

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

ELIEZER WILLIAMS,

Plaintiff(s),

vs.

No. 312236

STATE OF CALIFORNIA, et. al.,

Defendant(s),

\_\_\_\_\_ /

DEPOSITION OF JOHN KIRLIN, Ph.D.

Sacramento, California

Wednesday, September 3, 2003

Reported by:

LISA RICHARDSON, CSR, RPR, CRR

CSR No. 5883

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1 BE IT REMEMBERED that, on Wednesday, the 3rd day  
2 of September 2003, commencing at the hour of 9:08 a.m.  
3 thereof, at the Law Offices of Morrison & Foerster, 400  
4 Capitol Mall, Suite 2700, Sacramento, California,  
5 before me, LISA RICHARDSON, a Certified Shorthand  
6 Reporter in and for the State of California, duly  
7 authorized to administer oaths and affirmations, there  
8 personally appeared,  
9 JOHN J. KIRLIN, Ph.D.,  
10 a Witness in the within-entitled action called by the  
11 Plaintiffs herein, who having been duly sworn by the  
12 Certified Shorthand Reporter to tell the truth, the  
13 whole truth, and nothing but the truth, was thereupon  
14 examined and interrogated as hereinafter set forth.  
15 --oOo--  
16 EXAMINATION BY MS. WELCH  
17 Q Morning, Dr. Kirlin. I introduced myself  
18 earlier, but I will say again for the record that my  
19 name is Leecia Welch, and I represent the plaintiffs in  
20 this matter.  
21 How are you this morning?  
22 A Fine. Nice to meet you, Leecia.  
23 Q Have you been deposed before?  
24 A Yes, I have.  
25 Q How many times?

1 A I'd have to refresh my memory by looking at my  
2 vita. Four or five times. Seven or eight. Less than  
3 a dozen, I believe.

4 Q So you are probably pretty familiar with the  
5 groundrules of depositions; is that correct?

6 A I believe I am, but I'd be happy to have you  
7 repeat them if you'd like to.

8 Q Sure. I will go over a few of the basics.

9 As you know, the court reporter is going to be  
10 transcribing my questions and your answers, and it will  
11 all go into a booklet. You will have an opportunity to  
12 review that booklet once it's complete and make any  
13 changes you'd like to make. However, the lawyers in  
14 this case would be able to comment on those changes.

15 Do you understand that?

16 A Yes.

17 Q Couple things that are important. Try to  
18 answer audibly with yes or no or other responses versus  
19 uh-huh or nods of the head, because it's difficult for  
20 the court reporter to take down.

21 Does that make sense?

22 A Yes.

23 Q Another thing that's helpful is if you let me  
24 finish my question before you start your answer so that  
25 we are not talking over one another.

1 Can you do that?

2 A I will try.

3 Q So will I.

4 If any of my questions are confusing, don't  
5 make sense to you, just let me know, and I will try to  
6 ask a better question, or we can figure out what part  
7 of the question isn't tracking. Okay?

8 A Okay.

9 Q And if you need to take a break, just let me  
10 know. It's not a marathon, you can take a break  
11 whenever you need one.

12 A Okay.

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

15 A No.

16 Q Just want to start with a general question.

17 Besides the opinions that you've set out in  
18 your expert report, are there other opinions that  
19 you've arrived at during the course of your work on  
20 this case?

21 MR. CHOATE: Objection, vague and ambiguous.

22 THE WITNESS: No. The opinions I have are  
23 expressed in the report.

24 Q BY MS. WELCH: Are the basis for your opinions  
25 also reflected in your report?

1 A My report is as full in rendering of the basis  
2 of the opinions that I could provide.

3 MS. WELCH: I'm going to go ahead and make  
4 your full report an exhibit. I'm going to include the  
5 CV as well, just so that we have it altogether.

6 (Plaintiffs' Exhibit  
7 No. 1 was marked for  
8 identification.)

9 Q BY MS. WELCH: Do you recognize this document,  
10 Dr. Kirlin?

11 A Yes. Yes. The first two pages I did not  
12 prepare, but it is then my vita, and it appears to be  
13 my expert report, the beginning and the ending of the  
14 expert report. I trust everything is in there.

15 Q Did you write that expert report?

16 A Yes, I did write that expert report.

17 Q Is every word of that report yours?

18 A Yes. Except, of course, where I'm quoting  
19 someone and attributing a quote to an author.

20 Q Just going to briefly go through your  
21 educational background.

22 What was your bachelors in?

23 A Government.

24 Q Did you have a more specific focus than that?

25 A No. At this time at Notre Dame government was

1 what today would be called political science, I  
2 suspect.

3 Q Did you take any education courses as part of  
4 your bachelors?

5 A No, I did not.

6 Q You received your MPA in 1966; is that  
7 correct?

8 A That's correct.

9 Q Did you have a focus?

10 MR. CHOATE: Objection, vague and ambiguous.

11 Q BY MS. WELCH: In terms of your, in terms of  
12 your -- is -- I'm sorry. In terms of your work in  
13 public administration.

14 A I'm trying to remember. Part of my focus was  
15 on economic development at that time.

16 Q Did you have to prepare a thesis or anything  
17 like that?

18 A So long ago I can't remember, actually. I  
19 don't remember.

20 Q Did you take any education courses as part of  
21 your MPA?

22 MR. CHOATE: Object to the extent it's vague  
23 and ambiguous.

24 THE WITNESS: It would depend on what you  
25 define as an education course.

1 I took courses in public administration,  
2 administration of public organizations, which included  
3 educational organizations. And we may well have had  
4 material that spoke to education. I took courses on  
5 state and local government relations, which public  
6 educational entities are an example of a local  
7 government agency. So I would have covered those sorts  
8 of issues related to education.

9 Q BY MS. WELCH: Do you recall any courses that  
10 specifically were focused on education during your MPA?

11 MR. CHOATE: Objection, vague and ambiguous.

12 THE WITNESS: I think I gave an answer to that  
13 already.

14 Q BY MS. WELCH: As I understood your answer,  
15 you thought that education had been covered in some of  
16 the courses that you took. And my question is a little  
17 bit different.

18 I'm wondering if you took a course that was  
19 specifically focused on education systems or something  
20 along those lines.

21 A Simply educational pedagogy, no, would not  
22 have.

23 Education is a very large part of local  
24 government, so there's no way to talk about local  
25 government without talking about education. So it

1 A This is a traditional structure of a doctoral  
2 program in which one takes course work in and then  
3 writes a qualifying exam in three of those four areas.

4 Q You said economic development, American  
5 government, public administration, and what was the  
6 fourth?

7 A Comparative government.

8 MR. CHOATE: I will object to the extent it  
9 mischaracterizes the testimony. I think he said  
10 American politics, I believe. I could be wrong.

11 THE WITNESS: I believe you are correct. Yes.  
12 I said American politics.

13 Q BY MS. WELCH: Do you recall taking any  
14 education -- any courses focused specifically on  
15 education for your Ph.D.?

16 MR. CHOATE: Objection, vague and ambiguous,  
17 asked and answered.

18 THE WITNESS: The -- this would be in the  
19 same -- as I spoke earlier, when one talks about a  
20 public organization, or American politics, or even  
21 comparative government or economic development,  
22 education emerges as one policy area amongst many that  
23 is the stuff of politics, stuff of administration.

24 Q BY MS. WELCH: Is the CV that is attached as  
25 Exhibit 1, or as part of Exhibit 1 your most recent CV?

1 would have been in the context as I talked about  
2 already.

3 Q Okay. Did you have a specific focus for your  
4 Ph.D. in political science?

5 MR. CHOATE: Objection, vague and ambiguous.

6 THE WITNESS: No.

7 Q BY MS. WELCH: Did you prepare a dissertation?

8 A Yes.

9 Q What was your dissertation on?

10 A It was on decision-making in small groups.

11 Q Did you have areas that you were particularly  
12 interested in in terms of your political science study  
13 for your Ph.D.?

14 MR. CHOATE: I will object to the extent it's  
15 vague and ambiguous.

16 THE WITNESS: Yes.

17 Q BY MS. WELCH: What are those areas?

18 A One way is I -- qualified in four areas. Is  
19 that what you'd like to know?

20 Q Sure.

21 A I qualified in the areas of economic  
22 development, which I mentioned already. American  
23 politics, comparative government and public  
24 administration.

25 Q What do you mean by "qualify"?

1 A This was prepared at the time that the expert  
2 report -- I believe this is through early 2003.

3 Q Have there been any changes or updates to your  
4 CV?

5 A Yes.

6 Q What are those?

7 A I now reside in Sacramento, so the address has  
8 changed. And I have two or three more publications.

9 Q Do you recall what those are?

10 A One is about public works. It's an  
11 introduction to a set of articles about public works.

12 And one is about bringing spacial dimensions  
13 into analysis of and teaching of public -- about public  
14 affairs, are the two that I remember.

15 And I have a third piece out -- those are  
16 journal articles. I have a third issue brief out for  
17 the center that I'm affiliated with, Indiana, that  
18 compares nine regions in the United States, including  
19 Sacramento, and Indianapolis, and Austin, and others.

20 Q What journal was the public works article  
21 published in?

22 A I can provide an accurate citation, but it is  
23 something like the Journal of Public Works Policy and  
24 Administration.

25 Q And it has been published?

1 A That one I have received galleys on. So I  
2 believe it has -- I believe I have the journal. It has  
3 arrived -- I was just moving, so I believe I have that  
4 journal, yes.

5 Q What journal is the article on spacial  
6 dimensions published in?

7 A That will appear in International Journal of  
8 Public Administration.

9 Q The third article you mentioned, is that part  
10 of a journal or is that something you could get on the  
11 web?

12 A It's an issue brief that is just now going  
13 through publication. I'm not certain if it's yet  
14 posted on the website of the center. But if not yet,  
15 it will be -- I would expect it to be in the next 30  
16 days or so. And I've seen only blue line proof of  
17 that, so it is someplace in the printing process.

18 Q What aspects of these regions are compared in  
19 this third article that you mentioned?

20 A That issue brief sets the context for a series  
21 of comparisons that are being made at the center, and  
22 specifically speaks to demographic changes, structure  
23 of government, two dimensions, as I remember -- I'm  
24 speaking from memory here, and I would have to have it  
25 in front of me to be exact -- but two dimensions of

1 appointments, you were an assistant professor at  
2 University of Southern California from 1969 to 1973; is  
3 that correct?

4 A That's correct.

5 Q What courses did you teach?

6 A From memory, I would have taught, I taught  
7 courses in -- I can't remember the exact titles,  
8 whether it was state and local government or  
9 metropolitan and state and local government. I would  
10 have taught courses in introduction to public  
11 administration. Those are -- I'm certain I taught a  
12 number of courses in that period of time, but they  
13 would have focused in those two general areas.

14 Q Did you teach any courses that focused  
15 exclusively on the education system?

16 MR. CHOATE: Objection, vague and ambiguous.

17 THE WITNESS: To the best of my knowledge I  
18 taught no courses that focused exclusively on  
19 education.

20 Q BY MS. WELCH: Was the education system a  
21 component of courses that you did teach?

22 A Yes.

23 Q In terms of the courses that you taught as an  
24 associate professor from '74 to '80, would your answer  
25 be any different?

1 economic performance, job creation and growth in  
2 personal income, and an intermediate activity measure  
3 of economic activity generation of patents. I believe  
4 those are the major elements that it talks about.

5 Q Are there any other changes to your CV that  
6 you can recall?

7 A Those are the ones that come to mind now.

8 Q You said that you were still affiliated with  
9 Indiana University; is that correct?

10 A Yes.

11 Q Do you have the same position that's reflected  
12 in your CV?

13 A Yes, I do.

14 Q And you continue to be the director of the  
15 Center for Policy and -- urban Policy and the  
16 Environment? I'm sorry. The senior scholar.

17 A Yes. I am the senior scholar at the center.  
18 I'm no longer director.

19 Q That's quite a commute you have.

20 A I've been back twice in the last 30 days.

21 Q Are you currently teaching any courses?

22 A No, I'm not.

23 MR. HAJELA: That's a long way to fly for  
24 summer in Sacramento.

25 Q BY MS. WELCH: Looking back on your academic

1 MR. CHOATE: Different from what? From --

2 MS. WELCH: From what he answered to as an  
3 assistant professor.

4 Q Did you teach the same courses as an associate  
5 professor that you did as an assistant professor?

6 A I would have added two additional areas  
7 someplace in this period.

8 One course on public policy processes and  
9 making policy formation and implementation.

10 And I would have also begun someplace in  
11 here -- and I don't remember whether it started as an  
12 assistant professor or associate professor -- to teach  
13 doctoral courses in administrative theory, which is how  
14 we structure policy processes and implementation in  
15 this nation in comparison to other nations.

16 Q Did you teach any courses that focused  
17 exclusively on education systems when you were an  
18 associate professor?

19 A I do not remember teaching any such course.

20 Q What courses did you teach when you became a  
21 professor?

22 A Would have continued much the same. Sometime  
23 in this period I began to teach courses in  
24 entrepreneurship.

25 Q As a professor, did you teach any courses that

1 focused exclusively on education systems?  
 2 MR. CHOATE: Objection, vague and ambiguous.  
 3 THE WITNESS: I would respond similarly. I  
 4 don't remember teaching any course specifically focused  
 5 on education, or exclusively focused on education.  
 6 Q BY MS. WELCH: From 1998 to 2002 you were the  
 7 director for the Center for Urban Policy and the  
 8 Environment; is that correct?  
 9 A That is correct.  
 10 Q What were your -- what were your  
 11 responsibilities as director?  
 12 MR. CHOATE: Objection, vague and ambiguous.  
 13 THE WITNESS: I directed a professional staff.  
 14 I obtained funding. I stimulated and facilitated  
 15 research of faculty members. I interacted with  
 16 policymakers.  
 17 Q BY MS. WELCH: Anything else that you recall?  
 18 A No. I think those are the -- well, of course  
 19 I did my own analyses and writing, participated as an  
 20 analyst and an author in some of the work at the  
 21 center. I should have mentioned that.  
 22 Q What areas does the center focus on in terms  
 23 of policy?  
 24 A Among the areas that the center works on are a  
 25 variety of dimensions of state and local -- national,

1 state and local policy processes and implementation.  
 2 We did work, specifically in that period you  
 3 are talking about, about the impacts of gaming,  
 4 legalized gaming on the State of Indiana.  
 5 We did work on the ports at Indiana.  
 6 It was a fairly sizeable set of activities  
 7 that took place in that four-year period.  
 8 We began a series of analyses of what was  
 9 happening in central Indiana under my direction,  
 10 including analyses of demographic economic flows,  
 11 commissioned and directed analysis of educational  
 12 performance, amongst others.  
 13 Q Educational performance at what level?  
 14 A K-12.  
 15 Q Did you -- I'm sorry.  
 16 A I don't remember that we did much on higher  
 17 education. I remember specifically K-12.  
 18 Q What did you prepare regarding the K through  
 19 12 education system?  
 20 MR. CHOATE: Objection, vague and ambiguous.  
 21 THE WITNESS: I believe I said I sought and  
 22 directed analyses of K-12. They were undertaken by  
 23 others. And we looked at the -- again, under the award  
 24 of which I was the principal investigator, my memory is  
 25 that those analyses looked at resource levels available

1 to schools and performance. But I don't have the  
 2 documents in front of me, and this is now some years --  
 3 a few years ago.  
 4 Q BY MS. WELCH: Was a document published?  
 5 A Yes. Actually let me go back on that.  
 6 I am not certain we ever issued that work as  
 7 an issued brief or a technical report, which is the two  
 8 ways we brought work out. I don't remember, actually.  
 9 Q Do you recall the names of the -- I don't know  
 10 if you'd call them principal investigators or the other  
 11 participants in the study?  
 12 MR. CHOATE: Objection, vague and ambiguous.  
 13 THE WITNESS: I was the principal investigator  
 14 on the award. And I -- I do not remember at the moment  
 15 the authors. They were at Indiana University in  
 16 Bloomington and adjacent campus. And I may remember  
 17 them later, or we could -- if it's important I can find  
 18 out.  
 19 Q BY MS. WELCH: From whom did you receive the  
 20 award?  
 21 A That work was supported by the Lilly  
 22 Endowment, Inc.  
 23 Q If a report had been published, would it be on  
 24 the center's website?  
 25 A At the time those reports were done we weren't

1 mounting everything on the website, so it may or may  
 2 not be.  
 3 Q Do you recall if the work was memorialized in  
 4 some fashion?  
 5 MR. CHOATE: Objection, vague and ambiguous.  
 6 Q BY MS. WELCH: You said earlier that you  
 7 weren't sure if it was an actual report. I was  
 8 wondering if there's a copy of it that I could get if  
 9 it's memorialized in some way.  
 10 A We received a report. And what I don't  
 11 remember is what we did with that, whether it was  
 12 issued separately or incorporated in. We made a number  
 13 of public presentations, and my memory -- and I don't  
 14 remember how we used it. I don't remember.  
 15 Q Is there a way that you could refresh your  
 16 recollection on this issue?  
 17 MR. CHOATE: Sitting here today you are asking  
 18 him --  
 19 MS. WELCH: No, not necessarily sitting here  
 20 today.  
 21 Q I'm just wondering if there's a way you can  
 22 find out whether or not a report was published or  
 23 another type of document came out of this study.  
 24 A Yes, I can do that.  
 25 Q I'd appreciate it. You don't have to do it

1 right now.

2 A It will be in the -- Mr. Choate can make a  
3 note. I don't have a pad here.

4 Q Do you recall in any more detail what was  
5 analyzed as part of the study?

6 MR. CHOATE: Objection, vague and ambiguous.

7 THE WITNESS: I think I spoke to the resources  
8 and performance -- resources available and performance.  
9 I believe those were the two major issues. We had  
10 analyzed possible variation across schools in Indiana,  
11 so we looked at either the county level or metropolitan  
12 statistical area level.

13 Q BY MS. WELCH: Do you recall any of the  
14 conclusions that were reached in that report, if any?

15 MR. CHOATE: Objection, vague and ambiguous.

16 THE WITNESS: No, I don't. And this was one  
17 of a number of studies commissioned, and I wouldn't  
18 hazard a response without the document in front of me  
19 as to what the conclusions were.

20 Q BY MS. WELCH: When you spoke of resources,  
21 were you speaking specifically of financial resources,  
22 or were you also talking about other resources that the  
23 schools had available?

24 MR. CHOATE: Objection, compound.

25 THE WITNESS: I would have to have the

1 MR. CHOATE: What studies are we talking  
2 about?

3 MS. WELCH: The studies that the center  
4 publishes.

5 THE WITNESS: I can't answer that question  
6 without actually looking at the list of publications  
7 and seeing which ones I was an author of. I don't know  
8 the answer to that question.

9 Q BY MS. WELCH: Is it because it's such a large  
10 number?

11 A It's a substantial number. This was a 3.7  
12 million dollar award, the first award. The second was  
13 a 4 million dollar award. There may have been dozens  
14 of -- there were dozens of publications. I can't  
15 answer that question without the corpus in front of me.

16 Q During the time period you were director of  
17 the center, you were also a professor at Indiana  
18 University; is that correct?

19 A Yes.

20 Q Did you teach courses?

21 A Yes, I did.

22 Q What did you teach?

23 A At Indiana University I taught two courses; an  
24 undergraduate course, introduction to public affairs,  
25 and a masters level capstone course.

1 document in front of me to talk -- to speak to what  
2 possibly beyond financial resources were available --  
3 were analyzed.

4 Q BY MS. WELCH: While you've been director of  
5 the -- while you were director of the center, do you  
6 recall any other studies that focused specifically on K  
7 through 12 education?

8 MR. CHOATE: Object to the extent it's vague  
9 and ambiguous.

10 THE WITNESS: I think my response is in the  
11 same pattern as before.

12 Education is an issue in any region. The  
13 performance of the educational system, we would have  
14 looked at that. I don't remember another analysis  
15 specifically looking at just, for instance, K-12  
16 isolated from other things going on.

17 Q BY MS. WELCH: Do you recall the specific  
18 studies that would have looked at education as a  
19 component?

20 A I don't. And this is a substantial body of  
21 work, and I'd prefer not to hazard responses.

22 Q How many of the studies were you an author  
23 of --

24 MR. CHOATE: Objection, vague and ambiguous.

25 Q BY MS. WELCH: -- while you were at the center?

1 Q What do you mean by capstone course?

2 A Capstone course is a fairly common feature of  
3 professional degree programs in public affairs in  
4 which, taken in the last semester or late in the  
5 program, intended to afford students an opportunity to  
6 integrate and apply what they have learned in other  
7 subject matter and tool-oriented courses.

8 Q Were K through 12 education systems a  
9 component of your intro to public affairs course?

10 MR. CHOATE: Objection, vague and ambiguous.

11 THE WITNESS: Only in the same way it would  
12 have been in the other courses as described. One can't  
13 talk about public affairs without talking about public  
14 education.

15 Q BY MS. WELCH: Why is that?

16 MR. CHOATE: Why is what?

17 Q BY MS. WELCH: Why is it that one can't talk  
18 about public affairs without talking about public  
19 education?

20 A It's a very large public sector activity in  
21 terms of financial flows and employment. And the  
22 success of the educational system is critical for the  
23 functioning of society.

24 Q Why do you think the success of the education  
25 system is critical to the functioning of society?

1 MR. CHOATE: Objection.

2 THE WITNESS: Analysts have commonly talked  
3 about two dimensions of this; the preparation of the  
4 work force and preparation of citizens.

5 Q BY MS. WELCH: In what ways does the public  
6 education system involve preparation of citizens?

7 MR. CHOATE: I will object to the extent that,  
8 you know, your question calls for Dr. Kirlin to  
9 speculate.

10 But to the extent she's asking you questions  
11 that are within the scope of your teaching as a  
12 professor, go ahead.

13 THE WITNESS: This is related to my work in  
14 public affairs as a professor and as a participant in  
15 the profession, not to my expert report in this  
16 context.

17 Analysts talk about three different dimensions  
18 of preparation for citizenship. One, a set of  
19 cognitive understandings of, if you will, a structure  
20 of government, Bill of Rights, things like that.

21 Second, a set of skills, such as the ability  
22 to listen, the ability to articulate a position  
23 effectively.

24 And third, they talk often about a set of  
25 values, such as tolerance, acceptance of a variety of

1 research activities and support for the center, funding  
2 support.

3 Q BY MS. WELCH: Outside of the three articles  
4 that we talked about earlier that you would count as  
5 additions to your CV, are you currently working on any  
6 other articles or research projects?

7 MR. CHOATE: In connection with -- I'm sorry,  
8 Dr. Kirlin.

9 In connection with his work at the center?

10 MS. WELCH: For any purpose.

11 THE WITNESS: At the center I am -- yes. And  
12 elsewhere, too.

13 Q BY MS. WELCH: What are you currently working  
14 on at the center?

15 A At the center I am working to bring two other  
16 issue briefs to completion and publication. Issue  
17 briefs are technical reports. And it depends upon how  
18 long they will be whether they fall in one category or  
19 the other.

20 One analyzes the regional governance and  
21 economic development activities in the nine regions  
22 that we are comparing systematically.

23 The other one is a compilation and a  
24 discussion of the usefulness of a variety of measures  
25 of indicators of performance in these same nine

1 opinions, attachment to democratic norms of civility.

2 Q Anything else?

3 A I'm sorry?

4 Q Anything else?

5 A No. Those were the three.

6 Q Was K through 12 education a topic in your  
7 master level capstone course?

8 MR. CHOATE: Objection, vague and ambiguous.

9 THE WITNESS: It was a topic when -- this is a  
10 course, as I responded earlier, which students  
11 integrate and apply materials from other courses. And  
12 so as -- and students work in teams. As student teams  
13 would work on education, it became a matter of  
14 discussion in the classroom and in my interactions with  
15 that team.

16 Q BY MS. WELCH: What are your responsibilities  
17 as senior scholar of the Center for Urban Policy and  
18 Environment?

19 MR. CHOATE: Objection, vague and ambiguous.

20 THE WITNESS: They fall into three broad  
21 areas.

22 I continue to do analysis and writing.

23 I serve as a -- one of the group of faculty

24 who provide support counsel to the current director.

25 I am exploring and developing ideas for

1 regions.

2 I am also analyzing the fiscal affairs of  
3 local governments in these nine regions as a separate  
4 activity.

5 I believe those are my -- that's the work I'm  
6 doing now at the center.

7 Q Besides the analysis of the fiscal affairs, is  
8 there any other research you are doing separate from  
9 the center?

10 A As is common in my profession, I have two or  
11 three other projects that are sort of in latency or  
12 partially completed that I need to move forward as I  
13 have resources and time.

14 Q What are those projects?

15 A One of those is an analysis of the experience  
16 of doctoral students that I worked with at the  
17 University of Southern California. And -- I'm blocking  
18 on what else I'm working on now. I don't remember.  
19 The others are not active areas of work at the moment.

20 Q Are any of the projects that you are currently  
21 working on -- do any of the projects have K through 12  
22 education as a component of the analysis?

23 MR. CHOATE: Objection, vague and ambiguous.

24 THE WITNESS: Yes. The fiscal analysis  
25 includes, of course, public education. That work is

1 in -- well, that work is ongoing. The indicators --  
2 work includes a variety of indicators of educational  
3 performance.

4 And the analysis of the doctoral students,  
5 many of those are in, working in the field of higher  
6 education, and a few are working in schools of  
7 education.

8 Q BY MS. WELCH: What aspects of the doctoral  
9 students' experience are you analyzing?

10 MR. CHOATE: Objection, vague and ambiguous.

11 THE WITNESS: This is a project I've not paid  
12 attention to in many months as I prepared to move and  
13 moved.

14 But it includes a questionnaire which asks  
15 them about their professional activities, asks them  
16 also about what parts of their doctoral experience they  
17 found valuable, what areas they, now being further into  
18 their careers, would have liked to have strengthened.  
19 That's what comes to mind.

20 Q Going back to the project you are working on  
21 regarding the fiscal affairs of local governments.

22 What aspects of public education are you  
23 analyzing as part of that project?

24 MR. CHOATE: Objection, vague and ambiguous.

25 THE WITNESS: An early part of this work

1 A Just to clarify. Those are the ones regarding  
2 the indicators and the economic -- the governance and  
3 economic development.

4 Those are -- I would expect if we can move  
5 them forward will be in some final written form within  
6 the next two months. And then we go into the  
7 production process, which can run another 30 to 45 to  
8 60 days.

9 MR. CHOATE: We've been going for about an  
10 hour. Take a quick break?

11 MS. WELCH: Sure. That's fine.

12 (A break was taken.)

13 Q BY MS. WELCH: I'm going to talk about your  
14 experience as an expert witness.

15 Do you recall how many times you have been an  
16 expert witness?

17 A Something between eight and 12, I believe.

18 Q Are all of the engagements listed in your CV?

19 A I believe so. Yes. To the best of my

20 knowledge.

21 Q Without going through every single engagement,  
22 can you give me a general -- can you give me general  
23 categories of the areas in which you've testified as an  
24 expert?

25 A Testified as in trial?

1 focused specifically on the Indianapolis metropolitan  
2 area, and looked at the structure of financing of  
3 public activities, including public education in that  
4 area. And that pattern of analysis will continue as  
5 the work extends out to the other eight regions.

6 Q BY MS. WELCH: Are you looking at the quality  
7 of schooling?

8 MR. CHOATE: Objection, vague and ambiguous.

9 What do you mean by "quality"?

10 THE WITNESS: My memory is that focused  
11 exclusively on the fiscal relationships.

12 Q BY MS. WELCH: Do you have plans to publish  
13 this project, the fiscal affairs project?

14 A Yes.

15 Q What are those plans?

16 A I hope to complete a center-issued technical  
17 report on the analysis of Indiana in the fall of this  
18 year, and in midstream through developing plans to do  
19 the analysis and the writing will result in a book  
20 length monograph, and presumably a book, comparing nine  
21 regions. That would not be completed until the latter  
22 part of 2004.

23 Q When do you expect the two issue briefs to be  
24 published that you talked about that you are working on  
25 for the center?

1 Q Why don't we just -- why don't I back up a  
2 step.

3 Where you have been asked to be an expert  
4 witness.

5 MR. CHOATE: Do you want to ask him about the  
6 eight to 12 times where he's testified -- he believed  
7 he served as an expert witness? Is that what you are  
8 getting at.

9 MS. WELCH: I don't know that he's testified  
10 all those times.

11 Q It seems -- in your CV it seemed to say that  
12 at times you'd actually testified and other times you'd  
13 just done consulting work.

14 A That's correct.

15 Q So if we look at the times you've been asked  
16 to be an expert, can you tell me the categories of  
17 expert work that you've done?

18 A Let me start it, and then it may be useful to  
19 look at the specific assignments to flush it out.

20 They generally fit into my areas of expertise,  
21 which are the development of policies, the financing of  
22 policies and implementation of policies, particularly  
23 in state and local relationships, and also the  
24 implementation of activities all the way through  
25 service delivery.

1 The -- there were a set of cases that focused  
2 on state-local relationships. After Proposition 13  
3 there was a large case that revolved around local  
4 policy making and service delivery by municipalities.

5 There were three cases that speak to sort of  
6 the -- how public organizations do their work; one of  
7 which the issue was a discharge of a secretary.

8 Another one was a discharge of a City Manager.

9 The third case in that area the plaintiff was  
10 alleging that a government had not adequately  
11 maintained flood control systems.

12 I believe that's the cases. But as I said, it  
13 may be useful to go through them one-by-one to make  
14 sure I've accurately described what I was asked to do.

15 Q Can you give a breakdown of how many times you  
16 were an expert for the plaintiffs versus the  
17 defendants?

18 A Not without going through this document.

19 Q All right. Well, then, I was trying to avoid  
20 that, but why don't we go ahead and do that.

21 MR. CHOATE: She will walk you through the  
22 document.

23 THE WITNESS: Do you want to walk me through  
24 it?

25 Q BY MS. WELCH: It looks like the first expert

1 particularly amongst policy makers. But that very  
2 quickly matters became routinized and that there was  
3 effectively no impact on the municipal services of  
4 these municipalities.

5 Q Have you completed that expert work?

6 A Yes. That work is completed.

7 Q What lawyers did you work with?

8 A O'Melveny & Myers. Well, John Clough &  
9 Associates in Alaska, and O'Melveny & Myers was the  
10 lead for the trial.

11 Q Did you work with particular attorneys at  
12 O'Melveny?

13 A Actually my particular attorney I worked with  
14 and the one who did the direct at trial was John Clough  
15 from Clough & Associates.

16 Q Do you recall your total fees for that case?

17 A That case extended over nearly a decade. It  
18 was -- it ended up being substantial fees. I don't  
19 remember the total amount.

20 Q Do you have an estimate?

21 MR. CHOATE: Objection, asked and answered.

22 THE WITNESS: In excess of 100,000.

23 Q BY MS. WELCH: Over the course of a ten-year  
24 period; is that right?

25 A I don't remember, Leecia.

1 consulting work listed is on the top of page 2; is that  
2 correct?

3 A Yes. That is correct.

4 Q In that case you were an expert witness for  
5 EXXON; is that right?

6 A Yes. That is correct.

7 I note, incidentally, as a correction, that  
8 earlier I was asked if this vita is correct, and I  
9 mentioned some other additions. I don't have included  
10 this analysis and consulting expert witness role  
11 listed, the current Williams case.

12 Q What was this case about?

13 A This was a case about whether the EXXON Valdez  
14 oil spill had caused a diversion of municipal services  
15 by the plaintiff municipalities.

16 Q Can you give a general summary of your  
17 opinions in that case?

18 A I analyzed what had happened in these  
19 municipalities in their service delivery, and also the  
20 decision-making by their governing bodies, burrough  
21 councils, city councils, and reached the conclusion  
22 based on that evidence that in the very immediate  
23 aftermath of the EXXON Valdez there had been  
24 substantial attention paid to the spill and its  
25 potential impacts on these plaintiff local governments,

1 Q Were you deposed?

2 A Yes.

3 Q And you already said you testified at trial.

4 A Yes.

5 Q The next expert work I see listed on your CV  
6 is titled "Failure of Pajaro River Flood Control  
7 Project."

8 A Yes.

9 Q Do you know, are these set up in reverse  
10 chronological order?

11 A Yes.

12 Q So you testified -- or you worked on that case  
13 in 1998?

14 A That's correct.

15 Q What was that case about?

16 MR. CHOATE: Objection, vague.

17 Are you asking him what the case was about or  
18 what his role as an expert in that case was about?

19 Q BY MS. WELCH: What that case was about  
20 generally. Just a couple sentences.

21 A The Pajaro River had breached its banks and  
22 levees, and it had flooded, in my memory, the  
23 plaintiff's land. And the plaintiff was suing the two  
24 counties who had responsibility for that flood control  
25 project.

1 Q You represented the plaintiff in that case?  
 2 A Yes.  
 3 Q Could you give me a general summary of your  
 4 opinions in that case?  
 5 A In that case I analyzed the decision-making  
 6 and -- regarding the maintenance of the project and the  
 7 financing of maintenance activities for some more than  
 8 two decades, as I remember. And reached the conclusion  
 9 that the local government officials responsible for  
 10 maintaining the floodway had at some point decided to  
 11 dramatically reduce that maintenance, and instead treat  
 12 it as a, simple way of saying it is, desirable wildlife  
 13 habitat.  
 14 Q Did you prepare an expert report in that case?  
 15 A Yes, I did.  
 16 Q You were deposed as well?  
 17 A Yes.  
 18 Q Did you testify at trial?  
 19 A No.  
 20 Q Did it go to trial?  
 21 A Yes. I believe it did.  
 22 Q Do you know why they didn't use your testimony  
 23 at trial?  
 24 MR. CHOATE: I will object to the extent it  
 25 calls for speculation.

1 THE WITNESS: No, I do not.  
 2 Q BY MS. WELCH: Do you have an estimate of your  
 3 fees for that case?  
 4 A Perhaps in the \$20,000 range. But no good  
 5 memory.  
 6 Q The next case you've called the "Fiscal  
 7 Impacts of State Action on the City of Emeryville."  
 8 A Yes.  
 9 Q Is that correct?  
 10 A Yes, that's correct.  
 11 Q Did you represent the plaintiff or defendant  
 12 in this case?  
 13 A The defendant.  
 14 Q Was the defendant the State of California?  
 15 A The defendant was the City of Emeryville.  
 16 Q Who was the plaintiff?  
 17 A The plaintiff was a discharged former  
 18 secretary to the city manager.  
 19 Q This was the case you talked about earlier  
 20 that was an employment dispute?  
 21 A There were two such cases. This is one of  
 22 them.  
 23 Q Why have you titled it "Fiscal Impacts of  
 24 State Actions on City of Emeryville"?  
 25 A I was asked to analyze the fiscal context in

1 which this discharge occurred.  
 2 Q Could you provide a brief summary of your  
 3 opinion for that case?  
 4 A I did extensive analysis of the finances of  
 5 the City of Emeryville and other local governments and  
 6 the relationship of the state to financing of local  
 7 government activities. And an analysis -- I think -- I  
 8 don't know if I said an analysis of the finances of the  
 9 City of Emeryville specifically -- and offered the  
 10 opinion that the City of Emeryville had substantial  
 11 uncertainty about its finances when it undertook --  
 12 when this employee was discharged. And I don't  
 13 remember whether that actual trend line in revenues was  
 14 down or not, but there was a huge amount of uncertainty  
 15 about the finances of cities at that time.  
 16 Q You prepared an expert report?  
 17 MR. CHOATE: You are talking about the City of  
 18 Emeryville case?  
 19 MS. WELCH: Yes.  
 20 THE WITNESS: That may have been a case where  
 21 I was asked not to prepare a report. I'm not certain.  
 22 Q BY MS. WELCH: You were deposed in that case?  
 23 A Yes.  
 24 Q And you gave trial testimony as well?  
 25 A Yes.

1 Q Do you recall your fees for that case?  
 2 A Some tens of thousands. I don't remember.  
 3 Q The next expert work I see is entitled  
 4 "Declaration of John J. Kirlin." And it's on page 3.  
 5 What was this case about?  
 6 MR. POULOS: Excuse me. I think you skipped  
 7 one.  
 8 MS. WELCH: Did I?  
 9 MR. POULOS: I can't --  
 10 MS. WELCH: I think you are right.  
 11 MR. CHOATE: Leecia, you can't ask questions  
 12 about --  
 13 MS. WELCH: We will go back to that one. We  
 14 will talk about the declaration of John J. Kirlin.  
 15 Q What was that case about?  
 16 A This case was about the impacts of the  
 17 property tax shift that the state made from local  
 18 governments to schools, and analysis of that impact of  
 19 those shifts upon the Calleguas Municipal Water  
 20 District.  
 21 Q This was in 1994?  
 22 A Yes.  
 23 Q Did you work for the plaintiff or the  
 24 defendant?  
 25 A I was working with Calleguas Municipal Water

1 District, and they were the plaintiff. The state would  
2 have been the defendant in this case.

3 Q Could you give a summary of your opinions in  
4 that matter?

5 A That's now nearly ten years old.

6 The shift had substantial impacts on all such  
7 water -- all such special districts, and I presume that  
8 my declaration spoke to those impacts. But it's  
9 sometime now.

10 Q Do you recall your fees?

11 A This was a fairly short assignment, and I  
12 would expect in the thousands. But I don't -- it's  
13 some ten years now.

14 MR. CHOATE: She doesn't want you to guess.  
15 If you don't know, you should say so.

16 THE WITNESS: I don't know.

17 Q BY MS. WELCH: But your best estimate would be  
18 in the thousands?

19 Going back up to the one we skipped, it's also  
20 on page 3 of your CV, it's called "Relationships  
21 Between City Councils and City Managers."

22 That case was in 1994?

23 A Yes.

24 Q Did you represent the plaintiff or the  
25 defendant in that case?

1 Q Is that connected with the earlier work you  
2 discussed for EXXON?

3 A Yes.

4 Q And it dealt with the same set of facts you  
5 already testified about?

6 A Yes.

7 You skipped another expert witness role,  
8 Leecia.

9 Q I don't have good reading comprehension.

10 "Analyses of Impacts of Property Tax Shifts."  
11 Is that what you are referring to?

12 A Yes.

13 Q Did you work with the plaintiff in that case?

14 A Yes. I worked with the plaintiff County of  
15 San Diego.

16 Q That was in the 93/94 time frame?

17 A Yes.

18 Q What was that case about?

19 MR. CHOATE: I will object to the extent it  
20 calls for a legal conclusion.

21 THE WITNESS: The context in which this case  
22 arose is the same as in the Calleguas Municipal Water  
23 District.

24 The state shifted property tax base from local  
25 governments, including cities, counties and special

1 A In this case I represented the plaintiff, or  
2 served in representation of the plaintiff.

3 Q What was this case about?

4 MR. CHOATE: Object to the extent it calls for  
5 a legal opinion.

6 THE WITNESS: Rita Hardin had been discharged  
7 by the City of Concord, and the defendant City of  
8 Concord had retained an expert who opined about typical  
9 relationships between city councils and city managers.  
10 I was offered to offer an opinion on the same matters.

11 Q BY MS. WELCH: What was your opinion?

12 A The defendant's expert had offered what I  
13 characterize as unsubstantiated and unnuanced  
14 descriptions of that relationship, and I drew upon  
15 materials provided by the League of California Cities  
16 in the training of city councils and other literature  
17 to make an argument about a more complex, accurate, and  
18 nuanced understanding of the relationship.

19 Q And Rita Hardin had been the city manager; is  
20 that correct?

21 A Rita Hardin had been the city manager.

22 Q The next listing on page 3 I believe is "EXXON  
23 Defendants' Preliminary Report on Alleged Economic  
24 Damages to Municipalities Part Two." Is that correct?

25 A Yes.

1 districts, to schools. And I analyzed the impacts of  
2 those shifts.

3 Q What was your conclusion?

4 A We are speaking about work done a decade ago.

5 In this case the shifts were to the detriment  
6 of the affected local governments.

7 My memory is I compared a number of counties  
8 in addition to San Diego, and I believe in this case  
9 also analyzed -- either in this or the other assignment  
10 for San Diego, but I believe in this case -- also  
11 analyzed the financing of schools as a part of the  
12 case.

13 Q As part of your expert work, did you analyze  
14 why the state would be responsible for this?

15 MR. CHOATE: Objection, vague.

16 MS. WELCH: Let me try to rephrase it.

17 Q Why the state would be liable to the, in this  
18 case San Diego?

19 MR. CHOATE: Objection, vague and ambiguous.  
20 Calls for a legal conclusion.

21 THE WITNESS: No. That does seem to be a  
22 legal question as to liability.

23 I would have analyzed the shifts that had  
24 occurred, is my memory of what I did.

25 Q BY MS. WELCH: Do you recall your fees for

1 this case?  
 2 A It's a long time ago. I don't remember.  
 3 Q Do you recall if you prepared an expert  
 4 report?  
 5 A I presume there was some document about the  
 6 analyses. And it's not referred to as an expert  
 7 report, so I'm not certain what form it took.  
 8 Q Were you deposed?  
 9 A It does not say I was deposed, and I don't  
 10 remember being deposed on this case.  
 11 Q And you did not give trial testimony?  
 12 A No.  
 13 Q Moving to the next case. Your work is titled,  
 14 "Allocation of Property Taxes Under AB 8."  
 15 Did you represent the plaintiff or the  
 16 defendant in this case?  
 17 A Actually you skipped another one.  
 18 Q I did? How did I do that?  
 19 MR. CHOATE: Don't answer that question.  
 20 Excuse me. Allocation of property taxes under  
 21 AB 8 for the County of San Diego versus the State of  
 22 California.  
 23 Would you restate the question, please?  
 24 Q BY MS. WELCH: Did you represent the plaintiff  
 25 or the defendant?

1 A Plaintiff County of San Diego.  
 2 Q And what was the issue in this case?  
 3 MR. CHOATE: I will object to the extent it  
 4 calls for a legal conclusion.  
 5 THE WITNESS: The context of the case was that  
 6 after passage of Proposition 13, the state -- the State  
 7 of California adopted a system by which property taxes  
 8 were apportioned, referred to here as Assembly Bill, AB  
 9 8. And County of San Diego judged that allocation  
 10 scheme to be harmful to them.  
 11 Q BY MS. WELCH: Could you summarize your  
 12 opinions in that case?  
 13 A I analyzed the allocation of property taxes  
 14 under AB 8. They did discriminate against the counties  
 15 such as San Diego, and greatly advantaged the County of  
 16 San Francisco.  
 17 Q Why was that?  
 18 MR. CHOATE: Objection. Withdraw the  
 19 objection.  
 20 THE WITNESS: I would go back and refresh my  
 21 memory about all the specifics.  
 22 But the primary reason was that the allocation  
 23 was based on previous expenditures, local government  
 24 expenditure levels.  
 25 Q BY MS. WELCH: And this was in the 1989 to

1 1991 time frame?  
 2 A That's correct.  
 3 Q Do you recall if you prepared an expert  
 4 report?  
 5 A The reference here is to analyses which took a  
 6 written form. I don't remember if it was an expert  
 7 report submitted as a court document or in what form it  
 8 was prepared.  
 9 Q You were deposed for this case?  
 10 A Yes.  
 11 Q And you were a witness at trial?  
 12 A Yes.  
 13 Q Do you recall your fees?  
 14 A It's a long time ago. I don't.  
 15 Q Which one did you think I skipped? We already  
 16 talked about --  
 17 A There was another "Calleguas Water District  
 18 Alternatives of Property Tax Shifts."  
 19 Q I thought we already talked about that one.  
 20 A I believe we spoke about the Calleguas one  
 21 that is four lines above.  
 22 Q Okay. So this is a different one?  
 23 A Yes.  
 24 Q And you represented the plaintiff again in  
 25 this case?

1 A Yes.  
 2 Q What was the issue in this case?  
 3 MR. CHOATE: Object to the extent it calls for  
 4 a legal conclusion.  
 5 THE WITNESS: The context of this case was,  
 6 again, the shift of property taxes with the legislature  
 7 and governor, the State of California undertook in this  
 8 time period.  
 9 Q BY MS. WELCH: What was your opinion?  
 10 A I was asked and did provide a list of  
 11 alternatives to that property tax shift.  
 12 Q I know this was a while ago, but can you  
 13 generally describe what those alternatives were that  
 14 you provided?  
 15 A I can't.  
 16 Q Have you exhausted your memory on what your  
 17 opinion was in that case?  
 18 A I know we identified a number of alternatives.  
 19 I don't remember what they were.  
 20 Q Do you know, were the two Calleguas cases that  
 21 you worked on, were they related to one another or were  
 22 they separate cases?  
 23 MR. CHOATE: Objection to the extent it calls  
 24 for speculation.  
 25 THE WITNESS: My understanding is that they

1 were separate. They were separate assignments for me,  
 2 that I know. That's the simplest way to say it.  
 3 Q BY MS. WELCH: Okay. Do you recall whether  
 4 you were deposed in this one?  
 5 MR. CHOATE: Are you talking about the  
 6 alternatives to property tax shifts?  
 7 MS. WELCH: Yes.  
 8 THE WITNESS: I do not believe I was deposed.  
 9 Q BY MS. WELCH: And you didn't testify at  
 10 trial?  
 11 A No.  
 12 Q I bet you don't recall what your fees were.  
 13 A You are right.  
 14 Q I don't see any other expert assignments on  
 15 your CV. Do you?  
 16 A I see no others.  
 17 Q Sitting here today, do you remember if there  
 18 are assignments that -- expert assignments that you did  
 19 that are not listed on your CV?  
 20 A No, I do not remember any.  
 21 MR. CHOATE: May we just take a break for a  
 22 minute?  
 23 MS. WELCH: Sure.  
 24 (A break was taken.)  
 25 Q BY MS. WELCH: So besides what we've already

1 talked about earlier today, have you ever conducted any  
 2 research on issues relating to public education?  
 3 MR. CHOATE: Objection, vague and ambiguous.  
 4 THE WITNESS: Of course in the context that  
 5 I've talked about several times of the relationship  
 6 between, particularly state and local affairs, policy  
 7 making, and specifically in California.  
 8 Q BY MS. WELCH: Besides what we've already  
 9 talked about, have you conducted any research on issues  
 10 relating exclusively to K through 12 education?  
 11 MR. CHOATE: Objection, vague and ambiguous.  
 12 THE WITNESS: If the question is limited to  
 13 personally authored, I can think of none exclusively on  
 14 education.  
 15 Q BY MS. WELCH: If we expanded it to another  
 16 role. I know you say personally authored, no. But is  
 17 there another role in which you played a part in  
 18 research that was exclusively focused on K through 12  
 19 education?  
 20 A There were two other roles in which I played  
 21 research oversight roles. One as editor of California  
 22 Policy Choices when we published some articles, and I  
 23 don't remember the number, on K-12.  
 24 And the second role would be as a dissertation  
 25 advisor in context in which I had doctoral students

1 writing about K-12 education.  
 2 I probably also have reviewed manuscripts for  
 3 journals, which is not directing research, but requires  
 4 judgments about adequacy of research that have dealt  
 5 with K-12 education.  
 6 Q Focusing on the time that you were the editor  
 7 for Policy Choices, are there any articles that come to  
 8 mind that you recall editing that deal with K through  
 9 12 education?  
 10 A I'd have to go back. This is quite a while  
 11 ago now, and there were nine volumes in that series.  
 12 I'm trying to dredge up the name of the person, the  
 13 faculty member at the UCLA, now University of  
 14 Washington, I believe, who wrote about education. I  
 15 believe there were one or two others. There were a few  
 16 articles on K-12. But I'd have to look at the volumes  
 17 to give you an accurate response.  
 18 Q And were you -- when were you the editor of  
 19 that journal?  
 20 A That series of books -- it's reflected in  
 21 here. It began -- it's reflected in here, is the best  
 22 way to do it. 1985 through 1994.  
 23 Q Do you recall any of the dissertations about K  
 24 through 12 education on which you were the advisor?  
 25 A I remember two at this time. There may have

1 been more. There were several dozen dissertations that  
 2 I worked on as a committee member.  
 3 Q What were the topics?  
 4 A This is from sometime ago. One, as I  
 5 remember, it was about -- actually I shouldn't speak  
 6 from memory on this. I can't remember well enough.  
 7 Q You can't remember either of them?  
 8 A No. I shouldn't try to dredge it up from  
 9 memory.  
 10 Q Do you recall any of the manuscripts that you  
 11 said you reviewed?  
 12 A I don't.  
 13 Q Before preparing your expert report in this  
 14 case, had you ever analyzed California's K through 12  
 15 education system?  
 16 MR. CHOATE: Objection, vague and ambiguous.  
 17 THE WITNESS: As stated earlier, in the  
 18 context of the dynamics between relationships of the  
 19 state policy making and fiscal affairs, and in the  
 20 context of the one case where I was working for the  
 21 County of San Diego, had undertaken analyses of K-12  
 22 fiscal affairs for -- primarily.  
 23 Q BY MS. WELCH: So were these analyses that you  
 24 performed focusing on fiscal issues?  
 25 A That's my memory.

1 Q Do you recall any of the articles?

2 A An example would be "Political Economy of  
3 Fiscal Limits," the book authored now quite a while  
4 ago, analyze the state policy making in the period  
5 before Proposition 13, and the relationships between  
6 the state -- fiscal relationship between the state in  
7 forms of local government, including schools. I can't  
8 remember how extensively that was treated, but I  
9 believe it is part of that discussion.

10 Q Besides the work that you've done analyzing  
11 Prop 13 and its effect, do you recall any other  
12 analyses that you've performed of California's K  
13 through 12 education system?

14 MR. CHOATE: Objection, vague and ambiguous.  
15 Personally? Is that what you are asking?

16 MS. WELCH: Yes.

17 THE WITNESS: If we extend Proposition 13,  
18 much of the fiscal policy making in California since  
19 1978 can be explained as continued judgements, fights  
20 about decisions made in the two years immediately  
21 following Proposition 13. The -- my analyses of school  
22 finances fit into that area.

23 Q BY MS. WELCH: Have you analyzed issues in K  
24 through 12 public education in California relating to  
25 school quality?

1 MR. CHOATE: Objection, it's vague and  
2 ambiguous.

3 THE WITNESS: School accountability systems?  
4 No.

5 Q BY MS. WELCH: Have you ever analyzed the  
6 issues relating to the operations of public schools?

7 MR. CHOATE: Objection, vague and ambiguous.

8 THE WITNESS: If by "operations" you mean the  
9 roles of superintendents, boards, principals, of the  
10 internal operations of the public school entities, I do  
11 not believe so.

12 Q BY MS. WELCH: Have you ever analyzed issues  
13 related to whether students have an opportunity to  
14 learn?

15 MR. CHOATE: Objection, vague and ambiguous.

16 Q BY MS. WELCH: In K through 12 public  
17 education.

18 MR. CHOATE: Same objection.

19 THE WITNESS: As I understand the question,  
20 no.

21 Q BY MS. WELCH: Have you ever analyzed issues  
22 relating to school adequacy?

23 MR. CHOATE: Objection, it's vague and  
24 ambiguous. I'm not clear what you mean by "school  
25 adequacy."

1 MR. CHOATE: I will object, it's vague and  
2 ambiguous.

3 THE WITNESS: I have no memory of doing an  
4 analysis specifically focused on school quality before  
5 this report.

6 Q BY MS. WELCH: Did you do an analysis on  
7 issues relating to education outside of your work on  
8 school finance in California?

9 MR. CHOATE: Same objection.

10 THE WITNESS: The other analysis which -- I  
11 have to say I'm not -- I'm not certain, but I believe  
12 there are analyses -- the question is whether I did  
13 them or participated in teams of people that did  
14 them -- that analyzed impacts of school quality on  
15 decisions about where people live. And I can't  
16 remember when I've done that sort of work. It is so  
17 much of a part of the way we talk about what happens in  
18 urban areas, that it probably is in part of my work,  
19 and I can't remember where.

20 Q BY MS. WELCH: Do you remember looking at that  
21 issue specifically in California?

22 A I don't.

23 Q Before preparing your expert report in this  
24 case, had you ever prepared a paper regarding school  
25 accountability systems?

1 Q BY MS. WELCH: Do you understand what I mean  
2 by "adequacy"?

3 A I'm not sure I do.

4 Q There's a line of cases called adequacy  
5 litigation looking at whether students have access to  
6 what they need to learn in schools.

7 Are you familiar with school adequacy cases?

8 A No.

9 Q In your opinion, did Proposition 13 impact  
10 school funding in California?

11 MR. CHOATE: Objection, vague and ambiguous.

12 THE WITNESS: I would like you to better  
13 define what you mean by "school funding."

14 Q BY MS. WELCH: Do you have an idea of what  
15 school funding means?

16 A Well, school funding can be measured by  
17 quantity. In the initial period of Proposition 13  
18 sources changed. I have not analyzed the distribution  
19 by type of district. There's at least three dimensions  
20 of school funding; quantity, source and distribution.

21 Q Those are the three things, three ways that  
22 Proposition 13 had an impact on school funding in your  
23 opinion?

24 A Those are three ways to think about funding  
25 generally. And if you are looking at impacts of

1 Proposition 13, those would be three dimensions to look  
2 at.

3 Q So how did Proposition 13 impact the quantity?

4 MR. CHOATE: Objection, vague and ambiguous.

5 Q BY MS. WELCH: As you've defined it.

6 A That's the sort of thing I would not testify  
7 by memory. It's not a memory test, it's an empirical  
8 question.

9 Q Have you written about that topic?

10 A I wrote about some of that in the book on  
11 Proposition 13.

12 Q How do you think Prop 13 impacted the source  
13 of funding?

14 MR. CHOATE: Objection, vague and ambiguous.

15 THE WITNESS: Prop 13, as for all local  
16 governments, reduced the ability of local schools to  
17 control their sources of financing. And the sources  
18 shifted at different times depending upon how the state  
19 decided to finance education.

20 Q BY MS. WELCH: Do you think Prop 13 impacted  
21 the relationship between local government and state  
22 government?

23 MR. CHOATE: Objection, vague and ambiguous.

24 THE WITNESS: Yes. I have written to that  
25 effect.

1 Q BY MS. WELCH: In what way?

2 A It moved much discretion over financing of all  
3 local governments to Sacramento, to the state level, is  
4 the simplest response.

5 Q Did Prop 13 create more interdependence  
6 between state and local government?

7 MR. CHOATE: Objection, vague and ambiguous.

8 THE WITNESS: I just responded it created more  
9 state control of local governments. That would depend  
10 how you define "interdependence."

11 Q BY MS. WELCH: Do you think creating more  
12 control would inevitably create more interdependence?

13 MR. CHOATE: Objection, vague and ambiguous.  
14 It's an incomplete hypothetical.

15 THE WITNESS: Local entities are more affected  
16 by decisions made at the state level. But reciprocally  
17 the state is not particularly impacted by decisions  
18 made at the local level.

19 Q BY MS. WELCH: Did Prop 13 create more  
20 dependence on the state for school districts?

21 MR. CHOATE: Objection, vague and ambiguous.

22 THE WITNESS: That requires a judgment as to  
23 what you mean by "dependence."

24 Did you want to specify what you meant by  
25 "dependence"?

1 Q BY MS. WELCH: Haven't you written before  
2 about the issue of dependence and the impact of Prop  
3 13?

4 A What Proposition 13 did for schools is quite  
5 different than what it did for other local governments,  
6 because the state already had a system of financing in  
7 place for schools, and there had been a prior series of  
8 litigation which greatly constrained the total amount  
9 of money that was available to schools. That was very  
10 different than the situation in the cities and  
11 counties. So one could argue that schools were already  
12 dependent and constrained by prior state action.

13 In contrast to the change for -- other changes  
14 in county -- the relationship between the state -- the  
15 state and counties, cities and special districts was  
16 much less affected than for the others.

17 Q Do you think it was affected?

18 MR. CHOATE: What was affected?

19 MS. WELCH: He just said the relationship was  
20 much less affected for schools.

21 Q I'm asking if you think it was affected at  
22 all.

23 MR. CHOATE: Objection, vague and ambiguous.

24 THE WITNESS: It certainly reduced the ability  
25 of local school districts to change their tax rate and

1 their property tax flows. It did impact that.

2 Q BY MS. WELCH: Do you think Prop 13 resulted  
3 in greater centralization?

4 MR. CHOATE: Objection, vague and ambiguous.

5 THE WITNESS: Centralization of?

6 Q BY MS. WELCH: Focusing specifically on school  
7 districts and the relationship of school districts to  
8 the state.

9 Do you think Prop 13 resulted in greater  
10 centralization of that relationship?

11 MR. CHOATE: Same objection.

12 THE WITNESS: I don't know the answer to that  
13 question.

14 Q BY MS. WELCH: Have you analyzed that question  
15 before?

16 A As I've said, in the context of types of  
17 relationships between the state and local governments,  
18 the relationship between schools and the state have  
19 been much different than the other types of local  
20 government from well before Proposition 13. So it --  
21 as I've already responded to that question, I believe.

22 Q Do you have an opinion with respect to the  
23 centralization and the relationship between school  
24 districts and the state in general, setting aside Prop  
25 13?

1 MR. CHOATE: Objection, it's vague and  
2 ambiguous and it's compound.

3 THE WITNESS: I don't think that's an issue of  
4 expert opinion as you've phrased it. I think you are  
5 asking me about a preference for relationships, and I  
6 don't know that that's germane.

7 MS. WELCH: I actually wasn't meaning to ask  
8 you about a preference.

9 Q You just talked about the fact that you didn't  
10 think Prop 13 necessarily resulted in greater  
11 centralization with respect to school districts.

12 A I think that possibly mischaracterizes my  
13 statement a little bit.

14 Q Okay. I don't mean to do that. So please.

15 A I understand. I didn't suggest you meant to  
16 do that.

17 I believe what I said was that the  
18 relationship between schools and the state is already  
19 much more constrained because of the requirements or  
20 compliance with Serrano in which the state had financed  
21 schools. There was a much different relationship, much  
22 more constrained is a good way to talk about it.

23 And so Proposition 13 changed the ability of  
24 local school districts to change their property tax  
25 rate, but that had already been constrained in terms of

1 civic engagement?

2 MR. CHOATE: Can you read back the question,  
3 please?

4 THE REPORTER: Have you analyzed how  
5 government can increase civic engagement?

6 MR. CHOATE: I will object to the extent it's  
7 vague and ambiguous.

8 THE WITNESS: I have written -- I believe I  
9 have written about this issue.

10 Q BY MS. WELCH: How can government increase  
11 civic engagement?

12 A I'm sorry, the question was?

13 Q Can you give me some examples of how  
14 government can increase civic engagement?

15 A Are you talking about generally or as I have  
16 written about it?

17 Q Why don't we focus on how you've written about  
18 it.

19 A I don't have everything that I've written in  
20 front of me.

21 In the fairly recent past I wrote an article,  
22 co-authored with my wife, about the response to the  
23 terrorist attacks of 9/11, and suggested in that  
24 article that the response that were being developed  
25 were unlikely to increase civic engagement, and talked

1 its result on their total budget. That had already  
2 been changed. So it did affect how they got their  
3 sources of revenue.

4 But how do you characterize that as a  
5 centralization. I think it was already compared to --  
6 and this is the reason I'm reaching for a response  
7 which is comparative. Schools had a much more tightly  
8 defined relationship with the state than counties, and  
9 dramatically more tightly constrained relationship with  
10 the state than did cities and special districts before  
11 Proposition 13.

12 So if you wish to characterize that as  
13 centralized, Proposition 13 had much less impact on  
14 that -- the whole state relationship in schools than it  
15 did in counties, cities and special districts.

16 Q Have you analyzed before how schools use the  
17 strategy of dependence on the state?

18 MR. CHOATE: Objection, vague and ambiguous.  
19 Assumes facts not in evidence.

20 THE WITNESS: I am not sure. I've had a  
21 professional career for three decades plus, and I don't  
22 remember how -- at various times I've talked about that  
23 relationship.

24 MS. WELCH: We can come back to that.

25 Q Have you analyzed how government can increase

1 about a set of steps that would be required to increase  
2 civic engagement.

3 Q Do you think schools can serve a purpose of  
4 increasing civic engagement?

5 MR. CHOATE: I will object, it's vague and  
6 ambiguous. Also object to the extent it calls for  
7 Dr. Kirlin to testify about matters outside the scope  
8 of his expert work.

9 THE WITNESS: That's not what I spoke to in my  
10 expert report.

11 Earlier I said that one of the things people  
12 hope for in schools is the development of --  
13 facilitation of development, facilitation of young  
14 people becoming more effective, more engaged and more  
15 effective citizens.

16 We now talk about that oftentimes as  
17 citizenship and civic engagement. Ideally and --  
18 schools can contribute to that. It is not an area of  
19 my deep personal interest and professional work in our  
20 household. Actually my wife does more work in that  
21 area than I.

22 Q BY MS. WELCH: Have you been to any public  
23 schools in California K through 12?

24 A Been to, yes.

25 Q Have these -- have you visited these schools?

1 MR. CHOATE: Objection, asked and answered.  
 2 THE WITNESS: Yes.  
 3 Q BY MS. WELCH: Has this been in connection  
 4 with your personal life, or professional life, or both?  
 5 A I would say mostly my personal life.  
 6 Q So these are schools that your children or  
 7 other relatives attended?  
 8 A That my two daughters attended.  
 9 Q Where did they go to school?  
 10 A They both attended public schools in Napa.  
 11 Q Have you ever been to schools in Orange  
 12 County?  
 13 MR. CHOATE: Are you talking about public  
 14 schools?  
 15 MS. WELCH: Public schools.  
 16 MR. CHOATE: K through 12 schools?  
 17 MS. WELCH: Yes.  
 18 THE WITNESS: To the best of my knowledge, no.  
 19 Q BY MS. WELCH: Did you ever look at the school  
 20 facilities in Orange County or analyze them?  
 21 MR. CHOATE: Objection, vague and ambiguous.  
 22 THE WITNESS: I have no memory of undertaking  
 23 such an analysis.  
 24 Q BY MS. WELCH: Can you recall any occasions in  
 25 which you attended public schools in California for

1 professional reasons? And I shouldn't say attended.  
 2 That you visited public schools in California for  
 3 professional reasons?  
 4 MR. CHOATE: I'm just going to object, vague  
 5 and ambiguous. He did -- the CV doesn't indicate he  
 6 was -- well...  
 7 THE WITNESS: I have no memory. I don't know  
 8 what you mean by "professional."  
 9 What would a professional visit be?  
 10 Q BY MS. WELCH: To do research on the school,  
 11 to analyze anything about the school. I mean,  
 12 professionally as versus because your kids go to school  
 13 there.  
 14 MR. CHOATE: Same objection.  
 15 THE WITNESS: I can think of no such, no such  
 16 visit for that purpose.  
 17 Q BY MS. WELCH: Can you think of visits for  
 18 other purposes besides visiting your children's school?  
 19 A I'm trying to think. That's a long life.  
 20 I believe Delaine Eastin was sworn in as  
 21 superintendent of education at a public school. I was  
 22 there for that.  
 23 I don't know. Most of my professional work  
 24 does not require the visit of any specific entity.  
 25 Data sources are available that one relies on.

1 Q Do you think libraries are a critical resource  
 2 to communities?  
 3 MR. CHOATE: Objection, vague and ambiguous.  
 4 I will also object, it calls for Dr. Kirlin to testify  
 5 outside of the areas for which he's been retained as an  
 6 expert in this case.  
 7 THE WITNESS: You are asking me my personal  
 8 preference?  
 9 Q BY MS. WELCH: Well, haven't you written on  
 10 this topic?  
 11 A About libraries? I have no memory  
 12 specifically about writing about libraries. They are a  
 13 form of local government activities that may have been  
 14 discussed in work that I have done.  
 15 Q Weren't you an author on the, one of the  
 16 studies that the center did regarding libraries in  
 17 Indiana?  
 18 A Hmm-hmm. I was.  
 19 Q Do you consider yourself an expert in the area  
 20 of education equity?  
 21 MR. CHOATE: Objection, vague and ambiguous.  
 22 THE WITNESS: As I understand the phrasing of  
 23 that question, I would not consider myself an expert in  
 24 educational equity.  
 25 Q BY MS. WELCH: How do you understand the

1 phrase? What does --  
 2 A In the context of Serrano cases, I have not  
 3 offered myself as an expert in that area.  
 4 Q Do you consider yourself an expert in the area  
 5 of what constitutes an adequate education?  
 6 MR. CHOATE: Same objection, vague and  
 7 ambiguous.  
 8 THE WITNESS: I have not offered myself as an  
 9 expert in that area.  
 10 Q BY MS. WELCH: Do you consider yourself an  
 11 expert in California's policy making relating to K  
 12 through 12 education?  
 13 A I consider myself an expert in California  
 14 policy making generally, including K-12.  
 15 Q Do you consider yourself an expert in  
 16 California school finance system?  
 17 A I consider myself an expert in the way of --  
 18 California finances its public sector, including K-12.  
 19 Q I think I know the answer to this, but I'm  
 20 going to ask it anyway.  
 21 Do you consider yourself an expert in  
 22 California's state-local relationship regarding public  
 23 schools?  
 24 A Yes, I do.  
 25 Q Do you consider yourself an expert in

1 California's policy implementation regarding public  
2 schools?

3 A I consider myself an expert in the general  
4 area of California policy implementation, including  
5 K-12.

6 Q Do you consider yourself an expert in  
7 California's structures relating to public education?

8 A I consider myself an expert in the  
9 relationships between national, state and local  
10 governments in California and beyond. And I have  
11 written specifically in this expert report about those  
12 relationships in K-12 in California and compared other  
13 states.

14 Q So you do consider yourself an expert?

15 A Yes.

16 Q Have you ever undertaken the type of analysis  
17 of a school system for another state that you have done  
18 in this case?

19 A I've undertaken no other analysis that  
20 parallels the structure for this -- that I've  
21 undertaken for this case.

22 Q Anything similar?

23 MR. CHOATE: Objection, vague and ambiguous.

24 THE WITNESS: This is a fairly common  
25 structure for analysis applied to a variety of areas.

1 availability and interest in serving as an expert on  
2 this case. I don't know that there was initially any  
3 request that was a specific set of tasks.

4 Q Were you asked to analyze anything in  
5 particular?

6 MR. CHOATE: Are we talking -- it's vague as  
7 to time.

8 Q BY MS. WELCH: I'm talking about what I  
9 started off talking about, the initial contact on the  
10 case.

11 MR. CHOATE: You are asking him about the  
12 email?

13 THE WITNESS: The very first email, I'd have  
14 to refresh my memory. I don't know that there was a  
15 specific request.

16 Q BY MS. WELCH: What happened -- what was the  
17 next contact after the email?

18 A I'd have to go back and refresh my memory to  
19 get you real detailed information, if that is required.

20 MR. CHOATE: She's asking what you remember.

21 MS. WELCH: I'm asking what you recall.

22 THE WITNESS: What I remember.

23 At some point we had, I believe, a telephone  
24 conversation in which I said I might be interested and  
25 was available.

1 I've not applied it particularly to education before.

2 Q BY MS. WELCH: So this is the first time  
3 you've applied this structure of analysis to education?

4 A This is certainly the deepest look I've gone  
5 into education.

6 Q But is it the first time that you've done this  
7 sort of analysis?

8 A This particular analysis of education? This  
9 is, as I said, the first time I've done it to this  
10 extent.

11 Q By whom were you asked to prepare your expert  
12 report?

13 A I was first contacted by David Herron of  
14 O'Melveny & Myers.

15 Q Was that by email?

16 A I believe the initial contact was by email.

17 Q Do you recall when that took place?

18 MR. CHOATE: When the email was sent?

19 MS. WELCH: Yes.

20 THE WITNESS: There's a definitive answer to  
21 it. But I believe it was early this year. I don't  
22 know. Some time early this year. Late last year,  
23 early this year.

24 Q BY MS. WELCH: What were you asked to do?

25 A I believe the first question was about my

1 Q BY MS. WELCH: Do you remember anything else  
2 about the phone call?

3 A The very first phone call as opposed to email?  
4 No, I believe that was the extent of the conversation.

5 He also said, as I was trying to understand  
6 what the case was about, he said that the plaintiffs'  
7 expert reports were on, mounted on the web, and  
8 suggested I look particularly at the synthesis report  
9 prepared by Professor Oakes, I believe.

10 Q Did David describe to you what the case was  
11 about?

12 A My memory is it was a short conversation. And  
13 he probably said some version of what the plaintiffs  
14 are seeking, but I don't remember the extent of the  
15 conversation of it.

16 Q During that conversation, did you discuss what  
17 areas you'd be willing to opine on?

18 A No.

19 You are talking about the first telephone  
20 conversation?

21 Q Yes.

22 A No, we did not. My memory is we did not.

23 Q And during that conversation, you left it that  
24 you would do further research into the case by looking  
25 at the expert reports and then you'd talk about it. Is

1 that right?

2 A Yes.

3 Q Did you talk again?

4 A We did talk again. Yes, we did talk again.

5 Q Do you know how long -- what the time frame  
6 was for the second call?

7 MR. CHOATE: What do you mean, after the first  
8 conversation?

9 MS. WELCH: Yeah.

10 Q I don't care about exact dates.

11 A Some several days. Not several weeks, but  
12 several days. I don't know if it was three, or ten, or  
13 12.

14 Q What did you talk about during that  
15 conversation?

16 A Well, at that point I said that -- some  
17 version of the following. That the plaintiffs focused  
18 on education specifically. This was an example of a  
19 broader area that I had competence in, which was the  
20 development, financing and implementation of  
21 significant public policies. So I felt comfortable  
22 approaching it not as an expert in pedagogy or a narrow  
23 part of education, but rather as an example of a  
24 significant public activity that I'd analyzed many  
25 times.

1 I also was struck that the expert reports did  
2 not undertake three types of analyses that I thought  
3 were relevant to addressing this question, and that I  
4 felt competent to address in the broader rubric that I  
5 was talking about.

6 Q What were those three analyses?

7 A Comparison of California against a consistent  
8 set of other states. A comparison of the districts in  
9 which plaintiffs were enrolled against other districts  
10 in California. Any systematic assessment of the  
11 potential -- of the -- of what would happen if the  
12 plaintiffs listed remedies, as I could understand them,  
13 were undertaken.

14 Q During that call, did you talk about the fact  
15 that you could perform that analysis?

16 A I said that's the way I feel comfortable  
17 offering an expert work, and I'd already said yes, I  
18 was available to work on this project. Yes.

19 Q Were you asked to opine on any areas that you  
20 ultimately concluded that you couldn't opine on, for  
21 whatever reason?

22 MR. CHOATE: Objection, vague as to time.

23 Q BY MS. WELCH: Let's start off during the  
24 first two calls that we've talked about, and then we  
25 can go forward.

1 A No. No. I was not offered to opine on any  
2 other areas.

3 Q My question was a little bit different.

4 Were you asked to opine on areas and you said,  
5 you know, in sum or substance, "No, I don't really feel  
6 comfortable opining on that given my background"?

7 A No.

8 Q This is a similar question.

9 Did the topics about which you were asked to  
10 opine on change over time at all?

11 MR. CHOATE: Objection, assumes facts not in  
12 evidence, vague and ambiguous.

13 THE WITNESS: As I understand what you just  
14 said, the three areas, those are the three areas that  
15 continued through my work and are in my report.

16 The other one that sort of fits in there is  
17 the structure of, you know, is California like the  
18 comparison states in the variety of dimensions. That's  
19 implicit in that first -- comparing California to  
20 other -- a set of other states.

21 Q BY MS. WELCH: Were you ever asked  
22 specifically to opine on California's finance system,  
23 school finance system?

24 A I'm not certain I understand the question.

25 Q Were you asked to opine specifically on

1 California's school funding system?

2 A I was asked to analyze California's school  
3 financing system in the context -- their school system,  
4 including some of those financial dimensions in the  
5 context of a comparison that I chose to make. So I  
6 ended up offering -- I did -- I undertook analyses of  
7 financing. But that fits into the -- the way I  
8 understood the role, fits into the issue of  
9 California's school system, including its financing,  
10 policy structures, et. cetera, and some comparisons to  
11 other states in the nation and whether it looks odd  
12 or -- how it looks in that comparison.

13 Q After the second conversation when you talked  
14 about the areas that you felt like you could opine on,  
15 what happened next?

16 MR. CHOATE: Objection, vague and ambiguous.

17 THE WITNESS: My memory is that some days  
18 later I received a call saying they'd like to have me  
19 work on those areas and that I would be contacted by  
20 someone in the state attorney general's office about  
21 being retained as an expert.

22 Q BY MS. WELCH: You don't remember anything  
23 specific about that third call?

24 A The only other thing I remember they said I  
25 would be asked to reduce my fees.

1 Q From your usual fee?  
 2 A Yes.  
 3 Q What is your usual fee?  
 4 A Closer to \$400 an hour.  
 5 Q And for this case your fee is 325 an hour?  
 6 A Yes.  
 7 Q When did you begin preparing your report?  
 8 MR. CHOATE: Objection, vague and ambiguous.  
 9 THE WITNESS: Sometime in the spring of this  
 10 year. I don't remember the month even.  
 11 Q BY MS. WELCH: What was the -- what was your  
 12 first step?  
 13 MR. CHOATE: In --  
 14 MS. WELCH: In preparing the report.  
 15 THE WITNESS: My first step was to finish  
 16 reading the balance of the expert -- the plaintiffs'  
 17 experts so I understood as best I could the claims  
 18 being advanced.  
 19 Q BY MS. WELCH: Which expert reports did you  
 20 read?  
 21 A I read all of them that were mounted on the  
 22 website. I believe it's the full set.  
 23 Q Did you review any other documents relating to  
 24 the case?  
 25 A At that time, no. Or sometime subsequently

1 also mounted on the website -- and I don't know what  
 2 time frame -- was the legal filing of a big fat -- it  
 3 is cited in my report, and I forget even the exact  
 4 title of it.  
 5 Q The liability disclosure statement?  
 6 A Liability disclosure statement.  
 7 Q Did you read all of that document? Remember,  
 8 you are under oath.  
 9 A No, I did not read every page of that  
 10 document.  
 11 Q I can't believe you didn't read all 334 pages.  
 12 A Since you were the author. Had I known.  
 13 MR. HAJELA: You could have missed the best  
 14 parts.  
 15 Q BY MS. WELCH: Do you have a recollection of  
 16 which parts of the document that you focused on?  
 17 A I was particularly interested in the remedies  
 18 proposed in that section. And I read selectively the  
 19 balance of the document. And I also identified from  
 20 that the list of plaintiffs, and from there tried to  
 21 identify schools and then school districts.  
 22 Q Did you read any other court documents besides  
 23 the liability disclosure statement and the expert  
 24 reports?  
 25 A I don't believe so. I don't recall doing

1 that.  
 2 Q Do you recall reviewing the amended complaint?  
 3 A No, I don't recall reviewing the amended  
 4 complaint.  
 5 Q After reviewing the expert reports and  
 6 portions of the liability disclosure, what did you do  
 7 next?  
 8 A Next I made a decision about the comparison  
 9 state -- the comparison set of other states at which to  
 10 look at, and decided to follow a format that I've used  
 11 in the past, which was to pick comparisons  
 12 systematically. And in this case I chose the five  
 13 states with the next highest enrollments in K-12 and  
 14 the three geographically contiguous states, for a  
 15 comparison set of eight states.  
 16 Q When have you used that kind of format in the  
 17 past?  
 18 A Well, as example, I mentioned right now we are  
 19 comparing Indianapolis to eight other regions. And  
 20 those are picked on similar demographics and other  
 21 features.  
 22 As an expert for the state legislature looking  
 23 at energy policy, environmental regulation, I compared  
 24 California to a number of states. There was only four  
 25 or five in that case.

1 As a consultant to the treasurer's office I  
 2 compared California's debt issuance to a variety of  
 3 industrial states.  
 4 Three examples.  
 5 Q How did you decide upon the eight states you  
 6 chose as comparison states?  
 7 MR. CHOATE: Objection, asked and answered.  
 8 THE WITNESS: As I said, it's the five next  
 9 highest enrollments in K-12 and the three  
 10 geographically contiguous states.  
 11 MS. WELCH: I understand that. So maybe my  
 12 question isn't clear.  
 13 Q I'm wondering why did you decide to go with  
 14 the five largest to start?  
 15 A The report speaks to this.  
 16 The largest states will have more complex  
 17 educational systems and share more challenges with  
 18 California than smaller states. They are likely to  
 19 have more diversity in student bodies. But the  
 20 complexity issue was the bigger issue.  
 21 Q Why did you think that the three contiguous  
 22 states would be useful for comparison purposes?  
 23 A There were two reasons. One is sort of if  
 24 there's some sort of regional geographic culture or  
 25 sharing of ideas. But there's also a flow of people

1 back and forth amongst these states, and there are  
2 those who have pretty well documented demographic flows  
3 of people more recently from California to these other  
4 three states. Seems sensible to add them into the mix.

5 Q Did you consider other methods of choosing  
6 comparison states for purposes of your analysis?

7 A One of the things I did was try to look at  
8 what the plaintiffs had done. They'd may --  
9 plaintiffs' experts had made no systematic comparisons.  
10 Had they made a systematic comparison, I might have  
11 considered looking at what they had done and carrying  
12 the analysis further.

13 But no, I've -- this is in my experience an  
14 effective way to do analyses. And I didn't try  
15 something else and drop it, I started with this and  
16 stayed with it.

17 MR. CHOATE: Leecia, while you are formulating  
18 your next question. It's almost 12:00. What do you  
19 want to do?

20 MS. WELCH: Why don't we go off the record.  
21 (The luncheon recess was taken.)

22 Q BY MS. WELCH: Good afternoon, Dr. Kirlin.

23 A Afternoon, ma'am.

24 Q Did you have a nice lunch?

25 A I did, thank you.

1 things that you might have agreed with?

2 A The latter I'm not remembering. It's also  
3 hundreds of pages of documents, and they are not in  
4 front of me. I couldn't -- I don't know how to respond  
5 to that other than no.

6 Q So nothing is coming to mind?

7 A Nothing is coming to mind.

8 Q Were there reports you spent more time  
9 analyzing than others?

10 A No.

11 Q So you gave them all pretty much equal  
12 attention in respect to review?

13 A I started with the Oakes report because it was  
14 a synthesis, but I read each one equally.

15 Q Did you take notes?

16 A No.

17 Q Did you keep track of areas in the report that  
18 you would want to respond to in your own report in some  
19 form or another?

20 MR. CHOATE: Objection, vague and ambiguous.

21 THE WITNESS: I believe I also answered that.

22 I was struck with the last of systematic  
23 comparison in the report, so I made a mental note about  
24 that. It's so unlike how I approach tasks that that  
25 was glaring to me.

1 Did you?

2 Q I've had better, but it was okay.

3 I have one follow-up question for you on the  
4 topic of your expert work.

5 You testified that you worked on the EXXON  
6 Valdez case with lawyers from O'Melveny & Myers and  
7 another firm, correct? And you are working with  
8 O'Melveny & Myers in this case.

9 Were any of the other cases on which you did  
10 expert work with O'Melveny & Myers?

11 A No. Other than EXXON and this, no.

12 Q I believe you testified that you reviewed all  
13 of plaintiffs' expert reports. Is that correct?

14 A I reviewed all of those that were available  
15 when I pulled them off the website.

16 Q And the website you are referring to is Decent  
17 Schools?

18 A Yes.

19 Q Do you recall areas of agreement that you had  
20 with plaintiffs' expert reports?

21 MR. CHOATE: Objection, vague and ambiguous.

22 THE WITNESS: No.

23 Q BY MS. WELCH: Do you recall -- I mean, did  
24 you categorically disagree with most of what was in  
25 their reports, or are you just not remembering specific

1 Citing a couple of sections from reports, so I  
2 remembered where those were.

3 Q Did you mark up the drafts in any way?

4 A No. It's not my habit to mark on drafts.

5 Q Looking on page 2 of your report, the third  
6 paragraph, the last sentence says, "As director for the  
7 Center for Urban Policy and Environment -- and the  
8 Environment, I obtained funding for and launched a  
9 series of analyses for Central Indiana of eight  
10 comparison regions."

11 I understand we've spoken a little bit about  
12 some of that work earlier today.

13 My question is how you chose those eight  
14 regions.

15 A I was the principal investigator on this work,  
16 and worked with three colleagues in the selection of  
17 these regions. And they were picked to have similar  
18 population size and also -- the primary issue. And  
19 also we had the secondary factors. There are several  
20 state capitols, major universities. We were looking  
21 for something that were somewhat similar to Indiana,  
22 which was our -- which we were primarily interested in.  
23 So population size was a primary one, and there were  
24 some secondary features.

25 Q Why did you use population size as the primary

1 factor?

2 A Indianapolis is not Los Angeles, at the  
3 extreme of being very large, nor is it Waterloo, Iowa,  
4 much smaller. So the dynamics that result as a result  
5 of size that affect the policy issues seemed to be  
6 useful to stay in the same size range.

7 Q Looking at the top of page 3, the second prong  
8 in your -- the tasks that you undertook relating to  
9 this case.

10 You say that you analyzed the resources  
11 available to and used by the districts and schools  
12 where plaintiffs are enrolled in comparison to other  
13 districts in California.

14 Which resources are you referring to here?

15 A I was -- I have to go back and look later what  
16 I ended up doing, but finances were a primary one. But  
17 I was also interested, since the plaintiffs had focused  
18 particularly on facilities, textbooks and credentialed  
19 teachers, whatever I could find that would fit in those  
20 three specific areas. I don't remember what I found.

21 Q How did you choose the districts and schools  
22 where plaintiffs are enrolled?

23 A In this case I went from the plaintiffs'  
24 documents which identified named plaintiffs and schools  
25 and districts and compiled a list. To the best of my

1 statement.

2 Q All right. We can just come back to that when  
3 we get to the specific tables.

4 Do you recall which data sets you were  
5 provided upon request?

6 A Again, I'd have to look at table-by-table  
7 of -- and walk that through. There are very specific  
8 requests.

9 Q Do you remember who provided you with the data  
10 sets?

11 A I'd have to go back to my -- I don't have it  
12 off the top of my head.

13 Q Were they lawyers -- was it lawyers from  
14 O'Melveny or other people?

15 A Oh, no. These are employees of the State of  
16 California. And what I don't remember is what I got  
17 from the Department of Education, and what I got from  
18 the Department of Finance, and what I got from whomever  
19 else I got data from. They were not O'Melveny & Myers'  
20 attorneys.

21 Q We can come back to that again as well as we  
22 are going through the report.

23 How did you go about assessing -- now I'm  
24 looking at the third of your three tasks on page 3.

25 How did you go about assessing the feasibility

1 ability I believe it to be accurate.

2 Q Are you aware that this case is a class  
3 action?

4 A Actually I'm not even certain if I'm aware of  
5 that. I believe it's phrased as a class action. It  
6 has named plaintiffs, maybe that's a better way to say  
7 it.

8 Q Are you familiar with the class definition in  
9 this case?

10 A I don't believe I am.

11 Q Are you aware that many of the named  
12 plaintiffs have voluntarily dismissed their claims to  
13 become part of the class?

14 A No. I'm not aware of that.

15 Q Again looking at the top of page 3, how did  
16 you determine the resources available and used by the  
17 districts and schools where plaintiffs are enrolled?

18 A I relied on data of -- publicly available  
19 data, and also data sets provided to me upon my  
20 request.

21 Q Which publicly available data are you  
22 referring to?

23 A I would have to go back and look at which  
24 table. And those are all cited fully. It's much  
25 easier for me to respond that way than a global sort of

1 of plaintiffs' proposed changes, as you called them?

2 MR. CHOATE: Objection, vague and ambiguous.

3 THE WITNESS: There's a section of the report  
4 that describes the judgment I reached in that regard.

5 Q BY MS. WELCH: Is that the extent of your  
6 response?

7 A Is there a follow-up question?

8 Q My question is how you went about assessing  
9 the feasibility.

10 MR. CHOATE: Same objection.

11 THE WITNESS: I found it oftentimes not  
12 perfectly clear what the plaintiffs were asking for.  
13 There's language like, "Amongst the things that could  
14 be done is X," which is suggesting that in addition to  
15 whatever they talk about there are other things that  
16 could be done. I focused on what they talked about.

17 It then becomes a question of -- from prior  
18 experience as reflected in analyses of efforts to  
19 reform education, does this -- how does this comport  
20 with prior experience in this field only, education  
21 only. And how does it comport with what we know about  
22 implementing change in other complex and contentious  
23 policy arenas.

24 And I used both of those lenses, for want of a  
25 different word, to look at what was proposed and to

1 make a judgment about the likelihood of successful  
2 implementation and likely events.

3 Q BY MS. WELCH: Did you analyze other education  
4 cases as part of this assessment?

5 MR. CHOATE: Objection, vague and ambiguous.  
6 What do you mean "education cases"?

7 Q BY MS. WELCH: If you don't understand my  
8 question, I can rephrase it.

9 A Could you rephrase it? I may know what you  
10 mean, but if you could rephrase it, that would be  
11 helpful

12 Q In assessing the feasibility of what you call  
13 plaintiffs' proposed changes, did you take a look at  
14 what plaintiffs in other education cases had sought?

15 A As I think of your question simply as other  
16 education cases, those may have been assessed in the  
17 analyses that I looked at. But I looked more broadly  
18 at the range of efforts that have been mounted to  
19 reform education, and looked most specifically at the  
20 ones where there had been a careful analysis of what  
21 had happened over some period of time, particularly in  
22 places where it was relatively complex, similar to  
23 California.

24 Q Do you recall any specific education cases  
25 that were mentioned?

1 ambiguous.

2 THE WITNESS: No. And what -- no.

3 But there is an opinion that I have, which is  
4 that -- expressed in this report, that in the cases  
5 where we have evidence in comparison to the other  
6 states, it appears that students in California actually  
7 do quite well in terms of -- one measure was access to  
8 students -- we should look at individual tables --  
9 access to teachers with a major and minor in the  
10 subject matter they are teaching.

11 California seems to do, in comparison to the  
12 other states and nationally, a good job of distributing  
13 those teachers across different kinds of schools as  
14 they've been analyzed in the literature that was  
15 available to me.

16 So I end up making an argument about  
17 California's comparative position compared to the other  
18 states.

19 Q BY MS. WELCH: Do you have an opinion  
20 regarding whether or not California students in K  
21 through 12 public schools have equal access to decent  
22 school facilities?

23 MR. CHOATE: Objection, it's vague as to  
24 "equal access" and vague as to "decent school  
25 facilities."

1 A I don't understand that question.

2 Q I thought you said education cases may have  
3 been referenced in the research that you did with  
4 respect to reform efforts. I'm just wondering if you  
5 recall any particular cases.

6 A I don't recall any.

7 You used the language "the research I did  
8 assessing the reform." I reported on research by  
9 others, I think is a more accurate statement of what I  
10 did and what I try to say in the report, and also I  
11 want to make certain is clear here.

12 Q Thank you. I appreciate that. That is  
13 actually what I meant to say, so I appreciate that you  
14 clarified.

15 Do you have an opinion regarding whether or  
16 not students in California K through 12 public schools  
17 have equal access to instruction materials?

18 MR. CHOATE: Objection, it's vague as to  
19 "equal access."

20 THE WITNESS: No, I don't.

21 Q BY MS. WELCH: Do you have an opinion  
22 regarding whether students in K through 12 public  
23 schools in California have equal access to qualified  
24 teachers?

25 MR. CHOATE: Same objections, vague and

1 THE WITNESS: It's much the same response.

2 I ended up analyzing -- I did analyze the  
3 available evidence on facilities available in  
4 California schools compared to the other eight  
5 comparison states in the nation. California is where  
6 it is. It's in the -- I would have to look at the  
7 table to refresh my memory of exactly what I found.

8 Q BY MS. WELCH: I think my question is a little  
9 bit different.

10 I'm not talking about comparing California to  
11 other states, I'm just talking about within California  
12 whether students have equal access to decent  
13 facilities, whether or not you have an opinion on that.

14 MR. CHOATE: Objection, it's still vague as to  
15 what you mean by "equal access to decent facilities."

16 THE WITNESS: I looked at the available  
17 evidence that I had, and I'd have to go back and find  
18 what I was able to cite.

19 There is -- one of the things I did was a  
20 comparison of the districts that identified named  
21 plaintiffs versus like districts in a couple of areas.

22 One of the areas that there was a comparison  
23 made was spending on facilities over a five-year  
24 period. In that measure the districts that -- the  
25 districts with named plaintiffs was, if my memory

1 serves me, was below the average, was the only one that  
2 was below. That speaks to current expenditures, which  
3 is one way one might think about adequacy, but is  
4 certainly not the only one.

5 Q BY MS. WELCH: How else might one think of  
6 adequacy?

7 MR. CHOATE: Objection, calls for speculation.  
8 I will also object to the extent it calls for  
9 Dr. Kirilin to testify about matters outside the scope  
10 of his expert opinions in this case.

11 THE WITNESS: I was particularly attentive to  
12 the evidence that I could find that covered the  
13 schools, all the schools in California. I didn't run  
14 across anything better than what I found or talked  
15 about.

16 MR. CHOATE: Let me jump in.

17 Ms. Reporter, am I speaking loudly enough for  
18 you?

19 THE REPORTER: Yes.

20 Q BY MS. WELCH: I guess I'm a little confused  
21 by your answer. I was responding -- I was following up  
22 to a statement you made about current expenditures  
23 being one way to look at adequacy. But I can't -- I  
24 don't want to misquote you.

25 I thought your testimony was there were

1 Q BY MS. WELCH: As you sit here today, you  
2 can't think of any other data besides the expenditure  
3 data?

4 A That's right. I haven't spent my time walking  
5 through this page-by-page either. I don't remember  
6 running across any other as I sit here today.

7 Q We will go through your report. And if other  
8 data comes to mind, we can go back to it.

9 While you were preparing your report, did you  
10 consider the question of equal educational opportunity?

11 MR. CHOATE: Objection, vague and ambiguous.

12 THE WITNESS: Certainly as I tried to analyze  
13 the districts from the named plaintiffs versus like  
14 districts, that's the implicit question. It's the  
15 explicit question. Can I understand something about  
16 these districts and how they compare to the other  
17 districts that are similar to them.

18 So yes, I made that effort to address that  
19 question.

20 Q BY MS. WELCH: Did you address that question  
21 on a school-wide level?

22 A As I'm thinking about that response, those  
23 data are district level data, if I remember correctly.  
24 There are also some of the analyses that I report that  
25 talk about the distribution of other sorts of

1 others, and I was just wanting to get at what those  
2 others are.

3 A I did say that. And I think -- and I  
4 responded by saying I didn't see others, but one could  
5 imagine that there was an annual survey by building  
6 inspectors of facilities, and if that were all compiled  
7 and available statewide that would be another sort of  
8 measure.

9 Q I see.

10 A That would be an example of something  
11 conceivably that could be done.

12 Q So you were analyzing the only measure that  
13 you found available in terms of facilities, which was  
14 the fiscal expenditures?

15 MR. CHOATE: Objection. I will object to the  
16 extent it mischaracterizes his testimony.

17 You asked him kind of a hypothetical of what  
18 might -- how might someone else think about the issue  
19 of adequacy. I think he answered that question.

20 THE WITNESS: I did answer that question. And  
21 then I also did rely on the expenditure data. I would  
22 have to go back and see if there was anything else I  
23 relied on. I remember relying on the expenditure data.  
24 There may be other things I touched on, but that's the  
25 one that comes to mind right now.

1 resources; teachers. I'm not certain if those are  
2 school level or district level. I would have to go  
3 back and refresh my memory on the specific studies.

4 Q But your own analysis was only on a district  
5 level, correct?

6 A I believe that's accurate. I'd have to look  
7 at it again to refresh my memory for sure, but I  
8 believe it's district level.

9 Q Why was that?

10 A Because that's the data that's available.

11 Q Since preparing your report, have you reached  
12 any new opinions in this case?

13 A No.

14 Q As you sit here right now, are there any  
15 changes that you would like to make to your report?

16 A I found two typos when I read it yesterday.

17 Q That's okay. Happens to the best of us.

18 Who did you meet with, either in person or on  
19 the phone, to get data for this expert report?

20 A I don't have my records in front of me. If we  
21 went table-by-table my memory might be refreshed. They  
22 were state employees of -- you know, acting in their  
23 official capacity is who I would contact. I only  
24 remember one name, Jeannie Oropeza. That's the only  
25 name I remember right now.

1 Q I have your time notes, so we can perhaps get  
2 to that later.

3 Outside of the state officials and lawyers  
4 from O'Melveny, were there any other individuals who  
5 you met with in preparing this report?

6 MR. CHOATE: Just object to the extent it  
7 mischaracterizes his testimony.

8 THE WITNESS: I had an assistant that worked  
9 with me in doing one extraction of data and some data  
10 entry and some data proofing. So I met with that  
11 person.

12 Q BY MS. WELCH: What is your assistant's name?

13 A Jennifer Costin. C-o-s-t-i-n.

14 Q Which extraction of data did she perform?

15 A I asked her to go through independently the  
16 plaintiffs' experts reports.

17 She did two things. First thing, went through  
18 the plaintiffs' experts reports and identified the  
19 states that they suggested should be models for things  
20 to be done in California, which is in one of the tables  
21 here.

22 The second thing she would do is when I would  
23 identify a data source for some of the tables here,  
24 which are numerical, I had a template for tables, I  
25 would give her the document and say, "We need all of

1 form in the report. I was particularly interested in  
2 data sources from national governmental sources, from  
3 national think tanks. I was particularly -- et.  
4 cetera. So I looked at those places and looked to see  
5 what they did. And part of that was by going to  
6 websites, part of that was find one report and see what  
7 it cites and then go look for that report. So that was  
8 the process that was used.

9 Q As you were collecting the data, were you  
10 beginning the draft of your report, or did you collect  
11 all the data and then begin writing at a certain point?

12 A I think more the latter. Much more the  
13 latter. I may have started to write a section about  
14 the comparison states or something like that, but  
15 effectively I collected most of the data before I  
16 started writing.

17 Q Before you started collecting the data, did  
18 you have a sense in your own mind of where you thought  
19 California fell in terms of comparison in different  
20 areas of education?

21 A Actually I only had two -- I had one sense  
22 that I was certain of, which was there would be a  
23 variation. Because in any state there's always a  
24 variation. And I fully expected that in some measures  
25 California would do better and in others not so well.

1 the -- we need the entry for the eight comparison  
2 states, you know, highlighted in this table." She  
3 would do the key strokes to enter them. She did that  
4 on some of the tables. Some I did originally, she did  
5 some.

6 Q Earlier we were talking about the steps you  
7 took in preparing your expert report. And we talked  
8 about the first step being taking a look at plaintiffs'  
9 expert reports and liability disclosure statement.

10 And then I don't know if it was directly the  
11 second step, but one of the next steps you talked about  
12 was choosing the comparison states. I think that's  
13 where we left off.

14 So I'm wondering after you chose the  
15 comparison states, what did you do next?

16 A Well, the next step was to begin a collection  
17 of data about California, the nation, and comparison  
18 states. And as reflected in the structure of the  
19 tables, interested in multiple dimensions of those  
20 comparisons. So as I found data, identified data  
21 sources and began to make those comparisons would be  
22 the next step.

23 Q Did you have a specific methodology for  
24 collecting this data that you used?

25 A I had a procedure which is described in some

1 Given the popular discussion of how bad the  
2 situation in California is, I might have expected, I  
3 probably expected California to do much worse than it  
4 did, actually, when you start comparing it to other  
5 states.

6 Q And what do you mean by that?

7 A Because of a lot of popular discussion in this  
8 state and in other states that I know that education is  
9 terrible and much worse than everywhere else. So if we  
10 end up -- I end up with a picture that California has  
11 some challenges, it also has some successes.

12 And as I -- there wasn't any specifics to the  
13 expectation, other than given the popular way of  
14 talking about education I might have expected  
15 California to not fair as well as it did when you  
16 actually start to make the comparisons that I made.

17 Q Do you recall when your first draft was  
18 prepared or ready of the report?

19 A Something resembling a first complete draft?  
20 A very short period of time before whatever the date is  
21 on this. So a matter of a week or two. Couple weeks,  
22 possibly. Something of that version -- something of  
23 that -- it was a very busy time for me, and I know I  
24 was working to complete this.

25 Q So sometime in March you think?

1 A Probably. I don't remember what date in April  
2 this was submitted. It says April 2003. If it was  
3 late April it was submitted, it could have been early  
4 April before I had a draft. That's my memory. There  
5 could have been chunks of it before that.

6 Q Looking at page 3 again, the first full  
7 paragraph you write, "The plaintiffs' claims and the  
8 opinions of plaintiffs' experts are broad, asserting  
9 that the state has failed to adopt, fund and implement  
10 a variety of public policies that plaintiffs and their  
11 experts prefer."

12 What do you mean there by "public policies"?

13 A I have in mind a set of ordinary language  
14 meaning. I'm not certain what the question is or  
15 exactly how to answer it.

16 A public policy -- plaintiffs would like, for  
17 instance, a different -- something to be done  
18 differently about allocation of money for facilities.  
19 That would require to change -- that would require  
20 something, some change in public policy.

21 Q Do you characterize plaintiffs' interest in  
22 making sure all kids have books to use in class and to  
23 take home as a public policy?

24 MR. CHOATE: Object. Well, I will object to  
25 the -- you are asking Dr. Kirlin to characterize

1 A The last part of the report talks about a set  
2 of -- or their proposals. We could talk that through.

3 But it is more than funding, it's a set of  
4 relationships, as I understand the proposals, set  
5 relationships between the state and districts and  
6 schools that I would characterize as requiring more  
7 state oversight, monitoring, intervention, sometimes  
8 using county boards as -- county superintendents as  
9 agents, sometimes directly.

10 Q In terms of implementing public policies, do  
11 you think there is a way to ensure greater equity among  
12 schools without having greater state oversight?

13 MR. CHOATE: Objection, vague and ambiguous,  
14 it's an incomplete hypothetical.

15 THE WITNESS: A lot depends upon how one  
16 defines "oversight."

17 First it's worth noting that in the analysis I  
18 did comparing California to the other states,  
19 California already does quite well on several equity  
20 measures. And part of, part -- I believe one of the  
21 things I attribute that to is the attention to the  
22 distribution of financial resources that emerge out of  
23 the Serrano cases and has been continuing in  
24 California.

25 So is that state oversight, state public

1 plaintiffs' claim?

2 MS. WELCH: No. I'm asking if that's what he  
3 means by "public policy."

4 Q Is that a public policy that you are referring  
5 to?

6 A If your question could be reread by the  
7 reporter, I think you said "the plaintiffs interest in  
8 having," or some language to that.

9 MS. WELCH: Could you read back my question?

10 THE REPORTER: Do you characterize plaintiffs'  
11 interest in making sure all kids have books to use in  
12 class and to take home as a public policy?

13 THE WITNESS: There's their interest. There's  
14 that policy.

15 A public policy is a legitimated decision by  
16 someone in a position to make a legitimate decision;  
17 legislature, the governor, or whomever that authority  
18 is delegated to that actually eventually affects what  
19 happens in implementation of the policy.

20 I'm using policy not to prove interest, not to  
21 prove adequacy, but things that are legitimated and  
22 implemented through the governmental system.

23 Q BY MS. WELCH: Other than the example that you  
24 gave about funding, do you have any other public  
25 policies in mind that you think plaintiffs prefer?

1 policy? It is certainly a set of state constraints as  
2 I characterized earlier about financing.

3 What the plaintiffs are arguing for, though,  
4 in this case is something -- a type of oversight that  
5 seems to me to be different in extent and character  
6 than that which spoke to broad equalization of finances  
7 available for education.

8 So is it possible to get more equity with the  
9 type of oversight that they are proposing? I don't end  
10 up convinced of that, actually. Personally I don't end  
11 up convinced of that.

12 MS. WELCH: Wasn't exactly my question.

13 Q My question more got to do you think that  
14 there are mechanisms that could be put in place to  
15 ensure greater equity that would not involve more state  
16 oversight?

17 MR. CHOATE: Objection, it's asked and  
18 answered. It's also vague and ambiguous, and it's an  
19 incomplete hypothetical.

20 THE WITNESS: Well, I was trying to be  
21 responsive to that question in the sense of whether  
22 it's already been done. And I think the best evidence  
23 I have here, actually quite effectively in California.

24 And then you -- and I guess I stand with the  
25 answer that I gave. I'm not convinced that there's a

1 set of things even beyond what the plaintiff says here  
 2 that can get you a lot more, a lot more equity without  
 3 oversight unless one chooses to make the argument --  
 4 which I don't make here professionally -- unless one  
 5 chooses to make the argument -- I'm not making it --  
 6 that a flat out voucher system would be equitable, or a  
 7 weighted voucher system would be equitable. That  
 8 speaks back to equity on the input resource side which  
 9 for California already has quite a bit of success.

10 So it's not something that I addressed as an  
 11 expert in here, and I'm puzzled as to how to go much  
 12 further, personally.

13 Q BY MS. WELCH: In the second full paragraph on  
 14 page 3, you say, "The policies advocated by these  
 15 plaintiffs and their experts should be recognized as  
 16 representing only one of several alternative approaches  
 17 to improving educational performance that are hotly  
 18 contested among policy makers, analysts, advocacy  
 19 groups and parents."

20 What policies are you referring to that are  
 21 hotly contested?

22 A I would characterize the plaintiffs' remedies  
 23 as focusing on efforts to increase, and possibly  
 24 distribute, different inputs in three areas that they  
 25 talk about. That is only one way to -- that people

1 Q Do you think whether or not kids should have  
 2 books to use in class and to take home is something  
 3 that's hotly contested?

4 MR. CHOATE: Objection, it's vague and  
 5 ambiguous.

6 THE WITNESS: I think the challenge is that  
 7 stated that way there would be broad agreement,  
 8 probably broad agreement. But that's not a policy.  
 9 That's not a public policy. And as soon as one moves  
 10 to the public policy level related to textbooks in  
 11 schools, there will be a round of hotly contested  
 12 issues.

13 Q BY MS. WELCH: Do you think there would be  
 14 broad agreement that all students should be taught by  
 15 qualified teachers?

16 MR. CHOATE: It's vague and ambiguous as to  
 17 "qualified teachers."

18 THE WITNESS: I think that the response is in  
 19 addition -- there are differences about what qualified  
 20 teachers is. That's what becomes contentious. One  
 21 would have different -- the issue about what is  
 22 qualified would be contested, and the cost implication  
 23 would be contested. As one moves from a broad  
 24 statement of preference, anything that meets the  
 25 definition of a public policy it becomes hotly

1 talk about improving educational performance.

2 A moment ago I mentioned vouchers. There are  
 3 people who think the way to do it is give every kid a  
 4 voucher. One of your co-counsels in the room here was  
 5 mentioning at one point that they are representing --  
 6 as I understood it -- the group that is launching a  
 7 charter school inside a former high school in  
 8 Sacramento Unified School District. That's another  
 9 idea.

10 The plaintiffs and the plaintiffs' experts are  
 11 not advocates of those ideas. Even if you go to the  
 12 advocates of increased resources, which includes the  
 13 group of the plaintiffs, people have different ideas  
 14 how best to do that. And that's what this sentence  
 15 says. This was an area in which there's lots of  
 16 different approaches out there, lots of passion behind  
 17 them, and that's part of what makes successful reform  
 18 in this arena so tough.

19 Q Do you think that plaintiffs are opposed to  
 20 charter schools?

21 A I would characterize the plaintiffs being  
 22 largely not opposed to charter schools as a flat out  
 23 position, but they are strong supporters of increased  
 24 resources, as I read their reports, for what I would  
 25 call traditional public schools.

1 contested.

2 Q BY MS. WELCH: But in terms of whether or not  
 3 students should have qualified teachers, do you think  
 4 that that's something that's contested?

5 MR. CHOATE: Objection, asked and answered.  
 6 It's vague and ambiguous.

7 THE WITNESS: I think I've answered that the  
 8 best I can. I think it's not meaningful to ask that  
 9 question in the context of an expert report about  
 10 public policy making. I don't think that's a question  
 11 I can answer as an expert.

12 Q BY MS. WELCH: Do you think it's hotly  
 13 contested whether or not students should go to schools  
 14 every day and schools that are safe and conducive to  
 15 learning?

16 A Same response. It's not a public policy. And  
 17 as an expert I'm asked to analyze what is happening in  
 18 public policy in California and what are the set of  
 19 remedies that are public policies that can address  
 20 that. As soon as you move from public policy it will  
 21 be, has been, hotly contested.

22 Q But in the realm of the way things should be,  
 23 do you think that that's something that is hotly  
 24 contested?

25 A It's not something I'm offering an expert

1 judgment on.

2 Q In the third full paragraph you reference --  
3 you say in the second sentence, "Their preferred  
4 choices regarding education policies," and so forth.

5 Which preferred choices are you referring to?

6 A This section I consider a preamble to what  
7 follows and is expanded upon later in the report. So  
8 if you will -- preamble is the wrong word -- preview  
9 for what is to follow. So the preferred choices are  
10 the ones that are discussed later at pages -- well,  
11 it's discussed in a couple different places later on in  
12 the report.

13 But they speak not only to the specific  
14 measures that they want to have in regard to  
15 facilities, et. cetera, but they want to phase out  
16 Concept 6, phase out emergency permits, enjoin the  
17 state. Page 28 talks about some of the things that I  
18 found in their documents.

19 Q So in that paragraph in the first sentence,  
20 which experts are you talking about?

21 A Plaintiffs and their experts. When I'm  
22 referring to "plaintiffs," I'm talking to the statement  
23 of liabilities. I'm talking about experts. I'm  
24 talking about the experts, the plaintiffs' experts.

25 Q So you are talking about all of them?

1 It's not that there won't be someone else like that,  
2 but if you look at the broad pattern of what is  
3 happening in states, as I understand it, particularly  
4 in the complex states that are seeking to improve  
5 education, as California is, my interpretation of the  
6 proposals by the experts is that it would move  
7 California to a minority position, as I understand.

8 MR. CHOATE: This is a good time to take a  
9 break.

10 MS. WELCH: I would like to ask a couple of  
11 follow ups.

12 MR. CHOATE: If he needs to take a break,  
13 let's take a break and you can ask your follow up  
14 questions when we get back.

15 (A break was taken.)

16 MR. POULOS: I just wanted to thank Counsel,  
17 as in the past, agreed to let LAUSD excuse itself and  
18 reserve its objections. We will peep back in  
19 periodically. But with that, I will excuse myself.  
20 Thank you.

21 Q BY MS. WELCH: Before the break we were  
22 talking about the middle of page 3 where you talk about  
23 preferred choices regarding education policies that  
24 would be, quote, unquote, extraordinary in this nation.  
25 I want to make sure I understood your response.

1 A I'm characterizing the thrust of their  
2 arguments as I understood them.

3 Q Why do you think that what you believe to be  
4 their preferred choices would be extraordinary in this  
5 nation as you state in your report?

6 A Well, we should go through the various  
7 specifics later on. But one example would be the -- I  
8 just had it a moment ago.

9 I'm going to need a break in a moment, too.

10 Page 28. One of the things that I understand  
11 that plaintiffs want to do is enjoin the state from  
12 conditioning receipt of a high school diploma upon  
13 passage of the high school exit exam until the state  
14 can demonstrate equality in access to basic educational  
15 necessities.

16 As I understand the situation, more than half  
17 the states right now have a high stakes exit exam  
18 requirement. As I understand what the plaintiffs are  
19 asking for, they are asking that this -- that  
20 California no longer have that. Just mathematically,  
21 you know, California will shift from the majority of  
22 states to minority of states. That's what I mean by  
23 extraordinary.

24 Go through the others, it's that sort of  
25 judgment that I'm making that's behind this statement.

1 Were you saying that not having a high school  
2 exit exam is something that would be extraordinary in  
3 this nation because so many other states do have them?

4 A That was my response as an example of what  
5 would be extraordinary. The trend line has been to  
6 require high school exit exams. I believe now the  
7 majority of the states do require that. It is just one  
8 example of something that came to mind as I was  
9 responding to the question.

10 Q Is it your understanding that plaintiffs and  
11 our experts want to get rid of the high school exit  
12 exam altogether?

13 MR. CHOATE: I will object to the extent it's  
14 vague and ambiguous.

15 THE WITNESS: My understanding is -- first  
16 let me reiterate, this is a preview of what is  
17 developed more fully later in the document. And so the  
18 phrasing -- the fuller phrasing is more accurate of my  
19 judgment. But it is a preview.

20 I would have to look at what the plaintiffs  
21 say. I believe the statement on page 28 is an accurate  
22 reflection of the plaintiffs' statement of liability.  
23 I believe also some of the plaintiffs' experts come  
24 quite close to saying that they are an opponent to high  
25 stakes exit exams. It wouldn't be unusual. Quite a

1 few people are opponents. It is an example of a public  
2 policy that is hotly contested.

3 Q BY MS. WELCH: Are there any other preferred  
4 choices that you believe are extraordinary in this  
5 nation?

6 MR. CHOATE: I will object that it's asked and  
7 answered. He just testified I think at least two times  
8 that the phrase is a preview to what's in his report.  
9 So I believe he's indicated that there are other  
10 examples in his report, he was just giving you one of  
11 them.

12 MS. WELCH: I'm just asking for others.

13 Q Do you have other examples?

14 A I'd feel more comfortable going through the  
15 balance of the report in some detail, if that's  
16 acceptable to you.

17 Q Of course. We can do that.

18 I'm just wondering if there's any others that  
19 come to mind.

20 A At this time there's nothing else that pops in  
21 my mind.

22 Q Do you have any examples in mind of what you  
23 think of -- preferred choices that you think are  
24 unlikely to be successfully implemented in attempting  
25 to use your words on page 3?

1 A We'd have to go back through the more detailed  
2 discussion to get something there.

3 The biggest thing I would cite in this regard  
4 is the tremendous difficulty in getting changes made  
5 all the way through the system. So it's less a  
6 specific than a general that this is a very complex  
7 system, education, public education. It has proven  
8 very hard to get changes effectuated through the entire  
9 system, particularly as you try to reach in and effect  
10 behaviors further down at the school level, or beyond  
11 that the classroom level. It's just very, very hard.

12 And the report has quite a bit of discussion  
13 of analyses which document the difficulty of that. And  
14 the report also talks about -- this is actually not --  
15 education is not the only place where this challenge is  
16 encountered. It's just very tough to get a system  
17 that's complex and this large to change effectively.

18 Q Setting aside the challenges of any kind of  
19 large scale systemic change, are there, are there  
20 choices that you believe plaintiffs and their experts  
21 argue for that you think in particular would be  
22 unsuccessful if implemented, or unlikely to be  
23 successful if implemented?

24 MR. CHOATE: Objection, asked and answered.

25 THE WITNESS: I feel more comfortable going

1 through some of the specifics on this.

2 Part of that difficulty is that the state is  
3 doing a lot of things this also talks about here that  
4 the plaintiffs don't acknowledge and talk about. So,  
5 for example, the plaintiffs don't acknowledge and give  
6 the credit to the state for the progress that's being  
7 made. An example would be something like teacher  
8 credentialing, teacher preparation. And the state has  
9 made a bunch of efforts in that regard. I don't know  
10 at what point -- how one would -- there's some  
11 ambiguity in what the plaintiffs are actually asking  
12 for there. They have sort of an illustrative -- if I  
13 remember correctly, 80 percent of the teachers would  
14 have to be credentialed. I actually don't know, and  
15 they don't -- I didn't find in their documents an  
16 analysis which says how many schools in California  
17 would be in violation of this, of this -- such a  
18 standard, as an example. And I don't know the answer  
19 to that. Someone may, I don't.

20 But I do believe that if such a standard were  
21 imposed and 20 percent of the schools were not in  
22 compliance, that those 20 percent of schools wouldn't  
23 open. They would not open. And that it would take  
24 sometime to come into compliance with whatever the  
25 standard might be. And I don't -- you know, to go --

1 as an expert I'm in an awkward situation here, because  
2 the remedies of the plaintiffs are not well-defined.  
3 But the thrust of them I still judge to be  
4 extraordinarily difficult to implement.

5 We can go to the specifics which sort of flush  
6 some of this out. That's where I'd prefer to go with  
7 the conversation.

8 Q Do you think that it's the plaintiffs' burden  
9 to explicitly define the remedies that they seek with  
10 this lawsuit?

11 MR. CHOATE: Objection, calls for a legal  
12 conclusion.

13 THE WITNESS: Which would be my response. I'm  
14 not an attorney.

15 As an analyst, though, and someone interested  
16 in the policy process, and someone who is an expert in  
17 the policy process, remedies are required. At some  
18 point you are going to have to do something, and a lot  
19 of stuff is already being done in the educational  
20 system. And ideas will be generated. There's some  
21 hints at ideas in here in the plaintiffs'. That's the  
22 best I have to analyze.

23 Q BY MS. WELCH: Do you think having a system of  
24 accountability that monitors whether access to basic  
25 educational necessities would be extraordinary in this

1 nation, as you define it?

2 MR. CHOATE: Objection, vague and ambiguous.

3 Can you read back the question, please?

4 THE REPORTER: Do you think having a system of  
5 accountability that monitors whether access to basic  
6 educational necessities would be extraordinary in this  
7 nation, as you define it?

8 MR. CHOATE: Objection, vague and ambiguous.

9 THE WITNESS: We should go through some of the  
10 specifics.

11 MR. CHOATE: Are you asking whether it would  
12 be extraordinary to monitor conditions? I think it's  
13 quite a vague question.

14 Q BY MS. WELCH: I'm asking whether -- having an  
15 accountability system that monitors whether students  
16 have equal access to the basic learning tools is  
17 something that would be extraordinary in this nation.

18 MR. CHOATE: Objection, vague and ambiguous as  
19 to what are the basic learning tools.

20 THE WITNESS: I think there's two levels of  
21 response.

22 One, I'd have to go through and be more  
23 precise about what learning tools you are talking  
24 about. And some of those I found -- the best evidence  
25 I could find in the three areas that the plaintiffs

1 within the No Child Left Behind Act. It defines  
2 accountability in different ways.

3 And the system -- and that's being worked  
4 through the system right now, and will be worked  
5 through the system because it's being pushed by the  
6 national government.

7 Q So is it your opinion that the No Child Left  
8 Behind Act does not contain input requirements as well?

9 MR. CHOATE: Objection, mischaracterizes his  
10 testimony.

11 THE WITNESS: It's not -- that is not -- it's  
12 not what I said.

13 I believe that they emphasize more  
14 performance, is my understanding.

15 Q BY MS. WELCH: Do you think it would be  
16 impossible for an accountability system to take into  
17 account both inputs and outcomes.

18 MR. CHOATE: Objection, vague and ambiguous,  
19 incomplete hypothetical.

20 THE WITNESS: Conceptually it is not  
21 impossible to do both. In the world of implementing  
22 public policy, it is very difficult probably to do  
23 both.

24 Q BY MS. WELCH: Why is that?

25 A Because resources are going to be allocated on

1 have talked about.

2 And in those areas -- and let me switch now.  
3 There's some evidence about how California is doing,  
4 but you asked about the system of accountability.

5 In some areas I have an understanding of what  
6 the system of accountability is, and in others I don't.  
7 And -- but, the reason this would become extraordinary  
8 in some sense doesn't have to do with what the -- in my  
9 judgment this goes over into the third conclusion,  
10 also, in a sense, because one of the things that has  
11 happened in the world and environment of education  
12 right now is the No Children Left Behind Act, which  
13 defines -- which talks about educational  
14 accountability; not in these terms, in performance  
15 terms. There is a tremendous push going that way.

16 And in that sense to go back and push on the  
17 accountability on input factors is extraordinary  
18 because a lot of the institutional momentum and public  
19 policy momentum has shifted in California to  
20 accountability based outcomes. And in that context  
21 what the plaintiffs are arguing for, and what I believe  
22 the plaintiffs' experts to be most comfortable with, is  
23 just sort of out of step with, and I argue is  
24 diversionary resource and possibly counter productive  
25 of what is going to be required and what is sought

1 the basis of one of the set of accountability measures,  
2 or both, and they are going to be in conflict at some  
3 point. And that will have to be resolved.

4 Q The second-to-the-last paragraph on page 3,  
5 the first sentence you say, "I was especially attentive  
6 to the most recent comparisons across all 50 states and  
7 for the eight comparison states."

8 Why do you say you were especially attentive  
9 to those comparisons?

10 A I think what I wanted to say was I wanted to  
11 get the most recent information available, which is  
12 generally better information, particularly in the  
13 context where California made a significant effort to  
14 improve education by devoting more resources in the  
15 recent past. I wanted to find, if I could,  
16 assessments, data, analyses which reflected those.

17 I wasn't particularly interested in -- I mean,  
18 sort of an obvious statement. I gave more credit to  
19 things that are more recent than longer period term  
20 than something that was happening in California schools  
21 in the 1970s is not a germane as what was happening in  
22 late 1990s, early 2000.

23 Q I'd like to talk with you a little bit about  
24 your selection of comparison states again.

25 In the second paragraph on page 4 you say

1 that, "The three contiguous states share important  
2 attributes in the composition of students and are  
3 sources and destinations of migrants."

4 What important attributes are you referring  
5 to?

6 A I think that if we were to go to table 1 and  
7 look at -- we've got to look at some of the other  
8 tables, too. I was particularly interested in students  
9 with limited English proficiency. The second to the --  
10 second column from the right and the third column --  
11 the last two columns on the right next to the rightmost  
12 and the rightmost columns are two of the sorts of  
13 things that I was attentive to. And it is -- Texas, of  
14 course, has a large fraction of students with limited  
15 English proficiency, but still way below California.  
16 California is 24.5 percent, Texas is 14.1, Arizona is  
17 15. We don't -- the data are not reported for Nevada.  
18 In Oregon they are 7.9 percent. So I was trying -- but  
19 in Florida they are 7.7, Illinois 6.2, New York 8.0,  
20 and we don't have data for Pennsylvania.

21 So I was trying to get -- pick up those sorts  
22 of variables as an example by getting the contiguous  
23 states expected higher limited English proficiency  
24 students in western states. We get quite a few of  
25 those in Texas and -- in any case, it turns out.

1 Q In terms of the shared attributes of the three  
2 contiguous states in particular, are the attributes  
3 that you are referring to the percentage of --

4 A Limit English proficient.

5 Q Services -- I'm sorry. Go back. It's been a  
6 long day already.

7 The percentages, the percentage of students  
8 receiving LEP services and the percent of students  
9 eligible for free or reduced price lunch, are those the  
10 attributes you are referring to in particular with  
11 respect to the contiguous states?

12 A I was particularly interested in the first  
13 one, limited English proficiency. We gained a little  
14 bit by adding in the three contiguous states in that  
15 context, beginning Arizona and -- which had higher than  
16 any of the other of the five next largest states, or  
17 next largest K-12 enrollment states.

18 Q Are there any other attributes?

19 A I think that was the primary one.

20 Q What is the significance of the fact that you  
21 say that the three contiguous states are sources and  
22 destinations of migrants?

23 A There is an argument which is -- I'm -- my  
24 hesitation is -- I think the document cited here is  
25 simply a descriptive document, migration in California

1 and other states.

2 We now have 2000 census data that came out  
3 actually after I did this report, it's just coming out.  
4 But there is an argument beyond the data which is that  
5 California has become a less attractive place to live  
6 in the decade of the 1990s, and that is reflected in  
7 out migration of people. This is beyond the expert  
8 report, but it sets the context for why to bring those  
9 three states in. And that part of the attraction of  
10 moving to these other states included things like lower  
11 cost housing, less congestion, but also different  
12 educational opportunities.

13 And so there are those who come close to  
14 making the argument that some people are leaving  
15 California because they want a different lifestyle for  
16 themselves and their children, including education.  
17 One of the places they go to are -- amongst the  
18 destinations are these three states. So it's the  
19 context of that. In different times these states have  
20 sent people to California. So it's -- historically  
21 we've known there's fairly big flows of people back and  
22 forth from California to these states and back into  
23 California. So I brought them into the comparison.

24 Q Does the age of the migrants matter for  
25 purposes of your conclusions here?

1 MR. CHOATE: Objection, vague and ambiguous.

2 THE WITNESS: No. Doesn't really matter.

3 Q BY MS. WELCH: Does the racial background of  
4 the migrants matter for purposes of your conclusions  
5 here?

6 A No.

7 Q In the third paragraph on page 4 you say, "The  
8 five large elementary and secondary enrollment states  
9 share the challenges of educating diverse populations."

10 What do you mean by that?

11 A I mean these states are likely to have a  
12 bigger mixture of diversity as measured by urban,  
13 suburban, rural, of students or schools. In those  
14 context, they are likely to have more racial diversity,  
15 they are likely to have more economic diversity than  
16 smaller, more homogenous states.

17 Q So is it primarily the size of enrollment that  
18 makes the states good comparison states in your  
19 opinion?

20 MR. CHOATE: Objection, I think it  
21 mischaracterizes his testimony.

22 THE WITNESS: My intent was to do systematic  
23 comparisons as opposed to ad hoc comparisons.

24 It is wholly sensible in my professional  
25 judgment, something I've done and other analysts have

1 done, to pick states that are large and complex as is  
2 California. As I suggested, I did it in earlier  
3 analyses, other analysts have done it. I think that's  
4 a very standard comparison. Size becomes a proxy for  
5 other forms of complexity. And I don't know how much  
6 better to be responsive to the question.

7 If you look at size -- but you then get -- as  
8 a consequence of picking big, you get more complexity;  
9 complexity by virtue of the number of schools, the  
10 number of districts, just the number of things that  
11 have to be changed to make the whole system work.

12 Q In the last paragraph on page 4 you cite to an  
13 article called "Overlooked and Underserved: Immigrant  
14 Students in U.S. Secondary Schools."

15 Did you review this report?

16 A Did I review it?

17 Q Yes.

18 A Yes.

19 Q Do you think the report is well researched?

20 MR. CHOATE: Objection, vague and ambiguous.

21 THE WITNESS: This was the best of my memory  
22 the only analysis I saw of this particular --

23 This chair has got my legs cramping.

24 MS. WELCH: Would you like to take a quick  
25 break?

1 MR. CHOATE: It seemed to me -- I'm going to  
2 object to the extent you are reading some quote that  
3 comes apparently, according to you, somewhere from this  
4 document, and the document has not been given to  
5 Dr. Kirlin.

6 Makes sense to me if you want Dr. Kirlin to  
7 testify about something that appears on the document,  
8 you ought to give him the document. So do that, if you  
9 can do that.

10 MS. WELCH: First let's just start with my  
11 statement.

12 Q I'm just asking if you agree. You don't have  
13 to take my word that I'm quoting it from this paper, I  
14 will tell you that I am. I'm more interested in  
15 whether or not you are in agreement with the statement  
16 that I just made. And we can have it read back if  
17 you'd like.

18 MR. CHOATE: Dr. Kirlin, also look at the  
19 document, if he feels he wants to look at the document.

20 MS. WELCH: I can provide you with the  
21 document if you would like to see it.

22 THE WITNESS: Could the statement be reread?

23 MS. WELCH: Sure.

24 Can you read it back?

25 THE REPORTER: Do you agree with the statement

1 Why don't we go off the record.  
2 (Off the record.)

3 THE WITNESS: I don't remember any other  
4 analysis of this particular phenomenon, and it -- it  
5 struck me as worth observing that California really is  
6 unlike much of the nation in its schools. And so I did  
7 not independently verify the words that were reported  
8 in this report.

9 So when you ask me, on its face I felt  
10 comfortable citing it, but at some point that's an  
11 attribute of The Urban Institute, for which I have a  
12 lot of respect. But I did not independently assess the  
13 quality of the work that was done in any particular  
14 fashion.

15 Q BY MS. WELCH: Do you agree with the statement  
16 in the report that -- and I'm quoting from page 8,  
17 "That LEP immigrant students were also found to be  
18 concentrated in high poverty schools, troubled by  
19 shortages of appropriately trained teachers and  
20 instruction materials, and generally low capacity to  
21 educate either immigrant or native born children"?

22 MR. CHOATE: Just for -- are you reading from  
23 Dr. Kirlin's expert report?

24 MS. WELCH: No. I'm reading from Overlooked  
25 and Underserved.

1 in the report that -- and I'm quoting from page 8,  
2 "That LEP immigrant students were also found to be  
3 concentrated in high poverty schools, troubled by  
4 shortages of appropriately trained teachers and  
5 instruction materials, and generally low capacity to  
6 educate either immigrant or native born children"?

7 MR. CHOATE: What's the question?

8 THE REPORTER: Do you agree with the statement  
9 in the report that -- and I'm quoting from page 8,  
10 "That LEP immigrant students were also found to be  
11 concentrated in high poverty schools, troubled by  
12 shortages of appropriately trained teachers and  
13 instruction materials, and generally low capacity to  
14 educate either immigrant or native born children"?

15 MR. CHOATE: I will object that he just  
16 testified he didn't independently --

17 THE WITNESS: I would like to see the report  
18 if we are going to go to that line of questioning.

19 Let me observe. There are two statements in  
20 that report as I heard it, one of which I would  
21 characterize as possibly factual as to concentration,  
22 and one of which is, sounds to me to be judgmental as  
23 to capacity.

24 MS. WELCH: I'm going to have to go through  
25 other boxes.

1 Q I'm not quite sure I understand how your  
2 division of what is said in the statement, what that  
3 has to do with whether you would agree with it or not.

4 A Well, it's also -- we'd have to go look at  
5 other evidence, too. Because one of the things that I  
6 found, for instance, was that in a couple of measures  
7 California is doing better in terms of allocating  
8 resources that I could analyze to districts that were  
9 characterized as high poverty or urban school  
10 districts. Because presumably it's the same that these  
11 authors are talking about. That's the quantitative  
12 part of it.

13 And so this is one argument, and I'd have to  
14 put those data in the context of other data that they  
15 are also in this report and available elsewhere.

16 The judgmental part would be as to the  
17 capacity to educate these. And -- these students. And  
18 that seems to me to be judgmental rather -- in many  
19 ways rather than analytic, as I understood what -- the  
20 quote that you said.

21 And again, we have evidence that in some areas  
22 California's doing surprise -- better than much of its  
23 competition around the United States. And for me to --  
24 comparative test is important as an expert. Whatever  
25 ones preference is about levels of performance, it's

1 say, "This pattern may hold for educational performance  
2 and becomes more important for children of low  
3 education immigrants."

4 My question is, are you suggesting that it  
5 will take two to three generations for immigrant  
6 children to catch up academically to nonimmigrant  
7 children?

8 A No. But what I am suggesting -- no. You can  
9 ask me what I am suggesting if you want.

10 Q What are you suggesting?

11 A That in a context of high immigration any, any  
12 static look will always make California look worse than  
13 a state without the same number of immigrants. Because  
14 whether it takes one generation, two generations, or  
15 two years, it will take sometime. And there is in this  
16 area and -- that -- a suggestion that it is inter-  
17 generational, and it may not be -- and I don't know the  
18 answer to this. And so the reason it's phrased -- it  
19 may impact -- it may be that -- this is not my area of  
20 expertise. It's better to say -- I will leave it where  
21 I said, it's a conditional sort of statement.

22 Q Why do you say at the end of that sentence  
23 that "it becomes more important for children of low  
24 education immigrants"?

25 A It's basically what I'm expressing. It goes

1 still very valuable to understand comparatively how you  
2 are doing it.

3 Q To be fair, I didn't represent that that quote  
4 was focusing on California in particular.

5 MR. CHOATE: Well, to be fair --

6 THE WITNESS: I understand that.

7 MR. CHOATE: Dr. Kirlin -- it sounded to me  
8 like it was a 60 word or 70 word quote, and he doesn't  
9 have it in front of him. If you want him to testify  
10 about the quote or the document, you can give him the  
11 document.

12 MS. WELCH: Okay. I will do that. I just  
13 don't want to waste the time collecting it right now,  
14 so we can come back to it tomorrow. I think my  
15 question was pretty simple.

16 MR. CHOATE: I still think if you want  
17 somebody to testify from a document it makes proper  
18 sense to give him the document.

19 Q BY MS. WELCH: At the bottom of page 4 you  
20 talk about an article by George Borjas. And the report  
21 says, "For example, Borjas estimates that about half of  
22 any wage differential between a first generation  
23 immigrant and nonimmigrants persists into the second  
24 generation and half the difference remaining in the  
25 second generation persists into the third." Then you

1 back to -- in a state in which every year coming into  
2 the K-12 public educational system are a new cohort of  
3 immigrant children, particularly low education  
4 immigrant children. As we generally believe and  
5 know -- believe that the education of the parents has a  
6 great impact on the performance of their children in a  
7 school context. That is those coming into the school  
8 every year a new wave, that's going to color the --  
9 what is occurring in California schools all the time  
10 and make it more difficult to compare them to a state  
11 which is not experiencing those levels of immigration.

12 It's -- I intend it to be a pretty simple  
13 statement that it's very difficult to make comparisons  
14 when you have this number of immigrants coming in year  
15 after year after year, because there's a lot of catch  
16 up to do, even if they catch up very quickly.

17 Q Do you think it's important to compare  
18 California to the rest of the nation in terms of its  
19 success in educating children?

20 MR. CHOATE: Objection, vague and ambiguous.

21 THE WITNESS: Yes. I think that's a useful  
22 comparison.

23 Q BY MS. WELCH: Why is that?

24 A It's useful first of all as an analyst,  
25 because it's one of the comparisons -- I compare

1 California to the nation and my eight comparison states  
2 of California as part of this nation. It's not part of  
3 France, or not part of Germany, or part of Japan, or  
4 Russia, or China, or some places in this context. And  
5 it's a valuable comparison as an analyst, and it's  
6 valuable from a public policy perspective to compare --  
7 the results or whatever you are comparing at that  
8 level.

9 I'm not certain I understand what, what the  
10 question is beyond that sort of response.

11 Q Looking at page 5, why do you think that  
12 California will have among the most challenges of any  
13 state in successfully educating students?

14 A Well, this is a summary statement given the --  
15 what we've just seen in number of immigrants we've just  
16 described, the number on table 1 which actually follows  
17 it which we already talked about of high fraction of  
18 students receiving LEP services, highest in the nation,  
19 the highest in the nation of students eligible for --  
20 highest of the comparison states. I'm sorry we don't  
21 have national data here -- highest of the comparison  
22 states, although not much, for receiving free and  
23 reduced priced meals.

24 In that context Florida, New York and Texas  
25 are close to California, not much difference. But this

1 expertise.

2 It's an area my wife works in, so I hear her  
3 talk about it. So I've heard some things, but I  
4 haven't done it enough to have an independent ownership  
5 of it.

6 Q BY MS. WELCH: In the third paragraph on page  
7 5 you talk about plaintiffs' expert analyses. And I  
8 think we've covered this before. For the most part  
9 you've testified about this.

10 I'm wondering if you are referring to specific  
11 expert reports in this paragraph, or if you are just  
12 referring to them generally.

13 MR. CHOATE: Take the time and read the  
14 paragraph if you need to.

15 Could you read back the question, please?

16 THE REPORTER: In the third paragraph on page  
17 5 you talk about plaintiffs' expert analyses. And I  
18 think we've covered this before. For the most part  
19 you've testified about this.

20 I'm wondering if you are referring to specific  
21 expert reports in this paragraph, or if you are just  
22 referring to them generally.

23 THE WITNESS: I think this is a general  
24 comment. And that said, I don't think of a single one  
25 of them from memory that does not fit this

1 is a situation with students with these attributes that  
2 are widely believed to be more challenging to educate.  
3 All I was doing is summarized what we just talked  
4 about.

5 Q Any other reason why you think that it would  
6 have among the most challenges?

7 A Always talk about the size of the state. The  
8 mere size gives you -- raises its own challenges.

9 Q What do you mean by "successfully educating  
10 students"?

11 A I think I mean the sort of things that are  
12 captured in the analyses that are reported here;  
13 graduation rates, ability to do well in whatever sort  
14 of standard assessments are provided.

15 Q So with that phrase you are referring only to  
16 the measures that you set out as comparison measures in  
17 the tables?

18 A Well, primarily. One could talk about the  
19 more general functions we talked about earlier about  
20 employment and citizenship. But we measure those  
21 oftentimes with these other proxy measures, also.

22 Q Do you know of any proxies that get at  
23 citizenship?

24 MR. CHOATE: Objection, vague and ambiguous.

25 THE WITNESS: It's not my area of professional

1 characterization. I don't think of a single one that  
2 has a systematic selection of states to compare, as an  
3 example.

4 Q BY MS. WELCH: So do you think that providing  
5 best practices from other states is a form of advocacy?

6 MR. CHOATE: Objection, vague and ambiguous.

7 THE WITNESS: There are -- the weakness that I  
8 saw in these reports in this regard was selection of  
9 practices in -- selected practices in selected states  
10 without a convincing demonstration of either of two  
11 things; that the thing selected got the results hoped  
12 for -- and many times that was because the performance  
13 looked at was selective and not complete. An example  
14 would be Connecticut. Experts love Connecticut, but  
15 missed low graduation rates, whatever else is going on  
16 in Connecticut that's negative. That's a hypothetical.  
17 That's an example of what went on. So that's one  
18 problem I saw they didn't wrestle with.

19 The other problem I saw they didn't wrestle  
20 with is the difficulty in scaling up what they may  
21 judge to be a best practice in a state the size of  
22 Connecticut or Kentucky; tenth the size of California,  
23 roughly, to an enterprise as large and complex as  
24 California. So those are the two weaknesses that I  
25 saw.

1 Q Also in that paragraph you talk about caution  
2 in sources. You say, "I found little evidence of  
3 systematic comparison of policies and practices in  
4 caution and sources of data." And then the sentence  
5 goes on.

6 What do you mean by "caution and sources"?

7 A I think there are two things that I was paying  
8 attention to. Part of it is being explicit about how  
9 you are going to try to look for information, and I  
10 didn't see that reflected, I don't remember that being  
11 reflected in any of the expert reports as I tried to do  
12 saying, I really want to look at national data source  
13 and look at major think tanks, et. cetera. I didn't  
14 see that sort of explicit commitment to look broadly  
15 for the information. They may well have done it, they  
16 didn't make it explicit. Sometimes it looked to me  
17 like they had not done it.

18 The second thing that I didn't see goes to  
19 the -- dealing with the whole state and all of its, all  
20 of its warts and beauties, also, so you don't get a  
21 nuance sense of performance. And it's a little --  
22 it's -- I sort of said that in another way earlier.  
23 But if you pick only one part of a system to focus on,  
24 then you can say, "Gee, that's wonderful, or terrible,"  
25 but what's giving you that is the whole system, not

1 just wait until we get to the last section of your  
2 report and talk about them.

3 A My intent is to refer to the ones in the last  
4 section of the report.

5 Q On page 5, why do you -- the last paragraph  
6 you talk about a positive trajectory.

7 Why do you think California's public schools  
8 are on a positive trajectory?

9 A That's flushed out in the time section there.  
10 But we talked a little bit about it already in -- my  
11 interpretation of the performance measures that I found  
12 and assessed shows California graduating Hispanics and  
13 blacks at close to the white range. White range is  
14 keeping more kids in school through graduation. Those  
15 are positive. So I characterize it as positive  
16 trajectory.

17 Q Anything -- any other examples of that besides  
18 graduation rates and the rate at which California keeps  
19 students in school?

20 A Oh, there are several others discussed there.

21 Did you want to go to that section of the  
22 report to talk about them? That was just an  
23 illustration of -- I mean, that's my sense of -- and  
24 it's stated at the end when you look at all of the  
25 tables that are put together, California has some work

1 just that part. So you have to understand how the  
2 whole system works.

3 And I guess it's -- so I get very cautious  
4 when I see someone saying this state is wonderful in  
5 this dimension without also knowing what is happening  
6 to things like participation rates and graduation rates  
7 and things like that. Because in the context of not  
8 knowing those things, you can't tell whether this is  
9 wonderful, which is back to the prior response on sort  
10 of the best practices question.

11 Q The last paragraph on page 5 you talk about  
12 several major initiatives that California has lodged.  
13 And then you refer to the closing section of your  
14 report.

15 Are all of the major initiatives that you are  
16 kind of previewing here included in that last section  
17 of your report?

18 MR. CHOATE: Are you asking him if every  
19 single -- every single initiative of California is  
20 included in the last section of the report?

21 MS. WELCH: No.

22 Q I just wanted to avoid asking you which major  
23 initiatives you are referring to, and then have you  
24 say -- I mean, if your answer is going to be well, they  
25 are all in the last section of my report, then I can

1 someplace, it also has some great successes someplace.

2 So I would characterize -- I end up  
3 characterizing the overall situation -- I think the  
4 language I use is the glass at least half full  
5 metaphor.

6 Q Why don't we go to the section where you talk  
7 about evidence of the positive trajectory, and we can  
8 make a list.

9 Do you want to go to that part of your report?

10 A I was also saying it doesn't come out in just  
11 one section.

12 There's two things. There's the recent policy  
13 initiatives, which I characterize as positive, but I  
14 would say that it's -- they start right on page 11 with  
15 graduation rates. You know, not doing as well in NAEP  
16 scores, but better on graduation rates which we just  
17 mentioned. Better on percent of 16 and 19-year-olds  
18 not in school. Better on the deviation from poor urban  
19 schools versus others in the state, a measure of  
20 standard deviation from the mean of poor urban schools  
21 versus others in the state.

22 And I'd earlier suggested later on in the  
23 report, but as I think about it it actually builds  
24 throughout the report, so I apologize for suggesting  
25 that it was just a list at the back of the report.

1 Some recent policy initiatives are listed at the back  
2 of the report, but the overall positive assessment,  
3 positive trajectory comment comes out of the picture  
4 that I see emerging as we look at what's happening  
5 throughout the entire report. So if I misdirected you  
6 toward the end, I apologize for that.

7 Q That's okay. I want to get a complete list of  
8 what you think is evidence of the positive trajectory.

9 So far you've talked about the graduation  
10 rates, the rate at which California keeps students in  
11 schools, the standard deviation looking at the urban  
12 schools, recent policy initiatives that you list  
13 towards the back of the report.

14 Is there anything else you would add to that  
15 list?

16 MR. CHOATE: I think he added some other  
17 things I think that you have missed. He also talked  
18 about other things earlier in the deposition such as  
19 the distribution of teachers with majors and minors. I  
20 think he's given you some examples.

21 THE WITNESS: Would you like me to go through  
22 and try to identify more of these?

23 Q BY MS. WELCH: Do you have other examples in  
24 mind?

25 A That's another example. And what I was just

1 the best practice, accurately assessing what is the  
2 best practice, and then figuring out a way to bring it  
3 into a different context, context of California in this  
4 case.

5 Q BY MS. WELCH: Well, taking an example. If  
6 you have another state with a really high percentage of  
7 LEP students that is making a lot of strides in terms  
8 of student achievement for LEP students, do you think  
9 it makes sense for another state with a high percentage  
10 of LEP students to take a look at that and say, "Hey,  
11 that's -- they are having some success with that  
12 practice, we should think about doing that here"?

13 MR. CHOATE: Objection, vague and ambiguous,  
14 it's also an incomplete hypothetical.

15 THE WITNESS: I personally far prefer, and the  
16 way the report is written, also, is to look at the  
17 performance of the whole state educational system.  
18 Because that's ultimately what you are trying to  
19 achieve.

20 And what -- my understanding of the analysis  
21 we have to date is actually a lot of -- there's a lot  
22 of examples of initiatives to improve education, many  
23 more initiatives than there are carefully assessed  
24 initiatives, and quite a bit of controversy about  
25 the -- what works.

1 going to go through is every -- virtually every one of  
2 these tables and text has something that fits that.

3 California is very much in the mainstream on  
4 the movement toward content standards, performance  
5 standards, as I can read it, scores quite well  
6 regarding teachers with several majors that were found  
7 and discussed at pages 15 through part of page 20.  
8 Spends as much on school facilities as other states by  
9 the available data we have. Spends as much on  
10 instructional materials as other states.

11 So it's, you know -- the picture that comes  
12 out is California is being very much in the mainstream  
13 or -- and fitting amongst comparison states, often  
14 above a number, sometimes toward the bottom of the  
15 distribution, but usually in the middle or above. It's  
16 a very positive picture.

17 Q Do you think it makes sense for states to look  
18 at the best practices of other states in making  
19 decisions about school policies?

20 MR. CHOATE: Objection, vague and ambiguous.  
21 I will also object to the extent it was asked and  
22 answered.

23 THE WITNESS: I have provided an answer to  
24 that question.

25 And the big challenge is figuring out what is

1 But the point is I'd shift the starting point  
2 to the outcomes generally at the state level and then  
3 figure out what contributed to that and pay attention  
4 particularly to states that match California in terms  
5 of their attributes, and size, and number of --  
6 fractions of LEP students, et. cetera. And it's very  
7 hard to start just with a single best practice, in my  
8 judgment.

9 Q BY MS. WELCH: In terms of California, if it  
10 was looking for a best practices in other states, you  
11 would only consider best practices from a state that  
12 was similar in characteristic to California?

13 MR. CHOATE: Objection, I think that misstates  
14 his testimony.

15 THE WITNESS: What I said was I would try to  
16 start not with a single best practice, but with a state  
17 which was achieving the sort of outcomes and results  
18 that I hoped to achieve in California. And then I  
19 would work back from that, demonstrate success to try  
20 to figure out what had contributed to that, and paying  
21 attention to states that had the complexity and  
22 attributes that California has. In the course of that  
23 I may find something that someone calls a best  
24 practice, but I would hesitate to start just with the  
25 single best practice and build the policy logic up from

1 that.

2 Q BY MS. WELCH: Are you familiar with  
3 Connecticut's educational system?

4 MR. CHOATE: I will object to the extent it's  
5 vague and ambiguous as to what you mean by "familiar."

6 THE WITNESS: Not -- I'm more familiar with  
7 assessments in the performance of Connecticut's  
8 educational system as reported here, would be a better  
9 way of saying it.

10 Q BY MS. WELCH: Are you familiar with reforms  
11 Connecticut has instituted regarding teacher  
12 recruitment?

13 MR. CHOATE: Objection, vague and ambiguous,  
14 assumes facts not in evidence.

15 THE WITNESS: Without going back through it,  
16 I'm not even certain what these data show about what  
17 Connecticut has done.

18 And primarily what I've done is look at the  
19 data available across all states, rather than a single  
20 state, of policy initiatives around education, around  
21 teachers, as an example. So I don't know what, what,  
22 what -- I have right at the moment very little  
23 information -- none -- nothing comes to mind about what  
24 Connecticut has done in the area you just asked about.

25 Q BY MS. WELCH: What about in the area of

1 A I believe I've responded to that question  
2 generally about my approach to what can be best  
3 practices, and I would continue with that response to  
4 the specific query about Kentucky.

5 Q Your view is it wouldn't make sense to look at  
6 Kentucky?

7 MR. CHOATE: Objection, mischaracterizes his  
8 testimony. I think he testified as to what his views  
9 are regarding how you would do an appropriate analysis.

10 THE WITNESS: I would certainly start at the  
11 state level in terms of analysis. I think it's the  
12 most useful place to start for policy ideas. Because  
13 ultimately what you are trying to do is not, in my  
14 judgment not compile a list of best practices, but  
15 improve the performance of the entire educational  
16 system. I would look from there and start backwards.

17 I've already offered the opinion that I don't  
18 find it particularly valuable to start with the best  
19 practice and move up from there -- policy logic, excuse  
20 me.

21 Q BY MS. WELCH: Are you familiar with  
22 Kentucky's accountability system?

23 MR. CHOATE: Objection, vague and ambiguous.

24 THE WITNESS: Not in any specifics.

25 Q BY MS. WELCH: Are you generally familiar with

1 teacher salaries?

2 MR. CHOATE: What are we talking about, in  
3 Connecticut?

4 MS. WELCH: Yeah.

5 MR. CHOATE: Same objection.

6 THE WITNESS: Connecticut I believe has either  
7 the second highest or the highest teacher salaries to  
8 any other state which is close to California in teacher  
9 salaries. I believe those are the two high states.  
10 We'd have to go check.

11 This is not a -- I don't like to testify from  
12 memory. I far prefer to work from the data we have in  
13 the report. And in the data sources we could go look  
14 at those.

15 Connecticut was not one of the comparison  
16 states, so it's not listed in the report. This goes to  
17 the structure of my report which focuses on a  
18 consistent set of comparison states. Connecticut is  
19 not in my judgment a good comparison state to  
20 California.

21 Q BY MS. WELCH: Do you think that because  
22 Kentucky is smaller than California and has less -- a  
23 smaller LEP population that scholars in California  
24 should not look to Kentucky for best practices in terms  
25 of its accountability system?

1 it?

2 A I have read in these reports and general  
3 discussions about the efforts in Kentucky. But I do  
4 not purport to be an expert in the specifics of the  
5 Kentucky system.

6 Q Do you think the plaintiffs' experts have  
7 selected other states as models for California?

8 A Yes. I believe in their reports as they  
9 advocate ideas that they believe should be pursued in  
10 California, they have picked features of other states,  
11 is a better way of saying it, picked feature practices  
12 from other states. They have -- the best of my memory  
13 none of them of said California should emulate  
14 everything that happens in Connecticut, or Kentucky, or  
15 any other state.

16 MS. WELCH: Can we take a quick break?

17 (A break was taken.)

18 Q BY MS. WELCH: I think we've talked a couple  
19 times about the issue of best practices and your  
20 preferred methodology in terms of comparing educational  
21 systems.

22 My question is, do you use that same  
23 methodology if you are looking at another system in a  
24 state? By that I mean what you discussed in terms of  
25 preferring not to look at a particular best practice,

1 but instead to look at kind of -- with respect to  
2 education it was, you know, an entire state system.

3 And --

4 A Hmm-hmm.

5 Q I don't know if you understand my question.

6 I'm basically wondering if you apply that same  
7 methodology to reviewing other systems.

8 MR. CHOATE: I will object to the extent I  
9 think that's been asked and answered.

10 THE WITNESS: I'm sorry, I didn't hear your  
11 objection.

12 MR. CHOATE: I just said I think the question  
13 has been asked and answered in perhaps a slightly  
14 different way earlier.

15 THE WITNESS: The answer is yes. And I think  
16 I've done that. I gave the example in California  
17 looking at the state legislature for energy,  
18 environmental regulation. Their specific question was  
19 how to structure the relationship. It was a narrower  
20 question, but we looked at how that had been structured  
21 in a variety of other states, and looked at the states  
22 and figured out what they did, willie-nillie look --  
23 systematically look around for other places.

24 Similarly when I looked at and analyzed debt  
25 issuance and debt oversight processes for the state

1 understand what worked in that state and make a  
2 judgment about how it might work in California, as an  
3 example. So yes, I think that's a -- I've given an  
4 illustration of that way to think about developing  
5 policies in this report.

6 Q BY MS. WELCH: How do you determine causation?  
7 And by that I mean what is the cause of the  
8 improvements in the system that you are looking at?

9 A There's two or three ways to do it. And what  
10 one does -- what one does and what was done -- again  
11 it's in that report, that's -- the expert report in  
12 front of you provides an illustration of that, of that  
13 sort of work in which one looks at the assessments, or  
14 the evaluations, or the analysis, whatever word you  
15 want to use, of the system you are interested in, in  
16 this case education. And you look -- in my judgment  
17 you look for patterns and consistencies first of all of  
18 demonstrated success at the outcome level, and then you  
19 look for what analysts believe contribute to that. Or  
20 in some circumstances you do your own analysis -- in  
21 this case I was not doing that -- and you look for what  
22 is the, you know, the consensus of the most supported,  
23 the most plausible, whatever test you are able to get.

24 And what I reported here is very similar to  
25 what I am comfortable advocating as a way to do that,

1 treasurer's office, I picked a set of states and did a  
2 systematic comparison. It's very much my habit to do  
3 that. And my preference -- some of the reasons why I  
4 expressed why I think that's a preferable way to --  
5 both to the analysis, but also to guide policy process.  
6 So yes, I tried to do that systematically.

7 Q BY MS. WELCH: When you look to another state  
8 and do a systematic analysis, would you -- if you ended  
9 up finding that there were components of that other  
10 state that you think are working well, would you  
11 translate -- I mean, would you be opposed to trying to  
12 implement those components in the initial state for  
13 which you were looking for ways to improve?

14 MR. CHOATE: Objection, vague and ambiguous,  
15 it's an incomplete hypothetical.

16 THE WITNESS: As I understand the question, to  
17 give a specific that I reference in this case in this  
18 expert report, in looking at the assessments at the  
19 state level, one state that in several, several  
20 assessments looks like it has made progress is Texas.  
21 And so then I do say -- and what Texas did was early  
22 childhood intervention, early childhood -- some form of  
23 whatever it is I say, and so that is the way, then,  
24 that one begins to develop insights into the policy.

25 What could be attempted is then to try to

1 is figure out what people have done. Well, I've just  
2 said it.

3 Q On page 7 in the second paragraph I don't  
4 understand what you mean by the last sentence that  
5 says, "The challenges to successful improvements in  
6 school performance increase as the size of student  
7 enrollments and numbers of districts, schools and  
8 teachers similarly increase, and the variety of student  
9 attributes increase." And it goes on.

10 Could you explain what you mean by that  
11 sentence?

12 MR. CHOATE: I think I will object to the  
13 extent that this has been asked and answered in a  
14 number of different ways.

15 I think Dr. Kirlin has testified what he means  
16 by what's in that sentence

17 THE WITNESS: I have spoken to this sentence  
18 several times in the past. It's not a particularly  
19 artfully written sentence.

20 Q BY MS. WELCH: Well, let me stop you for a  
21 second.

22 My specific question is with the last  
23 parenthetical. "The variety in resources available to  
24 schools and communities similarly increase."

25 What is it about -- why do the challenges to

1 successful improvements in school performance increase  
2 as the variety in resources available to schools and  
3 communities similarly increase?

4 A This is from the state looking down. This is  
5 the policy perspective. And the argument is, and what  
6 I believe is, that the more uniformity there is in any  
7 of these dimensions, the more -- the easier it is to  
8 either -- to do any of the above, any of the following:  
9 Craft a policy, develop and implement a strategy, or  
10 learn from other schools, so that a school in Visalia  
11 could learn more easily from a school in Modesto than  
12 from a school in Southeastern Utah or someplace, you  
13 know, very different.

14 And all this was a way of sort of listing a  
15 set of dimensions of variation that leads to  
16 complexity; as you think about how to develop the  
17 policy, how to learn from each other, how to implement  
18 it. And so there wasn't any particular -- this was  
19 just another effort to enumerate that.

20 Q Do you think that California has a great  
21 variety in resources available to schools and  
22 communities?

23 MR. CHOATE: Objection, vague and ambiguous.

24 THE WITNESS: In this case I'm not talking  
25 particularly about the types of resources that the

1 work. Some communities might say there's lots of  
2 opportunity outside of -- enrichment outside the  
3 schools, we have these resources in the school,  
4 demonstrate equality in access to as soon as -- if I  
5 said it 25 different ways, it just gets more and more  
6 varied.

7 Q You are not referring specifically to school  
8 resources, you are referring to all the resources that  
9 might be available to a community?

10 A Yeah.

11 MR. CHOATE: And I will just note that the  
12 sentence also says "all the resources available to  
13 schools and communities."

14 THE WITNESS: Yeah, schools and communities.

15 Q BY MS. WELCH: The last sentence on page 7 you  
16 say, "These states also have weaknesses in school  
17 performance compared to California."

18 Which states are you referring to?

19 A Later on a couple of them are mentioned, and  
20 I'd have to go -- we should look at -- I think  
21 Connecticut is mentioned as an example. I don't know  
22 which other ones are mentioned. I'm not certain I went  
23 through and identified any specific weakness for each  
24 of these states. I'm pretty sure I didn't. We could  
25 go back and look at them. I could look at them and

1 plaintiffs are talking about, as an example.

2 But it could be any sort of variety. And I  
3 didn't mean to limit it to -- could be different levels  
4 of professionalism, it could be what's available in the  
5 local economic base of the community and other  
6 resources.

7 I just moved here from Indianapolis where the  
8 community is blessed with what is characterized as the  
9 world's largest children's museum. An extraordinary  
10 educational resource. And an extraordinary zoo.

11 Q BY MS. WELCH: I've been to the zoo. It is  
12 impressive.

13 A It is.

14 Those are extraordinary resources for the  
15 community, and they are extraordinary educational  
16 resources. If you go to any one of them, kids are  
17 flowing through them all the time.

18 You can't design the entire educational system  
19 of the State of Indiana on the presumption that every  
20 kid has access to the Indianapolis Zoo and Children's  
21 Museum. You similarly can't -- so that's what I'm  
22 talking about here.

23 It's not -- it's -- it's just a general  
24 observation that the more -- the more variation there  
25 is of -- the tougher it is to figure out what will

1 probably -- enumerate a weakness for each one. I  
2 don't -- if pressed to do that.

3 MR. CHOATE: Leecia, so you know, too, in the  
4 preceding paragraphs there's reference to some of the  
5 states that the plaintiffs' experts point to.

6 MS. WELCH: Right.

7 Q Are you -- is it your opinion that all of the  
8 states that plaintiffs' experts point to have  
9 weaknesses in school performance compared to  
10 California?

11 A I've earlier observed that California is doing  
12 well in a variety of areas. One of the things that  
13 California appears to be doing as near as -- my memory,  
14 I would have to go back and look table-by-table --  
15 better at what I call equity measures than any of the  
16 states cited by the experts.

17 So then -- yes, I would make the argument. If  
18 I went through a convinced myself that was the case,  
19 I'd say, you know, all these -- none of these states  
20 have done as well as California in equity distribution  
21 of resources or achieved equitable set of outcomes as  
22 California has.

23 So that's the sort of thing I'd have to do to  
24 go through. As I said, I'm not certain I actually went  
25 through and literally said well, the weakness in New

1 York is this, the weakness in Connecticut is this,  
2 North Carolina, et. cetera. I could go back and  
3 refresh my memory and do that.

4 The -- these states do have weaknesses.  
5 Whether they all have exactly the same weakness, I  
6 don't know. That's my general judgment about this.  
7 Any state will have some things it does very well, and  
8 some things not as well. And that's the nature of the  
9 policy process. It's the nature of getting things done  
10 in the public sector.

11 Q Are the basis for this sentence basically  
12 throughout your report?

13 A Yes.

14 Q Is there anything else that comes to mind that  
15 you haven't included in the report?

16 A No.

17 Q Do these states -- do you know whether these  
18 states also have strengths in school performance  
19 compared to California?

20 MR. CHOATE: Objection.

21 I'm sorry, Leecia, what states are we  
22 referring to now?

23 MS. WELCH: The states he refers to on the  
24 last sentence of page 7.

25 THE WITNESS: These are the states that the

1 A What I tried to do with this heading is be  
2 accurate to the text which describes what is in table  
3 3. And it starts with a discussion of expenditures in  
4 which the data that are available from National Center  
5 For Educational Statistics suggest that California  
6 spends less per pupil than for the national average,  
7 and four -- with New York spending more. But  
8 California, even by this measure, spends more than  
9 Arizona, Nevada, Florida and Texas. So California is  
10 sort of in the middle of the comparison states.

11 But then it's also clear that there is a major  
12 discrepancy between the numbers that are reported in  
13 this national data set and what California's budget  
14 documents show, and that the budget documents show  
15 substantially more expenditure than is reported in  
16 national data.

17 And so on page 10 I say California may spend  
18 less than the national average, I end up actually  
19 deeply suspicious of the national data in this regard.  
20 We don't know the other states are also spending more  
21 than they report nationally. But I report accurately  
22 what I found there.

23 The next paragraph, which is the fourth  
24 paragraph down, reports as accurate as I can that the  
25 raw performance scores on the NAEP test for eighth

1 plaintiffs' experts refer to that are enumerated on --  
2 in the paragraph above, page 8.

3 They may.

4 Q BY MS. WELCH: Do any come to mind, any  
5 strengths?

6 A No. Part of the caution here is -- goes back  
7 to the best practices conversation. It's very hard to  
8 isolate a single, a single, a single good thing.

9 I've already said that when you look at the  
10 overall performance, Texas looks like a place that has  
11 most, by most assessments improved performance broadly,  
12 and that's one that's cited by five of the -- cited  
13 five times as an example as a model state. As I've  
14 suggested already, I would be looking at what Texas has  
15 done.

16 Q On page 9 your heading says "Overall  
17 Assessment Provides Mixed Picture of the Performance of  
18 California Schools."

19 What do you mean by "mixed picture"?

20 MR. CHOATE: Dr. Kirlin, if you need to take  
21 the time to read part of this section of the -- your  
22 report in order to respond to Leecia's question, you  
23 are obviously free to do so.

24 THE WITNESS: Hmm-hmm.

25 Q BY MS. WELCH: Take as much time as you need.

1 graders in reading, math and science are below the  
2 nation and all comparison states which have the NAEP  
3 scores. And then a qualifying sentence, "These are  
4 unadjusted for student attributes," et. cetera.

5 But then the following paragraph, California  
6 performs substantially better against other performance  
7 criteria. High school graduation rates close to  
8 national average, and exceed those of four comparison  
9 states, match those of Oregon. Graduates at nearly the  
10 national average, surpasses Nevada, Oregon, Florida in  
11 this measure. Exceeds the national average in  
12 graduation rates of African Americans and of Hispanics.  
13 And graduation rates of African Americans surpasses  
14 five of the comparison states, equals Pennsylvania,  
15 falls short of Texas by 2 percentage points. Does  
16 quite well, in other words. Graduation rates of  
17 Hispanics surpassed by 2 percentage points Illinois and  
18 Texas -- by Illinois and Texas, but surpasses Florida,  
19 New York and Pennsylvania. And there are no data  
20 available for the other three comparison states.  
21 Percent of 16 to 19-year-olds not in school but not  
22 graduated from high school, California is 9 percent  
23 better than the national rate of 10 percent, it beats  
24 Arizona, Nevada, Oregon, Florida, Illinois and Texas,  
25 equals New York, surpassed only by Pennsylvania.

1 This performance of poor urban schools versus  
2 other schools and states expresses a standard deviation  
3 from the mean. California's score is substantially  
4 better than Illinois by a factor of 2, New York by a  
5 factor of 2, Pennsylvania by a factor of almost 3.  
6 Texas performs very close to the same, slightly better.  
7 Florida and Arizona are somewhat better.

8 So then you come to a summary of argument  
9 which is -- or statement which is, you know -- may have  
10 somewhat less resources. Does perform worse on the  
11 NAEP on adjusted scores, does better on the other  
12 measures talked about.

13 And then it ends with a final paragraph from  
14 Education Week's contrast of educational adequacy,  
15 resource of adequacy versus resource equity.  
16 California is somewhat below the national average on  
17 adequacy, but above the national average on equity.

18 So it's -- I characterize that as a mix, but  
19 I'd say generally positive picture of California's  
20 performance.

21 Q Are you aware of California's rank in the  
22 nation in terms of per pupil expenditure?

23 A It's not reported in these data -- in this  
24 report, it was in the data that I used. I don't  
25 remember it.

1 follows though.

2 Q BY MS. WELCH: Is the LAO analysis --

3 A LAO is what I rely on here. The actual  
4 ultimate comparison is in the third sentence -- third  
5 paragraph, I'm sorry. Because we have to get to the  
6 right year.

7 California is actually spending on education  
8 per ADA in 2000/2001 was \$9,068, which is \$1,544 or 20  
9 percent more than shown in table 3, the NCES data.

10 So yes, I'm comparing the work from the LAO,  
11 which I do trust, with the data reported in NCES; data  
12 available on NCES which I don't know what manipulation  
13 or who reported it.

14 Q Is it your view that LAO states that the  
15 expenditures are under reported?

16 A LAO in -- there are two statements here. The  
17 third paragraph is my statement of the difference  
18 between what is in the LAO report for expenditures for  
19 2001/2002 versus NCES. That's my statement. I also  
20 say other states, you know, may have made changes and  
21 have different variations, too.

22 The paragraph above that is -- actually talks  
23 about the Legislative analyst recognizes there are some  
24 difference between the data they report, which are  
25 based on actual expenditures in California, and what is

1 MR. CHOATE: Leecia, I'm sorry, were you  
2 asking for the numerical value?

3 MS. WELCH: Rank.

4 Q Why didn't you think providing the rank in the  
5 chart would be valuable data?

6 A I prepared the estimated expenditures, I could  
7 have -- in raw data terms. I could have then provided  
8 more information either as rank or as deviation from  
9 the national average or -- it would be the two classic  
10 ways to do it, or quartiles.

11 The comparisons to the eight comparison states  
12 are reasonable in terms of the raw data which I  
13 provided. Rank would provide no more information. And  
14 additionally as we discussed, I'm convinced that the  
15 data reported in this national study underreport what  
16 California is spending. Seems to me comparisons of  
17 that sort are in my judgment highly suspect.

18 Q What is the basis for your conclusion that  
19 California's expenditures are apparently underreported  
20 to NCES?

21 MR. CHOATE: Aside from what's in the report?

22 MS. WELCH: I'm looking at the, "Moreover,  
23 California's expenditures are apparently under reported  
24 in these national data." Page 9.

25 MR. CHOATE: There's a second sentence that

1 bantered about in some of these other sources. And  
2 that is their citation at footnote 5, and they identify  
3 five factors.

4 Q Doesn't the LAO also say California spending  
5 is below the national average no matter how you measure  
6 it?

7 MR. CHOATE: Objection, assumes facts not in  
8 evidence. If you want him to...

9 THE WITNESS: Actually I did not read a  
10 statement to that effect by LAO. If you have it, I  
11 would be happy to review it. But I have no memory of  
12 such a statement in an LAO document.

13 MS. WELCH: We can come back to that.

14 Q Do you know how the K through -- the figure  
15 was calculated?

16 MR. CHOATE: I'm sorry, which figure?

17 MS. WELCH: The per pupil figure.

18 THE WITNESS: By whom?

19 Q BY MS. WELCH: Well, the figures that you rely  
20 on, I guess starting with the first one in the second  
21 paragraph.

22 MR. CHOATE: 9,477?

23 MS. WELCH: Yeah.

24 THE WITNESS: Do I know how it was calculated?

25 Q BY MS. WELCH: Yeah.

1 A I'd have to go back and look at this to see  
2 what I -- what the document says and to see how far I  
3 went back into, into trying to understand how they  
4 calculated it.

5 What that says is this is the budget as  
6 enacted. And it's important to pay attention to the  
7 language here. That's the, the K-12 expenditures from  
8 all sources, that's federal, state and local, equal  
9 \$9,477.

10 They -- that's the reference to that. So I'd  
11 have to go back and look at it. I've walked through  
12 these calculations in the past. I'd have to have the  
13 document in front of me to see what they have in there.  
14 I don't -- my general presumption is that the  
15 legislative analyst is doing the math correctly. But I  
16 have gone back and checked their stuff and understand  
17 what's in and what's out sometimes.

18 Q Just to make sure that I understand the basis  
19 for your opinions on this page.

20 When you talk about on the -- in the second  
21 paragraph, the first sentence where you say,  
22 "California's expenditures are apparently under  
23 reported in these national data," could you tell me all  
24 the basis for that statement?

25 MR. CHOATE: Other than what he's already

1 that talks about educational expenditures that refers  
2 only to the Prop 98 expenditures. The other money is  
3 real money. It's being spent for education. But they  
4 flip flop back and forth. And that's a big source for  
5 the ambiguity and the confusion in California.

6 Q Do you know how other states calculate the per  
7 pupil expenditure figures that they use as reported to  
8 NCES?

9 A No.

10 Q Do you know what the figure would be for the  
11 comparison states that you used?

12 MR. CHOATE: Objection, vague and ambiguous.  
13 What figure?

14 Q BY MS. WELCH: If we are going to use a  
15 different figure for California to try to get at what  
16 the per pupil expenditure is according to the LAO as  
17 versus using the reported figure that you use in your  
18 charts, did you do a similar analysis for the other  
19 states to look at how their LAO equivalent judged per  
20 pupil expenditure?

21 MR. CHOATE: Let me object. First, it's been  
22 asked and answered a couple different times.  
23 Dr. Kirlin testified twice that other states may  
24 experience the same issue that's reflected here in  
25 California numbers.

1 testified to?

2 THE WITNESS: Other than what follows in the  
3 next two paragraphs? The balance of that paragraph and  
4 the next paragraph? Those are the basis for that  
5 statement.

6 Q BY MS. WELCH: Okay. So the basis are in the  
7 footnotes following?

8 A Yes.

9 Q And what is the basis for the sentence that  
10 says -- later on in that paragraph -- "Many reports of  
11 spending on education in California exclude important  
12 costs"?

13 A Well, what follows is that one reason  
14 expenditures in Prop 98 calculations are often reported  
15 while other expenditures for K-12 education which are  
16 not so counted are omitted.

17 This is -- and then it continues for  
18 2001/2002. The LAO reports these nonProposition 98  
19 funds total 13.8 billion, 36 percent of the 38.8  
20 billion counted under Proposition 98 or 26 percent, the  
21 total expenditures of 52.7 billion. And you will  
22 see -- even in an LAO report you will see a description  
23 which is total expenditures including -- and then it  
24 will be Proposition 98 counted expenditures, other  
25 educational expenditures. Then there will be a text

1 THE WITNESS: No. I did not do that. And  
2 yes, as I said earlier, I am deeply suspect with these  
3 national expenditure comparisons.

4 Q BY MS. WELCH: Can you tell me why you are  
5 deeply suspect, other than what we've already talked  
6 about?

7 A No. But what we've already talked about is  
8 very sufficient in my judgment.

9 Q That covers it?

10 A Yes. Actually we hit a couple more later on.  
11 It's the same issue, because the expenditures are hard  
12 to trace.

13 Q Are you familiar with the procedure that NCES  
14 uses to compare per pupil expenditures?

15 MR. CHOATE: I will object to the extent it's  
16 vague and ambiguous.

17 THE WITNESS: I read and sought to understand  
18 the reports from NCES, and I judge -- the documentation  
19 I saw did not provide an adequate explanation for the  
20 discrepancy between California and their numbers.

21 Q BY MS. WELCH: So you have some familiarity,  
22 is that right?

23 A I tried to understand it. It's not clear to  
24 me that I do fully understand it. And part of the  
25 difficulty is that there wasn't a way to crosswalk what

1 I'm finding in California to what is available in those  
2 data -- in their compilation. And short of that  
3 effort, it remains to me a mystery. And as I said, I'm  
4 deeply suspect of what they did.

5 Q Are you familiar with how the NEA compares per  
6 pupil expenditures?

7 A Not in any detail. I've seen their numbers,  
8 but I've not done the same sort of issue because I  
9 believe they are the same discrepancy between what they  
10 report and what you find in California documents.  
11 Again, I don't know what they put in or out or what  
12 adjustments they may have made.

13 Q So you have the same reservations about the  
14 NEA data?

15 A I focused on the NCES because it's a  
16 government source, the priority of sources I would look  
17 at, and did not spend as much time on the NEA data.  
18 Virtually no time. I think I looked at the NEA data  
19 and said I have the NCES, and given the template I will  
20 rely on the NCES.

21 Q As part of your production in this case, an  
22 article was produced from a source called Cal Tax  
23 regarding the discrepancy between NCES numbers and NEA  
24 numbers.

25 Do you recall that article?

1 gross terms, fiscal resources available.

2 Q BY MS. WELCH: Do you view it as an important  
3 indicator?

4 A Of -- I've -- I and virtually anyone else who  
5 does work on finances uses a variety of these sorts.  
6 Yes, they are valuable.

7 Q Are you familiar with the Ed Source  
8 calculations regarding per pupil expenditures?

9 MR. CHOATE: Objection, vague and ambiguous as  
10 to "familiar."

11 THE WITNESS: That I cited?

12 Q BY MS. WELCH: I don't think so.

13 A I'm not sure whether -- I don't remember --  
14 again, I would have cited -- I would have relied first  
15 on government, official government reports. So I may  
16 have run across the Ed Source, it doesn't come to mind.

17 Q So it doesn't come to mind, then, whether or  
18 not you considered it?

19 MR. CHOATE: I think he just said he didn't  
20 remember.

21 THE WITNESS: I don't remember seeing it.

22 Q BY MS. WELCH: Do you recall reviewing a  
23 document called "Geographic Variations in Public  
24 Schools Costs"?

25 A Do you have any other identifiers on it? It

1 A Unless I cited it, I didn't rely on it. And I  
2 don't remember, I don't remember citing that.

3 Q I don't think you did cite it, it just was  
4 produced. I was not sure it reflected your opinions in  
5 any way.

6 A I don't remember looking at it.

7 Q Do you recall reading a document that's called  
8 "A Short Primer on Per Pupil Expenditure" from the  
9 Pacific Research Organization that was also produced to  
10 us?

11 A Again, I don't remember whether I looked at  
12 that or not. Apparently some documents were produced  
13 for you that may have been provided -- I'm not certain  
14 what this packet of documents are. They are not  
15 documents I relied on in preparing this report.

16 Q As you testified before, the documents that  
17 you relied on you cited in your report?

18 A Yes.

19 Q In your opinion, what is the significance of  
20 the per pupil expenditure numbers?

21 MR. CHOATE: Objection, vague and ambiguous.

22 THE WITNESS: They are a standard shorthand  
23 way of comparing resources that are available  
24 denominated by number of students, which is a good  
25 starting point to understand the resources available in

1 doesn't ring a bell that way.

2 Q Just that you -- not you. It was produced to  
3 us as well.

4 MR. CHOATE: One way of going through these  
5 questions is showing him the document and letting him  
6 look at it. Otherwise if you don't --

7 I guess the question is do you remember.

8 THE WITNESS: I don't remember.

9 MS. WELCH: Well, the question is, did you  
10 consider it.

11 If he doesn't remember it, then --

12 MR. CHOATE: I think you asked do you recall.  
13 I think that was the question.

14 THE WITNESS: I think you are talking about --  
15 well, all the documents that you have mentioned in the  
16 last several questions I remember them are documents  
17 from advocacy groups, or in some cases like Ed Source a  
18 group similar to advocacy and a think tank where data  
19 were available.

20 As I've said, I relied on government sources.  
21 So even if I looked at it, I didn't, you know, I  
22 tended -- I did rely on the government sources. This  
23 is a document that's already however many pages long it  
24 is. To try to talk through all of the -- to sort it  
25 out all of the differences in these different ways of

1 talking about it would have been a very large task and  
2 not one that I believe was necessary to reach the  
3 judgment I reached.

4 Q What was your collection process in terms of  
5 giving articles and so forth in your possession to your  
6 attorneys?

7 A What was my collection process?

8 Q Yes.

9 MR. CHOATE: For getting documents to his  
10 attorneys?

11 MS. WELCH: Yes.

12 THE WITNESS: Everything that I looked at and  
13 I cited was first of all a public document and was  
14 provided to them. Some of the documents you are  
15 talking about were provided -- I believe were provided  
16 to me in a packet of -- that had been assembled by  
17 somebody at some point and came to me, probably via the  
18 attorneys. And I didn't use it fundamentally. So they  
19 may have sent it back to you as they had given it to  
20 me, but it's not -- I charted an independent course and  
21 independent assessment here. They may have provided  
22 this as background.

23 But as evidenced by my reaction to these type  
24 of sources, it's not that they are necessarily bad  
25 sources or erroneous all the time, I far prefer to rely

1 we are spending is the number that has been developed  
2 through the public policy process. We have other  
3 numbers for corrections, other numbers for  
4 transportation, other numbers for environmental  
5 protection.

6 You are asking in some sense about my  
7 political beliefs and preferences, and I'm not certain  
8 it's an appropriate question for me to respond to,  
9 frankly. I'm here as an expert witness, not here as a  
10 conversation. After we are all done with this I would  
11 be happy to talk with you in conversation about  
12 politics.

13 Q BY MS. WELCH: Well, I really disagree that  
14 it's about, you know, your political views. You have  
15 many pages in here about California's per pupil  
16 expenditures. You obviously have a number of opinions  
17 with respect to California's per pupil expenditures.  
18 So I don't think it's very far afield to ask if you  
19 think that that number is adequate or should be  
20 increased.

21 MR. CHOATE: I will just object again on the  
22 grounds that the question is totally an incomplete  
23 hypothetical. I mean, it's vague.

24 THE WITNESS: I will say as an expert what I  
25 see here is California expenditure looks to me -- first

1 on, as I said, the priority listing of other types of  
2 sources.

3 Q BY MS. WELCH: Do you have an opinion as to  
4 whether California should take steps to increase its  
5 per pupil expenditure figure?

6 MR. CHOATE: Objection, vague and ambiguous.  
7 Also object to the extent it asks Dr. Kirlin to testify  
8 about matters outside the scope of --

9 THE WITNESS: It's not relative to my expert  
10 witness report. And again, I would characterize it as  
11 a preference rather than an expert judgment. I don't  
12 have a considered opinion on that question.

13 Q BY MS. WELCH: What would your preference be?

14 MR. CHOATE: I will just still object to the  
15 extent you are asking him to testify about matters that  
16 are, you know, perhaps his personal opinion, but are  
17 outside the scope of his expert testimony in this case,  
18 like he just testified.

19 MS. WELCH: Okay.

20 Q Give me your personal opinion.

21 A Actually my strongest preference would be full  
22 transparency on the money we are now spending.

23 Q So you think the current figure is adequate?

24 A I don't think there's a way to assess that  
25 professionally or even personally. It is -- the number

1 of all, gross expenditure data are highly suspect.

2 On a variety of performance, which is where  
3 I'd much rather look, California is doing pretty well.  
4 So having looked at performance looks pretty good, I  
5 back into the gross expenditure level is probably not  
6 bad.

7 The second thing is we do know that in real  
8 dollar terms this is also per student, also referenced  
9 here it has gone up actually a very healthy amount in  
10 the recent past. So it's a safe -- situation where the  
11 state has invested substantial additional resources and  
12 is getting good performance compared -- and compared to  
13 other places.

14 So is it the right number? It looks like a  
15 pretty good number. It's certainly not something I  
16 would look at and say cut it in half, nor would I feel  
17 comfortable saying double it.

18 Q BY MS. WELCH: Do you know what California's  
19 scores are on the NAEP relative to the rest of the  
20 country?

21 MR. CHOATE: Objection, vague and ambiguous.  
22 Scores on the NAEP in what category.

23 MS. WELCH: In all categories.

24 THE WITNESS: I've looked at them in many  
25 categories, and I reported here as a summary -- as an

1 illustrative one; the eighth graders on table 3. I've  
2 looked at a variety of others. This is the one I chose  
3 to report here. It's in columns 2, 3 and 4.

4 Q BY MS. WELCH: I was more getting at what the  
5 ranking is in the nation.

6 A I didn't focus on -- I don't have in my head  
7 the rankings. I probably saw them, but I don't have  
8 them in my head.

9 Q What year NAEP scores are you looking at in  
10 table 3?

11 A Source 17. I would have to go back and look  
12 at the source whether those are the 2000 or the 1999  
13 scores. I didn't add that to the table header there.  
14 It should be added. The others have years associated  
15 with them, and except for -- I apologize for that. It  
16 should be in there. It's whatever was reported in  
17 quality counts 2000 that I think is actually -- if I  
18 remember correctly those are the 2000 data. But I  
19 should check that if it's important.

20 Q The reason I ask is because there is a 2003  
21 quality counts that I think you cite to sometimes that  
22 reports on the 2000 statistics. And it seemed to me  
23 that there -- that the numbers were different from the  
24 numbers that were reported on table 3.

25 A If that's the case I should figure out what

1 Q BY MS. WELCH: Do you know whether the NAEP  
2 scores in California have been improving?

3 MR. CHOATE: Objection, vague as to time.

4 THE WITNESS: If -- I do not remember what  
5 that pattern is.

6 Q BY MS. WELCH: Do you know what the percentage  
7 of California's eighth graders is that are LEP  
8 students?

9 A I certainly don't know it off the top of my  
10 head. I don't remember that I looked at specifically  
11 eighth graders as percent of LEP.

12 Q In looking at table 3, you say for the NAEP  
13 columns it says percent of eighth graders scoring at  
14 basic or proficient levels.

15 Do you know what "basic" signifies?

16 A I would have to have the document in front of  
17 me to refresh my memory, because it has a very specific  
18 meaning. And I'm not going to do it from memory.

19 Q So you don't remember?

20 A I just said I'm not going to do it from  
21 memory.

22 MR. CHOATE: Asked and answered.

23 Q BY MS. WELCH: Do you know what "proficient"  
24 means?

25 MR. CHOATE: Same objection.

1 the difference is and reconcile them. One of them we  
2 want to be the correct number and accurately cited.  
3 They should have been the latest available.

4 Q And the other thing is, just for you to think  
5 about, it appeared to me that you did cite the '03 data  
6 for graduation rates. So I wasn't sure if there was a  
7 reason why you weren't citing to the '03 data for the  
8 NAEP scores. So I wanted to ask you if you -- if that  
9 was something, you know -- if there was a basis for  
10 doing that or if it was just an oversight.

11 MR. CHOATE: Okay. What's the question?

12 Q BY MS. WELCH: My question was whether there  
13 is a basis for not citing the most recent NAEP scores.

14 A I would have intended to cite the most recent.  
15 If these are not the most recent, then that's some sort  
16 of inadvertent error on my part. It's not clear they  
17 are not the most recent. It could be a miscitation,  
18 I'm not certain. I can go back and find out what they  
19 are. My intent was to cite the most recent. That was  
20 my intention. If they are not that, then I will have  
21 to figure out what they are. I was trying to remember  
22 whether the NAEP scores were cited in another table,  
23 and I can't remember right now off the top of my head.

24 MR. CHOATE: There's not a question pending  
25 right now.

1 THE WITNESS: Same response. I don't do  
2 technical definitions from memory. Thank you.

3 Q BY MS. WELCH: I'm not asking for a technical  
4 definition, I'm just asking for a general  
5 understanding.

6 MR. CHOATE: Same objection. I think you  
7 asked him if he knows what it means.

8 MS. WELCH: Yeah. I didn't ask for a  
9 technical definition.

10 MR. CHOATE: I mean, you know, I think he just  
11 testified that basic and proficient in the context of  
12 NAEP scores have technical meaning. So if you have a  
13 document and you want to show it to him, show him the  
14 document.

15 THE WITNESS: The important thing is the  
16 comparison across California versus the other  
17 comparison states in the nation, consistent definition  
18 across those.

19 Q BY MS. WELCH: Are you aware of how California  
20 calculates its graduation rates?

21 A For the purposes of this report I did not look  
22 at how California calculates its graduation rates. And  
23 I have had someplace dim in my memory some discussion  
24 of this, but it's not an area that I delved into for  
25 this report.

1 Q Are you aware that California has been  
2 criticized for inaccuracy in reporting graduation  
3 rates?

4 MR. CHOATE: Objection, assumes facts not in  
5 evidence, it's vague and ambiguous.

6 Criticized by whom?

7 MS. WELCH: Numerous places.

8 Q Are you aware of any criticism?

9 A I have heard of such criticisms. That's part  
10 of why I like the data that are reported in the  
11 next-to-the-last column from the Census Bureau, I  
12 believe, which are the percent of 16 to 19-year-olds  
13 not in school, not graduated. I'm not certain who did  
14 that data, because it's records in NCES. But it gets  
15 around that question.

16 In any case, I suspect that if there's  
17 criticisms in California there are equal criticisms in  
18 other states, also.

19 Q Have you discussed California graduation rates  
20 with anyone at the CDE?

21 A No.

22 Q Are you aware California is changing the way  
23 it calculates its graduation rate to comply with No  
24 Child Left Behind?

25 MR. CHOATE: Objection, assumes facts not in

1 to Education Week.

2 Q To Quality Counts?

3 A We'd have to go to that and see what their  
4 source is and go to that source. From memory I think  
5 it's from the Census Bureau. I'm not 100 percent  
6 certain. Quite a while ago, lots of documents.

7 Q Why do you think that that -- I don't want to  
8 mischaracterize your testimony. You said something to  
9 the effect you thought that was a more important  
10 indicator or more reliable indicator than graduation  
11 rates; is that correct?

12 A I said I like that as opposed to -- if it is  
13 as I remember it, Bureau of Census collected data.  
14 They would not have relied on state reports from CDE,  
15 they would have relied on sample surveys of the  
16 population, much like any other census document. This  
17 would not be the decennial enumerated census for 1999,  
18 but some sample basis which they do, or some  
19 statistical modeling on other samples.

20 So if my memory is correct, it is quite  
21 different than what would have been reported from  
22 California or any other state on graduation rates.

23 Q And why would that be preferable in terms of  
24 relying on the figure?

25 A First of all because it would be a consistent

1 evidence.

2 THE WITNESS: I saw a list of things that  
3 California is doing to become -- to bring its practice  
4 into congruence with No Child Left Behind. I don't  
5 remember a specific item on graduation rates.

6 Q BY MS. WELCH: I think you already testified  
7 to the fact that you are not aware of how California --  
8 I'm sorry -- calculates the percent of 16 to  
9 19-year-olds not in school figure; is that right?

10 A I don't believe this is a state-calculated  
11 figure. I'd have to go back to the source document if  
12 you have it. I believe this was calculated not at the  
13 state level, but calculated nationally. I believe it's  
14 the Bureau of Census, but that's from memory. I don't  
15 have the document in front of me.

16 Q You are not aware of how the Bureau of Census  
17 calculates it, correct?

18 MR. CHOATE: Objection, asked and answered.  
19 He said he didn't have the document in front of him so  
20 he can't remember.

21 THE WITNESS: The document -- it would be  
22 better if we looked at the document. It would be  
23 better if we looked at the document.

24 Q BY MS. WELCH: You only cite to --

25 A NCES. We have to see -- I'm sorry, it cites

1 methodology applied nationwide as opposed to the  
2 variation that would occur in 50 Departments of  
3 Education doing it.

4 And second, there would not be institutional  
5 biases for misrepresentation or jiggling of the numbers  
6 that is possible when state departments do it.

7 Q Why do you think this figure is an important  
8 gross measure of school performance?

9 MR. CHOATE: Objection, vague and ambiguous.  
10 Leecia, what figure are you referring to?

11 MS. WELCH: We are still on the percent of 16  
12 to 19-year-old figure, and I'm quoting from your  
13 report.

14 THE WITNESS: I could restate what I just  
15 stated.

16 It is a measure of -- at a gross level of this  
17 age group, 16 to 19-year-olds who were likely to have  
18 graduated from high school or are still in school on  
19 track to graduate, presumably.

20 It is, if my memory is correct, it is a  
21 consistently collected data set across the entire  
22 nation by an entity which has no particular stake in  
23 what the number is. So I would expect it to be as  
24 close to an unbiased representation of the world as we  
25 are likely to get.

1 MR. CHOATE: Let's take a quick break.  
 2 (A break was taken.)  
 3 Q BY MS. WELCH: The bottom of page 10, the last  
 4 paragraph, the first sentence says, "California's  
 5 success in targeting resources to higher need students  
 6 is also seen in Education Week's calculation of  
 7 resource adequacy versus resource equity."  
 8 So is it your opinion that California has been  
 9 successfully targeting resources at higher need  
 10 students?  
 11 MR. CHOATE: Object, the document speaks for  
 12 itself.  
 13 THE WITNESS: What I'm reporting here is what  
 14 Education Week's calculations are. And I don't have  
 15 the document in front of me to refresh my memory of how  
 16 they did the calculation. So it says what they said  
 17 basically.  
 18 Q BY MS. WELCH: Is this sentence based on  
 19 anything besides Education Week's calculations?  
 20 A Well, it says "also." "Also." So Education  
 21 Week is one source. But earlier we had had another  
 22 table as examples, or in subsequent tables, I don't  
 23 know what the order is now. Some of the other  
 24 evidence -- I guess it is in this table, because we  
 25 just discussed this -- the graduation rates of African

1 Americans versus whites, and Hispanics versus whites,  
 2 and then the achievement of poor urban schools,  
 3 standard deviation from the mean discussion. So it's  
 4 in the context of that that this statement is done.  
 5 So Education Week I took to be, in essence,  
 6 confirming of the pattern I was finding in the other  
 7 data. So it was more another piece of similar evidence  
 8 rather than a singular support for the argument.  
 9 Q Do you know how Quality Counts makes its  
 10 determination regarding adequacy?  
 11 A If you provide -- if we get the document that  
 12 I cited, I'd be happy to refresh my memory and look at  
 13 it. I understood it, I believe, when I read it and  
 14 cited it. I can't do it from memory.  
 15 Q And same answer with respect to how they  
 16 determined equity?  
 17 A That's correct.  
 18 Q Do you know what California's score is  
 19 relative to other states on their adequacy calculation?  
 20 MR. CHOATE: Are you talking about the score  
 21 where, in Education Week?  
 22 MS. WELCH: Yes. In Quality Counts.  
 23 THE WITNESS: It doesn't look like I put that  
 24 in the table here. I had it because I refer to its  
 25 relative rank versus the comparison states on equity.

1 So I had it in front of me, but I didn't put it in the  
 2 table, and I don't by memory remember where it is.  
 3 MR. CHOATE: Ms. Court Reporter, could you  
 4 read back the question prior to the answer?  
 5 THE REPORTER: Do you know what California's  
 6 score is relative to other states on their adequacy  
 7 calculation?  
 8 MR. CHOATE: Leecia, I'm just noting that  
 9 final paragraph, second sentence. That may answer your  
 10 question, I don't know.  
 11 MS. WELCH: That gives the average -- the  
 12 second sentence gives the average state score. What I  
 13 was asking about was the rank with respect -- in terms  
 14 of the nation.  
 15 MR. CHOATE: The numeric rank?  
 16 MS. WELCH: Yeah.  
 17 MR. CHOATE: I think she's asking sitting  
 18 here right now, do you remember what the numeric rank  
 19 was?  
 20 MS. WELCH: He answered already.  
 21 THE WITNESS: I answered already, that my  
 22 answer was as responsive as I could make it. If you  
 23 want to ask it again.  
 24 MS. WELCH: No. I got ya.  
 25 Q So did you consider any other national test

1 scores for comparison purposes?  
 2 A I'm not quite certain how to answer that  
 3 question. I probably saw other comparison scores. My  
 4 intent, as I said earlier in the document here, was not  
 5 to report everything I saw, but to get the best  
 6 information I could, representative information. And  
 7 that is my -- was my intent, and that's what I tried to  
 8 do here.  
 9 So one could have gotten NAEP scores for  
 10 fourth grade or eighth grade or other grades and added  
 11 them into the table. In looking at them I must have  
 12 decided this was as good a representative set as  
 13 anything available and put those in as opposed to any  
 14 other alternative scores or something like that. So I  
 15 probably saw there's -- and picked these as the most  
 16 representative set. If that's responsive to your  
 17 question.  
 18 Q It kind of is. I was more getting at why  
 19 you chose NAEP scores as versus other potential  
 20 standardized test scores that you might have  
 21 chosen.  
 22 A Such as?  
 23 Q I don't know. That's what I'm asking you.  
 24 A I chose the NAEP scores because they are a  
 25 national set of scores, and they are, as I understand

1 the NAEP scores, valid at the state level. And they  
2 seem to be the -- an appropriate comparison to make.  
3 So I chose those.

4 Again, you go to a government source you are  
5 going to what I consider the most authoritative, most  
6 carefully constructed, most systematically reviewed  
7 statistics that was available.

8 Q Looking at the section of your report on the  
9 structure and governance of California schools, did you  
10 consider whether other states put mechanisms in place  
11 to ensure equity?

12 MR. CHOATE: Objection, vague and ambiguous as  
13 to "mechanisms" and "equity."

14 Equity with respect to what, Leecia?

15 MS. WELCH: Educational equity.

16 THE WITNESS: I don't remember looking  
17 specifically for that issue or seeing it in the  
18 documents that I -- that I reviewed. I was more --  
19 that said, I was looking in this case in this section  
20 for a structure in governance.

21 Q BY MS. WELCH: At footnote 8 you cite to  
22 a report called "The Invisible Hand of Ideology,  
23 Perspectives From the History of School  
24 Governance."

25 Did you review this entire report?

1 You want to call it quits for today?

2 MS. WELCH: Yeah. I'm at a good stopping  
3 point.

4 (The deposition was adjourned at 5:01 p.m.)

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1 A I believe I did. If you could provide the  
2 document, I could refresh my memory. But I believe I  
3 did.

4 Q Looking at table 4 or page 14, what is  
5 your understanding of California's policies on  
6 textbooks?

7 A California has a process in which, as I  
8 understand it, textbooks are selected -- first  
9 textbooks are matched to standards and put on a list  
10 for -- which districts can choose those textbooks and  
11 be compensated. I didn't get into detail on that. I'd  
12 have to go back and refresh my memory to figure out all  
13 the nuances of it.

14 Q Do you know whether California is among the  
15 states that selects textbooks or that recommends the  
16 textbooks as represented in the second column of table  
17 4?

18 A That's one of the ambiguities in my memory.  
19 And it literally is an ambiguity in my memory.

20 I think the situation in California is phrased  
21 "as recommended," but you can't use state funding  
22 unless you pick from the recommended list. I believe  
23 that is the situation, but it's not something that is  
24 fresh in my mind.

25 MR. CHOATE: Leecia, it's just after 5:00.

1 PURSUANT TO SECTION 2025 (q) (1) of the Code of  
2 Civil Procedure of the State of California, I hereby  
3 certify that I have read my deposition, made those  
4 changes and corrections I deem necessary, and approve  
5 the same as now written.  
6

7 (Check one) NO CORRECTIONS  
8 CORRECTIONS PER ATTACHED  
9

10 DATED this \_\_\_\_ day of \_\_\_\_\_,  
11 2003.  
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14 \_\_\_\_\_  
15 JOHN KIRLIN, Ph.D.  
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18 CASE TITLE: Williams v State of Calif.  
19 DATE OF DEPOSITION: September 3, 2003  
20 JOB NUMBER: 39944  
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DEPONENT'S CHANGES OR CORRECTIONS

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

DEPOSITION OF: John Kirlin, Ph.D.  
CASE: Williams v State of Calif.  
DATE OF DEPOSITION: September 3, 2003

I, John Kirlin, Ph.D., have the following corrections to make to my deposition:

PAGE LINE CHANGE/ADD/DELETE

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SIGNATURE DATE\_\_\_\_\_

REPORTER'S CERTIFICATE

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I, LISA RICHARDSON, a Certified Shorthand Reporter for the State of California, duly licensed and a disinterested person, certify:

That the foregoing deposition was taken before me pursuant to applicable sections of the Code of Civil Procedure of the State of California at the time and place herein set forth;

That John Kirlin, Ph.D., the deponent herein, was put under oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me, to the best of my ability, and were thereafter transcribed;

That the foregoing deposition is a verbatim record of the testimony of the deponent and all objections made at the time of the examination.

IN WITNESS WHEREOF, I have subscribed my name on this 9th day of September, 2003.

\_\_\_\_\_  
LISA RICHARDSON  
Certified Shorthand Reporter,  
License No. 5883