

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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

Plaintiffs,)

) No. 312236

vs.)

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

Defendants.)

DEPOSITION OF
JEANNIE OAKES, VOLUME IV
TAKEN ON
WEDNESDAY, MARCH 12, 2003

Reported by:
Cathy A. Reece, RPR, CSR No. 5546

1 Deposition of JEANNIE OAKES, taken on behalf of
2 Defendants, at 400 South Hope Street, Los Angeles,
3 California, commencing at 9:35 a.m., on Wednesday, March
4 12, 2003, before Cathy A. Reece, RPR, CSR No. 5546.

5
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1 I N D E X

2
3 WITNESS: JEANNIE OAKES
4
5

6 EXAMINATION PAGE
7 BY MR. HERRON 625, 713
8
9

10 EXHIBITS

11 EXHIBIT MARKED
12 19 E-mail string, beginning e-mail from 625
Oakes to Grubb, dated 1-11-02, Bates
Nos. 0795 and 0283

13
14 20 Letter from Oakes to Londen, dated 628
8-22-01, Bates No. 07122

15
16 21 E-mail string, beginning e-mail 637
from Oakes to Timar, dated 4-30-02,
Bates Nos. 11817 through 19

17
18 22 E-mail string, beginning e-mail 641
from Koski to Oakes, dated 7-19-02,
Bates Nos. 07925 and 26

19
20 23 Background Papers, Williams v. 650
California, undated, Bates Nos.
09048 through 50

21
22 24 E-mail from Oakes to Londen, dated 661
8-23-01, Bates No. 07173

23 25 E-mail string, beginning e-mail 662
from Oakes to Rosenbaum, dated 8-26-01,
Bates Nos. 07120 and 21
24
25

1 EXHIBITS (Continued)

2 26 Williams Expert Team Background 672
Papers, dated through April 2002,
Bates No. 07127

3

4 27 Letter from Oakes to Londen, dated 678
8-22-01, Bates No. 09043

5

6 28 Letter from Kreeger to Oakes, dated 684
11-12-01, Bates No. 00172

7 29 Letter from Welch to Oakes, dated 686
3-14-02, with attachment, Bates
Nos. 01363 and 64

8

9 30 A Survey of the Status of Equality 686
in Public Education in California,
dated March 2002, Bates Nos.
11599 through 619

10

11

12 31 Typewritten notes, undated, Bates 689
Nos. 13743 and 44

13 32 Typewritten notes, undated, Bates 690
Nos. 09584 through 86

14

15 33 E-mail string, beginning e-mail 691
from Oakes to Affeldt, dated 12-3-01,
Bates Nos. 00198 through 203

16

17 34 Letter from Oakes to Lou Harris, 735
dated 12-6-01, Bates Nos. 09062
through 66

18

19 35 Typewritten notes, dated 12-6-01, 740
Bates Nos. 09055 through 61

20 36 E-mail string, beginning e-mail 743
from Darling-Hammond to Oakes,
dated 12-9-01, Bates Nos. 12132
through 38

21

22

23 37 Harris Study No. 02003, dated 799
January 2002, Bates Nos. 11919
through 29

24

25

1 JEANNIE OAKES,
2 having been first duly sworn, was
3 examined and testified as follows:
4

5 EXAMINATION

6 BY MR. HERRON:

7 Q. Good morning, Dr. Oakes.

8 A. Good morning.

9 Q. Have you recently consumed any medication,
10 alcohol or any other substance that could cloud your
11 mind or interfere with your ability to give your best
12 testimony here today?

13 A. No.

14 Q. Any other reason we can't proceed?

15 A. No.

16 Q. Okay. This will be 19.

17 (Exhibit 19 was marked for I.D.)

18 BY MR. HERRON:

19 Q. Have you had an opportunity to review Exhibit
20 19?

21 A. I have.

22 Q. This is a two-page exhibit of e-mails
23 apparently unrelated, except for the fact they both
24 involve you and Norton Grubb. They are Bates stamped as
25 Plaintiffs' XP-NG 0795 and 0283.

1 EXHIBITS (Continued)

2 38 Document titled, "Final Version," 801
dated January 2002, Bates Nos.
3 13748 through 55

4 39 E-mail string, beginning e-mail 818
from Oakes to Saunders, Bates Nos.
5 12029 and 30

6 40 E-mail string, beginning e-mail 821
from Luczak to Oakes, dated 1-31-02,
7 Bates Nos. 12130 and 31

8 41 E-mail from Auchincloss to Stich 822
Regan, dated 2-11-02, Bates No. 00774

9

10 42 E-mail from Auchincloss to Stich 824
Regan, dated 2-11-02 and attachment,
Bates Nos. 00775 and 05167

11

12

13

14

15 QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:
16 (NONE)

17 INFORMATION TO BE SUPPLIED:

18	PAGE	LINE
19	647	6
20	648	8

21

22

23

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25

1 Do you recall these documents?

2 A. I actually don't, but I believe they are
3 something I have seen before.

4 Q. Okay. Let's look at 0283 first.

5 This is an e-mail dated as of April 25, 2002
6 from Norton Grubb to various people including you;
7 correct?

8 A. I am copied on it. It is not to me.

9 Q. Okay. He attaches, apparently, a revised
10 version of his paper; is that right?

11 A. There is an attachment -- it indicates there
12 is an attachment. It says, "Williams paper revised
13 version."

14 Q. Did you review that paper and provide comments
15 to Dr. Grubb?

16 A. I don't recall.

17 Q. Did you ever review Mr. -- Dr. Grubb's paper
18 and provide him comments?

19 A. I reviewed the final version of Mr. Grubb's
20 paper in conjunction with my preparation of the third
21 expert report.

22 If I provided any other comments to him, they
23 would have been in the form of an e-mail, and you would
24 have it.

25 I don't recall specifically.

1 Q. Okay. Let's turn to 0795.
 2 This is an e-mail from you to Dr. Grubb dated
 3 January 11, 2002; correct?
 4 A. Yes.
 5 Q. What is the purpose of the e-mail?
 6 A. Since I don't recall it, I have to simply
 7 repeat what it says in it.
 8 Q. Don't do that.
 9 A. Okay.
 10 Q. Do you recall having had -- well, the first
 11 sentence references talking at, quote, "some length with
 12 the litigation team today."
 13 Do you see that?
 14 A. Yes.
 15 Q. Do you recall what was discussed?
 16 A. No, I do not.
 17 Q. The next part of the e-mail references that
 18 Dr. Grubb would probably not be asked to testify in the
 19 first part of the case.
 20 Do you know why that was?
 21 A. No, I don't.
 22 Q. It also references he may be needed in the
 23 rebuttal phase of the case.
 24 What was the discussion about that item?
 25 A. I don't recall.

1 Q. Do you know whether Laura Goe gave any help to
 2 Mike Russell with his paper?
 3 A. I do not know.
 4 Q. At any time?
 5 A. I don't know.
 6 MR. HERRON: 20.
 7 (Exhibit 20 was marked for I.D.)
 8 BY MR. HERRON:
 9 Q. Have you had an opportunity to review Exhibit
 10 20?
 11 A. Yes, I have.
 12 Q. This is an August 22, 2001 memorandum from you
 13 to Jack Londen and the Williams litigation team;
 14 correct?
 15 A. Yes.
 16 Q. Bates stamped Plaintiffs' XP-JO 07274;
 17 correct?
 18 A. That is not what mine says. Mine says,
 19 "07122."
 20 Q. We will take that, then.
 21 Can I see yours?
 22 A. Sure.
 23 Q. Okay. Dr. Oakes, I have a lot of documents I
 24 want to go through today. I don't want to belabor this
 25 one any more than any of the others, so I am going to go

1 fairly quickly.
 2 I think we discussed some of this before?
 3 A. Yes.
 4 Q. Who did you send it to?
 5 A. I sent it to Jack Londen, I believe. I may
 6 have sent it to others. I don't recall.
 7 Q. Did you send it to anyone at UCLA?
 8 A. I don't recall.
 9 Q. This talks about "earlier conversations." Is
 10 this another iteration of documents we looked at
 11 previously that concerned about IDEA's role would be
 12 defined in terms of providing support to the litigation
 13 team?
 14 A. I know there was a series of memos that
 15 outlined sort of what I proposed that IDEA do.
 16 I don't know where in the sequence this one
 17 falls, except I think it is not the last because I
 18 remember some additional points.
 19 Q. Okay. This discusses about midway through the
 20 text:
 21 "IDEA, under the direction of
 22 Professor Jeannie Oakes, could do
 23 the following:"
 24 Did you do in fact, do the first bullet, which
 25 is, "Frame research questions" for the other scholars

1 from IDEA as well as the others who eventually became
 2 experts?
 3 A. The set of questions I believe we reviewed
 4 when we spoke earlier, four to six general questions
 5 that I had used as an outline for my own paper, were
 6 also shared with the other experts who were members of
 7 my research team.
 8 Q. Very good.
 9 The second bullet talks about bringing
 10 scholars together for a one-day conference.
 11 There were, in fact, two conferences; isn't
 12 that correct?
 13 A. Yes.
 14 Q. One was in September -- November?
 15 A. November.
 16 Q. November 2001, and the other in July of 2002?
 17 A. That is correct.
 18 Q. Now the third bullet talks about providing
 19 "ongoing assistance and review."
 20 Is that something that you did?
 21 A. Not as much as I planned.
 22 Q. What did you do?
 23 A. I mostly provided encouragement for people to
 24 keep working and to send their work to me as they got it
 25 done.

1 Q. Uh-huh.

2 A. And I also, I think, had conversations with
3 them from time to time about where they might find
4 documents, and as we discussed before, which of the
5 members of the litigation team had developed expertise
6 on these topics and might be useful resources.

7 Q. So matching the expert to the litigation team
8 member?

9 A. Well, as I explained before, there never
10 really was a match, but as I got to know members of the
11 litigation team I knew -- I developed some general
12 knowledge of who knew about various topics.

13 Q. For instance, with respect to your report and
14 the tables that are set forth under opinion No. 2, you
15 worked with John Affeldt of Public Advocates; is that
16 correct?

17 I am talking separate from this document.

18 A. Well, I wouldn't characterize it that way.

19 I had conversations with John Affeldt, but we
20 didn't work closely on my report.

21 Q. How about with Matt Kreeger?

22 A. Again, Matt and I had three or four
23 conversations over the -- a small number of
24 conversations over the months, but nothing in great
25 detail.

1 the publisher is ready to go.

2 I have no idea exactly how long it will take.

3 My guess is about six months.

4 Q. After March 15?

5 A. Yes. But that is very rough.

6 Q. Is it your intent to post those papers
7 anywhere on the Internet?

8 A. Yes.

9 Q. At what time?

10 A. They are already posted -- no. There are two
11 versions of the papers. The short versions of the
12 papers are what are being published in the journal.
13 They are about 30 pages each.

14 The longer versions from which those shorter
15 papers were drawn in some cases are posted on the
16 Internet on my IDEA site. Right now they are under a
17 password-protected part of the site so that only the
18 authors and others who know the password can get into
19 them. That is because they are being converted to PDF
20 files and given nice graphics and things.

21 As soon as they are finished, they are getting
22 posted on the public site, and that should happen within
23 the next couple of weeks.

24 Q. The last bullet on Exhibit 20 talks about your
25 reporting "regularly on the progress of this work to the

1 Q. Concerning your report and prior to its
2 production in this litigation how many conversations did
3 you have with Jack Londen about it?

4 MR. LONDEN: The question is a little vague.

5 Go ahead.

6 THE WITNESS: I am trying to get the time
7 frame again.

8 BY MR. HERRON:

9 Q. At any time from the time you began drafting
10 your report until it was produced in this litigation how
11 many times did you speak with Jack Londen about that
12 report, if you recall?

13 A. Maybe five or six times.

14 Q. Same question for Mark Rosenbaum.

15 A. Same answer.

16 Q. The next bullet point on Exhibit 20 talks
17 about overseeing "the editing and production of a
18 publication-ready collection of background papers."

19 Have you done that now? By "now," I mean as
20 of this date.

21 A. It is in process right now.

22 Q. Is there a production date or a publication
23 date that is anticipated?

24 A. The papers are due to me on March 15. All but
25 three are already in. Reviewers have been engaged, and

1 litigation team."

2 Is that something you did?

3 A. Only in the most informal way. I don't
4 believe I ever did anything like a written report.

5 Q. To whom did you report on the litigation team?

6 A. In informal conversations with several members
7 of the litigation team.

8 Q. Such as?

9 A. Jack, Mark, Catherine Lhamon, John Affeldt,
10 Peter Eliasberg.

11 Q. Did you ever make written reports?

12 A. There might have been informal e-mail
13 exchanges about the papers, but if there are, I don't
14 recall them, and if there are, you have them.

15 Q. Did you provide any report to the litigation
16 team concerning the meetings of scholars either -- that
17 occurred in November 2001 and July of 2002?

18 A. I invited the litigation team to participate
19 in those meetings, so I don't recall any reports
20 afterwards except in casual conversations or maybe a
21 casual comment in an e-mail exchange. Not -- nothing in
22 the way of a formal report.

23 Q. Did the litigation team participate in those
24 conferences?

25 A. Some members of the litigation team attended.

1 The first one, I had invited Jack, and Mike
2 Jacobs also was involved in this as well, to give the
3 group overview and background of the case. I invited
4 them to participate in the general discussion of the
5 papers.

6 Essentially, both meetings were a sequence of
7 scholars reporting on their work followed by a general
8 discussion, critique, review, comments, questions by the
9 other scholars.

10 And I invited the litigation team to
11 participate in that discussion as much or as little as
12 they wanted, and I think my recollection is that most of
13 them were quite silent. In fact, there was very little
14 comment on the substance of the work by anybody on the
15 litigation team during those meetings to the extent that
16 I can recall.

17 Q. Mr. Londen and Mr. Jacobs provided a
18 presentation at the November 2001 --

19 A. Yes.

20 Q. -- meeting?

21 A. Yes.

22 Q. Okay. Did anyone from the litigation team
23 provide a presentation at the second meeting in July
24 2002?

25 A. There might have been an informal update

1 given, but I am not recalling.

2 It was a very, very tight schedule, and we
3 were racing through with lots of paper in a little bit
4 of time. I do remember that. I don't recall whether --
5 I don't recall.

6 Q. Do you remember who from the litigation team
7 in addition to Mr. Londen and Mr. Jacobs attended the
8 first meeting?

9 A. I shouldn't look at this while --

10 Q. I will restate it.

11 Was there anyone else -- was there anyone
12 other than Mr. Jacobs or Mr. Londen from the litigation
13 team who attended the first meeting?

14 A. Yes.

15 Q. From the litigation team?

16 A. Yes.

17 Q. Who was that, if you recall?

18 A. Catherine Lhamon, I think. People's names are
19 escaping me.

20 Q. Just your best recall.

21 A. Megan Auchincloss.

22 Q. That is close.

23 A. There were several young attorneys or, I
24 think, interns at the meeting. There were others there,
25 but I am just -- I am not visualizing them sitting

1 around the table, who they were.

2 Q. And the second meeting, do you recall who was
3 at that one?

4 A. I know Mark was there. Jack was there.

5 Catherine Lhamon was there. I can't remember whether
6 John Affeldt was there or not. There were a handful.

7 Q. I have handed you now what will shortly be
8 marked as Exhibit 21.

9 (Exhibit 21 was marked for I.D.)

10 BY MR. HERRON:

11 Q. I would really like you to focus on this
12 exhibit to the page Bates stamped as 11818.

13 A. Page 2?

14 Q. Yes, ma'am.

15 A. I actually would like to read the whole thing
16 so I can figure out the context.

17 Q. Certainly.

18 Have you had an opportunity to review Exhibit
19 21?

20 A. Yes.

21 Q. This is a series of e-mails. I would like to
22 focus on the one beginning at the bottom of the first
23 page, 11817.

24 This is an e-mail from you to various people
25 dated as of March 4, 2002; correct?

1 A. Yes.

2 Q. On the "To" line a number of names are
3 mentioned.

4 Who is Jerchel Anderson?

5 A. Jerchel Anderson is the chief administrator of
6 IDEA.

7 Q. Who is Jan Castaneda?

8 A. I have no idea.

9 Q. Who is Kevin Vele, V-E-L-E-E? That is on
10 Page 11818, towards the top, the fourth one down, left
11 side.

12 A. "Kevin" is Kevin Welner.

13 Q. Oh, I'm sorry. I got it wrong.

14 A. And "velee" is Valerie Lee.

15 Q. Who is Valerie Lee?

16 A. She is a professor at the University of
17 Michigan.

18 Q. This e-mail, in general, discusses, I take it,
19 a process for finalizing the papers that the scholars
20 from IDEA were drafting.

21 Am I right?

22 A. Yes.

23 Q. It also in the first sentence talks about:

24 "It's to think about next
25 steps with our Williams papers."

1 Correct?
 2 A. Yes.
 3 Q. So this was also discussing how you finalize
 4 the expert reports; is that correct?
 5 A. No.
 6 Q. Why not?
 7 A. Because "our Williams papers" was the
 8 shorthand I used for the scholarly papers that were
 9 researching issues in the Williams case.
 10 Q. Do you see the reference to "April" midstream
 11 through this e-mail?
 12 A. Yes.
 13 Q. It talks about:
 14 "We read and respond to one
 15 another's papers and provide
 16 comments"?
 17 A. Yes.
 18 Q. Was that done?
 19 A. This was the preparation for the July meeting.
 20 I had hoped to have the meeting earlier than July, as
 21 this e-mail makes clear, but arranging the schedule
 22 proved difficult.
 23 In fact, one volunteer from the group did read
 24 at least one paper and made a set of comments to the
 25 group and -- at the July meeting.

1 Q. Can you describe the process in more detail.
 2 What I am interested in is finding how is it
 3 that you paired the different authors with a reviewer
 4 and what did that reviewer do?
 5 A. As you said, I -- as it says, I asked for
 6 people to volunteer, and you probably somewhere have a
 7 set of e-mails where people say, "I would like to look
 8 at Norton's paper," "I would like at Bill's paper," and
 9 there were volunteers for most papers.
 10 When there weren't, I tried to take people who
 11 I thought would be interesting and ask them to please
 12 review one of the papers -- read one of the papers that
 13 had not been volunteered for.
 14 I think, as an example, I had to persuade
 15 Valerie Lee to read my paper because I respect her
 16 opinion, and nobody had offered to read a paper on
 17 textbooks.
 18 Q. I take it you didn't have to convince your
 19 husband to read your paper?
 20 A. Excuse me?
 21 Q. Your husband, you didn't have to convince him
 22 to read your paper; he was glad to?
 23 A. I am not --
 24 Q. Or did he not read it, your husband?
 25 A. He did read it, but I am not quite

1 understanding the context of this question.
 2 Q. Okay. I will withdraw it then.
 3 Do you have any of those e-mails because we
 4 don't?
 5 A. You have every e-mail that I kept. Often when
 6 I get a little short e-mail back, I don't keep it.
 7 Q. Did Mr. Koski review your paper?
 8 MR. LONDEN: The question is ambiguous.
 9 Go ahead.
 10 THE WITNESS: I don't know whether he reviewed
 11 my paper.
 12 BY MR. HERRON:
 13 Q. Did he provide you any comments that you
 14 recall?
 15 A. I am not recalling. I think he might have
 16 informally said he liked it at some point.
 17 Q. I am going to hand you what we will mark as
 18 Exhibit 22.
 19 (Exhibit 22 was marked for I.D.)
 20 THE WITNESS: Okay.
 21 BY MR. HERRON:
 22 Q. Have you had an opportunity to review Exhibit
 23 22?
 24 A. Yes.
 25 Q. Do you recognize this document?

1 A. Yes.
 2 Q. The first page, which is Bates stamped as
 3 07925, is an e-mail from Bill Koski to you dated July
 4 19, 2002; correct?
 5 A. Yes.
 6 Q. Does this refresh your recollection as to
 7 whether or not Mr. Koski provided you input about your
 8 report --
 9 A. Yes.
 10 Q. -- after he reviewed it?
 11 A. Yes.
 12 Q. Did you make the changes he suggests in this
 13 e-mail, or do you know?
 14 A. I don't recall.
 15 Q. There were a number of people; I think we have
 16 talked about them before: Linda Darling-Hammond, Norton
 17 Grubb, Michael Russell, Heinrich Mintrop that were both
 18 part of the scholars group at IDEA and became experts;
 19 correct?
 20 A. Yes. I think that is what four or five out of
 21 the 15 or so.
 22 Q. Right.
 23 Now did you purposely provide any input on any
 24 of their reports other than what you already testified?
 25 MR. LONDEN: The question is vague.

1 Go ahead.
 2 BY MR. HERRON:
 3 Q. Do you understand it?
 4 A. On the expert reports?
 5 Q. Here is what I am after: I want to know what
 6 input you had with any of the reports that any of those
 7 people I just listed generated prior to their being
 8 produced in this lawsuit.
 9 A. And you asked me about Mintrop --
 10 Q. Russell, Mitchell --
 11 A. -- Russell, Mitchell, Darling-Hammond --
 12 Q. -- and Grubb.
 13 A. -- and Grubb.
 14 Q. Right.
 15 A. I don't recall making any substantive
 16 recommendations or suggestions to any of them about
 17 their papers.
 18 Q. Okay. Did you work with Linda Darling-Hammond
 19 on her report?
 20 A. Early on, as I explained, I think when we met
 21 before we had -- Linda had asked me in the summer of
 22 2000 if I would assist her in the preparation of an
 23 expert report she was doing for the Williams case.
 24 She particularly asked me to focus on the
 25 instructional materials portion of the report she was

1 or two others at Stanford.
 2 Q. Okay. Same question for Mr. or Dr. Grubb and
 3 his report.
 4 A. Norton worked on his report with Laura Goe,
 5 who was his doctoral student and research assistant, and
 6 Luis Huerta was also actively engaged in producing the
 7 material that became that report.
 8 I don't know the extent to which Mr. Huerta
 9 actually contributed to the Grubb and Goe version -- The
 10 Grubb and Goe paper that I have, but I do know that that
 11 paper is derivative of work that Huerta and Grubb had
 12 done before.
 13 Q. Understood.
 14 How about Michael Russell? Same question.
 15 A. I don't know what assistance Mike Russell
 16 might have had.
 17 Q. Same question for Heinrich Mintrop.
 18 A. I don't know of any collaboration that Rick
 19 might have had.
 20 Q. The papers that are about to be published from
 21 UCLA's IDEA we discussed earlier this morning, are those
 22 peer reviewed?
 23 A. Yes.
 24 Q. Who are they peer reviewed by?
 25 A. My paper is being reviewed by Bruce Fuller at

1 doing, and I agreed that I would and began that process.
 2 After about a year -- I think it was a year
 3 later in the summer of 2001 and as this process evolved,
 4 I developed the notion -- two things happened.
 5 One, I developed the notion of coordinating a
 6 set of scholarly papers around these issues and, second,
 7 Linda and I realized that the joint report we might
 8 produce would be extremely unwieldy, and it would be
 9 better to create separate reports on the topics.
 10 So the answer to your question is, early on,
 11 yes, I did contribute material to Linda's report. I
 12 don't -- I don't know the extent to which any of my work
 13 might have remained in it, although having read it, I
 14 think very little, if any.
 15 Q. Do you know who else from IDEA or otherwise --
 16 and I am talking other than plaintiffs' counsel -- might
 17 have contributed to Linda Darling-Hammond's report?
 18 "Contributed" meaning reviewed, provided
 19 input, comment.
 20 A. From IDEA? Did you ask anyone from IDEA?
 21 Q. Anyone from IDEA or otherwise, but excluding
 22 plaintiffs' counsel.
 23 A. Yes. She had the assistance -- early on Bill
 24 Koski worked with her on that report, and then Kenji
 25 Hakuta provided some support, and Suzanna Loeb and one

1 UC Berkeley.
 2 Linda's paper is being reviewed by Richard
 3 Elmore at Harvard.
 4 Valerie Lee's paper, the Lee, Doug Ready,
 5 Kevin Welner paper is being reviewed by Professor Adam
 6 Gamaron at the University of Wisconsin.
 7 I have not yet secured a reviewer for Flora
 8 Ortiz's paper on facilities.
 9 The paper on English language learners written
 10 by Patricia Gandara and Russ Rumberger is being reviewed
 11 by Professor Richard Duran at the University of
 12 California, Santa Barbara.
 13 Bill Koski's paper is being reviewed by
 14 Marshall Smith, who is a Stanford professor and a former
 15 Deputy or Undersecretary of Education in the U.S.
 16 Department of Education. I don't remember.
 17 Q. I need help on names.
 18 How about Steve Levy's report?
 19 A. Steve Levy's report is not among those papers
 20 that will be published.
 21 Q. How about Tom Timar's report?
 22 A. Tom Timar's report is being reviewed by Jim
 23 Cibulka, C-I-B-U-L-K-A, who is the dean at Virginia --
 24 some Southern university. I can't remember the name.
 25 Rick Mintrop's paper is being reviewed by

1 Professor -- I have to find that name for you. I don't
 2 recall.
 3 Q. With your counsel's permission, I will leave a
 4 blank in the transcript for you to fill in on that.
 5 MR. LONDEN: Yes.
 6 (Information requested: _____
 7
 8 _.)
 9 THE WITNESS: The Grubb paper I have had two
 10 turndowns so far and am still looking.
 11 Professor Mark Warren at Harvard is reviewing
 12 John Roger's paper.
 13 Professor Jean Anyon at the CUNY Graduate
 14 Center in New York, C-U-N-Y, is reviewing Pedro
 15 Noguera's paper.
 16 Who have I left out?
 17 BY MR. HERRON:
 18 Q. Did you tell us about Dr. Darling-Hammond's
 19 paper?
 20 A. Yes. Richard Elmore at Harvard.
 21 Q. Mr. Mitchell, Dr. Mitchell?
 22 A. Ross Mitchell?
 23 Q. Yes.
 24 A. He is not one of the scholars that was part of
 25 the group.

1 Q. Okay.
 2 A. Michele Fine's paper is now part of the group,
 3 and it is -- you will have to leave a blank for that as
 4 well.
 5 MR. HERRON: We will do so with your counsel's
 6 permission.
 7 MR. LONDEN: Yes.
 8 (Information requested: _____
 9
 10 _.)
 11 THE WITNESS: I think that may be the group,
 12 unless you remind me of another name.
 13 BY MR. HERRON:
 14 Q. Another one that comes to mind is Michael
 15 Russell. You may have mentioned him.
 16 A. I don't think I mentioned him, and I am not --
 17 oh, David Berliner at Arizona State University is
 18 reviewing Michael Russell's paper.
 19 Q. Is it typical to have papers peer reviewed by
 20 professors at universities other than UCLA?
 21 A. Yes.
 22 Q. Once these papers have been reviewed by these
 23 professors, these other folks, what is the process from
 24 there for peer review?
 25 Is there anything that happens after that?

1 A. In the kind of peer review we are using -- the
 2 journal, Teachers College Record, which is arguably the
 3 top journal in the field, has two or three different
 4 strategies that they use.
 5 Sometimes the peer review is blind. In that
 6 case you simply get your reviews; you respond to them,
 7 and the editor makes the final decision about whether
 8 you have been responsive.
 9 In this case it is more like a consulting
 10 review, where it is not blind, but the reviewer is known
 11 to the faculty, to the author, and in that case the
 12 reviewer and the author go back and forth until the
 13 reviewer is satisfied that the author has addressed all
 14 of the criticisms and suggestions, and that is the
 15 process that I opted for here.
 16 Q. Hence, it takes at least six months to get
 17 this done?
 18 A. Oh, yes. Yes.
 19 Q. All right. Is there anything else about the
 20 peer review process that happens that you haven't
 21 already discussed?
 22 A. In this case I have opted for the most
 23 rigorous process I could devise, partly because I knew
 24 these papers were going to be subject to greater
 25 scrutiny than most academic papers, so the names that I

1 have given you of the reviewers, it is a star-studded
 2 list in the field. They are all -- there is not an easy
 3 mark in the bunch.
 4 Q. I will quickly review another document with
 5 you, which we will mark as Exhibit 23.
 6 (Exhibit 23 was marked for I.D.)
 7 BY MR. HERRON:
 8 Q. Dr. Oakes, to make this easier for you, let me
 9 just give you a preface and see if this helps your
 10 review.
 11 Last time we saw a series of documents that
 12 looked like 23. I don't want to talk about the content.
 13 We couldn't find last time what we thought might have
 14 been the final one that was published. I want to ask
 15 whether or not this is it.
 16 A. No.
 17 Q. This is not it?
 18 A. No.
 19 Q. Okay. How do you know that?
 20 A. The -- well, because the -- there is no
 21 description of the standards and curriculum paper which
 22 eventually became two papers, one on standards and one
 23 on curriculum.
 24 Mine was the curriculum paper. The final
 25 version had a bit more -- had a description of Linda's

1 paper and Flora Ortiz's paper on facilities.
 2 The -- under Part 3, the "State governance
 3 management and accountability mechanisms" actually got
 4 broken out into two different papers.
 5 Q. Uh-huh. Let's set this aside.
 6 I want to talk to you about the November 2001
 7 meeting.
 8 Who paid for that?
 9 A. Morrison & Foerster.
 10 Q. Do you have any idea how much it cost?
 11 A. They -- I would hate to guess. It was
 12 airfare, an overnight in a hotel and the food that was
 13 served during the meeting --
 14 Q. Whatever that totals to?
 15 A. -- whatever that is.
 16 Q. Was it a one-day meeting?
 17 A. Yes.
 18 Q. How long did it last, if you know?
 19 A. I think it lasted quite a while. I think --
 20 it was on a Sunday. It started early, and we went until
 21 about 7:00 with people in and out as they could.
 22 Q. Was there a written announcement of the
 23 meeting?
 24 A. Probably over e-mail. That happens to be
 25 during the period of time, I think I told you, that my

1 dissertation, where you present your ideas and
 2 methodology, a little bit of review of the existing
 3 literature and outline your plans and then people
 4 respond. And that took the whole day.
 5 Q. Did any document result from that meeting,
 6 that is, some sort of summary or "Here is what we
 7 covered" or whatever?
 8 A. No.
 9 Q. Was each report, to the extent one existed, or
 10 each outline of a report distributed to all attendees?
 11 MR. LONDEN: Assumes facts.
 12 Go ahead.
 13 THE WITNESS: Not that I recall.
 14 BY MR. HERRON:
 15 Q. Tell me about the July 2002 meeting.
 16 Who paid for that?
 17 A. Morrison & Foerster.
 18 Q. Was there an announcement, written
 19 announcement, of that meeting?
 20 A. Only the e-mail announcement.
 21 Q. Sent from you?
 22 A. Yes, I believe. It might have been sent from
 23 Jamy or Melissa or somebody who was helping me
 24 coordinate.
 25 Q. Do you know if that document has been produced

1 hard disk crashed, and that our educational technology
 2 unit recovered all my documents, but they could not
 3 recover the end of September to January period of time
 4 with my e-mail.
 5 Q. All right. Where was the meeting?
 6 A. At UCLA.
 7 Q. And did all the people you just mentioned --
 8 when I say, "all the people," I mean Steve Levy,
 9 Patricia Gandara, et cetera -- did they all attend the
 10 meeting?
 11 MR. LONDEN: The question is compound.
 12 THE WITNESS: I don't remember exactly who
 13 attended and who did not. Most of them did attend.
 14 BY MR. HERRON:
 15 Q. What was the agenda, if you could describe
 16 that for us, please, other than you already testified.
 17 A. The only agenda -- well, there were two agenda
 18 items; one to brief -- give a very short briefing on the
 19 case to the experts, most of whom had no knowledge or
 20 very little knowledge of the case before.
 21 And then each of them had their -- had already
 22 agreed with me about what they would write, and they
 23 were asked to bring a set of preliminary ideas, share
 24 them with the group, and we would discuss them much in
 25 the fashion of a preliminary oral exam for a

1 in this litigation?
 2 MR. LONDEN: Lacks foundation.
 3 THE WITNESS: I know we gave everything we had
 4 to Morrison & Foerster and the other members of the
 5 litigation team.
 6 BY MR. HERRON:
 7 Q. Did Jamy -- who is Jamy?
 8 A. Jamy Stillman, she is a doctoral student who
 9 is my research assistant.
 10 Q. Did Jamy Stillman make the arrangements for
 11 the meeting, which is to say, was that person
 12 administratively responsible, lucky him or her?
 13 A. She was the party planner. Yes.
 14 Q. What was the agenda for that meeting?
 15 A. That each of the scholars would present --
 16 like the final orals, right -- in November they would
 17 talk to each other about what they intended to do, and
 18 this meeting was the chance to bring back everybody to
 19 share what they had actually done.
 20 As I explained before, to make sure the
 21 conversation started in an interesting and useful way,
 22 each of those scholars agreed to make some comments
 23 about one other paper to start the discussion.
 24 MR. HERRON: Could I have that read back,
 25 please.

1 (Record read.)

2 BY MR. HERRON:

3 Q. Okay. All right. Help me a little bit on
4 what actually occurred there.

5 So did each scholar do a presentation on his
6 or her own report?

7 A. Yes.

8 Q. What other presentations, then, were made, if
9 any?

10 A. The -- following the presentation, for
11 example, I presented about my report --

12 Q. Sure.

13 A. -- summarized it for the group.

14 Following my presentation Valerie Lee, who had
15 read my paper, made a few comments in order to begin the
16 conversation, and then there was about 20 minutes of
17 conversation. We actually used a little electric timer,
18 because we had an enormous amount of material to cover
19 in a very short period of time.

20 Q. And that same process repeated itself with
21 respect to each of the other reports?

22 A. Yes.

23 Q. What happened after those presentations were
24 done, if anything?

25 A. Some people went home and some went out to

1 Answer if you are able.

2 THE WITNESS: I have a small allocation
3 from -- temporary allocation from the chancellor.

4 BY MR. HERRON:

5 Q. Is that State money?

6 A. I believe it is not State money. It is money
7 that he or the UCLA Foundation has generated from
8 private gifts and donations.

9 Q. As far as you know, does UCLA's IDEA or any of
10 the people working with UCLA's IDEA receive State funds?

11 A. I do.

12 Q. How?

13 A. My salary.

14 Q. Does anyone else at UCLA's IDEA?

15 A. Some of the graduate students may have
16 fellowships that are funded with State money. I think
17 that is it.

18 Q. How about overhead for UCLA's IDEA?

19 I am talking lights, paper, equipment and the
20 like. How is that paid for?

21 A. We purchase our own equipment and paper and
22 supplies. The university provides the space and the
23 heating and the furniture.

24 Q. When you say, "we purchase," what does that
25 mean?

1 dinner.

2 Q. Okay. Did any writings generate or result
3 from that meeting?

4 That is not a very clear question, but I think
5 you know what I mean.

6 A. There was no normal write-up or report at that
7 meeting.

8 Q. I take it UCLA's IDEA gets money from various
9 outside sources, that is, sources other than the
10 university itself?

11 A. Yes.

12 Q. You get outside donations, for example?
13 Gifts, for example?

14 A. Gifts is one very small part of our income.

15 Q. What is the larger part?

16 A. Grants.

17 Q. Do grants come in the form of contracts or
18 what form do they take?

19 A. Grants are an award of money in response to a
20 proposal for specific work. They usually require
21 periodic progress reports, both financial reports and
22 substantive reports.

23 Q. What other form do donations or financial
24 contributions to IDEA take other than grants and gifts?

25 MR. LONDEN: The question is vague.

1 A. IDEA purchases out of its funds its own
2 supplies and copy machines and computers and printers.

3 Q. What part of the overhead, if any, is paid for
4 by State funds, if you know?

5 A. I couldn't tell you the proportion of the --
6 of the overhead costs that are paid for out of State
7 funds.

8 MR. HERRON: Could you read my question.

9 (Record read.)

10 BY MR. HERRON:

11 Q. What criteria does a donation of funds to
12 UCLA's IDEA have to do to qualify as a gift?

13 A. Gifts are -- gifts come with no constraints,
14 no strings attached.

15 Generally -- at least in the two instances
16 where I have had gifts, it has been a gift from an
17 organization that is simply interested in providing
18 support for my work, but does not have the technical
19 accountability requirements that grants have.

20 Gifts also have no overhead, but they have a 5
21 percent -- UCLA takes a 5 percent gift fee, which you
22 can either pay upfront, or you can let the money sit for
23 a year before you use it, and then they use -- if the
24 interest rates are still at 5 percent, they use the
25 interest to pay for that gift fee.

1 Q. So 5 percent is just a fee that is taken away
2 by UCLA?

3 A. Yes.

4 Q. The benefit, I take it, to UCLA's IDEA of a
5 gift as opposed to, for example, a contract is that the
6 overhead amount is lower?

7 MR. LONDEN: Foundation.

8 BY MR. HERRON:

9 Q. Let me ask another question.

10 You have contracts you have entered into where
11 you got funds; right?

12 A. I have never taken a contract, funds for a
13 contract. I have only had grants.

14 Q. Do you know what overhead rate or percentage
15 is applied to a contract?

16 A. A contract?

17 Q. Right.

18 A. I don't know. They are often negotiated.

19 Q. Okay. When you said that a gift has "no
20 constraints," quote -- that is a quote -- and "no
21 strings attached," what did you mean?

22 A. That, unlike a grant, where you propose a
23 scope of work and you use the money to perform that
24 work, if you decide to change the scope of work -- it is
25 a specific outline of a scope of work -- who will staff

1 24.

2 (Exhibit 24 was marked for I.D.)

3 BY MR. HERRON:

4 Q. Have you had an opportunity to review Exhibit
5 24?

6 A. Yes.

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. This is a document, a one-page document Bates
10 stamped 7173.

11 It appears to be, am I right, an e-mail from
12 you to, among others, Mr. Londen, dated August 23, 2001;
13 correct?

14 A. Yes.

15 Q. What was the purpose of this e-mail, if you
16 know -- if you recall?

17 A. It was one in a series of communications in
18 which I was defining and requesting support to fund the
19 coordination of the set of research papers that I was
20 proposing to do.

21 Q. The last sentence says:

22 "In the meantime, I am
23 developing agreements with each of
24 the experts"?

25 A. Yes.

1 that work, time frames for that work, they are all
2 included in the proposal.

3 If you make changes to that, you request
4 permission from the funder to reallocate funds for a
5 different purpose or different people, you are required
6 to give substantive and financial reports on a regular
7 basis, and it varies depending on the funder.

8 With a gift, the gift is -- and at the end of
9 a contract or at the end of a grant period, you have to
10 request a no-cost extension if you haven't used all the
11 money or you return the money.

12 With a gift, there are none of those
13 constraints. Although sometimes with gifts we do out of
14 courtesy provide reports to the donor.

15 Q. So providing a report to the donor is not a
16 string that is attached?

17 A. Well, I actually had -- the other gift I had
18 was from Atlantic Philanthropies, and it has been quite
19 a large gift over a period of three years.

20 Atlantic makes it pretty clear they want
21 reports. I believe I don't have to give them, but I
22 have.

23 Q. You have?

24 A. Yes.

25 Q. Let me show you what we will mark as Exhibit

1 Q. What does "experts" mean in that sentence?

2 A. That meant the scholars that I was working
3 with. There were no -- the scholars I was working with.

4 Q. Did you, in fact, develop written agreements
5 with each of the experts?

6 A. No.

7 Q. With any of them?

8 A. No. I had e-mail communications where I
9 invited them to do a paper and outlined these questions
10 I was interested in, and they wrote back and said yes;
11 they would like to do it.

12 I don't know whether that constitutes an
13 agreement.

14 Q. Well, there was no formalized agreement that
15 said, "Do you agree," and they signed on the dotted
16 line?

17 A. No.

18 Q. I will mark Exhibit 25.

19 (Exhibit 25 was marked for I.D.)

20 BY MR. HERRON:

21 Q. Have you had an opportunity to review Exhibit
22 25?

23 A. Yes.

24 Q. This is a two-page document Bates stamped 7120
25 through 7121; correct?

1 A. Yes.
 2 Q. And it is a --
 3 A. No.
 4 Q. Sorry? Did I get that wrong?
 5 A. Uh-huh.
 6 Q. Could I see yours?
 7 A. 7120 I have.
 8 Q. Okay. Right. Very good.
 9 Yours says 7120 on the first page and 7121 on
 10 the second?
 11 A. Oh, okay.
 12 Q. Okay. This is a series of e-mails. Let's
 13 focus on the one at the top of Page 1, which is Bates
 14 stamped 7120.
 15 This is an e-mail from you to Mark Rosenbaum,
 16 I take it, dated August 26, 2001?
 17 A. Yes.
 18 Q. What was the purpose of this e-mail?
 19 A. One purpose was to make sure that Mark was
 20 included in my communications about this, so it was, in
 21 part, an attempt to be respectful of his role.
 22 Second was to solicit his advice about the
 23 statements in the memo of understanding because I was --
 24 I wanted to be extremely careful that everything I did
 25 was completely proper, given that this project was an

1 Q. This e-mail talks about a "memo of
 2 understanding."
 3 It talks about your wishing to add a sentence
 4 or two to it; correct?
 5 A. Yes.
 6 Q. What is the "memo of understanding," if you
 7 recall or know?
 8 A. The memo of understanding was essentially what
 9 we had in Exhibit No. 20, but I added two things to it
 10 because I wanted to make sure that I had gone on record
 11 saying that these papers are nonproprietary, and that
 12 there is a degree that I am maintaining independence,
 13 and the analysis will be independent.
 14 Q. There are two items mentioned in your e-mail,
 15 Exhibit 25, on Page 7120 which asserts the independence
 16 of the analyses and the second which makes explicit the
 17 papers will be available to others beyond the litigation
 18 and will at some point be submitted for publication;
 19 right?
 20 A. Yes.
 21 Q. Your last sentence states -- not the last
 22 sentence. The second-to-the-last sentence states:
 23 "Having explicit statements to
 24 this effect might make it a bit
 25 easier for us to respond to

1 unusual one. I wasn't familiar with all the ground
 2 rules or issues that I should be concerned about. So I
 3 was asking his advice.
 4 Q. Did you say, "This process was an unusual
 5 one"?
 6 A. To have a litigation team fund a group of
 7 scholars over whom they were going to have very little,
 8 if any, control in terms of the nature of the work that
 9 was going to be done, and that at any point I would
 10 provide copies of whatever work in progress people were
 11 interested in to others beyond the litigation team, and
 12 that I would -- and that I was maintaining my
 13 independence from the litigation team.
 14 It was quite different than any process that I
 15 had been engaged with or knew about in terms of experts
 16 working in the context of litigation, and I was trying
 17 to figure out how to do it in a way that was scrupulous
 18 and proper.
 19 Q. As far as you know, has that process been
 20 replicated in any other litigation that you are aware
 21 of?
 22 A. I have no idea.
 23 Q. Has anyone ever told you that that process has
 24 been used in any other litigation?
 25 A. Not that I recall.

1 potential criticism that IDEA is
 2 stepping beyond a legitimate
 3 university role."
 4 Did I read that correctly?
 5 A. Yes.
 6 Q. From what quarter did you expect or anticipate
 7 criticism?
 8 A. I was not expecting criticism. I just -- I
 9 wanted to be very careful.
 10 I think I told you before that I had consulted
 11 with campus counsel at UCLA to make sure this was a
 12 proper procedure, and I was just being very careful.
 13 When you do research in controversial areas
 14 you get scrutiny, and I have an interest in protecting
 15 my reputation and the integrity of IDEA.
 16 Q. Are there any rules you are aware of at UCLA
 17 regarding the purposes for which a gift may be used?
 18 A. My guess is there are, but I'm not -- I
 19 couldn't name them for you.
 20 Q. Is there any rule you are aware of that
 21 applies in this situation; that is, where reports
 22 produced in an educational setting may ultimately be
 23 used in litigation?
 24 A. None that I am aware of.
 25 Q. Are there any rules at UCLA regarding the use

1 of State funds to support litigation?

2 A. There may be.

3 Q. Are you aware of any?

4 A. Well, it is not a proper role of a university
5 to -- I am not sure what you mean by "support."

6 Q. I don't think the question was that difficult,
7 but my point is simply that -- I guess my question is
8 really: Taken from the context that we all know
9 happened here, that is, reports were created by IDEA
10 using a gift of funds, and that money -- and those
11 reports, at least some portion thereof, ultimately
12 became expert reports in litigation.

13 Are there any rules that you are aware of that
14 apply to that situation?

15 MR. LONDEN: The first statement was
16 argumentative.

17 The second one, to the extent it purports to
18 restate testimony, is objected to on the grounds that it
19 mischaracterizes testimony.

20 Answer if you can.

21 THE WITNESS: The only report -- the gift from
22 Morrison & Foerster was used to support my research
23 assistant and my post-doctoral fellow in their doing
24 background work for me in preparation for a piece of
25 scholarship I was doing.

1 that is exactly what the money has -- the State money
2 has been used for over the past two years.

3 Q. You mean the scholarly activity of creating
4 the various IDEA scholar reports?

5 A. The scholarly reports were not created on
6 campus. They were created by scholars -- well, perhaps
7 Rick Mintrop did some work in his office at UCLA, which
8 is perfectly appropriate for him to do as a scholar.

9 John Rogers wrote his paper probably partly in
10 his office at UCLA, which is perfectly appropriate for
11 him to do as a faculty member.

12 Faculty members are free to spend a portion of
13 their time engaged in any type of work they choose as
14 consultants. Since some of us spend about 80 hours a
15 week on the job, it is very hard to parse out -- let's
16 say, I am more than confident that the part of my
17 salary -- the -- that my salary is well consumed by
18 engagement in university activities, and that whatever
19 additional time I spent transforming my work into an
20 expert report was on my own time.

21 Q. Is it your view that any State money was used
22 by you or others in generating expert reports in this
23 litigation?

24 MR. LONDEN: Lacks foundation.

25 THE WITNESS: I don't think so.

1 A version of that scholarship was -- became an
2 expert report which I did, which is perfectly
3 appropriate for a professor to do as a part of their
4 scholarly work and part of their consulting, if they get
5 paid for it.

6 None of the other -- none of the funding went
7 to any of the other scholarly papers, let alone any of
8 the other expert reports. I think that answers your
9 question.

10 BY MR. HERRON:

11 Q. Okay. The State pays your salary; correct?

12 A. Yes.

13 Q. The State pays some of the overhead that is
14 used to support UCLA's IDEA; correct?

15 A. Yes.

16 Q. Why is it -- why is it justifiable for you to
17 use that State money in support of this litigation?

18 MR. LONDEN: Argumentative. Calls for a legal
19 conclusion. Asked and answered.

20 Go ahead.

21 THE WITNESS: It is an inappropriate
22 characterization of what happened.

23 BY MR. HERRON:

24 Q. Why?

25 A. The State supports my scholarly activity, and

1 BY MR. HERRON:

2 Q. Did you tell anyone at UCLA that the scholarly
3 reports, by which I mean the reports developed by the
4 scholars for UCLA's IDEA, may or would be used for
5 litigation ultimately?

6 A. Yes. I told Ruth Simon, who is the counsel at
7 UCLA.

8 Q. That presents a bit of a problem for the next
9 question, doesn't it?

10 Did you tell anyone else?

11 A. At UCLA?

12 Q. Uh-huh.

13 A. The kinds of agreements that I said before,
14 that people were producing scholarly papers, that the
15 litigation team may very well and would likely contact
16 some of those people to transform their scholarly papers
17 into expert reports was common knowledge.

18 Q. Among whom?

19 A. Among people -- my colleagues, people I talked
20 to.

21 Q. Who is your direct supervisor, if you have
22 one?

23 A. My direct supervisor? That is an odd
24 question. I suppose I report to a dean.

25 Q. Who is that?

1 A. Aimee Dorr.
 2 Q. Did you ever tell Aimee Dorr that the
 3 scholarly reports being generated could result or could
 4 become expert reports in litigation?
 5 A. Yes.
 6 Q. What did she say?
 7 A. She has been following this work with great
 8 interest.
 9 Q. She didn't oppose that?
 10 A. No.
 11 Q. She didn't suggest and you didn't discuss with
 12 her that there might be a conflict in that?
 13 A. No.
 14 Q. She didn't suggest that would be a problem of
 15 any sort?
 16 A. Not that I recall.
 17 Q. What did counsel say?
 18 MR. LONDEN: I am not asserting the privilege,
 19 but if there is a privilege to be asserted, the witness
 20 should bear that in mind.
 21 BY MR. HERRON:
 22 Q. Do you want to talk to her off the record?
 23 A. I don't think it is necessary.
 24 MR. LONDEN: And I don't think I can get the
 25 privilege. You know, she could tell me whether there is

1 or isn't. If you want to break --
 2 MR. HERRON: I just wanted you to know if you
 3 would like to discuss it with her, I am glad to break.
 4 MR. LONDEN: Let's make sure Dr. Oakes has the
 5 rules in mind.
 6 BY MR. HERRON:
 7 Q. What I am asking you to do, Dr. Oakes, is to
 8 disclose the content of a communication that you
 9 received from UCLA's counsel. It may well be that that
 10 is attorney-client privileged. I don't think so, but I
 11 think Mr. Londen is suggesting if you think it is, you
 12 should not answer.
 13 MR. LONDEN: Actually --
 14 MR. HERRON: I don't want to
 15 mischaracterize -- sorry. Go ahead.
 16 MR. LONDEN: We can take a break, and I can
 17 make sure that Dr. Oakes knows what the rules are. I am
 18 not going to get into the content of a confidential
 19 communication that I was not a part of.
 20 MR. HERRON: Understood. I am just going to
 21 withdraw the question.
 22 I am going to show you what we are going to
 23 mark as Exhibit 26.
 24 (Exhibit 26 was marked for I.D.)
 25 BY MR. HERRON:

1 Q. Have you had an opportunity to review Exhibit
 2 26?
 3 A. Yes.
 4 Q. This is a one-page document Bates stamped as
 5 7179.
 6 Do you recognize this document?
 7 A. Yes.
 8 Q. Who drafted it?
 9 A. I did.
 10 Q. When?
 11 A. In --
 12 MR. EGAN: I have a different number.
 13 MR. HERRON: Oops.
 14 MR. EGAN: 7127.
 15 BY MR. HERRON:
 16 Q. Okay. The exhibit is actually Bates stamped
 17 as 7127.
 18 A. I drafted this in August of 2001.
 19 Q. May I see your document?
 20 A. Uh-huh.
 21 Q. Did you send this to anyone?
 22 A. Yes. I sent this to Jack Londen and Matt
 23 Kreeger as an attachment to that -- the memo that was
 24 the second e-mail in Exhibit 25, and I sent it to Mark
 25 Rosenbaum as an attachment to the first e-mail in

1 Exhibit 25.
 2 Q. Did you provide this to anyone at UCLA?
 3 A. I might have discussed it with John Rogers,
 4 but I don't recall.
 5 Q. This seems to cover a time frame of July 2001
 6 through April 2002; is that right?
 7 A. Yes.
 8 Q. Was there a later budget document generated?
 9 A. No.
 10 Q. There is a total cost set forth here of
 11 \$239,500.
 12 Was that money provided to UCLA's IDEA?
 13 A. No.
 14 Q. To whom was it provided?
 15 MR. LONDEN: Assumes facts.
 16 BY MR. HERRON:
 17 Q. If it was.
 18 A. All I know is that UCLA received a gift of
 19 \$51,500, and that the costs of the conferences at UCLA
 20 were reimbursed -- the cost of actually providing the
 21 food and the rooming costs were reimbursed to UCLA, and
 22 I had no direct involvement with the expenditure of any
 23 of these other funds, if those expenditures occurred.
 24 Q. You didn't receive any money for generating
 25 your report?

1 A. No.
 2 Q. Why is that?
 3 A. As I explained the last time we met, I
 4 believe --
 5 Q. If you explained it, I will withdraw that
 6 question.
 7 Let's look at the top of this document. It
 8 says, "Standards and curriculum" --
 9 A. Yes.
 10 Q. -- "Koski (w/Oakes)"?
 11 A. Yes.
 12 Q. What does that refer to, Koski (w/Oakes)"?
 13 A. That at the time of this writing I was
 14 thinking that Bill Koski's paper on standards and my
 15 paper on textbooks would be a combined paper.
 16 Q. Do you know whether Linda Darling-Hammond
 17 received any compensation for producing her report?
 18 A. I have no idea.
 19 Q. I asked because this document says, "N/A" in
 20 that column.
 21 Do you see that?
 22 A. Yes.
 23 Q. But you just don't know?
 24 A. Because Linda had already been engaged with
 25 the litigation team I felt it was none of my business to

1 suggest what it might cost to engage her in this work.
 2 Q. Are you aware of any negotiations that
 3 Mr. Levy might have had with Mr. Eliasberg?
 4 A. No.
 5 Q. I want to point you to the third heading here,
 6 "IDEA Infrastructure."
 7 A. Yes.
 8 Q. It says, "Graduate student assistants (50
 9 percent)"?
 10 A. Yes.
 11 Q. What was that 50 percent intended to reflect
 12 or mean?
 13 A. When you employ graduate students, the typical
 14 rate for the time for which they are employed is really
 15 49 percent time, and then you also have to pay their
 16 fees for them.
 17 Q. So that doesn't indicate the graduate students
 18 would be working 50 percent on this project, that is to
 19 say, the project of generating the expert reports?
 20 A. The -- the graduate students spent no time
 21 generating expert reports. They spent 50 percent of
 22 their time supporting me, mostly in my scholarly work
 23 around textbooks and curriculum materials, but they also
 24 were engaged in planning the conferences and doing other
 25 routine support work.

1 Q. Marisa Saunders is a graduate student;
 2 correct?
 3 A. No.
 4 Q. What is she? Postdoc?
 5 A. She is a -- she has a doctorate from Harvard,
 6 and she is -- worked as a researcher, and she was
 7 certainly postdoc.
 8 Q. But no graduate assistant assisted you in
 9 generating your expert report for this litigation?
 10 A. As I explained before, both Jamy Stillman and
 11 Noah Delissovoy and earlier Rebecca Joseph were all
 12 research assistants working for me that helped do the
 13 research for my piece of scholarship.
 14 Q. So they did assist to that extent?
 15 A. They did literature reviews. They helped
 16 create tables. They reviewed documents.
 17 I think I explained what they did the last
 18 time we met.
 19 Q. Okay. I guess my confusion is this: You said
 20 on the one hand graduate assistants didn't help you
 21 generate your expert report. Now you seem to be saying
 22 they did.
 23 What have I got wrong?
 24 MR. LONDEN: You got the quotation wrong, but
 25 the testimony will speak for itself. The question is

1 argumentative.
 2 THE WITNESS: The expert report came -- was a
 3 product of scholarship. There are other products of the
 4 scholarship as well.
 5 My graduate student researchers engaged in
 6 supporting me to do that scholarship.
 7 MR. HERRON: Uh-huh. I am handing you what
 8 has been marked as Exhibit 27.
 9 (Exhibit 27 was marked for I.D.)
 10 BY MR. HERRON:
 11 Q. Have you had an opportunity to review Exhibit
 12 27?
 13 A. Yes.
 14 Q. This is a one-page document Bates stamped as
 15 9043; correct?
 16 A. Yes.
 17 Q. This is a memorandum that appears to be dated
 18 August 22, 2001 to Jack Londen and the Williams
 19 litigation team from you; correct?
 20 A. Yes.
 21 Q. It concerns on the "Re" line "Agreement
 22 regarding a gift to UCLA's IDEA"; am I right?
 23 A. Yes.
 24 Q. What is the purpose of this memorandum?
 25 A. I was providing information that the UCLA

1 business office had conveyed to me about the terms under
2 which gifts are given to UCLA and the -- it also
3 expresses my preference about keeping the gift to UCLA
4 separate from the payments to any of the scholars who
5 were working on the IDEA project.

6 Q. Let's talk about the first paragraph,
7 specifically the percentage figures here. The second
8 full sentence, the first paragraph states:

9 "UCLA imposes a 5 percent
10 overhead charge on gifts made to
11 UCLA projects and programs."
12 I will go on.

13 "This is considerably less
14 than the usual 25.5 percent for
15 specific inter-institutional
16 contracts."

17 Does this refresh your recollection as to
18 overhead percentage applied to contracts?

19 MR. JORDAN: I think you said, "25.5 percent."
20 It says, "21.5 percent."

21 BY MR. HERRON:

22 Q. Thank you.

23 I meant to say, "21.5 percent for specific
24 inter-institutional contracts."

25 MR. LONDEN: Assumes facts.

1 contract."

2 Why did you believe that?

3 A. Because of the nature of the relationship, the
4 independence of the work, my commitment to having the
5 work be nonproprietary, to follow all the conventions of
6 traditional scholarly work made it clear to me that this
7 was more gift-like, the support for this work was more
8 gift-like than a contract, which would have
9 specifications in it about the nature of the work that
10 was to be done.

11 Q. The first paragraph concludes with the
12 sentence:

13 "However, it will depend on
14 the specificity of the language
15 that accompanies the commitment
16 from you to me and UCLA."

17 A. Yes.

18 Q. And when -- "it" there, I take it, is whether
19 or not the gift fit into a -- whether the money provided
20 fit into a gift category; is that right?

21 A. This -- when donors give a gift, it has to be
22 accompanied by -- I don't know if it has to be, but I
23 like -- I wanted it to be accompanied by some sort of
24 memorandum that told the business office the purpose of
25 a gift; that it was supposed to come to IDEA, and it was

1 THE WITNESS: What is the question?

2 BY MR. HERRON:

3 Q. Whether this refreshes your recollection as to
4 what overhead percentages applied to contracts.

5 A. Yes.

6 Q. That amount is 21.5 percent?

7 A. Apparently so.

8 Q. And it is much more beneficial, then, for
9 UCLA's IDEA to receive a gift than a contract; is that
10 correct?

11 A. The -- a gift and a contract are very
12 different kinds of mechanisms for providing support.

13 5 percent overhead is certainly better than
14 21.5 percent overhead, although some of my grants have
15 zero overhead.

16 Q. You go on in the first paragraph to state
17 that, "UCLA's IDEA" -- I'm sorry. Let me read it so I
18 am accurate.

19 "I think that the support that the Williams
20 litigation team wants to provide" -- I'm sorry. Let me
21 try that one more time.

22 "I think that the support that
23 the Williams litigation team wants
24 to provide UCLA's IDEA fits into
25 the gift category better than a

1 supposed to support my work.

2 This is a -- UCLA -- well, I am not sure what
3 more to say about that.

4 Q. My question really dealt with the "specificity
5 of the language" piece in there.

6 I take it what you are saying here is that for
7 the money given to fit into the gift category it was
8 dependent -- whether or not that was true depended on
9 the specificity of the language that accompanied the
10 commitment; is that right?

11 MR. LONDEN: Asked and answered.

12 Go ahead.

13 THE WITNESS: The intention of this was to --
14 Jack and I had talked about this being a gift, the terms
15 under which gifts are given, and that a gift is the way
16 I would accept support, and this was, in part, to help
17 inform him about how he would have to frame anything
18 accompanying the check to make sure that it conformed
19 with the kind of support that I wanted to have.

20 BY MR. HERRON:

21 Q. Paragraph 2 talks about that, in fact. It
22 goes on to say, "In order to have your support qualify
23 as a gift;" then it continues.

24 So what you were trying to do here is provide
25 direction as to how you would qualify this commitment,

1 this support, as a gift; is that correct?

2 A. I was attempting to make certain that the
3 funds come as a gift and not as anything that would have
4 specific specifications or requirements about how the
5 money would be spent.

6 Q. You state in the second paragraph, continuing
7 from what I just read:

8 "You need simply state that
9 the purpose of the funds is to
10 support research conducted... UCLA
11 in areas of educational quality and
12 equity related to the Williams
13 case."

14 Then it goes on from there.

15 Was it important in your view that the
16 statements -- the statement accompanying the commitment
17 indicate that it was related to the Williams case as
18 this --

19 A. No.

20 Q. -- document states?

21 A. No. I was simply trying to craft the kind of
22 general statement that would be usual in the giving of a
23 gift.

24 Q. So it mattered not that Williams case was
25 referenced in the accompanying -- the document

1 Q. What is this?

2 A. This is the letter from Morrison & Foerster
3 that accompanied the gift to IDEA.

4 Q. To whom did you -- to whom at UCLA did you
5 provide the gift money?

6 A. To the business office in the Graduate School
7 of Education and Information Studies.

8 Q. Other than the individuals you already
9 identified, who at UCLA knows that IDEA was preparing
10 reports that could be used as the basis for expert
11 reports in this litigation?

12 A. I think that mischaracterizes what the nature
13 of the activity was, and I described that before, that
14 the gift supported -- as to who knew about it, everyone
15 who ever knows about the receipt of funds to support
16 scholarly work at UCLA also was informed of this gift.

17 It has been treated exactly like any other
18 grant or contract to a UCLA faculty member.

19 Q. Can you identify those people?

20 I am not asking you to repeat prior testimony.

21 A. Rory Constancio, C-O-N-S-T-A-N-C-I-O, who is
22 the manager of the business office in the graduate
23 school.

24 Q. Uh-huh.

25 A. Sherry Miranda, who is the chief financial

1 accompanying the commitment?

2 MR. LONDEN: Vague and argumentative.
3 Go ahead.

4 THE WITNESS: Not to me or not to anyone that
5 I know of.

6 BY MR. HERRON:

7 Q. Then why did you put it in this document?

8 MR. LONDEN: Argumentative.

9 THE WITNESS: I was simply trying to write
10 enough words in a sentence that would -- so if Jack
11 needed some guidance, he would have an example of the
12 kind of thing he might say in a letter to the
13 university.

14 BY MR. HERRON:

15 Q. I am going to show you what has been -- will
16 be marked as Exhibit 28.

17 (Exhibit 28 was marked for I.D.)

18 MR. HERRON: Let's take a break.

19 (Recess taken.)

20 BY MR. HERRON:

21 Q. Have you had an opportunity to review Exhibit
22 28?

23 A. Yes.

24 Q. Do you recognize it?

25 A. Yes.

1 officer of the graduate school.

2 And then they send their reports to the
3 campuswide office of extramural funds, whose names --
4 the people in that office are people I do not know.

5 I think probably also members of the
6 development staff, both in the graduate school and in
7 the university, have some knowledge of this gift.

8 (Exhibit 29 was marked for I.D.)

9 BY MR. HERRON:

10 Q. Have you had an opportunity to review Exhibit
11 29?

12 A. Yes.

13 Q. What is this?

14 A. This is a letter that accompanied the
15 reimbursement that Morrison & Foerster sent for the
16 costs that UCLA incurred in conjunction with the
17 November meeting of scholars.

18 (Exhibit 30 was marked for I.D.)

19 BY MR. HERRON:

20 Q. Dr. Oakes, I will save us time: Do you
21 recognize Exhibit 30?

22 A. I know what it is. I am not sure that I have
23 ever seen it in this form before.

24 Q. What is it?

25 A. This is the report that the Louis Harris

1 Research Group, the Harris Research Group, released in
2 March of 2002 describing the survey they had conducted.

3 Q. Do you know how this report came about?

4 A. How the report came about?

5 Q. Yes.

6 A. I didn't participate in the development of
7 this report.

8 Q. Did you participate in the development of the
9 report in any way whatsoever?

10 MR. LONDEN: Vague.

11 THE WITNESS: Would you explain to me what you
12 mean by "the report," and I can probably answer.

13 BY MR. HERRON:

14 Q. I mean by "report" Exhibit 30.

15 A. No. This report was not -- I didn't
16 participate in the development of this report.

17 Q. Did you participate in the development of the
18 survey that was conducted which supports this report,
19 Exhibit 30?

20 A. As I explained to you, I think when we met
21 before, I was a participant in some telephone
22 conversations about the survey and made some suggestions
23 about the -- what content the survey might cover.

24 Q. It was actually beyond that, wasn't it?

25 I mean, you helped design the survey itself,

1 the sample.

2 Q. Do you know how the Harris sample was
3 designed?

4 A. I know several things about how the sample was
5 drawn.

6 The sample was drawn to be representative of
7 the various types of schools along demographic
8 characteristics of California to be geographically
9 representative.

10 The number of teachers in schools in
11 low-income communities was oversampled to insure that an
12 adequate sample would result.

13 There was some attention paid to making sure
14 that proper numbers of teachers at the various levels of
15 schooling, elementary, middle schools and high schools,
16 were sampled, and there was an effort to insure that at
17 least an adequate number of teachers in year-round,
18 multi-track schools were sampled in order to gain some
19 information that could be reported about those schools.

20 (Exhibit 31 was marked for I.D.)

21 BY MR. HERRON:

22 Q. Did you know how much money was given by the
23 Rockefeller Foundation to Public Advocates?

24 A. No.

25 Q. Reviewing what we have marked now as Exhibit

1 didn't you?

2 MR. LONDEN: Vague. Argumentative.

3 THE WITNESS: I contributed suggestions about
4 how the -- what kind of items would be of interest to me
5 in order to help me learn more about the issues I was
6 writing about in my scholarly work.

7 BY MR. HERRON:

8 Q. And others scholars from UCLA's IDEA also
9 contributed in a like fashion; is that correct?

10 A. Yes.

11 Q. How was the survey paid for, the Harris
12 survey, if you know?

13 A. I have actually no firsthand knowledge.

14 My understanding was that it was a grant from
15 the Rockefeller Foundation to Public Advocates.

16 Q. What did you hear about the amount of that
17 grant from Public Advocates, if anything?

18 A. I don't know if I ever heard about the amount
19 of the grant.

20 Q. Do you know how many school districts were
21 surveyed in the survey underlying this report, Exhibit
22 30?

23 A. The survey was of teachers.

24 Q. Okay.

25 A. And I know there were around 1,100 teachers in

1 31, do you recognize this document?

2 A. Actually, I don't, but I may well have seen it
3 before.

4 Q. This is a two-page document Bates stamped at
5 the bottom, we hope, 13743 --

6 A. Uh-huh.

7 Q. -- and 13744.

8 Do you know who drafted this?

9 A. I actually do not.

10 Q. Do you know what purpose this document served
11 or was intended to serve?

12 A. There is a note in it to me -- no. I really
13 don't know what purpose it was meant to serve.

14 Q. Do you happen to know when it was generated?

15 A. I do not. I mean, I don't recall.

16 (Exhibit 32 was marked for I.D.)

17 BY MR. HERRON:

18 Q. I have handed you what has now been marked as
19 Exhibit 32.

20 Rather than have you spend too much time
21 reviewing the content, I am really more interested in
22 knowing whether you know what this is.

23 A. I don't know that I have ever seen this
24 before.

25 Q. Do you have any idea who drafted it?

1 A. I have no idea who drafted it.
 2 Q. Do you have any idea what its purpose is?
 3 A. I have no idea what its purpose is.
 4 Q. You can set it aside.
 5 (Exhibit 33 was marked for I.D.)
 6 BY MR. HERRON:
 7 Q. Dr. Oakes, I am not going to ask you anything
 8 about pages -- anything after the first half of Page
 9 199.
 10 A. You are not going to ask me anything about --
 11 Q. Right, other than whether you recognize this.
 12 Have you had an opportunity to review, with my
 13 limitations, Exhibit 33?
 14 A. Yes.
 15 Q. This is two documents Bates stamped as 198
 16 through 2003, correct -- I am sorry -- 203; correct?
 17 A. Yes.
 18 Q. The first page is an e-mail from you dated
 19 December 3rd, 2001 to various people with a long list of
 20 cc's; correct?
 21 A. Yes.
 22 Q. What was the purpose of this e-mail?
 23 A. I was outlining some ideas I had for
 24 constructs and some sampling considerations that should
 25 be -- that would be useful from my perspective on the --

1 if new data were to be collected about teachers and
 2 conditions in schools, and my sharing those ideas with
 3 the members of the litigation team.
 4 And I cc'd the scholars with whom I was
 5 working that were doing work on areas that were relevant
 6 to this -- or potentially relevant -- to this survey to
 7 solicit their ideas about other kinds of data they might
 8 like to have included.
 9 Q. On Page 198 the first sentence states:
 10 "Attached is a memo outlining
 11 my first thoughts (and those of
 12 some of my colleagues) about a
 13 teacher survey."
 14 Which of your colleagues had collaborated with
 15 you to provide information that is disclosed in the
 16 remaining pages of this exhibit beginning at 199?
 17 A. Certainly John Rogers, and I suspect Marisa
 18 Saunders, Jamy Stillman, Noah Delissovoy -- that is
 19 D-E-L-I-S-S-O-V-O-Y -- may have contributed some ideas
 20 as well.
 21 Q. Okay. You state in here or there is the term
 22 used, "a teacher survey," unquote.
 23 What did that refer to?
 24 A. We had been discussing with the litigation
 25 team whether or not the survey of teachers about the

1 conditions under which they teach would be of use in the
 2 research we were doing. That is the reference.
 3 Q. Uh-huh. Had the decision been made, as far as
 4 you know, at this point that a teacher survey would, in
 5 fact, be conducted?
 6 A. You know, I don't recall the chronology.
 7 Q. At some point it was?
 8 A. Yes.
 9 Q. Were you involved in those discussions; that
 10 is, the final decision that a teacher survey would be
 11 conducted?
 12 A. I was involved in discussions of -- about the
 13 usefulness of a survey.
 14 I was not involved in any way with any of the
 15 negotiations about whether it would be done, who would
 16 pay for it, who would do it.
 17 Q. I take it there were a series of discussions
 18 about the potential usefulness of a teacher survey,
 19 correct, that you were involved in?
 20 A. Yes.
 21 Q. I take it you also can't separate those out in
 22 your mind, those various discussions and then tell us
 23 what each concerned?
 24 A. I can give you only a general.
 25 Q. Would you please do that.

1 A. As I proceeded in my work trying to understand
 2 the conditions around the use of textbooks and
 3 instructional materials, which at this point was the --
 4 I think -- I am not sure whether or not I had decided to
 5 do some other work on year-round, multi-track schools,
 6 but -- and as others were proceeding, it became clear
 7 there was very little available data about the extent of
 8 the problems we had questions about, and -- or about how
 9 those problems manifest themselves in the lives of
 10 teachers.
 11 Increasingly, we felt that it would be
 12 extraordinarily helpful if there were resources to have
 13 some new data collection that could more specifically
 14 inform our questions about those things.
 15 Q. What was the discussion about why a teacher
 16 survey would be needed other than what you just
 17 testified to?
 18 A. That is my recollection of the rationale.
 19 Q. You recall that we had a deposition where I
 20 deposed you for two days?
 21 A. Yes.
 22 Q. From that time until today who have you
 23 discussed -- have you discussed with anyone what your
 24 testimony would be here?
 25 MR. LONDEN: The question is vague.

1 BY MR. HERRON:

2 Q. Here is what I want to know: Who have you
3 talked to since the last time we got together until now
4 about your deposition?

5 I am not talking about, by the way, the
6 deposition on Monday. I am talking about this
7 deposition.

8 A. This deposition?

9 Q. Right.

10 A. My husband, some of my colleagues in my
11 office, Linda Darling-Hammond. I think that is all.

12 Q. Do you recall who in your office?

13 A. John Rogers, Marisa Saunders, Jamy Stillman,
14 Noah Delissovoy, David Silver.

15 Q. What was discussed with David Silver?

16 A. I think I spoke with David -- well, I spoke
17 with all of them just generally about the deposition
18 process and how it differed from a normal conversation,
19 particularly how it differs from teaching.

20 Q. Or reality, as that may be. That was intended
21 as a joke.

22 A. They are all very interested in this process.

23 It is also for my students, I think, an
24 interesting learning experience to understand how
25 research gets used in the context of litigation -- and

1 A. With Linda?

2 Q. Yes.

3 A. Yes.

4 Q. What?

5 MR. LONDEN: Related to the deposition?

6 BY MR. HERRON:

7 Q. Correct.

8 A. To the deposition?

9 Q. Right.

10 A. We talked about Erik Hanushek.

11 Q. What was discussed about Mr. Hanushek?

12 A. She thought I was -- when I told her how I
13 responded to your question about his expertise, she felt
14 I was kinder than she would have been.

15 Q. Anything else?

16 A. We laughed over the fact that it seemed you
17 could not pronounce his name.

18 Q. Well, I am a laughingstock between you and
19 Linda Darling-Hammond.

20 Anything else discussed about Mr. Hanushek?

21 A. Yes. We discussed the circumstances of his
22 appointment at Stanford.

23 Q. Which were what, very quickly?

24 MR. LONDEN: Are you asking for something
25 other than what was discussed?

1 postdocs.

2 I remember specifically with David we talked
3 about the Harris data and its use, and I believe I
4 relayed to him some of the questions you asked me about
5 the Harris data at that time, and I may have even asked
6 him if his recollections were consistent with the ones
7 that I reported and the ones that I had. I think that
8 is about it.

9 Q. How long did you speak with David Silver on
10 this topic?

11 A. On this topic?

12 Q. Correct. "This topic" being anything to do
13 with this depo.

14 A. Maybe a half hour total.

15 Q. Did -- you spoke also with Linda
16 Darling-Hammond?

17 A. Yes.

18 Q. How long was that discussion?

19 A. Maybe a half hour to an hour.

20 Q. What was discussed?

21 A. Linda was apprehensive about her own
22 deposition and wanted me to tell her, as much as
23 possible, what it was like so she would know what to
24 expect.

25 Q. Were there any other topics discussed?

1 BY MR. HERRON:

2 Q. No, simply what was discussed on that topic.

3 A. That she mentioned that when the Hoover
4 Institution wanted to bring Hanushek to Stanford, that
5 she was appointed as part of the committee to review
6 whether or not he could also be appointed as a faculty
7 member, and she said that he certainly was appointable
8 because he had been published in peer review journals.

9 Q. Anything else?

10 A. No.

11 Q. What other topics were discussed with Linda
12 Darling-Hammond other than what you already testified to
13 regarding this deposition?

14 A. That is all I recall.

15 Q. Have you reviewed any documents in
16 anticipation of your deposition today?

17 A. Yes.

18 Q. What?

19 A. I certainly reviewed my report again.

20 I looked at -- I looked at at least one of the
21 underlying documents and maybe more in connection with
22 the studies.

23 I spent quite a lot of time on the Internet
24 looking at what had happened to policies around the
25 Instructional Materials Fund.

1 I recall that you had asked me a question if
2 there had been any modifications. I assumed you were
3 asking that for a reason, so I looked and familiarized
4 myself with the legislation from last year that created
5 a new policy about instructional materials.

6 I also reviewed the governor's midyear budget
7 cuts and how they related to instructional materials.

8 I reviewed the governor's proposal for the
9 '03-'04 budget and how that related to instructional
10 materials, and I reviewed the Legislative Analyst's
11 Office analysis of the governor's budget proposal.

12 There might have been -- I looked again at the
13 Department of Education website to look at the costs,
14 the actual costs of the adopted curriculum materials.

15 I looked at the School Accountability Report
16 Cards again for Los Angeles Unified School District to
17 see if the new versions were different from the ones in
18 prior years.

19 I may have done a few other things, but that
20 is certainly the nature of things that I did.

21 Q. Did you find the LAO report on the Internet?

22 A. Yes.

23 Q. Did you print out a copy of that?

24 A. I printed out a copy of two sections. One
25 section about -- it was an analysis of the governor's

1 but this was now a more equal per-pupil amount, and it
2 specified that the first priority for the use of the
3 first -- excuse me -- that the first use of those funds
4 should be to provide standards-based instructional
5 materials in the four academic content areas before the
6 funds could be used for some other purpose.

7 Q. In the context of what you are -- you discuss
8 in your report, what is your reaction to that particular
9 piece of legislation; that is to say, that the money
10 must be spent on content-aligned textbooks before other
11 items?

12 MR. LONDEN: The question is vague.

13 THE WITNESS: I'm sorry. I really don't
14 remember the first part of your question.

15 (Record read.)

16 BY MR. HERRON:

17 Q. Let me try that one more time.

18 The legislation you described, I think, says
19 that money must first be spent on standard-aligned
20 instructional materials before it can be spent on other
21 types of instructional materials.

22 Did I get that right?

23 A. Yes.

24 Q. Your report refers, in part, to this type of
25 an issue at least.

1 proposal regarding the consolidation of categorical
2 funds into a block grant, and I printed out the
3 introduction to the education section.

4 I may have printed out one more little section
5 if there was something about instructional materials,
6 but I don't recall.

7 Q. What did you find about the new policy
8 regarding instructional -- the Instructional Materials
9 Fund?

10 A. In which context are you referring?

11 Q. I am referring simply to what you testified;
12 that you had reviewed the new policy regarding the
13 Instructional Materials Fund.

14 What did you find that it provided?

15 A. The new policy was a piece of legislation
16 authorized by Mr. Hertzberg, and what it did was
17 consolidate three prior fund sources, including the
18 Instructional Materials Fund, a second on funds for
19 classroom library materials, and the third -- I can't
20 recall exactly what the title is, another -- I can't
21 recall.

22 And that it specified that schools could --
23 had to use -- that it equalized the amount of funding --
24 it no longer specified the amount of funding that would
25 go to elementary pupils as opposed to secondary pupils,

1 What is your reaction to that part of the
2 legislation you have just discussed?

3 MR. LONDEN: Vague.

4 THE WITNESS: My reaction to the legislation
5 was that given the veto on the continuation of
6 Schiff-Bustamante funds that was specifically designed
7 to support the acquisition of standards-based curriculum
8 materials, that this piece of legislation was an effort
9 to insure that what money remained in the budget for
10 instructional materials was spent on material aligned
11 with content standards.

12 BY MR. HERRON:

13 Q. And that is good or bad?

14 MR. LONDEN: Vague.

15 THE WITNESS: I think the focus -- to focus
16 the money on materials required or materials
17 specifically designed to help students learn the
18 standards is a good thing.

19 I think it is too bad, not a good thing, that
20 the -- that the legislation was developed in the context
21 of ever-shrinking resources to use for that purpose.

22 BY MR. HERRON:

23 Q. Okay. How about the "equalizing of funding"
24 piece between primary -- and secondary education, did
25 you say?

1 A. Yes.
 2 Q. Do you consider that to be a step forward, for
 3 example?
 4 MR. LONDEN: The question is vague.
 5 THE WITNESS: Given the relatively small
 6 amount of money, I don't think that designation will be
 7 significant in either direction.
 8 It is true that materials for secondary
 9 students are often more expensive than materials for
 10 elementary school students.
 11 I really don't have a strong opinion about
 12 that issue.
 13 BY MR. HERRON:
 14 Q. Returning to Exhibit 33 and focusing your
 15 attention now on Pages 199 through 203 --
 16 A. This is 33 you said what we have?
 17 Q. I believe so; yes.
 18 Do you recognize this document?
 19 I am focusing only on 199 through the end now.
 20 A. You are now going to focus on the whole thing,
 21 not just the first two paragraphs?
 22 Q. I want you to look at it all so you can
 23 identify it, whatever you need to read.
 24 A. This appears to be a memo I wrote to the
 25 litigation team and copied to a collection of scholars

1 about a set of ideas about the content of a teacher's
 2 survey that would be useful from my perspective.
 3 Q. Did someone from the litigation team ask you
 4 to draft this?
 5 A. I don't recall.
 6 Q. Did someone from the litigation team ask you
 7 to supply your ideas or concepts about a teacher survey
 8 or teacher survey design?
 9 A. You know, I don't recall.
 10 I recall being very interested in having an
 11 opportunity to shape the content of a survey in ways
 12 that would provide me with data I could use in my
 13 research.
 14 I remember being very happy for the
 15 opportunity to do that, but I can't remember whether I
 16 was asked or whether I simply aggressively volunteered.
 17 I don't know.
 18 Q. This is a memorandum dated December 3, 2001 to
 19 the Williams litigation team from Jeannie Oakes, "Re:
 20 Ideas for teacher survey," and there are a number of
 21 cc's; correct?
 22 A. Yes.
 23 Q. Did you draft this entire document?
 24 A. I think this document may have pieces of
 25 material that came either from John Rogers or

1 Marisa Saunders. I don't recall specifically. It could
 2 very easily be a compilation of ideas.
 3 Q. Okay.
 4 MR. HERRON: Off the record.
 5 (Discussion off the record.)
 6 BY MR. HERRON:
 7 Q. I want to turn your attention to opinion No. 2
 8 in your report. It is on Page 20, at least on my
 9 version.
 10 A. Page 20?
 11 I think we have the same versions.
 12 Q. Question No. 2 states:
 13 "Do all California students
 14 have access to the textbooks,
 15 curriculum, materials, equipment
 16 and technology needed to learn
 17 State required subject matter
 18 content and skills."
 19 Right?
 20 A. Yes.
 21 Q. And your report from Pages 20 through 51 deal
 22 with this particular issue -- question; correct?
 23 A. Yes.
 24 Q. On Page 20 your opinion, at least summarized,
 25 is:

1 "No. Many California students
 2 lack access to the basic
 3 educational tools they need to
 4 acquire a basic education, to
 5 master the State content standards
 6 and to pass high stakes exams."
 7 I read that correctly, didn't I?
 8 A. Yes.
 9 Q. What did you mean by "basic educational
 10 tools"?
 11 A. In this context I meant the textbooks,
 12 curriculum, materials, equipment and technology needed
 13 to learn State required subject matter and content
 14 skills.
 15 Q. What did you mean by "basic education"?
 16 A. Again, learning State required content and
 17 skills.
 18 MR. HERRON: Read the last question and
 19 answer.
 20 (Record read.)
 21 BY MR. HERRON:
 22 Q. The first line here of your -- under the
 23 "Evidence" section states:
 24 "Although the majority of
 25 students in California schools have

1 access to the instructional
2 resources they need, many do not."
3 My question is: How many do have access to
4 the instructional resources they need?
5 A. It varies depending on the resource.
6 Q. How about in terms of instructional materials?
7 A. Well, there are a variety of types of
8 instructional materials.
9 I think the rest of the report details the
10 ones that I looked at and gives some percentages of the
11 teachers who report that they have adequate numbers.
12 You can make some speculation about the number
13 of students based on the responses of teachers. You
14 have to do that carefully and with lots of caveats,
15 which I think I have done.
16 Q. Can you supply us with a percentage of the
17 students in California schools who have access to the
18 instructional resources they need?
19 A. Well, given the data from the survey and from
20 other sources I would say at least half of the students
21 in California have what they need.
22 Q. Are you able to state what percentage of that
23 half is comprised of LEP students?
24 A. No.
25 Q. Are you able to state what percentage of that

1 half are represented by minority students?
2 A. No.
3 Q. Are you able to state what percentage of that
4 half is represented by low SES students?
5 A. No.
6 Q. Your report on Page 20 references, of course,
7 the Peter Harris study.
8 Was that a -- the principal source of data
9 upon which your Opinion No. 2 relies?
10 A. It was one principal source. I wouldn't
11 consider it the only one.
12 Q. There are 23 tables listing particular
13 statistics with respect to your Opinion No. 2; am I
14 correct?
15 A. Well, if you tell me the page the last one is
16 on, I can verify that is the right number.
17 Q. I believe it is Page 49.
18 A. Yes. There are 23 tables between Pages 21 and
19 49.
20 Q. And only one of those 23 tables relies on data
21 from any other source -- from any source other than the
22 Peter Harris survey; isn't that correct?
23 A. Yes. I think.
24 Q. Feel free to take your time.
25 A. I will.

1 Q. If you look at Page 37, that may be of some
2 assistance to you.
3 A. The one on 39 is also not Peter Harris data.
4 Q. What data is that from?
5 A. It is from a report by the California State
6 Auditor from June 2002.
7 Q. Right.
8 A. The one on Page 37 is RAND Corporation data.
9 Q. Very good.
10 A. The remaining 21 tables report Harris research
11 data.
12 Q. The second studies referred to on Page 28 of
13 your report, which is one conducted by, I take it, the
14 Social Policy Research Associates, SPRA?
15 A. Yes.
16 Q. You identify that as providing, quote:
17 "Qualitative data relative to
18 teaching and learning conditions
19 and problems confronting teachers
20 in California schools."
21 Did I read that correctly?
22 A. Yes.
23 Q. What did you mean by "qualitative data"?
24 A. That the data were gathered through interviews
25 and observations and rather than being expressed in the

1 form of only numbers, it also included descriptions and
2 quotes from the individuals who were studied.
3 Q. The SPRA study examined 17 schools; is that
4 correct?
5 A. Yes.
6 Q. Are you aware of how many schools there are in
7 California?
8 A. Roughly.
9 Q. Roughly 8,500; am I right?
10 A. Yes. Roughly.
11 Q. Is it your position or view that the
12 qualitative data obtained through the Social Policy
13 Research Associates study can be generalized to all
14 California schools?
15 MR. LONDEN: Vague and ambiguous.
16 BY MR. HERRON:
17 Q. You may respond.
18 A. I think we had quite a long conversation when
19 we spoke before about the difference between statistical
20 generalization and theoretical generalizations.
21 Q. I don't believe we discussed that topic.
22 Could we have the question restated.
23 (Record read.)
24 BY MR. HERRON:
25 Q. Could you respond to that question.

1 A. As I said before, you and I discussed this
2 when we spoke before, and if you are not recalling that,
3 I would be happy to repeat it.

4 MR. LONDEN: You can go ahead. I will object
5 as asked and answered, but please feel free to answer.

6 THE WITNESS: Unlike quantitative studies,
7 that are based on random or representative samples that
8 are designed to be able to calculate the proportions of
9 various conditions that exist in a larger group of
10 schools beyond those sampled, qualitative research looks
11 at particular instances, not in an effort to calculate
12 or compare proportions of conditions but, rather, to
13 understand and to develop some hypotheses or
14 explanations of the patterns that occur in quantitative
15 studies.

16 So the combination of the Harris data, which
17 can be generalized -- the Harris data gives you a set of
18 numbers which describes some patterns which are
19 generalizable.

20 The SPRA data gives you some rich descriptions
21 of those conditions in the context where they occur, and
22 it helps you better understand what kinds of phenomenon
23 the Harris data may be describing. We call that
24 "theoretical generalization."

25 BY MR. HERRON:

1 MR. HERRON: Sure.

2
3 (Whereupon at 11:55 a.m. the deposition
4 of JEANNIE OAKES was adjourned.)

5 (Whereupon at 1:15 p.m. the deposition
6 was reconvened.)

7
8 EXAMINATION (Continued)

9 BY MR. HERRON:

10 Q. Okay. Over the lunch hour did you consume any
11 medication, alcohol or any other substance that would
12 cloud your mind or interfere with your ability to answer
13 questions here?

14 A. No.

15 Q. Okay. Great.

16 Other than with your counsel did you discuss
17 your deposition with anyone over the lunch hour?

18 A. No.

19 Q. I want to talk to you about the Harris data
20 and the report you generated based on that data.

21 Did you work with Mr. Harris directly in
22 generating tables for your report? "Mr. Harris" being
23 Peter Harris.

24 A. Would you repeat the first part of that
25 question, because I am not sure I heard it.

1 Q. Okay. So is the answer "no"?

2 MR. LONDEN: Argumentative. Asked and
3 answered.

4 THE WITNESS: I think we can rely on the SPRA
5 study to provide us some ability to do theoretical
6 generalization on other schools, but not statistical
7 generalization.

8 BY MR. HERRON:

9 Q. Okay. Very good.

10 What were the criteria for including the 17
11 schools in the SPRA study?

12 A. The SPRA group selected schools based on the
13 percentage of uncredentialed teachers employed at the
14 schools.

15 They looked particularly for schools that had
16 high levels of uncertified teachers.

17 Q. When you say, "uncredentialed teachers," what
18 does that mean?

19 A. It means teachers who do not possess a full
20 California State teaching license.

21 Q. A preliminary or clear credential?

22 A. Yes.

23 MR. HERRON: Why don't we stop here for lunch,
24 if that is agreeable.

25 MR. LONDEN: Sure. Come back at 1:00.

1 Q. Did you work directly with Peter Harris in
2 generating the tables for your report?

3 A. No.

4 Q. Did you communicate directly with Peter Harris
5 regarding the data underlying the tables in your report?

6 A. Yes.

7 Q. How many times?

8 A. Two or three.

9 Q. What was the nature of those communications?

10 A. One was a request for some additional banners.

11 I don't recall the content of other
12 interactions. I just recall e-mail back and forth.

13 Q. It was for "additional banners," you said?

14 A. Yes.

15 Q. I think you discussed what that was before,
16 but so we are on the same page this afternoon, can you
17 describe what you mean by "banners."

18 A. "Banners" is a term that is used in survey
19 research of the type that the Lou Harris, Peter Harris
20 firm does, and it describes a set of analyses that array
21 data by a series of variables in a header, which I'm
22 assuming is what the "banner" refers to.

23 It is not a term I was familiar with before
24 this particular survey.

25 Q. Okay. Do you recall what banners, additional

1 banners, you requested from Peter Harris?
 2 A. Yes. I asked him to do some specific analyses
 3 related to the responses concerning textbooks and
 4 curriculum materials.
 5 Q. Can you be more specific than that?
 6 A. I don't recall the specificity -- with any
 7 specificity, although the original banners did not show
 8 the relationship among the different instructional
 9 materials responses, and I was eager to look at some
 10 analyses that showed the relationship among them.
 11 Q. So your request of Mr. Harris was for
 12 additional banners along -- on those same topics?
 13 A. Yes.
 14 Q. Do you recall anything that you requested of
 15 him at any time?
 16 A. Not that I recall.
 17 Q. The request you made of Mr. Harris related to
 18 the tables set forth in your expert report; is that
 19 correct?
 20 A. The request was for some analyses that would
 21 enable me to construct tables like the ones in my
 22 report, although the -- I ended up not using the banners
 23 that he provided for that purpose.
 24 Q. So nothing that he prepared for you ended up
 25 in your expert report?

1 Is that your testimony?
 2 MR. LONDEN: Vague.
 3 THE WITNESS: My report contains a number of
 4 analyses of the data that was collected by the Peter
 5 Harris firm. The data for these tables came both from
 6 the banners, but also from -- both from the banners and
 7 some new analyses that David Silver and I did at IDEA
 8 using the database that was supplied to us by the Harris
 9 research group.
 10 BY MR. HERRON:
 11 Q. You received the database from the Peter
 12 Harris group; is that correct?
 13 A. I don't recall whether we got it directly from
 14 the Harris group for it was conveyed to us by John
 15 Affeldt, who was working directly with Harris.
 16 Q. Is there anything that the Harris group did,
 17 directly or indirectly, that found its way into your
 18 expert report?
 19 MR. LONDEN: Asked and answered.
 20 Go ahead.
 21 THE WITNESS: Yes. They collected the data,
 22 and they provided some preliminary banners which were
 23 informative, and they provided two or three versions of
 24 their database, which they prepared.
 25 BY MR. HERRON:

1 Q. In your understanding was the Harris survey
 2 intended to be used in this litigation?
 3 A. I am not sure -- tell me who -- I am trying to
 4 figure out where the intentionality -- where you are
 5 putting the intentionality.
 6 Q. Well, I am trying to see if in the -- well,
 7 you had conversations with the lawyers about potentially
 8 doing a teacher survey; right?
 9 A. About the usefulness of having additional data
 10 about the conditions in the California schools, yes.
 11 Q. And you also testified, I believe, that there
 12 was a discussion about needing that information for
 13 purposes of the litigation; correct?
 14 A. I needed the data for purposes of exploring
 15 the questions that I was pursuing in my scholarly work.
 16 Q. Which included those questions that found
 17 their way into your expert report for this litigation;
 18 correct?
 19 MR. LONDEN: Vague.
 20 Go ahead.
 21 THE WITNESS: The scholarly process that
 22 resulted in my -- both my paper and my report drew on
 23 the data that was produced by the Harris survey.
 24 BY MR. HERRON:
 25 Q. And that was intended when the survey was

1 commissioned, was it not?
 2 A. I hoped the survey would yield data that would
 3 be interesting and useful for this project, yes.
 4 Q. "This project" being this expert report?
 5 A. The scholarly work that led both to the
 6 scholarly papers and this report. Yes.
 7 Q. And as you testified, Public Advocates
 8 obtained the funds that were applied to Peter Harris for
 9 the survey; correct?
 10 A. That is my understanding. I don't have
 11 firsthand knowledge of that.
 12 Q. In discussions you had with the litigation
 13 team the conclusion or agreement reached was that that
 14 data, that survey, the Harris survey would, indeed, be
 15 used in the litigation; correct?
 16 A. I don't recall that ever being specified.
 17 Q. That was your understanding of what was going
 18 to occur, though; correct?
 19 A. My understanding was that if I found the data
 20 useful and interesting and helpful, I would certainly
 21 use it.
 22 Q. Well, what was your -- I am not sure that is
 23 fully responsive.
 24 I am really trying to understand what you
 25 understood generally about the litigation. You had

1 multiple meetings on this score. You knew there was
2 going to be this Harris survey.

3 The fact of the matter is -- here is the
4 question: The fact of the matter is that you and the
5 litigation team intended, if the data came out right,
6 that the Harris survey would be used for purposes of
7 this litigation?

8 True or false?

9 MR. LONDEN: Objection. Argumentative. Asked
10 and answered.

11 Go ahead.

12 THE WITNESS: I was hopeful that the data,
13 however they came out, would be interesting and useful
14 in addressing the questions that I was asking in my
15 work.

16 I, as you saw, also made this process open to
17 other scholars so they could also contribute ideas about
18 what types of data would be useful in the questions --
19 in relationship to the questions they were answering.

20 BY MR. HERRON:

21 Q. Are you not capable of answering that last
22 question true or false?

23 MR. LONDEN: Argumentative. Don't answer
24 that.

25 MR. HERRON: Are you instructing her not to

1 Q. Okay. At the time that the Peter Harris
2 survey was commissioned were you designated or had you
3 been asked to become an expert in this case?

4 A. Yes.

5 Q. Okay. So at the time that this Peter Harris
6 survey was commissioned you understood that the
7 information supplied by him could be used in your
8 report; correct?

9 MR. LONDEN: Asked and answered.

10 Go ahead.

11 THE WITNESS: Yes.

12 BY MR. HERRON:

13 Q. You worked with plaintiffs' counsel in
14 relationship to generating the tables that are set forth
15 with respect to Opinion 2 in your report?

16 A. No.

17 Q. You communicated with plaintiffs' counsel
18 regarding the tables set forth in Table 2 of your
19 report; is that right?

20 A. I spoke with both Matt Kreeger and with John
21 Affeldt about the availability of data and asked their
22 help in providing me with the dataset that I was
23 interested in having.

24 Q. Did any of the IDEA scholars assist you, by
25 which I mean your team working on this expert report, in

1 answer that, Counsel?

2 MR. LONDEN: She can answer that underlying
3 question; the question, "Are you capable of answering
4 that question?"

5 I will withdraw that instruction.

6 BY MR. HERRON:

7 Q. You may respond.

8 A. Will you repeat the question for me.

9 Q. Yes.

10 Are you incapable of answering the question I
11 asked two before now? True or false?

12 A. Will you repeat the question you asked two
13 before.

14 MR. HERRON: Madam Court Reporter, would you
15 kindly repeat the question two before.

16 (Record read.)

17 THE WITNESS: I am not capable of answering
18 that question either "true" or "false" because I think
19 it mischaracterizes my relationship to this process.

20 BY MR. HERRON:

21 Q. How?

22 A. I was not engaged in planning the litigation
23 with the litigation team. I was engaged in doing a
24 research project which I would make available to them if
25 they were interested in using it.

1 generating the tables for this report?

2 MR. LONDEN: Vague.

3 Go ahead.

4 THE WITNESS: Marisa Saunders and David Silver
5 helped generate tables that were part of the research
6 that was then used as part of this report.

7 BY MR. HERRON:

8 Q. Anyone else?

9 A. Jamy Stillman and Noah Delissovoy.

10 Jared Planas may have been involved in
11 checking numbers to make sure -- checking for accuracy,
12 proofreading.

13 I might have discussed some of the tables with
14 John Rogers. I don't recall for sure.

15 Q. Did you get any input from Russ Rumberger
16 regarding the tables or the statistical analyses
17 conducted with respect to your report?

18 A. Russ is not, for the record, is not a member
19 of the team at IDEA so he would not be -- he is at the
20 University of California, Santa Barbara.

21 Q. Okay. I thought he was a coauthor with
22 Patricia Gandara and, therefore, to that extent an IDEA
23 scholar.

24 Am I wrong in that?

25 A. He was a member of the team of scholars that

1 IDEA commissioned papers from, but when you say, "my
2 team at IDEA," I tend to think of those people who are
3 housed in the office with me and that we work as the
4 IDEA team.

5 Q. Okay.

6 A. Yes. I think I had two or three conversations
7 with Russ about the analysis I was doing.

8 Q. Do you know if David Silver had any
9 conversations with Russ on that same topic?

10 A. I think he did.

11 Q. Who is John Luczak, L-U-C-Z-A-K?

12 A. John is at Stanford, and he has done the
13 quantitative analysis for Linda Darling-Hammond's
14 report, and I worked with him initially when I was
15 working with her.

16 Q. Did any of the experts who were designated in
17 this case as experts work with you on the data relating
18 to the tables set forth in your report here?

19 MR. LONDEN: The question is ambiguous, but
20 answer again.

21 THE WITNESS: Would you list for me the
22 people -- these are people who are testifying witnesses?

23 BY MR. HERRON:

24 Q. Yes. One that comes most readily to mind
25 would be Linda Darling-Hammond.

1 A. The first version was unweighted. The second
2 version was unweighted, and the third version, if I am
3 recalling correctly, was a dataset that had been
4 corrected for an error that was in the original dataset
5 that I believe was identified by Russ Rumberger,
6 although I am not sure, since I was not firsthand
7 involved in all of this, that I am remembering all the
8 details. But that is my understanding.

9 Q. Was the third set of the database you received
10 weighted or unweighted?

11 A. As far as I know, it was weighted.

12 Q. By whom was it weighted?

13 A. I would have to speculate. I don't have
14 firsthand knowledge of who did the weighting.

15 Q. I am not asking who specifically by name.
16 Was it the Harris group that weighted the data
17 and gave it to you or something else?

18 A. I am not sure at which point the data --
19 the data that I used was actually weighted.

20 Q. Are you sure that -- are you sure as to who
21 weighted the data that you used, meaning --

22 MR. LONDEN: Asked and answered.

23 BY MR. HERRON:

24 Q. -- meaning either Harris or David Silver or
25 someone else working with you?

1 A. She and John Luczak provided me with some data
2 from the RAND Class Size Reduction Study that -- they
3 were using that dataset in doing some of the analyses of
4 that dataset as a part of their work and provided me
5 with some tables that arrayed the responses of the
6 teachers in that dataset about instructional materials.

7 Q. Okay. Describe for me what data you received
8 from the Harris group, either directly or through the
9 attorneys.

10 A. I received three sets of banners which were
11 sent electronically and then printed out.

12 There were two sets of banners that were
13 essentially the same variables. One set was unweighted
14 and then was later replaced by the same set of analyses
15 but using the weighted data.

16 The third set of banners that I received was
17 my -- was the response to my request for additional
18 analyses around instructional materials.

19 Q. Okay.

20 A. I also received, I think, three different
21 versions of the data that -- the Harris dataset
22 electronically. I think I received it both as ASCII
23 files and as SPSS files.

24 Q. Why did you receive three versions, if you
25 know?

1 MR. LONDEN: Asked and answered.

2 THE WITNESS: How does that question differ
3 from the one you just asked?

4 MR. LONDEN: You can answer it again. I
5 objected.

6 THE WITNESS: I want to make sure I didn't
7 answer the prior question incorrectly, if I
8 misunderstood the question.

9 MR. LONDEN: I think it is the same question.
10 BY MR. HERRON:

11 Q. You got data on the third go-round. You say
12 it was weighted. The first two sets were not weighted.
13 The third set was. I am trying to figure out, you know,
14 who did the weighting.

15 Was it the Harris organization? Was it your
16 organization?

17 A. I think you misheard what I said. I got three
18 datasets. The first was unweighted and came from
19 Harris.

20 Q. Right.

21 A. The second was weighted. It came from
22 Harris --

23 Q. Ah.

24 A. -- at least this is my recollection.

25 The third was also weighted, but it had been

1 adjusted because there was an error that was detected
2 and corrected.

3 MR. LONDEN: I will say for the record I
4 think, as I heard it, the witness, I believe, misspoke
5 in saying weighted -- saying, "unweighted," "unweighted"
6 and then corrected it.

7 MR. JORDAN: That is what I heard, too.

8 MR. LONDEN: I think the witness did misspeak,
9 but I was not going to say anything other than to get it
10 corrected, if necessary. I think we finally got that
11 cleared up.

12 THE WITNESS: I apologize.

13 BY MR. HERRON:

14 Q. So the second set received was weighted, and
15 that had been received from the Harris folks; correct?

16 A. Well, I got it through one of the attorneys,
17 who got from it Harris.

18 As far as I know, that is the trail.

19 Q. But you don't know whether it was the Harris
20 people who weighted it or the attorneys or someone
21 associated with them; is that right?

22 A. I know the attorneys did not weight it.

23 Q. Okay.

24 A. My understanding is that the Harris group
25 weighted the data.

1 A. I will give you my understanding, but you need
2 to understand this is not firsthand knowledge.

3 Q. Okay.

4 A. Apparently, the story that I heard was that
5 there were two schools in the state of California that
6 have the same name. It could be "George Washington
7 Middle School." Who knows? Right?

8 And when the Harris group attached the data
9 from the CBEDS about the basic demographic
10 characteristics of the school to the data that they had
11 collected from teachers at that school, they
12 misidentified which George Washington or whatever it was
13 it was.

14 The reason that mattered was that the schools
15 that were oversampled because they were in low-income
16 communities, served English language learners or were
17 Concept 6 schools -- I am not sure which -- were
18 weighted differently in the construction of the database
19 than were schools that were not of that category in
20 order to make sure the weights controlled statistically
21 for the overrepresentation of the samples. You need to
22 do that to make sure you can generalize to the state as
23 a whole.

24 So the reason that there needed to be a third
25 database is that the weights needed to be adjusted in

1 Q. Who was the statistician at MoFo that you
2 worked with?

3 A. I did not work with a statistician at MOFO.

4 Q. Who is Andy?

5 A. Andy Lazarus -- I believe is his name -- is a
6 statistician who I believe is either at Berkeley or
7 associated with U.S. Berkeley in some fashion.

8 I worked with Andy Lazarus in 1992 or --
9 around the analysis of data for the San Jose -- "Vasquez
10 versus San Jose School District."

11 At one point during this research I asked Matt
12 Kreeger -- I told Matt Kreeger that I wanted to do some
13 analyses that went beyond the banners that were provided
14 by the Harris group and that I was looking for someone
15 who might help me do that.

16 I recalled that he had somehow been involved
17 with my getting connected with Andy in the San Jose
18 case, so I asked him if Andy was available and might be
19 interested in doing this again. That's who Andy is.

20 Q. Was he interested?

21 A. I don't know.

22 Q. Well, did you work with him?

23 A. No.

24 Q. What was the error in the third version of the
25 data that you received from the Harris group?

1 the database to make sure that that school that had the
2 same name as the other school had a weight in the
3 database that was appropriate. That is my
4 understanding.

5 Q. And you found that out from whom?

6 A. Russ Rumberger, I believe. It could have been
7 David Silver. One of the two.

8 Q. Was David Silver your point person in terms of
9 the -- I don't know what to call it short of
10 "statistical analysis" you did for purposes of your
11 report?

12 MR. LONDEN: Ambiguous.

13 Go ahead.

14 THE WITNESS: David Silver performed
15 additional analyses on the dataset to enable me to
16 construct the tables I wanted to construct.

17 He also performed significance tests on the
18 analyses which the Harris group had not done.

19 And after the databases were all corrected he
20 actually reran all of the analyses that appear in my
21 tables.

22 BY MR. HERRON:

23 Q. What additional analyses did he do? "He,"
24 David Silver.

25 MR. LONDEN: Objection. Vague and ambiguous.

1 Go ahead.

2 THE WITNESS: The original request -- the
3 request I made to the Harris group to have analyses that
4 enabled you to look at the relationship among conditions
5 rather than simply the breakdown of the occurrence --
6 they did some relationships, but a restricted amount.
7 Those additional relationships were analyses that David
8 performed.

9 BY MR. HERRON:

10 Q. You say the Harris group had not done
11 significance tests -- significance testing?

12 A. I don't recall for sure.

13 They had not done the kinds of significance
14 tests on the variables that -- and relationships that I
15 wanted done for my report.

16 They may have done some. I may just not be
17 able to remember.

18 Q. Have you now testified to a fair summary of
19 what David Silver did for you on this -- in terms of the
20 statistical analysis supporting your report?

21 MR. LONDEN: The question is vague.

22 THE WITNESS: I am not sure all of what David
23 did. I think what I have told you were certainly things
24 he did.

25 I also know he had some conversations with

1 what was discussed about that between Mr. Silver and the
2 Harris group?

3 MR. LONDEN: Assumes facts.

4 THE WITNESS: I certainly don't know
5 everything they talked about.

6 I know what he reported to me was that he
7 wanted to understand whether they had simply left out --
8 if the responses were "yes," "no" or "not sure,"
9 where -- whether the "not sures" were left out of the
10 analysis altogether, or if they were not, how they
11 treated them.

12 Just -- he wanted to know because he wanted
13 to -- when he checked our numbers against their numbers,
14 he wanted to know exactly what they did to assure the
15 accuracy -- you know, if there was a match, why there
16 was a match. If there was a mismatch, why there was a
17 mismatch.

18 BY MR. HERRON:

19 Q. Did he tell you what he found out? "He,"
20 David Silver.

21 A. He -- yes; that the not sures were included in
22 the banners.

23 Q. Did David Silver recreate the dataset once he
24 received it?

25 MR. LONDEN: Ambiguous.

1 both people at the Harris group and with Russ Rumberger
2 in his effort to insure that we had the most accurate
3 and well-understood procedures and results.

4 BY MR. HERRON:

5 Q. What were the discussions with the Harris
6 group, if you know?

7 A. I know -- he told me that he had discussed the
8 weighting procedures that they had used because he
9 wanted to insure that he fully understood what was done
10 and he also talked with them about the way they had
11 handled responses where people had said they weren't
12 sure or they didn't know in the analyses.

13 There were probably other things. I knew
14 about those two.

15 Q. What was the conversation about concerning the
16 weighting procedure used by the Harris group?

17 A. He -- David only told me that he talked with
18 them in order to understand what they had done, and he
19 didn't give me more details.

20 Q. So beyond what you have just said you don't
21 know what was discussed between Mr. Silver and the
22 Harris group on that topic?

23 A. No. Not that I recall.

24 Q. Okay. On the exclusion of the not sure
25 responses from the denominator of the ratios generated,

1 THE WITNESS: I know that -- well, it depends
2 on what you mean, "recreate a dataset," actually, but I
3 know what David does is construct datasets for
4 particular analytic purposes. They are all subsets of
5 the same dataset, so you could select out five variables
6 that you are interested in, and you create a little
7 dataset because it is easier to manipulate that way.

8 BY MR. HERRON:

9 Q. Did he have to supply any data that was
10 missing? "He," David Silver.

11 A. Not to my knowledge.

12 Q. Did he generate the tables that are set forth
13 in your report? David Silver.

14 A. He generated the data that are on those
15 tables. I mean, the analyses, not the data.

16 Q. We talked a little bit about the sample
17 design. You -- well, you had talked about there
18 being -- you know what? Let's just start afresh on that
19 one.

20 Tell me how -- what was the sample frame used
21 to select the sample for the Harris data?

22 A. Well, the sample would be -- I could refer to
23 your Exhibit No. 30, and we could look at it in here.
24 They explain it in this document.

25 Q. Without looking at that document, are you able

1 to respond to the question?
 2 MR. LONDEN: I think the question has been
 3 asked and answered, but do your best.
 4 THE WITNESS: Yes. I can tell you some things
 5 about it.
 6 BY MR. HERRON:
 7 Q. Okay.
 8 A. That they did a random sample of -- more
 9 accurately, a stratified random sample of teachers in
 10 elementary and secondary public schools in California.
 11 They selected their samples so it could be
 12 generalized to schools with various types of student
 13 populations and to schools in various geographic regions
 14 like urban, rural, suburban, and that you could look
 15 separately at elementary and secondary teachers.
 16 (Exhibit 34 was marked for I.D.)
 17 BY MR. HERRON:
 18 Q. Have you had an opportunity to review Exhibit
 19 34?
 20 A. I have.
 21 Q. Do you recognize this document?
 22 A. I do, but I did not remember that I wrote it.
 23 Q. Not surprising.
 24 This is a five-page document Bates stamped
 25 9062 through 9066. It appears to be a memorandum dated

1 December 6, 2001 to Lou Harris from Jeannie Oakes, "Re:
 2 Preliminary ideas Re: teacher survey"; correct?
 3 A. Yes.
 4 Q. Did you send this to Lou Harris?
 5 A. It looks like I did.
 6 Q. Are you speculating there or do you know?
 7 A. I don't remember, but I'm assuming that I did.
 8 Q. I want to talk to you about the first
 9 paragraph. It says that -- I am looking now at the
 10 second sentence.
 11 "The survey will focus on
 12 gathering descriptive information
 13 about the extent to which schools
 14 differ in their provision of basic
 15 educational tools to students."
 16 I will stop there.
 17 Why was that a purpose of the survey?
 18 A. Because that is what I wanted to know.
 19 Q. Why?
 20 A. Because I was doing research on the extent to
 21 which students were provided with basic educational
 22 tools, and that I was also representing the interest of
 23 other scholars who were doing the same sort of work.
 24 Q. The same sentence goes on to state, "establish
 25 what most schools provide."

1 Why was that essential?
 2 A. Because it gave -- would give me a reference
 3 point to make sense of the relative levels of provision.
 4 Q. It goes on, that sentence, to say:
 5 "And get a sense of the extent
 6 of the problems in schools attended
 7 by the class of students
 8 represented in Williams."
 9 Why was that essential?
 10 MR. LONDEN: Assumes facts. Go ahead.
 11 THE WITNESS: As a researcher I have this
 12 agnostic sense of wanting to have it proven to me that
 13 something exists and the extent to which it exists.
 14 So I was interested in getting a sense of
 15 whether or not the specific facts in the complaint were
 16 generally -- the extent to which they were -- they
 17 characterized California schools more generally.
 18 BY MR. HERRON:
 19 Q. Did any of the litigation team tell you at any
 20 time that it was essential to their case that the survey
 21 revealed items referenced in the second sentence of the
 22 first paragraph?
 23 A. I am sure I had conversations with both the
 24 researchers and members of the litigation team about
 25 these things, but I don't recall the nature of those

1 conversations.
 2 Q. The third full paragraph on Page 9062, the one
 3 beginning, "Below" --
 4 A. Yes.
 5 Q. -- the second sentence there says:
 6 "My current view is that we need to focus on
 7 concrete features of schools and classrooms."
 8 Then it goes on.
 9 What did you mean by that?
 10 A. That I was interested less in understanding
 11 how teachers felt about the climates of their school,
 12 relationships, and more interested in whether or not
 13 certain tangible resources, conditions existed.
 14 Q. That sentence goes on, "Since it is very
 15 hard" -- I am quoting now:
 16 "Since it is very hard to know
 17 what teachers actually mean when
 18 they are asked to report if they
 19 have 'enough' of something or to
 20 judge the goodness or adequacy of
 21 what they have."
 22 What do you mean by that?
 23 A. I wanted to have the judgments of teachers
 24 tied to something fairly concrete. So rather than
 25 simply ask them if they have enough textbooks, to ask

1 them whether they have enough textbooks for every
2 student to use in class or enough textbooks so every
3 student could take one home, so that there was some sort
4 of concrete, more measurable dimension to the question
5 rather than if they have "enough."

6 As I say, I think California has become very
7 impoverished in terms of education resources, so I think
8 any teacher could rightfully say, "Things are bad." "I
9 don't like it here."

10 Unless things are asked in a specific way, it
11 would be difficult to know what is meant by that.

12 Q. The data set forth at the top of 9063 -- there
13 are three underlined areas I am now looking at:
14 "Demographics," "Schedules," "Academic performance."

15 Do you see those items?

16 A. Yes.

17 Q. What is that reference?

18 A. I was informing them that they need not ask
19 people about these things because as long as they know a
20 school where a teacher is employed, these data are
21 publicly available from the California Department of
22 Education, and they probably would be more precise than
23 teachers' recollection during a telephone interview of
24 these school-level data.

25 Q. Uh-huh.

1 A. Is there a specific part of this you are going
2 ask me about?

3 Q. Yes. This is what we have marked as Exhibit
4 35.

5 (Exhibit 35 was marked for I.D.)

6 BY MR. HERRON:

7 Q. It is a document Bates stamped 9055 through
8 9061.

9 I would like you to focus on the first of
10 first two pages, 9055 and 56 and that part of the third
11 page that precedes "Background Data on Schools."

12 A. The third page being 9057?

13 Q. But I won't ask you anything from here down.

14 A. Just the first three?

15 Q. Then you can skip to Page 2.

16 A. Okay.

17 Q. Have you had an opportunity to review Exhibit
18 35?

19 A. Yes.

20 Q. Do you recognize this document?

21 A. I certainly recognize parts of it. I don't
22 recall this as a document.

23 Q. Did you draft this document?

24 A. I certainly drafted parts of the text. I
25 don't recall whether I drafted this or not.

1 Q. In the -- I have asked you to review the first
2 two pages and, essentially, the top one-quarter of Page
3 9057.

4 You recognize that as language that you
5 drafted?

6 A. Some of it, yes. Some of it -- if I drafted
7 some of it, it is as close to verbatim note-taking from
8 what I expect as a -- well, it is a phone meeting.

9 Something that I frequently do -- and actually
10 I am pretty good at it -- is taking down an enormous
11 amount of detail while somebody is talking, and I
12 suspect a lot of it under "Sampling" is that.

13 Q. That is, notes of a conversation?

14 A. Yes.

15 Q. This document on 9055 starts at the top:
16 "Note: Add CDE website below." It is dated December 6,
17 2001, "Re: Notes from phone meeting regarding teacher
18 survey."

19 A. Yes.

20 Q. "Goal" -- does the stuff that follows there up
21 until the point I asked you to stop that is on 9057,
22 before "Background Data" -- is that notes of the
23 conversation?

24 A. I think the first part must be, because it
25 sounds like I am writing down what others have said.

1 The bottom half of the first page looks like
2 it is lifted directly from that memo that was in Exhibit
3 34.

4 The "sampling considerations" portion looks,
5 again, like notes I took as someone was explaining the
6 sample, although some of that is also -- it looks like
7 it is either lifted or slightly changed from Exhibit 34.

8 Q. Who was -- who participated in this phone
9 meeting regarding the teacher survey?

10 A. The only person that I am sure was on the
11 phone was Lou Harris, because I do remember Lou talking
12 about the sampling and the details of where they -- the
13 basis from which they drew samples and how they were
14 going to construct that sample, which is on the middle
15 to the end of the second page and the top of the third
16 page.

17 This sounds very much like a summary of what
18 Lou Harris said he was going to do.

19 Q. Okay. The "Goals of Survey," this is on Page
20 1 -- "Goal of Survey," actually, that was -- these are
21 bullet points.

22 Your notes are bullet points of what was
23 discussed?

24 A. Yes. That is what it seems to me; that these
25 are -- because some of this language is not language I

1 would have generated.

2 Q. Such as Item 4, that is, Bullet 4, "Fill in
3 gaps in data on the Butt standard," what was discussed
4 about that?

5 A. I have no recollection.

6 Q. Under the "Process for finalizing the survey,"
7 Williams -- the first bullet is:

8 "Williams group sends
9 pared-down memo to Lou Harris (This
10 memo.)"

11 What does that mean?

12 A. I don't know.

13 Q. Was the idea that you were going to send
14 Mr. Harris your -- "your" being Dr. Jeannie Oakes -- and
15 others' initial thoughts about survey design as are set
16 forth in this document?

17 A. I am not sure because my memo had -- which is
18 Exhibit 34 -- had already been, I believe, already been
19 sent to him.

20 I would have to guess. I don't want to do
21 that.

22 Q. Okay. Don't do that. Let's try just to get
23 over this little piece.

24 Let me mark another document.
25 (Exhibit 36 was marked for I.D.)

1 Day, 2001 you sent this document with your e-mail to Lou
2 Harris.

3 Is that agreed?

4 A. I sent Exhibit No. 34 to Lou Harris attached
5 to the e-mail that is bracketed.

6 The version of it that is here is a copy of
7 that that has had additional comments inserted by Linda
8 Darling-Hammond in her response to me.

9 Q. Clear enough for me. Thank you. Let's set
10 Exhibit 36 aside.

11 Now in the discussion you had with Lou
12 Harris -- and perhaps others; right? There were perhaps
13 others?

14 A. Are we back on 35?

15 Q. Back on 35.

16 In that conversation -- do you just not
17 remember that anyone else was on it? Who else was on
18 it?

19 A. There were other people on it. I am just not
20 remembering who.

21 I think John Rogers was sitting there in the
22 room. My feeling is that John Affeldt was on the other
23 end of the line.

24 But since these are people with whom I have
25 conversations, it is hard for me to remember who

1 THE WITNESS: Okay.

2 BY MR. HERRON:

3 Q. Dr. Oakes, looking at what is marked as
4 Exhibit 36, do you recognize this document?

5 A. Yes.

6 Q. Can you describe it for us, please.

7 A. I had a response I received from Linda
8 Darling-Hammond to the e-mail I sent to Lou Harris with
9 my preliminary ideas about -- for a teacher survey.

10 Linda is telling me she is sorry she couldn't
11 participate in the phone call, but she has added some
12 comments and thoughts about the various ideas in the
13 text of the message.

14 You can tell which are hers because she has
15 used a different font, even though originally she said
16 it was red -- I think it is -- the Times Roman font is
17 hers, and the Arial font is mine.

18 Q. Uh-huh. Here is my take on all this stuff:
19 Exhibit 36, if you look at it, page -- the first page,
20 that is Bates 12132 --

21 A. Yes.

22 Q. -- and you look at your e-mail, "Hello, Lou,"
23 do you see that?

24 A. Yes.

25 Q. My take is that on December 7, Pearl Harbor

1 specifically was in on any particular conversation.

2 Q. On Page 9056 of Exhibit 35 there is a
3 discussion, I take it, of sampling conversations that
4 occurred during the meeting.

5 Am I correct?

6 A. Yes.

7 Q. One of the -- if you look at the third
8 paragraph under "Sampling conversations" on Page 9056 it
9 says:

10 "To understand in more detail
11 in the schools attended by the
12 children in the plaintiff class, it
13 might be useful to oversample
14 high-poverty schools and schools
15 with predominantly minority student
16 populations."

17 Why was that?

18 A. My recollection is that Lou Harris explained
19 to us when you do sampling strategies, if there is a
20 particular area of interest, you tend to oversample on
21 that, and then you weight it appropriately so that you
22 get detail, but you don't represent the relative
23 strength of that phenomenon in the sample as a whole.

24 Q. Further down it says:

25 "Here are some specifics we

1 agreed on regarding the sample."
 2 What does that mean?
 3 A. It looks like this is my summary of the
 4 conversation and -- about what would constitute a useful
 5 and valid sample.
 6 Q. Uh-huh. The first bullet point is,
 7 "Oversample lower-end schools."
 8 What does "lower-end schools" mean?
 9 A. It is just a shorthand way of saying
 10 high-poverty schools and schools with predominantly
 11 minority student populations.
 12 Q. The third bullet says, "Two different
 13 databases to draw from," and there are two sub-bullets:
 14 "Names of teachers and their schools."
 15 What does that refer to?
 16 A. Lou Harris was explaining that he wanted to
 17 use two different kinds of databases to draw the sample
 18 from, which together he believed would provide a much
 19 stronger and more representative sample than either
 20 strategy on its own.
 21 I think he also talked about maximizing
 22 response rates by doing it this way, and he had two
 23 databases: One was teachers located in schools, and he
 24 had certain kinds of information about those teachers.
 25 I think he only had school phone numbers for them. I

1 can't remember exactly.
 2 And then he had another database where you
 3 could draw teachers with their home -- and get their
 4 home phone numbers -- let me think.
 5 He was talking about this was the strongest
 6 way to get this kind of representative sample, and I
 7 think we were persuaded.
 8 Q. Please turn to Page 9057; the first bullet
 9 states:
 10 "Cross-section of 500 teachers
 11 from the census, call schools and
 12 ask teachers to return the call;
 13 call three times and then
 14 substitute for nonrespondents;
 15 about two-thirds of teachers call
 16 back, especially with major
 17 foundation support."
 18 What does that mean? It may be compound.
 19 There is a lot to that, but go ahead.
 20 A. Lou Harris was explaining to us the strategy
 21 to use when you only have teachers' names and the names
 22 of the schools they are in; you call and leave a message
 23 with an 800 number, and you say, "I am calling from the
 24 Lou Harris organization, and we are conducting a survey
 25 for the Rockefeller Foundation," and because Lou

1 Harris's name and Rockefeller are well-known and
 2 respected in this kind of work, that those were hopeful
 3 prompts to get people to call back, in addition to
 4 leaving an 800 number.
 5 And the procedure -- this was -- the "call
 6 three times and then substitute for nonrespondents"
 7 means this is the level of effort they would make to get
 8 the original -- when you pull people randomly from
 9 databases, you like to make a great deal of effort to
 10 insure that you actually speak with those people.
 11 If you can't and you want to have a very
 12 robust sample, then you draw -- you -- you substitute.
 13 That means you draw new names for the ones that -- you
 14 replace the members of the sample with others in order
 15 to -- so you have a full sample in the category you are
 16 getting. You pull that one randomly, and you substitute
 17 so you get a respondent in that category.
 18 So he was saying that about two-thirds -- his
 19 estimate was about two-thirds of the original sample
 20 would call back, and then the others, you would have to
 21 go for replacements.
 22 That was simply his estimate at the time.
 23 Q. The second bullet on 9057 talks about a number
 24 of things. First it says:
 25 "Weight sample from the second list by the

1 characteristics of those in the cross-sectional sample."
 2 Can you make heads or tails out of that for
 3 us?
 4 A. No.
 5 Q. You don't know what that means either?
 6 A. No. And I am not sure I can say this is an
 7 accurate representation of what was said.
 8 Q. It goes on to say, quote:
 9 "Structuring of the sample,"
 10 unquote, "according to teachers'
 11 phone numbers by SES."
 12 Again, what does that mean?
 13 A. I have no clue.
 14 Q. And then it continues and completes -- it
 15 continues with:
 16 "Matching strategy and then weighting."
 17 What does that mean?
 18 A. I don't know.
 19 Q. It finishes with:
 20 "Comparison of the cross-section."
 21 What does that mean?
 22 A. I don't know.
 23 And, again, I am not even sure that is an
 24 accurate rendering of what was said.
 25 Q. But, nonetheless, something along these lines

1 was discussed?
 2 A. Yes, apparently so.
 3 Q. Now the actual -- are you aware of what actual
 4 sample frame, then, was used by the Harris folks?
 5 A. No.
 6 Q. Are you aware whether there is what they
 7 called, "CalTech" -- the "CalTech source" where they
 8 had -- actually 321 teachers were interviewed?
 9 A. I have no knowledge of that.
 10 Q. That was a cross-section of schools with the
 11 names of the teachers selected.
 12 Are you aware of that?
 13 A. I am not aware of the specifics of that.
 14 Q. You are generally aware that that CalTech
 15 part, the first source of interviewees -- are you aware
 16 how that cross-section of schools was selected?
 17 A. No.
 18 Q. Who on your team is? "Team" meaning those
 19 assisting you in preparation of this report.
 20 A. I don't know that any of them knew, but I
 21 don't know everything that they know, so --
 22 Q. Right.
 23 Did Mr. Harris describe to you that there
 24 is -- "Look, there is this cross-section of teachers" --
 25 I'm sorry -- "This cross-section of schools we have, and

1 from that we will select various teachers' names on a
 2 random basis"?
 3 Did he describe that is what he intended to
 4 do?
 5 A. What I recall about what he described is what
 6 is written here.
 7 Q. "Written here" being written --
 8 A. On Page 2 where it says -- under the third
 9 bullet on exhibit -- Page 2 of Exhibit 35, the third
 10 bullet where he talks about the two different databases
 11 to draw from --
 12 Q. Uh-huh?
 13 A. -- that is as much detailed information as I
 14 recall.
 15 Q. Do you know whether Mr. Harris as a part of
 16 this survey selected the same number of teachers from
 17 each school to be interviewed?
 18 A. I don't have any knowledge of that.
 19 Q. Do you know that as a matter of survey
 20 design -- let me start that again.
 21 As a matter of survey design were teachers
 22 intended to be sampled proportional to the number of
 23 students at their school?
 24 A. I would have to reference the description of
 25 his methodology to talk with you in detail about these

1 details.
 2 Q. Okay.
 3 A. Would you like me to do that?
 4 Q. If you would like.
 5 MR. LONDEN: It is about time for a break.
 6 (Recess taken.)
 7 MR. HERRON: Would you please reread my last
 8 question.
 9 (Record read as follows:
 10 "As a matter of survey design
 11 were teachers intended to be
 12 sampled proportional to the number
 13 of students at their school?")
 14 THE WITNESS: From reading the Harris --
 15 technical appendix of the Harris report, which is
 16 Exhibit No. 30, it doesn't appear that the teachers were
 17 selected based on the number of students at their
 18 schools.
 19 BY MR. HERRON:
 20 Q. In practice, do you know whether teachers were
 21 sampled proportional to the number of students at the
 22 schools, whether or not that was the design?
 23 MR. LONDEN: Asked and answered.
 24 Go ahead.
 25 THE WITNESS: I only know what Harris outlines

1 in this appendix, and it appears to me from this
 2 appendix that they did not.
 3 BY MR. HERRON:
 4 Q. Do you know whether the sample design was such
 5 that teachers were to be sampled proportional to the
 6 number of teachers at each school?
 7 A. Not to my knowledge.
 8 Q. Do you know as a matter of practice, that is,
 9 in the way that the survey was actually conducted, that
 10 the number of teachers -- that teachers were sampled
 11 proportional to the number of teachers at each school?
 12 A. Not to my knowledge.
 13 Q. If those things did not occur, doesn't that
 14 mean that the Harris survey data is not representative
 15 of teachers generally in California?
 16 A. The sample yielded a pool of teachers that
 17 teach at schools that represent the schools in the state
 18 based on the characteristics of students who attend
 19 those schools.
 20 MR. HERRON: Could you reread my question and
 21 the answer provided, please.
 22 (Record read.)
 23 BY MR. HERRON:
 24 Q. So it is your view that the Harris survey is
 25 representative of teachers generally in California?

1 MR. LONDEN: The question is vague.

2 THE WITNESS: The Harris data is
3 representative of teachers nested in schools of various
4 types in California. So the schools -- the schools that
5 these teachers are reporting about are a representative
6 sample of the schools in California.

7 BY MR. HERRON:

8 Q. Is it your view that the data relied upon in
9 your expert report is representative of teachers
10 generally in California?

11 MR. LONDEN: Vague and ambiguous.

12 THE WITNESS: In some ways the sample is not
13 representative of teachers in general.

14 BY MR. HERRON:

15 Q. In what ways is it not representative of
16 teachers generally?

17 MR. LONDEN: Same objections.

18 THE WITNESS: My understanding is that the
19 number of less than fully qualified teachers in the
20 sample is far smaller than in the state as a whole, so
21 it undersampled underqualified teachers.

22 BY MR. HERRON:

23 Q. When you say, "underqualified teachers," what
24 do you mean?

25 A. Teachers who hold neither a preliminary or

1 Q. You make room for the possibility that it may
2 be not representative in other respects?

3 MR. LONDEN: Vague and it calls for
4 speculation.

5 THE WITNESS: I know the issue of concern and
6 what the Harris group checked carefully for and weighted
7 for was to insure that the sample was representative of
8 the various types of schools based on level of
9 schooling, racial and ethnic makeup of the student body,
10 the poverty level of students, the limited English
11 proficiency of students.

12 Other than what is described in this appendix,
13 I am not sure what else they may have on their own
14 looked at.

15 MR. HERRON: Move to strike that as
16 nonresponsive.

17 Could you please restate the question I just
18 asked, Madam Court Reporter.

19 (Record read.)

20 THE WITNESS: Yes.

21 BY MR. HERRON:

22 Q. You say you don't know in what other respects
23 it may -- the data you relied upon in your report may
24 not be representative of teachers generally in
25 California.

1 clear credential.

2 Q. In what other ways is the data relied upon by
3 you in your expert report not representative of teachers
4 generally in California?

5 MR. LONDEN: Vague and ambiguous.

6 I take it you are referring to the Harris
7 data, or are you talking about data from all sources?
8 Is that is what -- I don't like to make speaking
9 objections. That is what I was getting at.

10 MR. HERRON: That is fine.

11 Q. I am really focusing on the Harris data.

12 A. That is the only way in which I know that the
13 sample is unrepresentative of teachers in general.

14 Q. So in your opinion your -- the data relied
15 upon -- the Harris data relied upon by you in your
16 report is in all other respects representative of
17 teachers generally in California; is that correct?

18 MR. LONDEN: Vague and ambiguous.

19 Go ahead.

20 THE WITNESS: Actually, I said the only way
21 that I know that it is not representative is with the --
22 in terms of the credential status of the teachers.

23 I have not -- I do not -- I don't know. There
24 may be other ways it may not be.

25 BY MR. HERRON:

1 Who might know that data? "Who" being who
2 that was involved in the creation of your report, would
3 be able to answer that question?

4 MR. LONDEN: Calls for speculation. Assumes
5 facts. Vague.

6 THE WITNESS: I don't know.

7 BY MR. HERRON:

8 Q. How about David Silver?

9 A. I don't know.

10 Q. But in any event, you can't answer the
11 question?

12 MR. LONDEN: Asked and answered.

13 BY MR. HERRON:

14 Q. Is that right?

15 A. I thought I answered it. Maybe you should
16 repeat the question.

17 Q. I am just confirming you don't have knowledge
18 as to whether there are any other defects; that is,
19 whether or not the data you relied upon in your expert
20 report is not representative of teachers generally in
21 California in any other respect than you have already
22 identified?

23 A. The -- I would take issue with calling it a
24 "defect."

25 For example, when I say that I don't know, I

1 am referring to things like, I don't know if the ages of
2 the respondents to the survey perfectly match the ages
3 of the population of teachers in California.

4 I would not consider that a defect in the
5 survey, given the purposes of the survey.

6 Q. There was a second source that was used by the
7 data -- I'm sorry -- by the Harris folks in their
8 survey; isn't that right?

9 A. "Second" to --

10 Q. Second to a cross-section of schools, where
11 they obtained the names of teachers.

12 MR. LONDEN: Lacks foundation.

13 THE WITNESS: I know that -- I think we
14 were -- we have been speaking about the one of three
15 samples used in the study --

16 BY MR. HERRON:

17 Q. Uh-huh.

18 A. -- described in the Harris report as a
19 cross-section of California teachers whose -- who they
20 left phone messages for at schools and who called them
21 back.

22 That is the group we have been talking about
23 so far.

24 Q. I agree with you.

25 That is called, "random digit dialing"; is

1 by them -- Lou Harris says they were, so I am assuming
2 they were.

3 Q. When you say, "Lou Harris says they were," you
4 are referring now to Exhibit 30; is that correct?

5 A. Yes.

6 Q. I am referring to the CalHome piece of the
7 sample frame --

8 A. Yes.

9 Q. -- where 250 teachers were surveyed, and those
10 250 teachers were identified from Market Data Retrieval
11 data; correct?

12 MR. LONDEN: Lacks foundation.

13 THE WITNESS: This description in the
14 technical appendix would suggest that is where they got.

15 BY MR. HERRON:

16 Q. And the technical appendix you are looking at
17 is from Exhibit 30?

18 A. No.

19 Q. Do you know what happened actually in the
20 survey or do you have to look at Exhibit 30 to answer
21 these questions?

22 MR. LONDEN: Asked and answered.

23 Go ahead.

24 THE WITNESS: The details of the sampling
25 procedure are things that I need to rely on Mr. Harris's

1 that correct?

2 A. "Random digit dialing"? I don't know.

3 Q. You don't know?

4 A. I don't know if that is what that is called.

5 Q. I agree with you that is the first group that
6 we have been talking about.

7 What other groups, if any, as far as you know,
8 were part of the sample frame used to select the
9 teachers' sample for the Harris survey?

10 MR. LONDEN: Foundation.

11 THE WITNESS: Harris describes a second sample
12 of teachers, and those were teachers who teach in
13 disadvantaged schools, and they obtained lists from this
14 Market Data Retrieval firm by drawing telephone numbers
15 of teachers who live in areas that are low-income areas
16 or near low-income areas, and that was the second sample
17 of teachers.

18 BY MR. HERRON:

19 Q. There was a third sample of teachers as well
20 that was also obtained from Market Data Retrieval; is
21 that correct?

22 MR. LONDEN: Foundation.

23 THE WITNESS: I don't know whether the third
24 sample was also obtained from Market Data Retrieval.
25 It -- probably. All of the survey samples were provided

1 report for, because I was not personally involved in it.

2 BY MR. HERRON:

3 Q. What is "Market Data Retrieval," if you know?

4 A. It is a firm that compiles lists of teachers
5 and other educational personnel, and they sell those
6 lists to people who do survey research.

7 Q. Do you know how the teachers' names got on the
8 CalHome list?

9 MR. LONDEN: Assumes facts. Foundation.

10 BY MR. HERRON:

11 Q. Let me try again.

12 There was a list of teachers whose names were
13 apparently used as part of the sample survey.

14 They were called, "CalHome," as Mr. Harris
15 refers to them; correct?

16 A. Yes.

17 Q. Okay. There were 250 teachers who received
18 telephone calls and were interviewed from that list; is
19 that correct?

20 MR. LONDEN: Foundation.

21 BY THE WITNESS:

22 Q. I would not want to say with certainty the
23 number of teachers that were drawn from each one of
24 these samples, partly because the table in my copy of
25 the technical appendix did not reproduce well, and the

1 numbers are obscured.
 2 Q. Ignore the "250" then.
 3 Can you otherwise respond to the question?
 4 MR. LONDEN: Vague.
 5 THE WITNESS: Are you asking me where Market
 6 Data Retrieval gets the numbers of teachers?
 7 BY MR. HERRON:
 8 Q. Uh-huh.
 9 A. Harris reports that teachers identify
 10 themselves voluntarily as teachers in surveys on many
 11 subjects, and they gave the names of the schools they
 12 teach in, and they allow their names to be used on
 13 lists, and those are the sources -- those lists and
 14 other surveys are places where Market Data Retrieval
 15 obtains the names for their lists.
 16 Q. Do you know whether those lists are updated
 17 from time to time?
 18 MR. LONDEN: Vague. Foundation.
 19 THE WITNESS: I have a great deal of
 20 confidence that the Lou Harris group assures themselves
 21 of the validity of the databases from which they draw
 22 their samples.
 23 How often they update those lists is nothing
 24 something I'm knowledgeable about.
 25 BY MR. HERRON:

1 Q. There were two lists used here, what -- I'm
 2 sorry -- what Mr. Harris characterized as "CalHome" and
 3 "Calholo."
 4 You understand that to be the case; correct?
 5 MR. LONDEN: Foundation.
 6 THE WITNESS: It seems to me there were three
 7 lists that were used, but I am not -- I don't have
 8 firsthand familiarity with that.
 9 But reading this appendix, it appears there
 10 were three different lists.
 11 BY MR. HERRON:
 12 Q. Do you know whether names from the lists,
 13 whether it was two or whether it was three, were
 14 selected randomly?
 15 MR. LONDEN: Foundation.
 16 THE WITNESS: Yes. Although the second list
 17 was a -- my understanding is the names were drawn
 18 randomly from the lists that were provided. The lists
 19 were stratified in particular ways.
 20 BY MR. HERRON:
 21 Q. And it is your understanding they were
 22 selected, that is, the names were selected on a random
 23 basis?
 24 MR. LONDEN: Foundation again.
 25 THE WITNESS: You know, I am not -- I don't

1 have firsthand familiarity with the way the sample was
 2 drawn.
 3 BY MR. HERRON:
 4 Q. Okay. You had talked earlier about there
 5 being oversampling and low socioeconomic schools; is
 6 that right?
 7 A. Yes.
 8 Q. By how much was there oversampling? What
 9 percentage?
 10 A. I don't know.
 11 Q. Do you know what the normal percentage -- that
 12 is, in California generally -- what the percentage of
 13 low socioeconomic schools is that was used as the
 14 baseline for the oversampling determination?
 15 MR. LONDEN: Vague. Assumes facts.
 16 THE WITNESS: All I know is that the data that
 17 was used as the basis of estimating the proportions of
 18 schools of various types was the California Basic
 19 Education Data System.
 20 So it was the State's data that described the
 21 characteristics of schools that was used to match and
 22 weight the sample that Harris used.
 23 BY MR. HERRON:
 24 Q. I am asking about oversampling, not whether
 25 CBEDS stated it was used as a basis for selecting

1 schools.
 2 MR. LONDEN: Argumentative.
 3 BY MR. HERRON:
 4 Q. Actually, I am just trying to clarify.
 5 So you don't know by what degree schools in
 6 low economic areas were oversampled in the Harris
 7 survey?
 8 MR. LONDEN: Asked and answered.
 9 THE WITNESS: No. I don't know the extent of
 10 oversampling.
 11 BY MR. HERRON:
 12 Q. You talked earlier about there being
 13 oversampling of fully certificated teachers, or I guess
 14 you put it differently, "undersampling of underqualified
 15 teachers"; correct?
 16 A. I was not referring to that as a deliberate
 17 part of the construction of the sample.
 18 It turned out that the sample did not match
 19 the State on that characteristic.
 20 Q. Why was that, if you know?
 21 MR. LONDEN: Foundation.
 22 THE WITNESS: I could make a speculation. I
 23 have speculated about it.
 24 BY MR. HERRON:
 25 Q. Why don't you tell me what you know as opposed

1 to what you can speculate about.

2 A. I don't know.

3 Q. Do you know by what degree or by what
4 percentage fully credentialed teachers were oversampled?

5 MR. LONDEN: Ambiguous.

6 THE WITNESS: My recollection from the
7 conversation about the sample that resulted is that less
8 than 10 percent -- maybe considerably less than 10
9 percent -- were less than fully certified, whereas in
10 the State of California 14 percent of the teachers are
11 less than fully certified.

12 BY MR. HERRON:

13 Q. How did oversampling fully certificated
14 teachers affect the results of that Harris survey, if
15 you know?

16 MR. LONDEN: That mischaracterizes the earlier
17 testimony on the use of the term.

18 THE WITNESS: The fact that the sample ended
19 up being disproportionately well-qualified teachers
20 would have the effect of making the results more
21 conservative.

22 That is, it would underestimate the extent of
23 problems that teachers report because we know from lots
24 of other research that the less-than-fully qualified
25 teachers, brand-new teachers, teachers on emergency

1 Q. Would you have to refer to Exhibit 30 to find
2 that information?

3 A. Well --

4 MR. LONDEN: Assumes facts.

5 Go ahead.

6 THE WITNESS: I'm not sure that the answer to
7 that question is contained in Exhibit 30.

8 BY MR. HERRON:

9 Q. Okay. All I am asking is: Do you know or
10 not?

11 If you don't, it is fine to say you don't.

12 MR. LONDEN: Asked and answered.

13 Go ahead.

14 THE WITNESS: I would bet money on it, but I
15 don't know. I don't have firsthand knowledge of that.

16 BY MR. HERRON:

17 Q. Did the Harris survey oversample schools with
18 a high predominance of LEP students?

19 A. I would give the same response to that
20 question as I did about the representation of schools
21 with minority populations.

22 Q. Okay. What is a "confidence interval"?

23 A. A "confidence interval" is the range around a
24 score that -- in which you can be -- in which the result
25 might have -- the difference from the score -- let's

1 credentials, day-to-day substitutes, are typically
2 placed in the least desirable conditions in their
3 schools.

4 BY MR. HERRON:

5 Q. On what do you base that last statement?

6 A. My own knowledge and studies of teachers and
7 the conditions under which they work and other studies
8 of teachers' working conditions.

9 Q. Can you mention those studies to us, please.

10 A. Linda Darling-Hammond has done some of those
11 studies. Richard Ingersoll has done some of those
12 studies.

13 Q. Can you name any by title?

14 A. No.

15 Q. You mentioned earlier that the Harris survey
16 oversampled schools with high percentages of minority
17 student populations; is that correct?

18 A. It oversampled teachers who teach in
19 disadvantaged schools, which was defined as lower-income
20 areas, because minority families are disproportionately
21 found in low-income areas.

22 It is likely that it resulted in oversampling
23 of schools with high minority populations.

24 Q. It is likely, but do you know?

25 A. Not off the top of my head, I don't.

1 see.

2 It is a range around a score in which the
3 scores might have differed from the score that was
4 actually obtained by chance rather than because of any
5 real difference.

6 Q. What is "weighting"? Not W-A-I-T-I-N-G, but
7 W-E-I-G-H-T-I-N-G.

8 A. "Weighting" is a value that you give to a
9 particular, in this case, a member of a sample, so that
10 in the aggregate the sample matches the population as a
11 whole.

12 So that if three-quarters of the population
13 were people of X type, you would want to weight the
14 people of X type in your sample so they constituted
15 three-quarters of the sample, so the sample would match
16 the population.

17 Q. So if your sample resulted in 50 percent of
18 the people being of X type, you would weight up?

19 A. If they were 75 percent in the population as a
20 whole?

21 Q. Yes.

22 MR. LONDEN: Ambiguous.

23 Go ahead.

24 THE WITNESS: It depends. You might weight
25 down the other groups in order to -- you would do some

1 statistical manipulation so that the -- there would be a
 2 match between the proportion of the sample and the
 3 population -- the proportion of the people in the sample
 4 and the proportion in the population.
 5 BY MR. HERRON:
 6 Q. Okay. What is the margin of error for the
 7 Harris report data?
 8 MR. LONDEN: Compound. Ambiguous.
 9 THE WITNESS: Peter Harris reports that
 10 percentage points that are within around three
 11 percentage points can be -- anything outside of three
 12 percentage points within the obtained score could be
 13 presumed to be a real difference and not one that
 14 occurred by chance, I believe, but maybe I should check
 15 to see what he says.
 16 Q. You are looking at Exhibit 30 now?
 17 A. I am looking at Exhibit 30.
 18 He said:
 19 "Overall as a generalized
 20 guide to the reader any differences
 21 greater than three percentage
 22 points are likely to be
 23 significant, and any differences
 24 less than three percentage points
 25 are likely not to be significant."

1 Q. Okay. What is the margin of error for the
 2 tables expressed -- set forth with respect to your
 3 Opinion No. 2 in your report?
 4 MR. LONDEN: Compound. Ambiguous.
 5 BY MR. HERRON:
 6 Q. Do you understand?
 7 A. I understand, but I didn't rely on a margin of
 8 error.
 9 I used a chi-square test, which is another way
 10 of ascertaining statistical -- whether or not
 11 differences between groups or among groups are
 12 statistically significant, meaning they would not have
 13 occurred by chance.
 14 Q. Who did the chi-square testing?
 15 A. David Silver.
 16 Q. Did he do that on the unweighted Harris data
 17 or the weighted Harris data?
 18 A. On the weighted data, as far as I -- yes.
 19 Q. As far as you know?
 20 A. As far as I know, yes.
 21 Q. Did he do the chi-square testing before or
 22 after excluding the "not sure" responses?
 23 A. He excluded the "not sure" responses from the
 24 significance tests because he felt and asked me, and I
 25 agreed that it was the most appropriate comparison to

1 make.
 2 Q. Could you reread the question and answer,
 3 please.
 4 (Record read.)
 5 BY MR. HERRON:
 6 Q. I think mine was the "before" or "after"
 7 question.
 8 A. Well, then the answer is after.
 9 Q. Did he do any t-testing?
 10 A. No.
 11 Q. Z-testing?
 12 A. No.
 13 Q. Fishers exact?
 14 A. No. Not that I know of. Not that I know of.
 15 Q. He could have; you just don't know?
 16 A. Yes.
 17 Q. How did -- how were the weights that Harris
 18 applied constructed?
 19 A. They were constructed so that the -- well,
 20 they were constructed so that the sample would match the
 21 California Basic Education database's proportions of
 22 schools of various types.
 23 Q. Through what method; that is to say, what
 24 weighting method did Harris use?
 25 MR. LONDEN: Ambiguous. Go ahead.

1 THE WITNESS: I don't know the technical
 2 strategy that they employed.
 3 BY MR. HERRON:
 4 Q. Did David Silver ever tell you what they
 5 employed?
 6 A. Not that I recall.
 7 Q. Did anyone ever tell you what they, the Harris
 8 group, employed?
 9 A. Not that I recall.
 10 Q. Did -- your team then weighted the data, too;
 11 is that correct?
 12 A. I don't believe so.
 13 I know there was checking -- that David talked
 14 with the Harris group about how they weighted it, so he
 15 understood the nature of the sample.
 16 I don't know whether he did anything
 17 independent of that.
 18 Q. Is it possible that David Silver weighted the
 19 data set forth in your report independent of the Harris
 20 people?
 21 MR. LONDEN: Calls for speculation.
 22 THE WITNESS: I have no -- I don't know.
 23 BY MR. HERRON:
 24 Q. You say that the Harris people did do
 25 weighting.

1 What were the weights compensating for -- the
2 weighting?

3 A. The weights were to correct for the
4 overrepresentation of schools from low-income
5 communities in the sample.

6 Q. Is that the only compensating factor the
7 weights were used for?

8 MR. LONDEN: Foundation.

9 THE WITNESS: Well, Harris reports that he
10 used racial and ethnic makeup of the student body, the
11 levels at which teachers teach, the percentage of
12 limited English-proficient students, the percentage of
13 students eligible for free and reduced price meals.

14 BY MR. HERRON:

15 Q. Where are you looking?

16 A. On Page -- oops. There are no numbers. A2 in
17 Exhibit 30.

18 Q. Can you show me where you are looking. At
19 what portion of A2?

20 A. I was simply reading down the titles of the --
21 they say:

22 "Basic controls in weighting
23 were based on the numbers reported
24 by the California Department of
25 Education. The correct sampling

1 MR. LONDEN: Foundation.

2 THE WITNESS: Would you repeat the question.

3 MR. HERRON: Could you please read it back.
4 (Record read.)

5 THE WITNESS: Other than what is reported here
6 about making an attempt to match weighting so that the
7 sample would match the California data on the
8 eligibility for free and reduced price meals and on the
9 eligibility for CalWORKS, I don't know.

10 BY MR. HERRON:

11 Q. Okay. When you say, "here," you are again
12 referring to Exhibit 30, specifically Pages 11615 and
13 11616 of that exhibit; correct?

14 A. Yes.

15 Q. What weighting, if any, did David Silver do to
16 compensate for the oversampling with respect to
17 high-poverty schools?

18 MR. LONDEN: Asked and answered.

19 THE WITNESS: I have no knowledge of any
20 weighting that David Silver might have done.

21 BY MR. HERRON:

22 Q. What weighting did Mr. Harris do, if you know,
23 with respect to oversampling for predominantly minority
24 student populations other than what you already
25 testified?

1 controls used internally were
2 derived from the sample using the
3 1-800 procedure."

4 And then there is the list of the targets that
5 they were -- that they would obtain through the
6 weighting.

7 Q. Okay. Do you know what the "1-800 procedure"
8 is?

9 A. I do not.

10 Q. Do you know what weighting was applied to
11 gender?

12 A. I do not.

13 MR. LONDEN: Ambiguous.

14 BY MR. HERRON:

15 Q. I am talking about Exhibit 30, Page A2, which
16 is Bates stamped 11 -- 11615.

17 Do you know what weighting was done with
18 respect to racial and ethnic makeup of the student body?

19 A. In -- in the procedure -- weighting was done
20 in order to achieve a result that the sample would match
21 these proportions that exist in the California
22 Department of Education's database.

23 Q. Okay. What weighting, if any, were you aware
24 that the Harris group did concerning oversampling for
25 high-poverty schools?

1 A. I know that he was pleased that the two random
2 samples, the samples of teachers' phone numbers within
3 schools and the CalHome, yielded a sample of teachers
4 who taught at schools whose minority enrollments very
5 closely matched the minority enrollments of California
6 schools generally.

7 I don't know how well matched that third
8 sample of teachers in low-income communities matched,
9 and so I don't know -- I suspect some weighting was done
10 there, but I don't know.

11 Q. So you don't know if he was required to do any
12 weighting with respect to oversampling regarding
13 predominantly minority student populations; is that
14 correct?

15 A. He was required if the sample was not a match
16 with the state as a whole.

17 Q. My question is: What do you know on that
18 subject?

19 A. I know if he did it -- I know he did it if it
20 was not -- if the data were not matched.

21 Q. You just don't know if he did it?

22 A. I know that he weighted the samples so that it
23 would match the population of California schools as a
24 whole; the -- that we would get a representative sample
25 of schools in which California teachers teach.

1 I know he weighted the data on the factors
 2 that he listed in order to get a representative sample.
 3 Q. My question is actually more specific. I will
 4 restate it.
 5 You don't know of your own personal knowledge
 6 what weighting, if any, Mr. Harris did to compensate for
 7 the fact of oversampling predominantly minority student
 8 populations; is that correct?
 9 A. I did not say that he oversampled minority
 10 populations. I said that he oversampled schools in
 11 low-income areas.
 12 It was my opinion that that would yield a
 13 heavily minority sample, but I don't have firsthand
 14 knowledge of what actually resulted and what weights
 15 were applied, but I am confident that weighting was done
 16 to make the sample representative.
 17 Q. Why are you confident?
 18 A. Because the Peter Harris group is well-known
 19 for the quality of the work they do.
 20 Q. I would like to direct your attention to Page
 21 22 of your report.
 22 What I am looking at now is the middle
 23 paragraph, roughly the middle paragraph, beginning, "In
 24 California schools."
 25 I want to read to you the second -- part of

1 the second sentence where it begins:
 2 "12 percent of the teachers in
 3 the Harris 2002 survey indicated
 4 that they did not have enough
 5 copies of textbooks for every
 6 student in their class."
 7 Do you see where I am at?
 8 A. Yes.
 9 Q. I will continue, then.
 10 "If 12 percent of teachers who
 11 report that they don't have enough
 12 textbooks to use in class are
 13 teaching 12 percent of California
 14 students (a not unreasonable
 15 conjecture) these teachers'
 16 responses mean that approximately
 17 720,000 of California's six-plus
 18 million students are in classrooms
 19 where teachers do not have enough
 20 books for all of them to use."
 21 My question to you is: Why is that not an
 22 unreasonable conjecture?
 23 A. Given the size of the sample, it is not
 24 unreasonable to conjecture that the size of the student
 25 populations at the sample schools either matched or

1 exceeded the 12 percent -- the match between teachers
 2 and students would be the same, given the size of the
 3 sample of teachers that was questioned.
 4 Of course, it is framed as a hypothetical
 5 because we can't know with certainty that that is the
 6 case.
 7 Q. The conjecture here, though, is that
 8 generalizing the survey results to students generally,
 9 one can assume that 720,000 of California's six-plus
 10 million students are in classrooms where teachers do not
 11 have enough books for all of them to use, is it not?
 12 A. The sentence is framed that if the 12 percent
 13 of the teachers are teaching 12 percent of the students,
 14 then the 720,000 figure would be reasonably accurate.
 15 Q. So the conjecture is from a -- the -- you are
 16 applying a generalization from the sample of teachers to
 17 students generally; is that correct?
 18 A. I am not generalizing about anything. I am
 19 simply speculating that if 12 percent of the teachers in
 20 the state teach 12 percent of the kids, you would have
 21 about 720,000 kids.
 22 Q. And it is no more than that, correct,
 23 speculation?
 24 A. I call it --
 25 MR. LONDEN: That is argumentative, but go

1 ahead.
 2 THE WITNESS: I characterize it as a "not an
 3 unreasonable conjecture," and I would characterize it
 4 again as that.
 5 BY MR. HERRON:
 6 Q. Well, is it statistically sound? Is that a
 7 statistically sound conjecture?
 8 MR. LONDEN: Vague.
 9 THE WITNESS: I think it is what it is, and I
 10 wrote it in a way to represent it exactly with the
 11 confidence I have in it.
 12 BY MR. HERRON:
 13 Q. Well, "it is what it is" is really not
 14 responsive to my question. I asked a very specific
 15 question.
 16 I request that you respond to the question
 17 asked as opposed to the question you would like to
 18 answer.
 19 I would ask the reporter to kindly reread the
 20 question, and I will ask you to answer what I am asking.
 21 MR. LONDEN: And I object to the argument.
 22 MR. HERRON: Okay.
 23 (Record read.)
 24 THE WITNESS: I think it is.
 25 BY MR. HERRON:

1 Q. There are 21 tables set forth with respect to
2 Opinion 2 in your report that rely on the Harris data;
3 correct?

4 MR. LONDEN: Asked and answered.

5 Go ahead.

6 THE WITNESS: Yes.

7 BY MR. HERRON:

8 Q. Okay. Now, to what population is it that you
9 want to generalize the results set forth in those
10 tables?

11 MR. LONDEN: Ambiguous.

12 THE WITNESS: The teachers teaching in
13 California schools.

14 BY MR. HERRON:

15 Q. Do you generalize those data to the schools
16 themselves?

17 A. The school is the focus of interest in most of
18 the tables and the analysis. Teachers are reporting
19 about conditions in their schools.

20 Q. So do you generalize the data set forth in
21 your tables generally to schools in California?

22 A. Yes.

23 Q. So do you generalize the data set forth in
24 your tables generally to students in California?

25 A. Only in that conjecture framing that I used

1 teachers teach 12 percent of the kids, then the
2 extrapolation to the number of kids is statistically
3 sound, so it is all within the context of that
4 hypothetical.

5 BY MR. HERRON:

6 Q. So you believe it to be statistically sound to
7 say that if 12 percent of the teachers respond in a
8 certain way, you can with respect to the data set forth
9 in your report extrapolate that to the student
10 population; correct?

11 MR. LONDEN: Argumentative.

12 THE WITNESS: That is not what I said.

13 BY MR. HERRON:

14 Q. I misunderstood what you said. I'm sorry.

15 A. I said if 12 percent of the teachers are
16 teaching 12 percent of the kids, then we can extrapolate
17 and say, it is 720,000 kids, give or take a few.

18 Q. I'm sorry. If 12 percent --

19 A. 12 percent of the teachers are teaching 12
20 percent of the students, then we are talking about
21 720,000 students.

22 Q. But there is nothing in the Harris data or the
23 Harris survey that assured that 12 percent of the
24 respondents were teaching 12 percent of the students at
25 their schools; isn't that true?

1 with the shortage of textbook example.

2 Q. Is it a reasonable conjecture that if 32
3 percent of the teachers who responded to the Harris
4 survey said they don't have enough texts, then 32
5 percent of the students statewide do not have enough
6 texts?

7 A. I think it is a not unreasonable conjecture.

8 Q. Okay. If 18 percent of the teachers
9 responding to the Harris survey rate the texts that they
10 use as only "fair" or "poor" in their coverage of the
11 State content standards, is it proper to generalize,
12 then, that 18 percent of California students lack
13 textbooks that provide them adequate access to the
14 content standards?

15 MR. LONDEN: Vague. Incomplete hypothetical.

16 THE WITNESS: I would make the same statement
17 about the reasonableness of that conjecture as I have
18 about the other two.

19 BY MR. HERRON:

20 Q. That it is not unreasonable?

21 A. That it is not unreasonable.

22 Q. And that it is statistically sound?

23 MR. LONDEN: Vague.

24 THE WITNESS: In that hypothetical way. I
25 mean, if you are hypothesizing that 12 percent of the

1 MR. LONDEN: Asked and answered.

2 THE WITNESS: That is true.

3 BY MR. HERRON:

4 Q. So I take it you concede that, then, without
5 that information you cannot generalize to the student
6 population -- you cannot generalize the results set
7 forth in your tables to the student population
8 generally?

9 MR. LONDEN: Objection. "Concede" is
10 argumentative.

11 You can answer.

12 THE WITNESS: I think the way I have treated
13 that extrapolation from the analysis I have to a likely
14 number of students affected is a proper way to do that,
15 always with caveats and always in a hypothetical sense.

16 BY MR. HERRON:

17 Q. What caveats accompany it other than the ones
18 that you have identified?

19 When I say, "accompany it," I mean accompany
20 that assumption or that extrapolation.

21 A. Just the framing that I have used here.

22 Q. I don't understand.

23 A. Framing it as a hypothetical makes quite clear
24 that it cannot be -- that it is not a direct result of
25 these analyses but rather an extension and an

1 extrapolation and a conjecture.
 2 Q. What is "post-stratification weighting"?
 3 A. I don't know. I would be speculating.
 4 Q. What is "design effect"? Do you know what
 5 that means?
 6 A. No.
 7 Q. Did you ever have any communications with
 8 anyone about "design effect" as concerns your
 9 manipulation of the Harris data?
 10 A. No.
 11 Q. Do you ever talk about that with Russ
 12 Rumberger?
 13 A. No.
 14 Q. Do you know whether David Silver discussed
 15 with anyone the design effect related to the Harris data
 16 and how that might affect -- well, related to the Harris
 17 data?
 18 A. No.
 19 Q. Do you know whether David Silver discussed
 20 with anyone the design effect and how that might affect
 21 his manipulation of the Harris data?
 22 A. No.
 23 Q. Can you describe for me what "cluster
 24 sampling" is?
 25 A. "Cluster sampling," not with any precision.

1 Q. What is your understanding of "cluster
 2 sampling"?
 3 A. That you draw a sample of -- from more
 4 concentrated parts of the population and evenly
 5 distributed across it, but I am not at all certain that
 6 is the proper technical explanation.
 7 Q. And that accentuates homogeneity that doesn't
 8 truly exist; correct?
 9 A. I don't know.
 10 Q. Are you aware whether cluster sampling can
 11 result in false precision of statistical data?
 12 A. No.
 13 MR. LONDEN: Vague.
 14 BY MR. HERRON:
 15 Q. What is "significance testing"?
 16 A. Those are statistical tests performed to
 17 determine whether or not or how likely it is that a
 18 particular difference could have or particular score
 19 could have been obtained by chance.
 20 Q. Are you aware whether the Harris group did
 21 significance testing on their data?
 22 A. In the -- in Exhibit No. 30 on Page A3 they
 23 describe a procedure that they used to determine whether
 24 or not a difference in percentage points in their survey
 25 data is significant or not.

1 Q. Do you know whether David Silver did any
 2 significance testing?
 3 A. Yes. He performed chi-square tests.
 4 Q. Okay. Why was that important, or was it?
 5 A. It was to add an additional degree of
 6 confidence that the differences between groups or
 7 between sets of responses were not the product of a
 8 chance occurrence.
 9 Q. Did you direct him to do significance testing?
 10 "Him," being David Silver.
 11 A. Yes.
 12 Q. What was your concern or why did you direct
 13 him to do that?
 14 A. Always in sampling when you use sample data
 15 rather than asking every member of the population
 16 itself, your confidence in the results is assured
 17 through the use of significance tests since it is not
 18 always readily apparent by looking at the absolute
 19 differences between responses whether or not it is
 20 significant, since that is a function of the size of the
 21 sample and the methods that were used.
 22 Q. What is a "typical null hypothesis"?
 23 A. A "null hypothesis" is a statement of
 24 something in a negative that you set out to disprove.
 25 Q. What was the typical null hypothesis that was

1 used here? When I say, "used here," either by Harris or
 2 David Silver.
 3 MR. LONDEN: Assumes facts.
 4 THE WITNESS: The null hypothesis that is
 5 nearly always used is that there are no differences
 6 between groups, and your statistical tests set out to
 7 determine whether or not this is the case.
 8 BY MR. HERRON:
 9 Q. What was the result of David Silver's
 10 significance testing? What did it tell you?
 11 MR. LONDEN: Compound.
 12 THE WITNESS: It -- as is reported on each of
 13 my tables, the significance tests report whether or not
 14 or the likelihood that the differences observed could
 15 have occurred by chance and the level of confidence in
 16 that determination.
 17 BY MR. HERRON:
 18 Q. What was the critical value?
 19 MR. LONDEN: Vague.
 20 THE WITNESS: I don't know what you mean by
 21 "critical value."
 22 BY MR. HERRON:
 23 Q. What was the critical value that was selected
 24 here in terms of the significance testing?
 25 MR. LONDEN: Compound.

1 THE WITNESS: The -- we were interested in
2 whether the likelihood of a result occurring by chance
3 was greater than five times out of every 100, one time
4 out of every 100 or one time out of a thousand. It is
5 the probability that something would have occurred by
6 chance.

7 BY MR. HERRON:

8 Q. And were any of those selected as the critical
9 value to be used in your analyses?

10 A. We paid attention to anything that was .05
11 or -- we really set .05 as kind of the lowest level of
12 significance that we would classify as a statistically
13 significant difference.

14 Q. Why was that value selected?

15 A. Convention. It is convention.

16 Q. A number of the tables set forth with respect
17 to Opinion No. 2 exclude "not sure" respondents and
18 nonrespondents?

19 A. Yes.

20 Q. What is the effect of that exclusion?

21 A. It doesn't bias either of the two groups being
22 compared.

23 It was my conclusion that when someone says
24 they are not sure, it would be inappropriate to lump
25 them in either with a "yes" or with a "no," and what you

1 significant, we eliminated those numbers from the
2 calculation.

3 Q. Okay. I am confused.

4 Please turn to Page 25 of your report. This
5 is Table 8. At the bottom it says:

6 "Statistical testing was
7 performed excluding 'not sure'
8 respondents and nonrespondents for
9 all variables."

10 What was that intended to tell the reader?

11 A. That they could be confident that if teachers
12 said or were asked, "Do you have a shortage of texts to
13 use in class," that we were only testing the
14 percentage -- the difference between the groups that
15 said absolutely, "yes" or absolutely, "no."

16 Q. So are you telling me that at these
17 percentages, that is the percentages in each of the
18 tables that reflect the Harris data and have the same
19 notation regarding the exclusion of "not sure"
20 respondents -- are you saying that, in fact, "not sure"
21 was not excluded from that percentages?

22 That wasn't the most clear question, was it?

23 A. I don't know.

24 Q. Let me --

25 A. No. I want to check with David to see what

1 really want to understand is the different between
2 people who were certain that they have enough things or
3 were certain they didn't have enough and without trying
4 to make a decision about whether people who said they
5 weren't sure were more or less likely to have enough or
6 not.

7 Q. So it was your decision to exclude the "not
8 sure" and nonrespondents?

9 A. Yes.

10 Q. Did you instruct David Silver to exclude that
11 in the data runs he did that -- to exclude the "not
12 sure" responses?

13 A. In the significance tests, yes.

14 Q. Not only in the significance tests, but it was
15 excluded, that is, the "not sure" respondents from the
16 ratios and, therefore, the percentages that are
17 expressed in many of your tables; isn't that true?

18 A. Actually, we left the percentages as being the
19 same as the percentages that the Harris group reported,
20 which included the "not sures."

21 I am trying to remember. In order that our --
22 the actual percentages reporting would be consistent
23 with what the other scholars using this -- these data
24 would report and what Harris reported, but for purposes
25 of understanding whether or not these differences were

1 precisely what he did. I don't want to misrepresent
2 what we did.

3 My understanding was that if we -- actually,
4 there were very small differences in the percentages
5 when you excluded the "not sures," but we left the
6 numbers in the table the way they were reported by the
7 Harris group -- the percentages.

8 Q. Okay.

9 A. But I really -- I do need to check with David,
10 which I am very happy to do tonight if you would like me
11 to do that.

12 Q. That's fine.

13 There was a -- there was an issue about do we
14 include the "not sures" in the denominator of the ratios
15 or do we exclude the "not sure" responses that was
16 discussed among you and the group; is that correct?

17 MR. LONDEN: That is vague.

18 Go ahead.

19 THE WITNESS: I am actually not recalling the
20 substance of those conversations.

21 I know that we did decide what I told you just
22 now that we decided, to exclude them from the
23 significance tests.

24 We also decided to keep the numbers in these
25 tables consistent with how Harris reported the numbers.

1 BY MR. HERRON:

2 Q. And it is your understanding that Harris in
3 calculating his percentages and in reporting those
4 percentages did not exclude "not sure" responses from
5 the denominator; correct?

6 A. I can't remember how those banners were
7 reported. I can't visualize them now to know whether
8 the "not sures" were included and not.

9 Q. If the "not sures" -- let's talk about the
10 data you report here in your various tables.

11 If the "not sure" responses had been excluded
12 from the ratios --

13 A. Uh-huh.

14 Q. -- that would affect the reliability of the
15 data, would it not?

16 A. No. Because the percentages in the tables
17 tell you, of the sample of teachers who were asked about
18 these things, this percentage said they -- this
19 percentage of the total sample said they didn't have
20 enough of whatever. This percentage said they did -- of
21 the total sample.

22 But we felt that then when you took those two
23 samples and compared them to see if the difference was
24 right, that you wouldn't leave the "not sures" in the
25 mix; that you would simply test the people who said

1 materials. 50 percent said they did. That leaves 1
2 percent who said -- either they didn't answer at all or
3 they weren't sure. Right?

4 So these numbers -- when we compared, is the
5 difference -- if we were to compare, is the difference
6 between 49 and 50 statistically significant, we wouldn't
7 put that 1 percent who said they weren't sure in our
8 calculation that compares the differences between those
9 two groups. Okay?

10 Q. Okay. So to figure out what the "not sure"
11 responses were, the nonrespondents were, what the
12 percentage was, you have to add those numbers, 49
13 percent and 50, and whatever is left less than 100
14 equals the "not sure" respondents and nonrespondents
15 that were excluded?

16 A. The first row you could do that.

17 Q. Right.

18 A. It doesn't work in the other rows.

19 MR. LONDEN: Is it time for a break?

20 MR. HERRON: Sure.

21 (Recess taken.)

22 MR. HERRON: What was my last question,
23 please?

24 (Record read as follows:
25 "Okay. So to figure out what

1 definitely, "yes" and definitely, "no" to see whether
2 there was a significant difference between those groups.

3 Q. So you did exclude the "not sures" from the
4 percentages expressed in your report?

5 A. No. Let's look at Table 25.

6 Q. That would be most helpful.

7 A. Okay. There were 747 teachers who said they
8 taught science.

9 Of those 747, 49 percent of them said they did
10 not have enough materials and equipment to do lab work,
11 so 49 percent --

12 Q. Are you -- what table?

13 A. Page 25, Table 8.

14 Q. My mistake.

15 A. Row 1.

16 Q. Okay.

17 A. We have 747 teachers who were asked this
18 question.

19 Q. Okay.

20 A. Some of them said, "I don't have enough
21 materials." Some of them said, "I do have enough
22 materials." Some of them said, "I am not sure."

23 Q. Uh-huh.

24 A. Now look at those numbers.

25 49 percent said they didn't have enough

1 the "not sure" responses were, the
2 nonrespondents were, what the
3 percentage was, you have to add
4 those numbers, 49 percent and 50,
5 and whatever is left less than 100
6 equals the "not sure" respondents
7 and nonrespondents that were
8 excluded?")

9 MR. HERRON: Gee, I think I will save that one
10 for trial. Don't answer that.

11 MR. LONDEN: It is too good to waste.

12 BY MR. HERRON:

13 Q. Does your report anywhere reference that you
14 are not reporting the "not sure" respondents?

15 A. Actually on Page 23, Table 7 actually lists
16 the percentage of people who said they weren't sure to
17 make it clear to the reader that when it is says on the
18 bottom of the tables that the "not sure" responses were
19 included -- were excluded from the significance tests,
20 readers would have a sense of the magnitude of the group
21 that was in that category.

22 Q. Now, you are referring to the categories in
23 Table 7, right, the inadequate supply and inadequate
24 quality items?

25 A. Yes.

1 Q. Are any other of these types of items
2 expressed in any of the tables?
3 I take it the answer to that is "yes"?
4 THE WITNESS: Yes.
5 MR. LONDEN: The question is vague.
6 THE WITNESS: Do you mean, are there items
7 other than these that are included on the tables?
8 BY MR. HERRON:
9 Q. Well put. You ask the questions. I will
10 answer them.
11 That is right. That is what I am asking.
12 A. Yes. There are other items than those.
13 Q. Included in the other items -- are the "not
14 sure" responses set forth anywhere in your report?
15 MR. LONDEN: Compound.
16 THE WITNESS: Many of them can be inferred, as
17 we just did, with the percentage of science teachers
18 saying they don't have enough materials by looking at
19 the top rows of these subject-specific tables.
20 MR. HERRON: All right.
21 (Exhibit 37 was marked for I.D.)
22 BY MR. HERRON:
23 Q. Have you had an opportunity to review Exhibit
24 37?
25 A. Yes.

1 Q. Do you recognize this document?
2 A. Yes.
3 Q. What is it?
4 A. It is either a draft or a final version of the
5 questionnaire that the Lou Harris group used in the
6 survey of teachers.
7 Q. Is the handwriting on this document yours?
8 A. I don't know. It looks like it could be, but
9 I am not absolutely sure.
10 Q. Did you receive a draft of the Harris survey
11 prior to it being finalized?
12 A. I might have. Yes.
13 Q. Did you provide comments on that draft?
14 A. I might have.
15 Q. Well, do you know whether you did or not?
16 A. I don't recall.
17 Q. Do you know whether anyone else -- do you
18 know -- let me try that again.
19 Do you know whether anyone outside the Harris
20 organization provided input on the draft questionnaire?
21 A. I don't know.
22 Q. How about Linda Darling-Hammond?
23 A. I don't know.
24 Q. Do you know whether the lawyers provided input
25 on the -- "the lawyers" being the Williams litigation

1 team on the plaintiffs' side -- provided any input into
2 the drafting of the Harris questionnaire?
3 A. I don't know.
4 Q. Did they ever tell you that they did?
5 A. No. Not that I recall.
6 Q. I will hand you another document that we will
7 mark as Exhibit 38.
8 (Exhibit 38 was marked for I.D.)
9 BY MR. HERRON:
10 Q. Have you had an opportunity to review Exhibit
11 38?
12 A. Yes.
13 Q. Do you recognize this document?
14 A. Yes.
15 Q. What is it?
16 A. It is what is called the "Final Version" of
17 the questionnaire that the Louis Harris group used in
18 the survey of teachers.
19 Q. Do you know whether or not this is the final
20 version?
21 A. Not for sure.
22 Q. The middle -- have you read this document
23 before?
24 A. I think so, but I am not certain whether this
25 is a version that I have read.

1 Q. Either this version or some other prior
2 version you did read, though?
3 A. Yes.
4 Q. In the middle of this first page, the one
5 Bates stamped 13748, the one beginning, "Hello" --
6 A. Yes.
7 Q. -- it says:
8 "We are conducting a study for
9 the Rockefeller Foundation."
10 Do you see that sentence?
11 A. Yes.
12 Q. Do you consider that to be false?
13 A. No.
14 Q. Why not?
15 A. Because the study was funded by the
16 Rockefeller Foundation.
17 Q. And it is also true that the funding from the
18 Rockefeller Foundation was obtained by Public Advocates;
19 correct?
20 A. Yes.
21 Q. It is also true that the survey and its
22 results were intended to be used in your IDEA scholars'
23 reports; correct?
24 A. Yes.
25 Q. It is also true that the survey was intended

1 to be used in this litigation; correct?
 2 MR. LONDEN: Asked and answered.
 3 THE WITNESS: I am not sure what the
 4 intentions of the litigation team were.
 5 BY MR. HERRON:
 6 Q. It is fair to say from your own perspective
 7 you intended to use the results from this survey in your
 8 expert report knowing that that expert report would be
 9 used in the litigation; is that right?
 10 MR. LONDEN: Asked and answered.
 11 THE WITNESS: I thought there was a good
 12 likelihood that that would be the case.
 13 BY MR. HERRON:
 14 Q. Do think it is misleading to -- for this
 15 document, this survey, to suggest that it is being done
 16 for the Rockefeller Foundation when, in fact, the survey
 17 was being conducted for many other reasons?
 18 A. No.
 19 MR. LONDEN: Argumentative.
 20 BY MR. HERRON:
 21 Q. Why don't you?
 22 A. Because the Rockefeller Foundation, Fred
 23 Frelow in particular, who was the program officer who
 24 made the grant, had full knowledge of the uses to which
 25 the funding would be put and was supportive and

1 enthusiastic about having Rockefeller be the sponsor of
 2 this work.
 3 Q. Did any teacher -- as far as you are aware,
 4 did any teacher respondent -- any teacher responding to
 5 this survey have any idea that the responses might find
 6 their way into this litigation?
 7 A. I have no idea.
 8 Q. The last sentence in that paragraph says:
 9 "What you say will be kept and
 10 respected in complete confidence."
 11 Correct?
 12 A. Yes.
 13 Q. Did you have any say as to whether or not that
 14 promise was made in this document?
 15 MR. LONDEN: Vague.
 16 THE WITNESS: I don't believe I was ever part
 17 of a conversation about this.
 18 BY MR. HERRON:
 19 Q. Is it your view that that is a promise that
 20 should never have been made to the respondents of this
 21 survey?
 22 A. I think it is a perfectly appropriate promise.
 23 Q. Why do you say that?
 24 A. Because the strategy that researchers use to
 25 obtain honest answers to questions is to promise

1 respondents that they will -- their names will never be
 2 used in conjunction with the response, nor will the data
 3 be reported in a way that they could be personally
 4 identified, and for those of us who are in institutions
 5 that receive federal funding, it is a legal requirement
 6 that we include this in our work.
 7 Q. But this is a completely dishonest promise,
 8 isn't it?
 9 MR. LONDEN: Argumentative.
 10 THE WITNESS: Absolutely not.
 11 BY MR. HERRON:
 12 Q. Well, as we have discussed, everyone knew the
 13 results would be used in the litigation; correct?
 14 A. In no way has the confidence of the
 15 respondents been violated.
 16 Q. My point is: You knew the results would be
 17 used in -- you knew -- I think there was general
 18 understanding, was there not, that this -- well, let me
 19 try this another way.
 20 The reality is that the results of the survey
 21 were going to be used in litigation; everyone knew that
 22 going into this survey?
 23 Isn't that correct?
 24 MR. LONDEN: Asked and answered.
 25 THE WITNESS: I don't -- certainly to the

1 extent that that was a hoped-for result; it was
 2 certainly not the only result. This was to be a survey
 3 that would produce data that could be used in many ways
 4 for many purposes.
 5 BY MR. HERRON:
 6 Q. Did you or David Silver ever obtain the
 7 identity of any of the respondents to the Harris survey?
 8 A. No.
 9 Q. Do you know whether Mr. Harris has that data?
 10 A. I suspect he does have it.
 11 Q. Do you know if any of the districts -- well,
 12 the teachers who were surveyed were teachers at a number
 13 of districts.
 14 Do you know any of those districts? Can you
 15 identify them for us?
 16 A. No.
 17 Q. Were any from the Los Angeles Unified School
 18 District, as far as you know?
 19 A. I have no idea.
 20 Q. Do you know whether any of that information,
 21 that is, identity of respondents, identity of districts,
 22 was ever disclosed to David Silver?
 23 A. I don't believe it was.
 24 Q. Do you know if it was ever disclosed to anyone
 25 else who assisted you in your expert report?

1 A. I don't believe it was.
 2 Q. Can you please turn to Item 1b on Page 13749.
 3 A. Yes.
 4 Q. 1b asks:
 5 "In your classroom do you have
 6 enough books and other reading
 7 materials that are in the home
 8 language of the children in your
 9 class, not enough, or none at all?"
 10 Does this question suffer from the defect
 11 earlier identified by you in a memorandum that "enough"
 12 without providing a standard is insufficient in the
 13 survey?
 14 A. I would say it is midway between my concern
 15 about being not concrete at all and being as concrete as
 16 I might like it.
 17 Q. How do you personally interpret the meaning of
 18 that sentence, "Do you have enough books and other
 19 reading materials"?"
 20 A. I would interpret it to mean: In your
 21 judgment, do you have materials of sufficient quantity
 22 to enable you to instruct your students in a way that
 23 you feel is professionally adequate?
 24 Q. I take it you have no way of judging how the
 25 teacher respondents may have interpreted this question?

1 A. No.
 2 Q. Do you know whether Mr. Harris or the
 3 interviewer supplied any definition of what, quote,
 4 "enough" means in terms of this question, 1b on Page
 5 13749?
 6 A. I do not know.
 7 Q. If you could kindly turn to Page 13750. I
 8 want to draw your attention to Questions 2b, 2c, 2e and
 9 2f. If you would kindly review those questions.
 10 A. 2b, 2c --
 11 Q. 2e and 2f.
 12 A. -- 2e and 2f.
 13 Q. Have you been able to review them?
 14 A. Yes.
 15 Q. Each asks whether there is "enough" of
 16 something.
 17 Do you think that these questions, 2b, 2c, 2e
 18 and 2f suffer from the defect you talked about in your
 19 earlier memo?
 20 A. Certainly 2b does not. It is very concrete in
 21 that it asks about equipment and materials necessary to
 22 do particular kinds of work.
 23 2e and f also are made concrete by specifying
 24 about "to use" or "to take home" so it does have a
 25 concreteness that gives teachers a reference point.

1 2c is certainly less adequate in that regard.
 2 Q. What about 2b?
 3 A. 2b --
 4 MR. LONDEN: Asked and answered.
 5 THE WITNESS: 2b is terrific, concrete,
 6 specific.
 7 BY MR. HERRON:
 8 Q. Okay. Now, look at Question 3 here. It says:
 9 "All in all, how well prepared
 10 do you feel you are to teach all of
 11 your students in the state content
 12 standards?"
 13 Then it goes on.
 14 A. Uh-huh.
 15 Q. Do you, Dr. Oakes, interpret this as one of
 16 those questions that is insufficiently defined to
 17 provide the respondent an ability to give a concrete
 18 response?
 19 A. No. This is quite different, I think, than
 20 the concern I had earlier about the overall low levels
 21 of resources in California schools which might lead
 22 everyone to say they don't have enough until there is
 23 some concrete anchors.
 24 This one is of a very different order, and it
 25 is a very frequently asked kind of question about

1 teachers' confidence in their own level of preparation.
 2 Q. Did Mr. Harris or his interviewers provide the
 3 teacher respondents with any definition of "State
 4 content standards"?"
 5 A. I have no idea.
 6 Q. Do you know how -- I take it you do not -- do
 7 you know how the teacher respondents interpreted "State
 8 content standards" for purposes of this question?
 9 A. Teachers in California are extraordinarily
 10 familiar with the State content standards, and my guess
 11 is that I would be extraordinarily surprised if any of
 12 the respondents didn't know exactly what Mr. Harris
 13 meant.
 14 Q. On Page 13752, Question 11c --
 15 A. Yes.
 16 Q. -- asks:
 17 "How do you rate your
 18 textbooks on their coverage of the
 19 state content standards?"
 20 Is it your view that is sufficiently concrete
 21 to provide teachers a way adequately to respond?
 22 A. Yes, I do.
 23 Q. In 11b what does "up-to-date information" mean
 24 to you in terms of this question?
 25 A. Recent developments.

1 Q. What does "recent developments" mean in terms
2 of this question?
3 A. In terms of, say, social studies materials,
4 whether the -- say, whether the president is named as
5 someone who has been president in the last five years or
6 whether it was someone who was president 20 years ago.
7 Q. Do you think "up-to-date" could mean different
8 things depending on the textbook at issue?
9 A. I think it would.
10 Q. For example, your report discusses mathematics
11 texts, social science texts, science texts.
12 Presumably mathematics, "up to date," could be
13 10 years ago; is that correct?
14 A. It could be.
15 Q. I take it that may be true of English as well?
16 A. It could be.
17 Q. Is there any distinction provided to teacher
18 respondents or any definition provided so that they
19 could understand what "up-to-date information" meant
20 with respect to 11b, as far as you know?
21 A. Not to my knowledge.
22 Q. 11d on the same page, 13752, asks:
23 "Do your students have access
24 to fully usable computers in your
25 classroom?"

1 Do you have any idea what "fully usable
2 computers" mean?
3 A. This says -- you only read part of the
4 question -- "fully usable computers which allow them
5 access to the Internet for research."
6 "Fully usable" is a functional definition that
7 permits students to access the Internet for research.
8 Q. On Page 13754, Question 14b asks:
9 "Has your school had teaching
10 positions which could not be filled
11 for long periods of time or could
12 be filled only by substitutes or
13 has neither of these happened?"
14 Do you feel that "long periods of time" is
15 sufficiently well defined here so as to provide teacher
16 respondents an opportunity adequately to respond?
17 A. Yes.
18 Q. Why do you say that?
19 A. Because teachers are very familiar with
20 short-term absences for which day-to-day substitutes are
21 hired, and when substitutes are hired on longer-term
22 contracts, then it is quite a common matter of
23 discussion about having long-term subs in jobs that
24 teachers would be very familiar with.
25 Q. What is your understanding of what "long

1 periods of time" means in the context of this question?
2 A. Long enough so that it was perceived as a
3 problem.
4 Q. Do you know how the teacher respondents
5 interpreted that term, "long periods of time"?
6 A. No.
7 Q. I want to turn to your report at Page 21 and
8 ask about some of these tables.
9 Table 4 I would like to begin with, if I may.
10 Table 4 states:
11 "Textbook use is nearly
12 universal, although slightly
13 greater at schools with less
14 qualified teaching staffs."
15 What does "certified" or "uncertified" mean in
16 this table?
17 A. Teachers who hold either provisional or clear
18 credentials.
19 Q. And "uncertified" is anything less than that?
20 A. Yes.
21 Q. The overall percentage expressed here is 92
22 percent, meaning, I take it, that teachers report that
23 they used textbooks?
24 A. Yes.
25 Q. Can you explain to me why the -- here is what

1 I am not getting: See the 77 percent and 17 percent?
2 A. Uh-huh.
3 Q. What do those mean?
4 A. Percent of the schools in the sample that had
5 those characteristics.
6 Q. How come that only adds up to 94 percent?
7 A. Well, 94 percent of the teachers -- I don't
8 know.
9 Q. Shouldn't it equal 100 percent? If you add
10 those two columns, that is, add schools --
11 A. Let's see.
12 Are there some schools that wouldn't be
13 captured in those two categories?
14 Q. I don't know. That is a good question.
15 Could you kindly answer it?
16 A. It would -- I would have to think about this
17 for a while and do some calculations.
18 Q. Right now why that adds up to 94 percent
19 doesn't come immediately to mind?
20 A. It doesn't come immediately to me.
21 Q. Let's look at Table 5. It talks about:
22 "Textbook use is nearly
23 universal at all levels of
24 California K through 12 schooling."
25 The N line under "Overall" says, "N equals

1 1071."
 2 Is that the sample size?
 3 A. Yes.
 4 Q. Meaning that 1,071 teachers were surveyed?
 5 A. Yes.
 6 Q. Then the next three components are elementary,
 7 middle and high school teachers; correct?
 8 A. Yes.
 9 Q. Why is it that the N's for those columns sum
 10 to something more than 1,071?
 11 A. I would have to speculate.
 12 Q. Shouldn't they equal 1,071?
 13 A. If teachers had assignments where they went to
 14 more than one place, they might be counted twice.
 15 Q. Presently you can't explain why those sums
 16 would total 1,071?
 17 A. I would have to look at my records.
 18 Q. What records would you look at? I certainly
 19 may have them here.
 20 A. You might.
 21 I would want to go back and look at the
 22 banners or the runs that were done to produce these
 23 tables to see if I simply miscopied something off the
 24 table, or my strong suspicion is there would -- there is
 25 a good reason, and it would take me a while to figure it

1 out.
 2 Q. Table 6 refers to "table use" --
 3 "Textbook use is nearly
 4 universal across teachers of
 5 different academic content areas."
 6 What is the explanation -- well, the four
 7 right columns in this table list those teaching science,
 8 math, social science and English.
 9 Why did their N values sum to more than 1,071?
 10 A. Because many teachers, especially those at the
 11 elementary school level, teach more than one session.
 12 Q. Does the survey date provide any indication as
 13 to why some teachers do not use textbooks?
 14 A. I believe there is an item on this survey
 15 which asks teachers whether if -- if -- let me find it.
 16 Item 10b.
 17 Q. You are looking now at Exhibit 38?
 18 A. The same -- Exhibit 38, Page 13752, Item 10b,
 19 those who said they did not use textbooks were then
 20 asked:
 21 "Is this because the school
 22 does not make adequate textbooks
 23 available or is it your own choice
 24 not to use textbooks?"
 25 Q. Did you ever express the results of the

1 responses to that question in any of your tables?
 2 A. I don't think I did.
 3 Q. Is it your opinion in this case and is it part
 4 of your report that it is improper for a teacher to
 5 choose not to use a textbook in class?
 6 MR. LONDEN: Vague.
 7 THE WITNESS: I don't know.
 8 BY MR. HERRON:
 9 Q. When might it be proper for them not to use a
 10 textbook in class in teaching?
 11 MR. LONDEN: Asked and answered.
 12 BY MR. HERRON:
 13 Q. You can answer.
 14 A. When they choose to use a method of
 15 instruction that does not require them to use a
 16 textbook.
 17 Q. Such as?
 18 A. When they show a video.
 19 Q. Are there other occasions?
 20 A. Certainly. When they have a discussion.
 21 Q. Are there any other occasions that come to
 22 mind?
 23 A. They may be using a computer.
 24 Q. Any others that come to mind?
 25 A. I am sure I could think of lots more, but --

1 Q. May I ask about Table 7, please, on Page 23.
 2 A. Yes.
 3 Q. The -- one of the responses relates here to
 4 "inadequate quality" and, specifically, "poor physical
 5 condition of texts"?
 6 A. Yes.
 7 Q. Do you know how teachers were to interpret
 8 that question?
 9 A. Well, I would like to look at the item so I
 10 could look at the full language they were asked since
 11 all my tables have these little truncated -- they were
 12 asked to rate your textbooks --
 13 "How would you rate the
 14 physical conditions of the
 15 textbooks available to you?
 16 Excellent, good, only fair and
 17 poor."
 18 Q. I see.
 19 A. So they were asked to make a judgment about
 20 the condition that their books were in, and materials.
 21 Q. Okay. I am going to mark as Exhibit 39 the
 22 following document, please.
 23 (Exhibit 39 was marked for I.D.)
 24 BY MR. HERRON:
 25 Q. I am not going to ask you about the second

1 e-mail --
 2 A. Okay.
 3 Q. -- to speed things along.
 4 Dr. Oakes, have you had an opportunity to
 5 review Exhibit 38?
 6 A. Yes.
 7 Q. Do you --
 8 A. I think it is 39.
 9 Q. 39. Thank you.
 10 Do you recognize this document?
 11 A. Yes.
 12 Q. The -- this appears to be a series of e-mails,
 13 the top one of which -- and when I say, "top," I mean
 14 the one highest up on the page -- Bates 12029 is an
 15 e-mail, "Subject: Significance tests," date 4-30-02
 16 from you to Marisa Saunders; correct?
 17 A. Yes.
 18 Q. This talks about your wanting at this time to
 19 have "significance tests on the variables in our
 20 tables"; correct?
 21 A. Yes.
 22 Q. And this was the instruction you were giving
 23 to David Silver or to Marisa?
 24 A. The chronology was that I had asked Noah to
 25 relay to Marisa my request of David or the faculty

1 member who is David's advisor, who is Mike Seltzer,
 2 whether or not they could do -- because David was not a
 3 member of this project originally. He works for me on
 4 another project -- whether we could either borrow him or
 5 whether Mike Seltzer might be interested in doing the
 6 significance testing.
 7 Q. I see.
 8 A. And so she was -- she was responding to me
 9 that Noah had asked her to make the contact, and so she
 10 was asking me some questions about that, which I then
 11 responded to her questions in this e-mail you have
 12 pointed to.
 13 Q. The second full sentence of that e-mail reads:
 14 "However, I have a couple of
 15 ways that I'd like them to be
 16 tweaked."
 17 What is the "them" in that sentence?
 18 A. The tables.
 19 Q. What is -- what did you want to be tweaked?
 20 A. I constantly was playing with the format of
 21 the tables and the way I wanted to collect different
 22 variables into single tables, and I wanted her -- I
 23 wanted to talk to her about that.
 24 Q. It goes on later on in that second-to-the-last
 25 sentence in the first paragraph:

1 "I am supposed to have a call
 2 with the MOFO statistician about
 3 this."
 4 I asked you about this earlier.
 5 Do you know who that person is?
 6 A. I think it was Andy Lazarus, who Matt Kreeger
 7 said he would ask if he was interested.
 8 It turned out that he didn't do the work, so I
 9 proceeded to engage David Silver in it.
 10 Q. I am going to hand you what we will mark as
 11 Exhibit 40.
 12 (Exhibit 40 was marked for I.D.)
 13 BY MR. HERRON:
 14 Q. Do you recognize this document?
 15 A. Yes.
 16 Q. What is it?
 17 A. This is an exchange I had with John Luczak at
 18 Stanford about the data from the RAND Corporation Class
 19 Size Reduction Study that they provided me, which I
 20 think is represented in this final form in one of the
 21 tables.
 22 Q. One of the tables related to Opinion No. 2;
 23 right?
 24 A. Yes.
 25 Q. Okay. Did he do weighting on the RAND survey

1 date data? "He" being John Luczak.
 2 A. He did say that he added a teacher weight
 3 variable in order to make the sample generalizable to
 4 the state as a whole.
 5 Q. Okay. I will mark Exhibit 41.
 6 Off the record a second.
 7 (Exhibit 41 was marked for I.D.)
 8 BY MR. HERRON:
 9 Q. Dr. Oakes, have you had an opportunity to
 10 review Exhibit 41?
 11 A. Yes.
 12 Q. What is this?
 13 A. This is a note from me to the -- to John
 14 Affeldt, principally, with copies to Matt and Gary Blasi
 15 and Mark Rosenbaum about the first set of banners that I
 16 received, and my -- I believe it was the first set.
 17 Maybe it was the second set. When I asked for -- it was
 18 the set of banners that they sent me -- which my perusal
 19 of them suggested were not done with the weighted files,
 20 and I knew that was a problem, and I was politely trying
 21 to clarify what it is that I got. And if I was correct
 22 and that it was not from weighted data, would I get
 23 weighted data? And, if not, how would I deal with the
 24 representativeness problem.
 25 And also the data I got did not have

1 definitions of the comparison groups, so I wanted to
2 know that.

3 Q. When you say, "did not have definitions of the
4 comparison groups," what do you mean?

5 A. As you probably know, Harris created an
6 at-risk variable, which was a composite.

7 Q. Right.

8 A. And it was not clear to me from the banners
9 what variables that was comprised of.

10 And also the banners have a lot of shorthand
11 on them, like "high minority" or "high credential," "low
12 credential," something like that. It just was in a
13 cryptic form you see on tables, and I wanted to have
14 clear definitions of how those variables were
15 constructed.

16 Q. Were you supplied a code book that gave you
17 those definitions?

18 A. Not at that time.

19 Q. Were you supplied a code book at a later time?

20 A. David Silver got a code book at some point. I
21 never saw the code book firsthand.

22 Q. Do you know whether that code book has been
23 produced?

24 A. I do not know.

25 In fact, I am not certain David Silver got a

1 the questionnaire, but I am not sure -- but it says,
2 "Preliminary results," so it looks like a set of
3 banners.

4 Q. Leecia Welch calls it, "our teacher survey."

5 What is she referring to, as far as you know?

6 A. My assumption is that she was referring to the
7 Harris survey.

8 MR. HERRON: Jack, I propose to stop at this
9 point to give Dr. Oakes and others a chance to shoot
10 home and also for me to go through and, hopefully,
11 eliminate what appear to be a number of documents that
12 seem to be no longer relevant based on what we have
13 heard so far.

14 MR. LONDEN: Efficiency is good.

15 MR. HERRON: I propose the same stipulation
16 that applied to the first two session of Dr. Oakes'
17 deposition.

18 MR. LONDEN: Yes.

19 MR. HERRON: Okay. Great. We will start up
20 tomorrow at 9:30.

21
22 (The following stipulation
23 from a prior deposition was
24 incorporated as follows:

25 "MR. HERRON: May we

1 code book. I recall a message from David saying --
2 essentially asking a question, saying, "If something is
3 the case, then I will need a code book or a new code
4 book" or something.

5 I am simply speculating based on that, which I
6 shouldn't do.

7 Q. I will show you what we will mark as Exhibit
8 42.

9 (Exhibit 42 was marked for I.D.)

10 THE WITNESS: Is this David's e-mail?

11 BY MR. HERRON:

12 Q. No. It is later in here. I just don't know
13 exactly where.

14 You need only look at Page 1 of this exhibit.

15 A. Uh-huh.

16 Q. Have you had an opportunity to review Exhibit
17 42?

18 A. 42?

19 Q. 42, yes.

20 A. Yes.

21 Q. Do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. It is a message from Leecia Welch which has an
25 attachment that looks like it is the survey -- probably

1 stipulate the copies of the
2 documents attached to the
3 deposition may be used as
4 originals, and may we further
5 stipulate that the original of this
6 deposition be signed under penalty
7 or perjury.

8 "The original will be
9 delivered to the offices of the
10 ACLU and directed to Mark
11 Rosenbaum; that the reporter is
12 relieved of liability for the
13 original of the deposition. The
14 witness will have 30 days from the
15 date of the court's transmittal
16 letters to review, sign and correct
17 the deposition.

18 "And that Mr. Rosenbaum or
19 anyone he shall designate from
20 plaintiffs' side shall notify all
21 parties in writing of any changes
22 to the deposition within that
23 30-day period. And if there are no
24 such changes or signature within
25 that time, that any unsigned and

1 uncorrected copy may be used for
 2 all purposes as if signed and
 3 corrected.
 4 "MR. ROSENBAUM: If it's not
 5 a burden for the reporter, because
 6 I'm out of town a lot now because
 7 of depositions and my teaching, if
 8 copies could be served -- the
 9 stipulation that Mr. Herron read
 10 may -- if it could be served on
 11 both me and Ms. Lhamon, Catherine
 12 Lhamon, I think it would facilitate
 13 the process. Is that okay?
 14 "THE REPORTER: Yes.
 15 "MR. ROSENBAUM: With that
 16 addendum, I certainly stipulate to
 17 that.
 18 "MR. HERRON: Very good.")
 19
 20 (Whereupon at 4:47 p.m., the
 21 deposition of JEANNIE OAKES was concluded.)
 22
 23
 24
 25

1 STATE OF CALIFORNIA)
) SS.
 2 COUNTY OF LOS ANGELES)
 3
 4 I, CATHY A. REECE, CSR No. 5546, a Certified
 5 Shorthand Reporter in and for said County and State, do
 6 hereby certify:
 7 That prior to being examined, the witness
 8 named in the foregoing deposition, JEANNIE OAKES, by me
 9 was duly sworn to testify to the truth, the whole truth,
 10 and nothing but the truth;
 11 That said deposition was taken down by me in
 12 shorthand at the time and place therein named and
 13 thereafter reduced to computerized transcription under
 14 my direction and supervision, and I hereby certify the
 15 foregoing deposition is a full, true and correct
 16 transcript of my shorthand notes so taken.
 17 I further certify that I am neither counsel
 18 for nor related to any party to said action nor in
 19 anywise interested in the outcome thereof.
 20 IN WITNESS THEREOF, I have hereunto subscribed
 21 my name this _____ day of _____, 2003.
 22
 23
 24 _____
 CATHY A. REECE, RPR, CSR No. 5546
 25

1 STATE OF CALIFORNIA)
) SS.
 2 COUNTY OF LOS ANGELES)
 3
 4 I am the witness in the foregoing deposition.
 5 I have read the foregoing deposition or have
 6 had read to me the foregoing deposition, and having made
 7 such changes and corrections as I desired, I certify
 8 that the same is true in my own knowledge.
 9 I hereby declare under penalty of perjury
 10 under the laws of the State of California that the
 11 foregoing is true and correct.
 12 This declaration is executed this _____ day of
 13 _____, 2003, at _____
 14 California.
 15
 16
 17 _____
 JEANNIE OAKES
 18
 19
 20
 21
 22
 23
 24
 25