

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 VII
TAKEN ON
MONDAY, APRIL 7, 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 9:40 a.m., on Monday, April 7,
4 2003, before Cathy A. Reece, RPR, CSR No. 5546.

5
6
7 APPEARANCES:

8 FOR THE PLAINTIFFS:

9 MORRISON & FOERSTER, LLP
10 (NOT PRESENT)
11 425 Market Street
12 San Francisco, California 94105-2482
13 (415) 268-7415

14 -and-

15 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
16 BY: MARK D. ROSENBAUM, ESQ.
17 SOPHIE A. FANELLI, RESEARCH FELLOW
18 1616 Beverly Boulevard, Suite 920
19 Los Angeles, California 90026-5752
20 (213) 977-9500
21
22
23
24
25

1 APPEARANCES (Continued)

2
3 FOR INTERVENOR LOS ANGELES UNIFIED SCHOOL DISTRICT:

4 LOZANO SMITH
5 (NOT PRESENT)
6 20 Ragsdale Drive, Suite 201
7 Monterey, California 93940-5758
8 (831) 646-1501
9

10 FOR INTERVENOR CALIFORNIA SCHOOL BOARDS ASSOCIATION:

11 LAW OFFICES OF OLSON HAGEL & FISHBURN LLP
12 BY: N. EUGENE HILL, ESQ.
13 555 Capitol Mall, Suite 1425
14 Sacramento, California 95814-4602
15 (916) 442-2952
16

17 Also present: Gene Coppa (A.M. session only)
18
19
20
21
22
23
24
25

1 APPEARANCES (Continued)

2
3 FOR THE DEFENDANT STATE OF CALIFORNIA:

4 O'MELVENY & MYERS, LLP
5 BY: LYNNE M. DAVIS, ATTORNEY AT LAW
6 400 South Hope Street, Suite 1500
7 Los Angeles, California 90071-2899
8 (213) 430-7221
9

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

13 STATE OF CALIFORNIA
14 DEPARTMENT OF JUSTICE
15 OFFICE OF THE ATTORNEY GENERAL
16 BY: ANTHONY V. SEFARIAN, ESQ.
17 1300 I Street, Suite 1101
18 Sacramento, California 94244-2550
19 (916) 327-6819
20
21
22
23
24
25

1 I N D E X

2
3 WITNESS: JEANNIE OAKES

4
5
6 EXAMINATION PAGE
7 BY MR. HILL 1251, 1309
8
9

10 EXHIBITS

11 EXHIBIT MARKED
12 (NONE)
13
14
15

16
17 QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:
18 (NONE)
19

20 INFORMATION TO BE SUPPLIED:
21 (NONE)
22
23
24
25

1 LOS ANGELES, CALIFORNIA;
2 MONDAY, APRIL, 7, 2003, 9:40 A.M.

3 -----

4 MR. ROSENBAUM: David, in the last deposition,
5 asked Jeannie to search for some additional documents
6 relating to the survey; right?

7 THE WITNESS: The SPRA study.

8 MR. ROSENBAUM: "Study."

9 She found some. I only have one copy. I just
10 saw them for the first time this morning. You are
11 welcome to them, and maybe we can make copies.

12 MS. DAVIS: We will make copies at the break.

13 THE WITNESS: The top one is not related.

14 MR. ROSENBAUM: That is a separate document.

15 MS. DAVIS: There are two documents here.

16 MR. ROSENBAUM: The first document I think you
17 actually have in some other form.

18 MS. DAVIS: Great.

19 MR. HILL: We will look at those at the break.

20 MS. DAVIS: We will make copies at the break

21 and get those distributed.

22
23 JEANNIE OAKES,
24 having been first duly sworn, was
25 examined and testified as follows:

1 Q. Answer it that way first. Yes, your upcoming
2 testimony.

3 A. We had a brief conversation about it on Friday
4 morning by telephone.

5 Q. And would you tell us what was said to you and
6 what you said in return in that conversation?

7 A. I would characterize it as a "pep talk" where
8 the attorneys encouraged me to just continue to do what
9 I was doing, and that things seemed to be going fine,
10 and they didn't see any need for any extensive
11 preparation.

12 I said, "Flattery will get you everywhere."

13 Q. Indeed.

14 I would like you to go back to your -- to your
15 report. I want to look at Page 120 of your report.

16 In the final paragraph on Page 120, in the
17 first sentence of that paragraph -- and I will read it.

18 "Williams versus State of
19 California provides an opportunity
20 to establish adequate levels of
21 important instructional
22 conditions."

23 Then you go on with "such as." I would like
24 to ask you a couple of questions on that part I just
25 read.

1 EXAMINATION

2 BY MR. HILL:

3 Q. Professor Oakes, my name is Eugene Hill, and I
4 am representing the California School Boards
5 Association.

6 I think we are here to try to finish up
7 instructional materials, if I remember the sequence
8 correctly. I hope you see the same sequence that I do.

9 First, there has been some break in the time
10 since we had the last deposition testimony.

11 Has anything occurred that would prevent you
12 from being able to listen to the questions and give your
13 best answers to them?

14 A. No.

15 Q. -- since that time?

16 A. No.

17 Q. Have you done additional -- strike that.

18 Have you -- what did you do to prepare for
19 today's testimony?

20 A. I reviewed the transcripts from the prior
21 deposition and looked at a few of the materials that
22 were underlying my reports.

23 Q. Did you discuss your testimony with any of the
24 attorneys representing plaintiffs?

25 A. This upcoming testimony?

1 When you use the word, "opportunity," what do
2 you mean by that word? What do you mean, "opportunity"?

3 A. Well, in the context of the sentence it means
4 that I see Williams as a case that has raised awareness
5 of particular problems and that, at best, it might
6 prompt a solution to those problems.

7 Q. And from what source do you see that solution?

8 A. My analysis is that there are opportunities
9 for the State to restructure the way it builds the
10 capacity of local school districts to insure that all
11 students have access to the basic tools of an education.

12 Q. So when you use the word, "opportunity," you
13 don't refer to the plaintiffs in the case. As you just
14 said, you are referring to the State, so it is an
15 opportunity for the State.

16 Is that the way you are using the term?

17 A. Well, in a nonlegal sense I consider the
18 plaintiffs to be part of the State as well, and from my
19 perspective as an education researcher and policy
20 analyst it -- I see the State as a collective that has a
21 responsibility to serve the children of California and
22 that the Williams case provides an opportunity for all
23 of us in the state to do that.

24 Q. Does it provide an opportunity for you?

25 A. As a citizen.

1 Q. Does it provide an opportunity for you as a
2 professor?

3 MR. ROSENBAUM: Vague.

4 THE WITNESS: Now I will have to ask you what
5 you mean by the word, "opportunity."

6 BY MR. HILL:

7 Q. I don't want to engage in argument. You are
8 the one who used the term. I am trying to understand
9 how you used it, so I will go back to the question.

10 Does it provide an opportunity to you as a
11 professor involved in education?

12 MR. ROSENBAUM: That is vague.

13 THE WITNESS: Certainly the case provided an
14 opportunity for me to do research that I may not have
15 done otherwise.

16 BY MR. HILL:

17 Q. I would like to go on with the sentence. When
18 you use the word, "establish" -- you use it as "an
19 opportunity to establish."

20 How are you using the word, "establish" in
21 that sentence?

22 A. I would probably use "realize," "accomplish"
23 as synonyms for that word.

24 Q. And the following word, you use "adequate" and
25 place it in quotes, and "adequate" is a term that is

1 A. Because this is in the conclusion of a very
2 long report, much of what I am doing here is trying to
3 sum up and remind the reader of the context. In that
4 sense I would see the specifics of this report on
5 textbooks and other instructional materials as one of
6 many important conditions that needs to be in place for
7 students to have an adequate education or a sufficient
8 education or sound education or a meaningful education.

9 Other conditions are also being considered in
10 this case, such as teachers and facilities and -- so
11 that I am sure I was thinking in broader than just this
12 particular topic when I used the word, "instructional
13 conditions."

14 Q. So the term, "instructional conditions" is
15 meant to embrace more than textbooks and instructional
16 materials?

17 A. In painting this broader picture of the
18 context in which the specific concerns about textbooks
19 and materials exist, yes.

20 Q. Are you suggesting by the reference that you
21 have made in that first sentence of the final paragraph
22 on Page 120 of the report that there was a need to
23 "establish adequate levels of important instructional
24 conditions" other than textbooks and instructional
25 materials as you've defined it?

1 used in many instances in your report. We talked about
2 it a lot over the time we have been present in this
3 deposition.

4 But this time you chose to put it in quotes.
5 I am curious what that means.

6 A. It doesn't have any particular meaning.

7 Q. We can read it as if the quotes weren't there?

8 A. I think we could.

9 Q. It wasn't meant to define the term or refer to
10 a definition of the term?

11 A. Not as I am recalling right now.

12 Q. The next part of that sentence goes on and
13 says:

14 "Establish adequate levels of
15 important instructional
16 conditions."

17 I can't remember every word of the report as I
18 read it, and I am sure you can't either, but I am -- I
19 have not seen the term, "instructional conditions" used
20 in the report elsewhere.

21 Maybe you can refresh me and suggest it has
22 been used elsewhere, but I am -- my question is: Is the
23 use of the term, "important instructional conditions"
24 meant to distinguish something different from textbooks
25 and instructional materials?

1 A. Well, when we get to the third paper that I
2 wrote for this case, what is called the "Meta report,"
3 you will see that I do discuss the issues of the case
4 much more broadly and conclude with some recommendations
5 that it would be extraordinarily helpful and important
6 if the State would establish some standards related to
7 conditions and resources, including and beyond textbooks
8 and materials.

9 Q. This report however is more limited than your
10 third report, the Meta report or the synthesis report.

11 Am I take to take your answer to mean that you
12 are including in the conclusions of this report material
13 that is reflected in your third report?

14 A. No. It is just a general statement with no
15 particular meaning other than -- elsewhere in the report
16 I talk about how the problems related to textbooks
17 converge with problems related to staffing shortages and
18 problems with facilities, so there are references to
19 other conditions.

20 I am using this in no particular way here
21 other than to refer to there are many things that make
22 up an education. We could call those "instructional
23 conditions," and textbooks and materials are one class
24 of things that belong in that general term.

25 Q. You have talked in other parts of your

1 testimony about "reform strategies." You have gone
2 through and told us about other states, and you have
3 told us about some deficiencies that you believe exist
4 in the existing State programs.

5 In the first paragraph of your conclusion you
6 refer to the "hope of standard-based reform strategies."

7 I would like you to respond to what you meant
8 by "standard-based reform strategies."

9 A. To be perfectly precise, it should probably
10 say, "standards-based" rather than "standard based," and
11 what I am referring to is what I described in a much
12 earlier section of this report about the reforms that
13 California has undertaken to develop content standards
14 and to attempt to align various elements of the
15 educational system with those standards to provide
16 greater coherence and a higher level of academic
17 expectations and transparency in those expectations for
18 California students.

19 Of course, here I am talking about
20 standards-based reform as a national movement, as a
21 general idea, rather than specifically in California.

22 Q. As a national movement what is the
23 "standard-based reform movement"? What is it?

24 Again, you introduced the term, "national
25 movement."

1 and if we align tests so that what we measure children
2 on is aligned with the standards, we will have a system
3 that has -- that is clear and coherent.

4 And the theory was that that system would then
5 raise the level of demand on students for learning and
6 raise the level of students' response.

7 BY MR. HILL:

8 Q. Does your report on textbooks and
9 instructional materials embrace that movement?

10 MR. ROSENBAUM: It's vague.

11 THE WITNESS: By "embrace," do you mean
12 "approve of" or "applaud" or -- do you mean --

13 BY MR. HILL:

14 Q. Does it implement the principles of that
15 movement?

16 MR. ROSENBAUM: That's vague.

17 THE WITNESS: It -- the report doesn't
18 implement anything, but what the report does is say that
19 California's education system needs to be viewed in
20 light of the State's commitment to developing a
21 standards-based educational system, so that the State's
22 engagement -- the State's development of standards and
23 its engagement in pressing teachers and students to
24 respond to those standards provides an essential context
25 for our understanding of the need for textbooks and

1 I want to understand what that is.

2 MR. ROSENBAUM: I think she said,
3 "standards-based."

4 THE WITNESS: The -- again in my third report
5 I have a more elaborate discussion of the
6 standards-based reform movement in the United States. I
7 can give you a capsule.

8 The idea of standards-based reform emerged
9 somewhere in the mid-to-the-late 1980's when it appeared
10 that the cry for school improvement voiced in "A Nation
11 at Risk" in 1983 had not succeeded in bringing the
12 levels of educational quality to the nation's schools
13 that had been hoped for.

14 The idea of standards-based reform probably --
15 I don't know when it was first articulated, but
16 certainly most famously articulated by Marshall Smith,
17 who was then the Dean at Stanford -- was that if -- a
18 very simple idea -- that if we make clear what we expect
19 students to know and be able to do and put those in some
20 sort of concise form that people can refer to on a
21 regular basis and if we align curriculum materials and
22 textbooks with those standards so they include the
23 knowledge that is required to meet those standards, if
24 we prepare teachers so they are capable of engaging
25 students in ways that they can learn to those standards

1 materials in 2002 and 2003.

2 BY MR. HILL:

3 Q. My recollection of the testimony is that you
4 came on to the Williams case sometime in the spring of
5 the year 2000. I think that is -- I am not trying to
6 hold you to that date, but that seems to be the
7 approximation of the date at which you came onto the
8 Williams case.

9 Am I -- is that correct?

10 A. I think that is not quite correct.

11 I think that I said in the summer of 2000
12 Linda, Professor Linda Darling-Hammond asked me to
13 participate in supporting her writing of an expert
14 report that she was preparing.

15 I agreed to do that, but frankly only devoted
16 a very small amount of time to it until about the
17 following June or July.

18 Q. Of 2001?

19 A. Yes.

20 Q. I am not trying to put a qualitative impact on
21 your time. I am just trying to get a date fixed when
22 the case began to get your attention, and without trying
23 to deal with the quality of that intention -- attention.

24 A. Well, I have to say that I was involved in
25 doing some literature review and preliminary writing

1 about textbooks and instructional materials between the
2 summer of 2000 and the summer of 2001, but really did
3 not pay very much attention at all to this case until
4 the summer of 2001.

5 Q. Is the standards -- I am going to pluralize
6 it.

7 A. Please.

8 Q. Is the standards-based reform strategy, is
9 that linked in some way to an equity reform strategy or
10 equity reform movement?

11 A. That is actually a very interesting question.

12 Q. That is why I asked it.

13 A. Many of the reforms in the 1980's were
14 propelled by an impulse that argued that we had spend so
15 much time in the 60's and 70's worrying about equity
16 issues that we had to turn our attention again to
17 excellence and that we had really sacrificed excellence
18 in our schools based on equity.

19 But by the time Marshall Smith really
20 formulated this idea of a standards-based reform, the --
21 his commitment and his articulation of it -- and I think
22 it was picked up by the governors in a great deal of the
23 rhetoric -- is that when you establish very high
24 standards they have to be for all children, not just
25 some, and in that way the standards-based reform

1 standards is an integral element of the standards-based
2 reform.

3 Is that a fair statement?

4 A. Yes.

5 Q. And the strategy is -- excuse me.

6 The standard is set in the implementation of
7 the strategy by whom?

8 In any given -- let me withdraw the question
9 and start over again.

10 In any given educational system how is the
11 standard derived?

12 A. The standards have been derived in many ways.

13 First, let me make clear that in the original
14 conception and the original implementation plans for
15 standards-based reform there were three kinds of
16 standards talked about.

17 One was the content standards. Those are the
18 things that specify what children should know and be
19 able to do.

20 A second kind of standard was a performance
21 standard, which suggested that not only should they know
22 it and be able to do it, but that they should do it to a
23 particular level -- and that that would vary for
24 children of different ages -- to set the performance
25 expectations.

1 movement married an interest in excellence and very high
2 standards with an interest in being equitable in that
3 all children should have an expectation of achieving
4 those standards and that all children should have in
5 place the opportunity to learn what was necessary to
6 meet those standards.

7 Q. Would it be fair to summarize the
8 standards-based reform strategy as an "output strategy"?

9 A. No.

10 Q. Why is that not true?

11 A. Because the original formulation of
12 standards-based reform was that while it is setting a
13 standard, and not so much in the terms of a hurdle that
14 has to be overcome or an outcome that has to be reached,
15 but rather as a flag that is raised very, very high that
16 is something to which one looks and seeks to attain,
17 very much like a flag is a standard, then the notion is
18 that that standard drives the provision of resources and
19 opportunities that include all that one might reasonably
20 think teachers and children need to reach those
21 standards.

22 And then the measures, the tests, are a way of
23 putting a -- some ability to monitor and to assess the
24 degree to which we are achieving those goals.

25 Q. It sounds from your answer like setting high

1 The third was called, "school delivery
2 standards" or "delivery standards," which were a set of
3 standards of what would need to be in place in a system
4 in order to ensure that there was an opportunity to
5 learn those standards.

6 The notion of delivery standards eventually
7 became talked about in the Clinton Administration as
8 "Opportunity-to-Learn standards."

9 Again, I talk about this at some length in the
10 Meta report, but through the -- after much political
11 wrangling at the federal level, the idea of
12 Opportunity-to-Learn or school delivery standards was
13 eliminated from the federal formulation of
14 standards-based reform.

15 Now the standards that were set actually were
16 set by, initially, national bodies comprised primarily
17 of subject matter experts and teachers of those subject
18 matters and education researchers and some policymakers
19 who met -- there were several grants made from the U.S.
20 Department of Education, from the National Science
21 Foundation, to organizations -- I was on the standards
22 panel for science, which was done by the National
23 Academy of Sciences and the National Science Foundation.

24 The math standards were set by the National
25 Council of Teachers of Mathematics. There were bodies

1 around the country, national bodies, focused on the
2 content areas.

3 Because education in this country is
4 essentially a state function and not a federal function,
5 each state, then, beginning during the Clinton
6 Administration with the "Improving America's Schools
7 Act," I believe, was expected to set its own standards
8 using those national standards formulated by subject
9 matter experts as a model to the extent it seemed
10 reasonable in any state to do that.

11 It became a requirement for the receipt of
12 some federal moneys that states put in place sets of
13 standards, and so states varied in the way they composed
14 groups to develop those standards.

15 In California we had a standards commission
16 that again was comprised of teachers and subject matter
17 experts and citizens interested in those content areas.

18 Q. You said that there were three potential
19 definitions of "standards" as you described them in
20 response to that question.

21 When you use the term, "standards-based reform
22 strategies" as you refer to it in your final paragraph
23 in the conclusion, which of those definitions are you
24 using?

25 A. First, I didn't say there were three

1 definitions.

2 I said there are three types of standards that
3 were part of the conception of standards.

4 Q. I will withdraw the question.

5 Which type of standard were you referring to
6 in the paragraph on Page 120 that is headed,
7 "Conclusions"?

8 You use the term several times in that
9 paragraph.

10 A. Well, let's see.

11 In the first sentence in the conclusion where
12 I talk about the hope of standards-based reform is
13 speaking generally about the idea, the conception of
14 standards-based reform, which included all three of
15 those types of standards.

16 Then in the third line I talk about the
17 academic standards. That is certainly referring
18 specifically to the content, the performance
19 standards --

20 Q. I don't want to interrupt your response, but
21 just as a reference point you had mentioned the
22 Standards Commission in California --

23 A. Yes.

24 Q. -- adopting the standards.

25 Are those the kinds of standards you just now

1 were referring to when you said, "academic standards"?

2 A. Certainly the content standards were what the
3 commission --

4 Q. Pardon me for interrupting your response to
5 the question.

6 Go ahead, please.

7 A. Then I believe the next use of that word is in
8 the -- one line up from the bottom of the page. Again,
9 I am talking about the content and performance
10 standards.

11 Q. Is it fair to characterize the standards-based
12 reform strategy as an "input strategy"?

13 A. No. I believe that the notion of
14 standards-based reform or another phrase for it is
15 "systemic reform" is exactly that; that it is a reform
16 that attempts to bring coherence between inputs,
17 expectations and student -- and the results or --
18 student outcomes.

19 Q. I would like you to think back to the period
20 in your life before you were involved with this case.
21 My reference point would make that sometime around the
22 summer of 2000, somewhere along in that stretch. Put
23 yourself in that place.

24 MR. ROSENBAUM: Gladly.

25 MR. HILL: Pardon?

1 MR. ROSENBAUM: Gladly.

2 MR. HILL: Wouldn't we all gladly do that? I
3 will join in that.

4 Q. I would like you to refer to Page 1 of your
5 report.

6 A. Uh-huh.

7 Q. In the second paragraph you talk about your
8 background and some of the things you have done.
9 You say in the second paragraph:
10 "I have assisted State and
11 national policymakers in developing
12 equity-focused education reform."

13 I would like you to, again, put yourself prior
14 to the involvement with this case and tell me how you
15 are using the term, "equity-focused education reform" in
16 that sentence.

17 A. Well, I am certainly using it in a very
18 general way to encompass all of the instances where I
19 have been called upon to provide research-based insight
20 about how schools could come to serve all children well.

21 Q. Putting yourself again in the period prior to
22 the summer of 2000 and your involvement in this case,
23 could you give me some examples of how you have assisted
24 state and national policymakers in developing
25 equity-focused education reform.

1 This is prior to the year -- summer of 2000.
 2 A. Probably most immediately would be my efforts
 3 to advise the Department of Education in the state of
 4 California about their initiative to increase the
 5 availability of advanced placement courses for -- in
 6 schools serving children throughout the state.
 7 I also prior to working with the Department of
 8 Education on that issue and being a member of their
 9 advisory board, I provided some testimony at legislative
 10 hearings and met with Senator Escutia as she was framing
 11 legislation around ensuring that all children in the
 12 state had equitable opportunities to take advanced
 13 placement courses.
 14 In the late 90's I was appointed by the
 15 Secretary of Education, Richard Riley, to serve on a
 16 national panel to help the federal government better
 17 understand the causes of the high dropout rates among
 18 Latino students and to recommend strategies for
 19 improving the high school graduation rates among Latino
 20 students.
 21 I was a part of the California Commission on
 22 Teacher Credentialing advisory panel developing the new
 23 standards for teacher preparation under Senate Bill
 24 2042.
 25 I spent two years as a member of that panel,

1 I really consider my research, because it is
 2 about public policy issues, decisions that are made
 3 about the organization and conduct of schooling -- that
 4 all of that work is an effort to provide some useful
 5 knowledge to policymakers.
 6 I was extraordinarily pleased when the
 7 National School Boards Association named my 1985 book
 8 one of the 10 must-read books of the year for school
 9 board members. That to me is the most -- it is the best
 10 indicator that the work I do is doing what it should,
 11 engaging policy makers in thinking hard about the
 12 challenges of public education.
 13 Q. I appreciate the last statement but your
 14 report says, you have assisted state and national
 15 policymakers in developing equity-focused education
 16 reform.
 17 Do the activities that you have just described
 18 fulfill that statement? Are they an effort to assist
 19 state and national policymakers in developing
 20 equity-focused education reform?
 21 MR. ROSENBAUM: Asked and answered. Compound.
 22 Argumentative.
 23 THE WITNESS: To the extent that knowledge is
 24 helpful, yes.
 25 BY MR. HILL:

1 working on those standards, and made presentations of my
 2 research and our experiences in teacher education at
 3 UCLA to that group to help advise them.
 4 I have been actively involved in the
 5 University of California's efforts to develop strategies
 6 whereby public K-12 schools and universities could work
 7 together to increase the opportunities of students in
 8 educationally disadvantaged communities prepare for and
 9 be eligible for admission to the University of
 10 California. That involved working with the State
 11 legislators who ultimately have the authority to fund
 12 those kinds of initiatives.
 13 I have given -- I have given many, many talks
 14 to professional associations, including the California
 15 School Boards Association, and spoken with local school
 16 boards on occasion.
 17 I have -- how far would you like me to go?
 18 Q. Go as far as you feel you want to. I am not
 19 putting limits on it. I want to get a sense of how this
 20 sentence you used in your report relates to your -- the
 21 description that you have of yourself. I am relating it
 22 to the time period before this case.
 23 A. I think in my vita I have a whole list, and it
 24 is only a selected list. I have been doing this a very
 25 long time.

1 Q. Okay. The -- once again, to get into terms
 2 here, on Page 1 of your report you are using the term,
 3 "equity-focused education reform" and, of course, that
 4 is distinguished from Page 120 of your report where you
 5 are talking about "standards-based reform strategies."
 6 You may have given us a little comparison of
 7 the two, but could you explain to me what -- how you
 8 have chosen to use one statement on Page 1 and another
 9 statement on Page 120?
 10 MR. ROSENBAUM: You mischaracterized her
 11 testimony, but you can answer it.
 12 THE WITNESS: On Page 1 I am characterizing my
 13 work in a way that I hope will communicate to someone
 14 who has only read one paragraph that I have a particular
 15 interest in ensuring that all children have the
 16 opportunity to learn and achieve in public education.
 17 By Page 120 I hope that I have set a context
 18 that makes clear that in California at this particular
 19 time standards-based reform is the -- the -- I want to
 20 call it the "reform du jour." It is the current
 21 particular strategy that California and many other --
 22 most other states across the nation have adopted as a
 23 way to achieve equitable and excellent schools.
 24 BY MR. HILL:
 25 Q. Back on Page 120 you -- in a sentence in the

1 middle of the last paragraph that begins, "At a
2 minimum" -- I will read that.

3 "At a minimum this structure
4 must include the development of a
5 state mandate regarding students'
6 access to these vital education
7 inputs, capacity building to ensure
8 every school can meet the mandate
9 and more forceful approaches to
10 oversight, public reporting and
11 intervention."

12 I would like you to focus on the first few
13 phrases of that sentence.

14 It is -- it says, "include the development of
15 a state mandate." I would like you to tell me what
16 usage of that term you intended when you said,
17 "development of a state mandate."

18 A. I meant that the State should establish a
19 standard, in using the terminology of the day,
20 specifying both the type, as it now does with the
21 adoptions process, but also the sufficiency in terms of
22 quantity and -- of -- for the kinds of materials and
23 textbooks -- for the materials and textbooks that
24 students require to have a meaningful opportunity to
25 achieve the content standards that the State has set.

1 A. Well, in this report and in this sentence
2 the -- I use the words, "these vital educational
3 inputs," and that is a specific reference to these
4 textbooks and instructional materials in this context.

5 Q. Now in the -- you have -- there has been in
6 your earlier testimony some discussion of mandates. We
7 have talked mandates in a technical sense, like those
8 that are imposed upon local school districts, and we
9 have talked about in a much broader sense.

10 I would like to have you tell me the sense in
11 which you are talking about it here, and I will pose the
12 question this way: When you talk about a "mandate," are
13 you talking about the legislature imposing a duty upon
14 school districts to which they must comply?

15 A. I don't recall conversations where we used the
16 term more broadly than that.

17 Whenever I have used the term, "mandate," I
18 have meant either legislation or rules that compel
19 school districts to do something.

20 Q. In California has -- have you been introduced
21 to the concept of a "reimbursable mandate"?

22 Do you know what that term means?

23 A. No.

24 Q. For purposes of questioning I might propound
25 to you, the California Constitution includes a provision

1 And the word, "mandate" goes beyond such a
2 standard being voluntary but indicates the State's
3 intention that it -- to require that schools and
4 districts meet those standards.

5 Q. And the mandate would apply, as you use it, to
6 textbooks and instructional materials?

7 A. As I have discussed throughout the report and
8 I think in my prior deposition, that the core materials
9 necessary to provide students with access to the
10 knowledge that they need to learn to meet the content
11 standards comes in an increasing variety of forms, and
12 while the textbook is still the dominant form, in some
13 cases the textbook might not be the most essential or
14 the only form of the material. So that the standard
15 should be that students have access in sufficient
16 quantity as specified for that kind of material to the
17 core materials they need in the content areas specified
18 in the State's content standards.

19 Q. Earlier in that paragraph and earlier this
20 morning we talked about your use of the term,
21 "instructional conditions, such as," and then you go on
22 to describe textbooks and instructional materials.

23 Does your minimum that there must be
24 development of a mandate apply to whatever you might
25 define to be "instructional conditions"?

1 that requires the State to reimburse local school
2 districts for a new program or an increased level of
3 service when that program is mandated on school
4 districts.

5 Are you familiar with that concept?

6 A. Yes.

7 Q. Is it your assumption that when the State
8 legislature by statute or a State agency by rule imposes
9 standards upon school districts that school districts
10 would be reimbursed for the costs of implementing that
11 mandate?

12 A. Yes.

13 Q. Would you look to Page 53 of your report.

14 A. Okay.

15 Q. In the paragraph at the bottom it begins, "The
16 absence of mandates." It looked to me like when I read
17 that paragraph that you were treating funding as a
18 separate matter from the mandate; that the State would
19 first impose the mandate and then somehow or other would
20 separately provide funding, which in itself would have
21 some sort of, perhaps, sanction to it if you didn't
22 comply with the standard or with the mandate.

23 I am wondering, was I reading that -- am I
24 characterizing that as you intended that paragraph to be
25 read?

1 MR. ROSENBAUM: Vague, argumentative and
2 speculative.

3 THE WITNESS: The first two sentences in that
4 paragraph is my attempt to describe what you just
5 described as a "reimbursable mandate."

6 BY MR. HILL:

7 Q. So your discussion here is consistent with
8 what we discussed earlier said in terms of the State
9 imposing a mandate and having an obligation to fund it
10 along with the mandate?

11 A. Yes. If I understand your explanation
12 correctly, that is this -- these two sentences are
13 intended to be consistent with that.

14 Q. Now, further on in that sentence, and you
15 have discussed this a little bit in your earlier
16 testimony, you say:

17 "The State has allocated less
18 funding than districts and schools
19 actually require to purchase
20 materials in sufficient quantities
21 for all students to have them in
22 every core subject for use in class
23 at home" -- "in class and at home."

24 What is the basis for that statement?

25 MR. ROSENBAUM: Do you understand the

1 that would -- and the quality -- the standards-based
2 quality and the quantity so that all students could have
3 them in every core subject for use at school and at
4 home.

5 Q. So the "less funding" term refers to what we
6 might call, "categorical funding"?

7 A. To the -- yeah -- to the named funding
8 designated and specifically for textbooks.

9 Q. Does it consider revenue limit funding?

10 A. I was looking at the sources that the State
11 has named as being designated for the purchase of
12 textbooks and materials.

13 Q. If what you say in this sentence is true, is
14 correct, as to an individual school district, that the
15 State has allocated less funding than the district or
16 school requires to purchase materials in sufficient
17 quantity for all students to have them in every core
18 subject for use in class and at home, if we examine
19 current classroom conditions and a school has not
20 sufficient quantities for all students to have textbooks
21 or instructional materials in every core subject in
22 class and at home, how will the district fund that
23 obligation if it is required to provide textbooks in
24 that way?

25 MR. ROSENBAUM: It is an incomplete

1 question, Jean?

2 If you understand, go ahead.

3 THE WITNESS: The -- I am not sure.

4 MR. ROSENBAUM: I thought the question was
5 vague and ambiguous.

6 THE WITNESS: Okay. You mean --

7 BY MR. HILL:

8 Q. You say what I just quoted or somewhat
9 paraphrased, perhaps, as a sentence in the last
10 paragraph of your report. I can quote it.

11 "The State has allocated less
12 funding than districts and schools
13 actually require to purchase
14 materials in sufficient quantities
15 for all students to have them in
16 every core subject for use in class
17 and at home."

18 My question is: What is the basis for that
19 statement?

20 A. The reference is the comparison -- the basis
21 is the comparison of the categorical funds in the --
22 either the Instructional Materials Fund or even with the
23 augmentation of the Schiff-Bustamante funding, so that
24 the targeted textbook funding is in comparison to the
25 actual cost of purchasing materials in the quantities

1 hypothetical.

2 THE WITNESS: So let me get clear what you are
3 saying.

4 You are saying, suppose we have a situation
5 where there are insufficient materials and there is a
6 mandate?

7 BY MR. HILL:

8 Q. No.

9 A. Is that what you are saying?

10 Q. I think your report has described situations
11 where schools have insufficient quantities of textbooks
12 or instructional materials to provide them for all
13 students in every core subject for use in class and at
14 home.

15 A. Uh-huh.

16 Q. You have now described in the first sentence
17 of that, a statement that says

18 "The State has allocated less
19 categorical funding than would be
20 required to give all students that
21 level of textbook and instructional
22 material."

23 My question is: If a district chooses to
24 comply with the standard, where will the district obtain
25 funding to allow it to do so?

1 MR. ROSENBAUM: Same objection.
 2 THE WITNESS: I think actually that
 3 specific -- a specific answer to that question goes far
 4 beyond the scope of my report.
 5 I do make the recommendation that the State
 6 needs to find new ways to build the fiscal as well as
 7 the technical capacity to provide textbooks and
 8 materials in the quality and quantity that would meet a
 9 standard.
 10 BY MR. HILL:
 11 Q. And if that does not occur and the conditions
 12 that you describe in your report, that is, some students
 13 do not have adequate textbooks and instructional
 14 materials in every core subject -- that condition
 15 exists -- what is your recommendation to school
 16 districts as to how they should cope with that problem?
 17 MR. ROSENBAUM: Same objection. Foundation.
 18 THE WITNESS: This is a semi-flip answer, but
 19 if I were a local school board, I might join with the
 20 plaintiffs in the Williams case.
 21 MR. HILL: Do we -- are we ready for a break?
 22 MR. ROSENBAUM: Sure.
 23 (Recess taken.)
 24 BY MR. HILL:
 25 Q. Back on the record.

1 If you could look at Page 52, I want to follow
 2 up a little bit on this idea of mandate and funding a
 3 bit. If you look on Page 52, the heading of that
 4 paragraph at the bottom says, "Limited and Inadequate
 5 Policy Choices."
 6 Again, I read from this that the idea that
 7 mandate and funding seem to be separate -- you seem to
 8 look at it as two separate governmental decisions, and
 9 I -- I get that from reading the sentence that begins,
 10 "Mandates or rules" and down to the next sentence.
 11 Is that the way you are intending that
 12 paragraph to read?
 13 MR. ROSENBAUM: That's vague. Speculation.
 14 THE WITNESS: This paragraph simply describes
 15 some categories of policy instruments that states use.
 16 It is not a specific analysis of California,
 17 per se, but general categories that when you look
 18 nationally about how states get engaged in running
 19 educational systems, these are the types of things they
 20 do.
 21 The -- a mandate carries with it funding in
 22 California, and I was not intending to separate out that
 23 or to say otherwise. However, funding also is generally
 24 a large part of incentives and inducements, so there is
 25 some -- I was really talking about the tools, the kinds

1 of ways you can either require somebody to do something
 2 and then you pay them for it, or you tempt them to do
 3 something and you give them some money as a part of that
 4 as well.
 5 BY MR. HILL:
 6 Q. Using the mandate description that we went
 7 through just before the break, where the State directs
 8 school districts to do a certain thing and from that
 9 comes the obligation to reimburse them --
 10 A. Yes. In California that is certainly the way
 11 we do it.
 12 Q. Right.
 13 How do you build in the element of sanction to
 14 that process?
 15 You have described sanction -- my
 16 characterization of it is that you described sanction as
 17 an element, strong element, of need to ensure the
 18 districts do what they are supposed to do.
 19 How do you build sanction into that process?
 20 MR. ROSENBAUM: Vague. Incomplete
 21 hypothetical.
 22 THE WITNESS: Implicit in the notion of a
 23 mandate or a rule or requirement or a law is that there
 24 is some penalty for not abiding by it, so that sanctions
 25 that get attached or consequences that get attached are

1 sometimes implicit, sometimes explicit.
 2 BY MR. HILL:
 3 Q. In our prior deposition -- let me find
 4 something here.
 5 In the prior deposition testimony there was
 6 some mention of a State audit process. It was
 7 described, as I recall the question to you, as an annual
 8 audit performed by school districts for compliance with
 9 State law.
 10 Do you recall that discussion?
 11 A. I don't recall that discussion. I recall
 12 talking about audits and I -- and talking about
 13 compliance reviews and --
 14 Q. Are you familiar with the compliance audits
 15 that are conducted by school districts annually?
 16 MR. ROSENBAUM: That's vague. Overbroad.
 17 THE WITNESS: Probably, but I am not --
 18 BY MR. HILL:
 19 Q. Let me just -- let me give you an assumption
 20 to make in dealing with the question.
 21 In the Education Code beginning at Section
 22 14500 there are a series of provisions that direct an
 23 annual audit be performed by school districts under the
 24 supervision of the State Controller. The sections
 25 provide that it is both a financial audit and a

1 compliance audit. Built into that system is an audit
2 guide, the creation of an audit guide, that sets forth
3 the State programs that are to be audited.

4 My question is: Are you familiar with that
5 process?

6 A. If it is -- I am familiar with the fiscal
7 part.

8 If the programmatic part is different from
9 what gets covered in the compliance review process, then
10 I may not be.

11 Q. It is not in the compliance review process; it
12 is a different auditing process, and if you -- well,
13 there is -- if you are not familiar with it, I won't go
14 on.

15 A. I would be happy to take a look at it.

16 Q. Well, maybe I will give it to Mark, and he
17 can -- it has not come up. There has been no references
18 in that -- to those provisions in any of the materials I
19 have seen in your report. I am curious if you are
20 familiar with it, and it sounds like you are not.

21 In your testimony concerning the existing
22 review programs you mentioned the CCR, the Coordinated
23 Compliance Review, FCMAT, the II/USP, the HPSG program,
24 all the rest of those.

25 What I take from your report is that each of

1 monitoring that is necessary to ensure compliance?

2 MR. ROSENBAUM: Where are you referring to?

3 BY MR. HILL:

4 Q. Page 120. Did I say, "20"? I apologize. I
5 apologize to you.

6 It is the same paragraph we talked about here,
7 just another sentence here.

8 A. I think in my report I talk about specific
9 ways that these current mechanisms could be strengthened
10 so that they might accommodate the needed oversight and
11 reporting of textbooks and instructional materials.

12 I am not suggesting that any one be adopted,
13 but rather use this -- these examples as illustrations
14 of how the State might look to its own current practices
15 as the source of better policies.

16 Q. Based on what you just said, then, a
17 modification of any one individual program would not
18 satisfy the limitations that you describe in your report
19 as the State monitoring adequate levels of instructional
20 materials?

21 MR. ROSENBAUM: That's vague. Incomplete
22 hypothetical.

23 THE WITNESS: It certainly might. I would
24 need to see a specific plan before I could make a
25 judgment about its adequacy.

1 them has some deficiency in them that prevents them from
2 being a full and complete monitoring process as you
3 believe necessary to ensure school district compliance.

4 Is that an accurate statement?

5 A. The -- I think my judgment in this paper is
6 that none of them accomplishes the sufficient oversight,
7 monitoring, reporting around the provision of textbooks
8 and instructional materials.

9 Q. Without looking at them individually and
10 taking them in the aggregate -- looking at them in the
11 aggregate, would they fulfill the type of monitoring you
12 just described?

13 A. No. They do not adequately take into
14 consideration whether students have the textbooks and
15 instructional materials they need.

16 Q. In your report at Page 20 you suggest that
17 those programs -- and I will quote them here.

18 "Some of those opportunities
19 stem from sources it already has at
20 hand: The CRR, Comite,"

21 C-O-M-I-T-E, "monitoring, WASC,"
22 W-A-S-C, "FCMAT," F-C-M-A-T, "and
23 II/USP and HPSG."

24 Is it your suggestion that those programs
25 should be legislatively modified to provide the kind of

1 BY MR. HILL:

2 Q. Okay. Just a moment.

3 Go back to Page 53 of the report. You mention
4 that you read the transcript of earlier testimony.
5 There is -- in the upper part of that page, the first
6 full paragraph, the sufficiency standard is -- you talk
7 about that in that paragraph.

8 You suggested in other parts of your testimony
9 that the standard should be one text per student for
10 both class and home use, and that is a textbook
11 standard.

12 Is there a standard for instructional
13 materials that is comparable to that standard from your
14 point of view?

15 MR. ROSENBAUM: I think that mischaracterizes
16 her testimony.

17 THE WITNESS: The -- first of all, I am not
18 sure that the way you phrased it suggests what I meant
19 about "one textbook per child per student."

20 What you said might have implied that I meant
21 every child should have two textbooks, one for school
22 and one for home and, in fact, in some school districts
23 they do do that.

24 What I was suggesting was that if there is one
25 textbook per every child, that child would be able to

1 take that textbook home to use it at home, so that
 2 clarifies that.

3 A sufficiency standard, I think, for materials
 4 other than textbooks needs to be determined for each one
 5 of those materials. So I believe I suggested before
 6 that as materials other than textbooks become part of
 7 the State adoption list or a local district adoptive
 8 list, that the same process or as part of the process
 9 that determines whether or not these materials are
 10 adequate in their quality to be placed -- to be
 11 purchased with State money, there could be an evaluation
 12 and a determination of the supply that would need to be
 13 in place in a particular classroom to adequately provide
 14 all students with access to what they need.

15 BY MR. HILL:

16 Q. In the first -- back to Page 53. In the first
 17 full paragraph at Page 53 you suggest that there is a --
 18 there could be a relationship between the sufficiency
 19 standard and textbook adoption in the process that now
 20 takes place before the State Board of Education.

21 In earlier testimony there were questions
 22 raised about how that could apply to high school
 23 students and textbooks that are used by high school
 24 students. I don't see any mention made in this
 25 paragraph of a sufficiency standard that could be

1 adopted for high school textbooks.

2 Am I misreading this or is that contained
 3 elsewhere in your report?

4 A. It may not be explicitly outlined elsewhere in
 5 the report, but I would certainly say that local school
 6 systems should be asked to set standards, perhaps having
 7 them reviewed by the State for the materials they deem
 8 as appropriate for purchase for their high schools.

9 Q. So that -- is the thrust of this -- of this
 10 first full paragraph on Page 53 that whatever agency
 11 involved in education is doing textbook adoption, it
 12 ought to provide a sufficiency standard at that time for
 13 those books as they are adopted?

14 A. It establishes a general principle that a
 15 standard or an evaluation process or -- but a standard
 16 regarding textbooks and instructional materials should
 17 address both the issue of sufficiency as well as
 18 quality.

19 Q. Should it also address the particular
 20 circumstances where textbooks are unavailable because of
 21 the cycle, the purchase cycle?

22 You referred in some of the facts that you
 23 recite circumstances where school districts simply late
 24 in the cycle will not buy textbooks or can't buy
 25 textbooks.

1 Should the standard -- should there be
 2 standards directly aimed at that particular problem?

3 MR. ROSENBAUM: Vague. Incomplete
 4 hypothetical.

5 THE WITNESS: I think the standard that I am
 6 suggesting is not restricted to what one should buy but
 7 rather what should be available in the classrooms for
 8 children. So I am -- I wouldn't want to restrict it to
 9 simply the point of initial purchase.

10 BY MR. HILL:

11 Q. Where -- I am trying to deal with the
 12 practical problem of somehow or another there is student
 13 growth, and you have to buy textbooks for kids in, say,
 14 the fifth year of a seven-year cycle, and textbooks
 15 aren't truly available.

16 How does -- how would you propose a school
 17 district deal with that in relation to the kinds of
 18 standards you are talking about having adopted?

19 MR. ROSENBAUM: Vague and incomplete
 20 hypothetical.

21 THE WITNESS: I think the principle that I
 22 articulated in the prior session is that for a child it
 23 doesn't matter what year of the cycle you are in.

24 It may be it is your only chance to be a fifth
 25 grader studying U.S. history in the fifth grade, and if

1 there is not a book for you, it is irrelevant whether it
 2 is the first year of the cycle or the fifth year of the
 3 cycle. You need to have available to you the texts and
 4 materials you need to learn.

5 My -- I have a great deal of confidence in the
 6 system that if a market demand were known, books would
 7 be made available.

8 BY MR. HILL:

9 Q. In the last -- I think it was the last
 10 deposition that -- the last testimony that you had at
 11 your deposition you talked about the scholarly reports
 12 that were on the IDEA website, and you indicated there
 13 was some progress being made to revise them and get
 14 ready to publish them.

15 Has anything happened between the last
 16 deposition testimony and today that involves the editing
 17 and publication of the scholarly reports that are on the
 18 IDEA website?

19 A. The -- I -- we are far closer to having that
 20 website publicly available, meaning the reformatting of
 21 those versions of the papers is proceeding.

22 They may also be publicly available, but I
 23 haven't checked in the last two or three days, so that
 24 is certainly something that has happened as we continue
 25 to work on that.

1 The second thing that has happened relates to
2 the publication of the shorter, journal-length
3 manuscripts in the Teachers College Record, and all but
4 two of those manuscripts are currently out for review by
5 peer reviewers, and that is proceeding through the
6 publication process. I hope there has been some
7 progress made.

8 Q. I checked the website over the weekend, and I
9 didn't see any change in it from the time I looked at it
10 when we had our last deposition and now.

11 Is there a plan to add the reduced-size
12 reports to the website?

13 A. Not until after they have been published.

14 Q. So they will be published in the Teachers
15 College Record first?

16 A. Yes.

17 Q. And at that point some change may be made to
18 the content of the website?

19 A. No. No. Our process of working on the papers
20 on the website is that they are in the possession of a
21 work-study student and administrative assistant who are
22 in the process of reformatting them and putting covers
23 on them and doing all of that. That work proceeds. We
24 don't do that directly on the website.

25 When those are all finished, we will replace

1 explanation of patterns or illuminate patterns that I
2 have characterized as theoretically generalizable. I
3 wouldn't consider either of those forms as being
4 anecdotal.

5 The material in this report that comes from
6 depositions certainly contains anecdotes that are
7 instances of some phenomenon or pattern that a person is
8 being asked about.

9 The reports that people file, that educators
10 file, Coordinated Compliance Review reports, II/USP
11 reports, sometimes contain anecdotes that, again, are
12 illustrative examples, particular instances of phenomena
13 or patterns. I use those kinds of reports in scholarly
14 papers as examples.

15 Certainly they are evidence of a type, in that
16 they are the accounts of people about conditions or
17 events that they have experienced. They in themselves
18 for scholarly purposes are best used as illustrations.

19 BY MR. HILL:

20 Q. Is it consistent with the type of research
21 conducted by scholars to generalize from anecdotal
22 information?

23 MR. ROSENBAUM: Same objections.

24 THE WITNESS: Generalize in a statistical
25 sense?

1 the fancy versions with the versions that are now there.
2 We will replace the versions that are now there with the
3 fancier versions and make those papers publicly
4 available. They will remain on our website in that form
5 as long as we believe anybody is interested in accessing
6 them.

7 The papers that are published as part of the
8 Teachers College Record may or may not be added to that
9 website after they are published.

10 Q. Just a second.

11 There has been a -- the report -- the reports
12 that you have relied on in your instructional materials
13 reports contain what we might call, "anecdotal
14 evidence."

15 Could you describe for me how anecdotal
16 evidence is used by a researcher in writing a scholarly
17 report?

18 MR. ROSENBAUM: That is vague, compound,
19 incomplete.

20 THE WITNESS: There are three kinds of
21 evidence that I believe that I used -- there are several
22 types, but the empirical evidence that is in the report
23 is either results of quantitative research studies we
24 have discussed at some length that are generalizable or
25 of qualitative research studies which provide some

1 BY MR. HILL:

2 Q. Generalize in terms of conclusions.

3 A. It depends on the nature of the conclusion
4 the -- and the kind of evidence that supports an
5 anecdotal account. It is very context dependent.

6 Q. Is it generalizable in a statistical sense?

7 MR. ROSENBAUM: Same objections.

8 THE WITNESS: A person's report of an
9 occurrence of something is -- I would not generalize
10 from that to any estimate of the extent to which that
11 occurrence may characterize a larger population of
12 people.

13 BY MR. HILL:

14 Q. Would you consider newspaper accounts to be
15 anecdotal information, as we have just been referring to
16 it?

17 MR. ROSENBAUM: Vague.

18 THE WITNESS: Newspapers contain lots of
19 anecdotes, yes.

20 BY MR. HILL:

21 Q. And a researcher, an academic researcher --
22 what use would be made of newspaper accounts by an
23 academic researcher?

24 MR. ROSENBAUM: Same objections.

25 THE WITNESS: Newspaper accounts are useful

1 for describing particular instances when they are
2 consistent with knowledge of patterns or have other --
3 or are corroborated by other kinds of evidence.

4 BY MR. HILL:

5 Q. When you say, "corroborated by other kinds of
6 evidence," do you mean the kind of statistical evidence
7 that a researcher would use in drawing conclusions?

8 MR. ROSENBAUM: Same objections.

9 THE WITNESS: Either that or with a body of
10 professional knowledge that comes more generally from
11 experience and research and being a consumer of
12 research.

13 BY MR. HILL:

14 Q. In the editing of the scholarly reports and
15 the peer review of scholarly reports for publication is
16 there some identifiable standard that is applied to the
17 decision as to whether reports should or should not be
18 published?

19 MR. ROSENBAUM: Compound. Vague.

20 THE WITNESS: Are you asking me whether there
21 is a clearly defined set of standards that education
22 researchers use when they judge one another's work as
23 candidates for publication?

24 BY MR. HILL:

25 Q. Yes.

1 importance of the question?

2 MR. ROSENBAUM: Vague.

3 THE WITNESS: I -- I talked about the
4 importance of the question as a standard in itself; that
5 as a researcher and as a member of the research
6 community it is -- I look at articles in part to assess
7 whether this particular research has some value for the
8 community at large. That is the standard.

9 BY MR. HILL:

10 Q. So an article which meets all the other
11 requirements may be rejected simply because it hasn't
12 reached the level of -- I am going to use the word,
13 "importance" that might be found appropriate by the
14 reviewer?

15 A. It could, although I don't recall ever
16 suggesting a piece be rejected on those grounds.

17 Q. Uh-huh. Would -- you mentioned in the
18 analysis that the conventions of -- used for the type of
19 studies and empirical evidence as part of the analysis.

20 Again, what -- how would reliance upon
21 anecdotal information influence the judgment of your
22 view as a reviewer?

23 MR. ROSENBAUM: Same objections.

24 THE WITNESS: For me it would depend on the
25 degree to which anecdotal evidence was relied upon. I

1 A. I know of nowhere any written set of
2 standards, but there is certainly, as part of one's
3 professional training and experience, standards --
4 standards one applies when considering a research report
5 for publication.

6 Q. Have you reviewed research reports for
7 publication yourself?

8 A. Yes.

9 Q. What standards do you apply?

10 A. I -- I attempt to judge the importance of the
11 question being asked, the suitability of the method
12 employed to answer that question to the question, the
13 faithfulness of the -- well, the adequacy of the
14 description of the method, the faithfulness of the way
15 that method was employed to the conventions around the
16 use of that method, sufficient -- it is an empirical
17 article that I assume we are discussing -- sufficient
18 empirical evidence to persuade me that the question was
19 examined thoroughly and the conclusions drawn from the
20 analysis warranted, the clarity of the communication,
21 the procedures and the results.

22 Q. You mentioned as the first item, "the
23 importance of the question"?

24 A. Yes.

25 Q. Does the standard vary depending on the

1 can't imagine considering as good research something
2 that was only anecdotal research.

3 It would be the -- a judicious use of
4 anecdotes often greatly enriches one's understanding of
5 patterns that might otherwise simply be described in
6 numbers or in generalities that have less meaning.

7 I wouldn't call them "anecdotes" though. I
8 would talk about them as examples.

9 BY MR. HILL:

10 Q. Would -- are there any circumstances that you
11 can describe where what we have been calling "anecdotal
12 evidence" could be used to generalize from the specific
13 to the population at large, say California's population
14 at large?

15 MR. ROSENBAUM: Same objections.

16 THE WITNESS: I would need to have a much more
17 precise definition of what you mean by "anecdotal" to
18 answer that in every case.

19 BY MR. HILL:

20 Q. If a person describes an event as having
21 occurred as to them, are there circumstances where a
22 reviewer might form the judgment that those same
23 circumstances might apply to others in similar -- in
24 similar situations?

25 MR. ROSENBAUM: Same objections.

1 THE WITNESS: Are you asking if that is the
 2 only piece of evidence they had?
 3 BY MR. HILL:
 4 Q. Yes. Yes.
 5 A. I think it would be an extraordinary
 6 circumstance if someone did.
 7 Q. When reading the deposition testimony of the
 8 depositions that you have described and provided parties
 9 to the litigation as supporting your report how do you
 10 treat the individual facts that flowed from those
 11 depositions and in -- in reaching your broad
 12 conclusions?
 13 MR. ROSENBAUM: That's vague.
 14 THE WITNESS: Well, I treat them as facts and
 15 the specifics of how they are used depends on the
 16 context.
 17 BY MR. HILL:
 18 Q. And would the specifics as to how they are
 19 used bring them within the type of conventions that
 20 would -- that a reviewer would apply to research methods
 21 evidenced in the report?
 22 MR. ROSENBAUM: Same objections.
 23 THE WITNESS: Well, this is getting so far
 24 removed from any specific reality that it is very hard
 25 for me to make judgments.

1 I think it depends on the context. I mean, if
 2 we are explaining a murder, it seems that one instance
 3 would be a significant event worth reporting. It simply
 4 depends.
 5 BY MR. HILL:
 6 Q. In your report -- your report is 120 pages,
 7 plus or minus.
 8 You have indicated that you thought the
 9 reports could be reduced to 30 or 35 pages; is that
 10 correct? Is your report going to be reduced to about 30
 11 or 35 pages?
 12 A. The manuscript that is submitted for
 13 publication -- is that what you are referring to --
 14 Q. Yes.
 15 A. -- in the Teachers College Record?
 16 Q. Yes.
 17 A. Yes. Actually, it is about 33 pages.
 18 Q. And is there actually a draft of that document
 19 available at the present time that is in that format, 33
 20 pages?
 21 A. There is a draft.
 22 Q. And can you -- I am having a hard time
 23 understanding how something 120 pages could be reduced
 24 to 33 pages, but I guess -- when I do my appellate
 25 briefs I have a hard time meeting a 50-page limit, let

1 alone a 33-page limit.
 2 What process do you use to get it from 120
 3 pages to 33 pages?
 4 A. I can give you an example.
 5 Q. That is what I am reaching for, frankly.
 6 A. In Section 2 where I describe the patterns of
 7 shortages and insufficiencies that emerged from the new
 8 empirical work done by Harris and done by SPRA, for
 9 example, instead of displaying every table with every
 10 analysis, I will describe a pattern, say, across content
 11 areas and display one table as an example.
 12 Q. One table taken from the existing report or a
 13 new table that is generated for the 33-page report?
 14 A. I think I simply used one of the tables that
 15 was here, and then in a paragraph or so described the
 16 kinds of patterns that the other tables of the same type
 17 exhibited.
 18 Q. Do you describe your conclusions in the same
 19 language?
 20 MR. ROSENBAUM: That is vague.
 21 THE WITNESS: I don't know what "language" you
 22 mean.
 23 BY MR. HILL:
 24 Q. You have, for example, on Page 120 you have a
 25 section called, "Conclusions," and you have in the

1 beginning of your report the formulation of questions
 2 and responses to those questions.
 3 Are those -- is the formulation of the
 4 question and the response the same?
 5 MR. ROSENBAUM: Same objection.
 6 THE WITNESS: It -- there are some
 7 similarities, but the paper is framed slightly
 8 differently since it is trying to place this work in the
 9 context of scholarship.
 10 BY MR. HILL:
 11 Q. Have you included a bibliography?
 12 A. Yes.
 13 Q. Is it the same bibliography you included with
 14 this report?
 15 A. No.
 16 Q. Some of the items included in your
 17 bibliography have been eliminated?
 18 A. Yes.
 19 Q. Have others been added?
 20 A. I believe so.
 21 Q. Are those items that chronologically occurred
 22 after you wrote your report?
 23 MR. ROSENBAUM: That's vague.
 24 THE WITNESS: You know, I don't recall.
 25 MR. HILL: Give me a couple of minutes. I may

1 be finished.

2 MR. ROSENBAUM: Sure.

3 BY MR. HILL:

4 Q. One item we need to clear up. I think I
5 understand the answer, but if you turn to Page 103,
6 there is a reference there to Tables 23 and 24. It is
7 in the bottom paragraph on Page 103 --

8 A. Yes.

9 Q. -- reference to Tables 23 and 24.

10 A. Yes.

11 Q. Would you take a look at Tables 23 and 24 in
12 the context of that sentence.

13 MR. ROSENBAUM: What page are they on, Gene?

14 BY MR. HILL:

15 Q. On Page 49 and Page 50 -- 50-something. Page
16 49 is Table 23.

17 Let's see. Table 24 is on Page 60.

18 A. I think it should say, "24" and "25."

19 Q. I think that's right. I wanted to make sure I
20 was reading that -- should that say, "24" and "25"?

21 A. Yes, it should.

22 Q. And then just -- then if you look at the
23 heading on Page 24 where it says, "Comparison of
24 California's Appropriations with Oregon's Quality
25 Education Model Standards," I think we covered this in

1 prior testimony, but let me make sure.

2 The comparison between California is that
3 California's categorical programs -- when you say,
4 "current funding" -- "California's current funding for
5 textbooks and instructional materials," you are talking
6 about funding that flows through the -- the categorical
7 program, not other funding beyond that?

8 A. Yes. As the table specifies, it is the
9 Instructional Materials Fund in the first column, and
10 the Instructional Materials Fund augmented by the
11 Schiff-Bustamante allocation is in the second column.

12 Q. So to the extent that local school districts
13 receive general funding it is not intended to identify
14 any funding that might be available to local school
15 districts other than the categorical funding you
16 describe here; is that correct?

17 A. This is the funding that is specified by the
18 State as -- to be used on instructional materials and
19 textbooks.

20 Q. Okay. And then the Oregon reference is an
21 Oregon standard; it is not actually appropriated funds?
22 Is that correct?

23 A. That is correct.

24 Q. I believe the earlier testimony clarified part
25 of that, but I want to make sure we are certain this

1 only covers the Instructional Materials Fund, the IMF,
2 as you describe it.

3 And that would be true with Table 25 as to
4 California's program, but how is Connecticut's program
5 described? It says, "Connecticut's spending."

6 Is that appropriated funds?

7 A. These are reports from school systems about
8 what money they actually spent.

9 Q. And am I not correct that in Connecticut it is
10 all done at the local level, not at the state level?

11 MR. ROSENBAUM: That's vague.

12 THE WITNESS: This doesn't speak to where the
13 source of the money is. This simply says that
14 Connecticut districts reported this amount.

15 BY MR. HILL:

16 Q. Okay. So it is local district spending, is
17 what that refers to?

18 A. It is what local districts spent.

19 MR. HILL: Yeah. Okay. I think that is all I
20 have.

21 MR. ROSENBAUM: Thank you. Off the record.
22 (Whereupon at 11:47 a.m. the deposition
23 of JEANNIE OAKES was adjourned.)
24 (Whereupon at 1:00 p.m. the deposition
25 was reconvened.)

1 EXAMINATION (Continued)

2 BY MR. HILL:

3 Q. Professor Oakes, you are still under oath.

4 A. Yes.

5 Q. Did anything occur during the noon hour that
6 would make it difficult for you to answer the questions
7 in a forthright, honest way?

8 A. No.

9 Q. This afternoon I am going to cover Concept 6.
10 This is a little out of the sequence of the reports, but
11 this is what I have to do today. I ask you to focus on
12 that part of your report.

13 The first question is -- my copy of the report
14 doesn't contain a bibliography.

15 Was there ever a bibliography prepared for the
16 Concept 6 report?

17 A. The format of this report is that all the
18 information is in footnotes.

19 Q. It is all in footnotes.

20 There is no bibliography, then?

21 A. No.

22 Q. Was there any particular reason for not
23 preparing a bibliography?

24 A. It was simply a formatting decision.

25 Q. Who made the decision?

1 A. As I think I explained last time, the -- this
2 report was prepared with the support of Hector Villagra
3 at MALDEF, and I asked them if they would do the final
4 formatting for me because I had run out of time, so this
5 was their preferred formatting style.

6 Q. So what did you give to them for them to
7 format?

8 A. We'd been working back and forth on this draft
9 for -- over a period of months. They simply cleaned it
10 up and got the footnotes right and did the formatting.

11 Q. When you say, "cleaned it up," were you
12 referring to the text of the report?

13 A. Yes. Getting the margins right and the font
14 size and -- all of those, just do the final making it
15 look respectable.

16 Q. Were there any modifications made to the text
17 of the report in the formatting process?

18 A. There might have been some grammatical or
19 punctuation changes that were made, but I reviewed the
20 entire thing before it was submitted. I had the last
21 look and the last pass at it.

22 Q. Were there any materials -- excuse me -- any
23 text added to the report from the time you gave it to
24 Mr. Villagra until the time you got back?

25 A. No.

1 A. I have Page 2 here, yes.

2 Q. Good.

3 First, you state that one of the disadvantages
4 is, quote, "overcrowded and large schools."

5 Is overcrowded -- are overcrowded schools the
6 result of a school adopting a multi-track, year-round
7 Concept 6 calendar?

8 MR. ROSENBAUM: Vague.

9 THE WITNESS: In some occasions a school that
10 moves to a Concept 6 calendar -- well, in every case the
11 adoption of a Concept 6 calendar allows the school to be
12 over capacity, in other words, to have more students
13 enrolled than the school was designed to accommodate.

14 So while the concept of Concept 6 is to
15 relieve overcrowding by the design of the schedule, the
16 effect is often to create more crowding than other
17 solutions would do.

18 BY MR. HILL:

19 Q. Isn't it a given that a school which is being
20 converted to Concept 6 is always going to be
21 overcrowded?

22 A. Before moving to a Concept 6?

23 Q. Yes. Yes.

24 A. It might be, or it might be that the
25 configuration of the density of population requires that

1 Q. We talked this morning in connection with your
2 other report about -- strike that. I will go to that
3 later.

4 The notion of Concept 6 as a form of
5 multi-track school calendars, how did that concept
6 originate, if you know?

7 A. I don't know.

8 Q. It -- the authorization for it is contained in
9 legislation; is that not correct?

10 A. It was either legislation or some regulation,
11 but it is certainly allowed by the State because it is
12 an exception to the conventional calendar.

13 Q. So you don't know whether or not -- whether it
14 is legislation or whether it is regulation?

15 A. It is -- I would have to review my notes to
16 look at precisely the instrument.

17 Q. In any event, it authorizes 163 days instead
18 of 180 days for a school year; is that not correct?

19 A. That is correct.

20 Q. In your -- on Page 2 of your report you state
21 that there are five disadvantages that students who
22 attend Concept 6 schools have over students who attend
23 schools on traditional calendars.

24 I would like to refer to those. Do you have
25 them at hand?

1 some schools go to Concept 6 in order to accommodate
2 more students where, historically, it may not -- that
3 building may not have been overcrowded before.

4 Q. There is a need for more students to be housed
5 than there is capacity to house them; is that not
6 correct?

7 A. Yes.

8 Q. So when you are considering whether or not to
9 adopt Concept 6 you start with the premise that you are
10 in an overcrowding situation?

11 A. Yes.

12 Q. How, then, is it that overcrowding results
13 from Concept 6?

14 MR. ROSENBAUM: Asked and answered.

15 THE WITNESS: As soon as you adopt a schedule
16 that allows you to accommodate 50 percent more students
17 than a building is designed for, you have created an
18 overcrowded situation.

19 BY MR. HILL:

20 Q. Did you not have -- assuming for a moment that
21 you have 100 students -- you have 150 students, and you
22 have a need to house them, and you have capacity for 100
23 students, and you -- and -- are you not in an
24 overcrowded situation at that point?

25 A. Well, it depends on whether you have actually

1 accommodated them in the building before. I mean, it is
2 a --

3 Q. Let me focus the question a little bit. Let
4 me get the track moved a little bit to the side.

5 I am trying to determine -- and I am hoping
6 you will help me -- to look at the question as to
7 whether overcrowding is a systemic result from adoption
8 of a Concept 6 plan.

9 From reading your report, you give me the
10 impression that it is. I want to make sure that I am
11 reading your report correctly.

12 A. I am not sure what you mean by "systemic
13 result."

14 Q. It is an inevitable result linked directly to
15 the adoption of a Concept 6 plan that the school will be
16 overcrowded?

17 A. Yes.

18 Q. And is there any way to implement a Concept 6
19 plan without having an overcrowded situation?

20 MR. ROSENBAUM: It is an incomplete
21 hypothetical.

22 THE WITNESS: Well, I suppose if you decided
23 you wanted a Concept 6 calendar and you had a building
24 that accommodated 300 students and you only had 100
25 students but you still wanted them to be on three tracks

1 Q. I'm sorry. Go ahead and finish. I didn't
2 mean to interrupt.

3 A. That is fine.

4 Q. I thought you were finished.

5 Again, I am trying to focus on those things
6 that occur in the school that are inherently part of
7 Concept 6 and those things that may be discretionary
8 decisions made by school administrators. Keep that
9 focus in mind with this question.

10 Is there anything that a local school
11 administrator can do when a concept -- when a concept
12 school plan is initiated to ensure that there will not
13 be classroom overcrowding?

14 MR. ROSENBAUM: That is vague. Incomplete
15 hypothetical. Ambiguous.

16 THE WITNESS: I am not entirely sure I
17 understand your question.

18 You could certainly relieve classroom
19 overcrowding by bringing portable trailer classrooms
20 onto a facility, campus in order to reduce the number of
21 children in any one classroom. But in most cases you
22 will have not relieved the overcrowdedness of the
23 facility as a whole.

24 BY MR. HILL:

25 Q. So when you talk about in Item 1 on Page 2,

1 of 163 days of instruction, you could probably have a
2 Concept 6 calendar without overcrowding.

3 BY MR. HILL:

4 Q. As I understand the Concept 6 arrangement, it
5 allows the classroom to be utilized more intensely than
6 it would be without a Concept 6 school or -- excuse
7 me -- without a Concept 6 program. It is the classroom
8 that is used more intensely, and it spreads the number
9 of students that would ordinarily attend that classroom
10 out over a schedule that brings some of them there and
11 some of them absent in a different way so that the
12 individual classroom may not be overcrowded after you
13 implement Concept 6.

14 MR. ROSENBAUM: You are testifying. You are
15 not asking questions.

16 THE WITNESS: The -- that may well be the
17 case, in theory.

18 In practice, the Concept 6 schools tend to
19 continue to suffer from overcrowding, whether it is at
20 the high schools where the class sizes are still
21 extraordinarily large or whether it is at elementary
22 schools where rooms that were not designed for classroom
23 use get used as classrooms.

24 MR. ROSENBAUM: Let her finish her answer.

25 BY MR. HILL:

1 "overcrowded and large schools," you are focusing on the
2 entire school capacity not on an individual classroom
3 and the impact of Concept 6 on an individual classroom?

4 MR. ROSENBAUM: Same objections. Plus it is
5 compound. Plus it is asked and answered.

6 THE WITNESS: The inherent or "systemic" part,
7 as you have described it, of the result of overcrowding
8 from the use of Concept 6 is one that talks about the
9 facility as a whole, although there are many instances
10 where classroom overcrowding also happens at those
11 school sites.

12 BY MR. HILL:

13 Q. Did you read Dr. Sandel's report?

14 A. I did.

15 Q. Did you read what Dr. Sandel said about the
16 use of portables?

17 A. I did.

18 Q. Would you after reading that report recommend
19 that a school administrator bring portables onto the
20 school site?

21 A. It would not be, certainly, the best choice.

22 Q. Is it a choice that you would recommend not be
23 done by a school administrator?

24 MR. ROSENBAUM: Incomplete hypothetical.

25 Vague.

1 THE WITNESS: Actually, I am not prepared to
2 make a specific recommendation about the use of
3 portables today.

4 BY MR. HILL:

5 Q. Look at Item No. 4, "Mealtime breaks and
6 limited access to extracurricular activities and
7 enrichment programs."

8 What steps, if any, can a school administrator
9 do in a Concept 6 situation to relieve that
10 disadvantage?

11 MR. ROSENBAUM: Same objections.

12 THE WITNESS: When you say, "local school
13 administrator," are you talking about a site
14 administrator or a school superintendent or --

15 BY MR. HILL:

16 Q. I am talking about a site administrator.

17 A. A site administrator.

18 For No. 4 I think site administrators have
19 very little -- very few options to -- available to them
20 since they don't control these larger decisions about
21 schedules and facilities.

22 Q. Same question focused on a school board --

23 MR. ROSENBAUM: Same objections.

24 BY MR. HILL:

25 Q. -- a local school board.

1 A. I think they are extraordinarily constrained
2 to make alterations in the schedule.

3 I know that Los Angeles Unified School
4 District now is struggling valiantly to cope with this
5 circumstance by attempting to shift one grade from out
6 of the middle schools down to the elementary schools to
7 try to adjust to a four-track calendar rather than a
8 three-track calendar, but it is -- the decisions
9 available to local educators are quite limited.

10 Q. On the bottom of the page you refer to "Sports
11 and special classes," and you state that -- you quote
12 from a "Daily News" article that says:

13 "Many students at multi-track
14 schools cannot participate in
15 sports or special classes such as
16 the athletic decathlon unless they
17 are willing to go to school 12
18 months a year and cross track."

19 You also cite the Jimenez study.

20 Are there options available for local school
21 officials to make the kind of changes that would make
22 sports participation and special classes and enrichment
23 programs available to students attending Concept 6
24 schools?

25 MR. ROSENBAUM: Compound. Incomplete

1 What could a local school board do to relieve
2 the disadvantages in a Concept 6 program so that the
3 extracurricular activities and enrichment programs are
4 not disadvantages?

5 A. Well --

6 MR. ROSENBAUM: Same objections.

7 THE WITNESS: There may be -- although, again,
8 I think local school boards are very much constrained by
9 the larger State policies which create the problems that
10 need to be -- or that have responded inadequately to the
11 need for additional school buildings.

12 But given that constraint, I think local
13 boards do have some options around extracurricular
14 activities and enrichment programs, for example,
15 forming -- it all depends on the context.

16 One example I can think of are relationships
17 developed between school districts and park and
18 recreation departments, for example, to use public parks
19 or public recreation activities for extracurricular
20 activities. That is one hypothetical example.

21 BY MR. HILL:

22 Q. In your report you discuss -- this is at Page
23 31. You say, "Concept 6 breaks are ill-timed."

24 Can local school officials take action to
25 prevent the Concept 6 breaks from being mealtime?

1 hypothetical. Foundation.

2 THE WITNESS: I think it depends on the
3 activity and the context. It would be probably very
4 difficult for a local school administrator to change,
5 say, a -- the athletic schedule of an entire league to
6 conform to the schedules of some of their students who
7 may be on tracks that aren't in session at the time when
8 games are scheduled.

9 On the other hand, more localized activities,
10 there possibly could be some accommodations paid for it.

11 Certainly, a local school official is not
12 going to be able to get the college board to change the
13 scheduling of advanced placement exams in order to
14 accommodate kids on Concept 6 schedules.

15 BY MR. HILL:

16 Q. Item 2 on Page 2 suggests that "truncated and
17 lost instructional time" is a disadvantage suffered by
18 Concept 6 schools, and you discuss that on Page 21 --
19 excuse me -- on Page 20.

20 Are actions available to local school
21 officials to relieve the disadvantages you describe on
22 Pages 20, 21 and 22?

23 MR. ROSENBAUM: Same objections.

24 THE WITNESS: Well, again, I would say that
25 the options available to local educators are quite

1 limited, although there are and have been some efforts
2 to do after-school tutoring and provide Saturday
3 instruction and to make up for the difference, although
4 I think it is -- it doesn't provide students on those
5 schedules with the same kinds of opportunities that
6 students on regular schedules have.

7 BY MR. HILL:

8 Q. Is it your opinion that every student
9 attending a Concept 6 school will suffer the
10 disadvantages you describe on Page 2 of your report --
11 the five disadvantages you describe on Page 2 of your
12 report?

13 A. I think every student who is attending a
14 Concept 6 school is not having an educational experience
15 that is comparable to that of a student on a regular
16 traditional schedule or a single-track, year-round
17 schedule.

18 The extent to which these five problems visit
19 the lives of any one student, I think, varies. It
20 varies among students.

21 Certainly the truncated and lost instructional
22 time -- the truncated time is a characteristic that all
23 experience at the large schools -- everybody at a large
24 school --

25 Q. Truncated time reduces the number of days in

1 than there is, and because time on instruction is an
2 extraordinarily important dimension or time in learning
3 is an extraordinarily important dimension of achievement
4 you can't invent more time in a 24-hour day.

5 Q. How many minutes is the Concept school day
6 expanded because of the reduction to 163 days?

7 A. Oh, it is -- I am not remembering the precise
8 number, whether it is 27 minutes or 37 minutes or
9 something of instructional time.

10 Q. Of instructional time.

11 A. Uh-huh.

12 Q. Assume for striking an average between the two
13 you just mentioned, it is a half-hour. For ease of
14 reference, it is a half-hour.

15 Is it your testimony that a teacher in a
16 Concept 6 arrangement cannot develop a lesson plan that
17 will provide instructional programs sufficient to cover
18 the material that has to be covered in the additional
19 half-hour of a school day?

20 MR. ROSENBAUM: Assumes facts not in evidence.
21 Incomplete hypothetical.

22 THE WITNESS: I would say two things to that.
23 One is that while in theory one might think it would be
24 possible to accommodate the actual -- to use well the
25 minutes in instruction in school time, in practice that

1 attendance but expands the day to compensate for the
2 lost number of days so that the total minutes
3 attending -- the student will attend is the same in a
4 regular program and a Concept 6 program; is that not
5 correct?

6 A. Yes.

7 Q. How is it, then, that there is a truncated
8 instructional day that results from Concept 6?

9 A. Well, the compression of 180 potential nights
10 of homework assignments and the cycle of doing work at
11 home and coming back and getting feedback from your
12 teacher and doing more is certainly truncated in that
13 schedule.

14 Q. Why cannot the teacher adopt lesson plans that
15 compensate for that and provide the equivalent
16 instruction in the Concept 6 arena?

17 A. Well, as I discuss in my report, there are
18 lots -- there are a number of barriers for doing that
19 and, of course, there is only a finite amount of time in
20 a 24-hour period for students to accomplish homework
21 assignments.

22 Q. Cannot a teacher take that into account and
23 adopt a lesson plan that compensates for that
24 circumstance?

25 A. I don't know of how you can create more time

1 does not seem to be the case.

2 The disruption of the breaks and having to
3 prepare for the ending of a cycle on instruction and
4 getting a room ready for the next group of students who
5 will come in as soon as the first group leaves and then
6 starting up again has the impact of reducing the amount
7 of those minutes that actually get spent on instruction.

8 Also, teachers do report that it is very
9 difficult to make good use of those additional minutes
10 in the same way that they can be done -- that -- that
11 those minutes can be used when they are on a traditional
12 calendar, both because of the structure of some
13 prescriptive curriculum and also because of the need to
14 do homework and have that whole homework cycle fit into
15 it.

16 BY MR. HILL:

17 Q. Are not -- are -- cannot school administrators
18 adopt policies that relieve those disadvantages from a
19 Concept 6 school?

20 MR. ROSENBAUM: It has been asked and answered
21 multiple times, Counsel. It is an incomplete
22 hypothetical.

23 THE WITNESS: For example?

24 BY MR. HILL:

25 Q. You just gave me a series of reasons why you

1 believe Concept 6 schools disadvantage in terms of
2 curriculum and make it inappropriate for the use of the
3 30 minutes that we assume exists productively.

4 You said, for example, that the time between
5 one -- the vacation period is too short, and that is a
6 problem.

7 My question is directed to those things that
8 you stated cause a problem, and I am asking you whether
9 or not a school administrator can't deal with those and
10 eliminate them.

11 MR. ROSENBAUM: Same objection.

12 THE WITNESS: It is conceivable, for example,
13 that a school administrator might choose to pay teachers
14 to come in on Saturday and Sunday between the tracks to
15 clean up their rooms and check in and inventory books
16 and materials and all those things and shift from one
17 class to another, and that might relieve some of the
18 lost time, make up for some of the lost time at the end
19 of an instructional period.

20 The larger issue for me is that it creates a
21 setting in which the quality and the quantity of
22 instructional opportunity is different for the children
23 who are on these schedules than for the children who are
24 not.

25 BY MR. HILL:

1 I would also like you to assume that the
2 district has been reviewing its facilities and has
3 looked at and developed a construction plan, but that as
4 a result of that plan there would be no State money for
5 additional schools within the next five years.

6 My question is: What actions should the
7 school district take to accommodate the expense -- the
8 increase in school money?

9 MR. ROSENBAUM: It is an incomplete
10 hypothetical. It is vague.

11 THE WITNESS: Well, I would first want to know
12 where they have been that all of a sudden there was an
13 influx of children that they had not anticipated in time
14 to plan their building.

15 I mean, if there had been a new housing
16 development or a big housing development built and lots
17 of new families moved in, it seems like they would have
18 known ahead of time and done some projections.

19 If this has to do with increased birth rates,
20 it seems like they would have been aware of this new
21 little tidal wavelet of children coming that were going
22 to fill up their schools.

23 So I have a little bit of trouble with the
24 hypothetical that all of a sudden there was this huge
25 growth in enrollments that were unanticipated or

1 Q. I understand that it is different.

2 The key question, I think, is: Being
3 different, can a school administrator accept the
4 difference and accommodate so the end product is equal?

5 MR. ROSENBAUM: She has answered that six
6 times by my count. Just because you are not getting the
7 answer you want, it is not appropriate to badger her.

8 MR. HILL: I am not trying --

9 MR. ROSENBAUM: You are harassing her. She
10 answered that six times.

11 THE WITNESS: I think it is that many try
12 valiantly to accommodate and reduce the burdens on
13 teachers and on students. I would never say that they
14 created a situation that's equal.

15 BY MR. HILL:

16 Q. Okay. I am going to give you a hypothetical
17 question and see if we can have you respond to that.

18 I would like you to make an assumption. I
19 would like you to assume that -- that a school district
20 becomes aware that it will have a significant increase
21 in school enrollment in the next school year. At the
22 time it becomes aware of that information, its
23 facilities are sufficient to serve its present school
24 population, but those facilities are at the maximum and
25 that they comply with class size reduction requirements.

1 unplanned for. So I am --

2 BY MR. HILL:

3 Q. But we are asking you to assume that.

4 The question is: Assume a significant
5 increase and assume the district has been aware of the
6 potential increase enough to have a construction plan
7 that they have been working on, but that it will be five
8 years before any building can be built because of
9 school, say, funding limitations.

10 MR. ROSENBAUM: Same objection. Plus assumes
11 facts not in evidence.

12 THE WITNESS: Well, I think they should take
13 every action available to them to persuade the State or
14 other available authorities that they need some
15 emergency help soon because they are going to be placing
16 children in an untenable educational situation.

17 BY MR. HILL:

18 Q. Assume that there is no law that would provide
19 emergency action at the state level, prospectively.

20 MR. ROSENBAUM: Same objections.

21 THE WITNESS: Well, then I think they probably
22 have no option but to put children in overcrowded
23 schools that are going to diminish their educational
24 opportunities and their outcomes, but they would be wise
25 to tell the truth about that and not try to pretend that

1 the situation is not one that is damaging to children.

2 BY MR. HILL:

3 Q. And of the options that are available, you
4 discussed several of them in your report. One is
5 busing. One is Concept 6 year-round schools. Another
6 one is year-round schools other than Concept 6, and
7 today we mentioned the use of portables.

8 Of those options, which would provide the
9 least impact upon the education of the children?

10 MR. ROSENBAUM: Same objections.

11 THE WITNESS: They are all less-than-desirable
12 options. I wouldn't venture to say which I would
13 recommend. I wouldn't recommend any of them.

14 BY MR. HILL:

15 Q. The report that you did on Concept 6, the last
16 session we talked about it. You mentioned that it arose
17 from a -- and you mentioned a little bit today -- it
18 arose from a declaration you prepared in the Godinez
19 case.

20 Prior to writing that declaration was Concept
21 6 something that you had studied individually?

22 A. Not as an independent or an isolated
23 phenomenon.

24 Q. Have you done any academic research on Concept
25 6 as an academic matter?

1 A. Are you asking me to say whether I think
2 Concept 6 is an example of it?

3 Q. No. I am asking whether you consider your
4 report as a part of an equity-focused -- let me go back
5 and let me rephrase it.

6 Do you consider the recommendations that you make
7 in your report to be part of an equity-focused education
8 reform?

9 A. Well, I don't see this report as in itself
10 being a reform of any type.

11 It is an analysis and some recommendations
12 that I believe could result in greater quality and
13 equity.

14 Q. Is the elimination of year-round schools a
15 goal of equity education reform?

16 MR. ROSENBAUM: Year-round schools -- you are
17 talking about year-round schools?

18 BY MR. HILL:

19 Q. I am talking about year-round schools broadly.

20 A. No. I think that, in fact, there is some
21 evidence that single-track, year-round schools can be a
22 viable educational opportunity and in some cases may
23 serve disadvantaged populations well.

24 I am speaking here about the problems with
25 multi-track, year-round schools, specifically Concept 6.

1 A. I have certainly reviewed all of the studies I
2 believe exist about Concept 6 and reviewed them very
3 carefully.

4 Q. You have not done any studies of your own?

5 A. Well, I consider that a study. I have not
6 collected new empirical data.

7 Q. Is that study called a "review of the
8 literature"?

9 A. Yes.

10 Q. Would you say that is what your report is, a
11 review of the literature?

12 A. It is -- no, I actually think it is more than
13 that.

14 It is a review of the literature, a review of
15 other documents that speak to this issue, a review of
16 testimony and reports made by school people about these
17 conditions and to which I have applied my, I think,
18 considerable knowledge of school organization and school
19 practices and made some conclusions, drawn some
20 conclusions about the problems associated with Concept 6
21 that are something more than the sum of the individual
22 pieces of literature that I looked at.

23 Q. Your report on Concept 6, would you consider
24 it as part of the equity-focused education reform?

25 We discussed that earlier this morning.

1 Q. Is the elimination of Concept 6 part of a
2 standards-based reform strategy?

3 A. I think there is almost universal consensus
4 among educators that achieving a standards-based school
5 system that provides quality and equity of all students
6 would include the elimination of Concept 6.

7 Q. And is it your opinion that no administrative
8 activities undertaken by school administrators could
9 implement Concept 6 in a way that would save it?

10 MR. ROSENBAUM: You know, you asked that
11 question about 12 questions ago. It is not appropriate
12 for you to come back and do that. It has been asked and
13 answered.

14 THE WITNESS: I think in theory we might
15 conceive of a way that school administrators could
16 overcome some of the difficulties.

17 We know, however, and it is widely accepted,
18 that that is generally not the case.

19 Most school administrators I know feel
20 terrible about Concept 6 schools.

21 BY MR. HILL:

22 Q. On your IDEA website -- I didn't see your
23 Concept 6 report published on your website.

24 Is there a reason for that?

25 A. It was not one of the papers that I had

1 originally conceptualized as part of the group of
 2 scholarly papers and so it is not included with them.
 3 Q. And why was it not conceptualized as one of
 4 the scholarly papers?
 5 A. Because I didn't -- I had not planned at the
 6 point of framing that of -- framing the proposal and the
 7 conceptualization of having that as a separate paper.
 8 The paper by Valerie Lee and Kevin Welner and
 9 Doug Ready on school size and organization covers the
 10 constructs, some of the constructs, here in a way that I
 11 felt for the purposes of the scholarly project was
 12 sufficient.
 13 MR. HILL: I don't have anything further.
 14 MR. ROSENBAUM: Okay.
 15 MR. HILL: I apologize for having some
 16 downtime this afternoon. That is just the way --
 17 MR. ROSENBAUM: We will find a way to make do,
 18 I think.
 19 Thank you very much. I appreciate it. 9:30
 20 tomorrow.
 21
 22 (The following stipulation
 23 from a prior deposition was
 24 incorporated as follows:
 25 "MR. HERRON: May we

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 1:48 p.m., the
 21 deposition of JEANNIE OAKES was adjourned.)
 22
 23
 24
 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 _____
 18 JEANNIE OAKES
 19
 20
 21
 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