

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 IX
TAKEN ON
WEDNESDAY, APRIL 9, 2003

Reported by:
Cathy A. Reece, RPR, CSR No. 5546

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

5
6
7 APPEARANCES:

8 FOR THE PLAINTIFFS:

9 MORRISON & FOERSTER, LLP
10 (NOT PRESENT)
11 425 Market Street
12 San Francisco, California 94105-2482
13 (415) 268-7415

14 -and-

15 ACLU FOUNDATION OF CALIFORNIA
16 BY: MARK D. ROSENBAUM, ESQ.
17 SOPHIE A. FANELLI, RESEARCH FELLOW
18 1616 Beverly Boulevard, Suite 920
19 Los Angeles, California 90026-5752
20 (213) 977-9500
21
22
23
24
25

1 APPEARANCES (Continued)

2
3 FOR THE INTERVENOR LOS ANGELES UNIFIED SCHOOL DISTRICT:

4 LOZANO SMITH
5 (NOT PRESENT)
6 20 Ragsdale Drive, Suite 201
7 Monterey, California 93940-5758
8 (831) 646-1501
9

10 FOR THE INTERVENOR CALIFORNIA SCHOOL BOARD ASSOCIATION:

11 LAW OFFICES OF OLSON HAGEL & FISHBURN LLP
12 BY: ABE HAJELA, ESQ.
13 555 Capitol Mall, Suite 1425
14 Sacramento, California 95814-4602
15 (916) 442-2952
16

17 Also present: John Nolte
18
19
20
21
22
23
24
25

1 APPEARANCES (Continued)

2
3 FOR THE DEFENDANT STATE OF CALIFORNIA:

4 O'MELVENY & MYERS, LLP
5 BY: DAVID L. HERRON, ATTORNEY AT LAW
6 400 South Hope Street, Suite 1500
7 Los Angeles, California 90071-2899
8 (213) 430-7221
9

10 FOR DEFENDANT DELAINE EASTIN, STATE SUPERINTENDENT OF
11 PUBLIC INSTRUCTION, STATE DEPARTMENT OF EDUCATION,
12 STATE BOARD OF EDUCATION:

13 STATE OF CALIFORNIA
14 DEPARTMENT OF JUSTICE
15 OFFICE OF THE ATTORNEY GENERAL
16 BY: ANTHONY V. SEFERIAN, ESQ.
17 1300 I Street, Suite 1101
18 Sacramento, California 94244-2550
19 (916) 327-6819
20
21
22
23
24
25

1 I N D E X

2
3 WITNESS: JEANNIE OAKES
4

5
6 EXAMINATION PAGE
7 BY MR. HERRON 1514, 1584
8
9

10 EXHIBITS
11 EXHIBIT MARKED
12 (NONE)

13
14
15
16
17
18 QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:
19 (NONE)
20

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

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

5 EXAMINATION

6 BY MR. HERRON:

7 Q. Good morning, Dr. Oakes.

8 Are you able to give your very best testimony
9 here today?

10 A. I am.

11 Q. From the time we broke last night until now
12 have you spoken to anyone about your deposition?

13 A. I had a brief conversation with Mr. Rosenbaum
14 and Ms. Fanelli, and I had a brief conversation with my
15 husband over dinner.

16 Q. Did you review any documents?

17 A. Yes. I looked again at my report, and I
18 looked at a couple of the reports that I synthesized in
19 the process of constructing my report.

20 Q. All of them or just some?

21 A. Just some.

22 Q. Do you recall which ones?

23 A. I looked at the Grubb and Goe report. I
24 looked at the Darling-Hammond report. I looked at the
25 Corley report. I looked at the Earthman report.

1 thought the precise way in which the class size
2 reduction was done in California was well advised, I
3 would say that -- that I am critical of the fact that
4 class size reduction was done in isolation of other
5 reforms and was not accompanied by other measures that
6 would have ensured a sufficient number of highly
7 qualified teachers and professional development for
8 teachers in order to help them better use class size to
9 the advantage of students.

10 Q. Do you have any other criticisms of the way in
11 which class size reduction was implemented in
12 California?

13 A. I think that what I just said is a fairly
14 comprehensive criticism.

15 I certainly endorse the good intentions. I
16 think the unfortunate result of leaving children in
17 low-income schools with far greater numbers of less than
18 fully qualified teachers was an unfortunate one and
19 could have been anticipated and some measures been put
20 in place to warrant -- to avoid that outcome.

21 And it is disappointing to me that I think
22 what is essentially a good idea was done badly, and it
23 may have long-term negative consequences.

24 Q. What do you believe should have been done
25 instead in implementing class size reduction in

1 That is what I am recalling right now.

2 Q. Late night?

3 A. Late night.

4 Q. You are aware that class size reduction has
5 been implemented in California?

6 A. Yes.

7 Q. In your opinion is that a positive policy, one
8 that has a positive effect on student learning?

9 A. The -- I can tell you about the evidence we
10 know about class size is that class size in itself
11 sometimes has -- seems to have a positive effect and
12 sometimes it doesn't, given various researchers.

13 The most robust conclusion we have is that
14 class size in conjunction with other changes such as
15 changes in teaching practice, changes in the
16 relationships between teachers and students, can be
17 extraordinarily positive in its effect.

18 The goal is, of course, to get policies that
19 encourage not only class size reduction but the
20 accompanying changes in behavior that are likely to have
21 that positive effect.

22 Q. In your opinion was it appropriate to
23 implement class size reduction in California?

24 MR. ROSENBAUM: Vague as to "appropriate."

25 THE WITNESS: If you are asking me whether I

1 California?

2 A. Well, I think, as I talk about in my report at
3 some length, that California -- that California's
4 fundamental policy problem is one of fragmentation and
5 incoherence with a whole variety of actors attempting to
6 use categorical funds to make improvements in the
7 educational system, but that they are not well
8 articulated or coordinated.

9 So my advice would be to put first things
10 first and establish a policy system and governance
11 strategies for California that allowed far greater
12 coherence, clarity, articulation among policies and
13 policymakers.

14 Q. But what would you do different than
15 California actually did in implementation of class size
16 reduction?

17 MR. ROSENBAUM: Asked and answered. It is
18 argumentative as well.

19 THE WITNESS: I think my answer about
20 restructuring the policy system and the funding system
21 so that it is guided by a coherent set of goals and
22 plans and articulated clear responsibilities for various
23 actors and well articulated is -- again, I think that is
24 first things first.

25 That is where I would put my energy or effort

1 in giving advice about how to do things differently.
 2 BY MR. HERRON:
 3 Q. Would you also have assured that there were an
 4 adequate number of fully qualified teachers as you have
 5 defined that term prior to implementing class size
 6 reduction?
 7 MR. ROSENBAUM: That's vague.
 8 THE WITNESS: I am not prepared to outline a
 9 specific set of policy recommendations or a sequence of
 10 policy recommendations.
 11 I think what my report does is really talk
 12 about the systemic problems in the system that have led
 13 to good intentions going awry, is how I would
 14 characterize class size reduction, and that what I would
 15 do first is what I said, is to try to invest the energy
 16 in getting a more coherent, rational policy system.
 17 BY MR. HERRON:
 18 Q. So you have no opinion as to whether or not
 19 California should have first increased the number of
 20 fully qualified teachers it had prior to implementing
 21 class size reduction?
 22 A. It is not a trade-off I am willing to make,
 23 and it is not an opinion I am willing to say here
 24 because I think it is not a useful way to approach the
 25 problem.

1 Q. According to your definition, a fully
 2 qualified teacher is one that meets the existing
 3 standards set forth by the CDE for a full credential and
 4 has, indeed, obtained a full and clear credential.
 5 Have I stated that correctly?
 6 A. Not quite.
 7 Given my understanding of the current
 8 requirements to be a qualified teacher, to get
 9 certification in California, I think individuals who
 10 have met those standards for certification in the state
 11 could be considered as having met sort of a bottom
 12 threshold of demonstrated competence to be considered a
 13 qualified teacher.
 14 I might not think that if the specific
 15 requirements for a credential were very different than
 16 they are today.
 17 Q. Do you think that what constitutes a qualified
 18 teacher varies from state to state?
 19 A. By definition, if you mean "qualified" as
 20 having obtained a credential, then there are some
 21 variances among State policies and what constitutes a
 22 qualified teacher. That is certainly true.
 23 If you are talking more broadly about my
 24 definition of what a qualified teacher needs to have in
 25 terms of the substance of their knowledge, I think the

1 deep knowledge of subject matter, deep understanding of
 2 how children learn, a mastery of a set of skills on how
 3 to make knowledge accessible to children and how to help
 4 children grow and develop are essential in every state,
 5 minimums in every state, and that additionally in states
 6 like California where -- with a diverse --
 7 linguistically and culturally diverse populations, that
 8 it is also part of that minimum to have the specialized
 9 knowledge and skill about how to maximize the learning
 10 of children who -- from diverse cultures and language
 11 backgrounds.
 12 Q. So if, for example, a teacher in another state
 13 was fully credentialed in that state but the
 14 credentialing requirements were less stringent than
 15 those in place in California, that teacher may not be
 16 highly qualified or fully qualified -- I'm sorry --
 17 fully qualified, according to your definition of the
 18 term?
 19 MR. ROSENBAUM: That is vague and ambiguous.
 20 THE WITNESS: If the teacher in another state
 21 met that state's certification requirements, by
 22 definition, that person would be a qualified teacher in
 23 that state.
 24 That person might not meet what I believe to
 25 be necessary standards for teachers in particular

1 contexts like California.
 2 BY MR. HERRON:
 3 Q. So a teacher in Mississippi, for example,
 4 could be fully qualified under less stringent
 5 certification requirements in that state but that
 6 teacher would not be fully qualified in California?
 7 MR. ROSENBAUM: Asked and answered.
 8 THE WITNESS: I am not prepared to make a
 9 judgment about the credentialing requirements in states
 10 other than California or evaluate their stringency, if
 11 that is a word, or appropriateness for California.
 12 I know that we carry around a lot of negative
 13 stereotypes about Mississippi, but I am not going to sit
 14 here and say Mississippi teachers are not fully
 15 qualified. I just don't have enough information to give
 16 an opinion.
 17 BY MR. HERRON:
 18 Q. Why is it what you say -- let me try that
 19 again.
 20 Why is it that your definition of what is a
 21 qualified teacher should be the standard in California?
 22 MR. ROSENBAUM: Argumentative.
 23 THE WITNESS: It is the standard in
 24 California. It is certainly what most children have in
 25 California, fortunately. Unfortunately, it is what too

1 few children have in California and what
2 disproportionately is -- are absent in the schools
3 attended by the State's most vulnerable children.

4 BY MR. HERRON:

5 Q. So what you are saying is a qualified
6 teacher -- a teacher is qualified in California because
7 that teacher meets the standards set forth by California
8 for credentialing?

9 A. I would say there are two things that go into
10 my opinion that a certified teacher in California has
11 met the minimum standards for qualification.

12 One is that legally they have met the
13 technical requirements set forth by the State and,
14 substantively, those requirements match fairly well with
15 what I in my professional judgment think of as minimum
16 qualifications for teachers.

17 Q. Your third report talks about various
18 conditions that some students in California schools are
19 subject to.

20 In your opinion, for example, some students in
21 California public schools receive an inadequate number
22 of instructional materials; is that correct?

23 A. Yes.

24 Q. Do you know how many?

25 A. How many materials or --

1 A. I would certainly refer to all of the data
2 sources that I described in my instructional materials
3 report.

4 I don't include all of those data sources here
5 because this is an overview and a synthesis, not a
6 complete rendering of each of those reports.

7 Q. Okay. Your opinion is that some students in
8 California public schools have inadequate access to
9 technology.

10 Upon what data do you rely for that opinion?

11 A. Well, again, I specify all of the data sources
12 that I used at the time that I wrote the instructional
13 materials report.

14 Since that time I have checked the latest
15 figures from the California Department of Education
16 about students' access to computer technology, and while
17 there has been some slight improvement in the ratio of
18 students to computers in the last year, I think the
19 average now is a little bit more than five students per
20 computer. It is significantly less for computers that
21 have multimedia capability and even less for computers
22 that permit students to have access to the Internet.

23 What is most interesting to me in that most
24 recent -- the technology survey is that the disparities
25 between high-poverty schools and schools with very few

1 Q. No.

2 How many students receive an inadequate number
3 of instructional materials?

4 MR. ROSENBAUM: Vague.

5 THE WITNESS: I would say there are two
6 answers to that question.

7 One is that we don't have -- the State does
8 not collect the data that would be required to know with
9 absolute certainty the number of students who lack
10 adequate instructional materials, but that the data we
11 gathered from the Harris survey allows us to make rough
12 estimates of the numbers of students.

13 Those Harris reports are dramatic enough that
14 I don't think any reasonable person would conclude that
15 there is not a problem with the shortage of materials.

16 BY MR. HERRON:

17 Q. Other than the Harris data upon what do you
18 rely, upon what data do you rely to suggest that
19 California -- some California students receive an
20 inadequate number of instructional materials?

21 MR. ROSENBAUM: David, I am not going to
22 object this time, but I think you went into that at some
23 length in your questioning of her on textbook reports.

24 BY MR. HERRON:

25 Q. Okay.

1 children in poverty seem to have grown over the last
2 year.

3 Q. Other than the CDE data you referenced and the
4 Harris data, upon what data do you rely for your opinion
5 that students in California or some students in
6 California receive an inadequate or have inadequate
7 access to technology?

8 A. In my instructional materials report I do
9 refer to other data sources. For example, the
10 "Education Week's" special report they did last year on
11 access to technology in various states. There are a
12 number of other reports.

13 There certainly are also -- as I name in that
14 report, among other things -- mentions of these problems
15 in some of the reports that have been filed by schools
16 about their own problems in conjunction, say, with
17 II/USP and other sort of documents.

18 Q. What data do you rely upon for your opinion
19 that English language learners lack adequate access to
20 instructional materials?

21 A. Certainly the -- I rely on all of the data
22 sources that underlie the paper that Kenji Hakuta wrote
23 for this case and the report that Patricia Gandara and
24 Russ Rumberger did that is somewhat more elaborate than
25 Mr. Hakuta's report.

1 I also have some independent knowledge and
2 have looked at those data myself, not just the --
3 looking at their reports was certainly not my first
4 introduction to this topic or these data.

5 Q. Upon what data do you rely for your opinion
6 that some students in California public schools have
7 inadequate access to safe, clean and educationally
8 appropriate facilities?

9 A. Well, I certainly rely on the report -- the
10 expert reports that I summarized in the -- or that I
11 drew from -- hardly summarized -- in the Meta report.

12 Mr. Corley provides an extraordinary number of
13 reports up and down the state of those problems. Also
14 he and -- and I believe the other facilities reports --
15 although I cannot remember the details of every
16 report -- mention inadequacies in California's
17 facilities.

18 Certainly, the GAO report and the Legislative
19 Analyst's office reports are fairly clear. The
20 statements made by people like the former Superintendent
21 of Public Instruction, the data that came out in the
22 late 90's when there were several reports done on the
23 conditions of schools in Los Angeles and, you know -- I
24 am certainly not being comprehensive here.

25 There are many things I am probably not

1 What data shows that students are bused
2 because of overcrowding?

3 A. The -- as I talk about in my second report on
4 Concept 6 schools and busing for overcrowding, again, we
5 have a serious problem in the state that we don't
6 collect data about the reasons why various students are
7 bused in California. And that is a problem, although
8 there have been reports that help to give some
9 information. For example, at the time when I did that
10 report, or when I first started drafting that report,
11 there was a website put up by the -- a webpage on the
12 L.A. Unified website where they talked about the numbers
13 of children who were bused due to overcrowding in the
14 district. That page is no longer on their website.

15 There are -- if you are talking about specific
16 systematically collected data, those are the sources
17 that I have looked at.

18 Certainly, there are other forms of
19 information -- reports and discussions with educators.

20 I have to say with all of these conditions I
21 am not -- it is not as though I had no knowledge of or
22 research or professional understanding of these problems
23 before beginning these reports. I mean, I have
24 career-long experience, knowledge, reading, research
25 that speaks to these issues, and so that all of that

1 recalling at the moment that I have looked at to
2 understand this problem. Most recently was my own
3 perusal, as I mentioned yesterday, of the report card on
4 the states issued by the American Society of Civil
5 Engineers. I think that was quite specific in reporting
6 the percentages of California schools with various
7 facilities problems.

8 Q. How about Harris data? Do you rely upon it at
9 all for your opinion that some students in California
10 public schools have inadequate access to safe, clean and
11 educationally appropriate facilities?

12 A. Yes.

13 And in my instructional materials report, if
14 you recall, there is a section of that report that talks
15 about the convergence of problems with instructional
16 materials with problems around facilities, and in that
17 document I actually list the percentages of teachers who
18 responded to the Harris survey who reported the
19 existence of various facilities problems at their
20 schools.

21 And, you know, there's -- Mr. Corley also uses
22 the Harris data as well.

23 Q. Upon what data do you rely for your opinion
24 that some students in California's public schools are --
25 let me try that once more.

1 needs to be included as the basis on which I have drawn
2 these conclusions.

3 Q. All right. But you say that busing because of
4 overcrowding is a major problem.

5 What data other than the LAUSD data supports
6 that opinion?

7 MR. ROSENBAUM: Asked and answered.

8 THE WITNESS: Well, I am -- I think if 15,000
9 or 25,000 children are bused because their schools are
10 too overcrowded and some of them are bused up to an hour
11 a way in each direction, that is a major problem, and it
12 is enough for me to say that it is a major problem.

13 BY MR. HERRON:

14 Q. And why is that a major problem?

15 A. Because no parent would want their child to be
16 bused two hours a day on L.A. freeways or surface
17 streets simply because the educational system in this
18 state cannot provide a place for them in a classroom
19 closer to their home.

20 Q. Why is it acceptable to bus students for the
21 purpose of achieving racial integration?

22 A. First of all, I don't believe -- I mean, let
23 me say this. With you, I agree, that that is a -- I
24 have a personal and professional opinion that that is a
25 good thing to do, as you suggest.

1 The reason why I think it is very different is
2 that there is a great deal to be gained at the end of
3 the bus ride both for a child who is participating in a
4 desegregated school, and there is a great deal to be
5 gained by a society that wants to have racial
6 integration and equitable opportunity for all of its
7 children.

8 Q. So in your judgment the time spent on a bus
9 and the detriments of that are outweighed by the
10 benefits of integration that may be achieved?

11 MR. ROSENBAUM: David, I am not going to stop
12 the question, obviously, but that was gone into at
13 considerable length when you asked about integration
14 during the Concept 6 deposition.

15 BY MR. HERRON:

16 Q. Just a couple of questions on it.

17 A. As I explain in the Concept 6 report, both
18 things are true. Long bus rides are a problem and, yes
19 there are compensatory features when students are bused
20 long distances either because they have chosen a
21 particular educational program they want to attend or
22 that they're being bused for racial integration.

23 My preference would be that there be racially
24 integrated schools and high-quality programs near every
25 child's home.

1 Q. Do you think that that standard you just
2 articulated is part of students receiving a basic
3 education?

4 A. I think we talked yesterday quite a lot about
5 the elements of basic education, the threshold below
6 which no school should be allowed to fall.

7 My personal preference and -- would be that
8 every child have an extraordinarily high-quality
9 racially integrated program near their home. I think
10 there have been several court decisions that have
11 suggested that we should provide no less for California
12 children.

13 I in the context of this case would not add
14 rational integration to the list of things that have
15 been specified as being necessary for every child and
16 for the State to provide every child.

17 Q. The remedies that you set forth at Pages 58
18 through 71 of your third report, again, we will focus on
19 that.

20 Are there any proposed remedies not expressly
21 set forth in your report that in your opinion are,
22 indeed, needed in California?

23 MR. ROSENBAUM: Vague.

24 THE WITNESS: Of course. I mean, the purpose
25 here is very, very different, as I said yesterday, than

1 specifying particular remedies.

2 The principles that are set forth in this
3 section are things that I believe are nonnegotiable.
4 The specifics are illustrations of a -- of ways those
5 principles could be enacted in policy.

6 BY MR. HERRON:

7 Q. How do we distinguish between the principles,
8 the nonnegotiable principles, and the specifics?

9 MR. ROSENBAUM: Vague and compound.

10 THE WITNESS: I think essentially you can view
11 what I have written here as a statement of principles.

12 When specific agencies are named and specific actions
13 they might take in order to realize those principles,
14 you might consider those as examples that could be the
15 subject of a political process and some judgments about
16 the best way to achieve those principles.

17 BY MR. HERRON:

18 Q. This document, your third report, does not set
19 forth all of the things that -- or all of the changes
20 that you believe should be made in California in order
21 to assure its students receive an adequate and equitable
22 opportunity to learn?

23 A. I think this third report in its entirety does
24 two things.

25 It says there are a set of things that are so

1 foundational that they need to be present in the school
2 lives and the school experiences of every child in the
3 state, and then it attempts to offer a set of principles
4 that in my professional judgment would lead the State in
5 a direction of providing those essentials.

6 The details, I believe, are -- of policies --
7 that there are many. They are various. The experts in
8 this case have thought of a great number of them. I
9 have offered some of them as examples. They are only
10 examples.

11 The way in which the State chooses to ensure
12 that every child has what he or she needs is a matter of
13 decision making that is beyond the scope of the task
14 that I set for myself.

15 Q. Are you familiar with the educational
16 policies, programs and practices of states other than
17 California --

18 A. Some.

19 Q. -- that touch upon the issues raised in your
20 third report?

21 A. Some, yes. I have used some as examples in
22 the instructional materials report.

23 Other of the experts have used other state
24 policies as examples, and I have familiarity with some,
25 certainly not every detail of every state, of policies

1 in states across the country.

2 Q. Do you consider yourself an expert qualified
3 to testify about the educational policies, programs and
4 practices of any state other than California?

5 MR. ROSENBAUM: That is vague and overbroad.

6 THE WITNESS: Sure, to the extent that -- yes.

7 Of course.

8 BY MR. HERRON:

9 Q. What states?

10 A. I would say states generally.

11 Q. Any specific state?

12 A. I think that if -- that my professional
13 knowledge and background and expertise in educational
14 policy is sufficient that I could look at the specifics
15 of any state's policies and make a judgment about them
16 and have an opinion about them.

17 Q. But, for instance, have you studied what Texas
18 does with its school facilities?

19 A. As I said before, I do not know the details of
20 every state policy on every policy area.

21 That does not undermine the other truth, which
22 is that I have a broad and general and deep
23 understanding of state policymaking and local
24 policymaking and could with the -- a chance to look at
25 things speak knowledgeably about them.

1 to a measure.

2 BY MR. HERRON:

3 Q. Let's say on a national norm test.

4 Okay. Are you aware of what states achieve
5 highest -- students in which states achieve highest on
6 national norm tests?

7 A. I have seen those lists and looked at them,
8 and I have not memorized those lists.

9 Q. So it is your view that California should not
10 use any one particular state as a model for its own
11 educational policies, programs and practices?

12 A. You asked me earlier about whether there was a
13 state that had a comprehensive set of policies and
14 practices that California should follow.

15 I answered that I didn't believe that it would
16 be appropriate for California to look at the total set
17 of policies in a state and simply follow what another
18 state has done.

19 Q. What is the reason for that?

20 MR. ROSENBAUM: Asked and answered.

21 THE WITNESS: Because I believe that political
22 decisions about the means by which a particular state
23 wants to achieve a set of ends will differ in context,
24 and that it is appropriate to take that context into
25 consideration when framing the particular means a state

1 Q. In your opinion what states serve as the best
2 model for California in terms of their overall
3 educational policies, programs and practices?

4 MR. ROSENBAUM: Vague.

5 THE WITNESS: I think I stated once before or
6 in the report that certainly I think it would be
7 inappropriate for California to look to any single state
8 and say the bundle of policies that it has framed in
9 order to provide adequate and equitable education to its
10 students is one that California should copy.

11 I think the principles I have outlined here
12 are the ones that should be followed.

13 Some states are -- well, are experimenting or
14 have implemented some of these principles in various
15 ways. I think we can learn a great deal by studying
16 what other states have done, but in terms of the means
17 of achieving these basic requirements of an educational
18 system, that Californians need to come up with a
19 combination that best suits this context.

20 BY MR. HERRON:

21 Q. In what state do students have the best
22 academic achievement?

23 MR. ROSENBAUM: Vague.

24 THE WITNESS: I think it depends on the
25 measure. It depends on whether you are being restricted

1 wants to adopt.

2 BY MR. HERRON:

3 Q. So if one state is vastly different from
4 California in terms of its educational policies,
5 programs and practices, California should not rely on
6 that state's policies as a model?

7 MR. ROSENBAUM: Misstates the testimony.
8 Vague.

9 THE WITNESS: I said before I thought there
10 was a great deal to be learned by examining the policies
11 and practices in other states and that I suggest that
12 Californians do that.

13 BY MR. HERRON:

14 Q. And the states we should look to for models
15 are those mentioned in the experts' reports and in your
16 third report? "We" meaning California.

17 A. There are examples of various states in
18 conjunction with various of the expert reports.

19 I certainly would not say that those examples
20 constitute the universe of states that we might look to
21 for examples.

22 Q. Can you identify any state that has adopted or
23 implemented all of the remedies, proposed remedies set
24 forth in your third report from Pages 58 through 71?

25 A. As I tried to make clear, I don't characterize

1 these as a set of remedies. I characterize them as
2 examples of how the State might go about achieving the
3 ends it needs to achieve.

4 Q. Okay. Can you identify, then, any state that
5 has adopted or implemented all of the examples that are
6 set forth in your third report from Pages 58 to 71?

7 A. That is a ridiculous question.

8 Q. Okay.

9 A. No.

10 Q. Okay. Can you identify the state that has
11 adopted the greatest percentage of the examples set
12 forth in your third report from Pages 58 through 71?

13 A. You are asking me to assume that what I have
14 set forth here is a bundle of specific recommendations
15 that I am suggesting should be the remedies.

16 That is not what I put forth here; therefore,
17 it is very inappropriate, I think, to talk about in
18 terms of percentages or of other states that have
19 adopted these specific kinds of things. It is
20 completely contrary to the purpose of why these examples
21 are here.

22 Q. But you said each of these examples was both
23 feasible and reasonable, and I am just wondering if that
24 is true, then certainly some other state must have
25 adopted them?

1 that are providing an inadequate or inequitable
2 opportunity to learn to their students?

3 MR. ROSENBAUM: Compound. Vague.

4 THE WITNESS: Certainly I have not studied the
5 differences in opportunities to learn the way I have in
6 California of all other states.

7 However, the gap in achievement, in resources,
8 is a problem that is one of national concern, not simply
9 here in California. We do know that some states have
10 made considerable progress in reducing those gaps far
11 more than California.

12 BY MR. HERRON:

13 Q. Okay. My question is: What specific states
14 are providing, in your opinion and based upon your
15 knowledge of states generally as you just testified --
16 what other specific states are providing an inadequate
17 and inequitable opportunity to learn to their students?

18 MR. ROSENBAUM: Same objections.

19 THE WITNESS: I think we have had some court
20 decisions in New York and New Jersey, in Texas, to name
21 three examples of places that have demonstrable
22 inequities in the resources and opportunities they
23 provide to some of their students; namely, minority
24 students, low-income students. I think those are three
25 examples.

1 MR. ROSENBAUM: Objection. Argumentative.

2 THE WITNESS: I think the expert reports give
3 more than ample evidence that the specifics here are
4 reasonable and feasible and for most of them talk about
5 other places that have made quite good progress in
6 moving towards the things.

7 That does not mean that they -- well, that is
8 to me the only reasonable way of talking about the --
9 these specifics and the examples from other states.

10 I think that the expert reports really speak
11 for themselves; that these are reasonable and feasible,
12 and there are examples that we can look to other places.

13 BY MR. HERRON:

14 Q. But we can't or you can't identify a single
15 state that has adopted the greatest percentage of the
16 examples set forth in your report?

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

19 THE WITNESS: It is not a question I find I
20 can deal with in any reasonable way.

21 BY MR. HERRON:

22 Q. Your opinion is that California is providing
23 overall an inadequate and inequitable opportunity to
24 learn to some of its students.

25 In your opinion are there any other states

1 BY MR. HERRON:

2 Q. What other states?

3 A. I think certainly we -- this is a difficult
4 question because it is a question of variability and the
5 extent to which states have responded to their
6 inequities and their lack of adequacy.

7 I would say it has been a general problem.
8 Connecticut, for example, is a state that had a
9 significant problem that was addressed in the courts
10 and, in fact, there is some evidence that they have
11 responded quite constructively.

12 I would say that probably in no state is the
13 problem nonexistent, but there is certainly a great deal
14 of variance in the extent of the problem and the
15 responsiveness of the policy system to it.

16 Q. So other than New York, New Jersey, Texas and
17 previously Connecticut can you identify any other
18 specific state that is providing an inadequate and
19 inequitable opportunity to learn to its students?

20 MR. ROSENBAUM: That is a mischaracterization
21 of her testimony. She just said, "in no other state."

22 THE WITNESS: I think that the way I responded
23 is the way I would have to respond again; that it is a
24 national problem. It exhibits itself in nearly every
25 state, and there is a huge amount of variance in the

1 ways states have responded to the problems.
 2 We are talking about two problems here,
 3 actually, as well. One is the overall level of
 4 resources and opportunities provided, and the second is
 5 in the equitable distribution of those resources and
 6 opportunities, and again there is a great -- on both
 7 dimensions there is an extraordinary variation among
 8 states.

9 BY MR. HERRON:

10 Q. In your opinion is there any other state that
 11 is providing a better -- let me rephrase it in terms of
 12 the way you testified -- a more adequate and equitable
 13 education to their students than California?

14 MR. ROSENBAUM: Asked and answered. Vague.
 15 Compound.

16 THE WITNESS: I think there are a number of
 17 states that are doing better in that regard than
 18 California.

19 BY MR. HERRON:

20 Q. Which ones?

21 A. Well, I think that Connecticut stands out in
 22 my mind, and certainly relying on a very thorough
 23 description, I think, that Linda Darling-Hammond has
 24 done in both her expert report and in other places,
 25 there is lots of evidence that Connecticut has made

1 great strides, far beyond California.

2 Certainly, one that is popularly touted is
 3 Texas, especially in the regard of making sure that
 4 children have an opportunity to learn what is on the
 5 Texas Assessment of Academic Skills. I wouldn't want to
 6 make a broad characterization about Texas at this point,
 7 but we certainly know that the gap in achievement on
 8 that test has narrowed.

9 Q. Are there other states?

10 A. Oh, I am sure there are.

11 If you would like me to -- I mean, frankly to
 12 answer this question sensibly, I would want to do a --
 13 spend a little time with more information and review it.
 14 It is not -- I didn't take it upon myself in this
 15 report, nor am I prepared today, to give you a ranking
 16 of all the states in terms of the adequacy and the
 17 equitability of their systems, but that is something I
 18 could certainly do.

19 Q. Now, Dr. Oakes, in preparing your third report
 20 you did not conduct any systematic comparison of
 21 California's educational policies, programs and
 22 practices with other states in the United States;
 23 correct?

24 A. No. That is not correct.

25 I certainly looked carefully at policies

1 specifically related to instructional materials, as I
 2 have testified before and my report makes clear.

3 I have looked at the examples provided by the
 4 other experts.

5 I certainly have a general knowledge and
 6 systematically read everything I can about State policy
 7 all of the time.

8 What I said I didn't do was to sit down and do
 9 a specific analysis that would allow me to rate and rank
 10 the adequacy and the equity in every state.

11 Q. Rank California versus every other state?

12 A. I said to make a systematic ranking. You
 13 asked me exactly how many states are and which states
 14 are better and which states are worse.

15 Q. Right.

16 A. And that sort of systematic ranking and rating
 17 is not an analysis I have done, but it is certainly one
 18 I could do.

19 Q. And you haven't, for instance, compared
 20 California's policies, programs and practices related to
 21 teachers with each of the other states in the United
 22 States?

23 A. I am very familiar with the whole realm of
 24 teacher policy and have probably read everything that
 25 has been written about it and all the scholarship, but I

1 have not done a rank ordering or looked at the specifics
 2 of -- of every detail of every policy.

3 I think that it is pretty clear from Dr.
 4 Darling-Hammond's report where California's teacher
 5 policy system is in relationship to other states.

6 Q. Well, in terms of facilities, for instance,
 7 you haven't done any sort of systematic comparison of
 8 California's programs, policies and practices in
 9 comparison to all the other states in the United States,
 10 have you?

11 A. Well, actually the Association for Civil
 12 Engineers -- the Society for Civil Engineers' report
 13 that I read in preparation over the weekend -- I think
 14 we -- either over the weekend or Monday night -- comes
 15 as close to a state-by-state ranking as I have seen on
 16 about six different dimensions of policies.

17 I certainly have some confidence in the --
 18 reading their report and -- that -- that is about as
 19 close as anything could be to a state-by-state ranking.

20 And while I didn't memorize it, I certainly
 21 have looked at it and noted that California was right at
 22 the bottom on all of the dimensions except one, as I
 23 think I mentioned the other day, ventilation or
 24 something, where we were probably in the bottom third.

25 Q. Right.

1 But you didn't rely on that report in
 2 generating your third expert report, did you?
 3 A. The question you asked me is whether I had --
 4 is whether I was familiar with the research or I had
 5 done any study of how states compare along facilities,
 6 and the answer is yes.
 7 Q. Perhaps I was not clear enough in my question.
 8 What I am more interested in is whether in
 9 preparing your third report you conducted a systematic
 10 study that compared California's facilities policies,
 11 programs and practices with those policies, programs and
 12 practices of all other states in the United States.
 13 And I take it the answer to that is no?
 14 A. I actually relied --
 15 MR. ROSENBAUM: Well, it is asked and
 16 answered, and it is inappropriate for you to say, "and I
 17 think the answer is no."
 18 THE WITNESS: I certainly reviewed with great
 19 care Dr. Myers' report that does exactly that.
 20 Also, the -- certainly the other reports on
 21 facilities I think are quite helpful in understanding
 22 the current conditions in California.
 23 BY MR. HERRON:
 24 Q. I want to talk to you more about this concept
 25 of basic education.

1 Page 67 of your report, for example, talks
 2 about -- and I am looking now at the text under No. 1 on
 3 Page 67 of your third report. This suggests, for
 4 example:
 5 "The State must develop
 6 standards that regulate the minimum
 7 conditions in schools."
 8 I read that correctly; right?
 9 MR. ROSENBAUM: We will stipulate to that.
 10 BY MR. HERRON:
 11 Q. You go on to quote Mr. Sobol as saying:
 12 "There must be some
 13 nonnegotiable baselines."
 14 I just want to point to a few other places in
 15 your report where you discuss basic education and the
 16 concept of basic necessities. For example, Page 34.
 17 A. Where on 34?
 18 Q. In Item D where you state:
 19 "State policies do not give
 20 local districts the capacity to
 21 provide basic educational resources
 22 and conditions."
 23 And on 37 -- just by way of background looking
 24 at your report here, the second sentence in C talks
 25 about:

1 "Both failures prevent the
 2 State from recognizing needs and
 3 intervening when problems arise in
 4 the providing of basic educational
 5 necessities."
 6 How do you define the term, "basic education"?
 7 A. Well, I think in the context of this report
 8 and this case that I would have to say that a basic
 9 education consists of a set of foundations, including
 10 the three elements that are named in this -- in these
 11 reports, teachers and texts and materials and
 12 facilities, the other kinds of things that I mentioned
 13 yesterday when we went over this in some detail, and
 14 that there is also a functional definition. It is the
 15 things that are basic are what most children have in
 16 their schools.
 17 Q. Would you add anything to that definition?
 18 A. Well, if you include in that definition the
 19 things I mentioned yesterday as being for me absolutely
 20 foundational, nonnegotiable and this -- I think the
 21 definition certainly must include what most public
 22 schools provide to students.
 23 Q. Why is that the proper definition of "basic
 24 education"?
 25 A. I think it is a very functional way of

1 defining what in the contemporary context is basic for
 2 being an educated Californian.
 3 Q. On what do you base that opinion?
 4 A. My long experience and research and
 5 professional judgment and commitment to the principle of
 6 equity.
 7 Q. Anything else?
 8 A. I think what I just named pretty much
 9 constitutes the universe of my knowledge, my research,
 10 my professional experience, my commitment to having an
 11 equitable state, society.
 12 Q. That sums it up?
 13 A. That probably sums it up.
 14 Q. Your testimony yesterday will stand for what
 15 it is, and I am not going to restate it.
 16 You have given me two definitions -- well, two
 17 related definitions. "Basic education" is a set of
 18 foundations, the three items discussed yesterday,
 19 qualified teachers, adequate texts and instructional
 20 materials, facilities, as you talked about it yesterday.
 21 To that list of three you had added such
 22 things as -- I am not being fully inclusive here -- but
 23 such things as time on instruction that allows children
 24 to learn and to be taught, interactions that make
 25 knowledge available and so on.

1 Those were the additional things you talked
 2 about; right?
 3 A. And I think I --
 4 Q. There are more --
 5 A. I think I articulated the culminating
 6 principle that all -- a basic education includes having
 7 everything in your school that you need to have a
 8 reasonable opportunity to compete for a place at the
 9 most competitive public university in the state.
 10 Q. Berkeley?
 11 A. Currently.
 12 Q. Currently, right. Okay.
 13 Now the functional definition of "basic
 14 education," according to you, is what most children have
 15 in their schools.
 16 Am I stating that correctly?
 17 A. Yes.
 18 Q. Now should these basics, these elements of a
 19 basic education, be provided to all California
 20 schoolchildren without regard to the financial cost?
 21 A. Yes. I think so.
 22 Q. Should these elements of a basic education be
 23 provided to all California schoolchildren without regard
 24 to the State's ability to pay for them?
 25 MR. ROSENBAUM: Vague.

1 THE WITNESS: Well, I wouldn't accept the
 2 premise that the State doesn't have the ability to pay
 3 for them. I believe the State does.
 4 However, whether there are available dollars
 5 or not does not alter my conception that these things
 6 are basic and that all children should have them.
 7 BY MR. HERRON:
 8 Q. Why do you believe that the State has the
 9 fiscal ability to pay for the basic -- a basic education
 10 for all California students?
 11 A. Well, several reasons. One is that we are an
 12 enormously wealthy society. We have incredible
 13 resources available to us.
 14 Second, most schools are able to provide these
 15 features of an education to children; therefore, it
 16 seems quite reasonable that all schools should provide
 17 them.
 18 Most states in this country do a better job of
 19 providing these things than California. There is no
 20 reason that we can't.
 21 Q. Your testimony is that most states do a better
 22 job than California at providing a basic education to
 23 their students?
 24 A. Well, for example, let me deal with this one
 25 by examples.

1 In terms of the teacher shortage, we know that
 2 California has fallen far short of most other states in
 3 providing qualified teachers to all of its children.
 4 We know that in terms of clean and safe and
 5 decent facilities, that California falls far below other
 6 states. We just discussed this kind of evidence.
 7 Q. Sure.
 8 A. The fact that I am just using as a principle
 9 that if Connecticut can afford to provide students with
 10 books and teachers and schools, then there is no reason
 11 to assume that California could not.
 12 Q. What is it about your qualifications that
 13 qualifies you -- qualifications, background,
 14 education -- that qualifies you to offer an opinion
 15 about whether or not the State can -- whether or not the
 16 State has the fiscal ability to pay for a basic
 17 education for all of its students, as you have defined
 18 "basic education"?
 19 A. First of all, I want to say this is not about
 20 figuring out what we can afford to pay for or not.
 21 I mean, these things are so fundamental that
 22 if you are going to have an education system, children
 23 need to be provided with these things, and it is not a
 24 matter of sitting down and saying, "Can we afford to
 25 provide children with a book and a teacher and a decent

1 school and a chance to go to college?" That is not what
 2 it is about.
 3 However, I would say as a citizen of
 4 California for more years than I would want to put on
 5 the record, I am very familiar with the size of our
 6 economy, the wealth that is available in our state that
 7 could be used to provide these things for children.
 8 Q. What beyond your tenure as a resident in
 9 California qualifies you to opine about whether or not
 10 the State is fiscally able to pay for a "basic
 11 education," as you defined that term, for all California
 12 students?
 13 A. My years as being an expert on policymaking
 14 and the provision of education to schoolchildren in the
 15 state and around the country.
 16 Q. What does that have to do with fiscal ability
 17 to pay -- that experience?
 18 A. It's -- the question actually calls for little
 19 more than common sense.
 20 I have a lot of expertise to speak about this
 21 and other things. Actually, if you drive with me in the
 22 morning down Sunset Boulevard from my house to downtown
 23 Los Angeles and you pass the Rollses and the Jaguars and
 24 the BMW's and the Mercedeses, the notion that this state
 25 cannot afford a book and a teacher and a decent school

1 building for a child is ludicrous.

2 MR. ROSENBAUM: David, I don't mean to cut off
3 the stream of questioning, but we have been going for a
4 while.

5 MR. HERRON: That's fine. Let's take a break.

6 (Recess taken.)

7 BY MR. HERRON:

8 Q. Dr. Oakes, in your opinion is it possible for
9 a student to receive a basic education even though he or
10 she may not have access to all the educational inputs
11 that constitute a "basic education," as you defined it?

12 A. I consider the things I named nonnegotiable
13 parts of a basic education.

14 Q. Therefore, a student may not, if he or she is
15 missing one of those elements, receive a basic
16 education?

17 A. I think both by the definition I gave of the
18 elements and the functional definition I gave, yes. It
19 wouldn't be a basic education.

20 Q. What if a student has access to textbooks but
21 they are not all aligned to the State content standards
22 and in every other way the student has access to all the
23 items you have identified as constituting a basic
24 education?

25 MR. ROSENBAUM: That is an incomplete

1 under those conditions?

2 MR. ROSENBAUM: Asked and answered a bunch of
3 times.

4 THE WITNESS: First of all, it is hard for me
5 to imagine that situation, but I think that that
6 situation does not alter my definition of what
7 constitutes a basic education.

8 BY MR. HERRON:

9 Q. That is not the question.

10 Can that individual receive a basic education
11 or not under those circumstances?

12 A. I think, by definition, that student is not
13 receiving a basic education.

14 Q. How about the hypothetical student who has
15 access to every element of a "basic education," as you
16 have defined it, except no access to technology?

17 Can that student receive a basic education?

18 MR. ROSENBAUM: That is vague.

19 THE WITNESS: There is a general principle at
20 work here that drives all of my answers, and that is
21 that there are some things that are so foundational,
22 because most students have it, because they are
23 necessary to meet the standards that the State has set
24 for all students, that I would have to judge that
25 whenever those things are not present, by definition,

1 hypothetical.

2 BY MR. HERRON:

3 Q. Is that student able to receive a basic
4 education or no?

5 MR. ROSENBAUM: Incomplete hypothetical.
6 Vague.

7 THE WITNESS: In the context of this
8 discussion I think that I have to say that all of those
9 things are required.

10 Specifically not having textbooks aligned to
11 the standards puts a child at tremendous risk for
12 failing to pass the high school exit exam, and certainly
13 we would presume that passing the exam that the State
14 has said is a requirement for getting a diploma is
15 basic.

16 BY MR. HERRON:

17 Q. And, therefore, your answer is no?

18 A. You better phrase the question again for me
19 to --

20 Q. I am asking about this hypothetical student
21 who has access to texts but they are not aligned to the
22 content standards and in every other way has access to
23 all the other items that you define as constituting a
24 basic education.

25 Can that student receive a basic education

1 that child is not receiving a basic education.

2 BY MR. HERRON:

3 Q. So your answer would be the same if our
4 hypothetical student had all the -- had access to all
5 the elements of a basic education except for a fully
6 credentialed teacher; correct?

7 MR. ROSENBAUM: Same objections.

8 If you are going to ask a series, to expedite
9 it, I will have a continuing objection.

10 BY MR. HERRON:

11 Q. Absolutely.

12 A. My answer would be the same.

13 Q. And it would be the same if that student had
14 no access to a safe school?

15 A. Absolutely.

16 Q. Or a clean school?

17 A. Absolutely.

18 Q. Or an educationally appropriate school?

19 A. I don't know what you mean by that.

20 Q. I am using a term from your report.

21 A. "An educationally appropriate school"? Will
22 you show me where that is, and I will explain it in
23 context.

24 Q. I will, but I will do it later on.

25 The answer would be the same if that student,

1 the hypothetical student, was bused to relieve
 2 overcrowding?
 3 A. Yes.
 4 Q. And your answer would be the same for any
 5 student who attends a Concept 6 school?
 6 A. Absolutely.
 7 Q. What is the appropriate means to determine
 8 whether a particular school is providing all of its
 9 students with a basic education?
 10 A. I think I outline in my report my
 11 recommendations for a data collection and accountability
 12 system that regularly monitors and reports the presence
 13 and absence of the foundations of a basic education.
 14 Q. Do you believe it is important to look at an
 15 individual student's overall educational program as a
 16 whole to determine whether or not that individual
 17 student is receiving a basic education?
 18 A. I think there are these indicators of these
 19 essential foundational elements that can be quite useful
 20 to make that judgment.
 21 Q. Could you reread that answer.
 22 (Record read.)
 23 BY MR. HERRON:
 24 Q. Okay. What does that mean?
 25 A. I mean, you don't need to measure everything

1 that you asked.
 2 You do need to look at a student's program as
 3 a whole, and I think that we know from lots of research,
 4 not only in education, but in the economy, in
 5 healthcare, in the space program, that you can identify
 6 critical indicators that give you a great deal of
 7 education about whether the -- what is necessary is
 8 present or absent, and that is what I meant by that
 9 answer.
 10 Q. Uh-huh. If Student A attends an overcrowded
 11 school but otherwise has all the -- has access to all
 12 the elements that form a basic education, according to
 13 your definition, and Student B attends a school where
 14 the instructional materials are not aligned to the
 15 content standards but otherwise has access to all the
 16 items that you say constitute a basic education, is it
 17 fair to say that neither is receiving a basic education?
 18 A. Yes. That is what I would say.
 19 Q. Okay. In your opinion what is the best means
 20 to tell or to assess whether or not students in one
 21 district are receiving a basic education versus students
 22 in another district?
 23 A. As I just suggested, I think that there are a
 24 series of indicators that measure -- that can be used to
 25 measure whether schools are meeting the standards for a

1 basic education.
 2 They can be used across districts and made the
 3 basis of comparative analysis, much as we do now with
 4 the academic performance index.
 5 Q. I take it your approach would be -- in
 6 determining whether or not any particular district is
 7 providing a basic education to its students -- would be
 8 to review whether or not that district supplies each and
 9 every one of the items that you consider to be part of a
 10 basic education?
 11 A. I wouldn't frame it that way.
 12 I think it is the State's responsibility to
 13 ensure that all of these elements are in place. A
 14 monitoring system can help us determine whether or not
 15 those things are in place, and if they are not, there
 16 needs to be a serious investigation about whether the
 17 problem lies in the State's failure to provide them or
 18 whether the problem lies in problems that may occur at
 19 some other level of the system that need to be
 20 corrected.
 21 Q. But how do you tell whether one district is
 22 supplying a basic education to its students compared to
 23 what another district is supplying to its students?
 24 A. Perhaps I didn't make myself clear; that if we
 25 have State standards for the elements that are

1 absolutely foundational, basic, need to be in place for
 2 every child, we have measures of whether or not those
 3 things are present in the educational experience of a
 4 child, we use those measures across all the districts in
 5 the state, all the schools in the state. We look at the
 6 data, and you can see places where they are absent and
 7 places where they are present, and you would be able to
 8 make some sort of judgment about whether things are more
 9 adequate and equitable in the -- whether the standards
 10 of adequacy and equity are being met by some districts
 11 and not being met by others.
 12 Q. Does the question whether a student is
 13 learning or achieving have anything to do with an
 14 assessment of whether that student is receiving a basic
 15 education?
 16 A. Yes and no. I think it is a very important
 17 piece of information about the effectiveness of the
 18 educational system.
 19 It tells us very little in itself about the
 20 conditions under which learning occurs, so that in terms
 21 of the basic elements of an education you would have to
 22 make some guesses, which I think is not sufficient.
 23 Q. In other words, your definition of a "basic
 24 education" focuses exclusively on educational inputs as
 25 opposed to outcomes?

1 A. I think both things are very important, but,
2 for example, if a student had such extraordinary
3 motivation and such committed parents that that child
4 mastered the knowledge and skills of advanced
5 mathematics and went to a school that provided no
6 textbooks or materials in mathematics and did not have a
7 qualified mathematics teacher on its faculty, I think
8 the child's score on an achievement test would tell us
9 nothing about whether the State had provided that child
10 an adequate education.

11 Q. What role, if any, does student achievement
12 have in your opinion in determining whether or not a
13 student has received a basic education?

14 MR. ROSENBAUM: That is vague.

15 THE WITNESS: I think you can get some clues.
16 If there are serious problems with low achievement you
17 might -- that might serve as a trigger to do closer
18 examination of what is happening in a particular
19 building.

20 It does not obviate the need to -- even high
21 scores don't obviate the need to ensure that children
22 are being provided with what they need.

23 BY MR. HERRON:

24 Q. So, for example, if a student has access to
25 none of the items which you identify as required inputs

1 even -- if even possible.

2 I think in the best -- the very best way for
3 us to understand whether children have a basic education
4 is to examine their achievements in light of the
5 resources and conditions in which they were asked to
6 learn, and that if fundamental elements are not there,
7 as I have defined them and -- then we have a serious
8 problem, and that the State has not fulfilled its
9 responsibility to that child.

10 Q. So in your opinion mere achievement, mere
11 excellence in terms of an outcome, that is, achievement
12 on the CAT-6, for example, is not an indicator that a
13 child has received a basic education?

14 MR. ROSENBAUM: That has been asked and
15 answered numerous times now.

16 THE WITNESS: Not in itself.

17 BY MR. HERRON:

18 Q. Okay. Do you believe that what constitutes a
19 basic education varies from state to state?

20 A. I think the foundational elements that we have
21 talked about do not vary from state to state.

22 Q. What does that mean?

23 A. Well, we talked about qualified teachers,
24 adequate materials, decent school buildings, time to
25 learn, instructional strategies that make knowledge

1 constituting a basic education but nonetheless scores
2 100 percent on the CAT-6 test, your opinion is that that
3 student has not received a basic education; correct?

4 A. I think that the State -- my conclusion is
5 that the State has not provided that child with a basic
6 education. Somebody else may have, but the public
7 school system hasn't.

8 Q. Assume that an individual student has never
9 had access to any of the elements, the educational
10 inputs you say constitute a basic education but
11 nonetheless gains entrance to Berkeley.

12 Has that student received a basic education?

13 A. Not in the -- the State has not provided that
14 student with a basic education if they have not attended
15 a public school or had the option of attending a public
16 school where all of those elements were in place.

17 Q. So educational outcomes, that is, achievement,
18 in your view is not a proper barometer or proper measure
19 as to whether or not any student has received a "basic
20 education," as you have defined it?

21 A. As I explained before, I think measures of
22 educational achievement are very important. We want
23 students to achieve.

24 The likelihood that you pose that someone
25 would -- or that I posed -- are extremely rare, if

1 accessible, a fair chance to compete for a place at the
2 most competitive public university in the state, those
3 elements are quite the same -- they may get defined
4 differently in different states, but those fundamental
5 elements are essential anywhere.

6 Q. I take it you agree that there are states that
7 provide to their students fewer of the educational
8 inputs that you define as comprising a basic education?

9 A. Fewer -- fewer than what?

10 Q. Than California.

11 A. I didn't testify to that.

12 Q. Well, is that your opinion?

13 A. I am not in a position here to make a ranking,
14 and my conviction is and my research says that the value
15 of having these things is not dependent on whether some
16 other state may provide them or not.

17 Q. Has -- in California has what constitutes a
18 basic education changed over time?

19 A. Oh, I think it has. I think if we looked in
20 1875 at what was required to prepare young people for
21 being productive members of the workforce, from being
22 intelligent citizens that can manage the decision making
23 required of citizens for having productive, healthy
24 lives, for having a living wage, it would be quite
25 different than it is today.

1 Q. What constituted a basic education in 1930,
2 for example, is different than what constitutes a basic
3 education in California today?

4 A. I think that is probably a fair statement.

5 Q. And the same is true for 1950 versus today?

6 A. Well, the basic elements of having teachers,
7 having books and materials from which to learn, having a
8 safe school, those have always been fundamental.

9 The precise content of the materials -- I
10 mean, now the State has set its own standards. It has
11 established what every child in this state should know
12 and be able to do. So the content of what is actually
13 delivered by teachers and by materials and what good
14 buildings and facilities and equipment and time and
15 instructional strategies make possible, the content of
16 that is essentially changed.

17 I think there is something enduring about
18 needing to have someone who can help make knowledge
19 accessible to you, needing to have whatever tools are
20 necessary to acquire that knowledge and for having a
21 safe, decent place in which you can concentrate and
22 learn.

23 Q. When did access to technology and the Internet
24 become an element of basic education in California, in
25 your opinion?

1 A. I would not be comfortable giving you any kind
2 of precise date. It is certainly the case now.

3 Q. But it was certainly not the case in 1950?

4 A. It depends on the technology you are talking
5 about. There are different kinds of technology.

6 If you are talking about sort of digital,
7 computer technology, the moment it became important for
8 access to knowledge and the moment it became important
9 as a skill for employment, it became part of an
10 essential for California schools. I mean, as soon as
11 most kids had it.

12 I mean, the point at which policymakers said
13 all kids should have computers, computer technology is a
14 critical part of our educational system, and most kids
15 had it, then that is the point at which it became a
16 basic that all students should have.

17 Q. And certainly the schoolchildren in California
18 should not have had access to the Internet before Al
19 Gore invented it?

20 MR. ROSENBAUM: So stipulated.

21 THE WITNESS: Al Gore and UCLA.

22 BY MR. HERRON:

23 Q. So --

24 MR. ROSENBAUM: The case takes a productive
25 turn.

1 MR. HERRON: We found some ground for
2 agreement.

3 MR. ROSENBAUM: That's correct. Keep going,
4 David.

5 MR. HERRON: That is what I am, a bridge
6 builder.

7 Q. Well, on a more serious note, it is fair to
8 say, then, as technology changes over time what might be
9 part of basic education changes?

10 A. I think that that is why the functional
11 definition is so useful, to say that what most children
12 are provided in the course of their education can be
13 seen as constituting a basic education in the state of
14 California, and the details of that certainly do change.

15 Q. The other concept you talked about is if the
16 State sets a certain standard, then all students ought
17 to receive that.

18 That is part of receiving a basic education in
19 certain circumstances?

20 A. Yes. I think when -- for example, the one
21 circumstance I mentioned is when the State sets content
22 standards, the mastery of which is required to receive a
23 high school diploma, then the obligation for a basic
24 education is that children have what is required, what
25 is absolutely foundational to master those standards.

1 Q. In your opinion how is one to measure whether
2 or not a State-issued standard is sufficient to provide
3 the elements required for basic education?

4 Let me give you an example: Credentialing
5 requirements.

6 You agree that if someone meets those
7 credentialing requirements, passes, gets a full, clear
8 credential, that teacher is at least minimally qualified
9 and, therefore, fits within part of your definition of
10 "basic education"; correct?

11 A. As it is now defined in California.

12 Q. Right.

13 How do we know where the continuum lies? For
14 example, we talked about with the National Board
15 Certified --

16 A. That is why you have researchers like me. It
17 is what I think the people of California pay me to do,
18 is study and advise and help shape those decisions.

19 Q. I guess my question, then, is: When are we
20 able to assume -- when is someone able to say, "No, that
21 State standard doesn't go far enough. That doesn't
22 supply a basic education to students"?

23 A. Well, I think we are talking about two
24 different things.

25 One is that the foundational things are pretty

1 clear and obvious and constant and stable.
 2 The details do change and, you know, whether
 3 you need a G-3 or a G-4, they evolve over time, and that
 4 is why you use groups like the Standards Commission and
 5 other professional advisory bodies like the 2042 panel
 6 that has been constituted for the teacher credentialing
 7 to help specify the details.

8 Q. And the State specification of content
 9 standards in your opinion is sufficient to define the
 10 basic level of learning that any California student
 11 should be able to gain over the course of their career
 12 in public schools?

13 A. The State standards are what the State itself
 14 has defined as necessary and essential and has attached
 15 to them considerable consequences for children.

16 That is the situation we are in, and that is
 17 the standard, I think, that needs to be used at this
 18 point to determine what are the elements of a basic
 19 education.

20 Q. But what if the State content standards were
 21 considerably less difficult to achieve?

22 A. Well, I think we discussed this yesterday;
 23 that -- the State standards are what they are. I mean,
 24 we had minimum competency requirements before.

25 I and many other people, most people in this

1 what constitutes a basic education.

2 Assume that -- well, I think we have general
 3 agreement that both the State and the plaintiffs would
 4 like to see computer technology in the classroom. I
 5 want you to assume that 51 percent of the students in
 6 California are given by the State -- well, 51 percent of
 7 the students in California have laptop computers to use
 8 in school and to take home.

9 In your opinion and in the absence of a State
 10 standard requiring that all students have a laptop to
 11 use in the classroom and to take home, would the laptop
 12 access, then -- would that sort of access become a part
 13 of a basic education?

14 A. Well, I think that in the situation
 15 extraordinarily -- well, it may not be. In 10 years
 16 that may be a perfectly plausible set of circumstances;
 17 that 51 percent of the students would have a laptop to
 18 use at school and take home.

19 At the point at which 51 percent of students
 20 have that, I think we have reached the point where the
 21 equity principle dictates it has become basic and
 22 foundational and that all children should have it.

23 Q. Assume that 51 percent of the classrooms in
 24 California have their own bathrooms.

25 Once that occurs, should all classrooms in

1 state, thought they were too low. The -- that doesn't
 2 alter what is foundational.

3 I mean, we are not talking about the standards
 4 being the only basis on which one says children need
 5 teachers and good books and decent schools. I mean,
 6 there are plenty of other bases on which one would make
 7 that decision. The particulars happen to be driven at
 8 this point by the standards the State has set. They are
 9 one set of criteria that can help you analyze and make
 10 judgments about whether children are being provided a
 11 basic education.

12 So we really talked about two or three
 13 different ways one would make that determination. One
 14 is sort of basic elements; that -- there is ample
 15 evidence that basic elements are important and
 16 foundational.

17 There is the functional standard that if most
 18 children are provided it in the course of their public
 19 education, all children should have it as basic.

20 A third is when the State has set particular
 21 standards and hinges successful completion of schooling
 22 on those standards, then they also have to be taken into
 23 account as one derives the specifics of a basic
 24 education.

25 Q. Let's talk about your functional standard for

1 California have their own bathrooms?

2 A. I think this is, again, if I can use the word
 3 twice in the same day, ludicrous.

4 Q. I am using your definition.

5 A. Excuse me.

6 Q. The functional definition you provided us was
 7 that once a majority of kids have it, all kids should.

8 You also talked about in the definitional
 9 portion of basic education that there ought to be safe,
 10 clean, educationally appropriate facilities.

11 A. I think whether or not a bathroom is located
 12 in a classroom or whether or not it is outside in a
 13 hallway is irrelevant.

14 The principle that any reasonable person would
 15 apply is that all children should have access to a safe,
 16 clean, working bathroom.

17 Q. Returning to our example of the laptops and 51
 18 percent of students have them and 49 percent do not, you
 19 would say at that point that becomes an element of basic
 20 education; right?

21 A. The point at which a laptop was an integral
 22 feature, a basic tool, that 51 percent of the students
 23 were provided by the State, then the State should
 24 provide that for all children; yes.

25 Q. And that is true without regard to the State's

1 ability to pay for those laptops?

2 A. My judgment would be that if the State can pay
3 for 51 percent of the students to have laptops, then it
4 could pay for every student to have a laptop.

5 Q. What supports that opinion? Anything
6 different than you already testified?

7 A. No.

8 Q. Other than shifts in technology or perhaps
9 advances in technology, why in your opinion does what
10 constitutes basic education in California change over
11 time?

12 A. Well, using the -- both the sort of functional
13 definition, things change over time as the State sees it
14 as important and necessary to provide most children with
15 something that is fundamental to their ability to
16 learn -- that changes.

17 A second is that as the State specifies that
18 students learn things that require additional resources
19 or conditions or opportunities, those things become
20 foundational.

21 Q. Okay.

22 A. I can give you an example.

23 Q. Okay.

24 A. When I went to school a graphing calculator
25 probably didn't exist, but it certainly wasn't thought

1 Q. The State issues various standards from time
2 to time. Some may be fundamental to a student's ability
3 to learn. Some may not be.

4 How are you to distinguish between the two?

5 A. Right now the State has no standards for the
6 resources and conditions that are fundamental for
7 students to learn. That is part of what this report and
8 the other reports are arguing for; that we need to
9 identify those things that are absolutely fundamental,
10 develop standards for them and then the mechanisms to
11 ensure that all students have them and strategies for
12 intervening and correcting the situation if they don't.

13 Q. Assume that the student population in a single
14 year was cut in half in California.

15 Would what constitutes a basic education be
16 the same?

17 A. If the population was cut in half?

18 Q. The student population.

19 A. I can't speculate about -- I would want to
20 know the context. Was there a nuclear bomb dropped or
21 did everybody move to Nevada? There would be a whole
22 lot of information I would need to know to even begin to
23 deal with that kind of hypothetical.

24 Q. They all moved to Las Vegas.

25 A. That is absurd. I can't answer that.

1 of as an integral part of learning mathematical skills
2 in high school.

3 It has absolutely become an integral part of
4 what the curriculum in mathematics requires students to
5 have.

6 That is a example of how the -- when the
7 requirements placed on students for their learning
8 change what becomes basic for them to have also changes.

9 Q. You talked about when the State identifies
10 something that is, quote, "fundamental to a student's
11 ability to learn" -- how do we know when something is
12 fundamental to a student's ability to learn?

13 MR. ROSENBAUM: David, I am not going to
14 assert an objection, but I think this has been asked and
15 answered in every context conceivable over and over and
16 over again in both the report and her testimony.

17 THE WITNESS: Would you repeat the question.

18 MR. HERRON: Could you please reread it.

19 (Record read.)

20 MR. ROSENBAUM: Same objections.

21 THE WITNESS: I am not sure I understand the
22 question.

23 BY MR. HERRON:

24 Q. I was using your words.

25 A. That doesn't help.

1 MR. ROSENBAUM: Reno.

2 THE WITNESS: Oh, well, then.

3 BY MR. HERRON:

4 Q. Assume that rather than -- what is the, if you
5 know, the amount that California currently spends per
6 pupil?

7 A. Somewhere in the mid to high 5,000's.

8 Q. Let's call it 5,000 for purposes of
9 discussion. Assume that suddenly California has \$10,000
10 to spend per pupil.

11 Would the elements of what constitutes a basic
12 education change?

13 A. Actually, I think not. Unless, of course, the
14 State decided to use that money to give 51 percent of
15 all students some educational tool or resource or
16 condition, then I think that would become basic for all
17 the rest of the students as well.

18 Q. Assume for purposes of discussion that the
19 amount California was able to spend per pupil halved
20 from 5,000, in our example, to 2,500 per student.

21 Would the elements of what constitutes a basic
22 education change under those conditions?

23 MR. ROSENBAUM: Could I have the question
24 back?

25 (Record read.)

1 MR. ROSENBAUM: It is an incomplete
 2 hypothetical, and it is vague as to the phrase, "was
 3 able to spend."
 4 THE WITNESS: I think this report makes quite
 5 clear how I am defining a "basic education," and this
 6 and all the other expert reports, the importance of the
 7 elements that we talk about here, the amount of money
 8 available would not change that.
 9 BY MR. HERRON:
 10 Q. So if the state of California is in a fiscal
 11 crisis where its ability to spend beyond the limits of
 12 Prop 98 is nonexistent, you don't believe that that in
 13 any way alters what constitutes a basic education?
 14 A. No.
 15 Q. You don't believe that that alters what the
 16 State ought to spend on education?
 17 A. The State has an obligation to provide a basic
 18 education.
 19 Now perhaps there are ways that the State
 20 could scrutinize the educational system and eliminate
 21 any waste or perhaps cut other parts. We may decide not
 22 to build as many prisons or maybe force a pay reduction
 23 of prison guards, or there are all kinds of decisions
 24 that could be made in order to allow the State to meet
 25 its obligation to provide a basic education for every

1 child.
 2 Q. But in your view what constitutes a basic
 3 education in California does not vary based upon the
 4 State's fiscal capacity to pay for education?
 5 MR. ROSENBAUM: Objection. Incomplete
 6 hypothetical.
 7 THE WITNESS: I think I answered that; that
 8 certainly decreases in the amount of available money
 9 does not change what is currently the definition of a
 10 "basic education."
 11 I also think, though, as you suggested, if we
 12 had a huge windfall and the State decided to greatly
 13 enhance the conditions for 51 percent of the children,
 14 it would have an obligation to do that for all children.
 15 BY MR. HERRON:
 16 Q. You talked earlier about basic tools, I
 17 believe, if I am not getting this wrong, basic
 18 educational tools or inputs, and I believe you said
 19 that, "Look, even if you have that, you may not be
 20 getting an adequate education."
 21 Is that a fair statement?
 22 A. I think that what I said or certainly what I
 23 hope that this report makes clear is that the basic
 24 conditions, resources and opportunities that are
 25 identified in this case are certainly necessary and not

1 sufficient to provide the kind of education we would
 2 probably want all children to have. These are absolute
 3 basic minimum foundational tools.
 4 For example, my standard that every child has
 5 a right to opportunities and conditions that allow them
 6 to compete for a slot at Berkeley --
 7 Q. Right.
 8 A. -- is far beyond what is identified in this
 9 case.
 10 That is an example of what I would define as
 11 being basic and adequate as compared to the
 12 specification of these fundamental basic tools.
 13 Q. Page 58 of your report talks about many
 14 things, but it begins with a discussion of remedying --
 15 in the middle there is a discussion about remedying the
 16 specific complaints.
 17 By "specific complaints," you mean specific
 18 complaints in this case; correct?
 19 A. Yes.
 20 Q. And the first full sentence reads:
 21 "Mandate the provision of
 22 qualified teachers, appropriate
 23 standards-based instructional
 24 materials, equipment and technology
 25 and well-maintained, safe, healthy

1 and uncrowded school facilities."
 2 In addition to mandates, there are other
 3 policy instruments that could be used to achieve these
 4 ends; correct?
 5 A. Apparently not, because we have tried, and it
 6 hasn't happened.
 7 I think that a mandate is absolutely required
 8 for these specific tools. I think that we already have
 9 a mandate that children have a right to the things that
 10 are basic and fundamental in education, and if it
 11 requires specific legal mandates, which it appears to, I
 12 think that that is absolutely essential.
 13 Q. So your opinion is that the State ought to
 14 mandate each of the elements of a "basic education," as
 15 you have defined it?
 16 A. I certainly suggested that the State ought to
 17 mandate that every child have a qualified teacher,
 18 appropriate standards-based textbooks, instructional
 19 materials, equipment and technology and well-maintained,
 20 safe, healthy and uncrowded school facilities.
 21 Q. And it is your belief that no other policy
 22 instrument available to the State would adequately
 23 achieve provision of a basic education to each student
 24 in California; correct?
 25 A. As I state here, I think that a mandate is

1 certainly the most straightforward policy instrument for
2 ensuring all California public school students have
3 these things.

4 Q. Okay. And use of other policy initiatives --
5 "other" meaning policy initiatives or policy
6 instruments other than a mandate -- will not in your
7 opinion achieve provision of a basic education to
8 California students?

9 A. I would like to go back to the general purpose
10 of this report is -- all students need to have these
11 things. I have given my best judgment about some
12 principles and strategies that could be used to ensure
13 those things.

14 The thing that is absolutely for certain is
15 that all kids need to have these things. If somebody,
16 politicians, experts, can come up with other strategies
17 that would absolutely guarantee that all children had
18 these things, that would be fine with me.

19 Q. But in your professional judgment mandates are
20 required?

21 A. They are the most straightforward policy
22 instrument for ensuring that all children have these
23 things, and that is what I would stand by.

24 Q. Mandates -- among the policy instruments
25 available, State mandates are without dispute the most

1 strategies to achieve the goal.

2 MR. HERRON: Why don't we break for lunch?

3 MR. ROSENBAUM: That is fine.

4
5 (Whereupon at 11:55 a.m. the deposition
6 of JEANNIE OAKES was adjourned.)

7 (Whereupon at 1:05 p.m. the deposition
8 was reconvened.)

9
10 EXAMINATION (Continued)

11 BY MR. HERRON:

12 Q. Dr. Oakes, I hope you had a good lunch.

13 A. I had a good lunch. Thank you.

14 Q. Very good.

15 You are able to give your very best testimony
16 this afternoon?

17 A. Yes.

18 Q. Anything substantive you discussed about your
19 deposition over the noon hour?

20 A. No.

21 Q. You provided us a functional definition of
22 basic education, which at the risk of restating
23 it incorrectly -- correct me if I do -- is when most
24 children have a particular item in their schools, then
25 it becomes a part of a "basic education."

1 expensive or most costly policy instrument to use in
2 this context; correct?

3 A. I would say only if they are the only way you
4 can ensure that all children have it. If there is some
5 other policy instrument that is going to ensure that all
6 children have these things, it is going to cost as much
7 as a mandate.

8 Q. Why do you say that?

9 A. In fact, mandates may be cheaper than a lot of
10 things. A mandate is simply a rule and a provision of
11 funding that accompanies the rule.

12 If you try to use some other capacity-building
13 strategy or an incentive strategy you might be layering
14 on additional costs.

15 Q. So is your testimony that it is not clear that
16 mandates would be the most costly alternative? It may
17 or may not be; you just don't know?

18 A. I wouldn't say, "I just don't know." It may
19 or may not be.

20 Q. And to be able to tell whether it is most
21 costly, you would have to conduct some financial
22 analysis or study; is that right?

23 A. It wouldn't be unreasonable for -- once the
24 goal is absolutely established -- that analysts might
25 want to weigh the costs and benefits of various

1 Have I stated that roughly correctly?

2 A. Well, I think it is oversimplified.

3 I would say that when something becomes so
4 prominent a part of the educational conditions and
5 resources that more than half of the students are
6 provided it, then it -- I would consider it to have
7 arrived at a point where it would be considered basic.

8 I certainly wouldn't say that about things
9 that were not relevant to the educational process.

10 Q. From where does that fundamental definition of
11 "basic education" come?

12 A. The functional definition?

13 Q. Yes.

14 A. Because I have given you several definitions.

15 Q. The functional definition, yes.

16 A. Just my conviction about the importance of
17 providing equal educational opportunity to all children.

18 Q. So that functional definition is one that you
19 personally have created?

20 A. I am sure I am not -- I haven't created it. I
21 know that it is a principle that has been certainly used
22 by others, including in the state of California.

23 Q. Isn't the -- your functional definition of
24 "basic education," isn't that really a predominant
25 practice definition?

1 A. I don't know what you mean by "predominant
2 practice."
3 Q. It seems to imply whenever something becomes a
4 predominant practice in education, at that point in your
5 interpretation, under the functional definition, it then
6 becomes a part of a basic education?
7 MR. ROSENBAUM: Vague.
8 THE WITNESS: I wouldn't characterize it that
9 way.
10 There are fundamental tools and resources and
11 conditions that are basic and foundational. I think
12 there are other things -- for example, the particular
13 strategies one might use to engage a particular group of
14 students in knowledge that would vary considerably from
15 place to place, and that wouldn't be -- wouldn't be
16 encompassed by my definition.
17 BY MR. HERRON:
18 Q. Do you consider your definitions of basic
19 education, the functional definition, and I suppose we
20 could call it the "elemental definition," if that works,
21 do you consider those definitions of "basic education"
22 to set forth the best practices?
23 A. I wouldn't use "best practices" to
24 characterize what I have talked about as foundational or
25 elemental or basic.

1 I would say that they are essential resources
2 and conditions and elements that should be a part of any
3 child's education; that I would -- but I wouldn't
4 characterize them as "best practices."
5 Q. Are you aware of any state in the United
6 States that has mandated provision of qualified
7 teachers?
8 MR. ROSENBAUM: Vague.
9 THE WITNESS: I am not recalling any specific
10 instance of that right now, but I would certainly not
11 trust my memory to establish whether or not that is the
12 case.
13 BY MR. HERRON:
14 Q. Are you aware of any state that has mandated
15 the provision of appropriate standards-based textbooks,
16 instructional materials, equipment and technology?
17 A. Well, in my instructional materials report I
18 give some examples, two examples, I think -- I would be
19 happy to cite them for you -- of states where materials
20 are mandated.
21 Q. Florida, Oregon, Connecticut, Utah?
22 A. Could be. Your recollection of the details
23 may be -- on this particular point might be correct.
24 I have certainly cited Florida's
25 one-book-per-child policy, South Carolina, one text per

1 child. Rhode Island's is not as precise, but it
2 certainly has a mandate, and so does Utah.
3 Q. Are you aware whether any of those states,
4 Florida, South Carolina, Rhode Island or Utah have
5 succeeded in assuring that each of their students have
6 appropriate standards-based textbooks, instructional
7 materials, equipment and technology as a result of those
8 mandates?
9 A. So are you asking me if I am -- if I have
10 understanding or knowledge that in every one of these
11 states every single child has at this moment access to
12 sufficient books and materials?
13 Q. I don't know that anyone could know that.
14 What I am asking is: In Florida, for
15 instance, when the -- since the one-book-per-child
16 mandate has been imposed, what has occurred? Do you
17 know?
18 A. I have no specific knowledge about what steps
19 were taken to implement this policy or to intervene in
20 instances where the mandate was not complied with.
21 Q. Would you have the same answer as to South
22 Carolina, Rhode Island and Utah?
23 A. Yes.
24 Q. Do you know as to any of those states what the
25 cost to the states have been as a result of the various

1 mandates?
2 A. No. I think in relationship to both of those
3 questions it is important to recall that the purposes
4 for which I provided these examples are simply to
5 establish that these are not unthinkable policies; that
6 there are places that have actually adopted these
7 policies.
8 Q. Could you impart any information to us about
9 the level of success these policies have had in those
10 states, Florida, South Carolina, Rhode Island and Utah?
11 A. No. I would give the same answer.
12 Q. I am looking at Page 58 of your third report
13 and specifically the "Teacher" section. The last
14 sentence in that paragraph says:
15 "Teachers who lack experience
16 and appropriate credentials must be
17 provided appropriate training
18 before they enter the classroom."
19 When you say, "appropriate training," what do
20 you mean?
21 To simplify, are you saying training mandated
22 by the credentialing process currently in place in
23 California?
24 A. Yes.
25 Q. Let's focus on the same page at the

1 "Textbooks" paragraph. You state:
 2 "The State should require that
 3 all students be provided with
 4 textbooks, instructional materials,
 5 equipment and technology required
 6 for mastery of the state content
 7 standards in core subjects and that
 8 students have textbooks for use
 9 both in class and at home."
 10 Those items that must be provided for mastery
 11 of the State content standards, are those the items
 12 identified by Mr. Koski or Dr. Koski?
 13 A. I think that the textbook and materials report
 14 that I prepared gives quite a comprehensive discussion
 15 of what that requirement is, and it certainly considers
 16 Mr. Koski's analysis as part of it and very illustrative
 17 of the kind of analysis one needs to do in order to
 18 determine the specifics of the necessary materials at
 19 any point in time.
 20 Q. What does the term, "core subjects" mean?
 21 A. By "core subjects," I meant the subjects on
 22 which students are regularly tested: Language arts,
 23 mathematics, history, social science and science.
 24 Q. When you say, "that students have textbooks
 25 for use both in class and home," does that mean one

1 textbook that is their own?
 2 A. I think we discussed this at length in my
 3 earlier deposition, and I talk about it in my report, in
 4 terms of having a standard of sufficiency that is
 5 appropriate for particular materials that convey the
 6 core content; that in most cases, at least at this point
 7 in time, a textbook is what is likely to be required.
 8 But given that there are materials other than textbooks
 9 on the State Adoption List, those might be considered as
 10 well.
 11 Q. Okay. My question is this: Is -- are you
 12 meaning by the standard that each child should have one
 13 book in school to use and in addition another book -- I
 14 can say this better than that.
 15 Take mathematics, for example. Are you saying
 16 that each California student ought to have one
 17 mathematics book to use in school and separately have
 18 that same mathematics book to use at home so that each
 19 child has access to two mathematics books?
 20 A. I think that that is -- the principle is that
 21 the child has access to textbooks and materials at
 22 school and at home.
 23 Whether a district, such as my understanding
 24 in Palo Alto, decides that that means that you have a
 25 separate set of books at home and a separate set at

1 school, or whether it means that students carry their
 2 books back and forth with them is less relevant to me in
 3 establishing the standard.
 4 Q. Okay. The last sentence on Page 58, and it
 5 spills over onto Page 59, states:
 6 "Additionally, the State
 7 should require that schools provide
 8 materials and instruction for
 9 English learners and their parents
 10 in English and in the primary
 11 language, to the extent possible,
 12 to strengthen emergent literacy
 13 skills."
 14 What are you suggesting here ought to be
 15 provided to parents?
 16 A. Well, I think some detailed examples are
 17 provided in Professor Hakuta's report, and I would
 18 certainly want to refer you to that.
 19 I think essentially the concept here is if
 20 parents are able to support their children as they are
 21 learning English and as they are learning academic
 22 subjects, it is important for all parents, not just
 23 English-speaking parents, to have instructions about how
 24 they can help their child and materials that will assist
 25 them in helping their child in a language they

1 understand. That is what we provide for most children
 2 in the state, and it would extend to English learners as
 3 well.
 4 Q. So this provision of primary language books to
 5 English language learners is a function of your
 6 functional definition of "basic education"?
 7 A. I don't see where you are saying English --
 8 "primary language books."
 9 Q. It says on the top of Page 59 that the State
 10 should provide materials and instruction for English
 11 learners and their parents in English and in the primary
 12 language to the extent possible to strengthen emergent
 13 literacy skills.
 14 So your conclusion that texts ought to be
 15 provided in a primary language is a result of your
 16 functional definition of basic education: Most students
 17 have it, have texts in their primary language;
 18 therefore, English language learners should? Is that
 19 correct?
 20 A. I think it is important that all students have
 21 materials that make knowledge accessible to them, even
 22 if the law currently says that English should be the
 23 primary language of instruction.
 24 That in no way denies the need for children to
 25 have access to the content they are expected to master

1 in a language they understand.

2 Q. So the State could comply with its obligations
3 to provide materials in English but, according to your
4 definition of "basic education," the State would not be
5 supplying what it was required to; is that correct?

6 A. The State has a fundamental obligation to
7 provide materials that make the content accessible to
8 children whose primary language is not English.

9 Q. Correct. You certainly have my agreement
10 there.

11 But you are saying that in addition to
12 providing English-based texts and instructional
13 materials that those materials must be, according to
14 your definition of "basic education," provided in the
15 primary language as well?

16 A. Provided in a language that children
17 understand and that their families understand. There is
18 not -- the principle here that is important that
19 children -- if third graders, for example, are expected
20 to learn particular concepts in science, for example, in
21 order to fulfill the third grade standards, and a child
22 is a recently arrived immigrant who does not speak
23 English, that child should not be deprived access to
24 those science ideas because there are no materials that
25 allow that child access to those concepts in a language

1 that convey that content are written.

2 BY MR. HERRON:

3 Q. And from whence does that obligation arise?

4 A. From the basic principle that having access to
5 the knowledge you are expected to learn is the most
6 foundational principle on which education is based.

7 Q. On Page 59 you talk about facilities. The
8 State -- it reads:

9 "The State should mandate that
10 every child have a safe adequate
11 facility, clean, functioning
12 bathrooms, adequate classroom
13 space, outdoor space to exercise,
14 heating, cooling and electrical
15 outlets and access to technology in
16 which to learn."

17 What other states have imposed a mandate of
18 the kind you suggest regarding facilities?

19 A. I would have to refer to Dr. Myers and
20 Mr. Corley and Mr. Earthman's reports to review -- and
21 maybe other materials -- to review exactly what states
22 have what policies.

23 I certainly do not ground my conclusion that
24 the State should mandate these things simply because
25 that is what other people do. I am suggesting it

1 that he or she understands.

2 Q. What is the basis for that opinion?

3 A. I'm sorry. I don't understand your question.

4 Q. Well, I am aware of no requirement that any
5 instructional materials -- no legal requirement, no
6 statute -- that any materials be provided to a
7 California student in their primary language. You are
8 suggesting that materials must be provided to students
9 in their primary language.

10 I am asking: What is the basis for your
11 opinion?

12 MR. ROSENBAUM: That mischaracterizes her
13 testimony.

14 THE WITNESS: First of all, I clearly qualify
15 the statement in the paragraph, and it says, "to the
16 extent possible," realizing that it is probably not
17 feasible, if there is only one speaker of a language in
18 a county, to develop a whole set of instructional
19 materials for that particular individual so there is, I
20 think, reasonable limits.

21 But when a huge proportion of students in
22 California are students who speak primarily Spanish or
23 Korean or Chinese, there is an obligation to not
24 withhold from that child academic content simply because
25 they do not speak the language in which the materials

1 because it is a fundamental requirement of an education
2 and that California should ensure that all children have
3 it.

4 Q. What you are calling for is a fundamental
5 shift in the way that education, in this instance
6 educational facilities, are provided in California.

7 In light of that what I am asking is: Is
8 there any other state that you are aware of as you sit
9 here today that mandates the provision of facilities as
10 you recommend on Page 59 of your report?

11 MR. ROSENBAUM: I have an objection. You can
12 ask the question, but --

13 THE WITNESS: I think both Mr. Corley and Dr.
14 Myers make the case quite adequately that it is not an
15 unreasonable expectation that the State have standards
16 and enforce standards about safe, adequate facilities.

17 BY MR. HERRON:

18 Q. Be that as it may, the question is really:
19 Are there any other states you know of as you sit here
20 today that mandate what you are proposing on Page 59
21 regarding facilities?

22 A. Actually, the essential question is whether it
23 is feasible to do it, and we certainly have examples
24 within California of mandatory standards for public
25 facilities and --

1 Q. If I might, that is a really good question,
2 but it is not the one I am asking.
3 A. Okay.
4 Q. Are you aware of any such state?
5 A. Well, I would simply have to repeat what I
6 said before that --
7 Q. Isn't "no" the answer?
8 MR. HERRON: Let her finish the answer.
9 BY MR. HERRON:
10 Q. Sure. I'm sorry.
11 A. I wouldn't say no, because I can't say with
12 certainty that this is not something I have read. So I
13 would say to the best of my recollection as I am sitting
14 here today without any other information in front of me,
15 I can't tell you about any.
16 Q. Now that sentence I read on Page 59 beginning,
17 "The State should mandate" --
18 A. Yes.
19 Q. -- that is what you would characterize as a
20 "nonnegotiable principle"?
21 A. Yes.
22 Q. And what you discuss below that sentence
23 regarding what Corley and Myers suggest or argue for,
24 those are more specifics or examples; is that correct?
25 A. Well, actually, no. It is a substantiation of

1 the principle; that they both say that this could be
2 feasibly developed, and it is not an example of a
3 specific mandate.
4 It is more their expert opinions that this is
5 a reasonable thing to do.
6 Q. What Corley and Myers recommend as set forth
7 at this part of your report is establishing standards
8 regarding safety, ongoing maintenance and operations and
9 guidelines for allocation of financial resources to
10 ensure ongoing maintenance and operations; correct?
11 A. That is not a representation of what I said
12 here; however --
13 Q. It is a brief but incomplete summary of that
14 paragraph?
15 A. Well, I am not -- okay.
16 MR. ROSENBAUM: Brief.
17 THE WITNESS: I think they wisely suggest that
18 any sort of mandate should be accompanied by guidelines
19 to ensure that the resources are allocated in the ways
20 that that mandate can be realized.
21 BY MR. HERRON:
22 Q. Are you aware of what states mandate standards
23 concerning maintenance, operation, safety requirements
24 and -- I will stop there.
25 A. Specific examples, if they exist -- and I am

1 not all that convinced it is important that they
2 exist -- don't come to mind as I sit here today.
3 Q. Okay. Let's look at the second full paragraph
4 on Page 59. Halfway through the first sentence of that
5 paragraph beginning, "The State," it says:
6 "The State should prohibit the
7 assignment of any child to
8 overcrowded schools or to schools
9 employing a Concept 6, year-round
10 education plan."
11 Given the disjunctive "or" in that sentence,
12 what does "overcrowded schools" mean or what do you mean
13 by "overcrowded schools" in this sentence?
14 A. Well, there is -- an "overcrowded school" is
15 one where there are more children than can be adequately
16 accommodated.
17 The State -- and I don't recall the numbers --
18 but the State has some established or conventional
19 relationship of square feet per child that they use to
20 judge capacity, so that schools that are enrolling more
21 children than they were designed to serve is what I
22 would call an "overcrowded school."
23 Q. So an "overcrowded school" is a school in
24 which there are more students than the -- well, let me
25 state it differently -- that there is less square feet

1 of classroom available per pupil than is suggested by
2 the State as an appropriate standard?
3 MR. ROSENBAUM: Mischaracterizes her
4 testimony.
5 THE WITNESS: I wouldn't -- I would say that
6 the State conventions for defining the capacity of a
7 school should be adhered to, just as the State has
8 established other sort of capacity requirements like the
9 number of people who can be in a room or an elevator
10 or -- those kind of capacity standards.
11 I can't recall what the specifics are, but I
12 have seen it.
13 BY MR. HERRON:
14 Q. Okay. But so I know what the standard is,
15 when that is exceeded, when that State standard is
16 exceeded, then, in your opinion, the school is
17 overcrowded; correct?
18 A. Yes.
19 Q. Now we talked a little bit yesterday about the
20 cost of mandating that no child be assigned to a Concept
21 6, year-round education plan, but let's talk it about it
22 more broadly.
23 What do you believe, if you have any way to
24 estimate, the cost would be for the State to mandate
25 that no child be assigned to overcrowded schools or to a

1 school employing a Concept 6, year-round education plan?

2 A. I have no idea what the cost would be.

3 Q. Is it your opinion that the November 2002 bond
4 and the anticipated money that will be obtained -- if it
5 is -- from the March 2004 bond is insufficient to assure
6 that no child is assigned to an overcrowded school or to
7 a school employing a Concept 6, year-round education
8 plan?

9 A. I have certainly heard many people, including
10 Senator Alpert, say that the bonds wouldn't be
11 sufficient to cover all the needs.

12 Q. And so I take it we can assume from that that
13 in your view the cost to the State of assuring
14 satisfaction of this standard, that is, that no student
15 is assigned to an overcrowded school or to schools
16 employing a Concept 6, year-round education plan will
17 exceed \$25 billion.

18 A. It may. I think there are a variety of ways
19 of meeting that standard and that it would take a lot of
20 careful analysis to determine which we would want to
21 adopt and how much it would cost. It might.

22 Q. Do you believe that the bond money that we
23 have just been talking about, November 2002 and the
24 anticipated bond money from 2004, March 2004, will be
25 sufficient to assure that each student attends a safe

1 how many new schools would have to be built so that
2 California could satisfy your proposed mandate that all
3 students be assigned to well-maintained, uncrowded
4 school facilities within reasonable commuting distance
5 from home?

6 A. I don't think there is a single answer to that
7 question, and I have not attempted to determine one.

8 Q. Do you make room for the possibility that
9 complying with this mandate could require an expenditure
10 of a billion dollars?

11 MR. ROSENBAUM: Foundation. Speculation.

12 THE WITNESS: I wouldn't speculate on the
13 cost. I think there are too many variables.

14 BY MR. HERRON:

15 Q. You just don't know?

16 MR. ROSENBAUM: That is not her answer.

17 THE WITNESS: I would never say that.

18 MR. ROSENBAUM: But nice try.

19 BY MR. HERRON:

20 Q. You can't give me even a range of dollars it
21 would cost to comply with this proposed mandate that all
22 students be assigned to a well-maintained, uncrowded
23 school facility within reasonable commuting distance
24 from home?

25 A. Not as I sit here today without a whole lot

1 school?

2 A. Again, I would have to say that it depends on
3 how that money is used, and there are probably a variety
4 of ways of ensuring that all children go to safe
5 schools.

6 It may or may not be enough. I don't know.

7 Q. We are talking about Page 59, the second full
8 paragraph. The final sentence states:

9 "Finally, the State should
10 require that all students be
11 assigned to a well-maintained,
12 uncrowded school facility within
13 reasonable commuting distance from
14 home."

15 What does that mean, "reasonable commuting
16 distance from home"?

17 A. I haven't defined it any more precisely than
18 that.

19 Q. Okay. Do you have any estimate of the number
20 of new schools that would have to be built in California
21 in order to satisfy this standard you say the State
22 should mandate?

23 A. It could be a wide range depending on the size
24 of the facilities that were to be built.

25 Q. Have you conducted any analysis to determine

1 more information.

2 Q. And is there any state that has mandated that?
3 That is to say, has any state you are aware of mandated
4 that all students be assigned to a well-maintained,
5 uncrowded school facility within reasonable commuting
6 distance from home?

7 A. There should be 50, but I am not sure how many
8 there actually are.

9 Q. There may be none?

10 A. It is possible.

11 Q. Are you aware of any state that has a program
12 or policy in place which is designed to assure that all
13 students are assigned to school facilities within
14 reasonable commuting distance from home?

15 A. I think most states assume that that is what
16 their policies do.

17 Now in California we have some real evidence
18 that that is not the case, which suggests we need some
19 different policies.

20 But I believe most states would answer that,
21 yes, their policies do do that.

22 Q. Well, can you identify any specific state that
23 has an express policy stating or requiring, as you are
24 suggesting California should, that all students be
25 assigned to a facility within reasonable commuting

1 distance from home?

2 MR. ROSENBAUM: That's vague.

3 THE WITNESS: I don't know the specific
4 language of the facilities policies in every state.

5 BY MR. HERRON:

6 Q. And, therefore, you can't identify any such
7 state for us as you sit here today; correct?

8 MR. ROSENBAUM: Vague.

9 THE WITNESS: As I said before, I would -- it
10 is my judgment that most, if not all, states believe
11 that their policies are aimed at that result.

12 BY MR. HERRON:

13 Q. Which states specifically fall into that
14 category?

15 A. States who believe that their policies are
16 intended to provide children with clean, safe,
17 well-maintained facilities a reasonable distance from
18 their home?

19 Q. Yes.

20 A. My view is that -- I would repeat what I said
21 before. I believe that most states believe that that is
22 what their policies are intended to accomplish. I can't
23 answer it any other way.

24 Q. Okay. Item 2 on Page 59, we are really in the
25 discussion of mandates to remedy specific complaints.

1 A. I think the -- that it is nonnegotiable that
2 the State work to increase the supply and quality of the
3 teacher workforce until such point as there are
4 sufficient numbers of qualified teachers to teach every
5 child in this state.

6 Beyond that, I think that -- I wouldn't want
7 to continue. I wouldn't suggest they continue to build
8 the supply beyond the demand.

9 Q. At the bottom of Page 59 and spilling over to
10 Page 60 you talk about various recommendations from
11 Linda Darling-Hammond and Mr. or Dr. Hakuta, which are
12 "a combination of strategies to increase the number of
13 individuals who chose to prepare to teach or remain in
14 the profession."

15 Page 60, does this -- do the first two
16 paragraphs here identify the principal strategies that
17 in your opinion ought to be employed by the State in
18 order to increase the supply and quality of the State's
19 teacher workforce?

20 A. I think those two paragraphs identify some
21 reasonable and feasible alternatives that could be
22 considered as strategies for achieving the nonnegotiable
23 principle, which is to build the capacity such that all
24 schools and districts are able to provide qualified
25 teachers for every child.

1 Item 2 states:

2 "Build the capacity of schools
3 and districts statewide to provide
4 and maintain qualified teachers,
5 appropriate standards-based
6 textbooks, instructional materials,
7 equipment and technology and
8 well-maintained, safe, healthy and
9 uncrowded school facilities."

10 Is this an example of, again, a nonnegotiable
11 principle?

12 A. Yes. I actually think in addition to
13 requiring that schools and districts do things, that the
14 State has an obligation to make it possible for them to
15 do so.

16 Certainly, the provision of funding is within
17 the realm of capacity, as is the provision of technical
18 assistance or material resources.

19 Q. When you talk about this in terms of teachers,
20 you state that:

21 "The State must take action to
22 increase the supply and quality of
23 the State's teacher workforce."

24 That is -- that, too, is a nonnegotiable
25 principle?

1 Q. The top of Page 60, the first paragraph, one
2 of the strategies you identify is "increasing teacher
3 recruitment incentives for undergraduate and graduate
4 students."

5 Are you aware or can you describe for us what
6 California is currently doing in that regard?

7 A. First, they are -- the State provides some
8 funding to Teacher Recruitment Centers that provide
9 information and help direct students toward preparation
10 programs and help both undergraduates and graduates.

11 The State has in the past five years increased
12 the numbers of teachers that the University of
13 California has been expected to prepare, although many
14 would characterize that as an "unfunded mandate."

15 The State has expanded its provision of
16 forgivable loans to students who chose to teach in
17 challenging, what are thought of as hard-to-staff
18 communities and schools.

19 Q. Uh-huh.

20 A. And they have provided some funding to school
21 districts to enable them to attract and -- typically
22 through improving the working conditions of new teachers
23 or signing -- some signing bonuses. There have been a
24 handful of things that have been tried in the last four
25 or five years.

1 Q. In your opinion are those programs that the
 2 State currently has in place regarding teacher
 3 recruitment incentives you described over the last
 4 several years, are they inadequate?
 5 MR. ROSENBAUM: Vague.
 6 THE WITNESS: They have been inadequate to
 7 actually achieve the goal. I think they are not
 8 wrong-headed strategies. They are good strategies; they
 9 have just been insufficiently enacted.
 10 BY MR. HERRON:
 11 Q. Insufficiently funded as well?
 12 A. Yes.
 13 Q. Do you believe that California should enhance
 14 the current teacher recruitment incentives in place or
 15 adopt alternatives?
 16 A. I am agnostic about it. I think that there
 17 may be a variety of ways of recruiting and supporting
 18 people to go into teaching, and I would be happy for any
 19 one that had that effect, whether it be the one
 20 currently in place or some other.
 21 Q. A second item in the first paragraph on Page
 22 60 concerning building the supply and quality of the
 23 State's teacher workforce is the suggestion that
 24 "additional support to teacher education institutions to
 25 increase the quality of teacher preparation ought to be

1 any one strategy. The point is that these are some
 2 ideas that can be reasonably expected to help.
 3 I am not prepared to provide a detailed
 4 analysis of specific designs or levels of support for
 5 any one of them.
 6 Q. Are you aware of what the State has in place
 7 in terms of programs, target programs and financial
 8 support for getting teachers into shortage fields?
 9 A. No.
 10 Q. Are you aware of any incentives adopted by the
 11 State to assure there is an increase in the number of
 12 mathematics teachers, for example?
 13 A. Well, I know that some of the universities
 14 have -- such as ours -- have special programs that are
 15 designed to increase the supply of mathematics and
 16 science teachers.
 17 To the extent that those programs are State
 18 supported, they are State programs. There may be other
 19 specific strategies that I am not familiar with.
 20 Q. Is it your opinion that those State programs
 21 are deficient or inadequate?
 22 A. The fact that we have shortages in those
 23 fields suggests that whatever we are doing is not
 24 enough.
 25 Q. Okay. You recommend in this first paragraph

1 provided."
 2 What currently is being provided in that
 3 regard by California?
 4 A. Well, the State funds its public institutions
 5 to prepare -- I mean, it subsidizes through its public
 6 universities the preparation of teachers, and it has
 7 provided some small grants to stimulate the development
 8 of internship programs.
 9 Again, it has been insufficient to meet the
 10 need.
 11 Q. Okay. You are advocating for additional
 12 support to teacher education institutions to increase
 13 the quality of teacher preparation.
 14 What additional support in your opinion is
 15 required?
 16 A. Well, the -- again, the principle here is that
 17 we need to provide enough teachers, either through the
 18 recruitment of new teachers and their preparation or the
 19 retention of existing well-qualified teachers in
 20 schools, so that every child has a qualified teacher.
 21 These are examples of a variety of strategies
 22 that might be used to achieve that end. I think no
 23 single strategy alone is going be sufficient and, again,
 24 I am fairly agnostic about the combination of strategies
 25 or the level of strategies or the level of support for

1 on Page 60 that:
 2 "The State must enable
 3 districts to offer better
 4 salaries."
 5 How do you propose the State do that?
 6 A. It is fairly simple that if you increase the
 7 allocation to school districts, they are in a position
 8 to offer better salaries. But I hope you will notice
 9 that that is one of a string of things that -- better
 10 salaries, working conditions, more mentoring support --
 11 that have all been shown to both attract and retain
 12 teachers.
 13 Q. It is your opinion, though, that teachers
 14 ought to be paid better salaries than they are paid
 15 today?
 16 A. I have to repeat the general principle that I
 17 said before. I am interested in having the State do
 18 whatever it takes to ensure that every child has a
 19 qualified teacher.
 20 These are a set of possibilities that could
 21 achieve those ends. Again, I am agnostic about which or
 22 which combination the State chooses to use as long as
 23 the end is achieved.
 24 Q. So some of these suggestions here on Page 60
 25 may be necessary, some may not; that has just not been

1 determined yet?

2 A. I think that these are all grounded in
3 considerable evidence that they will work to achieve the
4 goal in some combination, and I think the details of
5 that, the particular policies and strategies, are things
6 that need to be worked out in the political process.

7 Q. What do you mean by the "political process"?

8 A. By the Legislature, by -- say, if there were a
9 decision in this case that all children must have
10 qualified teachers, whoever is then charged with
11 developing a remedy and whatever that process is.

12 Q. Are you aware of what incentives California
13 currently has in place to encourage teachers to teach at
14 schools serving primarily poor and minority children?

15 A. As I mentioned before, there is both the
16 policy that provides some additional resources to
17 schools to enhance their ability to attract and make the
18 jobs attractive, and there is certainly the Apple
19 program, which is the forgivable loan program for
20 teachers who commit to spending at least the first part
21 of their teaching careers in schools in high-poverty
22 communities.

23 Q. Are there any other programs currently in
24 place that California is using to incentivize teachers
25 to teach at schools serving poor and minority children

1 by Linda Darling-Hammond in which she rated California
2 as one of the top states nationwide in supplying -- in
3 having teachers who were qualified.

4 A. Oh, but what Linda's analysis is is different
5 from what you are characterizing it as.

6 Linda rates the state as among the highest in
7 terms of having high standards for entry into the
8 teaching profession, so that those California teachers
9 who are qualified are quite well qualified. I mean,
10 they have more rigorous training and education than is
11 required in many other states, but you were talking
12 about the supply of qualified teachers.

13 Q. Do you agree with her opinion?

14 A. Yes, I do.

15 Q. So if a teacher receives a full, clear
16 credential in California we can expect that that teacher
17 is largely more qualified than a teacher who might be
18 credentialed in another state?

19 Is that your opinion?

20 A. I think that -- not exactly. We know that
21 that teacher has passed or met a higher, somewhat
22 higher, threshold than in many other states.

23 I mean, one of the big differences in
24 California is -- and it is a problem as Linda
25 suggests -- that part of the reason why we have a

1 that you are aware of?

2 A. Those are the two that immediately come to
3 mind.

4 Q. Okay. We are talking about actions of the
5 State of California to increase the supply and quality
6 of the State's teacher workforce. We have discussed the
7 items set forth on Page 60.

8 Are you aware of any state that does a more
9 effective job than California currently is doing at
10 increasing the supply and quality of its teacher
11 workforce?

12 A. I think nearly every state is doing a better
13 job than California, given the shortage that we
14 experience here compared to shortages in other states.

15 Q. And the basis for that opinion is what?

16 A. Data about teacher shortages nationwide and
17 the variation among states.

18 Q. How about in terms of teacher quality? What
19 states do better than California in providing qualified
20 teachers?

21 MR. ROSENBAUM: Vague.

22 THE WITNESS: I am hearing that as the same
23 question, so I would give it the same answer.

24 BY MR. HERRON:

25 Q. What comes to mind for me is a report written

1 shortfall is that we have restricted teacher preparation
2 to a graduate year, and that many states have education
3 majors and have students graduate with bachelor's
4 degrees in education, having combined both their content
5 knowledge and their training to be teachers.

6 That makes it easier to become a teacher in
7 some other states. It is also part of the reason why
8 California teachers are quite well trained.

9 Q. At the last full paragraph on Page 60, the
10 last line, in discussing a PPIC report for 2000, says:

11 "In addition, such a system
12 might require renegotiation of
13 first right-of-transfer clauses in
14 collective bargaining agreements."

15 Do you think that that is a reasonable or
16 feasible possibility or proposal?

17 A. Well, I certainly am repeating it here. I am
18 quoting from a PPIC report --

19 Q. Right.

20 A. -- who offered that as one strategy for
21 ensuring the equitable distribution of highly qualified
22 teachers when there is a shortage.

23 My preferred solution is that there not be a
24 shortage.

25 They are suggesting what could be done with a

1 shortage. I think this is an extraordinarily difficult
2 kind of policy to enact. It would not be one on the top
3 of my list of recommendations.

4 Q. Why in your view would it be difficult to
5 enact; that is, renegotiation of the first
6 right-of-transfer clauses in CBA's?

7 A. First of all, the general principle for me is
8 that I do not want any child taught by a teacher who
9 does not want to teach that child. So to force through
10 a policy like this, the assignment of teachers to places
11 where they may not want to be and to children who they
12 may not want to teach, would not be my first choice of a
13 constructive way to provide children with qualified
14 teachers.

15 My preferred strategy, and what I think is
16 nonnegotiable, is there should be enough teachers for
17 every child to have one.

18 Q. And there would a massive political opposition
19 to such a proposal; that is, renegotiation of first
20 rights-of-transfer clauses in collective bargaining
21 agreements?

22 A. There might be.

23 Q. From CTA, for example?

24 A. There might be.

25 Q. Turning to Page 61, and we are still on the

1 A. Actually, as I said, the current standards for
2 achieving a credential require that California teachers
3 have considerable training and knowledge in language
4 acquisition and making knowledge accessible to children
5 from diverse cultural backgrounds. That was not always
6 the case, and there are still teachers who have a
7 credential in the system who don't have those skills and
8 increasingly are being in classrooms with students who
9 require teachers with those skills.

10 Q. So in your view this, that is, your
11 recommendation that the State must intensify its efforts
12 to increase the competence of teachers already working
13 with students, is a nonnegotiable principle? It is part
14 of what constitutes a basic education?

15 A. The principle is that children need teachers
16 who can make knowledge accessible to them. Increasing
17 through professional development the competence of
18 teachers who are working with those students is
19 certainly one way to ensure that children have teachers
20 who are -- have -- who are able to make knowledge
21 accessible to them.

22 Q. You have no disagreement from me on that
23 point, but this is a case about what is required for
24 basic education, and I need to know your opinion.

25 Is it mandatory in your view that the State

1 subject of capacity building as it relates to teachers.
2 You state:

3 "The State must intensify its
4 efforts to increase the competence
5 of teachers already working with
6 students."
7 Why?

8 A. Well, I believe as I said yesterday, that
9 the -- the credential is a rough proxy for all of the
10 knowledge and skills we would want students to have.

11 We are in a state that has experienced an
12 astonishing demographic shift and the influx of students
13 who don't speak English as their first language. Many
14 of the state's teachers are not prepared and have not
15 been prepared to work with these students, and that --
16 in order to enact the principle that all children
17 deserve a teacher who not only meets the rough
18 approximation established by the credential but is also
19 able to make knowledge accessible to children, it
20 requires ongoing professional development. I think that
21 is a quite uncontroversial proposition.

22 Q. You are advocating here something beyond the
23 basic education element of providing a qualified
24 teacher; that is, one who has received a clear
25 credential; correct?

1 intensify its efforts to increase the competence of
2 teachers already working with students in order to
3 assure that each student is being provided with a basic
4 education?

5 MR. ROSENBAUM: First of all, it is irrelevant
6 whether you agree or disagree. By saying it here and
7 not otherwise, I don't know what you intend to suggest.
8 It is inappropriate.

9 Second, she did fully answer the question in
10 her prior statement.

11 THE WITNESS: I think having a teacher who can
12 make knowledge and skills accessible and available to a
13 child is a fundamental part of a basic education.

14 What I am suggesting here is one strategy to
15 achieve that fundamental principle.

16 BY MR. HERRON:

17 Q. Okay. Are you aware of any programs or
18 policies currently in place in California that the State
19 is using to increase the competence of teachers who are
20 already working with students?

21 A. Yes. The State has had a program of
22 professional development in content areas called the
23 "California Subject Matter Project" for a number of
24 years that attempts to increase the competence of
25 teachers. It's 25 years old.

1 In the last five years the Governor has
2 initiated a targeted set of professional development
3 institutes aimed at helping teachers increase their
4 knowledge of the content standards in language arts and
5 mathematics.

6 There have been other interventions that have
7 helped -- been meant to help teachers of English
8 learners develop specially designed strategies for
9 teaching students who are speakers of other languages
10 and gaining a basic knowledge of English language
11 development.

12 Q. Anything else you are aware of?

13 A. Those are the primary things that come to
14 mind. I am sure there are other things.

15 Q. When you say, "other interventions" to help
16 teachers of ELL students, what do you mean?

17 A. Point me to the place.

18 Q. You just said, "other interventions." There
19 have been "other interventions" to help teachers of the
20 ELL students.

21 A. Well, there is SB-1869, I think -- if I am
22 remembering it correctly. I may not be -- which
23 required that teachers of English language learners have
24 60 hours, 45 hours, something like that, of instruction
25 in English language development. That is an example.

1 The mandate, as it says in the text, is the
2 most straightforward way of doing it, but as I suggested
3 earlier, there may be other ways that would achieve that
4 end, and that would be fine, too.

5 Q. As you say, the most straightforward way is to
6 mandate the provision of qualified teachers, adequate
7 instructional materials and adequate school facilities;
8 correct?

9 A. Yes.

10 Q. Given there is no state you are aware of that
11 has done so and that you cannot tell us how much this
12 could cost the State above current expenditures, why is
13 this proposal either feasible or reasonable?

14 MR. ROSENBAUM: Argumentative.

15 THE WITNESS: It is my professional opinion
16 that it is both feasible and reasonable and
17 straightforward.

18 BY MR. HERRON:

19 Q. But how do you know if it is feasible if it
20 has never been tested elsewhere?

21 A. First of all, I am not absolutely certain it
22 has never been tested elsewhere. I wouldn't want to go
23 on record as making that assertion.

24 The touchstone for judging whether or not it
25 is reasonable and feasible is the likelihood of

1 Q. Are there other examples you are aware of?

2 MR. ROSENBAUM: Asked and answered.

3 THE WITNESS: There may be, but I don't have
4 on the tip of my memory all of the specifics.

5 BY MR. HERRON:

6 Q. Is SB-1869 evidence of an appropriate policy
7 designed to enhance the quality of teachers already in
8 place?

9 A. I think it was an extraordinarily weak policy.
10 I think it is laughable to expect someone in 45 hours or
11 whatever it was to acquire all the knowledge and skills
12 they need to make knowledge accessible to children who
13 don't speak English.

14 MR. ROSENBAUM: Off the record. Are you close
15 to a place where we can take a break?

16 MR. HERRON: Sure. Let's take a break.

17 MR. ROSENBAUM: Thank you.

18 (Recess taken.)

19 BY MR. HERRON:

20 Q. Okay. Stepping back slightly to Page 58 and
21 the mandate that you are proposing here as a
22 nonnegotiable principle --

23 A. The nonnegotiable principle is that the State
24 needs to devise mechanisms to -- that ensure that all
25 children have qualified teachers.

1 accomplishing the end in sight. It is on its face the
2 most straightforward way to ensure that all students
3 have -- all students have qualified teachers and
4 facilities and materials, to set a standard that that is
5 what the State expects, build the capacity; that schools
6 are -- so that schools are able to provide that and put
7 in place the oversight and public reporting and
8 interventions that are able to detect shortages when
9 they arise and to correct them.

10 I think I say pretty clearly that it will
11 require a combination of policies and that a mandate in
12 itself is no guarantee, or that it is not sufficient
13 that it be -- it would not be sufficient.

14 Q. So you are not saying this proposal for
15 mandating these conditions is feasible in terms of the
16 State's fiscal capacity to pay for it?

17 MR. ROSENBAUM: Can you read that back,
18 please.

19 (Record read.)

20 MR. ROSENBAUM: Mischaracterizes her
21 testimony. She has talked about this a lot, David.

22 THE WITNESS: I would separate it out into two
23 kinds of statements.

24 One is that it is essential that children be
25 provided these things, and that there are a variety of

1 ways they could be achieved.
 2 The costs and feasibility of various
 3 strategies to achieve these things should be subjected
 4 to analysis as the State is making decisions about how
 5 to go about realizing these remedies to the specific
 6 problems and enacting principles to provide the best
 7 likelihood that these things will remain in place. That
 8 is the best way I can answer that question.

9 BY MR. HERRON:

10 Q. Okay. Let's turn to Page 61 where we are
 11 talking about or where your report discusses building
 12 the capacity of schools and districts statewide with
 13 respect to teachers. You state about the middle of the
 14 page, just above B, that:

15 "When the State obtains
 16 information from its current
 17 on-site reviews, such as CCR,
 18 Comite, et cetera, that suggest
 19 that" --

20 A. You can get rid of the "find" there.

21 Q. Okay.

22 -- "that suggests that
 23 experienced teachers lack specific
 24 content or EL skills, the State
 25 should intervene with professional

1 federal and state programs that are the subject of these
 2 reviews.

3 I think I am suggesting something slightly
 4 more assertive than that; that the State itself assumes
 5 the responsibility of helping schools and teachers build
 6 capacity that they lack.

7 Q. In connection with this recommendation do you
 8 have a specific program in mind that would -- for the
 9 State to intervene with professional development in the
 10 circumstances described?

11 A. I think that there are a number of strategies
 12 suggested, for example, by Professor Mintrop in his
 13 paper about kinds of interventions that might be useful.

14 Professor Grubb suggests some -- a variety of
 15 types of interventions and supports that could be
 16 helpful, as others do.

17 I don't have a particular program in mind, no.

18 Q. Do you believe that a school principal might
 19 be in a better position than the State to identify
 20 teachers who lack specific content or EL skills and then
 21 to intervene with professional development?

22 A. It is possible, but I think it is ultimately
 23 the State's responsibility to ensure that that kind of
 24 review and intervention is done when it is needed.

25 I am not particularly fixed on any one agent

1 development to help them meet their
 2 students' needs."
 3 Is the State doing anything in this regard so
 4 far as you are aware?

5 MR. ROSENBAUM: Asked and answered. She
 6 talked about that.

7 BY MR. HERRON:

8 Q. Did you already answer that question?

9 MR. ROSENBAUM: She talked about -- I don't
 10 want to suggest an answer. She did talk about teacher
 11 development programs the State is doing.

12 You asked her a series of three different
 13 questions specifically on that. I think she responded
 14 fully to that, David.

15 BY MR. HERRON:

16 Q. This is different, though, because what she is
 17 recommending here is that once an on-site --

18 MR. ROSENBAUM: You don't have to explain it.
 19 You are welcome to ask the question.

20 BY MR. HERRON:

21 Q. Okay. Please respond.

22 A. I think that the basic procedures are that
 23 recommendations are made about how schools themselves
 24 should bring themselves into compliance when they are
 25 found to be out of compliance with the requirements of

1 or any one strategy for doing that. The principal might
 2 be a fine way for the State to do that, but it needs to
 3 be activist in making sure that happens.

4 Q. Do you believe that districts are in a better
 5 position than the State to assess the professional
 6 development needs of its teachers concerning specific
 7 content or their EL skills?

8 MR. ROSENBAUM: Vague.

9 THE WITNESS: In some cases they might be and,
 10 again, I think if the State chooses a strategy to ensure
 11 that teachers have the professional development they
 12 need that relies on districts to play an important role,
 13 that that is fine.

14 BY MR. HERRON:

15 Q. Are you aware of the policy of any district in
 16 the state of California concerning intervention to
 17 provide professional development for teachers lacking in
 18 specific content or EL skills?

19 A. Well, there is a peer assistance and review
 20 program that is currently in place where there is some
 21 interventions when teachers are found to be in need of
 22 assistance.

23 Q. Which district has that in place?

24 A. That is a State program.

25 Q. Are you aware of any district program from any

1 district in the state of California that is designed to
2 intervene with professional development when teachers
3 are discovered to lack specific content or EL skills?

4 MR. ROSENBAUM: Vague and compound.

5 THE WITNESS: I am aware of lots of local
6 professional development programs.

7 I have to say that I don't know specifically
8 of any that actually targets a teacher -- a local
9 program that targets a teacher that is in need of
10 specific skills and then provides those in a specific
11 way to that teacher. There may be, but I am not
12 familiar with a strategy like that.

13 BY MR. HERRON:

14 Q. What empirical data suggests to you that this
15 is something that ought to be undertaken by the State;
16 that is, that it ought to set up a program of some sort
17 or variety designed to intervene with professional
18 development when teachers lack specific content or EL
19 skills?

20 A. First of all, on its face it is reasonable to
21 assume if someone lacks skills and that has been
22 noticed, that providing them with an opportunity to
23 learn is a reasonable thing to do and a sound thing to
24 do.

25 We also have quite a lot of empirical evidence

1 that professional development has a positive impact on
2 increasing teachers' knowledge and skills.

3 Q. I am interested in the empirical data that you
4 have reviewed that suggests that there is a need for a
5 State program to intervene with professional development
6 in the circumstances we are discussing.

7 A. Well, certainly the evidence that we see in
8 some of the Coordinated Compliance Reviews, the evidence
9 that schools put forth in their descriptions of the
10 problems they face in the II/USP program, the reviews
11 that -- for example, the recent audits, curriculum
12 audits, that took place in some L.A. Unified schools
13 that had failed to improve pointed clearly to the lack
14 of content or EL skills on teachers and the
15 recommendation that they be provided support and
16 professional development to enhance those skills.

17 Q. Is there any data from which you can state the
18 degree to which this is a problem in California, that
19 is, that the teachers lack specific content or EL skills
20 such that intervention with professional development is
21 required?

22 A. No.

23 Q. I take it you agree that the CCR process, the
24 II/USP reports provided by schools and FCMAT reviews are
25 sufficient in some circumstances to detect when there

1 are professional development needs for certain teachers?

2 A. I think I made clear throughout my previous
3 testimony and in my reports that those mechanisms have
4 the potential for being very useful instruments for
5 purposes such as those, but currently they are not used
6 in ways that are satisfactory to meet the needs.

7 Q. Let's talk about building capacity of schools
8 and districts in terms of textbooks, instructional
9 materials, supplies and technology.

10 Is it your testimony that the State does not
11 currently allocate a sufficient level of funding to
12 assure the availability of adequate instructional
13 materials?

14 MR. ROSENBAUM: She did -- you asked her a lot
15 of questions about this in the instructional materials
16 deposition -- lots of questions on it.

17 BY MR. HERRON:

18 Q. Just that one.

19 A. I think that in the way that I have explained
20 in my report on instructional materials and in my
21 previous testimony, I think that the State falls short
22 of providing sufficient fiscal capacity to meet a
23 standard of sufficiency and adequacy of materials for
24 all students.

25 Q. At the top of Page 62 of your report there is

1 a brief discussion about technical assistance in which
2 you state:

3 "The State must provide
4 technical assistance that enables
5 districts to purchase, inventory,
6 distribute and otherwise maintain
7 control over its textbooks,
8 instructional materials, equipment
9 and technology."

10 Does the State presently provide any technical
11 assistance you are aware of in this regard?

12 MR. ROSENBAUM: Again, she talked -- you asked
13 her a whole series about this. She gave you a variety
14 of examples. This has been covered, David.

15 THE WITNESS: Certainly in the case of Compton
16 we have an example -- a quite interesting one, I
17 think -- in which the problem was not simply the lack of
18 fiscal capacity but the lack of expertise locally to
19 manage adequately the supply and distribution of
20 textbooks, and that the State through FCMAT was able to
21 provide considerable technical assistance that has
22 resulted in some pretty remarkable improvements in
23 supply and -- of textbooks available to students in that
24 district.

25 BY MR. HERRON:

1 Q. Beyond that, what form of technical assistance
2 are you suggesting ought to be provided by the State --
3 I'm sorry -- must be provided by the State?

4 A. Again, the principle that technical assistance
5 should accompany the provision of fiscal capacity is a
6 principle that I think is important to maintain.

7 The specific ways in which the State does that
8 are, again, to be determined through the process of
9 weighing the various strategies.

10 I believe in my instructional materials report
11 starting on Page 103 and going through 105 it makes
12 several suggestions of capacity-building strategies in
13 relationship to textbooks and curriculum materials.

14 Q. Are you aware of any other state that provides
15 technical assistance to districts concerning their
16 purchase, inventory and distribution of instructional
17 materials?

18 MR. ROSENBAUM: Foundation.

19 THE WITNESS: I am not aware of the specifics
20 of any states that do that, no, not as I sit here today.

21 BY MR. HERRON:

22 Q. How about: Are you aware whether there is
23 any -- let's talk about facilities and capacity building
24 at the school and district level concerning facilities.

25 On Page 62, beginning with C, "Facilities,"

1 there are two recommendations here or examples here.
2 One is to implement an adequate data-gathering system
3 and two is to prioritize those districts and
4 specifically the buildings that are top priorities for
5 funding.

6 Are these examples? Are these proposals? Is
7 this a nonnegotiable principle? What are these?

8 A. I think what Myers is -- first of all, I think
9 the first half of that sentence -- well, the first
10 sentence I think establishes a principle that -- that
11 principles of equity and adequacy drive the provision of
12 dollars.

13 Then she in the second sentence, beginning
14 with "Rather," she suggests a strategy for using a
15 database and some negotiation processes to establish
16 this adequate and equitable distribution scheme.

17 Q. There are other strategies that might work?

18 A. Possibly.

19 Q. Is Myers recommending that the State should
20 dictate which buildings are funded and in which order
21 from among all the school facilities?

22 A. No. I think she suggests the process of
23 negotiation based on data.

24 Q. Well, it talks about prioritizing those
25 districts and specifically the buildings that are top

1 the first sentence reads:

2 "As with textbooks and other
3 instructional materials, capacity
4 requires both adequate funds and a
5 strategy for ensuring the equitable
6 distribution of funds, both for new
7 construction and for ongoing
8 maintenance and operations."

9 Is that a nonnegotiable principle?

10 A. Yes. I would say it is.

11 Q. In terms of new school construction what does
12 an "equitable distribution of funds" mean?

13 A. That all children in the state have an equal
14 chance of having access to new construction when it is
15 needed.

16 Q. So if a bond provides for first-come,
17 first-served funding of new school construction, in your
18 view that is inequitable?

19 MR. ROSENBAUM: That is vague.

20 THE WITNESS: It is certainly a policy that
21 has not proven itself to be effective in providing new
22 construction dollars equitably.

23 BY MR. HERRON:

24 Q. You talk about in this paragraph that is on
25 Page 62, Item C, what Myers recommends. It sounds like

1 priorities for funding.

2 Is she really advocating, as far as you
3 understand it, a system by which the State -- as opposed
4 to districts who apply for funds -- the State determines
5 which buildings are to be funded first for modernization
6 or new school construction?

7 MR. ROSENBAUM: Objection as to the form of
8 the question.

9 THE WITNESS: Well, I would not want to speak
10 to the particulars of her recommendation beyond what I
11 have summarized in here, especially without referring to
12 the specifics of her report. But I think --

13 MR. ROSENBAUM: If you need to refer to the
14 report, I am sure Mr. Herron would have no objection to
15 your doing that.

16 BY MR. HERRON:

17 Q. Sure.

18 A. Do you have her report?

19 Q. Sure. Let's take a short break.

20 (Recess taken.)

21 MR. HERRON: Would you read back the last
22 question.

23 (Record read.)

24 MR. HERRON: By stipulation, the question is
25 withdrawn.

1 Q. Let's just ask this --
2 MR. ROSENBAUM: I thought that was one of his
3 better questions. I withdraw that.

4 BY MR. HERRON:

5 Q. Under California's current system, if a
6 district wants to build a school, it must initiate
7 efforts to apply for funds; right?

8 A. Yes.

9 Q. Okay. Is Myers -- as far as you understand
10 it, is Myers advocating that the system ought to be
11 altered so that the State determines when and for what
12 new school construction funds are spent?

13 A. I think what she is saying is that the State
14 needs to take a stronger role in helping to assure that
15 funds get allocated in a way that provides for both
16 adequacy and equity. I think she would probably agree
17 that there are several ways to do it.

18 I think what she is saying is that in addition
19 to responding to applications or in the context of
20 responding to applications, the State needs much better
21 data and needs to engage in some -- some discussions and
22 additional fact finding in order to make decisions about
23 the priorities that it gives to various applications.

24 Q. The third full paragraph on Page 62 reads:
25 "Myers also recommends that

1 California is that we have both an inadequate number
2 and -- of facilities and inadequately maintained
3 facilities, and that we need stronger measures if the
4 State is to meet its responsibility to provide all
5 students with clean, uncrowded, well-maintained
6 facilities.

7 Q. The specifics of how California does that in
8 your mind are subject to negotiation?

9 A. The principle of providing each child with an
10 uncrowded, safe, well-maintained building in which to
11 learn is not negotiable.

12 The particular strategies by which the State
13 realized that principle, I think, are a matter for
14 further discussion, deliberations, analysis.

15 Q. Myers points to Maryland as an example of a
16 state with a very well-defined organizational structure
17 concerning maintenance.

18 Are you aware of any other states that might
19 serve as an example of a state having a very
20 well-defined organizational structure concerning
21 maintenance?

22 A. You know, I am not recalling the specifics of
23 Myers' and Corley's and Earthman's reports, but there
24 may very well be examples. They may be ones that I
25 am -- was at one time familiar with. At the moment I am

1 the State establish an
2 organizational structure that
3 allows local school districts the
4 opportunity to become responsible
5 for their facilities."

6 I know that is what she is recommending, but
7 what do you read that to mean or what does that mean?

8 A. Oh, it's -- I think what she is suggesting is
9 that there be -- while it may be, in fact, that local
10 school districts are in the best position to responsibly
11 maintain their facilities and to modernize them as
12 needed, that there should be a more careful, structured,
13 well-reviewed process for doing that, so that some sort
14 of structural plan like having -- like the one she
15 explains in Maryland, where they provide a maintenance
16 plan to the State, and it updates the plan, and then the
17 State engages with the district in helping to revise and
18 to respond to that plan in a way, again, that meets the
19 needs and has some way for the State to assure itself
20 that its funds are being used in adequate and equitable
21 ways.

22 Q. What is so wrong with the current system in
23 California such that California, the State, ought to
24 adopt a Maryland-like organizational structure?

25 A. Well, I think I think what is so wrong in

1 not recalling the details.

2 Q. Do you believe based on your review of the
3 Myers report or for other reasons that Maryland is an
4 appropriate -- that it is appropriate to compare
5 Maryland to California in terms of its organizational
6 structure concerning facilities maintenance?

7 A. I think that all of these examples serve the
8 same function. They first and foremost show us that,
9 yes, there are states that have tackled these problems
10 in different ways that have some promise, and that by
11 examining the policies in lots of states we could learn
12 lessons, gain ideas of strategies we might want to
13 develop and use here.

14 Q. Are you aware of the fiscal impact upon
15 Maryland of its adoption of its own particular
16 maintenance organizational structure?

17 A. No.

18 Q. Are you aware whether Maryland's adoption of
19 this organizational structure concerning maintenance has
20 resulted in improved maintenance?

21 A. Certainly the fact that Myers in her expertise
22 on these issues recommends this as a policy that we
23 should at least look at as an alternative suggests to me
24 that she at least has some evidence that the facilities
25 maintenance strategies in Maryland are -- would

1 represent an improvement over what California now has.
2 Q. You know, I read her report and saw no such
3 evidence.

4 Are you as you sit here today aware of any
5 evidence that the maintenance of school facilities in
6 Maryland have improved as a result of the organizational
7 structure it adopted?

8 A. No. I actually am relying on Dr. Myers'
9 expertise and her recommendations of strategies from
10 which California might gain some insight and ideas.

11 Q. The fourth full paragraph on Page 62 talks
12 about FCMAT assisting local districts concerning
13 maintenance and operations.

14 In your opinion is that -- well, let me try
15 this a little differently.

16 You go on to say in that paragraph that:
17 "FCMAT may need to be accorded
18 more power and authority as well as
19 financial resources."

20 In your opinion what additional power and
21 authority should be accorded to FCMAT?

22 A. I think what Dr. Myers is saying is that for
23 FCMAT to be considered as an organization that could
24 help implement the State's requirement that schools are
25 well maintained and clean, that it would need to be

1 maintenance.

2 Q. Well, back on Page 59 you talked about Corley
3 noting that California had already drafted quite good
4 nonmandatory school guidelines concerning maintenance.
5 Apparently, it has some role.

6 A. Actually, the -- while there are guidelines, I
7 know that in response to when Californians use the
8 Universal Complaint Procedure to complain about
9 facilities, the Department of Education is -- responds
10 that it is not their -- it is not in their purview; that
11 these are local matters.

12 Q. So the recommendation here is that the CDE's
13 School Facilities Planning Division be given enhanced
14 authority to resolve complaints about school
15 maintenance?

16 A. No. That is not what Dr. Myers is saying.
17 She is saying that the State Facilities
18 Division could be -- have an expanded role. This would
19 be one strategy for providing assistance to districts to
20 ensure the ongoing maintenance of the facilities once
21 they are built.

22 MR. HERRON: Why don't we end for today?

23 MR. ROSENBAUM: Same stipulation?

24 MR. ROSENBAUM: Yes. And I appreciate your
25 courtesy.

1 something other than voluntary assistance given on
2 request where there are no requirements that the
3 recommendations that FCMAT makes be followed.

4 I am certainly not suggesting that as the
5 specific remedy, but I am saying that if FCMAT were to
6 be the agency that Dr. Myers is suggesting, that it
7 would need to be something other than a
8 voluntary-assistance-on-request strategy.

9 Q. Are you aware of any other state that has an
10 entity like FCMAT, like a Fiscal Crisis Management
11 Assistance Team?

12 A. No, I am not aware. There may very well be.
13 It wouldn't surprise me.

14 Q. The last portion of the fourth paragraph on
15 Page 62 talks about the State having a role in providing
16 assistance to districts in maintaining school
17 facilities. It talks about an expanded role for the
18 CDE's School Facilities Planning Division in that
19 regard.

20 What is the recommendation here?

21 A. Well, that the CDE Facilities Division would
22 be one body that could help build the capacity of local
23 districts to maintain their schools once they are built.

24 Currently the CDE takes the position that it
25 has no role in assisting with problems about facilities

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 or 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 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 3:15 p.m., the
 25 deposition of JEANNIE OAKES was adjourned.)

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

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 _____
 JEANNIE OAKES
 18
 19
 20
 21
 22
 23
 24
 25