

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

ELIEZER WILLIAMS, )  
et al., )  
 )  
Plaintiffs, )  
 )  
vs. ) No. 312236  
 )  
STATE OF CALIFORNIA, )  
et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

DEPOSITION OF SUSAN E. PHILLIPS, Ph.D.  
Los Angeles, California  
Tuesday, August 5, 2003  
Volume 2

Reported by:  
PAMELA A. STITT

CSR No. 6027

JOB No. 43713

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FOR THE COUNTY OF SAN FRANCISCO

1 ELIEZER WILLIAMS, )  
2 et al., )  
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4 Plaintiffs, )  
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8 STATE OF CALIFORNIA, )  
9 et al., )  
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11 Defendants. )  
12 )  
13 )

Volume 2

14 Deposition of SUSAN E. PHILLIPS, Ph.D.,  
15 taken on behalf of Plaintiffs at  
16 555 West Fifth Street, 35th Floor,  
17 Los Angeles, California, beginning at  
18 9:04 a.m. and ending at 5:00 p.m.  
19 on Tuesday, August 5, 2003, taken before  
20 PAMELA A. STITT, Certified Shorthand  
21 Reporter No. 6027.  
22  
23  
24  
25

1 APPEARANCES (Continued):

2  
3 For LAUSD:  
4 STRUMWASSER & WOOCHEER  
5 100 Wilshire Boulevard  
6 Suite 1900  
7 Santa Monica, California 90401-1116  
8 (310) 576-1233  
9 (Not Present)  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 APPEARANCES:

2 For Plaintiffs:

3 ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
4 BY: MARK D. ROSENBAUM and  
5 KATAYOON MAJD  
6 ATTORNEYS AT LAW  
7 1616 Beverly Boulevard  
8 Los Angeles, California 90026-5752  
9 (213) 977-9500  
10 E-mail: mrosenbaum@aclu-sc.org

11 For Defendants:

12 O'MELVENY & MYERS LLP  
13 BY: DAVID HERRON  
14 ATTORNEY AT LAW  
15 400 South Hope Street  
16 Los Angeles, California 90071-2899  
17 (213) 430-6000  
18 E-mail: dherron@omm.com

19 For California Schools Board Association:

20 CALIFORNIA SCHOOLS BOARDS ASSOCIATION  
21 BY: ABE HAJELA  
22 ATTORNEY AT LAW  
23 555 Capitol Mall  
24 Suite 1425  
25 Sacramento, California 95814  
(916) 442-2952  
E-mail: abe@olsonhagel.com  
(Not Present)

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18 INFORMATION REQUESTED  
19 (None)  
20

21 INSTRUCTION NOT TO ANSWER  
22 (None)  
23  
24  
25

1 Los Angeles, California, Tuesday, August 5, 2003  
 2 9:04 a.m. - 5:00 p.m.  
 3  
 4 SUSAN E. PHILLIPS, Ph.D.,  
 5 having been first duly sworn, was examined and testified  
 6 further as follows:  
 7  
 8 EXAMINATION (Resumed)  
 9 BY MR. ROSENBAUM:  
 10 Q Good morning, Dr. Phillips. How are you?  
 11 A Good morning. Just fine, thank you.  
 12 Q Any reason we should not go forward this  
 13 morning?  
 14 A Not that I know of.  
 15 Q Did you review any documents or materials after  
 16 the deposition yesterday?  
 17 A Yes.  
 18 Q What did you look at?  
 19 A I looked through the tables in my report.  
 20 Q For what purpose?  
 21 A Just to refresh my memory about them.  
 22 Q Did you look at anything else?  
 23 A No.  
 24 Q Did you have any discussions with anyone about  
 25 the deposition?

1 A No.  
 2 Q Mr. Herron?  
 3 A Oh, well, no. We talked about where to eat and  
 4 how to find a convenience store.  
 5 Q Doctor, are you familiar with the phrase  
 6 "instructional validity"?  
 7 A Yes.  
 8 Q What does that mean?  
 9 A When the judge used the term "curricular  
 10 validity" in Debra P., it appeared that he was referring  
 11 to both curricular materials and what teachers were  
 12 actually teaching. Subsequent to that case in  
 13 psychometrics, a distinction was made for research  
 14 purposes so that people would understand the difference  
 15 in what information was actually looked at.  
 16 So curricular validity came to be used  
 17 primarily for written instruction materials and  
 18 textbooks, instructional validity for what teachers  
 19 actually taught in the classroom.  
 20 Q I see. And have any of the components of the  
 21 California assessment system, to your knowledge, been  
 22 evaluated for instructional validity?  
 23 MR. HERRON: Objection. Vague and ambiguous.  
 24 THE WITNESS: There were discussions in the  
 25 TAC meeting that we talked about yesterday about

1 curricular and instructional validity, and I understood  
 2 that there were plans to collect evidence. I don't know  
 3 exactly what evidence was ultimately collected.  
 4 BY MR. ROSENBAUM:  
 5 Q Do you know if any evidence --  
 6 Do you know for certain whether or not any  
 7 evidence was collected?  
 8 A I have not seen any specific follow-up on that  
 9 issue.  
 10 Q And you are talking about both curricular  
 11 validity and instructional validity in your answer?  
 12 A Yes.  
 13 Q What was the discussion -- Strike that.  
 14 Was there more than one discussion in the TAC  
 15 meetings about this subject matter?  
 16 A I don't recall specifically. There may have  
 17 been.  
 18 Q What is your best recollection as to the nature  
 19 of those discussions? Tell me generally what was talked  
 20 about.  
 21 A It was in the context of developing a legally  
 22 defensible high school exit examination and was one of  
 23 the requirements that was discussed.  
 24 Q And what did you say in those meetings, to the  
 25 best of your recollection?

1 A I don't recall.  
 2 Q Dr. Phillips, do you recall what anybody said  
 3 in the meeting?  
 4 MR. HERRON: On that topic?  
 5 MR. ROSENBAUM: Yes.  
 6 THE WITNESS: No, I don't have any specific  
 7 recollections about that.  
 8 BY MR. ROSENBAUM:  
 9 Q Are you familiar with the phrase, Doctor,  
 10 "equal educational opportunity"?  
 11 MR. HERRON: Objection. Vague and ambiguous.  
 12 THE WITNESS: I believe I have heard it used  
 13 or read it somewhere.  
 14 BY MR. ROSENBAUM:  
 15 Q Do you attach a meaning to that phrase?  
 16 MR. HERRON: Objection. Vague and ambiguous.  
 17 Vague as to context.  
 18 THE WITNESS: I believe that would depend on  
 19 the context and how it was used by the author.  
 20 BY MR. ROSENBAUM:  
 21 Q Have you ever used that phrase in your  
 22 writings, to the best of your recollection?  
 23 A Not that I can recall.  
 24 Q Are they're individuals whom you regard as  
 25 experts in the area of equal educational opportunity?

1 MR. HERRON: Objection. Vague and ambiguous,  
2 use of the term "area." Assumes facts not in evidence.

3 THE WITNESS: No one specific comes to mind.

4 BY MR. ROSENBAUM:

5 Q And do you consider yourself an expert in any  
6 meaning that you attach to the phrase "equal educational  
7 opportunity"?

8 MR. HERRON: Same objections.

9 THE WITNESS: I consider myself an expert in  
10 psychometrics.

11 BY MR. ROSENBAUM:

12 Q So your answer is: I am an expert in  
13 psychometrics; I do not consider myself an expert in  
14 equal educational opportunity; is that a fair  
15 statement?

16 MR. HERRON: Same objections.

17 THE WITNESS: Psychometrics is something you  
18 can get a major in or have an area of emphasis.

19 BY MR. ROSENBAUM:

20 Q Yes.

21 A I don't know if that is also true of the phrase  
22 that you are using, so I don't know if they are equal in  
23 that sense. And I'm not sure I know what it means to  
24 say you are an expert in that phrase.

25 Q Okay. Do you have an opinion, Doctor, as to

1 work.

2 BY MR. ROSENBAUM:

3 Q Okay. Tell me what you mean when you say, "I  
4 may know someone who has done so." What do you mean by  
5 that?

6 A There may be researchers who have collected  
7 such information and they may be people that I know, but  
8 I'm unaware of that particular research that they have  
9 done.

10 Q Okay. Have you ever undertaken any inquiry or  
11 examination to determine whether there exists among  
12 California public school students any disparity with  
13 respect to access to textbooks?

14 MR. HERRON: Objection. Vague and ambiguous,  
15 calls for speculation, beyond the scope of what she is  
16 here to testify about, irrelevant.

17 THE WITNESS: For purposes of developing my  
18 report, I did not collect any information on that  
19 issue.

20 BY MR. ROSENBAUM:

21 Q Okay. And for purposes not related to your  
22 work, have you ever sought to collect any such  
23 information?

24 MR. HERRON: Same objections.

25 THE WITNESS: I don't believe I have collected

1 whether or not there is any child enrolled in California  
2 K through 12 public schools who is being denied equal  
3 educational opportunity?

4 MR. HERRON: Objection. Calls for speculation,  
5 vague and ambiguous.

6 THE WITNESS: I don't have any personal  
7 knowledge about what is going on in California schools.

8 BY MR. ROSENBAUM:

9 Q Have you ever made any inquiry to determine  
10 whether or not there are any children in California K  
11 through 12 public schools who are being denied equal  
12 educational opportunity?

13 MR. HERRON: Objection. Vague and ambiguous,  
14 calls for speculation, vastly overbroad, irrelevant.

15 You may respond.

16 THE WITNESS: I don't have any specific data  
17 that I have collected on that issue.

18 BY MR. ROSENBAUM:

19 Q Do you know anyone who has?

20 A I may --

21 MR. HERRON: Same objections. I'm sorry. Same  
22 objections.

23 You may respond.

24 THE WITNESS: I may know someone who has done  
25 so. I don't have any specific recollection of that

1 any research data that match that, although that is a  
2 very broad question.

3 BY MR. ROSENBAUM:

4 Q Do you know if anyone has undertaken any  
5 inquiry to determine whether or not there exists among  
6 California public school students any disparity with  
7 respect to access to textbooks?

8 MR. HERRON: Same objections.

9 THE WITNESS: As part of a curricular validity  
10 inquiry, that information might be part of the  
11 information that might be collected. I'm not aware for  
12 sure what the department actually did collect, what  
13 questions were asked and so on. So I don't -- I'm not  
14 aware of it, but it might have happened.

15 BY MR. ROSENBAUM:

16 Q Okay. Have you ever made any inquiry to  
17 determine whether or not it, in fact, has happened?

18 MR. HERRON: Same objections.

19 THE WITNESS: We have not had any further  
20 discussions on that topic at this time.

21 BY MR. ROSENBAUM:

22 Q Okay. Thank you.

23 Could I have the witness's answer read back.  
24 Not the one that she just delivered, but the one prior  
25 to that, please.

1 (Record read as follows:  
2 "Answer: As part of a curricular  
3 validity inquiry, that information  
4 might be part of the information that  
5 might be collected. I'm not aware for  
6 sure what the department actually did  
7 collect, what questions were asked and  
8 so on. So I don't -- I'm not aware of  
9 it, but it might have happened.")

10 BY MR. ROSENBAUM:

11 Q Doctor, with respect to the answer that was  
12 just read back to you, when you said, "As part of a  
13 curricular validity inquiry that information might be  
14 collected," could you tell me, please, the basis for  
15 that answer.

16 A Curricular validity involves textbook  
17 materials and instructional materials, and you asked  
18 a question about textbooks and instructional  
19 materials. So information related to your question  
20 might have been obtained in the process of collecting  
21 that information.

22 Q Thank you. Bear with me for one minute,  
23 please.

24 Are there any other cases in which you are  
25 presently serving as an expert? We talked about the

1 A That is when the testing organization puts a  
2 notation by the score that it was obtained under  
3 nonstandard conditions.

4 Q I see. And the position of plaintiff is that  
5 it should not be flagged?

6 A Yes.

7 Q And then the Chapman case?

8 A Yes.

9 Q What is the Chapman case?

10 A That is challenge to the High School Exit  
11 Exam.

12 Q In what state?

13 A California.

14 Q Oh, that case. That is in San Francisco? Is  
15 that filed in San Francisco?

16 A I'm not sure.

17 Q Okay. On whose behalf are you serving as an  
18 expert?

19 A The State.

20 Q And how much are you being paid for that case?

21 A The same as this one.

22 Q Have you done any work in that case yet?

23 A Yes.

24 Q Have you prepared a report?

25 A No.

1 cases that you have served in the past as an expert and  
2 I know, of course, you are serving as an expert on  
3 behalf of the state in the Williams case.

4 Are there any other cases that you have been  
5 retained to serve as an expert?

6 A Yes.

7 Q What cases are those?

8 A An accommodations case and the Chapman case in  
9 California.

10 Q All right. When you say "an accommodations  
11 case," what do you mean by that? I know what you mean  
12 by that. You mean a question about accommodations for  
13 individuals who are disabled with respect to a statewide  
14 assessment test; is that what you mean?

15 A With respect to an assessment.

16 Q Okay. And for whom have you been retained, on  
17 whose behalf?

18 A For the plaintiff in the case.

19 Q And where is that case?

20 A Pennsylvania.

21 Q And what is your understanding of what the  
22 issue is in the Pennsylvania case?

23 A Whether the individual's test score should be  
24 flagged as a result of an accommodation received.

25 Q What does "flagged" mean?

1 Q Do you intend to prepare a report?

2 A I don't know yet.

3 Q Do you know what the status of that case is?

4 A I believe there was a motion to try to halt the  
5 testing this spring, and I believe that has either been  
6 denied or delayed, and I don't really know what has  
7 happened since then.

8 Q And how much have you been paid to date in the  
9 Chapman case?

10 A I don't know.

11 Q Can you give me a ballpark number, please.

12 MR. HERRON: Don't guess or speculate.

13 BY MR. ROSENBAUM:

14 Q I don't want you to guess. I just want a  
15 ballpark.

16 A I don't know without checking my records.

17 Q More or less than \$10,000?

18 A I'm just really not sure what it is.

19 Q Doctor, you told me that you have consulted in  
20 California -- Strike that.

21 Have you ever consulted regarding assessment  
22 tests that are not high-stakes tests outside  
23 California?

24 MR. HERRON: Objection. Asked and answered.

25 MR. ROSENBAUM: It was asked and answered, so I

1 withdraw that.

2 Q Have you ever served as an expert in a case  
3 involving an assessment program that doesn't involve  
4 what you have called a high-stakes test?

5 MR. HERRON: Same objection.

6 THE WITNESS: I don't think so.

7 BY MR. ROSENBAUM:

8 Q Have you analyzed the accountability system in  
9 Kansas?

10 A No.

11 Q Have you consulted with the state of Kansas?

12 A No.

13 Q Bear with me if I did ask you this question.

14 I just want it as a predicate.

15 You told me that you consult on the subject  
16 matter of opportunity to learn with states or state  
17 educational entities; is that right?

18 A That's one of the issues that we deal with.

19 Q And can you give me your best estimate,  
20 please, as to the number of states with which you have  
21 consulted on that subject matter, that is, opportunity  
22 to learn?

23 A Well, as I indicated to you yesterday, I have  
24 consulted with maybe 20 to 25 states over the course of  
25 my career and many of them have high-stakes test or have

1 THE WITNESS: As we talked about yesterday,  
2 opportunity to learn applies to a high school exit  
3 examination in California. As you know, that is a very  
4 recent development here, so that would not be at issue  
5 in the period that I believe you are talking about in  
6 the same way that it is now that there is an exit exam  
7 in California.

8 BY MR. ROSENBAUM:

9 Q Let me reframe my question since the  
10 implementation of the California High School Exit  
11 Exam.

12 Have you undertaken any inquiry or  
13 investigation to determine whether or not there are any  
14 students in the California K through 12 public school  
15 system who have not received the opportunity to learn,  
16 as you understand that phrase?

17 MR. HERRON: Same objections.

18 THE WITNESS: I have been involved, as I  
19 indicated to you, in discussions with the Technical  
20 Advisory Committee about collecting such data. The  
21 actual work is done by the department. Typically, the  
22 consultants do not do the actual collection of  
23 information.

24 BY MR. ROSENBAUM:

25 Q Sitting here today, are you aware whether or

1 had at some point, so I would imagine that I have  
2 consulted with many of them where that issue was talked  
3 about. I don't have a specific recollection of each one  
4 to give you an exact number.

5 Q Okay. And, Doctor, in California -- Strike  
6 that.

7 Do you have an opinion as to whether or not  
8 there are any students presently in California public  
9 school system K through 12 who are not receiving  
10 opportunity to learn, as you understand that phrase?

11 MR. HERRON: Objection. Calls for speculation,  
12 overbroad, vague and ambiguous.

13 THE WITNESS: I don't have the data at this  
14 point that I would need to offer such an opinion, so I'm  
15 not prepared to do so.

16 BY MR. ROSENBAUM:

17 Q Okay. And if I change my question to be not at  
18 the present time but at any time in the last five years,  
19 is there a student or are there any students in the  
20 California K through 12 public school system who have  
21 not received opportunity to learn? Have you undertaken  
22 any inquiry or investigation to make that determination?

23 MR. HERRON: Same objections, except change  
24 "overbroad" to "vastly overbroad."

25 You may respond.

1 not there are any students since the implementation of  
2 the High School Exit Exam in the California K through 12  
3 public school system who have not received the  
4 opportunity to learn?

5 MR. HERRON: Same objection. Asked and  
6 answered two questions before.

7 THE WITNESS: I do not currently have the data  
8 to offer an opinion on that issue.

9 BY MR. ROSENBAUM:

10 Q Have you ever made any effort to obtain that  
11 data yourself?

12 MR. HERRON: Same objections. Asked and  
13 answered three questions before.

14 THE WITNESS: I have been involved in the  
15 discussions with the Technical Advisory Committee and  
16 the department about collecting such data.

17 BY MR. ROSENBAUM:

18 Q Okay. But have you ever made any effort  
19 yourself to review that data?

20 MR. HERRON: Same objections. Asked and  
21 answered four questions before.

22 THE WITNESS: I do not currently have the data  
23 in which to discuss that issue.

24 BY MR. ROSENBAUM:

25 Q Have you ever had that data?

1 MR. HERRON: Same objections.  
 2 THE WITNESS: Not that I recall.  
 3 BY MR. ROSENBAUM:  
 4 Q Do you know for a fact whether or not anybody  
 5 has that data?  
 6 MR. HERRON: Same objections.  
 7 THE WITNESS: I know that the department was  
 8 planning to collect opportunity-to-learn information as  
 9 a result of the discussions with the Technical Advisory  
 10 Committee. I have not personally seen that data.  
 11 BY MR. ROSENBAUM:  
 12 Q Okay. In the states where you have consulted,  
 13 have you ever undertaken any investigation to determine  
 14 whether or not there are any students who have not  
 15 received the opportunity to learn? So let's put aside  
 16 California because you answered those questions for me,  
 17 which I appreciate.  
 18 In other states in which you have consulted,  
 19 have you ever undertaken any inquiry or investigation to  
 20 determine whether or not there are any students in the K  
 21 through 12 public school system who have not received an  
 22 opportunity to learn, as you understand that phrase?  
 23 MR. HERRON: Objection. Calls for speculation,  
 24 vague and ambiguous, overbroad.  
 25 THE WITNESS: In terms of what I recall at this

1 time, I have had discussions with department people in  
 2 other states about collecting such data.  
 3 BY MR. ROSENBAUM:  
 4 Q Okay. My question is just a little bit  
 5 different. I appreciate that.  
 6 But have you yourself ever undertaken any  
 7 inquiry or investigation to determine whether or not, in  
 8 fact, there are any students in any of those states'  
 9 public school systems who have not received the  
 10 opportunity to learn?  
 11 MR. HERRON: Same objections. Asked and  
 12 answered.  
 13 THE WITNESS: I have been part of a team of  
 14 individuals who sought to collect opportunity-to-learn  
 15 data.  
 16 BY MR. ROSENBAUM:  
 17 Q Okay. But have you had -- In every state where  
 18 you have consulted -- Strike that.  
 19 Have you ever reviewed the data collected to  
 20 make a determination yourself whether or not there are  
 21 any students who have not received opportunity to  
 22 learn?  
 23 MR. HERRON: Same objections.  
 24 THE WITNESS: I have reviewed opportunity-to-  
 25 learn data as part of that team effort typically in a

1 Technical Advisory Committee meeting.  
 2 BY MR. ROSENBAUM:  
 3 Q Well, are there any students in the United  
 4 States, public school students, in the last five years,  
 5 who you would conclude have not received an opportunity  
 6 to learn?  
 7 MR. HERRON: Objection. Calls for speculation,  
 8 vague and ambiguous, vastly overbroad, irrelevant to the  
 9 case.  
 10 THE WITNESS: Since I have only worked in 20 to  
 11 25 states, I certainly would not have information about  
 12 the nation as a whole.  
 13 BY MR. ROSENBAUM:  
 14 Q Okay. So let's remove those states that you  
 15 have not --  
 16 Well, in the states where you have not worked,  
 17 have you ever undertaken any inquiry or investigation to  
 18 determine whether or not there are students who have not  
 19 received the opportunity to learn?  
 20 MR. HERRON: Same objections.  
 21 THE WITNESS: In states I have not worked, I  
 22 haven't been involved in their assessment program in any  
 23 way.  
 24 BY MR. ROSENBAUM:  
 25 Q So you have not; is that right?

1 A As I said --  
 2 MR. HERRON: Asked and answered.  
 3 THE WITNESS: -- I have not been involved in  
 4 any of the aspects of assessment programs in states  
 5 where I have not worked.  
 6 BY MR. ROSENBAUM:  
 7 Q And as a researcher and as a scholar, have you  
 8 undertaken any inquiry or investigation to determine  
 9 whether or not in those states where you have not  
 10 consulted whether or not there are any students in the  
 11 public school system who have not received an  
 12 opportunity to learn?  
 13 MR. HERRON: Same objection. Vague and  
 14 ambiguous, calls for speculation, vastly overbroad,  
 15 irrelevant.  
 16 THE WITNESS: I can't think of anything at the  
 17 moment.  
 18 BY MR. ROSENBAUM:  
 19 Q Thank you. Now, in the states where you have  
 20 consulted, have you ever undertaken any specific inquiry  
 21 or investigation yourself to determine whether or not  
 22 there are students -- public school students who have  
 23 not received an opportunity to learn, as you understood  
 24 that phrase?  
 25 MR. HERRON: Same objections.

1 THE WITNESS: As I already indicated to you, I  
2 have been part of a team effort to do so.

3 BY MR. ROSENBAUM:

4 Q Let me be real clear about my question. What  
5 you have told me, if I understand you correctly, is that  
6 you have been part of the team effort to go out and  
7 identify and then collect the data required to make the  
8 determination as to whether or not students have  
9 received the opportunity to learn; is that right?

10 MR. HERRON: Her testimony is what it is.  
11 Misconstrues prior testimony.

12 BY MR. ROSENBAUM:

13 Q I don't want to misconstrue it. Tell me,  
14 please, if I am understanding you properly.

15 A I have been a consultant and member of a  
16 Technical Advisory Committee that worked with  
17 departments of education in other states to collect  
18 opportunity-to-learn information.

19 Q And have you ever reviewed information  
20 collected to determine whether or not there are  
21 students in any of those states where you consulted to  
22 determine whether or not there are students who have not  
23 received opportunity to learn, as you understand that  
24 phrase?

25 MR. HERRON: Objection. Asked and answered.

1 MR. HERRON: Objection. Vague and ambiguous.

2 THE WITNESS: Not that I recall.

3 BY MR. ROSENBAUM:

4 Q Okay. Were you part of -- I think you told me,  
5 but I don't want to mischaracterize your testimony so  
6 correct me if I am wrong, please.

7 Were you part of the decision making to replace  
8 the Stanford 9 with the CAT6?

9 A Consultants give advice. They don't make  
10 decisions. Decisions are made by the elected or  
11 appointed representatives --

12 Q Okay.

13 A -- that are charged with that.

14 Q Were you -- Did you give advice with respect to  
15 the replacement of the Stanford 9 with the CAT6?

16 MR. HERRON: Objection. Asked and answered.  
17 You may respond again.

18 THE WITNESS: I believe that there were  
19 discussions in the Technical Advisory Committee meetings  
20 about the testing program generally that may have  
21 included information about that. I did not participate  
22 in the same way that I did with the Stanford in terms of  
23 reviewing proposals.

24 BY MR. ROSENBAUM:

25 Q Did you concur with the advice to replace the

1 Calls for speculation, vague and ambiguous, vastly  
2 overbroad, irrelevant.

3 THE WITNESS: I have reviewed data that has  
4 been collected by the states, typically in a Technical  
5 Advisory Committee meeting.

6 BY MR. ROSENBAUM:

7 Q And have you ever reached a conclusion that  
8 there are students who have not received an opportunity  
9 to learn --

10 MR. HERRON: Same objection.

11 BY MR. ROSENBAUM:

12 Q -- in any of those states?

13 MR. HERRON: Sorry, Mark. Same objections.

14 THE WITNESS: I don't have specific  
15 recollection right now of the data that I reviewed and  
16 would not be prepared to offer any conclusions without  
17 reexamining that information.

18 BY MR. ROSENBAUM:

19 Q Have you ever testified in court that there are  
20 students who have not received opportunity to learn?

21 MR. HERRON: Vague and ambiguous.

22 BY MR. ROSENBAUM:

23 Q If you have testified in court, and I would  
24 also include if you have submitted a report that has  
25 that as one of its conclusions.

1 Stanford 9 with the CAT6?

2 MR. HERRON: Objection. Calls for  
3 speculation, assumes facts not in evidence.

4 THE WITNESS: Your question seems to assume  
5 that somebody provided advice in that way. Our  
6 discussions were not about recommending a specific  
7 exam.

8 MR. ROSENBAUM: Okay.

9 THE WITNESS: That was not our charge.

10 MR. ROSENBAUM: Okay. I appreciate that  
11 correction.

12 Q Your discussions, if I understand it correctly,  
13 were about replacing the Stanford 9 but not necessarily  
14 with a particular instrument; am I correct?

15 A I think that mischaracterizes it, too. You  
16 are assuming that the goal was to replace it. Replacing  
17 is one option. Continuation was also an option, too.

18 Q Okay. There were discussions whether or not --  
19 Strike that.

20 There were discussions in the TAC meetings as  
21 to whether or not to replace or maintain the Stanford 9  
22 as the norm reference test as part of the California  
23 assessment system. Did I finally get it right?

24 A As part of a broader discussion about the  
25 entire assessment system and about duplication of tests



1 and how to most efficiently use the testing resources.  
2 Those issues, I believe, did come up.

3 Q Was there a consensus among the four members  
4 of the TAC committee --

5 That is what you told me yesterday, right,  
6 there are four members?

7 A There are four members on the committee, yes.

8 Q Okay. Was there a consensus in your judgment  
9 among the four members as to whether the Stanford 9  
10 should be replaced by a different norm reference test?

11 MR. HERRON: Objection. Vague and ambiguous,  
12 vague as to time.

13 BY MR. ROSENBAUM:

14 Q At any point.

15 A I don't believe that question was put to us  
16 that directly. There was never really a vote on it in  
17 the way that you are characterizing it.

18 Q Well, when I say "consensus," I don't  
19 necessarily mean that people had to raise their hands  
20 one way or the other. I mean did you form a judgment  
21 that the four members felt that a different norm  
22 reference test should be utilized as part of the state  
23 assessment system?

24 A We weren't asked to make that judgment  
25 specifically. We talked about advantages and

1 A At the meetings that were scheduled.

2 Q Can you give me a date?

3 A Not off the top of my head right now.

4 Q Can you give me a year?

5 A It has been within the last two or three  
6 years.

7 Q And what I am seeking, Doctor, is your best  
8 recollection as to views expressed as to the advantages  
9 of maintaining the Stanford 9?

10 A I just don't recall the specifics of what was  
11 said during those meetings.

12 Q You can't think of a single viewpoint as to an  
13 advantage of maintaining the Stanford 9?

14 A That's not how I understood your question. You  
15 wanted me to tell you, I thought, what advantages were  
16 discussed during those Technical Advisory Committee  
17 meetings. I don't have any specific recollection of  
18 what was actually discussed.

19 Q In your mind, Doctor, were there advantages  
20 to maintaining the Stanford 9 as the norm reference  
21 test?

22 A I don't recall what was in my mind at that  
23 time.

24 Q Well, sitting here today, can you think of any  
25 advantages in maintaining the Stanford 9?

1 disadvantages of different options that the department  
2 might take and the board might approve, but that issue  
3 was really up to them in terms of reviewing the  
4 proposals that were submitted with respect to that which  
5 we did not see.

6 Q Did you have a view as to whether or not there  
7 were any advantages to maintaining the Stanford 9 as the  
8 norm reference test used as part of the California  
9 assessment system?

10 A I don't recall any specific things that I might  
11 have said, but I believe there were discussions both  
12 about advantages and disadvantages during the course of  
13 those meetings.

14 Q Tell me, please, to the best of your  
15 recollection what was the discussion as to the  
16 advantages of maintaining the Stanford 9 as a norm  
17 reference test?

18 A I don't have an accurate recollection of what  
19 each member said about that. I don't think I can  
20 reconstruct that accurately for you at this time.

21 Q Okay. I'm not asking you to attach a  
22 particular view to a particular member of the  
23 committee. I just want to be clear. I am asking you  
24 from those discussions -- When did those discussions  
25 take place?

1 A Yes.

2 Q What would they be?

3 A Continuity.

4 Q What do you mean by that?

5 A I think it means what it says. You continue  
6 the same things so you can continue your longitudinal  
7 trend data over time.

8 Q When you say "longitudinal trend data," what do  
9 you mean by that?

10 A Every year the test is given and the State  
11 collects statewide information and then you can look at  
12 that across years and see what changes occur from year  
13 to year.

14 Q Okay. What is the advantage of that?

15 A To track progress over time.

16 Q And what is the advantage of that?

17 A So the State knows how students are doing on  
18 the skills that are being measured.

19 Q And what is the advantage of that?

20 MR. HERRON: If there is one.

21 THE WITNESS: It goes back to the purpose of an  
22 accountability system, to establish standards and  
23 expectations and then assess to see if they have been  
24 realized.

25 BY MR. ROSENBAUM:

1 Q Okay. Are there any other advantages that you  
2 can think of to maintaining the Stanford 9 in addition  
3 to continuity?

4 A Cost advantages.

5 Q And explain what you mean by that, please.

6 A When a new test is adopted, there are a lot of  
7 costs associated with the changeover.

8 Q What do those costs entail?

9 A There are a lot of costs. That is a very  
10 broad question. Training out in the field for  
11 administration of the exam; different materials to work  
12 with; different procedures that people have to learn;  
13 initially more expense because everything is brand new  
14 in terms of materials. You can't reuse anything you  
15 might already have.

16 There are costs in moving all of the databases  
17 and the information from one contractor to another.  
18 There are management costs in reestablishing management  
19 plans and oversight and so on within the department.

20 The whole enterprise shifts and there are costs  
21 associated with that at every level in which changes  
22 occur.

23 Q Do you know what the costs were in California  
24 switching from Stanford 9 to CAT6?

25 A Not in terms of a dollar figure, no.

1 A As I indicated, I don't have any specific  
2 recollection of those discussions.

3 Q Okay. Have you examined the results on the  
4 California High School Exit Exam?

5 MR. HERRON: Objection. Vague.

6 MR. ROSENBAUM: It is a little vague.

7 Q On how many occasions has the California High  
8 School Exit Exam been administered, to the best of your  
9 knowledge?

10 A I think at least three. But there are -- That  
11 would be -- I should say three years. I believe it  
12 began when the current -- the seniors for next year were  
13 ninth graders. But it has been administered more than  
14 once during a given year and I'm not sure exactly how  
15 many administrations that makes total.

16 Q Okay. Have you examined the results of the  
17 California High School Exit Exam for any of the  
18 administrations, that is -- Do you understand what I  
19 mean? For any of the results that came in, whether it  
20 was once a year or more than once a year, have you  
21 looked at the results?

22 MR. HERRON: You mean pass rates?

23 MR. ROSENBAUM: Yes, I do mean that.

24 THE WITNESS: I have seen that data, yes.

25 MR. ROSENBAUM: Okay.

1 Q Do you have a ballpark number? I mean, was it  
2 hundreds of thousands of dollars, tens of thousands of  
3 dollars, millions of dollars?

4 A I would need more information to give you any  
5 kind of estimate like that.

6 Q Was that discussed in the committee, the cost  
7 of changing the systems?

8 A As I told you, I don't recall exactly what was  
9 discussed in those meetings.

10 Q In addition to continuity and cost, were there  
11 other -- are there other advantages that you can think  
12 of for maintaining the Stanford 9?

13 A That is all that comes to mind at the moment.

14 Q Okay. In your mind, are there disadvantages to  
15 maintaining the Stanford 9 as a norm reference test for  
16 California?

17 MR. HERRON: Objection. Vague and ambiguous.

18 THE WITNESS: Nothing I can think of at the  
19 moment.

20 BY MR. ROSENBAUM:

21 Q Did you ever --

22 Do you have any recollection of any member of  
23 the TAC committee discussing any disadvantages to  
24 maintaining the Stanford 9 as a norm reference test for  
25 California's assessment system?

1 Q And have you seen that data for each of the  
2 times it has been administered, to the best of your  
3 knowledge?

4 A I believe I have seen summaries of that  
5 information.

6 Q And do you know who prepared those summaries?

7 A Not to name an individual. By organization,  
8 there is data prepared and collected by the contractor,  
9 which becomes a part of the State's database and  
10 information and then there is also data that has been  
11 compiled probably from that same database by the  
12 external evaluator.

13 Q All right. So the external evaluator we  
14 established yesterday as HumRRO; right?

15 A Yes.

16 Q So you have looked at HumRRO compilation  
17 synthesis of the results data; is that right?

18 A I have looked at the HumRRO reports.

19 Q All right.

20 And then when you say the contractor, that is  
21 AIR?

22 A It was.

23 Q Okay. Do you know who it is now?

24 A I believe ETS is now administering that  
25 program.

1 Q And did you look at AIR summaries of the  
2 results data?  
3 A I have seen some of their data, yes.  
4 Q And what is the most recent data that you have  
5 looked at, to the best of your recollection?  
6 A I believe that would be the latest HumRRO  
7 report.  
8 Q Okay. And can you give me a date on that?  
9 A Well, I think that came out maybe around the  
10 1st of May and it was shortly thereafter.  
11 Q Okay.  
12 A But I don't really recall specifically.  
13 Q Okay. But it was within the past several  
14 months?  
15 A Yes.  
16 Q And did you form any conclusions upon examining  
17 that data? By "that data," I mean the last results that  
18 we have been talking about.  
19 MR. HERRON: Objection. Assumes facts not in  
20 evidence, vague and ambiguous.  
21 THE WITNESS: I read the report.  
22 BY MR. ROSENBAUM:  
23 Q Did you form any conclusions based on reading  
24 that report?  
25 MR. HERRON: Same objections.

1 THE WITNESS: I don't understand what you are  
2 asking me about. Do you have a specific conclusion in  
3 mind?  
4 BY MR. ROSENBAUM:  
5 Q Did you form any conclusions as to whether --  
6 Did you form any conclusions regarding how  
7 students were doing on the test?  
8 A I reviewed the data. That speaks for itself.  
9 Q Did you draw any conclusions from reviewing  
10 that data, form any judgments?  
11 MR. HERRON: Same objections.  
12 You may respond if you understand.  
13 THE WITNESS: I don't know what you are asking  
14 me. If you can be specific about what you are  
15 interested in, maybe I can answer your question.  
16 BY MR. ROSENBAUM:  
17 Q Were you concerned about the results in any  
18 way?  
19 A I'm a consultant to the program, so I am always  
20 concerned and interested.  
21 Q What was the nature of your concern when you  
22 reviewed those results?  
23 A I read the report to find out what it said and  
24 what the authors had in mind.  
25 Q I appreciate that. But my question to you is:

1 Were you disturbed at the results, about any of the  
2 results?  
3 A I haven't looked at that report since I  
4 initially read that. If you want me to talk about the  
5 data that is in there and the information, I would need  
6 to have the report in front of me.  
7 Q Okay. Were you involved in the --  
8 Did you tender any advice as to whether or not  
9 the High School Exit Exam should switch publishers from  
10 AIR to another entity?  
11 A Can you ask me that again, please.  
12 Q The High School Exit Exam, the publisher is  
13 switching from AIR to ETS; is that right?  
14 A I believe that's true.  
15 Q Okay. At any of the TAC meetings which you  
16 attended, was the subject matter of whether or not to  
17 maintain AIR or to switch to a new publisher, did that  
18 come up?  
19 A Not that I recall.  
20 Q Okay. Outside of those meetings, have you  
21 been consulted on the subject matter of switching the  
22 publisher for the High School Exit Exam from AIR to a  
23 different publisher?  
24 A I was not involved in the proposal review for  
25 that decision.

1 Q That means that you were not consulted at all  
2 about the wisdom of switching from AIR to a different  
3 publisher?  
4 A As I indicated, I did not review the proposal  
5 information about that on which the decision was based.  
6 Q Nobody asked your opinion as to whether that  
7 should be done or not?  
8 MR. HERRON: If you recall.  
9 THE WITNESS: They did not ask me to review  
10 that information.  
11 BY MR. ROSENBAUM:  
12 Q Do you have an opinion as to whether or not AIR  
13 should have been maintained as the publisher for the  
14 High School Exit Exam?  
15 A Without additional information, I would not be  
16 prepared to give you an opinion on that matter.  
17 Q What additional information would you need?  
18 MR. HERRON: Calls for speculation. I object  
19 on that ground.  
20 THE WITNESS: One piece of information that  
21 would be useful is the proposals that were submitted.  
22 BY MR. ROSENBAUM:  
23 Q Did you ever hear any dissatisfactions  
24 expressed about AIR?  
25 A By whom? In what context?

1 Q I made it deliberately broad. By anybody.  
 2 MR. HERRON: At any time?  
 3 BY MR. ROSENBAUM:  
 4 Q At any point.  
 5 MR. HERRON: Objection. Calls for speculation.  
 6 It is irrelevant. Vague and ambiguous.  
 7 THE WITNESS: I can't recall anything specific  
 8 at the moment.  
 9 BY MR. ROSENBAUM:  
 10 Q Have you at any point reviewed the results of  
 11 the administration of the Stanford 9 as part of the  
 12 California assessment system?  
 13 MR. HERRON: Objection. Asked and answered.  
 14 THE WITNESS: If you are asking if I have ever  
 15 looked at any Stanford 9 data for California, the answer  
 16 is yes.  
 17 BY MR. ROSENBAUM:  
 18 Q Okay. And if I -- I just want to be clear on  
 19 my time frame here. I am talking about since the  
 20 beginning of the California assessment system.  
 21 A That would be since 1998?  
 22 Q Yes. Have you looked at data results since  
 23 that date?  
 24 A Yes.  
 25 Q And have you formed any opinions regarding

1 those results?  
 2 MR. HERRON: Objection. Vague and ambiguous,  
 3 overbroad.  
 4 THE WITNESS: Again, without the data in front  
 5 of us, I don't know what you are asking.  
 6 BY MR. ROSENBAUM:  
 7 Q Do you have your report with you?  
 8 A Yes.  
 9 Q Do you have the declaration that Mr. Salvaty  
 10 submitted?  
 11 A No.  
 12 MR. ROSENBAUM: All right. Let's go off the  
 13 record for a second.  
 14 (Recess taken.)  
 15 MR. ROSENBAUM: Let's mark as Exhibit 1 to  
 16 this deposition a multipage document. The front page  
 17 says "Expert Witness Declaration re Susan E. Phillips,  
 18 Ph.D." I am going to have it marked and hand it to  
 19 you. I represent it is not in color. It is black and  
 20 white.  
 21 You can take as much time as you want to look  
 22 at this, but I just want to ask you to identify the  
 23 document. It is your document. Okay.  
 24 (Phillips Exhibit 1 was marked for  
 25 identification by the court reporter.)

1 BY MR. ROSENBAUM:  
 2 Q Doctor, you take as much time as you need, but  
 3 Exhibit 1 to this deposition has been placed in front of  
 4 you.  
 5 My only question at this time is: Do you  
 6 recognize this document?  
 7 A Well, I don't know yet. I have to go through  
 8 it.  
 9 Q Okay. Good luck.  
 10 (Discussion held off the record.)  
 11 BY MR. ROSENBAUM:  
 12 Q Okay. Have you had a chance to look at the  
 13 document, Doctor?  
 14 A Yes.  
 15 Q Does it appear to be a copy of your report  
 16 except for the colors?  
 17 A A copy of my report is appended to the end of  
 18 the document.  
 19 Q Okay. And the vita, that is your vita?  
 20 A My vita is also included.  
 21 Q Is your vita current? Are there any additions  
 22 that should be made to it? It says -- Let me ask you to  
 23 put the vita in front of you and I am looking in  
 24 particular at page 0021.  
 25 MR. HERRON: Do you see what he is saying?

1 THE WITNESS: Yes.  
 2 BY MR. ROSENBAUM:  
 3 Q Do you have that in front of you?  
 4 A Yes.  
 5 Q You can take as much time as you need to look  
 6 at your vita.  
 7 In the upper right-hand corner it says,  
 8 "Revised 10/01." Do you see that?  
 9 A Yes.  
 10 Q Is there -- Should any additions be made to  
 11 make this more current and accurate, referring to the  
 12 vita?  
 13 A There are probably a couple additional  
 14 publications and a couple additional presentations that  
 15 have occurred since this.  
 16 Q Do you have a more current vita that would  
 17 reflect those publications and presentations?  
 18 A I do not.  
 19 Q Can you tell me what presentations you are  
 20 referring to?  
 21 A Off the top of my head, I don't think I can  
 22 give you a complete list. I can mention a couple of  
 23 things that I remember at this point. I gave a  
 24 presentation at the Large Scale Assessment Conference in  
 25 San Antonio, Texas in June of this year.

1 Q What was the subject matter?  
 2 A It was an update on cases that had occurred  
 3 related to assessment.  
 4 Q Which cases?  
 5 A I had a list of different things that I talked  
 6 about and I don't remember all of that --  
 7 Q I'm not interested --  
 8 A -- at this moment.  
 9 Q I'm sorry, Doctor. I cut you off. I'm not  
 10 interested -- I mean, I am interested, but I'm not  
 11 focusing on the accommodations cases. Rather, were  
 12 there cases that did not deal with accommodations that  
 13 you were talking about?  
 14 A Yes.  
 15 Q Do you remember what cases those were?  
 16 A I don't remember all of it. One of them was  
 17 the case that had just come down from the Supreme Court  
 18 out of Michigan, the admissions case.  
 19 Q Any other cases?  
 20 A I just don't recall what they are at this  
 21 point.  
 22 Q Okay. What did you say about the Michigan  
 23 case?  
 24 MR. HERRON: Objection. Relevance.  
 25 THE WITNESS: I don't --

1 MR. HERRON: You may respond.  
 2 THE WITNESS: I don't recall all the specifics  
 3 of it. It was a brand new case and I had just gotten  
 4 the decision and talked basically about what the facts  
 5 in the case were and what the holding was, what the  
 6 court had done.  
 7 BY MR. ROSENBAUM:  
 8 Q Did you express a view as to whether or not you  
 9 agreed or disagreed with the majority opinion?  
 10 MR. HERRON: Objection. Relevance.  
 11 THE WITNESS: I don't recall doing that.  
 12 BY MR. ROSENBAUM:  
 13 Q So the best of your recollection is all that  
 14 you said was: This was the decision of the court in the  
 15 case and here is what the majority said?  
 16 A That was the essence of it.  
 17 Q And why did you talk about that case -- Strike  
 18 that.  
 19 The subject matter of your talk was  
 20 assessments; is that right?  
 21 A It was an update on legal issues.  
 22 Q Legal issues relating to assessments?  
 23 A Yes.  
 24 Q Why did you include the Michigan case as part  
 25 of that presentation?

1 A Because one of the factors in admissions at the  
 2 undergraduate level was the SAT Test.  
 3 Q Okay. Any other presentations that you recall?  
 4 A Nothing I can recall at the moment.  
 5 Q Have you been consulted by California as to  
 6 whether or not the university system should use the  
 7 SATs?  
 8 A No.  
 9 Q Have you by any state been consulted on that  
 10 subject matter?  
 11 A Not that I can recall.  
 12 Q Okay. And then you also told me that there  
 13 were some papers that are not included in this vita,  
 14 publications?  
 15 A I was thinking that there might have been, but  
 16 that may have just been an update to what is already  
 17 listed in press here.  
 18 Q Okay. If there are any additions, I would just  
 19 appreciate learning about them, your letting Mr. Herron  
 20 know. I would appreciate that.  
 21 Doctor, in 1975 to '76, you were a mathematics  
 22 instructor at Mt. Mercy College in Cedar Rapids?  
 23 A Yes.  
 24 Q What mathematics did you teach? Geometry?  
 25 Calculus? Algebra?

1 A I taught more than one course and I -- Really,  
 2 that has been a long time ago. I don't recall a lot of  
 3 specifics about it. I think one of them was a college  
 4 algebra course.  
 5 Q Did you use a textbook?  
 6 A Probably. I have no specific recollection of  
 7 what that was.  
 8 Q Okay. Why do you say "probably"?  
 9 MR. HERRON: It's 28 years ago.  
 10 I'm sorry. Go ahead.  
 11 THE WITNESS: Most classes that I have taught  
 12 in mathematics or statistics, I have used a textbook.  
 13 So I just expect that I probably would have.  
 14 BY MR. ROSENBAUM:  
 15 Q Do you know a statistics expert named Kelly?  
 16 Have you ever heard of a statistics expert named Kelly?  
 17 A Can you give me that name again.  
 18 Q His last name is Kelly.  
 19 MR. HERRON: Kelly?  
 20 THE WITNESS: That name doesn't ring a bell at  
 21 the moment.  
 22 MR. ROSENBAUM: Off the record.  
 23 (Discussion held off the record.)  
 24 BY MR. ROSENBAUM:  
 25 Q Let me ask you if you could take a look at --

1 It doesn't have a page number. It is the second page in  
 2 from the beginning of Exhibit 1. The title is "I, Paul  
 3 B. Salvaty, declare as follows:"  
 4 A Yes.  
 5 Q Can you look at that page and the following  
 6 page.  
 7 MR. HERRON: Do you want her to read it?  
 8 BY MR. ROSENBAUM:  
 9 Q Have you ever seen that before?  
 10 A No.  
 11 Q Okay. Do you know why at the bottom of the  
 12 page it says "EXPERT WITNESS DECLARATION RE ERIC A.  
 13 HANUSHEK"?  
 14 A No.  
 15 Q Here is what I want to know, Doctor: Looking  
 16 at the second page, you should feel free to read as much  
 17 as you want, it says, "Pursuant" -- I am looking at page  
 18 2 of the declaration by Mr. Salvaty, line 2:  
 19 "Pursuant to Section 2034(f)(2)(B)  
 20 of the California Code of Civil Procedure,  
 21 the following is a brief narrative  
 22 statement of the general substance of the  
 23 testimony that Dr. Phillips is expected to  
 24 give at trial."  
 25 Do you see that sentence?

1 A Yes.  
 2 Q Okay. My question is: Do you expect to  
 3 testify to any subject matter that is not included in  
 4 your report?  
 5 MR. HERRON: Objection. Calls for  
 6 speculation.  
 7 THE WITNESS: I don't know at this point.  
 8 BY MR. ROSENBAUM:  
 9 Q Okay. I just want to be clear that --  
 10 Have you had discussions with counsel about the  
 11 subject matter -- the substance of your testimony to be  
 12 given at trial?  
 13 A I understood that what was in the expert  
 14 witness report would be included, but I don't think we  
 15 have had any specific discussions about that at this  
 16 point.  
 17 MR. ROSENBAUM: Okay. I just want to state for  
 18 the record that I am going to object to any testimony  
 19 presented at trial that would be outside the report  
 20 itself.  
 21 Okay.  
 22 MR. HERRON: We have been going for about an  
 23 hour if this is a good time to break.  
 24 MR. ROSENBAUM: Sure.  
 25 (Recess taken.)

1 MR. ROSENBAUM: We are back on the record.  
 2 Q Did you have any discussions with Mr. Herron  
 3 over the break about the deposition just now?  
 4 A He made phone calls and I wandered around.  
 5 Q Okay. So you didn't discuss the deposition?  
 6 A Not that I recall.  
 7 MR. HERRON: The good lawyer that I am.  
 8 BY MR. ROSENBAUM:  
 9 Q One of the purposes of an assessment test is to  
 10 identify a student's academic strengths and weaknesses;  
 11 is that right?  
 12 A Can you be more specific about what test you  
 13 are referring to?  
 14 Q I will restate the question. Is it your view,  
 15 Doctor, that one of the purposes of an assessment test  
 16 is to identify a student's academic strengths and  
 17 witnesses?  
 18 MR. HERRON: Objection. Vague and ambiguous in  
 19 the use of the term "assessment test."  
 20 THE WITNESS: In order to determine the  
 21 purpose of a test, you need to know what the test is and  
 22 who the audience is and how it was written. That can be  
 23 a purpose of a test. It isn't always the purpose of  
 24 every test.  
 25 BY MR. ROSENBAUM:

1 Q What are some other purposes?  
 2 A Purposes of what?  
 3 Q A test. If I understood your last answer, you  
 4 said it could be the purpose of a test, it doesn't have  
 5 to be; is that correct?  
 6 A Yes.  
 7 Q Okay. Tell me other purposes.  
 8 MR. HERRON: Of assessment tests?  
 9 MR. ROSENBAUM: Yes.  
 10 THE WITNESS: Of any assessment test?  
 11 MR. ROSENBAUM: Yes.  
 12 THE WITNESS: That is a very, very broad  
 13 area. There are lots of different tests for lots of  
 14 different purposes.  
 15 BY MR. ROSENBAUM:  
 16 Q Okay. Tell me those other purposes.  
 17 MR. HERRON: Objection. Calls for a narrative,  
 18 vague and ambiguous.  
 19 You may respond to the extent you are able.  
 20 THE WITNESS: I can't give you a complete  
 21 catalog of what all of those might be. I could give you  
 22 another example if you want one.  
 23 BY MR. ROSENBAUM:  
 24 Q Well, you can start there, sure.  
 25 A One could give a typing test to find out how

1 fast a secretary can type.  
 2 Q What do you regard as the purpose of  
 3 California's statewide assessment test?  
 4 A I think that's --  
 5 MR. HERRON: Go ahead.  
 6 THE WITNESS: I think I made a statement to  
 7 that effect in my report.  
 8 MR. ROSENBAUM: Okay.  
 9 THE WITNESS: If you can direct me to what  
 10 page you are looking at, maybe it is on that page.  
 11 BY MR. ROSENBAUM:  
 12 Q I am not looking at any particular page with  
 13 respect to that question.  
 14 A Oh.  
 15 MR. HERRON: I'm sorry. Could I have the  
 16 question reread.  
 17 (Record read as follows:  
 18 "Question: What do you regard as the  
 19 purpose of California's statewide  
 20 assessment test?")  
 21 MR. HERRON: Objection. Vague and ambiguous.  
 22 THE WITNESS: To the extent that you are  
 23 referring to the STAR assessment program and the STAR  
 24 test, on page 4 there is a statement from the  
 25 legislature with respect to the intent when they enacted

1 that statute and they describe its primary purpose as  
 2 "assisting pupils, their parents,  
 3 and teachers to identify individual  
 4 academic strengths and weaknesses, in  
 5 order to improve teaching and learning.  
 6 It is further the intent of the  
 7 Legislature ... to determine" --  
 8 MR. HERRON: Slow down just a bit.  
 9 THE WITNESS: -- "to determine the  
 10 effectiveness of school districts and  
 11 schools, as measured by the extent to  
 12 which pupils demonstrate knowledge of  
 13 the fundamental academic skills, as well  
 14 as the ability to apply those skills."  
 15 BY MR. ROSENBAUM:  
 16 Q And do you believe that there are any other  
 17 purposes to the STAR assessment system other than those  
 18 that you have just read to me?  
 19 MR. HERRON: Vague and ambiguous, use of the  
 20 terms "purposes."  
 21 THE WITNESS: The STAR test results have a  
 22 variety of audiences. As the legislature has indicated,  
 23 one of the audiences is the parents of the students who  
 24 take the test; another audience is the school district  
 25 personnel who instruct that student; another is the

1 State in evaluating the effectiveness of schools within  
 2 the State.  
 3 BY MR. ROSENBAUM:  
 4 Q Okay. But that is not my question.  
 5 My question is: Besides the purposes that you  
 6 read to me two questions ago, do you regard the STAR  
 7 assessment system as having any other purposes?  
 8 MR. HERRON: Same objection.  
 9 You may respond.  
 10 THE WITNESS: What I just said in my previous  
 11 answer suggested different individuals who used the test  
 12 for different purposes. It is used for a variety of  
 13 purposes.  
 14 BY MR. ROSENBAUM:  
 15 Q What I am trying to find out, Doctor, is what  
 16 that variety of purposes is. And I want to know your  
 17 judgment based on your examination of all the materials  
 18 you looked at for purposes of your reporting in your  
 19 consultation what you regard to be the full set of  
 20 purposes of the STAR assessment system.  
 21 MR. HERRON: Objection. Asked and answered two  
 22 questions ago.  
 23 BY MR. ROSENBAUM:  
 24 Q Are there other purposes other than the two  
 25 that you have read me, specific purposes?

1 A As I indicated in my previous answer, I believe  
 2 that district personnel are also users of this  
 3 information. And it is part of the evaluation that they  
 4 make in their local schools and teachers in their  
 5 classrooms with respect to the knowledge and skills of  
 6 the students that they are instructing.  
 7 Q Any other purposes?  
 8 A The data is also communicated to the public,  
 9 made available on the State web site so that the public  
 10 can also see how schools and districts are doing within  
 11 the state.  
 12 Q Any other purposes?  
 13 A That's all I can think of at the moment.  
 14 Q And do you regard the purpose of assisting  
 15 pupils, their parents and teachers to identify  
 16 individual academic strengths and weaknesses in order  
 17 to improve teaching and learning, do you regard that  
 18 as an important purpose for a statewide assessment  
 19 system?  
 20 A I take as a given what the legislature of the  
 21 state decides what they want to do with the test. That  
 22 is a policy question and it is up to them to determine  
 23 that.  
 24 Q Okay. Do you personally have a view as to  
 25 whether or not that is an important purpose?

1 A Whether or not that's the case depends on the  
2 intent of the user of the test. It is up to the user to  
3 define what purpose they want to serve and then my job  
4 as a consultant is to help them figure out how best to  
5 do that.

6 Q But you have no independent view as to whether  
7 or not that is an important purpose or not, if I  
8 understand you correctly.

9 MR. HERRON: You mean in the context of the  
10 California test?

11 MR. ROSENBAUM: Yes.

12 MR. HERRON: I think he just wants your  
13 personal view if you have one?

14 THE WITNESS: It is clearly important because  
15 it is contained in the statute.

16 BY MR. ROSENBAUM:

17 Q Okay. Is it important for any other reason to  
18 you?

19 MR. HERRON: I'm sorry. I object as vague and  
20 ambiguous.

21 THE WITNESS: I don't understand what you are  
22 asking me.

23 BY MR. ROSENBAUM:

24 Q When you used the word "important" in your last  
25 answer, what did you mean by that?

1 important.

2 Q Now, Doctor, just so we are talking the same  
3 language here -- I think we did this yesterday, but bear  
4 with me -- if I talk about the STAR system or the STAR  
5 program or the STAR assessment test, what do you  
6 understand that to mean?

7 A The tests that were mandated in the assessment  
8 act that we were just talking about.

9 Q And let's just identify them. I know you have  
10 done that, but bear with me again.

11 A You are asking me for the name of the test?

12 Q Yes.

13 A It was the Stanford 9 for the first five  
14 years. It is now the CAT6.

15 Q Okay.

16 A Well, and let me also state it's the standards  
17 test as well that go with that, that is, both the norm  
18 reference and the standards test.

19 Q I know you have this in your report, but for a  
20 predicate: Were the standards tests administered in  
21 the first year when the Stanford 9 was administered as  
22 part of the STAR program?

23 A I'm not sure whether they did the augmented  
24 test in the first or the second year. There might have  
25 been one year of Stanford administration before, but I

1 A I meant that the statute states what the  
2 purpose of the test is and one should follow the  
3 statute.

4 Q Okay. As an expert in the area of  
5 psychometrics, do you regard the purpose articulated  
6 here -- "assisting pupils, their parents and teachers to  
7 identify individual academic strengths and weaknesses in  
8 order to improve teaching and learning" -- do you regard  
9 that as an important purpose of a statewide assessment  
10 program for reasons other than its appearance in  
11 legislation?

12 A I truly don't understand your question because  
13 it is up to the user of the test to state what their  
14 purpose is and I'm not a user of the test in that sense.  
15 So it is not my prerogative to tell any user what their  
16 purpose ought to be unless the test that they are using  
17 is not suited for the particular purpose. I might say  
18 that.

19 Now, if you are asking me as an individual, as  
20 a parent, for example, I would like to see my student's  
21 scores and I would want to see any subtest information  
22 that is also available so that I could see how my child  
23 was doing on a particular test.

24 Q Why is that important to you as a parent?

25 A Because the education of my child is

1 don't remember for sure which year. It was one of those  
2 two years, '98 or '99.

3 Q Now, do you know, Doctor, whether or not in  
4 each year during which the STAR assessment test has been  
5 administered, whether teachers routinely receive the  
6 results of their classroom, the students in their  
7 classroom?

8 A I know there are reports that go to the  
9 districts. I think those are broken down by grade but  
10 not by classroom. But I think that if a district wanted  
11 to get the information by classroom, they could order  
12 those reports from the publisher. The publisher does  
13 have standard classroom reports that it uses with the  
14 norm referenced assessment instruments.

15 Q Are you certain of what you just told me? The  
16 reason I am asking that is you began by saying "I  
17 think." And I just want to know the extent to which you  
18 are certain of that answer.

19 A I'm certain that the schools get results. The  
20 data --

21 Q Let's break that down. The results -- You are  
22 certain that the schools get results. They get  
23 schoolwide results; is that right?

24 MR. HERRON: Objection. Misconstrues prior  
25 testimony.



1 BY MR. ROSENBAUM:

2 Q I don't want to misconstrue your testimony. Do  
3 the schools get schoolwide results on the STAR  
4 assessment system?

5 A Yes.

6 Q Do they get class- --

7 Do you know for certain whether schools get  
8 classroom results?

9 MR. HERRON: Objection. Misconstrues prior  
10 testimony. Asked and answered.

11 THE WITNESS: It's my understanding that it is  
12 done by grade as you see it on the web site but not by  
13 classroom.

14 BY MR. ROSENBAUM:

15 Q Okay. So it is your understanding that a  
16 school gets the results of by second grade and by third  
17 grade; is that correct?

18 A Yes.

19 Q What about a high school, how does a high  
20 school get the results?

21 MR. HERRON: If you know.

22 BY MR. ROSENBAUM:

23 Q If you know.

24 In fact, I will make -- I will ask you a  
25 foundational question.

1 am just trying to understand what you mean by that.

2 A I believe they get like a CD or some kind of  
3 electronic format of the -- of all of the scores for all  
4 of the pupils in their school for all the tests that  
5 they took, all the subtests they took. They do also get  
6 individual student reports that are to go home to  
7 parents.

8 Q Do you know for certain that the schools get  
9 the CD that you are talking about?

10 MR. HERRON: Well --

11 THE WITNESS: It was my understanding that  
12 they did, that that data was available to them.

13 BY MR. ROSENBAUM:

14 Q And the CD that -- The school receives or the  
15 district receives? Who receives it, the school or the  
16 district?

17 A I don't know if it is --

18 MR. HERRON: Objection. Calls for speculation.

19 THE WITNESS: -- sent to the district or the  
20 school. I don't know how that distribution occurs.

21 BY MR. ROSENBAUM:

22 Q Do you know if it is broken down by classroom?

23 MR. HERRON: Objection. Asked and answered.

24 THE WITNESS: It was my understanding that it  
25 was not specifically analyzed that way at the state

1 Do you know how high schools get the results?

2 MR. HERRON: Of the tests.

3 THE WITNESS: It is my understanding that it is  
4 again like the web site, by grade and subject.

5 BY MR. ROSENBAUM:

6 Q By grade --

7 A By grade and subtest, if you are talking about  
8 the norm reference test.

9 Q Okay. And my understanding of your answer is  
10 that you believe that districts can order classroom  
11 data; is that right?

12 A I believe they can do two things, actually, if  
13 they want classroom information. They can do an  
14 analysis of their own data or they can order a report  
15 from the publisher.

16 Q Okay. And when you say, "do an analysis of  
17 their own data," what do you mean by that?

18 A It is my understanding that they are able to  
19 get the data in electronic format and that they could  
20 then use computer programs to compile the data in that  
21 format if they wished.

22 Q When you say, "they get it in electronic  
23 format," tell me what you mean by that. Each student's  
24 individual score, each classroom's score, each grade's  
25 score. It doesn't have to be one of those answers. I

1 level.

2 BY MR. ROSENBAUM:

3 Q Okay. Was it broken down alphabetically? Do  
4 you know how it was broken down?

5 A I don't know what the format is of that data.

6 Q Do you know -- And then you --

7 Do you know if any school in the State of  
8 California since the STAR assessment system began has  
9 ever broken down results by classroom?

10 MR. HERRON: Objection. Calls for speculation,  
11 vague and ambiguous, overbroad, largely irrelevant.

12 You may nonetheless respond to his question.

13 THE WITNESS: I'm not aware of any at this  
14 time.

15 BY MR. ROSENBAUM:

16 Q Have you ever made any inquiry to find out?

17 MR. HERRON: I'm sorry?

18 BY MR. ROSENBAUM:

19 Q Have you ever made any inquiry to find out?

20 MR. HERRON: Same objections.

21 THE WITNESS: I have not asked any specific  
22 schools what they have done.

23 BY MR. ROSENBAUM:

24 Q Did the subject matter of obtaining data by  
25 classroom, did that or anything related to that in your

1 judgment ever come up at a TAC meeting, that subject  
2 matter?

3 MR. HERRON: Objection. Vague.

4 THE WITNESS: I don't recall any discussions  
5 like that.

6 BY MR. ROSENBAUM:

7 Q Okay. To your knowledge, are teachers notified  
8 that there are ways that they can obtain classroom data  
9 as to the results on the STAR assessment system at any  
10 point in the administration of the system?

11 MR. HERRON: Objection. Calls for speculation,  
12 vague and ambiguous.

13 BY MR. ROSENBAUM:

14 Q I don't want you to speculate. If you don't  
15 know, just tell me and I will move on.

16 A Any information that teachers received would  
17 come from the school or the district, and I don't know  
18 what they tell them.

19 Q Okay. Have you ever made any inquiry to find  
20 out what, if anything, teachers are told in terms of  
21 obtaining data?

22 MR. HERRON: Same objections. Not relevant.

23 THE WITNESS: I don't recall having ever talked  
24 to school people about that issue.

25 BY MR. ROSENBAUM:

1 Q And do you know whether or not any teacher or  
2 school or district has ever sought data broken down by  
3 classroom from a publisher --

4 MR. HERRON: Objection.

5 BY MR. ROSENBAUM:

6 Q I'm sorry -- since the beginning of the STAR  
7 assessment system in California?

8 MR. HERRON: Objection. Calls for  
9 speculation. I just want to note that is impossible to  
10 answer. There are 1100 school districts, 8,000 schools,  
11 237,000 classrooms and 6.2 million students and you are  
12 asking her to testify about all of this in a single  
13 question.

14 BY MR. ROSENBAUM:

15 Q I am asking you whether or not you know if any  
16 of those school districts or classrooms that Mr. Herron  
17 referenced, to your knowledge, has anyone ever from any  
18 of those units ever requested that data from a  
19 publisher.

20 Do you know?

21 MR. HERRON: It absolutely calls for  
22 speculation.

23 You may respond if you can possibly answer that  
24 type of a question.

25 THE WITNESS: The only thing I can say about

1 Q Has this subject matter ever come up at a TAC  
2 meeting, to the best of your recollection?

3 A I don't recall a discussion like that.

4 Q Now, you also told me that you believe that  
5 classroom data, data broken down by classroom, can be  
6 obtained from the publisher; is that right?

7 A Yes. The publisher produces classroom level  
8 reports as part of the scoring service available with  
9 the norm reference test.

10 Q And is that true for both the publisher of the  
11 Stanford 9 and the CAT6?

12 A Yes.

13 Q And does the data include the augmentation  
14 portions of the exam?

15 A I'm talking at this point only about the NRT.  
16 I don't know about the standards portion of it. That  
17 would not be part of the publisher's scoring -- standard  
18 scoring package, but there may be options that they  
19 might offer in a particular state.

20 Q Do you know if those options are -- if there  
21 are any options offered in California?

22 A I don't know.

23 Q Have you ever made any inquiry to find out?

24 A I don't think I have ever specifically asked a  
25 publisher that question.

1 that is that it is my understanding that some schools or  
2 districts have ordered supplementary reports from the  
3 publishers. I don't know which ones they are.

4 BY MR. ROSENBAUM:

5 Q Okay. Do you know how many schools have done  
6 that?

7 MR. HERRON: Same objections.

8 THE WITNESS: No.

9 BY MR. ROSENBAUM:

10 Q Do you know if the supplementary reports  
11 that have been ordered have been broken down by  
12 classroom?

13 MR. HERRON: Same objections. Irrelevant.

14 THE WITNESS: As I indicated, I don't know  
15 which reports were ordered.

16 BY MR. ROSENBAUM:

17 Q Have you ever made an inquiry to find out?

18 MR. HERRON: Same objections. Irrelevant.

19 THE WITNESS: I have not seen that data.

20 BY MR. ROSENBAUM:

21 Q Okay. Did that subject matter ever come up at  
22 a TAC meeting, to the best of your recollection?

23 MR. HERRON: Same objections. Irrelevant.

24 THE WITNESS: There may have been some  
25 discussion about reporting and what reports were

1 available. I don't remember any of the specifics of  
2 that.

3 BY MR. ROSENBAUM:

4 Q Have you ever examined the individual reporting  
5 sheet that a student obtains as part of the STAR  
6 assessment system? Do you know what I am talking about?  
7 The student gets in the mail, the family gets in the  
8 mail a sheet that says, "Here are the results on the  
9 assessment system."

10 A I have seen sample reports.

11 Q Okay. Do they --

12 Does that sheet at any point since the  
13 beginning of the administration of the STAR system break  
14 down results by questions answered correctly or  
15 incorrectly as part of the augmentation questions as  
16 opposed to the norm reference questions?

17 A Well, I actually have a sample in my report, so  
18 the best way might be to look at that document.

19 Q Okay.

20 MR. HERRON: Can I testify to this?

21 MR. ROSENBAUM: I am doing you on Thursday.

22 THE WITNESS: Chart 12-A --

23 BY MR. ROSENBAUM:

24 Q Is it in color?

25 A -- has a sample performance report for a grade

1 9 student. And it continues on the back side of that  
2 page.

3 Q Okay. Now, looking at 12-A and any other basis  
4 that you have, do the results that are reported here  
5 break down whether or not a student is getting an answer  
6 correct or incorrect on a norm reference part of the  
7 exam as opposed to the augmentation part of the exam?  
8 Do you understand my question?

9 A Yes, I believe so, at least with respect to  
10 this particular report which is for a grade 9 student.

11 Let me first say the augmentation was in the  
12 early years of the program. The standards tests are now  
13 stand-alone exams and that is what is being reported  
14 here. And on the front page for the California  
15 standards tests, you have Englishlanguage arts results  
16 and this particular sample student took geometry as the  
17 mathematics test. So that is recorded.

18 And then if you flip over to the back side, you  
19 have the history, social science and the science test,  
20 which was an earth science test. And then below that at  
21 the very bottom, you have the Stanford 9 results for the  
22 student, which is the NRT portion.

23 Q All right. Now, are there still augmentation  
24 questions as part of the K through -- part of the  
25 elementary school questions?

1 MR. HERRON: For this school year?

2 MR. ROSENBAUM: Yes.

3 THE WITNESS: My understanding is that the  
4 exams that have been incorporated into the API are  
5 stand-alone exams.

6 BY MR. ROSENBAUM:

7 Q And are you sure of that?

8 MR. HERRON: According to her testimony.

9 THE WITNESS: That's my understanding.

10 BY MR. ROSENBAUM:

11 Q And do you know whether or not --  
12 When you say "stand-alone exams," you mean  
13 independent of the norm reference part; is that  
14 right?

15 A Completely separate exams, yes.

16 Q All right. And is the reporting --  
17 Do you know if the reporting reflects this is  
18 what you did on the stand-alone standards part and this  
19 is what you did on the Stanford 9 part?

20 A You have an example in front of you as shown in  
21 Table 12-A.

22 Q I'm sorry. I am trying to find out if you know  
23 if a similar performance report form is used for the  
24 elementary grades.

25 A Yes.

1 Q Okay. And do you know why there is a  
2 difference in the reporting, that is that the student  
3 gets -- the student and her family receives the results  
4 on the Stanford norm reference part separate from the  
5 standards test part? Is my question clear to you?

6 A No.

7 MR. HERRON: No.

8 BY MR. ROSENBAUM:

9 Q I don't think it is either. What you said to  
10 me is "Look, here is the performance report and it  
11 breaks down how the student performed on the standards  
12 test and it breaks down how the student performed on the  
13 norm reference part"; correct?

14 A Yes.

15 Q Why do they do it that way? Why is it done  
16 that way, if you know?

17 A As opposed to what other way would you do it?

18 Q As opposed to not desegregating the results at  
19 all between how you do on the --  
20 Why don't you just get a number? Here is the  
21 total number of questions you got correct. Why break it  
22 down between the norm reference part and the standards  
23 part?

24 A Well, first of all, they are separate tests.  
25 The norm reference test is given under the standardized

1 norm reference conditions under which the norms were  
2 originally obtained. The analysis of the test is  
3 separate, particularly with respect to the API but also  
4 with respect to the standard setting portion in which  
5 standard categories have been determined for the  
6 standards-based test. The norm reference tests use the  
7 percentile ranks or the norms that come with the  
8 instrument.

9 So you are reporting different kinds of  
10 information. They are also broken down differently  
11 subtestwise, so reporting the subtest information again  
12 follows the NRT Test in that portion and the standards  
13 test the way the tests were developed.

14 Q Okay. Great. Thank you.

15 Let me ask you, Doctor, if you could turn,  
16 please to, page 5 of your report which is Exhibit 1 to  
17 this deposition.

18 And for this question and for all of my  
19 questions, Doctor, if I am referring to a part of your  
20 report, you should feel free at any point to look at not  
21 only the sentence or sentences that I am directing you  
22 to, but whatever you need to put it in the context that  
23 you are comfortable with.

24 Do you understand that?

25 A Yes.

1 Prior to that time, they looked at the standards for the  
2 states that had them or had a statewide curriculum of  
3 some type and they distilled that into a common set of  
4 content that is then reflective of what the majority of  
5 schools are doing in the country.

6 Q All right. If you just answered it, then bear  
7 with me. But do you know -- can you attach a percentage  
8 to "majority"?

9 MR. HERRON: Objection. Asked and answered.

10 THE WITNESS: I can't attach an exact  
11 percentage, but I can say that the way that this  
12 distillation process occurs, I would say it is going to  
13 be a high percentage. Most schools are teaching the  
14 things that are on these tests. If it is very unique,  
15 it is not included.

16 BY MR. ROSENBAUM:

17 Q Do you know if it is more than 66 percent,  
18 two-thirds?

19 MR. HERRON: Objection. Asked and answered.

20 THE WITNESS: I don't know an exact number.

21 BY MR. ROSENBAUM:

22 Q Okay. Do you know for the Stanford Test the  
23 percent of school districts in California that are  
24 teaching the knowledge and skills as part of their grade  
25 level curricula?

1 MR. HERRON: Thank you.

2 BY MR. ROSENBAUM:

3 Q Now, at the bottom of page 5 in the second  
4 column, it says:

5 "These subtests are based on knowledge  
6 and skills commonly included in the  
7 grade level curricula of a majority of  
8 school districts in the United States."

9 Do you see that?

10 A Yes.

11 Q And that is in a paragraph in which you are  
12 talking about the Stanford Test.

13 Do you see that?

14 A Yes.

15 Q When you say, "majority of school districts in  
16 the United States," do you know what percent of school  
17 districts in the United States?

18 A One wouldn't really express it as a percent.  
19 It's a consensus process in which the publisher looks at  
20 the curricular materials that are commonly used across  
21 the country in a given subject at a given grade. They  
22 look at district scope and sequence charts for what is  
23 being taught in different grades and subjects.

24 And now that all states are required to have  
25 statewide standards, they are also looking at that.

1 MR. HERRON: Objection. Asked and answered.

2 THE WITNESS: I don't know an exact percentage,  
3 but I can say because the California standards tend to  
4 be more rigorous and have more difficult content, they  
5 should be teaching most of what is in the Stanford Test  
6 because that includes prerequisite and enabling skills  
7 for the content that they are supposed to be teaching as  
8 part of the standards.

9 BY MR. ROSENBAUM:

10 Q Okay. But do you know --

11 Do you know the percent of school districts in  
12 California that are teaching both knowledge and skills?

13 MR. HERRON: Objection. Asked and answered the  
14 question before.

15 THE WITNESS: I don't have an exact number.

16 BY MR. ROSENBAUM:

17 Q Okay. Do you --

18 If I were to ask you, Doctor, do you know the  
19 percent of schools in California that are teaching the  
20 knowledge and skills that are referred to in this  
21 sentence, do you know the number or the percent of  
22 schools in California?

23 MR. HERRON: Objection. Asked and answered.

24 THE WITNESS: Same answer that I already gave.

25 BY MR. ROSENBAUM:

1 Q Okay. Thank you.  
 2 Explain to me -- Doctor, if you would walk me  
 3 through Table 1, I would appreciate that.  
 4 MR. HERRON: Table 1?  
 5 MR. ROSENBAUM: Yes.  
 6 BY MR. ROSENBAUM:  
 7 Q Do you have that in front of you?  
 8 A Yes.  
 9 Q And did you construct this table?  
 10 A Yes.  
 11 Q And help me understand some vocabulary here.  
 12 The word "strands," I see that beneath "strands"  
 13 standards is in parenthesis. But what is a strand as  
 14 you use it in this table, Table 1 of your report?  
 15 A It refers to the organization of the standards  
 16 in which they are collected in groups and the group is  
 17 designated as strand.  
 18 Q Okay. Can you give me an example of that?  
 19 MR. HERRON: Of what a strand might be?  
 20 MR. ROSENBAUM: Yes.  
 21 Q Would it be -- I don't know. I mean, is it  
 22 like -- Is geometry a strand or is a certain way of  
 23 thinking a strand? Is American history between 1860 and  
 24 1900 a strand? What is a strand?  
 25 A What you are suggesting is probably a little

1 bit too global. I don't know without looking at the  
 2 specific California standards exactly what an example  
 3 would be. But I can give you sort of a notion. On the  
 4 geometry test it might be something like congruent  
 5 triangles.  
 6 Q Okay.  
 7 A And then under that, would be all the standards  
 8 of the different things you are supposed to know and be  
 9 able to do about congruent triangles.  
 10 Q Okay.  
 11 A But I don't know that that is exactly one of  
 12 them. I just made that up as an example of the level of  
 13 detail that it might be.  
 14 Q All right. Now, I just want you to be patient  
 15 with me because I have trouble understanding this.  
 16 It says here -- Let's take the first row across  
 17 your Table 1. For grade 2, and it says "Number of  
 18 strands 16," and then "46" is in parentheses.  
 19 Do you see that?  
 20 A Yes.  
 21 Q Okay. So that means for grade 2 in language  
 22 arts the test tests 16 strands; is that right?  
 23 A What it means is that there are 46 standards  
 24 and they are grouped together in 16 strands.  
 25 Q Okay. 46 of the states' contents standards for

1 language arts are grouped together in 16 strands; is  
 2 that right?  
 3 A Yes.  
 4 Q Who did you get that data from, the 16 strands  
 5 and the 46 standards?  
 6 A Information provided by the test publisher.  
 7 Q Okay. Have you done any verification of the  
 8 data independently?  
 9 A I didn't independently count those, no.  
 10 Q Do you know if anybody has besides the  
 11 publisher?  
 12 A I would imagine that the department has counts  
 13 of those things.  
 14 Q Do you know for a fact whether or not the  
 15 department has verified the publisher's determinations?  
 16 A I would expect them to have done that, but I  
 17 don't have personal knowledge that it was done.  
 18 Q All right. Now, the next box refers to the  
 19 Stanford Test; is that right?  
 20 A Yes.  
 21 Q Okay. And the Stanford -- for grade 2 still,  
 22 69 percent of the strands are assessed. That's what it  
 23 says?  
 24 A Yes.  
 25 Q Does that mean 69 percent of the 16 strands?

1 A Yes.  
 2 Q Okay. So -- again, I am trying to figure this  
 3 out -- there are 46 standards that deal with language  
 4 arts for grade 2 within the State's contents standards;  
 5 is that right?  
 6 A There are 46 standards that are assessed on the  
 7 language arts test.  
 8 Q 46 standards. How do you -- Does that mean by  
 9 adding up the Stanford Test -- I'm sorry. The standards  
 10 are -- How do you get that number? There are 46  
 11 standards that are assessed as part of the State's  
 12 assessment system for grade 2 in the area of language  
 13 arts; is that what you are telling me?  
 14 MR. HERRON: Objection. Asked and answered.  
 15 BY MR. ROSENBAUM:  
 16 Q Bear with me. It probably was. I'm just  
 17 trying to figure it out.  
 18 A There are 46 standards that are assessed.  
 19 Q Okay. And that is by looking at both the  
 20 Stanford Test and the augmentation part, the standards  
 21 part?  
 22 MR. HERRON: Objection. Vague.  
 23 BY MR. ROSENBAUM:  
 24 Q How do you get that number, 46?  
 25 A 46 would be the number of standards eligible

1 for assessment on the statewide standards test.  
 2 Q That's what I -- Okay. And 49, looking down  
 3 for grade 3, would be the number of standards in the  
 4 area of language arts that would be eligible for  
 5 testing?  
 6 A In grade 3.  
 7 Q Okay. Now --  
 8 So the Stanford Test you have told me tests 69  
 9 percent of the strands; right?  
 10 A Yes.  
 11 Q Do we know what percent of the standards are  
 12 tested?  
 13 A That information is knowable, but I don't have  
 14 it.  
 15 Q Okay. And how would one come to know that? I  
 16 mean, you say it is knowable. That is a stupid  
 17 question.  
 18 When you say it is knowable -- Say I wanted to  
 19 find that out, how would I go about doing that?  
 20 A The publisher would have that information.  
 21 Q And have you ever made any inquiry to find that  
 22 information out?  
 23 A Yes.  
 24 Q Okay. Do you have that information?  
 25 A No.

1 Q When did you -- When did you make that -- Did  
 2 you have that information when you were preparing your  
 3 report?  
 4 A No.  
 5 Q When did you have that information?  
 6 A I didn't have it.  
 7 Q Okay. Why didn't you -- Why didn't you --  
 8 Could you have obtained that information at the time you  
 9 were preparing this report?  
 10 A No.  
 11 Q Why not?  
 12 A Because the publisher had marked it  
 13 confidential and it could not be released to me.  
 14 Q Do you have a view as to why they marked it  
 15 confidential?  
 16 MR. HERRON: Objection. Calls for  
 17 speculation.  
 18 THE WITNESS: My understanding is when the  
 19 publishers submitted their proposals, they were allowed  
 20 to mark information as proprietary and confidential and  
 21 that the understanding was that that would not be made  
 22 public unless the publisher agreed to it.  
 23 BY MR. ROSENBAUM:  
 24 Q Do you know the methodology that the  
 25 publisher -- the Stanford publisher used to determine

1 how it was going to group strands, how many standards  
 2 would be in a strand?  
 3 A I believe that was done by the State. This  
 4 follows the State's standards document in which the  
 5 standards are grouped into strands.  
 6 Q Does the State have information as to the  
 7 percent of standards that were assessed?  
 8 A Yes, I believe so.  
 9 Q And did you make any attempt to obtain that?  
 10 A Yes.  
 11 Q And you were told it was confidential?  
 12 A I was told the publisher had marked it  
 13 confidential and it could not be released --  
 14 Q All right.  
 15 A -- without the publisher's agreement.  
 16 Q All right. Now, the next column is "Number of  
 17 Test Items."  
 18 Do see that?  
 19 A Yes.  
 20 Q And that means that students in grade 2 in the  
 21 area of language arts have 192 test items; is that  
 22 right?  
 23 A Yes.  
 24 Q And the next column is "Number of Augmented  
 25 Test Items"; is that right?

1 A Yes.  
 2 Q And that means in grade 2 they get 152 norm  
 3 reference test items and 40 augmented test items; is  
 4 that right?  
 5 A No.  
 6 Q Okay. Help me understand it. What is the  
 7 difference between number of test items and number of  
 8 augmented test items?  
 9 A The number of augmented test items reflects the  
 10 number of Stanford Test items that were selected to be  
 11 included as part of the augmented test.  
 12 Q All right. So you are telling me they are all  
 13 Stanford items; is that right?  
 14 A All 192, yes.  
 15 Q All right. And but for the augmented test  
 16 items, students in grade 2 would have received in the  
 17 area of language arts 152 Stanford Test items; is that  
 18 right?  
 19 A No.  
 20 Q All right.  
 21 A If you take the Stanford Test in language arts  
 22 in grade 2 --  
 23 Q Yes.  
 24 A -- you take all 192 items.  
 25 Q If there had been no augmentation -- Does

1 Stanford routinely augment their test?  
 2 A I don't know what you mean.  
 3 Q What I am trying to understand, if I were  
 4 taking the Stanford Test in Illinois in grade 2 language  
 5 arts, how many test items would I see?  
 6 MR. HERRON: Objection. Calls for  
 7 speculation.  
 8 THE WITNESS: You probably would not be taking  
 9 the form that was given in California. You may take  
 10 some other form of the Stanford Test and I'm not sure  
 11 the number of items that might have been on that form.  
 12 BY MR. ROSENBAUM:  
 13 Q All right. The augmented test items, those  
 14 are -- those are items on the Stanford Test?  
 15 A Yes.  
 16 Q And are those --  
 17 Who draws up those test items, the Stanford  
 18 publisher or somebody else?  
 19 A All of the items on the Stanford Test were  
 20 developed by the publisher.  
 21 Q All right. And a decision was made at some  
 22 point to add the augmented items; right? That is what  
 23 augmented means?  
 24 A No.  
 25 Q Okay. Were the augmented test items always

1 standards items that were aligned. They chose a  
 2 subset.  
 3 BY MR. ROSENBAUM:  
 4 Q Okay. And what is your understanding as to why  
 5 that was done?  
 6 MR. HERRON: Objection. Vague.  
 7 THE WITNESS: My understanding is that they did  
 8 that in the early years while the standards tests were  
 9 being developed so that they could have a standards test  
 10 soon before they had time to develop all of the items  
 11 that they needed for that test.  
 12 BY MR. ROSENBAUM:  
 13 Q So if you are not comfortable with this use,  
 14 tell me this. But the 40 items, in a sense, were the  
 15 early years' standards test; is that a fair  
 16 characterization?  
 17 A Not entirely. They were part of it. There  
 18 were also additional items that had been developed  
 19 specifically for the standards test.  
 20 Q All right. Now, when I see "Percent of Strands  
 21 Assessed, 69 percent" -- I want to stop. Withdraw that  
 22 question for a second.  
 23 192 total test items, 40 augmented test items.  
 24 Does that mean that there are 152 nonaugmented test  
 25 items?

1 part of the test?  
 2 A For the form that is being given in California,  
 3 those 40 items were always part of that standard test  
 4 form.  
 5 Q What is an augmented test item?  
 6 A That is an item selected to be included on the  
 7 standards test in the early years of the program.  
 8 Q And who did that selection?  
 9 A It is my understanding that the department did  
 10 that together with the publisher.  
 11 Q The department together with the publisher took  
 12 a look at the Stanford Test items, selected out 40 test  
 13 items for grade 2 language arts and designated those as  
 14 augmented test items?  
 15 A That's correct.  
 16 Q And the criteria for selecting them as  
 17 augmented test items is that they were aligned with  
 18 State standards; is that correct?  
 19 MR. HERRON: Calls for speculation. Object on  
 20 that basis.  
 21 Did you get that?  
 22 THE REPORTER: Yes.  
 23 THE WITNESS: All of the items that were  
 24 chosen for the augmented test were aligned with State  
 25 standards. They did not necessarily choose all

1 A It means that only 40 of the 192 were used as  
 2 part of the California standards test.  
 3 Q All right.  
 4 Now, the 69 percent, do we know what part of  
 5 that 69 percent came from the 40 questions and what part  
 6 of the 69 percent came from the remaining questions in  
 7 the area of language arts?  
 8 Do you understand what I mean?  
 9 MR. HERRON: Objection. Vague.  
 10 THE WITNESS: The percent of strands assessed  
 11 are -- represent the portion of the test that matches  
 12 the California standards. It assesses things that are  
 13 in the standards for that grade level at that subject  
 14 area. The 40 items were items that also match those  
 15 standards. So they would be included within the group  
 16 of items that measure the strands that are assessed by  
 17 the Stanford 9.  
 18 BY MR. ROSENBAUM:  
 19 Q All right. I appreciate that explanation. Let  
 20 me see if I can go one step further with it.  
 21 Do we know with respect to that universe, the  
 22 69 percent, what part of that 69 percent came from the  
 23 40 items? For example, did that 40 items include all of  
 24 the strands that are represented by the 69 percent? Do  
 25 you know what I mean?

1 A Well, let me try something here.  
 2 Q Okay.  
 3 A I'm not sure I do.  
 4 Q Okay.  
 5 A If you are asking how those 40 items were  
 6 distributed across the strands, that is, whether there  
 7 was at least one item among the 40 from each of the 16  
 8 strands, for example --  
 9 Q Yes.  
 10 A -- the department would know that. I don't  
 11 personally know that.  
 12 Q Is it possible that the 40 augmented test items  
 13 include all 16 of the strands?  
 14 A No. Because only 69 percent of the strands are  
 15 assessed.  
 16 Q Okay.  
 17 A So it would be across the portion of the 16  
 18 strands represented by the 69 percent, but I don't know  
 19 how that was distributed.  
 20 Q All right. Maybe you just answered this for  
 21 me. But if -- This may be a duplicate question. Why  
 22 isn't 69 percent of 16 an even number?  
 23 A I'm sorry? Why --  
 24 Q Why isn't 69 percent of 16 an even number?  
 25 A What number is it?

1 Q I'm getting about 11.2.  
 2 A I expect that is probably rounded to the  
 3 nearest whole number.  
 4 Q All right. Is it possible that, if my math is  
 5 correct --  
 6 Is it correct, David?  
 7 MR. HERRON: I can't even work a calculator.  
 8 MR. ROSENBAUM: He's the best the plaintiffs  
 9 have in this area.  
 10 MR. HERRON: Is it 11.04?  
 11 THE WITNESS: Do it the other way. Do 11 over  
 12 16.  
 13 MR. HERRON: .6875.  
 14 MR. ROSENBAUM: Oh, that's right, then.  
 15 THE WITNESS: So they rounded to 69.  
 16 MR. ROSENBAUM: All right, thanks.  
 17 Q Is it possible that the 11 strands are in the  
 18 40 augmented test items?  
 19 A Well, you have that backwards. The 40 items  
 20 will come from the 11 strands.  
 21 Q Okay. Okay.  
 22 Now, the next box says "California Survey  
 23 Test." Do you see that?  
 24 A Yes.  
 25 Q So if I am in grade 2 and I am taking the

1 language arts part, I take the Stanford Test and I also  
 2 take the California survey test?  
 3 A No.  
 4 Q Okay. The California survey test, what is  
 5 that? Is that the CAT6?  
 6 A Yes.  
 7 Q Okay. And so help me understand this. The  
 8 Stanford Test that you have represented here, for what  
 9 year was that?  
 10 A That was the form that was submitted by  
 11 proposal to be used in California for the first year of  
 12 the test.  
 13 Q Okay. And I take it that the California survey  
 14 test -- If I call that CAT6, is that okay with you?  
 15 A That's fine.  
 16 Q All right. Is this based on the proposal, too,  
 17 the data in this box?  
 18 A Yes.  
 19 Q All right. In Table 1.  
 20 A But I should probably say that CAT6 survey  
 21 would be the accurate one. There is a CAT6 test and  
 22 then there is a shorter survey version and what we are  
 23 talking about here is the shorter survey version.  
 24 Q Which one will kids in California take?  
 25 A The survey.

1 Q All right. Now, in grade 2, the percent of  
 2 standards assessed in language arts under the CAT6  
 3 survey will be 28 percent; is that right?  
 4 A Yes. And it was. This spring.  
 5 Q And there were 45 items, test items?  
 6 A Yes.  
 7 Q So there are a lot less test items that kids  
 8 are taking; is that right?  
 9 A That's correct.  
 10 Q And "Percent of Standards Assessed," what does  
 11 that mean? Percent of all standards that deal with  
 12 language arts?  
 13 A That's the percent of the 46 back in that first  
 14 column.  
 15 Q I see. Okay.  
 16 And why in the Stanford Test don't you have a  
 17 column that says "Percent of Standards Assessed." Is  
 18 that because that information was confidential?  
 19 A Yes.  
 20 Q And would your expectation be, Doctor, that the  
 21 percent of standards assessed in the Stanford Test for  
 22 grade 2 in language arts would be less than 28 percent?  
 23 MR. HERRON: Objection. Calls for  
 24 speculation.  
 25 THE WITNESS: I do not have that information.



1 I can't tell you what it is.  
 2 BY MR. ROSENBAUM:  
 3 Q You don't know if it is less, equal or more?  
 4 A I don't know what it is.  
 5 Q And if I went through every grade and subject  
 6 matter on Table 1, you would tell me the same thing:  
 7 For the CAT6 survey test as opposed to the Stanford  
 8 Test, you don't know if the percent of standards  
 9 assessed is more or less or equal in the Stanford Test  
 10 as to what you have recorded for the CAT6 survey test;  
 11 is that right?  
 12 A I did not have the standard level match data  
 13 for Stanford for either of those subjects for any of the  
 14 grades.  
 15 Q All right. And then the percent of aligned  
 16 items, tell me what your definition is of aligned in  
 17 your column on Table 1.  
 18 A Matching standards, measuring California  
 19 standards.  
 20 Q Okay. Why don't you have a similar column  
 21 under the Stanford Test?  
 22 A Because I didn't have standards or item level  
 23 data.  
 24 Q Okay. That was very helpful. Thank you.  
 25 And the calculation as to percent of aligned

1 the publisher with the appropriate norms.  
 2 Q So it wouldn't be broken down as to whether or  
 3 not a particular item -- say, for example, it says, "You  
 4 got 40 out of 45 items correct on the CAT6 survey  
 5 test."  
 6 Okay? Are you with me?  
 7 A I'm not sure if all scores are reported, but  
 8 I understand what you are saying about number of  
 9 items.  
 10 Q If it is not raw scores, it is percent?  
 11 A It is probably percentile rank --  
 12 Q All right.  
 13 A -- from the norms.  
 14 Q All right. Is there anything -- To your  
 15 knowledge, is there anything on the report that would  
 16 tell a parent or a student whether or not the items  
 17 which the student got correct or the percent of items  
 18 which the student got correct reflect aligned items or  
 19 not?  
 20 A I don't believe there are any desegregations  
 21 other than the ones that are normally provided by the  
 22 publisher on a student level score report.  
 23 Q All right. And you probably just answered  
 24 this, but just to be clear.  
 25 As far as you know, there are no desegregation

1 items, who made the judgment as to whether an item was  
 2 aligned or not?  
 3 A The publisher.  
 4 Q And do you know for a fact whether or not there  
 5 was any verification?  
 6 MR. HERRON: Objection. Vague and ambiguous.  
 7 THE WITNESS: Again, I would have expected the  
 8 department to be looking at that, but I don't know for a  
 9 fact whether they did.  
 10 BY MR. ROSENBAUM:  
 11 Q Now, if I am a student or the parent of a  
 12 student in grade 2, language arts, and I get my kid's  
 13 score on the CAT6 survey test, do you know if I will be  
 14 informed whether or not my student's correct answer was  
 15 on an aligned item or not an aligned item?  
 16 MR. HERRON: Objection. Calls for speculation,  
 17 incomplete and improper hypothetical.  
 18 MR. ROSENBAUM: It is a foundational question.  
 19 Q I am asking if you know whether or not parents  
 20 are informed whether or not their kids got correct  
 21 answers on aligned items or not.  
 22 A My understanding is that they get the standard  
 23 information provided by the publisher just like they did  
 24 with the Stanford, and the Stanford information was  
 25 based on the total collection of items as reported by

1 by alignment of the items; is that right?  
 2 A The only desegregations of which I am aware are  
 3 based on subarea or subtest scores within a subject.  
 4 Q All right. Now, when the API is calculated for  
 5 a particular school, is there any adjustment made, so  
 6 far as you know, by student scores on items that were  
 7 aligned as opposed to items that were not aligned?  
 8 A The API is based on the percentile rank score  
 9 and those percentile ranks are categorized into groups.  
 10 You may recall I have an example in my table and that is  
 11 based on the total score result.  
 12 Q So there is not that sort of desegregation by  
 13 alignment?  
 14 A There is no desegregation.  
 15 Q Okay. Thank you.  
 16 MR. HERRON: We have been going for about an  
 17 hour.  
 18 MR. ROSENBAUM: We can take a break and let's  
 19 go off the record.  
 20 (Discussion held off the record.)  
 21 MR. ROSENBAUM: We are back on the record.  
 22 Q Doctor, have you ever heard the phrase "access  
 23 to core curriculum"?  
 24 A I may have.  
 25 Q What meaning do you attach to that phrase?

1 A I would need to see it in context to understand  
2 what you are talking about.

3 Q How about "core curriculum"? What does that  
4 mean to you?

5 A Again, I would need some context on that.

6 Q If I define core curriculum as those subject  
7 matters and information bases that are reflected in the  
8 California standard, that is the definition that I am  
9 going to use.

10 Do you understand that?

11 A You are talking about all of the standards at  
12 every grade level in every subject?

13 Q Yes. Okay?

14 A I believe I understand what you are referring  
15 to.

16 Q Do you know, Doctor, whether or not there are K  
17 through 12 public school students in California who do  
18 not have access to core curriculum as we have just  
19 defined it?

20 MR. HERRON: Objection. Calls for speculation,  
21 overbroad, vague and ambiguous.

22 THE WITNESS: I don't understand what you mean  
23 by "access."

24 BY MR. ROSENBAUM:

25 Q They don't -- They are not taught that

1 Q Do you know if that information exists in  
2 California?

3 MR. HERRON: Same objections. Irrelevant.

4 THE WITNESS: I don't have enough data and  
5 information to answer that.

6 MR. HERRON: Are you able to hear me?

7 THE REPORTER: Yes. Thank you.

8 BY MR. ROSENBAUM:

9 Q On page 6 of your report, and I am looking,  
10 Doctor, at the second column, the last paragraph and I  
11 am going to pick out a sentence, but you can look at it  
12 as much as you would like to contextually understand  
13 it.

14 Reading from your report at page 6:  
15 "Based on the purpose of the test, a  
16 diverse panel of content experts is  
17 asked to identify an age-appropriate,  
18 testable domain of academic subject  
19 matter from the state content standards,  
20 to develop a set of test specifications  
21 which identifies the specific knowledge  
22 and skills to be sampled from the domain,  
23 and to specify the proportional weight  
24 to be given to each sampled content  
25 area."

1 information.

2 MR. HERRON: Same objections.

3 BY MR. ROSENBAUM:

4 Q It is not available to them.

5 MR. HERRON: Same objections.

6 THE WITNESS: I think this is the same thing we  
7 talked about this morning.

8 MR. ROSENBAUM: Okay. Okay.

9 Q Do you know if there are students in  
10 California who have to share textbooks in their  
11 classrooms?

12 MR. HERRON: Same objections.

13 THE WITNESS: I don't have data about how  
14 textbooks are used in schools.

15 BY MR. ROSENBAUM:

16 Q Okay. Do you know, Doctor -- maybe you just  
17 answered the question for me -- whether or not there  
18 are public school students in K through 12 in California  
19 who use textbooks that are not aligned with State  
20 standards?

21 MR. HERRON: Same objections. Asked and  
22 answered.

23 THE WITNESS: I don't have enough information  
24 at this point to offer an opinion on that.

25 BY MR. ROSENBAUM:

1 Do you see that?

2 A Yes.

3 Q Okay. Do you know how --

4 Is that done in California, so far as you  
5 know?

6 A That's the general procedure in test  
7 development.

8 Q Okay. And do you know how those -- how that  
9 panel of content experts goes about identifying the  
10 age-appropriate, testable domain of academic subject  
11 matter from the state content standards?

12 MR. HERRON: I'm sorry. Can I have the  
13 question reread?

14 MR. ROSENBAUM: It is easier if I just say it.

15 MR. HERRON: Okay.

16 BY MR. ROSENBAUM:

17 Q I just want to know if -- You say:  
18 "a diverse panel of content experts is  
19 asked to identify an age-appropriate,  
20 testable domain of academic subject  
21 matter from the state content standards."  
22 Do you see that?

23 A Yes.

24 Q Do you know how they do that?

25 A You are talking about California now,

1 specifically?

2 Q Yes.

3 A I didn't attend any of the meetings in which  
4 that occurred, but I can respond generally that the main  
5 criteria is whether or not it is testable at the state  
6 level.

7 Q Do you know what field testing is?

8 A I'm familiar with that term.

9 Q What is your understanding of what that means?

10 A You are asking in general now --

11 Q I am.

12 A -- for a definition?

13 Field testing is when you try out a test or set  
14 of test items on students at the grade level for which  
15 you intend to use them.

16 Q Was that done with respect to the STAR  
17 assessment system prior to its implementation?

18 MR. HERRON: Objection. Vague and ambiguous.

19 THE WITNESS: If you are talking about the NRT  
20 test that was done by the publisher prior to development  
21 of that test instrument.

22 BY MR. ROSENBAUM:

23 Q Was it done with respect to California  
24 students, do you know?

25 A I don't have a specific list in front of me,

1 A I don't have that data in front of me right  
2 now.

3 Q Okay. What is the purpose of field testing?

4 A As I indicated, it is a tryout of the items  
5 prior to using them in a final test form.

6 Q At any point with respect to the California  
7 assessment system, were field tests not done for items  
8 that were administered to California students on any of  
9 the assessment tests?

10 MR. HERRON: Objection. Vague and ambiguous,  
11 calls for speculation.

12 THE WITNESS: If you are talking about the NRT  
13 test, as I just indicated, those were field tested by  
14 the publisher. If you are talking about the California  
15 standards test, those were field tested by the  
16 contractor.

17 BY MR. ROSENBAUM:

18 Q How about the California High School Exit Exam?

19 MR. HERRON: Objection. Vague and ambiguous.

20 THE WITNESS: Those were field tested either by  
21 the department or the contractor.

22 BY MR. ROSENBAUM:

23 Q Prior to their administration?

24 A Yes.

25 Q At page 8, Doctor, of your report, I am looking

1 but it was done on a nationally representative sample of  
2 students across the country. It is likely that some  
3 students from somewhere in California participated.

4 Q Do you know for a fact whether or not there  
5 were California students participating?

6 A At this time I don't know who was on that  
7 list.

8 Q Okay. And regarding the items on the test,  
9 the augmentation items -- Strike that.

10 Do you know if the augment -- Was there a field  
11 test of the augmentation items with respect to  
12 California students?

13 MR. HERRON: Objection. Vague and ambiguous.

14 THE WITNESS: If you are asking about the  
15 augmentation items that we talked about out of Table 1,  
16 those were tried out with the rest of the Stanford items  
17 when that test was field tested.

18 BY MR. ROSENBAUM:

19 Q Okay. And if I ask you whether or not you, in  
20 fact, know whether or not California students were field  
21 tested, same answer as you gave me before?

22 A I believe it is likely there were some  
23 California students in the sample.

24 Q But you don't know for sure and you don't know  
25 if so, how many?

1 at the first paragraph and I am looking at the second  
2 sentence.

3 "Many of these skills are consistent  
4 with the content skills specified in  
5 the California Content Standards."  
6 Do you see that?

7 A Yes.

8 Q Okay. When you say "many," can you attach a  
9 percent to that?

10 A The percents that were available to me are  
11 reported in Table 1 of my report.

12 Q And just can you -- Let's take a look at Table  
13 1 just so that -- Is that -- Do you have that in front  
14 of you?

15 A Yes.

16 Q Okay. Where is that reflected in Table 1?

17 A If you are referring to the Stanford Test, it  
18 is under "Percent of Strands Assessed."

19 Q Okay. And the CAT6 test, where is it there?

20 A That is "Percent of Standards Assessed."

21 Q Okay. And in Table 1, of course it doesn't  
22 purport to be every subject matter that California kids  
23 were tested on as part of the assessment system, does  
24 it?

25 A If you are asking were there tests in

1 additional subjects, that's true at the high school  
 2 level where there was social science and science.  
 3 Q Okay. Did you construct tables regarding  
 4 science and social science --  
 5 A No.  
 6 Q -- similar to Table 1?  
 7 A No.  
 8 Q Did you look at that data?  
 9 A I don't recall it.  
 10 Q Okay. Is there any reason why you didn't  
 11 construct a table similar to Table 1 for science and  
 12 social science?  
 13 A Primarily because that was specific only to the  
 14 high school level.  
 15 Q Do you have a view as to what the percent of  
 16 aligned items would be for science in high school at  
 17 each grade level?  
 18 MR. HERRON: Objection. Calls for  
 19 speculation.  
 20 THE WITNESS: I don't have that data in front  
 21 of me and couldn't tell you without looking at that.  
 22 BY MR. ROSENBAUM:  
 23 Q Did you ever look at that data?  
 24 A I may have. I don't recall it.  
 25 Q Was it 100 percent?

1 MR. HERRON: She just answered she didn't  
 2 recall.  
 3 BY MR. ROSENBAUM:  
 4 Q If you don't recall, you don't recall. For  
 5 each grade level?  
 6 A That's correct, without the data in front of me  
 7 I don't know what those numbers are.  
 8 Q You have that data, though?  
 9 A No, I don't think so.  
 10 Q Did you make any attempt to get that data? Let  
 11 me strike that.  
 12 Did you have that data at some point?  
 13 A Not that I recall.  
 14 Q Did you ever make any effort to get that data?  
 15 A I don't think I requested that data.  
 16 Q Why is that?  
 17 MR. HERRON: Objection. Asked and answered.  
 18 THE WITNESS: As I indicated to you, I was  
 19 focusing on the tests that spanned the entire grade  
 20 level.  
 21 BY MR. ROSENBAUM:  
 22 Q And the same thing for social science,  
 23 history? They are administered at the high school  
 24 level; right?  
 25 A There are social science tests at the high

1 school, yes.  
 2 Q Okay. And did you ever request data so that  
 3 you could construct a Table 1 type analysis for social  
 4 science?  
 5 A I don't think so.  
 6 Q Who has that data, as far as you know?  
 7 A I'm not sure. Probably someone in the  
 8 department or at the board.  
 9 Q Okay. Directing your attention back to page 8  
 10 of your report. The same sentence:  
 11 "Many of these skills are consistent  
 12 with the content skills specified in  
 13 the California Content Standards."  
 14 We are back there.  
 15 Do you see that?  
 16 A Yes.  
 17 Q Tell me what you meant, please, by the word  
 18 "consistent."  
 19 MR. HERRON: Where are we?  
 20 MR. ROSENBAUM: It is the second sentence.  
 21 MR. HERRON: Okay.  
 22 THE WITNESS: That they measured the California  
 23 standards.  
 24 BY MR. ROSENBAUM:  
 25 Q I'm sorry. What?

1 A That they measured the California standards.  
 2 Q That is your definition?  
 3 MR. HERRON: Objection. Asked and answered.  
 4 BY MR. ROSENBAUM:  
 5 Q I just didn't hear you. I'm asking you. I'm  
 6 asking you what the definition of "consistent" is in the  
 7 second sentence. You may have just answered that. I'm  
 8 just asking you to restate it for me.  
 9 MR. HERRON: Objection.  
 10 THE WITNESS: That they measured the  
 11 California standards.  
 12 BY MR. ROSENBAUM:  
 13 Q Okay. And what do you mean by the word  
 14 "skills"?  
 15 MR. HERRON: Objection. Nitpicking.  
 16 THE WITNESS: That's the academic knowledge and  
 17 content and what we call skills necessary to answer the  
 18 item.  
 19 BY MR. ROSENBAUM:  
 20 Q Now, look at the next sentence, please.  
 21 "Many others represent prerequisite  
 22 or enabling skills from previous  
 23 grades."  
 24 Do you see that?  
 25 A Yes.

1 Q Okay. When you say "many others," can you tell  
2 me what percent or what number? Can you attach a number  
3 or percent to that?

4 A As I indicated, the percents that I had  
5 available are reported in Table 1.

6 Q So when you say, "Many others represent  
7 prerequisite or enabling skills from previous grades,"  
8 where are those many others reflected in Table 1?

9 A Those would be among the items that don't  
10 specifically test California standards.

11 Q All right. Do you know --

12 Of the items that don't specifically test  
13 California standards, how many of them, if you know,  
14 represent prerequisite or enabling skills from previous  
15 grades or what percentage of them? Either one.

16 MR. HERRON: For any particular grade or test  
17 or year or subject?

18 MR. ROSENBAUM: I would like to know all of  
19 that.

20 MR. HERRON: You may have to take them --

21 BY MR. ROSENBAUM:

22 Q And I am glad to take it one at a time if you  
23 want.

24 Do you know --

25 Let me see if I can capture this in a

1 MR. HERRON: Objection. Vague, ambiguous,  
2 calls for speculation, overbroad.

3 THE WITNESS: I have looked at content  
4 specifications and items and data for that test and I  
5 base my global judgment on that information. I have not  
6 undertaken an item-by-item analysis.

7 BY MR. ROSENBAUM:

8 Q Have you read over California standards with  
9 respect to mathematics for any grade?

10 A Yes.

11 Q For all the grades?

12 A I believe I have seen all of them.

13 Q And did you do a comparison between California  
14 standards and the test items that we are talking about?

15 A With respect to what?

16 Q To determine whether or not they specifically  
17 represented prerequisite or enabling skills from  
18 previous grades.

19 MR. HERRON: Objection. Overbroad, calls for  
20 speculation, vague and ambiguous.

21 THE WITNESS: I had data available to me about  
22 the percents of strands and in the case of the CAT6, the  
23 standards that are covered by the items and I have a  
24 knowledge of the nature of the items that are on that  
25 test and believe that the skills that don't match are

1 question. Do you know for any particular grade or for  
2 any particular subject how many of the -- how many of  
3 the questions that are not represented with respect to  
4 California standards, how many of those represent  
5 prerequisite or enabling skills from previous grades?

6 MR. HERRON: Objection. Vague and ambiguous.  
7 Vague as to time.

8 THE WITNESS: I can't give you any exact  
9 numbers in that regard. But I would believe that they  
10 would -- that would be a very high number. It would be  
11 most of them because these are skills that are commonly  
12 taught across the nation in that grade level and in that  
13 subject.

14 And to the extent they don't measure California  
15 standards, it tends to be because the California  
16 standards are more demanding and are requiring more  
17 difficult content. So these -- especially in  
18 mathematics, which is quite hierarchical. These are  
19 things you learn first before you do the more difficult  
20 content.

21 BY MR. ROSENBAUM:

22 Q Have you undertaken any analysis to determine  
23 what percent of those questions represent prerequisite  
24 or enabling skills from previous grades in the area of  
25 mathematics?

1 lower level skills, skills that would match a standard  
2 at a lower grade level.

3 MR. ROSENBAUM: Can I have that answer read  
4 back, please.

5 (Record read as follows:

6 "Answer: I had data available to me  
7 about the percents of strands and in  
8 the case of the CAT6, the standards  
9 that are covered by the items and I  
10 have a knowledge of the nature of the  
11 items that are on that test and believe  
12 that the skills that don't match are  
13 lower level skills, skills that would  
14 match a standard at a lower grade  
15 level.")

16 BY MR. ROSENBAUM:

17 Q And, Doctor, did you also have information  
18 regarding the standards covered by the items in the  
19 Stanford 9?

20 MR. HERRON: Objection. Vague.

21 THE WITNESS: As we talked about, we talked  
22 about Table 1, the information I had available to me  
23 involved the match at the strand level.

24 BY MR. ROSENBAUM:

25 Q All right. Now, the information that you had

1 that you referenced to me about the standards covered by  
2 items in the CAT6, what information is that?

3 A That was the information on the right-hand side  
4 of the table that gave the percent by standard.

5 Q Okay. Well, bear with me. I'm having a little  
6 trouble following you. It is probably my fault here.  
7 But did you have information about the specific  
8 information tested on the CAT6 so that you could make a  
9 judgment as to whether or not they represented  
10 prerequisite or enabling skills?

11 MR. HERRON: Objection. Vague.

12 THE WITNESS: Yes.

13 BY MR. ROSENBAUM:

14 Q What information is that?

15 A Information contained in the technical manual  
16 for the test.

17 Q Okay. And did you rely upon that for your  
18 conclusion here in forming that conclusion?

19 A That conclusion I believe applies specifically  
20 to Stanford. That paragraph is talking about SAT9, so  
21 that conclusion actually --

22 Q All right.

23 A -- relies on information about the SAT9.

24 Q Did you get that information from the technical  
25 manual about the Stanford Test?

1 A We talked about that yesterday. I think that  
2 was 1997.

3 Q Okay. Early or late 1997?

4 A I think it was late in the year.

5 Q Okay. And did you look at the CAT6 -- Tell me  
6 the phrase that you are using. Technical manual, is  
7 that what it is called?

8 A If you are referring to what we were talking  
9 about earlier, yes.

10 Q Okay. Have you ever looked at the CAT6  
11 technical manual?

12 A Yes.

13 Q When was that?

14 A As part of the preparation of this report.

15 Q Do you have that at home?

16 A No.

17 Q In your office?

18 A No.

19 Q When did you look at that?

20 A When I was preparing my report.

21 Q Where did you get it?

22 A I borrowed it.

23 Q From whom?

24 A From someone at the Department of Education.

25 Q And who?

1 A In part, yes.

2 MR. ROSENBAUM: Okay. I don't have that  
3 information, David, and I don't have the technical  
4 manual for either of the Stanford 9 or the CAT6 and it  
5 is clear that this witness has relied upon that material  
6 in forming her conclusions. So I am requesting that  
7 data.

8 MR. HERRON: Okay.

9 MR. ROSENBAUM: And it is necessary for  
10 purposes of this deposition.

11 MR. HERRON: Okay.

12 BY MR. ROSENBAUM:

13 Q Do you have that manual with you here in  
14 Los Angeles?

15 A No.

16 Q Back in your office?

17 A No. I don't think so.

18 Q Where is it?

19 A I believe in the hands of the publisher.

20 Q When did you look at that information?

21 A When I reviewed the Stanford Test as part of  
22 the proposal review process.

23 Q Tell me specifically what information you --  
24 When did you review that information as part of the  
25 proposal?

1 A Phil Spears.

2 Q Okay. And then what did you do with it after  
3 you borrowed it?

4 A I returned it.

5 Q Okay. And what did you look at in the CAT6  
6 manual for purposes of these conclusions?

7 MR. HERRON: Objection. Misconstrues prior  
8 testimony. Vague and ambiguous. Calls for  
9 speculation.

10 You may respond.

11 THE WITNESS: I don't remember in a lot of  
12 detail. I skimmed most of it. I read some sections in  
13 more detail.

14 BY MR. ROSENBAUM:

15 Q Tell me what you remember from that  
16 information.

17 MR. HERRON: You mean what she reviewed?

18 BY MR. ROSENBAUM:

19 Q What you just told me you reviewed, the  
20 skimming and what you read in more detail.

21 A The technical manual is quite thick. It is  
22 quite voluminous. It contains descriptive material and  
23 it contains a lot of tables of information about the  
24 test. I couldn't begin to recall and describe all of  
25 that to you at this point.

1 Q What information did you look at in the  
 2 Stanford 9 manual when you were reviewing the  
 3 proposal --  
 4 Did you read over the entire manual at the  
 5 time?  
 6 A I looked at that one in quite a bit of detail,  
 7 yes.  
 8 Q Okay. And did you look at material that caused  
 9 you to -- Strike that.  
 10 What material did you look at that caused you  
 11 to conclude that the questions would cover prerequisite  
 12 or enabling skills from prior grades? What information  
 13 in the manual?  
 14 MR. HERRON: Objection. Assumes facts not in  
 15 evidence, calls for speculation.  
 16 THE WITNESS: Information in the Stanford  
 17 technical manual that would be related to that  
 18 conclusion would include information about test  
 19 development, information about the test specifications  
 20 and how they were developed, sample items, data about  
 21 those items.  
 22 BY MR. ROSENBAUM:  
 23 Q At the time you did that, were there California  
 24 standards developed in language arts and mathematics in  
 25 all grade levels?

1 A I believe there were draft standards out for  
 2 review at that time. I think the board may not yet have  
 3 formally acted on those standards and adopted them.  
 4 Q Had you read those draft standards?  
 5 A I believe I had seen copies of them.  
 6 Q Had you studied those draft standards in  
 7 language arts and math?  
 8 MR. HERRON: Objection. Asked and answered.  
 9 THE WITNESS: As I indicated, I had seen them.  
 10 BY MR. ROSENBAUM:  
 11 Q I know. But you are using the verb "seen." I  
 12 want to know if you had read them.  
 13 MR. HERRON: Objection. Asked and answered.  
 14 THE WITNESS: Yes, I read them.  
 15 BY MR. ROSENBAUM:  
 16 Q You read them carefully?  
 17 A I think you are nitpicking now. I saw them, I  
 18 read them. I recall having seen them.  
 19 Q Okay.  
 20 MR. HERRON: Any time you are ready to break  
 21 for lunch, we are.  
 22 BY MR. ROSENBAUM:  
 23 Q When did you --  
 24 I'm not going to be much longer, David.  
 25 When did you read the State's math standards?

1 A I can't recall at this point.  
 2 Q Was it prior to your preparing your report?  
 3 A What report are you referring to?  
 4 Q The report you submitted for this case, Exhibit  
 5 1?  
 6 A Yes, I would have seen them prior to the  
 7 report.  
 8 Q You read them prior to the report?  
 9 A Yes.  
 10 Q How much prior?  
 11 A I just don't recall at this point.  
 12 Q A month? A year? Strike that.  
 13 Did you read them when they came out when they  
 14 were finalized?  
 15 A I saw them then, yes.  
 16 Q Have you read them since then? Strike that.  
 17 Did you read them at the time that they were  
 18 finalized?  
 19 A Yes, I did look at them then.  
 20 Q You are using the word "look at." I want to  
 21 know if you read them.  
 22 A You are using that word in a funny way. These  
 23 are tables of information and so you can look at the  
 24 table. It doesn't exactly read like a book in that  
 25 sense.

1 Q There is text in it, though; right? Strike  
 2 that.  
 3 Is there text with the standards of math?  
 4 A Yes.  
 5 Q Is there text with the standards for language  
 6 arts?  
 7 A Yes.  
 8 Q Have you read all of that text?  
 9 MR. HERRON: Objection. Asked and answered.  
 10 THE WITNESS: If you are asking me did I look  
 11 at all that material, the answer is yes, I did.  
 12 BY MR. ROSENBAUM:  
 13 Q Did you read all the text?  
 14 A Not in the way you would read a book but, yes,  
 15 I think I read all the words on the page.  
 16 Q How many pages was the math standards?  
 17 A I don't remember. It is many pages.  
 18 Q How many pages was the language arts?  
 19 A Same thing. Many pages.  
 20 Q 20? 100? 200? How many?  
 21 MR. HERRON: Objection. Calls for speculation.  
 22 BY MR. ROSENBAUM:  
 23 Q If you know.  
 24 A I don't remember the exact page length on it.  
 25 Q Did you read the text when the reports were

1 finalized?  
 2 MR. HERRON: Objection. Asked and answered.  
 3 THE WITNESS: You are asking after the board  
 4 had adopted the standards did I read the standards --  
 5 BY MR. ROSENBAUM:  
 6 Q Yes.  
 7 A -- that had been adopted? Yes.  
 8 Q Have you read them subsequent to that time?  
 9 MR. HERRON: Objection. Asked and answered.  
 10 THE WITNESS: Yes, I believe so.  
 11 BY MR. ROSENBAUM:  
 12 Q Okay. When was the last time you read the math  
 13 standards?  
 14 A I don't recall for sure.  
 15 Q When was the last time you read the language  
 16 arts standards?  
 17 A I don't recall.  
 18 MR. ROSENBAUM: I want those manuals, please,  
 19 David.  
 20 Okay. Let's take a break.  
 21 MR. HERRON: Fine.  
 22 MR. ROSENBAUM: See you in an hour.  
 23 MR. HERRON: Great.  
 24 (Luncheon recess taken from 12:09 p.m.  
 25 to 1:22 p.m.)

1 EXAMINATION (Resumed)  
 2 BY MR. ROSENBAUM:  
 3 Q Back on the record.  
 4 Doctor, did you review any documents over the  
 5 lunch break?  
 6 A No.  
 7 Q Did you have a discussion with anybody about  
 8 the deposition?  
 9 A Yes.  
 10 Q Mr. Herron?  
 11 A Yes.  
 12 Q Anybody else?  
 13 A One other attorney from the firm.  
 14 Q Who is that?  
 15 A Paul Salvaty.  
 16 Q Was that at the O'Melveny office?  
 17 A Yes.  
 18 Q How long was that -- Was there --  
 19 Was it in Mr. Salvaty's office or Mr. Herron's  
 20 office?  
 21 A No.  
 22 Q How long did the discussion take?  
 23 A The discussion you are asking about was  
 24 relatively short, but we had lunch together and we  
 25 discussed other things.

1 Q What was said about the case?  
 2 A We were talking about where to get the manuals  
 3 that you requested, who would have that information.  
 4 Q And what was said?  
 5 A I suggested that the department and/or the  
 6 board should have copies, that you can get copies from  
 7 the publisher directly, that most evaluations of large  
 8 districts have those.  
 9 Q Anything else that you discussed regarding the  
 10 case.  
 11 A They asked me how I was feeling, how I was  
 12 doing.  
 13 Q Did Mr. Herron ask Mr. Salvaty why he wasn't  
 14 here instead of him?  
 15 MR. HERRON: That would have been a fair  
 16 question.  
 17 MR. ROSENBAUM: Okay.  
 18 Q I think I asked you this before. I just want  
 19 to ask this as a predicate.  
 20 The CAT6 has questions about science, right,  
 21 for high school?  
 22 A I believe there is science at the high  
 23 school level similar to what has been the case in the  
 24 past.  
 25 Q Regarding the Stanford 9, you mean?

1 A Yes.  
 2 Q And the CAT6 and Stanford 9 also have  
 3 questions about social science or history at the high  
 4 school level; is that correct?  
 5 A There is a social science component at the high  
 6 school level, yes.  
 7 Q Have you compared history curricula standards  
 8 in California with any other state?  
 9 A I haven't made a direct side-by-side  
 10 comparison, but I have seen standards in other states.  
 11 Q In how many other states?  
 12 A Oh, a handful probably.  
 13 Q Do you feel competent to compare California's  
 14 history standards with history standards across the  
 15 country?  
 16 MR. HERRON: You mean could she do that?  
 17 MR. ROSENBAUM: Yes.  
 18 THE WITNESS: If I had the relevant documents  
 19 in front of me, I could make some comparisons.  
 20 BY MR. ROSENBAUM:  
 21 Q My question wasn't really a good question.  
 22 Have you done that? Have you put what you consider to  
 23 be the relevant documents and made that comparison about  
 24 the history curricula of California compared to across  
 25 the nation?



1 A If you are talking about actually having the  
2 standards side-by-side and making a systematic  
3 comparison, no.

4 Q Have you done that for social science,  
5 California standards, social science standards compared  
6 to social science standards across the nation?

7 A Again, I haven't made a side-by-side document  
8 comparison.

9 Q Do you know if anybody has with respect to  
10 history, compared California's history standards with  
11 history standards across the country?

12 A There are a number of groups that have sought  
13 to identify and compare standards across states.

14 Q Okay. Do you know the names of any of those  
15 groups?

16 A I cited one in my report, the Fordham Group.

17 Q The Fordham Group?

18 A The Fordham study looked at standards in a  
19 number of areas.

20 Q Can you name any other group besides the  
21 Fordham study?

22 A There are evaluations of standards also put out  
23 by Education Week.

24 Q Have you studied those?

25 A I have reviewed the information that they

1 published about that activity.

2 Q The comparisons that appeared in the Fordham  
3 study, they grade the standards, isn't that right, or  
4 they rank the standards?

5 A For each state they give a letter grade --

6 Q Okay.

7 A -- to their standards.

8 Q And the same thing for Ed Week, they rank the  
9 standards to one degree or another?

10 A Again, they gave letter grades.

11 Q Okay. My question is: Are you aware of any  
12 analysis that compares the content of the history  
13 curricula standards in California with the content of  
14 the history curricula standards in other states?

15 And I don't mean which are more rigorous, I  
16 mean the actual content themselves, what they study in  
17 California compared to what they study in other states  
18 across the country.

19 A Yes.

20 Q Okay. You have looked at those studies?

21 A Yes.

22 Q What studies are you thinking about?

23 A It's my understanding from reading the Fordham  
24 study and the methodology that they used, that that was  
25 a part of what they did when they assigned the letter

1 grades.

2 Q Did the Fordham study look to see the extent to  
3 which the curricula, the history curriculum for each  
4 grade in high school in California was similar to the  
5 history taught in other states across the country  
6 pursuant to the high school curricula by grade?

7 MR. HERRON: Objection. Vague and ambiguous.

8 THE WITNESS: With respect to the report that  
9 they published, it is my understanding that they  
10 compared the content in the standards from different  
11 states.

12 BY MR. ROSENBAUM:

13 Q What is the degree of similarity, if you know,  
14 between California's history curriculum at the high  
15 school level and the content of history taught across  
16 the country?

17 A Again, the information I looked at was with  
18 respect to the standards in different states and I  
19 couldn't give you any specifics or detailed information  
20 without having their supporting information in front of  
21 me, but I could say generally it is viewed as being more  
22 rigorous.

23 Q Okay. And do you know if they cover the same  
24 subjects in the eleventh grade in history in California  
25 that they cover in history across the country? Do you

1 know that one way or the other?

2 A I believe that information is in the supporting  
3 documentation of that report, but I don't recall the  
4 information about any particular topic without looking  
5 at that.

6 Q Okay. Sitting here today, do you have an  
7 opinion as to the similarity of the history curriculum  
8 in California versus the other states in the country?

9 A As I indicated to you, my understanding is that  
10 it is generally more rigorous overall.

11 Q All right. How about the subject matters, do  
12 you have an opinion as to whether or not there is a  
13 similarity in the subject matters taught in the history  
14 in California as compared to other states?

15 A As I indicated to you, I would have to have  
16 that information in front of me to answer that question.

17 Q And the information you are talking about is  
18 the supporting information for the Fordham study; is  
19 that right?

20 A Yes.

21 Q Did you rely upon the supporting information  
22 with respect to history from the Fordham study in  
23 preparing your report?

24 A I read their overall evaluations. I looked at  
25 some of that information, but the specific data that I

1 have reported are the letter grades that were given to  
2 various states in that study.

3 Q Okay. I want to particularize a little bit  
4 more.

5 Did you rely upon any of the supporting data in  
6 the Fordham study as to the content of the history  
7 curriculum in California versus other states with the  
8 exception of the letter grade?

9 MR. HERRON: Vague. Object on that basis.  
10 Asked and answered.

11 THE WITNESS: To the extent that that data  
12 supports the letter grades that they awarded, it is part  
13 of that information.

14 BY MR. ROSENBAUM:

15 Q Did you turn that information over, the  
16 supporting information on the Fordham study?

17 A That information is available on the Internet.

18 Q Okay. Sitting here today, do you have an  
19 opinion as to the similarity in the social science  
20 curriculum in high school in California versus the  
21 content of social science curriculum in other states  
22 across the country?

23 MR. HERRON: Objection. Vague and ambiguous.

24 THE WITNESS: Again, my understanding globally  
25 is that it is more rigorous in California than other

1 states. I can't give you a specific comparison topic by  
2 topic without having additional information in front of  
3 me.

4 BY MR. ROSENBAUM:

5 Q And the same thing about science, do you have  
6 an opinion as to the similarity of the content of the  
7 science taught in high school in California versus the  
8 content of science taught in other states across the  
9 country?

10 A Again, my understanding is that it is more  
11 rigorous overall, and for specific topic content I would  
12 need additional information in front of me.

13 Q Is there -- Did you rely upon -- Strike that.

14 Is there supporting data for the Ed Week study?

15 A Yes.

16 Q Did you rely on that for your report?

17 A I read what they published as part of their  
18 ranking and reporting and the footnotes and so on that  
19 went with that.

20 Q Okay. Anything that wasn't in the text of the  
21 Ed Week survey and report and the footnotes? Did you  
22 read anything other than that?

23 A Are you specifically asking did I see anything  
24 beyond that?

25 Q Yes.

1 A No, I didn't personally see anything beyond  
2 that.

3 Q Okay. Thanks. I wonder if you could direct  
4 your attention to pages 8 and 9 of your report, please.

5 MR. HERRON: Should we read it first?

6 MR. ROSENBAUM: Read what?

7 MR. HERRON: Pages 8 and 9 before you ask  
8 questions.

9 MR. ROSENBAUM: Read the whole page?

10 MR. HERRON: I'm just wondering if you want us  
11 to read it.

12 MR. ROSENBAUM: I am just turning to -- I will  
13 tell you the sentence I am interested in. You can read  
14 as much as you would like. Okay?

15 MR. HERRON: Sure.

16 BY MR. ROSENBAUM:

17 Q I am looking at the last sentence on page 8,  
18 Doctor:

19 "The introductory text to the Validity  
20 chapter in the 1999 Test Standards states:  
21 'In educational program evaluations, ...  
22 tests may properly cover material that  
23 receives little or no attention in the  
24 curriculum, as well as that toward which  
25 instruction is directed.'"

1 Do you see that?

2 A Yes.

3 Q Okay. Do you agree with that statement?

4 A Yes.

5 Q Okay. And could you tell me under what  
6 circumstances you believe that tests may properly cover  
7 material that receive no attention in the curriculum?

8 A As it states in the quote, in educational  
9 program evaluations.

10 Q Well, when would that be appropriate for  
11 educational program evaluations?

12 MR. HERRON: Objection. Vague and ambiguous as  
13 phrased.

14 THE WITNESS: I believe the statement speaks  
15 for itself. That activity is appropriate when you are  
16 doing an educational program evaluation.

17 BY MR. ROSENBAUM:

18 Q For what purpose with respect to that  
19 educational program evaluation may tests properly cover  
20 materials that receive no attention in the curriculum?

21 A When an educational program is being evaluated.

22 Q And how does it help evaluate the educational  
23 program to test information from material that receive  
24 no attention in the curriculum?

25 A To find out what is -- what students are not

1 learning that is part of material that you expect them  
2 to learn.

3 Q And what is the relationship between that and  
4 the fact that this test is covering material that  
5 receives no attention in the curriculum?

6 MR. HERRON: Objection. Vague and ambiguous.  
7 Vague and ambiguous as to the use of the term "that."

8 THE WITNESS: If you are asking with respect to  
9 California and the API accountability system, the  
10 purpose is to find out the extent to which students are  
11 learning the California content standards on a  
12 school-by-school basis, grade-by-subject basis; and if  
13 that is not happening, if they have not learned that  
14 material, then the intent is for schools to know that  
15 and to do something about it.

16 BY MR. ROSENBAUM:

17 Q But the content from the standards, that's  
18 material that does receive attention in the curriculum;  
19 isn't that right?

20 A It is material that is supposed to be taught in  
21 the curriculum.

22 Q All right. And my question to you is: When is  
23 it appropriate for a test to cover material that  
24 receives no attention in the curriculum?

25 MR. HERRON: Objection. Asked and answered

1 Q Is it your testimony that everything that  
2 appears on the Stanford 9 was taught in California  
3 curriculum at one grade or another?

4 A Not exactly. I'm saying that the content is  
5 covered by the standards at that grade level or at an  
6 earlier grade level.

7 Q So that's what I am saying. Your testimony is  
8 that all the information tested on the Stanford 9  
9 appears either at the grade level curriculum at which  
10 the test is administered or an earlier grade level; is  
11 that your testimony?

12 A My testimony is that a very large percentage of  
13 it is. I would say nearly all. There might be an  
14 exception somewhere for some content, but I would be  
15 surprised.

16 Q And could you state for me fully the basis for  
17 that answer, please.

18 MR. HERRON: Objection. Calls for a  
19 narrative.

20 THE WITNESS: The content specifications of  
21 the test, the format and content of the items, the data  
22 supporting the test and the test items.

23 BY MR. ROSENBAUM:

24 Q And you personally reviewed all of that  
25 information?

1 twice before.

2 THE WITNESS: As I indicated before in my  
3 answer, the purpose of doing a program evaluation is to  
4 see how well schools are doing at teaching the content,  
5 and you may discover that in some schools and in some  
6 grades or subjects not everything has been learned that  
7 is expected to be learned.

8 BY MR. ROSENBAUM:

9 Q Are there materials on the Stanford 9 that have  
10 been administered as part of the California assessment  
11 system that receive no attention in California  
12 curriculum? Do you know?

13 MR. HERRON: Objection. Vague and ambiguous in  
14 the use of the term "materials."

15 THE WITNESS: As I indicated earlier this  
16 morning, the skills tested on the Stanford either match  
17 the content standards or test knowledge and skills that  
18 students should have learned at earlier grades. To the  
19 extent that it is material covered in an earlier grade,  
20 it may be reviewed or not covered in a current grade.

21 If you are asking me school by school,  
22 classroom by classroom and so on, I don't have that  
23 specific information or data in front of me to answer  
24 the question that way.

25 BY MR. ROSENBAUM:

1 A Yes.

2 Q I want all of that information, David, please,  
3 that has not been turned over.

4 The same thing for CAT6, would your testimony  
5 be the same for the CAT6?

6 A The same thing what?

7 Q Is it your testimony that all the information  
8 and materials covered on the CAT6 test have been covered  
9 either at the grade level for which the test is being  
10 administered or a prior grade level?

11 A I believe that to likely be true. I don't have  
12 as much personal knowledge about that instrument as I do  
13 the SAT9.

14 Q Well, I don't want you to be speculating here.  
15 Can you state to me with certainty that that is true?

16 A Based on my experience and knowledge of norm  
17 reference tests and how they are constructed, I believe  
18 that to be true.

19 Q Okay. And have you reviewed -- You gave me a  
20 set of SAT9 -- Stanford 9 sources for your earlier  
21 answer. Do you remember that a few moments ago?

22 A I remember your asking me about what kind of  
23 information that was based on.

24 Q Okay. What is the information you are basing  
25 this on, your CAT6 answer?

1 MR. HERRON: Objection. Asked and answered.  
 2 THE WITNESS: Having reviewed the technical  
 3 manual for the test and my knowledge and experience in  
 4 the testing field.  
 5 BY MR. ROSENBAUM:  
 6 Q Can you tell me particular portions of the CAT6  
 7 manual you are relying on?  
 8 A As I indicated to you this morning, I skimmed  
 9 and reviewed the entire manual. Some sections I read in  
 10 more detail than others. I don't recall specifically at  
 11 this point without looking at it exactly what that would  
 12 have been.  
 13 Q What did you read specifically?  
 14 A As I indicated, I don't recall that without  
 15 looking at the manual and having it in front of me.  
 16 Q Okay. Doctor, are there any states that have  
 17 opportunity-to-learn criteria, specific OTL criteria  
 18 that you are aware of?  
 19 MR. HERRON: Objection. Vague and ambiguous.  
 20 THE WITNESS: I don't understand what you  
 21 mean.  
 22 BY MR. ROSENBAUM:  
 23 Q Have any states promulgated or legislated or  
 24 announced specific opportunity-to-learn standards?  
 25 MR. HERRON: Same objection.

1 THE WITNESS: States that have high-stakes  
 2 student assessments collect evidence of opportunity to  
 3 learn to support the use of the test for that purpose.  
 4 BY MR. ROSENBAUM:  
 5 Q Do you know if any state has established  
 6 specific opportunity-to-learn standards?  
 7 MR. HERRON: That is the same question you just  
 8 asked, Mark. Object as asked and answered.  
 9 You may respond again.  
 10 MR. ROSENBAUM: It wasn't answered  
 11 responsively.  
 12 THE WITNESS: Same answer.  
 13 BY MR. ROSENBAUM:  
 14 Q Okay. Directing your attention, please, to  
 15 page 8 -- Do you have that in front of you? -- of your  
 16 report?  
 17 A Yes.  
 18 Q When you say -- I am looking at the second  
 19 paragraph here and I am looking at the sentence that  
 20 reads -- it is the second sentence in:  
 21 "To provide a more targeted assessment  
 22 of the specific content skills for each  
 23 grade level, the state constructed its  
 24 own standards-based tests as required by  
 25 statute."

1 Do you see that?  
 2 A Yes.  
 3 Q What did you mean by "more targeted  
 4 assessment"?  
 5 A An assessment that measures the content  
 6 standards only at that grade level.  
 7 Q Okay. And in the next sentence it reads:  
 8 "But because such standards-based tests  
 9 required extended time for development,  
 10 the state adopted an interim procedure  
 11 for estimating achievement of the  
 12 California Content Standards."  
 13 Do you see that?  
 14 A Yes.  
 15 Q I will withdraw my question.  
 16 Did you agree with the decision to include  
 17 augmented test items?  
 18 MR. HERRON: Objection. Asked and answered  
 19 this morning.  
 20 THE WITNESS: Can you rephrase that, please.  
 21 MR. ROSENBAUM: Sure.  
 22 Q Did you agree with the decision for the  
 23 inclusion of augmented test items as part of the tests  
 24 administered to students?  
 25 MR. HERRON: Objection. Vague and ambiguous,

1 asked and answered.  
 2 THE WITNESS: I don't understand what you mean  
 3 by "including."  
 4 BY MR. ROSENBAUM:  
 5 Q I believe you told me this morning that you  
 6 weren't certain if the first time the test was  
 7 administered whether or not it included augmented test  
 8 items; is that right?  
 9 A I wasn't sure if the augmented standards test  
 10 first occurred in 1998 or 1999, that's true.  
 11 Q Did you agree with the decision to include the  
 12 augmented test, as you have just defined it?  
 13 A A standards-based test is required under the  
 14 statute.  
 15 Q Was there ever any analysis as to how long it  
 16 would take to develop a standards-based test for  
 17 California?  
 18 MR. HERRON: Objection. Calls for  
 19 speculation.  
 20 THE WITNESS: Yes, I believe so.  
 21 BY MR. ROSENBAUM:  
 22 Q And what is the basis of your answer?  
 23 A Discussions that occurred with the department  
 24 and some of the meetings that I attended.  
 25 Q Okay. And was there a time estimate that was

1 attached to that?

2 A I believe there were some time line documents  
3 developed by contractors.

4 Q Okay. And do you remember what those time  
5 estimates were?

6 A I don't recall the specifics of that.

7 Q You state at page 9 that

8 "40 to 55 language arts and 15  
9 mathematics Stanford Test items at each  
10 grade level were included in the  
11 augmented tests designed specifically  
12 to measure California Standards."

13 Do you see that?

14 A Yes.

15 Q Do you know how the number 40 to 55 was  
16 selected?

17 A My understanding is the department and the  
18 contractor together made those decisions.

19 Q Do you know what the basis of those decisions  
20 were, how that number was arrived at?

21 A I understand in a general way. I was not privy  
22 to those specific discussions.

23 Q Can you tell me please your general  
24 understanding.

25 A My general understanding was that they didn't

1 the actual discussions.

2 In general, the advantage of waiting is that  
3 you would have a completely stand-alone test that was  
4 standards only.

5 BY MR. ROSENBAUM:

6 Q Okay. And what would be the advantage of  
7 that?

8 A That it would be a separate instrument and you  
9 wouldn't have to reuse items.

10 Q What do you mean "reuse items"?

11 A Using the items out of the standards test  
12 instead of having a complete set of standards-based  
13 items.

14 Q And what is the advantage of that, not having  
15 to reuse items?

16 A That you have a completely independent measure  
17 of the standards of that grade and subject area.

18 Q And what is the advantage of that?

19 MR. HERRON: Objection. Asked and answered  
20 earlier this morning.

21 You may respond.

22 Vague and ambiguous as to your use of the word  
23 "advantage."

24 THE WITNESS: I'm not sure what more to tell  
25 you about that.

1 yet have enough time to develop enough items to have a  
2 stand-alone standards test, so they developed the  
3 standards test using some Stanford items and some that  
4 had already been developed and they put together what  
5 they considered the best possible test using that  
6 method.

7 Q And how about the 15 Stanford Test items,  
8 mathematics test items, do you know how that number was  
9 arrived at, the 15?

10 A My understanding was the same procedure.

11 Q Was there ever any discussion about waiting  
12 until a stand-alone test could be developed, to your  
13 knowledge?

14 A I believe there was.

15 Q Okay. And what do you know about that  
16 discussion?

17 A There were discussions about the advantages and  
18 disadvantages of doing that.

19 Q What is your understanding of what the  
20 advantages were?

21 MR. HERRON: You mean what was discussed about  
22 them?

23 MR. ROSENBAUM: Either based on the discussions  
24 or based on your own judgment.

25 THE WITNESS: I don't recall the specifics of

1 MR. ROSENBAUM: Okay.

2 Q And what are the disadvantages of waiting, as  
3 you understood them?

4 A That you don't have a standards-based measure  
5 immediately and that the schools in the field would not  
6 have the information about how those expectations were  
7 going to be measured and how their students were doing  
8 on those expectations.

9 Q And when you say "those expectations," what do  
10 you mean?

11 A The standards material that was not being  
12 measured by the Stanford achievement test.

13 THE REPORTER: By the "standard" or --

14 THE WITNESS: The Stanford -- Stanford 9.

15 THE REPORTER: Oh. Sorry.

16 BY MR. ROSENBAUM:

17 Q You know, you may have explained this to me  
18 this morning. I just want to understand it. Can you  
19 take a look at footnote 18 on page 9. It says:

20 "Note that the Stanford Test items  
21 were administered and scored intact  
22 and then responses from selected  
23 Stanford Test items were combined  
24 with the separately administered  
25 augmented items to create a composite

1 California Standards Test score."  
 2 Do you see that?  
 3 A Yes.  
 4 Q What does that mean? I don't get it.  
 5 A It means that the standards test consisted of  
 6 two parts. Part of it was Stanford items and part of it  
 7 was items written especially for the standards test.  
 8 Q That wasn't that hard, was it.  
 9 At page 8, Doctor, I'm looking, Doctor, at the  
 10 second paragraph in the second column.  
 11 "In the early years after state  
 12 adoption of the new content standards,  
 13 schools were still in the process of  
 14 adjusting their 'institutional' programs  
 15 to include all of the new state content  
 16 standards."  
 17 Do you see that?  
 18 A Yes. It is "instructional" programs.  
 19 Q I'm sorry. You're correct.  
 20 Do you know how schools were adjusting their  
 21 instructional programs to include all of the new state  
 22 contents standards?  
 23 A I don't have personal knowledge of what any  
 24 particular school district did, but I imagine there were  
 25 a variety of common methods used to do that.

1 Q What would those common methods include?  
 2 A Looking at their scope and sequence charts to  
 3 see where skills were being taught, looking at  
 4 curricular and instructional materials, providing  
 5 professional development for staff, meetings among  
 6 teachers teaching specific grade levels and subject  
 7 matter, especially at the high school level you might  
 8 call that a departmental meeting. At the elementary  
 9 level it might be a team meeting. Those are a few of  
 10 the things that come to mind.  
 11 Q Do you know when the schools received their --  
 12 the results of their standard assessment test? Put  
 13 aside the High School Exit Exam.  
 14 A You are talking about the STAR program?  
 15 Q Yes.  
 16 MR. HERRON: You mean this year?  
 17 BY MR. ROSENBAUM:  
 18 Q Well, let's start with this year.  
 19 A I don't know a specific date, but I believe it  
 20 is within a month or two of the conclusion of testing.  
 21 I think in some past years it has been sometime in June  
 22 maybe, early July.  
 23 Q Do you know if traditional calendar year  
 24 schools are still in session when the results are  
 25 obtained?

1 A I don't know what the calendar is that you  
 2 refer to.  
 3 Q Maybe you just answered this question. Do you  
 4 know if schools received them -- You did answer.  
 5 Was there ever any discussion, any meeting you  
 6 were at about the timing of when schools received the  
 7 data, the assessment data?  
 8 A Yes.  
 9 Q What was the nature of that discussion?  
 10 A I don't remember any of the specifics of what  
 11 was said by anyone in any particular meeting, but the  
 12 general notion is the sooner the better.  
 13 Q What do you mean by "the sooner the better"?  
 14 MR. HERRON: It's idiom.  
 15 THE WITNESS: That it is better to get results  
 16 back as quickly as possible within accuracy of data  
 17 reporting.  
 18 BY MR. ROSENBAUM:  
 19 Q Okay. Does the state have a choice as to when  
 20 the test can be administered?  
 21 MR. HERRON: Objection. Calls for speculation.  
 22 BY MR. ROSENBAUM:  
 23 Q If you know.  
 24 A Yes, I believe they do.  
 25 Q Do you know when the assessment tests are

1 administered, again putting aside the High School Exit  
 2 Exam?  
 3 A I don't know the exact dates, but I believe it  
 4 is in the spring.  
 5 Q Okay. Was there ever any talk, to your  
 6 knowledge, about administering them earlier than the  
 7 spring?  
 8 A Yes. I believe there were some discussions  
 9 along that line.  
 10 Q What was the nature of those discussions as you  
 11 recall?  
 12 A Again, I don't remember specifics of meetings  
 13 or individuals. The general issue is how much  
 14 instructional time students have had before they take  
 15 the test.  
 16 Q Okay. Was there ever any discussion about  
 17 moving it earlier than the spring?  
 18 A Again, I don't have specific recollection, but  
 19 I would expect that there was discussion about a number  
 20 of different possibilities when the test might be  
 21 administered.  
 22 Q Do you have a view as to what is the best time  
 23 to administer the test?  
 24 A I don't believe there is a single answer to  
 25 your question because it depends on the nature of the

1 test and various policy goals.

2 Q If the State of California came to you and  
3 said, "With respect to our STAR system, we would like to  
4 administer the test at a time that will maximize our  
5 ability to use the results to improve achievement," what  
6 time or times would you recommend?

7 A If what you mean by that is maximize their  
8 ability to assess whether students in given grades and  
9 subjects have learned the California standards, that  
10 goal by itself would leave one to give it as late as  
11 possible in the spring so you would have the most  
12 instructional time for which students have been taught  
13 the standards and the most complete information about  
14 what they learned during that year.

15 Q Can you think of any objectives that would  
16 promote giving the test as early as possible?

17 MR. HERRON: Same objection. Vague and  
18 ambiguous.

19 THE WITNESS: One advantage of an earlier  
20 administration is the ability to get faster turnaround  
21 from publishers. Their heavy season is in the spring  
22 because that is when most schools and states administer  
23 tests. If you were to administer it early, it would  
24 probably be possible to get a quicker turnaround of  
25 results.

1 assessment system?

2 A In order to give you an answer on that  
3 question, I would need to have the proposal information  
4 and other information in front of me.

5 Q And remind me, have you ever looked at that  
6 material?

7 A I was not asked to review those proposals.

8 Q So you have not looked at that material?

9 A Same answer.

10 Q I'm not asking if you were asked to look at  
11 the proposals. I am asking quite directly: Have you  
12 ever looked at that material?

13 A I have not seen the proposals that were  
14 submitted.

15 Q Have you ever looked at --

16 You told me that you looked at the CAT6  
17 technical manual; is that right?

18 A Yes.

19 Q Have you looked at --

20 Did the technical manual talk about test  
21 development?

22 A Are you talking about the technical manual for  
23 the CAT6?

24 Q Yes.

25 A That talks about test development for that

1 BY MR. ROSENBAUM:

2 Q What is the advantage of getting a quicker  
3 turnaround?

4 MR. HERRON: Objection. Asked and answered in  
5 part.

6 THE WITNESS: Having the data sooner after  
7 administration of the test, more contemporaneous with  
8 that activity.

9 BY MR. ROSENBAUM:

10 Q Do you have an understanding, Doctor, as to why  
11 the Stanford 9 was replaced?

12 MR. HERRON: Objection. Asked and answered in  
13 part.

14 THE WITNESS: In a general way.

15 BY MR. ROSENBAUM:

16 Q Could you tell me what your understanding is.

17 A My understanding is the original contract with  
18 Harcor Educational Measurement was a five-year contract  
19 and that was up for renewal.

20 And when a contract is up for renewal,  
21 proposals are solicited from publishers and those  
22 proposals are evaluated and then they select the  
23 contractor based on that evaluation.

24 Q Can you see any advantages of utilizing the  
25 CAT6 as opposed to the Stanford 9 for California's

1 instrument.

2 Q Right. You have looked at that; right?

3 A I have looked at the technical manual, yes.

4 Q And have you looked at analyses of the  
5 reliability and the validity of the CAT6 test?

6 A Yes.

7 Q And have you looked at --

8 What else have you looked at with respect to  
9 the CAT6?

10 MR. HERRON: It is vastly overbroad. It is  
11 vague and ambiguous.

12 THE WITNESS: If you are asking about data and  
13 technical information about the CAT6, I also have the  
14 information we looked at this morning in Table 1 about  
15 the overlap match of the content standards.

16 BY MR. ROSENBAUM:

17 Q Is there information about the Stanford 9 that  
18 you have looked at that you have not looked at with  
19 respect to the CAT6?

20 A Yes.

21 Q What is that?

22 A I have seen a lot more sample items for the  
23 Stanford 9 than I have for the CAT6.

24 Q Have you seen sample items for the CAT6?

25 A If I am recalling correctly, I believe there

1 are some in the technical manual.

2 Q Okay. Based on your knowledge and experience,  
3 would you recommend replacing the Stanford 9 with the  
4 CAT6?

5 MR. HERRON: Objection. Asked and answered  
6 several times now.

7 THE WITNESS: As I indicated to you, I can't  
8 give you an opinion on that without reviewing the  
9 proposals that were received.

10 BY MR. ROSENBAUM:

11 Q Assume that the cost would be the same. I  
12 don't want you to consider economic costs.

13 In terms of the test instrument itself, would  
14 you recommend the Stanford 9 over the CAT6 or the CAT6  
15 over the Stanford 9?

16 MR. HERRON: Objection. Incomplete and  
17 improper hypothetical, asked and answered in the  
18 question before and several times before that.

19 THE WITNESS: Same answer.

20 BY MR. ROSENBAUM:

21 Q Have you been asked by any state whether or not  
22 the state should adopt CAT6 for purposes of it's  
23 assessment system?

24 A I don't believe I have ever been asked that  
25 question directly.

1 head.

2 Q Can you name any states today that use the  
3 Stanford 9 as part of their statewide assessment  
4 system?

5 MR. HERRON: Objection. Vague and ambiguous.

6 THE WITNESS: That's a difficult question to  
7 answer because I have worked in a number of states over  
8 a long period of time and my information isn't current  
9 in many states. I would not want to speculate on  
10 whether something I may have known in the past would  
11 still be true or not. I would want to look up the  
12 actual information before I gave you that information.

13 BY MR. ROSENBAUM:

14 Q Where would you look that up?

15 A I'm not absolutely certain where to find it,  
16 but I think some of the work either that Education Week  
17 did or CCSSO did may contain that information.

18 Q Can you name me any states today that do not  
19 use a norm reference test as part of their statewide  
20 assessment system?

21 A You are talking about statewide  
22 accountability --

23 Q Yes.

24 A -- system?

25 I believe Texas does not. They have tests that

1 Q Indirectly have you?

2 A I don't believe I have been asked that  
3 question.

4 Q Have you --

5 Are there statewide systems that use --  
6 statewide assessment systems that use the Stanford 9?

7 MR. HERRON: Other, obviously, than California.

8 BY MR. ROSENBAUM:

9 Q Other than California.

10 A I believe there are other states that have the  
11 SAT9 as a norm reference component of their statewide  
12 assessment systems.

13 Q Do all states have norm reference tests as part  
14 of their statewide assessment system?

15 MR. HERRON: Assumes facts not in evidence.  
16 Object on that ground.

17 THE WITNESS: At any given point in time,  
18 probably not. Some states have had them and then not  
19 had them or vice versa.

20 BY MR. ROSENBAUM:

21 Q Today, are there --

22 What states are you aware of that use the  
23 Stanford 9 as part of their statewide assessment  
24 system?

25 A I don't have that information off the top of my

1 they have constructed at all grade levels and in subject  
2 areas that they test.

3 Q Do you know why that is?

4 A They have a state-mandated curriculum.

5 Q Do you feel competent, Doctor, to tell me any  
6 advantages of the CAT6 over the Stanford 9 for purposes  
7 of California's assessment system?

8 MR. HERRON: Objection. Asked and answered.

9 THE WITNESS: As I already indicated to you, I  
10 would need more information in front of me to give you  
11 an opinion on that.

12 BY MR. ROSENBAUM:

13 Q At page 9, Doctor, of your report, you state --  
14 I'm looking at the first paragraph under the subheading,  
15 "The California Survey Test."

16 And you write:

17 "The survey test is a shorter form of  
18 the complete battery test. Scores from  
19 the California Test will be linked to  
20 performance on the previously-administered  
21 Stanford Test."

22 Do you see that?

23 A Yes.

24 Q Do you know the methodology that was utilized  
25 to link scores from the California test to performance



1 on the Stanford Test?  
 2 A I have seen a description of that methodology.  
 3 Q And what is your understanding of the  
 4 methodology that is utilized to link scores from the  
 5 California test to the scores on the Stanford Test -- to  
 6 performance on the Stanford Test?

7 MR. HERRON: Objection. Calls for a  
 8 narrative. The words speak for themselves.

9 THE WITNESS: I wouldn't want to attempt to  
 10 describe that without re-reviewing that document.

11 BY MR. ROSENBAUM:

12 Q What document are you referring to?

13 A A document that described how that process was  
 14 to be completed.

15 Q Is that a publicly available document?

16 A I don't know.

17 MR. ROSENBAUM: I don't think that document was  
 18 turned over to us, David.

19 MR. HERRON: You have not established that she  
 20 relied on it for any part of her report. You keep  
 21 asking for documents, but you need to tie it into her  
 22 report.

23 BY MR. ROSENBAUM:

24 Q Did you rely on that document for any purpose  
 25 with respect to your report?

1 relied on for purposes of this report.

2 BY MR. ROSENBAUM:

3 Q That may be. But my question to you is: Have  
 4 you heard any criticisms?

5 A Same answer.

6 MR. ROSENBAUM: That's not responsive, David.

7 MR. HERRON: I think you can tell him whether  
 8 or not you have heard criticisms of that. I mean, if  
 9 you have, fine. If you haven't, that's fine, too. It  
 10 is not relevant, but it is his depo time.

11 THE WITNESS: I don't recall anything specific  
 12 about that. It may have been discussed in the Technical  
 13 Advisory Committee meeting.

14 BY MR. ROSENBAUM:

15 Q What do you remember generally about the  
 16 discussion?

17 MR. HERRON: Same objections.

18 THE WITNESS: I don't remember anything  
 19 specific about any meeting or any discussion, but it is  
 20 possible that we may have looked at the document and  
 21 it's typical when such documents are produced to have  
 22 discussions about them and to talk about ways in which  
 23 it might be improved or done differently.

24 BY MR. ROSENBAUM:

25 Q Did you concern yourself with respect to the

1 A No.

2 Q Do you have any criticisms of the methodology  
 3 that is utilized to link scores from the California test  
 4 to performance on the Stanford Test?

5 MR. HERRON: Objection. Beyond the scope of  
 6 her report.

7 BY MR. ROSENBAUM:

8 Q Is that beyond the scope of your report,  
 9 Doctor?

10 A I have not dealt with that issue in my  
 11 report.

12 Q Okay. Did you ever hear any criticisms  
 13 expressed regarding the methodology for linking scores  
 14 from the California test to the performance on the  
 15 Stanford Test?

16 MR. HERRON: Objection. Irrelevant in light of  
 17 the answer to the last question.

18 You may respond.

19 THE WITNESS: Again, that is beyond the scope  
 20 of the report.

21 BY MR. ROSENBAUM:

22 Q My question is: Have you ever heard any  
 23 criticisms?

24 MR. HERRON: Same objections.

25 THE WITNESS: It is not part of anything I

1 methodology utilized to link scores from the California  
 2 test to performance on the Stanford Test?

3 MR. HERRON: Objection. She has already  
 4 answered that many times.

5 You can respond again.

6 BY MR. ROSENBAUM:

7 Q I don't mean for purposes of the report. I  
 8 mean for purposes of your serving as a member of the  
 9 committee or consultant to the State of California.

10 MR. HERRON: Objection. Asked and answered in  
 11 the question before.

12 THE WITNESS: As I indicated, it might have  
 13 come up in the Technical Advisory Committee meeting. I  
 14 don't recall anything specific about that.

15 BY MR. ROSENBAUM:

16 Q My question is a little bit different.

17 Did you personally concern yourself as a member  
 18 of the committee with the methodology utilized for  
 19 linking scores from the California test to performance  
 20 on the Stanford Test?

21 MR. HERRON: Objection. Vague and ambiguous in  
 22 use of the term "personally concern yourself." Vague  
 23 and ambiguous as phrased. Irrelevant.

24 You may respond.

25 THE WITNESS: I don't understand what you mean

1 by "concern myself."  
 2 BY MR. ROSENBAUM:  
 3 Q I mean was it a matter that you felt, "I need  
 4 to involve myself, I need to explore this methodology, I  
 5 need to find out if I am satisfied with the methodology  
 6 utilized." That is my question to you.  
 7 A I was not asked to do that.  
 8 Q And you didn't otherwise make any inquiries; is  
 9 that right?  
 10 A As I indicated to you, it may have come up in  
 11 the Technical Advisory Committee. I believe I saw a  
 12 document that had a description of that process in it  
 13 and I read that document.  
 14 Q Did you do anything else?  
 15 A I may have participated in discussions that  
 16 occurred in the advisory committee meeting.  
 17 Q Can you recall anything you said?  
 18 A I don't recall any specifics of that.  
 19 Q You are aware that there is a writing portion  
 20 of the test, essay portion of the test?  
 21 A Yes.  
 22 Q And that is part of the standards test?  
 23 A That's my understanding.  
 24 Q Okay. Do you know to what grades that -- Shall  
 25 we call it the writing -- What phrase are you

1 comfortable with?  
 2 A Many people refer to it as open-ended items.  
 3 Q Okay. How about you, is that what you call it?  
 4 A Sometimes.  
 5 Q Do you call it anything else?  
 6 A It depends on the state that I am working in.  
 7 Some states have separate writing tests and they call it  
 8 the writing test.  
 9 Q California has an open-ended item test; is that  
 10 right?  
 11 A I would need to look at information, I think,  
 12 to refresh my memory about the specifics of what grades  
 13 and what items are included.  
 14 Q Well, let me direct you to page 9. Right above  
 15 where it says "The California Survey Test," do you see  
 16 where it says:  
 17 "A writing Standards Test utilizing  
 18 essay items is administered in grades  
 19 4 and 7 as part of the language arts  
 20 Standards Test."  
 21 MR. HERRON: Thanks. That's helpful.  
 22 BY MR. ROSENBAUM:  
 23 Q Do you see that?  
 24 A Yes.  
 25 Q That is what you mean by the open-ended items

1 part of the test?  
 2 A Yes. You can call it essay items, as I did  
 3 there.  
 4 Q Okay. Have you looked at the results of that  
 5 test, the essay items test?  
 6 MR. HERRON: Vague and ambiguous.  
 7 Do you mean has she graded the students'  
 8 written items?  
 9 BY MR. ROSENBAUM:  
 10 Q I will assume you haven't done the grading; is  
 11 that right?  
 12 A That's true. I have not graded them.  
 13 Q Have you looked at any of the reports of the  
 14 results of students' performance on the essay items part  
 15 of the test?  
 16 A Yes, I think so.  
 17 Q Okay. And did you form any judgments or  
 18 opinions based on your review in terms of academic  
 19 performance of the students?  
 20 A I'm not prepared to offer any opinion without  
 21 having the data in front of me.  
 22 Q Okay. I take it as part of your work in  
 23 California and other states you look at results,  
 24 students' performance results on assessment tests; is  
 25 that right?

1 A Yes.  
 2 Q Why do you do that?  
 3 A For a variety of purposes.  
 4 Q Why don't you tell me what that variety of  
 5 purposes consists of?  
 6 A Sometimes it is part of a Technical Advisory  
 7 Committee meeting. Sometimes it's part of some work  
 8 that I am doing, such as preparing an expert witness  
 9 report in a case.  
 10 Q Why would it be part of your preparing an  
 11 expert report for a case?  
 12 A To describe a program or support factual  
 13 assertions.  
 14 Q Do you ever look at results, student  
 15 performance results to make a determination as to  
 16 whether or not -- how the assessment system is working?  
 17 MR. HERRON: Objection. Vague and ambiguous.  
 18 THE WITNESS: I don't understand what you mean  
 19 about how it is working.  
 20 BY MR. ROSENBAUM:  
 21 Q Do you ever look at the results of a student's  
 22 performance because you are concerned about how students  
 23 are doing?  
 24 MR. HERRON: Same objection.  
 25 THE WITNESS: Statewide assessments are given

1 because the state is concerned about how students are  
2 doing and how well schools are teaching the content of  
3 the standards that they measure.

4 BY MR. ROSENBAUM:

5 Q Do you personally ever look at student  
6 performance data to determine how well schools are  
7 teaching their standards?

8 MR. HERRON: Objection. Vague and ambiguous.

9 THE WITNESS: As I indicated, I often look at  
10 statewide data in the preparation for reports or as part  
11 of Technical Advisory Committee meetings and  
12 discussions.

13 BY MR. ROSENBAUM:

14 Q And do you ever -- For those reasons, do you  
15 ever look at student performance results on statewide  
16 assessment tests to make a judgment as to how well  
17 schools are teaching standards?

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

20 MR. ROSENBAUM: It is really a "yes" or "no"  
21 question.

22 MR. HERRON: Not the way it is phrased.

23 MR. ROSENBAUM: Yes, it is.

24 THE WITNESS: I agree with David, not the way  
25 it is phrased. That is the purpose for which states

1 You have said it is the State's prerogative to  
2 look at those results to see how well schools are  
3 teaching standards, that is not within my purview. Is  
4 that a fair assessment?

5 A It is within the State's purview to make the  
6 ultimate judgment.

7 Q Do you make any judgment as to how well schools  
8 are teaching standards based on review of student  
9 performance data on assessment tests?

10 MR. HERRON: As part of her psychometric works?

11 BY MR. ROSENBAUM:

12 Q As part of your consultation work with the  
13 states or as part of your work in this case.

14 A I think those discussions occur from time to  
15 time in Technical Advisory Committee meetings.

16 Q Have you ever looked at California's  
17 performance results on the statewide assessment test --  
18 I garbled that question. Strike that.

19 Have you ever looked at student performance  
20 results on California's assessment test for purposes of  
21 evaluating how well state schools are teaching  
22 standards in California?

23 MR. HERRON: Objection. Asked and answered.

24 THE WITNESS: I have looked at data that  
25 indicates changes over time in performance on the

1 give those tests. The purposes for which Technical  
2 Advisory Committees look at them is in judging the  
3 overall psychometric defensibility of the exam.

4 BY MR. ROSENBAUM:

5 Q Have you ever looked at student performance  
6 results to make a judgment as to how well schools are  
7 teaching standards?

8 MR. HERRON: Objection. Asked and answered.  
9 Mixing your terms, Mark. Vague and ambiguous for that  
10 reason.

11 THE WITNESS: It is the state that makes  
12 judgments about their schools.

13 BY MR. ROSENBAUM:

14 Q Have you ever made those judgments about state  
15 schools?

16 A I have advised states about psychometric issues  
17 relevant to the assessments they use to make those  
18 judgments, sometimes on statistical issues related to  
19 collection of data. It is the State's prerogative to  
20 make judgments about their own schools.

21 Q So you have looked at the results for purposes  
22 of psychometric defensibility; is this a fair statement?

23 A That's one purpose of looking at it, yes.

24 Q And maybe you just answered the question two  
25 questions ago, but I just want to be clear.

1 California assessment instruments.

2 BY MR. ROSENBAUM:

3 Q I appreciate that as an empirical description.  
4 But I'm asking you: Have you ever taken a look at  
5 results, performance results of California students on  
6 statewide assessments as part of the STAR system for  
7 purposes of making a judgment as to how well the schools  
8 are teaching the students in California?

9 A I believe I have already answered that as  
10 completely as I am able to.

11 Q Bear with me and just -- If you just could  
12 answer that, I would appreciate it.

13 MR. HERRON: Objection. Asked and answered.

14 THE WITNESS: As I indicated, I have given you  
15 the most complete answer I can. Same answer as what I  
16 have already said.

17 MR. ROSENBAUM: I don't know which answer you  
18 are referring to, Doctor. I am just trying to get an  
19 answer here.

20 MR. HERRON: You have the answer several  
21 times. I don't know what she can do for you, Mark. If  
22 you don't like the answer, we can't help you. But you  
23 have asked it many, many times. She has answered many,  
24 many times.

25 MR. ROSENBAUM: She has told me what states do.

1 MR. HERRON: I will tell you what, why don't  
 2 you pose the question and we will answer it one last  
 3 time, if that is satisfactory.  
 4 BY MR. ROSENBAUM:  
 5 Q Doctor, have you --  
 6 Well, actually for purposes of this case,  
 7 have you looked at student performance results on  
 8 statewide assessment tests in order to make a judgment  
 9 as to how well state schools are teaching standards in  
 10 California?  
 11 MR. HERRON: Asked and answered. The report  
 12 speaks for itself.  
 13 THE WITNESS: I actually have a number of  
 14 tables that report some of that information, some  
 15 statewide data, some data at the district level, some  
 16 data at the school level.  
 17 BY MR. ROSENBAUM:  
 18 Q How well do you think schools are teaching the  
 19 standards in California, Doctor?  
 20 MR. HERRON: Objection. Vague and ambiguous.  
 21 Asked and answered.  
 22 THE WITNESS: That is far too broad to answer  
 23 in one question.  
 24 BY MR. ROSENBAUM:  
 25 Q Tell me your views as to how well schools are

1 MR. HERRON: You have asked a number of those  
 2 questions and it is time wasting and unnecessary.  
 3 BY MR. ROSENBAUM:  
 4 Q Go ahead.  
 5 MR. HERRON: If you can possibly respond, feel  
 6 free. Then we are going to need to take a break. We  
 7 have been going over an hour.  
 8 THE WITNESS: What I can say in terms of the  
 9 data that I reported in my expert witness report is that  
 10 schools differ greatly in their performance, districts  
 11 differ greatly in their performance. Some do better  
 12 than the state average, some do worse than the state  
 13 average. Some do better with certain groups of  
 14 students, some do worse with certain groups of  
 15 students.  
 16 BY MR. ROSENBAUM:  
 17 Q Do you have a view as to why that is?  
 18 MR. HERRON: The report speaks for itself.  
 19 All the same objections. This is the last question.  
 20 THE WITNESS: I don't think there is one  
 21 single answer.  
 22 BY MR. ROSENBAUM:  
 23 Q Tell me what you think are the reasons why that  
 24 is, if you know?  
 25 MR. HERRON: It is vague and ambiguous.

1 teaching standards in California.  
 2 MR. HERRON: Same objections. Overbroad.  
 3 Vague as to time.  
 4 THE WITNESS: One would need to limit that to a  
 5 subject, to a grade.  
 6 BY MR. ROSENBAUM:  
 7 Q Okay. How well are schools teaching the  
 8 language arts?  
 9 MR. HERRON: Objection. Calls --  
 10 MR. ROSENBAUM: Excuse me a second.  
 11 MR. HERRON: Excuse me.  
 12 BY MR. ROSENBAUM:  
 13 Q How well are California schools teaching  
 14 standards in elementary school in mathematics?  
 15 MR. HERRON: Objection. Calls for  
 16 speculation.  
 17 BY MR. ROSENBAUM:  
 18 Q Do you have a view about that?  
 19 MR. HERRON: The elementary school -- if I  
 20 could finish my objection. The elementary school has  
 21 1100 school districts statewide. It has about 3 million  
 22 students. So overbroad, vague and ambiguous, calls for  
 23 speculation. Really, it's just an unfair question and I  
 24 believe that's what it is intended by it.  
 25 MR. ROSENBAUM: That is not true.

1 MR. ROSENBAUM: In fact, let me lay a  
 2 foundational question.  
 3 Q Have you undertaken any investigation in order  
 4 to determine the causes of those differences?  
 5 MR. HERRON: Vague and ambiguous. All the same  
 6 objections.  
 7 THE WITNESS: I have not presented any data  
 8 about causation in my report.  
 9 MR. ROSENBAUM: Okay. We can take a break.  
 10 MR. HERRON: Thank you.  
 11 (Recess taken.)  
 12 BY MR. ROSENBAUM:  
 13 Q Doctor, regarding the essay item component of  
 14 the test, you reference it on page 9, do you agree with  
 15 that inclusion, the inclusion of an essay item  
 16 component?  
 17 A Essay items are generally considered the best  
 18 way to measure direct writing skills.  
 19 Q Do you think that is important to find out how  
 20 students are doing with respect to direct writing  
 21 skills?  
 22 A As I understand it, that is an important part  
 23 of the standards in California and the purpose of the  
 24 department in having those items on the test.  
 25 Q Can I direct your attention, please, to

1 footnote 22. It is on page 10.  
 2 "Note that although traditional  
 3 algebra 1 content is now part of the  
 4 California math content standards for  
 5 grade 8, many students do not take an  
 6 algebra course until high school."  
 7 Do you see that?  
 8 A Yes.  
 9 Q Do you know the number or the percent of  
 10 students who do not take an algebra course until high  
 11 school?  
 12 A No, I don't have that data.  
 13 Q Did you make any inquiry to find out?  
 14 MR. HERRON: Mark, I couldn't hear your  
 15 question.  
 16 MR. ROSENBAUM: "Did you make any inquiry to  
 17 find out."  
 18 MR. HERRON: Oh.  
 19 THE WITNESS: I did not request that data.  
 20 BY MR. ROSENBAUM:  
 21 Q Okay. What is the basis of footnote 22?  
 22 A Pretty much what it says. Algebra in the past  
 23 has traditionally been a high school course and some of  
 24 that content has now been moved to grade 8.  
 25 Q I guess my question could have been better

1 stated.  
 2 Do you know what the source for your assertion  
 3 that many students do not take an algebra course until  
 4 high school is?  
 5 A The fact that the content has been moved from  
 6 its traditional place to a much earlier place in the  
 7 curriculum, and there is a transition period when that  
 8 happens to get that content to students who will have  
 9 traditionally waited until high school to take that  
 10 material and may not be ready to take it until high  
 11 school.  
 12 Q Do you know why that is? Have you explored why  
 13 that is that they are not ready to take it before high  
 14 school? Have you looked at the causes?  
 15 A I don't have any specific information for  
 16 specific students or schools, but the general issue is  
 17 getting all of the prerequisite material first.  
 18 Q Do you know -- Do you have any information as  
 19 to why all students don't have the prerequisite material  
 20 first?  
 21 A That goes to what we just talked about, that  
 22 the content has moved from a later grade to an earlier  
 23 grade and you have students who are caught in that  
 24 transition as that change occurs.  
 25 Q Any other reasons?

1 MR. HERRON: Calls for speculation.  
 2 BY MR. ROSENBAUM:  
 3 Q If you know.  
 4 A I don't have any other information about that  
 5 at this time.  
 6 Q At the present time, Doctor, do you know how  
 7 many states have statewide curriculum standards?  
 8 MR. HERRON: Objection. Asked and answered, I  
 9 believe.  
 10 THE WITNESS: I believe that they are under  
 11 development in all states at this time.  
 12 BY MR. ROSENBAUM:  
 13 Q Do you know at the present time how many states  
 14 have statewide standards that have been developed?  
 15 A I am aware that the federal government has  
 16 approved plans submitted by all of the states for  
 17 meeting the NCLB requirements, and the first component  
 18 of that is to have statewide standards either in place  
 19 or under development that will be in place very  
 20 shortly.  
 21 Q Okay. But my question is with respect to the  
 22 first part of your answer.  
 23 Do you know how many are actually in place, how  
 24 many states actually have the standards in place?  
 25 A I couldn't give you have an exact number

1 without looking at additional data.  
 2 Q Do you know if half the states have?  
 3 A I wouldn't want to hazard a guess on that  
 4 without looking at more information.  
 5 Q Have you compared the percent of test items  
 6 that are aligned with state standards in any state other  
 7 than California? I'm referring to statewide assessment  
 8 tests.  
 9 MR. HERRON: Objection. Vague as phrased.  
 10 THE WITNESS: I am aware of data in other  
 11 states that answer that question.  
 12 BY MR. ROSENBAUM:  
 13 Q What other states?  
 14 A Texas.  
 15 Q Any other states?  
 16 A Minnesota.  
 17 Q Any other states?  
 18 A As I indicated to you, I have worked for a lot  
 19 of states over the years and I have seen other data.  
 20 Nothing specific comes to mind at this point.  
 21 Q In Minnesota, can you tell me what the  
 22 percent of test items aligned with state standards  
 23 is on the statewide assessment test in the area of  
 24 mathematics?  
 25 A Which tests are you referring to?

1 Q What are the statewide assessment tests in  
2 Minnesota?

3 A They have a High School Exit Exam.

4 Well, let me state, I am probably not in the  
5 best position to tell you what the new plan is. There  
6 obviously is a new plan under the NCLB requirements. I  
7 know what they had before. They had tests at elementary  
8 and middle school and high school as required under the  
9 old law.

10 Q Do you know what the percent alignment was  
11 under that?

12 MR. HERRON: I believe she talks about two  
13 tests.

14 Which one?

15 MR. ROSENBAUM: Not the High School Exit Exam.

16 THE WITNESS: The other tests were standards  
17 tests developed specifically for the state program.

18 BY MR. ROSENBAUM:

19 Q So they are like Texas?

20 A In the sense of being locally developed within  
21 the state, yes.

22 Q Is one of the factors in the Ed Week study the  
23 percent alignment of test items with state standards?

24 A I would have to relook at that information to  
25 answer it in detail about the criteria that they used.

1 the source for that information.

2 One of the sources for the Table 7 data is the  
3 2003 Ed Week study; is that right?

4 A Yes.

5 Q And I just want to understand your process.  
6 Was the 2003 --

7 When you read that study, how did you decide  
8 which information you were going to put in your report  
9 and which information you were not going to include in  
10 your report from that study?

11 A The study that you are referring to, that issue  
12 called quality counts, is a very lengthy document, has  
13 many, many tables in it and a lot of information.

14 What I attempted to do was summarize  
15 information that was relevant to the comparisons that I  
16 was making in terms of the standards and accountability  
17 systems in the states. I obviously couldn't put it all  
18 in my report, but it is all in the original.

19 Q Were there any analyses by Ed Week in that  
20 study which ranked California in the middle or towards  
21 the end of the states with respect to its assessment or  
22 accountability systems?

23 MR. HERRON: Prior to her response to that  
24 question, we would like to take you up on your offer  
25 that she could read portions of her report. It would be

1 Q Did the Ed Week study have any criticisms of  
2 California's assessment system?

3 MR. HERRON: Objection. The report speaks for  
4 itself.

5 THE WITNESS: Again, I would need to review  
6 that information before giving you an opinion about what  
7 was contained in it.

8 BY MR. ROSENBAUM:

9 Q While you were preparing your report, Doctor,  
10 how did you decide what portions of the Ed Week survey  
11 you were going to focus on in your report?

12 A What portions of what survey?

13 Q The Ed Week study that we are talking about.

14 A Are you talking about the information reported  
15 in a table in my report?

16 Q I want to understand your process here. You  
17 read the Ed Week study; is that right?

18 A Well, I have read a lot of different Ed Week  
19 studies.

20 Q The one that is referenced in your report.

21 A I don't remember where that is.

22 A Okay. You are talking about the information  
23 presented in Table 7?

24 Q Okay. I'm not actually talking about the  
25 information presented in Table 7. I am talking about

1 useful for us to read Table 7 before she responds, if  
2 that's okay.

3 MR. ROSENBAUM: Sure.

4 MR. HERRON: Do you have the question in mind?

5 THE WITNESS: I was going to ask him to reask  
6 it, if you would.

7 BY MR. ROSENBAUM:

8 Q In the quality counts report --

9 That is what you cited here; is that right?

10 A I cited that as a source for the data that is  
11 presented in Table 7.

12 Q Was there any ranking or discussion of  
13 California's assessment system in comparison to other  
14 states which you regarded as not favorable to  
15 California?

16 MR. HERRON: Objection. Vague and ambiguous.

17 THE WITNESS: I don't recall all the specifics  
18 of that without looking at it again. As you can see  
19 from the footnote there that talks about Ed Week  
20 criteria, there were a number of different areas on  
21 which they gave ratings and what I did was report the  
22 summary or the overall rating that combined all of that  
23 information and I don't recall specifically where  
24 California ranked on each and every one of those  
25 variables.

1 BY MR. ROSENBAUM:

2 Q Okay. Did you personally have any involvement  
3 through your consultation work or your other work on the  
4 TAC committee with the setting of cut scores for the  
5 High School Exit Exam?

6 MR. HERRON: Objection. Asked and answered.

7 THE WITNESS: That topic was discussed in the  
8 Technical Advisory Committee meetings.

9 BY MR. ROSENBAUM:

10 Q Okay. And did you agree with the decision to  
11 place the cut score where it presently is on the High  
12 School Exit Exam?

13 MR. HERRON: Same objection.

14 THE WITNESS: Setting a standard is a  
15 judgmental process and the ultimate responsibility  
16 resides with the entity that has the authority to do  
17 that, the State Board in this case.

18 Typically, the department and others give  
19 guidance. In that, there are typically also methods  
20 that are used to solicit judgment from educators, in  
21 particular teachers, and the TAC committee looked at the  
22 available information and had discussions with the  
23 department and the board about the content of that  
24 information.

25 BY MR. ROSENBAUM:

1 A Setting a cut score isn't a psychometric  
2 process where you can simply say what the equation is or  
3 plug some numbers into something and get an answer. It  
4 is a judgmental process. And all of the information  
5 that comes to the board from stakeholders involves  
6 judgments on their basis and the state board uses that  
7 information together with performance data to make a  
8 final judgmental decision that is the standard.

9 Q Did you have a view as to where the score  
10 should be set, you personally?

11 A As I indicated, there isn't a psychometric  
12 answer to this. It is a policy question and my job as a  
13 psychometrician is to help them gather and explain  
14 relevant data to the decision-maker.

15 Q But did you yourself have a view as to where  
16 the score should be set? That is just a "Yes" or "No."

17 MR. HERRON: Well, that's your view.  
18 Objection. Vague and ambiguous.

19 You may respond.

20 THE WITNESS: I did not participate in the  
21 judgmental activity that would lead to one making a  
22 decision like that. I assisted in understanding and  
23 interpreting data and processes used on that. It wasn't  
24 my function to tell them where the standard ought to be  
25 set.

1 Q What are the psychometric considerations in  
2 setting a cut score for a High School Exit Exam?

3 A The most important consideration is the process  
4 that is used and adequate documentation of the process  
5 and the qualification of the participants that engage in  
6 it for purposes of collecting what you are probably  
7 thinking of as a specific standard-setting methodology  
8 data.

9 Also, it is important to have multiple sources  
10 of data and information and have the entity that is  
11 setting the final standard, making the final decision  
12 fully informed.

13 Q What do you mean "multiple sources of data"?

14 A The information that comes out of a  
15 standard-setting process by educators is one piece of  
16 information to advise and inform the board about where  
17 the standard might be set. There is information that is  
18 part of that standard-setting that is useful for the  
19 board to have. There is also other information and  
20 opinions and recommendations of other stakeholders that  
21 are relevant.

22 Q And are there other psychometric  
23 considerations besides the process that you just  
24 described in setting a cut score for a High School Exit  
25 Exam?

1 BY MR. ROSENBAUM:

2 Q Okay. Did the TAC committee recommend a  
3 particular cut score?

4 A Not that I recall.

5 Q The assessment test, as far as the STAR  
6 program, there are different proficiency levels; is that  
7 correct?

8 A If you are talking about the standards tests,  
9 there are several cut scores set that lead to various  
10 categories of performance.

11 Q Okay. And were you involved in setting those  
12 cut scores, you personally?

13 A I don't understand your question.

14 Q You just told me, if I understood you  
15 correctly, that there were certain levels with respect  
16 to the assessment test, the standards test; is that  
17 right?

18 MR. HERRON: Misconstrues prior testimony.

19 THE WITNESS: I think the best way to  
20 understand this is to look at a table that has that  
21 information in it.

22 BY MR. ROSENBAUM:

23 Q Right.

24 A I'm sorry. It is a chart. It is Chart 8.

25 Q Okay.

1 A And on the top on the left-hand side under  
2 "Standards Test," it gives the names assigned to each of  
3 those levels.

4 Q Okay. And are there cut scores associated with  
5 each of those levels, Advanced, Proficient, Basic, Below  
6 Basic and Far Below Basic, for each subject area?

7 A There are cut scores that divide students at  
8 the boundary between those categorizations.

9 Q Were you involved in setting those cut  
10 scores?

11 A The Technical Advisory Committee was involved  
12 in the same way I already described to you.

13 Q Evaluating the process, securing all  
14 information relevant to the process.

15 Am I understanding that summary correct?

16 A And discussing and assisting the department in  
17 putting together data and interpretations for the State  
18 Board that made the final decisions.

19 Q Were you involved in setting the weighting  
20 factors?

21 A The weighting factors were determined by the  
22 PSAA Advisory Committee, together with recommendations  
23 from the technical group.

24 Q Were you involved in those group  
25 recommendations?

1 items here?

2 MR. ROSENBAUM: Yes.

3 THE WITNESS: There is nothing that I am aware  
4 of in the test standards that would contradict any of  
5 these decisions.

6 BY MR. ROSENBAUM:

7 Q Regarding No. 7, do you see that?

8 A Yes.

9 Q What is your understanding of the meaning of  
10 the phrase as it appears here, "Student-level  
11 longitudinal data"?

12 MR. HERRON: Objection. Asked and answered  
13 this morning.

14 You may respond again.

15 THE WITNESS: That involves collection of data  
16 over time.

17 BY MR. ROSENBAUM:

18 Q At a student level, per student; right?

19 A Yes.

20 Q Has that been done in California?

21 MR. HERRON: Objection. Asked and answered.  
22 Vague and ambiguous.

23 THE WITNESS: The current accountability system  
24 uses cross-sectional cohorts of students. There had  
25 been discussions about developing longitudinal

1 A No.

2 Q Why is that?

3 A I'm not a member of either group.

4 Q Okay.

5 A I think I should clarify what I just told you.

6 It was those two groups that made the  
7 recommendations to the board, who again made the final  
8 decision.

9 Q Can you turn to page 12, please, of your  
10 report, specifically referencing, Doctor, part of the  
11 second paragraph, the second paragraph on page 12, "The  
12 12 guiding principles for development stated that the  
13 API," and then you have a colon and you quote the 12  
14 guiding principles; is that right?

15 A I have quoted that directly.

16 Q Okay. And as a psychometrician, do you agree  
17 with these 12 principles as principles for development  
18 of an instrument like API?

19 A Many of the principles embody policy decisions,  
20 and I support developing instruments that conform to the  
21 policy decisions that are made by the State.

22 Q Are there any principles here that you think  
23 are at odds with professional psychometrician  
24 standards?

25 MR. HERRON: You are talking about the 12

1 comparisons that may be done by some of the larger  
2 school districts who could analyze their data that way  
3 if they chose to do so. I'm not aware of whether or not  
4 they have done that.

5 BY MR. ROSENBAUM:

6 Q Has the State done it?

7 MR. HERRON: Objection. Vague and ambiguous.

8 THE WITNESS: My understanding is that they  
9 have talked about doing that. There may have been pilot  
10 studies done, but I don't believe they are currently  
11 doing it on a statewide basis.

12 BY MR. ROSENBAUM:

13 Q Do you know why that is?

14 MR. HERRON: Objection. Calls for  
15 speculation.

16 THE WITNESS: I'm not sure what the current  
17 state of that project is at this point.

18 BY MR. ROSENBAUM:

19 Q Okay. Do you know for a fact that pilot  
20 studies have been conducted?

21 A I just know that they have been considering  
22 that issue. I don't know specifically what has been  
23 done.

24 Q Who is "they"?

25 A The department.



1 Q Do you know who in the department in  
2 particular?

3 A I'm not sure who is responsible for that.

4 Q Do you have a view as to whether or not there  
5 is any value to collecting student-level longitudinal  
6 data for purposes of the State's assessment system and  
7 accountability program?

8 MR. HERRON: I'm sorry. Could I have that read  
9 back.

10 (Record read as follows:

11 "Question: Do you have a view as to  
12 whether or not there is any value to  
13 collecting student-level longitudinal  
14 data for purposes of the State's  
15 assessment system and accountability  
16 program?")

17 MR. HERRON: Objection. Asked and answered  
18 several times.

19 THE WITNESS: That depends on the specific  
20 purpose of the assessment.

21 BY MR. ROSENBAUM:

22 Q Well, we have talked at length about the  
23 purpose of the state assessment system. You have  
24 pointed me to the portion of your report where you  
25 describe this, your understanding of the purpose.

1 THE WITNESS: My understanding is that the  
2 department is considering the option of doing that and  
3 looking into the technical feasibility of doing so.

4 BY MR. ROSENBAUM:

5 Q Do you know why it is doing that?

6 A That No. 7 that you are talking about is in  
7 there because the committees that put this together  
8 thought it was an important area to consider.

9 And I don't know for sure about any  
10 particular individual's motivation, but I would expect  
11 that the department would follow up on it on that  
12 basis.

13 Q Do you feel that it is within your area of  
14 expertise to have a viewpoint as to the value of using  
15 student-level longitudinal data for the purposes  
16 articulated in the act?

17 Is that within your area of expertise to make  
18 that sort of judgment call?

19 A Again, that is a policy decision, so it is not  
20 up to me to make the decision.

21 What I can do is help in the discussions of  
22 advantages and disadvantages and thinking about how the  
23 data would be used doing it in different ways and how to  
24 make that accurate.

25 Q But in terms of giving an opinion as to what

1 Do you remember that?

2 A I believe we looked at the statutory language.

3 Q Regarding the statutory language that you  
4 pointed to me, do you think there is value in collecting  
5 student-level longitudinal data?

6 A If you look at the language that you were  
7 referring to, the primary purpose was to identify  
8 individual academic strengths and weaknesses for  
9 individual students. Students are getting that  
10 information every year as they pass through the system  
11 already.

12 So as far as parents are concerned and as far  
13 as schools and districts are concerned, they have that  
14 tracking information.

15 In terms of the part about determining the  
16 effectiveness of school districts and schools, that is  
17 one way to look at the effectiveness of schools. It is  
18 not the only way to do so and, again, that is a State  
19 policy decision as to which method they choose to use.

20 Q And you think the State of California has  
21 chosen not to use student-level longitudinal data for  
22 that purpose?

23 MR. HERRON: Objection. Asked and answered.  
24 Misconstrues prior testimony, vague and ambiguous,  
25 calls for speculation.

1 you think is the most -- whether or not the State ought  
2 to do that, you don't feel that that is within your  
3 purview; is that correct?

4 A My view is that there isn't any one right way  
5 to do it, so it is not appropriate for me to tell a  
6 state what policy decisions they ought to make, only to  
7 help them do well, whatever they choose to do.

8 Q In No. 8 on page 12, what is your understanding  
9 of the meaning of the phrase "component indicators"?

10 A I believe that that is referring to the API,  
11 which appears before the colon in the text before that  
12 information, and the components are at this point the  
13 tests that are weighted to get the total API score.

14 Q Why do you say "at this point"?

15 A There is consideration of adding additional  
16 components or additional indicators in the future.

17 Q Okay. Do you support adding additional  
18 indicators?

19 MR. HERRON: Objection. Vague and ambiguous,  
20 calls for speculation, not relevant.

21 THE WITNESS: Again, it is a policy decision  
22 what to include in the system.

23 It is part of the statute that various  
24 components are to be considered for addition when they  
25 are valid and reliable.

1 BY MR. ROSENBAUM:

2 Q My question is a little bit different. Put  
3 aside the statute.

4 As a psychometrician, based on your expertise,  
5 do you have a view as to whether or not additional  
6 component indicators should be added?

7 A My role as a psychometrician in that issue is  
8 to deal with the validity and reliability and technical  
9 aspects of various components. But as I said, it is a  
10 policy issue and it is ultimately up to the  
11 decision-maker, the State Board, to decide which  
12 components to include.

13 I can provide guidance on thinking about issues  
14 of whether the component is valid and reliable, whether  
15 it meets the statutory criteria for consideration.

16 Q Okay. Looking at No. 10 -- Strike that.

17 Do you know what component indicators,  
18 additional component indicators are now under  
19 consideration in California?

20 A I think I gave a list.

21 Q That's okay. We can come back to that. I know  
22 what you are referring to.

23 Number 10, what is your understanding of the  
24 meaning of the phrase "contextual and background  
25 indicators beyond those required by law"?

1 and learning, and we are going to have an index as part  
2 of our assessment system. We would like to know whether  
3 or not you think that index should include information  
4 that incorporates contextual and background indicators.

5 "What do you think? Do you think we should do  
6 that?"

7 MR. HERRON: There is no question yet.

8 BY MR. ROSENBAUM:

9 Q The question is: "Do you think we should make  
10 part of our accountability index information which  
11 incorporates contextual and background indicators based  
12 on your experience and training, Doctor"?

13 MR. HERRON: And the question is what would she  
14 say in response to that inquiry?

15 MR. ROSENBAUM: Yes.

16 MR. HERRON: I will have the same objections.  
17 You may respond.

18 THE WITNESS: In the consulting that I do,  
19 typically the way it works is the state tells me what  
20 they want to measure, what they have already decided  
21 that they are going to measure, and then my job is to  
22 help them do that in a psychometrically defensible way.

23 BY MR. ROSENBAUM:

24 Q Okay. I am asking you --

25 If you feel like this is out of your area of

1 A My recollection is that there was text that  
2 went with this list in this report that it came from and  
3 I don't recall for sure, but it may be that it described  
4 in there what they had in mind. I would want to look at  
5 that. That would be the best characterization of what  
6 they were talking about there.

7 Q If a state came to you and said, "Doctor, we  
8 don't have a statute that spells out contextual and  
9 background indicators, but we would like your view as to  
10 whether or not you think our API-like index should  
11 include contextual and background indicators," what do  
12 you think --

13 A Again, what goes into --

14 Q -- for purposes of improving student  
15 achievement?

16 MR. HERRON: Objection. Incomplete, improper  
17 hypothetical. No question is there. Counsel is  
18 testifying, vague and ambiguous, calls for speculation.

19 THE WITNESS: Can you repeat that question,  
20 please?

21 BY MR. ROSENBAUM:

22 Q Sure. A state comes to you and says, "We are  
23 setting up an assessment and accountability system, that  
24 the purpose of which is to identify individual academic  
25 strengths and weaknesses in order to improve teaching

1 expertise, just tell me that. Maybe I will just ask you  
2 that question.

3 Do you feel it is within your area of expertise  
4 to have a judgment as to whether or not an index for an  
5 assessment system as part of the statewide  
6 accountability program should include information  
7 incorporating contextual and background indicators?

8 Is that the sort of thing that you could form a  
9 judgment on independent of what indicators the state  
10 chooses to consider?

11 A That is the type of judgment that is not formed  
12 in a vacuum.

13 You have to look at how the accountability  
14 system is going to be used and what sorts of things the  
15 state wants to measure, and ultimately it is a policy  
16 decision about which particular things they do want to  
17 include or not include.

18 What I can do is help them think about how to  
19 include a particular type of information or measure a  
20 particular type of information well and whether or not  
21 it will help serve a particular purpose that they have  
22 in mind.

23 If you notice under item 2 in that same list,  
24 it says, "must emphasize student performance, not  
25 educational processes." If you choose to measure

1 performance, you are looking at different kinds of  
2 information than you would be looking at if you choose  
3 to measure processes.

4 Q The state says here, "We want to emphasize  
5 student performance and the overall purpose of our  
6 assessment system is to identify individual academic  
7 strengths and weaknesses in order to improve teaching  
8 and learning and to determine the effectiveness of  
9 school districts and schools as measured by the extent  
10 to which pupils demonstrate knowledge of the fundamental  
11 academic skills as well as the ability to apply those  
12 skills.

13 I'm obviously reading to you from the STAR  
14 system.

15 I am saying to you if they come to you and they  
16 say, "This is what our system -- This is the intent of  
17 our system. Do you think we should include as part of  
18 our overall accountability system contextual and  
19 background indicators," is that something you have a  
20 view on?

21 A Your question has confused --

22 MR. HERRON: Same objection.

23 Go ahead.

24 THE WITNESS: Your question has confused two  
25 different things. You read me the purpose of an

1 Advisory Committee meetings in which a variety of types  
2 of data, variables and information have been discussed  
3 as information that might be included in an  
4 accountability system.

5 BY MR. ROSENBAUM:

6 Q Okay. Have you ever expressed a view as to  
7 whether or not particular indicators should, in fact, be  
8 included?

9 A I don't recall specific comments about that,  
10 but I expect that we discussed issues about validity and  
11 reliability in relationship to purpose, availability of  
12 data and other factors that would relate to states  
13 making decisions such as that.

14 Q Assuming you could obtain reliable and valid  
15 data, do you have a view as to what indicators -- what  
16 contextual and background indicators, if any, should be  
17 included as part of a comprehensive accountability  
18 system statewide?

19 MR. HERRON: Objection. Incomplete, improper  
20 hypothetical, calls for speculation.

21 THE WITNESS: As I already indicated to you, I  
22 would have to know a lot more about the accountability  
23 system and how it is functioning in that state to be  
24 able to address that issue.

25 BY MR. ROSENBAUM:

1 assessment system and that purpose clearly talks about  
2 academic skills or academic outcomes and the best  
3 measure of that information, that is, the knowledge and  
4 skills to be taught from the standards in this  
5 hypothetical state, would be some type of standardized  
6 assessment.

7 Now, when you shift gears and start talking  
8 about an accountability system, one might have  
9 information related to student acquisition of the  
10 knowledge and skills and depending on how the  
11 accountability and assessment system functions, you  
12 might also have other kinds of information that might be  
13 collected.

14 So I would need to know something about how  
15 they were implementing that accountability system and  
16 how they might use this information that they are  
17 considering collecting as part of that system.

18 BY MR. ROSENBAUM:

19 Q Have you ever been asked the question, Doctor,  
20 for purposes of an accountability system what sort of  
21 contextual and background indicators ought to be  
22 incorporated into that system?

23 MR. HERRON: The last five questions.

24 MR. ROSENBAUM: That's not true.

25 THE WITNESS: I have been in Technical

1 Q What would you need to know?

2 A As I indicated, how the accountability system  
3 works and functions in that state.

4 Q They say it works like California's.

5 MR. HERRON: Pardon me?

6 MR. ROSENBAUM: They say it works and functions  
7 like California's.

8 MR. HERRON: No question pending.

9 THE WITNESS: What is the question?

10 BY MR. ROSENBAUM:

11 Q The question is: Are there particular  
12 contextual and background indicators that you believe  
13 should be included as part of the accountability system?

14 MR. HERRON: One identical to California's?

15 MR. ROSENBAUM: Correct.

16 THE WITNESS: In California, the components to  
17 be included are specified in the statute.

18 BY MR. ROSENBAUM:

19 Q I'm not asking you what a legislator or  
20 legislators thought.

21 I am asking what you think as an expert in this  
22 area, if you have a view.

23 A I am suggesting to you that that is part of the  
24 background of the answer and the question, you have to  
25 look and see what the statute in the state requires, you

1 have to see how the accountability system is going to  
2 function, what decisions they are going to make, what  
3 consequences they intend to attach to that information,  
4 how it is going to operate.

5 Q Why don't you assume the answer to all of your  
6 questions is exactly like California except that the  
7 statute does not prescribe any particular background or  
8 component indicators.

9 MR. HERRON: No question pending.

10 BY MR. ROSENBAUM:

11 Q The question is: First of all, do you feel it  
12 is within your expertise and knowledge to recommend the  
13 inclusion of particular contextual and background  
14 indicators as part of the state's accountability  
15 system?

16 A Your hypothetical doesn't make sense to me  
17 because the way California's accountability system has  
18 been operationalized is a direct result of the statutory  
19 language that established it, and in most states there  
20 is statutory language that establishes how their  
21 accountability system is going to operate. And one  
22 always has to start from that first, so I don't know how  
23 to take that away and then say that it is like  
24 California.

25 Q Doctor, the California system legislatively

1 A You are asking a question, in my judgment, that  
2 is contradictory because you are asking me what I think  
3 should be included, but then you are saying that it is  
4 reliable and valid and that is the criteria by which any  
5 potential component that might be added is to be judged.

6 And so my first inquiry would always be for any  
7 variable what evidence do you have of its validity and  
8 reliability. You want to look at that and make some  
9 judgment about that.

10 If it meets those criteria, then it is eligible  
11 for inclusion and then it is a matter of a policy  
12 decision about including it to serve a particular  
13 purpose.

14 Q Say the committee said to you, "We are  
15 thinking about different options here. What background  
16 and contextual indicators should we look at to determine  
17 whether or not they are reliable and valid for purposes  
18 of inclusion in the overall accountability system?"

19 Do you feel capable of answering that  
20 question?

21 A The first question I would ask them in return  
22 is "What is the purpose of adding variables? What is it  
23 that you want to do or measure?"

24 Q Same purpose that is laid out in California's  
25 system.

1 talks about the inclusion of certain contextual and  
2 background indicators beyond those required by law; is  
3 that right?

4 A The language that you are reading came out of a  
5 framework for the API that was developed by the PSAA  
6 Advisory Committee and the technical design group that,  
7 to the best of my knowledge, is not a quote from the  
8 statutory language. This is information that they  
9 developed.

10 Q The Advisory Committee has talked about the  
11 inclusion of certain 'components' and background  
12 indicators that are not required by law; isn't that  
13 right?

14 MR. HERRON: Contextual.

15 MR. ROSENBAUM: Contextual. Yes.

16 THE WITNESS: Since they put it in the  
17 framework, I assume they had such discussions.

18 BY MR. ROSENBAUM:

19 Q Okay. Are there any -- If they came to you --

20 If the committee came to you and said, "Based  
21 on your training and experience, are there any  
22 contextual and background indicators beyond those  
23 that are required by law that you think we ought to  
24 include," and assume that they would be reliable and  
25 valid?

1 A That purpose has to be stated more explicitly  
2 than that. That is a general purpose. You need to say  
3 specifically what kind of data you are seeking or what  
4 types of decisions you want to make differently than  
5 what you are already doing.

6 Q Doctor, are there any local accountability  
7 systems in California that you are aware of in the  
8 school districts in the public school system?

9 MR. HERRON: Objection. Vague. Vague as to  
10 time, vague as phrased.

11 BY MR. ROSENBAUM:

12 Q At the present time.

13 MR. HERRON: You may respond.

14 THE WITNESS: Can you tell me what you mean by  
15 "local accountability systems"?

16 BY MR. ROSENBAUM:

17 Q Sure. Take a look at number 12 on page 12.

18 MR. HERRON: On page 12.

19 BY MR. ROSENBAUM:

20 Q What is your understanding of the meaning of  
21 the phrase "local accountability systems" as it appears  
22 in number 12 on page 12?

23 A In a general way I --

24 Again, without being part of the committee  
25 discussions here and without having had a chance to

1 review again the text which may give greater explanation  
2 than that, I would expect in a general way that that  
3 would be any accountability type measures and programs  
4 that might be developed in a local school district.

5 Those could take many forms, I would expect.

6 Q Do you know if any such systems exist in  
7 California?

8 A I'm not aware of the specifics of any  
9 particular program, but I know that local districts,  
10 especially the large ones, do a lot of data analysis of  
11 their own data; and to the extent that that is used in  
12 order to help their schools improve teaching and  
13 learning, one might consider that a form of  
14 accountability on a local level.

15 Q Do you know for a fact whether or not that  
16 occurs in any local school districts in California?

17 A I'm aware in the past of data produced by local  
18 school districts.

19 Q What data is that?

20 A For example, I have seen reports produced by  
21 San Francisco Unified School District.

22 Q What is the nature of those reports?

23 A It has been a long time since I looked at  
24 those. I don't recall specifically what is in them, but  
25 it was an analysis of their test score data in their

1 Q Do you know to what extent, if any, it is used  
2 for the purpose you stated in any local district in  
3 California?

4 MR. HERRON: Vague and ambiguous as phrased and  
5 your use of the term "it."

6 THE WITNESS: As I indicated, I have seen data  
7 reports produced by San Francisco Unified School  
8 District which address that question and it is my  
9 assumption they produce those in order to assist schools  
10 in improving the learning of their students.

11 BY MR. ROSENBAUM:

12 Q Do you think that San Francisco has a local  
13 accountability system? Do you have any basis -- Strike  
14 that.

15 Do you consider that San Francisco has a local  
16 accountability system?

17 MR. HERRON: "Consider that"? Vague and  
18 ambiguous.

19 THE WITNESS: What I know is what I just told  
20 you, that they do collect and analyze their own data.

21 BY MR. ROSENBAUM:

22 Q Do you consider that a local accountability  
23 system, Doctor?

24 MR. HERRON: Objection. Asked and answered.

25 THE WITNESS: I consider that a form of

1 district.

2 Q How long ago was that?

3 A Two to three years ago.

4 Q Okay. Do you consider, based on any of the  
5 reports or data that you have seen, that there exists  
6 any local accountability systems in California?

7 MR. HERRON: Objection. Asked and answered  
8 several times now.

9 THE WITNESS: I think I have already told you  
10 what I know about that topic.

11 BY MR. ROSENBAUM:

12 Q I can have your answer read back to you and I  
13 can stay as long as you want. Your phrase may be --

14 MR. HERRON: Have it read back.

15 MR. ROSENBAUM: Let's have your question read  
16 back two questions ago.

17 (Record read as follows:

18 "Question: What is the nature of those  
19 reports?

20 "Answer: It has been a long time since  
21 I looked at those. I don't recall  
22 specifically what is in them, but it  
23 was an analysis of their test score data  
24 in their district.")

25 BY MR. ROSENBAUM:

1 accountability, to look at your own test data and use  
2 that to attempt to improve what is happening in your  
3 local school district.

4 BY MR. ROSENBAUM:

5 Q Do you know what, if anything, San Francisco  
6 has done with that data besides publish a report?

7 A I don't have any personal knowledge of how that  
8 is used in the district.

9 Q Have you ever made any inquiry to find out?

10 MR. HERRON: Irrelevant. Object on that  
11 basis.

12 You may respond.

13 THE WITNESS: I have not talked to anybody in  
14 the district about that.

15 BY MR. ROSENBAUM:

16 Q Any reason why not?

17 MR. HERRON: Yeah. Because it has nothing --

18 MR. ROSENBAUM: Stop it.

19 MR. HERRON: -- to do with the case.

20 MR. ROSENBAUM: Stop it.

21 MR. HERRON: That's why. You stop it. Don't  
22 yell at me. Don't raise your voice.

23 MR. ROSENBAUM: Don't coach your witness.

24 MR. HERRON: I'm not coaching her.

25 MR. ROSENBAUM: It is clear you are not

1 confident in her answers. You have been coaching her  
2 all day.

3 MR. HERRON: No. Absolutely not. I'm  
4 completely confident.

5 MR. ROSENBAUM: Sure. That's how you can tell  
6 when you feel a witness isn't responding the way you  
7 want, you start giving her coaching.

8 MR. HERRON: Why do you have to go into  
9 speeches all the time, Mark? This isn't very fun.

10 MR. ROSENBAUM: Go ahead.

11 MR. HERRON: Why don't you ask a new question  
12 rather than the same question over and over and over  
13 again, and then focus on something relevant and we will  
14 get done with this depo sometime this century, please.

15 BY MR. ROSENBAUM:

16 Q Any reason why you haven't made such an  
17 inquiry, Doctor?

18 MR. HERRON: Objection. Vague and ambiguous,  
19 asked and answered, irrelevant to the case.

20 You may respond.

21 THE WITNESS: It wasn't part of the data that I  
22 was collecting to produce in my report.

23 BY MR. ROSENBAUM:

24 Q Let me direct your attention to page 14,  
25 please.

1 disagreement with any of the characteristics that are  
2 used in the similar schools index for purposes of that  
3 index as you understand it?

4 A I don't understand what you mean by  
5 "disagreement."

6 Q Any --

7 A They are specified.

8 Q I'm sorry. I didn't mean to cut you off. Go  
9 ahead.

10 A I just said, "They are specified."

11 Q Right. But as a psychometrician, if someone  
12 came to you and said, "We would like to set up a similar  
13 schools index for the purpose -- same purpose as  
14 California had" -- Strike that.

15 What do you understand the purpose of  
16 California's similar school index to be?

17 A To allow schools to be weighted and compared to  
18 schools that have similar demographics.

19 Q And any of the characteristics that are  
20 included presently in the index, do you feel that those  
21 characteristics should be removed for the purpose you  
22 stated?

23 A I don't understand your question. The statute  
24 specifies them and the statute is being followed.

25 MR. ROSENBAUM: Let's go off the record for a

1 At the end of the chart, Doctor, where it says  
2 "Elementary/Middle School API Weights," do you see that?

3 A Yes.

4 Q What does NPR stand for? Is that National  
5 Percentile Ranks?

6 A Yes, it is down in the corner by the asterisk.

7 Q Is there some reason why it doesn't include --  
8 it doesn't state California percentile ranks?

9 A These weights were used with the Stanford  
10 Achievement Test in the API calculation and that test  
11 reports national percentile ranks and that is what was  
12 used.

13 Q Okay. Did you have any involvement, Doctor, in  
14 the establishment of the characteristics that are  
15 utilized to produce a similar schools index in  
16 California? Do you know what I am referring to?

17 A I think I do. Those characteristics were  
18 specified in the statute.

19 Q Okay. And have you ever undertaken any inquiry  
20 or investigation to find out why the legislature  
21 selected particular characteristics that were, in fact,  
22 selected?

23 A I have not read the legislative history, so I  
24 do not know what was in the legislators' minds.

25 Q As a psychometrician, do you have any

1 minute. Is it time for a break.

2 MR. HERRON: Yes. We are getting awfully  
3 close, if you don't mind.

4 MR. ROSENBAUM: Sure.

5 MR. HERRON: Great.

6 (Recess taken.)

7 BY MR. ROSENBAUM:

8 Q Are you doing all right, Doctor?

9 A Yes, I am.

10 Q Doctor, if you could please turn your attention  
11 to page 17.

12 And I am looking, Doctor, at the final  
13 paragraph of your report on that page. In particular  
14 the sentence that says:

15 "To calculate the annual school growth,  
16 the base and growth year APIs must  
17 consist of the same content area tests  
18 weighted in the same proportions."

19 Do you see that?

20 A Yes.

21 Q Why is that?

22 A So that they are comparable.

23 Q And why is it important that they are  
24 comparable?

25 A In order to measure growth or change between

1 two time points, the measure must include the same  
2 components.

3 Q And now on the next page:

4 "However, when a new test is added  
5 to the API, to provide an appropriate  
6 base year API for the following year,  
7 the current API must be recalculated  
8 to include the new test with adjusted  
9 content area weights."

10 Do you see that?

11 A Yes.

12 Q Why is that?

13 A So that the measure of those will be  
14 comparable.

15 Q And the definition of "comparable"? What is  
16 your definition of "comparable"?

17 A As it indicates in that sentence, including the  
18 same components, using the same weights.

19 Q From a psychometrics point of view, is  
20 there -- do you have any concern about using scaling  
21 adjustments?

22 A What kind of scaling adjustments?

23 Q First of all, what is a scaling adjustment?

24 A I don't know what you mean.

25 Q Have you ever used that phrase?

1 you are talking about.

2 Q The methodology -- Strike that.

3 Look at footnote 55. Do you see that?

4 A Yes.

5 Q Where it says, "To date, these scaling  
6 adjustments have been very small."

7 Do you see that?

8 A Yes, I see that.

9 Q Do you know what the scaling adjustments have  
10 been to date?

11 A If you are asking me about the exact numbers, I  
12 don't know those off the top of my head.

13 Q Will there be a scaling adjustment for the  
14 switch from the Stanford 9 to the CAT6?

15 A Every time a new measure is added to the API,  
16 there is an adjustment that occurs.

17 Q And that would include a scaling adjustment?

18 A That is the adjustment I am referring to.

19 Q Has the scaling adjustment been calculated or  
20 determined yet for the change from the Stanford 9 to the  
21 CAT6?

22 A I don't know yet --

23 MR. HERRON: Calls for speculation.

24 THE WITNESS: I don't know if that work has  
25 been completed yet.

1 A Standardized tests are scaled and equated from  
2 form to form and sometimes year to year.

3 Q Do you know what a scaling adjustment is,  
4 Doctor?

5 MR. HERRON: Objection. Asked and answered.

6 THE WITNESS: It's typically a constant that is  
7 added to a test score to put it on a common scale.

8 BY MR. ROSENBAUM:

9 Q I'm sorry. What is it again?

10 A A constant that is added to an item or test  
11 score to put it on a common scale.

12 Q Okay. And had that been done with respect to  
13 the API in California?

14 A The API isn't a test. The Stanford Achievement  
15 Test and the CAT6 that is replacing it have had an  
16 equating study done to place some on a common scale.

17 Q Do you have any concern as a psychometrician  
18 with the use of scaling adjustments?

19 MR. HERRON: Objection. Vague.

20 THE WITNESS: There are a lot of psychometric  
21 issues associated with the scaling and equating of  
22 tests.

23 BY MR. ROSENBAUM:

24 Q What are those psychometric issues?

25 A That depends on the particular methodology that

1 BY MR. ROSENBAUM:

2 Q Have you made any inquiry to find out?

3 A I have not talked to anyone about that.

4 Q Any reason why not?

5 A I didn't have any need to do that.

6 Q Could you please turn to page 19. And  
7 directing your attention to the second paragraph. It  
8 carries over to the second column.

9 "Within each content area at the  
10 elementary and middle school levels,  
11 80 percent of the weight was assigned  
12 to the standards test and 20 percent  
13 to the Stanford Test."

14 Do you see that?

15 A Yes.

16 Q Okay. Was your committee involved in the  
17 determination of those levels, that is, 80 percent to  
18 the standards test and 20 percent to the Stanford Test?

19 A I don't recall making any specific  
20 recommendation, but I believe the issue was probably  
21 discussed at the meeting.

22 Q Okay. What do you recall about that  
23 discussion?

24 A I don't recall any of the specifics of that  
25 discussion.

1 Q Do you recall anything generally about the  
2 discussion?

3 A The discussion, I expect, would have generally  
4 been about the pros and cons of weighting one component  
5 more than another.

6 Q Did you personally agree with the assignment of  
7 80 percent to the standards test and 20 percent to the  
8 Stanford Test?

9 MR. HERRON: Objection. Assumes facts not in  
10 evidence.

11 THE WITNESS: That decision is very consistent  
12 with the desire to have the accountability system  
13 reflect the standards test to the greatest extent  
14 possible.

15 BY MR. ROSENBAUM:

16 Q What is your understanding of why the desire is  
17 to have it to the greatest extent possible?

18 A Because the standards tests specifically  
19 measure all of the California standards at a particular  
20 grade level.

21 Q Was there any talk about having 100 percent of  
22 the weight assigned to the standards test and zero  
23 percent to the Stanford Test?

24 A That's an option that may have been  
25 considered.

1 Q Did you have a viewpoint as to what was  
2 preferable, 100 percent or 80 percent assigned to the  
3 standards test?

4 A Again, I don't have a specific recollection of  
5 what was said in that particular meeting. But, again, I  
6 expect that the pros and cons of doing that were  
7 explored.

8 Q My question to you is: Did you personally have  
9 a view, based on your experience and training, as to  
10 whether or not the weight assigned to the standards test  
11 should have been 100 percent as opposed to 80 percent?

12 A As I understand it, the board chose to keep  
13 weight on the standards test because it measured  
14 students at the bottom end of the achievement continuum  
15 and it measures prerequisite and enabling skills  
16 important for achievement of the California content  
17 standards, and I think that is a reasonable position for  
18 them to take.

19 Q Did you have a view as to what percent should  
20 be assigned to the standards test and what percent to  
21 the Stanford Test?

22 A I did not recommend any specific percent to  
23 anyone.

24 Q Did you have a particular view?

25 A Again, that's a policy question that was up to

1 the policy maker to decide based on the pros and cons.  
2 My view was that the board made a reasonable decision.

3 Q Did you have a preference?

4 MR. HERRON: Objection. Asked and answered  
5 last two questions. Same question.

6 THE WITNESS: Same answer.

7 BY MR. ROSENBAUM:

8 Q Do you know where the 80/20 numbers came from?

9 MR. HERRON: Objection. Vague. Asked and  
10 answered in part.

11 THE WITNESS: I don't know what was  
12 specifically in their mind when they made that  
13 particular decision.

14 BY MR. ROSENBAUM:

15 Q The next sentence on page 19.  
16 "At the high school level in the  
17 content areas of language arts and  
18 mathematics, 69 percent of the weight  
19 was assigned to the standards test,  
20 19 percent to the High School Exit  
21 Exam and 12 percent to the Stanford  
22 Test."  
23 Do you see that?

24 A Yes.

25 Q Do you know how those numbers were arrived at?

1 A There are two issues in that weighting, the  
2 weighting between the norm reference test and the  
3 standards test and then also the weighting between  
4 specific subject areas, and I don't recall the specifics  
5 of it, but I believe in the minutes of the board meeting  
6 there is a record of extensive discussion about how  
7 those things might be weighted that had to do with the  
8 amount of instructional time devoted to the subject  
9 areas.

10 In mathematics I believe they said it is fairly  
11 even. Students take individual courses in these  
12 subjects -- subject areas. And then again between the  
13 standards test and the norm reference test, the goal was  
14 to give maximum weight to the standards test as quickly  
15 as possible, but preserve some weight on the norm  
16 reference test in order to continue to have a good  
17 measure of students at the bottom end of the achievement  
18 continuum.

19 Q Looking at page 19, "With the addition" -- I'm  
20 looking at the last paragraph on your page.  
21 "With the addition of the Language Arts  
22 standards test in 2001, the Stanford  
23 Test weight decreased from 100 percent  
24 to the 64 percent at the elementary and  
25 middle school levels and from 100 percent



1 to 76 percent at the high school level."  
 2 Do you see that?  
 3 A Yes.  
 4 Q Did you agree with the decision to decrease  
 5 those rates as reported here?  
 6 A Again, my understanding was that the board was  
 7 working toward increasing the weight given to the  
 8 standards test and decreasing the witness on the NRT  
 9 test, and I think the way that they went about this was  
 10 reasonable.  
 11 Q And why is that?  
 12 MR. HERRON: Objection. Vague.  
 13 THE WITNESS: They systematically added  
 14 standards tests when they became valid and reliable and  
 15 each time they add a standards test in a content area,  
 16 they put the majority of the weight on the standards  
 17 test and decrease the weight on the NRT exam.  
 18 BY MR. ROSENBAUM:  
 19 Q If the board had said to you -- Strike that.  
 20 Did the board say to you, "Doctor" -- or any  
 21 D.O.E. official say to you, "How much do you think we  
 22 should decrease the Stanford Test weight"?  
 23 A I don't recall being asked that question.  
 24 Q If the board had asked you that question with  
 25 respect to after the addition of the language arts

1 standards test in 2001, if the board had said to you,  
 2 "What amount, if any, do you think we should decrease  
 3 the Stanford Test weight at the elementary and middle  
 4 school levels," what would your answer have been?  
 5 MR. HERRON: Objection. Incomplete and  
 6 improper hypothetical. Are you saying with the same  
 7 purpose to be achieved?  
 8 MR. ROSENBAUM: Of course.  
 9 MR. HERRON: Do you understand his question?  
 10 THE WITNESS: Not very well. Would you  
 11 rephrase that or repeat it, please.  
 12 BY MR. ROSENBAUM:  
 13 Q Sure. If the board executive director had said  
 14 to you, "Dr. Phillips, we have added the language arts  
 15 standards test in 2001. You are familiar with our  
 16 assessment system and you are familiar with our  
 17 accountability program. Do you think we should decrease  
 18 the weight of the Stanford Test at the elementary and  
 19 middle schools levels," what would you have said?  
 20 A The API framework document specifically sets  
 21 that up as a goal of the program to do that. So it  
 22 seems very reasonable to me for the board to do that in  
 23 keeping with their original plan to do so.  
 24 Q And if the executive director had then said to  
 25 you, "How much do you think we should decrease the

1 standards test weight," what would you have said?  
 2 A My understanding is that at the elementary and  
 3 middle school level, there was a desire to preserve the  
 4 relationship between language arts and mathematics as  
 5 they had determined instructional priorities, and I  
 6 believe that the way they did this was to preserve those  
 7 ratios in the process of giving most of the weight or a  
 8 large portion of the weight to the standards test, and  
 9 that seems like a reasonable thing to do. I think what  
 10 they did was reasonable.  
 11 Q Do you know how cheating is detected in other  
 12 states besides California with respect to statewide  
 13 assessment tests?  
 14 A I have some knowledge of what other states do  
 15 in that regard.  
 16 Q What states?  
 17 A Various states that I have worked in over the  
 18 years.  
 19 Q Do you know what is done in Texas?  
 20 A Yes.  
 21 Q What is done?  
 22 A Texas has a variety of methods that they  
 23 utilize. They have a special set of individuals who  
 24 receive and investigate complaints about any alleged  
 25 cheating incident and then action is taken, if

1 warranted, against the individual or individuals that  
 2 are involved in the incident if it is confirmed.  
 3 They also do a ratio analysis looking for  
 4 unexpected patterns within the data that is used to flag  
 5 schools or districts or sets of scores in a particular  
 6 area for further investigation.  
 7 Q Anything else in Texas that you are aware of?  
 8 A That's all I recall at the moment.  
 9 MR. HERRON: Sometimes they are executed for  
 10 that stuff in Texas.  
 11 BY MR. ROSENBAUM:  
 12 Q Could you turn to Chart 9, please.  
 13 MR. HERRON: Chart 9?  
 14 MR. ROSENBAUM: Yes.  
 15 All right. Thank you.  
 16 Q Do you have an understanding, Doctor, as to  
 17 whether or not this six-year plan is on course for all  
 18 the items listed?  
 19 A At this time I don't know what, if any,  
 20 decisions have been made about 2003, 2004. Up to this  
 21 point, the exams have been added as shown in this chart  
 22 through 2002, 2003.  
 23 Q Can you tell me why for 2004 the first bullet  
 24 says "Stanford Test"?  
 25 MR. HERRON: Where? I'm sorry. 2004?

1 MR. ROSENBAUM: Yes.  
 2 THE WITNESS: I think that is because this  
 3 report was completed before a final decision was made.  
 4 I'm not sure if I had the information about the new  
 5 test.  
 6 BY MR. ROSENBAUM:  
 7 Q The six-year plan, am I correct, Doctor,  
 8 presumed that the Stanford Test would continue through  
 9 2006; is that right?  
 10 A And that is clearly not true. They have chosen  
 11 the new test and that new test is now being incorporated  
 12 into the API and this chart predated that and did not  
 13 reflect that.  
 14 MR. HERRON: Sorry. 2004.  
 15 MR. ROSENBAUM: Yes.  
 16 Q Did you ever hear any specific criticisms of  
 17 the Stanford Test for purposes of California's assesment  
 18 system?  
 19 MR. HERRON: Objection. Asked and answered.  
 20 BY MR. ROSENBAUM:  
 21 Q I am asking a different question. I'm asking  
 22 whether or not you ever heard any specific criticisms of  
 23 the use of the Stanford Test for purposes of  
 24 California's assessment system?  
 25 A Not that I can recall.

1 Q Did you have any criticisms of the use of the  
 2 Stanford Test?  
 3 MR. HERRON: Vague as to time. I object on  
 4 that basis.  
 5 BY MR. ROSENBAUM:  
 6 Q At any point.  
 7 A I think the board made a reasonable judgment to  
 8 use the available NRT test in the beginning of the  
 9 program and to phase in standards tests as they were  
 10 developed and became valid and reliable.  
 11 Q That's not responsive.  
 12 Q Let me direct your attention, Doctor, to page  
 13 22 of your report, please.  
 14 Q Do you have that in front of you?  
 15 A Yes.  
 16 Q I would appreciate, Doctor, if you could look  
 17 at the little table that is at the top of the second  
 18 column on page 22.  
 19 Do you see that?  
 20 A Yes.  
 21 Q Okay. Cohort 1, there were 3,145 schools that  
 22 were eligible for the intervention program; is that  
 23 right?  
 24 A That's what is reported in the table.  
 25 Q Do you know how many students that reflects?

1 A No. Not without additional data.  
 2 Q Did you ever make any inquiry to find out?  
 3 A I don't think I had any data that would give me  
 4 that information.  
 5 Q Did you ever seek any data to give you that  
 6 information?  
 7 A I did not attempt to make that calculation.  
 8 Q Did you do any analysis to determine the  
 9 socioeconomic status of the 3,145 schools?  
 10 MR. HERRON: You can read any portion of your  
 11 report, if you want, before you respond to these  
 12 questions. He has not given you an opportunity to  
 13 review anything.  
 14 MR. ROSENBAUM: That's not true.  
 15 MR. HERRON: So feel free.  
 16 MR. ROSENBAUM: I said throughout my questions  
 17 any time you want.  
 18 MR. HERRON: You are right, Mark. You are  
 19 right. You have said that. I appreciate that.  
 20 THE WITNESS: In terms of eligibility for the  
 21 program to which this table refers, schools had to be in  
 22 the bottom five deciles and they had to fail to meet  
 23 their growth targets, both the overall and the  
 24 comparable improvement targets. And I think it is  
 25 probably fair to say that there were probably more low

1 SES schools -- schools with more low SES students in  
 2 them that met those criteria.  
 3 BY MR. ROSENBAUM:  
 4 Q My question was different. Did you make any  
 5 inquiry to determine the SES status of the eligible  
 6 schools in Cohort 1?  
 7 MR. HERRON: At any time?  
 8 BY MR. ROSENBAUM:  
 9 Q At any point.  
 10 A I didn't collect any specific data on that.  
 11 Q Did you ever seek any data regarding the SES  
 12 status of the eligible schools in Cohort 1?  
 13 MR. HERRON: Schools don't have SES status.  
 14 MR. ROSENBAUM: Actually, they do. I will be  
 15 glad to modify to include students. The SES status of  
 16 students. Title 1 has SES status, but I am glad to  
 17 modify the question.  
 18 MR. HERRON: Can you kind of raise your voice  
 19 just slightly.  
 20 MR. ROSENBAUM: Sure.  
 21 THE WITNESS: I think I may have seen  
 22 information about that somewhere maybe in the evaluation  
 23 report, but I don't recall any of it specifically so I  
 24 can't really say for sure.  
 25 BY MR. ROSENBAUM:

1 Q Is there any reason why you didn't include that  
2 data in your report?  
3 A My purpose in including this table was to  
4 summarize the number of eligible schools, the number out  
5 of that who chose to apply and the number that were  
6 selected.  
7 Q Of the 3,145 that are eligible, you report that  
8 1,423 applied. Am I reading your chart correctly?  
9 A Yes.  
10 Q That is 45 percent of the 3,145 schools that  
11 applied; is that right?  
12 A Would you say that one more time, please.  
13 Q Sure. Am I reading your chart correctly, 45  
14 percent of 3,145 schools eligible with respect to Cohort  
15 1 applied?  
16 A Yes.  
17 Q Did you ever do any investigation or inquiry to  
18 determine why the schools that did not apply, the 55  
19 percent, did not apply for participation in the  
20 intervention program?  
21 A I do not have any information about that.  
22 Q Did you ever make any attempt to obtain such  
23 information?  
24 A Not that I recall.  
25 Q Do you know, Doctor, whether or not anyone in

1 the State of California has attempted to determine the  
2 reasons why 55 percent of the schools that were eligible  
3 in Cohort 1 did not apply?  
4 MR. HERRON: Objection. Calls for speculation,  
5 broad, vague.  
6 THE WITNESS: I don't know if anyone has done  
7 that.  
8 BY MR. ROSENBAUM:  
9 Q Do you know if anyone has attempted to find out  
10 why any of the schools in Cohort 1 that were eligible  
11 did not apply -- in fact, did not apply?  
12 MR. HERRON: Same objections.  
13 THE WITNESS: I don't know if anyone has done  
14 that.  
15 BY MR. ROSENBAUM:  
16 Q Is there any reason why you did not attempt to  
17 obtain information as to why schools in Cohort 1 that  
18 were eligible for participation in the intervention  
19 program did not apply?  
20 A That was not within the scope of what I was  
21 covering in the report.  
22 Q Why is that?  
23 MR. HERRON: Why is what?  
24 BY MR. ROSENBAUM:  
25 Q Why do you consider that not to be within the

1 scope of your report?  
2 A My purpose in this section of the report was to  
3 provide a concise summary of the intervention program  
4 associated with the accountability system. It was not  
5 intended to be exhaustive of all information and data  
6 that might be available or might be collected about the  
7 program.  
8 Q Would you be interested in the reasons why  
9 schools in Cohort 1 that were eligible for participation  
10 in the intervention program did not apply?  
11 MR. HERRON: Objection. Vague and ambiguous.  
12 You mean as a personal matter or a research matter or a  
13 matter of a psychometrician?  
14 BY MR. ROSENBAUM:  
15 Q In your professional capacity.  
16 A That's not a psychometric question, but it is  
17 an interesting policy question.  
18 Q Do you know of anyone in the State of  
19 California that is investigating that question?  
20 MR. HERRON: You have already asked her that.  
21 Objection. Asked and answered.  
22 THE WITNESS: As I said, I don't know if  
23 anyone has done that.  
24 BY MR. ROSENBAUM:  
25 Q Did that subject ever come up in any of your

1 TAC meetings, the question being why schools that are  
2 eligible for participation in the intervention program  
3 are not applying?  
4 A The TAC did not deal with the intervention  
5 program. We dealt with the assessments.  
6 Q Okay. Now, in Cohort 1, you also indicate that  
7 there were 430 schools selected; is that correct?  
8 A Yes.  
9 Q And that represents 14 percent of the eligible  
10 schools; is that right?  
11 A No. I think that's the percent selected out of  
12 those that applied.  
13 Q Okay. I was curious about that. I'm not sure  
14 that's right.  
15 A Well, I'm not sure that's right either.  
16 MR. HERRON: Do you want me to break out my  
17 calculator again?  
18 THE WITNESS: It probably is eligible because  
19 it would be about a third --  
20 BY MR. ROSENBAUM:  
21 Q Yes. If you look at --  
22 A -- of the ones that applied. Yes, I think that  
23 it is right. It is percentage of the eligible ones.  
24 Q Do you know, Doctor, what the criteria for  
25 selection was that was utilized to pick these 430

1 schools?

2 A I have seen information about that, but I  
3 don't remember it specifically at this point without  
4 reviewing it.

5 Q What information are you referring to?

6 A There I think was a document on the department  
7 web site about the program and there is also the  
8 evaluator's report. And I don't recall for sure where I  
9 might have seen it, but probably in one of those two  
10 documents.

11 Q Did you rely on what you saw on the web site  
12 and the other documents that you just referenced for  
13 purposes of this report? I am dealing with -- I don't  
14 want to make this overbroad. I'm dealing with the  
15 criteria that I was questioning you about, the selection  
16 criteria.

17 A I read and looked at all of that information  
18 for purposes of familiarizing myself with the program  
19 and then I tried to summarize and highlight information  
20 in order to describe the program.

21 Q Is there any reason why you didn't include a  
22 description of the selection criteria in your report?

23 A As I indicated, this is just intended to be a  
24 capsule summary of that portion of the accountability  
25 system, and I clearly couldn't be exhaustive and include

1 can ask you the same questions again. I just want to  
2 see if your answers are as I stated.

3 A If I understand what you are asking me, I don't  
4 know why schools that were eligible in Cohorts 2 and 3  
5 did not apply for the program.

6 Q With respect to the 430 number, that is the  
7 number selected each year?

8 A Yes.

9 Q Do you know how that number was arrived at?

10 MR. HERRON: Calls for speculation despite the  
11 way it is phrased. Object on that basis.

12 You may respond.

13 THE WITNESS: I don't recall for sure, but I  
14 think that was specified in the statute about how this  
15 program was to work.

16 BY MR. ROSENBAUM:

17 Q Do you know where the number 430 came from?

18 A My general understanding is that it had to do  
19 with the amount of resources available to support the  
20 program.

21 Q Okay. Did you have any involvement in terms of  
22 the determination of that number, 430?

23 A No.

24 Q Did you have any involvement in terms of the  
25 determination of the resources available?

1 everything and I made some judgments about what to  
2 include here. Much of the information about that  
3 program is very lengthy and very extensive and it would  
4 have taken a lot of space to include all of that.

5 Q Okay. Maybe you just answered it if you could  
6 just tell me that. I am not just talking about page  
7 22. I am talking about the entirety of your report.

8 Is there any reason that you did not include  
9 either an enumeration or a summary of the selection  
10 criteria anywhere in your report?

11 MR. HERRON: Mischaracterizes the document. It  
12 speaks for itself.

13 THE WITNESS: I think I have said all I can  
14 say about how I put this together to answer that  
15 question.

16 BY MR. ROSENBAUM:

17 Q Now, if I ask you the same questions basically  
18 that I just got through asking you with respect to  
19 Cohorts 2 and 3, and I am referring to my questions as  
20 to why schools that were eligible did not apply and the  
21 selection criteria utilized to select schools, can  
22 you -- would your answers be the same, that is, that you  
23 don't know why schools that applied -- why there were  
24 schools that were eligible that did not apply and that  
25 you did not specifically investigate that question? I

1 A No.

2 Q Do you have a view as to whether or not the  
3 resources available for the intervention program are  
4 adequate for the purposes of the statute?

5 MR. HERRON: Objection. Vague. Incomplete and  
6 improper hypothetical. Calls for speculation.

7 You may respond.

8 THE WITNESS: I don't have enough information  
9 to offer an opinion on that at this point.

10 BY MR. ROSENBAUM:

11 Q What information would you need to offer an  
12 opinion?

13 A I would need more information about how those  
14 numbers were determined and budgetary information.

15 Q What budgetary information would you want?

16 A I'm not --

17 MR. HERRON: Objection. Calls for  
18 speculation. It is an unfair question.

19 THE WITNESS: I'm not really sure without going  
20 back and studying the program and how it operates and  
21 just looking at a lot more information about that and  
22 refreshing my memory about it to even give you a good  
23 answer. I just know I am not in a position to have  
24 enough information to answer that question.

25 BY MR. ROSENBAUM:

1 Q When you said in your last answer "to be sure  
2 how it operates," what did you mean by that?  
3 A May I have that read back again.  
4 Q Sure.  
5 A I'm not sure what the context is of what you  
6 are asking me.  
7 Q Sure.  
8 Could the witness's last answer before this one  
9 be read back to her, please.  
10 (Record read as follows:  
11 "Answer: I'm not really sure without  
12 going back and studying the program and  
13 how it operates and just looking at a  
14 lot more information about that and  
15 refreshing my memory about it to even  
16 give you a good answer. I just know I  
17 am not in a position to have enough  
18 information to answer that question.  
19 "Question: When you said in your last  
20 answer "to be sure how it operates," what  
21 did you mean by that?")  
22 BY MR. ROSENBAUM:  
23 Q My question, Doctor, is: What did you mean by  
24 the phrase how it operates in the context of your  
25 answer?

1 A I was thinking about information about the  
2 program and about how it works, essentially what is in  
3 those two documents that we talked about earlier.  
4 Q Directing your attention to the table on page  
5 22. In Cohort 2, do you see the number under "Eligible  
6 936"?  
7 A Yes.  
8 Q And 3,145 is right above it?  
9 A Yes.  
10 Q Cohort 1. Are any of the schools --  
11 Do you know, Doctor, if any of the schools --  
12 any of the 936 schools are among the 3,145 schools?  
13 A I don't have any specific information about  
14 that, but it wouldn't be unreasonable if that happened.  
15 Q Okay. Have you ever made any specific inquiry  
16 to determine whether or not any of the 936 schools were  
17 among the 3,145 schools?  
18 A I don't believe I have any data to answer that  
19 question, but it is possible it could have been  
20 contained in those documents and I am not recalling it.  
21 Q Did you ever make any specific inquiry to find  
22 out?  
23 A I didn't ask for any information separate from  
24 those reports that I read.  
25 Q Is there any reason that you didn't discuss in

1 your report whether or not schools that are eligible in  
2 Cohort 2 were also eligible in Cohort 1?  
3 MR. HERRON: Misconstrues prior testimony.  
4 Object on that basis. Vague and ambiguous, calls for  
5 speculation, not relevant. Not even interesting.  
6 MR. ROSENBAUM: Let me ask you to please stop  
7 interrupting.  
8 MR. HERRON: These questions are so far afield.  
9 BY MR. ROSENBAUM:  
10 Q Go ahead.  
11 MR. HERRON: It is really outside the subject  
12 of her testimony.  
13 You may respond.  
14 BY MR. ROSENBAUM:  
15 Q Doctor, I will be glad -- Why don't you  
16 respond. Go ahead. I'm sorry.  
17 A The answer is the same as what I explained  
18 earlier about this part of the report being intended to  
19 summarize the components of the API and the  
20 accountability system and as such it is a capsule  
21 summary and not intended to be exhaustive or  
22 comprehensive.  
23 Q I just want to be clear for my last question.  
24 I'm not asking why it didn't appear on page 22 in the  
25 section, I'm asking why the information that I am

1 talking about didn't appear anywhere in your report.  
2 Did you understand that to be my question?  
3 A I don't understand how that is different than  
4 what you asked me that I already responded to.  
5 Q Sure.  
6 MR. HERRON: Can we take a two- or three- or  
7 four-minute break here when we get a chance?  
8 THE WITNESS: I could use another break,  
9 actually.  
10 MR. ROSENBAUM: Go right ahead.  
11 (Recess taken.)  
12 MR. ROSENBAUM: Back on the record.  
13 Q Still looking at this chart, Doctor, on page  
14 22. If we look at Cohorts 1, 2 and 3. Do you have that  
15 in front of you now?  
16 A Yes.  
17 Q Do you know how many different schools are  
18 represented by the 3,145 plus the 936 plus the 1,266?  
19 A No.  
20 Q Okay. Did you ever make any effort to find  
21 out?  
22 A Again, it is possible that information may have  
23 been in the documents that I looked at, but I don't  
24 recall it.  
25 Q Okay. My question is a little bit different.

1 Did you ever make any specific effort to ascertain the  
2 number of different schools?

3 A At one point I did read both of those reports,  
4 but I just don't recall whether that information was in  
5 there or not.

6 Q Okay. Did you give any consideration to  
7 including the number of different schools that were  
8 eligible for the intervention program anyplace in your  
9 report?

10 A I considered a lot of things in deciding what  
11 to include in this report and, as I indicated, it is a  
12 summary using the form of what I ultimately chose to  
13 include.

14 Q But my question is a little bit different.

15 Did you give any consideration to including the  
16 fact of the number of different schools that were  
17 eligible for participation in the intervention program  
18 for the first three Cohorts?

19 MR. HERRON: Objection. Asked and answered.

20 THE WITNESS: And my answer is that I don't  
21 recall all the things that I may have considered and  
22 didn't end up including in the report.

23 BY MR. ROSENBAUM:

24 Q Okay. Again, I don't want to belabor this. I  
25 asked you with respect to Cohort 1 whether or not you

1 A For Cohort 4?

2 Q For a Cohort after the results are announced.

3 A I don't recall the specific deadlines about  
4 that.

5 Q Have you looked at any applications that any  
6 school has submitted in any year for participation in  
7 the intervention program?

8 A No.

9 Q Have you had any discussions with anyone as to  
10 why some schools are selected and other schools are not  
11 for participation in the intervention program?

12 A Not that I recall.

13 Q On page 21, your last sentence in the first  
14 full paragraph in the second column:

15 "All schools that met or exceeded their  
16 growth targets and demonstrated comparable  
17 improvement were given certificates and a  
18 special emblem to use on their letterhead  
19 during the following year."

20 Do you see that sentence?

21 MR. HERRON: I don't.

22 MR. ROSENBAUM: It is page 21, David.

23 MR. HERRON: Okay. I'm on that page.

24 MR. ROSENBAUM: And it is the second column,  
25 last sentence in the last full paragraph.

1 knew anything about the reasons why certain schools  
2 didn't apply.

3 Do you remember those questions?

4 A I remember your asking that.

5 Q If I repeat that question for Cohorts 2 and 3,  
6 do you have any information as to why any of the schools  
7 in Cohort 2 that were eligible for participation did not  
8 apply? Do you have any such information?

9 A I believe you already asked me that question,  
10 too, and I indicated that my answer was the same for  
11 Cohorts 2 and 3.

12 Q All right. Thanks.

13 Is there a Cohort 4?

14 A Yes.

15 Q Do you know how many schools were eligible for  
16 participation in the intervention program in Cohort 4?

17 A No.

18 Q Have you seen any numbers as to the number of  
19 eligible schools?

20 A I don't think I have seen any of that  
21 information.

22 Q Okay. Same answer for applied and applied --  
23 Strike that.

24 Do you know when the application process takes  
25 place?

1 Q Do you see that?

2 A Yes.

3 Q Okay. Do you know if that is still done? Are  
4 schools that meet or exceed their growth targets given a  
5 special emblem to use on their letterhead during the  
6 following year?

7 A It was true when I wrote the report in the  
8 spring. I haven't checked recently to see if they still  
9 have that up there.

10 Q Do you know what that emblem says?

11 A I don't recall the exact wording, but something  
12 about being eligible for awards or having met the growth  
13 targets or something about the accomplishment.

14 Q Okay. Looking, Doctor, at page 23. I'm  
15 looking at "Summary results" -- I'm looking at, I'm  
16 sorry, the second column, first full paragraph:

17 "Of the 430 participating schools, 68  
18 percent met their targets or made at  
19 least some growth ...."

20 Do you see that?

21 A Yes.

22 Q Of the 68 percent, do you know how many met  
23 their targets and how many made at least some growth?

24 A No.

25 Q How do you define "some growth"? If they added

1 a point, would that be some growth in your definition?

2 MR. HERRON: The document speaks for itself.

3 MR. ROSENBAUM: I don't think it does speak to  
4 this.

5 THE WITNESS: This is not my definition. This  
6 information was taken from department data, and my  
7 assumption is that you have made some growth if your API  
8 growth for the current year exceeds the API base for the  
9 previous year.

10 BY MR. ROSENBAUM:

11 Q So a one point growth, it is your assumption,  
12 would be included within the definition of "at least  
13 some growth"; is that right?

14 A I would expect that to be true.

15 Q Did you ever make any inquiry as to how many  
16 schools actually met their targets and how many made at  
17 least some growth by this definition?

18 A Again, I may have seen data like that in the  
19 documents that I reviewed, but I don't recall it at this  
20 time.

21 Q Okay. And then 16 percent received a third  
22 year of funding. Is that right? Is that what you are  
23 telling us here?

24 A Let me take a quick look at that table.

25 Q Sure.

1 Cohort 1, Cohort 2 or Cohort 3?

2 MR. HERRON: For purposes of her report or just  
3 generally?

4 BY MR. ROSENBAUM:

5 Q Let's break that down. For purposes of your  
6 report, did you make any analysis to determine any of  
7 the reasons why schools fail to make any growth,  
8 referring to schools in Cohorts 1, 2 or 3?

9 A My understanding is that that is part of the  
10 process conducted with the external evaluator and would  
11 be included in the reports that they submit. I have not  
12 looked at those reports.

13 Q Okay. Have there been any changes in the  
14 external evaluation system since the inception of the  
15 program?

16 A I know that the statute was changed at some  
17 point and there were lists developed by the board of  
18 individuals that could serve as external evaluators and  
19 I believe there were some changes made, but I don't  
20 recall specifically what they were.

21 Q Okay. Did you do any tracking, Doctor, to  
22 determine whether or not schools that were eligible for  
23 participation in the program but were not -- but did not  
24 apply to be in the program, whether or not they made  
25 growth from Cohort 1 to Cohort 2 or Cohort 2 to Cohort

1 A I think, in fact, in response to your earlier  
2 question, two categories from this table had been  
3 combined. So you do have information that 75 of the  
4 schools, 75 out of the 430, made their growth targets  
5 both years and 262 made some growth and continued in the  
6 program.

7 Q Okay. Thanks.

8 Do you know what H.P. stands for, Doctor?

9 A It's in the footnote at the bottom. High  
10 priority schools program.

11 Q Do you know what the high priority schools  
12 program is?

13 A As the footnote indicates, it provides a third  
14 year of funding to schools and delays the implementation  
15 of sanctions by one year.

16 Q Do you know if there are any other components  
17 or elements of the high priority schools program?

18 MR. HERRON: Objection. Vague and ambiguous.

19 THE WITNESS: I don't recall any of the other  
20 specifics at this time.

21 BY MR. ROSENBAUM:

22 Q Okay. Do you know if there has been any  
23 analysis, Doctor -- Well, strike that.

24 Have you ever made any analysis to see if there  
25 are reasons why schools fail to make any growth,

1 3? Do you understand my question?

2 A I do --

3 MR. HERRON: I do not. Object. It is vague  
4 and ambiguous.

5 THE WITNESS: I believe there might be  
6 information along those lines in the external  
7 evaluator's report which compared performance of schools  
8 that were in the program against a control set of  
9 schools that were not in the program, and I don't recall  
10 the specifics of how that control group was determined  
11 but might have included some of those schools.

12 BY MR. ROSENBAUM:

13 Q Okay. Do you know for a fact whether that took  
14 place?

15 A Without reviewing the report, I just can't tell  
16 you what the specifics were.

17 Q Okay. Did you yourself undertake any analysis  
18 to determine for purposes of your report what happened  
19 to schools that were eligible to participate in the  
20 intervention program the following year, whether or not  
21 they had any API growth or whether they stayed the same  
22 or whether they decreased?

23 A As I indicated to you earlier, I read the  
24 available information about the program. I did not  
25 collect any data independently of that.

1 Q Okay. Do you have any judgment as to what  
2 happened to those schools, the number of percent it went  
3 up, the number of percent it stayed the same, the number  
4 of percent it went down?

5 A To answer the specific questions about the  
6 program and the cohorts and so on, I would have to  
7 review the available documentation. I don't recall it  
8 at this time.

9 Q Okay. The same sort of question, Doctor, with  
10 respect to those schools that applied and weren't  
11 selected.

12 To your knowledge, has anyone looked into the  
13 question about what happened to schools in a Cohort that  
14 were eligible for intervention, applied for  
15 participation in the intervention process, didn't get  
16 selected, what happened to them the following year?

17 MR. HERRON: Objection. Asked and answered.

18 THE WITNESS: Again, I just don't recall  
19 specifically what is contained in the available  
20 information. I would have to review that.

21 BY MR. ROSENBAUM:

22 Q Okay. I may have asked it, but it was not  
23 answered.

24 Q Do you know, Doctor -- I am looking at page  
25 23. The 5 percent of the schools that failed to make

1 respect to whether or not students in those 5 percent of  
2 schools had access to textbooks?

3 MR. HERRON: Objection. Vague and ambiguous as  
4 to use of the term "access," use of the term "textbooks"  
5 and as phrased, irrelevant.

6 THE WITNESS: As I indicated to you, without  
7 reviewing the available documentation, I don't recall  
8 what information is or is not available about these  
9 schools.

10 BY MR. ROSENBAUM:

11 Q Did you regard it as part of your job in  
12 preparing this report, Exhibit 1, to investigate the  
13 characteristics of schools that ended up in the  
14 intervention program?

15 MR. HERRON: Vague. Objection.

16 BY MR. ROSENBAUM:

17 Q It is vague, and by "characteristics," I mean  
18 racial and ethnic composition, socioeconomic conditions,  
19 the character of the facilities, percent of emergency  
20 credentialed teachers, whether students had access to  
21 textbooks.

22 My question is, Doctor: You obviously put a  
23 lot of time into this report. Did you consider that  
24 question, the characteristics of the schools that were  
25 eligible for the intervention program? Did you regard

1 any growth and are subject to State sanctions --

2 Do you see that?

3 A I see that.

4 Q -- is it your understanding that external  
5 evaluators are assigned to those schools, all of those  
6 schools?

7 A My understanding is that external evaluators  
8 were chosen when they entered the intervention program.

9 Q Okay. And do you know anything about the  
10 racial or ethnic composition of the 5 percent of schools  
11 that failed to make any growth and are subject to State  
12 sanctions?

13 A I don't recall the data about that, if it is  
14 available.

15 Q Do you know anything about the characteristics  
16 of those schools, for example, with respect to those  
17 5 percent of schools, the percent of emergency  
18 credentialed teachers in those schools?

19 A Again, I don't recall any specific data like  
20 that without reviewing the information that is available  
21 about the program.

22 Q Do you know whether or not that data has been  
23 compiled?

24 A I don't recall.

25 Q Do you know if data has been compiled with

1 that as within your purview or did you regard that as  
2 outside the subject matter that you were considering for  
3 purposes of your report?

4 MR. HERRON: The document speaks for itself.

5 THE WITNESS: As I indicated to you already, I  
6 reviewed a vast quantity of information for purposes of  
7 preparing the report. My goals were to summarize the  
8 accountability system, the awards and intervention  
9 programs that were a part of that system and the  
10 assessments that were used and to discuss how the API  
11 has changed over time, and then to respond to  
12 Dr. Russell's report.

13 And in doing those tasks, I made decisions  
14 about how to best summarize the data to give a concise  
15 picture of what was happening in the system.

16 BY MR. ROSENBAUM:

17 Q Okay. And do you recall giving any  
18 consideration to inclusion in your report of information  
19 about the socioeconomic characteristics of schools that  
20 were eligible for the intervention program?

21 MR. HERRON: Objection. Asked and answered in  
22 the question before and before that.

23 THE WITNESS: As I already indicated to you, I  
24 considered a vast quantity of data and a lot of things  
25 that I don't recall specifically when writing this



1 report.  
 2 BY MR. ROSENBAUM:  
 3 Q Okay. Let me just ask you one more question.  
 4 This is actually a convenient time to break.  
 5 Thank you.  
 6 MR. HERRON: Thank you, Doctor. We should --  
 7 Just before we go off, we should have the technical  
 8 manuals tomorrow, probably tomorrow afternoon.  
 9 MR. ROSENBAUM: I appreciate that.  
 10 (The following was stipulated to in an  
 11 off-the-record discussion between counsel  
 12 on August 7, 2003 in the deposition of  
 13 Susan E. Phillips, Ph.D., Volume 4: That  
 14 the original transcript be maintained by the  
 15 San Francisco office of Esquire Deposition  
 16 Services; that counsel for the witness will  
 17 see to it that the witness reads and corrects  
 18 the transcript and subsequently signs the  
 19 a signature page; that counsel for the witness  
 20 will notify the court reporter's office of any  
 21 changes; that the court reporter's office  
 22 will then notify all counsel of signature and  
 23 corrections made to the transcript; and that  
 24 thereafter the court reporter's office will  
 25 seal the original transcript, signature page

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 9 I, SUSAN E. PHILLIPS, Ph.D., do hereby declare  
 10 under penalty of perjury that I have read the foregoing  
 11 transcript; that I have made any corrections as appear  
 12 noted, in ink, initialed by me; that my testimony as  
 13 contained herein, as corrected, is true and correct.  
 14 EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
 15 20\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
 (City) (State)  
 16  
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 18 \_\_\_\_\_  
 SUSAN E. PHILLIPS, Ph.D.,  
 Volume 2  
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1 and changes in an envelope and send it to the  
 2 San Francisco office of Morrison & Foerster  
 3 to the attention of Ryoka Kita.)  
 4 (ENDING TIME: 5:00 p.m.)  
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 4 I, the undersigned, a Certified Shorthand  
 5 Reporter of the State of California, do hereby  
 6 certify:  
 7 That the foregoing proceedings were taken  
 8 before me at the time and place herein set forth;  
 9 that any witnesses in the foregoing proceedings, prior  
 10 to testifying, were placed under oath; that a verbatim  
 11 record of the proceedings was made by me using machine  
 12 shorthand which was thereafter transcribed under my  
 13 direction; further, that the foregoing is an accurate  
 14 transcript thereof.  
 15 I further certify that I am neither financially  
 16 interested in the action nor a relative or employee  
 17 of any attorney of any of the parties.  
 18 IN WITNESS WHEREOF, I have this date subscribed  
 19 my name.  
 20  
 21 Dated: August 21, 2003  
 22  
 23 \_\_\_\_\_  
 PAMELA A. STITT  
 CSR No. 6027  
 24  
 25