

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

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

Plaintiffs,)

vs.)

No. 312236

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

Defendants.)

-----)

DEPOSITION OF DR. SAM W. SWOFFORD
Sacramento, California
Wednesday, December 19, 2001
Volume II

Reported by:
TRACY LEE MOORELAND
CSR No. 10397
JOB No. 30336

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APPEARANCES, cont.

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1 BE IT REMEMBERED, that on Wednesday, December
 2 19, 2001, commencing at the hour of 10:22 a.m., thereof,
 3 at the Law Offices of Morrison & Foerster LLP, 400
 4 Capitol Mall, Suite 2600, Sacramento, California, before
 5 me, TRACY LEE MOORELAND, a Certified Shorthand Reporter
 6 in the State of California, there personally appeared
 7 DR. SAM W. SWOFFORD,
 8 called as a witness herein, who, having been previously
 9 duly sworn to tell the truth, the whole truth, and
 10 nothing but the truth, was thereupon examined and
 11 interrogated as hereinafter set forth.

12 ---o0o---

13 MR. AFFELDT: Before we get started, David, do
 14 you have any sort of indication for me as to what areas
 15 Dr. Swofford is the person most knowledgeable for?

16 MR. HERRON: Yeah, I think I do have some
 17 information. What I'm looking at now is a document
 18 entitled amended notice of deposition pursuant to CCP
 19 Section 2025(d), dated as of April 18th, 2001, and
 20 apparently served on all parties that same day. And of
 21 that, the teacher credentialing related issues begin at
 22 part C on page 9, continuing on through page 11.

23 Both the State and the State agency defendants
 24 have objected to the items set forth for a variety of
 25 reasons, which we all know about, and I think that as

1 MR. HERRON: Sure. We can have them copy it if
 2 you'd like. I think this is a good, clean copy.

3 MR. HAMILTON: David, what's the date of that?

4 MR. HERRON: It was signed and served on April
 5 18th, 2001, by plaintiff's counsel.

6 MR. HAMILTON: Thank you.

7 MR. HERRON: Okay. Why don't we get the fellow
 8 to copy it.

9 MR. AFFELDT: We can mark it. We'll copy it
 10 later during the break.

11 MR. HERRON: That's fine, unless it's going to
 12 be used.

13 MR. AFFELDT: Not at the present time. State
 14 Agency Defendant Exhibit 208.

15 (Exhibit SAD-208 was marked.)

16 EXAMINATION BY MR. AFFELDT

17 Q. Dr. Swofford, how are you feeling this morning?

18 A. Fine, thank you.

19 Q. Are you under any medication today that would
 20 impair your ability to answer questions here?

21 A. No, I'm not.

22 Q. Is it the CTC's responsibility to maintain a
 23 sufficient teacher supply in California?

24 MR. HERRON: Objection. Calls for a legal
 25 conclusion. Vague and ambiguous.

1 we've gone along the -- the inquiry has become whether
 2 or not the person has substantive working knowledge on
 3 the topics identified, and so with respect to whether or
 4 not Dr. Swofford has substantive working knowledge of
 5 the topics identified in part C, we think that he does
 6 as to certain of the categories.

7 Again, it's difficult for us to really respond
 8 given what we consider to be the objectionable nature of
 9 the categories provided us. With that said and with all
 10 objections preserved, Dr. Swofford has some substantive
 11 working knowledge as to parts C1, B, C, D, and E, and
 12 we're unable to indicate whether he has substantive
 13 working knowledge as to the other items and believe that
 14 he does not.

15 MS. READ-SPANGLER: John, before we get
 16 started. Would you mind if we enter into a stipulation
 17 that if one of the defendants or interveners makes an
 18 objection, it's deemed that all other defendants or
 19 interveners have made the same objection so we don't all
 20 have to say "join"?

21 MR. AFFELDT: Yes, we can continue that from
 22 last time.

23 MS. READ-SPANGLER: Okay.

24 MR. AFFELDT: I think it would be helpful,
 25 David, if we made an exhibit out of the depo notice.

1 THE WITNESS: My understanding of the statute
 2 is no.

3 Q. BY MR. AFFELDT: Which statute are you
 4 referring to?

5 A. The statute that authorizes the -- the
 6 Commission's existence.

7 Q. You don't have a particular education code
 8 section in mind off the top of your head?

9 A. Not off the top of my head.

10 Q. And in addition to whatever -- strike that.

11 So is it your understanding that it is not the
 12 CTC's responsibility to maintain an adequate teaching
 13 supply for the public school system?

14 MR. HERRON: Objection. Vague and ambiguous.
 15 Calls for a legal conclusion. Asked and answered three
 16 questions ago. You may respond again.

17 THE WITNESS: My understanding of the statute
 18 that authorizes our jurisdictional responsibility, that
 19 is not one that is included in that.

20 Q. BY MR. AFFELDT: Are you aware of any agency in
 21 this state that has the responsibility to maintain a
 22 sufficient supply of teachers for the public school
 23 system?

24 MR. HERRON: Objection. Vague and ambiguous.
 25 Also object to the extent it calls for speculation.

1 THE WITNESS: I don't know.
 2 Q. BY MR. AFFELDT: You don't know if there's any
 3 other agency?
 4 A. I don't know if there's another agency that has
 5 that responsibility.
 6 Q. You're not aware of any?
 7 A. No.
 8 Q. Has the Commission investigated why certain
 9 public schools in the state are finding it difficult to
 10 attract and retain certified public schoolteachers?
 11 MR. HERRON: Objection. Vague and ambiguous as
 12 phrased. Vague and ambiguous to the term "certified,"
 13 "schoolteachers." Assumes facts not in evidence.
 14 THE WITNESS: I'm trying to understand the word
 15 "investigate." That's not clear to me as to what that
 16 means.
 17 MR. AFFELDT: Study.
 18 THE WITNESS: No.
 19 Q. BY MR. AFFELDT: Has the Commission studied how
 20 to address recruitment issues in hard-to-staff schools?
 21 MR. HERRON: Objection. Vague and ambiguous as
 22 phrased.
 23 MS. READ-SPANGLER: Assumes facts not in
 24 evidence.
 25 THE WITNESS: I'm not aware of any study.

1 Q. BY MR. AFFELDT: Has the Commission studied the
 2 problem of retaining teachers in hard-to-staff schools
 3 in the public school system in California?
 4 MR. HERRON: Objection. Vague and ambiguous in
 5 the use of the term "hard-to-staff schools." Vague and
 6 ambiguous as phrased. Assumes facts not in evidence.
 7 THE WITNESS: I'm not aware, again, of any
 8 study that's been done relative to staffing schools.
 9 Q. BY MR. AFFELDT: So that would include
 10 recruitment or retention issues?
 11 A. That's correct.
 12 Q. And when -- what does the term "hard-to-staff
 13 schools" mean to you?
 14 MR. HERRON: Objection. Calls for speculation.
 15 Vague and ambiguous.
 16 MR. AFFELDT: Let me strike that.
 17 Q. Is the term "hard-to-staff schools" a term that
 18 you've heard used before?
 19 A. I've heard the term used.
 20 Q. What does that mean to you?
 21 MR. HERRON: Objection. Vague and ambiguous.
 22 THE WITNESS: It can mean a variety of things.
 23 I don't have a specific issue in mind with respect to
 24 that statement.
 25 Q. BY MR. AFFELDT: So when you heard the term,

1 you didn't understand what it meant, is that your
 2 testimony, or am misunderstanding?
 3 MR. HERRON: No, but you're harassing him. I
 4 object on that basis. It's a flippant question. It's
 5 vague and ambiguous as phrased. It's asked and
 6 answered.
 7 THE WITNESS: I don't know the definition of
 8 the hard to staff school statement made by someone.
 9 It's not specific in terms of what that means.
 10 Q. BY MR. AFFELDT: Uh-huh. When I was asking you
 11 about hard-to-staff schools, what did -- and you
 12 responded to the question, what was your understanding
 13 of what I was asking you about, which subset of schools
 14 was I referring to?
 15 MR. HERRON: Same objections as to the last
 16 question.
 17 THE WITNESS: I did not know what the statement
 18 meant in terms of in that particular situation.
 19 Q. BY MR. AFFELDT: Okay. Well, for shorthand can
 20 we agree that hard-to-staff schools are those schools
 21 which have large numbers of emergency-credentialed
 22 teachers on their faculty, and if we want to use a
 23 particular number, let's say 20 percent or more of their
 24 faculty is not on a preliminary or professional clear
 25 credential or its equivalent.

1 MR. HERRON: That's what you want him to
 2 understand when you say hard to staff?
 3 MR. AFFELDT: That's right.
 4 MR. HERRON: I think we're agreeable to that if
 5 that's your definition.
 6 MR. AFFELDT: Okay.
 7 THE WITNESS: The staffing --
 8 Q. BY MR. AFFELDT: Okay. Can I just make sure
 9 for the record that you understand what I just laid out
 10 as the definition, and it's one that you can comprehend.
 11 A. I want to understand. Staffing threshold was
 12 20 percent or more?
 13 Q. That's right.
 14 MS. READ-SPANGLER: Of emergency.
 15 THE WITNESS: Of emergency permits?
 16 MR. AFFELDT: Some might be waivers, some might
 17 be preinterns, some might be other. It's basically 20
 18 percent or more of the faculty is not on a -- is not
 19 fully credentialed because they don't have a
 20 preliminary, professional, clear or its equivalent.
 21 THE WITNESS: I would have to know specifically
 22 the type of school that's being described with respect
 23 to whether it was a hard to staff school or not based
 24 upon those numbers.
 25 Q. BY MR. AFFELDT: I understand you'd have to

1 look at the school, I'm just asking you, so we can have
2 a conversation about hard-to-staff schools, to agree
3 that we're talking about the same thing and that you
4 understand my definition of hard-to-staff schools.

5 A. I understand your definition.

6 Q. Okay.

7 MR. HERRON: And he understands we don't
8 necessarily agree, we're just going to use his
9 definition going forward for purposes of the question.

10 MR. AFFELDT: Right.

11 THE WITNESS: I understand.

12 Q. BY MR. AFFELDT: Okay. So with that
13 understanding, has the Commission -- strike that.

14 With that understanding, is your answer the
15 same, that you're not aware of any studies the
16 Commission has done with respect to staffing
17 recruitment, or retention issues at hard-to-staff
18 schools?

19 MR. HERRON: Objection. Vague and ambiguous in
20 the use of the term "studies." I would only ask whether
21 that includes collection of data. You don't have to
22 respond if you don't want. Objection. Vague and
23 ambiguous.

24 THE WITNESS: If the question includes
25 contributing data to studies, the Commission has done

1 A. That would cover that topic.

2 Q. Has the Commission undertaken a labor market
3 analysis in California to determine what salary levels
4 would attract sufficient numbers of teachers,
5 credentialed teachers to fill vacancies in hard-to-staff
6 schools?

7 MR. HERRON: Objection. Vague and ambiguous.
8 Calls for speculation. Assumes facts not in evidence.

9 THE WITNESS: To my knowledge, no.

10 Q. BY MR. AFFELDT: Has the Commission undertaken
11 a survey of why credentialed teachers who aren't
12 teaching in California have decided not to stay in the
13 teaching force?

14 MR. HERRON: Same objections as to the last
15 question.

16 THE WITNESS: To my knowledge, no.

17 Q. BY MR. AFFELDT: Does the Commission have any
18 data on how many credentialed teachers are living in
19 California who are not teaching in the public school
20 system?

21 MR. HERRON: Did you say any data at all?

22 MR. AFFELDT: That's what I said.

23 THE WITNESS: The Commission maintains a
24 database of those who have been granted a credential
25 regardless of their employment status with a school

1 that.

2 Q. BY MR. AFFELDT: Okay. Has the Commission
3 itself carried out studies, analyzed the data, issued
4 reports on hard to staff school staffing issues?

5 A. We have issued reports that have included data
6 on school districts, the numbers of permits used,
7 emergency permits used by school districts, not by
8 school.

9 Q. And other than gathering data on the teacher
10 shortage problem, has the Commission investigated why
11 certain schools find it hard to recruit teachers?

12 MR. HERRON: Objection. Vague and ambiguous in
13 the use of the term "investigated." Vague and ambiguous
14 as phrased.

15 You may respond if you understand.

16 THE WITNESS: I'm not aware of an
17 investigation.

18 Q. BY MR. AFFELDT: Has the Commission issued any
19 reports seeking to explain why there are teacher
20 turnover issues in hard-to-staff schools in California?

21 MR. HERRON: Objection. Vague and ambiguous.
22 Calls for speculation. Vague as to time.

23 THE WITNESS: I'm not aware of any reports
24 issued by the Commission.

25 Q. BY MR. AFFELDT: That would cover that topic?

1 district or private school.

2 Q. BY MR. AFFELDT: Are you done with your answer?

3 A. Yes.

4 Q. Has the Commission undertaken any analysis
5 using that database to determine the number of
6 credentialed teachers who are not in -- who are not
7 teaching in the public school system?

8 MR. HERRON: Objection. Calls for speculation.

9 THE WITNESS: I'm not aware of such a study.

10 Q. BY MR. AFFELDT: In fact, I think you told me
11 last time that that database did not indicate where the
12 teacher was employed; is that correct?

13 MR. HERRON: Well, if he did, it's asked and
14 answered. I object on that basis. His testimony before
15 will stand for itself.

16 Can we have the question reread, please.

17 (Record read.)

18 MR. HERRON: Also object as calls for
19 speculation. You may respond.

20 THE WITNESS: The database maintains
21 information on the granting of the certification. It is
22 not an employment record.

23 Q. BY MR. AFFELDT: Does the database tell you if
24 the teacher is currently employed -- I'll just ask
25 that -- tell you if the teacher is currently employed or

1 not?

2 MR. HERRON: Objection. Calls for speculation.

3 THE WITNESS: In some cases it will.

4 Q. BY MR. AFFELDT: And what cases are those?

5 A. It would pertain to individuals who have sought

6 an emergency permit or waiver at the request of the

7 school district, therefore, the recommending school

8 district would be in our file. Whether that would be in

9 the database of the computer, I don't know.

10 Q. So other than those teachers on emergency

11 permits or waivers, are there any other instances in

12 which the CTC maintains data on whether or not a given

13 teacher is employed?

14 A. Yes.

15 Q. What situations are those?

16 A. It would be, again, whether it is in the

17 database or in the records of individuals who are

18 preinterns or interns because they have -- they are

19 participating in a program through a specific school

20 district that would ultimately authorize them to have a

21 credential.

22 Q. And with respect to credentialed teachers, does

23 the Commission maintain data on whether or not those

24 teachers are employed?

25 A. No.

1 Q. So it wouldn't be possible for the Commission

2 to do a review of its credentialed teachers and

3 determine which ones of those are employed and which

4 ones are not employed by a public school district?

5 MR. HERRON: Objection. Vague and ambiguous.

6 Asked and answered.

7 THE WITNESS: Based on my knowledge of the

8 system, we cannot.

9 Q. BY MR. AFFELDT: Thank you. Are you personally

10 aware of any studies analyzing the number of

11 credentialed teachers in California who aren't employed

12 in the public school system?

13 MR. HERRON: Objection. Vague and ambiguous as

14 to "any studies." Vague as to time.

15 THE WITNESS: I have not seen a study on that

16 topic.

17 Q. BY MR. AFFELDT: Do you know if the Commission

18 has seen a study on that topic?

19 MR. HERRON: I guess I'm unclear. Are you

20 asking whether they've seen CTC studies, or any study of

21 any kind?

22 MR. AFFELDT: Any studies of any kind.

23 THE WITNESS: I'm not aware that they've seen

24 any studies.

25 Q. BY MR. AFFELDT: Has the Commission ever

1 discussed at one of its meetings the numbers of

2 credentialed teachers in California who aren't working

3 in the public schools?

4 MR. HERRON: Objection. Calls for speculation.

5 Vague as to time.

6 THE WITNESS: I have no recollection of any

7 specific discussions.

8 Q. BY MR. AFFELDT: You attend all of the monthly

9 meetings of the Commission, don't you?

10 A. That's correct.

11 Q. And you're ultimately responsible for setting

12 the agenda?

13 A. That's correct.

14 Q. So you would have a sense of what the topics

15 that are presented to the Commission are during your

16 tenure there; is that right?

17 A. Yes.

18 Q. Does the Commission have any jurisdiction to

19 investigate the working conditions that teachers

20 experience in public school systems?

21 MR. HERRON: Objection. Vague and ambiguous as

22 to "investigate." Calls for a legal conclusion. Vague

23 and ambiguous as phrased.

24 THE WITNESS: Based upon my knowledge, the

25 Commission does not have jurisdiction over working

1 conditions for teachers.

2 Q. BY MR. AFFELDT: Would that include

3 jurisdiction over facilities problems that teachers

4 experience in the public school system?

5 MS. READ-SPANGLER: Objection. Assumes facts

6 not in evidence.

7 MR. HERRON: Vague and ambiguous.

8 THE WITNESS: I'm not aware of any

9 jurisdictional responsibility on the part of the

10 Commission to review facilities or working conditions

11 for teachers.

12 Q. BY MR. AFFELDT: Does the Commission have

13 jurisdiction to -- strike that.

14 Has the Commission ever studied the connection

15 between poor facilities and the impact that the

16 condition of those facilities have on teacher retention?

17 MR. HERRON: Objection. Vague and ambiguous in

18 the use of the word "studied." Vague and ambiguous as

19 phrased. Calls for speculation. It's overbroad to the

20 extent it asks him to testify outside his tenure at the

21 Commission.

22 You may respond.

23 THE WITNESS: I'm not aware of any studies.

24 Q. BY MR. AFFELDT: Has the Commission ever

25 analyzed the effect of school leadership on teacher

1 recruitment and retention issues in hard-to-staff
2 schools?

3 MS. READ-SPANGLER: Objection. Vague and
4 ambiguous.

5 THE WITNESS: To my knowledge, I have no
6 knowledge of any studies or reviews conducted on the
7 leadership in hard to staff school.

8 Q. BY MR. AFFELDT: Are you aware of if the
9 Commission has been presented with any information on
10 school leadership problems and its effect on recruitment
11 and retention issues in hard-to-staff schools?

12 MR. HERRON: Objection. Vague and ambiguous in
13 the use of the term "presented with." Vague and
14 ambiguous as phrased. You may respond. Calls for
15 speculation.

16 THE WITNESS: I'm not aware of any information
17 going to the Commission relative to leadership in
18 hard-to-staff schools.

19 Q. BY MR. AFFELDT: Has the Commission ever
20 undertaken an analysis of what it would cost to fully
21 staff all the schools in California with
22 fully-credentialed teachers?

23 MS. READ-SPANGLER: Objection. Calls for
24 speculation. Vague as to time.

25 THE WITNESS: I'm not aware of any study done

1 THE WITNESS: I don't know.

2 MR. HERRON: I think, to be fair, you need to
3 identify what programs you're talking about.

4 Q. BY MR. AFFELDT: Were you aware of the study
5 published recently by the Center for the Future of
6 Teaching and Learning on the teaching shortage in
7 California?

8 A. Yes.

9 MS. READ-SPANGLER: Teaching shortage?

10 Q. BY MR. AFFELDT: Did you read the Center's
11 report?

12 A. You asked me if I just reviewed it. I did not
13 read it, I just reviewed it.

14 Q. What was it that you reviewed exactly?

15 MR. HERRON: The parts of the document?

16 MR. AFFELDT: The different aspects of it.

17 MR. HERRON: Objection. Calls for clairvoyant
18 recollection, but you may respond to the extent you
19 recall.

20 THE WITNESS: I don't recollect exactly what
21 areas I noted.

22 Q. BY MR. AFFELDT: Let me clarify. There's a
23 report which is 20 pages or so, and then there's much
24 longer findings, which is a separate document that is
25 quite extensive in terms of its data analysis and

1 on that topic.

2 Q. BY MR. AFFELDT: Would that include studies
3 done by entities outside the Commission on teacher
4 credentialing?

5 A. Yes.

6 Q. Okay. Last time -- before I go there, actually
7 let me ask you, have you reviewed your deposition from
8 October 19th?

9 A. No.

10 Q. Last time do you remember talking about the
11 various programs Governor Davis has implemented to
12 increase the supply of teachers in California?

13 MR. HERRON: Does he remember his testimony?

14 MR. AFFELDT: Yeah.

15 THE WITNESS: I remember the general topic, I
16 don't remember the specific testimony.

17 Q. BY MR. AFFELDT: Okay. Have the -- since those
18 programs have been implemented, has the teacher shortage
19 in California decreased or increased, to your knowledge?

20 MR. HERRON: Objection. Vague and ambiguous in
21 the use of the term "those programs." Assumes facts not
22 in evidence. Calls for speculation.

23 THE WITNESS: May I have the question repeated,
24 please.

25 (Record read.)

1 collection.

2 When you say you reviewed the report, did you
3 look at the shorter document, do you recall, or did you
4 look at the longer document which included all the data
5 and the findings?

6 A. I believe I reviewed a shorter executive
7 summary version.

8 Q. Okay. And when was that?

9 A. Several weeks ago.

10 Q. We're talking, I assume, about the same report
11 which came out earlier this month?

12 MS. READ-SPANGLER: I don't think you can make
13 that assumption.

14 MR. AFFELDT: If he knows when it came out, he
15 can --

16 MS. READ-SPANGLER: Well, but that's not
17 really -- maybe you should just rephrase it to clarify.

18 MR. HERRON: Objection. Assumes facts not in
19 evidence.

20 THE WITNESS: I'm just aware of the report that
21 came out in the last several weeks.

22 Q. BY MR. AFFELDT: The 2001 version of the report
23 that comes out every year from the Center for the Future
24 of Teaching and Learning?

25 MR. HERRON: Objection. Calls for speculation.

1 THE WITNESS: I saw a report that was issued
 2 after December 1st.
 3 Q. BY MR. AFFELDT: Okay. Thanks. And do you
 4 recall what that report concluded with respect to
 5 whether or not the teacher shortage in California was
 6 increasing or decreasing since last year?
 7 MS. READ-SPANGLER: Objection. The document
 8 speaks for itself.
 9 MR. HERRON: Calls for speculation.
 10 THE WITNESS: My knowledge of the report is
 11 that they made a recommendation that -- or a statement
 12 to the effect that there was a teacher shortage in
 13 California that continues.
 14 Q. BY MR. AFFELDT: And as you sit here today,
 15 you -- is it your testimony that you don't recollect
 16 whether that teacher shortage is bigger or smaller than
 17 it was last year?
 18 A. I have not analyzed the data that was contained
 19 in the report.
 20 Q. So you don't know whether the teacher shortage
 21 was bigger or smaller than last year?
 22 MR. HERRON: Are you asking him whether he
 23 knows that's what the report says? Because if that's
 24 the question, just hand him the report and we'll take a
 25 look. Object that the document speaks for itself.

1 THE WITNESS: I don't recall specifically what
 2 the report concluded.
 3 Q. BY MR. AFFELDT: Independent of the report,
 4 what is your understanding of whether the numbers of
 5 emergency-credentialed teachers in California has
 6 increased or decreased since the Davis administration
 7 took office?
 8 A. The data I have seen said there has been, in
 9 proportional numbers of teachers that are now in the
 10 work force, that the emergency permits have decreased.
 11 Q. Taking together emergency permits, waivers,
 12 preinterns and interns, I'm going to refer to those as
 13 underprepared teachers. I'm not asking you to agree
 14 with the characterization, but I'm just asking you to
 15 agree with -- understand what the concept is when I ask
 16 you a question.
 17 MR. HERRON: Yeah, and we don't agree with that
 18 characterization.
 19 MR. AFFELDT: I understand that.
 20 MR. HERRON: Okay.
 21 Q. BY MR. AFFELDT: Has the number of
 22 underprepared teachers increased or decreased in
 23 California since the Davis administration took office?
 24 MR. HERRON: You know what, I'm just going to
 25 object to the use of that term. I don't think that you

1 can just say that's your definition and want him to
 2 agree, because you know how you're going to try and use
 3 this, you're going to try and suggest that he bought
 4 into your definition of underprepared, and we don't and
 5 he does not. And I think it's inappropriate to use that
 6 term. If you want to ask him whether or not the --
 7 MR. AFFELDT: That's fine, David.
 8 MR. HERRON: Thank you.
 9 MR. AFFELDT: I'll change it so we can move
 10 along.
 11 MR. HERRON: Great. Ask a question that's
 12 correct and we'll move along fine.
 13 Q. BY MR. AFFELDT: Has the proportion of teachers
 14 who weren't fully certified increased or decreased since
 15 the Davis administration took office?
 16 MR. HERRON: Objection. Vague and ambiguous in
 17 the use of the term "fully certified." Calls for
 18 speculation.
 19 You may respond if you understand.
 20 THE WITNESS: I'd have to review the data.
 21 Without having it in front of me, I wouldn't be able to
 22 respond since the beginning of Governor Davis'
 23 administration. I don't have that information in my
 24 mind at this time.
 25 Q. BY MR. AFFELDT: That's something that you're

1 tracking from year to year?
 2 A. The Commission tracks the number of individuals
 3 granted certifications on an annual basis.
 4 Q. When you talk about emergency permits, numbers
 5 of emergency permits decreasing, what is your
 6 understanding of the types of certification those people
 7 are getting who formerly were emergency permitted?
 8 MS. READ-SPANGLER: Objection. Misstates his
 9 testimony and assumes facts not in evidence.
 10 MR. HERRON: Vague and ambiguous.
 11 Could we please have the question reread.
 12 (Record read.)
 13 THE WITNESS: I don't know. I don't have that
 14 answer.
 15 Q. BY MR. AFFELDT: And do you think that those --
 16 that proportion of teachers who were emergency permitted
 17 are becoming fully certified, and by that I mean
 18 preliminary or clear credentialed?
 19 MS. READ-SPANGLER: Objection. Calls for
 20 speculation.
 21 MR. HERRON: Vague and ambiguous.
 22 THE WITNESS: I don't know.
 23 Q. BY MR. AFFELDT: So we'd have to look at the
 24 data to figure out what the trends are?
 25 A. I believe the data would be very important to

1 look at to look at the increase and decrease in numbers
 2 by credential category.
 3 Q. Since the Davis administration -- strike that.
 4 Last time we talked about reciprocity bills
 5 being passed by the legislature and implemented by the
 6 Commission. Do you recall that discussion?
 7 A. Yes, I do.
 8 Q. Since the implementation of those, has the
 9 number of teachers coming from other states with
 10 credentials increased or decreased, if you know?
 11 A. I don't know.
 12 Q. Do you know Marilyn Errett?
 13 A. Yes.
 14 Q. Who is she?
 15 A. She's a consultant in the office of government
 16 relations with the Commission.
 17 Q. And what are her duties in that position?
 18 A. I don't know all the specific duties, but it's
 19 working on government relation issues and
 20 communications.
 21 Q. And just for the lawyers in the room who aren't
 22 politicos, can you tell us what government relations
 23 are?
 24 A. It's just the responsibility of providing
 25 information to legislators, policymakers in general

1 about the work of the Commission, and puts it in a
 2 format or in a communication release that informs them
 3 of what we're doing.
 4 Q. I'm going to hand you what we'll mark as State
 5 Agency Defendant Exhibit 209.
 6 (Exhibit SAD-209 was marked.)
 7 Q. BY MR. AFFELDT: This is a news article
 8 entitled Schools Search Far and Wide from the
 9 Press-Enterprise and dated 12/16, 2001.
 10 And you can take time to scan the article if
 11 you'd like, but I'll tell you the section I'm going to
 12 ask you about is on page 2, the second page, beginning
 13 about half way down, but for many out-of-state teachers,
 14 and continuing on to the end of the page.
 15 MR. HERRON: You just want him to read to the
 16 bottom of page 2?
 17 MR. AFFELDT: Yeah. If he wants to scan the
 18 rest of the article, I'm happy to give him time to do
 19 that as well.
 20 Let me know when you're ready.
 21 THE WITNESS: I've read the section beginning
 22 from but for many out-of-state teachers down to the
 23 bottom of that page.
 24 Q. BY MR. AFFELDT: The -- in that first
 25 paragraph, it's the but for many, it reports that the

1 Commission on Teacher Credentialing reported that more
 2 than 45 percent of teachers from out of state did not
 3 renew their licenses to teach in California between 1990
 4 and 1997.
 5 Do you see that? I just want to make sure
 6 you're following.
 7 A. I'm following that, yes.
 8 Q. Okay. Are you familiar with that information?
 9 A. I've heard that information, yes.
 10 Q. Can you tell me if there was a study that
 11 reported that information to the Commission?
 12 MR. HERRON: Objection. Calls for speculation.
 13 You may respond.
 14 THE WITNESS: I'm not aware of a study that was
 15 done on that particular topic.
 16 Q. BY MR. AFFELDT: Do you know how the -- maybe
 17 you can explain to me how the Commission would be able
 18 to track that data; in other words, how do you track who
 19 renews or doesn't renew their license?
 20 MR. HERRON: Objection. Calls for speculation.
 21 You may respond, if you know.
 22 THE WITNESS: A person with an out-of-state
 23 credential will submit an application indicating they
 24 possess an out-of-state credential, and generally
 25 there's deficiencies because of requirements that

1 California has, and then they have a five-year time
 2 frame, generally, to complete all the necessary
 3 requirements, thereby authorizing them to get a full
 4 credential, a clear credential in California.
 5 So the application would indicate -- so it's a
 6 tracking of the application and the information that the
 7 person is coming in on a credential from out of state,
 8 accepting coursework and other requisite requirements
 9 for California credentialing. That would be in our
 10 certification division identification file where they
 11 would track these individuals until they complete their
 12 work.
 13 Q. BY MR. AFFELDT: Are you familiar with the 1998
 14 commission study referenced in the next paragraph on the
 15 second page there?
 16 A. I'm not knowledgeable that it was 1998. I
 17 thought there was an earlier study, but I'm not -- I'm
 18 not aware of that. That's not a date that I'm familiar
 19 with.
 20 Q. When you say you thought there was an earlier
 21 study, what are you referring to?
 22 A. There was something done in the '90s, early
 23 '90s, but I don't have full recollection of if it was a
 24 study or a report, I have no idea.
 25 Q. And do you see in the second to last paragraph

1 on the page, the last sentence says, in fact, the number
 2 of out-of-state teachers who earn California credentials
 3 declined from 5,400 in 1997-'98 to 3,800 in 1999-2000?
 4 Are you familiar with those numbers?
 5 A. Actually, no. No.
 6 Q. Is this the first time you've seen that data?
 7 MR. HERRON: You mean these precise figures?
 8 MR. AFFELDT: No, I mean the concept that there
 9 was a decline.
 10 THE WITNESS: No.
 11 Q. BY MR. AFFELDT: No, this is not the first
 12 time?
 13 A. No, I've not seen the concept.
 14 Q. So this is the first time that you've seen the
 15 concept that there's been a decline in the number of
 16 teachers who earn California credentials from -- strike
 17 that. I think you answered the question.
 18 So does that mean that you're not aware of any
 19 analysis that the Commission or its staff has done
 20 regarding the increase or decline in out-of-state
 21 credentialed teachers since the Davis administration
 22 took office?
 23 MR. HERRON: Objection. Assumes facts not in
 24 evidence.
 25 THE WITNESS: You're asking me my personal

1 knowledge. No.
 2 Q. BY MR. AFFELDT: Who would have knowledge about
 3 that information?
 4 MR. HERRON: If you know.
 5 THE WITNESS: The divisions responsible for
 6 maintaining the data on out-of-state applicants,
 7 credential holders would be in the certification
 8 assignment and waivers division, but I do not know
 9 specifically who in that division is responsible for
 10 that data.
 11 Q. BY MR. AFFELDT: Have the commissioners been
 12 presented with data on the increase or decline in
 13 out-of-state credentialed teachers since you've been in
 14 office?
 15 MR. HERRON: Objection. Calls for speculation.
 16 THE WITNESS: I don't recall.
 17 Q. BY MR. AFFELDT: Not formally that you're aware
 18 of anyway?
 19 MR. HERRON: Objection. Calls for speculation.
 20 THE WITNESS: I just don't recall.
 21 MR. HERRON: We've been going about an hour.
 22 MR. AFFELDT: You want to take a break now?
 23 MR. HERRON: Yeah, that would be great.
 24 MR. AFFELDT: Can you note the time?
 25 (Recess taken 11:19 to 11:27.)

1 Q. BY MR. AFFELDT: Are you aware of any studies
 2 by the Commission on the effect of California recent
 3 loan forgiveness programs on attracting teachers to
 4 hard-to-staff schools?
 5 MR. HERRON: Objection. Vague and ambiguous.
 6 Calls for speculation.
 7 THE WITNESS: I'm not aware of any studies the
 8 Commission's done on that topic.
 9 Q. BY MR. AFFELDT: Are you aware of any studies
 10 on the governor's fellowship program which provides
 11 \$20,000 to students who commit to teach in
 12 low-performing schools for four years?
 13 A. I'm aware of the program, but I have no
 14 information beyond that.
 15 Q. You have no information on --
 16 A. Studies --
 17 Q. -- its effect with respect to attracting
 18 teachers to its target schools?
 19 A. That's correct.
 20 Q. Is that a topic that the Commission has
 21 investigated in any way that you're aware of?
 22 MR. HERRON: Objection. Assumes facts not in
 23 evidence.
 24 THE WITNESS: I'm not aware of any
 25 investigation.

1 Q. BY MR. AFFELDT: Who in the Commission staff
 2 would track that kind of data?
 3 MR. HERRON: Objection. Assumes facts not in
 4 evidence. Vague and ambiguous in that sort of data.
 5 THE WITNESS: I don't know.
 6 Q. BY MR. AFFELDT: Is anyone, to your knowledge,
 7 at the Commission trying to determine whether or not the
 8 governor's -- any of the governor's teacher
 9 credentialing initiatives have succeeded in attracting
 10 teachers to hard-to-staff schools?
 11 MR. HERRON: Objection. Vague and ambiguous.
 12 Vastly overbroad. Assumes facts not in evidence. Calls
 13 for speculation.
 14 (Ms. Cias entered the room.)
 15 THE WITNESS: I'm not aware of any study being
 16 conducted on hard-to-staff schools by the Commission.
 17 Q. BY MR. AFFELDT: That would include any study
 18 on any topic?
 19 MR. HERRON: Objection. Vague and ambiguous.
 20 All the same objections as to the last question.
 21 THE WITNESS: I don't know what you mean by
 22 "any."
 23 MS. READ-SPANGLER: Do you mean with respect
 24 to -- I don't even understand your question.
 25 MR. AFFELDT: I'm referring back to his answer

1 in which he said he's not aware of any study on
 2 hard-to-staff schools. I'm trying to determine if it's
 3 any study on any topic with respect to hard-to-staff
 4 schools.
 5 MS. READ-SPANGLER: That's what I wanted to
 6 know.
 7 THE WITNESS: I'm not aware of any study being
 8 done by the Commission on hard-to-staff schools.
 9 Q. BY MR. AFFELDT: Has the -- strike that.
 10 Are you familiar with the public school
 11 accountability act?
 12 A. If you're asking me about if I know about it, I
 13 do.
 14 Q. Are you familiar with the II/USP program, which
 15 is part of that act?
 16 A. No, I'm not.
 17 Q. That would be the intermediate intervention --
 18 MR. HERRON: Immediate.
 19 MR. AFFELDT: Immediate intervention, slash,
 20 underperforming schools program.
 21 THE WITNESS: No, I'm not.
 22 (Mr. Hamilton left the room.)
 23 Q. BY MR. AFFELDT: Well, let me lay out what it
 24 is, and maybe you can tell me if you're familiar with
 25 it, perhaps not by its formal name.

1 That's the means by which the State ranks
 2 schools on API scores and offers schools the opportunity
 3 to apply to be in the II/USP program. Upon the school
 4 being accepted in the program, they are provided some
 5 money per student, and then they use some of those funds
 6 to hire external evaluators to analyze why the school is
 7 underperforming.
 8 Are you familiar at all with that program which
 9 is part of the public school accountability act?
 10 A. No, I'm not. I'm not familiar with it.
 11 Q. Okay. So is it safe to say that you're not
 12 familiar with whether or not that program has had any
 13 effect on the ability of schools to attract credentialed
 14 teachers in California?
 15 MR. HERRON: Objection. Vague and ambiguous.
 16 Calls for speculation.
 17 THE WITNESS: I have no specific knowledge
 18 about the program.
 19 Q. BY MR. AFFELDT: Is the Commission tracking the
 20 implementation of the II/USP program at all?
 21 MS. READ-SPANGLER: He said he doesn't know
 22 what it is. And also I would object to your
 23 characterization of what II/USP is.
 24 MR. HERRON: Objection. Asked and answered.
 25 Calls for speculation.

1 THE WITNESS: The Commission has not been
 2 involved in discussions about this particular program.
 3 Q. BY MR. AFFELDT: Has the Commission been
 4 involved in discussions regarding other aspects of the
 5 public school accountability act?
 6 MR. HERRON: Objection. Calls for speculation.
 7 THE WITNESS: If you're asking me whether or
 8 not the Commission has addressed or has a responsibility
 9 for any of those issues, I'm unaware of any
 10 communications or discussion regarding it.
 11 Q. BY MR. AFFELDT: Is it fair to say that the
 12 Commission has taken no formal action to implement any
 13 part of the public school accountability act?
 14 A. That's correct.
 15 Q. And as far as you're aware, the Commission
 16 hasn't been involved in any discussions with the
 17 California Department of Education in implementing the
 18 public school accountability act?
 19 A. I'm unaware of any discussions between the
 20 Department and the Commission on this topic.
 21 Q. Okay. Does the Commission have any
 22 jurisdiction to correct the unequal distribution of
 23 credentialed teachers within districts?
 24 MR. HERRON: Objection. Assumes facts not in
 25 evidence. Calls for speculation.

1 I'm sorry, could we please have the question
 2 reread.
 3 (Record read.)
 4 THE WITNESS: You're asking me does the
 5 Commission have any authority under statute. I'm not
 6 aware of any authority to do so.
 7 Q. BY MR. AFFELDT: Are you aware that within
 8 school districts in California some schools have large
 9 numbers of uncredentialed teachers and other schools
 10 have none or almost none uncredentialed teachers?
 11 MR. HERRON: Objection. Assumes facts not in
 12 evidence. Object to the use of the term "uncredentialed
 13 teachers," because there is no such thing. It's vague
 14 and ambiguous as phrased.
 15 You may respond.
 16 THE WITNESS: If you're asking me whether or
 17 not there are districts with higher numbers or lesser
 18 numbers of fully-prepared teachers, then I'm aware of
 19 that.
 20 Q. BY MR. AFFELDT: And by fully prepared, you
 21 mean -- can you define what you mean?
 22 A. That the individual possesses a preliminary or
 23 clear teaching credential.
 24 Q. Okay. Your answer had to do with districts,
 25 and my question is within districts are you aware that

1 some schools have almost all fully-prepared teachers and
2 other schools have a majority or a substantial number,
3 more than 20 percent, not fully-prepared teachers?

4 MR. HERRON: Objection. Asked and answered.
5 Calls for speculation.

6 MS. READ-SPANGLER: Assumes facts not in
7 evidence.

8 MR. HERRON: It's vague and ambiguous.

9 THE WITNESS: I don't have direct knowledge of
10 specific schools.

11 Q. BY MR. AFFELDT: My question wasn't about
12 specific schools, it was about the -- whether you're
13 aware that that condition exists in districts in
14 California.

15 MR. HERRON: Same objections as to the last
16 question.

17 THE WITNESS: I don't have direct information
18 as to specific schools within school districts.

19 Q. BY MR. AFFELDT: I'm not asking you about any
20 specific school, I'm asking you whether you know that
21 there are some schools within certain districts in
22 California that have large numbers of teachers on --
23 that are fully prepared and other schools within the
24 same districts which have a majority of their teachers
25 not fully prepared?

1 THE WITNESS: I have seen publications,
2 newspapers and reports that have made reference to the
3 issue of proportional numbers of fully or not
4 fully-prepared teachers in schools.

5 Q. BY MR. AFFELDT: But you haven't followed up on
6 those reports as part of your official duties because
7 that's not a part of the CTC's jurisdiction; is that
8 right?

9 MR. HERRON: Objection. Argumentative.
10 Assumes facts not in evidence. Calls for speculation.
11 Vague and ambiguous.

12 THE WITNESS: If you're asking me by school
13 site, that's correct.

14 Q. BY MR. AFFELDT: Do you know if any state
15 entity has sought to correct the unequal distribution of
16 teachers, fully-prepared teachers at schools within
17 districts?

18 MR. HERRON: Same objections as to the last
19 question.

20 THE WITNESS: I don't know.

21 Q. BY MR. AFFELDT: Has the CTC ever examined what
22 incentives could equalize the distribution of
23 fully-prepared teachers within districts?

24 MS. READ-SPANGLER: When you say "ever," do you
25 mean since the CTC came into existence, or since he came

1 MR. HERRON: Objection. Vague and ambiguous.
2 Calls for speculation. It's asked and answered.

3 THE WITNESS: If you're asking me -- again, the
4 responsibility of my office is to monitor school
5 districts in terms of numbers, not by school site, so my
6 knowledge is of what happens with the school district as
7 a whole and not specific school sites.

8 Q. BY MR. AFFELDT: I was --

9 MS. READ-SPANGLER: I think he's saying he
10 doesn't have school level data. Is that right?

11 THE WITNESS: That's correct, I don't have
12 school district level data. Districtwide data I have.

13 MR. AFFELDT: I understand.

14 Q. My question is actually assuming you have
15 broader knowledge than just the data you receive as part
16 of your job.

17 By reading newspaper reports, the Center for
18 the Future of Teaching and Learning studies, or any
19 other reports, do you have knowledge that there exists
20 within districts in California disproportionate numbers
21 of fully-prepared teachers at different school sites?

22 MR. HERRON: Objection. Vague and ambiguous.
23 Calls for speculation. Asked and answered several
24 times.

25 You may respond.

1 to the CTC? It's vague as to time and overbroad.

2 MR. AFFELDT: Let's say in the 1990s.

3 THE WITNESS: I'm not aware of any examination
4 of that issue.

5 Q. BY MR. AFFELDT: Are you familiar with the
6 class size reduction legislation?

7 A. Yes.

8 Q. Approximately when was that legislation passed?

9 MR. HERRON: If you know.

10 THE WITNESS: My recollection is 1996.

11 Q. BY MR. AFFELDT: Was that the year it was
12 implemented as well?

13 MR. HERRON: Objection. Calls for speculation.
14 Vague and ambiguous.

15 THE WITNESS: I don't have specific knowledge
16 on the implementation timeline.

17 Q. BY MR. AFFELDT: Shortly after the legislation
18 was passed?

19 A. My recollection would be 1996, '97 for the 1997
20 school year, but that's my recollection.

21 Q. Okay. What effect did class size reduction
22 have on the teacher shortage in California?

23 A. The impact of class size reduction had an
24 impact on increasing the numbers of teachers needed to
25 serve in the primary grades as well as intermediate

1 grades.

2 Q. And did that increase in the number of teachers
3 needed result in an increase in the number of teachers
4 on emergency permits?

5 MR. HERRON: Objection. Calls for speculation.
6 Assumes facts not in evidence.

7 THE WITNESS: The number of emergency permits
8 did go up after class size reduction implementation.

9 Q. BY MR. AFFELDT: Can you quantify the magnitude
10 of the increase?

11 A. If you're asking me by year, by year, that data
12 is available of the numbers of emergency permits that
13 were requested after 1996.

14 MR. AFFELDT: I just want to get on the record
15 that we're marking State Agency Defendants' Exhibit 210.
16 (Exhibit SAD-210 was marked.)

17 Q. BY MR. AFFELDT: And if you can identify that,
18 please.

19 MR. HERRON: Take as much time as you need to
20 to tell whether you've seen that.

21 MS. READ-SPANGLER: And make sure it's
22 complete.

23 THE WITNESS: You mean to acknowledge that I've
24 seen this document was the question?

25 MR. AFFELDT: Yeah. Right.

1 Calls for speculation. Assumes facts not in evidence.

2 Could we please have it reread.

3 (Record read.)

4 MR. HERRON: Can I also object as vague and
5 ambiguous in even -- in the use of the term "evenly
6 across districts."

7 THE WITNESS: I don't know.

8 MS. READ-SPANGLER: I also think it's compound.

9 Q. BY MR. AFFELDT: Did the increase in the
10 numbers of teachers on emergency credentials

11 disproportionately increase -- strike that --

12 disproportionately appear in low-income schools, to your
13 knowledge?

14 MR. HERRON: Objection. Vague and ambiguous.
15 Calls for speculation.

16 THE WITNESS: If you ask me the question
17 whether or not I have data on school districts, I can
18 tell you what school districts. I do not collect data
19 on individual school sites.

20 Q. BY MR. AFFELDT: Based on your knowledge
21 reading the newspaper and other reports in this area,
22 isn't it true that teachers, for the most part, left
23 inner city schools and went to teach in suburban
24 schools, isn't that a general trend that was observed
25 during the class size reduction implementation?

1 THE WITNESS: Yes, I've seen the document.

2 Q. BY MR. AFFELDT: And can you identify what it
3 is for the record?

4 A. It's a 1997-98 annual report of emergency
5 permits and credential waivers. It's issued by the
6 California Commission on Teacher Credentialing, May
7 1999.

8 Q. And if I could ask you to look at page 3,
9 figure 2.

10 A. Uh-huh.

11 Q. There's a chart there entitled emergency
12 permits issued during the years -- it starts with 1992
13 to '93 and continues successively to 1997-98.

14 Is that the data you were referring to
15 previously about -- that reflects the increase in
16 emergency permits based on class size reduction?

17 A. Yes.

18 Q. Was the increase in the number of -- strike
19 that.

20 Are you aware whether the teachers -- the
21 increased number of teachers on emergency permits
22 occurred evenly across districts, or whether they were
23 disproportionately occurring in certain schools within
24 districts?

25 MR. HERRON: Objection. Vague and ambiguous.

1 MR. HERRON: Objection. Calls for speculation.

2 Are you asking him if that's what the reports he may
3 have read say, or whether he has personal knowledge that
4 if they said that, that's true?

5 MR. AFFELDT: I'm asking him whether he read
6 reports that said that.

7 THE WITNESS: I have seen publications in the
8 media and through other communications that there was a
9 migration of teachers during class size reduction, but I
10 do not have firsthand knowledge of that.

11 Q. BY MR. AFFELDT: And the migration of teachers
12 that we're talking about are fully-prepared teachers as
13 opposed to emergency permit or waiver teachers. The
14 people who were going from inner city schools to the
15 suburbs were the fully certified teachers?

16 A. I don't know that.

17 Q. What migration are you referring to then?

18 A. The teachers went to districts that were
19 enacting the class size reduction program and looking to
20 teach in 20 to 1 ratio classrooms. That's what I read
21 in newspapers. And they went to the districts that did
22 that. And that could have been any person possessing
23 certification, some type of certification. I don't have
24 specific knowledge of who.

25 Q. So is the Commission aware that fully-prepared

1 teachers were moving from inner city schools to suburban
 2 schools as part of class size reduction implementation?
 3 MR. HERRON: Objection. Calls for speculation.
 4 MS. READ-SPANGLER: Assumes facts not in
 5 evidence.
 6 THE WITNESS: I do not recall the Commission
 7 receiving any information that was specific on that
 8 topic.
 9 Q. BY MR. AFFELDT: Was the Commission aware that
 10 teachers were -- fully-certified teachers were moving
 11 from low-performing schools to higher-performing schools
 12 as a result of class size reduction?
 13 MR. HERRON: Objection. Calls for speculation.
 14 Vague and ambiguous in its use of the term
 15 "fully-certified." Vague and ambiguous as phrased.
 16 MS. READ-SPANGLER: And assumes facts not in
 17 evidence.
 18 THE WITNESS: I'm not aware of any information
 19 that was shared with the Commission on that specific
 20 topic.
 21 Q. BY MR. AFFELDT: Was the Commission at all
 22 concerned about the sharp rise in the number of teachers
 23 on emergency permits as evidenced by the figure 2 on
 24 page 3, Exhibit 210?
 25 A. The Commission was concerned about providing

1 more fully-prepared teachers with the class size
 2 reduction program.
 3 Q. And why is that?
 4 MR. HERRON: Objection. Vague and ambiguous as
 5 phrased. Why is what?
 6 Q. BY MR. AFFELDT: Why was the Commission
 7 concerned?
 8 A. The issue is trying to prepare more teachers
 9 through existing programs that we had at that time,
 10 which included our intern programs and our
 11 paraprofessional program.
 12 Q. Was the increase in the teacher shortage as a
 13 result of class size reduction an intended consequence
 14 of the legislation?
 15 MS. READ-SPANGLER: Objection. Calls for
 16 speculation. Calls for a legal conclusion.
 17 THE WITNESS: I don't know.
 18 Q. BY MR. AFFELDT: Did the Commission support the
 19 class size reduction legislation?
 20 A. The Commission did not take a position on class
 21 size reduction.
 22 Q. Why was that?
 23 A. Jurisdictionally it's not the Commission's role
 24 to take that type of an efficacy responsibility or
 25 support on something, unless it directly involves the

1 Commission.
 2 Q. And you see class size reduction as not
 3 directly involving the Commission?
 4 MR. HERRON: Objection. Vague and ambiguous.
 5 I mean, in what context? If you're asking in terms of
 6 adoption of legislation, he's answered the question, so
 7 it's also asked and answered.
 8 THE WITNESS: If you're asking me whether the
 9 Commission felt that the initiative itself was directly
 10 related to the Commission's work, there was no
 11 discussion of that.
 12 Q. BY MR. AFFELDT: Okay. Whose jurisdiction in
 13 the state was it to be directly concerned with the class
 14 size reduction initiative?
 15 MS. READ-SPANGLER: Objection. Calls for
 16 speculation.
 17 MR. HERRON: Vague and ambiguous.
 18 THE WITNESS: I do not know what the law
 19 required with respect to responsible authorities and the
 20 implementation of class size reduction.
 21 Q. BY MR. AFFELDT: Based on your years of
 22 experience in Sacramento and as a superintendent, when
 23 you saw the class size reduction bill and you concluded
 24 this wasn't the Commission's responsibility or direct
 25 jurisdiction, what agency of the state did you consider

1 to have that authority to deal with class size
 2 reduction?
 3 MS. READ-SPANGLER: You're assuming that he
 4 thought about that at all. That's kind of a ridiculous
 5 question.
 6 MR. HERRON: Assumes facts not in evidence.
 7 It's the same question you just asked, therefore it's
 8 asked and answered. Calls for speculation. Vague and
 9 ambiguous.
 10 You may respond if you understand.
 11 THE WITNESS: My understanding was, speaking as
 12 a superintendent background, it was the school
 13 district's decision whether or not to implement class
 14 size reduction.
 15 Q. BY MR. AFFELDT: And sitting here today, which
 16 state agency is it your understanding has responsibility
 17 for overseeing class size reduction implementation?
 18 MR. HERRON: Objection to the extent it calls
 19 for speculation.
 20 MS. READ-SPANGLER: Or a legal conclusion.
 21 THE WITNESS: I don't have specific knowledge
 22 of who the ultimate responsible agency is.
 23 Q. BY MR. AFFELDT: Is that something that you're
 24 aware of the Department of Education is working on?
 25 MR. HERRON: I think he just answered that

1 question. It's assumed by your last one, it's therefore
 2 asked and answered.
 3 MS. READ-SPANGLER: And, again, it calls for a
 4 legal conclusion.
 5 MR. HERRON: You may respond.
 6 THE WITNESS: I'm aware that the Department of
 7 Education is involved in class size reduction. To what
 8 extent they're involved, I don't know.
 9 Q. BY MR. AFFELDT: You mentioned a report
 10 earlier, pre-1998, when we were talking about the
 11 Commission study of out-of-state credentialed teachers.
 12 Do you recall that discussion before the break?
 13 A. Yes.
 14 Q. Is there any way you can identify for us any
 15 more information about that report so we know what to
 16 ask for in a document request?
 17 A. The only information I recollect was some
 18 discussion about teachers would typically find
 19 employment within a 50-mile radius of their home, and
 20 I've not seen or read any studies or reports on that, I
 21 just was aware that issue was discussed prior to my
 22 arrival to the agency.
 23 Q. But as far as you're aware, there's no
 24 published report, study, analysis that we could ask for
 25 at this point?

1 A. I don't know.
 2 Q. Do you have a view as to whether teacher
 3 preparation programs in California are graduating a
 4 sufficient supply of fully-prepared teachers?
 5 MR. HERRON: Objection. Vague and ambiguous in
 6 the use of the term "teacher preparation" and
 7 "fully-prepared teachers."
 8 MS. READ-SPANGLER: And "sufficient supply."
 9 THE WITNESS: I've not done a review of the
 10 capacity issues and the supply and demand for teachers.
 11 MR. AFFELDT: I'm sorry, I didn't hear your
 12 answer.
 13 THE WITNESS: The first part is that I have not
 14 done a review of the capacity of teacher preparation
 15 programs, nor have I done a labor supply for the needs
 16 of teachers.
 17 Q. BY MR. AFFELDT: Has the Commission done either
 18 of those studies?
 19 MR. HERRON: Objection. Vague and ambiguous as
 20 to time. Calls for speculation.
 21 THE WITNESS: The Commission collects data on
 22 those institutions that recommend individuals for
 23 credentials. That's the data we collect. The capacity
 24 question is something we do not study.
 25 Q. BY MR. AFFELDT: Is it within the Commission's

1 jurisdiction to take a position on the capacity question
 2 as you define it?
 3 A. I believe, based on my knowledge of our
 4 jurisdictional responsibility, it is not one that we
 5 take a position on.
 6 Q. Are you aware of any state entity that has the
 7 jurisdiction to ensure our teacher education programs
 8 have sufficient capacity to supply the public school
 9 system with fully-prepared teachers?
 10 A. I don't know who has that responsibility.
 11 Q. You don't know if anyone does or doesn't; is
 12 that right?
 13 A. I don't know who or -- a specific person or
 14 agency that has that responsibility.
 15 Q. Or if --
 16 A. Or if, yes, that's correct.
 17 Q. -- any person or agency has that
 18 responsibility?
 19 A. It's not within the jurisdiction of the
 20 Commission, so I don't know.
 21 MR. HERRON: We're getting mighty close to two
 22 hours now and it's now past 12.
 23 MR. AFFELDT: It's actually only been 45
 24 minutes since our last break, but I was going to suggest
 25 we break for lunch at this point.

1 MR. HERRON: Okay. Perfect.
 2 MS. READ-SPANGLER: Well, unless you guys all
 3 want to, it's usually most crowded right around now.
 4 (Lunch recess taken from 12:13 to 1:25.)
 5 Q. BY MR. AFFELDT: Dr. Swofford, did the
 6 Commission undertake any activity to counter the effects
 7 of class size reduction?
 8 MR. HERRON: Objection. Calls for speculation.
 9 Vague and ambiguous.
 10 THE WITNESS: I don't understand "counter the
 11 effects." What do you mean "the effects"??
 12 Q. BY MR. AFFELDT: Well, the effects we were
 13 talking about before the break was the substantial
 14 increase in the number of emergency permits being issued
 15 in California.
 16 Did the Commission take any action to counter
 17 the increase of emergency permits in California
 18 occasioned by class size reduction?
 19 A. The Commission enacted a new program called
 20 preinterns, which is designed to get individuals who
 21 want to pursue a teaching career on a career path and
 22 look for additional support for expanding the capacity
 23 of the intern program, which indeed -- that and the
 24 paraprofessional program. Those programs were then
 25 substantially enhanced by additional dollars over the

1 past several years.

2 Q. Are there any other actions the Commission took
3 to counter the effects of the increase in emergency
4 permits as a result of class size reduction?

5 A. In conjunction with the Department of
6 Education, the Commission sought additional funding and
7 did, in fact, get that funding for increasing the
8 capacity of the Beginning Teacher Support Assessment
9 Program, known as BTSA, which is given to teachers
10 having to complete their program, a two-year induction,
11 formal induction for purposes of retention.

12 Q. Anything else?

13 A. The Commission has been offering technical
14 assistance, the staff has been working with school
15 districts on identifying ways to access these
16 alternative pathways, getting people into pipelines to
17 become fully-prepared teachers, having them look at the
18 existing programs, working with universities and
19 colleges, partnering -- encouraging partnerships between
20 universities and colleges and school districts so there
21 would be really articulation between those entities. So
22 much has been done with respect to the alternative
23 certification routes and the induction for retention of
24 classroom teachers.

25 Q. And just to be clear for the record, by

1 20-percent threshold that we look at districts in terms
2 of accessing, communicating with them regarding
3 accessing alternative programs.

4 Q. BY MR. AFFELDT: Let me see if I'm
5 understanding what you're saying. When you identify a
6 district in the state that has 20 percent or more of
7 emergency-credentialed teachers, then you will
8 affirmatively contact them to explore alternative
9 certification options; is that --

10 A. That's correct.

11 Q. And if they fall below -- a district falls
12 below that 20-percent threshold, you will wait for them
13 to contact you to provide the technical assistance that
14 we're talking about?

15 A. Every district has the option of participating
16 in these programs, whether they be 20 percent and below
17 or 20 percent and above. We have -- many of those
18 districts have already accessed those programs. We
19 specifically concentrate on 20 percent or above. If
20 they wish to come to us for more technical assistance,
21 for those other than that, we have no criteria for that,
22 we just provide assistance when asked.

23 Q. And how did you arrive at the 20-percent
24 threshold?

25 MR. HERRON: Well, objection. Asked and

1 alternative certification, you're referring to the
2 preintern, the intern, and the paraprofessional
3 programs?

4 A. Yes, that's correct.

5 Q. Anything else that would fall under alternative
6 certification for present purposes?

7 A. That would be it.

8 Q. What kind of activities does your staff engage
9 in with school districts to help them identify these
10 alternative certification avenues?

11 A. First of all, we contact them via mail, or
12 whatever is available to us, phone calls to them, to
13 look at the number of emergency permits that they have
14 and whether or not these alternative programs will help
15 them, one, reduce the number of emergency permits and,
16 two, provide for teachers that will stay in the
17 district.

18 Q. Do you prioritize which districts you're going
19 to contact based on any criteria?

20 MR. HERRON: Objection to the extent it calls
21 for speculation.

22 THE WITNESS: There's only one criteria we look
23 at other than interest. Districts can come to us and
24 ask us for assistance at any time, that's what we're
25 about, we provide technical assistance. We have a

1 answered in the last session of deposition.

2 THE WITNESS: I did respond at the deposition,
3 I believe.

4 MR. AFFELDT: He hasn't instructed you not to
5 answer.

6 THE WITNESS: The 20-percent figure was based
7 upon doubling the 9- or 10-percent average of emergency
8 permits throughout the state, so it's a statewide
9 average of 9 to 10 percent. That wasn't an arbitrary
10 decision on the staff of the Commission's part to use
11 the 20 percent.

12 Q. BY MR. AFFELDT: Do you know how many districts
13 a year that meet that 20-percent threshold the
14 Commission contacts?

15 A. I can't tell you. The data is available, I
16 just don't have it in my head.

17 Q. Who would have that data?

18 A. The certification assignment and waiver
19 division.

20 Q. Do you know if -- strike that.

21 Do you know what proportion of all the
22 districts that are 20 percent or greater are contacted
23 by the Commission during the course of a typical year?

24 MR. HERRON: Objection. Calls for speculation.

25 THE WITNESS: I don't know.

1 Q. BY MR. AFFELDT: Does the Commission require
2 districts to pursue alternative certification routes
3 before granting permission to utilize emergency permits?
4 MR. HERRON: I'm sorry, could we have that read
5 back.
6 MR. AFFELDT: I can rephrase it.
7 MR. HERRON: Okay.
8 Q. BY MR. AFFELDT: Before the Commission responds
9 to a declaration of need and determines that a district
10 can request emergency permits for its teachers, does the
11 Commission place any preconditions on the district that
12 would require it to utilize one or more of the
13 alternative certification routes?
14 MR. HERRON: Are you talking any district, or
15 the ones that have the 20 percent or more?
16 MR. AFFELDT: Any district that applies for an
17 emergency permit.
18 THE WITNESS: As part of the declaration of
19 need process for filing with the Commission for the use
20 of emergency permits, they must attest to the fact they
21 have acted in good faith to seek out fully-qualified
22 individuals and that they have availed themselves of the
23 alternative routes.
24 That's all part of the process of making a
25 determination whether to grant or deny their request for

1 use of emergency permits, so it's a consideration, it's
2 not a requirement. It's the information that's brought
3 before the Commission prior to granting the request.
4 Q. BY MR. AFFELDT: So it's the requirement that
5 before a district submits a declaration of need, they
6 use -- for example, let's take preinterns, they use the
7 preintern program, or are you saying only that they
8 considered using it and decided it didn't fit their
9 district?
10 A. They must articulate in the document that they
11 have attempted to use preintern or intern programs in
12 order to recruit an individual into that position.
13 There may not be a program available for them depending
14 on the location of the school district, so geographical
15 conditions may be the issue. It may be a very unique
16 position, so there's different bases for why they're
17 either successful or not successful in using those
18 programs.
19 That's also now going to be required, from my
20 understanding of the new law that's going to be in
21 effect this next year. That really says to districts
22 they must essentially codify what we do in policy, the
23 requirement that you must make every effort to utilize
24 alternative certification routes and you have engaged in
25 attempts to recruit before you seek the use of emergency

1 permits.
2 Q. What is the difference between an individual
3 holding an emergency permit and an -- a preintern in
4 terms of the requirements they need to meet to obtain
5 that status?
6 A. The difference between the preintern and the
7 emergency permit, they both have -- this is what they
8 have similar. They have a BA degree or BS degree from
9 a -- baccalaureate degree from a regionally accredited
10 university or college, they have passed CBEST. And then
11 with the preintern, they are given dollars, the school
12 district, to help these individuals become proficient in
13 a subject area and that they're given classroom
14 management support. This is all part of the plan they
15 submit to the Commission to receive the dollars to
16 implement the preintern program.
17 So there's a support system there for the
18 individual and there's access to programs, whether it be
19 university based or school district based that would get
20 them qualified in their subject matter area. So if
21 they're secondary people, they would be taking English
22 courses if they're going to teach English, if they're in
23 the elementary, you have to demonstrate a competence in
24 multiple subject areas. So it would help them pass,
25 say, the multiple subject assessment test, what they

1 call the MSAT test or the single subject test for high
2 school, secondary folks.
3 So it's really subject matter preparation,
4 that's one of the primary focuses, as well as the
5 support as a new teacher. That's the preintern program.
6 That's what's different than the emergency permit. And
7 we have about 10,000 people in that program and \$11
8 million committed by the governor to support that.
9 Q. Under an emergency permit one is also supposed
10 to receive some sort of support from an experienced
11 teacher, correct?
12 A. It's really up to the district to work out the
13 support for emergency permits. There's not a formal
14 program with the Commission. They are supposed to, upon
15 renewal, demonstrate that they have made progress
16 towards becoming fully qualified, taking courses that
17 would enable them to be more proficient in the area
18 they're teaching. That's part of the renewal -- if they
19 come back for subsequent renewals.
20 Q. "They" meaning the individual --
21 A. Individual.
22 Q. -- emergency permit holder?
23 A. That's correct.
24 Q. And my question was just trying to clarify that
25 the district is supposed to provide some sort of, I

1 believe it's a third year or greater, experienced
2 teacher supporting the emergency permit holder in order
3 for the district to receive authorization to employ that
4 person, correct?

5 A. The district is supposed to support the
6 individual, it is not -- we don't -- it's not a program,
7 but it's an individual within the system along with
8 working with that individual so that they would become
9 academically prepared to be fully credentialed.

10 Q. So the preintern program is a more prescribed
11 support program, is that my understanding?

12 A. That's correct.

13 Q. In what ways is it more prescribed?

14 MR. HERRON: Objection. Asked and answered.

15 THE WITNESS: The proposal that they provide
16 the Commission with in terms of their program that
17 they're going to offer must show evidence that they're
18 going to have access to either university, community
19 college, whatever it may be, or through their own staff
20 development training prepare these individuals to meet
21 the requirements for credentialing.

22 Some larger districts are prepared to run their
23 own programs without university, college, such as Los
24 Angeles has their own intern program, but many districts
25 partner up with another university or college. Those

1 other aspect of the classroom management component that
2 you look for in a preintern program?

3 A. Just during the course of the program they have
4 mentoring support or have access to individuals who are
5 there to provide guidance and assistance.

6 Q. Does the Commission have guidelines for who
7 should be a mentor, who is qualified to be a mentor?

8 A. I don't have that specific detail of the exact
9 guidelines. We have -- my recollection is our issue is
10 a program and whether or not they will have staff that
11 are veteran teachers, and that's a definition we don't
12 prescribe. Veteran teachers is someone who has been on
13 the job for a period of time.

14 Q. Is two years a long enough period of time to be
15 a veteran teacher?

16 A. Again, it's a school district determination as
17 to some of the definitions of what's a veteran teacher.
18 An individual may have taught elsewhere for three or
19 four years in a private school that's now two years in a
20 public school, so they could be considered a veteran
21 teacher. So, again, it's based upon the individual
22 situation.

23 Q. But if the individual only had two years, would
24 you consider that person a veteran teacher?

25 MR. HERRON: Objection. Calls for speculation.

1 are things that we look at in the preintern program
2 before we approve them to conduct one. And also that
3 they have a plan for building competencies in terms of
4 classroom management, working with the population of
5 students that these individuals are going to be serving.
6 So it's all built into the plan. That's why it's more
7 prescribed. We evaluate the plan that they submit to
8 us.

9 Q. BY MR. AFFELDT: Okay. And I'm curious about
10 the second or latter piece, the classroom management.
11 Can you elaborate for me what you're looking for in a
12 preintern program in terms of what kind of classroom
13 management support the Commission wants to see in order
14 to approve a preintern program?

15 A. Many school districts do this, but it's an
16 orientation that you have, a formal orientation of the
17 individual with the content standards, for example,
18 what's expected of children in that classroom in terms
19 of subject matter. So you have -- it's really preparing
20 you to teach what's prescribed by the State of
21 California and the school district and organizing
22 lessons and being able to deliver the instruction to
23 children, not just having subject knowledge, but be able
24 to have the ability to deliver the instruction.

25 Q. Beyond the formal orientation, is there any

1 Assumes facts not in evidence.

2 THE WITNESS: Again, I don't prescribe the
3 number of years. They're a permanent employee, that's
4 the only thing that's in the law. After two years, you
5 are employed your third year, you could be a veteran
6 teacher based upon other experiences that you've had,
7 and that's a district decision.

8 Q. BY MR. AFFELDT: What about with respect to
9 teaching on emergency permit? I believe the law does
10 prescribe that they are to be assigned a mentor, I may
11 not have that term right, but a teacher to assist them
12 that has at least three years of experience. Is that --
13 am I stating that correctly?

14 A. I'd have to review the law. I don't know at
15 this point.

16 Q. If a -- strike that.

17 What about with respect to the intern program,
18 what are the requirements? How do the requirements of
19 an intern program compare to someone on an emergency
20 permit?

21 MR. HERRON: Objection to the extent your
22 question calls for speculation.

23 THE WITNESS: If you're asking me what the
24 requirements are of becoming an intern, I can give you
25 information in that respect.

1 MR. AFFELDT: Let's start there.
 2 THE WITNESS: Okay. An intern becomes a
 3 teacher of record based upon, one, they have had a
 4 baccalaureate degree from a regionally-accredited
 5 college, they have passed CBEST, and they have
 6 demonstrated subject matter competence either through
 7 coursework or through exam. And those are the
 8 requirements for participation in the intern program.
 9 Q. BY MR. AFFELDT: And someone in an intern
 10 program has not yet received a preliminary or
 11 professional clear credential, correct?
 12 A. That's correct.
 13 Q. The credential that they ultimately receive
 14 will be what?
 15 A. You're asking me what they're working under.
 16 They're working under an intern credential, and then
 17 they will receive a preliminary credential and be on the
 18 track to become a professionally cleared credential
 19 holder.
 20 Q. Is that true of district interns too, like in
 21 Los Angeles?
 22 MR. HERRON: Objection. Calls for speculation.
 23 THE WITNESS: Los Angeles, by statute, has
 24 their own intern program.
 25 Q. BY MR. AFFELDT: And if one graduates from that

1 intern program, do they receive a preliminary credential
 2 that they could teach with anywhere in the state?
 3 A. Yes.
 4 Q. Has the Commission measured the impact of the
 5 efforts you've been describing concerning alternative
 6 certification vis-a-vis reducing the number of
 7 emergency-credentialed teachers in California?
 8 MR. HERRON: Objection. Calls for speculation.
 9 Vague and ambiguous as phrased.
 10 THE WITNESS: I don't know what you mean by
 11 measure the impact. I don't understand that portion of
 12 the question.
 13 Q. BY MR. AFFELDT: Have you determined if your
 14 efforts have helped?
 15 MR. HERRON: Same objections, even more so.
 16 THE WITNESS: I'm not sure what help means as
 17 you pose the question.
 18 Q. BY MR. AFFELDT: You've said you responded to
 19 the large number of emergency credentials by trying to
 20 reduce the numbers of emergency credentials.
 21 The question is, have these programs succeeded
 22 in reducing the numbers of teachers under emergency
 23 credentials?
 24 MR. HERRON: Preintern and intern?
 25 MR. AFFELDT: Any -- had a third one.

1 MR. HERRON: Paraprofessional, BTSA, technical
 2 assistance, all of those?
 3 MR. AFFELDT: Not BTSA.
 4 MR. HERRON: Okay.
 5 Q. BY MR. AFFELDT: That's only for credentialed
 6 teachers, correct?
 7 A. BTSA, that's correct.
 8 Q. So the three alternative certification programs
 9 you identified, have they reduced the number of teachers
 10 on emergency permits in California?
 11 MR. HERRON: Objection. Vague and ambiguous.
 12 THE WITNESS: If you're asking me if I have any
 13 data that suggests there has been a reduction in the
 14 number of emergency permits, the information I have is
 15 that there has been a reduction in the number of
 16 emergency permits in proportion to the number of
 17 teachers in classrooms.
 18 Q. BY MR. AFFELDT: And has there been a number --
 19 an increase in the number of individuals in one of those
 20 three alternative certification pathways?
 21 A. Yes.
 22 Q. Has there been an increase in the number of
 23 teachers with preliminary or clear credentials during
 24 the time frame we're talking about, which would be 1996
 25 to the present?

1 A. Yes.
 2 Q. Has there been an increase in the proportion of
 3 teachers holding preliminary or clear credentials
 4 between 1996 to the present vis-a-vis all the other
 5 types of credentials short of those two?
 6 MR. HERRON: Objection. Vague and ambiguous.
 7 Calls for speculation.
 8 THE WITNESS: I would have to look at the data.
 9 I don't have that answer right now.
 10 Q. BY MR. AFFELDT: Okay. So when you answered
 11 that there was an increase in the number of teachers on
 12 preliminary or professional clear, you were referring to
 13 an absolute number of teachers as opposed to some
 14 proportion of the overall pie of teachers out there?
 15 A. That's correct.
 16 Q. Okay. If I could have you look at Plaintiff's
 17 Exhibit 208.
 18 MS. READ-SPANGLER: You mean -- just for the
 19 record, you mean State Agency Defendants' 208?
 20 MR. AFFELDT: That's the one. Thank you.
 21 Which is the amended notice of deposition.
 22 Q. If you could turn to page 9.
 23 A. Yes.
 24 Q. Under item 1A under C, teacher credentialing
 25 issues, the notice refers to, and I'll just read it,

1 quote, the existence of any requirements enacted by any
2 authority or any prescriptive standards applicable to
3 California public schools providing that each student
4 should receive instruction from a credentialed teacher,
5 unquote.

6 Are you aware of any requirement in California
7 that requires a student receive instruction from a
8 credentialed teacher?

9 MR. HERRON: I'm going to object as calling for
10 a legal conclusion, and we've already indicated that he
11 does not have nor is he going to be testifying as a
12 legal expert here about what the law does and doesn't
13 require in this regard.

14 Our objections have been put on -- we've made
15 them twice in writing and, you know, as to this
16 particular designation here, what you're really asking
17 is for the State to produce the person most
18 knowledgeable about how the statutes work, and we think
19 you're fully capable of reviewing the statutes yourself.

20 If you have a question where we've indicated
21 that he has a working knowledge and it's not a question
22 that calls for a legal conclusion, go ahead and ask it.
23 But I don't think that's a proper question and I think
24 you're now wasting our time.

25 MS. READ-SPANGLER: I want to indicate that

1 can tell. Oops. 38 through 62, ending with 124.

2 MR. AFFELDT: I stand corrected.

3 (Exhibit SAD-211 was marked.)

4 Q. BY MR. AFFELDT: If I could have you look at
5 page 41 and have you -- well, it's a very long answer,
6 but why don't you take a minute and review the question
7 and answer to special interrogatory No. 16 which is from
8 page 38 to 48.

9 MR. HERRON: Well, you've asked him to read 10
10 pages. Do you want to give this to us overnight, have
11 him read it overnight and ask him questions about it
12 tomorrow? Would that be more efficient? To read 10
13 pages, we're going to be here a while. That's fine if
14 that's how you want to proceed. It's your time.

15 MR. AFFELDT: I'm mostly interested in asking
16 him about the waiver and the declarations of need which
17 is 41 and 42. So if you can -- it is a fairly
18 self-contained subset despite the lack of paragraphs.
19 Maybe you can look at those two pages.

20 MR. HERRON: Do you have a particular line on
21 41?

22 MR. AFFELDT: Probably should start at the last
23 line on page 40, and run through page 42 line 21.

24 MS. READ-SPANGLER: Do you think he should read
25 the interrogatory or is --

1 state agency defendants have also filed written
2 objections to this amended deposition notice.

3 MR. AFFELDT: Everybody done?

4 MR. HERRON: Not if you're going to keep asking
5 these kind of questions, we're definitely not done.

6 Q. BY MR. AFFELDT: Are you aware of any
7 requirements?

8 A. I'm not knowledgeable on that.

9 Q. You have no knowledge one way or another?

10 MR. HERRON: I think he just responded to the
11 question.

12 You don't have to answer that one.

13 THE WITNESS: I have no knowledge.

14 MR. AFFELDT: I'm going to hand you what we'll
15 mark as SAD 211, and I'll note for the record this is a
16 portion of Defendants' State of California first
17 supplemental set of responses and objections to
18 plaintiffs' first set of specific interrogatories
19 stretching from page 1 to 62 and including page 124.

20 MR. HERRON: Actually, that's not quite right.

21 MR. AFFELDT: Would you like to amend that?

22 MR. HERRON: I think at least what you've
23 handed me goes pages 1 through 4.

24 MR. AFFELDT: You're right.

25 MR. HERRON: And then skips to 38, as best I

1 MR. AFFELDT: I don't think he needs to, but
2 why don't you read that as well. That's only a couple
3 lines on page 38.

4 MR. HERRON: Just so you know what this is,
5 this specific interrogatory, No. 16, is what plaintiffs
6 asked us to do, and what you have here is the State's
7 objections and response. So this is the State's written
8 response prepared by the State's counsel.

9 Q. BY MR. AFFELDT: Are you done reading that
10 section, Dr. Swofford?

11 A. Yes, I am.

12 Q. I'd like to direct your attention specifically
13 to the lines on page 41 between line 10 and 15
14 describing generally what the criteria are before an
15 employer can receive a waiver for an individual.

16 Do you see where we're at?

17 A. Yes, I do.

18 Q. Are those requirements as laid out on page 41,
19 lines 10 to 15 generally your understanding of what the
20 requirements are for an employer to receive a waiver?

21 MR. HERRON: Well, you know, the document --
22 the objection is the document speaks for itself, and
23 that's not what it purports to say. It says, are part
24 of the requirements, so you're -- so that's my
25 objection.

1 MR. AFFELDT: That's fine.
 2 Q. Are these generally part of the requirements
 3 for a school district to receive a waiver?
 4 A. Yes.
 5 Q. Where it says first requirement is a
 6 verification of attempts to recruit, does the CTC do
 7 anything to verify that verification?
 8 MR. HERRON: Objection. Vague and ambiguous.
 9 THE WITNESS: If you ask me whether or not the
 10 district verifies, the district verifies they have done
 11 that.
 12 Q. BY MR. AFFELDT: They verify that they've done
 13 all of those following criteria, correct?
 14 A. They verify this as part of their submission
 15 for approval.
 16 Q. Right. And does the Commission take that
 17 verification on face value, or do you do anything to
 18 investigate the voracity of what the district is
 19 purporting to tell you?
 20 MR. HERRON: Objection. Asked and answered.
 21 THE WITNESS: If you're asking me if we go out
 22 and spot-check school districts and engage in an
 23 investigatory role, no, unless there has been complaints
 24 filed or information is received that there may be an
 25 abuse of making these requests, then the agency will

1 then review the matter with the county and the school
 2 district and may require specific evidence to support
 3 their request.
 4 Q. BY MR. AFFELDT: Putting aside instances where
 5 you suspect there might be an abuse, on the typical case
 6 the Commission grants a waiver request as long as the
 7 requirements and the application have been verified too;
 8 is that right?
 9 A. It's my understanding that the waiver request
 10 also requires that it goes before the Board of Education
 11 of the local school district and be published, so it's
 12 public notice of such a utilization of the waiver
 13 process and that is -- our reliance is on that
 14 requirement.
 15 Q. And as long as the district says we've had a
 16 public notice of this requirement and says we've done
 17 these other components, the Commission will grant the
 18 waiver; is that right?
 19 MR. HERRON: You mean verify it?
 20 MR. AFFELDT: It says verify.
 21 THE WITNESS: That's correct.
 22 Q. BY MR. AFFELDT: In the cases where you do
 23 suspect there's an abuse, how do you find out about
 24 those suspected abuses?
 25 MR. HERRON: Objection. Calls for speculation.

1 Calls for a narrative. You may respond.
 2 THE WITNESS: It could be complaints from
 3 individuals within a community, could be just our review
 4 of the record and how many requests have come in from
 5 the district to see whether or not there has been a
 6 good-faith effort to recruit.
 7 It's based upon previous history of the school
 8 district or the county, if there has been a pattern of
 9 problems in terms of complaints about not hiring fully
 10 qualified individuals if they're available within the
 11 community, such as a newspaper release where an
 12 individual complains that they weren't hired but
 13 emergency permit people were, we'll review those. And
 14 if, in fact, that is the case, then we'll take that
 15 information to the Commission.
 16 Our first process is usually go out in the
 17 district, again, as I indicated in the previous
 18 testimony, to provide technical assistance to correct
 19 anything we think that has resulted in the problem that
 20 has come before us. So we not only go out and look at
 21 it, we also provide recommendations for eliminating any
 22 concern that may exist.
 23 Q. BY MR. AFFELDT: Do you have a sense of how
 24 many waiver requests the Commission receives in a
 25 typical year?

1 MR. HERRON: Objection. Calls for speculation.
 2 THE WITNESS: We have data that will tell you
 3 how many have been granted. I don't know about how many
 4 were submitted.
 5 Q. BY MR. AFFELDT: And as you sit here, do you
 6 have a general idea of how many were granted last year?
 7 A. About 5,000.
 8 Q. And how many cases of abuse did you
 9 investigate?
 10 MR. HERRON: Objection. Calls for speculation.
 11 THE WITNESS: I don't have any specific number.
 12 Staff routinely on their own will contact districts if
 13 they find something that's out of the ordinary or issues
 14 have come to their attention, but as a matter of
 15 day-to-day operation, that's not brought to my attention
 16 unless it's an egregious action on the part of a
 17 district or county.
 18 Q. BY MR. AFFELDT: Is there any systematic report
 19 that the Commission does on investigations into
 20 suspected abuses?
 21 MR. HERRON: You mean that's provided to
 22 Dr. Swofford?
 23 MR. AFFELDT: May not receive it. That he
 24 knows about.
 25 MR. HERRON: So the question is any reports

1 done.

2 THE WITNESS: I don't receive reports, nor do I
3 create reports unless it has to do with misassignments,
4 and then that information is reported to the Commission,
5 and that's by law.

6 Q. BY MR. AFFELDT: Are you aware of whether the
7 staff generates reports on abuses, suspected abuses
8 investigations regarding waiver applications?

9 A. I'm not aware of any reports.

10 Q. Are you aware of any system the Commission has
11 in place to monitor suspected abuses by -- on waiver
12 applications?

13 MR. HERRON: Objection. Asked and answered.

14 THE WITNESS: In previous testimony I indicated
15 if we have received information that there is an abuse,
16 then we follow up and review it and make a determination
17 whether or not there has been one and work with the
18 school districts or county in taking corrective action.

19 Q. BY MR. AFFELDT: The complaints that you
20 receive from individuals, is there a system for
21 receiving those complaints, or is it ad hoc, whoever
22 decides to send Dr. Swofford a letter or someone else on
23 the Commission?

24 A. If I understood what you mean by the word
25 "system," you mean -- what do you mean by system? Maybe

1 MR. HERRON: Objection. Calls for speculation.
2 Calls for a legal conclusion.

3 THE WITNESS: For us to take any steps towards
4 a review of a complaint, it is -- must be submitted to
5 us as an affidavit signed by the complainant. They are
6 informed of that when they contact the agency.

7 Q. BY MR. AFFELDT: Does that include waiver abuse
8 complaints?

9 MR. HERRON: Objection. Asked and answered in
10 part.

11 THE WITNESS: I'm not aware of specific
12 complaints coming in on waivers, other than staff has
13 looked at the request and has initiated a discussion
14 with the county or school district regarding the
15 request, but I have no knowledge of formal complaints
16 being filed because of waivers.

17 Q. BY MR. AFFELDT: So if someone sent you a
18 letter and said, Dr. Swofford, I'm a credentialed
19 teacher and Oakland Unified hired a waiver person that
20 has my qualifications for a position for which I'm
21 qualified rather, would you consider that a formal
22 complaint, or would they need to send it in affidavit
23 form?

24 MR. HERRON: Objection. Incomplete, improper
25 hypothetical. Calls for speculation. Vague and

1 it will help me with my response.

2 Q. Are there processes and procedures in place for
3 people to file complaints with the Commission regarding
4 suspected waiver abuses?

5 A. Any time the organization receives a complaint,
6 it is given to the appropriate division, if it's
7 misconduct or certification, whatever it may be, and
8 they're asked to review that under my direction if it's
9 a formal complaint.

10 If it's information that staff may receive as
11 part of working through the process of having the
12 documents submitted to the Commission, as long as --
13 that is handled at staff level based upon conversation
14 and discussions with the school district by staff
15 members.

16 So the system is in evaluating, one, either a
17 complaint or the application for a waiver, then in that
18 process staff evaluates the merits of the request
19 because they would have to present that information to
20 the Commission for approval or rejection of the request.

21 Q. Do you have a complaint form?

22 A. No, we don't.

23 Q. Do you have any mechanism by which the public
24 is informed that they can make complaints to the
25 Commission?

1 ambiguous.

2 You may respond if you understand.

3 THE WITNESS: If you're asking me whether or
4 not I would follow up on a complaint, yes, we would
5 contact the school district or county and inform them we
6 received this information and do they have a response.

7 Q. BY MR. AFFELDT: And you wouldn't require that
8 there be an affidavit, you just take the letter as a
9 complaint, am I understanding that?

10 A. We would take the letter in that case. A case
11 involving misconduct of individuals and so forth, it has
12 to be an affidavit. Matters of routine concerns or, as
13 you've indicated, that someone may be not hired and
14 someone less, quote, as prepared as they is hired, that
15 information is shared with the school district and we
16 ask them about the issue, and school districts make the
17 final determination on their employment.

18 Q. Is a credential holder or the public, more
19 generally, informed that they're allowed to file a
20 complaint with the Commission if they think a school
21 district is abusing the waiver process?

22 MR. HERRON: Objection. Vague and ambiguous.

23 THE WITNESS: If you're asking whether or not
24 we have a communications device that goes out to the
25 public informing them of the complaint procedure, no, we

1 don't.
 2 Q. BY MR. AFFELDT: You mentioned that staff could
 3 determine from a review of the record that a district
 4 might not have made a good-faith effort to recruit
 5 credentialed teachers. How would they be able to do
 6 that?
 7 MR. HERRON: Objection. Incomplete and
 8 improper hypothetical. Calls for speculation.
 9 THE WITNESS: It would be difficult for me to
 10 answer the question without having a specific instance,
 11 other than the fact that these individuals work with the
 12 school districts and they know basically what previous
 13 requests have been for and they evaluate that in a
 14 contextual sense in terms of their previous history in
 15 working with the school district.
 16 MR. HERRON: We've been going over an hour.
 17 Could we take a break at this point?
 18 MR. AFFELDT: Sure.
 19 (Recess taken 2:28 - 2:43.)
 20 Q. BY MR. AFFELDT: When you look at a declaration
 21 that a district has made attempts to recruit teachers in
 22 the particular area that they're asking -- seeking a
 23 waiver for, and they list, for example, three local
 24 teacher education programs that they recruited at, is
 25 your staff able to tell from that whether or not the

1 district has made a good-faith effort, or are you just
 2 relying on the district's assurance that they have made
 3 a good-faith effort?
 4 MR. HERRON: Objection. Asked and answered.
 5 Compound. Incomplete and improper hypothetical. Calls
 6 for speculation. Vague and ambiguous.
 7 THE WITNESS: Can I have the first part of the
 8 question, please.
 9 (Record read.)
 10 THE WITNESS: The district is attesting to the
 11 fact that they have attempted to find a fully-qualified
 12 teacher, and that attestation serves as our verification.
 13 We rely on that declaration.
 14 Attendant to that we also know many of the
 15 individuals in the school districts and our staff works
 16 with them on a continuous basis, so we have a history of
 17 knowing about those districts in many cases and
 18 understand the difficulty in recruitment could be
 19 geographical if they're a rural district, could be an
 20 urban district, but there are characteristics of these
 21 districts that become familiar to our staff, and then
 22 they assess those requests based on their experience and
 23 knowledge of those districts and the working
 24 relationship we've established with the districts and
 25 encourage them to access other programs, like preinterns

1 and interns. So we have an ongoing history with
 2 districts that give us guidance in terms of the validity
 3 of the request.
 4 Q. BY MR. AFFELDT: How many -- strike that.
 5 You mentioned the County has a role in
 6 investigating abuses on waiver applications. What is
 7 that role?
 8 A. I've indicated that the county office of
 9 education is responsible for working with school
 10 districts on assignment/misassignment of staff, and
 11 they're required to report to us on an annual basis
 12 misassignments at a school district, and I believe we
 13 have a biannual responsibility to report that to the
 14 legislature.
 15 Q. I was just asking specifically about waiver
 16 applications. Is it the case that where the Commission
 17 might suspect an abuse of a waiver application from a
 18 district that you will utilize the county office of
 19 education in investigating that?
 20 A. If, in fact, there's a belief that you have
 21 misassigned someone and you are now seeking a waiver,
 22 then the county will assist us in ascertaining whether
 23 or not there has been an abuse. We rely on the county
 24 because they are -- they have the responsibility of the
 25 assignment/misassignment task.

1 Q. And how will they assist you in investigating
 2 the suspected abuse?
 3 A. It would be up to the county to utilize
 4 whatever information they had, whether it be in their
 5 databank in terms if they are using technology for
 6 assignment/misassignment, that they would have documents
 7 regarding the individuals who are appropriately
 8 credentialed or not credentialed. County has access to
 9 local documents that we don't have.
 10 Q. If I could have you turn to page 42 of Exhibit
 11 211 and review the lines 7 and 10. This states
 12 responses to what is needed for a declaration of need
 13 for fully-qualified educators.
 14 Is that generally what the -- what's required
 15 of a district to verify before the Commission will issue
 16 emergency permits?
 17 A. The document reflects that they do an estimated
 18 need end of the school year for what they believe the
 19 number is of emergency permits that they will have to
 20 request be approved by the Commission.
 21 Q. It also says that they must attest to efforts
 22 to recruit certified personnel, efforts to establish
 23 alternative training options, stipulation of
 24 insufficiency of suitable applicants, and adoption of
 25 the declaration, which we know occurs at a public

1 hearing of the school board.
 2 Is that -- is that your understanding of the --
 3 what's required for a declaration of need?
 4 A. Yes.
 5 Q. And are the -- as with the application for a
 6 waiver for an individual, is the Commission also relying
 7 on the declaration to be accurate and not individually
 8 investigating the facts behind the declaration?
 9 MR. HERRON: Objection. Misconstrues his prior
 10 testimony on this point.
 11 THE WITNESS: If you're asking me if they have
 12 to produce information about their efforts to approve a
 13 fully-prepared individual, they must provide that and
 14 they must attest to the fact that you could not find a
 15 more qualified individual, and therefore are
 16 recommending the Commission grant this waiver for this
 17 individual based upon whatever criteria they believe
 18 would be persuasive to the Commission.
 19 Q. BY MR. AFFELDT: And does the Commission rely
 20 on their attestation in deciding whether or not to grant
 21 permission to obtain emergency permits?
 22 A. They rely on the data that are submitted by the
 23 district in their statement of need, so they have
 24 already noticed us as to their intent to employ
 25 individuals with emergency permits, and we evaluate each

1 of those requests based upon the evidence that they
 2 attest to in their documents.
 3 Q. Let me mark and hand you SAD-212.
 4 (Exhibit SAD-212 was marked.)
 5 Q. BY MR. AFFELDT: This document, which was
 6 produced by your counsel, purports to be a declaration
 7 of need for fully-qualified educators from Los Angeles
 8 Unified School District for the year 1998 to '99,
 9 looking at the upper right-hand corner of the first
 10 page.
 11 If you could take a moment to review this and
 12 let me know when you're done.
 13 A. I'm sorry, just review the first page or --
 14 Q. I'd just like you to flip through the document
 15 so you can tell me whether or not this is what a
 16 declaration of need looks like.
 17 MR. HERRON: Take as much time as you want. I
 18 think his question is, is this a typical set of
 19 documents making up a declaration of need. So take as
 20 much time as you want to review each and every page.
 21 May I suggest too, and this is up to you, John,
 22 this is a document that concerns Los Angeles Unified.
 23 For reasons unknown, Judd didn't see fit to appear
 24 today. I don't know if you want to preserve for him any
 25 objections he might have, but it's just a thought, since

1 he's not here to assert them.
 2 MR. AFFELDT: I'm comfortable with that.
 3 MS. READ-SPANGLER: Also, John, I'm having just
 4 a little bit of difficulty hearing you.
 5 MR. AFFELDT: I'm sorry.
 6 MS. READ-SPANGLER: And I don't know if it's me
 7 or the background noise or what.
 8 MR. AFFELDT: I'll try to speak up.
 9 MS. READ-SPANGLER: Thanks.
 10 MR. HERRON: I seem to have repeats.
 11 MR. AFFELDT: David, did you have a repeat of
 12 the Bates number?
 13 MR. HERRON: Yeah, there was a repeat of the
 14 Bates number. It was just before 2682, and it repeated
 15 2658. I don't know, maybe I just had a weird copy.
 16 Q. BY MR. AFFELDT: You're done reviewing the
 17 document?
 18 A. Yes, I am.
 19 Q. Can you tell me if this looks like a typical
 20 declaration of need?
 21 MR. HERRON: Objection. Calls for speculation.
 22 THE WITNESS: I can respond by saying the forms
 23 are familiar to me in terms of the declaration of need.
 24 It's our forms.
 25 Q. BY MR. AFFELDT: And are these the types of

1 documents that a district would need to submit in order
 2 to satisfy Commission requirements for being able to
 3 issue emergency permits?
 4 MR. HERRON: Objection. Asked and answered in
 5 part. Vague and ambiguous.
 6 THE WITNESS: The forms are typical. The
 7 attachments, I don't know that they are typical other
 8 than the attachment of the board resolution -- the board
 9 minutes, which is fairly standard as part of the
 10 requirements.
 11 Q. BY MR. AFFELDT: And according to the document,
 12 the efforts to recruit certificated personnel begin to
 13 be set out on State 2662. Do you see that?
 14 A. Yes, I do.
 15 Q. And then there's a reference under additional
 16 recruitment methods to an attachment B, which begins on
 17 the next page, 2663, and lists various schools, et
 18 cetera, running through 2667.
 19 Is that the -- if you know, is that the typical
 20 kind of recruitment effort information that's provided
 21 with the declaration of need?
 22 MR. HERRON: Objection. Calls for speculation.
 23 Incomplete and improper hypothetical.
 24 THE WITNESS: My response would be that this is
 25 LA, Los Angeles Unified's way of responding to our

1 request for information. It could vary from district to
2 district.

3 Q. BY MR. AFFELDT: In a typical case -- strike
4 that.

5 If I could have you look at page 2659 where the
6 estimated number needed are laid out. Does the -- you
7 might have explained this to me already, so maybe you
8 could just help me out here.

9 Does the Commission limit the number of
10 emergency permits that they're going to grant to this
11 number, or can a district submit individual applications
12 for emergency permits that might exceed the total number
13 laid out in the declaration of need?

14 MR. HERRON: Objection. The document speaks
15 for itself on that point.

16 THE WITNESS: The document indicates that if
17 there's -- you exceed 10 percent of the original
18 estimate, that would cause the district to have the
19 governing board adopt a revised request to submit to the
20 Commission a new estimate.

21 Q. BY MR. AFFELDT: Okay. Going back to the
22 previous exhibit, which your counsel may have put aside
23 for you, SAD 211 -- before we go there, do you ever
24 receive complaints of abuses regarding declarations of
25 need for emergency permits?

1 Q. My question wasn't about the projected need.

2 A. Oh, I'm sorry.

3 Q. It was about their good-faith recruitment
4 efforts that they had made in order to qualify for the
5 emergency permit.

6 MR. HERRON: Is that a question?

7 Q. BY MR. AFFELDT: I can make it a question. Are
8 you aware of any instances in which a district had been
9 determined to have claimed they made a good-faith effort
10 to recruit credentialed teachers when it was determined
11 that they had not, in fact?

12 A. During my tenure I have not been informed that
13 a district has deliberately represented their action or
14 inaction that reflected that they did not say what they
15 did on the form. I have no knowledge that that's ever
16 taken place in the last five years.

17 Q. Would that be the same answer with respect to a
18 district who unintentionally misrepresented what was on
19 their form in terms of a good-faith recruitment effort?

20 MR. HERRON: Objection. Vague and ambiguous.

21 THE WITNESS: If you were to ask me at -- on
22 the form, no, not aware of any instance.

23 Q. BY MR. AFFELDT: Are you aware of any instance
24 where a district had asserted they made a good-faith
25 effort to recruit qualified teachers but it had been

1 MR. HERRON: Objection. Calls for speculation.
2 You may respond.

3 THE WITNESS: If I was to respond during my
4 time at the Commission, I'm not aware of any complaints.

5 Q. BY MR. AFFELDT: Are you aware of any
6 investigations by your staff into whether a district had
7 abused the declaration of need process to get emergency
8 permits?

9 A. I have no recollection of being informed by
10 staff that there was a -- an abuse because the document
11 is a planning document, it is intended to project need,
12 and it gives us an idea as a Commission as to even the
13 workload that the Commission would have to encounter in
14 reviewing the emergency permit request. And it's
15 intended to provide assurance to the Commission that --
16 that there has been a good-faith effort to pursue
17 fully-qualified candidates and that the board makes that
18 public, so there's multiple purposes. I'm not aware of
19 a complaint about any of those particular areas.

20 Q. For example, has -- are you aware of any
21 instances in which it was determined that a district had
22 misrepresented the recruitment efforts that they made as
23 part of their application for a declaration of need?

24 A. I have not been made aware of any deliberate
25 effort to misrepresent their projected need.

1 determined not to, aside from the form?

2 MR. HERRON: Objection. Asked and answered.
3 Vague and ambiguous.

4 THE WITNESS: If you're asking me that in the
5 process of submitting the request are there discussions
6 about the adequacy of the recruitment, then the answer
7 would be, yes, we have probably asked districts about
8 the information they have submitted to us, but not based
9 upon that we have definitive information they have
10 misled us.

11 What the Commission staff does when we submit
12 these to the Commission for their approval, we look at
13 the adequacy of the recruitment activity, and that is
14 sometimes a subjective review process, and those
15 questions may be asked by staff of the district or the
16 questions may be asked by the Commission of the district
17 prior to granting or denying their request.

18 Q. BY MR. AFFELDT: What kind of questions would
19 those be?

20 MR. HERRON: Objection. Calls for speculation.

21 THE WITNESS: If you are asking me what the
22 questions would be on recruitment, it could be a wide
23 array of questions. Again, it depends on the locality
24 of the district, is it near a university or college,
25 does it have the funds, poor district to -- a small

1 district rather, a small district trying to access major
2 media?
3 A lot of districts are poorly situated in terms
4 of a labor pool where there's not a lot of qualified
5 individuals. I mean, there's all sorts of
6 situational -- kinds of situations that come up when we
7 look at the applicant. It could be that it's a
8 half-time position. Why is it half-time versus a
9 full-time position? So there's a lot of questions that
10 can be posed just to get more feedback on the merits of
11 the request.

12 I think the word shouldn't be feedback,
13 justification is what the Commission is looking for in
14 evaluating each one of the requests as to whether or not
15 they fully understand the difficulty and the efforts.

16 Q. BY MR. AFFELDT: Does the county office play
17 any role in investigating whether or not districts are
18 making a good-faith effort to recruit fully-qualified
19 teachers before they seek to obtain emergency permits?

20 (Ms. Huang left the room.)

21 MR. HERRON: Objection. Asked and answered.

22 THE WITNESS: The Commission is responsible
23 for -- for making a determination as to whether or not
24 there is an issue involving the request. We may ask for
25 county assistance depending on the situation.

1 THE WITNESS: If you're asking me whether or
2 not matters have come to our attention regarding
3 problems of credentialing in school districts, there are
4 specific instances where we have gone to the county and
5 asked for their assistance in reviewing the matter with
6 us.

7 (Ms. Huang entered the room.)

8 Q. BY MR. AFFELDT: My question dealt with the
9 narrow circumstance of whether -- an instance where you
10 suspected the county was not making a good-faith effort
11 to recruit fully-certified teachers in the process of
12 obtaining permission to issue emergency permits.

13 In that circumstance, do you recall any
14 instances where the Commission has called on the county
15 to help investigate your suspicions?

16 MR. HERRON: Objection. Asked and answered.

17 THE WITNESS: I don't recall that we have, in
18 my tenure, dealt with the issue of good-faith
19 recruitment.

20 Q. BY MR. AFFELDT: The issue just hasn't come up?

21 MR. HERRON: Objection. Calls for speculation.
22 Asked and answered.

23 THE WITNESS: The response is that I am not
24 aware of complaints or issues brought forth to the
25 Commission for me to review, or staff, regarding that

1 Q. BY MR. AFFELDT: What type of situation would
2 that be where you would ask for assistance?

3 A. Again, it's all hypothetical because I don't
4 have anything in mind other than the county has access
5 to documents that the school district has filed with
6 them. For example, if they're doing
7 assignment/misassignment, whether or not individuals are
8 being employed who have certification or credentialing,
9 authorizations, they're closer to the school district in
10 making those types of reviews.

11 Many times if we are engaged in those
12 discussions, we would have the county and the school
13 district together and talk to them, try to come up with
14 what is truly happening in a school district regarding a
15 particular problem. So we could send out staff to have
16 on-site review with the county and the school district
17 present and ask for county support if necessary,
18 depending on what the issue may be.

19 Q. Can you remember any instances in which you've
20 asked for county support to make a determination as to
21 whether a district was making a good-faith effort to
22 recruit fully-certified individuals?

23 MR. HERRON: Objection. Vague and ambiguous.
24 Calls for speculation.

25 You may respond.

1 topic.

2 Q. BY MR. AFFELDT: I'm going to hand you SAD-213.
3 This was produced by your counsel. And I'd ask you to
4 identify that, if you can. It's actually two -- there
5 should be two documents attached to each other.

6 (Exhibit SAD-213 was marked.)

7 Q. BY MR. AFFELDT: Are you done reviewing it?

8 A. Yes, I am.

9 MR. HERRON: You asked him to review it to see
10 whether he recognized it?

11 MR. AFFELDT: Right.

12 Q. Do you recognize any portion of this exhibit?

13 A. I recognize my signature, but I don't recall
14 the specific letter from Ms. Davis. I see my response,
15 but I don't have any recollection of exactly what was in
16 the contents of the letter.

17 Q. Do you recall writing your response at all?

18 A. My responses are prepared for me by staff. So
19 if my signature is affixed, then I would have read the
20 response prepared for me and I would have released it.

21 Q. In signing it you would have agreed with the
22 response that was prepared for you?

23 A. That's correct.

24 Q. But you don't recollect making this particular
25 response?

1 A. In all honesty, I get lots of letters on a
 2 variety of issues, those who fail the CBEST test, to
 3 those who didn't get their credential in 30 days. So
 4 there are a lot of letters that go out under my
 5 signature that I don't recall the specifics about, and
 6 on this one I don't.
 7 Q. I get some of those complaints about the CBEST
 8 test. I send them to you.
 9 A. That's why I don't remember all of them.
 10 Q. Turning back to Exhibit 211 on page 41, lines
 11 21 through -- actually, 20 through 28.
 12 A. I'm sorry?
 13 Q. Lines 20 to 28, page 41. Your counsel has set
 14 out requirements that persons teaching on emergency
 15 permits must meet.
 16 If you could review those and let me know if
 17 they comport with your understanding of what those
 18 requirements are?
 19 MR. HERRON: So is the question whether persons
 20 teaching on emergency permits must have satisfied the
 21 items set forth on these lines 20 through 28?
 22 MR. AFFELDT: My question is whether he thinks
 23 that's an accurate setting forth.
 24 THE WITNESS: It's accurate in part.
 25 Q. BY MR. AFFELDT: What else -- or what's

1 inaccurate about it?
 2 A. Well, the requirements, the CBEST requirement,
 3 it says -- I'm just reading. The specific person
 4 teaching on emergency permit --
 5 MR. HERRON: Before you go there, that's the
 6 problem with these long exhibits. If you look at the
 7 next page, Dr. Swofford, I think you'll see what you're
 8 worried about.
 9 THE WITNESS: Right. That's correct.
 10 Q. BY MR. AFFELDT: So with the addition of what's
 11 been set forth on top of page 42, lines 1 to 7, does
 12 that accurately summarize what one needs to fulfill to
 13 obtain an emergency permit?
 14 A. With the inclusion of 41 and 42, yes.
 15 Q. Does the -- what does the Commission do, if
 16 anything, to determine whether item small Roman numeral
 17 i, page 41, lines 21 to 24, are being met?
 18 MR. HERRON: Objection. Vague as to time. Are
 19 you saying upon initial application or upon
 20 reapplication? I think that's important to know. But
 21 that's my objection.
 22 MR. AFFELDT: Let's start with initial
 23 application.
 24 THE WITNESS: Initial application, then the
 25 district attests that they will do what is prescribed

1 right here in the document.
 2 Q. BY MR. AFFELDT: Okay. And is that true with
 3 respect to small Roman numeral ii, that the district
 4 will attest that they will set up the ongoing training
 5 coursework, et cetera?
 6 A. This is for the -- if you read 27, the
 7 employing agency shall verify that persons applying to
 8 renew their emergency permit are meeting these ongoing
 9 training requirements. So it's on the subsequent
 10 request for renewal that they attest that they have a
 11 professional development-type plan.
 12 Q. So what, if anything, does the Commission do to
 13 verify that the district is orienting
 14 emergency-permitted teachers to the curriculum?
 15 MR. HERRON: Objection. Asked and answered.
 16 MR. AFFELDT: Now we're upon reapplication.
 17 THE WITNESS: The district -- it indicates that
 18 that will take place for that -- on that request, that
 19 that individual will receive orientation.
 20 Q. BY MR. AFFELDT: But you don't do anything to
 21 make sure that that orientation, in fact, happened or is
 22 happening?
 23 MR. HERRON: Objection. Misconstrues prior
 24 testimony. Asked and answered.
 25 THE WITNESS: We approve these based upon the

1 district's statement that they will provide this
 2 training.
 3 Q. BY MR. AFFELDT: Okay. And is that -- is that
 4 the same with respect to whether or not the individual
 5 is being provided with the assistance and guidance of a
 6 certificated employee of a district who has completed at
 7 least three years of full-time teaching experience?
 8 MR. HERRON: Objection. Vague and ambiguous.
 9 THE WITNESS: Again, I believe the Commission
 10 is satisfied with the statement that the district will
 11 provide mentoring support for the individual, meeting
 12 the requirements spelled out here on page 41.
 13 Q. BY MR. AFFELDT: Is your answer the same with
 14 respect to small Roman numeral ii, participating in
 15 ongoing training, et cetera, the Commission will be
 16 satisfied if the district attests to that, that they
 17 will provide it?
 18 A. That's correct.
 19 Q. Does the Commission engage in any spot checks
 20 to see if that sort of orientation and training is
 21 happening?
 22 MR. HERRON: I object as asked and answered.
 23 You've gone into this several times now and he's already
 24 testified about it.
 25 You may respond yet again.

1 THE WITNESS: We rely on the submission of the
 2 document, and that's our review, unless there is a
 3 concern expressed by an individual or individuals to the
 4 Commission, which I don't have any direct knowledge
 5 about whether or not they're provided what's prescribed
 6 in the document on 41 and 42.
 7 Q. BY MR. AFFELDT: And is the -- does the
 8 information come to you -- strike that.
 9 Are you aware of any instances where the
 10 Commission has received complaints or information that a
 11 district is not providing the type of orientation and
 12 training set forth in lines 20 to 27?
 13 MR. HERRON: Objection. Calls for speculation.
 14 He's not a field representative.
 15 THE WITNESS: I have no knowledge. I don't
 16 recall any discussions regarding that issue.
 17 Q. BY MR. AFFELDT: Is there any -- strike that.
 18 Does the Commission rely on -- as you testified
 19 before with respect to the waiver, potential waiver
 20 abuses, does the Commission rely on individual
 21 complaints or news reports to determine whether or not a
 22 district might not be complying with the orientation and
 23 training requirements that we're talking about?
 24 A. As a general policy, the Commission reacts to
 25 any information via the media or from an individual

1 complainant's contact with the agency. We would proceed
 2 and review that complaint or the information and make a
 3 decision as to how to proceed. That's our general
 4 practice across the agency.
 5 Q. But you don't have an affirmative program to go
 6 out and investigate whether or not the orientation and
 7 training is happening, you wait for -- you wait for
 8 people to bring complaints to you?
 9 A. We don't have a -- a program of going out and
 10 investigating these types of issues with school
 11 districts. It's based upon working with the school
 12 districts over time.
 13 For example, I personally went to LA Unified
 14 School District and met with Ms. Irene Yamahara on a
 15 whole issue of emergency permits a number of years ago,
 16 talking about what they did and how they were working on
 17 recruitment and filling positions. So we have these
 18 ongoing discussions with the school districts and
 19 counties about their efforts. So it's just not
 20 assessment on a document, it's an assessment of the
 21 relationship that we have in working with these
 22 respective agencies, along with the type of request they
 23 submit to us for emergency permits and waivers, then we
 24 get a picture of what's taking place in that school
 25 district and county. If we believe there's something

1 amiss in that big picture of information that we have,
 2 then it does not preclude us from asking further
 3 questions and making some decisions whether or not
 4 they're acting in good faith or otherwise.
 5 For example, universities or colleges may
 6 say -- because we accredit the universities and colleges
 7 that are either within those geographic locations or
 8 contiguous to those areas that we hear about their
 9 graduates and their working relationships with school
 10 districts and counties because they put on the staff
 11 development programs in many cases. So we would be
 12 interviewing even graduates of the programs or students
 13 in the programs in those school districts, and we get
 14 feedback in that process as to whether or not they're
 15 getting, one, the type of preparation that's going to
 16 meet their needs as a classroom teacher in those
 17 particular settings.
 18 So it's a collateral type of process of us
 19 getting data from a variety of sources. So we just
 20 don't rely on a complaint to come in, we rely on our
 21 knowledge of working with that district and the
 22 education community that that district is a part of.
 23 Q. How many instances are you aware of where the
 24 Commission rejected a request for emergency permits
 25 because the district was not engaged in orientation or

1 training as set forth in these requirements?
 2 MR. HERRON: Objection. Calls for speculation.
 3 THE WITNESS: During my tenure, I'm not aware
 4 of the Commission making the decision. I don't know if
 5 staff in some way has had discussions regarding requests
 6 that have come in and have expressed concerns or have
 7 sent it back for further information. I couldn't give
 8 you any specific detail on that.
 9 Q. BY MR. AFFELDT: Do you see in lines 23 to 24
 10 where it references the requirement that an emergency
 11 permitted teacher have a certificated employee's
 12 assistance and guidance, and that that certificated
 13 employee must have completed at least three years of
 14 full-time teaching experience or the equivalent?
 15 Would an employee who has an emergency permit
 16 but has been teaching full time for three or more years
 17 satisfy that requirement?
 18 MR. HERRON: Objection. Vague and ambiguous.
 19 Calls for a legal conclusion. Calls for speculation.
 20 Incomplete and improper hypothetical.
 21 THE WITNESS: I would have to review the
 22 statute and the requirements to see whether or not it
 23 would require legal interpretation in terms of what is
 24 considered to be a certificate employee of the district
 25 with three years' of experience or equivalent. I don't

1 know how to answer that question without reviewing the
2 specific language.

3 Q. BY MR. AFFELDT: Aside from that specific
4 language, what is your general understanding of whether
5 a certificated employee is -- includes someone who is an
6 emergency permit?

7 MR. HERRON: That's the same question. Asked
8 and answered.

9 You don't have to respond to that. I'm not
10 going to have him responding to these questions three to
11 five times.

12 MR. AFFELDT: I'm not asking for his specific
13 interpretation of the statute, I'm asking for the
14 Commission's practice.

15 MR. HERRON: I don't think so.

16 MR. AFFELDT: And how they use these terms.

17 MR. HERRON: I don't think so, but we can
18 listen to the question. I think it's the same question
19 in different clothes.

20 MR. AFFELDT: Let me ask the question this way.
21 Maybe it will be --

22 Q. In the Commission's general practice, when they
23 refer to certificated employees, are they including
24 emergency -- people on emergency permits?

25 MR. HERRON: Objection. Vague and ambiguous.

1 Unless it's in the assignment/misassignment
2 area, we don't look at it, other than what we've
3 already -- what I've already given in testimony on
4 affidavits and documents they submit to us for emergency
5 permits or waivers.

6 Q. BY MR. AFFELDT: And substitutes, I assume?

7 A. I'm sorry?

8 Q. Declaration of need for substitutes too?

9 A. Substitute teachers.

10 Q. That would be another area in addition to
11 waivers and emergency permits?

12 A. Substitutes is a little bit more distant from
13 us. Since most substitutes are day to day, there's very
14 little activity for the Commission looking at employment
15 issues or licensing issues with that because of the
16 nature of the employment activities people are engaged
17 in. It's not full-time work.

18 Q. For districts who want to hire substitutes in
19 certain circumstances, isn't there -- doesn't the CTC
20 require a statement of need for 30-day substitute
21 teachers?

22 A. That's correct.

23 Q. What are those circumstances?

24 MR. HERRON: Objection. Calls for a legal
25 conclusion. Calls for a narrative and calls for

1 Calls for speculation.

2 You may respond.

3 THE WITNESS: I'm not aware of any definition
4 that the Commission has made relative to what a
5 certificated employee is. For purposes of this, I would
6 have to review the actual language, which I don't have
7 before me.

8 MR. AFFELDT: Why don't we take a break.
9 (Recess taken 3:51 to 4:07.)

10 Q. BY MR. AFFELDT: What, if any, investigation
11 does the CTC do of district hiring practices?

12 MR. HERRON: Objection. Vague and ambiguous.
13 Also object that it goes beyond -- you're asking him a
14 question that goes beyond his role at the CTC and beyond
15 the CTC's role.

16 THE WITNESS: Our role is
17 assignment/misassignment, so if it's within the scope of
18 assignment/misassignment, then we would look at
19 employment practice in that respect.

20 Q. BY MR. AFFELDT: Anything else?

21 MR. HERRON: Sorry, anything else what?

22 THE WITNESS: We have maintained a clear
23 distinction between jurisdiction, the employer's
24 responsibility as employer and the Commission's
25 responsibility in license.

1 speculation.

2 THE WITNESS: Am I supposed to be referencing a
3 particular document?

4 MR. AFFELDT: You can, it may help you. Page
5 56 is what I'm looking at, lines 11 through 20 of
6 Exhibit 211.

7 THE WITNESS: It's situational based upon
8 substitute services, because there's a myriad of reasons
9 why districts use substitutes, illness, staff
10 development days, mandatory leave of absences, Workers'
11 Comp issues. I mean, there are numerous reasons they
12 will articulate in a request. Most of this is
13 unforeseen absences.

14 Q. BY MR. AFFELDT: Going back to my earlier
15 question, I just want to understand that it's not --
16 other than the areas you described with respect to
17 declarations of need for emergency permits, waiver
18 applications, substitutes and assignment/misassignment,
19 the CTC does not have jurisdiction to investigate
20 district hiring practices?

21 A. You're going to have to be more specific with
22 the hiring. What do you mean by hiring practices, I
23 guess would be the question before I can respond.

24 Q. Does the CTC investigate what the -- how
25 efficient the district's processing of applications for

1 employment are, for example?
 2 MR. HERRON: Objection. Incomplete and
 3 improper hypothetical. Calls for speculation.
 4 Misconstrues his prior testimony.
 5 THE WITNESS: You're asking me whether or not
 6 we review application processing activity in a school
 7 district?
 8 MR. AFFELDT: Yeah.
 9 THE WITNESS: We don't do that.
 10 Q. BY MR. AFFELDT: Because it's not your
 11 jurisdiction?
 12 A. An individual who is seeking employment, so
 13 that's a perspective candidate, with the employer. So
 14 there's no place for us in that, so it's not a
 15 jurisdictional issue for us, that part of the process.
 16 Q. When you say it's not a jurisdictional issue,
 17 are you agreeing with me that you don't have
 18 jurisdiction or --
 19 A. I'm agreeing we don't have jurisdiction on the
 20 process of an individual submitting an application for
 21 employment and how the district handles that
 22 application. It's not within our jurisdiction.
 23 Q. So, for example, if there's a district with a
 24 large number of emergency-credentialed teachers, for
 25 example, over 20 percent, you would not consider it

1 within your jurisdiction to investigate whether or not
 2 that district has an effective application and hiring
 3 process as part of the effort to reduce their emergency
 4 credential hires?
 5 MR. HERRON: Objection. Incomplete and
 6 improper hypothetical. Calls for speculation. Asked
 7 and answered. Misconstrues prior testimony.
 8 You may respond.
 9 THE WITNESS: If you're asking me when we reach
 10 down and look at the district on their request for
 11 emergency permits, how far do we go into reviewing the
 12 process of employment practices, that is an area that we
 13 do not have jurisdiction over.
 14 We have jurisdiction if they call us and --
 15 once the person is employed, then that becomes an issue
 16 for us on assignment/misassignment on whether or not
 17 they have the appropriate authorizations. Then we have
 18 jurisdiction.
 19 Q. BY MR. AFFELDT: But you don't have
 20 jurisdiction, for example, to order a district to
 21 streamline its hiring process?
 22 A. No.
 23 Q. And you don't have jurisdiction even to provide
 24 technical assistance to a district to help them
 25 streamline their application process, do you?

1 A. No, we don't.
 2 Q. Are you aware of any state agency that does
 3 have the authority to order a district to streamline its
 4 application process?
 5 MR. HERRON: I'm little late on the objection,
 6 but vague and ambiguous in the use of the word
 7 "streamline."
 8 Can you tell us what you mean by that?
 9 MR. AFFELDT: Make more efficient.
 10 MR. HERRON: Same objection.
 11 THE WITNESS: I don't know who would be
 12 responsible, other than the local school district
 13 through the application process. I don't know if anyone
 14 else has jurisdiction over that.
 15 Q. BY MR. AFFELDT: Are you familiar at all with
 16 the agency known as FCMAT?
 17 MR. HERRON: It's not an agency, so I object as
 18 vague and ambiguous. You may respond.
 19 THE WITNESS: Can I have a little bit more
 20 information on what it does?
 21 MS. READ-SPANGLER: Why don't you tell him what
 22 FCMAT stands for.
 23 MR. AFFELDT: FCMAT stands for fiscal crisis
 24 management assistance team.
 25 Q. Have you ever heard of that entity?

1 A. I've heard the full name, I've never heard the
 2 acronym. But I'm not familiar with the FCMAT process or
 3 intervention.
 4 Q. Does that mean that you're also not familiar
 5 with what it is FCMAT does?
 6 A. That's correct.
 7 Q. Are you -- and, in particular, are you
 8 unfamiliar with FCMAT audits of local district hiring
 9 practices?
 10 A. I'm not familiar with it at all.
 11 Q. So does the -- can we take it from that the
 12 Commission does not receive reports from FCMAT when they
 13 audit local district hiring practices?
 14 MR. HERRON: Objection. Assumes facts not in
 15 evidence. Calls for speculation.
 16 THE WITNESS: To my knowledge, our agency has
 17 never been sent a copy of any FCMAT report, audit
 18 report.
 19 Q. BY MR. AFFELDT: And if there were a regular,
 20 formalized process of the Commission being notified by
 21 FCMAT, you would -- you would most likely know if there
 22 were such a process, wouldn't you?
 23 MR. HERRON: Objection. Argumentative.
 24 THE WITNESS: During my tenure, I have not seen
 25 a document, nor do I have much information about the

1 process. Anything that would have come to the
 2 Commission, I would have seen in that area.
 3 Q. BY MR. AFFELDT: I mean, is it fair to say that
 4 as the ED of the Commission, you would be familiar with
 5 the Commission's relationships with other governmental
 6 entities concerning the activities of the Commission?
 7 A. Any established responsibility between another
 8 government or entity I'm aware of.
 9 Q. Does the Commission have the authority to order
 10 a district to stop hiring emergency-permitted teachers
 11 if the Commission thinks there's a qualified
 12 credentialed teacher available?
 13 A. On a case-by-case basis the Commission can deny
 14 requests for waivers and emergency permits. That's
 15 within the purview of the Commission.
 16 Q. And one of the bases for that denial could be
 17 that the Commission believes there is a qualified
 18 credentialed individual available?
 19 A. The basis of denial could be for multiple
 20 reasons, and not limited to the fact that there might be
 21 a potential credential holder out there that would meet
 22 that requirement.
 23 Denials include that they do not believe the
 24 individual has substantially met the requirements for
 25 that position and may deny it just on that basis. But

1 there is not -- there's not a decision made upon the
 2 fact that there's a credential holder that may be
 3 qualified for that position in the area, the district
 4 makes the determination as to the person being qualified
 5 for that assignment in the district. And they may deem
 6 a person holding a credential not to be qualified for
 7 that job.
 8 Q. And as part of the process of denial, would it
 9 ever be the case that the Commission would determine
 10 that there is a qualified credential holder available,
 11 or are you just saying that that is not something --
 12 that would not be a basis for the Commission to deny a
 13 permit or waiver?
 14 MR. HERRON: Objection. Incomplete and
 15 improper hypothetical. Compound. Calls for
 16 speculation. Vague and ambiguous.
 17 I would like to have the question reread, if we
 18 may.
 19 MR. AFFELDT: Let me reask it.
 20 Q. If I understand your last point correctly, and
 21 correct me if I'm wrong, the Commission would -- may
 22 deny an emergency permit or waiver because they don't
 23 think the applicant is qualified; is that correct?
 24 A. That could be the determination of the
 25 Commission, that's correct.

1 Q. Could be one of the bases upon which the
 2 Commission would act to deny?
 3 A. That's correct.
 4 Q. Would the Commission ever act to deny a permit
 5 or waiver based on the Commission thinking that there is
 6 another qualified credential holder that the district
 7 could hire?
 8 MR. HERRON: Same objection as to the question
 9 two questions before.
 10 THE WITNESS: If I was to respond to what the
 11 Commission would or would not do in a hypothetical would
 12 be a problem because I don't know what they would do,
 13 other than the fact that when a document comes to the
 14 Commission from a school district attesting to the fact
 15 that they have looked at the available labor pool and
 16 have made a determination that an individual or
 17 individuals were not qualified for that position, that
 18 could incorporate individuals who are fully credentialed
 19 and they have deemed that person to not be qualified.
 20 Therefore they've come to the Commission with an
 21 individual who they might want to seek to have an
 22 emergency permit granted by the Commission or a waiver
 23 to fill that position, they have to demonstrate before
 24 the Commission in their documents and their presentation
 25 that this is the best person for the job. And that's

1 part of the hearing process that the Commission
 2 undertakes when a district makes that request.
 3 Q. BY MR. AFFELDT: And as part of that process,
 4 does the Commission review information on who are the
 5 applicants that the district considered unqualified?
 6 A. The district will indicate in their request
 7 that they have interviewed usually "X" number of
 8 individuals. Some may possess a full credential but
 9 they had determined that those individuals did not meet
 10 the threshold requirement for employment in their school
 11 district for that particular assignment, so that
 12 information is provided to the Commission.
 13 Q. And is the Commission making a qualitative
 14 assessment as to the information provided from the
 15 district about the rejected applicants, or is it merely
 16 verifying that -- that the information is there?
 17 MR. HERRON: Objection. Asked and answered.
 18 Calls for speculation. Incomplete and improper
 19 hypothetical.
 20 THE WITNESS: The Commission does not take the
 21 role of selecting or not selecting individuals for a
 22 position. They either grant or deny requests for
 23 approval of a permit or a waiver. They use the
 24 documents that have been submitted to them to make that
 25 determination.

1 Q. BY MR. AFFELDT: You used the word hearing
2 before when describing the decision-making process of
3 the Commission to grant or deny a waiver or permit
4 application.
5 Can you describe what that hearing process is?
6 MR. HERRON: Objection. Asked and answered in
7 the last session of the deposition.
8 You may respond.
9 THE WITNESS: Staff receives documents from the
10 district with the request. Staff will make a
11 determination based on whether or not they have provided
12 the records of documents, transcripts for the
13 individual's college courses, et cetera. If they
14 believe there is insufficiency, they'll recommend to the
15 Commission denial. If they believe that they have met
16 the burden of having enough documentation to support the
17 request, they'll recommend to the Commission approval.
18 In those cases where there's approval, it can
19 go on a consent calendar and then the Commission can
20 pull those particular items off the consent calendar and
21 speak to them and express concerns or raise issues or
22 questions.
23 The ones that are going to be denied, that
24 information goes back out to the district and they can
25 come to a Commission meeting and plead their case to

1 say, Commission, we don't believe this should be denied,
2 or you denied and we wish to appeal it to you for
3 reconsideration and alter their action.
4 And that's -- so the process is at the
5 Commission meetings we have what we call appeals and
6 waivers, which is an item on the agenda. It's a public
7 hearing. And the individual whose -- the individual
8 themselves may come who is requesting the emergency
9 permit for themselves. If the district requested it,
10 they may be there to testify, and the district can send
11 personnel to testify as well, and the Commission hears
12 it and makes a decision. That's basically the process.
13 Q. BY MR. AFFELDT: How many staff does the
14 Commission have that reviews declarations of need for
15 emergency permit approval?
16 A. That's a large division, our certification
17 division. I can't tell you the numbers of people who on
18 a day-to-day basis are reviewing the declarations of
19 need. I don't have that number of individuals who would
20 know that. It would be the director of that division.
21 Q. Do you have a sense of how many declarations of
22 need the Commission reviews each year?
23 MR. HERRON: Is that with respect to -- I'm
24 sorry --
25 MR. AFFELDT: Emergency permit approval.

1 MR. HERRON: Okay.
2 THE WITNESS: I can't answer that question.
3 I'm sorry, I don't know the numbers. It has to be a
4 large number, but I can't tell you specifically.
5 Q. BY MR. AFFELDT: Do you know how many staff
6 review waiver applications?
7 A. I don't know the answer to that question
8 because they work in teams in that division, so they've
9 been divided up into teams working on all sorts of
10 credentialing issues, and one or two people may be
11 working on that or three people one day, the next day
12 they may not. So I can't give you an accurate number of
13 how many people in waivers.
14 Q. The last time you mentioned what you believed
15 was a West Ed study on the BTSA program?
16 A. Yes.
17 Q. Do you recall that?
18 A. Previous testimony, yes.
19 Q. I think you indicated you were expecting a
20 report from West Ed in January on the BTSA program?
21 A. I don't recall if that's the month I gave. I'd
22 have to double-check now to see what the projected
23 timeline now is for that report. I haven't checked
24 since our last session.
25 Q. You don't have any information to update on

1 when you're expecting that report?
2 A. No, I don't.
3 Q. Are you familiar with the peer assistance
4 review program?
5 A. I've heard about it.
6 Q. Is that a program that the Commission has
7 jurisdiction over?
8 A. No.
9 Q. Who has jurisdiction over that?
10 A. I don't know who has oversight of that program.
11 Q. Which state agency?
12 A. I don't know.
13 Q. Does the Commission maintain any data on how
14 many substitute teachers are teaching in any given day
15 in the public school system?
16 A. No.
17 Q. What about for long-term substitutes, say,
18 substitutes who are in a single classroom for longer
19 than 30 days, does the Commission maintain any data on
20 how many classrooms are being taught by substitutes
21 teaching for 30 days or more?
22 MR. HERRON: Objection. Vague and ambiguous.
23 Calls for speculation.
24 THE WITNESS: Just a matter of practice, the
25 Commission does not track substitute usage by school

1 districts on a day-to-day basis or for any period of
 2 time during that school year.
 3 Q. BY MR. AFFELDT: So you don't know, for
 4 example, how many classrooms are being taught by
 5 substitute teachers for a semester or more?
 6 A. You asked me the question about substitutes.
 7 We approve substitute teachers who have a BA degree and
 8 CBEST. School districts can employ substitute teachers
 9 who have credentials, so we would not have any
 10 information on those individuals who have credentials
 11 who are working in classrooms under that authorization.
 12 So substitute teachers, we have a portion of
 13 information, we approve substitute permits, but then
 14 there's substitute teachers in classrooms that have no
 15 relationship to what we do at the Commission because of
 16 their credential status.
 17 Q. Is there a term for the substitute teacher that
 18 only has a BA and CBEST?
 19 A. They have a substitute permit. School
 20 districts all use the word substitute, so it's a generic
 21 kind of use of the term.
 22 Q. Is there an emergency substitute permit?
 23 A. There are a couple of other categories for
 24 substitutes who do not meet the BA and CBEST
 25 requirement.

1 Q. And what would those be?
 2 A. I'd have to review the document, but one could
 3 be 90 semester units and they're on the pathway of
 4 getting their BA degree, but they have limitations in
 5 terms of how much time they can serve in a classroom.
 6 Q. What about classrooms that have no permanent or
 7 substitute teacher assigned to them, does the Commission
 8 maintain data on those classrooms?
 9 MR. HERRON: Objection. Vague and ambiguous.
 10 Calls for speculation.
 11 MS. READ-SPANGLER: You mean a classroom where
 12 the kids are just running amuck with no teacher there?
 13 THE WITNESS: A person that possesses no
 14 credential at all, no authorization?
 15 Q. BY MR. AFFELDT: Let me ask it this way, does
 16 the Commission maintain data on teacher vacancies?
 17 A. No, other than a report that is -- which you're
 18 aware of, on the emergency permit projected need for the
 19 school district. So they let us know they anticipate
 20 they will have this number of individuals in the school
 21 year that they couldn't hire -- can't hire fully
 22 credentialed individuals because of whatever reason.
 23 That's our emergency credential report.
 24 Q. But if, for example, a district doesn't even
 25 meet their need for -- through emergency credential

1 hires and therefore have a certain number of teacher
 2 vacancies, the Commission wouldn't keep data on that; is
 3 that correct?
 4 MR. HERRON: Objection. Incomplete and
 5 improper hypothetical. Calls for speculation. Vague
 6 and ambiguous. Asked and answered.
 7 THE WITNESS: If you're asking me -- the
 8 Commission does not receive vacancy information from
 9 school districts by positions or other than what you
 10 have received in my testimony on emergency permits.
 11 Q. BY MR. AFFELDT: Are you aware of any state
 12 agency that tracks vacancy positions in school
 13 districts?
 14 A. I have no knowledge of anyone that does that.
 15 Q. Are you aware of any state agencies that track
 16 classrooms with substitute teachers teaching for 30 days
 17 or more?
 18 A. The only knowledge I have of a report that is
 19 filed by classroom is the CBEDS data. That is the
 20 responsibility of the Department of Education.
 21 Q. And what does that report?
 22 A. I don't have immediate familiarity with it. I
 23 did years ago. But it does have demographic information
 24 that's required, and it's even by periods of the day,
 25 what people teach. But I haven't seen the form in a

1 long time, so I'm not qualified to really attest --
 2 testify to the specific items that are on that basic
 3 information form.
 4 Q. We could find that out by looking at the CBEDS
 5 data form?
 6 A. I believe if you got a hold of the CBEDS form,
 7 it's done every year at school districts, that that
 8 would be something. That's all I have knowledge of.
 9 Q. Have you ever heard of the problem of rotating
 10 substitutes in certain districts?
 11 MR. HERRON: Objection. Vague and ambiguous as
 12 to "rotating substitutes in certain districts."
 13 THE WITNESS: I've not been involved in
 14 discussions regarding that particular topic.
 15 Q. BY MR. AFFELDT: Have you ever heard through
 16 media reports or otherwise of the problem of classrooms
 17 whereby no permanent teacher has been hired and the
 18 class is taught by a series of 30- or 60-day
 19 substitutes?
 20 MR. HERRON: Objection. Assumes facts not in
 21 evidence. Calls for speculation.
 22 THE WITNESS: I don't have specific knowledge
 23 of any district or classroom. I have heard the comments
 24 made, and I can't even recall where I heard them, about
 25 substitutes being assigned to a classroom for any length

1 of time. I'm not aware of any particular instances.
 2 Q. BY MR. AFFELDT: So you've heard anecdotal
 3 stories that you haven't been able to verify?
 4 MS. READ-SPANGLER: Objection. Misstates his
 5 testimony.
 6 THE WITNESS: Because it's not within my area
 7 of responsibility, I had no need to verify or pursue the
 8 issue.
 9 Q. BY MR. AFFELDT: And when you say your area of
 10 responsibility, you mean the Commission's as well?
 11 A. That's correct.
 12 Q. Are you aware of any studies concerning the
 13 extended use of substitutes to teach in classrooms where
 14 there are teacher vacancies?
 15 A. I'm not aware of any studies. I've not seen
 16 any studies.
 17 Q. By the Commission or any other entity?
 18 A. I don't recall seeing any studies during my
 19 tenure at the Commission, nor prior to my arriving at
 20 the Commission.
 21 Q. When you were superintendent at Lodi, did you
 22 ever have problems hiring substitute teachers?
 23 A. Yes.
 24 Q. On what sorts of occasions did you have
 25 problems?

1 A. Usually not knowing the extent of someone's
 2 absence because of an illness, trying to keep someone in
 3 there for an unknown period of time until you could
 4 confirm the duration of the absence. Pregnancies and
 5 things like that were less difficult because they're
 6 somewhat predictable, but heart attacks, things like
 7 that can be a little bit more problematic. And you have
 8 flu seasons and you have a tremendous demand. Teachers
 9 aren't just getting sick, so are substitutes. But there
 10 was, from time to time, problems, and the principal had
 11 to be the substitute teacher for the day.
 12 Q. Did you have problems hiring -- strike that.
 13 Did you have problems at Lodi with being able
 14 to -- not being able to fill positions with -- strike
 15 that too.
 16 Did you have instances where there were
 17 substitutes being hired for long periods of time, say,
 18 over 30 days?
 19 A. I don't recall over 30 days. Many times if it
 20 was going to go that length of time, I had someone who
 21 was credentialed go to an assignment. It's so long ago,
 22 I can't remember specific instances. I was in charge of
 23 personnel before superintendent. We made every effort
 24 to make sure we had someone in there who was fully
 25 qualified if it was going to be a long-term absence.

1 Q. Did you ever have the problem when you were at
 2 Lodi in any of your positions filling -- or with
 3 rotating substitutes?
 4 MR. HERRON: Objection. Vague and ambiguous as
 5 phrased.
 6 THE WITNESS: I indicated earlier there were
 7 times that it was difficult, but I took steps to remedy
 8 that as best I could.
 9 Q. BY MR. AFFELDT: What's the longest period of
 10 time you remember not having a permanent teacher in a
 11 class at Lodi?
 12 A. I don't recall.
 13 MR. AFFELDT: Why don't we end it there for the
 14 day and pick up tomorrow morning.
 15 (The deposition concluded at 4:51 p.m.)
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1 Please be advised that I have read the
 2 foregoing deposition. I hereby state there are:
 3
 4 (check one) _____ NO CORRECTIONS
 5 _____ CORRECTIONS ATTACHED
 6
 7 _____
 8 Date Signed
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 10 _____
 11 DR. SAM W. SWOFFORD
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 13 Case Title: Williams vs State, Volume II
 14 Date of Deposition: Wednesday, December 19, 2001
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REPORTER'S CERTIFICATE

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I certify that the witness in the foregoing deposition,
DR. SAM W. SWOFFORD,
was by me duly sworn to testify the truth, the whole truth, in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.
I further certify that I am not of counsel or attorney for either or any of the parties to said cause, nor in any way interested in the outcome of the cause named in said deposition.
IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of January, 2001.

TRACY LEE MOORELAND, CSR 10397
State of California