

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

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4 ELIEZER WILLIAMS, a minor, by
5 Sweetie Williams, his guardian ad litem,
6 et al., each individually and on behalf
7 of all others similarly situated,
8 Plaintiffs,

9 vs.

No. 312236

10 STATE OF CALIFORNIA, DELAINE EASTIN,
11 State Superintendent of Public
12 Instruction, STATE DEPARTMENT OF
13 EDUCATION, STATE BOARD OF EDUCATION,
14 Defendants.

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15 Deposition of
16 SHERRY GRIFFITH

17 Volume I, Pages 1 through 251
18 Wednesday, July 25, 2001

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22 Reported by:
23 TRACY LEE MOORELAND
24 CSR No. 10397
25 Job No. 27831

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INDEX

1
2 Examination by: Page
3 Mr. Jacobs 5
4 ---o0o---
5
6 EXHIBITS
7 Defendants' Page
8 SAD-53 1st Story of Level 2 printed in FULL
9 format, September 17, 2000, Sunday 7
10 SAD-54 Curriculum Development and Supplemental
11 Materials Commission, Minutes of
12 Meeting May 18-19, 2000 115
13 SAD-55 Article, New books seen as tool to
14 improve math learning 179
15 SAD-56 Curriculum Development and Supplemental
16 Materials Commission, Final Minutes of
17 Meeting January 17-19, 2001 241
18
19
20
21
22
23
24
25

1 BE IT REMEMBERED, that on Wednesday, July 25,
2 2001, commencing at the hour of 10:11 a.m., thereof, at
3 the Law Offices of Morrison & Foerster LLP, 400 Capitol
4 Mall, Suite 2300, Sacramento, California, before me,
5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in
6 the State of California, there personally appeared
7 SHERRY GRIFFITH,
8 called as a witness herein, who, having been duly sworn
9 to tell the truth, the whole truth, and nothing but the
10 truth, was thereupon examined and interrogated as
11 hereinafter set forth.
12 ---o0o---
13 EXAMINATION BY MR. JACOBS
14 Q. Ms. Griffith, I'm Michael Jacobs. I represent
15 the plaintiffs in this case.
16 You hold a couple of different positions right
17 now in the -- with state agencies; is that correct?
18 A. Yes.
19 Q. What are those positions?
20 A. I'm the division director for the curriculum
21 frameworks and instructional resources division for the
22 Department, and I'm the designee for the state
23 superintendent as executive secretary to the curriculum
24 development and supplemental materials commission.
25 Q. Do you have any other positions in -- as an

1 employee of the State of California?
 2 A. No.
 3 Q. Are you a member of the Publishers Resource
 4 Group, Inc.?
 5 A. Publishers Resource Group?
 6 Q. Uh-huh.
 7 A. No.
 8 Q. NASTA, National Association of State Textbook
 9 Administrators?
 10 A. Automatically you're a member of that group
 11 when you're the textbook or instructional materials
 12 coordinator for your state. Those are administrators
 13 for each state, so you become a participant in that
 14 process.
 15 Q. Are other State of California employees members
 16 of NASTA?
 17 MR. VIRJEE: Objection. Calls for speculation.
 18 THE WITNESS: I don't know.
 19 Q. BY MR. JACOBS: So to the best of your
 20 knowledge, you are the State of California
 21 representative to NASTA?
 22 A. Yes.
 23 Q. Have you had your deposition taken before in
 24 any case?
 25 A. Yes, in 1979.

1 Q. What kind of case?
 2 A. A car accident.
 3 Q. I'll remind you of the rules. I ask you
 4 questions, you give me answers, the court reporter takes
 5 it down. Various uses can be made of that in the
 6 litigation. Your testimony is under oath. I think you
 7 know from reading the papers what that means in terms of
 8 your obligations to give truthful testimony.
 9 If you don't understand a question, please tell
 10 me. I'll assume you understand it. Both lawyers,
 11 you'll find, for you, object frequently if they don't
 12 like the question, but unless they instruct you not to
 13 answer, your obligation stands to answer the question
 14 unless you don't understand it yourself. Okay?
 15 A. Uh-huh.
 16 Q. You were quoted in an article on September
 17 17th, 2000, in the Press Enterprise of Riverside,
 18 California.
 19 MR. VIRJEE: What was the date?
 20 MR. JACOBS: I'm handing it out now.
 21 MR. VIRJEE: Are you going to mark this?
 22 MR. JACOBS: Yes.
 23 (Exhibit SAD-53 was marked.)
 24 MR. JACOBS: Feel free to take a look at the
 25 article as a whole, but I've marked in yellow the

1 quotation from the article from you.
 2 MR. VIRJEE: Take your time. Read whatever you
 3 want to read.
 4 THE WITNESS: Okay.
 5 Q. BY MR. JACOBS: Did you say the words that are
 6 set forth in the article?
 7 A. I don't recall.
 8 Q. Do you recall generally being interviewed about
 9 that topic?
 10 A. Yes.
 11 Q. Do you recall the general thrust of your
 12 comments?
 13 A. Yes.
 14 Q. What was the general thrust of your comments?
 15 A. The general thrust of my comments is that each
 16 school district would assess its need based both on
 17 school sites, grade level and content areas in a
 18 particular year, and determine where they had greatest
 19 need, and then they would begin to select their
 20 materials for those areas that are of highest priority
 21 at that particular time.
 22 For example, if they had just purchased history
 23 social science books in 1999, they wouldn't be
 24 addressing that issue, they would go to perhaps another
 25 area, and each district would be different, to focus

1 their time and energy and their funding on a content
 2 area where they found they had greatest need for
 3 additional instructional materials, new and revised
 4 materials.
 5 So my thrust of the comments here are based on
 6 the fact that every district in California is at a
 7 different stage of selection, and it's an ongoing
 8 process that they're involved with on a regular basis.
 9 It's cyclical, and it adheres to the curriculum
 10 framework cycles in the state.
 11 Q. By "curriculum framework cycles," what do you
 12 mean?
 13 A. The State develops curriculum frameworks in
 14 grades K to 12 in every subject. There are four core
 15 subjects, math, reading language arts, social science
 16 history, so it's history social science.
 17 Q. That's one topic?
 18 A. Yes. History social science, and science. We
 19 also prepare curriculum frameworks in the areas of
 20 foreign language, physical education and health, and
 21 then finally visual performing arts. That's for all of
 22 K-12.
 23 The curriculum frameworks are developed by the
 24 curriculum commission with the assistance of my office
 25 through a public review process, and then they're

1 approved by the State Board of Education.
 2 And they're on cycles. For the core subjects
 3 it's every six years, and for the non-core it's every
 4 eight.
 5 Q. This aspect of the -- that you've just
 6 described has been in existence for how long?
 7 MR. VIRJEE: Objection. Compound. Also calls
 8 for speculation, that it's all been in existence at the
 9 same time.
 10 MS. ALTAMIRANO: Join.
 11 MS. KAATZ: Join.
 12 THE WITNESS: I don't understand your question.
 13 Q. BY MR. JACOBS: You described what you meant by
 14 curriculum framework cycle, and described a cycle and a
 15 process for adopting curriculum frameworks, right?
 16 A. Uh-huh. Yes.
 17 Q. To the best of your knowledge, how long a
 18 period is the description that you just gave me
 19 accurate?
 20 MR. VIRJEE: Objection. Compound. Assumes
 21 facts not in evidence. Assumes it's all been
 22 comprehensive and in effect for the same amount of time.
 23 THE WITNESS: I still don't understand your
 24 question.
 25 Q. BY MR. JACOBS: Did the system change in recent

1 years so that the description you just gave us is
 2 applicable to a period going back to '98 or '99, or has
 3 this description been accurate that you just gave me
 4 back to the early '90s or earlier?
 5 MS. ALTAMIRANO: Objection. Vague and
 6 ambiguous.
 7 Which system are you talking about, just a
 8 system of curriculum frameworks?
 9 MR. JACOBS: The answer the witness just gave
 10 me.
 11 THE WITNESS: Are you asking what year this
 12 process began?
 13 MR. JACOBS: No.
 14 Q. I'm asking for how long the description that
 15 you gave me in answering the question, what did you mean
 16 by curriculum framework cycles, would be -- is a then
 17 accurate description of the system?
 18 MR. VIRJEE: Same objection. Compound.
 19 To the extent maybe you're asking how long has
 20 exactly what you just described been the state of
 21 affairs.
 22 THE WITNESS: Many years.
 23 Q. BY MR. JACOBS: And do you know when it
 24 started?
 25 A. I couldn't give you the inception date.

1 Q. But let's take the cycles, for example, six
 2 years and eight years that you described. Has that
 3 been -- have those been the periods of the cycles for at
 4 least the last eleven years?
 5 A. Yes.
 6 Q. So when you said, every district in California
 7 has a very different textbook situation -- let me just
 8 put in the record the quote from the article -- said,
 9 Sherry Griffith, who oversees textbooks issues for the
 10 State Department of Education, some districts, for
 11 example, may put most of their money in reading or math
 12 because they are concerned about their test scores in
 13 that area, it's all a matter of priorities.
 14 Let me ask you, first of all, is that
 15 consistent with your understanding of the thrust of what
 16 you were conveying to the reporter?
 17 MR. VIRJEE: Objection to the extent you
 18 started that question with, "when you said." She's
 19 already said that she didn't say this specifically.
 20 MR. JACOBS: That's fair. Let me start over.
 21 Q. Having read into the record what the article
 22 quotes you as saying and now having had a description
 23 from you of what the thrust of your remarks were to the
 24 reporter, do you see any inconsistency in what's in the
 25 article from your recollection of the thrust of what you

1 conveyed to the reporter?
 2 A. Yes.
 3 Q. What's the inconsistency?
 4 A. It doesn't include the full detail of what I
 5 said.
 6 Q. When you were referring to a very different
 7 textbook situation, were you in any way referring to
 8 whether particular schools have what you understand to
 9 be shortages of textbooks?
 10 MR. VIRJEE: Objection. Assumes facts not in
 11 evidence. Assumes that she referred to a very different
 12 textbook situation. She didn't say she used those
 13 words, she gave you generally the thrust of what she
 14 said.
 15 MR. JACOBS: Fram, I have to ask you to --
 16 MS. ALTAMIRANO: Join.
 17 MR. JACOBS: -- Give a short, simple objection
 18 and not coach the witness.
 19 MR. VIRJEE: I'll make my objection in the way
 20 I choose. And that misstates her testimony and assumes
 21 facts not in evidence.
 22 You are trying to trick the witness into
 23 agreeing that's what she said when she's already told
 24 you she didn't, so I'll have to ask you not to
 25 mischaracterize her testimony.

1 Q. BY MR. JACOBS: Can you answer my question?
 2 A. Could you repeat the question.
 3 MS. ALTAMIRANO: Could you have the reporter
 4 read it back.
 5 MR. JACOBS: Let me start over. I'll withdraw
 6 the question.
 7 Q. Did you -- did the thrust of your remarks
 8 include the thought, in words or substance, that every
 9 district in California has a very different textbook
 10 situation?
 11 MR. VIRJEE: Objection. Vague and ambiguous.
 12 MS. ALTAMIRANO: Join.
 13 THE WITNESS: I don't understand your question.
 14 Q. BY MR. JACOBS: Well, I asked you whether there
 15 was anything inconsistent between what I read in the
 16 article and your recollection of the thrust of what you
 17 conveyed to the reporter. And your answer as to the
 18 inconsistency was that it didn't convey the full content
 19 that you relayed to us in this deposition when I asked
 20 you for your recollection of the thrust of your remarks.
 21 So I didn't understand you to be saying that you did not
 22 convey in the thrust of your remarks to the reporter
 23 that every district in California has a very different
 24 textbook situation.
 25 So let me ask you that, is there anything

1 inconsistent as opposed to subtractive or additive?
 2 MS. ALTAMIRANO: I'm going to object in the
 3 sense that you're misstating what she said earlier.
 4 Earlier she said that she conveyed much more to this
 5 reporter than what's in this quote.
 6 Q. BY MR. JACOBS: Right. Did you not convey to
 7 the reporter the thought that every district in
 8 California has a very different textbook situation?
 9 A. Repeat your question.
 10 MR. VIRJEE: You are asking in sum and
 11 substance, I assume?
 12 MR. JACOBS: Yes.
 13 MR. VIRJEE: So, Sherry, the question is in sum
 14 and substance, did you tell the reporter that every
 15 school district has a different textbook situation?
 16 Fair enough?
 17 MR. JACOBS: In words or substance, yes.
 18 THE WITNESS: Should I be answering this
 19 question?
 20 MR. JACOBS: Yes.
 21 THE WITNESS: Yes.
 22 Q. BY MR. JACOBS: Yes, I did convey to the
 23 reporter that every district in California has a very
 24 different textbook situation in words or substance?
 25 A. Yes. Not in these terms.

1 Q. Do you recall any better what words you used?
 2 A. Yes.
 3 Q. What were the words you used?
 4 A. What I stated previously to you.
 5 MR. VIRJEE: What she's already testified to.
 6 THE WITNESS: I've already answered that.
 7 Q. BY MR. JACOBS: So in your conversation with
 8 the reporter, were you referring to what you understood
 9 to be shortages of textbooks in any particular school or
 10 school district in the State of California?
 11 A. No.
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to the term "shortage."
 14 MS. KAATZ: Join.
 15 MS. ALTAMIRANO: I join as well.
 16 THE WITNESS: No.
 17 Q. BY MR. JACOBS: To put it in the converse, what
 18 you were referring to then was not whether there are
 19 sufficient numbers of textbooks in schools or school
 20 districts in the state, but rather the notion that
 21 different school districts were in different stages of
 22 the adoption cycles as it related to the State's
 23 adoption of curriculum frameworks?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "sufficient numbers."

1 MS. ALTAMIRANO: Join.
 2 MS. KAATZ: Join.
 3 THE WITNESS: The first part of your sentence I
 4 can respond to, the second part I cannot.
 5 MR. JACOBS: Let's take the first part.
 6 THE WITNESS: If you can repeat the first part.
 7 (Record read.)
 8 THE WITNESS: At the word cycle, I can answer
 9 yes.
 10 Q. BY MR. JACOBS: Did the reporter ask you in
 11 that conversation about whether you had information
 12 about whether there was sufficient numbers of textbooks
 13 in schools or school districts in the state?
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "sufficient numbers."
 16 MS. ALTAMIRANO: Join.
 17 THE WITNESS: I don't recall.
 18 Q. BY MR. JACOBS: The topic of the article -- one
 19 topic in the article is the claim by the ACLU, referred
 20 to in the fourth paragraph of page 4. The ACLU claims
 21 it knows of more than 30 schools statewide that don't
 22 have enough books in core subjects, such as math and
 23 science, for students to use in class or to take home.
 24 They say most of the schools with textbook shortages are
 25 in predominately poor or minority communities.

1 Do you see that paragraph?
 2 A. Uh-huh.
 3 MR. VIRJEE: You have to speak audibly for the
 4 reporter.
 5 THE WITNESS: Yes.
 6 Q. BY MR. JACOBS: Did your conversation with the
 7 reporter cover the ACLU claim as described in that
 8 paragraph?
 9 MR. VIRJEE: Objection. Asked and answered.
 10 THE WITNESS: No, not specifically the case. I
 11 was called upon to provide information by phone to them
 12 regarding the cycles of the frameworks, the funding
 13 streams that are available from the State, and the
 14 process that's used by local governing boards.
 15 Q. BY MR. JACOBS: When you say "called upon," did
 16 you mean to imply that you were asked by somebody in
 17 the -- in state government to answer those questions, or
 18 you were called by the reporter and asked those
 19 questions?
 20 MR. VIRJEE: Or something else.
 21 MR. JACOBS: Or something else.
 22 THE WITNESS: Our department communications
 23 director refers calls to particular individuals in the
 24 Department that have background and expertise in certain
 25 areas, and then I would provide information about the

1 State process.
 2 Q. BY MR. JACOBS: And that is, in fact, the
 3 process that was handled -- that was followed in this
 4 case?
 5 A. Yes.
 6 MR. VIRJEE: Objection. Calls for speculation.
 7 THE WITNESS: Yes.
 8 Q. BY MR. JACOBS: Did you have a discussion with
 9 the reporter about the funding available from the State
 10 for textbook purchases?
 11 A. Yes.
 12 Q. What do you recall of what you conveyed to the
 13 reporter on that topic?
 14 MR. VIRJEE: Other than what she's already
 15 testified to?
 16 MR. JACOBS: Yes.
 17 THE WITNESS: I can't recall every specific
 18 response.
 19 MR. VIRJEE: He's just asking to tell him what
 20 you remember you told the reporter.
 21 THE WITNESS: What I would have conveyed to the
 22 reporter is the amount per pupil that's provided, and
 23 some of that is reflected in this article, I think, to
 24 some extent, though I want to note it's incorrect. I
 25 would talk about the two categorical funding streams

1 that are available for districts to use.
 2 Q. BY MR. JACOBS: Those are Shiff-Bustamante and
 3 IMF?
 4 A. State IMF, yes.
 5 MR. VIRJEE: Move to strike her testimony as
 6 nonresponsive to the extent she's saying that's what she
 7 would have said.
 8 If you did say that, that's fine. I want you
 9 to tell him what you did say.
 10 MR. JACOBS: You can move to strike, but you
 11 can't instruct this witness, so please continue.
 12 THE WITNESS: I informed the reporter about the
 13 Shiff-Bustamante instructional materials program, the
 14 state instructional materials fund, how those funding
 15 streams work, the per pupil apportionments that were
 16 provided at that time, the requirements for the use of
 17 those funds, and general information about textbook
 18 pricing that's done at the state level.
 19 Q. BY MR. JACOBS: I'd like to ask efficient
 20 questions, and so if this works for you, great, if not,
 21 I'll break it down.
 22 As you just described the topics that you
 23 provided to the reporter, can you tell me what your best
 24 recollection is of what you told the reporter on those
 25 topics?

1 A. For Shiff-Bustamante I would have given the
 2 total appropriations for the fiscal year, I would have
 3 given the per pupil amount, I would have discussed with
 4 them the use of those funds, that they must be used for
 5 standards aligned materials, instructional materials
 6 approved by the State Board for K-8, kindergarten
 7 through grade 8, and approved by high schools, grades
 8 9-12.
 9 For the state instructional materials fund, I
 10 would have given them the general apportionment for the
 11 state, the per pupil amount for grades K-8 and 9-12, and
 12 how those funds should be used.
 13 As it relates to pricing of materials, I would
 14 have informed them of the price quotes that are
 15 submitted at the time the materials are approved by the
 16 State. Those prices are good for two years, and they
 17 can be revised biannually.
 18 And I would have informed the district -- or
 19 the reporter, excuse me, that there are purchase lists
 20 that would be used by the districts to make their
 21 decisions, and that those purchase lists are on cycles
 22 approved by the State Board for a core area at six
 23 years. So a district would have the opportunity any
 24 time within that six years to evaluate materials at the
 25 local level and determine if they wanted to purchase

1 them in that content area.
 2 Q. For the fiscal year that you were commenting on
 3 in your discussion with the reporter, what were the per
 4 pupil amounts as conveyed in your conversation?
 5 MS. ALTAMIRANO: Objection. Vague. Could we
 6 get the fiscal year?
 7 MR. JACOBS: For Shiff-Bustamante.
 8 MS. ALTAMIRANO: Could we get the fiscal year
 9 down, which year it is?
 10 MR. JACOBS: That's a fair question.
 11 Q. What year were you talking about?
 12 A. Well, we work on a fiscal cycle, which would be
 13 July to July. This article was September 17th, 2000, so
 14 I would have been providing information for fiscal year
 15 2000, 2001.
 16 Q. What was the per pupil amount that you had in
 17 mind when you were having a conversation with the
 18 reporter for Schiff-Bustamante?
 19 MR. VIRJEE: To the extent that you can recall.
 20 THE WITNESS: Well, I recall that I would give
 21 an approximate, which is \$42 per pupil for grades K to
 22 12.
 23 Q. BY MR. JACOBS: And for the state IMF, same
 24 question.
 25 MR. VIRJEE: Same year too?

1 MR. JACOBS: Uh-huh.
 2 THE WITNESS: I would have given an approximate
 3 apportionment of \$31 per pupil for K-8, and \$20 for
 4 grades 9 to 12.
 5 Q. BY MR. JACOBS: To the best of your knowledge
 6 sitting here today, aside from the fact that it was an
 7 approximation, are those figures accurate for that year?
 8 MR. VIRJEE: Thank you.
 9 THE WITNESS: Yes, it's an approximation.
 10 Q. BY MR. JACOBS: But it's not the case that
 11 you're sitting here today, realizing that what you had
 12 in mind at that time and told the reporter was in some
 13 material way incorrect?
 14 A. No.
 15 Q. Then what did you have in mind at that time
 16 about textbook pricing that you believe you would have
 17 conveyed to the reporter?
 18 MR. VIRJEE: Other than what she's already
 19 testified to?
 20 MR. JACOBS: Yes.
 21 Q. Just that the pricing information is available,
 22 or did you actually say to him, our understanding is
 23 that it costs roughly this amount to purchase textbooks?
 24 A. No, I didn't say that.
 25 Q. Did you have any discussion with the reporter

1 in which you compared available funding to cost of
 2 textbooks?
 3 A. I don't recall having that discussion at all.
 4 Q. Did you discuss with the reporter that there
 5 were potentially other sources of funding available for
 6 textbook purchases besides Shiff-Bustamante and state
 7 IMF available to school districts?
 8 A. Yes.
 9 Q. And what is your best recollection of what you
 10 conveyed to him on that topic?
 11 A. I would convey that they are able to use any
 12 resource available to them at the local level to
 13 purchase instructional materials, and they are expected
 14 to combine those resources with the dedicated accounts
 15 that the State provides.
 16 Q. And by "expected to," what do you mean?
 17 A. That they are under obligation to purchase
 18 materials using the sources the State provides and any
 19 other additional resources available to them.
 20 Q. And the obligation you're referring to is what?
 21 A. That they, at the local level, will need to
 22 determine from their budget whatever flexible resources
 23 they have that can be used to purchase the materials
 24 that they need, along with any state funds that are
 25 provided.

1 Q. So by "obligation" you were not referring to
 2 some specific requirement written into state law or
 3 regulation?
 4 MR. VIRJEE: Objection. Calls for a legal
 5 conclusion.
 6 MS. ALTAMIRANO: Join.
 7 THE WITNESS: No.
 8 Q. BY MR. JACOBS: No, I was not?
 9 A. No, I wasn't referring to a particular statute.
 10 Q. Were you referring to any -- what were you
 11 referring to then, other than the notion that school
 12 districts have flexibility to use funds from other
 13 sources?
 14 A. Purchasing decisions are made at the local
 15 level, so publisher representatives come to the school
 16 district, present what they have available. They're
 17 based on the prices they've submitted to the State for
 18 K-8.
 19 The district makes determinations, once they've
 20 determined they're going to purchase, what portions of
 21 the program they want to purchase and what additional
 22 supplements to a program they want to purchase, and they
 23 can determine that they'd like to purchase, for example,
 24 just a pupil edition and a student edition within the
 25 confines of their budget and their ability. They may

1 choose to purchase student edition, teacher's edition,
2 workbooks, CD ROMs, graphs and posters within the means
3 that they have at the local level.

4 So when I indicated obligation, if they chose
5 to purchase a program in which their dedicated funds did
6 not provide for the extra support materials they wanted
7 to purchase, then they would be obligated to find those
8 resources within their local budgets. Those costs would
9 not come as a reimbursement from the State.

10 Q. And the reason it wouldn't come as a
11 reimbursement from the State is because -- is not
12 because those funds can't be used for purchasing the
13 incremental materials, but rather, in your hypothetical,
14 if you will, those funds have simply already been used
15 for the purchase of, say, the student edition; is that
16 right?

17 A. I couldn't speak to every district and the
18 status of their purchases.

19 Q. That wasn't what I was getting at. It is
20 possible under the rules for Schiff-Bustamante to
21 purchase items such as teacher editions, workbooks,
22 posters and CD ROMs.

23 If the underlying curriculum meets the State
24 framework, Schiff-Bustamante doesn't preclude the use of
25 monies for that purpose; is that correct?

1 components are approved by the State Board of Education
2 and can be used under a traditional adoption for a
3 standards aligned review that's done by the State.

4 Q. I understood everything except the "but all of
5 the components" part of your answer. Let me see if I'm
6 hearing you correctly.

7 If the publisher has proposed for review and
8 approval by the relevant state-level entities ancillary
9 materials such as workbooks or posters or CD ROMs, and
10 those have been reviewed and approved, then, for
11 example, Schiff-Bustamante funds could be used by the
12 district to purchase those ancillary materials; is that
13 correct?

14 MS. ALTAMIRANO: I'll object. It's vague in
15 the sense of approved.

16 Do you mean adopted by the State?

17 MR. JACOBS: Yes.

18 MS. ALTAMIRANO: By the Board of Education?

19 MR. JACOBS: Okay.

20 THE WITNESS: Yes, they can purchase that.

21 Q. BY MR. JACOBS: But there are cases in which
22 the publisher doesn't submit those ancillary items for
23 approval or where they're submitted and not approved, in
24 which case if a district wanted to purchase those, they
25 would have to use other funds?

1 A. Yes. I need to clarify. They can purchase
2 those, but they must be reviewed at the state level and
3 approved by the State Board of Education before they can
4 use those funds.

5 Q. So is it the case that adoption of a textbook
6 doesn't necessarily mean adoption of the workbook, for
7 example?

8 A. What it means is when you're going through an
9 adoption cycle, which occurs every six years --

10 Q. For the six-year cycle?

11 A. For the six-year cycle. -- whatever the
12 publisher submits for that K-8 adoption and then is
13 reviewed at the state level by the curriculum
14 commission, content experts and then finally the State
15 Board, can be purchased using Schiff-Bustamante, but
16 there are additional components of a program that a
17 publisher may include that are optional for purchasing.

18 So my example is a district, in looking at its
19 budget, may determine, based on the price quotes, that
20 this year they can afford to buy the basics, the student
21 edition and the teacher's edition, but they may not be
22 in the position to buy, let's say, support or extraneous
23 materials, so they may wait to purchase those for a
24 subsequent year or they may choose not to purchase
25 those. So they can be taken separately, but all of the

1 MR. VIRJEE: Objection. Vague and ambiguous as
2 to "other."

3 Outside of Schiff-Bustamante?

4 MR. JACOBS: Correct.

5 MR. VIRJEE: And the IMF account, or including
6 the --

7 MR. JACOBS: We haven't gotten to the IMF yet
8 because I think there is some flexibility.

9 THE WITNESS: I don't understand your question.

10 Q. BY MR. JACOBS: I'm trying to tease out two
11 different possibilities. One is that in making a
12 purchasing decision, they've exhausted their per student
13 amounts under, say, Schiff-Bustamante and therefore in
14 deciding to purchase ancillary materials, they have to
15 go to funding sources. That's one case, it seemed to
16 me, could exist.

17 Another case is that in deciding to purchase
18 ancillary materials they discover the ancillary
19 materials have not been approved by the State Board of
20 Education and therefore have to use other funds.

21 MS. ALTAMIRANO: You mean adopt each time
22 you're saying approved, right?

23 MR. JACOBS: I think you said approved.

24 THE WITNESS: State Board approved, adopted
25 would be the same.

1 MS. ALTAMIRANO: I just want to make sure of
2 the terms.

3 I'll answer it in two parts. They could not
4 purchase materials that were submitted and rejected by
5 the State Board of Education under Schiff-Bustamante.

6 If they chose to buy materials that were
7 rejected by the State Board of Education, the only way
8 they could do that is if they were approved for what's
9 called legal and social compliance, and they would have
10 to use another resource, of which 30 percent of the
11 state IMF, instructional materials fund, could be used
12 to purchase those materials that were not approved by
13 the State Board.

14 Q. BY MR. JACOBS: Change the case a little bit.
15 It hasn't even been submitted and approved for legal and
16 social compliance, what then is the district's option?

17 A. They can't purchase those materials.

18 Q. Using even general funds available to the
19 school district?

20 A. The State requires districts to purchase
21 instructional materials from either State Board approved
22 lists. And for 9-12, local certified approved
23 materials, or the legal and social compliance list,
24 those reviews are conducted by our office.

25 Q. What's the mechanism for legal and social -- I

1 they go through the legal and social compliance review
2 conducted by the State, there are numerous Ed codes that
3 guide that, and they pay a fee for that review, and if
4 they pass legal and social compliance, they're put on
5 the list. That list is good for six years.

6 A district can then use 30 percent of their IMF
7 or other resources to purchase from that list, which
8 then could supplement any material that they have bought
9 with Schiff-Bustamante or the 70 percent IMF.

10 Q. Okay. So leaving aside literature, which is
11 treated separately, a state is prohibited -- a school
12 district is prohibited from purchasing instructional
13 materials that have not been approved in, A, the
14 adoption cycle, or, B, the legal and social compliance
15 review?

16 MR. VIRJEE: Objection. Overbroad. Compound.
17 Depends on the situation. That's what she's already
18 testified to.

19 THE WITNESS: There is flexibility. For
20 example, in the 30 percent of IMF, 5 percent of the 30
21 can be used to purchase tests, teacher professional
22 development support, distant learning resources, other
23 technology support, not the equipment, but educational
24 content technology. So there is flexibility there to
25 purchase other resources that strengthen the curriculum

1 want to cut to the chase on legal and social compliance.

2 If a school district says, I want to purchase
3 for an English class a novel that was released this
4 year, we think it's terrific for our kids, can they
5 submit it for a legal and social compliance and get a
6 relatively rapid review and approval of that?

7 A. Literature is treated differently. If it's
8 literature, they can use their state or classroom
9 library funds to purchase literature materials. They
10 could use their state instructional materials funds if
11 the novel was on the state legal and social compliance
12 list.

13 Q. And how does -- and how does a district get a
14 novel on the list if they want to purchase it?

15 A. Well, again, most publishers are not submitting
16 literature to the list, so it's not as likely that they
17 would use those funds for that purpose. They would use
18 their library funds or other resources, perhaps, for
19 literature.

20 The publishers that are submitting the legal
21 and social compliance are publishers who are offering
22 supplemental materials that help to reinforce and
23 strengthening the curriculum in the classroom. That's a
24 typical submission. So it might be a spelling book, for
25 example, that would supplement in the second grade. And

1 in the classroom.

2 Q. BY MR. JACOBS: This is 5 percent of the 30
3 percent, or 5 percent of the 100 percent?

4 A. It's 5 percent of the 30 percent.

5 Q. And this amount can be used to purchase these
6 materials even if they have not been approved for legal
7 and social compliance?

8 A. Yes.

9 Q. And even if they do not -- even if they are not
10 by the vendor linked to the support of an approved
11 textbook?

12 MR. VIRJEE: Objection. Vague and ambiguous as
13 to "textbook."

14 THE WITNESS: I don't understand your question.

15 Q. BY MR. JACOBS: One possibility is that the
16 rule says you can purchase these things using the 5
17 percent of the 30 percent, but they have to be vended by
18 the vendor as supplemental materials with respect to
19 textbooks that have been approved by the State?

20 A. No.

21 Q. No such requirement?

22 A. No.

23 Q. Just to be clear, because "no" is ambiguous in
24 English, there is no such requirement, correct?

25 A. There is no such requirement that it be

1 connected to the vendor of other materials.
 2 Q. So we have two categories right now where there
 3 is no requirement of passage through the adoption cycle
 4 or passage through legal and social compliance. One
 5 category is literature, and the other is the tests,
 6 teacher professional development, distant learning,
 7 other technology content category.

8 Have I summarized your testimony so far
 9 correctly?

10 MR. VIRJEE: I'll object as vague and ambiguous
 11 and compound. Also the testimony will speak for itself.
 12 And I'll also object on the grounds of categories.

13 Categories of what?

14 MS. ALTAMIRANO: Join.

15 THE WITNESS: For purposes of this process,
 16 yes, but there are additional opportunities for
 17 districts to provide materials for their teachers, for
 18 teacher professional support under other categories or
 19 categoricals. But for purposes of the state
 20 requirements for the use of these funds and the adoption
 21 process and the legal and social compliances, yes.

22 Q. BY MR. JACOBS: Just to take another
 23 hypothetical case, a school district wants to adopt, in
 24 a -- let's take a core subject area -- a reading
 25 curriculum that has not been adopted as part of the

1 not trying to be difficult.

2 MR. JACOBS: That's helpful. If we can get a
 3 parlance down, that helps.

4 Q. What parlance do you think is appropriate?

5 A. Well, I'm trying to understand how you're using
 6 the term curriculum. Curriculum is developed at the
 7 local level. The instructional materials support that
 8 curriculum that's developed at a local level. So the
 9 term reading curriculum would not be used in the work
 10 that we're discussing.

11 Q. Okay. So let's call it instructional materials
 12 then.

13 A. Uh-huh.

14 Q. So a school district has chosen a curriculum
 15 and wants to purchase the associated instructional
 16 materials and we're in reading and language arts, and
 17 just to simplify it, we're in K through 8, and it is not
 18 what might be regarded as supplemental materials that
 19 they wish to purchase, but rather the primary
 20 instructional materials that are going to be used to
 21 support that curriculum.

22 MR. VIRJEE: Objection. Vague and ambiguous as
 23 to "primary" and "supplemental."

24 Q. BY MR. JACOBS: What flexibility do they have
 25 to make that purchase?

1 adoption cycle for reading and language arts, is the
 2 district prohibited, regardless of the source of funds,
 3 from purchasing those materials?

4 MR. VIRJEE: Objection. Incomplete
 5 hypothetical.

6 Are you asking has it gone through legal and
 7 social compliance, what kind of funds are they using,
 8 what kind of materials are they purchasing?

9 MR. JACOBS: I said curriculum, and as I
 10 understood it, that was a clear question under the
 11 various --

12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "curriculum" and same objections.

14 MS. ALTAMIRANO: Join.

15 THE WITNESS: I don't know what you mean by
 16 reading curriculum.

17 MR. JACOBS: In my hypothetical this reading
 18 curriculum includes a primary set of instructional
 19 materials. It might be called a textbook, it might be
 20 called something else, but it is the core thing that you
 21 have to purchase in some quantities in order to deliver
 22 this curriculum.

23 MR. VIRJEE: I think the problem is parlance.
 24 I don't think you purchase curriculums. You purchase
 25 instructional resources or instructional materials. I'm

1 MR. VIRJEE: Also objection. Vague and
 2 ambiguous and calls for -- incomplete hypothetical and
 3 calls for speculation.

4 MS. ALTAMIRANO: Join.

5 THE WITNESS: As it relates to purchasing
 6 instructional materials, as I stated before, if they're
 7 in K-8, they need to purchase from the K-8 State Board
 8 adopted lists for the content areas I have mentioned.
 9 And for 9-12, if it's Schiff-Bustamante in particular,
 10 they need to purchase materials certified by the local
 11 governing boards, standards aligned.

12 And, as I stated before, the IMF funds, the use
 13 of those funds would guide their purchases for the 70
 14 percent and the 30 percent.

15 Q. BY MR. JACOBS: And just to be clear on this,
 16 this is not merely a rule about the use of state
 17 categorical funding for instructional materials
 18 purchased. The rule that you just described applies to
 19 purchasing decisions regardless of the source of funds?

20 MR. VIRJEE: Objection. That misstates her
 21 testimony. In fact, she identified the sources of funds
 22 that she was referring to.

23 MS. ALTAMIRANO: Join.

24 THE WITNESS: I can't speak to the question.

25 Q. BY MR. JACOBS: Why not? What part did you not

1 understand?

2 A. Because you're asking me to speak to other
3 funds that I have no knowledge of.

4 Q. That's why I'm asking you about what rule
5 you're describing.

6 Are you describing a rule about the use of
7 Schiff-Bustamante and IMF?

8 The rule you just gave me about what the school
9 districts can purchase, is that a rule about the use of
10 those funds, or is that a rule about what the districts
11 can purchase under your understanding of the applicable
12 state law and regulations regardless of the source of
13 funds?

14 MR. VIRJEE: Objection. Asked and answered.

15 MS. ALTAMIRANO: Join.

16 THE WITNESS: My understanding of your question
17 is you're asking me about decisions made by a district
18 to make purchasing decisions outside of the system
19 that's been set up by the State.

20 MR. JACOBS: I'll take that characterization.

21 THE WITNESS: Okay. I don't have any knowledge
22 of what districts are doing to make purchases outside of
23 the funding streams that the State is providing them.
24 And as I stated before, the courses of study and the
25 curriculum offered in the classroom is determined at the

1 available to districts.

2 The high school districts have the opportunity
3 to thoroughly review the materials that they use and
4 make their choices, and use the funding sources provided
5 by the State to do so.

6 The funding sources themselves have flexibility
7 within to make important decisions that support the
8 needs of the schools in the district by providing,
9 through the State Board's policy, various options
10 through the percentages, for instance, under the IMF
11 fund. So I don't consider it closed at all.

12 Q. Let's try this again. I asked you a pretty
13 concrete hypothetical, and then you answered a broader
14 question. So let's stick with the hypothetical.

15 We're in K through 8, not 9 through 12. First
16 step. Okay?

17 A. Uh-huh.

18 Q. We're purchasing a textbook for reading
19 language arts and everybody would agree it's a textbook.
20 Okay. Second part of the hypothetical. Are you with
21 me?

22 Do you understand that element of a
23 hypothetical?

24 MR. VIRJEE: You're asking her to assume
25 everybody would agree it's a textbook?

1 local level.

2 Q. BY MR. JACOBS: I think we can connect on this,
3 but it's not that difficult a question.

4 You described sort of a closed-loop system in
5 which there are approvals of various sorts at the state
6 level and those approvals affect the uses of funds,
7 whether it's Schiff-Bustamante or the 70 or 30 percent
8 or the 5 percent of the 30 percent of IMF.

9 Do you agree that that's kind of a closed-loop
10 system? Is that characterization fair?

11 MR. VIRJEE: Objection. Vague and ambiguous as
12 to "closed-loop system."

13 MS. ALTAMIRANO: Join.

14 MS. KAATZ: Join.

15 MR. VIRJEE: To the extent you're saying they
16 have no choices outside of that, I think that
17 mischaracterizes her testimony.

18 THE WITNESS: No, I wouldn't agree it's a
19 closed-loop system.

20 Q. BY MR. JACOBS: Why not?

21 A. Well, the law requires that the state boards
22 ensure that there are a variety of options available to
23 districts to purchase on the state adopted lists because
24 of the importance, as stated in the legislative intent
25 of the statute, that there be diversity in the choices

1 MR. JACOBS: Yes.

2 THE WITNESS: Sure.

3 Q. BY MR. JACOBS: So we have K through 8
4 textbook, reading language arts, and the district wants
5 to purchase such a textbook that has not been approved
6 as part of the adoption cycle for reading and language
7 arts.

8 Under your understanding of the range of
9 freedom available to the school district, if they do not
10 use Schiff-Bustamante or state IMF, can they purchase
11 that textbook?

12 MS. ALTAMIRANO: Objection. Vague. Are you
13 talking all funding sources from the State, or are you
14 talking about all in the whole world?

15 MR. JACOBS: I said Schiff-Bustamante or state.

16 Q. Do you understand what I mean by
17 Schiff-Bustamante or state IMF?

18 A. Uh-huh.

19 MS. ALTAMIRANO: Are you talking about all
20 funding sources which are even local, not just state?

21 MR. VIRJEE: I'll also object on the grounds
22 that it's an incomplete hypothetical.

23 MR. JACOBS: What part is incomplete? Let's
24 get it right.

25 MR. VIRJEE: For example, you're not talking

1 about whether the text has been approved for legal and
2 cultural compliance.

3 MR. JACOBS: No, I only said it has been
4 approved as part of the adoption cycle, that's correct.
5 Anything else?

6 MR. VIRJEE: It deals with the issue of what
7 funding source they're going to be using, so in order to
8 answer the question, you need to know what funding
9 source they're using.

10 MR. JACOBS: Well, I said they're not using
11 Schiff-Bustamante or state IMF.

12 Is there any remaining ambiguity?

13 MR. VIRJEE: It calls for speculation depending
14 on the funding source. Also calls for a legal
15 conclusion.

16 MS. ALTAMIRANO: Join.

17 THE WITNESS: It would be difficult for me to
18 respond because I don't know what the submission looks
19 like or the materials that you're hypothetically
20 presenting to me in this scenario. I don't know exactly
21 if it covers a full course of study for the year, I
22 don't know if it's a supplemental. It would be
23 difficult for me to respond to it.

24 Q. BY MR. JACOBS: Well, what do we need to
25 clarify? We need to respond whether it covers the full

1 question is that districts are typically not purchasing
2 K-8 instructional materials, they teach by grade level,
3 so your hypothetical is difficult to respond to.

4 Q. BY MR. JACOBS: Third grade?

5 A. A third-grade book?

6 Q. Intended to be used for the year?

7 A. For a full-year course of study?

8 Q. Correct.

9 A. Or other grades, but that grade in particular?

10 Q. Uh-huh.

11 A. What the district would need to do if they have
12 reviewed all materials that the State has approved in
13 the sense of K-8 basic instructional materials and they
14 want to use any instructional material funds, state IMF
15 or Schiff-Bustamante, to purchase those materials, those
16 are cases that I'm aware of.

17 So, for example, the process they would go
18 through -- there is a clause in the statutes that allows
19 districts to seek waivers for the use of
20 Schiff-Bustamante and seek petitions for the use of the
21 instructional materials fund. They would need to do a
22 local review, conduct a public hearing, consult with
23 their local bargaining unit and the teachers in the
24 schools affected, and they would need to thoroughly
25 review all materials that the State has adopted to

1 course of the year? Yes. It's not supplemental. It's
2 the textbook. The textbook, underline the, for that
3 reading and language arts curriculum that the district
4 has decided to adopt.

5 MR. VIRJEE: Objection. Vague and ambiguous as
6 to "the textbook," whatever that might mean.

7 It's still an incomplete hypothetical.

8 MR. JACOBS: What's missing?

9 MR. VIRJEE: For example, they have a right to
10 go to the Board and seek a waiver.

11 MR. JACOBS: Do they?

12 MR. VIRJEE: I'm not going to tell you all the
13 things that are missing. That's not my job. It's an
14 incomplete hypothetical.

15 MR. JACOBS: Good. Please pipe down.

16 MR. VIRJEE: No, I can still make my objection
17 as incomplete hypothetical and it's inappropriate for
18 you to tell me to pipe down. I specifically didn't talk
19 about the waiver issue. You asked me not to coach the
20 witness, so I didn't do that. You asked me the
21 question, now I'm giving it to you. There are other
22 permutations to the hypothetical that are missing as
23 well, but I'm not here testifying.

24 MR. JACOBS: Great.

25 THE WITNESS: A couple of problems with your

1 ensure that they cannot meet the maximum efficiency of
2 pupil achievement in that particular district and the
3 schools affected by the waiver, or in the case of IMF,
4 the petition. They would then submit that information
5 to the State, come to our office first.

6 They are now required to include all of their
7 achievement data by school for the subjects intended for
8 the materials they desire to purchase with these
9 dedicated sources.

10 That evidence then would be analyzed, their
11 achievement data, the assurance that they had their
12 local hearing, they have sign-off by all the local
13 leadership, the administrators, the governing board
14 president, et cetera, and that waiver would be analyzed
15 to include, from the Department, a recommend or not
16 recommend to the State Board.

17 It would be scheduled for a board meeting. The
18 district would come forth to the meeting and testify
19 before the Board and provide evidence through the
20 package, the waiver analysis, as well as their verbal
21 testimony, why it was in the best interest of those
22 students to be using a non-adopted book, grade three or
23 for a full school site, and the Board would then render
24 a decision of recommend the waiver or not recommend. If
25 they recommend, it's typically for a two-year period.

1 In other cases the Board will also ask the
 2 district to come back to the State Board at the end of
 3 the two years and report out their achievement data to
 4 ensure that the students indeed benefited from using
 5 materials that were not adopted by the State Board.
 6 Q. As you understand the process you've just
 7 defined -- first of all, we are now, again, talking
 8 about a process involving the use of, and you can
 9 clarify which one, Schiff-Bustamante or state IMF funds,
 10 correct?
 11 A. Uh-huh.
 12 Q. And which one was it, or both?
 13 A. Well, the petitions work in the same way.
 14 There's a little more flexibility with petitions. I'm
 15 more than happy to explain that.
 16 Q. Meaning that you can petition for using the
 17 processes you just described for flexibility in the use
 18 of Schiff-Bustamante and state IMF funds?
 19 MR. VIRJEE: Objection. Misstates her
 20 testimony. She said the petition process is for IMF and
 21 the waiver is for Schiff-Bustamante.
 22 THE WITNESS: Right. Let me clarify. What I
 23 explained to you was for the use of Schiff-Bustamante.
 24 For petitions it's a similar process, but it
 25 involves a request to the State Board to use more than

1 the 30 percent that's set aside for legal and social
 2 compliance materials only, or the 5 percent within that.
 3 They would petition the Board, it's called a
 4 petition, they would then petition to exceed that 30
 5 percent, so their full apportionment for that year.
 6 For example, they may want to use an additional
 7 10 percent of the funds for a supplemental purchase, so
 8 they would come into the Board with their petition
 9 request. We now also require achievement data for those
 10 particular requests as well and the subjects affected by
 11 the request.
 12 Q. BY MR. JACOBS: In your answer you used the
 13 phrase "basic instructional materials." Is that a term
 14 that you use in your day-to-day work?
 15 A. Yes.
 16 Q. And what does it mean?
 17 A. It's defined in statute for purposes of
 18 adoption of materials in K-8, and it's defined as
 19 instructional materials that provide for a full year's
 20 course of study.
 21 Q. So first of all, absent a waiver or approval of
 22 a petition, I'm not sure which applies here, can you use
 23 the 30 percent of IMF for basic instructional materials?
 24 A. Yes.
 25 Q. And that 30 percent, again, has to be on the

1 legal and social compliance approved list, again, absent
 2 an exception?
 3 A. Yes, all materials have to be approved for
 4 legal and social compliance regardless of the list
 5 they're on.
 6 Q. Do you understand there to be a rule applicable
 7 to school districts that precludes them from purchasing
 8 basic instructional materials inapplicable to a grade in
 9 K through 8 -- let me start over again.
 10 Do you understand there to be a rule for
 11 purchases applicable to K through 8 grades with respect
 12 to the purchase of basic instructional materials that
 13 applies if the district does not use Schiff-Bustamante
 14 or state IMF funds?
 15 MR. VIRJEE: Objection. Vague and ambiguous as
 16 to "rule." Also incomplete hypothetical.
 17 MS. ALTAMIRANO: Calls for a legal conclusion.
 18 MR. VIRJEE: Calls for a legal conclusion as
 19 well.
 20 THE WITNESS: I can respond in regards to the
 21 obligation that districts have to conduct an annual
 22 public hearing.
 23 Q. BY MR. JACOBS: I wasn't going in that
 24 direction. I was going in the direction of it's not on
 25 the legal or social compliance list and it's not been

1 approved as part of the adoption cycle, but the district
 2 wishes to purchase it and they're not using state IMF or
 3 Schiff-Bustamante funds. Are there rules applicable to
 4 that purchase?
 5 A. Well, if you let me finish my thought, this
 6 might be helpful.
 7 Q. Okay.
 8 A. Under the public hearing requirement in which
 9 the district conducts at least one hearing to ensure
 10 ample public input, community, teachers --
 11 Q. 60119?
 12 A. Right. -- they are to certify that they have
 13 sufficient materials for pupils within the cycles of the
 14 curriculum frameworks, and those frameworks contain the
 15 evaluation criteria which guide the development and
 16 approval of all K-8 basic instructional materials, as
 17 well as 9-12.
 18 So if they have to abide by 60119 and certify
 19 sufficient materials based on those cycles which contain
 20 the evaluation criteria, which develop those materials,
 21 which then go through an evaluation process at the state
 22 level, then are approved or rejected, then they must
 23 comply with that.
 24 Q. Are there any other rules that relate to a
 25 district's flexibility in making purchasing decisions

1 for basic instructional materials in K through 8 that
 2 are not on the -- approved as part of the adoption cycle
 3 or are on the legal and social compliance list?
 4 MR. VIRJEE: Objection. Vague and ambiguous.
 5 Incomplete hypothetical.
 6 And you're asking in addition to the rules
 7 she's mentioned, or all her previous testimony? Because
 8 she's mentioned other rules, that's why I'm asking.
 9 MR. JACOBS: I don't know that we have any
 10 other rules.
 11 MR. VIRJEE: She's talked about the waiver
 12 process, for example. She has mentioned others.
 13 Also object that it calls for a legal
 14 conclusion.
 15 MS. ALTAMIRANO: Join.
 16 MR. VIRJEE: Vague and ambiguous as to "rule."
 17 THE WITNESS: I don't have knowledge of general
 18 statutes related to your question. I can tell you that
 19 the compliance procedures that the State uses, the audit
 20 guideline, is applicable to the hearing process I just
 21 mentioned to you. So in that way, as well as the use of
 22 the funds that the State dedicates, there is a
 23 compliance review to ensure that the funds were not used
 24 to purchase programs that were not approved by the state
 25 or local governing board at grades 9 to 12. So the

1 compliance mechanism is related to that.
 2 Q. BY MR. JACOBS: To set up the hypothetical
 3 again, we're in K through 8, we're not getting -- we're
 4 not filing a petition or an application for a waiver,
 5 "we" being a school district, we wish to purchase
 6 materials that are not on the approved list as part of
 7 the adoption cycle and have not been approved for legal
 8 and social compliance, and at the public hearing we are
 9 going to state that we are -- to our electorate, our
 10 constituencies that we have made this purchasing
 11 decision, and, again, we're not using Schiff-Bustamante
 12 and we're not using state IMF, do you understand there
 13 to be any rule in place that would preclude the school
 14 district from making that purchasing decision?
 15 MS. ALTAMIRANO: Same objection as before, plus
 16 she's already answered that she doesn't know of any
 17 others.
 18 MR. VIRJEE: She already testified to a
 19 particular rule. It's also vague and ambiguous as to
 20 "public hearing."
 21 Are you talking about the 60119 public hearing
 22 or some other public hearing?
 23 MR. JACOBS: In the context of your previous
 24 testimony I think it is clear I'm talking about the
 25 60119 public hearing.

1 THE WITNESS: I would just state again that the
 2 certification by the local governing board through the
 3 hearing process is that they have sufficient materials
 4 that relate to the cycles of the framework which contain
 5 the criteria to approve the materials. They're
 6 interconnected. You can't separate them.
 7 The hearing isn't about certifying that you've
 8 purchased materials that aren't on any state lists, that
 9 are just extra support materials, it's not about that.
 10 It's about ensuring that the public can be assured that
 11 you have sufficient materials in line with the cycles of
 12 the framework, which is the foundation of the
 13 development of content aligned materials in grades K to
 14 12 for all subjects, and for those that don't have
 15 standards, the guidance that's provided in the
 16 framework.
 17 MR. JACOBS: Could you read back that answer,
 18 please.
 19 (Record read.)
 20 Q. BY MR. JACOBS: Do you understand that if the
 21 district wishes to use non-Schiff-Bustamante funds and
 22 non-state IMF funds, that there is any other rule other
 23 than 60119 that applies to that purchasing decision and
 24 says to the district, we're sorry, we have a process,
 25 it's got to be -- notwithstanding the fact that you're

1 not using Schiff-Bustamante or state IMF, you can't make
 2 that purchase?
 3 MR. VIRJEE: Objection. Asked and answered,
 4 and also incomplete hypothetical. She's provided
 5 information about what other processes there are.
 6 And it is also an incomplete hypothetical as to
 7 what's been purchased, what funds are being used. And
 8 it's also vague and ambiguous as to "rule."
 9 THE WITNESS: I have no knowledge.
 10 Q. BY MR. JACOBS: You have no knowledge of such a
 11 rule?
 12 A. I have no knowledge.
 13 (Recess taken.)
 14 Q. BY MR. JACOBS: Which entity actually -- before
 15 it's sent to the State Board of Education for approval,
 16 what is the ultimate approval step in the process of
 17 adopting instructional materials?
 18 A. The curriculum commission.
 19 Q. And that's the one to which you are executive
 20 secretary?
 21 A. Executive secretary.
 22 Q. The curriculum commission reviews the content
 23 of proposed materials to see how they match up against
 24 the curriculum framework, correct?
 25 A. The curriculum framework and the evaluation

1 criteria included in the framework.
 2 Q. Are the evaluation criteria confined to issues
 3 of content, or do they go to other issues? And the one
 4 I'm interested in is pricing in particular.
 5 MR. VIRJEE: Are you asking whether the
 6 evaluation criteria regarding the curriculum framework?
 7 MR. JACOBS: The ones she just referred to.
 8 MR. VIRJEE: She said the evaluation of
 9 criteria in the curriculum framework.
 10 MR. JACOBS: You can answer.
 11 MR. VIRJEE: If you understand it. It's vague
 12 and ambiguous and nonsensical.
 13 THE WITNESS: The criteria does not include
 14 information about prices.
 15 Q. BY MR. JACOBS: Does pricing come into the
 16 adoption process at all?
 17 MR. VIRJEE: Objection. Vague and ambiguous as
 18 to "pricing" and "at all."
 19 MS. ALTAMIRANO: I'll join.
 20 THE WITNESS: There's a process that requires
 21 publishers to submit their price quotes prior to
 22 adoption.
 23 Q. BY MR. JACOBS: What is that process?
 24 A. At the time that they're preparing to submit
 25 their materials to the State for review through the

1 curriculum commission with our office assistance to the
 2 curriculum commission, they're asked to submit a price
 3 quote. If they're adopted by the State Board after the
 4 evaluation by the curriculum commission and by action of
 5 the Board, that price quote is then in effect for two
 6 years.
 7 Q. Does the curriculum commission consider the
 8 price quote as a factor in deciding whether to approve
 9 the materials that have been submitted?
 10 A. No.
 11 Q. And is there a -- is there a statutory -- you
 12 understand the factors that the commission can consider,
 13 is there a statutory reason why the commission does not
 14 consider the price quote?
 15 MR. VIRJEE: Objection. Calls for a legal
 16 conclusion.
 17 MS. ALTAMIRANO: Join.
 18 THE WITNESS: The curriculum commission and the
 19 State Board and the Department of Education ensure that
 20 publishers comply with what's called the most favored
 21 nations clause, and that's in materials that they've
 22 submitted in California must be at no greater price and
 23 of the same quality that they have submitted or sold in
 24 any other parts of the nation.
 25 Q. BY MR. JACOBS: And is that a requirement that

1 is embodied only in regulation, or do you understand
 2 that it's also a requirement in the applicable statutes?
 3 MR. VIRJEE: Objection. Vague and ambiguous as
 4 to "embodied," and also calls for a legal conclusion.
 5 MS. ALTAMIRANO: Join.
 6 THE WITNESS: It's in statute and regulation.
 7 Q. BY MR. JACOBS: And is there any explicit
 8 prohibition in statute, as you understand the statutes,
 9 that bars the curriculum commission or State Board of
 10 Education from explicitly considering the amount of the
 11 price quote in deciding whether to approve materials for
 12 adoption?
 13 MR. VIRJEE: Objection. Asked and answered,
 14 and also calls for a legal conclusion.
 15 MS. ALTAMIRANO: Join.
 16 THE WITNESS: Can you restate the question?
 17 Q. BY MR. JACOBS: You stated in statute and
 18 regulation there is a -- that pursuant to statute and
 19 regulation the State ensures compliance with this MFN,
 20 most favored nations, pricing requirement, correct?
 21 A. Uh-huh.
 22 Q. And I take it that that's the extent of the
 23 role of the curriculum commission or your office in
 24 controlling the prices of the materials that are
 25 submitted for approval; is that correct?

1 MR. VIRJEE: Objection. Vague and ambiguous.
 2 Also misstates her testimony to the extent you've now
 3 included her office. Her questions (sic) were
 4 previously about the commission, because that's what you
 5 asked about.
 6 MR. JACOBS: She specifically referred to her
 7 office. Go ahead.
 8 THE WITNESS: No.
 9 Q. BY MR. JACOBS: What additional steps does the
 10 commission or your office take in that regard?
 11 A. The steps are required of the publishers first.
 12 The statute requires that they submit the price quote
 13 prior to approval by the State Board. That price quote
 14 must remain for two years. They cannot increase their
 15 prices.
 16 The Board takes into account the totality of
 17 the information that's presented to them. They approve
 18 the materials. The price quote stands. They sell those
 19 materials. If districts choose to purchase them, they
 20 can do so. The price lists are with our office, and we
 21 ensure compliance that those prices are not raised
 22 during the biannual period.
 23 Q. If a publisher submits materials for approval
 24 that are in your judgment -- let's take you. You're
 25 sitting there, you're looking at some materials in the

1 various capacities within which you operate with your
2 employer and you conclude that in your personal opinion
3 that the proposed materials are expensive, but you do
4 not understand the publisher to be out of compliance
5 with the MFN requirement and you understand them to be
6 committing to the two-year rule that you just described,
7 can you do anything with that information?

8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "expensive," and completely overbroad as to "can you
10 do anything with that information."

11 MS. ALTAMIRANO: Join.

12 MS. KAATZ: Join.

13 THE WITNESS: Every adoption is different.
14 Instructional materials is based on the evaluation
15 criteria, so I couldn't answer that.

16 Q. BY MR. JACOBS: I think you said that the
17 evaluation of the criteria do not in themselves include
18 pricing; is that correct?

19 MR. VIRJEE: Objection. Asked and answered.
20 The testimony speaks for itself.

21 MS. ALTAMIRANO: Join.

22 THE WITNESS: The criteria determines what the
23 State is asking for in the materials, and that differs
24 with each approval of each framework. So the evaluation
25 criteria includes what components are expected to be

1 that the last component, or any others?

2 A. No.

3 Q. I didn't understand your answer.

4 A. Yeah, I think you're confused about what I'm
5 saying. What guides the publishers in developing
6 materials is what the State is asking them to produce.
7 It's a private market. They produce those materials,
8 they ascertain their costs to produce those materials,
9 they submit a price quote based on the evaluation
10 criteria requirements and what they feel the costs were
11 that they bore for the production of those materials
12 based on California's requirements.

13 Q. I take it your point was if California expands
14 the requirements in any particular context, that might
15 relate then to the pricing by the publisher. Is that
16 what you were saying?

17 A. No, I didn't say that.

18 Q. What did you mean when you said that the
19 components of the criteria -- my question to you was
20 about control of pricing, and your answer was about the
21 components of the criteria.

22 MR. VIRJEE: Objection. That misstates both
23 your question and her answer.

24 MS. ALTAMIRANO: I'll join.

25 THE WITNESS: It's a little broader than that.

1 submitted by publishers, which thus also impacts the
2 price submissions.

3 Q. BY MR. JACOBS: Can you give me a for instance
4 of how the evaluation criteria relates to the
5 components?

6 A. What do you mean?

7 Q. An example. I don't understand what you just
8 said, so I'm hoping an example will elucidate your
9 testimony.

10 A. Typically the criteria asks for five aspects of
11 a program, content alignment, the grade-level content
12 alignment; rules about program organization within the
13 materials; requirements regarding assessment, individual
14 pupil assessment, summative, informative assessment; it
15 includes requirements for universal access, can all
16 students access the curriculum through the materials.

17 Q. For example, blind students or students with
18 disabilities?

19 A. What is available in the materials, right, for
20 special populations, English language learners, for
21 instance.

22 And then finally descriptions of what should be
23 included for instructional strategies and support for
24 teachers. Those are the main components.

25 Q. And the components that relate to pricing, is

1 I think you're asking me to tell that there's price
2 directions in the criteria, and there is not.

3 Q. BY MR. JACOBS: And I'm asking you, though, in
4 addition -- I'm asking you a subtler question, which is,
5 among the mix of factors that you would consider in
6 deciding whether to approve a proposed set of
7 instructional material, are you allowed to consider the
8 price that has been submitted pursuant to your process
9 for getting the price quote from the publisher?

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "you."

12 Now do you mean Sherry Griffith, her office,
13 the commission, the Board?

14 MR. JACOBS: Any of the above.

15 MR. VIRJEE: Also incomplete hypothetical and
16 also asked and answered.

17 MS. ALTAMIRANO: Join.

18 THE WITNESS: Can I request a more specific
19 question on this?

20 Q. BY MR. JACOBS: Specific in which way?

21 A. Who you're talking about in particular.

22 Q. I started with this line of questioning with
23 you, you're sitting there and in whatever way you have
24 input into this adoption process. And I realize I
25 haven't asked you all the ways in which you have input,

1 so I'm asking you about -- I'll change the question a
2 little bit. Just you in your role and you see a price
3 quote, because you've asked for the price quote and it's
4 been given you, and you have no issue -- as you look at
5 this, you have no MFN issue that you've identified and
6 you have no two-year adherence issue that you've
7 identified, but it looks expensive to you, how can you
8 use that, if you want to, in whatever input you provide
9 into the adoption process?

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "looks expensive" and "have input."

12 MS. ALTAMIRANO: And also as to "you" again,
13 because she has different positions which give her
14 different authority.

15 MR. VIRJEE: I guess that would make it
16 compound.

17 I understand he means "you" to be you in any
18 role.

19 MR. JACOBS: Yes.

20 THE WITNESS: No, my division does not have
21 authority to determine if the price is too high or too
22 low.

23 Q. BY MR. JACOBS: The program organization factor
24 that you described, can you explain what that is?

25 A. Submissions of materials are evaluated based on

1 It could be multifaceted, and should be multifaceted, in
2 their approach.

3 Q. As I understand your testimony, one of the
4 criteria, and in particular this assessment criteria, is
5 an evaluation by the -- as one step in the process, the
6 curriculum commission, of the quality of the assessment
7 content that is provided with this set of instructional
8 materials; is that right?

9 A. Yes.

10 Q. And on universal access, we talked about
11 specific populations in terms of English language
12 learners and physical disabilities; is that correct?

13 A. Special education populations would be included
14 in that description.

15 Q. And just to come back to our pricing
16 discussion, universal access does not include an
17 evaluation of whether -- of affordability of the
18 proposed materials?

19 MR. VIRJEE: Objection. Vague and ambiguous as
20 to "affordability." Also incomplete hypothetical.

21 MS. KAATZ: Join.

22 MS. ALTAMIRANO: Join.

23 THE WITNESS: In evaluation criteria it's
24 related to universal access for the student.

25 Q. BY MR. JACOBS: As opposed to what? Why is

1 how a program is organized in the sense of how the
2 content is presented, is it easy to follow, could the
3 teacher draw from that, could the student draw from
4 that, is it sequential, does it build upon the previous
5 chapters. Those would be examples.

6 Q. By assessment did you mean does the -- do the
7 materials that are being proposed for adoption include
8 related assessment tools?

9 MR. VIRJEE: You're asking about component
10 No. 3 now, the assessment requirement?

11 MR. JACOBS: Yes.

12 THE WITNESS: Could you restate that again.

13 Q. BY MR. JACOBS: What did you mean by assessment
14 as a criteria?

15 A. Assessment would primarily -- depending if it's
16 a student edition or the teacher's edition. Student
17 edition would include practice questions to assess their
18 knowledge, perhaps, of the chapter. That could also be
19 included in other components of the program. That would
20 be an example.

21 For the teacher's edition, it would include not
22 only what the student is using to ascertain their
23 knowledge of the materials, but it would include other
24 assessment strategies the teacher could use to determine
25 that they've achieved grade-level standard, for example.

1 that responsive to my question?

2 A. Why don't you restate your question.

3 Q. Does universal access include an evaluation of
4 the -- I take it from your earlier answer that universal
5 access does not include an analysis of the affordability
6 of the materials?

7 MR. VIRJEE: Same objection.

8 MS. ALTAMIRANO: Same.

9 Q. BY MR. JACOBS: The answer is I'm correct,
10 right?

11 A. Yes.

12 Q. What did you mean by the last criteria, which I
13 didn't quite get down, instructional strategies and
14 support for teachers, I think?

15 A. Uh-huh.

16 Q. What does that mean?

17 A. What it typically means is the teacher's
18 edition would include strategies that the teacher can
19 use in the classroom. It may involve the instructional
20 materials, it may not. It may provide additional
21 activities that the teacher can introduce in the
22 classroom for beyond the instructional materials. It
23 may include strategies on pacing the material, how to
24 deliver the material throughout the year.

25 Q. So, again, this is an assessment of the quality

1 of the proposed materials, in terms of providing this
2 kind of guidance and support to teachers, how to
3 actually impart the material as opposed to strictly an
4 evaluation of the content that is to be imparted?

5 MR. VIRJEE: Okay. Vague and ambiguous.
6 Assumes those are two different things. Assumes that
7 structures and strategies and pacing wouldn't be part of
8 the content.

9 MS. ALTAMIRANO: Join.

10 THE WITNESS: I don't understand your question.

11 Q. BY MR. JACOBS: This is an assessment of the
12 quality of the materials in terms of providing guidance
13 and direction to teachers about how to impart the
14 content of the materials; is that correct?

15 A. Well, they're interrelated.

16 Q. So you actually are looking at the content to
17 see whether the content itself is easily imparted, or
18 are you really looking at -- if I understood your
19 testimony, you're looking at, for example, here are some
20 tips for teachers about how to cover this chapter as
21 opposed to the chapter itself.

22 MR. VIRJEE: Objection. Vague and ambiguous.

23 Q. BY MR. JACOBS: Am I incorrect?

24 MR. VIRJEE: Incomplete hypothetical.

25 MS. ALTAMIRANO: Join.

1 Q. BY MR. JACOBS: Are there cases in which
2 materials are submitted for approval pursuant to the
3 process we've been discussing, and they are basic
4 instructional materials, but the publisher has chosen
5 not to submit a teacher's edition?

6 A. I know of no cases of that.

7 Q. So in general, then, or all the cases you're
8 aware of, a teacher's edition is proposed along with the
9 student edition?

10 A. In general, yes.

11 Q. When a school decides whether to purchase
12 materials that have been approved pursuant to the
13 process that we've described, is this correct, that
14 there is no requirement that they purchase the teacher's
15 edition along with a student edition?

16 MR. VIRJEE: Objection. Assumes facts not in
17 evidence. Assumes that a school makes that decision.

18 MS. ALTAMIRANO: Join.

19 THE WITNESS: Generally when a publisher sells
20 materials to a district, there's a teacher's edition
21 with a certain ratio of student editions in almost every
22 case. So if it's a class of 20, you get one teacher's
23 edition, if it's a class of 30, you get one teacher's
24 edition. So the publishers sell the materials to ensure
25 that the classroom can include a teacher's edition and

1 THE WITNESS: It's just too vague. It will
2 depend on the criteria as it's written for the
3 particular subject, so I can't speak specifically.

4 I provided you examples of what instructional
5 strategies or support could be. In each evaluation
6 criteria it may differ, but the premises of it is
7 support for the teacher to teach in the classroom as one
8 resource for them, and to, when applicable, extend out
9 beyond the activities of the materials to help deliver
10 the curriculum in the classroom, going beyond the
11 materials.

12 Q. BY MR. JACOBS: There are at least some
13 cases -- and I'll ask you about typicality in a minute,
14 but I want to set up the case first.

15 There are at least some cases in which proposed
16 instructional materials include basic instructional
17 materials, plus other materials, for example, a
18 teacher's edition, correct?

19 MR. VIRJEE: Objection. Assumes facts. Also
20 vague and ambiguous as to basic not including a
21 teacher's edition. I think her testimony earlier was
22 that basic instructional materials could include a
23 teacher's edition.

24 THE WITNESS: Basic instructional materials do
25 include a teacher's edition.

1 the number needed for the classroom.

2 Q. BY MR. JACOBS: This is a matter of publisher's
3 practice, or a matter of the way you approve -- or a
4 part of the process of approval that you've been
5 describing?

6 MR. VIRJEE: Objection. Assumes facts not in
7 evidence. Also assumes that those are mutually
8 exclusive.

9 MR. JACOBS: That wasn't a very good question.
10 I agree with you.

11 THE WITNESS: They're not mutually exclusive.

12 MR. JACOBS: They are not mutually exclusive.
13 I never realized that.

14 Q. But are they separately priced by the publisher
15 in a general case?

16 MR. VIRJEE: The teachers's edition and the
17 student edition?

18 MR. JACOBS: Correct.

19 THE WITNESS: Only in the case if you had to
20 purchase additional teacher's edition or replace a
21 teacher's edition.

22 Q. BY MR. JACOBS: In the ordinary case, if you
23 buy a set, however that's been defined, it will come
24 with the teacher's edition?

25 A. Yes.

1 Q. Just so I've got the term down, basic
2 instructional materials includes a teacher's edition if
3 one is available for -- associated with the student
4 edition, and it's a full year course of study.
5 Are there any other elements in your common use
6 of the term basic instructional materials?
7 A. You kind of confused the matter with those two
8 issues, so you'd have to restate that. You've included
9 student edition with the definition of basic
10 instructional materials.
11 Q. I think we just covered this. Basic
12 instructional materials would typically include a
13 teacher's edition, correct?
14 A. Yes.
15 Q. And it relates to materials that are intended
16 to be used across a full year course of study?
17 A. Yes.
18 Q. And as you use the term basic instructional
19 materials, are there any other components to the
20 definition?
21 MR. VIRJEE: Other than what she's testified
22 to?
23 MR. JACOBS: Right.
24 THE WITNESS: Not that I'm aware of.
25 Q. BY MR. JACOBS: And so typically basic

1 instructional -- typical case, basic instructional
2 materials exclude certain supplemental materials that a
3 publisher might propose along with a set of materials
4 for adoption?
5 A. No.
6 Q. So how does that work? A publisher says, I
7 want you to look at my student edition, my teacher
8 edition, my CD-ROM, my posters, can all those be
9 categorized as basic instructional materials?
10 A. Yes.
11 Q. And do you have flexibility in the approval
12 process in categorizing proposed materials as basic
13 instructional materials or not in the case where
14 materials are proposed along with, for example, a
15 textbook that clearly is part of basic instructional
16 materials?
17 MR. VIRJEE: Objection. Vague and ambiguous as
18 to "you."
19 MS. ALTAMIRANO: Join.
20 THE WITNESS: No.
21 Q. BY MR. JACOBS: Why not?
22 A. When a publisher determines that they're
23 submitting a program which is comprehensive, they
24 identify at that time for the core subjects the
25 materials within the program that need to be reviewed

1 for content alignment, grade-level content alignment, so
2 that all of those components could be used as needed if
3 the full program was purchased.
4 If in that basic submission they also submit
5 manipulatives, charts, things that reinforce the
6 standards aligned components, that is also reviewed, but
7 it would be identified as support pieces.
8 The basic materials to teach in the classroom
9 can come in a variety of formats, so, for example, they
10 could include, and have in the past, everything for a
11 full year course of study in a CD-ROM, and we've
12 reviewed those materials at the state level from one
13 disk. Or they may have it in the format of a student
14 edition, traditional student edition, teacher edition.
15 Or they may have a videotape and a support workbook that
16 would comprise the full basic program.
17 The publisher determines the format in which
18 they want to submit their program, and so long as it
19 meets the evaluation criteria and alignment to
20 grade-level content standards and the Board approves it,
21 it can be used by school districts.
22 Q. And it can be used by school districts -- to
23 the extent this definition of basic instructional
24 materials matters, it can be used as basic instructional
25 materials? That's what you meant really by your --

1 A. I don't understand as long as it matters.
2 Q. Does the definition of basic instructional
3 materials bear on how Shiff-Bustamante funds are used,
4 for example?
5 A. Yes.
6 Q. And how does that work?
7 A. I think I've mentioned this already.
8 Q. Now I'm understanding how basic instructional
9 materials relate.
10 MR. VIRJEE: I guess I should make an asked and
11 answered objection there.
12 THE WITNESS: How do the two relate?
13 MR. JACOBS: Yes.
14 THE WITNESS: For purposes of adoption of
15 materials at grades K to 8 and 9-12 there's a definition
16 of basic instructional materials, and it's defined as
17 providing for a full year's course of study. That's all
18 it states. It doesn't talk about format.
19 Schiff-Bustamante is used for the purpose of
20 purchasing materials that have been approved by the
21 State Board under the K-8 adoption process, which are
22 basic adoptions typically.
23 Q. BY MR. JACOBS: By "basic adoptions," you did
24 not mean to --
25 A. Basic materials, instructional materials,

1 adoption for a full year course of study.
 2 I would just clarify that the Board has the
 3 right to call for additional adoptions of materials,
 4 both basic and supplemental, but for the most part they
 5 are calling on the traditional cycles. Every six years
 6 there's two adoptions within a content area, a primary
 7 and a follow-up, and the definition for those
 8 submissions for the publishers is the definition of
 9 basic.
 10 That would also be applicable to grades 9-12.
 11 They would be producing basic instructional materials.
 12 Districts would purchase those using Schiff-Bustamante.
 13 Q. So there is funding available for the purchase
 14 of basic instructional materials that is distinct from
 15 funding available for purchasing supplemental materials?
 16 I need to get that predicate established. That's
 17 correct, right?
 18 MR. VIRJEE: Objection. Vague and ambiguous as
 19 to both -- funding for both and that they're mutually
 20 exclusive.
 21 MS. ALTAMIRANO: Join.
 22 MR. VIRJEE: She's already testified, for
 23 example, that you can use funding for the purchase of
 24 both. I think she's asked and -- answered the question,
 25 that your separation of the two is inaccurate.

1 Misstates her testimony.
 2 MR. JACOBS: I think you understand my question
 3 though.
 4 THE WITNESS: Well, there's two opportunities
 5 for districts to purchase support materials. If you
 6 want a definition for that.
 7 MR. JACOBS: Uh-huh.
 8 THE WITNESS: Is that correct?
 9 MR. JACOBS: Let's get that. That's a good
 10 idea.
 11 Q. Support materials definition?
 12 A. Supplemental materials. As I stated before,
 13 for the basic instructional materials adoptions, all of
 14 the materials submitted by the publishers is reviewed
 15 using the applicable evaluation criteria and to ensure
 16 content alignment.
 17 There are components of the basic program that
 18 districts have options to purchase or not purchase, and
 19 those are identified which parts are core and standards
 20 aligned and which parts might reinforce the curriculum,
 21 the graphs, the manipulatives, et cetera. That's one
 22 option for districts to purchase, not only the basics,
 23 but supplementals. That would be the one opportunity
 24 for them to do so within Schiff-Bustamante, but it must
 25 be part of a program that's been approved by the State

1 Board and aligned to grade-level content standards in
 2 the criteria.
 3 Q. Let me stop you for just a minute. If a
 4 publisher submits a set of materials and says this is my
 5 basic instructional materials and it includes some
 6 components that are -- let me back up a second.
 7 Are publishers incented, in your view, to
 8 propose materials for inclusion in a set of basic
 9 instructional materials?
 10 MR. VIRJEE: Objection. Vague and ambiguous as
 11 to --
 12 MR. JACOBS: -- as opposed to support all
 13 materials?
 14 MR. VIRJEE: I'm sorry. I apologize for
 15 cutting you off. Objection. Vague and ambiguous as to
 16 "incented."
 17 Incented specifically by the State, by the
 18 marketplace, by --
 19 MS. ALTAMIRANO: Join.
 20 MR. JACOBS: Incented by the funding streams
 21 that are available.
 22 MR. VIRJEE: Same objection.
 23 THE WITNESS: I couldn't answer that question.
 24 Q. BY MR. JACOBS: Why not?
 25 MR. VIRJEE: I guess it would call for

1 speculation as to what would incent them.
 2 THE WITNESS: I don't know the motivation of
 3 every publisher.
 4 Q. BY MR. JACOBS: I didn't ask you that. But you
 5 do have a view on the incentive system the State has set
 6 up with it's various funding streams, do you not?
 7 MR. VIRJEE: Objection. Assumes facts not in
 8 evidence. Assumes there is an incentive system.
 9 MS. ALTAMIRANO: Join.
 10 Q. BY MR. JACOBS: Is there?
 11 MR. VIRJEE: Vague and ambiguous as to
 12 "incentive system."
 13 Q. BY MR. JACOBS: Do you ever talk about
 14 incentives for various actions by school districts or
 15 publishers when you have discussions about that?
 16 MS. ALTAMIRANO: Objection.
 17 Incentive for what?
 18 MR. JACOBS: You can answer my question.
 19 MR. VIRJEE: If you understand it.
 20 THE WITNESS: I'm unclear about what you're
 21 really asking me. Have I had a policy discussion, a
 22 personal discussion with someone about what drives
 23 publishers to do what they do?
 24 MR. JACOBS: Yes.
 25 THE WITNESS: In what case?

1 Q. BY MR. JACOBS: I'm wondering if you've ever
2 considered -- let me tell what you I'm driving at. You
3 can tell me if the question is hopeless. I don't think
4 it is.

5 As I understand it, first of all, publishers
6 are incented to propose materials for inclusion on the
7 state adoption list because if those materials are
8 adopted pursuant to the process that you've identified,
9 funding is available to school districts to purchase
10 those materials that would not otherwise be available;
11 is that correct?

12 MR. VIRJEE: Objection. Vague and ambiguous as
13 to "incented," and also calls for speculation as to what
14 might incent someone or not.

15 MS. ALTAMIRANO: Join.

16 MS. KAATZ: Join.

17 Q. BY MR. JACOBS: You agree with me, don't you?

18 A. First, this is only the first phase at the
19 state level. It's a quality assurance phase. There's
20 no assurance for publishers that they're going to be
21 purchased. That is a decision that's made at the local
22 levels.

23 Q. That wasn't my question. I think you
24 understand it because you've been around policy circles,
25 haven't you, for much of your career?

1 MR. VIRJEE: Objection. Vague and ambiguous as
2 to screen.

3 Are you asking what they do to ensure there are
4 no extraneous materials?

5 MR. JACOBS: I think that was your testimony.

6 MR. VIRJEE: I'm asking, was that what your
7 question was?

8 MR. JACOBS: Yes.

9 THE WITNESS: Couple of procedures that we use.

10 First, the evaluation criteria is very explicit to the
11 publishers that they shall not include any extraneous
12 materials, and then secondly, the State Board of
13 Education, upon recommendation of the curriculum
14 commission, appoints content experts from various grade
15 levels and from university level to review the materials
16 to ensure that it aligns with the criteria and the
17 standards, and no extraneous materials are included.

18 Q. BY MR. JACOBS: And by extraneous here, is
19 there a definition of extraneous?

20 A. There's no one definition of extraneous. I
21 could provide you an example.

22 Q. Yes.

23 A. There is a second-grade chapter in science on
24 magnetism and it meets a certain grade-level content
25 standard to ensure that children understand magnetism,

1 A. I think that would require me to give you a
2 subjective, personal opinion.

3 Q. That's all I'm asking for.

4 MR. VIRJEE: Objection. Calls for speculation.

5 MS. ALTAMIRANO: Join.

6 THE WITNESS: Okay. The State ensures through
7 the evaluation criteria that no extraneous materials are
8 included in the submissions.

9 MR. JACOBS: That was what I was getting at.

10 Q. How do you do that?

11 A. Therefore the publishers have an incentive to
12 provide exactly what the State is asking them to
13 provide, and they provide what's called a standards map
14 to show how they've gotten there. So they compete using
15 the requirements the State has laid out, and if they're
16 successful, then they can compete in the marketplace in
17 California.

18 Q. Okay. So that was the screen. That was
19 exactly what I was asking, and I just didn't have the
20 vocabulary.

21 A. I thought you were.

22 Q. What is that screen that you apply to achieve
23 the objective that you just described in that last
24 answer with respect to -- I think your word was
25 extraneous?

1 what that process is. And on the page that that
2 material is provided, there is additional activities
3 that don't relate to the theory of magnetism, there are
4 colorful pictures that don't have anything to do with
5 magnetism, just kind of draws the eye but doesn't stick
6 to the content, then that would be cited by the content
7 experts as extraneous material.

8 And based on the determination of the
9 commission, and the Board subsequently, if the Board
10 determines they will approve the program with the
11 conditional change to remove the extraneous material,
12 then they would do so. Because the adoption of the
13 materials are conditioned on meeting the Board's
14 criteria and the grade-level content standards. So the
15 Board may put conditions on the approval and ask the
16 publisher to remove all extraneous material that's been
17 cited by the content experts.

18 Q. That's an example of a case where the material
19 was extraneous in that it did not relate to the content
20 standards as such, correct?

21 A. The evaluation criteria, which includes the
22 consent standards alignment criteria.

23 Q. In the case where a publisher submits for
24 approval a traditional textbook, that is, basic
25 instructional materials --

1 MR. VIRJEE: Are you saying those are the same
2 thing in that question?

3 MR. JACOBS: No, different case now. Setting
4 up a different hypothetical.

5 MS. ALTAMIRANO: Is the textbook basic
6 instructional material?

7 MR. JACOBS: Yes.

8 Q. But the publisher has submitted additional
9 materials for approval, such as a poster that is aligned
10 with the content standard, but is arguably extraneous in
11 the sense that you could impart the material in the
12 textbook without the poster --

13 MR. VIRJEE: Objection. Misstates her
14 testimony.

15 Q. BY MR. JACOBS: -- is there another measure of
16 extraneousness that would be applied to that issue?

17 MR. VIRJEE: Objection. Misstates her
18 testimony. Also vague and ambiguous.

19 THE WITNESS: No. If it reinforces the
20 curriculum and the content, and based on the best advice
21 of the appointees and the Board concurs, we would move
22 forward. It's based on the evaluation and the process
23 as a whole. There's no specific. Each one is a
24 case-by-case review.

25 Q. BY MR. JACOBS: Right. But is there a filter

1 materials for approval.

2 And my question then -- and you said there is a
3 process to filter out extraneous material, and that
4 process, as you gave me an example, related to alignment
5 with content?

6 A. No.

7 MR. VIRJEE: That misstates the testimony.

8 Q. BY MR. JACOBS: How did I get that wrong?

9 A. There's a lot involved in the evaluation
10 process.

11 Q. From the standpoint of extraneousness?

12 A. Content is a very broad term, so you'd have to
13 define that for me.

14 Q. Well, the example you gave me was a picture on
15 a page in a chapter on magnetism that didn't relate to
16 magnetism, and the content advisor that you had review
17 this says, I don't understand why this is here, this is
18 supposed to be about magnetism, this picture is
19 extraneous. Did I understand your testimony on that
20 example correctly?

21 A. Right.

22 Q. So I want to change the example a little bit
23 and ask you if content was not the driver of the
24 determination of extraneousness, are there other
25 potential drivers for the determination of

1 to avoid a situation in which the publisher is
2 submitting a wide range of media that happened, in fact,
3 to be -- from a content standpoint are aligned with the
4 standards, so that a wide range of media is not
5 automatically approved under the basic instructional
6 materials category and therefore eligible in the
7 ordinary case for Shiff-Bustamante funding?

8 MR. VIRJEE: Objection. Asked and answered.
9 She's already testified that a wide range of media can
10 be submitted as a part of the basic instructional
11 program.

12 MR. JACOBS: I think asked and answered is
13 sufficient. I'm trying to understand a system here.
14 and I think that's a completely fair question.

15 MR. VIRJEE: I think the problem is that you're
16 confusing -- or at least your questions seem to be
17 confusing extraneous versus supplemental. I think
18 that's the problem. I'm trying to help you.

19 MR. JACOBS: Actually, that is helpful, more
20 helpful than the objection.

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

22 Q. BY MR. JACOBS: So you answered my question
23 about incentives with an explanation from your personal
24 standpoint why it is desirable from the publisher's
25 standpoint, as you understand it, for them to submit

1 extraneousness?

2 A. The evaluation criteria determines that.

3 Q. And are there cases, then, or can you give me
4 an example in which an extraneousness determination
5 would be based on any of the factors other than content
6 alignment?

7 A. Yes.

8 Q. Please.

9 A. Could be one of the other categories I've
10 previously mentioned.

11 Q. So give me a for example under program
12 organization where something would be determined to be
13 extraneous.

14 A. Same type of example, where the teacher's
15 edition, the descriptions and strategies described do
16 not stay focused on the content that should be delivered
17 in the classroom, and based on the advice of the
18 appointees of the State Board, they'll take that into
19 account and determine if the material is extraneous and
20 should be removed or not. That's determined ultimately
21 by the State Board.

22 Q. And then the statement would be true with
23 respect to assessment, universal access, or
24 instructional strategies and support for teachers?

25 A. Yes.

1 Q. So if I understand, then, the way this works,
2 there is no criterion that is focused on, directed to
3 the possibility that a publisher might submit for
4 approval a wide range of materials in order to have more
5 of its offerings available for purchase using
6 Schiff-Bustamante funding where an educational expert,
7 say an advisor that you've contracted with, looks at
8 this set of materials and says, they're trying to throw
9 in too much, they're trying to throw in more than is
10 necessary in order to support instruction in the
11 classroom?

12 MR. VIRJEE: Objection. Vague and ambiguous as
13 to "more than is necessary to support." Also incomplete
14 hypothetical.

15 MS. ALTAMIRANO: Join.

16 THE WITNESS: I'm confused by your question
17 because you're combining extraneous with format in my
18 view. So could you clarify if you're talking about
19 extraneous or format?

20 Q. BY MR. JACOBS: I wasn't using the word
21 extraneous because I didn't want to be limited to what I
22 understand to be defined -- or a term of art in your
23 process, that is, whether it's extraneous or not.

24 I understand your testimony to be that
25 essentially whatever the publisher submits is reviewed

1 works for them, or it might be a combination.

2 And in many submissions they will submit using
3 different formats, and so long as the content is there,
4 it meets the evaluation criteria, and they've listed the
5 prices of the separate components and it doesn't contain
6 extraneous information, it can be approved, and then it
7 will then be offered to districts to make a choice which
8 format will work for them and which price will work for
9 them.

10 Q. BY MR. JACOBS: So the one piece of that that I
11 want to tease out is you said so long as the com --
12 something along the line of so long as the components
13 have individually listed prices.

14 MR. VIRJEE: That misstates her testimony.

15 Q. BY MR. JACOBS: What did you say on that score?

16 MR. VIRJEE: Why don't you have her testimony
17 read back if you want to know what she said.

18 (Record read.)

19 Q. BY MR. JACOBS: So the part of your answer that
20 I want to focus on is, so long as they've listed the
21 prices of the components.

22 Is that something that you are able to require
23 them to do as you understand your powers in this
24 process?

25 A. Yes.

1 under these five criteria?

2 A. Generally.

3 Q. And that therefore, if a publisher wants to
4 have what might be thought of as an expensive set of
5 materials approved along with what might be thought of
6 as the core instructional vehicle, in the traditional
7 case, the textbook, that there isn't a criteria that
8 kind of cuts -- that cuts off that wide range of
9 materials simply because -- on the grounds that that is
10 more than is -- in the judgment of an educational expert
11 looking at that range of material, more than is
12 necessary for instruction in the classroom?

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "expensive" and "necessary for instruction in the
15 classroom."

16 MS. ALTAMIRANO: It's also been asked and
17 answered as to pricing.

18 THE WITNESS: I can respond to your question as
19 it relates to format, and I can typically -- I could
20 tell you typically that submissions are multivariied to
21 allow for choice at the local level, and because it's a
22 market system, that allows districts to purchase what
23 might be a less expensive CD-ROM containing the full
24 year's course of study because that works for them, or
25 it might be a hardbound student edition because that

1 MR. VIRJEE: Objection. Asked and answered.

2 THE WITNESS: Yes.

3 Q. BY MR. JACOBS: And what's the vehicle for
4 that, for requiring individual components to be
5 individually priced?

6 A. Approximately two months before they submit for
7 the state evaluation, they have to submit the price
8 quotes for the components that they plan on selling in
9 California.

10 Q. And specifically they have to quote a price for
11 components as opposed to a package price?

12 A. They do both.

13 Q. And you have the power to require them to price
14 on a component-by-component basis?

15 A. Yes.

16 Q. And do you understand that power to be derived
17 from your statutory authority, your regulatory
18 authority, or both?

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

21 MS. ALTAMIRANO: Join.

22 THE WITNESS: It's contained in statutory and
23 regulatory components -- requirements.

24 Q. BY MR. JACOBS: The National Association of
25 State Textbook Administrators, have you gone to meetings

1 of that organization?
 2 A. No.
 3 Q. Have you -- is that because you couldn't -- why
 4 not? Why haven't you gone to meetings of the NASTA?
 5 A. Because the State's involved in compressed
 6 adoption cycles now, and every meeting has been during
 7 one of our major primary adoptions of instructional
 8 materials, so I've been unable to attend.
 9 Q. Have you sent a designee?
 10 A. No, because those who have to be there also
 11 have to be part of the adoption. My manager would be
 12 the one, but she also oversees the instructional
 13 materials process.
 14 Q. And that person is who?
 15 A. Susan Rios.
 16 Q. And what is her title?
 17 A. She's the manager for the instructional
 18 resources unit.
 19 Q. Have you received any materials from the
 20 National Association of State Textbook Administrators in
 21 the nature of reading reports or a monthly bulletin,
 22 something like that?
 23 A. I've received e-mails.
 24 Q. Is that it?
 25 A. That's all I can recall.

1 Q. Have you -- are you aware of any discussion at
 2 the National Association of State Textbook
 3 Administrators on the issue of textbook shortages?
 4 A. No, I haven't attended.
 5 Q. And nothing in the communications you've
 6 received from them have been directed to that issue?
 7 A. No.
 8 Q. Do you understand the mission of the curriculum
 9 frameworks and instructional resources division to
 10 include addressing issues related to whether districts
 11 have made available to their students sufficient
 12 textbooks or instructional materials in terms of
 13 numerosity?
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "mission."
 16 MS. ALTAMIRANO: Join.
 17 THE WITNESS: Do you want to restate that?
 18 MR. JACOBS: Can you read it back, please?
 19 (Record read.)
 20 MR. VIRJEE: Also going to object as with
 21 respect to the terms availability and "numerosity."
 22 MS. ALTAMIRANO: Join.
 23 THE WITNESS: No.
 24 Q. BY MR. JACOBS: No, it is -- no, addressing
 25 that issue is not part of your mission?

1 MR. VIRJEE: Same objection.
 2 MS. ALTAMIRANO: Join.
 3 THE WITNESS: No. Yes to no. Yes to the no.
 4 Q. BY MR. JACOBS: One more time. I am correct
 5 that addressing the issue that I just described is not
 6 part of the mission of the curriculum frameworks and
 7 instructional resources division?
 8 MR. VIRJEE: Same objection. Vague and
 9 ambiguous and overbroad.
 10 MS. ALTAMIRANO: Join.
 11 THE WITNESS: As stated, no.
 12 Q. BY MR. JACOBS: No, I'm not correct or, yes, I
 13 am correct? Do you want to give me an answer with an
 14 explanation so we understand?
 15 A. Yes. Your question is so vague that I can
 16 answer specifically but I cannot answer broadly.
 17 Q. So give me a specific that you have in mind
 18 when you say you can answer specifically.
 19 A. Part of our mission is to advise districts,
 20 which we do, based on our own policy at the division
 21 level and department level four times a year that they
 22 are required to adhere to Education Code 60119, which
 23 is, as I've stated before, ensuring sufficiency of
 24 materials based on the cycles of the frameworks. So,
 25 yes, our mission is to help inform districts of their

1 obligations.
 2 Q. When did this become part -- let me back up.
 3 This four times a year notice requirement, is
 4 that in regulation?
 5 A. No, that's department policy, division policy.
 6 Q. Do you know when that policy was adopted?
 7 A. No, I don't have the exact date.
 8 Q. It predated your -- did it predate your
 9 employment by the division?
 10 A. Yes.
 11 Q. So to put it conversely, it was a policy that
 12 was in place when you began working in that division?
 13 A. Yes.
 14 Q. And that was when?
 15 MR. VIRJEE: When did she begin working in the
 16 division?
 17 MR. JACOBS: Yes.
 18 THE WITNESS: In 1999.
 19 Q. BY MR. JACOBS: I take it that you send out
 20 some sort of a memo to the school districts four times a
 21 year that advises them of this?
 22 A. Yes.
 23 Q. And the memo sets forth the noticed -- the
 24 requirements in terms of notice, correct?
 25 A. The notice that's required in the statute?

1 Q. Yes.
 2 A. Yes.
 3 Q. And it sets forth the findings that the
 4 districts are required to make as part of the hearing
 5 process?
 6 MR. VIRJEE: Objection. Vague and ambiguous.
 7 Assumes those things are mutually exclusive.
 8 THE WITNESS: The communication identifies the
 9 requirements of the statute.
 10 Q. BY MR. JACOBS: Does it go beyond stating the
 11 requirements of the statute?
 12 MR. VIRJEE: Objection. Vague and ambiguous.
 13 THE WITNESS: No. There are four
 14 communications, and I'll need to clarify. Two are just
 15 about the statute, a general reminder that's included
 16 when we send out the assurance certification memos
 17 incorporated into that for the use of Schiff-Bustamante.
 18 So we remind districts that prior to the end of the
 19 fiscal year, they need to hold their hearings, and at
 20 the same time they're asked for that prior fiscal year
 21 to assure the use of Schiff-Bustamante.
 22 The other two communications are general
 23 information memos that our office sends out on a
 24 biannual basis, which includes a lot of information
 25 about recent board policies and new purchase lists.

1 It's a large document of information, and it's always
 2 included and highlighted in the packet.
 3 Q. BY MR. JACOBS: Is there a name for that
 4 packet?
 5 A. Information memo. Information update.
 6 Q. Do you know whether that information update is
 7 routinely made available on the Department of
 8 Education's website?
 9 MR. VIRJEE: The entire document?
 10 MR. JACOBS: Yes.
 11 THE WITNESS: No, because some components of it
 12 are not transferable to the web. It contains different
 13 materials each time, so some are in hardbound copy that
 14 we include. For example, a recent adoption report. The
 15 Board completes an adoption report describing the
 16 programs they approved or rejected. That's hardbound,
 17 so that would be included in that particular information
 18 memo, so it's not all on the web.
 19 Q. BY MR. JACOBS: So some of it is routinely --
 20 A. It may be.
 21 Q. You don't know one way or the other what the
 22 routine is with respect to it, is that what you mean by
 23 "maybe"?
 24 A. It's on a case-by-case basis depending on the
 25 package that's sent out.

1 Q. Are there any other specifics that you had in
 2 mind when you said you could answer my question about
 3 numerosity specifically but not generally?
 4 MR. VIRJEE: Objection. Vague and ambiguous.
 5 THE WITNESS: That's my response.
 6 Q. BY MR. JACOBS: Let's talk about 60119 for a
 7 few minutes.
 8 MS. ALTAMIRANO: Are we going to break for
 9 lunch at a certain time?
 10 MR. JACOBS: How about 12:30?
 11 MS. ALTAMIRANO: What time is it now?
 12 MR. JACOBS: 12:20.
 13 MS. ALTAMIRANO: Thank you.
 14 (Discussion held off the record.)
 15 Q. BY MR. JACOBS: Are you aware of any evaluation
 16 that has been done by the Department of Education about
 17 the effectiveness of 60119 in achieving the objectives
 18 that are stated for it in the statute?
 19 MR. VIRJEE: Objection. Vague and ambiguous as
 20 to the "effectiveness" and study -- or "evaluation."
 21 THE WITNESS: No.
 22 Q. BY MR. JACOBS: Are you -- have you personally
 23 received any anecdotal information that relates to
 24 whether 60119 is effective?
 25 And let me make that a little more focused.

1 Have you received any anecdotal information about the
 2 actual content of the public hearings or any particular
 3 public hearing that has been held pursuant to 60119?
 4 MR. VIRJEE: Which question do you want her to
 5 answer? It's compound.
 6 MR. JACOBS: It is. Let's start over again.
 7 Q. 60119 has a public hearing requirement,
 8 correct?
 9 A. Yes.
 10 Q. Have you received any information about the
 11 content of any particular public hearing that has been
 12 held pursuant to 60119?
 13 A. What do you mean by "content"?
 14 Q. I mean what the nature of the discussion has
 15 been beyond the simple findings that are required to be
 16 made pursuant to the statute.
 17 A. In what instance, from a district employee?
 18 I'm not clear.
 19 Q. In any instance have you received any anecdotal
 20 information from any source about what actually happened
 21 at a 60119 hearing other than the findings themselves
 22 being made?
 23 A. Yes.
 24 Q. What kind of anecdotal information have you
 25 received?

1 A. I've had district representatives call and talk
2 about how they had a very spirited discussion about the
3 programs to approve for the district, that the public
4 testimony was dynamic and intense.

5 Q. You said about programs to approve. Did you by
6 that mean -- how did that relate to 60119 in terms of
7 programs to approve?

8 A. Well, for many districts, not all by any means,
9 the way that they will conduct their hearing or hearings
10 is to include a discussion about which programs they
11 want to purchase for particular content areas, and so
12 there will be individuals who will testify for and
13 against the programs they're considering at that time.

14 Because part of the certification is to ensure
15 sufficient materials within the cycles of the framework,
16 so they are continually evaluating materials purchased
17 for their schools within the district. So many times
18 either one hearing or a number of hearings will include
19 that discussion before they certify.

20 Q. With respect to the topic of sufficiency, as in
21 sufficient materials, in your last answer, have you
22 received any information about the actual content of any
23 public hearings pursuant to 60119?

24 A. No.

25 MR. VIRJEE: Objection. Vague and ambiguous as

1 did you mean?

2 A. I wasn't referencing sufficient materials as
3 part of the resolution as the discussion piece that I've
4 participated in, I was discussing with you anecdotally
5 what I've been told about program discussions, which
6 fold into sufficiency as one component.

7 But the anecdotal information relates to
8 district personnel who want to talk about those programs
9 and the discussion they're having at the local level and
10 seek any additional information from our office about
11 the programs. So, again, they're interrelated, but the
12 anecdotal that relates to me and my office is about the
13 programs they're considering.

14 Q. And you meant to -- and it did not include
15 discussion about whether -- the anecdotal information
16 you've received did not relate to the sufficient
17 materials component of that public hearing?

18 A. That's correct. I'm referencing the fact
19 that's the obligation of the district while they're
20 conducting the hearing. And in some cases the districts
21 are also holding the hearing as to what materials to
22 purchase.

23 Q. I want to make sure we have a common
24 understanding about what information you haven't
25 received when you refer to sufficient materials.

1 to "sufficiency."

2 THE WITNESS: No.

3 Q. BY MR. JACOBS: Have you ever had any
4 discussions with your colleagues in the Department of
5 Education about the effectiveness of 60119 with respect
6 to the issue of sufficiency?

7 MR. VIRJEE: Objection. Vague and ambiguous as
8 to "sufficiency."

9 MS. ALTAMIRANO: Join.

10 THE WITNESS: No.

11 Q. BY MR. JACOBS: What did you mean when you said
12 "sufficient"? I want to make sure there's no ambiguity
13 about sufficient. When I say the word sufficiency, I'm
14 referring back to your use of the word sufficient. In
15 your answer a couple of questions and answers ago, what
16 did you mean by sufficient?

17 MR. VIRJEE: Objection. Vague and ambiguous.
18 Depending in what context.

19 THE WITNESS: I can't respond. I'm not sure
20 what you're asking me to do.

21 MR. JACOBS: Can you read back her answer about
22 three or four questions ago in which the word
23 "sufficient" was used?

24 (Record read.)

25 Q. BY MR. JACOBS: By sufficient materials what

1 What did you mean when you said sufficient
2 materials?

3 MR. VIRJEE: Objection. Vague and ambiguous,
4 and also calls for a legal conclusion to the extent
5 you're asking her to tell you what sufficient means in
6 60119, which is, I think, what she was referring to.

7 MS. ALTAMIRANO: Join.

8 THE WITNESS: I haven't had discussions with
9 anyone about sufficient materials anecdotally.

10 Q. BY MR. JACOBS: And by "sufficient materials,"
11 what do you mean?

12 MR. VIRJEE: Same objection.

13 THE WITNESS: I haven't had any discussion, so
14 I don't have any definition for you.

15 MR. JACOBS: Well --

16 THE WITNESS: I just don't have any.

17 Q. BY MR. JACOBS: I think this is all very clear,
18 but we get a lot of objections.

19 If by sufficient you meant materials, do you
20 mean whether there are -- in a kind of a lay sense, you
21 mean whether there are shortages of textbooks or
22 instructional materials with respect to -- shortages of
23 textbooks or instructional materials in any particular
24 district?

25 MR. VIRJEE: Objection. Vague and ambiguous

1 now as to where you are talking about the word
2 sufficient. As she used it in her last answer, she was
3 talking about 60119. Are you now asking her -- and she
4 said that she's never had conversations with anybody
5 using the word sufficient or about sufficiency of
6 materials, so she has no context to put it in.

7 So what are you asking her, Michael? I don't
8 understand.

9 MR. JACOBS: I think I'm asking not for the
10 statutory definition, I'm just asking what in her answer
11 she meant when she said, I haven't had conversations
12 about this topic, and the topic -- the words that you
13 used to describe the topic are sufficient materials.

14 MR. VIRJEE: I think she's answered that by
15 saying she can't say because she hasn't used the word
16 sufficient or the concept of sufficiency with anyone in
17 this area, so she can't say what she would mean by it if
18 she used it.

19 Q. BY MR. JACOBS: Have you ever had a discussion
20 with anybody about sufficiency of textbook?

21 MR. VIRJEE: Now we're talking about a
22 different question than 60119 or people at the school
23 districts.

24 MR. JACOBS: Yes.

25 MR. VIRJEE: Now I'll object to the word

1 the meaning of sufficient materials as it relates to
2 textbooks and instructional materials?

3 MR. VIRJEE: Objection. Vague and ambiguous as
4 to the context in which you're using it.

5 THE WITNESS: Do I have an understanding as it
6 relates to statute?

7 MR. JACOBS: No.

8 THE WITNESS: As it relates to my own personal
9 view?

10 MR. JACOBS: Personal view.

11 MR. VIRJEE: Objection. Overbroad. Vague and
12 ambiguous.

13 MS. ALTAMIRANO: And objection. In what
14 context as well?

15 MR. JACOBS: Any context. This is not that
16 hard.

17 THE WITNESS: I think it's a difficult question
18 to answer, and I'm not comfortable answering a question
19 that's in any context.

20 Q. BY MR. JACOBS: Why is it difficult? There's
21 an aspect of it that makes it difficult?

22 A. It's just too broad. There is nothing I can
23 tell you. There's nothing I can respond with.

24 MR. VIRJEE: She said she doesn't understand
25 your question.

1 "sufficient" as vague and ambiguous and overbroad.

2 THE WITNESS: Have I had a discussion with
3 anyone about sufficient materials? Could you clarify in
4 what context?

5 MS. ALTAMIRANO: And the time, please.

6 THE WITNESS: For the classroom, for the
7 district?

8 Q. BY MR. JACOBS: All I'm trying to do now is get
9 a vocabulary down. When I ask you have you ever had a
10 conversation with anyone about sufficient materials,
11 what do you mean by sufficient materials in a
12 non-statutory sense?

13 A. Yes, I've had conversations --

14 MR. VIRJEE: Hold on, because now he's asking
15 you a question about sufficient materials and he's using
16 the term, not you. So you asked the question, have you
17 ever had a discussion with someone, anyone in any
18 context about sufficient instructional materials?

19 MR. JACOBS: I think you're making this more
20 difficult.

21 MR. VIRJEE: I'm not intending to. I'm
22 intending to keep a clear record. I'll object to your
23 use of the term "sufficient materials" as vague and
24 ambiguous.

25 Q. BY MR. JACOBS: Do you have an understanding of

1 Q. BY MR. JACOBS: Have you discussed -- has the
2 Williams lawsuit been discussed at any meetings of the
3 curriculum commission at which you've been present?

4 MR. VIRJEE: And I would object to the extent
5 that it calls for any attorney/client privilege
6 information only.

7 THE WITNESS: Do you mean beyond the name of
8 the case?

9 MR. JACOBS: Yes.

10 THE WITNESS: No.

11 Q. BY MR. JACOBS: Was the name of the case
12 brought up in curriculum commission meetings?

13 A. It's been brought up in the paper, and everyone
14 is aware of the case.

15 Q. Do you understand that one of the allegations
16 of the case is that there is -- that there are shortages
17 of textbooks and instructional materials in classrooms
18 in the state of California?

19 MR. VIRJEE: Objection. Vague and ambiguous as
20 to "shortages."

21 MS. ALTAMIRANO: Join.

22 THE WITNESS: I'm aware of language in the case
23 that relates to that issue.

24 Q. BY MR. JACOBS: And your understanding as we
25 sit here today in this deposition of that allegation is

1 what?
 2 MR. VIRJEE: Object to the extent it would call
 3 for any attorney/client information. To the extent
 4 you've had any conversations with counsel what may be
 5 meant or not meant, of course you shouldn't provide
 6 that. To the extent you have some knowledge otherwise,
 7 the paper or with colleagues, otherwise, I would be free
 8 to allow her to talk about that.
 9 MS. ALTAMIRANO: Join.
 10 THE WITNESS: As it relates to the way it's
 11 presented in the newspaper?
 12 MR. JACOBS: Sure.
 13 THE WITNESS: What defines shortage?
 14 Q. BY MR. JACOBS: What's your understanding of
 15 the claim?
 16 A. Of the claim?
 17 Q. Uh-huh.
 18 A. That individual students have not had access to
 19 a particular textbook, or they've been unable to use the
 20 textbook out of the classroom.
 21 Q. Have you had any discussions, other than with
 22 your lawyer, as you understood who your lawyer was, have
 23 you had any discussions about that claim with anyone?
 24 MR. VIRJEE: Object to the extent that it would
 25 call for attorney/client privileged communications.

1 You don't have to take his definition of your
 2 lawyer, but can you answer otherwise.
 3 MS. ALTAMIRANO: Join.
 4 THE WITNESS: As it relates to the Williams
 5 case or shortage or sufficient?
 6 MR. JACOBS: I was trying to work my way to the
 7 former by starting with the latter.
 8 As it relates to the Williams case.
 9 THE WITNESS: The Williams case, I have general
 10 conversations about the main intent of the lawsuit, the
 11 three main issues that are embedded in it, but no detail
 12 of it or definitions of it or allegations specifically
 13 because I'm advised that the case information is
 14 confidential, so I would not discuss it.
 15 Q. BY MR. JACOBS: Have you had any discussions
 16 about the allegation in the complaint that the State
 17 does not have a proper system of oversight and
 18 management to ensure that students have access to
 19 textbooks or instructional materials?
 20 A. I understand that's a complaint.
 21 MR. VIRJEE: I'll object to the extent that
 22 would call for attorney/client privileged information,
 23 but only to that extent.
 24 MS. ALTAMIRANO: Join.
 25 THE WITNESS: I'm aware of that complaint.

1 Q. BY MR. JACOBS: Have you had any discussions
 2 about that?
 3 MR. VIRJEE: Same objection. Outside of the
 4 attorney/client relationship?
 5 THE WITNESS: With who?
 6 Q. BY MR. JACOBS: As you understand his
 7 instruction, in which counsel for the agency,
 8 defendants, I understand to be joining --
 9 MS. ALTAMIRANO: Thank you.
 10 Q. BY MR. JACOBS: -- who do you understand --
 11 with whom do you understand discussions to be excluded
 12 by that instruction? I'm sorry, that's hopeless.
 13 You understand that you're receiving an
 14 instruction not to reveal the contents of communications
 15 with certain lawyers, correct?
 16 A. The case generally, the details of the case,
 17 yes.
 18 Q. Well, you understand -- do you understand the
 19 instruction to relate to discussions you have with your
 20 colleagues at which lawyers are not present?
 21 A. You're going to have to go back on that one.
 22 Q. I'm asking you questions and you're getting an
 23 instruction not to answer, and I'm trying to understand
 24 what you are not answering because of the instruction.
 25 MR. VIRJEE: The objection can be made clearer.

1 My objection is that she should not disclose the content
 2 of any communications that she had with any lawyers
 3 regarding this case.
 4 And to the extent that those communications
 5 were with individuals other than counsel, I have no
 6 problem with her answering those questions, except to
 7 the extent that they involve instructions or directions
 8 from counsel.
 9 MR. JACOBS: You said any lawyer, but I don't
 10 think you literally meant any lawyer, because if you and
 11 I had had a discussion about this, that would not be
 12 privileged.
 13 MR. VIRJEE: Any counsel representing any state
 14 entity in this case. We'll do it that way.
 15 MR. JACOBS: So you are including yourself, for
 16 example?
 17 MR. VIRJEE: You bet.
 18 MR. JACOBS: We have an issue there.
 19 Q. You're being instructed now with respect to
 20 conversations you've had with lawyers for state agencies
 21 about this case, do you understand that?
 22 A. Uh-huh.
 23 MR. VIRJEE: That would include in-house
 24 counsel for the State Department of Ed, it would
 25 include the Attorney General's office, would include my

1 office, or any other lawyers who represent any agencies
 2 or divisions or branches or anything else of the state.
 3 MS. ALTAMIRANO: Of course we join in that.
 4 Q. BY MR. JACOBS: So now I'm going to ask you,
 5 leaving that set of people and conversations aside, have
 6 you had any conversations about the allegation with
 7 respect to textbooks in the Williams lawsuit?
 8 A. Very little.
 9 Q. And the very little includes what?
 10 A. That there are three main topics of the suit.
 11 Q. Facilities, textbooks and teachers?
 12 A. Right. I think I've had one to two
 13 conversations about concerns about the state process
 14 just generally, but no detailed conversations
 15 whatsoever.
 16 Q. And the concerns about the state process were
 17 about what aspect of the state process?
 18 A. Just the reference to the compliance process,
 19 that there was a process that was inadequate in the view
 20 of the plaintiffs.
 21 MR. VIRJEE: Can we -- before she says anything
 22 more about what these conversations are, can we
 23 establish who they were with so we make sure we're not
 24 invading any privileges?
 25 Q. BY MR. JACOBS: Who were they with?

1 A. My manager of the instructional resources unit.
 2 I believe I've had one conversation with the deputies of
 3 our department about the concerns.
 4 Q. And what was the substance of the first
 5 conversation or the conversation with the first
 6 individual?
 7 A. Generally informing my manager that there was a
 8 suit that involved some of the procedures in the sense
 9 of the work that's done by our department in that
 10 particular division, but in the same board terms that
 11 you would read in the paper. She actually doesn't have
 12 a lot of detail about the case.
 13 Q. Okay. And so you're representing to me --
 14 you're testifying that your conversation with your
 15 manager about this lawsuit was in general terms about
 16 the allegations?
 17 A. Uh-huh.
 18 Q. And that you've had no conversation with your
 19 manager about, for example, how procedures in state
 20 government might be changed to address the concerns that
 21 are raised in the lawsuit?
 22 A. No, I've had no conversations about that.
 23 Q. And let me just follow that trail one more
 24 step, which is, separate and apart from the specifics of
 25 the lawsuit -- separate from the conversation in which

1 the lawsuit itself was brought up, have you had any
 2 conversations in the last 14 months, which is when the
 3 lawsuit was first filed, about whether procedures at the
 4 Department of Education could be modified to strengthen
 5 the mechanisms by which the state controls whether
 6 students actually receive access to textbooks and
 7 instructional materials?
 8 MS. ALTAMIRANO: I'm going to object on
 9 official information privilege to this. If any of these
 10 discussions have been regarding confidential issues and
 11 with the intent of generating information that's
 12 confidential within the Department among higher-ups
 13 discussing policy, that remains confidential.
 14 MR. JACOBS: Do you want to give me some
 15 authority for that instruction?
 16 MS. ALTAMIRANO: Yes, Evidence Code Section
 17 1040.
 18 MR. VIRJEE: I'll also object to the question
 19 as vague and ambiguous.
 20 Q. BY MR. JACOBS: Are you withholding
 21 information?
 22 First of all, answer the question.
 23 A. Let's go back. Could you restate the question?
 24 MR. JACOBS: Please read it back.
 25 (Record read.)

1 MR. VIRJEE: I'm going to object as vague and
 2 ambiguous as to "access," and assumes facts not in
 3 evidence, that they need modification or strengthening.
 4 Also vague and ambiguous as to "strengthening."
 5 MS. ALTAMIRANO: Joining. Plus official
 6 information.
 7 THE WITNESS: I've had conversations about our
 8 process because I do that continuously. That's my job.
 9 As it relates to this lawsuit, no.
 10 Q. BY MR. JACOBS: Well, what I asked you was
 11 apart from the lawsuit, and I asked you about the issue
 12 that I understand you to have testified you have --
 13 let's create a category called sufficient materials,
 14 which is the category that you said you have not had
 15 discussions about with district officials or others in
 16 terms of 60119. Okay? With me so far?
 17 MR. VIRJEE: Objection. Vague and ambiguous as
 18 to "sufficient materials."
 19 THE WITNESS: Yes.
 20 Q. BY MR. JACOBS: And now I'm asking you whether
 21 you have -- separate from the lawsuit, whether you had
 22 discussions with anyone at the Department of Education
 23 about whether the Department's policies or procedures
 24 might be adjusted to enhance the probability that
 25 districts make available to their students sufficient

1 materials?

2 MR. VIRJEE: Same objection. Vague and
3 ambiguous as to "sufficient."

4 MS. ALTAMIRANO: And objecting on official
5 information privilege regarding any policy discussion
6 with higher-ups in the Department regarding possible
7 procedures to modify mechanisms in regards to school
8 districts.

9 THE WITNESS: No.

10 Q. BY MR. JACOBS: Are you withholding any
11 information pursuant to the instruction from
12 Ms. Altamirano?

13 A. I don't understand your question. Withholding
14 information about what?

15 Q. Are you -- by following her instruction, are
16 you not answering the question?

17 A. You're asking me a question that's not related
18 to the lawsuit, so it's not related to that. It's
19 related to general procedural instructions in our
20 department. That's how I answered that.

21 Q. So, in other words, her instruction did not
22 lead you to say no, where but for her instruction your
23 answer might have been different?

24 Her instruction did not cause you to answer my
25 question any differently than you would have answered it

1 A. Second paragraph?

2 Q. I think it's the -- yeah, second paragraph.

3 Well, first full paragraph.

4 MR. VIRJEE: On page -- the first paragraph
5 starting under performing -- I'm sorry, that's not a
6 full paragraph. Thank you.

7 Q. BY MR. JACOBS: I'll also ask you about the
8 following two paragraphs.

9 A. Okay.

10 Q. So the paragraphs I'm asking you about start
11 with Ms. Griffith then invited Mr. Scott Hill. Do you
12 see that?

13 A. Yes.

14 Q. And then the next paragraph is Chair Astore
15 noted? Do you see that?

16 A. Yes.

17 Q. And then the next paragraph is, Mr. Hill
18 encouraged the commissioners to continue. Do you see
19 that?

20 A. Yes.

21 Q. Do you recall Mr. Hill's presentation, the
22 presentation that is -- that was made that is reflected
23 in these minutes?

24 A. Generally. He provides a regular update to the
25 commission.

1 had she not --

2 THE WITNESS: Do I have to answer this?

3 MR. JACOBS: Yes.

4 THE WITNESS: Well, I think that you're asking
5 me to answer the question now again in relation to
6 something else.

7 MR. JACOBS: I think you're misunderstanding
8 what she thinks she's instructing you not to answer.

9 THE WITNESS: Privileged information is my
10 understanding.

11 Q. BY MR. JACOBS: And I get to ask you in this
12 privilege exercise that lawyers do whether the
13 instruction is changing your answer in any way from what
14 it might have been absent the instruction.

15 A. No.

16 MR. JACOBS: We'll break for lunch.
17 (Lunch recess taken.)

18 Q. BY MR. JACOBS: Let me show you some minutes of
19 the meeting of the curriculum development and
20 supplemental commission dated May 18th-19th, 2000.

21 (Exhibit SAD-54 was marked.)

22 Q. BY MR. JACOBS: Feel free to take a look at the
23 overall context of the discussion, but I'm going to ask
24 you about a paragraph reporting on what Scott Hill had
25 to say on page 4.

1 Q. Does the regular update include periodic
2 reports on the topic of whether there is -- as reflected
3 in item 4, whether there is adequate funding for
4 standards aligned instructional materials in the core
5 areas?

6 A. Rarely. I'd say this was one of the few times,
7 if ever else.

8 Q. Meaning this may have been an exceptional case
9 that he actually brought these issues to this particular
10 commission?

11 A. This is the only incident I remember the
12 discussion occurring.

13 Q. And leaving Mr. Hill out of it for a minute, is
14 that the only instance you can recall in the commission
15 of the topic of adequate funding for standards aligned
16 instructional materials in the core areas being
17 discussed?

18 A. They've been discussed in certain
19 circumstances, not exactly in this format.

20 Q. Meaning a report from Mr. Hill and then a
21 follow-up discussion?

22 A. No, not from Mr. Hill.

23 Q. Meaning correct in -- I'm sorry, we're losing
24 each other on yes and no again.

25 A. The way that it's been brought up in another

1 context is I provide the commission with a legislative
2 update and keep them informed of additional resources
3 that might become available for instructional materials,
4 and so it's come up in that context. And most recently
5 in the legislation, that would reauthorize the
6 Schiff-Bustamante funds to be continuously appropriated.

7 Q. What's the opposite of "continuously
8 appropriated"?

9 A. Well, this conversation and these minutes by
10 Mr. Hill relate to a discussion associated with the
11 sunset clause in the Schiff-Bustamante fund program in
12 particular, and that the discussion, in my view, my
13 recollection, related to the perception that those funds
14 were, in that four-year period, enough to provide
15 districts support in that one four-year period.

16 And the discussion partially centered on the
17 issue of ongoing needs for districts and the importance
18 of the commission and the Department supporting the
19 ongoing appropriations for funding. That's the context
20 of the discussion.

21 Q. Is it your testimony that the underlying
22 assumption in the discussion that's reported in these
23 minutes was that if the issue of ongoingness, the
24 ongoing appropriation was addressed, that is, the
25 appropriations was made ongoing, that there would be

1 Calls for speculation.

2 THE WITNESS: That wasn't discussed --

3 MS. ALTAMIRANO: Join.

4 THE WITNESS: -- in definition. I'm not sure
5 what your definition is of sufficient.

6 Q. BY MR. JACOBS: Well, I'm asking you whether
7 that would in and of itself address the gap in funding,
8 whether that was the assumption, the assumption of the
9 discussion or whether in addition the amount
10 appropriated on a year-by-year basis for
11 Schiff-Bustamante needed to be increased?

12 MR. VIRJEE: Objection. Compound. Vague and
13 ambiguous.

14 MS. ALTAMIRANO: Join.

15 THE WITNESS: I don't recall a detailed
16 discussion about the level of Schiff-Bustamante being
17 raised. I do recall a discussion by Chair Astore about
18 her concerns that reading language arts may cost, in her
19 view, \$100 per student, and then her reference to at
20 least four subject areas.

21 However, there's a general understanding by all
22 commissioners, because they're involved in these cycles,
23 that districts aren't purchasing for every subject every
24 year. She's bringing up the point that this cost is
25 associated with reading language arts, and so the

1 adequate funding for standards aligned instructional
2 materials in the core areas, the topic referred to in
3 item 4 in that paragraph?

4 MR. VIRJEE: Objection. Calls for speculation
5 and lacks foundation. Also vague and ambiguous as to
6 "adequate funding."

7 MS. ALTAMIRANO: Join.

8 THE WITNESS: I can't speak to the perspective
9 of these two individuals that are commenting on it.

10 Q. BY MR. JACOBS: It says Mr. Hill and the
11 commissioners discussed the following.

12 A. Right. I can't speak to their perception.

13 Q. You can speak to what was said though, right?

14 A. In general terms.

15 Q. Did what was said reflect a view that if the
16 Schiff-Bustamante was made an ongoing appropriation, that
17 that would address the issue of adequate funding for
18 standards aligned instructional materials in the core
19 areas?

20 A. I think that the commission and Mr. Hill felt
21 it was absolutely essential that those funds continue.

22 Q. So that was a necessary step, correct?

23 A. Yes.

24 Q. Was it sufficient?

25 MR. VIRJEE: Objection. Vague and ambiguous.

1 bare -- kind of the focus on the funding is a perception
2 that she wanted to make clear for this particular
3 subject, that in her view, \$100 is the cost. But no
4 price has been set in that adoption at this point.

5 Q. BY MR. JACOBS: Do you have any information on
6 whether any analysis has been done to determine whether
7 the -- to guide the State in the appropriation of
8 amounts under Schiff-Bustamante in terms of how much it
9 would cost per student to get any kind of quality
10 standards aligned materials in place, quoting from the
11 minutes of the discussion and with reference to Chair
12 Astore's comments?

13 MR. VIRJEE: Objection. Vague and ambiguous
14 and calls for speculation.

15 MS. ALTAMIRANO: Join.

16 MR. VIRJEE: I'm not sure I understand your
17 question.

18 MR. JACOBS: I think the witness does.

19 MR. VIRJEE: You can tell him, if you
20 understand his question.

21 THE WITNESS: Well, it's the legislature that
22 determines the appropriations, not the curriculum
23 commission.

24 MR. JACOBS: Could you read back my question.

25 (Record read.)

1 THE WITNESS: My confusion is that you're
2 asking if an analysis has been done, which I'm not sure
3 if you mean a state analysis or an analysis by the
4 commission, and then you're referring to Chair Astore's
5 comments, so which part of that should I respond to?

6 MR. VIRJEE: I'll also object as vague and
7 ambiguous as to an analysis done.

8 Q. BY MR. JACOBS: The first part of your answer
9 was the legislature makes this appropriation. And my
10 question is whether there's been any analysis of the
11 issue that Chair Astore was raising there, which is that
12 in -- she's making a specific reference to reading and
13 language arts, correct, that's your understanding of
14 what she was talking about?

15 A. Yes.

16 Q. But the general issue is how much has been
17 appropriated for instructional materials purchases
18 versus how much it actually costs to, in her words,
19 quote, get any kind of quality standards aligned
20 materials in place.

21 And my question is, are you aware of any
22 analysis of that issue?

23 A. By whom?

24 Q. By anyone.

25 MR. VIRJEE: Objection. Vague and ambiguous as

1 A. I have a copy of that report.

2 Q. Do you know the title?

3 A. Not offhand. I don't recall the exact title.

4 Q. Did you circulate it to the commission?

5 A. No. The American Association of Publishers
6 did.

7 Q. Did you provide any written analysis of the --
8 strike that.

9 Have you seen any Department of Education
10 analysis of that report?

11 A. No.

12 Q. Did you provide it to anyone under a cover
13 memo?

14 A. Not that I recall.

15 Q. And you've seen no cover memo associated with
16 the report, a cover memo internal to the Department?

17 A. No.

18 Q. Are you aware of any consideration of that
19 report by the Department?

20 MR. VIRJEE: By the Department of Ed?

21 MR. JACOBS: Uh-huh.

22 THE WITNESS: No.

23 Q. BY MR. JACOBS: Are you aware of any
24 consideration of that report by any other state agency?

25 A. I believe associated with testimony at

1 to "analysis." Written report, or just considering how
2 much it costs? It's vague and ambiguous.

3 MR. JACOBS: Let's start with written report.

4 THE WITNESS: Not by the Department of
5 Education.

6 Q. BY MR. JACOBS: How about by anybody that
7 you've become aware of?

8 MR. VIRJEE: Objection. Calls for speculation.
9 Also vague and ambiguous as to "analysis" and "written
10 report."

11 MS. ALTAMIRANO: Join.

12 THE WITNESS: Not by -- any report by the state
13 or the legislature?

14 MR. JACOBS: I literally mean by anyone.

15 THE WITNESS: From which period?

16 MR. JACOBS: That's fair. In the years 2000
17 and 2001.

18 THE WITNESS: I know of an industry analysis.

19 Q. BY MR. JACOBS: What is that analysis?

20 A. It's a survey that the American Association of
21 Publishers conducted of its members to get a general
22 sense or estimate of costs, and as an industry
23 organization they provide that information to those that
24 are interested.

25 Q. You received a copy of that report?

1 legislative hearings in regards to the reauthorization
2 of Schiff-Bustamante.

3 Q. Are you thinking of someone in particular who
4 testified?

5 A. The representative of the American Association
6 of Publishers.

7 Q. So it wasn't -- to the best of your knowledge,
8 it wasn't referred to in any testimony by any state
9 official?

10 A. No.

11 Q. Are you aware of any comment on the report to
12 the effect of whether it is accurate or inaccurate by
13 anyone?

14 A. Not by any department official. I recall one
15 comment.

16 Q. Which was?

17 A. When the testimony was provided, one of the
18 members of the Senate said, of course you think it costs
19 that much.

20 Q. Are you aware of -- do you have a view as to
21 whether the report is accurate or inaccurate, or both?

22 A. My personal view?

23 Q. Uh-huh.

24 A. I think it's inflated.

25 Q. And is that personal view -- what is that based

1 on?

2 A. History of price quotes that are submitted and

3 a recent history on the price quotes that are submitted

4 for standards aligned adoptions, so both before

5 standards and after standards were adopted.

6 Q. And can you describe what the conclusion of the

7 report is?

8 A. No, I couldn't describe the details of the

9 conclusion.

10 Q. But you have in mind that it had a kind of a

11 net dollar amount per student that was too high?

12 A. It's more complicated than that. The way they

13 presented it, they broke it down into many different

14 charts and factors, so they were looking at scenarios

15 based on information volunteered by their industry

16 members for certain content areas, certain grade-level

17 spans, what would happen if you tried to purchase

18 everything in one year, what would happen if you did it

19 over time. So it was kind of broken down into different

20 scenarios, so I couldn't summarize that for you.

21 Q. But you have in mind that the amounts that they

22 had inserted for particular instructional materials

23 seemed high compared to what they were actually quoting

24 you in the adoption process for the corresponding

25 material?

1 A. My personal opinion was they were slightly

2 higher than history has shown. But I have to clarify

3 that they are also in the position of trying to advocate

4 for the reauthorization of funding, and so therefore

5 they would want to show policymakers the maximum

6 possible extent of what it may take or what they assume

7 it will take over time.

8 Q. And with that answer in mind, are you aware,

9 then, of any independent analysis of the issue that the

10 report addressed that has been made available to

11 policymakers in the State of California?

12 A. No, there's been no official analysis. There's

13 been verbal testimony by myself during budget hearings

14 as to the actual prices of materials that have already

15 been approved.

16 Q. Did you -- is that all that you -- is that the

17 extent of the dollar amount information you conveyed in

18 that testimony, that is, here are some quotes, or did

19 you go on to come up with some guidance in terms of what

20 that meant for appropriations?

21 A. No, it was more descriptive and informative in

22 nature, so the information was about what exactly were

23 the price ranges for certain content areas.

24 Q. Do you recall -- I didn't mean to cut you off.

25 A. No.

1 Q. Do you recall what the testimony was in terms

2 of price ranges?

3 A. Uh-huh. Yes.

4 Q. Could you tell us.

5 A. I gave a general summary of the costs -- the

6 current general approximate costs for K-8 instructional

7 materials in the core content areas. I started with

8 history social science with an approximate cost for the

9 student edition of between 35 and \$40 per student. That

10 would include the teacher's edition, that's not extra.

11 I testified that for science the cost was

12 approximately 40 to 45 per student, and then I testified

13 that the price quotes for the recent math adoption,

14 2001, were between 60 and 65 per pupil, and then I

15 testified that our estimate for reading language arts

16 would be between 60 and \$100 per pupil.

17 And I prefaced it with the fact that that was a

18 broad range and we had not seen the price quote

19 submitted for this upcoming adoption.

20 Q. So this was sort of a forecast of what you were

21 anticipating?

22 A. Yes.

23 Q. Did you testify about 9 through 12 pricing?

24 MR. VIRJEE: I'm going to object to this whole

25 line of testimony to the extent you're asking her to

1 recall what she said. Her testimony will speak for

2 itself.

3 MR. JACOBS: If it had been produced to us.

4 MR. VIRJEE: I don't know that it has been

5 produced to you.

6 MR. JACOBS: It sure hasn't

7 MR. VIRJEE: I have no idea. Whether it's been

8 produced or not, it speaks for itself.

9 MR. JACOBS: Fair enough. Your objection is

10 noted.

11 Q. Did you testify about 9 through 12?

12 A. No, I didn't testify to price quotes for grades

13 9 through 12.

14 Q. Did you say anything about -- did you give any

15 dollar figures for 9 through 12?

16 A. Just the apportionments for the categorical

17 programs, Schiff-Bustamante and state IMF funds.

18 Q. Meaning you did the division of the -- you did

19 the math in terms of taking the total for those

20 appropriations and dividing them by the number of

21 student recipients of funds?

22 A. I didn't do it quite like that. It was an

23 informational hearing. It was just general information.

24 Q. I'm just trying to understand what you

25 testified to about dollar amounts.

1 A. General allocations, rough per pupil
 2 expenditures.
 3 Q. Do you recall what you said about rough per
 4 pupil expenditures?
 5 A. What I said earlier in the testimony today.
 6 What I indicated was the state IMF funds allocations and
 7 the Schiff-Bustamante fund allocations.
 8 Q. In other words, the amounts that you had in
 9 mind when you spoke with the reporter were corresponded
 10 with the testimony you're describing?
 11 A. Yes, they did.
 12 Q. When was the testimony?
 13 A. It was this spring. I couldn't recall the
 14 exact date.
 15 Q. And it was before what body?
 16 A. The assembly budget subcommittee No. 2 on
 17 education.
 18 Q. Who helped prepare your testimony?
 19 MR. VIRJEE: Objection. Assumes facts not in
 20 evidence. Also vague and ambiguous as to "helped
 21 prepared."
 22 MS. ALTAMIRANO: Join.
 23 THE WITNESS: I prepared my own testimony.
 24 Q. BY MR. JACOBS: And you did the -- you didn't
 25 go to anyone else to get the -- to get data in which

1 to -- on which to base your dollar amount testimony?
 2 A. I got it from my division. The records are in
 3 my office.
 4 Q. So in terms of how you did this, you looked at
 5 the underlying documentation yourself rather than go to
 6 somebody else for assistance?
 7 A. Well, I asked my analyst, who works on the
 8 purchase list, to give me the approximations.
 9 Q. This is an analyst who does -- ordinarily does
 10 what?
 11 A. He's responsible for updating and tracking the
 12 submission quotes, the biannual updates of those quotes,
 13 and ensuring that the purchase lists are up-to-date, and
 14 also that they're on the web and sent to all districts.
 15 Q. Now, do you know what the amount is for reading
 16 and language arts?
 17 A. No.
 18 Q. When do you expect to know that figure?
 19 A. It will be within about the next 60 days we'll
 20 be compiling that information.
 21 Q. Do you have any information yet that tells you
 22 whether it's more toward 60 or more toward 100?
 23 A. No.
 24 Q. In the hearing, did they ask you questions?
 25 A. Yes.

1 Q. Did they ask you to assess -- did they ask you
 2 how you would go about estimating how much they should
 3 appropriate in view of the cost information you were
 4 providing and the adoption cycles and what that meant
 5 for when districts, in fact, would need to make
 6 purchases?
 7 A. No, it wasn't that specific. They were
 8 approving the current appropriations and they were not
 9 intending, because it was an informational hearing, to
 10 take action, so it was general in terms of the
 11 discussion.
 12 Q. Did you form an understanding as to how the
 13 current appropriations related to the cost information
 14 you were providing in terms of whether it was sufficient
 15 or not?
 16 A. Was I trying to determine that?
 17 Q. Did you do it for yourself because you wanted
 18 to testify about it, or just for your own information?
 19 MR. VIRJEE: Objection. Vague and ambiguous as
 20 to "current appropriations."
 21 MR. JACOBS: The one that you were referring
 22 to.
 23 MR. VIRJEE: Are you talking about the IMF and
 24 the current Schiff-Bustamante appropriations or just one
 25 or the entire appropriations?

1 Q. BY MR. JACOBS: What appropriations were
 2 actually under consideration at that point?
 3 MR. VIRJEE: By this committee?
 4 MR. JACOBS: Yes.
 5 THE WITNESS: By the committee, both the state
 6 IMF and the Schiff-Bustamante funds.
 7 Q. BY MR. JACOBS: So they were looking at the
 8 reauthorization of Schiff-Bustamante?
 9 A. The appropriations for the next fiscal year.
 10 Q. And how did the amounts -- has that, in fact,
 11 been appropriated now by the legislature?
 12 MR. VIRJEE: For which fiscal year?
 13 MR. JACOBS: The one you were just talking
 14 about.
 15 THE WITNESS: As soon as the governor signs the
 16 budget.
 17 Q. BY MR. JACOBS: Are the amounts that are in
 18 that budget different on a per student basis from what
 19 you discussed with the reporter?
 20 MR. VIRJEE: Objection. Calls for speculation.
 21 Lacks foundation.
 22 THE WITNESS: What I discussed with the
 23 reporter was fiscal year 2000/2001, so it would differ
 24 because we're talking about 2001/2002 fiscal year. And
 25 in taking into account inflation and cost-of-living

1 adjustments, I would have to assume it would be higher.
 2 It has grown over time, but at this time I could not
 3 tell you what that amount is until the budget is signed
 4 by the governor.
 5 Q. BY MR. JACOBS: So you haven't run -- even in
 6 anticipation of the possibility that would be signed,
 7 you haven't done your own mental calculation of whether
 8 per student amounts, given also, I assume, the increase
 9 in the student population, are, in fact, going up?
 10 A. No, haven't seen the final figures.
 11 Q. Even though it's been submitted to the
 12 governor?
 13 A. We make no assumption until the budget is
 14 signed, so we wouldn't analyze it until the budget is
 15 signed.
 16 Q. Do you happen to know how the gross amounts,
 17 the appropriations under both state IMF and
 18 Schiff-Bustamante differ 2001 to 2000 over 2000/2001?
 19 MS. ALTAMIRANO: I'm going to object. This
 20 calls for speculation because the problem we're having
 21 here is that the governor can pencil things out, so
 22 she's not going to know even what the gross amounts
 23 would be finally.
 24 MR. JACOBS: I'm not asking for that. I think
 25 it's clear.

1 THE WITNESS: I am assuming you're asking that.
 2 MR. JACOBS: I'm asking what's on his desk.
 3 MR. VIRJEE: Objection. That speaks for
 4 itself.
 5 THE WITNESS: I can't speak to what the
 6 governor's action will be, so I can't speak to an
 7 analysis based on the apportionments that went to his
 8 desk.
 9 Q. BY MR. JACOBS: Is that secret from you?
 10 A. No. I can tell you they're not less than the
 11 current apportionment, but at this point I haven't seen
 12 the final version of the budget as of today to be able
 13 to tell you how much higher it is.
 14 Q. How about yesterday?
 15 A. No, I can't tell you either. I don't have the
 16 information.
 17 Q. Not that it's secret, you just literally
 18 haven't received it?
 19 A. Right, I just don't have the information until
 20 I get the budget.
 21 Q. Are you aware of any advocacy by the Department
 22 for increases in the total amount of funding under both
 23 Schiff-Bustamante and state IMF in the 2001/2002 budget
 24 over 2000/2001?
 25 MR. VIRJEE: For clarification, the department,

1 the Department of Ed?
 2 MR. JACOBS: Correct.
 3 THE WITNESS: What do you mean "advocacy"?
 4 MR. JACOBS: Urgings.
 5 THE WITNESS: Urgings to?
 6 MR. JACOBS: To anyone. We've had discussion
 7 with other officials about what the process might look
 8 like. I imagine that that advocacy could be directly
 9 from you to the legislature if you were testifying, or
 10 it could be you to other officials in the Department
 11 who, in turn, will make budget-related presentations or
 12 submissions.
 13 MR. VIRJEE: And by increases you mean not
 14 just -- just asking for clarification -- not just an
 15 increase, but a reauthorization of an amount as well?
 16 Are you including that or not?
 17 MR. JACOBS: I would assume that
 18 reauthorization is included in an increase.
 19 MR. VIRJEE: I just want to make sure,
 20 otherwise it would be vague and ambiguous.
 21 THE WITNESS: For purposes of the fiscal budget
 22 2001/2002, we provided information, I did, at the
 23 request of our deputy for governmental affairs, and gave
 24 the members of that committee -- in particular they
 25 requested general information about the apportionments

1 and the general price quotes for the content areas that
 2 I mentioned.
 3 I also provided them information on the
 4 curriculum frameworks, how the cycles work, and then
 5 gave them information about how funding choices would
 6 include districts holding funds over so that they could
 7 make the appropriate choices as they felt they needed to
 8 for particular subject areas. And that was the extent
 9 of the discussion.
 10 As you could tell from my testimony, the per
 11 pupil costs generally were well within the
 12 apportionment, so there wasn't any advocacy and there
 13 wasn't any request to testify in a particular way, it
 14 was to provide information.
 15 Q. BY MR. JACOBS: As you distinguish providing
 16 information from advocacy as you just distinguished in
 17 your last answer, I mean to adopt that in this question.
 18 Are you aware of any advocacy by anyone in
 19 the -- let's take it from the administrative branch --
 20 the executive branch of state government to the
 21 legislative branch, are you aware of any advocacy that
 22 those amounts should be increased?
 23 MR. VIRJEE: Objection. Lacks foundation for
 24 whether she'd be aware of that.
 25 THE WITNESS: In terms of legislation, a

1 hearing?

2 MR. JACOBS: Any context.

3 MR. VIRJEE: Objection. Overbroad.

4 THE WITNESS: I'm not aware of any advocacy to
5 increase the per pupil apportionment. I am aware of
6 advocacy officially from the Department supporting the
7 reauthorization of the Schiff-Bustamante instructional
8 materials fund. We have letters on file to that effect.

9 And I'm aware of the support of education
10 organizations and the American Association of Publishers
11 to support reauthorization of Schiff-Bustamante, and
12 that bill currently is the same apportionment that
13 exists annually.

14 Q. BY MR. JACOBS: We came across a press release
15 from now Lieutenant Governor Bustamante advocating what
16 I understood to be from the press release an actual
17 increase in a fairly substantial way in the amounts
18 available under Schiff-Bustamante.

19 Are you aware of that press release?

20 MR. VIRJEE: Objection. Whatever
21 Mr. Bustamante said will speak for itself, and you don't
22 have to assume that the way he's characterizing it is
23 correct.

24 THE WITNESS: I haven't seen it.

25 Q. BY MR. JACOBS: Are you aware of any

1 interaction with the lieutenant governor's office --
2 interaction between the Department of Education and the
3 lieutenant governor's office on whether the amounts
4 appropriated under Schiff-Bustamante needed to be
5 increased?

6 MR. VIRJEE: Objection. Vague as to time.

7 THE WITNESS: I'm not aware of any.

8 Q. BY MR. JACOBS: And I take it from what you
9 were saying then about the information you were
10 providing and the relationship between per pupil amounts
11 on the cost side and per pupil amounts on the
12 appropriations side, that you thought one could
13 reasonably -- that a take-away from your testimony, a
14 reasonable take-away from your testimony, was that the
15 amounts were, in fact, sufficient?

16 MR. VIRJEE: Objection. Vague and ambiguous as
17 to "amounts" and sufficiency, only because, again, that
18 doesn't deal with the issue of the reauthorization of
19 the Schiff-Bustamante, which she's testified about.

20 MR. JACOBS: Assuming reauthorization.

21 THE WITNESS: There was no assumption made by
22 the members of the committee or myself that I was
23 stating anything in regards to increasing or decreasing
24 the amount. I was providing information about the
25 factual prices and the apportionments. It was an

1 informational hearing.

2 Q. BY MR. JACOBS: With, in your view, no intended
3 policy impact?

4 MR. VIRJEE: Objection. Vague and ambiguous as
5 to "intended policy impact."

6 MS. ALTAMIRANO: Join.

7 THE WITNESS: It was an opportunity. One
8 member requested additional information about the
9 process, so I provided information about the process.

10 The only discussion that I recall in detail was
11 a discussion about the amount of time publishers were
12 taking to produce their materials. And then there was a
13 discussion about research and development time that
14 publishers needed. There was quite a bit of discussion
15 about that.

16 Q. BY MR. JACOBS: Do you have a personal view as
17 to how you would go about assessing the sufficiency of
18 the state allocations for textbooks; that is, do you
19 have a methodology in mind as to how you would run those
20 numbers in view of the fact that, as you testified,
21 there's this adoption cycle and districts aren't
22 necessarily purchasing a whole new set of books each
23 year?

24 MR. VIRJEE: Objection. Vague and ambiguous as
25 to "sufficiency." Also calls for speculation. Lacks

1 foundation and calls for an expert opinion beyond which
2 this witness is not competent to testify.

3 MS. ALTAMIRANO: Join.

4 THE WITNESS: First of all, we're able to base
5 our understanding of prices on the most favored nations
6 clause, and so the very lowest price nationally that the
7 materials are offered is what California will receive.
8 And there are other states that actually have caps on
9 the price of the materials to be sold, and when that
10 occurs, California benefits from that cap as well. So
11 that's one assurance that we know that publishers are
12 not charging more in California for materials than they
13 are in other states.

14 Secondly, I would be looking at the history of
15 the quotes, which are usually consistent and with a
16 small range. They're not wildly different. You're not
17 going to see really low prices and then really high
18 prices, you're going to see a range.

19 And that assumption, on my part, personally, is
20 that the publishers have two constrictions that guide
21 their submissions, one is the lowest price offered in
22 other states, and two is the competitive market and the
23 fact that they must stay within a range in order to
24 remain competitive in California. And that has, in my
25 view, guided them in maintaining prices for California.

1 Q. BY MR. JACOBS: So that goes to the
2 publishers -- that goes to the question of whether it's
3 reasonable to project going forward what the cost per
4 student of instructional materials -- of approved
5 instructional materials will be, correct, that's the
6 component of the calculation?

7 A. That could be. That could be part of the
8 calculation.

9 Another factor to keep in mind, and it's an
10 important example for reading language arts, in the past
11 we had two types of adoptions for reading language arts,
12 we had basic reading language arts and then we had
13 English as a second language, separate list, separate
14 costs. This particular adoption requires the publishers
15 to fold in the materials for English as a second
16 language, English language learners within the basic
17 program so there's even greater access for all students
18 in the classroom.

19 It has a very specific requirement of an
20 additional 30 to 45 minutes of material embedded in the
21 text or the CD-ROM, whatever format they're using. That
22 will impact price because they have incorporated what
23 you used to be purchased separately into one full
24 program for all students. And with the enormous numbers
25 of English language learners in California, that will be

1 therefore they will budget to determine their greatest
2 needs over time.

3 Q. So as between -- so within the range of
4 purchasing all books each year and purchasing one-sixth
5 of the books over six years, do you have a rule of thumb
6 as to what districts should expect to be -- what kind of
7 purchasing cycle districts should expect to be on?

8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "purchasing cycle." Also assumes that the range
10 would be within one versus one-sixth. Also incomplete
11 hypothetical, and also calls for expertise beyond which
12 this witness is not qualified to testify.

13 MS. ALTAMIRANO: Join.

14 MS. KAATZ: Join as to the vagueness objection.

15 Q. BY MR. JACOBS: Let me start over because part
16 of that was helpful. Do you have a rule of thumb as to
17 what districts -- what kind of purchasing cycle
18 districts should expect to be on?

19 A. They should be on the curriculum frameworks and
20 adoption cycle using State Board approved purchase
21 lists.

22 Q. And what does that mean, then, in practical
23 terms of a district looking, say, that is making
24 purchases for the 2001/2002 school year in K through 8?

25 A. Well, there's more than one list. They cycle

1 very beneficial to them in the sense of not having to
2 purchase additional resources to supplement the basic
3 program.

4 So that will impact the price, in my view, in a
5 reasonable way. It might be slightly higher, but in my
6 own personal view, it may not be as high as having to
7 purchase two separate books or two separate programs.

8 Q. How would you go about determining what a per
9 student expenditure amount would be in view of the fact
10 that adoptions occur in cycles; in other words, I take
11 it that you would not take -- let's just say core
12 subjects for a minute. You would not add the cost of
13 the four core subject items that you testified about,
14 which was 35 to 40 for history and social sciences, et
15 cetera, you would not sum those and say that each year
16 we should be expecting districts to spend the sum of
17 those four on a per student basis, correct?

18 A. That's correct.

19 Q. Because you would expect that they would make
20 purchases in, say, one subject one year and another
21 subject another year?

22 A. We would make that assumption because there's a
23 six-year cycle. Those materials are recent, up-to-date
24 materials that can be purchased through the six-year
25 cycle. They don't need to purchase every year,

1 on, they cycle off.

2 Q. Meaning that there's a period in which a
3 previously approved textbook in a previous cycle remains
4 on the list after the most recent adoption cycle?

5 A. That's occurred, especially recently with the
6 compressed adoption time lines.

7 Q. Is there a name for that sort of window?

8 A. Well, there's not a name for that window, but I
9 can tell you the name of the adoption that occurred
10 immediately after the state approved content level
11 standards for each grade. The State Board, by
12 authorization in the statute, called for what's called
13 an additional adoption process because they wanted to
14 ensure that all districts had a chance to purchase off
15 recent lists reflecting the new content standards that
16 were adopted 1997, 1998.

17 Those lists, those standards aligned materials
18 that were reviewed in a very short period, compressed
19 period in '98, '99 were added to a current list, a
20 current list that was six years long, and that would
21 allow districts, while we were completing the adoptions
22 we're under now, to purchase materials that were
23 standards aligned in two subjects. Math K-8, that list
24 is good until 2003. Reading language arts, that list is
25 good until 2005.

1 Along with that, we just completed the math K-8
2 adoption, which would be considered your primary
3 adoption for a six-year, seven-year -- six-year cycle.
4 That list commenced January 2001 and expires June 30th,
5 2007. So districts can purchase from the '99 list and
6 they can purchase from this new list. So they have a
7 lot of opportunity there.

8 For reading language arts, we're in the final
9 stages of that adoption, which will be completed January
10 10th, 2002. I know that date. So they will then have
11 two lists to purchase from.

12 And what that means is that the State assumes
13 those dates allow for those materials to be purchased
14 when needed, and then they're no longer considered
15 current; that is, they don't have an opportunity to
16 purchase from it any longer and they need to move within
17 the other cycles.

18 So there's two opportunities for those two
19 subjects.

20 Q. What you've talked about so far is purchasing
21 that's being driven by approved adoptions, whether of --
22 what was it called again?

23 A. Additional adoption.

24 Q. -- the additional adoption or the regular
25 adoption?

1 it out there is that it's about 2 percent annually that
2 districts spend to replace materials that have been lost
3 or stolen or damaged. That's a very general estimate.

4 Q. BY MR. JACOBS: But it's a 2 percent of their
5 total expenditures on instructional materials; that is
6 the 2 percent of what?

7 MR. VIRJEE: Objection. Vague and ambiguous on
8 "instructional materials."

9 Are you talking about that particular program
10 they're purchasing from that vendor, or generally?

11 Q. BY MR. JACOBS: What is the 2 percent of?

12 A. More from the vendor, the contract.

13 Q. So is it your understanding that typically a
14 district enters into a contract with a vendor that
15 includes provisions for purchasing replacement
16 materials?

17 A. No, it's not that they necessarily have to
18 build it in, they just find the activity associated with
19 replacement requests runs about 2 percent.

20 Q. Per year?

21 A. Right. I just want to clarify. That may not
22 include disposables in which they're purchasing to
23 replenish. It's real specific to lost, stolen, damaged.

24 Q. Do you -- do you have any data on actual
25 experience in the state of California of districts on

1 A. Primary adoption.

2 Q. Another driver for purchasing by the districts
3 is what might be called a shrinkage in their inventory
4 of textbooks, right, meaning lost or destroyed?

5 A. We call it replacement costs.

6 Q. Do you have replacement costs data?

7 MR. VIRJEE: Objection. Vague and ambiguous.

8 MS. KAATZ: Join.

9 MS. ALTAMIRANO: I'll join.

10 THE WITNESS: Yes, we have information of an
11 estimate of the annual replacement costs, but it's very
12 general.

13 MR. VIRJEE: I want to make sure you understand
14 my objection. Are you asking about the cost, do they
15 have data about the cost to actually do the replacing of
16 a particular text, or what the experience is with
17 replacing over some period of time, or what? I don't
18 know.

19 MR. JACOBS: Let's see what you meant. I
20 suspect you meant the latter, right.

21 THE WITNESS: I would base the estimate on what
22 the industry generally would respond with in regards to
23 making a sale with a client and maintaining that
24 contract with the client and providing support for that
25 client over time. And the general kind of view out of

1 replacement?

2 In other words, I take it 2 percent is, as you
3 say, a general view. Do you have any information about
4 whether some districts are above that or below that?

5 A. No.

6 Q. Are you aware of anyone in the state government
7 who collects that information?

8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "state government." Also calls for speculation.

10 THE WITNESS: No.

11 Q. BY MR. JACOBS: Do you have any information
12 about any guidance that is given to school districts by
13 the Department of Education about managing their
14 textbooks and instructional materials so that they are
15 at or below some normative amount of replacement
16 expenses?

17 A. No.

18 MR. VIRJEE: Objection. Vague and ambiguous.

19 Q. BY MR. JACOBS: Are you aware of any technical
20 assistance that the Department of Education gives to
21 school districts as to how to manage their textbook
22 inventory?

23 MR. VIRJEE: Objection. Vague and ambiguous as
24 to managing textbook inventory.

25 THE WITNESS: No.

1 Q. BY MR. JACOBS: Are you aware of any guidance
2 that the Department of Education gives to school
3 districts about purchasing software for assisting in the
4 management of textbook inventories?

5 MR. VIRJEE: Same objection.

6 THE WITNESS: Can you repeat the question?

7 Q. BY MR. JACOBS: I can rewind a few questions
8 back. Are you aware that there are software packages
9 that are vended to school districts that are designed to
10 assist in managing the inventory of textbooks?

11 A. Yes.

12 Q. Do you give any guidance to schools, you
13 meaning the Department of Education now, give any
14 guidance to school districts that relates to the
15 purchasing of such software?

16 MR. VIRJEE: Objection. Lacks foundation.
17 Calls for speculation.

18 THE WITNESS: No, we're not allowed to endorse
19 a particular product.

20 Q. BY MR. JACOBS: Not allowed by what?

21 A. We don't take positions on products that are
22 sold by publishers or other vendors.

23 Q. Do you have any kind of -- do you play any role
24 at all in the -- strike that.

25 Suppose that a district came to you and said, I

1 on the list, so they would contact us.

2 Q. Do you provide any guidance to school districts
3 to the effect that we don't endorse any particular
4 software package, but you should seriously consider
5 implementing some software to help you manage your
6 textbook inventory?

7 MR. VIRJEE: Does Sherry Griffith do that?

8 MR. JACOBS: The Department of Education.

9 MR. VIRJEE: Objection. Calls for speculation.
10 Lacks foundation.

11 THE WITNESS: No.

12 Q. BY MR. JACOBS: Do you have a personal view
13 whether it is a good idea for districts to adopt such
14 software?

15 MR. VIRJEE: Objection. Incomplete
16 hypothetical. Overbroad with respect to what district
17 in what situation.

18 THE WITNESS: My personal opinion is that
19 districts are -- range in size and staffing patterns to
20 the point that in some districts, particularly a small
21 district, it would not be necessary for them to use
22 software. They would have a good curriculum coordinator
23 or budget manager that would be doing that. In other
24 districts it may work in their favor to have that type
25 of system.

1 want to go to the right person to find out if the
2 Department of Education has any information at all about
3 software for the management of textbook inventories,
4 would you be able to point that person in any particular
5 direction?

6 A. Yes, I'd refer them to the list of those that I
7 know sell that software.

8 Q. Is that a list that you maintain, that the
9 Department maintains?

10 A. It's a pretty short list. It's not hard to
11 call up.

12 Q. And you call it up from memory?

13 A. Not the entire list by memory, by I know a
14 couple of the companies.

15 Q. Aside from -- well, how do you happen to know
16 about those companies?

17 A. Because they've provided us information about
18 their products to explain to us how they work and to
19 solicit information about our purchase lists, because
20 they would have to interface with the State's posting of
21 purchase lists as it relates to how they would organize
22 the data for a district in determining how they want to
23 make choices.

24 It's also impacted by the publishers that are
25 participating in that, so they may want to know who is

1 Personally I think it would be challenging
2 because you're working with so many different vendors at
3 so many different times that it may not be conducive if
4 you're constantly updating it. So I think there are
5 some technical matters that are really locally
6 determined.

7 Q. BY MR. JACOBS: Moving away from software to
8 issues of the sort that you just identified, like
9 whether there is a business manager and how that
10 business manager might go about assessing the practices
11 in that district with respect to textbook inventories,
12 does the Department provide any technical assistance of
13 that nature to school districts to strengthen their
14 ability to manage their textbook inventory?

15 MR. VIRJEE: Objection. Calls for speculation.
16 Lacks foundation. Also vague and ambiguous.

17 THE WITNESS: We don't provide technical
18 assistance on inventory.

19 Q. BY MR. JACOBS: And by inventory, how about
20 other aspects of the administration of textbooks other
21 than the process of selecting from the list which
22 textbooks to buy?

23 A. In our biannual updates we provide districts
24 information about what the current statutes and
25 regulations allow for them at the local level. For

1 example, if they receive a delivery from a vendor and
2 the materials are not of the same quality that were
3 approved at the state level, we ensure that they're
4 aware that they have the right to penalize that vendor
5 and receive damages for the fact that they were not of
6 the quality that was expected.

7 Q. Any other assistance that you provide of
8 that -- that fits within my previous question, or is
9 that --

10 MR. VIRJEE: Other than what she's testified to
11 today?

12 MR. JACOBS: Yes.

13 THE WITNESS: Could you be more specific?

14 Q. BY MR. JACOBS: I can give you another for
15 instance. Do you collect and disseminate any best
16 practices information about how to manage the process,
17 as opposed to the content selection now, the process of
18 purchasing and distributing and then collecting at the
19 end of the year textbooks and instructional materials
20 from students?

21 MR. VIRJEE: Objection. Overbroad and
22 incomplete hypothetical.

23 With respect to the purchasing issue, she's
24 been testify about that all day.

25 MR. JACOBS: I mean best practices in terms of

1 already asked her about and she's testified about?

2 Q. BY MR. JACOBS: Do the vendors do that?

3 A. I can't speak to every vendor, but a number of
4 them do advise their clients on what would be an
5 appropriate approach to take to ensure they have
6 replaceables, disposables replenished. They would be in
7 the position to advise them since they work directly
8 with them.

9 Q. And are you, in fact, aware that that occurs,
10 or you believe that this probably occurs given the
11 self-interest of the vendors?

12 A. Anecdotally, districts will indicate that
13 they're working with a particular vendor and working out
14 a contract that meets the needs of their district and
15 schools.

16 Q. I think I'm asking about something a little
17 different. When I asked you about whether it was
18 appropriate for a software package to be installed, you
19 pointed to the possibility that in smaller school
20 districts, if they have an effective business manager
21 and a curriculum coordinator, that that -- to expand
22 slightly upon your answer, I took your answer to be that
23 in those smaller school districts, if those people are
24 operating effectively, then a software package may not
25 be worth the cost in terms of enhancing the

1 administration, that process.

2 MR. VIRJEE: On how to go about purchasing?

3 MR. JACOBS: Yeah, I think so, but not from the
4 selection standpoint, from the standpoint of --

5 THE WITNESS: A contract?

6 MR. JACOBS: From the standpoint of, we in the
7 Department of Education have collected some best
8 practices about, for example, how you make sure you get
9 all the textbooks back from the kids at the end of the
10 year. Here are some good ideas for you to consider
11 adopting in your school district.

12 Q. Have you done assistance of that sort?

13 A. No.

14 MR. VIRJEE: "You" being the Department of Ed?

15 MR. JACOBS: Correct.

16 MR. VIRJEE: Objection. Calls for speculation.
17 Lacks foundation.

18 THE WITNESS: No.

19 Q. BY MR. JACOBS: Are you aware of anybody who
20 has collected and disseminated so-called best practices
21 information about the administration of textbook
22 purchasing, inventorying, distribution and collection?

23 MR. VIRJEE: Anybody in the Department of Ed?

24 MR. JACOBS: Anybody from any source.

25 MR. VIRJEE: Other than the vendors you've

1 administration of textbooks in that district.

2 Am I summarizing what you meant to say
3 correctly?

4 MR. VIRJEE: Objection. Her testimony speaks
5 for itself. That's a misstatement of her testimony.

6 THE WITNESS: I think there are a number of
7 variables in all districts for how they select
8 materials.

9 Q. BY MR. JACOBS: Is one of the variables one of
10 the effectiveness of the administration of textbooks in
11 that district?

12 A. It may be.

13 Q. And is effectiveness of the administration of
14 textbooks in any district an issue that, to your
15 knowledge, the Department of Education has addressed?

16 MR. VIRJEE: Objection. Vague and ambiguous as
17 to "addressed."

18 THE WITNESS: Could you be more specific?

19 Q. BY MR. JACOBS: I can give you another for
20 instance. In Los Angeles a report was written called no
21 bang for our books. It was a report that critiqued the
22 Los Angeles school district's administration of its
23 textbook purchasing, inventorying, distribution,
24 collection.

25 Have you ever seen that report?

1 A. No.
 2 Q. Are you aware of any other critiques? Are you
 3 aware of any critiques?
 4 MR. VIRJEE: Self or otherwise?
 5 MR. JACOBS: Yeah.
 6 MR. VIRJEE: Because that was really a
 7 self-critique.
 8 MR. JACOBS: Self or otherwise, fair enough.
 9 Of a school district's admin -- I'll use the
 10 shorthand "textbook inventory" to refer to the mechanics
 11 of purchasing textbooks, distributing them to students,
 12 collecting them at the end of the year, buying the
 13 replacements. That's what I mean by textbook inventory.
 14 THE WITNESS: No.
 15 Q. BY MR. JACOBS: You're not aware of any such
 16 critiques?
 17 A. No.
 18 Q. Let me just ask this question in this way one
 19 last time, are you aware of any technical assistance
 20 provided to school districts by the Department of
 21 Education to enhance the effectiveness of their
 22 administration of their textbook inventory?
 23 MR. VIRJEE: Objection. Asked and answered.
 24 THE WITNESS: As I stated before, we provide
 25 biannual updates to inform districts of their rights and

1 the responsibilities of publishers when they make a
 2 decision to purchase at the local level, what they
 3 should expect the publishers to do as it relates to the
 4 statutes and regulations when those materials are then
 5 presented to them for purchase. We keep them informed
 6 of that process and what their rights are if those
 7 provisions are violated.
 8 Q. BY MR. JACOBS: And that's the extent of what
 9 you regard as technical assistance with respect to the
 10 administration of textbook inventory?
 11 A. If a district calls my office, I'm going to
 12 provide technical assistance.
 13 Q. A district calls your office and says, we heard
 14 that we should be spending, by industry norms, about 2
 15 percent on replacements, and we're spending 10 percent,
 16 can you give us any help, would you be in a position to
 17 respond to a request like that?
 18 A. I would troubleshoot and explore with them,
 19 hear about their particular case, give them whatever
 20 assistance I could, direct them to any other support I
 21 could, remind them of other funding sources, refer them
 22 to a list of possible software vendors. I would try to
 23 give them everything I could think of that might assist
 24 them in their process if they requested that.
 25 Q. Have you ever gotten such a request?

1 A. Not in the way that you're phrasing the
 2 request.
 3 Q. What are you thinking of that -- are you
 4 thinking of a request that was approximate to the way I
 5 phrased it?
 6 A. I get requests all the time for all different
 7 types of matters related to instructional materials.
 8 Q. Like what, that doesn't go to the selection
 9 within the frameworks and the adoptions of textbooks?
 10 A. I don't think you can separate it.
 11 Q. Well, I was. I was asking about administration
 12 of textbook inventory, so I guess I could ask you that
 13 way.
 14 Have you gotten requests for assistance with
 15 respect to the administration of textbook inventory as I
 16 defined it a few minutes ago?
 17 A. As I said, I did not. I have not gotten
 18 questions the way you phrased it.
 19 Q. And you didn't mean the phrasing of 2 percent
 20 versus 10, you meant the way I phrased --
 21 A. The whole inventory process you've just laid
 22 out. I've discussed particular aspects of purchasing
 23 materials with districts, various aspects of it.
 24 Q. But, for example, you haven't been asked, how
 25 can we reduce the amount of money we're spending on

1 replacement materials?
 2 A. No.
 3 Q. And do you have any understanding as to whether
 4 there is a particular resource in the Department that is
 5 directed to serving as a resource for districts on that
 6 administrative issue?
 7 MR. VIRJEE: The administrative issue being
 8 replacement of textbooks or --
 9 MR. JACOBS: That's fair.
 10 MR. VIRJEE: That was your last question.
 11 Q. BY MR. JACOBS: Let's start with replacement.
 12 Is there any particular expert in the Department who you
 13 regard as a resource on how to reduce the amounts that
 14 districts are spending on replacements?
 15 A. No, the funding is locally controlled.
 16 Q. And are you aware of any other -- of a resource
 17 outside the Department, other than the software vendors,
 18 that you could direct a district to if it was looking
 19 for expertise on how to reduce the amount they're
 20 spending on replacement?
 21 A. I might refer them to organizations that
 22 address good budgeting practices, good management
 23 practices. Without qualifying the reference, I may do
 24 that.
 25 Q. What organizations do you have in mind?

1 A. Or I would just refer them, if necessary, to
 2 their county office of education who oversees and
 3 ensures compliance with budgeting. So I wouldn't
 4 particularly pick any group or organization, but I'd
 5 give them a laundry list of options to seek additional
 6 advice a little more close to home, close to what is
 7 going on for them at the local level.
 8 And I would also advise them during their
 9 public hearing, when they're inviting the community and
 10 teachers and parents and others to come forward, to
 11 solicit from them what they feel would work in reducing
 12 the number of lost books and damaged books, and how can
 13 we get the parents involved in making sure the kids get
 14 the books back to the classroom. I think I'd use the
 15 community to assist me as a district.
 16 Q. But, in fact, you haven't had that interaction
 17 with the district, where someone has asked you that
 18 question or, unsolicited, you have suggested to the
 19 district, you ought to involve the community in
 20 helping --
 21 A. I always advise that in any of the requests
 22 that we get.
 23 Q. But I take it that you've had no conversation
 24 about how to reduce replacements, for example, and
 25 therefore that particular guidance, well, you ought to

1 involve the parents in figuring out how to get the books
 2 back at the end of the year, you haven't been in a
 3 position to provide it because the topic hasn't come up?
 4 A. Not in that particular way.
 5 Q. Do you receive any information about the
 6 results of the 60119 hearings that are held in terms of
 7 the finding that is made about sufficient materials?
 8 A. Does my office receive the results?
 9 Q. Yes.
 10 A. No.
 11 Q. Do you know of anyone in the Department who
 12 does?
 13 MR. VIRJEE: Can you repeat the question? What
 14 was it you're asking for?
 15 MR. JACOBS: Yeah.
 16 Q. You talked before about the findings. I think
 17 we have a common understanding that under 60119
 18 districts are required to hold hearings and make
 19 findings about whether they have sufficient materials,
 20 right?
 21 A. Yes.
 22 Q. My question is if a district made the finding
 23 that we don't have sufficient materials, are you aware
 24 of anyone in the state educational system at the state
 25 level who would be informed of that conclusion?

1 MR. VIRJEE: Objection. Vague and ambiguous as
 2 to "state educational system."
 3 THE WITNESS: Those that audit for compliance
 4 withholding hearings may see documents that demonstrates
 5 evidence they held the hearing.
 6 MR. VIRJEE: I'm also going to object on the
 7 grounds that it calls for speculation and lacks
 8 foundation as to who does what.
 9 MR. JACOBS: I'm only asking what you know.
 10 MR. VIRJEE: Whenever you get a chance.
 11 MR. JACOBS: Time for a break? Yeah, let's go.
 12 (Recess taken.)
 13 (Ms. Kaatz not present.)
 14 Q. BY MR. JACOBS: Has the Department of
 15 Education, to the best of your knowledge, provided any
 16 assistance or guidance to the school districts in how to
 17 go about preparing for the 60119 hearing, aside from the
 18 specific statutory requirements related thereto?
 19 MR. VIRJEE: And aside from what she's already
 20 testified to about sending the materials to them?
 21 MR. JACOBS: Uh-huh.
 22 THE WITNESS: In relation to what we send, we
 23 will include encouragement in those materials to recruit
 24 as much public input as possible, so we will include
 25 some additional support for that. But outside of those

1 four notifications, no.
 2 (Ms. Kaatz entered the room.)
 3 Q. BY MR. JACOBS: Is there anyone that you can
 4 think of in the Department who is particularly expert on
 5 how 60119 has, in fact, been implemented at the school
 6 district level?
 7 MR. VIRJEE: Objection. Calls for speculation.
 8 Lacks foundation.
 9 THE WITNESS: No.
 10 Q. BY MR. JACOBS: We talked about the 2-percent
 11 replacement figure because we were embarked on an
 12 exercise in figuring out what the math would look like
 13 to determine if the per student allocations were
 14 sufficient to purchase sufficient numbers of textbooks.
 15 I want to return to that topic.
 16 Do you have an expectation as to -- let's take
 17 reading and language arts, and let's assume that we are
 18 on a cycle that started with the primary adoption
 19 process. Do you have an expectation about how often
 20 districts would purchase a new set of reading and
 21 language arts instructional materials?
 22 MR. VIRJEE: Objection. Vague and ambiguous as
 23 to "new set."
 24 MS. ALTAMIRANO: And also time period.
 25 MR. VIRJEE: Let me tell you what I'm --

1 MR. JACOBS: Okay.

2 MR. VIRJEE: In other words, a different set, a
3 different version of instructional materials as opposed
4 to a set which could be for a class or a school or
5 anything like that?

6 MR. JACOBS: Yes, the way Mr. Virjee is
7 interpreting it, that is, a new version because of the
8 passage of time as opposed to a new set because there
9 are more kids that need copies of the book or the
10 materials.

11 THE WITNESS: I can provide you a general
12 understanding, not specific to districts because they're
13 all different in their procedures for reviewing.

14 Generally they're on their own cycle, but they
15 usually complement and mirror the cycle that the State
16 is under, and we conduct, typically, a primary adoption
17 annually in a subject. Just the cycles work out to
18 include all of the subjects that we adopted. The ones
19 I've mentioned in the beginning of the day we're
20 adopting traditionally annually.

21 The districts are looking ahead to the
22 materials for that subject that will be approved, the
23 new list coming out, and then they just, by nature of
24 the system, will begin to communicate with the
25 publishers who will come to them, they will begin to

1 Q. And how does that then relate -- how does that
2 then convert into an answer to the question, is there a
3 general rule or a rule of thumb about how often the
4 district would then go through that cycle with respect
5 to a new version or a whole new adoption of a set of
6 materials?

7 A. Well, I can't say there's just one rule of
8 thumb, but I would say every six years would be
9 generally because that's the cycle, every six to seven
10 years.

11 There will be cases, because we have what's
12 called the follow-up adoptions, where additional choices
13 are available. They may decide that in the follow-up
14 adoptions, which is about two to three years after the
15 primary, that there's some additional materials that
16 they think are really great and they'd like to pilot
17 those, so they may add another choice to the mix for
18 maybe different grade levels.

19 So they're looking at the whole spectrum of
20 grade level needs, materials that are available, the
21 choices they have, their budget, which can be held over
22 annually and then --

23 Q. "Over annually" meaning they could not purchase
24 in the then current year, but make the purchase in the
25 following year?

1 determine their piloting schedule, they will determine
2 when they want to form their evaluation committees at
3 the local level to review the materials that will be
4 approved, and so they're planning that out anywhere from
5 a six-month period to a two-year period, depending on
6 the district, to conduct their own local review of the
7 materials that have been approved by the State.

8 Q. BY MR. JACOBS: That have been or are to be?

9 A. Well, they're always in a cycle, so they're
10 probably preparing for the upcoming list to be ready for
11 that, and they may also be piloting math that was just
12 approved. So if they're thinking ahead, which most of
13 them should be and they are, they have the pilot going
14 on in math, because in January 2001, for example, we
15 just approved those materials, so they're piloting them
16 this year, and they're beginning, in anticipation, to
17 determine who will be on their English language arts
18 evaluation committees and forming that committee or
19 committees in anticipation of the Board's action in
20 January 2002.

21 So they're continuously forming committee,
22 evaluating materials, making recommendations to the
23 local board, the Board's holding hearings, the Board's
24 determining which materials to buy, the numbers needed.
25 That would be kind of a traditional cycle.

1 A. Well, for example, let's say they purchase
2 history social science in '99 when those books were
3 approved, costs 35 to \$40 a pupil but they had \$75 a
4 pupil, save that money for the next year and purchase
5 science, save that money because you have additional
6 funds left, purchase math. Yes, you can accrue the
7 funds and then use the resources to purchase the next
8 content area.

9 Q. And the six-year or seven-year cycle in terms
10 of purchasing that you're describing is the cycle that's
11 driven by the six-year cycle the State is on for the
12 readoption of materials?

13 MR. VIRJEE: I'm going to object to this whole
14 line of questioning as an incomplete hypothetical with
15 respect to the district decides, the district, the
16 number of students, that there is some specific rule or
17 general rule of thumb.

18 MR. JACOBS: Go ahead.

19 THE WITNESS: I think that the cycle is a
20 general cycle of adoption and selection.

21 Q. BY MR. JACOBS: And it's a six- or seven-year
22 cycle in the general case?

23 A. Uh-huh.

24 Q. If somebody asked you what usually occurs, you
25 would say it's a six- or seven-year cycle?

1 A. Uh-huh, and those materials are considered
 2 recent and current.
 3 Q. Within that period of time?
 4 A. Uh-huh. Yes.
 5 Q. And so when you're talking about adoption in
 6 let's just call it year zero, then you -- in calculating
 7 what the district would need to be spending on textbooks
 8 with respect to any particular topic, let's say reading
 9 and language arts just to pick one for sake of
 10 discussion, a general rule would be a 2-percent
 11 replacement expense year by year over the six-year
 12 period, then in the last year or maybe the next year,
 13 the seventh year, there would be a purchase of an
 14 entirely new set of materials for reading and language
 15 arts.
 16 Do I accurately capture here the purchasing
 17 cycle as you understand it?
 18 MR. VIRJEE: Objection. Calls for speculation.
 19 Lacks foundation. Incomplete hypothetical.
 20 THE WITNESS: I'd say that's a general cycle,
 21 but as I mentioned, they may have purchased in
 22 mid-cycle. I mean, there's no way to know except at the
 23 district level and based on the hearing that they've
 24 held what their decisions have been.
 25 Q. BY MR. JACOBS: So let's take the mid-cycle

1 purchasing decision. I want to understand how that
 2 might affect ongoing purchases.
 3 If you -- it's not in this article, but I have
 4 read other articles that report school district
 5 officials say, yes, we have not purchased more copies of
 6 a textbook to meet our expanding student population
 7 because we know next year the State is going to do an
 8 adoption and we don't want to purchase books that are
 9 going to be superseded by an adoption cycle.
 10 First of all, do you understand that to be
 11 something that occurs at the school district level, the
 12 kind of decision that they might make?
 13 MR. VIRJEE: Objection. Vague and ambiguous.
 14 Incomplete hypothetical. Calls for speculation.
 15 THE WITNESS: In my personal view, they may
 16 make those decisions based on the cycles.
 17 Q. BY MR. JACOBS: If somebody called you up and
 18 said, this is our situation, do you have advice to give
 19 to that school district in that situation?
 20 A. What's the situation?
 21 Q. So they're not purchasing additional copies of
 22 a textbook -- and now I'm going to just start over again
 23 because I think I might have confused it by saying what
 24 about a purchasing decision made mid-cycle. Now I
 25 realize this isn't a mid-cycle issue at all. I think

1 that's right.
 2 The district is calling you up and saying, do
 3 you have any advice for us, we have an expanding student
 4 population, but for your adoption cycle, you,
 5 Ms. Griffith's, but for your adoption cycle and the fact
 6 that you're about to adopt a new set of textbooks in the
 7 coming year we would be buying more copies for this
 8 expanding student population, but we don't want to spend
 9 the money on those additional copies because those
 10 additional copies will be superseded shortly by your new
 11 adoption.
 12 A. What would I say to them?
 13 Q. Yes.
 14 MS. ALTAMIRANO: Object. It will call for
 15 speculation because there's no showing that this is
 16 within her purview at all.
 17 MR. VIRJEE: Also object as an incomplete
 18 hypothetical.
 19 THE WITNESS: Well, since it's hypothetical, I
 20 would first ask what happened at their public hearing
 21 and what kind of plan did they develop to ensure they
 22 had materials for the pupils, and if they haven't held
 23 their hearing yet, and that's kind of what they're
 24 looking to do and they're seeking advice, I would ask
 25 them to look at the options they have within the formats

1 of the program that they purchased or the other options
 2 available from the vendor that would allow them to
 3 ensure they have the materials.
 4 Q. BY MR. JACOBS: Can I stop you there and ask
 5 you what you have in mind by those options?
 6 A. For example, in many of the programs included
 7 are what are called blackline masters, and blackline
 8 masters are the masters that you can reproduce from. I
 9 guess they used to call them ditto sheets. But many of
 10 the programs have a very rich component of those. And
 11 because I wouldn't know their situation, so this is all
 12 hypothetical, I would say what are your options in
 13 regards to ensuring that the program that you've
 14 purchased has materials that you can provide all
 15 students, and then I would probably ask them to try to
 16 ensure that they had a plan that was approved by the
 17 local governing board to ensure that there was adequate
 18 coverage of the curriculum in the classroom and the
 19 materials necessary to meet that curriculum.
 20 I think there would be a lot of other factors
 21 than just the instructional materials in that decision.
 22 Q. BY MR. JACOBS: Is this an issue that you have,
 23 in fact, had discussions with others about, that is, how
 24 purchasing decisions might be affected by -- of the kind
 25 that I described, the incremental copies, might be

1 affected by the adoption cycle the State is on?
 2 A. No.
 3 MR. VIRJEE: When you say "others," are you
 4 talking about school districts in your hypothetical or
 5 just anybody?
 6 Q. BY MR. JACOBS: Let me reask it. Have you
 7 discussed with your colleagues or with the commissioners
 8 the issue of how the adoption cycles might affect
 9 decisions by school districts not to purchase additional
 10 copies of textbooks in the -- in the shadow period
 11 before the adoption of a new set of materials?
 12 A. No.
 13 Q. Is it a problem that you're -- is it an issue
 14 that you are aware of actually exists?
 15 A. No.
 16 Q. And you've never had conversations with school
 17 districts about that problem?
 18 A. No, I have not.
 19 Q. Do you collect -- strike that.
 20 Do you have a press clipping service that
 21 provides you with articles about textbook issues in
 22 California public schools?
 23 A. The Department has a press clipping service
 24 that scans for all education articles in the state,
 25 sometimes national, and I'm on that link and I review

1 that daily.
 2 Q. So have you seen articles in which school
 3 district officials have said, we're not purchasing
 4 additional copies now because there's an adoption coming
 5 up and we don't want to purchase at this point?
 6 A. I haven't heard that particular reference.
 7 Q. Let's take a look at another article. We'll
 8 make some copies, but for now I'll just hand it over to
 9 you. This is an article dated December 20, 2000. It's
 10 an Associated Press wire and it quotes you as saying,
 11 many districts have been saving textbook funds for --
 12 A. Can I see it?
 13 Q. Yeah. I want to put it on the record.
 14 -- textbook funds for the new math book list, said
 15 Sherry Skelly Griffith of the Department of Education,
 16 the executive director for the curriculum commission.
 17 MS. KAATZ: Is this going in as an exhibit?
 18 MR. JACOBS: We will in a second.
 19 In terms of interrupting the flow, can we come
 20 back to this and I can ask about something else while
 21 that's being copied?
 22 MR. VIRJEE: Sure. No problem.
 23 MS. KAATZ: Sure.
 24 Q. BY MR. JACOBS: In this meeting of November
 25 28th of the curriculum commission there was a report

1 from Ms. Jeffus (ph.) about the school library survey.
 2 Can you tell us what the school library survey
 3 is?
 4 MS. ALTAMIRANO: Are you looking at some
 5 minutes?
 6 MR. JACOBS: I don't need this one as an
 7 exhibit.
 8 MS. ALTAMIRANO: But it's possible for
 9 Ms. Griffith to look at it?
 10 MR. JACOBS: Yeah. Sure.
 11 MS. KAATZ: In your question what is the third
 12 word, school library --
 13 MR. JACOBS: Survey.
 14 MS. KAATZ: Survey. Thank you.
 15 MR. VIRJEE: Even though in a different format,
 16 they're the same thing?
 17 MS. DUFFY: They're the same.
 18 THE WITNESS: Okay.
 19 Q. BY MR. JACOBS: So we're on the survey
 20 question?
 21 A. Yes.
 22 Q. What is the school library survey?
 23 A. It's a survey conducted by my staff to
 24 determine the number of new materials that are being
 25 purchased by schools for school libraries in particular,

1 and the media equipment that would be purchased for
 2 libraries and a general estimate of the copyright date,
 3 the recency (sic) of the copyright dates of the
 4 materials that they are purchasing, because there is a
 5 general estimate of the average copyright date of a book
 6 in a library of California, and one of the goals of the
 7 state library funds and the classroom library funds that
 8 are available is to infuse support into schools to
 9 update their library materials and their lists to
 10 reflect more current materials.
 11 Q. So on the issue of more current materials, this
 12 aspect of the survey is designed to analyze whether
 13 libraries making purchases today are purchasing newer or
 14 older materials?
 15 A. To assess the impact of that.
 16 Q. This survey, is it mandated by some statutory
 17 directive you received?
 18 MR. VIRJEE: Objection. Calls for speculation
 19 and calls for a legal conclusion.
 20 THE WITNESS: I don't have the language
 21 memorized, but there's general intent in the program to
 22 assess the program's effectiveness.
 23 Q. BY MR. JACOBS: One of the issues we've been
 24 asking people about is -- that I've been asking people
 25 about among your colleagues is what independent ability

1 you have to initiate surveys of this sort.
 2 Was this a survey that you were given special
 3 appropriation to conduct?
 4 A. No.
 5 Q. You were relying on your existing staff?
 6 A. Well, yes. There's a connection to the library
 7 grantees and our office directly. Because they're
 8 submitting library plans, we're aware of what they're
 9 doing because for them to receive the funds, they have
 10 to submit a plan.
 11 Q. So is the survey based on a review of the plans
 12 that have already been submitted to you?
 13 A. That's part of the review.
 14 Q. Are you actually going out to the school or
 15 school districts and asking them questions?
 16 MR. VIRJEE: Objection. Vague and ambiguous.
 17 Are you saying are you going on-site to ask
 18 those questions?
 19 Q. BY MR. JACOBS: I meant, are you conveying
 20 questions for information to them?
 21 A. As part of a regular survey review. But they
 22 have a lot of the information embedded in the library
 23 plan that's approved by the State, so there wouldn't be
 24 a reason, except for maybe clarification.
 25 Q. So as I think of a survey, there isn't a form

1 that you're sending out to the districts and asking them
 2 to complete as part of survey?
 3 MR. VIRJEE: Unless you include that as part of
 4 what's embedded. I think she just answered that.
 5 THE WITNESS: I can't recall if there was an
 6 additional survey forms that were sent out. What I'm
 7 indicating is that there's a library plan that's
 8 submitted, and then my staff reviews the plan to ensure
 9 compliance with the requirements of the program, and
 10 that contains a lot of information, so the survey is
 11 partially based on that information. It may be based on
 12 follow-up as well.
 13 Q. BY MR. JACOBS: So to put it in the negative,
 14 you don't have information on school libraries that
 15 haven't submitted plans under these -- in order to
 16 receive funding under these particular allocations for
 17 school libraries?
 18 A. Well, actually, this is a voluntary grant
 19 program, but my staff are so committed to getting these
 20 funds out that they individually called every district
 21 to ensure that they submitted a plan, so, yes, we have a
 22 plan for every district in California.
 23 (Exhibit SAD-55 was marked.)
 24 Q. BY MR. JACOBS: Does a district's plan
 25 describe, in the ordinary case, what is being done on a

1 school-by-school or school-library-by-school-library
 2 basis?
 3 MR. VIRJEE: As opposed to districtwide, you
 4 mean?
 5 MR. JACOBS: Yeah. Exactly.
 6 THE WITNESS: Yes.
 7 Q. BY MR. JACOBS: So do you have information
 8 about what is being done under these programs at the
 9 level of granularity of school library by school
 10 library?
 11 MR. VIRJEE: I think that's the question you
 12 just asked.
 13 THE WITNESS: I can't speak to all the details
 14 that they're submitting today without the information in
 15 front of me, but, yes, they are school library plans.
 16 Q. BY MR. JACOBS: In addition to the copyright
 17 date, what else is being assessed as part of the survey?
 18 MR. VIRJEE: What is in the school library
 19 plan?
 20 MR. JACOBS: No.
 21 Q. What else is being assessed as part of the
 22 survey?
 23 A. Generally it would be the number of volumes
 24 they've purchased for their libraries, any media support
 25 that they have purchased for their libraries, for

1 instance, if they wanted to use technology-based
 2 materials in the library, what they've purchased, types
 3 of books they've purchased might be there.
 4 Q. Is one of the intended outputs of this survey
 5 or review of these plans to determine whether there
 6 is -- to determine the degree of variation in new
 7 library resources among the school libraries in the
 8 state?
 9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to "new library resources."
 11 MS. ALTAMIRANO: Join.
 12 MR. VIRJEE: Assumes facts and vague as to
 13 "intended outputs."
 14 THE WITNESS: Could you repeat the question.
 15 (Record read.)
 16 THE WITNESS: I'm not sure what you mean by
 17 "variation."
 18 MR. JACOBS: To determine whether some schools
 19 have very limited plans to buy new materials for their
 20 libraries as opposed to other schools that have more
 21 aggressive plans.
 22 THE WITNESS: No, that's not the purpose of the
 23 survey. They receive the same per pupil apportionment,
 24 so that wouldn't be the purpose.
 25 Q. BY MR. JACOBS: Do the plans permit your staff

1 to determine the level of staffing in school libraries?
 2 I'll amplify that with a for instance. I took
 3 a deposition of a school principal a few weeks ago who
 4 was facing the issue next year and had the issue this
 5 year whether to keep the library open because they had a
 6 budget issue about whether they could afford a staff
 7 person in the library.

8 Is that issue one you can analyze from the
 9 information you have available?

10 MR. VIRJEE: Objection. Compound. Are you
 11 asking is there staffing information provided?

12 MR. JACOBS: Yes.

13 THE WITNESS: It may be ancillary to the plan,
 14 but it is not the focus of the plan because the funds
 15 are intended for books and technology-based materials
 16 for students. That's the purpose of the two programs.

17 There's two, there's the state library fund and
 18 there's the classroom library fund. For example, the
 19 classroom library fund is for literature and other
 20 materials you wouldn't necessarily be purchasing under,
 21 for example, Schiff-Bustamante, supports those needs in
 22 the classroom, along with other resources.

23 Q. BY MR. JACOBS: Sticking with the idea of
 24 surveys for a minute, are you aware of any surveys that
 25 have been conducted that are directed to analyzing

1 MR. VIRJEE: What question are you asking her?
 2 What question is pending?

3 MR. JACOBS: The question about surveys.

4 MR. VIRJEE: And she says she doesn't know how
 5 you're using the word "access," and you said as she used
 6 it and you're pointing to a way that she didn't use,
 7 so I think that's the problem here.

8 MR. JACOBS: Fair enough.

9 MR. VIRJEE: She's asking for clarification on
 10 what you mean by "access."

11 THE WITNESS: I need clarification about what
 12 type of survey you are requesting information on.

13 Q. BY MR. JACOBS: Let's start over again. In
 14 looking at these minutes, it states, as I read, that
 15 Mr. Hill encouraged the commissioners to communicate on
 16 this topic. And the words are deficiencies and gaps in
 17 issues surrounding quality textbooks.

18 As you read these minutes sitting here today,
 19 what do you understand access to quality textbooks to
 20 mean in that context?

21 MR. VIRJEE: Objection. Calls for speculation.
 22 These aren't her words. She has no idea what Mr. Hill
 23 meant.

24 MS. ALTAMIRANO: Join.

25 MR. JACOBS: I think you can still answer.

1 whether students in the state of California have access
 2 to instructional materials?

3 MR. VIRJEE: Can you repeat that question?
 4 (Record read.)

5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to "survey."

7 I'm assuming you're asking in addition to
 8 anything she's already testified to.

9 THE WITNESS: Could you be more specific about
 10 access. I'm not sure what you mean.

11 Q. BY MR. JACOBS: Well, access is a word you used
 12 before, and so I'm trying to use your vocabulary.

13 Referring to Exhibit 54, which are the minutes
 14 from the May 18th-19th, 2000 meeting. It states,
 15 Mr. Hill encouraged the commissioners to continue to
 16 communicate with Deputy Superintendent Hernandez about
 17 where the deficiencies and gaps still are in issues
 18 surrounding access to quality textbooks.

19 A. Those aren't my words.

20 Q. No, I know, but you were at that meeting.

21 MR. VIRJEE: What's your question?

22 Q. BY MR. JACOBS: You used access in a different
 23 context, and since you seem not to like that word, I was
 24 referring back to the minutes.

25 A. I just want to be clear --

1 THE WITNESS: I can't speak to the way that he
 2 was presenting this, in what context. It could be
 3 defined in many different ways.

4 MR. JACOBS: Pick one.

5 MR. VIRJEE: You're asking what it means in
 6 this context, and she's telling you she doesn't know.

7 MR. JACOBS: She said it could be defined in
 8 many different ways, I'm asking for one.

9 MR. VIRJEE: Ways in which it could be defined?

10 MR. JACOBS: Yes.

11 MR. VIRJEE: Objection. Overbroad. Calls for
 12 speculation.

13 MS. KAATZ: Join.

14 THE WITNESS: What is the question now?

15 Q. BY MR. JACOBS: How would you -- what is one
 16 definition that you believe is potentially applicable to
 17 the word access or to the phrase deficiencies and gaps
 18 in issues surrounding access to quality textbooks?

19 MR. VIRJEE: Calls for speculation and
 20 overbroad.

21 MS. ALTAMIRANO: Join.

22 THE WITNESS: I can give you one explanation
 23 how to define.

24 MR. JACOBS: Shoot.

25 THE WITNESS: We reviewed submissions and there

1 are deficiencies and gaps found in the materials that we
 2 review, that is, the State, the State Board of
 3 Education, and those materials are not approved because
 4 they have deficiencies in content, gaps in understanding
 5 how to deliver that content, so that's one way of
 6 defining it.
 7 Q. BY MR. JACOBS: Are there any other ways that
 8 you can think of as you sit here today?
 9 A. Deficiencies in the sense of access to the
 10 materials at the -- I don't -- at the state level, at
 11 the local level?
 12 Q. I think we're playing games a little bit, in
 13 part because of the objections.
 14 Isn't it clear that the context here, that the
 15 issue here under discussion, was whether students had
 16 access in terms of whether the districts were purchasing
 17 and making available to them the instructional materials
 18 that had been approved by the State?
 19 A. I cannot ascertain that from Mr. Hill's
 20 comment.
 21 Q. Well, from the context when Chair Astore
 22 said --
 23 A. From her comment I can tell you what I think
 24 she was making a statement on.
 25 Q. Which was?

1 A. That's not Mr. Hill's comment.
 2 Q. Fair enough. We'll talk about her comment
 3 then.
 4 A. She was, again, talking about the perception
 5 that there was a lot of funding, and reminding the
 6 audience that there had been a lag in funding for many
 7 years prior to Schiff-Bustamante.
 8 Schiff-Bustamante by the State was an infusion
 9 of funds which has now brought those funds up per pupil,
 10 but she was also cautioning the audience that in her
 11 estimate it will cost at least \$100 per student for
 12 reading language and arts, and I know it's reading
 13 language arts because she's the chair for reading
 14 language arts and she's directly involved in that
 15 process.
 16 Q. And she was saying that Schiff-Bustamante had
 17 brought the level of funding up in order to achieve what
 18 objective?
 19 MR. VIRJEE: Objection. Assumes she said
 20 anything about the objective. Assumes facts not in
 21 evidence.
 22 MS. ALTAMIRANO: Objection. Calls for
 23 speculation as to what she was intending.
 24 THE WITNESS: My understanding, just from these
 25 minutes alone, is that she feels that there's not enough

1 awareness, and I'm going to make the assumption she
 2 means in particular those involved in this process,
 3 policymakers, that there had been a lag in funding for a
 4 number of years.
 5 Q. BY MR. JACOBS: And that had led to what?
 6 A. A misunderstanding about the need.
 7 Q. The need for what?
 8 A. For additional funding.
 9 Q. In order to do what?
 10 A. Purchase materials. And what she has done is
 11 talk about the awareness, because this conversation was
 12 predicated on the importance of Schiff-Bustamante and
 13 reauthorizing Schiff-Bustamante.
 14 Q. Purchase materials in order to give students
 15 access to instructional materials, correct?
 16 MR. VIRJEE: Objection. Vague and ambiguous as
 17 to the word "access."
 18 MS. ALTAMIRANO: And calls for speculation.
 19 THE WITNESS: No, she is administrator. She
 20 understands the need to purchase materials for pupils,
 21 so she's talking about that need.
 22 Q. BY MR. JACOBS: And are you aware of any
 23 surveys that assess whether that need is being met in
 24 the state of California?
 25 MS. ALTAMIRANO: Objection. Vague as to what

1 meeting and as to "surveys."
 2 THE WITNESS: I already answered that.
 3 MR. JACOBS: I don't think so.
 4 THE WITNESS: I referenced a report that was
 5 done by the private industry association, the American
 6 Association of Publishers, where they've given an
 7 estimate of what they think the need is.
 8 Q. BY MR. JACOBS: That was on a cost basis,
 9 right?
 10 A. Correct.
 11 Q. They didn't go out and survey in terms of what
 12 is actually in the hands of students?
 13 MR. VIRJEE: Objection. Calls for speculation
 14 on what they might have done.
 15 Q. BY MR. JACOBS: The report does not so reflect?
 16 MR. VIRJEE: Objection. The report speaks for
 17 itself.
 18 MS. ALTAMIRANO: Join.
 19 THE WITNESS: Not that I'm aware of.
 20 Q. BY MR. JACOBS: So are you aware of any such
 21 survey, that is, a survey that --
 22 A. No.
 23 MR. VIRJEE: Again, I restate the same
 24 objections. Vague and ambiguous as to "survey" and
 25 "access."

1 Q. BY MR. JACOBS: Are you aware of any surveys
2 that have been conducted by -- in other states about
3 what is, in fact, in the hands of students?
4 MR. VIRJEE: Objection. Vague and ambiguous as
5 to "survey."
6 MS. ALTAMIRANO: And calls for speculation.
7 THE WITNESS: I'm not specifically aware.
8 Q. BY MR. JACOBS: So you're not aware that
9 Nevada, for example, has conducted a survey to determine
10 whether -- the degree to which students have -- each
11 student has his or her own copy of instructional
12 materials?
13 A. No, I'm not aware of that survey.
14 Q. Is that something that -- in terms of your
15 understanding of the allocation of responsibilities in
16 the State Department of Education -- start over.
17 Is there somebody else who you regard as more
18 knowledgeable about what other -- about how you measure
19 whether -- I'm going to break this down a couple of
20 different ways.
21 Let's start with this one, who in the
22 Department is most knowledgeable about what other states
23 do to ensure that the need for instructional materials
24 is, in fact, met by that State's system of
25 administration of the public school system?

1 MR. VIRJEE: Objection. Vague and ambiguous as
2 to "need for instructional materials" as meant, and also
3 calls for speculation.
4 MS. ALTAMIRANO: I'll join.
5 MR. VIRJEE: And also vague and ambiguous as to
6 "most knowledgeable." As to what component part or the
7 entire topic?
8 MS. ALTAMIRANO: Join again.
9 THE WITNESS: There's not a requirement that
10 anyone in our department have a knowledge of what other
11 states are doing.
12 Q. BY MR. JACOBS: Is there anyone who in the
13 general sense has kind of made it an area in which that
14 person has become kind of expert looking at what other
15 states are doing in this area?
16 MR. VIRJEE: Objection. Calls for speculation.
17 MS. ALTAMIRANO: Join.
18 THE WITNESS: No, they're far too busy for
19 that.
20 Q. BY MR. JACOBS: And in terms of survey
21 techniques for assessing what is actually happening at
22 the school district or school level, is there anyone
23 that you know of in the Department who is particularly
24 knowledgeable about survey techniques?
25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to "survey techniques."
2 MS. ALTAMIRANO: Join.
3 THE WITNESS: What type of survey techniques
4 are you speaking of, a local district board would survey
5 their needs?
6 MR. JACOBS: No, how the State might perform
7 surveys if it wanted to answer the question what's
8 really happening in schools, are kids getting textbooks.
9 MR. VIRJEE: Objection. Vague and ambiguous as
10 to "survey."
11 And, again, other than what she's already
12 testified to? She already talked about this.
13 MS. ALTAMIRANO: And I join.
14 THE WITNESS: I'm still unclear. You want to
15 know is anyone knowledgeable about survey techniques
16 generally?
17 Q. BY MR. JACOBS: Is there somebody that you
18 would go to in the Department who you would regard as
19 having become or, in fact, charged with becoming
20 particularly expert about how to survey what is going on
21 at the local school level for the Department?
22 A. For the purpose of access to instructional
23 materials, or for any purpose?
24 Q. That might be one. I mean that as a for
25 example of the kind of survey that might be conducted.

1 A. We have a number of people who do different
2 data runs for different purposes, be it fiscal or based
3 on our data requirements in law. There's no one
4 particular person.
5 Q. And no one who you regard as -- if we define a
6 survey in a slightly narrower way than I think we've
7 been using it so far, as a process by which one solicits
8 information from the surveyed party, here, the school
9 district, and then analyzes the responses, I take it
10 that using that definition of survey, you're not aware
11 of somebody in the Department who you regard as
12 particularly expert about those techniques?
13 MR. VIRJEE: So you've actually defined the
14 survey for the first time as actually soliciting
15 information from the school districts about what they're
16 doing?
17 MR. JACOBS: Uh-huh.
18 THE WITNESS: What they're doing in what area?
19 Q. BY MR. JACOBS: Let's take textbooks. Let's
20 change our facts a little bit, and instead of doing a
21 school library survey, now you're doing a textbook
22 survey, but you're not doing it by looking at plans that
23 have been submitted, you're doing it by going out and
24 asking information from the school districts.
25 MR. VIRJEE: Objection. Assumes those are

1 mutually exclusive and that one is a way of conducting a
2 survey and another is not. Vague and ambiguous.

3 MR. JACOBS: Just asked the question. Go
4 ahead.

5 THE WITNESS: You're using the term "survey,"
6 and there are numerous functions in our department that
7 require compliance, certification, assurances, data
8 collection. There isn't one person I could tell you is
9 a key expert in what you're terming survey. Okay?

10 Q. BY MR. JACOBS: Okay. Let's go back to this
11 article, New books seen as tool to improve math
12 learning, and we're now using a slightly different
13 version as the exhibit. We've marked that document as
14 Exhibit SAD-55, and I want to ask you questions like the
15 ones I asked you before about the other article in which
16 you were quoted.

17 This article, although it doesn't put what you
18 said in quotes, it states as follows, many districts
19 have been saving textbook funds for the new math book
20 list, said Sherry Skelly Griffith of the Department of
21 Education, the executive director for the curriculum
22 commission.

23 So my first question is, is that quotation
24 accurate?

25 MR. VIRJEE: Did she say those exact words?

1 Schiff-Bustamante and how they are preparing to purchase
2 from each of the content areas.

3 And my comments were based on the fact that as
4 districts plan and budget -- and this was a significant
5 new primary adoption of math programs, for the first
6 time ever, algebra for the middle grades -- that they
7 were anticipating and, in our view, reserving funds to
8 make purchases from this brand-new list.

9 Q. You used the word "survey" in your answer.

10 A. Uh-huh.

11 Q. What, in that context, did you mean by survey?

12 A. We have conducted an informal survey, it's not
13 statutorily required. When the districts assure the use
14 of Schiff-Bustamante, we ask which subject area they
15 were purchasing in that particular year. Some
16 volunteered to provide it, some did not.

17 As part of the assurance, which actually we
18 have not had as a voluntary item, we ask to check off
19 one of three boxes, did you fully expend your money this
20 year, did you partially expend your funds this year, or
21 did you not expend your funds this year. And they're
22 reminded they have a right to carry those funds over.

23 Q. And by "funds" were you referring to just
24 Schiff-Bustamante or IMF?

25 A. For purposes of the assurance, just

1 MR. JACOBS: It's not in quotes, although it's
2 framed as a quote.

3 Q. Did you say that in words or substance?

4 A. Yes.

5 Q. Did you impart additional information to the
6 reporter in the conversation than reflected in this
7 article?

8 A. Yes.

9 Q. What did you tell them?

10 A. I talked about the new math programs that the
11 Board approved.

12 Q. Did you say anything else about how districts
13 were using funds?

14 A. I just generally indicated that many districts
15 had been anticipating the new list, and they were
16 prepared to move forward in selecting from that list now
17 that it was out.

18 Q. And what did you -- what were you referring to
19 when you conveyed that districts were saving textbook
20 funds for the new math book list?

21 A. That they've been accruing funds from the two
22 dedicated sources that they carry over, and so they are
23 prepared to use those funds to purchase from the list.
24 This stems from a survey that our office did in regards
25 to the assurances that are conducted for

1 Schiff-Bustamante.

2 Q. Let's go back to how we might calculate the
3 relationship between available resources and expected
4 expenses on the part of the school districts.

5 So far we have the school districts purchasing
6 textbooks, as I build my model using the information
7 you've provided, I would take the K through 8 core
8 content subject area costs that you've described, and
9 those are four -- you testified about four programs,
10 right?

11 MR. VIRJEE: Four --

12 MR. JACOBS: Four content areas, four subject
13 areas.

14 THE WITNESS: Testified to?

15 MR. JACOBS: I was referring to the testimony
16 you testified to about before to the legislative
17 committee.

18 THE WITNESS: Yes, I identified the four core
19 content areas.

20 Q. BY MR. JACOBS: There are other subjects that a
21 school district would, in the general case, be expected
22 to purchase textbooks or other instructional materials
23 for, correct?

24 MR. VIRJEE: Aside from the core content areas?

25 MR. JACOBS: Yes.

1 THE WITNESS: They may. They wouldn't be using
 2 Schiff-Bustamante for those purchases.
 3 Q. BY MR. JACOBS: They could use state IMF?
 4 A. Yes.
 5 Q. And they could use other funds available to
 6 them?
 7 A. Yes.
 8 Q. Pursuant to whatever restrictions there are as
 9 we discussed this morning?
 10 A. Yes.
 11 Q. In K through 8, other than history and social
 12 sciences, science, math and reading and language arts,
 13 do you have a general understanding of what other
 14 subjects a school district would be purchasing textbooks
 15 or instructional materials for?
 16 A. Yes.
 17 Q. What is that?
 18 A. You mean the subjects themselves, what they
 19 are?
 20 MR. JACOBS: Yes.
 21 MR. VIRJEE: Other than what she's already
 22 testified to?
 23 MR. JACOBS: Other than those four.
 24 MR. VIRJEE: So repeat what you've said before.
 25 THE WITNESS: We conduct adoptions for all the

1 subjects, and the additional subjects include visual
 2 performing arts, foreign language and health.
 3 Q. BY MR. JACOBS: Is it your expectation that
 4 districts would purchase instructional materials in each
 5 of those three areas for all -- leaving aside the issue
 6 of whether it's one per student, would you expect them
 7 to be purchasing materials for all of their students in
 8 those three areas?
 9 MR. VIRJEE: Objection. Vague and ambiguous.
 10 Q. BY MR. JACOBS: Or would it be the case that
 11 visual performing arts might be a subject that's only
 12 delivered to some students?
 13 A. I can't speak to what every district is doing
 14 in those subject areas. They may be purchasing those
 15 materials, and they might also be using other
 16 supplemental materials.
 17 Q. Let's go back for a minute to the four
 18 subjects. Did you approve kindergarten-level materials
 19 in those four subject areas?
 20 A. Yes.
 21 Q. And to cut to the chase, did you approve for
 22 each year of K through 8 for all four subject areas, for
 23 all years, all subject areas?
 24 MR. VIRJEE: The core subject areas?
 25 MS. ALTAMIRANO: Make it clear that the Board

1 is adopting. Is that what you're talking about, did the
 2 Board adopt?
 3 MR. JACOBS: Yes.
 4 THE WITNESS: Could you repeat that again.
 5 Q. BY MR. JACOBS: If I see history and science
 6 and math and reading and language arts, I see that list
 7 of four subject areas, we're covering K through 8, are
 8 there materials for each grade level that were approved?
 9 A. Yes, with a clarifying comment, that we're in
 10 the midst of reading language arts of this primary
 11 adoption, but, yes, in every grade level, materials have
 12 been approved.
 13 Q. And would it be, then, your expectation that in
 14 the general case a K through 8 school would purchase --
 15 would base its purchasing decision on the entire school
 16 population for those four subject areas?
 17 MR. VIRJEE: Objection. Calls for speculation.
 18 Lacks foundation.
 19 MS. ALTAMIRANO: Join.
 20 MR. VIRJEE: Also compound.
 21 MS. ALTAMIRANO: Join.
 22 THE WITNESS: It's going to depend on the
 23 district. Some of the submissions that are approved by
 24 the State Board are grade spans. For instance, they may
 25 purchase one program for K-3 and purchase another

1 program, same content area, State Board approved, for
 2 4-6, so they may have more than one review going on for
 3 those grade spans. Typically you'll see a larger number
 4 of the approved programs in a K-6 span or a K-5 span,
 5 and then you have your middle grades concentration.
 6 So when they review materials for approval at
 7 the local level, it will depend on the grade spans
 8 they're reviewing at the time, but it's likely that
 9 they're in sync with the cycles, so they're going to,
 10 over time, approve for all the grade spans, but it will
 11 depend on the submissions that are approved and their
 12 needs.
 13 Q. BY MR. JACOBS: I think I have a slightly
 14 simpler question. We have a K through 8 school,
 15 hypothetically, that has 500 kids. Divided among the
 16 eight grades, would you expect there to be materials in
 17 the history and social science category off the approved
 18 list for all 500 kids?
 19 MR. VIRJEE: Objection. Vague and ambiguous as
 20 to materials for all 500 kids.
 21 Q. BY MR. JACOBS: As opposed to, for example, we
 22 don't teach history and social science in the first
 23 grade, therefore, we don't need to purchase for the
 24 first grade.
 25 MR. VIRJEE: Same objection.

1 MS. ALTAMIRANO: Also it's an incomplete
2 hypothetical. It's hypothesizing that first grade with
3 those facts.

4 THE WITNESS: Again, I'd have to go back to
5 format, because, for example, in the primary grades, K-3
6 in particular, there is less use of an actual hardbound
7 textbook because small children are not carrying around
8 different hardbound textbooks for every subject because
9 they're in a contained classroom.

10 Q. BY MR. JACOBS: That's why I'm deliberately not
11 getting at the issue of whether there is literally one
12 copy for each student, but rather whether, in making
13 their purchasing decision and looking at the approved
14 list, the district would be contemplating, in the
15 general case, purchasing instructional materials that
16 are directed to all the students in that K through 8
17 school.

18 A. Well, as part of their annual public hearing
19 process, again, they're assessing the needs of their
20 district as a whole and which schools and which grade
21 levels and which content areas they need to focus on, so
22 that would be part of their assessment of their needs.

23 Q. Is it your expectation that in the general
24 case, with respect to the materials you've adopted or
25 are proposed for adoption by the State Board in the case

1 MR. VIRJEE: State content standard?

2 MR. JACOBS: Content standard, yes.

3 THE WITNESS: Well, recently the state did
4 approve visual performing arts, which are voluntary, and
5 that was conducted in the last three months, that
6 approval.

7 Q. BY MR. JACOBS: But nonetheless there is such a
8 standard, and whether it's voluntary or not, does it
9 have a content prescription for each grade of K through
10 8?

11 A. No, it's arranged differently, it's arranged by
12 strands of visual performing arts. It's different in
13 that way. It's based on what is grade level appropriate
14 in dance, what is grade level appropriate in music, what
15 is grade level appropriate in art. It's more of the
16 guidelines, if you were going to teach for part of a day
17 or a week, what would be developmentally appropriate for
18 that subject.

19 Q. How about for foreign language, are there
20 foreign language content standards for each grade K
21 through 8?

22 A. No.

23 Q. What grades are there content standards?

24 A. There are not state level content standards in
25 foreign language.

1 of reading language arts, that districts are assessing
2 those needs on the assumption that they are going to be
3 teaching all four of those core subjects to all of K
4 through 8 students?

5 MS. ALTAMIRANO: I'm going to object on the
6 basis of speculation as to what these districts are
7 actually doing when they make those decisions.

8 THE WITNESS: Well, again, local districts
9 determine curriculum and the delivery of curriculum.
10 The grade-level contents standards guide the State as a
11 whole and guide districts, guide the assessments, and
12 the standards that are expected to be taught in those
13 grade levels would be the ones expected to be covered.

14 Q. BY MR. JACOBS: I'm going to withdraw my
15 previous question. I got the answer to how to ask the
16 question.

17 Do the state content standards have standards
18 for each of these four areas for all of K through 8?

19 A. Yes, they do.

20 Q. Okay. So now let's ask the same question about
21 these three other topics, content areas, visual and
22 performing arts, foreign language and health, do the
23 state standards have a visual -- let's just take visual
24 performing arts. Is there a kindergarten visual and
25 performing arts standards?

1 Q. So what are you adopting -- what is the
2 adoption cycle for those materials measured against?

3 MR. VIRJEE: What is the adoption cycle
4 measured against?

5 MR. JACOBS: The adoption process.

6 THE WITNESS: The curriculum framework and the
7 chapters of that framework and the evaluation criteria
8 that's embedded in that framework would guide the
9 publishers on how to produce foreign language materials.

10 Q. BY MR. JACOBS: And the curriculum framework is
11 not grade by grade?

12 A. Well, every framework is a little bit different
13 depending on if it has standards or does not have
14 standards. And for those that don't have standards,
15 then it is based on, typically, how to begin teaching
16 the subject and then building upon that subject. And in
17 some cases, such as foreign language, the most recent
18 work, which we just approved the foreign language
19 framework, addresses how children can enter the subject
20 at any grade level and be able to begin to learn the
21 basic foundation of the language.

22 So it's not grade level specific because in
23 California foreign language is primarily taught at the
24 secondary level and is used as part of the requirements
25 for the UC and CSU for entry, so in the earlier grades

1 there is no requirement for foreign language.
 2 So in the earlier grade levels the curriculum
 3 framework focuses on how to enter the curriculum at any
 4 age, so that a teacher who has the opportunity to teach
 5 a second language or foreign language would be able to
 6 utilize the framework at that -- at any grade level and
 7 say this is how to begin to teach the beginning phases
 8 of the language.

9 Q. Aside from the content standards and the
 10 curriculum framework, are there any other state -- is
 11 there any other state guidance to districts about what
 12 students should be taught?

13 And I've got to fix this question a little bit.
 14 I'm talking about general subject areas now, not you
 15 shall teach kids about the following public health
 16 issue, for example. So I'm talking about topics like
 17 foreign language or visual performing arts.

18 Other than content standards or the curriculum
 19 framework that you described, is there other state
 20 guidance to districts about what should be taught?

21 A. The statewide assessment system.

22 Q. Foreign language, does the statewide assessment
 23 system give guidance to districts -- or create
 24 incentives for districts to teach foreign languages in
 25 K through 8?

1 guidance it receives from the State when it's making its
 2 textbook and instructional materials purchasing
 3 decisions.

4 What I understand so far is that the district
 5 would, in the general case, be planning to purchase
 6 instructional materials for the four core subject areas
 7 that we've described for each student in the school, and
 8 the reason for that is that the content standards have
 9 grade by grade K through 8 direction?

10 MR. VIRJEE: Objection. Vague and ambiguous as
 11 to "for each student in the school."

12 MS. ALTAMIRANO: I'm going to join.

13 Q. BY MR. JACOBS: And that's fair because I'm not
 14 trying to ask you now about whether that literally means
 15 one copy for each student, but rather that it would be
 16 in buying materials in order to impart that content to
 17 each student in the entire school.

18 MR. VIRJEE: Objection. Assumes facts not in
 19 evidence. Assumes that that would be the only way to
 20 impart the content.

21 MR. JACOBS: Now I think you understand what I
 22 mean there.

23 THE WITNESS: Can you restate the question?

24 MR. JACOBS: Yeah.

25 Q. I'm trying to put ourselves here in this room

1 MR. VIRJEE: Objection. Vague and ambiguous as
 2 to "create incentives."

3 Q. BY MR. JACOBS: Is it directed to the teaching
 4 of foreign language in K through 8?

5 A. No, we don't assess foreign language at the
 6 statewide level.

7 Q. So in addition to the four core subjects, are
 8 there any other -- I'm being too clipped.

9 We talked about how districts are guided
 10 pursuant to the content standards for the four subjects,
 11 the four core subjects, right?

12 A. Yes.

13 Q. And then we talked about the curriculum
 14 framework, and at least for visual and performing arts
 15 and foreign language, you explained that that is not
 16 directed to this is what you shall teach in
 17 kindergarten, this is what you shall teach in first
 18 grade, et cetera?

19 A. For the most part. There's greater emphasis if
 20 it's traditionally taught, for example, at the secondary
 21 level, the framework will focus on the guidelines and
 22 the approaches to take there. It's geared to meet the
 23 needs of all teachers in K-12.

24 Q. So let me put this back in the context of a
 25 district trying to meet what it understands to be the

1 in the position of a school district, trying to
 2 understand what it needs to do by way of purchasing
 3 textbooks and instructional materials.

4 And what I understand so far is that the
 5 district would be planning to make sufficient purchases
 6 to allow the school to teach all of the students in K
 7 through 8 in all four of the subject areas.

8 MR. VIRJEE: I'll object as vague and ambiguous
 9 with respect to the word "sufficient."

10 THE WITNESS: First, they're developing local
 11 policy guidelines for their curriculum, they're doing
 12 that by district and by school, and they would include
 13 that as part of their decision-making process for
 14 purchasing instructional materials, how they're going to
 15 deliver the curriculum in the classroom, and which
 16 materials would support that effort and which materials
 17 would provide support for the teacher.

18 Q. BY MR. JACOBS: But in terms of doing the math
 19 here, I understand your testimony to be that in the
 20 general case, you would not expect the district to be
 21 saying with respect to any grade or any of the four core
 22 subject areas, we don't need to purchase materials for
 23 that grade because as we hear what the State is trying
 24 to persuade us to teach, we don't need to teach that
 25 subject in this grade.

1 MR. VIRJEE: Objection. Compound. I think
 2 those are two different questions. Question one being
 3 whether we need to purchase materials in order to teach
 4 it, and question two being whether we need to teach it,
 5 so I'll object as compound.
 6 MS. ALTAMIRANO: I join.
 7 THE WITNESS: Could you define further what you
 8 mean by teaching the content?
 9 MR. JACOBS: I must be making this more
 10 difficult than it needs to be.
 11 THE WITNESS: The reason I ask for
 12 clarification is there are different requirements in
 13 different grade levels, so it's just too broad.
 14 Q. BY MR. JACOBS: Well, you've explained that if
 15 I go to the purchase list, I will see instructional
 16 materials that are -- whether or not they span more than
 17 one grade or not, there are materials in each of the
 18 core subject areas for each grade K through 8, correct?
 19 A. Programs have been approved that cover every
 20 grade level.
 21 Q. And those include -- when you say "programs
 22 have been approved," you mean you've approved something
 23 that's resulted in items being on the price list?
 24 A. Yes.
 25 Q. So when I'm building my budget, I have to build

1 my budget on the assumption that I'm purchasing
 2 materials that address each of the four subject areas
 3 for each grade K through 8?
 4 MR. VIRJEE: Objection. Incomplete
 5 hypothetical. Assumes facts not in evidence. Assumes
 6 that you need to purchase any materials in order to
 7 teach the frameworks and the standards. That's part of
 8 the problem of your question.
 9 MS. ALTAMIRANO: Also clarification, you said
 10 price list. Did you mean purchase list?
 11 THE WITNESS: We call it price list.
 12 MS. ALTAMIRANO: Okay. Thank you.
 13 THE WITNESS: The reason this is unclear to me
 14 is that there is greater emphasis in certain content
 15 areas in certain grades, so how they deliver that
 16 curriculum will depend on the local district. So, for
 17 example, and reading language arts are the focus in
 18 grades K-3 in a very concentrated way, and then the
 19 assessment system begins in grade 2, and that's also in
 20 reading language arts and math, and there are certain
 21 standards that are expected to be assessed in those
 22 subject areas. So all of those factors will play into
 23 the decisions that are made at the local level as to
 24 where they put their resources, where they have the
 25 greatest need.

1 So the assessment system is connected to the
 2 standards, the curriculum framework, the instructional
 3 materials, assessment, and then you have accountability,
 4 and you're assessing the achievement levels of those
 5 students. So it's all related.
 6 Q. BY MR. JACOBS: So if you had been at that
 7 hearing and a legislator had said I'm trying to run the
 8 numbers here, whether we're providing sufficient amounts
 9 under Schiff-Bustamante and the state IMF, and I come up
 10 short because if I multiply four subjects by your
 11 averages and assume that these are going to be bought on
 12 a per student basis for all of the students in a K
 13 through 8 school, you would regard it as one plausible
 14 response to that legislator to be I'm not sure that in
 15 grade "X" they'd actually need to be purchasing anything
 16 in that subject area?
 17 A. I wouldn't respond that way.
 18 Q. So why not?
 19 MR. VIRJEE: Objection. Incomplete
 20 hypothetical. Calls for speculation.
 21 THE WITNESS: It's not that simple. I mean,
 22 you have cycles and you have materials that are already
 23 in place in particular grade levels that are current, so
 24 except in some cases, you're not going to be purchasing
 25 all four content areas, regardless of the grade level.

1 You're not going to do that in K-8.
 2 Q. BY MR. JACOBS: So that's one answer to the
 3 legislator, is, you're not going to be purchasing all of
 4 those materials each year, right?
 5 A. That's correct.
 6 Q. And so he says, okay, I got it, but now let's
 7 spread it out, and I still can't make it add up; that
 8 is, I assume that I'm going to be purchasing one core
 9 subject in year one, the second core subject in year
 10 two, et cetera. You've told me there's a six- or
 11 seven-year cycle to these things, so I have -- arguably
 12 I have two years that are non-purchase years in that
 13 scenario, but I still don't see how we have enough
 14 money. What would your answer be?
 15 A. I don't know what your evidence would be.
 16 MR. VIRJEE: Objection. Assumes facts not in
 17 evidence. Assumes it would add to be that way.
 18 Incomplete hypothetical. Also vague and ambiguous as to
 19 what would be necessary to impart the instructional
 20 program.
 21 MS. ALTAMIRANO: Join.
 22 THE WITNESS: The source of funding is
 23 dedicated and it's used for the purchase of certain
 24 materials, but the delivery of the curriculum to meet
 25 the grade level standards is determined at the local

1 level, so they can use those materials to meet that need
2 grade by grade. They can also provide additional
3 resources and support in the classroom to meet that
4 need.

5 And then what will be the true test of the
6 achievement is the assessment that's conducted second
7 grade on, which will assess if the grade-level content
8 standards have been met.

9 Q. BY MR. JACOBS: So I'm the hypothetical
10 legislator again in that hearing and I respond to you,
11 you mean, Ms. Griffith, you can't really tell us whether
12 these amounts are sufficient or not. What is your
13 answer?

14 A. It's out of context. I can't answer that
15 without knowing the context of what the discussion is
16 and what sufficient means.

17 Q. So you can't tell me even how you would go
18 about calculating that because it's a matter of local
19 decision-making and trade-offs of priorities and how the
20 content is actually going to be imparted in the
21 classroom?

22 MR. VIRJEE: She just said she didn't
23 understand how you used the word sufficient.

24 Q. BY MR. JACOBS: Somehow I have a feeling that
25 if you were in a legislative context with an assemblyman

1 also vague and ambiguous as to whether you couldn't do
2 it.

3 MS. KAATZ: Join.

4 MS. ALTAMIRANO: Join.

5 THE WITNESS: I didn't say any of those things.

6 Q. BY MR. JACOBS: Well, am I incorrect?

7 MR. VIRJEE: I think she just --

8 THE WITNESS: They're not statements that I've
9 made, so I can't agree to those statements, no.

10 Q. BY MR. JACOBS: In what way is it incorrect
11 that you have not yourself run the math, as I stated in
12 any previous question?

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "run the math," and also vague as to time.

15 She's already said that if what you mean by run
16 the math is figure out what these work out to be pupil
17 by pupil, she said she doesn't have that information
18 yet. It's vague as to time and vague as to "run the
19 math."

20 THE WITNESS: I need to know what you mean by
21 "run the math." Run the math on what's been expended
22 under the assurances that we conduct, which is required
23 by law, or do you mean run the math on what one
24 particular district would have this year? I'm unclear.

25 Q. BY MR. JACOBS: Well, I mean analyzing the

1 asking you that question, you wouldn't say to him, I
2 don't understand what you mean by sufficient.

3 MR. VIRJEE: I'm going to object to that as
4 argumentative and an incomplete hypothetical and assumes
5 facts completely not -- there's no foundation for that
6 at all. She may, in fact, say exactly that.

7 MS. ALTAMIRANO: I'm going to join in that
8 objection.

9 THE WITNESS: You're going to have to repeat
10 that.

11 Q. BY MR. JACOBS: What I understand from your
12 testimony is that not only have you not run the math to
13 determine whether under the state IMF or
14 Schiff-Bustamante the funding levels are sufficient to
15 enable the districts to give each student what, in your
16 judgment, is appropriate access to instructional
17 materials, but that -- not only have you not actually
18 run that math, but that you couldn't run the math
19 because so much of the decision-making is up to the
20 local district and there's so many choices that the
21 district has to make.

22 MR. VIRJEE: Objection. Vague and ambiguous as
23 to whether or not the materials would be sufficient.

24 Also vague and ambiguous as to "appropriate access."

25 Also vague and ambiguous as to "running the math." And

1 question that is raised by your chair's comments at the
2 May 18-19, 2000 meeting.

3 A. Can I see this document again?

4 Q. Yes. Exhibit 54.

5 A. First the chair didn't ask me to run any
6 numbers.

7 Q. I realize that. But now I'm asking whether you
8 have run the numbers. And I think you testified earlier
9 that you haven't.

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "run the numbers." Vague as to time. And her
12 testimony from earlier will speak for itself.

13 MS. ALTAMIRANO: Join.

14 THE WITNESS: I've provided all factual
15 information related to price submissions, price quotes,
16 per pupil expenditures, everything that is currently
17 available. The databases that are available to my
18 knowledge, I've provided that information.

19 Q. BY MR. JACOBS: I'm sorry, I'm not trying to in
20 any way suggest that you didn't comply with the
21 direction from your chair, nor that you've in some way
22 failed your statutory or regulatory responsibilities.

23 A. No offense taken.

24 Q. Since you're the person in the seat of -- in
25 the spot of taking in this information about costs of

1 textbooks and you have an understanding about how
2 textbook adoption relates to curriculum frameworks, I
3 think you're one of the people who would be in the best
4 position to tell us how we would go about assessing
5 whether the amounts under Schiff-Bustamante and state
6 IMF are sufficient to meet the reasonable needs of
7 districts to purchase textbooks and instructional
8 materials.

9 MR. VIRJEE: Objection. Vague and ambiguous
10 as -- I'm sorry.

11 Q. BY MR. JACOBS: And so with that as background,
12 I understand that you actually haven't done that
13 mathematical exercise of taking the number of subjects
14 in which a district would reasonably be anticipating it
15 needs to purchase materials for, multiplying that over
16 the number of -- that proportion of K through 8 that
17 would actually need instruction and related materials,
18 and then measured the cost of that against the per
19 student allocation?

20 MR. VIRJEE: You're asking whether she's done
21 that?

22 MR. JACOBS: I understand you not to have done
23 that.

24 MR. VIRJEE: Objection. Vague and ambiguous as
25 to "sufficient to meet the reasonable needs of the

1 MR. JACOBS: Under Schiff-Bustamante and state
2 IMF. I'm sorry, not in those subject areas, but the
3 amounts that are allocated in Schiff-Bustamante or state
4 IMF.

5 Q. Now, I'm going to the next stage and I'm
6 saying, have you ever put all that together to determine
7 whether, given the fact that there is a cycle and given
8 the fact that you might be making purchases for one
9 subject in one year and another subject in another year,
10 whether the amounts that are allocated under
11 Schiff-Bustamante and state IMF are sufficient by any
12 measure of sufficiency?

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "sufficiency." She's also asked and answered the
15 question probably three or four times now saying these
16 decisions are made at the local level and that they're
17 each unique, district to district, and therefore you
18 cannot do that.

19 MS. ALTAMIRANO: Join.

20 THE WITNESS: I can indicate what the State has
21 done. The State has more than doubled the allocations
22 for instructional materials purposes since '98, '99. At
23 the 9-12 level, the per pupil amount has tripled. The
24 sources combined are not below the cost of one subject
25 area at this time, so that information I have.

1 district."

2 THE WITNESS: First of all, we don't need to do
3 that because they're not purchasing materials all in the
4 same content areas annually, so there's been no request
5 to run the numbers because it's not done that way.

6 Q. BY MR. JACOBS: Right. But that's why we then
7 went to the next level and explored what the cycle
8 period would be, and you testified it would be six or
9 seven years. And then we explored how many subjects a
10 district would expect to make purchasing decisions
11 about.

12 A. Correct.

13 Q. And as your chair noted, there is a need for at
14 least four subject areas?

15 A. And she's discussing the increase in the
16 funding.

17 Q. Right. And so we have at least four subject
18 areas, we have six or seven years, we have the issue of
19 whether it applies to every student K through 8, we've
20 explored that, and we've explored the cost of the
21 materials for those subject areas. You testified about
22 that. We've explored your understanding of the amounts
23 that are allocated in each of those subject areas.

24 MR. VIRJEE: The amounts that are allocated
25 in --

1 Q. BY MR. JACOBS: If I understood what you
2 conveyed about the per student amounts, though, unless I
3 misunderstood something, it was \$42 for
4 Schiff-Bustamante per student K through 12, and then for
5 state IMF, 31 K through 8, and 20 9 through 12 on an
6 approximate basis; is that right?

7 A. Yes.

8 Q. And I take it, then, that what you're saying is
9 if you look at the current cost of history and social
10 sciences for K through 8, that is below the sum of 42
11 and 31?

12 A. Yes.

13 Q. And so if your -- what your testimony is
14 driving at then, I take it, is that if the school
15 district purchased only history and social sciences in,
16 say, year one, the allocation would be sufficient?

17 MR. VIRJEE: Objection. Vague and ambiguous as
18 to what her testimony is driving at. She's answering
19 your questions.

20 THE WITNESS: I indicated what the prices are
21 of the materials in K-8.

22 MR. JACOBS: Uh-huh.

23 THE WITNESS: I indicated that they have not
24 exceeded the per pupil, I didn't say particularly for
25 history social science, I just said generally. I said

1 that the funding levels have more than doubled, and that
2 it's highly unlikely that all the content areas need to
3 be purchased in one year, and these are local decisions
4 that are made, the funding accrues, the interest is used
5 for the dedicated purpose, the decision is local.

6 Q. BY MR. JACOBS: And so if the legislator said
7 to you, I hear all that, but now I'm just looking for
8 the bottom line, Ms. Griffith, are we appropriating
9 enough money in these two funds, can you tell me that,
10 or what would it take for you to tell me that?

11 Would you be able to answer that question?

12 MR. VIRJEE: Objection. Calls for speculation.
13 Lacks foundation. Calls for an expert opinion beyond
14 the expertise of this witness.

15 MS. ALTAMIRANO: Join.

16 THE WITNESS: Could you repeat the last part of
17 the question.

18 Q. BY MR. JACOBS: What would it take for you to
19 tell us that?

20 MR. VIRJEE: Objection. Calls for speculation.

21 THE WITNESS: I can't answer that.

22 Q. BY MR. JACOBS: So if the legislator said to
23 you --

24 A. I'd have to know the specifics of the question
25 and what they're requesting and adequate time to analyze

1 set forth in the introduction to Section 60119 of the
2 State Education Code.

3 A. That connection is a locally determined
4 connection in line with the cycles of the frameworks and
5 the adoptions which are on a six-year cycle, so they are
6 continuously evaluating that at the local level and
7 using those dedicated funds and other sources to make
8 those purchases.

9 Q. So, again, I'm the legislator and I ask you, so
10 you can't tell me, Ms. Griffith, even what variables I
11 would need to supply you with in order for you to tell
12 me whether we are appropriating enough money under these
13 categories now?

14 A. They could tell me all kinds of variables and I
15 could provide my best expert opinion.

16 Q. And what are those variables that you need?

17 A. Whatever they are asking me for, but the
18 variables are as varied in every district as you could
19 come up with.

20 Q. So you can't actually tell me, the hypothetical
21 legislator here, whether we're appropriating too much?

22 MR. VIRJEE: Objection. Call for speculation.
23 Also vague as to "too much." Also calls for an
24 opinion -- an expert opinion which this witness is not
25 competent to give.

1 it and report back accurately.

2 Q. I'm the legislator now. I can give you the
3 time, but I want to know, Ms. Griffith, what you need to
4 know in order for you to complete the question for you?

5 A. I cannot answer that.

6 MR. VIRJEE: Same objections.

7 THE WITNESS: I need to know what the variables
8 are before I'm going to analyze the data to report back
9 to any policymaking body.

10 Q. BY MR. JACOBS: And what are the variables you
11 need to know?

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

14 THE WITNESS: I need to know what you want to
15 know.

16 Q. BY MR. JACOBS: I want to know the bottom line,
17 Ms. Griffith, are we in the state legislature
18 appropriating enough money under those categories?

19 MR. VIRJEE: Objection. Vague and ambiguous as
20 to "enough." Calls for speculation. Lacks foundation,
21 and also calls for an expert opinion which this witness
22 is not competent to give.

23 MS. ALTAMIRANO: Join.

24 THE WITNESS: Enough for what?

25 Q. BY MR. JACOBS: Enough to meet the objectives

1 MS. ALTAMIRANO: Join.

2 Q. BY MR. JACOBS: For the same reasons, which is
3 that it's all a matter of local decision-making and a
4 lot of individual choices?

5 A. Are you asking me if I think it's too much?

6 Q. Could you tell me whether it was too much?

7 A. I couldn't tell you that.

8 Q. Could you tell me what I would need to tell you
9 as a legislator in terms of additional parameters to the
10 question to tell me whether it's too much?

11 MR. VIRJEE: Same objection. Calls for
12 speculation. Vague and ambiguous as to "too much."
13 Calls for an expert opinion which this witness is not
14 competent to give.

15 MS. ALTAMIRANO: Join.

16 THE WITNESS: I would have to know the
17 variables in which you're asking the question.

18 Q. BY MR. JACOBS: And I take it, then, that
19 you've never sat down with your colleagues and said, you
20 know what, we've got to come up with a plan that
21 includes funding and includes other factors to make sure
22 that every student in the state of California has what
23 we as educational professionals regard as sufficient
24 access to high-quality instructional materials?

25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to "sufficient." Incomplete hypothetical.
 2 MS. ALTAMIRANO: Join.
 3 THE WITNESS: We're right in the midst of
 4 implementing the program that began in '97, '98, and
 5 part of that is the implementation of the use of the
 6 funds that have doubled, and part of that is the
 7 official department support for reauthorization of those
 8 funds to be used on a continuous basis, which we believe
 9 would support that effort on a continuous annual basis,
 10 allowing for the accrual of those funds, allowing for
 11 those decisions to be local, and ensuring that there are
 12 materials available that have been approved by the State
 13 and have been under a rigorous review and are standards
 14 aligned.
 15 Q. BY MR. JACOBS: What do you mean by "support
 16 that effort"?
 17 A. We support that effort by the reauthorization
 18 of the funding source.
 19 Q. No, by "support" did you mean meet the needs in
 20 order to achieve or did you mean help?
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to "support."
 23 Are you talking about in conjunction when he
 24 used the term support the reauthorization?
 25 MR. JACOBS: I think your exact words were

1 support that program.
 2 THE WITNESS: Our division and the curriculum
 3 commission are both involved in supporting the entire
 4 accountability structure that's been set up in
 5 California from beginning to end. And our role in that
 6 is the development of the curriculum frameworks and the
 7 approval of instructional materials to ensure that there
 8 are materials available for purchase and that the funds
 9 we support would be continuously appropriated on an
 10 annual basis to ensure that.
 11 Q. BY MR. JACOBS: Is it your professional
 12 judgment that if the existing funding levels plus
 13 inflation are appropriated on an annual and continuing
 14 basis, that it will be -- that funding should no longer
 15 be a legitimate explanation for why the standards set
 16 forth at the beginning of Section 60119 is not met by a
 17 school district?
 18 MR. VIRJEE: Objection. Vague and ambiguous as
 19 to existing funding sources and assumes facts not in
 20 evidence. Assumes that ever was a legitimate reason.
 21 Also vague and ambiguous as to "legitimate."
 22 MS. ALTAMIRANO: And it calls for a legal
 23 conclusion. Join as to the rest.
 24 THE WITNESS: The hearing requirement is based
 25 on more than the dedicated funding sources, but that

1 supports that effort and that responsibility for core
 2 governing boards, but they're still responsible for
 3 ensuring that they utilize the resources they have
 4 available to them to ensure sufficient materials are
 5 available to their pupils in their district, and they
 6 need to involve the public in making that decision.
 7 Q. BY MR. JACOBS: And your answer to my question
 8 about setting forth a plan had various components,
 9 including the increases in funding that you described.
 10 My question to you is, when those increases in
 11 funding were sought, was there any underlying analysis
 12 that supported the increases in terms of need?
 13 MS. ALTAMIRANO: Objection. Vague and
 14 ambiguous as to increases in funding.
 15 Are you talking about the reauthorization of
 16 Schiff-Bustamante, because that's what she's been
 17 testifying to?
 18 MR. JACOBS: I don't think so. I'm talking
 19 about the program you started in '97, '98.
 20 THE WITNESS: I wasn't working on that program
 21 at that time, so I couldn't speak to the direct
 22 assessment that was conducted or policymaking,
 23 decision-making process at the time. I know that the
 24 funds have more than doubled for per pupil spending.
 25 Q. BY MR. JACOBS: And you've never seen an

1 analysis in the kind of mathematical sense that we've
 2 been discussing of what districts need to buy as against
 3 per student amounts that are available that underlay the
 4 recommendation that those amounts be increased?
 5 MR. VIRJEE: Objection. Asked and answered.
 6 Also vague and ambiguous.
 7 THE WITNESS: You mean at the time of the
 8 development of the legislation?
 9 Q. BY MR. JACOBS: You've never seen analysis --
 10 Now I don't understand your question.
 11 A. You're asking about an analysis, so I need to
 12 know in relation to what action. Was it legislation
 13 that passed, AB 2041?
 14 Q. Yes.
 15 A. That was the bill, Schiff-Bustamante.
 16 Q. We'll take that one.
 17 A. No, I haven't seen that analysis.
 18 Q. And have you seen any analysis in that kind of
 19 mathematical sense that we have been discussing that
 20 supports the recommendation to reauthorize
 21 Schiff-Bustamante on an ongoing basis?
 22 A. I've seen the industry's analysis of what they
 23 feel it costs to purchase materials across K-12, as I
 24 testified to earlier.
 25 Q. And that's in terms of such analysis?

1 A. I've listened to testimony at the hearings, the
 2 policy hearings, senate education hearings in
 3 particular.
 4 Q. Did that hearing include some input in which
 5 the expected costs against available funds were
 6 assessed?
 7 A. No. Well, yes, my reference to the comment
 8 made by the chair to the industry representative, of
 9 course you think it will cost more.
 10 Q. Right. I thought you might be talking -- first
 11 of all, I thought it was an assembly committee and now I
 12 thought you just said senate.
 13 A. No, it's Assembly Bill 50 Hurstberg (ph.). It
 14 reauthorizes Schiff-Bustamante, the program itself and
 15 continuously appropriates. That's separate from the
 16 informational hearings that I testified at on the
 17 process generally and the price quotes. That was an
 18 assembly budget hearing. This was a senate education
 19 committee meeting in which they passed Assembly Bill 50,
 20 the Hurstberg Bill, which is going to go to the fiscal
 21 committee and then go to the governor.
 22 Q. And at that meeting, you were in attendance?
 23 A. I was. No, actually, I'm sorry, I observed
 24 that on television.
 25 Q. So that was -- obviously you didn't testify in

1 that context?
 2 A. Our legislative representative did testify.
 3 Q. And did your legislative representative provide
 4 any analytical support in terms of the cost and expense
 5 factors we've been discussing?
 6 MR. VIRJEE: Objection. Vague and ambiguous as
 7 to "analytical support."
 8 THE WITNESS: The bill went very quickly.
 9 There was strong support registered, and the bill was
 10 quickly passed. It wasn't an extensive hearing.
 11 Q. BY MR. JACOBS: What other adoptions are
 12 scheduled for the forthcoming several years?
 13 MR. VIRJEE: Objection. Vague and ambiguous.
 14 Over what time period?
 15 MR. JACOBS: I said for the forthcoming several
 16 years.
 17 MR. VIRJEE: Several being -- meaning six?
 18 They're all going to be readopted.
 19 THE WITNESS: They're always continuously going
 20 through that.
 21 MR. JACOBS: Maybe I should break it down.
 22 Q. You're on a compressed schedule for certain
 23 adoptions?
 24 A. Yes, right now we're completing the final
 25 compressed time line adoption, which is reading language

1 arts.
 2 And just so you can understand, normally
 3 publishers are given 30 months, 24 to develop the
 4 materials and then we review them for six months at the
 5 state level. The compressed time lines required that
 6 the complete process be done for history social science
 7 and science in 12 months and for reading language arts
 8 and math in 18 months, so we're at the final stage of
 9 that last adoption, reading language arts. This is the
 10 review process that's beginning in August.
 11 Q. Once those compressed adoptions are completed,
 12 will all your adoptions be on a typical schedule?
 13 MR. VIRJEE: Objection. Calls for speculation
 14 as to what might happen in the future.
 15 THE WITNESS: Actually, the Assembly Bill 2519
 16 legislation does expire, in other words, the compressed
 17 adoption cycle expires, and then unless other subsequent
 18 legislation is passed, we will go back on the 30-month
 19 cycle for all subjects.
 20 Q. BY MR. JACOBS: And what is in the queue for
 21 review after -- is there anything in parallel going on
 22 right now in addition to the compressed adoptions?
 23 A. On average we're conducting anywhere from two
 24 to five adoptions a year and, for example, in 2002,
 25 which really begins earlier, but we will complete

1 reading and language arts, and then in the summer of
 2 2002 we will have completed the follow-ups to primary
 3 adoptions, so this is the second round of opportunity
 4 for publishers in visual performing arts, in history
 5 social science and science. So those primary adoptions
 6 that kicked off with the inception of the content
 7 standards, we're now entering the follow-up adoptions
 8 for those subjects.
 9 Q. And the follow-up adoptions are additive of the
 10 previous adoptions?
 11 A. Yes, we add additional choices for districts.
 12 Q. So ranging from basic instructional materials
 13 to supplemental?
 14 A. No, it's the same criteria used for the primary
 15 adoption, so whatever was allowed during that
 16 submission, it's a follow-up to that. It's at this
 17 point in those adoptions a basic adoption, and it gives
 18 new publishers an opportunity to submit, and it provides
 19 an opportunity for publishers who were rejected to
 20 correct their materials and assure they're content
 21 aligned and accurate. They can resubmit during that
 22 time frame.
 23 Q. If I understand the idea here, it was to, on a
 24 compressed basis, get some approvals completed so that
 25 districts could more quickly purchase textbooks that

1 were aligned with the content standards?
 2 A. Yes.
 3 Q. And now the second phase is to expand the range
 4 of choice available to districts by providing an
 5 opportunity for additional publishers or existing
 6 publishers to resubmit?
 7 A. Yes, it's always conducted, not just during the
 8 compressed time line. We always conduct two adoptions
 9 in the six-year cycle for every subject.
 10 Q. I see.
 11 A. All subjects.
 12 Q. And you call those two adoptions?
 13 A. Primary and follow-up.
 14 Q. And so there's primary and follow-up in the
 15 usual cycle, and there's primary and follow-up with
 16 respect to the compressed schedule?
 17 A. Yes, in both.
 18 (Recess taken.)
 19 Q. BY MR. JACOBS: Returning to Exhibit 54,
 20 please. At the top of the page --
 21 MR. VIRJEE: Which page?
 22 MR. JACOBS: Page 4. The page we were
 23 discussing before.
 24 Q. -- there is a reference to the recent ACL
 25 lawsuit submitted regarding responsibilities for

1 up-to-date text.
 2 Did Deputy Superintendent Hernandez mention
 3 that lawsuit?
 4 A. I would assume so since the minutes reflect
 5 that.
 6 Q. You don't recall it?
 7 A. I don't recall any detail about that
 8 discussion.
 9 Q. So you don't -- do you recall whether there was
 10 any discussion about the lawsuit?
 11 A. I don't think there was any discussion about
 12 it. It's typical for the deputy superintendent to give
 13 us kind of a laundry list of issues that are current or
 14 are occurring that impact the Department in some way,
 15 but there would be no discussion of the actual lawsuit.
 16 Q. As we understand Ed Code Section 33126 --
 17 A. Where are you reading from?
 18 Q. My own notes. This is the school report card
 19 provision that requires schools to meet various
 20 requirements in terms of self-reporting, and one of the
 21 topics is textbooks.
 22 Does your office have any involvement in
 23 reviewing school accountability report cards?
 24 A. For the purpose of?
 25 Q. I guess for any purpose.

1 A. No, it's information for local communities.
 2 Q. And the answer is, no, my office does not
 3 review school accountability report card?
 4 A. We do not review the school accountability
 5 report cards.
 6 Q. Have you had any discussions about whether the
 7 school accountability report cards are a -- are accurate
 8 in reporting on the textbook issues that they're
 9 supposed to cover?
 10 A. Accurate in what way?
 11 Q. Accurate in terms of providing an accurate
 12 picture of the textbook and instructional materials
 13 situation at a particular school.
 14 MR. VIRJEE: Has she had any discussion with
 15 the school districts about that?
 16 MR. JACOBS: Any discussions with anyone about
 17 the accuracy of SARC's as they relate to textbooks.
 18 THE WITNESS: Accuracy related to what they
 19 state they have?
 20 MR. JACOBS: Yes.
 21 MS. ALTAMIRANO: I'll object on lack of
 22 foundation as to whether she actually knows what the
 23 report cards are reporting regarding textbooks.
 24 Q. BY MR. JACOBS: The question simply is whether
 25 you've had discussions with anyone about whether they're

1 accurate. And I think the answer is no, I haven't
 2 discussed that topic.
 3 MR. VIRJEE: Why don't we just let her answer
 4 the question.
 5 THE WITNESS: First of all, I need to know what
 6 you mean by "accurate," because whatever the district
 7 has purchased in their report, and they are expected to
 8 be reporting accurate factual information, would be
 9 accurate. There would be no reason to assume they're
 10 not accurate.
 11 Q. BY MR. JACOBS: But you haven't had any
 12 discussions about that topic; is that correct?
 13 A. There hasn't been any reason to have a
 14 discussion.
 15 Q. Because no one's said to you, this school
 16 accountability report card with respect to textbooks is
 17 inaccurate?
 18 A. It's a disclosure statement by the district.
 19 Q. And, again, you've had no discussions with
 20 anyone about whether there is any issue about whether --
 21 in terms of policy issue with respect to whether the
 22 SARC's coverage of textbooks is in any cases inaccurate?
 23 MR. VIRJEE: I'm sorry, could you repeat that
 24 question, because the policy issue was a different one
 25 than their actual accuracy, as I understand it.

1 MR. JACOBS: I changed the question a little
 2 bit. Let me withdraw the question.
 3 Q. One of the purposes of the school's
 4 accountability report card is to provide information to
 5 local communities about conditions in the school,
 6 correct?
 7 MR. VIRJEE: Objection. Calls for speculation.
 8 Calls for a legal conclusion.
 9 THE WITNESS: There are a number of factors
 10 that are required to be reported on the report card,
 11 yes.
 12 Q. BY MR. JACOBS: But the policy objective is to
 13 provide information about conditions in the schools to
 14 the local community, correct?
 15 MR. VIRJEE: Objection. Lacks foundation.
 16 Calls for a legal conclusion.
 17 MS. ALTAMIRANO: Join.
 18 THE WITNESS: My understanding is it's to
 19 report about the district as a whole. I'm not clear on
 20 what you mean by "conditions."
 21 Q. BY MR. JACOBS: Well, one aspect that is
 22 supposed to be reported on is the ratio of textbooks per
 23 pupil in the year the textbooks were adopted, are you
 24 aware of that?
 25 MS. ALTAMIRANO: Objection. The statute speaks

1 for itself.
 2 Q. BY MR. JACOBS; Are you aware of that?
 3 A. I'm aware of the general provisions of the
 4 reporting requirements.
 5 Q. And have you had any discussions, then, about
 6 whether school districts self-assessments, as reflected
 7 in the school accountability report card with respect to
 8 textbooks, are or are not accurate?
 9 A. No.
 10 Q. Do you receive any information, you meaning
 11 your office, receive any information from the
 12 coordinated compliance review process as it relates to
 13 textbooks?
 14 MR. VIRJEE: Objection. Calls for speculation.
 15 Lack foundation.
 16 MS. ALTAMIRANO: Join.
 17 THE WITNESS: No, there wouldn't be a reason
 18 for that. They would be utilizing our information to
 19 conduct their reviews.
 20 Q. BY MR. JACOBS: And so just to take a
 21 hypothetical case, if the CCR observed that -- observed
 22 whether students have textbooks in the classrooms, the
 23 physical condition of textbooks and the currency of such
 24 textbooks, and that that observation was there's a
 25 problem in this school district with respect to any of

1 those factors, that would not be reported to you in the
 2 ordinary course of business?
 3 MR. VIRJEE: Objection. Vague and ambiguous.
 4 Calls for speculation. Assumes facts not in evidence.
 5 MS. ALTAMIRANO: Join.
 6 THE WITNESS: My understanding would be they
 7 work directly with the district on those matters.
 8 Q. BY MR. JACOBS: And the answer is, no, it would
 9 not, in your course of business, be reported to me?
 10 A. No, it would not be reported to me.
 11 MR. VIRJEE: Or you. Just teasing.
 12 Q. BY MR. JACOBS: Has your office ever engaged in
 13 any review of a set of CCR reports with a view toward
 14 analyzing the information on those reports in order to
 15 assess the availability of textbooks?
 16 MS. ALTAMIRANO: Objection. Could you limit it
 17 as to time.
 18 MR. JACOBS: While you've been there.
 19 THE WITNESS: No.
 20 MR. VIRJEE: Objection. Calls for speculation.
 21 Lacks foundation.
 22 THE WITNESS: No.
 23 Q. BY MR. JACOBS: So just to ask this question a
 24 little more pointedly, the CCR notification of findings
 25 for the Oakland Unified School District, 1999 to 2000,

1 stated some schools have operated for three to five
 2 years without books, which personally I take to be a
 3 rather extreme case of a textbook availability issue.
 4 That finding was not reported to your office?
 5 MR. VIRJEE: Objection. Assumes facts not in
 6 evidence.
 7 You don't have to assume that's what the CCR
 8 report says.
 9 THE WITNESS: No, I don't have any knowledge of
 10 it.
 11 MS. ALTAMIRANO: Join.
 12 MR. JACOBS: Let me ask you about another
 13 document that we will mark as the next in order.
 14 (Exhibit SAD-56 was marked.)
 15 Q. BY MR. JACOBS: And these are minutes of the
 16 January 17th to 19th, 2001 meeting. And because it was
 17 a long set of minutes, we've just given you page 1 and
 18 page 14 to 15, because I only want to ask you about item
 19 H in the minutes, the presentation by the AAP.
 20 So if you could take a look at that discussion.
 21 A. Uh-huh.
 22 Q. And the minutes state that the representative
 23 of the AAP reported on a funding gap of \$1.2 billion.
 24 Do you see that?
 25 A. Yes.

1 Q. And then it says, commissioners discussed the
2 need to send a message in support of the survey to
3 increase funding to purchase textbooks and instructional
4 materials, and then there's a discussion about --
5 there's a sentence about a discussion about the media or
6 medium for instructional materials, and then there's a
7 motion to support AB 50 to continue the \$250 million
8 under Schiff-Bustamante which was unanimously approved.

9 Do you see that?

10 A. Yes.

11 Q. In the discussion at the commission, was there
12 any critique of the AAP conclusion?

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "critique."

15 THE WITNESS: No, it was a presentation,
16 information purposes only.

17 Q. BY MR. JACOBS: Was there any discussion of
18 whether the commission should solicit other studies
19 directed to the questions the AAP study was directed to?

20 A. No.

21 Q. Was there any -- has there ever been such a
22 discussion in which you've participated?

23 A. Regarding studies?

24 Q. Yes.

25 A. Of what type?

1 Q. Of whether there is a funding gap of the sort
2 described in the AAP study.

3 A. No.

4 Q. Why not?

5 MR. VIRJEE: Objection. Calls for speculation.
6 Lacks foundation.

7 MS. ALTAMIRANO: Join.

8 THE WITNESS: Would you like me to explain?
9 First of all, there's no motion here to advise anything
10 to the State Board on this matter. They discussed
11 sending a message, they took no action.

12 Secondly, the purpose of the curriculum
13 commission, while it may involve funding, is primarily
14 focused on curriculum and the frameworks that surround
15 the content standards and curriculum strategies, et
16 cetera. So any effort in this arena would be advice to
17 the State Board because they are the advisory body to
18 the State Board, so they wouldn't necessarily be
19 conducting studies as it relates to fiscal
20 apportionments.

21 Q. BY MR. JACOBS: But outside the particular
22 context of the commission itself, why hasn't there been
23 a discussion -- and if there hasn't been a discussion,
24 presumably there hasn't been any particular action -- to
25 determine whether the AAP study is accurate or not?

1 MS. ALTAMIRANO: Objection. Calls for
2 speculation.

3 THE WITNESS: Well, the survey just recently
4 came out. And there's -- there are discussions in
5 different arenas about issues, but there's no
6 requirement that someone analyze someone else's study
7 that I know of. And the Department would not be in a
8 position to be analyzing another -- someone's study,
9 particularly a private industry study, unless there was
10 some legislative mandate to do so.

11 Q. BY MR. JACOBS: And can I unpack that question
12 a little bit. The answer you gave me is consistent with
13 the answers I've received from others of your
14 colleagues, which is we can't undertake a study -- in
15 this context it's a study about funding -- unless we get
16 a legislative mandate to do so.

17 MR. VIRJEE: That misstates her testimony.

18 MR. JACOBS: How?

19 MR. VIRJEE: She didn't say they couldn't
20 undertake a study without a legislative mandate. That's
21 not what she said.

22 Q. BY MR. JACOBS: So could you?

23 MR. VIRJEE: Could who, in what context,
24 undertake what? And also vague and ambiguous as to
25 "study."

1 She's already talked about, for example, an
2 informal study, survey that was done with respect to use
3 of funds. That was not legislatively mandated. She
4 testified to it today.

5 THE WITNESS: The question is, could we conduct
6 a study of this particular study?

7 Q. BY MR. JACOBS: If for some reason it's
8 impolitic to do a study that critiques a private study.

9 The question is an important one, is it not?

10 The question whether there is a funding gap?

11 MS. ALTAMIRANO: Objection to the use of
12 "impolitic," whether that's the real issue in the case.
13 The answer actually calls for speculation.

14 THE WITNESS: Well, I can speculate that the
15 important priority would be, in my view, that I would
16 need to have the variables involved in the situation,
17 calling for an assessment or analysis based on those
18 variables.

19 This system is fluid in its operation, it's
20 moving forward continuously. The Schiff-Bustamante
21 funds which have recently gone into effect are just
22 really taking effect. With that doubling of the funds,
23 we are seeing enormous activity in the purchasing of
24 instructional materials, but until we get through the
25 cycles of these areas, I personally believe it's

1 difficult to assess that.
 2 If you look at our informal survey, districts
 3 have not fully expended every single part of their funds
 4 in any one given year, and our analysis of that is
 5 because they, as I said, are working within the cycles
 6 and they anticipate their purchases and they purchase
 7 what they need and then they move forward in the next
 8 cycle to purchase the next content area. It isn't
 9 because they don't want to use the money, it's because
 10 they're using it well, they're managing it well.
 11 Q. BY MR. JACOBS: That informal survey that you
 12 referred to, has that been embodied in a report?
 13 MR. VIRJEE: Objection. Vague and ambiguous as
 14 to "report."
 15 THE WITNESS: We've provided it individually,
 16 you know, separate paper, not within a report.
 17 Q. BY MR. JACOBS: I don't follow. You mean the
 18 individual survey --
 19 A. If someone requests it, we've provided it to
 20 them as information, background information.
 21 Q. And the "it" is what?
 22 A. It's a three-page summary.
 23 Q. Of what you gleaned from the voluntary
 24 responses to your questions?
 25 A. Uh-huh. Well, it gleans from two things, one

1 is just a percentage comparison between the first year
 2 of Schiff-Bustamante and the second year, and how many
 3 districts partially expended, fully expended or did not
 4 expend.
 5 And then the second component is the informal
 6 survey which asks what content areas did you expend in,
 7 and then that data was interesting data, does not give
 8 you the detail of what's going on at the local level,
 9 per se, but it was enlightening to see what areas there
 10 were concentrations in the first couple of years.
 11 And, as expected, history social science and
 12 science, there was a lot of activity in those areas
 13 because those lists had been approved.
 14 Q. I misunderstood something from earlier that
 15 you -- I now realize I misunderstood something.
 16 The informal aspect of this was about the
 17 content areas in which the purchasing had been directed
 18 to?
 19 A. Yes.
 20 Q. And how did you characterize the nature of the
 21 question about how Schiff -- the extent to which
 22 Schiff-Bustamante funds had been expended?
 23 A. There's three boxes on the form and it says,
 24 did you in such-and-such year, the two years that we had
 25 already -- we were working on assurances, did you fully

1 expend this fiscal year the apportionment provided to
 2 you for that fiscal year, did you partially expend that
 3 apportionment, or did you not expend the funds at all.
 4 Q. And did any of the responses include comments?
 5 A. No.
 6 Q. And the summary that you're referring to
 7 describes how many districts answered in which box?
 8 A. For two fiscal cycles, yes.
 9 Q. And do you also have the original reports?
 10 A. Yes.
 11 Q. So if one wanted to test whether a district's
 12 assertions that, well, we ran out of money were
 13 literally true, one could go back to the report, to you,
 14 for example, and find out whether they'd expended all
 15 their Schiff-Bustamante funds?
 16 A. In the broadest sense, yes.
 17 MR. VIRJEE: I hate to cut you off, but it's
 18 after 5:00.
 19 MR. JACOBS: Thank you very much.
 20 THE WITNESS: Thank you.
 21 (The deposition concluded at 5:04 p.m.)
 22 ---o0o---
 23
 24
 25

1 Please be advised that I have read the
 2 foregoing deposition. I hereby state there are:
 3
 4 (check one) _____ NO CORRECTIONS
 5 _____ CORRECTIONS ATTACHED
 6
 7 _____
 8 Date Signed
 9
 10 _____
 11 SHERRY GRIFFITH
 12 Case Title: Williams vs State, Volume I
 13 Date of Deposition: Wednesday, July 25, 2001
 14 ---o0o---
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1 DEPONENT'S CHANGES OR CORRECTIONS
 2 Note: If you are adding to your testimony, print the
 3 exact words you want to add. If you are deleting from
 4 your testimony, print the exact words you want to
 5 delete. Specify with "Add" or "Delete" and sign this
 6 form.
 7 DEPOSITION OF: SHERRY GRIFFITH, VOLUME I
 8 CASE: WILLIAMS VS STATE OF CALIFORNIA
 9 DATE OF DEPOSITION: WEDNESDAY, JULY 25, 2001
 10 I, _____, have the following
 11 corrections to make to my deposition:

12 PAGE LINE CHANGE/ADD/DELETE

13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
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 6 Ms. Sherry Griffith
 7 721 Capitol Mall, Room 636
 8 Sacramento, CA 95814
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 10 Re: Williams vs State of California, V. I
 11 Date Taken: Wednesday, July 25, 2001
 12 Dear Ms. Griffith:
 13 Your deposition is now ready for you to read, correct,
 14 and sign. The original will be held in our office for
 15 45 days from the date of your last day of deposition.
 16 If you are represented by counsel, you may wish to
 17 discuss with him/her the reading and signing of your
 18 deposition. If your attorney has purchased a copy of
 19 your deposition, you may review that copy. If you
 20 choose to read your attorney's copy, please fill out,
 21 sign, and submit to our office the DEPONENT'S CHANGE
 22 SHEET located in the back of your deposition.
 23 If you choose to read your deposition at our office, it
 24 will be available between 9:00 a.m. and 4:00 p.m.
 25 Please bring this letter as a reference.
 If you do not wish to read your deposition, please sign
 here and return within 30 days of the date of this
 letter.

 SHERRY GRIFFITH DATE
 Sincerely,
 TRACY LEE MOORELAND, CSR
 Esquire Deposition Services
 Job No. 27831
 cc: Michael Jacobs, Esq. Framroze Virjee, Esq.
 Sarah Kaatz, Esq. Margarita Altamirano, Esq.
 Judy Cias, Esq.

1 REPORTER'S CERTIFICATE
 2
 3 I certify that the witness in the foregoing
 4 deposition,
 5 SHERRY GRIFFITH,
 6 was by me duly sworn to testify the truth, the whole
 7 truth, in the within-entitled cause; that said
 8 deposition was taken at the time and place therein
 9 named; that the testimony of said witness was reported
 10 by me, a duly certified shorthand reporter and a
 11 disinterested person, and was thereafter transcribed
 12 into typewriting.
 13 I further certify that I am not of counsel or
 14 attorney for either or any of the parties to said cause,
 15 nor in any way interested in the outcome of the cause
 16 named in said deposition.
 17 IN WITNESS WHEREOF, I have hereunto set my hand
 18 this 7th day of August, 2001.
 19
 20
 21
 22
 23 TRACY LEE MOORELAND, CSR 10397
 24 State of California
 25

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 8 San Francisco, CA 94105-2482
 9
 10 Re: Williams vs State of California
 11 Deposition of: Sherry Griffith, Volume I
 12 Date Taken: Wednesday, July 25, 2001
 13
 14 Dear Ms. Perrin:
 15
 16 We wish to inform you of the disposition of this
 17 original transcript. The following procedure is being
 18 taken by our office:
 19
 20 _____ The witness has read and signed the
 21 deposition. (See attached.)
 22 _____ The witness has waived signature.
 23 _____ The time for reading and signing
 24 has expired.
 25 _____ The sealed original deposition is
 being forwarded to your office.
 _____ Other:
 Sincerely,
 TRACY LEE MOORELAND, CSR
 Esquire Deposition Services
 Ref. No. 27831