

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

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

vs.

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

) Case No.
) 312236
)

) Pages 1 - 220
)

DEPOSITION OF JEANNIE OAKES
THURSDAY, JANUARY 23, 2003
9:40 A.M.

REPORTED BY: LAURA J. MELLINI
RPR, CSR NO. 8181

1 Deposition of JEANNIE OAKES, the witness, taken on
2 behalf of the Defendant, on THURSDAY, JANUARY 23, 2003,
3 9:40 A.M., at 400 South Hope Street, Los Angeles,
4 California, before LAURA J. MELLINI, CSR NO. 8181.

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1 LOS ANGELES, CALIFORNIA; THURSDAY, JANUARY 23, 2003
2 9:40 A.M.

3
4 JEANNIE OAKES,
5 having been duly administered an oath
6 in accordance with Code of Civil Procedure
7 Section 2094, was examined and testified as follows:

8
9 EXAMINATION

10
11 BY MR. HERRON:

12 Q Please state your name.

13 A My name is Jeannie Oakes.

14 Q Dr. Oakes, I assume that's how you'd like us
15 to address you during the deposition?

16 A That's fine.

17 Q Any preference?

18 A That's fine.

19 Q Dr. Oakes, my name is David Herron. I
20 represent the State of California in this case, Williams
21 versus the State of California, et al. We're obviously
22 here to take your deposition today about your expert
23 report on instructional materials and your opinions
24 contained in that report, and whatever other opinions
25 you may have on that topic.

1 Have you been deposed before?

2 A Yes, I have.

3 Q Let me just give you a quick overview of the
4 rules we will abide by here today. I will be asking you
5 questions, and your responses will be oral. I would ask
6 that you let me finish my question before you begin your
7 response, and I will give you the same courtesy.

8 Is that agreed?

9 A Yes.

10 Q Obviously, what we say is being recorded. It
11 will be transcribed. It will be sent to you, and you
12 will have an opportunity to change the transcript if you
13 like.

14 Do you understand that?

15 A Yes.

16 Q Do you understand that, if you do make changes
17 or substantial changes, we can comment on that at trial?
18 Is that understood?

19 A Yes.

20 Q Have you recently consumed any medication,
21 alcohol or any other substance that clouds your mind or
22 would interfere with your ability to give your best
23 testimony today?

24 A No.

25 Q Any other reason why you can't testify today?

1 A No.

2 Q What did you do to prepare for this
3 deposition?

4 A Do you mean specifically to prepare for today,
5 or in preparation for the entire -- the report that's
6 being -- that I'm being deposed about?

7 Q What did you do to prepare for today's
8 testimony?

9 A I certainly wrote a report based on
10 considerable amount of research, and I met with the --
11 with Mr. Rosenbaum and other attorneys to get a general
12 overview of what this deposition might be like.

13 Q When did you meet with Mr. Rosenbaum?

14 A On Saturday, the 19th -- Saturday, the 19th,
15 and on Monday, the 21st of January.

16 Q Who was present on the 19th aside from
17 Mr. Rosenbaum?

18 A Jack Londen and Sophie Fanelli.

19 Q Who is Sophie Fanelli?

20 A Sophie Fanelli is the attorney in the ACLU who
21 is two people to my left. Right?

22 Q How long was that meeting?

23 A An hour and a half.

24 Q Where was it?

25 A At UCLA.

1 Q Your office?

2 A Yes.

3 Q What was discussed?

4 A Some general procedures for depositions, like
5 including things that you've just said about not talking
6 over one another and waiting to answer and the goals of
7 being responsive. General -- general things like that.

8 Q What was said about being responsive?

9 A That I should be.

10 Q What, other than general procedure, was
11 discussed?

12 A At that -- as I recall, that meeting was
13 entirely about the general -- general procedure for
14 the -- for a deposition.

15 Q Other than what you've already testified to,
16 what else was discussed at that meeting on Saturday the
17 19th?

18 A I think Mr. Rosenbaum and Mr. Londen explained
19 to me the kinds of objections that attorneys make in
20 these settings. And we talked a little bit about the
21 meanings of various words like "speculative" and
22 "hypothetical" and things like that.

23 We -- essentially, it was just about general
24 demeanor, being responsive, not worrying about giving
25 too much or too little, just general kind of -- I think

1 they were essentially trying to help me not be
2 apprehensive.

3 Q Very good. Was anything else discussed that
4 you recall, other than what you already testified?

5 A We might have briefly touched on the contents
6 of the textbook and materials reports, but that was what
7 we discussed on Monday -- at the Monday meeting.

8 Q So whatever you discussed regarding the
9 textbook materials on Saturday the 19th doesn't come to
10 mind?

11 A No.

12 Q The subsequent meeting was held on Monday, the
13 21st of January?

14 A Yes.

15 Q Who attended that meeting?

16 A The same. Mr. Rosenbaum, Mr. Londen and Miss
17 Fanelli.

18 Q Where was that meeting held?

19 A At the Morrison & Foerster office in Century
20 City.

21 Q How long did that meeting last?

22 A That meeting was about seven -- seven or eight
23 hours. About eight hours.

24 Q A long day. What was discussed at that
25 meeting?

1 A We discussed three things. One, the content
2 of the -- we spent most of the day reviewing the content
3 of the instructional materials report. We spent some
4 time --

5 Q That's the first thing?

6 A The first thing?

7 Q You said there were three things. Is that the
8 first thing?

9 A Yes, that's the first thing.

10 The second was some review of my credentials.

11 And the third was some general discussion
12 about the role that I have played with regard to the
13 other experts in this case.

14 Q What was discussed specifically, as you
15 remember, concerning the content of the instructional
16 materials report and your opinions?

17 A We basically reviewed the four main points of
18 the report and the opinions that I've derived -- the
19 report consists of four key questions to which I've
20 framed my opinions in the form of answers.

21 Q Right.

22 A And the rest of the report is considerable
23 documentation of the evidence that I used in part to
24 draw those conclusions. We basically reviewed --
25 reviewed those questions and the opinions and the

1 content of the evidence.

2 Q In discussing the opinions of your report
3 during this meeting, were there any -- was there any
4 discussion about the strong points of your report and
5 opinions?

6 MR. ROSENBAUM: Vague.

7 BY MR. HERRON:

8 Q You may respond, unless you don't understand.

9 A I don't understand what you mean by the
10 "strong points."

11 Q Was there any discussions that some of your
12 opinions would be difficult to attack?

13 A I think the lawyers expressed considerable
14 confidence in my report, but we weren't -- we didn't
15 talk specifically about points that would be difficult
16 to attack, as I recall.

17 Q Okay. Did you talk at all specifically about
18 points that would be -- would be easy to attack?

19 A No.

20 Q Was there any discussion about the weakness in
21 any of the opinions that you have?

22 A No.

23 Q None at all?

24 A No.

25 Q Just generally, what did the review of your

1 credentials concern during that meeting?

2 A We reviewed the other cases in which I had
3 been an expert witness, and we also talked generally
4 about how -- they asked me, and I responded to their
5 question about how I would frame the areas of my
6 expertise.

7 Q What did you say?

8 A What did I say in terms of how I framed my
9 areas of expertise?

10 Q Yes.

11 A I told them that I was an expert in education
12 policy and practice, particularly related to the domains
13 of curriculum and teaching and school organization, and
14 how policy -- policy decisions and practice affected
15 students' access to knowledge and opportunities to
16 learn, with a particular interest -- but not only an
17 interest -- a particular interest in the experience of
18 low income students and students of color.

19 Q I suppose if I asked you that same question, I
20 would get the same response?

21 A I think you probably would.

22 Q What, in general, was discussed regarding the
23 role you played with the other plaintiffs' experts in
24 this case? I'm looking for just a general explanation.

25 A We discussed the overlap between the research

1 project I have conducted at UCLA over the last year and
2 a half related to the Williams case, and the
3 collaboration of scholars who have been involved in that
4 project, and the group of people who are serving as
5 experts in this case.

6 Q What was discussed regarding the group of
7 experts that are serving as plaintiffs' experts in this
8 case?

9 A We discussed how some of the group of scholars
10 who have been working on my project subsequently became
11 experts in the case; others did not. And other experts
12 are participating in this case who were not part of the
13 group of scholars that I've been working with.

14 Q Who are those scholars that didn't become
15 experts that have been previously working with you?

16 A That had been working with me?

17 Q Yes.

18 A Steve Levy -- who have become experts in this
19 case?

20 Q Yes. I understood you to say that you talked
21 about people that worked with you, I guess,
22 educationally, and then had become experts in this case?

23 A Yes, yes, yes.

24 Q Who are those people?

25 A Linda Darling-Hammond -- Professor Linda

1 Q Kenji Hakuta.

2 A No.

3 Q Thomas Sobel (phonetic), I take is a no?

4 A No.

5 Q Nancy Meyers?

6 A No.

7 Q Other than what you have already testified,
8 what more was discussed concerning the contents of your
9 instructional materials report during this meeting?

10 A I can recall we discussed the empirical
11 evidence that I've relied on to establish the
12 importance, the educational importance of instructional
13 materials, and the other basis of support for my
14 conclusion that instructional materials mattered in
15 teaching and learning.

16 We spent some time discussing the
17 possibilities -- possible other strategies the state
18 might employ in response to the problems that my report
19 identifies. Those were -- in both cases those were --
20 the discussion was around what was written -- what's
21 written in the report.

22 There may be other things, but I'm not --
23 nothing stands out at this point.

24 Q With regard to the empirical evidence
25 underlying your report, what was discussed on that

1 Darling-Hammond from Stanford, Professor Norton Grubb
2 from University of California Berkeley, Professor Mike
3 Russell from Boston College. I'm going down my list.

4 Q How about Robert Corly (phonetic)?

5 A No.

6 Q Megan Sandel (phonetic)?

7 A No.

8 Q Lynn Erman (phonetic)?

9 A No.

10 Q Bill Koski?

11 A Yes.

12 Q So he is someone who previously, I guess, you
13 taught, and now he's becoming an expert in this case?

14 A I did not teach him, no.

15 Q You previously worked with him?

16 A Yes. He was a member of the group of scholars
17 who I was working with in this related project.

18 Q Okay. You mentioned Ross Mitchell?

19 A Ross Mitchell was not in that group.

20 Q Heinrich Mintrop?

21 A Yes, yes.

22 Q So he was in the group?

23 A Yes.

24 Q Michelle Fine?

25 A No.

1 topic?

2 A We talked about the studies that are reviews
3 of the literature on the relationship between textbooks
4 and instructional materials and student achievement, and
5 the reviews of research on the relationship between
6 students doing homework and academic achievement.

7 Q Did you discuss at all the SPRA case study
8 report?

9 A We did.

10 Q What was discussed in that regard?

11 A The knowledge -- I was asked about the
12 knowledge that -- we talked about my knowledge of that
13 study, how it was conducted, by whom it was conducted,
14 the schools in which it was conducted. We had a
15 previous discussion of methodology only.

16 Q What was discussed about methodology
17 underlying the SPRA report?

18 A That it was a qualitative set of case studies
19 that were conducted in 17 California schools; that those
20 schools were selected because they have large numbers of
21 less than fully qualified teachers; and, that the goal
22 was to determine whether in those particular schools
23 that had large numbers of less than fully qualified
24 teachers, there were also other conditions that might
25 create barriers for students -- for students' learning.

1 Q You said "qualitative set of case studies."
2 What do you mean by "qualitative set"?

3 A That the methods used were to get rich,
4 descriptive information through observation and
5 interviews on site, rather than using a survey in which
6 you would get responses that you could quantify or
7 asking a school to submit numbers that you -- test
8 scores.

9 It was more focused on trying to elicit the
10 details of the conditions in those schools.

11 Q In other words, the SPRA case study can't be
12 generalized to California as a whole. Is that correct?

13 MR. ROSENBAUM: No, that's not a correct
14 interpretation of her testimony. She can answer what
15 she thinks.

16 MR. HERRON: If you would like to testify,
17 Mark, feel free, but please just object.

18 MR. ROSENBAUM: I object as mischaracterizes
19 her testimony.

20 BY MR. HERRON:

21 Q You may respond.

22 A The study is not one that can be statistically
23 generalized to other schools in California.

24 However, in qualitative, researchers talk
25 about theoretical generalization, which means that in

1 SPRA study -- is that financed by the Williams
2 plaintiffs in any way?

3 A No, it's financed by the State of California.

4 Q Interesting.

5 By UCLA?

6 A No, by the legislature through the office of
7 the president. I am the director of a system-wide
8 research center in the University of California that
9 does empirical work on the relationship between
10 students' experiences in schools and their access to the
11 university.

12 Q What center is that?

13 A It's called UC ACCORD.

14 Q What was discussed during this meeting
15 regarding the -- aside from empirical evidence -- the
16 other basis for support for your report and opinions?

17 A We talked about my use of the state's own
18 policies and statements by state officials, as well as
19 policies and statements by national figures and
20 international organizations about the value of
21 instructional materials and textbooks in the teaching
22 and learning process.

23 Q Anything else on that topic? Just tell us
24 what you recall.

25 A There might have been, but I am not -- I mean,

1 qualitative studies, while you would never represent
2 what you found as being -- proportions of what you found
3 as being the same proportions of conditions you would
4 find in other schools across the state or patterns
5 across the state, you certainly can build theory about
6 the dynamics that underlie patterns that you find either
7 in other existing work, or that you may use as a basis
8 for doing additional quantitative work.

9 So, for example, you might use the theories
10 that you develop in a qualitative study as the basis for
11 a statewide survey because you have learned about the
12 dynamics of a particular phenomenon that allow you to
13 have a better understanding of the kinds of things you
14 would want to ask others.

15 Also, the meanings in context are quite useful
16 in making interpretations, educated interpretations, of
17 what narrower quantitative research might show you.

18 Q So the SPRA study has not been used as a basis
19 for a further survey in California. Is that correct?

20 A No, not a survey that followed on the SPRA
21 study as yet. Although I'm in the process currently of
22 planning a survey, which builds considerably on some of
23 the findings of the SPRA survey, but not entirely.

24 Q Is your planning and activities regarding the
25 follow-on survey -- that is, the survey to follow on the

1 I can't -- there may well have been. It was a
2 free-ranging conversation. That's what I recall at the
3 moment.

4 Q Very good. What was discussed regarding
5 strategies the state might employ regarding the issues
6 raised in your report?

7 A We talked in particular about my suggestion
8 that the use of the mandate regarding the provision of
9 textbooks and materials to all students would be one
10 possibility that the state could entertain.

11 And we also talked about the -- or I did the
12 talking, right. Using "we" in a very royal sense --
13 that I talked about how mandates alone would be
14 insufficient as a comprehensive remedy for the kinds of
15 problems that were identified, and that in my view the
16 state would also want to employ capacity-building
17 strategies, including the insurance of sufficient
18 resources that it would need to provide some technical
19 assistance to school districts to make sure things were
20 managed properly; that there should be mechanisms for
21 oversight and public reporting, and some policies for
22 intervening when problems are found.

23 Q So regarding strategies the state might employ
24 as concerns the issues in your report, I take it nothing
25 was discussed other than those kind of items that deal

1 with that topic set forth in your report, if you
 2 understand what I'm saying?
 3 A Well, the report may not capture every
 4 single --
 5 Q Possibility?
 6 A -- understanding that I have about this
 7 domain, or every possibility that I might conceive of,
 8 and I cannot say with all certainty that the only things
 9 I said on Monday were words that were written in this
 10 report.
 11 Q Fair enough. Was anything else discussed
 12 during this January 21st meeting, other than what you've
 13 already testified to?
 14 A We talked about Bruin basketball. There may
 15 have been other things.
 16 Q Anything concerning this case?
 17 A Probably, but I don't recall what the
 18 specifics might be.
 19 Q You've given us your best recollection?
 20 A Yes, I have.
 21 MR. ROSENBAUM: Did you mark it?
 22 MR. HERRON: I think we're having it marked as
 23 Exhibit 1.
 24 MR. JORDON: I had a thought on conserving
 25 exhibit numbers.

1 MR. ROSENBAUM: Off the record.
 2 (Discussion off the record.)
 3 BY MR. HERRON:
 4 Q We've marked as Exhibit 1 your CV.
 5 But before I ask you questions about this, did
 6 you review any documents in anticipation of your
 7 deposition today?
 8 A I reviewed my report.
 9 Q What is that binder sitting in front of you?
 10 A This is just the copy of my -- the three
 11 reports I submitted with the appendices. No markings on
 12 it.
 13 Q Did you read your entire report prior to the
 14 deposition?
 15 MR. ROSENBAUM: Which report?
 16 MR. HERRON: The one regarding instructional
 17 materials, textbooks, instructional materials.
 18 THE WITNESS: Yes, I did.
 19 BY MR. HERRON:
 20 Q Did you read any other documents in
 21 preparation for this deposition?
 22 A I read the -- you mean -- do you mean
 23 specifically for this deposition, independent of my
 24 preparation of this work?
 25 Q Correct.

1 A I read the other two reports that I wrote in a
 2 cursory fashion, thinking you might ask something about
 3 that. I also read the appendices to my report.
 4 Q Any other documents?
 5 A No.
 6 Q Were any documents read to you by counsel?
 7 A No.
 8 (The document referred to was marked by
 9 the CSR as Defendant's Exhibit 1 for
 10 identification and attached to and made a part
 11 of this deposition.)
 12 MR. HERRON: Let's turn to Exhibit 1.
 13 MR. ROSENBAUM: Exhibit 1 is just your resume.
 14 MR. HERRON: Yeah.
 15 MR. ROSENBAUM: Off the record.
 16 (Discussion off the record at 10:06 A.M.)
 17 MR. HERRON: Before the deposition is over
 18 today, I would like to take a look at the documents that
 19 you reviewed, with your permission, Mark.
 20 MR. ROSENBAUM: Sure.
 21 BY MR. HERRON:
 22 Q Now, Exhibit 1 -- do you recognize this?
 23 A Yes, I do.
 24 Q What is it?
 25 A It's a copy of a CV that I revised in about

1 August of 2002.
 2 Q Did you draft everything in this document?
 3 A Yes.
 4 Q Is it true and correct in all respects?
 5 A It is somewhat out of date, but it is true as
 6 of August, 2002.
 7 Q Is there anything worth mentioning that was
 8 omitted from this document as of August, 2002?
 9 A Actually, I have about two- or three hundred
 10 papers that were presented at academic meetings that I
 11 thought were superfluous for this purpose.
 12 Q Selected publications?
 13 A No, no. It's in addition to everything in
 14 here. It's a different category of work, which are
 15 research papers presented at academic meetings, and I
 16 just -- it adds to the bulk.
 17 Q Since August, 2002 have you published anything
 18 that is not listed in this Exhibit Number 1?
 19 A Yes. I published -- well, I published a
 20 second edition of a book called Teaching to Change the
 21 World that's published by McGraw Hill, and it, I think,
 22 was published in September?
 23 One -- then some of the publications in this
 24 list have changed status, meaning that things that were
 25 submitted -- something that was submitted has been

1 accepted for publication. Some things that were
2 accepted have now appeared in print. So that in the
3 academic world those things matter. It may not matter
4 to you.

5 I have entered into agreements to publish a
6 couple of other things as well.

7 Q What are those things?

8 A One is a chapter on Opportunity to Learn that
9 is -- will appear in a book published by Teachers
10 College Press about -- the topic of the book is about
11 responsible accountability systems.

12 Q You're going to publish a chapter?

13 A Yes. I've also agreed to serve as the editor
14 of a special issue of Teachers College Record, and that
15 will -- that volume will consist of the academic papers
16 that the group of scholars I've been working with over
17 the last year and a half -- that collection will appear
18 in that issue. And I've agreed to allow the Santa Clara
19 Law Review to publish the synthesis document that's part
20 of my set of reports.

21 Q So there are three, then, documents you've
22 agreed --

23 A I also entered into an agreement with Teachers
24 College Press to write a book on John Dewey that I
25 haven't started yet. I'm presenting three or four

1 Why don't you describe for me what that is.

2 A I've been working over the past year and a
3 half with a group of about a dozen to 15 scholars, some
4 of whom have subsequently become experts. The papers
5 that will make up this collection will consist of the
6 work done by the entire group that I've been working
7 with, and it will consist of their scholarly papers,
8 not -- for those who have become experts, there will
9 probably be some overlap with their expert reports.

10 But this is not a publication of the expert
11 reports. It's a set of scholarly papers. One exception
12 to that general rule is that Michelle Fine, who was
13 contacted independently of my research project for
14 purposes of being an expert, has subsequently joined my
15 research group, and she will be publishing in that
16 volume as well.

17 Q I see. For the experts that you worked with
18 in this case, each of them produced a scholarly report
19 first. Is that correct?

20 MR. ROSENBAUM: I object to the phrase "in
21 this case." It's not what she's testifying to.

22 MR. HERRON: Okay.

23 Q Let me try it again. IDEA stands for what?
24 All caps.

25 A IDEA?

1 papers at the American Educational Research Association
2 meeting in April. Those are likely to become
3 publications at some point as well.

4 Q What was that?

5 A The American Educational Research Association.

6 Q What chapter -- on the Opportunity to Learn
7 book --

8 A No. It's the chapter on Opportunity to Learn.
9 The book is on responsible accountability systems.

10 Q I see. Very good. Are you contemplating that
11 your chapter on Opportunity to Learn in that publication
12 will have anything to do with your current report,
13 Access to Textbooks, Instructional Materials, et cetera?

14 A I may very well use examples from that report.
15 The chapter will certainly go far beyond it.

16 Q The second item you mentioned was, I take it,
17 collecting all of the reports that have been created by
18 plaintiffs' experts in this case --

19 MR. ROSENBAUM: Mischaracterizes her
20 testimony.

21 MR. HERRON: Can I finish first? Then you
22 object.

23 MR. ROSENBAUM: Sure.

24 MR. HERRON: Thank you.

25 Q Why don't you describe for me -- very helpful.

1 Q Yeah.

2 A It's UCLA's IDEA, actually. Institute for
3 Democracy, Education and Access.

4 Q And that group, with you as its director,
5 worked with various scholars in the last year and a
6 half?

7 A Yes, we worked with a number of scholars over
8 the last year and a half, most of whom are people I have
9 worked with off and on throughout my career. Many of
10 them. Not all of them.

11 Q Some of those people with whom you worked
12 became experts in this case?

13 A Yes.

14 Q Some did not?

15 A Yes, but each of them produced a written
16 report as part of this project.

17 Q At UCLA IDEA?

18 A Yes.

19 Q You said you were talking about -- you were
20 contemplating perhaps presenting as many as three or
21 four papers at the American Education Research
22 Association?

23 A Yes.

24 Q Did any of those papers deal with topics for
25 which you prepared reports? By "reports" I mean the

1 three reports that have been submitted in this case?
 2 A One of the papers -- well, one of the
 3 presentations will be in the context of the symposium I
 4 organized about the relationship between education,
 5 research and litigation. And that panel will have a few
 6 people who work on these scholarly papers, and some of
 7 whom are experts; some of whom are not.

8 My particular paper on that panel will be
 9 jointly authored with Linda Darling-Hammond, and the two
 10 of us will discuss in that paper issues around students'
 11 access to qualified teachers, students' access to
 12 textbook and curriculum materials.

13 We will probably also draw on some of the work
 14 and facilities for that paper. But it hasn't been
 15 drafted yet. Again, it will use these reports as
 16 examples.

17 Q When is that particular presentation presently
 18 scheduled to take place?

19 A The last week in April in 2003.

20 Q Will any of the other papers that you intend
 21 to present deal with issues related to any of your three
 22 reports that are submitted in this case, if you know?

23 A I suspect not, but because I haven't written
 24 them yet, I can't say for sure.

25 Q Is there any other publication that comes to

1 Q On what case -- what cases were those?

2 A Let me look at my CV.

3 Q Please do.

4 A I was deposed in the -- let me get the names
 5 right -- the Coalition to Save our Children versus the
 6 State Board of Education.

7 Q Where is that listed in your CV?

8 A Well, unfortunately, this version doesn't have
 9 page numbers, but it's at the top of page 4. The second
 10 item on page -- the fourth item on page 4.

11 I was deposed in the People Who Care versus
 12 Rockford, Illinois. And I was deposed in Vasquez versus
 13 San Jose Unified School District.

14 Q Was the Coalition to Save our Children versus
 15 State Board of Education a California case?

16 A No. Delaware.

17 Q Delaware. Were you deposed as an expert or a
 18 lay witness?

19 A As an expert.

20 Q What did you charge in that case for your
 21 deposition testimony?

22 A In that case --

23 Q To the best of your recollection.

24 A Far too little, I know that. I recall \$500 a
 25 day. I'm not sure that's correct, but it might have

1 mind that you've actually had published since -- was it
 2 August of 2002?

3 A Uh-huh.

4 Q -- since August of 2002 that is not referenced
 5 in Exhibit Number 1?

6 A Not that comes to mind. I've -- I have two
 7 op-ed pieces that are not listed under the published
 8 commentary.

9 Q One of those op-ed pieces accompanied the
 10 release of the Harris Poll information and was in the
 11 Los Angeles Times. Is that correct?

12 A The op-ed piece referred to the Harris Poll,
 13 but it did not accompany the release of it. The topic
 14 of that op-ed piece was the California master plan.

15 Q What was the other op-ed piece?

16 A It was in October of this (sic) year, and it
 17 dealt with the high school exit exam, and it was also in
 18 the Los Angeles Times.

19 Q Does anything else come to mind in terms of
 20 publications?

21 A Not that I recall at the moment.

22 Q I take it you've been deposed before?

23 A Yes.

24 Q How many times?

25 A Three, I believe.

1 been 750, but I'm not sure. I don't recall.

2 Q 500 to 750 per day is your best estimate?

3 A Yeah.

4 Q Did you have a different charge for work on
 5 any report?

6 MR. ROSENBAUM: For that case?

7 MR. HERRON: For that case.

8 MR. ROSENBAUM: Foundation.

9 THE WITNESS: I'm not understanding what
 10 you're asking me.

11 BY MR. HERRON:

12 Q Sometimes there are different rates charged by
 13 experts for deposition testimony as opposed to the work
 14 that they do in preparing and writing a report.

15 A Yes. No, I hadn't learned that yet.

16 Q This is a school desegregation case?

17 A Yes, it was.

18 Q You testified for which side?

19 A For the plaintiffs.

20 Q Who was the plaintiffs' attorneys in that
 21 case?

22 A The attorney I worked with was Thomas
 23 Henderson for the Lawyers Committee for Civil Rights
 24 Under Law.

25 Q Where is Thomas Henderson located?

1 A Washington, D.C.
 2 Q What was the substance of your testimony? I'm
 3 not looking for details. Just an overview.
 4 A My testimony regarded the relationship between
 5 the district's practices of ability grouping and
 6 curriculum tracking in the period between -- while they
 7 were under court ordered desegregation, and the
 8 relationship between that and students' opportunities to
 9 learn, access to knowledge and achievement, and the
 10 particular effects on the plaintiff children.
 11 Q There was a transcript made of your
 12 deposition?
 13 A Yes.
 14 Q Do you happen to have a copy?
 15 A I think so -- I do not have a copy.
 16 Q You do not have a copy.
 17 Do you happen to know who the attorneys were
 18 on the other side? Only if you know.
 19 A It may come to me sometime today.
 20 MR. HERRON: Why don't we leave a blank in the
 21 transcript.
 22 THE WITNESS: Kravath (phonetic). Right? New
 23 York.
 24 BY MR. HERRON:
 25 Q Are you sure?

1 A Do they defend IBM?
 2 Q That I wouldn't know.
 3 MR. JORDON: They did.
 4 THE WITNESS: That's the best of my
 5 recollection. I'm not sure.
 6 MR. HERRON: With Mark's permission, I'll
 7 leave a blank in the transcript and ask that it be
 8 filled in once you review your transcript.
 9 MR. ROSENBAUM: If she recalls.
 10 MR. HERRON: Sure. Right.
 11 INFORMATION REQUESTED: _____
 12 _____
 13 _____)
 14 BY MR. HERRON:
 15 Q Do you have an attorney name on the opposing
 16 side?
 17 A I wish I could --
 18 Q Only what you remember.
 19 A No, I don't recall his name.
 20 Q The second case in which you were deposed was
 21 People Who Care versus Rockford, Illinois?
 22 A Yes.
 23 Q That was --
 24 A I was deposed twice in that case.
 25 Q Meaning on two separate days or for --

1 A Yes.
 2 Q -- two separate --
 3 A I was deposed during the liability phase of
 4 the Rockford case in 1993 and '94, and then later when
 5 the district requested to be granted unitary status
 6 in '99, 2000.
 7 Q You testified as an expert?
 8 A Yes.
 9 Q What was the fee charged there?
 10 A \$190 an hour for the preparation of the
 11 report. One and a half times that for deposition and
 12 trial testimony.
 13 Q So 385 for testimony?
 14 A No.
 15 Q 285?
 16 A Yes.
 17 MR. HERRON: Product of school systems --
 18 MR. ROSENBAUM: Which is superior to
 19 California.
 20 BY MR. HERRON:
 21 Q Do you have any recollection as to how much
 22 money you received for your services in that case
 23 overall?
 24 A In the Rockford case?
 25 Q Correct.

1 A Somewhere in the neighborhood, as best I can
 2 recall, of \$70,000.
 3 Q A deposition transcript was made of either or
 4 both of your depositions?
 5 A There was a reporter present so I'm assuming
 6 there was a transcript. I probably reviewed it, but I
 7 don't have a specific recollection.
 8 Q You don't have the transcript from either
 9 deposition?
 10 A No.
 11 Q What attorney was working with you on the
 12 plaintiff's side?
 13 A Robert Howard.
 14 Q What firm or organization is Robert Howard?
 15 A Footerman and Howard in Chicago.
 16 Q Who are the attorneys on the other side, if
 17 you recall?
 18 A His name is also not coming immediately to
 19 mind, but again I may recall it.
 20 Q Okay. Well, with Mark's permission, I'll do
 21 the same thing and leave a blank in the transcript,
 22 which you can fill in if you do get that name.
 23 A Okay.
 24 MR. HERRON: Mark?
 25 MR. ROSENBAUM: Okay.

1 INFORMATION REQUESTED: _____

2 _____
3 _____)

4 BY MR. HERRON:

5 Q Stepping back to the Coalition to Save our
6 Children, what was the total amount of money you were
7 paid in that case, to the best of your recollection?

8 A Maybe in the neighborhood of 15- to \$20,000.

9 Q Did that money go to you personally, or did it
10 go to UCLA or some other entity?

11 A I did that work as an independent consultant.

12 Q Same question on the People Who Care case.

13 That approximately \$70,000 -- was that money that went
14 to you personally?

15 A Yes. Although I did employ some research
16 assistants who assisted me on that case, and so I paid
17 some of them and sent them W-4's or whatever you do.

18 Q Out of that \$70,000 you paid your assistants?

19 A Yes.

20 Q The third and last case in which you were
21 deposed was Vasquez versus San Jose Unified School
22 District?

23 A Yes.

24 Q That was located?

25 A San Jose, California.

1 Q You testified as an expert?

2 A Yes.

3 Q What was your charge for that case?

4 A I don't recall precisely. It might have been
5 \$500 a day.

6 Q And no difference between your testifying --

7 A Right.

8 Q -- rate and your rate for preparing a report?

9 A That's correct.

10 Q What was the total sum of money, as best you
11 recall, that you were paid in the Vasquez case?

12 A I have no recollection.

13 Q Which side did you testify for?

14 A For the plaintiffs.

15 Q What was the substance of your testimony?

16 A Similar to the Coalition to Save our Children
17 case. I reviewed the practices of the San Jose School
18 District with regard to the ability grouping and
19 tracking during the period of time they had been under
20 court-ordered desegregation, and looked at the impact of
21 those practices on particularly the Latino children and
22 African American children's opportunity to learn,
23 achievements, access to knowledge. Same range of
24 questions.

25 Q I take it in the People Who Care case that

1 your testimony was similar?

2 A Yes, although in the first People Who Care
3 case it was the liability phase. It was not review of
4 practices during court-ordered desegregation, but review
5 of practices and their impact those practices had on the
6 children of color in that district.

7 Q Who was plaintiff's attorneys in Vasquez?

8 A Morrison & Foerster, with the assistance of
9 Thomas Henderson of the Lawyers Committee.

10 Q Who at Morrison & Foerster was involved in
11 that case?

12 A Jack Londen and Matt Kreeger are the two I
13 interacted with.

14 Q Who is the opposing counsel in that case, if
15 you recall?

16 A I don't recall.

17 MR. HERRON: Again, I'll ask that the
18 reporter, with Mark Rosenbaum's permission, leave a
19 blank in the transcript so you can fill that information
20 in if it comes to you.

21 INFORMATION REQUESTED: _____

22 _____
23 _____)

24 BY MR. HERRON:

25 Q Now, have you ever before testified as an

1 expert at trial?

2 A Yes.

3 Q How many times?

4 A Four times.

5 Q In what cases?

6 A Quarles versus Oxford, Mississippi in 1988.
7 Twice in the People Who Care versus Rockford, Illinois
8 and once in the Coalition to Save our Children versus
9 the State Board of Education of Delaware.

10 Q In the People Who Care and Coalition to Save
11 our Children cases, when you testified at trial, what
12 was your rate for testimony?

13 A I think I answered that just previously.

14 Q Oh, it was the same for deposition as for
15 testimony at trial?

16 A Yes, yes.

17 Q Okay. Fine. In the Quarles case -- what was
18 your hourly fee charged there?

19 A I did not charge for the Quarles case.

20 Q Why is that?

21 A I didn't know you were supposed to. Or could.
22 Or should.

23 Q If you had known that, would you have charged?

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

1 THE WITNESS: I don't know. It's impossible
2 for me to know what I would have done.

3 BY MR. HERRON:

4 Q And where is that court located, or where was
5 that case located?

6 A In Oxford, Mississippi.

7 Q The subject of the lawsuit was desegregation?

8 A Yes.

9 Q You testified for the plaintiffs?

10 A Yes.

11 Q Please describe the substance of your
12 testimony, if you can. It's a long time ago.

13 A I recall it very well, actually. I was asked
14 to testify approximately three days before I testified.
15 I was given some lists of classroom -- some classroom
16 roll sheets, and I sat in a hotel room with a home
17 calculator and tried to figure out whether black kids in
18 Oxford, Mississippi were disproportionately
19 participating in low-level classes in academic subjects.

20 I talked a little bit about what my rough
21 calculations suggested, which was that they were based
22 on that brief look. I had an opportunity to have a
23 conversation the day before the testimony with a
24 counselor at the high school, who shared some
25 information, which I then repeated.

1 Q Okay.

2 A I was deposed, but did not testify. A second
3 case is the Daniel versus the State of California case.

4 Q Is that listed anywhere?

5 A There is a reference to it somewhere, I
6 believe.

7 Q What did that case concern in Daniel?

8 A The case was brought on behalf of some young
9 people -- the specific plaintiffs were named plaintiffs,
10 were some young people at Inglewood High School, who
11 complained that they did not have access to advanced
12 placement courses in mathematics and science, which
13 restricted their opportunities to be eligible for
14 college -- for competitive colleges.

15 Q When was -- when did you serve -- well, let me
16 stop myself.

17 You've mentioned the Vasquez case and Daniel
18 versus State of California as two cases in which you
19 served as a nontestifying expert or consultant. Are
20 there others?

21 A Yes, third case is the Godinez case, and I
22 submitted a declaration in that case.

23 Q Any others? By which I mean are there any
24 other cases in which you've served as a nontestifying
25 expert or consultant?

1 And I talked a little bit about cooperative
2 learning pedagogy as an alternative to ability grouping,
3 which would allow desegregated classrooms to function
4 well in Oxford, Mississippi.

5 Q Nerve-racking. Sounds like.

6 A They had me for lunch, I'll tell you.

7 Q Do you know whether -- do you know whether a
8 transcript was made of your testimony?

9 A I have no idea. I assume, there was a court
10 reporter there.

11 Q Do you know the name of the attorney you
12 worked with?

13 A Alvin Chamblis (phonetic).

14 Q Any particular firm name?

15 A No, I was actually brought into the case by
16 one of the old legal aids in Cambridge, and I don't
17 recall that attorney's name, but I was called to come
18 help.

19 Q And I take it you don't recall who was on the
20 opposing side in terms of counsel?

21 A No.

22 Q Have you ever served in any case or matter as
23 a nontestifying expert or consultant?

24 A Yes. I believe that was my status in the
25 Vasquez versus San Jose.

1 A I receive telephone calls from time to time
2 from attorneys working on various cases. I sometimes
3 have conversations with them about their cases, and I
4 suspect that might be considered consulting, but I
5 think -- as best as I can recall, these are the only
6 cases in which I've submitted anything in writing,
7 although, actually -- yeah, the Quarles case never had
8 any written testimony.

9 Q In each case in which you've testified as an
10 expert, it was for the plaintiffs, am I correct?

11 A Yes.

12 Q And you've served as a consultant, at least on
13 official cases in three cases -- Vasquez, Daniel and
14 Godinas?

15 A Yes.

16 Q In each of those cases you were serving as a
17 consultant for the plaintiffs?

18 A Yes.

19 Q Correct?

20 In the phone calls that you mentioned that may
21 or may not be consulting where attorneys call you, has
22 any attorney from any defense firm called you for
23 advice?

24 A On occasions I have talked with attorneys in
25 state departments of education, who are involved in

1 litigation and are defending, and perhaps school
 2 districts as well. I don't recall.
 3 Q Would it be fair to say that the vast majority
 4 of attorneys who call you for this sort of informal
 5 consulting advice are plaintiff's attorneys?
 6 MR. ROSENBAUM: Vague.
 7 MR. HERRON: You may respond.
 8 THE WITNESS: I would say that the --
 9 regardless of which side they may be on, attorneys who
 10 call me tend to be interested in the area of my
 11 research, which is how policies and practices affect the
 12 schooling of low-income children of color. And
 13 sometimes those are government officials, and sometimes
 14 they are people who are pursuing cases against
 15 government.
 16 BY MR. HERRON:
 17 Q I was actually more interested in sort of the
 18 number, percentage, scope of who calls you as plaintiffs
 19 or defendants. Do you know what I mean? In other
 20 words, I'm interested in finding out are you consulted
 21 by plaintiffs' attorneys or others more often than not
 22 in these informal discussions you talked about?
 23 A Probably more often by plaintiffs' attorneys,
 24 but I couldn't possibly quantify that.
 25 Q Now, the Daniel case was against the State of

1 California?
 2 A Yes.
 3 Q That was actually litigation?
 4 A Yes.
 5 Q Godinas was a case filed against --
 6 A I believe Los Angeles Unified School District?
 7 I'm not sure. I think it was.
 8 Q Do you know whether the State of California or
 9 any state entity was a defendant in the Godinas lawsuit?
 10 A I don't know.
 11 Q In the Daniel lawsuit what hourly fee did you
 12 charge?
 13 A I did not charge an hourly fee. My role in
 14 that case was to prepare a report, and I believe I
 15 charged a flat fee for that report.
 16 Q What was the flat fee in that case, for that
 17 report?
 18 A You know, I don't remember. It might have
 19 been, say, between 2- and \$5,000. That's what I'm
 20 recalling, but I don't really remember.
 21 Q Is that your best recollection --
 22 A At the moment it is.
 23 Q -- or your best estimate? I'm not asking for
 24 you to speculate, but if you have a basis for
 25 estimating --

1 A I don't recall. I don't recall.
 2 Q Now, who are the plaintiffs' attorneys in
 3 Daniel?
 4 A The ACLU.
 5 Q What attorneys from the ACLU did you work with
 6 in that case?
 7 A Primarily Rocio Cordoba, Mark Rosenbaum to a
 8 lesser extent and Sophie Fanelli.
 9 Q Who was it from the ACLU that first contacted
 10 you to involve you in Daniel versus State of California?
 11 A It was either Mark or Rocio, and I don't
 12 recall where the first phone call came from.
 13 Q Who are the plaintiffs' attorneys in Godinas?
 14 A I worked with Maldf.
 15 Q Who from Maldf?
 16 A No, that's not true. That is true. But I
 17 also worked with Steven Smith and Molly Munger.
 18 MR. ROSENBAUM: For your purposes, when you
 19 say Steven Smith, you mean Steven English?
 20 THE WITNESS: Steven English. I'm sorry.
 21 BY MR. HERRON:
 22 Q Okay. So really you were working with two
 23 sets of attorneys; is that correct? in the Godinas
 24 case?
 25 MR. ROSENBAUM: Vague. Ambiguous.

1 THE WITNESS: Let me tell you precisely, I was
 2 contacted by Steven English and Molly Munger, and I did
 3 the actual substance of the work with Hector Villagra
 4 from Maldf.
 5 BY MR. HERRON:
 6 Q What was the substance of the work for the
 7 Godinas case?
 8 A Multitrack, year-round Concept 6 schools.
 9 Q You submitted a declaration in that case?
 10 A Yes.
 11 Q What was the subject matter of that
 12 declaration, generally?
 13 A The impact of the -- the effects of Concept 6
 14 multitrack year-round schools on students' access to
 15 knowledge, opportunity to learn, participation in
 16 extracurricular activities, length of the school year,
 17 just a general practice of Concept 6. And the -- and
 18 who -- which children were subject or were enrolled in
 19 Concept 6 schools. Just sort of general descriptive and
 20 a review of what research exists on that topic.
 21 Q Did you charge for your services in the
 22 Godinas case?
 23 A Actually, I intended to, but I never got
 24 around to submitting an invoice.
 25 MR. ROSENBAUM: Thanks for the reminder.

1 BY MR. HERRON:

2 Q What rate will you be charging Mr. Rosenbaum
3 for your services in that case?

4 A In that case -- he wasn't involved in that
5 case.

6 Q Let me state it differently.

7 Did you have any rates in mind that you would
8 have charged?

9 A Well, yes. I would have charged 190 to \$200
10 an hour, comparable to what I had charged in the
11 Rockford case for the preparation of the declaration.

12 Q What was the subject matter of Godinas? Just
13 the general description.

14 A I believe it's a case around school facilities
15 and over-crowding.

16 Q Let's turn back to Exhibit 1 and talk about
17 your education. You had a BA in English from San Diego
18 State University in 1964?

19 A That's correct.

20 Q Any education classes taken as part of your
21 BA?

22 A Did I take any classes in the department of
23 education?

24 Q Correct.

25 A No.

1 secondary teaching credential in the
2 department of education."

3 BY MR. HERRON:

4 Q What do you mean by "secondary teaching
5 credential"?

6 A I mean I satisfied the requirements for
7 certification as a second -- as a teacher of English in
8 California secondary schools.

9 Q Have you ever taught in California secondary
10 schools?

11 A Yes.

12 Q What time to what time?

13 A 1970 to 1977.

14 Q What courses?

15 A I taught grade 7 through 10 in the English
16 departments at a middle school and senior high school.

17 Q What middle school?

18 A Carl Sandberg Junior High School in Glendora,
19 California.

20 Q Sorry. That was the middle school?

21 A Yes.

22 Q What was the high school?

23 A Glendora High School.

24 Q So you were a teacher for about eight years?

25 A Seven years.

1 Q Or on the topic of.

2 A No.

3 Q You got an MA in American studies from the
4 California State University Los Angeles in 1969?

5 A Yes.

6 Q What is American studies?

7 A American studies is an inter-disciplinary
8 program of work in the social sciences and the
9 humanities that considers American culture,
10 scholarships, sociology, political science, education,
11 philosophy, literature, arts.

12 Q What education-related courses then did you
13 take as part of that course of study, if any?

14 A I don't recall precisely because immediately
15 subsequent to that, with the receipt of the master's
16 degree, I remained at Cal State LA for another year and
17 earned a secondary teaching credential in the department
18 of education.

19 MR. HERRON: I'm sorry. Could I have that
20 answer read back.

21 (Record read as follows:)

22 "ANSWER: I don't recall precisely because
23 immediately subsequent to that, with the
24 receipt of the master's degree, I remained at
25 Cal State LA for another year and earned a

1 Q Seven years. Why is that not mentioned in
2 your CV?

3 A Because I try to keep the length to something
4 respectable. I use the CV to -- primarily in academic
5 settings.

6 Q Any other reason?

7 A No. I wanted to keep my professional
8 experience all on one page.

9 Q Okay. Did you teach any grades other than 7
10 through 10?

11 A Not during that period of employment. Earlier
12 in my life I was a religious education director for the
13 Unitarian Universalist Church, during which I taught
14 children in the elementary grades as well as
15 adolescents.

16 Q During the time period from -- try it another
17 way.

18 What school district is that that you were
19 teaching at?

20 A Glendora.

21 Q Unified?

22 A Yes.

23 Q During the time period --

24 A Oh, let me correct. During the summers when I
25 taught in Glendora, I taught in the special program for

1 gifted and talented youngsters in the district, and that
2 was an elementary and secondary program as well.

3 Q Did you teach the GATE children each summer
4 that you served as a teacher in Glendora?

5 A No, I think I -- two or three summers.

6 Q Do you recall what year of elementary school
7 children were -- you were teaching?

8 A I don't. I don't recall whether it was older
9 or younger, the full range.

10 Q What years did you teach in the religious
11 education?

12 A This was in -- somewhere '68, '69, one year.
13 I also should add that during that same year I worked
14 as -- or during that same period of time, I worked as a
15 substitute teacher in the Tuscon Unified School
16 District, and I taught grades 11 and 12 during that year
17 as well.

18 Q In '68, '69?

19 A I'm not exactly sure of the dates, but
20 somewhere in that time period. That was in Arizona.

21 Q The religious education teaching was --

22 A Yes.

23 Q -- in Tucson?

24 A Yes.

25 Q What level of elementary students did you

1 educational practice provides knowledge and insights
2 that are extraordinarily valuable and complimentary to
3 what one learns from theorizing and doing empirical
4 research.

5 I also have been the director -- I was the
6 director for five years of UCLA's Teacher Education
7 Program. In fact, I developed the current Teacher
8 Education Program that's being used at UCLA. And having
9 been a teacher myself not only provided great assistance
10 to me, it was very useful to my -- the students at UCLA
11 that I had been a teacher.

12 I must also add that when one is a researcher,
13 especially when one studies educational problems,
14 educators are far more compelled, I think, by the -- I
15 should say in my experience I have found that the fact
16 that I have been a teacher has enhanced my ability to
17 interact in constructive ways with educators.

18 (Discussion off the record from 10:54 A.M.
19 until 11:07 A.M.)

20 BY MR. HERRON:

21 Q Just before we broke I had asked you whether
22 or not your teaching experience had assisted you in your
23 academic pursuits that followed or your career in
24 academics.

25 Other than what you've already testified, did

1 teach during that year?

2 A Well, I supervised and taught in a program
3 that spanned the full range of children who were members
4 of families of the church that employed me.

5 Q Were you yourself a teacher, or were you the
6 administrator?

7 A I was both. I wasn't the only teacher, but I
8 was also the director of the program.

9 Q Why did you leave that position?

10 A Because I moved back to California.

11 Q Why did you leave your position with Glendora
12 Unified?

13 A Because I was in the second year of my Ph.D.
14 degree program, and it became burdensome to be a
15 full-time teacher and doctoral student at the same time.

16 Q Did you enjoy teaching?

17 A Yes.

18 Q Do you think that your teaching experience
19 prepared you in any way for your sort of academic
20 pursuits that followed thereafter?

21 A Absolutely.

22 Q How so?

23 A My academic work has focused in a general
24 sense on the relationship between research and practice.
25 And having the firsthand experience of being engaged in

1 that teaching experience assist you in any other way?

2 A I'm sure it did.

3 Q Tell us how.

4 A Well, I think it -- it affects everything I
5 do. Specifically, I think having been an English
6 teacher has improved the way I write, and allows me, I
7 hope, to write in ways that communicate to other
8 practitioners.

9 I think that I probably have described to you
10 the most specific ways that it matters, but it matters
11 throughout.

12 Q You got your Ph.D. in education from UCLA?

13 A Yes.

14 Q In 1980?

15 A Uh-huh. Yes.

16 Q Describe to us generally your course of study.

17 A I was in a specialization called Curriculum
18 and the Study of Schooling, which meant that my primary
19 emphasis was to understand -- the way curriculum was
20 defined in that program was extraordinarily broad so
21 that it was all the formal and informal decisions that
22 educators make that influences what and how children
23 learn.

24 So that was the Curriculum part. The Study of
25 Schooling part was really the examination of schools as

1 institutions, how they work, their history, their
2 sociology.

3 I also had, as all UCLA students do, quite
4 rigorous training in research methodology, both
5 quantitative methods and qualitative methods. I had to
6 demonstrate foreign language proficiency. I had to take
7 a cognate field outside the school of education, which I
8 took in the -- in the area of socio linguistics. I had
9 several courses in that area.

10 General breadth courses on the history of
11 education, comparative education, sociology of
12 education, the philosophy of education, general
13 foundational courses.

14 Q When did you begin your Ph.D. program?

15 A 1976, I believe. Although it might have been
16 '75. I'm not sure. Either '75 or '76.

17 Q What else did you do besides pursue a Ph.D.
18 from '75 or '76 through 1980, other than what you've
19 already testified to?

20 A During my time at UCLA, I worked as a research
21 assistant to the dean in a large national study of
22 American schools, elementary through secondary. I
23 worked in the teacher education program at UCLA
24 supervising teachers in training.

25 I worked for the Center for the Study of

1 Q No. As much as I no doubt will want to read
2 it.

3 MR. ROSENBAUM: Off the record.
4 (Discussion off the record at 11:14 A.M.)

5 BY MR. HERRON:

6 Q Hopefully, our copying was accurately done,
7 but I want to have you vouch for that. Do you recognize
8 Exhibit Number 2?

9 A Yes, I do.

10 (The document referred to was marked by
11 the CSR as Defendant's Exhibit 2 for
12 identification and attached to and made a part
13 of this deposition.)

14 BY MR. HERRON:

15 Q What is it?

16 A It's a report that I prepared on students'
17 access to textbooks and instructional materials in
18 California's public schools.

19 Q Give us a description of how this report was
20 prepared. What was the process?

21 A The report actually began as a bit of material
22 that I prepared at the request of Linda Darling-Hammond,
23 who had asked me if I would be willing to collaborate
24 with her on some research she was doing related to the
25 Williams case, which I was happy to do.

1 Evaluation, doing some evaluation work of school --
2 under a contract with Los Angeles Unified School
3 District. I worked for a professor and wrote a big
4 review of research on multi-cultural education.

5 I basically functioned as a graduate research
6 assistant in a number of capacities that were related to
7 my area of study.

8 Is that what you meant? Did you mean
9 employment?

10 Q Yes, ma'am. Other than what you've already
11 testified, were there other areas of study you
12 concentrated on with respect to getting your Ph.D?

13 A Well, I read and study broadly and deeply, and
14 I'm sure there are things other than the specifics that
15 I mentioned, but those were the major emphases of my
16 work.

17 Q You did a dissertation?

18 A Yes, I did.

19 Q What was the title and topic?

20 A The title of the dissertation was -- the topic
21 of the dissertation was on the impact of tracking and
22 ability grouping in English and language arts in
23 secondary schools, meaning schools -- middle school and
24 senior high schools. It was a national study.

25 Do you have my dissertation?

1 Q When was that?

2 A That was in --

3 Q That is to say when did she make that request
4 of you?

5 A Sometime in the spring or summer of 2000
6 maybe. I would have to -- I think that's probably
7 right. Somewhere in that neighborhood.

8 Q Do you know whether that was before or after
9 the lawsuit was actually filed in court?

10 A I think it was following the filing of the
11 lawsuit in court, but I'm not -- I wasn't paying all
12 that much attention at that point so I don't know for
13 sure.

14 Q Did Linda Darling-Hammond describe to you at
15 that time what the purpose of the research would be for
16 the Williams case?

17 A She --

18 MR. ROSENBAUM: I think that's awfully vague.
19 I'm not sure it doesn't assume facts not in evidence,
20 but you can answer. Go ahead.

21 THE WITNESS: She told me she was preparing a
22 report for -- or that she was engaged in doing some work
23 related to Williams that was somewhat comparable. I was
24 familiar with the work she had done in New York, the
25 case -- the Campaign for Fiscal Equity case. And she

1 and I had been colleagues for many, many years, and she
2 and I share an interest in these issues.

3 And so I don't recall exactly what she told
4 me, but given my experience with her, I assumed that she
5 would be engaged in doing impeccable scholarly work
6 related to equity and access to educational resources.

7 BY MR. HERRON:

8 Q How did the process of generating your report,
9 Exhibit Number 2, unfold from that point?

10 A After Linda and I worked back and forth for a
11 while, it became clear to us -- I'm not sure exactly the
12 order in which these things happened, but at some point
13 it became clear to us that this material was too
14 voluminous to constitute a separate report.

15 At the same time I had had some conversations
16 with Mark Rosenbaum and Jack Londen about the range of
17 topics -- by that time I had read the complaint in
18 Williams, and we had conversations about the range of --
19 to me -- fascinating issues that were encompassed in
20 this case. And we started having conversations about
21 various domains of research that might be relevant to
22 the case.

23 Q Who is the "we" in that sentence?

24 A Linda and I, Jack and Mark essentially. I
25 think that's the people who were involved in this

1 developed an outline of what I thought this paper should
2 look like, and began writing.

3 As it grew and I became clearer about what I
4 wanted it to say and what kinds of evidence I wanted to
5 examine -- I don't mean what I wanted it to say, but
6 what questions I wanted to address and what evidence I
7 wanted to examine in order to answer those questions, I
8 engaged the support of some graduate students, and a
9 postdoctoral fellow, I guess, to provide some assistance
10 and support to me as I worked on this paper, which they
11 did.

12 Q Can I just interrupt?

13 A Yes.

14 Q How far along were you in the drafting process
15 of this report prior to your engaging anyone to assist
16 you or getting any assistance on the report?

17 A It's hard to -- the point at which I got
18 assistance was a point after which I had fully
19 conceptualized the topics and the organization of the
20 paper and identified the kinds of evidence I wanted to
21 examine and had already done a preliminary examination
22 of a lot of material to a point where I felt that I
23 could give pretty precise instructions to some
24 assistants who would then carry out some of the more
25 detailed -- looking at documents, summarizing documents

1 conversation.

2 Q Okay.

3 A It was at that point that I suggested that
4 because this -- the issues in the complaint were so very
5 close to my research agenda and so very much at the
6 heart of what my IDEA center was interested in doing
7 scholarly work on, that I would be interested in
8 examining these issues in more depth as a part of my
9 scholarly research agenda.

10 So it was at about this time that the -- that
11 I proposed an idea of assembling a group of scholars who
12 might -- under the auspices of IDEA, who might be
13 interested in exploring issues of this case in a
14 research context.

15 Q That was your idea?

16 A Yes.

17 Q Proposed to whom?

18 A I proposed it to Jack Londen and Mark
19 Rosenbaum. At that point as I begin generating a list
20 of the topics that I thought would be interesting and
21 relevant to pursue in this research project, I decided
22 that it really would be appropriate, although -- it
23 would really be appropriate to take on this textbook and
24 instructional materials in a more comprehensive way.

25 So at that point I began to outline -- I

1 for me, helping to draft at least preliminarily some
2 sections of this report.

3 Q How did things carry out from then?

4 A They along with me --

5 Q I'm asking for general.

6 A -- continued to read and summarize, and look
7 at all the available data and the report grew. I
8 have -- I wrote the last draft.

9 Q Wrote or edited?

10 A There are some sections in here which may
11 still be sentences from one or more of my research
12 assistants, but essentially the flow of the arguments,
13 the discussion, the opinions, analysis are mine.

14 Q Marisa Saunders didn't write this report?

15 A No, she did contribute considerably to drafts.

16 Q So how it worked was she would contribute
17 considerably to drafts, and then you would review and
18 revise or would you supplant her work?

19 A In some cases I would review and revise; in
20 some places I would supplant; in some places I would
21 reorganize. And it was a back-and-forth process, as is
22 very much the case with scholarly work that's done by
23 more than one person. But in every instance, I wrote
24 the -- this is my work.

25 Q But it was a collaborative process?

1 A Absolutely.
 2 Q Iterative, I take it, as well?
 3 A Yes.
 4 Q Others assisted aside from Marisa?
 5 A Yes. Jamy Stillman, who is my advisee. She
 6 is a Ph.D. student at UCLA. Did some preliminary work
 7 gathering materials, reading materials, sorting
 8 materials. My husband and co-author, Martin Lipton, did
 9 significant work, editorial work, as he does on
 10 everything I write.
 11 Q When you say co-author, what do you mean?
 12 A He is the second author on my book, Teaching
 13 to Change the World.
 14 Q I see.
 15 A He is the fourth author on Becoming Good
 16 American Schools. He is the co-author of other
 17 scholarly articles.
 18 Q Do you consider him as a co-author for this
 19 report, Exhibit Number 2?
 20 A No.
 21 Q But he did edit it?
 22 A Yes.
 23 Q How substantial were his edits? That may be
 24 vague, but give us your thoughts.
 25 A He edits, not substantially, but in -- I'd say

1 rigorously. He was an English teacher for 31 years.
 2 Q Have you described fairly well or at least
 3 topic-wise what Jamy Stillman did on this report, that
 4 is what Jamy Stillman's role was?
 5 A Yes, I think Jamy was involved in collecting
 6 materials, doing some summaries of materials. She might
 7 have -- I'm not sure, but it would be likely that she
 8 did some copy editing.
 9 I also worked with -- I used a graduate -- not
 10 graduate students -- post doc, David Silver, who
 11 performed some of the quantitative analyses of the data
 12 from the Lou Harris survey.
 13 Q Was Mr. Silver's quantitative analysis of the
 14 Harris survey sort of his own work on raw data received
 15 by you?
 16 A Yes.
 17 Q From Harris?
 18 A Yes.
 19 Q In your understanding did Mr. Silver -- what
 20 did he do? Why don't you describe his quantitative
 21 analysis in general terms, at least.
 22 A Well, he first of all examined the data. He
 23 talked with the Harris research team to understand how
 24 the sample was drawn and how the -- especially he was
 25 interested in how the weights -- the data was weighted.

1 He was interested and wanted to determine how they
 2 had -- the decisions they had made to -- and how they
 3 handled responses like "not sure" or "I don't know" as
 4 opposed to yes-or-no answers.
 5 He was interested in clarifying how -- which
 6 groups of teachers, the numbers of teachers that
 7 responded to different items.
 8 So, for example, there were several questions
 9 about the availability of materials that teachers of
 10 English learn -- for English learners, and he clarified
 11 with them whether all teachers answered those or whether
 12 only teachers who had said they do teach English
 13 learners answered those. Making sure that he fully
 14 understood the data set.
 15 He computed percentages that appear in the
 16 tables and performed significance tests on those -- the
 17 differences between responses of various groups of
 18 teachers.
 19 Q What do you mean by "significance tests"?
 20 A He primarily used Chi Square analyses to
 21 determine whether or not the patterns of responses in
 22 the data -- the probability that they would not have
 23 occurred by chance, that the differences would not be a
 24 product of chance rather than some real difference.
 25 Q What other significance tests are you aware of

1 that could have been applied as part of your report to
 2 the Harris data?
 3 A Significance tests?
 4 Q Right, other than Chi Square.
 5 A Chi Square is the most appropriate sort of
 6 statistical test for this kind of categorical data, but
 7 you certainly -- you could use other -- you could use
 8 correlation, Pierson correlation, coefficient. You
 9 probably could use analysis of variance. Although most
 10 of them are not continuance variables or categorical
 11 variables. We chose Chi Square test because it seems to
 12 us the most appropriate for the purposes we wanted to
 13 use the data for.
 14 Q Did Russ Rumberger -- who is he?
 15 A Russell Rumberger is a professor of education
 16 at the University of California Santa Barbara.
 17 Q Did he have any input on -- into the issue of
 18 what sort of significance test to apply to the Harris
 19 data as concerns your report?
 20 MR. ROSENBAUM: Speculation. If you know.
 21 BY MR. HERRON:
 22 Q If you know.
 23 A I had some -- I don't believe I discussed --
 24 I'm -- I don't fully recall because I talk with Russ a
 25 lot. But I'm not remembering any specific conversations

1 about what significance tests might be used.
 2 Q Was David Silver's role limited to the
 3 quantitative analysis you described in general terms?
 4 A Yes.
 5 Q Role on this paper?
 6 A Yes.
 7 Q What is his background?
 8 A He is -- either is about to finish momentarily
 9 or has finished in the last period of time a Ph.D. in
 10 quantitative methods in education at UCLA.
 11 Q Is he your advisee?
 12 A No.
 13 Q Who else worked with you in generating this
 14 report, Exhibit Number 2?
 15 A What do you mean "worked with"?
 16 Q Well, I'm looking at page 3 of Exhibit Number
 17 2 at the end of the first full paragraph -- first
 18 partial paragraph.
 19 A I have Rebecca's name there as well. Noah
 20 Delissovoy and Rebecca Joseph are two other Ph.D.
 21 students in the graduate school of education who --
 22 Q First talk about Noah. If you could kindly
 23 tell me what his background is.
 24 A Noah is a former teacher who is pursuing a
 25 Ph.D. in urban schooling at UCLA. He is a third-year

1 student.
 2 Q Is he your advisee?
 3 A He is not my advisee.
 4 Q When you use the term "advisee," you mean
 5 what?
 6 A That in the Ph.D. program at UCLA, each
 7 student has one professor who is their supervising
 8 professor and counsels them about course work to take,
 9 helps prepare them for exams, and in most cases becomes
 10 the primary advisor of their dissertation project.
 11 Q What was Noah's role on the generation of your
 12 report?
 13 A Noah's role was the same as Jamy Stillman's.
 14 He reviewed documents, searched for documents,
 15 summarized documents and talked with me about -- and
 16 provided me with summaries of documents.
 17 Q What's Rebecca Joseph's background?
 18 A Rebecca Joseph is a former teacher in
 19 Baltimore, Maryland, who is a fourth year Ph.D. student
 20 in urban schooling. She is my advisee. And she
 21 assisted me very early on when I was working with Linda
 22 Darling-Hammond.
 23 And, essentially, her role was when I
 24 identified studies of the relationship between
 25 instructional materials and textbooks and studies --

1 studies of those topics, she went to the library, found
 2 them, read them, summarized them and gave me copies of
 3 the studies and her summaries and was --
 4 Q The studies concerned the relationship of
 5 instructional materials --
 6 A Well, studies of instructional materials, so
 7 literature review, we call it.
 8 Q She at some point stopped working on the
 9 project?
 10 A Yes.
 11 Q Prior to finalizing it?
 12 A Yes.
 13 Q Other than what you've already testified,
 14 describe for us Marisa Saunders' background?
 15 A Marisa Saunders has a doctorate in education
 16 from Harvard. She is specialist in -- her area of
 17 research is on the schooling opportunities of Latino
 18 students. She did her dissertation work at a California
 19 high school, and she is a former California bilingual
 20 mathematics teacher.
 21 Q Is she certificated?
 22 A Yes. You know what, I'm not absolutely sure,
 23 but I think she is. I'm not sure.
 24 Q Do you know what California high school she
 25 did her study?

1 A No, it's an anonymous research site.
 2 Q Other than what you've already testified, what
 3 was her role? I know you had this collaborative process
 4 of drafting that went on with Marisa, but was there any
 5 other role that she played?
 6 A Marisa -- she worked with me very closely. We
 7 talked about this -- the progress of this paper. She
 8 also, I think, had interactions with Sophie Fanelli of
 9 the ACLU, requested documents that we wanted to see,
 10 depositions, other documents. And I know she had some
 11 interactions with Sophie about the production of those
 12 documents to us.
 13 And she -- she and I worked very closely and
 14 had lots of conversations about the substance of this
 15 report.
 16 Q Do you consider her as sort of a right-hand
 17 person on this report, right hand to you?
 18 MR. ROSENBAUM: Vague. Ambiguous.
 19 THE WITNESS: She played an extraordinarily
 20 supportive role. Perhaps best -- well, she played an
 21 extraordinarily supportive role.
 22 BY MR. HERRON:
 23 Q Who else, other than the folks we've already
 24 discussed, contributed to the generation of this report
 25 in any way?

1 A In any way -- I'm not clear about what you
2 mean by "in any way." Do you mean in casual
3 conversations that I had with people that I was writing
4 this report?

5 Q No. I mean you've listed people specifically
6 in here who I take it are the ones who principally did
7 the detail work that you were talking about. You've
8 explained Marisa Saunders' role.

9 Was there anyone else who influenced this
10 report or participated in its creation?

11 MR. ROSENBAUM: She also spoke about her
12 husband.

13 MR. HERRON: Correct. Fine.

14 THE WITNESS: I certainly had conversations
15 with the -- with Mark Rosenbaum and Jack Londen and
16 Catherine Lhamon of the ACLU about, I guess, what you'd
17 call the nature of the assignment, that apart from the
18 scholarly paper, what additional questions would be of
19 interest. And that was not -- I mean, I proposed to
20 them questions of interest, and we talked about those
21 questions.

22 BY MR. HERRON:

23 Q Okay.

24 A I also from time to time made -- as I said in
25 regards to Marisa, made requests for documents and also

1 BY MR. HERRON:

2 Q What effort did you personally make to assure
3 that communications received or sent by Marisa Saunders
4 were collected and produced?

5 MR. ROSENBAUM: Beyond what she just said of
6 giving everything?

7 MR. HERRON: Correct.

8 THE WITNESS: I went through my -- all of the
9 E-mails on my hard disk. I sorted them into --
10 everything related to the Williams case into files, into
11 folders. And I gave all of those things to -- burn a
12 CD. I can't remember. But they got everything.

13 BY MR. HERRON:

14 Q Do you know whether Marisa Saunders was asked
15 to collect her communications regarding this report?

16 A I think she was.

17 Q Do you know whether she produced those
18 documents?

19 A I don't have firsthand knowledge -- I mean, I
20 was not present during that process, but it's my
21 understanding that she did produce documents.

22 Q Do you know whether the same request was made
23 of Noah Delissovoy?

24 A Delissovoy.

25 Q Delissovoy?

1 encouraged -- frankly, encouraged the attorneys, if they
2 came across any documents in the course of their other
3 works that they thought might be related to the
4 questions that I was asking, that I would appreciate
5 their sharing those with me.

6 Q Did you communicate in writing, by which I
7 mean E-mail, memo, letter and the like, with any of the
8 UCLA people who are mentioned in this report? Marisa
9 Saunders, Noah Delissovoy, Rebecca Joseph, David Silver,
10 Jamy Stillman.

11 A Yes.

12 Q Did you communicate with Mark Rosenbaum, Jack
13 Londen and Catherine Lhamon or any of the other
14 plaintiffs' attorneys by E-mail or other correspondence,
15 written correspondence?

16 A Yes, from time to time.

17 Q In producing the materials related to your
18 expert report, what effort was made to collect those
19 communications?

20 A What effort was made by me? By them?

21 Q By anyone.

22 MR. ROSENBAUM: Speculation based on what you
23 know.

24 THE WITNESS: I do know that I gave them
25 everything that I had.

1 A Took me a while too.

2 Yes. I think. I think both Noah and Jamy
3 were asked to produce documents.

4 Q How about Rebecca Joseph?

5 A No.

6 Q No what?

7 A No, I don't think Rebecca -- maybe she was
8 asked. I don't have any knowledge of it. Rebecca was
9 not part of those -- the team with whom I communicated
10 about this report.

11 Q Okay. How about David Silver? Was he asked
12 to produce communications he had had with you or anyone
13 on the litigation team regarding this report, if you
14 know?

15 A I don't know.

16 Q Same question for Jamy Stillman?

17 MR. ROSENBAUM: Asked and answered.

18 MR. HERRON: If it was, I'll withdraw it, but
19 I think I was asking about Marisa.

20 THE WITNESS: Yes, you were, but I volunteered
21 that both Jamy and Noah had been asked.

22 MR. HERRON: Okay. I withdraw.

23 Q Do you consider this report, this Exhibit
24 Number 2, to be ground-breaking in any way?

25 A Other than in its length?

1 Q That I'll grant you.
 2 MR. ROSENBAUM: Vague, but go ahead.
 3 THE WITNESS: I don't know of another document
 4 that has done this type of analysis, and of the
 5 conditions, and link the conditions to California public
 6 schools, but I'm not sure I would call it
 7 ground-breaking.
 8 BY MR. HERRON:
 9 Q Are you aware of any similar study related to
 10 schools in other states?
 11 MR. ROSENBAUM: Vague and ambiguous. It's
 12 really quite vague, David.
 13 BY MR. HERRON:
 14 Q You may respond, if you understand.
 15 A Maybe you could point out the boundaries of
 16 "similar."
 17 Q Sure. Well, you had said that this was a
 18 unique study for California, that as to California
 19 public schools you had not seen a study like Exhibit
 20 Number 2, your report, done.
 21 Have you seen a report like Exhibit Number 2
 22 done in any other state?
 23 A No.
 24 Q I want to return to Exhibit Number 1. I want
 25 to sort of talk about your professional experience.

1 A Uh-huh.
 2 Q I think we could try and move through this
 3 relatively quickly. If you would describe for us,
 4 please, what you did as a senior research associate
 5 other than you've already testified while you were at
 6 the graduate school at UCLA from 1981 to 1985, please.
 7 A I worked in a unit of the school called the
 8 laboratory for something school and community education.
 9 Something like that, which was directed by the dean,
 10 John Goodlad (phonetic), who had also been a major
 11 professor on my dissertation.
 12 I was housed at the university elementary
 13 school for part of that time and worked with the
 14 teachers at the university elementary school around
 15 issues of curriculum and access to knowledge and
 16 pedagogy for the children at the university elementary
 17 school, and engaged the teachers at the elementary
 18 school and some teachers in public schools in the Los
 19 Angeles area in a collaborative study of the use of
 20 computers and technology by teachers to enhance their
 21 instruction.
 22 I wrote several papers on -- a few papers on
 23 the process of collaborative research with teachers
 24 engaged in research. I also was given time during that
 25 period to complete the manuscript of my first book. So

1 I spent considerable amount of time working on that
 2 during that period.
 3 Q Describe to us what you did as a senior social
 4 scientist, Education and Human Resources Program for
 5 Rand from 1985 to 1989.
 6 A At Rand I spent my time engaged in research on
 7 Rand projects. The first project that I was hired to
 8 participate in was a project commissioned by the
 9 National Science Foundation, where they were interested
 10 in Rand exploring the possibility of developing
 11 indicators for education that might be comparable to the
 12 indicators, economic indicators that we use. They
 13 believe that it might be useful to have a system of
 14 statistical indicators that could help monitor the
 15 health of the education systems in mathematics and
 16 science to predict its future. So I worked on that
 17 project for about three years.
 18 We produced a model for an indicator system.
 19 My primary areas of responsibility in that project were
 20 thinking about how you might measure schools and the
 21 opportunities that schools provide. I worked in the
 22 area of curriculum, looked at what you might develop as
 23 curriculum indicators that would be useful.
 24 I also wrote a section of that report on how
 25 education statistical indicators might be used to

1 monitor the equity of opportunities to learn and
 2 achievement for various groups of students in schools.
 3 And I was a major author of all of the reports
 4 that came out of that project and did some
 5 independent -- some of my publications in scholarly
 6 journals are derivative from that work.
 7 A second -- following on that, the National
 8 Science Foundation asked me to do a -- I actually
 9 proposed it, and then they funded a study to do an
 10 analysis of a major national database on mathematics and
 11 science education in the United States, because they
 12 agreed with me that it would be very important to
 13 understand how students' race, their social class, and
 14 schools' decisions about their academic abilities,
 15 worked together and separately to affect the
 16 opportunities they had to achieve in mathematics and
 17 science, including how those factors, those decisions
 18 about children and their race and social class
 19 influenced what access to knowledge they had, what
 20 opportunities they had to learn, what kind of teaching
 21 they were exposed to.
 22 And so I did a major report on that work
 23 called Multiplying in Equalities, which is really an
 24 analysis of the different opportunities for kids of
 25 color, based on the schools they attend and on the --

1 where they -- what curriculum they have an opportunity
2 to learn within at the schools they attend.

3 I also then did a -- I was the Rand senior
4 social scientist -- I was the principal investigator --
5 Rand entered into a collaboration with teachers -- with
6 Columbia University, with Berkeley, University of
7 Illinois, Virginia Polytechnic, University of Minnesota,
8 to compete for a huge national center on research for
9 vocational education. I was the Rand director in that
10 collaboration.

11 As a part of that work, the major piece of
12 work that I contributed -- the major original research I
13 contributed was a study called match-making --
14 educational match-making, and it was about the
15 decision-making processes in schools that affect
16 students' access to knowledge.

17 I did -- I did a review during that period for
18 the National Science Foundation called Lost Talent,
19 which examined the pipeline to mathematics and science
20 careers for women and people of color and disabled
21 persons. I did a lot of speaking during that time at
22 the American Association for the Advancement of Science,
23 for the National Science Foundation, and that may be
24 more than you wanted to know.

25 Q Are the publications that you either authored

1 in the second full paragraph on that page.

2 Q I see.

3 A So it began in about 1994 -- '94, '95.

4 Q I mean, I take it it's an ongoing process, but
5 when was it completed, that development?

6 A The first -- the process involved bringing
7 together all of the activities at UCLA in the graduate
8 school of education that had to do with either the
9 preservice training of teachers or the ongoing
10 professional development of teachers. And for a while
11 the programs related to the preparation of school
12 administrators. Those -- I brought those units
13 together. I mean, the dean gave me this assignment,
14 take these disparities. Create them in a single
15 functioning unit. Make the people happy. Develop a
16 good program, and make UCLA the best at this kind of
17 work.

18 So I did my best over a period of two or three
19 years not only to bring people together, but to really
20 redesign the program so that it focused on providing
21 extraordinarily well-qualified teachers for schools and
22 administrators for schools that had the most difficulty
23 attracting them. So we focused on urban schools where
24 the majority of children were low-income children of
25 color.

1 or contributed to at Rand during this time period
2 available anywhere?

3 A Yes, most of them -- they're all listed on my
4 vitae, and most of them are in public libraries.

5 Q Did you retain copies?

6 A Yes, of -- I think most of them. Although, my
7 house burned down in the 1993 fire in Malibu. So many
8 of the -- I'm not sure that I've recovered original
9 documents of everything I'd written before that period.

10 Q Now in 1989 you joined UCLA?

11 A Yes.

12 Q As an associate professor?

13 A Yes.

14 Q Teaching in the graduate school?

15 A Yes.

16 Q And you've been with UCLA ever since?

17 A Yes.

18 Q Becoming a professor, I take it, a full
19 professor in 1991?

20 A Yes.

21 Q And you had earlier referenced something about
22 developing the teacher education program?

23 A Yes.

24 Q When did that occur, or over what time period?

25 A On the second page of my vitae it's described

1 Prior to that time UCLA's Teacher Education
2 Program was very highly prized, but as a place that you
3 could earn a credential and a master's degree in a year
4 and a summer and be first in line for teaching jobs in
5 the region's most affluent communities. The program is
6 now a full two-year program, including a year of
7 internship in some of the most troubled Los Angeles area
8 schools.

9 Q Is that Center X?

10 A That's Center X.

11 Q So those activities are what Center X does?

12 A Yes.

13 Q Explain to us how UCLA's IDEA came about.

14 IDEA stands for, first of all, the Institute for
15 Democracy Education and Access?

16 A Yes. It says "of" here, but it should say
17 "for." It's a typo. In 2000 I was recruited very
18 heavily by Stanford to become their dean. IDEA was born
19 out of a negotiation with the chancellor. I was
20 interested in moving not out of Center X, but my feeling
21 was Center X was launched. The programs were going
22 well. There was a lot of other faculty interest in
23 working in Center X, and I wanted to try something new.

24 I had become persuaded that the role of the
25 university should be to engage more deeply and seriously

1 with members of the community, with state policy makers
 2 around the improvement of education as California's
 3 demography changes. That became -- I became
 4 increasingly persuaded that one of the most significant
 5 indicators of a healthy California school system would
 6 be diversity and access and participation in
 7 California's higher education system, and particularly
 8 the University of California.

9 So we searched toward those ends; the mission
 10 of the research towards those ends became IDEA's
 11 mission. The chancellor provided me with some seed
 12 money over a period of five years, four years, and said
 13 that at the end of that time, you should be on your own.

14 Q So as I understand what you've said in part,
 15 the IDEA is -- IDEA's mission is to engage with policy
 16 makers in California to change or -- to change
 17 California educational policy?

18 A Not exactly. The mission of IDEA is to bring
 19 the most rigorous and systematic educational research to
 20 bear on the decision making about the improvement of
 21 education. Where it moves beyond, I think traditional
 22 academic research is that IDEA is interested in having
 23 its research understood by, accessible to, the public as
 24 part of democratic decision making.

25 Q Meaning that it's the goal that that research

1 MR. ROSENBAUM: What?

2 MR. HERRON: Are you done?

3 MR. ROSENBAUM: I think what you're doing is
 4 trying to take her testimony and restate it in phrases
 5 that are --

6 THE REPORTER: Please speak up.

7 MR. ROSENBAUM: I don't think it's appropriate
 8 to take her testimony and reconfigure it into phrases
 9 that you'd like her testimony to say. But she can
 10 answer any way she wants.

11 BY MR. HERRON:

12 Q Is there a written mission statement for IDEA?

13 A Yes.

14 Q A website?

15 A Yes.

16 Q Is the mission statement on the website?

17 A I think it is.

18 Q Who assisted you in formation of IDEA other
 19 than what you've already testified to?

20 A My colleague at UCLA, John Rogers, has been my
 21 collaborator in the development of IDEA. We have a
 22 number of other people who work in IDEA, both faculty,
 23 postdoctoral fellows, graduate students. We like to
 24 think that IDEA is a collective enterprise.

25 Q Are there any sort of faculty positions that

1 will help alter how schools are run in California?

2 MR. ROSENBAUM: I think her answers speak for
 3 themselves. I think she answered it twice. Asked and
 4 answered. Mischaracterizes, but if you want to expand
 5 or respond, you're welcome to.

6 THE WITNESS: We are very interested in having
 7 our research used in the process of democratic decision
 8 making by the public and by policy makers. How it gets
 9 used is the business of those who are decision makers,
 10 and toward what end.

11 BY MR. HERRON:

12 Q So whether the research results in changing
 13 California is no particular concern of IDEA's?

14 MR. ROSENBAUM: Mischaracterizes her
 15 testimony.

16 BY MR. HERRON:

17 Q You may respond. If I'm wrong, you'll tell me
 18 why.

19 A Both IDEA and UC ACCORD are interested in
 20 producing research that is useful and used.

21 Q And nothing beyond that?

22 MR. ROSENBAUM: Mischaracterizes testimony.
 23 You've been on this for five questions now. She's
 24 answered it fully.

25 MR. HERRON: Are you done?

1 are dedicated solely to the work that IDEA --

2 MR. ROSENBAUM: You said a "sort of faculty
 3 position." What's a sort of faculty position?

4 MR. HERRON: If you got objections --

5 MR. ROSENBAUM: Vague as to "sort of."

6 MR. HERRON: Let's make it clear, my view,
 7 that if you've got objections, you should state those
 8 objections and not engage in speech-making and the like.
 9 If you want to do that, I can't really stop you, but my
 10 suggestion or request would be to simply make your
 11 objection and stop that.

12 MR. ROSENBAUM: I haven't made any speeches.
 13 Objection. Vague as to "sort of."

14 MR. HERRON: Do you need help with me
 15 restating the question, ma'am?

16 THE WITNESS: I can -- IDEA is considered a
 17 unit of the graduate school of education. I am the
 18 director of that unit. Faculty at UCLA are not hired to
 19 be part of units, but rather are hired as members of the
 20 faculty. They then choose whether and how to associate
 21 themselves with particular units.

22 BY MR. HERRON:

23 Q And if they associate with IDEA, for some
 24 research purpose, presumably funds come from IDEA to pay
 25 for their time?

1 A Not quite. Generally, what happens in that
2 case is that --I guess what has happened in the cases
3 where we've done that is that we have collaboratively
4 written proposals for outside funding in order to pay
5 for research projects where other faculty members are
6 participants.

7 Q Other than the funding that you have received
8 from the chancellor, how does IDEA obtain funding?

9 A One of my major jobs is to persuade private
10 foundations and the U.S. government and other sources of
11 research funding that IDEA would be a worthy place to
12 invest their funds. And we've been fairly successful in
13 obtaining grants and gifts from a variety of places.

14 Q Can you name some of those places, the most
15 important?

16 A The Hewlett Foundation, Atlantic
17 Philanthropies, the Mott Foundation, M-o-t-t, the
18 Rockefeller Foundation, the Hazen Foundation, the U.S.
19 Department of Education, Lumina Foundation. There
20 probably are some others, but I'm not giving them
21 sufficient credit.

22 Q Why don't you describe for us your role as
23 director, other than what you've already testified. I
24 mean, director of UCLA's IDEA.

25 A I oversee a collection of research projects,

1 A Well, the postdoctoral fellows may list their
2 affiliation as IDEA, but they're not -- it's just
3 like -- unlike Rand. Rand does Rand reports. Right.
4 There's nothing at UCLA that's a UCLA report. Right.
5 So we -- it's the individual scholars who get the credit
6 for the work.

7 Q I see. Okay.

8 A I think. I mean, we may have -- you know,
9 we're doing some work now that involves producing little
10 pamphlets that are summaries of other work that may, in
11 fact, be IDEA products rather than the products of an
12 individual researcher, but -- so I want to be -- yeah, I
13 don't want to be definite about how we never do anything
14 as IDEA because, in fact, there may be little instances
15 of things where we have, but...

16 Q Okay. Does -- has IDEA received any state
17 money, State of California money?

18 A Not that I recall right now, but it -- I
19 get -- because I serve on committees and advisory groups
20 for the state, I get travel reimbursements. I don't
21 know that any of the work that I've done for the state
22 has involved a stipend. It's mostly being a good
23 citizen. I don't think we have had any state grant
24 money since IDEA started; Center X gets -- has had lots
25 of money from the state.

1 participating actively in most of them. I supervise a
2 small staff. I manage a budget. I do fund-raising. I
3 help in the advanced training of postdoctoral fellows.
4 I provide research opportunities for Ph.D. students. I
5 provide -- well, that's -- those are the general
6 categories of things. I write. I speak.

7 Q Has IDEA or anyone working with or for it
8 published any papers since its inception?

9 A Yes.

10 Q Are those posted on the website?

11 A I'm not certain that anything is yet up on the
12 website or in a public space. We're in the process of
13 converting documents to PDF files, getting them posted,
14 you know.

15 Q How would one go about getting the
16 publications that IDEA has put out so far?

17 A Well, none of the publications are -- well, I
18 shouldn't say "none." Most of the publications are
19 publications by individual researchers about the work
20 they've done in the context of IDEA, because IDEA itself
21 doesn't -- other than its brochure describing what it
22 is, we have an electronic journal called Teaching to
23 Change LA, that is on the Internet. But the products of
24 IDEA are not institutional products.

25 Q It doesn't say IDEA?

1 Q Was the seed money that you had to start
2 IDEA -- was that State of California money, as far as
3 you know?

4 A It's a gray area that I don't know how you'd
5 define it because it's the chancellor's discretionary
6 money, and I think he draws on it primarily from
7 foundations. UCLA is only about 30 percent state money,
8 and the rest is other money. So my impression is -- but
9 I'm not certain -- that the money for IDEA was money
10 from his private sources, but I'm not sure.

11 My guess -- technically, it probably all
12 becomes state money the minute it comes into California,
13 but whether it originated through the legislator and the
14 state budget process, I don't know.

15 Q Has -- your CV here on page 1 has you as
16 director of UC ACCORD from 2001 to present. What is --
17 describe for us what UC ACCORD is.

18 A UC ACCORD is a multi-campus research unit in
19 the terminology of the University of California. That
20 means that it operates under the auspices of the office
21 of research in the office of the president of the
22 University of California. It is a collaborative effort
23 of all nine -- now ten UC campuses.

24 The mission is to marshal the very best
25 research of the university to help understand the root

1 causes of the disparities in participation in the
2 University of California in particular, but in four-year
3 colleges and universities in general of students of
4 color.

5 UC ACCORD was initially proposed to the
6 governor and the legislative as part of the university
7 out-reach initiative that followed on the passage of SP
8 1 and 2, which restricted or which eliminated the use of
9 race as part of the admissions process to the University
10 of California.

11 Q What do you do as director? I mean, you're
12 director of the whole consortium?

13 A Yes, yes. I put together a consortium of
14 faculty from all nine campuses and someone from the new
15 UC Merced, who is not a faculty member. We wrote a
16 proposal. We submitted it. This is a competition to
17 see which campus would become the home, and who at that
18 campus would be the director. So we had a competition
19 in 2001, and we won.

20 So I am responsible for managing the budget of
21 UC ACCORD, for convening and paying attention to an
22 executive board which sets the policies for UC ACCORD.
23 I produce all kinds of compliance documents for the
24 University of California about the operation of ACCORD.

25 Our primary function is to award grants on a

1 what I wrote in that report.

2 BY MR. HERRON:

3 Q Is that hard to detail?

4 A Yes, it's impossible to detail.

5 Q On page 2 of your CV, which is Exhibit 1,
6 there's a description of research areas. How come
7 there's no mention of any research regarding access to
8 textbooks, instructional materials, equipment and
9 technology, adequacy and quality in California public
10 schools?

11 A Because I consider access to those specifics
12 as a subset of the general category of policies and
13 practices that influence students' access to knowledge
14 and opportunities to learn. So it's a -- one of many
15 things that fit under this general description of my
16 work.

17 Q Prior to generating this report, can you tell
18 me, other than you may have already referenced before,
19 what research you've conducted regarding adequacy and
20 equality and access to textbooks in California public
21 schools?

22 A Well, the early studies on -- the multiplying
23 and equality study that I did for the National Science
24 Foundation, was the --

25 Q At Rand?

1 competitive basis to faculty and post docs and graduate
2 students, who are doing research related to the goals of
3 ACCORD.

4 ACCORD also has a fairly active relationship
5 with the state legislature in that we attempt to
6 regularly report our ongoing work in a way that can be
7 useful as the legislature and the governor's office and
8 the university try to struggle with this problem of
9 diversity and disparities in college -- college-going in
10 the state.

11 Q You referred to the goals of ACCORD. What are
12 those?

13 A The goals are what I outlined at the
14 beginning.

15 Q Have you -- how has ACCORD or its work or your
16 experience in any way affected what was produced as
17 Exhibit Number 2?

18 MR. ROSENBAUM: Compound.

19 THE WITNESS: The work of ACCORD has been in
20 every specific way, meaning use of funds, deliberation
21 of the executive board, awarding grants, entirely
22 independent of the IDEA work around this paper.

23 But I have to say that because I am engaged in
24 a substantive way in both enterprises, I'm sure what I
25 learn in my work with ACCORD has had an influence on

1 A At Rand -- among the many things that I
2 investigated in that study were the kinds of
3 instructional materials, access to technology,
4 laboratories, kinds of assignments that teachers gave,
5 their use of textbooks, the extent to which that survey
6 permitted. Those investigations.

7 Q Sure.

8 A The indicators work that I did at the Rand
9 corporation and the follow-on work, when I looked at
10 indicators of curriculum and opportunities to learn, the
11 consideration of the materials used in the course of
12 instruction was always a part of that general domain.

13 The work that I've done on the research that I
14 did in background preparation for the books of Teaching
15 to Change the World have a great deal -- those books
16 discuss at length curriculum materials, the use of
17 textbooks, content of the curriculum, access to
18 knowledge. It's been -- I've probably never produced
19 before a document that has this in the title. It's been
20 part of the theme of my work for 20 years.

21 Q You've received, as set forth in your CV, a
22 lot of honors. Which honors do you consider to be most
23 reflective of your status as an expert on the topics
24 that you are -- your report addresses?

25 A There's one I should add. I just in November

1 was given the World Award in Education by an
2 international organization called the World Council on
3 Education, Trinity College in Ireland. That was in
4 recognition of the work on opportunities to learn and
5 access issues that I see as relevant to this report.

6 The -- the book that won the Outstanding Book
7 Award from the American Educational Research
8 Association, *Becoming Good American Schools* -- there's a
9 whole chapter in that book called *Becoming Educative*
10 that deals with a variety of ways that teachers engage
11 students with the content of the curriculum, which I
12 consider relevant in some ways.

13 1990, when I received the Early Career Award
14 from the American Educational Research Association, that
15 was essentially on my work on tracking and ability
16 grouping, which has as its major theme, access to
17 knowledge and the way -- the decisions schools make
18 about how to provide students with access to knowledge,
19 which again is this general domain.

20 Obviously, the *Keeping Track* book that's in
21 the museum has a chapter in it on students' access to
22 knowledge. That's probably enough. Oh, the
23 outstanding -- no, that was something else.

24 Q What do you mean by curriculum tracking when
25 you use that term?

1 these are the principal ones?

2 A Yes. I don't even know if they're the
3 principal ones, but they're a selected group.

4 Q Which of these professional activities concern
5 adequacy and equality and access to textbooks and
6 instructional materials?

7 A Certainly the chairmanship that I just
8 recently completed of the legislative -- I was appointed
9 by the legislature's joint committee on the development
10 of the California master plan. I was appointed to
11 co-chair the working group on student learning, and that
12 group was very much concerned with issues of curriculum
13 and instruction and materials and teaching strategies
14 and course tracking and essentially ran the gamut of all
15 the features of schooling that influence student
16 learning. So that one is probably the most recent and
17 the most --

18 Q Did you say there was a subcommittee?

19 A It was a working group, the legislature
20 appointed seven working groups, and the chairs met from
21 time to time, and the groups met monthly for over a
22 year.

23 Q Who was your co-chair?

24 A Sonia Hernandez. She's former associate
25 superintendent of instruction in California.

1 A Curriculum tracking is a general term, or
2 track is a general term I use to identify or to name all
3 of a wide variety of practices schools use to make a
4 determination about classes or groups children should be
5 put in based on their prior achievement or their
6 demonstrated abilities.

7 Q Is Track B at a Concept 6 school an example of
8 that, in your opinion?

9 A Sometimes it is, actually. Sometimes it is.
10 There's considerable overlap. The concept -- multitrack
11 year-around schooling, which was originally designed as
12 a solution to a problem of over-crowding, in many
13 respects is another example of an organizational
14 strategy in schools that has impact on students' access
15 and opportunities to learn.

16 So for that reason it falls -- as a
17 sociologist, when you study organizational features and
18 their impacts, they can take many forms. Most of the
19 examples I've studied have been on specific ability
20 grouping and tracking, but the multitrack year-around is
21 another example of that sort of an organizational
22 strategy.

23 Q Let's turn to page 3 of your CV, Exhibit 1,
24 again. Selected activities. I take it they were
25 selected because there were others not included, but

1 Q Did you have any other role on that committee
2 to develop a master plan for California?

3 A Actually, I've been used quite a lot by the
4 committee. I've been invited -- I was invited to
5 testify early on before the working groups were
6 established, which I did. I have had some ongoing
7 conversations with Senator Deedee Elpert (phonetic)
8 about the conduct of that work.

9 I currently have every two weeks or so phone
10 calls with the chief consultants working on the
11 translation of the master plan into legislation. They
12 are my colleagues, and they ask my advice. From time to
13 time they ask me to help them think about particular
14 details of the legislation.

15 I testified before the joint committee at the
16 time last spring when the report was presented to them
17 for a couple of hours.

18 Q This is a second instance of testimony?

19 A I've testified many times, but -- I'm not
20 sure --

21 Q But in reference to this --

22 A To the master plan?

23 Q Right.

24 A Second, third, fourth, I don't know.

25 Q That's fine.

1 MR. ROSENBAUM: When you say you testified
2 many times, were you talking about the master plan? I
3 think the record is a little unclear here.

4 THE WITNESS: I testified before the master
5 plan, not many times for the master plan joint
6 committee, but I've been in joint meetings with the
7 master plan joint committee. So there have been several
8 occasions over the last year and a half, but I have also
9 done a lot -- not a lot, but I've testified for select
10 committees, for the education committee of the senate.
11 I'm not sure I've ever testified for the house, the
12 assembly, other things like that.

13 BY MR. HERRON:

14 Q Thank you. Other than that activity, which of
15 your Selected Professional Activities relate to or
16 concern adequacy and equality in students' access to
17 textbooks?

18 A The National Academy of Science reference here
19 on 1999 and 2001, I was appointed to be on a National
20 Academy panel to examine issues related to advanced
21 placement in mathematics and science. And as part of
22 that work, I was part of -- part of the work of the
23 committee was to examine the materials and the text and
24 the pedagogies used in science and math courses, not
25 only advance placement courses, but in the work students

1 do prior to advance placement. That clearly was
2 relevant to this topic.

3 And many of the other things I've done because
4 this access to knowledge is generally the area in which
5 I work, and textbooks and materials are part of that,
6 that it's hard to say that -- most of these things are
7 relevant to that.

8 Q Most of these are relevant, meaning -- means
9 what?

10 A That the -- that my -- well, you will have to
11 rephrase your question because I'm not sure of the verb
12 anymore.

13 Q I didn't understand your answer. You said
14 most things are relevant to that. I didn't understand
15 what that meant.

16 A I said that because I wasn't remembering what
17 specifically you had asked me about --

18 Q Let's try it again then. You had mentioned
19 now that your work on the California State Legislature
20 Joint Master Plan Committee and your work on the
21 National Academy of Science Committee related to the
22 topic of your report, Exhibit Number 2.

23 Are there any other selected professional
24 activities or professional activities for that matter
25 that relate to the topic of your report, Exhibit Number

1 2?

2 MR. ROSENBAUM: I object. Mischaracterizes
3 her testimony. She also talked about the master plan.
4 She also talked about -- she worked -- many of these
5 activities deal with the issues in this domain.

6 THE WITNESS: As I look through the list, it's
7 difficult for me to identify any of these that in some
8 way or another didn't draw on my experience, thinking
9 about the various strategies schools use to either
10 inhibit or facilitate students' access to knowledge,
11 which would include textbooks and materials.

12 MR. HERRON: Very good. Now a good time to
13 break?

14 MR. ROSENBAUM: Off the record.

15 (Whereupon, at 12:25 P.M. the proceedings
16 were adjourned for the lunch recess.)
17
18
19
20
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25

1 (Whereupon, at 1:35 P.M. the proceedings
2 were reconvened.)

3 BY MR. HERRON:

4 Q Dr. Oakes, over the lunch hour, did you
5 consume anything that rendered you unable to give your
6 best testimony here this afternoon?

7 A I don't think so.

8 Q Did you have any discussions with counsel
9 about your deposition?

10 A Briefly.

11 Q What was discussed?

12 A That I was doing fine.

13 Q I agree. Anything else?

14 A Just general comments about my not being
15 confined to narrow responses, as being a good thing.

16 Q Anything else?

17 A About the deposition?

18 Q Right.

19 A When did I -- when would I like to finish
20 today. A little bit of -- compared you to the guy who
21 deposed me in tennis whites in the San Jose case.

22 MR. ROSENBAUM: He wears tennis whites right
23 underneath this. Usually around 2:00 o'clock it peels
24 off.

25 THE WITNESS: So that -- I mean -- mostly, we

1 talked about our children and our school experiences.

2 BY MR. HERRON:

3 Q Okay. Did you review any documents?

4 A No.

5 Q One of the references in your CV under
6 Selected Professional Activities, consulting with the
7 ACLU on advance placement courses?

8 A Yes.

9 Q What is the substance of your consultation?

10 MR. ROSENBAUM: I don't want to cut off your
11 questions, but she answered, I think, a lot of these
12 questions when she talked about the Daniel case.

13 BY MR. HERRON:

14 Q Have you already responded to that question?

15 A I believe so. This line refers to my work
16 around the Daniels case with the ACLU that I talked
17 about earlier.

18 Q Okay. In your -- have you ever worked with
19 the ACLU in any other work, issue, case, other than what
20 you've already testified? Let me just stop there --

21 A I don't recall that I have.

22 Q So your work with the ACLU has been limited to
23 the Daniels cases, Daniels versus --

24 MR. ROSENBAUM: It's actually Daniel.

25 BY MR. HERRON:

1 Morrison & Foerster to IDEA. So that
2 certainly -- I wouldn't characterize that as
3 being part of this case, but it's certainly in
4 the context of this case."

5 BY MR. HERRON:

6 Q When you say "hasn't been officially a part of
7 this case," what do you mean?

8 A The work that the scholars and I have done in
9 producing a set of scholarly papers has been done
10 independent of the work -- that project is independent
11 of the engagement of some of the people, including
12 myself as expert witnesses.

13 Q But there's no official relationship between
14 the two in your mind?

15 A I've made a concerted effort to keep the two
16 quite separate.

17 Q Why is that?

18 A Because as a scholar and as a faculty member
19 of the University of California, I avoid doing work that
20 might be seen as proprietary, and I avoid any situation
21 in which it might be perceived that I'm operating under
22 anything other than academic freedom. So I consulted
23 with our university counsel about how to structure a
24 relationship that would maintain that kind of scholarly
25 independence.

1 Q Daniel versus State of California and this
2 case?

3 A I think that's correct. I've been a member
4 from time to time.

5 Q Of the ACLU?

6 A Yes.

7 Q And other than on the Vasquez case, have you
8 worked with Morrison & Foerster on any issue or matter?

9 A Only the Vasquez case and this one.

10 Well, let me amend that because the scholarly
11 project I've been involved with that is related to the
12 substance of this case, but hasn't been officially a
13 part of this case, was also supported in part by a gift
14 from Morrison & Foerster to IDEA. So that certainly --
15 I wouldn't characterize that as being part of this case,
16 but it's certainly in the context of this case.

17 MR. HERRON: Could you read the answer back.
18 (Record read as follows:)

19 "ANSWER: Only the Vasquez case and this
20 one.

21 Well, let me amend that because the
22 scholarly project I've been involved with that
23 is related to the substance of this case, but
24 hasn't been officially a part of this case,
25 was also supported in part by a gift from

1 Q I would like to show you another exhibit. Let
2 me ask you just one more question.

3 Is there anything not set forth in your CV
4 here, other than what you've already testified to, that
5 you consider to qualify you as an expert regarding this
6 report, this Exhibit Number 2?

7 A Yes, my broad range of general experience in
8 the field of education, both as a professional teacher
9 myself, as the trainer of teachers, as the consultant of
10 school districts for professional development. My
11 participation in the profession generally, I think, has
12 contributed to my expertise on this paper in addition to
13 the specific things noted on the CV.

14 Q Anything else?

15 A I hope that statement would cover anything
16 else.

17 MR. ROSENBAUM: One thing, David. You had
18 asked her earlier about awards or publications that were
19 not on her vitae. I didn't take your question to
20 exclude those.

21 MR. HERRON: No, I don't.

22 (The document referred to was marked by
23 the CSR as Defendant's Exhibit 3 for
24 identification and attached to and made a part
25 of this deposition.)

1 BY MR. HERRON:

2 Q Have you had an opportunity to review Exhibit
3 3?

4 A You mean in the last few minutes?

5 Q Yes.

6 A Not completely. Would you like me to take
7 some time to read it carefully?

8 Q I'm really only going to ask about paragraph

9 5. Do you recognize this document?

10 A Yes.

11 Q And what is it?

12 A It is a document that was prepared by Jack
13 Londen, and I believe it was provided as a preface or
14 cover sheet to my expert reports.

15 Q Right. This is Jack Londen's declaration
16 concerning you and your work as an expert as relates to
17 your expert report, which is Exhibit Number 2. Correct?

18 MR. ROSENBAUM: Calls for a legal conclusion.
19 Speculation.

20 THE WITNESS: I don't know. It also looks
21 like it concerns the other two expert reports that I've
22 written.

23 BY MR. HERRON:

24 Q Paragraph 5 states, "Dr. Oakes's fee for
25 providing deposition and trial testimony is \$300 per

1 activities? What was the rate for that?

2 A I intend to apply -- use this same rate for --
3 to cover the time during deposition preposition -- I
4 mean, preparation over the last week.

5 Q Let me try with another question. What does
6 "other activities" mean in the context of this
7 paragraph, if you know?

8 A I don't know. I'm not the author of this.

9 Q Other than for deposition testimony, what have
10 you been charging for in this case?

11 A I will charge for deposition preparation, the
12 time participating in the deposition, and any time I
13 should spend in trial testimony and preparation for that
14 testimony.

15 Q As concerns the research that you conducted
16 that underlies you -- when I say "you," I mean you and
17 the people assisting you -- that underlies your report,
18 Exhibit Number 2, what was charged for that?

19 A The -- I negotiated with Morrison & Foerster
20 that they would provide a gift of \$50,000, which would
21 be for unspecified research on education equity to IDEA.
22 That work was to be conducted independently and on
23 nonproprietary work, and that gift was made with no
24 gifts to UCLA. Does not come with any kind of reporting
25 requirement or specification of scope of work. They're

1 hour."

2 Is that your typical rate?

3 A It's quite close to what I charged in the
4 Rockford case for the deposition and testimony.

5 Q This rate -- try again.

6 I was asking whether it was your typical
7 rate.

8 MR. ROSENBAUM: Vague.

9 THE WITNESS: I don't have a typical rate, as
10 I think was probably clear from my reporting of the
11 specifics.

12 BY MR. HERRON:

13 Q This is the highest rate that you've ever
14 charged for your own time, working as an expert?

15 A Yes, by about \$20 or something.

16 Q Paragraph 5 goes on to state, "This rate did
17 not apply to research and other activities undertaken in
18 preparation of the attached expert report."

19 What rate did apply to research?

20 A To research?

21 Q Yes.

22 A None.

23 Q No charge?

24 A No charge.

25 Q How about the rate that was applied for other

1 made generally to support the work of a professor or a
2 student in a general area like educational equity, as
3 was the case here. I used that \$50,000 to employ a set
4 of research assistants through UCLA, the postdoctoral
5 scholar --

6 Q Marisa Saunders?

7 A Yes, Marisa Saunders, Jamy Stillman, Noah
8 Delissovoy were -- salaries were charged to the account
9 that was set up with this gift, but they were UCLA
10 employees under UCLA's terms of employment.

11 The remainder of the money was used for
12 miscellaneous administrative costs, administrative
13 support, supplies, materials, Xeroxing, other
14 miscellaneous office expenses related to this work.

15 Q Do you know whether the money that was given
16 to you by Morrison & Foerster came from that law firm or
17 from some other source?

18 A I have no idea.

19 Q Was there an understanding -- was there any
20 written understanding between you and Morrison &
21 Foerster concerning how that money -- the \$50,000 would
22 be used?

23 A There were two documents that -- I believe
24 two, maybe three, but two that I remember, that I
25 produced at the time. One was a draft of a letter with

1 the appropriate kind of language to make sure that a
2 gift -- that the gift of \$50,000 was given under the
3 conventional terms of gifts to the university. It's not
4 the first or only gift I have had of this nature.

5 The second document was a personal document
6 that I drafted and provided to Mr. Londen, which
7 established my interest in doing this work as a scholar,
8 and the independence of the work, the stipulation that
9 the work would be publicly available to interested
10 people at any point, that it would follow the
11 conventions of education scholarship.

12 Q And there was a third document?

13 A I don't recall a third document. I said that
14 because -- I just don't recall. But I don't want to be
15 precise about two because in case there was a little
16 memo that I'm not remembering, I don't want to be seen
17 as misrepresenting something.

18 Q At the time the \$50,000 was provided to you by
19 Morrison & Foerster, wasn't there an explicit
20 understanding that you would, in return for that money,
21 provide an expert report in this case?

22 A I'm not sure about the chronology. The kind
23 of conversation that I always had, and intentionally so,
24 was that any agreements about expert testimony, either
25 with me or with others who were involved in this

1 MR. HERRON: Let me just suggest, as I did
2 before, that if you'd like to object, I appreciate that.
3 What I do not appreciate is coaching the witness and
4 making speeches on the record to assist her. I'm
5 objecting to that now and requesting that you
6 discontinue it.

7 MR. ROSENBAUM: I am not coaching the witness.
8 I'm not making speeches. I asked you to ask appropriate
9 questions.

10 MR. HERRON: That is an appropriate question
11 you may respond to.

12 Could you kindly read the question back.

13 THE WITNESS: Would you repeat the question.
14 (Record read as follows:)

15 "QUESTION: As best you know, was any of
16 the \$50,000 that was provided to you by
17 Morrison & Foerster used in any way to
18 generate this report, Exhibit Number 2?

19 "QUESTION: So the money was used to
20 prepare the expert report. Is that correct?"

21 MR. ROSENBAUM: Same objection.

22 THE WITNESS: I think the way I characterized
23 the relationship between the funding and this document
24 and the other paper that's been generated is about as
25 accurate as I can characterize it.

1 project, would be made completely outside the terms of
2 this agreement. But I frankly don't remember the
3 chronology of all the events.

4 Q As best you know, was any of the \$50,000 that
5 was provided to you by Morrison & Foerster used in any
6 way to generate this report, Exhibit Number 2?

7 A The money was used to support the work of the
8 people who were engaged in preparing this draft, which
9 is at this point a preliminary draft of the scholarly
10 paper which will end up being much shorter, and in this
11 context the expert report.

12 Q So the money was used to prepare the expert
13 report. Is that correct?

14 MR. ROSENBAUM: Objection. Mischaracterizes
15 her testimony. She's answered you fully, David. It's
16 been asked and answered.

17 BY MR. HERRON:

18 Q You may respond.

19 MR. ROSENBAUM: If you have anything
20 additional to respond.

21 MR. HERRON: Stop coaching.

22 MR. ROSENBAUM: I am not coaching. The
23 question is objectionable. You can read it back. You
24 asked the identical question again. That's asked and
25 answered.

1 This particular document, this version, was
2 prepared by me, and I personally --

3 BY MR. HERRON:

4 Q This document being Exhibit 2?

5 A Exhibit 2 was prepared by me, and I personally
6 did not receive any of the Morrison & Foerster money in
7 the form of salary, benefits, any other form of
8 compensation.

9 Q Did IDEA or any other entity you're affiliated
10 with receive money as a result of your report?

11 MR. ROSENBAUM: Vague and ambiguous.

12 THE WITNESS: IDEA received a gift to support
13 the production of a set of scholarly papers prior to the
14 production of this report. So it was not as a
15 consequence of this report.

16 BY MR. HERRON:

17 Q And that's what you've already discussed?

18 A I believe I have.

19 Q Okay. How much time have you put into
20 generating this report?

21 A I have not kept track of my hours.

22 Q Do you have any estimate?

23 A I couldn't estimate with any sort of accuracy
24 at all. I've spent a lot of time on it.

25 Q Would you say a hundred hours is too low?

1 A Yes.

2 Q How about a thousand hours?

3 A You know, I'm not very good at ballpark
4 guesstimates. I work hard and long hours, and I spent a
5 lot of time on this, in large part because I consider it
6 part of my scholarly work as a faculty member and a
7 center director.

8 Q You consider your work on the report to be
9 scholarly work?

10 A The research that went into this report is my
11 scholarship, and from which I will do considerable
12 publishing. This particular piece of paper, set of
13 papers, with this particular version of the work, was
14 only a small fraction of the time.

15 Q Why did you agree to forgo compensation for
16 your work on your expert report?

17 A Two reasons. One, the topic of the research
18 is very related to all of my scholarly work. So the
19 questions were ones that interested me. Really, three
20 reasons.

21 The second reason was that I wanted to produce
22 this work with a great deal of independence and have the
23 academic credibility behind it so that I would publish
24 it in many forms and places, subsequently, so that it
25 would adhere to all of the traditional conditions under

1 which scholars do their work.

2 I have much regretted the fact that I have
3 never published -- I have only published small fractions
4 of the work that I've done in other cases, when I
5 consider that work some of my best scholarship. But
6 because -- not because of anything about the substance
7 of the work, but because it was done not in the context
8 of my professorship. It just didn't happen.

9 So I wanted to make this work something that
10 was more mainstream and -- in the circumstances under
11 which I produced it. That's the second reason.

12 The third reason is that I had a fledgling
13 center that had some initial support from the chancellor
14 that would decline over time. And I was under a great
15 deal -- I had a great personal interest in building the
16 work of the center and supporting the people in it. And
17 this seemed like an interesting opportunity to gain some
18 support for that center that I wanted to support and
19 have growth.

20 Q This professional matter, do you feel strongly
21 about the issues that are set forth in your expert
22 report?

23 MR. ROSENBAUM: Vague and ambiguous.

24 THE WITNESS: I think feeling "strongly" is an
25 unusual word -- phrase.

1 MR. HERRON: I'll rephrase that.

2 Q You believe that adequate equal access to --

3 You believe that adequate and equal access to
4 texts for California school children is important?

5 A Yes. Grounded in considerable existing
6 research and new analysis that I've done, and my prior
7 experience, I am convinced that texts and instructional
8 materials are an important part of education, yes.

9 (Record read.)

10 BY MR. HERRON:

11 Q I take it it's also your belief that children
12 of color, English-language learners, socioeconomically
13 disadvantaged students and the like do not have adequate
14 access to texts and instructional materials in
15 California public schools?

16 A I would not characterize it as a belief as
17 much as a conclusion from evidence.

18 Q Based on this research?

19 A This research, prior research, research done
20 by other people.

21 Q What was your opinion on that particular issue
22 prior to conducting the research that underlies your
23 expert report, Exhibit Number 2?

24 A My prior research and that of many other
25 people has demonstrated, I think, in a quite

1 uncontroversial way that the access to knowledge differs
2 in significant ways to the disadvantage of the groups of
3 children that you mentioned. I had not prior to this
4 done a systematic assessment of the extent of that
5 problem for children in public schools in California.

6 Q But this report confirmed your preexisting
7 notion?

8 A I'm sorry.

9 Q Am I right or wrong?

10 MR. ROSENBAUM: You're mischaracterizing.

11 THE WITNESS: You're mischaracterizing what
12 scholars do.

13 This -- the results of this research were
14 certainly consistent with the evidence and conclusions
15 that I had both drawn and observed and been aware of in
16 earlier work.

17 BY MR. HERRON:

18 Q Dr. Oakes, in your opinion, what educational
19 inputs are most important to assure that California
20 school children have an adequate and equitable
21 opportunity to learn?

22 MR. ROSENBAUM: Vague.

23 THE WITNESS: By "inputs" do you mean things
24 that schools -- I'm sorry. I don't understand your
25 question.

1 BY MR. HERRON:

2 Q Like a good teacher, an input for a child's
3 education which may enhance that person's ability to
4 learn.

5 A I would not want to sit here and say that I
6 could off the top of my head generate a fully
7 comprehensive list, but I would certainly say that
8 having fully qualified, well-prepared teachers, having
9 adequate text and curriculum and instructional materials
10 in sufficient numbers and appropriate to the goals set
11 for students is a critical factor.

12 I would say that having facilities in which
13 children can learn in safe, uncrowded and healthy spaces
14 is important. I would suggest that children should
15 have -- be subject to assessments that can accurately
16 and fairly diagnose problems they may be having in their
17 learning, and report what it is that they know and are
18 able to do.

19 I would argue that students have -- it's
20 important that students have sufficient knowledge of the
21 standards to which they are expected to achieve so that
22 an important input is clear and unambiguous, educational
23 goals that are expressed in language and forms,
24 accessible to children and their families.

25 I could go on, but that's a good beginning of

1 Q Correct.

2 A Explicit attention to connecting -- making
3 connections between schools and families so that
4 families are a significant part of children's schooling
5 experience, and that families have access to the
6 information they need to adequately guide their
7 children.

8 Q Is it your view that students -- the
9 background of a student's parents has an effect on that
10 student's achievement?

11 A In the U.S. there is a remarkable correlation
12 between students' background and their measured school
13 achievement.

14 Q Both in socioeconomic terms and their parents'
15 educational level?

16 A Those correlations do exist -- are found in
17 most studies.

18 Q Are there any other related correlations
19 you're aware of?

20 A Related to what?

21 Q Parents and parents' background to the
22 student's background on the one hand and the student's
23 achievement?

24 MR. ROSENBAUM: What's the question again,
25 please?

1 a list.

2 Q Those are the ones that come to mind?

3 A That's the beginning of a list.

4 Q Please continue.

5 A I would argue that children need to be placed
6 in instructional settings where they have access to
7 adults who have high expectations for them and believe
8 in their learning. That means not only their teachers,
9 but their school administrators.

10 I believe children in California certainly
11 need to have access to full and complete knowledge of
12 what's required to attend a four-year public college or
13 university in the state and have counseling and support
14 that enables them to achieve that should they desire.

15 Students need schools that provide them extra
16 support and resources to help them overcome any
17 particular difficulties they may have as a result of
18 being disabled or limited in their knowledge of the
19 language of instruction.

20 That's a good start.

21 Q Do any other major factors come immediately to
22 mind?

23 A In terms of the inputs --

24 Q Correct.

25 A -- that are supportive of children's learning?

1 MR. HERRON: Whether she is aware of any other
2 items other than the socioeconomic background of the
3 parents, and I believe it was, what, their level of
4 education? Did you say that?

5 THE WITNESS: You said it.

6 Those are the two that are most often focused
7 on. Although in some studies, race is related over and
8 above the effect of the social class.

9 BY MR. HERRON:

10 Q How about class size? Does class size affect
11 student achievement as far as you're aware?

12 A My reading of the literature suggests that,
13 yes, there is a relationship between class size and
14 student achievement.

15 Q At what ratio? 20 to 1 or below?

16 A There's a lot of variation in the studies.
17 The conventional wisdom used to be that it was below 20,
18 where class size made a difference. I'm not sure what
19 the conventional conclusion is at this point. Or 15.
20 It might have been 15. I don't know.

21 Q 15 to what?

22 A There is -- the conventional. Before this
23 early round of studies on class size reduction in
24 Tennessee and the Rand studies in California, there was
25 a -- I think it might have been 15 to 10 was the kind of

1 standard people talked about, but that was more than a
2 dozen years ago. I'm not sure there is a standard like
3 that at this point.

4 Q 15 to 1. Not 50 to 1?

5 A Right, right.

6 Q You've been involved in education issues in
7 California for, what, 25 years or more?

8 A Yes.

9 Q You've monitored, I take it, California
10 educational policy-making during that time period?

11 A I have.

12 Q How have you done that principally? What
13 means did you use to monitor?

14 A I would use "monitor" only in the most
15 layman's and casual -- I read the scholarly literature.
16 I read the newspapers. I follow some legislation that
17 I'm particularly interested in. It's only in the last
18 ten years that my attention has really focused
19 specifically on California. Prior to that I was more
20 involved in national studies.

21 Q I think we have discussed in part some of the
22 things you've done in terms of your sort of advisory
23 roles. One is the joint -- the California State
24 Legislature Joint Master Plan Committee. Another is
25 work as a member of an advisory board on AP Challenge

1 to their request for support and assistance about some
2 of their work. So there's been a variety of things over
3 the years.

4 Q Based on your observations and experience,
5 what California administration has done a better job of
6 providing equal and adequate access to texts,
7 instructional materials, equipment and technology than
8 the Davis Administration?

9 MR. ROSENBAUM: Vague and ambiguous.

10 THE WITNESS: I'm not sure that's a question I
11 can answer because I don't think about it in that way.

12 BY MR. HERRON:

13 Q How do you think about it?

14 A I'm interested in a set of policies, their
15 evolution over time and how those policies impact
16 children's opportunities, and I have not tied those
17 policies, I mean, to particular individuals who may be
18 serving in particular roles.

19 Q I guess I'm really talking more time periods.
20 The Davis Administration has been around for four years.
21 During what four-year period prior to the Davis
22 Administration was a better job done in terms of sharing
23 equal and adequate access to texts, instructional
24 materials, equipment and technology?

25 MR. ROSENBAUM: Vague and ambiguous.

1 Grants for the California Department of Education.
2 Correct?

3 A Yes.

4 Q Another is work on advisory panel regarding
5 teacher preparation standards for the California
6 Commission on Teacher Credentialing. Correct?

7 A Yes.

8 Q Have you served in any other advisory type
9 role of that nature regarding education in California?

10 A Yes. I've often -- I don't know often. On
11 several occasions I have been called upon by the
12 Department of Education to come and either participate
13 in a meeting where my advice was sought or
14 information -- sometimes on occasions I have presented
15 in symposium for department staff. I get phone calls
16 asking my assistance.

17 Occasionally, I'll get a manuscript from
18 either a legislator or the Department of Education or --
19 I don't know if the governor's staff has ever asked me
20 to comment on a draft of a document or -- I also
21 included in the early '90's I was doing a study of
22 middle grades reform in five states. California was one
23 of those states. In the course of that study, I spent
24 some time in the Department of Education, both
25 interviewing people for that study, but also responding

1 Foundation.

2 THE WITNESS: I can certainly say that when
3 Bill Honig was superintendant of instruction there was
4 an enormous and quite admirable effort to make sure that
5 teachers had the information and resources they need to
6 insure that they had the kinds of materials that would
7 enable them to provide students with access to
8 knowledge.

9 BY MR. HERRON:

10 Q During which four-year period, prior to the
11 time that Governor Davis has served as a California
12 State governor, has the state provided more money to
13 provide texts, instructional materials, equipment and
14 technology, in your understanding?

15 MR. ROSENBAUM: Same objection. Argumentative
16 as well.

17 THE WITNESS: I'm not able to answer that
18 question because I would want to do an analysis in terms
19 of constant dollar value adjusted for inflation and -- I
20 mean, I -- that's not a question I could give a --

21 BY MR. HERRON:

22 Q You can't answer?

23 A I won't answer without doing additional
24 research. It's not a topic that I've studied.

25 Q In your view has the Davis Administration or

1 the legislature during his terms done anything proper,
2 that is, anything you approve of or think is positive in
3 terms of providing equal and adequate access to texts,
4 instructional materials, equipment and technology?

5 I mean, you track the legislation, you know
6 what the CD is doing, you know what the board is doing.
7 What is --

8 A I thought the original passage of the
9 Schiff-Bustamante legislation. I track that to -- I'll
10 have to look -- the date. Is it 1988? It was a helpful
11 response to an immediate crisis.

12 However, I was most disappointed when the
13 subsequent piece of legislation to continue that funding
14 was vetoed. So, sure, but I want to make sure -- I
15 don't want to give the Davis Administration credit for
16 Schiff-Bustamante if they don't deserve it.

17 Q Take a moment if you like.

18 I'm willing to let the question pend and give
19 her a brief break, if she needs it.

20 MR. ROSENBAUM: I don't think it's going to
21 take very long.

22 THE WITNESS: 1998 legislation. So that would
23 have been Davis' -- it depends on whether it was passed
24 in the spring or -- take office in 1989. This isn't
25 his. Sorry.

1 BY MR. HERRON:

2 Q Won't give credit to the Davis Administration
3 for Schiff-Bustamante?

4 A But unfortunately they have to take credit for
5 vetoing the legislation that was intended to continue
6 it.

7 Q Is there anything else -- is there anything
8 you can point to, since Schiff-Bustamante isn't one of
9 them, that the Davis Administration or the legislature
10 during his term has done to assure, in your view, proper
11 or adequate access -- adequate and equal access to
12 texts, et cetera?

13 MR. ROSENBAUM: Vague and ambiguous.
14 Foundation.

15 THE WITNESS: I think that there are probably
16 many things -- I think I've covered in my report the
17 policies that have been initiated and modified during
18 the last few years that have affected students' access,
19 and in most of those cases or in -- in my judgment, that
20 on balance the students' access has been undermined by a
21 recent -- an effort -- a recent emphasis on outcomes
22 over an interest in insuring that the right inputs are
23 in place, including textbooks and materials.

24 BY MR. HERRON:

25 Q You can't point to anything that's positive,

1 but you would point out the API as something that's
2 negative?

3 A I didn't mention the API.

4 Q What were you referring to?

5 A The -- in my report I discuss how -- for
6 example the -- the emphasis in the moving toward the
7 single plan for promoting -- whatever that's called --
8 single plan for student achievement has shifted the
9 focus of much of the oversight activities related to
10 schools' compliance with state and federal programs away
11 from resources and conditions such as textbooks, toward
12 greater interest in looking at outcomes. That's an
13 example.

14 Q Of something that's not positive?

15 A Something that has undermined a focus on
16 insuring all children's access.

17 Q So far I've heard nothing from you that
18 suggests that the Davis Administration or the
19 legislature during its term has done anything positive
20 in terms of assuring equal and adequate access to texts
21 and other materials.

22 MR. ROSENBAUM: That's not a question. It's
23 argumentative.

24 MR. HERRON: I haven't asked the question.

25 MR. ROSENBAUM: I know that. You shouldn't be

1 testifying.

2 MR. HERRON: I'm not testifying.

3 MR. ROSENBAUM: Yes, you are.

4 MR. HERRON: I'm bringing her back to ask the
5 question, Mark.

6 MR. ROSENBAUM: No, you're characterizing what
7 you've heard.

8 MR. HERRON: I tell you what I've heard.
9 Nothing.

10 Q Why don't you tell me what's positive and
11 proper that the Davis Administration has done in that
12 term. If there is nothing, say nothing. If there is
13 something, please identify it.

14 A In one of your questions you asked about the
15 legislature and the Davis Administration both, and in
16 this question you just asked about the Davis
17 Administration. And I would like you to clarify what
18 you would like me to speak to.

19 Q I would like you to speak to both the efforts
20 of the Davis Administration and the legislature to
21 identify -- and to identify for us what positive or
22 proper things that either have done to assure adequate
23 and equal access to textbooks.

24 MR. ROSENBAUM: Vague and ambiguous.

25 Foundation. Compound.

1 BY MR. HERRON:

2 Q As I say, if there's nothing, that's a fine
3 response. If there's something, please identify it.

4 A I don't know of anything specific that the
5 Davis Administration has done to promote greater or more
6 equal access to textbooks and curriculum materials.

7 The legislature, on the other hand, has made
8 an effort over the last few years to require reporting
9 of the extent to which students have access to
10 appropriate curriculum materials. In at least two
11 instances those efforts had been vetoed by the
12 governor.

13 Q Which of those instances?

14 A One was SB 81, I believe is the number. I
15 reserve the right to have the number wrong.

16 Q We give you the right to change it later if
17 you like.

18 A Which was sponsored by Senator Hayden. It was
19 an effort to have a regular reporting of a number by
20 schools of the extent to which students had access to --
21 I don't remember the exact language, but it was some
22 specifics that identified what he thought was
23 appropriate curriculum materials and textbooks.

24 Second was a measure, I believe, last year,
25 sponsored by John Vasosalo (phonetic), attempted to

1 may have done himself?

2 A I think the governor has made some impressive
3 and admirable statements about the importance of
4 children having rigorous content-based instruction. So
5 there are many things the governor has said which I
6 think are positive. In terms of concrete actions, I'm
7 hard-pressed to name any.

8 Q Anything you would point to, other than you
9 already have, that the Davis Administration has done
10 during his time in office that you consider
11 counter-productive to providing equal and adequate
12 access to texts and instructional materials in
13 California public schools?

14 MR. ROSENBAUM: Same objections.

15 THE WITNESS: I'm not willing to say that the
16 things that I have just said would constitute my
17 complete list. I would want to have some time to review
18 the details of my report and to -- with a question like
19 that, it goes beyond the scope of my report as well. So
20 I would want to do some more thinking before I said I
21 had completed the list.

22 BY MR. HERRON:

23 Q Do you know what Section 60119 of the
24 Education Code provides?

25 A I do.

1 build into what I believe became the high-priority
2 schools' grant program, a similar requirement that
3 low-performing schools be required to report such things
4 as the availability and the sufficiency of textbooks and
5 instructional materials. Those are two examples.

6 Q Of positive?

7 A Of efforts by the state -- by members of the
8 state legislature to assure more equitable access to
9 textbooks and curriculum materials in the state.

10 Q But they were vetoed by the governor.

11 A The high-priority schools grant was actually
12 approved by the governor, but through whatever
13 machinations happened before that point, the requirement
14 of reporting was eliminated, and it was -- it was
15 eliminated.

16 The SB 81, which I believe was passed quite --
17 it was a very positive vote -- was actually vetoed, and
18 I think -- actually, I'm not sure, but I do -- there are
19 some references to other efforts that are in here -- I
20 would have to review the report. But those two
21 instances come to mind as good examples.

22 Q Of what the legislature did?

23 A Of efforts by members of the legislature, the
24 legislature, to improve access, yes.

25 Q But nothing comes to mind that the governor

1 Q Do you know whether Section 60119 of the
2 Education Code was modified in legislation signed by the
3 governor, Governor Davis?

4 A I want to review that section of my report so
5 I'm clear on the details.

6 Q Certainly.

7 A On page 86 of my report, I discuss the Senate
8 Bill 273, which waived certain provisions of 60119
9 related to the public hearing that is required before
10 districts are eligible to receive funds for textbooks
11 and materials. That, in fact, the -- let's see. Let me
12 get the details straight.

13 So the waiver of the bill allowed districts to
14 waive having a public hearing if they would certify that
15 the governing boards or the school board has actually
16 made the determination that there were significant --
17 that there are sufficient materials, or that they have
18 got a plan in place to remedy any deficiencies that the
19 board had become aware of during that process of an
20 effort to have sufficiency certified.

21 I see that as a weakening of that policy.

22 Q Are you aware how many waivers were granted on
23 the provisions of Senate Bill 273?

24 A I am not.

25 Q Do you know how many California communities

1 were prevented from voicing their concerns under the
2 provisions of 60119 as a result of the waiver policy
3 implemented by SB 273?

4 A I do not know that number.

5 Q Do you know whether the waiver policy has now
6 come to an end, that is, granting waivers of the 60119
7 hearing requirement?

8 A The information I have comes from -- comes
9 from the fact book 2002 from the California Department
10 of Education website. So if something has happened
11 since I last consulted that website, or maybe even
12 before I consulted it but hadn't made it to the website,
13 I don't know it.

14 Q Okay. Do you know -- in the instance where a
15 waiver would not have been granted to a district which
16 had not held a hearing as required by Section 60119, do
17 you know what the penalty would have been in terms of
18 instructional materials funding?

19 A I'm sorry. I'm afraid I don't understand. I
20 lost the details of your question.

21 Q Sure. 60119 requires, among other things,
22 that a hearing be held regarding the sufficiency of
23 textbooks and other instructional materials in a
24 district. Is that correct?

25 A Yes.

1 process or whether -- I don't know whether technically
2 it's an amendment that occurred in 2001.

3 Q Right. So other than SB 273, you're aware of
4 no legislation that affected 60119?

5 A Not that I can recall at this moment, but I
6 may refresh my own memory at some other point.

7 Q Sure. If it comes to mind during the course
8 of the deposition, feel free to speak up.

9 A Okay.

10 Q Your expert report provides another -- a
11 number of recommendations or proposed policy changes.
12 Am I right?

13 A It provides examples of ways that are
14 available, in my opinion, to the state. I would not
15 frame them at this point as specific recommendations.

16 Q How would you frame -- how would you word
17 that?

18 A I would say that the report contains examples
19 of how existing policies might be modified, and examples
20 of policies employed in other places, that could and
21 should be considered by the state to strengthen
22 students' access to adequate materials and equity in
23 that access.

24 Q If the state were to adopt the modification of
25 policies suggested by your report, do you think that

1 Q And the waiver policy we've been talking about
2 that was set forth in Senate Bill 273 provided a waiver
3 of compliance with that hearing requirement in certain
4 circumstances?

5 A Uh-huh.

6 Q If that waiver had not -- "uh-huh" means yes?

7 A Yes.

8 Q If -- do you know what the penalty to the
9 district would have been if their noncompliance with
10 hearing requirement had not been waived?

11 MR. ROSENBAUM: There are several negatives in
12 there. If you understand the question, fine.

13 THE WITNESS: I think I can phrase a sentence
14 that may respond to that, is that my reading of 60119
15 suggests that unless a district held its annual public
16 hearing, it would not eligible to receive instructional
17 materials funding.

18 BY MR. HERRON:

19 Q Okay. Setting aside that for your report, are
20 you aware that 60119 has been amended during the last
21 five years?

22 A It was my understanding that -- I don't know
23 if actually 61109 was amended or whether this -- the
24 senate bill I just mentioned is some other new piece of
25 legislation that changes the penalty and the waiver

1 would cost more money or less than already spent on
2 instructional materials, textbooks, equipment and
3 technology?

4 MR. ROSENBAUM: Vague and ambiguous.
5 Foundation.

6 THE WITNESS: I think the information we
7 currently have, that the state currently has, about the
8 deficiencies in the supply and adequacy of materials
9 prevents us from really making an accurate judgment
10 about whether and how much policies that insured
11 adequacy and equity might cost.

12 BY MR. HERRON:

13 Q Yeah. I'm not asking for a precise price tag.
14 I'm just asking is it your belief and opinion that if
15 the modifications to policies you have set forth in your
16 report were adopted by the state, is that going to cause
17 a net greater expenditure of funds, same expenditure or
18 less? What's your best estimate?

19 MR. ROSENBAUM: Asked and answered. Same
20 objections. Speculation.

21 THE WITNESS: I'm not prepared to estimate
22 whether there is currently enough money in the system to
23 insure an adequate and equitable supply of textbooks or
24 whether it would require more funds.

25 BY MR. HERRON:

1 Q Has anyone ever done an -- well, let me try
2 that again.

3 Has anyone done an assessment or study to
4 determine whether, if the modifications of policies your
5 report recommends were, in fact, adopted by the state,
6 it would cost more or less?

7 MR. ROSENBAUM: Same objections.

8 THE WITNESS: In the year 2000 the American
9 Association of Publishers did conduct a study that
10 suggested that providing an adequate supply of textbooks
11 to students would cost significantly more than what the
12 state now spends. I have no knowledge of what policy
13 changes they might have been thinking about as
14 mechanisms for insuring that supply.

15 BY MR. HERRON:

16 Q That was an Association of American
17 Publishers, I guess, report or study?

18 A Yes, it's the second reference on my reference
19 list.

20 Q The one that is -- from the year 2000, and
21 it's titled Financial Requirements for Instructional
22 Materials Purchases in California Adoptions 2001 through
23 2005?

24 A Yes.

25 Q Do you happen to have a copy of that document?

1 A I have a copy of that document -- I believe I
2 have a copy somewhere in my files in my office.

3 MR. HERRON: Mr. Rosenbaum, we have been
4 unable to locate that document in any documents you
5 produced or identified by the plaintiffs, and we could
6 not locate it on the web.

7 And that is also true of the first reference
8 in the bibliography, which is Association of American
9 Publishers, 5-5-98. Surprising Results in New Statewide
10 Survey; California Voters Rank Textbook Funding as
11 number one priority.

12 Not identified. Not produced. Been unable to
13 locate it. I would appreciate if you could kindly
14 provide us with those.

15 MR. ROSENBAUM: I'll click into it, David.

16 MR. HERRON: Thank you.

17 Q I take it no one has done a -- an assessment
18 or study of the recommendations you yourself make in
19 this report to determine what the cost might be?

20 MR. ROSENBAUM: Asked and answered.

21 Excuse me. I'm sorry. I didn't mean to --
22 I'm sorry.

23 THE WITNESS: A number of scholars who study
24 education policy have looked at policies like those that
25 are in the recommendations. I don't know of anyone

1 who's done a cost analysis.

2 BY MR. HERRON:

3 Q No one has done a cost analysis of your study
4 itself?

5 A Not to my knowledge.

6 MR. ROSENBAUM: David, I don't want to cut off
7 your statement.

8 MR. HERRON: Go ahead.

9 MR. ROSENBAUM: I've been informed by Ms.
10 Fanelli that what you're asking for is available on the
11 web. I'll check that during a break.

12 MR. HERRON: That would be great. Our folks
13 have not been able to find it. So if you happen to have
14 the website --

15 MS. FANELLI: I'll check -- the timing...

16 MR. ROSENBAUM: I'm glad to check it, but I
17 just thought --

18 MR. HERRON: I guess one of our problems was
19 it has been identified, apparently. Now this is
20 information I'm getting. This is what other people are
21 telling me. So just prior to the deposition, we
22 realized that we don't have it, but if you can provide
23 the website, that would be most helpful.

24 MR. ROSENBAUM: Okay. Sorry.

25 MR. HERRON: We've been going about an hour.

1 Why don't we take a short break.

2 (Brief recess taken from 2:45 P.M. until 2:55
3 P.M.)

4 (Record read.)

5 BY MR. HERRON:

6 Q Was a conscious decision made, either by you
7 or by the litigation team, not to cost out the -- the
8 modifications to policies that are set forth in your
9 expert report?

10 MR. ROSENBAUM: Speculation.

11 THE WITNESS: I certainly did not entertain
12 that as part of what I was interested in investigating,
13 and I have no idea what the litigation team might have
14 been thinking.

15 BY MR. HERRON:

16 Q We talked about your prior work with ACLU,
17 with Morrison & Foerster, with Maldf, the other firms
18 and public interest groups on plaintiff's side,
19 including public advocates and others, have you before
20 the Williams case worked informally or informally with
21 any other of the plaintiffs' counsel on any issue or
22 case before Williams?

23 A I had some interactions with John Affeldt of
24 Public Advocates around some of the legislation proposed
25 or being -- winding its way through the legislature.

1 John and I share an interest in the issue of opportunity
2 to learn. And public reporting of opportunity to learn.

3 So we -- I believe on one occasion John asked
4 me to participate in a session he was organizing for
5 Senator Vasconsalos around that issue.

6 I have invited ACLU counsel to speak to my
7 classes at UCLA and to some high school students as part
8 of a summer program, but those occasions were prior --
9 were in relation -- in the context of the work on
10 Daniel, as well as the work on Williams.

11 I participate as a member of Rocio Cordoba's
12 advisory board for a project she's doing on Latinos'
13 access to healthcare, education and other related
14 issues.

15 Are you talking about by named counsel on
16 this -- in this case?

17 Q Yes.

18 A The list changes from time to time.

19 Q Not much.

20 A Well, of course I -- perhaps we've already
21 covered this, but I worked with Matt Kreeger and Jack
22 Londen earlier in the Vasquez case.

23 Q Right. I think we've covered that.

24 A Lou Holaman (phonetic), who appears on some
25 lists of counsel, I think, early on in this case,

1 Q Pretty tangential, I mean, pretty attenuating.

2 A I think the Williams case was salient in
3 people's minds as something that was in the environment,
4 but the focus of the meeting was not anything about how
5 the Williams case ought to be conducted or any of that.

6 Q What conversations have you had with Lou
7 Holaman or is it Hallaman?

8 A Is it Hallaman?

9 Q I don't know. You might have it.

10 A I don't think I've spoken to Lou in about
11 maybe a year. Early on he was part of the litigation
12 team, as I understand it, and I think might have been
13 present either in person or on the telephone in
14 conversations concerning names of people I was speaking
15 with about research around Williams.

16 Q Did you ever have communications, by which I
17 mean written or oral communications, with Lou Holaman or
18 Hallaman concerning which individuals might be selected
19 as experts in this case?

20 A I think Lou was party to some of the
21 conversations concerning various scholars and their
22 areas of expertise. He at some point might have been on
23 a group E-mail list that I may have sent some E-mail
24 conversation to. He might have sent me E-mails from
25 time to time. But I have no recollection of any

1 actually turned up at a meeting that I participated --
2 actually a meeting that I helped organize at the Getty
3 Museum. But I believe that was after -- it might have
4 been in June, 2001.

5 Q Was that related to this case?

6 A Only in the most tangential way. My colleague
7 at UCLA, Gary Blasi, who is in the law school, and
8 Harold Williams, who is the president emeritus of the
9 Getty, were interested in thinking both about the
10 California master plan and the Williams case as two
11 events in the California context that might provide
12 openings for new thinking about California education
13 policies.

14 So we convened a group of people who were
15 interested in California policy, including a group of
16 people who had been leaders of some local reforms in Los
17 Angeles, to talk about general issues of education
18 policy and accountability and school funding, the topic
19 areas really of the -- that were being considered by the
20 master plan.

21 So in a tangential way that meeting touched on
22 issues of the Williams case. I can't recall whether
23 anyone discussed -- the case was probably mentioned in
24 the course of the meeting, but it -- that's really my
25 best recollection of the connection.

1 specific --

2 Q No specific communications?

3 A Not that I recall. He might very well have,
4 but I just...

5 Q Do you know a man named James Guthrie?

6 A I do know Jim Guthrie.

7 Q Have you ever met him in relation to this case
8 at all?

9 A No.

10 Q Have you ever discussed this case with him?

11 A I don't think so.

12 Q I want to talk to you about how the Williams
13 case came about, sort of genesis-wise.

14 A Uh-huh.

15 Q What is your understanding about how this
16 lawsuit was -- how this lawsuit came about?

17 A I know very little about how the lawsuit came
18 about. I do know that in the context of working on
19 Daniel, I had a conversation, very informal
20 conversation, with Mark Rosenbaum, maybe Rocio Cordoba
21 was in the room, but I don't recall. It was actually at
22 my house.

23 And Mark, in what I thought was a very
24 speculative, hypothetical way said, "What would you
25 think if there were a case about students' access to

1 basic resources?"

2 And I could remember at the time thinking that
3 I was very much focused on access to opportunities to
4 study advance placement, and that this was a leap from
5 that. And there was very little conversation about it,
6 and I don't think I discussed it any further with him
7 for months or a year or something.

8 The other thing I know is that when I began
9 working as a colleague with Gary Blasi, in the context
10 of my efforts as part of IDEA to reach out to scholars
11 in schools other than education who were interested in
12 equity issues, Gary shared with me that his students in
13 his public interest law program had been doing some
14 investigation of conditions, principally, I think around
15 facilities, but I'm not sure, in the California public
16 schools.

17 I came to learn later that some of that work
18 was incorporated into, or at least informed the Williams
19 complaint.

20 Q Do you know whether that particular report
21 you're talking about was commissioned to form the basis
22 of the Williams complaint?

23 A I have no idea about the arrangements
24 regarding that report.

25 Q The complaint in this case, I believe, was

1 THE WITNESS: I have no idea.

2 BY MR. HERRON:

3 Q What was the first time that you heard of the
4 lawsuit?

5 MR. ROSENBAUM: The actual filing of the
6 lawsuit?

7 MR. HERRON: You're right. Let me try
8 again.

9 Q What I've been trying to understand is what
10 you learned about, heard about, prefiling. Filing was
11 May of 2000. Have you now told me everything you know
12 about what went into formation of the Williams lawsuit
13 before it was filed?

14 A Yes.

15 Q What was your first communication that you had
16 with anyone regarding the lawsuit after it was filed?

17 A I remember reading in the newspaper when it
18 was filed and saying to my husband, "Mark did it." And
19 I was astonished because I recall very clearly thinking
20 that this was -- that what he had mentioned at my house
21 before was just some kind of wild brain-stormy idea.

22 Q And from that point, moving forward -- I mean,
23 we know that you were involved in the expert-related
24 work, and you've talked a little bit what IDEA has done
25 in terms of scholarly research and the like. I want you

1 filed on -- in May, 2000. Prior to that what other
2 knowledge did you gain about the case, whether it would
3 be filed, et cetera?

4 A You know, I don't recall anything specific.
5 Something may have happened. A conversation or
6 something, but I just -- I don't recall any.

7 Q You talked earlier about a conversation with
8 Linda Darling-Hammond about being involved in some
9 research she was doing for Williams?

10 A Yes.

11 Q Was that pre or post filing?

12 A That was after. I believe it was after. I
13 believe it was in the summer of 2000.

14 Q Is it your understanding that the ACLU,
15 together with -- is it Professor Blasi?

16 A Blasi, yes.

17 Q -- together with Professor Blasi designed the
18 Williams lawsuit?

19 MR. ROSENBAUM: Speculation and foundation.

20 THE WITNESS: I don't know. I don't know.

21 BY MR. HERRON:

22 Q What is your understanding, if you have one,
23 of who the principal motivators of the lawsuit were?

24 MR. ROSENBAUM: Speculation. Foundation and
25 vagueness.

1 to sort of walk us forward from that point.

2 You read in the newspaper that the case is
3 filed. What happens next that was a communication
4 related to the lawsuit?

5 MR. ROSENBAUM: Involving Dr. Oakes?

6 MR. HERRON: Right.

7 THE WITNESS: Involving me and -- well,
8 virtually -- not virtually. There was no -- I had no
9 conversations specifically -- let's see. Summer 2000.
10 I don't believe I had any conversations with anybody
11 engaged in the litigation during -- until later that
12 summer, when I started talking with Linda, and then with
13 Mark and Jack about the research needed for expert
14 reports.

15 It was about this same time that Gary Blasi
16 and I began to develop some ideas for joint scholarship.
17 And I knew Gary had conversations from time to time with
18 the litigation team. I believe probably from time to
19 time I asked him questions. But as an interested
20 citizen, curious about the case.

21 So it was very casual, informal, sorts of
22 non -- I guess it's professional, but non -- I didn't
23 see myself as having any particular interest in it. I
24 certainly wasn't consulted prior to the conversations
25 about the scholars who might be interested in these

1 issues.

2 If you have documents or E-mails or something
3 that indicate otherwise, I would be happy to reconsider
4 my response. That's my recollection at the moment.

5 (Defendant's Exhibit 4 was marked by
6 the CSR for identification and attached to and
7 made a part of this deposition.)

8 THE WITNESS: This was post filing. Right?

9 BY MR. HERRON:

10 Q Do you recognize this document?

11 A No, but I trust that it was sent to me.

12 Q It appears to be an E-mail dated May 31st,
13 2001 from Gary Blasi to you. Correct?

14 A Yes.

15 Q He's writing to you asking that you give him a
16 call because he wants to talk to you on, quote -- "about
17 some matters related to the Williams litigation,"
18 unquote. He goes on to say that he had a meeting in San
19 Francisco and would like to talk to you before then.

20 Do you recall having discussed anything with
21 Gary Blasi in response to this E-mail?

22 A I suspect that I called him because I
23 generally return requests for phone calls. I have
24 absolutely no recollection of what was discussed.

25 MR. ROSENBAUM: What exhibit number is this?

1 curriculum material, et cetera?

2 A Yes, yes.

3 Q So I take it that before the case was filed,
4 you yourself had no involvement in formulating the
5 claims that might be asserted in the Williams case?

6 A Not at all, that I remember, unless some phone
7 conversation that -- or --

8 Q Came and went?

9 A I mean, yeah, I have no -- I have no
10 recollection. I do remember being surprised reading
11 about the case in the paper

12 Q I take it that you don't recall in your
13 meeting where you sat down with plaintiffs' counsel,
14 Mark Rosenbaum, Jack Londen, before the case was filed
15 and discussed what Williams might look like in terms of
16 claims asserted or relief requested?

17 A I have no recollection of that, other than
18 that first very preliminary -- it wasn't even
19 preliminary, but that casual bit of conversation that I
20 described to you earlier at my house.

21 Q With Mr. Rosenbaum?

22 A Yes.

23 Q How long have you known Gary Blasi?

24 A I can't recall for certain, but I think I may
25 have met Gary in the fall or sometime during the '99,

1 MR. HERRON: 4.

2 Q Do you recall him telling you what the purpose
3 of the meeting in San Francisco was?

4 A No.

5 Q You said earlier that you had several sort of
6 professional conversations as an interested citizen with
7 Gary Blasi. Do you recall the specifics of those
8 conversations, apart from what's referred to in Exhibit
9 4?

10 A Uh-huh. I actually don't recall the
11 specifics. I mean, at some point I know I probably
12 discussed with him the interests that Linda had
13 expressed. I may have even asked him about what he knew
14 about what work Linda was doing. But I'm speculating.
15 I really don't remember.

16 Q Don't do that. When you say the "interests
17 that Linda had expressed," what do you mean?

18 MR. ROSENBAUM: Don't speculate. If you can
19 answer it, sure, go ahead.

20 THE WITNESS: Linda's invitation to me to join
21 her -- that's what I meant. Linda's interest in having
22 me participate with her in the research she was doing
23 over that summer.

24 BY MR. HERRON:

25 Q That was the research related to teachers and

1 2000 academic year.

2 Q He's a professor at the law school, is he?

3 A Yes.

4 Q When did you become aware of his study? When
5 I say "his study," I mean his -- the study dated May
6 2000, quote, "Who is Accountable to our School Children
7 for Conditions in California Public Schools at the
8 Beginning of the Millennium." When did you become aware
9 of that study?

10 A I don't recall. I don't recall. Sometime
11 probably soon after it was written, but I don't recall.

12 Q Did Gary Blasi or anyone else ever explain to
13 you or tell you why he did that study?

14 A Gary -- Gary had me come and serve as a guest
15 speaker in his public interest law class on the topic of
16 abilities grouping and tracking. He explained to me at
17 that time that his practice in the public interest law
18 program was to take current problems that were relevant
19 to public interest law and engage his students in
20 clinical training, doing the kind of work lawyers do in
21 preparing public interest law cases.

22 My -- I'm not sure he ever said it, but
23 assumption was that this report, this paper, was an
24 example of that kind of exercise he engaged his students
25 with. I don't know that for sure. That was my -- that

1 was the sense I had.

2 Q Do you know whether plaintiffs' counsel in
3 this case had any involvement in shaping that study,
4 that is, the one that was conducted by Gary Blasi and
5 his law students?

6 A I have no idea.

7 Q Is Gary Blasi a consultant to plaintiffs in
8 this case?

9 MR. ROSENBAUM: Speculation. Calls for a
10 legal conclusion. No foundation. Totally irrelevant.

11 THE WITNESS: I don't know.

12 BY MR. HERRON:

13 Q You've worked with them, have you not, and
14 happened to identify experts for plaintiffs in this
15 case?

16 MR. ROSENBAUM: With who?

17 MR. HERRON: To identify experts that
18 plaintiffs could use in this case.

19 THE WITNESS: Are you asking whether I had
20 conversations with the litigation people about potential
21 scholars could serve as experts?

22 BY MR. HERRON:

23 Q No, I'm being unclear.

24 You and Gary Blasi together have worked to
25 identify potential experts for the plaintiffs and

1 departments who were interested in issues related to
2 questions of educational equity and access.

3 So in addition to Gary, I also had
4 conversations with Paul Ong (phonetic), who is a
5 professor in public policy, Walter Allen, who is a
6 professor in sociology. So I was in the process during
7 that year of making connections with other faculty
8 members around.

9 My connections with Gary were -- I initiated
10 those connections there in that context, having no
11 knowledge of him involved in any way with Williams.

12 The second thing that was happening is UCLA --
13 the chancellor had announced as a major initiative
14 greater connections between UCLA and the communities of
15 Los Angeles, and the chancellor and the executive vice
16 chancellor convened a series of meetings on campus,
17 events, lunches, breakfasts, things where they would
18 bring together senior faculty who had these interests.

19 Gary and I often turned up with a number of
20 other people at these events. I mean, that was the
21 context of our beginning to have conversations. So the
22 early conversations before we decided that we had enough
23 in common, that we would try to actually propose doing
24 some work together, were that sort of level of
25 conversation, informal, collegial.

1 plaintiffs' counsel to use in this case?

2 A I certainly was engaged in that. I think Gary
3 might have been in the room, but Gary doesn't share my
4 network of connections with education researchers. I
5 mean, it was not a collaborative effort. I mean, I
6 contributed my knowledge of outstanding education
7 scholars who were interested in these areas. Gary may
8 have participated in listening to that but...

9 Q Since the -- since the time you went and made
10 a presentation to the students, what conversations do
11 you recall having with Gary Blasi about this case?

12 As I explained before, I think that during --
13 from -- obviously, late May, in 2000 --

14 MR. ROSENBAUM: This is 2001.

15 THE WITNESS: Oh, 2001. Oh, okay. All right.
16 Thank you.

17 That sometime -- and I'm not exactly sure
18 when -- as prior to my having direct discussions with
19 Mark and Jack about the case, I would ask Gary
20 interested questions about, you know, what does he know.
21 Is it interesting. In the context of two -- two things
22 were happening at UCLA. One was my development of
23 UCLA's IDEA, where my explicit agreement with the
24 chancellor is that I would move outside the school of
25 education and engage with scholars in other schools and

1 Q I take it recalling the contents of those
2 discussions is not possible?

3 A No.

4 Q With any specificity?

5 A No, like cocktail party talk.

6 Q Right. You just said something to the effect
7 that when we decided we could work together.

8 A Uh-huh.

9 Q On what?

10 A We actually proposed the chancellor or the
11 UCLA foundation or some entity on campus put -- allowed
12 a little request for proposals for faculty who wanted to
13 collaborate a cross-discipline on some problems of
14 interests. We put together a little proposal around the
15 issues of school accountability. I had long been
16 interested and still am in expanding accountability so
17 that it considers students' opportunity to learn as well
18 as students' outcomes.

19 And Gary also independently had been thinking
20 about issues of accountability. So we put together a
21 little proposal, and it wasn't funded. But we decided
22 that that was interesting enough, that we would continue
23 to try to find ways to work together

24 Q You said, I think, that you have long been
25 interested in expanding accountability to include

1 students' opportunity to learn as opposed to just their
2 achievement?

3 A Yes.

4 Q What did you mean by expanding accountability
5 for students' opportunity to learn?

6 A In the late 80's and early 90's there was an
7 intense debate in congress and with first George Bush,
8 and then the Bill Clinton Administration about the
9 movement toward greater accountability in education.

10 My experience at Rand as helping to develop an
11 educational indicator system had persuaded me that the
12 relationships between the conditions and resources that
13 characterize the context in which children learn should
14 be included in any system that attempts to measure and
15 report what students actually have learned. I'd done
16 considerable amount of writing about it since those
17 Rand -- those days at Rand and became quite involved in
18 a scholarly slash policy debate during the time this
19 became a very hot issue in congress.

20 The people advocating opportunity to learn as
21 being included in school accountability lost that battle
22 in the late 80's and early 90's, but since that time
23 it's remained a scholarly interest of mine of how you
24 would formulate an accountability system that actually
25 did set students' achievements next to the conditions

1 was not at all part of our conversations. I was more
2 interested in learning about these cases.

3 I was also very interested in following the
4 progress of the campaign for fiscal equity in New York
5 and, in general, had some conversations with Mike Rabell
6 (phonetic) and invited him to actually come out and
7 speak because I was interested as a scholar in the shift
8 from federal costs as a venue for equity-related
9 pursuits to the state courts and issues in state
10 constitutions and just -- not as a legal scholar by any
11 means, but as someone interested.

12 I mean, if you look at my first book, Keeping
13 Track, there is a chapter in that book called Some
14 Constitutional Questions, where I did a very layman's
15 look at the extent to which tracking and ability
16 grouping had been considered in the context of
17 litigation, simply because it's an interest of mine.

18 So my conversations with Gary were very
19 much -- all of a sudden I had a colleague who was a
20 legal scholar who could talk to me about these issues.

21 Q You spoke at some point with -- well, you
22 spoke at some point with Jack Londen, with Mark
23 Rosenbaum about this case?

24 A Yes.

25 Q Did you have a meeting with both of them?

1 under which they had had an opportunity to arrive at
2 those achievements. That's what I meant.

3 Q A sort of input-focused accountability system?

4 A I think input is -- I might not use that word.
5 I am interested in understanding the conditions under
6 which certain achievements were obtained for the
7 explanatory power and for the purposes of allowing
8 policy makers to have information about alterable things
9 in the school environment that might be useful in
10 increasing achievement.

11 So it's far more than what you -- what I would
12 take as meaning an input-focused accountability
13 system.

14 Q You have talked about several initial
15 conversations or meetings that you had with Gary Blasi.
16 After that how would you characterize your
17 communications with him regarding this case?

18 A Once --

19 Q It's what you can recall.

20 MR. ROSENBAUM: Vague and ambiguous question.
21 Do the best you can.

22 THE WITNESS: I talked to Gary frequently
23 about this case, as I was increasingly interested in it
24 and following it. And when I began working on the
25 textbook report, the substance of that report, I think,

1 Your first sort of meeting with them, was that with
2 both?

3 A I don't recall.

4 Q Do you know how many conversations you had
5 with them, say, in the year, 2000, if any?

6 Let me take that back and try another
7 question.

8 There was some initial communication or series
9 of communications you had with Mark Rosenbaum and Jack
10 Londen about your possible involvement in the case. Are
11 you able to divide those out in your mind, that is to
12 say, to consider them separately and tell me what was
13 said?

14 A No.

15 Q They all sort of run together?

16 A They do run together, and I -- I'm feeling
17 very inadequate about recalling the chronology as well.

18 Q Understanding that and setting aside the
19 chronology, I mean, to the extent you can tell us
20 chronology, please do, but can you give us an idea of
21 what was discussed?

22 A The conversations I had were about areas of
23 expertise that seemed relevant to the complaint, my
24 knowledge of scholars who had done serious credible work
25 in the area, and over time, my growing interest in

1 developing a project on my own that was related to this
2 work and my engagement of various individuals with that
3 project.

4 I think -- I certainly know that from time to
5 time I was part of conversations where I was told we're
6 in mediation now and we can't talk about any of that.
7 Okay. So there was a lot of that.

8 And as the work toward developing expert
9 reports developed, I was part of conversations. Some I
10 probably initiated; some I was responsive to. About the
11 need for additional empirical data collection that could
12 inform the case. And had some preliminary discussions
13 about if there were to be additional empirical evidence,
14 what kind of evidence or what kind of data collection,
15 what kind of methodology might one want to use to do
16 that, and what constructs one might want to inquire
17 about.

18 Those conversations, I believe, ended up
19 informing the substance and the methodology of the
20 survey work that the Lou Harris Survey Group conducted.
21 Certainly it -- those conversations influenced my
22 thinking a great deal when I talked with Rockefeller
23 about how interesting it would be to have some
24 additional qualitative case study work done around the
25 issues that were in the Williams complaint to try to

1 part of expert reports or my expert report, it might
2 compromise my role as a researcher, if I were ever
3 placed in a position where I knew the names of schools
4 that had participated in a study where they were
5 promised anonymity and confidentiality.

6 And so I told Fred that I would love to help
7 commission such a study and to do some oversight to make
8 sure the methodology was sound and well carried out.
9 But I would do it as a subcontract through IDEA rather
10 than having the study done by my team and IDEA.

11 Q Did you obtain a subcontract for that study?

12 A Yes, yes.

13 Q What was the -- how much money was involved?

14 A I think the subcontract was about \$70,000.

15 Q And the firm selected to conduct the survey
16 you're referring to is the Peter Harris firm?

17 A No, this was the Social Policy Research
18 Associates.

19 Q I see.

20 A No, I was not involved in any way with the
21 arrangements or the financing or -- of Peter Harris's
22 work.

23 Q Were you involved in the design of the Harris
24 survey in any way?

25 A I provided some advice about the kinds of

1 better understand the extent to which these problems
2 occurred in combination.

3 So the -- those were topics, I think, that
4 were covered in conversations.

5 Q Okay. Certainly not one conversation?

6 A No.

7 Q Now, in your discussion with Rockefeller about
8 what you just referenced, did you obtain any fundings as
9 a result of those discussions for IDEA?

10 A Yes. In my never-ending quest for money for
11 IDEA, I approached Rockefeller and told them that I was
12 doing this work and felt that there was a real need for
13 some additional qualitative case study work, that many
14 of the scholars who were working with me on this project
15 would love to have some new data, some up-close data
16 about California schools, and the program officer at
17 Rockefeller, Fred Freelow (phonetic), who happens to be
18 a former doctoral student of Linda Darling-Hammond, was
19 very interested in providing support and actually asked
20 me if IDEA could do such a study.

21 I said, well, I was concerned about our
22 capacity to do a study, given the staff, you know, just
23 in terms of the number of people and my time to oversee
24 such a study. I also, frankly, was concerned that if I
25 were engaged in a study like that, and it did become

1 constructs that I thought would be interesting to have
2 data about.

3 Q "Constructs" means what, as you just used that
4 word?

5 A Constructs, like the availability of textbooks
6 and curriculum materials to teachers, the importance of
7 asking about instructional materials beyond simply the
8 textbook so that you would want to ask science teachers
9 whether they had laboratory equipment and supplies in
10 order to -- that would enable them to engage children in
11 hands-on science activities.

12 I think I specified the kinds of manipulatives
13 and other supplies you would want to ask about in
14 mathematics and in social studies or in English. That
15 kind of advice about -- generally, my expertise about
16 what the domain of curriculum and instructional
17 materials is, and what somebody conducting a survey
18 would probably be wanting to ask.

19 Q Was there a contract in place that paid you
20 for your work in aiding the design, or at least
21 identification of constructs to be used in the Harris
22 Poll?

23 A No.

24 Q What funded your activities in that regard?

25 MR. ROSENBAUM: Assumes facts not in evidence.

1 Foundation.

2 THE WITNESS: The University of California
3 pays professors a salary, approximately a third of which
4 covers activities in teaching, approximately a third
5 covers your activities in research, and approximately a
6 third covers activities in professional and public
7 service. Providing advice like that is something I
8 regularly do for all kinds of people on all kinds of
9 topics, and I generally think of it as part of my public
10 service.

11 Although, frankly, I was hoping that the
12 Harris Survey would ask about things that -- and collect
13 data that I might be able to use in the course of
14 my secondary analysis in the way that I have. So I also
15 thought of it as part of my research activity.

16 Q How much time did you spend in relation to the
17 Harris Survey? By that I mean the design of the
18 constructs, you know, creating the survey questions,
19 whatever you did.

20 A Probably ten hours or somewhat less.

21 Q Have you had an opportunity to review Exhibit
22 5?

23 A Yes.

24 (The document referred to was marked by
25 the CSR as Defendant's Exhibit 5 for

1 Did Linda Darling-Hammond explain to you how
2 she had begun -- had become involved with the Williams
3 litigation, or preparation of it?

4 A All Linda told me is that she had spoken with
5 Jack Londen, and that Jack had asked her to do this
6 work. I believe that's what she told me.

7 Q Anything beyond that come to mind that was
8 discussed with Linda Darling-Hammond?

9 A Not in that regard.

10 Q In any other regard related to the case?

11 MR. ROSENBAUM: That's too vague. Ambiguous.

12 THE WITNESS: You know, I'm not sure. Maybe.

13 Linda and I have worked together -- Linda, I don't know
14 if you know, was a part of that same NSF -- we were at
15 the Rand Corporation at the same time. So we have
16 worked together over the course of all these years and
17 are also very good personal friends. So it's hard to --
18 it's hard for me to recall what she might have said when
19 in relation to what she was doing on this case and how
20 it got started

21 BY MR. HERRON:

22 Q Did she ever tell you that she had been asked
23 or had been coordinating with counsel for the plaintiffs
24 before the case was filed to help them determine what
25 the claims might be in this lawsuit?

1 identification and attached to and made a part
2 of this deposition.)

3 BY MR. HERRSON:

4 Q Do you recognize it?

5 A No.

6 Q Have you ever seen it before?

7 A I don't think so.

8 Q Set that aside.

9 When was it that you felt a defined role for
10 you in relation to the Williams case had been agreed to?

11 MR. ROSENBAUM: Vague.

12 MR. HERRON: Withdraw it.

13 Q When is it that you felt you had a role
14 related to the Williams case?

15 A The point at which I agreed to assist Linda
16 Darling-Hammond in constructing the research that she
17 was engaged with around the case.

18 Q Do you know how it was that Linda Darling --
19 I'm sorry. When was that, if you can recall?

20 A I think it was in the summer of 2001 but --

21 Q Did --

22 A Spring or summer.

23 Q Of 2001?

24 A Yeah, I have a very hard time remembering.

25 Q Just do your best.

1 A No, I don't think she said that to me.

2 Q Did she ever indicate to you that she had
3 communicated with plaintiffs' counsel about the
4 potential relief that might be sought in this lawsuit
5 before it was filed?

6 A I don't recall that kind of a conversation.

7 Q Okay. I have handed you what's now been
8 marked as Exhibit 6, and it is Bates-stamped at the
9 bottom as plaintiff XP-JO 13745 through 13747.

10 (The document referred to was marked by
11 the CSR as Defendant's Exhibit 6 for
12 identification and attached to and made a part
13 of this deposition.)

14 BY MR. HERRON:

15 Q Have you had an opportunity to review this
16 document?

17 A Yes.

18 Q Do you recognize it?

19 A Reading it, I recognize it as -- I don't
20 remember it, but it certainly seems like something I
21 wrote to my graduate students and my administrative
22 assistant.

23 Q This is an E-mail, apparently, from you to
24 Jamy, Noah and Jared that we've discussed before?

25 A Yes, we haven't discussed Jared before.

1 Q Let's discuss Jared. What did Jared do with
2 respect to your research?
3 A Jared is an administrative assistant in IDEA.
4 He is an amazingly bright young man with a degree in
5 philosophy from UCLA, who is the most incredibly
6 talented gopher kind of administrative assistant that
7 I've ever had. So he does anything that's left over and
8 needs to be done.
9 Q Priceless?
10 A Yes.
11 Q He was involved, I take it -- I won't ask
12 that.
13 Do you know what date this was sent?
14 A I don't. Do you?
15 Q I see nothing on the document itself.
16 A I can reason that it was between mid September
17 and mid November of 2001.
18 Q Why do you reason that?
19 A Because it refers to a November meeting, "Jamy
20 and I will nail down the date for the November meeting
21 tomorrow."
22 Q Ha.
23 A Which is a meeting of the scholars that I
24 already referred to throughout -- that I had engaged to
25 solicit their interest. They are all coming to UCLA.

1 The meeting had originally been scheduled for September
2 14th, but with the September 11th tragedy and the
3 shutdown of all the airlines, we had to postpone the
4 date until early mid November. So that the contents of
5 this message suggests that it was sometime between those
6 two dates.
7 Q So there was a conference of some number of
8 scholars in mid November 2001?
9 A Yes.
10 Q And there was a conference of some number of
11 scholars, I take it, on the same topic in about July,
12 2002. Is that correct?
13 A Yes.
14 Q Were there any other conferences of scholars
15 of a similar nature at any time?
16 A No.
17 Q Who paid for those conferences?
18 A Morrison & Foerster.
19 Q Do you know where Morrison & Foerster got the
20 money for those conferences?
21 A I have no idea.
22 Q Did you do any budget for those conferences,
23 that is, do draft?
24 A I drafted a rough estimate of costs and asked
25 them if they would be willing to add to the gift they

1 had provided in order to cover the cost of those
2 meetings, which they did.
3 Q Do you know what the total cost of the
4 November, 2001 conference of scholars, I'll call it,
5 actually was?
6 A I don't know.
7 Q How about the cost of the July, 2002
8 conference of scholars? What was the cost or price tag
9 on that?
10 A I don't know.
11 Q That was also paid for by Morrison & Foerster?
12 A Yes.
13 Q We're stepping on each other a little bit.
14 A I'm sorry.
15 Q That one is your fault. I want to point it
16 out when it's your fault.
17 Look at Exhibit 6. I want to refer to the
18 first paragraph. "I had a productive conversation with
19 John Affeldt today, and he seems increasingly interested
20 in finding a way to frame the arguments in the case so
21 that they meet a higher standard -- or, at least, one
22 that Linda and I can live with. That's good news -- at
23 least I think."
24 Tell me about your conversation with John
25 Affeldt.

1 A I can't recall the specifics of that
2 conversation, but I'm happy to talk to you about that
3 general issue.
4 Q Yeah, the general issue, context, whatever was
5 going on.
6 A Yeah. Both Linda and I had discussed some
7 concern that we believed that a standard for what all
8 children needed in the areas of teachers and access to
9 knowledge might be somewhat higher than it -- than what
10 we'd heard about how these issues -- than what we'd
11 heard in the conversations of the litigation team about
12 these issues.
13 And I had been talking with John about wanting
14 to expand the domain of textbooks and curriculum
15 materials to include some other dimensions of access to
16 knowledge. Obviously, I must have felt that John was
17 somewhat sympathetic to that concern during that
18 conversation. So that's what...
19 Q What conversations did you have with the
20 litigation team in which you believed that their view of
21 what was needed, as opposed to what your view of what
22 was needed was not the same?
23 A I think it took some discussion back and forth
24 over the -- whether or not they were interested in
25 reports that talked about what was both necessary and

1 sufficient, or that -- in these domains, or whether
2 their interest was more in simply what was necessary and
3 essential, but probably not sufficient.

4 Q The latter being the constitutional standard?

5 MR. ROSENBAUM: That calls for a legal
6 conclusion. That's inappropriate. Mischaracterizes the
7 testimony. Vague.

8 THE WITNESS: I can't speak to the
9 constitutional standard.

10 BY MR. HERRON:

11 Q You did have conversations with plaintiffs'
12 counsel, Mark Rosenbaum, Jack Londen and others in which
13 they talked about what the basic constitutional standard
14 might be. I take it there were times where you said
15 yes, that may be necessary, but it's not sufficient. Am
16 I correct?

17 A I don't remember the lawyers consulting with
18 me about what the constitutional standard is. I do
19 recall feeling very strongly that in an environment
20 characterized by high-stakes tests for students based on
21 their knowledge of content, that one would want to
22 insure that students not only have adequate textbooks,
23 but that they also have other supports that would insure
24 a meaningful opportunity for them to learn the material
25 on which they were to be tested. It was independent of

1 answered.

2 MR. HERRON: It has not.

3 Q You may respond.

4 A Certainly by higher standard here I meant
5 exactly what I explained earlier, that I would want to
6 see a specification of all of the curriculum supports in
7 my domain that would be required to insure that all
8 children had a meaningful opportunity to learn the
9 material on which they would be tested on high-stakes
10 exams administered by the state.

11 Q When you say in this first paragraph -- it
12 says, (reading), higher standard dash or at least one
13 that Linda and I can live with, what was meant by that
14 latter phrase, "one that Linda and I can live with"?

15 A Nothing precise.

16 Q Were you intending to convey that you wanted
17 the litigation team to pursue a standard that you, but
18 not they, believed was appropriate?

19 A I believe that Linda and I were thinking as
20 professional educators and researchers about what we
21 would define as necessary and sufficient. We were not
22 looking at it from -- through the lens of the law or
23 through the lens of a legal strategy. This was our --
24 that's enough.

25 Q Maybe you answered this, if you did, I'll

1 the constitutional standards.

2 Q By the time you had your conversation with
3 John Affeldt that's mentioned in this Exhibit 6, you had
4 concerns that the litigation team was pursuing remedies
5 that were less than best practice. Is that right?

6 A No. That was not my concern. My -- I thought
7 that certainly I would not have signed on to this if I
8 thought that this was not best practice to insure these
9 things, that the complaint asked for. I was -- as a lay
10 person and not understanding much, if anything, about
11 the law, I felt that if you were going to mount a
12 lawsuit on behalf of kids who were disadvantaged by the
13 educational system, that one would want to go for the
14 big prize and make sure that a higher standard of
15 adequacy was defined. That was my personal layman's
16 opinion.

17 Q Why is that?

18 A This lawsuit is costing the State of
19 California an enormous amount of money, and I am
20 interested in using the state's money as well and wisely
21 as possible to provide meaningful education for all
22 children in the state.

23 Q What does your reference to "higher standard"
24 mean in the first paragraph of Exhibit 6?

25 MR. ROSENBAUM: That's been asked and

1 withdraw it. What overall was the purpose of this
2 E-mail, Exhibit 6?

3 MR. ROSENBAUM: I think she answered that, but
4 you can expand.

5 THE WITNESS: This E-mail, I think, is a good
6 example of the kind of instructions that I give to
7 members of my research team to help keep the work moving
8 along and give them guidance about what I would like
9 them to do on my behalf or to help me develop the work
10 that I'm doing.

11 BY MR. HERRON:

12 Q By this date, that is, somewhere between
13 December (sic), 2001 and November, 2001, had you already
14 completed that draft you talked about earlier, that had
15 sort of -- I think you testified that you did a draft on
16 your own that laid out sort of the order that you would
17 address issues.

18 MR. ROSENBAUM: Which draft?

19 MR. HERRON: I meant the draft of this report,
20 Exhibit Number 2.

21 THE WITNESS: I think at this point I had
22 identified the questions that I wanted to address. I
23 was in the process, as you can see from the text, of
24 identifying particular kinds and examples of evidence
25 that I would like to examine. In relation to those

1 questions I had not yet reached a point of having
2 anything that looked like a preliminary draft.

3 BY MR. HERRON:

4 Q But that preliminary draft you referred to
5 earlier was completed about what time, if you know?

6 A This is a complicated question because I was
7 working simultaneously on a scholarly paper on this
8 topic and what eventually became a draft of an expert
9 report.

10 Q This scholarly paper came first?

11 A They were being worked on, I would have to
12 say, simultaneously. So my attention was both focused
13 on what I would want to include in a paper that would be
14 published as scholarship, and on what I would include in
15 something that would -- might become or would become an
16 expert report.

17 So, for example, I would be very interested in
18 looking at depositions because that would be an
19 appropriate thing to include in an expert report. I
20 would be less interested -- although I might -- in using
21 material from a deposition in a scholarly paper. So
22 those things were going on simultaneously.

23 Q I see.

24 A I remember presenting an outline at the
25 November meeting to my colleagues to get their response

1 and reaction. Marisa Saunders began working with me, I
2 believe, in January or February, I believe. Maybe
3 December of 2001. Somewhere about that point. That was
4 closer to the time when I'd done some initial drafting,
5 I was ready to have someone become more engaged in
6 helping fill in some of the details.

7 Q Were you instructed or informed that your
8 expert report was due by February 14th, 2002?

9 A I think at one point a date in February was
10 mentioned. The date changed many times. So I don't
11 recall the exact date, but there was a date which
12 certainly was making me scramble.

13 Q Did you ever tell Mark Rosenbaum or any one of
14 the plaintiffs' counsel that you would not be able to
15 meet that deadline?

16 A I don't recall saying that.

17 Q Were you aware of any other person who had
18 been designated as a testifying expert who informed you
19 that they would not be able to meet a February 14th,
20 2002 deadline for providing an expert report?

21 A I remember lots of complaining, but I don't
22 recall any specific statement like that.

23 Q Okay. Exhibit 6 has some numbered paragraphs
24 on page 1. The first of which -- I think actually 1, 2,
25 3 and 4 refer to some extent to Bill Koski's analysis.

1 Am I right?

2 A No, that's not true.

3 Q Maybe you can explain to me what the
4 references are to -- in paragraph 1 through 4.

5 A Paragraphs 1 and 2 do refer to the draft that
6 Bill Koski was working on. And you can see I'm trying
7 to get the pieces of it as he's working on it.

8 Number 3 refers to the HUMRRO report that was
9 commissioned or contracted by the state, and those
10 reports -- they've done two reports. I'm not sure which
11 ones I was referring to in this particular E-mail.

12 The 4th has to do with the publicly available
13 sample items of the high school exit exam. I was
14 interested in paragraph number 4 to make sure a group of
15 analysts other than Bill Koski looked at these materials
16 or looked at them independent of him to make sure that I
17 wasn't simply relying on Bill's analysis, but trying to
18 understand from independent sources whether or not his
19 analysis rings true with other evidence.

20 Q Was that independent analysis done?

21 A Not in any formal way that produced a
22 document, but over the course of -- not only at this
23 point, with Jamy and Noah, but later when Marisa
24 Saunders joined the team, we looked independently at the
25 standards and did some spot checking to assure ourselves

1 that the results that Koski reported were ones that we
2 were happy with.

3 Q Did that analysis you just referred to in your
4 last response result in the production of any work paper
5 or document that was used in reference or relation to
6 your expert report?

7 A I don't think so.

8 Q In paragraph 1 it says, "Remind Bill Koski to
9 send the appendices to his paper." I take it this was
10 before his paper was finalized?

11 A Yes, he had completed three of the content
12 areas, but not the fourth.

13 Q The purpose for your obtaining his appendices
14 was what?

15 A Well, because Bill had analyzed the California
16 contents standards -- not Bill, but the team of
17 researchers that Bill put together had analyzed the
18 content standards to determine what teaching
19 competencies and what in the way of curriculum materials
20 and equipment would be required in order for students to
21 have an opportunity to learn the material on that
22 standard, it was extraordinarily relevant to the task I
23 had set before myself of trying to understand both
24 whether curriculum materials were important to the
25 California education and what curriculum materials in

1 particular would be particularly important to California
2 students.

3 Q Did you obtain those appendices from Bill
4 Koski's draft report?

5 A Yes.

6 Q Were those produced as part of your production
7 related to this report, Exhibit 2?

8 A They are actually included in my report.

9 Q As a bibliographic item?

10 A No, they're included on pages 13 and 14 of my
11 report.

12 Q Those are his draft appendices?

13 A Well, it's draft in that -- you'll notice that
14 there's still only three subject matters included,
15 science is not included.

16 Q Right.

17 A So...

18 Q Paragraph 5 of this Exhibit 6 talks about
19 reviewing the deposition of Warren Fox, the CDE. Who is
20 that?

21 A Warren Fox -- I'm not sure of his exact title.
22 He's either associate or assistant superintendent, as I
23 understand it.

24 Q Was any review conducted that you're aware of?

25 A Yes.

1 Q Did the litigation team ask you to produce
2 work papers of either your own work papers or work
3 papers from Jamy, Noah, Marisa, any others that helped
4 you on this report, Exhibit Number 2?

5 A Yes, they asked me to produce any work that
6 was underlying this document, because I do all of my
7 work now on computer, that work in addition to my E-mail
8 files, so I generated some folders of whatever I had on
9 line and provided it to them.

10 Q What is your knowledge about what Jamy, Noah,
11 Rebecca, David or Marisa were asked to produce in terms
12 of their work papers?

13 A What they shared with me? Because I didn't
14 hear the conversation, the request firsthand?

15 Q Right.

16 A Was that they were asked to do a similar
17 thing, to provide E-mails and any other either hard copy
18 or on-line material that they had generated. I think --
19 it sounded like that to me, that it was a very similar
20 kind of request.

21 Q Okay. Do you know whether any of the
22 individuals I just mentioned generated work papers --
23 work papers other than just E-mails?

24 A I don't know.

25 MR. HERRON: We've found none. So this is a

1 Q Was any document created that related to that
2 review?

3 A I don't recall.

4 Q Who did the review?

5 A Well, I'm -- Jamy and Noah read -- one of the
6 two of them. This would not have been something Jared
7 would have done.

8 Q Did you at any time instruct the individuals
9 who were working with you on your report, Exhibit Number
10 2, to retain the work papers?

11 A I don't think I did.

12 Q Did you generate any work papers as part of
13 your creation of Exhibit Number 2?

14 A The way I work, typically, is to have a draft
15 evolve, and do -- rather than creating separate memos or
16 summaries, I will simply write into the draft,
17 continuously revising and deleting the old draft, so I
18 don't -- as I have on occasion -- mistake the older one
19 for the newer one.

20 Q I'm not asking about drafts of the report.
21 I'm asking, rather, are there work papers other than
22 drafts of the report that you generated in connection
23 with that?

24 A Perhaps, but they would be included in all the
25 material that was produced to the litigation team.

1 formal request of the work papers for anyone who worked
2 on this report, including Marisa Saunders, Noah
3 Delissovoy, Rebecca Joseph, David Silver and Jamy
4 Stillman.

5 MR. ROSENBAUM: I think you have everything
6 that's been called for, David.

7 MR. HERRON: Well, we viewed the thirty
8 thousand-odd pages of documents pretty intensely, those
9 that were produced and identified, at least the ones
10 that we have been able to locate, and we found none.

11 MR. ROSENBAUM: As I said, the fact that you
12 saw 30,000 indicates that the turnover was quite
13 voluminous. I'll be glad to make another request, but I
14 think you've been -- had turned over to you everything
15 that's called for by the request.

16 MR. HERRON: We don't.

17 MR. ROSENBAUM: Now you're assuming that there
18 are things that exist that you may not have or may not
19 be called for by the report. I don't agree with that.

20 MR. HERRON: I'm just mentioning that there
21 are absolutely no work papers whatsoever that we've seen
22 from any of these individuals which seems a -- given the
23 November 2001 order that required work papers being
24 produced, that certainly an instruction must have been
25 sent out that they were to be retained.

1 And if the fact turns out -- since we've
2 received none, I'm assuming, I may be wrong. You'll let
3 me know that those work papers, instead of being
4 retained, were destroyed and which were destroyed. Just
5 my interest in seeing what you might have.

6 (Brief recess taken.)

7 (Record read.)

8 BY MR. HERRON:

9 Q I'm a little bit confused about Exhibit 2
10 versus the scholarly report that you've talked about.
11 Are there two presently existing separate reports or
12 studies?

13 A The scholarly paper?

14 Q Yes.

15 A Is in a draft form and has to be completed by
16 February 1st.

17 Q Why is that?

18 A Because I have a commitment from a publisher
19 and so it's in process.

20 Q I think that you said that both the scholarly
21 paper on the one hand and Exhibit 2, that is your expert
22 report, were moving along at the same time. Am I
23 getting it right or wrong?

24 A That's right, because the research base is
25 very much the same. I mean, there's enormous overlap in

1 the research base for the two papers.

2 Q Was the scholarly report then that's not yet
3 completed by -- has to be by February 1 being drafted at
4 the same time as Exhibit 2, your expert report?

5 A My process of producing papers may be best
6 characterized as brain dump into the computer. So as I
7 do analyses and have thoughts and ideas, I dump them
8 into the computer. What evolved out of that are drafts
9 of various papers, often sort of coming at a late stage
10 of the game. So this one -- the same dump that produced
11 that one is also producing the scholarly paper, although
12 there's some additional things in the scholarly version
13 that don't appear in this one, and there will be some
14 things that appear in this one that don't appear in that
15 one. That one, thankfully, will be only about 30 pages
16 in length because of the restrictions of publication.

17 MR. ROSENBAUM: Be careful. Then they're
18 going to say so you agree that Exhibit 2 came from a
19 dump.

20 MR. HERRON: I personally will not say that.
21 You have my word.

22 MR. ROSENBAUM: That's what associates do. Do
23 you want some information now?

24 MR. HERRON: Sure. That would be fine

25 MR. ROSENBAUM: This is what I'm informed.

1 You asked earlier today about the American Association
2 of Publishers report that is referenced. I'm told
3 that -- the one from 98 -- there was a press release
4 that we turned over to you about that plaintiff. XP-JO
5 804 dash 806 -- I'm sorry. 806. Dash 806.

6 I'm told that the 2000 survey, you should look
7 at plaintiff 62170 dash 62181 --

8 THE REPORTER: I'm sorry, counsel. I can't
9 hear you.

10 MR. ROSENBAUM: I'm sorry. It's under the
11 chart of the -- into the chart -- the documents for
12 Dr. Oakes, you should look also at plaintiff's 62021
13 dash 62169. And the textbook motion.

14 I'm sorry. What?

15 MS. FANELLI: (Inaudible.)

16 THE REPORTER: I cannot hear you.

17 MS. FANELLI: Off the record.

18 (Discussion off the record.)

19 MR. ROSENBAUM: I want to add to that 62170
20 dash 62181 and 62021 dash 62169, my understanding is
21 that the turnover took place on December 2 -- in 2001,
22 December. If you have any problems with that, David,
23 fine. If I'm misrepresenting something inadvertently,
24 let me know.

25 MR. HERRON: Just a question.

1 MR. ROSENBAUM: I've also been informed that
2 these materials do appear publicly from time to time on
3 websites. I can't say I've seen it, and that the AAP
4 periodically changes its website. But anyway, please
5 check those documents and, you can leave me a message
6 this evening, if you like, if there's a problem.

7 MR. HERRON: Okay. You were referring to on
8 item one, that's the 1998 report, is a press release of
9 three pages. So the actual new statewide survey has not
10 been produced.

11 MS. FANELLI: That's what is referenced.

12 MR. ROSENBAUM: I think that -- I think that's
13 what is referenced in the press release Ms. Fanelli
14 informs me. I think that's what the reference is in Dr.
15 Oakes' report? Is that right?

16 MS. FANELLI: I think that's what you told
17 me.

18 MR. ROSENBAUM: In fact, looking at page 121
19 of Dr. Oakes' report, the very first item that's
20 referenced is consistent with what I think I've just
21 said. The press release, it wasn't publicly available,
22 or even if it was, and we gave it to you, as I said,
23 please, look at those pages, and if you have a problem,
24 let me know.

25 MR. HERRON: Thank you very much.

1 Q Your method of generating -- I suppose that's
2 any research but, in particular, the report, this expert
3 report, Exhibit Number 2 -- strike that.

4 Did you complete this expert report, Exhibit
5 Number 2, and then use it as a basis in any way for your
6 scholarly report?

7 MR. ROSENBAUM: I think that misrepresents the
8 process that she described, but you can answer.

9 THE WITNESS: I worked on the two reports, the
10 two papers simultaneously, and there will be
11 considerable overlap between them. But the framing of
12 the scholarly paper is somewhat different. The length
13 is certainly different, and the sources of evidence are
14 likely to be -- and the examples will be a restricted
15 set. So they are -- they were produced in a very
16 coordinated fashion. I had both products in my head as
17 I was doing this work.

18 BY MR. HERRON:

19 Q Let's return to Exhibit 6 and page 2 of that
20 exhibit, which is Bates-stamped at the bottom, plaintiff
21 XP-JO 13746. I would like to talk to you about
22 paragraph 9.

23 The first sentence reads, "I understand that
24 the state's CCR (Coordinated Compliance Review???)
25 reports speak to whether students have appropriate

1 I also read some depositions that -- by the
2 manager of the CCR unit in the department, I believe,
3 and cite some of that -- I think all of those things are
4 cited in the report. I may have -- I may have had
5 conversations with Jamy Stillman, who was my research
6 assistant on this project, because as a teacher, she may
7 have participated in a CCR at the school where she
8 taught prior to becoming a graduate student.

9 I may have read in some other policy documents
10 authored by other people some descriptions of the
11 process, some analyses, but I don't recall specifically.

12 Q Based on what you've learned since the date of
13 this E-mail, this exhibit, number 6, do you feel that
14 you're qualified to speak as an expert regarding the CCR
15 process, what it does, what its inefficiencies are?

16 A Certainly with regard to the extent to which
17 the CCR process considers and has procedures in place
18 related to the areas of interest in my expert reports, I
19 do, yes.

20 Q "Expert reports" meaning all expert reports
21 you've produced, or just this one, Exhibit Number 2?

22 A Well, there's some overlap between this report
23 and --

24 Q Yes.

25 A -- and the third report, which is the

1 access to the core curriculum?"

2 Did I read that correctly?

3 A Yes.

4 Q At the time that you wrote this, did you --
5 what level of knowledge did you have concerning the
6 state's CCR process?

7 A I was very familiar with the fact that the
8 state did conduct these CCR's regularly. I had known
9 and been in schools that participated in the reviews,
10 and I knew that they had to do with the monitoring of
11 the appropriate use of categorical funding.

12 I was not at that time familiar with all of
13 the specifics of what was included in the review.

14 Q Have you ever participated in a CCR review on
15 a particular school site?

16 A I don't think so.

17 Q How did you further familiarize yourself with
18 the CCR process after the date of this E-mail?

19 A I reviewed the website from the Department of
20 Education, which explains the process. I've looked at,
21 read and included the -- some of the documents that are
22 used by the review teams as a part of the CCR and by the
23 local districts as they comply with the CCR process. I
24 also read some selection of CCR reports made about
25 California schools, several California schools.

1 synthesis. So those two.

2 Q Yes. How about beyond that? Are you expert
3 regarding the issues beyond what you've just identified?

4 MR. ROSENBAUM: I don't know what that means.
5 Vague and ambiguous.

6 MR. HERRON: Let me rephrase it.

7 Q You said that you're qualified as an expert to
8 speak about CCR issues, at least insofar as they're
9 referenced in either of your expert reports.

10 A I believe that my knowledge of education
11 policy and policy instruments provides me sufficient
12 background to analyze the CCR as a particular instance
13 of an oversight instrument used in the context of state
14 and federal policy.

15 Q And to critique it?

16 A Well, analysis does sometimes lead to
17 critique, if warranted.

18 Q But the question is are you expert enough in
19 the CCR process to critique it?

20 A I'm expert enough in oversight, policy
21 instruments used to oversee compliance with state policy
22 to make a considered and I think expert judgment about
23 the CCR process, yes.

24 Q The last sentence of paragraph 9 states, "Also
25 can you find out whether FCMAT" -- that's all caps --

1 "(a state agency that does audits, I think) looks at
2 this?"

3 At that point in time what was your
4 familiarity with the FCMAT?

5 A The familiarity I had with FCMAT was more in
6 terms of its intervention in districts having financial
7 problems, and the support or the restructuring efforts
8 or support it provided in that regard. I was not using
9 the word "audit" here in any sort of technical sense
10 like the -- the actual state audit group. But I was not
11 sure whether or not the issue of instructional materials
12 was ever included in FCMAT's work and oversight.

13 I'm not sure at this point I would -- again, I
14 was using state agency in -- rather loosely in this,
15 meaning an entity that acts as an agent of the state in
16 its work with schooling districts.

17 Q That's what you understand FCMAT to be, an
18 entity that works as an agent of the state?

19 A I was responding to your question about what I
20 understood about FCMAT at this point in time when I
21 wrote this E-mail.

22 Q How about now? Do you understand that FCMAT
23 is an entity that operates as an agent of the state?

24 MR. ROSENBAUM: Vague and calls for legal
25 conclusion.

1 master plan, committee for the master plan work, and I
2 associate him with FCMAT, but I could be wrong so I
3 don't -- I would want to verify my memory on that.

4 Q Have you ever spoken to Tom Henry?

5 A Yes.

6 Q Have you ever spoken to Tom Henry about
7 anything having to do with this case?

8 A No.

9 Q What did you do after the date of this E-mail
10 to learn more about FCMAT insofar as it had anything to
11 do with Exhibit 2, your report?

12 A After my research assistants tracked down
13 additional information about FCMAT --

14 Q Yes.

15 A -- and looked, you know, from documents and
16 websites, and we had conversations about what was there,
17 it became clear to me that the work that FCMAT had done
18 in providing assistance to Compton Unified School
19 District did, in fact, have some relationship to the
20 availability and trying to improve the availability and
21 access of students to textbooks and curriculum
22 materials.

23 So I read further about that particular
24 instance of FCMAT help and actually cited it in my
25 report.

1 THE WITNESS: I know the agency -- I know that
2 FCMAT provides assistance to school districts that have
3 been identified as having difficulty by government
4 entities. I'm not quite sure about whether it's the
5 county's or the state or both or either that actually --
6 or whether the district actually itself, when it's been
7 identified as being in some difficulty, engaged FCMAT.
8 I can imagine a number of relationships, but I don't
9 know -- I couldn't say the specifics.

10 BY MR. HERRON:

11 Q Do you know what -- do you know how FCMAT was
12 created?

13 A No.

14 Q Do you know whether -- do you now how FCMAT is
15 funded?

16 A Not specifically, no.

17 Q Do you know whether it has statutory authority
18 for the activities it conducts or performs?

19 A No.

20 Q Do you know who its executive director is?

21 A Yes, I can -- I do because -- Tom Henry is the
22 name that comes to mind, but I'm not sure.

23 Q Tom Henry?

24 A That's a name that comes to mind as someone
25 involved, who was very involved in the California joint

1 Q I want to talk to you a little bit about
2 paragraph 2 on page 2 of Exhibit 6. Page 2 of Exhibit 6
3 is actually Bates stamp JO 13746. This concerns
4 apparently the, quote, "request for the matches of
5 attorneys and experts," unquote.

6 What did you mean by that?

7 A I was interested in helping the scholars
8 understand who on the litigation team might be most
9 useful for them to talk to about the work they were
10 doing and how their own research on these topics
11 overlapped with, intersected with the substantive issues
12 in the case.

13 I had also learned by that point that the
14 lawyers become quite -- develop considerable expertise
15 on the topics of the case and turn out to be wonderful
16 sources for researchers who are looking for documents
17 and reports and things that may be other kinds of
18 material that is related to subjects they're interested
19 in.

20 Q When you say "lawyers," you mean plaintiffs'
21 attorneys in this case served as the resource you just
22 referred to?

23 MR. ROSENBAUM: That's not what she testified
24 to. Mischaracterizes her testimony.

25 THE WITNESS: I was interested in having the

1 scholars learn who on the litigation team was
2 particularly expert in the topics that they were doing
3 their research papers on. So if they desired, they
4 might be able to connect with that person to use them as
5 a resource.

6 BY MR. HERRON:

7 Q Did you ever learn what the matches were of
8 experts to attorneys?

9 A Actually, I don't -- I was able in a few cases
10 to suggest to the researchers that they talk to
11 particular attorneys. Never was anything approaching a
12 list of matches between attorneys and experts achieved.

13 Q You never saw a document that served that
14 purpose?

15 A I might have seen a prelim list of ideas about
16 who might -- I might have even produced the preliminary
17 list of ideas about who might have expertise in various
18 areas, but to my knowledge, or at least in my domain of
19 the work, I have never had a formalized -- anything that
20 approaches a formal list of matches.

21 Q Who, if anyone, on plaintiffs' litigation team
22 did Robert Corly interact with concerning his report?

23 A Robert Corly was not a part of the group of
24 scholars who I worked with, but I know from the work I
25 did on the synthesis report that -- at least I know that

1 THE WITNESS: I don't think I heard
2 anything.

3 MR. ROSENBAUM: David -- I have not posed
4 objections, but this is so far outside the scope of the
5 letters that we received from you as to what the
6 coverage of this deposition was going to be involved
7 with. A very small percentage of your questions today
8 have been within that scope.

9 Again, I haven't stopped you. How is the
10 lawyer who may have been working with Meg Sandel --
11 lawyers -- relevant to the areas that you described as
12 the basis for this deposition?

13 MR. HERRON: First, we didn't have to describe
14 anything about what this deposition is going to be
15 about. Second, she has three reports, and I think that
16 this basic information of how she interacted with any of
17 the experts, how she worked with them in generation of
18 the reports is perfectly fair game whether it relates to
19 this report or others.

20 MR. ROSENBAUM: Completely -- it's completely
21 contrary to what you represented the basis of this
22 deposition is going to be, what our notifications to you
23 were about. I don't know what the relevance of this is.
24 Go ahead.

25 MR. HERRON: I don't know what to say either.

1 I spoke with Peter Alisaberg (phonetic) when I wanted to
2 obtain the final version of Corly's report to use as --
3 in the construction of my synthesis paper.

4 Q Who was -- who, if anyone, was Linda
5 Darling-Hammond matched up with on plaintiffs'
6 litigation team?

7 MR. ROSENBAUM: If you know.

8 THE WITNESS: Linda had relationships with the
9 litigation team prior to the time that I did so I was
10 not really involved in helping Linda identify who might
11 be a useful resource for her.

12 BY MR. HERRON:

13 Q Do you know who she worked with principally on
14 plaintiffs' litigation team with respect to her report?

15 A Principally? No.

16 Q Was Megan Sandel part of the group of
17 scholars?

18 A No.

19 Q Do you know with whom she worked on
20 plaintiffs' litigation team, if anyone, as concerns her
21 report?

22 A Not without speculating.

23 Q What did you hear?

24 MR. ROSENBAUM: If anything. Calls for
25 speculation.

1 We're going to ask all of these questions about -- at
2 some time, and it can be at the time of the first
3 report, the second or the third. They're all fair
4 game.

5 MR. ROSENBAUM: I don't agree with you
6 necessarily they're fair game. Certainly for this
7 witness. But in any case, go ahead and ask your
8 questions.

9 MR. HERRON: If that's your position, why did
10 you raise the issue?

11 MR. ROSENBAUM: Because I do think it's an
12 enormous waste of time for this witness to have to spend
13 here. It is not relevant to anything that this witness
14 is concerned about who Sandel may have been attached to,
15 and I don't think it's an appropriate use of discovery
16 time.

17 MR. HERRON: I think it's a perfectly
18 appropriate use. If you want to instruct her, instruct
19 her, but I am going to continue to ask these questions
20 until they've been fully answered.

21 MR. ROSENBAUM: Stalling, David.

22 MR. HERRON: No, that's not true. I don't
23 appreciate that.

24 Q Glen Erthman -- was he part of the group of
25 scholars?

1 MR. ROSENBAUM: She's already told you the
2 group of scholars. She did that this morning at
3 length.
4 MR. HERRON: No, that's not correct, Mark.
5 You're now interfering and wasting our time.
6 Q Can you please answer the question?
7 A Glen Erthman was not among the group of
8 scholars that I contacted. I don't know Glen Erthman.
9 But one of the experts I did, whose participation --
10 MR. ROSENBAUM: Just answer his question.
11 THE WITNESS: Glen Erthman became a part of my
12 circle of scholars in that a professor who I had asked
13 to participate around the issue of facilities named him
14 as someone with great expertise in this area, and
15 someone that she would like to work collaboratively
16 with, and she did that.
17 BY MR. HERRON:
18 Q Who was that?
19 A Her name is Flora Ortiz, Professor Flora Ortiz
20 at the University of California Riverside.
21 Q Do you know with whom Mr. Erthman was paired
22 on the plaintiffs' litigation team?
23 A No.
24 Q Was William Koski one of the scholars?
25 Let's make this easier. I am going to list

1 these people. Why don't you tell me who are the group
2 of scholars and who are not. Koski, Grubb, Go,
3 Mitchell, Russell, Mintrop, Fine, Hakuta, Meyers.
4 A Let's go one by one, please.
5 Q Koski?
6 A Not on my original list, but quickly joined
7 the team once I read his paper.
8 Q How about Norton Grubb?
9 A Yes.
10 Q Laura Go?
11 A Yes.
12 Q Ross Mitchell?
13 A No.
14 Q Did he ever join the team?
15 A No.
16 Q Michael Russell?
17 A Yes.
18 Q Heinrich Mintrop?
19 A Yes.
20 Q Michelle Fine is a no?
21 A No, but she joined the team at a much later
22 date.
23 Q Kenji Hakuta?
24 A No.
25 Q Ann Meyers?

1 A No.
2 Q Do you know with whom Koski was paired?
3 A No.
4 Q Norton Grubb?
5 A No.
6 Q Laura Go?
7 A No.
8 Q Ross Mitchell?
9 A No.
10 Q Michael Russell?
11 A No.
12 Q Heinrich Mintrop.
13 A No.
14 Q Michelle Fine?
15 A No.
16 Q Mr. Hakuta?
17 A I know he did some work with John Affeldt, but
18 I don't know if that was any sort of official pairing.
19 Q Paragraph 4 of Exhibit 6 talks about Jeannie
20 sending the next batch of E-mails, copies of preliminary
21 ideas from expert -- you know. Do you see the first
22 sentence. Could you tell me what that means, of
23 paragraph 4, page 2 of Exhibit 6.
24 A Yes. It looks like I was -- I had been having
25 conversations with the experts about what a

1 comparable -- an outline might be that would work for
2 all of the topics in production of the scholarly papers
3 in order to achieve some consistency among the papers.
4 They had been either talking with me on the phone, or I
5 suspect maybe in some cases sending me messages with
6 preliminary ideas about how they would approach this
7 scholarly paper.
8 Q Did you retain those E-mails and produce them?
9 A I had a hard disk crash, and all of my E-mail
10 between -- I can't remember the date of the crash, but
11 it was for about -- I was able -- our educational
12 technology unit was able to recover everything that I
13 had lost, except E-mail, between the end of September
14 and the 1st of January of 2001 (sic). So those E-mails
15 are gone.
16 Q I'm sorry. The dates were end of September
17 2000 to January, 2002?
18 A Yes.
19 Q Okay. Paragraph 5 in this second page of
20 Exhibit 6 --
21 A Those dates are very -- I mean, I think that's
22 right.
23 Q Approximate?
24 A Yeah, yeah.
25 Q Paragraph 5, the very last phrase talks about

1 coordinating the entire set of papers.
 2 A Yes.
 3 Q You viewed that as IDEA'S role?
 4 A IDEA's role in coordinating the set of
 5 scholarly papers that would be produced as a set of
 6 products from IDEA.
 7 Q IDEA was not coordinating the production of
 8 expert reports?
 9 A No.
 10 Q Who was doing that?
 11 A I have no idea.
 12 Q We can set that aside.
 13 Did you have discussions with anyone at any
 14 time about who was coordinating the expert -- the
 15 drafting of the expert papers?
 16 MR. ROSENBAUM: Assumes facts not in
 17 evidence.
 18 MR. HERRON: Pardon me?
 19 MR. ROSENBAUM: Assumes that somebody was
 20 coordinating.
 21 THE WITNESS: You know, I don't recall
 22 anything specific, and a -- I think at one point early
 23 on, Helene Silverberg, who is an associate at Morrison &
 24 Foerster, either called me or E mailed me and said
 25 something about developing a list of experts for

1 testifying experts. But I don't recall ever having a
 2 conversation with her about that subsequent to that,
 3 whatever that initial something was.
 4 BY MR. HERRON:
 5 Q I'm a little confused. I mean, you talked to
 6 Mark Rosenbaum and Jack Londen about doing this
 7 scholarly research. You've testified about that
 8 already. Right? Is that correct? You have to be
 9 audible --
 10 A Yes.
 11 Q And you knew that whatever research was
 12 performed by IDEA and the scholars that you identified
 13 would be turned into expert reports, or at least some of
 14 it would be. Correct?
 15 A No, I didn't know that. Actually, it had been
 16 made very clear, both to the lawyers and to the
 17 scholars, that should the lawyers, the litigation team,
 18 be interested in pursuing any of the scholars as expert
 19 witnesses, that those negotiations and arrangements
 20 would take place outside of the purview of my project,
 21 and that I would not be a party to those decisions or
 22 conversations.
 23 Q I see. Who contacted you to actually provide
 24 an expert report then?
 25 A Who asked me if I would provide an expert

1 report?
 2 Q Yes.
 3 A Either Jack or Mark. I am not sure that I
 4 recall which.
 5 Q Do you know when that was?
 6 A Sometime in the fall of -- late summer or fall
 7 of 2001.
 8 Q Do you recognize --
 9 (Discussion off the record.)
 10 MR. HERRON: These are the -- the following
 11 documents taken from the bibliography attached to
 12 Exhibit 2, which is the expert report we're talking
 13 about. We have been unable to locate, and they were not
 14 produced, as far as we know, by plaintiffs. They are as
 15 follows: The Association of American Publishers, School
 16 Division, 1996. AAP Instructional Materials Survey Data
 17 Reports.
 18 MR. ROSENBAUM: I have responded to that as
 19 best I can as of now, but go ahead.
 20 MR. HERRON: I thought that was different than
 21 the first two. That's the third one on.
 22 MS. FANELLI: This one.
 23 MR. ROSENBAUM: Ms. Fanelli says that if you
 24 look at plaintiffs 62021 -- 62021 dash 62169 that that,
 25 I believe, would be responsive to what you just asked.

1 MR. HERRON: Excellent.
 2 De Guzman, A, February, 2000, Statement by
 3 World Bank in the Southeast Asian Ministers of Education
 4 Organization.
 5 MR. ROSENBAUM: Hang on a second, David,
 6 please. Let's just -- on the reference list -- where is
 7 that, David?
 8 MR. HERRON: I think it would be De Guzman.
 9 THE WITNESS: Page 123.
 10 MR. ROSENBAUM: Part of the inspection team in
 11 Iraq.
 12 MR. HERRON: Is he?
 13 MR. ROSENBAUM: I have no idea.
 14 MR. HERRON: You just --
 15 (Discussion off the record.)
 16 MR. HERRON: Educational Products Information
 17 Exchange Institute, 1977, report referred to there.
 18 MR. ROSENBAUM: Thank you.
 19 MR. HERRON: Now, next is Education Week
 20 1-10-2002, The State of the States.
 21 MR. ROSENBAUM: Hang on a second. I think
 22 that's publicly available.
 23 THE WITNESS: It is.
 24 MR. ROSENBAUM: It's on their website.
 25 MR. HERRON: We'll try again.

1 THE WITNESS: Can I offer something helpful?
 2 MR. HERRON: Certainly.
 3 THE WITNESS: Each year the first week in
 4 January, or right on the 1st of January, Ed Week
 5 produces a special issue called Quality Counts, my
 6 recollection, especially given the page numbers, is that
 7 it's that larger annual report that this may be
 8 referring to rather than their weekly publication. It
 9 should also be on their website. Try Quality Counts.
 10 MR. HERRON: Excellent.
 11 The next one is Institute for Educational
 12 Reform, 2001, Advanced Placement in California. Again,
 13 could not find -- was not identified, nor produced, and
 14 we could not find it on the web.
 15 THE WITNESS: You can find it on the web
 16 under -- it's a California State University, Sacramento
 17 division called the Institute for Educational Reform,
 18 and the report, I believe, is on their website.
 19 MR. ROSENBAUM: That's one of your clients.
 20 MR. HERRON: I have so many.
 21 Next, Krashen, S., 1995, School Libraries,
 22 Public Libraries, and the NAEP Reading Scores.
 23 All of these are in the category of neither
 24 identified or produced, and we could not find them on
 25 the web.

1 MR. ROSENBAUM: Off the record.
 2 (Discussion off the record.)
 3 MR. HERRON: Next is Ve, V-E, Chen and Smurden
 4 (phonetic) DT, which, I think, is a sufficient
 5 identification, next is -- oops. It is not a sufficient
 6 identification. Gender Differences in Middle Grade
 7 Science Achievement. Subject domain, et cetera.
 8 THE WITNESS: My guess is -- well, I shouldn't
 9 guess, but clearly Science Edition is a misprint, that
 10 it probably is Science Education. That's my guess, but
 11 I would have to double check. Again, I think a journal
 12 in the library.
 13 MR. HERRON: The next, Ve Chen and Smurden
 14 (phonetic) document we also could not find.
 15 MR. ROSENBAUM: One second, please. Tell us
 16 again.
 17 MR. HERRON: Ve, V-e, Chen and Smurden BA,
 18 1996, The Influence of School Climate and Gender
 19 Differences in the Achievement and Engagement of Young
 20 Adolescents.
 21 MR. ROSENBAUM: Okay.
 22 MR. HERRON: Next, is the Market Data
 23 Retrieval 2000, A, Technology and Education, 2000.
 24 Next is National Education Goals Panel Weekly.
 25 Teacher Spending, Dipping Into Their Own Pockets for

1 Classroom Expenses.
 2 Next, National Research Council, 1996,
 3 National Science Education Standards.
 4 THE WITNESS: You couldn't find that?
 5 MR. HERRON: That's what they tell me.
 6 THE WITNESS: It's both on the -- the National
 7 Research Council is also the National Academy of
 8 Sciences, and it should be on their website. You'll
 9 find it in probably every public school in America.
 10 MR. ROSENBAUM: That's why they couldn't find
 11 it.
 12 MR. HERRON: I'll have my seven year old look
 13 for it.
 14 Next is Wenglisky, W-e-n-g-l-i-s-k-y, 1998,
 15 Does it Compute, et cetera.
 16 Next is World Bank, 1996.
 17 MR. ROSENBAUM: One second. Off the record.
 18 (Discussion off the record.)
 19 MR. ROSENBAUM: If we've got it, it's either
 20 been turned over, but it was on that website. If we
 21 have an additional copy of it, of course, you can have
 22 it.
 23 MR. HERRON: If it's not on that website,
 24 then, obviously, it's not available and should be
 25 produced.

1 MR. HERRON: Finally, World Bank, 1996, India,
 2 Primary Education Achievement and Challenges. Same
 3 issue.
 4 MR. ROSENBAUM: Okay.
 5 MR. HERRON: Whatever you can tell us on those
 6 items would be helpful.
 7 MR. ROSENBAUM: Thank you.
 8 MR. HERRON: On the stipulation, I'd say same
 9 stip, but I don't think she's reported for our cases
 10 before so I'll read it off.
 11 May we stipulate the copies of the documents
 12 attached to the deposition may be used as originals, and
 13 may we further stipulate that the original of this
 14 deposition be signed under penalty of perjury.
 15 The original will be delivered to the offices
 16 of the ACLU and directed to Mark Rosenbaum; that the
 17 reporter is relieved of liability for the original of
 18 the deposition. The witness will have 30 days from the
 19 date of the court's transmittal letters to review, sign
 20 and correct the deposition.
 21 And that Mr. Rosenbaum or anyone he shall
 22 designate from plaintiffs' side, shall notify all
 23 parties in writing of any changes to the deposition
 24 within that 30-day period. And if there are no such
 25 changes or signature within that time, that any unsigned

1 and uncorrected copy may be used for all purposes as if
 2 signed and corrected.
 3 MR. ROSENBAUM: If it's not a burden for the
 4 reporter, because I'm out of town a lot now because of
 5 depositions and my teaching, if copies could be
 6 served -- the stipulation that Mr. Herron read may -- if
 7 it could be served on both me and Ms. Lhamon, Catherine
 8 Lhamon, I think it would facilitate the process. Is
 9 that okay?
 10 THE REPORTER: Yes.
 11 MR. ROSENBAUM: With that addendum, I
 12 certainly stipulate to that.
 13 MR. HERRON: Very good.
 14 MR. ROSENBAUM: My experience is that that
 15 stipulation is not well known to other counsel. If you
 16 circulate it to your counsel, that would be a help.
 17 MR. HERRON: Okay.
 18 (Whereupon, at 5:10 P.M., the deposition of
 19 JEANNIE OAKES was adjourned.)
 20
 21
 22
 23
 24
 25

1 STATE OF CALIFORNIA)
 2) ss
 3 COUNTY OF LOS ANGELES)
 4 I, LAURA J. MELLINI, Certified Shorthand
 5 Reporter, number 8181, for the State of California, do
 6 hereby certify;
 7 That prior to being examined,
 8 JEANNIE OAKES,
 9 the witness named in the foregoing deposition, was by me
 10 duly sworn to testify the truth, the whole truth and
 11 nothing but the truth;
 12 That the testimony of the witness and all
 13 objections made at the time of the examination were
 14 recorded stenographically by me;
 15 That the foregoing transcript is a true
 16 record of the testimony and all objections made at the
 17 time of the examination.
 18 I hereby certify that I am not interested
 19 in the event of the action.
 20 IN WITNESS WHEREOF, I have subscribed my
 21 name this day of , 2003.
 22
 23
 24 _____
 25 LAURA MELLINI
 CSR #8181

1 STATE OF CALIFORNIA)
 2) ss
 3 COUNTY OF LOS ANGELES)
 4
 5
 6
 7 I, JEANNIE OAKES,
 8 hereby certify under penalty of perjury under the laws
 9 of the State of California that the foregoing is true
 10 and correct.
 11 Executed this day of ,2003
 12 at ,
 13 California.
 14
 15
 16
 17
 18
 19
 20 _____
 21 JEANNIE OAKES
 22
 23
 24
 25