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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 CITY AND COUNTY OF SAN FRANCISCO

13 ELIEZER WILLIAMS, et al., ) Case No. 312 236  
14 )  
15 Plaintiffs, ) Hearing Date: April 11, 2001  
16 )  
17 vs. ) Time: 8:30 a.m.  
18 )  
19 STATE OF CALIFORNIA, DELAINE ) Department: 414  
20 EASTIN, State Superintendent )  
21 Of Public Instruction, STATE ) Judge: Hon. Peter J. Busch  
22 DEPARTMENT OF EDUCATION, STATE)  
23 BOARD OF EDUCATION, )  
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25 Defendants. )  
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Cases

Brokate v. Hehr Mfg. Co.,  
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Butt v. State of California,  
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California Teachers Ass'n v. Hayes,  
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Laitram Corp. v. Hewlett-Packard Co.,  
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Resolution Trust Corp. v. Heiserman,  
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Rimington v. General Accident Group of Ins. Cos.,  
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Other Authorities

4 Witkin, California Procedure, Pleading § 338 at 435  
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Civil Trials ¶ 4:343 (Rutter Group 1996).....6

1                                 RESPONSE OF DEFENDANT STATE OF CALIFORNIA  
2                                 TO MOTIONS FOR SEVERANCE AND STAY  
3

4                 This Memorandum responds to the two motions for  
5 severance and stay that have been filed, one by plaintiffs ("Pl.  
6 Mot."), and one by cross-defendants Fresno Unified School  
7 District and San Francisco Unified School District ("Fresno  
8 Mot."). Seven of the other 16 school districts named in the  
9 Cross-complaint have filed notices of joinder in Fresno's  
10 Motion;<sup>1</sup> Los Angeles Unified School District, which is  
11 responsible for about a seventh of California's school children,  
12 has moved to intervene on the Complaint, a course that is  
13 entirely inconsistent with severance; while the other school  
14 districts so far have taken no position.

15                 The motions should be denied. They rest on a  
16 fundamental misunderstanding of the issues that are involved in  
17 this case and which will be the subject of discovery and trial.  
18 A severance and stay will promote no judicial efficiencies of any  
19 kind, either in discovery or in trial. To the contrary, a  
20 severance would ensure that many issues would be tried twice,  
21 wasting the time of the parties and the Court. A severance would  
22 also greatly reduce the Court's ability, if plaintiffs should  
23 ever demonstrate that they are entitled to any relief, to frame a  
24 remedy that is efficient, economical, and effective.

---

25  
26  
27                 <sup>1</sup> Long Beach Unified, Lynwood Unified, Merced City  
28 Elementary, Oakland Unified, Ravenswood City Elementary, Visalia  
Unified, and West Contra Costa Unified School Districts.

1 I. THE MOVING PARTIES HAVE MISSTATED THE NATURE OF THE  
2 ISSUES TO BE LITIGATED AND TRIED.

3 The central thrust of both motions for severance is  
4 that the Complaint supposedly concerns only the State's conduct,  
5 whereas the Cross-complaint concerns only conditions at  
6 individual schools. Thus, plaintiffs say that their Complaint is  
7 about the State's "obligation to establish and maintain an  
8 effective system of oversight and management which ensures basic  
9 educational quality," while the Cross-complaint "concerns  
10 specific district failures in implementing delegated duties."  
11 Pl. Mot. 3:21-22, 5:1-2.

12 This Emperor has no clothes. Despite plaintiffs'  
13 rhetoric, the State has no general "obligation to establish and  
14 maintain an effective system of oversight and management."  
15 Plaintiffs cite no case that says that; they have never cited  
16 such a case; they cannot cite such a case because there is none.  
17 Plaintiffs have made up this so-called "obligation" out of thin  
18 air. Yet they talk as if the existence of such a duty were  
19 manifest and accepted.

20 The law is quite different. The State does not have  
21 any obligation to maintain a "system of oversight and  
22 management." But the State is ultimately responsible, under the  
23 California Constitution, for public education in California;<sup>2</sup> and

24 \_\_\_\_\_  
25 <sup>2</sup> City of El Monte v. Commission on State Mandates, 83 Cal.  
26 App. 4th 266, 278-79 (2000); California Teachers Ass'n v. Hayes,  
27 5 Cal. App. 4th 1513, 1523-24 (1992). To avoid misunderstanding,  
28 it may be well to reiterate, as the cited cases indicate, that  
for purposes of the doctrine that the State has ultimate  
constitutional responsibility for the public schools, the "State"  
includes not only the executive agencies and officers of the  
State, but also the Legislature, the Judiciary, and all other  
entities and persons operating under and by virtue of the

1 children in California have the right to an education that meets  
2 a certain basic standard. The content of that basic standard is  
3 not well defined in the case law, and the principal formulation,  
4 in Butt v. State of California, 4 Cal. 4th 668, 686-87 (1992), is  
5 negative:

6 Unless the actual quality of the district's program,  
7 viewed as a whole, falls fundamentally below prevailing  
8 statewide standards, no constitutional violation  
occurs.

9 If a California public school student is receiving an  
10 education that meets the basic standard -- whatever that is -- no  
11 California case suggests that the student has a constitutional  
12 claim against the State or anyone else. If the basic standard is  
13 met, the California Constitution is utterly indifferent to  
14 whether the State has provided "a system of oversight and  
15 management," or whether it has done nothing at all. Therefore,  
16 despite what plaintiffs say, there is no free-standing obligation  
17 resting on the State "to provide a system of oversight and  
18 management." There is merely a right to an education that meets  
19 the basic constitutional standard -- a right belonging to every  
20 California school child and judicially enforceable against the  
21 State and its agents the school districts, subject to the  
22 ordinary limitations on judicial power.

23 Accordingly, the first question that must be answered  
24 in this case, for every plaintiff, is whether that plaintiff is  
25 receiving an education that meets the basic standard. If so, he  
26

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27 Constitution of California on whom some portion of the sovereign  
28 power of the People has been conferred, including the State's  
agents the school districts.

1 or she has no claim, and the Complaint as to that plaintiff will  
2 be dismissed. If, on the other hand, there is proof that a  
3 particular plaintiff is not receiving an education that meets the  
4 basic standard, then the Court will need to decide what relief,  
5 if any, is appropriate, and against whom. Realistically, the  
6 scope of relief will depend on what the problem is, how  
7 widespread it is, and what remedy will be practical, efficient,  
8 and effective to fix it.

9           If problems are found to exist, some will be remediable  
10 at the level of the individual school, some at the level of the  
11 individual school district, some at the level of one or more  
12 State agencies, and some may not be remediable at all -- at least  
13 not by a court acting within the constitutional limits on its  
14 authority. But the scope of any remedy will depend on the nature  
15 and extent of the problem. And only by looking at the situation  
16 of individual students in individual schools can the nature and  
17 extent of the problem be ascertained.

18           When plaintiffs are not trying to obtain a procedural  
19 advantage by distorting what this case is about, they recognize  
20 all this. In the memorandum they filed in connection with the  
21 last status conference, they admitted that the first matter to be  
22 examined at trial would be whether plaintiffs were obtaining an  
23 education that met the basic constitutional standard:

24           Plaintiffs propose that the trial of this action be  
25           divided into two phases. In the first, the trial would  
26           focus on the actual conditions existing in public  
              schools and their effect on the education of students.

27           Plaintiffs' Status Conference Statement, filed March 2, 2001, at  
28           4:10-12.



1           Similarly, in responding to the State's Motion for  
2 Summary Judgment concerning the Cloverdale plaintiffs -- the  
3 first motion in this case to go to the merits of any plaintiff's  
4 claim -- plaintiffs' entire focus is on the exact and specific  
5 circumstances of Cloverdale High School: Does the freshman class  
6 in Integrated Science have enough textbooks?<sup>3</sup> What materials are  
7 used in freshman geography class?<sup>4</sup> How often, if ever, do  
8 temperatures in Cloverdale get over 90?<sup>5</sup> There is not a word in  
9 plaintiffs' opposition about the State's "obligation to maintain  
10 a system of oversight and management." Indeed, there is barely a  
11 word about the State's activities at all.

12           The omission speaks volumes. If plaintiffs could  
13 defeat the Cloverdale summary judgment motion by pointing to  
14 authority that laid on the State "an obligation to maintain a  
15 system of oversight and management," surely they would do so.  
16 They cannot, and they know they cannot. When the rubber meets  
17 the road, plaintiffs know that the merits of this case are not  
18 about what the State has or has not done. They are about whether  
19 the individual plaintiffs are receiving an education that meets  
20 the basic constitutional standard as defined in Butt; and, if  
21 there should prove to be any plaintiff who is not receiving such  
22 an education, about what remedy can be devised for the

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25           <sup>3</sup> Plaintiffs' Separate Statement of Undisputed Facts in  
26 Opposition to Defendant's Motion For Summary Judgment as to the  
Cloverdale plaintiffs ("Separate Statement") at ¶ 1.

27           <sup>4</sup> Separate Statement at ¶ 10.

28           <sup>5</sup> Separate Statement at ¶ 19.

1 plaintiff's problem that would be practical, efficient, and  
2 effective.

3 **II. A SEVERANCE WOULD RENDER TRIAL LESS EFFICIENT, NOT**  
4 **MORE.**

5 Plaintiffs and Fresno seek a separate trial pursuant to  
6 § 1048(b) of the Code of Civil Procedure.<sup>6</sup> Whether such a  
7 separate trial should be granted is a matter within the sound  
8 discretion of the Court. But the statute provides that a  
9 separate trial should be ordered only when it "will be conducive  
10 to expedition and economy." C.C.P. § 1048(b). That is not the  
11 case here.

12 Section 1048(b) was enacted in its present form in  
13 1971, and was intended "to conform in substance to Rule 42 of the  
14 Federal Rules of Civil Procedure." C.C.P. § 1048(b), Legislative  
15 Committee Comment. "The revised statute has produced little  
16 California authority on its scope and effect." 4 Witkin,  
17 California Procedure, Pleading § 338 at 435 (4th Ed. 1997).  
18 Cases decided under the federal rule are accordingly persuasive  
19 as to the interpretation of the California statute. Wegner,  
20 Fairbanks & Epstein, California Practice Guide: Civil Trials ¶  
21 4:343 (Rutter Group 1996).

22 The federal cases make plain that separate trials  
23 should be ordered only where it will promote convenience,  
24 efficiency, and judicial economy, or where it is necessary to  
25 avoid prejudice. "[S]eparate trials should be the exception, not  
26 the rule." Laitram Corp. v. Hewlett-Packard Co., 791 F. Supp.

27 \_\_\_\_\_  
28 <sup>6</sup> Fresno also relies on C.C.P. § 548. The State agrees with  
plaintiffs that this section is not applicable. Pl. Mot. 2 n.3.

1 113, 114-15 (E.D. La. 1992). A motion to sever is inappropriate  
2 where the claims at issue are "interrelated," or where separate  
3 trials would be "duplicative." In re MDC Holdings Securities  
4 Litigation, 754 F. Supp. 785, 800 (S.D. Cal. 1990). See also  
5 Rodin Properties-Shore Mall, N.V. v. Cushman & Wakefield of  
6 Pennsylvania, Inc., 49 F. Supp. 2d 709, 721 (D.N.J. 1999)  
7 ("Because 'a single trial tends to lessen the delay, expense and  
8 inconvenience to all parties,' the burden rests on the party  
9 seeking bifurcation to show that it is proper"); Resolution Trust  
10 Corp. v. Heiserman, 151 F.R.D. 367, 377 (D. Colo. 1993) ("Because  
11 the same or overlapping discovery, evidence and exhibits at trial  
12 will be necessary to prove the claims [against both defendants],  
13 I find that judicial resources could be unnecessarily wasted if  
14 the claims . . . are separated and stayed").

15 It is telling that neither plaintiffs nor Fresno cite  
16 any cases ordering separate trials in circumstances similar to  
17 those here. For this case presents none of the unusual  
18 circumstances that are required under the case law to warrant a  
19 separate trial. On the contrary, separate trials of the  
20 Complaint and the Cross-complaint would cause duplication of  
21 effort and waste the resources of the Court and the parties.

22 First, as discussed above, the fundamental issue in  
23 this case is whether plaintiffs, or any of them, are receiving an  
24 education that does not meet the basic constitutional standard of  
25 Butt. To obtain any relief, plaintiffs will have to prove that  
26 the education they are receiving does not meet that standard.  
27 But that is also the key fact that the State must prove on its  
28 Cross-complaint against the districts. Only if there is a

1 constitutional violation are plaintiffs entitled to relief  
2 against the State, and only if there is that very same  
3 constitutional violation is the State entitled to relief against  
4 the districts. On that question, moreover, the legal issues will  
5 be identical and the evidence will be identical -- whether  
6 presented on plaintiffs' Complaint or on the State's Cross-  
7 complaint.

8           It is obviously sensible and appropriate to try that  
9 issue only once, and to do so in a trial in which the State and  
10 the districts participate. Any result reached in such a trial  
11 will bind plaintiffs, the State, and the districts. If no  
12 plaintiff succeeds in proving that he or she was deprived of a  
13 constitutionally adequate education, then no relief will be  
14 granted and the case will be over.<sup>7</sup> If any plaintiff succeeds in  
15 proving a constitutional violation, then the Court can proceed to  
16 consider what remedy, if any, is proper. But the violation will  
17 have been established by a trial binding on both the State and  
18 the district, and the Court will be able to consider the issue of  
19 remedy in a context where the same facts have been established  
20 against all relevant parties. By contrast, if there is a  
21 severance, any district that disputes the existence of a  
22 constitutional violation will be able to litigate that issue  
23 against the State when the Cross-complaint is tried -- even if at

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24           <sup>7</sup> Fresno says the fact that plaintiffs may fail to prove  
25 their case means that the issues on the Cross-complaint are not  
26 justiciable. Fresno Mot. 5. This is nonsense. Numerous  
27 California cases allow cross-complaints against potentially  
28 responsible parties prior to the time liability in the principal  
case has been determined. Brokate v. Hehr Mfg. Co., 243 Cal.  
App. 2d 133, 137-38 (1966); Rimington v. General Accident Group  
of Ins. Cos., 205 Cal. App. 2d 394, 397 (1962).

1 the trial of the Complaint a violation has already been found.  
2 The Court will be put to the burden of duplicative trials, and  
3 the risk of inconsistent determinations will be real. A single  
4 trial thus promotes efficiency and economy; separate trials will  
5 cause duplication of effort and additional expense for all sides.  
6 See Fleet Bank of Maine v. Druce, 791 F. Supp. 17, 19 (D. Me.  
7 1992) (severance should be denied where same evidence would be  
8 relevant to plaintiff's claim against corporation and to  
9 "derivative liability" claims against individuals,  
10 notwithstanding argument that if corporation prevailed derivative  
11 liability claims might become moot).

12 In addition, plaintiffs seek relief which, if granted,  
13 would have an enormous impact on the school districts. Because  
14 of that, Los Angeles Unified School District and the California  
15 School Boards Association have already sought leave to intervene  
16 on the Complaint. They recognize that the relief plaintiffs  
17 seek, though nominally directed against the State, would in fact  
18 greatly affect the operations of local school districts, would  
19 undermine local control, and would impose financial and  
20 administrative burdens on the districts. It is obviously right  
21 and fair that the school districts should have an opportunity to  
22 offer evidence and be heard on matters that so directly affect  
23 them. Equally obviously, the Court and the parties will benefit  
24 from the expertise that the school districts will bring to any  
25 trial. Plaintiffs argue repeatedly that the State is ignorant of  
26 conditions at the individual school level: Do plaintiffs  
27 therefore intend that the Court should address the sensitive and  
28 critically important issues in this case without evidence and

1 input from the local districts that (according to plaintiffs) are  
2 the only entities with knowledge of the facts? That would be a  
3 recipe for judicial disaster.<sup>8</sup>

4 Separate trials would also severely prejudice the  
5 State. If any plaintiff succeeds in proving that he or she has  
6 been deprived of a constitutionally adequate education, the State  
7 expects to argue that in most cases the appropriate remedy lies  
8 at the school or district level, not at the level of state  
9 agencies. If the districts participate in a single trial, they  
10 will be bound by any finding that a constitutional violation has  
11 occurred. The Court will then be free to consider, on the  
12 merits, the arguments of the State, the plaintiffs, and the  
13 affected district as to what remedy is appropriate. If there is  
14 a severance, however, districts will be free to contest any  
15 finding of a constitutional violation, and the Court will not be  
16 in a position to impose any remedy that affects any district  
17 without a second trial. This prejudices the State, since it  
18 increases the chance that a remedy will be ordered against the  
19 State which might be unnecessary if a remedy against the district  
20 were available. It also prejudices the Court and the  
21 administration of justice, since it reduces the range of remedies  
22 available to the Court, and increases the chance that the  
23 ultimate remedy adopted will not be the most effective,  
24 efficient, and economical.

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25 <sup>8</sup> Given the motions to intervene, moreover, it is hard to  
26 see how a severance could be effected in any event. If the  
27 issues raised by the Los Angeles District and the School Boards  
28 Association are addressed as part of the Complaint, there cannot  
be any effective severance of the almost identical issues raised  
by the Cross-complaint.

1           Separate trials thus hold the potential for wasteful  
2 duplication of effort and for complication or degradation of the  
3 ultimate outcome of the case. As against these disadvantages,  
4 plaintiffs and Fresno point to no practical advantages of a  
5 separate trial except that their counsel will not be required to  
6 attend trial of issues that may not affect the districts.

7           But this is not so. If, as the State expects and  
8 plaintiffs have urged, the first order of business at any trial  
9 will be to identify which plaintiffs have failed to receive an  
10 education that meets the basic standard of Butt, there will be no  
11 undue burden on the districts. They will participate in the  
12 trial only of issues that relate directly to them -- issues about  
13 what sort of education they are offering. If the proof shows  
14 that plaintiffs in a particular district are receiving a  
15 constitutionally adequate education, those plaintiffs' claims  
16 will be dismissed; the State will have no claim against the  
17 affected district; and the district need participate no longer in  
18 the trial. On the other hand, if the proof shows that plaintiffs  
19 in a particular school are not getting the education that is  
20 constitutionally required, then it is not at all unreasonable  
21 that the district, whose duty it is to educate its students,  
22 should participate in the question of what remedy is appropriate.

23           For these reasons the State believes that separate  
24 trials will be wasteful and inappropriate, and that the motions  
25 for severance should be denied. But if the Court is in any doubt  
26 about the matter, the answer is not to grant the motions to  
27 sever, but to postpone the issue until the Court and the parties  
28 know what issues will be open between the parties at the time of

1 trial, and how the trial of this action will be structured. No  
2 one knows any of that today. Accordingly, if the Court does not  
3 wish to deny the motions for severance outright, they should be  
4 denied without prejudice to being renewed at some point in the  
5 future when the shape of the case is clearer, and when the  
6 parties can meaningfully address what will be tried and in what  
7 order. Such a ruling would be entirely consistent with the cases  
8 holding that when there is uncertainty about what issues will be  
9 tried, a decision about severance is premature. Vegetable Oil  
10 Products Co. v. Superior Court, 213 Cal. App. 2d 252, 259-60  
11 (1963) (discretion to order separate trials "can best be  
12 exercised by a trial court after the pleadings are closed and the  
13 parties (including cross-defendants) are able to advise the court  
14 as to their plans for trial"); Fairchild Stratos Corp. v. General  
15 Elec. Co., 31 F.R.D. 301, 302 (S.D.N.Y. 1962) (motion for  
16 separate trials was premature since "certainly the decision  
17 should not be made without further clarification of the ultimate  
18 trial issues").

19 **III. THERE IS NO BASIS FOR A STAY.**  
20

21 In addition to seeking a separate trial, plaintiffs and  
22 Fresno also seek a stay of proceedings on the Cross-complaint.  
23 Whether or not the Court favors a separate trial of some issues,  
24 there is no basis for a stay.

25 Moving parties argue that they are being subjected to  
26 burdensome discovery because of the Cross-complaint, and that a  
27 stay of proceedings will streamline discovery and make it more  
28 efficient. None of this is true.



1 First and foremost, not a bit of discovery in this  
2 action has occurred because of the Cross-complaint. All  
3 discovery so far conducted has been conducted on the issues  
4 presented by the Complaint, and would have been conducted, in  
5 identical fashion, if the Cross-complaint had never been filed.  
6 A stay of discovery on the Cross-complaint would not eliminate a  
7 single document request, a single interrogatory, or a single  
8 deposition.

9 Fresno complains that the school districts are being  
10 subjected to discovery. Fresno Mot. 6-8. The truth is that the  
11 only discovery anyone has sought against school districts  
12 comprises the depositions of the principals of the schools  
13 mentioned in the Complaint. These depositions were noticed by  
14 the State before the Cross-complaint was filed; they go to the  
15 question of whether the allegations of plaintiffs' Complaint are  
16 true; and the identical depositions would have had to be taken  
17 whether the Cross-complaint had been filed or not. Plaintiffs  
18 (not defendants) have sought some documents in connection with  
19 these depositions; plaintiffs are seeking those documents for the  
20 purpose of trying to prove the case laid out in their Complaint,  
21 not because of any allegations in the Cross-complaint. None of  
22 this discovery would be one iota different if the Cross-complaint  
23 had never been filed; all of it would go forward without change  
24 even if there were a stay of proceedings on the Cross-complaint.

25 No other discovery in the case is directed to the  
26 school districts in any way. Document requests and  
27 interrogatories have been exchanged between plaintiffs and  
28 defendants. No district has been required to answer a single

1 interrogatory, and no district has been required to produce a  
2 single document because of the allegations of the Cross-  
3 complaint. The suggestion that the Cross-complaint is increasing  
4 discovery is simply false.

5 The only remaining discovery that is going forward is a  
6 series of depositions of State employees, noticed by plaintiffs.  
7 These were noticed long before the filing of the Cross-complaint;  
8 they would have been noticed and taken whether or not the Cross-  
9 complaint had been filed.<sup>9</sup>

10 Accordingly, a stay of discovery on the Cross-complaint  
11 will not eliminate any discovery currently in progress, and will  
12 not reduce the discovery burden of this case in any way. A stay  
13 would have only one consequence that matters. It would create a  
14 possibility, which does not now exist, that witnesses might have  
15 to be deposed a second time. As the Court was made aware at the  
16 last Status Conference, all school districts are notified of the  
17 ongoing depositions of state employees.<sup>10</sup> They are free to  
18 attend; but if they choose not to attend the State takes the

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19  
20 <sup>9</sup> Plaintiffs claim that these depositions have been delayed  
21 because of scheduling difficulties caused by the school districts  
22 who wish to attend. Pl. Mot. 9. This is a gross exaggeration.  
23 The truth is that the very first deposition was delayed one week  
24 as a courtesy to the school districts. As for the other  
25 depositions, plaintiffs and defendants have agreed on a schedule,  
26 and the depositions are going forward on that schedule, subject  
27 only to agreed adjustments or changes in the witnesses'  
28 availability. School districts are free to attend, but the  
depositions are not being rescheduled if district counsel have  
scheduling problems.

26 <sup>10</sup> The State believes that these deponents have almost  
27 nothing to say that is of interest to the school districts. For  
28 example, at the most recent such deposition, there was no  
testimony relating to individual school districts; only two  
lawyers for districts even attended, and they asked no questions.

1 position that they are not entitled to require the witness to  
2 attend a second deposition, absent good cause. If the Court were  
3 to order a stay, the school districts would stop attending the  
4 currently-scheduled depositions, and would assert a right to  
5 depose the same witnesses a second time at some later date. That  
6 would mean the witnesses would have to appear a second time, that  
7 counsel for the State would have to defend them a second time,  
8 and that the witnesses would risk exposure to unnecessary and  
9 duplicative questioning. There is no justification for that.

10 In sum, a stay of proceedings on the Cross-complaint  
11 will not eliminate any discovery, and it will not simplify  
12 proceedings in any way. It will accomplish nothing but give the  
13 districts an excuse not to attend currently scheduled  
14 depositions, and subject witnesses to the risk of repetitive and  
15 duplicative discovery.

16 **CONCLUSION**

17  
18 Neither a severance nor a stay will accomplish anything  
19 useful here. The motions should be denied.

20  
21 DATED: March 30, 2001

22  
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