

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, )

No. 312236

Plaintiffs, )

vs. )

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

Defendants. )

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DEPOSITION OF DR. SAM W. SWOFFORD  
Sacramento, California  
Thursday, December 20, 2001  
Volume III

Reported by:  
TRACY LEE MOORELAND  
CSR No. 10397  
Corp. No. 30337

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17 For the Defendant Delaine Eastin, State Superintendent  
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20 DEPARTMENT OF JUSTICE  
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25 ////

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APPEARANCES, cont.

1  
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4 The Intervener:

5 CALIFORNIA SCHOOL BOARD ASSOCIATION  
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1 BE IT REMEMBERED, that on Thursday, December  
2 20, 2001, commencing at the hour of 9:36 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 EXAMINATION BY MR. AFFELDT

14 Q. Morning, Dr. Swofford.  
15 A. Morning  
16 Q. How are you this morning?  
17 A. I'm good. How are you?  
18 Q. Good.  
19 Yesterday you were feeling a little sick and  
20 coughing. Just want to make sure you're okay today to  
21 proceed with the deposition.  
22 A. I have my throat lozenges, and that should  
23 allow me to continue.  
24 Q. Are you on any medication that would interfere  
25 with your ability to answer questions truthfully?

1 A. No, I'm not.  
 2 Q. Do you recall last time -- I'll give you the  
 3 exhibit again, but I will purport that this is Exhibit  
 4 SAD-147 from day one of your deposition.  
 5 Does that look familiar?  
 6 A. Yes, it does.  
 7 Q. In here in the middle of the second paragraph,  
 8 quote, as you know, research clearly shows that the  
 9 preparation of a child's teacher is one of the most  
 10 potent factors in the child's learning, unquote.  
 11 Do you recall last time that you said you were  
 12 relying on other people's research in making that  
 13 statement?  
 14 MR. HERRON: Well, whether he does or not, his  
 15 prior testimony will stand for what it is. Why don't  
 16 you ask him a new question.  
 17 Q. BY MR. AFFELDT: Are you relying on other  
 18 people's research when you make that statement?  
 19 MR. HERRON: Objection. Asked and answered in  
 20 the prior deposition. Why don't you ask him a new  
 21 question.  
 22 MR. AFFELDT: You can answer.  
 23 THE WITNESS: Yes.  
 24 Q. BY MR. AFFELDT: Whose research were you  
 25 relying on?

1 MR. HERRON: If you know.  
 2 THE WITNESS: I don't have a specific name of a  
 3 researcher or article in mind, it's just through my  
 4 experience of reading material on the subject during my  
 5 tenure in education.  
 6 Q. BY MR. AFFELDT: And based on your experience  
 7 and training in the field of education, are you  
 8 confident that research is sound?  
 9 MR. HERRON: Objection. Calls for speculation.  
 10 He can't even tell you what the research is. Assumes  
 11 facts not in evidence. Vague and ambiguous. Calls for  
 12 an expert opinion.  
 13 THE WITNESS: I would be unable to attest to  
 14 the fact whether the research was sound, not having any  
 15 specific research in mind.  
 16 Q. BY MR. AFFELDT: You felt it was sound enough  
 17 to make statements about it in your letter to Senator  
 18 Scott?  
 19 MR. HERRON: Is that a question, or are you  
 20 testifying?  
 21 Q. BY MR. AFFELDT: You wouldn't have put it in  
 22 the letter, correct, if you didn't feel that the  
 23 research was adequate?  
 24 A. That's correct.  
 25 Q. I'm going to hand you what we'll mark as

1 SAD-214, and ask if you can identify that.  
 2 (Exhibit SAD-214 was marked.)  
 3 THE WITNESS: Yes, I can.  
 4 Q. BY MR. AFFELDT: And what is it?  
 5 A. It's the November/December 1998 issue of the  
 6 Commission's newsletter.  
 7 Q. And on page 3 there's a letter from you; is  
 8 that correct?  
 9 A. That's correct.  
 10 Q. Did you write this message from the executive  
 11 director?  
 12 MR. HERRON: Objection. Really calls for  
 13 speculation. This is three years old. Are you  
 14 expecting him to remember whether or not he wrote each  
 15 and every word in here, is that the question?  
 16 MR. AFFELDT: You can answer.  
 17 THE WITNESS: I don't recall to what degree I  
 18 crafted the letter in its entirety.  
 19 Q. BY MR. AFFELDT: What's your typical practice  
 20 when you write messages from the executive director in  
 21 the CTC newsletters?  
 22 MR. HERRON: Objection. Assumes facts not in  
 23 evidence.  
 24 THE WITNESS: It varies depending on what  
 25 issues I may have in mind or my staff has in mind. It's

1 from issue to issue. We just come up with ideas, and  
 2 sometimes I have them, sometimes I don't, and I rely on  
 3 other members of staff to make suggestions for articles  
 4 to be included in the publication.  
 5 Q. BY MR. AFFELDT: On the -- strike that.  
 6 How often does the newsletter come out?  
 7 A. We try and do three or four a year.  
 8 Sometimes -- it depends on how much activity there has  
 9 been relative to the Commission's policies and what's  
 10 happened legislatively, but it's based upon trying to  
 11 time it with specific information about actions of the  
 12 Commission and the legislature and the government.  
 13 Q. And to whom did you send the newsletter?  
 14 A. I don't have specific names. We have a mailing  
 15 list, and it would go out to the -- the mailing list  
 16 would be school districts and universities and colleges  
 17 and interested policymakers, but I couldn't tell you  
 18 specifically who is on the list, but generally that's  
 19 who receives the document.  
 20 Q. And what is your role in the production of the  
 21 newsletter?  
 22 MR. HERRON: Objection. Assumes facts not in  
 23 evidence.  
 24 THE WITNESS: I'm just responsible for all  
 25 documents released from the agency, whether it be a

1 newsletter or otherwise.

2 Q. BY MR. AFFELDT: Who decides what articles are  
3 going to be in the newsletter?

4 A. I ultimately decide whether or not the articles  
5 appear or do not appear in the newsletter.

6 Q. Do you decide the -- which article is going to  
7 be on the front page, for example?

8 MR. HERRON: Does it really matter? I can't  
9 believe I am spending time away from my family sitting  
10 here listening to how a letter is produced. Come on, go  
11 into something relevant here and get this deposition  
12 over with.

13 You may respond.

14 THE WITNESS: I personally do not organize the  
15 format. There is a relatively consistent format that's  
16 used by the communications person within the office of  
17 government relations. That person follows usual  
18 protocol about the appearance of the -- having the  
19 chair's message and the executive director's message,  
20 and so there's a format that they -- a template that  
21 they typically use, and I rely on staff to make those  
22 decisions.

23 Q. BY MR. AFFELDT: And on your messages, are  
24 those messages that -- let me ask it this way, do you  
25 normally write the first draft?

1 Q. BY MR. AFFELDT: Before you do that, if you  
2 could just verify that you see the statement and that I  
3 accurately read it.

4 A. Yes.

5 Q. Why don't you take a moment to review the whole  
6 statement.

7 Are you done?

8 A. Yes, I am.

9 Q. So based on this -- the statement that I read  
10 to you earlier, you would agree, wouldn't you, that it  
11 is part of the Commission's work to increase  
12 California's teacher supply?

13 MR. HERRON: Objection. Vague and ambiguous.  
14 Vague as to time. Assumes facts not in evidence.  
15 Document speaks for itself.

16 THE WITNESS: In reading that paragraph, it  
17 pertains to the utilization of alternative routes to  
18 help with the teacher supply by placing people in  
19 paraprofessional programs and preintern programs,  
20 offering those options to individuals, which increases  
21 the number of routes that individuals can utilize to  
22 access classrooms and become fully qualified.

23 Q. BY MR. AFFELDT: It certainly mentions the  
24 paraprofessional and preintern program in the last  
25 sentence?

1 MR. HERRON: Objection. Asked and answered.  
2 You may respond again.

3 MS. READ-SPANGLER: First draft of what, every  
4 single article?

5 MR. AFFELDT: His message.

6 THE WITNESS: No, I do not.

7 Q. BY MR. AFFELDT: But ultimately you approve of  
8 what's written and goes out under your name as a message  
9 from the executive director, right?

10 MR. HERRON: Objection. Asked and answered.

11 THE WITNESS: That's correct.

12 Q. BY MR. AFFELDT: In the article on page 3 in  
13 the first sentence in the fourth paragraph it says, the  
14 Commission continues its work to increase California's  
15 teacher supply and to assure that teachers who are not  
16 fully credentialed receive the classroom and coursework  
17 support that is necessary to ensure their success.

18 Do you see that sentence that you approved?

19 MR. HERRON: Well, why don't we give him an  
20 opportunity to read the entire document. I don't want  
21 him to answer questions without having had the  
22 opportunity to review a document that is three years  
23 old.

24 So, Dr. Swofford, feel free to read your entire  
25 statement.

1 A. That's correct.

2 Q. In the sentence immediately preceding that it  
3 also mentions removing barriers to credentialing for  
4 teachers prepared in other states, what we've been  
5 referring to as reciprocity, correct?

6 A. That's correct.

7 Q. So that's not just an alternative certification  
8 issue, that's also -- that's a separate issue, correct?

9 A. That's correct.

10 Q. And it also mentions in that same preceding  
11 sentence recruitment plans, correct?

12 MR. HERRON: Do you see where he's talking  
13 about?

14 THE WITNESS: Yes, I see that.

15 Q. BY MR. AFFELDT: Is that correct, that it  
16 mentions recruitment plans?

17 A. Yes.

18 Q. And recruitment plans is, likewise, a separate  
19 issue than alternative certification programs, right?

20 A. That's correct.

21 Q. And when you refer in that -- in the second  
22 sentence that these efforts, quote, require long-term  
23 planning, what are you referring to in terms of  
24 long-term planning?

25 MR. HERRON: If you recall.

1 THE WITNESS: Based upon that paragraph that  
 2 references that, when we have alternative certification  
 3 programs, we want to ensure that the implementation of  
 4 those programs are successful and that the coursework  
 5 and training are meaningful and help improve student  
 6 achievement. That's the purpose of the programs and why  
 7 they were developed and implemented.  
 8 Q. BY MR. AFFELDT: And your long-term planning  
 9 also applies to issues of reciprocity and recruitment  
 10 plans, doesn't it?  
 11 A. That does not accurately characterize what is  
 12 intended in that paragraph.  
 13 Q. And why is that?  
 14 MR. HERRON: Objection. Vague and ambiguous.  
 15 Why is what?  
 16 MR. AFFELDT: Why is his answer that that was  
 17 an inaccurate characterization?  
 18 MS. READ-SPANGLER: Because it's an inaccurate  
 19 characterization. How can he explain that?  
 20 MR. AFFELDT: He can answer the question.  
 21 MR. HERRON: If you understand, you may  
 22 respond. Dr. Swofford, if you don't understand, he'll  
 23 clarify.  
 24 MS. READ-SPANGLER: The document speaks for  
 25 itself.

1 THE WITNESS: I do not understand whether or  
 2 not the question pertains to the Commission has  
 3 recruitment plans, or has responsibility for recruitment  
 4 plans. That's the issue that I do not think is  
 5 accurately being characterized as you presented the  
 6 question to me.  
 7 Q. BY MR. AFFELDT: Thank you for clarifying that.  
 8 The Commission -- is it fair to say, in your view, the  
 9 Commission doesn't have responsibility for jurisdiction  
 10 over creating recruitment plans for increasing  
 11 credentialed teachers in the state?  
 12 MS. READ-SPANGLER: Objection. Vague and  
 13 ambiguous as to "creating."  
 14 MR. HERRON: And as to "recruitment plans."  
 15 THE WITNESS: I'd answer no.  
 16 Q. BY MR. AFFELDT: But you do think it is the  
 17 Commission's job to take a careful look at the  
 18 effectiveness of recruitment plans?  
 19 MR. HERRON: Objection. Argumentative. Calls  
 20 for speculation.  
 21 THE WITNESS: On its face I indicated that we  
 22 need to look at recruitment plans, and connected with  
 23 that is the barriers to credentialing teachers from out  
 24 of state.  
 25 Q. BY MR. AFFELDT: Do you review the newsletter

1 before it goes out?  
 2 MR. HERRON: Objection. Asked and answered.  
 3 Vague and ambiguous.  
 4 THE WITNESS: I do a cursory review of the  
 5 newsletter if I'm available. There are times when I may  
 6 not see the final newsletter. Depends on what -- at  
 7 what point I've been brought into the process of  
 8 developing the newsletter.  
 9 Q. BY MR. AFFELDT: Do you see on the first page,  
 10 the first sentence, it says, for the past three years  
 11 the California Commission on Teacher Credentialing has  
 12 played a leading role in addressing the crisis of  
 13 California's statewide teacher shortage?  
 14 A. I see that.  
 15 Q. If you could take a minute to remove the -- or  
 16 review rather the first paragraph ending with the three  
 17 bullets, and tell me if that accurately characterizes  
 18 the efforts the Commission was undertaking to address  
 19 the crisis in the teacher shortage?  
 20 A. I've read that.  
 21 Q. Is that an accurate characterization?  
 22 MR. HERRON: Objection. Vague and ambiguous as  
 23 to time. Are you asking was it accurate as of three  
 24 years ago or accurate now?  
 25 MR. AFFELDT: As of three years ago when the

1 newsletter went out.  
 2 THE WITNESS: At that time it's accurate.  
 3 Q. BY MR. AFFELDT: Do you see in the -- why don't  
 4 you finish reading the -- take a moment to review the  
 5 rest of the lead article there on page 1 carrying over  
 6 to page 9.  
 7 MS. READ-SPANGLER: Which carries over to page  
 8 18. You want him to look at all of that?  
 9 Q. BY MR. AFFELDT: Have you had a chance to  
 10 review that article?  
 11 A. Yes.  
 12 Q. Do you see in the -- on the first page in the  
 13 second paragraph after the bullets, the second sentence  
 14 says that, the state has experienced teacher shortages  
 15 in hard-to-staff schools and classrooms?  
 16 A. Yes.  
 17 Q. Does that refresh your recollection about what  
 18 hard to staff means?  
 19 MR. HERRON: How could it possibly? Objection.  
 20 Vague and ambiguous. Calls for speculation. I mean --  
 21 MR. AFFELDT: He testified yesterday that he --  
 22 that other people used this term. Now, here it is on  
 23 page 1 of a CTC newsletter.  
 24 MS. READ-SPANGLER: And it's something he  
 25 didn't write.

1 MR. HERRON: How is it possibly going to  
 2 refresh his recollection as to what it means when  
 3 someone else uses it?  
 4 Q. BY MR. AFFELDT: Let me ask this question, what  
 5 does hard to staff mean when the CTC uses it?  
 6 MR. HERRON: You asked that question yesterday.  
 7 Asked and answered. Calls for speculation. Vague and  
 8 ambiguous. Incomplete and improper hypothetical.  
 9 MS. READ-SPANGLER: And you're also assuming  
 10 that there's one meaning when the CTC uses it. There's  
 11 more than one person who works at the CTC. They don't  
 12 necessarily all use it in the same way. You might want  
 13 to lay a foundation.  
 14 MR. AFFELDT: He can answer the question.  
 15 THE WITNESS: I don't know what the motives of  
 16 the individual was in writing that particular statement,  
 17 nor do I know what their definition of hard-to-staff  
 18 school meant, and it doesn't refresh my memory in terms  
 19 of what the thinking was of myself even at that time.  
 20 Q. BY MR. AFFELDT: When you read that, do you  
 21 have any idea in your mind what hard to staff means?  
 22 A. On its face I can just respond by saying that  
 23 it means there are schools that have a difficult time  
 24 recruiting fully-qualified teachers, and that could be  
 25 urban schools, rural schools, it could be schools that

1 deal with special needs children, children who have --  
 2 called the exceptional children. Could be a variety of  
 3 definitions that could be applied to that.  
 4 Q. The last sentence on the first page which  
 5 states, meanwhile, research reinforcing the findings of  
 6 Dr. Linda Darling Hammond, executive director for the  
 7 National Commission on Teaching and America's Future,  
 8 has clearly demonstrated the importance of teacher  
 9 qualifications in improving student achievement.  
 10 Are you familiar at all with Dr. Darling  
 11 Hammond?  
 12 A. Yes, I am. I'm familiar with her personally.  
 13 Q. You know her personally. Are you familiar with  
 14 her work in seeking to demonstrate the importance of  
 15 teacher qualifications in improving student achievement?  
 16 MR. HERRON: That's referred to in this  
 17 exhibit?  
 18 MR. AFFELDT: Generally.  
 19 THE WITNESS: I have some knowledge of her  
 20 work.  
 21 Q. BY MR. AFFELDT: What is your knowledge of her  
 22 work?  
 23 MR. HERRON: Objection. Calls for a narrative.  
 24 Vague and ambiguous.  
 25 THE WITNESS: You asked me does she do research

1 on teacher preparation. I know that she does research  
 2 on that topic.  
 3 Q. BY MR. AFFELDT: Do you have an opinion on the  
 4 quality of Dr. Darling Hammond's work?  
 5 A. I'm not an expert on research, so I wouldn't be  
 6 able to render a judgment in terms of her competency as  
 7 a researcher.  
 8 Q. Who else that you're aware of does work in the  
 9 area of studying the link between teacher qualifications  
 10 and improving student achievement?  
 11 A. I have read literature by -- written by a  
 12 number of individuals in the field, Theodore Sizer,  
 13 other folks that -- other educators who have written on  
 14 the topic. I've not actively pursued any one  
 15 researcher's work. That's not the nature of my role.  
 16 Q. But your -- who would you consider to be, based  
 17 on your knowledge and experience, the most prominent  
 18 researchers in the area of studying the link between  
 19 teacher qualification and student achievement?  
 20 MR. HERRON: Objection. Calls for speculation.  
 21 MS. READ-SPANGLER: Calls for an expert  
 22 opinion.  
 23 THE WITNESS: What do you mean by "prominent"?  
 24 You mean well known or -- I don't know the definition.  
 25 MR. AFFELDT: Well regarded.

1 THE WITNESS: I'm sorry?  
 2 MR. AFFELDT: Well regarded.  
 3 THE WITNESS: I wouldn't be able to answer  
 4 that. I don't know.  
 5 Q. BY MR. AFFELDT: Other than Theodore Sizer and  
 6 Linda Darling Hammond, are there any other names you can  
 7 identify for us?  
 8 MR. HERRON: Names of researchers?  
 9 MR. AFFELDT: Researchers who study the link  
 10 between teacher qualification and student achievement.  
 11 THE WITNESS: I don't have names of individuals  
 12 who I follow in terms of their research work. Again,  
 13 I've just picked up the information from reports I may  
 14 have seen along the way or education articles  
 15 referencing work that has been done. I'm more  
 16 interested in the work and not who.  
 17 Q. BY MR. AFFELDT: How do you know Dr. Darling  
 18 Hammond?  
 19 A. I have met with her on several occasions. I  
 20 was invited back to New York to meet with her prior to  
 21 the release of her report from the National Commission.  
 22 Q. That would be the National Commission on  
 23 Teaching and America's Future?  
 24 A. That's correct.  
 25 Q. What report is it that you're referring to?

1 A. It was a report that they released at that time  
 2 frame on teachers across the county, a national study  
 3 they had done, and it was also to invite California to  
 4 be a member of the Commission.  
 5 Q. Did California join the Commission?  
 6 A. No, they did not.  
 7 Q. Why is that?  
 8 A. There's not the interest on the part of the  
 9 State to participate on the Commission.  
 10 Q. Whose decision in the State was that?  
 11 MS. READ-SPANGLER: If you know.  
 12 THE WITNESS: I don't know.  
 13 Q. BY MR. AFFELDT: It wasn't your decision?  
 14 A. No.  
 15 Q. Does the report that you're referring to seek  
 16 to demonstrate the importance of teacher qualifications  
 17 in improving student achievement?  
 18 A. I don't recollect the report, the contents of  
 19 the report. It's been five years.  
 20 Q. Was it issued five years ago?  
 21 A. I believe it was in 1996, to my best  
 22 recollection.  
 23 Q. Does the Commission do any work with academic  
 24 experts in the area of teacher preparation?  
 25 MR. HERRON: Objection. Vague and ambiguous.

1 THE WITNESS: If you ask me do we work with  
 2 people who practice in the field of -- in higher  
 3 education, K-12 education, yes, we do, we work with  
 4 individuals throughout the K-16 system, as well as  
 5 teacher preparation programs.  
 6 Q. BY MR. AFFELDT: Does the Commission -- does  
 7 that include professors of education?  
 8 A. Yes.  
 9 Q. Who are the professors of education the  
 10 Commission most regularly works with?  
 11 MR. HERRON: Objection. Assumes facts not in  
 12 evidence.  
 13 You may respond if you know.  
 14 THE WITNESS: I can't answer the question of  
 15 who would be the most frequent resource for the  
 16 Commission.  
 17 Q. BY MR. AFFELDT: Have you worked with Professor  
 18 Ed Haertel from Stanford University?  
 19 A. That name does not ring a bell for me. I don't  
 20 know.  
 21 Q. Has the Commission worked with Professor Mark  
 22 Wilson from UC Berkeley?  
 23 A. I don't know.  
 24 Q. Has the Commission worked with Theodore Sizer?  
 25 A. I have no information that we worked with

1 Dr. Sizer, no.  
 2 Q. Has the Commission worked with Professor  
 3 Darling Hammond?  
 4 MR. HERRON: Objection. Vague and ambiguous.  
 5 THE WITNESS: I'm not sure what you mean by  
 6 "worked with," how that is defined.  
 7 Q. BY MR. AFFELDT: Have you sought advice from  
 8 Dr. Darling Hammond on any of the issues the Commission  
 9 is working on?  
 10 A. I cannot speak for my staff, I can only speak  
 11 for myself. I have not sought advice from Darling  
 12 Hammond on any educational issue.  
 13 Q. And you don't know if your staff has?  
 14 A. I'm not aware of discussions -- the intimacy of  
 15 any discussions between staff and Dr. Hammond. To my  
 16 knowledge, there has not been advice sought from her for  
 17 the work of the Commission.  
 18 Q. Did the class size reduction initiative  
 19 exacerbate the substitute teacher shortage as well?  
 20 MR. HERRON: Objection. Assumes facts not in  
 21 evidence. Asked and answered.  
 22 You may respond.  
 23 Calls for speculation as well.  
 24 THE WITNESS: I have no information or  
 25 collected data that would verify that there was an

1 impact on substitute availability in classrooms --  
 2 availability of substitutes in classrooms as a result of  
 3 class size reduction.  
 4 (Exhibit SAD-215 was marked.)  
 5 Q. BY MR. AFFELDT: Let me hand you SAD-215 and  
 6 ask if you can identify that.  
 7 A. Yes.  
 8 Q. What is this?  
 9 A. This is coded correspondence 97-9706,  
 10 distributed on March 28th, 1997, and the subject is  
 11 credentials that authorize day-to-day substitute  
 12 teaching.  
 13 Q. And it's from you, correct?  
 14 A. That's correct.  
 15 Q. What is the coded correspondence?  
 16 A. That becomes an official document that school  
 17 districts and counties and universities or colleges need  
 18 to take seriously. It's not just a memo, it has -- it  
 19 provides clarity usually on requirements or policy  
 20 decisions that the Commission has made so they can go  
 21 about and implement whatever they're doing with those  
 22 particular entities in accordance with the Commission's  
 23 direction. So it's basically a directive.  
 24 Q. And who is on the list of individuals and  
 25 groups that receive coded correspondence generally?

1 MR. HERRON: Objection. Calls for speculation.  
2 Vague as to time. Do you mean four years and nine  
3 months ago when this memo was written, or do you mean  
4 today? John, he's not answering the question unless you  
5 provide clarity.

6 THE WITNESS: At that time?

7 MR. AFFELDT: Generally, today.

8 THE WITNESS: Offices that -- in this case,  
9 offices that are responsible for credentialing in school  
10 districts and county offices, but I don't know that it  
11 would be limited to that. That would be my assessment  
12 of who would receive this document today.

13 Q. BY MR. AFFELDT: And was that any different in  
14 1997, the groups that would receive the document that  
15 you identified in your answer?

16 A. Without having seen the mailing list of that  
17 time versus today, I don't know. I was rather new to  
18 the agency at that date, so I'm not sure who was on the  
19 mailing list.

20 Q. But it would have still been the school  
21 districts and county offices, at least, that are  
22 responsible for credentialing matters, isn't it?

23 A. Well, no. It's directed to all individuals and  
24 groups interested in the activities of the California  
25 Commission on Teacher Credentialing. It could have been

1 the substitute teacher shortage?

2 (Ms. Huang left the room.)

3 MR. HERRON: Well, objection. Calls for  
4 speculation. Assumes facts not in evidence. It's vague  
5 as to time. Your question is whether four years and  
6 nine months ago that was the opinion of whomever wrote  
7 this?

8 You can respond.

9 THE WITNESS: May I read the --

10 MR. AFFELDT: Sure.

11 THE WITNESS: I just don't have a recollection  
12 of the document, even reading the information. I don't  
13 have a recollection of the precipitating event that  
14 created the document.

15 Q. BY MR. AFFELDT: Does that also mean you don't  
16 have a recollection as to whether the class size  
17 reduction initiative exacerbated the substitute teacher  
18 shortage?

19 A. I don't have a recollection of why that was  
20 used at that time.

21 (Ms. Huang entered the room.)

22 Q. BY MR. AFFELDT: As to what?

23 A. Why or how -- why the word was used at that  
24 time. I don't recall the discussion that precipitated  
25 the issuance of this document.

1 a large group of individuals that could have received  
2 this document. I don't know who that would have been,  
3 but it would include individuals who were responsible  
4 for credentialing at school districts and counties.

5 Q. It would have included as of 1997 at a minimum  
6 individuals responsible for credentialing in school  
7 districts and county offices, right?

8 MR. HERRON: Objection. Asked and answered  
9 three times.

10 You may respond yet again.

11 THE WITNESS: I don't know who is on the  
12 mailing list. It could be directed to the county  
13 superintendent versus the county credential technician.  
14 I don't know how these were specifically addressed, but  
15 the intent is for them to go to the individual  
16 responsible for credentialing.

17 Q. BY MR. AFFELDT: In the second page here, the  
18 first full paragraph, the sentence reads, at its March  
19 1997 meeting, to assist school districts addressing the  
20 substitute teacher shortage which was exacerbated by the  
21 implementation of the class size reduction initiative,  
22 the Commission adopted the following policy, and then it  
23 cites the policy.

24 Does that refresh your recollection as to  
25 whether the class size reduction initiative exacerbated

1 Q. I'm not asking you at this point about the  
2 policy that this document describes, I'm asking you  
3 about the fact of whether or not the class size  
4 reduction initiative exacerbated the substitute teacher  
5 shortage.

6 Having reviewed the document, do you have any  
7 recollection as to whether that fact is true or not?

8 MR. HERRON: Was true four years and nine  
9 months ago, or is true now? Objection. Vague as to  
10 time.

11 MR. AFFELDT: Was true at the time the  
12 statement was made.

13 MR. HERRON: Okay. That's fair, except that  
14 it's also asked and answered three times, and so I'll  
15 object on that basis as well.

16 You may respond.

17 THE WITNESS: Again, I don't recall the events  
18 at that time and what the underlying reasons were for  
19 the document. It's over four years ago, so I have no  
20 recollection in terms of the basis for this or what was  
21 being communicated to the Commission at that time  
22 regarding substitute usage or need for substitutes. I  
23 just don't remember.

24 Q. BY MR. AFFELDT: And to know that, would we be  
25 able to find out by looking at the March '97 minutes?



1 MS. READ-SPANGLER: To know what?  
 2 MR. AFFELDT: To know the precipitating events  
 3 that Dr. Swofford can't recall.  
 4 MR. HERRON: That led to the creation of this  
 5 exhibit?  
 6 MR. AFFELDT: That's the question.  
 7 MR. HERRON: Okay. Objection. Calls for  
 8 speculation.  
 9 THE WITNESS: I don't know if the minutes would  
 10 provide that information.  
 11 Q. BY MR. AFFELDT: Do you review the coded  
 12 correspondence before it goes out under your name?  
 13 A. Yes, I do.  
 14 Q. And you would have reviewed it in March of  
 15 1997, correct?  
 16 MR. HERRON: Objection. Calls for speculation,  
 17 and a very good memory.  
 18 THE WITNESS: I don't recall whether or not I  
 19 reviewed this.  
 20 Q. BY MR. AFFELDT: But you do know it's your  
 21 practice to review coded correspondence before it goes  
 22 out under your name, right?  
 23 MR. HERRON: Objection. Asked and answered two  
 24 questions before.  
 25 THE WITNESS: It's my intent to review coded

1 correspondence before it's released, but there are times  
 2 when I'm just informed of the contents of a document as  
 3 opposed to reading it through word by word.  
 4 (Exhibit SAD-216 was marked.)  
 5 Q. BY MR. AFFELDT: I'm going to give you SAD-216.  
 6 Can you identify what this document is, entitled  
 7 everyone loves a "lert"?  
 8 A. I've not seen the document, to my knowledge,  
 9 before, so I can only tell you that it --  
 10 MR. HERRON: You've responded to his question.  
 11 THE WITNESS: I've not seen it before to my  
 12 recollection.  
 13 Q. BY MR. AFFELDT: Would you agree that it  
 14 appears to be a document from the CTC website?  
 15 MS. READ-SPANGLER: Objection. The document  
 16 speaks for itself.  
 17 MR. HERRON: Calls for speculation. Not  
 18 relevant.  
 19 THE WITNESS: It has that information on it,  
 20 but I've not seen it on the website so I don't know.  
 21 Q. BY MR. AFFELDT: What are credential  
 22 information alerts?  
 23 MS. READ-SPANGLER: If you know.  
 24 MR. HERRON: Objection. Assumes facts not in  
 25 evidence.

1 THE WITNESS: I really don't have specific  
 2 knowledge as to the reason for the use of the words.  
 3 That would have to be someone in that division that  
 4 would be responsible for sending those out. I'm not  
 5 part of the decision-making process of releasing this  
 6 kind of information.  
 7 Q. BY MR. AFFELDT: And what division are you  
 8 referring to?  
 9 A. The certification assignment and waivers  
 10 division.  
 11 Q. Can you take a minute to review the substance  
 12 of the document and let me know when you're done.  
 13 A. Okay. I've reviewed it.  
 14 Q. Okay. The document describes a change of  
 15 policy in which first-time CBEST waivers for 30-day  
 16 substitutes need not be individually noticed by a local  
 17 governing board but may be noticed through a blanket  
 18 statement that the district intends to employ substitute  
 19 teachers on CBEST waivers.  
 20 Is that a change in policy you recall the  
 21 Commission making?  
 22 MR. HERRON: Objection. Document speaks for  
 23 itself. Counsel is testifying.  
 24 Simply because he says something or  
 25 characterizes a document in a particular way, you don't

1 have to agree, Dr. Swofford. His question is whether or  
 2 not this is a change in policy.  
 3 THE WITNESS: I don't know from the document.  
 4 I don't know if this is a change.  
 5 MR. AFFELDT: That wasn't my question, that was  
 6 Mr. Herron's question.  
 7 THE WITNESS: Then may I have the question  
 8 reread, please.  
 9 (Record read.)  
 10 MR. HERRON: He's not going to answer that  
 11 question. I mean, the document speaks for itself.  
 12 You're misinterpreting it or providing your own  
 13 interpretation.  
 14 If you have a new question which asks him  
 15 whether he has personal knowledge whether this document  
 16 sets forth a change in policy, I'm willing to let him  
 17 answer that question. I'm not going to let him  
 18 speculate about your characterization of the document.  
 19 Q. BY MR. AFFELDT: Do you disagree with my  
 20 characterization of the document, why don't you tell me  
 21 that?  
 22 A. Without knowing the history of what was the  
 23 past practice and what's provided for in this document,  
 24 I can't answer the question.  
 25 Q. The document states on page 1, bottom

1 paragraph, quote, for the first time 30-day substitute  
 2 CBEST waiver request, we have relaxed the public notice  
 3 requirement that each individual must be approved by the  
 4 governing board before the waiver request is submitted.  
 5 Instead, we are requiring the governing board to adopt a  
 6 blanket statement that the district intends to employ  
 7 substitute teachers on CBEST waivers during the school  
 8 year, unquote.

9 Does the document say that, Dr. Swofford?

10 MS. READ-SPANGLER: Objection. The document  
 11 speaks for itself.

12 MR. HERRON: Don't -- if you want to get  
 13 emotional and start harassing him, this is going to end  
 14 real quick. So I object you're harassing this deponent.  
 15 Please don't raise your voice or use that tone with him.

16 You may respond to the question.

17 MR. AFFELDT: David, I'm not harassing the  
 18 witness.

19 MR. HERRON: You are harassing him, and you've  
 20 been doing it for some period of time.

21 MR. AFFELDT: I completely disagree with your  
 22 characterization.

23 MR. HERRON: That's fine, John.

24 MR. AFFELDT: And you are trying to interrupt  
 25 the flow of questioning with numerous objections that

1 waiver requests for 30-day substitutes from local  
 2 districts, correct?

3 A. That's correct.

4 Q. Is there any systematic tracking of the number  
 5 of waiver requests that the Commission receives?

6 MS. READ-SPANGLER: Objection. Vague and  
 7 ambiguous.

8 MR. HERRON: Asked and answered.

9 THE WITNESS: I don't have that level of detail  
 10 of whether or not there's a tracking system.

11 Information is received, how that information is  
 12 organized and reviewed, that's a matter that I'm not  
 13 involved in.

14 Q. BY MR. AFFELDT: And who would have that  
 15 information?

16 A. The director of that division.

17 Q. And who is that?

18 A. At this time it's the acting director, Dale  
 19 Janssen.

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

21 MR. AFFELDT: That sounds like a good idea.

22 (Recess taken 10:51 - 10:57.)

23 MR. AFFELDT: Before we get going again, David,  
 24 maybe we should just get on the record that I'm not  
 25 pursuing English language learner questions today with

1 don't make any sense and are just wasting time.

2 MR. HERRON: No, actually, I haven't heard a  
 3 good question come out of your mouth for a day and a  
 4 half here. What I'm trying to do is get you to ask good  
 5 questions and to get done with the deposition. If  
 6 you're not willing to do that, I can't help you. But  
 7 I've been trying to get you to go in that direction.

8 So, No. 1, don't harass the witness; No. 2, why  
 9 don't we move on to something relevant. Whether or not  
 10 the document says what it obviously says is absolutely  
 11 irrelevant here and you're wasting our time.

12 You may respond to the question.

13 Q. BY MR. AFFELDT: Have I misread the document,  
 14 Dr. Swofford?

15 MR. HERRON: Objection. Lacks relevance.

16 THE WITNESS: You read what is provided for on  
 17 the document in terms of the use of the words that were  
 18 written on that day.

19 Q. BY MR. AFFELDT: Has the Commission enacted  
 20 that policy change?

21 MR. HERRON: Objection. Assumes facts not in  
 22 evidence. Calls for speculation. Asked and answered  
 23 several times now.

24 THE WITNESS: I don't know.

25 Q. BY MR. AFFELDT: The Commission does receive

1 Dr. Swofford because you've identified two individuals  
 2 who are the persons most knowledgeable in that area, one  
 3 is Margaret Olebe.

4 THE WITNESS: Olebe (pronunciation).

5 MR. HERRON: Can you spell that for us,  
 6 Dr. Swofford?

7 THE WITNESS: O-l-e-b-e.

8 Q. BY MR. AFFELDT: And she is the most  
 9 knowledgeable on the Commission on English language  
 10 learner policy issues?

11 A. I believe she would be the one who knows it on  
 12 the program side.

13 Q. And Dale Janssen is the individual who would be  
 14 most knowledgeable on --

15 A. The credential, authorization side.

16 Q. Thank you. Are there any other sides to the  
 17 English language learner issue that the Commission is  
 18 involved with?

19 A. No, I'm not. The program -- if we're speaking  
 20 of preparation of educators and we're speaking of  
 21 licensing of educators, then those are two individuals  
 22 that I believe have the information.

23 Q. Okay. I just re-handed you Exhibit SAD-211.  
 24 I'd ask if you can look at page 56.

25 A. Page 56?

1 Q. Yes. I'm waiting for the other counsel in the  
2 room to catch up to us.

3 MR. HERRON: You might want to take a look  
4 beginning at 53 to see what the interrogatory was.

5 Q. BY MR. AFFELDT: Looking at page 56, line 20  
6 through page 57 line 17, there's a description of the  
7 various types of substitute permits the Commission  
8 issues and explanation that, depending on the type of  
9 credential, one is authorized to teach 30 or 60 days.  
10 Do you see that?

11 A. Yes, I do.

12 Q. And certain of the credentials limit the  
13 teacher to teaching no more than 90 days during a given  
14 school year, do you see that?

15 A. Yes.

16 Q. Does the Commission play any role in monitoring  
17 whether those time limits are being adhered to at the  
18 district level?

19 A. We would monitor if, in fact, we are noticed by  
20 individuals or have information that indicates there's  
21 an abuse of the restrictions provided for on that  
22 particular permit.

23 Q. So is that similar to the type of response to  
24 complaints that you discussed yesterday with respect to  
25 waiver applications?

1 A. Yes.

2 Q. Does the Commission have any system in place to  
3 regularly check to see if districts are adhering to the  
4 time requirements for substitute teachers?

5 MR. HERRON: I'm sorry, I missed the question.  
6 Could we have it reread.  
7 (Record read.)

8 MR. HERRON: Objection. Asked and answered.

9 THE WITNESS: If the information is received by  
10 the Commission, then we will follow up on that  
11 information. There is no other process other than I  
12 think I've already testified to, through  
13 assignment/misassignment monitoring. Information comes  
14 to us, and then we follow up on that information.

15 Q. BY MR. AFFELDT: Are substitute teaching  
16 assignments reviewed as part of the  
17 assignment/misassignment process?

18 A. The assignment/misassignment process is  
19 conducted by the county, except in seven counties where  
20 they are monitored by the Commission. The seven  
21 counties are stand-alone, the counties and school  
22 districts like San Francisco. I do not know whether or  
23 not they collect data on substitute teachers.

24 Q. Okay. Let me mark and hand you SAD-217.  
25 (Exhibit SAD-217 was marked.)

1 Q. BY MR. AFFELDT: This is entitled a preliminary  
2 report on the assignments of certificated employees by  
3 county offices of education for four school years, 1995  
4 to 1999, and it's dated November 10th, 2000.  
5 Do you know what this document is?

6 A. I don't recall seeing the document.

7 Q. The Commission is charged with reporting to the  
8 legislature on assignments and misassignments; isn't  
9 that correct?

10 A. On a biannual basis, I believe that's what the  
11 law provides. That report goes to the legislature.

12 Q. And is it an accurate statement in the first  
13 sentence under the summary that county offices of  
14 education review one quarter of the school districts  
15 within their county every year?

16 A. Yes.

17 Q. So if that would be the case, then a four-year  
18 snapshot would give us all the school districts in the  
19 state that have been reviewed?

20 A. That's correct.

21 Q. On page 4 of 14 there's a definition of  
22 misassignment in a box. Would you review that and let  
23 me know if that's an accurate definition.

24 A. That's the definition I'm familiar with.

25 Q. And the one that the Commission uses?

1 A. Yes.

2 Q. If an individual is not legally authorized to  
3 teach in a given area -- let me give you an example,  
4 maybe it will be easier to ask this way.  
5 If a teacher has an English credential but is  
6 teaching a math course, would the Commission consider  
7 that individual misassigned?

8 A. I would have to have more information regarding  
9 the qualifications of the individual, transcripts  
10 regarding their coursework taken, number of periods and  
11 days that they're teaching. There's a variety of  
12 information that I would have to have in order to make  
13 that determination.

14 Q. So if their only certificate or credential was  
15 that for teaching English, you wouldn't know if they're  
16 misassigned based on that information alone if they were  
17 teaching a math course?

18 A. Hypothetically they could have a waiver. I  
19 don't know without having more information about the  
20 position of math, what math courses they were being  
21 required to teach, and what the individual possesses in  
22 terms of other possible waivers to be in the job.

23 Q. Okay. Maybe I could have been clearer. Under  
24 my hypothetical they don't have any waiver or emergency  
25 permit or any other authorization from the State, they

1 only would have their -- say it's a clear credential in  
 2 English.  
 3 If they're teaching a math course, would that  
 4 be considered a misassignment?  
 5 MR. HERRON: Objection. Vague and ambiguous.  
 6 Incomplete and improper hypothetical.  
 7 THE WITNESS: I don't know. I'd have to review  
 8 the statute and our regulations with respect to teaching  
 9 one math course outside their credential area and see  
 10 whether or not there's an exception provided for that.  
 11 I don't know.  
 12 Q. BY MR. AFFELDT: Is that because it's one  
 13 course, is that what's making you not know?  
 14 MR. HERRON: Same objections. Compound.  
 15 THE WITNESS: I would want to review our  
 16 current statutes and our regulations to see whether or  
 17 not there's other qualifying conditions that that person  
 18 could teach the course for a period or two periods of  
 19 the day. I don't have that information before me.  
 20 Q. BY MR. AFFELDT: If an individual is found to  
 21 be misassigned, can that misassignment be corrected if  
 22 they obtain a waiver?  
 23 MR. HERRON: Objection. Incomplete and  
 24 improper hypothetical. Calls for speculation.  
 25 You may respond.

1 THE WITNESS: My understanding of our  
 2 application of the regulations is that you must not use  
 3 a waiver to correct a misassignment.  
 4 Q. BY MR. AFFELDT: So how does one correct a  
 5 misassignment according to your understanding?  
 6 MR. HERRON: Same objections.  
 7 THE WITNESS: I'd have to have a specific  
 8 situation and look at what has transpired in terms of  
 9 who is placed in that job and the nature of the  
 10 misassignment. I would need more information.  
 11 Q. BY MR. AFFELDT: Well, take the example of an  
 12 individual who has a clear credential for teaching  
 13 English but is teaching full time in a math course. If  
 14 they have a -- does that person -- is that person  
 15 authorized to teach math based on their credential  
 16 status?  
 17 A. The credential itself does not authorize  
 18 teaching of math.  
 19 Q. So if they had no other authorizations from the  
 20 Commission, then isn't it true that person would be  
 21 considered misassigned?  
 22 MR. HERRON: Objection. Asked and answered.  
 23 Incomplete and improper hypothetical.  
 24 THE WITNESS: I believe I would, again, have to  
 25 review whether or not there are exceptions in law

1 relative to an individual being assigned based upon  
 2 other qualifying areas that that person may have. I  
 3 would have to see transcripts of the individual, see  
 4 what exceptions are provided for in regulation or in  
 5 law.  
 6 Q. BY MR. AFFELDT: Do you have any idea what  
 7 those exceptions might be?  
 8 A. There are possibilities when individuals have  
 9 taken coursework that they are moving towards becoming  
 10 qualified to be authorized in a particular subject area  
 11 that a district can place an individual in that  
 12 particular assignment.  
 13 I need to review that, what the exceptions are  
 14 in the law. I'm not that familiar with that particular  
 15 section of the code, and my recollection goes back to  
 16 more of the time I was in the personnel office in the  
 17 school district. There was the ability of the school  
 18 board on its own to waive certain requirements, so I  
 19 would have to -- that's why I'm vague on terms of  
 20 recalling what actually the statute provides for.  
 21 Q. Uh-huh. So a misassignment could be corrected  
 22 if the individual, under the situation you're  
 23 describing, went through the school district and  
 24 received one of those exceptions at the district level?  
 25 A. Again, I don't know. That could be old law, it

1 could be regulations that are no longer existing. I do  
 2 not have recency familiarity with those possibilities.  
 3 I only extend that because I don't know. I would have  
 4 to review the regulations to see if there's anything in  
 5 there that speaks to that issue.  
 6 Q. Would Dale Janssen know?  
 7 A. Dale Janssen would probably have a better  
 8 working knowledge of that particular issue.  
 9 Q. And what is his title again?  
 10 A. He's the acting director of the certification  
 11 assignment and waivers division.  
 12 Q. Do you see on that same page there --  
 13 MR. HERRON: Where are we now, page 4 of --  
 14 MR. AFFELDT: Yeah, 14.  
 15 Q. The head of that page is titled the 1996 report  
 16 to the Commission on the 1992-95 monitoring cycle, and  
 17 then under the bullet points it says -- the third bullet  
 18 point says, the subject area that had the highest  
 19 percentage of misassigned personnel for the three years  
 20 of assignment monitoring was in classes for limited  
 21 English proficient students.  
 22 Do you have any specialized recollection of  
 23 that report?  
 24 A. No, I don't. Some of the information here is  
 25 familiar, some -- I don't recollect the details of that

1 report.

2 Q. Is that an area Dale Janssen would be more  
3 familiar with?

4 MR. HERRON: You mean a seven-year-old report,  
5 this 1996 report?

6 MR. AFFELDT: It's a five-year-old report.

7 MR. HERRON: If that's how you add.

8 THE WITNESS: Mr. Janssen would know more about  
9 the report than I would.

10 Q. BY MR. AFFELDT: And who would know between  
11 Margaret Olebe and Dale Janssen about the plan to remedy  
12 misassignments in the limited English proficient area?

13 MR. HERRON: Objection. Calls for speculation.  
14 Assumes facts not in evidence.

15 THE WITNESS: I don't know who of the two would  
16 be best qualified to respond.

17 Q. BY MR. AFFELDT: Okay. I'm going to hand you  
18 the misassignment statute. I think it will be easier to  
19 follow questions.

20 (Exhibit SAD-218 was marked.)

21 Q. BY MR. AFFELDT: This is SAD-218. This  
22 purports to be a copy of the Ed Code Section 44258.9 and  
23 is entitled review of teacher assignments; affidavits of  
24 teacher and employee assignments; reports; sanctions for  
25 misassignments.

1 The Commission can exercise its prerogative in  
2 granting emergency permits or waivers based upon whether  
3 or not there's a concern relative to the abuse of  
4 assignment of personnel.

5 Q. BY MR. AFFELDT: And how would an issuance of  
6 an emergency permit or waiver resolve the issue of  
7 misassignment?

8 MR. HERRON: Objection. Calls for speculation.

9 THE WITNESS: It would have to be based upon  
10 whatever the situation is in that district. It would be  
11 a situational issue. We'd have to evaluate what is  
12 being done by the district, what problem has been  
13 created by the district, and what remedy is the  
14 appropriate remedy.

15 So I'd have to have a specific instance when  
16 the Commission inserts itself into a district because of  
17 an assignment/misassignment issue. We have a variety of  
18 ways of working with that district to correct the  
19 problem.

20 Q. BY MR. AFFELDT: I'm responding to your point  
21 that the Commission could issue an emergency permit or  
22 waiver to correct the problem, so maybe you can give me  
23 an example of where that would be the case.

24 A. We look at whether or not school districts are  
25 acting in good faith to assign personnel based upon

1 Do you know if this is the main Ed Code section  
2 on misassignments?

3 MR. HERRON: Well, John, before you go there,  
4 doesn't the third page of this show the new and recently  
5 enacted version of this same statute? I mean, I may be  
6 wrong here.

7 MR. AFFELDT: Yeah.

8 MS. READ-SPANGLER: Yeah.

9 MR. AFFELDT: You retrieved it for us, Jen. Is  
10 that what we're looking at on page 3?

11 MS. HUANG: Uh-huh.

12 MR. AFFELDT: So let's stick -- in fact, why  
13 don't we just make 218 just the last page.

14 (Exhibit SAD-218 was re-marked.)

15 Q. BY MR. AFFELDT: Looking at section G1 where it  
16 says the Commission shall establish reasonable sanctions  
17 for the misassignment of credential holders, has the  
18 Commission established those sanctions?

19 MR. HERRON: Objection. Calls for speculation.

20 THE WITNESS: I'm not aware of any  
21 establishment of sanctions. The Commission goes out and  
22 reviews the placement of an individual who has not been  
23 determined to be qualified, works with the school and  
24 the district in the county in correcting the  
25 misassignment.

1 authorizations that are appropriate for that particular  
2 assignment.

3 If we believe there is an abuse, then we will  
4 review all requests by the district with respect to  
5 requests for waivers or emergency permits to see if  
6 there's any other concerns there. So it's part of our  
7 review process when districts may not be acting in  
8 accordance with the statutes or the regulations.

9 MR. AFFELDT: Can you read the question and  
10 answer for Mr. Swofford's benefit?

11 (Record read.)

12 Q. BY MR. AFFELDT: Can the Commission correct a  
13 misassignment by issuing an emergency permit or waiver?

14 MR. HERRON: Objection. Asked and answered.

15 You may respond.

16 THE WITNESS: If you're asking me whether as a  
17 specific sanction -- I'm sorry?

18 Q. BY MR. AFFELDT: I'm just asking you, is it  
19 possible in any case for the Commission to correct a  
20 misassignment by issuing an emergency permit or a  
21 waiver?

22 MR. HERRON: Objection. Calls for speculation.  
23 You may respond. Asked and answered.

24 THE WITNESS: I don't know if I understand the  
25 question.

1 MR. HERRON: If I may here, maybe I can help  
 2 out. I think that you misunderstood his answer. I  
 3 think his answer is meant to say that they can consider  
 4 past misassignments in determining whether or not to  
 5 provide waivers and emergency permits and that that's  
 6 the sanction, as opposed to that's how you correct the  
 7 misassignment.  
 8 Q. BY MR. AFFELDT: In response to section G1 you  
 9 said you weren't aware of any establishment of  
 10 sanctions.  
 11 Do I understand you to say that the Commission  
 12 has not anywhere adopted specific sanctions when it  
 13 discovers misassignments or adopted specific sanctions  
 14 covering misassignments?  
 15 MR. HERRON: Objection. Asked and answered.  
 16 You may respond.  
 17 THE WITNESS: I don't know from the -- that we  
 18 have any legal authority, and I'm not qualified to make  
 19 that judgment as to whether we can, by this statute,  
 20 adopt specific sanctions.  
 21 Q. BY MR. AFFELDT: But I'm just asking factual --  
 22 A. I'm not aware of any --  
 23 Q. I'm just asking the factual incident, whether  
 24 the Commission has adopted specific sanctions in  
 25 response to this section.

1 A. The answer is no.  
 2 Q. Are you aware of -- now I'm looking at  
 3 subsection G3 where in the middle it says, the county  
 4 superintendent of schools should notify the Commission  
 5 on Teaching Credentialing of the misassignment if the  
 6 certificated school administrator has not corrected the  
 7 misassignment within 30 days of the initial  
 8 notification, or if the certificated school  
 9 administrator has not described in writing within the  
 10 30-day period to the county superintendent of schools  
 11 the extraordinary circumstances which make this  
 12 correction impossible.  
 13 Are you aware of the Commission ever being  
 14 notified by county superintendents of such instances?  
 15 A. I'm not aware of specific notices that we have  
 16 received.  
 17 Q. Would you be if they were received?  
 18 A. No.  
 19 Q. Who would be?  
 20 A. The director of the certification assignment  
 21 and waiver division.  
 22 Q. That is currently Dale Janssen again?  
 23 A. That's correct.  
 24 Q. What about under subsection G4, and in the  
 25 middle it says, the county superintendent of schools

1 shall notify the Commission on Teacher Credentialing of  
 2 the misassignment if the school district superintendent  
 3 has not corrected the misassignment within 120 days of  
 4 the initial notification, or if the school district  
 5 superintendent of schools has not described in writing  
 6 within the 120-day period to the county superintendent  
 7 of schools the extraordinary circumstances which make  
 8 this correction impossible.  
 9 Are you aware of any instances where the  
 10 Commission has received such notice?  
 11 A. Again, I don't, in my office, receive those  
 12 notices. The notices would go down to the certification  
 13 division.  
 14 Q. Are you familiar with the biennial reports  
 15 referenced in section F?  
 16 MR. HERRON: Objection. Asked and answered.  
 17 THE WITNESS: Yes, I'm familiar that we do  
 18 issue the report on a biennial basis.  
 19 Q. BY MR. AFFELDT: Are those reports reviewed and  
 20 approved by the Commission itself?  
 21 A. The reports are submitted to the Commission for  
 22 their review and their adoption.  
 23 Q. Are you familiar with a piece of legislation  
 24 known as AB 1422?  
 25 A. Yes, I am.

1 Q. And what was the purpose of that particular  
 2 legislation?  
 3 MR. HERRON: Objection to the extent it calls  
 4 for speculation or a legal conclusion.  
 5 Just give him your understanding.  
 6 THE WITNESS: The 1422 process, my  
 7 understanding, I was not at the agency when the  
 8 legislation was enacted, speaks to reviewing current  
 9 credentials structure, making recommendations to the  
 10 improvement of credentialing teachers.  
 11 Q. BY MR. AFFELDT: Was there an advisory panel  
 12 established pursuant to the bill to review the  
 13 credentialing process in California?  
 14 MR. HERRON: Objection. Calls for speculation.  
 15 THE WITNESS: The legislation did create an  
 16 advisory group, and there was an advisory group  
 17 established.  
 18 Q. BY MR. AFFELDT: Did you participate with that  
 19 advisory group?  
 20 A. No.  
 21 Q. Who did on the Commission?  
 22 MR. HERRON: Objection. Calls for speculation.  
 23 THE WITNESS: Staff would have facilitated the  
 24 advisory group activity. Staff of the Commission would  
 25 have been involved in it.

1 Q. BY MR. AFFELDT: Do you recall when the  
2 advisory group carried out its mandate under AB 1422?

3 MR. HERRON: Objection. Assumes facts not in  
4 evidence. Vague and ambiguous, and it calls for  
5 speculation.

6 THE WITNESS: If you're asking me when the  
7 report went to the Commission from the task force, it's  
8 been in the last two years.

9 Q. BY MR. AFFELDT: It was during your tenure?

10 A. That's correct. I'm sorry, it could be two or  
11 three years. I'm losing track of time. It's been in  
12 the last three years.

13 Q. What, if any, action came out of the report  
14 that was submitted as a result of AB 1422?

15 MR. HERRON: I'm sorry, I couldn't hear you,  
16 John.

17 Could we have that read back.

18 (Record read.)

19 MR. HERRON: Objection. Calls for speculation.  
20 Assumes facts not in evidence. Any such report would  
21 speak for itself.

22 THE WITNESS: The advisory panel submitted  
23 recommendations to the Commission for their  
24 consideration.

25 Q. BY MR. AFFELDT: Was there any follow-up

1 information via the agenda. That was my role.

2 Q. I didn't understand what you meant by that?

3 A. The recommendations were of the panel, they  
4 were not my recommendations, but my responsibility is to  
5 carry the recommendations to the Commission because I  
6 create the agenda, along with the chair of the  
7 Commission, for each of the meetings.

8 MR. AFFELDT: For the record, I've been saying  
9 AB 1422, but the correct bill number is SB 1422.

10 Q. Was this report, do you recall, presented to  
11 the commissioners at a meeting?

12 A. Yes.

13 Q. Do you recall if there was discussion about its  
14 conclusions and recommendations?

15 A. Yes.

16 Q. And what do you recall about that discussion?

17 MR. HERRON: Objection. Calls for a narrative.

18 THE WITNESS: I do not recall the details of  
19 the presentation. I do recall there was probably over  
20 100 recommendations that went to the Commission. That's  
21 the extent of my recollection without reviewing the  
22 document.

23 Q. BY MR. AFFELDT: Do you recall when the meeting  
24 was that the report was presented?

25 THE WITNESS: As I indicated in previous

1 legislation that you're aware of?

2 MR. HERRON: Objection. Vague and ambiguous.  
3 Calls for speculation.

4 THE WITNESS: If you're asking me was there  
5 legislation to address the recommendations of the 1422  
6 panel, yes, there was.

7 Q. BY MR. AFFELDT: What legislation was that?

8 A. Senate Bill 2042.

9 Q. I'm going to hand you we'll mark as SAD-219,  
10 and ask if that's the 1422 report you're referring to.

11 (Exhibit SAD-219 was marked.)

12 MR. HERRON: I object that it calls for  
13 speculation. He already said he didn't serve on the  
14 panel.

15 THE WITNESS: It appears to be the document  
16 prepared by the Commission on SB 1422.

17 Q. BY MR. AFFELDT: And this document was prepared  
18 during your tenure, correct?

19 A. That's correct.

20 Q. Do you recall reviewing it at the time?

21 A. I did review the document.

22 Q. Did you submit it to the commissioners for  
23 review and adoption?

24 A. I did not. The process is the advisory panel  
25 reports to the Commission. My staff provided the

1 testimony, it was several years. It appears to be even  
2 more, 1997. I don't recall the exact month that this  
3 went to the Commission.

4 MR. AFFELDT: Why don't we break for lunch at  
5 this point.

6 (Lunch recess 11:53 - 12:08.)

7 Q. BY MR. AFFELDT: Dr. Swofford, why did you  
8 leave Lodi, the superintendent position?

9 A. I resigned the district.

10 Q. Why is that?

11 A. Wanted to resign.

12 Q. And what was your reason for wanting to resign?

13 A. Resigned. I had personal, professional  
14 reasons.

15 Q. What are the duties of a professional services  
16 division?

17 A. Major responsibilities are standards setting  
18 for preparation programs of all professional educators,  
19 and they also are responsible for facilitating the  
20 committee of accreditation, which approves programs that  
21 universities and colleges offer in the area of  
22 professional educator preparation.

23 They also have the responsibility of testing,  
24 the California basic -- well, the CBEST, basic education  
25 schools test, they do the subject matter test, they do

1 the elementary test, called MSAT, multiple subject  
 2 assessment test. Those are the major functions.  
 3 And then they help staff -- are part of a joint  
 4 governance structure with the Department of Education on  
 5 the BTSA program, and they also are responsible for  
 6 coordination, and certainly the activities involving all  
 7 the alternative routes, paraprofessional programs  
 8 preintern and intern program. Those are probably the  
 9 major responsibilities.  
 10 Q. In terms of setting standards for teacher  
 11 education programs, what are the types of standards that  
 12 the division is setting?  
 13 MR. HERRON: Objection. Vague and ambiguous.  
 14 THE WITNESS: You're asking me what types of  
 15 standards or --  
 16 Q. BY MR. AFFELDT: Give me an example of a  
 17 standard that the division sets.  
 18 A. The type of -- standards are designed, they're  
 19 not courses. Standards, they set out expectations that  
 20 certain competencies must be addressed in the  
 21 preparation program in order for the person to be fully  
 22 qualified to teach in a particular area, so it would be  
 23 like methodology, how do you deliver instruction to  
 24 students, standards in that area, subject matter  
 25 standards, what is expected of students teachers need to

1 know, which is now part of the K-12 academic content  
 2 standards adopted by the state board.  
 3 The preparation programs then align the  
 4 standards for teachers using that as the reference  
 5 point, so it's in those two areas. Classroom management  
 6 skills. So it sets out expectations that certain  
 7 competencies will be achieved in the program through  
 8 coursework or through student teaching, or through some  
 9 other demonstration of competency.  
 10 Q. If an individual comes -- if an individual has  
 11 not graduated from a teacher preparation program in  
 12 California or another state, does the Commission have  
 13 any confidence in whether or not that person has the  
 14 competencies that you just described?  
 15 MR. HERRON: Objection. Vague and ambiguous.  
 16 Calls for speculation.  
 17 THE WITNESS: Can I have the question read back  
 18 to me. I think I missed the first part myself.  
 19 (Record read.)  
 20 THE WITNESS: I don't know without having the  
 21 opportunity to review that particular individual's  
 22 experience and academic preparation.  
 23 Q. BY MR. AFFELDT: Under what circumstances would  
 24 an individual who has had no teacher preparation satisfy  
 25 you that they have competencies in classroom management,

1 methodology and the other areas you described?  
 2 MR. HERRON: Objection. Calls for a narrative.  
 3 Vague and ambiguous.  
 4 THE WITNESS: If you're asking me a specific  
 5 example --  
 6 MR. AFFELDT: Yeah.  
 7 THE WITNESS: -- I can give you a specific  
 8 example.  
 9 Troops to teachers program would be an example.  
 10 Q. BY MR. AFFELDT: Can you elaborate on troops to  
 11 teachers?  
 12 A. Individuals are eligible for that program if  
 13 they have a baccalaureate degree, they have subject  
 14 matter competence either through academic preparation or  
 15 through exam, they -- individuals who have taught in the  
 16 military, recruits, for example, or individuals going  
 17 through going through particular programs in the  
 18 military, they've had the experience of teaching young  
 19 adults and they've demonstrated competencies in that  
 20 respect and that would -- along with the character  
 21 fitness requirements, that would qualify them for an  
 22 internship.  
 23 And many of these individuals have 20, 25 years  
 24 of experience in the work force in working with diverse  
 25 students and they understand how to deliver instruction,

1 and certainly the classroom control or classroom  
 2 management issue is not much of an issue because of that  
 3 experience. So they have proficiencies that were  
 4 required through their employment and not through a  
 5 credential program that would enable them to be  
 6 successful as a teacher of record in most classrooms.  
 7 Q. Does an individual who enters the troops to  
 8 teachers program qualify for a clear or preliminary  
 9 credential?  
 10 MR. HERRON: Objection. Calls for speculation.  
 11 Incomplete and improper hypothetical.  
 12 THE WITNESS: If you're asking me what is the  
 13 credential they're working on, they have at the time an  
 14 intern credential.  
 15 Q. BY MR. AFFELDT: And they're working on it,  
 16 they're not awarded the credential upon entering the  
 17 program; isn't that right?  
 18 A. They're awarded -- they're an intern. They're  
 19 working as an intern under an intern authorization for  
 20 whatever the duration of the program, one or two years.  
 21 Q. And at the end of the program, what is the  
 22 credential that they earn?  
 23 A. Then they move into a preliminary credential if  
 24 recommended by the -- if it's a school district program  
 25 or by the university that's working with the school



1 district.

2 Q. And an intern credential, in the hierarchy of  
3 commission credentials, is below a preliminary  
4 credential; isn't that right?

5 A. No.

6 Q. So the individual who is working towards a  
7 preliminary credential -- well, let me ask it this way,  
8 why don't you explain to me why you think an intern  
9 credential is the equivalent of a preliminary  
10 credential.

11 MS. READ-SPANGLER: Objection. Misstates his  
12 testimony.

13 THE WITNESS: I did not indicate that there was  
14 an equivalency between the intern and preliminary.

15 Q. BY MR. AFFELDT: Does someone who -- other than  
16 your example on troops to teachers, how does the  
17 Commission ensure that individuals have the competencies  
18 you described earlier regarding methodology, classroom  
19 management, et cetera, other than graduation from the  
20 teacher preparation program?

21 MR. HERRON: Objection. Calls for a narrative.  
22 Asked and answered in part, if not in whole.

23 THE WITNESS: I'm trying to understand.

24 MR. HERRON: He'll rephrase.

25 THE WITNESS: I can't respond based upon the

1 methodology, classroom management and the other  
2 competencies you were describing, as a graduate of a  
3 teacher preparation program?

4 MR. HERRON: Objection. Vague and ambiguous.  
5 Incomplete and improper hypothetical. Calls for  
6 speculation, and it misconstrues his prior testimony.  
7 Argumentative.

8 You may respond.

9 THE WITNESS: I would have to have the  
10 individual's record, their experience or academic  
11 preparation, work experience before me before I could  
12 make any kind of determination as to whether they are as  
13 qualified or not as qualified as someone with a full  
14 credential.

15 Q. BY MR. AFFELDT: Working in the aggregate, is  
16 the Commission as confident, all things being equal,  
17 that a school with 100 percent of teachers holding  
18 preliminary or clear credentials are -- and then on the  
19 other hand you've got a school with 50-percent emergency  
20 permit teachers, is the Commission more confident that  
21 the 100-percent fully-credentialed school faculty is  
22 more qualified than the 50-percent emergency permit  
23 faculty?

24 MR. HERRON: All the same objections as to the  
25 last question.

1 question.

2 Q. BY MR. AFFELDT: What part didn't you  
3 understand?

4 A. It was the assurance of competency and there  
5 was all other certifications. I'm not clear which  
6 certifications you're talking about. Are you talking  
7 about all certifications?

8 MR. AFFELDT: Can you reread the question?

9 MR. HERRON: Can I -- I hate to interrupt, but  
10 I've got to make a phone call, about five minutes. It's  
11 an emergency that I just learned about, and I wonder if  
12 now would be okay.

13 MR. AFFELDT: Sure.

14 (Recess taken 1:22 to 1:26.)

15 (Record read.)

16 MR. HERRON: Objection. Vague and ambiguous.  
17 Calls for speculation.

18 THE WITNESS: There are requirements in statute  
19 and regulations and standards that are set for all our  
20 certifications, and if they meet those, then they are  
21 granted an authorization to serve, and the authorization  
22 itself is -- permits the individual to serve in a  
23 classroom.

24 Q. BY MR. AFFELDT: It is your testimony that an  
25 emergency permit holder is as prepared in terms of

1 THE WITNESS: I would have to see more  
2 information relative to the performance of the  
3 individual teachers on both sides, as well as the other  
4 data that would be helpful in constructing a view of  
5 equal to, greater than, or less than in terms of the  
6 level of confidence.

7 Q. BY MR. AFFELDT: So the Commission wouldn't  
8 make a determination based on the qualifications of the  
9 faculty looking at their credentials?

10 MR. HERRON: Well, assumes facts not in  
11 evidence, and all the same objections as to the last two  
12 questions.

13 Go ahead, if you understand.

14 THE WITNESS: The Commission doesn't make  
15 determinations on compositions of facilities.

16 Q. BY MR. AFFELDT: But the Commission makes  
17 determinations on whether or not an individual is  
18 qualified to teach, correct?

19 A. The Commission makes a determination of  
20 providing authorization for someone to perform the  
21 services of a classroom teacher.

22 Q. And the Commission uses credential systems to  
23 determine -- strike that.

24 The Commission considers an individual with a  
25 preliminary or clear credential to be fully prepared to

1 teach, correct?  
 2 A. If I understand the question, someone who has  
 3 a -- completed a teacher preparation program and has  
 4 been granted a clear or preliminary credential, they  
 5 have met the requirements for being fully credentialed.  
 6 Q. And if one receives one of those two  
 7 credentials, is there any additional preparation that  
 8 the Commission requires?  
 9 A. I'm sorry, which two credentials?  
 10 Q. Preliminary or clear.  
 11 MR. HERRON: Objection. Vague and ambiguous as  
 12 to "requires."  
 13 THE WITNESS: I can only speak to the fact  
 14 that --  
 15 MR. AFFELDT: Let me rephrase the question  
 16 based on the objection.  
 17 Q. Once one receives a preliminary or clear  
 18 credential, are there any additional credential  
 19 authorizations available to that individual?  
 20 A. No. If I understand the question, is there  
 21 a -- once you have a preliminary credential or  
 22 professional clear, there's ongoing requirements to  
 23 maintain a credential in California.  
 24 MS. READ-SPANGLER: You're limiting it to  
 25 California credentials, right?

1 MR. AFFELDT: That's right.  
 2 MS. READ-SPANGLER: So not like the national  
 3 whatever, whatever?  
 4 MR. AFFELDT: No.  
 5 Q. That's just the continuing education  
 6 requirements?  
 7 A. 150 hours -- there's 150-hour requirement for a  
 8 credential holder every five years, one to clear it and  
 9 one to maintain it. In order to obtain a clear  
 10 credential, you need to have 150 hours over a five-year  
 11 period, then after that, if you've obtained the clear  
 12 credential, the renewal requirement every five years is,  
 13 again, 150 hours.  
 14 And I'd also indicate that under the initial  
 15 credential you have to have years of experience working  
 16 on the credential in order to clear the credential. So  
 17 it's just not a continued education kind of requirement,  
 18 it's also that you are practicing teaching.  
 19 Q. Who is Donald Currier?  
 20 A. Donald Currier is the director of the  
 21 certification assignment and waiver division.  
 22 Q. Is that his current position?  
 23 A. Donald Currier is a -- is currently on duty  
 24 with the Army National Guard, and I testified earlier  
 25 that Mr. Dale Janssen is the acting -- he is replacing

1 Mr. Currier while he's serving his country in the state  
 2 of Washington.  
 3 Q. Thank you. I thought it sounded like the same  
 4 division that Mr. Janssen was in.  
 5 A. That's correct.  
 6 MR. AFFELDT: I'm just going to need a few  
 7 minutes to review the documents here, see if I have  
 8 anything else.  
 9 MR. HERRON: Okay. We'll take a break then.  
 10 That's great.  
 11 (Recess taken 1:38 - 1:55.)  
 12 Q. BY MR. AFFELDT: Dr. Swofford, is there any  
 13 limit to the number of waivers that the Commission will  
 14 grant an individual district?  
 15 A. I don't know that answer.  
 16 Q. You don't know if there's a limit or not?  
 17 A. I'm not aware of a limit.  
 18 Q. Are you aware of a limit on the number of  
 19 emergency permits that the Commission will grant an  
 20 individual district?  
 21 MR. HERRON: Objection. Calls for a legal  
 22 conclusion. Calls for speculation.  
 23 You may respond.  
 24 THE WITNESS: I don't know. I'm not aware of  
 25 any existing statute or regulation. I don't know that

1 there's any limitations.  
 2 MR. AFFELDT: David, that's all I have at this  
 3 time. There are documents that we're expecting from you  
 4 that we've moved to compel on. Most of those, if not  
 5 all of them, deal with misassignment, which Dr. Swofford  
 6 has identified Dale Janssen as the individual who would  
 7 have the most knowledge about that. So if that proves  
 8 to be the case, then I think we are done with  
 9 Dr. Swofford, but if there are additional documents that  
 10 turn up pursuant to those requests, then we're going to  
 11 ask Dr. Swofford to come back.  
 12 MR. HERRON: We'll deal with your request at  
 13 that time.  
 14 MR. AFFELDT: Okay.  
 15 MR. HERRON: Excellent.  
 16 (The deposition concluded at 1:58 p.m.)  
 17 //  
 18 //  
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 25

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 \_\_\_\_\_  
Date Signed

8  
9 \_\_\_\_\_  
DR. SAM W. SWOFFORD

10 Case Title: Williams vs State, Volume III  
11 Date of Deposition: Thursday, December 20, 2001  
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1 REPORTER'S CERTIFICATE

2  
3 I certify that the witness in the foregoing  
4 deposition,  
5 DR. SAM W. SWOFFORD,  
6 was by me duly sworn to testify the truth, the whole  
7 truth, in the within-entitled cause; that said  
8 deposition was taken at the time and place therein  
9 named; that the testimony of said witness was reported  
10 by me, a duly certified shorthand reporter and a  
11 disinterested person, and was thereafter transcribed  
12 into typewriting.

13 I further certify that I am not of counsel or  
14 attorney for either or any of the parties to said cause,  
15 nor in any way interested in the outcome of the cause  
16 named in said deposition.

17 IN WITNESS WHEREOF, I have hereunto set my hand  
18 this 3rd day of January, 2001.  
19  
20  
21

22 \_\_\_\_\_  
TRACY LEE MOORELAND, CSR 10397  
23 State of California  
24  
25