

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN FRANCISCO

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4 ELIEZER WILLIAMS, a minor, by
5 Sweetie Williams, his guardian ad litem,
6 et al., each individually and on behalf
7 of all others similarly situated,
8 Plaintiffs,

9 vs.

No. 312236

10 STATE OF CALIFORNIA, DELAINE EASTIN,
11 State Superintendent of Public
12 Instruction, STATE DEPARTMENT OF
13 EDUCATION, STATE BOARD OF EDUCATION,
14 Defendants.

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15 Deposition of

16 PAUL WARREN

17 Volume III, Pages 402 through 660

18 Wednesday, August 29, 2001

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22 Reported by:

23 TRACY LEE MOORELAND

24 CSR No. 10397

25 Job No. 28227

APPEARANCES

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3 For the Plaintiffs Eliezer Williams, et al.:

4 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
5 BY: MARK D. ROSENBAUM, ESQ.
6 1616 Beverly Boulevard
7 Los Angeles, California 90026

8

9 For the Defendant State of California:

10 O'MELVENEY & MYERS LLP
11 BY: DAVID HERRON, ESQ.
12 400 South Hope Street
13 Los Angeles, California 90071

14

15 For the Defendant Delaine Eastin, State Superintendent
16 of Public Instruction, State Department of Education,
17 State Board of Education:

18 DEPARTMENT OF JUSTICE
19 OFFICE OF THE ATTORNEY GENERAL
20 BY: KARA READ SPANGLER, ESQ.
21 1300 I Street, Suite 1101
22 Sacramento, California 95814

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I N D E X

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APPEARANCES, cont.

1
2
3 The Intervener:

4 CALIFORNIA SCHOOL BOARD ASSOCIATION
5 BY: RICHARD L. HAMILTON, ESQ.
6 3100 Beacon Boulevard
7 West Sacramento, California 95691

8

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

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

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1 BE IT REMEMBERED, that on Wednesday, August 29,
2 2001, commencing at the hour of 10:00 a.m., thereof, at
3 the Equity Offices, 400 Capitol Mall, Sixth Floor,
4 Sacramento, California, before me, TRACY LEE MOORELAND,
5 a Certified Shorthand Reporter in the State of
6 California, there personally appeared
7 PAUL WARREN,
8 called as a witness herein, who, having been duly sworn
9 to tell the truth, the whole truth, and nothing but the
10 truth, was thereupon examined and interrogated as
11 hereinafter set forth.
12 ---o0o---
13 EXAMINATION BY MR. ROSENBAUM
14 Q. How are you, Mr. Warren?
15 A. Good, thanks.
16 Q. Nice to see you again. I appreciate you
17 accommodating us.
18 Mr. Warren, we were last in deposition on May
19 24th. Has your position remained the same over that
20 period of time?
21 A. Do I have the same job, you mean?
22 Q. Yes.
23 A. Yes.
24 Q. Same title?
25 A. Yes.

1 Q. Have there been any changes in your division
 2 since then that you're aware of?
 3 MR. HERRON: Objection. Vague and ambiguous
 4 and overbroad.
 5 THE WITNESS: I work for the accountability
 6 branch.
 7 MR. ROSENBAUM: I meant the branch. Thank you.
 8 MR. HERRON: What do you mean by "changes"?
 9 MR. ROSENBAUM: I mean personnel at the higher
 10 levels.
 11 Q. Have there been any changes?
 12 A. Yes.
 13 Q. And what do they involve?
 14 A. Well, I have a new research assistant. Whether
 15 that's meaningful to you or not, I don't know. Also
 16 there has been a change in that one of the divisions
 17 that was previously in the accountability branch is no
 18 longer in it, and that division also has a new manager.
 19 Q. And which division is that?
 20 A. School and district accountability division.
 21 Q. And who is the new manager?
 22 A. Marsha Bedwell.
 23 Q. Okay. And that was briefly Dr. Greenfeld; is
 24 that right?
 25 A. That's correct.

1 Q. And help me understand this. Who is it now?
 2 A. Marsha reports directly to my boss, Scott Hill.
 3 Q. Mr. Hill. And were you involved in any
 4 discussions regarding that change?
 5 MR. HERRON: Objection. Relevance. Vague and
 6 ambiguous in the use of the term "involved."
 7 MS. READ SPANGLER: Join.
 8 MR. JORDAN: Just for the record, do we have a
 9 protocol that we need not expressly join to have the
 10 benefit of joining folks' objections?
 11 MR. ROSENBAUM: I've been reviewing a number of
 12 depositions recently, and I don't think these objections
 13 are well taken. I do think that it would expedite
 14 things. I'm prepared to stipulate that when an
 15 objection is made, all counsel can join unless they
 16 expressly don't want to.
 17 MR. HERRON: The State will join in any
 18 objections that are registered by the state agency,
 19 defendants' counsel, but not in any objection by LAUSD,
 20 unless otherwise expressly specified.
 21 And I take issue with our objections being not
 22 well taken. What's not well taken is the questions that
 23 have pondered on for two days now, and I hope that this
 24 depo ends today.
 25 MS. READ SPANGLER: And we'll stipulate that

1 all objections are deemed joined with Mr. Herron's
 2 change.
 3 MR. ROSENBAUM: Can I get the question read
 4 back?
 5 (Record read.)
 6 THE WITNESS: Regarding that change meaning
 7 what?
 8 Q. BY MR. ROSENBAUM: First of all, as I
 9 understand it -- is it Ms. Bedwell?
 10 A. I don't know.
 11 Q. Do you know Marsha Bedwell?
 12 A. Yes.
 13 Q. Okay. Were you involved -- as I understand
 14 what you're saying, she -- is her division -- am I using
 15 the right phrase here? Is it still part of the same
 16 accountability branch? Am I using the right terms?
 17 A. I'm sorry, I'm confused.
 18 Q. I think I'm the one that's confused. Explain
 19 to me exactly what the change was.
 20 MR. HERRON: Objection. Asked and answered.
 21 MR. ROSENBAUM: I know it was.
 22 THE WITNESS: The school and district
 23 accountability was previously in the accountability
 24 branch and the director reported to me, and now the
 25 school and district accountability branch is no longer

1 in the accountability branch and the reporting
 2 relationship is to the chief deputy.
 3 Q. BY MR. ROSENBAUM: Okay. So Marsha Bedwell now
 4 reports directly to Scott Hill?
 5 MR. HERRON: Objection. Asked and answered.
 6 THE WITNESS: Correct.
 7 Q. BY MR. ROSENBAUM: And with respect to that
 8 reporting relationship, were you involved in any
 9 discussions that dealt with that change?
 10 MR. HERRON: Objection. Vague and ambiguous.
 11 THE WITNESS: Discussions before, after? What
 12 are you trying to ask?
 13 MR. ROSENBAUM: Before initially.
 14 MR. HERRON: Objection. Relevance.
 15 THE WITNESS: Yes.
 16 Q. BY MR. ROSENBAUM: And who participated in
 17 those discussions? I take it Marsha Bedwell did?
 18 MR. HERRON: Objection. Relevance.
 19 THE WITNESS: I never discussed it with Marsha.
 20 Q. BY MR. ROSENBAUM: Did you discuss it with
 21 Scott Hill?
 22 A. Yes.
 23 Q. And Superintendent Eastin?
 24 A. Yes.
 25 Q. And Stu Greenfeld?

1 A. I don't remember.
 2 Q. Who else?
 3 MR. HERRON: Objection. Relevance.
 4 You don't have to guess or speculate, all you
 5 need to give him is your best recollection. If you
 6 don't have one, you can say so.
 7 THE WITNESS: I really don't remember.
 8 Q. BY MR. ROSENBAUM: And to the best of your
 9 knowledge, in your discussions, who first broached the
 10 subject about changing the reporting relationship?
 11 MR. HERRON: Objection. Relevance.
 12 THE WITNESS: The first time I discussed it
 13 with anybody, that I heard about the proposal, was from
 14 Scott Hill.
 15 Q. BY MR. ROSENBAUM: And approximately when was
 16 that?
 17 A. I don't know. I can't remember.
 18 Q. Was it in June?
 19 A. I just don't remember.
 20 Q. Do you know if it was before or after June?
 21 A. I don't remember when the change took place, to
 22 be honest with you.
 23 Q. Okay. And what's your best recollection of
 24 what Mr. Hill said?
 25 MR. HERRON: Object to the whole line of

1 questioning as lacking any relevance to the case and
 2 wasting our time.
 3 THE WITNESS: The best I can remember is that
 4 he suggested that there might be a good reason to do it
 5 as evidence that the Department is taking the issue very
 6 seriously.
 7 Q. BY MR. ROSENBAUM: What issue are you referring
 8 to?
 9 A. I'm sorry, Comite.
 10 Q. Did he explain why he thought that might be an
 11 indication that the Department was taking that
 12 seriously?
 13 A. No, I don't think so.
 14 Q. Did you ask why?
 15 A. No.
 16 Q. Did you have an understanding what he meant by
 17 that?
 18 MS. READ SPANGLER: Objection. Calls for
 19 speculation.
 20 THE WITNESS: Do I know what he meant by it?
 21 No.
 22 Q. BY MR. ROSENBAUM: That wasn't my question.
 23 A. I think it was.
 24 Q. What was your understanding? Did you have any
 25 understanding at all as to what he meant by that?

1 MR. HERRON: Objection. Asked and answered.
 2 THE WITNESS: I don't know what he meant by
 3 that, no.
 4 Q. BY MR. ROSENBAUM: Did you ask him what he
 5 meant by that?
 6 MR. HERRON: Objection. Asked and answered
 7 three questions before.
 8 THE WITNESS: No.
 9 Q. BY MR. ROSENBAUM: Why not?
 10 MR. HERRON: Objection, relevance. Objection,
 11 harassing. Objection, ridiculous.
 12 Does it really matter why not, Mark? This is
 13 really starting not well. Does it really matter why?
 14 MR. ROSENBAUM: Go ahead.
 15 MR. HERRON: Must matter to you. Doesn't
 16 matter to the case though.
 17 You may respond. Do you want the question
 18 reread?
 19 THE WITNESS: No.
 20 Probably because I created my own rationale in
 21 my own head as to why they might do that.
 22 Q. BY MR. ROSENBAUM: And what's the rationale you
 23 created?
 24 A. It gives it more visibility to the upper
 25 management.

1 Q. And when you say "upper management," what do
 2 you mean by that?
 3 A. Scott Hill and Delaine Eastin and Leslie
 4 Faucette.
 5 Q. When you say "it," what do you mean by "it"?
 6 A. The case.
 7 Q. The Comite case?
 8 A. Correct.
 9 Q. Did you object?
 10 A. I think I pointed out pros and cons.
 11 Q. What were the pros you pointed out?
 12 A. That it does give more visibility for the
 13 Comite case to the upper management and is a signal to
 14 both the plaintiffs and those who -- others who are
 15 interested in the case that the Department takes the
 16 case very seriously and is very sincere in its efforts
 17 to try to be -- to do its job, that we want to follow
 18 the law.
 19 Q. Did you think that was necessary to do?
 20 MR. HERRON: Objection. Relevance. Calls for
 21 speculation. Calls for a legal conclusion.
 22 THE WITNESS: I don't know about necessary.
 23 Q. BY MR. ROSENBAUM: Do you think it was a good
 24 thing to do personally?
 25 A. I understand the rationale.

1 Q. Did you agree with that rationale?
 2 A. I don't think I agreed or disagreed.
 3 Q. Did you state what you thought the cons were?
 4 A. I raised some issues, yes.
 5 Q. What were the issues?
 6 A. I think the primary one was just a matter of
 7 time, that a chief deputy's time is extremely limited,
 8 and I was concerned whether my boss would have the time
 9 to do the kind of work that I know I used to do when I
 10 was responsible.
 11 Q. Okay. Your boss, you mean Mr. Hill?
 12 A. Yes.
 13 Q. And you said this directly to Mr. Hill?
 14 A. Yes.
 15 Q. And what did he say?
 16 A. He understood.
 17 Q. Did he say anything?
 18 A. No, I don't think so. I don't recall anyway.
 19 Q. How do you know he understood?
 20 A. That's my impression, my recollection.
 21 Q. Did you express any other comments?
 22 A. Just that part of the rationale of having it in
 23 my branch is to try to put the accountability programs
 24 in one place and kind of aligning them together, and
 25 that that creates a division.

1 Q. Did you think that was important?
 2 MR. HERRON: What was important? Objection.
 3 Vague and ambiguous in the way you phrased that
 4 question.
 5 THE WITNESS: The accountability branch was put
 6 together for a specific reason and that I think that was
 7 important.
 8 Q. BY MR. ROSENBAUM: When you say "put together
 9 for a specific reason," what do you mean by that?
 10 A. Well, I've already answered that, which is that
 11 in order to align the accountability programs and to
 12 make a coherent program out of it.
 13 Q. How do you believe that helps to make it a
 14 coherent program?
 15 MS. READ SPANGLER: What makes a coherent
 16 program?
 17 MR. ROSENBAUM: Putting them together.
 18 THE WITNESS: By itself it doesn't, but it
 19 allows -- it facilitates more kind of coordination
 20 between the programs.
 21 Q. BY MR. ROSENBAUM: Why is that?
 22 MR. HERRON: Why is what? Objection. Vague
 23 and ambiguous. Asked and answered.
 24 THE WITNESS: It facilitates it because one
 25 person oversees all of those issues.

1 Q. BY MR. ROSENBAUM: Any other reasons?
 2 MR. HERRON: Any other reasons what, Mark?
 3 It's not a question.
 4 MR. ROSENBAUM: You shook your head no.
 5 MR. HERRON: He's shaking his head at your
 6 question. Vague and ambiguous.
 7 THE WITNESS: Like I said, by itself it doesn't
 8 do anything, but it just -- no, there's no other
 9 reasons.
 10 Q. BY MR. ROSENBAUM: And what did Mr. Hill say?
 11 MR. HERRON: Objection. Vague and ambiguous as
 12 to time.
 13 THE WITNESS: I don't remember specifically.
 14 Q. BY MR. ROSENBAUM: Do you remember generally
 15 what he said when you expressed this?
 16 MR. HERRON: Objection. Asked and answered.
 17 THE WITNESS: I don't recall.
 18 Q. BY MR. ROSENBAUM: And was there any other
 19 discussion that you had with Mr. Hill on this subject?
 20 MR. HERRON: Objection. Relevance. Vague as
 21 to time. Vague and ambiguous as phrased.
 22 THE WITNESS: Well, I think I did express to
 23 him a personal concern that the change could be seen as,
 24 in some respects, punishment for losing the case.
 25 Q. BY MR. ROSENBAUM: Punishment of whom?

1 A. Of me.
 2 Q. Okay. And what was his response?
 3 A. He said -- I mean, I don't know what he
 4 responded, but what I recall, the vague -- the general
 5 response was, that's not why, you shouldn't worry about
 6 that.
 7 Q. Did you regard it to any degree as a punishment
 8 for losing the case, did you regard it as such?
 9 A. No.
 10 Q. On how many occasions did you have discussions
 11 with Mr. Hill about this subject?
 12 MR. HERRON: Objection. Asked and answered.
 13 THE WITNESS: I don't remember.
 14 Q. BY MR. ROSENBAUM: More than two?
 15 MR. HERRON: Objection. Asked and answered.
 16 THE WITNESS: I don't remember.
 17 Q. BY MR. ROSENBAUM: Did you ever prepare a
 18 written document expressing your views?
 19 A. No.
 20 Q. Were there any written documents prepared, to
 21 your knowledge, regarding the change?
 22 MR. HERRON: Objection. Vague and ambiguous.
 23 THE WITNESS: I don't believe I saw any written
 24 documentation regarding the rationale behind the change,
 25 if that's what you're talking about.

1 Q. BY MR. ROSENBAUM: Or any memos discussing pros
2 and cons to any degree?
3 A. I don't think I've seen anything regarding
4 rationale for the change.
5 Q. Did you ever hear any other reasons as to why
6 the change was made?
7 MR. HERRON: Other than what he's already
8 testified to?
9 MR. ROSENBAUM: Yes. Thank you.
10 THE WITNESS: Yes.
11 Q. BY MR. ROSENBAUM: What other reasons did you
12 hear?
13 A. That I was overworked.
14 Q. Okay. And from whom did you hear that?
15 A. I don't know.
16 Q. Okay. Did you ever hear that Marsha Bedwell
17 had a preference to report to Scott Hill directly?
18 MR. HERRON: Objection. Vague and ambiguous.
19 Preference of reporting to who else?
20 MR. ROSENBAUM: As opposed to Mr. Warren.
21 THE WITNESS: No.
22 Q. BY MR. ROSENBAUM: Okay. And what's your best
23 recollection as to when this change took place?
24 MR. HERRON: Objection. Asked and answered
25 three times. He's already told you he doesn't recall.

1 THE WITNESS: Yeah.
2 MS. READ SPANGLER: You know, Mark, we've spent
3 15 minutes on this line of questioning, and I just don't
4 see how it's reasonably calculated to lead to the
5 discovery of admissible evidence, so maybe you can wrap
6 it up.
7 Q. BY MR. ROSENBAUM: Mr. Warren, are you familiar
8 with the phrase reengineering CCR?
9 A. Yes.
10 Q. What's your understanding of what that phrase
11 means?
12 MR. HERRON: Objection. Vague and ambiguous.
13 In what context, please?
14 THE WITNESS: The Department has an internal
15 initiative to examine the CCR process and to see if
16 there aren't ways that we can monitor schools in a way
17 that is more targeted and more effective.
18 Q. BY MR. ROSENBAUM: Okay. And are you involved
19 in that process?
20 A. Yes.
21 Q. Can you tell me, please, what the nature of
22 your involvement is?
23 MR. HERRON: Objection. Calls for a narrative.
24 THE WITNESS: It's kind of hard to answer
25 succinctly, but I guess you could say I've been one of

1 the planners and leaders of guiding the process.
2 Q. BY MR. ROSENBAUM: Was it your idea?
3 A. Was what my idea?
4 Q. To initiate an internal exam of CCR. Am I
5 understanding correctly, that that's the process you're
6 talking about?
7 A. That's what the reengineering is.
8 Q. Yeah. Was that your idea to do that?
9 MR. HERRON: Objection. Vague and ambiguous.
10 THE WITNESS: You know, I don't recall.
11 Q. BY MR. ROSENBAUM: Why don't you explain to me,
12 as best you can, Mr. Warren, how this initiative came
13 into being.
14 MR. HERRON: Objection. Calls for speculation.
15 Vague and ambiguous. Calls for a narrative.
16 THE WITNESS: Well, my recollection is kind of
17 fuzzy.
18 MS. READ SPANGLER: Remember, don't guess.
19 THE WITNESS: Yeah, I mean, really the first
20 thing that I can really remember is a planning session
21 that I had with staff to lay out the different parts of
22 the reengineering process that we were going to focus
23 on.
24 Q. BY MR. ROSENBAUM: Can you give me an
25 approximate date as to when that occurred?

1 A. Sometime, I would say, in the spring of 2000.
2 Q. Okay. Had you had prior discussions with
3 Mr. Hill about reengineering CCR?
4 MR. HERRON: Objection. Vague and ambiguous as
5 to the use of the term "prior discussions."
6 MS. READ SPANGLER: Misstates his testimony.
7 Assumes facts not in evidence.
8 MR. ROSENBAUM: You're right, it does.
9 Q. Had you had discussions with Mr. Hill prior to
10 this staff meeting about reengineering CCR?
11 A. Yes.
12 Q. Okay. And how about with Superintendent
13 Eastin?
14 A. I don't recall any.
15 Q. Okay. Incidentally, you mentioned to me you
16 had discussions with Superintendent Eastin about the
17 change in the reporting relationship we talked about
18 several moments ago. Do you remember that?
19 A. Yes.
20 Q. On how many occasions?
21 A. Once.
22 Q. And was that a person-to-person discussion?
23 A. Uh-huh. Yes.
24 Q. And what did you say in that discussion?
25 MR. HERRON: Objection. Relevance.

1 THE WITNESS: I don't remember specifically
 2 what I said.
 3 Q. BY MR. ROSENBAUM: What's your best
 4 recollection?
 5 MR. HERRON: Well, he just answered your
 6 question. He doesn't remember specifically. Asked and
 7 answered.
 8 THE WITNESS: It was a meeting -- I'm sorry, I
 9 just don't remember.
 10 Q. BY MR. ROSENBAUM: Do you remember anything
 11 that was said at the meeting?
 12 A. By whom?
 13 Q. By you.
 14 A. Well, I remember expressing surprise.
 15 Q. Okay. And did you tell Superintendent Eastin
 16 that you were upset with the decision?
 17 A. I wasn't upset with the decision.
 18 Q. Or that you opposed the decision?
 19 MR. HERRON: Objection. Relevance.
 20 THE WITNESS: No, I didn't tell her I opposed
 21 the decision.
 22 Q. BY MR. ROSENBAUM: Did you express some of the
 23 cons with respect to the decision?
 24 MS. READ SPANGLER: I'm going to make a
 25 continuing objection on the grounds that none of this is

1 reasonably calculated to lead to the discovery of
 2 admissible evidence.
 3 THE WITNESS: I don't remember.
 4 Q. BY MR. ROSENBAUM: What did she say, as best
 5 you recall?
 6 A. She told me that they were going to make the
 7 change.
 8 Q. Did she explain why?
 9 A. I don't know.
 10 Q. How did the meeting take place, did you request
 11 it or was it a staff meeting?
 12 A. It was at a regular meeting.
 13 Q. Okay. Who else was present at that meeting
 14 besides you and the superintendent?
 15 A. I recall Camille Maben was also there.
 16 Q. Who is that?
 17 A. She's an advisor to the superintendent.
 18 Q. Do you recall if anyone else was present?
 19 A. I don't.
 20 Q. What's her last name, please?
 21 A. Maben.
 22 Q. How do you spell that?
 23 A. M-a-b-e-n.
 24 Q. Did Camille Maben say anything with respect to
 25 this subject?

1 A. Not that I recall.
 2 Q. Were there any other subjects discussed at this
 3 meeting besides the change?
 4 A. Yes.
 5 Q. Did you request the meeting, or was it just --
 6 strike that.
 7 Did you request the meeting?
 8 MR. HERRON: Objection. Asked and answered.
 9 THE WITNESS: No.
 10 Q. BY MR. ROSENBAUM: How did you express
 11 surprise?
 12 MR. HERRON: Objection. Relevance.
 13 THE WITNESS: I don't know.
 14 Q. BY MR. ROSENBAUM: Did you say you disagreed
 15 with it, you didn't think it was a good idea, anything
 16 like that?
 17 MR. HERRON: Objection. Asked and answered,
 18 and it's becoming harassing, Mark. This is irrelevant.
 19 You need to move off this subject and onto a
 20 topic that actually has some relevance to the case,
 21 please.
 22 THE WITNESS: Which one do you want me to
 23 answer?
 24 MR. ROSENBAUM: Just trying to speed it up a
 25 little bit.

1 MR. HERRON: No, you're not, you're slowing it
 2 down.
 3 Q. BY MR. ROSENBAUM: My question was, did you
 4 express any concerns about the change being made?
 5 MR. HERRON: Objection. Asked and answered.
 6 THE WITNESS: I don't recall.
 7 Q. BY MR. ROSENBAUM: Okay. Sitting here today,
 8 can you recall anything else about what you said than
 9 what you've already told me in your discussion with
 10 Superintendent Eastin?
 11 A. On this particular topic?
 12 Q. Yes.
 13 A. I don't recall.
 14 Q. Do you recall anything else that Superintendent
 15 Eastin said other than what you already testified to on
 16 this subject?
 17 A. No.
 18 Q. Or Ms. Maben?
 19 A. No.
 20 Q. Okay. You told me that there was a planning
 21 session at some point in the spring of 2000 about
 22 reengineering the CCR; is that right?
 23 A. Yes.
 24 (Mr. Hamilton entered the room.)
 25 Q. BY MR. ROSENBAUM: Had there been any

1 documents, to your knowledge, prepared with respect to
 2 reengineering CCR prior to the meeting itself?
 3 MR. HERRON: The staff meeting?
 4 MR. ROSENBAUM: Yes.
 5 MR. HERRON: Objection. Vague and ambiguous.
 6 You may respond.
 7 THE WITNESS: I don't believe so.
 8 Q. BY MR. ROSENBAUM: Okay. Now were you the
 9 point person for this process, were you in charge of
 10 this process?
 11 MR. HERRON: Objection. Compound. Asked and
 12 answered.
 13 THE WITNESS: I'm not exactly sure from what
 14 perspective you're asking that.
 15 MR. ROSENBAUM: That's a fair question.
 16 Q. What I'm trying to understand is, is there an
 17 individual who is in charge of reengineering CCR?
 18 MR. HERRON: Objection. Vague and ambiguous.
 19 Assumes facts not in evidence.
 20 THE WITNESS: I don't believe so.
 21 Q. BY MR. ROSENBAUM: Okay. What do you
 22 understand your duties and responsibilities to be with
 23 respect to reengineering CCR?
 24 MR. HERRON: Objection. Asked and answered.
 25 THE WITNESS: At what point are you talking,

1 because that's -- it has changed over time.
 2 Q. BY MR. ROSENBAUM: Okay. Why don't we see
 3 where we are now and work backwards. Reengineering CCR,
 4 that is still taking place at this time; is that right?
 5 A. We are continuing the process, yes.
 6 Q. And when you say "the process," that's what you
 7 were talking about earlier, the internal evaluation; is
 8 that right?
 9 A. Yes.
 10 Q. Is there a date set as to when you expect that
 11 process to end?
 12 A. No.
 13 Q. Are there particular goals and objectives that
 14 you understand to be behind reengineering CCR?
 15 MR. HERRON: Objection. Vague and ambiguous.
 16 THE WITNESS: I think what we are trying to do
 17 is -- the process -- we're trying to establish an
 18 internal process for continually trying to improve what
 19 the Department is doing, and that's why I responded that
 20 I don't think there is an end point to this process.
 21 That is something that we should continually be doing is
 22 re-examining what we're doing, how we do it and try to
 23 make it as effective as possible.
 24 Q. BY MR. ROSENBAUM: Is there a person or are
 25 there persons who are given specific responsibilities

1 with respect to reengineering CCR at the present time?
 2 A. Yes.
 3 Q. And who are they?
 4 A. Well, there's a lot of them.
 5 Q. Okay. Is there a hierarchy?
 6 MR. HERRON: Objection. Vague and ambiguous.
 7 THE WITNESS: To some extent, yes.
 8 Q. BY MR. ROSENBAUM: Okay. When you say "to some
 9 extent," why don't you explain to me what you mean.
 10 A. We have four work groups that --
 11 Q. Four work groups with respect to reengineering
 12 CCR?
 13 A. Yes.
 14 Q. I cut you off. Go ahead.
 15 A. -- that are looking at different aspects.
 16 Q. Okay. And what are the different aspects that
 17 each of these groups are looking at?
 18 MR. HERRON: Objection. Calls for a narrative.
 19 Vague and ambiguous as phrased.
 20 You want him to go group by group?
 21 MR. ROSENBAUM: That's fine.
 22 THE WITNESS: There are four work groups which
 23 are looking at different aspects, one looks at the
 24 consolidated application, one is looking at the CCR
 25 monitoring guidelines, one is examining providing

1 assistance to schools who have significant compliance
 2 problems, and the fourth deals with internal CDE
 3 administrative issues related to those other three
 4 areas.
 5 Q. BY MR. ROSENBAUM: Would you mind saying that
 6 last group -- that last area again, internal CDE?
 7 A. Internal CDE administrative issues that relate
 8 to the other three areas.
 9 Q. Okay. Thank you. And do you -- Mr. Warren, do
 10 you have particular duties and responsibilities with
 11 respect to any of the four work groups that you just
 12 mentioned?
 13 A. I chair the first group on consolidated
 14 application.
 15 Q. Do you attend meetings of two, three or four?
 16 A. On occasion.
 17 Q. Are the groups charged with preparing reports
 18 as to what they're doing or the status of their
 19 investigations?
 20 MR. HERRON: Objection. Vague and ambiguous as
 21 to time.
 22 THE WITNESS: There's -- there are updates that
 23 are written approximately -- well, I can't really say
 24 for sure how often, but there are regular updates.
 25 Q. BY MR. ROSENBAUM: Okay. Do you maintain those

1 updates in a particular file?
 2 MR. HERRON: You mean does he personally?
 3 MR. ROSENBAUM: Yeah. I'll withdraw that.
 4 Q. If I wanted to see those updates, how would I
 5 go about doing that?
 6 MR. HERRON: Objection. Calls for speculation.
 7 Vague and ambiguous as phrased.
 8 THE WITNESS: You would probably contact Laura
 9 Wagner, the person who is responsible for creating those
 10 updates.
 11 Q. BY MR. ROSENBAUM: For each of the four groups?
 12 A. (Witness nods head.)
 13 Q. And who is Laura Wagner?
 14 You nodded yes, by the way.
 15 A. I'm sorry, yes.
 16 Q. And who is Laura Wagner?
 17 A. Laura Wagner is a unit manager in the school
 18 and district accountability division.
 19 Q. And who is the chair of the CCR monitoring
 20 guidelines work group?
 21 A. Leslie Faucette.
 22 Q. And who is the chair of providing assistance to
 23 schools with significant compliance issues?
 24 A. Scott Hill.
 25 Q. And have these four work groups been in

1 existence since spring of 2000?
 2 MR. HERRON: Objection. Calls for speculation.
 3 Vague and ambiguous as phrased.
 4 THE WITNESS: I can't say for sure exactly when
 5 they came into being, but it was sometime after the
 6 staff meeting that I had discussed before.
 7 Q. BY MR. ROSENBAUM: Okay. You know who Eleanor
 8 Clark-Thomas is?
 9 A. Yes.
 10 Q. Is she a part of one or more of these work
 11 groups so far as you know?
 12 A. I don't know for sure.
 13 Q. Okay. The phrase "reengineering CCR," do you
 14 know where that phrase came from?
 15 A. No.
 16 Q. Okay. I asked you this before, and I just
 17 would appreciate it if you could clarify as best you
 18 can. I'm trying to figure out where this idea sprung
 19 from that the internal evaluation of CCR should take
 20 place.
 21 To your knowledge, had such an internal
 22 evaluation taken place prior to the spring of 2000?
 23 A. I'm sorry, what kind of --
 24 Q. You said to me that your understanding about
 25 reengineering CCR means an internal initiative to

1 examine the workings of CCR. Did I understand you
 2 correctly?
 3 MR. HERRON: Objection. Calls for speculation
 4 as to what you understood. Asked and answered.
 5 THE WITNESS: I'm not sure that that's what I
 6 said.
 7 Q. BY MR. ROSENBAUM: I would appreciate it if
 8 you'd tell me exactly what you understand reengineering
 9 CCR to mean.
 10 MS. READ SPANGLER: Objection. Asked and
 11 answered.
 12 MR. HERRON: Vague and ambiguous.
 13 THE WITNESS: I think what I said was that it's
 14 an attempt to review the CCR and related processes and
 15 try to make it as effective as possible.
 16 Q. BY MR. ROSENBAUM: And you referred to that as
 17 an internal review; is that right?
 18 A. Yes.
 19 Q. To your knowledge, prior to the spring of 2000,
 20 had there ever been any such internal review?
 21 MR. HERRON: Of CCR?
 22 MR. ROSENBAUM: Yes.
 23 THE WITNESS: With the same goals and
 24 objectives?
 25 MR. ROSENBAUM: Yes.

1 THE WITNESS: I don't know.
 2 Q. BY MR. ROSENBAUM: You're not aware of any; is
 3 that right?
 4 MS. READ SPANGLER: Objection. Misstates his
 5 testimony.
 6 THE WITNESS: I just don't know.
 7 Q. BY MR. ROSENBAUM: And, to your knowledge,
 8 prior to the spring of 2000, had there been any internal
 9 review of the operation of CCR?
 10 MR. HERRON: Objection. Vague and ambiguous.
 11 Calls for speculation.
 12 THE WITNESS: I don't know what "operation"
 13 means.
 14 MR. ROSENBAUM: How it was working. How
 15 effectively it was working to achieve its goals.
 16 MR. HERRON: Same objections.
 17 THE WITNESS: I don't know.
 18 Q. BY MR. ROSENBAUM: Okay. And prior to the
 19 spring of 2000, to your knowledge, has there ever been
 20 any external independent review of how effectively CCR
 21 is operating?
 22 MR. HERRON: Objection. Vague and ambiguous.
 23 Calls for speculation. Vague in the use of the term
 24 "independent."
 25 THE WITNESS: I was going to say, what do you

1 mean?

2 MR. ROSENBAUM: Any external review.

3 THE WITNESS: Any external review of CCR for

4 the purpose of --

5 MR. ROSENBAUM: Seeing how well it was

6 achieving its purposes.

7 THE WITNESS: I don't know.

8 Q. BY MR. ROSENBAUM: And subsequent to the spring

9 of 2000, to your knowledge, has there been any external

10 review of CCR to see how well its achieving its

11 objectives?

12 MR. HERRON: Same objections.

13 THE WITNESS: Not that I know of.

14 Q. BY MR. ROSENBAUM: Now, you described this as

15 an internal examination, am I understanding you right?

16 A. Yes.

17 MR. HERRON: Objection. Asked and answered.

18 Q. BY MR. ROSENBAUM: And are there any

19 individuals, to your knowledge, who are involved in this

20 examination who come from outside the Department?

21 MR. HERRON: Objection. Vague and ambiguous.

22 Asked and answered in part.

23 THE WITNESS: I guess I don't know what you

24 mean by involved in the investigation.

25 Q. BY MR. ROSENBAUM: Okay. Let me break it down.

1 You mentioned to me four work groups, right?

2 A. Yes.

3 Q. Okay. To your knowledge, are there any persons

4 who are members of those work groups who are not

5 employees of the Department of Education?

6 A. I don't know if you consider employees of the

7 State Board as employees of the Department of Education.

8 I think technically they are so --

9 Q. Are there members of the State Board on any of

10 the four work groups?

11 A. No.

12 Q. Are there staff members from the State Board on

13 any of the four work groups?

14 MR. HERRON: Objection. Vague and ambiguous.

15 Calls for speculation.

16 THE WITNESS: My understanding is that there

17 are no official members of any of the work groups from

18 the State Board staff, but they are invited to attend as

19 they find it helpful and interesting.

20 Q. BY MR. ROSENBAUM: Are the work group meetings

21 public?

22 MR. HERRON: Objection. Vague and ambiguous.

23 You mean open to the public to attend?

24 MR. ROSENBAUM: Yeah. Thanks.

25 THE WITNESS: I don't know.

1 Q. BY MR. ROSENBAUM: How about the one that you

2 chair, is that open to the public?

3 A. The question has never been raised.

4 Q. Does your work group prepare minutes?

5 MR. HERRON: Of meetings?

6 MR. ROSENBAUM: Yes.

7 THE WITNESS: I don't believe so.

8 Q. BY MR. ROSENBAUM: And would Laura Wagner --

9 A. Yes, Laura Wagner would be the appropriate

10 person.

11 Q. Have you ever seen minutes from any of the

12 other three work groups?

13 A. From time to time.

14 Q. Okay. To your knowledge, Mr. Warren, was there

15 ever any discussion about inviting individuals from

16 outside the Department to participate in reengineering

17 CCR?

18 A. What do you mean by "participate"?

19 Q. Let's break it down. First to become involved

20 with any of the work groups.

21 MS. READ SPANGLER: Discussions by whom?

22 MR. ROSENBAUM: Any discussion you ever were a

23 part of or attended.

24 THE WITNESS: Be involved in the work groups,

25 actually being a work group member, is that what you're

1 asking?

2 MR. ROSENBAUM: That's my first question.

3 THE WITNESS: No.

4 Q. BY MR. ROSENBAUM: Was there ever any

5 discussion about consulting with individuals outside the

6 Department to get their views as to how reengineering

7 CCR ought to take place?

8 MS. READ SPANGLER: Objection. Calls for

9 speculation.

10 THE WITNESS: I know we have consulted with

11 people outside the Department on specific aspects of the

12 reengineering.

13 Q. BY MR. ROSENBAUM: Okay. And was there ever --

14 if you've just answered it, just tell me. Was there

15 ever any discussion, to your knowledge, about consulting

16 with individuals outside the Department as to what they

17 thought about CCR, how effective CCR was?

18 MR. HERRON: Objection. That's been asked and

19 answered, I think, several times now. The different

20 phraseology does not change the question.

21 THE WITNESS: Can you ask the question again?

22 Q. BY MR. ROSENBAUM: Yeah. What I'm trying to

23 figure out is did anyone ever say in sum or substance,

24 let's consult with some people who are not involved with

25 the Department to see what they think about CCR?

1 MR. HERRON: Objection. Asked and answered.
 2 MS. READ SPANGLER: Also vague and ambiguous as
 3 to "not involved with the Department."
 4 THE WITNESS: To see what they think about CCR,
 5 no, we would have never discussed it in that way.
 6 Q. BY MR. ROSENBAUM: Okay. To analyze the
 7 effectiveness of CCR?
 8 MR. HERRON: Objection. Asked and answered.
 9 Vague and ambiguous. Calls for speculation.
 10 THE WITNESS: I think the answer is yes,
 11 although it's not -- I don't think that, again, it was
 12 phrased in that way.
 13 Q. BY MR. ROSENBAUM: What's your understanding of
 14 how it was phrased?
 15 A. Well, I think we have -- that there was
 16 discussion about trying to garner input from people in
 17 schools about their views on the CCR.
 18 Q. Anyone else besides these individuals and --
 19 when you say "schools," you mean schools that were
 20 subjected to CCR reviews, for example; is that right?
 21 A. I'm sorry, when I say schools, I'm not talking
 22 precisely and so forgive me. All districts are subject
 23 to CCRs, so I meant districts.
 24 Q. Okay. Was a survey instrument ever prepared to
 25 solicit the views of districts about CCR?

1 MS. READ SPANGLER: Objection. Calls for
 2 speculation.
 3 MR. HERRON: Vague and ambiguous in the use of
 4 the words "survey instrument."
 5 THE WITNESS: I don't recall if we ever
 6 developed any survey instrument of school people.
 7 Q. BY MR. ROSENBAUM: Was a survey conducted, so
 8 far as you know, of district personnel to obtain their
 9 views about CCR?
 10 MR. HERRON: Objection. Asked and answered in
 11 part.
 12 THE WITNESS: I don't recall.
 13 Q. BY MR. ROSENBAUM: Okay. Were personnel in
 14 districts, in fact, questioned as to their views about
 15 CCR?
 16 MR. HERRON: Objection. Asked and answered.
 17 Calls for speculation.
 18 THE WITNESS: We invited a group of school
 19 people, and I'm using that as kind of a generic term, to
 20 come up and talk about the issues that we were focusing
 21 on in our work groups for a one-day meeting.
 22 Q. BY MR. ROSENBAUM: Okay. Is that like a focus
 23 group of school people?
 24 A. I don't know what -- I don't know what you want
 25 to call it. We called it as an advisory group.

1 Q. Okay. And who was involved in selecting the
 2 membership for this advisory group?
 3 MR. HERRON: Objection. Calls for speculation.
 4 THE WITNESS: Can you repeat the question?
 5 Q. BY MR. ROSENBAUM: Yes. Were you involved
 6 personally in deciding who should be part of that
 7 advisory group?
 8 A. I reviewed a proposed list of participants.
 9 Q. Okay. And did you add or subtract things to
 10 that list?
 11 A. I don't remember.
 12 Q. Okay. And so far as you know, that list formed
 13 the basis of the people who eventually became the
 14 advisory group; is that right?
 15 MR. HERRON: Objection. Argumentative.
 16 THE WITNESS: Yes.
 17 Q. BY MR. ROSENBAUM: Okay. And approximately how
 18 many people are on that advisory group?
 19 A. I'd estimate it at around 20.
 20 Q. Okay. And is there a list of that advisory
 21 group somewhere?
 22 A. I'm sure there is.
 23 Q. And who --
 24 A. Laura Wagner again.
 25 Q. Okay. And do you know whether or not there

1 were any criteria utilized to select the membership for
 2 the advisory group?
 3 A. I don't recall any explicit criteria.
 4 Q. Okay. And was there a person or persons whom
 5 you believed to be principally involved in figuring out
 6 who should be on that list?
 7 A. Yes.
 8 Q. Who would that person or persons be?
 9 MR. HERRON: Objection. Relevance.
 10 THE WITNESS: Laura Wagner.
 11 Q. BY MR. ROSENBAUM: Okay. Now, does the
 12 advisory group -- they met in Sacramento, that's what
 13 you're telling me?
 14 A. Yes.
 15 Q. Can you give me an approximate date?
 16 A. It was late fall of 2000.
 17 Q. Okay. And has that group, to your knowledge,
 18 met subsequently?
 19 A. Not to my knowledge.
 20 Q. It doesn't have an independent existence, as
 21 far as you know, it was just assembled for this one
 22 meeting; is that right?
 23 MR. HERRON: Objection. Compound. Counsel is
 24 testifying.
 25 MS. READ SPANGLER: Leading.

1 THE WITNESS: I don't know what you mean by
 2 "independent existence."
 3 Q. BY MR. ROSENBAUM: Does the advisory group
 4 still exist in any formal sort of way?
 5 A. No, not to my knowledge.
 6 Q. I take it what you're telling me is that there
 7 was a meeting with the advisory group in which advisory
 8 group members were solicited to state their views about
 9 CCR; is that right?
 10 MS. READ SPANGLER: Objection. Leading.
 11 THE WITNESS: Solicited to state their views on
 12 CCR?
 13 Q. BY MR. ROSENBAUM: What happened at the
 14 meeting? Were they asked questions at the meeting?
 15 MR. HERRON: Objection. Compound.
 16 MS. READ SPANGLER: Calls for speculation.
 17 THE WITNESS: What I remember is that we
 18 briefed them on the four -- the three areas really that
 19 were of importance to them of the three work groups.
 20 The internal CDE administrative work group, I don't
 21 think we raised any issues on that, but we briefed them
 22 and asked them for their input on whether we were headed
 23 in the right direction, whether they had suggestions
 24 about areas that maybe we had not focused, those kinds
 25 of things.

1 Q. BY MR. ROSENBAUM: And, to your knowledge, are
 2 there members of the advisory groups -- strike that.
 3 To your knowledge, any of the members of the
 4 four work groups, do any of them come from this advisory
 5 group?
 6 A. Are any of the advisory group members who are
 7 from schools actually on any of the four work groups?
 8 MR. HERRON: Objection. Asked and answered.
 9 THE WITNESS: No.
 10 Q. BY MR. ROSENBAUM: Okay. Now, did you chair
 11 that meeting?
 12 A. No.
 13 Q. Were you a facilitator in that meeting?
 14 MR. HERRON: Objection. Vague and ambiguous.
 15 THE WITNESS: I spoke at the meeting.
 16 Q. BY MR. ROSENBAUM: Okay. Was there a chair?
 17 MR. HERRON: Or a couch?
 18 THE WITNESS: Not that I recall.
 19 Q. BY MR. ROSENBAUM: Okay. And were you the
 20 person who gave the principal explanation about the
 21 three work groups?
 22 A. No.
 23 Q. Who was that?
 24 A. There was not one.
 25 Q. Okay. You talked about your group; is that

1 right?
 2 A. Yes.
 3 Q. And then the -- were the other chairs present?
 4 A. Yes.
 5 Q. And each of them spoke about his or her group;
 6 is that right?
 7 A. Yes.
 8 Q. And in the course of -- how long did this
 9 meeting last, approximately?
 10 MS. READ SPANGLER: Objection. Calls for
 11 speculation.
 12 THE WITNESS: I really don't remember.
 13 Q. BY MR. ROSENBAUM: And in the course of the
 14 meeting, did you express any concerns you had about CCR?
 15 A. I don't remember.
 16 Q. Or did Ms. Faucette?
 17 MS. READ SPANGLER: Objection. Assumes facts
 18 not in evidence.
 19 THE WITNESS: I just don't remember.
 20 Q. BY MR. ROSENBAUM: Or Mr. Hill?
 21 MS. READ SPANGLER: Objection. Assumes facts
 22 not in evidence.
 23 THE WITNESS: I don't remember.
 24 Q. BY MR. ROSENBAUM: Did any of the advisory
 25 group members express any concerns that they had about

1 CCR?
 2 MS. READ SPANGLER: Objection. Assumes facts
 3 not in evidence.
 4 THE WITNESS: You know, this was almost a year
 5 ago and I attend a zillion meetings and I just can't
 6 recall the detailed conversation.
 7 Q. BY MR. ROSENBAUM: Do you remember any
 8 recommendations that were made as to how to improve CCR
 9 at that meeting?
 10 MS. READ SPANGLER: Objection. Assumes facts
 11 not in evidence. You haven't established that any
 12 recommendations were made.
 13 MR. ROSENBAUM: That's a fair point. You can
 14 still answer the question.
 15 THE WITNESS: I don't remember any specific
 16 recommendations, no.
 17 Q. BY MR. ROSENBAUM: Do you remember if any
 18 general recommendations were made?
 19 MR. HERRON: Objection. Asked and answered the
 20 question before.
 21 THE WITNESS: What I recall is that -- what I
 22 recall from the meeting is that there was a general
 23 approval of the direction that we were headed.
 24 Q. BY MR. ROSENBAUM: And why do you say that as
 25 the basis of that answer?

1 A. That's what I remember.

2 Q. Okay. Besides the advisory committee
3 consisting of persons from districts or schools, has the
4 group working on reengineering CCR, to your knowledge,
5 solicited assistance from persons outside the Department
6 of Education?

7 MR. HERRON: Objection. You've asked that same
8 question before and it's been answered.

9 MR. ROSENBAUM: The answer was that they did
10 consult with people, and the example that was given was
11 the advisory group. Now I'm asking was there anyone
12 else.

13 MR. HERRON: That's a different question.

14 THE WITNESS: I don't know.

15 Q. BY MR. ROSENBAUM: Okay. You haven't talked to
16 anyone else outside the Department about this process;
17 is that right?

18 MR. HERRON: Objection. Vague and ambiguous.

19 THE WITNESS: I mean, I talk to a lot of people
20 about a lot of stuff. Okay? And when you say have you
21 talked to anybody else about this process outside of the
22 Department, the answer is yes. Okay? Is it for the
23 purpose of soliciting input? I guess the answer is no.

24 Q. BY MR. ROSENBAUM: Okay. Thank you. As a
25 result of reengineering CCR to date, have there been any

1 Q. BY MR. ROSENBAUM: Do you understand the
2 question?

3 My understanding of your answer was that
4 because of the Comite case, there have been, to use your
5 phrase, substantial changes with respect to the review
6 process and English language learners.

7 Do I understand you correctly?

8 A. Yes.

9 Q. Put aside the category of review involving
10 treatment of English language learners. Any other
11 changes that you're aware of in the CCR process since
12 the spring of 2000?

13 A. Well --

14 MR. HERRON: Objection. I withdraw the
15 objection.

16 THE WITNESS: It's a difficult question to
17 answer from the standpoint of that there are changes
18 made every year to the -- how the Department does its
19 work, what is actually monitored, because law changes.
20 So I guess I don't exactly know how to answer the
21 question.

22 Q. BY MR. ROSENBAUM: Let me see if I can help.
23 Comite aside, any specific changes you're aware of with
24 respect to CCR procedures?

25 A. Department --

1 changes made in the way CCR goes about its business?

2 MR. HERRON: Objection. Vague and ambiguous.

3 THE WITNESS: I'm not sure.

4 Q. BY MR. ROSENBAUM: To your knowledge, the
5 procedures that CCR utilizes today, are they any
6 different than the procedures that were utilized in the
7 spring of 2000?

8 MR. HERRON: Objection. Calls for speculation.
9 Vague and ambiguous.

10 THE WITNESS: Yes.

11 Q. BY MR. ROSENBAUM: Okay. And tell me the basis
12 of your answer, please.

13 A. Well, as you probably know, the Comite court
14 case has made some fairly substantial changes in the way
15 that the Department is doing its work on CCR. The
16 process of the CCR has been changed by the court case.

17 Q. Okay. Particularly with respect to English
18 language learners, correct?

19 A. Yes.

20 Q. With respect to anything else besides English
21 language learners?

22 MR. HERRON: Objection. Vague and ambiguous.
23 That's really not a question.

24 MS. READ SPANGLER: I'll have to agree. It
25 seems like it's like half a question.

1 MS. READ SPANGLER: Hang on. Were you done
2 with your question?

3 MR. ROSENBAUM: Yes.

4 MS. READ SPANGLER: Objection. Overbroad.
5 Eleanor Clark-Thomas testified to a whole slew of things
6 the CCR management unit does including before they go to
7 schools.

8 MR. ROSENBAUM: Right.

9 MS. READ SPANGLER: And so I think you need to
10 break it down, or else just rely on her testimony.

11 MR. HERRON: Yeah.

12 MS. READ SPANGLER: I really think we've
13 covered a lot of this with Eleanor's deposition.

14 MR. ROSENBAUM: No, that's precisely my
15 concern.

16 Q. I'm aware, of course, what Ms. Clark-Thomas
17 testified to, and what I'd like to know is, have there
18 been any changes instituted with respect to the
19 procedures that CCR was using in the spring of 2000,
20 Comite aside?

21 MS. READ SPANGLER: But are you talking about
22 when they go to the schools, when they give their
23 workshops? What I'm saying is I think you need to break
24 it down. Are you just talking about the instrument that
25 they used? It's just very overbroad.

1 MR. ROSENBAUM: I think it simplifies it. I'll
2 just do it my way.
3 MS. READ SPANGLER: I mean, if you feel like
4 you can answer it. But there's just -- the CCR
5 management unit does so much that I just think that's
6 almost unanswerable. Calls for a narrative.
7 MR. HERRON: Redundant and unnecessary if it's
8 already been testified to by Ms. Clark-Thomas.
9 MR. ROSENBAUM: It hasn't been testified to.
10 I'm specifically inquiring as to changes that have been
11 made. I'm not interested in a rehash of what's done,
12 that's why I'm specifically asking whether or not there
13 have been any changes. I'm glad to break it down, but
14 that will really be time-consuming.
15 Q. I'll give you one example. The number of
16 schools that CCR would conduct on-site reviews of, to
17 your knowledge, has that changed?
18 A. To my knowledge -- I don't really have
19 knowledge, I guess is what I have to say. I don't know.
20 Q. Have you heard anything about the number of
21 schools that CCR would conduct on-site reviews of has
22 changed or recommendations that it be changed?
23 MR. HERRON: Objection. Asked and answered.
24 THE WITNESS: No. Well, I have a hard time
25 answering that question. It has been discussed. Okay?

1 MR. ROSENBAUM: Okay.
2 THE WITNESS: So did somebody recommend it?
3 No. It has been discussed.
4 Q. BY MR. ROSENBAUM: Am I correct, Mr. Warren,
5 there's been discussion about reducing the number of
6 schools that CCR conducts on-site reviews of; is that
7 right?
8 MR. HERRON: Objection. Argumentative. Calls
9 for speculation.
10 THE WITNESS: Yes.
11 MS. READ SPANGLER: Leading.
12 Q. BY MR. ROSENBAUM: Okay. And what's your
13 understanding of what -- what was that discussion, as
14 you can best recall?
15 MR. HERRON: Same objections.
16 THE WITNESS: As I said earlier, the idea
17 behind reengineering is to make CCR a more effective
18 tool. And in reducing the number of CCRs that we do, I
19 think there's -- the hypothesis is that we can do a
20 better job in the schools that we visit, if we can
21 target schools that are clearly having problems and we
22 can provide them with technical assistance to help them
23 improve their situation so we can use the resources that
24 we have in this area more effectively.
25 Q. BY MR. ROSENBAUM: Okay. And is that your

1 view?
2 A. Yes.
3 MR. HERRON: Objection --
4 Q. BY MR. ROSENBAUM: Okay. And have you
5 discussed this with Eleanor Clark-Thomas?
6 MR. HERRON: Objection. Vague and ambiguous in
7 the use of the term "this."
8 MR. ROSENBAUM: I appreciate that.
9 Q. Have you discussed with her the idea of
10 reducing the number of CCRs so as to target particular
11 schools with technical assistance?
12 A. I don't remember.
13 Q. Okay. Have you had any discussions with
14 Eleanor Clark-Thomas about any phase or any aspect of
15 reengineering CCR?
16 MR. HERRON: Objection. Vague as to time.
17 THE WITNESS: Yes.
18 Q. BY MR. ROSENBAUM: What aspects?
19 A. One of the areas we have discussed in this
20 discussion of targeting is how we would target, what
21 criteria we would use, and I do recall talking about
22 that with Ms. Clark-Thomas.
23 Q. Okay. Did you ever ask her views as to whether
24 or not the number of CCRs should be reduced?
25 A. I don't recall.

1 Q. Did you ever hear her viewpoint on that subject
2 matter?
3 A. I don't recall.
4 Q. Okay. Now, have there been criteria that have
5 been designated -- strike that.
6 Are there any criteria, to your knowledge, as
7 to how to target schools for assistance?
8 MR. HERRON: Objection. Vague and ambiguous.
9 MR. ROSENBAUM: As part of this reengineering
10 CCR process.
11 THE WITNESS: No.
12 Q. BY MR. ROSENBAUM: Okay. There haven't been
13 any developed so far as you know?
14 MR. HERRON: Objection. Asked and answered.
15 THE WITNESS: Well, we have -- I mean, you're
16 making an assumption here that we are -- we've done
17 something.
18 MR. ROSENBAUM: Okay.
19 THE WITNESS: And that we've instituted it.
20 That's an incorrect assumption.
21 Q. BY MR. ROSENBAUM: What I was curious about in
22 this question, Mr. Warren, have there been any draft
23 criteria that have been developed?
24 MR. HERRON: Objection. Calls for speculation.
25 Asked and answered.

1 MS. READ SPANGLER: Assumes facts not in
2 evidence.
3 THE WITNESS: I believe so, yes.
4 Q. BY MR. ROSENBAUM: Okay. And are they in
5 written form?
6 A. Yes.
7 Q. Do you know who prepared those draft criteria?
8 A. No.
9 Q. Okay. Have you seen them?
10 A. I've seen -- I've seen them at different
11 stages, yes.
12 Q. How about is there -- I take it there's a most
13 recent draft; is that right?
14 A. That would make sense, wouldn't it.
15 Q. And have you seen --
16 A. I don't know if I've seen the most recent
17 draft.
18 Q. Is there someone in charge of that process?
19 A. Yes.
20 Q. Who is that?
21 A. Laura Wagner.
22 Q. And what criteria do you recall having been
23 listed as target -- criteria for targeting schools?
24 MR. HERRON: Objection. Vague and ambiguous.
25 THE WITNESS: What I recall, the criteria were

1 test scores.
2 Q. BY MR. ROSENBAUM: Which tests?
3 A. STAR tests and prior CCR findings and the
4 number of complaints received by the Department for that
5 district. CCR is a district process, so let's just make
6 sure we're clear about that.
7 Q. I appreciate that. By that you mean the
8 districts are what are actually reviewed; is that right?
9 A. That's correct.
10 Q. When you say prior CCR reviews, you mean
11 findings of noncompliance, would that be the key?
12 A. Yes.
13 Q. And --
14 MR. HERRON: Mark, we've been going about an
15 hour.
16 MR. ROSENBAUM: I know we have. I'd be glad to
17 take a break now. Can I just ask two more questions?
18 MR. HERRON: Sure.
19 Q. BY MR. ROSENBAUM: You said -- several
20 questions ago you talked about whether or not, in fact,
21 the changes had been made so as to reduce CCRs, and
22 targets along the lines that we've been discussing. Do
23 you recall that? Doesn't matter.
24 Have any changes been made so far as you know?
25 A. To what?

1 Q. That is reducing the number of CCRs in the way
2 CCR now goes about its review process.
3 MS. READ SPANGLER: You mean on-site visits?
4 MR. ROSENBAUM: Yes, I do mean on-site visits.
5 THE WITNESS: To my knowledge, there's been no
6 reduction made in the number of site visits that result
7 out of our reengineering process.
8 Q. BY MR. ROSENBAUM: Do you know if there have
9 been any reductions, period?
10 A. I don't know.
11 Q. Do you know if -- what I want to know is, is it
12 imminent? Do you expect this to happen? Is there a
13 recommendation that, in fact, the number of site visits
14 be reduced?
15 I asked three questions there, but I'm just
16 trying to get a sense of whether or not you think this
17 is going to come to fruition.
18 MR. HERRON: Objection. Vague and ambiguous.
19 Compound.
20 MS. READ SPANGLER: Calls for speculation.
21 THE WITNESS: I don't know.
22 MR. ROSENBAUM: This would be a fine time to
23 break.
24 (Recess taken from 11:15 to 11:23.)
25 Q. BY MR. ROSENBAUM: You doing okay, Mr. Warren?

1 A. Yes, thank you.
2 Q. You told me before we broke, Mr. Warren, that
3 there was discussion about reducing the number of CCRs?
4 A. Yes.
5 Q. And just so that we're talking the same
6 terminology, when you say CCRs, what do you mean in that
7 context?
8 A. The number of districts that we do a
9 verification visit of.
10 Q. Okay. And was there any talk about
11 quantitatively what that would mean, how many districts
12 reduced?
13 MR. HERRON: Objection. Calls for speculation.
14 Vague as to time.
15 THE WITNESS: I don't recall any discussion of
16 that, no.
17 Q. BY MR. ROSENBAUM: Are there any numbers in
18 your mind at all as to what the reduction would look
19 like?
20 A. No. I mean, part of the discussion is whether
21 there would be any reduction and whether there would be
22 a differentiated CCR based on these criteria that we
23 discussed.
24 Q. Okay. And to your knowledge, Mr. Warren, was
25 there ever any discussion about increasing the number of

1 CCRs?
 2 A. That's hard to do.
 3 Q. Because?
 4 A. Because we visit every school district every
 5 four years.
 6 Q. Okay. Was there any discussion about visiting
 7 every school district every three years or every two
 8 years?
 9 A. Not that I recall.
 10 MR. HERRON: Objection. Calls for speculation.
 11 MS. READ SPANGLER: Vague as to time.
 12 Q. BY MR. ROSENBAUM: Was there ever any
 13 discussion -- and the time period I'm talking about is
 14 since spring of 2000. Are you aware of that?
 15 A. Okay. I understand.
 16 Q. Would you change your answer based on that
 17 qualification?
 18 A. Well, my answer is that I don't recall.
 19 Q. Of course. Was there ever any discussion --
 20 strike that.
 21 Are you aware, sir, that when CCR conducts an
 22 on-site visit of a district, it doesn't necessarily go
 23 to every school as part of its on-site process?
 24 A. That's correct.
 25 Q. Okay. Was there ever any discussion since the

1 spring of 2000 about increasing the number of schools in
 2 a district that would be visited?
 3 MR. HERRON: Objection. Calls for speculation.
 4 THE WITNESS: I've discussed that issue, yes.
 5 Q. BY MR. ROSENBAUM: And with whom have you
 6 discussed that issue?
 7 MR. HERRON: Again, this is since spring of
 8 2000?
 9 MR. ROSENBAUM: Yes.
 10 THE WITNESS: I can't tell you.
 11 Q. BY MR. ROSENBAUM: Okay. Can you think of
 12 anybody you've talked this over with?
 13 MR. HERRON: Objection. Vague and ambiguous as
 14 to the use of the word "this."
 15 THE WITNESS: I could only guess, and it would
 16 be a guess.
 17 Q. BY MR. ROSENBAUM: What have you said?
 18 MR. HERRON: Objection. Calls for speculation.
 19 THE WITNESS: Well, the reason why you might do
 20 a greater number of schools is because you feel --
 21 because -- as I spoke before, the goal of the
 22 reengineering process was to make our process more
 23 effective, and part of being more effective is targeting
 24 the schools that you think have significant problems,
 25 and for districts that have significant problems it

1 might be appropriate to go visit a greater number of
 2 schools.
 3 Q. BY MR. ROSENBAUM: And when you say
 4 "significant problems," what do you mean by that?
 5 A. The CCR process is designed to ensure that
 6 schools and districts are following state and federal
 7 law with respect to specific programs.
 8 Q. And do you know, Mr. Warren, the number of
 9 schools with significant problems, as you've just
 10 defined it, that CCR conducts on-site visits on each
 11 year?
 12 MS. READ SPANGLER: Objection. Vague and
 13 ambiguous.
 14 MR. HERRON: Calls for speculation.
 15 THE WITNESS: I'm not sure I understand the
 16 question.
 17 Q. BY MR. ROSENBAUM: Let me tell you where I'm
 18 going and then I'll break it down in questions to help
 19 you out. You said to me, if I understand you correctly,
 20 that one of the -- one of the -- one of the areas for
 21 examination was whether or not CCR should visit less
 22 districts, and if I understood you correctly, you said
 23 one of the reasons you would do that would be to target
 24 more schools with significant problems.
 25 Am I understanding you right?

1 A. More districts, yes.
 2 Q. More districts.
 3 MR. HERRON: I'll object as misconstruing his
 4 prior testimony, which will stand for itself.
 5 Q. BY MR. ROSENBAUM: What I want to know is, has
 6 the Department ever compiled a list of districts it
 7 believed had significant problems as you've defined it?
 8 MR. HERRON: Objection. Calls for speculation.
 9 MS. READ SPANGLER: Vague as to time.
 10 MR. HERRON: I think this has been asked and
 11 answered. He's already said that CCR -- that's what CCR
 12 is.
 13 THE WITNESS: I've never seen the list.
 14 Q. BY MR. ROSENBAUM: Okay. Have you ever heard
 15 any discussion about compiling such a list?
 16 MR. HERRON: Objection. Relevance.
 17 MS. READ SPANGLER: Also assumes facts not in
 18 evidence. He doesn't know if there's a list one way or
 19 the other.
 20 THE WITNESS: Has there been any discussion of
 21 compiling lists?
 22 MR. ROSENBAUM: Might be a good idea about
 23 compiling a list of districts with significant problems
 24 that you've defined.
 25 THE WITNESS: As I've defined it?

1 MR. ROSENBAUM: Well, you just used the phrase
2 of targeting districts with significant problems. I
3 want to adopt your language.

4 THE WITNESS: I don't know if we've gotten to
5 the point where we've clearly defined what that is.

6 Q. BY MR. ROSENBAUM: When you say "we --"

7 A. The Department.

8 Q. In your mind when you think of significant
9 problems, do you have criteria that you apply?

10 MR. HERRON: Objection. Vague and ambiguous.
11 Very difficult to answer as it's phrased.

12 THE WITNESS: I can't say as I have specific
13 criteria, no.

14 Q. BY MR. ROSENBAUM: Maybe you just answered
15 this, so bear with me. Do you have any idea,
16 Mr. Warren, as to the percent of districts with
17 significant problems that CCR conducts on-site visits to
18 in a particular year?

19 A. No.

20 Q. Okay. Or the number of schools with
21 significant problems that CCR visits every year?

22 MR. HERRON: Objection. Vague and ambiguous.
23 Vague as to time. Calls for speculation. Calls for a
24 legal conclusion.

25 THE WITNESS: And you assume that -- and I've

1 Q. Okay. Now, my question is, has there ever been
2 any discussion, to your knowledge, in the reengineering
3 CCR process about saying we should use CCR to look at
4 other issues involving how schools are operating beyond
5 federal and state programs?

6 MS. READ SPANGLER: Objection. Vague and
7 ambiguous. Also he said it ensures compliance with
8 state and federal law regarding specific programs. But
9 the way you're -- I think your question is unclear.

10 MR. HERRON: And misconstrues his prior
11 testimony.

12 THE WITNESS: We would have no basis for
13 looking at issues outside of state and federal law.
14 This is a compliance monitoring process that's designed
15 to ensure that schools and districts are obeying state
16 and federal law.

17 Q. BY MR. ROSENBAUM: Okay. Just help me
18 understand this, Mr. Warren. You're chair of the work
19 group that deals with the consolidated application; is
20 that right?

21 A. Yes.

22 Q. Tell me what that means, consolidated
23 application, as you understand it.

24 A. The consolidated application is just what it
25 says. It's one application that school districts employ

1 already told you that I don't really know if I know what
2 significant problems means, so I can't answer the
3 question.

4 Q. BY MR. ROSENBAUM: Okay. Thanks. You told me
5 a few moments ago CCR looks at federal and state
6 programs; is that right?

7 A. Yes.

8 Q. And in the reengineering CCR process, to your
9 knowledge, has there ever been any discussion about
10 expanding CCR and its activities beyond just federal and
11 state programs?

12 MR. HERRON: Objection. Assumes facts not in
13 evidence. Vague and ambiguous.

14 THE WITNESS: I don't know what that means.

15 Q. BY MR. ROSENBAUM: What I'm interested in is
16 CCR conducts a review process, for example, with respect
17 to special education issues?

18 A. Yes.

19 Q. And gender issues?

20 A. Yes.

21 Q. And English language learner issues?

22 A. Yes.

23 Q. Okay. My question -- and other issues beyond
24 those, right?

25 A. Yes.

1 to apply for funding of a variety of state and federal
2 programs.

3 Q. Okay. If you've answered this question, bear
4 with me. I just want to refine it a little bit. Your
5 work group, does it have regular meetings?

6 A. We haven't for some time.

7 Q. When you say "some time," what do you mean by
8 that?

9 A. I can't remember the last time we had a -- let
10 me restate that. We probably had our last meeting
11 sometime during the spring.

12 Q. Spring of 2001?

13 A. 2001, right.

14 Q. And as the result of your work -- and I'm
15 referring to the work group that you chair -- were any
16 changes made in the application?

17 MR. HERRON: Objection. Asked and answered.
18 Vague and ambiguous.

19 THE WITNESS: Our work made a number of
20 recommendations that have resulted in changes in the
21 consolidated application.

22 Q. BY MR. ROSENBAUM: And were those
23 recommendations made in writing?

24 A. Some of them, yes.

25 Q. Okay. Was there someone who had authority to

1 say we'll adopt these recommendations or we'll reject
2 these recommendations, was there a place where the buck
3 stopped?

4 MR. HERRON: Objection. Compound. Vague and
5 ambiguous as phrased.

6 THE WITNESS: I think the recommendations were
7 discussed and approved at a meeting of the chairs of the
8 committees, along with some other staff who were
9 present.

10 Q. BY MR. ROSENBAUM: Okay. Were there four
11 separate chairs at these committees?

12 A. There was one chair for each committee.

13 Q. Of course. And did they have regular meetings?
14 Did you have regular meetings?

15 MR. HERRON: Objection. Vague and ambiguous.
16 Compound.

17 THE WITNESS: Each work group had a schedule
18 that they were trying to have regular meetings. I don't
19 know if they did or not.

20 Q. BY MR. ROSENBAUM: I think my question wasn't
21 clear. Was there then a steering committee of the four
22 chairs that also met?

23 A. Yes.

24 Q. Okay. Did that committee -- did that committee
25 have a name?

1 Q. What does that mean, CCR monitoring guidelines?

2 A. What is the work group looking at, what are
3 they doing?

4 Q. Yes. Exactly.

5 A. They are -- well --

6 MR. HERRON: Objection to the extent it calls
7 for speculation.

8 THE WITNESS: Their job -- I can say this,
9 their job was to look at the actual things that we
10 monitored out in schools.

11 Q. BY MR. ROSENBAUM: Okay. And do you know if
12 that work group has made any recommendations for
13 changes?

14 A. I don't know.

15 Q. Okay. Do you know if there have been any
16 changes since the spring of 2000 with respect to what
17 CCR looks at at the actual sites?

18 A. I don't know.

19 Q. Okay. Incidentally, going back to our
20 discussion a little bit earlier about the number of
21 CCRs, the number of districts that would be reviewed
22 on-site.

23 A. Yes.

24 Q. I take it -- strike that.

25 Do you expect a decision to be made regarding

1 A. It was called the steering committee.

2 Q. That's clever. Did the steering committee meet
3 regularly?

4 MR. HERRON: Objection. Vague and ambiguous.
5 Vague as to time.

6 THE WITNESS: It began at some point to meet
7 regularly, yes.

8 Q. BY MR. ROSENBAUM: When was the last time it
9 met, so far as you recall?

10 A. The last meeting I attended, I believe, was in
11 July.

12 Q. Are there plans to have more meetings so far as
13 you know?

14 A. Yes.

15 Q. And have any recommendations -- is there a
16 chair of the steering committee?

17 A. No.

18 Q. And, to your knowledge, with respect to the
19 second work group, the CCR monitoring guideline -- first
20 of all, what's your understanding of what that
21 comprises?

22 A. What does what comprise?

23 Q. CCR monitoring guideline, that's the second
24 work group; is that right?

25 A. Yes.

1 in -- decreasing the number of CCRs or keeping them the
2 same at any point in the future?

3 MR. HERRON: Objection. Calls for speculation.
4 Vague and ambiguous as phrased.

5 MS. READ SPANGLER: Vague as to time.

6 THE WITNESS: So you want me to speculate as to
7 whether I think this is going to come to fruition, is
8 that what you're asking?

9 MR. ROSENBAUM: I don't want you to speculate.
10 I want to know if you have any basis for --

11 THE WITNESS: Well, I can't predict the future.

12 Q. BY MR. ROSENBAUM: But if there was a meeting
13 set at which a decision was to be made, one could --

14 A. That is what you're asking, is there --

15 Q. Is there a target date to make a decision with
16 respect to whether or not to decrease the number of
17 CCRs?

18 MR. HERRON: Insofar as you're aware.

19 THE WITNESS: Not that I know of.

20 Q. BY MR. ROSENBAUM: Okay. Regarding providing
21 assistance to schools with significant compliance
22 problems, that's the area of concern for the third work
23 group; is that right?

24 MR. HERRON: Could you restate the question.

25 THE WITNESS: Yeah, I'm sorry, I need it too.

1 (Record read.)
 2 THE WITNESS: That's part of it, yes.
 3 MS. READ SPANGLER: Can I just interject? I
 4 think there was a discussion when you were out of the
 5 room that when Paul said schools -- and correct me if
 6 I'm wrong, I don't want to testify for you -- he really
 7 meant districts.
 8 THE WITNESS: I mean I just have this problem
 9 that I use schools as a generic term to mean both
 10 schools and districts.
 11 Q. BY MR. ROSENBAUM: Okay. So if I restated that
 12 the subject area of the third work group is providing
 13 assistance to districts with significant compliance
 14 problems, are you more comfortable with that?
 15 A. Yeah, that's more accurate. Yes.
 16 Q. And, to your knowledge, Mr. Warren, have there
 17 been any changes since the spring of 2000 in the way
 18 that CCR provides assistance to districts with
 19 significant compliance problems?
 20 A. Not to my knowledge.
 21 Q. Okay. Have you seen any recommendations with
 22 respect to providing assistance to districts with
 23 significant compliance problems?
 24 A. Have I seen any recommendations?
 25 MR. HERRON: Objection. Vague and ambiguous.

1 MR. ROSENBAUM: We're talking about CCR.
 2 THE WITNESS: I guess the answer is yes.
 3 Q. BY MR. ROSENBAUM: Okay. And have there been
 4 discussions at the steering group, the steering
 5 committee group about changes in terms of how CCR
 6 provides assistance to schools exhibiting compliance
 7 problems?
 8 A. Yes.
 9 Q. And tell me, as best you recall, Mr. Warren,
 10 what those suggestions have been.
 11 A. Sure.
 12 MR. HERRON: I'll object as vague and ambiguous
 13 and misconstruing his testimony. I think he said there
 14 were discussions, not that there were suggestions.
 15 THE WITNESS: I think the hypothesis is that
 16 schools that have significant compliance problems also
 17 have -- are very likely to have low performance, and so
 18 this assistance in providing assistance on becoming
 19 compliant would also have an element of improving
 20 programs and making it more responsive to student needs.
 21 That's a big order. That's a difficult thing
 22 to do, one that may outstrip the Department's capacity
 23 to really fulfill, and so the discussion has centered
 24 around trying to find other more local entities who
 25 could help fulfill this function, that we'd be looking

1 at both compliance and student performance and trying to
 2 fix these severe compliance problems in a way that led
 3 to improved student performance.
 4 Q. BY MR. ROSENBAUM: Okay. And when you say "low
 5 performance," what do you mean by that?
 6 MR. HERRON: Objection. Vague and ambiguous.
 7 You mean what did he mean by it when he just said it?
 8 MR. ROSENBAUM: Yeah.
 9 MR. HERRON: I think it's asked and answered
 10 and sort of obvious.
 11 THE WITNESS: Student performance is how well
 12 students are achieving in school.
 13 Q. BY MR. ROSENBAUM: Okay. And when you say may
 14 outstrip the Department's capacity to fulfill, what did
 15 you mean by that?
 16 A. The Department has a limited number of staff,
 17 it's smaller every year, and there's only so much the
 18 Department can realistically do just in terms of the
 19 number of staff we have.
 20 In addition, addressing severe compliance
 21 problems and severe problems with student achievement
 22 requires a keener understanding of the environment at
 23 the local level, one that we just can't have because
 24 we're in Sacramento.
 25 And to think that the State can fix problems of

1 this magnitude from Sacramento I think is not a
 2 realistic way of thinking about the problem, so the
 3 discussion really has focused on the other local
 4 entities who can provide that kind of assistance with a
 5 knowledge of the local context.
 6 Q. And do you have certain local entities in mind
 7 when you say that?
 8 A. I think the natural -- well, I think there have
 9 been several avenues of discussion on that, so one of
 10 them would be county offices of education, but that
 11 doesn't necessarily mean that that's exclusively what
 12 the discussion has been.
 13 Q. Okay. And has there been any discussion with
 14 county offices regarding their involvement?
 15 MR. HERRON: Objection. Vague and ambiguous.
 16 THE WITNESS: County offices?
 17 MR. ROSENBAUM: Of education.
 18 Q. That's what you're referring to, right, is
 19 county offices of education?
 20 A. Yes.
 21 Q. To your knowledge, have there been any
 22 discussions with representatives of county offices of
 23 education?
 24 A. Yes, I believe so.
 25 Q. Okay. And have you participated in any of

1 those discussions?
 2 A. No.
 3 Q. Have you heard anything about the results of
 4 any of those discussions?
 5 A. There have been discussions with Riverside
 6 County office of education because they are attempting
 7 to do something somewhat similar in Riverside.
 8 Q. When you say "something somewhat similar," what
 9 do you mean by that?
 10 A. They are contracting -- I need to be careful
 11 about going beyond my knowledge. But they are working
 12 with schools in the Riverside County -- the county
 13 office is working with schools in the county that are
 14 exhibiting low performance, and really trying to build
 15 their own capacity to be a useful -- play a useful role
 16 in improving schools.
 17 Q. When you say "their own capacity," you mean the
 18 county offices?
 19 A. County offices.
 20 Q. Do you know how they're going about doing that?
 21 A. I don't.
 22 Q. Is Mr. Hill the person who is in charge of
 23 that?
 24 A. He's in charge of that work group, yes.
 25 Q. Okay. And do you know if there has been any

1 survey of county offices of education to see what their
 2 views would be as to fulfilling the role as you
 3 described it?
 4 A. Not to my knowledge.
 5 Q. Okay. Do you know how many county offices, if
 6 any, besides Riverside have been the subject of
 7 discussions?
 8 A. I don't know.
 9 Q. Okay. Now, you said to me be careful I'm not
 10 saying exclusively county offices of education. Are
 11 there other local entities that you had in mind when you
 12 talked to me about increasing involvement of other --
 13 A. No specific ones, no.
 14 Q. Okay. Is there -- at this stage is there a
 15 recommendation from the steering committee about
 16 involving the county offices of education?
 17 A. I don't know.
 18 Q. Okay. Do you personally support involving
 19 county offices of education in providing assistance to
 20 local school districts?
 21 MR. HERRON: Objection. Vague and ambiguous as
 22 phrased.
 23 You mean in the context of CCR?
 24 MR. ROSENBAUM: Well, I think that's too
 25 limited, but I don't want to mischaracterize you.

1 Q. I thought what you were telling me, Mr. Warren,
 2 is that there is an overlap here between what CCR looks
 3 at and low performing schools in general; isn't that
 4 right?
 5 MR. HERRON: Objection. Argumentative.
 6 Misconstrues prior testimony.
 7 THE WITNESS: I think what I said is that the
 8 hypothesis is that schools that have significant
 9 compliance problems probably also are experiencing
 10 significantly lower than desired performance of their
 11 students in achievement.
 12 Q. BY MR. ROSENBAUM: And has anyone, to your
 13 knowledge, ever tested that hypothesis?
 14 MR. HERRON: Which hypothesis? Objection.
 15 Vague and ambiguous.
 16 MR. ROSENBAUM: The one you just stated.
 17 THE WITNESS: I've never seen anything on it,
 18 any evaluation of the hypothesis.
 19 Q. BY MR. ROSENBAUM: Okay. Do you believe that
 20 hypothesis to be true?
 21 MR. HERRON: Objection. Vague and ambiguous.
 22 THE WITNESS: I don't know.
 23 Q. BY MR. ROSENBAUM: Okay. Has there ever been
 24 any discussion, to your knowledge, about determining
 25 whether or not that hypothesis is true, conducting some

1 sort of investigation or inquiry to determine whether or
 2 not the hypothesis is true?
 3 MR. HERRON: Objection. Compound. Vague and
 4 ambiguous. Asked and answered in part.
 5 THE WITNESS: Yeah.
 6 Q. BY MR. ROSENBAUM: Okay. And was that at the
 7 steering committee? Strike that.
 8 Where did that discussion take place,
 9 discussion or discussions?
 10 A. I don't remember.
 11 Q. Okay. Do you remember who was involved in the
 12 discussion?
 13 A. I remember discussing it with Laura Wagner.
 14 Q. Okay. And does Laura Wagner have a title with
 15 respect to reengineering CCR?
 16 A. No.
 17 Q. Does she have a title in general?
 18 A. She's the unit manager for -- and I don't know
 19 the name of her unit.
 20 Q. Does she report to you?
 21 A. She reports to now Marsha Bedwell.
 22 Q. And do you remember what Ms. Wagner's response
 23 was?
 24 A. She proposed that we do a pilot of the criteria
 25 that we would use to select districts if we were going

1 to have a more targeted approach, to see whether the
 2 hypothesis were true -- were, was -- was true.
 3 Q. Approximately when did that discussion occur?
 4 A. I really can't tell you.
 5 Q. To your knowledge, has there been any follow-up
 6 to that discussion?
 7 MR. HERRON: Objection. Vague and ambiguous.
 8 THE WITNESS: I think it's always -- you know,
 9 like I said before, this is not a process that is going
 10 to start and stop, this is a continuing process, and as
 11 part of the continuing process, you would always want to
 12 be reviewing the effectiveness of different important
 13 features of the process, such as the criteria, so it is
 14 just a part of the process, that it would be a
 15 continuing part to evaluate our criteria effectively
 16 targeting these schools.
 17 Q. BY MR. ROSENBAUM: Maybe my question was a
 18 little different. She talked to you about a pilot
 19 program; is that right?
 20 MR. HERRON: She who?
 21 MR. ROSENBAUM: Laura Wagner.
 22 THE WITNESS: Yes.
 23 Q. BY MR. ROSENBAUM: Has that pilot program -- to
 24 your knowledge, has there been any attempt to, in fact,
 25 institute any such pilot program?

1 A. Well, at this point, since we haven't come to
 2 more of a conclusion as to what we're going to do, the
 3 answer is obviously no.
 4 Q. Okay. Do you support the institution of such a
 5 pilot program?
 6 A. I support the idea that we evaluate our
 7 criteria before we make any final decisions.
 8 Q. Okay. And, again, I just want to be precise
 9 here. When you say "criteria," what specifically are
 10 you referring to?
 11 A. Well, again, you know, this discussion is
 12 presuming a lot of things. Okay? It's important to
 13 clarify that nothing at this point has happened, no
 14 decisions have been made and I'm speaking in kind of
 15 hypothetical terms. Okay?
 16 And now I've forgotten the question.
 17 MR. HERRON: He'll restate it.
 18 (Record read.)
 19 THE WITNESS: So we talked earlier about
 20 criteria that we would use to somehow differentiate
 21 school districts in terms of how we would do a CCR. As
 22 I discussed before, it might be we do a differentiated
 23 CCR; that is, you know, districts that we targeted as
 24 having significant problems or potentially having
 25 significant problems would get a deeper and maybe more

1 schools would be visited in their CCR than a school that
 2 didn't appear to have the -- that didn't appear to have
 3 the same level of problems.
 4 So these criteria would be the ones that would
 5 kind of help guide us in selecting those schools for
 6 whatever kind of differentiated treatment that might
 7 happen.
 8 Q. BY MR. ROSENBAUM: Okay. Now, talking,
 9 Mr. Warren, about the districts with significant
 10 compliance problems -- and we're talking about the CCR
 11 programs. You've talked to me about that several times
 12 today.
 13 A. Uh-huh.
 14 Q. Are you saying yes?
 15 A. Yes. I'm sorry.
 16 Q. Has there ever been any discussion, to your
 17 knowledge, about surveying to see whether or not
 18 students in those districts with significant compliance
 19 problems, what the percentage of emergency-credentialed
 20 teachers is?
 21 MR. HERRON: Objection. Vague and ambiguous in
 22 the use of the term significant -- what did you say?
 23 MR. ROSENBAUM: Using his phrase significant
 24 compliance problems.
 25 MR. HERRON: I think that that's not

1 necessarily true in that it's not been defined before,
 2 so I think your question is vague and ambiguous.
 3 MS. READ SPANGLER: Right. He said they -- I
 4 don't think that's answerable, Mark.
 5 MR. ROSENBAUM: Of course it's answerable.
 6 MS. READ SPANGLER: We haven't defined what
 7 significant compliance problems are.
 8 MR. ROSENBAUM: Go ahead. I'll withdraw the
 9 question for a moment.
 10 Q. When you use the phrase "significant compliance
 11 problems," what did you mean, Mr. Warren?
 12 A. That in a number of significant areas they were
 13 not adequately following state or federal law.
 14 Q. When you say "significant areas," what do you
 15 mean by that?
 16 A. I don't know.
 17 Q. Can you give me some examples?
 18 A. Sure. If they weren't identifying, testing and
 19 providing services to English language learners.
 20 Q. Access to core curriculum, would that be a
 21 significant area?
 22 A. Yes.
 23 Q. All right. Using your formulation regarding
 24 significant areas, has there ever been any discussion,
 25 to your knowledge, about surveying districts with

1 significant compliance problems to determine the
2 percentages of emergency-credentialed teachers in those
3 districts?
4 MR. HERRON: Objection. Overbroad. Calls for
5 speculation.
6 MS. READ SPANGLER: Join.
7 MR. HERRON: Vague and ambiguous in the use of
8 the term "ever."
9 THE WITNESS: Well, I guess the question is
10 whether -- is whether having a high percentage of
11 noncredentialed teachers is illegal under the state or
12 federal law.
13 MR. ROSENBAUM: I'm asking a slightly different
14 question.
15 THE WITNESS: Sorry.
16 Q. BY MR. ROSENBAUM: What I'm asking is this,
17 you've told me that you're aware that there are some
18 number of districts with significant compliance
19 problems, right?
20 A. No, I actually didn't say that.
21 Q. There are districts -- districts that do have
22 significant compliance problems?
23 A. Districts do exist with significant compliance
24 problems.
25 Q. My question is, has anyone, to your knowledge,

1 ever said, we ought to try to figure out what the
2 characteristics of those districts are? That's my first
3 question.
4 MR. HERRON: Objection. Asked and answered.
5 MS. READ SPANGLER: Vague and ambiguous. Also
6 I think maybe this is my problem, but I think he said
7 before that there's no list of such districts, so
8 there's kind of a disconnect between how they can do
9 more with them when they don't know what they are.
10 Maybe I'm misstating what you said.
11 THE WITNESS: Yeah, I mean, we haven't settled
12 on criteria yet to -- and all agreed that, yeah, these
13 are the criteria that we would use to identify districts
14 that could have significant compliance problems, and we
15 have never put together a list of districts that have
16 significant compliance problems so -- and so therefore I
17 don't think -- I think the answer to your question has
18 to be no.
19 Q. BY MR. ROSENBAUM: Okay. And the answer would
20 be no if I talked about whether or not students in those
21 districts had textbooks in core curriculum areas; is
22 that right?
23 MR. HERRON: Objection. Assumes facts not in
24 evidence. Vague and ambiguous.
25 Could you read back the question.

1 (Record read.)
2 MR. HERRON: I don't believe that's a fair
3 question.
4 THE WITNESS: Also we would not have data on
5 that.
6 Q. BY MR. ROSENBAUM: Why is that?
7 MR. HERRON: Objection. Calls for speculation.
8 THE WITNESS: I don't know.
9 Q. BY MR. ROSENBAUM: Okay. And what about the
10 state of facilities in those districts, has there ever
11 been any discussion, to your knowledge, we ought to take
12 a look at what the state of those facilities are?
13 MS. READ SPANGLER: Objection. Vague and
14 ambiguous as to state of the facilities.
15 MR. HERRON: And in the use of the term "those
16 districts."
17 MR. ROSENBAUM: Referring to districts with
18 significant compliance problems.
19 THE WITNESS: I don't --
20 MS. READ SPANGLER: Objection. Calls for
21 speculation. We don't know what those districts are.
22 THE WITNESS: It's kind of an impossible
23 question to answer since we don't have a list, and
24 there's been no discussion about looking at districts on
25 a list and the condition of the facilities.

1 Q. BY MR. ROSENBAUM: Same thing about
2 overcrowding or multi-tracking?
3 MR. HERRON: Objection. Vague and ambiguous.
4 MS. READ SPANGLER: Compound.
5 THE WITNESS: Since there's no list, there's
6 been no way for us to review that data.
7 Q. BY MR. ROSENBAUM: Okay. Do you know, sir,
8 whether or not CCR, when it conducts its reviews, looks
9 at whether or not schools are overcrowded? And I'm
10 using schools deliberately now as opposed to districts.
11 A. Can you define "overcrowded" for me?
12 Q. I was going to ask you that.
13 A. I asked you first.
14 Q. Are you familiar with the phrase "overcrowding"
15 in terms of -- as used in reference to certain
16 California schools?
17 MR. HERRON: Objection. I just -- vague and
18 ambiguous.
19 MS. READ SPANGLER: By whom?
20 MR. HERRON: That's just not a fair question.
21 THE WITNESS: I don't know of any definition of
22 that word.
23 Q. BY MR. ROSENBAUM: Has the subject of
24 overcrowding come up, to your knowledge, in any of the
25 steering committee meetings?

1 MR. HERRON: Since spring of 2000?
 2 MR. ROSENBAUM: Well, it didn't exist before
 3 that.
 4 MR. HERRON: That's the time frame he's looking
 5 at.
 6 THE WITNESS: I don't remember any.
 7 Q. BY MR. ROSENBAUM: Okay. How about
 8 multi-tracking, has the subject of multi-tracking come
 9 up at the steering committee?
 10 A. Not to my knowledge.
 11 Q. Okay. You also talked to me, Mr. Warren, about
 12 schools -- strike that.
 13 If I mischaracterize your testimony, tell me
 14 right away. You talked to me about schools with lower
 15 than desired performance levels. Do you remember saying
 16 that?
 17 A. I don't think I said it quite that way, but
 18 schools where students were achieving -- I can't
 19 remember exactly what I said, but basically it's schools
 20 with students that aren't achieving up to what our hopes
 21 are for them.
 22 Q. Okay. And has anyone, to your knowledge, ever
 23 attempted to compile a list of those schools?
 24 A. Of schools that are not achieving up to what
 25 our hopes are?

1 Q. Yes.
 2 MR. HERRON: Objection. Asked and answered in
 3 the prior deposition. You've been through this with the
 4 API and all that stuff, Mark. We're retreading
 5 already-trodden ground.
 6 MR. ROSENBAUM: Go ahead.
 7 THE WITNESS: I think the API probably is what
 8 you're describing.
 9 Q. BY MR. ROSENBAUM: That's what's in your mind
 10 too?
 11 A. Yeah, that's what I was going to respond.
 12 Q. Okay. And has there ever been any discussion,
 13 to your knowledge, to determine whether or not
 14 low-performance schools -- whether kids in those
 15 low-performance schools have textbooks, the availability
 16 of textbooks in those schools?
 17 MR. HERRON: Objection. Asked and answered.
 18 By whom and when? Vague and ambiguous.
 19 THE WITNESS: I remember talking about this in
 20 the previous times.
 21 MR. ROSENBAUM: Okay.
 22 MR. JORDAN: Are we getting to a decent spot?
 23 MR. ROSENBAUM: Yeah. You tell me when you
 24 want to break, Mr. Warren.
 25 (Discussion held off the record.)

1 Q. BY MR. ROSENBAUM: Has Superintendent Eastin
 2 attended any of the steering committee meetings?
 3 MR. HERRON: Objection to the extent it calls
 4 for speculation.
 5 THE WITNESS: I don't recall.
 6 Q. BY MR. ROSENBAUM: Have you been at all the
 7 steering committee meetings so far as you know?
 8 A. I don't think so.
 9 Q. Okay. The ones you were present at, was the
 10 superintendent at any of those meetings?
 11 MR. HERRON: Objection. Asked and answered two
 12 questions before.
 13 THE WITNESS: I just don't recall.
 14 Q. BY MR. ROSENBAUM: Okay. Do you recall if
 15 anyone from her staff was at those meetings besides the
 16 four chairs?
 17 MS. READ SPANGLER: Objection. Vague and
 18 ambiguous as to "her staff."
 19 THE WITNESS: The whole Department is her
 20 staff.
 21 MS. READ SPANGLER: Yeah.
 22 Q. BY MR. ROSENBAUM: Anyone between Mr. Hill and
 23 the superintendent in terms of reporting relationship?
 24 A. There is not.
 25 Q. There isn't?

1 A. No.
 2 Q. Mr. Warren, are you aware of any review by the
 3 federal government of programs which are the
 4 responsibility of the accountability branch?
 5 MS. READ SPANGLER: Objection. Vague and
 6 ambiguous as to "review."
 7 MR. HERRON: Misconstrues his prior testimony
 8 on this point.
 9 MR. ROSENBAUM: I want to be clear. I'm not
 10 talking about today.
 11 Q. The accountability branch has a responsibility
 12 for reviewing certain programs; isn't that right?
 13 A. Reviewing certain programs?
 14 Q. Looking at certain programs. For example, CCR,
 15 we talked about special education, EL, gender, et
 16 cetera, right?
 17 A. Okay.
 18 Q. Okay. And my question to you is --
 19 A. Let me clarify here. The school and district
 20 accountability, which was a part of the accountability
 21 branch up until recently, as we've discussed, had
 22 responsibility for three parts. Okay? The CCR means
 23 consolidated compliance review.
 24 MS. READ SPANGLER: Coordinated.
 25 THE WITNESS: Coordinated. She's right.

1 MR. HERRON: Mark misled you last time.

2 Consolidated.

3 THE WITNESS: And Eleanor Clark-Thomas, who is
4 in school district accountability, is responsible for
5 coordinating it across the Department. Okay? That
6 division does not do the compliance reviews in gender
7 equity, in special ed, et cetera.

8 It also does have responsibilities for doing
9 the reviews in specific areas, EL is one, and then there
10 are several others. But the way that you said it, it
11 sounded like my previous division had responsibility for
12 all of the reviews, which they don't.

13 Q. BY MR. ROSENBAUM: Okay. Given your duties and
14 responsibilities -- strike that.

15 Do you have any duties and responsibilities now
16 with respect to EL programs?

17 A. EL programs?

18 Q. Yeah.

19 A. What does that mean?

20 Q. Programs to comply with federal and state law
21 with respect to English language learners.

22 MR. HERRON: Objection. Asked and answered.

23 THE WITNESS: To the extent that English
24 language learners are tested, yes. To the extent that
25 they're included in the API, yes. In terms of direct

1 Q. I want to do both. The school first though.

2 A. I don't know the answer.

3 Q. How about at district level?

4 A. I believe so, yes.

5 Q. Okay. And same question with respect to
6 special education. To your knowledge, has the federal
7 government ever reviewed services to special education
8 students at the district level?

9 A. I don't know.

10 MR. HERRON: Objection. Asked and answered.
11 He's already testified to this.

12 Q. BY MR. ROSENBAUM: Or at the school level?

13 A. I don't know much about what happens in special
14 ed.

15 Q. Did you ever have any meetings with
16 representatives of the federal government regarding the
17 delivery of services to English language learners?

18 A. I think I met with Steven Rosenzweig, one of
19 the guys, I'm not remembering his name, who works for
20 the federal government in San Francisco once as an
21 introduction.

22 Q. Nothing substantive as you recall?

23 A. Not that I recall.

24 Q. How about the GAO office, to your knowledge,
25 has the GAO office ever reviewed the services that

1 services and compliance with state and federal law, no.

2 Q. BY MR. ROSENBAUM: Okay. And how about with
3 respect to special education, same question?

4 A. Same answer.

5 Q. Okay. Are you -- when you did have
6 responsibility with respect to English language
7 learners, were you aware of any federal reviews or
8 audits of those programs?

9 A. Of those programs at what level?

10 Q. I don't know what you mean by that. You mean
11 at the district level or the school level?

12 A. Or the state level?

13 Q. Yeah, first.

14 A. Are you talking about did they review our
15 programs?

16 Q. That's the first question.

17 A. Not in the time that I've been in the
18 Department. I don't recall any.

19 Q. How about at the school level?

20 A. Yes, the federal government does review school
21 district programs on occasion.

22 Q. Okay. And, to your knowledge, has the federal
23 government ever reviewed services to English language
24 learner students at the school level?

25 A. At the school level or at the district level?

1 English language learners receive at the district level
2 or at the school level?

3 A. I don't know.

4 MS. READ SPANGLER: You might want to define
5 what GAO is for the record.

6 MR. ROSENBAUM: Government accounting office.

7 THE WITNESS: I don't know.

8 Q. BY MR. ROSENBAUM: Same question with respect
9 to special education.

10 A. I don't know.

11 Q. How about the LAO office, to your knowledge,
12 has the LAO office ever reviewed the services that
13 English language learners --

14 MR. HERRON: The which office?

15 MR. ROSENBAUM: LAO.

16 MS. READ SPANGLER: You mean California?

17 THE WITNESS: Legislative analysts office.

18 MS. READ SPANGLER: Where he used to work?

19 MR. ROSENBAUM: Yes.

20 Q. Has LAO ever looked at services -- reviewed
21 delivery of services to English language learners?

22 A. In specific districts and schools?

23 Q. Yeah.

24 MR. HERRON: Objection. Calls for speculation.

25 MS. READ SPANGLER: It's also vague and

1 ambiguous with respect to reviewed the delivery of
 2 services.
 3 THE WITNESS: Not to my knowledge.
 4 Q. BY MR. ROSENBAUM: Or special education?
 5 MS. READ SPANGLER: Same objections.
 6 THE WITNESS: I don't know.
 7 Q. BY MR. ROSENBAUM: Has the LAO ever looked at
 8 the API?
 9 A. I don't know.
 10 Q. Or IUSP?
 11 A. I don't know.
 12 Q. Okay. You talked to me in our prior
 13 deposition, Mr. Warren, about the high school exit exam.
 14 We just barely discussed it. But do you recall
 15 discussing that?
 16 A. Yes.
 17 Q. If I've asked you this before, I apologize, but
 18 I want it as a predicate here. Could you tell me, sir,
 19 what duties and responsibilities you have with respect
 20 to the high school exit exam?
 21 MR. HERRON: Objection. Asked and answered.
 22 MR. ROSENBAUM: I know it was, but I just want
 23 this as a predicate question.
 24 THE WITNESS: The assessment division, which is
 25 responsible for the high school exit exam, is part of

1 the accountability branch, and Phil Spears is the
 2 director that reports to me.
 3 MR. HERRON: I don't think this was just
 4 touched upon, it was -- great detail has gone into this
 5 subject already. I would hope that we would be focusing
 6 on new things.
 7 Q. BY MR. ROSENBAUM: Okay. In terms of
 8 day-to-day responsibility regarding the high school exit
 9 exam, is there a person in your branch who has that
 10 responsibility?
 11 MR. HERRON: Objection. Asked and answered
 12 multiple times before. You may answer yet again.
 13 MS. READ SPANGLER: It's also kind of vague and
 14 ambiguous with respect to responsibilities.
 15 THE WITNESS: Day to day?
 16 Q. BY MR. ROSENBAUM: Who has the primary
 17 responsibility?
 18 A. There is a unit within Phil Spears' division
 19 called the high school exit examination unit, or
 20 something like that, and there's a manager of that unit.
 21 Q. And who that is?
 22 A. A woman named Jan Chladek.
 23 Q. How do you spell that?
 24 A. C-h-l-a-d-e-k. I remember we discussed this
 25 specifically because we had these gender issues with the

1 first name.
 2 Q. You're aware, Mr. Warren, that the -- that a
 3 passing score has recently been set with respect to the
 4 high school exit exam?
 5 A. Yes.
 6 Q. Were you involved in that process?
 7 MS. READ SPANGLER: Objection. Vague and
 8 ambiguous as to "that process."
 9 THE WITNESS: There's various stages of the
 10 process and so --
 11 Q. BY MR. ROSENBAUM: Let's work backwards. There
 12 was a meeting in June of the State Board of Education
 13 where a number was set, is that right, a number for the
 14 math and a number for the English?
 15 A. I guess it was June. That sounds right.
 16 Q. Were you at that meeting?
 17 A. Yes.
 18 Q. Were you asked your views as to what the
 19 percent -- it wasn't actually a number, it was a
 20 percent, wasn't it?
 21 A. A percent is a number.
 22 Q. Okay. Were you asked your views as to what
 23 percent?
 24 MR. HERRON: Objection. Vague and ambiguous.
 25 What percent what?

1 MR. ROSENBAUM: What percent should be set for
 2 the math and what percent should be set for English.
 3 MR. HERRON: In order to set -- as a passing
 4 score?
 5 MR. ROSENBAUM: Yes.
 6 THE WITNESS: No.
 7 Q. BY MR. ROSENBAUM: Did the branch examine the
 8 question of what the passing rate should be?
 9 MR. HERRON: Objection. Asked and answered.
 10 MR. ROSENBAUM: Your division. I'm sorry.
 11 THE WITNESS: I'm the head of the branch.
 12 Q. BY MR. ROSENBAUM: Did your branch undertake --
 13 this is a different question. Did your branch undertake
 14 any investigation to determine where the passing rate
 15 should be set?
 16 MR. HERRON: Objection. Asked and answered.
 17 It's a different question than the one before, but it's
 18 not different from the questions asked at the last
 19 session of the deposition.
 20 You may respond yet again. Would you like the
 21 question reread?
 22 THE WITNESS: No, that's okay.
 23 Phil Spears and his staff and myself spent a
 24 lot of time trying to develop a recommendation to our
 25 boss, the superintendent of public instruction.

1 Q. BY MR. ROSENBAUM: Okay. And did you make a
2 specific recommendation?

3 MR. HERRON: Objection. Vague and ambiguous.

4 THE WITNESS: Did who make a specific
5 recommendation and to whom?

6 Q. BY MR. ROSENBAUM: Let's see if I can go back a
7 step. You told me that you and Mr. Spears and other
8 individuals expended a lot of time trying to figure out
9 what the passing rate should be; is that right?

10 A. Yes.

11 Q. And in the process of conducting that
12 investigation, one of the things you looked at is if we
13 set the passing rate at "X," how many students will fail
14 and how many students will pass; isn't that right?

15 MS. READ SPANGLER: Objection. Leading.

16 Q. BY MR. ROSENBAUM: You made projections?

17 A. We looked at the data from the March

18 administration in looking at our recommendation.

19 Q. And one of the purposes for which you looked at
20 the data from the March administration was to make
21 projections as to how many students would pass at
22 different passing rates; is that right?

23 MS. READ SPANGLER: Objection. Leading.

24 MR. HERRON: Asked and answered.

25 THE WITNESS: To make projections is probably

1 understand. When you say a "process of being
2 reasonable," what do you mean by "reasonable"?

3 A. Like I said, there are no criteria that really
4 are available to guide this decision, so I can't explain
5 it to you exactly.

6 Q. In your involvement in the process, were there
7 criteria that you yourself applied to determine what was
8 reasonable?

9 MR. HERRON: Objection. Vague and ambiguous.
10 Calls for speculation. Very unfair. Overbroad. Just
11 not a good question.

12 THE WITNESS: I found it very difficult. What
13 you're doing is balancing two things, and I guess this
14 is kind of the -- the two criterias that you're working
15 with, one is that you're setting it at a level that
16 students have -- all students have a reasonable
17 opportunity to actually achieve, and you're also trying
18 to make the test be meaningful in that you haven't set
19 it so low that all students could successfully pass with
20 no trouble at all, that it really wasn't a measure in
21 any sense of what all students need to be able to do
22 when they graduate from high school. So it's a
23 balancing act between those two things, and there really
24 are, again, as I said before, no criteria to help you
25 make that decision.

1 too strong a word. To get a sense of how well students
2 did on the test itself and what a reasonable place to
3 set the passing score would be.

4 Q. BY MR. ROSENBAUM: Okay. And when you say "a
5 reasonable place to set the passing score," what do you
6 mean by that?

7 MR. HERRON: Objection. That sort of stands
8 for itself, doesn't it? I think the question is vague
9 and ambiguous.

10 MR. ROSENBAUM: Go ahead.

11 MR. HERRON: If you have any way to respond,
12 you may.

13 THE WITNESS: There are no psychometric or
14 scientific guidelines about how to do this work that
15 we're discussing of setting a passing score. It is, by
16 its nature, a process of being reasonable.

17 And, you know, one newspaper talked about it as
18 a political decision, and I see it, and that kind of
19 rubbed me the wrong way. But, you know, it absolutely
20 is a political decision in the best sense of what
21 politics really means, and because politics is getting
22 in the public process a group of people together to make
23 what they think are reasonable decisions. Okay? And
24 that's what happened.

25 Q. BY MR. ROSENBAUM: Okay. And help me

1 Q. BY MR. ROSENBAUM: Was there ever any
2 discussion, to your knowledge, about attempting to
3 develop such criteria?

4 MR. HERRON: Objection. Vague and ambiguous as
5 to who and when. Vague and ambiguous as phrased.

6 THE WITNESS: Well, I'm not an expert in this
7 area, but it's my understanding that this has been done
8 many, many times in the test development process. And
9 in talking with the experts, what I've been told is
10 there are no criteria and there's no way to develop
11 criteria.

12 Q. BY MR. ROSENBAUM: And what experts are you
13 referring to?

14 A. Different assessment experts that I work with
15 on a routine basis in all the different programs that --
16 the testing programs that we administer.

17 Q. Can you give me their names as best you can
18 recall?

19 MR. HERRON: The names of the vendors, or are
20 you talking about people's names?

21 MR. ROSENBAUM: The individuals.

22 THE WITNESS: I'm not sure if I can.

23 Q. BY MR. ROSENBAUM: Can you think of any of
24 them?

25 A. No, I'm sorry.

1 Q. The branch did come up with some suggested
2 numbers; is that right?
3 A. We made a recommendation to the superintendent.
4 Q. Okay. Was there a meeting with the
5 superintendent at which this recommendation was
6 discussed?
7 MR. HERRON: Objection. Calls for speculation.
8 THE WITNESS: I don't recall specifically,
9 but -- I just don't recall specifically.
10 Q. BY MR. ROSENBAUM: Okay. And, to your
11 knowledge, was there a written paper or a memorandum
12 prepared that identified what the recommendation was?
13 A. There may have been a chart that described how
14 students would do under different scenarios or different
15 recommendations.
16 Q. And when you say "would do," you mean the
17 percent that would pass and the percent that would fail?
18 A. Yes.
19 Q. And do you know -- when you say "there may have
20 been," do you have a recollection that such a chart was
21 prepared?
22 A. Yeah, I have a recollection of that.
23 Q. Okay. And do you know if that chart was broken
24 down by racial and ethnic groups?
25 A. I believe it may have included. I'm not sure

1 it was complete, that it encompassed all groups.
2 Q. And do you know whether or not the chart
3 included how students at low-performing schools would
4 do?
5 MR. HERRON: Objection. Vague and ambiguous.
6 THE WITNESS: I think it had -- I think it did
7 have a number that tried to get at that. It's not
8 exactly the way you've described it. But we did try to
9 look at schools serving high school students that
10 were -- where students had not done well on the STAR
11 exam.
12 Q. BY MR. ROSENBAUM: And how are you defining not
13 "done well"?
14 A. Like in the lower -- you know, like the bottom
15 10 percent in terms of average student achievement on
16 the STAR exam, that kind of a thing.
17 Q. Okay. And besides the chart itself, was there
18 a memorandum that discussed the recommendation?
19 A. To the superintendent?
20 Q. Yes.
21 A. I don't recall.
22 Q. Okay. If one existed -- strike that.
23 Do you have a file where if such a memorandum
24 existed, it would be present?
25 MR. HERRON: Objection. Calls for speculation

1 since he doesn't even remember the memorandum. You're
2 asking him to speculate about what document he has,
3 which he already said he doesn't know if he ever
4 received.
5 THE WITNESS: I mean, I have a -- how do I say
6 this? You took my high school exit file so --
7 MR. JORDAN: That's what I was going to say.
8 MR. ROSENBAUM: And I didn't see such a
9 memorandum, so that's why I was asking.
10 THE WITNESS: Yeah.
11 Q. BY MR. ROSENBAUM: Would you like it back?
12 A. Yes, I would.
13 MR. HERRON: Mr. Warren, it's 12:25.
14 MR. ROSENBAUM: Can I ask two more questions?
15 MS. READ SPANGLER: Okay.
16 Q. BY MR. ROSENBAUM: Tell me as best you recall
17 what the recommendations were for the passing grade that
18 your branch offered to the superintendent?
19 A. What I remember was that it was -- you know, I
20 don't remember the specifics, but they were very close
21 to the final recommendations that went to the State
22 Board.
23 Q. Okay. Can you tell me the basis upon which
24 your branch made those recommendations?
25 MR. HERRON: Objection. Calls for a narrative.

1 Asked and answered. I think we've talked about it.
2 THE WITNESS: Like I explained before, it's
3 this balance.
4 MR. ROSENBAUM: But I'm trying to see if
5 there's any more specificity with respect to the
6 particular numbers that were recommended.
7 MR. HERRON: Objection. Not a question.
8 MS. READ SPANGLER: Calls for speculation.
9 MR. HERRON: Vague and ambiguous, I suppose.
10 You don't have to respond if you don't
11 understand what he's asking. You only have to respond
12 to the question. If you understand, you can go ahead
13 and respond, otherwise you can ask him to rephrase.
14 THE WITNESS: Could you try again.
15 Q. BY MR. ROSENBAUM: Sure. You've talked to me
16 at some length about the balancing process. And my
17 question is, two numbers were decided upon, one for math
18 and one for English; am I right?
19 A. Yes.
20 Q. And what I'm saying to you is, can you state to
21 me any reasons why those particular numbers were
22 selected, that your branch eventually ultimately fixed
23 upon?
24 MS. READ SPANGLER: Beyond what he's already
25 told you?

1 THE WITNESS: I don't think there's any
2 specific reasons that I can give you. Okay? Again, it
3 was that sense of this is a reasonable place after
4 looking at options, you know, above and below those
5 levels.
6 MR. ROSENBAUM: I'm going to take a break now.
7 MR. HERRON: I'd like to discuss when the
8 deposition is going to terminate. We're glad to go and
9 take a shorter lunch if that's going to get us out
10 earlier today and end this deposition. And that's what
11 we're expecting, I think, to happen, that this is the
12 last day and we're not going to come back yet again for
13 this.
14 MR. JORDAN: We've got a few questions too,
15 although very few compared to --
16 MS. READ SPANGLER: Right. But Mark had
17 already indicated to me that he thought he would finish
18 today, and we want to hold you to that.
19 MR. ROSENBAUM: I want to go off the record.
20 You can put me back on after you hear my question.
21 (Discussion held off the record.)
22 (Lunch recess taken 12:30 to 1:31.)
23 (Mr. Hamilton and Mr. Jordan not present.)
24 MR. ROSENBAUM: We are resuming some minutes
25 after we said we would be back, and we're resuming

1 without Mr. Hamilton or without Mr. Jordan.
2 And I would like to represent that counsel
3 present have discussed it, and in deference to
4 Mr. Warren's schedule, we will resume and give the
5 lawyers an opportunity to review the transcript over the
6 first break.
7 Does anybody have any problem with that?
8 MS. READ SPANGLER: No.
9 MR. HERRON: No.
10 Q. BY MR. ROSENBAUM: Okay. Mr. Warren, do you
11 know what the California standards exam is -- standards
12 test is?
13 A. Yes.
14 Q. And what is the California standards test?
15 A. It's a part of the STAR test system, and it's a
16 series of tests that are designed to determine to what
17 extent students know the materials that are on the state
18 content standards.
19 Q. Now, was it administered for the first time
20 this year?
21 A. Well, no, not really.
22 Q. Okay. When was the first --
23 Is it administered at the same time as the
24 Stanford-9?
25 A. Yes.

1 Q. Okay. And there is -- it was administered this
2 year, is that right, this calendar year?
3 A. It's still in development, most of it, so it
4 has been administered several times as part of the
5 development process.
6 Q. Let me see if I understand this. Prior to this
7 year, there had been certain questions that had been
8 asked as opposed to particular areas; is that --
9 A. I think we went over this last time, that the
10 standards test or most of the tests up to this point
11 have been derived out of some of the questions from the
12 SAT-9 and then some additional questions.
13 (Mr. Hamilton entered the room.)
14 MS. READ SPANGLER: Maybe you want to ask him
15 all this and maybe you don't, but, again, I think this
16 is a lot of what you'd probably want to ask Phil.
17 MR. ROSENBAUM: You know, let's see. I'm very
18 sensitive to that, that's why I made the comments prior
19 to the break. I don't expect to get too far into this
20 without reaching that point to determine whether we've
21 got the right person.
22 Q. There was a language arts section this time; is
23 that correct?
24 A. Yes.
25 Q. Okay. And there were two writing questions?

1 A. There was one writing question in grade four
2 and one in grade seven where kids were actually required
3 to write an extended response. There were also
4 multiple-choice questions on writing.
5 (Mr. Jordan entered the room.)
6 Q. BY MR. ROSENBAUM: But it was not offered in
7 math, history, science or social studies; is that right?
8 A. No.
9 Q. And is it the plan, so far as you know, to
10 offer those areas in the future?
11 A. We offered them this year. You misunderstood
12 my answer. You said is it --
13 MS. READ SPANGLER: Is that right?
14 THE WITNESS: No, it's not right.
15 Q. BY MR. ROSENBAUM: There was a California
16 standards test in math?
17 A. Yes.
18 Q. And what other subjects?
19 A. Science and history and social science.
20 Q. Forget about the writing questions for a
21 moment. How were the questions in the other areas
22 graded, what was the -- how was it calibrated? Was it a
23 number calibration, like 1 to 4, was it proficient,
24 basic, below proficient? I'm just trying to get the
25 criteria that was used to grade.

1 MR. HERRON: Objection. Calls for speculation.
 2 Compound.
 3 THE WITNESS: Well, on each of the tests,
 4 students are given a percent correct and a number
 5 correct, and for English language arts they were --
 6 students were given a score that indicated their level
 7 of proficiency with the material.
 8 Q. BY MR. ROSENBAUM: And tell me how the score
 9 indicated the level of the proficiency.
 10 MR. HERRON: Objection. Vague and ambiguous.
 11 THE WITNESS: The score in the English language
 12 arts was -- rather than a numerical score, it was one of
 13 five descriptors, starting with advanced and going down
 14 through -- the lowest one was far below basic.
 15 Q. BY MR. ROSENBAUM: And do you know what was far
 16 below basic?
 17 A. I don't know what you mean by that.
 18 Q. Advanced was the highest, far below basic was
 19 the lowest; is that right?
 20 A. Correct.
 21 Q. Basic is in the middle?
 22 A. Correct.
 23 Q. What's above basic?
 24 A. Proficient.
 25 Q. And what's below basic?

1 A. Below basic.
 2 Q. And this was administered to students in what
 3 grades?
 4 A. Well --
 5 MR. HERRON: Objection. Asked and answered.
 6 THE WITNESS: The math and English language
 7 arts are 2 through 11, the science and social science
 8 are high school only.
 9 Q. BY MR. ROSENBAUM: Okay. Now, this is my
 10 question -- and I take it Mr. Spears is familiar -- did
 11 he have certain responsibilities with respect to this
 12 test?
 13 A. Yes.
 14 Q. And what were his responsibilities?
 15 A. He's responsible for making sure that -- for
 16 all aspects of the tests.
 17 Q. And who actually drew up the questions for the
 18 test?
 19 A. We have vendors who do that for us.
 20 Q. Do you know who the vendor was this year?
 21 A. Well, Harcourt is who we contract with and then
 22 they may subcontract, but I'm not aware of that.
 23 Q. And is the Department shifting from Harcourt?
 24 MS. READ SPANGLER: Objection. Vague and
 25 ambiguous as to "shifting."

1 MR. ROSENBAUM: Strike that.
 2 Q. Are they going to utilize a different vendor in
 3 the future?
 4 A. I don't know.
 5 Q. With students who scored far below basic on any
 6 part of the test, was any analysis made as to racial and
 7 ethnic characteristics?
 8 A. Well, we just got the scores back August 15th.
 9 Today is August 29th. So in the two weeks we've had the
 10 material, I don't know.
 11 Q. Okay. To your knowledge, are there plans to
 12 look at the students who scored far below basic and
 13 analyze those results by race and ethnicity?
 14 A. Are there plans to do that? I don't know.
 15 Q. Is that something Mr. Spears would know?
 16 I just want to know would he know something you
 17 wouldn't know in terms of that?
 18 A. Well, I guess I'm not sure because in some
 19 respects it's not really an assessment issue, right,
 20 it's really kind of -- it's another issue, either it's
 21 an accountability issue or it's an instructional issue.
 22 Q. When you say an "accountability issue," what do
 23 you mean by that?
 24 MR. HERRON: Objection. Asked and answered.
 25 THE WITNESS: Because a part of the

1 accountability system looks at whether you're making
 2 growth in your students, you know, by race and
 3 ethnicity.
 4 Q. BY MR. ROSENBAUM: When you say an
 5 "instructional issue," what do you mean?
 6 A. Well, the assessment system is designed, in
 7 part, to identify where are the problems in our system,
 8 right? And so the whole idea behind assessment and
 9 accountability is to get people to pay attention to
 10 where the problems are, and then those have to be dealt
 11 with in some way, you know, instruction has to change in
 12 some way or be improved, I guess, is a more accurate way
 13 of saying it, in order to meet the needs of those kids.
 14 Q. Why is that important?
 15 MR. HERRON: Why is what important?
 16 THE WITNESS: The goal of the education system
 17 is to extend to all kids a fair opportunity to learn,
 18 you know, what a society thinks is necessary.
 19 Q. BY MR. ROSENBAUM: When you say "a fair
 20 opportunity to learn," what do you mean by that?
 21 A. I don't know.
 22 Q. Okay. To your knowledge, are there any plans
 23 to look at the race and ethnicity of students who scored
 24 far below basic on any of the tests?
 25 MR. HERRON: Objection. Asked and answered.

1 You asked that precise question.
 2 Q. BY MR. ROSENBAUM: Are you aware of any plans
 3 to examine the race and ethnicity of students who scored
 4 far below basic?
 5 MR. HERRON: Objection. Asked and answered.
 6 Wasn't that the question you just posed?
 7 MR. ROSENBAUM: No, the question I posed before
 8 was had he done it. Now I'm asking whether he has any
 9 plans to do that.
 10 MS. READ SPANGLER: Now, you asked that and he
 11 said he didn't know.
 12 THE WITNESS: I don't know.
 13 Q. BY MR. ROSENBAUM: Okay. If I changed the
 14 question to below basic, does your answer remain the
 15 same? Are you aware of any plans to investigate the
 16 race and ethnicity of students who scored below basic?
 17 A. I don't know.
 18 Q. Or basic?
 19 A. No, I don't know.
 20 Q. Or proficiency or advanced?
 21 A. No, I don't know.
 22 Q. Have you -- have you given -- strike that.
 23 Are you -- has there been any inquiry to
 24 determine what schools the students who score far below
 25 basic attend?

1 MR. HERRON: Objection. Calls for speculation.
 2 THE WITNESS: The data that we publish is
 3 broken down by race and ethnicity.
 4 Q. BY MR. ROSENBAUM: It is broken down by race
 5 and ethnicity, you say?
 6 A. Yes.
 7 Q. Regarding?
 8 A. By school and by district.
 9 Q. Okay. So let me see if I understand you.
 10 You're telling me that I can find out the schools where
 11 the kids scored far below basic; is that right?
 12 A. You could. It would be a lot of work, but you
 13 could do it.
 14 Q. It's not in a hard copy form right now?
 15 A. No, the school level information is never put
 16 into a hard copy, it's on our website. Okay? And each
 17 school eventually -- and I don't know if it's up now or
 18 not, but eventually the web will have a breakout for
 19 each school of the student test scores.
 20 Q. Okay. Do you use that information for any
 21 purposes?
 22 A. Uh-huh. Sure.
 23 Q. What do you use it for?
 24 MR. HERRON: "You" being his branch?
 25 MR. ROSENBAUM: Yes.

1 THE WITNESS: I thought you meant me.
 2 MR. ROSENBAUM: First your branch.
 3 THE WITNESS: Well, the accountability office,
 4 Bill Padia uses it in developing the API and looking at
 5 subgroup scores.
 6 Q. BY MR. ROSENBAUM: Any other purposes you're
 7 aware of?
 8 A. You're talking about the breakouts
 9 specifically?
 10 Q. Right now the race and ethnicity, yes.
 11 A. No.
 12 Q. Is there any inquiry made by your branch, to
 13 your knowledge, as to whether students who scored far
 14 below basic have textbooks in their classes?
 15 A. Like I said, we've had the data for two weeks
 16 so --
 17 Q. Nothing been done with it so far as you know?
 18 A. I kind of feel like let's not go through that.
 19 Q. With respect to plans for the future, to your
 20 knowledge, does the branch have any plans to determine
 21 whether or not students who scored far below basic had
 22 textbooks in their classes?
 23 MR. HERRON: Objection. Nonsensical. You're
 24 asking him a question -- assumes facts not in evidence.
 25 THE WITNESS: I don't know of any.

1 Q. BY MR. ROSENBAUM: Okay. Or whether they were
 2 taught by emergency-credentialed teachers?
 3 A. I don't know of any at this point.
 4 Q. Okay. Or --
 5 A. I'm sorry, that's not quite true in that the
 6 similar schools index for the API does include percent
 7 of credentialed teachers as a component, an
 8 environmental factor. That's in the law. It's required
 9 by law.
 10 Q. Okay. My question is a little bit different.
 11 For individual students who scored far below basic, is
 12 there any plans to determine --
 13 A. Individual students?
 14 Q. Yes.
 15 A. We don't get individual student data. Let me
 16 correct that. We get individual student level data, but
 17 we don't have any way of identifying the students
 18 themselves. All of that data is not -- we're not
 19 allowed to have, the state department, by law.
 20 Q. Okay. So other when you say "individual
 21 student level data," what do you mean by that?
 22 A. Like I said, we get the data on every student,
 23 but there's no unique identifier that allows us to say
 24 did David Smith have a textbook.
 25 Q. Or an emergency-credentialed teacher?

1 A. Correct.

2 Q. Okay. How about do you have the capability of
3 determining where there are classrooms with high
4 percentages of students who scored far below basic?

5 A. No.

6 MR. HERRON: His branch, you mean?

7 MR. ROSENBAUM: Yes.

8 THE WITNESS: I don't know the answer to that.

9 Q. BY MR. ROSENBAUM: Are you aware of any inquiry
10 at the classroom level or plans to conduct any inquiry
11 at the classroom --

12 A. I don't know if we get the data where we can
13 identify individual classrooms.

14 Q. Has there ever been any discussion that it
15 would be useful to obtain that information for purposes
16 of your branch?

17 MR. HERRON: Objection. Calls for speculation.

18 THE WITNESS: I think -- is there any
19 discussion? I don't know.

20 Q. BY MR. ROSENBAUM: To your knowledge,
21 Mr. Warren, has there been any discussion about
22 providing particularized assistance -- strike that.
23 To your knowledge, has there been any
24 discussion about providing technical assistance to
25 schools with high percentages of students who scored far

1 below basic?

2 MR. HERRON: Objection. Vague and ambiguous.

3 THE WITNESS: There has been discussion about
4 providing technical assistance to schools with very low
5 student performance, which having a large percentage of
6 students at far below basic would probably qualify a
7 school.

8 Q. BY MR. ROSENBAUM: Okay. But the discussion --
9 you tell me if I'm wrong here. The discussion that --
10 there has been discussion about providing assistance to
11 schools who score low on the API; is that right? Strike
12 that.

13 There has been discussion about providing
14 assistance to schools who qualify for the IIUSP; is that
15 right?

16 MR. HERRON: By whom?

17 MS. READ SPANGLER: Isn't it sort of inherent
18 in IIUSP that they do that? I think your question is
19 vague and ambiguous.

20 Q. BY MR. ROSENBAUM: What I'm trying to focus on
21 is the California standards test itself. Has there been
22 specific discussion about providing technical assistance
23 to schools where student performance on the California
24 standards test was far below basic?

25 A. Like I discussed --

1 MR. HERRON: Objection. Asked and answered.

2 THE WITNESS: -- with you, as part of the CCR
3 we do pull that in, the idea of looking at student
4 performance and identifying schools with a lot of
5 students who are low performing as a part of our
6 targeting to do CCRs, which would then move into a
7 technical assistance phase that would be focused both at
8 the educational program as well as a compliant education
9 program.

10 Q. BY MR. ROSENBAUM: Okay. That's the discussion
11 you and I had this morning about the hypothesis and
12 about some of the proposals and stuff?

13 A. That's correct.

14 Q. And that's what you were referring to?

15 A. What?

16 Q. Strike that. That's okay.

17 Now, on the written part of the examination --

18 A. Can you be more precise?

19 Q. There was also a written essay; is that right?

20 A. In two grades, correct.

21 Q. And you told me those were grades 4 and 7?

22 A. Yes.

23 MR. HERRON: Which exam are we talking about?

24 MS. READ SPANGLER: California standards on the
25 English language portion.

1 Q. BY MR. ROSENBAUM: This was the first year that
2 that part of the exam had been offered; is that right?

3 A. Yes.

4 Q. And that was graded on a 1 to 4 basis?

5 A. Two reviewers each individually reviewed it on
6 a 1 to 4 basis, and then those scores were added
7 together.

8 Q. So that a student could get 2 through 8; is
9 that right?

10 A. I think that's right, yeah.

11 Q. Now, my question is -- I don't want to belabor
12 this -- have you had a chance to analyze those results?

13 A. We got them two weeks ago so --

14 Q. Are there any plans to determine -- strike
15 that.

16 Do you get those on an individualized student
17 basis?

18 A. In the same way as we do all the other STAR
19 test data, yes.

20 Q. There were exams where students didn't write
21 anything; isn't that right?

22 A. I assume so. I don't know that for a fact.

23 MS. READ SPANGLER: If you don't know, then
24 don't guess.

25 Q. BY MR. ROSENBAUM: Have you heard that?

1 A. No.

2 Q. Okay. You haven't heard anything about an exam
3 being left blank?

4 MR. HERRON: Objection. Asked and answered.

5 THE WITNESS: Not specifically, no.

6 Q. BY MR. ROSENBAUM: Does your branch have any
7 plans to attempt to determine whether or not students
8 who scored a 2 on this exam, whether or not they had
9 availability of textbooks?

10 MR. HERRON: Objection. Vague and ambiguous.

11 THE WITNESS: In the two weeks since we've
12 gotten the results, no, we haven't had that opportunity.

13 Q. BY MR. ROSENBAUM: No. I'm saying, do you have
14 any plans to do that?

15 A. I'm sorry. Not at this time.

16 Q. Or whether they're taught by
17 emergency-credentialed teachers?

18 MR. HERRON: Vague and ambiguous.

19 THE WITNESS: Not that I know of.

20 Q. BY MR. ROSENBAUM: Or anything about the
21 characteristics of the schools where they attend?

22 MR. HERRON: Objection. Vague and ambiguous in
23 the use of the word "characteristics."

24 THE WITNESS: The way you asked that question
25 is a little different and -- I mean, we certainly plan

1 to do an analysis of the data, just as we do with all of
2 our tests, to try and understand how accurate is it, you
3 know, what are possible problems with the test, what
4 are -- what's influencing the scores, associated
5 characteristics with the scores. That is something that
6 we do with all of our tests after the fact. And that
7 kind of study is something that we have talked about.

8 Q. BY MR. ROSENBAUM: Okay. And are there
9 specific plans in place to conduct such a survey?

10 A. Not specific plans at this time.

11 Q. Okay. Have you received any specific directive
12 from the superintendent to conduct any such survey?

13 A. No.

14 Q. Or from the State Board of Education?

15 A. Not that I know of.

16 Q. Or from the State Board of Education?

17 A. Isn't that what you just said?

18 Q. I'm sorry. Secretary Mazzone's office?

19 A. No.

20 Q. Or the governor's office?

21 A. No.

22 Q. And if I asked you the same question not with
23 respect to the standards test, but with respect to the
24 Stanford-9, would your answers be the same?

25 Have you received any directives from any of

1 those agencies or entities?

2 A. To?

3 Q. To look at what was influencing the schools.

4 A. Well, the Stanford-9 is a static test that
5 doesn't change. The reason why you do the evaluation
6 that I'm speaking of is to ensure that you have a sound
7 test, it's not being influenced by something that you
8 didn't understand when you designed the test. Okay?
9 Stanford-9 is immutable and it's owned by somebody else,
10 and that kind of analysis wouldn't make sense.

11 Q. Okay. Thanks. There is a new set of
12 Stanford-9 results since we've last talked; is that
13 right?

14 A. There are new STAR results, and Stanford-9 is a
15 part of that.

16 Q. When did you receive those results?

17 A. Around the 15th of August is when they were
18 posted and made public.

19 Q. To your knowledge, are there any plans to look
20 at students who scored below the 25th percentile on any
21 part of that exam to determine whether or not they had
22 textbooks available?

23 MR. HERRON: Objection. Vague and ambiguous.
24 Calls for speculation.

25 When you say "you," do you mean him?

1 MR. ROSENBAUM: The branch. Thanks. The
2 branch.

3 THE WITNESS: I don't know of any study to look
4 at schools associated -- and the issue of textbooks, no.

5 Q. BY MR. ROSENBAUM: If I change it to some other
6 percentile besides the 25th, the answer would be the
7 same?

8 A. Correct.

9 Q. Same thing with respect to conditions in school
10 facilities where students attend school?

11 MR. HERRON: Objection. Vague and ambiguous.

12 Q. BY MR. ROSENBAUM: Do you have any plans to
13 conduct an inquiry about that?

14 A. I don't know of any plans to look at SAT-9
15 scores and its relation to school facilities, no.

16 Q. Okay. Or relationship to classrooms taught by
17 emergency-credentialed teachers?

18 A. I don't know of any study.

19 Q. Okay. And when you say you don't know of any
20 study in the last few answers, would your answer be the
21 same whether we were talking about the branch or the
22 Department as a whole?

23 A. I can't speak for the Department as a whole.

24 Q. Okay. But are you aware of any plans to study
25 these questions outside the branch?

1 A. I might or might not be aware of it. I mean,
 2 you know, the idea, again, behind this data is to make
 3 it available to folks and give clues as to where the
 4 problems are, and I would hope other people in the
 5 Department are pursuing -- using this data to pursue
 6 issues of importance.
 7 MS. READ SPANGLER: Can I just ask for
 8 clarification? You're talking about individual -- the
 9 generic individual student data?
 10 MR. ROSENBAUM: The question speaks for itself.
 11 MS. READ SPANGLER: No, it doesn't.
 12 Q. BY MR. ROSENBAUM: Why would you hope that?
 13 A. This is important because most people don't
 14 have access to the individual data. What they have
 15 access to is the school level data, which is a summary
 16 of the student level data. Understand?
 17 Q. Okay. But the answers that you gave me, I just
 18 want -- how did you think you were answering the
 19 question?
 20 MR. HERRON: What?
 21 Q. BY MR. ROSENBAUM: Did you think you were
 22 referring to individuals, or did you think you were
 23 referring to schools?
 24 A. Schools.
 25 Q. Okay. And when you say you "would hope," why

1 would you hope that?
 2 A. Because part of the -- one reason -- and I've
 3 talked about this before, one reason to do testing is to
 4 find out where the problems are and start leading you
 5 towards thinking about solving problems that are a part
 6 of our system.
 7 Q. Okay. And are you aware of any studies or
 8 investigations outside the branch?
 9 MR. HERRON: What?
 10 MS. READ SPANGLER: About what?
 11 MR. ROSENBAUM: To look at the characteristics
 12 of the schools.
 13 MR. HERRON: Objection. Asked and answered.
 14 MS. READ SPANGLER: Not only that, but we've
 15 gone over this a lot during Bill Padia's deposition.
 16 THE WITNESS: I'm not aware of anything.
 17 Q. BY MR. ROSENBAUM: You know what, we talked
 18 briefly, Mr. Warren, in the prior days about opportunity
 19 to learn.
 20 A. Uh-huh.
 21 Q. You're saying yes?
 22 A. Yes.
 23 Q. And that's sometimes referred to as OTL; is
 24 that right?
 25 A. Yes.

1 Q. And, to your knowledge, does California have
 2 OTL standards?
 3 MR. HERRON: Objection. Vague and ambiguous.
 4 THE WITNESS: I don't know what OTL standards
 5 are.
 6 Q. BY MR. ROSENBAUM: Okay. To your knowledge,
 7 does California have opportunity to learn criteria?
 8 MS. READ SPANGLER: Objection. Vague and
 9 ambiguous as to "opportunity to learn criteria."
 10 MR. HERRON: Objection. Vague.
 11 Perhaps providing context would assist him in
 12 being able to answer. Just a suggestion.
 13 THE WITNESS: Yeah. I mean, in a general
 14 sense, I don't know what that means.
 15 Q. BY MR. ROSENBAUM: Okay. When we talk about
 16 opportunity to learn, in what context are you familiar
 17 with that?
 18 A. Primarily I'm familiar with it in terms of
 19 high-stakes decision-making for individual students.
 20 Q. And when you say "high-stakes decision-making,"
 21 would that include the high school exit exam?
 22 A. Yes.
 23 Q. Would it include the STAR?
 24 A. No.
 25 Q. What else would it include besides the high

1 school exit exam?
 2 MS. READ SPANGLER: Are you just asking how
 3 he's familiar with it?
 4 MR. HERRON: Objection. Vague and ambiguous.
 5 Calls for speculation.
 6 THE WITNESS: In terms of my own work, high
 7 school is the only area that I've experienced it.
 8 Q. BY MR. ROSENBAUM: Have you been to meetings
 9 where the subject matter of opportunity to learn has
 10 been discussed in the context of the high school exit
 11 exam?
 12 A. Yes.
 13 Q. On more than one occasion?
 14 A. Yes.
 15 Q. Okay. And have you read writings about
 16 opportunity to learn in the context of the high school
 17 exit exam?
 18 A. I don't remember.
 19 Q. Okay. To your knowledge, does the Department
 20 of Education define opportunity to learn in the context
 21 of the high school exit exam?
 22 A. Not to my knowledge.
 23 Q. To your knowledge, does the Department of
 24 Education have a set of criteria as to what students
 25 must receive in order to have opportunity to learn for

1 purposes of the high school exit exam?
 2 A. My understanding is that the courts have
 3 defined what students must receive in order to ensure
 4 that all students have the opportunity to learn.
 5 Q. Okay. And I'm asking a slightly different
 6 question. To your knowledge, has California ever
 7 defined what students must receive in order to have
 8 opportunity to learn for purposes of the high school
 9 exit exam?
 10 MR. HERRON: Objection. Calls for him to speak
 11 beyond his role in his branch, and it's vague and
 12 ambiguous as phrased.
 13 MS. READ SPANGLER: I think it also calls for a
 14 legal conclusion.
 15 THE WITNESS: When you say "California," are
 16 you saying has the Department ever written down
 17 somewhere that says in order to satisfy opportunity to
 18 learn XYZ? Is that what you're asking?
 19 MR. ROSENBAUM: Exactly.
 20 THE WITNESS: I'm not sure.
 21 Q. BY MR. ROSENBAUM: You're saying today you're
 22 not aware of any?
 23 MR. HERRON: Objection. Asked and answered the
 24 question before.
 25 THE WITNESS: You've seen some of the materials

1 that I've had, you know, high school exit and stuff.
 2 There's been volumes of materials that have been
 3 produced. There's a separate website that we maintain
 4 on high school exit exam. I just don't know.
 5 Q. BY MR. ROSENBAUM: Okay. Do you have in your
 6 own mind in your role as -- with the accountability
 7 branch, do you have a definition of what opportunity to
 8 learn means in the context in which you've described
 9 what students must receive in the contents of the high
 10 school exit exam?
 11 A. Not a real concrete one, no.
 12 Q. Have you ever heard a real concrete one?
 13 MR. HERRON: In the same context?
 14 MR. ROSENBAUM: Yes.
 15 THE WITNESS: No. And I, frankly, think that
 16 there probably isn't one even that has come out of the
 17 court. That's my own kind of impression of where things
 18 are in this microcosm of issues.
 19 Q. BY MR. ROSENBAUM: Has anyone ever asked you,
 20 Mr. Warren, to come up with a set of criteria as to what
 21 students must receive in order to have an opportunity to
 22 learn for purposes of a high school exit exam?
 23 A. I think that the Department is working on that
 24 issue, but it's an in-progress thing.
 25 Q. My question is a little bit different. Has

1 anyone ever asked you to do that?
 2 MR. HERRON: Him personally?
 3 MR. ROSENBAUM: Yes.
 4 THE WITNESS: No.
 5 Q. BY MR. ROSENBAUM: Has anyone ever asked you to
 6 have the branch do that?
 7 MR. HERRON: Objection. Vague and ambiguous as
 8 to the use of the term "that."
 9 THE WITNESS: I'm confused about the importance
 10 of someone asking me. I mean, who is it that you
 11 want -- I mean, do you want to know are we doing it or
 12 did somebody ask me, somebody above me in the hierarchy
 13 or somebody outside of the Department or what?
 14 Q. BY MR. ROSENBAUM: I want to do both. But
 15 first I want to know if you ever received a directive
 16 from Mr. Hill or Superintendent Eastin to have the
 17 branch come up with a set of requirements as to what
 18 students must receive?
 19 A. No.
 20 Q. Okay. And has anyone outside the Department of
 21 Education ever asked you to do that?
 22 A. No.
 23 Q. Okay. I take it the State Board of Education
 24 and Secretary Mazzoni have never asked you to do that?
 25 A. Not me.

1 Q. Either you or the branch?
 2 MR. HERRON: Objection. Calls for speculation.
 3 THE WITNESS: I can't speak for -- all I can
 4 say is nobody has asked me.
 5 Q. BY MR. ROSENBAUM: I just want to be clear
 6 because of Mr. Herron's comment. No one has ever asked
 7 you to have the branch do it; is that right?
 8 MR. HERRON: Objection. Asked and answered the
 9 question before.
 10 THE WITNESS: Well, I wouldn't do it, right,
 11 so --
 12 Q. BY MR. ROSENBAUM: You said to me that it's
 13 your understanding that the Department is working on
 14 this issue; is that right?
 15 A. Yes.
 16 Q. What's the basis of your understanding?
 17 A. We've -- we know that opportunity to learn is
 18 kind of the lynchpin of defending the high school exit
 19 exam in terms of fairness, you know, so we are
 20 continuing to work on those issues and try to define
 21 what is the state's responsibilities.
 22 Q. Okay. When you say "lynchpin," what do you
 23 mean by that?
 24 A. The courts in other states that have had high
 25 school exits have determined that opportunity to learn,

1 i.e., fairness, that's how I think about it anyway, that
 2 there's a set of conditions under which students have
 3 received a fair opportunity to learn the material and to
 4 show that they understand and have mastered the
 5 material. And so those are the conditions that need to
 6 be in place to have, you know, discharged the state's
 7 duties to the kids in schools.
 8 Q. Okay. Sitting here today, Mr. Warren, based on
 9 your training and experience, do you have any beliefs as
 10 to what some of those conditions would be?
 11 A. Beliefs?
 12 Q. Yeah. Based on your training and experience,
 13 do you have a view as to what those conditions would
 14 include?
 15 MR. HERRON: Objection. Vague and ambiguous.
 16 Calls for speculation. Asks him to testify as an
 17 expert. He's not an expert, so you're asking a question
 18 beyond -- you're asking him for information to
 19 testify -- to testify to information beyond his
 20 competence. I think that's asked and answered. I think
 21 you've been down this road, as with many other questions
 22 today.
 23 MS. READ SPANGLER: I think it also probably
 24 calls for a legal conclusion.
 25 THE WITNESS: That was going to be my -- I can

1 tell you what courts -- I can tell you my impression of
 2 what courts have determined in other states, and I'm not
 3 sure I have a set of beliefs about it.
 4 Q. BY MR. ROSENBAUM: Do you have a set of beliefs
 5 about it?
 6 A. I'm not sure.
 7 Q. Why is that?
 8 MR. HERRON: Why is what? That's a ridiculous
 9 question. I think that is harassing.
 10 MS. READ SPANGLER: Why is he not sure he has a
 11 set of beliefs?
 12 MR. HERRON: And it's vague and ambiguous. Why
 13 is that what? Please clarify.
 14 MS. READ SPANGLER: That's ridiculous.
 15 MR. HERRON: We don't have to play this game
 16 here. This is ridiculous. Please move on to
 17 something -- ask him a good question, ask him relevant
 18 topics. We've got three hours left. We've been going
 19 around and around about things that have already been
 20 discussed before. And this deposition is going to end
 21 today, so I really encourage you to move to things that
 22 are relevant, Mark, and ask other questions.
 23 MR. ROSENBAUM: Go ahead.
 24 MS. READ SPANGLER: I don't think he needs to
 25 answer why he's not sure he doesn't have beliefs. I'm

1 not sure that's even answerable.
 2 MR. ROSENBAUM: Let me mark as Exhibit 59 a
 3 document that I received in discovery. It's a document
 4 bearing the Bates No. DOE 93080 through 93093, and I'm
 5 going to have it marked and supplied to Mr. Warren, and
 6 I will supply counsel with copies of it.
 7 (Exhibit SAD-59 was marked.)
 8 Q. BY MR. ROSENBAUM: Mr. Warren, you should feel
 9 free to take as much time as you'd like to review this
 10 document, but I also want you to know that if I ask you
 11 particular questions, you're free to go back and look at
 12 it.
 13 Right now I just want to know if you're
 14 generally familiar with this document?
 15 A. No, I don't think I've ever seen it before.
 16 Q. Let me ask you, sir, if you would --
 17 MR. JORDAN: I'm sorry, Mark, I think we got
 18 the wrong thing. Did you say it was 93080 to 93093?
 19 What you gave us starts with 93094.
 20 MS. READ SPANGLER: 93080?
 21 THE WITNESS: You have a different document.
 22 MR. ROSENBAUM: I'm really sorry.
 23 (Discussion held off the record.)
 24 Q. BY MR. ROSENBAUM: Mr. Warren, have you ever
 25 seen the results of this survey?

1 A. Only to the extent that it was discussed in one
 2 of the HumRRO reports.
 3 Q. Have you ever studied the results?
 4 MS. READ SPANGLER: Objection. Vague and
 5 ambiguous as to "studied."
 6 THE WITNESS: Well, I mean, the results of this
 7 survey? I just told you I've only seen it to the extent
 8 that it's been discussed in one of their reports.
 9 MR. ROSENBAUM: Okay. Thanks.
 10 Q. Let me ask you, sir, to look at page 93087 of
 11 what's been marked as Exhibit 59, and I want to
 12 specifically direct your attention to question 25B.
 13 Do you see that?
 14 A. Okay.
 15 Q. And the question says, what is your estimate of
 16 the percentage of students in your school who know what
 17 knowledge and skills are covered by the exam. Do you
 18 see that?
 19 A. Yes.
 20 Q. To your knowledge, Mr. Warren, did the
 21 Department -- strike that.
 22 Did your branch conduct any follow-up
 23 examination to determine what the basis of the
 24 principals' answers to this question was?
 25 MR. HERRON: Objection. Calls for speculation.

1 Asks him to testify regarding a document he says he's
 2 never seen.
 3 THE WITNESS: Your question is have we done any
 4 follow-up to try to get at how principals made this
 5 estimate, on what basis?
 6 MR. ROSENBAUM: Yes.
 7 THE WITNESS: I don't know if anything was done
 8 for this survey. There was a similar survey done a year
 9 prior to that where we did quite a bit of additional
 10 work.
 11 Q. BY MR. ROSENBAUM: Okay. And the prior survey,
 12 who prepared that survey?
 13 A. HumRRO.
 14 Q. And in the prior survey was a question in sum
 15 or substance like 25B of Exhibit 59 asked?
 16 MR. HERRON: Objection. Calls for speculation.
 17 THE WITNESS: I don't know.
 18 Q. BY MR. ROSENBAUM: Do you know who was in
 19 charge of conducting that -- strike that.
 20 The branch did a follow-up on a prior survey;
 21 is that right?
 22 A. There was a similar survey done a year previous
 23 to that, and as a part of that survey they went through
 24 all the content standards and asked about whether
 25 individual content standards were a part of the

1 curriculum that students received.
 2 They also tracked -- I believe they also
 3 tracked what courses students were taking so that they
 4 could really kind of get a sense of what parts of the
 5 contents standards and what students were actually
 6 getting that education.
 7 MR. HERRON: May I just ask, is this an area
 8 where Phil Spears might have the knowledge, that is, the
 9 surveys and what they consisted of and what follow-up
 10 occurred?
 11 THE WITNESS: He might. You actually might
 12 have to go down even another level.
 13 Q. BY MR. ROSENBAUM: First of all, when you say
 14 "they," do you mean HumRRO?
 15 A. What?
 16 Q. The answer you gave to me just before
 17 Mr. Herron's comment, you said that they looked into
 18 content standards and --
 19 A. Yes. Yes.
 20 Q. And HumRRO did that?
 21 A. HumRRO, correct.
 22 Q. Did the Department ever undertake any such
 23 survey?
 24 A. They were doing this for us.
 25 Q. I understand that. But besides HumRRO, did the

1 Department ever do this?
 2 A. Not that I know of.
 3 Q. Now, the survey that you're referring to, was
 4 that, to your knowledge -- and if Mr. Spears is the
 5 right person, just tell me that. I'm just going to ask
 6 it slightly different.
 7 My understanding is that not every principal
 8 received a survey, but it was a sample of --
 9 A. This survey?
 10 Q. Yes.
 11 A. Yes, this was sent to a sample.
 12 Q. And the prior survey too?
 13 A. The initial survey was sent to a sample, and
 14 then that was followed up with a second survey of all
 15 schools
 16 Q. Okay. Of all schools?
 17 A. All high school.
 18 Q. All high schools in the state of California?
 19 A. Yes.
 20 Q. My first question to you -- the survey that
 21 you're talking about was a survey similar to that. To
 22 your knowledge, has one ever been given to middle
 23 schools to determine --
 24 A. I think some of the schools in this sample are
 25 middle schools.

1 Q. Do you know if all middle schools have been
 2 subject to a survey?
 3 A. I don't know.
 4 Q. Do you expect Mr. Spears would know that?
 5 A. He may.
 6 Q. How about elementary schools?
 7 A. I don't know.
 8 Q. Okay. You told me that there was follow-up of
 9 content -- to the extent to which the content standards
 10 were being taught in the school; is that right?
 11 A. Yes.
 12 Q. And also what courses students were taking?
 13 A. I believe so. A little less certain on that.
 14 Q. Okay. If you don't know, if Mr. Spears is the
 15 right person or someone else is, just tell me.
 16 My question is, do you know if any follow-up
 17 was undertaken to determine whether or not one of the
 18 bases for the principals' analysis was availability of
 19 textbooks?
 20 A. One of the things that HumRRO was charged to do
 21 was to find out whether textbooks used in the high
 22 schools, you know, covered the standards that are being
 23 tested in the high school exit. That's right out of the
 24 legislation.
 25 Q. Okay. And do you know the number -- strike

1 that.

2 Do you know the percent of high school students
3 who do not have textbooks which cover the standards?

4 A. First of all, that's a very imprecise question
5 in terms of covering the standards. You can have
6 algebra and they cover 95 percent of the standards. Is
7 that covering the standards or not? So it's hard for me
8 to answer the question.

9 Q. Well, has there been any analysis, to your
10 knowledge, to determine whether -- the percent of
11 students who have textbooks that cover 100 percent of
12 the standards?

13 MR. HERRON: Objection. Asked and answered.

14 THE WITNESS: I mean, I think HumRRO is charged
15 with tracking that, and I'm not sure exactly how they
16 reported it. I just don't recall.

17 Q. BY MR. ROSENBAUM: Have you ever seen the
18 resulting data?

19 A. I've seen the HumRRO reports.

20 Q. Okay. How about --

21 A. If you want to get into kind of a level -- more
22 detail about what HumRRO has done and what data they
23 have that's beyond just the reports that they issue to
24 the State, that's really something that I won't know
25 anything about.

1 A. No.

2 Q. How about if I changed the question to not talk
3 about the characteristic of being taught by
4 emergency-credentialed teachers and changed it to
5 overcrowding, would your answer be the same, that HumRRO
6 has never looked into that so far as you know?

7 MS. READ SPANGLER: Objection. Vague and
8 ambiguous with respect to "overcrowding."

9 THE WITNESS: I mean, I agree. We've talked
10 before that overcrowding doesn't really mean anything.
11 I don't know if HumRRO has looked into issues of the
12 size of the school compared to its original capacity.

13 Q. BY MR. ROSENBAUM: Or multi-track?

14 A. I don't know.

15 Q. Or other conditions in the school?

16 MR. HERRON: Objection. Vague and ambiguous.
17 Calls for speculation.

18 THE WITNESS: I mean, I've told you I've never
19 seen this before. I don't know a lot about what data
20 they're actually collecting.

21 Q. BY MR. ROSENBAUM: And with the exception of
22 what HumRRO is doing, has anyone ever said to you,
23 Mr. Warren, could you collect data as to the
24 characteristics of schools where principals think that
25 50 percent or more of their students don't have the

1 Q. Who would know that in your branch, if anybody?

2 A. Well, I would probably go to Jan Chladek.

3 Q. Do you know if HumRRO asks questions about
4 whether or not students whom principals believe did not
5 have the knowledge and skills covered by the exam were
6 taught by emergency-credentialed teachers?

7 A. I don't know.

8 Q. Have you ever been directed, you or your
9 branch, to your knowledge, ever been directed to
10 determine whether or not whom principals thought didn't
11 have the knowledge and skills covered by the exam were
12 taught by emergency-credentialed teachers?

13 MR. HERRON: For purposes of this particular
14 survey?

15 MR. ROSENBAUM: No, just in general.

16 MR. HERRON: Well, vague and ambiguous then.
17 Doesn't make sense in the way you've stated it.

18 MR. ROSENBAUM: You're right about that. With
19 respect to this survey or the prior survey.

20 THE WITNESS: Whether they looked at the issue
21 of noncredentialed teachers?

22 MR. ROSENBAUM: Yes.

23 THE WITNESS: I don't know the answer to that.

24 Q. BY MR. ROSENBAUM: And independent of HumRRO,
25 have you ever been directed to look into that question?

1 knowledge and skills covered by the exam?

2 MR. HERRON: Well, objection. Misconstrues the
3 very document you're asking him about, which he's
4 already testified he hasn't seen. Calls for
5 speculation. It's vague and ambiguous, and I think,
6 again, it's time wasted.

7 You may respond.

8 THE WITNESS: I really suggest that -- I
9 think -- and I'm not trying to be coy or not answer your
10 question. I think detailed questions about data, you
11 know, and the relationship of school characteristics,
12 high school exit, need to be addressed to somebody else.

13 Q. BY MR. ROSENBAUM: Who, if anybody in your
14 branch, would be best equipped to answer that?

15 A. Like I said, it could be Phil or Jan Chladek.
16 Those are the two people I would talk to.

17 Q. Have you ever been in any staff meetings where
18 the subject matter of what are the characteristics of
19 the schools where principals project 50 percent or more
20 of kids are not going to -- don't have the knowledge and
21 skills covered by the exam, has that subject come up?

22 MS. READ SPANGLER: Objection. Vague and
23 ambiguous as to "characteristics of the schools."

24 MR. HERRON: You're also referring to the
25 document, Exhibit 59, misconstruing what it says itself.

1 Calling for speculation. And whether he's been at such
2 a meeting seems awfully irrelevant given the very little
3 time you have left to question this witness.

4 MR. ROSENBAUM: I'm here to represent my
5 client, and I'm going to ask the questions that are
6 required, and there are not time limits on that.

7 Your office took depositions of 9- and
8 11-year-old students for four days and you will not --
9 and where you have given me answers to interrogatories
10 which rely in great part upon these individuals and this
11 branch and you will not artificially limit my
12 deposition.

13 MR. HERRON: Thank you for your heartfelt
14 speech, Mark.

15 MR. ROSENBAUM: You are impeding this
16 examination and you are making it longer than it would
17 otherwise.

18 MR. HERRON: No, I'm not impeding it. Now that
19 you've made your speech, I have to make my little
20 response speech. If you could ask a question that was
21 relevant, ask a question within his knowledge and ask
22 decent, nonobjectionable questions, we'd be done with
23 this deposition already. We came up, we gave the
24 documents early so you could be done. We came here at
25 9:00 as we were told. It didn't get started until

1 Exhibit 59? Do you see that question?

2 A. What question?

3 Q. 27.

4 A. Okay.

5 Q. Do you see the second bubble where it says, the
6 state content standards include more than our district
7 content standards?

8 A. Yes.

9 Q. Do you know the names of the districts in
10 California today where the state content standards with
11 respect to English language arts include more than the
12 district content standards?

13 MR. HERRON: He personally?

14 THE WITNESS: Understand that this was sent to
15 a sample of schools, so it would not be all schools even
16 if I knew. But the answer is, no, I don't know the
17 names of the schools.

18 MR. ROSENBAUM: Okay.

19 THE WITNESS: Districts. Excuse me.

20 Q. BY MR. ROSENBAUM: Did your branch, to your
21 knowledge, ever attempt to get the answer for all
22 districts, that is, to find out throughout the state
23 which districts had state -- which district was it true
24 that the state content standards included more than our
25 district content standards?

1 10:00. We've gone three days in this deposition.
2 There's no reason it needs to go further. You can get
3 done if you ask the right questions seeking information
4 that he has.

5 So it's just our position that, you know, we
6 think you've asked and answered questions time and time
7 again and wasted time, and we're not going to likely
8 reproduce him.

9 I'm just suggesting to you that in the 2 hours
10 and 40 minutes that remain in this deposition day, that
11 trying to get done would be, I think, beneficial to us
12 all.

13 MS. READ SPANGLER: Also, you know, I have to
14 object to the fact that you seem to be suggesting that
15 you're drawing out this deposition as some sort of quid
16 pro quo for the State taking long depositions.

17 Mr. Warren is my client, and I don't appreciate that
18 when I wasn't even present at the other deposition.

19 MR. ROSENBAUM: First of all, there's no quid
20 pro quo. I'm only asking questions that are relevant.

21 Secondly, I am not suggesting -- you didn't
22 conduct those depositions, Mr. Herron's office conducted
23 those depositions.

24 Q. Mr. Warren, let me ask you, sir, if you could
25 take a look at page 93088 of what's been marked as

1 MS. READ SPANGLER: Which, if any.

2 THE WITNESS: Well, what -- I heard the
3 question is, did I follow up and look at to see how all
4 schools would have scored this particular question.

5 MR. ROSENBAUM: Right. And then your answer to
6 me was, you need to be aware that this was just a
7 sample.

8 Q. And so my return question was, were you ever
9 directed -- did you ever look comprehensively to see
10 throughout the state which districts it would be true
11 that the state content standards included more than the
12 district content standards?

13 MR. HERRON: Calls for speculation.

14 MS. READ SPANGLER: Assumes facts not in
15 evidence.

16 THE WITNESS: As far as I know, we only have
17 data on a sample of schools.

18 Q. BY MR. ROSENBAUM: Okay. And with respect to
19 the districts where they responded that the state
20 content standards included more than the district
21 content standards, was there ever any follow-up done, to
22 your knowledge, as to why that was the case?

23 A. Well, we received this report on July 1st, I
24 believe, so within the month and a half or so that
25 we've -- almost two months now that we've had it, I

1 don't think there has been.
 2 Q. Are there any plans to determine why there are
 3 some districts where their state content standards
 4 include more than district content standards?
 5 A. I don't know.
 6 Q. And you haven't been directed to undertake any
 7 such inquiry so far as you know?
 8 A. No.
 9 Q. Okay.
 10 A. I should say, again, this crosses the line
 11 where these are not accountability or assessment issues,
 12 these are issues of curriculum, and they would normally
 13 be the responsibility of other parts of the Department.
 14 Okay? And I know people are working on these types of
 15 issues. I don't know specifically whether they plan to
 16 follow up on this specific data or not.
 17 Q. Who are the people you're thinking of?
 18 A. Well, there are folks in the high school
 19 division under Pat Ainsworth that have been working on
 20 the high school exit exam, trying to help districts
 21 understand what the requirements of the high school exit
 22 exam are, the kind of issues that we've been talking
 23 about today about, you know, what are the
 24 responsibilities of school districts in providing a
 25 reasonable opportunity to learn, those kinds of things.

1 Q. You don't regard that as part of your
 2 jurisdiction; is that right?
 3 A. That's right.
 4 Q. And if I asked you the same question with
 5 respect to the last bubble, our district does not have
 6 an official set of content standards, would you give me
 7 the same answers, that's not part of your jurisdiction
 8 to follow that up?
 9 A. Yes.
 10 Q. Okay. Thank you. Let me ask you, sir, if you
 11 would take a look at question 29 on page 93088 of
 12 Exhibit 59. Do you see that?
 13 A. Yes.
 14 Q. And, again, take as much time as you'd like.
 15 Do you see the second bubble, our current textbooks
 16 align well with the content standards?
 17 A. Yes.
 18 Q. Do you have any plans to do any follow-up with
 19 respect to schools where that bubble was not marked in?
 20 MR. HERRON: Objection. Vague and ambiguous.
 21 Calls for speculation.
 22 I think he's already testified -- well --
 23 THE WITNESS: Not that I know of.
 24 Q. BY MR. ROSENBAUM: Would that also -- would you
 25 also regard that as outside your jurisdiction?

1 A. I'm not sure that there's any state law that
 2 requires districts to have textbooks that are aligned
 3 with standards for 9 through 12, and so I don't know who
 4 is responsible for that, to be honest with you. The
 5 difference between this and question 27 is that
 6 districts are supposed to have content standards.
 7 Q. You said grades 9 through 12. Would you give
 8 the same answer if I said grades K through 8?
 9 A. I don't know if there's a law that says they
 10 have to have. I think it's different than that. I
 11 think we talked about that last time, that they have to
 12 spend their money on books that are aligned, but they
 13 don't have to necessarily have aligned books.
 14 Q. Okay. Look, sir, if you would, at the second
 15 to last bubble, our district or school is hiring only
 16 teachers certified in their field. Do you see that?
 17 A. Yes.
 18 Q. Okay. Does your -- do you have any plans to do
 19 any follow-up with respect to responses where that
 20 bubble was not marked in?
 21 MR. HERRON: Objection. Calls for speculation.
 22 Vague and ambiguous. Assumes facts not in evidence.
 23 THE WITNESS: By "follow-up" you mean?
 24 MR. ROSENBAUM: Identify the districts, find
 25 out why, anything of that nature.

1 MR. HERRON: Also object that you're asking him
 2 to testify beyond the scope of his duties and his
 3 branch.
 4 THE WITNESS: I don't know of anything.
 5 Q. BY MR. ROSENBAUM: And do you regard that as
 6 outside your jurisdiction?
 7 A. Well, kind of. I mean, I don't know if it's
 8 the state's jurisdiction.
 9 Q. Would you give me the same set of answers with
 10 the last bubble, our district or school is assigning
 11 teachers only in their certified fields? And I'm
 12 reading from 93088 of 59.
 13 A. Again, I don't know if this is the state's -- I
 14 don't think the Department has any authority to do
 15 anything about this particular issue.
 16 Q. How about, sir, the bubble that is five from
 17 the bottom, still question 29 of 93088 of Exhibit 59,
 18 our district has a plan, which ensures that all high
 19 school students receive instruction in each of the
 20 content areas, any plans to do any follow-up with
 21 respect to responses in that bubble that were not
 22 marked?
 23 MR. HERRON: Objection. Vague and ambiguous.
 24 Calls for speculation. Asks him to testify about
 25 something he's already said he's not dealing with

1 personally, and he's never seen this document. It's
 2 improper.
 3 THE WITNESS: This would, again, I believe,
 4 fall outside of the branch responsibilities.
 5 Q. BY MR. ROSENBAUM: Let me have marked as
 6 Exhibit 60 a document with the letterhead of the
 7 California Department of Education to the Honorable Gray
 8 Davis, and it bears the Bates stamp 93214 through 93217.
 9 Let me have it marked and given to the witness and I'll
 10 provide it to counsel.
 11 (Exhibit SAD-60 was marked.)
 12 Q. BY MR. ROSENBAUM: I'm going to ask you,
 13 Mr. Warren, if you'd take a look at that, please.
 14 A. Sure.
 15 Q. Have you had a chance to look at that document,
 16 Mr. Warren?
 17 A. Give me another minute.
 18 Q. Okay. Sure.
 19 A. Okay.
 20 Q. You've had an opportunity to look at what's
 21 been marked as Exhibit 60?
 22 A. Yes.
 23 Q. Now, directing your attention, sir, to the
 24 final page of Exhibit 60, DOE 93217, do you see the last
 25 line there? It has DE in caps and then a colon, PW?

1 A. Uh-huh.
 2 Q. You're saying yes?
 3 A. Yes.
 4 Q. Are you that PW?
 5 A. Yes.
 6 Q. Okay. Did you have any involvement in the
 7 drafting of this letter?
 8 A. Yes.
 9 Q. Did you draft the letter?
 10 A. I drafted at least the first draft of this.
 11 Q. Okay. And then were you involved in the
 12 development of final drafts?
 13 A. Let's just say that a lot of people were
 14 involved in various stages, including the
 15 superintendent.
 16 Q. Okay. The draft that you now have in front of
 17 you which has been marked as Exhibit 60, did you see
 18 this particular draft before it went out?
 19 A. I don't remember.
 20 Q. Okay. Now, did the superintendent at some
 21 point prior to October 11th of the year 2000 ask you to
 22 prepare a draft of a letter to the governor?
 23 A. You mean was the genesis of the letter a
 24 request by the superintendent?
 25 Q. Yeah.

1 A. I don't remember.
 2 Q. Do you remember anything about how it came to
 3 happen that you wrote the first draft?
 4 A. Well, I mean, I think the letter speaks for
 5 itself. There's a couple of important issues that she
 6 wanted to discuss with the governor in terms of making
 7 changes in the next legislative year.
 8 Q. Do you see where it says -- page 93215, page 2
 9 of the letter there's a bullet point and it says, many
 10 students never take algebra in high school. Data
 11 collected by the Department indicate that 30 to 40
 12 percent of all high school students never take algebra?
 13 Do you see that?
 14 A. Yes.
 15 Q. Do you know where that data came from, what
 16 that data is?
 17 A. I believe that data comes from CBEDS.
 18 Q. Okay. Do you know when algebra is supposed to
 19 be taken in the usual course of events?
 20 A. There is no usual course of events.
 21 Q. Do you know today the percent of high school
 22 students who are not taking algebra?
 23 A. I don't know that number.
 24 Q. Do you know is that on the CBEDS data?
 25 A. I think so. Actually, part of what you

1 requested and what you were sent was some information on
 2 the percent of students taking algebra.
 3 Q. Why was that a concern?
 4 MR. HERRON: Objection. Vague and ambiguous as
 5 to the use of the term "that."
 6 THE WITNESS: In order to ensure the students
 7 have had the opportunity to learn algebra, which is on
 8 the high school exit exam, students usually have to take
 9 a course in it.
 10 Q. BY MR. ROSENBAUM: And geometry is also on the
 11 high school exit exam; is that right?
 12 A. There is geometry. I don't know what you mean
 13 by "geometry."
 14 Q. What about statistics?
 15 MR. HERRON: Objection. Asked and answered.
 16 MS. READ SPANGLER: And vague and ambiguous --
 17 THE WITNESS: What level is --
 18 MS. READ SPANGLER: -- as to "statistics."
 19 Q. BY MR. ROSENBAUM: Do you have to have a
 20 knowledge of statistics for purposes of answering
 21 questions on the high school exit exam?
 22 MS. READ SPANGLER: Vague and ambiguous as to
 23 statistics.
 24 THE WITNESS: I believe that statistics are
 25 part of the sixth grade standards, yes.

1 Q. BY MR. ROSENBAUM: And how about probability?
 2 A. Yes, also probably sixth grade level questions.
 3 Q. And how about geometry?
 4 MR. HERRON: Objection. Asked and answered.
 5 MS. READ SPANGLER: And vague and ambiguous as
 6 to "geometry."
 7 THE WITNESS: Again, you know, geometry is a
 8 course that kids take, so when you say that, it sounds
 9 like all kids are going to have to take a full course in
 10 it, and it's more -- I'm a little vague on what
 11 standards the questions are based on, whether they're
 12 sixth grade or seventh grade standards.
 13 Q. BY MR. ROSENBAUM: To your knowledge, has an
 14 analysis ever been done to determine whether or not --
 15 what percent of students in the sixth grade have
 16 textbooks that have materials on statistics consistent
 17 with those standards?
 18 A. Textbooks or instructional materials?
 19 Q. Textbooks or other instructional materials.
 20 A. Both, you're saying?
 21 Q. Yes.
 22 A. No, I don't know.
 23 Q. Is that within your jurisdiction?
 24 A. That would be within HumRRO's jurisdiction, but
 25 I'm not sure that they have gone down to the elementary

1 level.
 2 Q. Do you know if anyone in the Department of
 3 Education has looked into that question?
 4 A. I just don't know.
 5 Q. And if I change the question to probability, do
 6 you know, sir, the percent of sixth grade students who
 7 have textbooks or other basic instructional materials?
 8 A. You know, I know you have deposed Sherry, I'm
 9 forgetting her last name, who is the head of the
 10 textbook -- the instructional materials. She would be
 11 much more likely than I to be able to answer your
 12 questions.
 13 Q. Okay. Is that within your jurisdiction?
 14 A. Textbooks and instructional materials are not a
 15 part of my jurisdiction.
 16 Q. Okay. I appreciate that.
 17 MR. HERRON: Is now a good time for a break?
 18 MR. ROSENBAUM: Sure.
 19 (Recess taken from 2:45 to 3:00.)
 20 Q. BY MR. ROSENBAUM: Still looking at Exhibit 60,
 21 Mr. Warren. The last full paragraph on 93216, do you
 22 see that? Let me know.
 23 A. Yes.
 24 Q. Do you know if a meeting ever took place
 25 between the superintendent and the governor on these

1 issues?
 2 A. I don't recall.
 3 Q. Okay. Directing your attention to the last
 4 full paragraph on 93215 going over to 93216, providing
 5 students with an adequate, quote, opportunity to learn,
 6 close quote, the material on the test is a critical
 7 factor in ensuring the test is fair to students. In
 8 other states with high school exit examinations, the
 9 opportunity to learn has been a central issue in
 10 lawsuits challenging the legality of the examinations.
 11 Thus, it is incumbent on all of us to do what we can to
 12 create the conditions that will result in a fair test
 13 for students and, in the process, help the State defend
 14 the test when legal challenges arise.
 15 Do you see that?
 16 A. Yes.
 17 Q. Okay. Are those your words in sum or
 18 substance?
 19 MR. HERRON: Do you mean did he draft them?
 20 THE WITNESS: Geez, I can't tell you.
 21 Q. BY MR. ROSENBAUM: What was your understanding
 22 of what was meant by the phrase "opportunity to learn"
 23 at 93215 in quotes?
 24 MS. READ SPANGLER: Objection. Calls for
 25 speculation.

1 MR. HERRON: Asked and answered. The document
 2 speaks for itself.
 3 MS. READ SPANGLER: If he didn't draft it, I'm
 4 not sure -- I don't think he's competent to testify to
 5 that.
 6 If you have a basis for answering other than
 7 guessing, go ahead.
 8 THE WITNESS: I can't tell you a specific set
 9 of things, if that's what you're asking.
 10 Q. BY MR. ROSENBAUM: And on 93216 the sentence
 11 that begins thus, and see where it says to create the
 12 conditions?
 13 A. I'm sorry, in the same paragraph. Sorry. Go
 14 ahead.
 15 Q. See where it says to create the conditions in
 16 that sentence?
 17 A. Yes.
 18 Q. What's your understanding of what "conditions"
 19 means there?
 20 MS. READ SPANGLER: Objection. Calls for
 21 speculation. The document speaks for itself. He's not
 22 competent to testify on this.
 23 THE WITNESS: Well, I think it's -- my
 24 understanding in reading it is that it's referring
 25 essentially back to the opportunity to learn.

1 Q. BY MR. ROSENBAUM: Okay. And so your answer is
 2 the same as you gave me before with respect to
 3 opportunity to learn a few questions ago?
 4 A. That I can't give you a list of what
 5 opportunity to learn is defined as, no.
 6 Q. Directing your attention still to Exhibit 60,
 7 93216, do you see where it says, the consensus of these
 8 experts is that the State is not ready to begin giving
 9 the test to students in the manner directed by law?
 10 A. I don't know where you are.
 11 Q. It's the second full paragraph. And feel free
 12 to read as much as you need.
 13 A. I see it.
 14 Q. Is that in sum or substance words that you
 15 wrote or examined at some point?
 16 A. Wrote or examined?
 17 Q. You wrote the first draft, you told me that.
 18 A. I wrote the first draft.
 19 Q. And then you looked at subsequent drafts?
 20 MS. READ SPANGLER: Objection. Misstates his
 21 testimony.
 22 THE WITNESS: I assisted in the preparation of
 23 this at various stages. I can't really tell you, you
 24 know, whether I saw this before or not. I mean, I
 25 probably did, but I'm sorry, I'm guessing again here.

1 Q. BY MR. ROSENBAUM: Okay. To what experts -- do
 2 you know what experts are being referred to here?
 3 A. Well, HumRRO specifically recommended that we
 4 delay the test for reasons of fairness and opportunity
 5 to learn.
 6 Q. Okay. And there have been other state
 7 officials who have also recommended the delaying of the
 8 implementation of the test?
 9 A. State officials meaning?
 10 Q. Start with the Department of Education
 11 officials.
 12 MR. HERRON: Objection. Vague and ambiguous as
 13 to the term "other state officials."
 14 THE WITNESS: Has the Department ever formally
 15 recommended that, is that what you're asking?
 16 MR. ROSENBAUM: Well, we can start there, yes.
 17 THE WITNESS: I don't know. I'm not sure.
 18 Q. BY MR. ROSENBAUM: Okay. Have you been in
 19 meetings at which the subject of whether or not the
 20 tests should be delayed has come up?
 21 A. Yes.
 22 Q. Okay. Multiple meetings?
 23 A. Yes.
 24 Q. And have you heard the superintendent's views
 25 on that subject?

1 A. I don't know.
 2 Q. Okay. Do you have an understanding at the
 3 present time whether she believes that the test should
 4 be delayed in its implementation?
 5 A. At the present time? No, I don't know.
 6 Q. Has she ever -- to your knowledge, has she ever
 7 stated that she believed that the implementation should
 8 be delayed?
 9 A. I just can't remember.
 10 Q. Okay. How about Mr. Hill, has he ever stated a
 11 viewpoint as to whether the test should be delayed at
 12 any point in the process?
 13 A. I can't remember.
 14 Q. Have you?
 15 A. Yes.
 16 Q. And what have you said?
 17 A. I recommended that we delay the test.
 18 Q. And when did you do that?
 19 A. Certainly in -- I could speak for myself, that
 20 my intent in drafting this letter was to create a forum
 21 to discuss that very recommendation.
 22 Q. Okay. And was the superintendent aware that
 23 that was your intent?
 24 MS. READ SPANGLER: Objection. Calls for
 25 speculation.

1 MR. HERRON: Not relevant.
 2 THE WITNESS: The problem is I just can't
 3 remember exactly what was said between us.
 4 Q. BY MR. ROSENBAUM: You weren't trying to sneak
 5 something by her?
 6 A. I don't operate that way.
 7 Q. Of course not. So did you ever say to her it's
 8 your view that the tests should be delayed?
 9 A. I'm sorry, Mark, I just can't remember.
 10 Q. Okay. What's the reason that you believed that
 11 the test should be delayed, the implementation?
 12 A. I reviewed in detail the first HumRRO report
 13 which had a recommendation of delaying, and in that
 14 review -- in that regard they did a standard-by-standard
 15 analysis of the responses from their survey group, you
 16 know, their subset of schools that they surveyed, and I
 17 looked at that very closely. And it became clear to me
 18 that there was really solid grounds for their
 19 recommendation, that schools were far behind in aligning
 20 their curriculum to the standards. And that is not
 21 something that happens -- you know, making a change in
 22 the curricula is not something that happens quickly, and
 23 so I felt their recommendation was quite justified.
 24 Q. Okay. And did you share your view -- you
 25 shared your view with other individuals within the

1 Department; is that correct?
 2 A. Yes.
 3 Q. Did anyone agree with you?
 4 MR. HERRON: Objection. Calls for speculation.
 5 Not relevant.
 6 THE WITNESS: Did anyone agree with me?
 7 Q. BY MR. ROSENBAUM: Did anyone say to you, that
 8 makes sense to me, or, I think that's right, or, I share
 9 the same feelings, anything in sum or substance like
 10 that?
 11 A. Yeah.
 12 Q. Who was that?
 13 A. You just said anyone. I don't know. I can't
 14 really give you specifics.
 15 Q. What about Mr. Spears?
 16 A. I don't recall.
 17 Q. And looking at page 93215 of Exhibit 60, the
 18 bullet point that says, courses are not aligned to state
 19 standards.
 20 A. Yes.
 21 Q. That's one of the reasons that you believe that
 22 the test should be delayed?
 23 MR. HERRON: Objection. Asked and answered.
 24 THE WITNESS: Like I discussed before, I think
 25 it's one of the primary reasons.

1 Q. BY MR. ROSENBAUM: What other reasons?
 2 MR. HERRON: Objection. Asked and answered.
 3 Vague and ambiguous as phrased.
 4 What other reasons what?
 5 THE WITNESS: I believe that it ought to be
 6 delayed, in part, because of the first bullet on that
 7 page, as well that while the majority of students take
 8 algebra, there was still a substantial minority where
 9 schools had not gotten to the point where they were
 10 taking algebra and, again, that's another thing that, in
 11 my view, takes a certain amount of time to recommend.
 12 Q. BY MR. ROSENBAUM: Why is that?
 13 MR. HERRON: Why is that his view? Objection.
 14 Vague and ambiguous.
 15 THE WITNESS: Why is it that it takes time?
 16 MR. ROSENBAUM: Yes.
 17 THE WITNESS: Well, because schools have to
 18 create more classes of algebra, they have to provide
 19 training to teachers in order to, you know, teach those
 20 classes, kids' schedules have to be changed, and
 21 their -- I don't mean their schedule in terms of when,
 22 but the courses they take each year have to be changed.
 23 And some students, you know, by ninth or tenth grade may
 24 still be taking more fundamental type skills in
 25 mathematics, so they too will have to be -- their

1 preparation will have to be stepped up in some way.
 2 Q. BY MR. ROSENBAUM: Were there other reasons
 3 besides the two you've mentioned?
 4 MR. HERRON: Objection. Vague and ambiguous.
 5 THE WITNESS: Well, the other reason, it's kind
 6 of a technical delay in that this letter we talk about
 7 there's two things that Ms. Eastin wanted to discuss,
 8 and the second one had to do with the test development
 9 process. And there's just a -- the law offered ninth
 10 graders the opportunity to take it on a voluntary basis,
 11 and that created a lot of technical problems for us in
 12 the development process. And so delaying the test until
 13 kids were tenth graders is a change that we have been
 14 seeking in order to solve those technical problems, and
 15 so that's the third one.
 16 Q. BY MR. ROSENBAUM: Has that change been
 17 effected?
 18 A. Not yet.
 19 Q. Is there a bill right now to deal with that?
 20 A. Yes.
 21 Q. Is that 1609?
 22 A. Yes.
 23 Q. Do you have a present view as to whether or not
 24 the test should be delayed?
 25 A. Yes.

1 Q. What is that?
 2 A. My view is that the test should not be delayed,
 3 but that we need to be following very closely how kids
 4 are doing, to what extent schools are meeting the needs
 5 of kids and giving them both the initial instruction, as
 6 well as any kind of remedial instruction needed to pass
 7 the test, and be prepared to decide to delay the
 8 consequences of not passing the high school exit exam if
 9 we become convinced that we haven't been fair to kids.
 10 Q. Okay. When you say "meeting the needs of
 11 kids," what do you mean by that?
 12 A. I think I said be fair to kids, didn't I?
 13 Q. You did, but about two sentences before you
 14 said meeting the needs of kids.
 15 MR. ROSENBAUM: You want your answer read back?
 16 THE WITNESS: That'd be helpful, yeah.
 17 (Record read.)
 18 THE WITNESS: I think I kind of described what
 19 I mean generally by meeting the needs of students by
 20 saying that they've had the appropriate initial
 21 instruction and that the remedial opportunities are
 22 available.
 23 Q. BY MR. ROSENBAUM: Would that include having
 24 textbooks and other instructional materials aligned with
 25 state standards?

1 MR. HERRON: Objection. Vague and ambiguous.
 2 MS. READ SPANGLER: Calls for speculation.
 3 THE WITNESS: I don't know the answer to that.
 4 Q. BY MR. ROSENBAUM: And would that include
 5 having teachers qualified to teach the material required
 6 by state standards?
 7 MS. READ SPANGLER: Objection. Calls for
 8 speculation. Seeks an expert opinion.
 9 THE WITNESS: I don't think I'm qualified to
 10 answer that question.
 11 Q. BY MR. ROSENBAUM: Do you know if anyone in the
 12 Department is investigating the extent to which students
 13 are provided with textbooks or other basic instructional
 14 materials aligned with state standards?
 15 MR. HERRON: Objection. Asked and answered.
 16 THE WITNESS: Didn't we discuss this already?
 17 Q. BY MR. ROSENBAUM: Or teachers qualified to --
 18 A. You're talking about globally now, not in
 19 relation to high school exit, and I know we talked about
 20 that last time.
 21 Q. And your answer is the same as last time?
 22 A. Yes. As far as I know, it hasn't changed.
 23 Q. Am I right, sir, to understand you to say that
 24 your opinion has changed regarding whether or not the
 25 test should be implemented or delayed?

1 A. It's changed because the situation has changed.
 2 Q. And how has the situation changed?
 3 A. We've started giving the exam. Okay?
 4 Q. Do you know, sir, if the superintendent ever
 5 asked or suggested to the governor that the exam be
 6 delayed?
 7 MR. HERRON: Objection. Exhibit 60 speaks for
 8 itself.
 9 THE WITNESS: And I also answered the question.
 10 I don't know if the superintendent actually spoke with
 11 the governor or not.
 12 MR. HERRON: So it's asked and answered as
 13 well.
 14 Q. BY MR. ROSENBAUM: Do you know if the
 15 superintendent ever spoke with members of the governor's
 16 staff and suggested or recommended that the exam be
 17 delayed?
 18 A. Yes.
 19 Q. Okay. And when did that happen?
 20 A. Sometime after this letter was sent. I believe
 21 in the fall.
 22 Q. Was there a meeting?
 23 A. Yes.
 24 Q. Were you present at that meeting?
 25 A. Yes.

1 Q. And who else was present?
 2 A. In the whole meeting from the Department?
 3 Q. Where did the meeting take place?
 4 A. In the governor's office, I believe. I'm
 5 pretty sure.
 6 Q. And approximately how many people were there?
 7 A. Ten to twelve.
 8 Q. And who was there from the Department of
 9 Education, as you best recall?
 10 A. Superintendent, Scott Hill and myself.
 11 Q. Okay. Anyone else?
 12 A. Not that I recall.
 13 Q. Okay. And who was there from the governor's
 14 staff, so far as you recall?
 15 A. Susan Kennedy, Lynn Shank, I believe. That's
 16 it.
 17 Q. Okay. Was Sue Burr there?
 18 A. I don't believe so, but, you know what, I'm not
 19 sure.
 20 Q. Was Mr. Mockler there?
 21 A. I don't recall.
 22 Q. Who else do you recall as being there?
 23 A. Gary Harte, Keri Mazzoni, I believe, was there
 24 or was on the phone, and then a couple members -- a
 25 couple staffers from the Department of Finance.

1 Q. Okay. Do you remember their names?
 2 A. Kathy Gather (ph.) was one, and I'm not sure of
 3 the other.
 4 Q. And there was a speaker phone set up; is that
 5 right?
 6 A. Yeah, for Keri Mazzoni.
 7 Q. And how did the meeting proceed? Did somebody
 8 make a presentation at the beginning of recommendations?
 9 A. I believe -- I believe the superintendent made
 10 a statement --
 11 MS. READ SPANGLER: Actually, before he
 12 testifies on the substance, just for the record, I'm
 13 going to make a deliberative process privilege
 14 objection.
 15 MR. HERRON: Well, can we take a short break
 16 before he answers any more questions?
 17 MR. ROSENBAUM: No.
 18 MR. HERRON: Pardon me?
 19 MR. ROSENBAUM: For what purpose?
 20 MR. HERRON: To discuss whether or not we're
 21 going to assert privilege as to what was discussed.
 22 MR. ROSENBAUM: I'm going to object to doing
 23 that, but I can't hold you to this room.
 24 MR. HERRON: We'd like to take a short break.
 25 Thanks.

1 (Recess taken from 2:22 to 2:27.)

2 MS. READ SPANGLER: We are going to assert the
3 deliberative process privilege. And since Paul is not
4 entirely sure who was present, attorney/client
5 privilege, and on both grounds I'm going to instruct him
6 not to answer with regard to the content of the meeting.

7 Now, after we've had a chance to find out who
8 was at the meeting and learn more about it, if we figure
9 out that those weren't good grounds, we'll make Paul
10 available, telephonically would probably be best, for a
11 continued deposition on the very limited grounds of the
12 content of that meeting.

13 MR. ROSENBAUM: I don't agree with any of that.
14 I'm under no limitation.

15 MS. READ SPANGLER: You can disagree. I can
16 assert privileges.

17 MR. ROSENBAUM: You can assert them. I'm not
18 sure appropriately.

19 MS. READ SPANGLER: I'm not sure you understand
20 the privilege.

21 MR. ROSENBAUM: I think I understand the
22 privilege, and I've looked at the way it's been asserted
23 in this case, and I'm quite sure that the State is not
24 appropriately asserting it.

25 MS. READ SPANGLER: First of all, I don't

1 you say.

2 Q. BY MR. ROSENBAUM: Mr. Warren, do you have any
3 recollection that any attorney was at that meeting?

4 A. I just don't remember.

5 MR. ROSENBAUM: Let's mark as Exhibit 61 a
6 multipaged document, 93112 through 93348, and I'm going
7 to represent that the pages that I was just talking to
8 Mr. Warren about, 93214 through 93217, are included
9 within this document, but otherwise it should have the
10 numbers I mentioned.

11 I'm going to have this marked.

12 I'm certainly not suggesting, Mr. Warren, that
13 you read this whole thing. I'll hand it to you.

14 (Exhibit SAD-61 was marked.)

15 Q. BY MR. ROSENBAUM: Mr. Warren, I'm placing
16 what's been marked as Exhibit 61 in front of you, and
17 I'm supplying counsel with copies.

18 Mr. Warren, I'm going to represent to you that
19 the segregation of these documents, this is my doing,
20 this is not the way it was handed to me, that is, it
21 wasn't bunched 93112 through 93348.

22 And, again, I'm going to -- you should feel
23 free at any point to look at anything you want, but I'm
24 only going to be asking about selected pages. Okay?

25 A. Okay. I'm kind of confused.

1 represent the State, I represent the Department of
2 Education, the State Board of Education and Delaine
3 Eastin as superintendent of public instruction, and as
4 you said earlier, my job is to defend my clients, and
5 that's what I'm doing.

6 MR. ROSENBAUM: But I'm also making it very
7 clear that I do not -- I have never --

8 MS. READ SPANGLER: You can disagree all you
9 want.

10 MR. ROSENBAUM: I've never agreed to limit this
11 deposition artificially, and I don't agree to a
12 telephonic deposition. And I apologize, Mr. Warren, for
13 any inconvenience that there is for you.

14 I would appreciate, Counsel, that you make that
15 determination as rapidly as possible at the conclusion
16 of this deposition. It shouldn't be very difficult to
17 get that information. I don't think the privilege
18 exists. If it does, it's waived.

19 MS. READ SPANGLER: I'm sorry, which privilege?

20 MR. ROSENBAUM: Both privileges.

21 MS. READ SPANGLER: The attorney/client
22 privilege doesn't exist?

23 MR. ROSENBAUM: I've made my point.

24 MS. READ SPANGLER: I don't understand your
25 point, but that's fine. I don't understand half of what

1 Q. Let me start with some questions, and if you
2 are confused, tell me. I don't want you confused
3 through this.

4 MS. READ SPANGLER: It looks like it's several
5 documents.

6 MR. ROSENBAUM: It may well be. It's many
7 documents, actually.

8 Q. Okay. Mr. Warren, can you turn, please, to
9 page 93200. Do you see that? I'm going to ask you to
10 look through 93200 through 93204.

11 A. Okay.

12 Q. Looking, sir, at page 93200, do you see where
13 it says to Paul Warren, deputy superintendent,
14 accountability branch?

15 A. Uh-huh. Yes.

16 Q. Did you request -- that's you, right?

17 A. Yes.

18 Q. Okay. And did you request that this be
19 prepared?

20 A. No.

21 Q. Do you know the origins of this paper?

22 A. Yes.

23 Q. What are they?

24 A. Well, Jan Chladek, who at that time was kind of
25 the lead consultant for the high school exit exam and

1 her coworker, Lily Roberts, were trying to think in a
 2 longer-term sense about all of the things that needed to
 3 be done to make the high school exit examination
 4 successful and the different areas that the Department
 5 needed to be focusing in on.
 6 Q. Had you been in conversation with one or the
 7 other of them about the preparation of the paper?
 8 A. I think the genesis of it was that they wanted
 9 to meet with some other branches within the agency to
 10 start talking to them about -- about opportunities for
 11 them to contribute to the successful implementation of
 12 the program, and I said why don't you lay out what those
 13 areas are in a memo so that I can set up a meeting and
 14 get them started before we have a meeting.
 15 Q. Okay. And then this paper is a result of that
 16 discussion?
 17 A. Of that request, yes.
 18 Q. Okay. Thanks. And directing your attention --
 19 well, anything you disagree with in this statement?
 20 Anything in this paper that you disagree with?
 21 A. Disagree with? I'm not that familiar to be
 22 able to -- it would -- I'd have to read the whole thing
 23 very carefully. It would take me a half hour to respond
 24 to that question.
 25 Q. Okay. Let's take a look, sir, at page 93203.

1 And you take as much time as you need to answer any of
 2 my questions.
 3 A. What is it that you want me to look at?
 4 Q. See where it says remediation/intervention?
 5 A. Yes.
 6 Q. And do you see No. 7, need more or what is
 7 working, such as academics, more counselors, mentoring,
 8 et cetera, to provide one-on-one adult attention to
 9 students? Do you see that?
 10 A. Yes.
 11 Q. And then it says, counselors are especially
 12 vital because if the students aren't scheduled into the
 13 right courses, they wouldn't be able to graduate. Do
 14 you see that?
 15 A. Yes.
 16 Q. Do you agree with that statement?
 17 MR. HERRON: Objection. Calls for speculation.
 18 Overbroad. Vague and ambiguous.
 19 THE WITNESS: There's several different
 20 thoughts in these couple of sentences.
 21 Q. BY MR. ROSENBAUM: Let's just take the sentence
 22 that says counselors are especially valuable because if
 23 the students aren't scheduled in the right courses, they
 24 won't be able to graduate.
 25 MS. READ SPANGLER: What's the question with

1 respect to that sentence?
 2 Q. BY MR. ROSENBAUM: Do you agree with that?
 3 A. I believe if what they are referring to is that
 4 kids need to be able to get to algebra before they
 5 graduate and, of course, this was written prior to
 6 algebra being a state requirement, then, yes, I would
 7 agree with that.
 8 Q. Did you ever ask them what they meant?
 9 A. We never had the opportunity to go over this
 10 memo in detail.
 11 Q. Why is that?
 12 MR. HERRON: Objection. Calls for speculation.
 13 THE WITNESS: I don't remember.
 14 Q. BY MR. ROSENBAUM: Do you know the ratio of
 15 counselors to students in high schools throughout the
 16 state of California?
 17 A. No.
 18 Q. Did you ever direct that anyone compile that
 19 information?
 20 A. No.
 21 Q. Okay. Is that within your jurisdiction as you
 22 understand it?
 23 A. No.
 24 Q. In whose jurisdiction would that be?
 25 A. I don't know.

1 MR. HERRON: Objection. Calls for speculation.
 2 Q. BY MR. ROSENBAUM: Now, still in No. 7 under
 3 remediation/intervention on page 93203 of Exhibit 61,
 4 see the sentence that says, we need credentialed
 5 teachers in mathematics and English language arts
 6 providing remediation, and if the remediation is outside
 7 of the school day or year, who is providing it? Do you
 8 see that?
 9 A. Yes.
 10 Q. The clause that precedes the word "and," we
 11 need credentialed teachers in mathematics and English
 12 language arts providing remediation, what's your
 13 understanding of what that means?
 14 MS. READ SPANGLER: Objection. Calls for
 15 speculation.
 16 Don't guess. If you have some basis for
 17 answering, go ahead.
 18 THE WITNESS: I guess I can't read their minds.
 19 I can tell you --
 20 Q. BY MR. ROSENBAUM: You got this memo; isn't
 21 that right?
 22 A. I got this memo.
 23 Q. When you got the memo, did you read it over?
 24 A. I don't remember how carefully I read it.
 25 Q. Is it your practice to read -- strike that.

1 A. You know, this is more than a year ago. Come
 2 on, don't get frustrated with me. I'm trying my best.
 3 Q. I'm not frustrated with you, I'm frustrated
 4 with other parts of this process. I know you're trying
 5 as hard as you can.
 6 What is your understanding of what was meant by
 7 the phrase credentialed teachers?
 8 MS. READ SPANGLER: Objection. Calls for
 9 speculation.
 10 MR. HERRON: Asked and answered.
 11 MS. READ SPANGLER: It's tough because he's
 12 already said he didn't necessarily review this that
 13 closely, he didn't discuss it with them. I'm sure he
 14 has a general understanding of the term credentialed
 15 teachers, but he may not know the context in which Jan
 16 and Lily were using it.
 17 MR. ROSENBAUM: It's entirely appropriate for
 18 me to ask this individual about a memo that was sent to
 19 him and that he had some part in terms of the decision
 20 to create in the first place. Nothing wrong with that.
 21 THE WITNESS: I can't tell you what was meant
 22 specifically.
 23 Q. BY MR. ROSENBAUM: Tell me what your
 24 understanding today of the phrase "credentialed
 25 teachers" means.

1 MS. READ SPANGLER: In general?
 2 THE WITNESS: In terms of the way it's used in
 3 this sentence, I would say that they're saying that
 4 however remediation is provided, it should be somebody
 5 who has the appropriate credential to provide that
 6 remediation.
 7 Q. BY MR. ROSENBAUM: And what do you understand
 8 appropriate credential to mean in that context?
 9 A. If you're teaching algebra and mathematics,
 10 that they have the appropriate credential to -- that
 11 certifies them, or whatever the right word is, to teach
 12 algebra.
 13 Q. Okay. And do you agree with that statement as
 14 you've explained your understanding?
 15 A. No.
 16 Q. And why is that?
 17 A. I don't believe that a credential is
 18 necessarily the be-all and end-all as to whether
 19 somebody is adequately trained to teach algebra or
 20 mathematics.
 21 Q. What do you think is?
 22 A. I don't think there is one.
 23 Q. Is there a base -- do you think there's a basis
 24 to figure out if a teacher is adequately trained to
 25 teach algebra?

1 MR. HERRON: Objection. Calls for expert
 2 opinion testimony and for testimony beyond the scope of
 3 his duties in his branch. It's vague and ambiguous.
 4 MR. ROSENBAUM: That's a fair comment.
 5 Q. If you don't have a view as to -- if you don't
 6 feel you're competent to answer my question, you
 7 certainly can tell me now.
 8 A. I am not an expert in this area, but my general
 9 view of these areas is that we hire managers like
 10 principals and other district staff to evaluate the
 11 qualifications of individuals to do the job that they're
 12 assigned to do.
 13 Q. But my question to you is a little bit
 14 different. My question is, do you know of any basis to
 15 determine whether or not a teacher is adequately
 16 qualified to teach a subject like algebra?
 17 MR. HERRON: Same objection as posed to the two
 18 questions before.
 19 MS. READ SPANGLER: It's also vague and
 20 ambiguous, "adequately qualified."
 21 THE WITNESS: I really don't know those, no.
 22 Q. BY MR. ROSENBAUM: Do you know if any inquiry
 23 has been made to determine whether or not there are
 24 teachers in mathematics who are adequately qualified to
 25 provide remediation?

1 MS. READ SPANGLER: Objection. Vague and
 2 ambiguous as to "adequately qualified."
 3 MR. HERRON: And "inquiry."
 4 MS. READ SPANGLER: Probably calls for an
 5 expert opinion.
 6 MR. HERRON: And on that basis we object.
 7 Q. BY MR. ROSENBAUM: Do you know if anyone has
 8 looked into the question about what are the
 9 qualifications of the teachers who are teaching
 10 remediation, math or English?
 11 MS. READ SPANGLER: That's a different
 12 question.
 13 THE WITNESS: No, I don't know any.
 14 Q. BY MR. ROSENBAUM: Or teaching the courses
 15 themselves? Did anyone in your branch look into the
 16 question of whether or not the teachers are adequately
 17 qualified to teach courses that they are teaching?
 18 MS. READ SPANGLER: Objection. Vague and
 19 ambiguous as to "adequately qualified."
 20 MR. HERRON: Calls for speculation.
 21 THE WITNESS: Not to my knowledge. And, again,
 22 I think that's the kind of thing that falls outside of
 23 my branch.
 24 Q. BY MR. ROSENBAUM: Okay. Thanks. Let me ask
 25 you, if you would, sir, to look at page 93205, and

1 there's an attachment to it which is 93206 through
 2 93212.
 3 A. Yes.
 4 Q. Okay. The first page, 93205, do you see where
 5 it says to Paul and Terri?
 6 A. Yes.
 7 Q. You're Paul?
 8 A. Yes.
 9 Q. And who is Terri?
 10 A. Terri Burns, who is the director of our
 11 legislative unit.
 12 Q. Who is Erika?
 13 A. Erika Hoffman who is one of Terry's employees.
 14 Q. Was this a memo you received?
 15 A. Yes.
 16 Q. Okay. And do you see where it says DOF has
 17 gone neutral, in quotes, on the bill as it was amended
 18 yesterday?
 19 A. Yes.
 20 Q. Do you know why DOF went neutral on the bill?
 21 MR. HERRON: Objection. Calls for speculation.
 22 THE WITNESS: No.
 23 Q. BY MR. ROSENBAUM: Did you ever hear any reason
 24 why?
 25 A. I don't recall.

1 Q. Okay. Do you recall ever making any inquiry as
 2 to why DOF had gone neutral?
 3 MR. HERRON: Did he make any inquiry?
 4 MR. ROSENBAUM: Yes.
 5 THE WITNESS: No.
 6 MS. READ SPANGLER: Doesn't the document speak
 7 for itself? You've got the DOF bill analysis.
 8 Q. BY MR. ROSENBAUM: Let me ask you, sir, if you
 9 would take a look at 93223 through 93227. You don't
 10 have to read that, I just want to know if you're
 11 familiar with this document at the beginning.
 12 A. It's a long time ago. Let me just get a sense
 13 of what it says.
 14 Q. Sure.
 15 A. Okay.
 16 Q. Is this document familiar to you?
 17 A. Yeah.
 18 Q. Can you tell me the basis of your familiarity?
 19 A. Well, this was a report of the cochairs of the
 20 superintendent's advisory committee on the high school
 21 exit exam to the superintendent approximately six months
 22 into the deliberations on the test. I was -- I'd been
 23 on the job for about three months. And it's a review
 24 basically of what they'd been talking about for the time
 25 they'd been convening and discussing the various issues.

1 Q. Okay. And did you receive a copy of this?
 2 A. Well, it was in my files, so I must have.
 3 Q. Okay. Let me ask you, sir, if you could take a
 4 look at page 93227, please.
 5 A. Okay.
 6 Q. Okay. And see the third bullet point there,
 7 teacher recruitment and quality development should be a
 8 top priority for the state?
 9 A. Yes.
 10 Q. Students will not meet the exam performance
 11 expectations without further efforts to identify and
 12 strengthen teachers. Do you see that?
 13 A. Yes.
 14 Q. What did that mean to you?
 15 MS. READ SPANGLER: Objection. Calls for
 16 speculation.
 17 You're asking for his interpretation of this
 18 document?
 19 THE WITNESS: That's what he asked, what does
 20 it mean to me.
 21 There's a couple of things -- you need to kind
 22 of understand this document in context. This memo
 23 demonstrates a certain level of naivete about the task
 24 ahead of it and the job that has to be done. And these
 25 two cochairs are extremely bright, capable people, and I

1 don't mean in any way to impune, you know, their
 2 integrity or their smarts or anything, but they were --
 3 you know, they were trying to, I think, speak broadly
 4 about the issues facing the state of the high school
 5 exit exam.
 6 And if you are familiar with the issues and
 7 kind of where we -- what we've learned since this time,
 8 you'll see that there's a fairly -- we've learned a lot
 9 and these issues have changed a lot. So let me just use
 10 that as a preface to say that these issues, like the
 11 bullet that you've identified, teacher recruitment and
 12 quality development should be a top priority for the
 13 state for a lot of reasons. Okay?
 14 And in some respects I think what they tended
 15 to do is to pull in issues that they were concerned
 16 about, rightfully so, and sometimes would kind of get
 17 those commingled into the job of assessing -- creating
 18 the high school exit exam. So that's kind of how I
 19 think about this.
 20 Not that they're wrong, in that obviously
 21 teacher recruitment and quality teacher development
 22 should always be a high priority. They're the staff
 23 that deliver the services. How this relates exactly to
 24 the high school exit exam and the task of this advisory
 25 panel, though, I think, is a question.

1 Q. BY MR. ROSENBAUM: What do you mean when you
2 say "is a question"?

3 A. I view it in some respects as a non sequitur.
4 It's not -- you know, as chairs of this committee, it's
5 not really something that's within their purview or
6 particularly appropriate to be discussing in the
7 developmental context of a high school exit exam.

8 Q. Let me ask you, if you would, Mr. Warren to
9 look at page 93132 of Exhibit 61. There are six pages
10 of your graphs, right?

11 A. Yes.

12 Q. When you say "my graphs," what did you mean by
13 that?

14 A. I found these graphs very interesting.

15 Q. Okay. Do you know who prepared these graphs?

16 A. Yes.

17 Q. And we're talking about the graphs 93132
18 through 93137?

19 A. Six pages, that's correct.

20 Q. And who prepares these graphs?

21 A. Our contractor for the English language
22 development test.

23 Q. And, to your knowledge, was there a particular
24 person or person involved?

25 A. I don't know.

1 school exit exam. We were about to go through that
2 process for the ELD test, and so whatever data that we
3 can get to help us get a context on the results of the
4 test is very useful to helping us understand what the
5 results of the tests are.

6 So these charts look at results on the English
7 language development test for a set of students where we
8 also got their scores on the Stanford-9 test. Okay? So
9 it gives us a way of comparing the data on the same kids
10 that we get from two different tests. Okay? That's the
11 significance of this.

12 Q. BY MR. ROSENBAUM: Okay. And looking -- do you
13 know what level 1 means? I'm looking at page 93132 of
14 Exhibit 61.

15 MR. HERRON: What was the question?

16 MR. ROSENBAUM: I'm trying to understand some
17 of the language.

18 Q. Do you see where it says level 1, Mr. Warren?

19 A. Yes.

20 Q. And below it says level 2?

21 A. Yes.

22 Q. I'm just trying to understand what that means.

23 A. Right. I can't remember. I'm sorry.

24 Q. Looking at the two graphs that are under level
25 1, do you draw any conclusions from those graphs?

1 Q. And who was your contractor?

2 A. CTB. And I don't know what it stands for, I'm
3 sorry.

4 Q. And help me, first of all, understand what's
5 going on in these graphs. Were these graphs prepared
6 according to your request?

7 A. I'm not sure.

8 Q. What's your best understanding as to the
9 origins of these graphs on these pages, 93132 through
10 93137?

11 MR. HERRON: Objection. Vague and ambiguous as
12 phrased and in the use of the term "origins."

13 THE WITNESS: In understanding -- with the high
14 school exit exam, we had to set a passing score and we
15 went through a process to set that passing score, made a
16 judgment call, that we discussed earlier today, about
17 where to set that passing score and what recommendation
18 to make to the superintendent. We do that on every one
19 of our tests. Because it's not necessarily a passing
20 score, you set what we call proficiency levels.

21 As we talked about on the English language arts
22 STAR standards test, we have five proficiency levels,
23 from far below basic to advanced. You go through a very
24 similar process of setting those levels as we went
25 through with setting the passing scores for the high

1 MR. HERRON: As he sits here today?

2 MR. ROSENBAUM: Yeah.

3 MS. READ SPANGLER: Objection. The document
4 speaks for itself.

5 Q. BY MR. ROSENBAUM: To your knowledge, when did
6 you first see these graphs, the ones 93132 through
7 93137?

8 A. Sometime this spring.

9 Q. Okay. Thanks. At the time did you draw any
10 conclusions that you recall as to the two graphs that
11 are under level 1?

12 A. Well, the purpose is not to look necessarily at
13 any -- the purpose, if I can --

14 Q. I want to know what they mean to you.

15 A. And let me try to explain that. The first two
16 pages are all looking at listening and speaking -- you
17 see that's on the "X" axis on the bottom of each -- on
18 the ELD test, which is only one part of the test, as
19 compared to the SAT-9 scores, and they're by levels,
20 which, I believe, are preliminary levels that NSCTB was
21 using, that is, the proficiency levels. Okay?

22 What it does -- on the left side it compares EL
23 students, non-native speakers, with native speakers.
24 Okay? And so -- because one of the things we did was we
25 gave the ELD test to kids who were native speakers as

1 part of what we did. So if you go to level 4, for
2 instance, which is the highest proficiency level -- I
3 don't know what that is. I'm sorry, you're going to
4 have to talk to somebody else about what the levels
5 mean.

6 This is a good example where you see a very big
7 difference in the distribution of scores for native
8 speakers and non-native speakers.

9 Q. Level 4 you're referring to?

10 A. Yes.

11 Q. Which is at 93133?

12 A. That's correct. And so for the native English
13 speaker you see that all of the kids are speaking way --
14 they're scoring way over in the right-hand side almost
15 no matter where they are in terms of their SAT-9 score.
16 What this shows is that these kids have a pretty good
17 grasp of spoken and oral language in English.

18 You don't see that same relationship for the
19 non-native speakers. You see quite a different
20 relationship.

21 Q. They are much more all over the place; is that
22 the point?

23 MR. HERRON: Objection. Calls for expert
24 opinion. Lacks foundation. Calls for speculation.

25 THE WITNESS: There's a wider distribution.

1 Stanford-9 for non-native English learners -- non-native
2 English speakers?

3 MR. HERRON: Same objections.

4 THE WITNESS: First of all, you have to
5 understand these charts that we've been speaking about,
6 they're looking at listening and speaking and, of
7 course, there is no such test on the Stanford-9. Okay?
8 Actually, the next charts look at reading and writing.
9 Okay?

10 And my conclusion, again, not as an expert, is
11 that actually the Stanford-9 does a reasonably good job
12 of assessing English language learners' reading and
13 writing skills.

14 Q. BY MR. ROSENBAUM: Who else, to your knowledge,
15 received copies of these 93133 through 93137?

16 A. As far as I know, Phil Spears and his staff are
17 the only other folks within the Department that have
18 this.

19 Q. Was there ever any thought, to your knowledge,
20 Mr. Warren, about submitting these graphs to experts in
21 psychometrics to determine the reliability or the
22 validity of the Stanford-9 for English language
23 learners?

24 A. No, because these graphs would not be
25 considered sufficient evidence.

1 The same goes for --

2 MR. HERRON: Why don't you let him ask a
3 question.

4 THE WITNESS: I'm trying to explain to him.

5 MS. READ SPANGLER: Are you the best person to
6 explain these?

7 THE WITNESS: Absolutely not.

8 Q. BY MR. ROSENBAUM: But you were interested in
9 these results; isn't that right?

10 A. I'm interested in these results.

11 Q. And what results do you take away from the
12 first two pages, 93132 and 93133?

13 MR. HERRON: Objection. Calls for speculation.
14 Calls for expert testimony.

15 MS. READ SPANGLER: The document speaks for
16 itself.

17 THE WITNESS: I think what I take away from it
18 as a generalist, as somebody who is good with numbers
19 and charts but not, you know, somebody who is a
20 psychometric, is this test does a pretty good job of
21 measuring students' oral and spoken language.

22 Q. BY MR. ROSENBAUM: This test being?

23 A. The English language development test.

24 Q. Okay. And did you draw any conclusions with
25 respect to either the reliability or the validity of the

1 Q. Because?

2 A. Because there's a variety of other things you
3 would do to make that determination.

4 Q. What would those be?

5 MR. HERRON: Objection. Calls for expert
6 witness testimony. Speculation. Vague and ambiguous.

7 THE WITNESS: I can't tell you that. I'm not
8 an expert.

9 Q. BY MR. ROSENBAUM: Did you ever go to anybody
10 and say, I want to find out the reliability and the
11 validity of the Stanford-9 for English language
12 learners, what should we do?

13 A. Have I done that, is that your question?

14 Q. Yes.

15 A. We are in the process of doing that.

16 Q. And was that your initiative, or were you
17 directed to do that?

18 MR. HERRON: Objection. Relevance.

19 THE WITNESS: I can't answer that.

20 Q. BY MR. ROSENBAUM: Okay. And when you say
21 we're in the process of doing that, what's the basis of
22 that answer?

23 A. We are doing some in-depth studies, we are
24 planning some in-depth studies to look at the
25 relationship of the SAT-9 and the English language

1 development test, and as a part of that I believe we
 2 will get some very good information on how well the
 3 Stanford-9 measures the reading and writing abilities of
 4 English language learners.
 5 Q. And when you say we're doing that, who is "we"?
 6 A. Phil Spears and his staff.
 7 MR. HERRON: Would he be better to speak to
 8 these issues?
 9 THE WITNESS: Probably. I mean, obviously they
 10 know more about it than I do.
 11 MR. ROSENBAUM: Of course we'll respect that.
 12 Q. Do you have any idea as to when -- is there an
 13 end point to that process, when you expect some results
 14 from Mr. Spears?
 15 A. I'm hopeful that we'll get some results by the
 16 end of this calendar year.
 17 Q. Do you know if this is being done in shop or
 18 whether or not Mr. Spears is contracting out with
 19 someone else?
 20 A. The plan is to contract it out.
 21 Q. Has that happened yet?
 22 MR. HERRON: That being contracting out?
 23 MR. ROSENBAUM: Yes.
 24 THE WITNESS: I don't know the answer to that.
 25 Q. BY MR. ROSENBAUM: Okay. Thanks. Why are you

1 interested in finding that information out?
 2 A. For several reasons. I think, first of all,
 3 he -- first of all, I think it's important that we know
 4 about the behavior of our tests with different subgroups
 5 of kids; second of all, there's a hypothesis that this
 6 data that we just reviewed raises that really the ELD
 7 test is not actually adding a lot of new information
 8 than we already have through the SAT-9, and therefore
 9 that would raise the question of do we need to go
 10 through the expense and the time to collect that
 11 information if we're already getting it.
 12 Q. Okay. Let me ask you, Mr. Warren, the
 13 Stanford-9 that was administered this calendar year, was
 14 it different than the Stanford-9 that was administered
 15 the prior calendar year?
 16 MR. HERRON: Objection. Asked and answered at
 17 a prior day of deposition.
 18 THE WITNESS: The same in terms of?
 19 MR. ROSENBAUM: Same questions.
 20 THE WITNESS: Yes.
 21 Q. BY MR. ROSENBAUM: Any new questions?
 22 A. For the Stanford-9?
 23 Q. Yes.
 24 A. No.
 25 Q. Okay. And next year are there plans, to your

1 knowledge, to give the same Stanford-9 next year?
 2 MR. HERRON: Objection. Asked and answered.
 3 THE WITNESS: Next year being?
 4 MR. ROSENBAUM: 2002.
 5 THE WITNESS: Yes.
 6 Q. BY MR. ROSENBAUM: Are you aware of discussion
 7 about the subject matter of utilizing -- is there --
 8 strike that.
 9 Is there any discussion that you're aware of,
 10 sir, about not utilizing the Stanford-9 for purposes of
 11 the API?
 12 MS. READ SPANGLER: Objection. Vague as to
 13 time.
 14 MR. HERRON: And asked and answered.
 15 THE WITNESS: I've never had a discussion about
 16 not including norm referenced test information into the
 17 API.
 18 MR. ROSENBAUM: Okay.
 19 THE WITNESS: Which currently is the SAT-9, and
 20 could change in the future.
 21 Q. BY MR. ROSENBAUM: Is there discussion now
 22 about changing the norm reference test from the
 23 Stanford-9 to something else?
 24 MR. HERRON: Objection. Asked and answered the
 25 question before.

1 THE WITNESS: Yes.
 2 Q. BY MR. ROSENBAUM: Okay. And do you know if
 3 the superintendent supports changing the norm reference
 4 test from the Stanford-9 to some other test?
 5 MR. HERRON: Objection. Calls for speculation.
 6 THE WITNESS: I don't know.
 7 Q. BY MR. ROSENBAUM: Okay. Are there other tests
 8 that are under consideration for change?
 9 A. You got to help me there.
 10 Q. Instead of the Stanford-9.
 11 A. Are there other tests that are being considered
 12 to replace the Stanford-9?
 13 Q. Yes.
 14 MS. READ SPANGLER: Objection. Asked and
 15 answered.
 16 THE WITNESS: Specifically?
 17 MR. ROSENBAUM: Yes.
 18 THE WITNESS: No.
 19 Q. BY MR. ROSENBAUM: Do you support a change from
 20 the Stanford-9?
 21 MR. HERRON: Objection. Vague and ambiguous.
 22 Asked and answered.
 23 THE WITNESS: In 2003 you're talking about, or
 24 after 2002?
 25 Q. BY MR. ROSENBAUM: What about, first, 2002?

1 MR. HERRON: Objection. Asked and answered.
 2 THE WITNESS: I haven't really thought about it
 3 for 2002 because it's been part of our plan for a long
 4 time to go through 2002. For 2003, I think, yes, I
 5 support it.
 6 Q. BY MR. ROSENBAUM: To change?
 7 A. Yes.
 8 Q. And have you ever heard the superintendent say
 9 that she supports a change for 2003?
 10 MR. HERRON: Objection. Asked and answered.
 11 THE WITNESS: I have no idea.
 12 Q. BY MR. ROSENBAUM: And why do you support a
 13 change?
 14 A. For a variety of reasons. Stanford-9 is
 15 becoming kind of old from the stand -- from several
 16 standpoints. Its norms are old. It is known to the
 17 field what the questions are, and in some cases that has
 18 a negative influence on the accuracy of the test. We
 19 are hopeful that the newer versions of norm reference
 20 tests that will be becoming available will be more
 21 aligned to our standards.
 22 Q. Have you looked at any particular tests as
 23 candidates or replacement?
 24 A. No.
 25 Q. And when you say "more aligned," what do you

1 mean by that?
 2 MR. HERRON: Objection. Asked and answered in
 3 the prior day of deposition.
 4 THE WITNESS: I mean, the questions are more --
 5 more consistently cover the California standards.
 6 Q. BY MR. ROSENBAUM: Were there instances this
 7 past year, 2001, of -- I don't want to use the wrong
 8 phrase here. I'll say cheating, and you can correct me
 9 if I'm not using the appropriate phrase here -- of
 10 cheating at schools with respect to the administration
 11 of the Stanford-9?
 12 MR. HERRON: Objection. Asked and answered in
 13 the prior day of deposition.
 14 THE WITNESS: Districts report to us testing
 15 irregularities that are caused by teachers or other
 16 professionals.
 17 Q. BY MR. ROSENBAUM: And there was one district
 18 that it's recently come to light actually prepared
 19 students on actual questions; is that right?
 20 A. I'm not sure I know what you're talking about.
 21 MR. HERRON: Objection. Asked and answered.
 22 Q. BY MR. ROSENBAUM: Do you know how many
 23 irregularities came to the branch's attention?
 24 A. This year?
 25 Q. Yeah.

1 MR. HERRON: Objection. Calls for speculation.
 2 Asked and answered in part.
 3 THE WITNESS: I believe we have -- first of
 4 all, irregularities could be a lot of things, and
 5 certainly not all of them would be considered cheating.
 6 Okay? But having said that and not knowing any of the
 7 specifics of this list, I believe there are about 70.
 8 Q. BY MR. ROSENBAUM: Okay. 70 reports?
 9 A. 70 reports.
 10 Q. Okay. And I want to stop here if I'm asking
 11 you questions that someone else would know.
 12 Mr. Spears, is he the person to whom these
 13 reports would come?
 14 A. It would more likely be Richard Diaz of his
 15 staff who is the manager in charge of the STAR program,
 16 or one of his staff.
 17 Q. Did the branch -- let me strike that.
 18 Reports came in from the district,
 19 self-reporting; is that right?
 20 A. Yes.
 21 Q. Did the branch undertake any independent
 22 investigation to determine if there were testing
 23 irregularities?
 24 A. We haven't yet.
 25 Q. Okay. What does that mean?

1 MR. HERRON: What it says. Objection. Well,
 2 I'll withdraw it. Go ahead. It will be quicker.
 3 THE WITNESS: We get an analysis from our
 4 contractor that looks at erasures that have been done on
 5 the answer sheets, and that provides us with a lead.
 6 And we do go through an analysis to identify schools
 7 that have an extraordinary number of erasures and that
 8 gives us some sense whether maybe there was some
 9 irregularity at a school, and then we follow-up on
 10 those.
 11 Q. BY MR. ROSENBAUM: When you say "we haven't
 12 yet," that's something that Mr. Spears plans to do as
 13 far as you know?
 14 A. And his staff, yes.
 15 Q. And do you know when that's supposed to take
 16 place?
 17 A. I believe we get the information from our
 18 contractor in the middle of this next month, September.
 19 Q. Okay. And besides looking at what may be
 20 disproportionate numbers of erasures, any other way that
 21 the branch independently investigates as to whether or
 22 not there are irregularities?
 23 A. The budget this year just gave us a couple of
 24 staff to actually do independent reviews. For instance,
 25 sometimes we'll get anonymous tips, if you want to call

1 it that, of irregularities, and we'll send those forward
2 to counties or to the school districts and ask them to
3 investigate that, but we have not had any staff to be
4 able to follow those through.

5 This year we're given in the budget two staff.
6 Those staff are not yet in place, and we do not really
7 have any programs in place that directs the activities
8 of those staff, but I think there's -- now that we have
9 more independent capacity, something is going to happen.

10 Q. Okay. Do you know how many reports like
11 anonymous tips were made?

12 A. I'm sorry, I don't.

13 Q. Would that be within Mr. Spears, would that --

14 A. And his staff, yes.

15 Q. There has been some resistance to the use of
16 the Stanford-9 for purposes of the API among certain
17 school districts; isn't that right?

18 MR. HERRON: Objection. Relevance.

19 MS. READ SPANGLER: And leading.

20 THE WITNESS: I'm not sure I know what you
21 mean.

22 Q. BY MR. ROSENBAUM: Have there been any
23 districts that -- have there been any schools where
24 there was a refusal to administer the Stanford-9?

25 MR. HERRON: Objection. Calls for speculation.

1 THE WITNESS: You're going to have to talk to
2 him.

3 Q. BY MR. ROSENBAUM: Were you involved in the
4 process to make a determination to conduct such an
5 evaluation?

6 MR. HERRON: Objection. Relevance.

7 THE WITNESS: It's required by law.

8 Q. BY MR. ROSENBAUM: And Mr. Padia is in charge
9 of that?

10 A. Yes.

11 Q. In the course of your duties and
12 responsibilities, Mr. Warren, do you concern yourself
13 with dropout rates?

14 A. No.

15 Q. Okay. Do you know who if anyone in the
16 Department of Education looks at dropout rates?

17 A. Well, the Department has traditionally
18 collected dropout information from schools, I believe,
19 as a part of CBEDS.

20 Q. Do you know if there is any office within the
21 Department that attempts to determine the causes of
22 dropout rates?

23 A. Not to my knowledge.

24 Q. Okay.

25 A. I mean, I've got to be careful with that. I

1 Lacks any relevance to this case.

2 THE WITNESS: I don't know the answer to that.

3 Q. BY MR. ROSENBAUM: Okay. Any classrooms?

4 A. I don't know.

5 Q. Have there been any boycotts of the Stanford-9?

6 MR. HERRON: Same objection. Vague and
7 ambiguous.

8 THE WITNESS: I don't know the answer to that.

9 Q. BY MR. ROSENBAUM: Okay. Has your office
10 undertaken any analysis of how the money that is
11 received through the API --

12 A. The awards?

13 Q. The awards, how that has been utilized?

14 A. No, but that is going to be part of an
15 evaluation that's about to get underway.

16 Q. Okay. And who is undertaking that
17 investigation so far as you know?

18 A. Well, Bill Padia's office is charged with
19 contracting for that evaluation.

20 Q. Okay. And do you know when that -- I'm trying
21 to get the scope of the evaluation here. It will go
22 back -- would it go back to all the bonuses that have
23 been given, all the awards that have been given?

24 MR. HERRON: Wouldn't that be a better question
25 for Bill Padia?

1 mean, not to my knowledge is probably the best answer.

2 Q. Okay. There has been a change in the vendor
3 for the high school exit exam; is that correct?

4 A. Not yet.

5 Q. Okay. But it was initially done by HumRRO; is
6 that right?

7 A. No.

8 Q. Who did it?

9 A. AIR.

10 Q. That's right. And then AIR administered the
11 high school exit exam this year, they were in charge of
12 putting it together?

13 A. Yes.

14 Q. And in prior years?

15 A. They've been the only contractors at this
16 point.

17 Q. And what about in subsequent years?

18 MR. HERRON: Wouldn't this be a better question
19 for Phil Spears?

20 MR. ROSENBAUM: It may be a better question for
21 Mr. Hill.

22 Q. Were you involved in the decision to change the
23 vendor?

24 A. We have not changed the vendor. I answered
25 that already.

1 Q. There is discussion about changing the vendor;
 2 is that right?
 3 MR. HERRON: Objection. Asked and answered.
 4 THE WITNESS: The contract for the high school
 5 exit exam was rebid recently, and a new contractor was
 6 selected.
 7 Q. BY MR. ROSENBAUM: And that's not AIR?
 8 A. That's correct.
 9 Q. And that is CTB?
 10 A. No.
 11 Q. Who is that?
 12 A. Educational Testing Services.
 13 Q. Of course. And were you involved in the
 14 decision to select ETS?
 15 A. Not directly, no.
 16 Q. To your knowledge, who was involved in that
 17 process?
 18 A. I mean, if you want to talk about that, Phil
 19 Spears and Jan Chladek.
 20 MR. HERRON: Why don't we take a three-minute
 21 break.
 22 MR. ROSENBAUM: Okay.
 23 (Recess taken from 4:19 to 4:28.)
 24 Q. BY MR. ROSENBAUM: I asked you some questions.
 25 I don't think I was sufficiently precise. Have there

1 been some districts since the Stanford-9 has been
 2 administered that did not administer the test to English
 3 language learners?
 4 MS. READ SPANGLER: Objection. Calls for
 5 speculation.
 6 THE WITNESS: Yes.
 7 Q. BY MR. ROSENBAUM: Now, tell me, is this an
 8 area that Mr. Spears is familiar with?
 9 A. I think it predates him, so I don't think he
 10 has any direct knowledge.
 11 Q. Okay. Any this past year, any districts that
 12 did not administer to English language learners?
 13 A. Not to my knowledge. As a policy, several
 14 districts in the Bay Area pointedly refused to
 15 administer the test to English language learners. There
 16 was a lawsuit, et cetera, it was resolved.
 17 Those districts tested English language
 18 learners in 2001, and I don't know if -- I don't believe
 19 there were any districts that as a matter of policy did
 20 not test their English language learners.
 21 Q. This past year?
 22 A. In 2001.
 23 Q. And the districts that didn't administer it,
 24 that would include San Francisco Unified School
 25 District?

1 A. Yes.
 2 Q. And San Mateo?
 3 A. I don't think San Mateo was one of those.
 4 Q. Alameda?
 5 A. I don't think Alameda was one of them.
 6 Q. What about West Contra Costa?
 7 A. I'm not sure about that.
 8 Q. Do you know any other districts?
 9 A. Oakland and Berkeley and Hayward.
 10 Q. Okay. And how many years was the Stanford-9
 11 not administered pursuant to the policy?
 12 MR. HERRON: Objection. Calls for speculation
 13 and it's compound.
 14 MS. READ SPANGLER: Well, it's also not really
 15 calculated to lead to the discovery of admissible
 16 evidence. This is the subject of a whole other lawsuit.
 17 THE WITNESS: I don't know.
 18 Q. BY MR. ROSENBAUM: Do you know if it was more
 19 than one year?
 20 A. I don't know.
 21 Q. Now, there are also -- a parent can seek to
 22 exempt a student who is an English language learner from
 23 Stanford-9; is that right?
 24 A. Any parent can exempt a student -- any parent
 25 with any type of student can ask to have their student

1 exempted.
 2 Q. Am I correct, sir, that if the percent is above
 3 a certain number, the percent of students, that district
 4 doesn't qualify for the API rewards?
 5 A. Yes.
 6 Q. Okay. And this past year, were there any
 7 districts -- do you know if there were any districts
 8 where the number of exemptions removed a district from
 9 the API?
 10 A. School.
 11 Q. I know. Schools?
 12 MR. HERRON: I'll object as harassing. You
 13 know that's a better question for Bill Padia. He may
 14 have general knowledge.
 15 MR. ROSENBAUM: If Mr. Padia is a bet --
 16 THE WITNESS: Yeah.
 17 MR. HERRON: All these questions are better
 18 asked to other people, it sounds like.
 19 MR. ROSENBAUM: Let me have marked as Exhibit
 20 62 a document I received from Mr. Warren bearing Bates
 21 Nos. 93599 through 93681. I'll have it marked, put in
 22 front of you, and provide counsel with copies.
 23 (Exhibit SAD-62 was marked.)
 24 Q. BY MR. ROSENBAUM: The front page says HumRRO
 25 and high school exit examination, HSEE, in parens,

1 supplemental year one -- supplemental year one
 2 evaluation report?
 3 A. Yes.
 4 Q. Are you familiar with this document?
 5 A. I was at one time.
 6 Q. When you talked to me earlier about an
 7 evaluation report, is this the report or is it part of
 8 the report you were referring to?
 9 A. I'm sorry, you have to be more specific.
 10 Q. If I understood you correctly, you told me that
 11 you looked at a HumRRO evaluation report; is that right?
 12 MR. HERRON: For year one?
 13 MR. ROSENBAUM: For year one.
 14 THE WITNESS: Yes.
 15 Q. BY MR. ROSENBAUM: And is this either part of
 16 it or is this the report you were referring to?
 17 A. This is the second part of it.
 18 Q. And directing your attention, Mr. Warren, to
 19 page 93650.
 20 Again, feel free to look at as much of this as
 21 you'd like.
 22 Q. Okay.
 23 A. Not yet. Okay.
 24 Q. Feel free to read as much of this as you'd
 25 like. Do you see the section on page 93650, Exhibit

1 SAD-62, where it says, preparation thus far?
 2 A. Yes.
 3 Q. Could you read to yourself, the first
 4 paragraph, and I'll have a question. And if you need to
 5 read more, that's fine.
 6 A. Okay.
 7 Q. And do you see the sentence that says -- the
 8 last sentence in the first paragraph under preparation
 9 thus far, 26 percent stated that their textbooks do not
 10 align well with the content standards; 38 percent report
 11 that they can cover all the content standards with a mix
 12 of textbooks and supplemental material? Do you see
 13 that?
 14 A. Yes.
 15 Q. And do you understand that to refer to the
 16 respondents on the principal survey?
 17 A. Yes.
 18 Q. Okay. And did your branch ever undertake any
 19 inquiry to find out what schools that 26 percent
 20 represented?
 21 MR. HERRON: Objection. Calls for speculation.
 22 Vague and ambiguous. Document speaks for itself.
 23 THE WITNESS: I think we've already gone over
 24 this territory.
 25 MR. HERRON: Asked and answered.

1 THE WITNESS: I think the answer is no.
 2 Q. BY MR. ROSENBAUM: Do you know if anyone in the
 3 Department of Education did that?
 4 A. I don't know.
 5 Q. Sitting here today, do you know if the
 6 principals who responded that their textbooks don't
 7 align well with the content standards, whether the
 8 textbooks in their schools today do align well with the
 9 content standards?
 10 A. Do I know?
 11 Q. Yes.
 12 A. I do not know.
 13 Q. Have you assigned anyone in your branch to find
 14 out whether or not in these schools the textbooks align
 15 well with the content standards?
 16 MR. HERRON: Objection. Vague and ambiguous.
 17 MR. ROSENBAUM: Referring to the 26 percent.
 18 THE WITNESS: I have not assigned anybody to
 19 look into that.
 20 Q. BY MR. ROSENBAUM: Now, see the next phrase
 21 where it says 38 percent report that they can cover all
 22 the content standards with a mix of textbooks and
 23 supplemental material?
 24 A. Yes.
 25 Q. Okay. To your knowledge, has your branch

1 undertaken any investigation to find out about the
 2 schools that say that they cannot cover all the content
 3 standards with a mix of textbooks and supplemental
 4 materials?
 5 MR. HERRON: Objection. Vague and ambiguous.
 6 MR. ROSENBAUM: What schools those are.
 7 MR. HERRON: Vague and ambiguous. Calls for
 8 speculation. And the document speaks for itself.
 9 THE WITNESS: I understand what this is saying
 10 is that 26 percent are saying the textbooks don't align
 11 well and they don't have supplemental materials, that
 12 these are exclusive categories. Right?
 13 MR. ROSENBAUM: That's right. That's my
 14 understanding also.
 15 THE WITNESS: I don't understand your question.
 16 Q. BY MR. ROSENBAUM: Did your branch ever
 17 undertake any inquiry to find out what schools also
 18 don't have supplemental materials so that they can
 19 cover --
 20 A. That would be the same 26 percent, as I
 21 understand what this is saying.
 22 Q. Tell me what you understand the 38-percent
 23 phrase to mean.
 24 A. It's a separate group that is saying maybe
 25 their textbooks don't cover all the standards, but they

1 have supplemental materials.
 2 Q. And in terms of the 62 percent that aren't in
 3 that category?
 4 A. That their textbooks align well. No, it's 26
 5 plus 38 is whatever it is, 54.
 6 Q. 64.
 7 A. 64. So 100 minus 64 are saying their textbooks
 8 are adequately aligned.
 9 Q. 26 percent say that they don't align well, 26
 10 percent are not saying that they do align well. But
 11 I'll simplify this.
 12 A. Okay.
 13 Q. Has your branch looked into -- you answered
 14 some questions for me about the textbooks that don't
 15 align well. Now I have a new question.
 16 Has your branch looked into the question of
 17 identifying those districts where principals report that
 18 they cannot cover all the content standards with a mix
 19 of textbooks and supplemental materials?
 20 MR. HERRON: Objection. Vague and ambiguous
 21 asked and answered. I think we've been over this
 22 territory, and I also wonder are you asking in addition
 23 to this report. This report was done at the behest of
 24 his branch, so it's already done what you're asking. I
 25 mean, isn't that what's already been testified to?

1 Those are my objections.
 2 THE WITNESS: The way I understand this is
 3 written is that 38 percent are saying textbooks don't
 4 align well, but we have supplemental materials that
 5 allow us to have good alignment between the textbooks
 6 and materials and the standards.
 7 There's a missing group that they're saying,
 8 hey, we're fine, we're aligned, our textbooks are
 9 aligned. The 26 percent do not have the supplement
 10 materials to help them align. That's how I understand
 11 it.
 12 Q. BY MR. ROSENBAUM: Okay. Take a look, sir, if
 13 you would at the following paragraph, and if you could
 14 read that to yourself, I'd appreciate that, starting on
 15 page 93650, along similar lines.
 16 A. Okay.
 17 Q. Now, see the last two sentences, however, 7
 18 percent reported that the state standards include more
 19 than the districts standards, and 5 percent indicated
 20 that they could not judge? Do you see that?
 21 A. Yes.
 22 Q. With respect to that 12 percent, do you know
 23 today whether or not the situation is the same, that is,
 24 the state standards include more than the district
 25 standards for 7 percent and 5 percent indicate they

1 can't judge?
 2 A. I don't know. But as we discussed earlier,
 3 this question has been asked as part of a 2001 survey,
 4 and we will get that data eventually, if we don't
 5 already have it.
 6 Q. After your branch received this document,
 7 referring to Exhibit 62, did you direct anybody on your
 8 staff, go out and talk to those 7 percent of schools and
 9 see why the state standards include more than the
 10 district standards?
 11 MR. HERRON: Objection. Assumes facts not in
 12 evidence. Asking him to testify beyond his role.
 13 THE WITNESS: I didn't direct staff to do that.
 14 Q. BY MR. ROSENBAUM: Or the 5 percent, to find
 15 out why they couldn't judge?
 16 MR. HERRON: Same objections.
 17 THE WITNESS: You know, this standards stuff,
 18 as we discussed earlier, is really something that's
 19 outside of the purview of my branch, I believe.
 20 Q. BY MR. ROSENBAUM: Thanks. Let me ask you,
 21 Mr. Warren, to please turn to 93652.
 22 A. Okay.
 23 Q. And I'm actually going to spill over to page
 24 93653 of Exhibit 62. I'm particularly interested in the
 25 sentence at the beginning of 93652, for example, only 14

1 percent of principals indicated that no plans had been
 2 made for remediation, compared to 38 percent of
 3 teachers. Do you see that?
 4 A. Yes.
 5 Q. Okay. Did your branch do any follow-up to
 6 determine why no plans had been made for remediation in
 7 the 14 percent of the schools where the principals
 8 indicated that?
 9 A. No.
 10 Q. And same thing with 38 percent of the teachers,
 11 the answer still is no?
 12 A. Yes, the answer is no.
 13 Q. Do you know if any agency or individual within
 14 the Department of Education undertook any such inquiry?
 15 MR. HERRON: Are you asking in addition to this
 16 contractor that was specifically contracted to find out
 17 this information?
 18 MR. ROSENBAUM: No, you weren't listening to my
 19 question. My question is why no plans had been made for
 20 remediation, not whether or not there were any plans.
 21 MR. HERRON: I don't think that was your
 22 question.
 23 THE WITNESS: I think that falls outside of the
 24 purview of my branch.
 25 Q. BY MR. ROSENBAUM: Do you know in whose

1 preview, if any, it does fall?

2 A. I don't know.

3 Q. And if I just asked this question before, bear
4 with me, or a similar question. Sitting here today, do
5 you know what percent of districts have not made plans
6 for remediation?

7 MR. HERRON: Objection. He just said that
8 falls outside the purview of his group.

9 THE WITNESS: And this is routine -- the intent
10 of HumRRO is to chronicle what is happening in districts
11 from a variety of different perspectives and to what
12 extent that their plans and their preparations for this
13 test and providing the appropriate services are changing
14 over time, that's why they've done a subset of districts
15 and they followed the same set of schools and districts
16 over time. This was in 2000.

17 In 2001 HumRRO reported that things are much
18 better out there, that preparations have been moving
19 rather rapidly, and they felt very encouraged by it. I
20 can't speak to this specific piece of information, but
21 this is, of course, a critical piece of information, and
22 I believe HumRRO would have taken a very close look at
23 it.

24 Q. BY MR. ROSENBAUM: But you don't know what
25 districts today still don't have plans for remediation?

1 MR. HERRON: Objection. Asked and answered.
2 He's answered it and he's explained the reasons why.
3 Object as harassing.

4 I think you're stalling. You're trying to move
5 us into another day of deposition rather than asking
6 questions that appropriately should be directed to this
7 individual who operates at a much higher level than the
8 information you're trying to solicit at the time would
9 suggest.

10 THE WITNESS: If I remember the question, I
11 don't know of anything in the Department that has been
12 done to follow through and identify individual schools.

13 Q. BY MR. ROSENBAUM: Let me direct your attention
14 to page 49 of the report, 93655. See where it says
15 predicted percentage of class of 2000 achieving passing
16 rate? There's a bar graph there.

17 A. Yes.

18 Q. Did your branch do any follow-up with
19 principals upon receipt of this report to find out the
20 basis of the principal's predictions?

21 MR. HERRON: Objection. Calls for speculation.
22 Asks him to testify outside his role. It's harassing.
23 I think any questions about this document are harassing,
24 but you may proceed.

25 MR. ROSENBAUM: Mr. Warren, I want to be

1 sensitive to the substance of Mr. Herron's objections,
2 the spirit of them. And if I'm asking you a series of
3 questions about whether or not your branch did any
4 follow-up to the results that were reported in the
5 HumRRO reports that's in front of you that's been marked
6 as Exhibit 62, if you believe -- if you're understanding
7 is follow-up to the results in this report, Exhibit 62,
8 were outside your jurisdiction, then that is what I'm
9 trying to find out.

10 And I certainly don't mean to ask you repeated
11 questions with follow-up responses to the results that
12 were reported in the HumRRO report if they are outside
13 your jurisdiction.

14 Q. Do you understand what I mean?

15 A. I understand what you mean.

16 MR. HERRON: I disagree with that statement and
17 consider it self-serving. He's repeatedly told you that
18 other people have knowledge, and that has not limited
19 the questions in any way.

20 I think that while he's mindful now of what
21 you're saying, that even when he identifies others who
22 could speak to it or says that I don't have knowledge
23 about this, you haven't stopped. We'll be glad to
24 continue identifying them, but it doesn't seem to assist
25 the speed of this deposition.

1 MR. ROSENBAUM: I don't agree with your
2 determination.

3 MR. HERRON: I'm sure you don't.

4 THE WITNESS: The memo that was written by Jan
5 Chladek and Lily was an initial attempt to start the
6 discussion internally with other branches in the
7 Department who had more responsibility over these
8 issues.

9 Q. BY MR. ROSENBAUM: But in terms of your branch
10 conducting follow-ups, am I understanding -- like what
11 schools are now doing to -- where there are reports that
12 the standards are not aligned, that's outside the
13 purview of your --

14 A. HumRRO is my branch's eyes and ears for
15 understanding what is happening in terms of preparation
16 and providing services to students out there in the
17 field.

18 Q. And in terms of -- are they the exclusive eyes
19 and ears?

20 A. I can't speak for staff, what they have --
21 connections that they may have.

22 Q. But so far as you know?

23 A. As far as I know.

24 Q. Now, in terms of corrective actions, that's --

25 A. You mean remediation?

1 Q. Yeah. To deal with where standards are not
2 found to be aligned or where expectations are that kids
3 will fail, my question to you is, is that outside your
4 jurisdiction to undertake those sorts of corrective
5 measures?

6 MR. HERRON: Objection. Asked and answered.
7 Compound. Vague and ambiguous.

8 THE WITNESS: I'm not sure it's within the
9 State's jurisdiction, let alone the Department's,
10 because when you talk about corrective actions, when you
11 say kids not being able to pass, kids failing high
12 school exit exam, I mean, there's no law that says
13 schools have to ensure all of their kids pass the high
14 school exit exam. There's no authority for the
15 Department to go in and say you must do this or that.

16 And, frankly, I mean, I disagree with a lot of
17 what you believe are important factors in terms of kids
18 being able to pass the test or not. And certainly with
19 many of those areas we don't have any authority to tell
20 districts what to do.

21 I probably shouldn't say this, but as you know,
22 in writing the master plan, I believe that, you know,
23 school districts have their own governance authority and
24 that the electorate holds them responsible, as well as
25 holding us responsible through our superintendent and,

1 A. Yes.

2 Q. Who?

3 A. I believe it's in that memo.

4 Q. Okay. Have you heard it expressed by anyone
5 who -- to whom you report?

6 A. I don't recall.

7 Q. Okay. And do you share that concern?

8 A. I share the concern of high school dropouts
9 generally. And California already has a fairly
10 significant problem in my view.

11 Q. Why do you say that?

12 MR. HERRON: Presumably because it's his view.
13 Objection. Vague and ambiguous and nonsensical.

14 MS. READ SPANGLER: Argumentative.

15 THE WITNESS: Because the last time I looked at
16 the data, the dropout rates were undesirably high.

17 Q. BY MR. ROSENBAUM: Do you remember the last
18 time when you looked at that data?

19 A. It must be five years ago.

20 Q. Have you looked at the dropout rates since
21 then?

22 MR. HERRON: Objection. Relevance.

23 THE WITNESS: I don't recall.

24 Q. BY MR. ROSENBAUM: And what about specifically
25 with respect to the exit exam, are you concerned that

1 you know, I feel like you're confusing a lot of
2 governance issues and you're asking me whether we have
3 done things where I don't even think we have to do that.
4 So you're asking a whole series of questions I find
5 really difficult.

6 Q. BY MR. ROSENBAUM: Okay. I really appreciate
7 that. Thanks.

8 Let me direct your attention, sir, to page
9 93666. Do you see where it says other?

10 A. Yes.

11 Q. Okay. Again, feel free to read as much or as
12 little as you'd like. They also express concern that
13 the exit exam will result in increased dropout rates, do
14 you see that?

15 A. Yes.

16 MR. HERRON: I don't see that.

17 THE WITNESS: It's the third sentence.

18 Q. BY MR. ROSENBAUM: Have you heard that concern
19 expressed?

20 A. Yes.

21 MR. HERRON: Other than this document?

22 MR. ROSENBAUM: Other than in this document.

23 THE WITNESS: Yes.

24 Q. BY MR. ROSENBAUM: Okay. Have you heard it
25 expressed by anybody on your staff?

1 the exit exam may exert some pressure on dropout rates?

2 A. Yeah. I have a lot of concerns about the
3 effect of the exit exam, sure.

4 Q. What's your concern about the exit exam with
5 respect to dropout rates?

6 A. Well, I think the general hypothesis is that
7 students who are lower achieving, when they hit high
8 school and they find themselves far behind, are going to
9 feel like there's little hope that they can master the
10 skills on the test, and in a kind of a sense of despair
11 exit the system.

12 Again, I called this a hypothesis so, of
13 course, I have a concern about that. Do I think it's
14 going to happen, that's a different question.

15 Q. Okay. Is the branch doing anything to test
16 whether or not that will happen, to explore, to examine
17 the question -- let me state that again.

18 Is the branch doing anything, to your
19 knowledge, to investigate that hypothesis?

20 MR. HERRON: Objection. Calls for speculation.
21 Vague and ambiguous. Asked and answered in part.

22 THE WITNESS: No, not that I know of.

23 Q. BY MR. ROSENBAUM: Have you expressed that
24 concern to the superintendent?

25 A. Expressed what concern?

1 Q. What about the hypothesis about dropout rates?
 2 A. No, not that I can recall.
 3 Q. Or to Mr. Hill?
 4 A. I don't recall.
 5 Q. Or to anybody at the State Board?
 6 A. Not that I can recall.
 7 Q. You said to me a few moments ago that you had a
 8 number of concerns about the high school exit exam?
 9 A. Sure.
 10 Q. What are your other concerns?
 11 A. Well, I mean, you want -- my job, as I've
 12 described before, is to make the accountability system
 13 meaningful and --
 14 MR. HERRON: I'm sorry, I need to object as
 15 asked and answered. We've been over this quite a bit, I
 16 think.
 17 THE WITNESS: And so in trying to construct a
 18 high school exit exam, you know, I wanted to play the
 19 role it's intended, which is to try to ensure that all
 20 the kids have the kind of skills that they need to
 21 succeed out in the world once they've graduated and not
 22 to make it a game.
 23 And, I mean, these are extremely complex things
 24 that -- I have lots of concerns. What about cheating?
 25 Educators are very concerned about the status and the

1 welfare of kids, that's my experience. And I know from
 2 other states there are teachers who get so concerned
 3 about individuals, that they'll help the kids cheat on
 4 tests. That's a big concern to me both from a
 5 standpoint of the integrity of the system, as well as
 6 creating pressures on the adults and professionals in
 7 the system who want these kids to succeed and putting
 8 them in what they feel is a bind. There's lots and lots
 9 and lots of concerns. My job is to make meaning of it
 10 and to minimize those negative consequences and
 11 incentives.
 12 Q. BY MR. ROSENBAUM: There are some districts
 13 that have testing coordinators; is that right?
 14 MR. HERRON: Objection. Calls for speculation.
 15 THE WITNESS: I believe all districts are
 16 required to have test coordinators.
 17 Q. BY MR. ROSENBAUM: Do you know if they all do?
 18 A. No.
 19 Q. Do you know if anyone in your branch is
 20 checking to see the percent?
 21 A. All districts have to have somebody who works
 22 with the Department and its contractors in implementing
 23 these tests, so it may not be called a, quote, test
 24 coordinator, but somebody does the job of a test
 25 coordinator.

1 Q. Okay. The last time we talked, Mr. Warren, you
 2 were talking to me about the NAEP results?
 3 A. Yes.
 4 Q. And I think you told me at the time that they
 5 weren't out yet?
 6 A. That's correct.
 7 Q. Have you seen the NAEP results since your
 8 deposition?
 9 A. Yes.
 10 Q. And how is NAEP graded, how is it marked?
 11 A. NAEP is graded --
 12 MR. HERRON: Objection. Asked and answered in
 13 the prior day of deposition.
 14 THE WITNESS: It's similar to the way that we
 15 have set up our English language arts performance levels
 16 in that it has these performance levels of proficient,
 17 advanced, et cetera.
 18 Q. BY MR. ROSENBAUM: And are the results -- what
 19 students take the NAEP test?
 20 MR. HERRON: Objection. Asked and answered in
 21 the prior day of deposition.
 22 THE WITNESS: Most states work with the federal
 23 government, who is responsible for the test, to select a
 24 subgroup of students to take the test that are
 25 representative of the state.

1 Q. BY MR. ROSENBAUM: Okay. And do you know how
 2 many students took the NAEP test in California?
 3 A. I don't know.
 4 Q. Do you have a ballpark number?
 5 A. I believe it's about 1,700.
 6 Q. And was any analysis done of those students who
 7 scored in the lowest two categories as to whether or not
 8 they had had textbooks available to them, textbooks or
 9 other instructional materials available to them?
 10 MR. HERRON: Objection. Calls for speculation.
 11 Assumes facts not in evidence. Vague and ambiguous as
 12 phrased.
 13 THE WITNESS: The data that I have seen only
 14 reports the actual student scores by performance levels,
 15 and it does not look at the conditions in the way that
 16 you've asked.
 17 Q. BY MR. ROSENBAUM: Okay. And, to your
 18 knowledge, are there any plans to look at the conditions
 19 to see if there's any relationship in terms of
 20 availability of textbooks or the credentials of teachers
 21 or facilities where students attend and the NAEP
 22 results?
 23 MR. HERRON: Objection. Vague and ambiguous.
 24 Compound. Calls for speculation.
 25 THE WITNESS: I also think that you don't

1 understand the way that this test is administered in
 2 that it gives you a statewide estimate and it's not
 3 meaningful at any level below that. Okay? So it
 4 wouldn't make sense to say, let's go look at the five
 5 kids in your child's school, you know, because they were
 6 all pretty low and see if there's some relationship.
 7 Q. BY MR. ROSENBAUM: I take it your answer is no?
 8 MR. HERRON: His answer is what it is.
 9 THE WITNESS: My answer is that's not a
 10 meaningful question.
 11 Q. BY MR. ROSENBAUM: To your knowledge, does your
 12 branch have any plans to investigate to determine
 13 whether or not there are any characteristics of the
 14 students who are projected to be in the lowest two
 15 levels?
 16 A. I don't know if -- what data is available to
 17 the state. Okay? That's something you'd have to ask
 18 somebody else.
 19 MR. HERRON: Mark, we've now reached 5:00.
 20 It's time to conclude for the day.
 21 MR. ROSENBAUM: Okay.
 22 MR. HERRON: Before we do, however, I want to
 23 make sure that at least the State's objection is
 24 perfectly clear that we consider this deponent to have
 25 been now produced for a reasonable period of time.

1 I believe that you have asked him repeatedly
 2 questions not having anything to do with his personal
 3 knowledge, and that it has become harassing and you're
 4 trying to spread this into several more days, and so we
 5 feel as though the obligation to produce him has been
 6 satisfied.
 7 MR. ROSENBAUM: I don't have much more of
 8 Mr. Warren, and I may not have anything more or a very
 9 little bit, and I would be -- I do appreciate how taxing
 10 this is, and I do appreciate your patience on this a
 11 lot, as well as other counsel.
 12 What I'd like to do is this, David, I'd like to
 13 go through the questions I have, give you a reasonable
 14 estimate of how much more time is required, if any, and
 15 see if, with counsel, we can work out some
 16 accommodation, whether it's in his office or in some
 17 other sort of method.
 18 But I don't anticipate I have a great deal more
 19 to ask him, if anything. I'd like to be able to explore
 20 those options. I certainly --
 21 MS. READ SPANGLER: Maybe we should just finish
 22 today if all you need to do is review your notes and ask
 23 a few follow-ups.
 24 MR. JORDAN: I've got a few too, not a whole
 25 lot, and I don't want to be rushed and I want to do it

1 right.
 2 MR. HERRON: But I'm assuming you were prepared
 3 today.
 4 MR. JORDAN: Yeah, I could go right now if you
 5 want to go.
 6 MS. READ SPANGLER: Can you review your notes
 7 while Mr. Jordan is asking his?
 8 MR. HERRON: If they can wrap up in an hour --
 9 THE WITNESS: I can't stay an hour. I can stay
 10 a half hour.
 11 MR. ROSENBAUM: Here's what I'm glad to do. I
 12 couldn't be more sincere. I don't believe I have a
 13 great deal more to do, but I don't want to hold you any
 14 longer.
 15 I certainly don't acquiesce in agreeing that
 16 this deposition is over and that I would waive any
 17 rights. I'd like to see if I can accommodate Mr. Warren
 18 and maybe do it in some sort of more informal setting
 19 and do it as his convenience.
 20 MR. HERRON: If you and Mr. Jordan can tell us
 21 you can get done in a half hour, we'll stay, even though
 22 we had an hour this morning that I think was wasted.
 23 MR. ROSENBAUM: That was a complete
 24 misunderstanding, because I was trying to take this
 25 thing at 9:00 and I was told yesterday that I couldn't.

1 MS. READ SPANGLER: Who told you that, because
 2 my understanding was it was at 9:00.
 3 MR. ROSENBAUM: I was here too.
 4 MR. HERRON: In any event, if you can confirm
 5 for us that you'll be completed in a half hour, we'll
 6 stay, otherwise, I consider this deposition to be over.
 7 MR. ROSENBAUM: You're hardly in a position to
 8 say that. You can say anything you want.
 9 MR. HERRON: Mr. Jordan?
 10 MR. JORDAN: I can estimate, but I can't
 11 guarantee. It would depend on objections and how the
 12 witness responds.
 13 MR. HERRON: What's your estimate?
 14 MR. JORDAN: Just my stuff, I think I can be
 15 done in a half an hour or less.
 16 MR. ROSENBAUM: Why don't you go ahead, and
 17 I'll try to streamline my questions so it's even less.
 18 (Break in the proceedings.)
 19 THE WITNESS: Can I ask you who you represent?
 20 MR. JORDAN: Sure. I represent Los Angeles
 21 Unified School District, and my firm also represents
 22 Pajaro Valley Unified School District, although they're
 23 not an intervener. So I'm here in a capacity
 24 representing Los Angeles Unified.
 25 THE WITNESS: Intervener means?

1 MR. JORDAN: An intervener in the action
 2 between the plaintiffs, a third party, if you will.
 3 MS. READ SPANGLER: I'll explain later.
 4 THE WITNESS: Sounds too complicated.
 5 EXAMINATION BY MR. JORDAN
 6 Q. I've actually got a few clarifying questions on
 7 things you've already testified to. This is my first
 8 chance to ask you questions.
 9 Here's volume one of your deposition, which has
 10 a copy of the LA report, which has SAD-31 in the back of
 11 it. And here's Volume II, which has a copy of SAD-32.
 12 I'll represent to you that those are the copies
 13 that we got from the court reporter.
 14 A. Okay.
 15 Q. Looking at SAD-31, there's a bibliography at
 16 the back of it, and does that bibliography list all the
 17 sources you reviewed when you were preparing Exhibit 31?
 18 MR. HERRON: Objection. Asked and answered.
 19 Calls for speculation.
 20 THE WITNESS: I can't really answer that. This
 21 was three years ago at least.
 22 Q. BY MR. JORDAN: If you don't remember, that's
 23 the thing to say.
 24 A. Okay.
 25 Q. Okay. The bibliography cites this Hoxby and

1 the Quarterly Journal of Economics. Is that something
 2 you subscribe to?
 3 A. No.
 4 Q. How did you come to use that as a cite for this
 5 report?
 6 MR. HERRON: Objection. Relevance.
 7 THE WITNESS: I had it in my possession from a
 8 different -- a different investigation I undertook. I
 9 can't remember the significance of it.
 10 Q. BY MR. JORDAN: Okay. You do have a background
 11 in economics, as your deposition reflects, correct?
 12 A. Correct.
 13 (Mr. Herron left the room.)
 14 Q. BY MR. JORDAN: Pages 19 to 20 of SAD-31,
 15 there's some references to create competition, the
 16 bottom of page 19, top of page 20.
 17 A. Okay.
 18 Q. Do you remember where those thoughts came from?
 19 A. Where they came from?
 20 Q. Yeah. Is it something you thought up, or was
 21 it something that you got from reviewing other sources?
 22 MS. READ SPANGLER: Objection. Vague and
 23 ambiguous.
 24 THE WITNESS: I can't answer at this point
 25 given how much time has elapsed and what I was thinking

1 about at the time I wrote this and where this idea of
 2 competition came from. I'm sorry.
 3 (Mr. Herron entered the room.)
 4 Q. BY MR. JORDAN: I thought it might have come
 5 from your economic background. Is that sort of a
 6 Chicago school kind of thing?
 7 A. Well, I have done a substantial amount of work
 8 looking into -- LEO was required to do an evaluation of
 9 charter schools and, of course, the whole charter
 10 movement is in some respects designed to free schools to
 11 do different things and to think differently about it,
 12 and to some extent compete, in my view anyway, with the
 13 traditional school system.
 14 Q. So this paragraph at the bottom of 19 and the
 15 beginning of 20 is sort of a reflection of that kind of
 16 thought?
 17 A. Again, you know, I don't want to speak for what
 18 I was thinking about at the time I wrote this.
 19 Q. Okay. Going back to the bibliography again,
 20 the only title which -- at least in my looking at it,
 21 the only reference that appeared to refer to teacher
 22 quality appeared to be this Rodriguez citation, but I
 23 don't want to put words in your mouth.
 24 Are there any of the other references in your
 25 bibliography that, in your view, relate to teacher

1 quality?
 2 MS. READ SPANGLER: Objection. The document
 3 speaks for itself.
 4 THE WITNESS: I can't answer the question. But
 5 understand, this was a study of governance.
 6 MR. JORDAN: I understand.
 7 THE WITNESS: It wasn't intended to be a
 8 cure-all for the ills of the system or the needs of the
 9 system. It was designed to look at the role of the
 10 state and the role of districts broadly speaking. Leave
 11 it at that.
 12 Q. BY MR. JORDAN: When you said you couldn't
 13 respond further, is that just because there's too much
 14 water under the bridge, too much time has gone by since
 15 you wrote this?
 16 A. Well, the report, again, is not trying to be
 17 exhaustive about how to, quote, fix the system, it was
 18 trying to look at, you know, the roles of the state in
 19 the process, the role of districts, the role of schools,
 20 the role of teachers, all of those levels from the
 21 standpoint of governance and what does the research say
 22 about what works. And in the end where there's some
 23 kind of more specific examples of a particular issues,
 24 we're supposed to be illustrative rather than
 25 comprehensive.

1 Q. Do you know an author named Linda Darling
2 Hamilton (sic)?
3 MS. READ SPANGLER: Hammond.
4 THE WITNESS: Hammond.
5 Q. BY MR. JORDAN: Do you remember reviewing
6 anything of hers before you wrote this report?
7 A. I have read her stuff. I can't tell you
8 whether it was before or after.
9 Q. At the time you wrote SAD-31 -- there's one
10 other document I want to ask you if you remember seeing
11 before, and I have a copy of it just for reference.
12 Maybe we can make it an exhibit, if you want,
13 or we don't have to if you don't want to.
14 It's David C. Illig (ph.), reducing class size.
15 It's on the California government website, but in the
16 California research bureau branch.
17 Do you remember seeing that before you wrote
18 Exhibit 31?
19 A. I have reviewed this and, I mean, it was from
20 the mid '90s rather than the late '90s, and that would
21 be before I wrote the master plan, yes.
22 Q. Okay. In your deposition, I can give you the
23 page reference, you said you reviewed a report prepared
24 by a Joel Schwartz on class size reduction.
25 A. I was his supervisor.

1 Q. Right. And he would have drafted it and you
2 would have reviewed it?
3 A. Yes.
4 Q. Okay. And I was trying to figure out which one
5 it was, and I found two of them and I was hoping you
6 could identify which one of those it was. Then we can
7 identify which one it was. Maybe it's both.
8 A. What's your question?
9 Q. I'm just trying to clarify some earlier
10 testimony where you'd said you'd reviewed a report by
11 Schwartz. I was trying to identify what report it was,
12 and I came up with these two off of the website.
13 A. I was his supervisor during both of these.
14 Q. So you would have reviewed both of them?
15 A. Yes.
16 Q. Just for the record, I represent these are off
17 of the California -- this is actually the legislative
18 analyst office website, and I'll give the website
19 address. I just took these down yesterday, so they're
20 reasonably current.
21 (Exhibits SAD-63 and SAD-64 were marked.)
22 Q. BY MR. JORDAN: Just for the record, we've
23 marked those two as Exhibits 63 and 64, and these are
24 the ones you've identified as being the reports written
25 by Schwartz that you reviewed while you were with LEO?

1 A. Yes.
2 Q. Thank you. I'd like you to look back at
3 Exhibit SAD-32, and, in particular, if you could look at
4 page 3, the first full paragraph on the page.
5 A. Starting --
6 Q. Starts out, another constitutional issue.
7 A. Right.
8 Q. It's not that I want you to focus on that, I'm
9 just trying to identify the paragraph. It talks about
10 the initiative, Prop 13, resulting in separation of
11 financial responsibilities now held by the state and
12 program responsibility held by the school districts.
13 A. Yes.
14 Q. Okay. And you say that led to a much larger
15 state role -- this separation has led to a much larger
16 state role in financial and in policymaking for K
17 through 12 education in a corresponding diminution of
18 local control. Is that something you still believe?
19 MR. HERRON: Objection. Asked and answered.
20 We've gone over this.
21 THE WITNESS: Yes.
22 Q. BY MR. JORDAN: And on the same page, if we
23 look at the third paragraph under reform principles, the
24 second sentence says, local decision-makers must have
25 responsibility for fiscal policies because of the close

1 interrelationship with program control.
2 A. Yes.
3 Q. Is that something you still believe?
4 A. Well, first of all, let me just say this is the
5 product of the legislative analysts office, not of Paul
6 Warren. When you say still, I need to be very careful
7 that -- this doesn't reflect my thinking, this reflects
8 the thinking of the legislative analyst.
9 Q. Let me phrase my question differently to avoid
10 that problem. Do you believe that's true?
11 MR. HERRON: I believe it's irrelevant, and I
12 object on that basis.
13 THE WITNESS: I think it's true.
14 Q. BY MR. JORDAN: And that is because program
15 controls can be limited by fiscal policies?
16 MR. HERRON: Objection. Document speaks for
17 itself. Asked and answered. Irrelevant.
18 THE WITNESS: I think there's a variety of
19 reasons why those decision-makers needed responsibility
20 for fiscal policies, and that is one of them.
21 Q. BY MR. JORDAN: I'd like you to look at page 4,
22 the fifth full paragraph down on page 4.
23 A. Second, starting there?
24 Q. Yes, that paragraph. And the third sentence
25 says, for example, the State would emphasize the

1 importance of student outcomes by establishing an
2 outcome-based accountability system. Are you referring
3 to an accountability system such as the API system?

4 MR. HERRON: Is that what this was doing, is
5 that your question?

6 MR. JORDAN: Yes.

7 Q. Is that the kind of thing you had in mind,
8 something like the API?

9 A. I didn't have anything specific in mind. The
10 API has a lot of particular features, but, yes, that --

11 Q. It's the sort of thing you had in mind?

12 A. It's the sort of thing. It's in the right
13 direction, put it that way.

14 Q. At the bottom there's a box under refining the
15 State's role and there's some bullets for funding and
16 flexibility that say, under funding, provide sufficient
17 state funding to permit schools to reach state
18 standards. And, flexibility, create stable policy and
19 funding base that ensures needed local flexibility.

20 Is that something you think ought to be the
21 role of the State?

22 MR. HERRON: Objection. Vague and ambiguous as
23 phrased. Vague as to time.

24 THE WITNESS: I think when the State holds
25 schools responsible for getting kids to standards, it

1 slippery topic, and a lot of people will say that
2 schools aren't meeting certain goals because of lack of
3 funding generally. And, you know, as I talk at great
4 length in the master plan document, you know, trying to
5 figure out what adequate means is a very, very difficult
6 thing to do, and I'm very loathe to make any
7 generalities about inadequate state funding.

8 I'm not sure I answered your question.

9 Q. BY MR. JORDAN: Let me ask a short follow-up.
10 Do you think accountability doesn't necessarily have
11 anything to do with whether or not a school district has
12 adequate funding to meet state standards?

13 MR. HERRON: All the same objections as posed
14 to the last question.

15 (Record read.)

16 MS. READ SPANGLER: Vague and ambiguous. Calls
17 for an expert opinion

18 MR. HERRON: Same objections. I propose that
19 the question be rephrased.

20 THE WITNESS: If you could simplify it, it
21 would help me.

22 Q. BY MR. JORDAN: I'm not trying to confuse you.
23 On the other hand, it's not a simple question.

24 You understand that the school districts are
25 being asked to be held accountable for the achievement

1 ought to understand whether it's providing sufficient
2 funding for schools to do that. Yeah, I think that's
3 one of the things, yes.

4 Q. BY MR. JORDAN: Matter of fact, that's just
5 only being fair, isn't it?

6 MR. HERRON: Objection. Argumentative. Vague
7 and ambiguous. Calls for speculation. Nonsensical.

8 THE WITNESS: It seems reasonable that you give
9 agencies the ability to do the job that you've asked
10 them to do.

11 Q. BY MR. JORDAN: In other words, you don't hold
12 them accountable for something they can't control?

13 MR. HERRON: Objection. Argumentative. Vague
14 and ambiguous. Calls for speculation.

15 THE WITNESS: That's something that's in the
16 eye of the beholder. I would need to understand a lot
17 more what you mean by that.

18 Q. BY MR. JORDAN: Let's talk about funding. For
19 example, if you have a school district that's unable to
20 meet state standards because of lack of funding, would
21 you still hold them accountable?

22 MS. READ SPANGLER: Objection. Calls for
23 speculation. Calls for an expert opinion.

24 MR. HERRON: Vague and ambiguous. Overbroad.

25 THE WITNESS: I think lack of funding is a very

1 of their students?

2 A. Correct.

3 Q. All right. And at least some districts clearly
4 understand and take the view that there are some factors
5 over which they don't have a whole lot of control
6 because of a lack of funding, this is the position they
7 took, at least?

8 A. Yes.

9 Q. Whether or not the State agrees, right?

10 A. Correct.

11 Q. All right. Do you think there are some
12 instances where, in fact, the districts don't have
13 control over particular variables, such as, for example,
14 whether they have adequate housing for all their
15 students?

16 MS. READ SPANGLER: Objection. Vague and
17 ambiguous. Calls for speculation. Incomplete
18 hypothetical. Calls for an expert opinion.

19 THE WITNESS: I really can't answer that. I
20 don't know.

21 Q. BY MR. JORDAN: Let's ask the more general
22 question. Do you know of any factors where school
23 districts do not have adequate funding to meet state
24 standards?

25 MS. READ SPANGLER: Same objections.

1 THE WITNESS: I don't know.
 2 Q. BY MR. JORDAN: I don't want you to speculate,
 3 and it sounds like I'm going to have to have you
 4 speculate since you don't know about any such
 5 conditions.

6 Let's go back to page 3.

7 A. Of the same document?

8 Q. Yes, of the same document. The last paragraph
 9 under reform principles, they say, that understanding
 10 the incentives that influence local decision-making is a
 11 key part of creating effective state policies.

12 Do you see that?

13 A. Yes.

14 Q. Since you've disassociated yourself with this
 15 document, is that something you believe?

16 MR. HERRON: Objection. Relevance.

17 MS. READ SPANGLER: Also do you mean Paul
 18 Warren as an individual, or Paul Warren in his capacity
 19 as deputy superintendent?

20 MR. JORDAN: Hopefully he believes the truth is
 21 the same in whatever capacity. I don't know if that
 22 makes a difference.

23 MS. READ SPANGLER: There's some things where
 24 he can't speak on behalf of the Department.

25 MR. JORDAN: I'm not asking if the Department

1 think what is in here.

2 Q. I want to understand what you mean by
 3 incentives. Can you explain why funding for class size
 4 reduction would not be what you mean by incentives?

5 A. Funding for class size reduction is an
 6 incentive program in that you get the money if you do
 7 certain things.

8 Q. That's my understanding.

9 A. In economics, incentives go way beyond that. I
 10 mean, there are nonfinancial incentives, like if you
 11 come home late and you didn't call your wife, she's
 12 going to be pissed off at you and it's going to make
 13 life miserable for you or --

14 Q. I understand that one.

15 A. Or you're a politician and you --

16 Q. And I don't want to put either one of us in
 17 that box.

18 A. There's incentives that play on governing
 19 boards, not financial. I'm not seeing anything, you
 20 know, illegal or anything like that, but they have
 21 constituencies they have their jobs to do. There's all
 22 sorts of incentives.

23 Q. I think you're trying to answer my question.
 24 But what I want to know is why is funding for class size
 25 reduction not an incentive as you were using it?

1 has an official position, if that's what you're asking.

2 THE WITNESS: As a person trained in economics,
 3 I believe incentives are very important.

4 Q. BY MR. JORDAN: From your answer, I understand
 5 that what you had in mind by incentives is financial
 6 incentives?

7 MR. HERRON: Well, objection. Causes him to
 8 speculate back three years as to what he was thinking at
 9 that time. He or someone else drafted that particular
 10 sentence. It's not relevant.

11 THE WITNESS: I can't say that it was
 12 specifically financial incentives, no.

13 Q. BY MR. JORDAN: Would your incentives include
 14 such things as funding for class size reduction?

15 MR. HERRON: Objection. Calls for speculation.

16 MS. READ SPANGLER: And an expert opinion.

17 MR. HERRON: And interpretation.

18 THE WITNESS: I think we talked about this,
 19 actually, before, in that when I talk about incentives,
 20 I'm talking about a much broader range than just money
 21 incentives.

22 Q. BY MR. JORDAN: I understand it's not
 23 restricted to money. I want to know, would it include
 24 things like funding for class size reduction?

25 A. No, that's really a different meaning than I

1 MR. HERRON: Objection. He's already answered
 2 it.

3 MS. READ SPANGLER: Misstates his prior
 4 testimony.

5 THE WITNESS: This is really talking broadly
 6 about governance and about structure in a system that is
 7 balanced, and that pro -- has a better chance of
 8 producing an education system that is trying to reach
 9 all of our goals. It's not really talking about
 10 individual specific little programs. Class size may not
 11 be little and the mechanism of how that works.

12 Q. BY MR. JORDAN: So you didn't have that sort of
 13 incentive in mind?

14 A. That was not really what this was.

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

16 MR. ROSENBAUM: Just one or two questions.

17 FURTHER EXAMINATION BY MR. ROSENBAUM

18 Q. Mr. Warren, we talked earlier about setting the
 19 passing grade for the high school exit exam.

20 A. Yes.

21 Q. Isn't it true, sir, that there was a group of
 22 educators that were convened to make a recommendation in
 23 that regard?

24 A. Yes, educators, as well as other community
 25 members.

1 Q. Do you know how many persons were involved with
 2 that?
 3 A. Over 100.
 4 Q. Okay. And were you involved in the process
 5 of --
 6 A. I attended it. I was not a participant.
 7 Q. Help me understand the constituent groups.
 8 There were educators?
 9 A. Yes, roughly half were teachers, the other half
 10 were composed of school administrators, higher ed
 11 representatives, parents, business, community members,
 12 those kinds of things.
 13 Q. And the teachers and administrators, did they
 14 come from the state school system?
 15 A. Yes.
 16 Q. State public school system?
 17 A. Yes.
 18 Q. And they made a recommendation to the passing
 19 grade; is that right?
 20 A. No. Yes and no. The process got to the point
 21 where people had made informed decisions about where
 22 each individual thought the passing score should be set.
 23 Our contractor, AIR, created a statistical
 24 average or a median, different than the average, but the
 25 median that represented kind of the midpoint of this

1 range of individual and small group recommendations.
 2 Okay? So there was actually no specific recommendation.
 3 Let me tell you, I sweated bullets trying to
 4 figure out a way to get the press to describe that
 5 accurately, because they all wanted to say it was their
 6 recommendation, whereas this group actually never made a
 7 specific recommendation.
 8 Q. And was this group convened for any other
 9 purpose other than to select a score or to give opinions
 10 on scores?
 11 A. No.
 12 Q. Were you involved in selecting the membership?
 13 A. No. Again, as with other advisory groups that
 14 we've talked about, I reviewed them, but I was not
 15 really involved.
 16 Q. Did someone have principal responsibility for
 17 that selection?
 18 A. Jan Chladek and her staff.
 19 Q. Is there a written document that discusses the
 20 range of the recommendations?
 21 A. Yes.
 22 Q. Okay. I don't think I received that document.
 23 A. That's because we did after, I believe, our
 24 deposition.
 25 Q. Okay. And the NAEP results, do you have a file

1 on the NAEP results?
 2 A. I don't have a file on it. I did at one point
 3 have something from the federal government that they
 4 sent out to the state with the California results on it.
 5 MR. ROSENBAUM: I don't have anything further.
 6 I really appreciate your patience.
 7 I'm obviously reserving the right to question
 8 after counsel explores whether or not she has any
 9 objection or whether or not it's been waived, but I
 10 certainly appreciate your patience.
 11 MS. READ SPANGLER: You mean with respect to
 12 that limited issue of the meeting?
 13 MR. ROSENBAUM: Right.
 14 MR. HERRON: Okay. Thank you very much.
 15 (The deposition concluded at 5:33 p.m.)
 16 ---oOo---
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 18
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 21
 22
 23
 24
 25

1 Please be advised that I have read the
 2 foregoing deposition. I hereby state there are:
 3
 4 (check one) _____ NO CORRECTIONS
 5 _____ CORRECTIONS ATTACHED
 6
 7 _____
 8 Date Signed
 9
 10 _____
 11 PAUL WARREN
 12
 13 Case Title: Williams vs State, Volume III
 14 Date of Deposition: Wednesday, August 29, 2001
 15
 16 ---oOo---
 17
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1 DEPONENT'S CHANGES OR CORRECTIONS

2 Note: If you are adding to your testimony, print the
3 exact words you want to add. If you are deleting from
4 your testimony, print the exact words you want to
5 delete. Specify with "Add" or "Delete" and sign this
6 form.

7 DEPOSITION OF: PAUL WARREN, VOL. III
8 CASE: WILLIAMS VS STATE
9 DATE OF DEPOSITION: WEDNESDAY, AUGUST 29, 2001
10 I, _____, have the following
11 corrections to make to my deposition:

PAGE	LINE	CHANGE/ADD/DELETE
12	_____	_____
13	_____	_____
14	_____	_____
15	_____	_____
16	_____	_____
17	_____	_____
18	_____	_____
19	_____	_____
20	_____	_____
21	_____	_____
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23	_____	_____
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PAUL WARREN DATE

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8 Re: Williams vs State, Volume III
9 Date Taken: Wednesday, August 29, 2001
10 Dear Mr. Warren:

11 Your deposition is now ready for you to read, correct,
12 and sign. The original will be held in our office for
13 45 days from the date of this letter.
14 If you are represented by counsel, you may wish to
15 discuss with him/her the reading and signing of your
16 deposition. If your attorney has purchased a copy of
17 your deposition, you may review that copy. If you
18 choose to read your attorney's copy, please fill out,
19 sign, and submit to our office the DEPONENT'S CHANGE
20 SHEET located in the back of your deposition.
21 If you choose to read your deposition at our office, it
22 will be available between 9:00 a.m. and 4:00 p.m.
23 Please bring this letter as a reference.
24 If you do not wish to read your deposition, please sign
25 here and return within 45 days of the date of this
letter.

19 _____ DATE _____
20 Sincerely,
21 TRACY LEE MOORELAND, CSR
22 Esquire Deposition Services
23 Job No. 28227
24 cc: Mark Rosenbaum, Esq. Judd Jordan, Esq.
25 David Herron, Esq. Kara Read Spangler, Esq.
Richard Hamilton, Esq.

1 REPORTER'S CERTIFICATE

2 I certify that the witness in the foregoing
3 deposition,
4 PAUL WARREN,
5 was by me duly sworn to testify the truth, the whole
6 truth, in the within-entitled cause; that said
7 deposition was taken at the time and place therein
8 named; that the testimony of said witness was reported
9 by me, a duly certified shorthand reporter and a
10 disinterested person, and was thereafter transcribed
11 into typewriting.

12 I further certify that I am not of counsel or
13 attorney for either or any of the parties to said cause,
14 nor in any way interested in the outcome of the cause
15 named in said deposition.

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 this 10th day of September, 2001.

18 _____
19 TRACY LEE MOORELAND, CSR 10397
20 State of California
21
22
23
24
25

1 ESQUIRE DEPOSITION SERVICES
2 Certified Shorthand Reporters
3 1801 I Street, Suite 100
4 Sacramento, California 95814

5 MORRISON & FOERSTER
6 ATTN: LOIS K. PERRIN, ESQ.
7 429 Market Street
8 San Francisco, CA 94105-2482

9 Re: Williams vs State
10 Deposition of: Paul Warren, Vol. III
11 Date Taken: Wednesday, August 29, 2001

12 Dear Ms. Perrin:

13 We wish to inform you of the disposition of this
14 original transcript. The following procedure is being
15 taken by our office:

- 16 _____ The witness has read and signed the
17 deposition. (See attached.)
- 18 _____ The witness has waived signature.
- 19 _____ The time for reading and signing
20 has expired.
- 21 _____ The sealed original deposition is
22 being forwarded to your office.
- 23 _____ Other:

24 Sincerely,
25 TRACY LEE MOORELAND, CSR
Esquire Deposition Services
Ref. No. 28227