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

ELIEZER WILLIAMS, )

) Plaintiff(s), )

) vs. ) No. 312236

) )

STATE OF CALIFORNIA, et al., )

) Defendant(s). )

__________________________________)

DEPOSITION OF DELAINE EASTIN
Sacramento, California
Tuesday, September 23, 2003

Reported by:
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CSR No. 10757
Job No. 45628
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DELAINE EASTIN, BE IT REMEMBERED, that on Tuesday, the 23rd day of September, 2003, commencing at the hour of 10:07 a.m. thereof, at the offices of Morrison & Foerster, 400 Capitol Mall, Suite 2700, Sacramento, California, before me, COLLEEN N. KAZNOWSKI, a Certified Shorthand Reporter in the State of California, duly authorized to administer oaths and affirmations, there personally appeared DELAINE EASTIN, the Witness, having been first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION BY MR. JACOBS

Q Good morning, Ms. Eastin. I'm Michael Jacobs of Morrison & Foerster. We represent the plaintiffs in Williams v. State of California. We also refer to it as "the schools' case," so we'll probably refer to that during the course of this deposition.

A You formally left your position on what date?

Q I left my position on something like January 5, was my last day, I think.

A And the first day in office as Superintendent of Public Instruction?

BY MR. JACOBS:

Q As you reflect today, there were many changes in the state's system of education during that period?

A Yes.

Q And you're proud of many of them?

A Yes.

Q You're proud of the content standards that were developed?

A Yes, very proud.

Q You're proud of the gradual alignment of the state's education system during your tenure with those content standards?

BY MR. JACOBS:

Q You remain concerned about the issue of educational equity in the State of California?
MR. VIRJEE: Objection. Vague and ambiguous as to "educational equity."
Delaine, maybe let him finish his questions, let us object, and then you can answer.
THE WITNESS: Okay.
MR. VIRJEE: Thanks.

BY MR. JACOBS:
Q       You remain concerned about the educational equity in the State of California? Same Question.
MR. VIRJEE: Objection. Vague and ambiguous as to "educational equity."
THE WITNESS: I think it's fair to say I have concerns about equities that exist in our nation insofar as education is concerned.

BY MR. JACOBS:
Q       And thereby including the State of California?
A       Yes.
Q       And that was an issue that you were concerned about as SPI as well?
A       Yes. We worked hard to give more support to children who had, what we felt, was not an equitable educational opportunity.
Q       What are the programs that you would point to as providing more support to children who did not have an equitable educational opportunity?

THE WITNESS: Well, first we tried to raise the achievement of all children in the State of California. But there were specific programs aimed at helping children who were at greater risk, so we worked hard to reduce the class size for all children, kindergarten through third grade.

We worked hard to ensure that every child had a fully-credentialed teacher, and that we attracted more people into the profession, and that they were well -- not only well compensated, we raised beginning teacher salary, but also that they were given lots more professional development opportunity so they could help all children to learn to read.

We worked hard to ensure that there was a large increase in support for instructional materials including probably the largest increase in school library materials in history as well as the largest increase in instructional textbooks as well as a large increase in technology.

We worked very hard to ensure that there were additional opportunity for children in preschool, and to give more children a chance to learn after schools with Saturday schools and intercessions and certainly in summer schools.

Our efforts were geared for making sure that every child had a teacher that followed the standards and gave children a chance to learn those standards, that there was a system of assessment that was aligned to those standards, which didn't happen at first but did eventually. It's in process now.

I supported the High School Exit Exam; although, I didn't want to see it have consequences as quickly as the initial bill had consequences. I do believe, though, that kids ought to have -- you know, when they leave school, they ought to have knowledge that they have certain basic information mastered, make sure the right stuff gets mastered really is part of the great goal that we've had.

And all of the efforts that we made on behalf of children including English language learners were intended to get all kids to high standards.

We also did a lot in the facilities area.
When I was in the Legislature, I had carried what was then the biggest bond in the history of the state. Subsequent to that, we have passed a much bigger bond that will allow a lot more resources from the state-level, but I supported a fifty percent vote for school facilities repair. It didn't pass at 50 percent, but it did pass at 55 percent. And we gave an incentive in the bond to local districts to pass local bonds. In some cases they've gotten 65 percent but not 66 and two-thirds, but there was some worry that some hadn't even gotten 55.

And what we did in the bond was to say if you pass a local measure, you get to stand in line sooner for the state's resources. And there's been an extraordinary increase in construction around the state as well as in modernization. Some of the older schools are, you know, rapidly coming into the 21st century, which we're very happy about.

BY MR. JACOBS:
Q       The issue of -- let's take facilities first.
A       An improved facility doesn't guarantee a student educational equity or an educational opportunity, correct?
MR. VIRJEE: Objection. Incomplete hypothetical. Calls for speculation. Lacks foundation. Vague and ambiguous as to "educational
equity" and "guarantee."
THE WITNESS: I don't remember who said give me Socrates and Iroc and I will have a great teacher, and I will get a great education, something like that.
So I believe that the most important single component is having an effective teacher; however, I have said, and you probably read me saying that I think buildings make a statement about the seriousness of our adults about a child's education. And the schools should be clean, well-lighted, up to date.
And that's why I was such a proponent of not only the big state bond, but I've been involved in a lot of local campaigns as a practical matter. In a state with such strong local control, you really do want to urge that the local board get in the game and get the voters behind the children. It's good for the kids, but it's also good for the community. Property values go up, frankly, when the schools are better, and everybody wins when the school is improved.
BY MR. JACOBS:
Q So the fact that econometric data might not validate the rule of facilities as the "but for" cause of improved educational achievements, how does that relate to your view that buildings make a statement and are important?
MR. SEFERIAN: Assumes facts not in evidence.
THE WITNESS: What was the question?
MR. JACOBS: Could you read it back.
(Whereupon, the record was read by the court reporter)
THE WITNESS: Do you want to restate that?
BY MR. JACOBS:
Q Sure.
Since you left office, the state and the state agency defendants have offered expert testimony by econometricians who have taken achievement data and tried to correlate achievement with various, what they call "educational inputs," and their experts have argued among other things that buildings don't guarantee improved educational performance, and that somewhat more sophisticatedally, if you try and parse out the components of improved educational performance, buildings are weakly correlated as opposed to an effective teacher. And yet, you were a strong advocate for improved facilities. So I guess I should back up a little bit.
Have you been aware of the econometric analysis on this point by people like Dr. Hanushek?
MR. VIRJEE: I'm going to object to the extent that is supposed to be a characterization of any expert opinions provided by either side in this case.
You don't have to assume that that's what any expert has testified to or reported.
And I'm going to also object on the ground that calls for speculation, lacks foundation and calls for an expert opinion.
THE WITNESS: Well, I guess we could have the shoot out Hoover Institute and Iran Corporation. I mean, there's a lot of stuff that's been written about whether money makes a difference in the education of children. If you made me choose between a beautiful school and a great teacher, I would definitely choose the great teacher.
I think, though, that an evident should be made by a society to have decent facilities for children. I just think that that makes the likelihood you keep the teacher as well as the fact that it helps kids I think to focus on instruction. But I don't -- I do believe the teaching is the most important single thing that you can do, good teachers.
BY MR. JACOBS:
Q In the course of your superintendentship, you visit a lot of schools in the state?
A Yes.
Q You actually had a -- from reading the materials, it sounds like you made a particular effort to keep to almost a schedule of going out and seeing what was happening at the local level?
A That's fair to say. I went to -- I averaged more than a school a week.
Q Did you have any method of keeping notes of what you saw?
A No, it was more anecdotal. I suppose I should have been more, you know, of a diary taker, but I wasn't.
Q Did you have a staff person who came along with you on these trips who was taking notes of what was seen?
MR. VIRJEE: Objection. Calls for speculation. Lacks foundation as to what someone
might do. Also vague and ambiguous as to taken that particular staff person.

THE WITNESS: I usually traveled with a member of my staff and a highway patrolman, and we didn't take notes the way I think you're suggesting. We wrote letters to principals thanking them. If we saw any especially good teacher, we wrote a letter to the teacher. Occasionally we'd write a letter to someone else, librarian or head of custodians if the school was particularly well kept. But it was more in the nature of thank you and accolades for all the hard work we saw.

BY MR. JACOBS:
Q   And in the opposite case where say you saw a facility that was not well kept, did you have a practice of any follow-up?

MR. SEFERIAN: Objection. Vague and ambiguous.

BY MR. JACOBS:
Q   What was the percent?

A   Over sixty percent.

So you can't take people that are funded by the federal government to do nutrition, and they tell them to go out and start looking in schools for, you know, cleanliness or for other things. So we were not charged with oversight of the facilities per se unless there was apparent complaint.

There is a uniform complaint process which we do respond to. But, you know, it's more we don't usually hear from parents about the physical plan; although, I did get a complaint one time about red ants on the playground that I should have gone down and taken care of myself. But the truth is the reality is for the most part, the buildings are a function of the local district. And if you envision a time when the state should be looking into the cleanliness and/or the safety of the facilities, you'd have to envision a much larger State Department of Education because compliance staff at the Department is under a hundred, I believe, and that's for 8,914 schools serving 6.2 million children.

MR. JACOBS: So we'll give a marked version in a second, but you can start looking at that.

(Exhibit 330 marked for identification)

BY MR. JACOBS:
Q   We've marked as Exhibit 330 an article published January 7, 2002 from the Contra Costa Times downloaded from the web version. "State Education Chief's term wanes. Delaine Eastin's tenure has been contentious, but that may be built into the position."

And I'm going to take a look at the article,
old, this superintendent can't do anything about it,
Eastin said. I can't go in and order you to fix the
bathrooms, paint the walls."
MR. JACOBS: That's the paragraph.
BY MR. JACOBS:
Q Did you convey the substance of that
paragraph for a reporter for the Contra Costa Times
in interview around January 7, 2002?
A Yes.
Q And what else did you say to her in that
interview about the powers of the superintendent to
order schools or school districts to do things?
MR. SEFERIAN: Objection. Assumes facts not
in evidence.
MR. VIRJEE: Calls for speculation. Lacks
foundation.
THE WITNESS: Well, I'd have to read the
whole thing to see. You know, I might leave
something out.
Okay. Now, what was your question?
BY MR. JACOBS:
Q Did you say anything else to the reporter?
It was obviously some time ago, but did you say
anything to the reporter in addition to what's
quoted here about your power to go in and order
schools to do things?
A I don't recall. I mean, it's what's here in
the article.
Q In the previous paragraph it says:
"Although Eastin acknowledges the huge disparity in
resources, facilities and academic achievement in
the states, sometimes within the same district..."
Stop there. Do you see that fragment?
A Where are we?
Q It's right up here.
A I see it.
Q Did you acknowledge a huge disparity in
resources sometimes within the same district to that
reporter?
MR. VIRJEE: Objection. Vague and ambiguous
as to "huge disparity" and "resources, facilities
and academic achievement" unless you're asking
whether she used those specific words.
THE WITNESS: It's not in quotes, so I don't
know if that's exactly what I said.
BY MR. JACOBS:
Q In substance?
A Substantively I said there is definitely
disparity within the state, sometimes within the
same district. State superintendent can't change
that.
Q I'll tell you what my reaction was. You can
tell me whether I accurately inferred what you were
trying to conveying. When I read it, I inferred
that you had seen cases in which you had wished you
could pick up the phone and say, "clean those
disgusting bathrooms;" is that accurate?
MR. VIRJEE: Objection. Vague and ambiguous
and calls for speculation. Vague and ambiguous as
to "is that accurate;" is that what you inferred.
Also vague as to time as to when that might have
occurred.
THE WITNESS: I think that's a level of
detail that one person with a small department is
not going to be able to do. I mean, it really calls
for a rethinking about how the Department of
Education is run and staffed, and it calls for big
changes in state law.
I think the reality is that the first line
of defense is the local school district, and that
the superintendent and their boards should be
walking around the schools and seeing these things
and taking steps.
And the first line of defense for parents
should be to go to the principal, and after that,
you would desire or would have desired when you were SPI.

You visited a school district where, you know, there’s mismanagement or even corruption, and that has led to a low-performing down-in-the-heel school, is it your view that you wish to leave the remedy for that down-in-the-heel school to the success or failure of local control?


MR. SEFERIAN: Compound question.

THE WITNESS: Can you break the question into pieces for me, please.

MR. JACOBS: I think so, but maybe I can come at it from another direction.

BY MR. JACOBS:

Q This tradition of local control in which parents, school boards, local school officials are responsible for the maintenance and upkeep of schools, that’s been the system for many, many years now, correct?

A Yes, correct.

Q And in many cases it works quite well?

A Yes.

Q In fact, in the majority of the schools that you visited around the state, did you find them in the sense in which we’re talking about it now, not down-in-the-heels?

MR. VIRJEE: Objection. Vague and ambiguous as to "down-in-the-heels." Vague as to time.

THE WITNESS: I saw a tremendous improvement in the eight years that I was state superintendent. I think the level of investment increased and the attention of the local districts on issues like modernization helped us.

We did, for example, Net Day. And on Net Day we had 30,000 volunteers turn out to help us wire schools. If anything, I think it was an eye opener to a lot of people. They got into the schools, and they said, huh, there's some need here. And I think what we saw were more people willing to help out.

When we first changed the bond vote to 55 percent, 29 out of the first 29 bond votes passed. So I think there was a lot of enthusiasm for us working on improving the schools.

I think that the job of the state superintendent, though, on the academic accountability side and the financial accountability side is sufficient to keep any one person very, very busy in California, and I don't think that the current system you will find the superintendent wanting to become deeply involved in monitoring for cleanliness.

Now, I wrote AB 1200 as a legislator. So I do believe the state has a responsibility to make sure that the money gets well spent, and I do believe that there is -- there are a few districts that are actually, as you said, corrupt, but very few.

Now, we have a mechanism for getting at those very few districts that are corrupt. We also have academic accountability, which is something we fought long and hard for. But you can't really have had academic accountability before you had standards and aligned to standards.

So I think we're trying very hard in the state to focus on the right stuff, and the right stuff is making sure all kids get to high standards, making sure all kids have an opportunity to have an opportunity to learn.

BY MR. JACOBS:

Q Let's talk about AB 1200 for a minute. You were Superintendent of Public Instruction when the state took over Compton, correct?

A No, I was not.

Q It happened before?

A Yes.

Q You were SPI during much of the state's direct administration of the Compton School District?

A Correct.

Q What was your involvement in reviewing the actual administration of the Compton District during that period?

MR. VIRJEE: Objection. Vague and ambiguous as to "involvement."

THE WITNESS: Well, my biggest responsibility was to finally find a state administrator that would focus on the right stuff and would, in fact, do the right things by those children. And Randy Ward proved to be not only a good financial manager who paid the loans back to the state, but an excellent academic leader who focussed on the instruction of those children, and we saw a tremendous improvement in the children's education.

Most of the review on the financial side,
for example, was done through the people that worked for me, the financial side. I would get sometimes notes or information in a biweekly report on how things were going from the financial people and/or from the academic people.

And we did try to give Randy some support from the Department. We sent some people down physically from the Department to -- and we helped him find in one case a retired annuitant that could help him set up a personnel system.

Compton is the exception that proves the rule. And other people helped too. CSPA did some training of their board members, and we had other -- FCMAT certainly played a big role. But there's enough going on in the Superintendent of Public Instruction's life that you don't spend a lot of time on any one of the more than thousand districts, even the state control.

We did spend some time, and I met with Randy when he was in Sacramento, and occasionally we'd talk on the phone. But he would also talk to others like Richard Whitmore, who, you know --

BY MR. JACOBS:
Q       Let me ask you a little more about Compton just to talk about the exception a little bit more.

BY MR. JACOBS:
Q       I want to ask you whether you conveyed to the reporter that, "Compton's fiscal problems were linked to decades of nepotism, cronyism and corruption"?
A       I probably said that. We had an audit. Los Angeles County did an audit and specifically used the words "nepotism and corruption."
Q       In what way do existing state mechanisms prevent school districts from falling as far as Compton fell in terms of these issues of "nepotism, cronyism and corruption"?

BY MR. JACOBS:
Q       Would you repeat the question.

THE WITNESS: Well, AB 1200 set up the Financial Crisis Management Assistance Team officially known "FCMAT." It also, though, gave county offices a much greater role.

Let me give you this to look at while I mark it.

BY MR. JACOBS:
Q       Here's the marked version for you. 331 is an article from The Chronicle, May 11, 2003. "Oakland gauges results in Compton as state takeover of district looms." There's a paragraph in here -- actually, a section called "Corruption in Compton" which purports to be based in part on an interview of you. And then on the next page, it's the printout, page 7, there's a quote from you on the top: "Oakland is no where near as broken as Compton,' Eastin said. 'Compton would still not be considered a good school district, but it's improved.'"

And then in the middle of the page: "Randy found that as soon as he got teachers credentialed they'd split to different districts,' Eastin said." So when you're ready to answer --

MR. VIRJEE: Delaine, feel read to read the whole article if you feel that's necessary to answer the questions.

The superintendent of Contra Costa County testified before the Legislature that he had looked at the books at what was then Richmond Unified School District and seen them spiraling down financially, and he couldn't do anything about it, he said.

And I was an accounting manager in one of my past lives, and I was horrified. I mean, what was the point of having books if nobody reviews them? And neither did the State Department review them because they weren't staffed to do that, and they weren't charged with doing that.

So AB 1200 set up, you know, and it was -- by the way, it wasn't the easiest bill I ever wrote. There were opposition from some of our friends on AB 1200.

The mechanism, though, the first line of defense was the County Office, and the County Office was to, you know, look at the books and make sure that everybody was in the black. And then after that, if there was thought to be a problem, we could invite FCMAT in. The problem in Compton was that they were cooking the books. You know, it's what dishonest people do. They said they were in the black; they
weren't broke. And it was only after the audit that it came clear that they were quite definitely in the red, and far into the red. And that was the reason that they had so many nonteaching personnel on staff. They had a lot of -- at one point almost twice as many nonteaching as teaching personnel, so they were larded up with assistance. They had 132 district police, if you can imagine, making it one the largest police departments in the county.

So we decided -- and we went through the process. We decided we needed legislation. We went through the process of writing a bill. We arm wrestled with the education stakeholder groups and with the Superintendent of Public Instruction at the time, Bill Honick, and Bill didn't want the responsibility in the Department because he felt that the Governor would never give him the staff to do that kind of oversight. And because Prop 98 -- this is an arcane point, but important one -- Prop 98 funds cannot be used to run the Department, but they can be used to fund county offices. So we dreamt up this kind of juryrigged process where we created an opportunity for county offices to bid on doing the Fiscal Crisis Management Team. So Kern County actually runs FCMAT, and is funded with Prop 98 monies to do its work. And, in fact, at one point, about half the revenues of the State General Fund money that the Department has to do its full responsibilities. So the tail sort of wags the dog now. And FCMAT isn't even in Kern County. It's located in Sonoma County.

Management Team. So Kern County actually runs FCMAT, and is funded with Prop 98 monies to do its work. And, in fact, at one point, about half the revenues of the State General Fund money that the Department has to do its full responsibilities. So the tail sort of wags the dog now. And FCMAT isn't even in Kern County. It's located in Sonoma County.

BY MR. JACOBS:

Q       And administered still out of Kern?
A       Still administered out of Kern.

So, you know, the long and short of it is that we have a process which involves the Legislature and the Governor, and if you want to change the way things are done in terms of oversight, superintendent can't just go in and say we're going to knock heads and do things. We have to follow the law.

And the law we wound up writing was a combination of a variety of different realities and did create an odd but turns out fairly effective system. We haven't had many bankruptcies in the state considering we have so many districts. And usually it is because there's corruption. I mean, Emery went bankrupt using the same superintendent that had bankrupted Compton. And yet, you know, on the books it looked like it was in the red -- I mean, in the black. And we sent staff down there to take a good look. And subsequent to that, my staff went down.

We invited the Alameda County office to join us because we were concerned about an article we had read in The Chronicle, and they essentially said pay no attention to that article in the Chronicle; we're fine.

And we got in there and looked at their stuff and agreed that we needed to send FCMAT in to do a complete audit. And when we went in, they found many of the same type of problems that existed in Compton.

Again, this is quite exceptional. Only a half dozen school districts have gone belly up. A few others have had the County Office step in and give them direction and purpose and scope and helped them to stay out of bankruptcy.

Q       All districts now have their budgets reviewed by their country superintendent?
A       Yes, except San Francisco which is reviewed by the Department because there is no County Office in San Francisco.

Q       And the review of the office is designed to test for solvency?

MR. SEFERIAN: Objection. Vague and ambiguous.

MR. VIRJEE: Also calls for speculation.

THE WITNESS: The review of the budget is designed to make sure they're following state law in terms of their assets and their liabilities.

BY MR. JACOBS:

Q       As long as the budget is balanced with the necessary reserve component, it's not designed to test for management efficiency?
A       No.

MR. VIRJEE: Objection. Calls for a legal conclusion.

BY MR. JACOBS:

Q       No, that's correct?
A       We are not trying to determine management efficiencies. There's no way that a department with that size staff could do that. 8,914 schools and over a thousand school districts, and some are bigger than whole states. You know, San Diego is bigger than a lot of states, let alone Los Angeles, which is as big as the ten smallest states put together or something.

Q       My question, though, was about the review by
county superintendent not about the State Department of Education.

A Well, the county I would argue is in a similar situation. They review for financial soundness. They don't make judgments about how well managed they are anymore than a bank examiner makes decisions about how well managed a bank is.

Q The Emeryville experience was designed to catch Emeryville before it fell as far Compton had fallen?

MR. SEFERIAN: Objection. Vague and ambiguous.

MR. VIRJEE: Vague as to "Emeryville experience." Calls for speculation.

THE WITNESS: We asked FCMAT to go into Emery Unified. It's actually called "Emery Unified." We asked FCMAT to go into Emery Unified to determine whether their accounting was accurate. And they determined that their accounting was not accurate. That they were in deep financial difficulties; that they'd overstated their A.D.A., average daily attendance, and that they were in a tough spot.

They weren't as broken as Compton because we now had a way of getting in there sooner. There wasn't a FCMAT when Richmond went bankrupt. And even when Compton went bankrupt, I think we were just starting the process with FCMAT. It was a baby organization then.

BY MR. JACOBS:

Q By the time you left as SPI, was there in your judgment some learning that had gone on about these exceptional school districts that rendered the staff of the Department more sensitive to the possibility that a district might be headed in this direction, and therefore, able to intervene earlier than occurred with, for example, Compton?


THE WITNESS: We still rely on counties as the first line of defense. We really are not in a position usually to go in and do those sort of things. We did notice Emery partly because Mr. Handy, who had been in Compton, was in Emery. And we saw the article in The Chronicle; it made our alarm bells go off.

But in West Fresno the county superintendent contacted us to say West Fresno is in deep, deep trouble. And we worked with the county superintendent, Pete Haus, to try to intercede in that I -- one of the quotes I pointed you to earlier is found about the effort to keep teachers in the district. And it says that, "Ward lifted teacher salaries, for example."

Do you see that in the middle of page?

A Is that on the previous page, on page 7?

Q It says page 7, yes.

A Okay. Yeah.

MR. VIRJEE: And which quote are you referring to?

BY MR. JACOBS:

Q Quote, "Randy found as soon as he got teachers credentialed, 'they'd split to other districts' Eastin said," close quote.

Do you see that?

A Uh-huh.

Q Was that your understanding at the time, that he was having trouble keeping credentialed teachers?

A Yes.

Q That was of concern to you?

A Yes.

Q What was your diagnosis, if you had one, as to why he was having trouble keeping credentialed teachers in Compton?

THE WITNESS: We have a problem in a number of districts with retaining teachers. It's a salary issue in many cases. Sometimes, though, it's that they want to live closer to home. Sometimes it's that they don't like the working conditions. And for a variety of reasons, though, even within a district, you'll have the more veteran teachers moving to the higher performing schools often.

And there's no easy state fix for that, but what we have done following the process I outlined earlier, we went to the Legislature and asked them to raise starting teacher salaries. We asked them to raise per pupil spending as well across the state, and we sought to give teachers more support by giving them, you know, the resources to not only be trained but to be able to help lower-performing kids.

And each one of those things had to be fought through the legislative and budgetary process. But we were successful in raising per pupil spending quite a bit in California in the last eight years.

This current budget isn't so well, but even there you don't see schools being cut as quickly as in '92 when we had a budget deficit situation, the then governor proposed suspending Prop 98. Nobody has proposed that this time.

I think there's an agreement on the part of most people in California that we need to keep our shoulders to the wheel when it comes to school improvement. But in order to fix this problem, you know, I think you would have to really increase the -- dramatically the involvement that we're making in children. And I think you have to do that across the state.

BY MR. JACOBS:

Q       Actually, your last sentence gets to what I wanted to ask you about which is that to the extent you raise average teacher salaries across the board, you don't necessarily address the problem of teacher migration from less attractive schools to more attractive schools, correct?


THE WITNESS: Could you repeat that.

(Whereupon, the record was read by the court reporter)

MR. VIRJEE: I'm also going to object to the extent it's supposed to be a paraphrase of her testimony. She didn't talk about average teacher salaries across schools.

THE WITNESS: We raised starting teacher salaries, which was important. We raised per capita expenditure for children, which helped us to raise all salaries. And we improved the working conditions in some of the lower-performing schools, which also helped us to retain some teachers.

The bottom line, though, is you either have to change state law, or you have to through collective bargaining find another remedy.

Right now the superintendent could not do anything to help Randy in that particular position, nor could the State Board of Education do anything.

The Legislature and the governor might do something like they've tried in New York City in one of the burrows, one of the precincts in New York City, where they raised teacher salaries by $20,000 at the lowest-performing schools, and they had the teachers working an additional month of the year so the kids get an extra month of education, but that was collectively bargained at the local level.

And you know, the only other thing, the only other way the state could fix it would be if we had a statewide salary schedule and the state paid additional resources for the lowest-performing kids.

But all that would have to go through the Legislature and the governor. There's nothing that the superintendent or State Board could do to make those things happen.

BY MR. JACOBS:

Q       Did you keep track over the course of your tenure the degree to which the programs you've pointed to addressed disparity in the distribution of fully-credentialed teachers across the state as between suburban relatively middle class, well off schools and urban schools teaching students of color with low ACS status?


THE WITNESS: Could you repeat the question.

MR. JACOBS: Let me break it down.

BY MR. JACOBS:

Q       You observed during the course of your tenure that the less-experienced teachers tended to be concentrated in low-performing schools, correct?
Mr. Virjee: Objection. Vague and ambiguous as to "less-experienced low-performing schools." And to the extent that's supposed to be a characterization of testimony, it mischaracterizes her testimony.

The witness: There have been some studies that show that children in the lowest-performing schools are more likely to have newer teachers. It's not always bad, by the way. Sometimes the new teachers are full of energy and enthusiasm. But what you hope is you have a good enough balance of veteran teachers so that you're able to mentor the newer teachers, which is one of the reasons that we fought hard to do a couple of other things that I haven't mentioned. One was BTSA, the Beginning Teacher Support Assessment Program, which was where a new teacher was paired with a veteran teacher for mentoring purposes. And we found out in some areas some schools where we had a lot of new teachers, we didn't have very many veteran teachers, we actually had teachers out of retirement, specifically for L.A. Unified as well as other districts, that sought to give more support to their lowest -- their newest teachers.

I think we also in the process of doing class size reduction we really tried to help all teachers to focus much more clearly on the beginning student's needs, on children's needs who were at the greatest risk. We also sought, didn't achieve, we sought mandatory kindergarten for all kids. It's not mandatory in California. I think it should be. We haven't been able to succeed, but we have increased the amount of preschool pretty dramatically. And with a lot of help from our friends, we're still continuing to try to do more to get the state into a position where we have universal preschool as you would find in high-performing countries like in Europe and some countries of Asia.

By Mr. Jacobs:
Q There were some school districts that didn't take advantage of BTSA, correct?
A Right.
Q And there were some school districts that had substantial numbers of beginning teachers who -- and in those school districts, the school districts didn't take advantage of BTSA?

Mr. Seferian: Objection. Vague and ambiguous.

Witness: I couldn't tell you which districts didn't. I know that there were beginning teachers that were not part of BTSA.

By Mr. Jacobs:
Q And that was concerning to you?
A Oh, yes. And it was a concern I think that the Legislature did respond to. I mean, the Legislature did substantially increase the investment for BTSA, made it a lot more available than it had been. And the Governor also I think recognized that there was research that showed, you know, that it was making a difference in the lives of teachers. So our retention of new teachers improved because of BTSA.

Q There were school districts with schools serving substantially low-performing SES children of color with teachers who were not taking -- with substantial numbers of inexperienced teachers during the period you were SPI, correct?

Mr. Virjee: Vague and ambiguous as to "low-performing."

Mr. Jacobs: Let me withdraw the question and start over.

By Mr. Jacobs:
Q During the period you were SPI, you were concerned about the fact that there were schools serving a large proportion of low SES children, often children of color, with large numbers of inexperienced teachers? I'll just set that up. And then I'll ask you a couple questions about what you did about it.

Mr. Virjee: Vague as to time. Calls for speculation. Incomplete hypothetical.

The witness: Yes, I was concerned that we had so many teachers that were not fully-credentialed period. One out of seven teachers in the State of California was not credentialed, and we were -- we took some steps, for example, there's a whole series of bills that were passed to Cal Teach, to In Right (phonetic), to get people into teaching. Then BTSA to keep them. They were raising beginning teacher salaries, as well as organizing districts -- you know, passing legislation that made it impossible for districts to keep inexperienced teachers for years and years and years when they weren't working on their credential. We set an absolute time limit where they could have an emergency credential, and then they had to be enrolled in a program and had to get their credential within a specified period of time.
BY MR. JACOBS:

Q       And one of the particular manifestations of
the phenomenon that you just described was that
there were teachers of the character that you just
described concentrated in schools serving low SES
children, typically children of color, correct?

MR. VIRJEE: Objection. Calls for
speculation. Lacks foundation and vague as to time.
MR. SEFERIAN: Vague and ambiguous.
MR. VIRJEE: Also compound as to "children
of color" and "low SES."

THE WITNESS: We had a lot of uncredentialed
teachers, and there did seem to be a higher
concentration of uncredentialed/emergency credential
teachers serving the low SES children. On the other
hand, we had a lot of charter schools as well that
had a lot of uncredentialed people. And they were
trying to move the ball for those kids, and
sometimes were succeeding.

So we also had some other things we tried to
do to get more credentialed teachers into the
system. They wouldn't let me go out and make them
indentured servants or anything. So we did, though,
try to make it easier for people that came from
other states. We sponsored legislation that called
for reciprocity with other states. We found even
some teachers that were from high-performing states
who had great resumes and great recommendations were
having to jump through a lot of hoops to become
teachers in California. So we did a lot to try to
urge the California Teacher Credential Commission to
increase reciprocity with other states. And with
these many other bills, we were endeavoring to
create a much larger group of new teachers, which we
did.

MR. JACOBS: Let me mark as Exhibit 332 an
article entitled "Panel Agrees Teachers Need More
Training" from the L.A. Times Internet Edition,

(Exhibit 332 marked for identification)

BY MR. JACOBS:

Q       You are quoted in the middle of the article
on the first page in particular as saying that the
heart of quote, "the educational crisis," unquote,
in California is that, quote, "too many children
have uncredentialed, not fully-qualified teachers.
This is particularly true in many inner-city, urban
and some rural schools," close quote.

A       Yes.
1 minutes ago?
3 THE WITNESS: We have more credentialed teachers than we used to have. We had a huge problem that was created by the speed with which class size reduction was implemented.
4 When I initially proposed the bill, we proposed phasing it in over four years. Pete Wilson made fun of me over that bill, and then later in June when his tax cut was defeated, he looked around and thought, my God, there's going to be all this money out there available. Because we owe money under Prop 98 because we illegally took money away from schools, the courts were in the process of ruling.
5 So he agreed to finally at the 11th hour do class size reduction, gave us two weeks to implement it. Literally the Department had two weeks, no resources to implement a billion dollar program. And because of the hard work of a lot of superintendents and principals and boards and people of good will in the state, we were able to reduce class size pretty quickly.

But what that did was exacerbate the teacher shortage because we needed 30,000 more teachers, and we didn't have 30,000 extra teachers lying around; although, you can make the case that we have actually tens of thousands of teachers out there in the ether who could come back to schools and teach for one reason or another. They're not -- they're either working in some nice law office or working in Silicon Valley or home raising their kids or doing something that pays more.

So overall, I have consistently said that I think the State of California and the United States of America should do a lot more to support its teachers and to treat them like they have the most important job in America including paying them more. And we did make some progress, but we still haven't made all the progress that we need. As a result, we still have some inequities.

BY MR. JACOBS:

Q Class size reduction aggravated the problem, referred to on Exhibit 332, in substantial part because of the speed of the implementation?
A Yes.

Q And it aggravated it to the detriment of the students in the inner-city, urban or rural schools that you were referring to in Exhibit 332?

MR. SEFERIAN: Vague and ambiguous.

THE WITNESS: Well, lessened the problem in some of the rural schools. They stepped to have small classes anyway. They just have a supply problem.

In the inner-city school where they were able to reduce class size, there was a problem. But in some of the schools in L.A., they didn't have enough classrooms. So they didn't have any space to put them, so they were in a facilities bind.

L.A. has since passed a very large local bond, and they're working very hard to fully implement class size reduction. And they got a few exceptions to be able to try to get more of the reduced class size impact on the lowest-performing schools. They really worked at it.

But it was a big problem for the State of California because of the speed. A program of that magnitude, I mean, even in the private sector, if you tell somebody you've implemented a billion dollar program in two weeks, they go, "Wow. With no additional staff? Wow."

You know, and so it was -- it had an impact, and it's still having some impact in the State of California.

BY MR. JACOBS:

Q And in particular the impact that you describe on 332 in inner-city urban schools?
A Yes, it's a problem there. They would still rather have the problem, you understand. They would rather have smaller class sizes and have teachers that are in the process of being credentialed than to have the large class sizes with fully-credentialed teachers because they could choose to do that now.

Q Well, if it's the inner-city urban school, it's competing with the suburban school to fill the teacher slots that open up with the CSR, correct?

THE WITNESS: We think that class size reduction -- I think that class size reduction is a good thing. And I think that inner-city boards tend to think class size reduction is a good thing. And they do try to have reduced class size. It does, in
fact, probably make the challenge of having
fully-credentialed teachers more severe, but if the
alternative is we have fully-credentialed teachers
in classrooms of 45, that's not a good instructional
option.
BY MR. JACOBS:
Q       There were warning signs as the CSR program
was being adopted, warning signs that if it's
adopted so quickly, we are going to create a problem
of teacher shortages.
MR. VIRJEE: Objection. Vague and ambiguous
as to "warning signs." And also calls for
speculation or lacks foundation as to who might have
been warned by what.
THE WITNESS: Well, there were some problems
already with uncredentialed teachers being in
classrooms. Clearly the class size reduction being
implemented in a two-week period made that situation
much more dramatic. But subsequently, there were
lots of legislative efforts made to fix the problem,
including putting a limit on how long they can be
emergency credentialed, making them enroll actively
in some kind of an internship program, and
encouraging them to get the additional training
provided as well as having a much, much expanded
BTSA. It started out as a pilot program, and it
became available for virtually every school in the
state where the districts took advantage of it.
MR. JACOBS: Let me mark this as 333. Take
a look at that one.
(Exhibit No. 333 marked for identification)
BY MR. JACOBS:
Q       333 is an article from the San Francisco
Chronical downloaded from Nexus headline on Better
California Schools; Is Smaller Always Better?
A       Yes.
Q       And you see in the opening paragraph it
describes -- it has a characterization from you of
the challenge of implementing CSR in so rapid a time
table. Do you see that?
A       Uh-huh.
Q       And the quote he said, quote, "Gee,
Delaine, I'm really sorry we didn't give you much
money or time to do this, but I hope you can do it'
Eastin recalls." Do you see that?
A       Uh-huh.
Q       Did you convey that in substance to a
reporter from the San Francisco Chronicle?
A       Yes, I believe so.
Q       And do you see there's some reports of some
studies in the article that question the
relationship between class size reduction and
improved student achievement?
MR. VIRJEE: Can you tell us where you're
pointing to, Michael, unless you want her to read
the whole article first. I mean, I don't think
she's done that.
BY MR. JACOBS:
Q       I think the only study report is the
paragraph, "however painful it might be to
accept..."
A       Do you see that?
Q       And you've noted that some of the studies
have pointed to loss of student achievement among
the most at risk students because of their higher
probability of being taught by inexperienced
teachers?
MR. VIRJEE: Objection. Calls for
speculation. Lacks foundation. To the extent
you're referring to a particular study, that
document speaks for itself.
MR. SEFERIAN: Vague and ambiguous.
THE WITNESS: Well, and you ought to look at
the other RAN study. They said it was inclusive in
that study because there were so many reforms that
had begun at the same time, they couldn't say which
ones were related to class size reduction, which
ones were related to other things. I do not know a
teacher or pretty much very many board members
around this state that didn't think class size
reduction was overall a good idea.
There was another RAN study called Improving
Student Achievement in which they cite five
characteristics of the highest performing states,
one of which is smaller class sizes in elementary
grades. So this is inconclusive, The Chronicle is
saying.
But if you really read the report, they say
it's inconclusive because we did a lot at the same
time, a lot of student reforms.
I would argue that even at the
lowest-performing schools of this state, you're
seeing pretty impressive gains. It's relative. You
can't be like the legislator who stated I want
especially all schools to be in the top five API,
top five decils of the API. There's always going to
be schools in the bottom decile. But overall and on balance, the vast
majority of schools in this state are moving up. There are some that are chronically behind and don't
move up. When that happens now under either the OB
Porter Elementary and Secondary Acts Program,
Improvement Program or through the governor's IUUSP
Program, Immediate Intervention Under Performing
Schools Program, or the Legislature's High Priority
Schools Program, or now under No Child Left Behind, there are a number of opportunities for the schools
that are low-performing to get help. And if they
don't get help on their own nickel, then we will, in
fact, intervene in those schools.

BY MR. JACOBS:
Q  The bottom line for you on whether CSR is a
good idea, is it the fact that so many school boards
and so many teachers and so many administrators and
so many parents have concluded that it's in
children's best interest to be taught in smaller
classrooms, is that at the and of the day that's why
you support the program?
MR. VIRJEE: Objection. Vague and ambiguous
as to "good idea" and "support the program."

THE WITNESS: I went to a school in Santa
Maria, Bonita. This little boy, Sherman, sweet
face, big glasses, looked me right in the eye when I
asked him whether class size reduction was a good
idea. He nodded very sincerely. And I said, "Why?"
And he said, "You know, we're learning
more." And pointed to his teacher and said, "She
has more time for me. And you know what else? It's
quieter in here."
I don't know -- you know, there are some
times you just have to remember what Mark Twain said
when he said, "The problem with common sense is it's
not very common."
Common sense tells us that smaller class
sizes are good. That's what people that send their
kids to these very expensive private schools cite as
one of the reasons -- the fact is that the class
sizes are smaller.
The year we implemented class size
reduction, the estimate was that we would have
something like 80,000 kids in California public
schools. We actually had 142,000 kids. I was never
given any money to research this, so it's pure
speculation on my part, but I believe it's because
we got kids back from private schools.

BY MR. JACOBS:
Q  The 80,000 or 140 was the incremental growth
in school population?
A  Yeah. Now, it's settled back down. We add
about the state of Wyoming every year in California.
Wyoming has 90,000 kids, and we add a little over
100,000 most years. So the growth of the state
naturally does put great strain on the state's
budget, and it puts great strain on recruiting and
retaining our teaching force because we are growing
as a state.
And that's why I really believe that, you
know, ultimately we're going to have to have a
conversation about paying teachers a higher salary,
or they're not going to teach in the San Francisco
Bay Area and Santa Barbara and San Luis Obispo and
L.A. and San Diego because they won't be able to
afford to live there, and it's an interesting
problem, but in upscale communities and in
inner-city communities recruitment is a problem.

Q  But a worse problem in inner-city community?
A  Yes.
MR. SEFERIAN: Objection. Incomplete
hypothetical.

MR. VIRJEE: Lacks foundation.
THE WITNESS: Other than that, it was a
great question.

BY MR. JACOBS:
Q  We were talking before the break about your
visits to schools, and on occasion you would
encounter parents who had complaints about school
conditions, correct?
A  Yes.
Q  Did you encourage them to use the Unified
Complaint Procedure?
MR. SEFERIAN: Objection. Vague and
ambiguous.
THE WITNESS: Typically I would urge that
they first go to their school district and to the
school superintendent and the school board if they
had already gone to the principal because, in fact,
that is the further line of defense. And, you know,
the way we operate in given the size and scale of
California, it just makes a lot more sense for people to start at the local level.

**BY MR. JACOBS:**

Q       Did you urge help to use the Unified Complaint Procedure if that was unsuccessful?

MR. VIRJEE: Objection. Vague and ambiguous as to "Unified Complaint Procedure."

THE WITNESS: On occasion we would invite people to write to us to -- if they really felt like they had been given the runaround. And we would ask if they had inquired with the Department, and if not, we would tell them that would be the next step then, and be as specific as possible, and we'd try to help them.

**BY MR. JACOBS:**

Q       And we were talking before the break about your powers to direct school districts to take actions. As you implemented the UCP, if someone wrote to the Department and invoked the UCP, did that change your powers?

MR. SEFERIAN: Objection. Incomplete hypothetical.


THE WITNESS: As a typical matter, I didn't see the UCPs unless it was something extraordinary. And typically when we got a complaint, they hadn't gone to the local district first, and that is where we would send them. That is where they're supposed to go first.

The exception is, you know, we had a special case situation with special ed kids we would really be pretty active on their behalf. But, again, 6.2 million children right now. 6.1 when I left office. You know, the Department gets a lot of different kind of detailed complaints that the superintendent doesn't see.

**BY MR. JACOBS:**

Q       But as you understood, through the UCP the result in directive action from the Department to the district, in those cases is where the Department felt that the district had been nonresponsive?


THE WITNESS: I can't give you any specific examples of places we did that.

**BY MR. JACOBS:**

Q       And in general your understanding is that, in fact, the way the UCP worked, was that the Department would get -- if the Department did get UCP complaints, its authority was the same as the authority limitations that you described before the break; in other words, a parent invoking the UCP didn't all of a sudden empower the Department to actually direct the district to take action to remedy the parent's complaint, correct?


THE WITNESS: I really -- that is pretty vague as far as I'm concerned. I mean, there are specific cases where let's say a child who was in special education would be entitled to some intervention, and we would make it.

But for the most part, I didn't get very involved in, you know, what we did. And my experience, though, is most of the time we used the -- we jaw boned or used the bully pulpit to try to get the district to do the right thing. And normally they do the right thing.

**BY MR. JACOBS:**

Q       So if we take a look at Exhibit 330 again, and we discussed earlier the portion of the article where you are quoted as saying, "I can't go in and order you to fix the bathrooms and paint the walls."

A       Yes.

Q       That remains true even if a complaint comes in through the UCP, correct?


MR. SEFERIAN: Incomplete hypothetical.

THE WITNESS: I don't know. We would obviously -- there might be an exception, but the legal staff would make that determination. For the most part, I don't believe we ever did that.

**BY MR. JACOBS:**

Q       In a few paragraphs up -- we're looking at the second page of the article.

A       By the way, the exception to that would be Compton because we were running Compton. So we were responsible for making sure the bathrooms were cleaned up, and we did that.

Q       All right. So if you go up on the second page, and there's the fourth full paragraph, so there's a carry over paragraph, and then one, two, three, four down, there's a paragraph that says:

"In addition, the inequities of education in California are,'coming to a head,' Eastin said."
Do you see that?

A Uh-huh.

Q Did you discuss the topic of inequities in education with the reporter for the Contra Costa Times in connection with this article?

MR. VIRJEE: Objection. Vague and ambiguous as to "inequities."

THE WITNESS: I believe I was referring to the several accountability bills that I have mentioned where we for the first time had the authority to go into schools and do more than just say, tisk, tisk, I guess is the way you put that, with the program improvement schools under the OB Porter legislation as well as with the IIUSP and high-priority schools, and now with No Child Left Behind, there is a lot more -- there's a lot bigger role for the state in terms of making sure that children are not allowed to languish in low-performing schools for long periods of time. There still, however, isn't -- there hasn't been much attention yet paid by the Governor and the Legislature to who's really going to do the heavy lifting when a school fails to improve. There's some vague language about the superintendent having either a university take over the schools or some other nonprofit or some other entity. I mean, if you know any universities that are prepared to take over low-performing schools, you really ought to tell me because I don't know who they are. I think it's a little like that Gary Larson cartoon where the two scientists are in white lab coats talking to one another. One guy has written a family on the board. In the middle, "Here a miracle occurs." One guy says to the other guy, "This needs a little work, Fred." I don't think there's even today the mechanism in the State Department or the mechanism in the State of California to do some of the work that needs to be done in the not too distant future, but that's for the Governor and Legislature to decide. There isn't a staff at the Department. There isn't authority at the Department to do that which is envisioned in many of these accountability systems, and that's why the State Legislature and the Governor have got to get more engaged in what we're going to do when the rubber meets the road on No Child Left Behind.

Q And in particular you're referring to the rubber meeting the road as to schools that don't show academic achievement gains?
THE WITNESS: Okay.

BY MR. JACOBS:

Q Okay?

A Okay.

Q So back to that question and answer I asked you about.

A Which one was this one?

Q Page 3: "How evenly are educational resources appropriated among California schools?"

You start out by saying: "The good news is they are more equal than they once were." Do you see that?

A Uh-huh.

Q Was that your comment to the interviewer in this interview?

A Yes, I believe so.

Q At the end of that paragraph you state: "Again, I think that our goal should be not just absolute equality dollar per dollar, but in fact, additional support for the children that have learning challenges." Do you see that?

A Yes.

Q Does that accurately capture the substance of something you said to the interviewer?

A Yes.

Q So looking at that sentence and reflecting on it, you have given a lot of thought in the course of your career to what it means to have equality of educational opportunity, correct?

MR. SEFERIAN: Objection. Vague and ambiguous.

MR. VIRJEE: Vague and ambiguous as to "educational equity."

THE WITNESS: Well, I fought to raise achievement for all children and to make sure that every child gets a world class education.

BY MR. JACOBS:

Q And is that what you mean by the goal that you would like to see us reach in terms of equality of educational opportunity?

A Yeah, I don't think you can give absolute equality to every person. That is not what the Founders meant either. They meant equality of opportunity. And I think if we do our jobs well, then that child with cerebral palsy, Steven Hawking, Tom Cruise, whose dyslexic, will both get a great education and make great contributors. I think that there are issues that some kids have either because of poverty or because of special needs that the society because it's America needs to address.

But I do -- I also want to say that I've been in little schools in rural remote parts of the state that aren't magnificent, but they're excellent schools.

And I think one of the surprising things about going to Japan was to see they actually have very, very large class sizes in Japan. And the school year starts in April, and the schools are very big class sizes and no airconditioning; they're hot. In fact, we were all about to pass out, those of us who had lined suits on, because it was so warm in the room.

So I think you can -- I don't think it's a question of absolute dollar for dollar equity, nor is it a set of absolute conditions. But I do believe that every child should be given a quality teacher and a good classroom and adequate materials, and I think that we've worked hard as a state -- I worked hard as an individual, and we've worked hard as a state to do a better job by kids than we were doing a decade ago. We still got a ways to go.

Q Just to take the Japan case for a minute, what's the significance of that experience for your view of what we need to accomplish in California?

A Well, when I came home, I thought to myself, you know, what is -- they weren't as Tony as I thought they would be. The schools weren't as nice as I expected them to be. And they were more crowded than I thought they would be. But what was interesting was that the teachers are really treated with great respect in Japan, and they're paid at approximately -- this is anecdotal. I don't have personal research that I did on this. But I've read in a couple of different places that the Japanese teachers make what Japanese engineers make.

So I do think that in a society where you really want to have high student achievement, that you have to give teachers support. That was one of the other things that the RAN study found in the highest-performing states. I mention that in here. One of the things is higher pupil spending, smaller classes sizing in elementary education, public pre-kindergarten, high percentages of kids attending public pre-kindergarten. The teachers who say they are given adequate support and teachers who have low turnover, those are all the characteristics of the highest performing states which probably Connecticut is the example.

But I don't want to put too fine a point on having -- on "equity" meaning that everything looks
the same because it doesn't necessarily have to look
the same. What it has to do is make sure there are
certain key components.
Q In Japan the schools that you saw, you had
the impression were typical?
MR. VIRJEE: Objection. Calls for
speculation. Lacks foundation. Vague and ambiguous
as to "typical."
THE WITNESS: I don't know. I mean, I
assume we were guests of the Japanese Ministry of
Education, so I assume that they took us to good
schools. But I have reason to believe they were
typical. We sent teachers every year and a member
of the Department every year to Japan. I went once.
And the experiences of other people that went that I
spoke to were very similar to mine, and they went to
different schools.
BY MR. JACOBS:
Q And one of the points you make in this
paragraph is that: "In order to give some students
the fullest opportunity to learn, they may need
additional support compared with students who come
from environments that are supportive of learning."
Do you see that?
A Yes.

speculation. Vague and ambiguous as to "target."
THE WITNESS: There are low-performing
children in high-performing schools. So we try to
help them as well as the low-performing children in
low-performing schools. We had a lot of programs,
though, that were intended help children at risk.
Everything from academic programs, which were
after-school programs, instructional materials
programs, all those things, as well as trying to
make them safer, trying to make sure that the school
environment was safe, making sure that the school
environment was better for kids. We worked very
hard on all those things.
We cannot, you know, go to their home and
change their family life. And I'm sad to say that
there are kids in California schools that are in
foster homes or group homes or who have loving
parents, but they have a single parent at home
working two jobs. Those children we can't help them
when they're home necessarily. We can't help them
on their way to school, which may be risky for them.
But we did try to do things to get them to attend
school and to get them to stay after school and to
get them to get extra help from a variety of
different, you know, means.

Q And that's something you believed in while
you were SPI as a goal?
MR. SEFERIAN: Objection. Vague and
ambiguous.
THE WITNESS: Repeat the question.
BY MR. JACOBS:
Q That was something you believed in when you
were SPI as a goal to provide additional support?
A Yes, something I believed in and worked for.
We had, as I said, smaller class sizes, more
instructional materials purchased, more textbooks,
library books, computers, more money for teacher
training, more money for professional development
once they were teachers, professional development
for principal as well when we supported better
facilities.
I mean, we really did work hard to lift up
the lowest-performing schools and to support the
children in the lowest-performing schools.
Q Were any of those programs that you just
mentioned targeted at the kind of children you're
referring to in this paragraph that as "needing
additional support"?
MR. VIRJEE: Objection. Vague and ambiguous
as to "additional support." Overbroad. Calls for

Q The distinction you drew in that sentence
was between schools. One school has lots of
children who didn't have books and opportunity to
learn at home, and I guess by inference, a school
that has lots of kids who do have books and
opportunity to learn at home. Do you see that?
A Yeah.
Q Were any of the programs that you've
described targeted at schools that have lots of
children who didn't have books and opportunity to
learn at home?
MR. VIRJEE: I'm going to object as
mischaracterizing the statement. The statement is
vague. It could refer to children or schools.
THE WITNESS: Would you rephrase the
question.
MR. JACOBS: Sure.
BY MR. JACOBS:
Q If you read the whole block there, it says:
"Even if you gave an identical amount of money to
two schools, if one school had lots of children who
didn't have books and opportunity to learn at home,
those children might need additional support."
Do you see that?
A: Yes, I see that.

Q: And my question is if you view the unit of targeting schools, were any of the programs that you described targeted at schools with lots of children who didn't have books and opportunity to learn at home?

MR. VIRJEE: Objection. Vague and ambiguous as to "targeted." Also asked and answered.

THE WITNESS: There are programs that are designed to help children in the lowest-performing schools, and that's the IIUSP Program, the Governor's Performing School Program, various titles under the performing law. And sometimes the schools whose children are most challenged have a higher percentage of special ed children; they do receive additional resources.

BY MR. JACOBS:

Q: Two sentences up you said: "Some districts are inefficient and a very few are corrupt."

A: Uh-huh.

Q: Does that also capture the substance of something you said to the reporter?

A: Yes.

Q: We've talked about the corruption issue before. I want to talk about the fragment that some districts are inefficient. What do you mean by, "some districts are inefficient"?


THE WITNESS: It might be something as simple as not having an inventory system for your textbooks.

Compton was corrupt, but it was also inefficient. And we discovered that in Compton they actually were buying the textbooks. They were spending the right amount of money, sufficient amount of money to give every kid a textbook. Because they were given no inventory system, the books never returned.

We had one woman drive up in her pickup truck say, "Where do I leave these? My five kids and I are moving out of town. We've been collecting these textbooks over the last few years. We want to give them back to you now."

Inefficiency could be not monitoring attendance as closely as you should be. It could be a variety of things that will affect the student.

BY MR. JACOBS:

Q: One of the things that Randy Ward instituted in Compton was a Retention Book Management System, correct?

A: That's correct.

Q: And it included a use of a software package that enables the district to computerize its inventorying of textbooks?


THE WITNESS: I don't know.

BY MR. JACOBS:

Q: Did you take away from the Compton experience any action plan to attempt to discern whether there were other districts that were mismanaging textbook inventory?

MR. SEFERIAN: Vague and ambiguous.

THE WITNESS: I may have mentioned it in a speech or something, but I had -- we had a lot of things going on, and I could spend a lot of time trying to figure out how to do textbook inventories. I was a lot more focussed on trying to make sure that children were learning, that the standards were being embraced, that we were aligning the assessments with the standards, that we were building an accountability system. And the level of detail, that is of local control issue, I just didn't get into that.

You know, it's hopeful that CSPA and others are giving advice to districts about how to do that. There are administrators, associations. There are coalition of various groups that do try to help districts to manage their work. Some districts use the county offices for their fiscal accounting. It's a very complex system. And we weren't trying to centralize the way textbooks were monitored in the state.
BY MR. JACOBS:

Q  Nor were you trying to centralize knowledge of how textbooks are in the state?


MR. VIRJEE: Assumes facts not in evidence. Also vague and ambiguous as to how textbooks are monitored.

THE WITNESS: We don't have any staff to do textbook monitoring per se. We have a curriculum staff that does work on the adoptions. We do try to -- we fought hard to get additional resources and then to make sure the resources were aligned to the standards. We worked hard to allow for on-line reviews of materials so people would know what those standards aligned. We worked hard on various aspects of the curriculum piece.

But the day-to-day monitoring of textbooks was just not in the purview of the State Department of Education. We wanted them to have hearings on whether they had aligned textbooks, whether they were spending their money right. But to actually go in and monitor their inventory procedures, was not something we were wanting to do.

BY MR. JACOBS:

Q  So when you said "some districts are inefficient," did you have anything else in mind by way of that fragment?

MR. VIRJEE: Other than what she's already testified to?

THE WITNESS: You know, we had other issues. We had some places that didn't monitor their cafeterias properly. And we had examples of people that weren't efficiently managing their bus systems. And there were a variety of things that we discovered in Compton that we had reason to believe were problems in some other areas.

But again, it's sort of like the Better Business Bureau may make recommendations to people about what they should be doing; they don't go in and monitor and micromanage what they're doing because they didn't have any authority, and we didn't have any authority either in a lot of areas.

There was inefficiency where we did have authority in places like nutrition, then we went in and tried to help people to do the right things.

BY MR. JACOBS:

Q  So on the next page.

A  Page 4?

Q  Yes. At the top, you discuss there something similar that you said -- to what you said this morning about the degree of constraint on the resources of the Department. Do you see that?

A  Yes.

Q  And then you say: "I am as fascinated as anybody out there about the inability of the State of California to force higher quality and more ethical and responsive behavior on the part of the kids."

What did you mean by that sentence?


THE WITNESS: It takes a long time to work through the process to get things done. It took us a long time to get standards. Then we had an assessment system that wasn't aligned to standards. There was a lot of money given out for rewards based on the test that wasn't aligned to standards which was really a loopy idea in my opinion. But then we got tests that aligned to standards. I got frustrated because we should have gotten rid of the other tests then because we now do excessive amounts of multiple choice testing and not enough really evaluating whether kids can think and write and speak, and life is not a multiple choice exam after all. So I have my frustrations.

We wanted an accountability system. Governor Wilson vetoed our first effort -- we had a Revise and Interventions Task Force that actually recommended things like the API, put it in a bill, had a Republican carry it, and Wilson vetoed it. So then we wound up with a Gray Davis answer which was not everything we wanted, and in some cases in realistic timetables. So it's frustrating. But all the time, you know, we were moving the ball.

I think whenever you deal with public processes, if you really care about children, you'll get frustrated because it's slow, but it's the way you have to do it. You know, I can't wave a magic wand. I can't grasp things from the ether. I can't make people do things that I'm not authorized to do under law. So I worked hard to get authorized under law to improve things. Some cases we juryrigged things in order to get stuff done. Some cases we got a half a loaf.

But we have constantly moved ahead as the State of California over the last decade I would say. And hopefully we're going to keep moving ahead, but it's frustrating.

BY MR. JACOBS:
Q       You were part of the implementation of the API, correct?

MR. VIRJEE: Objection. Vague and ambiguous as to "implementation" and "part of."

THE WITNESS: My record in the Sanctions Task Force suggested that we have an Academic Performance Index, that it not just be one factor, that it be more complex. And that we not only look at where an individual school was in achievement, but where it was in comparison to like-schools, so we worked on that. It's now, ironically, been part of No Child Left Behind. Many states are scrambling to do what we were already in the process of doing.

BY MR. JACOBS:
Q       So what part of what you believed was called for was, in fact, implemented in the API system?

MR. VIRJEE: Objection. Vague and ambiguous as to what was "called for."

THE WITNESS: I have an imperfect memory of all the details of the recommendations of the Task Force. Suffice it to say that we did want some assessment included, but we also wanted some additional information about subgroups within a school to be sure that all kids were moving ahead which is part of the API.

BY MR. JACOBS:
Q       And you wanted some other factors besides assessments, correct?

A       Right.

MR. VIRJEE: Objection. Asked and answered.

BY MR. JACOBS:
Q       And the legislation, in fact, of the PSA Act calls for an API that has factors other than assessments, correct?

MR. VIRJEE: Objection. Calls for a legal conclusion. The statute speaks for itself.

THE WITNESS: I have an imperfect memory of all the details of the recommendations of the Task Force. Suffice it to say that we did want some assessment included, but we also wanted some additional information about subgroups within a school to be sure that all kids were moving ahead which is part of the API.

We needed a student information system in California. When we have that, we will be much stronger in terms of our ability to use data to manage for results. We're still a ways away from that. That's one of my frustrations. I first proposed it in 1991, and so when it finally got passed after I became superintendent, it's taken a long time to get it completed. It's being done by a contractor through FCMAT.

Q       And by "student information," you're referring to that system which is also sometimes referred to as CSIS?

A       Yes.

Q       And the reason you believe such a system is important is what?

A       I believe it's important for everybody to have such a system. I think it's important for children. I think it's important for teachers. I think it's important for administrators. I think it's important for parents. I think it's important for school boards because when -- you have a cleaner picture of not only individual student performance, but of the dynamics of the state student population. For example, we have kids who move, and they move frequently. And today when a child moves, we send the child's records in an envelope to the receiving district. If the child doesn't show up at that district, or as often happens -- you know, San Jose has something like eleven school districts in it; Santa Rosa has fourteen; Fresno has got a few. So if there's a mistake about which school district the child is in, their papers can be months behind them, and the child could have a physical need or could have a special education requirement or could have some other kind of issues related to the parental controls that are contained in there. You know, dad's not supposed to pick up the child or whatever.

We feel that it would really improve not only the academic performance side of the equation, but it would actually improve things like attendance, and we'd have a better picture of the dropout rate. We'd have a lot better information on many different levels if we had CSIS, but right now we don't have that.

Q       As it relates to the academic performance side of the equation, why is CSIS important?

MR. SEFERIAN: Objection. Overly broad.

THE WITNESS: Well, No Child Left Behind,
for example, has some information in it about you're supposed to include the child if the child has been in your school for the whole year. I think it would be more powerful, though, even if the child has been in six different schools in six different years, it tells you something about the mobility of the child. And we know that kids that move a lot aren't achieving as high a level. It might give us information we could communicate to parents, frankly, to say if at all possible, could you find another residence in this school vicinity, so your child isn't moving as much? I think academic performance is enhanced by a variety of different factors, some of which are not academic.

BY MR. JACOBS:
Q       One of the current uses of the API is to measure whether schools are making certain performance gains, and therefore, determine whether the schools are needing of further support or even dramatic intervention, correct?
A       Right.
Q       And how the implementation of a CSIS, in your judgment, alter or improve the effectiveness of that component of the API?

THE WITNESS: Could you repeat the question.
MR. JACOBS: I can shorten it.
BY MR. JACOBS:
Q       How would the implementation of a CSIS affect the usability of the API as a measure of school performance?

THE WITNESS: Could you repeat the question.
MR. JACOBS: It might be. If you could fully develop it, you'd be able to attract a child year-to-year, make sure that they had, you know, the full compliment of educational opportunity. If you found a child that had a series of uncredentialed teachers, for example, you might have, you know, a reason to intercede more effectively to make sure they don't fall behind.

BY MR. JACOBS:
Q       And as compared with the current API system and its ability to assess whether we have achieved a state of greater equality of opportunity, how would you compare and contrast a fully-developed CSIS-based system with our current API system?

THE WITNESS: Well, the API gives you big aggregate numbers. It doesn't tell you about individual student circumstances. If you had CSIS, you would know better what was happening for individual students in the context of the broader system, was that child getting opportunity or being deprived of opportunity.

BY MR. JACOBS:

MR. JACOBS: I'm going to show you an article from the Sacramento Bee that refers to CSIS. This will be 335.

(Exhibit 335 marked for identification)

BY MR. JACOBS:

Q Just to be clear, 335 is a download of an article that was published in the San Diego Union-Tribune, but it's by Daniel Weintraub of the Sacramento Bee. It's dated January 1, 2003. And you'll note that the article is about the tension between the Superintendent of Public Instruction and the Governor's Office. I particularly want to ask you about the paragraph toward the bottom of page 1: "More recently, Governor Gray Davis has clashed with Superintendent Delaine Eastin. One casualty has been a development of a data system to track the records of individual students as they move from one school to another, an important piece of the accountability puzzle that's languishing because no one is completely responsible for its development."

Do you see that?

A Uh-huh.

Q Do you agree that one of the reasons that CSIS is not developing more rapidly is attributable to a governance issue as it relates to powers between the Governor and the a SPI?

MR. SEFERIAN: Objection. Vague and ambiguous.

MR. VIRJEE: Calls for speculation. Lacks foundation.

THE WITNESS: I don't think it's necessarily because of that. I think it's because the Department of Finance runs so many of these decisions, and they know the cost of everything and the value of nothing. So there are people in the Department of Finance -- smiles down at the end of table -- people down in the Department of Finance who really are just parsimonious to the point of silliness. And they are dragging their feet on this. And I think it's the difference between working in the Accounting Department, which I did, and working in corporate strategy, which I did. In accounting, everybody is worried about balancing the book to the penny. They never want to spend any money. That's part of the corporate culture in accounting. That's part of the corporate culture in finance. I think there's some conservative people there that don't want to make the level of investment that is required. It may be because they personally are worried about invasion of student privacy as I've heard some say, but for whatever reasons, I see it as a problem in the Department of Finance.

And there's not a lot of push from the various stakeholder groups because, you know, it's not one of those sexy, interesting things that really attract great enthusiasm. So there's no -- except for the Superintendent of Public Instruction, there hasn't been a lot of push to do it.

I actually think the State Board wouldn't mind have a CSIS system even though they're appointed by this Governor. But I think if you move the SPI under the Governor, you would still have foot dragging by finance, and you would still not have a student information system.

BY MR. JACOBS:

Q Finance reports to...

A The Governor.

MR. VIRJEE: Michael, whenever you're ready, it's about 12:30. I don't know if you want to take a break now, or you were looking at a different time frame.

MR. JACOBS: This is a good time. You want to resume at 1:25?

MR. VIRJEE: Or 1:15.

THE WITNESS: 1:15.

(Lunch Recess)

BY MR. JACOBS:

Q And the quotation you begin on page 3 of 5, and I specifically want to ask you about the quote: "It's our black and brown kids who are falling farther behind, and it's not because they are intrinsically worse students. It is that we have chronically under-performing schools in our state," she said."
1. Do you see that?
2. A  Uh-huh.
3. Q  Did you convey the substance of that to the reporter who prepared this article?
4. A  I probably did. I don't have an exact recollection. I probably said something like that.
5. Q  And what do you mean by "chronically under-performing schools"?
6. A  We have schools that weren't really focussed on student achievement. They were almost like they were -- they were keeping students during the day, but they weren't really educating them to a high level. And I think we've worked hard over the last few years to really try to convince the Governor and Legislature, both Governors and the Legislature, that we need to do some things that other states that were turning around their low-performing schools did and other countries like Singapore had done. Namely, that there needed to be standards for what all kids would be able to do, and that we need to have an assessment system. Because when I took office, there was no assessment system at all in the state, so we needed an assessment system, ideally one based on our standards. Then we needed to hold people accountable. But you can't hold people accountable if you have no standards and no testing, no assessments at all.
7. So we believed even though we really hadn't had a system, it was quite clear by the dropout rates and by the problems that these children were having in adulthood, that the schools were not doing enough.
8. Q  And the relationship between that characterization of chronically under-performing schools and the reference there to "black and brown kids," what's the correlation you were drawing there?
9. A  Well, that the chronically under-performing schools tend to be in high poverty areas, and they tend to be majority minority schools.
10. Q  "Majority minority" meaning that they have a majority of?
11. A  Minority students, right. But anyway, more poor kids tend to be children of color for a variety of different historic reasons.
12. Q  The paragraph above that: "Outgoing State Superintendent of Instruction, Delaine Eastin, said that bridging the racial and economic gap will be her successor's most formidable task."
13. A  Yes.
14. Q  Did you convey the substance of that to the reporter?
15. A  I think so.
16. Q  What did you have in mind when you were referring to that as being the "most formidable task"?
17. A  Well, for a variety of reasons poor children and children of color have challenges which are well documented in a lot of literature. Namely, that they are more likely to be living in a home with a single parent, living in a group home, living in a foster home. They're less likely to have access to tutors, books and some of the kind of advantages that middle class and upper middle income and rich kids have.
18. And yet, because of the people who vote continued to be the majority of affluent people or middle class people or at least blue collar people whose children aren't necessarily in these schools, it's sometimes hard for people to worry about other people's children. So they ignore other people's children, or they don't want to put extra resources in to help those kids over there. Not because they're really bad. Just because they're really focussed on their own kids.
19. Q  And the upshot of that is that the schools serving those kids continue to exist in the state that you described before where they're not focussed on achievement?
21. MR. VIRJEE:  Also calls for speculation. And vague as to time.
22. THE WITNESS:  I believe that the problems of poverty are worse in some ways today because there isn't a large pool of jobs for people who lack skills as there were fifty years ago. So fifty years ago if your parents were not well educated and you were not in a very good school and you did not get a very good education or you dropped out of high school, you could still get a job. That is less likely to be so now or in the future. So now the importance of bridging the gap is much more important, is much more significant than it would have been fifty years ago.
23. BY MR. JACOBS:
24. Q  And the standards that have been created, are challenging standards?
25. A  Yes.
26. MR. SEFERIAN:  Objection. Vague and
BY MR. JACOBS:

Q       And the graduates of schools that are able
to deliver a curriculum that meets those challenging
standards will be on balance better prepared for the
kind of jobs that are out there, that's the
hypothesis, correct?

MR. VIRJEE: Objection. Calls for
speculation. Lacks foundation. Incomplete
hypothetical.

THE WITNESS: What we know is that in a
country like Singapore which a generation ago had
poor children and a very poor educational system,
and in one generation changed its students
achievement levels dramatically, is that they did it
with high standards for all children. They did it
with, you know, assessments to see if kids were
reaching those standards. And they did it with an
accountability system which is what we're trying to
do here.

BY MR. JACOBS:

Q       But the implementation of -- I guess I'm
still -- I don't think you tied it up. You referred
there to chronically under-performing schools. You
referred to the black and brown kids falling further

behind. And you referred in your explanation to the
phenomenon of the relatively affluent, not
necessarily out of malevolence but out of just a
focus on their own kids, not necessarily focusing on
the schools that serve the poorer kids. And the
relationship between those three is what?

MR. VIRJEE: Objection. Asked and answered.
And your question is vague and ambiguous, compound,
overbroad.

THE WITNESS: Could you repeat the question.
(Whereupon, the record was
read by the court reporter)
THE WITNESS: That's a mouthful, isn't it?
MR. VIRJEE: Same objections.
THE WITNESS: I think I did answer it. I
mean, I think we have had chronically
under-performing schools because we had no
standards. Nothing ever happened. We had no
accountability. We had no testing as of eight years
ago. Zero testing in California. We had had
testing, and it had gotten ash canned. So, you
know, I think the problem of under-performing
schools has been a chronic one.

And now with standards, assessment and
accountability, we can, in fact, hold people
accountable. We can move the ball for those kids.
And No Child Left Behind as well as our own API
which uses -- No Child Left Behind forces us to
desegregate the data based on racial groups and
helps us to target our efforts on those schools that
aren't helping those children.

BY MR. JACOBS:

Q       And the "us" there is whom?
A       The state and the local districts. The
first line of defense is always the local district.
But ultimately now with these other programs, there
will be a point where the state will have to step
in.

Q       We talked about FCMAT a little bit before
the break. I want to ask you a little more about
it.

MR. JACOBS: We'll mark as Exhibit 337 an
article from the Oakland Tribune dated June 30, 2003
downloaded from Nexus.
(Exhibit 337 marked for identification)

BY MR. JACOBS:

Q       So my specific question is what did you mean
by "capricious"?

MR. SEFERIAN: Objection. Assumes facts not
in evidence.
MR. VIRJEE: Go ahead and take time to
finish looking at the document.
THE WITNESS: Yeah, I read the first page.
MR. JACOBS: I think there's a relevant
discussion on the top of the next page, and then it
goes off on to another topic.
THE WITNESS: Uh-huh. I believe that FCMAT,
as I said before, stands for Fiscal Crisis
Management Assistance Team, does very good fiscal
analysis. But as this article points out, I think
their academic analysis is lacking. That at the
time they rated -- this article doesn't go into the
very first time they rated West Contra Costa versus
Compton. West Contra Costa actually had forty
percent of its schools who were API one or two;
Compton eighty percent of its schools one or two.
Yet they're saying Compton is almost as good as West
Contra Costa. That made no sense.
They contracted out the work, and different
contractors came to different conclusions. And I
believe that ultimately FCMAT should stick to fiscal
crisis management, and the State Department of
Education should do the accountability piece as it
relates to student achievement because that's what
they're more set up to do.

BY MR. JACOBS:
Q       So when Henry says in the top of the second
page referring to the Department of Education and
you, he says, "They tend to look at test scores.
Our process developed standards that would be more
likely to demonstrate in pupil achievement," do you
see that?
A       Yeah, I see that. Ask him to show you his
standards. I never saw his standards. We asked for
them after this, and that's one of the reasons we
encouraged there to be an audit of the Fiscal Crisis
Management Assistance Team Program because their
dollars are embedded in the budget of Kern County.
You can't extricate them; you can't see what that
are spending money on. But the standards should be
known to all. They should be observable. They
should be a product of the Legislature, and the
Governor's accountability legislation.
Q       And in your judgment, they should be
focussed on the fiscal and leave the pupil
achievement issue to the Department?
A       Either to the Department or to one of the
school intervention teams, the state accountability
intervention team, the state teams or the evaluators
or the county offices. But people that are more set
up to do this kind of work, so we can be sure that
we have a more consistent approach.
Q       And in terms of the discussion of Oakland --
and the further down in that page, there's a
reference to judging Oakland on 379 agency
standards.
A       Right.
Q       Were those also not visible to you?
A       You know, I can't recall. They may have --
I may have seen them. I don't remember seeing 379
agency standards, but they may have them. I just
didn't see them.
Q       And in calling for this audit, do you have
questions about FCMAT's effectiveness on the fiscal
side?
MR. VIRJEE: Objection. Calls for
speculation. Lacks foundation. Overbroad and vague
as to time.
THE WITNESS: I think that all government
agencies should be subject to public scrutiny unless
they're dealing with very great national security
issues.

BY MR. JACOBS:
Q       But you did have a particular concern with
the standards they were applying, and that was an
issue you were focused on, the achievement standards
they were applying, correct?
A       Yes. I don't think they're expertise -- I
think they have "mission creep." I think their
expertise is in fiscal matters.
Q       Let's talk about Concept 6, multi-tracking.
(Exhibit 338 marked for identification)
MR. JACOBS: We've marked as Exhibit 338 a
printout from the web version of the Lodi News
Sentinel, October 26, 2002. State Superintendent
Makes Stop at Lodi Middle School.
BY MR. JACOBS:
Q       You are quoted in the middle of the first
page as follows: "I would love to get rid of
Concept 6. But schools didn't move to it because
they were trying out some educational innovation.
It was out of desperation."
Do you see that?
A       Right.
Q       Did you convey the substance of that to --
during your visit to Lodi?
A       No doubt.
Q       And did it reflect your views of Concept 6?
A       Yes.
Q       And why did you have that -- what was the
basis for that assessment?
A       Well, as I said in here, I don't believe
schools moved to Concept 6 because they thought it
was a good education achievement promotion. They
did it because they were desperate for space, and
they -- the Legislature allowed them to do it.
They passed the specific legislation to
allow the district to have a shorter school year and
longer school day so that the same number of minutes
supposedly would be experienced by each child. In
reality, we don't -- most of the information that I
have seen, most of the data I have seen as well as
anecdotal evidence, is that Concept 6 is not a good
move academically for kids.
But after it was done at the most desperate time, and we still had two-thirds majority local school bond vote requirements, and the state was growing, and yet, there wasn't enough money to build new schools. So districts, some fast growing suburban as well as urban districts, because Lodi essentially is a fast growing suburban district, went to this as a last resort.

But the Legislature did enact it to do a few things. To try to deal with this issue, and that included the bonds. It included allowing Mello Roos fees on new housing to provide new schooling. It included a host of different efforts locally to pass bonds, and that's what you see I think Lodi was trying to do.

(Exhibit No. 339 marked for identification)

BY MR. JACOBS:

Q       Exhibit 339 is a letter from you to Jackie Goldberg dated May 10, 2002 regarding AB 2027.
A       Yes.

Q       And in it you expressed your opposition to AB 2027, correct?
A       Correct.

MR. VIRJEE: Why don't you give the witness a chance to take a look at it.
THE WITNESS: Uh-huh.

They did it because they had a desperate need for classrooms. So while I want to see it go away, I don't want to have a bunch of kids sitting out on the street not going to school.

BY MR. JACOBS:

Q       For the transcript, is that a yes?
A       Yes.

Q       And in this letter, you opposed AB 2027 on the basis that you did not think that a elimination of Concept 6 by 2008 was feasible, correct?
A       Correct.

Q       And that was based on some analysis that was done in the Department?
A       Yes. Our facilities people I believe.

Q       L.A.U.S.D. comprises a large number of the Concept 6 students, correct?
A       Correct.


MR. POULOS: Vague and ambiguous.
THE WITNESS: I believe so. There are only four districts that use it according to this little memo.

BY MR. JACOBS:

Q       And in the fourth paragraph, the issue that was analyzed was what would happen if you took the schools that were on Concept 6 with a three-track calendar and moved them to a four-track calendar, correct?
A       -- don't have the same negative impact on educational programs as Concept 6 does, correct.

MR. SEFERIAN: Overly broad. Incomplete hypothetical. Lacks foundation.

THE WITNESS: 180 days even if they're shorter than the 163 days, appear to be better.
BY MR. JACOBS:
Q  And the 180-day programs are in the four-track schools?
A  Correct.
Q  And did you analyze how much capacity could be achieved by moving schools that were on single tracks, more schools that were on single tracks to four-tracks in any of these districts?
MR. VIRJEE: Objection. Calls for speculation. Lacks foundation. Assumes facts not in evidence. Assumes there were schools on single track with districts that could be moved. Also calls for an expert opinion.
THE WITNESS: The letter says four districts use Concept 6. Los Angeles, Palmdale Elementary, Lodi Unified and Vista Unified. And they have a combined enrollment of those three-track programs of 355,634 kids. That is almost four times the size of the State of Wyoming. This is not an insignificant number of children.
So our concern was something like sixty thousand kids wouldn't have classrooms. That was based on information that I received from my facilities people, who don't like Concept 6 either. But we allowed this to happen, and now we have to live with the consequences until such time as we have the money and have the capacity to expand these school districts, and we're working as hard and as fast as we can on that.

BY MR. JACOBS:
Q  Did you explore during your tenure as SPI whether there were changes that could be made in legislation or in administration in Sacramento that would speed up the pace by which schools -- school districts with Concept 6 schools could build out of the Concept 6 problem other than the school bonds that the state enacted?
MR. VIRJEE: Objection. Vague and ambiguous as to "build out." Calls for speculation.
THE WITNESS: I worked very hard to speed up school construction. But I do believe there were unique problems in Los Angeles Unified that -- and some other urbans like San Francisco that make it very difficult to move as expeditiously as they would like in building new schools.

BY MR. JACOBS:
Q  My question is in opposing AB 2027 did you ever analyze whether seats were to be made available in these school districts by moving schools that were on single tracks to four-tracks sufficient to accommodate the number of students who would be displaced by moving the three-track schools to four-tracks?
THE WITNESS: I do not sit down and do those calculations. I rely on my staff to do those calculations. They presented me with this letter. I remember we had kind of a fight about it because I don't like Concept 6. But they convinced me that rather than having 65,000 kids out on the street, we should give them more time.

BY MR. JACOBS:
Q  And the things that you said you did to expedite school construction, did any of them include legislative changes that would remove obstacles to rapidly building schools in L.A.U.S.D.?
MR. VIRJEE: Vague and ambiguous as to obstacles. Calls for speculation. Lacks foundation.
THE WITNESS: We tried to mechanize, put a common data system together, between the various state agencies that were doing work. We tried some things, technical things, like that at the state-level. But overall and on balance, there weren't many things we could do without running the risk that we would have L.A. Unified building on unsafe sites. They had already had one bad experience at Belmont High School where the site was found to be of questionable safety. So when you try to shortcut, sometimes the unintended consequence is you built a school on a place that it shouldn't be built.

BY MR. JACOBS:
Q  And that was the conclusion you reached when you looked at the question whether it would be possible to make changes that would allow for expedition in building additional schools in L.A.U.S.D.?
MR. VIRJEE: Vague and ambiguous as "expedition." Calls for speculation. Lacks foundation.
THE WITNESS: We focussed on getting more money and trying it make it possible to have the resources to build the schools more than on -- you know, I had had some experience trying to streamline straight building construction. I tried to eliminate the office of what was used to be called
Office of Local Assistance. I tried to eliminate it. Instead they changed the name to Office of School Construction. I believe that agency should be managed with the Office of the State Architect, but I've never been able to convince the Legislature to do that or the Governor.

BY MR. JACOBS:
Q You mentioned the unique problems of L.A.U.S.D. Did you form a judgment over the course of your superintendentship on the degree to which those problems were self-inflicted?


THE WITNESS: I had many years of association with several superintendents in L.A. Unified. And some years ago when I went to Huntington Park High School, I was appalled to see the conditions of the school, and I found that the district had received some resources to modernize the school. Worked hard to get them to put those modernization plans into effect.

Subsequent superintendents I think have really made this much more of a priority, and over the years they have speeded up what they've been able to do.

It is -- you know, it's also true that we explored with L.A. more small schools because these bigger sites are harder for them to get. My department actually spent a certain amount of time down in L.A. Unified. We don't have a huge school facilities group, in fact, it's rather small, but it's -- but we sent everybody but one man down there to try to help when Rick Martinez was the interim superintendent to help him see how he could streamline his School Districts Program. I think Duane Brooks (phonetic) you may have already interviewed, and he has tried to help specifically L.A. but also some other districts.

We really have worked to try to make the process faster, but at the same time because we've had some problems with sites that had toxic materials on them, we've actually added some steps even as we were trying to get rid of some other steps, so that was done by the Legislature, and it's done for the safety of kids.

So, you know, we -- I looked at one time at getting rid of the Field Act because it's slower. But I became convinced that because of -- I was in L.A. during the Northridge earthquake. I visited the school that had problems after Northridge. I became convinced -- and the college there, Cal State Northridge had two buildings that were less than three years old that collapsed which weren't current to field standards, but they were built to the Uniform Building Code -- so based on what happened at Cal State Northridge, that we ought to keep the Field Act.

But various times I stepped before the Little Hoover Commission. We looked at ways to try to streamline things. Most of that requires getting agreement of the Legislature and Governor.

Sometimes they agree; sometimes they don't.

BY MR. JACOBS:
Q Do you recall any specific recommendations you made in your testimony to Little Hoover on expediting school construction?

A Certainly I think I must have probably told them, but I'm not sure. I don't recall. I think I would have told them.

MR. VIRJEE: Don't want you to guess or speculate, Delaine. If you can remember, he's entitled to...

THE WITNESS: I think I said they should combine Office of the State Architect, Public School Construction, and I think we should create a single data system which is electronic and on-line.

And we did some -- I changed some things even when I was in the Legislature to say that if you gave money for the approval of a site, that that money essentially had to go into an escrow account because Office of the State Architect was taking your money to build her school, and then they would tell you you'd have to wait until they got some more money. So we did some things to try to help districts.

(Exhibit 340 marked for identification)

BY MR. JACOBS:
Q Let me ask you about a program you were on. Exhibit 340 purports to be a transcript of a show called Capital Week, and the show is No. 538, and the document indicates that it was a transcript from June 1, 2001. And I want to ask you about the question that you were asked about multi-track on page 3 of 9.

A Uh-huh.
And you say: "The lowest-performing schools in our state are the ones most likely to be on a multi-track year-round schedule. The ones that have the spare classrooms, the vacancies, are the ones that can extend the school year."

That's the passage I want to ask you about. And my first question to you is does that transcript accurately record what you said in the program?

I imagine.

For context, why don't we let her look at what this is referring to because it's not referring necessarily to the multi-year or multi-track, and I'm not trying to mischaracterize what you said, Michael, but I think it's actually referring to the proposal to extend the middle school year.

Yes, it is. But it's -- well, whatever.

Okay.

So you're quoted there saying: "On multi-track, year-round, the children already only go 163 days, and they probably go seven hours a day and some have an hour-and-a-half commute each way. This is insanity."

Do you see that?

Yes.

Did you say that?

I imagine I said it.

What did you have in mind when you referred to that mechanism as "insanity"?

Well, in Los Angeles particularly, but in some other areas, the children are often -- the facilities with extra -- with space are not located where the children are located, so we have some bussing patterns that have developed. I think a lot of California think we bus for racial integration. We actually bus because the kids are not where the schools are. So that's why we've all worked long and hard to not only have a bigger state bond, but you have a bigger incentive for locals to have their own bonds to match the money.

And I've supported both of the bonds in Los Angeles specifically because I really think they need to build schools so that the kids can, in fact, have a 180-day school year, and that some of the kids can actually have a longer school year, that they can do summer schools.

One of the problems with Concept 6, they have a hard time doing summer school because the school is in use 50 weeks a year. Some of Concept 6 schools do Saturday schools. But it has been a facilities problem. And that's why, I mean, there's no state that has passed as big of bonds as we have passed in this state in the last four years.

On page 6 of 9, you say, "They ought to go to a clean, safe environment according to teachers."

Do you see that?

Uh-huh.

Why don't you read the whole response.

Yeah. Okay.

First of all, you made the comments that are recorded there, correct?

Yes.

And the comment about, "a clean, well-lighted, safe environment," was part of an overall strategy of upgrading the quality of the teacher work force, correct?

Right.

Objection. Vague and ambiguous as to "overall strategy." Calls for speculation.

I will say I'm quoted in a lot of places saying we should have clean, well-lighted, safe schools. Sometimes I'm talking about the kids; sometimes I'm talking about the teachers.

But overall, I believe that that should be a philosophy that we have, and that's why we worked hard to put the deferred maintenance money back into the school bonds into the budget, and why we worked hard to pass the bond and put a big amount in for modernization, far more than we used to put in for modernization.

And that in your judgement is taking into account all the competing priorities for the use of school dollars was well advised?


Also vague and ambiguous as to "competing" and "dollars." And assumes facts not in evidence. Assumes that bond monies compete with other monies.

Bond money is separate from operating money. Deferred maintenance is included in our overall budget. In every corner and every vein, I continue to believe that the State of...
California underfunds all of its schools, and that's my opinion. Now, we were 43rd in per pupil spending, and we were 50th as a percentage of personal income when I took office. We climbed as high as 27th. Still below what we should be. I believe we should be in the top ten or five at least. So I believe that all schools are underfunded in the State of California.

BY MR. JACOBS:

Q       And the distributional impact of that underfunding, does that aggravate the problem of school equity?

MR. VIRJEE: Objection as to "distributional impact."

THE WITNESS: I think all schools are underfunded. I do believe that some of the needs that poor children have for better education should be addressed by the Legislature and by the Governor. I do not believe the State Board of Education can do anything about it, nor do I believe the State Superintendent of Public Construction can do anything about it or can do anything but advocate. I had a California School Publications Department, but we don't print money. We considered that at one point, but it was just a joke.

In all seriousness, I believe that the state needs to make a bigger investment. It's a very high cost state. And so the fact that poor kids are often in older schools, has a disproportionate affect on them.

BY MR. JACOBS:

Q       You're aware of studies that show that within school districts on account of the concentration of less-experienced, and hence, lower-paid teachers in certain schools, those schools effectively subsidize the schools that have more experienced teacher force?


MR. VIRJEE: And to the extent you're referring to something in a particular study, that study speaks for itself. Calls for speculation.

THE WITNESS: I think you could change the law. But I think the law right now is being upheld that school districts are following the laws of collective bargaining and seniority and doing what they're doing.

BY MR. JACOBS:

Q       But you're aware of that research?

MR. SEFERIAN: Same objections.

MR. VIRJEE: Also vague and ambiguous as to that research. Same objections otherwise.

THE WITNESS: If you have a specific study you'd like me to look at.

I do know --

MR. VIRJEE: You've answered the question.

BY MR. JACOBS:

Q       Well, do you know that there is this cross-subsidy effect within school districts?

MR. VIRJEE: Objection. Vague and ambiguous as to "cross-subsidy effect."

THE WITNESS: I think the Legislature and the Governor could do something to help pay inner-city teachers more. I think we could through collective bargaining do something to pay inner-city teachers more. But it takes two to tango. In no case it is the work of the State Board of Education or of the Superintendent of Public Construction.

BY MR. JACOBS:

Q       Are you aware of the "cross-subsidy effect"?

MR. VIRJEE: Objection. Vague and ambiguous as to "cross-subsidy effect." Incomplete hypothetical. Calls for speculation.

BY MR. JACOBS:

Q       I'm not asking you whether who could have done anything about it. I'm just asking if you were aware of the phenomenon.

MR. VIRJEE: Objection. Vague and ambiguous as to "phenomenon."

THE WITNESS: I have seen there are disproportionately higher numbers of lower-performing schools -- yes.

BY MR. JACOBS:

Q       Have you seen the research that shows that the effect of that is an internal subsidy from the schools with that concentration to the schools without that concentration?


THE WITNESS: I have not seen a real research study to that effect.

BY MR. JACOBS:

Q       Are you aware of the phenomenon?

MR. VIRJEE: Objection. Vague and ambiguous as to "phenomenon." Calls for speculation.

THE WITNESS: I'm aware that in some urban districts, the more veteran teachers are in the higher-performing schools on balance. Although, not
every teacher.

MR. VIRJEE: You've answered the question.

BY MR. JACOBS:

Q Are you aware that that has a cross-subsidy effect?

MR. VIRJEE: Objection. Asked and answered three times. She's answered that question three times. Calls for speculation. Lacks foundation. Asked and answered, that exact question.

THE WITNESS: If we did an accounting, we would find that there was some subsidy in terms of salaries, but there are sometimes other programs that are sent to the poorest schools such as Title 1 monies and other monies. There are efforts made to try to help the lowest-performing kids. So there may be some effect in terms of the actual cost per child in these large districts because of the current law of the land.

I think you've sued the wrong people. I think you should have sued the Governor and Legislature. But the law is being followed in California, and it has that effect.

(Exhibit 341 marked for identification)

BY MR. JACOBS:

Q Let me ask you about some other construction discussion. Exhibit 341 is a printout from the web reprinting a Sacramento Bee piece dated August 29, 2001. School groups, Eastin Pitch Near the $30 Billion in School Bonds.

You are quoted as saying toward the bottom: "We can't have high-quality schools if we have crummy, rundown facilities housing a third of our students as we have today."

Do you see that?

A Uh-huh.

Q Did you say that?

A I imagine I did.

Q And part of what you were saying there, the first half of it, is that there is a relationship between upgrading facilities and achieving high-quality in education, correct?

MR. VIRJEE: Objection. The document speaks for itself. The statement speaks for itself. Doesn't say anything about "achievement."

MR. SEFERIAN: Vague and ambiguous.

THE WITNESS: I think I've already testified that I believe we should increase the investment in schools, and I think we should invest in buildings as well as in staffing the schools.

BY MR. JACOBS:

Q And that is part of achieving high-quality?

MR. VIRJEE: Objection. Vague and ambiguous as to "high-quality." Calls for speculation. Incomplete hypothetical.

THE WITNESS: I think a great school looks like the adults are serious.

BY MR. JACOBS:

Q And that's an indicator of whether the adults are serious, is the --

A It's necessary, but not sufficient.

Q Necessary.

A What part is "necessary"?

Q I think schools should be modern and up to date and clean, but I don't think that's sufficient.

Q And the reference to a third of our students, was there -- how solid was your basis for that?

MR. SEFERIAN: Objection. Vague and ambiguous.

THE WITNESS: It may as well have been provided by the facilities people. I think may just have been an estimate, guesstimate more likely.

BY MR. JACOBS:

Q Based on your visits?

A Yeah.

Q Do you have a sense of the change in that situation two years later?

A Well, they did agree to put the 9.2 billion, and then they made a commitment to another bond. And I thought we were getting close to 25 billion in terms of what the Legislature was talking about. So they didn't get all the way where I wanted them to go, but it was still the biggest in history. You know, better to set your sights too high and miss them than set them too low and miss them, so I was trying to set my heights high.

BY MR. JACOBS:

Q Your sights were aimed at what?

A I asked for 30 billion, and I think they made a commitment to two bonds that total something like 25 billion dollars for higher ed as well as for K-12 put together. I may misremember that, though. I'm not sure.

Q Computers, what's the role of computers in your view in providing access to a rigorous curriculum?


THE WITNESS: I knew this was coming.
MR. JACOBS: Let me help you out. I didn't mean to hide this from you. Let me show you something that may refresh your recollection as to things you've said about it.

MR. VIRJEE: There's been no indication that her recollection needs refreshing, but we like the document.

(Exhibit No. 342 marked for identification)

BY MR. JACOBS:

Q Exhibit 342 is a news release from the California Department of Education. Student to Computer Ratio Improving in California Schools But Not for All.

A Correct.


A Correct.

Q Maybe we'll move this along by asking you a few questions about what you said. The "disheartened" part on the second paragraph of the release: "I am disheartened that it is our poorest students who have the least access to these tools that could contribute to their academic success."

Do you see that?

A Uh-huh.

Q And that was based on some data that showed there was significant disparity in the availability of computing power as compared -- comparing schools serving relatively well off kids and relatively poor kids?


MR. VIRJEE: Vague as to "computing power" and "relatively well off" and "relatively poor."

THE WITNESS: Would you repeat the question.

(Whereupon, the record was read by the court reporter)

THE WITNESS: There is a digital divide that's been documented. It's a national problem.

And we did get some assistance from -- for high schools under Governor Wilson. And then we went after and won the highest -- by far the highest amount of money under President Clinton, and we did do what we could within the Department to target as much as we could to the lowest achieving schools and to the poorest kids.

Admittedly, the higher-achieving schools have some natural advantages. They have parents who work at Cisco Systems and Hewlett Packard and places like that.

But we were heartened by the support we got from not only the public through the Legislature and the Governor's budgetary work, but even through the privates through the gifts and donations. We had several Net Days. We had a lot of private help that really did try to focus as much as we could in the poorest neighborhoods.

BY MR. JACOBS:

Q As you left office, what was the state of the digital divide in schools in California?

A I couldn't tell you.

MR. SEFERIAN: Objection. THE WITNESS: The exact numbers, I imagine it's on our web site. Nancy Sullivan who worked for me would be a good source, though.

MR. VIRJEE: You've answered the question. THE WITNESS: But what she did --

MR. JACOBS: Let me ask you about another interview.

MR. VIRJEE: If you need to take a break at any time, let us know.

THE WITNESS: Okay.

(Exhibit No. 343 marked for identification)

BY MR. JACOBS:


On page 4 of 5 in the first block interview, there's a discussion of library collections. And then you go on to say: "47 percent of our kids do not have access to textbooks everyday. A bunch of kids can't take their books home at night. That's wrong. It's bad. It's not acceptable. We need to make sure we get the instructional materials into the hands of kids."

Do you see that?

A Yes.

Q And one of your priorities was, in fact, to increase the amount of funding specifically available for standardized textbooks, correct?

A Yes.

Q And the "47 percent" figure, where did that come from?


THE WITNESS: I'm quite sure it came from someone on my staff.

BY MR. JACOBS:

Q Do you have any information about the method
by which that figure was developed?

MR. VIRJEE: Calls for speculation. Lacks foundation. This is from a 1997-98.

THE WITNESS: Right. You should talk to Shelly Griffith; she'll tell you.

BY MR. JACOBS:

Q Was that a figure you monitored over time to see whether it went up or down as you instituted additional policies with respect to textbooks?


THE WITNESS: There is an audit function with textbooks, and we really did work hard to first adopt the standards, then adopt framework to align the standards, and then make the textbook publishers follow the standards in their textbooks. And we did convince the Legislature to invest well over a billion dollars in a categorical called Instructional Materials Fund, so there was a huge increase in the actual dollars spent.

I can't recall at this minute what our audits showed in terms of how many kids had access. But I will tell you that it goes way beyond textbooks. I mean, the work we did with technology, we really believe that it was important that kids have technology and have access to computers. And there was a lot more hardware and software purchased. We know that there was a lot more just instructional material that maybe the teacher produced based on, you know, either something the teacher made up, him or herself, but are more likely something that they were using in a way of a workbook or some other instructional materials.

I think it was extraordinary, though, how much more we got into the hands of children in a short period of time after we had the standards aligned materials.

BY MR. JACOBS:

Q And my question is what was the last time you reported to anyone what percent of kids do not have access to textbooks everyday?

A I don't recall.

MR. SEFERIAN: Objection. Vague and ambiguous.

BY MR. JACOBS:

Q You think there was a mechanism in place to actually monitor that question, though?

MR. SEFERIAN: Objection. Vague and ambiguous.

MR. VIRJEE: Vague and ambiguous as to "monitoring" and "mechanism."

THE WITNESS: I think there was a reporting procedure where they reported to us, but I wouldn't think it's fair to say -- we don't have textbook police. We don't monitor per se.

BY MR. JACOBS:

Q Well, you didn't monitor the aggregate effect of the additional funding in terms of whether it actually resulted in more kids having access to textbooks, correct?

MR. VIRJEE: Objection. Vague and ambiguous as to "monitoring" and what that would mean. Vague and ambiguous as to "access." Also vague as to time.

THE WITNESS: I just can't answer that question.

BY MR. JACOBS:

Q And, "a bunch of kids can't take their books home at night," what was the point you were making with that statement?

A At that time in '97, there were children that were unable to take their textbooks home to study at night because there was a shortage, and they had to make sure all the books came back the next day in a lot of places. I think many more children take their textbooks home. And you've seen all the cartoons about kids and their backpacks. I think there's a lot more materials going home. Some of the material doesn't need to go home. Some of the textbooks that we purchased, teachers don't use because they don't like them. They use sometimes their own materials or older materials. Sometimes volunteer to use older materials because they don't like the new materials.

That is, you know, the prerogative of each individual school. Because what we should be focussed on are the outcomes, not the inputs. We should be looking at whether or not the children learn. Like I said, I don't care if they sit on the floor in circles or on benches. What I want to know is did they learn anything. And it's the same with counting titles. The question is are they learning, and that's where our emphasis was on student achievement.
MR. VIRJEE: Also incomplete hypothetical.
THE WITNESS: I think the answer speaks for itself. Clearly there are children that should be able to take their textbooks home, and many more can now.

BY MR. JACOBS:
Q       But if as an imprecise matter the data showed that that was not true, you would continue to think that's wrong, it's bad, it's not acceptable, correct?

MR. VIRJEE: Also vague and ambiguous as to "that's not true," whether you're referring to her answer on student achievement or being textbooks.

THE WITNESS: For a variety of reasons, it's just you can't say you -- you can't answer that. The child might be in an after-school program and spends three hours after school doing their homework. They may not need to take their textbooks home.

But the reality is we -- the situation in '97 was too many kids didn't have textbooks, period. And there was such a shortage of textbooks, that often times when they had work to do, they couldn't take them home.

I think we ought to determine what the child needs to achieve. That ought to be our goal. And if they need to take their textbook home to achieve, then we ought to find a way to make that happen, and I think it has vastly improved in California.

BY MR. JACOBS:
Q       And that's primarily because of the additional funding that you're pointing to, not any other step that was taken by the state?

A       I think there was additional emphasis on student achievement, and that's caused kids to take their books home more.

Q       But just to be clear, if you were interviewed today, if it were true that a bunch of kids can't take their books home at night, you would continue to assert that's wrong, it's bad, it's not acceptable?

MR. VIRJEE: Objection. Asked and answered. She said she can't answer that question the way you posed it. Incomplete hypothetical. And calls for speculation.

THE WITNESS: It really would vary. I mean, if the child had homework to do, we'd want them to be able to take the book home or stay after school to do it.

BY MR. JACOBS:
Q       So are you saying this was oversimplification what you said in '97-'98?

A       Well, I mean by their very definition when you do these kind of interviews, you continued to oversimplify. The kids in Beverly Hills and a lot of other places could take their textbooks home. In fact, a lot of middle class communities and working class blue collar and poor communities there were places where the kids had textbooks they could take home. Now, there are many more places where virtually every child can take the textbook home.

Again, the magic isn't in taking the textbook home. I mean, if they just put them under the pillow, it's not going to help them. The magic are kids, parents, teachers, administrators, all focused on student achievement.

(Exhibit No. 344 marked for identification)
BY MR. JACOBS:

A       No, it's not.

Q       I want to ask you about the fragment that's right in the middle of under Passionate Voice and above Personal Milestone that starts out: "Favoring education cuts over higher taxes is sinful."

A       Yeah.

Q       Did you say that in substance?

A       Yes.

Q       What did you mean by that?

A       Well, after the Schiff-Bustamonte money went out the door, the Board made another adoption and said those materials are no longer aligned. We have these new materials that are aligned. And the fact of the matter is, I believe the old materials are aligned as well as the new materials. And, you know, my own belief was that the actions to force people to buy more new books on top of the new books they had bought, was taking away local control when the district might have rather spent their money on...
longer school year, on more technology, on tutors, on a whole host of other things than to replace two-year-old text with brand new text when you've got so many pieces of unfinished business. It was not fiscally rational in my view.

Q And that had effect of negating some of the benefit of the additional instructional materials funding that had been made available in earlier years, correct?


THE WITNESS: What was the question?

(Whereupon, the record was read by the court reporter)

THE WITNESS: I wouldn't use the word "negate" probably. I just thought it was, you know, putting too tight a reign on what local districts could do to get to high achievement.

I think whenever we focus -- you know, there are so many categoricals that are really just straightjackets for how districts could spend money. And once you have a results-driven system, and you're managing for results, that's where all your focus ought to be. What did the children learn; how much do they know; how effective are they in problem solving and in analytical thinking and in working in groups and in writing and in speaking. You know, are they -- can they use mathematics; do they understand science. Not just measuring how many books they had and how old they are.

You know, you could have an older book that is really quite good. I mean, obviously we all read Mark Twain, and those are older books. So there has to be some room here for judgment on the part of the local district especially if you don't have enough resources.

BY MR. JACOBS:

Q Your report says in substance: "Denying diplomas to students who could not pass a High School Exit Exam by 2004 is 'unreasonable,'" unquote.

Do you see that?

A Yes.

Q Did you convey the substance of that to the reporter?

A Yes.

Q What underlies the conclusion of unreasonability?

A The senior class of 2004 entered school before there were standards, before there were assessments that were aligned to standards, before there was class size reduction, before there was an emphasis on making sure every child mastered the material before they moved on to another grade. So I felt that the date was capriciously chosen, and that it should have been done based on, you know, a much more thoughtful analysis of how do we get the kids to the highest standards.

Incidentally, I'm for giving the exam. I think it sends a powerful message to kids that is what we expect you to do. But I'm not for having it be a high stakes exam until we ensure all kids are in a school where they were taught to standards.

Q So earlier on we discussed a passage where you referred to chronically under-performing schools?

A Right.

Q Then we talked about building the capacity to turn around chronically under-performing schools especially given the limitations on personnel at the state-level. And now we're talking about implementing -- when it becomes reasonable to make the High School Exit Exam high stakes.

Given the existence of chronically under-performing schools and a question about how to -- how we're going to have the capacity to turn around those schools, when does it no longer become capricious or unreasonable to institute the high stakes component of the HSEE?

MR. VIRJEE: Objection. Calls for speculation. Lacks foundation. To the extent you're trying to characterize her testimony, she didn't use the word "capricious." And also asked and answered; she just answered that question.

THE WITNESS: I proposed a High School Exit Exam back in '95-'96. And I thought we could get the kids ready by 2007. I thought it would take twelve years. I thought it was reasonable to ask a first grader who had standards and a reduced class size to get there in twelve years, but that wasn't based on research. It was just sort of us, the Department, leadership, kind of trying to challenge each other as well as be reasonable.

And I originally testified to the Governor that I thought 2004 was too early, and he wanted to put the pressure on. And I can certainly respect those who want to put the pressure on because the kids are in a high stakes world. At the same time I'm glad they moved it off, and they did.
BY MR. JACOBS:
Q And what econometric would you propose to use to determine when it is reasonable to make the High School Exit Exam high stakes?

MR. VIRJEE: Objection. Vague and ambiguous as to "econometric." Asked and answered. Incomplete hypothetical.

THE WITNESS: You know, it might be a moving target. I think people who are at the helm should look very carefully at a whole set of indicators. I would like to have a Student Information System in place. I'd like to be sure that the children were given every opportunity to reach these high standards.

BY MR. JACOBS:
Q Could you take a look at 334 again, please.

MR. VIRJEE: 334?

MR. JACOBS: Yes.

BY MR. JACOBS:
Q This was the interview you did with Teaching to Change L.A. And I just want to ask you if you said in substance a few of the passages here.

A Which page?

Q First of all on page 2, the second from the bottom. "DE: The state constitution says that you're entitled to free and appropriate education."

A Uh-huh.

Q And then it goes on to the end of that paragraph: "We have a ways to go in California before we give every child a free and appropriate education in my view."

And I wonder if you could just tell us as to that whole paragraph, did you in that interview convey that in substance?

A Yes.

Q And then --

A Whale Gulch burned down, by the way. Poor little school. You have to go in a four-wheel-drive vehicle. No electricity generated. They were going to use technology because they were going wireless, but the school burned down. Twelve kids.

Q On page 3 of 4, again the second one up, the paragraph that starts: "I would raise teacher's salaries even higher among some of the poorest schools."

And then to the end of that paragraph: "I would make sure that they would have great support programs but also sure that they have great art programs."

The substance of that paragraph, did you convey that in the interview?

A Yes.

Q On the --

A By the way, to do that, you'd have to change the law.

MR. VIRJEE: You've answered the question.

BY MR. JACOBS:
Q And you're referring to the law on --

A The way teachers salary -- giving higher salaries to the kids (sic) in the poorest areas, or you'd have to do collective bargaining.

Q If you look on page 4 of 4, you'll recall we talked about the place where you said, "I'm as fascinated as anybody out there."

There's a paragraph under it that starts out: "I will tell you that we build Cadillac prisons and jalopy schools, and it is a disgrace to California."

Then it ends: "We need to have a Legislature that passes laws to begin working on the problems."

Did you convey the substance of that paragraph?

A Yes.

THE REPORTER: Can we break?

(Recess)

BY MR. JACOBS:
Q Second paragraph of the article says: "The recommendations are made by the 40-member Professional Development Task Force."

Do you see that?

A Yes.

Q And you did, in fact, do so?

A Yes.

Q The report asserted that: "A disproportional number of uncredentialed teachers are put into the poorest schools to teach the neediest children."

Fourth paragraph of the article.

Is that, in fact, a summary of one of the conclusions of the report?

MR. VIRJEE: Objection. The report speaks for itself.

MR. SEFERIAN: Lacks foundation.

THE WITNESS: Yeah, I think if you look at the report, it says that.
BY MR. JACOBS:

Q       And two paragraphs down you're quoted as saying: "The shortage of trained teachers in this state is nothing less than a crisis. We should take bold steps to increase the number of fully-qualified educators."

A       Yes.

Q       And did you, in fact, convey that in sum or substance?

A       Yes.

Q       And then down at the bottom you're quoted to say: "We cannot afford to scrimp on providing our teachers and administrators, who are the linchpins of our public schools, with the resources they need."

A       I think I do mention in here a big salary increase. Like, we did get beginning teacher salaries increased. But we should go even further.

Q       And the other factors you were pointing to are factors beyond the scope of the Task Force you convened?

A       Yes. Although, the schools were not -- I mean, in 2001 we were funding schools above the Prop 98 guarantee. And there were some more opportunities which we don't have right now because the state is broke.

Q       The Task Force was chaired by Linda Darling-Hammond and --

A       And Skip Mino (phonetic), former Superintendent of the State of Texas.

Q       And you chose Linda and Skip as the chairs of the Task Force?

A       Co-chairs, yes, I did that.

Q       And what commended them to you?

A       They're actually both known to me. Linda Darling-Hammond had worked to create the National Board for Professional Teaching standards and also had -- I had spoken to her and had seen her speak. And she had seen me speak. And we're compatible about a lot of things, not everything, but a lot of things.

And Skip had been the Commissioner in Texas who had started the famous Texas Education Reform which actually preceded George W. Bush and come in under Ann Richards. I felt -- he's now the Dean of the School of Education at San Diego State University. I thought the two of them would be outstanding.

Q       You're aware of criticism of teacher credentialing systems that they were too weakly correlated with teacher quality to make them -- to give them the significance we give them in the system of education?


THE WITNESS: I think there continues to be a shortage. I don't think the -- I think some other things are contributing right now to some of our teacher shortages, but I don't think the crisis is as bad. I think we've mitigated some of the worst effect of it. Not entirely, but somewhat.

BY MR. JACOBS:

Q       Are you aware of criticism of teacher credentialing systems in the United States,
criticisms based on a assessment whether or not you
have a credential is not sufficiently correlated
with teacher quality to make the enterprise as
significant as the system now makes it?

MR. VIRJEE: Objection. To the extent that
refers to a particular study or group of studies,
those documents, those studies, speak for
themselves.
The witness: I'm aware there is criticism
of the teacher credentialing system from a variety
of different vantage points. A lot of people think
we should go to a system more like medicine or law
where we actually have an exit exam as people come
out of college. But that would require a change of
law.

BY MR. JACOBS:
Q       In your judgment having spent a lot of time
around policy in the field of education, just how
important is a credential to being a successful
teacher?

MR. VIRJEE: Objection. Calls for
speculation. Lacks foundation. Vague and ambiguous
as to "importance." Also calls for an expert
opinion, which this witness is not competent to
give.

THE WITNESS: There are lots of criticisms
of teachers all over the country. And they come
from a variety of different vantage points. And
they're about a variety of different things. And
there is also information that in some other
countries they do things very differently.

So I do believe that some of the programs
that we have are more successful than others, but we
need a lot more research, really
scientifically-based research on the subject of what
works best.

I've met mid career people who have gone
through programs like Troops to Teachers through San
Francisco State down in Elk Grove who were very
satisfied. I've met corporate people and military
people both who have gone into teaching and who do
quite well at the high school level. On the other
hand, ironically, it might be harder to teach a
first grader to read than it is to teach physics to
a high school student if you're a physicist.

So I think we could do a lot more to
evaluate teachers, but right now that would take a
major change in state law. And before we did that,
ought to have a lot more research on what works
best.

BY MR. JACOBS:
Q       Does a CSIS figure into the ability to do
that research?

MR. VIRJEE: Objection. Calls for
speculation. Lacks foundation. Calls for an expert
opinion, which this witness is not competent to
give.

THE WITNESS: It might help, but I think a
student information system hopefully will tell us
more about the student. I think you can tell a lot
about teachers by a variety of things including
observation. I worry about, you know, as I -- I
worried about the reward system being for individual
teachers because then we might give all the gate
teachers awards, no awards to the special ed teacher
when the special ed teacher might be a better
teacher than the gate teacher.

BY MR. JACOBS:
Q       What did Glen Seaborg's physicist son say?

A       He went to teach. He didn't yet have a
credential, but by all accounts he was probably a
pretty good physics teacher.

Q       So do you think it's an important policy
objective, as the report recommended, to end
emergency credentials?

MR. VIRJEE: Objection. Calls for
speculation. Lacks foundation. Incomplete
hypothetical.

THE WITNESS: For the record, I think we
were trying to do more than just end emergency
credentials, but rather to increase the number of
fully-credentialed and well-supported teachers. It
wasn't just about getting rid of something. It was
about building a system that would improve the
education of children.

BY MR. JACOBS:
Q       And that was a recommendation you endorsed?

A       I've supported the Task Force Report.

I will tell you --

MR. VIRJEE: You've answered the question.

THE WITNESS: I had a major disagreement
with Linda on one aspect, but that's all right.

BY MR. JACOBS:
Q       What was that aspect?

A       Well, Linda doesn't like the internship
programs, but I've seen good internship programs. I
think given the current situation in California, we
need to have them.
BY MR. JACOBS:

Q       346 is a KCBS segment. Poison Paint Part II.

A       Oh, yes.

Q       This is dated November 6, 2000. It's downloaded from the web. You're quoted on the second page of this --

A       They misspelled both names.

Q       -- as saying: "When you look at those windows, we could be in Soweto, South Africa; we could be in a third world country. The condition of these schools is unacceptable, and I do worry terribly about the paint because it could cause permanent damage to these children."

Do you see that?

A       Yes.

Q       Did you say that in sum or substance?

A       Yes.

Q       And then you are purported to have said: "Eastin said, 'the time has come for a new state law which requires schools to clean up the lead. There needs to be a hammer and there needs to be financial support given to poor districts to get this work done.'"

A       Yes.

Q       Did you say that in words or substance?

A       Yes.

Q       What did you mean when you said, "there needs to be a hammer and there needs to be financial support given to poor districts"?

A       Well, I mean, I think it speaks for itself. The hammer, there needs to be some way of ascertaining whether or not there is lead paint at schools, and, you know, probably the health departments or somebody closer to the problem. I know, we don't have anybody in the State Department that does that kind of work, so I don't necessarily think it's something the State Department should do, but I do think it might be something we ask the local health departments to do. And then there ought to be an item either in the budget or in the bond to specifically deal with this issue so nobody can hide behind, "we're broke; we're sorry."

Q       "And this issue" in the context of your last answer being what?

A       We did support legislation to deal with this issue. I can't remember the exact substance of the bill. But I don't believe it -- I think it either got watered down or got out, or it didn't get out.

But bottom line I don't think there should be lead paint in schools that children are going to touch and be able to be harmed by.

Q       So this issue was the lead issue?

A       Right. I thought we should get the lead out.


BY MR. JACOBS:

Q       It begins: "Thank you for this opportunity to testify on behalf of Superintendent of Public Instruction, Delaine Eastin."

Do you see that?

A       Uh-huh.

Q       Was this testimony you had some involvement in preparing?

A       Some. A lot of work was, as I indicate here, done by the School Facility Planning Division during Broom's (phonetic) tenure.

Q       At the end of the testimony on page 8, the report states in quote: "In conclusion, the Superintendent of Public Instruction would like to thank the Little Hoover Commission for follow-up on its important report 'No Room for Johnny.' School facilities poorly maintained and just plain inadequate can depress the human spirit. Cleanliness and enough room are not frills; they enhance productively."

Do you see that?

A       Yes.

Q       Did you contribute to that text?

A       Yes.

Q       And you endorsed it?

A       Yes.

Q       You've spoken a lot this morning about the achievements in terms of school construction and the school bonds. What would you point to to show progress on the issue of facilities maintenance?


THE WITNESS: I do not have any data. I'm no longer State Superintendent. I'm sure somebody at the Department could get you data.

But I visit schools, and I observe that many, many schools that are older, are now sporting a face lift. They are modernized; they are cleaned up. They look better. And that's true in urban areas..."
California as well as in rural California. I think we still have some work to do, but I think that many districts have addressed the most egregious problems, and they're working on still others.

At one point I saw a school out in Sierra County where one wing of the school was closed down because it was not -- there was no money to fix it, and it was not -- it was not habitable. There had been a crack in the ceiling because of the snow weight. Things like that used to make me very mad because we were broke, and we didn't have the money to do it. And then as you recall, and this is '98, I was mad that they didn't have a bond on the ballot for that June. But I think we have made substantial progress.

Again, the 55 percent votes has caused us to put a lot of local money on the table.

BY MR. JACOBS:
Q       This morning we spoke about some of your comments regarding school district mismanagement. Based on your visits and observations, was school district mismanagement a contributor to facilities maintenance problems?


THE WITNESS: I think you have to go sort of case-by-case. I think you might find that in one district they're working on getting the approvals to fix their buildings. In another district you might find they had so much to do that, you know, they started with the most severe problems first. And still other districts, you might find that they're somewhere in the process.

Again, this is not a quick process. And although, we've taken steps to try to streamline it, we were never able to do as much as we wanted. And you know, even under Governor Wilson -- and usually the Republicans are for smaller government, right? But even under Wilson we couldn't get them to eliminate agencies that were involved in this.

So it's a very drawn out process. So even though money has been in the system a couple years now, they may not have fixed all the schools by a long shot.

BY MR. JACOBS:
Q       So the answer is in some cases, yes; in some cases, no?

MR. SEFERIAN: Same objections.
THE WITNESS: I would say, yeah. I think it's really broad. I think in more cases than not, it was a lack of resources than a lack of will. Or, you know, there aren't very many incompetents; there aren't very many crooks. There are just a few of them.

BY MR. JACOBS:
Q       So if one encountered facilities maintenance problems in 2003 after all this money has come into the system, what would your hypothesis be as to the leading causal explanation?


THE WITNESS: I think you have to go sort of case-by-case. I think you might find that in one district they're working on getting the approvals to fix their buildings. In another district you might find they had so much to do that, you know, they started with the most severe problems first. And still other districts, you might find that they're somewhere in the process.

Again, this is not a quick process. And although, we've taken steps to try to streamline it, we were never able to do as much as we wanted. And you know, even under Governor Wilson -- and usually the Republicans are for smaller government, right? But even under Wilson we couldn't get them to eliminate agencies that were involved in this.

So it's a very drawn out process. So even though money has been in the system a couple years now, they may not have fixed all the schools by a long shot.

BY MR. JACOBS:
Q       One of the maintenance issues the Legislature has seized on recently is school bathrooms. You're aware of the pending legislation to address that problem?

A       I am. Although, I have not read the legislation. I've only read news accounts of it.

Q       During your tenure, did you become aware of a issue of significance concerning maintenance of school bathrooms?

MR. VIRJEE: Objection. Vague and ambiguous as to "significance" and "maintenance."

THE WITNESS: Yes.

BY MR. JACOBS:
Q       And what was your observation about that problem?


THE WITNESS: In many places I went, I was told plumbing is very expensive. And then all the people that I know that remodel their homes tell me plumbing is very expensive. In fact, there may have been some cases where the bathrooms are just so old, that they should have been completely modernized, but there wasn't money to do that, or there may have been a more pressing need.

Bottom line, there are some great schools that don't look as good as we'd like them to look
and may not have as good of bathrooms as we'd like them to have.

BY MR. JACOBS:
Q       And some not so great schools that have those characteristics?
A       Right.
Q       And in terms of the policy implementation of this bathrooms issue that the Legislature has now seized with, did you ever form a judgment about the best thing that could be done at the state-level to address that problem?
MR. VIRJEE: Vague and ambiguous as to "policy implementation" and "seized with."
MR. SEFERIAN: Overly broad. Incomplete hypothetical.
THE WITNESS: Oh, in a way it's very typical of the legislative process. You know, something hits the press and all of a sudden we have the Bathroom Bill. But at the core, the issue is facilities. And the Legislature should have acted years before to change it to a 55 percent vote to put it before the voters, and the Legislature should have put more money into facilities sooner. I think they came to the party late, but they have come to the party. But the bathrooms are really just the symptom; they are not the whole story. And you know, for the most part if you find bathrooms, you'll find a lot of other problems at a school. It's just one symptom of a school that's really broken. Compton we found bad bathrooms, but we've also found virtually every roof leaked, and some of the schools were just unbelievably uncare for. Compton, again, is sort of one of the handful of exceptional schools that we have had to takeover, school districts that we've had to takeover. But still it wasn't just the bathrooms in Compton; it was a symptom of a far greater and deeper disease.

BY MR. JACOBS:
Q       And still had these conditions?
A       And still had these conditions.

I had been to a school --

MR. VIRJEE: You've answered the question.

THE WITNESS: Okay.

MR. JACOBS: Could we take a couple minutes?

THE WITNESS: Sure.

(Recess)

(Exhibit No. 349 marked for identification)

BY MR. JACOBS:
Q       Is this, in fact, a memo covering first interim report to the Superintendent that you received?

MR. VIRJEE: Objection. To the extent you're asking for the content of the document, the document speaks for itself. If you're asking if she's seen it before, if you can remember without reading the whole document, he's entitled to your response.

THE WITNESS: I probably got this. I was pretty attentive to the High School Exit Exam issues. I can't say that I really remember every
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detail, though.
(Exhibit No. SAD 150 reintroduced in
the record)

BY MR. JACOBS:
Q       And a document that's previously been marked
6       as SAD 150.
A       A sad document. Just a joke. You don't
have to write it down.
Q       SAD 150 purports to be a letter under an
Executive Office Routing Slip from you to Governor
Davis dated October 11, 2000.
Is this, in fact, such a letter?
MR. VIRJEE:  The document speaks for itself.
MR. SEFERIAN:  Could you take as long as you
need to answer the question.
The witness:  Let me read it. I do actually
remember this letter, I think.
MR. JACOBS:  I'm not going to actually ask
you any substantive questions about it. I need just
you to, as we say, authenticate it.
The witness:  Yes, I do remember this
letter.
(Exhibit No. 350 marked for identification)

BY MR. JACOBS:
Q       350 is a letter to you. Purports to be a
letter to you from Gary Hart when he was Secretary
for Education. Did you receive this letter around
the time it was sent?
MR. VIRJEE:  Objection. Calls for
speculation.
The witness:  Were you going to mark this
one separately?
MR. JACOBS:  No, it's marked. SAD 150 is in
the record and marked.
The witness:  Yes, I received this letter.
(Exhibit No. 351 marked for identification)

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BY MR. JACOBS:
Q       351 is a download of an article from the
Educators Wary of Bush Testing Plan. They Fear
Legislation Will Undermine State Testing Procedures.
And if you go over to the second column,
third paragraph up from the bottom, there's a quote
from you. Quote: "We're focussed on weighing the
hog, not making sure its fed well,' said Delaine
Eastin, California Superintendent of Public
Instruction. 'Just testing is not the magic. The
magic is in powerful curriculum and in giving the
teachers the time and the training," close quote.
Do you see that?

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A       Yes. Right.
Q       Did you say, "we're focussed on weighing the
hog, not making sure its fed well"?
A       I often say, "You don't fatten the hog by
feeding it more often."
I'm worried we added more and more testing
time but testing of a multiple choice nature that
isn't as powerful as the writing exams and problem
solving exams and some of the more specific but more
rich testing approaches.
Q       Then you went on to say: "Just testing is
not the magic. The magic is a powerful curriculum
and in giving teachers the time and the training,"
correct?
A       Right. You know, the assessments are a way
of figuring out did the kids really master the
material? Did the children really get the
information, understand it and are they able to use
it? That's the real magic. So we want to use --
the assessments are important, and I fought to bring
back a state assessment system, but I am
disappointed that it's so heavily-weighted toward
multiple choice and so on.
Q       So it looked like you were saying here,
though, that the emphasis of the emerging federal
legislation was in your judgment misplaced, and you
said: "Testing is not the magic. The magic is in a
powerful curriculum and in giving teachers the
curriculum, the time and the training."
"The curriculum, the time and training"
aren't a matter of more sophisticated training, are
they?
MR. VIRJEE:  Objection. Asked and answered.
She told you what she meant by that.
The witness:  I was critical of the -- in a
way the Bush administration I think kind of
chickened out. You know, George Herbert Washington
Bush was for having national standards, and then we
would have been able to really say, well, how are
all these kids doing as compared to every other kid
in the country. When Bush Junior, little Bush,
comes along, he says, W says, we're going to have --
every state is going to have its own test system,
every state is going to have its own standard
system, but we're going to decide whether you meet
our standards. And it becomes -- as it's played
out. It's become a little bit compressed in terms
of, you know, you can't say that every kid in every
state is being asked to meet high standards.
I feel confident in California we've
actually set high standards, but we still have too much emphasis coming down from the federal government on testing and on doing ancillary things that aren't necessarily as rich as, you know, some of the things we ought to be doing with the curriculum. And they're not funding us at the level that we should be funded at.

So I think that they're in a way -- I understand what the Congress did, and I think they're intent was excellent. I do not quarrel at all with the intent of No Child Left Behind. I do quarrel with the failure to focus on sort of powerful learning and on giving people all the tools they need to get kids to powerful learning. And it seems like we spent a lot of time talking about testing rather than talking about achievement.

BY MR. JACOBS:
Q       One of the requirements of NCLB or one set of requirements relates to the highly qualified teacher issue. You're generally familiar with those requirements?

MR. SEFERIAN: Objection. Vague and ambiguous.

THE WITNESS: I'm generally familiar. I'm not deeply steeped in it.

BY MR. JACOBS:
Q       You're aware that NCLB has a particular focus on ending the practice of hiring non-highly-qualified teachers in schools receiving NCLB funding?

MR. SEFERIAN: Objection. Vague and ambiguous.

MR. VIRJEE: Vague as to "highly-qualified" teachers.

THE WITNESS: I think they're being very capricious. Here again, they're going to decide that this state's standards are high enough, and that state's standards aren't. The second state may have higher standards. They're going to approve the credential system in some states that have only four-year degree requirement. California has a fifth year degree requirement; our standards are arguably higher. It just seems to me there's too much influx. Not enough is really based on scientifically-based research, which is a phrase they used a hundred eleven times in the bill. I didn't count them myself. Somebody told me. (Exhibit 352 marked for identification)

BY MR. JACOBS:
Q       352 is a packet of documents under stamp DT-OA 05929 to 05935. Let me say that again. DT-OA 05929 to DT-OA 05935. And the second page is a letter from you concerning Survey of Environmental Conditions in California Portable Classrooms.

Do you see that?
A       Uh-huh.
Q       Do you recall this communication?
A       Yes.
MR. VIRJEE: Take your time to look at it if you need to.

BY MR. JACOBS:
Q       And do you recall that the Department developed a survey methodology to find out the environmental health conditions in California portable classrooms?

A       I'll just read this here.

Okay. Now, what was the --

MR. JACOBS: What was the question?
(Whereupon, the record was read by the court reporter)

MR. SEFERIAN: Objection. Vague and ambiguous?

THE WITNESS: We worked with the Department of Health Services. Our job was give them the list of the schools.

BY MR. JACOBS:
Q       The schools with portables?
A       Right.
Q       And absent the survey information, the Department lacked information about the extent of use of portable classrooms?

MR. VIRJEE: Objection. Calls for speculation. Lacks foundation as to what the Department upheld services may have had or not had.

MR. JACOBS: I'm sorry. By "department," I meant your department.

THE WITNESS: What was your question?

BY MR. JACOBS:
Q       Did the Department of Education, absent the survey, the Department of Education lacked data on where portable classrooms were located?

MR. SEFERIAN: Objection. Lacks foundation.

MR. VIRJEE: Calls for speculation.

THE WITNESS: As I understood it, our job was to ask districts to respond to the survey so that DHS and the Resources Board could make some recommendations to the Governor.

BY MR. JACOBS:
Q       And did you participate in discussions about whether a survey on this issue was a useful tool?
A: I don't think so. I think we were just told to help DHS with what they were trying to do.

Q: You see where it says: "Unfortunately we lack sufficient information to determine whether publicized cases are isolated occurrences or system-wide problems"?

A: Right.

Q: And why was it important to know whether the publicized cases were isolated occurrences or system-wide problems?

THE WITNESS: There were some news reports about problems in portable classrooms. We needed to know if it was one problem in one particular manufacturer, or systemic problems from many manufacturers. Was it a little problem? Was it a big problem? And we were trying to help Air Resources Board and Department of Education Services get their arms around the problem. The Governor sponsored the bill. If I remember right, I think somebody else was trying to do something more dramatic, and they first wanted to get their arms around how big the problem was.

BY MR. JACOBS:

Q: So that the policy could be driven by data about the significance and scope of the problem?

THE WITNESS: That sounds logical to me. I think that's probably what happened. But I wasn't deeply involved in this. This was really being driven by Department of Health Services. We just happened to have the CDS codes. Schools have a code, and we are the only ones that could help them get -- identify the schools.

BY MR. JACOBS:

Q: And then as you understood it, the Department of Health Services was then going to follow-up on this data and do more investigation as to the environmental conditions that might be prevalent based on this data?

A: Right.

BY MR. JACOBS:

Q: Do you recall participating in discussions about whether it would make sense to do additional surveying of school districts in the state to determine the extent of publicized problems?

MR. VIRJEE: Objection. Vague and ambiguous as to "survey data." Also object to the extent that would have delayed the deliberative process privilege. Also vague and ambiguous as to "additional."

BY MR. JACOBS:

Q: Let me tell you what I'm driving at. Really what I want to know is did you have any opposition, did you oppose or see any reason to oppose, from your advantage point as SPI, periodically surveying school districts to find out the prevalence of various reported conditions?

THE WITNESS: We tried to be responsive to real problems, and we had a million of them. We were pretty busy. So we didn't really -- we may have conducted some other surveys. But we didn't take on a lot of surveys to identify new areas to work in because we were so busy trying to get kids to high achievement to deal with the various other problems we had. I mean, trying to keep them from smoking, trying to keep them from being bullies, trying to keep them safe, trying to make sure their schools are clean. There were a whole lot of things we were working on, but with a very small staff of overworked people. Like I said, I wouldn't rule out having done a survey, but I don't recall.

(Exhibit 353 marked for identification)

BY MR. JACOBS:

Q: 353, Minutes of the Advisory Committee. Public Schools Accountability Act of 1999 from a meeting held on January 18, 2000. Please turn to the second to last page where you are reported to have been asked about your thoughts on the political future of accountability,
what has to take place, and to have suggested that three things are needed, quote:

"One, we are competing with the private sector. We have to show that we have a strong accountability system. We must show that accountability as a fundamental part of our thinking. We must demonstrate we mean business to our shareholder (the public). Two, there is a higher level of resources required. Kentucky is spending about three hundred dollars more per student than California. Three, we have to show that there are consequences for not improving student achievement in under-performing schools. We have a system of fiscal accountability. Taking other districts under that system, such as Compton, has been difficult. We have to show that we have similar resolve with regard to under-performing schools. We must be fair, have due process and be even-handed, but we must insist on improvement. Accountability has to be something that stays around. We must show that it is not just something we are doing while we wait for the next thing to happen."

Did you say that in words or substance at this meeting?

A       I'm sure I did.
Q       Then Mr. Weis comments on the need to build district-level support for schools in order to facilitate improvement. And you're reported to have agreed, quote, "that a strong system of district-level support is essential," close quote. Do you see that?
A       Yeah. Mr. Weis -- I'm sorry, you were saying? Would you repeat that? I'm just tired.
Q       I realize that. And it's the bottom paragraph there, and I really just want to ask you if you, in fact, agreed, "that a strong system of district-level support is essential"?
A       Yes.
Q       And what did you understand "district-level support" to mean in this context?
MR. VIRJEE: Objection. Calls for speculation as to what she might have meant in 2000. If you can remember, that's fine.
THE WITNESS: Well, I think the district is the first line of defense. It is the place where it must begin. The district must step in if a school is chronically under-performing. As I said, the state is not equipped to intercede in more than a handful of schools. So the system we have is a system of local control.

And I feel quite certain that, you know, most of the administrators in the state as well as most of the school board members believe the district is the first line of defense.

BY MR. JACOBS:
Q       What did you mean by "a strong system of district-level support"?
A       Well, districts have to be able to identify low-performing schools and systematically intervene in those low-performing schools in such a way that they help the principal and the principal's teachers to help kids with achievement and engage, wherever is needed, other resources and other means to invite parents in to help kids to at the time get to higher levels. The district has to be the first line of defense.

BY MR. JACOBS:
Q       And did you mean to convey that the -- that action needed to be taken at the state-level in order to build a stronger system of district-level support?
THE WITNESS: I'm not sure I understand what you're getting at.
MR. JACOBS: I can help you out. I'm going to show you some more minutes. And we're going to be done in about ten minutes, so hang in there with me.

(Exhibit 354 marked for identification)

BY MR. JACOBS:
Q       354, Final Minutes California State Board of Education, February 7 and 8, 2001. On page 11 of 14 of the printout under Progress Report of the Awards Intervention Subcommittee of the Public Schools Accountability Act Advisory Committee Item 20 --
MR. VIRJEE: What page, I'm sorry, Michael?
THE WITNESS: I have 11 of 13.
MR. JACOBS: Can I see?
THE WITNESS: Just want to make sure I have the right thing here.
MR. JACOBS: I'll give you this copy.
MR. VIRJEE: What page did you want us to look at, Michael?
MR. JACOBS: I want you to look at Item 20.
THE WITNESS: They're not always in order.
THE WITNESS: Okay.
BY MR. JACOBS:
The quote in the minutes says:
"Superintendent Eastin added that current law puts
the responsibility to improve on the school, but the
principal of the school does not have the authority
needed to make the necessary changes. We need to
directly engage and involve the district more. Mrs. Joseph
stated that she concurs with the Superintendent that
district accountability must be addressed. District
accountability is the issue. Mr. Mockler suggested
at the next meeting the Board spend some time on
this idea of district accountability."

Do you see that?

A Yes.

Q And when you said, "we need to engage and
involve the district more," you were referring to
the need on the part of state-level administration
to engage and involve the district more, correct?

MR. VIRJEE: Objection. Calls for
speculation. Lacks foundation as to whether she
said it or didn't say it.

THE WITNESS: I think we need to engage the
district more in the achievement, or lack thereof,
of individual schools. I think the first line of
defense is the district.

BY MR. JACOBS:

Q What did you have in mind as a mechanism for
engaging and involving the district more?

MR. VIRJEE: Objection. Asked and answered.

THE WITNESS: As I said, the district API.

BY MR. JACOBS:

Q But that would be a district-wide measure of
performance, correct?

A Yes. And, well, we did -- you know, we did
ask the Governor for additional positions to enact
this PSAA, this Public Schools Accountability Act,
and to support the IIUSP and the high-priority

improvement in five years, then that ought to be a
matter of great interest to the Board and to the
District Superintendent. Eventually the state may
be able to say "boo" and the state may be forced to
withhold money or do something else.

But I think most people think it's
counter-intuitive to withhold money from a
low-performing school which is right now the remedy
that seems to be most available to the State
Department. I think you would probably and most
people logically would envision a different
mechanism, but right now, and I really want to say
this strongly, there's a 150-year history of local
control that won't die easily. And that, you know,
even a slight up tick in state intervention is going
to require a lot more resources on the part of this
government toward its Department of Education or
somebody.

But in the meantime, the Department has
dropped staff. There was a five percent cut, and a
five percent cut and a ten percent cut and now
they're in the middle of a twenty percent cut. So
the Department is going from -- went from 1,600 when
I was there to 1,300. It's going down still
further. It's already over sixty percent federally

funded. It's illegal for the Superintendent of
Public Instruction to take a federally funded person
and have them do some other work to make the state
feel better.

So at some point -- and this is really why I
said you should have sued the Governor and
Legislature. At some point some things that you
seem to be driving at would require a fundamental
change in state law and in the allocation of state
resources that neither the State Department of
Education nor the State Board of Education nor the
Superintendent of Public Instruction has any
authority over.

Q My question was what mechanism did you
envision for engaging and involving the district
more?

MR. VIRJEE: Objection. Asked and answered.

THE WITNESS: As I said, the district API.

BY MR. JACOBS:

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more?

MR. VIRJEE: Objection. Asked and answered.

THE WITNESS: As I said, the district API.

BY MR. JACOBS:

Q But that would be a district-wide measure of
performance, correct?

A Yes. And, well, we did -- you know, we did
ask the Governor for additional positions to enact
this PSAA, this Public Schools Accountability Act,
and to support the IIUSP and the high-priority
Schools Program. And while we did get some additional positions, many of them were never filled because the State Department of Finance has a hiring freeze on.

You can see why I thought I was in a Fillini movie. So brand new additional responsibilities, massive new oversight, expectations and a declining resource base and a smaller staff.

Q And from the authority standpoint, did you envision instead of being a directive at the school level, which is how the IUSP Program is primarily configured, did you envision to be able to be directive at the district-level to be able to say to the district you must provide the following improvements at this school or you will be in violation of my edict?

MR. SEFERIAN: Assumes facts not in evidence.

THE WITNESS: While I was there, we did have the OB Porter Act, the Elementary and Secondary Education Act, that required us to go into a small number of schools. Essentially these were the schools that had shown no improvement for five years. They were Title 1 schools.

First year there were thirteen, and I want to say the second year there was somewhat more, maybe eighteen. And we did, in fact, go into those schools, and in each case I personally called the superintendent of that district and told them we were going there. And in every case both years the superintendent didn't want us to come because they were afraid it would make us look bad. I told them it was the federal law, and as stretched as we were staff-wise, we do try to obey the law.

So we did, in fact, go into those schools -- and they are a matter of public record, so you can look at them. We did, in fact, go into those schools. In some cases we found a new principal that the district had really gotten in the game with the new principal in working hard to fix the school. In other cases nothing had changed. And so we put pressure on the superintendent.

But this is just jawbone. I couldn't make the superintendent do anything. All I could do was urge the superintendent to do things. And my staff urged the superintendent to do things. And we did get a couple of those principals moved or more than a couple, and we did get some attention from the district, and we are seeing some improvement.

I actually went down the second year and saw one of the schools in L.A. actually that had a new principal that was making some progress. But I will tell you honestly it is absolutely impossible for there to be a very in depth involvement of this very small State Department of Education.

Again, 41 percent of the state budget we administer, but we do it with 1,300 people. So there just hasn't been -- the State Legislature and the Governor hadn't really fully thought out a system. And at some point they said the superintendent is going to -- you know, I said get a university to run a low-performing school? Fat chance. Start a charter school? Have you ever tried to start a charter school? It's actually a huge job. The superintendent is not going to do that. State Superintendent is not going to do that. I mean, it's like this part that they haven't figured out that somebody -- it's like posting 55 miles per hour speed limits and not hiring any police. That's what they're doing.

But it's not -- and I really want to say this again, the State Board and the Department do not make the laws. They do not appropriate the money, and they are the wrong people to sue for the problems that you identify. That's my opinion, at least, and I'm not a lawyer.

(Exhibit No. 355 marked for identification)

BY MR. JACOBS:

Q 355 is a report from the Little Hoover Commission from 1992. And if you turn to page 22 and you look at the text at Note 10 under the Big F, and it refers to a speech by you. If you look at 195 and notes says Assemblywoman Delaine Eastin Speech to CASH February 24, 1992 Sacramento. The report on page 22 states, quote: "One Legislator who has extensively toured school facilities throughout the state tells of classrooms with buckets strategically placed to catch rain, windows covered with dark sheets to block out the sweltering sunlight, broken bathroom fixtures and bathrooms reminiscent of Third World slum conditions."

A Uh-huh. Of course if I said --

MR. SEFERIAN: Please wait. He hasn't asked you a question yet.

THE WITNESS: Sorry.

BY MR. JACOBS:

Q So are you with me in terms of the page
references back and forth?
Q And do you see that if you go to the footnote, it's referring to a speech by you?
A Although let me just said it says in 1992 --
oh, I was still a legislator; you're right. I'm a few years off. I need more caffeine, I guess.
Q Okay.
MR. VIRJEE: Do you have a question? I didn't hear the question. I'm sorry.

BY MR. JACOBS:
Q My question is, first of all, did you give a speech as a legislator in which you reported on facilities conditions?

MR. VIRJEE: In 1992?
MR. JACOBS: That in substance, alliance with the description of it on page 22 of this report.

MR. VIRJEE: Objection. Calls for speculation. If you can remember that...

THE WITNESS: I remember speaking at the CASH, and these are things I might have said.

BY MR. JACOBS:
Q And it reflected your observations at the time?
A Yes.
Q And did you, in fact, say that in word or substance on or about October 4th, 1996?

MR. VIRJEE: Objection. Calls for speculation.
THE WITNESS: Well, I know that I went down to L.A. to support this bond, and it's probable that I said that. I will say that we're trying to get two-thirds vote at that time to fix the schools of Los Angeles locally, and we did, in fact, succeed in getting Measure B passed.

BY MR. JACOBS:
Q You weren't stating that you were overstating the extent of the problems?


THE WITNESS: I said what I said.

BY MR. JACOBS:
Q And you believed it to be true at the time?
A Yes.
Q And if you go down a couple paragraphs:

"Eastin was shown classrooms where the floor tiles are all detached."

Do you see that?
A Uh-huh.

Q And where, "a room with a gaping ceiling hole caused a ceiling leak, which the school has stopped repairing because it reopens in every rain storm."

Let's just take that sentence. Were you, in fact, shown such classrooms?
A Yes. I toured a great many classrooms which saw abysmal conditions, and I fought to pass bonds to correct these conditions.
Q And then, "a school restroom emits a stench bacteria that has steeped into the walls."

Did you see such a restroom?
A Yes.
Q And as you said, one of the reasons for the prevalence of facilities problems in the state was the percentage required to pass bonds, something you worked to address, correct?
A Correct.

(Exhibit No. 357 marked for identification)

BY MR. JACOBS:
Q And this is an article from the San Francisco Examiner printed off of West Law, February 22nd, 2000 regarding Prop 26.
A Yes.
Q And if you turn to the second page, it quotes you at the bottom as saying: "We are only
one of four states that requires this two-thirds majority." Do you see that?
A    Yes.
Q And then it notes that you visited a school in every county in California. That was true, correct?
A    That's correct.
Q And then quote: "I was in a school in Ontario last week. It is so crowded that one group of kids is going to school from seven a.m. to noon another from noon to five p.m."
You, in fact, saw such a school in Ontario around 2000, correct?
A    That's correct.
Q "I was in a Sacramento school where they've had to close off rooms because of water leaks and mold."
You were also in such a Sacramento school around the year 2000?
A    Yes.
Q "I visited a high school in Fort Bragg that almost fell down because of dry rot."
Was that around the year 2000?
A    It was earlier.
Q How much?
A I'm not sure.
Q Then you said: "This is not a proposition benefiting urban districts. It applies to urban, rural and suburban schools."
Do you see that?
A    Yes.
Q And that's because you saw facilities problems of magnitude not just in urban schools, but in other kind of schools?
A    Yes.
MR. SEFERIAN: Objection. Vague and ambiguous.
MR. VIRJEE: We're pretty close to the time.
MR. JACOBS: Yep, we're pretty close to being done.
MS. WELCH: Why don't we just take a couple minutes. I think we're close to being done.
(Recess)
MR. JACOBS: Yep, I think we're done.
Thank you very much for your time,
Ms. Eastin.
THE WITNESS: Thank you very much. Good luck.
ATTORNEY #5: Can I just put on the record usual stipulation, the parties have deemed to join objection. I don't think we did at the beginning just note this deposition was set at five hours. The plaintiffs used all five hours. I'm going to reserve my objections, whatever those may be.
Thank you.
(Time noted: 4:08 p.m.)

Please be advised I have read the foregoing deposition, and I hereby state there are:
(Check one)

NO CORRECTIONS
CORRECTIONS ATTACHED

DELAINE EASTIN

Date Signed

Case Title: Williams v. State of CA
Date of Deposition: September 23, 2003
No. 39974
DEPONENT'S CHANGES OR CORRECTIONS

Note: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "add" or "delete" and sign this form.

DEPOSITION OF: DELAINE EASTIN
CASE: Williams v. State of CA
DATE OF DEPO: September 23, 2003

PAGE  LINE  CHANGE/ADD/DELETE

Deponent's Signature______________________________

Date______________________

REPORTER'S CERTIFICATE

I certify that the witness in the foregoing deposition,

DELAINE EASTIN,
was by me duly sworn to testify in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said testimony was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of September, 2003.

__________________________
COLLEEN N. KAZNOWSKI
Certified Shorthand Reporter
Certificate No. 10757