

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

ELIEZER WILLIAMS, et al.,)

Plaintiffs,)

vs.)

No. 312 236

STATE OF CALIFORNIA,)

DELAINE EASTIN, State)

Superintendent of Public)

Instruction, STATE DEPARTMENT)

OF EDUCATION, STATE BOARD OF)

EDUCATION,)

Defendants.)

-----)
AND RELATED CROSS-ACTION.)
-----)

DEPOSITION OF NATHAN SCOTT HILL
Sacramento, California
Thursday, January 17, 2002

Reported by:
TRACY LEE MOORELAND
CSR No. 10397
Job No. 30594

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1 APPEARANCES

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4 ACLU FOUNDATION OF SOUTHERN CALIFORNIA

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9 For the Plaintiffs Eliezer Williams, et al.:

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15 For the Defendant Delaine Eastin, State Superintendent

16 of Public Instruction, State Department of Education,

17 State Board of Education:

18 DEPARTMENT OF JUSTICE

19 OFFICE OF THE ATTORNEY GENERAL

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1 APPEARANCES, cont.

2

3 The Intervener:

4 CALIFORNIA SCHOOL BOARD ASSOCIATION

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10 For the Defendant State of California:

11 O'MELVENEY & MYERS LLP

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16 Also present: Gena Peyton, Law Clerk from the

17 Attorney General's office

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7 EXHIBITS

8 Deposition of NATHAN SCOTT HILL

9 Thursday, January 17, 2002

10 Number Page

11

12 (No exhibits were offered.)

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1 BE IT REMEMBERED, that on Thursday, January 17,

2 2002, commencing at the hour of 3:02 p.m., thereof, at

3 the offices of Morrison & Forester, 400 Capitol Mall,

4 26th Floor, Sacramento, California, before me,

5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in

6 the State of California, there personally appeared

7 NATHAN SCOTT HILL,

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 (Mr. Affeldt not present.)

14 EXAMINATION BY MR. ROSENBAUM

15 Q. How are you, Mr. Hill?

16 A. I'm fine. Thank you.

17 Q. Could you state your full name for the record.

18 A. Yes, my first name is Nathan, my middle name is

19 Scott, last name H-i-l-l.

20 Q. And Scott is with two T's?

21 A. Yes.

22 Q. Have you ever been deposed before?

23 A. No.

24 Q. Have you had a chance just generally to talk

25 about the procedures we'll be following with counsel?

1 A. Yes.

2 Q. Let me briefly review them with you. If you've

3 got any questions, feel free to ask me. Okay?

4 A. Yeah.

5 Q. One of the rules is when you answer, if you

6 answer audibly, it just helps the reporter in addition

7 to nodding your head. Okay?

8 A. Sure.

9 Q. Okay. Mr. Hill, this is a deposition in the

10 case called Williams versus the State of California.

11 It's not my intention to try to trick or deceive you

12 with any of my questions, but merely to gain some

13 information that's relevant to the lawsuit.

14 Do you understand that?

15 A. I do.

16 Q. So, therefore, if any of my questions are

17 unclear, if you want me to restate a question or to

18 clarify it in any way, please ask me, I'll be very happy

19 to accommodate you.

20 Do you understand that?

21 A. I do.

22 Q. Otherwise I'm going to assume you're answering

23 the questions as they were asked as fully and as fairly

24 as you possibly can.

25 Do you understand that?

1 A. I do.

2 Q. Just a few moments ago the reporter

3 administered an oath to you. Even though we're in an

4 informal setting and you can drink Diet Coke or coffee

5 as you'd like, you're testifying under the same pains

6 and penalties of perjury as you would in a courtroom.

7 Do you understand that?

8 A. I do understand that.

9 Q. You're going to get a booklet at the end of the

10 deposition, and it's going to have my questions and your

11 answers and any other comments or questions that counsel

12 have asked, and you'll have an opportunity to review it.

13 Do you understand that?

14 A. I do.

15 Q. And you're absolutely free to make any changes

16 to any of the answers that you gave me.

17 Do you understand that?

18 A. I do.

19 Q. But I just want you to understand that either

20 myself or Mr. Hajela or any counsel can draw whatever

21 inferences we think are appropriate about the changes

22 that you make to your answers.

23 Do you understand that?

24 A. I do.

25 Q. Any reason we shouldn't go forward?

1 A. No.

2 Q. Besides it's a lovely day. Okay.

3 Do you have a resume, Mr. Hill?

4 A. I do have a resume. I do not have one with me.

5 Q. Okay. I take it it's accessible in your

6 office?

7 A. I can make that accessible.

8 Q. I would appreciate that for tomorrow morning,

9 if that's not a big hassle.

10 A. I will try to produce it for tomorrow morning.

11 Q. What's your position?

12 A. I'm chief deputy superintendent in the

13 Department of Education.

14 Q. And how long have you had that position,

15 please?

16 A. I've had that position since May of 1999.

17 Q. Okay. And I take it you report to

18 Superintendent Eastin?

19 A. Correct.

20 Q. Is she the person to whom you directly report?

21 A. Yes.

22 Q. Do you have persons who directly report to you?

23 A. Yes.

24 Q. Who are they?

25 A. Terrie Burns, deputy superintendent.

1 Q. Is it Mr. or Ms. Burns?

2 A. Ms. Burns.

3 Q. Can you spell her last name, please?

4 A. B-u-r-n-s.

5 Q. Okay.

6 A. Susie Lange, L-a-n-g-e, deputy superintendent;

7 Linda Cabatic, general counsel; Marsha Bedwell, she's

8 assistant superintendent; Paul Warren, deputy

9 superintendent; and then I have my support staff.

10 Q. Okay. Do you have regular meetings with

11 Ms. Burns, Ms. Lange, Ms. Cabatic, Ms. Bedwell,

12 Mr. Warren?

13 MR. VIRJEE: Objection. Vague and ambiguous as

14 to "regular" and "meetings."

15 THE WITNESS: Yes.

16 Q. BY MR. ROSENBAUM: And these are staff

17 meetings, is that what they are?

18 A. Yes.

19 MR. VIRJEE: Objection. Vague and ambiguous as

20 to "staff meetings."

21 Q. BY MR. ROSENBAUM: And do they occur on a

22 weekly or otherwise regular basis by time?

23 A. It varies.

24 Q. How do they -- explain to me when they occur as

25 best you can.

1 A. We have some meetings that we try to have on a
 2 weekly basis, others more irregularly, such as monthly.
 3 Q. Help me get down the responsibilities.
 4 Ms. Cabatic, she's the counsel for the Department of
 5 Education; is that right?
 6 A. Yes.
 7 Q. And Ms. Lange, what's her formal title?
 8 A. She's deputy superintendent for finance,
 9 technology and administration.
 10 Q. Okay. And how about Ms. Burns?
 11 A. She's deputy superintendent for governmental
 12 affairs.
 13 Q. Does that mean dealing with the legislature and
 14 the governor's office?
 15 MR. VIRJEE: Objection. Vague and ambiguous.
 16 MR. ROSENBAUM: That's a good objection.
 17 Q. Why don't you tell me what that means?
 18 A. Ms. Burns deals with state and federal
 19 legislation issues.
 20 Q. Okay. And Ms. Bedwell?
 21 A. She is -- she directs the school and district
 22 accountability division.
 23 Q. And Mr. Warren?
 24 A. He's deputy superintendent for the
 25 accountability branch.

1 Q. Are you familiar, Mr. Hill, with the recent
 2 federal legislation that was signed by President Bush?
 3 MR. VIRJEE: Objection. Vague and ambiguous as
 4 to "familiar" and also "recent legislation."
 5 THE WITNESS: I would need more information.
 6 Q. BY MR. ROSENBAUM: You know that a bill was
 7 just passed and signed by the President dealing with
 8 education, No Child Shall Be Left Behind Act?
 9 A. I'm aware of the Elementary and Secondary
 10 Education Act reauthorization.
 11 Q. Okay. And to your knowledge, Mr. Hill, have
 12 any memos been prepared that deal in sum or substance
 13 with the subject matter of what California's response to
 14 that act should be?
 15 MR. VIRJEE: Objection. Vague and ambiguous as
 16 to "response." Also calls for speculation.
 17 THE WITNESS: Yes.
 18 Q. BY MR. ROSENBAUM: And if I just changed the
 19 question slightly, are you aware of any memos, memoranda
 20 that deal with the Act itself that you've examined? Is
 21 your answer still yes?
 22 MR. VIRJEE: Objection. Vague and ambiguous as
 23 to deals with the Act itself.
 24 THE WITNESS: I think I would need you to ask
 25 the question differently because I can't answer it

1 affirmatively that way.
 2 Q. BY MR. ROSENBAUM: Let's go back two questions.
 3 When you said yes to the memo, what were you referring
 4 to?
 5 A. The Department has prepared a memorandum to the
 6 field regarding the change in hiring of
 7 paraprofessionals.
 8 Q. Do you know who authored that?
 9 A. I am aware that it came out of Joanne Mendoza's
 10 branch.
 11 Q. Okay. And what branch is that?
 12 A. Curriculum and instructional leadership branch.
 13 Q. And did you sign off on that?
 14 MR. SEFERIAN: Objection. Vague and ambiguous
 15 as to "sign off."
 16 MR. VIRJEE: Just for clarification, you asked
 17 if he signed it or approved it?
 18 MR. ROSENBAUM: I'll withdraw it.
 19 Q. Did you review it before it was sent out to the
 20 field?
 21 A. I'm trying to recall, and I can't recall. I
 22 can't recall. I've seen a copy of what went to the
 23 field.
 24 Q. When you say "field," what do you mean by that?
 25 A. To county superintendents -- excuse me, to

1 district superintendents.
 2 Q. Anyone else?
 3 A. I recall there was a CC distribution list, I do
 4 not recall who was on that list.
 5 Q. Okay. Who signed the memo actually in terms of
 6 where it came from, was it Ms. Mendoza?
 7 A. Yes.
 8 Q. Did Superintendent Eastin sign it as well, do
 9 you know?
 10 A. No.
 11 Q. Okay. Any other memoranda which you've seen
 12 that relate to the federal bill that you mentioned?
 13 MR. VIRJEE: Objection. Vague and ambiguous as
 14 to "memoranda." Also object to the extent it calls for
 15 attorney/client privilege.
 16 THE WITNESS: I would need some clarification
 17 as to what you're seeking.
 18 MR. ROSENBAUM: Right now it's just a broad
 19 question. I'm not asking for the contents of any of
 20 these documents yet.
 21 Q. What I want to know is, have you seen any
 22 memorandum in addition to the one that you described to
 23 me in which the subject matter of the federal
 24 legislation is discussed?
 25 MR. VIRJEE: Any memorandum generated within

1 the Department, or anywhere?
 2 MR. ROSENBAUM: Let's start with generated
 3 within the Department. Thank you.
 4 THE WITNESS: Yes.
 5 Q. BY MR. ROSENBAUM: Okay. And I'm not
 6 interested in any memorandum that was authored by an
 7 attorney, okay, at this stage.
 8 What's the basis of your answer? What
 9 memoranda are you referring to?
 10 MR. VIRJEE: Objection to the extent it calls
 11 for attorney/client privileged information.
 12 THE WITNESS: I'm trying to figure out what
 13 might be a -- we have prepared a summary document of the
 14 legislation.
 15 Q. BY MR. ROSENBAUM: Okay. When you say "we,"
 16 whom do you mean?
 17 A. It was prepared by the governmental affairs
 18 branch.
 19 Q. That's Ms. Burns' branch?
 20 A. Correct.
 21 Q. Do you know who was involved in the authorship
 22 of that?
 23 A. I don't. I only recall that it came from
 24 Ms. Burns' branch.
 25 Q. And do you know who directed Ms. Burns, if

1 anyone, to have her branch prepare the memorandum?
 2 A. I don't.
 3 Q. Okay. Have you read the document?
 4 A. Yes.
 5 Q. Okay. And can you tell me your recollection as
 6 to the contents of that document?
 7 MR. SEFERIAN: I'll object. I think that
 8 document might be privileged, might be attorney/client
 9 privileged. I'd like to speak to the witness about that
 10 before he answers that question.
 11 MR. ROSENBAUM: Let's hold. You don't need to
 12 take a break right now. I'll come back to it.
 13 Q. My understanding, by the way, Mr. Hill, the
 14 document you're referring to came out of the government
 15 affairs branch. So far as you know, did any attorney
 16 draft that document or participate in the drafting of
 17 that document?
 18 MR. VIRJEE: Objection. Calls for speculation.
 19 Lacks foundation.
 20 THE WITNESS: I don't know the answer to that
 21 question.
 22 Q. BY MR. ROSENBAUM: Okay. Thank you. You don't
 23 know if any attorney was involved in the preparation,
 24 that's what you're telling me?
 25 MR. VIRJEE: Objection. Asked and answered.

1 Calls for speculation. Lacks foundation.
 2 THE WITNESS: I don't know.
 3 Q. BY MR. ROSENBAUM: And in addition to the
 4 document that came out of government affairs and the
 5 document that came from Ms. Mendoza, any other documents
 6 of which you're aware that relate to the subject matter
 7 of the federal legislation that came from the Department
 8 of Education?
 9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to "relates to."
 11 THE WITNESS: I can't recall any other
 12 documents.
 13 Q. BY MR. ROSENBAUM: Okay. So far as you know,
 14 Mr. Hill -- strike that.
 15 Have you directed any of your subordinates to
 16 prepare any memoranda relating to the subject matter of
 17 the federal legislation?
 18 A. No.
 19 Q. Do you know if -- to your knowledge, has
 20 Superintendent Eastin directed anyone in the Department
 21 to prepare any memoranda regarding the subject matter of
 22 the federal legislation?
 23 A. Yes.
 24 Q. Okay. And what's the basis of that answer,
 25 please?

1 A. In fulfilling our responsibilities,
 2 Superintendent Eastin has asked us to develop a
 3 memorandum to the field regarding the overall changes in
 4 ESEA law that result from the reauthorization.
 5 Q. When you say ES --
 6 A. ESEA.
 7 Q. Just for the record, what do you mean by that?
 8 A. Elementary and Secondary Education Act.
 9 Q. Did she ask you to oversee the development of
 10 such a memorandum?
 11 A. Yes.
 12 Q. Did you task anyone with that responsibility?
 13 A. No.
 14 Q. Are you -- do you plan to prepare it yourself?
 15 MR. VIRJEE: Objection. Vague and ambiguous as
 16 to "prepare." Also calls for speculation.
 17 THE WITNESS: I have not made a determination
 18 yet.
 19 Q. BY MR. ROSENBAUM: And have you discussed the
 20 request from the superintendent with any of your staff?
 21 A. No.
 22 Q. Okay. When did this request -- when was it
 23 made?
 24 A. Earlier this week.
 25 Q. Did the superintendent say anything regarding

1 the Act?

2 MR. VIRJEE: Objection. Calls for speculation.
3 Lacks foundation. Also vague and ambiguous as to "say
4 anything."

5 MR. ROSENBAUM: I'll rephrase it slightly.

6 Q. Did -- when she asked you to please prepare a
7 memorandum, was that at a staff meeting?

8 A. I don't recall the circumstance.

9 Q. Okay. And did she -- in addition to saying
10 could you please develop a memorandum, did she discuss
11 the Act at all?

12 MR. VIRJEE: Objection. Vague and ambiguous as
13 to "discuss the Act." It also misstates his testimony
14 because he said that he was asked to develop a
15 memorandum to the field re overall changes in the ESEA.

16 THE WITNESS: I'm sorry.

17 Q. BY MR. ROSENBAUM: I'm interested in new
18 legislation. What did she say about it in addition to
19 preparing a memorandum for the field?

20 MR. VIRJEE: Objection. Assumes facts. Calls
21 for speculation. Assumes she said something else.

22 THE WITNESS: Superintendent Eastin -- I think
23 I did answer the question previously -- she's asked to
24 communicate the changes to the field, and that was the
25 direct -- that was the direction she provided.

1 teachers?

2 A. Yes.

3 MR. SEFERIAN: Objection. Vague and ambiguous
4 as to "requirements."

5 Q. BY MR. ROSENBAUM: And what's your
6 understanding of what those requirements are? Again, I
7 don't mean as a lawyer, just in your capacity with the
8 Department.

9 MR. VIRJEE: Objection. The Act speaks for
10 itself. It calls for a legal conclusion. There's been
11 no evidence that he's read the Act. No foundation has
12 been laid.

13 THE WITNESS: I think that I would ask for a
14 more specific question with regard to teachers.

15 Q. BY MR. ROSENBAUM: Well, are you aware of --
16 have you read the Act?

17 A. I have not read the Act.

18 Q. But you've read a summary of the Act?

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

21 THE WITNESS: I have reviewed a summary of the
22 Act.

23 Q. BY MR. ROSENBAUM: And did that summary discuss
24 requirements of the Act with respect to teacher
25 qualifications?

1 Q. BY MR. ROSENBAUM: Okay. And was that the sum
2 and substance of her discussion about the --

3 A. As I recall, yes.

4 Q. Okay. Has there been any discussion of which
5 you're aware, Mr. Hill, about the capacity of California
6 to comply with the Act?

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

9 THE WITNESS: I think I would need a more
10 direct question.

11 Q. BY MR. ROSENBAUM: Are you aware, Mr. Hill,
12 that this act establishes certain requirements for
13 states?

14 A. I am.

15 Q. Okay. And what's your understanding of what
16 requirements it establishes?

17 MR. VIRJEE: Objection. Calls for a legal
18 conclusion. Calls for speculation. Calls for an expert
19 opinion which this witness is not competent to give.

20 MR. ROSENBAUM: I just want your understanding.

21 THE WITNESS: I think it would be helpful to
22 have something more specific because the legislation
23 asks for many ESEA responsibilities.

24 Q. BY MR. ROSENBAUM: Okay. Are you aware that
25 the Act has requirements for states with respect to

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

3 MR. SEFERIAN: I'll object to the contents of
4 the summary to the extent it calls for revealing
5 attorney/client communications, if the summary you're
6 asking about is an attorney/client document.

7 THE WITNESS: Mr. Rosenbaum, could you perhaps
8 give me a little bit more information here about what --
9 you asked about teacher qualifications.

10 Q. BY MR. ROSENBAUM: Yes, I have. I'm interested
11 in figuring out what your understanding is as to what
12 the Act requires of states with respect to hiring and
13 placing qualified teachers in classrooms, that's the
14 question.

15 MR. VIRJEE: Objection as to relevancy. Also
16 lacks foundation. Calls for speculation. He's already
17 said he hasn't read the Act.

18 MR. ROSENBAUM: Go ahead.

19 MR. VIRJEE: Also the Act speaks for itself.

20 THE WITNESS: I think my sense is that -- well,
21 counsel is correct, the Act speaks for itself with
22 regard to teacher qualifications.

23 Q. BY MR. ROSENBAUM: I know that. But I'm
24 interested in -- I'm entitled to find out what personnel
25 in the Department of Education understand the Act to say

1 and what their response is.

2 So I'm asking you, sitting here today, what
3 your understanding is with respect to what requirements,
4 if any, the Act provides regarding teacher
5 qualifications?

6 MR. VIRJEE: Objection. Calls for speculation.
7 Lacks foundation.

8 THE WITNESS: The Act seeks to compel states to
9 ensure that there are highly-qualified teachers in place
10 over a certain time frame.

11 Q. BY MR. ROSENBAUM: When you say "in place,"
12 what do you mean by that?

13 MR. VIRJEE: Objection. Calls for speculation.
14 Lacks foundation. If you're asking him to tell you what
15 the Act says or means, also calls for a legal
16 conclusion.

17 THE WITNESS: I think I've answered the
18 question.

19 Q. BY MR. ROSENBAUM: Sitting here today,
20 Mr. Hill, when you say "in place," do you have an
21 understanding of what that means?

22 MR. SEFERIAN: Objection. Calls for an
23 inadmissible legal opinion.

24 MR. VIRJEE: Obviously, Mark, you're asking him
25 in the capacity that he just used those words.

1 for privileged and confidential communications.

2 MR. VIRJEE: I'll object on the grounds of
3 ability.

4 THE WITNESS: Mr. Rosenbaum, if you don't mind,
5 I really do need to ask counsel a question on that.

6 MR. SEFERIAN: Can we go off the record?

7 MS. READ-SPANGLER: Why don't we take a short
8 break and then John can get his stuff out without --

9 MR. AFFELDT: I just need to get a pen at this
10 point.

11 THE WITNESS: Okay.

12 MR. ROSENBAUM: Let me come back to it.

13 Q. You told me, Mr. Hill, that -- let me ask you
14 one more question with respect to -- I don't think this
15 offends your request.

16 To your knowledge, is there anyone in the
17 Department of Education at this time who has
18 responsibilities for compliance with respect to this
19 legislation, this federal legislation?

20 MR. VIRJEE: Objection. Vague and ambiguous as
21 to "responsibilities for" and "compliance." Also vague
22 as to time.

23 THE WITNESS: I think I answered the question
24 previously with respect to Superintendent Eastin's
25 directive to me to prepare something.

1 MR. ROSENBAUM: That's correct.

2 THE WITNESS: In the Act the -- what I mean by
3 in place is that the federal government is encouraging,
4 through this legislation, states to ensure that
5 highly-qualified teachers as defined by the legislation
6 are hired for all students.

7 (Mr. Affeldt entered the room.)

8 Q. BY MR. ROSENBAUM: Okay. And when you say
9 "highly qualified," do you have an understanding of what
10 that phrase means?

11 MR. VIRJEE: Other than what he's just said as
12 defined by the legislation?

13 THE WITNESS: It's only as defined by the
14 legislation. I have not read the legislation beyond
15 that.

16 Q. BY MR. ROSENBAUM: Okay. Sitting here today,
17 do you have any understanding as to what the legislation
18 says with respect to the meaning of the phrase "highly
19 qualified" as you just used it?

20 A. I do not.

21 Q. Have you been at any meetings, Mr. Hill, where
22 the subject matter of the ability of California to place
23 highly-qualified teachers in place over a certain time
24 period in concert with the statute has been discussed?

25 MR. SEFERIAN: Object to the extent it calls

1 Q. BY MR. ROSENBAUM: Okay. Thanks. You began by
2 telling me you are the chief deputy superintendent of
3 the Department of Education?

4 A. Correct.

5 Q. Okay. And can you tell me, Mr. Hill, what your
6 duties and responsibilities are in that position?

7 A. In the superintendent's absence I am
8 responsible for day-to-day administration of the
9 Department. I have specific oversight responsibilities
10 for the branches I've already described. I serve as a
11 staff -- as staff to the State Board of Education in
12 addition to the state superintendent.

13 Q. Any other responsibilities?

14 A. I think that summarizes it.

15 Q. Okay. Let me ask you about some programs,
16 maybe you can tell me. I take it your department has
17 duties and responsibilities with respect to PSAA?

18 A. Yes.

19 Q. Okay. And with API?

20 A. Yes.

21 Q. II/USP?

22 A. No.

23 Q. Okay. Do you personally have any duties or
24 responsibilities with respect to II/USP?

25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to "personally" and "duties" and "responsibilities."
 2 THE WITNESS: No, I do not personally have
 3 those responsibilities.
 4 Q. BY MR. ROSENBAUM: In the branches which you
 5 have oversight responsibility, to your knowledge, do
 6 they have any duties or responsibilities with respect to
 7 II/USP?
 8 A. Yes.
 9 Q. Which, if any, of those branches?
 10 A. Under Mr. Warren -- this may clarify it for
 11 you. Under Mr. Warren, Bill Padia's division generates
 12 the data that is used for the II/USP program. Joanne
 13 Mendoza's branch works to support schools in II/USP.
 14 Q. Okay. And Ms. Mendoza's branch is what?
 15 A. Curriculum and instructional leadership.
 16 Q. And when you say "support schools," what do you
 17 mean by that in that answer?
 18 A. For those schools that do not improve in terms
 19 of academic performance, we -- Ms. Mendoza's branch
 20 provides some assistance.
 21 I should clarify one other point to my answer
 22 about Mr. Padia. On the rewards side Mr. Padia's
 23 division does administer the awards program that is
 24 generated -- that is based on the data of those who meet
 25 their growth targets.

1 Q. Okay. And help me understand what that means.
 2 That means that their data identifies who receives the
 3 rewards, that's part of it?
 4 A. Correct.
 5 Q. And do they actually hand out the checks?
 6 MR. SEFERIAN: Objection. Vague and ambiguous
 7 as to "hand out."
 8 MR. VIRJEE: Also calls for speculation.
 9 THE WITNESS: No.
 10 Q. BY MR. ROSENBAUM: Okay. What else, if
 11 anything, does Mr. Padia do with respect to the rewards?
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "do with." And, Mark, you took his depo for two
 14 days, you know what he does with respect to it.
 15 MR. ROSENBAUM: You're right. That's a bad
 16 question.
 17 Q. Now, when you say Ms. Mendoza offers some
 18 assistance, tell me what you mean by that?
 19 MR. SEFERIAN: Objection. Asked and answered.
 20 MR. VIRJEE: Exactly the same question.
 21 MR. ROSENBAUM: I'm trying to figure out what
 22 sort of assistance you're referring to.
 23 THE WITNESS: For schools that are -- for
 24 schools that are threatening to reach the end of their
 25 time in II/USP without meeting growth targets, there

1 is -- we provide a -- or we try to provide some
 2 technical assistance to those schools.
 3 Q. BY MR. ROSENBAUM: Okay. Do you know or have
 4 an estimate, Mr. Hill -- when you say threatening to
 5 reach the time, tell me what you mean by that?
 6 A. II/USP has a specific timetable that schools
 7 who participate must work within to reach their academic
 8 improvement goals.
 9 Q. Do you have an understanding what that
 10 timetable is?
 11 MR. VIRJEE: Objection. The legislation and
 12 statute speaks for itself.
 13 MR. ROSENBAUM: I'm just interested in your
 14 understanding.
 15 MR. VIRJEE: Objection. Calls for speculation.
 16 Calls for a legal conclusion.
 17 THE WITNESS: With the recent change in
 18 legislation, I'm not certain right now.
 19 Q. BY MR. ROSENBAUM: Okay. Do you know,
 20 Mr. Hill, whether there are schools today that you would
 21 put into the category of threatening -- threatened to
 22 reach that time?
 23 MR. VIRJEE: As he's defined it?
 24 MR. ROSENBAUM: Yes.
 25 MR. SEFERIAN: Objection. Lacks foundation.

1 THE WITNESS: We are -- I believe there are
 2 approximately -- there is some number of schools who
 3 after two years in the program have not indicated the
 4 kind of performance that would suggest that they're on
 5 the track to get out of II/USP in that sense.
 6 Q. BY MR. ROSENBAUM: Okay. And when you say
 7 "some number," I'm not going to ask you for an exact
 8 number, but do you have a ballpark figure?
 9 MR. SEFERIAN: Objection. Lacks foundation.
 10 Calls for speculation.
 11 THE WITNESS: Yeah, I'm sorry, it would be
 12 truly speculation. I don't know.
 13 Q. BY MR. ROSENBAUM: You're absolutely free to
 14 tell me the same thing. I mean, is it more or less than
 15 20, more or less than 100, more or less than 200? Do
 16 you have any idea?
 17 MR. VIRJEE: Objection. Lacks foundation.
 18 Calls for speculation.
 19 He doesn't want you to guess.
 20 MS. READ-SPANGLER: Since they're not at the
 21 end of the time frame, I'm not sure how he could do
 22 anything other than guess.
 23 MR. ROSENBAUM: He can do whatever he wants.
 24 Q. When you said "some number," I just want to --
 25 I want to know if it's a two-digit number, a three-digit

1 number.

2 A. I really could not tell you whether it's a two-
3 or three-digit number. I couldn't -- I really could not
4 provide you with an accurate guess.

5 Q. To your knowledge, has the Department made a
6 list of those schools that are in this category of
7 threatened to reach the time limit?

8 MR. VIRJEE: Objection. Vague and ambiguous.
9 I mean, vague as to time.

10 THE WITNESS: I don't know the answer to that.

11 Q. BY MR. ROSENBAUM: You've never seen a listing
12 of those schools so far as you remember?

13 A. That's correct, as far as I remember.

14 Q. Okay. Now, are you aware, Mr. Hill, that
15 II/USP is a voluntary program for schools?

16 A. Yes.

17 Q. Okay. And to your knowledge, does the
18 Department look at schools which have not volunteered to
19 be part of II/USP to see whether or not they would
20 otherwise qualify for II/USP?

21 MR. VIRJEE: Objection. Vague and ambiguous as
22 to "volunteered." Also misstates the statute. Calls
23 for a legal conclusion.

24 MR. SEFERIAN: Vague and ambiguous as to
25 "look." Assumes facts not in evidence

1 Q. BY MR. ROSENBAUM: Let's make it more specific.
2 You told me several questions ago that there were a
3 certain number of schools, some number of schools I
4 think is what your phrase was, that were in a category
5 of threatening to reach the time. Do you remember that?

6 A. I do.

7 Q. Now, to your knowledge, does the Department
8 monitor schools that are not in II/USP to see if they
9 would otherwise be in that category, threatened to reach
10 the time?

11 MR. VIRJEE: Objection. Nonsensical. How
12 could they be threatening to be in the time if they're
13 not in the program.

14 MR. ROSENBAUM: If they were in the program.

15 MR. VIRJEE: Objection. Incomplete
16 hypothetical. Would depend on when they went into the
17 program. Doesn't make any sense, Mark.

18 MR. SEFERIAN: Vague and ambiguous as to
19 "monitor." Assumes facts not in evidence.

20 THE WITNESS: I think I would need to have --
21 as the question is stated, I don't think I can answer it
22 accurately. I don't think I can answer it.

23 Q. BY MR. ROSENBAUM: Because?

24 A. Because the Department as the state agency
25 gathers and maintains lots of information about schools,

1 THE WITNESS: I'm sorry, could you restate the
2 question.

3 Q. BY MR. ROSENBAUM: Let me tell you what I'm
4 interested in finding out. You tell me -- is it your
5 understanding of II/USP that the Department cannot
6 automatically put a school in II/USP; is that right?

7 MR. VIRJEE: Objection. Incomplete
8 hypothetical.

9 MR. ROSENBAUM: Without voluntary -- without
10 the school volunteering.

11 MR. VIRJEE: Objection. Incomplete
12 hypothetical. Calls for speculation. Also vague and
13 ambiguous as to volunteer. Also calls for a legal
14 conclusion.

15 MR. ROSENBAUM: Go ahead, sir.

16 THE WITNESS: The Department has not placed any
17 schools voluntarily in II/USP.

18 Q. BY MR. ROSENBAUM: Here's my question, what I'm
19 trying to figure out is, does the Department monitor
20 schools that would be eligible to be in II/USP but have
21 not volunteered?

22 MR. SEFERIAN: Objection. Vague and ambiguous
23 as to "monitored." Assumes facts not in evidence.

24 THE WITNESS: I don't understand your use of
25 "monitor."

1 and what you refer to as monitor or support or provide
2 technical assistance on may be provided from a very
3 different -- for different purposes, and it may be
4 coincidental or purposeful that it's a low-performing
5 school.

6 Q. Okay. You said to me earlier that II/USP is
7 not part of your responsibilities other than what you've
8 talked to me about; is that right?

9 MR. VIRJEE: Objection. Asked and answered.

10 THE WITNESS: Correct.

11 Q. BY MR. ROSENBAUM: Okay. If the state --
12 you're aware that under the statute the State, under
13 certain circumstances, can take over a school?

14 MR. VIRJEE: Objection. Vague and ambiguous as
15 to "take over." Also calls for a legal conclusion.

16 MR. SEFERIAN: Incomplete hypothetical
17 question.

18 THE WITNESS: Mr. Rosenbaum, are you referring
19 to the sanctions that the State directs towards schools?

20 MR. ROSENBAUM: Exactly.

21 THE WITNESS: I am aware that one of the
22 sanctions that the State -- that the statute provides is
23 for the State to assume the responsibilities for a
24 school.

25 Q. BY MR. ROSENBAUM: Okay. And do you, Mr. Hill,

1 have any duties or responsibilities with respect to that
 2 sanction, the sanction of assuming responsibilities for
 3 running the school?
 4 MR. VIRJEE: Objection. Are you asking about
 5 assuming the responsibilities or making the decision?
 6 It's vague and ambiguous on that issue.
 7 MR. ROSENBAUM: That's helpful. Let's break
 8 that down. First about making the decision.
 9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to "duties." Calls for speculation. Vague as to time.
 11 THE WITNESS: No.
 12 Q. BY MR. ROSENBAUM: And how about the actual
 13 operation of the school if it were to be taken over?
 14 MR. VIRJEE: Objection. Calls for speculation.
 15 MR. SEFERIAN: Incomplete hypothetical
 16 question. Objection.
 17 THE WITNESS: No.
 18 Q. BY MR. ROSENBAUM: Who does, so far as you
 19 know, if you know?
 20 MR. VIRJEE: Objection. Calls for speculation.
 21 Vague as to time.
 22 Q. BY MR. ROSENBAUM: Do you know who does?
 23 MR. VIRJEE: Objection. Calls for speculation.
 24 Vague as to time.
 25 MR. SEFERIAN: Assumes facts not in evidence.

1 THE WITNESS: I don't.
 2 Q. BY MR. ROSENBAUM: Okay. Were you involved,
 3 you personally involved, Mr. Hill, in the development of
 4 II/USP?
 5 A. No.
 6 Q. Or API?
 7 A. No.
 8 Q. Or PSAA?
 9 A. No.
 10 MR. SEFERIAN: Can all different counsel assert
 11 each other's objections?
 12 MR. ROSENBAUM: Sure.
 13 MR. SEFERIAN: Thank you.
 14 THE WITNESS: Actually, I want to clarify
 15 something. The Public Schools Accountability Act which
 16 defined the API which defined -- which called for the
 17 development of the API and called for the development of
 18 II/USP, I was not involved in that.
 19 I was not -- I assumed my position at about the
 20 same time that the API was being finalized and
 21 recommended to the State Board by the Department. I
 22 wanted to make that clear.
 23 Q. BY MR. ROSENBAUM: I appreciate that. Does
 24 your office -- strike that.
 25 Have you ever been present at any discussions

1 where the question of whether or not II/USP should be
 2 voluntary was discussed?
 3 MR. VIRJEE: Objection. Vague and ambiguous as
 4 to "voluntary." Also calls for attorney/client
 5 privileged information.
 6 Q. BY MR. ROSENBAUM: For all my questions,
 7 Mr. Hill, I'm not interested in discussions that you've
 8 had with your attorneys.
 9 So with that in mind, I'm interested in -- you
 10 told me earlier you're aware that participation in
 11 II/USP is voluntary on the part of the school; is that
 12 right?
 13 MR. VIRJEE: Objection. Vague and ambiguous as
 14 to "voluntary." Also calls for speculation. Calls for
 15 a legal conclusion. Misstates the statute.
 16 MR. ROSENBAUM: Go ahead.
 17 THE WITNESS: Mr. Rosenbaum, I'm aware that
 18 there have been very public discussions at the
 19 legislature with regard to whether II/USP should be
 20 voluntary for the lowest-performing schools. I'm aware
 21 at that level of conversation.
 22 Q. BY MR. ROSENBAUM: Let's put aside the
 23 legislative discussions. Any other discussion on that
 24 subject matter that you're aware of?
 25 A. No.

1 Q. Have you ever had a discussion with the
 2 superintendent on that subject matter?
 3 MR. SEFERIAN: Objection to the extent it calls
 4 for information protected by the deliberative process
 5 and official information privileges.
 6 THE WITNESS: No.
 7 Q. BY MR. ROSENBAUM: Okay. Have you ever
 8 testified on the question of whether it should be
 9 voluntarily, participation should be voluntary?
 10 A. Not that I recall.
 11 Q. Do you have an opinion as to whether it should
 12 be voluntary?
 13 MR. VIRJEE: Objection. Vague and ambiguous as
 14 to "voluntary."
 15 Q. BY MR. ROSENBAUM: Let's go back because that's
 16 a helpful point. When you say "voluntary," what do you
 17 mean by that voluntary participation with respect to
 18 II/USP?
 19 MR. VIRJEE: Objection. Calls for speculation.
 20 Incomplete hypothetical. Calls for a legal conclusion
 21 and misstates the statute.
 22 MR. ROSENBAUM: Go ahead.
 23 THE WITNESS: I really don't have an opinion.
 24 I'm trying to recall, Mr. Rosenbaum, the extent to which
 25 you were seeking my opinion with regard to whether or

1 not it would be voluntary in terms of state assistance
 2 or some other kind of assistance.
 3 Q. BY MR. ROSENBAUM: Let's break it down. First
 4 in terms of state assistance.
 5 MR. VIRJEE: Objection. Vague and ambiguous.
 6 Calls for speculation. Incomplete hypothetical.
 7 MR. SEFERIAN: Calls for an inadmissible
 8 opinion.
 9 THE WITNESS: I don't have an opinion on the
 10 state.
 11 Q. BY MR. ROSENBAUM: On any other part do you
 12 have an opinion?
 13 MR. SEFERIAN: Objection. Calls for an
 14 inadmissible opinion. Incomplete hypothetical question.
 15 THE WITNESS: Schools that are identified as
 16 low performing need some assistance. I do believe that
 17 that's correct.
 18 Q. BY MR. ROSENBAUM: Okay. And why do you think
 19 that?
 20 MR. SEFERIAN: Objection. Overly broad. Calls
 21 for an inadmissible opinion.
 22 THE WITNESS: Mr. Rosenbaum, it would be
 23 helpful if there was something specific about a
 24 low-performing school that you wanted to ask. It might
 25 be helpful to ask that way.

1 Q. BY MR. ROSENBAUM: I appreciate that. But your
 2 answer, I can have it read back to you. If I wrote it
 3 down correctly, your answer was that you believe that
 4 low-performing schools need some assistance. Am I
 5 correct?
 6 MR. VIRJEE: Schools identified as
 7 low-performing schools need assistance were the words.
 8 Q. BY MR. ROSENBAUM: And when you say schools
 9 identified as low-performing, what did you mean by that?
 10 A. Our accountability system focuses on student
 11 outcomes. Schools where students are not performing to
 12 expectations indicate that there are -- that there is a
 13 need for intervention and assistance for students and
 14 for the adults at that school and there needs to be
 15 assistance provided so that student results improve.
 16 Q. Why do you think that?
 17 MR. SEFERIAN: Objection. Incomplete
 18 hypothetical question. Overly broad. Calls for an
 19 inadmissible opinion.
 20 THE WITNESS: Because our accountability system
 21 focuses on results, and if schools and districts are not
 22 getting results, we need to do everything we can to
 23 ensure the students are learning.
 24 Q. BY MR. ROSENBAUM: When you say "we," who do
 25 you mean by "we"?

1 A. By we I mean every citizen of California.
 2 Q. Okay. And does that include the Department of
 3 Education?
 4 MR. SEFERIAN: Objection. Overly broad. Lacks
 5 foundation. Vague and ambiguous. Incomplete
 6 hypothetical question. Calls for an inadmissible legal
 7 opinion.
 8 THE WITNESS: I think I'll stick with my
 9 original answer. Every citizen of California should be
 10 concerned.
 11 Q. BY MR. ROSENBAUM: Why is that?
 12 A. Public education is everybody's business.
 13 Q. Okay. When you say "do everything we can,"
 14 what did you mean by "everything we can"?
 15 MR. SEFERIAN: Objection. Overly broad.
 16 Incomplete hypothetical question.
 17 MR. VIRJEE: Calls for speculation.
 18 THE WITNESS: I think I would need a little bit
 19 more specific question.
 20 Q. BY MR. ROSENBAUM: But I just want to
 21 understand what you meant when you used the phrase
 22 "everything we can." Tell me, please, what you meant by
 23 that.
 24 MR. VIRJEE: Same objections.
 25 THE WITNESS: Understanding why schools --

1 understanding why schools aren't performing to
 2 expectation levels proves necessary to then find out how
 3 you can help them improve, so the first task is to focus
 4 on why they're not achieving.
 5 Q. BY MR. ROSENBAUM: And what's the second step?
 6 MR. SEFERIAN: Objection. Incomplete
 7 hypothetical question. Overly broad. Calls for an
 8 inadmissible opinion.
 9 THE WITNESS: The second step is not clear
 10 until you understand the first step.
 11 Q. BY MR. ROSENBAUM: If you understand the
 12 reasons, as best you can, what might be the next step?
 13 MR. VIRJEE: Objection. Incomplete
 14 hypothetical.
 15 THE WITNESS: It's entirely dependent on what
 16 the first step would be.
 17 Q. BY MR. ROSENBAUM: To your knowledge, Mr. Hill,
 18 has the Department undertaken any investigation or
 19 inquiry as to why certain schools are underperforming?
 20 MR. VIRJEE: Objection. Vague and ambiguous as
 21 to "underperforming." Also vague and ambiguous as to
 22 "inquiry."
 23 MR. ROSENBAUM: Let me have Mr. Hill's last
 24 answer read back, please.
 25 (Record read.)

1 Q. BY MR. ROSENBAUM: When you said why they are
2 not achieving, what did you mean by that?

3 MR. VIRJEE: Objection. Asked and answered.

4 THE WITNESS: I'm referring specifically to
5 their test results.

6 Q. BY MR. ROSENBAUM: Okay. And has the
7 Department, to your knowledge, undertaken any inquiries
8 or investigations as to why certain schools are not
9 achieving as you use that phrase?

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "inquiry." Assumes facts not in evidence. Vague and
12 ambiguous as to "investigation." Overly broad.

13 THE WITNESS: Before I answer that question, I
14 would need to consult with counsel about something.

15 MR. SEFERIAN: Can we go off the record?

16 MR. ROSENBAUM: Let's go a little longer.

17 Q. To your knowledge, Mr. Hill, has the Department
18 identified here are some principal causes as to why
19 certain schools are not achieving as you used that
20 phrase?

21 MR. VIRJEE: Objection. Vague as to time.
22 Also vague as to "principal causes".

23 MR. SEFERIAN: Objection. Vague and ambiguous
24 as to "causes" and "not achieving." Overly broad.

25 Q. BY MR. ROSENBAUM: At any point in your tenure,

1 laid out, have you in your tenure heard any criticisms
2 about that concept or concerns with that concept?

3 MR. SEFERIAN: Objection. Compound question.
4 Vague and ambiguous as to "criticism" and "concerns."
5 Overly broad.

6 THE WITNESS: No.

7 Q. BY MR. ROSENBAUM: Okay. And when you say
8 "what needs to be done to improve student achievement,"
9 do you have in your mind examples of what needs to be
10 done to improve student achievement?

11 MR. VIRJEE: Objection. Asked and answered.

12 MR. SEFERIAN: Incomplete hypothetical
13 question. Overly broad.

14 THE WITNESS: The use of student performance
15 information drives that answer.

16 Q. BY MR. ROSENBAUM: And that's what I'm trying
17 to understand, if you can help me, Mr. Hill. When you
18 say the use of data helps drive it, I want to know what
19 some of the end points are in terms of figuring out what
20 needs to be done to improve it. Help me understand the
21 process.

22 What is it when you look at the data do you
23 identify as, well, here are underachieving,
24 underperforming schools, here are some things that need
25 to be done?

1 Mr. Hill?

2 A. Mr. Rosenbaum, I think that is -- the way that
3 you phrased the question is part of the challenges we
4 face in redefining the work of schools. To assume that
5 there are -- to go in and do it from sort of an
6 extrinsically built process without cause is something
7 we're trying not to do.

8 We, I think, at least I believe, this is now my
9 personal opinion, that the way our accountability system
10 works, the strength of our accountability system, is
11 that it builds from test data on out. You start with
12 the concept of strengths and weaknesses in terms of
13 student performance, and you look to support improvement
14 based upon real evidence as to what needs to be done to
15 improve student achievement. So it is not necessarily
16 linked to any one cause or another or prioritizing any
17 one cause or another, it's about using data to drive
18 change.

19 Q. Have you heard any criticisms of that concept?

20 MR. VIRJEE: Objection. Vague and ambiguous as
21 to "criticisms."

22 MR. SEFERIAN: Overly broad.

23 THE WITNESS: I'm sorry, what do you mean by
24 "criticism?"

25 Q. BY MR. ROSENBAUM: The theory that you just

1 MR. VIRJEE: Objection. Asked and answered.

2 MR. SEFERIAN: Overly broad. Vague and
3 ambiguous as to "data." Incomplete hypothetical
4 question.

5 THE WITNESS: I would suggest that if a school
6 is identified as low performing, there are three things
7 that need to be focused on, the first is an evaluation
8 of performance data, because the performance data
9 reveals what we accept as our bottom line, whether
10 students have learned or not.

11 The second thing is when you understand clearly
12 the strengths and weaknesses of your students'
13 performance, you build an instructional program to
14 support the improvement of student learning.

15 And the third thing is to ensure that you have
16 maximized the directing of your resources, human and
17 fiscal, towards supporting student learning based on
18 that data.

19 Q. BY MR. ROSENBAUM: What does that mean, the
20 third one?

21 A. It means that all priority both from the
22 perspective of every bit of personnel support and every
23 bit of fiscal support should be -- should reflect the
24 goal of improving student learning.

25 Q. Okay. Your office, Mr. Hill, does it have

1 responsibility for CELDT?
 2 MR. SEFERIAN: Objection. Vague and ambiguous
 3 as to "office." Calls for inadmissible legal opinion.
 4 Vague and ambiguous as to "responsibilities."
 5 THE WITNESS: The answer is I personally do not
 6 have responsibility for the CELDT.
 7 Q. BY MR. ROSENBAUM: Do you know who does?
 8 A. I do.
 9 Q. Who is that?
 10 A. The assessment division in the accountability
 11 branch.
 12 Q. Do you have any direct oversight
 13 responsibility?
 14 A. I do.
 15 Q. Okay. And how about the high school exit exam,
 16 does your office have responsibility for that?
 17 MR. SEFERIAN: Objection. Overly broad. Vague
 18 and ambiguous as to responsibilities.
 19 THE WITNESS: My answer for the CELDT would
 20 stand, same.
 21 Q. BY MR. ROSENBAUM: Same for the Golden State
 22 exam?
 23 A. Correct.
 24 Q. Same for the STAR program?
 25 A. Correct.

1 Q. What about CCR?
 2 MR. VIRJEE: What about CCR?
 3 Q. BY MR. ROSENBAUM: Do you have any duties or
 4 responsibilities with respect to CCR?
 5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to "you" and "duties" and "responsibilities."
 7 MR. ROSENBAUM: I mean you personally,
 8 Mr. Hill.
 9 THE WITNESS: I'm sorry, could you ask the
 10 question again.
 11 Q. BY MR. ROSENBAUM: Yeah. Mr. Hill, do you
 12 oversee the CCR program?
 13 MR. SEFERIAN: Objection. Vague and ambiguous
 14 as to "oversee."
 15 MR. VIRJEE: Objection. Vague and ambiguous as
 16 to "oversee."
 17 THE WITNESS: I would offer the same response
 18 as I did with the testing programs.
 19 Q. BY MR. ROSENBAUM: What about PQR?
 20 MR. SEFERIAN: Objection. Vague and ambiguous.
 21 MR. VIRJEE: Also vague as to time.
 22 THE WITNESS: Mr. Rosenbaum, I believe that PQR
 23 as a requirement and administrative responsibility of
 24 the Department has ceased.
 25 Q. BY MR. ROSENBAUM: And what about

1 administration of NAEP, N-A-E-P?
 2 A. I would offer the same response as with the
 3 other testing programs.
 4 Q. Now PQR has gone out of existence, is that your
 5 understanding?
 6 MR. VIRJEE: Objection. Asked and answered.
 7 MR. SEFERIAN: Vague and ambiguous as to "gone
 8 out of existence."
 9 THE WITNESS: I would stand by my answer.
 10 Q. BY MR. ROSENBAUM: And were you involved -- do
 11 you know when it ceased?
 12 MR. VIRJEE: Objection. As to "ceased" as
 13 deceased.
 14 THE WITNESS: I believe it was last year.
 15 Q. BY MR. ROSENBAUM: Okay. And were you
 16 personally involved in any discussions as to the
 17 decision whether or not to continue the program?
 18 MR. VIRJEE: Objection. Vague and ambiguous as
 19 to "discussions" and to "continue." If you're asking
 20 whether he participated in the decision or not, I would
 21 object on the official information privilege.
 22 MR. SEFERIAN: Assumes facts not in evidence.
 23 THE WITNESS: It was a decision by the
 24 legislature and governor, not by the Department of
 25 Education.

1 Q. BY MR. ROSENBAUM: Did you have an opinion as
 2 to whether or not the program should end?
 3 A. I did.
 4 Q. What was your opinion?
 5 MR. VIRJEE: Objection. Relevancy, and also
 6 vague as to time.
 7 MR. SEFERIAN: Calls for an inadmissible
 8 opinion.
 9 THE WITNESS: In my personal opinion, PQR did
 10 not contribute to bottom line student learning.
 11 Q. BY MR. ROSENBAUM: And what was the basis for
 12 that conclusion?
 13 A. PQR did not focus the efforts of schools around
 14 student learning.
 15 Q. Okay. I want to see if I can figure out the
 16 status of some of the programs that we've talked about,
 17 Mr. Hill.
 18 To your knowledge at this time, are there any
 19 changes being contemplated with respect to the API
 20 program?
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to "this time" and also "contemplated." Also
 23 speculative as to who might be contemplating. Also
 24 speculative as to who might be contemplating those
 25 anywhere in the world at any time.

1 MR. SEFERIAN: Overly broad. Vague and
2 ambiguous as to "changes."
3 MR. ROSENBAUM: I'm not talking about
4 Afghanistan.
5 MR. VIRJEE: You could be talking about outside
6 the Department of Ed, outside the Board of Ed, outside
7 the legislature, in academia, anywhere.
8 Q. BY MR. ROSENBAUM: Is the Department
9 contemplating any changes to the API program so far as
10 you know?
11 MR. SEFERIAN: Objection. Vague and ambiguous
12 as to "changes." Calls for speculation.
13 MR. SEFERIAN: Object to the extent it calls
14 for information protected by the deliberative process
15 and official information privileges.
16 THE WITNESS: Mr. Rosenbaum, I would offer you
17 two responses, one is I would refer you to the -- to
18 today's newspapers which details a change to the API,
19 and second I would refer you to the State Board of
20 Education which makes final determinations about the
21 API.
22 Q. BY MR. ROSENBAUM: And the change that was
23 mentioned in the newspapers, that has to do with respect
24 to the exam that would be the basis of the API; is that
25 correct?

1 A. Right.
2 Q. And with the exception of that change, are you
3 aware of any other changes that are being discussed
4 within the Department or contemplated within the
5 Department?
6 MR. SEFERIAN: Objection to the extent it calls
7 for privileged information.
8 MR. VIRJEE: Also. Vague and ambiguous as to
9 as to "changes" and "discussed."
10 THE WITNESS: There have been very public
11 discussions before the State Board of Education about
12 the intention to add the final three standards --
13 California standards tests into the API this year.
14 Q. BY MR. ROSENBAUM: Any other subject matters
15 besides that one that you're aware of?
16 MR. VIRJEE: Same objections.
17 THE WITNESS: No.
18 Q. BY MR. ROSENBAUM: Have you made any
19 recommendations for changes to the current API program?
20 MR. VIRJEE: Objection. Vague and ambiguous as
21 to "current API program" and "changes."
22 MR. SEFERIAN: Object to the extent it calls
23 for privileged information.
24 THE WITNESS: Yes.
25 Q. BY MR. ROSENBAUM: What have you recommended?

1 MR. SEFERIAN: Object to the extent it calls
2 for privileged communications.
3 THE WITNESS: I have stated publically that one
4 of my concerns is that schools and districts have many
5 responsibilities, and we should reflect on the totality
6 of those responsibilities when we look at
7 accountability.
8 Q. BY MR. ROSENBAUM: When you say "one of my
9 concerns," what do you mean by that?
10 A. We should ensure that districts are evaluated
11 for their performance in ensuring that students learn
12 and are well served in their learning.
13 Q. Okay. And when -- you said "reflect on the
14 totality," did I understand you right?
15 A. Uh-huh.
16 Q. Are you saying yes?
17 A. Yes.
18 Q. What did you mean by that?
19 A. Schools and districts have many
20 responsibilities, and to the extent that there is a way
21 to represent in a quantitative way, to the extent that
22 you can correlate the contributions that -- the many
23 things that schools do to maximize student learning, we
24 should anticipate that those are important. And the
25 statute already does some of that anticipation with

1 looking at attendance and graduation rates.
2 Q. Help me understand, Mr. Hill, what you meant by
3 that answer. When you say "to the extent" -- tell me
4 the phrase you used.
5 THE WITNESS: I'm sorry, can you maybe read it
6 back.
7 MR. ROSENBAUM: You're learning.
8 (Record read.)
9 Q. BY MR. ROSENBAUM: Let's break that down a
10 little bit. When you say to the extent there is a
11 quantitative way, what did you mean by that?
12 A. If with some aspect of a school activity or
13 responsibility there is a way to understand the
14 relationship between that activity and what it
15 contributes to student learning, then we should try to
16 provide some acknowledgement of success or failure of a
17 school in terms of accountability for that.
18 Q. When you said "quantitative," what did you mean
19 by that?
20 A. What I mean by that is if there was -- if
21 there's a way to do what we have done with the API, that
22 is, figure out a way to bring it into a formula that
23 represents -- that is a proxy for those things that we
24 want schools to do on behalf of student learning, then
25 we should look at that.

1 Q. And attendance numbers would be one way of
2 looking at that, is that right, in terms of what you
3 want schools to do?
4 MR. SEFERIAN: Objection. Overly broad.
5 Incomplete hypothetical question.
6 THE WITNESS: I would simply say the statute
7 already requires that to be the case.
8 Q. BY MR. ROSENBAUM: Okay. So that would include
9 attendance rates of students; is that right?
10 MR. VIRJEE: You're asking what the statute
11 includes?
12 Q. BY MR. ROSENBAUM: I want to know what you
13 think is important, Mr. Hill. Do you think dropout
14 rates are important?
15 MR. VIRJEE: Objection. Vague and ambiguous as
16 to "dropout rates," "important," and incomplete
17 hypothetical. Calls for speculation. Lacks foundation.
18 MR. SEFERIAN: Overly broad. Vague and
19 ambiguous as to "important."
20 THE WITNESS: The concept, Mr. Rosenbaum, of
21 dropout rates is so ambiguous that I don't think I can
22 provide an answer for that.
23 Q. BY MR. ROSENBAUM: Do you -- the concept of
24 dropouts is a meaningful concept to you?
25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to the context. Incomplete hypothetical. Vague and
2 ambiguous as to "meaningful."
3 THE WITNESS: It is. It is an ambiguous
4 concept to me.
5 Q. BY MR. ROSENBAUM: It's ambiguous?
6 A. Yes.
7 Q. Why is that? Let me strike that.
8 To your knowledge, does the State of California
9 maintain what you would consider reliable dropout data?
10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "dropout data."
12 MR. SEFERIAN: Lacks foundation.
13 MR. VIRJEE: Also vague and ambiguous as to
14 "reliable." Also vague as to time.
15 MR. SEFERIAN: Vague and ambiguous as to
16 "dropout."
17 THE WITNESS: No.
18 Q. BY MR. ROSENBAUM: Okay. Do you have an
19 opinion as to why that is?
20 MR. SEFERIAN: Objection. Assumes facts not in
21 evidence. Lacks foundation.
22 THE WITNESS: My understanding of the reason
23 why is that we are in the midst of building a student
24 information system, and we have not yet achieved the
25 completion of that system.

1 Q. BY MR. ROSENBAUM: Do you personally have any
2 responsibilities with respect to the building of that
3 system?
4 MR. VIRJEE: Objection. Vague and ambiguous as
5 to personal "responsibilities."
6 THE WITNESS: No, I don't.
7 Q. BY MR. ROSENBAUM: Do you know who does?
8 A. I do.
9 Q. Who is that?
10 A. Susie Lange oversees the demographics office
11 which does have a relationship to it. However, the
12 specific oversight of CSIS, California School
13 Information System, is provided by FCMAT.
14 Q. And do you know, sitting here today, if there
15 is a projected date as to when that system will be in
16 place?
17 MR. VIRJEE: Objection. Calls for speculation.
18 Lacks foundation. Vague and ambiguous as to
19 "projected."
20 THE WITNESS: I don't.
21 Q. BY MR. ROSENBAUM: Okay. Do you have a
22 ballpark number, if it's a year, five years, ten years?
23 MR. VIRJEE: Same objections. Calls for
24 speculation. Lacks foundation.
25 THE WITNESS: There are -- I can't predict the

1 future. I can't give you any specifics.
2 Q. BY MR. ROSENBAUM: Okay. Thanks. Do you have
3 a view, Mr. Hill, as to whether or not -- strike that.
4 When you said attendance data, is there
5 attendance data that you think would be helpful in
6 assessing how well schools are performing their
7 missions?
8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "attendance data" and "helpful."
10 MR. SEFERIAN: Incomplete hypothetical
11 question.
12 THE WITNESS: I don't know the answer to that.
13 I don't know.
14 Q. BY MR. ROSENBAUM: Okay. When you told me
15 several moments ago about quantitative ways, what were
16 you thinking about besides the API, if anything?
17 A. I'm sorry, I was only thinking of the API.
18 Q. Okay. Have you ever been in any meetings or
19 discussions where other quantitative measures have been
20 discussed?
21 MR. VIRJEE: Objection. Vague and ambiguous as
22 to "quantitative measures." In what context?
23 MR. SEFERIAN: Object to the extent it calls
24 for privileged communications.
25 THE WITNESS: I can't recall any specific

1 meeting.

2 Q. BY MR. ROSENBAUM: Okay. Or have you read any
3 memoranda?

4 A. I can't recall any specific memoranda.

5 Q. Thank you. Now, the changes to the test that
6 is administered, are you referring to changes with
7 respect to the use of the Stanford-9?

8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "use of the Stanford-9."

10 THE WITNESS: No, I'm not.

11 Q. BY MR. ROSENBAUM: Tell me what you're
12 referring to.

13 MR. VIRJEE: Other than what he's already
14 testified to?

15 MR. ROSENBAUM: I think so, yeah. Go ahead.

16 MR. VIRJEE: He's already told you what the
17 changes are.

18 THE WITNESS: The change was in reference to
19 the addition of the English language arts standards test
20 to the API.

21 Q. BY MR. ROSENBAUM: Okay. Did you personally
22 support that?

23 MR. VIRJEE: Objection. Vague and ambiguous as
24 to "personally support." Also relevancy.

25 THE WITNESS: As a personal opinion, I am very

1 SB 233, which went into effect a couple of weeks ago,
2 requires the State to select a new -- to select, once
3 again, a norm-reference test sometime during this year,
4 whether it will be the Stanford-9 or some other NRT we
5 don't know; two, I think -- well, I'll leave it at that.

6 MS. READ-SPANGLER: Mark, would this be a good
7 time for a break?

8 MR. ROSENBAUM: Three more questions.

9 Q. Have you -- do you have an opinion, Mr. Hill,
10 as to whether or not the API should continue to rely
11 upon the Stanford-9?

12 MR. VIRJEE: Objection. Vague as to time, and
13 vague and ambiguous as to "the Stanford-9" and "rely."

14 MR. SEFERIAN: Incomplete hypothetical
15 question. Calls for an inadmissible opinion.

16 THE WITNESS: Mr. Rosenbaum, I would suggest
17 that the Stanford-9 is not the relevant issue. The
18 issue is whether a norm-referenced test is part of our
19 academic performance index. And it is often confused by
20 critics of our assessment system that the Stanford-9 or
21 other norm-reference tests that may be used do not in
22 some way reflect or correlate to our state standards.
23 They, in fact, do at some level.

24 Q. BY MR. ROSENBAUM: Do you know at what level
25 the Stanford-9 correlates with the state standards?

1 strongly in support of that.

2 Q. BY MR. ROSENBAUM: And why is that?

3 A. Several years ago California embarked on the
4 development of a system based upon learning objectives
5 for all students. Those are called our academic
6 standards. We have spent the years since aligning our
7 system to reflect those standards, including our state
8 tests. We're now at a very exciting point in time where
9 our accountability system is really beginning to reflect
10 the standards tests that we've developed to directly
11 represent our state learning objectives.

12 Q. Okay. And have you -- you're obviously
13 familiar with what the Stanford-9 is; is that right?

14 MR. VIRJEE: Objection. Vague and ambiguous as
15 to "familiar."

16 THE WITNESS: I know that Stanford-9 is the
17 state administered basic skills examination.

18 Q. BY MR. ROSENBAUM: Okay. And are you aware of
19 any plans to cease use of the Stanford-9 with respect to
20 the determination of API rankings?

21 MR. VIRJEE: Objection. Vague as to time.
22 Also vague as to "cease use of the Stanford-9."

23 MR. SEFERIAN: Object to the extent it calls
24 for privileged communications.

25 THE WITNESS: I would offer two responses. The

1 MR. VIRJEE: Objection. Calls for speculation.
2 Lacks foundation. Also compound question as to which
3 standards. Also vague as to time.

4 MR. SEFERIAN: Vague as to "level."

5 THE WITNESS: I'm sorry, I'm not the
6 appropriate person to answer that question.

7 Q. BY MR. ROSENBAUM: I just want to -- I just
8 want to know, though, in terms of -- maybe you just
9 answered this, and if you did, just bear with me and
10 tell me that.

11 But you were involved with the development of
12 the standards, right?

13 A. That's correct.

14 MR. SEFERIAN: Objection. Overly broad.

15 Q. BY MR. ROSENBAUM: Well, you were involved with
16 development of all the standards, weren't you?

17 MR. VIRJEE: Objection. Vague and ambiguous as
18 to "development."

19 MR. SEFERIAN: Vague and ambiguous as to
20 "standards."

21 MR. ROSENBAUM: This is Mr. Standards.

22 THE WITNESS: I served as executive director of
23 the academic standards commission.

24 Q. BY MR. ROSENBAUM: Now, with respect to any of
25 the standards that you're aware of, do you know to what

1 extent, if any, the Stanford-9 correlates with those
 2 state standards?
 3 MR. VIRJEE: Objection. Calls for speculation.
 4 Lacks foundation. Calls for an expert opinion which
 5 this witness is not competent to give. Also vague and
 6 ambiguous as to "correlates," and also vague as to time.
 7 MR. SEFERIAN: Asked and answered.
 8 MR. ROSENBAUM: I'm using correlates as you
 9 used it.
 10 THE WITNESS: Mr. Rosenbaum, I would answer by
 11 saying that as the -- as someone in the Department who
 12 receives information, I have been -- it has been
 13 communicated to me that there is specific correlations
 14 with some of our content area standards and the
 15 Stanford-9. I do not have the specific information
 16 about the correlation.
 17 Q. BY MR. ROSENBAUM: Okay. When you say "some of
 18 our content area," I want to --
 19 A. Language arts and mathematics.
 20 Q. What about the ones in -- elementary kids are
 21 given language arts and math; is that right?
 22 A. That's correct.
 23 Q. And then in the higher grades, the secondary
 24 grades it breaks down to language arts, mathematics,
 25 history/social science and science; is that right?

1 A. That's correct.
 2 Q. Have you received any information that there is
 3 a correlation between the Stanford-9 and those content
 4 areas, the ones in the secondary?
 5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to "correlation," and also vague as to time. Also calls
 7 for speculation, lacks foundation and calls for an
 8 expert opinion.
 9 THE WITNESS: I don't have specific
 10 information.
 11 Q. BY MR. ROSENBAUM: Okay. And who is the person
 12 I should talk to?
 13 MR. VIRJEE: Objection. Calls for speculation.
 14 THE WITNESS: Phil Spears.
 15 MR. ROSENBAUM: Okay. I appreciate your
 16 patience.
 17 (Recess taken.)
 18 Q. BY MR. ROSENBAUM: You doing okay, Mr. Hill?
 19 A. Yep.
 20 Q. Okay. When you were telling me what needs to
 21 be done -- strike that.
 22 When you used the phrase just before we broke,
 23 "norm-referenced," what do you mean by that?
 24 A. Norm reference is a term that is used to refer
 25 to tests that have as a basis a scoring system that is

1 measured against a norming population. So students
 2 achieve in relation to the norming population that was
 3 used to set the performance expectations and
 4 achievements, expectations for the test.
 5 Q. For example, the Stanford-9 is a norm-reference
 6 test as far as you know?
 7 A. That's correct.
 8 Q. Do you have -- do you consider yourself as an
 9 expert in psychometrics?
 10 MR. VIRJEE: Objection. Vague and ambiguous as
 11 to "psychometrics" and "expert," and calls for a legal
 12 conclusion to the extent you're asking whether he'd be
 13 legally qualified as an expert.
 14 THE WITNESS: I'm not an expert in
 15 psychometrics.
 16 Q. BY MR. ROSENBAUM: And what's the basis for
 17 that?
 18 MR. VIRJEE: For him not being one?
 19 MS. READ-SPANGLER: His lack of expertise.
 20 Q. BY MR. ROSENBAUM: Why do you conclude that?
 21 MR. SEFERIAN: Same objections.
 22 THE WITNESS: I do not have -- I do not have a
 23 background or training or expertise in psychometrics.
 24 Q. BY MR. ROSENBAUM: Okay. And to your
 25 knowledge -- strike that.

1 Is anyone in your department, to your
 2 knowledge, looking at tests, norm-reference tests for
 3 use in the API pursuant to SB 223 (sic)?
 4 MR. VIRJEE: Objection. Vague as to time and
 5 also "use."
 6 MR. SEFERIAN: Calls for speculation.
 7 THE WITNESS: I don't think I can answer the
 8 question as you phrased it.
 9 Q. BY MR. ROSENBAUM: Why is that?
 10 A. I don't have a reference point to answer from.
 11 Q. Okay. Let me see if I can get at the same
 12 point. This is what I'm interested in, I want to know
 13 is there anyone who has been tasked with the
 14 responsibility of why don't you put out some candidates
 15 as some possible norm-reference tests that might be
 16 utilized with respect to the API?
 17 Do you understand that I mean?
 18 MR. VIRJEE: Objection. Vague as to time.
 19 Q. BY MR. ROSENBAUM: Is there such a person or
 20 persons?
 21 A. The evaluation of potential contractors
 22 pursuant to 233 will include an evaluation of their
 23 norm-reference components for standards alignment.
 24 Q. Okay. When you say "standards alignment," you
 25 mean with respect to the California standards?

1 A. That's correct.
 2 Q. Okay. And has any evaluation taken place yet
 3 of contractors, potential contractors, so far as you
 4 know?
 5 A. No.
 6 Q. Do you know if there -- has an RFP gone out
 7 with respect to that, so far as you know?
 8 MR. SEFERIAN: Objection. Calls for
 9 speculation.
 10 MR. VIRJEE: For SB 238?
 11 MR. ROSENBAUM: It's 233 -- 223.
 12 MR. VIRJEE: I'm sorry, 233.
 13 THE WITNESS: It's SB 233. Yes, an invitation
 14 to submit was released yesterday.
 15 Q. BY MR. ROSENBAUM: Okay. What are the
 16 deadlines associated with that?
 17 A. I don't know the specific deadlines.
 18 Q. Is Mr. Spears in charge of that?
 19 A. Mr. Spears' division is responsible for that
 20 activity.
 21 Q. Okay. And did you read the invitation?
 22 MR. VIRJEE: The one that was finally put out?
 23 MR. ROSENBAUM: Yes.
 24 THE WITNESS: I have not read the final draft
 25 of it.

1 Q. BY MR. ROSENBAUM: So far as you know,
 2 Mr. Hill, will you be involved in the selection process?
 3 MR. VIRJEE: Objection. Vague and ambiguous as
 4 to "be involved."
 5 I assume you're talking about the
 6 norm-reference test?
 7 MR. ROSENBAUM: Correct.
 8 MR. SEFERIAN: Calls for speculation.
 9 THE WITNESS: I should perhaps clarify two
 10 things, one, I can't answer -- I can only answer, as you
 11 phrased it, the question about my involvement in the
 12 evaluation. Second, the State Board would be an
 13 appropriate point of inquiry for you about the overall
 14 evaluation because the Board will be making the final
 15 decision and the Board will be selecting a single
 16 contractor as voted on in a public meeting. They will
 17 be voting on a single contractor to work on both the
 18 norm-reference test and the development and
 19 administration of the standards test.
 20 Q. BY MR. ROSENBAUM: Okay. My question wasn't
 21 sufficiently precise. I appreciate your point.
 22 Do you expect to be involved, Mr. Hill, in
 23 making recommendations as to what norm-reference tests
 24 ought to be selected?
 25 MR. VIRJEE: Objection. Assumes facts not in

1 evidence, and also calls for speculation.
 2 THE WITNESS: I don't know the answer to that.
 3 Q. BY MR. ROSENBAUM. So far as you know,
 4 Mr. Hill, does the Department have criteria as to what
 5 degree the norm-reference test should be standards
 6 aligned for use in the API?
 7 MR. VIRJEE: Aside from the request for
 8 submission?
 9 MR. ROSENBAUM: Yes.
 10 MR. VIRJEE: Objection. Vague and ambiguous as
 11 to "criteria."
 12 THE WITNESS: I would refer you to the
 13 invitation to submit for that information, which I
 14 believe is a public document.
 15 Q. BY MR. ROSENBAUM: Okay. Were you involved in
 16 the development of the actual invitation?
 17 MR. VIRJEE: Objection. Vague and ambiguous as
 18 to "involved."
 19 THE WITNESS: Yes.
 20 Q. BY MR. ROSENBAUM: Okay. And what was the
 21 nature of your involvement?
 22 MR. VIRJEE: Same objection.
 23 THE WITNESS: I read and provided feedback on
 24 an early draft of that document.
 25 Q. BY MR. ROSENBAUM: Okay. In your tenure,

1 Mr. Hill, did you ever express any concerns about the
 2 degree to which the Stanford-9 was aligned with
 3 California standards?
 4 MR. VIRJEE: Objection. Vague and ambiguous as
 5 to "tenure." Tenure in what?
 6 MR. ROSENBAUM: As a deputy superintendent.
 7 MR. SEFERIAN: Objection to the extent it calls
 8 for privileged communications.
 9 MR. VIRJEE: Can you read back the question.
 10 (Record read.)
 11 MR. SEFERIAN: Objection. Vague and ambiguous
 12 as to "aligned."
 13 THE WITNESS: Mr. Rosenbaum, I think I have to
 14 answer your question in a context. I have made clear in
 15 a variety of public settings that California needs to
 16 demonstrate that its standards-based tests are the basis
 17 for -- are the primary basis for our API and for our
 18 focus on student learning.
 19 Within that context I have also suggested that
 20 the Stanford-9 was in and of itself, or any
 21 norm-reference test in and of itself is not sufficient,
 22 and that we needed to make progress towards including
 23 the standards tests as part of the API.
 24 Q. BY MR. ROSENBAUM: Okay. When you say "primary
 25 basis," what do you mean by that?

1 MR. VIRJEE: I actually don't think he used the
2 words "primary basis."
3 MR. ROSENBAUM: Could you read back his answer.
4 (Record read.)
5 Q. BY MR. ROSENBAUM: What did you mean when you
6 used the phrase "primary basis"?
7 A. That the API in its weighting of the
8 criteria -- its weighting of the elements that are
9 included in it should reflect as much as possible the
10 standards tests.
11 Q. Why is that important?
12 MR. SEFERIAN: Objection. Overly broad.
13 Incomplete hypothetical question.
14 MR. VIRJEE: Also vague as to time.
15 MR. SEFERIAN: Calls for an inadmissible
16 opinion. Vague and ambiguous as to "important."
17 THE WITNESS: I would reiterate an earlier
18 statement I made, which is that for the past six years,
19 California has been on a path to build a
20 standards-aligned system. That is of primary
21 importance, and a great deal of emphasis in state
22 policymaking has been to align that system behind
23 standards, including our tests.
24 Q. BY MR. ROSENBAUM: Okay. Do you know how the
25 API weights the norm-reference test as compared to the

1 Q. BY MR. ROSENBAUM: Did anyone in the
2 Department, to your knowledge, make recommendations as
3 to how to weight the norm-reference tests and how to
4 weight the standards tests?
5 MR. VIRJEE: Objection. Vague as to time.
6 THE WITNESS: It's entirely possible, but I do
7 not have a specific answer for you.
8 Q. BY MR. ROSENBAUM: Do you know what a cut point
9 is?
10 A. I do.
11 Q. Are there cut points associated with the API?
12 MR. SEFERIAN: Objection. Overly broad. Vague
13 and ambiguous.
14 THE WITNESS: As stated, I don't think I can
15 answer your question.
16 Q. BY MR. ROSENBAUM: Okay. Do you know if there
17 are cut points associated with the Stanford-9 with
18 respect to the API?
19 MR. SEFERIAN: Objection. Vague and ambiguous.
20 THE WITNESS: I don't know.
21 Q. BY MR. ROSENBAUM: Okay. Or with the
22 California standards, do you know if there are cut
23 points associated with those tests relating to the API?
24 MR. SEFERIAN: Same objections.
25 THE WITNESS: Mr. Rosenbaum, I can't answer

1 standards test, the California standards test?
2 MR. VIRJEE: Objection. Vague as to time.
3 Calls for speculation.
4 MR. SEFERIAN: Vague and ambiguous as to
5 "weights."
6 THE WITNESS: Mr. Rosenbaum, I would refer you
7 to a press release, it was on the Department of
8 Education's website yesterday, that describes the new
9 weighting of the API. I don't recall the specific
10 weights.
11 Q. BY MR. ROSENBAUM: Were you involved in the
12 selection of those weights?
13 A. No.
14 Q. Do you know who was?
15 A. No.
16 Q. Now, the press release that you're referring me
17 to, that announces some changes in the weighting; is
18 that correct?
19 MR. VIRJEE: Objection. Calls for speculation.
20 Lacks foundation. Also vague and ambiguous as to
21 changes in weighting.
22 THE WITNESS: Mr. Rosenbaum, I can't -- the
23 State Board of Education has ultimate responsibility for
24 assigning the weights of the API. I would refer you to
25 the State Board of Education for that decision.

1 your question with regard to the connection between the
2 cut points and the API.
3 Q. BY MR. ROSENBAUM: Because?
4 A. I don't know the answer to that part of your
5 question.
6 Q. Okay. Do you have any knowledge, Mr. Hill, as
7 to why changes were made in the weighting of the
8 norm-reference test?
9 MR. VIRJEE: Objection. Vague and ambiguous as
10 to "changes." Also assumes facts not in evidence.
11 MR. SEFERIAN: Lacks foundation.
12 THE WITNESS: Yes.
13 Q. BY MR. ROSENBAUM: And what's your
14 understanding?
15 A. To fulfill the commitment made by state
16 policymakers to ensure that the API reflects what we
17 want students to learn as expeditiously as possible.
18 Q. When you say "what we want students to learn,"
19 what do you mean by that?
20 A. Our students' tests reflect our standards.
21 Q. Do you have an opinion -- if you don't feel
22 confident to have an opinion, just tell me that.
23 Do you have an opinion, Mr. Hill, as to what
24 extent API rankings reflect, rely -- strike that.
25 Do you know what the word "reliable" means with

1 respect to administration of tests?
 2 MR. VIRJEE: Objection. Vague and ambiguous
 3 and calls for speculation. Incomplete hypothetical as
 4 to what context.
 5 MR. SEFERIAN: Objection. No foundation.
 6 Calls for speculation.
 7 THE WITNESS: I would answer by saying that I
 8 am not qualified from the perspective of a testing or
 9 assessment expert to answer the question in terms of the
 10 precision needed for reliability on testing.
 11 Q. BY MR. ROSENBAUM: How about if I asked the
 12 word validate or valid?
 13 A. I would give you the same answer.
 14 Q. Do you have an opinion as to the extent to
 15 which the API reliably reflects knowledge of content
 16 reflected in California standards?
 17 MR. VIRJEE: Objection. Asked and answered.
 18 Calls for speculation. Lacks foundation. Calls for an
 19 expert opinion.
 20 MR. SEFERIAN: Vague and ambiguous as to
 21 "reliably."
 22 THE WITNESS: To answer your question with any
 23 precision, I would refer you to people who are more
 24 qualified than me to really reflect on those terms and
 25 their relationship to the API.

1 Q. BY MR. ROSENBAUM: Have you seen any data as to
 2 the extent -- or memoranda discussing the extent to
 3 which the API reliably reflects the content of
 4 California standards, knowledge of that content?
 5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to time. Also vague and ambiguous as to "reliably
 7 reflects."
 8 MR. ROSENBAUM: At any point in your employ
 9 with the Department of Education as the time frame.
 10 MR. SEFERIAN: Object to the extent it calls
 11 for disclosure of privileged information.
 12 THE WITNESS: I don't recall.
 13 Q. BY MR. ROSENBAUM: And if I asked you the same
 14 question about the validity of the API as reflecting
 15 content covered by the California standards, have you
 16 seen any memorandum discussing that subject matter?
 17 MR. SEFERIAN: Same objection.
 18 THE WITNESS: And I don't recall.
 19 Q. BY MR. ROSENBAUM: Okay. Have you been at any
 20 meetings at any point in your tenure at the Department
 21 of Education where the subject matter of the extent to
 22 which the API reliably reflects contents covered by the
 23 California standards was discussed?
 24 MR. SEFERIAN: Objection to the extent it calls
 25 for disclosure of privileged information.

1 MR. VIRJEE: Also vague and ambiguous as to
 2 "reliably reflects." Calls for speculation. Calls for
 3 an expert opinion.
 4 WITNESS: I don't recall any such meetings.
 5 Q. BY MR. ROSENBAUM: Same question, if I asked
 6 you to substitute the word "validity" for reliability?
 7 MR. SEFERIAN: Same objections.
 8 THE WITNESS: And same response.
 9 Q. BY MR. ROSENBAUM: You told us before the
 10 break, Mr. Hill, that you were involved with the
 11 development of the standards, is that right, the
 12 California standards?
 13 MR. VIRJEE: Objection. His testimony will
 14 speak for itself.
 15 MR. SEFERIAN: Vague and ambiguous as to
 16 "California standards."
 17 THE WITNESS: I think, actually, you
 18 volunteered that.
 19 Q. BY MR. ROSENBAUM: But you didn't fight me on
 20 that point?
 21 A. That's correct.
 22 Q. And prior to the development of those state
 23 standards, to your knowledge, did any state standards
 24 exist in academic areas?
 25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to "state standards," and also calls for speculation.
 2 MR. SEFERIAN: Lacks foundation.
 3 THE WITNESS: Mr. Rosenbaum, are you referring
 4 directly for the state of California?
 5 MR. ROSENBAUM: Yes, I am.
 6 THE WITNESS: I am not aware of any learning
 7 objectives that were referred to as state standards.
 8 Q. BY MR. ROSENBAUM: Okay. In California?
 9 A. In California.
 10 Q. Okay. And --
 11 A. Actually, I need to correct that. Prior to the
 12 adoption of the state standards by the State Board of
 13 Education, Superintendent Eastin and the Department of
 14 Education had developed what the superintendent referred
 15 to as challenge standards. Those were developed in
 16 1995, 1996.
 17 Q. Okay. And were you involved with the
 18 development of the challenge standards?
 19 A. I was not.
 20 Q. Were the challenge standards mandatory on
 21 districts so far as --
 22 MR. SEFERIAN: Objection. Calls for an
 23 inadmissible legal opinion. Vague and ambiguous as to
 24 "mandatory."
 25 THE WITNESS: I don't believe so.

1 Q. BY MR. ROSENBAUM: Okay. Now, the standards
2 that you were involved in developing, let's go over it.
3 Maybe you already answered it. Let's go over the
4 subject matters. There were science standards; is that
5 right?

6 MR. VIRJEE: Objection. Vague and ambiguous as
7 to "involved." And now we're talking about involved in
8 developing. He's never said he was involved in the
9 developing. You asked was he involved with the
10 standards.

11 Q. BY MR. ROSENBAUM: You were involved in
12 developing the standards, were you not?

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "involved in developing the standards." Also
15 compound to the extent there's more than one set of
16 standards.

17 MR. SEFERIAN: Vague and ambiguous as to
18 "standards."

19 THE WITNESS: I will clarify my relationship to
20 the standards. I served as the executive director of
21 the academic standards commission.

22 Q. BY MR. ROSENBAUM: And what were your duties
23 and responsibilities as executive director of that
24 commission?

25 A. My duties and responsibilities included

1 supporting commissioners, working to ensure that the
2 development of the standards occurred according to
3 timelines, attending a number of development committee
4 meetings.

5 And to answer your other question,
6 Mr. Rosenbaum, that was referred to as compound, the
7 standards were developed in the areas of English
8 language arts, history social science, mathematics and
9 science.

10 Q. Okay. And let's break it down. The standards
11 for math, was that for grades K through 12?

12 MR. SEFERIAN: Objection. Vague as to time.

13 THE WITNESS: AB 265 required that the state
14 develop K-12 standards in those four content areas.

15 Q. BY MR. ROSENBAUM: And that was done?

16 A. That was done.

17 Q. Okay. And part of that being done was that the
18 State Board of Education approved it; is that right?

19 A. The standards commission was advisory
20 ultimately to the State Board of Education which had the
21 final adoption.

22 Q. Now, during your tenure as the executive
23 director of the academic standards commission, did you
24 ever hear any concerns expressed that the development of
25 academic standards in the subject areas you mentioned

1 encroached upon the legitimate and appropriate
2 responsibilities of local school districts?

3 MR. SEFERIAN: Objection to the extent it calls
4 for privileged information. Vague and ambiguous as to
5 "concerns" and "encroached."

6 MR. VIRJEE: Also calls for a legal conclusion.

7 THE WITNESS: Mr. Rosenbaum, I -- the academic
8 standards commission solicited widely public input on
9 its standards. I do not recall a specific concern or
10 set of concerns related to that encroachment issue. I
11 don't recall such a concern.

12 Q. BY MR. ROSENBAUM: Okay. Did you personally
13 entertain any concerns that you were encroaching upon
14 the responsibilities of local districts in developing
15 standards for recommendation to the State Board?

16 MR. VIRJEE: Objection. Calls for speculation.
17 Lacks foundation. Calls for an expert opinion. Also
18 calls for a legal conclusion.

19 MR. SEFERIAN: Assumes facts not in evidence.

20 THE WITNESS: Mr. Rosenbaum, my personal
21 opinion was and is that I strongly supported the
22 adoption of the state standards as a way to define
23 learning expectations for every student in California.

24 Q. BY MR. ROSENBAUM: Okay. And when you say
25 "state standards," you mean statewide standards?

1 A. That's correct.

2 Q. And what's the basis of that opinion, Mr. Hill?

3 MR. VIRJEE: The basis of what opinion?

4 MR. ROSENBAUM: His opinion.

5 MR. VIRJEE: That he supported doing that?

6 MR. ROSENBAUM: Yes.

7 MR. VIRJEE: Other than that the statute
8 required it?

9 Q. BY MR. ROSENBAUM: Yes. If it's just because
10 the statute told me so and that's the only reason I did
11 it, I just followed orders, sir, okay, you can tell me
12 that. But I'm interested in whether or not you have a
13 personal belief that supported that effort.

14 MR. VIRJEE: Objection. Relevance.

15 MR. SEFERIAN: Objection. Overly broad. Calls
16 for an inadmissible opinion.

17 THE WITNESS: Mr. Rosenbaum, by the state
18 establishing common learning expectations for all
19 students, a more aligned system of construction and
20 accountability is available to ensure that all students
21 are served and all students can learn.

22 Q. BY MR. ROSENBAUM: And you think that's
23 important?

24 MR. SEFERIAN: Objection. Overly broad. Vague
25 and ambiguous as to "important."

1 THE WITNESS: I think that is the reason public
2 schools exist.
3 Q. BY MR. ROSENBAUM: Okay. Now, Mr. Hill, are
4 you familiar with the phrase "instructional materials"?
5 MR. VIRJEE: Objection. Vague and ambiguous.
6 In what context?
7 THE WITNESS: I am familiar with that phrase.
8 Q. BY MR. ROSENBAUM: Okay. Just so we're talking
9 the same language here, what's your understanding of
10 what that phrase means?
11 MR. VIRJEE: Objection. Vague as to what
12 context.
13 THE WITNESS: I think I actually would need
14 more context for that.
15 Q. BY MR. ROSENBAUM: I'm thinking about -- I
16 don't want you to have to adopt what I think.
17 Textbooks and other materials that communicate
18 instruction, is that a way you think about this?
19 MR. VIRJEE: That's not a context, that's a
20 definition. He said he needs the context.
21 MR. ROSENBAUM: Okay.
22 THE WITNESS: Maybe you can move on to another
23 question related to that.
24 Q. BY MR. ROSENBAUM: Okay. When did the Board
25 adopt these standards?

1 MR. VIRJEE: Which ones?
2 MR. ROSENBAUM: First, the English language
3 arts.
4 THE WITNESS: English language arts were
5 adopted in the fall of 1997.
6 Q. BY MR. ROSENBAUM: Okay. And they are for
7 use -- you tell me if I understand this right -- in
8 English classes, is that right, throughout the state?
9 MR. SEFERIAN: Objection. Vague and ambiguous
10 as to "English classes."
11 THE WITNESS: The standards as adopted by the
12 State Board of Education are voluntary standards. They
13 are to establish learning expectations common to all
14 schools and students. The language arts standards, like
15 those in all content areas, are to be used for
16 instruction as a guide for instruction in those content
17 areas.
18 Q. BY MR. ROSENBAUM: So there's no requirement
19 that -- so far as you know, there's no requirement that
20 an English class conform its instruction to those
21 standards, is that right, to cover the content of those
22 standards for any particular grade?
23 MR. VIRJEE: Objection. Vague and ambiguous as
24 to "requirement."
25 MR. SEFERIAN: Calls for a legal conclusion.

1 Incomplete hypothetical question.
2 THE WITNESS: You're asking a question that
3 gets into a whole lot of different issues around
4 instruction, and it would probably be helpful if you
5 could break that up.
6 MR. ROSENBAUM: Let's do that.
7 Q. When you use the word "guide," "guide for
8 instruction," what do you mean by "guide"?
9 A. The standards establish learning expectations.
10 They're words on paper, they are not how you teach.
11 They establish the state's learning expectations for
12 every child, and that's all they do.
13 Q. And when you say "learning expectations," what
14 do you mean by that?
15 A. The standards movement was and remains an
16 attempt to define what we as a society, we as
17 Californians want all students to know and be able to
18 do.
19 Q. Okay. So it includes specific content, right?
20 A. Specific content, correct.
21 Q. Anything else?
22 MR. SEFERIAN: Objection. Overly broad.
23 THE WITNESS: I don't understand your
24 statement.
25 Q. BY MR. ROSENBAUM: Okay. With respect to -- so

1 English language arts was the fall of 1997, that's when
2 the Board adopted it you told me?
3 A. Yes.
4 MR. VIRJEE: Objection. Asked and answered.
5 Q. BY MR. ROSENBAUM: How about math?
6 A. The same time.
7 Q. How about science?
8 A. Science, and I'll also answer for history, were
9 both in 1998, and -- fall of 1998.
10 Q. Okay. Now, to your knowledge, Mr. Hill, when
11 was the first time that -- strike that.
12 Do you know what the STAR program is?
13 A. I do know what the STAR program is.
14 Q. And just so we're talking the same language
15 here, what's your understanding what the STAR program
16 is?
17 A. The STAR program is the primary state
18 assessment system.
19 Q. Okay. And do you know when was the first time
20 that API rankings were established?
21 MR. VIRJEE: Objection. Vague and ambiguous as
22 to "API rankings" and "established." Relative rankings
23 or numerical rankings? Vague and ambiguous.
24 THE WITNESS: Mr. Rosenbaum, you are referring
25 to the first API? It was 1999.

1 Q. BY MR. ROSENBAUM: And the test that was
 2 used -- the assessment -- strike that.
 3 The assessment instrument that was used as the
 4 basis for the first API, did it include state standards
 5 questions in the area of history social science?
 6 MR. VIRJEE: Objection. Vague and ambiguous as
 7 to "state standards questions."
 8 MR. SEFERIAN: Lacks foundation.
 9 THE WITNESS: I think I've answered that
 10 question prior, that this year is the first time we have
 11 had state standards tests included in the API.
 12 Q. BY MR. ROSENBAUM: Okay. For all four subject
 13 matters?
 14 A. No.
 15 MR. SEFERIAN: Objection. Misstates the
 16 witness' testimony.
 17 Q. BY MR. ROSENBAUM: I just want to be clear.
 18 For which subject matters?
 19 MR. VIRJEE: Which subject matters what?
 20 MR. ROSENBAUM: Were included.
 21 MR. VIRJEE: When?
 22 MR. ROSENBAUM: This year.
 23 MR. VIRJEE: For the first time?
 24 MR. ROSENBAUM: This year.
 25 MR. VIRJEE: Which ones were on it this year in

1 total?
 2 MR. ROSENBAUM: Sure. This year.
 3 THE WITNESS: The API that was released
 4 yesterday reflects data for 2001. 2001 data includes
 5 information from the Stanford-9 and from the English
 6 language arts California standards test.
 7 Q. BY MR. ROSENBAUM: But not for the math
 8 standards, no math standards were part of that API; is
 9 that right?
 10 MR. VIRJEE: Objection. Vague and ambiguous as
 11 to "no math standards."
 12 THE WITNESS: I think I've answered this prior
 13 as well. The schedule -- the public schedule is that we
 14 are -- it is our intent to include in 2 -- for 2002 API
 15 the remaining three California standard test content
 16 areas.
 17 Q. BY MR. ROSENBAUM: Okay. Thanks. Now, in your
 18 work -- strike that.
 19 When did you complete your work with respect to
 20 the English language arts standards? I'm going back to
 21 the time when you were the executive director.
 22 MR. VIRJEE: Objection. Vague and ambiguous as
 23 to "your work." You mean the commission's work or his
 24 work?
 25 MR. ROSENBAUM: I appreciate that. The

1 commission's work.
 2 THE WITNESS: The commission worked up until
 3 the final days before the State Board took action in the
 4 fall.
 5 Q. BY MR. ROSENBAUM: At any point during that
 6 period of time up until the fall of 1997, Mr. Hill, did
 7 your commission investigate the extent to which English
 8 language art textbooks in California schools were
 9 aligned with California standards?
 10 A. No.
 11 Q. Subsequent to the fall of 1997, to your
 12 knowledge, has the Department -- California Department
 13 of Education ever investigated the extent to which
 14 textbooks in English language arts classrooms are
 15 aligned with the California standards that the Board
 16 adopted?
 17 MR. SEFERIAN: Objection. Assumes facts not in
 18 evidence.
 19 MR. VIRJEE: Calls for speculation. Lacks
 20 foundation. Also vague and ambiguous as to "textbooks"
 21 in California classrooms and "aligned."
 22 MR. SEFERIAN: Lacks foundation. Vague and
 23 ambiguous as to "investigation."
 24 THE WITNESS: Mr. Rosenbaum, I'm having trouble
 25 understanding your question.

1 MR. ROSENBAUM: Okay.
 2 THE WITNESS: And maybe I can offer a corrected
 3 version of what you mean. Subsequent to the standards,
 4 subsequent to the adoption of state standards, there was
 5 no need to have a survey regarding alignment of
 6 textbooks because the clear intent of the State was to
 7 align textbooks, therefore, there was an immediate call
 8 for -- and there was a schedule established readily for
 9 the development of new state textbooks adopted to the
 10 standards.
 11 Q. BY MR. ROSENBAUM: Okay. My question to you
 12 is, first of all, did you personally agree with that,
 13 what you described as that "clear intent"?
 14 MR. VIRJEE: I'm sorry?
 15 Q. BY MR. ROSENBAUM: The clear intent was to
 16 align all textbooks in each of the subject areas with
 17 the actual content standards, is that what you're
 18 telling me?
 19 MR. SEFERIAN: Objection. Overly broad.
 20 MS. READ-SPANGLER: Misstates his testimony.
 21 MR. SEFERIAN: Incomplete hypothetical
 22 question.
 23 THE WITNESS: The AB 265, which established
 24 this direction, called for and required that that
 25 alignment process begin by the adoption of standards.

1 Q. BY MR. ROSENBAUM: When you say "that alignment
2 process," that includes having instructional materials
3 that are aligned with the standards; is that right?

4 A. Yes.

5 Q. And that includes having teachers who are
6 qualified to teach those standards; is that right?

7 MR. SEFERIAN: Objection. No foundation.
8 Vague and ambiguous as to "qualified teachers." Calls
9 for an inadmissible opinion. Misstates the witness'
10 testimony.

11 MR. VIRJEE: Are you asking what AB 265 --

12 MR. ROSENBAUM: I'm asking for his
13 understanding.

14 MR. SEFERIAN: Calls for an inadmissible legal
15 opinion.

16 THE WITNESS: I'm having trouble answering the
17 question in relation to the specific way you phrased it
18 in terms of teachers qualified. I'm not understanding
19 whether you mean that in terms of current teachers and
20 professional development preservice teachers. I'm
21 having trouble with that because -- and the reason why
22 is, I don't recall the specifics of AB 265 and whether
23 there was a reference to either preservice or continuing
24 professional development.

25 Q. BY MR. ROSENBAUM: To your knowledge, was there

1 any reference in AB 265 to teachers being able to teach
2 the standards?

3 MR. VIRJEE: Objection. 265 speaks for itself.
4 That calls for a legal conclusion.

5 MR. ROSENBAUM: I want your understanding.

6 MR. SEFERIAN: Vague and ambiguous as to
7 "teachers," "standards".

8 MR. VIRJEE: His own understanding is
9 irrelevant.

10 THE WITNESS: I can't recall the specific
11 language of AB 265.

12 Q. BY MR. ROSENBAUM: Sitting here today,
13 Mr. Hill, do you have an opinion as to whether or not
14 teachers in classrooms in California public schools
15 should be qualified to teach the content of the
16 California standards that were approved by the Board?

17 MR. VIRJEE: Objection. Vague and ambiguous as
18 to "qualified." Calls for speculation. Lacks
19 foundation. Calls for an expert opinion which this
20 witness is not competent to give.

21 THE WITNESS: Mr. Rosenbaum, I will answer your
22 question by saying that subsequent to the adoption of
23 state standards, the State has embarked on an aggressive
24 campaign to provide professional development and support
25 for teachers in California regarding our state

1 standards.

2 Q. BY MR. ROSENBAUM: What do you mean by
3 "regarding our state standards"?

4 A. In every aspect I can think of in terms of
5 appropriate instruction familiarity, instructional
6 techniques. I'm not an educator, I'm not qualified to
7 say beyond that.

8 Q. And what do you understand the objective of
9 that campaign to be, if you understand it?

10 MR. SEFERIAN: Objection. Lacks foundation.
11 Vague and ambiguous as to "objective."

12 MR. ROSENBAUM: That's a horrible question.

13 Q. Do you have an understanding of what the
14 purpose of that campaign is?

15 MR. SEFERIAN: Objection. Lacks foundation.
16 Calls for speculation. Vague and ambiguous as to
17 "purpose" and "campaign."

18 THE WITNESS: Consistent with and fully in
19 support of the academic standards teachers must be
20 provided all the appropriate information and resources
21 to effectively teach students so they can effectively
22 learn our state standards.

23 Q. BY MR. ROSENBAUM: When you say "to effectively
24 teach," what do you mean by that?

25 A. I don't mean anything beyond what I said.

1 Q. Let's go back. With respect to textbooks,
2 Mr. Hill, my question is, to your knowledge, has the
3 Department of Education undertaken any survey or
4 investigation to determine whether or not the textbooks
5 that are actually in the classrooms in California public
6 schools are aligned with California standards?

7 MR. VIRJEE: Objection. Vague and ambiguous as
8 to "textbooks." Vague as to time. Calls for
9 speculation. Lacks foundation.

10 MR. SEFERIAN: Asked and answered. Vague and
11 ambiguous as to "survey" and "investigation."

12 THE WITNESS: I would stand by my prior
13 response.

14 Q. BY MR. ROSENBAUM: I want to see if I
15 understood your prior response. Your prior response, if
16 I understood you, sir, didn't answer for me -- what I
17 want to know is what's really in the classroom.

18 My question to you is, has the Department of
19 Education, to your knowledge, actually undertaken any
20 survey or investigation to determine whether or not the
21 textbooks that are in California classrooms are aligned
22 with the standards?

23 MR. VIRJEE: Same objections. Asked and
24 answered.

25 MR. SEFERIAN: Assumes facts not in evidence.

1 Vague and ambiguous as to "aligned."

2 THE WITNESS: I'm having trouble,
3 Mr. Rosenbaum, because the focus of the state's energy
4 and resources has been to put as a bottom line
5 instructional materials and resources in front of
6 teachers and students that are standards aligned, and
7 for the past four years there has been a very
8 significant state effort to do that.

9 Q. BY MR. ROSENBAUM: What I'm trying to find out
10 is whether as part of that effort there's been any
11 attempt to find out the extent which students actually
12 have textbooks that are aligned with the standards?

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "textbooks." Also calls for speculation and lacks
15 foundation. And "attempt to find out" is also vague and
16 ambiguous.

17 MR. SEFERIAN: Assumes facts not in evidence.
18 Asked and answered.

19 THE WITNESS: I guess then I would offer two
20 responses. One is, I'm not aware of any Department
21 effort to conduct such a survey; and, two, I would --
22 based upon the direction of your question, I think I
23 would not necessarily agree with the assumptions or the
24 premises that are built into the question.

25 Q. BY MR. ROSENBAUM: What's the basis of that

1 your question, unless there's more to your question. Go
2 ahead and finish it then.

3 Q. BY MR. ROSENBAUM: My question is, has the
4 state -- strike that.

5 My question is this, are there classrooms where
6 teachers want to use textbooks that are aligned with
7 state standards who, in fact, use textbooks that are
8 aligned with state standards?

9 MR. VIRJEE: Objection. Calls for complete
10 speculation as to what a teacher may want to do, and
11 lacks any foundation.

12 THE WITNESS: I don't think I know how to
13 answer your question, Mr. Rosenbaum.

14 Q. BY MR. ROSENBAUM: To your knowledge, Mr. Hill,
15 are there teachers in classrooms in California public
16 schools who want to use textbooks aligned with state
17 standards who don't have access to textbooks?

18 MR. VIRJEE: Objection. Calls for speculation
19 as to what a teacher may or may not want to do.

20 MR. SEFERIAN: And lacks foundation. Vague and
21 ambiguous as to "aligned with state standards." Overly
22 broad.

23 THE WITNESS: I don't think I know how to
24 answer that question.

25 Q. BY MR. ROSENBAUM: Because?

1 answer, the second part of your answer?

2 A. Learning objectives and teaching the standards
3 can be achieved in a number of ways. Instructional
4 materials, whether they're textbooks or something else,
5 can -- and effective instruction on standards can be
6 achieved in a number of ways, and I'm not sure that
7 simply a focus on textbooks is entirely relevant.

8 Q. Okay. To your knowledge, Mr. Hill, are there
9 classrooms in the state of California where there are
10 teachers who want to use textbooks to communicate the
11 content standards who, in fact, have textbooks that are
12 aligned with standards?

13 MR. VIRJEE: Objection. Calls for speculation.
14 Lacks foundation as to what teachers may want to do or
15 not want to do. That's complete speculation.

16 MR. ROSENBAUM: Let me just ask for the
17 courtesy of finishing my question.

18 MR. VIRJEE: I'm sorry. I thought you were
19 finished.

20 MR. ROSENBAUM: Then you can introduce any
21 objection you want.

22 MR. VIRJEE: Great. I will.

23 Q. BY MR. ROSENBAUM: Do you know the answer to my
24 question?

25 MR. VIRJEE: Then I think you were done with

1 MR. SEFERIAN: Same objections.

2 THE WITNESS: I don't know how I could begin to
3 assemble a level of information and data to draw such a
4 conclusion one way or the other.

5 Q. BY MR. ROSENBAUM: Are there children in
6 California, Mr. Hill, who are using English language
7 arts textbooks that are not aligned with state standards
8 so far as you know?

9 MR. VIRJEE: Objection. Calls for speculation.
10 Lacks foundation. Also vague and ambiguous as to
11 "aligned with state standards" --

12 MR. SEFERIAN: Vague and ambiguous as to --

13 MR. VIRJEE: -- as to what degree they are
14 aligned or not aligned.

15 MR. SEFERIAN: Vague and ambiguous as to
16 "language arts textbooks."

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

18 Q. BY MR. ROSENBAUM: And the reason you can't
19 answer that question is what?

20 MR. SEFERIAN: Same objection.

21 THE WITNESS: And my same response. I have no
22 way of knowing what data I would use to make such a
23 conclusion.

24 Q. BY MR. ROSENBAUM: And if I changed it from
25 English language arts to math or history or science,

1 your answer would be the same?
 2 MR. SEFERIAN: Same objections.
 3 THE WITNESS: And same response.
 4 Q. BY MR. ROSENBAUM: Okay. And if I change it
 5 from textbooks -- to textbooks or other instructional
 6 materials, would your answer be the same?
 7 MR. SEFERIAN: Same objections. Vague and
 8 ambiguous as to "other instructional materials."
 9 THE WITNESS: Yes, it would be the same.
 10 Q. BY MR. ROSENBAUM: Okay. Do you know -- have
 11 you heard the expression "teachers teaching out of
 12 field"?
 13 MR. SEFERIAN: Objection. Vague and ambiguous.
 14 Vague as to context.
 15 THE WITNESS: I think I have a sense of what
 16 you mean.
 17 Q. BY MR. ROSENBAUM: Tell me what you think that
 18 means.
 19 MR. VIRJEE: Tell him how you're using it.
 20 Q. BY MR. ROSENBAUM: Tell me what you think the
 21 phrase means.
 22 MR. SEFERIAN: Vague as to context. Vague as
 23 to "field."
 24 THE WITNESS: Mr. Rosenbaum, are you referring
 25 to when teachers who have been -- who have professional

1 training in one content area teach in a content area
 2 that is not their area of expertise?
 3 MR. ROSENBAUM: Yes, let's use that definition.
 4 Q. Are there math teachers in California public
 5 schools who are teaching out of their field as you just
 6 described it?
 7 MR. VIRJEE: Teaching out of the area of their
 8 expertise?
 9 MR. ROSENBAUM: Yeah.
 10 MR. VIRJEE: I'll object as vague and ambiguous
 11 as to teaching out of their area of expertise.
 12 MR. SEFERIAN: Vague and ambiguous as to
 13 "field." Lacks foundation. Calls for speculation.
 14 MR. ROSENBAUM: I don't want to adopt a
 15 different definition of expertise, I want to use the
 16 definition you used.
 17 MR. VIRJEE: He hasn't given a definition of
 18 expertise.
 19 MR. ROSENBAUM: I want to use your
 20 understanding as you said it for me. You're an
 21 articulate guy, you know what you're talking about.
 22 Q. Mr. Hill, my question is, to your knowledge,
 23 are there math teachers who are teaching out of the
 24 field of math in California public schools?
 25 MR. VIRJEE: Are there teachers teaching out of

1 the field of math? Sure, there's teachers that are
 2 teaching English. Mark, it's a silly question.
 3 Q. BY MR. ROSENBAUM: Are there math teachers who
 4 are teaching out of the field of math?
 5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to "math teachers." Someone who has ever taught math,
 7 someone who is credentialed to teach math? It's a vague
 8 and ambiguous question.
 9 MR. SEFERIAN: Lacks foundation. Calls for
 10 speculation. Overly broad.
 11 MR. ROSENBAUM: Go ahead.
 12 THE WITNESS: I don't have any specific
 13 information or reference point to answer your question.
 14 Q. BY MR. ROSENBAUM: To your knowledge, has the
 15 Department of Education ever undertaken any
 16 investigation or survey or inquiry to determine the
 17 number or the percentage of math teachers who are
 18 teaching out of their field?
 19 MR. SEFERIAN: Objection. Assumes facts not in
 20 evidence. Vague and ambiguous as to "investigation" and
 21 "survey." Vague and ambiguous as "teaching out of their
 22 field."
 23 MR. VIRJEE: Also vague and ambiguous as to
 24 "math teachers."
 25 THE WITNESS: Let me respond by saying that I

1 do not recall or do not have any specific information or
 2 knowledge of such a study or information.
 3 I am aware on a more global level there have
 4 been such studies conducted. I do not know of any
 5 connection with them to the Department of Education.
 6 Q. BY MR. ROSENBAUM: Or if I change it from the
 7 Department of Education to the State Board of Education
 8 or to the secretary of education or the governor's
 9 office, would your answer be the same, you're not aware
 10 of any?
 11 MR. VIRJEE: Same objections with respect to
 12 the original question, and plus calls for speculation.
 13 MR. SEFERIAN: Compound question.
 14 THE WITNESS: I could not provide you with any
 15 information.
 16 Q. BY MR. ROSENBAUM: And if I change the subject
 17 matter from math to history, are your answers the same?
 18 MR. VIRJEE: Are there history teachers that
 19 don't teach history, which is what your question was.
 20 Are there math teachers that don't teach math?
 21 Q. BY MR. ROSENBAUM: Who are -- are there math
 22 teachers who are teaching out -- who are teaching out of
 23 their field?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "teaching out of their field," and vague and

1 ambiguous as to "math teachers."

2 MR. ROSENBAUM: He's already answered those
3 questions.

4 MR. VIRJEE: I also made the objections because
5 they're ridiculous questions.

6 A math teacher could be credentialed in many
7 different areas and teach in many different areas. A
8 math teacher could be someone who taught math before and
9 now is teaching math, or someone who is qualified to
10 teach math but has never taught math. The question is
11 vague and ambiguous.

12 Teaching out of their field could mean they're
13 teaching in another area in which they're qualified, or
14 in an area in which they're not qualified, in an area in
15 which they're certificated, in an area in which they're
16 not certificated.

17 Your questions are completely vague and
18 ambiguous and ridiculous, and it's a waste of
19 everybody's time.

20 Q. BY MR. ROSENBAUM: Are there history teachers,
21 to your knowledge, Mr. Hill, who are teaching history
22 and their field is not history?

23 MR. VIRJEE: Objection. Vague and ambiguous as
24 to "field."

25 MR. SEFERIAN: Lacks foundation. Calls for

1 teachers" and "field," and calls for speculation. Lacks
2 foundation. Nonsensical.

3 THE WITNESS: I don't know the answer to that.

4 Q. BY MR. ROSENBAUM: If I change it to social
5 science or English or math or science, same?

6 MR. VIRJEE: Same objections.

7 MR. SEFERIAN: Same objections.

8 THE WITNESS: And same response.

9 Q. BY MR. ROSENBAUM: Have you ever been in a
10 meeting, Mr. Hill, where someone said, hey, it would be
11 a good idea to find out whether or not we've got history
12 teachers teaching history whose field isn't history?

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "history teachers" and "field."

15 MR. SEFERIAN: Object to the extent it calls
16 for disclosure of confidential communications,
17 privileged information.

18 THE WITNESS: I can't recall any such
19 discussion in a meeting.

20 Q. BY MR. ROSENBAUM: If I change it to math,
21 English language arts or science, would your answer be
22 the same?

23 MR. VIRJEE: Same objections.

24 MR. SEFERIAN: Same objections.

25 THE WITNESS: And same response.

1 speculation.

2 THE WITNESS: I don't know the answer to that
3 question.

4 Q. BY MR. ROSENBAUM: To your knowledge, has the
5 Department ever undertaken any investigation or inquiry
6 to determine whether or not there are history teachers
7 who are teaching history and their field isn't history?

8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "history," and vague and ambiguous as to "field."

10 MR. SEFERIAN: Assumes facts not in evidence.

11 THE WITNESS: I don't know the answer to that
12 question.

13 Q. BY MR. ROSENBAUM: If I change it to other
14 subject areas, science, social science, English language
15 arts or math, are your answers the same?

16 MR. VIRJEE: Yes, it will be just as vague and
17 ambiguous if you change the subject matter.

18 THE WITNESS: My answers would be the same.

19 Q. BY MR. ROSENBAUM: To your knowledge, has
20 anyone in the State of California ever undertaken any
21 investigation or inquiry to determine the extent to
22 which there are history teachers in California public
23 schools whose field is not history who are teaching
24 history?

25 MR. VIRJEE: Vague and ambiguous as to "history

1 Q. BY MR. ROSENBAUM: Mr. Hill, are there -- to
2 your knowledge, are there teachers in the state of
3 California who think I'd like to have a textbook, an
4 English textbook, but my school isn't providing me with
5 any English textbooks for my students?

6 MR. VIRJEE: Objection. Calls for speculation
7 as to what a teacher thinks or doesn't think. And also
8 vague and ambiguous as to "textbook." Also vague as to
9 time.

10 MR. SEFERIAN: Lacks foundation. Overly broad.

11 THE WITNESS: I don't know.

12 Q. BY MR. ROSENBAUM: Okay. If I change it to
13 some other subject matter besides English, is the answer
14 the same?

15 MR. SEFERIAN: Same objections.

16 THE WITNESS: Same response.

17 Q. BY MR. ROSENBAUM: Has there ever been a
18 discussion of which you're aware that it would be a good
19 idea to find out if there are teachers who want to use
20 textbooks who can't get access to textbooks in certain
21 core curriculum areas?

22 MR. SEFERIAN: Objection. Assumes facts not in
23 evidence. Object to the extent it calls for disclosure
24 of privileged information.

25 MR. VIRJEE: Also vague and ambiguous as to

1 "textbooks," and calls for speculation.
 2 THE WITNESS: I do not recall any such
 3 conversation in a meeting.
 4 Q. BY MR. ROSENBAUM: Okay. Has there -- you
 5 talked to me earlier, Mr. Hill about -- if I'm
 6 mischaracterizing this, you tell me.
 7 My understanding is you talked to me about
 8 components of an accountability system, and one of the
 9 components you talked about was an instructional system.
 10 Did I understand you correctly?
 11 MR. VIRJEE: Objection. Completely misstates
 12 his testimony.
 13 MR. SEFERIAN: Objection. Vague and ambiguous.
 14 THE WITNESS: I'll be happy to refresh what I
 15 meant by that.
 16 MR. ROSENBAUM: Thanks.
 17 THE WITNESS: I was referring to when there is
 18 a low-performing school and there is a need to
 19 understand what the strengths and weaknesses of that
 20 low-performing school are, there is a beginning point
 21 that is driven by an evaluation of the data, that is,
 22 the performance data of students and therefore the
 23 schools.
 24 Based upon that data and the strengths and
 25 weaknesses that it reveals, an appropriate instructional

1 program to serve those students and to focus on
 2 maintaining the strengths and correcting the weaknesses
 3 is what I was referring to.
 4 Q. BY MR. ROSENBAUM: All right. You just said
 5 it. Appropriate instructional -- what was the phrase?
 6 A. Appropriate instructional program I think is
 7 what I said.
 8 Q. And when you use the phrase "appropriate
 9 instructional program," what did you mean by that?
 10 MR. VIRJEE: Objection. Calls for speculation.
 11 Excuse me. Objection. Calls for speculation as to what
 12 context that would be. He's already testified
 13 specifically about it's different in every instance.
 14 MR. ROSENBAUM: Go ahead.
 15 THE WITNESS: I would begin by confirming that
 16 an appropriate instructional program may indeed be
 17 unique in every circumstance based upon the data and
 18 evidence provided.
 19 With that said, my reference to an
 20 instructional program is a focus on student learning
 21 expectations established for that school or for that
 22 district, and a plan of action that's going to move the
 23 students towards -- towards meeting those objectives.
 24 Q. BY MR. ROSENBAUM: Okay. Has the Department,
 25 to your knowledge, Mr. Hill, formulated any descriptions

1 of what would be the components of appropriate
 2 instructional programs?
 3 MR. SEFERIAN: Objection. Assumes facts not in
 4 evidence. Overly broad. Vague and ambiguous.
 5 MR. VIRJEE: Vague and ambiguous as to
 6 "components."
 7 MR. SEFERIAN: Incomplete hypothetical
 8 question. Vague and ambiguous as to "formulated" and
 9 "description."
 10 THE WITNESS: Mr. Rosenbaum, I would give you
 11 two responses on that, one is with your specific
 12 reference to the Department of Education, I would have
 13 to assert that there is some privilege to the
 14 conversation of that material.
 15 The second piece is that what you're discussing
 16 is not a secret in terms of the work of an awful lot of
 17 folks to try to improve student performance. All the
 18 external evaluators working throughout the state of
 19 California have this common agenda in mind, and it might
 20 be useful to think about it or talk with some of them
 21 about how they're approaching that agenda.
 22 Q. BY MR. ROSENBAUM: Let's break down that answer
 23 a little bit. Is there any requirement that you're
 24 aware -- you used the phrase "plan of action" two
 25 questions before. What did you mean by that?

1 MR. SEFERIAN: Objection. Vague as to context.
 2 THE WITNESS: I think it's a relatively
 3 common-sense understanding of that term. If you have a
 4 beginning point and you see in the distance the end
 5 point you want to achieve, you create a plan of action
 6 that includes the appropriate steps to reach your end.
 7 Q. BY MR. ROSENBAUM: You think that's a good
 8 idea?
 9 MR. SEFERIAN: Objection. Overly broad. Vague
 10 as to context.
 11 MS. READ-SPANGLER: Does he think what's a good
 12 idea?
 13 MR. ROSENBAUM: I want you to know that I know
 14 the two of you are talking, and I haven't said a word
 15 about it.
 16 MS. READ-SPANGLER: I'm trying not to object
 17 much.
 18 Q. BY MR. ROSENBAUM: Do you think developing a
 19 plan of action is a good idea?
 20 MR. SEFERIAN: Objection. Overly broad. Vague
 21 as to context.
 22 MR. ROSENBAUM: The context in which you were
 23 talking about it.
 24 MR. VIRJEE: Incomplete hypothetical.
 25 THE WITNESS: If your reference is to a plan of

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1 action as I referred to it in focusing low-performing
 2 schools on improving student learning, the answer is
 3 absolutely.
 4 Q. BY MR. ROSENBAUM: Why is that?
 5 MR. SEFERIAN: Objection. Overly broad.
 6 Incomplete hypothetical.
 7 THE WITNESS: Because based upon the evidence
 8 at hand, students were not learning in a satisfactory
 9 rate or level. A plan of action that is designed to
 10 improve student learning, that is, to increase the
 11 amount of information in relation to our learning
 12 expectations is a laudable goal.
 13 Q. BY MR. ROSENBAUM: And when you use the phrase
 14 "low-performing school," what do you mean by that?
 15 MR. SEFERIAN: Objection. Vague as to context.
 16 THE WITNESS: For the purposes of what we
 17 were -- of what I was referring to, I was referring to
 18 the definitions of low-performing schools associated
 19 with the Public School Accountability Act.
 20 Q. BY MR. ROSENBAUM: What's your understanding of
 21 what that is?
 22 MR. VIRJEE: Objection. Calls for a legal
 23 conclusion.
 24 MR. SEFERIAN: Statute speaks for itself.
 25 THE WITNESS: The statute does define

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1 low-performing schools both in terms of associations
 2 with certain deciles and in relation to meeting growth
 3 targets and subgroup performance targets.
 4 Q. BY MR. ROSENBAUM: Do you know -- sitting here
 5 today, can you give me a number, an estimate as to the
 6 number of low-performing schools in California at this
 7 time?
 8 MR. VIRJEE: Objection. Vague and ambiguous.
 9 MR. SEFERIAN: Vague as to "low-performing
 10 schools." Overly broad.
 11 THE WITNESS: It is vague because there are --
 12 you could reference that from a federal perspective,
 13 from an II/USP perspective, or from a perspective of
 14 PSAA.
 15 Q. BY MR. ROSENBAUM: Well, I'm interested in the
 16 way you go about your business, Mr. Hill.
 17 Do you have in your mind a definition that you
 18 feel best captures the idea of a low-performing school?
 19 MR. VIRJEE: Objection. Compound. Calls for
 20 speculation. Incomplete hypothetical.
 21 MR. SEFERIAN: Vague as to context.
 22 THE WITNESS: I think I would need to have a
 23 more specific context from you, and then assert whether
 24 I agree or we have a conversation about that context.
 25 Q. BY MR. ROSENBAUM: Okay. Let's start with the

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1 API rankings. Do you have a view as to whether or not
 2 looking at API rankings we can classify certain schools
 3 as low performing?
 4 MR. VIRJEE: Objection. Calls for speculation.
 5 Lacks foundation. Calls for a legal conclusion to the
 6 extent you're asking whether they're categorized as low
 7 performing under the statute or under his personal view.
 8 THE WITNESS: The statute, by definition, says
 9 that all schools who are below the rank of 6 are low
 10 performing.
 11 Q. BY MR. ROSENBAUM: Okay. And do you personally
 12 agree with that?
 13 MR. SEFERIAN: Objection. Overly broad.
 14 Incomplete --
 15 MR. ROSENBAUM: The problem with that question
 16 is foundational.
 17 Q. Do you have an opinion as to whether or not
 18 that's a definition that captures the notion of low
 19 performing?
 20 MR. VIRJEE: Objection. Vague and ambiguous.
 21 Calls for speculation. Lacks foundation. Calls for an
 22 expert opinion which this witness is not competent to
 23 give.
 24 THE WITNESS: There is certainly every reason
 25 to believe that those schools identified as low

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1 performing by the API can strive for improvement.
 2 Beyond saying that, I think that we would have to have
 3 some sort of context for a specific way of answering
 4 your question.
 5 Q. BY MR. ROSENBAUM: Okay. Do you agree with
 6 your counsel that you're not competent to give that
 7 opinion?
 8 MR. SEFERIAN: Objection. Argumentative.
 9 Calls for an inadmissible legal opinion. Vague and
 10 ambiguous as to "competent." Lacks foundation. Calls
 11 for speculation.
 12 THE WITNESS: I don't know how to answer your
 13 question.
 14 Q. BY MR. ROSENBAUM: Okay. In the tenth
 15 decile -- that's the lowest, right?
 16 A. No.
 17 Q. One is the lowest?
 18 A. Correct.
 19 Q. Okay. In decile No. 1, do you know how many of
 20 those schools have a plan of action as you defined that
 21 phrase?
 22 MR. SEFERIAN: Objection. Vague as to time.
 23 Vague as to "plan of action." Incomplete hypothetical
 24 question. Overly broad. Lacks foundation.
 25 THE WITNESS: I would, again, refer you to an

1 answer I provided a few minutes ago. I don't know the
 2 answer to that because plans of actions could come from
 3 a variety of sources, federal, state or voluntary.
 4 Q. BY MR. ROSENBAUM: Okay. Do you know -- but
 5 I'm interested in any of those. Do you know, sir, how
 6 many schools -- strike that.
 7 Do you know whether all schools in the first
 8 decile have a plan of action, whether it's federal,
 9 state or something else?
 10 MR. VIRJEE: Objection. Calls for speculation.
 11 Lacks foundation. Vague and ambiguous as to "plan of
 12 action."
 13 MR. SEFERIAN: Vague as to time.
 14 THE WITNESS: I don't know.
 15 Q. BY MR. ROSENBAUM: Okay. Would that be true
 16 for the second, third, fourth and fifth deciles as well?
 17 MR. SEFERIAN: Same objections. Lacks
 18 foundation. Calls for speculation.
 19 THE WITNESS: That would be the same response
 20 as well.
 21 Q. BY MR. ROSENBAUM: To your knowledge, has
 22 anyone in the Department of Education ever undertaken
 23 any inquiry to determine to what extent the schools in
 24 the first decile have plans of actions, whether federal
 25 state or otherwise?

1 MR. VIRJEE: Objection. Vague and ambiguous as
 2 to plan of action. Calls for speculation. Vague and
 3 ambiguous as to time.
 4 MR. SEFERIAN: Assumes facts not in evidence.
 5 Vague as to "inquiry."
 6 THE WITNESS: Well, I don't know with any
 7 specificity the answer to your question. I would --
 8 I'll leave it at that.
 9 Q. BY MR. ROSENBAUM: Okay. When you say "with
 10 any specificity," what do you mean by that?
 11 A. Under any number of different programs, whether
 12 it is a federal program, state program, whether it is as
 13 a basis for receiving specific categorical funds,
 14 whether it was under PQR, whether it was under WASC, all
 15 schools are required to do some measure of planning,
 16 therefore, I don't know how to answer your question in
 17 relation to what I have -- the operating context of your
 18 question has been in relation to low-performing school
 19 status and some plan of action to presumably move beyond
 20 that. I don't know the answer to which school plans are
 21 focused on what I think has been the direction of your
 22 questioning.
 23 Q. Which is what?
 24 MR. SEFERIAN: Objection. Calls for
 25 speculation.

1 THE WITNESS: Which was, as I just said, their
 2 status as a low-performing school and doing something
 3 about it.
 4 Q. BY MR. ROSENBAUM: Okay. I'm just interested
 5 in your understanding. So far as the PSAA is concerned,
 6 to your knowledge, is there any requirement that schools
 7 in the first decile develop plans of action?
 8 MR. VIRJEE: Objection. Vague and ambiguous as
 9 to "requirement" and "plans of action."
 10 MR. SEFERIAN: Calls for an inadmissible legal
 11 opinion. Lacks foundation. Statute speaks for itself.
 12 MR. VIRJEE: Also compound.
 13 I don't know if you were talking about
 14 requirements in the statute. If that's true, the
 15 statute definitely speaks for itself.
 16 THE WITNESS: The statute speaks to a
 17 requirement that schools that participate in II/USP have
 18 action plans. I don't know the answer to your question
 19 beyond that.
 20 Q. BY MR. ROSENBAUM: Okay. Have you ever
 21 looked -- do you know if any II/USP schools have ever
 22 developed action plans?
 23 MR. SEFERIAN: Objection. Lacks foundation.
 24 Calls for speculation.
 25 THE WITNESS: The answer is, yes, the State

1 Board of Education every spring or summer approves the
 2 action plans that are adopted by those schools and
 3 approved by their school boards.
 4 Q. BY MR. ROSENBAUM: Okay. Now, do you know the
 5 percentage of schools that are eligible, right now who
 6 are eligible for the II/USP program who are not
 7 participating in that program?
 8 MR. VIRJEE: Objection. Calls for speculation.
 9 Lacks foundation. Also vague as to time.
 10 MR. SEFERIAN: Vague as to "participating."
 11 THE WITNESS: I don't know the answer to that.
 12 Q. BY MR. ROSENBAUM: Or a year ago would you
 13 know?
 14 MR. SEFERIAN: Same objections.
 15 THE WITNESS: I don't know the answer to that.
 16 Q. BY MR. ROSENBAUM: At any point?
 17 MR. SEFERIAN: Same objections.
 18 THE WITNESS: I don't know the answer to that.
 19 Q. BY MR. ROSENBAUM: Has there, to your
 20 knowledge, been any audit or investigation to determine
 21 the extent to which -- strike that.
 22 Have you -- are you involved, you personally,
 23 Mr. Hill, involved in the selection of external
 24 evaluators?
 25 A. No.

1 Q. Have you -- are you aware of changes in the
2 PSAA since its initial formulation -- strike that --
3 since its passage with respect to the use or selection
4 of external evaluators?

5 MR. VIRJEE: Objection. Vague and ambiguous as
6 to "use" and also "passage."

7 THE WITNESS: I am aware that in 2001 the State
8 Board approved a new list of evaluators based on new
9 criteria. I do not have information beyond that.

10 Q. BY MR. ROSENBAUM: Do you know what those
11 criteria are?

12 A. I do not.

13 Q. Were you ever asked your view as to whether or
14 not new criteria should be developed or what you thought
15 about the proposed criteria?

16 MR. SEFERIAN: Objection to the extent it calls
17 for disclosure of privileged communications.

18 THE WITNESS: I don't have a specific
19 recollection of being asked that.

20 Q. BY MR. ROSENBAUM: Okay. Were you ever at any
21 meetings at which the subject matter of changes in the
22 criteria for external evaluators were discussed that you
23 recall?

24 MR. VIRJEE: Objection. Vague and ambiguous as
25 to "meetings."

1 MR. SEFERIAN: Object to the extent it calls
2 for disclosure of privileged communications.

3 THE WITNESS: And I may have been at such a
4 meeting, but I don't recall. I just don't recall any
5 specific discussion around that issue.

6 But let me just comment that there was very
7 broad public discussion in front of the State Board with
8 the Board adopting this specific criteria.

9 Q. BY MR. ROSENBAUM: I want to put aside the
10 State Board meetings. Do you regularly attend those
11 meetings?

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

14 THE WITNESS: Yes.

15 Q. BY MR. ROSENBAUM: Okay. Were you ever at any
16 staff meetings or Department meetings, I don't mean
17 State Board meetings, at which the subject matter of
18 whether or not there should be changes in the criteria
19 for selecting the external evaluators was discussed?

20 MR. SEFERIAN: Objection. Calls for disclosure
21 of official information and deliberative process. To
22 that extent, it's privileged.

23 THE WITNESS: And my response is similar to my
24 last one. I may have been, but I do not recall any
25 specific conversation or discussion.

1 MR. ROSENBAUM: Now, if I ask you a question
2 you don't know the answer to, you just tell me that.

3 MR. VIRJEE: He wants you to tell him the
4 answer to the questions you don't know the answers to.

5 MR. ROSENBAUM: It's a reversal of that trick
6 question that I mentioned earlier.

7 Q. What's your understanding of what external
8 means, when we talk about external evaluators?

9 MR. VIRJEE: Objection. Vague and ambiguous.
10 Are you talking about in the context of the
11 statute?

12 MR. ROSENBAUM: The context of the program
13 we're talking about.

14 MR. VIRJEE: Objection. Calls for speculation.
15 Lacks foundation.

16 THE WITNESS: Mr. Rosenbaum, I hate to bring
17 the State Board into this, but the State Board had
18 extensive conversations around it because there was
19 controversy about whether external meant external to the
20 school site or external to the district, and I would
21 refer you to their policy or regulations on it. I don't
22 recall the specific findings.

23 Q. BY MR. ROSENBAUM: Do you have a view as to
24 whether or not it makes a difference in terms of the
25 purpose of the program whether or not the evaluators are

1 external to the district or external to the school site?

2 MR. VIRJEE: Objection. Calls for speculation.
3 Lacks foundation. Calls for an expert opinion which
4 this witness is not competent to give, and also compound
5 as to the context.

6 MR. SEFERIAN: Vague and ambiguous as to
7 "difference" and "purpose."

8 THE WITNESS: I don't have a way -- I don't
9 have a way of having enough information to draw a
10 conclusion one way or the other.

11 Q. BY MR. ROSENBAUM: Okay. Now, you know what --
12 have there been any audits, to your knowledge, of the
13 work of external evaluators under this program?

14 MR. VIRJEE: Objection. Vague and ambiguous as
15 to "audits."

16 Q. BY MR. ROSENBAUM: By audits I mean have any
17 external evaluators looked at the work of external
18 evaluators, has the Department ever tasked any of its
19 personnel, let's see how these external evaluators are
20 doing?

21 I want to know if there's been any oversight of
22 the work of external evaluators that you're aware of?

23 MR. VIRJEE: Objection. Compound.

24 Which one of those three do you want him to
25 answer?

1 MR. ROSENBAUM: Pick one.

2 MR. SEFERIAN: Objection. Vague and ambiguous
3 as to "oversight." Lacks foundation. Calls for
4 speculation.

5 THE WITNESS: Mr. Rosenbaum, I am aware that
6 there were a number of concerns raised about the
7 original statute because there was no state level
8 oversight or evaluation, and for many people that was
9 purposeful in the legislation, that it remained a
10 locally-driven, locally-controlled recovery plan or
11 rescue plan for those schools.

12 I am aware that at some point in time, and I
13 really don't have a recollection as to who was involved
14 or when it happened, the Department -- either the
15 Department or county offices, someone hosted a meeting
16 where external evaluators could come and give some
17 feedback as to what was working and what was not
18 working. I know that the State Board has hosted a
19 working seminar, I believe, on the same questions which
20 led to some of the revisions during this last year.
21 That's the extent of my recollection.

22 Q. BY MR. ROSENBAUM: Were you at any of those
23 meetings?

24 A. No, I was not.

25 Q. Did you ever get a memorandum describing any

1 MR. VIRJEE: At least we're all listening.

2 Q. BY MR. ROSENBAUM: To your knowledge, Mr. Hill,
3 has there been any analysis of schools in decile 6 or
4 below?

5 MR. VIRJEE: Below 6?

6 MR. ROSENBAUM: Okay. Start that again.

7 MR. VIRJEE: I don't know. It's your question.

8 Q. BY MR. ROSENBAUM: Underperforming schools are
9 below 6?

10 A. Correct.

11 Q. Has there been any analysis, Mr. Hill, to your
12 knowledge, of schools that are in below -- in deciles
13 below 6 and characteristics of those schools?

14 MR. VIRJEE: Objection. Vague and ambiguous as
15 to "analysis."

16 MR. SEFERIAN: Vague and ambiguous as to
17 "characteristics." Assumes facts not in evidence.
18 Calls for speculation. Overly broad.

19 THE WITNESS: I can't recall any specific
20 evaluations or studies. I don't know.

21 Q. BY MR. ROSENBAUM: Okay. When you heard me use
22 the phrase characteristics, what were you thinking
23 about? What did you think I meant by that?

24 MR. SEFERIAN: Objection. Calls for
25 speculation.

1 conclusions or any discussion in any of those meetings?

2 A. I don't have a specific recollection. I may
3 have, but I just don't remember whether I did or not.

4 Q. Do you know for a fact whether or not anyone in
5 any of the branches under your supervision attended any
6 of those meetings?

7 MR. VIRJEE: Objection. Calls for speculation.
8 Lacks foundation.

9 THE WITNESS: I don't know the answer to that.
10 I don't know.

11 Q. BY MR. ROSENBAUM: Okay. Was there ever was
12 any discussion of which you're aware with Superintendent
13 Eastin about any of these meetings or any of these
14 discussions about the work of the evaluators?

15 MR. SEFERIAN: Object to the extent it calls
16 for the disclosure of privileged communications.

17 THE WITNESS: And I simply cannot recall such a
18 discussion. I don't recall.

19 Q. BY MR. ROSENBAUM: Okay. Have you -- to your
20 knowledge, Mr. Hill, has there been any analysis of
21 schools in underperforming deciles? That's 6 or below;
22 is that right?

23 MR. VIRJEE: Below 6.

24 THE WITNESS: Below 6.

25 MR. ROSENBAUM: Let me start that over.

1 THE WITNESS: I would infer from your question
2 that by characteristics you meant whether it was a
3 common type of student enrollment, a common type of
4 teacher preparation or qualifications, common type of
5 community demographics, common type of instructional
6 programs, those kinds of characteristics.

7 Q. BY MR. ROSENBAUM: And if it weren't -- by
8 common I don't necessarily mean 100 percent, I mean just
9 prevailing characteristics. You understood that, right,
10 when you gave me that answer?

11 MR. SEFERIAN: Objection. Argumentative.
12 Assumes facts not in evidence. Vague and ambiguous.

13 THE WITNESS: I would stick with my inference,
14 yeah.

15 Q. BY MR. ROSENBAUM: To your knowledge, Mr. Hill,
16 are any changes being contemplated at this time by the
17 Department with respect to the high school exit exam?

18 MR. VIRJEE: Objection. Vague and ambiguous as
19 to "changes." Also vague as to time.

20 MR. SEFERIAN: Assumes facts not in evidence.
21 Calls for disclosure of privileged communications.

22 THE WITNESS: Mr. Rosenbaum, I am not aware of
23 any changes that are intended for the high school exit
24 exam.

25 Q. BY MR. ROSENBAUM: Okay. How about CCR?

1 MR. VIRJEE: How about CCR?

2 MR. SEFERIAN: Objection. Vague and ambiguous.
3 Calls for disclosure of privileged communications.
4 Objection. Overly broad.

5 THE WITNESS: I'm sorry, Mr. Rosenbaum, I need
6 a little bit more specificity to your question.

7 Q. BY MR. ROSENBAUM: Okay. What I'm interested
8 in is, are there any changes that are being considered
9 as to either the structure or the operation of CCR?

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "changes," and vague and ambiguous as to who might be
12 considering those changes.

13 MR. SEFERIAN: Objection to the extent it calls
14 for disclosure of privileged communications.

15 THE WITNESS: Our coordinated compliance review
16 both in structure operations and in content are
17 evaluated every year to be consistent with state and
18 federal law. That is an ongoing activity.

19 Q. BY MR. ROSENBAUM: Okay. And the Department of
20 Education runs a CCR program; isn't that right?

21 A. Are you referring to the training we provide
22 the school districts?

23 Q. No, I'm talking about the training plus the
24 actual coordinating compliance review that takes place
25 at the districts.

1 and ambiguous as to do CCR.

2 THE WITNESS: The coordinated compliance
3 reviews are carried out by the primary services of two
4 units. There is a CCR administration and planning unit,
5 there is also -- there is also a consolidated
6 application and consolidated program review unit. In
7 addition to that, the administration unit coordinates
8 the activities of many consultants from a variety of
9 programs throughout the Department to conduct the field
10 reviews.

11 MR. VIRJEE: All of this, Mark, you'd already
12 know if you'd go back and read Eleanor's deposition
13 again. You took it. It's kind of a waste of time for
14 everybody.

15 Q. BY MR. ROSENBAUM: My question is, to your
16 knowledge, are there any changes being contemplated with
17 respect to the program review unit that you're aware of?

18 MR. VIRJEE: Objection. Asked and answered.
19 Calls for speculation. Vague and ambiguous as to
20 "changes."

21 MR. SEFERIAN: Object to the extent it calls
22 for disclosure of privileged communication and official
23 information, deliberative process.

24 THE WITNESS: I would respond by, one,
25 asserting a privilege and, two, reminding you of my

1 A. You are asking do we actually conduct re -- the
2 coordinated compliance reviews?

3 Q. Yeah.

4 A. The answer is yes.

5 Q. And who does that?

6 MR. SEFERIAN: Objection. Overly broad.

7 MR. VIRJEE: Objection. Vague and ambiguous as
8 to "who does that."

9 Who coordinates it? Who goes out and does the
10 reviews? You already know the answers to these
11 questions anyway.

12 MR. ROSENBAUM: I know. The first question was
13 just fine.

14 Q. There is a CCR unit; is that right?

15 A. CCR is not confined to a single unit.

16 Q. Okay. Forget about English learners, that part
17 of it. The remainder of the program, the programs that
18 are looked at, that is done by a unit; isn't that
19 correct?

20 MR. VIRJEE: Objection. Vague and ambiguous as
21 to "unit."

22 THE WITNESS: That is also not contained in a
23 single unit.

24 Q. BY MR. ROSENBAUM: What units do the CCR?

25 MR. SEFERIAN: Objection. Overly broad. Vague

1 prior response that the CCR is evaluated on a yearly
2 basis to be consistent with state and federal law.

3 Q. BY MR. ROSENBAUM: Tell me, Mr. Hill, the basis
4 of your assertion of this privilege.

5 MR. SEFERIAN: That's asserting privilege based
6 on official information and deliberative process.
7 That's the basis of the objection. I don't think it's
8 appropriate to have the witness discuss a privilege.

9 MR. ROSENBAUM: I don't agree with that, but
10 that's all right for now.

11 Q. Any changes that you're aware of that are being
12 contemplated with respect to the California English
13 language development test?

14 MR. SEFERIAN: Objection to the extent it calls
15 for disclosure of privileged communications.

16 MR. ROSENBAUM: I'm just asking if there are
17 any changes being contemplated.

18 MR. VIRJEE: Calls for speculation. Lacks
19 foundation. Also vague and ambiguous as to "changes."

20 MR. SEFERIAN: Assumes facts not in evidence.

21 THE WITNESS: Mr. Rosenbaum, I would refer you,
22 and I mean this with the most -- you will find the
23 discussion at the last State Board of Education meeting
24 very helpful in this regard.

25 The Department of Education gathered a variety

1 of options to potentially improve the English language
 2 development test, and the Board listened to those
 3 options and listened to a great deal of field input and
 4 did not act on any of those seeking additional input
 5 over the next month, and there was a great deal and very
 6 active public discussion that I'm sure you would find
 7 informative.

8 Q. BY MR. ROSENBAUM: Did the Department have any
 9 recommendations, so far as you know?

10 MR. SEFERIAN: Object to the extent it calls
 11 for the disclosure of privileged communications.

12 THE WITNESS: We viewed our job as one of
 13 providing a series of options to the State Board of
 14 Education. Any number of those options could improve
 15 the quality of the test, and that was the basis of our
 16 submittal to the Board.

17 Q. BY MR. ROSENBAUM: Did you attend any meetings,
 18 I don't mean State Board meetings, but did you attend
 19 any Department meetings where the discussion about
 20 whether or not there ought to be changes to the English
 21 language development test were discussed?

22 MR. SEFERIAN: Object to the extent it calls
 23 for disclosure of privileged communications.

24 THE WITNESS: I would assert a privilege in
 25 answering that question. And I would, again, refer you

1 to the Board discussion because the Board discussion has
 2 the full extent of all conversations that have taken
 3 place with regards to potential changes to the exam.

4 Q. BY MR. ROSENBAUM: Are you telling me that
 5 outside the actual board meeting, there were no
 6 discussions in your department that you're aware of
 7 involving concerns with the English language development
 8 test?

9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to "concerns with the English language development
 11 test." Also object on the grounds of attorney client
 12 privilege and the official information privilege.

13 THE WITNESS: I am answering that the
 14 conversation of which I am aware is one for which I
 15 would assert a privilege.

16 Q. BY MR. ROSENBAUM: I am not asking for the
 17 content. There was a conversation outside the State
 18 Board on the subject matter I'm asking about, that is,
 19 concerns regarding the English language development
 20 test; is that right?

21 I'm not asking for the content of that
 22 discussion, I just want to know if it happened outside
 23 the State Board.

24 MR. VIRJEE: The conversation in which he was
 25 involved?

1 MR. ROSENBAUM: That's right.

2 THE WITNESS: I'll be as direct as I can. The
 3 conversation I was involved in was a conversation
 4 between our staff and the contractor with regard to
 5 the -- on these issues.

6 Q. BY MR. ROSENBAUM: Okay. And when did that
 7 conversation take place?

8 A. It was -- it was sometime earlier this month.

9 Q. Okay. And you may have just answered this, so
 10 just bear with me. Prior to that -- first of all, who
 11 is the contractor?

12 A. CTB McGraw-Hill.

13 Q. Now, prior to that discussion, to your
 14 knowledge, were there discussions in your department
 15 about the English language development test, concerns
 16 about the test?

17 I'm not asking for the content, I just want to
 18 know if there were discussions prior to the meeting with
 19 the contractor?

20 MR. VIRJEE: Objection. Vague and ambiguous as
 21 to "discussions." Vague and ambiguous as to "concerns,"
 22 and also vague as to time.

23 THE WITNESS: I can only answer in relatively
 24 vague ways. The ELD test has received a great deal of
 25 public scrutiny in front of the State Board for several

1 months. We have received numerous concerns at Board
 2 meetings about a number of issues related to the test.

3 I don't have any awareness of specific
 4 conversations or discussions around how we would improve
 5 the test. I just don't know beyond that. I do know
 6 that we arrived in January with a series of options to
 7 present to the Board.

8 Q. BY MR. ROSENBAUM: Who prepared these options?

9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to "prepared."

11 Q. BY MR. ROSENBAUM: When you say "we," who do
 12 you mean by "we"?

13 A. I think I would only refer to the standards and
 14 assessment division.

15 Q. And, to your knowledge, was a memorandum
 16 prepared describing recommendations with respect to the
 17 CELDT from that division?

18 MR. VIRJEE: Objection. Vague and ambiguous as
 19 to "recommendations."

20 THE WITNESS: There was a State Board item for
 21 its public agenda that was distributed at the Board
 22 meeting with regard to those recommendations.

23 Q. BY MR. ROSENBAUM: But that's not my question.
 24 My question is, internally within the Department, to
 25 your knowledge, was a memorandum or memoranda prepared

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1 that discussed possible changes to the California
2 English language learner test?
3 A. No. No.
4 Q. To your knowledge, are there particular persons
5 or a person in the assessment division who had
6 responsibility for critiquing the California English
7 language development test?
8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "responsibility" and "critiquing."
10 THE WITNESS: Phil Spears as the division
11 director is my -- is the person I always hold
12 responsible for those exams.
13 Q. BY MR. ROSENBAUM: Did you ever have any
14 discussion with Mr. Spears about the California English
15 language development test?
16 A. I don't know how to answer your question. In
17 what context, sir?
18 Q. Staff meeting, one-on-one discussion, any
19 discussion with Mr. Spears or any member of his staff
20 with respect to the California English language
21 development test?
22 A. Mr. Rosenbaum, the problem I have with your
23 question is that test has been in development or -- I
24 mean, all the way from bidding, contracting, development
25 to administration over the course of a year and a half

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1 there have been innumerable but unremarkable
2 conversations around each of those kinds of things. I
3 couldn't pull out a specific item for you about that.
4 Q. Maybe you just answered this for me, I'm sorry.
5 Sitting here today, can you recall any of the concerns
6 that were expressed about changes to the English
7 language development test?
8 MR. VIRJEE: Objection. Assumes facts not in
9 evidence. Assumes that concerns were expressed. Also
10 vague as to time. Also vague and ambiguous as to
11 "changes."
12 THE WITNESS: I need a little clarification
13 from you. By "concerns" do you mean concerns from our
14 staff about changing the exam, or are you asking for me
15 to identify the concerns that have been raised about the
16 exam?
17 MR. ROSENBAUM: The first.
18 MR. VIRJEE: Same objections.
19 MR. SEFERIAN: Object to the extent it calls
20 for disclosure of privileged communications.
21 THE WITNESS: Our -- I would refer you to the
22 Board item that we submitted in January, because, to me,
23 that demonstrates that our division was fulfilling its
24 responsibilities to listen to concerns from the field
25 about the exam and to provide a series of options for

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1 the State Board to consider. Whether it's their
2 specific professional judgment or recommendation or
3 whether there is not, they have exercised it, and I
4 would refer you to that.
5 Q. BY MR. ROSENBAUM: To your knowledge, Mr. Hill,
6 has there been any investigation to determine whether or
7 not there is any -- has been any relationship between
8 scores in the STAR program and scores on the California
9 English language development test?
10 MR. SEFERIAN: Objection. Assumes facts not in
11 evidence. Vague and ambiguous as to "relationship."
12 THE WITNESS: I am aware that we have stated
13 publically that it is our intent to conduct such a
14 study. Such a study has not yet been conducted. And
15 such a study has been called for by many districts for
16 the development of a single cut score for redesignation
17 purposes, and we simply have to go through another round
18 of testing to get sufficient data to do that.
19 MR. ROSENBAUM: Thanks, Mr. Hill. See you
20 tomorrow morning.
21 (The deposition concluded at 6:04 p.m.)
22 //
23 //
24
25

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1 Please be advised that I have read the foregoing
2 deposition. I hereby state there are:
3
4 (check one) _____ NO CORRECTIONS
5 _____ CORRECTIONS ATTACHED
6
7 _____
8 Date Signed
9
10 _____
11 NATHAN SCOTT HILL
12
13 Case Title: Williams vs State, Volume I
14 Date of Deposition: Thursday, January 17, 2002
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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: NATHAN SCOTT HILL, VOLUME I
8 CASE: WILLIAMS VS STATE

9 DATE OF DEPOSITION: THURSDAY, JANUARY 17, 2002

10 I, _____, have the following
11 corrections to make to my deposition:

12 PAGE LINE CHANGE/ADD/DELETE

13	_____	_____	_____
14	_____	_____	_____
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25 _____
NATHAN SCOTT HILL DATE

1 REPORTER'S CERTIFICATE

2
3 I certify that the witness in the foregoing
4 deposition,
5 NATHAN SCOTT HILL,
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 29th day of January, 2002.

19
20
21
22 _____
23 TRACY LEE MOORELAND, CSR 10397
24 State of California
25