

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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

Plaintiffs,)

) No. 312236

vs.)

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

Defendants.)

_____)

DEPOSITION OF
JEANNIE OAKES, VOLUME VI
TAKEN ON
FRIDAY, MARCH 14, 2003

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

1 Deposition of JEANNIE OAKES, taken on behalf of
2 Defendants, at 400 South Hope Street, Los Angeles,
3 California, commencing at 9:40 a.m., on Friday, March
4 14, 2003, before Cathy A. Reece, RPR, CSR No. 5546.

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1 I N D E X

2
3 WITNESS: JEANNIE OAKES
4
5
6 EXAMINATION PAGE
7 BY MR. HERRON 1042
8 BY MR. EGAN 1096, 1122
9 BY MR. JORDAN 1169
10
11
12 EXHIBITS
13 EXHIBIT MARKED
14 64 Document titled, "Teacher Surveys," 1064
Bates Nos. SF 05549 through 51
15
16 65 E-mails, beginning e-mail from Oakes 1117
to Saunders, dated 2-18-02, Bates
Nos. 12082 and 83
17
18 66 E-mails, beginning e-mail from Oakes 1164
to Kreeger, dated 1-22-02, Bates Nos.
00468 through 71
19
20 67 "A First Look at What We Can Learn from 1176
High Performing School Districts," dated
August 1999, 67 pages
21
22 68 "Expert Report of Linda 1182
Darling-Hammond, 116 pages
23 69 Excerpts from Clark-Thomas deposition, 1194
dated 4-5-01, four pages
24
25 70 Excerpts from Clark-Thomas deposition, 1194
dated 4-10-01, eight pages

1 E X H I B I T S (Continued)

2 71 1998-99 Coordinated Compliance 1199

3 Review Notification of Findings,

4 dated 2-5-99, Bates Nos. DOE 28368

5 through 94

6 72 1999-2000 Coordinated Compliance 1199

7 Review Notification of Findings,

8 dated 2-4-00, Bates Nos. DOE 21788

9 through 822

10 73 "Summary of Findings, 2000-2001," 1202

11 dated 2-20-01, 54 pages

12 74 Section 60119, Education Code, one 1218

13 page

14 75 Compton Unified School District, 1227

15 Serna v. Eastin Consent Decree,

16 Six-Month Progress Report, dated

17 February 2002, 14 pages

18 76 Sections from Education Code, 1231

19 one page

18 QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:

19 PAGE LINE

20 1222 21

21

22 INFORMATION TO BE SUPPLIED:

23 (NONE)

24

25

1 been granted one, do you know what the result would have

2 been for that district?

3 MR. ROSENBAUM: Speculation. Incomplete

4 hypothetical.

5 THE WITNESS: No.

6 BY MR. HERRON:

7 Q. Do you know how many waivers were granted from

8 the -- from compliance with Section 60119 in the

9 2001-2002 school year?

10 A. No.

11 Q. How about the 2002-2003 school year?

12 A. Well, the rules -- no.

13 Q. Page 88 of your report, if you could kindly

14 turn there.

15 This discusses, among other things, the

16 provisions of the SARC?

17 A. Yes.

18 Q. One of the statements made in the first full

19 paragraph on Page 88 of your report is that -- it is a

20 partial part of a sentence:

21 "SARC depends on a system of

22 self-reporting. As such, it is not

23 clear if accurate information

24 regarding these elements is

25 provided."

1 JEANNIE OAKES,

2 having been first duly sworn, was

3 examined and testified as follows:

4

5 EXAMINATION

6 BY MR. HERRON:

7 Q. Dr. Oakes, is there any reason you can't give

8 your best testimony here today?

9 A. No.

10 Q. We left off yesterday with the issue of

11 waivers on Page 86 of your report. I would like to

12 return to that now, if we may.

13 MR. ROSENBAUM: Okay.

14 BY MR. HERRON:

15 Q. I believe the waiver issue is really the

16 waiver of 60119 at this portion of your report; correct?

17 A. Yes.

18 Q. Do you know why the legislature enacted

19 legislation allowing a waiver of the provisions of

20 60119?

21 MR. ROSENBAUM: Speculation. Legal

22 conclusion.

23 THE WITNESS: Not with any certainty.

24 BY MR. HERRON:

25 Q. If a district had applied for a waiver but not

1 Did I read that correctly?

2 A. Yes.

3 Q. You provide one example of that in the form of

4 LAUSD; is that true?

5 MR. ROSENBAUM: Is it true she provides one

6 example?

7 BY MR. HERRON:

8 Q. And that it concerns LAUSD?

9 A. Yes. There is a LAUSD example that follows

10 that statement.

11 Q. Can you provide us or identify for us any

12 other district that has not provided accurate

13 information in its SARC?

14 A. Yes. If I could review -- if I had an

15 opportunity to review my -- the resources that -- where

16 I can find that information.

17 Q. In preparing your report did you review any

18 such information?

19 A. Yes, I did.

20 Q. Are you aware of the degree of the problem, if

21 it is one, that districts do not provide accurate

22 information in their SARC?

23 MR. ROSENBAUM: Vague.

24 THE WITNESS: I certainly know of and observed

25 more than one instance.

1 BY MR. HERRON:

2 Q. Can you provide us any percentage of districts
3 that on an annual basis did not provide accurate
4 information in their SARCs?

5 A. Unfortunately, the State does not collect or
6 analyze the data that is reported, so it is impossible
7 to do that.

8 Q. And, therefore, you are unable to give us a
9 response to that question?

10 A. About the percentage of schools that report
11 inaccurate data on their SARC?

12 Q. Correct.

13 A. Correct.

14 Q. At the bottom of Page 88 the sentence
15 beginning, "Third," it states:

16 "Third, it appears that data
17 compiled through the SARC is not
18 reviewed by the State."

19 Do you know why the legislature in the
20 enabling legislation for the SARC chose not to require
21 State review of the SARC results?

22 MR. ROSENBAUM: Assumes facts not in evidence.
23 Legal conclusion.

24 THE WITNESS: If that is the case, I do not
25 know why.

1 Q. Do you think that increasing access of parents
2 and community members to the SARC is essential?

3 A. Yes.

4 Q. Why so?

5 A. There are many reasons, principal among them
6 is that the public has a right to know, especially when
7 legislation has intended for them to know.

8 Second, and more practically, is when
9 communities understand the conditions in their schools,
10 they are able to help take corrective action.

11 Q. Why is posting on the Internet or making
12 copies available at district offices insufficient in
13 your opinion?

14 A. Well, there are many families in the state
15 that don't have access to the Internet, and there are
16 many families in the state, in a district like Los
17 Angeles Unified School District, for example, who have
18 transportation problems that would make it
19 extraordinarily difficult for them to go to the district
20 office to obtain a copy of a report about the conditions
21 of their schools.

22 Those are two of lots of reasons I could think
23 of.

24 Q. Do other reasons come to mind?

25 A. Sure. Many low-income families, in

1 BY MR. HERRON:

2 Q. On Page 89 of your report, the first full
3 paragraph beginning "Finally," states in part, quote:

4 "The State falls short in
5 making sure that the SARC is made
6 accessible to all parents and
7 community members."

8 I read that correctly, did I not?

9 A. Yes.

10 Q. Do you understand that the SARC is made
11 available both on the Internet and at all district
12 offices; correct?

13 A. Yes.

14 Q. What else should be done in your opinion to
15 make the SARC available or accessible to all parents and
16 community leaders?

17 A. It could be mailed in hard copy to every
18 family.

19 It could be distributed at open-house nights
20 at school.

21 It could be sent home with children.

22 It could be posted in the front office of
23 school buildings.

24 There are many ways that it could be made more
25 available to parents.

1 particular, work such hours that they are not available
2 to go to the district office while the district office
3 is open.

4 Q. Any others?

5 A. Yes. I am sure there are, but I would want
6 some time to make a comprehensive list.

7 Q. Those are the ones that come to mind now?

8 A. Off the top of my head.

9 Q. Page 92 of your report discusses, among other
10 things, the Intermediate Intervention Underperforming
11 School Program, II/USP, and the High Priority Schools
12 Grant program, HPSG; is that right?

13 A. Yes.

14 Q. Now, there is a statement in the third full
15 paragraph:

16 "Schools that receive this
17 assistance are required to create
18 an action plan and submit this to
19 the State for review and approval."

20 What did you mean by "this assistance"?

21 A. First of all, that is not exactly a correct
22 statement, and it is modified later, but the action plan
23 itself is not really submitted to the State for review
24 and approval, only a five-page summary is required.

25 And the "assistance" is the funding that comes

1 with participation in the program.
 2 Q. Do you think that the provision of the action
 3 plan on the five-page summary is an insufficient
 4 mechanism for monitoring and detecting problems with
 5 instructional materials in California schools?

6 A. Yes.

7 Q. Why so?

8 A. It is -- it relies solely on self-report. It
 9 has no mechanism to validate whether or not the
 10 information is correct.

11 It has no strategy embedded in it for
 12 follow-up to see if the program is -- the problem is
 13 remedied, and it has no specific mechanism to target
 14 funds to correct a specific problem.

15 There may be other reasons, but those are the
 16 ones that come to mind immediately.

17 Q. What is inherently wrong with self-reporting
 18 in this context, II/USP?

19 A. I think as I said yesterday, there is nothing
 20 inherently wrong with self-reporting as long as it is a
 21 part of a much more comprehensive strategy to detect and
 22 correct problems when they occur.

23 Q. And you don't believe the II/USP is such a
 24 comprehensive strategy?

25 A. I think the II/USP has some very promising

1 and solutions.

2 In fact, the II/USP plans identify -- in the
 3 self-review and the plans -- identify problems that go
 4 far beyond what the school has any ability to control,
 5 things that are really a product of district or State
 6 actions or inactions. That is one problem.

7 The external evaluators, the initial list,
 8 there was very limited screening of people who were
 9 approved to be on that list. They didn't receive any
 10 specific training, nor are there precise instructions
 11 for them to follow in providing assistance to schools.

12 The focus of demonstrating progress towards
 13 solving problems is solely on whether or not students'
 14 test scores improve, so that means that the -- the
 15 vastly disproportionate attention and use of the
 16 resources is on increasing students' test scores, and
 17 that many of the schools participating in the program
 18 and the external evaluators recommend programs that are
 19 narrowly focused on test preparation and test score
 20 improvement as opposed to more general, comprehensive,
 21 deep focus on teaching and learning.

22 Finally, and there are -- I discuss this at
 23 length in my report, so there are probably other things
 24 there, and certainly the literature talks about other
 25 things. The program is voluntary, and schools are not

1 elements in it, and I certainly, however, think it could
 2 be strengthened to make it capable of doing the job it
 3 hopes to.

4 Q. What are the most promising elements of the
 5 II/USP in your opinion?

6 A. The fact that the State has determined that it
 7 is important to provide assistance to schools that are
 8 in trouble.

9 Q. Anything else?

10 A. I would say that is the most promising.

11 Q. Are there any other promising elements of the
 12 II/USP program in your opinion?

13 A. I think the concept of having an external
 14 evaluator is a good one. I think it is not well
 15 conceived or very well implemented in this case.

16 I think the concept of having an action plan
 17 is a good one and, again, I think there are limitations
 18 and restrictions in this particular plan that make it
 19 less than effective.

20 Q. How is the II/USP not well conceived in your
 21 opinion?

22 A. There are several problems with it.

23 First, it looks at the school as the if not
 24 only source of problems and source of solutions, at
 25 least the primary focus when one is looking at problems

1 required to participate and, in fact, if all schools
 2 chose to participate, the funding is far from adequate
 3 to provide support for all schools.

4 Q. What part of the II/USP in your opinion is not
 5 well implemented?

6 MR. ROSENBAUM: Beyond what she just testified
 7 to?

8 BY MR. HERRON:

9 Q. Her answer previously that the problems with
 10 the II/USP were that it was not well --

11 MR. ROSENBAUM: Well conceived.

12 BY MR. HERRON:

13 Q. -- conceived or implemented.

14 A. I would simply repeat much of what I just
 15 said; that these are implementation problems as well.

16 An additional one is the fact that the State
 17 decided not to collect or review the action plans at the
 18 schools' write-up; that there's not a careful evaluation
 19 of the people who are providing this external support.

20 Q. Do you think that that collection and review
 21 ought to be done at the level of the Department of
 22 Education?

23 A. Not necessarily -- I'm sorry. The review of
 24 the schools or the review of the action plans?

25 Q. Of the action plans.

1 A. I would say not necessarily as well, because
2 the State certainly could put into a process where there
3 was some sort of regional body or County office or some
4 sort of regional office to which it delegated that
5 responsibility.

6 Q. In your opinion do the action plans from the
7 II/USP adequately require a view of provision of
8 instructional materials to students?

9 MR. ROSENBAUM: Vague. Overbroad.

10 THE WITNESS: The action plan certainly does
11 ask districts or schools that apply for the program to
12 indicate whether or not students have adequate
13 instructional materials and, if not, to specify how that
14 is addressed. Although I am troubled by the fact that
15 the information from this is to come from the School
16 Accountability Report Card and, as I said before, the
17 level of reporting on instructional materials on the
18 School Accountability Report Card is less than adequate.
19 BY MR. HERRON:

20 Q. Does the High Priority Schools Grant program
21 in your opinion require schools to address instructional
22 materials?

23 MR. ROSENBAUM: I'm sorry.

24 THE WITNESS: First of all, it does not
25 require schools to address anything. It is a voluntary

1 literacy and achievement, quality
2 of staff, parental involvement,
3 facilities, curriculum,
4 instructional materials and support
5 services."

6 Do you think the HPSG program is adequate in
7 that regard?

8 MR. ROSENBAUM: Vague.

9 THE WITNESS: I think the encouragement to
10 participating schools to focus on instructional
11 materials is certainly stronger, and it is commendable.
12 I don't find it adequate.

13 Because it is a voluntary program, schools are
14 not required to apply and, frankly, it is uncertain at
15 this moment whether it will be funded.

16 MR. HERRON: Okay. Can you read that answer
17 back, please.

18 (Record read.)

19 BY MR. HERRON:

20 Q. Dr. Oakes, why in your opinion does -- why
21 does the API in your opinion reveal little about the
22 problems schools are facing?

23 MR. ROSENBAUM: Could I ask you one question
24 for clarification?

25 Do you want her to repeat the things that are

1 program.

2 If a school chooses to participate, it does
3 ask them to address instructional materials as part of
4 its improvement plan.

5 BY MR. HERRON:

6 Q. Pages 93 to 94 of your report, if I could
7 direct your attention there --

8 A. Yes.

9 Q. -- specifically the bottom of Page 93, where
10 it begins:

11 "Unlike the II/USP program,
12 the HPSG program requires schools
13 to address instructional materials
14 as" --

15 MR. ROSENBAUM: You didn't read the whole
16 sentence.

17 BY MR. HERRON:

18 Q. -- "as part of a" -- actually, I am reading
19 the whole sentence.

20 MR. ROSENBAUM: I'm sorry. My apologies.

21 BY MR. HERRON:

22 Q. Okay.

23 -- "as part of a plan for
24 improvement that focuses on four
25 essential components: Pupil

1 in her report when she discusses it or do you want her
2 to --

3 MR. HERRON: You know what? I just want her
4 opinion, whatever it is.

5 I mean, she has pointed several times to the
6 fact the report is inaccurate or not fully reflective of
7 the material she is aware of, doesn't reflect all the
8 bases of her opinion; that her opinion goes beyond the
9 report.

10 What I would like her to do is simply respond
11 with what her opinion is and let us know its basis.

12 MR. ROSENBAUM: I don't agree with the
13 characterization, but I understand your intent.

14 BY MR. HERRON:

15 Q. You can respond.

16 A. First of all, I would like to respond that I
17 never characterized my report as incorrect.

18 Out of the 133 or so single-spaced pages I
19 pointed to, I think, three or four words that I asked
20 you to change. It was reflecting one inaccuracy that I
21 found.

22 Q. Okay.

23 A. Well, I discuss at length in my report the
24 problems that I see with the public schools'
25 accountability act as the only mechanism that California

1 uses to monitor and report on schools.

2 Q. Let me ask you a different question.

3 Why is it your opinion that the API provides
4 little information about problems within schools?

5 A. Because the State has decided not to collect
6 or report information about conditions within schools,
7 for the most part.

8 Q. Each school gets an API score; is that
9 correct?

10 A. Yes.

11 Q. Why is that score not indicative of problems
12 within schools in your opinion?

13 A. It only reports the students' achievement
14 outcomes. It does not report the conditions under which
15 those outcomes were obtained.

16 Q. Isn't that the purpose of II/USP, to determine
17 what conditions led to an inadequate API score and
18 correct it?

19 MR. ROSENBAUM: I'm sorry. Are you still
20 asking about the API?

21 I think the context of your questions is
22 entirely unclear.

23 Also, as you know, she goes into this at
24 considerable length in the Meta report. If you have
25 that there, I invite you to provide it to her, and she

1 report.

2 A. Yes.

3 Q. If you would focus on the first sentence in
4 Footnote 13, stating:

5 "Another serious flaw is that
6 the API score is not currently
7 aligned with the State's content
8 standards."

9 What does that mean?

10 A. Well, the rest of the footnote explains what
11 that means. If you would like me to read it to you, I
12 will.

13 Q. No. I don't need you to do that.

14 Is there anything to the meaning of that
15 sentence that is not in the footnote, as far as you
16 know?

17 A. Well, I would add just generally that there
18 is -- there are items on the achievement tests -- that
19 there is not a match between the content of the
20 achievement test used to achieve the API and the
21 California State content standards that are the State's
22 expectations for what is taught and learned in schools.

23 Q. Do you believe that to be true today?

24 A. As a detail in that footnote, I understand
25 that the State has made and is continuing to make

1 can review it. If you want to go into it, you are
2 welcome to do it.

3 MR. HERRON: Could you reread the question.
4 (Record read.)

5 MR. ROSENBAUM: Vague and ambiguous.
6 BY MR. HERRON:

7 Q. You may respond.

8 A. The II/USP is an after-the-fact intervention
9 that schools may choose to participate in if they so
10 choose. They are asked to provide their analysis of the
11 problems that led them to have low achievement test
12 scores.

13 There are no standards or guidelines against
14 which schools can measure the adequacy of the conditions
15 they provide students. So it is simply a generated,
16 context-dependent, individual-dependent analysis by
17 people enmeshed in a setting that is problematic.

18 That is far short of providing regular reports
19 to the public about essential conditions and
20 opportunities that are available in all schools and
21 using that information to interpret the context or
22 the -- to understand the context in which both high and
23 low-performing schools achieve the results that they
24 did.

25 Q. Would you kindly turn to Page 94 of your

1 progress toward replacing or at least augmenting the
2 norm reference standardized tests of basic skills with
3 items that have been derived from the California content
4 standards, and it is better today than it was a year
5 ago.

6 Q. Page 96 of your report, please.

7 You talk about a limitation built into these
8 programs at the last partial paragraph.

9 "These programs" is the II/USP and the HPSG?

10 A. I'm sorry?

11 MR. ROSENBAUM: I don't know where you are.

12 BY MR. HERRON:

13 Q. Page 96, the last partial paragraph. I want
14 to talk to you about the second limitation referenced
15 there. That states, the first sentence of that
16 paragraph:

17 "A second limitation is based
18 on the sanctions built into these
19 programs."

20 And that "these programs" references II/USP
21 and HPSG; correct?

22 A. Yes. In this context, that is what I am
23 referring to.

24 Q. I take it your point is that because the
25 programs are voluntary, having sanctions in place means

1 you can't expect to get the best possible participation;
2 is that correct?

3 A. As I explain in this paragraph, that the
4 prospect of a school being -- a principal being removed
5 or a school being taken over is based on whether or not
6 a school improves its students' achievement scores
7 provides considerable disincentive for some of the most
8 troubled schools to apply and participate in this
9 program.

10 Q. Your opinion is that the II/USP should be
11 mandatory?

12 A. I think I actually say in here that I am
13 cautious about making such a program mandatory; however,
14 it would -- that answered your question.

15 Q. So as best I understand your opinion, the
16 problem with the II/USP is that it shouldn't be
17 voluntary, but you are cautious about making it
18 mandatory?

19 MR. ROSENBAUM: Mischaracterizes the
20 testimony.

21 I kept track. The last 12 questions, 10 of
22 those questions have been to ask her what she says in
23 the report, and then you try to summarize it into a
24 sentence, and she says, "No, it is all in my report."

25 I think this is an improper use of deposition

1 (Record read.)

2 THE WITNESS: First of all, for the record,
3 the report is 129 pages long with 51 pages of
4 appendices, so I misspoke earlier.

5 The problems with the II/USP go far beyond
6 your characterization of my opinion, and that I outlined
7 earlier, I think, four or five different elements of the
8 II/USP that reflect my views of areas where the programs
9 are weak.

10 BY MR. HERRON:

11 Q. That is understood.

12 My question to you is: Should it be voluntary
13 or should it be mandatory?

14 MR. ROSENBAUM: Incomplete hypothetical.

15 THE WITNESS: The program -- I could not
16 possibly simplify my recommendation into one of those
17 two options.

18 There are ways of structuring a program that
19 would provide assistance to all schools that need it
20 without having to require them to participate in a
21 mandatory sort of fashion the way that -- the way the
22 word, "mandatory" is -- it should be an obligation of
23 the State to provide the assistance, not the obligation
24 of the schools to volunteer or to sign up for a program
25 that could be punitive and is not -- that is enough.

1 time. I object to your mischaracterization of her
2 testimony.

3 And this report, it is a 133-page report. It
4 is not a six-sentence report.

5 MR. HERRON: Now, Mr. Rosenbaum, I am going to
6 have to ask you, as I have in every session of the
7 deposition so far, to please limit your comments to
8 objections and nothing further. I think --

9 MR. ROSENBAUM: I object to the misuse of this
10 deposition time.

11 MR. HERRON: I think you continue to instruct
12 and to coach the witness, which is improper. I have
13 noted this many times before.

14 I beseech you to kindly not interfere with the
15 deposition and to comply with professional conduct rules
16 that apply to depositions.

17 MR. ROSENBAUM: My objections stand.

18 BY MR. HERRON:

19 Q. You may answer the question.

20 MR. ROSENBAUM: Objection. Mischaracterizes
21 her testimony.

22 THE WITNESS: I would appreciate you repeating
23 the question since I don't recall it.

24 MR. HERRON: Could you kindly reread the
25 question.

1 (Exhibit 64 was marked for I.D.)

2 BY MR. HERRON:

3 Q. Dr. Oakes, have you had an opportunity to
4 peruse Exhibit 64?

5 A. I would -- if you give me an indication of how
6 much detail you want from me, I will tell you whether or
7 not I have had enough time.

8 Q. We are in the "peruse" mode, so what is it --
9 the type of mode.

10 Do you recognize this document?

11 A. Yes.

12 Q. What is it?

13 A. These are just the -- some descriptive
14 statistics that report the results of a survey of
15 teachers in the San Francisco Unified School District.

16 Q. Did you read -- there was a report related to
17 the San Francisco Unified School District survey,
18 correct, that is in addition to Exhibit 64?

19 A. I am not recalling precisely what all was
20 published with these.

21 Q. Are you aware of the methodology employed in
22 conducting the San Francisco Unified School District
23 teacher survey?

24 A. I am not recalling it with any precision.

25 Q. Okay. I would like to talk to you about your

1 opinion related to Question No. 4 as set forth in your
2 report at Page 101.

3 Is the opinion stated on Page 101 an accurate
4 summary of your opinion on Question No. 4 presented
5 here?

6 A. It is an extraordinarily brief statement that
7 attempts to capture the essence of my opinion that is
8 spelled out in more detail in the 20-or-so pages of this
9 section.

10 Q. Sure.

11 And the third full paragraph -- I'm sorry. Do
12 you see, "Evidence"?

13 A. Yes.

14 Q. The third full paragraph below that in the
15 second-to-the-last sentence states:

16 "New policies should accept
17 the State move beyond the current
18 fragmentation and the incoherence
19 in the State's education policy
20 system."

21 What did you mean by that?

22 A. Actually, that is a sentence I do explain in
23 great length in the Meta report, and if you would like
24 me to turn to it, I will discuss that with you, but it
25 will take a very long time. It is quite a long story.

1 Q. -- that suggested we could not duplicate it
2 without permission of the authors, and we can handle
3 this off record if you want to talk to your counsel, but
4 we were wondering if we are permitted, "we" being any
5 other party to this case, to reproduce those documents.

6 You may want --

7 A. The restriction was our wish not to have them
8 in circulation until they had the fancy format and all
9 the IDEA credit lines and information.

10 But you certainly, as I told my -- the
11 university attorney yesterday, that you should be -- you
12 should feel free to use those as -- you know, to produce
13 as many copies as you need for your use.

14 Q. Thank you.

15 A. Don't give any to Barnes & Noble yet.

16 Q. We could make some money, couldn't we?

17 A. I know.

18 But the password worked?

19 MR. HILL: It worked. Yes.

20 THE WITNESS: Good.

21 MR. HERRON: "2000" or "2002"?

22 MR. HILL: "2002."

23 THE WITNESS: Good.

24 BY MR. HERRON:

25 Q. Let's talk about the mandate portion of your

1 Q. I'm sure it is. No. Let's forego that.

2 May I ask you -- in the next paragraph there
3 is a reference to "new school finance"?

4 A. Yes.

5 Q. What does that mean?

6 A. Again, this is a topic that is discussed at
7 some length in my Meta report and discussed at great
8 length in Professor Huerta's report --

9 Q. Professor who?

10 A. Huerta.

11 -- and in the scholarly papers written by
12 Norton Grubb and Laura Goe and by numerous other
13 scholars in school finance.

14 Essentially, it is a very elaborate
15 conceptualization of a way of funding schools that is
16 based on estimates of what it -- what funding is
17 required to provide the resources and opportunities that
18 is necessary for children to become educated.

19 Q. Yesterday you provided us with a password to
20 the IDEA website?

21 A. Yes.

22 Q. And when we accessed it, there was a notation,
23 I believe, on your -- Gene, some or all of the papers?

24 MR. HILL: The ones I looked at.

25 BY MR. HERRON:

1 Opinion No. 4.

2 Your opinion about mandates, is that --
3 briefly stated, and I am taking this from Page 101 --
4 that:

5 "The State ought to mandate
6 the provision of texts and
7 materials."

8 A. Yes.

9 Q. On Pages 102 and 103 you identify other states
10 that have done so?

11 A. Yes.

12 Q. One of those is Florida.

13 Why is Florida a good comparator to California
14 in this regard?

15 A. All of the examples here are -- have a single
16 purpose, and that is to show it is, indeed, possible for
17 states to mandate the provision of textbooks and
18 materials. Florida is simply one example of a state
19 that has done it.

20 Q. The states mentioned are Florida, South
21 Carolina, Rhode Island and Utah.

22 Have you done any research or review to
23 determine how the mandates regarding the instructional
24 materials in those states have affected access to
25 instructional material in those states?

1 A. No.
 2 Q. At Page 104 -- and this, so we are -- we know
 3 our topic, falls under the "Adopt new strategies to
 4 build capacity" heading that is set forth on 103.
 5 I would like to talk about some of the
 6 information set forth in the second paragraph, actually
 7 the first full paragraph on that page, 104.
 8 Your conclusion, it appears, is:
 9 "Remedying the current
 10 inadequacies will require a shift
 11 in the State's approach to funding
 12 of textbooks and instructional
 13 materials."
 14 And then it talks about one approach.
 15 Further on in that paragraph it talks about:
 16 "California's first task will
 17 be to define and provide adequate
 18 funding."
 19 How is it that one determines what "adequate
 20 funding" is?
 21 A. Well, as I explain elsewhere in this report
 22 the approach that is being taken in other states is to
 23 assemble a body which conducts a study and determines
 24 what the costs would be of providing an adequate
 25 education and the modifications of those costs that

1 would be required to provide adequate education to
 2 children in different circumstances.
 3 And that becomes the basis, then, of policy
 4 decisions about allocations.
 5 Q. That is like the Oregon Quality Education
 6 model that we were --
 7 A. Yes. The Oregon model is an example of that.
 8 Q. Is another example of that the suggestions set
 9 forth in the California Master Plan?
 10 A. Yes.
 11 Q. You participated in the development of the
 12 California legislators' joint committee to develop a
 13 master plan for education?
 14 A. Yes.
 15 Q. What was the process for developing that plan
 16 in general?
 17 A. The master plan?
 18 Q. Yes.
 19 MR. ROSENBAUM: Vague.
 20 THE WITNESS: The legislative committee
 21 through its staff crafted a goal statement for a new
 22 California Master Plan.
 23 There was, I think -- I don't know about what
 24 sort of legislation authorized the launching of this
 25 process, but typically master plans in California have

1 been reviewed on a periodic basis.
 2 The legislature at this time decided it would
 3 be appropriate to extend its master plan downward from
 4 simply focusing on higher education to including K-12
 5 education as well. That later was modified to include
 6 preschool education.
 7 Once the legislature made that decision, the
 8 staff and -- for the joint committee drafted a goals
 9 statement of what they hoped to accomplish with such a
 10 master plan.
 11 The procedure was then to determine that seven
 12 working groups of citizens and professionals should be
 13 used to make recommendations in a number of areas that
 14 should be included in the master plan.
 15 Those working groups were representative of
 16 higher education and researchers and K-12 education and
 17 school boards and citizens. They worked on a voluntary
 18 basis. The process was funded by private philanthropy.
 19 Each of the working groups met over a period
 20 of a year to 18 months. Chairs of those groups met on
 21 two occasions, once alone and once in the company of the
 22 members of the joint legislative committee to give
 23 progress reports.
 24 Each of the working groups presented the
 25 results of its work in the form of a written report and

1 a formal presentation at a hearing for the legislature,
 2 whereupon the legislature conducted public hearings
 3 around the state, drafted a -- perhaps this next step
 4 came first -- drafted the -- the joint committee drafted
 5 a synthesis report that became the draft master plan,
 6 which was then subject to public hearings around the
 7 state, an interactive week-long dialogue on the Internet
 8 and lots of other forms of distribution and newspaper
 9 articles and efforts to engage the public as much as
 10 possible in it.
 11 Then there was some redrafting based on the
 12 comments, and last August the draft master plan was
 13 approved -- August or September -- was approved by both
 14 the legislative committee and, I believe, the
 15 legislature as a whole.
 16 It is now in the process of -- it is standing.
 17 It has no legislative authority, but it is currently
 18 being used as a set of recommendations to guide
 19 education legislation.
 20 Senator Alpert calls it a 20-year plan.
 21 BY MR. HERRON:
 22 Q. You said a set of recommendations to guide --
 23 A. Education policy.
 24 Q. Would you please describe your role in this
 25 process.

1 A. I was invited by Senators Alpert and Strom
2 and -- Assemblymember Strom Martin to co-chair one of
3 the seven working groups -- the group that was focused
4 on student learning.

5 Q. Did you have any other role?

6 A. I testified at an early hearing before the
7 working groups were formed to give background, I guess,
8 into this goal-setting process.

9 Q. That was testimony before the legislature?

10 A. Before the joint master plan committee.

11 I certainly -- I drafted most of the report of
12 those student learning working group with lots of input
13 and revision and comment by the 30-or-so members of that
14 group.

15 I testified to the contents of that report at
16 a hearing of the joint committee. I attended and
17 participated in some of the public hearings and heard
18 public comments and was asked questions by members of
19 the public, along with some of the members of the joint
20 committee and the staff.

21 I had informal conversations with staff.

22 Q. From the time that the master plan was issued
23 have you worked with the legislature at all on
24 educational policy issues?

25 A. I have been --

1 student learning.

2 I don't recall what the fourth one is. It may
3 be lumped into government.

4 Q. You were chairman of the student learning --

5 A. Working group.

6 Q. -- working group.

7 What exactly was the task of that working
8 group -- the task or focus?

9 A. We had quite an elaborate charge that was
10 extraordinarily ambitious.

11 We were to determine the -- what California
12 students in the 21st century ought to know and to make
13 recommendations about all of the conditions and
14 resources and support that ought to be provided to
15 students in order to reach those goals, or at least how
16 State policies could insure all those things.

17 We were asked to comment and to make
18 recommendations about the admissions policies for all of
19 the public higher education systems.

20 We were asked to make recommendations about
21 what the State's accountability system in education
22 should look like.

23 There might have been a few other things in
24 the charge.

25 Q. What was the title of the report that came out

1 MR. ROSENBAUM: Vague.

2 THE WITNESS: I have been asked for my advice
3 by the staff of the joint master plan committee as they
4 have attempted to translate the recommendations into
5 some sort of bills.

6 I have provided some -- I have had a
7 conversation with Senator Vasconellos about a bill he
8 has now in front of the legislature that is derivative
9 of the master plan.

10 I had a conversation with Senator Alpert at
11 the Santa Clara conference we discussed yesterday.

12 Those are the main things the master plan
13 related to, the interactions with the legislature.

14 BY MR. HERRON:

15 Q. Have there been any bills other than the one
16 you just mentioned that were derivative of the master
17 plan?

18 A. There are four bills, I think, derivative of
19 the master plan that -- there may be more than four.
20 These things undergo lots of mutations in the process.

21 Q. Sure.

22 A. But there was --

23 Q. "Mutations"?

24 A. "Mutations." That is the polite word.

25 One on governance, one on personnel, one on

1 of your working group, if you recall? Anything close?

2 A. It is on my vita. I can look -- no. I don't
3 think I put it on my vita.

4 BY MR. HERRON:

5 Q. That is okay. I mean --

6 A. I don't recall. It is available on the joint
7 master plan committee website, and I am -- I am happy to
8 give you a copy if you like.

9 Q. That report had certain recommendations in it?

10 A. Yes.

11 Q. And to get to that recommendation or those
12 recommendations, the members of your group what?
13 Debated back and forth?

14 A. We did a great deal of reading.

15 We listened to testimony from researchers,
16 policy analysts, educators, policymakers. We had a
17 great deal of deliberations.

18 We met approximately once a month for over a
19 year, and those meetings were six or -- six to seven
20 hours in length, and we had extensive Internet
21 conversations in between.

22 We had a full-time staff person assigned to us
23 who filled our mailboxes with all kinds of background
24 reading material that members read and discussed.

25 Q. On Page 104, the first full paragraph, you

1 identify a second task.

2 A. First full paragraph?

3 Q. Yes. The one beginning, "Remedying --

4 A. Yes.

5 Q. Do you see where it says, "second task" --

6 A. Yes.

7 Q. -- "will be to create incentives that promote
8 the sufficient conditions for effective schools by
9 imposing some outcome requirements measured by
10 conventional test scores or by requiring the use of
11 plans"?

12 What incentives did you have in mind in this
13 statement?

14 A. Well, the -- there are a whole range of
15 incentives that the State might entertain to encourage
16 the appropriate use of funding that it provides.

17 The one I mention here, as an example, is that
18 there should be some measures of student achievement.
19 There should also be some monitoring that goes on to
20 make sure that the money is well spent.

21 The idea here is that it is not sufficient for
22 the State merely to provide funding; that there needs to
23 be efforts to build the capacity and to insure
24 compliance and oversee and monitor and intervene when
25 there are -- when the money is not being used well.

1 does.

2 Q. Is there any data you are aware of
3 demonstrating whether or not Oregon's Quality Education
4 model has resulted in its success?

5 MR. ROSENBAUM: Vague.

6 THE WITNESS: No.

7 BY MR. HERRON:

8 Q. If you could kindly turn to Page 106 of your
9 report. The underlined language close to the top of
10 this page is, "Implement more effective oversight and
11 accountability strategies." You reference an annual
12 report required by Utah.

13 Do you know what form that annual report
14 takes?

15 A. No.

16 Q. Do you know how it is different from the
17 California SARC?

18 A. Well, the SARC is not provided to the State.
19 The SARC is simply provided to local communities, to the
20 extent that it is.

21 Q. Do you know in Utah what review is conducted
22 by the State Board of Education of the annual report
23 referenced on Page 106?

24 A. No.

25 Q. Do you know whether review of the annual

1 Q. Kindly turn to Page 105 of your report.

2 This talks about -- this page does, as do
3 others -- about Oregon, but more specifically Oregon in
4 the context of adopting new strategies that build
5 capacity.

6 Am I wrong?

7 A. No. This is actually a -- okay. It is fair
8 to characterize it this way since I put it in this
9 section.

10 Q. Oregon developed a Quality Education model; is
11 that right?

12 A. Yes.

13 Q. Do you know -- has that model been implemented
14 in Oregon?

15 A. The model has been adopted, but it certainly
16 has not been fully funded.

17 Q. Have there been any studies that you are aware
18 of about Oregon's Quality Education model?

19 A. Actually -- there are certainly studies. I am
20 not certain if there is any published work about it yet.

21 It is widely discussed and talked about as an
22 example among those who are interested in this new
23 school finance. In fact, the Huerta and Grubb "spinning
24 straw into gold" or whatever it is called may, in fact,
25 refer to it. I don't recall specifically whether it

1 report in Utah may result in intervention by the State
2 or the State Board of Education?

3 A. I do not know.

4 The use of the Utah example here, as with the
5 other examples, is the same as the purposes for which I
6 included the other examples -- mandates. And that is to
7 illustrate that it is possible to create State oversight
8 and accountability strategies that relate specifically
9 to texts and instructional materials.

10 Q. Is there any one state that you would point to
11 that best exemplifies the type of policies you believe
12 California ought to adopt as set forth in your opinion
13 on Page 101?

14 A. I certainly believe that California should not
15 mimic anybody else's policies.

16 It is a unique place, but it certainly could
17 learn from the examples of other places about the
18 various elements of a policy system that need to be in
19 place here, which I specify as including mandates and
20 capacity building and oversight and monitoring and
21 public reporting and intervention when help is needed.

22 Q. Is there any one state, though, that comes to
23 mind that could serve as a proper model for California?

24 A. Again, I wouldn't assume -- we find good
25 examples of some things in some places, as I have

1 outlined in my report, that certainly could inform the
2 elements of a California plan.

3 Q. But you wouldn't point to a single state as a
4 model?

5 MR. ROSENBAUM: Asked and answered twice.

6 THE WITNESS: I think it is inappropriate to
7 think about copying wholesale an approach that another
8 state has used.

9 BY MR. HERRON:

10 Q. Why is that?

11 MR. ROSENBAUM: Asked and answered three
12 questions ago.

13 THE WITNESS: Because each state needs to
14 consider its context and to take a set of general
15 principles that I think apply across the states and
16 devise specific strategies that are appropriate to that
17 context.

18 BY MR. HERRON:

19 Q. Page 106 of your report in the paragraph
20 beginning, "This report and plan" -- do you see where I
21 am at?

22 A. Yes.

23 Q. I take it what you are talking about here is
24 the report and plan modeled after what you have said
25 about Utah; is that right?

1 Q. What kind of process are you talking about?

2 MR. ROSENBAUM: Objection. You ended the
3 sentence with a preposition.

4 MR. HERRON: Touche.

5 THE WITNESS: Well, there -- I didn't have a
6 specific process in mind, although there are strategies
7 that one might imagine where citizens could work to help
8 monitor and report on conditions and report on
9 conditions in ways that would trigger some assistance or
10 remedial action.

11 BY MR. HERRON:

12 Q. Are you aware of the Uniform Complaint
13 Procedure?

14 A. Yes, I am.

15 Q. Why would that be an insufficient process for
16 citizen complaints?

17 A. Well, while I am aware of it, I would be hard
18 pressed to find most ordinary citizens who understand
19 that process is in place and it could be used to report
20 about schools.

21 Q. Aside from that defect, what is wrong with the
22 Uniform Complaint Procedure serving as the process?

23 You say people don't know about the Uniform
24 Complaint Procedure. That is one problem.

25 Is there any other problem with having the

1 A. No.

2 Q. What you are saying, then?

3 A. I am talking about the proposals offered by
4 the finance and facilities working group that was part
5 of the California Master Plan process.

6 Q. Okay. The second sentence of that paragraph
7 talks about:

8 "Any group of citizens must
9 have access to information about
10 whether or not a district meets
11 these standards with a process in
12 place that would make citizens'
13 concerns" --

14 A. Okay. The report's full of errors.

15 That was off the record. I'm sorry.

16 Q. -- "where citizens' concerns may trigger
17 external actions."

18 A. I'm sorry.

19 Q. See, only you and I get that joke because --
20 it is the English teacher in you. I know that. Let me
21 try that again.

22 This paragraph talks about having in place a
23 process where citizens' concerns may trigger external
24 actions?

25 A. Yes.

1 Uniform Complaint Procedure serve as the process that
2 could make citizens' concerns trigger external actions?

3 A. Well, I am not aware of policies which
4 actually use the complaint procedure as a trigger for
5 specific actions that would remedy particular school
6 problems like insufficient resources.

7 Q. You are not aware of policies that do that?

8 A. That provide for systematic routine specified
9 responses to particular problems like the inadequacy of
10 texts and instructional materials.

11 Q. You are aware that each school board of each
12 district adopts board policies; correct?

13 A. Yes.

14 Q. Are you aware whether board policies as
15 recommended by CSBA provide such a complaint mechanism?

16 MR. ROSENBAUM: That is vague.

17 THE WITNESS: I am not familiar with the
18 specifications of the local policies regarding
19 complaints.

20 BY MR. HERRON:

21 Q. On Page 107 of your report you talk about
22 "independent reviews"?

23 A. 107?

24 Q. Yes.

25 A. Yes.

1 Q. Do you see where I am focusing?
 2 A. Yes.
 3 Q. And this talks about establishment of a,
 4 quote, "professional cadre of external evaluators," and
 5 you provide the English HMI process as one example.
 6 Beyond what is set forth in your report, can
 7 you explain to us how that model of oversight works?
 8 A. I am not sure what you are asking me.
 9 Q. Do you see there is a reference to "such a
 10 system is in place in England"?
 11 A. Yes.
 12 Q. "Her Majesty's inspector of schools, HMI," is
 13 a model of oversight?
 14 A. Yes.
 15 Q. Do you see where I am focusing?
 16 A. Yes.
 17 Q. Other than what is set forth in your report,
 18 how does that model of oversight work?
 19 A. Do you want details?
 20 Q. Yes. Any that you know.
 21 A. I know quite a lot of details about this, but
 22 the fact that there is a regular schedule; that there
 23 are inspectors who come in and work with schools to try
 24 to identify problems. They create reports.
 25 They work with schools to develop plans for

1 improvement. It is seen as a regular part of the way
 2 schools improve and that students are insured
 3 opportunities. It is one of the chief mechanisms of the
 4 British accountability system.
 5 The former principal of the University
 6 Elementary School at UCLA used to be a member of the
 7 British inspectorate and has told lots of stories, which
 8 I don't think you want me to repeat.
 9 Q. Under the system of model of oversight you
 10 cite in here is a report issued?
 11 A. Yes.
 12 Q. To whom does that go, that report?
 13 A. It certainly goes to the State as well as to
 14 the local officials.
 15 Q. Does the State intervene or take any action
 16 based on the report it receives?
 17 A. You know, I am not certain of this -- what
 18 kinds of responses are made.
 19 Q. Are you aware of the cost of this model of
 20 oversight?
 21 A. Let me say, first, I am not recommending that
 22 California imitate the British system anymore than I am
 23 recommending that it imitate any other system.
 24 I am simply using this as an example of
 25 another strategy for insuring accountability to

1 illustrate the point that there are stronger mechanisms
 2 available.
 3 Q. So you are simply providing examples of what
 4 California could do in your report as opposed to what
 5 California should do?
 6 A. I am providing some general recommendations
 7 about strengthening these various dimensions of
 8 education policy and giving some examples that give some
 9 concrete images of what stronger policies might look
 10 like.
 11 Q. In order to assure that students are given
 12 full access to educational tools they need to acquire a
 13 basic education you are not suggesting that the
 14 recommendations set forth in your report necessarily
 15 must be adopted; is that correct?
 16 A. I am saying that the general recommendations,
 17 yes, should be.
 18 The specific form that the programs that are
 19 used to enact those recommendations, I am not suggesting
 20 that those imitate the particulars of any other state or
 21 country.
 22 Q. You do point to a number of currently existing
 23 California policies or practices, though, that you think
 24 can be enhanced; correct?
 25 A. I point to current practices that I think

1 could be greatly strengthened in ways that would, in
 2 part at least, move toward the recommendations that I
 3 offered.
 4 Q. Such as the Coordinated Compliance Review
 5 which you criticize as having too narrow a focus.
 6 How would you expand the focus of the
 7 Coordinated Compliance Review?
 8 A. Specifically related to textbooks and other
 9 instructional materials, I would suggest that the
 10 collection of data be made a routine and required part
 11 of the process.
 12 Q. Okay.
 13 MR. ROSENBAUM: I want to enter a continuing
 14 objection to the set of questions that ask her to
 15 restate what is in her report.
 16 BY MR. HERRON:
 17 Q. How else would you broaden the focus of the
 18 CCR?
 19 A. With respect to textbooks and other
 20 instructional materials, I would, in addition to making
 21 sure that both the self-review and the site reviews
 22 focus specifically on it, that it be included in the
 23 instruments they use and included in the training
 24 process.
 25 I would also make sure that any problems that

1 are detected in those reviews trigger some specific
 2 response that addresses the problem.
 3 Q. Have you assessed what the cost effects may be
 4 of the suggestions you have just made?
 5 MR. ROSENBAUM: Incomplete hypothetical.
 6 BY MR. HERRON:
 7 Q. You may respond.
 8 A. No. Although I would say to that, adding --
 9 simply adding an explicit focus on texts and
 10 instructional materials and providing that as an
 11 explicit part of the training, that portion of the
 12 recommendation shouldn't increase the costs at all.
 13 Insisting that there be a concrete response
 14 that helps to remedy problems certainly would have some
 15 cost involved, but not much more than the cost of simply
 16 providing adequate texts and materials in the first
 17 place.
 18 MR. ROSENBAUM: Off the record a moment.
 19 (Recess taken.)
 20 BY MR. HERRON:
 21 Q. Dr. Oakes, on Page 109 and following
 22 thereafter you talk about Rhode Island in the context of
 23 public reporting?
 24 A. Yes.
 25 Q. Are you saying that California ought to adopt

1 Rhode Island's public reporting mechanism wholesale?
 2 A. I think Rhode Island provides a really healthy
 3 example of a very comprehensive example for collecting
 4 data, detecting problems, responding to problems, and I
 5 think there is much about what Rhode Island does that
 6 could be useful in California.
 7 I think I also suggest that, given the
 8 extraordinary difference in the size of the state and
 9 the number of schoolchildren, that California might do
 10 well to think -- the State might do well to develop some
 11 sort of regional strategy so that we could imagine
 12 counties, for example, serving as small Rhode Islands,
 13 where the functions that Rhode Island does are closer to
 14 the school.
 15 Q. Okay. You talked about FCMAT and its
 16 potential on Page 113 and thereafter?
 17 A. Yes.
 18 Q. Using, I believe, Compton Unified School
 19 District and FCMAT's intervention there, at least as a
 20 point of departure, do you know what the status of the
 21 FCMAT intervention in Compton is now?
 22 MR. ROSENBAUM: Vague.
 23 THE WITNESS: I don't think I have the most
 24 up-to-date information.
 25 BY MR. HERRON:

1 Q. Are you aware since September 1993, that is
 2 the date that Assembly Bill 33 was passed, whether test
 3 scores at Compton have improved?
 4 A. Well, it is impossible to know that because we
 5 have changed the test several times, and for some years
 6 we don't have scores, and we don't have any consistency
 7 in data collection that would allow us to make any solid
 8 judgments about changes in Compton.
 9 Q. Well, we do have API scores, do we not, for
 10 the last four years?
 11 A. We have API scores, yes. But that is not
 12 since 1993.
 13 Q. Do you know whether the API scores have
 14 improved over the time period in which that -- they have
 15 been reported?
 16 MR. ROSENBAUM: Vague.
 17 THE WITNESS: I would want to certainly review
 18 the data about Compton before making any judgment about
 19 what changes have occurred and would constitute
 20 improvement.
 21 BY MR. HERRON:
 22 Q. What are your principal opinions -- well, let
 23 me try that again.
 24 I take it -- you say that FCMAT ought to be
 25 enhanced in certain ways.

1 Tell us how.
 2 A. I say lots of things in the report about this,
 3 but one of the things that is clear to me, that in a
 4 case like Compton, where there was some authority to
 5 insist on responses to the FCMAT report, specific things
 6 have improved dramatically, and the instructional
 7 materials area is one where there is some real evidence
 8 that things have gotten better in Compton.
 9 In most of FCMAT's work with school districts
 10 there is not a requirement that there be any responses
 11 to the -- made to the counsel provided by FCMAT.
 12 Q. How should -- Compton is an example of a State
 13 takeover of a school district; right?
 14 A. I am using Compton as an example where a
 15 resource that has been provided by the State came in and
 16 provided specific assistance to help improve the
 17 instructional materials provision to students.
 18 I mean, that is the example that I am giving
 19 in this report.
 20 Q. Okay. In that context how would you envision
 21 FCMAT's authority being expanded?
 22 A. I am using Compton as an example of expanded
 23 authority of FCMAT that might be applied more
 24 generally around -- if the State were to choose the
 25 expansion and strengthening of FCMAT as a strategy for

1 strengthening its intervention and assistance approach.
 2 MR. HERRON: Could you read my question.
 3 (Record read.)
 4 BY MR. HERRON:
 5 Q. I guess a slightly different question: As
 6 opposed to FCMAT coming in and taking over a district,
 7 do you think there is a role for FCMAT to assure that
 8 school districts have adequate instructional materials
 9 or that the students in school districts have adequate
 10 instructional materials?
 11 MR. ROSENBAUM: Asked and answered two times.
 12 MR. HERRON: It hasn't.
 13 MR. ROSENBAUM: Yes, it has. She described --
 14 you are mischaracterizing her testimony. You don't
 15 listen to the answers and take it out of context.
 16 MR. HERRON: That is so false. It is really
 17 nauseating to have to listen to these objections.
 18 Q. You may respond.
 19 A. I'm sorry. I am not remembering the question.
 20 Q. I am not sure I am either. Let's try it
 21 another way.
 22 Your report, as I understand it, in a general
 23 way suggests that there ought to be an expanded role for
 24 FCMAT in terms of assuring there are adequate
 25 instructional materials for California schoolchildren.

1 MR. ROSENBAUM: You are mischaracterizing her
 2 testimony. She said repeated there are a number of
 3 strategies available --
 4 MR. HERRON: You are coaching.
 5 MR. ROSENBAUM: Okay. Then her testimony
 6 speaks for itself.
 7 MR. HERRON: Good. Object.
 8 MR. ROSENBAUM: Asked and answered. You are
 9 mischaracterizing her testimony.
 10 MR. HERRON: Very good.
 11 Q. You may respond.
 12 MR. ROSENBAUM: It is nauseating.
 13 THE WITNESS: I suggest that FCMAT is one
 14 current instrument that the State uses that could be
 15 strengthened in ways that would provide more adequate
 16 strategies for grappling with the textbook and
 17 instructional materials problem in the state.
 18 I am not, certainly, specifying that FCMAT be
 19 or a strengthening of FCMAT be the solution that the
 20 State settles upon. It could be.
 21 BY MR. HERRON:
 22 Q. Beyond what is set forth in your report, how
 23 should FCMAT's role be enhanced?
 24 A. Well --
 25 MR. ROSENBAUM: Same objections.

1 BY MR. HERRON:
 2 Q. Okay.
 3 A. I think that the kinds of standards that FCMAT
 4 set in Compton and the process it used for regularly
 5 monitoring and getting these every-six-month reports and
 6 the kind of instruments it had available, the reading
 7 scales that it used to measure progress towards adequacy
 8 in texts and instructional materials are all strategies
 9 that could be more routinely applied in FCMAT's work
 10 with school districts and carry with it authority, which
 11 it now doesn't have except in these special instances
 12 where there has been a special either piece of
 13 legislation or a court decision that has led to that.
 14 Q. On Page 117 of your report you refer to
 15 Kentucky?
 16 A. Yes.
 17 Q. Are you suggesting that California ought to
 18 adopt Kentucky's method of assistance and enforcement
 19 measures?
 20 A. I think there are many things about the
 21 Kentucky strategy that California certainly could adopt.
 22 It is a very useful example. There are parts of it that
 23 seem like they would be entirely appropriate for
 24 California.
 25 Q. Are you aware of how many students are in

1 schools in Kentucky?
 2 A. Not off the top of my head.
 3 Q. Have you done any research or study to
 4 determine whether or not Kentucky's system of assistance
 5 and enforcement would be an appropriate tool in
 6 California?
 7 MR. ROSENBAUM: Vague.
 8 THE WITNESS: I have certainly read a number
 9 of scholarly and evaluative accounts of Kentucky that
 10 suggest that the progress there has been impressive and
 11 that the strategies that Kentucky employed are ones that
 12 are not restricted in any way to Kentucky but could be
 13 used elsewhere, including places like California.
 14 MR. HERRON: I have no more questions at this
 15 time. I am going to reserve time to come back after the
 16 State agency defendants are done and the intervenors
 17 have asked their questions.
 18 MR. ROSENBAUM: I don't know if I agree with
 19 that reservation.
 20
 21 EXAMINATION
 22 BY MR. EGAN:
 23 Q. Good morning, Doctor.
 24 A. Good morning.
 25 Q. This morning you testified with respect to the

1 II/USP programs, as I recall, that the plans that were
2 developed by school districts do provide for addressing
3 the question of whether students have access to
4 instructional materials?

5 A. I summarized, in what I said, what's written
6 in my report, which gives a little bit more detail about
7 the way texts and instructional materials are treated in
8 the II/USP program.

9 Q. I believe you also stated that you had some
10 concerns with regard to the plans in the II/USP, because
11 they were to come -- the information on the plans was to
12 be based on the SARC, Student Accountability Report
13 Card.

14 A. Yes.

15 Q. Can you explain what you mean by that; they
16 were to come from the SARC?

17 A. The information -- the schools are to rely on
18 the information in the SARC as they are developing plans
19 as a mechanism for detecting and reporting problems,
20 considering strategies for improvement.

21 Q. Okay. Do you know if the II/USP statutes
22 require that the plan address topics that are covered in
23 the SARC?

24 A. I don't remember the specific language of the
25 legislation.

1 instructional materials?

2 A. As I said in my report, I quote the Ed Code
3 section, which is quite specific on the need to provide
4 instructional materials that are consistent with the
5 development of a high-quality curriculum and
6 instruction, and it also recommends that the schools use
7 standards-aligned texts that have been adopted by the
8 Board of Education rather than in -- so in that way it
9 is -- it is more constraining on the particular
10 strategies related to texts and instructional materials
11 that a school might use in making the effort to remedy
12 its achievement problems.

13 Q. Okay. Are you aware of any II/USP plans that
14 propose to use instructional materials that are not
15 aligned with the State content standards?

16 A. I have not reviewed every II/USP plan.

17 Q. I am sure.

18 A. I suspect there are some that don't
19 specifically note that they are going to use
20 standards-aligned instructional materials.

21 Q. Okay. Do you think it likely that an II/USP
22 school would choose to utilize nonstandards-aligned
23 material?

24 MR. ROSENBAUM: Vague.

25 THE WITNESS: Yes, I do.

1 Q. Okay. Dr. Oakes, on Page 93, I believe, of
2 your report at the very bottom of the page you indicate
3 that:

4 "Unlike the II/USP program,
5 the HPSG program requires schools
6 to address instructional
7 materials."

8 Could you clarify what the difference is
9 between -- that you are talking about here -- between
10 the HPSG program and the II/USP program?

11 A. In respect to its requirement for addressing
12 materials or --

13 Q. Yes. Specifically with regard to
14 instructional materials.

15 A. Well, the -- well, there is more flexibility
16 in the action plans submitted by the II/USP.

17 For example, they can use the Single Plan for
18 Student Achievement, which really leaves it to the
19 discretion of the school which strategies are likely to
20 be most successful and which areas should be emphasized,
21 whereas the High Priority Schools Grant does lay out
22 these four essential components that it expects schools
23 to address.

24 Q. Are there any other differences other than
25 that between the two programs with respect to

1 BY MR. EGAN:

2 Q. What is the basis for that?

3 A. My discussions with both the external
4 evaluators and members of schools and communities that
5 are doing II/USP, and that their use of the funds to
6 purchase test preparation materials that are
7 specifically designed to norm referenced standardized
8 tests of basic skills and not necessarily in alignment
9 with the content standards.

10 Q. Okay. I think -- I am not sure I understand
11 your response.

12 Since the test preparation materials are not
13 aligned with the content standards, how --

14 A. Many of those kinds of materials, those kits
15 that you can buy that analyze your school's test scores
16 and then coach kids on how to answer the questions
17 correctly -- I think you have probably seen those
18 materials -- they are not for the most part on the State
19 adoptions list relative to the standards, but they are
20 those additional supplementary materials.

21 Q. Let me rephrase my question a little bit to
22 say: Are you aware of II/USP schools that purchase
23 instructional materials apart from the testing materials
24 that you describe that are not aligned with the State
25 content standards?

1 MR. ROSENBAUM: I think it is pretty vague.
 2 THE WITNESS: My general knowledge says there
 3 are, because of my conversations with schools and II/USP
 4 and discussions about what the evaluators suggested they
 5 purchase.

6 One school I know of is actually engaged in an
 7 arts-based program that is using all kinds of
 8 interesting materials, but they are not aligned with the
 9 California standards in any deliberate sort of way.

10 But, frankly, I would want to prepare a little
 11 more to answer that question fully.

12 BY MR. HERRON:

13 Q. Are -- does the State have content standards
 14 in the arts at this point?

15 A. The -- I am not sure where they are in
 16 development in content standards in the arts.

17 The requirements around the instructional
 18 materials, especially the new legislation realigning the
 19 Instructional Materials Fund places a -- the requirement
 20 that schools use their instructional materials first and
 21 foremost to provide standards-aligned materials in the
 22 four academic content areas for which we have adopted
 23 standards.

24 Q. All right. Dr. Oakes, I would like you to
 25 refer to Page 94, Footnote 13, where you note that:

1 Q. Okay. Do you have an opinion as to how long
 2 it will take the State to get to the point where the API
 3 score is aligned with the State content standards?

4 A. Given the current budget crisis, I can't
 5 predict anything about the progress of anything.

6 Q. Do you know what the targets are for changing
 7 the tests to bring them into alignment?

8 A. I know that they plan by -- the plan had been
 9 by this year; that they were going to start using
 10 content-based items in the other subject areas.

11 I don't know when the end date, when they --
 12 whether there is an end date or what that date is, where
 13 there would be a complete shift.

14 In fact, I think there is some debate about
 15 whether they ever would fully shift to a standards-based
 16 testing system.

17 Q. Doctor, you testified you were not aware of
 18 any research with regard to how mandates affect access
 19 to materials in certain other states. This is with
 20 regard to Pages, I think, 102 and 103 of your report.

21 Do you have any other information other than
 22 research about how mandates affect access to materials?

23 A. Well, because mandates are requirements,
 24 mandates create rules that schools and districts have to
 25 follow.

1 "Another serious flaw is that
 2 the API score is not currently
 3 aligned with the state content
 4 standards."

5 You noted that the State has made progress in
 6 aligning -- I believe you said it was in aligning its
 7 testing with the State content standards.

8 In light of that progress is that -- the first
 9 sentence in your Footnote 13 still accurate?

10 A. Yes. It is still accurate, but there has been
 11 some improvement, and I know that there are plans in
 12 place to continue that alignment.

13 Q. Okay. Could you explain in what sense you
 14 mean it is still not "currently aligned"?

15 A. Well, only the -- the API this year, to the
 16 best of my understanding, the results that were just
 17 released, were based -- there is a ratio of how much
 18 weight in the API score is placed on the standardized
 19 norm reference test, and in the English language arts,
 20 how much on the contents standards.

21 As those standards-based items have been
 22 developed, the weight placed on students' responses to
 23 those items has increased, and the greatest increase was
 24 in the most recent -- they have not yet done that with
 25 mathematics. So the statement is still correct.

1 They are the strongest way of insuring access,
 2 because if access is not provided, then you are in
 3 violation of the law, unlike the other kinds of
 4 instruments that are being used currently.

5 Q. Okay. My question is, again, with regard to
 6 the states that were referenced, I think, at Pages 102
 7 and 103 of your report under the heading, "Mandate
 8 textbooks and materials."

9 Do you have any information as to the fact of
 10 the mandates in the states that you have cited there?

11 A. I have -- I have read as much as I could about
 12 those mandates, and I am not recalling details beyond
 13 what is in the report.

14 Q. Dr. Oakes, with respect to the Uniform
 15 Complaint Procedure, is there a reason that you did not
 16 discuss that in your report with respect to oversight
 17 and accountability strategies?

18 A. No. I mean, I am sure there is a reason, but
 19 not one that was a conscious decision.

20 Q. Okay. Do you recognize it as a potential for
 21 oversight and accountability with respect to textbooks?

22 A. I think it certainly could function if it were
 23 reconfigured and developed in ways that were made more
 24 precisely related to educational settings and one that
 25 was widely known and publicized.

1 I suppose you could have the phone number
2 posted in every classroom, for example, and handed out
3 to children with some instructions in multiple languages
4 about how to use it and what it would be appropriate to
5 be used for. I think it certainly has some potential.

6 Q. Dr. Oakes, I think on your first or second day
7 of testimony with regard to your instructional materials
8 report, you referenced, I believe it was, a symposium
9 that -- I think you were going to convene with regard to
10 the relationship between educational research and
11 litigation.

12 Do you recall that?

13 A. Yes.

14 Q. Could you tell me a little more about what the
15 symposium is.

16 A. The symposium is at the American Educational
17 Research Association, and it is an effort to use the
18 Williams case and the scholarly papers that have been
19 developed around the issues in the Williams case as an
20 example of how litigation can pose interesting problems
21 for educational researchers and some examples of the
22 kinds of research that has resulted, at least in this
23 case.

24 And, more generally, because the theme of the
25 meeting is about accountability, and there are some

1 A. Yes.

2 Q. Okay. I believe that you mentioned Dr. Fine,
3 who is another expert, plaintiffs' expert, is going to
4 be a participant in the symposium?

5 A. Actually, she just sent me an electronic
6 message that family illness is preventing her from
7 attending this year.

8 Q. Are you aware of any research Dr. Fine has
9 done with regard to the relationship between educational
10 research and educational litigation?

11 A. No.

12 Q. Dr. Oakes, I would like to have you take a
13 look at Exhibit 6.

14 A. I was afraid you would ask -- maybe I could
15 borrow someone's copy.

16 Q. Take a minute to review Exhibit 6.

17 (Recess taken.)

18 BY MR. EGAN:

19 Q. Dr. Oakes, have you had a chance to review
20 Exhibit 6?

21 A. Yes.

22 Q. Do you know what the approximate date -- let
23 me go back.

24 Can you identify this document?

25 A. Yes, I can.

1 implications in this case for accountability, as I
2 detailed in my report, to inform the educational
3 research community a little bit more about what is
4 happening in California.

5 Q. Okay. Can you tell me when this symposium is
6 going to be?

7 A. It is on Monday afternoon, the last week in
8 April, I believe.

9 Q. And where will it be?

10 A. In Chicago.

11 Q. In Chicago?

12 A. Yes.

13 Q. Do you know whether there will be any
14 publication reporting the results of the symposium?

15 A. It might be covered by media. Sometimes these
16 things are. I have no idea about that.

17 The special issue of the Teachers College
18 Record that will include the scholarly papers will be
19 the publication that is relevant to the symposium.

20 Some of the authors who are presenting papers
21 may publish other versions of those papers, but I have
22 no plans to.

23 Q. Is the symposium really a forum, a venue for
24 discussing the scholarly papers that have been developed
25 in connection with the Williams case?

1 Q. Okay. Would you tell me what it is.

2 A. It is a note that I wrote to my two research
3 assistants and my administrative assistant giving them
4 some instructions about the research assistance I would
5 like them to provide me.

6 Q. Can you give me an approximate date of the
7 note?

8 A. Approximately -- my guess, it is late
9 September of 2001.

10 Q. Okay. With regard to Paragraph 3 on Page
11 Bates 13745, can you tell me what the "HumRRO
12 reports" -- can you identify what those are for me?

13 A. Yes. It is -- I don't know if it was the
14 Governor's office or -- they were a State-commissioned
15 report to assess -- "HumRRO" is a private research firm
16 in Virginia, I think, and they were to come in and do
17 something rather like an audit or at least investigate
18 the readiness of the State's schools to prepare students
19 for the high school exit exam.

20 They published two reports that I know of and
21 have another due out, I believe, in May of this year --
22 April.

23 Q. Paragraph 3 refers, in parens, to "Reports 1,
24 1 Supplement and 2."

25 Were there -- to the best of your

1 recollection, were there three reports, one and the
2 supplemental one?

3 A. Yes.

4 Q. Can you be a little more descriptive or
5 explicit in terms of what the reports covered.

6 A. I know that they interviewed district
7 administrators -- maybe others -- about the extent to
8 which they felt they had their resources and capacity to
9 cover the standards material that would be tested in
10 items on the high school exit exam.

11 I have read those reports on instruments
12 carefully. I am not recalling all the details of what
13 they asked.

14 Q. Okay. Reading on in Paragraph 3 your memo
15 states:

16 "My view is that this may
17 establish 'what most kids have,'
18 showing that some kids don't have
19 it and provide some framework for
20 the less systematic data we have" -
21 I will reread it -- "less
22 systematic data we have or will get
23 about schools serving poor kids."

24 Did you have any discussions or -- discussions
25 with any of your research assistants to whom the memo is

1 Q. When you say, "less specific," do they give
2 you some information with regard to that issue?

3 A. I am not recalling the specifics of the items.

4 Q. Do you know if you relied in any way on these
5 reports in preparing your report?

6 A. Certainly, my general knowledge of these
7 reports and, frankly, I would need to go through my
8 report again to see if I actually refer to them
9 specifically because I am not recalling --

10 Q. Okay.

11 A. -- whether or where I did.

12 Q. Okay. With regard to Paragraph 4, can you
13 tell me what the "high school exit exam items"
14 referenced in the first sentence refers to?

15 A. Yes. They are items from the high school exit
16 exam provided on the Internet as illustrations of the --
17 both the form and substance that the exam will take.

18 Q. Okay. And did you review those items,
19 those --

20 A. My research assistants, Jamy and Noah, did and
21 talked to me about it, about what they found.

22 Q. Did they -- in your discussions with your
23 research assistants did you discuss whether, as you
24 state in Paragraph 4, they are consistent with Koski's
25 analysis?

1 addressed regarding the topics I just read?

2 A. Perhaps.

3 Q. Okay. Do you recall -- did the HumRRO reports
4 establish what most kids have?

5 A. I found them less specific on -- in that
6 regard than I thought they might have been.

7 They certainly did report the extent to which
8 school administrators, at least, felt that schools --
9 the proportion of school administrators who felt that
10 schools were well prepared to sufficiently prepare
11 students with the background they needed to take the
12 high school exit exam.

13 Q. Okay. Paragraph 3 also says -- I think it is
14 the second-to-the-last sentence:

15 "Also see to what extent these
16 reports shed light on the
17 availability of the specific
18 materials and resources identified
19 by Koski."

20 Did you make any determination as to that
21 issue?

22 A. Yes. I felt that the HumRRO reports were less
23 specific than I had hoped in terms of detailing the
24 availability of the specific standards-related materials
25 and texts that Koski had outlined in his analysis.

1 A. I recall that we did talk about that and felt
2 that there was some consistency, although because the
3 high school exit exam didn't cover the whole range of
4 standards, there wasn't an exact match between what he
5 had said was necessary to achieve the standards and what
6 appeared would be necessary to answer the specific items
7 that were given as examples directly.

8 Q. Other than the fact that the not all items are
9 covered -- not all standards items are covered on the
10 high school exit exam, did you discuss any other
11 consistencies or inconsistencies between the high school
12 exit items and Mr. -- Professor Koski's analysis?

13 A. They -- I am not recalling the details of what
14 they said, but we did have a conversation and assured
15 ourselves, again, from this independent source, that
16 Koski's analyses were as he represented them to be, to
17 be accurate and consistent -- and conservative
18 representations of what students should have available
19 to them.

20 Q. My question is with specific regards to
21 Paragraph 4 and the comparison between high school exit
22 exams and Professor Koski's analysis.

23 A. I am not recalling details of that
24 conversation.

25 Q. Referring to Paragraph 5 of Exhibit 6, do you

1 know who "Warren Fox" is?
 2 A. Yes. He is an administrator in the California
 3 Department of Education.
 4 Q. And this refers to a deposition of Mr. Fox.
 5 Do you know in what case the deposition of
 6 Mr. Fox was taken?
 7 A. I am not recalling specifically.
 8 Q. It also refers to, "on the CD."
 9 Is there a CD with his deposition on it?
 10 A. Yes.
 11 Q. Okay. Are there other depositions on the CD?
 12 A. Yes.
 13 Q. Can you tell me whose -- what other
 14 depositions are on the CD, if you recall?
 15 A. You know, I can't recall which depositions I
 16 retrieved from the CD and which I had in hard copy and
 17 which were available at the time I got the CD and which
 18 came later. I just don't recall.
 19 Q. Okay. Do you recall -- did you discuss
 20 Mr. Fox's deposition with any of your research
 21 associates?
 22 A. Yes.
 23 Q. And what was the substance of that discussion?
 24 A. The material that I cited in my report. I am
 25 not recalling what page.

1 Q. If you recall, can you relate what your report
 2 reflects with respect to the deposition of Mr. Fox.
 3 A. I am not recalling specifically. I would have
 4 to sit and look and find out whether and where that --
 5 Q. Okay. Do you recall what your report says
 6 with respect to the high school exit exam and the
 7 Opportunity-to-Learn?
 8 MR. ROSENBAUM: Asked and answered.
 9 THE WITNESS: The general tenor of what is in
 10 the report -- and there are lots of details in the
 11 report that I don't have committed to absolute memory --
 12 but the general tenor is that if the State is to
 13 administer a high school exit exam, the results of which
 14 will determine whether or not children graduate from
 15 high school, it should have some assurance that students
 16 have fair and adequate, meaningful opportunities to
 17 learn the content on which they are going to be tested.
 18 I assert that as a principle myself, and I
 19 cite others in the Department of Education who also have
 20 asserted that general principle.
 21 BY MR. EGAN:
 22 Q. Okay. With regard to Paragraph 6 of Exhibit
 23 6, do you recall -- did you either -- did you review any
 24 of the minutes of the Instructional Materials
 25 Commission?

1 A. I did.
 2 Q. Do you recall what they covered?
 3 A. Certainly, I don't have a comprehensive
 4 recollection of all the details of the minutes.
 5 I found nothing that approximated a standard
 6 for adequacy in terms of kids being provided access to
 7 instructional materials and textbooks.
 8 There was quite a lot about the -- as I
 9 recall, to the best of my recollection -- about the
 10 adoption process and the review process, but I was
 11 hoping to find, actually, that the State had set a
 12 standard of what it considered necessary for adequate
 13 access to materials.
 14 I found nothing like that.
 15 Q. So on the top of the second page is -- you say
 16 you are looking for "anything the State has on record
 17 regarding what ought to be and what actually is
 18 regarding texts and working materials."
 19 Can you explain what --
 20 A. Yes. As a part of my research I wanted to
 21 fully understand what standards the State had
 22 established regarding curriculum materials and to see
 23 whether or not the Materials Commission had made any
 24 assessments of the extent to which that standard had
 25 been met.

1 I mean, this was at an early point in the
 2 research, and I was trying to explore all potential
 3 sources of evidence about the questions in the -- that I
 4 had set for myself.
 5 Q. Okay. In Paragraph 9 you indicate -- it says:
 6 "I understand that the State's
 7 CCR (Coordinated Compliance
 8 Review?) reports speak to issues of
 9 whether students have appropriate
 10 access to the core curriculum."
 11 What was your understanding -- what was that
 12 understanding based on?
 13 A. I don't recall.
 14 Q. Did you satisfy yourself that that was, in
 15 fact, the case?
 16 MR. ROSENBAUM: Foundation.
 17 THE WITNESS: I satisfied myself that the CCR
 18 is what I describe it to be in my report.
 19 BY MR. EGAN:
 20 Q. Okay. Did you have any specific discussions
 21 with your research associates about this subject?
 22 MR. ROSENBAUM: "This subject" is what?
 23 BY MR. EGAN:
 24 Q. The State's CCR reports addressing access to
 25 the core curriculum.

1 A. Yes. I actually instructed them to read a
2 number of CCRs and reports and to look specifically and
3 to point me to any examples they could find of reports
4 referring to students' access to the core curriculum.

5 Q. I have one more document to mark as an
6 exhibit.

7 (Exhibit 65 was marked for I.D.)

8 BY MR. EGAN:

9 Q. Have you had a chance to review Exhibit 65?

10 A. Yes.

11 Q. Can you tell me what it is?

12 A. Only a sad story at IDEA.

13 Q. Beyond that?

14 A. It is an exchange between Marisa Saunders and
15 myself as we were engaged in one of multiple rounds of
16 review and revision and drafting.

17 Q. Okay. Let me refer you to the first page. I
18 think it is the fourth paragraph. That begins, "BTW,"
19 which I understand is shorthand for "by the way"?

20 A. Yes.

21 Q. Can you tell me what -- looking at that
22 paragraph, what is the "Koski paper" that is referenced?

23 A. This is the -- the draft of Bill Koski's
24 analysis of the requirements in terms of teacher
25 competencies and instructional materials that are

1 A. No. No.

2 Q. Okay. Dr. Oakes, I would like you to refer to
3 Exhibit 21.

4 MR. ROSENBAUM: Off the record, please.
5 (Discussion off the record.)

6 BY MR. HERRON:

7 Q. Dr. Oakes, specifically I have some questions
8 regarding Page 2, the paragraph towards the bottom that
9 begins, "May."

10 A. Yes.

11 Q. Can you describe what the "conference"
12 referred to in that paragraph is?

13 A. This is the conference I described that
14 actually took place in July of 2002.

15 Q. Okay. And in that paragraph there is a
16 sentence which provides:

17 "We can also use this meeting
18 to develop a strategy for using our
19 papers to help shape California
20 education policy in the context of
21 the California Master Plan
22 adoption."

23 Is the "Master Plan" referenced in that
24 sentence the Master Plan that you participated in the
25 process of developing?

1 inherent in the California content standards.

2 Q. This is the draft of his expert report in this
3 case?

4 A. It is the report of his research. I am not
5 sure that is the version or -- I am not sure of the
6 relationship between that draft and his expert report.

7 Q. The first sentence refers to the "Koski
8 paper," and it says, "but not your additions."

9 What "additions" are you referring to?

10 A. Well, in the message she sent to me below, she
11 suggested that she made some additions or comments to
12 the second section of my draft -- the draft that we were
13 working on that reported this research, and that she had
14 not sent those suggestions -- apparently, she thought in
15 her e-mail she had sent them in the form of attachments,
16 but I am telling her that she did not.

17 Q. So these are not additions to the Koski paper?

18 A. No.

19 Q. Okay. The second sentence also refers to your
20 work rather than Professor Koski's; the one that begins,
21 "So when you get a chance"?

22 A. The second sentence refers to her suggestions
23 for modifications or additions to the report I was
24 working on. Yes.

25 Q. And not Professor Koski's report?

1 A. Yes. I think it is.

2 Q. Did you develop a strategy for using the
3 papers to help shape California education policy as
4 stated there?

5 A. No.

6 Q. Why not?

7 A. Why not? Well, the meeting, as I described it
8 before, was extremely intense, with this series of
9 reports by authors and conversations following by --
10 that were started by other experts, and we had my
11 little -- I had my kitchen timer there and was timing,
12 and we went late, and we just didn't.

13 It was not really part of the agenda of this
14 group anyway.

15 Q. Is this part of agenda for IDEA or for you?

16 A. Well, if you can -- see the date, March 4,
17 2002, this was in the midst of the preparation and the
18 testimony to the legislature about my involvement with
19 the student learning working group and the public
20 hearings I was participating in. It was just on my
21 mind.

22 Q. Did you in any way use the papers that were
23 developed to shape the California Master Plan adoption?

24 MR. ROSENBAUM: Assumes facts not in evidence.

25 THE WITNESS: The -- only in the most general

1 way, in that some of the information was in my head, as
 2 I was learning it, and I was not keeping it proprietary,
 3 as I had suggested I would not all along.
 4 And I am sure that I shared it with my
 5 colleagues, and at one point we did have in the Master
 6 Plan process a briefing about the Williams case. It was
 7 just simply as background for the committee members, but
 8 it wasn't related to any of the papers that were
 9 produced.

10 BY MR. EGAN:

11 Q. Did you ever develop anything that you would
 12 characterize as a "strategy" for using the Williams
 13 papers to shape policy?

14 A. Only in the most indirect way, in that I have
 15 been interested in finding ways to make the results of
 16 this research available to people who might find it
 17 interesting as they engage in their own work of shaping
 18 policy, much as I do with all of the research that I do.

19 Q. And have you found ways to do that?

20 A. I have on occasion referred people to the
 21 decentschools.com website where my papers are posted.

22 I have found some ways to make this
 23 information available to parents and other community
 24 members and community groups who might find it
 25 interesting. They are only in the loosest sense

1 advice that you requested from Ruth Simon at UCLA?

2 A. Yes.

3 Q. Was that request in writing?

4 A. No.

5 Q. Was her response in writing?

6 A. No.

7 Q. What is Ms. Simon's position? Is she counsel
 8 for the Regents or counsel for UCLA?

9 A. Counsel for UCLA. We all technically work for
 10 the Regents, but she is located on the UCLA campus.

11 Q. Okay. Thank you.

12 Yesterday you mentioned that you had spoken to
 13 Senator Alpert about establishing a commission. I am
 14 not sure what the topic -- what the purpose of the
 15 commission was.

16 A. Oh, the reference was to the Quality Education
 17 Commission that has already been established under a
 18 bill that is -- Assemblymember Strom Martin proposed
 19 last year.

20 Q. That was my question.

21 This is legislation that has already been
 22 passed?

23 A. Yes.

24 Q. Has the commission been established?

25 A. No. My understanding is that the target date

1 "policymakers."

2 Q. And have you spoken -- have you specifically
 3 focused on any State policymakers?

4 A. Because there is considerable overlap between
 5 the ideas and the problems that are identified in this
 6 work and the issues in the Master Plan and the problems
 7 that the legislature is considering more generally, I am
 8 sure that in the context of my being asked for advice or
 9 comment or providing research, that some of this work is
 10 reflected in my responses to that.

11 MR. EGAN: Okay. Do you want to break?

12 MR. ROSENBAUM: Thank you very much. Thanks
 13 for accommodating me.

14
 15 (Whereupon at 11:55 a.m. the deposition
 16 of JEANNIE OAKES was adjourned.)

17 (Whereupon at 1:15 p.m. the deposition
 18 was reconvened.)

19
 20 EXAMINATION (Continued)

21 BY MR. EGAN:

22 Q. Dr. Oakes, are you ready?

23 A. Yes.

24 Q. I will try to speak louder.

25 Yesterday you testified with regard to legal

1 for establishing the commission is this July, or that is
 2 what the hoped-for date was, but like all else, plans
 3 have gotten muddled --

4 Q. It may be delayed a bit?

5 A. Yes.

6 Q. Yesterday I think you also referred to the, I
 7 think it was, the 2000 Associates of American Publishers
 8 study that was cited in your report.

9 I believe you testified that the State
 10 Curriculum Commission had a report regarding that study?

11 A. My only knowledge of that is by my perusal of
 12 the agenda on the website of the Curriculum Commission
 13 that said that someone was scheduled to give a report of
 14 that survey at that meeting.

15 That is my only knowledge.

16 Q. Okay. So the report may not have been a
 17 written report? It may have been a verbal presentation?

18 A. It could be.

19 Q. Dr. Oakes, what is the relationship between
 20 IDEA and TCLA?

21 A. TCLA is an acronym for "Teaching to Change Los
 22 Angeles," which is a journal, an electronic journal,
 23 that is housed on IDEA's website, and that we construct
 24 and edit and maintain.

25 It is, essentially, predominantly work done by

1 and for Los Angeles area teachers.
 2 Q. Okay. Has -- so information that is published
 3 on TCLA is collected or is done through the auspices of
 4 IDEA?

5 A. We edit it. Certainly, not all of it is
 6 created at IDEA, but people do submit things, and we
 7 edit and post it on the site.

8 Q. I believe that there is a posting or has been
 9 a posting on TCLA related to student report cards --
 10 students reporting and providing report cards on their
 11 schools.

12 Is that familiar to you?

13 A. Yes.

14 Q. Can you describe more specifically what that
 15 information is?

16 A. My colleague, John Rogers, has a project where
 17 he engages teachers, Los Angeles area teachers, and some
 18 parent groups in educational activities, like classes or
 19 seminars, where they discuss issues of interest around
 20 education.

21 The -- during this school year, beginning last
 22 summer, the project or at least part of the project has
 23 focused on engaging teachers and their students and some
 24 community members in thinking about what locally
 25 constructed School Accountability Report Cards might

1 have done, what other categories of information has IDEA
 2 shared with plaintiffs' counsel?

3 MR. ROSENBAUM: Assumes facts not in evidence.
 4 Foundation.

5 THE WITNESS: Occasionally I think there may
 6 have been an instance where somebody on my staff -- and
 7 I am thinking of John Rogers in particular because it is
 8 an incident I am thinking of -- has been provided
 9 information or comes across information that seems very
 10 closely connected to the issues in this case, and I
 11 think I recall in one instance he may have reported that
 12 information.

13 BY MR. EGAN:

14 Q. Did you speak with any Department of Education
 15 employees in preparing your report -- in connection with
 16 your report?

17 MR. ROSENBAUM: Vague. Like teachers or --
 18 I'm sorry. I will withdraw that.

19 THE WITNESS: Are you talking about --

20 BY MR. EGAN:

21 Q. The California Department of Education.

22 A. I may have, but it would have been in the most
 23 informal way.

24 I may have called and asked about the
 25 availability of reports or had casual conversations

1 look like.

2 So some of the activities have engaged young
 3 people and teachers and parents in constructing examples
 4 of alternative School Accountability Report Cards.

5 Q. Have any efforts been made as part of this
 6 project to fill in the report cards, so to speak, and to
 7 provide information about the quality of categories that
 8 are identified on the report cards?

9 MR. ROSENBAUM: Foundation. Speculation.

10 THE WITNESS: I have not personally been
 11 involved with these projects, but my understanding is
 12 that they have some rubrics and guidelines for
 13 collecting information and then -- some individuals have
 14 submitted that information.

15 BY MR. EGAN:

16 Q. Do you know if any of that information has
 17 been shared with plaintiffs' counsel in this case?

18 A. Not to my knowledge.

19 Q. Okay. Has any other information gathered
 20 through IDEA been shared with plaintiffs' counsel in
 21 this case?

22 A. Sure. All my research and other -- other work
 23 that has been done at IDEA. Most of it is publicly
 24 available.

25 Q. Other than specific records and research you

1 because I interact with people.

2 Q. Okay. Do you recall who you might have spoken
 3 with in that manner?

4 A. You know, at the moment I don't recall
 5 specifically.

6 Q. Same question with regard to employees at the
 7 State Board of Education.

8 Have you spoken to anybody there in connection
 9 with your report?

10 A. I might have had the briefest conversation
 11 with Mr. Mockler when he was employed by the Board, and
 12 I know I sat next to Mr. Hastings. We had a meeting we
 13 were both participating in, and I don't know whether it
 14 came up in the conversation or not.

15 Q. Anybody other than Mr. Mockler and
 16 Mr. Hastings?

17 A. I don't think it came up in a conversation
 18 with Ms. Joseph, but she might have asked me about it.
 19 I just don't recall.

20 Q. Okay. Let me ask you to take a look at Page 3
 21 of your report, specifically the first paragraph under
 22 the heading, "Evidence and opinions."

23 The last sentence, you refer to, "Passing
 24 high-stakes tests."

25 MR. ROSENBAUM: The last sentence of the first

1 full paragraph.
 2 BY MR. EGAN:
 3 Q. Correct.
 4 You refer to, "Passing high-stakes tests."
 5 Can you tell me specifically what "high-stakes
 6 tests" you are referring to there?
 7 A. Well, the two examples that I know I am
 8 referring to here are the California high school exit
 9 exam, which has high stakes for students in that it
 10 determines whether or not they receive a diploma, and
 11 the STAR collection of tests, that are part of the STAR,
 12 also because the State expects districts to take those
 13 into consideration when schools make decisions about
 14 promotion policies for individual students, and because
 15 they are high stakes for schools and educators, given
 16 that decisions are made about whether to place schools
 17 on lists of low-performing schools and potentially face
 18 sanctions as a result of the performance on those tests.
 19 Q. Since -- you also indicate in that sentence
 20 that:
 21 "Students are required to gain
 22 knowledge contained in textbooks,
 23 instructional materials and to
 24 develop particular skills by
 25 interacting with instructional

1 tested on material covered by the content standards.
 2 Q. Is it your understanding that the content
 3 standards include provision for doing Internet research?
 4 A. The content standards?
 5 Q. Yes.
 6 A. As currently -- my recollection?
 7 Q. Uh-huh.
 8 A. To the best I can recall, there is at least
 9 one content standard that asks that students be able to
 10 perform research using the Internet.
 11 Q. And is it your testimony that that would be
 12 something that would be tested on the high school exit
 13 exam?
 14 MR. ROSENBAUM: Speculation. Asked and
 15 answered.
 16 THE WITNESS: I don't believe there is
 17 currently such an item on the versions of the exam that
 18 have been administered so far, but there is no specific
 19 exclusion in the policy that such items -- were it
 20 feasible to have them -- could be included.
 21 BY MR. EGAN:
 22 Q. It is feasible to test all the items in the
 23 standards in a high-stakes test?
 24 MR. ROSENBAUM: Incomplete hypothetical.
 25 THE WITNESS: If all the resources in the

1 equipment and technology."
 2 What particular skills did you have in mind in
 3 that context?
 4 A. Essentially the skills that are outlined in
 5 the California content standards that detail what
 6 students should know and be able to do.
 7 Q. Okay. Can you tell me what skills or what you
 8 meant by "interacting with instructional equipment and
 9 technology"?
 10 A. Well, certainly developing science knowledge
 11 requires -- at least the full range of science knowledge
 12 and skill specified in the standards -- requires
 13 interacting with laboratory equipment and supplies.
 14 Another example is the standards that expect
 15 students to learn to do research using the Internet.
 16 Q. Are skills that require students to learn how
 17 to do research on the Internet a part of high-stakes
 18 testing, as you defined it?
 19 A. My understanding is that anything in the State
 20 standards at about the tenth grade level or below is
 21 fair game for inclusion on the high school exit exam.
 22 Q. Okay. And the basis for that understanding?
 23 A. My knowledge of what the high school exit exam
 24 is supposed to -- the level at which it is supposed to
 25 be pegged at and the expectation that students will be

1 world were available, it would be, I would hope, or they
 2 wouldn't be standards.
 3 BY MR. EGAN:
 4 Q. I would like you to turn to Page 9 in your
 5 report, specifically to the paragraph that begins,
 6 "Impact of supplementary curriculum materials."
 7 If you could read the first or, I guess,
 8 through the sentence that ends, "U.S. Department of
 9 Education, 1999."
 10 A. Read it silently?
 11 Q. Yes.
 12 A. Yes.
 13 Q. Dr. Oakes, is it fair to say that in that part
 14 of your report that it is your opinion that the use of
 15 calculators would improve student math performance?
 16 A. Actually in the sentence below the one you
 17 asked me to read there is some evidence from a study
 18 done by the Institute for Education Reform, which is a
 19 unit of the California State University system that, in
 20 fact, students who did have access to calculators,
 21 controlling for all kinds of other characteristics, did
 22 perform better on calculus tests.
 23 Q. So is it fair to say that you would concur in
 24 that conclusion?
 25 A. I accept that conclusion.

1 Q. Okay. Do you feel that you have the expertise
2 to independently state an opinion as to whether
3 calculators enhance math performance?

4 A. I think what I have cited here and what I
5 would cite elsewhere is evidence from responsible
6 research that had -- that had reached that conclusion.

7 Q. Okay. But you do not have that -- personally
8 have that expertise to state that opinion?

9 MR. ROSENBAUM: Vague. I think she just
10 answered that.

11 THE WITNESS: I think I have ample expertise
12 in the area of the relationship between materials and
13 supplies that provide additional access to knowledge and
14 students' opportunities to learn and their learning.

15 BY MR. EGAN:

16 Q. So that would include the relationship between
17 access and use of calculators and math performance on --
18 in mathematics?

19 MR. ROSENBAUM: That is the third time that
20 question has been asked.

21 Go ahead. If you can answer it more.

22 THE WITNESS: I think, as with many of the
23 things we talked about yesterday, it is always the case
24 that there are multiple factors that work together to
25 support teaching and learning, and I would never make

1 A. It may be. My assumption is that it is, or at
2 least it is -- the expert report was derivative of some
3 version of this particular paper, and the underlying
4 analysis is probably the same one.

5 Q. Okay. Do you know if the document that is
6 cited in your references has been produced in this case?

7 A. The -- I believe, and correct me if I am
8 wrong, that this document, or at least a version of it,
9 was on the website that I gave you yesterday to the
10 extent that it is -- I don't know. It may also be the
11 same that is on the decentschools.com website. I don't
12 know.

13 Q. That is a fair answer. Let me go back.

14 A. I think you have a copy.

15 MR. JORDAN: No. That is the expert report.

16 BY MR. EGAN:

17 Q. My recollection of your previous testimony was
18 that you had a version of Dr. -- Professor Koski's
19 report when you prepared your report that did not
20 include an evaluation of the instructional materials
21 related to the science standards; is that correct?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 Q. And for that reason your report -- tables on

1 such a simplistic statement that: Under any
2 circumstances whatsoever having a calculator available
3 might enhance students' academic performance.

4 For example, in the absence of a highly
5 qualified teacher, I would think it wouldn't do one much
6 good to have a calculator. It might, but --

7 BY MR. EGAN:

8 Q. Dr. Oakes, if you could turn to the bottom of
9 Page 11 of your report.

10 You refer there to a "recent study performed
11 by Koski, 2001."

12 Can you tell me what that study is? Is
13 that -- well, can you identify that for me?

14 A. If you look in the references, it should give
15 exactly the details of what it is.

16 Q. Okay.

17 A. It is an unpublished manuscript with a date of
18 2001 entitled, "What Education Resources Do Students
19 Need to Meet California Educational Content Standards?
20 An Analysis of California's Standards-Based Reform
21 Policy and Its Implications For an Adequate K-12
22 Education."

23 Q. Do you know if that document is an earlier
24 version of Dr. or Professor Koski's expert report in
25 this case?

1 Pages 13 and 14 of your report do not include the
2 science standards?

3 A. Oh, that is correct. Yes.

4 Q. All right. Dr. Oakes, looking on Page 13 at
5 Table 1-3, which is headed, "Instructional materials
6 required to teach California's content standards in
7 math, English language arts and history/social science,"
8 do you recall if that was the way in which Professor
9 Koski titled his tables?

10 A. I believe this is my title.

11 Q. The tables that are included identify
12 resources that are both required and suggested; is that
13 correct?

14 A. Yes.

15 Q. Okay. So that to that extent, they are not --
16 all the items are not required? Some are suggested; is
17 that correct?

18 A. That is correct.

19 Q. Dr. Oakes, returning to Page 12 of your
20 report, you say -- you state -- the paragraph at the top
21 of the page referring to Professor Koski's work -- that:

22 "The analysis was enhanced by
23 reference to the corresponding
24 curriculum frameworks."

25 What do you mean by "enhanced" in that

1 context?

2 A. That the understanding of the meaning and
3 intent of the standard was developed, filled out by
4 consulting the frameworks that correspond to the content
5 area for which the standards were -- to which the
6 standards referred.

7 Q. Can you tell me: What are "frameworks"?

8 A. I think I discuss the "frameworks" in my
9 report at -- if you know, if you can help me --

10 Q. I'm sorry. I would if I knew.

11 A. I would really refer you to my report to get a
12 precise description of the relationships between the
13 standards and the frameworks, but the frameworks
14 actually provide a set of guidelines and discussion
15 about the content that is related to the specific
16 standards that were set.

17 Q. Okay. Do you know what the purposes of the
18 frameworks are?

19 MR. ROSENBAUM: Speculation. Vague.

20 THE WITNESS: You know, I would very much --

21 MR. ROSENBAUM: Off the record a moment?

22 MR. EGAN: Sure.

23 (Discussion off the record.)

24 THE WITNESS: The specific language that I use
25 in my report is that the frameworks serve as blueprints

1 mandatory?

2 A. Yes.

3 Q. But they have --

4 MR. ROSENBAUM: All her answers are correct,
5 but go ahead. That was inappropriate, but --

6 BY MR. EGAN:

7 Q. Yes, it is.

8 There is a consequence in the context of the
9 receipt of instructional materials funds with respect to
10 content standards?

11 A. If one chooses to avail themselves of that
12 funding, one must use them to purchase materials that
13 are aligned with the standards. Yes.

14 Q. Right.

15 Do you know if there is any comparable
16 consequence with respect to frameworks?

17 MR. ROSENBAUM: Vague.

18 THE WITNESS: Are you saying -- asking if
19 districts choose not to use the assistance provided in
20 the frameworks, is there --

21 BY MR. EGAN:

22 Q. Correct.

23 A. Is there -- not that I know of. No direct
24 enforcement of any sanctions.

25 Q. Thank you. That is exactly what I was looking

1 to guide districts and schools.

2 Essentially, it is assistance that the State
3 Department of Education under the State Board provides
4 to help schools and districts structure a curriculum in
5 ways that will help students achieve the content
6 standards.

7 BY MR. EGAN:

8 Q. Do you know whether the frameworks are in any
9 sense mandatory?

10 MR. ROSENBAUM: Vague.

11 THE WITNESS: No. And, in fact, the standards
12 are technically voluntary as well.

13 BY MR. EGAN:

14 Q. Okay. Let me ask you: Is it your
15 understanding that there is a -- the standards have a
16 significance in that -- to take advantage of certain
17 categorical textbook and instructional material funding,
18 a district must purchase materials that are in alignment
19 with the standards; is that correct?

20 MR. ROSENBAUM: I don't see a question there.

21 THE WITNESS: Are you asking if that is what I
22 see as the advantage of the standards?

23 BY MR. EGAN:

24 Q. I am asking if you -- you indicated -- and
25 correct me -- that the content standards are not

1 for.

2 Dr. Oakes, I would like you to refer to Page
3 52 of your report, specifically to the opinion where you
4 state that:

5 "The State's statutes and
6 regulations regarding textbooks and
7 instructional materials have either
8 created or contributed to the
9 shortages and poor quality of
10 textbooks."

11 Can you -- did you identify statutes and
12 regulations which specifically created shortages and
13 poor quality, as distinguished from contributed?

14 A. The creation I would attribute to the failure
15 to enact particular types of statutes. So it is in
16 the -- in their absence, yes.

17 Q. Can you tell me the type of statute you have
18 in mind?

19 A. The types that I have detailed throughout the
20 remainder of the report.

21 Q. Okay. And then the statutes and regulations
22 that contributed are the specific statutes and
23 regulations that you have also detailed in your report?

24 A. Yes. I think my report provides lots of
25 examples of those sorts of things.

1 Q. All right. Correct.
 2 Dr. Oakes, the last sentence of your opinion,
 3 it says:
 4 "Each of these deficiencies
 5 has contributed to the problems
 6 detailed in Section 2 above."
 7 Do you consider one of the problems detailed
 8 in Section 2 the premise that "deficiencies in textbooks
 9 and instructional materials have made problems worse at
 10 schools enrolling the most vulnerable students," which I
 11 think is language from Page 34 of your new book?
 12 A. Yes.
 13 Q. Can you explain how that -- how the
 14 deficiencies contribute to making problems worse at
 15 schools who enroll the most vulnerable students.
 16 A. Yes. In particular, that the absence of
 17 mandates, oversight and accountability requirements that
 18 insure equitable access to textbooks and materials.
 19 Q. How does that -- how does that -- when you
 20 say, "make problems worse," how does that make problems
 21 worse at schools with the most vulnerable students as
 22 opposed to the schools with less vulnerable students?
 23 A. I think I make clear in my report that we see
 24 problems in all types of schools in California, but we
 25 also see distinct patterns of disparity that work to the

1 disadvantage of students in low-income communities.
 2 The statement here refers to the fact that the
 3 State does not have built into its policy system
 4 sufficient bases for knowing about those disparities or
 5 mechanisms that would work to prevent them from
 6 occurring in the first place or fixing problems directly
 7 when they occur.
 8 Q. Okay. Dr. Oakes, on Page 53 and I think in
 9 other places you discuss mandates.
 10 Are you familiar with the California laws that
 11 pertain to unfunded State or -- to unfunded State
 12 mandates?
 13 A. I am familiar with the fact that California is
 14 not permitted to create mandates for which it does not
 15 provide the requisite funding.
 16 Q. Okay. Is it your understanding that if a
 17 school district is providing a particular service of its
 18 own volition that is subsequently mandated by the State,
 19 that the State becomes responsible, fully responsible,
 20 for the costs associated with that mandate?
 21 A. Can you give me an example of that?
 22 Q. Say that a district has of its own volition
 23 elected to provide teachers with a -- one day a year of
 24 staff development time and that thereafter the State
 25 imposes a mandate that requires districts to provide

1 teachers with one day of staff development time.
 2 Is it your understanding that under that
 3 hypothetical that the State would then become fully
 4 responsible for the costs of that mandate even though
 5 the district may have previously done it of its own
 6 volition?
 7 A. I don't have independent knowledge that that
 8 is the case, but I believe you if you say that is the
 9 case.
 10 Q. Fair enough.
 11 I think you have previously outlined, I think,
 12 your analysis of various problems and options that the
 13 State might take to address, you know, the problems that
 14 you have outlined.
 15 Is cost to the State a relevant factor in
 16 making those policy choices, from your perspective?
 17 A. I certainly think that any policy decision
 18 should be accompanied by a careful analysis of the costs
 19 and the benefits of those policies.
 20 Q. Thank you.
 21 Dr. Oakes, referring to Page 53 of your
 22 report, the first full paragraph -- I will just read
 23 part of a sentence I would like to ask you a question
 24 about.
 25 MR. HILL: What page?

1 BY MR. EGAN:
 2 Q. Page 53, the first full paragraph. The part I
 3 would like to ask you about is a little more than
 4 halfway down.
 5 "The board could
 6 simultaneously provide a definition
 7 of use of each title adopted. In
 8 other words, the board would
 9 determine what a 'sufficient'
 10 number of textbooks could consist
 11 of and provide a definition for use
 12 and distribution, i.e., one text
 13 per student for both class and home
 14 use."
 15 How would in that context -- what would -- how
 16 would the board determine what a "sufficient number of
 17 textbooks" would consist of?
 18 A. Well, what I had envisioned here was a process
 19 that would simply augment the task of the reviewers who
 20 review adoptions now for their quality and their
 21 conformance with legal requirements and their alignment
 22 to the standards to consider a sufficiency standard for
 23 each of the sets of materials it approves for State
 24 adoption, and that the board would then be guided by the
 25 advice of that commission, as it is now, in terms of

1 which materials it adopts.

2 Q. Let me ask this: Is your definition that you
3 propose for use in distribution, you said, "i.e., one
4 text per student for both class and home use," is that
5 that what would drive the determination of a sufficient
6 number of textbooks?

7 A. I gave that as an example because it is
8 certainly the standard that is used internationally for
9 sufficiency.

10 It, however, is quite dependent on the primary
11 instructional material being a bound print text.

12 Q. Okay.

13 A. I would think in this day of multimedia, that
14 we wouldn't want to constrain a sufficiency standard by
15 that in terms of materials for which some other standard
16 might be more appropriate, given the nature of the
17 materials.

18 Q. So one text per student is simply an example?
19 It is not the definition?

20 A. I think --

21 Q. I'm sorry. I read "i.e." as meaning, "This is
22 the definition," rather than "e.g.," giving an example.

23 A. I see. I would say it is somewhere in between
24 those two, because in most cases, still, one text per
25 child per subject so that children can use it both at

1 review and approve materials for use in grades 9 through
2 12.

3 Q. What is the standard for review and approval
4 at grades 9 through 12?

5 MR. ROSENBAUM: Foundation.

6 THE WITNESS: My understanding for grades 9
7 through 12, the local governing boards are expected to
8 insure that the materials they approve meet or comply
9 with the legal requirements for texts.

10 BY MR. EGAN:

11 Q. And specifically what are you referring to,
12 "the legal requirements for texts"?

13 A. Well, there is a process called the "Social
14 Content Review," and it is to insure that instructional
15 resources meet requirements of things, like they are not
16 biased towards members of particular racial groups or
17 religions.

18 Q. I understand.

19 Is it your understanding that for grades 9
20 through 12 the district in order to avail itself of
21 Instructional Materials Funds must certify that the
22 texts are consistent with the content standards?

23 A. Under the new legislation, the Instructional
24 Materials Fund Realignment Program, I believe that is
25 the case.

1 school and at home is probably the standard that would
2 be appropriate for most materials.

3 But given -- it is not simply one example. It
4 is more than that. But it certainly wouldn't be
5 appropriate in every instance.

6 Q. As you said, somewhere in between i.e. and
7 e.g. We need some new initials.

8 Dr. Oakes, on Page 53 -- this is the paragraph
9 that begins, "Instead of mandates." I would like to ask
10 you a question or two about that paragraph. Would you
11 take a moment to read it.

12 My specific question is: You refer to the
13 "State's review and adoption of materials in grades K-8
14 encourage and build the capacity of districts" --

15 MR. ROSENBAUM: Why don't you start the
16 question over again?

17 BY MR. EGAN:

18 Q. The sentence that talks about the "State's
19 review and adoption of materials in grades K through 8
20 encourage and build the capacity of districts."

21 MR. ROSENBAUM: Off the record.

22 (Discussion off the record.)

23 BY MR. EGAN:

24 Q. What about grades 9 through 12?

25 A. The State leaves it to local school boards to

1 Q. Do you know if that was true under the
2 Schiff-Bustamante and Instructional Materials Fund
3 categorical programs?

4 A. Yes.

5 Q. Okay. Dr. Oakes, on Page 53 the paragraph
6 that begins, "The absence of mandates," you state that:

7 "The State has allocated less
8 funding than districts and schools
9 actually require to purchase
10 materials in sufficient qualities."

11 Can you tell me how you -- what funding you
12 are referring to when you say, "The State has allocated
13 less funding"?

14 A. First of all, I would say all funding in
15 that -- the data from the Lou Harris survey makes quite
16 clear that the funding provided has not been such that
17 it has allowed all schools in the state to provide all
18 students with textbooks and materials.

19 Specifically, the targeted money, the money
20 that the State has earmarked for textbooks and
21 materials, falls short of what is required.

22 Q. Okay. Did you consider any other funds other
23 than the funds that were earmarked as categorical funds
24 for instructional materials and textbooks when you
25 stated, "The State has allocated less funding"?

1 A. Yes. I included both the general funds and
2 the earmarked funds.

3 Q. Okay. How did you determine what the general
4 funds allocated for textbooks were?

5 A. You can't do that because it is general funds.
6 It is not specified.

7 Q. So then you go back to your conclusion is
8 based not so much on analysis of the actual dollars
9 available, total dollars available, but the results of
10 the Harris study?

11 A. The results of the Harris study and other
12 evidence of the inadequacy of California's funding
13 levels.

14 Q. Okay. I believe we talked a bit yesterday
15 about the recent legislation, and we just talked a
16 moment ago about the Instructional Materials Funding
17 Realignment Program, which is the Hertzberg legislation,
18 I believe, you referred to?

19 A. Yes.

20 Q. Is it -- you are familiar with that
21 legislation?

22 A. I have read it and read some of the
23 surrounding materials.

24 Q. Is it fair to say that one of its purposes is
25 to insure that students are provided with materials,

1 instructional materials, aligned with the standards,
2 State content standards?

3 MR. ROSENBAUM: Objection. Legal conclusion.

4 THE WITNESS: It certainly states that as its
5 purpose; that it is to be used to purchase
6 standards-based materials.

7 BY MR. EGAN:

8 Q. Okay. And you have characterized it as an
9 "incentive" rather than a mandate?

10 A. Yes.

11 Q. Is it fair to say if a district accepts these
12 funds, it is obligated to insure that -- under the --
13 this legislation -- is it fair to say if a district
14 accepts these funds, it's obligated to insure that
15 students have instructional materials aligned with the
16 content standards in the core areas?

17 A. Only if it intends to use part of the money
18 for other sorts of materials; that the first requirement
19 is that the money be spent on standards-based materials.

20 If the district can provide evidence that that
21 is in place, then it has the option of using money for
22 other purposes.

23 There is no requirement that this money insure
24 that all students have standards-based materials.

25 Q. But before a district can spend those funds on

1 other materials, that is, other than the content-based
2 or content-aligned materials, the district has to insure
3 or has to -- has to see that students have access to
4 instructional materials in the core content areas that
5 are aligned with the content standards?

6 A. That is my understanding.

7 Q. And I believe we talked yesterday whether you
8 were aware there were any districts that did not
9 accept -- apply for and accept categorical materials
10 funding.

11 And my recollection is that you were not aware
12 of many, if any?

13 A. Not to my knowledge.

14 Q. If we assume that virtually every school
15 district in the state does apply for the categorical
16 instructional materials funding and is subject to the
17 requirements that we just discussed, what is the
18 practical difference between the incentive program and a
19 mandate that districts provide instructional materials
20 in core content -- core areas to students?

21 MR. ROSENBAUM: Objection. Assumes facts not
22 in evidence. Incomplete hypothetical.

23 THE WITNESS: An incentive carries with it no
24 sufficiency requirements. So that, unlike a mandate for
25 providing all students with the materials they need, the

1 incentive has no obligation to cover the expenses that
2 that provision would require.

3 BY MR. EGAN:

4 Q. I am not sure I understand what you mean by
5 "no sufficiency requirement."

6 A. For example, if, in fact, it -- if,
7 hypothetically, it would require \$400 million to provide
8 every California child this year with the instructional
9 materials they needed, if there were a mandate, the
10 State would be obligated to supply that amount of money.

11 However, under the current budget
12 circumstances, it may be likely that only 200 million
13 will be available to fund the Instructional Materials
14 Realignment Program because it is an incentive that
15 would be an acceptable thing to do.

16 Q. Are you aware of any State efforts to help
17 train teachers to teach material aligned with the
18 content standards?

19 A. Yes.

20 Q. Can you describe those.

21 A. The governor has initiated a set of
22 professional development activities that -- in language
23 arts and mathematics, in particular, that are
24 specifically designed both to increase the content
25 knowledge of teachers and to help them be more

1 proficient to teaching to the standards.

2 Q. And is that a positive development from your
3 perspective?

4 A. The program to me seems like a very positive
5 one; however, you might be quite aware that it is
6 practically decimated in the current governor's budget
7 proposal.

8 Q. Dr. Oakes, are you aware of any statutes that
9 require school districts to obtain outside audits of
10 their compliance with specified provisions of the
11 Education Code?

12 A. I believe that if -- I don't want to go -- in
13 terms of 60119, districts are subject to audit if they
14 don't comply with the -- all of the requirements for a
15 public hearing, at least I am aware of agenda items
16 before the audit -- Joint Audit Committee -- that have
17 to do with considering audits of school districts who
18 have not complied with all of those provisions.

19 Q. Okay. I don't -- do you discuss the audit --
20 those types of audits in your report?

21 A. I don't believe I do.

22 Q. Do you consider them a form of monitoring?

23 A. I would consider them more a form of
24 investigation when it appears a problem has arisen.

25 Q. Do you know what the purpose of the audits you

1 Review, Program Quality Review and Single Plan Per Pupil
2 Achievement.

3 I am trying to understand -- when you say,
4 "The State fails to take advantage," are you saying that
5 the laws governing policies such as Coordinated
6 Compliance Reviews could be amended to give authority as
7 you have suggested, or are you suggesting that the State
8 already has that authority under Coordinated Compliance
9 Review or Program Quality Review?

10 MR. ROSENBAUM: That is an incomplete
11 hypothetical.

12 She can say whatever she wants as to what that
13 means.

14 THE WITNESS: I didn't make such a
15 distinction.

16 I simply gave these as examples of policies
17 that are in place that have the potential for
18 elaboration in ways that would better account for the
19 recommendations that I suggest.

20 BY MR. EGAN:

21 Q. Okay. So you are not suggesting that any --
22 that the authority exists presently to do the things
23 that you are proposing?

24 A. I am not suggesting that it does and I am not
25 suggesting that it doesn't.

1 are talking about is in the context of Section 60119?

2 MR. ROSENBAUM: Objection. Speculation.
3 Calls for a legal conclusion.

4 THE WITNESS: Not specifically. I am not now
5 recalling the details.

6 BY MR. EGAN:

7 Q. Apart from the audit that you described in
8 connection with Section 60119, are you aware of any
9 other obligations that school districts have to secure
10 an independent audit of their compliance with provisions
11 of the Education Code?

12 A. I know that they are required to comply with
13 audits that have been requested and approved through the
14 Joint Legislative Committee on Audits, but -- but I am
15 not recalling the details of other audit requirements.

16 (Discussion off the record.)

17 BY MR. EGAN:

18 Q. Back on the record.

19 Dr. Oakes, on Page 54, the first full
20 paragraph, you indicate that:

21 "The State fails to take
22 advantage of its opportunities to
23 use other State policies already in
24 place."

25 You go on to identify Coordinated Compliance

1 Q. Either way?

2 A. Yes.

3 Q. Are you aware of any changes in laws that
4 would -- that have taken place since your report that
5 would affect any of your conclusions or recommendations?

6 Let me rephrase that and make it a little
7 broader.

8 Are you aware of any changes since you
9 authored your report and statutes that affect your
10 opinion in any way?

11 A. Other than deliberations -- well -- certainly,
12 the change in the Instructional Materials Fund's
13 regulations have occurred between the writing of this
14 report and now. For the most part other -- no.

15 Q. Let me ask you: Have you ever considered the
16 impact of the federal no-child-left-behind act on any of
17 the opinions stated in your report?

18 A. Yes. In a general way, I have. I didn't
19 comment on them because I was focused on State policy.

20 Q. Okay. In what sense have you considered the
21 no-child-left-behind act in these -- in the context of
22 the subject of this report?

23 A. Well, that there is little in
24 no-child-left-behind that would -- that has any direct
25 bearing on the issue of the provision of textbooks and

1 instructional materials.

2 Q. Is there anything in the no-child-left-behind
3 that bears on monitoring as you have outlined it?

4 MR. ROSENBAUM: Vague.

5 THE WITNESS: To my knowledge, there is
6 nothing in the monitoring requirements of the
7 no-child-left-behind that relate specifically to the
8 provision of textbooks and instructional materials.

9 BY MR. HERRON:

10 Q. Are there general provisions in the
11 no-child-left-behind act that relate to monitoring?

12 A. Yes.

13 Q. Okay. Have you considered those in the
14 context of the recommendations you have made in your
15 report?

16 A. No. Not in any specific way.

17 Q. Okay. Dr. Oakes, I think your report
18 discusses the High Priority School Grant program.

19 Is it your understanding that schools that
20 participate in that program must purchase
21 standards-aligned reading language arts and math
22 instructional materials?

23 A. I think, as I said earlier in the day, that
24 the requirement of the Ed Code governing the High
25 Priority Schools Grant is that the schools must include

1 Do you know whether there is a requirement,
2 legal requirement, that schools participating in the
3 High Priority School Grant program have teachers who --
4 that must participate in the math Professional
5 Development Program?

6 A. I don't recall. It would probably be a good
7 idea.

8 Q. Dr. Oakes, I would like you to refer to Page
9 60 of your report, and specifically to Table 25, which
10 is -- Table 25 is a comparison of California
11 appropriations for textbooks and materials with reported
12 levels of spending in Connecticut.

13 With regard to Connecticut, do you know
14 whether Connecticut has categorical funding for
15 instructional materials?

16 A. I am not recalling that.

17 Q. This data regarding Connecticut was collected
18 and analyzed by the Connecticut Office of Legislative
19 Research.

20 Do you know how they collected that data?

21 A. I would have to review the report --

22 Q. Okay.

23 A. -- to recall those details.

24 Q. To your knowledge, does the Connecticut data
25 that you report in Table 25 include all spending by

1 as a goal the provision of quality instructional
2 materials and that it recommends the use of
3 standards-aligned textbooks and materials.

4 Q. But to your knowledge there is no obligation
5 that they must purchase standards-aligned materials if
6 they are participating in the High Priority Schools
7 Grant program?

8 A. It requires that school districts must submit
9 a report that -- reports to the Superintendent the
10 availability of instructional materials that are
11 aligned.

12 My assumption is that if a school could
13 demonstrate that such things were already in place, it
14 wouldn't be required to spend its High Priority Schools
15 Grant funds on materials to duplicate what it already
16 has.

17 Q. But do you know whether it is required or not?
18 I think that is my question.

19 MR. ROSENBAUM: Part of the law? I don't
20 understand the question.

21 Objection. Vague. Asked and answered.

22 THE WITNESS: The language I have cited here
23 falls just slightly short of a requirement.

24 BY MR. EGAN:

25 Q. Okay. Fair enough.

1 districts on textbooks and instructional materials?

2 MR. ROSENBAUM: Vague.

3 THE WITNESS: I only know it is what was
4 reported in the context of this review.

5 BY MR. EGAN:

6 Q. Turning to the second column, which is
7 "California's current funding, 2001-2002," the amounts
8 designated there are only from the Instructional
9 Materials and Schiff-Bustamante funds; is that correct?

10 A. That is correct.

11 Q. So that sum -- those sums do not include the
12 general funds that districts might spend and do spend on
13 instructional materials; is that correct?

14 MR. ROSENBAUM: Assumes facts not in evidence.

15 THE WITNESS: We have no data to tell us how
16 much, other than these categorical funds, districts
17 spend on instructional materials.

18 BY MR. EGAN:

19 Q. Do you believe that districts do spend general
20 funds for instructional materials?

21 A. I have no evidence of it, but I think it could
22 very well be the case.

23 Q. Okay. Let me ask you a hypothetical. Let's
24 presume that the districts do spend general funds for
25 instructional materials in addition to whatever they

1 might receive from the IMF and Schiff-Bustamante funds.
 2 If that is correct, then, is it fair to
 3 compare only Schiff-Bustamante and IMF funding with what
 4 Connecticut spends?
 5 MR. ROSENBAUM: Vague. Assumes facts not in
 6 evidence. Incomplete hypothetical.
 7 THE WITNESS: I think it is very fair in the
 8 way that I did it, because I make perfectly clear what
 9 the comparisons were and made no claim or claim now that
 10 these are comparisons of the same things.
 11 BY MR. EGAN:
 12 Q. So they really are not necessarily comparisons
 13 of the same thing?
 14 A. It is simply a device to place California's
 15 targeted textbook and materials spending in the context
 16 of what is spent somewhere else.
 17 Q. Professor Oakes, if you could refer to Page 66
 18 of your report, the second full paragraph, which begins:
 19 "One obvious inadequacy with
 20 the CDE's now-abandoned PQR
 21 policy."
 22 Isn't it correct that the PQR policy was
 23 repealed by the legislature rather than the Department
 24 of Education?
 25 A. Yes. But that sentence doesn't attribute

1 abandonment to any particular actor.
 2 Q. I just wanted to clarify that.
 3 Page 66, the last paragraph, there is a
 4 sentence that reads:
 5 "The simplicity of this letter
 6 makes clear that extensions to four
 7 years" --
 8 A. I'm sorry. I am not finding the spot you are.
 9 Q. It is the last paragraph, the second sentence.
 10 A. Page what?
 11 Q. 66.
 12 A. 66. I'm sorry. Yes.
 13 Q. Do you have any other evidence other than the
 14 simplicity of the letter which supports the proposition
 15 that extensions were routinely granted and required no
 16 substantive justifications?
 17 A. Yes. Actually, somewhere on the -- in the
 18 documentation on the CDE website some of the
 19 supplementary materials talk about or -- assure schools
 20 it is a fairly routine matter to extend the PQR review
 21 to a four-year cycle.
 22 Q. Any other evidence other than that?
 23 A. I may have actually reviewed some responses,
 24 but I don't recall specifically, no.
 25 Q. Dr. Oakes, if you could refer to Page 83 of

1 your report --
 2 A. Okay.
 3 Q. -- in the middle of the page you refer to
 4 "definitions currently in use"?
 5 A. Yes.
 6 Q. Do you know whether those definitions have --
 7 I think you go on in the next paragraph that they were
 8 approved on an interim basis and subject to possible
 9 review and revision.
 10 Do you know what their current status is?
 11 A. No, I do not.
 12 Q. Referring to Page 86, the paragraph that
 13 begins, "As troublesome as is the conduct of
 14 hearings" --
 15 A. Yes.
 16 Q. What has the California Department of
 17 Education done to make available a waiver, as you
 18 describe there?
 19 A. Well, I am referring to the letter that
 20 Delaine Eastin spent following the passage of 273 giving
 21 districts instructions about how they can have the --
 22 any penalties for failure to comply waived.
 23 Q. Do you know if the Eastin letter you referred
 24 to does anything other than advise districts of what the
 25 provisions of the statute are?

1 MR. ROSENBAUM: Argumentative. Vague.
 2 THE WITNESS: It conveys a joyful tone that I
 3 don't expect was in the legislation, but other than
 4 that, I am sure the specifics are simply conveying what
 5 the new legislation requires.
 6 MR. EGAN: This will be the next exhibit.
 7 (Exhibit 66 was marked for I.D.)
 8 (Recess taken.)
 9 BY MR. EGAN:
 10 Q. Dr. Oakes, could you take a look at what has
 11 been marked as Exhibit 66.
 12 A. Yes, I will.
 13 Do you want me to comment on the detail or --
 14 Q. I have some specific questions.
 15 A. All right.
 16 Q. Can you generally identify the document for
 17 us?
 18 A. Yes. This is a series of e-mails between
 19 myself and a woman named "Stephanie Graham," who is an
 20 employee of the L.A. County Office of Education and has
 21 been an acquaintance and friend for 20 years. And she
 22 and I were serving together on a task force for the Los
 23 Angeles Unified School District, in which she mentioned
 24 per participation in a scholastic audit of 10 schools.
 25 She didn't go to all 10 schools, but she was part of the

1 audit team.

2 I asked her more about that in this e-mail,
3 and she, as you can tell, gave me a rather lengthy
4 response.

5 Q. Okay. Let me refer you to Page 00470. It is
6 part of an e-mail that is from you to Ms. Graham. It
7 says:

8 "I was fascinated with your
9 findings about the level of
10 instruction and the miscalibration
11 of standards in the classroom."

12 Do you see where I am reading?

13 A. Yes.

14 Q. What were the findings about the level of
15 instruction you are talking about?

16 A. She gave a very informal report to me, saying
17 that she was quite shocked at the level of teacher
18 knowledge that she observed in classrooms, and the fact
19 in her judgment -- or at least what she reported -- that
20 the district standards were set far below or -- at least
21 the standards as she saw them expressed and enacted in
22 these classrooms were far below what the State standards
23 suggested they should be.

24 Q. Do you know what she meant by -- is that --
25 can you explain what she meant by "miscalibration of

1 those low-performing schools.

2 Q. Do you know -- what is "SBIX" that you
3 referenced?

4 A. It was the omnibus school reform piece of
5 legislation.

6 Q. Do you know whether the audit that is the
7 subject of your communications was pursuant to Title I
8 of the -- what is now the no-child-left-behind act or
9 some provision of State law?

10 A. You know, I am not recalling.

11 Q. On Page 00469, her e-mail to you, she
12 indicates that:

13 "The protocol used is modeled
14 after the Curriculum Management
15 Audit process."

16 Can you tell me what that is?

17 A. No.

18 Q. Okay. Did you ever have any other discussions
19 about this particular -- this particular audit that she
20 was involved in?

21 A. I may have checked with her at some later date
22 about whether or not the data had been made publicly
23 available, but I am not recalling specifically.

24 Q. Are you aware of any audits conducted by the
25 Department of Education pursuant to federal law

1 standards."

2 A. Yes. She was referring to the fact that the
3 standards that were expressed -- I think she was talking
4 about standards being written on the chalkboards or the
5 whiteboards in the classrooms -- that for the high
6 school grade levels and content areas she was observing
7 that those things that were being -- that were expressed
8 and taught as standards were far below what the State
9 adopted content standards for that subject and that
10 grade were.

11 Q. Thank you.

12 Did you discuss with her -- what was the
13 authority for the audit that was undertaken that she was
14 working on?

15 A. Well, you -- by "authority," do you mean the
16 particular legal statute?

17 Q. Was it under a particular program?

18 A. Yes. In her e-mail she provides the context.
19 She says the audits were the CDE's response to those
20 schools who were first identified as low-performing five
21 years ago and showed no growth over that time.

22 She refers to SBIX didn't make allowances for
23 the next steps or sanctions, so that the CDE used the
24 vehicle of the scholastic audit as a way to try to
25 intervene to provide some monitoring and assistance in

1 regarding performance related to poor-performing
2 schools?

3 A. Related to?

4 Q. Poor-performing schools.

5 A. Pursuant to federal law?

6 Q. Yes.

7 MR. ROSENBAUM: Vague.

8 THE WITNESS: This sounds familiar to me, but
9 I am not recalling the specifics.

10 BY MR. EGAN:

11 Q. There was no discussion -- correct me if I am
12 wrong -- I do not recall any discussion in your paper of
13 any monitoring or auditing pursuant to any federal
14 program.

15 A. Well, yes. The Coordinated Compliance Review
16 is the mechanism that the State has used to monitor
17 compliance with federal categorical program requirements
18 as well as State programs.

19 Q. Other than that, is there any discussion of
20 any federal monitoring program?

21 A. Not to my recollection.

22 Q. And in the e-mail the reference to "Locke" is
23 to Locke High School in the Los Angeles Unified School
24 district?

25 A. Yes.

1 MR. EGAN: I have no further questions.
2 MR. ROSENBAUM: Thank you.

3
4 EXAMINATION

5 BY MR. JORDAN:

6 Q. Gene has kindly allowed me to go next.
7 I am representing Los Angeles Unified School
8 District in this deposition today. I would like to ask
9 you some questions about some particular items in your
10 report.

11 Turning to Page 6 -- it is a mechanical
12 question. The first full paragraph refers to an EPIE
13 study --

14 MR. ROSENBAUM: Speak up, please.

15 BY MR. JORDAN:

16 Q. The first full paragraph refers to an EPIE
17 study that said that:

18 "Textbooks and other
19 commercially produced instructional
20 materials were the basis for 66
21 percent of classroom instruction,
22 while an additional 22 percent of
23 classroom instruction revolved
24 around nonprint materials."
25 From which you conclude:

1 Again, I would want -- to speak with certainty
2 I would want to review -- if you have it, I would be
3 happy to take a look at it.

4 Q. If you can find it quickly, I gather we are
5 limited in time, or at least your counsel claims we are
6 limited in time.

7 I would pleased to have you look at it,
8 though.

9 A. It is pretty clear it is going to take a while
10 to find it.

11 Q. I was afraid it might be.

12 Let me ask you this: One thing I have been
13 trying to figure out and could not from the report nor
14 the article you reference is whether you were assuming
15 that "nonprint materials" does not include things such
16 as lectures or structured question-and-answer sessions
17 prepared by a teacher?

18 MR. ROSENBAUM: That is vague and an
19 incomplete hypothetical.

20 THE WITNESS: I'm afraid I don't understand
21 your question.

22 BY MR. JORDAN:

23 Q. Does "nonprint materials" to you include or
24 exclude such things such as lectures?

25 A. It depends on whether there are notes

1 "89 percent of instructional
2 time was structured around
3 textbooks or some other
4 instructional materials."
5 So you added the 67 percent to the 22 percent
6 to come up with 89 percent?

7 A. It appears to be the case.

8 Q. So you were assuming the nonprint materials
9 were instructional materials?

10 A. Yes.

11 Q. Okay. How do you know that they were not
12 included in the, quote, "commercially produced
13 instructional materials" included in the 67 percent?

14 A. Well, I would certainly like to review the
15 details of that study, but my understanding is -- and I
16 probably should have been more precise by saying, "other
17 nonprint materials," but I would want to review the
18 report to verify that assumption.

19 Q. Were you assuming all nonprint materials were
20 not commercially produced?

21 A. I was -- I think the way I expressed it here
22 is what I was assuming, and it doesn't -- it says, "The
23 textbooks and other commercially produced instructional
24 materials," which doesn't include a modifier specifying
25 whether it was print or nonprint.

1 distributed or paper and pencil used to take notes
2 during lectures. There may be materials associated with
3 the lecture.

4 MR. ROSENBAUM: It is an incomplete
5 hypothetical.

6 The page says, "were the basis for." You are
7 not making --

8 MR. JORDAN: You may state your objection, but
9 please don't make a speaking objection.

10 MR. ROSENBAUM: Objection. Incomplete
11 hypothetical.

12 BY MR. JORDAN:

13 Q. Okay.

14 A. The point of all of this text is to simply
15 establish that instructional materials are a prominent
16 and important part.

17 MR. ROSENBAUM: Just let him ask his
18 questions.

19 BY MR. JORDAN:

20 Q. I am trying to figure out whether in your 89
21 percent you are including lectures.

22 MR. ROSENBAUM: That is the third time you
23 have asked it. It is an incomplete hypothetical.

24 I tried to help you to refine it. You didn't
25 want the help. It has been asked and answered.

1 THE WITNESS: Again, I would have to refer to
 2 that report to be precise about what the EPIE included
 3 in their definitions.
 4 BY MR. JORDAN:
 5 Q. All right. Let's look at Page 8 of your
 6 report. In the middle it says:
 7 "Research focusing exclusively
 8 on the U.S." --
 9 Do you see that?
 10 A. Yes.
 11 Q. Okay.
 12 -- "confirms the importance of
 13 textbooks in the U.S. as well."
 14 One of the research studies you cite is the
 15 Third International Math and Science Studies, TIMSS, in
 16 which, quote:
 17 "A subsample of students drawn
 18 from a group of schools in affluent
 19 school districts in Illinois
 20 achieved test scores that
 21 significantly exceed the national
 22 average."
 23 By "these students," were you referring to the
 24 same subsample of students drawn from a group of
 25 students in affluent school districts in Illinois that

1 use textbooks that incorporate
 2 algebraic thinking regardless of
 3 whether the students were in high
 4 or low math tracks."
 5 MR. ROSENBAUM: Where are you reading?
 6 THE WITNESS: The last sentence in the
 7 paragraph.
 8 MR. ROSENBAUM: Thank you.
 9 BY MR. JORDAN:
 10 Q. Does that in your view support the notion that
 11 they are using textbooks at much higher rates than their
 12 U.S. peers, or if you are relying on the Department of
 13 Education report, would it have been something else in
 14 that report that you were relying on?
 15 MR. ROSENBAUM: Compound. Assumes facts not
 16 in evidence. Vague and ambiguous.
 17 THE WITNESS: The last sentence doesn't make a
 18 comparison.
 19 It simply reports the fact that algebraic
 20 thinking was included pretty universally in the
 21 textbooks that the students in this consortium had
 22 access to regardless of whether they were in high or low
 23 math courses.
 24 BY MR. JORDAN:
 25 Q. Okay. So that doesn't really tell you whether

1 you referenced in the preceding sentence?
 2 A. Yes.
 3 Q. The next sentence says:
 4 "Other data about these
 5 students shows that their teachers
 6 use textbooks at much higher rates
 7 than their U.S. peers."
 8 By "other data," are you referring to data
 9 from the U.S. Department of Education 1999 study cited
 10 in the next-to-the-last sentence in that paragraph of
 11 your report?
 12 A. It is not clear to me whether I am -- it looks
 13 as if that is the reference. Yes.
 14 Q. That is why I am asking. I couldn't tell.
 15 A. There has been a lot written about these --
 16 this First World Consortium and their results, and I
 17 have a lot of general knowledge about it.
 18 I am not sure whether this is drawn
 19 specifically from that site.
 20 Q. Let me ask you a couple more questions to try
 21 to narrow it down. You do say something about that same
 22 study in the next-to-the-last paragraph, which may or
 23 may not be meant for support for your prior statement.
 24 You say that:
 25 "Teachers of these students

1 these First World students' teachers were using
 2 textbooks at much higher rates than U.S. peers?
 3 A. Those are two independent pieces of
 4 information.
 5 Q. I thought so, too.
 6 I would like to mark the TIMSS study that you
 7 cite as next in order. That is No. 67, I guess.
 8 (Exhibit 67 was marked for I.D.)
 9 BY MR. JORDAN:
 10 Q. I was going to try to save some time. If that
 11 is not the statement in the report you were relying on,
 12 I was trying to find out what was.
 13 On Page 21 there is a table that talks about
 14 using textbooks at all.
 15 Are you there?
 16 A. Yes.
 17 Q. It says that in the First World schools 100
 18 percent of them were using textbooks at all versus the
 19 U.S. as a whole it was 97 percent.
 20 I don't know. I am just trying to help if
 21 this speeds things up.
 22 Do you think that is what you are referring to
 23 for support for this statement they used textbooks at a
 24 much higher rate than U.S. peers?
 25 MR. ROSENBAUM: Foundation. Speculation.

1 You are free, Gene, to spend as much time as
2 you want reviewing that report. I am not suggesting you
3 are asking anything other than in good faith. You are
4 free to check out the report if you need to.

5 THE WITNESS: This -- there is a sentence in
6 the paragraph before that table -- two paragraphs
7 above -- that says:

8 "First World students are more
9 likely than U.S. students to be in
10 classes where a large percentage of
11 teaching time is based on material
12 in the text. As seen in Exhibit 3,
13 55 percent of eighth grade students
14 are in classes where more than
15 three-fourths of the teaching time
16 is based on material in a textbook.
17 In contrast only 36 percent of
18 students, U.S. students, are in
19 classes that rely this heavily on
20 material in the textbook."

21 BY MR. JORDAN:

22 Q. Do you think that is the part you are
23 referring to in your report where you say that, "The
24 First World teachers were using textbooks at much higher
25 rates than their U.S. peers"?

1 time as has been taken with the witness.

2 MR. HILL: I haven't had any time with the
3 witness.

4 MR. ROSENBAUM: I appreciate that fact. That
5 doesn't mean as a group you can keep her here --

6 MR. HILL: I am not a member of a group. I am
7 representing a client. I am not a member of a group.

8 MR. JORDAN: I second that.

9 MR. ROSENBAUM: I mean, if I take more than
10 five hours with Eastin, are you going -- whoever is
11 doing Eastin -- will I get more than five hours on that?

12 MR. HILL: The court said five hours.

13 MR. ROSENBAUM: There are reasonable limits.

14 MR. HERRON: Let's go off the record. We
15 don't need this on the record, unless someone objects.

16 Do you want it on?

17 MR. ROSENBAUM: Off the record.

18 (Discussion off the record.)

19 MR. ROSENBAUM: I want to reflect that there
20 is discussion that has been -- and presumably the
21 lawyers for the intervenors and Mr. Herron want to
22 continue to discuss the time -- and I am saying this is
23 not an appropriate use of the time now.

24 I am urging you to, Judd, go forward with your
25 questioning of Dr. Oakes.

1 A. It is certainly consistent with that
2 statement.

3 Q. I don't mean to confine you to that page of
4 the First World report. I was just trying --

5 A. This is an example of some evidence in this
6 report that is supportive of that statement. I am sure
7 there is -- I suspect there is more, but I don't recall
8 all the details of this report.

9 Q. Do you remember any other part of the report
10 that has that kind of support for that statement?

11 A. Not that I am recalling at the moment without
12 reviewing it.

13 Q. I don't know that we have got time. We will
14 return it to if we do have time.

15 How is that?

16 MR. HILL: Let's raise the question of time if
17 it is okay.

18 MR. ROSENBAUM: You can do it, but you are
19 doing it on your time.

20 MR. HILL: I think the problem is --

21 MR. HERRON: You can do it on my time.

22 MR. HILL: I think we have enough questions
23 between the two of us that we are not going to be
24 finishing by 5:00 today.

25 MR. ROSENBAUM: I don't think you need as much

1 MR. JORDAN: I am going to try to get done
2 what I can get done, even though I don't agree we are
3 limited to the time we have today. I would like to
4 continue to do that.

5 MR. ROSENBAUM: I have no objection.

6 BY MR. JORDAN:

7 Q. I would like you to look at the last paragraph
8 on Page 8 of your report where you are citing various
9 Third World country studies. There is a statement here
10 that says:

11 "Increasing instructional
12 resources, like texts and
13 materials, is much more cost
14 effective than other strategies."

15 Do you see that?

16 A. No, but I am sure it is here. I haven't found
17 it yet.

18 MR. ROSENBAUM: Where is it, please?

19 BY MR. JORDAN:

20 Q. The last paragraph on Page 8.

21 A. Yes. Second sentence?

22 Q. Yes.

23 I was wondering if that statement applies here
24 in California or whether you were just making a
25 statement about these Third World countries.

1 MR. ROSENBAUM: Objection. That is an
2 incomplete hypothetical.

3 You are not limited to the two examples he has
4 given you, the either/or. That is completely
5 inappropriate for that question.

6 THE WITNESS: I think I discussed with
7 Mr. Herron at some length the reasons why I cited these
8 studies and the way I cited them; that is, first, that
9 they help demonstrate that instructional materials and
10 textbooks are an important part of the educational
11 context.

12 Second, that I think we are sufficiently
13 knowledgeable now that the similarities among human
14 beings in their -- the processes through which they
15 learn, that it is not unreasonable to use evidence about
16 what supports learning from one context to another.

17 The third reason is that since most Americans
18 assume that textbooks and instructional materials are in
19 place in American children's schools, that we have very
20 little direct evidence about the impact of instructional
21 materials on students' achievement.

22 And, finally, because the State has not
23 collected data that would allow us to look more closely
24 at the situation in California, we have to look
25 elsewhere.

1 Dr. Linda Darling-Hammond that, "Among school resources,
2 teacher qualifications often appear to have the greatest
3 influence on what students learn"?

4 A. I certainly agree that most studies have found
5 that.

6 I also know that most studies never consider
7 the availability of adequate numbers and high quality of
8 instructional resources and materials in their analyses
9 and, therefore, we have very little information about
10 what further amount of student achievement might be
11 explained if we had good measures of those things.

12 Q. In your study in connection with this case
13 have you had made any effort to establish the relative
14 importance of teacher qualifications and experience as
15 opposed to textbooks and other instructional materials?

16 A. As I explained to Mr. Herron, my view is that
17 the two things are so closely connected, the presence of
18 a well-qualified teacher and the support for that
19 teacher's instruction with appropriate high-quality
20 materials, that I would never feel comfortable with a
21 study that tried to pull those two things apart as if
22 they could operate independently.

23 Q. Okay. On Page 9 of your report in the first
24 paragraph -- I assume first full paragraph -- you cite a
25 recent California study indicating that:

1 (Exhibit 68 was marked for I.D.)

2 BY MR. JORDAN:

3 Q. Okay. I would like you to look at Linda
4 Darling-Hammond's report that we have marked as Exhibit
5 68, in particular Page 16, the first paragraph.

6 MR. ROSENBAUM: First full paragraph?

7 BY MR. JORDAN:

8 Q. Let's see. Yes. The first full paragraph on
9 the page. She is citing a recent study of student
10 achievement scores across more than 7,000 California
11 schools by the Public Policy Institute of California
12 which found that:

13 "Teacher qualifications
14 variables were the strongest
15 predictors of student achievement
16 in a regression analysis after
17 controlling for the substantial
18 effects of socioeconomic status."

19 In the next paragraph of her study she says
20 that such research indicates that, quote:

21 "Among school resources,
22 teacher qualifications often appear
23 to have the greatest influence on
24 what students learn," end quote.
25 Do you agree with the conclusion expressed by

1 "Controlling for the
2 socioeconomic level of the school
3 population, students achieved
4 higher scores on AP calculus exams
5 if they were provided with graphing
6 calculators to use at class and at
7 home," end quote.

8 You are not suggesting that if something like
9 a graphing calculator is found to improve students' test
10 scores, that each student should be provided with that
11 something, whatever it is?

12 MR. ROSENBAUM: Argumentative. Vague.

13 THE WITNESS: I am simply saying that the CSU
14 Institute for Education Reform has provided us with some
15 evidence that students' mastery of calculus is enhanced
16 if they have graphing calculators to use in class and at
17 home in conjunction with their study.

18 BY MR. JORDAN:

19 Q. Okay. Let's go to Page 11 and 12 of your
20 report where you are talking about Koski.

21 You say that Koski analyzed each of
22 California's content standards:

23 "To determine the specific
24 resource requirements implied by
25 the standard."

1 A. Are you on Page 11?
 2 Q. The paragraph that goes from 11 to 12.
 3 A. Okay.
 4 Q. The sentence I just read --
 5 A. Yes.
 6 Q. Okay. The last sentence of that paragraph
 7 says:
 8 "When a particular standard
 9 could 'best' be taught with certain
 10 resources, the 'minimum' resources
 11 necessary to teach the standard
 12 were indicated."
 13 I want to make sure I understand that
 14 statement first.
 15 Do you mean by that when a particular standard
 16 could best be taught with certain resources, that those
 17 resources are not required, but only the minimum
 18 resources required to teach the standard?
 19 MR. ROSENBAUM: Objection. Compound. It is
 20 argumentative.
 21 THE WITNESS: The -- I think the chart on
 22 Pages 13 and 14, where the materials that are relevant
 23 to the -- to instruction in the standards are displayed,
 24 he displays two categories. One is required. Those
 25 are -- reflect his team's judgments about this minimum

1 A. This is 32 percent of the sample.
 2 Q. Okay. Maybe I did misunderstand it. It says,
 3 "Percent yes responses, 32 percent."
 4 So it is not the responses; it is the whole
 5 sample, whether they responded or not?
 6 A. It is the percent of the whole sample that
 7 responded, "Yes," the percent of the whole sample who
 8 responded, "not sure." The remainder responded, "No,"
 9 that they did not have this problem.
 10 Some, I suspect, a few, probably, may not have
 11 answered at all.
 12 Q. So we really can't tell from these numbers how
 13 many responded that they were sure they had enough
 14 textbooks to let the students take them home?
 15 A. We can be quite confident that over 50 percent
 16 said they did.
 17 Q. Okay. You remarked earlier that the
 18 percentages here -- let me ask you this question: The
 19 Harris sample overrepresented some of the less
 20 experienced teachers, if I understand -- the more
 21 experienced teachers?
 22 A. Yes. Yes.
 23 Q. Would your expectation be that the more
 24 experienced teachers would more likely have textbooks
 25 than the least experienced teachers?

1 necessary resources, whereas those in the column -- in
 2 the rows that say, "suggested" are materials that would
 3 enhance or, in my phrase, provide the best resources for
 4 teaching that standard.
 5 BY MR. JORDAN:
 6 Q. All I am trying to get at is whether you are
 7 agreeing with his analysis or trying to create some
 8 higher standard for us.
 9 MR. ROSENBAUM: Objection to the form of the
 10 question.
 11 THE WITNESS: I am accepting and reporting. I
 12 am reporting and then expressing my -- I am simply
 13 reporting what he did and using it as a standard.
 14 BY MR. JORDAN:
 15 Q. Okay. I would like you to look at Page 23 of
 16 your report. This table from the Harris study shows
 17 that 32 percent of the reporting teachers said they did
 18 not have enough texts for students to take home, and 11
 19 percent were not sure.
 20 Does that mean to you that 57 percent were
 21 sure they had enough texts for students to take home?
 22 A. The third choice, they had -- they could have
 23 either not responded at all or --
 24 Q. This is just the responses; right? 32 percent
 25 of the responses?

1 A. It is possible, but I wouldn't want to make --
 2 I wouldn't want to speculate about that.
 3 Q. If that were so, it might be that even though
 4 over half of the responding teachers responded that they
 5 had enough textbooks to allow their kids to take home,
 6 that if you had the sample corrected for the
 7 underrepresented teachers with less experience, that
 8 that might drop below 50 percent?
 9 MR. ROSENBAUM: Foundation. Speculation.
 10 Incomplete hypothetical.
 11 THE WITNESS: I actually think that is not the
 12 case because -- as some of the e-mail exchanges
 13 yesterday about the problems created by the sample
 14 between Linda Darling-Hammond and myself were that we
 15 certainly wouldn't want to use these data to make
 16 judgments or to generalize to the population of teachers
 17 regarding their certification status; that they seemed
 18 quite robust as measures of the conditions in schools.
 19 BY MR. JORDAN:
 20 Q. Towards the bottom of the same page you cite a
 21 1996 report which, quote:
 22 "Found that 54 percent of
 23 California teachers reported they
 24 did not have enough books to send
 25 home with their students compared

1 to 39 percent nationwide."

2 A. Yes.

3 Q. So if you are right about the Harris study,
4 between 1996 and 2002, in California at least, the
5 number of teachers reporting that they did not have
6 enough texts for students to take home went from over 50
7 percent to less than 50 percent.

8 Is that right?

9 A. Well, if we can trust the AAP study to be
10 precise, which both Mr. Herron and I agreed there was a
11 potential for exaggeration given that the study was
12 sponsored by a group that stands to benefit from selling
13 more textbooks, that might be the case.

14 Although the reason I would never rely on that
15 study in itself, as I explained yesterday or this
16 morning, is because it is not an independent research
17 study.

18 Q. Do you have any better data that would tell us
19 whether or not that happened?

20 A. The Harris data.

21 Q. The Harris data doesn't go back in time. I
22 mean, this change from being less than 50 percent to
23 over 50 percent, to verify whether or not that happened,
24 is there any other data that you know of that would tell
25 us that?

1 numbers. It would take a while.

2 Q. How long do you think it would take?

3 A. Well, frankly, I would not want to -- it would
4 take a while. We could all get out our calculators if
5 we had them.

6 MR. ROSENBAUM: He doesn't think that
7 calculators are necessary.

8 THE WITNESS: If you would like me to
9 calculate that, I could certainly do some additional
10 data runs.

11 Roughly, if we say 52 percent of 18 percent,
12 we get about 9 percent of the whole sample; right? 9
13 percent of 797, right, is what? 70?

14 BY MR. JORDAN:

15 Q. Okay. I am seeing how you are saying you
16 could do it. You'd use the 797 to arrive at the number.
17 All right.

18 I would like you to look at Page 36 of your
19 report.

20 Again, the Harris study table, did you notice
21 that the teachers in the schools with the highest
22 percent of limited English proficient students reported
23 the lowest percent of having a shortage of texts to use
24 in class --

25 A. Yes. I both noticed it and put it in my

1 A. Unfortunately, the State collects no data that
2 would help us make that judgment.

3 Q. I would like you to look at Page 27 of your
4 report.

5 With this Harris data that we are pretty
6 confident of it reporting the percentage of teachers who
7 have or don't have enough books for students to take
8 home, there is a number in there for math teachers that
9 say 52 percent of them still don't think they have
10 enough texts for students to take home.

11 Am I understanding that correctly?

12 A. No.

13 Q. Can you explain that for me.

14 A. It is 52 percent of the 18 percent who say
15 they don't have enough materials and equipment. It is
16 half of that number.

17 Q. Okay. It is even less for the ones who do
18 have enough materials, the 26 percent?

19 A. It is 26 percent of the 82 percent.

20 Q. Did you ever try to get an aggregate number
21 for each teacher as a whole, those with and without --

22 A. That is what is reported in the earlier table.

23 Q. But that is not broken out for math teachers,
24 is it?

25 A. We could actually do the math from these

1 table.

2 Q. -- and the highest percentage of having a
3 shortage of texts for students to take home?

4 A. Yes.

5 Q. Did you make any inquiry whether there is any
6 relationship between having texts available to use in
7 class and not allowing students to take them home?

8 A. I can imagine all kinds of scenarios where
9 that would be the case.

10 Q. I am asking if you made any inquiry into
11 whether there was a relationship between those two
12 numbers beyond the statistical one.

13 A. Since I had no knowledge of the teachers who
14 were in the survey, there wasn't -- I did not make
15 further inquiries of them about anything.

16 Q. I would like you to look at Page 53 of your
17 report, the third paragraph.

18 A. The third full paragraph or the third
19 paragraph?

20 Q. The third full paragraph, in particular at the
21 fourth sentence, which starts out:

22 "The State has allocated less
23 funding than districts and schools
24 actually require to purchase texts"
25 and so on.

1 A. Yes.
 2 Q. If that is true, doesn't a school district
 3 have to make the best choice it can between spending
 4 money on textbooks for kids to use in class or to take
 5 home and other purposes?
 6 MR. HERRON: Objection. Calls for
 7 speculation.
 8 MR. ROSENBAUM: Argumentative. Incomplete
 9 hypothetical.
 10 THE WITNESS: I think that is exactly what has
 11 to happen.
 12 BY MR. JORDAN:
 13 Q. I would like you to look at Pages 69 to 73 of
 14 your report where you quote portions of the deposition
 15 testimony of Eleanor Clark-Thomas.
 16 A. If you are going to ask me detailed questions
 17 about it, I will take some time to read it.
 18 Q. That is probably a good idea. I will help you
 19 by telling you what I am going to ask.
 20 In the report, it is Pages 69 to 73 --
 21 MR. ROSENBAUM: What page, Judd?
 22 BY MR. JORDAN:
 23 Q. One of the questions I wanted to ask you,
 24 although it does not appear in the portions of text that
 25 you quote in the report, so -- it relates really to your

1 review of the deposition and how you picked what parts
 2 to put in your report.
 3 A. Do you have a copy of her deposition that I
 4 can review?
 5 Q. I have copies of the pages that have the
 6 things I am most interested in.
 7 I also have a copy of the complete deposition.
 8 MR. ROSENBAUM: Do you want her to review the
 9 whole deposition?
 10 MR. HERRON: I don't think she needs to, but I
 11 have it here in case she thinks she needs to.
 12 MR. ROSENBAUM: I want Dr. Oakes to do
 13 anything she needs to answer your questions as fully as
 14 you wish.
 15 MR. JORDAN: Let's mark as the next two
 16 exhibits portions of the Clark-Thomas deposition.
 17 These will be 69 and 70.
 18 (Exhibits 69 and 70 were marked for I.D.)
 19 MR. ROSENBAUM: Let's mark the whole thing.
 20 MR. JORDAN: I only have excerpts from the
 21 deposition.
 22 MR. ROSENBAUM: Your choice.
 23 BY MR. JORDAN:
 24 Q. In particular, at Page 164, Lines 2 to 5 --
 25 MR. ROSENBAUM: I'm sorry. Which exhibit are

1 you in?
 2 MR. JORDAN: Exhibit 69.
 3 MR. ROSENBAUM: And you want Page 164?
 4 BY MR. JORDAN:
 5 Q. Page 164 of the transcript, not of the
 6 exhibit.
 7 MR. ROSENBAUM: My pages have Pages 432 --
 8 MR. JORDAN: That is No. 70?
 9 MR. ROSENBAUM: I'm sorry. I don't have 69.
 10 MR. HILL: I don't have 70.
 11 MR. JORDAN: Here is 69. Here is 70.
 12 MR. ROSENBAUM: What page do you want her to
 13 look at?
 14 Do you have what you need, Jeannie?
 15 THE WITNESS: I am not sure yet. I don't
 16 have --
 17 BY MR. JORDAN:
 18 Q. Would like you to look at Exhibit No. 69, and
 19 the page that is numbered at the bottom right as Page
 20 165 --
 21 A. 165. Okay.
 22 Q. -- in particular Lines 2 to 5.
 23 Do you remember reviewing that portion of the
 24 deposition transcript for Eleanor Clark-Thomas?
 25 A. Lines 2 --

1 Q. Through 5.
 2 A. Yes.
 3 Q. Okay. Was there some reason that you didn't
 4 include that portion of the deposition testimony in your
 5 report?
 6 MR. ROSENBAUM: Which lines?
 7 BY MR. JORDAN:
 8 Q. Lines 2 through 5, Page 165 of the deposition
 9 transcript.
 10 A. I felt that I had made the point in what I
 11 cited.
 12 Q. What was the point that you were citing this
 13 deposition testimony for?
 14 A. That there are few incentives built into the
 15 CCR process to report shortages when they exit.
 16 Q. And how does this deposition testimony support
 17 that?
 18 A. The fact that the manager of the unit was
 19 altered to a problem, and there was no systematic
 20 follow-up either built into the process or that she took
 21 individually to ascertain whether or not that report was
 22 an accurate one, whether it was corrected or handled
 23 appropriately when it was called to the attention of the
 24 school administrator, and that was the point.
 25 Q. So this was not intended as a comment on

1 LAUSD's follow-up? It was intended as a comment on the
2 CCR process?

3 A. Yes.

4 Q. Okay. I would like you to look at Page 74 of
5 your report.

6 A. Are we through with No. 69?

7 Q. Yes.

8 A. And we are not going to do 70?

9 Q. We are through, for the moment anyway.

10 On Page 74 of your report, the paragraph

11 continuing from the preceding page, the
12 second-to-the-last sentence says, quote:

13 "These inadequacies are
14 allowed to persist in one district
15 from one academic year to another
16 as in the case of LAUSD."

17 Obviously, you will need to read more of the
18 paragraph to put that in context.

19 The question I am going to want to ask you
20 before you do that is whether that statement is based on
21 the CCR reports for the 1998 to 1999 and 1999 to 2000
22 school years quoted above in the same paragraph.

23 A. It is a -- it is a reference to the fact that
24 when CCR teams note -- find and note problems, either
25 through a self-review or an on-site review, that there

1 A. I think that is probably fair.

2 Q. Okay. Well, let's go ahead and mark them.

3 These were exhibits to Eleanor Clark-Thomas's
4 deposition. They have those exhibit numbers on them,
5 but we will mark them as exhibits to your deposition as
6 well.

7 They are called, "SAD 21 and 22" for "State
8 Agency Defendants."

9 (Exhibits 71 and 72 were marked for I.D.)

10 BY MR. JORDAN:

11 Q. In your report you actually cite the page
12 numbers, which makes things easier.

13 In the -- let's see. In the 1998 to 1999
14 report, which is SAD 21 and is now 71, you cite DOE
15 28379, so I would like you to turn to that page.

16 And the reference to "insufficient
17 materials" -- let's look at your report here, the
18 quotation says:

19 "Insufficient basic ELD
20 materials for English learners in
21 Model A classrooms were noted."

22 That is the reference to Cohasset Elementary
23 School, isn't it?

24 MR. ROSENBAUM: On that page?

25 BY MR. JORDAN:

1 is no follow-up -- that, in fact, we have no assurance
2 that the State has mechanisms in place to assure that
3 the identified inadequacies are corrected.

4 Q. Okay. But were you asserting that that
5 actually happened at LAUSD?

6 A. Well, because I give more than one year, there
7 is evidence of the persistence of a problem, so that is
8 given as an example.

9 Q. So I can understand that better, I would like
10 to mark next in order those two reports.

11 Are those two reports what you are relying on
12 for that, the 1998 to 1999 and the 1999 to 2000 CCR
13 reports?

14 A. I was -- well, it is the notification of
15 findings, if that is what you mean by "report."

16 Q. Yes. Sometimes called a "Notification of
17 Findings report."

18 A. Okay.

19 Q. Okay.

20 A. That is certainly where these two quotes were
21 drawn from.

22 The inference is one that I made by
23 juxtaposing the two reports.

24 Q. Okay. So it was in reliance on those two
25 reports?

1 Q. That page, which is the page she cites in her
2 report. Yes.

3 A. It appears to be.

4 Q. Now, this CCR report differentiates between a
5 finding for Cohasset and a district-wide finding such as
6 the one that is above it on the same page, doesn't it?

7 A. There are two separate findings on this page;
8 one is a district-wide finding and one is with a
9 specific reference to an elementary school.

10 Q. The one you are citing in your report happens
11 to be the one for the particular elementary school,
12 Cohasset; right?

13 A. Yes.

14 Q. I would like you to look at Exhibit -- it was
15 originally SAD 22 and it is now 72.

16 Now, the page you cite in your report --

17 MR. ROSENBAUM: What -- what paragraph?

18 MR. JORDAN: What paragraph of which?

19 MR. ROSENBAUM: Where is the citation you are
20 referencing?

21 MR. JORDAN: The citation in her report --

22 MR. ROSENBAUM: Yes.

23 BY MR. JORDAN:

24 Q. -- is at the bottom of Page 73 of her report
25 and continuing on to Page 74 of her report, where she

1 quotes this thing and says:
 2 "There are an insufficient
 3 number of ELD materials available
 4 to teachers and students to provide
 5 an effective ELD program."
 6 And she is citing DOE 21799. I believe if you
 7 look at that page, 21799 --
 8 A. I don't have a copy of that --
 9 Q. Here it is.
 10 A. I'm sorry.
 11 Q. Look at 21799.
 12 A. Yes.
 13 Q. The quotation you have there says:
 14 "There are an insufficient
 15 number of ELD materials available
 16 for teachers and students to
 17 provide an effective ELD program,"
 18 unquote.
 19 It appears to be a quotation of a reference
 20 here to Anne Street Elementary School?
 21 A. Yes.
 22 Q. Again, that is a finding for a particular
 23 school as opposed to a district-wide finding, isn't it?
 24 MR. ROSENBAUM: Give her an opportunity to
 25 look at all the district findings.

1 THE WITNESS: It is a finding about the
 2 district. The location of the problem was a particular
 3 elementary school, but this is a district report.
 4 BY MR. JORDAN:
 5 Q. The report is a district report, but the
 6 particular finding is a finding related to a particular
 7 school, isn't it?
 8 A. Yes. That is correct.
 9 Q. And so what you are really saying is that the
 10 same problem was found at two different schools in the
 11 same district, but not that it is at every school in the
 12 district?
 13 A. The problem -- what I was saying is that the
 14 problem was found in the district in subsequent -- in
 15 consecutive years.
 16 Q. Somewhere in the district?
 17 A. Somewhere in the district. Yeah.
 18 Q. But you are not suggesting, for example, that
 19 the problem at Cohasset was not remedied, are you?
 20 A. I have no knowledge that it was or wasn't.
 21 Q. Okay. Did you look at all at the 2000 and
 22 2001 CCR report for the LAUSD that was an exhibit to the
 23 Eleanor Clark-Thomas deposition?
 24 A. I don't recall.
 25 (Exhibit 73 was marked for I.D.)

1 BY MR. JORDAN:
 2 Q. I have placed in front of you a copy of the
 3 2000-2001 Coordinated Compliance Review report which was
 4 an exhibit to Eleanor Clark-Thomas's deposition.
 5 I would like to have you look in particular at
 6 Page 33 of 38.
 7 A. At the top?
 8 Q. They are at the top of the pages on this
 9 report.
 10 If you look at the first full paragraph under
 11 the introductory paragraph that says, "Summary of
 12 Findings" --
 13 A. Yes.
 14 Q. -- it says, quote:
 15 "Los Angeles Unified School
 16 District's fourth year of a
 17 Coordinated Compliance Review phase
 18 has demonstrated dramatic positive
 19 changes in the school's
 20 preparation, presentations and
 21 compliance status. The California
 22 Department of Education CCR team
 23 has noted that the quality of
 24 programs, delivery of services are
 25 more student focused, which has

1 resulted in fewer noncompliant
 2 items."
 3 Do you remember reading that portion of this
 4 report?
 5 A. I don't have a specific recollection of that.
 6 Q. Do you remember reviewing Mrs. Clark-Thomas's
 7 testimony that working with people at L.A. Unified, she
 8 did not ever run into any problems with them resisting
 9 efforts to cause the district to come into compliance?
 10 MR. ROSENBAUM: Objection.
 11 THE WITNESS: I have a vague recollection.
 12 BY MR. JORDAN:
 13 Q. Do you remember, in fact, it was a proposal
 14 from LAUSD that resulted in pioneering the new
 15 Coordinated Compliance Review?
 16 A. I am not recalling that.
 17 Q. I would like you to look at Exhibit 70, which
 18 is Volume II of the excerpts of Eleanor Clark-Thomas's
 19 deposition.
 20 A. I have it.
 21 Q. And in particular -- excuse me. Counsel is
 22 prompting the witness.
 23 MR. ROSENBAUM: I am not prompting the
 24 witness. I am objecting to showing her a document --
 25 MR. JORDAN: Then object. Don't show her the

1 document and point her to pieces of it.
 2 MR. ROSENBAUM: You are misrepresenting what
 3 the document says. That is inappropriate.
 4 MR. JORDAN: Then object.
 5 MR. ROSENBAUM: Give her a chance to read the
 6 whole document.
 7 MR. JORDAN: Then object, but don't point to
 8 parts of the document to your witness while she is being
 9 examined under oath.
 10 MR. ROSENBAUM: I object to the way you are
 11 asking these questions. I will move to cut this down
 12 altogether.
 13 You are giving her documents she has never
 14 seen before, and you are misrepresenting the contents of
 15 the documents. That is inappropriate lawyering and
 16 questions.
 17 MR. JORDAN: Have you finished your objection?
 18 MR. ROSENBAUM: I sure have.
 19 MR. JORDAN: All right.
 20 MR. ROSENBAUM: That was really inappropriate,
 21 Judd. That is totally misrepresentative of what the
 22 document was about.
 23 MR. JORDAN: Are you now done or not?
 24 MR. ROSENBAUM: I am not done if you are
 25 continuing that process.

1 I also want to say for the record, if you
 2 continue to testify -- and you are testifying
 3 inaccurately -- I am going to instruct her not to
 4 answer. It is completely inappropriate questioning
 5 whether it is at deposition or trial. You should know
 6 better than that.
 7 MR. JORDAN: Are you done?
 8 MR. ROSENBAUM: I am not done if you continue
 9 to question in the way you are questioning.
 10 BY MR. JORDAN:
 11 Q. I would like you to look at Page 432 to the
 12 excerpts of Eleanor Clark-Thomas's deposition that we
 13 marked as Exhibit 70, particularly Page 432, Line 4, to
 14 433, Line 23. I will ask you to read those first before
 15 I ask my questions.
 16 MR. ROSENBAUM: Could you please repeat --
 17 MR. JORDAN: Page 432, Line 4 through 433,
 18 Line 23.
 19 THE WITNESS: How far do you want me to go?
 20 BY MR. JORDAN:
 21 Q. Just those two pages. I have two questions
 22 for you.
 23 First, do you remember reading that?
 24 And, second, did you consider including it in
 25 your report?

1 A. I have no specific recollection of this
 2 section.
 3 Q. Okay. I would like you to look at Page 76 of
 4 your report, the paragraph that says, "Inadequacies in
 5 WASC."
 6 There is a sentence that is the -- let's
 7 see -- the fourth sentence, it says:
 8 "The high schools described in
 9 Williams versus the State of
 10 California are substandard in many
 11 respects" and so on.
 12 Do you see that sentence?
 13 A. Yes.
 14 Q. Okay. What I want to ask you for was what
 15 evidence you are basing that statement on in addition to
 16 anything that is stated in your report, if anything?
 17 A. My own knowledge of the schools that were
 18 named in the complaint.
 19 Q. Okay. Can you give us any particulars?
 20 A. I would want to look at the complaint to
 21 refresh my memory about the names of the schools, but
 22 many of them were familiar to me.
 23 Q. How were they familiar to you?
 24 A. They are familiar to me because I spend a
 25 great deal of time in the schools around the state, and

1 I know many educators who work in those schools and who
 2 report to me about the circumstances of their work
 3 lives.
 4 I also know many young people in the state.
 5 Q. Okay. I am particularly interested in Los
 6 Angeles Unified School District schools, as you might
 7 imagine.
 8 Are there any facts you have to add to the
 9 allegations in the complaint about those schools?
 10 MR. ROSENBAUM: Vague.
 11 THE WITNESS: I could give you lots of
 12 specific facts that would supplement the allegations,
 13 but I wouldn't want to do it without having a list of
 14 the schools so I could actually be very precise in my
 15 making sure that I am relating stories about schools
 16 that are actually named.
 17 BY MR. JORDAN:
 18 Q. I don't have a list of the schools with me,
 19 but this is my chance to ask you what you might come up
 20 with on the stand to support your opinions.
 21 So do you recall any facts about schools in
 22 Los Angeles Unified in addition to what is alleged in
 23 the complaint that you would use to support your
 24 opinion?
 25 MR. ROSENBAUM: Vague. Overbroad.

1 THE WITNESS: I think that one of the things
2 you might want to reference is the material on the IDEA
3 website, "Teaching to Change Los Angeles," where there
4 are lots of reports from teachers and students in Los
5 Angeles Unified School District about the things they
6 experience in their schools.

7 BY MR. JORDAN:

8 Q. Have you spoken with any administrators in Los
9 Angeles Unified School District upon whose statements
10 you would rely as the basis for your opinions in this
11 case?

12 A. Yes.

13 Q. Who?

14 A. Can I ask an off-the-record question?

15 Q. Unless everybody agrees it is off the record,
16 it is not off the record.

17 MR. ROSENBAUM: Fine.

18 (Discussion off the record.)

19 MR. ROSENBAUM: Okay. At great inconvenience
20 to Dr. Oakes, I am going to accommodate the request
21 today to say, Gene, when Dr. Oakes returns after Judd
22 completes, you can question.

23 I am going to say to you, there is a limit to
24 what any witness can go through, and I think she has not
25 been accommodated fairly; I think she has not been

1 the condition of the schools in Los Angeles. The
2 question was asked of her what that report -- what that
3 statement of fact was based upon.

4 That seems to me a proper, relevant question
5 that has not been asked yet in the deposition that I
6 have heard.

7 So I don't share your sense that these
8 questions are repetitive. Some are. That certainly
9 wasn't.

10 MR. ROSENBAUM: I didn't say that one in
11 particular was. A question that says to her under a
12 chapter of "Inadequacies of 60119," tell me what the
13 inadequacies are, that is not an appropriate question
14 for this witness.

15 It went on for pages and pages. Let's not
16 take any more time.

17 Have a nice weekend.

18 MR. HILL: I appreciate, Dr. Oakes, your
19 accommodation.

20 THE WITNESS: I hope you make your flight.

21 MR. HILL: I probably won't, but I will try.

22 (Whereupon MR. HILL and MR. EGAN
23 exited the deposition proceedings.)

24 BY MR. JORDAN:

25 Q. I think the question was: Which

1 committed fairly and, frankly, I think she has priority
2 over any of the lawyers in this case in terms of decent
3 treatment.

4 MR. JORDAN: Every witness does.

5 MR. ROSENBAUM: That is right. Every witness
6 does.

7 By doing this, I am not saying I am going to
8 do it in the future. You have limited days with her. I
9 am going to come down tough -- there are too many
10 questions in this -- these depositions that repeat each
11 other and that merely ask a witness to state what is
12 already in the report.

13 These are not efficient, properly run
14 depositions. I'm sorry. I am not saying each and every
15 question is appropriate.

16 MR. HILL: I appreciate the accommodation, but
17 I would have to say, we have been here since Monday, and
18 I have not had a chance to question the witness, and I
19 have been waiting patiently to do that.

20 MR. ROSENBAUM: I was not referring to that.

21 MR. HILL: I appreciate the accommodation.

22 I don't share your view, Mark, about the
23 questions, and I don't need to state that. For example,
24 the last series of questions, Dr. Oakes made a statement
25 in her report, a clear, firm, factual statement about

1 administrators in LAUSD have you talked to -- statements
2 you are relying on as any basis for your opinions in
3 this case?

4 A. Did you say, "administrators"?

5 Q. That would include principals in that category
6 and on up.

7 A. I actually made a presentation last week, last
8 Thursday. I was asked to comment at a presentation by
9 the Los Angeles Unified School District to a summit of
10 African-American leaders in the city about the progress
11 that the district had made in -- toward achieving the
12 goals that were established by board member Hayes in the
13 initiative on African-American achievement.

14 I relayed a bit of the findings from the
15 Harris study and the SPRA study to those administrators
16 who were present and the ones making the presentation,
17 and I apologized in advance saying, I was going to say
18 some harsh things about the district, about California
19 schools, and after I presented some of the data several
20 of them came up to me -- and, unfortunately, I don't
21 know their names. They were central office
22 administrators -- who said, "Thank you so much for
23 saying this. These are things we cannot say.
24 Conditions in our school are so bad, and we hope
25 something is done about it, and we are not in a position

1 to say it the way you are."

2 That is one example.

3 Q. While we are on that example, you said you
4 were making this statement to LAUSD, and then you said
5 to a summit of African-American leaders.

6 Was this a LAUSD function or not?

7 A. The -- under the initiative, the LAUSD is to
8 report to the community every six months on its
9 progress.

10 So this event was held at a hotel, and I think
11 it was actually in conjunction with a conference that
12 the African-American groups were having, but the first
13 day of the conference was the report by the district to
14 the community.

15 I had been asked to be a respondent to that
16 report.

17 Q. So the district was not asking you to speak?
18 Somebody was asking you to respond to the district's
19 presentation?

20 A. Yes.

21 Q. That is what I am trying to get straight.

22 A. Yes. I think you could probably find the
23 names of those individuals because it was a published
24 agenda with -- I happened to sit at the open plenary
25 session with Mr. Vigil, Dale Vigil, the Superintendent

1 this hour.

2 Q. The schools you have named are South Gate
3 Middle School, Locke, Jordan, Fremont.

4 Any others that come to mind?

5 A. Mrs. Jackson is Superintendent of all the
6 schools in District J -- is that right?

7 This is not a quiz of my memory, is it?

8 Q. Actually, we are asking you the questions
9 today.

10 A. She is the administrator of one of the
11 subdistricts that includes Dorsey and Crenshaw and a
12 number of feeder schools.

13 Q. Do any other particular school names come to
14 mind?

15 A. I would certainly refer you to the website,
16 "Teaching to Change Los Angeles," in which there are a
17 number of school names that can be obtained where we
18 have the information about problems.

19 Q. Does your website give the source of that
20 information?

21 A. In most cases the articles have an author
22 and -- I think in most cases.

23 Some of the students -- I think the students
24 may be protected by not -- we try not to publish
25 students' names unless it is something that has clearly

1 of District -- some alphabet.

2 Q. Any other -- had you finished?

3 A. No. He actually, unprompted, told me that it
4 was a terrible thing to have to try to administer a
5 school of 4,200 students in a building that was designed
6 for 800 students.

7 Q. Do you know which building he was referring
8 to?

9 A. South Gate Middle School.

10 I have frequent conversations with
11 Mrs. Sylvia, Dr. Sylvia, who is the Superintendent of
12 District I -- I have known her a very long time. I was
13 on her dissertation committee -- about the conditions
14 she grapples with at Locke, Jordan, Fremont.

15 Mrs. Jackson, Dr. Jackson. My close
16 colleagues are Sid Thomas, who is the former
17 superintendent and very much involved in LAUSD to this
18 day.

19 I have regular conversations with individuals
20 who consistently share concern about the conditions in
21 the district.

22 Q. Can you name any other individual
23 administrators of LAUSD whose statements you are relying
24 on for the basis of your opinions?

25 A. Those are the names that come to my mind at

1 been cleared and approved for publication.

2 Q. I was just asking about any other
3 administrators.

4 A. Not that occur to me right now.

5 Q. I would like you to look at Page 79 of your
6 report. In the middle paragraph the last sentence talks
7 about this audit report.

8 I am trying to be careful not to reask
9 questions you have been asked before, but you say
10 here -- let me find the spot -- that "Statistical
11 testing was not performed to determine significant
12 differences"?

13 MR. ROSENBAUM: Where are you, please?

14 MR. JORDAN: It is --

15 MR. ROSENBAUM: I see it. Thank you.

16 BY MR. JORDAN:

17 Q. Do you see that?

18 A. Yes.

19 Q. I understand that is a criticism of the audit
20 report.

21 Is that a correct interpretation of that?

22 A. Yes.

23 Q. Have you participated in any statistical
24 testing to determine statistical differences that the --
25 in other words, to do the report that -- to do the work

1 you thought that the audit committee should have done?
2 MR. ROSENBAUM: That is vague.

3 THE WITNESS: I am not implying whether they
4 should or shouldn't have. It is just -- a report uses
5 the word, "significant." I'm used to that being --
6 referring to a test of statistical significance. Since
7 it was not, I simply wanted to note that for the reader.

8 And, no, I have not examined the data
9 underlying that report.

10 BY MR. JORDAN:

11 Q. Going to Page 82, the second-to-the-last
12 paragraph starts off, "The governing board" -- you have
13 a sentence that says:

14 "The governing board is
15 responsible to take any action
16 necessary to provide each student
17 with textbooks and instructional
18 materials within two years of the
19 termination date of insufficient
20 materials."

21 What is that based on? Is that an oblique
22 code reference to Ed Code Section 60119?

23 A. It is --

24 MR. ROSENBAUM: Argumentative.

25 THE WITNESS: It is material taken from the

1 Were you relying just on the Department of Ed
2 fact book for what you said in your report or also what
3 you reviewed in 60119?

4 A. You know, I don't recall.

5 Q. I have to ask you: Was there something about
6 your review of 60119 that you think supports the
7 statement that:

8 "The governing board is
9 responsible to take any action
10 necessary to provide each student
11 with textbooks and instructional
12 materials within two years of a
13 determination date of insufficient
14 materials"?

15 A. You know, I don't recall whether that is part
16 of the statute itself or whether it is a matter of
17 subsequent regulations from the department or whether it
18 is a misstatement on -- in the fact book.

19 Q. Okay. Let's go to Page 100 of your report
20 under "Conclusion." It says, quote:

21 "California does not have
22 policies in place that mandate that
23 students have access to a textbook
24 to use in the classroom and/or to
25 use at home for the purposes of

1 fact book that the Department of Education puts out
2 instructing districts about their responsibilities under
3 60119.

4 BY MR. JORDAN:

5 Q. You haven't tried to review 60119 to determine
6 whether it really says that, have you?

7 A. I actually have reviewed 60119, but I don't
8 recall the details of the language.

9 Q. Did you reach a conclusion agreeing or
10 disagreeing with the Department of Ed fact book on that
11 point?

12 A. I don't recall.

13 Q. Would it help if you looked at 60119 again?

14 MR. ROSENBAUM: Speculation.

15 THE WITNESS: I am happy to take a look at it
16 if you would like me to.

17 (Recess taken.)

18 (Exhibit 74 was marked for I.D.)

19 BY MR. JORDAN:

20 Q. I may be able to save you the agony of parsing
21 60119.

22 Let me ask a follow-up question.

23 You said, I think, you were relying on the
24 Department of Ed fact book for the statement in your
25 report, but then you said you reviewed 60119.

1 homework," end quote.

2 All I want to do is figure out with the
3 "and/or" statement, whether you are saying that both
4 alternatives of the "and/or" are true?

5 A. Yes.

6 Q. Okay. Let's go to Page 101. The last full
7 paragraph on that page says:

8 "Decisions about textbook
9 policies should not be made in
10 isolation from decisions about
11 policies aimed at insuring
12 high-quality staff, facilities,
13 programs for English learners and
14 so forth," unquote.

15 A. Yes.

16 Q. Okay. Now, is that true when we are talking
17 about budget decisions that school districts make?

18 A. I think it is probably always the case that
19 any single policy decision be weighed in the context of
20 other related decisions.

21 Q. I would like you to look at Pages 103 and 104.
22 There is a statement about Tables 23 and 24 that starts
23 on Page 103 and continues onto Page 104. It talks about
24 comparing to amounts allocated by other states or
25 estimates of an adequate level of spending.

1 What I want to ask you is: Do you think in
2 here somewhere is a comparison to an adequate level of
3 spending?

4 MR. ROSENBAUM: Vague.

5 THE WITNESS: That reference is the reference
6 to the Oregon model, which estimated the costs of an
7 adequate level of spending on texts and other
8 instructional materials.

9 BY MR. JORDAN:

10 Q. Okay. I would like you to look at Page 112,
11 the second full paragraph. It talks about Rhode Island,
12 and you say -- an example, "Rhode Island has much to
13 offer" and so on.

14 What I wanted to ask you about is whether you
15 have any opinion whether it would actually be possible
16 to create a number of Rhode-Island-sized regions in the
17 state of California that would oversee districts, or is
18 this just one of the possible things that the State
19 should consider?

20 A. I think it is a reasonable idea for the State
21 to consider. I would say it is an reasonable idea for
22 the State to consider.

23 Q. I was trying to reach -- do you have any
24 opinion whether that would actually be feasible or not?

25 A. Well, the State already has -- the State has

1 Don't answer. Next question.

2 MR. JORDAN: Are you instructing her not to
3 answer that question?

4 MR. ROSENBAUM: I am.

5 BY MR. JORDAN:

6 Q. Okay. In your report on Page 113 on the
7 potential of FCMAT, you mention that the --

8 MR. ROSENBAUM: The record should reflect when
9 Mr. Jordan asked that question, he started laughing.

10 MR. JORDAN: I disagree with that
11 characterization.

12 MR. ROSENBAUM: You can disagree, but you did.

13 BY MR. JORDAN:

14 Q. Referring to your report on Page 113, under
15 "The potential of FCMAT," there is a reference to the
16 state putting in 10-and-a-half million and then needing
17 another nine-and-a-half million for Compton.

18 Do you know what the total amount the State
19 has put into Compton after the takeover?

20 A. No, I do not.

21 Q. If you look at 114, the first and third
22 bulleted paragraphs say that:

23 "The consent decree in Compton
24 states that appropriate textbooks
25 and instructional materials in the

1 regions that it uses to implement other sorts of
2 policies, these 11 regions, for example, in the state
3 that do a lot of the -- some of the professional
4 development work. It has County offices that function
5 as regional centers.

6 So I think there is some basis for saying that
7 it is possible for California to create regional
8 entities to carry out some of its policies.

9 Q. When we say, "regional," are you talking more
10 in terms of geography or more in terms of student
11 population? When you say, "Rhode-Island-sized," are you
12 talking size in terms --

13 A. I was speaking of entities that would be of
14 manageable size both in terms of geography and
15 population, much as we have legislative districts that
16 take into account both things.

17 Q. In your view a county would be in that context
18 a Rhode-Island-sized entity?

19 A. Some may be, and some are obviously
20 considerably larger than Rhode Island.

21 Q. Do you have a view whether Los Angeles County
22 is a Rhode-Island-sized entity?

23 MR. ROSENBAUM: That is inane. We shouldn't
24 be spending time on Friday afternoon with questions like
25 that.

1 core subject areas will be provided
2 to all children in the CUSD."

3 Correct?

4 A. Yes.

5 Q. And that:

6 "Children will be able to take
7 home either a textbook used in each
8 core subject class or a reproduced
9 portion of the textbook in order to
10 prepare for class, study for
11 examinations and complete
12 homework"?

13 A. Yes.

14 Q. In reviewing the FCMAT reports for Compton,
15 did you determine how well the stipulations in the
16 consent decree are being met?

17 A. I reviewed some of the reports and the
18 increased ratings that FCMAT has given to Compton with
19 regard to instructional materials.

20 I don't recall the specifics of whether these
21 two bullet points were referenced in those reports.

22 Q. Let's look at Page 116, the second full
23 paragraph of your report, the third sentence, which
24 says:

25 "Summary of findings and

1 recommendations concerning consent
 2 decree stipulations related to
 3 pupil achievement found that
 4 consent decree Section 8 textbooks
 5 are being met by the district."
 6 It says:
 7 "The district has purchased
 8 classed sets of texts in English
 9 and mathematics as well as
 10 sufficient texts in English,
 11 mathematics and history/social
 12 science to assign a text for each
 13 student for use at home."
 14 However, you further state that:
 15 "Standard 1.25 regarding
 16 student accessibility to
 17 instructional materials reached a
 18 rating of 6, apparently, in 2002.
 19 However, it needs to reach a rating
 20 of 8 to be compliant."
 21 What I am trying to get at is: It sounds like
 22 there is one of these stipulations that is not quite
 23 being met yet, the one that is at 6, but needs to be at
 24 8 to be compliant; is that correct?
 25 A. That is how I read it, as well.

1 Q. On the other hand, the beginning where you say
 2 that -- the summary of findings and so on says that,
 3 "The consent decree Section 8 are being met by the
 4 district," that is just a general statement, not meaning
 5 that they are being met in every particular?
 6 A. I would want to review the report in its
 7 entirety to see how these statements appear in context
 8 before I could comment more specifically than I have in
 9 my paragraph here.
 10 Q. Okay. I have prepared copies of relevant
 11 pieces of that report, which is the "Summary" section at
 12 the beginning and a detailed part about the student
 13 curriculum part in the back. It is called, "Pupil
 14 achievement."
 15 MR. ROSENBAUM: Do you have the whole report
 16 available?
 17 MR. JORDAN: I don't have it with me. I will
 18 represent these are the pieces dealing with textbooks.
 19 MR. ROSENBAUM: I will represent that you -- I
 20 will stipulate you think they are the relevant pieces,
 21 but I would like to have the whole report for the
 22 witness.
 23 MR. JORDAN: I don't have it today. We will
 24 have to mark what we have. If you claim some other
 25 piece is relevant, you will have the opportunity to do

1 that.
 2 Let's mark this next in order.
 3 (Exhibit 75 was marked for I.D.)
 4 BY MR. JORDAN:
 5 Q. If you look at 75, the portion that seems to
 6 be referenced in your report seems to be the Executive
 7 Summary, Page 4, under "Consent Decree, Section 8,
 8 Textbooks."
 9 A. Well, I am also -- yes. I see the paragraph
 10 you point to.
 11 Q. In that the first section says:
 12 "The requirements of Section 8
 13 are being met by the district."
 14 But it goes on to say, as you say in your
 15 report, that there is actually one pupil achievement
 16 standard that says that they are supposed to reach an 8
 17 and they have only gotten a 6?
 18 A. Yes.
 19 Q. So that is all you are referring to in your
 20 report, aren't you?
 21 A. I certainly looked at the whole report and
 22 reviewed it, and I am summarizing it much as the report
 23 did.
 24 Q. Well, to be more specific, you are not
 25 suggesting that students at Compton have a science text

1 from the current adoption that they are using?
 2 It says:
 3 "Science texts from a prior
 4 adoption are currently available
 5 for student use."
 6 MR. ROSENBAUM: Assumes facts not in evidence.
 7 THE WITNESS: I quote the report as saying
 8 that they purchased texts in English and mathematics as
 9 well as sufficient texts in history, mathematics,
 10 science and social science.
 11 BY MR. JORDAN:
 12 Q. Right. What I am asking you is: Wouldn't
 13 they also need science texts in the current adoption to
 14 be fully compliant?
 15 MR. ROSENBAUM: Speculation.
 16 THE WITNESS: Well, it is -- I think I am not
 17 understanding the question.
 18 Are you saying in order to get a -- I'm sorry.
 19 Explain to me --
 20 BY MR. JORDAN:
 21 Q. Your report talks about them having to have
 22 appropriate textbooks and instructional materials in the
 23 core subject areas; right?
 24 That is at Page 114 of your report in the
 25 bulleted paragraphs.

1 A. Yes.
 2 Q. And science is a core subject area, isn't it?
 3 A. Yes.
 4 Q. Okay. By "appropriate," what I am trying to
 5 get at here is: Are the science textbooks from the
 6 prior adoption appropriate or do they still need to do
 7 something to get the current ones?
 8 A. I think the judgment, as reflected here, is
 9 that the judgment of FCMAT was that, given the intention
 10 of the district to purchase the newly adopted science
 11 texts once they had finished purchasing sufficient
 12 quantities of English, history, social science and
 13 mathematics texts, that it would be adequate for them to
 14 use the science texts from a prior adoption.
 15 The bullet point doesn't specify on Page 114
 16 that they have to be the most recent adoption, but,
 17 rather, that they be appropriate.
 18 Q. Okay. So in this case the prior adoption for
 19 science was appropriate?
 20 A. In FCMAT's judgment.
 21 Q. Okay. How about in your judgment? Did you
 22 have a judgment that was the same or different from
 23 that?
 24 A. I didn't make an independent judgment. I am
 25 simply reporting what FCMAT had accomplished.

1 Q. Okay. On Page 115 of your report, the last
 2 paragraph, the fourth sentence says that:
 3 "Education Code Section 48904
 4 establishes that lost or damaged
 5 textbooks must be paid for or the
 6 result could be the denial of
 7 school activities, including
 8 withholding of grades, diplomas and
 9 transcripts."
 10 A. Yes.
 11 Q. Did you review Ed Code Section 48904?
 12 A. If I cited it, I reviewed it. I don't have a
 13 specific recollection at this point of the -- of the
 14 event of doing it.
 15 Q. Okay. Do you recall whether that section
 16 allows a school district to withhold the grades, diploma
 17 and transcripts of a pupil where the loss or damage to
 18 the textbook is not willful?
 19 MR. ROSENBAUM: Foundation. She said she
 20 didn't have a recollection at this time.
 21 If you have a copy, show it to her, and she
 22 would be glad to answer the question.
 23 THE WITNESS: I would need to review the Ed
 24 Code section in order to comment on the specifics.
 25 MR. JORDAN: 76.

1 (Exhibit 76 was marked for I.D.)
 2 BY MR. JORDAN:
 3 Q. I will invite your attention to subparagraph
 4 B, sub 1, if it helps you.
 5 Do you remember reading that before?
 6 A. Yes.
 7 Q. Do you have any experience with the
 8 difficulties which school districts face in proving
 9 whether or not the loss or damage to a textbook was
 10 willful?
 11 A. No.
 12 Q. You have no idea how much it might cost to do
 13 that in a typical case?
 14 MR. ROSENBAUM: Vague.
 15 THE WITNESS: No.
 16 BY MR. JORDAN:
 17 Q. Well, students who leave a district and enroll
 18 in some other district, do you know of any way that in
 19 California there is any way to track the student to the
 20 new school?
 21 A. No. Actually, there is not, unless the
 22 student voluntarily -- the family gives that
 23 information.
 24 Q. In your experience are textbook damages and
 25 loss ratios higher at schools with high student

1 turnover?
 2 A. I have never done a systematic analysis of it,
 3 but I have heard that to be the case.
 4 Q. How about textbook damage and loss ratios at
 5 schools with high teacher turnover?
 6 MR. ROSENBAUM: What is the question, please?
 7 THE WITNESS: I am not aware of those
 8 patterns.
 9 BY MR. JORDAN:
 10 Q. Have you had heard textbook damage and loss
 11 ratios tend to be higher at schools with multi-track
 12 calendars?
 13 A. At the moment I am not recalling specific
 14 evidence about that, but I would -- I am not going to
 15 ask to review anything more.
 16 I am not recalling at this moment any specific
 17 evidence of that fact.
 18 Q. Do you remember any data on whether textbook
 19 loss or damage ratios are higher for students of low
 20 socioeconomic status?
 21 A. The one piece of evidence we discussed
 22 yesterday in the Harris report that the teachers'
 23 reports of the physical condition of their textbooks and
 24 materials did not differ significantly among schools
 25 with the largest percentages and the smallest

1 percentages of low-income students is the most specific
 2 evidence that might speak to that that I know of.
 3 Q. And that would be a contraindicator, I take
 4 it?
 5 A. Yes.
 6 Q. We are through the new exhibits.
 7 Do we have Exhibit 15?
 8 There is a statement in this e-mail from you
 9 to -- actually, it says from you to you. It is from you
 10 to you and a bunch of other people -- you copy yourself
 11 sometimes, like I do -- Jack Londen, Matthew Kreeger,
 12 Gary Blasi, a cc to Rogers, "Subject: Attached revised
 13 expert memo."
 14 MR. ROSENBAUM: What is the number in the
 15 lower right-hand corner?
 16 MR. JORDAN: The starting page is 00058.
 17 MR. ROSENBAUM: We have it.
 18 BY MR. JORDAN:
 19 Q. The page I want to direct your attention to is
 20 00060, like the third page of the exhibit. There is a
 21 statement in there I am going to ask you about.
 22 You say, "The trial court" -- the second
 23 paragraph, last sentence:
 24 "The trial court has already
 25 agreed with plaintiffs that the

1 State is obliged to set in place a
 2 system that will either prevent, or
 3 detect and correct, significant
 4 educational deficiencies and
 5 inequalities."
 6 What is the basis for that statement?
 7 A. This was, I believe, part -- to the best of my
 8 recollection, it was part of the ruling made by Judge
 9 Bush when he was considering the State's countersuits
 10 against the districts named in the complaints.
 11 That is the best of my recollection.
 12 Q. Did you get that from reviewing the text of
 13 the court's decision itself or was this something the
 14 plaintiffs' lawyers told you?
 15 A. I actually reviewed that decision myself.
 16 Q. And that is your interpretation of that
 17 decision?
 18 A. I am not sure it captures the entire decision,
 19 but it is certainly the meaning I drew from what I read.
 20 Q. Okay. I have got 4:47. I have covered my
 21 questions on exhibits.
 22 There were some other questions I had wanted
 23 to ask, but we are out of time by your clock.
 24 MR. ROSENBAUM: We set the time by mutual
 25 agreement. How much more do you have?

1 MR. HERRON: I have a couple of pages of
 2 questions. It is hard to say how long they might take.
 3 MR. ROSENBAUM: Let's break for today.
 4 MR. HERRON: Same stipulation as before?
 5 THE WITNESS: I am willing to go a little
 6 longer.
 7 MR. ROSENBAUM: Can you give me a fair
 8 estimate?
 9 MR. JORDAN: I would say half an hour, if it
 10 is straightforward.
 11 MR. ROSENBAUM: Let's just go on.
 12 BY MR. JORDAN:
 13 Q. I appreciate that, Mark. Also, Dr. Oakes, I
 14 appreciate your patience.
 15 A. You are welcome.
 16 Q. Some of these are just to establish a
 17 negative, I hope.
 18 A. Okay.
 19 Q. Have you made any systematic study of Los
 20 Angeles Unified School District's textbook policies and
 21 practices for the purpose of arriving at an opinion
 22 about whether those policies and practices are
 23 sufficient to make instructional materials available to
 24 students?
 25 A. I have not.

1 Q. That helps.
 2 MR. ROSENBAUM: It is called, "leading the
 3 witness."
 4 MR. HERRON: Perfectly appropriate.
 5 MR. ROSENBAUM: I was being silly.
 6 BY MR. JORDAN:
 7 Q. It saves us several questions, however. I
 8 think I am entitled to ask leading questions.
 9 There are a few questions on the
 10 State-approved curriculum packages.
 11 Are you aware the State has approved various
 12 curriculum packages in a particular subject area --
 13 A. Yes.
 14 Q. -- like they will have several from different
 15 publishers for math, for example?
 16 A. Yes.
 17 Q. And some of those packages have different
 18 features than others, like some will have intervention
 19 modules for kids that need help in particular areas?
 20 A. Yes.
 21 Q. Okay. Do you think it is a good idea to have
 22 the State approve different packages of curriculum in a
 23 particular subject area for students of different needs?
 24 A. Yes, I do.
 25 Q. With any particular school or district can it

1 be important to give schools or districts a choice of
2 which package or particular subject matters to use for
3 particular students or schools?

4 A. Yes. I think it is.

5 Q. When we are dealing with things like choices
6 of intervention modules, who is in the best position to
7 decide which of those materials, preapproved by the
8 State and by a particular district, should be used in a
9 classroom?

10 A. I think that should be a professional decision
11 made by local educators and perhaps in consultation with
12 their communities.

13 Q. Let's see. Two last questions.

14 Are you familiar with Los Angeles Unified
15 School District's open court or language intervention
16 programs?

17 A. Somewhat familiar, yes.

18 Q. Do you have any opinions about those that
19 relate to your opinions in this case?

20 A. Only that should the district choose to use
21 those materials, that they should have the resources
22 available to them to buy them in sufficient quantity to
23 enable students to learn what they are expected to
24 learn.

25 Q. I think that may be it.

1 You said they are a good idea. The question
2 is: Are they essential?

3 A. The American educational system in general and
4 the specific systems of most states are designed to have
5 learning result as a combination of what happens in
6 school and what happens in students' learning activities
7 outside of school.

8 Q. The last question, literally: Do you know of
9 any data studying whether there is a relationship -- am
10 I phrasing this right?

11 Do you know of any data or studies trying to
12 determine how much of the student achievement of
13 students of low socioeconomic status is due to SES
14 versus having textbooks to take home specifically?

15 A. Unfortunately, as I think I discussed at
16 length earlier, because there is so little data
17 available about whether students have materials to take
18 home that neither researchers nor the State have been
19 able to answer that question.

20 My belief is that some of the explanation of
21 low achievement that we attribute to students'
22 background or other things might very well be a result
23 of the lack of textbooks to take home but we simply
24 don't know that.

25 MR. JORDAN: Thank you. Thanks for the extra

1 MR. JORDAN: I think the rest of these Jeff
2 can probably deal with in his thing on the so-called
3 "Meta report."

4 I just want to make sure if there are any that
5 relate specifically to textbooks I should ask now. I
6 don't think these do.

7 Q. He has one thing about homework I ought to ask
8 you about.

9 A. I am in favor of it.

10 Q. You are in favor of homework?

11 MR. ROSENBAUM: You are way over the limit.

12 MR. HERRON: That is 100 percent over the
13 limit. I agree.

14 BY MR. JORDAN:

15 Q. It is just a few minutes past 4:45, for
16 heaven's sake.

17 On Page 9 of your report you note that:

18 "Having a textbook to take
19 home makes it possible for students
20 to complete meaningful homework."

21 You refer to doing homework as a, quote,
22 "out-of-school learning experience," unquote.

23 I guess we want to know: Are out-of-school
24 learning experiences essential to education and, if so,
25 why?

1 time.

2 MR. ROSENBAUM: Same stipulation.
3 (Whereupon at 4:52 p.m., the
4 deposition of JEANNIE OAKES was adjourned.)

5
6 (The following stipulation
7 from a prior deposition was
8 incorporated as follows:
9 "MR. HERRON: May we
10 stipulate the copies of the
11 documents attached to the
12 deposition may be used as
13 originals, and may we further
14 stipulate that the original of this
15 deposition be signed under penalty
16 of perjury.

17 "The original will be
18 delivered to the offices of the
19 ACLU and directed to Mark
20 Rosenbaum; that the reporter is
21 relieved of liability for the
22 original of the deposition. The
23 witness will have 30 days from the
24 date of the court's transmittal
25 letters to review, sign and correct

1 the deposition.
 2 "And that Mr. Rosenbaum or
 3 anyone he shall designate from
 4 plaintiffs' side shall notify all
 5 parties in writing of any changes
 6 to the deposition within that
 7 30-day period. And if there are no
 8 such changes or signature within
 9 that time, that any unsigned and
 10 uncorrected copy may be used for
 11 all purposes as if signed and
 12 corrected.
 13 "MR. ROSENBAUM: If it's not
 14 a burden for the reporter, because
 15 I'm out of town a lot now because
 16 of depositions and my teaching, if
 17 copies could be served -- the
 18 stipulation that Mr. Herron read
 19 may -- if it could be served on
 20 both me and Ms. Lhamon, Catherine
 21 Lhamon, I think it would facilitate
 22 the process. Is that okay?
 23 "THE REPORTER: Yes.
 24 "MR. ROSENBAUM: With that
 25 addendum, I certainly stipulate to

1 STATE OF CALIFORNIA)
) SS.
 2 COUNTY OF LOS ANGELES)
 3
 4 I am the witness in the foregoing deposition.
 5 I have read the foregoing deposition or have
 6 had read to me the foregoing deposition, and having made
 7 such changes and corrections as I desired, I certify
 8 that the same is true in my own knowledge.
 9 I hereby declare under penalty of perjury
 10 under the laws of the State of California that the
 11 foregoing is true and correct.
 12 This declaration is executed this ____ day of
 13 _____, 2003, at _____
 14 California.
 15
 16
 17 _____
 18 JEANNIE OAKES
 19
 20
 21
 22
 23
 24
 25

1 that.
 2 "MR. HERRON: Very good.")
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1 STATE OF CALIFORNIA)
) SS.
 2 COUNTY OF LOS ANGELES)
 3
 4 I, CATHY A. REECE, CSR No. 5546, a Certified
 5 Shorthand Reporter in and for said County and State, do
 6 hereby certify:
 7 That prior to being examined, the witness
 8 named in the foregoing deposition, JEANNIE OAKES, by me
 9 was duly sworn to testify to the truth, the whole truth,
 10 and nothing but the truth;
 11 That said deposition was taken down by me in
 12 shorthand at the time and place therein named and
 13 thereafter reduced to computerized transcription under
 14 my direction and supervision, and I hereby certify the
 15 foregoing deposition is a full, true and correct
 16 transcript of my shorthand notes so taken.
 17 I further certify that I am neither counsel
 18 for nor related to any party to said action nor in
 19 anywise interested in the outcome thereof.
 20 IN WITNESS THEREOF, I have hereunto subscribed
 21 my name this ____ day of _____, 2003.
 22
 23
 24 _____
 25 CATHY A. REECE, RPR, CSR No. 5546