

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
Thursday, August 7, 2003
Volume 4

Reported by:
PAMELA A. STITT

CSR No. 6027

JOB No. 43715

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

1 ELIEZER WILLIAMS,)
2 et al.,)
3)
4 Plaintiffs,)
5)
6 vs.) No. 312236
7)
8 STATE OF CALIFORNIA,)
9 et al.,)
10 Defendants.)

Volume 2

11 Deposition of SUSAN E. PHILLIPS, Ph.D.,
12 taken on behalf of Plaintiffs at
13 555 West Fifth Street, 35th Floor,
14 Los Angeles, California, beginning at
15 11:03 a.m. and ending at 3:30 p.m.
16 on Thursday, August 7, 2003, taken before
17 PAMELA A. STITT, Certified Shorthand
18 Reporter No. 6027.
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3 WITNESS EXAMINATION
4 SUSAN E. PHILLIPS, Ph.D.
5 Volume 4

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7 BY MR. ROSENBAUM 755
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12 EXHIBITS

13 PHILLIPS IDENTIFIED
14 3 Fax cover sheet, Attention: Paul
15 Warren with attachments; 6 pages
16 4 Document entitled "Technical Committee
17 advising the HSEE panel"; 1 page
18 Production No. DOE94634 810
19

20 INFORMATION REQUESTED
21 (None)

22 INSTRUCTION NOT TO ANSWER
23 (None)
24
25

1 Los Angeles, California, Thursday, August 7, 2003
2 11:03 a.m. - 3:30 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 How are you, Doctor?

11 A I'm fine. Thank you.

12 Q Did you review any documents last night?

13 A No.

14 Q Did you have any discussion about the
15 deposition?

16 A Yes.

17 Q With whom?

18 A Mr. Herron.

19 Q And what was said?

20 A He suggested that I rest and relax.

21 Q Good. There are a few things, Doctor, that I
22 would appreciate if you could clarify for me.

23 Am I right, Doctor, did I understand you to
24 tell me earlier that you made an opportunity to learn
25 presentation as part of your California consulting work;

1 THE WITNESS: I don't really understand what
2 you are asking.

3 BY MR. ROSENBAUM:

4 Q Do you see any relevance of opportunity to
5 learn in any context that you are familiar with to the
6 STAR program?

7 MR. SALVATY: Objection. Vague and ambiguous.

8 THE WITNESS: In the STAR program, there are no
9 high stakes for students, so that concept applies to
10 cases where you have high stakes for students. So it is
11 a different issue in my mind.

12 BY MR. ROSENBAUM:

13 Q Doctor, you talk in your report in Exhibit 1
14 here about a teacher credentialing analysis written by
15 David Rogosa. I am not going to ask you detailed
16 questions about it, but you are welcome to look for it.

17 A I am trying to think about what Exhibit 1 is in
18 my report.

19 Q Exhibit 1 is your report.

20 A Oh, in the report. I'm sorry. I
21 misunderstood. I thought you were referring to a
22 particular table or something.

23 Q You recall referring to a teacher credentialing
24 analysis that David Rogosa did or an analysis in which
25 teacher credentialing is referred to?

1 is that right?

2 A Yes.

3 Q And that predated the High School Exit Exam?

4 A Yes.

5 Q And did your presentation focus primarily on
6 the STAR program?

7 A At this point I don't recall specifically what
8 was in the presentation.

9 Q Do you have any recollection at any point about
10 making an OTL presentation with respect to STAR?

11 A I have no specific recollection of a
12 presentation focused exclusively on that.

13 Q Does opportunity to learn -- I know that we
14 have discussed this, so I don't want to belabor this.
15 But in your judgment, does opportunity to learn relate
16 to the STAR program?

17 MR. SALVATY: Objection. Vague.

18 THE WITNESS: If you are referring to
19 opportunity to learn in the curricular validity sense
20 out of the Debra P. case, that focuses on High School
21 Exit Exams where there are high stakes for students.

22 BY MR. ROSENBAUM:

23 Q Is there a connotation of opportunity to learn
24 that you adopt that would apply to the STAR program?

25 MR. SALVATY: Objection. Vague, ambiguous.

1 A If you are referring to what is in Table 12,
2 yes.

3 Q Okay. How did you obtain a copy of Rogosa's
4 analysis?

5 A I think I got that one from the department.

6 Q And in the context of your consulting work?

7 A No.

8 Q How did it come to pass that you --
9 Did you request it from the department?

10 A Yes.

11 Q And how did you know about it? How did you
12 know about the existence of Rogosa's report?

13 A I believe I heard about it in a discussion with
14 someone from the department.

15 Q Relating to this case?

16 A Yes.

17 Q Who in the department?

18 A Bill Pedia.

19 Q And to the best of your recollection, Doctor,
20 how did the subject matter come up?

21 A I don't recall.

22 Q Did you raise it initially or did Mr. Pedia
23 raise it?

24 A I don't recall.

25 Q What did Mr. Pedia say with respect to the

1 report?

2 A He told me that it had been done very recently
3 and was not yet on the web site.

4 Q Do you remember how the subject came up?

5 A I don't recall.

6 Q If you could, Doctor, could you turn to page 73
7 of your report, Exhibit 1.

8 I am specifically directing your attention to
9 the first sentence in the second column:

10 "The SES variables account for 53 percent -
11 66 percent of the variance in API scores while
12 the percent of teacher emergency credentials
13 accounts for only 21 percent of the variance in
14 API scores."

15 Do you see that?

16 A Yes.

17 Q What does it mean that a variable accounts for
18 21 percent of the variance in an overall score?

19 A If I could just have a minute to look at the
20 context here.

21 Okay.

22 MR. SALVATY: Okay.

23 BY MR. ROSENBAUM:

24 Q Do you remember the question?

25 A Could you ask it again, please.

1 scores.

2 MR. ROSENBAUM: Okay.

3 Q Can you give me an example so that I can
4 understand this.

5 A I could work up one if I had time off the
6 record.

7 Q Okay. Okay.

8 Doctor, in the first column, I am looking at
9 the first full paragraph in your text.

10 "The Russell report takes the simplistic view
11 that because school API scores and percents of emergency
12 credentialed teachers are correlated, the state can
13 improve academic performance by requiring schools to
14 reduce the number of non-fully credentialed teachers
15 over an unspecified period of time. Meanwhile, schools
16 would not be held accountable for student outcomes."

17 Do you see those two sentences?

18 A Yes.

19 Q Okay. What is the basis of your statement --
20 Strike that.

21 I assume the sentence, "Meanwhile, schools
22 would not be held accountable for student outcomes," I
23 presume what you are saying there is that you are
24 attributing that assertion to Mike Russell; is that
25 right?

1 MR. ROSENBAUM: Could it be read back.
2 (Record read as follows:

3 "Question: What does it mean that a
4 variable accounts for 21 percent of the
5 variance in an overall score?")

6 THE WITNESS: If you use one variable to
7 predict another variable, that is the percent of
8 differences in scores that can be explained by the
9 predicted variables.

10 BY MR. ROSENBAUM:

11 Q 21 percent would mean one fifth of the scores
12 could be predicted by that factor; is that what you are
13 saying?

14 A No.

15 Q Help me out, please.

16 A It would be 21 percent of the variance in the
17 scores.

18 Q So if there are two API scores that differ by
19 20, approximately 4 points of that 20 points could be
20 explained by that factor; is that a fair understanding
21 of what you were just saying?

22 MR. SALVATY: Objection. Incomplete
23 hypothetical.

24 THE WITNESS: You wouldn't be able to do an
25 analysis like this with only two scores. You need many

1 A That's correct.

2 Q Okay. And could you state fully for me,
3 please, the basis of that attribution with respect to
4 the sentence, "Meanwhile, schools would not be held
5 accountable for student outcomes."

6 A It comes from the text of his report.

7 Q Let me give you Exhibit 2, which we have marked
8 previously as the report of Michael Russell, and ask you
9 if you could show me where that comes from the text in
10 his report, please.

11 And you don't have to look -- You can look at
12 anything you want. You can look at his report or you
13 can recall it or you can look at Exhibit 2. I don't
14 mean to say you have to use the report.

15 And could we note the time right now, please.

16 You take as much time as you need, Doctor.

17 (Witness reviews Exhibit 2 from 11:14 a.m.
18 to 11:19 a.m.)

19 THE WITNESS: Okay.

20 BY MR. ROSENBAUM:

21 Q You have reviewed Exhibit 2, to your
22 satisfaction?

23 A Yes.

24 Q Okay. And can you point to me the sources for
25 your saying that, please?

1 A Okay. It is on page 57 of Dr. Russell's report
2 and it reads as follows:

3 "Given that inputs affect outcomes and that
4 at times it is the inputs that must be altered
5 before outcomes are impacted, schools must be
6 allowed and encouraged to set goals that focus
7 first on the inputs. As an example, there is
8 a clear correlation between the percent of
9 emergency credentialed teachers within a school
10 and the school's API. It only makes sense,
11 then, that for schools that have a high
12 percentage of emergency credentialed teachers,
13 interim goals should focus on decreasing the
14 percentage of emergency credentialed teachers
15 (ideally to zero percent) rather than on
16 increasing students' test scores. Only after
17 significant progress towards this interim goal
18 has been reached, should attention then focus
19 on changes in test scores."

20 Q Thank you, Doctor.

21 Doctor, did you have any discussions with
22 anyone at any point at the state level regarding the
23 definition of "highly qualified teachers" for NCLB
24 purposes?

25 A Yes.

1 was the committee that was studying that issue.

2 Q The highly qualified teacher issue?

3 A No. Potential changes to the credentialing
4 program.

5 Q And did you express any viewpoints -- Strike
6 that.

7 Did you make any statements during the course
8 of that conference call?

9 A Yes.

10 Q What did you say?

11 A I don't recall.

12 Q Can you tell me anything about what you said
13 in that call?

14 A We were discussing potential changes related to
15 a report that had been put together, I believe, by the
16 contractor.

17 Q Which contractor are you referring to?

18 A I don't recall.

19 Q What was the subject matter of the report that
20 the contractor was dealing with?

21 A Potential changes to the credentialing
22 program.

23 Q Okay. Do you know who the contractor was?

24 A I don't recall.

25 Q Did you get a copy of that report?

1 Q And who was that?

2 A Rae Belisle.

3 Q And when did that take place?

4 A I don't recall for sure. Probably late last
5 year.

6 Q And what was the nature of your discussion with
7 Ms. Belisle?

8 A It was part of background information shared in
9 getting ready for a conference call meeting.

10 Q And what was the nature of the background
11 information that was shared?

12 A She was bringing me up to date on what
13 California had done so far.

14 Q Okay. And did you give any response?

15 A I don't recall.

16 Q Can you tell me what was the nature of the
17 conference call, what was your understanding as to the
18 purpose of that conference call?

19 A That's the one we talked about a couple days
20 ago with respect to California's teacher credentialing
21 program.

22 Q Okay. And so who else was on that call?

23 A Karen Steenthofte.

24 Q Okay. Anyone else?

25 A I don't know the names of the individuals. It

1 A Yes.

2 Q Had you read the report?

3 A Yes.

4 Q Were there different viewpoints expressed in
5 the call about changes in the credentialing system?

6 A There was an extensive discussion that took
7 place.

8 Q How long did that conversation take place?

9 A I don't recall for sure. Probably a couple
10 hours.

11 Q Okay. And were you on the call the entire
12 time?

13 A Yes.

14 Q Did you receive any other documents besides the
15 report for purposes of that call?

16 A As I indicated to you when we talked about it
17 earlier, yes.

18 Q Refresh my recollection. What else did you
19 get?

20 A I received information about the current
21 credentialing program.

22 Q Anything else?

23 A Not that I recall.

24 Q What other -- What were the different options
25 that were discussed with respect to the credentialing

1 program?

2 A Without reviewing that report, I wouldn't be
3 able to give you a good answer about that.

4 Q Do you have a copy of that report?

5 A Not anymore.

6 Q What did you do with it?

7 A Threw it away.

8 Q Do you have a copy of the other document that
9 you received?

10 A I don't think so.

11 Q When did you throw it away? I am referring to
12 the first report.

13 A Sometime after the call occurred.

14 MR. ROSENBAUM: Paul, I request a copy of that,
15 too. We didn't get that report.

16 Did that -- The report and the memo, did that
17 help inform you about the credentialing system in
18 California?

19 A The information --

20 MR. SALVATY: Objection. Vague. Vague and
21 ambiguous.

22 THE WITNESS: The information I received was
23 about the credentialing program in California.

24 BY MR. ROSENBAUM:

25 Q Were you previously informed about the

1 A Not that I recall.

2 Q Do you know -- Is there someone or some
3 persons, in your view, who are in charge of collecting
4 that data?

5 A I don't know who is responsible for that.

6 Q Do you know who is involved in the process of
7 collecting that data?

8 A I don't know who is doing that work.

9 Q How do you know --

10 What is the basis of your statement that you
11 think the state is in the process of collecting the
12 data?

13 A Information that was provided at a Technical
14 Advisory Committee meeting.

15 Q Was it written information that was presented?

16 A Not that I recall.

17 Q Who made the -- Who made the oral presentation
18 or who told you that?

19 A I don't recall specifically who talked about
20 it.

21 Q Are there any psychometric issues, in your
22 mind, Doctor, that are raised by the inclusion of high
23 school essay exam results in the API?

24 MR. SALVATY: Objection. Vague and ambiguous.

25 THE WITNESS: There were a number of issues

1 credentialing system in California before you received
2 that report?

3 MR. SALVATY: Objection. Vague and ambiguous.

4 BY MR. ROSENBAUM:

5 Q The teacher credentialing system.

6 A I had not been involved in any consultation on
7 that program prior to that instance.

8 Q For purposes of your report, did you do any
9 independent research on teacher credentialing?

10 MR. SALVATY: Objection. Vague and ambiguous.

11 THE WITNESS: If you are asking whether I
12 collected any data myself about that, no.

13 MR. ROSENBAUM: I am going to request again a
14 copy of that, please. It should have been turned over
15 to us.

16 Q You told me yesterday or the day before,
17 Doctor, that you thought that the department was going
18 to collect some OTL data; is that right?

19 A It was my understanding that that was in
20 process.

21 Q And you personally haven't seen any such data
22 as of this date; is that right?

23 A I don't recall having seen the data.

24 Q Have you heard anything about the status of
25 that data collection by the state?

1 that were discussed in the PSAA Advisory Committee
2 report that was forwarded to the state board.

3 BY MR. ROSENBAUM:

4 Q Okay. Did you review that report?

5 A Yes.

6 MR. ROSENBAUM: Off the record.
7 (Discussion held off the record.)

8 MR. ROSENBAUM: I don't have a copy of that
9 and I am requesting a copy of that, please.

10 MR. SALVATY: Just for the record, I don't
11 think you established that that should have been
12 produced. I will leave it at that.

13 BY MR. ROSENBAUM:

14 Q In your report, Doctor, you talk about the
15 inclusion of the High School Exit Exam as part of the
16 API; isn't that true?

17 A Yes.

18 Q And do you agree with the inclusion of the High
19 School Exit Exam as part of the API?

20 A I believe the board made a reasonable decision
21 to adopt the recommendations of the PSAA Advisory
22 Committee.

23 Q And why do you think it is reasonable?

24 A For the reasons that are set forth in that
25 document and in the board proceedings.

1 Q Okay. Did you rely in any way on that
2 document for any of the inclusions in your report?
3 A Yes.
4 MR. ROSENBAUM: I think I made it there, Paul.
5 Q Do you regard the High School Exit Exam as
6 valid and reliable for use as an indicator as part of
7 the API?
8 A If you are referring to the criteria set forth
9 by statute, I believe that the committee demonstrated
10 that it met those criteria adequately.
11 Q And that is part of the report?
12 A I believe the information in the report speaks
13 to that issue.
14 MR. ROSENBAUM: Paul, I'd appreciate that.
15 Q I know you told me this. I am just asking this
16 as a predicate question, Doctor.
17 You began working as a consultant with the
18 State of California with respect to its assessment
19 programs on what date?
20 A I believe that began in November of 1997.
21 Q Okay. And have you done consultation work for
22 California in each year since 1997?
23 A I believe so, yes.
24 Q Could you give me your best judgment, Doctor,
25 as to how much money you have earned from the State of

1 California with respect to your consulting work? You
2 should subtract out any payments that you have received
3 or will receive for purposes specifically of this
4 litigation. I'm not asking you about work as an expert
5 for which you have been compensated. I am just talking
6 about the consultation work.
7 A I can't tell you that without checking my
8 records.
9 Q Okay. What records would you check?
10 A My invoices.
11 Q Okay. Is it more or less than \$100,000?
12 A I wouldn't want to speculate without checking.
13 Q All right. Thank you.
14 How much were you paid by the state of Texas
15 for your work in the Texas case?
16 A Again, I would need to check my records.
17 Q Can you give me a ballpark number for that?
18 A I wouldn't want to speculate without checking.
19 Q Do you have an opinion, Doctor, as to whether
20 or not administration of the statewide assessment
21 program in Texas has resulted in an increase in academic
22 performance by Texas public school students?
23 MR. SALVATY: Objection. Vague and ambiguous.
24 THE WITNESS: I have seen data that shows in
25 general over time performance on statewide assessment

1 has increased and that has been true for all students
2 and for subgroups. To give you any accurate picture of
3 that, I would need to refer to the data.
4 BY MR. ROSENBAUM:
5 Q Do you attribute the increases to the
6 implementation of the statewide assessment program? I
7 am asking if you find a causation.
8 MR. SALVATY: Objection. Lacks foundation.
9 THE WITNESS: I understood your question to
10 ask about causation and, as I indicated to you
11 yesterday, the only way you can be sure about causation
12 is to do a true experiment.
13 BY MR. ROSENBAUM:
14 Q Okay. Do you have a view as to the likelihood
15 that the increases that you referred to me were caused
16 by the assessment system?
17 MR. SALVATY: Objection. Calls for
18 speculation.
19 BY MR. ROSENBAUM:
20 Q Do you understand what I am asking? I heard
21 you say to me -- You said that you can't be absolutely
22 sure. I construe that to mean you can't be 100 percent
23 certain. Am I understanding you right?
24 A One can't claim causation on the basis of
25 events that occur simultaneously or on the basis of

1 correlations. The two things that you are talking about
2 happened at the same time. There is lots of evidence
3 about what was going on in the schools and changes that
4 occurred that one might reasonably believe would lead to
5 changes in student performance, but it is not possible
6 to say it's a cause, per se, in the statistical sense.
7 Q Do you think that that is what happened,
8 though, that the statewide assessment system resulted in
9 an increase -- resulted in an increase in academic
10 performance?
11 MR. SALVATY: Objection. Calls for
12 speculation.
13 THE WITNESS: I believe your question is too
14 narrow. The assessment system measured changes that
15 occurred. The changes that occurred were likely the
16 result of variables such as teacher professional
17 development, teaching the new curriculum that had been
18 adopted, using materials and other methods for helping
19 students to be remediated when they were not successful
20 and so on.
21 BY MR. ROSENBAUM:
22 Q Have you seen any data that would cause you to
23 question the results of student outcomes from year to
24 year on the Texas assessment exam?
25 MR. SALVATY: Objection. Vague and ambiguous.

1 Is the question "results"?

2 MR. ROSENBAUM: Yes.

3 THE WITNESS: If you are asking about the
4 possibility of inappropriate test preparation and other
5 problems of that type, Texas has discovered some and
6 they continue to police that area. It has not been
7 large.

8 BY MR. ROSENBAUM:

9 Q When did Texas -- When did you learn about what
10 Texas detected?

11 A Many years ago. They have been doing this for
12 a long time.

13 Q My question actually is a little bit
14 different. My question is: Have you -- and maybe I
15 didn't say it well. Have you seen anything, any data or
16 any information or any reports that would cause you to
17 question whether or not the increases in the student
18 performance that you referred to me -- Let me strike
19 that.

20 Do you remember you talked to me yesterday
21 about the decrease and you said to me -- in one of your
22 tables, that was reflected in one of your tables, and
23 you said to me, "There is some question about whether
24 that decrease was really a decrease."

25 Do you remember what we were talking about?

1 a decrease is not really a decrease. I'm generalizing.

2 Have you seen any data or any studies that
3 question, for whatever reason, whether or not the
4 increase in the Texas student performance really
5 reflects an increase in student proficiency other than
6 the cheating data that you talked to me about.

7 A In terms of psychometric quality, all of the
8 information I have suggests that the tests are developed
9 according to appropriate psychometric standards and I
10 would have no reason to question the psychometric
11 quality of those exams.

12 Q Okay.

13 A And I should also say I assume you are talking
14 about the TAAS exams because we were talking about the
15 litigation.

16 Q Yes, thank you. TAAS or any of its
17 successors. You understood that is what I was talking
18 about?

19 A I understood you to be talking specifically
20 about TAAS.

21 Q Okay. Have you ever read any scholarship that
22 questions whether or not student achievement in Texas
23 recorded on statewide assessment tests in Texas
24 accurately reflect increased proficiency by public
25 school students?

1 A I believe I recall that discussion.

2 Q Okay.

3 A About the California data.

4 Q Yes. That's right. I am not referring to that
5 table now. I am just using that as a table setter
6 here.

7 Have you seen any data or any information that
8 would cause you to conclude that some or all of the
9 increase in Texas student performance that you referred
10 to may not really be an increase other than the cheating
11 data that you just talked to me about?

12 MR. SALVATY: Objection. Vague and ambiguous.

13 THE WITNESS: The California data that you are
14 referring to in that table regarded an issue that I
15 raised based on using proportions from the test, that
16 is, raw score type data from the test that had not been
17 adjusted to a common scale. The Texas data that we are
18 referring to has -- involves tests that have all been
19 equated to a common scale and all of the numbers are on
20 the same scale, so that issue doesn't apply.

21 BY MR. ROSENBAUM:

22 Q And I appreciate that. I'm not being that
23 liberal. I'm not saying that it had to be a function of
24 the phenomenon that you just described for me. I was
25 just using it as an example of your telling me sometimes

1 A Not that I recall.

2 Q I wonder, Doctor, if you could please turn to
3 page 29 of your report. Do you have that in front of
4 you?

5 A Yes.

6 Q Directing your attention to the second column,
7 last sentence in the paragraph that is right under the
8 box with the Russell quote. It starts with the word
9 "But."

10 Do you see that paragraph?

11 A Yes.

12 Q Okay. I am interested in the second sentence.
13 "Educator and legislators in California,
14 like those in many states, have determined that
15 focusing on outcomes is preferable to continuing
16 to pursue the failed input-based policies of the
17 past."

18 Do you see that sentence?

19 A Yes.

20 Q And what is the -- When you say "failed input
21 policies of the past," what are you referring to?

22 A Programs that did not focus on student
23 outcomes.

24 Q Are there specific policies that you have in
25 mind?

1 A I think that's a more generic term for whatever
2 was being done to evaluate or monitor schools based on
3 inputs without looking at student outcomes.

4 Q Okay. And do you know whether or not -- Strike
5 that.

6 Can you give me any examples of such specific
7 policies?

8 A As you may note, that is footnoted to a
9 specific report. There may have been examples in the
10 report. I don't recall.

11 Q Okay. Besides what may appear in that report,
12 can you think of any other -- can you think of any
13 examples?

14 A I would need more data and more information to
15 be able to give you an answer on that.

16 Q Have you ever looked at any such data that you
17 can recall today?

18 MR. SALVATY: Objection. Vague as to what
19 data you are talking about.

20 THE WITNESS: Yes, I believe I have looked at
21 information related to that issue.

22 BY MR. ROSENBAUM:

23 Q What information is that?

24 A I don't recall at this time.

25 Q Okay. How do you determine if a policy fails

1 THE WITNESS: This is like what we talked about
2 the other day, that whatever criteria are used are
3 tailored specifically to the particular situation. You
4 have to look and see and then you design your research
5 to elicit information that is relevant.

6 BY MR. ROSENBAUM:

7 Q What I am trying to find out, Doctor, is have
8 there been situations where you have applied criteria to
9 determine whether or not a policy has succeeded or
10 failed consistent with your use of those words on page
11 29 of your report?

12 A If you are asking me for a specific list of
13 criteria that I personally used, I am telling you that I
14 don't have any such specific list.

15 Q That's not -- I appreciate that answer, but
16 that is not my question.

17 My question is: Have there been situations, to
18 go back to your answer two questions ago, where you have
19 applied criteria to determine whether or not a policy
20 has succeeded or failed within the meaning of those
21 words on page 29 of your report?

22 MR. SALVATY: Objection. Vague, ambiguous and
23 overbroad.

24 THE WITNESS: I have read the work of others
25 who have done that.

1 in the context of this sentence?

2 MR. SALVATY: Objection. Vague. How does
3 Dr. Phillips determine that?

4 MR. ROSENBAUM: Yes. Thank you.

5 MR. SALVATY: Objection. Incomplete
6 hypothetical.

7 THE WITNESS: It would depend on the particular
8 situation.

9 BY MR. ROSENBAUM:

10 Q Are there criteria that you would apply to
11 determine whether or not a policy has failed as you use
12 those words in your report at page 29? Can you think of
13 any criteria you could reply?

14 A One possibility would be looking at student
15 achievement.

16 Q Okay. Can you think of any other examples?

17 A Again, I think it would depend on the specific
18 policy you are talking about and the context in which it
19 occurred.

20 Q Well, based on your experience, can you
21 articulate for me instances where you have looked at
22 policies and applied the criteria to determine whether a
23 particular policy has succeeded or failed?

24 MR. SALVATY: Objection. Overbroad, vague and
25 ambiguous.

1 BY MR. ROSENBAUM:

2 Q My first question is: Have you ever done that
3 yourself?

4 MR. SALVATY: Same objections.

5 THE WITNESS: If you are asking me if I have
6 ever written a report like that, I don't recall having
7 done that.

8 BY MR. ROSENBAUM:

9 Q Or conducted any research like that, whether
10 you wrote a report or not?

11 MR. SALVATY: Objection. Vague and ambiguous.

12 THE WITNESS: I don't understand what you are
13 talking about.

14 BY MR. ROSENBAUM:

15 Q Well, have you ever undertaken any such
16 investigation of a situation to determine whether or not
17 a policy has succeeded or failed within the meaning of
18 those words as used on page 129? You told me you
19 haven't done a report. I am saying to you, okay, I
20 appreciate that, but have you ever, in fact, done the
21 work to determine whether or not in a situation a policy
22 has succeeded or failed?

23 MR. SALVATY: Objection. Vague, ambiguous, and
24 overbroad.

25 THE WITNESS: I have been involved in

1 discussions in which those sorts of things have been
2 talked about.

3 BY MR. ROSENBAUM:

4 Q Okay. What discussions are those?

5 A I don't recall anything specific at this time.

6 Q And when you said "the research of others" --
7 Remember you said that two or three questions ago.

8 A Perhaps it would have been better if I had said
9 work of others or data collection of others.

10 Q Okay. With respect to the work of others, what
11 is the basis of that answer? Whose work?

12 A I don't recall anything specific at this time.

13 Q Are you aware, Doctor, of any systems in the
14 State of California that prevent, detect and correct
15 shortages of textbooks in classrooms?

16 MR. SALVATY: Could I have that reread, the
17 first three words.

18 (Record read as follows:

19 "Question: Are you aware, Doctor, of
20 any systems in the State of California
21 that prevent, detect and correct
22 shortages of textbooks in classrooms?")

23 MR. SALVATY: Objection. Overbroad. And
24 vague.

25 THE WITNESS: I don't recall having seen any

1 that you supply in the report?

2 MR. SALVATY: Objection. Vague and ambiguous.

3 THE WITNESS: The best I can tell you is it is
4 something I recall having seen.

5 MR. ROSENBAUM: I can't specify what I want,
6 but I would appreciate it if you would talk to the
7 witness. I think I have established a basis to get the
8 report that she is referring to.

9 MR. SALVATY: Okay. I disagree with you.

10 BY MR. ROSENBAUM:

11 Q Do you remember who supplied you with that --
12 Was it a report, Doctor?

13 A I just don't recall.

14 Q Okay. Did you regard -- If you don't remember,
15 you just tell me that. But did you form a judgment,
16 Doctor, as to whether or not you believed that the
17 system -- that there was a system that prevented,
18 detected and corrected the facilities overcrowding in
19 public schools?

20 MR. SALVATY: A single system that does these
21 three things?

22 MR. ROSENBAUM: Did any one of those three
23 things.

24 MR. SALVATY: Objection. Vague, ambiguous,
25 overbroad.

1 data about that.

2 BY MR. ROSENBAUM:

3 Q Are you aware of any systems in the State of
4 California that prevent or detect and correct facilities
5 overcrowding in the State of California with respect to
6 public schools?

7 MR. SALVATY: Objection. Vague, ambiguous,
8 overbroad, compound.

9 THE WITNESS: I read something that I don't
10 recall the source about information that was being
11 collected for the board so the board could better assess
12 the facilities issue.

13 BY MR. ROSENBAUM:

14 Q Do you remember anything about what you read?

15 A I don't remember anything more than that.

16 Q When did you read that?

17 A Sometime during the preparation of my report.

18 Q Okay. Did you rely on that for any purpose in
19 your report?

20 A I don't think it is referenced in my report.

21 Q Did you rely upon it for any of the judgments
22 or background that you used in your report?

23 A It is something I recall seeing. I don't think
24 it's related to any of the conclusions in my report.

25 Q How about some of the background information

1 MR. ROSENBAUM: That is what my other question
2 was aimed at, also.

3 THE WITNESS: I don't recall any additional
4 information about what I saw.

5 BY MR. ROSENBAUM:

6 Q Doctor, could you turn to page 37 of your
7 report, please.

8 Do you have that in front of you?

9 A Yes.

10 Q And I am looking in particular, Doctor, at the
11 first full paragraph in the second column and in
12 particular about the second sentence.

13 "When a student performs poorly on such a
14 test, it is the responsibility of the school
15 and the student's teacher to collect
16 additional information to diagnose the reason
17 or reasons."

18 Do you see that sentence?

19 A Yes.

20 Q Now, when you use the word "responsibility," do
21 you mean legal responsibility?

22 A Give me a minute here. I would like to look at
23 the context on it.

24 Q Sure.

25 A Okay.

1 Q So my first question is: When you use the word
2 "responsibility" in this sentence, did you mean legal
3 responsibility?

4 A I meant educational responsibility.

5 Q Okay. And the judgment that it is the
6 educational responsibility, do you regard that as an
7 opinion that is based in psychometric principles?

8 MR. SALVATY: Objection. Vague and ambiguous.

9 THE WITNESS: Yes.

10 BY MR. ROSENBAUM:

11 Q Explain to me how that is.

12 A As I explain in the previous column,
13 standardized achievement tests can only give you a
14 snapshot of performance. It's a sample from the domain.
15 So psychometricians would advise clients using these
16 tests that if a student scores poorly, that test is not
17 going to tell you what the problem is. It will give you
18 subscores or skill scores or item data to give you clues
19 where to go look, but you need to collect additional
20 information and it is generally believed that the
21 appropriate vehicle for doing that is local assessments
22 and information that would be collected by the classroom
23 teacher.

24 Q If it turned out after further investigation
25 that the reason that students in a classroom performed

1 THE WITNESS: If a student has been absent an
2 excessive amount of time so that they were not present
3 when instruction was given and therefore scored poorly,
4 then one might consider the absence as the primary
5 cause; and if it were due to some illness, certainly the
6 teacher would not be responsible for that.

7 BY MR. ROSENBAUM:

8 Q Can you think of any other circumstances?

9 MR. SALVATY: Same objections.

10 THE WITNESS: That's all that comes to mind at
11 the moment.

12 BY MR. ROSENBAUM:

13 Q Thank you. Doctor, if decision-makers as to
14 whether or not the Stanford Test should be replaced by
15 the CAT6 were in possession of information that was
16 deemed reliable that the CAT6 was rated as far less
17 aligned to California standards than the Stanford Test,
18 would you think that it was a reasonable decision to
19 replace the Stanford Test with the CAT6?

20 MR. SALVATY: Objection. Incomplete
21 hypothetical.

22 THE WITNESS: As we talked about at length
23 yesterday, making a decision like that is never based on
24 a single variable. That would be one piece of
25 information among many that would have to be weighed and

1 poorly on a test was because there were not books or
2 textbooks available that included that information,
3 would you regard it as the teacher's responsibility and
4 the school's responsibility to cure those problems in
5 all instances?

6 MR. SALVATY: Objection. Incomplete
7 hypothetical, vague and ambiguous.

8 THE WITNESS: Do you remember we had our
9 discussion about causation? I believe it would be very
10 difficult to attribute a single variable like that as
11 the cause of the problem. So I don't think I accept
12 your premise in the way you have described it.

13 BY MR. ROSENBAUM:

14 Q Okay. Can you think of any circumstances in
15 which it would not be the responsibility of a school and
16 the teacher to cure the problem?

17 MR. SALVATY: I object to the extent we are
18 getting into legal judgments here. I think you are
19 asking for improper opinion --

20 MR. ROSENBAUM: I am not asking --

21 MR. SALVATY: -- to that extent.

22 MR. ROSENBAUM: I am asking for a psychometric
23 judgment.

24 MR. SALVATY: Object that it is also an
25 incomplete hypothetical.

1 considered in making that judgment.

2 BY MR. ROSENBAUM:

3 Q If you were asked your advice as to how to
4 weigh that factor by a decision-maker, what would you
5 say?

6 MR. SALVATY: Objection. Incomplete
7 hypothetical.

8 THE WITNESS: I would say that I need a lot
9 more information.

10 BY MR. ROSENBAUM:

11 Q And that information would be what?

12 A All the facts and circumstances surrounding the
13 program and the proposals that had been put forth.

14 Q When you say "program," what do you mean?

15 A The assessment program and the accountability
16 system.

17 Q And I want you to assume it is the California
18 assessment system and the California accountability
19 program as you are familiar with it at the present
20 time.

21 Are there additional facts that you believe you
22 would need to offer an opinion?

23 A Yes.

24 Q What would they be?

25 A I would want to see all the proposals that were

1 submitted to California.
 2 Q Okay. If the only proposals that were
 3 submitted was the CAT6 proposal and the Stanford
 4 proposal, is there any additional information you would
 5 need?
 6 A That's all I can think of at the moment.
 7 Q Is there any information that you could
 8 conceive of -- Strike that.
 9 Could you turn to page 44, please. Do you have
 10 that in front of you?
 11 A Yes.
 12 Q And I am looking at the top of the second
 13 column and the particular sentence that I want to direct
 14 your attention to is the first full sentence in that
 15 column.
 16 "These incentives encouraged 'students'
 17 to target their resources at the most
 18 educational needy students."
 19 Do you see that?
 20 A Yes. And it is "schools," I believe.
 21 Q It sure is. Thank you.
 22 Do you have any evidence, Doctor, that public
 23 schools in California are targeting their resources at
 24 the most educationally needy students?
 25 MR. SALVATY: Objection. Overbroad.

1 THE WITNESS: I would like a minute to look at
 2 this, please.
 3 BY MR. ROSENBAUM:
 4 Q Sure.
 5 A Okay.
 6 Q My question is: Do you have any evidence that
 7 supports the statement that schools are targeting their
 8 resources -- That's not what you said.
 9 Do you have any evidence that public schools in
 10 California are targeting their resources at the most
 11 educationally needy students?
 12 MR. SALVATY: Objection. Vague and ambiguous.
 13 THE WITNESS: Yes.
 14 BY MR. ROSENBAUM:
 15 Q What evidence is that?
 16 A There was information provided I think either
 17 to the advisory committee or to the board about
 18 improvement of ELL students and the likelihood of
 19 schools with greater percentages of ELL students making
 20 their API targets.
 21 Q Any other evidence?
 22 A There has been improvement in other groups as
 23 well in test scores over time.
 24 Q When you say "other groups," what do you mean
 25 by that?

1 A Historically disadvantaged groups.
 2 Q Okay. And are you equating historically
 3 disadvantaged groups with educationally needy students?
 4 A They are one group of students that
 5 historically have scored low on standardized achievement
 6 tests and appear to need additional resources and
 7 remediation to improve.
 8 Q And can you tell me how the data that you are
 9 referring to supports the conclusion that the schools
 10 are targeting their resources -- Strike that.
 11 What do you mean by "resources"?
 12 A I think it has the usual meaning in the
 13 schools.
 14 Q Tell me what the usual meaning is.
 15 A Resources are typically thought to be human
 16 resources and monetary resources.
 17 Q Okay. If there were data, Doctor, that showed
 18 that ELL students -- the performance of ELL students
 19 declined at schools, would you conclude from that that
 20 schools were targeting their resources away from
 21 educationally needy students?
 22 MR. SALVATY: Objection. Incomplete
 23 hypothetical. Vague and ambiguous.
 24 THE WITNESS: I believe you are asking a
 25 causation question again and that would be difficult to

1 pinpoint to a specific factor. Beyond that, if you are
 2 talking about correlational kinds of information, you
 3 need a lot more information to try to assess the
 4 situation in a particular circumstance.
 5 MR. SALVATY: We have been going a little over
 6 an hour, Mark.
 7 MR. ROSENBAUM: We have. Let's go off the
 8 record for a minute.
 9 (Luncheon recess taken from 12:06 p.m.
 10 to 1:20 p.m.)
 11 BY MR. ROSENBAUM:
 12 Q Are you doing okay, Doctor?
 13 A Yes.
 14 Q Let's mark as Exhibit 3 to this deposition a
 15 several-page document I represent is part of the
 16 turnover by the defendants. And I have marked and
 17 supplied Mr. Salvaty with a copy and have had it placed
 18 in front of the witness.
 19 (Phillips' Exhibit 3 was marked for
 20 identification by the court reporter.)
 21 BY MR. ROSENBAUM:
 22 Q Have you just read what has been marked as
 23 Exhibit 3?
 24 A Yes.
 25 Q Are you familiar with this document?

1 A Not I recall.
 2 Q Look at page 94191 of Exhibit 3. I am
 3 referring, Doctor, to the citations that are in the
 4 lower right-hand corner.
 5 Do you see that?
 6 A Yes.
 7 Q Do you have that in front of you?
 8 A Yes.
 9 Q Were you part of a team that included
 10 superintendent Eastin, Scott Hill, Paul Warren, a
 11 representative of HumRRO, a representative of AIR,
 12 Suzanne Tacheny and John Mockler?
 13 MR. SALVATY: Objection. Vague.
 14 THE WITNESS: I was part of that group of
 15 individuals that made presentations or talked to them
 16 about these issues.
 17 BY MR. ROSENBAUM:
 18 Q First of all, can you speak up just a little
 19 bit.
 20 When you say "these issues," do you mean issues
 21 around the High School Exit Exam?
 22 A Yes.
 23 Q And who was the audience? Did it include
 24 superintendent Easton?
 25 A I believe that there were a lot of people who

1 attended, but I don't recall specifically who was
 2 there.
 3 Q When you say "a lot of people," what do you
 4 mean?
 5 A A room full.
 6 Q This meeting -- This was on or about October
 7 30th?
 8 MR. SALVATY: Objection. What was on or
 9 about?
 10 MR. ROSENBAUM: The meeting.
 11 MR. SALVATY: The meeting referenced in the
 12 letter?
 13 MR. ROSENBAUM: Yes. October 30, 2000.
 14 THE WITNESS: That appears to be the date on
 15 this memo but, having read it, I believe that the memo
 16 probably preceded the meeting. So I'm not sure exactly
 17 what the date was of the meeting.
 18 BY MR. ROSENBAUM:
 19 Q Okay. Was it in the year 2000?
 20 A I think that's likely, but I don't know for
 21 sure.
 22 Q Okay. And did you at a meeting outline
 23 problems with respect to the High School Exit Exam that
 24 you perceived?
 25 MR. SALVATY: Objection. Vague.

1 THE WITNESS: I remember having a discussion
 2 about this emergency legislation that they were planning
 3 to try to pass.
 4 BY MR. ROSENBAUM:
 5 Q And what did you understand to be the purpose
 6 of the emergency legislation?
 7 A To make some changes to the statute regarding
 8 the high school exit examination.
 9 Q And what changes did you understand to be under
 10 consideration?
 11 MR. SALVATY: Are you talking about the
 12 legislation?
 13 MR. ROSENBAUM: Yes.
 14 MR. SALVATY: Objection. Vague.
 15 THE WITNESS: I did not see the drafts that
 16 they were working from, as least as I remember. I know
 17 a general issue that was discussed extensively about
 18 that that is related to psychometrics.
 19 BY MR. ROSENBAUM:
 20 Q Which is what?
 21 A The issue of testing in ninth grade.
 22 Q And when you say "with respect to
 23 psychometrics," that is the capacity which you were
 24 operating with; is that right? You were there to talk
 25 about psychometrics issues; that was your understanding?

1 A That's my recollection of this.
 2 Q Okay. Let me ask you if you would turn the
 3 page to 94192, still with Exhibit 3.
 4 Did you deliver a presentation at a meeting
 5 about -- Strike that.
 6 Do you see the third bullet under "Summary of
 7 Issues":
 8 "Legal challenges to high stakes
 9 accountability measures are a near certainty
 10 for California. Experts suggest that
 11 California has less than a 5 percent chance
 12 of success in any such challenge. A ruling
 13 overturning California's exit test jeopardizes
 14 the entire accountability program. The state
 15 of Texas successfully defeated such lawsuit
 16 through prudent test development and rollout."
 17 Do you see that?
 18 A Yes.
 19 Q Is that accurate, to your knowledge?
 20 MR. SALVATY: Objection. Overbroad.
 21 MR. ROSENBAUM: It is not a good question.
 22 BY MR. ROSENBAUM:
 23 Q Were you involved in discussion about potential
 24 legal challenges to the High School Exit Exam?
 25 A My recollection is that I talked to them about

1 the test, yes.

2 Q Do you remember hearing at any point that
3 California has less than a 5 percent chance of success
4 in any such challenge?

5 A No, I don't recall that.

6 Q Did you ever make an analysis of the likelihood
7 of the success of a challenge to the High School Exit
8 Exam?

9 A I doubt it. I don't recall that.

10 Q The statement that I -- One of the statements
11 that I read to you, "A ruling overturning California's
12 exit test jeopardizes the entire accountability
13 program," do you agree or disagree with that statement?

14 MR. SALVATY: Objection. Vague and ambiguous.

15 THE WITNESS: I would state it a little bit
16 differently. If you are talking about the general
17 notion of having a legal challenge to the High School
18 Exit Exam and having that go against California, since
19 that is part of the accountability index and it was
20 planned at that point, that would certainly have an
21 effect on the accountability system.

22 BY MR. ROSENBAUM:

23 Q How would you appraise that effect?

24 MR. SALVATY: Objection. Lacks foundation,
25 calls for speculation.

1 has carefully reviewed California's status and
2 also recommends a delay in implementation."

3 Do you see that bullet point?

4 A Yes, I do.

5 Q Okay. Did you review California's status?

6 MR. SALVATY: Objection. Vague.

7 THE WITNESS: I don't know for sure what the
8 writer means by that. If you are referring to knowledge
9 of the High School Exit Exam, I had knowledge of the
10 statute and how the test was being developed and so on.

11 BY MR. ROSENBAUM:

12 Q And you had a contract with California to
13 perform psychometric evaluation of the High School Exit
14 Exam and the process of its development and
15 implementation; is that a correct statement?

16 A I had a consulting contract.

17 Q Okay. And how much were you to be paid for
18 that?

19 A I don't recall for sure what rate was in effect
20 at that time.

21 Q It was an hourly rate?

22 A Yes.

23 Q Okay. And what did you understand to be the
24 parameters of your work regarding that consultation
25 agreement?

1 THE WITNESS: It is hard to say without
2 knowing the nature of the challenge and what the judge
3 said and at what point the accountability program was in
4 its development when that happened.

5 BY MR. ROSENBAUM:

6 Q What if there were a decision now that
7 invalidated the High School Exit Exam, how would that --
8 what effect would that have on the entire accountability
9 program, as you understand it?

10 MR. SALVATY: Objection. Incomplete
11 hypothetical, vague and ambiguous, calls for
12 speculation, asked and answered.

13 THE WITNESS: I can't tell without knowing what
14 is meant by "invalidating" and what the judge said about
15 it.

16 MR. ROSENBAUM: Okay.

17 Q Could you turn the page, please. Actually,
18 turn two pages, please, 94194.

19 Do you have that in front of you of Exhibit 3?

20 A Yes.

21 Q At the top of the page it says:

22 "On" and then there is a blank, comma,
23 "California contract of Dr. Susan Phillips,
24 the legal and testing expert who wrote the
25 successful legal opinion for Texas. Dr. Phillips

1 A To attend meetings about the High School Exit
2 Exam.

3 Q Anything else?

4 A Phone conversations.

5 Q Anything else?

6 A That's all I recall.

7 Q Did you believe that you had certain
8 responsibilities in terms of undertaking certain
9 analyses or reviews with respect to the High School Exit
10 Exam?

11 MR. SALVATY: Objection. Vague.

12 THE WITNESS: With respect to that consulting,
13 I did what I was asked to do by the state.

14 BY MR. ROSENBAUM:

15 Q Okay. And, again, your understanding is that
16 you were supposed to act in a psychometrics capacity?

17 MR. SALVATY: Objection. Vague and ambiguous.

18 THE WITNESS: My understanding is that they
19 were interested in my psychometric expertise and my
20 knowledge of the Texas case.

21 BY MR. ROSENBAUM:

22 Q Okay. Did you ever recommend a delay in the
23 implementation of the High School Exit Exam?

24 A I believe I probably did. I don't have a
25 specific recollection of making specific

1 recommendations, but the sum total of what I presented
2 them certainly could be taken that way.

3 Q And could you tell me the basis of your answer,
4 please.

5 MR. SALVATY: Objection. Vague and ambiguous.

6 THE WITNESS: It's my best recollection about
7 this.

8 BY MR. ROSENBAUM:

9 Q I understand that. But what I am saying is --

10 Well, could I have the witness's answer read
11 back. Not the last one, but the one immediately
12 preceding that, please.

13 (Record read as follows:

14 "Answer: I believe I probably did. I
15 don't have a specific recollection of
16 making specific recommendations, but
17 the sum total of what I presented them
18 certainly could be taken that way.")

19 BY MR. ROSENBAUM:

20 Q Did you present them anything in writing?

21 A Not that I recall.

22 Q What was the sum total of what you presented,
23 to use your phrase?

24 MR. SALVATY: It is using her phrase in a
25 different context, so I object to its use.

1 Q What did you tell them about, that would cause
2 you to conclude that the sum total could be construed to
3 recommend a delay in implementation?

4 MR. SALVATY: Objection. It mischaracterizes
5 testimony.

6 THE WITNESS: If you are asking what
7 specifically about the Texas case would recommend a
8 delay, I don't know that I would make that connection,
9 per se.

10 BY MR. ROSENBAUM:

11 Q Of course, that is not my question.

12 My question is: What did you tell them in
13 substance that caused you to conclude that they -- that
14 that might add up to, in terms of the sum total, a
15 recommendation for a delay in implementation?

16 MR. SALVATY: Objection. That mischaracterizes
17 testimony.

18 THE WITNESS: I don't recall very specifically
19 all the things we discussed at that meeting, but I do
20 believe that we talked fairly extensively about the
21 psychometric issue of the ninth grade testing.

22 BY MR. ROSENBAUM:

23 Q What I am interested in, Doctor, is what you
24 talked about right now. Tell me what you said at that
25 meeting that you recall.

1 MR. ROSENBAUM: I want, Paul -- When she said,
2 "the sum total of what I presented," that's what I want
3 to know.

4 Q What do you mean by that?

5 A I mean the discussions that we had about the
6 High School Exit Exam and all of the information that
7 was discussed.

8 Q Did you make a presentation, go to the front of
9 a room and make a presentation to the people in the
10 audience?

11 A I don't recall if I actually went to the front
12 of the room or not.

13 Q Did you stand up when you made your
14 presentation?

15 A I just don't recall.

16 Q Okay. Who chaired that meeting?

17 MR. SALVATY: Objection. Lacks foundation.

18 THE WITNESS: If you are talking about this
19 gathering that the memo referred to, several people
20 coming to talk to the state, I don't recall.

21 BY MR. ROSENBAUM:

22 Q What did you tell the audience? I want the
23 substance of what you told them, please.

24 A My recollection is that there were a variety of
25 topics discussed, including the Texas case.

1 MR. SALVATY: Objection. Asked and answered.

2 THE WITNESS: I don't recall specifically what
3 I said. I recall that we talked about that issue.

4 BY MR. ROSENBAUM:

5 Q Did you talk about other issues as well, you
6 personally, Doctor?

7 A As I indicated, I believe we talked about the
8 Texas case.

9 Q Okay. You used the pronoun "we." I am
10 interested in what you talked about, Doctor. Did you
11 talk about the Texas case?

12 A I believe I did.

13 Q Okay. What did you say about the Texas case as
14 it related to the California High School Exit Exam?

15 A I don't recall specifically what we talked
16 about.

17 Q Do you recall what you talked about generally?

18 A I don't recall specifically what I said to
19 anyone at that meeting.

20 Q Do you recall generally what you said?

21 A Yes.

22 Q What was that?

23 A The general topics that we talked about were
24 the psychometric issue around the ninth grade testing
25 and the Texas case.

1 Q Anything else?
 2 A I don't recall anything else at this time.
 3 Q What did you say about the ninth grade issue?
 4 A Again, I don't recall specifically what I said
 5 during that meeting.
 6 Q Do you recall anything generally that you said
 7 at that meeting?
 8 A I recall that it was discussed and I believe
 9 extensively. I don't recall specifically what I said.
 10 Q Do you recall a single thing that you said at
 11 that meeting?
 12 MR. SALVATY: I just object that she has
 13 already testified about some things that were said
 14 generally.
 15 THE WITNESS: Could you ask your question
 16 again, please.
 17 BY MR. ROSENBAUM:
 18 Q Sure. Do you recall anything specifically or
 19 generally that you said at that meeting?
 20 A Yes.
 21 Q What is that?
 22 A I recall generally that we talked about the
 23 psychometric issue of the ninth grade testing and the
 24 Texas case.
 25 Q Do you recall anything that you said about the

1 Texas case?
 2 A I don't recall anything specific.
 3 Q Do you recall anything in general that you said
 4 about the Texas case?
 5 A I don't recall what I said, if anything, about
 6 the Texas case.
 7 Q Do you recall anything that you said about the
 8 ninth grade issue?
 9 A I know that issue was discussed. I don't
 10 recall what I said.
 11 Q Looking at page 94194 of Exhibit 3 in the
 12 second bullet, do you see where it says:
 13 "Dr. Phillips recommends that the system
 14 be changed to administer the test to 10th
 15 graders because the test must be 'piloted'
 16 on the student for whom all consequences
 17 apply"?
 18 Do you see that sentence?
 19 A Yes.
 20 Q Does that refresh your recollection as to what
 21 you said at that meeting?
 22 MR. SALVATY: I would just object that this
 23 doesn't purport to be a summary of what Dr. Phillips
 24 said.
 25 MR. ROSENBAUM: That's an inappropriate

1 statement.
 2 MR. SALVATY: I think the question --
 3 MR. ROSENBAUM: I didn't say it was a summary
 4 but that's beside the point.
 5 MR. SALVATY: -- was vague and ambiguous.
 6 THE WITNESS: As I have already indicated to
 7 you, I don't recall specifically what I said at that
 8 meeting.
 9 BY MR. ROSENBAUM:
 10 Q Was that your view at that point, Doctor, on or
 11 about October 30, 2000, that the system needed to be
 12 changed to administer the test to 10th graders because
 13 the test must be piloted to the student for whom all
 14 consequences apply?
 15 A I believe that I recommended to them that that
 16 would be the psychometrically best way to approach it.
 17 Q Was that done?
 18 A Yes.
 19 Q And was it done by statute?
 20 A My understanding is that it was. I didn't see
 21 the specific change in writing.
 22 Q Did you make any other recommendations?
 23 A Not that I recall.
 24 MR. ROSENBAUM: Let me mark, please, as
 25 Exhibit 4 to this deposition a one-page document. It

1 says "Technical Committee - advising the HSEE panel,"
 2 and it is Bates stamp DOE94634. I will have it marked
 3 and supply a copy to counsel and let me ask that it
 4 please be placed in front of the witness.
 5 (Phillips' Exhibit 4 was marked for
 6 identification by the court reporter.)
 7 BY MR. ROSENBAUM:
 8 Q Have you had a chance to look at what has been
 9 marked as Exhibit 4?
 10 A Yes.
 11 Q Doctor, this next question doesn't relate to
 12 it, so I don't want to confuse you.
 13 Did you at any point hold the belief that the
 14 High School Exit Exam in California should have its
 15 implementation delayed?
 16 MR. SALVATY: Objection. Asked and answered.
 17 THE WITNESS: I believe we already talked about
 18 that in conjunction with the memo on the psychometric
 19 issue with the ninth grade testing.
 20 BY MR. ROSENBAUM:
 21 Q On any other occasion or for any other reason
 22 did you ever hold the view that the High School Exit
 23 Exam should have its implementation delayed?
 24 MR. SALVATY: Objection. Vague.
 25 THE WITNESS: Those same issues were probably

1 talked about on more than one occasion.
 2 BY MR. ROSENBAUM:
 3 Q The same issues relating to ninth graders; is
 4 that what you mean?
 5 A Yes.
 6 Q Okay. Did you -- or have you for any other
 7 reason ever held the view that the High School Exit Exam
 8 should have its implementation delayed?
 9 MR. SALVATY: Objection. Vague.
 10 THE WITNESS: You are asking about time and I
 11 am saying, yes, I think there were other times that that
 12 was discussed.
 13 MR. ROSENBAUM: Maybe my question was
 14 confusing.
 15 Q If I understood you correctly, you said to me
 16 the issue of ninth grade piloting or tenth grade
 17 piloting, that came up on more than one occasion; is
 18 that right?
 19 A That's my best recollection.
 20 Q Okay. Put aside that issue. For any other
 21 reason have you ever held the view that the High School
 22 Exit Exam should have its implementation delayed?
 23 A If you are asking about things outside of
 24 psychometrics, I have not advised anybody about anything
 25 other than my psychometric views regarding that.

1 Q Okay. For reasons other than psychometrics,
 2 have you ever had the view that the High School Exit
 3 Exam should have its implementation delayed?
 4 MR. SALVATY: Objection. Vague.
 5 THE WITNESS: Not that I recall.
 6 BY MR. ROSENBAUM:
 7 Q Okay. Have you ever had the view that the High
 8 School Exit Exam should have its implementation
 9 suspended, that is, once implemented have you ever had
 10 the view that the implementation of the High School Exit
 11 Exam should be suspended?
 12 A If you are asking did I ever express the view
 13 that there should not be a High School Exit Exam, no.
 14 Q That is not the question I am asking you.
 15 I am asking you the question: Once the High
 16 School Exit Exam was implemented in California, did you
 17 ever hold a view that its implementation should be
 18 suspended for any period of time?
 19 MR. SALVATY: Objection. Vague.
 20 THE WITNESS: I'm confused about the difference
 21 between delaying and suspending. To me, suspending is
 22 to stop having the test and, to the best of my
 23 knowledge, I did not ever express that view.
 24 BY MR. ROSENBAUM:
 25 Q That's a fair point. Let me see if I can

1 paraphrase my question a bit.
 2 Let's assume for hypothetical purposes, out of
 3 the universe of what happened, the High School Exit Exam
 4 is implemented for 20 years and then someone says, "I
 5 don't think we should give it for the next five years
 6 and then we can consider resuming it," or it is
 7 administered for 20 years, "I think that it should be
 8 suspended for two years and then we will consider
 9 whether or not we should resume it, but we are not
 10 permanently disabling it." That is what I am getting
 11 at.
 12 Did you at any point in the process since the
 13 High School Exit Exam has gone into effect believe that
 14 its administration should be stopped for any period of
 15 time?
 16 A If you are talking about a situation where the
 17 Exit Exam is given -- administered to students and then
 18 it is not administered for some relatively short period
 19 of time and then it is given again to students after
 20 that, no, I did not recommend that.
 21 Q Okay. Could I ask you if you could please take
 22 a look at Exhibit 4 -- Well, you have already had a
 23 chance to briefly review it?
 24 A Exhibit 4?
 25 Q Yes.

1 A Yes.
 2 Q Have you seen this document before?
 3 A Not that I recall.
 4 Q Do you see your name on this document under the
 5 category "Measurement"?
 6 A Yes.
 7 Q Were you part of a measurement committee or
 8 subcommittee with respect to the High School Exit Exam?
 9 A Not that I'm aware of.
 10 Q Maybe we can get you some more consulting fees
 11 here.
 12 A With the exception of the Technical Advisory
 13 Committee that I have already talked to you about.
 14 Q Do you know -- Do you see the names under
 15 "Measurement?" There are three, six, nine, twelve
 16 names, including yours.
 17 Do you see those names?
 18 A Yes.
 19 Q Do you know all of those people?
 20 A No.
 21 Q Do you know -- When I said "know," I meant do
 22 you know personally. Have you heard of all of those
 23 people?
 24 A Many, yes. Some, not that I recall.
 25 Q Who don't you recall?

1 A John Bianchini.
 2 Q B-i-a-n-c-h-i-n-i.
 3 Anyone else?
 4 A Chuck Weiss.
 5 Q W-e-i-s-s.
 6 Any others?
 7 A That's it.
 8 Q Do you have any idea what this refers to,
 9 referring to Exhibit 4?
 10 A As you probably notice, there is no date on
 11 it. It could refer to people that made presentations or
 12 advised in the early years of the development in some
 13 way at all, that is, advisers to the department
 14 generally. I don't know where it came from. I don't
 15 know who wrote it.
 16 Q Okay.
 17 A So I really don't know for sure what it refers
 18 to.
 19 Q The cover of your report, did you design that
 20 cover yourself?
 21 A Yes.
 22 Q And in the middle of the cover, you have
 23 "Content standards, API, achievement test and
 24 consequences."
 25 Do you see that?

1 A Yes.
 2 Q Why did you choose those four categories?
 3 A If you look on page 3 of my report, in the
 4 left-hand column I make a statement that "Academic
 5 accountability programs at the state level have three
 6 major components," and it is the academic content
 7 standards, the assessment instruments, and consequences.
 8 And so that is where the three -- the first three pieces
 9 come from.
 10 The third one is basically -- the major focus
 11 of the report is the API portion of the accountability
 12 system.
 13 Q And when you use the word "accountability,"
 14 what do you mean by that?
 15 A In the context of California, it is a system
 16 that holds schools accountable for student outcomes.
 17 Q Besides the issue of the pilot testing, were
 18 there any other psychometric issues at any point with
 19 respect to the High School Exit Exam that caused you to
 20 believe that the graduation requirement from the High
 21 School Exit Exam should be delayed?
 22 MR. SALVATY: Objection.
 23 BY MR. ROSENBAUM:
 24 Q At any point.
 25 MR. SALVATY: Objection. Mischaracterizes

1 testimony.
 2 THE WITNESS: There were other psychometric
 3 issues that were a consequence of the broader issue that
 4 we have talked about that were also discussed.
 5 BY MR. ROSENBAUM:
 6 Q What are they?
 7 A How to maintain the equating of the instrument,
 8 how to maintain its quality through pretesting of items.
 9 Q Any other issues?
 10 A Not that I recall.
 11 Q And did those issues cause you to think at some
 12 point that the implementation of the graduation
 13 requirement relating to the exam should be delayed?
 14 A Those issues were things that needed to be done
 15 prior to the test being used for that purpose, and the
 16 issue was a timing issue as to how quickly that could
 17 occur.
 18 Q Were they done?
 19 A As I indicated, that change was made to the
 20 statute and appropriate steps were taken accordingly.
 21 Q The subject matter of the percentage of kids
 22 passing and failing the High School Exit Exam, would
 23 that be a psychometric issue with respect to whether the
 24 exam would be delayed? I am just interested here in a
 25 categorization. If the issue is X percent of kids are

1 failing, should we or should we not delay implementation
 2 of the exam, would you characterize that as a
 3 psychometric issue?
 4 A Passing rates are a piece of psychometric data
 5 that is collected about tests. How that is used to make
 6 a decision is a policy issue.
 7 Q Okay. Were you ever present at any discussions
 8 where the subject matter of the passing rate came up in
 9 regards to whether the exam should have its
 10 implementation delayed?
 11 A I know I have seen that information and I know
 12 there were a lot of psychometric discussions about the
 13 test. I don't recall anything specific.
 14 Q When you say there were a lot of
 15 psychometric -- I'm sorry. What was your phrase again,
 16 please. I can have it read back.
 17 A There were a lot of psychometric issues
 18 discussed about the test.
 19 Q What were those psychometric issues you are
 20 referring to?
 21 MR. SALVATY: Other than those already
 22 discussed?
 23 MR. ROSENBAUM: Yes.
 24 THE WITNESS: As I had indicated to you, I was
 25 part of the Technical Advisory Committee about that test

1 and over the course of doing that advising, we dealt
 2 with all of the standards that are relevant to the
 3 development of such a test.
 4 BY MR. ROSENBAUM:
 5 Q Like cut scores, is that what you are referring
 6 to?
 7 A Yes.
 8 Q Any other standards you are referring to?
 9 A Standards on validity, reliability, test
 10 administration, equating all of the psychometric pieces,
 11 test development.
 12 Q Okay. Did you have a view as to whether or
 13 not -- Strike that.
 14 Did you ever hear anyone at any of the meetings
 15 say in sum or substance, "I think we should delay
 16 implementation of the graduation requirement as a
 17 function of the passing rates we are seeing here"?
 18 A Yes, I think so.
 19 Q And who do you recall saying that.
 20 A The person who was presenting the HumRRO
 21 evaluation report.
 22 Q And when was that?
 23 A I don't recall.
 24 Q And was it a man or a woman?
 25 A To the best of my recollection, it was a man.

1 Q And what did he say?
 2 A I don't recall specifically what he said.
 3 Q Could you give me your best recollection as to
 4 when this occurred?
 5 A I don't recall.
 6 Q Did you ever hear Superintendent Eastin express
 7 a view on that question?
 8 A Not that I recall.
 9 Q Or hear that she had a view on that question?
 10 A Not that I recall at this time.
 11 Q Did you ever hear Mr. Mockler express a view on
 12 that question?
 13 A I may have, but I don't recall it specifically.
 14 Q What is your best recollection?
 15 A My best recollection is I was in meetings that
 16 he also attended and I imagine he expressed viewpoints.
 17 I don't recall any of them specifically.
 18 Q After the HumRRO representative gave his
 19 statement, did you hear anyone make statements in
 20 agreement with that position?
 21 A He made that statement in summarizing the
 22 report in a large meeting setting and my recollection is
 23 that we just went on to the next presentation after that.
 24 Q Was this after the first administration of the
 25 exam, the second administration?

1 A I don't recall.
 2 Q I am just trying to fix it in time. Do you
 3 know which -- HumRRO has come out with a number of
 4 reports on the exam; is that right?
 5 A Yes.
 6 Q Did you hear him say it after -- And when a
 7 report is prepared, is it your experience that somebody
 8 from HumRRO comes and talks about the summary of results
 9 and recommendations?
 10 A I'm aware of at least one occasion where that
 11 was true. I don't know if it has been true every time.
 12 Q Is that the occasion that we have been talking
 13 about?
 14 A Yes.
 15 Q Do you have a recollection if it was after the
 16 first HumRRO report or the second or the third?
 17 A I don't recall which one it was.
 18 Q Okay. And can you tell me anything else about
 19 what the representative said?
 20 A I don't recall.
 21 Q Do you know who M. Gandal is, G-a-n-d-a-l?
 22 A The name sounds familiar, but I can't place it.
 23 Q Do you know who Al McGiffert,
 24 M-c-G-i-f-f-e-r-t, is?
 25 A Can you tell me what you are referring to?

1 Q Let me just ask you first without referring to
 2 anything. Is that a familiar name to you?
 3 A Well, my belief is you are probably referring
 4 to a particular report and it is an author of whatever
 5 report you are looking at.
 6 Q But independent of that, do you know anything
 7 about who McGiffert is?
 8 A No, I don't think so.
 9 Q Or Gandal?
 10 A No, I don't think so.
 11 Q Do you have any recollection of ever having
 12 read any scholarship or surveys or studies by either
 13 McGiffert or Gandal?
 14 A I may have. Not that I recall sitting here
 15 right now.
 16 Q Why don't you take a look, please, at footnote
 17 267. It is on page 71 of your report.
 18 MR. SALVATY: What page of the report?
 19 MR. ROSENBAUM: 71.
 20 Q Do you have that in front of you?
 21 A Yes.
 22 Q Okay. Do you see where the names Gandal and
 23 McGiffert appear on that page?
 24 A Yes.
 25 Q Does that refresh your recollection -- Strike

1 that.
 2 Does that help you in any way as to who either
 3 of those individuals are?
 4 A Only that they published an article.
 5 Q Okay. Do you know -- Have you ever heard of
 6 the firm Fairbank, Maslin, Maullin, M-a-u-l-l-i-n, &
 7 Associates?
 8 A Yes.
 9 Q Did you know about that firm prior to your work
 10 on this report?
 11 A No, I don't think so.
 12 Q Have you seen any other surveys conducted by
 13 Fairbank, Maslin, Maullin & Associates other than the
 14 survey that you include in your report?
 15 A Not that I recall.
 16 Q Do you know who any of those individuals are,
 17 Fairbank, Maslin or Maullin?
 18 A I don't know them personally, if that is what
 19 you are asking.
 20 Q Okay. Do you know the background or the
 21 credentials of any of those individuals?
 22 A No.
 23 Q Do you know what the methodology -- Strike
 24 that.
 25 Have you examined the instrument that was used

1 A I may have had information about that at one
 2 time, but I don't recall it right now sitting here.
 3 Q Okay. Could you turn, please, to page 73 of
 4 your report. The last sentence on that page, Doctor,
 5 what does "monotonic" mean?
 6 A Give me a minute to review the context,
 7 please.
 8 Q Sure.
 9 A Okay.
 10 Q Okay. Can you explain what that word means in
 11 the context in which you utilize it?
 12 A Yes. Probably the easiest way is to look at
 13 Table 12.
 14 Q Okay.
 15 A And if you look at the variables ECREd,
 16 E-C-R-E-D, which is emergency credentialed teachers, and
 17 this is given in percents, if you look at the top, at
 18 the first decile you have 20.3 and then as you go down
 19 the list, the value always gets smaller.
 20 Q I see. Did you construct any tables or charts
 21 that you ended up deciding not to put in your report?
 22 A Not that I recall.
 23 Q Okay. I want to talk to you about Texas for a
 24 few moments.
 25 You talked to me about TAAS, do you remember?

1 for the survey that is referred to on page 71 of your
 2 report by Fairbank, Maslin, Maullin & Associates?
 3 A On page 71?
 4 MR. SALVATY: Bottom right.
 5 BY MR. ROSENBAUM:
 6 Q It is in the bottom corner, bottom right
 7 corner.
 8 A I'm sorry. I'm not finding it.
 9 Q It says "California Opinion Data." Do you see
 10 that?
 11 A Oh, in the text. I was looking for footnotes.
 12 Q I'm sorry.
 13 A All right.
 14 Q Did you examine the instrument that was
 15 utilized for that survey?
 16 A Yes.
 17 Q Do you know how the survey was conducted?
 18 A It was a telephone survey.
 19 Q Do you know anything else about the manner in
 20 which the survey was conducted, other than that it was a
 21 telephone survey?
 22 A That it was a random sample of California
 23 voters.
 24 Q Do you know how the random sample was
 25 generated?

1 A We talked about that instrument earlier.
 2 Q That is the instrument about which you --
 3 When you worked in the Texas case, that was the
 4 instrument that was the subject of the lawsuit; is that
 5 right?
 6 A Yes.
 7 Q Do you know what TABS is, T-A-B-S?
 8 A Yes.
 9 Q Do you know what TEAMS refers to, T-E-A-M-S?
 10 A Yes.
 11 Q Do you know what TAKS is, T-A-K-S?
 12 A Yes.
 13 Q What is the difference among TASS, TABS, TEAMS,
 14 and TAKS?
 15 MR. SALVATY: Objection. Overbroad.
 16 BY MR. ROSENBAUM:
 17 Q It is overbroad and it is compound, but to save
 18 time I am going to ask you. And if you want me to break
 19 it down, I am glad to do it.
 20 A If you take it chronologically, the TABS test
 21 came first, followed by the TEAMS test, followed by
 22 TAAS, followed by TAKS.
 23 Q Have you done -- And TAKS is what is in effect
 24 now?
 25 A Yes.

1 Q Have you done any analysis -- For purposes of
2 working on the effects of this case or for any other
3 purpose, did you do any analysis of TABS or TEAMS?

4 A Yes.

5 Q Okay. And was that for the purposes of the
6 case?

7 A In part.

8 Q And did you form any conclusions --
9 How did TABS differ from TEAMS differ from
10 TAAS? And, again, I can see it is a compound question.
11 I just thought it might help you if I put them
12 together. Can you compare them for me?

13 A If you are asking for a general notion, it is
14 an oversimplification and clearly not complete at all,
15 but in a general way, TABS is the easiest of the tests.
16 It was a very low level basic skills test, the first in
17 the series. TEAMS was more rigorous. TAAS was more
18 rigorous than that, with more high-order thinking kinds
19 of skills being assessed. And TAKS is more rigorous
20 than that.

21 Q Okay. Did any of those four tests have an
22 off-the-shelf Norm Reference Test as part of -- as one
23 of its components?

24 MR. SALVATY: Objection. Vague.

25 THE WITNESS: All four of those tests were

1 Does Texas have a similar configuration?

2 MR. SALVATY: Objection. Vague.

3 THE WITNESS: I'm not sure what you are trying
4 to get at there.

5 BY MR. ROSENBAUM:

6 Q I want to know -- California has a stand-alone
7 High School Exit Exam; isn't that true?

8 MR. SALVATY: Objection. Vague and ambiguous.

9 BY MR. ROSENBAUM:

10 Q It is administered at a different time than the
11 STAR system test, it is a different exam, it is a
12 different publisher; isn't all of that correct?

13 A It is a separate test.

14 Q Okay. Does Texas have a separate High School
15 Exit Exam apart from its statewide assessment test?

16 A It is a separate exam and has several parts to
17 it, as in California. Again, I'm not sure what you are
18 asking me. It's not -- It does not contain
19 norm-referenced items, if that is what you are asking.

20 Q It's not. What I am asking is this: In
21 California, you just explained to me, there is a
22 separate High School Exit Exam. It is different than
23 the STAR system test; isn't that right?

24 A It is a separate test.

25 Q Okay. Is that the situation in Texas, if you

1 developed specifically for Texas to match their state
2 curriculum.

3 BY MR. ROSENBAUM:

4 Q Okay. Have you ever done any psychometric
5 analysis of TAKS?

6 A If you are asking me if I personally have run
7 computer runs or data analysis, no.

8 Q Okay. Have you seen any analyses of TAKS?

9 A Yes.

10 Q Performed by whom?

11 A The contractor and the state.

12 Q Okay. For what purpose?

13 MR. SALVATY: Objection. Vague.

14 BY MR. ROSENBAUM:

15 Q If you know.

16 MR. SALVATY: For what purpose were they run,
17 do you know, or for what purpose did the witness review
18 them?

19 MR. ROSENBAUM: Good point.

20 Q Do you know for what purpose the analyses were
21 run?

22 A They were part of the development of the exam.

23 Q I see. Help me understand this.

24 Q In California, we have a separate High School
25 Exit Exam from the STAR system.

1 know?

2 A Well, the Texas model is not like the
3 California model in that California has the SAT9 piece
4 that the students take, and then California has the
5 separate Standards Test that students take and then
6 California has the High School Exit Examination.

7 In Texas, you have standards tests that would
8 be analogous to the California standards tests and a
9 high school exit test which is analogous to the
10 California High School Exit Exam, without saying that
11 the instruments are alike in terms of content and
12 items.

13 Q Okay. Doctor, what is the "golden rule
14 remedy"?

15 A That was a proposal that items be selected for
16 a test based on the difference between majority and
17 minority group performance.

18 Q You have said with respect to that in sum or
19 substance, haven't you, "If poverty and inferior
20 educational experiences cause one group to have less
21 knowledge than another, should the test be condemned as
22 biased or should the underlying environmental factors be
23 targeted?" Is that something you said or wrote?

24 A I don't know. What are you reading from?

25 Q A statement I have. Is that your view?

1 A I would really like to see the context around
2 which that comes from.

3 Q I'm not hiding it from you. I don't have a
4 document that I am reading it from. It is just a
5 statement I have written down. That is your view, "If
6 poverty and inferior educational experiences cause one
7 group to have less knowledge than another, should the
8 test be condemned as biased or should the underlying
9 environmental factors be targeted?"

10 A I just don't understand the statement outside
11 of context.

12 Q Okay.

13 MR. SALVATY: We have been going for about an
14 hour.

15 MR. ROSENBAUM: I'm prepared to stop for a
16 break right now.

17 MR. SALVATY: Take 10 minutes?

18 MR. ROSENBAUM: Oh, sure. Of course.

19 (Recess taken.)

20 BY MR. ROSENBAUM:

21 Q Are you okay, Doctor?

22 A Yes.

23 Q Doctor, were you asked by counsel to collect
24 documents that you relied upon for use in the course of
25 preparing your report?

1 sent to you?

2 MR. SALVATY: I would rather not talk about it
3 on the record. I mean, I can tell you yes, she sent us
4 documents and generally I am happy to give you an
5 overview of the process.

6 We reviewed them and we stamped each -- I think
7 we gave a different Bates series for each expert, and so
8 "SP" was Dr. Phillips, numbered them and produced them.
9 And I believe we have subsequently produced some
10 additional materials.

11 I know some materials were sent out on
12 July 31st and then we produced the additional materials
13 yesterday. I don't think that's -- I think there was a
14 supplemental production at one point. So that is
15 generally the process.

16 BY MR. ROSENBAUM:

17 Q Dr. Phillips, did you get a second batch of
18 documents or a third batch of documents that you found
19 at some point that you had relied on?

20 A No.

21 Q Do you know where the supplemental batch came
22 from? I'm not doing an indictment here. I'm just
23 trying to find out.

24 A Yes.

25 Q Where was that?

1 A Yes.

2 Q And did you do that faithfully, as far as you
3 know?

4 A Yes.

5 Q And then did you review the documents after
6 they were collected, compiled, for accuracy to make sure
7 that those were documents that you did rely on?

8 MR. SALVATY: Objection. Review all of them?

9 MR. ROSENBAUM: My question isn't a very good
10 question.

11 Q I am just interested in the process. Counsel
12 said to you at some point, "Preserve the documents that
13 you are relying on"; that is a fair statement?

14 A Counsel asked me to send the documents that I
15 relied on that were not on the web in public record.

16 Q And you did that?

17 A Yes.

18 Q And did you ever get a set of documents back
19 that appeared to you to be the documents that you had
20 sent, the contents of the documents that you sent to
21 counsel?

22 A Not that I recall.

23 MR. ROSENBAUM: Help me, Paul. I have a bunch
24 of documents that are Bates stamped and they have an
25 "SP" on them. Are those the documents that Dr. Phillips

1 A They came from the board.

2 Q They came from the board. And were those
3 documents that you had reviewed in the course of putting
4 together your report?

5 A They were copies of the documents I had
6 reviewed.

7 Q Okay. And do you know how they ended up --
8 They were not in your possession; they were in the
9 board's possession? Well, I know you can't say. I'm
10 trying to figure out how did they get from -- This is
11 the worst question in the deposition, so I will start
12 over.

13 Were there some documents that you understand
14 were turned over to plaintiffs that were not in your
15 possession or custody?

16 MR. SALVATY: You said "plaintiffs."

17 BY MR. ROSENBAUM:

18 Q That you reviewed.

19 MR. SALVATY: Oh, turned over to plaintiffs
20 that were not in Dr. Phillips' possession?

21 MR. ROSENBAUM: Correct.

22 THE WITNESS: Yes.

23 BY MR. ROSENBAUM:

24 Q And what do you know about those documents? I
25 don't mean content. I am asking process questions here.

1 A They were attachments to state board minutes.
 2 Q Okay. That you had seen before?
 3 A I'm sorry.
 4 MR. SALVATY: Not those direct copies, I don't
 5 think, Mr. Rosenbaum. Is that one of the questions --
 6 You are wondering if Dr. Phillips sent documents to the
 7 board and then they circuitously arrived?
 8 MR. ROSENBAUM: I am just trying to figure out
 9 the process here.
 10 Q So there were documents that were attached to
 11 the board minutes.
 12 Were those documents that you had supplied to
 13 the board at some point?
 14 A No.
 15 Q Do you know how they ended up being attached to
 16 the board minutes?
 17 A They were part of the action that was taken by
 18 the board at that particular session.
 19 Q I see. Okay.
 20 Did you review the documents, the second batch
 21 of documents, before they were sent out to plaintiffs?
 22 A No.
 23 Q Have you gotten copies of those documents?
 24 MR. SALVATY: Objection. Vague.
 25 THE WITNESS: If you are asking did they send

1 me a copy also, no.
 2 MR. ROSENBAUM: Okay.
 3 Q What I am curious about -- This is not looking
 4 for the Bermuda Triangle. I am just trying to figure
 5 out -- This is a speculation-type question, I suppose.
 6 But do you know how somebody knew you had seen those
 7 documents when they weren't in your possession?
 8 A They are footnoted in my report.
 9 Q I see. Okay.
 10 MR. SALVATY: I think they were requested by
 11 plaintiffs.
 12 MR. ROSENBAUM: Yes.
 13 MR. SALVATY: I think there were some letters
 14 back and forth and requests made, and then we tracked
 15 down the documents and produced them.
 16 MR. ROSENBAUM: Okay. Thank you.
 17 Q Doctor, could you turn, please, to page 66 of
 18 your report.
 19 Do you see in the last paragraph on that page,
 20 fourth line down, do you see the phrase "equally
 21 possible"?
 22 A Yes.
 23 Q Okay. What is the basis for your use of the
 24 phrase "equally possible" in that sentence?
 25 A Give me a minute to review this, please.

1 Q Sure.
 2 A Okay.
 3 Q You have had a chance to review the context?
 4 A Yes.
 5 Q Can you tell me the basis for your use of that
 6 phrase "equally possible," please?
 7 A Yes. I have listed a number of factors that
 8 were found in the Texas dropout study.
 9 Q That is your complete answer?
 10 A Yes.
 11 Q Okay. Could you turn, Doctor, to footnote
 12 233. Really, what I am interested in is not the
 13 footnote but the text. And I am referring to the
 14 sentence to which that footnote is attached. For
 15 example:
 16 "U.S. Department of Education reports,
 17 'Students who earn mostly A's in disadvantaged
 18 schools achieved at the level of students
 19 earning mostly D's in affluent schools.'"
 20 Do you see that phrase?
 21 A Yes.
 22 Q Why did you include that in your report, page
 23 62 of Exhibit 1?
 24 A Give me a minute to review the context,
 25 please.

1 Q Sure.
 2 A Okay.
 3 Q Okay. Why don't you answer that as best you
 4 can, please.
 5 A It is an example supporting the statement above
 6 that:
 7 "...grades do not have the same meaning
 8 across classrooms because teachers weight
 9 factors such as attitude, effort, improvement,
 10 attendance and achievement differentially when
 11 assigning grades."
 12 Q Are you aware of any studies, Doctor, that
 13 would contradict the statement:
 14 "Students who earn mostly A's in
 15 disadvantaged schools achieved at the level
 16 of students earning mostly D's in affluent
 17 schools"?
 18 MR. SALVATY: Objection. Vague and ambiguous.
 19 THE WITNESS: Not that I recall at this time.
 20 BY MR. ROSENBAUM:
 21 Q Have you ever made any investigation or inquiry
 22 to determine whether or not there are studies or papers
 23 that would disagree with that statement?
 24 A Not that I recall.
 25 Q Doctor, do you have any criticisms of the way

1 any of the money has been spent in the State of
 2 California on its assessment system?
 3 MR. SALVATY: Objection. Lacks foundation.
 4 THE WITNESS: I would need more data to answer
 5 that question.
 6 BY MR. ROSENBAUM:
 7 Q Okay. Same question with respect to the
 8 state's accountability system.
 9 MR. SALVATY: Same objection.
 10 THE WITNESS: Same answer.
 11 BY MR. ROSENBAUM:
 12 Q Have you ever undertaken any inquiry to
 13 determine whether you think there could be reasonable
 14 criticisms of the way the state spent its money on its
 15 assessment system?
 16 MR. SALVATY: Objection.
 17 BY MR. ROSENBAUM:
 18 Q Any aspect of it.
 19 MR. SALVATY: Objection. Vague and ambiguous
 20 and overbroad.
 21 A Not that I recall.
 22 Q Same question regarding the accountability
 23 system.
 24 MR. SALVATY: Same objection.
 25 THE WITNESS: Same answer.

1 BY MR. ROSENBAUM:
 2 Q Okay. Any reason why not?
 3 A It wasn't necessary for the work I was asked to
 4 undertake as part of this report.
 5 Q And you said that several times and I have been
 6 negligent. When you say "The work that you were asked
 7 to undertake for purposes of the report," what was that
 8 work as you understood it?
 9 A As I indicated to you earlier, I was asked to
 10 review and summarize the API and accountability system
 11 in California, the ways in which it has evolved over
 12 time and to react to Dr. Russell's report.
 13 Q Could you turn to page 42, please. Do you have
 14 that front of you?
 15 A Yes.
 16 Q Okay. I am interested in your reference to
 17 Table 16 which is in the last full paragraph on that
 18 page.
 19 Do you see that?
 20 A Table -- Which one?
 21 Q 6b.
 22 A On page 42?
 23 Q Yes. The table isn't there. There is a
 24 reference to it. Table 6b also includes a summary of
 25 reasons why some schools did not, in italics, "receive

1 2002 API growth results.
 2 Do you see that sentence?
 3 A I'm sorry. I have not found it.
 4 Q I'm sorry. It is in the second column on page
 5 42.
 6 MR. SALVATY: Last full paragraph on the
 7 bottom.
 8 BY MR. ROSENBAUM:
 9 Q The last sentence.
 10 A Oh, all right.
 11 Q Really, I am just using that to get you to
 12 Table 6b. I wanted to be clear what I was doing.
 13 A All right.
 14 Q Okay. Do you have that in front of you?
 15 A Yes.
 16 Q What does -- On Table 6b, the
 17 second-to-the-last bullet, I suppose, says, "No 2002
 18 test results."
 19 Do you see that?
 20 A Yes.
 21 Q Do you know why there were no 2002 test
 22 results?
 23 MR. SALVATY: Objection. Vague and
 24 ambiguous.
 25 THE WITNESS: I would need more data to answer

1 that question.
 2 BY MR. ROSENBAUM:
 3 Q Okay. Do you know if there were teachers in
 4 California, Doctor, who spent time in their classrooms
 5 teaching students how to take tests? By that I don't
 6 mean teaching them the information that appeared on the
 7 test, but teaching them test-taking abilities.
 8 A Test-taking strategies are typically taught to
 9 students, so I would expect teachers did that.
 10 Q Okay. Do you know -- Have you undertaken an
 11 investigation to see how prevalent that was in
 12 California since the inception of the assessment system?
 13 A I don't have any data on that.
 14 Q All right. Do you know if anybody does have
 15 data on that or if anybody has looked into that
 16 question?
 17 A The department might have some information
 18 about that.
 19 Q But you don't know one way or the other for
 20 sure?
 21 A I don't recall anything specific.
 22 Q Okay. You have explained to me in some detail
 23 your involvement with the High School Exit Exam. Are
 24 you still involved with the High School Exit Exam? Are
 25 you still on that committee?

1 A Yes.

2 Q What committees are you on presently in
3 California?

4 MR. SALVATY: Objection. Vague. Committees
5 with the State of California or anywhere?

6 MR. ROSENBAUM: Anywhere is interesting. Let's
7 put aside the State of California.

8 BY MR. ROSENBAUM:

9 Q Are you on any -- Are you serving as a
10 consultant on education matters in the State of
11 California to clients other than the State of
12 California?

13 A No.

14 Q Okay. And with respect to your consultation
15 relationship with the State of California, and to repeat
16 myself, you remain on the committee with respect to the
17 California Exit Exam?

18 A Yes.

19 Q Okay. Are you on a committee with respect to
20 the API at this time?

21 A Not that I'm aware of.

22 Q You have consulted, though, you told me with
23 respect to the API; right?

24 A No, I don't recall having done that.

25 Q Okay. Did you have any involvement with

1 your office is, but if I'm in the neighborhood there,
2 I'm glad to accommodate that. So if you would think
3 about how we could handle that, I would appreciate it.

4 MR. SALVATY: I can respond. On the CAT6
5 handbook, we attempted to find a copy within the
6 department. We weren't able to do that. It is our view
7 that that is a publicly available document that you
8 could obtain from the publisher, so I don't think that
9 we are obligated to produce it. We did as a courtesy
10 attempt to track it down and were hopeful to do so, but
11 it wasn't possible.

12 I don't believe you have established that there
13 are any other documents that Dr. Phillips reviewed and
14 relied upon that were not publicly available and that
15 should have been produced. So I think we do have a
16 disagreement on that. I don't think -- I mean, we are
17 certainly not willing to agree to keep the deposition
18 open. It is our view that you should go until
19 completion and that after the questioning is completed,
20 Dr. Phillips' deposition is over.

21 So that is our view on it. You know, you are
22 obviously free to disagree with that.

23 MR. ROSENBAUM: First of all, the CAT6 handbook
24 is not cited in her report and it was only through
25 questioning that that became -- that I learned as to her

1 respect to the development of the API?

2 A No, I don't think so.

3 Q Okay. Are there any other committees that you
4 are presently on?

5 A Not that I can recall.

6 MR. ROSENBAUM: Okay. I'd like to take a
7 moment, Paul. I am pretty close to concluding. Here is
8 the question, though, that maybe you could discuss with
9 Dr. Phillips when I leave the room for a moment.

10 There have been a number of documents that we
11 haven't received yet. The CAT6 handbook was one. And
12 there are a number of others. It would be my
13 expectation that I would want to question with respect
14 to those documents. I won't suggest that there will be
15 extensive questioning, but I want -- I certainly don't
16 want to keep this witness out who has been very patient
17 and very gracious any longer. So I invite your
18 suggestion on what to do.

19 I'm glad to receive documents, take a look at
20 them, give you a frank appraisal of what, if any,
21 questions I am going to ask and how long I think the
22 examination will be and if Dr. Phillips is coming out
23 here on an occasion to consult or otherwise be out here,
24 try to accommodate that schedule.

25 If I'm -- I don't know where your residence is,

1 reliance upon that document. So there would have been
2 no way without even agreeing -- I have attempted to get
3 testing documents from publishers. I haven't been
4 successful. So I don't defer to that. But my
5 recollection is that it is not cited in the report and I
6 had no way of knowing about it.

7 Q Are you finding a place, Doctor, that it is
8 there?

9 MR. SALVATY: It looks like it is cited in
10 footnote 20 on page 9. It is cited in footnote 20 on
11 page 9.

12 MR. ROSENBAUM: Well, I appreciate that. All
13 right. Well, I don't waive my position on any of the
14 documents.

15 Also, I do want to serve a subpoena for certain
16 documents. I can't remember if I said it to you or
17 David. I think it was David. I would like an address
18 to serve it on. I'm pleased not to ask her her home or
19 office residence, but that is based on my being able to
20 not have to scramble and get a different location.

21 MR. SALVATY: Okay. We will provide an answer
22 for that.

23 MR. ROSENBAUM: Okay.

24 MR. SALVATY: I think it is in the report, but
25 we will find an address for that.

1 MR. ROSENBAUM: Okay. Give me a few minutes,
2 then.
3 MR. SALVATY: Okay.
4 (Recess taken.)
5 MR. ROSENBAUM: Paul, I have been informed by
6 Ms. Majd that a very serious effort was made to try to
7 obtain that document and that we were unable to do that.
8 MR. SALVATY: Are you talking about the CAT6
9 manual?
10 MR. ROSENBAUM: Yes. So I reserve my rights on
11 that.
12 Q Doctor, could you --
13 And I would appreciate your continuing to
14 attempt to get that document.
15 How did you get it in the first place, Doctor?
16 A As I indicated to you, I borrowed it.
17 Q Oh, yes.
18 Let me ask you a few more questions. If you
19 would, turn to the last page of your report. Not the
20 charts, just the text. It is page 78.
21 Looking at the last sentence on the last page:
22 "It would be unfortunate if the state were
23 required to revert back to the unsuccessful
24 Kansas City model before the API accountability
25 system has had a full opportunity to be

1 some time after that to have some longitudinal data of
2 results.
3 Q Longitudinal student data?
4 A Longitudinal accountability system data.
5 Q Okay. How much time would you say -- When you
6 say "some time," how much time?
7 A There is no set amount of time, but effects
8 don't occur overnight typically, particularly if schools
9 are making changes. That process gets very close
10 scrutiny and attention when it actually counts, so it is
11 going to take a few years to see the effects. The
12 longer you wait, the more data you have on which to
13 judge that.
14 Q Okay. Can you give me any time span at all
15 once the measures are in effect?
16 MR. SALVATY: Objection. Asked and answered.
17 BY MR. ROSENBAUM:
18 Q If you just answered that, just tell me that.
19 A I think I answered it as best I can. You'd
20 need to watch and see what is happening. And it would
21 be speculative at this point without watching it unfold.
22 Q When you used the word "effective" in this
23 last sentence on your last page of Exhibit 1, your
24 report, what do you mean by "effective"?
25 A Increasing student achievement.

1 effective."
2 Do you see that sentence?
3 A Yes.
4 Q Can you attach a time frame to full
5 opportunity? How many years?
6 A I don't think I would attach a time frame to
7 that.
8 Q Okay. Any criteria by which one could
9 determine whether or not the API accountability system
10 has had a full opportunity to be effective, any criteria
11 that you would apply?
12 MR. SALVATY: Objection. Vague and ambiguous.
13 THE WITNESS: One thing that would need to
14 happen is that all of the measures be included in the
15 system.
16 BY MR. ROSENBAUM:
17 Q Meaning the graduation rates and the attendance
18 rates, for example? I don't mean that that is the
19 exhaustive list but ...
20 A But any other measures that the state
21 determines should be added to the system.
22 Q Any other criteria you can think of as to how
23 to evaluate when the system has had a full opportunity
24 to be effective?
25 A Once those additional measures have been added,

1 Q And how would you measure increasing student
2 achievement? How do you know when student achievement
3 is increased?
4 A You look at the test score results and the API
5 measures.
6 Q All students, all subject matters, all grades
7 in order to be effective? How do you figure it out?
8 A That's what the federal legislation says.
9 Q Is that your standard, also?
10 A Again, as I indicated, I would want to have
11 more data to know what measures had been added and to
12 watch the progress and track the data over time before
13 making a judgment about that.
14 Q Okay. That's not quite my question. My
15 question is: How do you know when the system is
16 effective? What is the criteria that you apply? And
17 you told me "increased student achievement," and then I
18 asked you what does that mean, "increased student
19 achievement."
20 MR. SALVATY: Objection. Asked and answered.
21 THE WITNESS: And I indicated that that is
22 based on the assessment program information and the
23 accountability program information.
24 BY MR. ROSENBAUM:
25 Q What I am asking you is: What information are

1 you looking at -- I don't mean test results, but I am
2 asking you, how do you know when you look at that
3 information whether or not the system is effective or
4 not?

5 A You look at the data and see what change has
6 occurred over time.

7 Q Okay. But what change would you need to see in
8 order to determine whether or not the system has been
9 effective?

10 MR. SALVATY: Objection. Asked and answered.

11 THE WITNESS: If student scores have increased,
12 if API scores go up, that is a measure of effectiveness.

13 BY MR. ROSENBAUM:

14 Q When you say "student scores," that is what I
15 am trying to figure out, every student in the system?

16 A Typically, no. It is summarized by schools and
17 by districts and for the state. If you are talking
18 about the state making a result -- making a decision,
19 they would look at the data that is available.

20 Q You have told me that now several times. I
21 know you look at the data that is available. That is
22 your view, anyway. What I want to know is: How do you
23 know whether or not the system is effective? Do you
24 need to see that every student has improved his or her
25 score, every classroom, every school, every district,

1 MR. SALVATY: Objection. Vague.

2 THE WITNESS: The available data contradicts
3 that.

4 BY MR. ROSENBAUM:

5 Q But that is not my question. My question is:
6 Is it possible for the API accountability system to be
7 ineffective?

8 MR. SALVATY: Objection. Vague and ambiguous.

9 THE WITNESS: I don't understand your question
10 because the available data so far shows that it has
11 raised scores.

12 BY MR. ROSENBAUM:

13 Q Shows that what has raised scores?

14 A That student performance has increased.

15 Q And you conclude that that is a result of the
16 API accountability system?

17 A Now you are asking a causation question and we
18 are back to not being able to determine causation by
19 looking at changes that occur simultaneously.

20 Q Okay. I'm not asking -- I'm asking you now as
21 a psychometrician, is it possible for a state
22 accountability system to be ineffective?

23 A I guess if you put it globally and
24 theoretically that way, it could be.

25 Q How would you know if it were ineffective?

1 every subgroup, every grade, every subject matter? How
2 do you figure it out?

3 MR. SALVATY: Objection. Asked and answered.

4 BY MR. ROSENBAUM:

5 Q Let me ask you a more foundational question. I
6 withdraw that question.

7 Have you given thought as to how you determine
8 whether or not the AP accountability system -- Strike
9 that.

10 Have you given thought or study as to how to
11 judge the effectiveness of the AP accountability system
12 such that you would know when the system has become
13 effective?

14 A I wouldn't look at it the way you are talking
15 about it. When you add additional variables and you get
16 increases in test scores on those variables and API
17 scores go up, those are measures of effectiveness and at
18 a point in time it is possible to have more
19 effectiveness later. So there isn't just a magic point
20 at which you stop. You can continue to try to get
21 additional effectiveness.

22 Q Is it possible that the API accountability
23 system could be ineffective in your judgment?

24 MR. SALVATY: Are you talking about right now?

25 MR. ROSENBAUM: At any point.

1 What criteria would you apply?

2 MR. SALVATY: Objection. Incomplete
3 hypothetical.

4 THE WITNESS: I would need to look at all the
5 facts and circumstances surrounding the program and its
6 assessments.

7 BY MR. ROSENBAUM:

8 Q What facts and circumstances would you need to
9 look at?

10 MR. SALVATY: Objection. Incomplete
11 hypothetical.

12 THE WITNESS: For one thing, you would want to
13 look at the assessments that were being used.

14 BY MR. ROSENBAUM:

15 Q Okay. Can you think of any other facts and
16 circumstances that you would need to look at?

17 A All of the information related to how the
18 program is structured and how it works.

19 Q Okay. And when you say "how it works," what do
20 you mean by that?

21 A Well, for example, in California you go to the
22 web site and read the information that is available
23 there.

24 Q I see. Is there any state accountability
25 system that you conclude has had a full opportunity to

1 be effective?
 2 A I don't recall having made such a conclusion.
 3 Q Have you thought about that question?
 4 A Not that I recall.
 5 Q Okay. Have you thought about the question
 6 about whether or not there is any state accountability
 7 system that you would conclude is effective?
 8 A As I indicated, there is evidence that
 9 California's system has been effective so far. Student
 10 outcomes have increased.
 11 Q Okay. Do you see any evidence that
 12 California's accountability system has been ineffective?
 13 A If you are asking specifically about student
 14 outcomes, there has been a lot more increase at the
 15 elementary level than there has been at the high school
 16 level.
 17 Q That's not my question exactly, although I
 18 appreciate that answer.
 19 Do you see any evidence that the California
 20 accountability system has not been effective?
 21 MR. SALVATY: Objection. Vague, ambiguous and
 22 overbroad.
 23 THE WITNESS: My response is that it is a
 24 comparative notion and that comparatively the elementary
 25 level has been a lot more effective than the high school

1 level and there is a lot more room for improvement at
 2 the high school level.
 3 BY MR. ROSENBAUM:
 4 Q Can you identify for me any -- all the evidence
 5 that you are aware of that demonstrates that the API
 6 accountability system has been ineffective?
 7 MR. SALVATY: Objection. Vague, ambiguous and
 8 overbroad.
 9 THE WITNESS: If you are talking about student
 10 outcomes, all of the data about that are on the web site
 11 and I believe that it generally shows that there has
 12 been increases in student outcomes.
 13 BY MR. ROSENBAUM:
 14 Q That's not my question.
 15 And I am not talking about how I would judge
 16 it. I want to know how you, Dr. Phillips, would judge
 17 it. I am asking you: Do you believe that there is any
 18 evidence that exists that the API accountability system
 19 in California has been ineffective?
 20 MR. SALVATY: Objection. Vague and
 21 ambiguous.
 22 THE WITNESS: My answer again is that if you
 23 are talking about student outcomes, all of that
 24 information is on the web site for the assessments for
 25 the accountability system, and it generally shows

1 increases.
 2 BY MR. ROSENBAUM:
 3 Q Are you aware of any evidence that would cause
 4 you to conclude that the AP accountability system in
 5 any -- in whole or in part has been ineffective? I want
 6 you to cite to me any evidence of which you are aware
 7 from which you would conclude that the API
 8 accountability system in whole or in part has been
 9 ineffective.
 10 MR. SALVATY: Objection. Asked and answered.
 11 THE WITNESS: Same answer I have already
 12 given.
 13 BY MR. ROSENBAUM:
 14 Q Which answer, Doctor? Do you have any evidence
 15 that you can point to that says to you that the AP
 16 accountability system in whole or in part has been
 17 ineffective?
 18 MR. SALVATY: Objection. Asked and answered.
 19 THE WITNESS: As I indicated with respect to
 20 student outcome scores, there has been less
 21 effectiveness at the high school than there has been at
 22 the elementary school.
 23 BY MR. ROSENBAUM:
 24 Q Any other evidence?
 25 A I don't recall anything else.

1 Q What is your definition of "ineffective"?
 2 A The purpose of the API accountability system is
 3 to increase student achievement. The measure of that is
 4 the assessment instruments and the API. If you look at
 5 the gains that have been made, they are larger at the
 6 elementary level than they are at the high school
 7 level. So the high school level has not been as
 8 effective.
 9 Q What is your understanding of what they are at
 10 the high school level?
 11 A What is --
 12 MR. SALVATY: What are --
 13 BY MR. ROSENBAUM:
 14 Q You said to me -- Well, let's have the last
 15 answer read back, please.
 16 (Record read as follows:
 17 "Answer: The purpose of the API
 18 accountability system is to increase
 19 student achievement. The measure of
 20 that is the assessment instruments and
 21 the API. If you look at the gains that
 22 have been made, they are larger at the
 23 elementary level than they are at the
 24 high school level. So the high school
 25 level has not been as effective.

1 BY MR. ROSENBAUM:

2 Q What has been the situation at the high school
3 level, as you understand it, with respect to gains?

4 MR. SALVATY: Objection. Vague and ambiguous.

5 THE WITNESS: I have data that was presented in
6 my report --

7 BY MR. ROSENBAUM:

8 Q Okay.

9 A -- that gives a snapshot of that.

10 Q Why don't you point me to that.

11 A There is Stanford test results in Table 3a for
12 the state for all ELL and socioeconomically
13 disadvantaged students and if you look at the bottom of
14 the table -- about the middle of the table, actually,
15 for reading, the bottom of the table for math.

16 There is statewide Stanford tests summary data
17 in Table 2a, statewide Standards Test summary data in
18 Table 2b. In Table 6a, there is a summary of statewide
19 API school performance and that is broken out by
20 elementary, middle, and high school.

21 Q Which table were you just talking about?

22 A 6a.

23 Q Thanks. Okay.

24 Those are the tables you are referring to as
25 the basis for your answer?

1 A Yes.

2 Q And then the reading scores go from 39 to 43 to
3 48 to 50 to 52.

4 Do you see those?

5 A Yes.

6 Q Could any of those growths be explained by -- I
7 don't want to use the wrong word here -- a standard
8 error? Is that the right word, an error rate or
9 standard error, sampling error?

10 First of all, what is the right phrase that I
11 should be using?

12 A I would use sampling error.

13 Q Okay. Could any of those growths be explained
14 by sampling errors?

15 A Well, the particular data you are looking at is
16 for all students in California, so there is no sample.

17 Q Okay. Are any of the -- Could they be
18 explained by student error? Let me see if I understand
19 this. I am garbling my question a bit. A student gets
20 a score of 75 on a test. What is the -- How do you --
21 As a psychometrician, am I correct you set up a range,
22 that is, that score 75 may really reflect 75 percent,
23 that is what we are talking about, 75 percent of the
24 answers, is that the proficiency level? Or, on the
25 other hand, maybe if the range is 73 to 77 -- Do you

1 A Yes.

2 Q Doctor, looking at --

3 Do you know what the phrase "standard error"
4 means?

5 A Yes.

6 Q What does it mean?

7 A When tests are administered to individuals,
8 they can have a good day or a bad day and the error
9 reflects the amount to which the test score differs from
10 their true ability or achievement based on those
11 factors.

12 Q Can there be a standard error for all students,
13 like an aggregate standard error?

14 A If you are talking about error in a statistic
15 that summarizes group performance, typically that error
16 is a sampling error.

17 Q I see. Let me ask you if you could turn back
18 to Table 2a.

19 Directing your attention to the first column
20 where it says "Grade 2" and then it goes from 43 to 50
21 to 57 to 59 to 62, that is the math scores. Do you see
22 that, the first column?

23 A The scores in parentheses that go from 43 up to
24 62?

25 Q Yes. Do you see those?

1 know the concept I am talking about here?

2 A What you said is a bit convoluted.

3 Q I'm sure it is. So help me straighten it out.

4 MR. SALVATY: Objection. Vague and ambiguous.

5 BY MR. ROSENBAUM:

6 Q When you get a score, when a student gets a
7 score, and there is a range at which you feel confident
8 that that accurately reflects a student's knowledge of
9 the information, it is not precisely the number that was
10 recorded, isn't that right, and that is one of the
11 issues with instrument, test instruments?

12 A You can calculate a standard error of
13 measurement for an individual student score.

14 Q Can you calculate a standard error of
15 measurement for all students? Can you say, for example,
16 looking at 2002 where the score is 52 -- it's for
17 reading -- that there is a range that that number should
18 be part of in terms of reflecting the score?

19 MR. SALVATY: Objection. Vague and ambiguous.

20 MR. ROSENBAUM: I will confess I am garbling
21 this a little bit. But you be the teacher. Help
22 straighten me out here.

23 THE WITNESS: As I indicated, when you do a
24 summary of group data, the appropriate error term is a
25 sampling error.

1 BY MR. ROSENBAUM:

2 Q All right. Can there be a sampling error
3 associated with any of the numbers in the first column
4 on Table 2a? And let's limit our analysis to the
5 reading scores.

6 A As I indicated, one wouldn't typically think of
7 it that way when you have all students included.

8 Q I understand. That's what I am trying to
9 figure out. Even I got that.

10 What I am trying to understand is: On the
11 other hand, are you saying 52 is it, that is the
12 absolute and only reflection of the range of proficiency
13 of all students?

14 A That number represents the average for all
15 students in the State of California. It represents
16 everyone who took the test in that year on that subject
17 for that test.

18 Q If you gave that test again to California
19 students, isn't there a principle in psychometrics that
20 would say, "You can get" -- "We can predict what the
21 range of scores are going to be so that if the next time
22 it was 53 or 51, that doesn't invalidate the 52, it is
23 within reason."

24 Am I -- I know I am garbling this a little bit,
25 but am I getting a concept here that is a basic

1 THE WITNESS: That would be speculation. I
2 would need more data.

3 BY MR. ROSENBAUM:

4 Q What data would you need?

5 A Maybe a better way to say it is that basically
6 state level data is pretty stable. So if you could do
7 your hypothetical, theoretical experiment where you
8 would give it and you could get every single one of
9 those kids to show up and no additional kids to show up
10 and nobody has taught them anything new between the time
11 that you gave the test the first time and gave the test
12 the second time and so on, I would expect to get
13 essentially the same answer.

14 Q What about a school API score, is that equally
15 stable to what we just talked about, the score for all
16 students in the State of California?

17 MR. SALVATY: Objection. Vague and ambiguous.

18 THE WITNESS: The answer to that question
19 would depend on what size school you are talking about.

20 BY MR. ROSENBAUM:

21 Q Have you given any consideration, Doctor, as to
22 the relative stability of API scores throughout -- for
23 schools throughout the State of California?

24 MR. SALVATY: Objection. Vague and ambiguous.

25 THE WITNESS: I have read and studied

1 psychometric principle?

2 A Not really.

3 Q Okay. If you gave -- If you gave the test
4 again, what is the likelihood that all students, when
5 you compiled the average for all students, you would get
6 52?

7 MR. SALVATY: Objection. Incomplete
8 hypothetical.

9 BY MR. ROSENBAUM:

10 Q Gave the exact same test again the next day, is
11 it 100 percent likelihood -- I want to be more precise.
12 You give the Stanford test -- A week later you give the
13 identical Stanford test to the same population of
14 students, would you expect to get the exact same score,
15 52?

16 A First of all, I don't think you would be able
17 to do that with a state as large as California and
18 differences in absentees and so on. I doubt you could
19 ever get them to be identical.

20 Q I am talking about a principle of statistics
21 here. I mean, if you could, would you expect to get the
22 exact same answer?

23 A Pretty close.

24 Q What do you think the range would be?

25 MR. SALVATY: Objection. Lacks foundation.

1 information about that issue, yes.

2 BY MR. ROSENBAUM:

3 Q What information have you read and studied?

4 A Papers written by David Rogosa.

5 Q And by anyone else?

6 A With respect to California data, I don't think
7 so, not that I can recall at the moment.

8 Q Okay.

9 MR. ROSENBAUM: Okay. I don't have any further
10 questions. I maintain my position with respect to
11 keeping this deposition open because of additional
12 documents that I think have been identified. And I take
13 it, Paul, that you don't want to put on the record the
14 address to send it to?

15 MR. SALVATY: I would rather just give you the
16 address off the record.

17 MR. ROSENBAUM: That's fine with me based on
18 counsel's representation.

19 MR. SALVATY: Thank you.

20 MR. ROSENBAUM: Now, there is a question about
21 the stipulation. Kat, why don't you do that.

22 Doctor, thank you very much. I really
23 appreciate your patience through all of this.

24 (The following was stipulated to in an
25 off-the-record discussion between counsel:

1 That the original transcript be maintained
 2 by the San Francisco office of Esquire
 3 Deposition Services; that counsel for the
 4 witness will see to it that the witness
 5 reads and corrects the transcript and
 6 subsequently signs the signature page; that
 7 counsel for the witness will notify the
 8 court reporter's office of any changes; that
 9 the court reporter's office will then notify
 10 all counsel of signature and corrections made
 11 to the transcript; and that thereafter the
 12 court reporter's office will seal the
 13 original transcript, signature page and
 14 changes in an envelope and send it to the
 15 San Francisco office of Morrison & Foerster
 16 to the attention of Ryoka Kita.)
 17 (ENDING TIME: 3:30 p.m.)

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 3
 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 26, 2001

22
 23 _____
 24 PAMELA A. STITT
 25 CSR No. 6027

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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)

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 SUSAN E. PHILLIPS, Ph.D.
 Volume 4