

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 221 - 430
) Volume II
)

DEPOSITION OF JEANNIE OAKES
FRIDAY, JANUARY 24, 2003
9:45 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 FRIDAY, JANUARY 24, 2003,
3 9:45 A.M., at 400 South Hope Street, Los Angeles,
4 California, before LAURA J. MELLINI, CSR NO. 8181.

5
6 APPEARANCES OF COUNSEL:

7
8 FOR PLAINTIFFS:

9
10 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
11 BY: MARK ROSENBAUM, ESQ.
12 SOPHIE A. FANELLI
13 JOHN NOLTE
14 1616 BEVERLY BOULEVARD
15 LOS ANGELES, CALIFORNIA 90026-5752

16
17 FOR DEFENDANT STATE OF CALIFORNIA:

18
19 O'MELVENY & MYERS LLP
20 BY: DAVID L. HERRON, ESQ.
21 400 SOUTH HOPE STREET
22 LOS ANGELES, CALIFORNIA 90071-2899
23
24
25

1 APPEARANCES OF COUNSEL: (Continued)
2 FOR INTERVENOR LOS ANGELES UNIFIED SCHOOL DISTRICT:

3
4 LOZANO SMITH
5 BY: JUDD L. JORDAN
6 20 RAGSDALE DRIVE
7 SUITE 201
8 MONTEREY, CALIFORNIA 93940-5758
9

10 FOR DEFENDANT DELAINE EASTIN, STATE SUPERINTENDENT OF
11 PUBLIC INSTRUCTION, STATE DEPARTMENT OF EDUCATION, STATE
12 BOARD OF EDUCATION:

13
14 STATE OF CALIFORNIA
15 DEPARTMENT OF JUSTICE
16 OFFICE OF THE ATTORNEY GENERAL
17 BY: JOSEPH O. EGAN
18 DEPUTY ATTORNEY GENERAL
19 1300 I STREET, SUITE 1101
20 P.O. BOX 944255
21 SACRAMENTO, CALIFORNIA 94244-2550
22
23
24
25

1 (APPEARANCES CONTINUED)

2
3 FOR INTERVENOR CALIFORNIA SCHOOL BOARD ASSOCIATION:

4
5 LAW OFFICES OF OLSON HAGEL & FISHBURN LLP
6 BY: N. EUGENE HILL, ESQ.
7 555 CAPITOL MALL, SUITE 1425
8 SACRAMENTO, CALIFORNIA 95814-4602
9
10
11
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I N D E X		
WITNESS	EXAMINATION	PAGE
JEANNIE OAKS		
Mr. Herron		236
(P.M. Session)		340

E X H I B I T S		
NO.	PAGE	DESCRIPTION
Plaintiff's		
A	227	Copy of Document Entitled Documents David Herron Identified as Missing on Thursday, January 23, 2003, that are Publicly Available on the Internet or have been Produced:
Defendant's		
7	353	Copy of Document Entitled Williams Meeting, PLTF-XP-JO 09085
8	355	Copy of Document Entitled Meeting about Williams Case 6-26-01, PLTF-XP-JO 09051
9	355	Copy of E-mail Dated Friday, June 29, 2001 from Jeannie Oakes, PLTF-XP-JO 09092 to 09093
10	383	Copy of Document Dated 7-04-01, Williams Experts, Summary of Phone Conversations, PLTF-XP-JO 09083 to 09084

1 Exhibits (continued)

2 NO.	PAGE	DESCRIPTION
3 11	392	Copy of Document Entitled Conversation with Mark Rosenbaum & Gary Blazi - 7/6/01, PLTF-XP-JO 09091
6 12	396	Copies of E-mail and Draft Concept Paper Dated July 24, 2001, PLTF-XP-JO 00047 to 00052
9 13	407	Copy of E-mail and Expert Work Document, PLTF-XP-JO 07130 to 07134
11 14	409	Copy of E-mail Dated Friday, July 27, 2001 to Gary Blasi from Linda Darling-Hammond, PLTF-XP-JO 08501 to 08502
15 15	411	Copy of E-mail and Concept for Expert Work Document Dated July 29, 2001, PLTF-XP-JO 00058 to PLTF-XP-JO 00063
18 16	415	Copy of Memo Dated August 20, 2001 to Williams Expert Team from Jeannie Oakes, PLTF-XP-JO 09086 to 09090
21 17	422	Copy of Document Entitled Research to Inform Litigation and Policy, Williams v. California, PLTF-XP-JO 09033 to 09035
24	///	
25	///	

1 LOS ANGELES, CALIFORNIA; FRIDAY, JANUARY 24, 2003
2 9:45 A.M.

3

4 JEANNIE OAKES,
5 having been previously administered an oath
6 in accordance with Code of Civil Procedure
7 Section 2094, was examined and testified as follows:
8

9 MR. ROSENBAUM: I'd like to have marked as
10 Plaintiffs' Exhibit A to this deposition a document that
11 was prepared last night. It's a two-page document. The
12 title of it is Documents David Herron Identified as
13 Missing on Thursday, January 23, 2003, et cetera.
14 Let me have this marked, and I'll supply
15 counsel with copies. I'd like this attached to the
16 deposition.
17 (The document referred to was marked by
18 the CSR as Plaintiff's Exhibit A for
19 identification and attached to and made a part
20 of this deposition.)
21 MR. ROSENBAUM: At approximately 5:10
22 yesterday in the deposition we heard for the first time
23 that some of the documents -- a fairly long list of
24 documents, actually, that were referenced in Dr. Oakes'
25 report were not available. Miss Fanelli and --

1 MS. FANELLI: Kevin.
2 MR. ROSENBAUM: -- Kevin Deborde (phonetic) at
3 Morrison & Foerster in San Francisco took the list that
4 David Herron identified to see what the story was with
5 them. We turned over tens of thousands of pages in
6 compliance with the court's order here and our usual
7 practice.
8 The documents that are listed on Plaintiffs'
9 Exhibit A are all available publicly. We have done what
10 we don't have to do, but we have listed precisely how
11 they may be found.
12 Off the record.
13 (Discussion off the record.)
14 MR. ROSENBAUM: As I indicated yesterday on
15 the record, three of the documents that were requested
16 we actually had turned over.
17 MR. HERRON: Can I just ask --
18 MR. ROSENBAUM: One second, please. I'm told
19 by Miss Fanelli that it took in the neighborhood of
20 between 30 seconds and five minutes max to find these
21 documents.
22 There are four other documents that were
23 requested by Mr. Herron that are not available on the
24 Internet, but otherwise are publicly available. The
25 Education Products Information Exchange Institute in

1 1977 -- I'm not going to read the full report. That is
2 available -- appears to be available on the ERIC
3 database.
4 The Lee & Burkham report, 1996, appears to be
5 available on the ERIC database. The Lee, Chen & Smerdon
6 report is publicly available at the library. We will
7 provide you with a hard copy of it. Although, again,
8 we're not required to do that.
9 The Market Data Retrieval 2000 A, Technology
10 and Education 2000, is available through the Market Data
11 Retrieval website. My understanding is that MDR needs
12 to be specifically contacted. Mr. Deborde is attempting
13 to do that this morning. I understand there is a fee
14 attached to that, but it's perfectly available through
15 the MDR website.
16 I am very concerned about this. I would like,
17 David, for -- at your convenience for you to document
18 the efforts that you undertook, your office undertook,
19 to find these available. Our people did not spend a
20 great deal of time on this, but it wasn't time that was
21 necessary to be spent.
22 And I'm also really concerned about the fact
23 both -- all sides to this case have the right to prepare
24 their depositions in their cases fully. We turned over
25 these documents to you, tens of thousands of documents

1 in October, late last year, in the fall or sometime, I
2 believe, around October.

3 Your office has a stellar reputation for
4 preparation and prosecution of litigation. If documents
5 were missing that you believe were -- should have been
6 appropriately turned over, I cannot fathom any
7 explanation as to why it took until the first day of the
8 deposition after 5:00 P.M. to request them. Your office
9 has -- makes no shortage of writing letters. You could
10 have contacted me or any of the attorneys in this case
11 for documents that were missing.

12 My conclusion is that -- this continues --
13 continues to be my conclusion in expert depositions I'm
14 attending, is that there is a stalling tactic going on
15 here. I do not know why you waited until 5:00 P.M. on
16 the deposition day to request these documents, and I
17 would like an explanation from you as to why you waited
18 until 5:10 yesterday to request these documents.

19 MR. HERRON: Well, let me respond to a couple
20 of items. I'm not going to waste all of our deposition
21 time on the little side show you're trying to create
22 with false allegations.

23 MR. ROSENBAUM: It's not false.

24 I'm sorry.

25 MR. HERRON: Yeah, your false allegations of

1 refuses, refuses to identify which documents support
2 which reports. We have asked repeatedly. You have
3 refused. This is a continuing pattern of trying to hold
4 back documents so we can't find them.

5 Let me give you an example. In the Fine
6 deposition or preFine deposition, preErthman deposition,
7 we requested documents repeatedly and were told they're
8 publicly available. You go find them. That is a tactic
9 by plaintiffs to, number one, overwhelm us with useless
10 documents that, in fact, Dr. Oakes did not rely on for
11 her report or the other plaintiffs' experts did not rely
12 on for their reports, and to make it difficult to locate
13 pertinent documents.

14 Again, I'll just emphasize, Mr. Rosenbaum, if
15 you truly were interested in proceeding in an ordinary
16 fashion in this deposition, you and your attorneys would
17 simply take the documents that Dr. Oakes relied upon;
18 you would copy those documents. They're in your
19 possession. You certainly have them. She certainly
20 looked at them in order to do her report. And you just
21 produce them.

22 Instead, you chose the delaying tactic, the
23 make-work tactic, the increase-expense tactic of
24 identifying documents or not identifying, such as the
25 ones that are on your exhibit. They're not identified.

1 some stalling technique. Let me tell you something
2 first. I very much appreciate you're looking into the
3 location of those documents. It's hardly surprising
4 that you would be able to find them quickly since you
5 had them available and since Doc Brokes (phonetic)
6 presumably had them available and could have simply
7 copied them. This problem could have been resolved by
8 your producing them as opposed to identifying a bunch of
9 documents and obscure websites that may or may not have
10 the documents as you already conceded.

11 Second of all, the documents that I mentioned
12 were not identified or produced. In other words, you
13 did not comply with the court order with respect to any
14 of those documents. In this period the plaintiffs in
15 this case were required by the court's order to identify
16 and produce documents by particular dates. Those time
17 lines were not met, and they were -- the compliance was
18 not complete, and it was very late and, in fact, for the
19 documents that were identified we did not even get those
20 together, because there were a hundred thousand or more
21 pages of those documents, until the end of December.

22 Now -- so we're doing the very best we can
23 with a very big case. Let's understand something else;
24 for Dr. Oakes, who is your principal expert witness, you
25 produced over 30,000 pages of documents. Your office

1 You didn't comply with the court order with respect --
2 in respect to these documents here.

3 Who's making it hard? Who's making things
4 more difficult? I suggest it's plaintiffs' side. I
5 reject your assertion, which is absolutely false, that
6 we're doing anything to stall. We're doing our best
7 with an enormous case and an enormous amount of
8 documents over 180,000 pages you produced with reference
9 to your experts alone, to try and get this done as
10 quickly as we possibly can. You know we're sitting here
11 with a report that's 110 single spaced pages with a
12 bibliography that's 10 pages long. That takes weeks to
13 get ready for.

14 If you want to make this easier, my suggestion
15 to you would be produce all the documents that you
16 say -- the experts relied on. Do it before the depositions,
17 and we will be able to get ready and get things done
18 quicker. But the delay, if any -- the usage of time and
19 the waste of time is not our fault. It's yours. I
20 really am offended by your assertions to the contrary.

21 I will also tell you that when you say that
22 the first three documents on the exhibit you marked were
23 produced last year, you understand that there were
24 60,000 pages of documents produced last year. Then we
25 went into mediation. You never identified them. They

1 were put together as if someone had shuffled some cards.
 2 It was your obligation to identify these as
 3 part of the expert production, to either identify them
 4 as being publicly available or to produce them, and that
 5 was not done, according to what I'm told by the people
 6 who have investigated it.

7 Can we move on with the depo?

8 MR. ROSENBAUM: Two things. We have been in
 9 come -- I don't agree with any of your
 10 characterizations. In the future, David, if there are
 11 documents, in either Dr. Oake's depositions or any of
 12 the other expert depositions, that your office cannot
 13 locate, if you could let me or one of the other
 14 attorneys know the moment you can't find those
 15 documents, we will do everything in our power to
 16 identify where those documents either exist or whether
 17 they've already been transmitted.

18 MR. HERRON: I appreciate that offer and
 19 invitation, and you have shown that with respect to Fine
 20 and Erthman that at least some of your attorneys were
 21 entertaining those requests. I appreciate that.

22 MR. ROSENBAUM: I have hard copies of
 23 documents I mentioned. You can have them at a break.

24 MR. HERRON: Which are those?

25 MS. FANELLI: The four documents on the

1 EXAMINATION

2
 3 BY MR. HERRON:

4 Q Dr. Oakes, you recognize you're still under
 5 oath?

6 A Yes, I do.

7 Q Have you recently consumed any medication,
 8 alcohol or any other substance which would cloud your
 9 mind or interfere with your ability to give your very
 10 best testimony today?

11 A No.

12 Q Is there any reason you can't give your best
 13 testimony today?

14 A No.

15 Q Since we broke last night, have you reviewed
 16 any documents regarding the case?

17 A I read my report once again. I did -- I'm not
 18 sure it's considered a document, but out of curiosity I
 19 got on my computer to trace -- try to refresh my memory
 20 of -- with chronology of my exchanges with Gary Blasi.
 21 I found that the very first E-mail exchange that Gary
 22 Blasi and I had, arranging to meet together to pursue
 23 some joint research, was in July of 2000, which made me
 24 feel more settled about my claim yesterday that I had
 25 not spoken with him about his students' work or about

1 Internet.

2 MR. HERRON: That would be great. Could I get
 3 that list of the four documents as well, or is that
 4 privileged?

5 MS. FANELLI: Actually, I will have to
 6 redact --

7 MR. ROSENBAUM: Redact some stuff.

8 MR. HERRON: If you redact, I can get a copy
 9 of it.

10 MR. ROSENBAUM: But we're furnishing hard
 11 copies of the --

12 MS. FANELLI: Four copies.

13 MR. ROSENBAUM: Of what?

14 MS. FANELLI: Yeah.

15 MR. ROSENBAUM: Three of the four documents.
 16 I'm supplying them to counsel.

17 MR. HERRON: So this is three of the four?

18 MS. FANELLI: No, here they come.

19 MR. ROSENBAUM: Why don't you do it during a
 20 break.

21 MR. HERRON: Let's do it during a break.

22 ///

23 ///

24 ///

25 ///

1 the case or anything before the case was filed.

2 MR. ROSENBAUM: So the record is clear for you
 3 David -- was that E-mail related to the case -- July
 4 2.

5 THE WITNESS: No, it was about a -- call for
 6 proposals that the chancellor had issued that I spoke
 7 about yesterday.

8 MR. HERRON: Right.

9 Q Did you review any other documents?

10 A No, not that I recall. I read the newspaper.

11 Q No, in relation to the case, of course.

12 MR. ROSENBAUM: Can I ask --

13 THE WITNESS: Oh, I did. This morning Mark
 14 showed me what I think is Exhibit 7; is that right? --
 15 that we ended the day with yesterday.

16 BY MR. HERRON:

17 Q Right.

18 A And asked me just to look at it so I could
 19 save time. I think you asked that I could look at it or
 20 take it with me. I hadn't taken it with me. Mark
 21 showed it to me, and I looked at it. That I did.

22 I'm sorry.

23 Q Did you review any other documents related to
 24 the case?

25 A No.

1 Q Did you have any discussions with
2 Mr. Rosenbaum other than the one you just referred to?
3 A Related to the case?
4 Q Right. Not the Bruins.
5 A Again, we had coffee afterwards, after the
6 session yesterday, and he was kind in his comments about
7 my responsiveness and encouraged me to continue
8 responding the way I am, but not to answer questions
9 that weren't asked.
10 Q Was there anything else discussed last night
11 between you and Mr. Rosenbaum related to the case?
12 A Not that I recall.
13 Q How about this morning?
14 A He forewarned me that this exchange over the
15 document production might take place, and that I
16 shouldn't worry about it because it was not related to
17 me.
18 Q Okay. Anything else?
19 MR. ROSENBAUM: Other than what you testified
20 to about Exhibit 7?
21 MR. HERRON: Sure.
22 THE WITNESS: Not that I recall.
23 BY MR. HERRON:
24 Q Okay. I'd like to talk to you about the first
25 part of your report, here, if I may. I'm looking at

1 page 1.
2 A I hope you don't mind if I refer to my own
3 copy.
4 Q As long as we're paginated the same, and I
5 assume we are?
6 A Yes, and it continues to have no marks in it.
7 Q Looking at the cover page of the report, page
8 number 1, so that we're on the same definitional page
9 going forward, what is it that you mean throughout this
10 report when you use the word "textbooks"?
11 A By "textbooks" I mean the primary -- the
12 primary tools that teachers use to deliver the core
13 curriculum in the class. In some cases a textbook is
14 literally a bound print book published by a textbook
15 publisher.
16 In other cases it may be -- it may include
17 other media, workbooks. But essentially by textbook --
18 just as the state has a slightly more expanded
19 definition, given the new technologies, but it's really
20 the core -- the core tool for delivering instruction.
21 The kinds of things that are on the state's textbook
22 adoption list, for example, would be included in the
23 definition of textbooks.
24 I need to say that I can't promise that I am
25 consistent throughout the report in the discussion -- in

1 the separation of textbooks, other materials.
2 Q Sometimes textbooks may mean instructional
3 materials as well?
4 A Well, there's not a clear boundary between --
5 I think in anybody's mind between primary text and
6 other, say, ancillary materials. So I can't promise
7 that I'm any more precise than anybody else about --
8 Q Sure. Instructional materials -- how is that
9 defined, or how should we define it for purposes of
10 discussion?
11 A I think of instructional materials as all of
12 those other resources, print materials, equipment,
13 supplies, manipulatives, that are used by teachers to
14 help students have access to the knowledge of the
15 curriculum. They often support what's in the primary
16 text or core delivery system that's used.
17 For example, I would include chemicals as a
18 curriculum material or instructional material in a
19 chemistry class.
20 Q How about equipment? How is that
21 differentiated from textbooks and instructional
22 materials?
23 A Well --
24 Q I take it it's a little bit broader?
25 A It's slightly different. I mean, the

1 instructional materials in a chemistry laboratory may be
2 actually the chemicals and the beakers and the -- more
3 the supply kind of thing. Where the hardscape of the,
4 you know, the plumbing and the sinks and the gas is
5 more -- is more equipment like. Again, these are very
6 loosely-bounded concepts.
7 Q When you refer to "technology" in your report,
8 what general definition does that take? I mean --
9 A Probably any piece of equipment with some
10 silicone technology in it. I mean, computers, graphing,
11 calculators and digital equipment.
12 Q Presumably software?
13 A Sure.
14 In this definition, of course, there are
15 things like -- you know, in geography, you have globes
16 and maps and all of the -- they are these subject
17 specific materials that --
18 Q Would globes and maps be instructional
19 materials?
20 A Sure. Or some might call it equipment.
21 Q What do you mean by "manipulative"?
22 A In mathematics children are often -- in
23 mathematics teachers provide children with concrete
24 objects in order to help them learn math concepts
25 through the actual physical movement of objects around

1 to understand the abstract concepts, Kisan air rods
2 (phonetic) is an example.

3 I'm certainly -- I hope you don't presume that
4 I have named all of the examples that are appropriate in
5 those categories.

6 Q I do not. Page 2 of your report talks about
7 questions that were posed that you felt were essential,
8 I take it, to be answered. Do you see those questions,
9 the bullet points?

10 A Yes.

11 Q Who developed that framework for addressing
12 the issues that your report addresses?

13 A I did.

14 Q Was that same framework suggested to other
15 scholars or experts in this case with respect to their
16 own particular studies?

17 MR. ROSENBAUM: Vague and speculation.

18 BY MR. HERRON:

19 Q To the extent you know.

20 A I know that I sent memos to the group of
21 scholars that were engaged with me in the UCLA-based
22 project, suggesting that these -- that this --
23 suggesting this as a way of organizing those scholarly
24 papers in order to provide consistency. I have no idea
25 about whether or not these questions were shared with

1 Q What is your opinion regarding the state's
2 contents standards? By which I'm really asking are they
3 good standards? Appropriate standards? Do they push
4 students? What do you think?

5 MR. ROSENBAUM: Awfully vague and overbroad.
6 You can answer it.

7 THE WITNESS: I was quite familiar with the
8 process that was -- took place to establish those
9 standards. I think --

10 BY MR. HERRON:

11 Q Did you participate in it?

12 A Not the California standards. I participated
13 in the formulation of the national standards for science
14 education. The process was both a political one and an
15 academic one, as most such processes are. I think the
16 group took the assignment extraordinarily seriously and
17 came up with -- after much political rankling in some
18 subject areas, probably the best sort of negotiated set
19 of concepts that they could have under those
20 circumstances; I personally might quibble with some of
21 the details, but I have no serious problems with the
22 actual content of those standards.

23 Q Who was the group -- the group was composed of
24 what sort of people?

25 A A combination of educators, education faculty,

1 other experts.

2 Q Okay. After the fourth bullet point there's a
3 sentence that begins, "Additionally, the assignment
4 required that I place these questions and their answers
5 in the context of California's current high stakes,
6 standards-based education system."

7 Can you explain why that's so?

8 MR. ROSENBAUM: That's vague. I don't know
9 what you mean "that's so."

10 MR. HERRON: Her words.

11 THE WITNESS: Are you asking why I was
12 required?

13 BY MR. HERRON:

14 Q Yeah, why did you consider that important to
15 place these questions in the context identified?

16 A To fully understand the importance of
17 textbooks and curriculum materials, it's critically
18 important that one understands the context in which
19 they're going to be used. It was my professional
20 judgment that ignoring the fact that California has a
21 standards-based education system, and students are
22 assessed with instruments or students are assessed with
23 high-stakes tests was a critical factor in -- of context
24 in which their access to textbooks and curriculum
25 materials occurs.

1 discipline, experts in the disciplines and perhaps a few
2 other types of people.

3 Q How long did deciding on the content standards
4 take for the core courses?

5 MR. ROSENBAUM: Foundation. Vagueness. Why
6 don't you say what you mean by core subjects.

7 MR. HERRON: Core subjects referenced in your
8 report.

9 THE WITNESS: Would you repeat the question.
10 I didn't actually hear the first part.

11 Q Do you know how long it took for California to
12 adopt content standards in each of the core subject
13 matters that are identified in your report?

14 A Not precisely, but I know it was over a period
15 of months and more than several months or lots of
16 months.

17 Q Are you aware of any research or studies
18 comparing content standards to those content standards
19 of other states?

20 A I know that policy researchers have looked
21 at -- there are two dimensions. I mean, the process of
22 adopting standards has been studied. And I probably
23 couldn't name you a specific study that has compared the
24 actual content of the standards from one state to
25 another, you know, standard by standard. It wouldn't

1 surprise me to learn that that had been done.

2 Q I guess I was really thinking more of sort of
3 a ranking of California standards in relation to other
4 states are exemplary standards or they're mediocre
5 standards or they're substandard. Have you seen any
6 research in that point?

7 A Standards are a result of a political process
8 in the context of particular states, and I don't know of
9 any -- I mean, it doesn't seem sensible to me that
10 someone would come along and say, well, Alabama defines
11 science better than California defines -- I mean, I'm
12 not sure I'm understanding your question.

13 I know there's been a lot of concern about
14 Kansas, for example, that wanted to eliminate any
15 consideration of evolution in their science standards.

16 And there was a lot of criticism, including some
17 scholarly analysis of why that was probably not
18 appropriate. But other than things like that, I --

19 Q I guess my point is this. I mean, California
20 went through a rigorous process to identify content
21 standards. Do you agree?

22 A Yes, it did.

23 Q And the content standards that came out were
24 designed to assure that students achieved at high
25 levels. Do you agree?

1 Your opinion, I take it, is set forth below
2 that, which says that, "Yes. National and state
3 leaders, scholarly research, and California policy all
4 establish textbooks, instructional materials, equipment
5 and technology as basic and essential educational
6 tools."

7 Is that your opinion?

8 A Yes.

9 Q There are a number of reports cited with
10 respect to this first question and your opinion on it.
11 Reports, studies and so forth. Did you review all of
12 the reports and studies that are cited in this with
13 respect to your first opinion?

14 A Yes, I did.

15 Q Did you review just portions, or do you read
16 them all?

17 A It varied. In many of these cases my research
18 assistants first obtained and read and -- all of the
19 studies and documents. In other cases, I did. In the
20 cases where they read the documents, there were some
21 occasions where they would point me to particular pages
22 in a document that were especially relevant. I may have
23 only read those pages.

24 Q It sort of varied report to report or study to
25 study?

1 A They were designed to set goals so that --
2 toward which all schools should reach. I'm not sure
3 there are assurances of the reaching of those standards
4 built into the standards.

5 Q That's good for my purposes. On page 3 of
6 your report you talk about "reports produced by schools,
7 districts and/or other educational agencies throughout
8 the State of California provided the status,
9 description, and/or conditions of these schools,
10 districts and/or educational agencies. These reports
11 were made available to me by attorneys for the
12 plaintiffs in this case."

13 Do you recall what those reports were?

14 A I obtained some WASC reports, FCMAT reports,
15 consolidated complaints, review reports, some reports
16 produced by the state. I believe I asked the attorneys
17 if they would find the HUMRRO report that the state did,
18 for example. Those kinds of documents that were easier
19 for them to track down and find than me.

20 Q I would like to turn to page 5 of your report,
21 and let's discuss Question 1 and your opinion related to
22 it.

23 Question 1 says, "Are textbooks, instructional
24 materials, equipment, and technology fundamental and
25 essential to the education of students in California."

1 A I certainly read all of the parts of each of
2 these documents that are relied on in this report.

3 Q I take it your overarching opinion is kids
4 need textbooks?

5 A The overarching opinion is that, yes,
6 textbooks are an essential part of California public
7 school students' education.

8 Q Is there any real dispute on that point in the
9 education community?

10 MR. ROSENBAUM: Vague.

11 MR. HERRON: Let me rephrase.

12 Q Are there any research -- is there any
13 research or studies you're aware of that suggests that
14 kids do not need textbooks and instructional materials
15 in order to learn?

16 A Any instructional materials -- textbooks in
17 the way I defined it as the tools -- a tool for
18 delivering the core knowledge of the content area to
19 students, providing access to that knowledge. By that I
20 would certainly exclude a human teacher, but in terms of
21 some sort of tangible materials that deliver that
22 content, I suppose there might be some research --
23 well -- that talks about early childhood learning, where
24 interactions with adults around particular knowledge may
25 not require instructional materials.

1 But I think there would be very little
 2 disagreement among scholars that materials that provide
 3 students access to knowledge are an essential part of
 4 the educational process.
 5 Q On page 5 of your report, you discuss a topic
 6 that has a heading here, Textbooks are Universally
 7 Acknowledged as Basic Educational Tools. You then cited
 8 U.S. Aid report, a UNESCO report, apparently a statement
 9 of Alfonso de Guzman, who is with the World Bank?
 10 A Yes.
 11 Q What relevance do pronouncements by U.S. Aid,
 12 UNESCO or Mr. de Guzman have to California?
 13 MR. ROSENBAUM: Compound.
 14 BY MR. HERRON:
 15 Q Or you can take them one at a time if you
 16 like?
 17 A These are all organizations that have both
 18 supported research and have a vast amount of experience
 19 attempting to understand and improve education around
 20 the world, who have determined, both from their own
 21 review of research, their own research they've done and
 22 practice that an adequate supply of textbooks and --
 23 broadly defined -- in fact, they say one textbook for
 24 each pupil in every subject is the standard that is most
 25 frequently cited, is an important part of teaching and

1 learning for children.
 2 Q What you referred to in terms of one textbook
 3 for each pupil in every subject is the UNESCO report?
 4 A Yes, yes.
 5 Q Do you know on what basis it reached that
 6 conclusion?
 7 A The UNESCO had a -- went through a very
 8 serious process, and I'm not remembering exactly the
 9 date, but in the -- either the early 80's -- somewhere
 10 in the last two decades, two or three decades to really
 11 try to understand the essential ingredients of education
 12 and put out a major report.
 13 And this declaration, Education for All, in
 14 which it was the consensus of both expert opinion and
 15 the practitioners and policy makers involved with UNESCO
 16 that this was a basic standard that all countries should
 17 meet.
 18 Q Do you know whether UNESCO looked at any
 19 empirical data that suggested that as the appropriate
 20 standard?
 21 MR. ROSENBAUM: Vague.
 22 THE WITNESS: Since I was not present, I don't
 23 know what UNESCO looked at.
 24 BY MR. HERRON:
 25 Q Are there any studies that you're aware of

1 that suggest that -- for California and for California
 2 children, each child should have a textbook in every
 3 subject?
 4 MR. ROSENBAUM: Vague.
 5 THE WITNESS: Are you asking me to assume that
 6 California children and their learning processes are
 7 somehow different from children in other parts of the
 8 world?
 9 MR. HERRON: No. I'm asking the question --
 10 could you restate it. If it's unclear, I'll rephrase
 11 it, but I don't think that was unclear.
 12 (Record read as follows:)
 13 "QUESTION: Are there any studies that
 14 you're aware of that suggest that -- for
 15 California and for California children, each
 16 child should have a textbook in every
 17 subject?"
 18 THE WITNESS: They're certainly statements to
 19 that effect made by the officials of the state's
 20 education system. I believe that's...
 21 BY MR. HERRON:
 22 Q Yeah, but the question are you aware of
 23 studies or research -- is that suggesting that that is
 24 the required standard in California or the appropriate
 25 standard in California?

1 A My experience both as a researcher and a
 2 colleague of researchers who study access to knowledge
 3 is that most of us presume, and wrongly I've discovered,
 4 that California children all have a textbook in every
 5 subject, and that it's not a question that needs to be
 6 studied.
 7 Q Which is to say you're aware of no study or
 8 research on that topic with respect to California
 9 children. Correct?
 10 MR. ROSENBAUM: No. Mischaracterization.
 11 Your question is vague as to what you mean regarding
 12 studies regarding California. Do you mean studies in
 13 general that could be applied to California, or are you
 14 asking specifically study of California children
 15 themselves?
 16 MR. HERRON: The latter.
 17 THE WITNESS: I would -- I would have to say
 18 that I believe the studies -- the U.S. studies related
 19 to the -- I'm sorry. I'll take a minute because I want
 20 to make sure I'm precise.
 21 BY MR. HERRON:
 22 Q Take all the time you need.
 23 A My judgment is that the American studies
 24 looking at the relationship between the availability and
 25 use of curriculum materials and textbooks and the

1 studies that look at the impact of homework -- if they
2 did not include California students in them, which I
3 doubt, I mean, my suspicion is that there were
4 California students in some of those national samples --
5 are studies that can be reliably generalized to
6 California students.

7 Q Are you thinking of any particular studies
8 that are referenced in your report?

9 A Well, the Cooper study on the importance of
10 homework, the studies that have been done on the Third
11 International Mathematics and Science assessment --
12 T-I-M-M-S, all caps -- includes California children in
13 their samples.

14 So I -- I also am firmly convinced that the
15 process of learning is sufficiently similar among human
16 beings that the context in which a particular study has
17 been done about the relationships between having
18 materials that provide access to knowledge and learning
19 are very applicable to California children.

20 Q Of the studies you just mentioned, have you or
21 anyone you're aware of reviewed those studies to
22 determine whether or not their conclusions can be
23 generalized to California?

24 MR. ROSENBAUM: It's been asked and
25 answered.

1 THE WITNESS: I reviewed the Cooper study and
2 reviewed his methodology. What's particularly important
3 in reviews is the criteria set for including studies as
4 part of a review. I can't repeat the specifics of
5 Cooper's method at this point, but I assure you that I
6 satisfied myself that the inclusion criteria were
7 sufficiently rigorous for my taking his work into
8 account.

9 The quantitative studies were -- these are all
10 quantitative studies -- are assumed to be
11 generalizable -- assumed to be generalizable as a part
12 of the teaching and learning process, that these studies
13 are not studies that are context-specific in their
14 results.

15 BY MR. HERRON:

16 Q Okay. On page 6, first full paragraph, there
17 is reference to an EPIE study. What this is really
18 discussing, I think, is the percentage of classroom time
19 dedicated or structured around textbooks or some other
20 instructional materials. Am I right?

21 A Yes.

22 Q And the EPIE study suggested that 89 percent
23 of instructional time was structured around textbooks or
24 some other instructional materials. Is that correct?

25 A Yes.

1 MR. HERRON: No, it's not.

2 Q Please respond.

3 A Please repeat it. I didn't --

4 Q Let me just make an example. Cooper on page
5 10 says, "A review of the literature on the importance
6 of homework, (Cooper, 1994,) shows that of 50 studies
7 correlating the time spent doing homework with student
8 achievement; a remarkable 43 of the 50 studies found
9 that students who did homework had greater achievement."

10 "Correlating" doesn't necessarily mean
11 "causal." Does it?

12 MR. ROSENBAUM: What's your question? Does
13 correlating mean causal?

14 MR. HERRON: That's the question now.

15 Q What I'm really looking for here is if you or
16 anyone you know have gone to the Cooper study and the
17 other study you referenced to look at their methodology
18 and to determine whether or not it could be generalized
19 to California?

20 MR. ROSENBAUM: Compound. Asked and answered.
21 You're free to answer it.

22 MR. HERRON: It has been asked. It has not
23 been answered.

24 MR. ROSENBAUM: It was answered two questions
25 ago. I don't want to interrupt.

1 Q Now, you also refer to the Harris Poll, which
2 we discussed a little bit yesterday. And it says that
3 92 percent of the randomly -- let me be accurate.
4 "92 percent of nearly 1,100 randomly selected
5 California public school teachers reported that they
6 used textbooks as part of their instruction."

7 Did the Harris Poll conclude or investigate
8 what percentage of instructional time those California
9 teachers spent structuring -- instructional time was
10 structured around textbooks?

11 A No.

12 Q Is comparing the results of the EPIE study and
13 the Harris Poll appropriate to suggest that California
14 is similar in the amount of instructional time
15 structured around textbooks?

16 A That is not what this paragraph says. This
17 paragraph cites two studies that both attest to the
18 centrality of the textbook to the teaching and learning
19 process in the schools.

20 Q Is it your belief that the EPIE study from
21 1977 accurately suggests the amount of time that
22 California teachers -- the amount of instructional time
23 that California teachers structure around textbooks or
24 some other instructional materials?

25 A I think the pattern that the EPIE study

1 suggests is probably quite comparable to what one would
2 find if a study were done on California exclusively.

3 Q Even though it's 26 years old?

4 MR. ROSENBAUM: Argumentative.

5 MR. HERRON: It's a question.

6 MR. ROSENBAUM: No, it's not. It is a
7 question, but it's an argumentative question.

8 THE WITNESS: I'm happy to answer it.

9 In the 1970's was probably a period of time
10 where there was more experimentation with nontraditional
11 pedagogy than many other times. I would suspect if
12 there is any trend, is that there's greater dependence
13 on textbooks now then in 1977.

14 MR. ROSENBAUM: That's when Mr. Herron was
15 educated.

16 THE WITNESS: That's when I was teaching so be
17 careful.

18 MR. HERRON: I'm the successful result of
19 those experiments.

20 MR. ROSENBAUM: Definitely the result.

21 I had educated in quotation marks.

22 MR. HERRON: Mr. Rosenbaum enjoys demeaning me
23 at any opportunity.

24 Q That's your suspicion that text use may have
25 increased. What studies, what research, upon what do

1 student at UCLA, and I was on this committee so I know
2 the study well. What he did was analyzed the
3 translation of the history, social studies standards in
4 California. Well, at that time it was curriculum
5 frameworks -- by Cuda Missile, I believe, was the
6 publisher -- into a set of textbooks that would use what
7 we've learned about the multi-dimensional nature of
8 learning to create a text that would provide children
9 access to knowledge of history and social studies in
10 multiple ways.

11 So he -- he went to the design firm and
12 analyzed how they used visuals, and how they design the
13 spaces on the pages, the placement of text and visuals
14 and all kinds of graphic color in order to provide the
15 maximum possible accessibility for children who may be
16 more visually oriented in terms of graphics and images
17 rather than simply text, and concluded from his work,
18 since he'd also done a lot of work learning, that these
19 contemporary textbooks were becoming increasingly
20 consistent with what we're learning about the
21 multi-dimensional nature of the learning process.

22 Q Is there an educational theory that suggests
23 that kids learn in different ways? For example, that
24 kids learn by doing, which sounds a little bit like
25 Chairman Mao. But kids learn by doing. That's one

1 you base your suspicion or opinion in that regard?

2 A Well, I would not characterize it as a
3 suspicion. I would --

4 Q Thought you did. I'm sorry. Go ahead.

5 A It has been my professional observation, both
6 through my experience in training teachers, and my
7 extensive work in classrooms studying curriculum and
8 instruction and school processes, as well as my reading
9 of both the scholarly literature and the publications
10 like Education Week and Education Leadership and the Phi
11 Delta Kappan that the trend has been everywhere in the
12 U.S. toward more structured and textbook-dependent
13 pedagogy over the last 30 years.

14 Q Very good. I want to ask you about the
15 Laspina study on page 7. If you look at the third full
16 paragraph, last sentence, it says -- for context let's
17 read the last two.

18 "Educationally, 'interesting' means that
19 students will be more likely to do the reading and more
20 likely to find it meaningful. Further" -- this is what
21 I want to ask you about -- "the multiple ways that
22 students interact with textbooks is connected with
23 multiple ways of learning."

24 What does that mean?

25 A Yes. James Laspina actually was a Ph.D.

1 method by which they can learn. Correct?

2 A Doing is certainly an integral part of
3 learning.

4 Q Or that some kids learn better visually than
5 other kids?

6 A I have to say the literature -- the literature
7 on learning styles is extraordinarily controversial.
8 Much of it has been discredited.

9 I think what we can say with the most
10 confidence is that human beings learn in very different
11 ways, but it would be inappropriate to designate a
12 particular person, as we often do in layman's terms,
13 just a visual learner. The modes in which people learn
14 vary over their lifetime, during the course of a day.
15 It's part of the reason why a wide variety of
16 instructional materials and texts such as the type
17 Laspina studied are so important.

18 Q It may just be that students in general --
19 there are different strategies to teach students in
20 general. You can give them visuals; you can give them
21 manipulatives; you can give them tapes; you can give
22 them videos, and by constructing an instructional
23 program in that way, they learn better as opposed to
24 just reading out of a text?

25 A Good teachers construct environments in which

1 there are -- at any one time multiple ways of gaining
2 access to knowledge. The textbook is a fundamental part
3 of that.

4 Q Looking now at the bottom of page 7, and top
5 of page 8 of your report, it talks about (reading), a
6 large body of international studies and some U.S.
7 research -- or some research in the U.S. make clear that
8 having textbooks for use in the classroom and at home
9 has a positive effect on academic achievement.

10 Is it your opinion, for purposes of this case,
11 that each student ought to have a textbook in each class
12 and have a textbook to take home?

13 A There should be sufficient textbooks available
14 so that children have access to the knowledge that they
15 are expected to learn, both in the context of the
16 classroom and in the context of the learning that
17 they're expected to do outside of school. So --

18 Q Right. And sufficient textbooks means what?
19 Does it mean each child has one textbook in each class?

20 A Enough --

21 Q Each subject?

22 A Enough textbooks in each subject that children
23 can use it to learn at school, and to use it in the
24 context of the learning their teachers expect outside of
25 school.

1 in some cases that would vary, but it's not impossible
2 to set a sufficiency standard in those --

3 Q Explain to us those cases where that standard
4 of one textbook per child, per class, might vary.

5 A For example, in science instruction in the
6 elementary schools, many teachers use kits, like Fass,
7 F-a-s-s, is a -- I believe National Science Foundation
8 developed -- I'm not certain about that, but a very
9 reputable set of science materials that can be the core
10 instructional tool, i.e. the textbook in many elementary
11 science classes.

12 Every child does not need a Fass science kit
13 of their own to have at school and to take home. But
14 there are various materials in those kits that have to
15 be available in sufficient numbers so that every child
16 has both at school and at home the particular part of
17 that kit that is required to provide them access to the
18 knowledge they're supposed to learn. That's an
19 example.

20 Q So it's your opinion that, depending on the
21 subject, the standard for providing a textbook may vary
22 -- let me try again.

23 You've pointed to science as an example where
24 it may not be required that each and every child -- at
25 least in elementary school, has a textbook in science?

1 Q But "enough" doesn't mean one per child?

2 A It's hard for me to imagine a situation other
3 than one per child that would provide that level of
4 access.

5 Q So in your view, I take it, then that should
6 be the standard, each child in each class should have a
7 textbook to use in the class?

8 A I think that because -- if you'd asked me that
9 20 years ago, I probably would have said absolutely,
10 give every kid a book in every class and make sure that
11 they can take that book home with them.

12 With the advent of newer technologies and new
13 media and the increasing multi-dimensional nature of the
14 primary curriculum materials that are used in classes,
15 what I'm calling broadly "textbooks," I think that the
16 standard for sufficiency might vary.

17 But I think that experts -- I'm not sure I
18 would trust publishers to do this, but that experts can
19 determine, given each form of text and curriculum
20 material, what level is required to provide -- to meet
21 that basic standard of every child having the materials
22 required to provide access to knowledge that they need
23 to learn, both in the classroom and at home.

24 I think that in most cases still that's one
25 book per child, per subject, but I certainly know that

1 A No. What I pointed to was an example of a
2 type of material, where one unit of that material per
3 child may not be the appropriate standard for
4 sufficiency. I'm not speaking at all about science in
5 general.

6 Q But it is possible that there are certain
7 subjects where it would be more important to have a
8 textbook for each child and subjects where it's not as
9 important?

10 A Given the way I have defined "textbook" as the
11 primary tool for providing children with access to the
12 knowledge they need to learn, it is hard for me to
13 imagine inherently that there's any one subject that
14 might -- that children are expected to learn that are
15 established by the California context standards, where
16 it would be less important for them to have access than
17 others.

18 Q For example, an art class as opposed to, say,
19 math, it is probably less important that some elementary
20 student in an art class have a textbook than it is to
21 have a math book. Correct?

22 A I think it would depend on the instructional
23 goals of the teacher. If it were an art appreciation or
24 art history class, art criticism, a textbook might be
25 equally important.

1 Q I take it you're saying that the particular
2 instructional strategy of the teacher may control the
3 extent to which textbooks are required in the classroom?

4 A I would never want a teacher to have to decide
5 whether or not to use the textbook based on the lack of
6 availability of textbooks.

7 MR. HERRON: Could I have the question and
8 answer read, please.

9 MR. ROSENBAUM: The last two because your
10 prior question talked about art. Then you asked a
11 question which was much broader than that.

12 (Record read as follows:)

13 "QUESTION: For example, an art class as
14 opposed to, say, math, it is probably less
15 important that some elementary student in an
16 art class have a textbook than it is to have a
17 math book. Correct?

18 "ANSWER: I think it would depend on the
19 instructional goals of the teacher. If it
20 were an art appreciation or art history class,
21 art criticism, a textbook might be equally
22 important

23 "QUESTION: I take it you're saying that
24 the particular instructional strategy of the
25 teacher may control the extent to which

1 teacher might have fewer texts than one per children,
2 and then the children would still receive the content
3 and curriculum that they need?

4 MR. ROSENBAUM: Vague and really incomplete
5 hypothetical.

6 BY MR. HERRON:

7 Q You may respond.

8 A Again, I would reserve a teacher's right to
9 choose, to have children share textbooks if promoting
10 interaction over the textbook was part of the
11 instructional goal. I would never want that to be a
12 function of only having enough textbooks -- I would
13 never want that decision to be made based on the fact
14 that there were only enough textbooks available for
15 sharing.

16 Q You do not want the supply of textbooks to
17 drive the pedagogical instruction strategy?

18 A Exactly. Exactly. If a teacher chooses to
19 use only half the textbooks that are available in the
20 classroom because there's an instructional goal to be
21 met that that would achieve, I think that's fine.

22 Q Or if the teacher only needs half of the --
23 one textbook for every two kids because that is the
24 instructional strategy, and it's appropriate, that's
25 perfectly fine with you?

1 textbooks are required in the classroom?"

2 "ANSWER: I would never want a teacher to
3 have to decide whether or not to use the
4 textbook based on the lack of availability of
5 textbooks."

6 MR. HERRON: I move to strike that answer as
7 nonresponsive. Can you repeat that question?

8 MR. ROSENBAUM: Perfectly responsive. That's
9 not the answer you wanted.

10 MR. HERRON: That's your view.

11 (Record read as follows:)

12 "QUESTION: I take it you're saying that
13 the particular instructional strategy of the
14 teacher may control the extent to which
15 textbooks are required in the classroom?"

16 THE WITNESS: No.

17 MR. ROSENBAUM: Asked and answered.

18 BY MR. HERRON:

19 Q You're not saying that?

20 A No.

21 Q What about if a teacher values cooperative
22 learning, for example? That teacher believes that
23 children should work together, work out of the same
24 text, and that interaction that they gain is beneficial
25 to learning? Wouldn't that be a situation where a

1 A I cannot imagine a classroom in which that
2 would be the consistent decision or consistent enough to
3 limit the supply of textbooks to only half as many as
4 there are children.

5 Q There are methods other than just textbooks to
6 deliver the state standards frameworks. Correct?

7 MR. ROSENBAUM: Are you using the definition
8 of textbooks that Dr. Oakes described earlier?

9 MR. HERRON: I'm trying to.

10 Q You can respond.

11 A Was that a question?

12 Q Let me rephrase it for you.

13 There are many ways to instruct students and
14 to deliver to them the state standards frameworks that
15 don't necessarily involve instructional materials.
16 Correct?

17 A There are certainly some ways of making
18 content accessible to children that don't involve
19 textbooks.

20 Q Can you provide us some examples?

21 A A teacher giving a lecture.

22 Q Where there's a sort of chalkboard, white
23 board discussion. Is that another example?

24 A I'm not sure it's another example. Who is at
25 the chalkboard?

1 Q The teacher or the student.
 2 A Where the children are?
 3 Q You seem confused. Perhaps it's my question.
 4 A I'm confused.
 5 Q Not all instructional time that's sufficient
 6 and proper to deliver the content standards needs to
 7 revolve around instructional materials. Correct?
 8 A Sure.
 9 Q There are plenty of means to deliver the state
 10 content standards while not using instructional
 11 materials or textbooks. Correct?
 12 MR. ROSENBAUM: All of the content standards.
 13 Is that your question?
 14 THE WITNESS: I would not say "plenty," and I
 15 would not apply it to all the standards.
 16 MR. ROSENBAUM: I want to have it -- just so I
 17 don't interrupt, I want to have a continuing objection
 18 to the series of questions which are incredibly vague,
 19 and the hypotheticals are willfully incomplete.
 20 MR. HERRON: You have your standing objection
 21 to any hypothetical I pose.
 22 THE WITNESS: Would this be an appropriate
 23 time to take a break?
 24 MR. HERRON: Absolutely.
 25 (Brief recess taken.)

1 (Record read as follows:)
 2 "QUESTION: There are plenty of means to
 3 deliver the state content standards while not
 4 using instructional materials or textbooks.
 5 Correct?
 6 "ANSWER: I would not say "plenty," and I
 7 would not apply it to all the standards."
 8 THE WITNESS: Could I elaborate a little bit
 9 on that answer?
 10 MR. HERRON: Certainly.
 11 THE WITNESS: Because it occurred to me during
 12 the break that this is exactly the reason why I relied
 13 on Bill Koski's work because he very methodically went
 14 through and identified the number of standards that --
 15 for which textbooks are absolutely essential, at least
 16 what I have is in mathematics, English, language, arts,
 17 history and social science, and it's all spelled out in
 18 my report.
 19 BY MR. HERRON:
 20 Q That data is on what page of your report?
 21 A The charts are on page 13 and 14. The summary
 22 is on the top of page 15. For example, he says, in math
 23 -- I say, in mathematics based on Koski's works 196 out
 24 of the 212 standards for K 12 require at a minimum a
 25 textbook that provides the content of the standard.

1 Q Do you think that the need for having
 2 instructional material -- textbooks and instructional
 3 material in the classroom varies depending upon grade
 4 level?
 5 A No, not the absolute need for textbooks and
 6 curriculum materials.
 7 Q What do you mean by "absolute need"?
 8 A The type of materials will certainly vary with
 9 the grade level, as they do with the content area. But
 10 the availability of curriculum materials and texts that
 11 provide access to knowledge are essential in all grades.
 12 Q There are instances, are there not, where a
 13 teacher or a school may have an older textbook, say it's
 14 six years old. Is there any reason that a teacher or a
 15 school might not buy a new textbook that has all the
 16 state content standards?
 17 MR. ROSENBAUM: Speculation. Incomplete
 18 hypothetical.
 19 THE WITNESS: Are you assuming that the older
 20 textbook meets all of the -- is aligned with the current
 21 content standards?
 22 BY MR. HERRON:
 23 Q Assume for purposes of this question that it
 24 is not fully aligned with the content standards. Is
 25 there some short-term reason not to purchase new

1 textbooks that might benefit both the teacher and the
 2 school and the students in the long term?
 3 A A school might make that decision, but to the
 4 extent they do, they would be depriving children of
 5 access to the knowledge of the content standards that
 6 are not included in that text.
 7 Q For that year?
 8 A Well, children are only in a particular grade
 9 or subject area at that grade for one year. So for
 10 those particular kids, it's their only chance.
 11 Q Let's take science as an example. Let's say
 12 that a child has a six-year-old text, and the adoption
 13 cycle is coming to an end. If there are scarce
 14 resources to purchase textbooks, is it necessary in all
 15 cases that that teacher or that school go out and buy
 16 new textbooks?
 17 MR. ROSENBAUM: Very incomplete
 18 hypothetical.
 19 BY MR. HERRON:
 20 Q You may respond.
 21 A I want to be clear what you're asking me
 22 about. Are you asking me about, say, if there are 50 --
 23 let me give some assumptions -- 50 children taking the
 24 science class, and it's in the fifth year of the
 25 adoption cycle, and there are only 35 science books

1 left, would it -- would there be any serious consequence
2 to not buying another 15 science books so that each
3 child would have one? Is that what you're asking me?

4 Q You can answer that question.

5 A Yes, I think there would be a serious
6 consequence.

7 Q Assume that all 50 students have the
8 five-year-old text. Is there any serious consequence
9 then in not buying a new text?

10 MR. ROSENBAUM: Can you just describe the
11 text, David?

12 MR. HERRON: In a science class, for
13 example.

14 MR. ROSENBAUM: I really don't want to be
15 interfering. Three questions ago you said it was not
16 fully in line with the standards.

17 MR. HERRON: Right.

18 MR. ROSENBAUM: Is that a predicate of your
19 question in this question?

20 MR. HERRON: It is.

21 THE WITNESS: Now you're asking me -- let me
22 make sure I understand. You're now not asking me about
23 a situation in which there are not enough?

24 BY MR. HERRON:

25 Q Correct.

1 posing is the case. And so because of that, it's very
2 difficult for me to construct an answer to that
3 question.

4 Q Have content standards been adopted in all the
5 core subjects as far as you know?

6 A Actually, I believe the history, social
7 science was the last ones, and I'm not sure whether
8 they've actually had all the T's crossed and I's dotted.
9 I'm not certain.

10 Q Let me change the question. We'll talk about
11 history, social science, and we'll assume for purposes
12 of this question that those state content standards have
13 not yet been adopted. Okay?

14 MR. ROSENBAUM: History, social sciences.

15 THE WITNESS: We have -- actually, we have
16 history and social science standards. We do. We do.

17 BY MR. HERRON:

18 Q Let's assume we didn't.

19 A Why would I want to assume that?

20 Q Because I'm going to ask you a hypothetical,
21 and I'm going to ask you to assume that the state has
22 not adopted its content standards for history, social
23 science. Are you with me so far?

24 A Yes.

25 Q We're in a 6th grade class, and the history,

1 A That was what the last question was about.
2 Not enough.

3 Q Correct.

4 A This question is there are enough, we're in
5 the fifth year of an adoption cycle.

6 Q But the texts that the students presently have
7 don't have all the content that's required by the state.
8 Don't cover the state-required content.

9 A So that the state's adopted textbooks are out
10 of alignment with the state's own standards. Is that
11 what you're saying what the situation would be?

12 Q Right. Does that situation not occur right
13 now in California classes?

14 A I would like to check my description of the
15 textbook adoption procedure because I do have the dates.

16 On page 55 I start talking about the --
17 perhaps -- let me see. It might be in the front section
18 about policies.

19 Did you find it?

20 Q Page 11. One reference.

21 A Somewhere in this document I have the dates of
22 the actual cycle, the dates of the adoptions of
23 materials and particular content areas, and I believe --
24 it's hard -- I'm having a great deal of trouble
25 imagining a real situation where the scenario you're

1 social science teacher is waiting for a new adoption.
2 He or she has old textbooks that are not fully aligned
3 with what the state content standards are likely to be.
4 Should he -- what should he do? How is he supposed to
5 deliver the content?

6 A I would say two things to that. First of all,
7 individual teachers rarely have control over whether or
8 not new textbooks are going to be purchased. We have to
9 get that straight.

10 Second, if there are no standards yet adopted,
11 it would be absolutely impossible to know with any
12 certainty about what should be delivered and whether or
13 not the -- or the extent to which the old texts
14 contained that content.

15 Now, if the text were sufficiently old that
16 Ronald Reagan was still the president in the textbook, I
17 think there would be a serious substantive problem with
18 continuing to use those books. It's very dependent on
19 many things, but the -- it's impossible to insure --
20 well, I won't say more than that. That's it.

21 Q It's impossible to insure what?

22 A I don't know where I was going with that.

23 Q Okay. When there's a new adoption of a
24 content standard, is it your view that each and every
25 school ought to purchase for each and every student

1 immediately textbooks that relate to that adoption?
 2 MR. ROSENBAUM: Incomplete hypothetical.
 3 THE WITNESS: The state -- would you repeat
 4 the question?
 5 MR. HERRON: Could you read that back, please.
 6 (Record read as follows:)
 7 "QUESTION: Okay. When there's a new
 8 adoption of a content standard, is it your
 9 view that each and every school ought to
 10 purchase for each and every student
 11 immediately textbooks that relate to that
 12 adoption?"
 13 THE WITNESS: You're talking about the
 14 adoption of a standard, not the adoption of a text? I'm
 15 confused by the use of the word "adoption" in the last
 16 part of your sentence.
 17 BY MR. HERRON:
 18 Q Let me try again.
 19 A standard is adopted and text has been
 20 approved. Those texts become available, say, in math.
 21 As soon as they're available, should every district,
 22 every school purchase for each and every student those
 23 books immediately?
 24 MR. ROSENBAUM: Incomplete hypothetical.
 25 THE WITNESS: Resources -- when the state

1 adopts a standard, and then adopt materials aligned to
 2 that standard, certainly schools should have the
 3 resources available to them to -- in that cycle -- buy
 4 books for every child at the right grade level and right
 5 content area that is -- that has been determined by the
 6 state as the most appropriate materials to deliver that
 7 instruction.
 8 BY MR. HERRON:
 9 Q The question is should they do it as soon --
 10 should those books be purchased as soon as they're made
 11 available?
 12 A In the context of the adoption cycle, I
 13 believe that's the plan. That's why not all subjects
 14 are adopted in the same year.
 15 Q Here's kind of what I'm trying to get at.
 16 There are scarce resources in education. Are there not?
 17 Scarce financial resources?
 18 A I think that's a matter of opinion. I don't
 19 believe there's scarce resources in the state.
 20 Q Why is that? Why do you believe that?
 21 A We are one of the fifth largest economies of
 22 the world, one of the wealthiest places in the world.
 23 Q What's the current budget deficit?
 24 A I wasn't speaking of the budget deficit
 25 currently. I was speaking about the state's capacity to

1 provide textbooks for every child.
 2 Q I was asking about scarce financial resources,
 3 which seem to be two different things.
 4 MR. ROSENBAUM: You're arguing. You're giving
 5 incomplete hypotheticals. It's outside this witness's
 6 expertise. You can answer as best you want.
 7 MR. HERRON: You sort of interrupted there. I
 8 didn't quite pose a question yet.
 9 MR. ROSENBAUM: I thought you had. Sorry.
 10 If you read back what you said, it will sound like a
 11 question, but I didn't mean to cut off your questions.
 12 You said -- in your phrase there is a budget
 13 deficit, isn't there, or there's scarce resources. I
 14 took that to be a question. I'm sorry.
 15 MR. HERRON: No need to apologize.
 16 Q Maybe we're just missing one another on this.
 17 MR. ROSENBAUM: That's an inappropriate
 18 comment. I think she's answering your questions
 19 absolutely appropriately. Try to reframe your questions
 20 or ask additional questions if you want additional
 21 answers.
 22 MR. HERRON: You're free to object, but the
 23 speeches are becoming tiresome. You're interrupting the
 24 deposition. You're slowing this deposition down. I
 25 repeatedly asked you to desist these kinds of comments.

1 I'm going to make that request again.
 2 MR. ROSENBAUM: That's fine. Don't use
 3 phrases like "maybe we're missing each other," because
 4 that's not a question.
 5 MR. HERRON: I just asked you try and control
 6 your comments.
 7 Q Isn't it true that there may be instances
 8 where a school or a district would delay immediately
 9 purchasing newly adopted instructional materials for
 10 legitimate reasons?
 11 MR. ROSENBAUM: Asked and answered. Vague.
 12 Incomplete -- well, asked and answered and vague.
 13 THE WITNESS: I need a definition of what you
 14 mean by "legitimate."
 15 BY MR. HERRON:
 16 Q Perfectly appropriate.
 17 MR. ROSENBAUM: Same objections.
 18 THE WITNESS: Without hearing an example of
 19 such a perfectly appropriate reason for delaying buying
 20 textbooks, I would have to answer no.
 21 BY MR. HERRON:
 22 Q You're aware of none?
 23 A None that immediately come to mind. On
 24 further contemplation I might think of one.
 25 Q If you do, would you let us know?

1 Do you agree or disagree with the following
2 statement, that the need for availability of a textbook
3 for each student in a class may vary depending upon the
4 teacher and instructional strategies that teacher
5 adopts?

6 MR. ROSENBAUM: Asked and answered.
7 Incomplete hypothetical.

8 BY MR. HERRON:

9 Q Do you agree or disagree?

10 A The need -- please repeat it. I want to hear
11 it.

12 MR. HERRON: Could you read it back.
13 (Record read as follows:)

14 "QUESTION: Do you agree or disagree with
15 the following statement, that the need for
16 availability of a textbook for each student in
17 a class may vary depending upon the teacher
18 and instructional strategies that teacher
19 adopts?"

20 THE WITNESS: I would agree that the use --
21 decisions about the use might vary, but that the need to
22 have texts available as a resource is constant.

23 BY MR. HERRON:

24 Q Have you had any discussion with Mark
25 Rosenbaum, Jack Londen or anyone else on plaintiffs'

1 subjects?

2 A I think that in the context of my report, I'm
3 pretty explicit about -- I'd like to find the page to be
4 precise in my answer. I certainly argue that California
5 must establish a textbook standard; that it's important
6 to have one.

7 Q Sure.

8 A And I certainly refer to the UNESCO standard
9 again as one that seems reasonable, which is one book
10 per child, per subject. Also, I believe the standard
11 set in South Carolina.

12 If you put those pieces together, I think you
13 have an answer.

14 Q Why don't you say what the answer is.

15 A Maybe she could read what I said.

16 Q The answer is that you do agree that the
17 standard should be one textbook for each student for
18 each core class. Correct?

19 A The only caveat I would add to that, and that
20 I explain in this report, is that I think, as I
21 explained earlier, that with the variety of media and
22 technology and the forms in which the textbook, quote,
23 unquote, now appears, that it would be that -- it would
24 be important to -- as a part of the state adoption
25 process to adopt a sufficiency standard for each text --

1 litigation team regarding the standard that the
2 litigation team has proposed be instituted for
3 availability of in-class textbooks?

4 A I've certainly been involved in conversations
5 where we have discussed my opinion of that.

6 Q Have they expressed to you their opinion of
7 that?

8 A I think I've heard them say things like "every
9 kid needs a book."

10 Q Has it been suggested to you by them that the
11 standard that's being promoted by the plaintiffs in this
12 case is that each student must have a textbook in each
13 of the core subjects; that's a standard that's being
14 promoted?

15 A I haven't heard -- been party to a discussion
16 of any absolute standard in that kind of framing of it.
17 We have talked about every kid needs a teacher, a book,
18 and a decent place to learn. I mean, we have had those
19 conversations many times. I think we have a lot of
20 agreement about that.

21 Q By what standard -- well, do you agree with
22 that standard, whether or not it's one they're
23 propmoting -- whether plaintiffs' litigation team is
24 promoting that standard or not, that each student in
25 class ought to have a textbook for each of the core

1 for each adoption so that any reasonable variations that
2 would be dictated by the nature of the material would be
3 included in that standard.

4 Q Fass being an example?

5 A Fass being an example.

6 Q Okay. Very good. I want to return back to
7 your report at page 8.

8 Most of the page is dedicated to -- that the
9 subtopic of the impact of textbooks on achievement in
10 the -- last sentence of the first full paragraph it
11 states, "In that review, Heyneman," H-e-y-n-e-m-a-n, "et
12 al, found that availability of books is the most
13 consistent factor in predicting academic achievement."

14 Do you believe that's a correct conclusion?

15 Do you agree with that?

16 A I trust Steve's analysis that that is what's
17 appropriate to be concluded from his review of the --
18 the studies.

19 Q Steve is Steve Heyneman?

20 A Steve Heyneman.

21 Q Heyneman?

22 A Uh-huh.

23 Q Do you consider him to be an expert in the
24 topic he addressed in his review?

25 A He certainly has done a great deal of work

1 on -- on education in less developed countries.
 2 Q The next research that you cite is Wang,
 3 Haertel and Walberg. Are you familiar --
 4 A Yes.
 5 Q -- with Wang?
 6 A Yes.
 7 Q Is Wang a female or male?
 8 A Woman.
 9 Q What is her expertise?
 10 A She's dead, actually.
 11 Q What was her expertise?
 12 A She worked in -- primarily in the area of
 13 special education.
 14 Q How about Haertel? Is he or she an expert in
 15 any particular area?
 16 A Ed Haertel is a measurement specialist.
 17 Q Do you consider him -- him -- is he still
 18 alive?
 19 A Yes, he's still alive.
 20 Q Do you consider him to be an expert in that
 21 area?
 22 A Yes.
 23 Q Now, Walberg -- is that a male or female?
 24 A He's a male. Herb Walberg.
 25 Q Is he still alive?

1 A He is still alive.
 2 Q I'm gun shy. Is Mr. Walberg an expert in any
 3 area?
 4 A Mr. Walberg studies almost anything that comes
 5 along.
 6 Q Is there any area in which you consider him to
 7 be an expert?
 8 A He is extraordinarily prolific. He writes on
 9 many, many topics, mostly quantitative analyses. Nearly
 10 everything he writes is co-authored. I'm not sure what
 11 his individual area of expertise is.
 12 Q The report cited is cited for the
 13 proposition -- well, it states here in your report on
 14 page 8 that "Wang, Haertel and Walberg (1993), for
 15 example, found that good curricular materials had a
 16 significant effect on student learning."
 17 Is that what that report concluded?
 18 A Yes.
 19 Q Are you aware that that report considered six
 20 different constructs?
 21 A I would have to review that report to be able
 22 to speak about the details of it.
 23 Q And that good curriculum materials fell under
 24 the -- in that report, fell under the construct of
 25 design and delivery of curriculum and instruction. Were

1 you aware of that?
 2 MR. ROSENBAUM: Foundation.
 3 THE WITNESS: My assumption is that you are
 4 reading from -- I would like to review that document
 5 before I --
 6 BY MR. HERRON:
 7 Q Sure. What I want to ask you, I guess -- I'll
 8 show you the document. This says that there was a
 9 "significant effect on student learning." Before I show
 10 you this, isn't it true that the report concluded that
 11 that was, of the six constructs, considered fourth in
 12 order of importance on student learning?
 13 A It could be, but that would not have an effect
 14 on whether it was statistically significant.
 15 Q Is "statistically significant" different than
 16 "significant effect" as you use it in this report?
 17 A Well, researchers rarely use the word
 18 "significant" unless they are referring to statistical
 19 significance. Sometimes we use the word "meaningful,
 20 important." In research "significance" has a particular
 21 meaning.
 22 MR. ROSENBAUM: Would you mind showing her the
 23 report.
 24 MR. HERRON: Sure. Go ahead and read the
 25 highlighted material, if you would.

1 MR. ROSENBAUM: Read as much as you like. You
 2 don't have any objection, do you?
 3 MR. HERRON: Certainly.
 4 MR. EGAN: This is the Fuller and Heyneman
 5 1989?
 6 THE WITNESS: No. Wang, Haertel.
 7 MR. HERRON: If you would like to take a brief
 8 break, we could. It's up to Dr. Oakes.
 9 THE WITNESS: Yeah, I mean, unless you want to
 10 sit here and watch me read.
 11 MR. HERRON: As fascinating as that is.
 12 (Brief recess taken.)
 13 BY MR. HERRON:
 14 Q You have had an opportunity to at least take a
 15 fairly quick look at this Wang, Haertel, Walberg study
 16 now?
 17 A Yes. Briefly perused it.
 18 Q Of the six constructs, the curriculum
 19 construct is fourth in order of having an effect on
 20 student learning. Is that correct?
 21 A That category comes fourth in their list, yes.
 22 Q Proceeded by student characteristics,
 23 classroom practices and home and educational -- home and
 24 community educational context. Correct?
 25 A Yes.

1 Q Do you still stand by the statement in this
2 report that the good curricular materials in this report
3 was found to have had a significant effect on student
4 learning?

5 A Yes.

6 Q Why is that?

7 A Two reasons. First of all, if you read
8 carefully on page 261 you'll see that curriculum
9 materials -- I think the quote is creating and
10 maintaining materials -- is listed as a factor in
11 classroom practices, as well as being referred to under
12 the other -- the fourth category, and that classroom
13 practices actually falls as number two on their list.

14 Q On that basis you stick with what you've
15 written in your report?

16 A Yes. Also, on the basis that they were
17 looking at studies that had been shown to impact
18 achievement and were simply trying to sort among -- they
19 were trying to rank order of those things that have a
20 significant effect on learning what might be the
21 relative importance of each of those variables.

22 In terms of -- on page 260, I think you'll see
23 when they talk about the curriculum variables, they say
24 they were included because, quote, researchers agree
25 that they impact the way students learn.

1 was not the point I was trying to make by including
2 them. I simply included them as other types of evidence
3 that suggests that textbooks and materials are
4 important. I wasn't making a relative judgment in this
5 report.

6 Q Okay. There's a reference to an educational
7 project in Northwest Brazil, finding that the provision
8 of (reading) teacher tables, toilets, and bookcases had
9 the highest cost-effectiveness impact on student
10 achievement among several inputs.

11 For what purpose is that study cited?

12 A It speaks to particularly school supplies
13 that -- that, in fact, that there are tangible resources
14 that are effective in promoting student achievement,
15 even the most rudimentary ones.

16 Q At least insofar as Northeast Brazil is
17 concerned?

18 A This was -- absolutely, that's where the study
19 was conducted.

20 Q The study was by Harbison & Hanushek?

21 A Hanushek.

22 Q Harbison -- Male? Female?

23 A I don't know.

24 Q Do you know about Harbison's particular
25 expertise?

1 Q Okay.

2 A They also have a statement in there, you might
3 want to refer to, on page 262, that there is strong
4 agreement among researchers about the value of homework.

5 Q Sure.

6 A I might also offer that Mr. Walberg has -- I
7 have an invitation from Mr. Walberg on my computer to
8 contribute a chapter to his next book.

9 Q Have you decided whether to do that?

10 A I'm not going to do it, actually.

11 Q Why not?

12 A Off the record? He produces hundreds of
13 books. I don't find they're terribly useful. I have
14 more opportunities to publish than I can accept.

15 Q And limited time?

16 A Yeah.

17 Q Focusing still on page 8 of your report and
18 specifically the last partial paragraph, this paragraph
19 seems to review studies, examining the cost
20 effectiveness of various inputs?

21 A Yes.

22 Q Is it your opinion that the provision of
23 resources like texts and materials is more
24 cost-effective than other strategies?

25 A I believe the results of these studies. That

1 A I do not.

2 Q How about Hannasek (phonetic) or Hanushek?

3 A Well, I think people pronounce it both ways.

4 Q And Hanushek is male, female?

5 A He's a male.

6 Q Does he have particular expertise that you're
7 aware of?

8 A He is an economist.

9 Q Do you consider him as an expert in the field?

10 A I know he's been fairly prolific in doing
11 econometric studies, particularly related to the value
12 of increasing teacher's salaries in relationship to
13 student achievement.

14 Q But my question was do you consider him an
15 expert in the areas identified?

16 MR. ROSENBAUM: What areas?

17 MR. HERRON: In her last response.

18 THE WITNESS: At this point I may need you to
19 define what you mean by "expert."

20 BY MR. HERRON:

21 Q Someone who could opine in court.

22 A Well, he certainly has.

23 MR. ROSENBAUM: That calls for a legal
24 conclusion.

25 BY MR. HERRON:

1 Q I know he has. I am just asking do you
2 consider him an expert in areas you've identified?

3 A By the criteria that his work is published in
4 peer review journals, I would say that, yes, he's --
5 would probably fall into the category called expert.

6 Q You seem to take issue with Mr. Hanushek?

7 A He employed very different strategies, asked
8 very different questions and reaches very different
9 conclusions than I would. There are some substantive
10 disagreements. I don't doubt his skill as an economist.

11 Q Moving up on that page, Pritchett & Filmer --
12 are you familiar with either of them?

13 A No.

14 Q There is a second example that you referred to
15 in this last partial paragraph about cost effectiveness
16 and a study by the World Bank in eight states of India
17 showing that including textbook and other teaching aids
18 was 14 times more effective than increasing teachers'
19 salaries.

20 Do you think that those results are in some
21 way translatable to California's own situation?

22 A I think they help, again, add to the evidence
23 that instructional materials, including textbooks and
24 other teaching aids, matter in the education of
25 children.

1 Q Do you believe that that provision of
2 instructional materials to California school children
3 would be a more cost-effective means of increasing
4 student achievement than increasing teachers' salaries?

5 A The difficulty I have with cost-effectiveness
6 studies is they try to isolate variables in a way that's
7 inappropriate and has very little meaning in the real
8 world. A textbook without a qualified teacher is likely
9 to be far less than what we would want for children. A
10 qualified teacher without a textbook is far less than
11 what we want for children. I would never want to parse
12 out and say we should try to weigh the trade-offs.

13 Q Do you have any opinion on that point, though?

14 MR. ROSENBAUM: Asked and answered.

15 THE WITNESS: No.

16 BY MR. HERRON:

17 Q Do you think it's inappropriate for the people
18 who did these studies, Pritchett & Filmer, Hanushek, et
19 al, that are cited here on page 8, to try and parse out
20 all variables showing cost-effectiveness?

21 A This is a methodology that they use that is
22 commonly used, that's accepted as an econometric way of
23 analyzing production functions and impacts of isolated
24 variables on certain outcomes. I think that they're
25 careful and trustworthy enough as scholars that I would

1 trust that they are telling me with some confidence that
2 textbooks and instructional materials matter.

3 Q I don't think that quite responded to what I'm
4 saying. What you've said is you don't trust econometric
5 studies to try and isolate variables, cost-effectiveness
6 of one input versus another?

7 A I didn't say that. I said it was not a method
8 that I use, and I think it's a method that is -- when
9 it's used to -- that it would be inappropriate to use
10 those studies to decide which kinds of resources, a
11 teacher versus a textbook, one should choose.

12 Q Okay. Page 9 of your report refers to the
13 Impact of Supplementary Curriculum Materials. What is
14 meant by that?

15 A I would refer back to the discussion we had at
16 the beginning of the day that supplementary materials
17 are really those that are ancillary to the primary tool
18 being used to deliver the core content. These -- as you
19 can see, the study that I cite -- the studies that I
20 cite, both the U.S. Department of Education study and
21 the Institute for Education Reform studies looks at
22 particularly -- the availability and use of calculators
23 and computers in mathematics.

24 Q Do you think that the necessity for supplying
25 supplementary curriculum materials varies depending upon

1 the subject matter?

2 MR. ROSENBAUM: Incomplete hypothetical.

3 THE WITNESS: I think it may vary, yes.

4 BY MR. HERRON:

5 Q How may it vary?

6 A For example, if you were -- if a teacher were
7 teaching a course in American literature to 11th graders
8 and there was an anthology of -- that was very
9 comprehensive and included literary examples and
10 commentary criticism in between the examples, that would
11 allow students to meet the literature standards, the
12 American literature standards for 11th graders, that
13 that might be a case in which simply having a text were
14 sufficient.

15 Although I would argue that students -- given
16 all we've spoken about earlier today about multiple ways
17 of learning, that to be able to supplement that textbook
18 with films or other artifacts of the historical period
19 or the culture of writers would make it -- the knowledge
20 more accessible to students.

21 Q Have you read the state's adopted frameworks?

22 A Yes, I believe I have.

23 Q Do the frameworks deal with this topic at all,
24 that is, the impact or the provision of supplementary
25 curriculum materials?

1 A I think if we look again at the chart that
 2 I've provided --
 3 Q The Koski chart?
 4 A Yes. That provides the analysis of the kinds
 5 of materials that are needed, for example, Mr. Koski's
 6 analysis, which I trust.
 7 Q On which page?
 8 A Page 13, says that in grades 5 through 8, 8 of
 9 the standards in mathematics require that students have
 10 available to them measuring instruments. We might
 11 consider that a supplementary curriculum material.
 12 Q Your analysis here on the impact of the
 13 supplementary curriculum materials deals with subjects
 14 of mathematics and science only and cites a number of
 15 reports. Are there any other studies you're aware of
 16 relating to other subjects that discuss the impact of
 17 supplementary curriculum materials in those subjects?
 18 A In subjects other than mathematics and
 19 science?
 20 Q Correct.
 21 A Not that come immediately to mind.
 22 Q Do you believe that the necessity for
 23 supplying supplementary curriculum materials may differ
 24 depending on the subject area or subject matter?
 25 A Well, you can see from the chart displaying

1 Mr. Koski's results that there is variation among the
 2 three content areas here in the number of standards that
 3 require supplementary materials and the kinds of
 4 material that are required. So, yes, there is
 5 variation.
 6 Q So I take it you're relying on Mr. Koski's
 7 study in order to -- for your opinion regarding whether
 8 or not supplementary curriculum materials are necessary?
 9 A No. Not entirely. I also know that it is,
 10 from my own personal experience as a teacher, that it is
 11 almost impossible to teach children geography unless you
 12 have a map in the room.
 13 Q Or a globe?
 14 A Or a globe. We -- Mr. Koski's very helpful,
 15 but we don't need him for that.
 16 Q In the last full paragraph on page 9, you
 17 refer to "access to school libraries"?
 18 A Yes.
 19 Q And your opinion is that access to school
 20 libraries also relates to achievement. What supports
 21 that opinion?
 22 A Well, as you can see, I reference
 23 Mr. Krashen's study of the correlation between the
 24 number of books per student in the library and school
 25 library media centers, and the Fuller & Clark review of

1 studies in developing countries.
 2 Q Are you aware personally of any California
 3 school which does not have a school library?
 4 A Yes. Many elementary schools had to give up
 5 their libraries with class size reduction because there
 6 was inadequate space for classes.
 7 Q Are you aware of the scope of what you're
 8 suggesting, which is to say how many schools, percentage
 9 of schools?
 10 A No, I couldn't make a -- I wouldn't want to
 11 quantify it because I would need to -- I would need to
 12 run some numbers.
 13 Q Do you know whether anyone has run those
 14 numbers?
 15 A You know, I think that because California
 16 collects so little data about issues of facilities and
 17 overcrowding and classroom use, that we probably don't
 18 have those data available to make a considered judgment
 19 about the scope of the problem. Anecdotally, we do hear
 20 these stories all the time.
 21 Q Let's talk about textbooks and homework. The
 22 next subject says, "Textbooks Allow Students to Do
 23 Homework that Positively Impacts Achievement."
 24 The last partial sentence on page 9, and then
 25 skipping over to page 10 reads, "Without texts and

1 materials to take home, teachers have a difficult time
 2 assigning out-of-school learning."
 3 On what basis do you make that statement?
 4 A You only read half of the sentence.
 5 Q Did I?
 6 A Yes. The sentence does go on. "Teachers have
 7 a difficult time assigning out-of-school learning
 8 experiences that require students to have access to the
 9 content included in the text, and students, particularly
 10 those with few books and learning resources at home,
 11 have difficulty completing such assignments."
 12 Q Really, two opinions in the same sentence,
 13 isn't it?
 14 A Yes, it is.
 15 Q How about the first opinion? What's the basis
 16 for that?
 17 A Well, let me give you an example.
 18 Q Sure.
 19 A A young man, who I actually saw in videotape
 20 from this summer, was talking with some fellow students
 21 and teachers about his physics class in a high school in
 22 South Central. In the physics class there were
 23 somewhere between 30 and 40 students, and there were
 24 only 20 textbooks. The teacher spent -- the students
 25 shared their textbooks during the class. Then they had

1 to spend a considerable portion of the time copying down
2 problems out of the textbook that they could take home
3 and work on those problems at home as homework.

4 He was complaining that not only did that make
5 it difficult to have enough time to learn his physics in
6 class, but it was extraordinarily difficult to try to
7 learn physics working off of copied problems that -- the
8 problems he copied out of the textbook in this class.
9 That is an example of what that generalization refers
10 to.

11 Q Beyond that example, what study, what
12 research, what data supports your statement that
13 teachers have a difficult time assigning out-of-school
14 learning experiences that require students to have
15 access to the content included in text?

16 MR. ROSENBAUM: In addition to what she
17 testified to today?

18 MR. HERRON: I think it's clear.

19 THE WITNESS: There are some -- some things
20 that are so true, that they do not require empirical
21 evidence, and most researchers do not spend time trying
22 to prove the obvious, like it is difficult for teachers
23 to assign students learning exercises that require them
24 to have access to the content knowledge in textbooks
25 when they don't have textbooks to send home with

1 A It certainly may vary with the subject matter.

2 Q For example, in English frameworks isn't it
3 suggested that teachers assign essays on various topics
4 for which no textbook is required for that out-of-class
5 work?

6 A I'm not recalling that exact. I will trust
7 that you're telling me the truth about what it says.
8 Unfortunately, many children in California don't even
9 have dictionaries at home, and it is difficult to write
10 an essay that in any way challenges you to push your
11 knowledge beyond where it currently is without having
12 those kinds of resources.

13 Q In that instance, what is the state to do? A
14 child doesn't have a dictionary at home. Are they not
15 to assign essays to that child?

16 A The state's responsibility is to insure that
17 children have a meaningful opportunity and the resources
18 to learn what the state expects them to learn, and what
19 the state will use as the basis for a decision about
20 whether or not a student is promoted from one grade to
21 the next or is able to graduate from high school.

22 Q I think we agree that the content can be
23 conveyed by means other strictly than having a textbook
24 assignment for purposes of homework. Correct?

25 A One might send a tutor home with a child.

1 children to enable them to do that work.

2 BY MR. HERRON:

3 Q I'm not sure that was precisely my question.
4 I take it you would agree that there are lots of ways to
5 assign out-of-class work that continues the learning
6 process and includes the content?

7 A If children are in families with good home
8 libraries, with a safe street to walk down to the public
9 library, with a computer and Internet access, with
10 after-school learning opportunities, I think teachers
11 can devise interesting ways.

12 I think it is far more difficult in other
13 circumstances for other children. So I would not want
14 to make a generalization, blanket, that there are lots
15 of ways for teachers to design ways to extend
16 instruction that includes the content -- of the content
17 standards.

18 Q Isn't it true that the frameworks themselves
19 suggest ways in which a teacher can provide out-of-class
20 learning experiences without using a textbook or other
21 instructional materials?

22 A Yes, but I would say that constitutes only a
23 small portion of the kinds of suggested activities that
24 teachers provide students.

25 Q Doesn't that depend on the subject matter?

1 Q Well, there are other ways, such as look at
2 the newspaper, read an article, something like that.
3 That could be an assignment that's not text-based but
4 nonetheless provides the content required by the state.
5 Correct?

6 A I would want to make sure that all of my
7 children had access to material like that before I made
8 such an assignment.

9 Q Do you know what "black line masters" are?

10 A No. What are they?

11 Q It's not important enough to discuss.

12 Do the frameworks, as you understand them --
13 you've read them, I take it -- require that in each
14 instance and in each subject a teacher assign homework
15 out of a textbook every day?

16 A I couldn't answer that question without
17 reviewing the documents.

18 Q In your opinion, what's the minimum number of
19 days that a teacher must assign homework out of a
20 textbook to assure adequate learning and conveyance of
21 the state content?

22 MR. ROSENBAUM: Incomplete hypothetical.

23 THE WITNESS: I would never render an opinion
24 like that.

25 BY MR. HERRON:

1 Q Is there any study that suggests the frequency
2 with which homework must be assigned out of a textbook
3 to students in, say, K through 5 in order to convey the
4 content standards?

5 A There are a number of studies that demonstrate
6 that the greater amount of time spent on learning tasks
7 enhances achievement, and that it's a rather linear
8 relationship. So the more, the more. Although I would
9 suggest there's probably some point at which you would
10 not want a child to continue.

11 I think that those studies have a great deal
12 of bearing without reducing it to sort of an artificial
13 sort of number of days that suggests that the greater
14 access children have to opportunities to learn outside
15 of school, the more their learning will be enhanced.

16 Q Agreed. My question really has to do with
17 learning outside of school, but without using a
18 textbook. I'm just wondering if you're aware of
19 anything that suggests that some sort of quota or
20 requirement that, for instance, every day a student not
21 to be given an assignment or homework at home that comes
22 from a textbook?

23 MR. ROSENBAUM: Asked and answered.

24 Incomplete hypothetical.

25 BY MR. HERRON:

1 MR. ROSENBAUM: Move to strike. I can respond
2 to that.

3 MR. HERRON: Well, again, I just -- I think
4 you're interfering with this deposition. It's not
5 appreciated. I will try the question one more time.
6 Maybe I can make it more clear.

7 Q Are you aware of any studies that suggest a
8 minimum number of days a week that a teacher should
9 assign work out of a textbook to assure that state
10 content is learned by the child?

11 A I do mean to be responsive when I say I know
12 of no study that's identified a specific number of days.

13 Q Do you think that the need to assign homework
14 out of a textbook may vary depending upon what the
15 subject is?

16 MR. ROSENBAUM: That's been asked and
17 answered.

18 THE WITNESS: Yes.

19 MR. ROSENBAUM: Every time a question is asked
20 and answered, that goes off. I can't control it. It's
21 not my phone.

22 MR. HERRON: The record will reflect we've
23 just listened to music from a telephone. And there was
24 much laughter.

25 I'm now lost. It was very effective.

1 Q You may respond.

2 A I am aware of no study that gives a precise
3 number of days that children should be assigned
4 homework.

5 MR. HERRON: I move to strike as not
6 responsive.

7 MR. ROSENBAUM: Completely responsive.

8 MR. HERRON: No.

9 MR. HERRON: Could you reread the question.
10 (Record read as follows:)

11 "QUESTION: Agreed. My question really
12 has to do with learning outside of school, but
13 without using a textbook. I'm just wondering
14 if you're aware of anything that suggests that
15 some sort of quota or requirement that, for
16 instance, every day a student not to be given
17 an assignment or homework at home that comes
18 from textbook?"

19 MR. ROSENBAUM: Actually, more than
20 responsive. Incomprehensible question, but I believe
21 the -- Dr. Oakes understood the spirit of it and
22 answered it fully.

23 MR. HERRON: You're just going to keep
24 talking, aren't you. You're not going to limit yourself
25 to objections. It's really --

1 (Record read as follows:)

2 "QUESTION: Do you think that the need to
3 assign homework out of a textbook may vary
4 depending upon what the subject is?"

5 "ANSWER: Yes."

6 BY MR. HERRON:

7 Q Now explain what you mean by your response.

8 A You explained it.

9 Q Pardon me?

10 MR. ROSENBAUM: He just wants you to answer
11 the question.

12 THE WITNESS: I did. I said yes.

13 BY MR. HERRON:

14 Q Why is that?

15 A Read the first question.

16 (Record read as follows:)

17 "QUESTION: Do you think that the need to
18 assign homework out of a textbook may vary
19 depending upon what the subject is?"

20 THE WITNESS: I think Mr. Koski's studies
21 suggests that there's variation among the content areas,
22 and the extent to which the standards are dependent on
23 textbook knowledge.

24 I would interpret that to mean that the same
25 kind of variation may exist in the need then to -- to

1 assign the homework that's commensurate with the
2 standards.

3 BY MR. HERRON:

4 Q Okay. Do you think that the need to assign
5 homework from a textbook may vary depending upon what
6 the teacher's instructional strategy is?

7 MR. ROSENBAUM: Asked and answered.

8 MR. HERRON: No, it's not, Mark.

9 THE WITNESS: Yes.

10 BY MR. HERRON:

11 Q Why is that?

12 A Because assignments vary in the extent to
13 which they would require students to refer to a text.

14 Q Okay. Which is perfectly appropriate?

15 A In a proportion that is -- matches the -- the
16 extent -- as long as it's commensurate with the
17 requirement for textbook-based learning to achieve the
18 standards.

19 Q Then it's acceptable?

20 A Sure.

21 Q Okay. Now, you've talked about the importance
22 of homework, which should be based on the content or at
23 least designed to deliver the content to students. Have
24 you or did you in your study -- I'm sorry -- in
25 preparing your report, did you consider any studies or

1 MR. HERRON: That comment was repeated. I
2 don't consider that in the least bit egregious. I'm
3 just suggesting that, look, that wasn't quite where I
4 was going. I think I'm being perfectly respectful. I'm
5 just trying to set the stage for the question so that
6 we're on the same page.

7 MR. ROSENBAUM: I don't think that it's
8 appropriate.

9 MR. HERRON: I'm trying to treat Dr. Oaks with
10 the utmost respect, which she certainly deserves. I
11 don't think that that in any way suggests otherwise.

12 Q Are you aware of any state board of education
13 study or consideration of the issues of the weight of
14 textbooks kids are required to take home to do homework?

15 A I know that it is a topic that's been
16 discussed over the last two years. Most of my knowledge
17 of it is through the press.

18 Q Are you aware of any state board standards and
19 requirements for publishers concerning creating new
20 strategies for homework that is not based on texts?

21 A No.

22 Q What is your opinion regarding the -- what the
23 availability of text and instructional materials ought
24 to be for a child to take home for homework? What's the
25 standard?

1 information related to concerns about the weights of
2 textbooks and health and safety concerns kids have --
3 that exist where kids are just carrying huge loads?

4 A I did actually.

5 Q What was your consideration in that regard?

6 A That I wish every poor child should be
7 confronted with such a terrible dilemma, that they had
8 so many textbooks that their families were worried about
9 potential for back injury.

10 Q How many don't have that dilemma?

11 A I think the data in the -- portrayed in the
12 second section of my report gives some good estimates of
13 the scope of the shortage of textbooks.

14 Q Did you consider all the health and safety
15 concerns of those children today who have to take
16 textbooks home -- I'll try that again. You sort of
17 responded in an opposite way to what I was asking.

18 MR. ROSENBAUM: David, that's the sort of
19 comment that I do comment upon. That's not an
20 appropriate way -- you can ask your questions, but
21 that's not an appropriate comment.

22 MR. HERRON: Do we want to review the
23 transcripts of your taking depositions of state
24 officials?

25 MR. ROSENBAUM: Fine.

1 A Are you asking me about the standard with
2 regard to weight of the textbooks?

3 Q No, I'm asking now more generally and in terms
4 of availability. What standards should there be in
5 terms of the provision of texts for students to take
6 home?

7 A Again, I'm assuming we're talking about texts
8 in the way we defined them at the outset.

9 Q Sure. Fine.

10 A I believe that every child should have
11 available to him or her the text and instructional
12 materials to take home in order to complete the learning
13 at home of the material related to the content standards
14 that schools expect them to learn.

15 Q How is a standard in the way that you just
16 phrased it -- how would that standard be enforced by the
17 state?

18 A I think, as I explained before, my view is
19 that as a part of the textbook adoption process, there
20 should be said a sufficiency standard in terms of the --
21 of what's required to give -- in terms of the supply of
22 those materials to make sure that each child has
23 sufficient access to do work in school and at home.

24 One textbook per child, per subject is
25 probably a general rule, but it should be modified to

1 the extent that an expert panel, like the curriculum
2 commission, would see fit, given the nature of the
3 particular adoptive material.

4 Q To vary from that standard?

5 A To determine whether or not some variation was
6 appropriate for a particular material.

7 Q By "particular material" you mean a particular
8 subject matter or a --

9 A No. Like the Fass, again, the Fass science
10 kits as an example.

11 Q Okay. I take it one of the principal reasons
12 that you think it's important that kids have access to
13 those in -- textbooks and instructional material to take
14 home is because there's greater achievement under those
15 circumstances, greater student achievement?

16 A Yes.

17 Q And the reports you cited, for example, on
18 page 10, Cooper being an example we referred to earlier,
19 bears that out, that is, that if a student has textbooks
20 and other instructional materials that deliver the
21 content, the higher achievement is shown?

22 A I think what these studies suggest is that
23 when students are engaged in homework, they exhibit
24 greater achievement on the material that -- when they're
25 studying the material they're expected to learn in

1 A State uses a combination of the -- now, it's
2 the CAT 6, used to be the SAT 9, supplemented
3 increasingly by standards-based items that are based on
4 the California State content standards.

5 Q What is your critique of SAT 9?

6 A It doesn't match the California standards.

7 Q Do you know to what degree it doesn't match
8 the California standards?

9 A I wouldn't quantify it, but there are many
10 standards that are not tested by the SAT 9 and many SAT
11 9 items that are not matched by California standards.

12 Q Is it your belief and opinion, therefore, that
13 the SAT 9 ought not to have been administered prior to
14 the -- well, since it didn't contain all the state
15 standards?

16 A I have no problem with the SAT 9 being
17 administered. I have a problem with it being used as
18 the basis for high-stakes decisions. When children
19 haven't had all the opportunities they need to learn it,
20 I also think it's not very useful as an instrument of
21 how well schools are meeting the standards when the test
22 doesn't match the standards.

23 Q In what high-stakes decisions was the SAT 9
24 used?

25 A I believe the state has a policy that each

1 school, then they show greater achievement in that
2 material.

3 I think we can also add to this list, the
4 Wang, Walberg and Haertel study, that as I pointed out
5 before on page 262 said there's strong agreement among
6 researchers about the value of homework for student
7 achievement.

8 Q And student achievement is measured by Cooper
9 1994 as scores on standardized texts. Correct?

10 A Tests.

11 Q Tests.

12 A Yes.

13 Q Similarly, Sander 2000 measures increased
14 performance based on standardized tests. Is that right?

15 A Yes.

16 Q Do you think that utilization of standardized
17 tests is an appropriate measure of student achievement?

18 A It's one of many measures of student
19 achievement, and like all measures is appropriate for
20 particular purposes in text context.

21 Q Are you aware of the standardized tests
22 utilized in the State of California to measure student
23 achievement?

24 A Yes.

25 Q What are those?

1 district needs to set standards for grade-to-grade
2 promotion for children, and that the SAT 9 is -- the
3 state test was to be -- choose my adjectives and verbs
4 carefully -- that those decisions were to be made in
5 relationship to the scores on standardized tests.

6 Q I'm sorry. That's grade-to-grade promotion?

7 A Yes.

8 Q Can you describe to us the grade-to-grade
9 promotion policy of any district in the State of
10 California?

11 A Not without referring to the specific policy.

12 Q Can you tell us of your own knowledge whether
13 performance on the SAT 9 was unfairly used in any
14 grade-to-grade promotion decision for any State of
15 California student?

16 A Are you asking me to say with confidence that
17 there was at least one case of an unfair use of the SAT
18 9?

19 Q Based on your own personal knowledge.

20 A Yes. My daughter is an elementary school
21 teacher in Fremont, California, and she has told me on
22 at least two occasions of some children who she felt
23 were not appropriately measured by the SAT 9, partly
24 because of language difficulties, and that it wasn't a
25 fair assessment of their ability, and that the retaining

1 of that student, she felt, was not based on a fair
2 assessment of their ability.

3 Q Other than those two instances, in your view,
4 of unfair retention, can you identify any other instance
5 of your own personal knowledge where there was an unfair
6 retention based on the students score on the SAT 9?

7 A I worked with a great number of teachers who
8 tell me lots of report -- report lots of incidents like
9 that. So while I don't -- I don't want to make a
10 mistake and give incorrect details, I know that in my
11 personal experience, I have heard teachers at least
12 report instances of this.

13 Q Other than what you've heard, are you aware of
14 any study, survey, research, suggesting that application
15 of the SAT 9 to a grade-to-grade promotion in various
16 districts is unfair?

17 A You know, I think this is going beyond the
18 scope of what I feel comfortable in testifying about
19 right now because this has not been the area of work
20 that I've reviewed in preparation for this case.

21 Q But this precise issue is mentioned in your
22 report, is it not, that this is a high-stakes system,
23 where grade-to-grade promotion decisions are being made
24 based on SAT 9 scores, and that that is unfair? I mean,
25 that is your opinion?

1 A Yes, given the absence of opportunities to
2 learn, the material on the test and the lack of
3 alignment between the SAT 9 and even what the state says
4 children should learn, having that system in place has
5 an unfairness.

6 I think we could probably make a parallel to
7 the death penalty decisions in Illinois, where the issue
8 was that the system was constructed in such a way that
9 the risk of fairness was so high -- unfairness was so
10 high that we couldn't take the chance of making those --
11 couldn't trust those high-stakes decisions to that
12 process. I'm sorry. The fairness of that -- the
13 structure and the process was so in doubt, that it would
14 be inappropriate to make high-stakes decisions based on
15 that.

16 Q So your view is that it's unfair to make those
17 decisions, that is, it's unfair to make grade-to-grade
18 promotion decisions based on achievement scores under
19 certain conditions, but I take it you agree with me, do
20 you not, that there's no data available to show that SAT
21 9 scores have been unfairly applied to students in terms
22 of their grade-to-grade promotions?

23 A Unfortunately, the state has no process in
24 place to make assessments about grade-to-grade promotion
25 and whether or not the particulars of that case were

1 fair or not.

2 What I'm saying is that we have a system in
3 place that contains extraordinarily high risks of unfair
4 decisions being made about children.

5 Q In terms of grade-to-grade promotion based on
6 their test scores?

7 A Yes.

8 Q Okay. The reference here in the first full
9 paragraph on page 10 to the Sander report states that,
10 "In a recent study of high school students attending
11 Catholic schools, minority students, most of whom came
12 from urban areas, completed an average of 1.5 hours more
13 homework at night than students attending public
14 school."

15 That's a misstatement of the research, is it
16 not?

17 A Well, not to my knowledge.

18 Q I'd like to provide you an opportunity to
19 review that particular report.

20 A Okay. Yes, there is an error. It's per week,
21 rather than per night.

22 Q Isn't that the uncorrected data, the
23 uncorrected estimate?

24 A That's the phrase that's used. I would want
25 to review this article to make sure I understand the

1 meaning of that term in this context.

2 Q My suggestion is we come back to this after
3 lunch so as to not waste time. Maybe you could just
4 glance at it. It's a real quick read. The portions
5 that are relevant to uncorrected versus the corrected
6 estimates. That's what I will ask you about after
7 lunch, if that's fine with you, Mark?

8 MR. ROSENBAUM: I'm going to do that based on
9 your representation it's a quick read.

10 MR. HERRON: Sure. Is it not, we'll do it
11 another way.

12 THE WITNESS: Just my scan of it says on
13 page -- again, I want to read it, but let me just read
14 this to you for minority students, the Catholic school
15 coefficient increases indicated -- these corrected -- an
16 additional two and one-fourth hours per week, and it is
17 significant.

18 BY MR. HERRON:

19 Q Okay.

20 A Do you still want me to review this more?

21 Q Yeah, I think that your report misconstrues
22 some of the cites -- the cited study in terms of the
23 hours spent on homework. I just would like to clear up
24 that point so, yes, if you could review it briefly over
25 lunch, and we can return to that.

1 A My view is that the use of a night rather than
2 a week was simply a slip of the fingers so to speak and
3 not -- I mean, it's simply an error.

4 Q It doesn't alter your opinion in any way?

5 A That homework matters and this study helps
6 show that homework matters. No.

7 Do you still want me to review this more?

8 Q Pass it back to me. Thank you.

9 I don't think you need to, unless you would
10 like.

11 On page 10, the last partial paragraph
12 concerns, "Less Well-Prepared and Inexperienced
13 Teachers -- I'm sorry, I'll restate that.

14 States, "Less Well-Prepared and Inexperienced
15 Teachers May Rely More on Textbooks."

16 Why the "may"?

17 A I was just being cautious.

18 Q Is it accurate to say may or may not?

19 A I would -- if I were rephrasing it, I would
20 say are likely to rely more on textbooks because I think
21 the "may" is a far stronger likelihood than the "may
22 not."

23 Q There's a reference in the third -- do you see
24 about three lines down from what I've just read to you.
25 It says "under-prepared teachers"? Do you see that

1 requirements to have an unconditional -- I don't want to
2 get trapped up here in words. It means that you've met
3 the requirements to be awarded a credential by the state
4 that is near an internship credential, a preinternship
5 credential or an emergency credential, but the full
6 credentialing, and there's some provision status, but
7 also those teachers have met the full certification
8 requirements.

9 Q There's a reference here to Ball &
10 Feiman-Nemser?

11 A Yes.

12 Q This is supported by -- preceding that
13 reference it states the -- the report states on page 10,
14 "This is supported by studies finding that teachers'
15 reliance on textbooks varies with training, experience
16 and convictions."

17 Does the Ball & Feiman-Nemser study stand for
18 that?

19 A Does it stand for that?

20 Q Stand for the proposition cited.

21 A Yes, it's one of the three sources I used as
22 support for that statement.

23 Q Do you know how many teachers were the subject
24 of the Ball & Feiman-Nemser study?

25 A I'm not recalling.

1 line?

2 A Yes.

3 Q Open paren, "those without full state
4 certification," closed paren.

5 A Uh-huh.

6 Q Is it your definition for purposes of this
7 report that under-prepared teachers are equivalent to
8 those or equal to those teachers who do not have full
9 state certification?

10 A That's the state's definition of it so for the
11 purposes of this report, that's what I've accepted.

12 Q Where is the state's definition set forth?

13 A In the policies of the California teacher
14 credentialing commission.

15 Q Under-prepared is the term used?

16 A I'm not sure what -- whether or not that term
17 is used, but it's very clear that the standards for the
18 teaching credential in California are the state's
19 expressions of its belief about what constitutes a
20 prepared teacher.

21 Q What do you mean by "full state
22 certification"?

23 A Either a preliminary or -- I can't remember
24 the words -- but they're either with certification
25 for -- it's either -- it's having satisfied the

1 Q Does the -- I am saying it wrong. Stodolsky?

2 A Stodolsky.

3 Q Stodolsky, 1989 -- your view is that it
4 supports the statement preceding it, the one I just
5 read?

6 A Yes.

7 Q And the -- there's further reference down
8 below that states as follows: If you could just go down
9 about three or four lines. It says, "They" -- "they"
10 referring to Ball and Feiman-Nemser "concluded
11 developing lesson plans based on trade books and other
12 supplementary materials as distinguished from textbooks
13 is too difficult for the beginning teacher."

14 Do you stand by that citation? Which is to
15 say did Ball and Feiman-Nemser really say that?

16 A That -- certainly I'm confident at the time
17 that I read it, that was my conclusion about the meaning
18 of their findings.

19 Q On page 11 of your report. There is the
20 subtopic "Low-income." Do you see that?

21 A Yes.

22 Q "Low-income Students May Depend More Heavily
23 on School-Provided Textbooks and Materials."

24 Again, why the "may"?

25 A Again, I'm being cautious.

1 Q The first full sentence is a lengthy one, but
2 has the conclusion that -- well, I just read it.
3 "Access to textbooks and other curriculum materials,
4 equipment and technology to support teaching and
5 learning is particularly important for students from
6 low-income communities and families since they are less
7 likely to have access to other books and learning
8 materials outside of school."

9 Upon what is that statement based?

10 A First, it's based on common knowledge. But I
11 believe that -- well, I don't want to -- somewhere in my
12 store of knowledge is that having read sociological
13 studies and references to census data and other sort of
14 large-scale studies that have -- all the way back from
15 the 60's -- that have looked at the relative wealth or
16 impoverishment of the learning resources available in
17 homes of low-income versus upper-income families.

18 Q But that generalization certainly doesn't
19 apply in all cases, does it?

20 A No. Generalization applies in all cases.

21 Q You don't know to what extent it does apply,
22 what percentage?

23 A I am quite confident that what this says is
24 true.

25 Q That this generalization is accurate?

1 A Textbooks.

2 Q Take notes of the conversation?

3 A I don't recall -- yes, I might have. I know
4 he -- but I'm not sure. I think because he did give me
5 some references related to another topic I was
6 interested in, and I bought some books based on his
7 recommendation, I must have jotted down the names.

8 Q Indeed on page 5 of this report of yours in
9 the last full paragraph you quote him?

10 A Yes, but he didn't actually tell me about
11 that. I found that independently.

12 Q Okay. Did you turn over any notes that you
13 had to plaintiffs that are to be produced to us?

14 A I turned everything over.

15 Q We've seen no notes?

16 A I might not have kept the notes. After I
17 bought the books.

18 Q So when you -- when you were here on page 11
19 of your report, recapitulating what Mr. de Guzman told
20 you, that was just from your memory?

21 A I might have added it into the draft of the
22 text I was working on as we were speaking.

23 Q Do you know that you did?

24 A I don't know that I did, but it's something
25 that I occasion -- I mean, it's part of the way I work

1 A Yes.

2 Q I'm asking slightly different, which is you
3 can't point to any study that says as a percentage
4 matter, this number of low-income children are unlikely
5 to have access to books and learning materials outside
6 of school?

7 A There are, though, a wealth of studies, and
8 Mr. Walberg is among those who have done many of the
9 studies that speak over and over and over about the
10 impoverishment of the homes from which poor children
11 come.

12 Q Did you rely on any of those studies when you
13 made this statement?

14 A This is such an accepted finding that it is,
15 in fact, one that requires no set of specific citations.
16 I think there's such general widespread agreement about
17 that.

18 Q You had a discussion, or someone did with
19 Alfonzo de Guzman?

20 A Yes, I did.

21 Q Over the telephone?

22 A Yes.

23 Q How long was the conversation?

24 A About an hour and a half.

25 Q What was the topic of the conversation?

1 that so that might very well be the case. I remember
2 him -- very distinctly him saying this because I thought
3 it was quite shocking. It was very interesting because
4 he had actually -- he was very interested in this work
5 and had done quite a lot of study of the Cerna
6 (phonetic) case in Compton and was very, very
7 interested. That was the basis, his reading and
8 study -- that was the basis for those remarks.

9 Q Why do you characterize him as a textbook
10 expert?

11 A He was referred to me by a gentleman named
12 Dr. Allen Ruby, who is the president of the Atlantic
13 Philanthropy, which is a very large philanthropy in the
14 U.S., and then they're also in Ireland and in the
15 Bahamas. Alan Ruby is the former, I think, Minister of
16 Education or Deputy Minister of Education in Australia.

17 I met Mr. Ruby when I worked at the Rand
18 Corporation because we were both appointed as our
19 country's representatives to an OACD project on
20 developing indicators of education internationally.

21 I was sharing with Mr. Ruby in a recent
22 conversation because Atlantic Philanthropies gives me
23 funding about my interest in textbooks, and I knew --
24 when he left Australia, his government position, he went
25 to the World Bank and had a very senior position at the

1 World Bank. So I was sharing with him I was doing this
2 work on textbooks. It reminded me, and it was taking me
3 back to the days when we had worked together in the OECD
4 project.

5 He said, "I know the world's greatest expert
6 on textbooks," or at least the one at the World Bank who
7 spends all of his time worrying about textbooks. He
8 said, "If you want to know about textbooks, call Alfonso
9 de Guzman." So I did. And I found the man was willing
10 to speak for hours.

11 Q Probably run up the phone bill a little bit.

12 Do you know anything about his -- Alfonso de
13 Guzman's expertise, other than what you just described?

14 A Only that he often represents the World Bank
15 at international conferences as an expert on textbooks
16 for the World Bank.

17 Q We've talked about the research done by Koski
18 that is cited in your report at pages 13 and 14. Other
19 than what was discussed yesterday, did you or anyone
20 working with you on your report do anything to assure
21 the validity of the results set forth here that are
22 taken from Koski?

23 A Maybe I didn't explain fully enough yesterday,
24 but that my team of research assistants and myself
25 did -- I don't want to call it spot check because it was

1 it to him at that point or not. I may well have.

2 Q Did he -- as best you recall did he, Mr. --
3 presumably Dr. Koski. I'm not sure.

4 A I believe he's a lawyer.

5 Q We'll call him -- I'll be careful there.

6 Did Mr. Koski provide you with any input
7 regarding how you utilized his data in your report, if
8 you recall?

9 A Not that I recall.

10 Q Can you describe in any more detail the method
11 by which you became satisfied that his -- his,
12 Mr. Koski's, analysis and results that are cited in your
13 report are accurate?

14 A Well, my research assistants looked
15 independently at the standards documents, and made some
16 judgments for themselves about what they thought would
17 be required for students to meet those standards, and
18 checked it against what his assessment had been, and
19 then we all sat at a table and had a collective
20 discussion.

21 Our primary concern was -- he made a claim in
22 the report that this was a conservative -- that they try
23 to always make the most conservative judgment. And I
24 was interested in seeing whether or not that's how I
25 would characterize it. And I felt it was.

1 more systematic than that, but did a review of the
2 standards and made some independent judgments about
3 whether or not Koski's team's judgments matched ours.
4 Now -- were consistent with ours. I have to say that
5 Koski's team used a very careful and precise
6 methodology, which he describes in his report.

7 Q Yes.

8 A And that when my group and myself did our
9 look, we did not do anything as systematic as what he
10 had done in his study, but we certainly did enough to
11 satisfy ourselves that his work was trustworthy.

12 Q Did you communicate to Mr. Koski the results
13 of your review of his work?

14 A I think I may have, but I know that I have
15 told him how much I appreciate his work.

16 Q Did he ever -- do you know whether he ever
17 reviewed your report, Exhibit Number 2?

18 A He may have. It's now on the website. He may
19 have looked at it. I don't -- he participated in a
20 meeting of the scholars on -- in July, at which time my
21 report -- or at least almost this report was discussed.
22 I presented an overview, Valerie Lee of the University
23 of Michigan provided some comments. I remember
24 afterwards Bill saying that he was very interested in
25 it, and I don't recall whether he ever -- whether I sent

1 Q Were any work papers generated as part of this
2 review of Koski's work that you've referenced?

3 A Some of my team may have had some notes as
4 we -- that they brought to the table when we were
5 talking. I don't recall. It's not the kind of thing we
6 would routinely keep.

7 Q Do you know when that review was done?

8 A I can't recall.

9 Q Was it after November, 2001?

10 A I don't recall.

11 Q Do you have any way to provide us a best
12 estimate as to when this was?

13 A I know it was at a time when he was continuing
14 to work, because as you'll notice, the version of the
15 report I reference lacks the information about the
16 science standards. That may help you locate it in time.
17 I don't have a recollection.

18 Q Could you kindly turn to page 15 of your
19 report. The first sentence of the second full
20 paragraphs states, "Detailed findings for the necessary
21 instructional materials required by the content
22 standards in science are not available as of this date."

23 This is a reference to Mr. Koski having not
24 yet completed that?

25 A As of the date that I wrote that paragraph,

1 yes.

2 Q Has he since completed it?

3 A I don't know.

4 Q Well --

5 A I think I have his final report, but I haven't
6 read it.

7 Q Have you received copies of all plaintiffs'
8 experts' reports?

9 A The final versions of the reports, yes, I
10 think. I think I have them.

11 Q And you've read them all?

12 A I've read -- I read them all in preparation
13 for the synthesis report that I did. I haven't read
14 them in six months.

15 Q I thought you just said you didn't read
16 Koski's report?

17 A I read his earlier version of his report. I
18 didn't read the table that ended up completing the
19 science, if he finished it.

20 Q Your review of the other experts' reports was
21 done for your third synthesis report?

22 A Yes, yes.

23 Q On page 15 you discuss Star Testing program
24 for elementary and secondary schools.

25 A Yes.

1 nationally to see where California students stand?

2 A Actually, I think that the national assessment
3 of educational progress is a far better instrument for
4 that use and --

5 Q That's another testing -- another test?

6 A It's a national -- it's a national testing
7 program sponsored by the federal government that does
8 state -- that enables state-by-state comparisons in the
9 content areas. And I think it's my personal opinion
10 it's a better -- better strategy for making comparisons
11 of how California students do with students elsewhere in
12 the country.

13 Q Why is that?

14 A I like the design of the test better, that
15 it's focused on items that cover a broader range of
16 student learning. I think the methods used in -- it's
17 called the Nape Test -- Nape are quite solid, and I
18 think that it's -- it uses an efficient methodology in
19 that it doesn't require every child in every state to
20 spend a good chunk of time taking a test, but it varied
21 its design so you get a quite accurate picture of what
22 U.S. students should know overall and how that varies
23 among states.

24 Q Is there some way to compare the value of the
25 SAT 9 versus the Nape test? That is, Nape is superior

1 Q And the statement is made without citation to
2 study or authority. It says, "SAT 9 is called an
3 off-the-shelf test because it is designed by a
4 commercial publisher. It only generally meets the needs
5 of particular locales, and it is not especially tailored
6 to match what students in a state have been taught."

7 My question relates to "it only generally
8 meets the needs of particular locales." What is meant
9 by that statement?

10 A The test is designed to be -- to have a broad
11 appeal across many states and localities. It's unlike
12 many states that have tests that have been designed
13 specifically for their standards, and increasingly in
14 California we're having standards-based items. The SAT
15 9 is not tailored to any particular state's curriculum
16 or any local curriculum.

17 Q For that reason you conclude that it doesn't
18 meet the needs of the particular locale?

19 A I said it only generally meets the needs of
20 particular locales.

21 Q And "needs" in that sentence means what?

22 A The need to measure whether students have
23 learned, period.

24 Q Do you consider it a benefit of the SAT 9 test
25 that California students who take it can be compared

1 while the SAT 9 is woefully inadequate or -- how would
2 you make a comparison in those sort of terms?

3 A My professional preference is for the national
4 assessment, and it has -- the design of the national
5 assessment has had the -- it's been a very long and
6 careful and highly participatory process involving some
7 of the best assessment people in the country working on
8 it, and I personally like the fact that it's seen as a
9 public service to do this, rather than the result of a
10 commercial enterprise.

11 Q What is the difference between the SAT 9 and
12 the CAT 6?

13 A They're very comparable.

14 Q What are the differences, if any?

15 A I couldn't specify item-by-item differences.
16 They're produced by different companies.

17 Q And the CAT 6 contains more or less California
18 content?

19 MR. ROSENBAUM: Foundation.

20 BY MR. HERRON:

21 Q If you know.

22 A I don't know.

23 Q I take it one of the important consequences
24 for students that you identify -- I'm now looking at
25 page 16 of your report -- you know what. Now is just as

1 good a time to break as any.
 2 MR. ROSENBAUM: That's fine.
 3 (Discussion off the record.)
 4 MR. ROSENBAUM: David, we've checked out the
 5 items that I mentioned to you. The Lee and Burkham,
 6 1996, reference is the science -- is the science
 7 education program. It is \$42 from ERIC and Infotreve
 8 (phonetic). It's available in the San Francisco Public
 9 Library. The Educational Products Information Exchange
 10 Institute, the 1977 reference, is available at ERIC. I
 11 do not know what its cost is because there are copyright
 12 fees. I'm told once it's ordered, the agent from whom
 13 you place the order can determine the cost.
 14 But you can also get it by calling Infotreve,
 15 which I'm told pops up when you click obtain after
 16 finding the document at the ERIC site.
 17 The Lee Chen and Smerdon cite, 1996, is
 18 available at ERIC on microfiche. The Market Data
 19 Retrieval 2000 A cite is available at ERIC microfiche.
 20 I think the record reflects this, David, but during the
 21 break we did distribute the documents, the hard copies
 22 that we brought. Isn't that right?
 23 MS. FANELLI: Yes.
 24 MR. ROSENBAUM: The three of them were
 25 brought.

1 MR. HERRON: Okay. Would you mind?
 2 (Whereupon, at 12:25 P.M. the proceedings
 3 were adjourned for the lunch recess.)
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1 (Whereupon, at 1:30 P.M. the proceedings
 2 were reconvened.)
 3 BY MR. HERRON:
 4 Q You are, of course, still under oath.
 5 A Yes.
 6 Q Over the lunch hour, did you consume any
 7 medication, alcohol or any other substance that clouds
 8 your mind or would interfere with your ability to
 9 understand my questions and to respond to them?
 10 A No.
 11 Q Is there any other reason that you're not able
 12 to give your best testimony this afternoon?
 13 A Not that I know of.
 14 Q Over the lunch hour did you review any
 15 documents?
 16 A No.
 17 Q Did you talk with anybody about your
 18 deposition?
 19 A I had a brief conversation with Mr. Rosenbaum.
 20 Q What was said?
 21 A Again, he complimented me on my answers. He
 22 reminded me that I don't need to connect dots for you
 23 that are not being asked -- that you're not asking for,
 24 and then when I really don't recall, it's sufficient to
 25 say that I don't recall rather than elaborating all of

1 the kinds of circumstances that might have been there in
 2 the moment I don't recall.
 3 Q Okay. Anything else?
 4 A Not that I recall.
 5 MR. EGAN: Could you elaborate?
 6 MR. HERRON: Could you connect the dots for
 7 me, please?
 8 Q Before we broke for lunch, we were discussing
 9 a subject that's set forth on page 16 of your report,
 10 which is important consequences for students, and I take
 11 it what we're talking about here is high standards-based
 12 systems, the consequences of not providing them with
 13 content?
 14 A Yes, if I understand what you're saying to
 15 mean that the consequences that come to students who
 16 haven't learned content and therefore do not perform
 17 successfully on the state's assessments, yes.
 18 Q And one of those assessments is the California
 19 high school exit exam?
 20 A Yes.
 21 Q When is that slated for implementation, if you
 22 know?
 23 A Well, it's already been implemented in that
 24 the class of 2004 has taken the exam now and for two
 25 year's there now juniors. At the moment it's to effect

1 their graduation, class of 2004.
 2 Q Why do you say "at the moment"?
 3 A Because there's considerable discussion about
 4 whether or not there should be a delay or moratorium.
 5 Q Is there a discussion at any level of state
 6 government that you know about on that topic?
 7 A I have not been -- I have no firsthand
 8 knowledge of discussion among high-level government
 9 officials.
 10 Q Do you know whether or not the State Board of
 11 Education is considering whether to delay implementation
 12 of the high school exit exam?
 13 A There have been some quotes in the newspaper
 14 of state board members saying they were concerned about
 15 whether or not the policies should go ahead as planned.
 16 Q Do you know whether any entity outside state
 17 government is -- has been asked to assess this issue,
 18 that is, whether the high school exit exam should be
 19 the -- the implementation of the high school exit exam
 20 should be extended?
 21 A I know that there is a HUMRRO report that is
 22 expected either in March -- maybe in March or April that
 23 will provide information about the state of readiness to
 24 implement the high school exam.
 25 Q In your opinion, is it appropriate to defer

1 A My analysis of the results of the first
 2 administration.
 3 Q Which show what?
 4 A Disproportionate failure rates among African
 5 Americans and Latinos and disproportional failure rates
 6 of students in schools with large numbers of uncertified
 7 teachers.
 8 Q In light of those results what do you think
 9 the state ought to do?
 10 A As I said before, I've suggested and
 11 recommended a moratorium on the consequences of the
 12 high-stakes exam until the state can provide
 13 some assurance that all students have access to the
 14 meaningful opportunities to learn the material.
 15 Q Was your recommendation in writing?
 16 A It was in the Los Angeles Times in an opinion
 17 piece.
 18 Q Have you made that recommendation in any other
 19 form?
 20 A In writing?
 21 Q Or orally?
 22 A Yes.
 23 Q In what form?
 24 A I don't recall the specifics, but I know I
 25 have said that on occasion.

1 implementation of the high school exit exam requirement?
 2 MR. ROSENBAUM: Speculation. Foundation.
 3 THE WITNESS: I personally have called for a
 4 moratorium on the consequences associated with that test
 5 until such time that we can be assured that all students
 6 have an opportunity to learn the material that's on the
 7 test.
 8 BY MR. HERRON:
 9 Q Is it your opinion that -- is it your opinion
 10 that certain California students are more disadvantaged
 11 than others or perhaps more likely to be impacted than
 12 others by the requirement of the California high school
 13 exit exam?
 14 A Would you clarify what you mean by certain
 15 groups of students?
 16 Q Students with certain characteristics, for
 17 example, English-language learners or socioeconomic
 18 disadvantaged children and the like.
 19 A And these groups of students --
 20 Q Is it your opinion that they would be
 21 disadvantaged by implementation of the California high
 22 school exit exam as currently contemplated?
 23 A There would certainly be a disparate impact of
 24 that test.
 25 Q What's your basis for that statement?

1 Q Publicly?
 2 A Yes.
 3 Q Have you ever been involved -- have you ever
 4 participated as a member of the state's curriculum
 5 commission?
 6 A No.
 7 Q Do you know what sort of backgrounds are
 8 required for members of the curriculum commission?
 9 A Yes, I believe that at some -- in my report I
 10 describe the curriculum commission, and I may not --
 11 let's see. I think it may be on page 55.
 12 In fact, it doesn't describe the membership of
 13 the curriculum commission. However, it does -- at some
 14 point it describes the members of the panels, the expert
 15 panels that the commission appoints to help it make
 16 judgments about the appropriateness of the curriculum
 17 materials. The classroom teachers, curriculum
 18 specialists, university faculty, parents.
 19 But the commission itself, the political
 20 appointees, the people I've known who have been involved
 21 have had some content expertise.
 22 Q What is your opinion of the quality of the
 23 work done by California's curriculum commission in the
 24 past five years?
 25 A I wouldn't want to make a global assessment of

1 their performance, but suggest to me particular
 2 decisions they have made, I might have an opinion.
 3 Q You can't provide an overall sort of opinion
 4 of whether they've done well, poorly?
 5 MR. ROSENBAUM: Asked and answered.
 6 BY MR. HERRON:
 7 Q You may respond.
 8 A Did you ask a question?
 9 MR. HERRON: Yes.
 10 (Record read as follows:)
 11 "QUESTION: You can't provide an overall
 12 sort of opinion of whether they've done well,
 13 poorly?"
 14 THE WITNESS: Is that a question?
 15 BY MR. HERRON:
 16 Q Yes.
 17 A I prefer to make my judgments on particular
 18 actions rather than judging that group as an entity.
 19 Q Your report at the bottom of page 7 discusses
 20 California's postsecondary education policies. You note
 21 that they emphasize the importance of textbooks,
 22 curriculum materials, and technology in elementary and
 23 secondary schools.
 24 On what -- is that your opinion?
 25 MR. ROSENBAUM: David, would you mind

1 referring, please, to the portion.
 2 MR. HERRON: Yes, paragraph 17, the
 3 underlined -- the last underlined material on that
 4 page.
 5 MR. ROSENBAUM: I thought you said page 7.
 6 MR. HERRON: Page 17.
 7 THE WITNESS: 17?
 8 MR. ROSENBAUM: Can you please direct us to
 9 the paragraph. Talking about underscored section and
 10 then the paragraphs below that.
 11 MR. HERRON: No, the bottom underscored.
 12 MR. ROSENBAUM: I'm sorry.
 13 BY MR. HERRON:
 14 Q We'll start again there.
 15 A Yes.
 16 Q Page 17 at the bottom?
 17 A Yes.
 18 Q On the top of page 18 you make the statement,
 19 or your report makes the statement that a fundamental
 20 component of public education is providing each student
 21 with a reasonable opportunity to compete for admission
 22 to any public institution of higher education in the
 23 state and to compete for admission to the full range of
 24 college majors.
 25 Upon what do you base that opinion, and more

1 specifically that a fundamental component of education
 2 is providing each student the opportunity that you
 3 identify?
 4 MR. ROSENBAUM: I'm sorry. I'm sure -- can
 5 you tell me where you're referring?
 6 MR. HERRON: Top of page 18. This is my 18.
 7 MR. ROSENBAUM: I'm using your exhibit. Oops.
 8 THE WITNESS: Are you missing a page?
 9 MS. FANELLI: You're missing a page.
 10 MR. ROSENBAUM: Very clever strategy. Forget
 11 it. It's all right. I can share. For this one
 12 instance I can share instructional material.
 13 MR. HERRON: You'll find that the joint
 14 learning experience is really quite rewarding.
 15 MR. ROSENBAUM: I'm totally lost now.
 16 THE WITNESS: Every lawyer needs an
 17 opportunity to learn.
 18 MR. ROSENBAUM: This doesn't have 18 also, by
 19 the way.
 20 MR. HERRON: You're kidding.
 21 MS. FANELLI: Here is 18. I want judicial
 22 notice of this process.
 23 THE WITNESS: The basis for that statement is
 24 the California 1960 master plan, which established the
 25 principle that every Californian who wanted it should be

1 able to pursue -- actually said tuition-free post
 2 secondary education. The implication of that master
 3 plan is that no child should be precluded from attending
 4 a particular institution by virtue of the secondary
 5 school that they attend.
 6 In other words, that no school should have
 7 such limits in place that would make it virtually
 8 impossible for a child to gain entrance to any of the
 9 California public post secondary institutions.
 10 Q Did the 1960 master plan set forth that it was
 11 a fundamental component of education that each student
 12 would have the opportunity to go to post secondary
 13 education, or are those your words?
 14 A I don't know the specific language in the
 15 master plan. I'm not only relying on the master plan,
 16 but the fundamental -- I guess premise that perhaps
 17 relying on Brown versus the Board of Education, that
 18 education should be made available to all on equal
 19 terms.
 20 Q You set forth information regarding -- on page
 21 18 you have set forth information regarding three tiers
 22 of requirements that govern admission to public colleges
 23 and universities. From where did you draw this
 24 information?
 25 A This information is drawn from my extensive

1 reading of the policies regarding admission to post
2 secondary institutions in California and my study of
3 this topic over a number of years.

4 Q So this is -- you were able to just draft from
5 your knowledge of -- "this" meaning this information on
6 18 regarding the three tiers of requirements you drafted
7 based on your own personal knowledge as opposed to
8 taking it from any source document? The reason I ask is
9 none is cited.

10 A Some of the language might come from website
11 documents, but I certainly have sufficient knowledge of
12 all of these details to rely on my own expertise.

13 Q Your report, and particularly your question
14 number 2 -- and the associated opinion set forth a
15 number of tables, and below each the source for the
16 information in the tables is identified as Peter Harris
17 Research Group, date of tabulations 2002.

18 What data did you receive from the Peter
19 Harris Research Group?

20 A I received data in two different forms. One
21 was data reported in -- on a large set of printouts,
22 hard copy, called banners, which is a way that the Peter
23 Harris Group reports their data. I also received
24 electronically a copy of the raw data.

25 Q When you say "electronically," what form did

1 not exactly -- they didn't include all of the analysis
2 that I wanted to do of the data. I also have a great
3 deal of confidence in David Silver, and I wanted to have
4 a second run at the data to make myself feel as
5 comfortable as I could be about using it.

6 Q I may have asked it. If I did, tell me, but
7 in what form did you provide that data to David Silver?

8 A I provided both forms. I think one was an
9 SPSS file, but I would have to check to be absolutely
10 certain of the format it was in.

11 Q Just as a general matter, what is your
12 understanding of what David Silver did with that data?

13 A David Silver --

14 Q I'm talking just generally.

15 A Okay. I know I explained in some detail
16 yesterday what he did with the data. Essentially, he
17 checked the data to make sure that the files were
18 appropriately constructed. He checked with Peter Harris
19 to make sure that he understood how the weights were
20 constructed, and how different kinds of responses were
21 handled in their analysis.

22 Then he ran some analyses for me, verified
23 them with the -- looked to see the match with the Harris
24 data, and provide -- did some significance tests on the
25 analysis I'd asked for, and then sent the results to me

1 it take?

2 A It was a zip file attached to an E-mail.

3 Q Do you know what the particular -- was it in a
4 spreadsheet form?

5 A It's -- I think it came in two or three
6 different formats, and I would have to check the actual
7 formats on my computer to know with certainty.

8 Q Okay. When you say raw data, what do you
9 mean?

10 A The data files that were -- it wasn't raw.
11 Like, I didn't get the pieces of paper where the
12 interviewers had marked on the responses, but after the
13 data had been -- data file had been created from the
14 data.

15 Q Was the data only that data which concerns
16 text or instructional materials or the entire data set?

17 A I was provided with the entire data set.

18 Q To whom did you provide that data?

19 A I provided the data to David Silver, who is
20 my -- primary research group, the methodologist. I may
21 have also provided a copy to Russell Rumberger.

22 Q For what purpose did you provide that data to
23 David Silver and perhaps Russ Rumberger?

24 A I provided data to David Silver because the
25 particular analyses that the Harris Group had done were

1 so I could make the tables.

2 Q So the data you received from David Silver
3 then was put into your tables in your report?

4 A The analyses of the data.

5 Q Do you know whether or not he did particular
6 data runs using the information -- the raw data that
7 you've given him?

8 A Yes.

9 Q We request formally the production of that raw
10 data. Previously, asked for it from plaintiffs, and
11 they refused. Dr. Oakes has testified quite clearly
12 that the data was received by her, analyzed by her
13 group, and utilized and heavily relied upon in her
14 report. So we would like the delivery of that data as
15 soon as possible so that we can utilize it as she has?

16 MR. ROSENBAUM: Do me a favor, David. Would
17 you put that sentence in writing to me. Just make it
18 easy for me.

19 MR. HERRON: Sure. The other thing I will
20 question is any data runs that were done by David Silver
21 because I don't believe that we have received those
22 either though. In that regard, if I'm mistaken, I'll
23 double check before asked.

24 MR. ROSENBAUM: Why don't you -- I would
25 appreciate if you would cc the request to Jack.

1 MR. HERRON: Sure.
 2 Q I would like to ask you to look at Exhibit 7,
 3 if you would, please.
 4 A I think I --
 5 Q Do I need to get a new one?
 6 A I left Exhibit 2 on the table.
 7 MR. ROSENBAUM: As long as we're talking about
 8 that, why don't we check Exhibit 2 to make sure it
 9 includes page 18.
 10 (Discussion off the record from 2:06 P.M.
 11 until 2:08 P.M.)
 12 BY MR. HERRON:
 13 Q Have you had an opportunity to review Exhibit
 14 7?
 15 A Yes.
 16 Q This is a document that at the top says,
 17 Williams meeting, and it's Bates-stamped at the bottom
 18 Plaintiff XPJO 09085. What is this?
 19 MR. ROSENBAUM: If you know.
 20 THE WITNESS: I don't know exactly what this
 21 is.
 22 (The document referred to was marked by
 23 the CSR as Defendant's Exhibit 7 for
 24 identification and attached to and made a part
 25 of this deposition.)

1 BY MR. HERRON:
 2 Q Do you know if you drafted it?
 3 A I do not know if I drafted it.
 4 Q Have you ever seen it before?
 5 A I do not know whether I've seen it before.
 6 Q Do you have any idea about the date on which
 7 it was?
 8 MR. ROSENBAUM: Object. Foundation.
 9 Speculation.
 10 THE WITNESS: I wouldn't want to speculate. I
 11 don't know.
 12 BY MR. HERRON:
 13 Q Do you know without speculating what the
 14 reference is to responses to teacher survey draft?
 15 A I do not know.
 16 Q How about the next entry, plans for the,
 17 quote, case survey?
 18 A I don't know.
 19 Q Was it ever determined that neither North
 20 Carolina, Connecticut nor Kentucky's oversight systems
 21 were appropriate for citation in your report, Exhibit 2?
 22 A No, it wasn't. In fact, I have citations in
 23 my report, certainly to Kentucky and Connecticut, and I
 24 would have to double check before I said with certainty
 25 about North Carolina.

1 MR. HERRON: You may set that aside. 8.
 2 (The document referred to was marked by
 3 the CSR as Defendant's Exhibit 8 for
 4 identification and attached to and made a part
 5 of this deposition.)
 6 BY MR. HERRON:
 7 Q Have you had an opportunity to review Exhibit
 8 8?
 9 A I have reviewed it.
 10 Q This is a document that has at its top on the
 11 first page, Meeting About Williams Case 6/26/01. It's
 12 Bates-numbered plaintiff XP-JO 09051 through 09054.
 13 Do you know what this is?
 14 A Yes.
 15 Q What is it?
 16 A These are my notes that I made during a
 17 meeting at Stanford University about the scope of issues
 18 that would need to be addressed by experts in the
 19 Williams case.
 20 (The document referred to was marked by
 21 the CSR as Defendant's Exhibit 9 for
 22 identification and attached to and made a part
 23 of this deposition.)
 24 BY MR. HERRON:
 25 Q Was this part of your work at IDEA, or was

1 this part of your work as a retained expert?
 2 A At this point I was in a role of having spent
 3 six or eight months off and on working along with Linda
 4 Darling-Hammond contributing to what was going to be her
 5 expert report. At this point I was acting as an
 6 individual academic who had been consulted to work on
 7 this.
 8 Q Okay. And what you were doing in conjunction
 9 with the other people, I take it, listed -- well, step
 10 back.
 11 Is this a complete list of the participants in
 12 this meeting that was held as best you know, on page
 13 1 -- I mean, page 09051?
 14 A I don't recall with certainty. I can see that
 15 I wrote "Another, Public Advocates," so I didn't know
 16 all the people.
 17 Q Okay. The group, however, including you, did
 18 discuss what issues need to be addressed by experts?
 19 A Yes.
 20 Q So you were participating in identifying what
 21 each expert would be talking about. Is that correct?
 22 MR. ROSENBAUM: Mischaracterization of her
 23 testimony.
 24 BY MR. HERRON:
 25 Q You may answer.

1 A We were brain-storming about the issues that
2 were relevant to the complaint. I have to say I'm not
3 sure how much of this -- on this paper reflects what was
4 actually said out loud or what was being -- or what I
5 was thinking because I tend, when I write my own notes,
6 to put both things down.

7 Q So this may not necessarily be a sort of
8 summary of everything that was said?

9 A It may be less than. It may be more than.

10 Q But it represents either what was said or what
11 your thoughts were on the topics addressed in this
12 document. Correct?

13 A In some part.

14 Q Let's talk about the part that follows, "Who
15 Will Do What." This second entry there begins, "Who can
16 coordinate the use of experts dash Gary with Jeannie and
17 John."

18 Was a decision made or an assignment made that
19 along with Gary Blasi and John Affeldt would, in fact,
20 coordinate the use of experts in the Williams case?

21 A I believe the John in this reference is John
22 Rogers, who is my colleague at UCLA.

23 Q Oh, okay.

24 A I don't know the extent to which this was
25 spoken out loud or the -- I thought -- it was during

1 at -- during this meeting, as best as I can recall. I
2 don't think any commitments were made.

3 Q But, ultimately, that's what you've done in
4 this case. Correct?

5 A I have done in this case what I've represented
6 to you before. I gathered together a group of scholars,
7 made agreements with them about a set of work that I
8 would like to so accomplish, and I made clear to them
9 that this was scholarly work, independent of the case,
10 that it was possible, maybe even likely that they would
11 be approached by the attorneys to become testifying
12 experts. And if that was the case, that was to take
13 place independent of any interaction with me.

14 Q I'm confused. This says you're going to
15 coordinate experts. What you've just said is you
16 weren't going to coordinate experts?

17 MR. ROSENBAUM: That's your characterization.

18 MR. HERRON: It sure is. I would like an
19 explanation of the difference, if you could, please.

20 MR. ROSENBAUM: Go ahead.

21 THE WITNESS: Sometime after this
22 conversation, I had an additional conversation with, I
23 believe, Jack Londen and -- who wasn't present at this
24 meeting, and Mark, and proposed what they characterized
25 as a very innovative approach to examining issues in

1 this meeting that I first began to have the idea of the
2 possibility of an independent research project that
3 would gather together experts to work as scholars on
4 topics related to this case. So part of what you see
5 here is my initial thinking about that.

6 Q With the full understanding that once that
7 work was done on the scholar work or in conjunction with
8 the scholar work being done, that the results would be
9 used in the Williams case. Correct?

10 A No.

11 Q Why do you say that?

12 A I had no full understanding -- first of all, I
13 had no full understanding of anything at this point.
14 This was beginning brain-storming. I think at this
15 point that Linda Darling-Hammond was the only person who
16 had made a commitment to testify.

17 Q But your recognized role for yourself was
18 to -- as stated on this document at 09051, "It ended up
19 that John, Gary and I, if all are willing, will
20 coordinate to work with the experts and take ownership
21 of how-to ideas about an accountability system that
22 would correct or at least shed light on this, drawing on
23 other experts."

24 That was what you intended to do?

25 A That was the -- an idea that we ended up with

1 litigation. And that was to commission a set of
2 independent scholarly studies with no restrictions on
3 the scholars about what and how they approach the
4 problem as a way to more deeply explore the issues in
5 the case.

6 From my perspective it was an opportunity for
7 a wonderful research project. I think they saw it as an
8 opportunity to get more insight into the issues that
9 they cared about and have an opportunity to look at the
10 work of a number of scholars who were potential
11 candidates for experts.

12 BY MR. HERRON:

13 Q In fact, they told you that's what they
14 wanted?

15 A I knew they were looking for experts.

16 Q Yes. And this was the means by which Jack
17 Londen and Mark Rosenbaum and the plaintiffs' attorneys
18 were going to obtain their experts in this case is
19 through what you just described?

20 MR. ROSENBAUM: Calls for speculation.

21 THE WITNESS: I don't know that.

22 BY MR. HERRON:

23 Q Do you believe that to be true?

24 A In fact, it turned out that only a small
25 number of the experts I identified and have worked with

1 became testifying witnesses. So I don't now have any
2 knowledge any more than I did at that time.

3 Q On page 09052, the second page of this Exhibit
4 number 8, there is a reference, if you see a third one
5 down -- "Need to build for equalizing resources as well
6 as an accountability system."

7 What does this reference mean?

8 A When you read the last sentence, that
9 "Districts are worried that they will only get reporting
10 requirements and not the resources," that expressed my
11 personal concern about the plight of educators who are
12 continuously asked to take on more responsibility
13 without being provided the resources that they need to
14 do it. I was personally concerned about that. I remain
15 concerned about that.

16 Q There's a reference a little bit below that
17 that says, "Computers - Barbara O'Connor (CSU
18 Sacramento.)"

19 Was she someone that you contacted at any time
20 regarding this case or the work on the -- the IDEA work?

21 A I actually contacted her -- or I had a
22 telephone conversation with her. I'm not sure who
23 contacted who. I think I contacted her because she had
24 done some survey work on computers, and I was interested
25 in gaining access to that information for my own work on

1 A No, I did not.

2 Q Did you ever speak to her about it, the
3 projects, I mean?

4 A Not to my recollection.

5 Q Do you recall having communicated with her in
6 writing regarding the projects?

7 A I don't recall having done that.

8 Q How about Mr. Allen Odden? Did you have
9 communications with him?

10 A I don't recall ever interacting with Allen
11 about this.

12 Q Same question about Larry Picus?

13 A I don't recall.

14 Q Did you recommend -- did you recommend Miss
15 Goertz, Mr. Odden or Mr. Picus to the litigation team as
16 potential experts?

17 A Their names came up in the course of this
18 conversation, and it's not -- I'm not recalling who may
19 have mentioned their names first.

20 Q But these folks were at least identified as
21 potential experts during this meeting?

22 A They were identified as people who had
23 expertise and who had done considerable research on
24 issues of school finance.

25 Q At the bottom of that paragraph, you wrote,

1 curriculum materials.

2 At some point I might have considered a
3 separate scholarly paper on technology, but decided
4 against it.

5 Q So the contact didn't result in her becoming a
6 consultant or being involved in the project of IDEA or
7 the expert-related matters?

8 A She was not involved with IDEA. I don't have
9 any knowledge of how she might be related to the
10 litigation team.

11 Q Below, about, I guess it's the second full
12 paragraph, the one beginning "What's missing," there's
13 reference to finance, and then the names Goertz, Odden,
14 Picus or Pecus. Who are those folks?

15 A They're three scholars who I mentioned as
16 people I know work in the area of school finance.
17 Margaret Goertz is at the University of Pennsylvania.
18 Allen Odden at the University of Wisconsin. Larry Picus
19 is at USC.

20 Q Do you consider each of them expert in
21 finance -- education finance issues?

22 A I think they're recognized as experts, and
23 that was the reason their names were mentioned.

24 Q Did you contact Miss Goertz to become involved
25 in the projects in which you were working?

1 "Basic principles of accountability that are not present
2 here. We don't have to defend one particular approach
3 to it."

4 What was discussed regarding that last
5 sentence, "We don't have to defend one particular
6 approach to it."?

7 A I think we were speaking generally about what
8 seemed important -- what I recall is a conversation that
9 it's always important to establish that there are
10 possibilities other than what is currently existing in
11 any practical or policy environment, but that doesn't
12 mean necessarily that there is only one best way.

13 Q And that in the context of the litigation, it
14 was not necessary to defend one particular approach to
15 accountability?

16 A I don't know that this refers specifically to
17 the context of the litigation, but rather generally that
18 there are principles around accountability that are
19 important, and that there may be multiple strategies for
20 enacting those principles in policy.

21 Q Okay. The next sentence says, "We don't need
22 to design the perfect system - identify what they don't
23 have; cite other examples of what other states now have;
24 judge needs a template."

25 Does that refresh your recollection that this

1 discussion was occurring in the context of what should
2 be done about accountability in terms of the litigation?

3 A There were several lawyers in the room, and I
4 suspect -- I won't suspect -- that some statements made
5 during the meeting were in reference to what was needed
6 for the litigation.

7 Q That was the principal purpose of the meeting.
8 Correct?

9 MR. ROSENBAUM: Speculation.

10 THE WITNESS: The purpose was to -- at least
11 my understanding of the purpose was to come and discuss
12 the expert -- expertise required for the litigation,
13 yes.

14 BY MR. HERRON:

15 Q The next page, that is 09053, has a reference
16 at the top, "Money issues scares them - the other side
17 would like a big price tag to shoot down; don't be hung
18 to a particular number; we don't need to figure out what
19 it would cost; the state needs to figure out what it
20 costs."

21 "Money issues scares them." My first question
22 is who is "them"?

23 A I don't recall precisely what -- either who
24 said this or I thought it.

25 Q Fine. Do you recall the discussion, though,

1 Q Below it says, "Survey - do we need it?"

2 Do you recall what was discussed about the
3 survey, either at this time or near this time?

4 A I only remember that there was a discussion
5 about whether there now existed sufficient empirical
6 evidence around all of the issues in the case. Just a
7 casual conversation. Do we need more information.
8 Might it be fun to have a survey. Interesting. Useful.

9 Q Jeannie -- in the next reference, "Jeannie
10 will ask Linda about Steve Klein -- Brian Stetcher --
11 Richard Elmore -- Peg Goertz -- Rudy Crew -- Skip Meno
12 -- and Monica Lozano --"

13 Did you have the discussion with Linda about
14 those people?

15 A I don't recall.

16 Q Are these people who were contemplated as
17 potential experts in this case?

18 MR. ROSENBAUM: Speculation.

19 THE WITNESS: These are people who have
20 expertise in the areas of the case who Linda and I have
21 either worked with before or knew of -- I wanted to ask
22 her something. I don't recall what.

23 BY MR. HERRON:

24 Q What was the purpose for contacting them?

25 A I don't recall.

1 surrounding the reference that the other side would like
2 a big price tag to shoot down? And I mean in this
3 conversation or at any other time.

4 A Well, the reference is to the -- two sides of
5 the particular litigation, and the other side would mean
6 the side that's not the plaintiffs.

7 MR. HERRON: Joe Egan.

8 MR. EGAN: Or the intervenors.

9 THE WITNESS: Or the intervenors.

10 MR. JORDON: I don't think we were in it back
11 then.

12 THE WITNESS: Frankly, I have almost no
13 recollection of the fuller context of any of these
14 notes, whether or not they were spoken aloud or whether
15 these are my notes to myself.

16 BY MR. HERRON:

17 Q You just don't recall what the discussion may
18 have been?

19 A No. This was a year and a half ago. It's
20 very difficult to remember the --

21 Q No, I understand. The next line says, "Don't
22 put piece that Linda and I wrote out there without an
23 overlay of the discussion - "

24 What does that mean?

25 A I have no idea.

1 Q But they are apparently people who have
2 expertise in education issues?

3 A Well, Steve Klein, Brian Stetcher and Richard
4 Elmore are all policy analysts who Linda and I have
5 worked with at the Rand Corporation or in conjunction
6 with the Center for Policy Reserve on Education. Peg
7 Goertz is a school finance expert. Rudy Crew is now the
8 president of the Stupski Foundation, but the former
9 chancellor of -- maybe not the president, but he's the
10 major person at the Stupski, the former chancellor of
11 the New York City Schools and the former superintendent
12 of Oakland. Sacramento, sorry.

13 Skip Meno is the dean at San Diego State
14 University and the former state commissioner of
15 education in Texas and a friend of mine, and Monica
16 Lozano is either the current or former editor of La
17 Opinion, and I believe now a member of the school board
18 or the regents. She's a regent.

19 Q Have you worked with Rudy Crew or Monica
20 Lozano before?

21 A Rudy Crew was a Ph.D. intern at the elementary
22 school that my two daughters attended. I have known
23 Rudy a long time. We have worked together from time to
24 time on committees.

25 Q How about Monica Lozano?

1 A I have never worked with Monica Lozano.
 2 Q Next mentioned on this document, 09053, are
 3 David Long and Ron Ferguson. I take it Long was someone
 4 who, what, you were going to contact regarding his
 5 expertise in finance?
 6 A I have no idea.
 7 Q How about Ferguson?
 8 A I don't know why Ron Ferguson's name is there.
 9 Q Mike Rebell? Who is that?
 10 A He was the lead attorney on the campaign for
 11 fiscal equity case in New York.
 12 Q Did you ever have contact with him?
 13 A Yes.
 14 Q Why?
 15 A Mike and I were grantees of the Ford
 16 Foundation and attended a series of meetings. Ford
 17 convenes for a while. Ford was convening meetings of
 18 its grantees two or three times a year for purposes of
 19 exchange, and they were hoping to promote collaborative
 20 work. That's where I met Mike. Later invited him to
 21 come to California.
 22 Q And did he?
 23 A He did.
 24 Q For what purpose?
 25 A He was the keynote speaker at a culminating

1 project -- I mean, a culminating event for a summer
 2 project we held in IDEA for African American and Latino
 3 high school students who have little access to advanced
 4 placement in their own schools. So we tried to provide
 5 them a course that would give them college credit as
 6 high schooling students that they didn't have available
 7 to them at their own schools.
 8 Mike came -- they had been studying the
 9 sociology of education and doc research on that all
 10 summer long. We invited Mike to come and speak to them
 11 about the New York case as a very special experience.
 12 Q I take it in the context of this document,
 13 though, you're not mentioning his name for that purpose.
 14 It was for some other?
 15 A These were my own personal notes, and I have
 16 no idea what may have been going through my brain. It
 17 might have occurred to me at this point, gee, it would
 18 be great to invite Mike to come talk to the kids.
 19 Q On the last page of this document, 09054,
 20 there's a third item down that says, "Mark assured that
 21 there are resources to support expert paper writing and
 22 buy some time from a student to help pull all this
 23 together."
 24 Did Mark indicate what resources were
 25 available?

1 A No.
 2 Q Is this -- does this reference reflect your
 3 understanding at the time that there would be expert
 4 paper writing taking place relevant to the Williams
 5 case, and more specifically to plaintiffs' experts?
 6 A Yes, that was my assumption.
 7 Q David Kirp and Tom Timar?
 8 A Timar.
 9 Q Timar. Who are they?
 10 A David Kirp is a professor in the policy school
 11 at UC Berkeley, who studied education policy among other
 12 things. Timar is a professor of education at UC
 13 Riverside, who studies -- he's a historian and studies
 14 educational governance.
 15 Q Have you worked with either of them before,
 16 before the date of this document, Exhibit 8?
 17 A I have never worked with David Kirp and Tom
 18 Timar. Had simply met them from time to time as
 19 colleagues of the university faculty, University of
 20 California faculty college.
 21 Q The next reference says, "Paper by Linda, me,
 22 Bill Koski, and Kenji Hakuta."
 23 A Yes.
 24 Q "Curriculum and teaching." Was this sort of
 25 contemplated -- was this contemplated as a -- at that

1 point as one expert report, or do you know?
 2 A Yes. As I explained to you yesterday, Linda
 3 had contacted me sometime late summer of 2000 and asked
 4 me if I would be -- and told me that she was working on
 5 a paper, an expert paper for this case and was doing it
 6 with the participation of some other people at Stanford
 7 and asked me if I would write the curriculum part.
 8 At this point in June of 2001, we still had
 9 that concept in our heads.
 10 Q Okay. How frequent were your meetings in the
 11 summer of 2001 concerning this case? When I say
 12 "meetings," I mean meetings with anyone from the
 13 litigation team, if you recall.
 14 A I don't recall.
 15 Q Have you had an opportunity to review Exhibit
 16 9?
 17 A Yes.
 18 Q This is -- what is it?
 19 A This is a copy of an E-mail that I sent on
 20 June 29th, 2001 to Linda Darling-Hammond to Mark
 21 Rosenbaum and Helene Silverberg with copies to John
 22 Rogers, Gary Blasi and Martin Lipton.
 23 Q Who Lipton?
 24 A Martin Lipton.
 25 Q What was Martin Lipton's involvement here?

1 A He's both my husband and my close colleague.
 2 Q I apologize.
 3 A Quite all right.
 4 Q This is a two-page document Bates-stamped at
 5 the bottom, plaintiffs XP-JO 09092 and 09093. The first
 6 paragraph states, "I thought it might be useful for me
 7 to send you my sense of what we've agreed to, and what
 8 we'll each do next."
 9 Is it your recollection and understanding that
 10 in between the meeting on June 26, '01 and this date,
 11 June 29th, '01, agreement had been reached about how to
 12 proceed in terms of getting expert reports prepared for
 13 this case?
 14 A I actually don't recall any conversations or
 15 any agreements. I do recall my brain was buzzing away
 16 with ideas about creative ways to engage people with
 17 this work.
 18 Q Paragraph one states, "UCLA's IDEA, (Jeannie,
 19 John Rogers and Gary Blasi) will coordinate the work of
 20 the experts, who will write reports for the case."
 21 At the time you wrote this you understood that
 22 to be what the agreement was between you and the
 23 plaintiffs' litigation team?
 24 A I think this might have been -- well, this
 25 E-mail is part of the process that led me to this

1 proposal of an independent set of research papers. It
 2 appears from this document that the full character of
 3 that project had not yet been formulated.
 4 Q Right, the organization that you talked about
 5 previously hadn't been set by this point?
 6 A What I mean is that I had not yet developed or
 7 presented the proposal that these scholarly papers be
 8 independent of the preparation of expert testimony. And
 9 that it be conceived of as a scholarly project, rather
 10 than, I guess, a more typical coordination of experts
 11 who would testify in the case.
 12 Q Because at this point it clearly is explicit
 13 that UCLA's IDEA will coordinate the work of experts,
 14 who will write reports for the case. Right?
 15 MR. ROSENBAUM: Argumentative.
 16 THE WITNESS: Yes. This was a preliminary
 17 formulation, and I later changed my mind about what --
 18 how I wanted to be engaged with this work.
 19 BY MR. HERRON:
 20 Q Very good. At this time at least, you
 21 contemplated as the document states, "identifying likely
 22 people in each of the areas where we need a report" --
 23 I'm now quoting the document -- "developing a framework
 24 to guide the report writing, and gathering the group
 25 together to think through how the separate reports can

1 work both together and separately."
 2 That was what you were contemplating at this
 3 time, at least?
 4 A That was my thinking at this time.
 5 Q Yes. And even though the organization changed
 6 later or the way that you went at this later, that was
 7 the same result that was ultimately accomplished by UCLA
 8 IDEA's work related to the Williams case. Correct?
 9 A No, that's not correct because as it turned
 10 out, only a small number of the testifying witnesses
 11 ever had any connection with IDEA and the project we
 12 conducted.
 13 Q A number of reports -- setting aside this
 14 document for just a moment. A number of reports -- let
 15 me rephrase that.
 16 You contacted a number of scholars, who then
 17 did scholarly research in a number of areas, and they
 18 produced papers?
 19 A Yes.
 20 Q Some of those individuals were apparently
 21 asked to become and did become experts in this case?
 22 MR. ROSENBAUM: Is that a question?
 23 MR. HERRON: No, I'm just setting the stage
 24 for the question.
 25 Q Some did not. I think that's all consistent

1 with your testimony. Correct?
 2 A Yes.
 3 Q Of the people who produced papers but did not
 4 become experts, where are those papers?
 5 A Those papers are -- a draft of those papers is
 6 in my possession at IDEA. They are in the process of
 7 being rewritten and -- for publication.
 8 Q For the February 1 date?
 9 A Yes. They are in the process of being
 10 formatted as PDF files, and once they are, they will be
 11 on the IDEA website.
 12 Q Do you know -- regarding the authors of
 13 research for IDEA who didn't later become experts in
 14 this case, do you -- are you able to recall the topics
 15 on which they wrote?
 16 A I think so.
 17 Q Could you identify both the name of the
 18 individual and the topics?
 19 A The first is Dr. Steve Levy. And Steve wrote
 20 a paper on the economic consequences of educating
 21 California's children. He's an economist.
 22 Q Where is he from?
 23 A He's from the -- let's see if I get the
 24 acronym right. Continuing Study of the California
 25 Economy. Is that right? In Palo Alto.

1 Q Is that like --
 2 A A think tank.
 3 Q Yeah.
 4 A I'm not sure that's the right -- I got the
 5 name right. It's close.
 6 A second person is Patricia Gondera
 7 (phonetic), who is a professor at the University of
 8 California Davis, and she was writing on the conditions
 9 of educating English learners in California public
 10 schools. Her co-author on that paper was Professor
 11 Russell Rumberger, who was the director of the
 12 Linguistic Minority Research Institute at the University
 13 of California, and a professor of education at
 14 University of California Santa Barbara.
 15 Q Interesting.
 16 A A third paper was by professor Flora Ida
 17 Ortiz, and she was writing about school facilities in
 18 California public schools, and she is also at the
 19 University of California Riverside.
 20 Another person was professor Tom Timar, who I
 21 believe was in residence at Stanford that year, but also
 22 is a professor on the faculty of UC Riverside, and his
 23 topic was governance of California public schools.
 24 Professor Petra Nogura of Harvard University.
 25 Q N-o-g-u-r-a?

1 A Yes. Professor Nogura is a former
 2 professor -- he's at Harvard now -- at UC Berkeley and
 3 was a member of Berkeley Unified School District School
 4 Board. And his paper was on issues around local control
 5 and local governance in California.
 6 Professor Valerie Lee of the University of
 7 Michigan, and her colleague, Professor Kevin Welner of
 8 the University of Colorado, are writing --
 9 Do you know Kevin?
 10 Q No, but I grew up in Boulder.
 11 A Were writing on the issues of school
 12 organization, school size and the attendant -- some
 13 things about including multitrack year-round scheduling,
 14 you know, organization features of schools, schools
 15 within schools.
 16 And then Professor John Rogers is my colleague
 17 at UCLA, was writing about the role of parents and
 18 community involvement in the education of California's
 19 public school children. I think that's the list.
 20 Q Just mention it again to see if this is
 21 correct.
 22 Steve Levy, Patricia Gondera, co-author of
 23 Russ Rumberger, Flora Ida Ortiz, Tom Timar, Petra
 24 Nogura, Valerie Lee, co-authoring with Kevin Welner, and
 25 John Rogers.

1 A If I've forgotten someone, I will complete the
 2 list, but my recollection is right now that is the
 3 group, in addition to the ones who then have become
 4 testifying experts.
 5 Q Uh-huh. Which you identified yesterday?
 6 A Yes, I think.
 7 MR. ROSENBAUM: Whenever it's convenient,
 8 we've been going for a while.
 9 MR. HERRON: Sure. Now is fine.
 10 (Brief recess taken.)
 11 BY MR. HERRON:
 12 Q We're looking at Exhibit 9, and I'd like to
 13 focus on paragraph 2 on page 09092, the first page of
 14 this exhibit. It talks about using the model of an
 15 edited book and in the second full sentence,
 16 importantly -- states, "Importantly these implications
 17 should consider resources as well as accountability and
 18 management."
 19 What was your thinking along those lines at
 20 this time, if you know, if you recall?
 21 A Well, this reflects my evolving idea about a
 22 scholarly work that would look comprehensively at the
 23 issues in the case. I was -- remained concerned that
 24 whether or not resources were a part of the case that
 25 scholars consider those issues because of my concerns

1 about demands placed on school districts that aren't
 2 supported with sufficient resources.
 3 Q By the way, has there been any discussion that
 4 you're aware of that Mr. Levy, Ms. Gandara, Mr.
 5 Rumberger, Ms. Ortiz, Mr. Timar, Mr. Huerta, Miss Lee or
 6 Mr. Rogers might serve as plaintiffs' rebuttal experts
 7 in this case?
 8 A I did have one conversation -- I'm not
 9 recalling with whom, but one of the attorneys, where I
 10 was told that Mr. Rogers or Professor Rogers might well
 11 be a rebuttal witness at some point perhaps.
 12 Q Exhibit 9 2 -- paragraph 2 A through F, I take
 13 it this is a sort of listing of the topics to be written
 14 on as then -- as then contemplated?
 15 A The sentence that precedes says, "As of now,
 16 it seems we need the following chapters, in addition to
 17 the overview." So that would suggest that.
 18 Q Page 2 of this exhibit, which is Bates-stamped
 19 09093 and item 5 states that, "The legal team will
 20 provide support" open paren dollar sign, closed paren
 21 "for the team of expert reports and the graduate student
 22 assistance. The specific amount of support has yet to
 23 be determined, but Jeannie will draft a preliminary
 24 budget."
 25 Is that a task then that you assumed at this

1 point and going forward, that is budgeting the amount
2 that will be spent for the team of experts' reports?

3 A No. Actually, as the next sentence says, "Of
4 course all of this is subject to ongoing discussion and
5 changes of plans," and it was not long after this that I
6 had the idea of developing this scholarly team, and
7 simply thinking about the amount of core support that
8 might be needed to carry out the scholarly project
9 became my purview.

10 I'm not sure -- I think I may have been
11 involved in some other thinking about the costs of
12 individual papers after that as well.

13 Q Okay. With respect to the scholarly team, you
14 oversaw the budget and financing of that?

15 A The commissioning of the scholarly papers --

16 Q Uh-huh.

17 A -- was done independent of me, but I certainly
18 identified the scholars and suggested the team and put
19 them in contact with Morrison & Foerster, who was going
20 to give the honorarium for the papers.

21 Q Were there -- you may have answered this part
22 already. But setting aside the litigation team, were
23 there others you worked with in the identification of
24 potential scholars or experts?

25 A I made some contacts with colleagues. And

1 A Yes.

2 Q Have you had an opportunity to review Exhibit
3 10?

4 A I have.

5 (The document referred to was marked by
6 the CSR as Defendant's Exhibit 10 for
7 identification and attached to and made a part
8 of this deposition.)

9 BY MR. HERRON:

10 Q Exhibit 10 is a two-page document
11 Bates-stamped at the bottom plaintiffs XP-JO 09083
12 through 09084. Do you recognize this?

13 A Yes.

14 Q What is it?

15 A It is a memo which summarizes a phone
16 conversation that I wrote on the 4th of July in 2001.

17 Q Concerning Williams' experts as noted at the
18 top of page 09083?

19 A Yes. But I would not want the term "experts"
20 construed narrowly to mean testifying experts for this
21 case.

22 Q Okay. Do you recall who was on the call?

23 A No.

24 Q Do you recall whether any member of the
25 litigation team was on the call?

1 Professor Bill Clune, University of Wisconsin. I
2 remember calling Bill and asking him about his
3 availability, and if not him, who else he might suggest
4 had expertise in issues of governance and school finance
5 that might be interested, and that he would regard
6 highly. So I said, "I'm sure" -- I had a number of
7 conversations like that with colleagues.

8 Q Bill Clune being one?

9 A Bill Clune being one.

10 Q Linda Darling-Hammond being another?

11 MR. ROSENBAUM: What's the question?

12 MR. HERRON: Whether or not Dr. Oakes
13 communicated with Dr. Darling-Hammond concerning the
14 collection of scholars or experts.

15 THE WITNESS: To be a part of our scholar
16 group?

17 BY MR. HERRON:

18 Q Correct.

19 A Yes, Linda and I had many conversations around
20 this.

21 Q Were you the one who was principally in charge
22 of, responsible for that task?

23 A Of assembling the group of scholars for the
24 IDEA project?

25 Q Identifying.

1 A I don't recall.

2 Q The second full paragraph on 09083 talks about
3 assembling, quote -- I'm sorry -- talks about, quote,
4 "the strategy of assembling a team of experts," unquote.

5 I'm just going to read. "We will follow the
6 strategy of assembling a team of experts who will write
7 separate but coordinated 'chapters' of a volume that
8 will begin with a framework that ties them together and
9 shows their collective relevance to the Williams
10 complaint and remedy."

11 What was meant by that?

12 A This E-mail is another in this evolving series
13 of conceptualizations that I had which resulted in the
14 arrangement that I have described to you.

15 Q The next reference is to "Each of the chapters
16 will cover the following ground," and then there are a
17 series of four bullet points. I'm sorry, six bullet
18 points.

19 Was this the framework that was to be provided
20 to the various scholars or experts for drafting of their
21 research or reports?

22 A This was the beginning of my conceptualization
23 of an outline that I would suggest; I think earlier
24 today I told you I had developed a set of questions,
25 guiding questions, that I suggested in a memo to each of

1 the scholars might be useful as they did their work.
 2 This is a preliminary version of that.
 3 Q This is what you conceptualized without input
 4 from others at this point?
 5 A I have to say that Linda and I had been
 6 talking about these general topics as we had done our
 7 work previously on this -- what we thought was going to
 8 be a joint paper so I -- certainly she had some
 9 influence over how this list evolved.
 10 Q Item two talks about curriculum and teaching
 11 and mentions Suzanna Loeb?
 12 A Yes.
 13 Q Who is she?
 14 A Suzanna is a professor in the school of
 15 education at Stanford, and she is an educational
 16 economist, and she was providing some analyses as a part
 17 of the curriculum -- what was then the
 18 curriculum-in-teaching paper.
 19 Q So input into the paper that Linda
 20 Darling-Hammond did that you were involved in?
 21 A Yes, yes.
 22 Q Was she contemplated as one of the scholars by
 23 Dr. Oakes? By you?
 24 A No.
 25 Q Okay. Why not?

1 A Suzanna is a -- yet-to-be-tenured assistant
 2 professor at Stanford who's extraordinarily talented. I
 3 knew she would continue to assist Linda. I did not want
 4 to get her engaged in something that might deflect her
 5 from her career trajectory.
 6 Q Item 5 references, "Glen Erthman, (with
 7 material from Gary Blasi's student work)."
 8 What was that intended to mean?
 9 A I had been interested in Flora Ortiz as an
 10 expert in this area. I'm not remembering the
 11 chronology, but I know when I spoke with Flora, she told
 12 me that Glen Erthman was someone she widely respected
 13 and would like to engage as part of her work. I'm not
 14 sure whether that happened before this memo was written
 15 or not though.
 16 I noted Gary's material here because I felt
 17 that whoever took on this topic might profit from seeing
 18 what Gary's students had done and because it was a
 19 fugitive document, might not come to them immediately.
 20 So there is a note to myself saying that, don't forget
 21 that material might be relevant to this person.
 22 Q "Fugitive document"?
 23 A Yes. That's a term of art in the research
 24 world meaning a document that is not published -- it's
 25 not a publicly available document in terms of --

1 probably the wrong word to use in this context.
 2 Q Do you know whether Mr. Erthman was ever
 3 provided with Blasi's student's work?
 4 A You know, I don't know.
 5 Q On page 2 -- page 2 of this document that's
 6 Bates-stamped 09084, reference to a Jean Ross?
 7 A Yes.
 8 Q Why is Jean Ross identified?
 9 A Jean Ross is the director of the California
 10 Budget Project and was someone who I had considered as a
 11 person who might be able to speak to issues of school
 12 finance or the economic implications of quality
 13 education in California.
 14 Q Did you ever -- Jean is man? Male or female?
 15 A Jean is a female.
 16 Q Did you ever talk to Jean about becoming
 17 involved in a scholarly project or working as an expert?
 18 A I don't believe I ever had a conversation with
 19 Jean.
 20 Q Who is Bob Peterkin?
 21 A Bob Peterkin is on the faculty of Harvard, or
 22 at least he's associated with Harvard. I think he runs
 23 the superintendent's training program. He's involved in
 24 some of the training of practitioners.
 25 Q Did you ever contact Bob --

1 A No.
 2 Q -- Peterkin?
 3 A No.
 4 Q Item 8 says Public Engagement?
 5 A Yes.
 6 Q "Statistical support for the group could be
 7 sought from Jan DeLeuw?"
 8 A Jan DeLeuw.
 9 Q What statistical support was ever sought from
 10 Jan DeLeuw?
 11 MR. ROSENBAUM: Speculation.
 12 BY MR. HERRON:
 13 Q If you know.
 14 A All I know is that I once had a casual
 15 conversation with Jan, and he explained to me that he
 16 would love to get involved in this project, but that he
 17 was protecting his health. So I didn't pursue it with
 18 him.
 19 Q What did you mean by "public engagement"?
 20 A That is unrelated to the statistical support.
 21 Public engagement is another topic, and by that I meant
 22 the role of local communities and families in the
 23 decision making and functioning of California's public
 24 schools. It was a topic I was interested in pursuing.
 25 Q In connection with the Williams litigation?

1 A Yes.
 2 Q Why so?
 3 A It seems relevant to me.
 4 Q Why is that?
 5 A My conceptualization of a well-functioning
 6 education system is one that has roles for parents and
 7 community members, as well as roles for professionals
 8 and policy makers, and I wanted to think about how that
 9 might work and ask someone to think about it. Work on
 10 it.

11 Q The document goes on to reference quote, "Some
 12 Additional Thoughts." I'll read this much. "The team
 13 has been careful not to frame the case as an adequacy
 14 case because of the particular meanings that term has,
 15 and the wish to avoid having the judge specify what an
 16 adequate education is. However, we also want to go
 17 beyond the bare minimums."

18 What was your understanding regarding the team
 19 being careful not to frame this as an adequacy case? I
 20 mean, by "this" the Williams case.

21 A Yesterday we talked a bit about the -- that
 22 Linda Darling-Hammond and I had expressed some wish that
 23 the case could go beyond the mere bare bones essentials
 24 of education and talk about what might be considered
 25 adequate or sufficient.

1 I think the litigation team was very clear
 2 that their interest was in focusing on the bare
 3 essentials, even though they were aware that those bare
 4 essentials were not everything a child would require to
 5 have an ideal education, that adequacy probably required
 6 more than what the specific issues in the case were.

7 So, again, this is a beginning of my thinking
 8 that a scholarly paper with independence could and
 9 should take the latitude of going beyond the bare
 10 essentials outlined in the case.

11 Q Yeah, and as you said it yesterday, the bare
 12 essentials was the necessary, and then going beyond that
 13 was the sufficient. So it wasn't just -- it wasn't just
 14 getting a remedy that was necessary, but also one that
 15 in your view was sufficient. Have I stated that
 16 accurately?

17 MR. ROSENBAUM: Mischaracterizes her
 18 testimony.

19 THE WITNESS: I think what I said yesterday,
 20 what I intended to convey is that as nonlawyers, Linda
 21 and I were interested in having the legal team aim
 22 high.

23 BY MR. HERRON:

24 Q Towards best practices, for example?

25 MR. ROSENBAUM: Vague.

1 THE WITNESS: I wouldn't use -- certainly
 2 what's being sought in the case are extraordinarily
 3 important elements of an education system. We were
 4 thinking greedily.

5 BY MR. HERRON:

6 Q The reference here in this document at 09084
 7 and the wish to avoid having the judge specify when --
 8 what good education is, during this telephone
 9 conversation, what was discussed on that point?

10 A I have no recollection.

11 Q At any time what was discussed on that point,
 12 as far as you know?

13 A I don't recall that point being discussed in
 14 my presence.

15 Q The last paragraph on page 09084 says,
 16 "Finally, it would help Jeannie and John Rogers to have
 17 a bit more specifics from each of you about what you see
 18 as a specific outcome you're seeking. That is, these
 19 papers will be used as evidence to support what outcome
 20 beyond winning the case?"

21 What does that all mean?

22 A You know, I don't know, because I can't recall
 23 who was on this phone conversation.

24 A little intellectual biography here.

25 MR. HERRON: 11.

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

5 BY MR. HERRON:

6 Q Have you had an opportunity to review Exhibit
 7 11?

8 A Yes.

9 Q This is a one-page document whose title is
 10 Conversation with Mark Rosenbaum and Gary Blasi dash
 11 7/6/01, and it's Bates-stamped at the bottom plaintiff
 12 XP-JO 09091. Correct?

13 A Yes.

14 Q Do you recognize this document?

15 A I don't have an independent recollection of
 16 it, but now that I see it, it's pretty clear to me what
 17 it is.

18 Q And what is it?

19 A It's some notes from a conversation that I had
 20 with Mark and Gary on the 6th of July in 2001.

21 Q These are note that you took?

22 A Yes, I think they are.

23 Q If you can, do you recall whether they were
 24 made contemporaneously with the conversation with
 25 Mr. Rosenbaum, Mr. Blasi?

1 A I don't recall.
 2 Q Were they made at or near the time?
 3 A I don't recall for sure.
 4 Q Is that your ordinary practice?
 5 MR. ROSENBAUM: Foundation.
 6 THE WITNESS: My -- it's likely, but I don't
 7 recall with certainty.
 8 BY MR. HERRON:
 9 Q If that's the best you can do, that's fine.
 10 A Yeah.
 11 Q Okay. One of the questions -- I'm sorry. One
 12 of the topics addressed in here reads as follows: "How
 13 to integrate the report and trial testimony, and bare
 14 minimum approach in the complaint. Report shouldn't be
 15 constrained by the limits of what you can argue under
 16 the constitution."
 17 Then the next sentence reads, "Report that
 18 sees its audience as the legislature, policymakers --
 19 here's what it would take to have an ed system that
 20 we're proud of and here's how far we are from it."
 21 What was meant by the first two sentences
 22 ending with the word "constitution"?
 23 A Well, all of what you read is a reflection of
 24 my -- the evolution in my thinking beyond constructing a
 25 set of reports framed narrowly, for use in conjunction

1 with the litigation, but rather the interest and
 2 potential value of a set of reports that really
 3 discussed these issues more broadly.
 4 Q And beyond what might be -- you might be
 5 limited to argue under the constitution?
 6 A Oh, I wouldn't be in a position to actually
 7 make such a judgment, but -- and I don't know what I
 8 meant by that.
 9 Q Was this -- I mean, you identified it as your
 10 thinking, but was this what was discussed -- what
 11 Mr. Rosenbaum said?
 12 A I don't recall.
 13 Q But nonetheless it was a topic of
 14 conversation?
 15 A I made this note relevant to this
 16 conversation. That's all I know for sure.
 17 Q When the next sentence talks about a system
 18 we're proud of, was it -- was it your agenda to seek or
 19 have the litigation team seek a remedy that went beyond
 20 constitutional minimums as that had been discussed with
 21 Mr. Rosenbaum and Mr. Blasi.
 22 A Would you repeat that the question.
 23 (Record read as follows:)
 24 "QUESTION: When the next sentence talks
 25 about a system we're proud of, was it -- was

1 it your agenda to seek or have the litigation
 2 team seek a remedy that went beyond
 3 constitutional minimums as that had been
 4 discussed with Mr. Rosenbaum and Mr. Blasi?"
 5 THE WITNESS: I was not interested in having
 6 the litigation team do anything other than what they
 7 wanted to do. It was my view that the improvements that
 8 the California's education system requires would require
 9 the participation of the public and policy makers as
 10 well as the courts, and as my thinking evolved, I began
 11 thinking about how this work might be framed for that
 12 broader audience.
 13 BY MR. HERRON:
 14 Q Let's look at the last full paragraph on this
 15 page. It says, "Standards are variable down to a
 16 constitutional minimum."
 17 Who said that?
 18 A I don't recall.
 19 Q Did you have an understanding of what that
 20 meant at the time?
 21 A I don't recall.
 22 Q Do you have an understanding of what that
 23 means now?
 24 A No, I don't.
 25 Q The last sentence says, "They can't" --

1 "they", presumably it's standards -- "can't mean
 2 something different for poor kids and kids of color than
 3 they do for the privileged system."
 4 What was meant by that?
 5 A Well, I'm sure that what they meant -- that
 6 meant to me at the time is what it means to me today,
 7 that standards can't be -- that the state can't
 8 establish a system where the standards mean different
 9 things for poor children and children of color than they
 10 do for more advantaged children.
 11 Q Is it your view that the standard ought to be
 12 whatever the, quote, privileged system standards are?
 13 A I was merely speaking, and I'm speaking now to
 14 the need for a system to be equitable. I wasn't setting
 15 a particular standard.
 16 Q Have you had an opportunity to review Exhibit
 17 12?
 18 A Yes.
 19 (The document referred to was marked by
 20 the CSR as Defendant's Exhibit 12 for
 21 identification and attached to and made a part
 22 of this deposition.)
 23 BY MR. HERRON:
 24 Q This is two types of documents -- more than
 25 that. The first page marked as plaintiffs XP-JO 00047

1 appears to be an E-mail from you, Dr. Oakes, to Jack
 2 Londen dated July 24th, 2001. Correct?
 3 A Yes.
 4 Q The next four pages that are Bates-stamped as
 5 00048 through 00051 appear to be what's referenced in
 6 00047 as a "concept paper"?
 7 A Yes.
 8 Q And the final --
 9 A Or a draft of a concept paper.
 10 Q Draft of a concept paper. The final page,
 11 00052, appears to be a draft budget?
 12 A Yes.
 13 Q Okay. On 00047 why were you dealing directly
 14 with Jack Londen on this, on these issues?
 15 A My understanding is that Jack Londen, as one
 16 of the lead members of the litigation team, was also the
 17 person who had authority to commit resources for the
 18 kind of project that was evolving in my mind.
 19 Q What was the idea or purpose behind the
 20 concept paper, which is attached to this E-mail?
 21 A This is a draft of a letter that I was -- that
 22 was evolving, in my mind, as a way to communicate with a
 23 group of experts to give them some background on the
 24 Williams case and its context, and to talk about why the
 25 issues raised in the case were likely to benefit from a

1 broader consideration of the issues than merely in
 2 litigation, and to invite a group of researchers to
 3 participate in exploring those issues, invite them to a
 4 conference to give a sense of what scope I thought the
 5 papers might cover.
 6 And then the last section of the paper is --
 7 or the section on the third page called tentative list
 8 of paper topics and expert authors was my -- at that
 9 point in time, my best brainstorm of a list of potential
 10 experts.
 11 And the last paragraph of the paper suggests
 12 an honorarium of \$10,000 for the participation in this
 13 project, and let's the experts know that any other
 14 participation like participating in -- as a testifying
 15 expert would be a matter between them and the litigation
 16 team.
 17 Q Okay. Turning back to 00047. The E-mail --
 18 there is the E-mail. It says the names in italics are
 19 those who would be commissioned to write background
 20 papers. The others are those with whom you have
 21 already -- whom you already have arrangements or who
 22 could be nonwriting experts. By this point you've
 23 talked to Jack Londen about who was going to be a
 24 testifying expert; who would not. Is that correct?
 25 A I had some information about some individuals

1 that they had already discussed, providing expert
 2 testimony with and my -- I had no interest in
 3 interfering with any prior arrangements they might have.
 4 Q Sure.
 5 A I'm not sure the italics or not italics are
 6 completely accurate, however.
 7 Q Okay. Let's look at the concept paper as it
 8 exists here in its draft form. I guess my first
 9 question to you is was this draft ever finalized?
 10 A Yes.
 11 Q Was it distributed?
 12 A In a different form. This evolved -- there
 13 have been many iterations of this, but some version of
 14 this, I believe, if I'm recalling accurately, was
 15 eventually sent to some group of experts. Although,
 16 the -- what was eventually sent was different. It had
 17 been altered.
 18 Q Sure. Okay. The first sentence reads as
 19 follows? "The plaintiffs' litigation team in
 20 California's Williams case" -- I'm now going to leave
 21 out what's in the parenthetical -- "has asked me to
 22 coordinate the work of the group of experts who have
 23 agreed to work with the team."
 24 Is that statement true at the time written?
 25 A The fact that -- that they had asked me to

1 coordinate a group of experts is, in fact, true, and I
 2 don't know -- the phrase is kind of conditional, that
 3 they'd asked me to coordinate a work of experts who have
 4 agreed to work with the team. I have no knowledge about
 5 whether or not the conversations or agreements with the
 6 particular people on this list or the group -- I mean --
 7 whether those agreements had been made.
 8 Q Okay. Nonetheless, you had been asked and
 9 you'd agreed to coordinate the work of the group of
 10 experts?
 11 A Actually, I had not agreed. I was still
 12 evolving the nature of my relationship with the team. I
 13 certainly had been asked to coordinate the work.
 14 Q On page 00049, the first full paragraph,
 15 "Unlike Serrano" -- it's kind of hard to find, but it's
 16 sort of in the middle. "As the trial court has
 17 already".
 18 Do you see that?
 19 A Uh-huh.
 20 Q It reads, "As the trial court has already
 21 agreed with plaintiffs that the state is obligated to
 22 set in place a system that will either prevent, or
 23 detect and correct, significant educational deficiencies
 24 and inequalities."
 25 What does that mean?

1 A That's a reference to some sort of document
2 that came out of court proceedings earlier in 2001 that
3 I had read.

4 Q Had it been explained to you that the trial
5 court had ruled as you wrote here in this document?

6 A I don't -- I don't recall whether it was told
7 to me or whether it was my inference from reading the
8 document.

9 Q I see. The last -- second to last sentence
10 says -- this is the paragraph on 00049. It says, "A
11 court order will be a significant political shock to the
12 California educational apparatus and political system."

13 What's the basis for that statement?

14 A My sense that a ruling for the plaintiffs in
15 the case would be a rather dramatic event in the history
16 of California policy.

17 Q Why do you say so?

18 A Because it would require significant changes
19 in the way the state does its educational business.

20 Q Including providing additional funding beyond
21 that which is provided now. Correct?

22 A I wasn't making a judgment about that.

23 Q Isn't that your belief?

24 A As I said yesterday, I am unprepared to
25 estimate or judge whether or not there is currently

1 sentence that reads, "These papers will be used to
2 inform the litigation team, ground the expert testimony,
3 and shape the remedy."

4 A Yes.

5 Q That was your view at that time?

6 A My view is, and still is, that the papers that
7 were done have been -- provided some helpful education
8 to the litigation team, in some parts the work has
9 become the basis of expert testimony, and in some ways I
10 expect that the writing in these papers will influence
11 the way a remedy is framed.

12 Q At the bottom of this page 00049 we see
13 another reference to "Each of these papers will cover
14 the following ground:" This is, I think, slightly
15 different than our prior exhibit, although I'm not sure
16 it matters much. But in any event, that would be
17 Exhibit 10.

18 Is this sort of an evolving -- part of the
19 framework you were trying to develop for the papers that
20 would be written by the scholars or experts?

21 A Yes, the sentence prior to the underlined
22 title says, "Below are my initial thoughts about the
23 background papers." So this is yet another iteration of
24 my evolving thinking about the kinds of questions that
25 might be useful to answer.

1 enough money in the system or whether additional funding
2 would be required. I just -- I don't think we have
3 enough evidence to really know the answer to that
4 question with any certainty.

5 Q The next sentence, which is the last sentence
6 in the first full paragraph on 00049 states, "However to
7 be effective the litigation must be a part of a larger,
8 coherent agenda in the administrative and legislative
9 arenas."

10 What did you mean by that?

11 A By that I'm referring to the long, drawn out
12 battles in states like Texas and New Jersey where there
13 have been court orders, and there hasn't been a
14 coordinated, well-informed public process to make
15 that -- to translate that court order into speedy or
16 smooth improvements in the educational system.

17 Q The next paragraph that begins "Toward this
18 end." We're still on page 00049.

19 A I'm sorry.

20 Q What's that?

21 A "Towards this end" is a phrase without a
22 reference.

23 Q It's the English teacher in you?

24 A It's the English teacher.

25 Q At the middle of that paragraph there is a

1 Q Page 00050, which is the next page, item 4,
2 Educating English Learners.

3 A Yes.

4 Q Who is Laurie Olson?

5 A Laurie Olson is the executive director, I
6 believe is her title, of California Tomorrow, which is a
7 nonprofit education research and advocacy public
8 interest organization.

9 Q Did you ever contact Miss Olson regarding
10 participation as a scholar or expert?

11 A I did.

12 Q What was discussed?

13 A I asked her if she would be interested in
14 participating in this project.

15 Q What was her response?

16 A She said, yes, she would very much want to be
17 involved in this project.

18 Q Did she get involved?

19 A I think she has been somewhat involved, but
20 I'm not sure of the extent of her involvement because
21 after following that conversation -- we're all close
22 colleagues -- Patricia and Russ agreed to take the lead
23 on this paper, and named Laurie as one of the other
24 people they'd like to consult with in the course of the
25 work.

1 Q Do you know whether they ever did?
 2 A I would have to look carefully at the paper
 3 they wrote to see whether or not any of Laurie's work
 4 was actually relied on in the work they did.
 5 Q Okay. Who is Julia Smith? And I'm talking
 6 about this number 6 in "School Organization" reference.
 7 A Julia Smith is a mathematics education
 8 professor at the University of Rochester. She was
 9 Valerie Lee's doctoral student at the University of
 10 Michigan. They have written a book together called
 11 "Schools That Work."
 12 I suspected that Valerie might like to involve
 13 Julia. It turned out she was too busy as an untenured
 14 assistant professor with other things.
 15 Q Page 00051, the next page, the last paragraph
 16 says, "In exchange for participation in the conference,"
 17 which I believe you're referring -- the original
 18 September 14th contemplated conference.
 19 A Yes.
 20 Q "And as a major contributor to one of these
 21 paper, I would like to offer you an honorarium of
 22 \$10,000."
 23 What's an honorarium as you used that term
 24 there?
 25 A An honorarium is a term used to sort of name

1 the sum of money that's given to academics in exchange
 2 for writing or speaking or --
 3 Q To support their work?
 4 A As a way to honor and demonstrate value for
 5 the work they have done. It's not usually considered a
 6 fee or salary. It's more like a --
 7 Q Here's money, do with it what you like?
 8 A Yeah.
 9 Q Page 00052, this is the, I take it, draft
 10 budget?
 11 A Yes.
 12 Q I take it the IDEA infrastructure money was to
 13 come from Morrison & Foerster as a gift?
 14 A Yes.
 15 Q The remainder of that money -- and that's a
 16 sum of \$51,500?
 17 A In this draft.
 18 Q Where was the remainder of the money to come
 19 from?
 20 A To come from?
 21 Q Yes. What was the source of the money to be?
 22 MR. ROSENBAUM: I don't know --
 23 THE WITNESS: I don't know the source of the
 24 money.
 25 BY MR. HERRON:

1 Q Okay. Did you have a discussion with --
 2 withdraw that.
 3 Let me give you another document that's very
 4 similar, but that we will roll through very quickly.
 5 What I want you to do, just to make this easier for you
 6 and quicker for us all, is only to look at the first
 7 page so that you can identify it, and then at the last
 8 page, from about "Time Frame".
 9 (The document referred to was marked by
 10 the CSR as Defendant's Exhibit 13 for
 11 identification and attached to and made a part
 12 of this deposition.)
 13 BY MR. HERRON:
 14 Q Have you had an opportunity to review those
 15 portions of the document that I directed you to?
 16 A Yes.
 17 Q Do you recognize Exhibit 13?
 18 A Yes.
 19 Q The first page of Exhibit 13, Bates stamp 7130
 20 is an E-mail from you to Jack Londen, cc's various
 21 individuals, and is dated as of July 26, 2001. Correct?
 22 A Yes.
 23 Q Did you draft this?
 24 A Yes.
 25 Q Who is Gene Garcia?

1 A Eugene Garcia is the former assistant
 2 secretary of education at the U.S. Department of
 3 Education, the former dean at -- of education at
 4 University of California Berkeley, the current dean at
 5 Arizona State University and a good friend of mine.
 6 Q Did you ever talk to Mr. Garcia about
 7 potentially participating as a scholar, as an expert in
 8 this case?
 9 A I may well have. I don't recall the specific
 10 conversation.
 11 Q Did he ever participate in either manner?
 12 A Not to my knowledge.
 13 Q The last page of this exhibit, 07134, refers
 14 to a time frame. How did you come up with this time
 15 frame? Let me try something -- another question first.
 16 It says, "The case is expected to go to trial
 17 in spring 2002. Therefore, the papers must be completed
 18 no later than January 31, 2002," and you set forth a
 19 time frame.
 20 Now the question is how did you come up with
 21 this?
 22 A I was interested in having the scholarly
 23 papers complete in time, in ample time so the litigation
 24 team -- so they would serve the function of providing
 25 some education and background to the litigation team so

1 they could select from among those scholars people that
2 they may want to use as testifying experts. That was
3 how I...

4 Q Did this come from conversation -- "this"
5 meaning the time frame -- come from conversations you
6 had with Mr. Rosenbaum or Mr. Londen?

7 A I don't recall. I knew independently in my
8 work with Linda Darling-Hammond that there was a need to
9 have work done by early spring.

10 Q Did Gary Blasi ever indicate to you why he
11 could not be an expert in this case, the Williams case?

12 MR. ROSENBAUM: Assumes facts not in evidence.
13 Foundation.

14 THE WITNESS: I didn't consider Gary for an
15 expert. He's not an education researcher. The rest of
16 the group is.

17 MR. HERRON: We'll mark as Exhibit 14 the
18 following document.

19 (The document referred to was marked by
20 the CSR as Defendant's Exhibit 14 for
21 identification and attached to and made a part
22 of this deposition.)

23 BY MR. HERRON:

24 Q Have you had an opportunity to review Exhibit
25 14?

1 question regarding Gary Blasi's role as potential
2 expert.

3 BY MR. HERRON:

4 Q So that we can move quickly, rather than read
5 this whole thing, I'll just ask you first what you --
6 whether you can identify these documents, and then I'll
7 guide you to specific parts of it.

8 A All right.

9 Q The first page of this Exhibit 15 is
10 Plaintiff -- marked Bates-stamped as plaintiff XP-JO
11 00058. It appears to be an E-mail from Dr. Oakes sent
12 on July 29, 2001 to Jack Londen, Matt Kreeger, Gary
13 Blasi and -- I hate to say Mr. Rogers, but I can't
14 remember his first name.

15 A John.

16 Q John Rogers. Correct?

17 A Yes.

18 (The document referred to was marked by
19 the CSR as Defendant's Exhibit 15 for
20 identification and attached to and made a part
21 of this deposition.)

22 BY MR. HERRON:

23 Q Is this indeed an E-mail that you drafted?

24 A Yes.

25 Q Was the document that is attached attached to

1 A Yes.

2 Q This is an E-mail chain. I'm principally
3 interested in the E-mail written by Gary Blasi, and in
4 the middle of this document it says at 04:23 P.M.,
5 7/26/01, and it goes on, "Blasi, Gary wrote:" ?

6 Was this an E-mail that you received from Gary
7 Blasi, if you know?

8 A I can't say for certain. It looks like it
9 might be a reply to an E-mail I sent, but I'm not
10 certain.

11 Q In what he wrote there is a reference that
12 says, "I can't be an expert in this case." Does that
13 refresh your recollection about any discussion you may
14 have had with Gary Blasi about whether he could serve as
15 an expert in this case?

16 A No. I mean, he's volunteering that, but I
17 don't recall the context.

18 MR. ROSENBAUM: Objection to the form of the
19 question. There's no suggestion by the witness that she
20 had any faulty memory.

21 THE REPORTER: Please speak up.

22 MR. ROSENBAUM: I'm interposing an objection
23 to the form of that question because it was a refreshed
24 recollection question, and there was no testimony by
25 Dr. Oakes that there was any lack of memory on the prior

1 that E-mail? Let me say that differently.

2 Was the document that is attached as part of
3 Exhibit 15 also attached to that E-mail as best you
4 know?

5 A I don't recall specifically that this version
6 was attached, but the dates are the same so it --

7 Q Seems --

8 A -- seems reasonable that it would be.

9 Q The remainder of this Exhibit 15 is -- I take
10 it another iteration or draft of the concept paper?

11 A Yes.

12 Q And I'd like to -- ask you to kindly turn to
13 page 00062, specifically to review the part about
14 finance.

15 A Yes.

16 Q Have you had an opportunity review paragraph
17 7?

18 A Yes.

19 Q First, who is Richard Rothstein?

20 A Richard Rothstein is an economist who had a --
21 who used to be at the Economic Policies Institute, is a
22 regular contributor to the New York Times, and now is at
23 Columbia University.

24 Q Did you or anyone else you know of contact him
25 to ask him to be involved in either the scholarly work

1 or the expert matters?
 2 A I did.
 3 Q What was discussed?
 4 A I asked him if he would be interested in
 5 participating in this project.
 6 Q Was anything else discussed?
 7 A Well, I described the project to him and asked
 8 him if he would be interested.
 9 Q What was his response?
 10 A He said he was extremely interested and would
 11 like to be helpful. His -- he felt that his role as a
 12 regular columnist for the New York Times might present
 13 some appearance of conflict so he would prefer to simply
 14 provide informal assistance if he could be -- if that
 15 would be useful.
 16 Q Did he ever, as far as you know?
 17 A Not to my knowledge, I don't know.
 18 Q The paragraph 7 contemplates -- as I read it,
 19 a paper that would include an "empirical analysis, of
 20 California's school finance system, and illuminate how
 21 school finance theories have progressed from foundation
 22 funding, to equity, to standards and OTL-based or
 23 needs-based approaches."
 24 Did I read that right?
 25 A Yes.

1 Q OTL-based means?
 2 A Opportunities to learn.
 3 Q Was this paper -- I take it this is the
 4 concept, but was the paper ever written?
 5 A Yes.
 6 Q By whom?
 7 A Norton Grubb and Laura Go, his associate.
 8 Q From Mr. Huerta?
 9 A I'm not sure that Luis actually -- he also has
 10 just become a new professor at Columbia University, and
 11 I asked him and Norton asked him whether he could be
 12 helpful, and he was worried about his time as well. He
 13 may have contributed at some point. He and Norton Grubb
 14 have co-authored in the past works on this topic.
 15 Q You don't know if Luis Huerta was involved in
 16 creating the expert report that was produced by
 17 Mr. Grubb and Miss Go?
 18 A The expert report that Grubb and Go drafted is
 19 drawn in large part on a previous paper that was
 20 authored by Professor Grubb and Professor Huerta. So I
 21 know that that work, in part, relies on his work. And
 22 to the extent to which he was an active contributor, I
 23 have no knowledge.
 24 Q Do you know what prior paper they drew upon?
 25 A I believe the name of the paper is something

1 like "Spinning Straw Into Gold, Conceptions of the New
 2 Education Finance."
 3 Q Sort of a reach-out-and-grab-you title?
 4 A Yeah. It's a paper I had read previously and
 5 was -- prompted me to include them on this list.
 6 Q Miss Gandara and Mr. Rumberger -- I take it
 7 from your prior testimony, had drafted a scholarly piece
 8 on the conditions of educating English language learners
 9 in California and public schools?
 10 A Yes.
 11 Q Did you read Kinji Hakuta's expert report?
 12 A Yes.
 13 Q Do you realize that his expert report refers
 14 to and relies upon the paper that I've just referenced
 15 drafted by Gundara and Rumberger?
 16 A Yes.
 17 Q I want to very quickly go through this one,
 18 which we will mark as Exhibit 16.
 19 (The document referred to was marked by
 20 the CSR as Defendant's Exhibit 16 for
 21 identification and attached to and made a part
 22 of this deposition.)
 23 BY MR. HERRON:
 24 Q Dr. Oakes, for your ease of review, I'm only
 25 going to be asking questions about pages -- specific

1 questions about this document on pages 9088 through
 2 9090.
 3 A I'd like to note that the rest of that
 4 document is not identical to the earlier ones, just for
 5 the record.
 6 Q Okay. Sure.
 7 Have you had an opportunity to review the
 8 pertinent pages I pointed you to?
 9 A Oh, I haven't reviewed them in detail, but I
 10 can do that as you ask questions.
 11 Q Why don't we do it that way. That will be
 12 quicker, I think. Do you recognize Exhibit 16?
 13 A Yes.
 14 Q What is it?
 15 A It is yet another draft of the concept paper
 16 that I was crafting to introduce and engage a group of
 17 scholars in a project related to the Williams case.
 18 Q I will represent to you that this is the
 19 only -- maybe it's not. Do you know whether this is the
 20 final draft of this concept paper?
 21 A I do not.
 22 Q Okay. Let's look at, if we could, please --
 23 well, I'm going to try this again because I want to get
 24 it authenticated.
 25 This is a document that's Bates-stamped as

1 Plaintiff XP-JO 09086 through 09090, inclusive. And its
2 first page is dated August 20th, 2001 to Williams Expert
3 Team from Jeannie Oakes, Re Concept for Background
4 Papers, Williams versus California. Correct?

5 A Yes.

6 Q And you drafted this?

7 A Yes.

8 Q On page 09088 on the education and the economy
9 portion, do you see that?

10 A Yes.

11 Q Was this a description of a -- a tentative
12 description of a potential paper?

13 A This outlines topics that -- as in all of
14 these, this outlines a proposed set of ideas that a
15 scholar might use in crafting a paper.

16 Q And with respect to this contemplated paper on
17 the education and the economy, your view, at this time
18 at least, was that perhaps it could be drafted, quote,
19 in the context of the California economy. Correct?

20 A The -- what that means is that I was hoping
21 that Mr. Levy, who had agreed at this point to write
22 this paper, would be able to use his knowledge of the
23 California economy and its potential as a context in
24 which to place this case and its importance.

25 Q Okay. You note two emphases that the paper

1 A Harold Williams is the president emeritus of
2 the Getty Foundation. He is the former commissioner of
3 the Securities and Exchange Commission in the Jimmy
4 Carter administration, and he's the former dean of the
5 Anderson School of Business at UCLA.

6 Q Did you contact him about potentially getting
7 involved in this case in some fashion?

8 A I have conversations with Harold Williams from
9 time to time. He has invited me to speak at groups that
10 he's hosted, and he has been very involved in school
11 reform in Los Angeles. He was part of the inner circle
12 in the Annenberg Challenge project in Los Angeles, and I
13 had met him on those occasions. He has expressed a
14 great deal of interest in being engaged in any way he
15 can in the improvement of California schools.

16 Q Did you ask him to become involved in the
17 case?

18 A I didn't ask anybody to become involved in the
19 case. I did have conversations with Harold about his
20 perspectives, about administration and government, and
21 whether or not it might be interesting to have those be
22 part of the conversation.

23 Q Page 09089.

24 A Yes.

25 Q "Part 3. State governance, management &

1 might have. "1, the needs of the economy and costs of
2 NOT educating students in terms of economic losses to
3 the state. 2, the size of the economy and it's
4 potential resources." Correct?

5 A Yes.

6 Q You go on to conclude that, "Both will provide
7 a backdrop against which the problems in the complaint,
8 and a potentially expensive remedy could be put."

9 Did I read that correctly?

10 A Yes.

11 Q Your thinking of this time -- at this time at
12 least, then, was that the remedy in the Williams case
13 could be, as you write, potentially expensive. Correct?

14 A This paragraph evolved from a conversation
15 with Mr. Levy about how he might conceptualize a paper
16 about seeing Williams in the context of the economy of
17 California. So I can't say with certainty that is my
18 phrase or his. Although I would allow for that
19 potential.

20 Q I take it you view this case as a resource
21 case in many ways?

22 A I view this case exactly as I've stated it in
23 the documents I've written. I don't believe I've ever
24 called it the resource case.

25 Q Who's Harold Williams?

1 accountability mechanisms." It appears that he's
2 mentioned as a potential expert or drafter of either a
3 report or the scholarly piece.

4 A Where?

5 Q Third line up from the bottom of that
6 paragraph?

7 A Yes.

8 Q So did you contact him about that, that is, a
9 drafting responsibility?

10 A I may have had a conversation with him about
11 that.

12 Q Do you recall the conversation, if indeed it
13 occurred?

14 A No.

15 Q Has he been involved in either the scholarly
16 aspect of your activities or the case, if you know?

17 A I don't know about his involvement in the
18 case. I know he is a member of a project that Gary
19 Blasi and I have that's separate from the case, and we
20 talk regularly. He has not been involved in any of the
21 drafting of any papers. I think he's beyond that point
22 in his career.

23 Q Haggai Kuppermintz. Another University of
24 Colorado?

25 A Yes.

1 Q Presumably, professor?
 2 A Yes.
 3 Q Of what?
 4 A He's a professor of education methodology.
 5 He's a statistician, Stanford-trained.
 6 Q Did you contact him?
 7 A I don't recall whether I talked to Haggai or
 8 not.
 9 Q Is he someone that you know or worked with
 10 before?
 11 A Yes. When I was an expert in the Rockford
 12 case, I -- Haggai did -- he was the lead statistical
 13 analyst on that -- the data that we analyzed on that
 14 case. So I had worked with him before.
 15 Q To your knowledge has he in any way been
 16 involved with either the scholarly aspect of what we've
 17 been discussing or the expert work?
 18 A Not to my knowledge.
 19 Q Did I ask you -- did you contact him?
 20 A I don't recall. I don't think I did, but I
 21 don't recall.
 22 Q Last page of this exhibit is 09090. And there
 23 is a discussion of compensation. I note that the
 24 honorarium of \$10,000 is dropped out. Do you know why
 25 that was?

1 A Yes, because the way the papers are
 2 conceptualized now, some of them have two authors, some
 3 of them have one author, and it seemed most appropriate
 4 to think about a budget for each paper, and that that
 5 budget might vary depending on the number of senior
 6 scholars participating. So I simply decided not to
 7 include any kind of a public standard honorarium for
 8 each person.
 9 Q That was your unilateral decision?
 10 A I don't recall.
 11 Q Let's look at Exhibit 17.
 12 MR. EGAN: It's 4:15. I was hoping that we
 13 might terminate today about 4:30?
 14 MR. HERRON: Sure. Why don't I try to get
 15 through this.
 16 (The document referred to was marked by
 17 the CSR as Defendant's Exhibit 17 for
 18 identification and attached to and made a part
 19 of this deposition.)
 20 BY MR. HERRON:
 21 Q Have you had an opportunity to review Exhibit
 22 17?
 23 A Yes.
 24 Q Do you recognize this document?
 25 A Yes.

1 Q What is it?
 2 A This is yet another of -- sequence of
 3 iterations of the scholarly project that IDEA was
 4 leading.
 5 Q This is not an iteration, however, of the
 6 concept paper, one of which is Exhibit 16. Is that
 7 correct?
 8 A It is the last section of that concept paper
 9 that you -- that's number 16, where the list of paper
 10 topics and authors are -- have been -- the list has been
 11 evolving. This is a more fleshed out version of that
 12 half of the paper. It eliminates much of the front
 13 matter.
 14 Q Sure. Exhibit 16, this August 20, 2001
 15 version of the concept paper -- this is the last --
 16 meaning the most recent one we have. Do you know
 17 whether or not this was indeed sent out, or is it just
 18 not clear, that is, Exhibit 16?
 19 A You know, I can't recall with certainty if
 20 that is the version that was sent out or --
 21 Q What was the distribution list for the final
 22 version, if you know?
 23 A I don't know.
 24 Q Do you know who it did include, if you don't
 25 know everyone that it included? We're now talking about

1 Exhibit 16.
 2 A Exhibit 16?
 3 Q Yes.
 4 A I don't know.
 5 Q Was it at least sent to the scholars that
 6 you've talked about?
 7 A Because this includes lists of people who were
 8 not -- with whom I did not enter into an agreement to
 9 participate in the project, I suspect that at least the
 10 second part of this paper was not one that was sent --
 11 this tentative list of paper topics and lead authors, is
 12 not one that was sent to all of the people on that list.
 13 Q Who was in charge of determining to whom
 14 this -- the final draft of Exhibit 16 would be sent?
 15 A I was.
 16 Q You just have no recollection of who that list
 17 might have included?
 18 A No.
 19 Q That's fine.
 20 Exhibit 17 -- this is a three-page document,
 21 Bates-stamped as Plaintiff XP-JO 09033 through 09035
 22 inclusive. Do you know the date of this document?
 23 A I do not.
 24 Q But this is something you drafted?
 25 A Yes.

1 Q The first sentence, first paragraph says,
 2 "UCLA's IDEA has commissioned a set of research papers
 3 that place the specific complaints of the Williams case
 4 in their larger context."
 5 Then goes on from there. Eventually, UCLA's
 6 IDEA was commissioned for that set of research papers.
 7 Right?
 8 A No.
 9 Q Right?
 10 A No.
 11 Maybe you need to define to me by what you
 12 mean by "was commissioned."
 13 Q I'm sorry. You're right. I misstated.
 14 UCLA's IDEA commissioned a set of research
 15 papers, whether it was concurrent with the date of this
 16 document, Exhibit 17, or thereafter. Is that right?
 17 MR. ROSENBAUM: Vague.
 18 MR. HERRON: It's what the document says.
 19 MR. ROSENBAUM: If you would just restate your
 20 question, I would appreciate it.
 21 BY MR. HERRON:
 22 Q This document says, "UCLA's IDEA has
 23 commissioned a set of research papers." And at some
 24 point that actually became true. UCLA's IDEA did
 25 commission a set of research papers?

1 A Yes.
 2 Q So by the time of this document, whenever it
 3 is, your thinking now has evolved to the point where
 4 you're dividing out the research scholarly side of
 5 things and the expert side of things. Is that correct?
 6 A Yes.
 7 Q In the middle of that first paragraph it says,
 8 "The papers will also be used to inform a broader
 9 policy" -- withdraw that question.
 10 On page 2, Bates-stamped 09034 the last --
 11 this sort of bullet point area, do you see --
 12 A Yes.
 13 Q -- first third of the paper. This represents
 14 an evolving, I take it, list of items that would be
 15 covered in the reports or studies. Right?
 16 A Yes, as a -- as an academic working with other
 17 professors, one can only hope that one's suggestions are
 18 taken.
 19 Q Bottom bullet point there poses a number of
 20 questions, one of which is, "Are California sights set
 21 on meeting minimum legal standards rather than standards
 22 of optimal equity and productivity?"
 23 Why was that included as a question that
 24 should be addressed by the papers?
 25 A I don't recall now.

1 Q Have we spoken about Kevin Welner?
 2 MR. ROSENBAUM: Yes.
 3 THE WITNESS: I mentioned his name.
 4 MR. HERRON: You may set this aside.
 5 I'm not going to get through another one in
 6 three minutes. Why don't we close for the day then. I
 7 propose the same stipulation as we did yesterday.
 8 MR. ROSENBAUM: That's fine.
 9 MR. HERRON: Very good. Thank you.
 10 (Whereupon, at 4:30 P.M., the deposition of
 11 JEANNIE OAKES was adjourned.)
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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
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 22
 23
 24
 25

JEANNIE OAKES

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