

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 JOHN MOCKLER
Sacramento, California
Thursday, January 24, 2002
Volume II

Reported by:

TRACY LEE MOORELAND

CSR No. 10397

JOB No. 30599

APPEARANCES

1
2
3 For the Plaintiffs Eliezer Williams, et al.:

4 MORRISON & FOERSTER LLP
5 BY: MICHAEL JACOBS, ESQ.
6 425 Market Street
7 San Francisco, California 94105
8
9

10 For the Defendants Delaine Eastin, State Superintendent
11 of Public Instruction, State Department of Education,
12 State Board of Education:

13 DEPARTMENT OF JUSTICE
14 OFFICE OF THE ATTORNEY GENERAL
15 BY: ANTHONY V. SEFERIAN, ESQ.
16 RAE BELISLE, ESQ.
17 1300 I Street, Suite 1101
18 Sacramento, California 95814
19

20 The Intervener:

21 CALIFORNIA SCHOOL BOARD ASSOCIATION
22 BY: ABE HAJELA, ESQ. (present from page 248)
23 3100 Beacon Boulevard
24 West Sacramento, California 95691
25

APPEARANCES, cont.

1
2
3 For the Defendant State of California:

4 O'MELVENEY & MYERS LLP
5 BY: FRAMROZE VIRJEE, ESQ.
6 400 South Hope Street
7 Los Angeles, California 90071
8

9 For the Los Angeles Unified School District and the
10 Pajaro Valley Unified School District:

11 LOZANO & SMITH
12 BY: JUDD JORDAN, ESQ.
13 20 Ragsdale Drive, Suite 201
14 Monterey, California 93940
15

16

17 Also present: Kathleen Duffy, Legal Assistant,
18 Morrison & Foerster
19
20
21
22
23
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INDEX

1
2
3 Examination by Page
4 Mr. Jacobs 237
5 Mr. Jordan 429
6

7 EXHIBITS

8 Deposition of JOHN MOCKLER
9 Thursday, January 24, 2002

10 Number Page
11 SAD-244 Los Angeles Times, July 22, 2000,
12 Home Edition 237
13 SAD-245 Dollars and Sense: A Simple Approach
14 to School Finance, July 1997 247
15 SAD-246 The Orange County Register,
16 January 10, 2002, Thursday 283
17 SAD-247 The Orange County Register,
18 February 29, 1988, Monday,
19 Evening Edition 285
20 SAD-248 California Journal, June 1, 1997 308
21 SAD-249 Draft Minutes, California State
22 Board of Education, December 5-6,
23 2001 312
24
25

EXHIBITS, cont.

1
2 Deposition of JOHN MOCKLER
3 Thursday, January 24, 2002

4 Number Page
5 SAD-250 Little Hoover Commission,
6 February 8, 2000, Bates stamped
7 PLTF 59903 - PLTF 60006 324
8 SAD-251 Confidential Memorandum, dated
9 November 1, 2000, Bates stamped
10 DOE 94390 - DOE 94397 364
11 SAD-252 San Jose Mercury News, December 7,
12 2000, Thursday, Morning Final Edition 377
13 SAD-253 Contra Costa Times, December 7, 2000,
14 Thursday, Final Edition 377
15 SAD-254 AP Online, May 18, 2000, Thursday 396
16 SAD-255 The Daily News of Los Angeles,
17 May 27, 1999, Thursday 400
18 SAD-256 Modesto Bee, December 14, 2000,
19 Thursday, All Edition 402
20 SAD-257 Educational Marketer, February
21 14, 2000 404
22
23
24
25

1 BE IT REMEMBERED, that on Thursday, January 24,
2 2002, commencing at the hour of 10:05 a.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 JOHN MOCKLER,
8 called as a witness herein, who, having been previously
9 duly sworn to tell the truth, the whole truth, and
10 nothing but the truth, was thereupon examined and
11 interrogated as hereinafter set forth.

12 --oOo--

13 (Exhibit SAD-244 was marked.)

14 (Mr. Hajela not present.)

15 EXAMINATION BY MR. JACOBS

16 Q. Good morning, Mr. Mockler.
17 A. Good morning.
18 Q. You understand you're still under oath?
19 A. Yes.
20 MR. JACOBS: Abe Hajela is not here, but he has
21 apparently told us that we can start without him.
22 Q. We've marked as Exhibit 244 a printout of an
23 article from the Los Angeles Times dated July 22nd,
24 2000, interim education secretary named, John B.
25 Mockler, executive director of the State Board of

1 Education will fill the job, at least until the year's
2 end.
3 Mr. Mockler, in the third paragraph the
4 paragraph states, Mockler is an influential Sacramento
5 insider, a self-described, quote, education finance and
6 policy junkie, close quote, who has spent three decades
7 in and out of state government.
8 First question to you, are you a self-described
9 education finance and policy junkie?
10 MR. VIRJEE: Are you asking whether he's
11 describing himself that way?
12 MR. JACOBS: Yes.
13 THE WITNESS: Yeah.
14 Q. BY MR. JACOBS: And what did you mean by that?
15 A. I meant it's a fun and interesting subject that
16 I spend time at.
17 Q. And the subject being education finance and
18 policy?
19 A. Yes.
20 Q. And then in the paragraph 4 up from the
21 bottom --
22 MR. VIRJEE: Starting outside of Sacramento?
23 MR. JACOBS: Yes.
24 Q. It says, outside of Sacramento Mockler worked
25 three years for the Los Angeles Board of Education

1 reviewing budgets and district policies.
2 Do you see that?
3 A. Yes.
4 Q. And was -- is that referring to your job on the
5 staff of the LAUSD?
6 MR. VIRJEE: Objection. Calls for speculation.
7 Lacks foundation as to what's being referred to since
8 Mr. Mockler is not the author of this.
9 THE WITNESS: What is your question?
10 MR. JACOBS: Can you read it back, please.
11 (Record read.)
12 MR. VIRJEE: Also objection. Vague and
13 ambiguous as to "staff of the LAUSD."
14 THE WITNESS: I reported to the Board of
15 Education in Los Angeles in the capacity as director of
16 the independent analysis unit.
17 Q. BY MR. JACOBS: And was one of the functions in
18 that capacity to review budgets and district policies?
19 A. Yes.
20 Q. In the course of your -- of that position, did
21 you develop a view as to the relative costs of education
22 in Los Angeles as opposed to the costs in some or all
23 school districts in the state?
24 MR. VIRJEE: Objection. Vague and ambiguous as
25 to "costs of education." Calls for speculation. Lacks

1 foundation. Incomplete hypothetical.
2 THE WITNESS: I don't know what you mean.
3 "Relative" and "costs," what do those two terms mean to
4 you?
5 Q. BY MR. JACOBS: What's ambiguous about that?
6 A. Costs, what are costs? Are they expenditures?
7 MR. JACOBS: Expenditures.
8 THE WITNESS: No.
9 Q. BY MR. JACOBS: And how about -- and by
10 "expenditures," did you mean actual expenditures as
11 opposed to desirable expenditures?
12 MR. VIRJEE: Objection. Vague and ambiguous as
13 to "desirable expenditures."
14 THE WITNESS: I just answered your question.
15 Q. BY MR. JACOBS: No, you did not. My question
16 is, what did you mean by "expenditures"?
17 A. The amount of money spent in a school district
18 on its students.
19 Q. And did you develop any view as to whether the
20 same amount of expenditures in Los Angeles as opposed to
21 in other school districts around the state delivered the
22 same results to the classroom?
23 MR. VIRJEE: Objection. Calls for speculation.
24 Lacks foundation. Vague and ambiguous as to
25 "expenditures" and "results to the classroom."

1 Incomplete hypothetical. Calls for speculation. Calls
 2 for an expert opinion.
 3 THE WITNESS: No.
 4 Q. BY MR. JACOBS: Did you develop a view as to
 5 the costs of school construction in Los Angeles as
 6 opposed to other areas of the state?
 7 A. Yes.
 8 MR. VIRJEE: Objection. Vague and ambiguous as
 9 to "costs." He's answered the question.
 10 Q. BY MR. JACOBS: And was that the basis for your
 11 testimony yesterday that you thought it cost, in the mid
 12 '80s, roughly double in Los Angeles what it costs in
 13 average across the state?
 14 MR. VIRJEE: Objection. That misstates his
 15 testimony, but his testimony will speak for itself
 16 THE WITNESS: No.
 17 Q. BY MR. JACOBS: That view was developed later?
 18 MR. VIRJEE: Objection. Assumes facts.
 19 Assumes that you've characterized his view correctly.
 20 You don't have to assume that simply because
 21 he's characterized it that way.
 22 THE WITNESS: No.
 23 Q. BY MR. JACOBS: That was not your view?
 24 A. What was not my view?
 25 Q. Why is your answer "no" to my previous

1 question?
 2 A. Because you asked whether or not I developed an
 3 opinion during a period of time as to school
 4 construction.
 5 Q. And did you develop such an opinion at any
 6 time, that is, the costs of school construction in Los
 7 Angeles as opposed to other areas of the state?
 8 MR. VIRJEE: Objection. Vague and ambiguous as
 9 to "costs of school construction."
 10 THE WITNESS: No.
 11 Q. BY MR. JACOBS: Were you basing your testimony
 12 yesterday on input provided you by the LAUSD instead of
 13 your own opinion on the subject?
 14 A. No.
 15 Q. So where did the 28,000 versus 14,000 cost per
 16 building -- per classroom cost, was it, I think?
 17 MR. JORDAN: Per student.
 18 MR. JACOBS: Per student cost.
 19 Q. Where did that information come from?
 20 MR. VIRJEE: Objection. That misstates his
 21 testimony and calls for speculation.
 22 THE WITNESS: Cost of land.
 23 Q. BY MR. JACOBS: As opposed to construction?
 24 A. Yes.
 25 Q. Did you develop that cost of land understanding

1 in your position on the staff of the LAUSD?
 2 A. Technically, no. Costs of land I've known
 3 about for -- there and other times.
 4 Q. And are you aware of any other differential
 5 costs of -- let me start over again.
 6 Costs of land is the cost of an input into the
 7 building of schools, correct?
 8 A. Correct.
 9 Q. And it's therefore the cost of an input into
 10 education, correct?
 11 MR. VIRJEE: Objection. Vague and ambiguous as
 12 to "education" and "input."
 13 THE WITNESS: Not as generally discussed,
 14 but --
 15 Q. BY MR. JACOBS: As generally discussed land is
 16 not regarded as an input or --
 17 A. It's generally discussed, facility costs are
 18 separate from normal comparisons of costs of education.
 19 Q. Are you aware of any other data regarding
 20 differential costs of education in LAUSD as opposed to
 21 statewide averages?
 22 MR. VIRJEE: Objection. Calls for speculation.
 23 Lacks foundation. Calls for an expert opinion, and also
 24 vague as to time.
 25 THE WITNESS: I don't understand the question.

1 Are we referring to facilities now?
 2 MR. JACOBS: Any educational costs.
 3 MR. VIRJEE: Same objections.
 4 THE WITNESS: Only vaguely.
 5 Q. BY MR. JACOBS: By vaguely you have a general
 6 understanding that it is more costly in Los Angeles to
 7 provide education than in other areas?
 8 MR. VIRJEE: Objection. Vague and ambiguous as
 9 to "costly," and vague as to time. Calls for
 10 speculation.
 11 THE WITNESS: There is some evidence of cost
 12 differentials, not specifically related to LA.
 13 Q. BY MR. JACOBS: And what is it specifically
 14 related to or related generally to?
 15 A. The costs of overcoming initial deficits of
 16 students who come to your school.
 17 Q. And are you referring to any particular data or
 18 studies in that connection?
 19 A. No.
 20 Q. Are there any other indicators of differential
 21 costs as between some kinds of school districts and
 22 others?
 23 MR. SEFERIAN: Objection. Lacks foundation.
 24 Calls for speculation.
 25 MR. VIRJEE: Also vague and ambiguous as to

1 differential of costs because you didn't use education
2 especially this time.

3 MR. JACOBS: I meant differential costs of
4 education.

5 THE WITNESS: I have a general understanding of
6 that, but no specific citations.

7 Q. BY MR. JACOBS: And is the general
8 understanding that there are -- beyond the issue of
9 initial deficits there are other reasons to believe that
10 it may be more costly to provide comparable input,
11 educational inputs in some kinds of school districts
12 than others?

13 MR. VIRJEE: Objection. Calls for speculation.
14 Lacks foundation. Calls for an expert opinion.

15 THE WITNESS: I am aware of some studies, but
16 not any particular one I could reference with respect to
17 a variety of input costs.

18 Q. BY MR. JACOBS: And what input costs do you
19 have in mind?

20 A. Transportation, disproportionate share of
21 handicapped students, maintenance of old facilities.
22 That's all I can remember right now.

23 Q. And how about teacher compensation or the labor
24 market for teachers, is that input that you have any
25 information about differential costs?

1 shown.

2 Q. And therefore -- and so just to try and move
3 this along, I take it that you say it bears looking at
4 because you don't think those studies have necessarily
5 addressed all the factors that might attract teachers to
6 a particular work site; is that correct?

7 A. There are a lot of studies, none of which are
8 as particular as they might be. There are many studies
9 that have a lot of different views on that.

10 Q. And by "bear looking at" you mean that, in your
11 opinion, it would be useful to look at all those studies
12 and then see whether additional research needs to be
13 done to determine whether the whole package of factors
14 that might draw a teacher to a particular -- to teach or
15 to a particular teaching location need to be examined?

16 MR. SEFERIAN: Objection. Lacks foundation.
17 Calls for an inadmissible opinion.

18 THE WITNESS: My opinion is that, yes, that
19 bears a look at.

20 Q. BY MR. JACOBS: Let me ask you about the Little
21 Hoover Commission report that we will mark as 245.
22 (Exhibit SAD-245 was marked.)

23 Q. BY MR. JACOBS: Exhibit 245 is entitled dollars
24 and sense, a simple approach to school finance. It's a
25 web printout of the report dated July 1997.

1 MR. VIRJEE: Objection. Vague and ambiguous as
2 to "teacher compensation" and teacher availability.

3 THE WITNESS: With respect to LA Unified?

4 MR. JACOBS: No, we've now moved away from any
5 particular school district.

6 THE WITNESS: There are studies that assert
7 differential costs of some districts over others with
8 respect to salaries.

9 Q. BY MR. JACOBS: And have you formed an opinion
10 as to whether the conclusion of those studies is valid?

11 MR. VIRJEE: Objection. Assumes facts not in
12 evidence. Calls for speculation as to the conclusions
13 of those studies.

14 THE WITNESS: If you're asking for my opinion
15 not my analysis, my opinion is that there are -- some of
16 those studies bear looking at with respect to costs
17 of -- generalized costs of attracting and retaining
18 teachers.

19 Q. BY MR. JACOBS: And by "bear looking at," what
20 do you mean?

21 A. Why teachers work where they work is a very
22 complicated subject. If you're speaking of
23 compensation, you have one very small piece of the
24 puzzle. The other part of the puzzle are conditions
25 under which they work and the respect which they're

1 In terms of your -- where you pop up,
2 Mr. Mockler, you're noted as having been a witness at a
3 public hearing on February 26th, that's toward the back.
4 The numbering started again with each chapter, I guess,
5 and this is appendix B, and it's noted as page 4 of 5.

6 If you could look at that and tell me whether
7 you were, in fact, a witness at a public hearing of the
8 Little Hoover Commission education finance hearings?

9 MR. VIRJEE: Is that appendix "B," as in boy?

10 MR. JACOBS: Yeah.

11 (Record read.)

12 THE WITNESS: I was a witness at the Little
13 Hoover Commission. The date escapes me. That's their
14 record. I don't know if it's public or not. Seemed to
15 be in a private room. But, yes.

16 Q. BY MR. JACOBS: Let me ask you first about the
17 Little Hoover Commission's -- whether you have an
18 opinion as to the usefulness of the Little Hoover
19 Commission's work on education generally.

20 (Mr. Hajela entered the room.)

21 MR. VIRJEE: Objection. Calls for speculation.
22 Lacks foundation. Overbroad and vague, and ambiguous as
23 to "usefulness."

24 THE WITNESS: In general I'd give them about a
25 D-plus over time, with some exceptions.

1 Q. BY MR. JACOBS: And did you say "D," as in dog?
 2 A. "D," as in dog.
 3 Q. And why is that?
 4 A. They lack research capacity to fully understand
 5 the subjects that they grapple with, although that's not
 6 always true. Education, that's generally true.
 7 Q. And by "research capacity," what do you mean?
 8 A. I mean the capacity to test out assertions made
 9 by witnesses.
 10 Q. And by testing out, what do you mean?
 11 A. If I tell you my cat can talk, you'd probably
 12 want to find out whether my cat can really talk.
 13 Q. In the context of education, however, I suspect
 14 your answer is it's case by case, it depends on what the
 15 witness is asserting what you would view as necessary to
 16 test it out, correct?
 17 A. That's correct.
 18 Q. You said there were some exceptions to that. I
 19 take it that you mean there are some particular reports
 20 that you have regarded as making a significant
 21 contribution to the education policy debate; is that
 22 correct?
 23 MR. VIRJEE: Objection. Calls for speculation.
 24 Lacks foundation. Vague and ambiguous as to
 25 "significant" and "education policy debate."

1 THE WITNESS: Actually, I was referring to some
 2 work they did on nursing homes that I thought was pretty
 3 good.
 4 Q. BY MR. JACOBS: Any in the education area that
 5 you regard as pretty good?
 6 MR. SEFERIAN: Objection. Lacks foundation.
 7 Calls for an inadmissible opinion.
 8 MR. VIRJEE: Vague and ambiguous as to "pretty
 9 good." Overbroad.
 10 THE WITNESS: Not that I recall. You'd have to
 11 bring them to my attention.
 12 Q. BY MR. JACOBS: Did you read this report when
 13 it came out, dollars and sense?
 14 A. Part of it, yeah.
 15 Q. And what was your -- did you form an overall
 16 opinion as to quality?
 17 MR. VIRJEE: Objection. Vague and ambiguous as
 18 to "quality." Vague as to time.
 19 THE WITNESS: This is -- yeah, I think it would
 20 be a C-plus.
 21 Q. BY MR. JACOBS: C-plus. By "C-plus," what do
 22 you intend to convey in terms of your assessment of it?
 23 MR. SEFERIAN: Objection. Lacks foundation.
 24 Calls for an inadmissible opinion. Overly broad.
 25 THE WITNESS: I would give it an "A" in

1 outlining problems, and a "D" in proposing solutions.
 2 Q. BY MR. JACOBS: Now, on page 2 of 5 of the
 3 executive summary the report states, once reform
 4 discussions are underway, specific changes that
 5 policymakers should make include adopting a white neck
 6 Mockler-style model that provides school districts with
 7 equal basic grants, plus proportionate funding for
 8 special needs and special costs.
 9 Do you see that?
 10 A. Yes.
 11 Q. Have you -- do you have an understanding of
 12 what is meant there by the reference to a white neck
 13 Mockler-style model?
 14 MR. VIRJEE: Objection. Calls for speculation.
 15 Lacks foundation as to what the author or authors might
 16 have meant.
 17 THE WITNESS: Yes.
 18 Q. BY MR. JACOBS: What is that?
 19 A. I thought it was in the report somewhere. The
 20 commission asked us independently to propose a
 21 simplification model for the complicated school finance
 22 system. We both proposed one. They're somewhat
 23 similar. So there is no white neck Mockler style.
 24 Q. What was your proposal?
 25 MR. VIRJEE: Objection. To the extent the

1 document is written, it speaks for itself. Also calls
 2 for speculation since it's been quite a while.
 3 THE WITNESS: This is like five years ago. If
 4 you can find it.
 5 MR. JACOBS: Take a minute because there are a
 6 couple of different places where the overall school
 7 finance is discussed.
 8 (Ms. Duffy left the room.)
 9 Q. BY MR. JACOBS: I can refer you, sir, to the
 10 chapter entitled system, which is about halfway into the
 11 document.
 12 A. Is there a number in the top right?
 13 Q. Page 14 of 17. And we're going to try and
 14 print out the side bar on page 15 of 17.
 15 The document states, one long-time education
 16 expert, John Mockler of Strategic Education Services,
 17 gave the commission a whimsically titled but serious
 18 model to simplify and beef up education funding.
 19 Do you see that?
 20 A. Yes.
 21 Q. And then it goes on to describe a package of
 22 funding, I guess, certain categories of services; is
 23 that right?
 24 MR. VIRJEE: Objection. The document speaks
 25 for itself. Are you asking what the document says?

1 MR. JACOBS: I'm asking what your proposal was.
 2 MR. VIRJEE: Objection. Calls for speculation.
 3 Lacks foundation. Also the document speaks for itself.
 4 If you recall.
 5 THE WITNESS: I recall that they asked at the
 6 meeting, give us how to simplify the system, and I
 7 outlined a system that would be simple. And as
 8 whimsical, I think would be -- but it reflected a model
 9 that I thought would cover the core values of school
 10 finance. I can't recall the specifics of it, but it's
 11 simple.
 12 Q. BY MR. JACOBS: And by "core values," first of
 13 all, is that a term that you used at the time?
 14 A. No.
 15 Q. So what do you mean today by core values of
 16 education?
 17 MR. VIRJEE: What does he mean today?
 18 MR. JACOBS: He used that phrase just a second
 19 ago.
 20 MR. VIRJEE: I'm confused about are you asking
 21 what he meant when he outlined this proposal, or when he
 22 uses that term today?
 23 MR. JACOBS: The latter.
 24 MR. VIRJEE: Calls for speculation. Lacks
 25 foundation. There's been no indication he uses that

1 term today.
 2 THE WITNESS: I said core values of school
 3 finance.
 4 Q. BY MR. JACOBS: And what do you mean by that?
 5 A. Recognizing basic needs of a basic system,
 6 recognizing the disproportionate distribution of special
 7 needs students and recognizing the disproportionate
 8 special costs where they're identified. There's
 9 essentially, I guess, five levels.
 10 Q. And did you make this proposal in the form of a
 11 paper that you contributed?
 12 A. I think it was just -- I think I just did it.
 13 I believe it was one page. I don't really recall what
 14 it was.
 15 MR. VIRJEE: Don't guess or speculate. He's
 16 entitled to your best recollection.
 17 Q. BY MR. JACOBS: Did you do anything further
 18 with the proposal?
 19 MR. VIRJEE: Objection. Vague and ambiguous as
 20 to "do anything further."
 21 THE WITNESS: No.
 22 Q. BY MR. JACOBS: And how about with the notion
 23 of the essential model that you proposed, have you
 24 advocated such a model in -- since the Little Hoover
 25 Commission report?

1 MR. VIRJEE: Objection. Vague and ambiguous as
 2 to "model" and "advocate."
 3 THE WITNESS: Variations of it, yes.
 4 Q. BY MR. JACOBS: In what context?
 5 MR. SEFERIAN: Object to the extent it calls
 6 for privileged communications.
 7 THE WITNESS: Whenever -- when people ask me
 8 about what the system -- where the system ought to go, I
 9 reference a similar model.
 10 Q. BY MR. JACOBS: And have you done any further
 11 elaboration of the model?
 12 A. I talk about it a lot. I'd have to recall. I
 13 mean, it's certainly something I'm aware of and talk
 14 about.
 15 Q. If somebody said to you -- I'll say it to you
 16 now, if I want to go and find the best -- in your
 17 judgment the best iteration of the model, what would I
 18 look at?
 19 MR. VIRJEE: Objection. Vague and ambiguous as
 20 to "iteration," "model," and vague as to time.
 21 MR. SEFERIAN: Lacks foundation. Calls for
 22 speculation.
 23 THE WITNESS: I can't get my hands right now on
 24 what that might be or where that would be. This had it,
 25 other people had it.

1 Q. BY MR. JACOBS: Have you had occasion to
 2 compare the education finance system as of the year
 3 2000, 2001 or 2002 against the model that you were
 4 referring to?
 5 A. No.
 6 Q. Have you had occasion to discuss that topic in
 7 other than cocktail party chatter?
 8 MR. VIRJEE: Discuss which topic, the
 9 comparison of the two?
 10 MR. JACOBS: Yes.
 11 MR. VIRJEE: He just said he hasn't made the
 12 comparison.
 13 MR. JACOBS: I'm asking it a little
 14 differently.
 15 MR. VIRJEE: Okay. Objection. Vague and
 16 ambiguous. I don't know how you can discuss it if you
 17 don't make the comparison. Nonsensical.
 18 THE WITNESS: I talk about this subject often.
 19 I can't give you any specifics on it.
 20 Q. BY MR. JACOBS: Have you written any internal
 21 memos on -- since you've been back in state
 22 government -- since you've been in state government in
 23 this last several years on the model?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "in state government." Calls for speculation. Lacks

1 foundation. Misstates the facts that he's been back at
 2 state government for several years, and also object on
 3 the grounds of official information and attorney/client
 4 privilege.
 5 THE WITNESS: I don't recall having done that.
 6 Q. BY MR. JACOBS: Now, if you look at the
 7 introduction, it's about maybe 10 pages or so.
 8 MR. VIRJEE: Any part -- page on the
 9 introduction?
 10 MR. JACOBS: The first page.
 11 MR. VIRJEE: Thank you.
 12 Q. BY MR. JACOBS: There's a paragraph there, lack
 13 of meaningful accountability. Do you see that?
 14 A. I see it.
 15 Q. And the paragraph states, it is very difficult
 16 for consumers and taxpayers to get straight answers
 17 about what is going on financially with schools. If a
 18 parent complains that his child has no textbooks, the
 19 teacher points to district procedures that delay
 20 purchasing, and the District points to the State for
 21 failing to provide adequate funding, and the State
 22 points to the District for making poor choices on how to
 23 use its resources. If a taxpayer wonders why a school
 24 in his neighborhood is falling apart, acting as a magnet
 25 for vandalism and depressing his property value, the

1 principal tells him about the long wait for maintenance
 2 services, the District talks about uncooperative voters
 3 and underfunded state assistance, and the State argues
 4 that locals have to pay a share of costs because the
 5 State cannot afford to underwrite all of the facilities
 6 for a rapidly expanding school-age population. Blame is
 7 continually shifted both upwards and downwards, and any
 8 desire on the part of the public to help resolve school
 9 financial problems soon evaporates.
 10 My question to you, sir, is what is your
 11 assessment of the accuracy of this problem
 12 identification by the Little Hoover Commission?
 13 MR. VIRJEE: Objection. Lacks foundation.
 14 Calls for speculation. There's no evidence that the
 15 witness has any in-school experience at all. Also vague
 16 as to time. Also calls for an expert opinion.
 17 (Ms. Duffy entered the room.)
 18 MR. SEFERIAN: Overly broad. Incomplete and
 19 improper hypothetical question.
 20 THE WITNESS: This type of language is why the
 21 Hoover Commission reports have less credibility than
 22 they would otherwise have.
 23 Q. BY MR. JACOBS: Why do you say that, sir?
 24 MR. SEFERIAN: Same objections.
 25 THE WITNESS: Overly broad, taking small

1 occurrences and presuming them to be a policy violation.
 2 It's a political statement, not an analysis.
 3 Q. BY MR. JACOBS: I believe you said earlier that
 4 you thought the Little Hoover Commission education
 5 reports did a -- my word not yours so you can use your
 6 word again in answering this -- creditable job as
 7 opposed to finding solutions.
 8 Is this a case where you think they have not
 9 done a creditable job of identifying the problem?
 10 MR. VIRJEE: Objection. Misstates his
 11 testimony. His testimony speaks for itself.
 12 MR. SEFERIAN: Calls for an inadmissible
 13 opinion. Lacks foundation.
 14 THE WITNESS: I don't believe this is
 15 identification of a problem, this is a hyperbolic
 16 statement, political statement, not an analytical
 17 statement of a problem.
 18 Q. BY MR. JACOBS: So let's break it down a little
 19 bit. The first sentence says, it is very difficult for
 20 consumers and taxpayers to get straight answers about
 21 what is going on financially with schools.
 22 That's a true statement, isn't it?
 23 MR. VIRJEE: Objection. Calls for speculation.
 24 Lacks foundation. Overbroad incomplete hypothetical.
 25 MR. SEFERIAN: Calls for an inadmissible

1 opinion. Vague and ambiguous as to "difficult."
 2 THE WITNESS: No.
 3 Q. BY MR. JACOBS: In what way do you disagree
 4 with that proposition?
 5 MR. SEFERIAN: Same objections.
 6 THE WITNESS: All information regarding
 7 financing the schools is on the Internet. There are
 8 public documents, there's a variety of sources. It is a
 9 very public system. It's not difficult.
 10 Q. BY MR. JACOBS: The next sentence says, if a
 11 parent complains that his child has no textbooks, the
 12 teacher points to district procedures that delay
 13 purchasing and the District points to the State for
 14 failing to provide adequate funding, and the State
 15 points to the District for making poor choices on how to
 16 use its resources.
 17 Do you disagree with that as having -- as
 18 identifying a problem worthy of policy attention in
 19 California's public school system?
 20 MR. VIRJEE: Objection. Vague and ambiguous as
 21 to policy worthy of attention. Also calls for
 22 speculation and lacks foundation, and incomplete
 23 hypothetical. Also overbroad and calling for an expert
 24 opinion.
 25 THE WITNESS: I disagree.

1 Q. BY MR. JACOBS: And why is that?
 2 MR. SEFERIAN: Same objections.
 3 MR. VIRJEE: Same objections.
 4 THE WITNESS: The law is very clear.
 5 Q. BY MR. JACOBS: Which law are you referring to,
 6 60119 again?
 7 A. As well as parent complaints, yes.
 8 Q. And parent complaints in what context?
 9 A. Procedures.
 10 Q. You're talking about the uniform complaint
 11 procedures?
 12 A. Yes.
 13 Q. Are you aware of any uniform complaint
 14 procedures that have been invoked in the case of
 15 textbooks?
 16 A. No.
 17 MR. VIRJEE: Objection. Calls for speculation.
 18 Lacks foundation. Calls for a legal opinion.
 19 Q. BY MR. JACOBS: Just on the textbook point, put
 20 yourself in the place of a parent who is complaining
 21 that his child has no textbooks. How would you get a
 22 straight answer about what is going on financially with
 23 respect to textbooks in that school?
 24 MR. VIRJEE: Objection. Calls for speculation.
 25 Lacks foundation. Vague and ambiguous as to "straight

1 answer" and "financially" in school. Overbroad.
 2 THE WITNESS: I can't answer that question. It
 3 makes no sense.
 4 Q. BY MR. JACOBS: The question makes no sense?
 5 A. Right.
 6 Q. And then if a taxpayer wonders why the school
 7 in his neighborhood is falling apart, acting as a magnet
 8 for vandalism and depressing his property value, the
 9 principal tells him about the long wait for maintenance
 10 services, the district talks about uncooperative voters
 11 and underfunded state assistance, and the State argues
 12 that locals have to pay a share of costs because the
 13 State cannot afford to underwrite all of the facilities
 14 for a rapidly expanding school-age population, do you
 15 disagree that in this sentence the Little Hoover
 16 Commission has identified a problem worthy of policy
 17 attention in the California school system?
 18 MR. VIRJEE: Objection. Vague and ambiguous as
 19 to "problem" and "worthy of policy attention." Calls
 20 for speculation and lacks any foundation. Calls for an
 21 expert opinion and overbroad.
 22 THE WITNESS: Yes.
 23 Q. BY MR. JACOBS: And why is that?
 24 MR. SEFERIAN: Same objections.
 25 THE WITNESS: Because it provides them with no

1 information.
 2 Q. BY MR. JACOBS: No information in the sense of
 3 what?
 4 A. Where this occurred, did it occur, how it
 5 occurred, what was the circumstance. It's overly broad.
 6 Q. And then the last sentence, blame is
 7 continually shifted both upwards and downwards. Let's
 8 break it up.
 9 Blame is continually shifted both upwards and
 10 downwards. Do you disagree that blame shifting of the
 11 sort described here is a significant problem in the
 12 California public school system?
 13 MR. VIRJEE: Objection. Vague and ambiguous as
 14 to "blame shifting," "significant." And overbroad.
 15 Calls for speculation, and lacks any foundation. Also
 16 vague as to time.
 17 MR. SEFERIAN: Calls for an inadmissible
 18 opinion.
 19 THE WITNESS: The problem word is
 20 "continually." Anything is true somewhere in the school
 21 system, but, in general, that's not an accurate
 22 statement, in my opinion, without researching the issue.
 23 Q. BY MR. JACOBS: And any desire on the part of
 24 the public to help resolve school financial problems
 25 soon evaporates. You disagree with the sentence now

1 expanded to include the second half as well, I presume?
 2 A. Yes.
 3 MR. VIRJEE: Objection. Vague and ambiguous.
 4 Calls for speculation. Lacks foundation, and vague as
 5 to time.
 6 Q. BY MR. JACOBS: Now, one of the things the
 7 commission proposed was the building of a model of what
 8 it takes to provide an education. I believe it's best
 9 described or most completely described in adequate
 10 funding under fund HTML. And this is probably the last
 11 full chapter of the report. Yes.
 12 MR. VIRJEE: Page at the top right?
 13 MR. JACOBS: It starts 107.
 14 MR. VIRJEE: That helps. It does. I'm not
 15 being facetious.
 16 MR. JACOBS: I apologize.
 17 MR. JORDAN: There's a conclusion section that
 18 follows.
 19 MR. JACOBS: Yes.
 20 MR. VIRJEE: I'm not always facetious. Is
 21 there a specific portion you want him to look at?
 22 Q. BY MR. JACOBS: I'm looking. I had it before.
 23 If you look at page 6 and 7, there's a reference to the
 24 work of the so-called Hanson Committee. Actually, let
 25 me ask you, did you have -- did you participate in the

1 work of the Hanson Committee?

2 MR. VIRJEE: Objection. Vague and ambiguous as
3 to "Hanson Committee."

4 THE WITNESS: There are only three people in
5 the world who remember that.

6 Q. BY MR. JACOBS: And you're one of them, I
7 suppose.

8 A. I did not partici -- I participated a small
9 amount in their work, but I'm aware of their work.

10 Q. Okay. And did you review the report of the
11 Hanson Committee at the time?

12 MR. VIRJEE: Objection. Assumes facts not in
13 evidence. Assumes there was a report.

14 THE WITNESS: Yes.

15 Q. BY MR. JACOBS: And did you -- and what were
16 you doing at the time -- what were you doing at that
17 time, what was your professional capacity?

18 MR. VIRJEE: When he was reviewing it, or in
19 conjunction with the review, or just generally at that
20 time?

21 Q. BY MR. JACOBS: At that time, what job were you
22 in?

23 MR. VIRJEE: In 1974?

24 MR. JACOBS: If that's when the report came
25 out.

1 MR. JACOBS: Or something else.

2 THE WITNESS: I think at the time the Hoover
3 Commission was doing their report, I was the only person
4 that still had the data from that report in my hands.
5 No one else in the state had it.

6 Q. BY MR. JACOBS: Did you reference it in your
7 contribution to this particular study?

8 A. I might have.

9 Q. And did you commend it as a useful model?

10 MR. VIRJEE: Objection. Calls for speculation.
11 Lacks foundation as to what he might have done back
12 then.

13 MR. SEFERIAN: Vague and ambiguous as to
14 "commend."

15 THE WITNESS: I might have. I don't know. I
16 don't remember that. It might have. It's something I
17 know about.

18 Q. BY MR. JACOBS: And is it something that you
19 have offered as representing something that might well
20 be considered to be undertaken again?

21 MR. VIRJEE: Objection. Vague and ambiguous as
22 to "considered to be undertaken again." Vague as to
23 time.

24 MR. SEFERIAN: Lacks foundation. Calls for an
25 inadmissible opinion.

1 Q. Is that about right, sir?

2 A. My recollection is when the committee first
3 started, I was working for the assembly ways and means
4 committee.

5 Q. And was it in that capacity that you reviewed
6 the output of the committee?

7 MR. VIRJEE: I don't want you to guess or
8 speculate, but he's entitled to your recollection.

9 THE WITNESS: Later in '74, somewhere around, I
10 think, July or so, I went to work for the Department of
11 Education and worked more on that data at that time.

12 Q. BY MR. JACOBS: And did you form a judgment at
13 the time as to the utility of the work that the Hanson
14 Committee had done?

15 MR. VIRJEE: Objection. Vague and ambiguous as
16 to "utility." Calls for speculation as to what opinion
17 he might have formed in 1974.

18 THE WITNESS: I thought it was an important
19 addition to the school finance information.

20 Q. BY MR. JACOBS: And when this first came up and
21 you were smiling about the reference to the Hanson
22 Committee, did that reflect your recollection of the
23 quality of the work or just the bringing up of what by
24 now is pretty old history?

25 MR. VIRJEE: Or something else.

1 THE WITNESS: I have advocated that a number of
2 models of how much is enough be developed. This would
3 be one of them.

4 Q. BY MR. JACOBS: Why do you think it would be
5 useful to develop such models?

6 MR. VIRJEE: Objection. Calls for speculation.
7 Lacks foundation. Incomplete hypothetical. Vague as to
8 time.

9 THE WITNESS: Because it's akin to a business
10 plan for school finance.

11 Q. BY MR. JACOBS: By "business plan," what do you
12 mean?

13 A. It is a costing of input model which is useful
14 in looking and comparing budgets with those models so a
15 district could find out whether or not their expenditure
16 patterns are deviant from that.

17 Q. And would that also aid in providing
18 accountability for how a district spends its money?

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

21 MR. SEFERIAN: Lacks foundation.

22 MR. VIRJEE: Calls for speculation. Lacks
23 foundation. Incomplete hypothetical.

24 THE WITNESS: I would say no.

25 Q. BY MR. JACOBS: And why is that?

1 MR. SEFERIAN: Same objections.
 2 THE WITNESS: My definition of accountability
 3 is output, student achievement.
 4 Q. BY MR. JACOBS: And you exclude from
 5 accountability how the district spends its money to
 6 obtain student achievement?
 7 MR. SEFERIAN: Objection. Misstates the
 8 witness' testimony.
 9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to how the district spends its money.
 11 THE WITNESS: I don't object to any research.
 12 Q. BY MR. JACOBS: But wouldn't it be useful -- to
 13 go back to our discussion about parents a few minutes
 14 ago and a parent trying to find out why some input such
 15 as textbooks or facilities are not available, would it
 16 not be useful even for local accountability for such a
 17 model to be available?
 18 MR. VIRJEE: Objection. Vague and ambiguous as
 19 to "local accountability." Calls for speculation.
 20 Overbroad.
 21 MR. SEFERIAN: Vague and ambiguous as to
 22 "useful." Calls for an inadmissible opinion.
 23 THE WITNESS: No.
 24 Q. BY MR. JACOBS: No, it would not be useful for
 25 that purpose?

1 MR. VIRJEE: He answered that question.
 2 Q. BY MR. JACOBS: Sir, no, it would not be useful
 3 for that purpose?
 4 MR. SEFERIAN: Objection. Asked and answered.
 5 THE WITNESS: I answered your question no.
 6 Q. BY MR. JACOBS: Just want to make sure we're
 7 connected. No, it would not be useful for that purpose?
 8 MR. SEFERIAN: Objection. Asked and answered.
 9 THE WITNESS: For what purpose?
 10 Q. BY MR. JACOBS: For the purpose of aiding in
 11 accountability at the local level to parents?
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "accountability at the local level to parents."
 14 Calls for speculation.
 15 THE WITNESS: The answer is no.
 16 Q. BY MR. JACOBS: Why would that not be helpful?
 17 MR. SEFERIAN: Same objections.
 18 THE WITNESS: It's been my experience that
 19 finance models are not helpful for parents to get a good
 20 education for their children.
 21 Q. BY MR. JACOBS: And do you have an explanation
 22 for that, why that is so?
 23 MR. SEFERIAN: Objection. Lacks foundation.
 24 Calls for an inadmissible opinion.
 25 THE WITNESS: I have no expertise. My opinion

1 is that finance models are useful for policy, but not
 2 useful for day-to-day decisions which parents need to
 3 make.
 4 Q. BY MR. JACOBS: Is it your view that -- let me
 5 see if I can get at your opinion on this topic this way.
 6 Some have argued that the answer to some of the input
 7 issues that this case is addressing is parental
 8 involvement, that parents, for example, if their kids
 9 don't have textbooks should be taking whatever steps
 10 they can to get textbooks to their kids if they think
 11 that's called for.
 12 In that context is it useful for parents to
 13 have financial models?
 14 MR. VIRJEE: Objection. Assumes facts not in
 15 evidence. There's been --
 16 MR. JACOBS: Let me withdraw the question.
 17 MR. VIRJEE: Fine. Then I don't need to
 18 object, although it's always fun to object to a
 19 withdrawn question.
 20 Q. BY MR. JACOBS: Some have argued that the
 21 answer to at least some of the issues that this lawsuit
 22 addresses, i.e., the absence of what the plaintiffs
 23 regard as critical or essential inputs to education is
 24 more parental involvement in seeing to it that those
 25 inputs are delivered to their children.

1 Do you believe that more parental involvement
 2 in seeing to it that essential inputs to a child's
 3 education are delivered is a useful policy path to -- on
 4 which to proceed?
 5 MR. VIRJEE: Objection. Calls for speculation.
 6 Lacks foundation. Assumes facts not in evidence that
 7 anybody's made that argument. Also vague and ambiguous
 8 as to "useful." Calls for speculation and overbroad,
 9 and calls for an expert opinion. Lacks foundation.
 10 THE WITNESS: It's a large subject. My opinion
 11 is that all residents of our state ought be involved in
 12 this as well as parents as part of that, and that the
 13 information as contained in the Hanson report is not
 14 healthy for that issue.
 15 Q. BY MR. JACOBS: And why is that? Why is it not
 16 useful to know -- why is it not useful to know how much
 17 the various components of a school costs in that
 18 context?
 19 MR. SEFERIAN: Objection. Overly broad. Lacks
 20 foundation.
 21 MR. VIRJEE: Also assumes facts not in
 22 evidence. Assumes that's what the Hanson report is all
 23 about. The Hanson report speaks for itself.
 24 MR. SEFERIAN: Calls for an inadmissible
 25 opinion.

1 THE WITNESS: I don't think the data as set
 2 forth in the Hanson report is useful in that respect.
 3 Q. BY MR. JACOBS: And why is that?
 4 MR. SEFERIAN: Same objections.
 5 THE WITNESS: That's my opinion.
 6 Q. BY MR. JACOBS: No basis for it?
 7 A. It's been my experience that complicated
 8 financial information, as the type found in the Hanson
 9 Committee report, is not helpful to parents or, indeed,
 10 to almost anyone who is not -- does not wish to get
 11 deeply involved in the arcane notion of school finance.
 12 Q. So back to the proposition set forth in the
 13 earlier pages of this that we discussed, the paragraph
 14 in the introduction, lack of meaningful accountability.
 15 It sounds like you really do agree with the
 16 sentence, it's very difficult for consumers and
 17 taxpayers to get straight answers about what is going on
 18 financially with schools.
 19 MR. VIRJEE: Objection. Asked and answered.
 20 He answered that question twice, and the answer was no.
 21 MR. SEFERIAN: Argumentative. Misstates the
 22 witness' testimony.
 23 THE WITNESS: The question?
 24 Q. BY MR. JACOBS: How do you reconcile your last
 25 answer with your answers to that question about that

1 sentence, about the difficulty of obtaining information
 2 about school finance?
 3 MR. VIRJEE: Objection. Assumes facts not in
 4 evidence. It assumes they need to be reconciled. Calls
 5 for speculation and argumentative.
 6 THE WITNESS: I don't understand the question.
 7 MR. JACOBS: That's helpful.
 8 Q. You're, in fact, the person who said the
 9 portion in italics on page 6 of 7 of fund.html, are you
 10 not?
 11 MR. VIRJEE: Back to the Hanson page?
 12 MR. JACOBS: Yes.
 13 MR. VIRJEE: Thank you. He's asking did you
 14 say that, if you recall.
 15 THE WITNESS: Yes, I did.
 16 Q. BY MR. JACOBS: And just to be clear, it says,
 17 demonstrate what it would take to attract the level of
 18 quality of personnel, teachers, custodians, school
 19 secretaries, administrators, cost of facilities,
 20 transportation and the like. Set your standards for
 21 what you would like to see for your own children. Visit
 22 the 10 or 20 best private and public schools in
 23 California or the United States. Find out what it takes
 24 to educate not only the typical student in the typical
 25 school, but also the seriously emotionally disturbed

1 student and the student that comes to school with little
 2 prior background. Set the standards where you would
 3 send your child or your grandchild. Make sure to cover
 4 the various requirements commonly accepted by social
 5 policy or law.
 6 Those are your words, correct?
 7 A. Yes, they are.
 8 Q. And do you believe that -- do you still believe
 9 those words to be -- is that still your opinion?
 10 A. Yes.
 11 MR. VIRJEE: Objection. Overbroad. Calls for
 12 speculation. Incomplete hypothetical.
 13 MR. SEFERIAN: Calls for an inadmissible
 14 opinion.
 15 THE WITNESS: As it relates to the development
 16 of a school finance policy for a state, yes.
 17 Q. BY MR. JACOBS: And has that been done?
 18 MR. VIRJEE: Objection. Calls for speculation.
 19 Lacks foundation. Vague and ambiguous as to "that."
 20 Overbroad.
 21 MR. SEFERIAN: Incomplete and improper
 22 hypothetical question.
 23 THE WITNESS: Somewhat.
 24 Q. BY MR. JACOBS: And by "somewhat," what do you
 25 mean?

1 MR. SEFERIAN: Objection. Lacks foundation.
 2 Calls for an inadmissible opinion.
 3 THE WITNESS: There are a variety of activities
 4 that have addressed some of the concerns that are in
 5 this statement.
 6 Q. BY MR. JACOBS: But there is no demonstration
 7 of what it would take to attract the level of quality of
 8 personnel, costs of facilities, transportation and the
 9 like, correct?
 10 MR. VIRJEE: Objection. Calls for speculation.
 11 Lacks foundation.
 12 MR. SEFERIAN: Lacks foundation. Calls for an
 13 inadmissible opinion. Vague and ambiguous as to
 14 "personnel," "costs of facilities" and "transportation."
 15 MR. JORDAN: And it's compound.
 16 THE WITNESS: To my knowledge, the activities
 17 and model development suggested by that statement have
 18 not been done.
 19 Q. BY MR. JACOBS: And what is your opinion as to
 20 the effect of the absence of such a model on the
 21 development of school finance policy for the state of
 22 California?
 23 MR. VIRJEE: Objection. Calls for speculation.
 24 Lacks foundation. Vague and ambiguous as to effect of
 25 the lack of a model. Calls for an expert opinion.

1 THE WITNESS: My opinion is that we've done
 2 quite well without it.
 3 Q. BY MR. JACOBS: And by "quite well," what do
 4 you mean?
 5 MR. SEFERIAN: Objection. Calls for an
 6 inadmissible opinion. Overly broad.
 7 THE WITNESS: Distribution of resources to the
 8 public schools from the date of this statement to now is
 9 up about 80 percent.
 10 Q. BY MR. JACOBS: So was it your judgment that
 11 the -- let me rewind a couple questions.
 12 Why would it be -- in 1997 why did you think it
 13 would be useful to have such a model for the development
 14 of such school finance policy?
 15 MR. VIRJEE: By "such model," you're referring
 16 to his first sentence, correct?
 17 MR. JACOBS: Correct.
 18 MR. VIRJEE: Objection. Vague and ambiguous as
 19 to "such model."
 20 MR. SEFERIAN: Lacks foundation. Calls for an
 21 inadmissible opinion.
 22 THE WITNESS: There are many models of
 23 developing school finance. This is one. I thought it
 24 was a good idea then from a research and analytical
 25 perspective. I think it's still an interesting model,

1 but it's not essential to sound school finance policy.
 2 Q. BY MR. JACOBS: And it's not essential to sound
 3 school finance policy because there are substitutes for
 4 the model?
 5 MR. SEFERIAN: Objection. Lacks foundation.
 6 Calls for inadmissible opinion. Vague and ambiguous as
 7 to "substitutes."
 8 THE WITNESS: As I understand your question, my
 9 opinion is there are lots of models of school finance.
 10 This is simply one.
 11 Q. BY MR. JACOBS: So in the absence of the model
 12 on -- that we've been talking about on page 6 or 7, what
 13 are the other models of school finance that play an
 14 equally effective role in setting state school finance
 15 policy?
 16 MR. VIRJEE: And by the model on page 6 of 7,
 17 you have been talking about the first sentence?
 18 MR. JACOBS: Yeah. Why don't we just call that
 19 the model on page 6 of 7.
 20 MR. VIRJEE: Because there's more there, so I
 21 just want to make sure. You originally asked him about
 22 the entire italicized piece, and then you've asked him
 23 about the first sentence, so I want to make sure that he
 24 understands what you mean by "the model."
 25 Q. BY MR. JACOBS: Do you see a difference between

1 the entire paragraph and the first sentence, sir?
 2 MR. VIRJEE: Since they cover different topics
 3 and different sections, different issues, there would be
 4 a difference.
 5 MR. JACOBS: That was coaching.
 6 THE WITNESS: What do you mean by "the model"?
 7 Q. BY MR. JACOBS: What do you mean, sir?
 8 A. The question from the commission was how much
 9 money is enough. There is no analytical answer to that
 10 question in a republic that is answered through the
 11 political process. The question becomes what ways do
 12 you want to look at funding to see if you're heading in
 13 the right direction in that context. This is one way.
 14 There are many other ways.
 15 Q. And give me a for instance of another way.
 16 MR. SEFERIAN: Objection. Lacks foundation.
 17 Calls for an inadmissible opinion.
 18 MR. VIRJEE: Just for clarification, "this," I
 19 don't know what he was referring to either, whether it's
 20 the first sentence or the entire document.
 21 Q. BY MR. JACOBS: The sentence preceding the
 22 italicized comments says, but at least one witness urged
 23 the Little Hoover Commission to undertake the task. He
 24 said models should be developed for a typical elementary
 25 school and a typical high school.

1 That witness is you, correct?
 2 MR. VIRJEE: Objection. Asked and answered.
 3 If you're asking if he made this statement, that's been
 4 asked and answered.
 5 THE WITNESS: Yes.
 6 Q. BY MR. JACOBS: And you said that models should
 7 be developed, correct?
 8 A. Correct.
 9 Q. And the italicized description is a description
 10 of how you would develop that model; isn't that correct?
 11 MR. VIRJEE: Objection. Assumes facts not in
 12 evidence. Assumes there would be only one way.
 13 THE WITNESS: That's a general, simplistic
 14 statement about how to develop one model of how to look
 15 at how much money you should spend on public schools.
 16 Q. BY MR. JACOBS: And could we give it a label
 17 that you're comfortable with, to that model?
 18 A. I don't know. I've never given it a label.
 19 Q. You're the one who urged it. Did you put a
 20 name on it at the time, sir?
 21 MR. VIRJEE: Objection. Assumes facts not in
 22 evidence.
 23 THE WITNESS: I don't think so. I've never had
 24 a name for it.
 25 Q. BY MR. JACOBS: So can we call it "the model

1 you urged at the Little Hoover Commission"?

2 A. Sure.

3 Q. Okay. In the absence of the model you urged at
4 the Little Hoover Commission, sir, what model for school
5 finance would you point to as serving the same
6 objectives for which you urged this model at the Little
7 Hoover Commission?

8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "model," and also assumes that the two issues would
10 be mutually exclusive since he stated part of these
11 things were covered and some parts weren't.

12 MR. SEFERIAN: Lacks foundation. Calls for an
13 inadmissible opinion.

14 THE WITNESS: That's such a vague question.
15 There are -- I can't give you any particular models.
16 There are models like opinions of the superintendent of
17 public instruction, priorities of the legislature, views
18 of local educators, economic models of overtime
19 earnings, submodels of various costing out of
20 circumstances. There are just lots of ways economically
21 and within policy to make a judgment about distribution
22 mechanisms for public schools. It's done all the time.

23 Q. BY MR. JACOBS: And in your judgment those
24 other mechanisms, either in part or taken as a whole,
25 are equally useful to the model you urged at the Little

1 Hoover Commission?

2 MR. VIRJEE: Objection. Calls for speculation.
3 Lacks foundation. Assumes facts not in evidence. Also
4 vague as to time.

5 MR. SEFERIAN: Calls for an inadmissible
6 opinion.

7 THE WITNESS: You're asking for my opinion on
8 that? I think we've done pretty well without the model.

9 Q. BY MR. JACOBS: And how do you judge -- and the
10 reason you think that is because school finance has
11 increased by 80 percent over some period of time that
12 you identified, correct?

13 MR. JORDAN: Asked and answered.

14 MR. SEFERIAN: Objection. Lacks foundation.
15 Calls for an inadmissible opinion. Incomplete and
16 improper hypothetical question.

17 THE WITNESS: Because I think the judgments and
18 other analysis have produced a distribution system that
19 is substantially fairer than it had in the past.

20 Q. BY MR. JACOBS: And "fairer" measured by what?

21 MR. VIRJEE: Objection. Vague and ambiguous as
22 to "measured by what." I think also asked and answered
23 to the extent he just answered the question.

24 THE WITNESS: As measured by how we distribute
25 funds to schools.

1 Q. BY MR. JACOBS: What's your test of fairness?
2 When you said fair, what did you mean? Strike that.
3 Start over.

4 When you said fair, what did you mean?

5 MR. VIRJEE: That's an incomplete statement of
6 his testimony. I'll object on that grounds. He didn't
7 just say fair.

8 MR. SEFERIAN: Objection. Lacks foundation.
9 Calls for an inadmissible opinion.

10 THE WITNESS: Fair is allocating resources in
11 the manner that produces the best academic results for
12 students within a state as big as California.

13 MR. SEFERIAN: Can we take a break?

14 MR. JACOBS: Sure.

15 (Recess taken.)

16 MR. JACOBS: Okay. Let me ask you about a
17 recent article from the Orange County Register. This
18 will be 246.

19 (Exhibit SAD-246 was marked.)

20 Q. BY MR. JACOBS: This is an article entitled
21 Davis budget funds two O.C. projects, spending: His
22 call for more school funding leaves educators wondering
23 about previous plans for cuts.

24 And at the bottom of the article on the first
25 page of this January 10, 2002 article from the Orange

1 County Register it states, John Mockler, executive
2 director for the State Board of Education, said Davis
3 shouldn't be blamed if local school district managers
4 decide to make deep cuts.

5 Is that an accurate reflection of the comments
6 to a reporter?

7 A. No.

8 Q. Do you recall what you said?

9 MR. VIRJEE: To this particular reporter?

10 MR. JACOBS: Yes.

11 THE WITNESS: In general, yes.

12 Q. BY MR. JACOBS: What did you say?

13 A. Question, our districts are eliminating
14 science, eliminating vocational programs, eliminating
15 nurses and blaming it on your budget. I said, the cuts
16 in the general program of the school district, not
17 including categorical aids, amounted to one-third of
18 1 percent in the current year, and that if cuts were
19 beyond that in the current or budget year, that would
20 not be because of the budget.

21 Q. I take it the emphasis there was -- to try and
22 make sense of this paraphrasing, the emphasis on deep --
23 you would place the emphasis on deep; is that correct?

24 You were saying that the governor's budget is
25 not making deep adjustments, and if the school district

1 is making deep adjustments or deep cuts, you can't
 2 attribute that to the statewide budget changes?
 3 MR. VIRJEE: Objection. Misstates his
 4 testimony to the extent you're trying to paraphrase what
 5 he told you he told the reporter. The question is asked
 6 and answered.
 7 THE WITNESS: I said the cuts were about
 8 one-third of 1 percent of the general program budget,
 9 and if cuts were made in the general budget in excess of
 10 one-third, those cuts were not a function of the
 11 governor's budget. I did not mention blaming or not
 12 blaming.
 13 Q. BY MR. JACOBS: Let me ask you about class size
 14 reduction. And let's go back into history here with an
 15 article -- this will be 247 -- from February 29th, 1988,
 16 the Orange County Register.
 17 (Exhibit SAD-247 was marked.)
 18 MR. JACOBS: Excuse me. Excuse me.
 19 MR. VIRJEE: You have a problem? I can talk to
 20 him any time I want to.
 21 MR. JACOBS: I don't think you can.
 22 MR. VIRJEE: Well, I am, right now.
 23 MR. JACOBS: We're going to suspend the
 24 deposition. Get out of here.
 25 MR. VIRJEE: Get out of here yourself.

1 MR. JACOBS: We're suspending the deposition.
 2 Go outside. I'm calling --
 3 MR. VIRJEE: That's outrageous.
 4 MR. JACOBS: You can't just consult with the
 5 witness in the middle of questioning.
 6 MR. VIRJEE: Make your objections. Go ahead
 7 and move the court. Do whatever you want. I can talk
 8 to him whenever I want.
 9 MR. JACOBS: Are you going to talk to him again
 10 in the middle of the deposition?
 11 MR. VIRJEE: That's ridiculous.
 12 MR. JACOBS: That is ridiculous. I've never
 13 heard of such an absurd proposition.
 14 MR. VIRJEE: Then test it.
 15 MR. JACOBS: Let's suspend, please.
 16 MR. VIRJEE: No. I'm sitting right here.
 17 There's no reason I can't talk to him. There's no
 18 question pending or anything.
 19 MR. JACOBS: I'm going to do this on a break.
 20 I find that absolutely intolerable, and I'm going to put
 21 it on the record and we're going to send in this
 22 transcript and he'll see the kinds of objections that
 23 have been made.
 24 MR. VIRJEE: Go ahead.
 25 MR. JACOBS: And that you've acknowledged

1 whispering to the witness in the middle of questioning.
 2 MR. VIRJEE: There's no question pending.
 3 MR. JACOBS: Where there's privilege issue.
 4 MR. VIRJEE: There's no question pending.
 5 MR. JACOBS: Appalling deposition conduct.
 6 Q. Could I ask you to turn, please, to page 183,
 7 sir. It's the second page of the handout Exhibit 247.
 8 In the middle of the page it refers to you
 9 making estimates of the costs of bringing class size
 10 down to 20. Do you see that?
 11 A. I do.
 12 Q. My question to you to begin with is, what
 13 involvement have you had in class size reduction
 14 initiatives over the -- over your educational career?
 15 MR. VIRJEE: Would you rephrase -- reread the
 16 question.
 17 (Record read.)
 18 MR. VIRJEE: Objection. Vague and ambiguous as
 19 to "involvement" and "class size reduction initiatives."
 20 THE WITNESS: Oh, Lord, I can't remember them
 21 all. It's a subject that comes up all the time over the
 22 35 years or so I've been involved for lesser or greater
 23 extents.
 24 Q. BY MR. JACOBS: Are there any particular
 25 instances of involvement in your career that you would

1 characterize as substantial or deep?
 2 MR. SEFERIAN: Are you referring to a specific
 3 class size reduction program or --
 4 MR. JACOBS: I think the question is absolutely
 5 clear. If you want to state an objection, quote, vague
 6 and ambiguous, you may do so.
 7 MR. SEFERIAN: I'll object to the question,
 8 vague and ambiguous as to class size reduction.
 9 MR. JACOBS: The words are vague and ambiguous,
 10 period, not as to anything.
 11 MR. VIRJEE: Objection. Vague and ambiguous as
 12 to class size reduction.
 13 Q. BY MR. JACOBS: Sir?
 14 A. As I understand your question, have I been
 15 involved in discussions about class size reduction, the
 16 answer is yes.
 17 Q. My question is were there any particular
 18 involvements that you would characterize as substantial
 19 or deep?
 20 MR. VIRJEE: Objection. Vague and ambiguous as
 21 to "substantial or deep."
 22 THE WITNESS: No.
 23 Q. BY MR. JACOBS: And this particular estimate
 24 that you made here, according to this article, were you
 25 involved in some particular discussions about class size

1 reduction at the time outside of the article that you
2 based this on?

3 A. Wow. This is 1998?

4 Q. 1988.

5 A. 1988. Not in that year, no. That's a Prop 98
6 year, I think. This is a discussion about Prop 98.

7 Q. And, sir, have you generally had a concern over
8 your career about the costs of class size reduction
9 properly implemented?

10 MR. VIRJEE: Objection. Lacks foundation.
11 Calls for speculation. And vague and ambiguous as to
12 "concern."

13 THE WITNESS: No.

14 Q. BY MR. JACOBS: Were you concerned in 1988 that
15 it would be costly to implement class size reduction?

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

18 THE WITNESS: No.

19 Q. BY MR. JACOBS: When you say, "no," is that
20 because you thought that it was not costly or -- why do
21 you say "no?" Why were you not concerned about cost of
22 class size reduction?

23 A. I'm not concerned about class size because
24 class size costs a certain thing. That's just a factual
25 matter.

1 Q. So you were merely -- just the facts, ma'am,
2 that's what you were reporting at the time, not a
3 concern about those facts?

4 MR. VIRJEE: Objection. Vague and ambiguous as
5 to "reporting."

6 THE WITNESS: I have no idea about what this --
7 I don't recall this particular instance. Class size
8 reduction costs change every year. We calculate them
9 all the time. We talk about those costs, we talk
10 about -- so I've talked about those costs many times,
11 and they change all the time depending on where we were
12 in history.

13 Q. BY MR. JACOBS: Did you have any involvement in
14 the particular class size reduction initiative that was
15 underway in the mid '90s and continues to the present?

16 MR. SEFERIAN: Objection. Vague and ambiguous
17 as to "involvement."

18 THE WITNESS: I was aware of legislation to
19 propose class size reduction in the mid '90s.

20 Q. BY MR. JACOBS: Did you take any advocacy
21 position with respect to that legislation?

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

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

1 THE WITNESS: What do you mean by "advocacy"?

2 Q. BY MR. JACOBS: Let's go back. In that period
3 you were in your strategic consulting firm, correct?

4 A. Yes.

5 Q. And you were representing clients on
6 educational issues among other things?

7 A. Yes.

8 Q. Did you do any representations --

9 A. Yes.

10 Q. -- in which you made -- and I want to exclude
11 where you simply served as sort of a consultant
12 internally to a client. By advocacy positions I mean
13 expressing a view to people outside the client about
14 class size reduction.

15 A. Yes.

16 Q. What roles did you -- what did you do in that
17 capacity?

18 A. I can't recall them all. I represented several
19 interests regarding legislation and its effect and costs
20 in various circumstances, both the reimbursement rates
21 and the ability to implement.

22 Q. Was LAUSD one of those clients?

23 A. Yes.

24 Q. Did you take positions on behalf of LAUSD about
25 the -- about the costs of class size reduction?

1 A. Yes.

2 Q. And what did you -- in a general sense, what
3 did you urge on behalf of LAUSD?

4 A. That the full costs of class size reduction,
5 including facilities costs, be appropriated commensurate
6 with the reductions sought.

7 Q. And did you assess on behalf of LAUSD what
8 that -- what those costs were?

9 MR. VIRJEE: Objection. Calls for speculation.
10 Vague as to time.

11 THE WITNESS: We estimated costs, yes.

12 Q. BY MR. JACOBS: Did you estimate them on a
13 statewide basis or in particular for LAUSD, or both?

14 A. Both.

15 Q. Do you recall, first of all, what the basic
16 components of your estimates were in terms of what the
17 cost components were?

18 A. In general.

19 Q. What were they?

20 A. It's a math problem. Salaries on average on
21 margin compared to the number of teachers you'd need,
22 that you didn't have now, to reach a particular goal.
23 As to program costs, it's a pretty simple algebra
24 equation. And then the costs of classroom space for
25 those students.

1 Q. Did you estimate that latter component?
 2 A. Yes.
 3 MR. VIRJEE: Objection. Vague and ambiguous as
 4 to "estimate" and "latter component."
 5 THE WITNESS: Yes.
 6 Q. BY MR. JACOBS: Do you recall what the estimate
 7 was?
 8 MR. SEFERIAN: Objection. Calls for an
 9 inadmissible opinion.
 10 THE WITNESS: I don't recall particularly what
 11 that was.
 12 Q. BY MR. JACOBS: In a general sense do you
 13 recall the magnitude of the estimate?
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "magnitude."
 16 THE WITNESS: It was quite high. I don't
 17 recall the exact numbers, but very high.
 18 Q. BY MR. JACOBS: High in the range of billions?
 19 A. Oh, yes.
 20 Q. And did you track the legislation as it was
 21 enacted and funds appropriated for class size reduction
 22 and compare that to what you had estimated the costs of
 23 class size reduction to be?
 24 A. Yes.
 25 Q. And what did that comparison show?

1 MR. SEFERIAN: Objection. Lacks foundation.
 2 Calls for an inadmissible opinion.
 3 MR. VIRJEE: Objection. Calls for speculation.
 4 And to the extent you're asking what a document said,
 5 the document speaks for itself.
 6 THE WITNESS: I can't recall specifically, but
 7 at different points in the process the reimbursement
 8 rates proposed were insufficient to cover the costs.
 9 Those, at several points, were adjusted based upon that
 10 data.
 11 Q. BY MR. JACOBS: And did you break it down as to
 12 whether they were sufficient to cover the teacher
 13 component as against the -- on the one hand, and the
 14 facilities component on the other?
 15 MR. VIRJEE: Objection. Vague and ambiguous.
 16 THE WITNESS: Yeah, in some form. They were
 17 separate calculations.
 18 Q. BY MR. JACOBS: Did you reach separate
 19 conclusions on the comparison of your estimate of costs
 20 as against what was being proposed as the legislation
 21 proceeded through the legislature?
 22 A. With respect to what?
 23 Q. Those two components, teachers and facilities.
 24 A. Yes.
 25 Q. And what was your conclusion?

1 MR. VIRJEE: Objection. Calls for speculation.
 2 Vague and ambiguous as to "conclusion."
 3 MR. SEFERIAN: Calls for an inadmissible
 4 opinion.
 5 THE WITNESS: I'm not certain we made a
 6 conclusion. We simply informed the legislature of the
 7 costs of the implementation phase and our best estimate
 8 of the cost of facilities. Some of those resolved
 9 and -- as I recall, some were resolved and some were
 10 not.
 11 Q. BY MR. JACOBS: And by "resolved," you mean
 12 what?
 13 A. The unit rates were increased to reflect
 14 average costs.
 15 Q. Average costs?
 16 A. Per program.
 17 Q. As you were advocating on the average cost
 18 that -- you were advocating on behalf of LAUSD?
 19 A. Yes.
 20 Q. And when you say average costs for LAUSD, did
 21 you have a LAUSD-specific estimate as opposed to a
 22 statewide-average estimate?
 23 MR. VIRJEE: Objection. Vague and ambiguous,
 24 and assumes that they're mutually exclusive.
 25 THE WITNESS: I don't recall how specific we

1 got in that, yes. We basically used the central salary
 2 structure, if you look at it. I don't recall how much
 3 detail we went into that.
 4 Q. BY MR. JACOBS: By central salary structure,
 5 you mean LAUSD structures?
 6 A. Statewide and LA. We looked at many districts,
 7 but I can't remember exactly what we produced in
 8 documentation.
 9 Q. Now, you said some of them were resolved. I
 10 take it that some were not resolved; is that correct?
 11 A. I think that's accurate.
 12 Q. So as the program actually rolled out, did you
 13 conduct a comparison of the final product as against
 14 your estimates of cost?
 15 MR. VIRJEE: Objection. Vague and ambiguous as
 16 to "conduct a comparison."
 17 THE WITNESS: I recall doing some work on that,
 18 yes. And there was a gap initially, and then later that
 19 was made up on the program side.
 20 Q. BY MR. JACOBS: By "program," that's as opposed
 21 to?
 22 A. Cost of teachers.
 23 Q. And how about on the facilities side?
 24 A. My recollection, it was never fully resolved.
 25 Q. And the magnitude of the gap, do you have any

1 recollection of figures that you came up with
 2 specifically or generally?
 3 MR. SEFERIAN: Objection. Lacks foundation.
 4 Calls for an inadmissible opinion.
 5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to "gap" and "magnitude."
 7 THE WITNESS: I don't think the facilities gap
 8 was ever fully resolved.
 9 Q. BY MR. JACOBS: And the magnitude of the gap,
 10 do you have a sense of the magnitude of the gap today?
 11 MR. SEFERIAN: Objection. Lacks foundation.
 12 Calls for an inadmissible opinion. It's an incomplete
 13 and improper hypothetical question.
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "magnitude of the gap."
 16 THE WITNESS: No, I don't know today what the
 17 gap is. I recall it being large. It may still be
 18 large.
 19 Q. BY MR. JACOBS: And by "large," you mean in the
 20 billions?
 21 A. Yes.
 22 Q. Did you argue on behalf of LAUSD that under the
 23 circumstance where the estimates of costs were not fully
 24 addressed by the legislature, there would be a
 25 differential ability of school districts to effectively

1 implement class size reduction?
 2 MR. VIRJEE: Objection. Vague and ambiguous.
 3 THE WITNESS: I vaguely recall that, yes, I
 4 think so.
 5 Q. BY MR. JACOBS: Did you make any arguments on
 6 behalf of LAUSD that from the standpoint of fairness or
 7 equity, that this would be a -- that this would not be a
 8 positive outcome of a gap in funding?
 9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to "positive outcome," "fairness" and "equity." Also
 11 vague as to time.
 12 THE WITNESS: As I recall, the relative ability
 13 to implement class size reduction was talked about a
 14 lot. I don't recall the specifics, but clearly there is
 15 a differential amount.
 16 Q. BY MR. JACOBS: A differential ability?
 17 A. Differential ability.
 18 Q. And did you make the -- we've characterized in
 19 the last few minutes the arguments you made on behalf of
 20 LAUSD.
 21 Were you representing any other clients at the
 22 time on class size reduction issues?
 23 MR. VIRJEE: Objection. Vague and ambiguous as
 24 to whether or not he was making those arguments on
 25 behalf of other clients or simply representing other

1 clients.
 2 MR. JACOBS: Just to be clear, I'm only asking
 3 the representational question now, not what you urged on
 4 behalf of clients.
 5 THE WITNESS: I don't think so, but I might
 6 have been. I'm trying to recall the time.
 7 Q. BY MR. JACOBS: Your answer so far about what
 8 you were arguing were made with reference to advocacy on
 9 behalf of LAUSD; is that correct?
 10 A. Primary advocacy issue as far as advocacy.
 11 Q. What time period have you been referring to in
 12 your testimony?
 13 MR. VIRJEE: Objection. Assumes facts not in
 14 evidence.
 15 MR. SEFERIAN: Vague and ambiguous as to
 16 "testimony."
 17 THE WITNESS: My understanding of your
 18 questions with respect to class size reduction are that
 19 they involved Governor Wilson's initiative or
 20 recapturing the initiative by Jack O'Connell, and I
 21 don't recall the exact date. I think it's 1996.
 22 Something like that. I don't know. In that time, 1995.
 23 I don't know.
 24 Q. BY MR. JACOBS: Mid '90s?
 25 A. Mid '90s.

1 Q. Did you make -- advance any arguments about the
 2 impact of class size reduction on the distribution of
 3 credentialed teachers in schools around the state during
 4 this period?
 5 A. Probably.
 6 Q. And what do you recall?
 7 A. That the distribution of teachers under class
 8 size reduction, absent a supply increase, would be
 9 maldistributed to the possessed and away from the
 10 dispossessed.
 11 Q. And by "the dispossessed," what do you mean?
 12 A. I mean people, students of greater need
 13 socioeconomically.
 14 Q. Were you advancing at the time a specific
 15 recommendation about how to address the supply issue in
 16 that equation?
 17 MR. VIRJEE: Objection. Vague and ambiguous as
 18 to "recommendation" and "supply."
 19 THE WITNESS: I don't recall any specifics, but
 20 we talked a lot about supply issues in those times,
 21 sure.
 22 Q. BY MR. JACOBS: When you say you "talked a lot
 23 about," you're referring to discussions you had with
 24 legislative staff, for example?
 25 A. Yes, and district staff and others.

1 Q. And discussions with legislators themselves?
 2 A. I think so.
 3 Q. And with executive branch officials?
 4 A. Yes.
 5 Q. Did the -- at the time did you compare the
 6 output of the class size reduction program in terms of
 7 teacher supply and what you were urging about what
 8 needed to be done on teacher supply?
 9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to output of class size reduction for teachers.
 11 Q. BY MR. JACOBS: You were urging that steps be
 12 taken specifically or generally to address teacher
 13 supply issues so that the maldistribution that you
 14 referred to wouldn't occur, correct?
 15 MR. VIRJEE: Objection. That misstates his
 16 testimony. He didn't say anything about urging any
 17 specific anything.
 18 THE WITNESS: There were a large number of
 19 discussions, I can't remember them specifically, with
 20 respect to the ability to attract and retain teachers
 21 within the class size reduction issue, and I've talked
 22 about that a lot. I can't give you any specifics that I
 23 recall.
 24 Q. BY MR. JACOBS: And did you -- did your
 25 advocacy go beyond saying this is what is going to

1 happen unless supply issues are addressed, did it go
 2 beyond that to we really need to address supply issues
 3 if we are going to implement class size reduction?
 4 MR. SEFERIAN: Objection. Vague and ambiguous.
 5 MR. VIRJEE: Also calls for speculation and
 6 compound.
 7 THE WITNESS: I don't recall the specifics of
 8 the advocacy. We were aware of the problem of
 9 attraction and retention of teachers in general, and
 10 when you need more teachers, the attraction/retention
 11 issue simply gets magnified. And there were a lot of
 12 discussions, I can't remember anything in particular,
 13 about various things on what to do with that.
 14 Q. BY MR. JACOBS: And thinking back to how you
 15 compared the output on the funding side with your
 16 estimates of costs, I'm now asking you whether you drew
 17 a similar comparison in terms of the output of the
 18 legislature process on the teacher supply issue as
 19 against your concern that there might be a
 20 maldistribution of teachers if supply issues were not
 21 addressed? Did you draw that comparison at the time and
 22 comment on it?
 23 MR. VIRJEE: Objection. Compound. Convolutd.
 24 Vague and ambiguous as to output of supply of teachers
 25 on the legislative side.

1 MR. SEFERIAN: Lacks foundation. Calls for an
 2 inadmissible opinion.
 3 MR. JORDAN: Could I have the question read
 4 back.
 5 (Record read.)
 6 THE WITNESS: The most truthful answer I can
 7 give you is probably.
 8 Q. BY MR. JACOBS: And probably meaning that as
 9 you put yourself -- sitting here today, you think that's
 10 something you did as opposed to having a recollection of
 11 doing it?
 12 MR. VIRJEE: Objection. Calls for speculation.
 13 Lacks foundation.
 14 THE WITNESS: We did no empirical research on
 15 the outcome issue, we asserted a condition and asked
 16 that that be resolved and there was some motion.
 17 Whether it was sufficient or not was subject to debate.
 18 Q. BY MR. JACOBS: And did you take a position in
 19 that debate?
 20 MR. VIRJEE: Objection. Assumes facts not in
 21 evidence. Assumes there was a debate. Also vague and
 22 ambiguous as to "position."
 23 THE WITNESS: As I understand the Los Angeles
 24 position, we advocated any activity that could assist us
 25 in increasing the supply of teachers.

1 Q. BY MR. JACOBS: When you say "any activity,"
 2 you mean to say no specific activity or -- what do you
 3 mean by "any activity"?
 4 A. I mean there were a range of activities, and I
 5 can't recall each specific. That was seven years ago.
 6 Q. Do you recall whether the combination of what
 7 was done was, in your judgment, sufficient to meet the
 8 needs for teachers that were being created by the class
 9 size reduction program?
 10 MR. VIRJEE: Objection. Vague and ambiguous as
 11 to teachers created by the class size reduction program.
 12 Also calls for speculation. Vague and ambiguous as to
 13 "what was done" and "sufficient."
 14 MR. SEFERIAN: Lacks foundation. Calls for an
 15 inadmissible opinion.
 16 THE WITNESS: Would you read it back.
 17 (Record read.)
 18 MR. SEFERIAN: Also object, vague as to time.
 19 THE WITNESS: Yeah.
 20 Q. BY MR. JACOBS: Yes what?
 21 (Record read.)
 22 Q. BY MR. JACOBS: So yes means you recall what
 23 you concluded at the time?
 24 A. Yes.
 25 Q. What was your conclusion?

1 MR. SEFERIAN: Objection. Lacks foundation.
 2 Calls for an inadmissible opinion.
 3 THE WITNESS: I can't give you a specific
 4 response to that, but our -- my position was that the
 5 problem was not fully addressed.
 6 Q. BY MR. JACOBS: And did you in any capacity
 7 monitor the impact of class size reduction on -- I'm
 8 sorry, what was the word you used to describe the
 9 disparate impact on possessed and dispossessed? It
 10 wasn't disparate, it was some other word that you used.
 11 MR. VIRJEE: Objection. Calls for speculation.
 12 Vague and ambiguous. I don't think he's used the words
 13 "disparate impact."
 14 MR. JORDAN: Describe the impact of class size
 15 reduction and the distribution of teachers?
 16 MR. JACOBS: Maldistribution.
 17 Q. Was maldistribution the word you used, sir?
 18 A. I can't recall.
 19 Q. Let's try that. Do you recall -- did you
 20 observe any maldistributional effects as the class size
 21 reduction program came into effect?
 22 MR. VIRJEE: Objection. Calls for speculation
 23 as to a causal effect. Vague and ambiguous as to
 24 maldistribution. Also vague as to time.
 25 THE WITNESS: No.

1 MR. SEFERIAN: Lacks foundation.
 2 Q. BY MR. JACOBS: Did you -- as the program
 3 rolled out, did you, on behalf of the LAUSD, raise any
 4 red flags that there were, in fact, maldistributional
 5 effects?
 6 MR. VIRJEE: Objection. Vague and ambiguous as
 7 to "maldistributional effects." Also calls for
 8 speculation as to a cause and effect, and lacks
 9 foundation.
 10 THE WITNESS: Red flags?
 11 MR. JACOBS: Warnings. Something along the
 12 lines of we told you this was going to happen, and now
 13 at LAUSD we see this happening, this is an urgent
 14 problem that needs to be addressed.
 15 MR. VIRJEE: Same objections.
 16 THE WITNESS: We took a series of positions
 17 that suggested that the difficulty in the attraction and
 18 retention of teacher for the class size reduction had
 19 not been resolved.
 20 Q. BY MR. JACOBS: And you're talking about a
 21 series of positions after the class size reduction
 22 legislation was enacted?
 23 A. Yes.
 24 Q. Do you recall the positions you took?
 25 MR. VIRJEE: Objection. Vague as to time.

1 MR. SEFERIAN: Overly broad.
 2 THE WITNESS: We took the position on facility
 3 density, we took the position on -- which was partially
 4 resolved. We took a position on the amount of money,
 5 the unit rates, which was subsequently partially
 6 resolved. We took a position on use of portables, a lot
 7 of opinions. I don't remember any more of them, but
 8 there were a number. There were lots of them.
 9 Q. BY MR. JACOBS: Did you convey any specific
 10 information in your capacity as a representative of
 11 LAUSD to anyone in state government about what was
 12 actually happening in terms of the distributional
 13 effects of class size reduction?
 14 MR. VIRJEE: Objection. Calls for speculation.
 15 Vague and ambiguous as to "distributional effects of
 16 class size reduction."
 17 THE WITNESS: Probably. I don't recall
 18 specifically doing that.
 19 Q. BY MR. JACOBS: Are you aware of any data in
 20 the last several years that bears on the question -- by
 21 last several years, let's say, 2000 to the present --
 22 that bears on the question whether the class size
 23 reduction as implemented in the state of California had
 24 a differential impact on the distribution of trained
 25 teachers as between the possessed and dispossessed?

1 MR. VIRJEE: Objection. Vague and ambiguous.
 2 Calls for speculation. Lacks foundation.
 3 MR. SEFERIAN: Calls for an inadmissible
 4 opinion.
 5 THE WITNESS: I recall seeing several reports
 6 that suggest that that occurred. I can't give you the
 7 specific references, but, yes.
 8 Q. BY MR. JACOBS: And in your opinion, has the
 9 implementation of class size reduction in the state of
 10 California led to those effects?
 11 MR. VIRJEE: Objection. Vague and ambiguous as
 12 to "those effects." Calls for speculation as to a cause
 13 and effect. Lacks foundation. Calls for an expert
 14 opinion. Vague as to time.
 15 THE WITNESS: I think it's been very positive
 16 overall. I think it's been positive in those terms,
 17 possessed and dispossessed. I think the issue of
 18 attraction/retention of teachers remains.
 19 MR. JACOBS: Let me ask you about an article
 20 that quotes you about LAUSD in conjunction with class
 21 size reduction. This is an article from the California
 22 Journal dated June 1st, 1997, and this will be 248.
 23 (Exhibit SAD-248 was marked.)
 24 Q. BY MR. JACOBS: If you could take -- if you
 25 could scan the article generally. I'm going to ask you

1 about the comments on, upper right-hand corner page 27,
2 the third page of the exhibit.

3 A. 27?

4 Q. Yes. Do you see that on the upper right-hand
5 corner?

6 A. Yeah. Yeah.

7 Q. Do you see, in the giant Los Angeles Unified
8 School District, said LAUSD lobbyist John Mockler, they
9 have 100 schools that are so overutilized, it's just
10 impossible to bring in any more classroom space.

11 Do you see that?

12 A. Yes.

13 Q. Do you recall having held that view at the
14 time?

15 A. I recall making that statement, yes, similar.

16 Q. In substance is that a correct quotation?

17 A. Yes.

18 MR. VIRJEE: Objection. Vague and ambiguous.

19 Are you asking is the substance correct, or is that a
20 correct recitation of what he said?

21 MR. JACOBS: I think it's clear.

22 Q. Mr. Mockler, what else do you recall telling
23 the reporter about the situation at LAUSD?

24 MR. VIRJEE: Objection. Assumes facts not in
25 evidence. Assumes he told the reporter this or anything

1 facts not in evidence. Assumes they were seeking a
2 particular amount.

3 THE WITNESS: I think what they were seeking
4 was a lot. They had no particular thought. They
5 informed us that an amount in the neighborhood of \$300
6 million would alleviate the most serious density issues.
7 They ended up receiving about \$650 million.

8 Q. BY MR. JACOBS: Did you regard that at the time
9 as having accomplished the objective of obtaining
10 special funding to relieve overcrowding in dense school
11 situations?

12 MR. VIRJEE: Objection. Assumes facts not in
13 evidence. Assumes that was his objective. Also
14 overbroad to the extent you're asking beyond LA Unified.

15 MR. SEFERIAN: Lacks foundation. Calls for an
16 inadmissible opinion.

17 THE WITNESS: I regarded it as a major solution
18 to density issues in Los Angeles.

19 Q. BY MR. JACOBS: Do you have any information on
20 whether that allocation of funds, in fact, alleviated
21 the density issue that you were seeking to alleviate by
22 asking for those funds?

23 MR. VIRJEE: Objection. Calls for speculation
24 as to a cause and effect. Lacks foundation. Calls for
25 an expert opinion. Also vague as to time.

1 else.

2 THE WITNESS: I actually don't recall talking
3 to this reporter, but the substance of that remark is
4 something that I've said many times.

5 Q. BY MR. JACOBS: What were you urging, if
6 anything, as a result of the facts that you were
7 asserting?

8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to your "urging" and to whom he was urging. If that's
10 supposed to be a reference as to what he was urging to
11 the reporter, it's unclear.

12 THE WITNESS: We urged the legislature and the
13 governor to provide special facilities assistance to
14 school districts that had dense sites as defined by
15 number of students per acre.

16 They responded to that urging, and ultimately
17 produced about \$680 million set aside for essentially
18 Los Angeles Unified School District to overcome that
19 condition.

20 Q. BY MR. JACOBS: Did you have an estimate of --
21 strike that.

22 What was LAUSD seeking in terms of a dollar
23 amount at the time?

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

1 THE WITNESS: In my role as executive director
2 to the State Board of Education, the State Board must
3 review the implementation of the use of those funds. As
4 I recall, the districts -- district has not expended
5 those funds as they had promised in that year, and that
6 a substantial portion of those funds are yet to have
7 been spent.

8 Q. BY MR. JACOBS: And do you have any
9 understanding of why that is so?

10 MR. VIRJEE: Objection. Calls for speculation.
11 Lacks foundation. Also vague as to time.

12 THE WITNESS: Lack of management and political
13 priority.

14 Q. BY MR. JACOBS: In LAUSD?

15 A. In LAUSD.

16 Q. And what is the basis for that judgment?

17 A. They asked for more than half a billion
18 dollars. They received more than half a billion
19 dollars. The commitment was within a period of time to
20 relieve density problems in schools that had these.
21 Progress within the first three or four years of that is
22 not acceptable.

23 Q. Let me ask you to take a look at the draft
24 minutes of the December 5, 6, 2001.

25 (Exhibit SAD-249 was marked.)

1 Q. BY MR. JACOBS: We've marked as 249 draft
2 minutes of the State of California Board of Education
3 meeting December 5, 6, 2001, and I want to ask you first
4 about option 1, class size reduction.

5 MR. VIRJEE: Did you refer to a specific page?

6 MR. JACOBS: I'm sorry. It's item W-4. It's
7 on page 28, lower right-hand corner.

8 MR. VIRJEE: Thank you.

9 Q. BY MR. JACOBS: This item W-4 is a request by
10 Los Angeles Unified School District for waiver renewal
11 under Ed Code Section 52122(b)(2)(A) and 52123(c) for
12 allowing school sites with 200 or more students per acre
13 to receive option 1 class size reduction funding. This
14 is the fourth renewal for 77 schools and third renewal
15 for 23 schools.

16 Can you explain, first of all, the -- in
17 layperson's terms what this waiver request is about?

18 MR. VIRJEE: Objection. The document speaks
19 for itself. The waiver request speaks for itself. To
20 the extent you're asking what is legally required, that
21 calls for a legal opinion.

22 THE WITNESS: The funding provided by the
23 legislature requires the district -- allows the district
24 to have -- option 1 funding is 20 students in -- not
25 more than 20 students in a class K-3. Option 2 funding

1 My first question is -- and you can break it
2 down if you'd like, but to move it along, I'll ask you
3 in total, does that accurately reflect the substance of
4 your comments on this issue at the Board meeting?

5 MR. VIRJEE: You're asking whether that whole
6 paragraph does?

7 MR. JACOBS: Yes.

8 MR. SEFERIAN: Objection. Overly broad.

9 THE WITNESS: Reasonably.

10 Q. BY MR. JACOBS: And does it reflect the tenor
11 of your comments in terms of -- the tenor of your
12 comments?

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "tenor."

15 THE WITNESS: What do you mean by "tenor"?

16 Q. BY MR. JACOBS: I take it from reading this
17 that you were not enthusiastic about the waiver request;
18 is that correct?

19 A. That's not correct.

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

22 Q. BY MR. JACOBS: Did you -- were you
23 enthusiastic about the waiver request?

24 MR. SEFERIAN: Objection. Vague and ambiguous
25 as to "enthusiastic."

1 is if you have partial implementation. So they get full
2 funding for classrooms in which they have, for example,
3 40 kids and two teachers in a single classroom, which is
4 not allowed in other districts. So students receive the
5 benefit of teacher/pupil ratio reduction, but not
6 explicitly class size reduction.

7 They're allowed to continue that so long as
8 they make progress towards overcoming the density issues
9 outlined for which they received the money.

10 Q. BY MR. JACOBS: It refers to your comments in
11 the second paragraph of that item, Mr. Mockler stated
12 that the LAUSD has \$600 million set aside for school
13 facilities. The goal of class size reduction in
14 kindergarten through the third grade is to have 20
15 students in a classroom with one teacher. The children
16 attending the schools covered by this waiver are some of
17 the most vulnerable in the state. The law requires the
18 district to set its own benchmarks for providing
19 facilities and to report on its progress. The Board,
20 when Ms. Lozano was president, was very critical of the
21 district's lack of progress. The LAUSD has had three
22 different sets of benchmarks. It is hard to know what
23 progress has been made. The \$600 million has not been
24 spent. This is a very important matter affecting
25 thousands of children.

1 THE WITNESS: No.

2 Q. BY MR. JACOBS: Were you neutral on the waiver
3 request?

4 A. No.

5 Q. What was your position on the waiver request?

6 MR. VIRJEE: Objection. Assumes facts not in
7 evidence. Assumes he had a position. Vague and
8 ambiguous as to "position."

9 MR. SEFERIAN: Vague and ambiguous as to time.

10 THE WITNESS: I had no position on the waiver
11 request.

12 Q. BY MR. JACOBS: Let me ask you, as a matter of
13 procedure internal to the SBE, typically would staff of
14 the Board make a recommendation yea or nay on a waiver
15 like this?

16 MR. VIRJEE: Objection. Vague and ambiguous as
17 to "staff of the Board."

18 THE WITNESS: If Board members ask our views,
19 we tell them our views.

20 Q. BY MR. JACOBS: And by "view" you mean more
21 than factual reportage, you mean should we grant this or
22 not?

23 MR. VIRJEE: Objection. Overbroad. Compound.
24 Calls for speculation.

25 THE WITNESS: Individual Board members, yes.

1 Q. BY MR. JACOBS: Did you get asked your views on
2 whether this waiver request should be granted?

3 MR. VIRJEE: This particular one on December 5,
4 6? Objection. Calls for speculation. Lacks
5 foundation.

6 MR. SEFERIAN: Object to the extent it calls
7 for privileged communications.

8 THE WITNESS: The Board had expressed its
9 frustration in previous years with this waiver. My role
10 is to explain to the board in public session of its
11 previous actions on a matter.

12 On this matter, since we were in the fifth and
13 fourth renewal for some schools and the third for
14 others, it was clear that the benchmarks were not being
15 met quickly enough. The Board has expressed its view
16 that it cares about these students and that when \$600
17 million of the taxpayers' money is set aside in a
18 district over a five-year period and it's unable to be
19 spent, that is not acceptable.

20 MR. VIRJEE: John, answer his question. His
21 question was, did you make a recommendation. That was
22 his question. Okay?

23 THE WITNESS: I don't recall if I did or not.

24 MR. JACOBS: I don't even think he's your
25 lawyer.

1 THE WITNESS: I actually don't recall. I
2 really don't.

3 Q. BY MR. JACOBS: In these comments as reported
4 here -- strike that.

5 In the comments you actually made at the
6 meeting, did you say one or the other, definitively or
7 not, in my judgment, this waiver request should or
8 should not be granted?

9 MR. VIRJEE: Objection. Vague and ambiguous.

10 THE WITNESS: I really don't recall. I'd have
11 to review the record.

12 Q. BY MR. JACOBS: Review what record?

13 A. The Board reports. There's a tape.

14 Q. And the effect of not granting the waiver, as
15 you understand it, would be -- would have been what?

16 MR. VIRJEE: Objection. Calls for speculation.
17 Lacks foundation. Vague and ambiguous as to "effect."

18 MR. SEFERIAN: Calls for an inadmissible legal
19 opinion. Overly broad.

20 THE WITNESS: The district would lose a portion
21 of its class size reduction funds.

22 MR. SEFERIAN: We've been going for about an
23 hour. Can we take a break?

24 MR. JACOBS: Let me do just a couple more on
25 249, and then we'll finish.

1 MR. VIRJEE: Answer the questions that he asks.

2 THE WITNESS: I don't recall.

3 Q. BY MR. JACOBS: You don't recall whether you
4 were asked your opinion on this? My question -- he's
5 right, in a sense.

6 MR. VIRJEE: I'm absolutely right. You didn't
7 answer the question.

8 MR. JACOBS: He's right in the sense that my
9 question has not been answered. He's not right in
10 trying to stifle your free speech rights.

11 MR. VIRJEE: Please answer the questions that
12 he asks, and don't otherwise give narratives.

13 Q. BY MR. JACOBS: Were you asked your -- let's
14 walk this back a little bit. It says recommended for
15 approval there. Do you see that under item W-4?

16 A. I do see that.

17 Q. And is that a recommendation that came from the
18 superintendent?

19 A. Yes.

20 Q. And were you asked for your views on whether
21 this waiver request should be approved?

22 MR. VIRJEE: Objection. Vague and ambiguous as
23 to "views." And also objection to the extent that it
24 calls for the deliberative process or official
25 information privilege or the attorney/client privilege.

1 Q. Let me turn you to on the bottom right-hand
2 corner, page 25. It's the third page of the exhibit.

3 MR. VIRJEE: I'm sorry, page 25?

4 MR. JACOBS: Yes.

5 Q. And I'm not sure whether this is maybe just a
6 drafting issue, but -- oh, I see.

7 Do you see the reference to WC-2 at the top of
8 the page and retroactive waiver of 60119?

9 A. Yes.

10 Q. And then Judy Pinegar, waiver office, informed
11 the Board that WC-2 is the first waiver before the Board
12 under its newly-adopted policies on waivers of Education
13 Code Section 60119. Do you see that?

14 MR. VIRJEE: Actually, it says policy, not
15 policies.

16 THE WITNESS: Yeah.

17 Q. BY MR. JACOBS: And then it says, this waiver
18 request is for five districts. All of the districts
19 failed to hold the required public hearing on the
20 availability of instructional materials in their
21 districts. The districts have since held the required
22 public hearing.

23 Do you see that?

24 A. Yes.

25 Q. And then you commented that the penalty for not

1 holding the public hearings was the loss of all
 2 Schiff-Bustamante instructional materials funds.
 3 Do you see that?
 4 A. Yes.
 5 Q. Is that an accurate -- it goes on to say, in
 6 cases where there were technical and inadvertent errors
 7 but the substance of the law was met, legislation was
 8 passed to allow the Board to waive the penalty.
 9 Mr. Mockler commended Ms. Pinegar and the others who
 10 worked to develop the waiver policy for their excellent
 11 work.
 12 Do you see that?
 13 A. Yes.
 14 Q. And is that an accurate summary of your
 15 comments on this topic?
 16 A. Reasonably.
 17 Q. Anything strike you as you read it that is
 18 omitted from the comment?
 19 A. No.
 20 MR. SEFERIAN: Objection. Overly broad.
 21 MR. VIRJEE: Objection. Calls for speculation.
 22 Q. BY MR. JACOBS: My question to you is that --
 23 what I believe I understood from your testimony was that
 24 under the new policy, in order to grant a waiver, the
 25 question was not only whether the hearing had been held

1 or not, but whether the district was, in fact, meeting
 2 the objectives of 60119, that is, to provide sufficient
 3 textbooks or instructional materials to its students.
 4 MR. JORDAN: Misstates.
 5 Q. BY MR. JACOBS: My first question to you, is
 6 that what you intended to convey yesterday?
 7 MR. SEFERIAN: Objection. The policy speaks
 8 for itself. Calls for a legal opinion.
 9 MR. VIRJEE: And I don't think he's asking the
 10 policy. I do think that misstates his testimony. His
 11 testimony will speak for itself, and it was different
 12 than that.
 13 THE WITNESS: Yeah, we can get a copy of the
 14 policy. The policy, I think, is reflective of that.
 15 Q. BY MR. JACOBS: Reflective of what I said, just
 16 said?
 17 A. I believe so.
 18 Q. Was there more information available to the
 19 Board than is reported in the minutes here about the
 20 actual availability of textbooks in the school districts
 21 that were seeking waiver under item WC-2?
 22 MR. VIRJEE: Objection. Calls for speculation.
 23 Lacks foundation. Also vague and ambiguous as to "more
 24 information."
 25 MR. SEFERIAN: Vague and ambiguous as to

1 "available to the Board."
 2 MR. VIRJEE: Also assumes facts not in
 3 evidence. Assumes there were other issues other than
 4 technical failures to comply.
 5 THE WITNESS: Each waiver request is presented
 6 to the Board in its totality. Under the policy,
 7 districts must assert a variety of things regarding its
 8 activities in order to get the waiver. The Board
 9 members have that information on each of these waivers.
 10 Q. BY MR. JACOBS: I'm sorry, maybe my question
 11 wasn't clear. With respect to Cutten Elementary School
 12 District, or if you don't recall specifically as to
 13 Cutten, any of the school districts, what information
 14 was before the Board under item WC-2 that went beyond
 15 the question of technical compliance with the hearing
 16 requirements of Section 60119?
 17 MR. JORDAN: Document speaks for itself.
 18 MR. SEFERIAN: Objection. Lacks foundation.
 19 Calls for speculation. Vague and ambiguous as to
 20 "beyond." Lacks foundation.
 21 THE WITNESS: The waiver document is presented
 22 to the Board in its agenda and it contains all of the
 23 assertions contained in the Board's policy, and that
 24 information is available to the Board members, and for
 25 that matter the public, and that's the information they

1 were acting on.
 2 Q. BY MR. JACOBS: Do you recall what the
 3 information before the Board said about the -- about
 4 whether, in fact, these districts or any of them were
 5 complying with the requirement under 60119 beyond the
 6 requirement to hold a hearing that they actually deliver
 7 sufficient textbook or instructional materials to their
 8 students?
 9 MR. VIRJEE: Objection. Compound. Vague and
 10 ambiguous. Calls for speculation. And to the extent
 11 you're asking what the documents say, the documents
 12 speak for themselves.
 13 THE WITNESS: No.
 14 MR. JACOBS: I think it would be a good time
 15 for a short break.
 16 (Recess taken.)
 17 (Exhibit SAD-250 was marked.)
 18 Q. BY MR. JACOBS: Mr. Mockler, we're marking as
 19 Exhibit 250 a report of Little Hoover Commission
 20 entitled to build a better school, dated February 2000,
 21 and you are listed on this report, I believe, as an
 22 advisor or as a member of the advisory committee,
 23 looking at page 86.
 24 And just to be clear, the beginning of appendix
 25 B says the list reflects titles and affiliations at the

1 time the advisory committee met, because by the time the
 2 report met, you were no longer at Strategic Education
 3 Services, correct?
 4 A. Correct.
 5 Q. And what was your -- you were a member of the
 6 Little Hoover Commission school facilities advisory
 7 committee?
 8 A. Not really.
 9 Q. So what do you mean, "not really"?
 10 A. They called me and asked me if I would talk to
 11 them once in a while. I don't recall ever actually
 12 meeting with this group on this issue.
 13 Q. Do you recall having any input into the
 14 considerations of the Little Hoover Commission that led
 15 to the issuance of this report?
 16 A. If it was, it was very tangential.
 17 Q. Did you review this report when it was issued?
 18 A. No.
 19 Q. Have you ever seen this report outside of
 20 deposition preparation?
 21 A. I don't believe so.
 22 Q. In February 2000, what position did you hold?
 23 A. Was I executive director of the Board by then?
 24 Yeah, I was. I think I was executive director of the
 25 Board by then. Was I? I don't know. I think.

1 February 2000. Yeah.
 2 Q. So by that time you were no longer acting
 3 secretary, as you best recall?
 4 A. No, I wasn't secretary until, I believe, August
 5 of 2000 -- or 2001.
 6 MR. SEFERIAN: He said secretary.
 7 MR. JACOBS: To the governor.
 8 THE WITNESS: Governor's education secretary,
 9 August 2000 to February 2001. I wasn't secretary at
 10 this time.
 11 Q. BY MR. JACOBS: And just to tie down the tent
 12 flap, aside from the actual report itself, do you recall
 13 any discussion about the recommendations in the report
 14 approximately at the time it was issued?
 15 MR. VIRJEE: Objection. Vague and ambiguous,
 16 and assumes facts.
 17 Q. BY MR. JACOBS: So, for example, if you saw a
 18 newspaper article about the report or some summary of
 19 the report, is that something you recall discussing?
 20 A. I do not recall that, no.
 21 Q. If you look at the executive summary of this
 22 report, there are a series of recommendations, and I'm
 23 going to ask you some questions basically about whether
 24 you have an opinion on the recommendations based on work
 25 you've done to date. And if the answer is no, then

1 we'll move on. My purpose in doing this at this stage
 2 is primarily to find out what you might testify to at
 3 trial on the topic of these recommendations.
 4 So with that as background, on 2 little "i"
 5 there's a recommendation -- there's a finding and then
 6 on 3 little "i" there's a recommendation, and the
 7 recommendation is about alternative structures for the
 8 building and maintenance of school buildings.
 9 Do you see that?
 10 A. Yes.
 11 Q. And the report makes a finding that school
 12 districts may not be the best organization to build and
 13 maintain school buildings, do you see that, in some
 14 communities?
 15 A. Yes.
 16 MR. VIRJEE: Are you asking him to read the
 17 entire paragraph, or just to understand that you've read
 18 the title?
 19 MR. JACOBS: I think the question is clear.
 20 Q. You see that, correct?
 21 MR. VIRJEE: Objection. The question is vague
 22 and ambiguous as to "do you see that," and vague and
 23 ambiguous as to "finding."
 24 I just don't know if you want him to read the
 25 document or not, Michael, that's all.

1 Q. BY MR. JACOBS: Why don't you read finding 1
 2 and recommendation 1.
 3 MR. JORDAN: And the document speaks for
 4 itself.
 5 MR. VIRJEE: Read the whole thing, John.
 6 Q. BY MR. JACOBS: Okay?
 7 A. Yeah.
 8 Q. My question to you is, have you formed an
 9 opinion over the course of your career on whether it
 10 would be beneficial to have alternatives to school
 11 districts as the structure -- the organizational
 12 structure for building and maintaining schools?
 13 MR. VIRJEE: Objection. Calls for speculation.
 14 Lacks foundation. Also incomplete hypothetical.
 15 MR. SEFERIAN: Assumes facts not in evidence.
 16 THE WITNESS: No.
 17 Q. BY MR. JACOBS: In the second finding and
 18 recommendation there's a finding that the success of the
 19 state school facility program rests on the ability of
 20 school districts to manage construction programs, but
 21 the degree of competence varies greatly among districts.
 22 And then there's a recommendation,
 23 recommendation No. 2, the governor and the legislature
 24 should establish an institute to provide leadership on
 25 school facility issues, training for local school staff,

1 and technical assistance, advice and consulting
 2 services, and then there's a series of
 3 subrecommendations about the institute.
 4 Why don't you read that finding and
 5 recommendation.
 6 A. Okay.
 7 Q. Let me tie down another tent flap. On finding
 8 1 -- go back to the previous page -- aside from the
 9 recommendation there's a finding that in some
 10 communities school districts may not be the best
 11 organization to build and maintain school districts.
 12 Do you see that?
 13 A. Yes.
 14 Q. In the course of your career, have you formed
 15 an opinion on a slightly more definitive statement, that
 16 is, whether school districts are the best organization
 17 to build and maintain school buildings?
 18 MR. VIRJEE: Objection. Calls for speculation.
 19 Lacks foundation. Compound and overbroad.
 20 THE WITNESS: No.
 21 Q. BY MR. JACOBS: Now back to page 3, little "i,"
 22 finding No. 2, the success of the state's school
 23 facility program rests on the ability of school
 24 districts to manage construction programs, but the
 25 degree of competence varies greatly among districts.

1 Have you formed an opinion over the course of
 2 your career on whether that finding is true?
 3 MR. SEFERIAN: Objection. Lacks foundation.
 4 Calls for an inadmissible opinion. Incomplete and
 5 improper hypothetical question.
 6 MR. VIRJEE: And overbroad.
 7 MR. SEFERIAN: Vague and ambiguous as to
 8 "manage construction programs." Vague and ambiguous as
 9 to "degree of competence." Vague and ambiguous as to
 10 "success."
 11 THE WITNESS: Yes.
 12 Q. BY MR. JACOBS: What is your opinion?
 13 MR. SEFERIAN: Same objections.
 14 THE WITNESS: I agree.
 15 Q. BY MR. JACOBS: And then recommendation No. 2
 16 is as to the establishment of an institute as discussed
 17 in the recommendation.
 18 Have you formed an opinion on whether the
 19 establishment of such an institute would be a good idea?
 20 MR. SEFERIAN: Objection. Lacks foundation.
 21 Calls for an inadmissible opinion. Vague and ambiguous
 22 as to "institute" and "good idea." Overly broad.
 23 Incomplete and improper hypothetical question. Vague as
 24 to time.
 25 THE WITNESS: Yes.

1 Q. BY MR. JACOBS: What is your opinion?
 2 MR. SEFERIAN: Same objections.
 3 THE WITNESS: I don't agree.
 4 Q. BY MR. JACOBS: Why is that?
 5 MR. SEFERIAN: Same objections.
 6 THE WITNESS: I don't agree that leadership
 7 issues are the issues.
 8 Q. BY MR. JACOBS: And how about the other
 9 components that are included in the recommendation, an
 10 institute that would be directed toward training,
 11 technical assistance, advice and consulting services?
 12 MR. VIRJEE: Objection. Compound. Vague and
 13 ambiguous. Calls for speculation. Lacks foundation.
 14 Overbroad. Calls for an expert opinion.
 15 THE WITNESS: I don't believe it would be
 16 helpful.
 17 Q. BY MR. JACOBS: And why is that?
 18 MR. SEFERIAN: Same objections.
 19 THE WITNESS: It would be a delay in the
 20 district's responsibility to hire and manage appropriate
 21 staff.
 22 Q. BY MR. JACOBS: By "delay," what do you mean?
 23 A. Districts have a responsibility to hire
 24 competent people.
 25 Q. And the effect of creating this institute on

1 that responsibility would be what?
 2 MR. SEFERIAN: Objection. Overly broad.
 3 Incomplete and improper hypothetical question. Lacks
 4 foundation. Calls for an inadmissible opinion. Vague
 5 as to time and "institute."
 6 MR. VIRJEE: Also asked and answered.
 7 THE WITNESS: The talent to complete these
 8 tasks is available, it's simply a matter of hiring the
 9 right people.
 10 Q. BY MR. JACOBS: Unifying state oversight. Why
 11 don't you take a look at finding No. 3 and
 12 recommendation No. 3.
 13 A. Right.
 14 MR. VIRJEE: He's asking you to read the entire
 15 text.
 16 THE WITNESS: I thought he just said finding
 17 No. 3.
 18 MR. JACOBS: No, I think you need to read the
 19 rest of the paragraphs too.
 20 THE WITNESS: Oh, and the recommendations?
 21 MR. JACOBS: Yes, please.
 22 MR. VIRJEE: Yes.
 23 THE WITNESS: That wasn't the question, but I
 24 will.
 25 Q. BY MR. JACOBS: You ready?

1 A. Yeah.

2 Q. The text of the finding itself under unifying
3 state oversight is, the State's multiple interests in
4 safe and efficient school facilities are not optimally
5 served by divided oversight structure.

6 In the course of your career have you formed an
7 opinion on whether that statement is true?

8 MR. VIRJEE: Objection. Calls for speculation.
9 Lacks foundation. Calls for an expert opinion and
10 overbroad. Vague and ambiguous.

11 THE WITNESS: No.

12 Q. BY MR. JACOBS: The recommendation is that the
13 State should unify its oversight of school facility
14 projects -- sort of recommendation 3A and 3B, I'm
15 including the A and B in there -- and concentrate
16 compliance efforts on low-performing school districts.

17 As so defined have you formed an opinion on 3A,
18 whether the State should unify its oversight of school
19 facility projects?

20 MR. VIRJEE: Objection. Vague and ambiguous as
21 to "unify." Calls for speculation. Lacks foundation.
22 Calls for an expert opinion.

23 THE WITNESS: No.

24 Q. BY MR. JACOBS: Have you formed an opinion on
25 whether the State should concentrate compliance efforts,

1 incentives to encourage and assist local school
2 districts to design, build, operate, maintain and
3 renovate buildings to maximize value over the life of
4 the facilities.

5 Do you see that?

6 A. Yes.

7 Q. Have you formed an opinion over the course of
8 your career on whether that finding is true?

9 A. No.

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "finding." Calls for speculation. Calls for an
12 expert opinion. Vague as to time.

13 Q. BY MR. JACOBS: And recommendation No. 4 is
14 that the institute -- which I understand you disagree
15 with, so let's take out the who aspect of recommendation
16 No. 4 and just the task aspect of it -- should develop
17 protocols for life cycle engineering of facilities,
18 develop cost-effective plans for use by school
19 districts, and recommend financial incentives for
20 districts that incorporate life cycle facility
21 management. It goes on to say that the institute should
22 provide cost-effective plans, define best practices and
23 consolidate buying power.

24 Do you see that?

25 A. Yes.

1 from the context they're talking about, facilities
2 compliance efforts on low-performing school districts?

3 MR. VIRJEE: Same objections.

4 THE WITNESS: No.

5 Q. BY MR. JACOBS: Back to -- let me take you back
6 to No. 2 again. On your opinion that the personnel
7 resources are available, they just need to be hired, did
8 you have any -- what were you drawing on for that
9 opinion, what evidence were you drawing on?

10 MR. VIRJEE: Objection. That misstates his
11 testimony.

12 MR. SEFERIAN: Lacks foundation. Calls for an
13 inadmissible opinion.

14 THE WITNESS: General opinion.

15 Q. BY MR. JACOBS: No particular -- no study, for
16 example?

17 A. No.

18 Q. Any particular instances that stand out in your
19 mind as demonstrating that to be true?

20 A. No.

21 Q. Take a look at life cycle investing, finding
22 No. 4, recommendation No. 4.

23 A. Okay.

24 Q. Finding No. 4, while the State has taken steps
25 to hold down construction costs, it has no mechanisms or

1 Q. Let's take out the issue of whether this is an
2 institute or some other entity of state government, and
3 substitute in the word "the State" for "the school
4 facility institute."

5 Have you developed an opinion as to whether the
6 State should develop protocols for life cycle
7 engineering of facilities?

8 MR. VIRJEE: Objection. Vague and ambiguous.
9 Calls for speculation. Lacks foundation. Calls for an
10 expert opinion.

11 THE WITNESS: No.

12 MR. SEFERIAN: Vague as to "life cycle
13 engineering of facilities."

14 Q. BY MR. JACOBS: Have you developed an opinion
15 as to whether the State should develop cost-effective
16 plans for use by school districts?

17 MR. VIRJEE: Objection. Vague and ambiguous as
18 to "the State" and "cost-effective plans." Calls for
19 speculation. Lacks foundation. Overbroad and compound.

20 MR. SEFERIAN: Calls for an inadmissible
21 opinion.

22 THE WITNESS: No.

23 Q. BY MR. JACOBS: Have you developed an opinion
24 as to whether the State should recommend financial
25 incentives for districts that incorporate life cycle

1 facility management?

2 MR. VIRJEE: Objection. Vague and ambiguous as
3 to "life cycle facility management." Overbroad. Calls
4 for speculation. Lacks foundation. Calls for an expert
5 opinion.

6 THE WITNESS: No.

7 Q. BY MR. JACOBS: And then there's a specific
8 recommendation about defining best practices under
9 recommendation 4.

10 Do you have a view generally as to whether the
11 State has a role in defining best practices for school
12 districts?

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "best practices for school districts."

15 MR. SEFERIAN: Calls for an inadmissible legal
16 opinion. Vague and ambiguous as to "role." Lacks
17 foundation.

18 THE WITNESS: The question regarding
19 facilities?

20 MR. JACOBS: No, I was abstracting from that
21 for a minute.

22 THE WITNESS: So it's not about this
23 recommendation. What's the question about?

24 MR. JACOBS: Will you read it back, please.
25 (Record read.)

1 Q. BY MR. JACOBS: Do you have a view as you sit
2 here today as to under -- as to under which topics those
3 conditions are met?

4 MR. VIRJEE: Objection. Vague and ambiguous as
5 to "topics." Lacks foundation. Calls for speculation.
6 Calls for an expert opinion.

7 THE WITNESS: Certainly the adoption of
8 instructional materials. After that, I can't give you a
9 specific example.

10 Q. BY MR. JACOBS: And by "adoption," you mean
11 not -- it's not the best practices of the process of
12 adopting them, but the actual selection of them?

13 A. Yes.

14 Q. Finding No. 5, why don't you take a look at
15 that, determining need. Tell me when you're done.

16 A. Okay. No.

17 Q. Just tell me when you're done.

18 A. I'm done.

19 Q. Okay.

20 MR. VIRJEE: That's true anticipation.

21 Q. BY MR. JACOBS: Let's break finding No. 5 down
22 and we'll take out the -- I'm not interested in while
23 the State is an equal partner in developing school
24 facilities.

25 I want to start with, the State does not have

1 MR. VIRJEE: And then the question was
2 clarified by Mr. Jacobs that he was not talking about
3 facilities, but generally.

4 MR. SEFERIAN: Vague and ambiguous as to "best
5 practices."

6 THE WITNESS: Yes.

7 Q. BY MR. JACOBS: What is your opinion?

8 MR. SEFERIAN: Same objections.

9 THE WITNESS: In limited circumstances.

10 Q. BY MR. JACOBS: Is facilities one of those
11 circumstances?

12 MR. VIRJEE: Objection. Calls for speculation.
13 Lacks foundation. Incomplete hypothetical. Vague and
14 ambiguous as to best practices. Calls for an expert
15 opinion.

16 THE WITNESS: Possibly.

17 Q. BY MR. JACOBS: Did you have some particular
18 circumstances in mind where you are more certain it
19 would be beneficial if the State defined best practices?

20 MR. VIRJEE: Objection. Calls for speculation.
21 Lacks foundation. Calls for an expert opinion. Vague
22 and ambiguous as to "best practices."

23 THE WITNESS: Where the Constitution requires
24 it and where the State has the best level of
25 information.

1 an inventory of buildings.

2 Do you have an opinion as to whether that
3 statement is true or not?

4 MR. VIRJEE: Objection. Calls for speculation.
5 Lacks foundation. Vague and ambiguous as to
6 "inventory."

7 THE WITNESS: Yes.

8 Q. BY MR. JACOBS: What is your opinion?

9 MR. SEFERIAN: Same objections.

10 THE WITNESS: The second part of that is a true
11 statement.

12 Q. BY MR. JACOBS: That is that the State does not
13 have an inventory?

14 A. Correct.

15 Q. And the finding goes on. And we'll just
16 rewrite it slightly so that it's clear.

17 A. Why do I read it?

18 Q. Good point. Just to take out the conjunctions
19 in there. The state -- the finding is that the State
20 does not have a methodical way to project and plan for
21 future needs.

22 Do you see that?

23 A. Yes.

24 Q. And do you have an opinion as to whether that
25 finding is true?

1 MR. VIRJEE: Objection. Vague and ambiguous as
2 to "future needs." Calls for speculation. Lacks
3 foundation. Vague as to time, and incomplete
4 hypothetical.

5 MR. SEFERIAN: Calls for an inadmissible
6 opinion.

7 THE WITNESS: No.

8 Q. BY MR. JACOBS: And the last finding is that
9 the State does not have a methodical way to assess
10 progress toward meeting those needs.

11 Do you see that?

12 A. Wasn't that the last question?

13 Q. No, it was project and plan.

14 A. Oh, okay. I see that.

15 Q. Do you have an opinion as to whether that
16 finding is true or not?

17 MR. VIRJEE: Objection. Vague and ambiguous as
18 to "that finding." Vague and ambiguous as to need and
19 "methodical." Calls for speculation. Lacks foundation.

20 MR. SEFERIAN: Calls for an inadmissible
21 opinion.

22 THE WITNESS: No.

23 Q. BY MR. JACOBS: The recommendation No. 5 is
24 that the governor and the legislature should enact
25 legislation directing the office of public school

1 THE WITNESS: No.

2 Q. BY MR. JACOBS: And the second part of that
3 is -- can I shorten it by simply saying, to develop and
4 maintain -- I'm sorry, to project -- let's see. What
5 are they proposing here?

6 Let's take it from the beginning. The
7 recommendation is that the governor and the legislature
8 should enact legislation directing the office of public
9 school construction to project -- in partnership with
10 local school districts to project long-term facilities
11 needs.

12 Do you have an opinion as to whether that's a
13 good idea or not?

14 A. No.

15 MR. VIRJEE: Objection. Calls for speculation.
16 Lacks foundation. Incomplete hypothetical. Calls for
17 an expert opinion.

18 THE WITNESS: No.

19 Q. BY MR. JACOBS: And then I don't see much point
20 in asking you about the allocation of state funds point.

21 Adequate investment, why don't you take a look
22 at that finding and recommendation.

23 A. Okay.

24 Q. So finding No. 6, while voters have supported
25 statewide bond efforts, local school districts do not,

1 construction in partnership with local school districts
2 to develop and maintain an inventory of facilities,
3 project long-term facility needs, and assess the
4 allocation of state funds.

5 Do you have an opinion as to whether all of
6 that or some of that is a good idea?

7 MR. VIRJEE: Objection. Compound. Calls for
8 speculation. Lacks foundation. Vague and ambiguous.
9 Calls for an expert opinion.

10 THE WITNESS: Which of those two questions do
11 you want me to answer?

12 Q. BY MR. JACOBS: I was trying to go faster. If
13 you want me to divide it up, I will. Do you want me to
14 divide it up?

15 A. Sure.

16 Q. I guess the first question then is, do you have
17 an opinion on whether it would be a good idea for the
18 governor and the legislature to enact legislation
19 directing the office of public school construction in
20 partnership with local school districts to develop and
21 maintain an inventory of facilities?

22 MR. SEFERIAN: Objection. Lacks foundation.
23 Calls for inadmissible opinion. Vague and ambiguous as
24 to "good idea." Incomplete and improper hypothetical
25 question.

1 as a whole, have reliable and efficient mechanisms for
2 financing facility needs.

3 Do you have an opinion as whether that finding
4 is correct?

5 MR. VIRJEE: Objection. Calls for speculation.
6 Lacks foundation. Vague and ambiguous as to "reliable
7 and efficient mechanisms." Calls for an expert opinion.
8 Incomplete hypothetical.

9 THE WITNESS: At the time of this report or
10 now?

11 MR. JACOBS: I'll take the first, first.

12 MR. SEFERIAN: Same objections.

13 THE WITNESS: Yes.

14 Q. BY MR. JACOBS: And what was your opinion at
15 the time of the report, whether that was true?

16 MR. SEFERIAN: Objection. Lacks foundation.
17 Inadmissible opinion. Overly broad. Compound question.

18 THE WITNESS: Accurate.

19 Q. BY MR. JACOBS: And has the situation changed?

20 A. Yes.

21 MR. SEFERIAN: Same objections.

22 Q. BY MR. JACOBS: And how has it changed?

23 MR. SEFERIAN: Objection. Lacks foundation.
24 Calls for an inadmissible opinion.

25 THE WITNESS: 55 percent local vote.

1 Q. BY MR. JACOBS: So with that change, this is --
 2 this finding is no longer true, in your judgment?
 3 MR. SEFERIAN: Objection. Lacks foundation.
 4 Calls for an inadmissible opinion. Overly broad.
 5 MR. VIRJEE: Vague and ambiguous as to "this
 6 finding," and vague and ambiguous as to reliable and
 7 efficient mechanism.
 8 MR. SEFERIAN: Compound question.
 9 THE WITNESS: Yes, much less true.
 10 Q. BY MR. JACOBS: It's still partially true?
 11 MR. SEFERIAN: Objection.
 12 MR. VIRJEE: Vague and ambiguous as to
 13 "partially true." Compound. Calls for speculation.
 14 Lacks foundation. Calls for an expert opinion.
 15 THE WITNESS: Partially true.
 16 Q. BY MR. JACOBS: And partially true in what way?
 17 MR. SEFERIAN: Same objections.
 18 MR. VIRJEE: Same objections.
 19 THE WITNESS: Local districts do have a
 20 reliable and efficient mechanism for financing
 21 facilities needs.
 22 Q. BY MR. JACOBS: That's why this is partially
 23 false, I think, right?
 24 To summarize, I thought you were saying some
 25 progress has been made in addressing this finding, but

1 there's more to be made; is that correct?
 2 MR. VIRJEE: That misstates his testimony. You
 3 just asked whether he had an opinion whether the
 4 statement were true or false.
 5 MR. JACOBS: Just state your objection.
 6 MR. VIRJEE: You misstated his testimony. His
 7 testimony will speak for itself.
 8 THE WITNESS: My opinion is that local school
 9 districts at this point do have a reliable and efficient
 10 mechanism for financing facilities needs.
 11 Q. BY MR. JACOBS: And the recommendation, the
 12 governor and the legislature should develop a reliable
 13 long-term plan that defines the State's financial
 14 contribution toward school facilities and provides local
 15 districts with the tools to fund their share of
 16 projects.
 17 Leaving aside the specifics as to what the plan
 18 should include, do you agree with the recommendation?
 19 MR. VIRJEE: Objection. Calls for speculation.
 20 Lacks foundation. Incomplete hypothetical. Vague and
 21 ambiguous as to "reliable long-term plan." Calls for an
 22 expert opinion.
 23 THE WITNESS: No.
 24 Q. BY MR. JACOBS: Is that because you have no
 25 opinion on it, or that you disagree with it?

1 MR. VIRJEE: He answered your question.
 2 MR. SEFERIAN: Objection. Asked and answered.
 3 MR. JACOBS: Maybe I misunderstood.
 4 MR. VIRJEE: You asked do you have an opinion,
 5 he said no.
 6 MR. JACOBS: No, you said, I think, do you
 7 agree with that?
 8 THE WITNESS: What's the question?
 9 Q. BY MR. JACOBS: I'm trying to move ahead a
 10 little more quickly. Do you have an opinion on that
 11 recommendation?
 12 MR. VIRJEE: Same objections.
 13 THE WITNESS: Yes, as relates to the third
 14 bullet.
 15 Q. BY MR. JACOBS: That is assess and, if
 16 necessary, modify the ability of local districts to
 17 raise revenue?
 18 A. Yes.
 19 Q. How about just focusing on the development of a
 20 reliable long-term plan that defines the State's
 21 financial contribution towards school facilities, that
 22 part of the recommendation?
 23 MR. VIRJEE: Objection. Vague and ambiguous as
 24 to "reliable long-term plan." Calls for speculation.
 25 Lacks foundation. Incomplete hypothetical. Calls for

1 an expert opinion.
 2 THE WITNESS: I have no opinion.
 3 Q. BY MR. JACOBS: But I take it you -- if I
 4 understood you correctly, there are aspects of the third
 5 bullet that you think are a good idea?
 6 MR. VIRJEE: Objection. Misstates his
 7 testimony.
 8 MR. SEFERIAN: Lacks foundation. Calls for an
 9 inadmissible opinion.
 10 Q. BY MR. JACOBS: And you probably are going to
 11 tell me that you think some of those have been done
 12 already; is that right?
 13 MR. SEFERIAN: Objection. Compound question.
 14 THE WITNESS: I agree with the recommendation
 15 on the third bullet.
 16 Q. BY MR. JACOBS: Do you believe that the third
 17 bullet has, in part or in whole, been addressed?
 18 MR. SEFERIAN: Objection. Compound question.
 19 Lacks foundation. Calls for speculation. Calls for an
 20 inadmissible opinion.
 21 MR. VIRJEE: Also compound.
 22 MR. SEFERIAN: Vague as to time.
 23 THE WITNESS: Yes.
 24 Q. BY MR. JACOBS: Helping the children of Los
 25 Angeles, finding 7, recommendation 7.

1 MR. JORDAN: If you want to save time, Mike,
 2 I'm going to have an objection to each one of these
 3 questions that it will call for an expert opinion or
 4 speculation and lacks foundation.
 5 MR. JACOBS: Can I just agree that that's a
 6 standing objection to the line of questioning?
 7 MR. JORDAN: That's what I'm asking.
 8 MR. JACOBS: Terrific. Will that work for
 9 everybody else here?
 10 MR. SEFERIAN: No, thank you.
 11 MR. JORDAN: I guess unless we have a
 12 stipulation that I can have it, then I better go ahead
 13 and do it to each one.
 14 MR. JACOBS: No one disagrees with him having a
 15 standing objection, do you?
 16 MR. SEFERIAN: No, I don't, but I just meant
 17 for myself personally.
 18 MR. JACOBS: And, Fram, you don't disagree with
 19 him having that standing objection?
 20 MR. VIRJEE: Just let me know when the -- the
 21 standing objection begins and ends, that's all.
 22 MR. JACOBS: Abe, you don't disagree?
 23 MR. HAJELA: No problem.
 24 Q. BY MR. JACOBS: Tell me when you're done.
 25 A. I'm done.

1 Q. Finding No. 7, another generation of children
 2 in Los Angeles has been doomed to overcrowded,
 3 uninspiring and unhealthy schools because of persistent
 4 incompetence by the Los Angeles Unified School District.
 5 Now, this was written as of February 8th, 2000,
 6 so maybe I should ask you, as of the time -- did you
 7 have an opinion as to whether the substance of this
 8 finding was true as of February 2000?
 9 MR. JORDAN: Mike, with your consent, this is
 10 where my standing objection starts.
 11 MR. JACOBS: Sure.
 12 MR. VIRJEE: Objection. Calls for speculation.
 13 Lacks foundation. Vague and ambiguous as to
 14 "overcrowded, uninspiring and unhealthy." Calls for an
 15 expert opinion. Incomplete hypothetical.
 16 MR. SEFERIAN: Compound question.
 17 THE WITNESS: No.
 18 Q. BY MR. JACOBS: You have no opinion on that?
 19 A. Right.
 20 MR. SEFERIAN: Objection. Asked and answered.
 21 Q. BY MR. JACOBS: Now, if you break down the
 22 elements of the finding underneath it, the
 23 facility-related problems in California's largest school
 24 districts are so pervasive and persistent that the State
 25 should take specific and drastic action.

1 Let's break that down. Do you have an opinion
 2 as of -- just to do this quickly, can I ask you both as
 3 of today and as of February 8th, 2000, in the same
 4 question?
 5 Do you have an opinion as to whether the
 6 facility-related problems in California's largest school
 7 district are pervasive and persistent?
 8 MR. VIRJEE: Objection. Calls for speculation.
 9 Lacks foundation. Vague and ambiguous as to "pervasive
 10 and persistent." Vague as to time.
 11 MR. SEFERIAN: Calls for inadmissible opinion.
 12 THE WITNESS: Yes.
 13 Q. BY MR. JACOBS: What is your opinion?
 14 A. True.
 15 MR. SEFERIAN: Same objections.
 16 Q. BY MR. JACOBS: And true for both the times,
 17 February 8th, 2000, and today?
 18 MR. SEFERIAN: Same objections.
 19 THE WITNESS: You're stopping at persistent?
 20 MR. JACOBS: Correct.
 21 THE WITNESS: Yes.
 22 Q. BY MR. JACOBS: Do you have an opinion as to
 23 whether now the whole sentence is true, that the
 24 problems are so pervasive and persistent, quote, that
 25 the State should take specific and drastic action,

1 period, close quote?
 2 MR. SEFERIAN: Objection. Lacks foundation.
 3 Calls for an inadmissible opinion. Incomplete and
 4 improper hypothetical question. Vague and ambiguous as
 5 to "drastic" and "action." Lacks foundation.
 6 THE WITNESS: No.
 7 Q. BY MR. JACOBS: That is, you have no opinion or
 8 you disagree with it?
 9 A. I have no opinion.
 10 Q. The next sentence, the district's personnel
 11 practices have failed to ensure that high-caliber
 12 professions fill key positions, do you have an opinion
 13 on whether that's true?
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "personnel practices." Calls for speculation and
 16 lacks foundation, and calls for an expert opinion.
 17 MR. SEFERIAN: Vague and ambiguous as to
 18 "high-caliber."
 19 THE WITNESS: Yes.
 20 Q. BY MR. JACOBS: What is your opinion?
 21 MR. SEFERIAN: Same objections.
 22 THE WITNESS: Inaccurate.
 23 Q. BY MR. JACOBS: Inaccurate as of both times?
 24 A. Yes.
 25 Q. And do you have any particular -- are you

1 thinking of anything by way of evidence that you're
 2 relying on for that purpose?
 3 MR. SEFERIAN: Objection. Calls for an
 4 inadmissible opinion.
 5 THE WITNESS: Personnel practices are not their
 6 problem, in my opinion.
 7 Q. BY MR. JACOBS: And what is the problem?
 8 MR. SEFERIAN: Objection. Overly broad.
 9 Incomplete and improper hypothetical question. Lacks
 10 foundation. Calls for an inadmissible opinion.
 11 MR. VIRJEE: Vague and ambiguous as to the
 12 "problem." Calls for speculation.
 13 THE WITNESS: My uninformed opinion is that the
 14 Board is unable to make decisions regarding land.
 15 Q. BY MR. JACOBS: So by personnel practices, you
 16 weren't referring only to the practices of the district
 17 with respect to personnel but the -- you also believe
 18 that it's not the personnel themselves in the facilities
 19 arms of the district that are the issue; is that
 20 correct?
 21 MR. JORDAN: That misstates.
 22 MR. VIRJEE: Objection. Vague and ambiguous as
 23 to facilities arm. Calls for speculation and lacks any
 24 foundation. Vague as to time. Calls for an expert
 25 opinion.

1 THE WITNESS: What's the question?
 2 Q. BY MR. JACOBS: I wanted to make sure you
 3 weren't focusing -- in answering that you disagree, I
 4 wanted to make sure you weren't focusing only on the
 5 concept of personnel practices as opposed to the actual
 6 results of those practices in terms of the caliber of
 7 the professionals filling key positions.
 8 I take it you --
 9 A. I disag --
 10 MR. SEFERIAN: Please wait. He hasn't asked a
 11 question yet.
 12 Q. BY MR. JACOBS: You disagree with?
 13 A. The entire sentence.
 14 Q. The organizational structure divides
 15 responsibility in ways that thwart accountability.
 16 Do you have an opinion on whether that's true
 17 or not?
 18 MR. VIRJEE: Vague and ambiguous as to
 19 "organizational structure" and "accountability." Calls
 20 for speculation and lacks foundation. Calls for an
 21 expert opinion.
 22 THE WITNESS: No.
 23 Q. BY MR. JACOBS: How about the next sentence,
 24 the school board has not provided the competency-based
 25 leadership needed to guide a large public organization?

1 MR. VIRJEE: Objection. Calls for speculation.
 2 Lacks foundation. Vague and ambiguous as to
 3 "competency-based leadership." Incomplete hypothetical.
 4 THE WITNESS: No.
 5 Q. BY MR. JACOBS: Similar problems plagued the
 6 district when the commission reviewed its facility
 7 program in 1980 and the district's failings have been
 8 further documented by a recent internal audit.
 9 Do you know whether that's true or not?
 10 MR. SEFERIAN: Objection. Compound question.
 11 THE WITNESS: No.
 12 Q. BY MR. JACOBS: Do you have an opinion on how
 13 far back the facilities -- the facility-related problems
 14 in LAUSD can be dated?
 15 MR. JORDAN: Assumes facts not in evidence.
 16 MR. VIRJEE: Vague and ambiguous as to
 17 "facilities-related problems." Calls for speculation.
 18 Lacks foundation.
 19 MR. SEFERIAN: Objection. Calls for an
 20 inadmissible opinion.
 21 THE WITNESS: No specific dates or times.
 22 Q. BY MR. JACOBS: Do you think it dates back to
 23 the 1980s?
 24 MR. VIRJEE: Objection. Calls for speculation.
 25 MR. JORDAN: Same objection.

1 MR. VIRJEE: And lacks foundation. Vague and
 2 ambiguous as to "facilities-related problems."
 3 THE WITNESS: That would be my opinion.
 4 Q. BY MR. JACOBS: Do you believe that as reported
 5 in the next sentence, the problems are endemic and
 6 systemic?
 7 MR. SEFERIAN: Objection. Lacks foundation
 8 vague and ambiguous as to "problems." Calls for an
 9 inadmissible opinion. Overly broad.
 10 THE WITNESS: No.
 11 Q. BY MR. JACOBS: Do you believe that they are
 12 endemic?
 13 MR. VIRJEE: Objection. Vague and ambiguous as
 14 to "endemic." Calls for speculation. Lacks foundation.
 15 Calls for an expert opinion.
 16 THE WITNESS: No.
 17 Q. BY MR. JACOBS: Do you believe they're
 18 systematic?
 19 A. No.
 20 Q. Although this is in the findings section, there
 21 are two recommendations in the remainder of the
 22 paragraph, given the large share of educational
 23 resources consumed by the district, the State Allocation
 24 Board should not give the district any additional
 25 resources until the appropriate reforms have been put in

1 place.
 2 Do you have an opinion on whether that's a good
 3 idea or not?
 4 MR. VIRJEE: Objection. Calls for speculation.
 5 Lacks foundation. Incomplete hypothetical. Also calls
 6 for an expert opinion.
 7 THE WITNESS: Yes.
 8 Q. BY MR. JACOBS: What's your opinion?
 9 A. I disagree.
 10 MR. SEFERIAN: Same objections.
 11 Q. BY MR. JACOBS: And given the 700,000 children
 12 involved --
 13 MR. JORDAN: I'm sorry, Mike, I missed the
 14 answer.
 15 MR. JACOBS: He disagrees.
 16 Q. Given the 700,000 children involved, state
 17 policymakers should not accept empty promises but demand
 18 documented performance.
 19 Do you have an opinion on that recommendation?
 20 MR. VIRJEE: Objection. Vague and ambiguous as
 21 to "empty promises." Incomplete hypothetical. Calls
 22 for speculation. Lacks foundation. Calls for an expert
 23 opinion.
 24 THE WITNESS: No.
 25 MR. JACOBS: Let's go on to the recommendation

1 Q. BY MR. JACOBS: Is it your opinion that that
 2 should not be done?
 3 MR. SEFERIAN: Objection. Lacks foundation.
 4 Calls for an inadmissible opinion.
 5 MR. VIRJEE: Also vague and ambiguous as to
 6 "that."
 7 THE WITNESS: I disagree with the
 8 recommendation 7 as it's written.
 9 Q. BY MR. JACOBS: And then in terms of structural
 10 or administrative solutions that are listed under
 11 that -- to move this along, I take it that you don't
 12 think that the governor and legislature should break up
 13 LAUSD into smaller school districts.
 14 MR. SEFERIAN: Objection. Lacks foundation.
 15 Calls for an inadmissible opinion. Compound question.
 16 Vague and ambiguous as to "break up." Calls for
 17 speculation. Incomplete and improper hypothetical
 18 question.
 19 THE WITNESS: No.
 20 Q. BY MR. JACOBS: I asked you a question in the
 21 negative, so the no is potentially ambiguous. No what?
 22 MR. VIRJEE: No to your question.
 23 THE WITNESS: Not near as ambiguous as your
 24 question.
 25 MR. JORDAN: I think that's a fair statement.

1 7. On behalf of the children of Los Angeles, the
 2 governor and the legislature should intervene to
 3 fundamentally reform the Los Angeles Unified School
 4 District. And then there are several proposed
 5 alternatives, break up LAUSD into smaller school
 6 districts, create an independent authority to develop
 7 school facilities in Los Angeles, and several others,
 8 but those are the two that I want to ask you about, as
 9 well as the general -- the recommendation in general.
 10 So let's take the general case first. Do you
 11 believe that as a general matter the governor and the
 12 legislature should intervene to fundamentally reform the
 13 Los Angeles Unified School District?
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "fundamentally reform." Calls for speculation.
 16 Lacks foundation. Incomplete hypothetical.
 17 THE WITNESS: No.
 18 Q. BY MR. JACOBS: And this is a case where you
 19 have -- I didn't start right. You have an opinion on
 20 that topic, I take it?
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to what you take.
 23 THE WITNESS: Yes.
 24 MR. VIRJEE: You're asking if he has an
 25 opinion. Why don't you just ask him that.

1 The record is going to be unclear unless that's
 2 clarified.
 3 MR. VIRJEE: That's been the case every time we
 4 started a question with "I take it."
 5 MR. JORDAN: The beginning was do you disagree
 6 with and then he said no and --
 7 MR. JACOBS: I'm trying to move it along.
 8 Q. Should the governor and legislature break up
 9 LAUSD into smaller school districts?
 10 MR. VIRJEE: Objection. Asked and answered.
 11 Vague and ambiguous. Incomplete hypothetical.
 12 THE WITNESS: I don't know.
 13 Q. BY MR. JACOBS: Should the governor and
 14 legislature create an independent authority to develop
 15 school facilities in Los Angeles?
 16 MR. VIRJEE: Objection. Incomplete
 17 hypothetical. Calls for speculation. Lacks foundation.
 18 Calls for an expert opinion.
 19 MR. SEFERIAN: Vague and ambiguous as to
 20 "independent authority."
 21 THE WITNESS: I have no opinion.
 22 Q. BY MR. JACOBS: And you said with respect to
 23 the general recommendation that, as written, you
 24 disagreed with it.
 25 Are there some particular interventions by the

1 governor and the legislature with respect to reform of
2 the Los Angeles Unified School District that you believe
3 to be good ideas?

4 MR. VIRJEE: Objection. Calls for speculation.
5 Lacks foundation. Vague and ambiguous as to "reform"
6 and "good ideas." Incomplete hypothetical.

7 MR. SEFERIAN: Calls for an inadmissible
8 opinion. Overly broad.

9 THE WITNESS: Yes.

10 Q. BY MR. JACOBS: And what are those?

11 MR. SEFERIAN: Same objections.

12 THE WITNESS: Many things. For example,
13 providing training to teachers in a fundamental
14 curriculum to reform their educational system.

15 Q. BY MR. JACOBS: And is this a recommendation
16 for a program that is not currently in place?

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

19 THE WITNESS: No.

20 Q. BY MR. JACOBS: Is it a recommendation for an
21 expansion of an existing program?

22 MR. VIRJEE: Same objections.

23 MR. SEFERIAN: Lacks foundation. Calls for an
24 inadmissible opinion. Incomplete and improper
25 hypothetical opinion.

1 MR. SEFERIAN: Same objections.

2 THE WITNESS: Pass the bond issues as proposed
3 by the governor.

4 Q. BY MR. JACOBS: Anything else?

5 MR. SEFERIAN: Same objections.

6 THE WITNESS: That's all I can think of now.

7 Q. BY MR. JACOBS: When you were commenting on the
8 \$600 million that -- let me start over.

9 When you were commenting on the Los Angeles

10 Unified School District's performance in building the
11 facilities to address the class size reduction issues

12 that we discussed earlier, did your review of that
13 waiver application lead you to any conclusions about
14 actions that should be taken at the state level to

15 demand better performance from LAUSD in facilities
16 construction?

17 MR. VIRJEE: Please read back that question.

18 (Record read.)

19 MR. VIRJEE: Objection. Vague and ambiguous.

20 Compound. Nonsensical. Calls for speculation and lacks
21 foundation. Assumes his comments on those two things

22 were connected, and they were not. Misstates his
23 testimony.

24 MR. SEFERIAN: Assumes facts not in evidence.

25 Calls for an inadmissible opinion.

1 THE WITNESS: Yes.

2 Q. BY MR. JACOBS: And do you have a particular
3 program in mind?

4 MR. SEFERIAN: Same objections.

5 THE WITNESS: I just gave you an example.

6 Q. BY MR. JACOBS: Do you have any other
7 recommendations for how the governor and legislature
8 should intervene to -- with respect to reform of the Los
9 Angeles Unified School District?

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "intervene" and "reform." Assumes facts not in
12 evidence. Calls for speculation. Lacks foundation.

13 Calls for an expert opinion. Incomplete hypothetical.

14 THE WITNESS: Not off the top of my head.

15 Q. BY MR. JACOBS: Do you have an opinion as to
16 any changes that should be made by the governor and the
17 legislature that would help address the facility-related
18 problems at Los Angeles Unified School District?

19 MR. VIRJEE: Objection. Vague and ambiguous as
20 to "facility-related problems." Also calls for
21 speculation. Lacks foundation. Calls for an expert
22 opinion. Vague as to time. Assumes facts not in
23 evidence.

24 THE WITNESS: Yes.

25 Q. BY MR. JACOBS: What are your beliefs?

1 THE WITNESS: Yes.

2 Q. BY MR. JACOBS: What was your opinion?

3 MR. SEFERIAN: Same objections.

4 THE WITNESS: Submission by the District, if
5 carried out, will -- in the timeline proposed will
6 resolve a very long-standing issue.

7 Q. BY MR. JACOBS: Did you have any other
8 opinions?

9 A. No.

10 Q. Did you believe that the District would carry
11 out the timeline?

12 MR. VIRJEE: Objection. Calls for speculation.
13 Lacks foundation. Vague and ambiguous as to "carry out
14 the timeline."

15 MR. SEFERIAN: Vague as to time.

16 THE WITNESS: Yes.

17 MR. SEFERIAN: Counsel, this be a good time to
18 break for lunch?

19 MR. JACOBS: Yes.

20 MR. JORDAN: And we may as well stop the
21 continuing objection at this point.

22 MR. JACOBS: Okay.

23 (Lunch recess taken.)

24 (Exhibit SAD-251 was marked.)

25 Q. BY MR. JACOBS: We've marked as the next

1 deposition exhibit, Mr. Mockler, a memo from you to
2 Susan Kennedy, Scott Hill, Ray Belisle, Alan Bersin and
3 Susan Tacheny, as well as the file, dated November 1,
4 2000, re high school exit exam, status and need for
5 major decisions.

6 And my question to you is -- if you could scan
7 the memo to refresh your recollection as to it, but my
8 question to you is focused on paragraph 4 of page 3.

9 MR. VIRJEE: Paragraph numbered 4?

10 MR. JACOBS: I mean the bottom one under
11 recommended actions.

12 THE WITNESS: Yeah.

13 Q. BY MR. JACOBS: First of all, the addressees on
14 this memo, I recognize some of the names, but what's the
15 reason why these particular people were sent this memo?

16 A. Yes.

17 Q. What's the reason?

18 A. They were involved in reviewing the HumRRO
19 report and commenting on next steps regarding the high
20 school exit exam.

21 Q. Is this some sort of subcommittee or other
22 constituted body, or just an informal assembly of
23 personages?

24 A. Informal assembly.

25 Q. Under recommended actions item 4 it says,

1 standards-based materials conditioned on the receipt of
2 those materials, continuation and simplification of the
3 laws which provide each student who is in risk of or has
4 not passed the high school exit exam to be given
5 instruction so that they may pass the high school exit
6 exam.

7 Q. BY MR. JACOBS: And with respect to that last
8 component is that a mechanism that, as of the time of
9 this memo, was in place already?

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

12 THE WITNESS: Partially.

13 Q. BY MR. JACOBS: What program or mechanism are
14 you referring to?

15 A. The statute provides that students who are at
16 risk or who have not -- or have not passed the high
17 school exit exam have access to -- the school districts
18 have access to a continuous appropriation of funding
19 which allows them to have special classes to make up any
20 deficits that are provided -- that are deemed to be
21 necessary as a result of the exam or analysis prior to
22 the exam.

23 Q. What is -- is there a name for that program?

24 A. No specific name, but it's in the code.

25 Q. And is it a program that's currently funded?

1 propose a series of initiatives to address opportunity
2 to learn issues, including ensuring that adequate
3 instructional materials are available, that staff
4 development is aligned to standards, and that programs
5 for targeted assistance are developed for schools with
6 large populations who are not prepared to meet the
7 standards. Provide incentives for schools to
8 participate in these programs.

9 Do you see that?

10 A. Yes.

11 Q. This is language that you actually input into
12 this memo?

13 MR. VIRJEE: Are you asking the language you
14 just read?

15 MR. JACOBS: Yes.

16 THE WITNESS: Yes.

17 Q. BY MR. JACOBS: And did you have in mind
18 anything in -- what did you have in mind in terms of a
19 series of initiatives, other than what's set forth in
20 this paragraph?

21 MR. VIRJEE: Objection. Assumes facts not in
22 evidence. Assumes he had any others.

23 THE WITNESS: Continuation of funding for
24 instructional materials, expansion of the professional
25 development activities for teachers aligned to

1 A. Yes.

2 Q. And being accessed by school districts?

3 MR. VIRJEE: Objection. Calls for speculation.

4 Lacks foundation. Vague and ambiguous as to access.

5 THE WITNESS: Yes.

6 Q. BY MR. JACOBS: Do you have any designator for
7 the program? Is there a statutory provision, for
8 example, that you could refer to it by?

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

11 THE WITNESS: I can't cite the code section,
12 but in law there is such a program.

13 Q. BY MR. JACOBS: And is it administered by the
14 Department of Ed?

15 MR. VIRJEE: Objection. Vague and ambiguous as
16 to "administered."

17 MR. SEFERIAN: Calls for a legal conclusion.

18 THE WITNESS: Yes.

19 Q. BY MR. JACOBS: And do you know which group?

20 MR. VIRJEE: Objection. Vague and ambiguous as
21 to "group." Calls for speculation.

22 MR. JACOBS: Administers the program.

23 THE WITNESS: To my knowledge, the
24 apportionment division.

25 Q. BY MR. JACOBS: And do you know the current

1 funding level for the program?
 2 MR. SEFERIAN: Objection. Lacks foundation.
 3 THE WITNESS: As I understand the statute,
 4 there is unlimited funding for that program.
 5 Q. BY MR. JACOBS: When you say "unlimited
 6 funding," is there a distinction between funding and
 7 appropriation in this context?
 8 MR. VIRJEE: Objection. Vague and ambiguous.
 9 Calls for speculation. Lacks foundation.
 10 THE WITNESS: Statute provides that school
 11 districts may provide extra assistance to students and
 12 charge on an hourly basis, and that those funds are
 13 without limit with respect to those hours.
 14 Q. BY MR. JACOBS: And what's your understanding,
 15 then, of how that is figured into the state budget?
 16 MR. VIRJEE: Objection. Calls for speculation.
 17 Lacks foundation. Also assumes facts not in evidence.
 18 THE WITNESS: There's an appropriation in the
 19 state budget as an estimate of its cost.
 20 Q. BY MR. JACOBS: And as you understand the way
 21 this works then, is there any budgetary limit on how
 22 much districts can draw down the resource available
 23 under this provision?
 24 MR. VIRJEE: Objection. Calls for speculation.
 25 Lacks foundation.

1 THE WITNESS: Not with respect to hours, no.
 2 Q. BY MR. JACOBS: And how about the charge per
 3 hour, is that restricted?
 4 A. That's set forth in statute.
 5 Q. Do you happen to know the figure?
 6 MR. VIRJEE: Objection. The statute speaks for
 7 itself, and that calls for a legal conclusion.
 8 THE WITNESS: No.
 9 Q. BY MR. JACOBS: Were you proposing any
 10 modifications to this -- did you have in mind proposing
 11 modifications to this program?
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "modifications." Assumes facts not in evidence.
 14 MR. SEFERIAN: Vague as to time.
 15 THE WITNESS: I don't recall.
 16 Q. BY MR. JACOBS: What the memo says is that
 17 programs for targeted systems are developed for schools
 18 with large populations who are not prepared to meet the
 19 standards.
 20 A. My understanding of your question was --
 21 MR. SEFERIAN: He hasn't asked a question yet.
 22 Q. BY MR. JACOBS: What did you mean with respect
 23 to the "are developed" language there?
 24 Let me put a little differently. Did you mean
 25 that programs for targeted assistance need to be

1 developed for schools with large populations who are not
 2 prepared to meet the standards?
 3 MR. VIRJEE: Objection. Vague and ambiguous.
 4 THE WITNESS: No.
 5 Q. BY MR. JACOBS: What did you mean?
 6 A. I meant that the current program needed to be
 7 refined and appropriately funded, and it was.
 8 Q. When was that?
 9 A. I don't recall.
 10 Q. It was refined?
 11 A. Yes.
 12 Q. In what way?
 13 A. Hourly rate was increased.
 14 Q. And was that the sum and substance of the
 15 refinements you had in mind?
 16 A. Yes.
 17 Q. So as of today, were the initiatives that you
 18 had in mind then when you wrote this memo -- strike that
 19 and start over again.
 20 When you wrote this memo and had in mind a
 21 series of initiatives, as you look at the programs in
 22 place today, the objectives that you set forth here, do
 23 you believe they've been met?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "objectives," "series of initiatives," and assumes

1 facts not in evidence. Calls for speculation. Vague
 2 and ambiguous as to "met."
 3 MR. SEFERIAN: Lacks foundation.
 4 THE WITNESS: Yes.
 5 Q. BY MR. JACOBS: And then as you look
 6 prospectively today at the question of the
 7 implementation of the high school exit exam, do you have
 8 in mind today any additional initiatives to address
 9 opportunity to learn issues that you believe should be
 10 undertaken?
 11 MR. VIRJEE: Objection. Calls for speculation.
 12 Lacks foundation. Vague and ambiguous as to
 13 "opportunity to learn" and calls for an expert opinion.
 14 THE WITNESS: No.
 15 Q. BY MR. JACOBS: On paragraph one of recommended
 16 actions you wrote, introduce urgency legislation in
 17 January to resolve test development and timing issues
 18 and to ensure student access to the curriculum required
 19 by the test.
 20 What did you mean by ensuring student access to
 21 the curriculum required by the test?
 22 A. That the students taking the test had a
 23 reasonable opportunity to have the subjects covered on
 24 the test available to them in school.
 25 Q. And you had in mind some specific changes in

1 legislation that you believed needed to be made in order
 2 to ensure such access?
 3 MR. VIRJEE: Objection. Calls for speculation.
 4 Lacks foundation. Calls for an expert opinion.
 5 MR. SEFERIAN: Assumes facts not in evidence.
 6 THE WITNESS: It was simply a matter of time.
 7 Q. BY MR. JACOBS: What was a matter of time, sir?
 8 A. As to whether the consequence for the test
 9 should be imposed in 204 or 205.
 10 Q. So the urgency legislation you had in mind --
 11 if I can try and move this along by guessing as to what
 12 you are saying and asking you to confirm it or not.
 13 What you're saying is that you thought an
 14 additional year was going to be needed in order to
 15 ensure student access to the curriculum required by the
 16 test?
 17 MR. VIRJEE: Objection. Incomplete
 18 hypothetical. Calls for speculation. Lacks foundation.
 19 Calls for an expert opinion. Vague and ambiguous as to
 20 what you were saying. The document speaks for itself.
 21 MR. SEFERIAN: Misstates the witness'
 22 testimony.
 23 THE WITNESS: That was my recommendation at
 24 that time.
 25 Q. BY MR. JACOBS: And that was the particular

1 urgency legislation that you had at that time?
 2 A. Correct.
 3 Q. And today have you made any -- as of today, do
 4 you have a view as to when it would be appropriate to
 5 introduce the requirement of passage of the test for
 6 graduation?
 7 MR. VIRJEE: Objection. Calls for speculation.
 8 Lacks foundation. Incomplete hypothetical. Calls for
 9 an expert opinion. Vague and ambiguous as to
 10 "appropriate."
 11 THE WITNESS: No.
 12 Q. BY MR. JACOBS: Just to ask this a couple of
 13 different ways, have you made any recommendations since
 14 this memo as to an effective date of the high school
 15 exit exam?
 16 MR. VIRJEE: Objection. Vague and ambiguous as
 17 to "effective date." Also calls for speculation. And
 18 also object to the extent it calls for attorney/client
 19 privileged information or would invade the official
 20 information privilege.
 21 THE WITNESS: Can I ask a question of my
 22 lawyer? Are you talking about a public statement? If
 23 it's a private statement with respect to the governor,
 24 I'm not allowed to answer that question.
 25 Q. BY MR. JACOBS: Is that your understanding of

1 the instruction?
 2 MR. VIRJEE: If the information was part of the
 3 official information privilege or deliberative process,
 4 then you shouldn't answer the question.
 5 Q. BY MR. JACOBS: Do you have an understanding of
 6 the scope of those privileges?
 7 MR. SEFERIAN: I'll object. I think that calls
 8 for a legal conclusion.
 9 Q. BY MR. JACOBS: Sir?
 10 A. I don't know.
 11 Q. You don't have an understanding of the scope
 12 then? But for your lawyer's instruction would you be
 13 answering the question differently?
 14 A. No, my --
 15 MR. VIRJEE: Objection. Calls for speculation.
 16 Lacks foundation.
 17 THE WITNESS: My understanding is
 18 communications with the governor in my official capacity
 19 at the time is something I'm not supposed to reveal.
 20 That's my understanding.
 21 Q. BY MR. JACOBS: So then you're not going to
 22 answer the -- I have to do this to set up the issue for
 23 later proceedings.
 24 Your answer to the question, aside from the
 25 period when you were acting secretary is that, no, you

1 have not made a recommendation as to an effective date
 2 of the high school exit exam since this memo; is that
 3 correct?
 4 MR. VIRJEE: Objection. Vague and ambiguous as
 5 to "recommendation." Lacks foundation. And object to
 6 the extent it would invade the attorney/client privilege
 7 or the official information privilege or the
 8 deliberative process privilege.
 9 THE WITNESS: What do I do?
 10 MR. VIRJEE: If you can answer without
 11 violating those privileges, then you should.
 12 THE WITNESS: I cannot.
 13 MR. JACOBS: Would you read back the question,
 14 please. And I'll ask you to consider the question
 15 again.
 16 (Record read.)
 17 THE WITNESS: Yes.
 18 Q. BY MR. JACOBS: And then are you constrained to
 19 answer the question as to the period when you were
 20 acting secretary by virtue of the instruction you've
 21 been given by your counsel, correct?
 22 A. Yes.
 23 Q. And you're going to follow that instruction?
 24 A. Yes.
 25 Q. We'll continue the walk down memory lane. I'd

1 like to show you two articles dated December 7th, 2000.
 2 And we'll mark the one from the San Jose Mercury News as
 3 252, and the Contra Costa Times as 253.
 4 (Exhibits SAD-252 and SAD-253 were marked.)
 5 Q. BY MR. JACOBS: I can point you to where I'm
 6 going to ask you about in these, but you'll probably
 7 want to read the articles in their entirety.
 8 On Exhibit 252 in the upper right-hand corner,
 9 page 146, you're quoted in the second and third
 10 paragraphs, and in 253 upper right-hand corner, page
 11 143, you're quoted in the middle of that page.
 12 A. What's the next page? You want me to do both
 13 of them at the same time?
 14 Q. Yeah.
 15 MR. VIRJEE: And he suggests that you read the
 16 entire -- entirety of both articles.
 17 THE WITNESS: Yeah.
 18 Q. BY MR. JACOBS: Ready?
 19 A. Sure.
 20 Q. Let's look at 252 first. The headline on this
 21 story, where students are neediest, teachers often have
 22 little training, number of instructors without full
 23 credentials increases statewide.
 24 And as I mentioned, this is December 7th, 2000.
 25 And on the second page of the article you are quoted as

1 saying, I think we're going to see a turnaround
 2 absolutely, said John B. Mockler, the interim education
 3 secretary for Governor Gray Davis, noting that many
 4 low-performing schools already have made significant
 5 progress toward their academic targets in the state's
 6 ranking system.
 7 This report offers a, quote, static view of a
 8 very dynamic situation, close quote, he added. We would
 9 hope the massive infusion the governor has made in both
 10 general programs and his focused efforts on teacher
 11 training, teachers' staff development and teacher
 12 recruitment will dramatically improve this picture over
 13 time.
 14 As you best recall the conversation that led to
 15 these quotations, are the quotations accurate?
 16 MR. VIRJEE: Objection. Vague and ambiguous as
 17 to "accurate."
 18 MR. SEFERIAN: Compound question.
 19 THE WITNESS: Accurate out of context.
 20 Q. BY MR. JACOBS: And what's the proper context?
 21 A. I began by saying we don't accept the notion
 22 that an intern teacher is any less qualified than
 23 teachers coming out of teacher training institutions in
 24 their first year, so we do not accept the premise of the
 25 report as it's written.

1 Q. Anything else by way of context?
 2 A. No.
 3 Q. Do you hold that view today?
 4 A. Yes.
 5 MR. SEFERIAN: Objection. Lacks foundation.
 6 Calls for an inadmissible opinion. Overly broad.
 7 Q. BY MR. JACOBS: And what do you base that
 8 opinion on?
 9 MR. SEFERIAN: Objection. Lacks foundation.
 10 Calls for inadmissible opinion. Overly broad.
 11 Incomplete hypothetical question.
 12 THE WITNESS: What opinion?
 13 Q. BY MR. JACOBS: The one that I just asked you
 14 whether you hold it today and you said yes.
 15 MR. SEFERIAN: Same objections. Vague and
 16 ambiguous.
 17 THE WITNESS: The opinion regarding the quality
 18 of intern teachers compared to other teachers?
 19 MR. JACOBS: Exactly.
 20 THE WITNESS: Significant but not sustained
 21 research which suggests that the intern teachers have
 22 skills equal to, and in some cases greater than -- as
 23 teachers who come from schools of education.
 24 Q. BY MR. JACOBS: And can you recall the research
 25 you're relying on?

1 A. Not off the top of my head.
 2 Q. Anything about the research that would help us
 3 chase it down, who did it, when it was done?
 4 MR. VIRJEE: Objection. Calls for speculation
 5 as to what might help you.
 6 THE WITNESS: No.
 7 Q. BY MR. JACOBS: So when you said, I think we're
 8 going to see a turnaround, absolutely, what kind of
 9 turnaround did you have in mind?
 10 A. As I recall, the question, they said, do you
 11 believe we're going to have a turnaround? And I said,
 12 yes. And they said, do you really think there's going
 13 to be a turnaround? And I said, yes, absolutely there's
 14 going to be a turnaround. So the context is really a
 15 little backwards. I said absolutely have a turnaround,
 16 not turnabout absolutely, just for context. Yeah, I
 17 think so. I think we have some evidence that the --
 18 MR. VIRJEE: He just asked what you were
 19 referring to.
 20 THE WITNESS: Yes, I think there is evidence
 21 that the distribution of teachers on a relative basis is
 22 getting better.
 23 Q. BY MR. JACOBS: And distribution of what kind
 24 of teachers?
 25 MR. SEFERIAN: Objection. Lacks foundation.

1 Calls for an inadmissible opinion.
 2 MR. VIRJEE: Also vague and ambiguous as to
 3 "what kind of teachers."
 4 THE WITNESS: I don't know what you mean by
 5 that.
 6 Q. BY MR. JACOBS: What did you mean when you said
 7 the distribution of teachers is getting better?
 8 MR. SEFERIAN: Same objections.
 9 THE WITNESS: I meant that qualified intern
 10 teachers were -- their distribution was improving in
 11 low-performing schools.
 12 Q. BY MR. JACOBS: And by qualified intern
 13 teacher, what do you mean?
 14 A. I mean teachers that meets the qualifications
 15 under law of being an intern teacher.
 16 Q. And was that what you meant when you said
 17 that -- was that the kind of intern teacher that you
 18 were referring to when you said you disputed the
 19 proposition that intern teachers were inferior to
 20 teachers coming out of teacher training programs?
 21 MR. SEFERIAN: Objection. Misstates the
 22 witness' testimony.
 23 THE WITNESS: That's part of it.
 24 Q. BY MR. JACOBS: What else did you have in mind?
 25 THE WITNESS: Distribution of qualified

1 Q. BY MR. JACOBS: So I'm having trouble following
 2 what the universe of teachers then is as you were
 3 talking about the distribution of teachers.
 4 You have credentialed teachers who have
 5 completed a teacher training program and you have your
 6 qualified intern teachers?
 7 MR. VIRJEE: Objection. Vague and ambiguous.
 8 Q. BY MR. JACOBS: What other kinds of teachers
 9 are in, for example, low-performing schools?
 10 MR. VIRJEE: Objection. Vague and ambiguous as
 11 to "credentialed teachers."
 12 THE WITNESS: Emergency teachers.
 13 Q. BY MR. JACOBS: And by emergency teacher, you
 14 mean a teacher on an emergency credential?
 15 A. Correct.
 16 Q. Are there any other kinds of teachers that you
 17 are thinking of in analyzing the distribution of
 18 teachers in this context?
 19 MR. SEFERIAN: Objection. Lacks foundation.
 20 Calls for an inadmissible opinion. Calls for
 21 speculation.
 22 THE WITNESS: I think that's about it, in
 23 general.
 24 Q. BY MR. JACOBS: I understand, then, your
 25 testimony to be that there's been an improvement over

1 teachers to schools was getting better, and that
 2 included intern teachers as well as teachers that were
 3 not intern teachers.
 4 Q. BY MR. JACOBS: But by "intern teachers" you
 5 mean, in this context, teachers that meet the statutory
 6 qualifications for being an intern teacher?
 7 MR. VIRJEE: Objection. Calls for speculation.
 8 Lacks foundation. Calls for a legal conclusion.
 9 THE WITNESS: Yes.
 10 Q. BY MR. JACOBS: And what do you understand the
 11 central requirements for such an intern teacher to be?
 12 MR. VIRJEE: Objection. Calls for a legal
 13 conclusion and lacks foundation.
 14 MR. SEFERIAN: Vague and ambiguous as to
 15 "central."
 16 THE WITNESS: College degree, pass the subject
 17 matter test, pass the CBEST, and enrolled in an approved
 18 intern program.
 19 Q. BY MR. JACOBS: And just to be clear on this,
 20 when you said, I think we're going to see a turnaround,
 21 it was a turnaround in what?
 22 MR. VIRJEE: Objection. Asked and answered.
 23 THE WITNESS: Turnaround in the number of
 24 teachers, intern and regular teachers, intern and other
 25 credentialed teachers in low-performing schools.

1 time in the distribution of emergency-credentialed
 2 teachers across the system as well, correct?
 3 MR. SEFERIAN: Objection. Lacks foundation.
 4 Misstates the witness' testimony. Calls for an
 5 inadmissible opinion. Vague and ambiguous as to
 6 "distribution" and "improvement."
 7 THE WITNESS: Incorrect. Wrong.
 8 Q. BY MR. JACOBS: If I do the subtraction, if
 9 there's been an improvement in the distribution of the
 10 two kinds of credentialed teachers you talked about,
 11 then the only remaining kind of teacher is
 12 emergency-credentialed teacher. How can one occur
 13 without the other?
 14 MR. SEFERIAN: Objection. Vague and ambiguous
 15 as to "improvement" and "distribution." Lacks
 16 foundation. Calls for an inadmissible opinion.
 17 THE WITNESS: You called my attention to a
 18 statement which says, I think we're going to see a
 19 turnaround. I still believe that. What does that mean?
 20 That means we will have fewer, in a sense, emergency and
 21 other unqualified teachers in those schools as a percent
 22 of their number.
 23 Q. BY MR. JACOBS: And you still believe that
 24 prospectively, correct, that we will see a turnaround?
 25 MR. SEFERIAN: Objection. Lacks foundation.

1 Incomplete hypothetical question. Calls for
2 inadmissible opinion.
3 THE WITNESS: Yes.
4 Q. BY MR. JACOBS: As you sit here today, you
5 don't believe we have, in fact, seen that turnaround
6 yet, have we?
7 MR. SEFERIAN: Objection. Lacks foundation.
8 Misstates the witness' testimony. Calls for an
9 inadmissible opinion.
10 MR. VIRJEE: Also vague and ambiguous as to
11 "turnaround."
12 THE WITNESS: I don't know which way to answer
13 that question. Read that back.
14 MR. JORDAN: And as a double negative, I think,
15 that may be the problem.
16 MR. JACOBS: Let me withdraw it. Let me start
17 again.
18 Q. As you sit here today, have you seen that
19 turnaround yet?
20 MR. VIRJEE: Objection. Calls for speculation.
21 Lacks foundation. Vague and ambiguous as to
22 "turnaround."
23 THE WITNESS: I have no information to add on
24 that.
25 Q. BY MR. JACOBS: What do you mean, "I have no

1 information to add"?
2 A. I don't know.
3 Q. And then you said, this report offers --
4 according to the article -- a static view of a very
5 dynamic situation. We would hope the massive infusion
6 the governor has made in these programs, paraphrasing,
7 will dramatically improve this picture over time.
8 As you sit here today, I take it you still have
9 that hope?
10 A. Yes.
11 Q. And as you sit here today, do you believe that
12 since December 7, 2000, we have yet to -- we have seen
13 dramatic improvement in this picture?
14 MR. VIRJEE: Objection. Vague and ambiguous as
15 to "this picture." Calls for speculation. Lacks
16 foundation.
17 MR. SEFERIAN: Incomplete hypothetical
18 question.
19 THE WITNESS: The data in this report is two
20 years old. In the report in question, in this article
21 there is no data with respect to the instant moment.
22 When we get that data, we'll know it. I can't speculate
23 on that.
24 Q. BY MR. JACOBS: When you say there's "no data,"
25 you haven't seen recent reports on the distribution of

1 emergency-credentialed teachers in the last, say, 12
2 months?
3 A. Not with data subsequent to that report.
4 Q. Turning to 253, let me ask you -- first of all,
5 in the first page it says, underqualified teachers are
6 those who hold emergency permits or do not have proper
7 subject area credentials for their job.
8 Do you see that?
9 MR. VIRJEE: Tell us where you're reading from,
10 Michael.
11 MR. JACOBS: Fourth paragraph down, first page.
12 THE WITNESS: I see that.
13 Q. BY MR. JACOBS: And my question to you is, on
14 this issue of what you understand to be the problem area
15 here to be, is this an accurate categorization of the
16 credentialing or subject area issues for teachers?
17 MR. VIRJEE: Objection. Vague and ambiguous as
18 to "problem area." Calls for speculation. Lacks
19 foundation. Compound and nonsensical.
20 MR. SEFERIAN: Assumes facts not in evidence.
21 Vague and ambiguous as to "underqualified."
22 THE WITNESS: No.
23 Q. BY MR. JACOBS: And why not?
24 MR. SEFERIAN: Same objections.
25 THE WITNESS: Because the story doesn't relate

1 to the study they're quoting on. That's not the
2 definition of underqualified teachers used by the report
3 for which they're using that data.
4 Q. BY MR. JACOBS: That was my question, is that
5 your definition?
6 MR. SEFERIAN: Objection. Vague as to context.
7 THE WITNESS: No.
8 MR. VIRJEE: Also vague as to in what context
9 in that would be a definition.
10 Q. BY MR. JACOBS: And why not?
11 MR. VIRJEE: Also assumes facts not in
12 evidence. Assumes he has a definition.
13 THE WITNESS: Well, subject area credential is
14 very vague. If I have a master's in economic history
15 from Harvard, I'm considered not to be qualified to
16 teach history. I don't think that's a definition of
17 underqualified teacher, but technically it may be.
18 Q. BY MR. JACOBS: So you think that the
19 definition in that sentence may be overinclusive?
20 A. I do.
21 Q. And with respect to teachers who hold emergency
22 permits, that is a category that, as a general matter,
23 you believe represents an underqualified teacher?
24 MR. VIRJEE: Objection. Calls for speculation.
25 Lacks foundation. Incomplete hypothetical. Compound.

1 Also --

2 MR. SEFERIAN: Calls for inadmissible opinion.
3 Vague and ambiguous as to "underqualified." Vague as to
4 context.

5 THE WITNESS: My personal opinion is that if
6 you want to look at the emergency permits, some are
7 quite qualified and many may not be. I would point out
8 that under the provisions of that definition you would
9 have suspicions of about a third of the Catholic schools
10 in California.

11 MR. VIRJEE: Just answer his questions.

12 THE WITNESS: Sorry. Just have to get that.

13 Q. BY MR. JACOBS: On the second page of this,
14 your comments regarding the teaching as a priority block
15 ramp program are paraphrased there.

16 Do you see that there in the one program
17 paragraph?

18 MR. VIRJEE: Which paragraph are you referring
19 to?

20 MR. JACOBS: It's under the John Mockler
21 paragraph.

22 THE WITNESS: Yeah.

23 Q. BY MR. JACOBS: And then you refer to the -- to
24 a program that helps students pay off their loans if
25 they're qualified and they agree to work in

1 credentialed teachers?

2 MR. VIRJEE: Objection. Calls for speculation.
3 Lacks foundation as to whether there is an absence of
4 data. Also calls for speculation and lacks foundation
5 as to the expertise to answer the question.

6 MR. SEFERIAN: Assumes facts not in evidence.

7 THE WITNESS: It's my sense that these programs
8 in combination have been successful. I have no -- I
9 cannot point you to a research document which would
10 prove that.

11 Q. BY MR. JACOBS: And how about any anecdotal
12 evidence?

13 A. My daughter is becoming a teacher.

14 Q. That's good evidence.

15 A. In a low-performing school.

16 Q. Which school is she teaching in?

17 A. San Francisco Western Addition.

18 Q. I'm not going to invade the daughter/parent
19 privilege here.

20 A. I've had many stories, anecdotal stories and
21 information from districts that suggest that's been
22 helpful.

23 Q. And how about anecdotal information to the
24 contrary, do you have any of that?

25 A. No.

1 hard-to-staff or low-performing schools?

2 MR. VIRJEE: I don't believe it says students
3 pay off their loans.

4 MR. JACOBS: Pay off student loans.

5 Q. Do you see that paragraph?

6 A. Yes.

7 Q. With respect to the teaching as a priority
8 block program, do you have any information on whether
9 that program has been effective in helping
10 low-performing schools recruit and retain credentialed
11 teachers?

12 MR. VIRJEE: Objection. Calls for speculation.

13 Lacks foundation. Vague and ambiguous as to
14 "effective," and calls for an expert opinion.

15 THE WITNESS: No.

16 Q. BY MR. JACOBS: And with respect to the student
17 loan pay-off program, do you have any information on
18 whether that program has been effective in aiding
19 low-performing schools to recruit and retain
20 credentialed teachers?

21 MR. VIRJEE: Same objections.

22 THE WITNESS: No.

23 Q. BY MR. JACOBS: In view of the absence of data,
24 do you have an opinion as whether either of those
25 programs have been effective in recruiting and retaining

1 Q. Do you have an understanding of the role of
2 FCMAT in providing oversight over school districts in
3 the state?

4 MR. VIRJEE: Objection. Vague and ambiguous as
5 to "role" and "oversight."

6 THE WITNESS: What do you mean by that?

7 Q. BY MR. JACOBS: Do you use the word "oversight"
8 in your discussions of educational policy?

9 MR. VIRJEE: Objection. Overbroad.

10 THE WITNESS: Not as it relates to FCMAT.

11 Q. BY MR. JACOBS: What do you understand FCMAT's
12 job to be?

13 MR. SEFERIAN: Objection. Overly broad.

14 THE WITNESS: FCMAT --

15 MR. SEFERIAN: Calls for inadmissible legal
16 opinion.

17 THE WITNESS: FCMAT has several statutory and
18 funded budgetary issues.

19 Q. BY MR. JACOBS: And are some of those related
20 to oversight of school districts?

21 MR. VIRJEE: Objection. Vague and ambiguous as
22 to "oversight."

23 MR. SEFERIAN: Calls for an inadmissible legal
24 opinion.

25 THE WITNESS: FCMAT may go in when invited or

1 directed by the legislature to certain districts and
 2 under certain conditions. They may go in when a school
 3 district has financial circumstances on a normal basis.
 4 Q. BY MR. JACOBS: And to your -- is it your
 5 understanding that a State Board action is required in
 6 any of those circumstances in order to involve FCMAT?
 7 MR. VIRJEE: Objection. Vague and ambiguous as
 8 to "required," and also calls for a legal conclusion.
 9 THE WITNESS: No.
 10 MR. SEFERIAN: Improper hypothetical question.
 11 Q. BY MR. JACOBS: Have you participated in any
 12 discussions about whether FCMAT should be involved in a
 13 particular school district?
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "involved." Also object to the extent it calls for
 16 attorney/client privilege information or would invade
 17 the official information or deliberative process
 18 privilege.
 19 THE WITNESS: Yeah.
 20 Q. BY MR. JACOBS: What?
 21 A. Vague examples. I can't remember back that
 22 far, but when legislators wanted to send FCMAT into
 23 San Francisco and when legislators wanted to send FCMAT
 24 into West Contra Costa, I recall those. There may have
 25 been other times.

1 Q. And on those occasions, what job were you
 2 filling at the time?
 3 MR. VIRJEE: Objection. Compound.
 4 THE WITNESS: Boy, different jobs at different
 5 times.
 6 Q. BY MR. JACOBS: Do you have an opinion as to
 7 the contribution FCMAT makes to the efficient operation
 8 of the school system in the state of California?
 9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to "contribution" and "efficient." Calls for
 11 speculation. Compound.
 12 MR. SEFERIAN: Lacks foundation. Calls for an
 13 inadmissible opinion.
 14 THE WITNESS: I only have an opinion. There
 15 are instances where they have done what I thought was
 16 good work, and instances where it was okay.
 17 Q. BY MR. JACOBS: So compared with -- if you put
 18 the Little Hoover Commission on the D-plus scale, where
 19 would you put FCMAT?
 20 MR. SEFERIAN: Objection. Lacks foundation.
 21 Calls for inadmissible opinion. Overly broad.
 22 THE WITNESS: FCMAT does too many things in too
 23 many areas to answer that question in any other way.
 24 Q. BY MR. JACOBS: Is that something you view as a
 25 negative? Do you believe that they have too many

1 responsibilities?
 2 MR. VIRJEE: Objection. Vague and ambiguous as
 3 to "responsibilities." Calls for speculation and lacks
 4 foundation.
 5 THE WITNESS: I think they have too many
 6 responsibilities and almost no oversight.
 7 Q. BY MR. JACOBS: No oversight of them?
 8 A. Yes.
 9 Q. And what oversight of FCMAT is missing?
 10 MR. VIRJEE: Objection. Calls for speculation.
 11 Lacks foundation.
 12 MR. SEFERIAN: Incomplete hypothetical
 13 question. Overly broad. Calls for an inadmissible
 14 opinion.
 15 (Record read.)
 16 MR. SEFERIAN: Vague and ambiguous as to
 17 "missing." Incomplete and improper hypothetical
 18 question.
 19 THE WITNESS: FCMAT is administered by a
 20 political official elected in Kern County and has no
 21 other formal oversight.
 22 Q. BY MR. JACOBS: Do you have an opinion as to
 23 what kind of oversight of FCMAT would be useful?
 24 MR. VIRJEE: Objection. Calls for speculation.
 25 Lacks foundation. Incomplete hypothetical. Vague and

1 ambiguous as to "useful."
 2 THE WITNESS: No.
 3 Q. BY MR. JACOBS: But you're concerned that there
 4 is insufficient oversight?
 5 MR. SEFERIAN: Objection. Vague and ambiguous
 6 as to "concerned" and "oversight."
 7 MR. VIRJEE: Also asked and answered.
 8 MR. SEFERIAN: Calls for an inadmissible
 9 opinion.
 10 THE WITNESS: That's my opinion.
 11 (Exhibit SAD-254 was marked.)
 12 Q. BY MR. JACOBS: I'm going to ask you about some
 13 comments that you made on the lawsuit. We'll mark as
 14 Exhibit 254 an article from AP Online dated May 18th,
 15 2000, headline ACLU sues California over schools.
 16 Take a look at this, and I'm going to ask you
 17 about the quotes from John Mock. And also you're quoted
 18 on the next page as well as John Mockler.
 19 MR. JORDAN: Just for the record, I've got a
 20 question mark in the margin next to my copy of that,
 21 which I presume was not in the original.
 22 MR. JACOBS: I think what happened here is that
 23 the AP Online printed out twice. Some of the language
 24 is repeated. I don't know why.
 25 Q. Let me ask you about the quotes on -- as quoted

1 on page 104 of John Mockler as opposed to on 103 of John
2 Mock. And my question to you is going to be whether
3 these are accurate.

4 It says, starting in the middle of page 104,
5 John Mockler, executive director of the State Board of
6 Education, said there are laws to ensure that schools
7 are kept clean and safe, but no agency to monitor them.
8 Disparities between school facilities, particularly
9 those in the same district, depend primarily on local
10 districts, he said. That's a function of the
11 distribution of funds, he said. It's a function of
12 local management and of patterns of attendance.

13 And then after a quote from -- or after a
14 paraphrase from Catherine Lhamon it says, Mockler
15 countered that neither the Board of Education nor the
16 Department of Education have the power to require school
17 districts to spend money evenly between schools. Only
18 the legislature could require that, he said.

19 Those statements that the article attributes to
20 you, did those -- did that accurately capture the
21 substance of your comments to the reporter?

22 A. No.

23 Q. In what way did they not?

24 MR. SEFERIAN: Objection. Compound question.

25 THE WITNESS: Which statement?

1 of attendance.

2 MR. JORDAN: Calls for hearsay.

3 Q. BY MR. JACOBS: Would that capture the
4 substance of your comments?

5 MR. JORDAN: Calls for hearsay.

6 MR. VIRJEE: If you recall.

7 THE WITNESS: I don't believe it does.

8 Q. BY MR. JACOBS: In what way?

9 A. Because it doesn't make any sense the way it's
10 written.

11 Q. Do you recall what you said on that score?

12 MR. JORDAN: Calls for hearsay.

13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to what score.

15 THE WITNESS: It related back to the issue
16 before. It simply said local districts determine where
17 kids go to school and how to maintain the facilities
18 when they go to school.

19 Q. BY MR. JACOBS: And then Mockler countered that
20 neither the Board of Education nor the Department of
21 Education have the power to require school districts to
22 spend money evenly between schools. Only the
23 legislature could require that, he said.

24 Does that capture the substance of your
25 comments to the reporter?

1 Q. BY MR. JACOBS: You want to go one by one?

2 A. As I recall -- what's the comment?

3 Q. We can do it one by one if you'd like. The
4 first one was, there are laws to ensure that schools are
5 kept clean and safe, but no agency to monitor them.
6 Disparities between school facilities, particularly
7 those in the same district, depend primarily on local
8 districts.

9 Did that accurately capture the substance of
10 your comments?

11 MR. JORDAN: Calls for hearsay.

12 MR. VIRJEE: Objection. Calls for speculation.

13 MR. SEFERIAN: Compound question.

14 THE WITNESS: As I recall the conversation --
15 I'm not certain I even talked to this board, as I recall
16 at this time -- I said there are public health and
17 safety laws that require schools and other public
18 facilities locally to be clean and safe, but the State
19 is not the agency to monitor them.

20 Second issue was in districts some schools
21 being good -- well maintained and some not. I'm saying
22 that is a local district decision, the State doesn't --

23 Q. BY MR. JACOBS: And then that, quote, that's a
24 function of the distribution of funds, close quote, you
25 said it's a function of local management and of patterns

1 MR. JORDAN: Calls for hearsay.

2 MR. SEFERIAN: Compound question. Objection.

3 THE WITNESS: Not accurate. What I said was it
4 would be foolish to spend money equally on schools.
5 Some have more needs than others. And the reporter
6 said, shouldn't it be spent equally? And I said, no,
7 but if you want that done, only the legislature can do
8 that, the Board can't.

9 MR. VIRJEE: Is this a good chance to take a
10 break?

11 MR. JACOBS: Sure.

12 (Recess taken.)

13 MR. JACOBS: I want to ask you about one more
14 article about school construction issues.

15 (Exhibit SAD-255 was marked.)

16 Q. BY MR. JACOBS: We've marked as Exhibit 255 an
17 article from The Daily News of Los Angeles dated May 27,
18 1999. Headline, group plots strategy for building new
19 school campuses across LA. And I want to focus you on
20 the quote toward the bottom of the page. I'll read it
21 into the record, the problem is that to build schools in
22 this circumstance, you go after someone's property
23 adversely, end quote, which means upsetting people, said
24 education finance consultant John Mockler, noting the
25 site selected often is the one opposed by the least

1 people.
 2 Do you see that?
 3 A. I do.
 4 Q. Do you believe that finding land in the Los
 5 Angeles Unified School District on which to build
 6 schools is one of the major obstacles to easing
 7 overcrowding in LAUSD?
 8 MR. VIRJEE: Objection. Vague and ambiguous as
 9 to "obstacles." Vague as to time and calls for
 10 speculation.
 11 MR. SEFERIAN: Calls for inadmissible opinion.
 12 Overly broad.
 13 THE WITNESS: Yes.
 14 MR. JORDAN: Lack of foundation.
 15 Q. BY MR. JACOBS: Do you have in mind any state
 16 level initiatives that would help address that
 17 situation?
 18 MR. SEFERIAN: Objection. Lacks foundation.
 19 Calls for an inadmissible opinion.
 20 MR. VIRJEE: Also vague and ambiguous as to
 21 "state level initiatives."
 22 THE WITNESS: No.
 23 Q. BY MR. JACOBS: Do you believe that it's a
 24 problem to be addressed solely within LAUSD?
 25 MR. SEFERIAN: Lacks foundation. Calls for an

1 inadmissible opinion. Overly broad.
 2 MR. VIRJEE: Vague and ambiguous as to "solely
 3 addressed." Calls for speculation. Incomplete
 4 hypothetical.
 5 THE WITNESS: I find the question impossible to
 6 answer as given.
 7 Q. BY MR. JACOBS: Do you have in mind any
 8 solution anywhere to the problem of acquiring land for
 9 schools in LAUSD?
 10 MR. SEFERIAN: Objection. Overly broad.
 11 Incomplete hypothetical question. Lacks foundation.
 12 Calls for speculation. Calls for an inadmissible
 13 opinion.
 14 THE WITNESS: Strength and courage of a local
 15 school district governing board.
 16 MR. JACOBS: I'm going to ask you about another
 17 quote about the lawsuit.
 18 (Exhibit SAD-256 was marked.)
 19 Q. BY MR. JACOBS: This is an article dated
 20 December 14th, 2000 from the Modesto Bee. Headline,
 21 Merced schools are sued over nonexistent policy. And
 22 the article states toward the bottom, John Mockler
 23 Governor Davis' interim secretary of education, said the
 24 State sued the school districts to protect their
 25 autonomy. He said if the ACLU had won its lawsuit, it

1 would put the State in charge of local school decisions.
 2 Quote, it's up to the school districts to implement the
 3 policies of the State, close quote, he said.
 4 Does that capture the substance of your
 5 statements to the author of this article?
 6 MR. JORDAN: Calls for hearsay.
 7 MR. SEFERIAN: Objection. Assumes facts not in
 8 evidence. Overly broad. Compound question.
 9 THE WITNESS: I don't recall talking to this
 10 reporter at all. I don't recall these statements.
 11 What's the question?
 12 MR. SEFERIAN: You've answered question,
 13 Mr. Mockler.
 14 Q. BY MR. JACOBS: Do you recall -- do you recall
 15 that these statements are different from what you were
 16 thinking at the time about the cross-complaint that was
 17 filed against the school districts?
 18 MR. VIRJEE: Objection. Assumes facts not in
 19 evidence. Assumes that he was thinking about it at all.
 20 Calls for speculation. Lacks foundation.
 21 MR. SEFERIAN: Assumes that he made these
 22 statements.
 23 THE WITNESS: I don't recall these statements.
 24 Q. BY MR. JACOBS: You don't recall what you were
 25 thinking at the time?

1 MR. SEFERIAN: Objection. Assumes facts not in
 2 evidence. Assumes he made these statements.
 3 THE WITNESS: Yes.
 4 Q. BY MR. JACOBS: And, therefore, you can't say
 5 one way or the other whether these statements attributed
 6 to you are not consistent with your thinking at the
 7 time?
 8 MR. VIRJEE: Objection. Calls for speculation.
 9 Lacks foundation. Asked and answered.
 10 THE WITNESS: Yes.
 11 Q. BY MR. JACOBS: Yes, that's correct?
 12 A. Yes.
 13 Q. Let me ask you about some comment you made at
 14 an AAP annual meeting.
 15 (Exhibit SAD-257 was marked.)
 16 Q. BY MR. JACOBS: This is an article from
 17 Educational Marketer, dated February 14th, 2000.
 18 Headline, AAP annual meeting puts focus on California,
 19 Florida and Texas. And you are paraphrased and quoted
 20 on the first page of this, and I want to focus you on
 21 the last portion of what you're quoted as saying.
 22 So developing good materials and training good
 23 teachers is incumbent because the law says you can't not
 24 pass someone if they don't have access to education.
 25 There's a real legal morass you could open up, Mockler

1 said.
 2 Do you see that?
 3 I think there are more negatives in that
 4 statement than in any question I've asked today,
 5 Mr. Mockler, I must say.
 6 Did you say that at that meeting?
 7 A. I hope not.
 8 MR. JACOBS: Let the record reflect laughter
 9 all around.
 10 Q. Did you say something along those lines?
 11 A. Yes.
 12 Q. And were your comments with reference to
 13 algebra only, or also with respect to other content
 14 areas?
 15 MR. VIRJEE: Objection. Vague and ambiguous
 16 and calls for speculation. Also to the extent you're
 17 asking about quoted material, the document speaks for
 18 itself.
 19 MR. JORDAN: Or it calls for hearsay.
 20 THE WITNESS: I was talking about the math
 21 adoption in which we adopted algebra books in January of
 22 '01. I believe this is about a year before that time.
 23 So that was implementation of those standards. I was
 24 talking about making sure that teachers were trained on
 25 the materials that they had because that's how you do

1 good education for kids.
 2 Q. BY MR. JACOBS: Let me ask you about how you do
 3 good teaching for English language learners.
 4 Do you have any information about whether there
 5 are sufficient numbers of teachers trained in teaching
 6 English language learners in the state of California?
 7 MR. VIRJEE: Objection. Vague and ambiguous as
 8 to "sufficient." Calls for speculation and lacks
 9 foundation. Calls for an expert opinion.
 10 THE WITNESS: No specific information on that.
 11 Q. BY MR. JACOBS: Have you made any
 12 recommendations in the last three years about policies
 13 that would expand the pool of qualified teachers for
 14 English language learners?
 15 MR. VIRJEE: Objection. Vague and ambiguous as
 16 to "qualified." Calls for speculation. Lacks
 17 foundation. Calls for an expert opinion. Also object
 18 to the extent it invades the attorney/client privilege
 19 or the deliberative process or official information
 20 privilege.
 21 THE WITNESS: I don't recall specifically,
 22 except with respect to the integration of the English
 23 learner teacher program and the reading language arts
 24 EDL adoption, some discussion on that. Vaguely remember
 25 talking something about that, but that's all I remember.

1 Q. BY MR. JACOBS: Do you have an opinion as to
 2 the sufficiency of current state programs to train
 3 teachers for English language learners?
 4 MR. SEFERIAN: Objection. Lacks foundation.
 5 Incomplete hypothetical question. Calls for an
 6 inadmissible opinion. Calls for speculation.
 7 MR. VIRJEE: Vague and ambiguous as to
 8 "sufficiency" and "program."
 9 THE WITNESS: I think the -- I believe the
 10 English language arts, English language development
 11 instructional materials adopted by the State Board last
 12 month combined with the training on those materials with
 13 respect to English learners will elevate the sufficiency
 14 of that.
 15 Q. BY MR. JACOBS: And elevate it -- do you have
 16 an opinion as to what level it will be elevated to?
 17 MR. VIRJEE: Objection. Vague and ambiguous as
 18 to "level." Calls for speculation. Lacks foundation.
 19 Calls for an expert opinion.
 20 THE WITNESS: I think the emphasis on the needs
 21 of English learners in those materials and the training
 22 provided on those materials is a quantum leap in
 23 academic sufficiency for all students, but especially
 24 English learners.
 25 Q. BY MR. JACOBS: And that is the extent of your

1 opinion on the level to which it will be elevated?
 2 MR. VIRJEE: Same objections.
 3 THE WITNESS: The State Board does not deal
 4 with teacher issues of that sort, we deal with
 5 professional development after they are teachers.
 6 Q. BY MR. JACOBS: So the answer to my question
 7 is, I don't have --
 8 A. I have no particular information.
 9 Q. You don't have any further opinion on that
 10 topic?
 11 MR. SEFERIAN: Same objections.
 12 THE WITNESS: Yes.
 13 Q. BY MR. JACOBS: We got a list of topics that I
 14 mentioned that you have substantive working knowledge
 15 about, and I think we've talked about most of them, but
 16 let me just find out if I've missed any areas.
 17 On the issue of the condition of textbooks that
 18 are available to students, do you have any data,
 19 anecdotal or otherwise, about whether students in the
 20 state of California -- about whether there's an issue in
 21 the state of California about the condition of textbooks
 22 that students receive?
 23 MR. VIRJEE: Objection. Vague and ambiguous as
 24 to "condition." Calls for speculation and lacks
 25 foundation.

1 MR. SEFERIAN: Vague and ambiguous as to
2 "issue."
3 THE WITNESS: Yes.
4 Q. BY MR. JACOBS: What information do you have?
5 MR. SEFERIAN: Same objections.
6 THE WITNESS: I have minimum anecdotal
7 information, some limited survey information, some
8 limited polling information, much of which is outdated.
9 Q. BY MR. JACOBS: Survey information dating back
10 to your days when you were representing the publishers?
11 A. Yes.
12 Q. And what was the first category of information?
13 MR. SEFERIAN: Will you read his answer,
14 please.
15 (Record read.)
16 Q. BY MR. JACOBS: Is any of the survey and
17 polling data not outdated?
18 MR. VIRJEE: Objection. Vague and ambiguous as
19 to "outdated." Calls for speculation.
20 THE WITNESS: I've been told, I have no
21 independent knowledge, that there is some survey
22 information done by the Department of Education's
23 curriculum division, that they've done some surveys.
24 That's the extent of my knowledge.
25 Q. BY MR. JACOBS: And those surveys are directed,

1 as you understand it, to condition of textbooks in part?
2 MR. VIRJEE: Objection. Vague and ambiguous as
3 to "condition." Calls for speculation.
4 MR. SEFERIAN: Lacks foundation.
5 THE WITNESS: I believe they have relationship
6 to purchase decisions which would, by proxy, have some
7 issue of condition.
8 Q. BY MR. JACOBS: And on the anecdotal side, do
9 you have any non-outdated anecdotal information about
10 textbook condition?
11 MR. VIRJEE: Objection. Vague and ambiguous as
12 to "textbook condition." Also vague and ambiguous as to
13 "non-outdated." Calls for speculation and incomplete
14 hypothetical as to whether it would be or would not be
15 outdated in any circumstance.
16 THE WITNESS: No.
17 Q. BY MR. JACOBS: Another issue that we've raised
18 in the lawsuit is that students have -- some students
19 have textbooks that are outdated.
20 Do you have any information on the prevalence
21 of students having textbooks that are outdated?
22 MR. VIRJEE: Objection. Vague and ambiguous as
23 to "outdated." Calls for speculation.
24 THE WITNESS: I have no idea what "outdated"
25 means.

1 Q. BY MR. JACOBS: When you did survey work for
2 the -- when you looked at surveys for the publishers,
3 was one of the issues how old the textbooks were?
4 MR. VIRJEE: Objection. Vague and ambiguous as
5 to "how old." Calls for speculation.
6 THE WITNESS: I didn't do surveys for the
7 publishers.
8 MR. JACOBS: I don't think that was my
9 question.
10 (Record read.)
11 MR. VIRJEE: Same objections.
12 Q. BY MR. JACOBS: When you looked at surveys
13 for -- when you were working for the publishers, was one
14 of the issues on the surveys the currency of the
15 textbooks?
16 MR. VIRJEE: Objection. Vague and ambiguous as
17 to "currency." Overbroad. Assumes facts not in
18 evidence. Assumes the surveys had anything to do with
19 California. Calls for speculation.
20 THE WITNESS: A vague recollection, yes. There
21 was some information on that.
22 Q. BY MR. JACOBS: How do you recall that being
23 measured?
24 MR. VIRJEE: Objection. Vague and ambiguous as
25 to "measured."

1 MR. SEFERIAN: Assumes facts not in evidence.
2 THE WITNESS: The measure used in the statute
3 is consistent with the cycle, which would be
4 instructional materials, broadly stated, that are no
5 more than six or eight, depending on the subject, years
6 old. I believe that's generally been the standard, but
7 I'm not sure of that.
8 Q. BY MR. JACOBS: Do you have any information
9 using that definition of -- using that dividing line
10 between current and noncurrent, do you have any
11 information on the prevalence of the use in California
12 schools of outdated textbooks?
13 MR. VIRJEE: Objection. Vague and ambiguous as
14 to "outdated." Calls for speculation and lacks
15 foundation.
16 THE WITNESS: No specific information.
17 Q. BY MR. JACOBS: Do you have general
18 information?
19 A. No.
20 MR. SEFERIAN: Same objections.
21 Q. BY MR. JACOBS: Another issue in the lawsuit is
22 that in some schools substitute teachers are used
23 essentially in lieu of regular full-time teachers
24 assigned to the classroom.
25 Do you have any information on the prevalence

1 of the use of substitute teachers in that way?
 2 MR. VIRJEE: Objection. Vague and ambiguous as
 3 to "in lieu of." Assumes facts not in evidence.
 4 MR. SEFERIAN: Incomplete hypothetical
 5 question.
 6 THE WITNESS: No.
 7 Q. BY MR. JACOBS: You're listed here as having
 8 substantive working knowledge regarding the topic of
 9 prevalence of substitute teachers.
 10 Do you have any information as to the
 11 prevalence of substitute teachers in some other way?
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "prevalence."
 14 MR. SEFERIAN: Objection. Asked and answered.
 15 MR. VIRJEE: Calls for speculation. Lacks
 16 foundation.
 17 THE WITNESS: No.
 18 Q. BY MR. JACOBS: On multi-tracking do you have
 19 an opinion as to the impact of multi-tracking on
 20 opportunity to learn? And by opportunity to learn I
 21 mean to be using it in the way I believe you used it in
 22 your November 1st, 2000 memorandum.
 23 MR. VIRJEE: You want to tell him the exhibit
 24 number and he'll get it in front of him.
 25 MR. JACOBS: 251.

1 MR. VIRJEE: Which page?
 2 MR. JACOBS: Page 3.
 3 Q. Let me ask you, what did you mean there by
 4 "opportunity to learn"?
 5 MR. VIRJEE: You want to point out the
 6 paragraph for him.
 7 MR. JACOBS: It's paragraph 4 under recommended
 8 action.
 9 MR. VIRJEE: Paragraph 4 under recommended
 10 action.
 11 THE WITNESS: I meant that students subject to
 12 the high school exit exam had a reasonable opportunity
 13 to have instruction on the standards tested in the high
 14 school exit exam.
 15 Q. BY MR. JACOBS: Do you have an opinion on the
 16 degree to which multi-tracking affects the opportunity
 17 to learn as so defined?
 18 MR. SEFERIAN: Objection. Incomplete
 19 hypothetical question. Lacks foundation. Calls for
 20 inadmissible opinion. Calls for speculation. Vague and
 21 ambiguous as to "multi-tracking." Vague as to time.
 22 Overly broad.
 23 THE WITNESS: Yes.
 24 Q. BY MR. JACOBS: What is your opinion?
 25 MR. SEFERIAN: Same objections.

1 THE WITNESS: My opinion is that multi-track
 2 year-round has nothing to do with opportunity to learn.
 3 Q. BY MR. JACOBS: And that's true for -- is that
 4 true for all of the flavors of multi-track year-around
 5 that you're aware of?
 6 MR. SEFERIAN: Objection. Lacks foundation.
 7 Incomplete hypothetical question. Calls for an
 8 inadmissible opinion. Vague and ambiguous as to
 9 "flavors." Calls for speculation. Vague as to time.
 10 THE WITNESS: In my opinion, yes.
 11 Q. BY MR. JACOBS: And is there any data that you
 12 are relying on for that opinion?
 13 MR. SEFERIAN: Same objections.
 14 MR. VIRJEE: It's also vague and ambiguous as
 15 to "data."
 16 THE WITNESS: No.
 17 Q. BY MR. JACOBS: Is it an impression?
 18 MR. SEFERIAN: Same objections.
 19 THE WITNESS: Yes.
 20 Q. BY MR. JACOBS: And no more than an impression?
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to "impression."
 23 THE WITNESS: I have witnessed quality programs
 24 in many forms of multi-track year-round programs. I
 25 have witnessed bad instructional programs in all

1 configurations of multi-track and other configurations
 2 of schooling.
 3 Q. BY MR. JACOBS: And by witness, what do you
 4 mean?
 5 A. Observed, watched, looked at, touched, talked
 6 to.
 7 Q. By having gone to school sites?
 8 A. Yes.
 9 Q. And have you done any of that in the last four
 10 years?
 11 MR. SEFERIAN: Objection. Overly broad.
 12 THE WITNESS: No.
 13 Q. BY MR. JACOBS: The multi-track program that's
 14 you looked at, were they Concept 6 programs?
 15 MR. SEFERIAN: Objection. Calls for
 16 speculation.
 17 THE WITNESS: Yes.
 18 Q. BY MR. JACOBS: Do you recall what Concept 6
 19 site you were looking at?
 20 A. No.
 21 MR. SEFERIAN: Objection. Calls for
 22 speculation.
 23 Q. BY MR. JACOBS: You're listed as having
 24 substantive working knowledge on the issue of number of
 25 instructional days, and I think the only way that's come

1 up in the lawsuit is in the context of multi-tracking.
 2 I take it that it is your opinion that the fact
 3 that the number of school days under Concept 6
 4 multi-tracking is less than the number of school days
 5 under a traditional academic year or non-Concept 6
 6 multi-tracking is also not correlated with educational
 7 achievement; is that correct?
 8 MR. VIRJEE: Will you read back that question,
 9 please.

10 (Record read.)

11 MR. VIRJEE: Objection. Compound. Vague and
 12 ambiguous and nonsensical. And grammatically incorrect.

13 MR. SEFERIAN: Lacks foundation. Calls for
 14 inadmissible opinion.

15 THE WITNESS: I don't understand your question.
 16 Can you make it smaller?

17 Q. BY MR. JACOBS: Sure. You understand that
 18 Concept 6 multi-tracking has a different number of
 19 school days than regular multi-tracking?

20 MR. SEFERIAN: Objection. Vague and ambiguous
 21 as to "regular multi-tracking."

22 THE WITNESS: I understand Concept 6 has fewer
 23 days.

24 Q. BY MR. JACOBS: And that it also has fewer days
 25 than the regular academic school year?

1 MR. SEFERIAN: Calls for an inadmissible
 2 opinion.

3 THE WITNESS: It is my opinion based on
 4 observation, not on analytical study.

5 Q. BY MR. JACOBS: At one point in the last couple
 6 of years there was a proposal to lengthen the school
 7 year for certain grades, I guess, in the state.

8 Do you recall that discussion?

9 A. Yes.

10 Q. And what do you recall of the proposal in
 11 question?

12 A. I believe the proposal was to allow or to
 13 provide incentives for middle schools to extend the days
 14 and hours which students would go to school.

15 Q. Did you participate in discussions about that
 16 puzzle?

17 MR. VIRJEE: Objection to the extent it calls
 18 for attorney/client privilege or official information or
 19 deliberative process privilege.

20 THE WITNESS: Yes.

21 Q. BY MR. JACOBS: And what discussions do you
 22 recall that you participated in?

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

25 THE WITNESS: Many.

1 MR. SEFERIAN: Objection. Vague and ambiguous
 2 as to "regular."

3 THE WITNESS: In California.

4 Q. BY MR. JACOBS: In California, yes?

5 A. In California, yes.

6 Q. And do you have an opinion on whether that
 7 reduced number of instructional days has an impact on
 8 opportunity to learn?

9 MR. JORDAN: Object to "instructional days."
 10 Ambiguous.

11 MR. VIRJEE: Objection. Calls for speculation.
 12 Lacks foundation. Calls for an expert opinion.

13 THE WITNESS: Do I have an opinion? Yes.

14 MR. JORDAN: Actually, misstates too.

15 Q. BY MR. JACOBS: What is your opinion?

16 MR. SEFERIAN: Same objections.

17 THE WITNESS: My opinion is that the number of
 18 days or number of hours, per se, in their mix does not,
 19 per se, affect student achievement.

20 Q. BY MR. JACOBS: Does that mean that it is
 21 loosely correlated with student achievement in your
 22 view?

23 MR. VIRJEE: Objection. Vague and ambiguous as
 24 to "correlated." Calls for speculation. Lacks
 25 foundation and incomplete hypothetical.

1 Q. BY MR. JACOBS: Did you -- were you urging a
 2 particular -- did you have a view on whether that
 3 proposal was a good idea or not?

4 A. Yes.

5 Q. What was your view?

6 A. That the addition of instructional time for
 7 students and preparation and study time for school
 8 staff, especially in middle schools, would be a large
 9 step in improving instruction in those schools.

10 Q. And why did you believe it would be a large
 11 step?

12 MR. VIRJEE: Objection. Calls for speculation.
 13 Lacks foundation. Calls for an expert opinion.

14 THE WITNESS: Because it would raise the
 15 remuneration and pay for staff in those schools, and it
 16 would provide time to those staff and those students to
 17 be trained to reconfigure how they provide education to
 18 adolescent kids.

19 Q. BY MR. JACOBS: And are you saying that the
 20 amount of instructional time itself was not one of the
 21 things that commended that proposal to you?

22 MR. SEFERIAN: Objection. Misstates the
 23 witness' testimony. Incomplete hypothetical question.

24 MR. VIRJEE: Also calls for speculation. Lacks
 25 foundation. Calls for an expert opinion.

1 THE WITNESS: It was my view that the
 2 instructional time increase, number of instructional
 3 hours, would be helpful.
 4 Q. BY MR. JACOBS: What is your understanding of
 5 the -- of the obstacles that led to that proposal not
 6 being adopted? Why was that proposal not, in the end,
 7 adopted?
 8 MR. VIRJEE: Objection. Calls for speculation.
 9 Lacks foundation. And overbroad was to why something
 10 wasn't adopted.
 11 THE WITNESS: It's difficult to provide
 12 fundamental change in a system, that was 1; No. 2, the
 13 proposal was not well explained; and No. 3, the economy
 14 went in the tank and we ran out of money.
 15 Q. BY MR. JACOBS: Was it also the case, sir, that
 16 schools that were on multi-track year-round schedules
 17 would have difficulty adopting the proposed additional
 18 instructional time?
 19 MR. JORDAN: Calls for speculation.
 20 MR. VIRJEE: Objection. Calls for speculation.
 21 Lacks foundation. Calls for an expert opinion.
 22 MR. SEFERIAN: Incomplete and improper
 23 hypothetical question.
 24 THE WITNESS: No.
 25 Q. BY MR. JACOBS: Why was that?

1 MR. SEFERIAN: Same objections.
 2 THE WITNESS: I recall discussions on both
 3 sides of that issue as to whether or not multi-track and
 4 Concept 6 multi-track, in what manner could they
 5 participate, and there were a variety of very positive
 6 proposals from school districts who used multi-track
 7 that seemed to hold promise to fulfill in that area.
 8 MR. JACOBS: We'll take a couple minutes and
 9 then I may be able to turn it over to you guys.
 10 (Recess taken.)
 11 Q. BY MR. JACOBS: Do you have an opinion, sir, as
 12 to whether there are any programs that are currently
 13 part of the education budget that should be contracted
 14 in their spending levels because they are not delivering
 15 results for the expenditure?
 16 MR. VIRJEE: Objection. Calls for speculation.
 17 Lacks foundation. Calls for an expert opinion.
 18 Overbroad. And vague and ambiguous as to "contracted."
 19 THE WITNESS: Yes.
 20 Q. BY MR. JACOBS: What's your opinion on that
 21 subject?
 22 MR. SEFERIAN: Same objections.
 23 THE WITNESS: Some programs should be
 24 terminated, some should be combined, some should be
 25 increased.

1 Q. BY MR. JACOBS: Let's take the first category.
 2 Do you have in mind any programs that you believe should
 3 be terminated?
 4 MR. SEFERIAN: Objection. Lacks foundation.
 5 Incomplete hypothetical question. Calls for an
 6 inadmissible opinion. Overly broad.
 7 MR. VIRJEE: Calls for speculation.
 8 THE WITNESS: I'd have to have a whole list of
 9 programs to answer that question. I can't do them off
 10 the top of my head.
 11 Q. BY MR. JACOBS: You don't have any in mind?
 12 A. Not off the top of my head.
 13 Q. Have you, in the last several years, done any
 14 thinking that led to a recommendation in that
 15 connection?
 16 MR. SEFERIAN: Object to the extent it calls
 17 for privileged communications.
 18 THE WITNESS: Yes.
 19 Q. BY MR. JACOBS: What are you now thinking of in
 20 answering that question?
 21 MR. SEFERIAN: Object to the extent it calls
 22 for privileged communications.
 23 THE WITNESS: As I understood the question,
 24 have I ever thought about that.
 25 MR. JACOBS: That led to a recommendation.

1 MR. VIRJEE: Objection. Vague and ambiguous as
 2 to "recommendation."
 3 THE WITNESS: Yes, I just don't have the stuff
 4 in front of me to explain that.
 5 Q. BY MR. JACOBS: Was it in your capacity as
 6 executive director of the State Board?
 7 MR. VIRJEE: Object on the grounds of
 8 attorney/client privilege and official information
 9 privilege and the deliberative process privilege.
 10 THE WITNESS: No.
 11 Q. BY MR. JACOBS: Was it in any -- in a capacity
 12 predating your assignment as interim secretary?
 13 MR. VIRJEE: Same objections.
 14 THE WITNESS: Yes.
 15 Q. BY MR. JACOBS: What capacity?
 16 MR. VIRJEE: Objection. Vague and ambiguous as
 17 to capacity.
 18 THE WITNESS: Capacity as an old person who has
 19 written many of the laws and recommended many different
 20 things over time. I'm asked often about that issue, and
 21 we've developed a series of alternatives over the last
 22 20 or so years on that issue. I can't recite all the
 23 particulars of those right now, but there are many of
 24 them.
 25 Q. BY MR. JACOBS: How about from 1995 through the

1 present, have you done sufficient thinking to put pen to
2 paper and create a writing in which you recommended that
3 some programs be terminated?

4 MR. VIRJEE: Objection. Calls for speculation
5 as to whether or not the thinking was sufficient. If
6 you're asking whether he put a pen to paper and provided
7 such writing, I'll object to the documents speak for
8 themselves to the extent that they exist.

9 THE WITNESS: I think probably. I don't know
10 the timeline, but probably.

11 Q. BY MR. JACOBS: And what context?

12 A. Okay. Proposed categorical reform four or five
13 times as a -- working with a wide variety of interest
14 groups on how to make the system more efficient, more
15 effective and concentrate on primary purposes.

16 Q. When you say "we," are you talking about you
17 and in your capacity as a consultant?

18 A. As a consultant with other people who have
19 interest in making the system work better and more
20 efficiently and effectively in a lot of different venues
21 and occasions.

22 Q. Can you give me the most recent instance in
23 which you've worked on that question?

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

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

2 MR. JACOBS: And by time, I mean since 1995.

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

5 THE WITNESS: Yes.

6 Q. BY MR. JACOBS: What studies?

7 A. Studies may be too specific a word. When I was
8 in private consulting practice we were asked to combine
9 certain categorical programs and fund them. I've been
10 asked by numerous legislators over time as to how to
11 merge programs to focus them. They've asked my advice,
12 I've given it. Sometimes they take it, mostly they
13 don't.

14 Q. Are there any programs that -- aside from
15 combining them into a single program, are there any
16 programs that you believe are resulting in the
17 expenditure of money in a way that is not
18 cost-effective?

19 MR. VIRJEE: Objection. Vague and ambiguous as
20 to "cost-effective." Calls for speculation and calls
21 for an expert opinion, and incomplete hypothetical.

22 THE WITNESS: As I understand the question, no.

23 Q. BY MR. JACOBS: And so to put it a little
24 differently, when you've been asked your opinion in
25 these various contexts that we've been talking about,

1 THE WITNESS: A combining a variety of
2 instructional materials allocations.

3 Q. BY MR. JACOBS: And you were?

4 A. In my current position.

5 Q. So that was -- I'm trying to understand the
6 context here. That was a proposal or recommendation
7 that you made in your capacity as executive director?

8 MR. VIRJEE: Objection. Assumes facts not in
9 evidence. Vague and ambiguous as to "proposal." And
10 object to the extent it would invade the official
11 information privilege or invade the attorney/client
12 privilege.

13 THE WITNESS: Read the question back.
14 (Record read.)

15 THE WITNESS: Correction. No. My capacity as
16 a person who has looked at this issue many times and was
17 asked my opinion.

18 Q. BY MR. JACOBS: Who asked your opinion?

19 A. A variety of people.

20 Q. Meaning this is an idea that you have
21 propounded in several different contexts?

22 A. Yes.

23 Q. Let me ask you -- let me approach it from this
24 question. Have you worked on any studies that included
25 recommendations that programs be terminated?

1 Mockler, is there any money we can save in the system
2 that's not being spent cost-effectively, have you had
3 any -- have you had a positive answer to that question?

4 MR. VIRJEE: Objection. Vague and ambiguous
5 and misstates his testimony. Calls for speculation.

6 MR. SEFERIAN: Object to the extent it calls
7 for privileged communications.

8 THE WITNESS: Not to my knowledge.

9 Q. BY MR. JACOBS: So then to approach it slightly
10 differently, your recommendations along the line of
11 improving the cost-effectiveness of the system have been
12 confined to combining programs; is that correct?

13 A. In the main. There may have been exceptions to
14 that rule.

15 Q. And as you sit here today?

16 A. Defund A to fund B, not that A is ineffective
17 or inefficient, just its relative merit is not as --

18 Q. So in the context of defunding A in order to
19 fund B, do you recall any of the A's?

20 MR. VIRJEE: Objection. Calls for speculation.
21 Lacks foundation. Vague as to time.

22 THE WITNESS: Not off the top of my head, but
23 they're numerous. Lot of those. I can't remember any
24 specific example.

25 Q. BY MR. JACOBS: As you sit here today, do you

1 have an opinion that -- looking at the current
2 allocation of monies to various programs, do you have in
3 mind any A's that should be defunded in order to fund
4 any B's?

5 MR. VIRJEE: Objection. Calls for speculation.
6 Lacks foundation. Incomplete hypothetical. Calls for
7 an expert opinion.

8 THE WITNESS: I'd have to have a series of
9 programs in front of me to really answer that question
10 very well. I don't have a particular example. It's not
11 coming to my mind.

12 MR. JACOBS: I have no further questions.

13 MR. HAJELA: I don't have any questions.

14 MR. JORDAN: I've got just a couple here.

15 EXAMINATION BY MR. JORDAN

16 Q. Yesterday, and I won't purport to be able to
17 quote the context exactly, but you testified that there
18 were members of the Board who had been principals at
19 schools that were similar and had similar resources to
20 some schools in the underperforming schools program but
21 who had made progress.

22 Do you remember your testimony along those
23 lines?

24 A. In general, yes.

25 Q. Can you identify which Board members that you

1 plug up some of them.

2 Q. BY MR. JORDAN: You mentioned that you had some
3 of your data from the -- the Stanford-9 data. You're
4 talking about the API database?

5 A. We look at the API database, we also take a
6 look at the comparison of that to the standards tests, I
7 believe I said the STAR system, so substantially it's
8 the Stanford-9, but we also cross-check that with the
9 standards tests and the percent correct on standards
10 tests.

11 Q. I'm trying to get at whether there's any other
12 data than this Board member that you're relying on
13 that's not posted on the Internet?

14 A. There's a recent study done, I think -- I can't
15 remember the name of it -- who did a national report on
16 successful schools with students that current -- the
17 current belief is that there are less than high
18 achieving students in schools that are achieving.

19 MR. HAJELA: I think I can be helpful there.

20 If you call Darryl Steinberg's office, they had a
21 committee and they had a hearing where that study was
22 talked about. I don't know the name of that study
23 either.

24 Q. BY MR. JORDAN: Does that sound like the study
25 you're talking about?

1 were thinking of when you gave that testimony?

2 A. Nancy Ichinaga.

3 Q. Anybody else?

4 A. Not on the Board, no.

5 Q. Okay. Do you happen to know which school or
6 schools Nancy Ichinaga was principal of?

7 A. I believe it's Bennetkew in Inglewood. I
8 believe that's --

9 Q. Don't suppose you can spell that for us.

10 A. B-e-n-n-e-t-t-k-e-w.

11 MR. VIRJEE: You didn't ask him to spell it
12 right.

13 Q. BY MR. JORDAN: That's in Inglewood, right?

14 A. Yes.

15 Q. Any other schools that you had in mind when you
16 were making that statement?

17 MR. SEFERIAN: Objection. Calls for
18 speculation.

19 THE WITNESS: I have a number of schools. I
20 can't give you all their names right now. Eight, ten,
21 twenty and more schools that are dealing with a
22 difficult population, populations that come to us with
23 less educational experience throughout California who
24 have done substantially better than other schools of the
25 type that you can actually call up on the Internet and

1 MR. VIRJEE: Objection. Calls for speculation.
2 Lacks foundation.

3 THE WITNESS: There are such studies. I've
4 seen them. There are such schools.

5 Q. BY MR. JORDAN: I should ask the further
6 question whether there are any in Los Angeles Unified
7 that you know of that you could point to?

8 MR. VIRJEE: Objection. Calls for speculation.
9 Lacks foundation. Calls for an expert opinion.

10 MR. SEFERIAN: Vague and ambiguous as to "point
11 to."

12 THE WITNESS: I believe the answer is yes, but
13 I'll have to go check.

14 Q. BY MR. JORDAN: Just as you're sitting here,
15 you can't think of any?

16 A. By name, no, but I do recall looking at a list
17 and seeing a couple pop up.

18 Q. What list do you recall looking at?

19 A. It's a computer printout with the data.

20 Q. Now I've got to ask, what computer printout was
21 it?

22 A. I don't recall. I've just seen it.

23 MR. JORDAN: That's all I have.

24 (The deposition concluded at 4:20 p.m.)

25 ---o0o---

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 JOHN MOCKLER

12 Case Title: Williams vs State, Volume II
13 Date of Deposition: Thursday, January 24, 2002
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1 REPORTER'S CERTIFICATE

2
3 I certify that the witness in the foregoing
4 deposition,
5 JOHN MOCKLER,
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 4th day of February, 2002.

19
20
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22
23
24
25

TRACY LEE MOORELAND, CSR 10397
State of California

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: JOHN MOCKLER, VOLUME II
8 CASE: WILLIAMS VS STATE
9 DATE OF DEPOSITION: THURSDAY, JANUARY 24, 2002
10 I, _____, have the following
11 corrections to make to my deposition:

8	PAGE	LINE	CHANGE/ADD/DELETE
9			
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
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24	_____	_____	_____

25 JOHN MOCKLER _____ DATE _____