

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

)
ELIEZER WILLIAMS, a minor, by)
SWEETIE WILLIAMS, his guardian)
ad litem, et al., each)
individually and on behalf of all)
others similarly situated,)

)
Plaintiffs,)

)
vs.)

) No. 312236
)

)
STATE OF CALIFORNIA, DELAINE)
EASTIN, State Superintendent of)
Public Instruction, STATE)
DEPARTMENT OF EDUCATION, STATE)
BOARD OF EDUCATION,)

)
Defendants.)
)

DEPOSITION OF MICHAEL JOHN PODGURSKY, Ph.D.
Los Angeles, California
Monday, August 11, 2003
Volume I

Reported by:
CAROL ANN NELSON
CSR No. 6974
JOB No. 44002

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EASTIN, State Superintendent of)
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DEPARTMENT OF EDUCATION, STATE)
BOARD OF EDUCATION,)
Defendants.)

Deposition of MICHAEL JOHN
PODGURSKY, Ph.D., Volume 1, taken on behalf
of Plaintiffs at 555 West Fifth Street,
35th Floor, Los Angeles, California
beginning at 9:19 a.m. and ending at
5:07 p.m. on Monday, August 11, 2003,
before CAROL ANN NELSON, Certified
Shorthand Reporter No. 6974.

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INFORMATION REQUESTED
(NONE)

INSTRUCTION NOT TO ANSWER

(NONE)

1 Los Angeles, California, Monday, August 11, 2003
2 9:19 a.m. - 5:07 p.m.

3
4 MICHAEL JOHN PODGURSKY, Ph.D.,
5 having been first duly sworn, was examined and testified
6 as follows:

7 MS. DAVIS: John, these are documents I'm going
8 to hand you that Professor Podgursky gave to me
9 yesterday evening and they are documents that have been
10 published since the completion of his expert report, so
11 he did not rely on them when preparing his report but he
12 thought that they are relevant to his report and support
13 his report but were published after, so I just wanted to
14 give those to you. He provided those to me, like I
15 said, yesterday evening.

16 I also wanted to give you another document. We
17 sent a letter to Kevin DeVorde on Friday with a document
18 authored by Michael McKibbin, and I just didn't send the
19 E mail, the correspondence from Professor Podgursky to
20 me which attached the document, so I wanted you to have
21 that.

22 MR. AFFELDT: Great. Thank you.

23 MS. DAVIS: One clarification. I believe is it
24 the Hanushek document is going to be published?

25 THE WITNESS: Yes.

1 MS. DAVIS: In?

2 THE WITNESS: Brookings Papers on Education
3 Policy.

4 MS. DAVIS: I'm not sure if it's published yet.

5 THE WITNESS: No. I -- I'm a discussant of the
6 paper so -- and the conference was a couple months ago.

7 EXAMINATION

8 BY MR. AFFELDT:

9 Q Great. Good morning, Dr. Podgursky.

10 A Good morning.

11 Q As I explained to you off the record, I'm John
12 Affeldt, one of the counsel for plaintiffs in the
13 Williams case and I'll be taking your deposition in the
14 next couple of days.

15 Have you ever been deposed before?

16 A Yes.

17 Q How many times?

18 A Three times.

19 Q And what were those occasions?

20 A The New York school finance case. I don't
21 remember the names of them but it's the big one. And
22 the desegregation case in Kansas City and then there --
23 in South Carolina there's a similar school finance
24 case. South Carolina is Abbeville and a whole bunch of
25 districts versus the State of South Carolina. I

1 remember that one.

2 Q All of those depositions were serving as an
3 expert witness?

4 A Yes, sir.

5 Q Have you ever had your deposition taken in a
6 personal matter?

7 A No, sir.

8 Q You are probably familiar somewhat with the
9 practice of deposition taking but it's helpful to go
10 over the general ground rules when we get started.

11 Because we have a court reporter here, she has
12 to have an affirmative yes or no, and a shake of the
13 head one way or another, it can't really be recorded.
14 So can you affirmatively give your answers rather than
15 by gesticulation; is that agreeable?

16 A Yes.

17 Q You need to wait until I finish my question
18 before you begin to answer; is that agreeable?

19 A Yes.

20 Q And I'll warn you ahead of time, sometimes I
21 drag my questions out or wait so that I have the correct
22 phraseology, but I'll let you know if you interrupted
23 me; is that acceptable?

24 A Yes.

25 Q By the same token I will let you finish your

1 answer, and if I've interrupted you will you let me know
2 that you haven't completed your answer?

3 A Yes.

4 Q If you don't understand a question, can we
5 agree that you'll let me know that you didn't understand
6 the question?

7 A Yes.

8 Q If you need a break at any time, just let me
9 know. The one thing that I would ask is that you answer
10 the pending question before we go on a break; is that
11 acceptable?

12 A Yes.

13 Q Are you taking any medication or drugs of any
14 kind that might make it difficult for you to understand
15 my questions today?

16 A No, sir.

17 Q Are you under a doctor's care for any illness
18 that might make it difficult for you to answer my
19 questions today?

20 A No.

21 Q What did you do to prepare for your deposition?

22 A Well, I reviewed -- Well, first of all I read
23 Professor Darling-Hammond's report. That's the primary
24 thing. I read that carefully a number of times. Then I
25 reviewed studies that she cited in the report and other

1 studies that I could find are information from the web
2 on -- from the CTC, the Commission on Teacher
3 Credentialing, site or the State Department of Ed web
4 site, and then I put together a data set downloading
5 data from the State Department of Ed web site. And of
6 course I had conversations with Paul Salvaty as the --
7 as I progressed in my work.

8 Q My question was rather than what did you do to
9 prepare your expert report, what did you do to prepare
10 your -- for your deposition this week. So I just want
11 to be clear that you're answering --

12 A I'm sorry.

13 Q -- that question.

14 A To prepare for this deposition I reread my
15 report; quickly reread Professor Darling-Hammond's
16 report and glanced over a few of my documents; and I had
17 a meeting yesterday, short, with Ms. Davis.

18 Q Which of your documents did you review?

19 A Well, my report, Professor Darling-Hammond's
20 report, and I looked at -- I looked over those documents
21 that were just passed to you and I looked on the web
22 site just to refresh my memory about the various
23 certificates in the state, the difference between a
24 preintern and an intern and the difference between a
25 waiver and an emergency, so I spent a little bit of time

1 on the CTC web site just trying to remind myself what
2 the rules were for the various certificates.

3 Q Are there any other documents you reviewed to
4 prepare for your deposition?

5 A I don't believe so.

6 Q How much time did you spend reviewing the CTC
7 web site?

8 A An hour.

9 Q And when was that?

10 A A couple days ago probably. Today's Monday, so
11 probably Friday or Saturday.

12 Q And when you referenced the documents that you
13 say you looked at, are those the ones that I'm holding
14 in my hand that Ms. Davis just handed me?

15 A Yes.

16 MR. AFFELDT: And for the record the first
17 document is a Survey and Analysis of Teacher Salary
18 Trends, 2002. It appears to be published by the
19 American Federation of Teachers. The second document is
20 Teacher Characteristics and Student and Achievement
21 Gains: A Review by Wayne and Youngs, Y-o-u-n-g-s,
22 Review of Educational Research. The third document is
23 Teachers and Student Achievement in the Chicago Public
24 High Schools, June 2003, Aaronson, Barrow, and Sander.
25 The next document is How to Improve the Supply of High

1 Quality Teachers by Eric A. Hanushek and Stephen G.
2 Rivkin, Preliminary Draft of Paper for the Brookings
3 Papers on Educational Policy, May 21 to 22, 2003 and
4 which appears to be a print off from the web, ECS
5 Teaching Quality Research Reports, Eight Questions on
6 Teacher Preparation, What Does the Research Say.

7 Q Is that the Education Commission of the States?

8 A Yes, sir.

9 Q Is there an author to this report?

10 A I believe his name is Allen. I'm not sure if
11 it appears on the web site. There's a report which -- a
12 final version of a report which I've ordered and then
13 you can read parts of the report on the web site, so
14 there's more you can print off. I believe the author is
15 Michael Allen.

16 Q Okay. Thank you.

17 How much time did you spend reviewing these
18 various reports in preparation for your deposition?

19 A A couple of hours.

20 Q And when was that?

21 A Last week.

22 Q And when did you come to first review these
23 various reports?

24 A Well, professionally I go to a lot of meetings
25 and -- and follow the research and so there's always

1 something popping up in this area. The Brookings -- The
2 Hanushek paper, I was at a conference at the Brookings
3 Institution and I was a discussant on that paper, and
4 that conference was I believe in May. The paper by
5 Aaronson was presented at the -- Well, they presented
6 the results. The paper wasn't ready yet. But they
7 presented the results at the American Education of
8 Finance Association meetings which I believe were in
9 March in Orlando, and I asked them to send me the paper
10 when it was available and I think I got that a couple of
11 months ago. The Education Commission -- So that's when
12 I read it, so when I first got these papers when they
13 sort of arrived at my door.

14 The Education Commission of the States report
15 came out a couple months ago, two, three months ago, and
16 I sort of glanced at it when it came out quickly and
17 I -- I realized it was relevant for this discussion and
18 so I -- before I came out here I looked over it again.
19 Oh, and the Youngs -- The Review of Education Research
20 by Wayne and Youngs, that just came out -- well, I
21 became aware of it. It came out this spring. I don't
22 know exactly when it arrived at the library, but I went
23 over and copied it a couple of months ago and read it.

24 So these are things that came out after I
25 submitted my report and I would have cited them had they

1 been, you know, on my desk at the time so. . .
 2 Q And the AFT Survey and Analysis?
 3 A The AFT came out in July.
 4 Q And you mentioned a meeting that you had
 5 yesterday with Ms. Davis to prepare for this deposition?
 6 A Yes.
 7 Q Did you have any other meetings with any other
 8 individuals to prepare for this deposition?
 9 A No, sir.
 10 Q What time was your meeting yesterday with Ms.
 11 Davis?
 12 A 5 o'clock.
 13 Q And how long did that last?
 14 A Only an hour, until 6:00.
 15 Q And what did you discuss at that meeting?
 16 A It was very general. How -- Sort of dos and
 17 don'ts for depositions, and -- and I don't mean what to
 18 say but sort of the general ground rules of much of what
 19 you went over. And I mentioned I brought those papers
 20 along because I thought if we were going to talk
 21 about -- if we were going to start talking about teacher
 22 quality, it was very likely I would refer to some -- to
 23 some recent work, so I brought those along and I wanted
 24 to make those available. And, you know, I think that
 25 was about it, really.

1 She asked me about other -- my other
 2 depositions and she indicated some of the kinds of
 3 questions I might be asked about, you know, when I
 4 started work on the case and how many hours I worked
 5 and, you know, so some general indications of what I
 6 could be expected to be asked.
 7 Q Did you have any discussions with any attorneys
 8 over the phone regarding this deposition?
 9 A Nothing beyond just scheduling. There was --
 10 It was a good -- a bit of confusion about that, so the
 11 only discussion was sort of when and where and sort of
 12 pinning down a time and so on, so just those logistics.
 13 Q And who were those logistical discussions with?
 14 A I forgot his name. It's Choate, Peter Choate.
 15 MS. DAVIS: Peter.
 16 THE WITNESS: Peter Choate.
 17 And then I had a discussion I mean with the
 18 attorney -- assistant attorney general's secretary about
 19 which hotel I could go to and things like that, who had
 20 the government rate and who didn't.
 21 BY MR. AFFELDT:
 22 Q Are you getting a good government rate?
 23 A I -- I hope so.
 24 Q Did you discuss the substance of your expert
 25 opinions with Ms. Davis?

1 A Only -- Only in the most general terms. I -- I
 2 said -- It came up in the context of talking about those
 3 papers. I felt that those papers were consistent with
 4 the general thrust of what I argued in the report and so
 5 in general terms I talked about my conclusions, yes.
 6 Q Did you review any documents with Ms. Davis?
 7 A No. I mean I handed those over but I didn't
 8 review them.
 9 Q Other than handing over these documents, did
 10 you review any other documents?
 11 A No, sir.
 12 Q Did you discuss any of the documents that you
 13 produced for this case?
 14 A Well, I did say that I've -- I thought that I
 15 was -- Yes, I did discuss documents but the context of
 16 it was I -- I sent my documents and I -- I thought that
 17 they were going to get photocopied and returned to me,
 18 and so they haven't so somewhere are my documents, maybe
 19 in that box, and that's the only copy. So that was
 20 the -- that was the only discussion of substance, I just
 21 wondered where they were so. . .
 22 Q I think there's more than one copy now.
 23 A Okay.
 24 MS. DAVIS: We've got a copy for you.
 25 THE WITNESS: Okay. Well, I don't, so everyone

1 else does.
 2 BY MR. AFFELDT:
 3 Q Did you discuss the process of how documents
 4 were produced from your office?
 5 MS. DAVIS: In his meeting?
 6 MR. AFFELDT: Yes.
 7 THE WITNESS: I'm not sure what you mean by
 8 that.
 9 BY MR. AFFELDT:
 10 Q Did you go over the -- the production --
 11 discuss the process of producing documents?
 12 A No. No.
 13 Q Did you discuss any of the studies cited in
 14 your report with Ms. Davis?
 15 A No.
 16 Q Did you discuss any of the problems that you
 17 might perceive with any of the studies in your report?
 18 A No.
 19 Q Did you discuss any criticisms of the studies
 20 cited in your report?
 21 MS. DAVIS: Asked and answered.
 22 THE WITNESS: Does this mean I still answer?
 23 MS. DAVIS: Yes.
 24 THE WITNESS: Okay. We -- Could you repeat the
 25 question?

1 BY MR. AFFELDT:

2 Q Did you discuss any criticisms of the studies
3 cited in your report?

4 A We discussed -- In very general terms Ms. Davis
5 mentioned that Professor Hoxby commented on my study and
6 possibly some of the studies that are cited -- well,
7 some of the studies that are cited by Professor
8 Darling-Hammond but didn't name any particular studies.
9 I got the -- It's -- I -- As I understand it Professor
10 Hoxby was critical of a few of these studies as well, so
11 it was just a very general discussion of what came up
12 with Professor Hoxby.

13 Q And what's your understanding of what came up
14 with Professor Hoxby?

15 A I believe that she was commenting on several of
16 the studies, the plaintiffs' expert reports including
17 Professor Darling-Hammond's, and I gather that she said
18 that some of the research that is cited doesn't meet
19 sort of current sort of standards for policy evaluation
20 research.

21 Q Is it your understanding that Professor Hoxby
22 was -- expressed any -- Let me rephrase that.

23 Do you have an understanding as to whether
24 Professor Hoxby expressed any opinion as to the study
25 you did in your expert report?

1 A I heard that she -- I didn't hear anything
2 about my report per se. Professor Hoxby apparently said
3 nice things about me, so I gather, said I'm an okay
4 researcher. Coming from her that's quite a compliment
5 by the way.

6 Q So do you have an understanding as to whether
7 she said anything specific about the study that you did
8 in your expert report?

9 A I did not hear -- I did not hear anything
10 specifically about my expert report. All I heard was
11 that Caroline referred to my work generally, not the
12 specific report but she knows my research generally.

13 Q Did you discuss any of the studies cited in
14 Linda Darling-Hammond's report with Ms. Davis?

15 A No.

16 Q And as Ms. Davis probably went over with you
17 yesterday, she makes objections for the record and she
18 needs to do that to represent her client. That
19 doesn't -- That shouldn't interfere with your answering
20 a question unless she directs you not to answer a
21 question for a particular reason. Is that understood?

22 A I understand. She told me that yesterday and I
23 already forgot, so my apologies --

24 Q No problem.

25 A -- to all concerned.

1 Q Do you recall producing documents in this case
2 that would be turned over to plaintiffs' counsel?

3 A Yes, I know that I shipped a number of
4 documents to you -- or to Mr. Salvaty, but to be quite
5 honest I don't remember which ones they were. There
6 were some things on my shelf and I shipped them so. . .

7 Q What was the request as you understood it from
8 defendants' counsel in terms of which documents you were
9 supposed to ship to them?

10 A Well, this was a conversation with Mr. Salvaty
11 that occurred -- I don't know -- in March, February -- I
12 don't know -- a number of months ago, and I was trying
13 to get from Paul what I needed to ship because, you
14 know, there are a lot of studies that Professor
15 Darling-Hammond cites that are published and, you know,
16 I have them in my files, she has them in her files and
17 so on, so I wanted to pin down what -- what needed to be
18 shipped to avoid sort of needless expense. And then I
19 also talked with Mr. Salvaty about the data, I was
20 trying to cooperate and so, you know, do you want the
21 final data set or the SAS programs that created the data
22 set, and so -- so we had a couple of conversations about
23 that and I -- so I made a couple of shipments of
24 documents and data.

25 Q And when you asked Mr. Salvaty if he wanted the

1 final data set, what did he say to you?

2 A I really don't remember. My recollection was I
3 sent the final data set, and then I guess we had a
4 conversation -- Well, for one thing we had -- my
5 research assistant had some problems with his hard disk
6 and it took him a little bit of time to pull the -- the
7 earlier jobs up that created the final data sets, so
8 that was part of the discussion. But I honestly cannot
9 remember all the -- much at all about the conversation
10 other than I just wanted to get a sense of what I needed
11 to send and on the basis of that I sent some things
12 so. . .

13 Q And among the things you sent was your final
14 data set?

15 A Yes, sir.

16 Q Did you also send to Mr. Salvaty instructions
17 for how to assemble the data set?

18 A Yes.

19 Q What would you refer to that set of
20 instructions as?

21 A There's a -- a -- I believe a Zip disk,
22 although I sent this electronically, a Read Me file,
23 which is an ASCII file that lays out all the steps, and
24 then a series of SAS, S-A-S, program files. That's a
25 statistical program that was used to merge -- well,

1 extract and merge the various data sets that are -- that
2 we downloaded off the State Department of Ed web site.

3 Q Did you identify in that Read Me file the State
4 Department of Ed web sites that you used?

5 A Yes, I believe so.

6 Q And the SAS program files, are those -- how are
7 those linked to the Read Me file?

8 A Well, they're not linked. They're just
9 lines -- It's a programming language so it's lines of --
10 of code that tells the computer what to do and how to
11 merge the files and what variables to keep and so on.

12 Q So if I opened your Read Me file and I had my
13 own SAS software, how would I walk through the Read Me
14 file to reassemble your data set?

15 MS. DAVIS: Vague and ambiguous.

16 Go ahead.

17 THE WITNESS: The -- The Read Me file says --
18 it's very short. It says this program was used for this
19 step, this program was used for this step, this program
20 was used for this step, and so on, so it would -- it
21 walks you through all the steps and it says -- points to
22 the program that did it. So I think it's pretty
23 straightforward.

24 BY MR. AFFELDT:

25 Q Does one need the SAS software themselves to

1 A That we requested from Professor
2 Darling-Hammond? There was one kind of a newsletter
3 from the Los Angeles Unified School District. There was
4 a study by -- an unpublished study by a fellow named
5 Fuller at the University of Texas that was done a number
6 of years ago. Those are the only two that come to mind.

7 Q Did you send copies of E mails of your
8 communications with counsel?

9 A I don't believe so because there really weren't
10 any. We communicated by phone.

11 Q Were you personally responsible for identifying
12 the documents that were forwarded to Mr. Salvaty?

13 A From Professor Darling-Hammond?

14 Q No.

15 A I'm sorry. Could you repeat the question?

16 Q In response to Mr. Salvaty's directions to
17 produce documents along with your expert report as part
18 of this case, were you personally responsible for
19 identifying which documents would be sent to
20 Mr. Salvaty?

21 A Yes.

22 Q Did your research assistant help with that
23 process at all?

24 A In terms of the documents, no. I shipped
25 those. My -- The research assistant just worked with

1 reassemble the data set that you had?

2 A Yes.

3 Q Any other software one would need?

4 A Other than -- Nothing other than what would be
5 on a PC to read the Read Me file, Word or something like
6 that.

7 Q How did you identify which documents to send
8 Mr. Salvaty that weren't part of your data set?

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: Well, as I recall it really
11 were -- were documents -- it really boiled down to
12 documents that weren't already cited by Professor
13 Darling-Hammond and I think that -- that was primarily
14 it and any sort of things off the web that I used, you
15 know, and any documents that you -- you know, that
16 would -- would -- weren't published. And there may be
17 some published ones, too. Basically it's my
18 recollection it was anything other than what Professor
19 Darling-Hammond cited, the presumption being that you
20 all had the things that she cited.

21 I also remember that I requested some of the
22 documents she cited because I didn't have copies of a
23 few of the things, so I didn't send those back to you
24 so. . .

25 Q Do you remember which documents those were?

1 the data, so I asked him to pull together -- to write
2 the Read Me file and pull together all the SAS jobs and
3 so on. So he put together the data, I sent the
4 documents. Of course I sent the data, too. He gave it
5 to me and then I shipped it after looking over the
6 documentation.

7 Q So the research assistant wrote the Read Me
8 file?

9 A Yes.

10 Q Did you look over the Read Me file --

11 A Yes.

12 Q -- before you sent it?

13 A Yes.

14 Q And what's his name?

15 A Donald Watson, W-a-t-s-o-n.

16 Q Is he a grad student at the university?

17 A No, he's a consultant. He -- He was a former
18 graduate student. He now lives in Texas, but he and I
19 work on many projects. And in fact, he's also an
20 employee of the University of Missouri. He's paid off
21 of some contracts, research contracts I have.

22 Q Other than working for you, does Donald Watson
23 work in any other capacity for the University of
24 Missouri?

25 A No.

1 Q Did Mr. Watson earn his degree, his graduate
2 degree?
3 A Yes.
4 Q What is the degree that he holds?
5 A He has a Ph.D. in education and I supervised
6 his dissertation research.
7 Q Do you know if he has any training in
8 statistics?
9 A Yes. He's trained in -- He's had courses in
10 statistics taken as part of his Ph.D. program and he's a
11 very good SAS programmer. I rely on him for the SAS
12 programming and I -- I define what the statistical
13 research is. But in terms of preparing the databases,
14 he's an outstanding SAS programmer.
15 Q Just for the record, what does "SAS" mean?
16 A Oh, that's a good question. It's Statistical
17 Analysis Software, SAS.
18 Q Is that a software generally used by
19 researchers in the social sciences?
20 A Yes.
21 Q Do researchers in any other fields commonly use
22 SAS to the extent you know?
23 A I think it's used to maintain business
24 databases quite a bit. It's very widely used.
25 Q Do you know how to program in SAS?

1 A I do but not nearly so well as Don.
2 Q Is he a full-time employee of the University of
3 Missouri?
4 A Yes.
5 Q So you have enough work to keep him busy full
6 time?
7 A Yes.
8 Q Where does he live in Texas?
9 A He just moved to Lubbock. He was in
10 Nacogdoches when he did his work. His wife got a job.
11 She -- She got a degree in education. She was at
12 Stephen F. Austin in Nacogdoches and now she just got a
13 job at Texas Tech and they're in school and so they just
14 moved to Lubbock.
15 Q So do you do most of your work with Mr. Watson
16 over the phone and the internet?
17 A Both. More the phone than the internet, but we
18 do a lot of E mails. I'm involved in many projects with
19 Don so there's -- and he's supported off of research
20 contracts that I have. This is sort of moonlighting,
21 doing a little bit of this work on the side.
22 Q Did Mr. Watson get paid for his work on this
23 case?
24 A Yes.
25 Q Was he paid directly by the state?

1 A No, by me.
2 Q As a portion of your payment for your work on
3 this case?
4 A Yes.
5 Q How much did you pay Mr. Watson for his work on
6 this case?
7 A \$75.00 an hour.
8 Q And what is your hourly rate on this case?
9 A \$150 per hour.
10 Q Do you know what Mr. Watson's undergraduate
11 degree was?
12 A He was a science teacher. I believe he has a
13 degree in physics and then he had a degree in science
14 education. That might be a double major. And he's been
15 a computer programmer for many years prior to coming
16 into this line of work.
17 Q Did anyone else, like a secretary, play any
18 role in helping to produce the documents that you sent
19 to Mr. Salvaty for this case?
20 A No.
21 Q Did you take any notes when you were reviewing
22 Dr. Darling-Hammond's expert report?
23 A I'm sure I did, I scribbled down a few things.
24 Q Did you produce those notes to Mr. Salvaty?
25 A I believe there's some notes in there. I --

1 I -- I don't remember but I -- if it was in my pile
2 of -- I put things for the case in a pile and I've sent
3 that pile, and I believe there's some notes in there on
4 various things.
5 Q By that do you mean handwritten notes?
6 A Yes.
7 Q When you take notes, how do you usually take
8 notes?
9 A Handwritten.
10 Q On a legal pad?
11 A Usually something like what you're doing.
12 Q And you're pointing toward my yellow standard
13 series legal pad?
14 A Yes, although I don't use legal size paper.
15 Q Okay. For the record I think this is 8-1/2 x
16 11.
17 A Okay.
18 Q So neither do I. It's too long.
19 All right. Do you type your notes ever?
20 A Very rarely.
21 Q Did you type any notes in this case?
22 A Not that I recall, no.
23 Q Have you had any conversations with other
24 experts representing the State of California in this
25 case?

1 MS. DAVIS: Relating to this case?
 2 MR. AFFELDT: Yes.
 3 THE WITNESS: Only one that I can recall and
 4 that was Professor Berk here at UCLA.
 5 BY MR. AFFELDT:
 6 Q And when was that conversation?
 7 A Probably in December or January. It was about
 8 the time that I was doing my statistical analysis for my
 9 report.
 10 Q That was December '02/January '03?
 11 A Yes.
 12 Q And what was the reason for your talking with
 13 Professor Berk?
 14 A Mr. Salvaty -- When -- When I described to
 15 Mr. Salvaty how I thought one should look at the data on
 16 student achievement in California and what I was
 17 contemplating doing for my report concerning student
 18 achievement gains, he suggested I talk to Professor
 19 Berk, give him a call and just have a short chat about
 20 what I was planning, and so I did.
 21 Q Why did Mr. Salvaty suggest you talk to
 22 Professor Berk?
 23 MS. DAVIS: Calls for speculation.
 24 THE WITNESS: Probably because he thought two
 25 heads are better than one and Professor Berk is a good

1 statistician, and I -- I think it's a good idea to sort
 2 of bounce an idea off of another person who does
 3 quantitative research in the area.
 4 BY MR. AFFELDT:
 5 Q Had you ever done that sort of a statistical
 6 analysis before?
 7 MS. DAVIS: Vague and ambiguous.
 8 THE WITNESS: You're referring to the analysis
 9 in the -- that I did in the report?
 10 BY MR. AFFELDT:
 11 Q That's right.
 12 A Yes.
 13 Q On what occasion?
 14 A I've looked at -- I've analyzed Missouri
 15 student achievement data quite a bit that I did for a
 16 paper, a scholarly paper, I did some analysis of student
 17 achievement gains in Missouri and looked at teacher
 18 credentials and it -- it worked its way into a report by
 19 a commission the governor appointed, a commission on
 20 achievement CAP elimination, that they had a report.
 21 And then I also put some of that work in a scholarly
 22 paper that's under review in a journal. Although,
 23 actually, it appeared in the first draft of the
 24 scholarly journal and then the editor said the paper's
 25 too long, so I took it out. But it appeared in the

1 draft of a paper, the initial draft.
 2 I also did some similar work with -- for a
 3 paper published back in '97 on teacher mobility. And I
 4 also did similar work in this school finance case in
 5 South Carolina. So I -- So I've run these kinds of
 6 statistical models before.
 7 Q What was the name of the '97 study you just
 8 referred to?
 9 A May I look at my Vita? I don't have my Vita.
 10 It was --
 11 Q Sure.
 12 A It should be in the cover of my report. It was
 13 published in the JOURNAL OF POLICY ANALYSIS AND
 14 MANAGEMENT but I don't -- I can't remember the exact
 15 title but I'll be able to tell you if you hand me that.
 16 Q Okay. We are going to mark it first as
 17 Podgursky Exhibit 1.
 18 (Podgursky Exhibit 1 was marked for
 19 identification by the court reporter.)
 20 BY MR. AFFELDT:
 21 Q If you could take a look at Podgursky Exhibit 1
 22 and let me know if that is a copy of your Vita?
 23 A Yes, it is.
 24 Are we ready to answer the question?
 25 Q If you're ready.

1 A Okay. So it's on page 2 and it's the article
 2 called towards the bottom. It says:
 3 "D. Ballou and M. Podgursky. 'Teacher
 4 Recruitment and Retention in Public and Private
 5 Schools.' JOURNAL OF POLICY ANALYSIS AND
 6 MANAGEMENT," June 1998.
 7 MS. DAVIS: John, page 4 seems to be blank but
 8 it has a page No. 4. I'm not sure if --
 9 THE WITNESS: Woops. That was a --
 10 MS. DAVIS: -- we're missing something.
 11 THE WITNESS: That's probably my fault. I
 12 probably -- There's nothing missing there.
 13 MS. DAVIS: Okay.
 14 THE WITNESS: It's just a glitch, a Word
 15 glitch.
 16 MR. AFFELDT: That's what --
 17 MS. DAVIS: Oh, yeah, I've got the same --
 18 Okay. The same thing.
 19 MR. AFFELDT: So both our versions --
 20 THE WITNESS: And I'm sure it's my fault.
 21 It -- It happens in Word. I didn't notice it. This may
 22 have come off the web somewhere. I don't know where it
 23 came from.
 24 BY MR. AFFELDT:
 25 Q In the June '98 paper that you just identified,

1 did you do the same type of statistical analysis as you
2 did in this case, by that I mean did you look at student
3 achievement gains of teachers who had some sort of
4 provisional credential and then reanalyzed it
5 controlling for SES and then reanalyzed it looking just
6 at gain-scores?

7 MS. DAVIS: Compound. Vague and ambiguous.

8 THE WITNESS: No, the -- when I -- I
9 interpreted your question to mean had I done studies
10 where I looked at the effect of teacher characteristics
11 on student achievement gains. I did not -- And that
12 came up in this study. I was looking in this particular
13 case at supervisor evaluations and whether -- The issue
14 that came up in this study was whether those were
15 reliable, supervisor evaluations were associated with --
16 whether teachers who had better evaluations from their
17 supervisors had students -- produced greater student
18 achievement gains, and so I ran some -- I did a
19 statistical analysis along with citing some other
20 literature on that point. So no, I didn't specifically
21 look at teacher certification in that study.

22 BY MR. AFFELDT:

23 Q How many times did you talk with Professor
24 Berk?

25 A Just once in my -- As I recall just once on the

1 test scores?

2 A Off the web. So the state puts data at the
3 building and the grade level along -- well, actually
4 very large data sets with building and grade level and
5 test scores broken out by race and a variety of other
6 factors in large data sets and makes them available for
7 downloading off the web, and so that's what I used.

8 Q And how did you get the data on the teacher
9 qualifications for the teachers teaching at cohort?

10 A In another place on the web the state puts --
11 it's called CBEDS -- and I don't know what that stands
12 for but it's C-B-E-D-S -- data and it's split among
13 several files but there's data on the certification
14 status of the teachers and what their teaching and the
15 grade level and race and a whole variety of
16 school-and-teacher-level variables on the web in several
17 files. And then that's what the SAS program was about,
18 was linking those, so you got to link them together
19 by -- you got a code for the building, so you have to
20 link all these various files together using those codes
21 for the buildings.

22 Q So you were looking at the building or school
23 level?

24 A That's grade within a building, yes.

25 Q How many buildings did you look at?

1 phone.

2 Q How long did the conversation last?

3 A It was pretty short I think. 15 minutes.

4 Q And what did you ask Professor Berk?

5 A Well --

6 MS. DAVIS: Vague and ambiguous.

7 THE WITNESS: -- I didn't -- I just told
8 Professor Berk that Professor Salvaty -- Mr. Salvaty
9 wanted me to touch base with him about what I was
10 planning to do with regard to the case, and so I told
11 him I was going to track a cohort through a building
12 using the STAR data and then use the data on the web --
13 put on the web by the State Department of Ed, the CBEDS,
14 C-B-E-D-S, to link the teacher characteristics at the
15 building and the classroom level with the gain-scores.
16 And so I just ran that plan by him, and he said yeah,
17 that was a good idea, and that was about -- you know, we
18 had a little bit of chat about it and that was about it,
19 but he indicated to me he thought that was a good way to
20 come at the problem.

21 BY MR. AFFELDT:

22 Q Did you explain to Professor Berk how you were
23 going to get the data for the cohort test scores?

24 A Yes.

25 Q And how did you get the data for the cohort

1 A Well, the sample size -- I'm not sure it's
2 reported there. It should be. Hopefully it's in a
3 printout I sent you, but it's all of them, so every --
4 so it's thousands of classrooms. Now, the master file
5 has -- Well, in fact, we decided after some preliminary
6 analysis to look at elementary buildings, so we have all
7 the elementary buildings that reported scores to -- in
8 the STAR. That's the -- That's what the state calls the
9 test, S-T-A-R. So in the STAR files there's a -- a file
10 with building and grade level and subject scores for all
11 the schools in the state -- the public schools in the
12 state.

13 And so what we did is we -- since I wanted to
14 look at a gain -- I wanted to track a cohort through a
15 building and see how much -- so the idea was to take --
16 to look at a group of teachers, say we looked at fifth
17 grade teachers, and so we looked at the gain-scores of
18 students from fourth to fifth grade and so we needed to
19 identify -- identified all the sets of schools that have
20 fourth and fifth in the same building. So if -- if they
21 changed buildings, we didn't use them. So we wanted to
22 track cohorts through buildings, so we took elementary
23 because that's -- One of the most common patterns that
24 works is, say, three to five or four to five because
25 kids are in the same building, and then we also looked

1 at seven and eight because there was a large sample of
2 kids that stayed in the same building at seven to eight.
3 So we -- So those are the buildings we chose.

4 I hope I was answering your question. I may
5 have drifted but. . .

6 Q Is the N in your sample a building, then?

7 A Yes.

8 Q It's not a student?

9 A No.

10 Q Or a teacher?

11 A No.

12 Q And is your testimony that you looked at all
13 buildings with a fifth grade in it that was reported in
14 the STAR database?

15 A If -- They -- They had to have a fifth grade
16 score and a fourth grade score. So if they had both of
17 those they were in the sample.

18 Q The same for seventh and eighth?

19 A Yes. Well, let me clarify. And they also had
20 to have reported the data on the teachers. So
21 overwhelmingly the data was complete, so you had to have
22 not only the change in test scores but also the
23 right-hand side variables, that is the teacher
24 characteristics and free and reduced lunch status of the
25 test-takers. But overwhelmingly that was the case, if

1 you had the one, you had the other.

2 Q Did you explain to Professor Berk in as much
3 detail as you just explained to me on what you were
4 planning on doing?

5 A Well, I hadn't really done it at the time but I
6 explained to him what I planned to do, yes.

7 Q And other than saying it sounds like a good
8 idea or agreeing with your notion, do you remember any
9 specifics of Professor Berk's response to you?

10 A Well, we didn't -- we didn't -- The issue is
11 trying to get the best estimate of the teacher effects,
12 and Professor Berk pointed out, he used the term
13 ecological fallacy. The problem that still remains is
14 you -- you actually haven't linked a particular teacher
15 to particular students. You're still averaging over the
16 teachers at -- at the building level, so you're --
17 you're taking the average characteristic -- the average
18 percent certified, say, or percent with full credentials
19 at the building and grade level and then comparing that
20 to the student achievement gains, and so it's -- it gets
21 you closer to your ideal which would be the classroom
22 level or the student and classroom level. He agreed
23 that it's better than a cross-section, the types of
24 things that Professor Darling-Hammond cited. It's
25 better to be looking at gain-scores. But we discussed

1 in general that it's -- you know, the ideal would be
2 student level longitudinal data.

3 An issue that came up again in that regard is
4 you're -- because particularly at the elementary level
5 we were actually able to identify fifth grade teachers
6 in the data set, so we weren't averaging over a whole
7 building but rather actually looking at the fifth grade
8 teachers and that was a -- we agreed that was an
9 attractive feature of what -- of what I planned to do.

10 Q So again, you said the ideal would be student
11 longitudinal -- Can you repeat your --

12 A That's correct. The ideal would be to have a
13 data set where you have every student in California and
14 you could track them and so that if they changed schools
15 you would know, you know, you'd know if they were at
16 this school in this year and they're at a different
17 school in a different year.

18 Q How would a student changing a school effect
19 the data that you were analyzing?

20 A Well, it introduces some measurement error,
21 that is I'm -- I'm taking the -- the data in the, say,
22 fifth grade and I'm assuming -- I'm looking at the gains
23 from fourth to fifth grade of a cohort, but some of the
24 kids who were there in fourth grade aren't there in
25 fifth and some of the kids that were there in fifth

1 grade weren't there in fourth grade, so you get a little
2 bit of this measurement error in the data.

3 Q Is another term for that "student mobility"?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: Yes, that's -- that's a generic
6 problem, yes.

7 BY MR. AFFELDT:

8 Q Did you make any analysis in your study of
9 student mobility?

10 A No. The data didn't permit an analysis of
11 student mobility.

12 Q In addition to having a student longitudinal
13 data, wouldn't you also need some sort of teacher
14 longitudinal data, some data set indicating which
15 teachers were in which classrooms over time?

16 MS. DAVIS: Calls for speculation.

17 THE WITNESS: Not -- Not for a one-year change
18 because you're looking at spring scores so you know -- I
19 mean you assume that teachers were there in the fall, so
20 overwhelmingly these are the same teachers who were in
21 that classroom for the year. So it's really not a
22 problem on the teacher level but the problem is the
23 student level since you're -- you're using the fourth
24 grade scores of that cohort as a proxy for the prior
25 student achievement of the fifth grade students, so if

1 they were at a different school, then you've introduced
2 some -- some measurement error.

3 I guess the other way to put it is they didn't
4 have -- you haven't -- you haven't fully controlled for
5 their prior student achievement. You're using the
6 fourth grade scores of the students in that building as
7 a proxy for their fourth grade student achievement.

8 BY MR. AFFELDT:

9 Q And when you say that in looking at spring
10 scores you're assuming that teachers were there in the
11 fall, you mean at the beginning of the school year?

12 A That's correct.

13 Q Did you do any analysis of the issue of teacher
14 mobility in the samples you were looking at?

15 A No.

16 Q If there were teacher mobility, would that also
17 introduce a measure of error?

18 MS. DAVIS: Calls for speculation.

19 THE WITNESS: I've never seen -- There is
20 teacher mobility but overwhelmingly it occurs between
21 academic years. Within academic years it's very unusual
22 for teachers to leave. I mean they do, there's some,
23 but it's -- it's a -- in my opinion it's a very small
24 problem compared to the student mobility problem
25 referred to earlier.

1 statewide. It can be done within some school districts
2 but not statewide.

3 Q Do you agree that it would be helpful to track
4 student achievement over time if there were such a
5 database in California?

6 MS. DAVIS: Vague and ambiguous. Calls for
7 speculation.

8 THE WITNESS: Yes, some states -- This is an
9 issue that states have been debating, and Texas has a
10 statewide database where students are linked over time.
11 Tennessee has one. Some other states are discussing
12 doing this. It's -- It's a step forward for states to
13 do it. I mean first they -- Remember, you know, ten
14 years ago the states weren't even testing the kids, so,
15 you know, first they sort of got their standards in
16 place, developed assessments. Many states are not
17 testing every year the way California -- Or at least
18 California tests three through eight. Missouri only,
19 for example, in math tested four, eight, and ten. New
20 York State tests over -- only certain intervals. So for
21 those states it wouldn't be very useful to link the
22 records over time. So gradually states are moving
23 towards testing kids every year and then after they've
24 been doing it for a while the realization is occurring
25 that, well, yes, it would be useful then to link those

1 BY MR. AFFELDT:

2 Q My question was: If there were teacher
3 mobility, would that introduce an error of measurement
4 into your data?

5 MS. DAVIS: Same objection.

6 THE WITNESS: Yes, if there were a lot of
7 mobility. Actually, in the state data the -- it's my
8 understanding that the information on teachers actually
9 comes from the fall and the kids are tested in the
10 spring, so if a lot of the teachers who were there in
11 the fall, you know, quit at Christmastime and were
12 replaced by other teachers and then you tested the kids
13 in -- I'm not sure what month they test in -- March or
14 April, then you know -- then that's where your
15 measurement error would come in, is you would have the
16 new teacher would -- would be influencing achievement
17 but you would be using the characteristics -- you would
18 have only measured the characteristics of the teacher
19 who they replaced, not the new teacher.

20 BY MR. AFFELDT:

21 Q Do you know if California has a student
22 longitudinal database that tracks individual students
23 over time?

24 A To the best of my understanding it does not.
25 It can be done within the school districts but not

1 records in order to, you know, see how kids are
2 progressing.

3 BY MR. AFFELDT:

4 Q Other than Texas and Tennessee, are you aware
5 of any other states that have a statewide student
6 longitudinal database?

7 A Someone's told me, one of our Missouri state
8 people, our State Department of Ed people says there's a
9 couple of other states, but I've never seen any research
10 and I don't know what those states are, but the only
11 states where I've seen research and information coming
12 out of those is -- are Tennessee and Texas.

13 Q Do Tennessee and Texas also link the students
14 to the specific teachers that they've had over time?

15 A Not statewide. Well, let me back up.
16 Tennessee does to some extent. Texas does not. It --
17 Discussing this sort of around a table makes it sound
18 simple, but these are all big steps for states. In
19 Tennessee, for example, they can identify the teachers
20 but they haven't linked it to -- at least as of recently
21 haven't linked it to particular characteristics of
22 teachers, for example certification status or, you know,
23 education or -- or other teacher characteristics. So
24 they actually could identify classrooms and teachers and
25 break out these teacher effects but they hadn't linked

1 the other administrative data about teachers to the
2 system. So -- So these are all like incremental steps,
3 if you will, in pulling these things together.

4 Q If you had a link between student achievement
5 data and the teacher characteristics, the teachers those
6 students have been taught by, would researchers be able
7 to use that information to determine better in your
8 opinion the effects of teachers on student achievement
9 in California?

10 MS. DAVIS: Same objections.

11 THE WITNESS: Yes, ideally you'd like a data
12 set that keeps track of kids over time and can link
13 student achievement -- and can put, you know, those kids
14 in a classroom and you know the characteristics of the
15 teachers. That would be preferred, yes.

16 BY MR. AFFELDT:

17 Q Have you ever heard of the California Student
18 Information System, CSIS, C-S-I-S?

19 A No, I'm not familiar with that.

20 Q Did you exchange any E mails with Professor
21 Berk?

22 A I believe Professor Berk followed up with just
23 one E mail pointing out one issue that I mentioned, what
24 he calls the ecological problem, and I think that was
25 it. I think I sent him an initial E mail saying "I'd

1 over the whole school -- See? -- and looking at --
2 they're taking the current test score of the kids and
3 the current average teacher characteristics over the
4 whole school. Now, that assumes that those kids have
5 been at that school for, if you're looking at fifth
6 grade, five consecutive years. So while I'm sinning by
7 assuming they've been there one year, you see it's --
8 it's less of a sin, it's less measurement error, than
9 the cross-section which assumes they've been there for
10 whatever the grade span of the school is. So that's --
11 that's -- So -- So the context of our discussion is we
12 were reducing the ecological, that is this mismatch,
13 problem or the mobility problem.

14 Q Is another way of defining this particular
15 ecological problem that Professor Berk was raising
16 aggregation bias?

17 MS. DAVIS: Vague and ambiguous. Calls for
18 speculation.

19 THE WITNESS: Yeah, I think it would translate
20 into -- I think it's associated -- As best as I
21 understand it's the sociologist's version of aggregation
22 bias.

23 BY MR. AFFELDT:

24 Q Did you produce Professor Berk's E mail to you
25 to Mr. Salvaty?

1 like to talk to you sometime. What's a convenient time
2 to call?" so just a couple.

3 Q What did Professor Berk's E mail on the
4 ecological problem say?

5 A Well, he just said that that could be an
6 issue. I mean it's just a couple of sentences. And the
7 ecological problem means -- it's not a term that
8 economists uses as much as a sociologist. He had a
9 joint appointment in sociology and staff. But it means
10 when you're averaging over things, when you are using
11 aggregated data, you know, you're -- it -- you're -- it
12 could be that the kids -- I mean you take certification
13 status, you're assuming an overall percent certified but
14 you actually are not actually putting the kid in a
15 particular classroom of a certified or uncertified
16 teacher, you're just averaging overall the teachers.
17 That's -- That's what it means. So, you know, he
18 pointed out that it would be -- the ideal would be to
19 have the classroom level data.

20 Now, I should mention that in our conversation,
21 see, I pointed out and I -- I -- and he agreed on this
22 point that, you see, this is -- doing it the way I did
23 is orders of magnitude better, however, than the
24 cross-section studies that Professor Darling-Hammond
25 cites because in those the researchers are averaging

1 A I'm not sure. I don't remember. If it's not
2 there, I could try to find it.

3 Q Would it still be on your system?

4 A Probably. It was very short. I mean it was
5 just like two sentences is my recollection.

6 Q Do you recall what those two sentences said?

7 A Well, yeah, I'm saying, you know, there -- he
8 was referring to the ecological bias and he said
9 that's -- that could be an issue, and that -- that was
10 it. Maybe it was one sentence, there could be a problem
11 with ecological bias or ecological fallacy, which again
12 I understand to mean aggregation bias.

13 Q Did you produce your E mail to Professor Berk
14 to Mr. Salvaty?

15 A I didn't E mail him back on that point. He
16 just sent me that E mail, and so I didn't discuss any of
17 the technical things via E mail with him. I only E
18 mailed him just to set up the phone call. We had the
19 phone conversation, and then after we had the phone
20 conversation he sent me this just short, you know,
21 one -- like I said, it was one or two sentences just
22 stating that.

23 Q Did you produce the preliminary E mail that you
24 sent to Professor Berk to Mr. Salvaty?

25 A I don't know but probably not. I didn't -- It

1 was just "What's a good time I could give you a phone
2 call?" was all I said.

3 Q Other than the interaction with Professor Berk,
4 have you had any other interactions with experts
5 representing the State of California regarding this
6 case?

7 A No, there -- there were no other interactions
8 that I can recall.

9 Q Have you read any of the other expert reports
10 in this case?

11 A No, I haven't.

12 Q Does that go for both on the plaintiffs' side
13 and the defendants' side?

14 A That is correct, I did not -- I haven't read
15 any of the other -- I -- I was very narrowly focused.
16 I've only looked at Professor Darling-Hammond's report
17 and my response was to that. I have not read any of the
18 other documents.

19 Q Do you recall gathering documents for
20 Mr. Salvaty more than once?

21 A Oh, I'm sorry. You mean producing the
22 documents?

23 Q Right. Let me ask it better.

24 Do you recall having to produce more than one
25 round of documents?

1 A I think I only shipped him one group of
2 documents. I think I might have had a couple of phone
3 calls about what should go in and what should go out,
4 but my recollection is I only did one shipment.

5 Q Did you deal with any other individual in
6 producing these documents that was representing the
7 State of California?

8 A No. I only dealt with Mr. Salvaty up through
9 the whole time I was dealing with the report other than,
10 you know, just for billing and Mr. Egan for, you know,
11 just payment and bills and things. But in terms of
12 Mr. Salvaty is the only person I've dealt with.

13 MR. AFFELDT: This is probably a good time to
14 take a break.

15 MS. DAVIS: Yeah. Sounds good.

16 (Recess.)

17 BY MR. AFFELDT:

18 Q Going back to your testimony about other cases
19 that you have worked on, what work did you do with the
20 desegregation case in Kansas City?

21 A That work -- and I don't know the complicated
22 history of that case, but by the time I entered it,
23 which was a couple years ago, Judge -- there was a
24 ruling from Judge Clark, who has since passed away, that
25 set a standard for narrowing of black/white achievement

1 gaps in Kansas City that said as part of the
2 requirements to go to unitary status the district had to
3 narrow the black/white achievement gap by a certain
4 amount. That amount was 2.6 NCE, and that stands for
5 Normal Curve Equivalence. So the school district
6 through their counsel asked me to -- to look into the
7 data and see if the district had -- had complied or the
8 case could be made that they complied. And it's more
9 complicated than it sounds because Judge Clark didn't
10 really pin down a lot of details on that, but that's
11 what was involved, looking at narrowing declines of
12 black/white achievement gaps in Kansas City.

13 Q Is that the Brown v. Board of Education case?

14 A I don't believe --

15 MS. DAVIS: You mean "the Brown"?

16 THE WITNESS: The original? I don't think so.
17 It has a name but these -- these names go in one ear and
18 out the other for me. It's -- It's the federal
19 desegregation case, so I don't -- I can't remember.
20 There's a name associated with it but I don't think it's
21 Brown.

22 BY MR. AFFELDT:

23 Q Okay. And who were you working for then in
24 that case?

25 A The school district.

1 Q Was the state involved in that case?

2 A Well --

3 MS. DAVIS: Vague and ambiguous.

4 Go ahead.

5 THE WITNESS: -- not -- I think at the earlier
6 points you could sort of join the team and I think the
7 State of Missouri had some involvement, but it primarily
8 was just between the plaintiffs which were the students
9 and their representatives and the school district and it
10 was in federal court, so the state's role was pretty
11 peripheral at this point.

12 BY MR. AFFELDT:

13 Q So we're talking about Kansas City, Missouri?

14 A Yes.

15 Q Not Kansas City, Kansas?

16 A That's correct.

17 Q Do you know when that case was originally
18 filed?

19 A A long time ago. I believe it goes back to the
20 early '80s, so it's gone through many rounds and the
21 lifetime of a federal judge, or much of it.

22 Q When did you become first involved in the case?

23 A About two years ago, a little more than two
24 years ago. It probably would have been in 2001 some
25 point, middle.

1 Q Have you provided any written testimony in that
2 case?

3 A Yes, I -- I did two reports, one of which was
4 introduced into evidence I guess you'd say.

5 Q How was it introduced into evidence?

6 MS. DAVIS: Calls for a legal conclusion.

7 THE WITNESS: Someone put little numbers on it
8 and we discussed it in the trial.

9 MS. DAVIS: That's a good indication.

10 THE WITNESS: It looked legal to me.

11 BY MR. AFFELDT:

12 Q That's a pretty good definition.

13 What happened to the other report that you did
14 in that case?

15 A Well, this -- this would have been -- The case
16 was complicated, and as I understand it -- And again,
17 this is speaking as an uninformed economist discussing a
18 complicated legal case -- there were a variety of
19 factors or criteria that had to be met to -- for the
20 district to go back to unitary status and the
21 black/white achievement gap was just one piece. There
22 were some issues surrounding governance and so on. So
23 about the time I did my first report they were in the
24 process of firing their superintendent and there was a
25 good deal of disarray on the school board, so the judge,

1 as I understand it -- Now, Judge Clark was -- No, No.
2 I'm sorry. It was Judge Whipple at that point, he said
3 we're going to do it all together, and so I was on the
4 verge -- I was literally on the verge of being deposed
5 for that report and then they had a call with the judge
6 and they sort of -- everything halted. And so I did
7 nothing basically for almost a year and then they
8 came -- or yeah, I think about a year, and then they
9 came back to me and they said well, now, let's go back
10 and take all the new data that's been generated and
11 update the numbers and all of that. So that's -- that's
12 my layman's rendition of what I understand to have
13 happened.

14 Q So what was your reason, then, for doing the
15 second report?

16 A Well, the second report updated the numbers
17 and -- and -- and by that time the district was
18 represented by a new law firm and they didn't want me to
19 get into some of the things I got into in the first
20 report and we -- we -- the focus changed. See, by that
21 point the state had started testing kids with our own
22 assessment in the State of Missouri. In math they
23 started in '98 and in communication arts in '99, and so
24 the -- when I did the first report you really only had a
25 first round of those state assessments to use, or maybe

1 two. I don't know. So it was new because there's a lag
2 in their release times.

3 But by the time of the second report we
4 actually had a track record for the district we could
5 use on -- and we actually -- on the state assessments
6 you really do see a good deal of narrowing at most grade
7 levels on black/white achievement gaps in the context of
8 overall increases. So the -- So the story -- you had a
9 lot of new data to shed light on the issue in the
10 district, and so the new report focused much more on the
11 state assessment and much less on the Stanford 9 data
12 than the old report.

13 Q Who was administering the Stanford 9 that
14 you -- that generated data for the first report?

15 A The district -- Quite a few school districts,
16 including the Kansas City, Missouri school district used
17 the Stanford 9 in the spring or were administering
18 pieces of the Stanford 9 in the spring. The district
19 subsequently switched to the fall. When the state
20 started their spring testing for their state assessment,
21 many districts either dropped the Stanford 9 or moved
22 into the fall and Kansas City moved it to the fall which
23 introduced all kinds of messy statistical problems as
24 well in using it.

25 Q What were the points that you didn't include in

1 the second report that you had included in the first?

2 A Well, the first report got into how Judge Clark
3 came up with his criteria, and I was -- I pointed out
4 that in Judge Clark's -- the 2.6 NCE rule that he
5 imposed was really arrived at through reasoning that
6 wasn't statistically correct, and so I -- there was a
7 discussion of that.

8 I also brought in a lot of data
9 on -- we did have run round of the MAP, the Missouri
10 Assessment of Progress, the state assessment, that
11 showed that the achievement gaps were actually smaller,
12 black/white achievement gaps, in Kansas City than the
13 typical district statewide. None of that data had been
14 brought into the trial or any of the discussion before
15 because you really didn't have statewide assessment data
16 at that time back in the mid-nineties when they were --
17 this latest iteration had occurred, so there was a good
18 deal of discussion of that. The feeling with the new
19 law firm was move beyond that and let's look at the new
20 numbers and focus on the narrowing we observed in MAP,
21 the state assessment.

22 Q Did you also find any narrowing in the Stanford
23 9 scores in the second report?

24 A Not -- Not very much. It was uneven, but
25 it -- it -- I -- We didn't really take a long-term look

1 at Stanford 9 but there was -- in my opinion there were
 2 a lot of measurement problems with Stanford 9 and it was
 3 a low-stakes test. So in my opinion the state
 4 assessment trumps these kinds of low-stakes sort of
 5 casually administered tests; and that was another reason
 6 I think for putting more emphasis on it is that this
 7 really is the assessment that matters as far as
 8 accreditation and a whole variety of decisions in
 9 Missouri, and there were just a lot of problems with the
 10 Stanford 9 data in my opinion.

11 And I can go into that if you want, I mean. If
 12 not inherent in the Stanford 9, I'm talking about the
 13 way they were using it in Kansas City to be precise.

14 Q Have your first and second reports of those
 15 been submitted as part of the court record in the Kansas
 16 case?

17 A The first report is -- it was not, and so, you
 18 know, I'm not sure -- I mean the district sort of owns
 19 it. It's not -- It's sort of not in evidence.

20 Q Was it ever turned over to the other side, do
 21 you know?

22 A Yes, it was. And it was criticized by -- or,
 23 you know, they had critiques done of it by their own
 24 expert.

25 Q You said the second report was entered at

1 Q How long did you testify for?

2 A Well, I presented my data and then there were a
 3 couple of witnesses, I guess you would call it rebuttal,
 4 and then I came back on the stand again. So I guess my
 5 first presentation was a day or less and then the
 6 rebuttal was just an hour or two. I may not be using
 7 these terms right. I don't know. The second time when
 8 I was answering some of the counterarguments was about
 9 an hour -- a couple hours maybe.

10 Q How many times were you deposed in the Kansas
 11 case?

12 A Just once.

13 Q And how many days was that?

14 A It was over in one day, a long day.

15 Q Other than those two expert reports, did you
 16 submit any declarations in the case?

17 MS. DAVIS: Calls for a legal conclusion.

18 THE WITNESS: Well, there was a -- there was
 19 another document that was entered into evidence and that
 20 was a -- I guess you'd say a rebuttal to the rebuttal.

21 They had two experts that wrote a critique or -- of my
 22 report and then I wrote a short rebuttal or rejoinder to
 23 that, and that was introduced into evidence. And then
 24 there was sort of the usual kind of little short
 25 document that says Professor Podgursky is expected to

1 trial. Was there a trial in front of Judge Whipple then
 2 on -- at some point in time?

3 A Yes.

4 Q When was that?

5 A Well, the -- I don't know when the trial
 6 began. It is now completed and he's going to issue a
 7 decision at some point here. My testimony in the trial,
 8 my piece of it was -- I believe I testified back in
 9 March. I can give you the exact dates from my office
 10 calendar but I believe it was in March.

11 Q March 2003?

12 A Yes.

13 Q When did you complete the second report?

14 A Before March. We got it over to the plaintiffs
 15 and I was deposed on that I'd say maybe a couple months
 16 before that.

17 Q So early '03?

18 A Is my recollection, yes. It was all on a
 19 pretty tight schedule. I mean it could be a little bit
 20 more compressed than I indicated but I think that's
 21 roughly when it was.

22 Q Did you say the trial had ended?

23 A Yes. My testimony was sort of at the end of
 24 it. I think it went on just another day or two and then
 25 was completed.

1 testify on A, B, C, D that preceded the deposition.

2 That's -- so -- But that's all the documents that
 3 were -- You know, there was a report with lots of charts
 4 and then this rebuttal and then that initial kind of
 5 statement of what I was expected to be testifying on.

6 BY MR. AFFELDT:

7 Q When were you first engaged to work on the
 8 Campaign for Fiscal Equity case in New York?

9 A Wow. Okay. This is 2000 -- I am going to
 10 speak allowed if I can sort of mentally do a time line.
 11 That I guess -- And again, I -- this is my -- as I get
 12 older my memory gets worse and worse about dates. But I
 13 guess I testified in that a couple of years ago and my
 14 work on it began about a year before the testimony, so
 15 I'd say probably in 2000, maybe the fall of 2000 would
 16 be a -- a rough guess. I'd say that I probably worked
 17 on it about a year before the testimony.

18 Q And when you say a year before the testimony,
 19 you mean the trial testimony?

20 A Yes.

21 Q And in that case were you also working for the
 22 defendants?

23 A Yes.

24 Q And the defendants there were the State of New
 25 York?

1 A Yes.

2 Q And what was the purpose of your testimony in
3 the CFE case?

4 A Well, the question -- the focus was on adequacy
5 of resources for New York City and my specifics were --
6 were really focusing on the New York City teachers and
7 whether their pay was adequate, and then issues came up
8 of, you know, how much -- was New York City losing a lot
9 of teachers to the suburbs, how -- how did their pay in
10 and benefits stack up compared to the suburbs and to
11 other teachers in other urban areas. Then there was a
12 question that came up of, you know, their -- how much of
13 the gap in student achievement between New York City
14 kids and kids in the rest of the state could you argue
15 was coming from these differences in teacher
16 credentials. So those were the -- I'd say the key
17 points.

18 Q Did you submit any written reports in that
19 case?

20 A No. There were -- But I had tabled -- I mean
21 charts and tables that were submitted, if that's -- but
22 I did not write a report. I just had a bunch of charts
23 and tables that were introduced into evidence.

24 Q Other than the charts and tables, did you
25 submit any written work product?

1 Q How long have you been involved in the South
2 Carolina case?

3 A I think I made my first trip out there, which
4 really initiated my involvement, about two years ago.
5 Actually, two-and-a-half years. Can it be that long?
6 Maybe two years. I'd have to check my records to be
7 exact, but there was -- Yeah, it might be two years. A
8 little over two years is my best guess when I made my
9 first contact with them and had a meeting.

10 Q Did they contact you?

11 A Yes.

12 Q Who do you work for in that case?

13 A Well, who's the defendant? It's the State of
14 South Carolina and the law firm is Sowell, Gray &
15 LaFitte, I believe.

16 Q What's the purpose of your testimony in that
17 case?

18 A Well, it's -- it's very similar to in this
19 case. The question of whether resources are adequate to
20 hire teachers and -- and in this case there's a set of a
21 small group of plaintiff districts, and so really my
22 work on this has been focused more on statewide, whether
23 the state is devoting adequate resources to -- to
24 teacher -- to development of teachers and teacher
25 compensation and -- and staffing and so on.

1 A No, not that I recall, no. I'm fairly certain
2 it was just the tables and charts.

3 Q Did you have your deposition taken?

4 A Yes.

5 Q How many times?

6 A Just once.

7 Q And how long did that last?

8 A It was done in a day.

9 Q And how long did you testify at trial?

10 A I had to come -- That was messy. It was a
11 couple of days. It was -- Or maybe two and a half.
12 I -- Because of some issue of scheduling of another
13 witness or some kind of complexity, I testified -- did
14 part of my testimony, then flew back, and then had to
15 come back again and complete it, so I ended up being
16 there two blocks and it spread over -- Well, the judge
17 had a very short workday, so we would start at 10:30 and
18 adjourn at 2:30 or -- you know, I mean it seemed that
19 way, and with a long lunch, and so it took a couple of
20 days on both times, I believe, to sort of get through my
21 testimony and cross-examination. So I feel like I spent
22 a lot of time in that -- in that little resort -- I mean
23 that little -- Not resort. Little -- It was a little
24 hotel, not a big hotel like these here. It's kind of an
25 inn.

1 Q And is it your opinion that South Carolina is
2 devoting adequate resources to teachers?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: In my opinion the State of South
5 Carolina is devoting a lot of resources to putting
6 qualified teachers in the classrooms. They're --
7 They're considered right at the top among states in
8 terms of doing lots of things. They have -- They have
9 an aggressive stance vis-a-vis the labor market and so
10 they're throwing lots of programs at the problem with
11 substantial resources.

12 BY MR. AFFELDT:

13 Q Have you submitted any written work product in
14 that case?

15 A No report. I've submitted a set of charts and
16 tables.

17 Q Is it your understanding that you won't have to
18 submit a report in that case?

19 A I don't anticipate there will be a report.

20 Q Have you been deposed?

21 A Yes.

22 Q How many times?

23 A Once.

24 Q When was that?

25 A Recently. I'm tending to say everything was in

1 March. Everything can't have been in March. It was
2 probably April or May, I believe. April is my best
3 guess.

4 Q How long did that last?

5 A One day.

6 MS. DAVIS: A lot of pressure on you. All the
7 depositions have been one day.

8 THE WITNESS: You know, everyone else's has --
9 it was a long day but it was one day.

10 BY MR. AFFELDT:

11 Q You realize this is going to be more than one
12 day?

13 A Well, so I hear.

14 Q So this is your third deposition this year; is
15 that correct?

16 A This one will be the third this year, yes.

17 Q So after no depositions you're becoming an
18 expert on depositions?

19 A I'm understanding the way the lawyers work, the
20 sociology of law if you will, the process. Lawyers are
21 careful, methodical people.

22 Q Is the trial scheduled in the South Carolina
23 case?

24 A It's already underway.

25 Q When did it start?

1 some work on this case, and so it was just a very
2 general "Hello. How do you do? Would you be
3 interested?" It was a short call is my recollection.

4 And then, you know, there was some gap and then he
5 called again and then Mr. Egan sent a contract, so I
6 believe these were pretty short phone calls and that's
7 the best I can remember of the first phone call.

8 BY MR. AFFELDT:

9 Q Have you had any substantive discussions with
10 Mr. Egan about the case?

11 A No, not at all. All of my interactions with
12 Mr. Egan were purely about, you know, getting a contract
13 in, getting reimbursed for travel, just -- just sort of
14 those kinds of things. Nothing about the case.

15 Q And prior to talking with Ms. Davis last night,
16 is it true, then, that your only substantive discussions
17 on the case have been with Mr. Salvaty?

18 A Yes.

19 MS. DAVIS: Vague and ambiguous.

20 Go ahead.

21 THE WITNESS: Yes, that's very much the case.

22 BY MR. AFFELDT:

23 Q At least in terms of attorneys representing the
24 defendants in this case?

25 A Yes.

1 A I think just a few -- a few weeks ago.

2 Q Have you testified yet?

3 A No.

4 Q Are you scheduled to testify?

5 A I don't have a date yet. It's the -- At this
6 point it's the plaintiffs and we haven't really talked
7 about a date for me yet.

8 Q Is it your understanding that the defendants
9 want you to testify for them at trial?

10 A I believe so, yes.

11 Q When did you first learn about this case?

12 A You had me think about all of these other cases
13 and I thought about it last night and now I've forgotten
14 because I was thinking about all these other dates.

15 Let's see. I was contacted by Paul I believe
16 around October of 2002. I think that was -- Yeah, I
17 think it was around October of 2002 roughly.

18 Q And by "Paul" you mean Paul Salvaty?

19 A Salvaty. I'm sorry. Mr. Salvaty.

20 Q And what did Mr. Salvaty tell you when he
21 contacted you in October of 2002?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: Well, I -- I -- I really cannot
24 recall very well. I -- I believe like a first call was,
25 you know, we might be interested in asking you to do

1 Q When did Mr. Salvaty define for you the scope
2 of work they wanted you to do?

3 A Oh, I think pretty early on. I think this was
4 pretty straightforward that they wanted someone to look
5 at Professor Darling-Hammond's report and sort of
6 comment, and so I think that was -- Now, we did have
7 discussions about data we could -- we could have looked
8 at and I -- I recommended some other things that
9 never -- you know -- or, you know, some things we might
10 have done, and, you know, they never really got off the
11 ground. But it was always just sort of looking at her
12 report and the issues that were raised in her report.

13 Q What data did you discuss looking at that never
14 got off the ground?

15 A Well, I would liked to have looked at -- I
16 would have liked to have looked at the teacher data, the
17 records on teachers, and link those to data on the
18 unemployment insurance. Well, two things. I would have
19 liked to have had data on teachers that would have
20 permitted looking at patterns of teacher mobility and
21 then also we could have followed up the teachers as they
22 left -- the teachers who left teaching to see if they
23 were making more or less money. I've done that in
24 Missouri. I did that in Wyoming. I did that in --
25 Well, I didn't do it but Mike Wolkoff who's -- I had a

1 lot of discussions with Mike Wolkoff in South Carolina
2 on this to get a sense of how the teacher pay stacks
3 up. If the teachers who quit -- Are the teachers who
4 are quitting making a lot more money or about the same
5 money or less money than when they were teaching, I
6 think that's something states can do in examining their
7 own data, but it didn't come to pass here in California.

8 Q Why is that?

9 A I don't really know. I don't know. I -- I
10 just made suggestions to Paul about data we could try to
11 get from the State Department of Ed or the -- I guess
12 your sort of kind of laboring industries -- I don't know
13 what it's called -- the Department of Labor. And
14 ultimately I only ended up using publicly available data
15 off the web, so I never got any sort of data from any of
16 the agencies.

17 Q Do you know if anyone representing the
18 defendants in this case attempted to obtain any of that
19 data that you asked for?

20 MS. DAVIS: Calls for speculation.

21 THE WITNESS: I -- I don't -- I do not know. I
22 merely mentioned when -- When I had these conversations
23 with Mr. Salvaty I said well, look, you know, here's --
24 here's some issues we can look at. You know, the states
25 got these data; you know, why don't we ask for them, you

1 variable, which in my case is either the level or the
2 change in test scores, and then you have -- you're
3 saying those changes in test scores are caused by a set
4 of variables that you have on the right-hand side of the
5 model and then an error term that picks up all these.
6 So the statistical model incorporates measurement error.

7 Now, so having the student mobility I don't
8 think is -- is a particularly serious problem, and I'm
9 -- I'm minimizing it, I'm holding it -- or at least I'm
10 reducing it by looking at one year changes. The teacher
11 data is particularly attractive in California
12 particularly at the elementary level because we know
13 that the fifth grade teachers are -- are fifth grade
14 teachers, so you're not averaging over the whole
15 building, you're only looking at fifth grade teachers.
16 And, by the way, in most of these schools there aren't
17 that many fifth grade teachers, so, you know, you're
18 talking two or three or sometimes one teacher; so you're
19 not averaging over a big number, you're averaging over a
20 small number.

21 But I guess the -- the -- my final point on
22 this is that I -- the ideal, as I said, would be linked
23 longitudinal data but I think the important lesson that
24 comes out in what I'm showing in the report is that the
25 better data that you use, the smaller these effects get;

1 know, on teachers, try to get the student level data to
2 link, you know. You know, and I -- I made those
3 suggestions and I don't -- I don't know -- I never got
4 the data so I never was able to analyze the data.

5 BY MR. AFFELDT:

6 Q As you say, you didn't get the student level
7 data so you had to use building level data which earlier
8 you testified an issue around that was aggregation bias
9 but you testified you still went ahead and used that
10 data. I'm curious to know how do you decide whether or
11 not an issue such as aggregation bias is so serious that
12 it interferes with the data -- with the reliability of
13 the data and when you decide that the issue is -- that
14 the data is still meaningful?

15 MS. DAVIS: Vague and ambiguous. Calls for
16 speculation.

17 THE WITNESS: Well, I -- I don't think that
18 in -- I don't think the aggregation bias is -- is a
19 particularly big problem for what I did. The --
20 Basically when you write down a statistical model -- The
21 statistical model I'm using assumes there's measurement
22 error. So as long as its measurement error is on the
23 dependent variable -- I apologize for getting a bit
24 technical. But basically you -- when you write down one
25 of these statistical models, you have a dependent

1 okay? So the direction is clear, the cleaner you do
2 these estimates, the smaller become the teacher effects.
3 So I show in the chart if you do nothing, you find this
4 strong relationship between these teacher
5 characteristics and student achievement. If you use
6 this very crude control, free and reduced lunch, in a
7 cross-section, it has -- even though it's a poor proxy
8 for socioeconomics, you get a big reduction in the
9 effect. And then finally, if you move to what I
10 consider to be even cleaner estimates, still more
11 accurate, less biased, the effect disappears.

12 So I think the important part of the case here
13 is that the better you measure the data, the smaller
14 these effects go. So I think it's not unreasonable to
15 say if we pushed it even further still, you would be
16 unlikely to see a reversal. The more controls we're
17 entering to sort of pick up these socioeconomic factors
18 in prior achievement, the smaller these effects look is
19 the pattern that I see in the data. So while there may
20 be biases in my estimate, the direction of these changes
21 is clear and fairly striking in the data.

22 So I guess that's my point, is that you use the
23 best data you can, and I think it is superior to look at
24 these changes, gain-scores rather than doing
25 cross-section estimates.

1 Let me put it a little differently. If I had
2 done these cross-section estimates and found results
3 very similar to Professor Darling-Hammond, I would say
4 wow, maybe they're robust, maybe these issues I've
5 raised aren't so important. But you see a dramatic
6 reduction in these teacher effects when you go over to
7 one of these changed gain-score models.

8 BY MR. AFFELDT:

9 Q So while you didn't have the ideal data set,
10 you felt it was appropriate to use the data that you had
11 because that was the best data available?

12 A Well, you never in life have the ideal data set
13 so what you try to do is use the data that you have at
14 hand and make the best possible use of what you have,
15 and in my opinion the best way to use the California
16 data is the way I did it.

17 Q But generally speaking how do you decide if
18 your data is good enough to produce meaningful results?

19 MS. DAVIS: Vague and ambiguous. Calls for
20 speculation. You mean ever or just the data he analyzed
21 for his expert report?

22 MR. AFFELDT: I mean generally speaking.

23 THE WITNESS: Well, you -- you try to take
24 account of -- you describe -- you lay your cards on the
25 table. You say here are the biases that are out

1 think that we're entering a world where states are
2 beginning to present a lot of data about the performance
3 of schools and we're looking at, you know, under federal
4 law, you know, we have schools have to make adequate
5 yearly progress and so on. I think -- It's my opinion
6 and I think that there's a growing consensus among
7 researchers that the right way to judge the performance
8 of a school is -- is to focus on the gains in
9 achievement that you observe rather than focusing on
10 levels because levels is too much affected by, you know,
11 the students who sort of enter in the fall. So if you
12 really want to be looking at what's working in schools
13 and what isn't, and this goes well beyond teacher
14 quality, it goes to curriculum changes or -- or any of
15 these types of interventions, you need to look at
16 what -- what the intervention does to gains, and when we
17 want to compare the performance of schools we should be
18 looking at what the school is adding, that is
19 gain-scores.

20 So I think that there's -- Again to repeat, I
21 think that there's sort of a broad consensus that's
22 emerging that's if you're going to be looking at
23 performance and judging performance of schools, it's
24 important to look at these gains which involves the type
25 of analysis I did. That's a better way to use these

1 there and here's how I'm trying to deal with them as
2 best I can and you present the estimates in different
3 ways, and so I presented cross-section versus the
4 gain-scores. And as I said, by going to the gain-scores
5 and controlling for prior student achievement, you're --
6 you have a dramatic reduction in the estimate of the
7 teacher effects.

8 Now, I guess -- I guess I'd answer your
9 question by saying this is really a question about
10 robustness. Rather than printing your estimates in only
11 one way, you present them in a variety of ways and try
12 to see what the data are telling you. And I think what
13 the data are telling us is that the more you control for
14 SES and the more you control for prior achievement, the
15 smaller you're seeing these teacher -- measurable
16 teacher characteristics and smaller their effects, and
17 so that's the pattern that I see in the available data.

18 BY MR. AFFELDT:

19 Q Is part of your approach to then look at data
20 in different ways than look for patterns?

21 A Well --

22 MS. DAVIS: Vague and ambiguous.

23 Go ahead.

24 THE WITNESS: -- let me say specifically -- let
25 me generalize and I think this gets at your question. I

1 kinds of aggregated data to assess performance than
2 simply to look at cross-sections.

3 BY MR. AFFELDT:

4 Q Do you think it's useful in making conclusions
5 about the effect of education policy to look at data --
6 a variety of sources of data?

7 MS. DAVIS: Vague and ambiguous. Calls for
8 speculation.

9 THE WITNESS: Well, yes, it would be -- in
10 general it's better to have more data than less data. I
11 think as a general rule that would be correct.

12 BY MR. AFFELDT:

13 Q As a general rule do you think it's important
14 to look for patterns that emerge from different sources
15 of data over time?

16 MS. DAVIS: Same objections.

17 THE WITNESS: Well, it's hard for me to answer
18 in -- in -- That's a very general -- That's what I did
19 with these data. The more data you have available to
20 address a question the better.

21 BY MR. AFFELDT:

22 Q And in this case you looked for a pattern that
23 emerged from looking at the data in different ways; is
24 that fair?

25 A Yes.

1 Q Do you do that generally when trying to reach a
2 conclusion about a particular educational issue, that is
3 look for patterns in data that emerge from a variety of
4 sources?

5 MS. DAVIS: Same objections.

6 THE WITNESS: Well, yes, but I would like to
7 add something to what I said before. This -- This
8 pattern that we're talking about here of these
9 gain-scores of these teacher effects having -- teacher
10 characteristics having a smaller effect on gains as
11 compared to levels is not something that's unique to
12 California. We've tended to see that in other data, in
13 other studies. The way you rank schools and what
14 appears to be working and doesn't work is sensitive to
15 whether you look at -- in general whether you look at
16 changes or levels; okay? So -- I'm sorry. So repeat
17 your question again. I felt I had to insert that.

18 BY MR. AFFELDT:

19 Q Okay. But that wasn't necessarily responsive
20 to my most immediate question --

21 A Okay.

22 Q -- is that right? I am just clarifying.
23 You're just amplifying an earlier answer?

24 A It may or may not be. You will have to repeat
25 your question again.

1 MR. AFFELDT: Okay. Can you read my last
2 question, please.

3 (Record read as follows:

4 "Q Do you do that generally when trying
5 to reach a conclusion about a particular
6 educational issue, that is look for patterns in
7 data that emerge from a variety of sources?")

8 THE WITNESS: So my answer would be yes.

9 BY MR. AFFELDT:

10 Q Were there any other types of studies you
11 discussed with Mr. Salvaty that didn't come to pass?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: Well, my recollection is that we
14 talked about trying to get the student level data and
15 data that could be linked, and I think that that was --
16 early on I think that was -- we learned that was
17 unavailable, and I had hoped to get the teacher level
18 file that would have been linked over times so we could
19 have looked at turnover, and then finally this link to
20 the unemployment insurance tax records. Those are
21 the -- Those are the only three that come to mind.

22 BY MR. AFFELDT:

23 Q What do you mean when you say you wanted to get
24 the teacher file over time to study retention, what
25 exactly were you trying to get?

1 A Well, if you're looking at teacher turnover and
2 mobility, you need more than one year because you have
3 to link the records. So what you get is a series of
4 snapshots of which teacher is where and then you have to
5 have a -- a teacher identifying code that would permit
6 you to link the records over time, and that's not
7 available off the web.

8 Q Do you know if such a database exists in
9 California?

10 A Oh, I'm pretty sure that the state has that
11 data. They have a master file of certificated staff
12 with such an identifier with, I believe, social security
13 numbers that could be scrambled and then, you know, you
14 could -- I'm pretty sure you could do such a study.

15 Well, I think you could do such a study. Let
16 me -- Let me back off. I think they have -- they have
17 those identifiers in their file, but I must say I'm not
18 sure that they do. I'm -- I'm not sure that they have
19 those social security numbers in their file.

20 Q Do you know where in the vast bureaucracy, that
21 is the State of California, that master file exists?

22 A Well, it's what underlies, what's presented in
23 the CBEDS files on the web. But in terms of what
24 office, I have no idea.

25 Let me add a point on that.

1 Q Sure.

2 A See, another thing you could address by looking
3 at the turnover would be these -- Yeah, that's what I
4 wanted to look at, too -- were these intern teachers,
5 you know, whether there are turnover rates. I mean the
6 argument is made that they're bad for kids, and one
7 thing I would have liked to have looked at is to
8 actually look at these data and compare, you know, the
9 intern teachers with the traditional teachers in terms
10 of where they're teaching and their turnover rates and
11 that sort of thing. So far as I can see, we -- I
12 haven't seen, you know, a careful statistical study of
13 those teachers yet and it would have been useful to do
14 that.

15 Q But you weren't able to do that for this case?

16 A No. The McKibbon report that I cite makes
17 statements about it. You know, he states that they have
18 similar rates of retention and so on but he actually
19 does not present specific data on that point.

20 Q And you didn't review Mr. McKibbon's data, did
21 you?

22 A No.

23 Q Other than reading his report, did you do any
24 analysis of Mr. McKibbon's statements about retention of
25 interns?

1 A No.

2 Q So is it fair to say you relied on his report
3 at face value?

4 A Yes.

5 Q Can you explain to me how you would have used
6 data about teachers' unemployment insurance records?

7 MS. DAVIS: Calls for speculation.

8 THE WITNESS: The -- Yes, I've done this in --
9 in other states. If -- If -- The unemployment insurance
10 records tell you what a person is earning so there are
11 tax records that almost all employers have to file, and
12 so what -- what can be done and has been done in other
13 states is you -- if teachers quit teaching and they
14 stay -- and they work in California, you can link their
15 records and see how much they're earning when they quit
16 teaching and you can compare that to what they were
17 earning when they were teaching.

18 You could also look at questions of recent
19 graduates out of the UC system or the Cal State system;
20 and if you've got those students' social security
21 numbers, you can see -- you know, you can compare those
22 who become public school teachers with those who -- who
23 do something else. For example, you could take the
24 students coming out of Cal State Northridge and compare
25 the earnings of those who become teachers with those who

1 A I believe that I've seen studies not of
2 teachers but of looking at college grads that have made
3 some use of these unemployment insurance records, but
4 I'm not sure. But they're there. I mean they have to
5 be. The state has to maintain that data for purposes of
6 complying with the federal unemployment insurance laws.
7 Some states have made efforts to use those data for
8 research purposes and sort of have facilitated that and
9 other states haven't. It's -- It's just part of the --
10 That's sort of the steps of linking together data sets.

11 These data have been used, for example, in
12 looking at welfare recipients, how well, you know -- and
13 in employment and training programs and whether people
14 are finding jobs and how much they're making coming out
15 of these programs. So I don't know a specific study
16 that's exploited these in California. I can't name one.
17 But I know that in other states they've been used in a
18 variety of ways to address -- assess the effects of
19 programs.

20 Q What other states have you used unemployment
21 insurance earnings to link to research of education?

22 A Well, in Missouri we've done it in looking at
23 teachers. In Wyoming we arranged to have the records
24 matched to look at exactly this question, as to whether
25 the teachers who were quitting teaching in Wyoming were

1 graduate from Cal State Northridge and don't become
2 teachers. So it's a matter of sort of linking together
3 different data files that state bureaucracies have.

4 BY MR. AFFELDT:

5 Q And the unemployment insurance records, it may
6 be a question of phraseology that I'm getting hung up
7 on, but I'm confused as to why the unemployment
8 insurance records would have earning records.

9 A Well, yeah, we have -- it's -- They're called
10 the UI earnings files. See, the reason that the data is
11 collected is for purposes of unemployment insurance. If
12 you become unemployed and you file for unemployment,
13 the -- the state agency has to know what your prior
14 earnings were because your UI payment is based on your
15 prior earnings. So everyone who's eligible, not just
16 the unemployed, but everyone who's covered by
17 unemployment insurance, their employers have to file
18 that data with the State Department of Labor in case so
19 that if they do file a claim, the State Department of
20 Labor knows how much they should be paid. So it's a
21 database that gives quarterly earnings for everyone
22 who's covered by the unemployment insurance system,
23 which is most everyone.

24 Q Do you know if such records exist in
25 California?

1 actually making more money, and in fact they weren't.
2 They were actually on average earning less than they
3 were making as teachers.

4 A similar study was done in Florida and -- not
5 by me but it was done internally -- and they found that
6 in general the teachers who were quitting were not
7 making more money, on average they were earning less.
8 And also I believe recently there was a study in Georgia
9 that did a similar kind of link and found that teachers
10 were not making more.

11 Q What did you find in Missouri? Let me ask this
12 question first: What did you study in Missouri with
13 respect to UI earning data?

14 A Well, I've done a lot of work on teacher
15 turnover and the teacher labor market and in a recent
16 paper that's unpublished, it's under review at a
17 journal, is -- we looked at teacher turnover in
18 Missouri, and one of the things we looked at was of the
19 teachers who quit, how did their new employment earnings
20 compare to their old earnings, and on average it was --
21 it was a little bit lower. And I was particularly
22 interested in breakouts by field and particularly by --
23 by ACT score of the teachers, and my recollection is we
24 found that the teachers who were quitting who had higher
25 ACT scores tended to make more -- Let me put it this

1 way: In teaching there was no relationship between ACT
2 scores and pay, but among those teachers who quit
3 teaching there was a positive relationship between ACT
4 scores and pay, so that was -- we cut the data a variety
5 of ways.

6 Q And how did it break out by did you say field
7 or subject matter?

8 A I -- I -- I can't remember how the fields broke
9 out. There may be a table that looks at math and
10 science. But in general the -- it was rare to see that
11 the actual pay was higher than what they were earning
12 particularly if you adjusted for, you know, let's say a
13 2 percent pay increase or, you know, an increase had
14 they stayed on the job, had they stayed in teaching.

15 Q Has your Wyoming effort been published?

16 A It's on the web. It's -- I did it -- I -- I
17 worked with a consulting company called MAP, Management
18 Analysis and Planning, and they work a lot with the
19 state legislature developing sort of -- How do I put
20 it? -- formulas or models for funding school districts
21 and schools and I was asked to look at the labor market
22 piece of that. And so we did a report -- "we," I did it
23 with Michael Wolkoff who's an economist at the
24 University of Rochester -- and that report is on the web
25 site, the MAP web site.

1 Q And I believe you said your Missouri piece was
2 going to be published?

3 A Well, it's -- it's been revised and resubmitted
4 for a journal. It's on my web site as well.

5 Q Has it been accepted yet?

6 A No.

7 Q What journal have you submitted it to?

8 A ECONOMICS OF EDUCATION REVIEW. It's what you
9 call a revised and resubmit. The editor said do this,
10 this, this, and this and sent it back in.

11 Q In your experience is it usually published
12 after that?

13 A It's -- In economics articles are almost never
14 published on the first submission and usually you have
15 to do a revise and resubmit, and editors being cagey
16 will almost never say if you do A, B, C, and D I will
17 publish it. What they say is if you do A, B, C, and D
18 we will consider publishing it. So I would say that
19 it's likely to be accepted based on many years of
20 submitting articles to academic economic journals.

21 Q Is that a peer review journal?

22 A Yes.

23 Q All right. At this point in time, though,
24 you'd be speculating as to whether or not they're going
25 to publish it?

1 A That's correct.

2 Q Did you have any follow-up conversations with
3 Mr. Salvaty about the data you had requested?

4 A Oh, I think so, but, you know, I don't really
5 remember. I just -- My recollection is we talked
6 about -- I talked about what I'd ideally like to get to
7 look at some of these questions, and, you know,
8 ultimately I don't really know who he talked to or what
9 the chain of discussion was. It ultimately came down
10 to, you know, you will have to make-do with, you know,
11 what's available on the web and, you know, what you've
12 got.

13 Q Do you remember when you got that news?

14 A Well, I think it sort of trickled in sort of by
15 default, that well, did you hear anything about this;
16 well, no. So I just kind of laid options on the table
17 and they never came to pass, so I wrote the report based
18 on what I have. I can't recall a specific date when
19 this all happened.

20 Q As part of your work in this case have you been
21 asked to comment on the state's approach to hiring
22 teachers?

23 MS. DAVIS: Vague and ambiguous.

24 THE WITNESS: Not specifically, no. I just
25 focused on Professor Darling-Hammond's report which

1 really -- Well, I guess it's addressing that question,

2 so I'm -- I guess I'm not sure how to answer your
3 question. I mean I've written a rejoinder to Professor
4 Darling-Hammond's report in that she criticizes school
5 districts, not the state, but she criticizes the hiring
6 practices of school districts; so if that's what you
7 mean by the state is what the school districts are
8 doing, I guess I'm doing that but. . .

9 BY MR. AFFELDT:

10 Q But to the extent you're doing that it's within
11 the scope of responding to Dr. Darling-Hammond's report?

12 A That's correct.

13 Q Have you been asked as part of your work on
14 this case to suggest any revisions to the approach by
15 which the state oversees school district hiring of
16 teachers?

17 A No.

18 MS. DAVIS: Vague and ambiguous.

19 BY MR. AFFELDT:

20 Q Have you been asked as part of your work on
21 this case to assist the state in revising how the state
22 improves recruitment of teachers?

23 A No.

24 Q Have you been asked as part of your work on
25 this case to assist the state in revising how it retains

1 teachers?

2 A No.

3 Q Have you been asked as part of your work in
4 this case to assist the state in revising how it
5 certifies teachers?

6 A No.

7 Q Have you been asked as part of your work in
8 this case to comment on the state's methods for
9 determining what are qualified teachers in California?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: Well, I'm giving all these nos.
12 I'm responding to those issues only to the extent that
13 Professor Darling-Hammond is addressing them. I mean
14 I'm -- it's not like I'm ignoring the issues but I was
15 specifically asked to sort of respond to Professor
16 Darling-Hammond. So again I'll say no, I wasn't asked
17 to do more than respond to Professor Darling-Hammond.
18 BY MR. AFFELDT:

19 Q Have you worked with any of the attorneys that
20 you've met representing the defendants before in any
21 other case?

22 A No.

23 Q Have you worked with -- Well, strike that.

24 Are you familiar with any of the other experts
25 representing the defendants in this case?

1 A Yes.

2 Q Who are you familiar with?

3 A Well, I know Professor Hoxby, Caroline Hoxby
4 professionally. I've interacted with her for many
5 years. I know Herb Wahlberg. Herb and I have been at
6 many education conferences together and have -- and I
7 wrote a -- I wrote a chapter for a book he edited and
8 went to a conference he organized a number of years
9 ago. Rick Hanushek of course is an economist. I've
10 known him professionally for many years and interacted
11 with him. I'm not sure I know who all the people -- Oh,
12 Christine Rossell, I believe, isn't she one of the
13 experts? Christine I met at some conferences on
14 education a number of years ago, a Brookings conference.

15 You may have to read me the names. Those are
16 the ones that I'm aware of. I don't really -- I'm not
17 sure I know all of them. I -- I got on that web site
18 once, dsinschools -- Is that what it's called? -- to see
19 my own report --

20 Q dsinschools.org?

21 A .com -- or dot whatever.

22 (Continuing) -- where my report is and I
23 downloaded it and I saw the list, but that's all I
24 really know about who they are. I didn't discuss them
25 with anyone. I just saw that list of names because I

1 wanted to print off my own report. And Mr. Salvaty told
2 me it was on the web, so I thought well, I'll go see.
3 So that's my only knowledge of who else is -- that's
4 the only -- I can recall that's the only knowledge I
5 have of whose involved, and those are the names that pop
6 to mind. I may know others. You'd have to read the
7 list, I guess, for me to say.

8 Q Did you have a copy of your final report before
9 going to the dsinschools.org web site to print it off?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: Well, yes, I had a copy of my
12 final report. I sent that in. But for this, for
13 example, I just printed it off -- I mean to get ready I
14 printed off a copy from the dsinschools because it had
15 that cover page with some other stuff, so it seems to be
16 the same document.

17 BY MR. AFFELDT:

18 Q So why did you have to go to the
19 dsinschools.org web site to get a version of your
20 report?

21 MS. DAVIS: Mischaracterizes his testimony.

22 THE WITNESS: No, I have a copy on my computer
23 but I just wanted to make sure I have the final copy.
24 Sometimes I slip up and accidentally don't do the final
25 if I -- You know, you have version one -- you know, the

1 final, final, final version, and I just wanted to make
2 sure I brought with me the final version.

3 MS. DAVIS: John, we've been going for about an
4 hour and twenty minutes. Is this a good stopping point
5 or do you --

6 MR. AFFELDT: Really --

7 MS. DAVIS: Are you doing okay?

8 BY MR. AFFELDT:

9 Q How are you doing?

10 A I'm fine.

11 MS. DAVIS: I mean at some point we should
12 think about lunch and that is probably just because I'm
13 getting hungry. I just wanted to bring it up. I didn't
14 want to stop you if you're sort of in the middle of
15 something.

16 BY MR. AFFELDT:

17 Q Yeah, if we could keep going for another 20
18 minutes or so.

19 A Fine with me.

20 Q If you need a break, let me know.

21 A It's okay.

22 Q Are you familiar with Kirlin, K-i-r-l-i-n?

23 A No, that name doesn't ring a bell.

24 Q Were you familiar with Professor Berk before
25 Mr. Salvaty recommended you talk with him?

1 A His name was familiar. I can't cite a paper
2 specifically but I -- his name is familiar.

3 Q Had you ever cited any of his work?

4 A I don't think I've cited any of it but I think
5 I've heard of him.

6 Q Did Mr. Salvaty send you any materials as part
7 of your work on the expert report in this case?

8 A I believe the only materials he sent me are
9 papers that were cited by Professor Darling-Hammond.
10 Well -- Well, yes, he sent me papers cited by Professor
11 Darling-Hammond that I requested that I didn't have
12 copies of. He also sent me sort of a huge number of
13 boxes of kind of documents, sort of, from Professor
14 Darling-Hammond which were just reams and reams of
15 printouts of things; so those are the only two things
16 that come to mind, sort of this big shipment of many
17 boxes of things which didn't have really what I wanted
18 and then I specifically asked for a few papers that she
19 cited that I did not have copies of, and he sent those.
20 That's all I recall.

21 Q Did you review the reams of printouts as part
22 of writing your report?

23 A Yes.

24 Q What did you learn from that review?

25 A Not a great deal. It was -- It was -- It had

1 correspondence between lawyers and, you know, different
2 people and I didn't learn a great deal from it.

3 Q Did Mr. Salvaty suggest that you review any
4 document specifically as part of preparing your expert
5 report?

6 MS. DAVIS: Vague and ambiguous.

7 THE WITNESS: I -- I don't remember him ever
8 suggesting a specific document, no.

9 BY MR. AFFELDT:

10 Q What web sites did you review as part of
11 writing your expert report whether or not they're cited
12 in your paper?

13 A Well, I'd say it comes down to three. The
14 first is the State Department of Ed, California State
15 Department of Education; the second is the CTC web site,
16 California Teaching Commission, or it's actually CCTC;
17 and the National Center for Education Statistics. I am
18 always continually going to them and I cite data from
19 them in the report. I think that's really -- Well, I
20 had to go to the AFT web site to get the data that --
21 well, look at the data that Professor Darling-Hammond
22 cited and then get the most recent report and so on.
23 Well, that's what comes to mind right now.

24 Q Do you know what CCTC stands for?

25 A Well, people refer to the Teaching Commission

1 as CTC which means commission -- See, I call it
2 California Teaching Commission but I don't think that's
3 right. It's Commission on Teacher Credentials, so it's
4 California Commission on Teaching Credentials. You
5 know, once you start using these acronyms you forget
6 what they -- Everyone says "CTC," and it's the Teaching
7 Commission, so I apologize.

8 Q When did you first begin to work on your expert
9 report in this case?

10 A Well, I suppose pretty soon after Mr. Salvaty
11 contacted me and -- well, he said don't start working
12 until you have a contract. And so when Mr. Egan sent me
13 a contract and I signed it, I pretty much started then.

14 Q When was that?

15 A Well, I think that was probably around last
16 October, October 2002.

17 Q So you haven't reviewed the expert report by
18 Dr. Kenji Hakuta in this case; is that correct?

19 A No.

20 Q And you haven't been asked to provide testimony
21 concerning Dr. Hakuta's opinions regarding the teaching
22 of English language learners in California; is that
23 correct?

24 A Yes.

25 And I think I answered the previous question

1 incorrectly. It was a negative and I said no. I think
2 I should have said yes. I have not reviewed those
3 studies, let the record show.

4 MS. DAVIS: It's correct that you did not
5 review --

6 THE WITNESS: It's correct that I did not
7 review those studies.

8 BY MR. AFFELDT:

9 Q Okay. Thank you.

10 Have you read any of the studies that Dr.
11 Darling-Hammond relies on, reread them or read them for
12 the first time as part of your report?

13 A Well, I've read a lot of them before I did my
14 report and I have looked at a few of them. I've looked
15 at them, a number of them again. There were some that
16 she cited that I've never been able to get ahold of, and
17 so, you know, I had to request them from her by way of
18 counsel. So yes, I read a number of the papers again or
19 for the first time.

20 Q Which ones did you reread in preparing your
21 expert report for this case?

22 A Well, the ones that I paid particular attention
23 to were the ones -- the achievement studies for
24 California, so that would include the study by Betts and
25 several people, Julian Betts and others from the -- What

1 is it? -- the Public Policy Institute of California I
2 believe is the title of the group. And then there were
3 two studies published in this electronic journal, the
4 EDUCATION AND POLICY ANALYSIS ARCHIVES, one is by a
5 woman by the name of Goe, G-o-e, and then there was a
6 study by a guy named Fetzer, F-e-t-z-e-r. I'd have to
7 look at the report to -- It might help if I looked at
8 Darling-Hammond's report if -- if you would like me to
9 go through her citations.

10 Q At this point I am just comfortable relying on
11 your recollection.

12 A Okay. I mean those -- those studies
13 specifically were California and they looked at student
14 achievement and teacher credentials. Then there were
15 the studies that are outside of California which for
16 reasons I state in the report I think are less germane
17 but I looked back at them. She cited a study by a
18 fellow named Fuller on Texas certification. She
19 cited -- I looked at the -- Well, I reread the study by
20 Goldhaber and Brewer that she cites and then her
21 rejoinder, she has a rejoinder to Goldhaber and Brewer
22 that I cite extensively in my report, so I reread her
23 rejoinder. Then there's a study by, oh, Margaret
24 Raymond, so that's another plaintiff -- or, excuse me,
25 defense expert who I know. So Margaret Raymond &

1 Associates did a study of Teach For America in Texas,
2 and so I looked over that study again. Well, I looked
3 at some papers by Bill Sanders and Hanushek on -- these
4 are the teacher effect studies that really don't so much
5 look at specific teacher characteristics but sort of the
6 general effects of teachers.

7 There were a few that she cited that I had not
8 seen before. There's one by a fellow with a Polish name
9 that looks kind of like mine who's an economist at one
10 of the Cal State campuses. It begins with --

11 Q Pagasinski?

12 A Pagasinski, yeah. He was looking at
13 out-of-field certification and pay, I believe or I think
14 was the issue in that study, so I had not seen that
15 study before and I took a look at that. Well, then
16 there was this study that Professor Darling-Hammond
17 cites over and over again which I've been very critical
18 of and I dug it out one more time, this study of these
19 North Carolina teachers, 36 of them in the mid '80s.
20 It's by Hawk and Coble and there's a third author. I
21 don't know. Those are the ones that come to mind as I
22 sit here thinking about it.

23 Q Other than the Pagasinski and the Fuller study
24 from Texas, were these other non-California studies ones
25 you had previously reviewed?

1 A Yes, I -- I'd looked at them before.

2 In this regard I should also mention that study
3 I requested, she cited at one point kind of a study
4 from the Los Angeles School Board that looked at student
5 achievement and certification but it was -- it was just
6 like a little thing in a newsletter, so that was -- I
7 requested that and took a look at that.

8 Q Do you remember who the authors were on that?

9 A I don't even think it said an author. It was
10 just like a little two-page newsletter. It was not a
11 statistic -- a formal statistical study.

12 Q You mentioned Margaret Raymond. How do you
13 know Margaret Raymond?

14 A Oh, I've run into her. We've been on many
15 conferences together, expert. Not legal but sort of
16 panels, education policy panels, so there have been
17 numerous education conferences.

18 Q Do you consider Christine Rossell an expert in
19 anything?

20 MS. DAVIS: Vague and ambiguous. Calls for
21 speculation.

22 THE WITNESS: I'm not as familiar with
23 Christine's work. The first time I met Professor
24 Rossell was at a conference at the Brookings Institute,
25 and so I assumed that -- and she delivered a paper

1 there, so my assumption was if you're invited by the
2 Brookings Institute to deliver a paper on something you
3 must be an expert on something, and the paper I believe
4 was on bilingual education and so she had kind of a
5 lively interchange with a professor from Harvard. I
6 believe that's the first time I met her. And then we
7 were at another conference together. So my
8 understanding -- Now, I read the Brookings paper on
9 bilingual ed and maybe one other paper of hers, but, you
10 know, it's -- that's -- I'm not intimately familiar with
11 her work but I know that she has written about bilingual
12 education and that's all I know about her work.

13 BY MR. AFFELDT:

14 Q Is it fair so say that you're not familiar
15 enough with her work to form an independent judgment as
16 to whether Professor Rossell is an expert in any
17 particular area?

18 A Well, I sat through a two-day conference at the
19 Brookings Institute and I sat through her panel and she
20 seemed to know what she was talking about, held her own
21 in a policy debate. But it's not really my area of
22 expertise and, you know, so I'm -- I'd say my response
23 is middling. I would -- She seemed to know what she was
24 talking about but I'm not an expert in the area.

25 Q And by "the area" you mean the area of

1 education of English language learners?

2 A Yes.

3 Q Who was the Harvard professor that she had a
4 lively exchange with?

5 A I -- I think it might be Snow was her name.
6 It -- It -- I'm pretty sure this was published in a
7 Brookings Papers on education policy, so it would have
8 been about three years ago, or four.

9 Q Other than the Brookings paper that you
10 mentioned written by Christine Rossell, have you read
11 any other of her work?

12 A I think I read another paper of hers on -- on
13 bilingual but I can't remember what it was, but it --
14 you know, it was -- I think I have read another paper
15 she wrote on bilingual and that's about it.

16 Q Do you have an opinion as to whether Professor
17 Rossell employs sound methodology in her work?

18 MS. DAVIS: Calls for speculation. Vague and
19 ambiguous.

20 THE WITNESS: I really am not -- I don't know
21 enough about her work to say. The paper I read was --
22 it was my recollection it was -- it was descriptive and
23 seemed -- you know, it seemed -- I didn't -- It wasn't
24 highly technical, it was descriptive, and it was
25 analyzing -- making some arguments about bilingual ed

1 either, so if -- Is that satisfactory?

2 BY MR. AFFELDT:

3 Q The work of Professor Rossell's that you've
4 reviewed is descriptive of policy recommendations as
5 you've described it. Have you reviewed any of her work
6 describing research that she's done?

7 A No.

8 Q So you don't have a basis for -- to make an
9 opinion about whether or not she employs sound
10 methodology in her research; is that correct?

11 MS. DAVIS: That's what he just said.

12 THE WITNESS: I've watched her discuss policy
13 and so I formed a judgment that way, but I don't have a
14 very sound basis for making the judgment; okay?

15 BY MR. AFFELDT:

16 Q For making a judgment on her research
17 methodology?

18 A Yes.

19 Q Do you consider Margaret Raymond an expert in
20 any area?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: Yes, I consider Margaret
23 Raymond -- The work I've seen by her. And I read
24 carefully the study that she did for Teach For America
25 in Houston, I thought that was very well done.

1 and I -- you know, I didn't see anything incompetent in
2 it, but I'm not that familiar with her work or the field
3 so. . .

4 BY MR. AFFELDT:

5 Q So you don't have an opinion as to whether
6 Professor Rossell employs sound methodology?

7 A Well --

8 MS. DAVIS: Asked and answered.

9 THE WITNESS: -- I'd say that I've never seen
10 anything to indicate otherwise, so it's not as if I
11 don't know anything about her. So if you go from a
12 scale of 1 to 10 and 10 says I'm absolutely sure that
13 she has sound methodology and 1 is that I know
14 absolutely nothing about her, I'm probably like a 2 or
15 3. I've watched her talk, I've looked at some of her
16 papers, and I -- so I wouldn't -- I wouldn't bet a
17 thousand dollars on it but I would bet \$5.00 on it I
18 guess is the way to answer your question. It's a
19 continuing -- It's not a zero one. It's sort of a
20 continuum and on that continuum I have some familiarity
21 with her work and I thought from what I saw it was --
22 you know, it didn't -- it struck me as sound, if that
23 was your term, sound methodology. But I'm not
24 intimately familiar with the area or her field so I'm
25 not an expert there, but I'm not completely uninformed,

1 BY MR. AFFELDT:

2 Q So what area do you consider Margaret Raymond
3 to be an expert in?

4 A I think she's -- And I participated in
5 conferences with her and I think her area is education
6 policy analysis and her work seems quite competent and I
7 think that Teach For America study was quite well done.

8 Q Do you consider Eric Hanushek to be an expert?

9 A Oh, yes.

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: Yes.

12 BY MR. AFFELDT:

13 Q In what area?

14 A Oh, on education policy generally. I mean he's
15 very widely published in the field.

16 Q What area, if any, do you consider Caroline
17 Hoxby to be an expert in?

18 A I'd say the same as Hanushek, education policy.

19 Q Do you consider Caroline Hoxby to be -- have
20 any expertise in research methodology?

21 A Yes, very much so. Caroline Hoxby is -- is a
22 very smart, very clever researcher, perhaps -- it's --
23 You want to be careful putting Caroline in a narrow box
24 because she's really an outstanding, applied
25 microeconomist and a very good researcher.

1 Q Do you consider Herb Wahlberg an expert?
 2 A Yes, I do.
 3 Q And in what areas?
 4 A Well, Herb -- Professor Wahlberg is an
 5 educational psychologist and he's -- his work -- he's
 6 published so much. It's -- It -- You know, he's visible
 7 to economists as well and he's clearly done a lot of
 8 work on education policy as well and specifically I
 9 think he's done -- he's well recognized as looking at
 10 curriculum, what -- what curricula work and what
 11 doesn't. He's done these sort of massive
 12 meta-analyses of I guess you'd sort of say what works in
 13 terms of curriculum and types of curricula and classroom
 14 methods and so on. He's also done interesting work
 15 on -- sort of done some work on organizational
 16 characteristics of schools. One of the early sets of
 17 papers I saw of his was looking at school district size
 18 and performance. So he's -- he's written in a variety
 19 of areas and -- and -- and I guess you could put it
 20 under the broader umbrella of sort of education policy
 21 in -- in education psychology.
 22 Q Do you know who Julian Betts is?
 23 A Yes.
 24 Q Do you have an opinion as to whether Julian
 25 Betts is an expert in any area?

1 A Julian's a -- Professor Betts is a very well
 2 recognized economist in the area of education policy.
 3 Q Do you consider Professor Betts to be an expert
 4 in the area of education policy?
 5 A Yes.
 6 Q Have you relied on or cited Professor Betts'
 7 work before?
 8 A Yes.
 9 Q Do you have an opinion as to whether Herb
 10 Wenglinsky is an expert in any area?
 11 A Harold Wenglinsky?
 12 Q Yes, Harold Wenglinsky, W-e-n-g-l-i-n-s-k-y.
 13 MS. DAVIS: Vague and ambiguous.
 14 THE WITNESS: He's a Ph.D. sociologist who
 15 works for the Educational Testing Service. I've read a
 16 few papers by him and I've criticized one in print. I
 17 was sharply critical of a study he did, so I've had my
 18 disagreements methodologically with Professor
 19 Wenglinsky.
 20 BY MR. AFFELDT:
 21 Q Have you agreed with Professor Wenglinsky in
 22 any form?
 23 MS. DAVIS: Vague and ambiguous.
 24 THE WITNESS: Yes, I guess I'm not sure what
 25 you mean. I mean what I published -- the report -- or

1 the paper I published was very critical of a report that
 2 he did for Educational Testing Service. He's done a
 3 couple of reports for them. I -- You know, I'm sure
 4 there's something in it I agree with but -- but I
 5 disagree with many other things.
 6 BY MR. AFFELDT:
 7 Q Are you familiar with John Sonstelie?
 8 A Yes, I -- I've read papers by him, yes.
 9 Q Do you have an opinion as to whether he's an
 10 expert in any area?
 11 MS. DAVIS: Vague and ambiguous.
 12 THE WITNESS: He's -- He's -- He's done work on
 13 education finance, clearly has a report that's cited
 14 here in California with the -- I guess it was the Public
 15 Policy Institute. But he's published in other areas. I
 16 mean I'm familiar with his name and -- and I -- I know
 17 I've read an article or two by him but I can't -- you
 18 know, I'm not as familiar with the corpus of his work as
 19 some of the other people you've mentioned. His work
 20 does not appear as routinely in the -- in this area of
 21 teacher quality as some of those other names we've gone
 22 through, Hanushek, Hoxby, and others, Wahlberg.
 23 BY MR. AFFELDT:
 24 Q Have you ever relied on the work of the Public
 25 Policy Institute of California?

1 MS. DAVIS: Vague and ambiguous.
 2 THE WITNESS: I think so far as I can recall
 3 the only time I've cited a study by them was in this
 4 report. So I -- that's -- So I don't routinely cite
 5 their work. I'm aware of what they do and I've seen
 6 seminars by folks who were at that institute but I don't
 7 say I rely on it.
 8 BY MR. AFFELDT:
 9 Q Do you have an opinion as to the quality of the
 10 work that you've reviewed from the PPIC?
 11 A I think it's -- I think they've had some good
 12 reports.
 13 Q Have you ever criticized a report from the
 14 Public Policy Institute of California other than your --
 15 your critique in your expert report here?
 16 A No.
 17 MR. AFFELDT: This is probably a good place for
 18 a lunch break.
 19 MS. DAVIS: Okay. Are we going to take an
 20 hour?
 21 MR. AFFELDT: Yes.
 22 MS. DAVIS: Okay.
 23 (Lunch recess.)
 24 EXAMINATION (Resumed)
 25 BY MR. AFFELDT:

1 Q Dr. Podgursky, approximately how many hours did
2 it take you to write the expert report in this case?

3 A Let me start with days probably. I think it's
4 been about from beginning to completing the report, I
5 guess my time would probably be about 14, 15 days, and
6 the assistant a few days, so multiply that times 8.

7 Q So those are full days?

8 A I -- I'd have to look at the billing records,
9 but yes, that's -- that's what I mean.

10 Q Have you submitted bills to the state thus far?

11 A Yes.

12 Q How much have you submitted for?

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: It's -- Well, it's under 20,000,
15 so it's probably 18-. That's my recollection. I hope
16 you -- I hope I won't go to jail if I'm off on this, but
17 I'd say it's probably about 18-, 17-, 18-.

18 BY MR. AFFELDT:

19 Q Is that for your work and Donald Watson's?

20 A Yes.

21 Q Do you recall what the proportion was between
22 the two of you?

23 A Oh, it's -- he's -- his isn't that much. I
24 mean I did -- 80 percent is mine.

25 Q Are you getting paid to testify in this

1 defendants, do you have the same assumption, that you're
2 on the lower end of the spectrum?

3 A Well, I have people tell me that I ought to
4 charge more, economists, so -- who are -- so that's all
5 I can say, so I don't think I'm worth more but they say
6 I am so. . .

7 MS. DAVIS: You're too helpful.

8 BY MR. AFFELDT:

9 Q And modesty aside, why do you think that you're
10 only worth \$150 an hour?

11 MS. DAVIS: Vague and ambiguous.

12 THE WITNESS: Well, I -- I don't -- on the one
13 hand I'd like to get remunerated for my time; on the
14 other hand, you know, this is -- if this were IBM I'd
15 bill at a higher rate, let's put it that way. So
16 it's -- it's K-12, so, you know. I charge even less for
17 Kansas City so it's. . .

18 BY MR. AFFELDT:

19 Q What did you charge for Kansas City?

20 A \$125. I have a blue light Missouri special.

21 I won't joke when I'm on the stand. Don't
22 worry, Lynne.

23 Q If you could look at Exhibit 1, which is your
24 your Vita, on the first page does that accurately
25 reflect your academic background?

1 deposition?

2 A I hope so.

3 Q Will you get paid to testify in court?

4 A I understand that that's the way it works.

5 Q Is there a cap on your fees?

6 A I believe the contract says 50,000 and there
7 was some upper limit to the time. I mean I'm not even
8 close to it so -- When it was drawn up he said -- he
9 sort of asked to give a -- he said what sort of an upper
10 limit, and I think it says 50,000.

11 Q Do you expect to go over that?

12 MS. DAVIS: Calls for speculation.

13 THE WITNESS: I -- No, I don't expect to.

14 BY MR. AFFELDT:

15 Q Are you aware of any compensation disparities
16 among the different experts for the State of California?

17 MS. DAVIS: Vague and ambiguous.

18 THE WITNESS: I don't know what the other folks
19 are billing. My general sense is I'm -- I'm cheap,
20 but -- but I don't -- I don't really know.

21 BY MR. AFFELDT:

22 Q Why do you think that you're cheap?

23 A Well, I keep reading Professor Darling-Hammond
24 say that she bills at \$300 an hour so. . .

25 Q With respect to the experts testifying for the

1 A Yes.

2 Q Did you go to high school in Missouri as well?

3 A Yes.

4 Q And college?

5 A St. Louis, Missouri.

6 Q Is that where you grew up?

7 A Yes.

8 Q And those are your professional associations?

9 A Yes. Actually, I belong to the American
10 Education Finance Association now, too, if you. . .

11 Q When did you --

12 A Within -- I presented a paper at their meetings
13 and so I joined so I'll probably stay. And they were
14 pretty useful meetings so I'll stay. I'll join that
15 club, too.

16 Q When did you join that club?

17 A It was last fall -- or maybe this spring. This
18 spring I presented a paper at the AEFA meetings.

19 Q Are you a member of AERA?

20 A Yes -- No, no, not currently. I let it lapse.

21 Q Previously were you a member --

22 A Yes.

23 Q -- of the American Educational Research
24 Association?

25 A Yes, I joined when I presented a paper at their

1 meetings and then in between let it lapse.
 2 Q Is there any particular reason you let it lapse
 3 other than --
 4 A Well, the -- the library gets professional
 5 journals. There's really only a couple of other
 6 professional journals that are useful, so that's the
 7 primary reason. I -- It -- It's a very broad field
 8 and -- and, you know, a lot of it is not quantitative
 9 research and so it's -- the American Education of
 10 Finance Association actually does a lot of stuff on this
 11 achievement gains and resources, so it's a more focused
 12 group so . . .
 13 Q Do you anticipate rejoining the AERA?
 14 A If -- I expect that I'll be presenting papers
 15 at some point there. You have to understand it's --
 16 it's -- the AERA meetings are -- they're like a circus,
 17 I mean there's like 8,000 people and it's just -- you
 18 know, and jillions of papers and it's just not -- I
 19 didn't think it's very -- I don't know. I -- I prefer
 20 smaller focused meetings.
 21 Q This Vita is -- looking on page 1 in the
 22 uppermost left-hand corner, does that 2-03 mean February
 23 2003?
 24 A Yes.
 25 Q Does that mean this Vita is updated as of that

1 date?
 2 A I would assume that that's -- I changed that to
 3 reflect the last time I made an edit, so it was about
 4 the time the report was submitted.
 5 Q Are there any updates that you would since add
 6 to your resume other than the American Education of
 7 Finance Association?
 8 A Yes, there's another published article, the one
 9 that you asked about the paper. It's called -- It's
 10 called Fringe Benefits. It was published -- It's about
 11 teacher pay and it was published in the current issue of
 12 the -- of EDUCATION NEXT and it -- it has -- the title
 13 is -- I didn't pick it. They change these titles. The
 14 title is Fringe Benefits and it's sort of a critical
 15 review of AFT and NEA data on teacher pay. That's
 16 roughly the title, and so that's not on here.
 17 Q Anything else that isn't on here?
 18 A Well, I did a talk at the Milken Family
 19 Foundation in the spring. I did a presentation on
 20 teacher licensing. It's kind of a debate or an exchange
 21 between Arthur Wise, who's the president of NCATE, and
 22 that's going to get published as sort of a pro and con
 23 or a part of their proceedings at the Milken Foundation,
 24 and so I edited that.
 25 I don't do a lot of -- The talks I just kind of

1 pick out -- The talks, I do a lot of talks to education
 2 groups. I sort of put the more academic things down
 3 here. I get invited to do presentations lots of places
 4 so they're not all on here so. . . These are the more
 5 scholarly, academic kinds of things. So I think it's
 6 pretty up to date.
 7 Q Will you add the Milken Family Foundation?
 8 A I can update it when I get back. I will add
 9 it. Anything that's published I put in there. It's
 10 just it's not published yet so. . .
 11 Q Where is it going to be published?
 12 A The Milken Foundation is going to publish it
 13 and they'll distribute it widely.
 14 Q What are the types of entries that you don't
 15 put on your resume?
 16 A The only thing I don't put down is -- Well,
 17 there's two, I guess. I don't put these consultings
 18 down. I don't put that down. And the -- A lot of these
 19 talks, I get invited to education groups. Like the
 20 Milken one, I didn't put that down. I was a panel on
 21 teacher licensing, I didn't put that down. I -- I mean
 22 I just do a lot of those. I'm going to be, you know, in
 23 October, the National School Board Association invited
 24 me to be on a panel on teacher pay adequacy, and so I do
 25 a lot of these kinds of talks, you know, get invited on

1 these things and I don't put them down.
 2 Q Why don't you put those down?
 3 A Well, I don't -- because I'm lazy. I -- You
 4 know, I mean they're just -- I don't know. They're
 5 not -- I mean basically my view of the vita is sort of
 6 the more scholarly sort of stuff, and these are sort
 7 of -- they're kind of just like a lecture or a public --
 8 It's not that I'm ashamed of them, I just don't put them
 9 down. You know, I just focused a little more on the
 10 more scholarly meeting presentations. You know, just in
 11 general I think professors probably tend not to put
 12 those down, I mean at least the economists tend not --
 13 tend to be more parsimonious about what we put down on
 14 our vitas. There are people that put everything that
 15 they do in their life; they took out the garbage last
 16 night, they put it in their vita. I'm toward the
 17 spare-the-vita style, the Ernest Hemingway style vita.
 18 Q The Milken Family Foundation presentation, what
 19 was the position that you took at that panel?
 20 A Well, the -- the question for the panel was --
 21 is -- is certification and guarantee of teacher quality
 22 or some provocative title like that, so it was pro and
 23 con and I was arguing that it's not and I was making the
 24 case for alternate certification and multiple routes
 25 into teaching.

1 Q And what was Arthur Wise arguing?

2 A Arthur Wise is the president of NCATE, which is
3 the accrediting organization for ed schools and he was
4 making the case for more -- the more traditional
5 approach of sort of you go through an ed school and
6 major in education, and so he was skeptical of alternate
7 routes into teaching.

8 Q Under the Journal Articles section, page 2 to
9 5, including a blank page 4, are those all referee
10 journals?

11 A Not all of them. There's -- There's a gray
12 area where someone read them and -- They weren't -- None
13 of them were solicited and all of them were reviewed.
14 I'd say THE PUBLIC INTEREST you would say would not
15 generally be considered a sort of peer review referee
16 journal that got reviewed, so I mean that one. Oh,
17 EDUCATION MATTERS is kind of a gray as well. They --
18 They send -- They do review it but it's -- it's meant
19 for a more popular audience than a traditional scholarly
20 journal. But most of them are, the vast majority are.

21 Q Is the GOVERNMENT UNION REVIEW a peer review
22 journal?

23 A It -- The paper got reviewed and it -- it --
24 I'd say it's closer to that than not peer reviewed
25 because it's had -- it's had articles on law, and so

1 I -- I don't really know how you classify it but I think
2 it has -- you know, it does -- papers do get reviewed.

3 Q How do you define a peer review journal?

4 A Well, I mean in the sense it's like a
5 continuum. I mean the JOURNAL OF HUMAN RESOURCES
6 without question is your standard conventional peer
7 review journal because it goes out to other economists.
8 EDUCATION MATTERS does -- the papers get reviewed. I've
9 reviewed papers for EDUCATION MATTERS but the audience
10 is not -- In some of these journals the audience is
11 meant to be the sort of broader education policy
12 community as opposed to college professors. I think
13 that might be the difference. So that EDUCATION
14 MATTERS, the papers are reviewed, sent to outsiders and
15 reviewed, because I've reviewed papers for them, but
16 they're not meant to be -- they're meant to be -- to be
17 read by a larger audience, policy sort of audience, and
18 so they tend to be of a less technical nature and the
19 style is they, you know, say put your footnotes on the
20 web, you know, don't pile up footnotes and, you know,
21 you can put references on the web but just keep it, you
22 know, as sparse -- you know, sort of a not so
23 intensively footnoted style in the text.

24 I don't know. I mean, you know, there's a gray
25 area on some journals and so some of them are in the

1 gray area, that's why I didn't put referee journals. I
2 wouldn't want to mislead anyone. I used to have a
3 section called Refereed Articles and Nonrefereed, and
4 then I couldn't decide how to classify the journal so I
5 stopped doing it. About ten years ago I gave up and
6 said here's an article, you decide.

7 Q Looking at page 2, which of those journals are
8 either gray or not peer reviewed?

9 A Well, I'd say EDUCATION MATTERS is gray.
10 PUBLIC INTEREST is -- is not peer reviewed. GOVERNMENT
11 UNION REVIEW would be gray. The RURAL DEVELOPMENT
12 PERSPECTIVES, that's published by the -- in the Rural
13 Office in the U.S. Department of Agriculture but it's
14 reviewed by their own staff, so I think it's okay.

15 Q And page 3?

16 A Okay. This is when I started switching, the
17 MONTHLY LABOR REVIEW. Now, this is -- this is published
18 by the Bureau of Labor Statistics.

19 Q You're about 40 percent of the way down on page
20 3?

21 A Yes, Changes in the Industrial Structure of Job
22 Displacements. Now, I've written a number of papers in
23 MONTHLY LABOR REVIEW. Now, you submit -- You know,
24 outsiders -- They encourage researchers to submit
25 papers. They're reviewed internally by their technical

1 staff, economists, statisticians, and they publish some
2 and they reject some. Now, I've had people say "Well,
3 that's not really a scholarly peer review journal
4 because it's just reviewed by the Bureau of Labor
5 Statistics people," so I stopped calling it a referee
6 journal. I just put journal. So you could say it's
7 gray, I suppose. So that would be the MONTHLY LABOR
8 REVIEW. And then scroll on down and there's -- there's
9 two more MONTHLY LABOR REVIEW articles, so you could
10 call those gray.

11 Q Okay. On page 5?

12 A Well, when you get to edited volumes it's a
13 different story. Now, those get refereed -- I mean some
14 do, some don't. These Brookings ones got reviewed.
15 See, now Brookings is a peer review press, the one with
16 Wahlberg, Regulation Versus Markets, the book went out
17 for peer review. That one on job displacement went out
18 for peer review. So some of -- Yeah, some of them get
19 peer reviewed. Oh, the other one in Addison got peer
20 reviewed, Wayne State University Press.

21 Q So when you say standard conventional peer
22 review journal, what do you mean by that?

23 A Well, in economics you have conventional
24 economics journals that are expected to be read by other
25 economists; okay? So a number of my papers, many of

1 them, most of them, are published in economics journals
 2 where they're -- you know, your audience are other
 3 economists, or at least technically trained folks, and
 4 they're reviewed by economists. In the area of
 5 education policy, you have -- you have some publications
 6 that are -- that are meant to speak to a policy
 7 community who may be less technical, and so some of
 8 these are meant -- you know, have a broader audience
 9 than just college professors. I guess that's -- Does
 10 that answer your question? State superintendents read
 11 them, you know, people on the state boards of education,
 12 staff and state departments of education, you know, so
 13 not -- people who are trained who know education but are
 14 not college professors.

15 Q And my question was: When you use the term as
 16 you did a few minutes ago of a standard conventional
 17 peer review journal, were you referring to only those
 18 journals that are intended for college professors?

19 A That's what I mean, yes. I think I have a
 20 pretty narrow definition of "peer review" and, you know,
 21 that's why I stopped trying to make the distinction
 22 because my definition is pretty narrow and so I
 23 stopped, I'll let the readers decide.

24 Q And do you also mean when you say a standard
 25 conventional peer review journal that the submissions

1 So I think there are things in the world, you
 2 know, publications that -- For example, the Educational
 3 Testing Service, this came up in one of the
 4 meta-analyses I've given you. The Educational Testing
 5 Service sends all its reports out for peer review;
 6 okay? So sometimes when people are doing these
 7 literature surveys where they count only peer review
 8 publications, they count Educational Testing Service
 9 reports. One of the surveys I gave you did that, took
 10 that approach. Education Commission of the States used
 11 that bar. They said well, things have to be peer
 12 reviewed but then they included studies that weren't
 13 traditional academic journals, something like the
 14 Educational Testing Service, so they took a broader
 15 definition; okay? So people use -- Well.

16 BY MR. AFFELDT:

17 Q And I'm just trying to get your definition.
 18 Would your definition include the -- a publication
 19 that -- would your definition include a publication in a
 20 journal that had only been reviewed by staff internal to
 21 the publication, would you consider that a traditional
 22 conventional peer review journal?

23 A No, I would -- I think "peer review" means you
 24 would send it to at least a larger group of
 25 technically -- of professionals. Now, so if you're in a

1 are sent out externally to others knowledgeable in the
 2 field to review ahead of time?

3 A Right, so certainly the peer review means it's
 4 sent out to peers to review, and so that's -- that's
 5 true of many of these journals that I'm putting in the
 6 gray area.

7 Q And is it -- under your definition of a
 8 standard conventional peer review journal, would a
 9 journal that is only reviewed internally by staff,
 10 internal to the publication, not be a -- not fall with
 11 within the definition?

12 MS. DAVIS: Calls for speculation. Vague and
 13 ambiguous.

14 THE WITNESS: Well, these sorts of things come
 15 up when you look at tenure cases or promotion cases,
 16 what's peer reviewed and what isn't. And to me if, for
 17 example, in the area of economics you have a lot of
 18 government agencies or think-tanks or not-for-profit
 19 organizations like the International Monetary Fund, the
 20 World Bank, that have publications that are published
 21 and sophisticated research and they're reviewed by their
 22 technical staff, but we -- but they're not -- they
 23 wouldn't fall in the first circle of what you'd call
 24 a -- at least in my view a narrowly peer review journal
 25 but they are peer reviewed.

1 big organization, the organization would count. So like
 2 the Bureau of Labor Statistics has hundreds of
 3 economists and statisticians so they can internally
 4 review papers but their -- their size is big enough that
 5 even though it's not external I still would consider it
 6 peer review.

7 Q So your definition does not turn on internal
 8 versus external, it turns on the number of people who
 9 have been able to review the proposed publication?

10 A Well, I -- this isn't -- My ideas on this may
 11 be evolving as we have this discussion. I mean it's not
 12 something I've, you know, thought carefully about of
 13 late but I think that to me "peer review" means it's
 14 been looked at by someone -- Well, a couple of things.
 15 First of all, it wasn't solicited, you know, you
 16 submitted it as an outsider and it's been reviewed
 17 almost always anonymously by someone with technical
 18 expertise in the field. That would be like the minimal
 19 requirement to call something peer reviewed.

20 Now, I guess what I've been saying to you is
 21 beyond that we sort of have a -- and I use the term the
 22 traditional peer reviewed academic journal is somewhat
 23 more than that in that its audience is really other
 24 basically college professors or researchers.

25 Q Do you ever rely on research from publications

1 that aren't peer reviewed?

2 MS. DAVIS: That are peer reviewed?

3 MR. AFFELDT: That are not peer reviewed.

4 MS. DAVIS: Are not. Okay.

5 THE WITNESS: Well, I -- the question is what
6 the word "rely" means. I've certainly cited things that
7 are -- that have been published in -- in publications
8 that are not peer reviewed. You know, I think that
9 my -- the standards of reliability that -- I believe in
10 the scientific model which is that the -- we should --
11 the highest standard for -- for -- for, you know,
12 developing knowledge and advancing knowledge is to
13 submit research to peer review, so -- but I've certainly
14 used, I guess you would say relied upon, data,
15 publications, statements that weren't always peer
16 reviewed.

17 BY MR. AFFELDT:

18 Q And under what circumstances do you rely on
19 data and information that is not peer reviewed?

20 A Well, I think in those -- those would be things
21 that would be more of a factual nature. You know,
22 the -- the -- Well, I mean journalistically, you know,
23 the New York City School Board of Regions voted 12 to 3
24 to, you know, adopt whole language learning teaching
25 styles. That -- You know, that's -- that fact could be

1 A Well, let me give you -- there's a good example
2 of research that we often do. The paper -- One of the
3 papers I gave you is not yet peer reviewed, it's a
4 working paper, the one by Aaronson. It's not
5 published. It's circulating as a working paper for
6 comment. It's been presented. That's all part of the
7 peer review process. It gets circulated, we make
8 comments on it, I've read it, I've watched him present
9 it, so it's in the process of being peer reviewed but I
10 certainly -- I cite it, I find it very interesting
11 research and I think very good research, but, you know,
12 it's got to go through the crucible of peer review and
13 ultimately get published and that will -- and lots of --
14 more eyes will need to look at it.

15 In other context if I read something and it
16 looks like they've done it right and I consider the
17 person reliable, then, you know, it -- it enters my --
18 How should I say it? -- it enters my -- it has some
19 weight in terms of my forming judgments about things, I
20 don't dismiss it.

21 Q Are any of these other publications listed on
22 page 5 and 6 peer reviewed?

23 A Well, as I said, the -- this book Regulation
24 Versus Markets, that book was reviewed, was peer
25 reviewed before its publication. I made some edits.

1 reported in a variety of venues. But if I were looking
2 at statistical research, you know, more -- it would
3 be -- I would much prefer and I would be more inclined
4 to rely on statistical research that was peer reviewed
5 as opposed to presentation of simple data.

6 The State of California presents data on the
7 web about the number of teachers who are certified and
8 not certified, but that's not peer reviewed but I
9 certainly would rely on their data because I -- you
10 know, I think that they on the whole present their data
11 accurately and honestly.

12 Q Have you relied upon statistical research that
13 is not peer reviewed?

14 A In my life or for this report or what is the
15 context?

16 Q In your life --

17 A Yes. Yes.

18 Q -- during the course of your professional
19 career.

20 A Yes, in the course of my professional career
21 there have been times when I used -- relied upon
22 research that was technical research that was not peer
23 reviewed.

24 Q And why were you willing to do so in those
25 circumstances?

1 The Brookings volume, Teacher Unions and Education
2 Reform, that was a peer reviewed publication. This
3 rural -- This Iowa State University Press, Rural
4 Teachers and Schools, that went on for peer review, so
5 did the next one on job displacement, Wayne State
6 University Press. So did the next one, the Ballinger
7 Press one, job displacement in the labor market. The
8 others weren't. And in terms of -- Well, the -- a few
9 of the others are because they were -- it's just that
10 they're short. I mean this Brookings Papers on page 6,
11 my comment, well, you know, my comment was reviewed,
12 they decided to publish it.

13 Q The first entry on page 6?

14 A Yes.

15 Those proceedings weren't. The comment in
16 INDUSTRIAL AND LABOR RELATIONS REVIEW was peer reviewed.
17 So at least a couple of those -- a few of those were.

18 But the book, by the way, was peer reviewed
19 from the Upjohn Institute, that first one. I mean that
20 went out for external review.

21 Q Which book are you referring to?

22 A The TEACHER PAY AND TEACHER QUALITY.

23 Q That's the one book you've written?

24 A Yes. Right. That was externally reviewed. I
25 got a set of -- several sets of referee reports that we

1 had to address before they published it.

2 Q What are the areas in which you've done
3 research yourself?

4 A Well, my background was -- is as a labor
5 economist. I sort of entered the economics world as a
6 labor economist, and so I did work on when I first came
7 out of graduate school -- My thesis was on unions and
8 inequality and earnings inequality, and so I published a
9 few papers in that area and I published a few papers on
10 union wage effects, collective bargaining and wage
11 effects. Then I got interested in this whole question
12 of job displacement, so I published a number of articles
13 in that area and sort of estimating earnings losses and
14 the effects of policies and advance notice and things
15 like that.

16 Then in the early '90s I got interested in the
17 question of teacher labor markets. People began talking
18 about teacher shortages and -- and staffing problems in
19 schools, so I started looking at -- at the question of
20 how teacher labor markets work and don't work, and
21 that's where I've been ever since. So my entry point
22 into education research has really been through the
23 labor market for teachers and then into sort of what
24 determines teacher productivity and quality and so on.

25 Q What do you mean by "job displacement"?

1 Economics?

2 A Well, a few courses -- Yes, although some of
3 the courses are cross-listed, so my economics of
4 education was cross-listed with the ed school and this
5 public policy one is cross listed with the -- we have a
6 public policy school, the Truman School of Public
7 Policy.

8 Q And by cross-listing you mean what exactly?

9 A It counts in both places.

10 Q Is your current position still as chair of the
11 Economics Department at University of Missouri?

12 A Yes, it is.

13 Q Are you -- Is your current job at the
14 university a full-time job?

15 A Yes.

16 Q Do you consider your consulting on legal cases
17 to be part of your job or your own -- your own private
18 work?

19 A No, it's private work. We're allowed to do a
20 certain amount of consulting.

21 Q How much consulting are you allowed to do?

22 A I think the rule is a day a week, I mean
23 averaged over some -- Obviously it's going to be more
24 than a day this week, so averaged over, you know, a
25 larger period of time.

1 A Plant shut downs, mass layoffs. You guys are
2 probably too young to remember there were lots of
3 layoffs and plant shut downs in the mid eighties.

4 Q I wish I could say I was.

5 What are the subjects that you've taught as a
6 professor?

7 A Well, labor economics, econometrics which is
8 statistics applied in -- in economics. Both at the
9 undergraduate and grad level I've taught econometrics
10 and labor economics. And at the undergrad level I've
11 taught everything. I'm kidding. Principles of micro-,
12 principles of -- principles of microeconomics,
13 principles of macroeconomics, intermediate
14 microeconomics, intermediate macroeconomics. I've
15 taught -- I've taught courses on industrial relations
16 and also on -- of late I've been teaching for public
17 policy students a course on economics of public policy,
18 sort of how -- cost benefit analysis and how you use
19 data to make policy decisions, things like that. I
20 taught a course on economics of education at the
21 graduate and undergraduate level. And next semester I'm
22 teaching principles of economics combined to freshmen,
23 honors.

24 Q Have your courses always been taught under the
25 auspices of the -- of your school's Department of

1 Q How much time are you currently spending on
2 outside consulting activities?

3 A It's less than a day a week. I -- I don't
4 really know. I mean it's -- I'm working on these other
5 cases but they're -- I mean I've worked on them over the
6 summer. I can't give you a number. I don't know. It
7 varies from week to week. Some weeks nothing, some
8 weeks a day or two.

9 Q What areas do you consider yourself to be an
10 expert in?

11 A Well, the -- my current area of research is on
12 teachers, teacher labor markets, teachers and teacher
13 quality and this relationship to student achievement, so
14 I think -- you know, I think I have some expertise
15 there. I'm certainly following the research and I've
16 made my own small contributions to it.

17 Q Any other areas you currently consider yourself
18 to be an expert in?

19 A As a labor economist, you know, I -- I've
20 written about the areas I've described to you and I
21 guess that qualifies me as an expert since I've
22 published in those areas.

23 Q Anything else?

24 A Well, I think the area of education statistics
25 I'm -- I'm competent, I've been spending a lot of time.

1 I'm on -- Okay. Here's another thing I forgot to put on
 2 the Vita. I've been on some advisory boards for the
 3 National Center for Education Statistics. I've had
 4 contracts with them and I've mentioned that. But, you
 5 know, they've put together panels, what should we be
 6 looking at in terms of these schools and staffing. So
 7 I've done -- I've worked with people in the Department
 8 of Ed and in the National Center for Education
 9 Statistics which is part of the Department of Ed on
 10 labor statistics issue. A good example is the -- Yeah,
 11 it is on the Vita. I was on it. The NAEP over-sight
 12 board. NAEP is the national report card, National
 13 Assessment of Education Progress. They asked me -- They
 14 commissioned a paper by me to look at the questions
 15 about teacher quality and teacher performance, but more
 16 generally sort of the contextual questions that are
 17 involved in NAEP. So I guess the outer boundaries of
 18 the teacher quality, you know, involve looking at more
 19 generally education statistics and -- and, you know, how
 20 to do a better job of -- of collecting data on -- on
 21 education.

22 And I also -- many of those research contracts
 23 I have are on higher education. I have big contracts
 24 with the State of Missouri maintaining a database and
 25 examining a variety of issues surrounding higher

1 education access, so we have a grant from the Lumina
 2 Foundation looking at access and affordability of higher
 3 ed in Missouri; so I'm working that area as well in
 4 higher ed issues, and they involve looking at data about
 5 access and affordability and trying to determine
 6 what's -- how readily accessible higher education is to
 7 students.

8 Q Any other areas you would consider yourself an
 9 expert on?

10 A Oh, I think that's probably about it.

11 Q How do you define your expertise?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: Well, I guess there's two parts
 14 of being an expert. I guess -- Or three. You -- You've
 15 contributed to the research in an area, you follow the
 16 research in the area, and you can understand the
 17 research that you're reading in the area, so I guess
 18 those are the three factors. So if you stop following
 19 the research, you've sort of slipped -- you sort of slip
 20 behind, if you will.

21 BY MR. AFFELDT:

22 Q Do you consider yourself to be a researcher?

23 A Yes.

24 Q Do you consider yourself an expert on research
 25 methodology?

1 A Well, methodology in the turf in which I'm
 2 operating, yes. I mean the policy evaluation research I
 3 think I'm knowledgeable in that field, yes.

4 Q Education policy or policy generally when you
 5 say "policy evaluation research"?

6 A Well, social policy evaluation, and I think
 7 that the ed policy is really a -- falls within that. An
 8 economist's view tend to look at education policy
 9 evaluation as -- Let me back up.

10 Economists and I think social -- generally in
 11 the social sciences there's -- there's a, if you will,
 12 science of policy evaluation and, you know, what sort of
 13 state of the art methodology is in terms of evaluating
 14 social policy, and I think most or at least a lot of
 15 what we're looking at in education falls within that.
 16 You know, the same kind of research methods that are
 17 used to evaluate whether an employment in-training
 18 program is helping people find jobs after they're
 19 displaced is also used -- the same kind of research
 20 design is used -- can be used and should be used in
 21 evaluating whether, you know, a teacher -- professional
 22 development program for teachers raises student
 23 achievement. I mean it's the same kind of generic
 24 evaluation problem. The data is different and the
 25 particular program you're looking at but the general

1 statistical issues you're confronting are very similar.

2 Q So when you say you would consider yourself an
 3 expert on research methodology within the area that
 4 you're working, how do you define that area that you're
 5 working?

6 A Well, I said social program evaluation. So I'm
 7 not an expert on validating the -- I'm not a
 8 psychometrician in terms of validating tests or for the
 9 most part economists don't do experimental designs,
 10 although we -- there is some research coming up in this
 11 area and there has been in the social policy area. Most
 12 of the evaluation we do is using nonexperimental data.

13 Q What do you mean by "experimental designs"?

14 A Well, random assignment, basically. You have a
 15 treatment group and you have a control group and you
 16 have random assignment to the treatment and control
 17 groups.

18 Q And why don't economists for the most part use
 19 experimental designs?

20 A Well, for the most part it's the -- the
 21 programs we're trying to evaluate you don't have that
 22 type of data available. It's certainly -- There have
 23 been -- There have been programs where you have
 24 introduced random assignment in training, for example,
 25 job training; but if you're looking at the causes of

1 unemployment, you can't randomly assign people to be
 2 unemployed. If you're looking at the causes of job
 3 displacements, you can't randomly assign people to be
 4 displaced; or the consequences of job displacement, you
 5 can't -- you can't run an experiment and randomly lay
 6 people off. So much of the data that's generated in
 7 the -- in the world of economics and in the world of
 8 education is nonexperimental, so we have to -- we take
 9 that data and we try to figure out what works and what
 10 doesn't but most of it's being generated by a process
 11 that isn't experimental. We haven't controlled who gets
 12 treatments and who doesn't, but we try to learn
 13 something about what works and what doesn't by looking
 14 at that data.

15 Q Is it appropriate in your view to rely on
 16 nonexperimental data to make policy judgments in the
 17 area of education?

18 MS. DAVIS: Vague and ambiguous. Calls for
 19 speculation.

20 THE WITNESS: I -- I believe so, yes. I think
 21 you can -- You know, the best -- It goes back to what we
 22 said before, you -- you can define what is the very
 23 best, sort of the model, and the gold standard would be
 24 a random assignment study where you track people over
 25 time and that's what you should -- the more of that kind

1 of research we have the better. But a great deal can be
 2 learned by carefully done studies using nonexperimental
 3 data. It's just you -- the key is careful.

4 And as I indicated in my report, it's very
 5 important to have data on prior student achievement.
 6 And generally in -- in policy evaluation you want data
 7 on your sort of initial conditions, if you will,
 8 prior -- prior work history if you were looking at job
 9 displacement, prior earnings if you were looking at job
 10 training programs, and then you get to -- and then you
 11 have some people get a particular treatment or
 12 intervention, some don't, and you look at posttreatment
 13 outcomes. So we use -- I think a lot can be learned
 14 from nonexperimental data.

15 BY MR. AFFELDT:

16 Q Who else would you consider an expert on
 17 research methodology in the education field?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: So you just want me to start
 20 naming every name I can think of?

21 BY MR. AFFELDT:

22 Q Yes.

23 A Okay. Well, let me start with the economists
 24 because that's my -- the club I belong to and then I'll
 25 go out from there; okay? Not because economists are

1 more important than other people, it's just that I rub
 2 shoulders with them more.

3 Clearly Caroline Hoxby; Eric Hanushek; Alan
 4 Krueger who's at Princeton; Tom Kain here at UCLA;
 5 Julian Betts, UC Davis; Jeff Grogger, UCLA; Dan
 6 Goldhaber, University of Washington. I guess I am just
 7 going to sweep across the country. I will start on the
 8 West Coast. Dominic Brewer at RAND. You've got a good
 9 group at RAND over at Santa Monica. Dominic Brewer
 10 heads the group. Dave Grissmer who's not an economist
 11 who's there, he's good. There's Goldhaber up at
 12 Washington. We'll go to the University of Chicago,
 13 let's move eastward now. Obviously Gary Becker, Nobel
 14 laureate; Jim Heckman, Nobel laureate. Wisconsin --
 15 No, Derek Neal went to Chicago. Derek Neal. Gosh. I
 16 mean this is -- Okay. Let's keep sweeping east, go to
 17 Princeton. Cicily Rouse. Let's see. I said Krueger.
 18 Let's go to Harvard. Okay. Let's broaden it out. Then
 19 there's -- I don't know. I mean it's a very -- it's --
 20 There's a lot of people involved in education research.

21 Q Again, these are people not just involved in
 22 education research but whom you would consider to be an
 23 expert in research methodology --

24 A Yes.

25 Q -- of education.

1 Okay.

2 A Going outside -- You know, my problem is I --
 3 I -- if I start naming a whole lot of names, I start
 4 going blank, and when you hit 50 it's going to happen to
 5 you, too. Andrew Porter, a big guy in methodology that
 6 just went to Vanderbilt. He's a statistician.

7 Do I have to keep going? Does that --

8 Q Is that --

9 A Well, no, that's not an exhaustive list. It's
 10 just I'm hard-pressed to name names. Can I -- Can I
 11 look at my citation -- Can I look at my -- the
 12 references and what I wrote for my report? I need
 13 something to jog my memory. I can't -- If I go over a
 14 hundred names, it's hard.

15 Q There are no more names coming to you at this
 16 point in time?

17 A But I don't want to say that those are all the
 18 experts. I just -- I'm having trouble --

19 Q I understand that --

20 A -- naming all of the people who do research in
 21 the area who I think are -- are -- Well, okay. If we're
 22 talking about people who -- who would fall in the area
 23 of sort of I'd say econometrics and methodology, Charles
 24 Manski who I think is now at Northwestern. Well, yeah,
 25 then -- then Card, David Card who was at Princeton. I

1 think he's at Berkeley now. There was another one. Oh,
2 in terms of kind of evaluation methodology at MIT is --
3 he writes with a guy from -- an Israeli. There's a guy
4 at MIT.

5 Q Who writes with an Israeli?

6 A Yes. This is what's going to happen here. We
7 can go on like this. I -- You know, I reach a point
8 when I sort of blank out here and I -- if you give me
9 a --

10 Q You only need to answer to the best of your
11 ability sitting here with your --

12 A Well, I'm trying to --

13 MS. DAVIS: He understands that you're -- you
14 don't want to offend somebody by leaving them off the
15 list.

16 MR. AFFELDT: Right.

17 THE WITNESS: I'm thinking about people in
18 economics who have been -- who have done sophisticated,
19 innovative research in evaluation of ed policy broadly
20 defined, okay, so this could be human capital theory,
21 training. Orley Ashenfelter at Princeton would be
22 another name that comes up. Well, no one else is coming
23 to mind at the moment so. . .

24 BY MR. AFFELDT:

25 Q Are you familiar with the work of Walt Haney?

1 that I mentioned in terms of sort of the frontiers of
2 evaluation methodology but he's certainly done very good
3 work on ed policy.

4 Q What about Ron Ferguson?

5 A Ferguson would be a tier below those guys. I
6 mean he's -- he's done some interesting work but he's
7 not -- his statistical work isn't generally -- hasn't
8 been as sophisticated as the guys -- the folks I've
9 indicated earlier.

10 Q What about Larry Hedges?

11 A Hedges would definitely go into that tier.
12 That -- He's -- Now, Hedges and -- is -- Hedges is a
13 psychologist and what he's done -- his expertise is what
14 you call research synthesis, so he's less of a
15 methodologist and more -- his contribution has been more
16 developing techniques for synthesizing large bodies of
17 research, although he's a very good statistician. He's
18 done empirical studies looking at some -- you know,
19 looking at some programs. But yeah, see, he certainly
20 is very knowledgeable about methodology and he'd belong
21 in that first tier.

22 Q What about Russell Gersten?

23 A I don't -- I'm not familiar with Gersten.

24 Q What about Linda Darling-Hammond?

25 A Well, Professor Darling-Hammond has mostly

1 A Yes, I've read a couple of papers by him.

2 Q Would you consider him an expert in the area of
3 research methodology on -- in education?

4 MS. DAVIS: Calls for speculation. Vague and
5 ambiguous.

6 THE WITNESS: Yes, but I've always thought of
7 Haney as more of a testing guy than an evaluation guy.
8 There's a difference there and -- and I -- as I
9 indicated earlier you have a lot of people that are
10 involved in looking at tests and properties of tests
11 and, you know, validity of tests and reliability of
12 tests, and that's really different than evaluating the
13 effect of a policy intervention. So there's a whole --
14 At least from what I've read of Haney I'd put him in
15 more of a testing psychometrics kind of field than in
16 the policy evaluation field.

17 BY MR. AFFELDT:

18 Q What about Kenji Hakuta?

19 A I don't really know his work so I can't say.

20 Q What about Richard Murnane?

21 A Murnane I would put very much in the policy
22 evaluation area.

23 Q As an expert?

24 A Yes. And I should have included him as -- He's
25 not as much of an econometrician as those other people

1 relied on synthesized the work of others in most of her
2 writings, as far as I've seen, hasn't done a lot of her
3 own empirical work, and so I -- clearly she's
4 knowledgeable in this field. I disagree with her
5 conclusions about that, but she's clearly knowledgeable
6 in the field and is widely cited.

7 Q You testified that you considered yourself to
8 be an expert on teacher quality and its relation to
9 student achievement. Do you consider Professor
10 Darling-Hammond to be an expert on -- in that field,
11 too?

12 A Yes.

13 Q Who else do you consider to be an expert in the
14 area of teacher quality and its relation to student
15 achievement?

16 A Dominic Brewer at RAND, Dan Goldhaber at
17 University of Washington, Hanushek for sure, one of his
18 coauthors Steve Rivkin. I left him off that earlier
19 list.

20 Q So you would put Rivkin on both lists?

21 A Yeah.

22 People who have cited. Tom Kain. Dick
23 Murnane. Oh, well, Professor Caroline Hoxby. Oh,
24 Suzanna Loeb -- I left her off -- Stanford.

25 Q Would she be on both lists?

1 A Yeah, she'd be on both. She's young so she's
2 just getting started, but she's good. She's already
3 published a number of papers. Well, yeah, actually in
4 -- in this area I should have -- Suzanna's been
5 publishing papers. There's a project using data, this
6 administrative data that we were talking about before in
7 New York with Hamilton Lankford, and so it would fall on
8 that list, and James Wykof and then Suzanna Loeb,
9 they've been writing in this area.

10 Let's see here. I don't know. Those are the
11 names that are -- that immediately come to mind. I
12 guess you'd have to put -- since we did teachers,
13 Stanford, Henry Levin. He's less so now but he's at
14 Teachers College, an economist background.

15 Q Are there individuals whom you would consider
16 experts in the area of attracting and retaining
17 teachers?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: Well, I -- I think you're parsing
20 it a little finer. I mean basically you got a group of
21 people that look at teacher labor markets and teacher
22 quality and I think it's all the same club, I mean I
23 think it's all the same issue or very similar issues.
24 So I tend to -- I'd put all the names I gave you before
25 on -- on that list.

1 references, but -- But there was an interchange between
2 Professor Darling-Hammond and Kathy Walsh on -- about
3 this -- the quality of the research that -- the studies
4 that Professor Darling-Hammond has cited. And Katherine
5 called me to ask questions about the research, and I
6 gave her my observations on it.

7 And in the process of reading the interchange
8 between Professor Darling-Hammond and Kathy Walsh, I
9 thought these same studies keep getting mentioned over
10 and over again and I thought it would be useful for me
11 to just sort of write a one -- or a -- kind of a short
12 synopsis and critique of a few of the studies that gets
13 cited over and over again because no one had ever done
14 that. I mean it's -- So what I do is I walk through and
15 just wrote, you know, maybe -- I don't know -- 300, 400
16 words giving a quick summary of the methodology and what
17 I see as kind of the strength and limitations of -- of a
18 few of the studies that were being thrown back and
19 forth. So Professor Walsh, if you look at it, what she
20 wrote is separated from what I wrote; so it's like put
21 together but we're like joined off -- I mean we're not
22 coauthors. There's a part of it she wrote and then
23 there's little vignettes, if you will, that I wrote
24 about I believe it was four of the studies that had come
25 up in the debate giving my view of the strengths and

1 BY MR. AFFELDT:

2 Q And when you say all the same people, are you
3 referring to both lists or primarily the second list?

4 A The second list.

5 Q Do you consider Katherine Walsh to be an expert
6 in -- in any of the areas we've been discussing?

7 A Katherine is -- is a -- she's -- she's more of
8 a -- more of a commentator and not -- I wouldn't call
9 her an expert. She's written -- She's -- She's a policy
10 person as opposed to a researcher. There are a lot of
11 people that are sort of out there writing about policy
12 and writing about the research, but I think she's -- she
13 isn't -- you know, that's her credentials as opposed to
14 kind of being involved in the -- being involved in the
15 academic environment producing the research.

16 Q Do you know what her academic background is?

17 A I think she has a degree in political science.

18 Q Do know what the degree is?

19 A I don't know what the highest degree is, no.

20 Q You don't know if she has a Ph.D.?

21 A I don't know.

22 Q You coauthored something with Katherine Walsh;
23 correct?

24 A Yeah, it's not exactly coauthored. It's --
25 It -- That's how it gets put down on a list of

1 weaknesses of those studies.

2 Q And we're talking about Teacher Certification
3 Reconsidered, Stumbling For Quality, a rejoinder?

4 A Yes.

5 Q Is it identified in that publication exactly
6 which parts you wrote and which parts she wrote?

7 A Yes. At least -- At least when I saw it the
8 final version, yes, it's -- it has clearly little sort
9 of boxed inserts or something that I wrote and then the
10 overall thing she wrote.

11 Q Did you agree with the portions that she wrote?

12 A You know, it got -- the debate got so long and
13 drawn out I -- on the whole I agreed with her but I --
14 every point I would have -- you know, I didn't -- I
15 didn't -- In general I agreed with her but, you know,
16 there are specifics where I'm sure I would have come
17 down a little bit differently or I would have come down
18 a bit differently. So she very much wrote her own
19 response. I mean I -- That's -- That's her response to
20 Darling-Hammond. I took my little piece and it's
21 clearly delineated what I wrote.

22 Q On the opening piece which I think was just
23 called Teacher Quality Reconsidered or Teacher
24 Certification Reconsidered, Stumbling For Quality, what
25 was your role in -- in drafting of that document?

1 A It was none. I -- I think I -- she showed me a
2 copy of it or I think I may have talked to her briefly.
3 I didn't know her before she wrote that, so I think at
4 some point along the line -- She called many people and
5 talked to many people, many of the authors of these
6 studies, but I didn't play any role in writing it. I
7 know I talked to her about particular studies or issues
8 while she was writing it but then she called lots of
9 people and got their input.

10 Q Did you play any role in the appendix to the
11 initial piece?

12 A I don't know. If -- Maybe I'm thanked or
13 something there. I don't remember specifically playing
14 a role in it. I just remember -- I think I played more
15 of a role in just discussing some of the general issues
16 as -- Do you mean an appendix where she kind of wrote up
17 what was in each study or --

18 Q Yes.

19 A No, I didn't really do that, no. It's the
20 second rejoinder where I did that. I didn't play a role
21 there in that appendix on the first report.

22 Q How many times did you talk with Kate Walsh
23 while she was writing the opening piece?

24 A Oh, probably two or three times. Not a whole
25 lot. Probably three times.

1 Q How often did those -- How long did those
2 conversations generally last?

3 A We're talking about something that was quite a
4 while ago, so I -- I -- you know, I don't think they
5 were all that long. I mean what -- one of the
6 problems -- one reason she called me is that, you
7 know, it's often hard to find the studies that Professor
8 Darling-Hammond cites and so she was trying to find some
9 of them. And I said -- I said, "You know, I would love
10 to get a copy if you can -- if you can come up -- you
11 know, get a copy," and so that was an issue, so that was
12 short. And then -- I don't know -- I think there were
13 some general questions on methodology of some studies or
14 other but I don't think they were all that long so. . .

15 Q Did you in those conversations convey to Ms.
16 Walsh your opinions on some of the methodological issues
17 that you have had with the studies that Dr.
18 Darling-Hammond was relying on?

19 A Yes.

20 Q Did you provide any written feedback or input
21 to Ms. Walsh at that point in time?

22 A Well, I would imagine we had some E mail
23 interchanges, too, so I -- I -- I recall we probably had
24 some E mail interchanges. She was at the Abell
25 Foundation, A-b-e-l-l, at the time, so I think that

1 would have been it. There may have been some E mails.
2 She started that -- I mean she began that project,
3 geez, I don't know, maybe 2000 or -- and so we're
4 talking about a number of years ago so it's hard for me
5 to recall
6 exactly when I started talking to her. We had a couple
7 of phone calls and maybe a few E mails and I think I
8 finally met her at an education conference, but it
9 wasn't a lot of interaction on that report.

10 Q Do you remember what education conference you
11 met her at?

12 A Yes, the first time I met her was at the
13 Education Leaders Conference which is an organization of
14 education -- of chief state school officers. And we met
15 at the meeting -- I don't know. It was one of them.
16 They're in September so it would have been -- not last
17 September. Maybe the September before that, so
18 September -- Let's see -- '02, '01 -- maybe September of
19 2000 or 2001. Probably 2000. It was probably -- It was
20 in -- I think -- I think it was when it was in Atlanta.
21 It's probably 2000. That's my best guess.

22 Q How many times have you met Ms. Walsh?

23 MS. DAVIS: Are you talking about in-person
24 meetings?

25 MR. AFFELDT: Yes.

1 THE WITNESS: Well, now I'm on the -- After all
2 of this, this new -- Well, actually it predates her.
3 But she's now the director of this National Center on
4 Teacher Quality and I'm on the advisory board for that,
5 so I've met within I guess -- Your question was how many
6 times in total have I met with Kate Walsh, so my answer
7 would probably be three or four. I met her at a second
8 ELC meeting and she was at this Brookings -- She's in
9 D.C. so she was at this Brookings conference that I was
10 just at in the spring and we chatted a bit then, so
11 probably only three or four times total.

12 BY MR. AFFELDT:

13 Q What's the name of the -- the organization that
14 she's now directing?

15 A It's called the National Center for Teacher
16 Quality, NCTQ. I'm pretty sure that's what it means.
17 It's based in D.C. and there's an advisory board, and
18 I'm on the advisory board. And, you know, that might
19 not be on my Vita. If it's not, I apologize. I forget.

20 Q Is that something you would include on your
21 Vita if you remembered it?

22 A Yeah, I'd put that down.

23 Q That wouldn't be one of the things that you
24 would keep off?

25 A Well, it's -- it's like a service thing, so I'd

1 put it on.

2 Q Did you review a draft of -- of any of the
3 versions of the opening or rejoinder papers that Kate
4 Walsh wrote, give her feedback on the Stumbling For
5 Quality piece?

6 A Well, the rejoinder she -- she asked me about.
7 I had more contact with her on that since -- since I
8 knew her at that point, and she asked me and -- and so I
9 wrote my own thing and we discussed. I think I looked
10 at a draft of her response. I don't think I gave her a
11 lot of feedback.

12 Part of the reason is, see, I -- it's not that
13 I disagreed but I feel that -- I think we're -- the
14 debate kind of got a little off track and in my view the
15 problem here is -- is -- it's to set the bar -- it's the
16 right place to set the bar methodologically and as I
17 layout in my report, either random assignment or prior
18 control for student achievement. I think it gets -- It
19 just bogs down and became counterproductive to get in
20 this study by study kind of thing and so -- Anyway, so I
21 glanced over. I really -- I read her -- I think I read
22 it quickly, a draft of her rejoinder, but it's -- It was
23 so long, both the original and Darling-Hammond's
24 response and then Kate's response to the response -- How
25 should I say? -- my attention flagged and so I decided

1 A It looks like mine. October 2002. I was
2 right. It looks like my E mail. When I go home I will
3 probably have 250 E mails so I can't say that I -- you
4 know, the volume of E mails is becoming absolutely out
5 of control, but it certainly looks like my E mail, you
6 know.

7 Q Okay. While reviewing the -- it appears to be
8 an E mail, Paul Salvaty responding to an E mail from
9 you, two E mails. Do you recall that exchange?

10 A Yes, I recall this now.

11 Q And do you recall whether or not you produced a
12 E mail concerning your communications with Mr. Salvaty?

13 A Mr. Salvaty preferred that I call him, so there
14 really were virtually no E mails. If he wanted -- He
15 felt that if I wanted to talk about something I should
16 call him and talk about it and not use E mail, so I did.
17 So there essentially other than saying -- You know, I
18 mean I just didn't use E mail with him. It's just
19 minuscule the number of E mails, and nothing of
20 substance was ever -- I mean this has to be the most
21 substantial E mail we had.

22 Q What did Mr. Salvaty say to you with regard to
23 calling him as opposed to sending E mails?

24 A Well, he said that he'd prefer that I call him
25 and not send E mails.

1 to just write my little piece about the four studies
2 that were going back and forth on it and be done with
3 it.

4 Q Did you give her any -- Strike that.

5 Did you review and provide feedback to Kate
6 Walsh on the opening piece?

7 A No, I don't believe I ever reviewed a draft of
8 that. She -- Like I said, she just called me and asked
9 me questions about things, but I don't recall reviewing
10 a draft of that.

11 MS. DAVIS: John, can we take a break soon?

12 MR. AFFELDT: Yeah, I am going to -- I am about
13 to finish this section.

14 MS. DAVIS: Okay.

15 MR. AFFELDT: Yes, why don't we take a break
16 here.

17 MS. DAVIS: Okay.

18 (Recess.)

19 BY MR. AFFELDT:

20 Q I am going to hand you what we will mark as
21 Podgursky Exhibit 2.

22 (Podgursky Exhibit 2 was marked for
23 identification by the court reporter.)

24 BY MR. AFFELDT:

25 Q I ask if you recognize that.

1 Q And why did he prefer that?

2 MS. DAVIS: Calls for speculation.

3 THE WITNESS: I -- I really am not sure, but I
4 would speculate that I would have to turn them all over.
5 But I don't know that. I just followed the rules of
6 what he wanted me to do.

7 BY MR. AFFELDT:

8 Q Did he tell you the reason he wanted you to
9 call him was because if you sent him an E mail he'd have
10 to turn it over to plaintiffs?

11 A I -- I'm not sure if he ever told me that.

12 I -- I just -- I -- He might have but I don't remember
13 one way or the other. I sort of just assumed that
14 that's why he wanted to do it, so I just don't recall.

15 Q But do you recall whether or not you retrieved
16 any E mails from your E mail file to print off and send
17 to Mr. Salvaty in terms of the producing documents to
18 plaintiffs?

19 A I -- My recollection is I printed off all the E
20 mails I had and sent them off in the -- in my box or in
21 my shipment. I may have accidentally deleted some. I
22 mean things get deleted. You know, I didn't purposely
23 delete things, but in the maelstrom of E mails from
24 students and many people, sometimes things get deleted.
25 But in general I just didn't use E mail with

1 Mr. Salvaty.

2 Q It's your testimony -- It's your testimony now
3 that you do affirmatively remember printing off E mails
4 from your in box or any box and sending them to
5 Mr. Salvaty?

6 A I -- I may have.

7 In terms of producing documents for this case?

8 Q Yes.

9 A If there were any I would have done that
10 because he told me to do that. And so I can't remember
11 if there were or not, but I -- I know that he did tell
12 me that I was supposed to produce any E mails.

13 Q Okay. I am going to hand you what we will mark
14 as Exhibit 3.

15 (Podgursky Exhibit 3 was marked for
16 identification by the court reporter.)

17 BY MR. AFFELDT:

18 Q This is a document entitled "STATE'S MEMORANDUM
19 OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR
20 CLASS CERTIFICATION." If you could take a moment to
21 review this and tell me if this is the -- appears to be
22 the document you were referring to in your E mail which
23 is Exhibit 2. It goes about the same name in the last
24 paragraph of your E mail.

25 A I don't think it is. There -- The only

1 BY MR. AFFELDT:

2 Q Okay. Do you see -- Looking at Exhibit 2, your
3 E mail --

4 A Uh-huh.

5 Q -- if you can look at the last paragraph it
6 says:

7 "One minor problem. The document you sent
8 dated July 30, 2001 'State's Memorandum of
9 Points and Authorities in Opposition to Motion
10 for Class Certification' was missing page 33.
11 Page 33 seems to have information pertinent to
12 the 20 percent rule."

13 A Well, okay. Maybe I did see this, then.

14 Q Does that refresh your recollection as to
15 whether you saw this document?

16 A Yeah, so I guess I probably did see this.
17 Well, probably I guess I did see this document since --
18 since I wrote that.

19 Q If you could look at page 33 and around there,
20 and when you've had a chance let me know what you're
21 referring to as concerns to the 20 percent rule.

22 MS. DAVIS: Feel free to read as much of the
23 document as you need to to answer the question.

24 THE WITNESS: Okay. I've read this now. Could
25 you repeat the question? I forgot the question.

1 documents -- And I did forget to mention that there was
2 like a basic -- I primarily looked at Professor
3 Darling-Hammond's report but I do believe that now in
4 discussing this with you he did send me like a document
5 that sort of looks like this, legal cover, but it was
6 more of like what the complaint was kind of a document;
7 and my recollection was, you know, it talked about
8 particular schools and it said that -- I believe it
9 referred to the conditions in particular schools and --
10 and how there was a shortage of certified teachers and a
11 series of schools were mentioned, is my recollection. I
12 don't think it was this. I don't recall seeing this.

13 Q Okay. In addition to the Darling-Hammond
14 documents, you reviewed a document that made allegations
15 about a series of schools and their conditions?

16 A My recollection was there was a document like
17 that, that talked about -- it was more of a complaint,
18 here's the problem kind of a document.

19 Q Was that produced by plaintiffs?

20 MS. DAVIS: Calls for a legal conclusion.

21 THE WITNESS: My recollection was that it was
22 sent to me by Mr. Salvaty and it sort of looked -- it
23 looked like -- my recollection is it was the complaint
24 and it was coming from the plaintiffs is my
25 recollection.

1 BY MR. AFFELDT:

2 Q The question is: What did you mean by the 20
3 percent rule in your E mail on Exhibit 2?

4 A Well, this cap is what I -- I believe I was
5 referring to, this you can't have more than 20 percent
6 without full clear credentials.

7 Q Did Mr. Salvaty send you page 33 eventually?

8 A You know, I don't think he ever did. It just
9 kind of -- I think this was some preliminary material
10 and I glanced over it and I saw the page was missing,
11 the only page that seemed relevant to what I was doing,
12 and I'm not sure I ever got it, frankly.

13 Q Looking at it now now that you have finally
14 gotten it --

15 A Yes.

16 Q -- does it add anything to your understanding
17 of the issues in the case?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: Not at all. I really don't know
20 what this is. It's -- It's -- It's in the context of
21 whether someone can be a class or not. It's -- It's in
22 the context of legal arguments I don't understand. I
23 understand what Professor Darling-Hammond's report says
24 but I really don't -- it -- it really doesn't add -- it
25 doesn't speak to me.

1 BY MR. AFFELDT:

2 Q Okay. Have you ever taught in a public school?

3 A No.

4 MS. DAVIS: You mean K-12?

5 MR. AFFELDT: Yes.

6 THE WITNESS: No.

7 BY MR. AFFELDT:

8 Q And other than for research purposes, have you
9 spent time in a K to 12 public school classroom?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: Yes, my kids were in public
12 school for a while, so I was in their classrooms,
13 teacher conferences and after-school things visiting
14 classes.

15 BY MR. AFFELDT:

16 Q So as a parent you've spent time in public
17 school classrooms.

18 A Yes.

19 Q Was that in Massachusetts or Missouri or both?

20 A Both.

21 Q And have you spent time as a researcher in
22 public school classrooms?

23 A Not very much, no.

24 Q Have you spent any time as a researcher in a
25 public school classroom in any state?

1 speculation.

2 THE WITNESS: Well, I've argued that that's an
3 important role for principals and supervisors; so yes, I
4 think there's an important role to be played by school
5 administrators in determining whether teachers are
6 performing well. So the answer to your question is
7 yes. But as far as my research is concerned, I don't --
8 you know, it's not critical for me to do that. I -- You
9 know, if I'm examining whether teachers with a master's
10 degree produce better student achievement gains than
11 teachers who don't have a master's degree, then I don't
12 need to sit in a classroom to investigate that point.

13 BY MR. AFFELDT:

14 Q When you say "I do statistics," you mean what
15 exactly?

16 A I'm -- I'm relying on data that's collected on
17 schools to examine the questions of teacher pay, teacher
18 quality, teacher performance. Primarily that's what I
19 do.

20 Q When you say you've visited K to 12 classrooms
21 in public and private schools, approximately how many
22 classrooms have you visited during the course of your
23 research?

24 A Well, the answer would be schools. As I said,
25 I don't -- I generally don't sit in classrooms.

1 A Well, I visited public and private schools and
2 talked to individuals, administrators and teachers, but
3 I don't -- as my research doesn't involve sitting in a
4 classroom watching what goes on, no. I do statistics.

5 Q What do you mean when you say that you do
6 statistics in that context?

7 A Well, I -- I don't feel it's necessary to sit
8 in classrooms to do the research I do.

9 Q And what is the kind of research that you do
10 that doesn't necessitate your sitting in classrooms to
11 draw conclusions?

12 A Well, I study -- I examine the way teacher
13 labor markets work and the role of teacher credentials
14 and general issues of teacher quality. In my view
15 the -- the -- it's difficult to judge teacher quality
16 by -- you would have to sit in a whole lot of
17 classrooms, and even then it's -- You need to quantify
18 the research, I mean you need quantitative evidence in
19 my opinion, and so sitting in on a couple of classrooms
20 is what the education community calls qualitative
21 research and I don't -- that's not my approach.

22 Q Can one determine whether or not a teacher is a
23 qualified teacher by sitting in a classroom and
24 observing their work?

25 MS. DAVIS: Vague and ambiguous. Calls for

1 I've talked to many teachers and many school
2 administrators over the years, and superintendents, so I
3 don't really know how many schools and superintendents
4 I've talked to. I mean I know that in the course of
5 doing our book we visited probably 25 -- or at least I
6 interviewed -- We didn't visit all of them -- I
7 interviewed private school administrators at 25 or 30
8 schools. Then we visited some charter schools and I did
9 surveys of charter school administrators. But how many
10 have I visited? I -- I don't know. Not -- A dozen, 15,
11 20.

12 Q When you say for your book you interviewed 25
13 to 30 school administrators, you indicated that you
14 hadn't actually visited the school for all of those
15 interviews; is that correct?

16 A That's correct.

17 Q And you said you did a survey. Was that for
18 your book, also?

19 A It was a study we did on charter schools for
20 the Fordham Foundation.

21 Q And was that separate from your book?

22 A Yes.

23 Q How many charter schools did you survey?

24 A I think it was about 300 or 200. 200 to 300.
25 I can't remember.

1 I should point out, as I said, I go to a lot of
2 conferences, education conferences, and I talk to a lot
3 of principals, superintendents. I ask them about
4 teacher pay, personnel policy in schools, so I don't
5 need to be in a classroom to ask administrators how
6 decisions are made. And I talk to teachers, too.

7 Q In a given year how many conferences do you go
8 to?

9 A In the past year at least half a dozen.
10 Education conferences maybe eight.

11 Q And is it fair to say most of those conferences
12 are attended by other researchers and academics?

13 A No, many of these are policy people or else
14 some -- many will have teacher school administrators,
15 superintendents. The Milken one I just mentioned to you
16 that I spoke at a couple of -- several months ago here
17 in L.A., the group I was interacting with were school --
18 state school chiefs. I spoke at a science -- science
19 educator conference earlier in the spring, that was
20 mostly ed professors and science teachers. So it's been
21 a mixture. I'm going -- In a few weeks I'm speaking to
22 the personnel directors of Missouri Public Schools, so
23 it's various groups, and some have been ed researchers.

24 Q In the last year how many teachers have you
25 talked to at any of these conferences you've attended?

1 you have in a given year at these conferences in which
2 you gain information from the teacher, not just talk to
3 an audience of teachers, where you actually engage in
4 conversations with practicing teachers about areas in
5 which you're doing your research.

6 A I get feedback by E mail from teachers, too.
7 About a third of teachers in the country told me that my
8 recent article was wrong after the news media covered it
9 on teacher pay. So I -- You know, a lot of them send me
10 E mails, too, and I've had discussions, and informative.

11 The one paper on there -- Here's another one.
12 The science teachers, that one paper that's listed on
13 there, NCTM Dialogues, National Council of Teachers of
14 Math, they asked me to write an article for their
15 electronic journal on national board certification, and
16 I've been critical of that and I got a lot of -- I got a
17 number of E mails from them on that.

18 I actually have two other electronic
19 publications I forgot to mention on the Vita. I wrote
20 this little electronic newsletter the Fordham
21 Foundation does, and I've had people respond to those.
22 One was on the teacher shortage and one was on some
23 legislation here in California that would make -- that
24 would
25 mandate -- that would require school districts bargain

1 A I don't know. I mean almost everyone you talk
2 to in the education community used to be a teacher, so
3 you mean current or former teachers? I mean even the
4 superintendents used to be teachers.

5 Q I mean how many teachers who are currently
6 teachers have you talked to regarding issues related to
7 your research?

8 A How many practicing teachers have I talked to?
9 Oh, a dozen.

10 Q Would you say that's about average or high or
11 low compared to your --

12 A Well, no, two years ago I spoke at the Milken
13 and it was -- that was almost all teachers in the
14 audience. So if you average over five years, it would
15 be a lot because there were 500 teachers in that
16 audience, or a huge number. So it just varies. I mean
17 it's fluid. I mean the Education Leaders Conference,
18 every year I've gone to that and almost every year I'm
19 on the panel and there are some teachers that are at
20 that that are teacher/administrators, you know, people
21 that are doing some administration and some teaching.
22 So I -- it's -- I'm not in classrooms but I do have
23 contact with teachers and school administrators in the
24 course of what I do so. . .

25 Q I'm trying to figure out how many conversations

1 with teacher unions about education policy. I thought
2 that was a very bad idea and I wrote a little thing for
3 that and I've had some dialogue with people on those
4 things, so I get E mails from teachers.

5 Q From the conferences that you attend on an
6 annual basis, about how many conversations with teachers
7 do you have where you get feedback on issues that you're
8 currently working?

9 A Face-to-face feedback?

10 Q Yes.

11 A Not a great deal, so it's -- I can't say there
12 have been a lot of teachers I've had face-to-face
13 conversations with about any particular article. More
14 typically it's school administrators who talk to me
15 about these issues.

16 Q And by school administrators what level
17 administrator are you typically talking about?

18 A Principals, business managers, assistant
19 superintendents, superintendents.

20 Q And when you refer to your recent article that
21 you got a lot of feedback from teachers on, which
22 article was that?

23 A The -- The one that has this name Fringe
24 Benefits. It was originally cited as Apples to Apples
25 but it's -- it's -- it was published Fringe Benefits.

1 It was talking about teacher pay.

2 Q And I think you testified that you received
3 critical feedback from approximately one third of the
4 nation's teaching force?

5 A A slight exaggeration.

6 MS. DAVIS: It seemed that way probably.

7 THE WITNESS: The problem is I presented --
8 This is an example. I presented that paper at meetings
9 at the American Enterprise Institute in Washington,
10 D.C., a session on teacher pay that coincided with the
11 publication of that, and so there was someone from the
12 teacher union and then me and another guy and there were
13 some reporters in the audience, and someone from
14 the -- one of the news services picked up on it and it
15 was in USA TODAY and a whole bunch of newspapers -- you
16 know, Economist Says Teachers Are Overpaid kind of --
17 that slightly exaggerates but -- and so I -- I
18 referred -- you know, I had some discussions with a
19 number of teachers, you know, about the article. I said
20 read the article, and we had some interchanges about --
21 about some of the issues in the article.

22 BY MR. AFFELDT:

23 Q Do you have an estimate of how many E mails you
24 received?

25 A If you try to subpoena them, I did delete many

1 of them so they're gone. Oh, gosh. I got so sick of
2 it. It was -- No, I -- Probably 50, 60.

3 Q Were there any E mails from teachers saying
4 you're right, we're overpaid?

5 A They tend to be silent. There were a couple of
6 principals that said that, that agreed with me.

7 Q But no teachers?

8 A But no teachers, that I recall.

9 It wasn't -- The issue wasn't overpayment. The
10 issue was this argument about -- specifically was
11 expressing teacher pay on an hourly basis, a scheduled
12 teacher pay on an hourly basis, which is the data that
13 pops up in that report.

14 Q By "that report" you mean your expert report in
15 this case?

16 A Yes.

17 Q Do you have a sense of the demographic
18 breakdown of the student population in California public
19 schools?

20 A A general sense.

21 Q What is that sense?

22 A There are quit a few Hispanic students and
23 minority students, ethnic minority.

24 Q Do you know what the percentages are?

25 MS. DAVIS: Calls for speculation.

1 THE WITNESS: I don't know them off the top of
2 my head.

3 BY MR. AFFELDT:

4 Q Do you know what the single largest ethnic
5 group is in California's public schools?

6 A My guess would be Hispanic.

7 Q Do you know how many total students there are
8 in California's public schools?

9 A I know there's about 360,000 teachers and the
10 student/teacher ratio is about 20 or a little -- around
11 20, so my ballpark guess would be 360 times -- 7
12 million.

13 Q Do you consider California's student population
14 to be unique in any way compared to other state's public
15 schools' student population?

16 MS. DAVIS: Vague and ambiguous. Calls for
17 speculation.

18 THE WITNESS: No, I don't think you're unique.

19 What do you mean? The state is unique or the
20 condition of a typical school district is unique?

21 I'm -- I think there are other states that have large --
22 certainly school districts that have large percentages

23 of minority students and challenges of English as a
24 second language and so on. Not a lot of them are in

25 California but there are other states, New Mexico. New

1 York City has -- clearly they've had many challenges.
2 Many big urban districts. Kansas City, St. Louis have
3 their high -- they're largely minority school districts,
4 so I don't think you're unique.

5 BY MR. AFFELDT:

6 Q What do you understand to be the challenges
7 English language learners bring to the public school
8 system in any state?

9 MS. DAVIS: Vague and ambiguous. Calls for
10 speculation.

11 THE WITNESS: Well, clearly you've got to --
12 you've got to get the kids -- you've got to teach them
13 English, you've got to get them integrated into the
14 curriculum, so they -- I think that there are challenges
15 there.

16 BY MR. AFFELDT:

17 Q Do you know what percentage of California's
18 public school population consists of English language
19 learners?

20 A No.

21 Q Do you have even a rough idea?

22 MS. DAVIS: Calls for speculation.

23 THE WITNESS: 30 percent.

24 BY MR. AFFELDT:

25 Q Do you have a idea of what the ethnic makeup of

1 California's teaching force is?
 2 A In general terms, yes.
 3 Q What is that understanding?
 4 A It has fewer minorities than the school
 5 population but I don't know the exact percent. It would
 6 be black and Hispanic and Asian, but that -- I would
 7 imagine the minority share is less than 50 percent.
 8 Q Do you know what percent of California's public
 9 school teachers can speak a language other than English?
 10 A No.
 11 Q Do you know what percent of California's public
 12 school teachers have been trained to teach English
 13 learners in any way?
 14 A No.
 15 Q Do you consider California's public school
 16 system to be unique in any way compared to other states?
 17 MS. DAVIS: Vague and ambiguous. Asked and
 18 answered.
 19 THE WITNESS: Well, you used to be a growing
 20 state. You know, the -- But I think there's so many
 21 different problems that school districts face and
 22 challenges. Obviously there's only one California, but
 23 if when you say do you think California is unique, I --
 24 if you -- I would interpret that to say does California
 25 have more problems than anyone else. If that's what you

1 mean by "unique," then my answer is no.
 2 BY MR. AFFELDT:
 3 Q Do you think California has -- Well, let me ask
 4 you what you mean by "problems."
 5 A Well, trying to teach the kids and so, you
 6 know, you've got -- you know, trying to get kids to
 7 learn. I mean that's -- that's the problem, that's the
 8 challenge is to get kids educated, so that's -- yeah,
 9 and so if -- so you've got California clearly has
 10 challenges with lots of immigrants from many different
 11 countries, large Hispanic share, and until recently a
 12 growing population of kids, although it's still growing
 13 but it's slowed down. Those are -- Those are serious
 14 problems.
 15 But other states have faced those problems. I
 16 mean Texas has a huge Hispanic population and is
 17 growing. Florida is growing faster than you. I think
 18 you have urban districts where the poverty rates are
 19 much higher. I mean urban districts in the east and in
 20 areas like St. Louis are overwhelmingly black now. The
 21 whites have fled so you don't have that base of -- it's
 22 sort of very kind of a poor socioeconomic foundation
 23 now. So, you know, I just think that there are a lot of
 24 problems in different school districts and you've got
 25 one bundle and other people have another bundle, but on

1 the face of it I wouldn't say you -- you know, you're
 2 unique because it's sunny all the time here and
 3 people -- you know, it puts people in a better mood.
 4 Imagine trying to teach a poor low SES classroom with
 5 120 inches of snow in Buffalo so -- now that's unique.
 6 Q On the SES point, and all joking aside, I just
 7 didn't understand whether you were saying California --
 8 in saying that California has some high poverty
 9 districts you were saying that other places don't or
 10 they also have high poverty districts?
 11 A Well, they do have high poverty districts in
 12 many other states, and I think that if you look at the
 13 resource base in cities like St. Louis, for example, or
 14 Toledo or Cincinnati you have cities where the economic
 15 base has eroded much more severely than really anywhere
 16 in California. So, you know, I think problems of urban
 17 decay are often much worse in many of these Northeastern
 18 cities than in California here.
 19 Q Other than the study that you did for this
 20 report, have you done other research in California?
 21 MS. DAVIS: Vague and ambiguous.
 22 THE WITNESS: Not specific to California, no.
 23 We did California on the charter school study,
 24 California -- I think we picked seven states that had
 25 permissible charter school legislation and California

1 was one of them. But I haven't -- I don't recall
 2 singling out California in any particular study.
 3 BY MR. AFFELDT:
 4 Q Has your research in other work ever touched on
 5 California data other than the charter schools that you
 6 just mentioned?
 7 A Well, yes. I mean to the extent I've used
 8 national data California's in the sample.
 9 Q How often have you used national data?
 10 A Continually. I mean I -- I'm looking -- I've
 11 been using the schools and staffing data on teaching out
 12 of field and teacher quality measures, and California's
 13 in there. And I break things out occasionally by state,
 14 so I use national data a lot on my analysis.
 15 Q But the charter school piece and the -- your
 16 expert report in this case are the only instances where
 17 you've specifically had a California focus; is that
 18 fair?
 19 A I've -- In looking at wages and studying
 20 collective bargaining, each teacher unions, you know,
 21 I've paid some attention to collective bargaining
 22 agreements in, you know, L.A. Unified, San Diego just
 23 because they're big, I mean being among the largest
 24 school districts in the country. So if you look at any
 25 sample of large school districts and their collective

1 bargaining agreements or their salary schedules,
2 invariably California pops up with several, so -- so
3 they've -- I guess California is overrepresented in some
4 sense in some of the work I've done.

5 Q What studies are you referring to? You can
6 look at Exhibit 1.

7 A Well, the study in the JOURNAL OF HUMAN
8 RESOURCES, Seniority, Wages and Turnover Among Public
9 School Teachers, we did some analysis of salary
10 schedules for teachers and that appeared, so California
11 schools were probably over sampled in that because they
12 have collective bargaining agreements.

13 There's -- Well, I guess that's -- I looked at
14 the -- I looked at a number of contracts in New York --
15 I mean -- Excuse me -- in California when I did work on
16 the New York case because I collected a sample of
17 contracts from major urban districts around the nation
18 and I actually wrote a little paper that's on my web
19 site that's not published, so that's not on there, too,
20 but it's on looking at scheduled pay and scheduled
21 hours. And I -- I refer in some of the papers I write
22 to features of collective bargaining agreements, and
23 L.A. and San Diego may have popped up. So -- So again,
24 I've looked at contracts in some of the -- in several of
25 the major districts in the state because they're so

1 A Well, they're certainly in the sample and I may
2 have made reference to as an example, you know, of
3 something, of a schedule or back loading of a schedule
4 or, you know, longevity adjustments. I draw on
5 contracts where I've seen it and I may have referred to
6 L.A. Unified or San Diego at one point or another.

7 Q Any other California-related research that you
8 can identify?

9 A That's -- That's all I can think of.

10 Q The research for the charter school piece, was
11 that primarily the survey you sent to charter schools?

12 A Yes.

13 Q Is there any other source for the data that you
14 gathered for that work?

15 A The schools and staffing surveys which is a --
16 it's -- it's conducted by the National Center for
17 Education Statistics. It's -- It's a national survey.
18 It has public, private, and now the most recent one has
19 charter schools. But I used the public and private in
20 the previous '94, '95 wave of the surveys. And this
21 gets really bad because that's also called SASS but it's
22 S-A-S-S as opposed to the software. So I use SAS to
23 analyze SASS. We won't get into that.

24 Q The data that you gathered from the charter
25 school work you gathered from your office in Missouri

1 big. I mean L.A. Unified is the second biggest school
2 district in the U.S.

3 Q This paper on the web site, did that grow out
4 of your work on the New York case or --

5 A Well, what happened in the New York case is
6 lots of journalists called me up and policy people and
7 asked about the data that I presented in the case and on
8 this comparing -- it wasn't just for New York because I
9 had done national comparisons on statutory workdays and
10 some other factors. So I wrote up -- I took some of the
11 charts from the testimony and I wrote some -- you know,
12 I wrote up sort of a short paper with just a brief
13 description of the data and some summary charts that's
14 on my web site. It's under the section that says
15 Unpublished Papers and Reports, and -- and that --
16 that -- and I think I've referred to these -- Well, that
17 would be about it.

18 Q And so you may have referred to L.A. Unified or
19 San Diego --

20 A Oh, they're definitely in that paper. I'm
21 sorry. I interrupted. L.A. Unified and San Diego are
22 definitely in the paper I just mentioned.

23 Q Okay. And are they in the Seniority, Wages and
24 Turnover Among Public School Teachers piece that you
25 referenced to?

1 basically?

2 MS. DAVIS: Vague and ambiguous.

3 BY MR. AFFELDT:

4 Q Let me ask it this way: You didn't have to
5 come to California to gather and analyze the
6 California-related data for that work; is that correct?

7 A That's correct.

8 Q Did you interview any -- anyone in California
9 as part of that survey -- as part of that work other
10 than sending the survey instruments to people?

11 A I ran into some charter school people at
12 conferences from California and we talked about it but
13 not -- just not more than three or four.

14 Q That wasn't a formal interview as part of --

15 A It wasn't a formal interview. They just --
16 Again, I would bump into a lot of these charter school
17 people at conferences and they would talk to me.

18 Q You've been pretty good, but you have to let me
19 finish my questions.

20 A Oh, I'm sorry.

21 Q That's okay.

22 A I'm sorry.

23 Q As part of your work on the expert report in
24 this case, did you conduct any formal interviews with
25 anyone?

1 A No.

2 Q Are you familiar with teachers' salaries in
3 California?

4 MS. DAVIS: Vague and ambiguous.

5 BY MR. AFFELDT:

6 Q For public school teachers.

7 A Well, yes, I review data for the report on
8 teachers' salaries and nonteachers' salaries.

9 Q And that's the date that you reported in
10 your -- in your report?

11 A Yes.

12 Q So that would be the BLS data?

13 A Yes.

14 Q And the AFT data to the extent that that
15 covered California?

16 A Yes.

17 Q Did you review any salary schedules from any
18 districts?

19 A No.

20 Q Would that be the most direct source for
21 knowing what a salary was in a given district?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: I think that it would be very
24 useful in cases like this to have data on the salary
25 schedules and that I'm sure that in my discussions with

1 and Staffing Survey.

2 BY MR. AFFELDT:

3 Q Did you -- When you said you looked on the web
4 site for salary schedule information, which web site
5 were you referring to?

6 A The State Department of Ed.

7 Q Did you find any salary schedule information on
8 the State Department of Ed web site?

9 A No, I didn't.

10 Q Did you obtain any salary schedule information
11 from any of the teacher unions in California?

12 A No, I did not.

13 Q Did Mr. Salvaty let you know whether salary
14 schedule information for districts from any of the
15 teacher unions in California was available?

16 A Well, I knew that it was available for some
17 districts but what I wanted was a complete sample, not
18 just sort of hit or miss, so I believe I did ask him
19 if -- if we could get statewide data for all of the
20 salaries.

21 Q And what did he tell you?

22 A Well, I think it was part of those general
23 discussions at the beginning about well, it would be
24 good to get data on this, it would be good to get data
25 on that, and I never got the data so I -- so between

1 Mr. Salvaty I asked -- in fact, I recall raising with
2 him and checking the web site to see if there were any
3 data that was collected by the Department of Ed on -- on
4 salary schedules statewide for all roughly one thousand
5 school districts both for comparison within the state
6 and in between states. I've done that in other states,
7 because part of the problem you have in comparing across
8 states or across districts is that, you know, you may --
9 while you have average teacher pay, it could be that
10 the -- the average is determine -- or differences in the
11 average could be coming from differences in the
12 seniority of the teachers, so that's why I like to use
13 salary schedule data wherever it's available.

14 Now, as I recall in the report when I looked at
15 the dispersion of pay in California, I was using SASS
16 data which is on -- Okay. For the one issue in the
17 report I did I used Schools and Staffing Survey data and
18 one of those questions in the -- or a couple of the
19 questions in the survey they ask the school
20 administrator about points on the salary schedule in the
21 school district and I made use of that in one of the
22 charts in my report. It was about the dispersion of pay
23 within the state, and I compared California to a number
24 of states with major urban areas, so I did make use of
25 salary schedule data that was reported in the Schools

1 that conversation and looking at the web site I
2 concluded that it probably wasn't available, it wasn't
3 collected by the state.

4 Most states actually don't collect -- Most
5 states Department of Ed don't collect salary schedule
6 data in my experience, so I wasn't surprised that in a
7 state with a thousand school districts roughly they
8 probably didn't have it systematically compiled, "they"
9 being the State Department of Ed. If there were fifty
10 or a hundred districts, it might be a different story
11 but. . .

12 Q How many California districts are represented
13 in the SASS data in terms of salary information?

14 A Off the top of my head I can't answer it. I'd
15 have to go back and look at my -- my data.

16 Q Do you recall if it's a handful or a majority?

17 MS. DAVIS: Calls for speculation.

18 THE WITNESS: I remember I looked at this
19 question because I -- I wanted to make sure I had
20 comparable numbers in the other states and I noted --
21 For example, Florida has districts that are contiguous
22 with counties and so there's only, gosh, a small number
23 of school districts in Florida. My guess is 70,
24 something like that. Maryland only has 28. So, you
25 know, I had to leave states like that out because I was

1 looking at dispersion.

2 So I did look at the numbers but I can't -- you
3 know, I just cannot remember how many -- what the N was
4 on the sample size was on that. I'd have to go look it
5 up.

6 Q Are you familiar with California's system of
7 accountability for its public schools?

8 A Well, I read -- I read about STAR but I don't
9 know a lot and I've heard people talk about it and read
10 a couple of papers, I guess, but I -- you know, I don't
11 know the details. I know that the schools under No
12 Child Left Behind have to show progress and the STAR
13 data is now part of evaluating the -- is the state's
14 test that's used for monitoring performance, and so I
15 know a little bit about it but I'm -- that was not the
16 focus of my work here. And I read about it in Professor
17 Darling-Hammond's report, too.

18 Q When you say the STAR data is used for
19 monitoring progress, do you mean adequate yearly
20 progress under No Child Left Behind?

21 A As I understand it, yes.

22 Q Do you understand the difference between the
23 state's measures to comply with No Child Left Behind and
24 the state's own Public School Accountability Act?

25 A Sure, every state I'm familiar with has its

1 A I believe they do, or it's going to be
2 implemented. It's -- It's not -- How should I say? --
3 It's not high stakes at the moment but there is an exit
4 exam as I recall.

5 Q Do you know when it's going to be implemented?

6 A I don't recall. Not -- Well, I -- I guess
7 relatively soon maybe. I don't remember. I know it's
8 been -- There's been discussion of that.

9 Q Do you know what tests the state uses to
10 measure academic performance in its STAR testing
11 program?

12 A It's the Stanford 9, based on the Stanford 9.

13 Q What's the difference of being the Stanford 9
14 and being based on the Stanford 9?

15 A Well, I guess it is just the Stanford 9. You
16 can re-weight parts of the test. Some states do that,
17 some districts.

18 Q What grade levels does the state test students
19 under its STAR testing program?

20 A I think it's three through eight but it may
21 be -- No, I think it's three -- I think it goes through
22 tenth grade and I think -- and it may be two through
23 ten. It is annual and it goes from somewhere in
24 elementary to somewhere I think up to ten, but I don't
25 recall.

1 own -- and most states it predates the system they put
2 in place. States went through a process, like
3 California did, of coming up with a set of standards
4 about what kids should know and do and developing an
5 evaluation and then kind of a -- putting in place a
6 monitoring system in many cases with rewards and
7 sanctions for failure to meet any of the standards, and
8 that's distinct from the federal law. And so I know
9 California has one. I don't know the details. I
10 believe some of that was discussed in the Betts study,
11 so I -- you know, I've read about it and I understand
12 its distinct from No Child Left Behind.

13 Q Do you know what the API is in California?

14 A That's the -- Yeah, it's the Academic
15 Performance Index and I read about it on the web site
16 and it combines a variety of data on performance, but
17 I -- you know, I don't remember the details of how it's
18 measured. But it plays a role in this performance
19 monitoring in the state, I know that.

20 Q Do you know what constitutes the Academic
21 Performance Index?

22 A Well, as I said, I don't remember the details
23 of how it's constructed.

24 Q Do you know whether California has a high
25 school exit exam requirement?

1 Q How familiar are you with California's
2 credentialing system?

3 A Well, I had to try to understand as much of it
4 as I could to do this report, so I have some familiarity
5 with it but it is complicated and it's changing, too.

6 Q Do you know what the -- What do you understand
7 to be the duties of the California Commission on Teacher
8 Credentialing?

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: Well, California I believe was
11 the first state in the union to set up an independent
12 commission, teacher credential commission. Other
13 states -- About ten or so other states have followed
14 suit. The National Commission on Teaching and America's
15 Future and the teacher unions and some other groups have
16 pushed that idea as sort of a model that the argument is
17 teaching should be like medicine and so there should
18 be these independent commissions separate from the state
19 board that set these standards, so California was I
20 believe the first or second state to do this back around
21 1970 or the early '70s is my recollection, and they're
22 charged with, you know, all of the things that go with
23 certification, so setting the standards, determining,
24 you know, what criteria will be used for what
25 certificate, keeping track of all the certificates so

1 that, you know, if a school district wants to know if
 2 Susie Smith is really certified to teach, you know,
 3 speech therapy at the elementary schools that they can
 4 check that, so that maintaining a database that keeps
 5 track of all these very complicated certificates and
 6 endorsements. So it's -- it's all of the duties that
 7 are -- And, you know, validating
 8 these -- determining cut-off scores for these tests,
 9 coming up with new tests, appropriate tests for content
 10 knowledge and, you know, essentially trying to develop
 11 mechanisms to assure quality teachers to -- to -- on the
 12 one hand to -- to try to control quality and make
 13 sure -- screen out low quality practitioners but then
 14 developing a system that can -- that's workable and can
 15 get teachers into the classroom, so it's a challenging
 16 set of tasks.

17 MR. AFFELDT: Could you read the end of his
 18 question back to me, just the last couple of sentences,
 19 of his response, rather.

20 (Record read.)

21 BY MR. AFFELDT:

22 Q Are you familiar with an entity called FCMAT,
 23 F-C-M-A-T?

24 A No.

25 Q Are you familiar with what, if any, duties the

1 California Department of Education has on issues of
 2 teacher quality?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: Well, that's -- that's a good
 5 question. The -- The teacher -- Now, other questions
 6 of -- surrounding pay, teacher professional development,
 7 you know, a number of things like that will -- I would
 8 imagine that authority still resides in the State
 9 Department of Ed, certainly -- certainly they will be
 10 the pass-through mechanism for all the federal money on
 11 teacher professional development, national board
 12 certification. I believe all of that is still in the
 13 Department of Ed. It's -- It's -- As I understand it
 14 it's just primarily the initial certification and the
 15 surrounding duties that -- that passes -- that's passed
 16 over to the CTC.

17 BY MR. AFFELDT:

18 Q What do you understand the California
 19 Department of Ed's responsibilities to be with respect
 20 to pay for teachers?

21 A Well, what I mean is the -- ultimately the
 22 pay -- the foundation for pay is coming from the school
 23 finance system so that's -- and that's still within the
 24 State Department of Ed. That would be primarily what
 25 we're talking about. Of course some benefits, the --

1 Well, I guess the pension fund is independent of the
 2 State Department of Ed so that's probably in a separate
 3 agency. Collective bargaining is in a separate agency I
 4 would imagine, so I guess they probably don't have a
 5 whole lot to do with pay other than writing out the
 6 check to these school districts that sets their
 7 bargaining at the district level. See, in some states
 8 you have statewide teacher salary schedules, minimum
 9 salary schedules, but as I understand it you don't have
 10 that in California.

11 Q What do you understand the Department of
 12 Education's responsibilities to be with respect to
 13 professional development?

14 A Well, I would imagine they -- they promote it.
 15 Federal moneys pass through their hands and so they
 16 have responsibilities for seeing that the money is
 17 appropriately spent. They -- I would imagine that they
 18 have some grants that are available to school districts
 19 that come from the federal title to moneys. I haven't
 20 investigated this a great deal. It was not relevant,
 21 but I -- I'm -- so I am speculating that this is what
 22 states' Department of Education do in other states, so I
 23 would be surprised if they weren't doing it in
 24 California because that is where the federal money
 25 passes through.

1 Q But you haven't investigated specifically with
 2 respect to California's Department of Education's
 3 duties?

4 A Well, as I said, I read the web site and so I
 5 read things on the web site and my recollection is that
 6 there were activities in this regard going on.

7 Q Is that the extent of your familiarity with
 8 their duties?

9 A At the moment that's all I can recall, yes,
 10 on teacher quality --

11 Q Right.

12 A -- specifically.

13 Q Are you familiar with the distribution of
 14 teachers in California's public schools who have
 15 preliminary or clear credentials?

16 A Yes, I've read several reports -- well,
 17 Professor Darling-Hammond's work plus several reports I
 18 downloaded off the -- either the CTC or the Department
 19 of Ed web site. It's probably the CTC web site that
 20 talked about the distribution of waivers and the
 21 distribution of emergency certs and distribution of
 22 clear credentials, so there's an annual report as I
 23 recall it on certification, emergency certs that has
 24 this data.

25 Q Do you -- You didn't take issue in your report

1 with Dr. Darling-Hammond's statistics at least as
2 concerns to distribution of credential versus
3 uncredentialed teachers? By "credentialed" I mean
4 preliminary or clear and by "uncredentialed" I mean
5 everyone less than that standard. Is that -- Is that
6 correct?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: What specifically --

9 BY MR. AFFELDT:

10 Q That you didn't take issue with her -- her data
11 discussing the extent to which there are students being
12 taught by uncredentialed teachers in California.

13 A Well, they all have credentials. There's
14 credentials Professor Darling-Hammond likes and there's
15 credentials that Professor Darling-Hammond doesn't like.
16 So I would prefer to say the sort of clear credential or
17 preliminary and clear versus other credentials.

18 They're obviously not uniformly distributed
19 across the state. They tend to be more of the waivers,
20 emergency, preintern and intern in the urban and poorer
21 districts from what I gather from her report and
22 other -- other data from the Department of Ed or CTC.

23 Q Right. And you didn't take issue with her
24 conclusions regarding the distributions of preliminary
25 and clear credentials in California; is that correct?

1 THE WITNESS: I had no reason to doubt it.

2 BY MR. AFFELDT:

3 Q What's your understanding of the difference
4 between a clear and a preliminary credential in
5 California?

6 A They're -- Well, a clear credential is the --
7 when you've met all the requirements and you've taught
8 successfully for two years. Preliminary you've met all
9 the preliminary requirements, you've passed CBASE -- or
10 CBEST -- I'm sorry -- you've demonstrated content
11 knowledge, you've passed through and approved teacher
12 training program -- there's a list of nine criteria but
13 those are the key -- but you have not completed this
14 probationary period of teaching during which you're
15 evaluated.

16 MS. DAVIS: Would this be a good time? It's
17 about 5:00. Are you planning on wrapping this up?

18 MR. AFFELDT: Yes.

19 MS. DAVIS: Okay.

20 BY MR. AFFELDT:

21 Q Other than reading Dr. Darling-Hammond's
22 report, how have you come to familiarize yourself with
23 the California teacher credentialing system?

24 A Well, I read the web site and I read McKibbon's
25 study and I read several reports off the CTC web site

1 A What specific conclusion are you referring to?

2 Q Where the -- Where the teachers are that have
3 preliminary and clear credentials.

4 A Well, if you mean in general terms, they tend
5 to be in poorer districts. And I didn't independently
6 investigate that data. I took that fact as given.

7 Q Okay.

8 A I should mention that that was sort of
9 extensively examined in the Betts study and I had no
10 reason to doubt their presentation of that data, so they
11 did extensive analysis of that point in their study.

12 Q Have you reviewed any of the reports from the
13 Center for the Future of Teaching and Learning?

14 A Can you give me an author for one of those?

15 Q Patrick Shields.

16 A I believe I looked at that study. I didn't
17 review it as carefully because it wasn't on student
18 achievement. But I gather -- My recollection is that
19 Shields was looking at the incidents of -- of clear and
20 preliminary certs versus other certification.

21 Q All right. And similarly did you find any
22 reason to doubt the accuracy of the Shields, et al.,
23 data on that question?

24 MS. DAVIS: Vague and ambiguous. Calls for
25 speculation.

1 on -- on the emergency waivers, and there's been
2 several -- there's an annual report and there's -- there
3 were several other special reports on -- on these
4 topics, so I -- I read those.

5 Q And when did you do that reading?

6 A When I was doing my report, so I -- I had a --
7 and I -- I believe I sent those but I read those in
8 preparing for writing my report.

9 Q You say you believe you sent those. Do you
10 mean you produced those to Mr. Salvaty to be passed on
11 to plaintiffs?

12 A I believe so.

13 Q Do you know what the requirements are for an
14 intern credential in California?

15 A As I recall they're -- they're essentially the
16 same as preliminary. You have to pass CBEST, you have
17 to have a baccalaureate degree, you have this criminal
18 background check, you have to have either passed the
19 subject matter test or have a -- demonstrated content
20 knowledge in an academic major or something like that,
21 but you haven't gone through a teacher training program
22 and so you have to take your pedagogical course work in
23 the course of two years, sort of like on-the-job
24 training, either in a district intern program or an IHE,
25 Institute of Higher Ed, affiliated intern program. And

1 then at the end of those two years you -- if you've
 2 completed all that you have a clear credential.
 3 Q Do you know if there are any other intern
 4 certificates other than the district intern or the
 5 university intern?
 6 A Well, there is a preintern. Is that what
 7 you're referring to? There is a preintern and I think
 8 the preintern is I believe you haven't passed one of
 9 those tests.
 10 Q Do you know which one?
 11 A One or both. I don't remember the details of
 12 the preintern.
 13 Q When you --
 14 A It's smaller, it's much smaller than intern.
 15 Q When you say "one of those tests," do you mean
 16 the --
 17 A CBEST or a content knowledge test.
 18 Or you may not have completed your academic
 19 college degree, you know, your content knowledge by way
 20 of your degree. I believe there's -- there's a -- there
 21 can be a -- My recollection is you can be short, you
 22 know, one of several things and so there -- you're
 23 preparing to move into an intern status.
 24 Q And are there any other intern certificates
 25 that you're aware of?

1 Foerster San Francisco.")
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1 A Well, I -- other than district based and IHE
 2 based, no, I'm not.
 3 MS. DAVIS: And you were talking California?
 4 MR. AFFELDT: Correct.
 5 MS. DAVIS: Okay.
 6 MR. AFFELDT: This is probably a good place to
 7 stop for the day.
 8 MS. DAVIS: Okay.
 9 THE WITNESS: Okay.
 10 (The stipulation from the deposition of
 11 Michael John Podgursky, Volume 4, is
 12 incorporated as follows:
 13 "MS. DAVIS: We will notify you, the court
 14 reporter, of any changes within 45 days of
 15 receipt of the transcript.
 16 "All else is per the code?"
 17 "MR. AFFELDT: Right."
 18 "MS. DAVIS: Okay."
 19 "MR. AFFELDT: Which is the court reporter
 20 is going to keep the original and will send a
 21 copy to the deponent's attorney, Ms. Davis,
 22 with an errata sheet and the court reporter
 23 will notify all parties of any changes to the
 24 original and will send a certified copy
 25 to Ryoko Kita, R-y-o-k-o K-i-t-a, at Morrison &

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 9 I, MICHAEL JOHN PODGURSKY, do hereby
 10 declare under penalty of perjury that I have read the
 11 foregoing transcript of my deposition; that I have made
 12 such corrections as noted herein, in ink, initialed by
 13 me, or attached hereto; that my testimony as contained
 14 herein, as corrected, is true and correct.
 15 EXECUTED this ____ day of _____,
 16 20____, at _____, _____.
 (City) (State)
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 20 MICHAEL JOHN PODGURSKY
 21 Volume 1
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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using a machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: _____

CAROL ANN NELSON
CSR No. 6974