

1 SUPREME COURT OF THE STATE OF CALIFORNIA  
2 COUNTY OF SAN FRANCISCO

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

6 Plaintiffs,

7 -vs-

8 STATE OF CALIFORNIA, DELAINE EASTIN, State  
9 Superintendent of Public Instruction; STATE  
10 DEPARTMENT OF EDUCATION; STATE BOARD OF  
11 EDUCATION,

12 Defendants.  
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13 Volume III  
14 March 10, 2003  
15 9:35 A.M.

16 Continued deposition of THOMAS SOBOL,  
17 Ed.D., taken by Intervenor, pursuant to Notice,  
18 at the offices of O'Melveny & Meyers, L.L.C., 153  
19 East 53rd Street, New York, New York, before  
20 Linda J. Greenberg, a Certified Shorthand  
21 Reporter and Notary Public of the State of New  
22 York.  
23  
24

## 1 APPEARANCES:

2  
3 ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
Attorneys for Plaintiffs

4 1616 Beverly Boulevard  
Los Angeles, California 90026-5752

5 BY: CATHERINE E. LHAMON, ESQ.

6  
7 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

8 Attorneys for Defendants  
1300 I Street, Suite 1101  
P.O. Box 944255  
Sacramento, California 94244-2550

10 BY: ANTHONY V. SEFERIAN, ESQ.

11  
12 CALIFORNIA SCHOOL BOARDS ASSOCIATION  
Intervenor

13 555 Capitol Mall, Suite 1425  
Sacramento, California 95814

14 BY: ABE HAJELA, ESQ.

15  
16 STRUMWASSER & WOOCHEER, LLP  
Attorneys for Intervenor

17 Los Angeles Unified School District  
100 Wilshire Boulevard, Suite 1900  
Santa Monica, California 90401

19 BY: FREDRIC D. WOOCHEER, ESQ.

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1 Q. What years were those?

2 A. 1971 through June 30, 1987.

3 Q. And then as Commissioner of  
4 Education, my assumption is you're fairly  
5 familiar with the operation of other school  
6 districts in the state?

7 A. Yes, sir.

8 Q. First, with Scarsdale, can you  
9 briefly describe the demographics of the student  
10 population, meaning wealth, ethnicity, that sort  
11 of thing.

12 A. Scarsdale is an upper middle-class  
13 community relatively homogeneous in Westchester  
14 County.

15 Most of the families are reasonably  
16 well off, as the world goes, and are well  
17 educated; and students enjoy the benefit of those  
18 family backgrounds, as well as the school system,  
19 and tend to be very successful in conventional  
20 terms, at least academically, as a result of it,  
21 the combination of the family background and the  
22 schools themselves.

23 I don't know if I'm answering you  
24 fully enough.

1 THOMAS SOBOL, Ed.D.  
2 Having been previously duly sworn, was examined  
3 and testified as follows:

## 4 EXAMINATION BY

5 MR. HAJELA:

6 Q. Good morning, Dr. Sobol.

7 A. Good morning, sir.

8 Q. My name is Abe Hajela. I represent  
9 the California School Boards Association. We  
10 represent our member districts in this action.  
11 We intervened in the lawsuit and we're neither  
12 assigned with plaintiffs or defendants, but  
13 obviously we're trying to represent the interest  
14 of school districts in the case?

15 I won't go over the ground rules  
16 again, I think you've done this often enough, but  
17 if I'm a little bit jet-lagged here and I'm not  
18 making sense, tell me if you don't understand a  
19 question and I'll try to rephrase it for you?

20 I want to talk a little bit first  
21 about the experience of school districts in New  
22 York, and based on your experience at Scarsdale,  
23 I believe you were a superintendent there?

24 A. Yes, I was.

1 Q. Yes, you are. It was a rather broad  
2 question. Thank you?

3 When you say "relatively  
4 homogeneous," that means predominantly white, is  
5 that correct?

6 A. Predominantly white, predominantly  
7 upper middle-class socioeconomically. There  
8 grew, over the period of 16 years that I served  
9 there, a population of what we call international  
10 students. Many Japanese families, but a wide  
11 mixture of international backgrounds as well.

12 But that remained a minority of the  
13 total population, which was white, as you say.

14 Q. I believe you described it as a  
15 predominantly suburban school district?

16 A. It was a suburban school district.

17 Q. Can you briefly describe your  
18 primary duties as superintendent of schools for  
19 Scarsdale?

20 A. Well, if you asked any of the kids,  
21 the most important thing I did was decide whether  
22 we should have school or not on the days that it  
23 snowed, but other than that, the duties were very  
24 broad.

1 Superintendent of schools in New  
2 York State, as is typical throughout much of the  
3 nation, serves as the chief professional advisor  
4 and chief executive officer for the elected board  
5 of education, so I was involved in helping the  
6 board to discharge all of its responsibilities  
7 under the law, from raising funds locally to  
8 compliment the funds we received directly from  
9 the state, to planning instructional programs, to  
10 devising curricula, to hiring teachers and other  
11 staff, to communicating with people in the  
12 community.

13 The whole gamut of school activities  
14 fall within the purview of a school  
15 superintendent.

16 Q. I'm going to take something out of  
17 order, since you mentioned it here?

18 The issue of raising revenues  
19 locally, can you talk a little bit about how  
20 that's done?

21 A. In New York State?

22 Q. Yes. How school districts can do  
23 that in New York.

24 MS. LHAMON: Vague as to time. Do

1 In Scarsdale still, the percentage  
2 of state aid, as we call it, that funds the local  
3 schools is still relatively small. Something  
4 on the order of 7 to 8 percent, but don't hold me  
5 to that because I'm not current with those  
6 numbers any longer, but it's approximately that.  
7 Something just below 10 percent. And the bulk of  
8 the revenue is raised by -- raised from the local  
9 property tax, the tax that the board is  
10 authorized to get the town to raise for it.

11 Q. So that local property tax then, the  
12 funds from that source can be used for  
13 instructional purposes at the discretion of the  
14 board and the town --

15 A. Can be used by -- for any purpose  
16 that is lawfully within the board's zone of  
17 authority to do.

18 Q. Are you aware of any constraints on  
19 local districts in California, constraints  
20 related to raising revenue?

21 A. No, I'm not. I don't pretend to  
22 know the detail of the California scene in that  
23 regard or pretty much in any other.

24 I know only those general principles

1 you mean now or when Dr. Sobol was  
2 superintendent?

3 Q. Let's talk about now, if you know.

4 A. I think I know the general process.  
5 I'll do my best to describe it for you, but I  
6 don't know the exact numbers from the top of my  
7 head.

8 Q. That's fine.

9 A. Public school districts in the State  
10 of New York were, in my time, and are still  
11 funded by a combination of local and state  
12 revenues. A little bit of money coming from the  
13 federal government, but a very small amount  
14 relative to the whole.

15 Local boards of education are  
16 empowered under the law to levy taxes, or to --  
17 actually, to certify to the town who levies the  
18 taxes -- which levies the taxes, to generate the  
19 local revenue; and the percentage on the money  
20 that is spent on an education each year from  
21 local funds as opposed to state funds varies  
22 substantially from one community to another,  
23 depending upon the relative wealth of the  
24 community and other demographic characteristics.

1 that apply to it.

2 Q. So are you aware or have you been  
3 told that the system of public education in  
4 California is predominantly state funded?

5 A. I'm generally aware of that, but I'm  
6 aware of it more as a layman than anybody who has  
7 specific knowledge of it.

8 Q. I didn't want your expert opinion on  
9 it. It's an interesting distinction between  
10 school districts in California and New York?

11 Let me turn briefly to your report.  
12 If I can refer you to page 5, Exhibit 1.

13 You use the term "sound, basic  
14 education" in your report. It's in paragraphs 10  
15 and 11 of your report; and then in paragraph 11,  
16 you list some of the essentials of a sound, basic  
17 education and I'm looking at the sentence that  
18 begins, "These educational essentials are," and  
19 then there's a list that follows?

20 When you came to Scarsdale in 1971,  
21 is it your opinion that every student in the  
22 district was being provided a sound, basic  
23 education, as you use that term?

24 A. Yes. Yes, it was.

1 Q. And to your knowledge -- and I'm  
2 talking here both as the superintendent of  
3 Scarsdale, but also the knowledge you have as  
4 Commissioner of Education -- was Scarsdale  
5 typical of school districts in New York, in that  
6 manner that it was providing every student a  
7 sound, basic education?

8 A. I'm not trying to hedge, but it  
9 would depend on how you would describe "typical."

10 I think that Scarsdale itself is not  
11 regarded as "typical." It was regarded as being  
12 very advanced in these respects and perhaps in  
13 others.

14 I do think that the majority of  
15 schools and school districts throughout the state  
16 enjoyed these essentials, but not all school  
17 districts throughout the state enjoyed those  
18 essentials.

19 Q. Would you be able to characterize  
20 generally the types of districts that did not  
21 enjoy those essentials?

22 A. Speaking very broadly, as your  
23 question invites me to do, urban school districts  
24 where there are concentrations of students living

1 We developed and maintained a system  
2 of recruiting people to fill vacant positions or  
3 to reflect growth in enrollment from time to  
4 time.

5 When we hired teachers, principals  
6 and other personnel, we took pains to assure  
7 ourselves that the people were properly qualified  
8 and licensed by the State of New York. Not  
9 incidentally making the assumption that state  
10 licensure in and of itself was witness of  
11 effective capacity on the part of the people we  
12 were hiring, but making rather the assumption  
13 that we would not then be hiring people who were  
14 demonstrably not qualified to serve because of  
15 lack of education in their subject or lack of the  
16 opportunity to have acquired the professional  
17 skills they needed to be effective in classrooms.  
18 We did that.

19 We maintained a program of  
20 supervision over the teachers and principals in  
21 our employ to be sure that the goals of their  
22 activity were appropriate and the means of their  
23 activity were conducive to achieving the goals.

24 And on those rare occasions when we

1 in poverty and some rural school districts living  
2 in conditions of sparse population, but difficult  
3 economic circumstances.

4 Q. I'm going to look at this list very  
5 briefly that you have and ask you both about  
6 Scarsdale and then about your knowledge of other  
7 districts, and when I talk about the other  
8 districts, I want to focus on the ones that  
9 aren't able to provide these essentials?

10 On the first one, "Teachers," you  
11 state, "As educational essentials are teachers,  
12 principals, and other personnel who have  
13 appropriate skills, training and professional  
14 supports."

15 In Scarsdale, when you were  
16 superintendent there, what did you do to ensure  
17 these education essentials? It's a broad  
18 question, I'm not asking everything you did, but  
19 some of the main things that come to mind.

20 A. We made certain, first of all, that  
21 we made financial provision for hiring such  
22 people. That the revenue was available, that the  
23 money was allocated properly in the budget and so  
24 on.

1 felt that there was a member of the staff who was  
2 not performing effectively with respect to the  
3 students and the person who was serving, we would  
4 take pains to provide additional help to the  
5 teacher and/or, in more extreme cases, reassign  
6 the teacher or counsel the teacher out of  
7 service.

8 So those were among the things that  
9 we did, from providing resources on through  
10 hiring people, to looking at state licensure, to  
11 maintaining a program of supervision, to  
12 providing help and intervening when necessary.

13 Q. Thank you.

14 In terms of you mentioned that a  
15 license didn't necessarily mean -- I'm  
16 paraphrasing. Let me ask you again.

17 Having a license, did that mean you  
18 were, in your opinion, a teacher with appropriate  
19 skills and training, or is there more to it?

20 A. It seems to me that state licensure  
21 is a threshold to condition, and that you want  
22 everybody in your employ to meet that threshold  
23 condition.

24 Now, if you're in fortunate

1 circumstances, as Scarsdale was, and you're  
2 dealing only with licensed people, then you have  
3 to apply other measures to be informed as to the  
4 person's effectiveness above and beyond that  
5 threshold level; but being at that level as a  
6 condition of entry was vital for us, and in my  
7 years as commissioner, I found it vital for  
8 schools and school districts throughout the  
9 state.

10 Q. In terms of additional training, if  
11 that's the right word, after licensure, is that  
12 the role of the State of New York or the role of  
13 districts or is it a dual role?

(Requested portion of record read.)

14 A. Very much a dual role.  
15 Some of that ongoing professional  
16 development was provided by the districts and  
17 some was provided by the State of New York  
18 directly, depending on the subject and the need  
19 that was trying to be met, that people were  
20 trying to meet at the time.

22 Q. Can you tell me just briefly what  
23 the State of New York did in terms of additional  
24 training for teachers after licensure?

1 understand the purpose of the program, to see  
2 evidence of it or reports of it in operation in  
3 places where it was working effectively, and to  
4 acquire some of the skills that were necessary to  
5 participate in such an endeavor.

6 Q. Again, briefly, when you were  
7 superintendent at Scarsdale, what sort of  
8 activities did the district undertake to ensure  
9 that teachers were trained properly?

10 A. In Scarsdale, we created an entity  
11 called the Scarsdale Teachers Institute, which  
12 was an organization devoted to the professional  
13 development of teachers run by teachers  
14 themselves in consultation with district  
15 authorities, including the superintendent, but  
16 enjoying a relatively large amount of autonomy in  
17 determining what the needs were, what the  
18 appropriate learning experiences should be, and  
19 what the evaluation of the program would consist  
20 of.

21 And we would offer workshops,  
22 courses, conferences on matters that were  
23 designated by the governing board of the  
24 Scarsdale Teachers Institute. They might have

1 MS. LHAMON: Vague as to time.  
2 Are you talking about when Dr. Sobol was  
3 commissioner or as superintendent or some other  
4 time?

5 Q. Let's make it when you were  
6 commissioner.

7 A. When I was commissioner, we were  
8 beginning to develop a program of standards,  
9 content standards and student performance  
10 standards that were to apply to all school  
11 districts, and an accompanying program of  
12 assessment to measure pupil progress toward the  
13 attainment of those standards; and as we did so,  
14 we provided opportunities for teachers, not only  
15 to comment upon our drafts in an effort to  
16 improve them as we went along, but to get an  
17 opportunity to become familiar with the material  
18 and more skillful in its use, so that was one  
19 such initiative.

20 When we were establishing site-based  
21 committees of teachers, principals and parents in  
22 each public school throughout the state, the  
23 state provided workshops and written materials  
24 and televised materials that helped people

1 ranged, for example, from effective ways to teach  
2 the new math curriculum to understanding some of  
3 the issues of multiculturalism that attach to the  
4 teaching of social studies.

5 Those kinds of matters.

6 Q. I want to turn to the districts that  
7 you or we characterized as not able to provide  
8 every student a sound, basic education.

9 I guess it make sense to talk about  
10 your experience as Commissioner of Education in  
11 this regard?

12 For districts that could not provide  
13 teachers, principals and other personnel who have  
14 appropriate skills, training and professional  
15 supports, can you talk about some of the  
16 impediments that they faced?

17 A. Yes.

18 Q. Can you briefly describe some of  
19 those?

20 A. Well, let me start in an obvious  
21 place and then I'll do my best to continue.

22 Some districts lack the resources  
23 necessary to hire people for the positions that  
24 they otherwise would have filled. There was not

1 money, for example, for a school librarian or for  
2 some other position. I don't mean to limit it to  
3 the library.

4 Beyond lack of funds for hiring,  
5 some districts did not have access to a  
6 sufficient pool of licensed people to guaranty  
7 that all teachers and other professional staff  
8 met that threshold criterion of preparation to  
9 teach effectively, teach or otherwise work  
10 effectively.

11 In those districts, many teachers,  
12 either in their entire teaching load or in a  
13 portion of their teaching load, were teaching  
14 what we call "out of license." They would be  
15 teaching physics, let's say, when they were not  
16 licensed to do it; though they might know a  
17 smattering of general science or biology, but did  
18 not know general physics and so on.

19 Q. That's fine. I apologize for asking  
20 general questions, so you don't need to give me  
21 every thought you have --

22 MS. LHAMON: Were you done,  
23 Dr. Sobol?

24 THE WITNESS: Yes, I'm done.

1 circumstances, where the local school district is  
2 either unable or unwilling to provide the  
3 revenues that are needed, the state has an  
4 obligation to intervene and make sure that funds  
5 are provided from one source or another to give  
6 the students the sound, basic education which is  
7 their constitutional right.

8 Q. And hypothetically, so assuming a  
9 state other than New York -- if you assume that a  
10 district does not have the authority to raise  
11 revenues that could be utilized to hire  
12 personnel, would it be your opinion that the  
13 state then has a duty to provide sufficient  
14 resources?

15 MS. LHAMON: Incomplete  
16 hypothetical.

17 A. Yes.

18 Q. In terms of supply of licensed  
19 teachers, do you have an opinion as to -- and I'm  
20 speaking of New York State specifically here --  
21 what the reason for an inadequate supply of  
22 licensed teachers in some school districts, what  
23 that reason is? I'm sorry. That's a messy  
24 question. I can do it again if you want.

1 Thank you.

2 MR. HAJELA: I'm sorry.

3 Q. In terms of the first issue you  
4 mentioned, the funds to hire teachers and other  
5 support personnel, you talked about a dual role  
6 of the state and the locals in raising revenues.

7 Do you have an opinion as to, in  
8 those circumstances, when a district didn't have  
9 sufficient revenue available, whose duty it is to  
10 provide sufficient resources?

11 MS. LHAMON: The question is vague.  
12 Are you asking about under the conditions in New  
13 York State or are you asking about in any state?

14 MR. HAJELA: New York State.

15 A. Well, it's a dual responsibility.

16 Local school districts, in my view,  
17 have the obligation to raise funds to conduct the  
18 programs of studying that the board has  
19 determined are appropriate for students within  
20 the district and that are consistent with state  
21 law and regulation.

22 The state, however, has the ultimate  
23 responsibility for the conduct of the public  
24 school system as a whole; and in those

1 A. That's fine.

2 It's a combination of factors.

3 In some subjects, the overall supply  
4 of teachers throughout the state as a whole is  
5 smaller than in other subjects, so it was more  
6 difficult, still is more difficult, to hire  
7 adequately trained teachers of mathematics and  
8 physics and special education and bilingual  
9 education than it is to hire -- to find  
10 appropriately trained teachers for elementary  
11 school classrooms or the teaching of English,  
12 social studies, so on, so there were differences  
13 among subjects, first of all, just as to the  
14 overall supply.

15 New York City, the City of Buffalo,  
16 some other urban jurisdictions found that they  
17 would hire people who were adequately trained, or  
18 seek to hire them, and those people would either  
19 come and leave to go to the suburbs or go there  
20 directly because the salaries were higher.

21 Some teachers who were appropriately  
22 credentialed for teaching service in the kinds of  
23 school districts that we're talking about were  
24 reluctant to teach in those school districts

1 because they, for whatever reason, they were  
2 reluctant to teach there.

3 So it's a combination of things:  
4 overall supply, which is varied among teachers,  
5 the money to attract and retain people, and the  
6 conditions of teaching in the schools that were  
7 less than desirable for some portion of the  
8 licensed teaching population.

9 Q. And do you have an understanding of  
10 whether some of these problems related to supply,  
11 both as you described overall and for certain  
12 districts? Do you have an understanding of  
13 whether that's also a problem in California  
14 currently?

15 A. I'm not an expert about the  
16 California scene specifically, but my belief is  
17 formed from the reading that I've done, the  
18 conversations that I've had with people from the  
19 state, that those problems are found in  
20 California as well.

21 Q. I wanted to add, if there's any  
22 point during this process that you would like a  
23 break just let me know and I'll be happy to do  
24 that?

1 urban centers or in some of the more impoverished  
2 rural areas.

3 Q. Let me ask you hypothetically if  
4 funding per student was roughly equal as between  
5 New York City and Scarsdale, do you have an  
6 opinion of whether it would still be more  
7 difficult in New York City to provide fully  
8 licensed teachers?

9 MS. LHAMON: Incomplete  
10 hypothetical. Was the fund equalized yesterday  
11 or --

12 Q. Let's assume the funding has been  
13 equalized for five years.

14 A. It certainly would be easier, but I  
15 don't know that the attractiveness of the two  
16 districts would be the same even so.

17 Q. So is it possible that even with  
18 equalized funding per student among districts,  
19 some districts might have more problems than  
20 others hiring fully licensed teachers?

21 A. It's possible that that might be the  
22 case.

23 On the other hand, without the  
24 money, it is certainly the case.

1 Turning to the second education  
2 essential on page 5 that you described, "Small  
3 classes," were you able to provide that in  
4 Scarsdale?

5 A. I believe so, yes.

6 Q. And were small classes also provided  
7 in urban school districts in New York, such as  
8 New York City and Buffalo, speaking now to your  
9 time as commissioner?

10 A. Well, in certain situations in those  
11 cities, small classes do exist, but they're rarer  
12 and more difficult to find because the overall  
13 pupil staff ratios are different from communities  
14 like Scarsdale to communities like New York City  
15 or Buffalo or Rochester or Yonkers. Where there  
16 is less money to hire people, there tends to be  
17 more pupils per teacher or staff position than  
18 there is money to hire more people.

19 So from my perspective, though,  
20 small classes is admittedly a general phrase  
21 here, we're not quantifying it.

22 It was more easily to achieve that  
23 standard in Scarsdale -- it was easier to achieve  
24 that standard in Scarsdale than in the large

1 Q. And in New York, as I believed you  
2 testified --

3 A. It was the case and is the case.

4 Q. Thank you.  
5 Turning to --

6 MR. WOOCHEER: It's the case that the  
7 funding is not equal?

8 THE WITNESS: Yes, sir.

9 Q. Let me jump to something else and  
10 I'm come back to this.

11 The Campaign for Fiscal Equity, you  
12 were involved in that lawsuit, correct?

13 A. Yes, sir.

14 Q. What is the status of that lawsuit  
15 currently, if you know?

16 A. Plaintiffs won a victory in the  
17 trial court. It was reviewed by the Appellate  
18 Division and the decision was overturned. It is  
19 on appeal now before the Court of Appeals, and I  
20 understand that oral argument will be held on May  
21 8th.

22 Q. Then I understand why it is still  
23 the case that funding is unequal and I won't  
24 pursue that one further. I will have more

1 questions for you about that case, but I'll get  
2 to those later?

3 Turning to, "Sufficient and  
4 up-to-date books, libraries, technology and  
5 laboratories," I'm assuming your answer is going  
6 to be those essentials were provided in  
7 Scarsdale?

8 A. Yes, sir.

9 Q. Now, how about in a district like  
10 New York City or Buffalo, could you talk about  
11 some of the impediments to providing those  
12 essentials?

13 A. In some situations in the cities and  
14 in impoverished rural areas, students did not  
15 have access to up-to-date textbooks or library  
16 areas or technology and laboratories. Some  
17 schools do not have libraries. Some schools have  
18 libraries but no librarian. Some schools have  
19 libraries and librarians, but no money to keep up  
20 to date with the textbooks.

21 It's a very varied pattern. Some  
22 schools and school districts, students have to  
23 share textbooks rather than having one for their  
24 personal use, or there may be a set of textbooks

1 you have an opinion as to what some of the  
2 impediments were?

3 A. I'm trying to do better for you but  
4 I can't. I think the answer is pretty much as  
5 the previous: money and facilities -- lack of  
6 money and facilities.

7 Q. Thank you.

8 "Appropriate support services for  
9 all students and supplemental aids, services and  
10 suitable instructional programs for students with  
11 extraordinary needs."

12 Were you able to provide these  
13 essentials in Scarsdale?

14 A. I believe so, yes.

15 Q. And can you talk a little bit about  
16 why some school districts, perhaps New York City  
17 and Buffalo, could not provide those essentials?

18 A. For some of the same reasons that  
19 we've discussed earlier, lack of funds to hire  
20 the appropriate staff members. A shortage of  
21 people trained in those specific areas to begin  
22 with that affect the supply -- characterize the  
23 supply of people. The reluctance of some people  
24 who are credentialed to serve in those

1 in the teacher's care and students have access to  
2 them in school, but aren't allowed to take them  
3 home.

4 All of those are conditions that my  
5 friends and other constituents in Scarsdale would  
6 not permit.

7 Q. So you describe some of the  
8 deficiencies, if you want to put it that way, in  
9 districts like New York City and Buffalo with  
10 regard to instructional materials and technology;  
11 but I'm interested in, if you know, what were  
12 some of the impediments they faced in providing  
13 those resources?

14 A. First impediment would have been  
15 lack of money. In some cases, the buildings were  
16 overcrowded and the former library was now used  
17 as classrooms -- subdivided and used as classroom  
18 space.

19 I'd say those were the two chief  
20 impediments: money and facilities.

21 Q. "Suitable curricula as well as extra  
22 curricula activities."

23 Turning just to districts that were  
24 unable to provide these education essentials, do

1 communities. Those same variables.

2 Q. Turning to, "Adequate and accessible  
3 facilities," same question again.

4 In districts that have problems  
5 providing these essentials, can you discuss some  
6 of the impediments?

7 A. Some of the facilities are terribly  
8 overcrowded in large urban districts. Not so  
9 much in the impoverished rural areas, by the way.

10 Some students are meeting in  
11 overcrowded classrooms in spaces that were not  
12 designed for instruction to beginning with.  
13 Corridors or large closets or smallish conference  
14 rooms and so on, just makeshift sort of physical  
15 arrangements.

16 Some schools lack playgrounds or  
17 other outdoor space where students can exercise  
18 during a portion of the day or before or after  
19 school.

20 That sort of pattern.

21 Q. And do you have, in terms of  
22 overcrowding during your time as Commissioner of  
23 Education, do you have an understanding of some  
24 of the causes of that overcrowding?

1 A. One of the first and great causes is  
2 the arrival of more kids, more students.  
3 If enrollment is growing, you've got  
4 to put kids someplace and that can pose a problem  
5 depending upon the logistical circumstances  
6 involved.

7 Beyond that, the issues are the  
8 same. Funds to create the space -- create or  
9 lease or rent the space that is necessary to  
10 provide the physical conditions that are  
11 students' rights.

12 Q. In some of the urban districts in  
13 New York, is there a problem, aside from money,  
14 which you've talked about, is there a problem  
15 finding appropriate space for these schools?

16 A. Yes. Because the neighborhood is  
17 already heavily built and industrialized and  
18 space may not be available easily.

19 I'll leave it at that.

20 Q. In terms of funding specifically for  
21 building schools, construction of new schools,  
22 can you just tell me briefly how that's funded in  
23 the State of New York? And I'm focusing mainly  
24 on the difference between state funding and local

1 was going on and talking to the mayor, the  
2 governor and so on, but I can't remember for the  
3 life of me the acts. Forgive me. I can look it  
4 up for you.

5 Q. That's okay.

6 A. The point that I'm making is, the  
7 then existing, no longer existing Central Board  
8 of Education in New York City, did not have the  
9 same authority over buildings and the funding of  
10 buildings to meet needs as did the normal range  
11 of school district, the boards of school  
12 districts throughout the state.

13 I hope that's being clear.

14 Q. That's clear. Thank you.

15 The next one is, "Safe and orderly  
16 environment." Fairly general language.

17 Could you help me a little bit with  
18 what you mean by, "Safe and orderly environment"?

19 A. It's sort of hard to get beyond the  
20 plain meaning of the words. I mean -- forgive  
21 me. This is going to sound smart-alecky, but I  
22 don't mean it that way.

23 By, "A safe, orderly environment,"  
24 I mean something that is not unsafe or

1 revenue.

2 A. It differs, depending on the nature  
3 of the school district.

4 For most school districts, most of  
5 the 700-odd school districts there are in the  
6 State of New York, the procedure is that the  
7 Board of Education, locally elected Board of  
8 Education, would determine the need for new or  
9 additional or renovated space, raise the money  
10 either through an annual operating budget or by  
11 asking the public to approve bonding to supply  
12 the capital needed for the purpose, and there is  
13 a portion of that fund, something provided by the  
14 state through formulas for building aid embedded  
15 in the state education law.

16 In the City of New York, it's more  
17 complicated than that. The authority was not  
18 left with a local Board of Education alone, but  
19 given to -- ascribed to it a different legal  
20 entity, the name of which I'm not remembering.

21 The state created a new structure  
22 for financing building needs in the City of New  
23 York. In the years, either 1987 or 1988, I can  
24 remember being at the meetings where all of this

1 disorderly.

2 You don't want a school in which  
3 there are frequent or even occasional episodes of  
4 violence. You don't want schools that are fire  
5 hazards or that are so overcrowded that exiting a  
6 building in an emergency would become difficult.  
7 That sort of thing.

8 Unhappily, there are such physical  
9 environments in some of the schools in New York  
10 State, so it was very important to the plaintiffs  
11 in the Campaign for Fiscal Equity suit that you  
12 mentioned earlier to make as one of their  
13 additions the existence of a safe, orderly  
14 environment.

15 Q. And finally, "Parent and community  
16 involvement." I'll ask about Scarsdale first?

17 When you were superintendent in  
18 Scarsdale, what did the district do to improve  
19 parent and community involvement, if anything?

20 A. There is nothing we could have done  
21 to improve the parental community involvement in  
22 Scarsdale.

23 Parents participated vigorously in  
24 the operation of the Scarsdale schools from the

1 level of the classroom right on up through the  
2 level of the board. They were involved in every  
3 issue that came along and created many of them in  
4 their own right, but that's not the general  
5 pattern throughout the state.

6 And unhappily, in some  
7 circumstances, parents do not feel encouraged by  
8 school authorities to participate, not even --  
9 I'm not talking about participating to the full  
10 extent of the Scarsdale parents, but even at much  
11 more limited levels, not encouraged to  
12 participate.

13 Q. Let me ask you, because my sense is  
14 the answer might be different on this particular  
15 one?

16 Do you have an opinion as to the  
17 impediments faced by districts that are unable to  
18 provide adequate parenting community involvement  
19 in their schools?

20 A. For some parents, there's a cultural  
21 gap between the communities in which they live  
22 and their perception, at least, of the school or  
23 the school system; and the people in the schools  
24 or the school system have not, for whatever

1 reason, been able to close that gap, so the  
2 parents -- some parents don't feel comfortable in  
3 a school environment.

4 Some parents have not had happy  
5 experiences in schools. Some parents are not  
6 educated beyond a certain level. Some parents  
7 don't speak with the language that is commonly  
8 used in the school.

9 In my opinion, since you solicited,  
10 is that it is the school's responsibility to  
11 surmount those impediments as effectively as it  
12 can to reach out to parents and enlist them in  
13 ways that are possible in the pursuit of their  
14 children's education, because if there's one  
15 thing that we know to be true in schooling, it is  
16 that things go best for children when the parents  
17 and the school do, in fact, work collaboratively  
18 with one another.

19 MR. HAJELA: For the record, I don't  
20 plan to go through each paragraph like that.  
21 That's a unique one.

22 Would you like to take a break now?

23 THE WITNESS: Yes.

24 (A recess was taken.)

1 Q. Dr. Sobol, we talked a little bit  
2 about funding before the break.

3 I'm interested in, if you have one,  
4 a definition of "adequate resources"; and what I  
5 mean by that is, how would you determine whether  
6 a school district has adequate resources to bring  
7 about equity and education results?

8 MS. LHAMON: Vague as to  
9 "resources." Are you asking --

10 MR. HAJELA: The term "resources" is  
11 used throughout this report, and I assumed it  
12 primarily meant funding.

13 Q. If it means something else as well,  
14 maybe you can explain that to me.

15 A. I want to make sure I understand the  
16 question.

17 The question is, how would you  
18 determine whether the resources being provided  
19 are sufficient to the need?

20 Q. Yes.

21 A. And that could mean, what are the  
22 criteria that you would employ in order to answer  
23 the question, or it could mean, how would you, as  
24 an empirical matter, acquire the information that

1 you needed to see if the criteria had been met,  
2 or do you mean both of those things?

3 Q. I mean both, but let's start with  
4 the first.

5 A. It seems to me that there are  
6 certain essential conditions for an effective  
7 public school education that must be met  
8 regardless of finance or other circumstance.

9 Those conditions are properly  
10 trained and credentialed staff, up-to-date  
11 textbooks and other materials of learning, and a  
12 safe, orderly physical environment in which to  
13 work.

14 So those are the criteria that I  
15 would apply.

16 The second part of your question, as  
17 I understand it, is how should the information be  
18 gathered so as to see whether those conditions  
19 exist and are properly met or not, or the extent  
20 to which --

21 Q. I'm sorry I interrupted. I wanted  
22 to clarify. Or the cost to providing those  
23 conditions.

24 A. Okay.

1 So we've talked about what the  
2 criteria are. Now we need to talk about how you  
3 know whether the criteria have been met or not,  
4 and then you need to talk about -- not  
5 necessarily in that order, the cost of it. How  
6 would you determine the cost of them, right?

7 Q. Right.

8 A. Let me do how you would get the  
9 information first.

10 I think there are a great many ways  
11 to do that. There's no one way that is best  
12 necessarily for all states, but I can tell you  
13 some of the things that we did in New York State  
14 that generated the information that we needed in  
15 order to make that kind of determination.

16 We would require, first of all,  
17 annual reports by local boards of education and  
18 their administration as to the presence or  
19 absence of certain conditions in the schools.

20 We would conduct testing programs  
21 and other programs of educational assessment to  
22 inform us as to how well students were doing  
23 throughout the state.

24 We required all teachers and

1 it was, what are the criteria? Secondly, how do  
2 you know if the criteria are being met? And the  
3 third part is, what does it cost to do it?

4 It turns out to be a tricky business  
5 to answer the question. In the Campaign for  
6 Fiscal Equity litigation that you mentioned  
7 earlier, one of the chief activities underway  
8 almost literally as we speak is an effort to cost  
9 out what it takes financially to provide the  
10 conditions that have been enumerated in that  
11 proceeding as essential to a sound, basic  
12 education.

13 Similar costing out initiatives have  
14 been conducted, to my understanding, in other  
15 states of the union. I don't know that one has  
16 been conducted in California. If it has, it's  
17 news to me. I don't know that, nor are all the  
18 results yet available for the State of New York,  
19 so I can't answer the third part of the question  
20 satisfactorily, I'm afraid.

21 I can't tell you exactly how much,  
22 assuring the presence of these fundamentally --  
23 of these essential conditions will cost.

24 I could tell you whether they're met

1 principals and other people in the professional  
2 staff in the schools throughout the state to  
3 self-report annually on something called the BEDS  
4 form. It's an acronym, B-E-D-S: Basic  
5 Educational Data System.

6 They wouldn't talk -- they would  
7 provide information concerning their background,  
8 level of training, nature of their assignment and  
9 so on.

10 We had a system of district  
11 superintendents throughout the state who -- part  
12 of whose role it was to represent the State  
13 Education Department in the various physical  
14 regions of the state, who would monitor  
15 conditions there, interact with local school  
16 officials, with parent groups, visit people from  
17 the business and lay community to gather  
18 information about the schools that they would  
19 feed back in to the state, so there was a variety  
20 of ways to get the information from a variety of  
21 sources, all of which applied.

22 Now, the third part of the question  
23 is how -- first one, just to recall, this is the  
24 professor in me, forgive me -- the first part of

1 or not. I could tell you how important they are,  
2 but I can't put specifically a price tag to it,  
3 that it's quite reasonable to request.

4 Q. In your opinion, is it important to  
5 do that analysis, the costing out analysis, if  
6 the result you are seeking is adequate funding  
7 for the schools in the state?

8 A. Yes. I believe that is essential.

9 Q. Setting aside the issue of funding  
10 for a moment, I want to examine the authority  
11 exercised by school districts in the State of New  
12 York, and you've already talked about raising  
13 revenue?

14 For example, another example, as  
15 superintendent of Scarsdale, did you have, in  
16 your opinion, sufficient authority to ensure that  
17 your most qualified teachers were equitably  
18 distributed among all the schools in the  
19 district?

20 A. Yes.

21 Q. And is it your opinion that that is  
22 true for superintendents of urban school  
23 districts, such as New York City?

24 A. No.

1 My understanding is, in the City of  
2 New York, for example, to take one case, the  
3 contract between the then existing Board of  
4 Education and the Teachers Union is such that  
5 senior teachers have some say as to what their  
6 assignment shall be; and the chancellor for which  
7 we -- superintendent in New York City does not  
8 have the same authority that I enjoyed as  
9 superintendent in Scarsdale to make those  
10 decisions according to perceived need.

11 Q. I just want to make sure I  
12 understood you correctly.

13 Seniority, is that a provision of a  
14 collective bargaining agreement entered into?

15 A. Yes. I'm sorry I didn't make that  
16 clear.

17 Q. Thank you.

18 Are you aware of whether there are  
19 similar problems in school districts in  
20 California with inability to equitably distribute  
21 the most qualified teachers?

22 MS. LHAMON: Vague and ambiguous.

23 A. I don't know enough about the  
24 specifics of the California situation to answer

1 Q. If hypothetically California has an  
2 inadequate supply of licensed teachers,  
3 generally, would you agree that a state standard  
4 that requires dismissal of teachers teaching out  
5 of license would have similar negative  
6 consequences?

7 MS. LHAMON: Incomplete  
8 hypothetical.

9 A. It depends upon the numbers  
10 involved. In a situation -- let's see if I can  
11 explain.

12 In a situation where you have a  
13 relatively small number or a small percentage of  
14 teachers out of license, I can imagine a state  
15 mandate that says "you may not hire such people"  
16 having beneficial effects. It would require  
17 local school authorities to live up to the  
18 requirement established by the state to begin  
19 with.

20 But in a situation such as that in  
21 New York City, where the numbers are much greater  
22 and the percentages are much higher of unlicensed  
23 people, and where it is not clear where the  
24 licensed people are who would fill those

1 the question. I'm sorry.

2 Q. Assuming hypothetically an urban  
3 school district in California where collective  
4 bargaining agreements were entered into between  
5 the district and the Teachers Union; and that  
6 agreement includes seniority rights.

7 In your opinion, is it likely that  
8 there would be difficulty in equitably  
9 distributing the most qualified teachers?

10 MS. LHAMON: Incomplete  
11 hypothetical.

12 A. If I understand the hypothetical  
13 situation clearly, I can imagine such difficulty  
14 arising, yes.

15 Q. I want to turn for a minute to  
16 something you previously testified to.

17 You talked with Mr. Seferian about  
18 the inadequate supply of licensed teachers in New  
19 York City; and you commented that, "There would  
20 be a negative consequence of a state standard  
21 that required dismissal of any teacher teaching  
22 out of license."

23 Do you recall that discussion?

24 A. Yes. I do recall it.

1 positions, such a mandate could work great  
2 mischief, because the kids show up every morning  
3 expecting somebody to be there to teach them and  
4 you don't want the -- the state ought not to  
5 exercise its authority mindlessly, without a  
6 provision for those kids who would otherwise be  
7 uninstructed.

8 Q. So is it fair to say it's your  
9 opinion that the state should ensure some sort of  
10 solution that provides a licensed teacher for  
11 every student prior to mandating that school  
12 districts cannot hire unlicensed teachers?

13 MS. LHAMON: Vague and ambiguous.

14 A. Or at least the state should have  
15 some long-term plan for meeting the situation.

16 In other words, in between ignoring  
17 a situation and doing nothing about it on the one  
18 hand, which is unacceptable, it seems to me; or  
19 on the other hand saying that, "As of this  
20 instant, anyone who is not credentialed may not  
21 be employed even though we don't know who the  
22 teachers will be who will fill the vacancies,"  
23 which is also unrealistic, you can do what we try  
24 to do in the State of New York; and that is to

1 develop a long-term plan for meeting those needs  
 2 effectively so that over the course of three  
 3 years, five years, whatever, working  
 4 collaboratively with teacher training  
 5 institutions and local authorities, the state can  
 6 generate a plan that will make it possible five  
 7 years later, if that's the figure, to say, "Okay,  
 8 now we know where we're going to get the teachers  
 9 we need. We no longer may employ unlicensed  
 10 people. You must draw from that pool."

11 So it's neither ignore it nor  
 12 mandate it mindlessly as of that day, but to  
 13 build a plan that resolves the conditions over  
 14 time.

15 Q. I believe you stated that you  
 16 developed such a plan when you were Commissioner  
 17 of Education?

18 A. We sought to.  
 19 Part of my difficulty in trying to  
 20 get that plan accomplished was that I served as  
 21 commissioner for eight years, and during those  
 22 eight years, there were seven different  
 23 chancellors of the New York City school system.  
 24 "You can look it up," as Casey used to say.

1 MS. LHAMON: Go ahead. It has been  
 2 asked and answered, but he's made that clear.

3 A. What I wish I had talked about is  
 4 equality of input and equity of outcome, might  
 5 have helped make the distinction more clear. But  
 6 equality of input or even equity of input, I  
 7 guess, but more clearly equality. It means  
 8 providing the same resources to all students  
 9 regardless of need.

10 Very fair, very evenhanded equal  
 11 distribution of resources to all the kids, but  
 12 failing to take into account that some students  
 13 are more needy educationally than others,  
 14 students that labor under handicapping conditions  
 15 of one kind or another. Students who may have  
 16 recently emigrated to the country and don't yet  
 17 understand English well.

18 Students exhibit a variety of needs,  
 19 and our goal was to move away from equality of  
 20 input to a greater equity of outcome, where the  
 21 results we would achieve would be to get all  
 22 students to the same high standards, regardless  
 23 of their starting point.

24 I don't know if that's clear or not.

1 That's Stengel in New Yorkese. And it's very,  
 2 very difficult to achieve long-term effects when  
 3 you're dealing with that kind of discontinuity.

4 So we began to make plans for it,  
 5 but we never finished developing a plan or put it  
 6 fully to effect. It still makes sense to me, by  
 7 the way.

8 Q. I agree?  
 9 Do you have a sense of whether there  
 10 has been an improvement in the supply of fully  
 11 licensed teachers in the State of New York over  
 12 the past five years?

13 A. I'm not really aware of it. I'm  
 14 sorry, I'm not.

15 Q. Turning again briefly to something  
 16 you testified to previously, you talked about the  
 17 difference between the term "equity of outcome"  
 18 and "equity of input," and I can either read  
 19 what's in the rough transcript or I can ask you  
 20 to state it again. It depends on what Catherine  
 21 wants to do with her objection.

22 But can you explain to me again the  
 23 distinction between equity of input and equity of  
 24 outcome?

1 Q. Actually, that is clear?  
 2 Let me ask you a little bit about  
 3 it. You say "move away from equality of input,"  
 4 which you defined as the same resources.

5 A. Yes.

6 Q. But I'm puzzled by "moving away  
 7 from."

8 Is it your opinion that in New York  
 9 State, equality of input was achieved?

10 A. No, and it is not. It has not been  
 11 achieved and I shouldn't say "move away from it."  
 12 That was loose thinking.

13 I mean move beyond it. You  
 14 incorporate it, but move beyond it. I'm  
 15 thinking -- I'm thinking, as Jack Benny would  
 16 say.

17 It seems to me that the system to be  
 18 encouraged is one characterized by equity of  
 19 outcome, to the extent that you can achieve it,  
 20 where you take into account differences in kids'  
 21 backgrounds and learning experiences and move  
 22 everybody toward the same -- to the attainment of  
 23 the same high standards.

24 That's the kind of system that you

1 want to have.

2 In the meanwhile, while you don't  
3 have it yet, I don't think you can neglect  
4 equality of input either. If that helps.

5 Q. That does help. I'll come back to  
6 Campaign for Fiscal Equity and your understanding  
7 of the Williams lawsuit later today, but I want  
8 to ask you, in the Campaign for Fiscal Equity, is  
9 it your understanding that what is being sought  
10 is equity of outcome or equality of input?

11 A. Plaintiffs in the Campaign for  
12 Fiscal Equity litigation are looking for adequacy  
13 of funding; and adequacy is more directly  
14 associated with equity of outcome than it is with  
15 equality of input.

16 Q. Then turning to your understanding  
17 of what plaintiffs seek in the Williams lawsuit,  
18 do you have an opinion as to whether they're  
19 seeking equality of input or equity of outcome?

20 A. My understanding is that the  
21 Williams plaintiffs are looking, at least in  
22 part, to the extent to which the essentials of a  
23 public school education are present or not, the  
24 presence of adequately trained and prepared and

1 equity of outcome without them either, so it's  
2 sort of a one-to-one fit, if you follow me.

3 Q. I understand, and I didn't mean to  
4 imply that they were mutually exclusive in some  
5 way, but I think you answered it. You said one  
6 went beyond the other.

7 In terms of achieving equity of  
8 outcome as opposed to simply equality of input,  
9 do you have an opinion as to the impediments  
10 towards achieving that with regard to qualified  
11 teachers?

12 MS. LHAMON: Vague and ambiguous,  
13 and asked and answered.

14 A. Could you state the question again,  
15 please?

16 MR. HAJELA: Yes. That was a fair  
17 objection.

18 Q. I'm trying to figure out if the  
19 education essential you're looking at is a well  
20 qualified teacher, I can imagine what equality of  
21 input is; if you defined the well qualified  
22 teacher as licensed, it would be similar  
23 percentages of licensed teachers in different  
24 districts?

1 effective teachers, up-to-date textbooks and  
2 other instructional materials, and a safe,  
3 orderly environment.

4 I'm not aware of the tension between  
5 equity of outcome and equality of input that is  
6 characteristic of the New York State scene right  
7 now. In other words, that may be part of the  
8 litigation in California, but I'm not aware of  
9 it.

10 The way I've experienced it is that  
11 the plaintiffs are seeking to assure the presence  
12 of those essential conditions of education that  
13 all kids should have.

14 Q. Just to push that a little bit  
15 further, then the presence of those educational  
16 essentials -- I'm not trying to be difficult  
17 here -- is that more a characteristic of equality  
18 of inputs or equity of outcomes?

19 MS. LHAMON: Asked and answered.

20 A. Again, I haven't thought of it in  
21 those terms.

22 It applies to both. You can think  
23 of it as an input measure, those essential  
24 conditions, but you're not going to achieve any

1 But if you're defining -- if you're  
2 thinking about equity of outcome with regard to  
3 qualified teachers, I'm having difficulty  
4 understanding what that would mean in terms of an  
5 essential, such as teachers.

6 MS. LHAMON: Vague and ambiguous.

7 A. Nevertheless, thank you for  
8 clarifying.

9 You would move toward equity of  
10 outcome if the teacher is effective in teaching  
11 students so that they attain the standards that  
12 the state has promulgated for student  
13 performance.

14 In other words, you look to the  
15 results of the teaching as well as to the input  
16 characteristics of the teachers.

17 Equality of input for teachers has  
18 to do with the background and the training level  
19 and the licensing, presence of licensure or  
20 absence of it, with all of those entry conditions  
21 that are relevant to the teaching profession.

22 Equity of outcome has to do with  
23 results of the work of the teachers, so I would  
24 look to see results of their performance over a

1 period of time to make that determination.

2 Q. That's very helpful. So to see if  
3 we're on the same page, in an example you used a  
4 demographic of students that speak English as a  
5 second language, or you may have used the term  
6 "bilingual."

7 So in that instance, you're not  
8 looking for equally qualified teachers; you're  
9 looking for teachers qualified to produce an  
10 equal outcome with those students?

11 A. Correct. You make my point much  
12 more effectively than I do.

13 Q. I want to turn now to the section of  
14 your report that discusses the state role in  
15 education. It's Section B beginning on page 10.  
16 The section is entitled, "An appropriate state  
17 role in ensuring the existence in public schools  
18 of educational essentials."

19 Turning to the next page, on page 11  
20 near the top you state, "No one approach in  
21 school reform would work for all students in all  
22 communities, but some core elements are required  
23 for appropriate implementation of a state role."

24 And then a little further down you

1 State of New York, and I believe it has been the  
2 case in much of the rest of the union as well,  
3 that states attempting to achieve educational  
4 improvement through top-down regulation, they  
5 would require more of everything.

6 More courses for high school  
7 graduation. More time on task. More testing.  
8 More assessments and so on, and they would spell  
9 out with considerable operational detail the  
10 procedures that would be followed at a local  
11 level in order to achieve those results.

12 It was a top-down educational reform  
13 movement and it had some beneficial effects, in  
14 my view, particularly in situations where local  
15 school districts, for whatever reason, were not  
16 meeting the then existing standards for student  
17 performance that the state had set.

18 But that top-down effort could only  
19 go so far in improving education because the  
20 state or the people, such as I, who served the  
21 state don't teach the kids. We're not in the  
22 classrooms every day. We're not in local school  
23 districts. We're not in local schools. We're  
24 certainly not in classrooms in the presence of

1 go on to say, "The elements that I have found to  
2 be required for effective state assurance of  
3 delivery of educational essentials are: 1, a  
4 posture I term 'top-down support for bottom-up  
5 reform'; 2, strict requirements that educational  
6 essentials be provided; 3, providing the  
7 resources necessary for delivery of the  
8 educational essentials to children; and 4,  
9 monitoring and enforcement of the presence of  
10 educational essentials in the schools."

11 I want to talk to you a little bit  
12 about each of these elements, "core elements," as  
13 you describe them?

14 So starting with the first one, the  
15 philosophy -- or as you call it, "The posture of  
16 top-down support for bottom-up reform," I'm  
17 interested in your reasoning regarding this state  
18 posture or philosophy?

19 Why is this the first core element  
20 for any effective state role in education?

21 A. The context in which I developed  
22 that idea was the context of state efforts to  
23 improve education in the mid 1980s, mid and late  
24 1980s, where it was certainly the case in the

1 students trying to learn or to whom we wish to  
2 see learning.

3 So you can regulate -- the lesson of  
4 that experience for me was if you can regulate  
5 out some of the worst abuses of a system and  
6 establish certain threshold conditions that need  
7 to be met, but you can't regulate through  
8 top-down initiative alone through -- strike that.

9 You can't, through top-down  
10 regulation alone, achieve the effectiveness you  
11 want in a system because the effectiveness of a  
12 system is dependant upon the hearts and minds and  
13 energies of the people who are actually involved  
14 in the day-to-day activities of teaching and  
15 learning.

16 So the state now, to come back,  
17 seeking improved educational results, needs to  
18 exercise its authority not only in -- don't  
19 abandon it, but not only in a regulatory way, but  
20 in an enabling way that elicits the support and  
21 the energy of people at the local level and gives  
22 it a context and clear goals and standards within  
23 which to work, and then supports the activity and  
24 so on.

1 But it is neither top-down  
2 regulation all by itself, nor laissez-faire, "Let  
3 many flowers bloom if they feel like it," or  
4 somewhere along the line; but a different way to  
5 engage where you provide top-down support for  
6 bottom-up reform.

7 I continue to believe that that  
8 principle is one that has a much better chance of  
9 bringing about desired educational results than  
10 either top-down regulation alone or laissez-faire  
11 bottom-up stuff alone.

12 The state sets standards, makes them  
13 very clear and holds everybody, including itself,  
14 accountable for their attainment; but it affords  
15 much more operational freedom to local schools  
16 and school districts in determining the means by  
17 which those standards are to be attained.

18 So you've got thinking, feeling  
19 people. We talked the other day with the  
20 distinguished gentleman to my right at the other  
21 end of the room about accountability systems.

22 The accountability system in a  
23 regulatory top-down system is one of compliance.  
24 Are people doing what they've been told or are

1 educational essentials and the nonnegotiable  
2 baselines?

3 A. Yes.

4 Q. How would a state go about -- let's  
5 use your experience as Commissioner of Education  
6 in New York -- determining what constitutes an  
7 educational essential that is nonnegotiable or  
8 that must be mandated?

9 A. Well, what I hear myself about to  
10 say is that there are certain conditions that are  
11 so essential in pursuit of what we call in New  
12 York State a sound, basic education, that there's  
13 no question about them.

14 You've got to have teachers who know  
15 what they're doing, you've got to have relevant  
16 stuff to work at, and you've got to have a place  
17 to do it in; and those essentials seem as obvious  
18 to me as I said the other day, as the sun and the  
19 moon.

20 They don't require social science  
21 research to support them any more than if I said,  
22 "It would be more difficult for me to carry  
23 things if I didn't have arms."

24 It's such an obvious fact that

1 they not?

2 The accountability in the system  
3 that I'm advocating, top-down support for  
4 bottom-up reform, rests in the results that you  
5 attain. Are they achieving the results or are  
6 they not? So that's the distinction.

7 It was out of that particular  
8 historic context that I moved into that position,  
9 but it's -- the position is one that I continue  
10 to hold today.

11 Pardon me for the length of that  
12 response.

13 Q. That helped me quite a bit?

14 After adopting this posture of  
15 top-down support for bottom-up reform, you  
16 discuss -- it's number 2 on your list -- "The  
17 need for strict state requirements for  
18 educational essentials"; and on page 13, if you  
19 can refer you to it, in the first sentence in  
20 paragraph 26, you refer to these requirements as,  
21 "Nonnegotiable baselines for essentials."

22 Just so I understand what you're  
23 saying here, are those terms meant to be  
24 synonymous, the strict state requirements for

1 scarcely needs to dispute.

2 Q. I think my question probably wasn't  
3 precise enough because I think I agree with you  
4 about identifying certain things as essentials,  
5 but how would you determine the content of the  
6 mandator, the nonnegotiable baseline, so let's  
7 take one issue: unqualified teachers.

8 How would you determine what the  
9 content of that nonnegotiable baseline would be?

10 A. I would look both at the threshold  
11 input considerations, and then I would look to  
12 see the results of the teaching itself.

13 So I would be looking to see on the  
14 input side whether teachers were appropriately  
15 trained in the subjects that they're teaching,  
16 whether they have been, in general, licensed by  
17 the state or not so as to weed out incompetent or  
18 undesirable people for whatever reason, and then  
19 I would look to see the results that they achieve  
20 and make a determination as to whether they were  
21 effective or not based upon, in large part, upon  
22 those results.

23 Q. Now, if I understand you correctly,  
24 and I did ask you from the perspective as

1 Commissioner of Education, and I think you gave  
2 me that answer?

3 Now I'm trying to understand, do you  
4 envision these nonnegotiable baselines as being  
5 contained in state statutes or in regulations, or  
6 are they something that's left to the discretion  
7 of the Commissioner of Education?

8 A. I envision them as being reflecting  
9 the authority of the state. The state is  
10 ultimately responsible, in my view, for all of  
11 the public education that goes on within the  
12 state; and these conditions are of such  
13 fundamental importance that the state ought to  
14 require their presence regardless of all other  
15 circumstances.

16 Q. If I understand you correctly then,  
17 it's not important whether they're contained as  
18 an authority of the commissioner or a regulation  
19 or as a statute, as long as they're required in  
20 some fashion?

21 MS. LHAMON: Mischaracterizes the  
22 testimony.

23 A. I haven't really thought about that  
24 problem.

1 MS. LHAMON: Asked and answered  
2 twice.

3 A. Someone has to make sure on behalf  
4 of the state that the state is requiring the  
5 presence of these essentials for students.

6 Now, if I was starting,  
7 hypothetically, from scratch, and nobody was  
8 doing that across the board, I would seek to make  
9 it a constitutional provision.

10 Absent that, I would like to see it  
11 in legislation, because the state board, in New  
12 York State's case at least, operates only under  
13 the authority of the legislature.

14 But if it were not present in the  
15 constitution or in law, I would ask the state  
16 board to require the presence of those conditions  
17 in rules of the regions in New York State.

18 And way down in the pecking order  
19 someplace, if it were not done by  
20 constitutionally or legislatively or through the  
21 exercise of the board's authority, I would do it  
22 as commissioner.

23 I don't know if that answers your  
24 question or not.

1 What's clear to me is that the  
2 state, as the entity ultimately responsible for  
3 the quality of children's education, are in some  
4 way or another to assert the necessity of  
5 providing these senses; and I guess it could be  
6 done through statute, it could be done through  
7 regulations of the state board, it could be done  
8 through regulations of the commissioner, it could  
9 be incorporated into a constitutional provision.

10 But however executed, there should  
11 be provision by the state in some way or other  
12 that these essentials be present for all kids.

13 Q. I guess I'm thinking a little bit  
14 from a political science point of view, and if  
15 you don't have a response to this question,  
16 that's fine, but when you talk about the state,  
17 it's sort of an abstract entity.

18 A. Yes.

19 Q. What I have in mind is if the state  
20 is going to mandate certain educational  
21 essentials, is that a decision to be made by a  
22 state legislature or a state board of education  
23 or a commissioner, or do you not have a strong  
24 opinion either way?

1 Q. It does. Thank you. I'd like to  
2 turn for a minute before coming back to the  
3 sequence you have here to page 15, paragraph 29.

4 Would you mind just reading that  
5 paragraph for me so I don't have to read it out  
6 loud.

7 A. "It is critical for a state or chief  
8 state school officer" --

9 Q. Sorry, I just meant read to  
10 yourself. I was going to ask you some questions  
11 about it.

12 With regard to the delivery of  
13 educational essentials, I'm not clear on how this  
14 focus on every child that's described in this  
15 paragraph as opposed to a focus on every school  
16 or every school district is accomplished?

17 Can you explain what you mean when  
18 you say, "The children are in school now so a  
19 state must look at each child's experience and  
20 not just that school's and district's and the  
21 educational system as a whole, to be sure the  
22 individual child is equipped with educational  
23 essentials"?

24 A. The point that I wished to make,

1 which I don't think that I made very clearly in  
2 that paragraph, I apologize for it, is that what  
3 is at stake is the quality of learning experience  
4 that each child enjoys, and sometimes in our  
5 concern, appropriate concern, to report on  
6 school-wide achievement or district-wide  
7 achievement, we report on averages with respect  
8 to those aggregations.

9 But the averages may or may not  
10 reflect accurately and usefully what the  
11 experience of individuals within the aggregate  
12 are. I said the other day to the distinguished  
13 gentleman on my far right over here --

14 MR. HAJELA: Let the record reflect  
15 that both times it was Mr. Seferian.

16 A. -- that sometimes the comparison --  
17 the use of average scores reminds me of the man  
18 who was -- who has his head in a hot oven and his  
19 feet in a bucket of ice. On average, he feels  
20 fine, and that may even be accurate, but it  
21 doesn't tell you very much about his condition.

22 The point I try to make in the  
23 paragraph is that we should be concerned about  
24 the condition of each individual student, because

1 credentials were not available for some students.  
2 So we had this standard, but we  
3 didn't achieve this standard in all cases.

4 Q. Would you describe that standard as  
5 a nonnegotiable baseline? I guess I'm having  
6 trouble with the term?

7 If the standard wasn't accomplished,  
8 then either the state simply took no action or it  
9 wasn't, in fact, nonnegotiable? Does that make  
10 sense? I'm having a little trouble.

11 A. It was seemingly inappropriate to  
12 negotiate what was absolutely essential. So we  
13 wouldn't negotiate about it. We never changed  
14 the standard, we just had difficulty attaining  
15 it. Not because we were negotiating it, but  
16 because the empirical facts were not such that we  
17 could meet the standard as quickly as we wanted.

18 I was talking earlier about my  
19 efforts to development a three-year or a  
20 five-year plan for increasing the supply of  
21 adequately trained teachers over a period of  
22 time.

23 We weren't negotiating about whether  
24 the standard existed or not. We were trying to

1 the student -- we should be concerned about the  
2 experience of each individual student and not  
3 lose sight of that student in the averages,  
4 because each student passes through our hands  
5 only once and has only one opportunity for  
6 learning and for growth; and we ought to be  
7 concerned with -- to the extent possible -- with  
8 the quality of experience that each child has.

9 Q. Thanks. Actually, that helps a lot.  
10 You may have answered this before.  
11 You can tell me if you did?

12 During your tenure as Commissioner  
13 of Education in New York, were nonnegotiable  
14 baselines established in any of the areas we've  
15 talked about, which briefly would be qualified  
16 teachers, safe and orderly facilities and  
17 instructional materials?

18 A. Yes, but they weren't achieved in  
19 all cases.

20 For example, if you take the first  
21 of those essentials, well trained, qualified  
22 teachers, you and I in this little colloquy have  
23 talked earlier today about situations in which  
24 teachers with the appropriate training and

1 find a way to meet it even though we weren't  
2 meeting it at that juncture.

3 Q. I'm not trying to split hairs here,  
4 but would it be more accurate then to define that  
5 as a clear goal rather than as a nonnegotiable  
6 state mandate? It seems to me they are two  
7 different things.

8 MS. LHAMON: Objection.

9 A. I'm certainly open to improved  
10 language over "nonnegotiable," but I don't like  
11 that particular formulation of a goal, because a  
12 goal sounds to me like something that is far off  
13 and aspirational, and maybe I'll get there and  
14 maybe I won't and so on; and what I have in mind  
15 is something more immediate than that; that all  
16 efforts must be bent toward the meeting of that  
17 standard as quickly as possible.

18 If "goal" means that, then I would  
19 embrace the word "goal." But I don't want it to  
20 be something as far off and aspirational. As I  
21 said, something that has more immediacy.

22 Q. In the case of that standard, as you  
23 used the term, did New York have an enforcement  
24 mechanism related to that standard?

1 MS. LHAMON: Just to be clear, are  
2 you talking about the standard about teachers?

3 MR. HAJELA: Yes.

4 A. Theoretically, I believe, we could  
5 have required New York City, in this particular  
6 case, no longer to employ uncredentialed  
7 teachers. Theoretically, we had the authority to  
8 do that; but the result of doing that would be  
9 that many students would not have teachers of any  
10 kind, or at least for certain subjects, so we  
11 were loathe to execute that authority; and  
12 instead, turned our attention to ways in which we  
13 could increase the supply of appropriately  
14 credentialed teachers so that we could then  
15 exercise the authority, if necessary.

16 Q. Okay. I think I'm understanding you  
17 now?

18 So the standard in terms of its  
19 content was nonnegotiable; but as Commissioner of  
20 Education, you exercised your discretion  
21 regarding immediate enforcement of that standard?

22 A. That's a good way to put it.

23 We took an action that was  
24 pragmatic, recognizing the realities of the

1 before you turn to your discussion of resources,  
2 which is step 3?

3 A. Would you help me find the passage  
4 that you're referring to?

5 Q. I wasn't referring to a specific  
6 passage, but more to the sequence you lay out in  
7 what I take to be a model for reform of the  
8 state's role.

9 You discuss first the posture;  
10 second, the need to establish standards -- I'm  
11 paraphrasing a bit -- and third comes providing  
12 resources?

13 I'm interested in the sequence and  
14 whether there's a logic to the sequence or  
15 whether it's random.

16 A. I don't believe it to be random.  
17 I'm not sure I can explain the logic  
18 satisfactorily, but it's not random in my mind.

19 The first -- my way of thinking  
20 about it is that first the state needs to know  
21 what its general posture, attitude, disposition  
22 ought to be. How should it be engaging with  
23 local school districts in the exercise of its  
24 responsibilities?

1 situation; and by the way, were roundly  
2 criticized by some parties for doing so, but then  
3 we were roundly criticized for mostly everything  
4 we did.

5 Q. Must have been doing something right  
6 then?

7 Would it be fair to say the goal for  
8 you as commissioner was implementation of the  
9 standard rather than at a specific point in time  
10 focusing on compliance or noncompliance?

11 A. Well, we monitored the situation to  
12 know the extent to which there was compliance and  
13 noncompliance, and did our best within the  
14 circumstances that existed to move as rapidly  
15 toward meeting the standard as possible, but we  
16 didn't attain it. We didn't attain it. We  
17 didn't even finish the plan for it.

18 Q. Going back to the sequence regarding  
19 the state's role, the baselines, the  
20 nonnegotiable of baselines are listed as the  
21 second core element of the state's role in  
22 education.

23 Can you briefly explain to me the  
24 logic of discussing this core element first,

1 And that I tried to describe with  
2 the top-down support for bottom-up reform notion.

3 That posture means that the state  
4 should be very clear about standards and provide  
5 resources and other help in meeting them, monitor  
6 progress toward meeting the standards and  
7 intervention, if needed, at the far end of that  
8 continuum.

9 So first you've got what the state's  
10 role is and how it discharges its role generally.  
11 So then you come to the standards, and the first  
12 thing is to make sure the absolute essentials are  
13 present; and in order to make sure that they're  
14 present, you've got to provide the money for  
15 them. So that's why that one comes next, the  
16 resources.

17 Then you've got to figure out  
18 whether it's working or not. Whether people are  
19 complying with what they need to comply with or  
20 not, and whether you're attaining the results or  
21 not.

22 So then comes the monitoring and  
23 enforcement. It starts with the conception of  
24 the state's role generally, to asserting

1 standards, to monitoring compliance and progress  
2 as appropriate, and taking action, if needed, at  
3 the far end.

4 Q. That's helpful. I want to come back  
5 to the resources issue and the rest, but  
6 following up on the sequence then, so it makes  
7 sense then for the state to have a posture, set  
8 the standard, provide adequate resources and then  
9 engage in a monitoring and compliance system, is  
10 that right?

11 A. Yes. That is correct.

12 MR. HAJELA: I'm trying to see how  
13 much more I have on this section to see whether a  
14 break makes sense now or in a few minutes.

15 (A recess was taken.)

16 Q. Referring back to the sequence we  
17 were talking about earlier regarding the state  
18 role and discussing specifically the state's role  
19 in providing resources, on page 15, paragraph 30  
20 in the middle you state, "It should go without  
21 saying that the state, as a coordinator for all  
22 other educational efforts under its control, must  
23 provide resources, both economic and noneconomic,  
24 necessary to deliver educational essentials to

1 education, I mean the state and all of its  
2 branches.

3 It may be that in a given situation,  
4 the state should be holding local school  
5 districts responsible for increasing the level of  
6 funding they provide. I'm not sure that would  
7 work in California for different reasons, but  
8 theoretically that could be so.

9 Or it might mean that the state qua  
10 state, as a funding agency, might provide more  
11 money. Whatever it is, whatever the source of  
12 the money, the fundamental constitutional  
13 obligation is for the state to provide the  
14 resources necessary for children to receive their  
15 educational birthright.

16 Q. I think that's fair?

17 Is that birthright you refer to  
18 something that's founded or unique to the State  
19 of New York Constitution, or is that something  
20 that you believe applies to the State of  
21 California?

22 A. I believe it is fundamental to our  
23 American democracy that all students in our  
24 society, regardless of the state in which they

1 students."

2 I understand your statement, and  
3 don't need you to elaborate specifically on the  
4 meaning of the statement, but I would like in  
5 your own words your response to why, why should  
6 the state provide the necessary resources to  
7 deliver educational essentials to all students?

8 If that's not clear, why is it their  
9 role rather than someone else's?

10 A. First of all, I have a piece of  
11 candy in my mouth. Forgive me.

12 In making that statement, I'm  
13 thinking of the state very broadly. I do not  
14 mean necessarily the state as a funding agency as  
15 distinct from the local school district as a  
16 funding agency.

17 What I mean is that the entire  
18 public school system, including its system of  
19 local public schools, of local boards of  
20 education, local school districts and so on, that  
21 entire system is a creature of the state.

22 So when I say that the state should  
23 provide the resources that are necessary for kids  
24 to achieve their fundamental right to an

1 reside or in the specific ways in which this  
2 obligation is discharged, are deserving of an  
3 education that permits them to function  
4 effectively in the larger society.

5 Our whole democracy is predicated on  
6 that basis, so it is their cultural and political  
7 birthright to be so educated, it seems to me.

8 Q. And just hypothetically, in a state  
9 where funding was provided solely by the state  
10 for instructional services and not by other  
11 entities of the state, would you agree then that  
12 it's the state's responsibility to provide  
13 adequate resources to deliver educational  
14 essentials?

15 A. No matter what the organization or  
16 the system is, it is, in my view, the fundamental  
17 obligation -- it is the obligation of the state  
18 to provide the fundamental essentials that are  
19 necessary, whether it does so "itself" or through  
20 the instrument of local school districts, which  
21 are an extension of the state's authority.

22 Q. Forgive me, I'm not sure if we  
23 covered this?

24 In your time as Commissioner of

1 Education, did the State of New York provide to  
2 school districts adequate resources to deliver  
3 educational essentials to all students?

4 A. In my judgment, it did not.

5 Q. Do you have an opinion based on your  
6 experience as Commissioner of Education about  
7 what factors prevented the state from providing  
8 such adequate resources?

9 MS. LHAMON: Vague and ambiguous and  
10 assumes facts not in evidence.

11 A. That's difficult to answer.

12 The Board of Regents, who are my  
13 employers and whom I served -- and I attempted to  
14 persuade the legislature and the governor  
15 annually during my time as commissioner that  
16 there were schools and school districts in the  
17 state where these essentials were not being  
18 currently provided; and we sought them to enact  
19 legislation and/or to alter the state aid funding  
20 formula so as to make that provision, but we  
21 didn't succeed.

22 Now, I can't speculate, or it would  
23 be not profitable for me to speculate on what the  
24 motives of each individual legislator was in

1 answer from the legislators or from the governor  
2 as to why they did not do it.

3 Q. I think that answers my question.

4 I was not very elaborately trying to  
5 figure out whether it was fiscal and political  
6 factors or something else, and I think you've  
7 answered it?

8 Next in the sequence about state's  
9 role you refer to "monitoring and enforcement."  
10 I'd like to refer you to page 16 where you state,  
11 the first sentence of paragraph 31, "Having  
12 identified which educational essentials must be  
13 in every school and provided the resources for  
14 delivery of those essentials, the state must  
15 develop a system for scrutiny to ensure the  
16 existence of the educational essentials on school  
17 sites and in classrooms."

18 And you may have covered this in  
19 your general overview of the sequence, but if you  
20 have more thoughts, I'm interested in them on the  
21 logic, again, of this sequencing?

22 You place "a system for scrutiny"  
23 after "the provision of adequate resources."  
24 Is there a reason for that?

1 casting votes as they did or neglected to do or  
2 chose not to do, so I guess I don't have a ready  
3 answer for your question.

4 Q. And I'm sorry. Let me be a little  
5 more precise. I'm not curious about the  
6 individual motivations of legislators, but more  
7 of a characterization of the problem.

8 Is it essentially a problem of --  
9 and we talked off the record about my former life  
10 as being a lobbyist -- is it an inability to get  
11 political support for such a change or is there  
12 something else you have in mind when you talk  
13 about the legislature not providing this?

14 A. Again, I don't know what was going  
15 through the mind of the legislators, and I know  
16 you're not seeking how they voted individually,  
17 but it may have been that they perceived -- it  
18 may have been their desire not to increase taxes.  
19 It may have been that their political  
20 constituency was not affected so that they did  
21 not reflect those interests.

22 I mean, there were fiscal  
23 considerations, there were political  
24 considerations; but, again, you'd have to get the

1 MS. LHAMON: Asked and answered.

2 A. Yes. First, the state provides  
3 resources and then it sees how they're used.  
4 You can't see how they're used if you don't have  
5 them, so provision of the resources comes first  
6 and monitoring the effects of providing the  
7 resources comes second. I can't say it any  
8 differently.

9 Q. You give some examples of a  
10 monitoring system, if that's the right term, in  
11 your report starting on paragraph 32?

12 Other than examples, do you have in  
13 mind what some of the essential components of an  
14 effective monitoring and enforcement system would  
15 be?

16 MS. LHAMON: The report speaks for  
17 itself.

18 Q. For clarification, I was asking not  
19 in the report, but what you have in mind on that  
20 issue.

21 MS. LHAMON: Same objection.

22 A. Well, I could tell you some of the  
23 things that we did as they occur to me now in  
24 order to try to monitor satisfactorily the

1 results of the standards and the provisions we  
2 made for meeting them.

3 This is not an exhaustive list.  
4 It's off the top of my head.

5 First of all, there is in New York  
6 State, as there are in most states of the union,  
7 I would guess, a system of reports to the state  
8 on expenditure and what the money is being used  
9 for and how much money has been sent and so on,  
10 so annual reporting on use of school funds.

11 There's an assessment program that  
12 monitors student achievement toward the standards  
13 that the state has prescribed.

14 There was the system that I  
15 described earlier of district superintendents who  
16 represented the State Education Department and  
17 various regions of the state and had their own  
18 communications apparatus with the schools and  
19 school districts and people in the community  
20 within those regions and generated information  
21 which was fed back to us.

22 We developed a system of what we  
23 called "School Quality Reviews," they're written  
24 in my report, which brought together outstanding

1 information and identify problems and note  
2 successes where they occur.

3 Q. That's helpful.

4 So would it be fair to characterize  
5 that as having set standards and providing  
6 adequate resources to the district, the state  
7 then needs to have a system which can be flexible  
8 and have different components, but a system that  
9 makes sure districts are held accountable for  
10 results?

11 A. Yes. But to see not only that  
12 districts are accountable for the results, but  
13 that all parties to children's education are  
14 accountable for their role in the education, to  
15 look at the state's own behavior: Are the  
16 standards appropriate? Are the standards clear?  
17 Are the standards sufficiently well publicized?  
18 Has the state met its own role in providing  
19 resources and other assistance that might be  
20 needed? And then ask the same questions of local  
21 school districts. Ask the same questions at the  
22 school level. Ask the same questions of the  
23 teachers in the classroom.

24 Everybody in the system is

1 teachers and principals and parents from local  
2 jurisdictions to visit school sites and look to  
3 see whether the essentials were present, whether  
4 the instruction made sense or not to them, and to  
5 determine or to identify any problems that may  
6 have existed and report upon them to us.

7 There's a very broad informal  
8 network of communication that informs people at  
9 the state level about what's going on as well.  
10 Conversations with legislators about what's going  
11 on in their legislative jurisdiction,  
12 conversations with educational organizations,  
13 employee unions of various kinds, parent groups  
14 of various kinds, special interest groups, such  
15 as groups for the well-being of organizations and  
16 services for pupils with disabilities. A  
17 multitude of such informal communication with  
18 interested organizations, and all of it becomes  
19 grist for the mill of the state's monitoring  
20 function.

21 It's not that there's a single scale  
22 and a single assessment that is made at a given  
23 stroke of noon on a given day, but rather a  
24 voluminous continuing effort to ingest

1 accountable for the effect of his or her or their  
2 actions with respect to giving kids the  
3 fundamental education that is their birthright.

4 Q. And I don't intend to ask a series  
5 of questions on this, but is it accurate to say  
6 much of the New Compact For Learning contains  
7 those elements in and about the roles of each of  
8 those entities?

9 A. That's correct.

10 Q. Let me switch to another topic.  
11 We've talked about this a bit already, so I'll  
12 skip as many questions as I can?

13 You previously testified about the  
14 Campaign for Fiscal Equity case here in New York;  
15 and in previous testimony with Mr. Seferian, I  
16 believe you indicated that you thought the  
17 arguments of the plaintiffs in this case have  
18 great merit so you did not want to be aligned as  
19 a defendant, is that correct?

20 A. That is correct.

21 Q. And in response to questions, you  
22 indicated that you expressed the opinion that an  
23 increase in education spending for New York was  
24 needed to accomplish a sound, basic education.

1 Is that accurate?

2 A. That is correct.

3 Q. What was the basis for this  
4 response, that an increase in educational  
5 spending was needed in New York to accomplish a  
6 sound, basic education?

7 A. It was well documented and  
8 recognized that some students did not enjoy the  
9 benefit of what we thought of as educational  
10 essentials, what would be an adequate supply of  
11 trained teachers or up-to-date textbooks or safe,  
12 orderly surroundings or other criterion in our  
13 own case.

14 And where we knew that they -- the  
15 resources -- where we knew that the conditions  
16 were dependant upon resources and saw that the  
17 resources were not being expended, we said they  
18 should be spent. Am I being clear or not?

19 So you can't do everything with  
20 money. Money alone doesn't change it  
21 necessarily, but you can't do certain things  
22 without money; and if you're not providing the  
23 essential conditions because you don't have the  
24 money, then it's your job to come up with the

1 The amount of additional resources  
2 that are necessary, I believe you said, is a  
3 complicated calculation based on costing out what  
4 it takes to provide educational essentials?

5 A. That is correct.

6 Q. Let me turn to the last paragraph,  
7 paragraph 36. You state that, "Gross inequities  
8 and inadequacies exist in the provision of public  
9 education to many children in the State of  
10 California. These inequities and inadequacies  
11 keep many of our children from achieving a sound,  
12 basic education. The state bears ultimate  
13 responsibility for these conditions and these  
14 results. The state must be told to fix them."

15 Assuming you're correct, that gross  
16 inequities and inadequacies exist in the  
17 provision of public education in California,  
18 would you agree that adequate resources are  
19 necessary to correct these deficiencies?

20 A. Yes.

21 Q. And I know you stated before you're  
22 not an expert on the State of California.

23 Do you have an opinion based on your  
24 knowledge in general or your involvement in this

1 money, and that job is ultimately the state's,  
2 either on its own or through the medium of its  
3 local school districts.

4 Q. That makes sense to me. I guess the  
5 question I was asking you answered, which is you  
6 determined that money was an essential part of  
7 the problem, that it wasn't attributable just to  
8 misuse of money or bad management or bad  
9 planning, is that correct?

10 MS. LHAMON: In the CFE case?

11 MR. HAJELA: Yes.

12 A. In the CFE case that is so. I could  
13 imagine circumstances in which the problem may be  
14 mismanagement or inappropriate expenditure of  
15 funds, and I would want to monitor the possible  
16 presence of such conditions as part of the  
17 monitoring that I do.

18 But in the specific case of the CF E  
19 litigation, our determination was that more money  
20 was needed in order to provide the sound, basic  
21 education that kids are entitled to.

22 Q. And because I think we talked about  
23 this before, I'll just see if I have an  
24 understanding?

1 lawsuit regarding the likelihood that California  
2 currently provides adequate resources for the  
3 delivery of educational essentials?

4 A. I didn't get quite the way you  
5 worded the question.

6 (Requested portion of record read.)

7 MS. LHAMON: Vague as to  
8 "resources." Are you talking about economic  
9 resources or the other kinds of resources  
10 described in the report?

11 MR. HAJELA: Let's do economic  
12 first.

13 MR. SEFERIAN: I'll object.  
14 Lack of foundation.

15 A. Again, as you made clear a moment  
16 ago, I profess to no expertise with respect to  
17 the State of California.

18 On the basis, however, of the  
19 reading that I've done and my more or less  
20 anecdotal encounters with individuals who are  
21 active in the state, superintendents, teachers  
22 and so on, it is my belief that in many  
23 situations in the State of California, inequities  
24 and inadequacies do exist and that their reason

1 is that the funds are insufficient to the need.  
 2 Q. Hypothetically, if you were advising  
 3 the State of California -- and I mean that as the  
 4 abstract entity, it could be the state board or  
 5 the commissioner or the legislature -- regarding  
 6 a school reform effort that included an  
 7 examination of the state's role in education,  
 8 would you support the adoption and enforcement of  
 9 strict state standards for educational essentials  
 10 even if you were specifically informed that the  
 11 level of funding was inadequate to accomplish  
 12 delivery of those essentials?

13 A. Yes. Absolutely, I would.

14 Q. Can you tell me why?

15 A. Because I think that, as I said  
 16 earlier, what we call in New York State a sound,  
 17 basic education is the birthright of all children  
 18 in American democratic society; and as of such  
 19 fundamental importance to the health of that  
 20 society that it ought to receive first priority  
 21 or near first priority when considering the  
 22 disposition of the resources available to the  
 23 government at various levels.

24 So that principle applies no matter

1 A standard of qualified teaching  
 2 saying every teacher must be fully licensed.

3 A. I would recommend for the State of  
 4 California the same approach that I took in the  
 5 State of New York, I and a great many other  
 6 people. I don't mean that I was the lone  
 7 individual doing this, but it was my experience  
 8 to help in that effort.

9 I would encourage the same approach.  
 10 Namely, no debate at all about the  
 11 appropriateness of the standard or the  
 12 desirability of reaching it as quickly as  
 13 possible, but where the resources are simply not  
 14 available at a given moment in time, to make as  
 15 clear and specific plans as could be made to  
 16 bridge that gap so that the standard could be  
 17 attained in a reasonable period of time.

18 Let me explain my own convoluted  
 19 sentence if I can.

20 Hop back to what we were talking  
 21 about happened in the State of New York with  
 22 respect to the presence of many uncertified  
 23 teachers in certain schools.

24 We never relaxed the standard.

1 whether the times are good or whether the times  
 2 are bad; that the duty of the state at large, the  
 3 duty of the state is to provide the essentials  
 4 needed for a sound, basic education for all of  
 5 the children of all of the people.

6 Not to do that in good times, but  
 7 slack off in bad times. But to do that all the  
 8 time. All of the children of all of the people  
 9 all of the time.

10 Q. I actually liked your answer far  
 11 better than my question. I don't think my  
 12 question was clear, though.

13 A. I didn't answer your question?

14 Q. I didn't ask it well, but -- the  
 15 question I was asking focused on assuming whether  
 16 the times were good or bad, the legislature  
 17 simply refuses to provide what you would consider  
 18 adequate resources to deliver education  
 19 essentials; and assuming here there's no other  
 20 source of funding, would you still encourage the  
 21 adoption of both standards and a strict  
 22 enforcement method related to those standards  
 23 even if the funding wasn't available?

24 Let me give you an example?

1 The standard remains the same, but pragmatically,  
 2 we understood that to exercise our theoretical  
 3 authority and discharge all those people and have  
 4 nobody to replace them would leave the schools in  
 5 a kind of temporary, at least, chaos. That was  
 6 not sound policy, in my judgement. Would not  
 7 have been sound policy to do that.

8 So what we attempted to do, while  
 9 maintaining the standard without debate, was to  
 10 make plans collaboratively with higher education  
 11 institutions that prepare teachers; and with the  
 12 representatives of local school districts,  
 13 chiefly, in this case, with those from the City  
 14 of New York, to develop a plan for meeting the  
 15 standard in as short a term as possible.

16 That's the same kind of action that  
 17 I would encourage here.

18 Q. You testified previously about the  
 19 Campaign for Fiscal Equity case, and you may have  
 20 said this already, but I want to ask it again?

21 Was it your understanding of that  
 22 case that among the things being sought was  
 23 adequacy of resources for education essentials?

24 MS. LHAMON: Asked and answered

1 already today.

2 A. Yes.

3 Q. Is it your understanding of this  
4 case, the Williams case, that the relief that  
5 plaintiffs are seeking includes adequacy of  
6 funding?

7 MS. LHAMON: Asked and answered  
8 already today.

9 A. My understanding of the Williams  
10 case is that the plaintiffs are seeking the  
11 presence of three essential conditions for  
12 children's effective education: well trained and  
13 appropriate teachers, up-to-date textbooks, safe,  
14 orderly environment and so on.

15 I've not focused on the cost of  
16 those conditions, but on the necessity of their  
17 provision.

18 Q. Hypothetically, if a Court  
19 determined that the case was solely about state  
20 monitoring and oversight and not about adequate  
21 funding, would that change your understanding of  
22 the efficacy of the case?

23 MS. LHAMON: Incomplete hypothetical  
24 and vague and ambiguous.

1 MR. HAJELA: Off the record.  
2 (Discussion held off the record.)

3 Q. I just have one more short series of  
4 questions, Dr. Sobol?

5 Referring again to page 5 of your  
6 report, paragraph 11, where you list what you  
7 refer to as educational essentials in the last  
8 long sentence of that paragraph, I want you to  
9 assume for a minute that a state has provided  
10 insufficient funding for school districts to  
11 deliver each of these educational essentials on  
12 your list.

13 Among these essentials, who do you  
14 feel, meaning which entity, ought to decide the  
15 priorities in terms of what would be delivered to  
16 students?

17 MS. LHAMON: Incomplete  
18 hypothetical.

19 MR. HAJELA: If you'd like  
20 clarification, I can try to be clearer.

21 A. I want to make sure that I  
22 understand the question.

23 As I understand it, you're asking me  
24 which entity of the state should prioritize among

1 A. I'm not sure if my answer is  
2 responsive or not. Please tell me if it isn't.

3 I think it is important that the  
4 Court not limit its attention to whether the  
5 financial resources needed are provided or not.  
6 It should look at that, but should not limit it  
7 to that, but should look at the remainder of the  
8 state's role as well, to determine if the state  
9 is meeting its obligations fully to set  
10 standards, to provide resources and assistance,  
11 which may not be monetary in certain cases, or to  
12 monitor progress toward the standards and to  
13 intervene if necessary in the far end.

14 I think all of that should be  
15 subject to the Court's scrutiny.

16 Q. So if I'm not clear, please tell me?

17 In your view, it would be  
18 problematic if one or more of the things you just  
19 mentioned dropped out of the case?

20 A. Thank you for saying that for me.  
21 Yes.

22 MS. LHAMON: Mischaracterizes the  
23 testimony.

24 A. Yes. I agree with that.

1 these essentials if financial resources are  
2 insufficient to provide all of them?

3 Q. Yes. If by "entity of the state,"  
4 you're including school districts and schools.

5 A. Yes. I meant state in that broad  
6 sense, yes.

7 Q. Yes, that's what I'm asking.

8 A. I think it's the responsibility of  
9 the state because we're not talking about a set  
10 of optional conditions. We're talking about  
11 essentials that must be provided in all schools  
12 and all school districts throughout the state.

13 So it would seem to me that since  
14 the fundamental obligation for providing these  
15 essentials rests with the state, as I can see it,  
16 the state ought logically be the one that does  
17 the prioritizing.

18 I would hope that in doing that, the  
19 state would be informed by the knowledge and  
20 experience of local practitioners so that it is  
21 fully aware of the circumstances for which it's  
22 prioritizing these conditions.

23 But ultimately, the obligation, once  
24 informed, rests with the state, I believe.

1 Q. I want to explore that a little bit  
2 more. So I understand that you are locating the  
3 duty to prioritize with the state, but do you  
4 mean to say those priorities -- assuming again  
5 that there's insufficient funding -- that the  
6 state should set those priorities and apply them  
7 similarly to all school districts, or does it  
8 need to look at each and every school district to  
9 determine whether, for example, small classes are  
10 more or less important than suitable curricula  
11 and extracurricular activities?

12 MS. LHAMON: Incomplete  
13 hypothetical.

14 A. Why are you making me think?

15 Q. Because you made me fly out here.

16 A. If we're talking about the three  
17 most fundamental of the essentials, the provision  
18 of adequately trained teachers, the availability  
19 of textbooks and other materials, and a safe,  
20 orderly place in which to do business, if we're  
21 talking about those three things, then I think  
22 that the state should give them first priority to  
23 begin with, and they should be applied evenly  
24 across all parts of the educational system.

1 A. I don't envisage a single individual  
2 sitting and having that knowledge and making  
3 those determinations. But rather a process  
4 whereby people from appropriate branches of state  
5 government receive information and are in  
6 communication with local authorities, so that the  
7 prioritizing that needs to be done in this  
8 hypothetical case can be done with some knowledge  
9 of local conditions.

10 Q. Would you approve of a system in  
11 which, setting aside the three essentials that  
12 you just talked about, but for the rest of these,  
13 the local school board and local superintendent  
14 made decisions regarding those priorities and  
15 reported them to the state --

16 MS. LHAMON: Incomplete  
17 hypothetical.

18 A. I think that's one of the chief ways  
19 in which the state should inform itself about  
20 local conditions before it makes the priorities,  
21 but since we're talking about the provision of  
22 resources by the state, it still seems to me that  
23 you want the state to be setting the priorities  
24 for that provision, just that it should be done

1 With the remaining essentials that  
2 are listed here, again, I think that ultimate  
3 responsibility for their provision rests with the  
4 state. The state needs to assure that they're  
5 provided from whatever source, but I would want  
6 the state to be informed about local needs and  
7 conditions before I made a priority because  
8 circumstances may vary from one jurisdiction it  
9 to another.

10 They don't vary ever, from my point  
11 of view, with the three main essentials, but with  
12 others -- those always get first priority.

13 But with the other elements, if  
14 you're going to prioritize them, the priority  
15 setting should be made with knowledge of local  
16 conditions and not simply in the abstract.

17 Q. If I understand that answer then,  
18 and assuming again the insufficient resources,  
19 then somebody at the state level would have to  
20 know enough about each school district in the  
21 state to authorize priorities to be set in each  
22 of those school districts, is that correct?

23 MS. LHAMON: Mischaracterizes the  
24 testimony slightly.

1 with knowledge of the local circumstances and not  
2 blindly.

3 Q. So to push it just a little bit  
4 further then, let's take another example?

5 Taking into account all sources of  
6 funding, the school board and the superintendent  
7 of a district determine they don't have  
8 sufficient money for science laboratories in all  
9 of their middle and high schools, but they also  
10 don't have enough money currently to keep all  
11 their facilities as clean as they would like, in  
12 terms of cleanliness of the bathrooms and the  
13 floors, is it your opinion that somebody at the  
14 state level from the state department ought to be  
15 making the decision about where the funds go  
16 rather than the school board or the  
17 superintendent?

18 MS. LHAMON: Incomplete  
19 hypothetical.

20 A. Well, if I understand your question  
21 right, I don't mean that. I don't mean that the  
22 state should make decisions about local  
23 expenditure from available funds at the locality.  
24 I thought you were talking about developing a

1 system of -- developing a set of priorities where  
2 there is limited state funding, and to see where  
3 the state should be putting its money or not.

4 So the kind of situation that you're  
5 describing wouldn't arise in the question that  
6 I'm answering.

7 Q. Oh, I understand. So we just had --  
8 my questions probably weren't clear?

9 So I understand your answers to now  
10 be if the state is going to prioritize funding it  
11 sends to districts for specific purposes, and  
12 it's the state's job to set the priorities?

13 A. Right, but if general funds are  
14 appropriated by the state, it's the  
15 responsibility of local authorities to spend them  
16 wisely.

17 Q. I just want to explore one more  
18 idea?

19 You've identified three essential  
20 components that you think the state just needs to  
21 make sure are priority across every school  
22 district: to have qualified teachers,  
23 instructional materials and facilities, broadly?

24 If a school board and superintendent

1 to answer it in the abstract. I would need to  
2 know a little bit more about the circumstances.

3 Q. I think that's a fair answer.

4 Let me try it one way, which is that  
5 the current practice of a school district as  
6 determined by the school board and the  
7 superintendent is to have a certain schedule of  
8 routine maintenance in a school, and they find  
9 they're short of funds and they really want this  
10 literacy program so they reduce funding from  
11 ongoing maintenance. It's not as good as they'd  
12 like it, but they think the trade-off makes  
13 sense?

14 Is it your opinion that in some  
15 circumstances it's appropriate for the school  
16 board and the superintendent to make such a  
17 trade-off?

18 A. Again, it would depend on the  
19 factual circumstances. It would depend upon what  
20 conditions resulted in the facilities and how  
21 long they remained.

22 Can I imagine in the abstract a  
23 situation in which it would be possible to defer  
24 some maintenance while I attended to more

1 determined that -- this is a hypothetical again  
2 -- determined that they have a problem in their  
3 school district with early literacy; that in the  
4 early grade levels, kids are just not reading as  
5 well as they want to and they have an informed  
6 understanding that this is a problem, in all  
7 cases, is it your opinion that they need to first  
8 spend money to make sure every bathroom is clean  
9 and every floor is swept regularly, or could it  
10 sometimes be appropriate to decide, "We're going  
11 to spend less money there so we can spend more on  
12 the early literacy program"?

13 MS. LHAMON: Incomplete  
14 hypothetical.

15 A. I have difficulty with the question  
16 in the abstract. I mean, if the choice is to be  
17 made whether the bathroom is swept twice a day or  
18 once an hour, I would answer one way.

19 If the bathroom is unswept and  
20 unsanitary and inadequately equipped, there are  
21 no doors on the stalls, there is no toilet paper  
22 present, then I think that that condition needs  
23 to be dealt with immediately, those conditions  
24 need to be dealt with immediately, so it's hard

1 pressing instructional needs? Yes, of course I  
2 could.

3 But I don't want that to be taken as  
4 an open invitation to neglect facilities, to  
5 allow unsafe and unsanitary conditions to abound  
6 and to have that pattern over a long period of  
7 time. Couldn't countenance that -- that's not  
8 even a verb.

9 MR. HAJELA: I think that's all I  
10 have. Thank you very much, Dr. Sobol.

11 MS. LHAMON: We had an off the  
12 record conversation in which we discussed among  
13 counsel the stipulation discussed Saturday; and  
14 we have agreed, am I correct, that the original  
15 of the deposition of Dr. Sobol and of Dr. Fine  
16 will be sent to me and maintained by my office,  
17 with the understanding that it can be made  
18 available for use at trial, if necessary; and if  
19 for some reason it's unavailable, we can use a  
20 certified copy; and that plaintiffs will have  
21 45 days from receipt of the transcript for  
22 Dr. Sobol and for Dr. Fine, respectively, to  
23 return changes, if necessary?

24 Does that comport with your

1 understanding?  
 2 MR. WOOCHEER: Just to clarify then,  
 3 the use of the transcript, that is prior to  
 4 Dr. Sobol having completed his opportunity to  
 5 review it and make corrections, if any party  
 6 needs to make use of it, they can make use of a  
 7 certified copy; and you retain, and Dr. Sobol  
 8 retains the opportunity to make corrections on  
 9 any pertinent portions, but that you don't have  
 10 to wait that time period.

11 MS. LHAMON: So stipulated.

12 MR. SEFERIAN: Also, even after  
 13 Dr. Sobol and Dr. Fine sign the transcripts and  
 14 make changes, if the Court requires the original  
 15 transcript be produced, then plaintiffs'  
 16 attorneys agree to make that original transcript  
 17 available to the Court.

18 And if for some reason that original  
 19 transcript cannot be made available, then a  
 20 certified copy can be used as if it were the  
 21 signed original.

22 MS. LHAMON: So stipulated.

23 MR. WOOCHEER: Agreed.

24 MR. HAJELA: Okay with me.

1 STATE OF NEW YORK )  
 2 ss:  
 3 COUNTY OF NEW YORK )  
 4 I wish to make the following changes, for  
 the following reasons:  
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21 \_\_\_\_\_  
 THOMAS SOBOL, Ed.D.  
 22 Subscribed and sworn to before me  
 this \_\_\_\_\_ day of \_\_\_\_\_, 2003.  
 23 \_\_\_\_\_  
 24 \_\_\_\_\_

1 MS. LHAMON: One final point.  
 2 Counsel for intervenors have both  
 3 represented that they are concluded with  
 4 Dr. Fine's deposition and we've canceled it for  
 5 the rest of today, is that correct?

6 MR. WOOCHEER: Subject to the same  
 7 issue that arose about the identity of the  
 8 participants in the focus groups.

9 MS. LHAMON: Okay.

10 (Time noted: 12:56 p.m.)  
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CERTIFICATE

1  
 2  
 3  
 4 I, Linda J. Greenberg, Professional  
 5 Shorthand Reporter and Notary Public in and for  
 6 the State of New York, do hereby certify that,  
 7 THOMAS SOBOL, Ed.D., the witness whose deposition  
 8 is hereinbefore set forth, was duly sworn and  
 9 that such deposition is a true record of the  
 10 testimony given by the witness to the best of my  
 11 skill and ability.

12 I further certify that I am neither related  
 13 to or employed by any of the parties in or  
 14 counsel to this action, nor am I financially  
 15 interested in the outcome of this action.  
 16 IN WITNESS WHEREOF, I have hereunto set my hand  
 17 this 25th day of March, 2003  
 18  
 19  
 20

21 \_\_\_\_\_  
 22 Linda J. Greenberg  
 23

24 My commission expires: May 17, 2007

1 INDEX

2 WITNESS EXAMINED BY PAGE  
THOMAS SOBOL, Ed.D. Mr. Hajela 327

3

4 EXHIBITS

5 NO. PAGE

6 (No exhibits marked.)

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