

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 SAN FRANCISCO - UNLIMITED JURISDICTION

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4 ELIEZER WILLIAMS, a minor, )

5 by SWEETIE WILLIAMS, his )

6 guardian ad litem, et al., )

7 each individually and on )

8 behalf of all others similarly )

9 situated, )

10 Plaintiff, )

11 vs. ) No. 312236

12 STATE OF CALIFORNIA, DELAINE ) VOLUME IV

13 EASTIN, State Superintendent )

14 of Public Instruction, STATE )

15 DEPARTMENT OF EDUCATION, )

16 STATE BOARD OF EDUCATION, )

17 Defendants. )

18 -----

19 Continued Deposition of MICHAEL RUSSELL,

20 Ph.D., at 400 South Hope Street, Suite

21 1700, Los Angeles, California 90071-2899,

22 commencing at 9:33 A.M., Friday, February

23 21, 2003, before Kathy F. Kellogg, CRR,

24 RDR, CSR No. 6591.

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1 MICHAEL RUSSELL, Ph.D.,  
 2 the witness, having been previously administered an  
 3 oath in accordance with CCP Section 2094, testified  
 4 further as follows:  
 5  
 6 EXAMINATION (CONTINUING)  
 7 BY MR. HAJELA:  
 8 Q. Good morning, Dr. Russell. My name is Abe  
 9 Hajela. I represent the California School Boards  
 10 Association. And since this is day 4, I don't think 9:33AM  
 11 we need to go over ground rules again.  
 12 I just wanted to make sure you understand  
 13 that if there's a question I ask that's not clear,  
 14 and you don't understand it, please just let me  
 15 know, and I'll try to rephrase it. 9:33AM  
 16 A. Okay.  
 17 Q. I'd like to refer you to Page 15 of your  
 18 report.  
 19 The sentence starting "Paul Warren," and  
 20 I'm just going to go ahead and read this: 9:34AM  
 21 "Paul Warren, Deputy  
 22 Superintendent of the Accountability  
 23 Branch, has said that the state's  
 24 role in terms of accountability is  
 25 to create the incentive for schools 9:34AM

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1 to 'do the right thing' regarding 9:34AM  
 2 student outcomes. It is then the  
 3 district's responsibility to  
 4 implement an action plan according  
 5 to its own specific situation. In 9:34AM  
 6 this way, state the state would play  
 7 a regulatory role. But school  
 8 districts often disagree with this  
 9 description of the accountability  
 10 roles. They see the state as being 9:34AM  
 11 accountable for implementing  
 12 appropriate programs to achieve  
 13 intended student outcomes."  
 14 Do you see that?  
 15 A. Yes. 9:34AM  
 16 Q. What did you mean by the phrase,  
 17 "implementing appropriate programs"?  
 18 What sorts of programs are you talking  
 19 about in the last sentence?  
 20 A. Very much like I was talking about 9:34AM  
 21 yesterday, with examples from Rhode Island, where if  
 22 there is a need that's common across many schools,  
 23 or even within one school district, that the state  
 24 would play a role in assisting those school  
 25 districts to meet that need. 9:35AM

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1 And, again, I may -- the needs could vary, 9:35AM  
 2 you know, again depending on what they are.  
 3 Q. So you're not referring, then, solely to  
 4 sort of accountability programs. You mean academic,  
 5 educational programs? 9:35AM  
 6 A. Yeah. It -- yeah. In the first sentence  
 7 you read, Paul Warren refers to doing the right  
 8 thing regarding student outcomes, which I  
 9 interpreted when reading that, it meant implementing  
 10 some kind of educational program, or making some 9:35AM  
 11 kind of changes to the educational program in the  
 12 school. And so that if a school, or a set of  
 13 schools, had a common need, the state could play a  
 14 role in assisting the schools to meet that need.  
 15 Q. Okay. And in the sentence then before, 9:36AM  
 16 the second to the last sentence, the "school  
 17 districts often disagree with this description of  
 18 the accountability roles," and then --  
 19 A. Right.  
 20 Q. -- "they see the state as being 9:36AM  
 21 accountable."  
 22 Which school district officials expressed  
 23 that view?  
 24 A. I -- again, we talked about this the first  
 25 or second day of the depositions, and I can't 9:36AM

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1 read -- I believe this all is based on Paul Warren's 9:36AM  
 2 deposition, but I haven't gone back and looked at it  
 3 fully, so I -- I believe it was what he was saying,  
 4 and so he wasn't specific as to -- from what I  
 5 recall, he wasn't specific -- 9:36AM  
 6 Q. Okay.  
 7 A. -- as to what districts.  
 8 Q. I understand.  
 9 So you didn't actually speak to any school  
 10 district officials, or -- 9:36AM  
 11 A. No. No. This is based on Warren's  
 12 deposition -- depositions, I believe.  
 13 Q. All right. Thank you.  
 14 On Page 17, in the middle of the last  
 15 paragraph, you have a sentence: 9:37AM  
 16 "At the national level and within  
 17 nearly all states, changes in  
 18 student test scores are the sole  
 19 focus of accountability systems,  
 20 with no reference to school policies 9:37AM  
 21 and practices, or educational  
 22 opportunities provided to students."  
 23 Is that still your opinion?  
 24 A. Yes.  
 25 Q. So, to the extent that California focuses 9:37AM

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1 solely on student outcomes measured by statewide 9:37AM  
 2 tests, is it your opinion that the California  
 3 accountability system is consistent with what's done  
 4 in nearly all states?  
 5 A. In terms of its focus on outcomes, sole 9:37AM  
 6 focus on outcomes, yeah.  
 7 Q. Okay. I refer you to page Roman numeral  
 8 iv. Focusing on the latter part of the first full  
 9 paragraph, you state:  
 10 "...I assume that state-level 9:38AM  
 11 accountability systems should be  
 12 designed to assist school systems in  
 13 assessing the extent to which they  
 14 provide an environment in which  
 15 these academic, social, and 9:38AM  
 16 work-related skills and knowledge  
 17 develop. Thus, an effective and  
 18 educationally beneficial  
 19 accountability system would  
 20 encourage schools to focus on 9:38AM  
 21 inputs, outputs, and the  
 22 relationships between the two - that  
 23 is, the extent to which inputs  
 24 impact outputs ... in desired ways."  
 25 Do you see that? 9:38AM

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1 A. Yes, I do. 9:38AM  
2 Q. And during this deposition, over the last  
3 three days, I believe you've noted that the  
4 California API focuses solely on student outputs and  
5 does not provide schools with diagnostic information 9:38AM  
6 that would help improve student learning in those  
7 schools. Is that correct?  
8 A. Yeah, the API -- the API focuses solely on  
9 outcomes and does not provide information that  
10 provide -- that will allow schools any insight into 9:39AM  
11 what their programs are and how they're impacting  
12 student learning.  
13 Q. If the goal is to provide a school with  
14 good diagnostic data, perhaps including analyses of  
15 grade, classroom and student level data, is it 9:39AM  
16 possible that school districts could perform such  
17 analyses rather than the state?  
18 MR. ROSENBAUM: That's a vague and  
19 incomplete hypothetical.  
20 THE WITNESS: I'm not sure. I'm not sure 9:39AM  
21 I understand the question.  
22 BY MR. HAJELA:  
23 Q. If you're trying to improve student  
24 learning in a school, and the assumption is that  
25 certain data would help them do that, including 9:39AM

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1 inputs, outputs -- 9:39AM  
2 A. Right.  
3 Q. -- in the relationship between the two,  
4 and you're looking at the level of -- classroom  
5 level or grade level data, is it possible that the 9:39AM  
6 school district could perform that sort of  
7 diagnostic analyses?  
8 MR. ROSENBAUM: Same objection.  
9 THE WITNESS: I think --  
10 MR. ROSENBAUM: Do you mean with a proper 9:39AM  
11 tool and a proper test, could the districts have  
12 conducted that sort of diagnosis?  
13 MR. HAJELA: Yes.  
14 MR. ROSENBAUM: Is that the question?  
15 MR. HAJELA: Yes. 9:40AM  
16 THE WITNESS: I think -- I'm confused by  
17 the question, because I think that's what I've been  
18 talking about for these last three days, that you  
19 would have a state system where you're collecting  
20 common information about inputs and outputs across 9:40AM  
21 all schools, and that that information would allow  
22 schools, and schools would, in fact, be strongly  
23 encouraged or required to use that information to  
24 study their programs, in essence.  
25 ////

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1 BY MR. HAJELA: 9:40AM  
2 Q. Okay. Then I think I understand.  
3 So you're not saying that state  
4 accountability system means that some state entity  
5 is diagnosing the data, or analyzing the data and 9:40AM  
6 providing that information to the schools, but  
7 the -- but the data becomes available from the state  
8 assessment, and the school districts can then  
9 analyze it?  
10 A. Exactly, yeah. At the very end of the 9:40AM  
11 report, I talk about how there's different players,  
12 really, in an accountability system.  
13 There's things that should be happening at  
14 the schools. There should be things happening at  
15 the district; things happening at the state level. 9:41AM  
16 So the state would be collecting this information,  
17 assisting schools in collecting this information,  
18 common information, so that schools could be using  
19 that information to study themselves. Districts, in  
20 theory, could be using that information to study the 9:41AM  
21 district, and the state could be looking at issues  
22 across the whole entire state.  
23 Q. Okay. And I think I understand.  
24 So, for example, if the California  
25 standards test is completely implemented, and you 9:41AM

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1 don't have the problems that you've just discussed 9:41AM  
2 before with the Norm Reference Test, the state gives  
3 the test, students -- or the state asks the  
4 districts to give the test. Students take the test,  
5 and it provides information, but it might be the 9:41AM  
6 school district that looks at inputs and the outputs  
7 and the relationship between the two?  
8 A. Right. But the state would also provide  
9 tools or instruments that would assist the schools  
10 in collecting the information about the inputs as 9:41AM  
11 well.  
12 Q. Okay.  
13 A. So that you would have common information  
14 collected across all the schools.  
15 Q. And the reason why I'm asking these 9:42AM  
16 questions is, if you assume 6 million students in a  
17 public school system, and more than 8,000 schools --  
18 A. Right.  
19 Q. -- it seems to me that there would be  
20 practicality problems of having the state diagnose 9:42AM  
21 that data.  
22 A. At the school level?  
23 Q. Yes.  
24 A. Oh. Yeah. Yeah.  
25 I think the school would be involved in 9:42AM

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1 looking at itself. The state would be looking at 9:42AM  
 2 more general patterns and trends.  
 3 The state wouldn't be responsible for  
 4 doing school-level analyses for every single school.  
 5 That would be something that the school would want 9:42AM  
 6 to be involved in. And if you look at, you know,  
 7 some of the literature on school improvement,  
 8 that's -- a vital component of school improvement is  
 9 the school actively reflecting on the practices and  
 10 the effects of those practices. 9:42AM  
 11 Q. Have you looked at how school districts  
 12 currently in California are using the data from the  
 13 California assessment system?  
 14 A. Only what's available on the web and the  
 15 descriptions of -- of what's available on the web. 9:43AM  
 16 Q. Okay. All right. Let me take just one  
 17 more set of questions.  
 18 I refer you to Page 21. Actually, just  
 19 the title of this section, "The API is not Even an  
 20 Adequate or Useful Measure of Student Academic 9:43AM  
 21 Achievement."  
 22 Without looking at the text below this,  
 23 I'm just going to assume for purposes of my question  
 24 that that's a correct statement, an accurate  
 25 statement. 9:43AM

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1 If the API is not an adequate or useful 9:43AM  
 2 measure of student learning, then would you agree  
 3 that the API is not an accurate indicator of the  
 4 impact of specific school conditions on student  
 5 learning? 9:43AM  
 6 MR. ROSENBAUM: It's an incomplete  
 7 hypothetical.  
 8 MR. HAJELA: I can try to clarify it, if  
 9 you like.  
 10 THE WITNESS: Just ask the question again 9:43AM  
 11 just so I understand.  
 12 BY MR. HAJELA:  
 13 Q. If the API is not an adequate or useful  
 14 measure of student learning, then would you agree  
 15 that the API is not an accurate indicator of the 9:44AM  
 16 impact of specific school conditions on student  
 17 learning?  
 18 A. The API doesn't contain any information  
 19 about school conditions, so it can't provide any  
 20 information about the impact of those conditions on 9:44AM  
 21 learning.  
 22 Q. Okay. I think my question wasn't clear.  
 23 Let me try a hypothetical.  
 24 Let's assume an expert on school  
 25 facilities' conditions relies on differences in API 9:44AM

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1 scores among schools to assert that poor school 9:44AM  
 2 facilities negatively impact student learning.  
 3 Based on your analysis of the API, would  
 4 the API scores be an accurate indicator of the  
 5 impact of school facilities' conditions on student 9:44AM  
 6 learning?  
 7 MR. ROSENBAUM: Incomplete hypothetical.  
 8 THE WITNESS: I mean, I don't -- I don't  
 9 really understand the question.  
 10 Are you asking can you use the API to look 9:44AM  
 11 for a relationship between school conditions and  
 12 performance?  
 13 BY MR. HAJELA:  
 14 Q. Let's do it this way: There's two  
 15 schools, and an expert notes that school conditions 9:45AM  
 16 in one school are -- school facilities' conditions  
 17 in one school are in some way different than the  
 18 other school. For example, one's overcrowded; the  
 19 other isn't. Or one's on multitrack; the other  
 20 isn't. 9:45AM  
 21 A. Right.  
 22 Q. Then that expert says, multitrack or  
 23 overcrowding must neg -- negatively impact student  
 24 learning, because I've looked at the API scores of  
 25 the two schools, and API the API scores are lower in 9:45AM

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1 the first school than the second. 9:45AM  
 2 A. Well, you couldn't do that based on just  
 3 two schools. You'd have to do it across a large  
 4 sample, and show that that relationship holds up  
 5 across a large sample. 9:45AM  
 6 Q. But if the re- -- okay. If the  
 7 relationship showed -- held up --  
 8 A. Then you would want to control for other  
 9 variables as well, I would think.  
 10 Q. So if you relied -- let me ask it 9:46AM  
 11 differently.  
 12 If you relied solely on API scores to try  
 13 to show that different school conditions had a  
 14 negative impact on student learning, based on your  
 15 statement that the API is not an adequate or useful 9:46AM  
 16 measure of student learning --  
 17 A. Yeah, the --  
 18 MR. ROSENBAUM: Same objection.  
 19 THE WITNESS: The total, though, I mean,  
 20 everything I talk about in this section talks about 9:46AM  
 21 the API in terms of informing decisions and --  
 22 informing schools and helping them understand how  
 23 performance might be different within their school.  
 24 Again, I talked about this at length, how  
 25 the API boils everything down to a single index. 9:46AM

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1 MR. HAJELA: Uh-huh. 9:46AM  
 2 THE WITNESS: That's not very useful for  
 3 diagnostic purposes. So when I talk about it not  
 4 being a useful measure of student academic  
 5 achievement, that's what I'm talking about in that 9:46AM  
 6 title. I'm not saying that the API, or any of the  
 7 tests that comprise the API, don't provide  
 8 information about student learning or student  
 9 achievement.  
 10 What I'm saying is it's not useful from a 9:46AM  
 11 diagnostic perspective.  
 12 Does that -- does that help?  
 13 BY MR. HAJELA:  
 14 Q. I think so, but I thought I understood  
 15 your testimony, your report, to say that it provides 9:47AM  
 16 information on student achievement, but it's only  
 17 useful in terms of achievement on the test. And I  
 18 thought the point of your testimony before is that  
 19 the test -- when you give a national test, for  
 20 example in math, I think you gave this example, and 9:47AM  
 21 the scores don't go up on the national test, but  
 22 they go up on the state test, that indicates that  
 23 your -- your scores in the state test don't give you  
 24 any useful information about student learning in  
 25 math. But maybe I misunderstood. 9:47AM

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1 A. No. No. Those analyses were done to show 9:47AM  
 2 that the learning, the perceived learning on that --  
 3 on the state test in your example, doesn't appear to  
 4 translate to the national test.  
 5 And, so, it's unclear whether there's 9:47AM  
 6 actual learning in that narrow band that's being  
 7 tested by the state test, or if there's just  
 8 generally not learning occurring that's  
 9 generalizable to other tests, or if those change in  
 10 the state tests are resulting because of teaching 9:48AM  
 11 specifically to that test, test preparation on items  
 12 similar to that test, and there's a whole variety of  
 13 reasons that I talk about.  
 14 Q. All right.  
 15 A. But that's not -- it doesn't mean that the 9:48AM  
 16 test isn't measuring what students can do on those  
 17 items at that point in time. That's not what I'm  
 18 saying.  
 19 Q. Okay. Okay. I think I -- let me just ask  
 20 it one more time, because maybe I'm not being -- I'm 9:48AM  
 21 obviously not being clear.  
 22 If the only thing you relied on were API  
 23 scores to try to show that, for example,  
 24 overcrowding in one school has a negative effect on  
 25 student learning, compared to another school that's 9:48AM

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1 not overcrowded, and I appreciate your 9:48AM  
 2 clarification, you try to hold the other  
 3 variables --  
 4 A. Right.  
 5 Q. -- in some way, control for them in some 9:49AM  
 6 way.  
 7 Do you believe the API could be used for  
 8 that purpose?  
 9 MR. ROSENBAUM: Same objections.  
 10 THE WITNESS: Yeah, you could use API 9:49AM  
 11 scores to look at the relationship between school  
 12 conditions and poor performance on the tests that  
 13 comprise the API. You could do -- I mean, I do it  
 14 in the report with emergency credentials, look at  
 15 the correlation between emergency credentialed 9:49AM  
 16 teachers and API scores. You can do that.  
 17 BY MR. HAJELA:  
 18 Q. And that would then show you that  
 19 emergency credentials are -- a percentage of  
 20 teachers with emergency credentials has an impact on 9:49AM  
 21 your achievement on that specific test?  
 22 A. Well, I mean, it would show that  
 23 there's -- there's a relationship between the two.  
 24 MR. HAJELA: Okay. All right. I don't  
 25 think I have anything else. 9:49AM

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1 MS. READ-SPANGLER: Go ahead. 9:49AM  
 2 MS. SHARGEL: Are you done?  
 3 MR. HAJELA: I'm done.  
 4 MR. ROSENBAUM: Thank you.  
 5 MR. HAJELA: I think I met my time limit 9:50AM  
 6 too.  
 7 MS. READ-SPANGLER: Shooting for 30  
 8 minutes.  
 9 MR. HAJELA: Trying for 20.  
 10 9:50AM  
 11 EXAMINATION  
 12 BY MS. SHARGEL:  
 13 Q. Professor Russell, I introduced myself  
 14 before. My name is Johanna Shargel, and I'm  
 15 representing Los Angeles Unified School District. 9:50AM  
 16 In response to Abe's questions, you  
 17 mentioned that ideally the state would provide tools  
 18 and instruments to help schools and districts gather  
 19 data on their inputs and outputs.  
 20 A. Right. 9:50AM  
 21 Q. What specifically, types of tools and  
 22 instruments, do you have in mind, if any?  
 23 A. Well, tests are -- are one type of tool.  
 24 It could be surveys. It could be protocols. It  
 25 could be rubrics. It really depends on the type of 9:51AM

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1 information that you're using, what tools it would 9:51AM  
 2 be.  
 3 Q. Do you think that those tools and  
 4 instruments should vary across districts within the  
 5 State of California? 9:51AM  
 6 A. I would think if you're trying to collect  
 7 common information across the state, you would want  
 8 to use the same tools in all of the settings.  
 9 So if you're -- you know, the tests, you  
 10 would want to use the same test across all the 9:51AM  
 11 schools. You'd want to use -- if you're collecting  
 12 information about availability of textbooks or uses  
 13 of instructional practices, or whatever it might be,  
 14 you would want to use the same set of questions  
 15 across all contexts which would be presented in the 9:51AM  
 16 same instrument.  
 17 Q. And if a school district already had data  
 18 analysis systems in place to gather inputs, would  
 19 that affect your opinion?  
 20 MR. ROSENBAUM: Incomplete hypothetical. 9:52AM  
 21 Vague and ambiguous.  
 22 BY MS. SHARGEL:  
 23 Q. Did you understand the question?  
 24 MR. ROSENBAUM: It doesn't matter whether  
 25 he says he understands the question, it still has to 9:52AM

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1 be clear. 9:52AM  
 2 THE WITNESS: Are you saying --  
 3 BY MS. SHARGEL:  
 4 Q. I'm not talking about tests now, I'm  
 5 talking about collecting input information. 9:52AM  
 6 If a school district already had  
 7 structures in place for collecting information on  
 8 inputs --  
 9 MR. ROSENBAUM: Same objection.  
 10 BY MS. SHARGEL: 9:52AM  
 11 Q. -- would that affect your opinion as to  
 12 whether -- as to the state's role?  
 13 A. Again, you'd want to be sure that you're  
 14 collecting common information, and that that  
 15 information -- it -- it's a difficult question to 9:52AM  
 16 answer, because it just depends on how you're  
 17 actually collecting that information.  
 18 If for some reason you couldn't use the  
 19 computer to upload information to the state to -- a  
 20 state database -- 9:53AM  
 21 Q. Uh-huh.  
 22 A. -- you may have to use a paper-based  
 23 survey, in which case, in order for the state to  
 24 function and do this efficiently, I would think that  
 25 then everyone would have to fill that paper survey 9:53AM

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1 out. 9:53AM  
 2 If there's some way electronically of  
 3 doing it, you know, there may be a way to integrate  
 4 these systems. There really -- it depends on  
 5 what -- what the ultimate system ends up looking 9:53AM  
 6 like.  
 7 I would think you'd want to move towards  
 8 some kind of electronic system to streamline it and  
 9 make it more efficient.  
 10 Q. You spoke yesterday about how the focus in 9:53AM  
 11 collecting inputs can vary from state to state. For  
 12 example, Rhode Island is not as focused on  
 13 facilities questions --  
 14 A. Right.  
 15 Q. -- as perhaps California is. 9:53AM  
 16 Do you remember that?  
 17 A. Yes.  
 18 Q. Is it your opinion that -- well, strike  
 19 that.  
 20 Do you have any opinion as to whether in 9:53AM  
 21 California, the focus for collecting information on  
 22 inputs can vary from district to district?  
 23 A. Again, if you're trying to collect common  
 24 information across the state, I think the focus  
 25 should be the same across all settings within the 9:54AM

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1 state. 9:54AM  
 2 Q. Are you familiar with the way in which  
 3 Los Angeles Unified School District, LAUSD,  
 4 currently collects data on input?  
 5 A. I'm not, no. 9:54AM  
 6 Q. Have you ever looked at its web site?  
 7 A. I've have briefly, but I haven't studied  
 8 it.  
 9 Q. Do you remember what kind of information  
 10 you saw there? 9:54AM  
 11 A. I don't remember, no.  
 12 Q. Do you have any opinion about whether it  
 13 would be beneficial for local districts to have  
 14 their own accountability systems?  
 15 MR. ROSENBAUM: Incomplete hypothetical. 9:55AM  
 16 Vague and ambiguous.  
 17 THE WITNESS: Yeah, I guess I do.  
 18 BY MS. SHARGEL:  
 19 Q. And what's your opinion?  
 20 A. I think in most cases it's going to be 9:55AM  
 21 inefficient and difficult for many districts to be  
 22 able to do a good job if they're all developing  
 23 their own -- own independent accountability systems,  
 24 based on my experience.  
 25 Q. And why is that? Why would it be 9:55AM

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1 difficult? 9:55AM  
 2 A. It's technically challenging to develop  
 3 sound measures. It's expensive to develop sound  
 4 measures. And it's easier to just do that once,  
 5 develop the instrument, and basically, you're -- 9:56AM  
 6 you're replicating the development process. And  
 7 it's -- to me, that would be an inefficient waste of  
 8 resources or use of resources.  
 9 And, again, I just don't think that enough  
 10 districts have enough expertise to be able to do it 9:56AM  
 11 properly.  
 12 Q. But you think that local school districts  
 13 should be analyzing the information on student  
 14 outcomes from the state system and comparing that  
 15 with the inputs that it's collected? 9:56AM  
 16 A. Yeah. Yeah. They should be reflecting on  
 17 their -- their information.  
 18 Q. Okay.  
 19 A. But it's different -- I mean, it's very  
 20 different to develop a sound test, a sound survey, a 9:56AM  
 21 sound protocol. I mean, that's an extremely  
 22 difficult job. And I just don't think most  
 23 districts have the capacity to do that.  
 24 Q. If you could turn to Page Roman numeral XV  
 25 of your report. 9:57AM

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1 A. The bottom numbers of my pages are cut 9:57AM  
 2 off. Let's see. I think this is it here. Does it  
 3 start --  
 4 Q. It starts with "...diagnostic information  
 5 or characterize student performance." 9:57AM  
 6 MR. HAJELA: It has the bullet, "Unless  
 7 API Score Increases are Above Average, They Go  
 8 Unnoticed."  
 9 MR. ROSENBAUM: Here it is.  
 10 MR. SALVATY: What page? 9:57AM  
 11 MR. ROSENBAUM: Can I just see yours to  
 12 make sure? Is this what it looks like?  
 13 (indicating).  
 14 MS. SHARGEL: Yes. That's it.  
 15 MR. ROSENBAUM: Go ahead. 9:57AM  
 16 MR. HAJELA: Roman numeral XV -- Romanette  
 17 xv, I'm sorry.  
 18 BY MS. SHARGEL:  
 19 Q. In the first full sentence, you state  
 20 that: 9:58AM  
 21 ". . .SAT-9 is a poor instrument  
 22 for either identifying student  
 23 weaknesses within specific  
 24 sub-domains or determining whether  
 25 students have achieved acceptable 9:58AM

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1 levels of skills or knowledge within 9:58AM  
 2 a given domain."  
 3 A. Yes.  
 4 Q. Could a school district administer a test,  
 5 apart from the SAT-9, that would help them identify 9:58AM  
 6 strengths and weaknesses at the school level?  
 7 MR. ROSENBAUM: Same objections.  
 8 THE WITNESS: Could -- are you asking  
 9 could a school administer a test that provides  
 10 information about -- diagnostic information about 9:58AM  
 11 students' strengths and weaknesses?  
 12 MS. SHARGEL: Yes.  
 13 THE WITNESS: Yeah, sure.  
 14 BY MS. SHARGEL:  
 15 Q. Do you know whether LAUSD administers such 9:58AM  
 16 tests?  
 17 A. I don't know right now, no.  
 18 Q. Do you know whether any schools within  
 19 LAUSD administer those kinds of tests?  
 20 A. I don't know. 9:59AM  
 21 Q. Do you know whether test scores have  
 22 increased or decreased for English language learner  
 23 students?  
 24 MR. ROSENBAUM: That's way too vague and  
 25 ambiguous. 9:59AM

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1 BY MS. SHARGEL: 9:59AM  
 2 Q. In LAUSD?  
 3 MR. ROSENBAUM: Still.  
 4 Do you mean across the board for any  
 5 particular student in a particular school? 9:59AM  
 6 BY MS. SHARGEL:  
 7 Q. Across the school district in recent  
 8 years.  
 9 A. I don't know off the top of my head if  
 10 it's specifically in LAUSD they have. 9:59AM  
 11 Q. Have you looked at any test scores  
 12 specifically with respect to LAUSD?  
 13 MR. ROSENBAUM: Test scores, do you mean  
 14 SAT-9 or API test? Or I don't know what you're  
 15 referring to. 9:59AM  
 16 MS. SHARGEL: SAT-9.  
 17 THE WITNESS: No, I -- yesterday I  
 18 talked -- I haven't looked specifically at any  
 19 schools or districts in California in the  
 20 performance. 10:00AM  
 21 The nature of my assignment was looking at  
 22 the accountability system in general. So I  
 23 didn't -- for that -- for that nature of the -- to  
 24 fulfill that nature of the assignment, I didn't do  
 25 any school-level analyses or district-level 10:00AM



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1 analyses. 10:00AM  
 2 BY MS. SHARGEL:  
 3 Q. Have you done any research specific to  
 4 LAUSD at all?  
 5 A. The only thing we've looked at, I believe, 10:00AM  
 6 was looking at graduation rates in a subsample of  
 7 the schools, which I believe is presented in here  
 8 somewhere. I believe that was an LAUSD.  
 9 Q. Are you speaking about the drop-out rates  
 10 at Garfield and Jefferson High School that's 10:00AM  
 11 included in your report?  
 12 A. Yes.  
 13 Q. Let's look at that. It's Page 34 of your  
 14 report.  
 15 In the middle of the first full paragraph, 10:01AM  
 16 it says that: We used available data to calculate  
 17 what computer drop-out rates might be in high  
 18 schools within LAUSD.  
 19 Do you see that?  
 20 A. Uh-huh. 10:01AM  
 21 Q. Did you attempt to get the actual numbers,  
 22 rather than imputed numbers, at any point?  
 23 A. I -- no. As I described, I think it was  
 24 in the first or second day of the deposition, I had  
 25 asked, I believe it was Sophie, to find some data, 10:01AM

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1 to pull out some data so that I could do this type 10:01AM  
 2 of calculation.  
 3 So I did not personally go looking for any  
 4 of those data. I asked Sophie to do that, because I  
 5 was under a time pressure. 10:01AM  
 6 Q. And Sophie, you're referring to Sophie  
 7 Fanelli, ACLU?  
 8 A. Sophie Fanelli, yes.  
 9 Q. But you recognize these are imputed  
 10 drop-out rates that are -- that are derived from 10:02AM  
 11 the -- I think it's measuring a percentage of grade  
 12 enrollment in the 9th grade, versus percentage of  
 13 grade enrollment of the 12th grade, and not the  
 14 actual drop-out rates for these two schools?  
 15 A. Actually, there's a real problem with the 10:02AM  
 16 actual drop-out rates as discussed in the number of  
 17 state documents. There's inconsistencies.  
 18 There's also work -- research has been  
 19 done in Texas, and the Ford Foundation has funded  
 20 research nationally looking at discrepancies in 10:02AM  
 21 drop-out rates, and, you know, although there's not  
 22 an-agreed upon method for -- for trying to get more  
 23 accurate estimates, this notion of looking at  
 24 imputed drop-out rates seems to be providing more --  
 25 I'll call it more valid information of dropouts. 10:03AM

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1 So that's why I chose to do this. 10:03AM  
 2 Q. Do you know whether the drop-out rates for  
 3 Garfield and Jefferson are public -- publicly  
 4 available?  
 5 A. I don't know that for sure, but I assume 10:03AM  
 6 they are.  
 7 Q. Do you have any basis for believing that  
 8 the drop-out rates that are publicly available for  
 9 those two schools are inaccurate?  
 10 MR. ROSENBAUM: Foundation. 10:03AM  
 11 THE WITNESS: As I said, there's a number  
 12 of state documents that discuss problems in the  
 13 drop-out rates, and based on my reading of the  
 14 literature, it's very difficult to use the actual  
 15 reported drop-out rates for many schools, to get an 10:03AM  
 16 accurate assessment of what's happening with these  
 17 students when they're in schools.  
 18 And the imputed method seems to be  
 19 providing a more accurate measure across -- an  
 20 average across schools. 10:03AM  
 21 BY MS. SHARGEL:  
 22 Q. Okay. But it would be correct to say that  
 23 you have no reason to believe that the drop-out  
 24 rates that have been calculated for these two  
 25 schools specifically are inaccurate? 10:04AM

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1 MR. ROSENBAUM: Asked and answered. 10:04AM  
 2 THE WITNESS: I have no reason to believe  
 3 that they are accurate.  
 4 BY MS. SHARGEL:  
 5 Q. What inaccuracies and problems with 10:04AM  
 6 drop-out rates do you have in mind?  
 7 A. In general?  
 8 MR. ROSENBAUM: He's answered four times.  
 9 BY MS. SHARGEL:  
 10 Q. You just talked about the fact that state 10:04AM  
 11 documents show problems in inaccuracies in drop-out  
 12 rates. What are those inaccuracies based on?  
 13 A. There's -- I mean, there's all kinds of  
 14 reasons for why there's inaccuracies. There's  
 15 different -- students are counted at different 10:04AM  
 16 times. Sometimes the drop-out rates are based on  
 17 changes from year to year, which under --  
 18 underestimates the drop-out rates because you're  
 19 starting with a smaller denominator each year.  
 20 Sometimes students who transfer into a GED 10:04AM  
 21 program are counted as a drop-out. In other cases  
 22 they're not counted as a drop-out. There's a whole  
 23 variety of reasons for why these numbers are -- are  
 24 inconsistent across schools and across time.  
 25 Q. Okay. Do you know how schools in LAUSD 10:05AM

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1 calculate their drop-out rates? 10:05AM  
 2 A. I don't know.  
 3 MS. READ-SPANGLER: Can I just ask a  
 4 clarifying question, because otherwise, I'm going to  
 5 double back to this. 10:05AM  
 6 MR. ROSENBAUM: No, you can't.  
 7 MS. READ-SPANGLER: Okay. But don't say  
 8 "asked and answered," because it's not gonna be  
 9 answered.  
 10 MS. SHARGEL: I'm okay. Go ahead. 10:05AM  
 11 MS. READ-SPANGLER: Well, if he doesn't  
 12 want me to go out of order.  
 13 MR. ROSENBAUM: Go ahead.  
 14 MS. READ-SPANGLER: You just said that in  
 15 the state documents, they discussed the problems 10:05AM  
 16 with drop-out rates. And then you just listed the  
 17 problems. And I was wondering if the problems --  
 18 THE WITNESS: It's some of the problems,  
 19 just for the record.  
 20 MS. READ-SPANGLER: Okay. Some of the 10:05AM  
 21 problems.  
 22 I'm just wondering if those problems that  
 23 were listed are the ones that were in the state  
 24 documents.  
 25 THE WITNESS: I don't remember 10:05AM

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1 specifically what was in state -- the state 10:05AM  
 2 documents.  
 3 BY MS. SHARGEL:  
 4 Q. Did you look at the imputed or actual  
 5 drop-out rates for any schools other than Garfield 10:06AM  
 6 and Jefferson?  
 7 A. As I said, I asked -- I can't remember off  
 8 the top of my head now. I don't remember if we just  
 9 looked -- if I just had data for these two schools,  
 10 if there's schools -- I'd have to look at my files. 10:06AM  
 11 Q. On Page 19 of your report -- I'm sorry,  
 12 it's Roman numeral XIX.  
 13 MR. ROSENBAUM: Why don't you tell us  
 14 what's at the top of the page so we don't get this  
 15 wrong. 10:06AM  
 16 THE WITNESS: (Indicating.)  
 17 MS. SHARGEL: No. It's "Course taking  
 18 patterns." (Indicating.)  
 19 Q. I don't think I even need to refer you to  
 20 the page. 10:07AM  
 21 MR. ROSENBAUM: We're just curious to see  
 22 if we can find it.  
 23 MR. HAJELA: It's got four bullets at the  
 24 top, Mark.  
 25 MS. SHARGEL: It's this (indicating). 10:07AM

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1 MR. ROSENBAUM: Might need an extra day. 10:07AM  
 2 MS. FANELLI: It's three pages before  
 3 the --  
 4 THE WITNESS: This?  
 5 MS. READ-SPANGLER: Get another version. 10:07AM  
 6 MR. ROSENBAUM: This doesn't have big  
 7 bullets.  
 8 MS. READ-SPANGLER: Here.  
 9 MR. HAJELA: Just refer to that.  
 10 MR. ROSENBAUM: We're okay. 10:07AM  
 11 MR. HAJELA: And where I commented "BS,"  
 12 just ignore that.  
 13 (Laughter.)  
 14 THE WITNESS: Wait, I notice here this  
 15 says it's an excellent report. I agree with 10:07AM  
 16 everything.  
 17 (Laughter.)  
 18 MR. ROSENBAUM: I see Paul's signature  
 19 right under that too.  
 20 BY MS. SHARGEL: 10:07AM  
 21 Q. In the first sentence of the first full  
 22 paragraph, it says that, "the state should implement  
 23 a longitudinal student tracking system, such as the  
 24 CSIS."  
 25 Do you know see that? 10:08AM

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1 A. Yes. 10:08AM  
 2 Q. Do you know whether LAUSD maintains a  
 3 tracking system for its students?  
 4 A. I believe I've seen reference to a system  
 5 like that, but I don't know for sure. I really 10:08AM  
 6 don't know for sure.  
 7 Q. Do you know anything else about that  
 8 system?  
 9 A. No, I really don't. I just recall  
 10 somebody talking about a system like that in L.A., 10:08AM  
 11 but I just don't -- I really don't know if that was  
 12 something that was implemented or something they're  
 13 talking about.  
 14 Q. Have you looked at LAUSD's API scores?  
 15 MR. ROSENBAUM: Asked and answered. 10:08AM  
 16 MS. SHARGEL: I asked before about SAT-9  
 17 scores, but the API scores.  
 18 THE WITNESS: As I said, I haven't looked  
 19 at any districts systematically in California, if  
 20 they're individual scores. I don't recall. 10:08AM  
 21 BY MS. SHARGEL:  
 22 Q. Have you looked at school accountability  
 23 report cards?  
 24 A. I have looked at samples of them. I've  
 25 looked at a couple just to get a sense of what they 10:09AM

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1 are. 10:09AM  
2 Q. Do you remember what was contained in  
3 them?  
4 A. Not right now, I don't. We talked about  
5 this last time. I just haven't looked at them since 10:09AM  
6 then. I believe we talked about them.  
7 Q. We talked about LAUSD's?  
8 A. No, just talked about the school report  
9 card in general.  
10 Q. You looked at LAUSD's school performance 10:09AM  
11 indicators?  
12 A. No, I haven't looked at LA -- no, I  
13 haven't.  
14 Q. Have you looked at any surveys or studies  
15 specific to LAUSD? 10:09AM  
16 MR. ROSENBAUM: Overbroad. Vague.  
17 BY MS. SHARGEL:  
18 Q. With regard to accountability systems and  
19 testing?  
20 MR. ROSENBAUM: Same objection. 10:09AM  
21 THE WITNESS: As I said, I haven't looked  
22 at any districts that closely systematically, with  
23 the exception of the drop-out rate issue.  
24 BY MS. SHARGEL:  
25 Q. Have -- are you aware of LAUSD's matched 10:09AM

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1 scores program? 10:10AM  
2 A. No.  
3 Q. Are you aware of any interventions that  
4 LAUSD makes for underperforming schools?  
5 A. Not specifically, no. 10:10AM  
6 Q. Generally?  
7 A. No. I mean, no.  
8 Q. In your report, I can refer you to the  
9 page, but it would just waste time. It's Roman  
10 numeral XI. You state that ELL students in 10:10AM  
11 California have historically performed on a 25 to  
12 30 percent rank, well below the national mean.  
13 A. Yes.  
14 MR. HAJELA: There it is.  
15 MR. ROSENBAUM: Can you say where you are 10:10AM  
16 again, please?  
17 MS. SHARGEL: Yes. Page Roman numeral xi.  
18 THE WITNESS: Yes, I see that.  
19 BY MR. SALVATY:  
20 Q. Okay. Do you know whether that's true for 10:10AM  
21 ELL students in LAUSD?  
22 A. I do not have enough of ELL students  
23 specifically in that district.  
24 Q. Okay. We have talked a little bit about  
25 alternative assessments, or you've talked about 10:11AM

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1 alternative assessments, such as open-ended tests 10:11AM  
2 and performance assessments.  
3 A. Yeah, I wouldn't call them alternative,  
4 but, yeah.  
5 Q. What would you call them? 10:11AM  
6 A. They're just different ways of collecting  
7 information about student learning.  
8 Q. Are there any other different ways to  
9 collect information about student learning, aside  
10 from standardized tests? 10:11AM  
11 A. Oh, yeah, there's a wide variety. There's  
12 a wide variety of ways.  
13 Q. Like what?  
14 A. Well, you could have an oral exam. You  
15 could have demonstrations; have them create various 10:11AM  
16 work products.  
17 You know, the method you're using is gonna  
18 again depend on what it is you're trying to learn  
19 about student learning. There's a wide variety of  
20 ways of doing it. We could have them do a 10:12AM  
21 performance. There's a wide variety of ways of  
22 doing it.  
23 Q. Is it your opinion that performance tests  
24 and open-ended tests should be included in the  
25 state's accountability system? 10:12AM

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1 A. I don't have opinion, because it depends 10:12AM  
2 on what it is you're trying to measure.  
3 Q. Well, do you have an opinion as to what  
4 the state should be measuring?  
5 A. They should be measuring things that are 10:12AM  
6 mentioned in their standards.  
7 Q. And do you think those tests that I've  
8 just named are -- are good ways of measuring  
9 standards?  
10 A. You can't develop a test until you define 10:12AM  
11 exactly what it is you're measuring and what it is  
12 you're trying to learn about that area of learning.  
13 And one of the mistakes people often  
14 make -- and this is one of the dangers with  
15 individual schools and districts design -- designing 10:12AM  
16 these instruments, is they begin with the format  
17 rather than what it is you're trying to learn.  
18 Q. So you don't have a preference for any  
19 particular type of format; is that correct?  
20 A. I have a preference for a format. 10:13AM  
21 It's going to provide valid and reliable  
22 information about whatever it is you're trying to  
23 measure. But you can't define what the format is  
24 until you define what it is you're measuring.  
25 Q. Is it fair to say that it's your opinion 10:13AM

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1 that California should be measuring student 10:13AM  
 2 achievement on state standards?  
 3 A. Student achievement, yeah, you should be  
 4 measuring student achievement -- the tests should be  
 5 designed based on what's in the state standards, 10:13AM  
 6 let's put it that way.  
 7 Q. And given that assumption, do you have any  
 8 opinion as to which format would be beneficial to  
 9 doing that?  
 10 A. It depends on what -- I mean, it's gonna 10:13AM  
 11 vary from standard to standard, what instrument you  
 12 would use.  
 13 Q. Well, do you think that open-ended tests  
 14 or performance tests would be beneficial in  
 15 measuring student achievement with regard to certain 10:14AM  
 16 standards?  
 17 MR. ROSENBAUM: That's the third time  
 18 you've asked the question.  
 19 THE WITNESS: Again, it depends on the  
 20 stand- -- what standard you're talking about and 10:14AM  
 21 what it is you're trying to learn.  
 22 It's difficult to talk about that. The  
 23 in- -- it's difficult to talk about format of the  
 24 instrument without talking about specific content  
 25 and skills that you're trying to learn. 10:14AM

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1 MR. ROSENBAUM: All these questions are 10:14AM  
 2 vague, ambiguous, and wildly incomplete as  
 3 hypotheticals.  
 4 BY MS. SHARGEL:  
 5 Q. Without reference, then, to the content of 10:14AM  
 6 the tests, you don't have any opinions as to whether  
 7 certain formats are more beneficial than others?  
 8 MR. ROSENBAUM: Mischaracterizing his  
 9 testimony. That's the fourth time --  
 10 THE WITNESS: It depends on what it is 10:14AM  
 11 you're trying to measure. You can't say -- here's  
 12 an example. You wouldn't use a thermometer to  
 13 measure how much someone weighs. Right?  
 14 MS. SHARGEL: Right.  
 15 THE WITNESS: You wouldn't use a 10:15AM  
 16 thermometer to measure how much someone weighs.  
 17 Just like you wouldn't use a performance -- you  
 18 wouldn't ask someone to perform a dance to measure  
 19 how much math they've learned.  
 20 So it depends on what the content is. It 10:15AM  
 21 depends on what you're trying to learn as to the  
 22 format and the type of instrument you're gonna use.  
 23 BY MS. SHARGEL:  
 24 Q. Do you have any opinion as to whether  
 25 there are higher burdens to teachers, for example, 10:15AM

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1 associated with different types of formats of tests? 10:15AM  
 2 A. For them actually grading them?  
 3 Q. Grading them --  
 4 MR. ROSENBAUM: It's too vague, ambiguous,  
 5 and incomplete hypothetical. 10:15AM  
 6 BY MS. SHARGEL:  
 7 Q. Implementing them. Grading them.  
 8 A. I'm confused if you're talking about in a  
 9 state accountability system, or are you talking  
 10 about in a classroom? 10:15AM  
 11 Q. State accountability system.  
 12 A. Well, they wouldn't have to develop them,  
 13 so there wouldn't be a burden on teachers developing  
 14 them. The state could choose different ways of  
 15 scoring them, so there may or may not be a burden on 10:16AM  
 16 the teachers for scoring them, depending on how the  
 17 state decides to go about doing that.  
 18 And, you know, I'll use Massachusetts as  
 19 an example. For a while they were using teachers to  
 20 score them, but teachers were being compensated. So 10:16AM  
 21 I'm not sure how much of a burden that -- in that  
 22 case that really was, because they were being paid  
 23 extra to do it and it was on a voluntary --  
 24 voluntary basis.  
 25 So, you know, there's too many -- too many 10:16AM

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1 variables to really answer that question. 10:16AM  
 2 Q. What was happening in Massachusetts?  
 3 Teachers were --  
 4 A. They had scoring institutes in the summer  
 5 that teachers could volunteer for to participate in. 10:16AM  
 6 They basically applied. And then they were, you  
 7 know, compensated for being involved in scoring the  
 8 student responses to the essay questions.  
 9 Q. You state on Page 10 that the caption --  
 10 MR. ROSENBAUM: I'm sorry. Roman numeral 10:17AM  
 11 X?  
 12 MS. SHARGEL: Roman numeral X.  
 13 MR. ROSENBAUM: Thank you. Get the right  
 14 page here.  
 15 MR. HAJELA: Go ahead. 10:17AM  
 16 BY MS. SHARGEL:  
 17 Q. The actual text is, "poorly aligned test."  
 18 MR. ROSENBAUM: One of your strongest  
 19 pages, page magella.  
 20 Go ahead. 10:17AM  
 21 (Laughter.)  
 22 THE WITNESS: I'm sorry. Where is that?  
 23 BY MS. SHARGEL:  
 24 Q. At the end of the first full paragraph.  
 25 MS. READ-SPANGLER: Where is that? 10:17AM

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1 MS. SHARGEL: You don't talk about the 10:17AM  
 2 cat- -- look at the page, the next page, footnote 1  
 3 and --  
 4 MR. ROSENBAUM: Just for the record,  
 5 footnote asterisk 1. 10:18AM  
 6 MS. READ-SPANGLER: I have asterisk.  
 7 MS. SHARGEL: Okay.  
 8 THE WITNESS: Where it says:  
 9 "It should be noted that the  
 10 expected change from the SAT 9 to a 10:18AM  
 11 new NRT test in 2003 does not  
 12 rectify the issue. . ."  
 13 MS. SHARGEL: Uh-huh.  
 14 THE WITNESS: Yeah.  
 15 BY MS. SHARGEL: 10:18AM  
 16 Q. If another Norm Reference Test were  
 17 aligned to the state standards, would you support  
 18 its use in a state accountability system?  
 19 MR. ROSENBAUM: Incomplete hypothetical.  
 20 THE WITNESS: No, it doesn't make any 10:18AM  
 21 sense to use a Norm Reference Test when you're  
 22 testing standards and the achievement of standards.  
 23 BY MS. SHARGEL:  
 24 Q. Why?  
 25 A. Well, because that's not what a Norm 10:18AM

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1 Reference Test is designed to do. A Norm Reference 10:18AM  
 2 Test is designed to compare students to students and  
 3 not students to standards. So, by definition, if  
 4 it's a standards-based test, it should be  
 5 criterion-referenced. 10:18AM  
 6 Q. On Page 45 --  
 7 MR. ROSENBAUM: What's on top of it,  
 8 please? It says, "Warren stated"?  
 9 MS. SHARGEL: Yes.  
 10 MR. ROSENBAUM: Okay. Thank you. 10:19AM  
 11 BY MS. SHARGEL:  
 12 Q. In the first paragraph, it says --  
 13 MR. ROSENBAUM: First full paragraph?  
 14 MS. SHARGEL: No. The run-on paragraph.  
 15 Q. It says that: 10:19AM  
 16 "The State relies on districts  
 17 alone to investigate testing  
 18 irregularities for administering  
 19 sanctions."  
 20 A. Yes, I see that. 10:19AM  
 21 Q. In your opinion, has that created problems  
 22 that districts are responsible for investigating  
 23 irregularities and administering sanctions?  
 24 A. You know, I don't have an opinion about  
 25 that. 10:20AM

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1 MS. SHARGEL: Okay. I'm not sure what 10:20AM  
 2 exhibit this was. Paul, do you remember? It's  
 3 MR 3020 we introduced yesterday.  
 4 THE REPORTER: It's 3.  
 5 MS. SHARGEL: Exhibit 3. Do you have a 10:20AM  
 6 copy of this?  
 7 THE WITNESS: I don't.  
 8 THE REPORTER: Here it is.  
 9 MR. ROSENBAUM: Let me get a copy.  
 10 MS. SHARGEL: Sure. 10:20AM  
 11 MR. ROSENBAUM: Are you done with the  
 12 report now?  
 13 MS. SHARGEL: I'm not sure.  
 14 MR. HAJELA: You should have kept it,  
 15 Mark, it had some really good (indicating). 10:21AM  
 16 BY MS. SHARGEL:  
 17 Q. If you look at the third paragraph, you  
 18 state that an alternative notion of accountability  
 19 is to aim to help systems or schools account for  
 20 their actions, rather than hold them accountable. 10:21AM  
 21 Can you elaborate on what you meant by  
 22 that?  
 23 A. Just for the record, yesterday I said I'm  
 24 not positive if this is actually all my words,  
 25 because I don't recall sending something that said, 10:22AM

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1 "Memo from Mike Russell" to anybody. 10:22AM  
 2 I said I believe that some of these words  
 3 could be mine, but I don't know if these are all  
 4 my -- my words.  
 5 Q. So you're not sure that you wrote that 10:22AM  
 6 sentence?  
 7 A. As I said yesterday, I mean, these are  
 8 ideas that I've discussed, and ideas that I may or  
 9 may not have written exactly as they appear here,  
 10 because I just don't remember writing a document in 10:22AM  
 11 which it says, "Memo from Michael Russell."  
 12 Q. Do you believe that this is your idea, or  
 13 is this Walt Haney's idea --  
 14 MR. ROSENBAUM: Foundation --  
 15 BY MS. SHARGEL: 10:22AM  
 16 Q. -- that you're putting down here?  
 17 MR. ROSENBAUM: I'm sorry. Foundation.  
 18 Speculation.  
 19 BY MS. SHARGEL:  
 20 Q. If you know. 10:22AM  
 21 A. I'm not sure how -- ask the question  
 22 again.  
 23 Q. Sitting here today, does this seem like  
 24 your idea, or someone else's idea that you put down  
 25 or. . . 10:23AM

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1 MR. ROSENBAUM: Same objections, plus 10:23AM  
 2 vague and ambiguous.  
 3 THE WITNESS: Clearly, what's discussed in  
 4 this paragraph is discussed throughout my report.  
 5 So I -- I mean, I'm not sure. 10:23AM  
 6 Is this more ideas? Ideas? I don't  
 7 understand your question.  
 8 BY MS. SHARGEL:  
 9 Q. I wanted to ask you to elaborate on that  
 10 sentence. But then you said you weren't sure you 10:23AM  
 11 wrote it.  
 12 A. I just want to be clear that yesterday we  
 13 talked about -- someone asked whether I had produced  
 14 this document. And I said I don't recall producing  
 15 this document. 10:23AM  
 16 I don't recall ever putting, "From Mike  
 17 Russell" on anything. So I can't be sure that  
 18 everything in here is exactly what I would have  
 19 written.  
 20 MR. ROSENBAUM: Same objection to this 10:23AM  
 21 line of questions.  
 22 MS. SHARGEL: I haven't asked a question.  
 23 MR. ROSENBAUM: No, you asked about four  
 24 or five questions, actually, and there was a  
 25 question pending. 10:24AM

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1 BY MS. SHARGEL: 10:24AM  
 2 Q. Can you elaborate on what that sentence  
 3 means? If you can't, just say so, that's fine.  
 4 A. I just want to be clear --  
 5 Q. Right. 10:24AM  
 6 A. -- that this may or may not be my exact  
 7 words --  
 8 Q. I understand.  
 9 A. -- that's all I'm saying.  
 10 Okay. So what was the question? 10:24AM  
 11 Q. Can you elaborate on what the first  
 12 sentence in the third paragraph means: An  
 13 alternative notion of accountability is to aim to  
 14 help systems or schools account for their actions,  
 15 rather than hold them accountable. 10:24AM  
 16 MR. ROSENBAUM: I don't want to interrupt  
 17 your questions, so I'll just have a continuing  
 18 objection, set of objections, if that's all right  
 19 with you. Is that okay?  
 20 MS. SHARGEL: Sure. 10:24AM  
 21 THE WITNESS: I mean, again, I talk about  
 22 it at length, that whole concept, that the notion of  
 23 accountability that I believe is most educational,  
 24 or at least more educationally beneficial, is one  
 25 that -- that collects information that allows 10:24AM

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1 schools to look at the relationship between the 10:25AM  
 2 their inputs and their outputs, and which would  
 3 allow schools to identify areas in which they want  
 4 to improve, would hold them accountable for those  
 5 improvements. 10:25AM  
 6 In some cases, there are going to be  
 7 improvements focused on inputs. Sometimes there may  
 8 be improvements focused on outputs for outcomes.  
 9 And that's what this sentence -- that's  
 10 what this notion of accountability is all about. 10:25AM  
 11 BY MS. SHARGEL:  
 12 Q. Do you believe that school districts  
 13 should be -- strike that.  
 14 Do you believe that school districts are  
 15 in a better position than the state to set their own 10:25AM  
 16 growth targets with regard to the API?  
 17 MR. ROSENBAUM: Incomplete hypothetical.  
 18 THE WITNESS: I mean, I -- set their own  
 19 targets?  
 20 BY MS. SHARGEL: 10:26AM  
 21 Q. Yesterday, if I can clarify, you were  
 22 saying that in Rhode Island, school districts are  
 23 allowed to set their own growth targets.  
 24 A. No, they set their own goals. I said that  
 25 they set their own goals. 10:26AM

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1 In Rhode Island, in most cases the goals 10:26AM  
 2 are not specific: Our test scores will increase by  
 3 7 percent over the next year. Or: Our test scores  
 4 will increase by 2 percent, or whatever.  
 5 They are goals that are set around things 10:26AM  
 6 that they believe are gonna have a positive impact  
 7 on student learning. So the assumption is  
 8 everything that they do in their schools is -- is  
 9 designed to have an impact on students learning. So  
 10 the goals they set are in those inputs, and then 10:26AM  
 11 they look at the relationship.  
 12 Once the input has -- once that goal has  
 13 been met, that input has been changed, they then  
 14 look at how does that affect our student  
 15 performance. Generally, that's the type of goals 10:26AM  
 16 that they're setting in Rhode Island.  
 17 Q. And that's being done at the school or  
 18 school district level?  
 19 A. Yes. Yes. Exactly. And it will -- it  
 20 will vary from school to school what the focus of 10:27AM  
 21 each school is, depending on the school -- school's  
 22 perceived needs.  
 23 Q. And it can also vary from district to  
 24 district, in terms of what the goals are within a  
 25 specific district? 10:27AM

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1 A. Yeah, I don't see why it wouldn't, yeah. 10:27AM  
 2 Q. You've talked a lot about the state  
 3 assisting schools, and school districts and meeting  
 4 their needs and obtaining their goals.  
 5 Can you be a little more specific in how 10:27AM  
 6 that would work, in your opinion?  
 7 A. Beyond what I talked about yesterday?  
 8 Q. I don't think that you talked specifically  
 9 about how that arrangement will work, how the  
 10 state -- 10:27AM  
 11 MR. ROSENBAUM: He talked about --  
 12 BY MS. SHARGEL:  
 13 Q. -- assists schools and school districts.  
 14 MR. ROSENBAUM: Mischaracterizes his  
 15 testimony. He talked about that a lot yesterday, 10:27AM  
 16 and he talked about it the first two days, and he  
 17 talked about it in his report.  
 18 THE WITNESS: I don't know. Beyond  
 19 everything that I've said, I don't know how --  
 20 how -- how more to elaborate on that. 10:28AM  
 21 Again, it's very difficult to talk about  
 22 the specifics, absent the specifics of -- of what it  
 23 is you're trying to do. I mean, you can't talk --  
 24 you just can't talk generally that this is the  
 25 arrangement, or this is the way in which it's gonna 10:28AM

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1 function without knowing what it is you're trying to 10:28AM  
 2 affect.  
 3 You wouldn't -- you wouldn't create a  
 4 professional development program if you're trying to  
 5 improve the quality of facilities in some schools. 10:28AM  
 6 But you might, if you're trying to improve the way  
 7 that teachers in some schools are using  
 8 instructional materials.  
 9 I mean, it's just -- unless -- it's too  
 10 difficult to talk about in the abstract. 10:28AM  
 11 BY MS. SHARGEL:  
 12 Q. Let's say a state wanted to create a  
 13 professional development program. Let's say the  
 14 State of California wanted to create a professional  
 15 development program in a specific district. 10:29AM  
 16 How would it go about doing that, in your  
 17 opinion?  
 18 A. I'm not an expert in creating professional  
 19 development programs.  
 20 Q. I'm just trying to ask if you could give 10:29AM  
 21 an example of how a state would work with a school  
 22 district, or schools, in meeting their specific  
 23 needs --  
 24 MR. ROSENBAUM: Same objection --  
 25 I'm sorry. 10:29AM

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1 BY MS. SHARGEL: 10:29AM  
 2 Q. -- in obtaining their specifically  
 3 identified goals?  
 4 A. That's not really my area of expertise in  
 5 how a state works with a school to meet an input 10:29AM  
 6 need. That's not my area of expertise.  
 7 Q. Okay. On Page 59 of your report --  
 8 A. Yes.  
 9 Q. -- in the second full paragraph, you state  
 10 that II/USP supports investigation -- 10:30AM  
 11 MR. ROSENBAUM: I'm sorry. I don't see  
 12 that.  
 13 MS. READ-SPANGLER: I don't either. 59?  
 14 MS. SHARGEL: On Page 59.  
 15 MR. ROSENBAUM: No, that's not correct. 10:30AM  
 16 MS. SHARGEL: I'm sorry.  
 17 Q. Well, in the second half of the second  
 18 paragraph, you're referring to the II/USP program?  
 19 MR. ROSENBAUM: Can you be specific where  
 20 you're talking? 10:31AM  
 21 MS. READ-SPANGLER: Are you sure? Maybe  
 22 your pagination is different.  
 23 BY MS. SHARGEL:  
 24 Q. You say that:  
 25 ". . . a school becomes eligible 10:31AM

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1 for funding that supports an 10:31AM  
 2 investigation into conditions that  
 3 may be negatively impacting school  
 4 performance.  
 5 A. Yes. 10:31AM  
 6 MS. READ-SPANGLER: Okay.  
 7 BY MS. SHARGEL:  
 8 Q. Are you referring to the II/USP program?  
 9 A. Yes.  
 10 Q. Then it says that: 10:31AM  
 11 "The schools are then expected to  
 12 remedy these conditions, but the  
 13 extent to which the conditions are  
 14 actually remedied is never  
 15 examined." 10:31AM  
 16 Do you see that?  
 17 A. Yes, exactly.  
 18 Q. Do you know whether LAUSD examines  
 19 improvements in conditions, or changes in  
 20 conditions, in schools that are targeted for II/USP? 10:31AM  
 21 A. No.  
 22 MR. ROSENBAUM: Vague. Incomplete  
 23 hypothetical.  
 24 THE WITNESS: I don't know anything  
 25 specific about the district. 10:31AM

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1 BY MS. SHARGEL: 10:32AM  
 2 Q. Okay. Do you know whether LAUSD uses  
 3 matrix sampling?  
 4 A. On their state test?  
 5 Q. On any test? 10:32AM  
 6 MR. ROSENBAUM: Any test that's given to  
 7 any student in any LAUSD school?  
 8 MS. SHARGEL: No, whether the school  
 9 district.  
 10 MR. ROSENBAUM: Where the LAUSD has a 10:32AM  
 11 matrix test?  
 12 MS. SHARGEL: Yes.  
 13 MR. ROSENBAUM: That it gives to all  
 14 students in the district?  
 15 MS. SHARGEL: Yes. 10:32AM  
 16 THE WITNESS: I don't know anything about  
 17 it.  
 18 BY MS. SHARGEL:  
 19 Q. Do you know whether schools in LAUSD use  
 20 matrix sampling tests? 10:32AM  
 21 A. No, I don't know anything about -- that I  
 22 talked about that before.  
 23 I don't know anything about the specifics  
 24 of the district's testing program beyond what it  
 25 does for the state system. 10:32AM

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1 Q. Do you have an opinion as to whether the 10:32AM  
 2 state or the local district would be in a better  
 3 position to identify underperforming schools in need  
 4 of intervention?  
 5 MR. ROSENBAUM: Incomplete hypothetical. 10:32AM  
 6 Vague and ambiguous. Foundation.  
 7 THE WITNESS: Ask the question again.  
 8 BY MS. SHARGEL:  
 9 Q. Do you have any opinion as to whether the  
 10 state or the local district would be in a better 10:32AM  
 11 position to identify underperforming schools that  
 12 are in need of intervention?  
 13 A. You have to define what "underperforming  
 14 schools" means.  
 15 MR. ROSENBAUM: And which districts are 10:33AM  
 16 you talking about? By what resources are available?  
 17 You can't properly ask a question unless  
 18 you specify what all the variables are.  
 19 BY MS. SHARGEL:  
 20 Q. Well, what do you mean by an 10:33AM  
 21 underperforming school?  
 22 MR. ROSENBAUM: It's your question.  
 23 THE WITNESS: I don't talk about  
 24 underperforming schools beyond what the state  
 25 defines as an underperforming school. 10:33AM

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1 BY MS. SHARGEL: 10:33AM  
 2 Q. Well, then, let's take underperforming  
 3 schools out of the equation.  
 4 Do you have any opinion as to whether a  
 5 state or a local district is in a better position to 10:33AM  
 6 identify schools that are in need of intervention?  
 7 A. I think the --  
 8 MR. ROSENBAUM: Same objections.  
 9 THE WITNESS: I mean, I think it really  
 10 depends on the district. It depends on who is in 10:33AM  
 11 place in the district. It depends on the politics  
 12 of the district. You know, it's gonna vary.  
 13 MS. SHARGEL: Want to take a break?  
 14 THE WITNESS: Yes. Whenever it's  
 15 convenient. 10:34AM  
 16 (Recess taken.)  
 17 BY MS. SHARGEL:  
 18 Q. On Page 50 of your report --  
 19 MR. HAJELA: I'm sorry, you said "50"?  
 20 MS. SHARGEL: 50, yeah. 10:49AM  
 21 Q. 50 to 51, you talk about the SALT survey  
 22 in Rhode Island.  
 23 A. Yes. Yes.  
 24 Q. Do you know whether any school districts  
 25 in California are taking steps to implement 10:49AM

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1 something similar to the SALT survey? 10:49AM  
 2 A. I don't know.  
 3 Q. Yesterday I believe you testified -- and  
 4 correct me if I'm wrong -- that the state should  
 5 suspend looking at outcomes until the inputs that 10:50AM  
 6 are necessary are in place across the schools in the  
 7 state?  
 8 A. No, I didn't say across the schools in the  
 9 state.  
 10 Q. What did you say? 10:50AM  
 11 A. I would have been talking about within  
 12 schools where the inputs aren't in place.  
 13 Q. So it's your opinion that this state  
 14 should suspend looking at outcomes across the state  
 15 until -- 10:50AM  
 16 A. No. What I'm saying is in a school where  
 17 the inputs, key inputs, whatever, however those are  
 18 defined, are not in place, the state should ask  
 19 those schools to focus on get- -- putting those key  
 20 inputs in place before asking those schools to be 10:50AM  
 21 focusing solely on -- ordinarily on outcomes.  
 22 Q. Okay.  
 23 A. But that doesn't apply to every school in  
 24 the state. The suspension of looking at the  
 25 outcomes doesn't apply to every school in the state. 10:51AM



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1 Q. That was my question. Thanks. 10:51AM  
2 You testified last month about the error  
3 margin in API scores. Do you remember that?  
4 A. Yeah, I remember talking about that.  
5 Q. Do you have any basis for believing that 10:51AM  
6 interventions have been incorrectly made based on  
7 the errors in calculating API scores?  
8 A. No, I don't have any information on that.  
9 Q. How about awards being incorrectly given  
10 based on the error margin? 10:51AM  
11 Do you want me to repeat the question?  
12 MR. ROSENBAUM: Do you mean does he have  
13 specific information that a particular award was  
14 incorrectly given?  
15 BY MS. SHARGEL: 10:52AM  
16 Q. Or do you have any basis for believing  
17 that any awards have been incorrectly given in  
18 California schools, based because of the error  
19 margin in API scores?  
20 MR. ROSENBAUM: Besides the general 10:52AM  
21 statements that he's made about the problems with  
22 the error margins. That's what I'm trying to  
23 understand.  
24 Are you asking about do you know that a  
25 particular school shouldn't have gotten an award, or 10:52AM

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1 do you have problems which caused you difficulties 10:52AM  
2 in terms of the error margin?  
3 Because he went on at length about the  
4 problems in the error margin.  
5 MS. SHARGEL: I understand. 10:52AM  
6 Q. But because of those problems, do you know  
7 whether the cash awards have been incorrectly  
8 given --  
9 A. You can never answer --  
10 Q. -- in any specific schools? 10:52AM  
11 A. I'm sorry. You can never answer that  
12 question because the measure is an estimate of true  
13 learning, true achievement, true growth. And the  
14 error is the error in your estimate.  
15 And one of the -- one of the challenges, 10:53AM  
16 one of the problems, if you will, shortcomings of  
17 any kind of statistical estimation or measurement is  
18 that you never know what the true measure is.  
19 So there's no way of knowing for sure that  
20 there is an error made. You can only look at the 10:53AM  
21 probability that there may have been an error made.  
22 Q. Okay. So you don't have any opinion as to  
23 whether in specific schools --  
24 MR. ROSENBAUM: He just answered the  
25 question. I'm going to instruct him not to answer. 10:53AM

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1 BY MS. SHARGEL: 10:53AM  
2 Q. -- awards would be given?  
3 MR. ROSENBAUM: I'm instructing not to  
4 answer.  
5 BY MS. SHARGEL: 10:53AM  
6 Q. Are you following your counsel's  
7 instruction?  
8 A. I --  
9 MR. ROSENBAUM: Yes.  
10 THE WITNESS: Yes. 10:53AM  
11 BY MS. SHARGEL:  
12 Q. Do you have any opinion as to whether  
13 teachers in LAUSD are teaching to the test?  
14 A. Specifically? I don't have any data  
15 specific to that district. 10:53AM  
16 Q. To your knowledge, have there been any  
17 criticisms at all of your report?  
18 A. No, not that I've -- not -- not -- not --  
19 that anyone shared with me.  
20 MR. ROSENBAUM: He's been very 10:54AM  
21 complimentary.  
22 MR. HAJELA: We have all been scared,  
23 Mike.  
24 BY MS. SHARGEL:  
25 Q. You testified that one of the problems 10:54AM

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1 with the API is that it masks scores in various 10:54AM  
2 grades, as it gives you a single number for a  
3 school.  
4 A. Yes.  
5 Q. Is that correct? 10:54AM  
6 A. Yes.  
7 Q. Do you know whether LAUSD issues specific  
8 API scores for specific grades within a school?  
9 MR. ROSENBAUM: Vague and ambiguous. I  
10 don't -- do you understand that? 10:54AM  
11 THE WITNESS: I don't know. I'll answer  
12 it this way: I don't know anything about what that  
13 district is doing specifically with its scores.  
14 BY MS. SHARGEL:  
15 Q. Just to make sure my question is clear, I 10:54AM  
16 meant, do you know whether it has data that's  
17 publicly available which shows API scores --  
18 A. I don't know if they do or do not.  
19 Q. -- or grades within a specific school?  
20 A. I know they ought to be able to do that if 10:55AM  
21 they wanted to, but I don't know if they do that.  
22 Q. Earlier, you testified that it would be --  
23 it wouldn't be feasible for local school districts  
24 to create their own assessments in accountability  
25 programs. Is that fair to say? 10:55AM

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1 A. For all schools in the state, I don't 10:55AM  
2 think it would be feasible for every school in the  
3 state to develop a reliable and valid accountability  
4 program.  
5 Q. I'm talking about school districts now, 10:55AM  
6 not schools.  
7 A. Yeah. The same answer for all districts  
8 in the state.  
9 I don't think each one could develop their  
10 own individual system that would be valid and 10:56AM  
11 reliable and cost -- and be done in a cost-effective  
12 manner.  
13 Q. Well, Rhode Island creates its own --  
14 A. No, they don't.  
15 Q. -- assessments, doesn't it? 10:56AM  
16 A. No, it does not. No, that does not.  
17 Q. But Rhode Island as a state, though, does?  
18 MR. ROSENBAUM: We'll stipulate it's a  
19 state.  
20 THE WITNESS: I don't understand the 10:56AM  
21 question.  
22 BY MS. SHARGEL:  
23 Q. Doesn't Rhode Island create its own  
24 assessment measures for its accountability programs?  
25 A. No. We talked about that yesterday. They 10:56AM

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1 use the New Standards Reference Exam. 10:56AM  
2 Q. Okay.  
3 A. They also use the SALT survey, which is  
4 publicly -- I mean it's been modified slightly  
5 through Rhode Island, but it's publicly available -- 10:56AM  
6 commercially available, I should say.  
7 Q. In Maine, isn't it true that local school  
8 districts create their own assessments for  
9 accountability purposes?  
10 A. Yeah, they develop their own assessment 10:57AM  
11 systems, yeah.  
12 Q. Do you know if that results in any  
13 problems or difficulties in Maine?  
14 A. Yes, it's put some burdens on the  
15 districts and it's created some inconsistent -- 10:57AM  
16 inconsistencies in terms of the validity and  
17 reliability of each district's program.  
18 Q. What sorts of inconsistencies?  
19 A. In terms of the reliability and validity  
20 of those programs. 10:57AM  
21 MS. SHARGEL: I don't think I have any  
22 more questions.  
23 THE WITNESS: Okay.  
24 MR. ROSENBAUM: Thank you very much.  
25 MR. HAJELA: Slide down again. 10:57AM

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1 (Pause in proceedings.) 10:57AM  
2 MS. READ-SPANGLER: (Indicating). Shit.  
3 THE WITNESS: Is that on the record?  
4 MR. SALVATY: Everything's on the record.  
5 MR. ROSENBAUM: Private comment, Paul. 10:58AM  
6 MR. HAJELA: Talking about -- she's  
7 talking about mushrooms.  
8 MS. READ-SPANGLER: Now it's on the  
9 record.  
10 10:59AM  
11 EXAMINATION  
12 BY MS. READ-SPANGLER:  
13 Q. Good morning, Professor Russell.  
14 I introduced myself before, I think. My  
15 name is Kara Read-Spangler, and I represent the 10:59AM  
16 California Department of Education, the State Board  
17 of Education and the Superintendent of Public  
18 Instruction.  
19 Just to follow up first on some of the  
20 questions that were asked this morning. 10:59AM  
21 Well, first, generally, you said you --  
22 your assignment was to look at the accountability  
23 system in general; is that correct?  
24 A. Yeah. In essence, yeah.  
25 Q. When you say that, you really mean you 10:59AM

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1 just looked at the Public School Accountability Act, 10:59AM  
2 right?  
3 A. No, I didn't look just at the Act.  
4 Q. But when -- when you've been talking about  
5 the accountability in California, you've defined it 11:00AM  
6 based on the three components in the Public School  
7 Accountability Act?  
8 A. Yes. That's correct.  
9 Q. And so in your mind, that comprises the  
10 entire accountability system in California? 11:00AM  
11 A. Ummm --  
12 Q. At least in the context of your report?  
13 A. Yes.  
14 Q. Earlier, you said you asked Sophie Fanelli  
15 for drop-out data. Did she manage to get that for 11:00AM  
16 you?  
17 A. Yeah, she sent me a file that had some  
18 data.  
19 Q. Do you know where she obtained that data  
20 from? 11:00AM  
21 A. I don't recall off the top of my head.  
22 Q. And then you mentioned that there were a  
23 number of state documents that discussed problems in  
24 drop-out rates.  
25 Do you know what -- can you tell me what 11:00AM

1 state documents those were? 11:00AM  
 2 A. I can't. I wouldn't be accurate if I told  
 3 you off the top of my head.  
 4 As I talked about last time, and then the  
 5 first day of this portion of the deposition, I 11:01AM  
 6 reviewed a number of state documents, and it comes  
 7 up in a number of those documents.  
 8 Q. Is it accurate to say that all the state  
 9 documents -- or that these state documents would be  
 10 among those listed in your references? 11:01AM  
 11 A. Some of them would be. Some of them were  
 12 documents that I reviewed in preparation for -- for  
 13 the deposition.  
 14 We talked about this at length the first  
 15 day, and then the first day of this one as well. 11:01AM  
 16 Q. I don't think you mentioned any state  
 17 documents that weren't listed in your deposition --  
 18 or in your reference, but --  
 19 A. I don't think that's accurate, because I  
 20 mentioned that I looked at reports that had been 11:01AM  
 21 released and documents that had been released since  
 22 the time of that report. And I had reviewed all the  
 23 meeting notes that were available on the web from  
 24 the PSAA committee and the technical committees.  
 25 Q. Okay. 11:02AM

1 A. Which are -- you know, some of them are 11:02AM  
 2 referenced here, but not all of them.  
 3 Q. So can you tell me generally which state  
 4 documents discussed the problems? Would they be,  
 5 like, from the PSAA advisory committee? 11:02AM  
 6 A. Yes, some of those documents talk about  
 7 it. I believe there's a document that describes  
 8 future changes that -- to the API, or -- yeah, to  
 9 the API that may make reference to problems with the  
 10 drop-out rates as well. 11:02AM  
 11 Q. In response to one of Ms. Shargel's  
 12 questions, you stated that the state should be  
 13 measuring things mentioned in its standards.  
 14 Given the state's standards, how should we  
 15 measure things -- well, let me back up. 11:02AM  
 16 Have you actually read the -- the  
 17 California content standards?  
 18 A. Yes.  
 19 Q. Have you read the curriculum frameworks?  
 20 A. I've read large portions of them. I can't 11:03AM  
 21 say I've read every single word.  
 22 Q. Okay. So, then, let me ask the question I  
 23 asked before: Given those standards, let's take the  
 24 math standards, what sort of testing do you think  
 25 would be appropriate to measure what's set forth in 11:03AM

1 the math standards? 11:03AM  
 2 A. That's the way -- I mean, that's too  
 3 difficult of a question to answer without looking at  
 4 each specific standard individually one by one.  
 5 Q. Well, you -- 11:03AM  
 6 A. It's not how you design a test. I mean,  
 7 you lay out -- you develop a test blueprint, and  
 8 part of the blueprint is identifying the specific  
 9 domains that you're measuring. And then beginning  
 10 with those specific domains, you then consider the 11:03AM  
 11 type of item formats that would be appropriate for  
 12 measuring those.  
 13 So, unless you give me a test blueprint, I  
 14 just -- you can't answer that question.  
 15 Q. Do you consider yourself to be an expert 11:04AM  
 16 in psychometrics?  
 17 A. What do you mean by an expert in  
 18 psychometrics?  
 19 Q. An expert in determining quality and  
 20 measurement of testing? 11:04AM  
 21 A. Yes.  
 22 Q. And what in your background and education  
 23 qualifies you as a psychometrician?  
 24 A. My course training and my research.  
 25 Q. Have you had courses in psychometrics? 11:04AM

1 A. Yes. 11:04AM  
 2 Q. At a graduate level?  
 3 A. Yes.  
 4 I also teach a course, or I've -- I should  
 5 say I'm developing a course on computer applications 11:04AM  
 6 which -- computer applications to testing, which  
 7 relies heavily on IRT theory.  
 8 Q. On IRT theory?  
 9 A. Item response theory.  
 10 Q. Thank you. You have to kind of dumb it 11:05AM  
 11 down for the attorneys here.  
 12 Just generally, what exhibits are you  
 13 planning to use at trial, if we go to trial?  
 14 A. I haven't even thought about that.  
 15 Q. Well, as you sit here today, what exhibits 11:05AM  
 16 do you think you would use?  
 17 MR. ROSENBAUM: Foundation. Speculation.  
 18 THE WITNESS: I -- I can't answer that  
 19 question. I really have no idea. I haven't given  
 20 it any thought. 11:05AM  
 21 BY MS. READ-SPANGLER:  
 22 Q. On the first day of your deposition, we --  
 23 I use "we" in the global sense, really --  
 24 Mr. Salvaty, asked you about your report, and some  
 25 of the earlier drafts. And I was wondering if any 11:06AM

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1 substantive changes were suggested when you wrote 11:06AM  
 2 your earlier drafts?  
 3 A. What do you mean by that?  
 4 Q. You testified that some organizational  
 5 changes were suggested. 11:06AM  
 6 A. "Structural," I think I said.  
 7 Q. Okay. Structural.  
 8 I'm wondering if any content changes were  
 9 suggested.  
 10 A. I mean, I also said that we talked about 11:06AM  
 11 ideas and notions that were unclear and could be  
 12 clarified further, expanded on further. So if that  
 13 falls into that category that you're describing,  
 14 then, yes.  
 15 Q. Were you ever told of anything that you 11:06AM  
 16 should include that you had not originally included?  
 17 A. I was -- I was asked to expand on the  
 18 areas, if that's what you mean.  
 19 Q. Do you recall what areas you were asked to  
 20 expand on? 11:07AM  
 21 A. The issue around drop-outs in California.  
 22 I was asked to talk more about  
 23 alternatives in California, an alternative  
 24 accountability system in California.  
 25 I was asked to expand on -- what else? I 11:07AM

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1 can't think of anything else actually off the top of 11:07AM  
 2 my head.  
 3 I was more asked to contract than to  
 4 expand, frankly.  
 5 Q. What were you asked to contract? 11:08AM  
 6 A. Some of the technical -- the technical  
 7 stuff that I did, some of the modeling.  
 8 Q. And I think previously, you said you'd  
 9 moved some of that to appendices?  
 10 A. Yeah. That's what happened. 11:08AM  
 11 Q. Okay. Did you expand your section on  
 12 drop-outs in California?  
 13 A. Yeah, I did.  
 14 Q. And did you expand the section on  
 15 alternative accountability systems in California? 11:08AM  
 16 A. Yeah, I believe I did.  
 17 Q. What do you mean when you say "alternative  
 18 accountability systems"?  
 19 A. I mean an alternative to the current  
 20 accountability system. 11:08AM  
 21 (Telephonic interruption.)  
 22 BY MS. READ-SPANGLER:  
 23 Q. What would be an alternate to the current  
 24 accountability system?  
 25 A. It's basically what I described in the 11:08AM

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1 blueprint. Everything we've been talking about for 11:08AM  
 2 three-and-a-half days.  
 3 MS. READ-SPANGLER: Let's go off the  
 4 record for just a second.  
 5 (Discussion off the record.) 11:09AM  
 6 MS. READ-SPANGLER: We're back on.  
 7 Q. Were you ever told of anything not to  
 8 include in the report?  
 9 A. No, I don't think so.  
 10 Q. Were you ever told by anyone not to 11:09AM  
 11 include specific remedies?  
 12 A. No, absolutely not.  
 13 Q. You also previously testified that --  
 14 about a expert meeting -- and that's my term; I  
 15 don't know that that's your term -- in approximately 11:10AM  
 16 November 2001.  
 17 And you said that an attorney spoke  
 18 initially for approximately 15 minutes.  
 19 A. I think I said 10.  
 20 Q. Okay. 10 minutes. And that he'd said 11:10AM  
 21 test -- or spoke about what it means to be an  
 22 expert.  
 23 I'm wondering if you can recall anything  
 24 else that he spoke about.  
 25 A. The only thing I really remember him was 11:10AM

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1 emphasizing that as we work on our papers, and if we 11:10AM  
 2 choose to work on a report, that we should just do  
 3 what we normally do. Whatever our normal practices  
 4 are, we should be sure to do our normal practices,  
 5 and that -- and that's basically it. 11:10AM  
 6 Q. What did you understand that to mean?  
 7 A. That we should perform our research in the  
 8 way that we always perform our research.  
 9 We should use our -- our -- the resources  
 10 that we would rely on, just like as we always use 11:11AM  
 11 our resources that we rely on; that, you know, we  
 12 have people who normally review our work. We should  
 13 have people normally who would normally review our  
 14 work, review it.  
 15 Q. Do you normally have people review your 11:11AM  
 16 work?  
 17 A. I usually have -- yeah, people I work with  
 18 review my work.  
 19 Q. And who are those people?  
 20 A. Some of the grad students. It depends on 11:11AM  
 21 what I'm doing. Sometimes they're grad students.  
 22 Sometimes they're fellow faculty.  
 23 Q. Do you have anyone review this, other than  
 24 Jen and Stacey?  
 25 A. No, I did not. 11:11AM

1 Q. Do you recall or know what entity or firm 11:11AM  
2 the attorney you spoke was with?

3 A. I don't know for sure.

4 Q. Do you recall anything else that he said?

5 A. He talked about a plane trip on the way 11:12AM  
6 down. That's the only other thing that stands out  
7 in my mind.

8 Q. What did he say about the plane trip?

9 A. I think someone missed a plane, or they  
10 just barely made a plane, or something. I don't 11:12AM  
11 know. I don't remember the specifics.

12 Q. You also, when we were talking about that  
13 meeting, you said that you spoke about  
14 accountability. And I was wondering if anyone  
15 besides you spoke about accountability? 11:12AM

16 A. I don't -- I don't recall. I don't recall  
17 all of the different people who gave presentations.  
18 I don't remember another specific  
19 presentation that was on accountability. But people  
20 may have mentioned the word "accountability." 11:12AM

21 Q. What are Jen Cowan's qualifications? By  
22 that I mean, is she -- I know she is a graduate  
23 student, right?

24 A. She's not anymore. She's a research  
25 associate now. 11:13AM

1 Q. Does that mean she has her doctorate? 11:13AM

2 A. No, she has a Master's.

3 Q. Is she going for her doctorate?

4 A. She's not sure.

5 Q. How about Stacey -- 11:13AM

6 A. Raczek.

7 Q. Raczek. Is she a graduate student?

8 A. She's ABD. She's done everything except  
9 her dissertation.

10 Q. Just for the record, that means all the 11:13AM  
11 dissertations.

12 And what's her -- what's she doing her  
13 doctorate in?

14 A. For her dissertation?

15 Q. Right. 11:13AM

16 A. I mean, what's her --

17 Q. What's her Ph.D. going to be in?

18 A. Education research and measurement  
19 evaluation.

20 Q. And actually, I said Ph.D. Is it a Ph.D. 11:13AM  
21 or a MDB?

22 A. It would be a Ph.D.

23 Q. Do you know what her dissertation is going  
24 to be on?

25 A. No, I don't. 11:14AM

1 Q. And what did Jen get her Master's in? 11:14AM

2 A. Educational research and measurement  
3 evaluation.

4 Q. And just generally speaking, what does  
5 that mean? 11:14AM

6 A. It's -- you're required to take courses on  
7 research methodology, statistics, as it uses  
8 statistics in educational and social research. Test  
9 theory. And then there's usually an evaluation  
10 course you have to take. 11:14AM

11 Q. Are you one of Stacey's dissertation  
12 advisors?

13 A. No, I'm not.

14 Q. You mentioned before that David Berliner  
15 said that he saw your report, and I think you 11:14AM  
16 hypothesized that he probably saw it off plaintiffs'  
17 web site.

18 Do you know if he's working -- if David  
19 Berliner is working with plaintiffs?

20 A. I have no idea. 11:15AM

21 Q. And also, you previously said that you  
22 weren't directly contacted at first by plaintiffs.

23 It was George Madaus who received an  
24 e-mail from Jeannie Oakes; is that correct?

25 A. That's what I said, yeah. 11:15AM

1 Q. And he forwarded that e-mail to you, I 11:15AM  
2 think you said?

3 A. I think that's what happened, yeah.

4 Q. Do you recall if that e-mail was  
5 soliciting him to work for plaintiffs? 11:15AM

6 A. I don't recall if it was asking him  
7 directly, or asking him for a recommendation for  
8 someone. It wasn't working for plaintiffs, the  
9 e-mail. That is, I talked about at length, it was  
10 to produce a scholarly paper around accountability 11:15AM  
11 in California. And, so, I -- I don't recall if it  
12 was initially asking him if he was -- would be  
13 interested, or if he knew of someone that -- that  
14 would be appropriate for doing this type of work.

15 Q. Did you and he discuss whether he would be 11:16AM  
16 interested in doing that sort of paper, or why he  
17 wasn't interested in doing that sort of paper?

18 A. He's semi-retired.

19 Q. Do you know if Walt Haney was ever  
20 approached by plaintiffs to do a paper, or to do any 11:16AM  
21 work for them?

22 A. I don't know.

23 Q. Before, you were talking about Jim Popham  
24 and you said, and I'm quoting: He has said, to some  
25 extent, that if he knew what was going to happen in 11:17AM

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1 response to some of the work he's done, he wouldn't 11:17AM  
 2 have done it. End quote.

3 Do you know what he was referring to when  
 4 he said if he had known what was going to happen, he  
 5 wouldn't have done it? 11:17AM

6 A. I -- I believe he was talking in reference  
 7 to some work he had done in Texas, but I really  
 8 don't know for sure.

9 It was at a conference where he was  
 10 talking about these -- these type of issues as part 11:17AM  
 11 of, as I recall, a panel.

12 Q. You said beyond that, that if things were  
 13 going to be so focused on the tests rather than the  
 14 domain, he wouldn't have been as involved in -- in  
 15 developing the systems. 11:17AM

16 What do you mean when you say -- when you  
 17 use the word "domain" in that sentence?

18 A. Well, the domain is the domain of  
 19 knowledge and skills that makes up something we  
 20 might call mathematics, or language arts or social 11:18AM  
 21 studies, or social sciences.

22 Q. Did you have an understanding of -- well,  
 23 I mean, you said it's so focused on the test rather  
 24 than the domain.

25 What do you think he meant by that? 11:18AM

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1 A. Are you asking how I interpret -- 11:18AM  
 2 Q. Right.

3 A. -- interpret that?

4 Q. Right.

5 A. Well, again, if you go back to a test 11:18AM  
 6 theory, a test is supposed to be a sample of --  
 7 provide a sample of performance, or behavior within  
 8 a given domain.

9 So, in theory, you want to be sampling  
 10 broadly from the domain to make inferences about how 11:18AM  
 11 a student is performing in that domain.

12 What often happens, and what happens often  
 13 when teachers teach to the test, is they focus on  
 14 the specific items in the test, rather than the  
 15 domain in general, that you end up with restricted 11:18AM  
 16 coverage in the teaching and restricted coverage of  
 17 the domain.

18 And that often translates into less  
 19 generalized -- generalizable learning. So I think  
 20 that -- my interpretation is that's what he's 11:19AM  
 21 talking about.

22 Q. But if your test is constructed broadly to  
 23 cover the domain, why would that be a problem?

24 A. Because you can't cover the -- because a  
 25 domain -- let's say algebra is part of a math 11:19AM

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1 domain. And algebra, as it could be defined as a 11:19AM  
 2 domain itself. And within algebra -- I'm not a math  
 3 ma -- math instructor, so I'm kind of making this up  
 4 a little bit.

5 But within algebra, you may want to focus 11:19AM  
 6 on different types of problems. But what ends up  
 7 happening, when you have a general math test is you  
 8 can only include two or three types of problems from  
 9 algebra from the larger set of problems.

10 So instruction tends to focus on those two 11:20AM  
 11 or three types of problems, rather than the  
 12 general -- the broader domain of algebra. Same  
 13 thing would happen in geometry. You take  
 14 trigonometry, number sense, and so forth and so on.

15 Q. I would assume, then, though, at the lower 11:20AM  
 16 levels where the domain of knowledge is smaller,  
 17 you'd probably get better coverage.

18 MR. ROSENBAUM: Incomplete hypothetical.  
 19 Assumes facts not in evidence. Speculation.

20 THE WITNESS: It varies on the test. 11:20AM

21 MR. ROSENBAUM: Vague and ambiguous.

22 BY MS. READ-SPANGLER:

23 Q. When we were talking about on the first  
 24 day --

25 MR. ROSENBAUM: Can I interrupt you a 11:21AM

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1 second? You don't have any objection -- when you 11:21AM  
 2 read from her -- his transcript, and that's what  
 3 you've been doing -- you don't have any objection if  
 4 he wants to see the transcript, just to --

5 MS. READ-SPANGLER: No, that's fine. 11:21AM

6 MR. ROSENBAUM: I just want you to know  
 7 that you're welcome at any point to take a look at  
 8 that.

9 THE WITNESS: Just pull out my copies of  
 10 the transcripts? 11:21AM

11 MS. READ-SPANGLER: Sure. Go ahead.

12 MR. ROSENBAUM: What page are you on,  
 13 please?

14 MS. READ-SPANGLER: 108. That's why I  
 15 went through and put all the pages, in case you 11:22AM  
 16 wanted to.

17 Q. I think we were talking about your  
 18 assignment and whether the system accurately and  
 19 sufficiently notifies the state, and does it provide  
 20 the state the opportunity to look at the extent to 11:22AM  
 21 which essentials required for learning are present.

22 And you responded, at the bottom of page  
 23 108, that the system as it exists does not provide  
 24 any information about these -- these essentials  
 25 required for learning. 11:23AM

1 And I was wondering if you could explain 11:23AM  
 2 that a little bit further.  
 3 A. Yeah, what I've talked about over the last  
 4 three-and-a-half days?  
 5 Q. Uh-huh. 11:23AM  
 6 A. None.  
 7 Q. First of all, I want you to tell me what  
 8 you consider to be essentials for learning.  
 9 A. Beyond what we've talked about?  
 10 Q. Right. 11:23AM  
 11 A. No. I mean, I've talked about it all at  
 12 length.  
 13 Q. Well, how do you know what is an essential  
 14 for learning?  
 15 A. I mean, I talked about this, how -- it's 11:23AM  
 16 just -- first of all, there's common sense about  
 17 some things that should be present. And then  
 18 there's research over the last, you know, 30, 40, 50  
 19 years that show that some things do make a  
 20 difference. 11:23AM  
 21 So it's both common sense and a body of  
 22 research.  
 23 Q. So you can't elaborate on the statement  
 24 that the system as it exists does not provide any  
 25 information about the essentials required for 11:24AM

1 learning? 11:24AM  
 2 A. It doesn't provide any information about  
 3 anything that goes into the learning. All it does  
 4 is provide information about the outcome. So it  
 5 doesn't provide anything about any input. 11:24AM  
 6 Q. I think yesterday you said you had just  
 7 gotten a grant for -- was it Maine, New Hampshire,  
 8 Vermont and Rhode Island?  
 9 A. I didn't get the grant.  
 10 Q. Oh. 11:25AM  
 11 A. Rhode Island got the grant.  
 12 Q. But you helped them work on that?  
 13 A. Yeah.  
 14 Q. Is that the grant that you previously  
 15 testified to was for en- -- to get enhancement 11:25AM  
 16 money, or to work on enhancement issues for NCLB?  
 17 A. Yeah, there's enhancing state assessment  
 18 programs grant through the NCLB.  
 19 Q. And can you tell me as specifically as  
 20 possible what they're going to do with that money to 11:26AM  
 21 become compliant with NCLB?  
 22 A. I can't right now, actually, because we  
 23 didn't get as much money. We didn't get the full  
 24 amount, so we have to replan some of what we're  
 25 gonna do. 11:26AM

1 I can talk about some of the things that 11:26AM  
 2 were in the proposal.  
 3 Q. Okay. Why don't you do that.  
 4 A. Some of the things that were in proposal  
 5 were they're trying -- they're going to try to 11:26AM  
 6 develop -- it's kind of common standards across the  
 7 states, or at least the common notion of standards  
 8 across the states so that they then could try to  
 9 work together to create common measures across the  
 10 states. 11:26AM  
 11 We are going to begin exploring  
 12 transitions to computers, and we're going to begin  
 13 exploring universal design issues to make the tests  
 14 more accessible for various students with special  
 15 needs. 11:27AM  
 16 That's the -- that's the main things that  
 17 I -- I remember standing out in the proposal.  
 18 Q. Do you remember anything else?  
 19 A. No. I was mainly -- mainly involved in  
 20 the -- developing the pieces on the computerized 11:27AM  
 21 assessment, and to a lesser extent on universal  
 22 design.  
 23 Q. Do you know in what way Rhode Island is  
 24 not compliant with NCLB?  
 25 A. I don't know, no. 11:27AM

1 I know -- I may know some of the ways, but 11:27AM  
 2 I don't know all the ways.  
 3 Q. In what ways are you familiar with --  
 4 A. One of the main ones is they don't have  
 5 a -- they don't test every student between the 11:27AM  
 6 grades of 2 and 8, or 3 and 8. I can't remember if  
 7 it's 2 or 3.  
 8 Q. And what else?  
 9 A. That's the main one. That's the main one  
 10 that I'm familiar with. 11:28AM  
 11 Q. You're not familiar with any others?  
 12 A. Well, basically, that makes it impossible  
 13 to be in compliance with it, so they have to do that  
 14 before they can focus on anything else.  
 15 That's the only thing we've talked about 11:28AM  
 16 with them. But there's a whole range of issues.  
 17 You've got to then set performance level standards  
 18 for each of those grades levels which you wouldn't  
 19 do if you're not testing them.  
 20 You have to define annual progress, which 11:28AM  
 21 you wouldn't do until you start collecting measures.  
 22 So there's a whole list of noncompliance  
 23 issues that result because you're not testing every  
 24 student in grades, in those grades.  
 25 Q. Is there anything else? 11:28AM

1 A. That's -- that's the one I'm most familiar 11:28AM  
 2 with.  
 3 Q. When you say "annual progress," do you  
 4 mean adequate yearly progress?  
 5 A. Uh-huh. 11:28AM  
 6 MR. ROSENBAUM: You said "yes"?  
 7 THE WITNESS: Yes, I did.  
 8 MS. READ-SPANGLER: Thank you, Mark.  
 9 Q. I don't want to beat a dead horse, but I'm  
 10 just trying to understand. 11:29AM  
 11 I know you don't like Norm Reference  
 12 Tests, or you don't think they're useful.  
 13 A. I never said that. That's totally wrong.  
 14 I never said that.  
 15 Q. Okay. I don't want to put words in your 11:29AM  
 16 mouth at all.  
 17 But for purposes of California's  
 18 accountability system, you don't seem to think that  
 19 they are useful; is that correct?  
 20 A. If you're measuring standards based -- 11:29AM  
 21 standards in the standards-based manner, they're not  
 22 useful.  
 23 Q. But a Norm Reference Test is useful to  
 24 compare students to students, right? You said that  
 25 before. 11:30AM

1 A. Yes, it's -- 11:30AM  
 2 MR. ROSENBAUM: Incomplete hypothetical.  
 3 THE WITNESS: It's useful for comparing  
 4 students to a norm group, yes.  
 5 BY MS. READ-SPANGLER: 11:30AM  
 6 Q. So why would that be inappropriate as a  
 7 small part of an accountability system?  
 8 A. Because you set up standards for people to  
 9 meet standards, not to be compared to anyone else.  
 10 That's the point of setting a standard, is you're 11:30AM  
 11 trying to set a criteria for students or schools, or  
 12 whoever it is, to meet. So it's irrelevant how they  
 13 perform relative to other kids.  
 14 All that's relevant is how they perform in  
 15 relationship to that standard and their criteria. 11:30AM  
 16 Q. Okay. Is it your understanding that  
 17 schools receive desegregated data from the SAT-9?  
 18 Do you have an understanding about that?  
 19 A. What do you mean by "desegregated data"?  
 20 Q. Well, do you have any understanding as to 11:31AM  
 21 whether schools receive, say, grade level data back  
 22 from the SAT-9?  
 23 A. Are you asking do they receive data, any  
 24 type of data from the SAT-9 that is desegregated?  
 25 Q. Yes. 11:31AM

1 A. Yes. 11:31AM  
 2 Q. What's your understanding of that?  
 3 A. That they do receive desegregated data.  
 4 Q. And do you have an understanding as to  
 5 what form they get it in? 11:31AM  
 6 A. You mean electronic or paper?  
 7 Q. No. I mean, is it student level? Class  
 8 level? Grade level? School level?  
 9 A. I believe it's desegregated by -- I  
 10 believe it's desegregated by race or ethnicity, I 11:31AM  
 11 believe. And I believe that the schools get grade  
 12 level data for their SAT-9 scores.  
 13 Q. What about student -- individual student  
 14 scores?  
 15 A. Yeah, I believe they receive those as 11:31AM  
 16 well.  
 17 Q. So, then, the schools would be able to use  
 18 those scores in --  
 19 A. However they wanted?  
 20 Q. Yes. 11:32AM  
 21 A. Yes.  
 22 Q. On the second day -- I don't know what  
 23 page this is on. You were talking about the SAT-9,  
 24 and when the SAT-9 was developed, it wasn't aligned  
 25 to California standards. 11:32AM

1 And you indicated you hadn't done your own 11:33AM  
 2 research on the alignment. You had looked at work  
 3 from CRESTT. And also you thought William Schmidt  
 4 had done work on this?  
 5 A. Uh-huh. 11:33AM  
 6 Q. Is that a "yes"?  
 7 A. Yes, I'm sorry.  
 8 Q. Did you rely on William Schmidt's work  
 9 when you were preparing your report?  
 10 A. No. I really relied on the -- you know, 11:33AM  
 11 what CRESTT said, as well as what the technical  
 12 advisory committee said.  
 13 I believe I quote them in my report at  
 14 least once, maybe twice.  
 15 Q. On Page 234 -- and I'm going to try to do 11:34AM  
 16 this without binding the question. You say, quote:  
 17 "If a school deemed that all the  
 18 appropriate inputs were in place and  
 19 were functioning, I think it's  
 20 totally reasonable to expect -- 11:34AM  
 21 what's it say -- all numerically  
 22 significant ethnic and socially --  
 23 socioeconomically disadvantaged  
 24 groups, as well as those that don't  
 25 meet this criteria, to be growing in 11:34AM



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1 a school. . ." then it goes on. 11:34AM  
 2 End quote.  
 3 A. Uh-huh.  
 4 Q. Who do you think it is that should  
 5 determine what all the appropriate inputs are? By 11:34AM  
 6 that, I mean is that something that the school  
 7 should be determining?  
 8 A. Individually, by school-by-school  
 9 decision?  
 10 Q. Yes. 11:35AM  
 11 A. No.  
 12 Q. Who should be determining that?  
 13 A. I talked about this at length yesterday,  
 14 that it's the stage to facilitate a process by  
 15 which, in essence, standards are set. 11:35AM  
 16 Q. So you're saying that every school would  
 17 have the same set of --  
 18 A. No.  
 19 Q. -- appropriate inputs?  
 20 A. They would have the same -- they would be 11:35AM  
 21 meeting the same opportunity-to-learn standards.  
 22 That doesn't mean that it's the same in every  
 23 school. Some schools could exceed those standards.  
 24 But the goal would be that just with performance  
 25 standards for student performance on tests, for 11:35AM

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1 example, you would have an opportunity-to-learn 11:35AM  
 2 standards, input standards, if you will, that all  
 3 students -- or all schools would ideally be meeting.  
 4 Q. What do you mean when you say  
 5 "opportunity-to-learn standards"? 11:35AM  
 6 A. Standards that focus on the inputs that  
 7 are important for students, for facilitating  
 8 students -- student learning.  
 9 Q. But, again, doesn't that assume that if  
 10 you have a set of standards, that those would be the 11:36AM  
 11 same at all schools?  
 12 A. No. Performance standards don't -- I  
 13 mean, if you take testing, we set a level, the --  
 14 usually API. The API has a target of 800. That  
 15 doesn't imply that every single school is only at 11:36AM  
 16 800. You can exceed an 800.  
 17 The same with opportunity-to-learn  
 18 standards. It doesn't mean that every one -- every  
 19 school is going to look exactly the same. But at a  
 20 minimum, everyone's got -- should be meeting these 11:36AM  
 21 basic opportunity-to-learn standards.  
 22 As I said, a school could exceed them --  
 23 could exceed some of them and not others.  
 24 Others could be if they -- you know, the  
 25 cut score, if you will. 11:37AM

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1 Q. And what is -- what should the -- well, do 11:37AM  
 2 you have an opinion as to what the California  
 3 Department of Education's role is in setting these  
 4 opportunity-to-learn standards?  
 5 A. Again, I talked about this at length, that 11:37AM  
 6 I'm not familiar enough with the politics in  
 7 California to know who should be playing what role.  
 8 But I do believe that the Department of Ed should be  
 9 playing a role in at least facilitating  
 10 establishment of those standards. 11:37AM  
 11 Q. How about with respect to the State Board  
 12 of Education?  
 13 A. I -- as I said, I'm not familiar enough  
 14 with the politics in California to know. If it's  
 15 the State Board of Education in California, 11:37AM  
 16 department -- I'm not sure who the right players  
 17 should be.  
 18 Q. Is your answer the same for the  
 19 Superintendent of Public Instruction?  
 20 A. Yeah. 11:37AM  
 21 Q. Have you read the Public School  
 22 Accountability Act?  
 23 A. Yes, I have.  
 24 Q. Have you read the implementing  
 25 legislation? 11:38AM

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1 A. I'm not familiar with that term. 11:38AM  
 2 MR. ROSENBAUM: I'm sorry. I didn't hear  
 3 the phrase.  
 4 MS. READ-SPANGLER: "Implementing  
 5 legislation." 11:38AM  
 6 MR. ROSENBAUM: It's vague.  
 7 THE WITNESS: I'm not sure what that  
 8 means.  
 9 BY MS. READ-SPANGLER:  
 10 Q. Well, let me ask you this: Have you read 11:38AM  
 11 the Senate Committee Analyses regarding the Public  
 12 School Accountability Act?  
 13 MR. ROSENBAUM: It's vague.  
 14 THE WITNESS: I read what's posted on the  
 15 web site as the legislation. So I'm not sure what 11:38AM  
 16 terms are -- are used.  
 17 BY MS. READ-SPANGLER:  
 18 Q. So you haven't read any of the legislative  
 19 history?  
 20 MR. ROSENBAUM: It's vague, and it 11:38AM  
 21 mischaracterizes his testimony.  
 22 THE WITNESS: I've read whatever's posted  
 23 under the legis- -- what they call -- I think it's  
 24 called "the act" or "the legislative act." That's  
 25 what I've read. 11:38AM

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1 BY MS. READ-SPANGLER: 11:38AM  
 2 Q. Earlier you testified that you thought  
 3 that the purpose wasn't -- I think you said clearly  
 4 articulated.  
 5 A. That the purposes, yeah. 11:39AM  
 6 Q. Did you ever make any effort to get any of  
 7 the legislative history to see if that more clearly  
 8 articulated the purposes underlying --  
 9 A. No --  
 10 Q. -- the Public School Accountability Act? 11:39AM  
 11 A. No. I'm sorry. I'm sorry.  
 12 No. When I say that it's not clearly  
 13 articulated, that's basically based on different  
 14 messages that I see different people putting forth  
 15 about the purpose of -- of the API. 11:39AM  
 16 So, for example, yesterday we talked  
 17 about -- I can't remember what it was. That it was  
 18 supposed to be a measure of -- I don't know. I'd  
 19 have to look at the reference.  
 20 Q. Are you referring to Exhibit 6? 11:39AM  
 21 A. I might be. Yes. Thank you. Yeah.  
 22 In Exhibit -- what did you say, 6 -- the  
 23 purpose of the API is to measure the academic  
 24 performance and progress of schools.  
 25 Yet in my report -- it may take me a few 11:40AM

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1 minutes to find it -- somebody talks about the 11:40AM  
 2 purpose being to influence instruction. To me,  
 3 that's slightly different purposes.  
 4 Q. What about in the Public School  
 5 Accountability Act reservation or statute itself, is 11:40AM  
 6 the purpose or purposes --  
 7 A. I don't recall.  
 8 Q. -- clearly -- clearly articulated?  
 9 A. I'm sorry. I don't recall.  
 10 Q. Would it be fair to say, you fundamentally 11:41AM  
 11 disagree with California's approach which focuses on  
 12 student performance, and that you think you need to  
 13 look at student performance, educational processes  
 14 and the relationship between the two?  
 15 A. Would you say that again. 11:41AM  
 16 Q. I said, would it be fair to say that you  
 17 basically fundamentally disagree with California's  
 18 approach because it focuses on student performance,  
 19 and that you think you need to look at student  
 20 performance, educational processes or inputs, if you 11:41AM  
 21 will, and the relationship between the two?  
 22 A. I believe a better approach to  
 23 accountability is one that looks at inputs and  
 24 outputs, and the relationship between the two.  
 25 Q. So would you sort of fundamentally 11:41AM

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1 disagree with any approach like California's that 11:41AM  
 2 just looks at outcomes --  
 3 MR. ROSENBAUM: It's vague. Incomplete  
 4 hypothetical.  
 5 BY MS. READ-SPANGLER: 11:42AM  
 6 Q. -- and doesn't look at outcomes, inputs  
 7 and the relationship between the two?  
 8 A. I mean, again, I've talked at length about  
 9 how you have to put these things in the context of  
 10 the purpose. 11:42AM  
 11 And then I believe that a more effective  
 12 and educational beneficial accountability system  
 13 would focus on those, the inputs, outputs and  
 14 relationship between the two.  
 15 Q. Isn't the national trend to focus simply 11:42AM  
 16 on outcomes?  
 17 A. That doesn't mean it's right or  
 18 educationally beneficial.  
 19 Q. Would it be fair to say that you don't  
 20 think it's educationally beneficial to use an 11:42AM  
 21 approach that combines multiple measures into a  
 22 single score?  
 23 MR. ROSENBAUM: Argumentative. It's a  
 24 hypothetical. Incomplete hypothetical. It's vague  
 25 and ambiguous. 11:42AM

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1 THE WITNESS: I haven't said it's 11:42AM  
 2 educationally beneficial; I said it's not as  
 3 educationally beneficial.  
 4 BY MS. READ-SPANGLER:  
 5 Q. So you think the most educationally 11:43AM  
 6 beneficial -- I'm not trying to put words in your  
 7 mouth, I'm just trying to clarify --  
 8 MR. ROSENBAUM: I object that you're  
 9 mischaracterizing his testimony. He's talked about  
 10 these matters at length. You are trying to reduce 11:43AM  
 11 it to a sentence that isn't even remotely close to  
 12 what he's testified about, or what his report's  
 13 about.  
 14 BY MS. READ-SPANGLER:  
 15 Q. I'm just trying to clarify some of your 11:43AM  
 16 testimony. I don't mean to mischaracterize it. If  
 17 you want to rephrase it, that's fine.  
 18 You think the best system is to not  
 19 combine multiple measures into a -- that's not a  
 20 good way of saying it. 11:43AM  
 21 You think it's a poor approach to combine  
 22 multiple measures into a single score; is that  
 23 correct?  
 24 MR. ROSENBAUM: For what purpose? He's  
 25 discussed this at length. It's an incomplete 11:43AM

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1 hypothetical. You're not specifying your variables. 11:43AM  
2 Your words are vague and ambiguous.  
3 You're trying to get him into some sort of  
4 bumper sticker statement, when he's given you a  
5 careful analysis of these issues. 11:44AM  
6 THE WITNESS: I think it's less useful --  
7 the more you aggregate information, the less useful  
8 it becomes for diagnostic purposes.  
9 And I'll also say, the more you take the  
10 output, the more you disassociate the output from 11:44AM  
11 the inputs, the harder it is to understand what's  
12 really going on and what needs to be improved.  
13 MR. HAJELA: Just off the record for a  
14 second.  
15 THE REPORTER: Off the record. 11:44AM  
16 (Discussion off the record.)  
17 BY MS. READ-SPANGLER:  
18 Q. You testified on the second day that there  
19 was some modeling that had been done by the  
20 technical advisory group, but you hadn't been able 11:49AM  
21 to get details on all the different models.  
22 And I was wondering what efforts you made  
23 to get more information about the modeling.  
24 A. Yeah, I talked about how I called Brian to  
25 see if he had some more information, Brian Stecher, 11:49AM

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1 that is, and I also reviewed a number of -- a number 11:50AM  
2 of the documents available on the web site to see if  
3 there's any more details.  
4 Q. You're talking about minutes of the  
5 technical advisory group? 11:50AM  
6 A. Exactly. And any other documentation.  
7 There's a couple of reports as well that the  
8 advisory committee had written.  
9 Q. Did you ask anyone working for plaintiffs  
10 to try to get you additional information? 11:50AM  
11 A. No, I didn't.  
12 Q. Did you try to contact anyone at the  
13 Department of Education to obtain additional  
14 information regarding the modeling?  
15 A. No, I didn't. 11:50AM  
16 Q. Did you try to contact anyone besides  
17 Brian Stecher with regard to the modeling?  
18 A. I tried to call, get in touch with Mark  
19 Wilson, because I had heard he may have been  
20 involved in that as well. But as I talked about, I 11:50AM  
21 wasn't able to reach him.  
22 Q. Why didn't you try to talk to anyone at  
23 the Department of Education?  
24 A. We -- let me correct that.  
25 We did make some phone calls, and a couple 11:51AM

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1 of people that we talked to didn't seem to know what 11:51AM  
2 we were talking about.  
3 So I just -- I just stopped.  
4 Q. Do you recall who you spoke with --  
5 A. No, I don't know. 11:51AM  
6 Q. -- at the Department of Education?  
7 I'm just going to remind you, especially  
8 because I tend to pause a lot in my questions, you  
9 really need to wait for me to --  
10 A. Yeah, I apologize. 11:51AM  
11 Q. One of the reasons for that is because  
12 Mark likes to object, and so you've got to give him  
13 time to get his objection out there too.  
14 MR. ROSENBAUM: I object to that  
15 characterization. 11:51AM  
16 MS. READ-SPANGLER: I'm just teasing you.  
17 MR. ROSENBAUM: You are.  
18 MS. READ-SPANGLER: I look forward to your  
19 wildly speculative objections.  
20 MR. ROSENBAUM: "Wildly" is an appropriate 11:51AM  
21 comment.  
22 BY MS. READ-SPANGLER:  
23 Q. I know you looked at II/USP, and I think  
24 you were asked if you looked at the high priority  
25 school grant program, and you indicated you didn't 11:52AM

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1 look at it for the report, but you looked at it 11:52AM  
2 since; is that correct?  
3 A. I've looked at it just very superficially  
4 since.  
5 Q. And what -- what did you look at with 11:52AM  
6 respect to that?  
7 A. Just the basic short description of what  
8 it was.  
9 Q. And do you have any thoughts or opinions  
10 about the high priority school grant program? 11:52AM  
11 A. I don't, no.  
12 Q. Do you have any opinions regarding its  
13 effectiveness as an intervention tool?  
14 A. I don't, no.  
15 MR. ROSENBAUM: Vague and overbroad. 11:52AM  
16 BY MS. READ-SPANGLER:  
17 Q. Did you look at the Comprehensive School  
18 Reform Demonstration Program?  
19 A. I read some documents on it. I read first  
20 year -- I think it was the first or second year 11:53AM  
21 evaluation of the program.  
22 Q. And do you have an opinion as to its  
23 effectiveness as an intervention program?  
24 MR. ROSENBAUM: Vague and overbroad.  
25 THE WITNESS: All I can do is try to 11:53AM

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1 summarize what I recall of the evaluation that was 11:53AM  
 2 done.  
 3 BY MS. READ-SPANGLER:  
 4 Q. And can you go ahead and do that.  
 5 A. Yeah, I believe I said they reported the 11:53AM  
 6 results were mixed. There was three or four  
 7 recommendations. I don't remember what they are off  
 8 the top of my head, but the big thing that stands  
 9 out is the results were mixed.  
 10 Q. But you don't have your own opinion as to 11:53AM  
 11 its effectiveness?  
 12 A. No, I haven't studied.  
 13 Q. Have you looked at school improvement  
 14 program or program improvement?  
 15 Have you heard of those? 11:54AM  
 16 A. I'm not sure what you're referring to  
 17 there, no.  
 18 Q. Have you looked at -- other than CSRSD, the  
 19 Comprehensive School Reform Demonstration Program,  
 20 have you looked at any of the other federal programs 11:54AM  
 21 that California does?  
 22 A. No, I haven't.  
 23 Q. At one point -- and this is on Page 285 --  
 24 you testified that you're not sure it's necessary to  
 25 have an evaluator in either context. "Either 11:54AM

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1 context" being high-performing schools and, 11:55AM  
 2 I'm sorry, assuming the other context was  
 3 low-performing schools --  
 4 MR. ROSENBAUM: What page are you  
 5 referring to? 11:55AM  
 6 MS. READ-SPANGLER: 285.  
 7 MR. ROSENBAUM: Thank you.  
 8 BY MS. READ-SPANGLER:  
 9 Q. You just think that schools need to take a  
 10 critical look at themselves and identify areas of 11:55AM  
 11 improvement.  
 12 So I just wanted to clarify you don't --  
 13 it's your opinion that you don't need an external  
 14 evaluator or some outside person to help schools  
 15 take a critical look at themselves? 11:55AM  
 16 A. That's not what I said.  
 17 Q. Well, I'm just trying to understand what  
 18 you said.  
 19 A. I said I don't think you necessarily have  
 20 to have an eval- -- an external evaluator going in 11:55AM  
 21 and doing an evaluation of the school. You may have  
 22 someone who comes out -- comes in and facilitates  
 23 you with that process, but when I see the term  
 24 "evaluator," I usually think of an independent  
 25 person going in and making judgments about the 11:55AM

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1 school. And I don't think that's necessary. 11:55AM  
 2 Q. Is this critical look at themselves  
 3 something that schools can also do by themselves  
 4 without an outside person coming in?  
 5 MR. ROSENBAUM: Incomplete hypothetical. 11:56AM  
 6 THE WITNESS: Yeah, I mean, depending on  
 7 their expertise and their resources, they -- they  
 8 could do that, yeah.  
 9 BY MS. READ-SPANGLER:  
 10 Q. Well, let's use -- you said that -- is it 11:56AM  
 11 Rhode Island where they do this?  
 12 A. Yeah -- do what?  
 13 Q. Schools do this active reflection --  
 14 A. Yes.  
 15 Q. -- and take a critical look at themselves? 11:56AM  
 16 A. Right.  
 17 Q. Do they have an outside person come in and  
 18 help them with this active reflection critical look  
 19 process?  
 20 A. They have -- as part of the five-year 11:56AM  
 21 process, there is people that come in that work with  
 22 them as part of the five-year process, but someone  
 23 doesn't -- my understanding is someone does not come  
 24 in every single year, or go through this review  
 25 process. 11:56AM

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1 There's a formal five-year review process, 11:56AM  
 2 and then every year there's reflection that goes on,  
 3 the annual reflection. Generally someone from the  
 4 outside does not come in.  
 5 Q. Okay. We also talked about WASC. 11:57AM  
 6 And I think you said you asked Jen Cowan  
 7 to find information, and she found some information,  
 8 but not lots of information.  
 9 A. Yes.  
 10 Q. I'm wondering if you asked plaintiffs to 11:57AM  
 11 obtain any information for you about WASC?  
 12 A. No, I didn't.  
 13 Q. And do you recall now which depositions  
 14 you looked at where WASC might have been mentioned?  
 15 A. I don't remember off the top of my head. 11:57AM  
 16 Q. Do you know why you didn't ask plaintiffs  
 17 to help you obtain any information about WASC?  
 18 A. I -- you know, the only thing I really  
 19 asked them to obtain was the high school drop-out  
 20 rate -- high school -- the data that was calculated 11:58AM  
 21 on the high school drop-out rates were. And that  
 22 was very late in the process. I just didn't ask  
 23 them. I didn't really know. It's the first time  
 24 I've done this, so I didn't know the process. And  
 25 they asked me to do research the way I normally do 11:58AM

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1 research, and it's usually through my assistants and 11:58AM  
 2 myself.  
 3 MS. READ-SPANGLER: Let's go off the  
 4 record.  
 5 (The luncheon recess was taken at 11:58AM  
 6 11:58 A.M.)  
 7  
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1 (The deposition of MICHAEL RUSSELL, Ph.D.  
 2 reconvened at 1:17 P.M.)  
 3 MICHAEL RUSSELL, Ph.D.,  
 4 having been previously administered an oath in  
 5 accordance with CCP Section 2094, testified further  
 6 as follows:  
 7  
 8 EXAMINATION (CONTINUING)  
 9 BY MS. READ-SPANGLER:  
 10 Q. Earlier, on the second day, we were 1:17PM  
 11 talking about some states that used to use matrix  
 12 sampling testing, and you said Massachusetts used to  
 13 use it. And I'm wondering if you know why they  
 14 stopped using matrix sampling testing?  
 15 A. I don't know the exact reason, but it 1:18PM  
 16 probably had something to do with the move  
 17 towards -- or at least a desire to have student  
 18 level scores for graduation decisions.  
 19 Q. Do you know of any state that has, or that  
 20 uses a matrix sampling test and another test that 1:18PM  
 21 would give them student level scores?  
 22 MR. ROSENBAUM: It's vague.  
 23 THE WITNESS: I mean, again, I talked  
 24 about at length how you would want to use different  
 25 types of sampling methods for different purposes. 1:18PM

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1 APPEARANCES OF COUNSEL:  
 2 (P.M. SESSION)  
 3  
 4 PAUL SALVATY, ESQ.  
 5  
 6 MARK D. ROSENBAUM, ESQ.  
 7  
 8 KARA READ-SPANGLER, ESQ.  
 9  
 10 JOHANNA R. SHARGEL, ESQ.  
 11  
 12  
 13 ALSO PRESENT:  
 14  
 15 SOPHIE A. FANELLI  
 16 (Research Fellow, ACLU  
 17 Foundation of Southern California)  
 18  
 19  
 20  
 21  
 22 REPORTED BY:  
 23 KATHY F. KELLOGG, CSR No. 6591  
 24  
 25

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1 And, so, for example, you could use matrix sampling 1:18PM  
 2 at lower levels if you wanted, and then use  
 3 population sampling at higher levels, high school,  
 4 for example, if you wanted to get student level  
 5 scores. And Maryland, in essence, I believe, is 1:19PM  
 6 doing that, has done that. I believe they're still  
 7 doing that.  
 8 BY MS. READ-SPANGLER:  
 9 Q. Okay. Let me clarify my question.  
 10 Your answer was fine, but I'm wondering if 1:19PM  
 11 there's any state that uses both at the same grade  
 12 level?  
 13 A. I don't -- I don't know off the top of my  
 14 head.  
 15 MR. ROSENBAUM: He's testified about the 1:19PM  
 16 use of NAEP. Are you talking about --  
 17 MS. READ-SPANGLER: I'm excluding NAEP.  
 18 Q. A state -- is there any state that in its  
 19 own state testing program uses both a matrix  
 20 sampling test and a test that would give them 1:19PM  
 21 individual student scores?  
 22 A. So you're asking is there a state that has  
 23 two tests, one that's administered as a matrix  
 24 sample, and one that's administered as a population  
 25 sample to give individual scores? 1:20PM

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1 Q. Right. 1:20PM  
 2 A. I don't know.  
 3 Q. You don't know of any?  
 4 A. I don't know if there any.  
 5 I can't name them, but that doesn't mean 1:20PM  
 6 that there aren't any.  
 7 Q. You indicated that you did a content  
 8 analysis mission statements of some schools?  
 9 A. Yes.  
 10 Q. Do you remember that? 1:20PM  
 11 A. Yes.  
 12 Q. Did you produce your -- well, let me back  
 13 up.  
 14 Did you -- do you have working papers from  
 15 when you did that content analysis, or notes, or 1:20PM  
 16 anything from when you did that?  
 17 A. After the last deposition, I went back to  
 18 my files, and there was nothing in the files that I  
 19 saw on that.  
 20 So at this point in time, I don't -- I 1:21PM  
 21 don't believe so. At least they're not in my files.  
 22 Q. Where else might they be, if they weren't  
 23 in your files --  
 24 A. I don't know.  
 25 Q. -- if you know? 1:21PM

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1 A. I don't know. 1:21PM  
 2 Q. I think you indicated before that  
 3 Jen Cowan helped you with that. Is it possible that  
 4 she might have notes or working papers?  
 5 MR. ROSENBAUM: Foundation. No 1:21PM  
 6 establishment that there even are such documents.  
 7 THE WITNESS: I -- I said that Jen and the  
 8 work study student helped with that.  
 9 Jen has turned over everything that she  
 10 has, to the best of my knowledge. So I can -- I can 1:21PM  
 11 ask her again, but I don't know.  
 12 BY MS. READ-SPANGLER:  
 13 Q. That's fine.  
 14 We talked about the API score, and you  
 15 were asked if it was compensatory, and you 1:22PM  
 16 indicated -- and this is my phrase -- that it's sort  
 17 of anticompensatory because it puts more emphasis on  
 18 low scoring because of a weighting system that it  
 19 has.  
 20 And do you remember talking about the 1:22PM  
 21 weighting system?  
 22 A. Yeah, that's not really what I said.  
 23 Q. What I'm getting at is, I just wanted you  
 24 to explain the weighting system to me. And I'm not  
 25 trying to -- 1:22PM

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1 A. Yeah. 1:22PM  
 2 Q. -- twist your words or anything.  
 3 MR. ROSENBAUM: You mean, what a weighting  
 4 system is or --  
 5 BY MS. READ-SPANGLER: 1:22PM  
 6 Q. The way the weighting system works in the  
 7 AIP.  
 8 A. I'd have to refer to the actual  
 9 weightings. I just can't remember them -- actually,  
 10 I think it's this my report. 1:22PM  
 11 Q. I think it's at note 13.  
 12 A. Thanks.  
 13 Q. Or end of note 13.  
 14 A. I can't find it.  
 15 MR. ROSENBAUM: Is this it? 1:23PM  
 16 Don't guess. If you need to go through  
 17 it, feel free to do it.  
 18 THE WITNESS: It's not in note 13.  
 19 MS. FANELLI: Yeah, it's not in 13.  
 20 THE WITNESS: Let me just take a moment. 1:23PM  
 21 MS. READ-SPANGLER: Okay.  
 22 MR. ROSENBAUM: Kara, I don't want to  
 23 confuse, but if you have something that you could  
 24 show Mike that may assist him.  
 25 MS. READ-SPANGLER: Oh, I'm sorry. 1:24PM

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1 THE WITNESS: You're talking about the 1:24PM  
 2 performance band weightings. Far below low basic,  
 3 one in the 19th MDR, weighting factor 200?  
 4 Is that what you're talking about, when  
 5 you're talking about the weightings? 1:24PM  
 6 It's confusing because there's multiple  
 7 weights. There's weights on continuities and  
 8 there's weights on performance level.  
 9 BY MS. READ-SPANGLER:  
 10 Q. You were asked at Page 319 -- "What I mean 1:24PM  
 11 is that students scoring in the highest two deciles  
 12 can compensate for students who score at a lower  
 13 level."  
 14 And you say:  
 15 "My understanding is that it's 1:24PM  
 16 really kind of the opposite. That  
 17 because of the weighting system,  
 18 it's designed to encourage a focus  
 19 on the lower performing, lowest  
 20 performing students, and if you can 1:25PM  
 21 move them up sometimes slightly,  
 22 sometimes significantly at the lower  
 23 levels, then you're going to get a  
 24 bigger bang for your buck at the  
 25 lower level, that way" -- I'm 1:25PM

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1       sorry -- "the way that the                   1:25PM  
 2       weightings occur. It's kind of  
 3       converse to compensatory."  
 4       A. Right.  
 5       Q. And I just didn't understand what -- what   1:25PM  
 6       you meant by the way the weightings occur in that  
 7       context.  
 8       A. I'll refer you to, I believe it's page 8,  
 9       and there's a footnote 2. It shows the weightings  
 10      for the difference performance bands, and it says   1:25PM  
 11      that band 1, which is students that perform between  
 12      the first and the 9th -- 19th percentile would have  
 13      a weighting factor of 200.  
 14      The next band, band 2, would have a  
 15      weighting factor of 500. The next band is 700. So   1:25PM  
 16      between the first and second band, there's a 300  
 17      point difference, 200, 500.  
 18      Q. Okay.  
 19      A. Then the next band is a 200-point  
 20      difference. So, if you move a student basically   1:26PM  
 21      from band 1 to band 2, you're picking up 300 points.  
 22      Q. Okay.  
 23      A. Whereas, if you move them from band 4 to  
 24      band 5, you're only picking up 125 points.  
 25      Does that make sense?                   1:26PM

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1       Q. Yes. Thank you for explaining that.       1:26PM  
 2       Do you know if it's still weighted this  
 3       way?  
 4       A. To the best of my knowledge, yes.  
 5       Q. You testified before that high stakes       1:27PM  
 6       decisions -- and I think you were using that in the  
 7       context of high stakes testing, can have an effect  
 8       on graduation rates and retention rates.  
 9       Does that ring a bell? I can refer to a  
 10      page if you like.                       1:28PM  
 11      MR. ROSENBAUM: Okay.  
 12      BY MS. READ-SPANGLER:  
 13      Q. Let's look at 371.  
 14      It says --  
 15      MR. ROSENBAUM: Hang on a second, please.   1:28PM  
 16      MR. SALVATY: What page?  
 17      MS. READ-SPANGLER: 371 of the transcript.  
 18      MR. ROSENBAUM: I've got it.  
 19      THE WITNESS: Yeah. Got it.  
 20      BY MS. READ-SPANGLER:               1:28PM  
 21      Q. "So there seems to be something happening  
 22      to either graduation or retention rates or sometimes  
 23      both."  
 24      A. Uh-huh.  
 25      Q. When you say that, what do you mean?   1:29PM

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1       What's happening to graduation rates?       1:29PM  
 2       A. It seems that in some settings, they  
 3       appear to be decreasing; that is, fewer students  
 4       seem to be graduating.  
 5       Q. And what about retention rates? What's   1:29PM  
 6       happening with those?  
 7       A. Again, in some places it appears that  
 8       retention rates in certain grades are increasing.  
 9       Q. Well, if students aren't learning,  
 10      shouldn't they be retained?               1:29PM  
 11      A. That really depends on the programs that  
 12      schools have in place.  
 13      Q. I'm just wondering what conclusion, if  
 14      any, you draw from increasing retention rates.  
 15      MR. ROSENBAUM: Incomplete hypothetical.   1:29PM  
 16      THE WITNESS: I don't understand the  
 17      question.  
 18      MR. ROSENBAUM: Foundation.  
 19      BY MS. READ-SPANGLER:  
 20      Q. Well, I'm just -- you're saying that where   1:29PM  
 21      high stakes tests are being used and high stakes  
 22      decisions are being made based on tests, retention  
 23      rates are increasing. And I guess I'm wondering  
 24      what, at least to you, what that means, if anything?  
 25      A. Again, it depends on the context.       1:30PM

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1       In some cases, it -- it suggests that       1:30PM  
 2       schools are holding students back so they don't have  
 3       to participate in the testing program.  
 4       Sometimes they're holding students back so  
 5       they can expose them to the same content again.   1:30PM  
 6       Sometimes they're holding students back  
 7       and putting them into special programs to help them  
 8       learn stuff that they -- they haven't learned yet.  
 9       It depends what -- the reasons vary  
 10      widely.                               1:30PM  
 11      Q. But wouldn't any of those examples you  
 12      just gave, or reasons you just gave, be preferable  
 13      than, say, social promotion?  
 14      A. But I'm not talking about social  
 15      promotion. In holding a student back so that he   1:30PM  
 16      doesn't participate in the testing program, I don't  
 17      see how that's educationally beneficial. And, if  
 18      anything, it misleads the impact of the school on  
 19      the student's performance.  
 20      It's also problematic when you hold       1:31PM  
 21      students back and have them retake the same test,  
 22      and then try to make statements about growth within  
 23      the school when you're doing cross-sectional  
 24      analyses.  
 25      Another point is, it makes it difficult   1:31PM

<p style="text-align: right;">Page 617</p> <p>1 when these things happen to really understand what 1:31PM  2 exactly is leading to changes in student  3 performance.  4 Q. But you don't know exactly why they're  5 being retained either? 1:31PM  6 A. It varies widely.  7 Q. Looking at Page Roman numeral VII of your  8 report.  9 A. Okay.  10 Q. In the first full paragraph, the second 1:32PM  11 sentence, we talked about this briefly yesterday.  12 It says:  13 ". . .some of students' learning  14 is influenced by factors outside of  15 a school's control." 1:32PM  16 You're talking about this in the context  17 of high socioeconomic status.  18 I'm wondering if this isn't sort of  19 equally true of students who come from a low  20 socioeconomic background. Isn't it true that there 1:32PM  21 are factors that would influence their learning as  22 well?  23 A. Outside of school?  24 Q. Yes.  25 A. Oh, yes. 1:32PM</p>	<p style="text-align: right;">Page 619</p> <p>1 student learning, versus what role factors outside 1:34PM  2 of the school are having.  3 Q. Do you know what -- we talked before  4 about -- I'm trying to find your exact word here.  5 I think when Abe was asking you questions 1:34PM  6 earlier, you were talking about relationships  7 between the API and certain factors. And we didn't  8 specifically get into anything. You said there were  9 tables in here that looked at, you know,  10 relationships between the API and certain factors. 1:35PM  11 A. Right. I said there was a table.  12 Q. But I just want to clarify, a relationship  13 is not causation, correct?  14 A. No, not necessarily, no.  15 Q. And it's hard if -- well, strike that. 1:35PM  16 (Pause in proceedings.)  17 BY MS. READ-SPANGLER:  18 Q. When you looked at schools' mission  19 statements, did you look at the state's education  20 mission statement? 1:36PM  21 A. I don't recall if we did. I'm -- I don't  22 recall.  23 Q. Do you know if the state has an education  24 mission statement?  25 A. No, I don't know. That's why I don't know 1:36PM</p>
<p style="text-align: right;">Page 618</p> <p>1 Q. So that if a -- the next sentence says: 1:32PM  2 ". . .these external factors play  3 a role in high test scores, they may  4 overcome poor educational practices  5 employed within a high performing 1:33PM  6 school."  7 So, similarly, wouldn't the converse be  8 true of that, that if there's high or low test  9 scores, it would be hard to know what those are  10 attributable to? 1:33PM  11 A. Especially if you don't know anything  12 about what's happening at the school, yeah.  13 So -- is that what you asked?  14 Q. Well, I mean, I guess what I'm wondering  15 is, you know, if -- if a student or students bring 1:33PM  16 with them factors that can influence their learning,  17 whether they're from a high or a low socioeconomic  18 background, I think it's hard to ever hold  19 everything constant to determine what it is exactly  20 that's influencing their learning. 1:34PM  21 A. Right. And, again, that's why you'd want  22 to know as much -- we'd want to try to learn as much  23 about what's happening in the school so that you  24 could start to develop a -- a better understanding  25 of what role the school is having in impacting 1:34PM</p>	<p style="text-align: right;">Page 620</p> <p>1 if I looked at it. I don't remember seeing one. 1:36PM  2 Q. In your opinion, does a state's mission  3 statement have to be the same as schools' mission  4 statements?  5 MR. ROSENBAUM: Foundation. Vagueness. 1:37PM  6 THE WITNESS: Does a state's mission have  7 to be the same as a school's?  8 MS. READ-SPANGLER: For education.  9 THE WITNESS: I mean, I wouldn't think it  10 has to be a replication. I think they would be 1:37PM  11 similar.  12 BY MS. READ-SPANGLER:  13 Q. Well, you, in your report, discuss common  14 goals that you say arguably are all important,  15 common goals found in mission statements that you 1:37PM  16 say are all arguably aims for public education.  17 And I'm wondering if, in your opinion,  18 it's the state's responsibility to support those  19 common goals, and to make efforts, or to make  20 efforts to further those goals? 1:38PM  21 MR. ROSENBAUM: Compound. Vague and  22 ambiguous.  23 THE WITNESS: You mean -- are you  24 asking -- if you're asking do I believe that the  25 state should support a broad set of educational 1:38PM</p>



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1 goals that are embraced by schools generally in the 1:38PM  
 2 state, I'd say yes.  
 3 BY MS. READ-SPANGLER:  
 4 Q. How?  
 5 A. How what? 1:38PM  
 6 Q. How should it go about doing that?  
 7 A. I mean, that's -- it's gonna depend on the  
 8 goals that you're talking about.  
 9 Q. Why is it -- I'm sorry. Were you  
 10 finished? 1:38PM  
 11 A. Just -- no. It's gonna depend on the  
 12 goals that the state defines and lays out and are  
 13 generally accepted across the schools.  
 14 Q. And why is it the state's responsibility  
 15 to support those goals? 1:38PM  
 16 MR. ROSENBAUM: It's way outside his area  
 17 of expertise.  
 18 THE WITNESS: Yeah.  
 19 MR. ROSENBAUM: Super compound. Vague.  
 20 Do you want him to talk about -- calls for 1:39PM  
 21 a legal conclusion.  
 22 Go ahead, Mike.  
 23 THE WITNESS: The state plays a role in  
 24 setting up and supporting education, as I understand  
 25 it. And so, therefore, they have a role in 1:39PM

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1 supporting schools and meeting the mission, and the 1:39PM  
 2 purposes laid out, which is generally broadly  
 3 defined as a variety of educational achievements.  
 4 I mean, I don't know how else to answer  
 5 that. 1:39PM  
 6 BY MS. READ-SPANGLER:  
 7 Q. And, in your opinion, does the California  
 8 Department of Education similarly --  
 9 A. I can't answer that question.  
 10 Q. How about for the State Board? 1:39PM  
 11 A. I can't answer that question.  
 12 Q. How about for the Superintendent of Public  
 13 Instruction?  
 14 A. I can't answer that question.  
 15 Q. Why can't you answer those questions? 1:39PM  
 16 A. I don't have enough information.  
 17 Q. Okay. I don't think you really need to  
 18 refer to it, but on Page 22 you're talking about  
 19 past and current performance of California's LEP  
 20 students on the SAT-9. 1:40PM  
 21 And I'm just wondering what in your  
 22 education and background gives you expertise to form  
 23 an opinion regarding English learners?  
 24 A. Their performance on tests? I'm an expert  
 25 on tests. Scholar's interpretation of tests and use 1:40PM

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1 of tests. 1:40PM  
 2 Q. Specifically with respect to English  
 3 learners?  
 4 A. When you're describing the performance of  
 5 a group, you don't need to know -- you don't need to 1:40PM  
 6 be experts in that group.  
 7 Q. I'm not trying to be argumentative, but  
 8 I'm allowed to ask specifics. So I'm just trying  
 9 to, you know --  
 10 A. But I've already established that I have 1:40PM  
 11 expertise in tests and test use; test  
 12 interpretation.  
 13 Q. Okay. I get ask my questions too.  
 14 A. I know.  
 15 Q. I'm not trying to make you mad. 1:41PM  
 16 On Page 45, you talk about:  
 17 "One of the key variables under  
 18 the control of schools that has been  
 19 shown to influence student learning  
 20 is the quality of teachers and the 1:41PM  
 21 instructional practices employed by  
 22 teachers."  
 23 And then you go on and discuss quality of  
 24 teachers in California schools.  
 25 And I'm wondering, same question: What in 1:41PM

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1 your background in education qualifies you to give 1:41PM  
 2 an expert opinion about quality of teachers?  
 3 MR. ROSENBAUM: He's already answered  
 4 that. I mean, you're free to ask it again. But he  
 5 answered that at some length to Paul on the first 1:42PM  
 6 day, I think.  
 7 THE WITNESS: Can you ask the question  
 8 again. Just the tail end of the question is fine.  
 9 MR. ROSENBAUM: Get the whole question.  
 10 MS. READ-SPANGLER: Can you just read the 1:42PM  
 11 question back.  
 12 (Record read as follows:  
 13 "Q. On Page 45, you talk about:  
 14 'One of the key variables under  
 15 the control of schools that has been 1:41PM  
 16 shown to influence student learning  
 17 is the quality of teachers and the  
 18 instructional practices employed by  
 19 teachers.'  
 20 And then you go on and discuss 1:41PM  
 21 quality of teachers in California  
 22 schools.  
 23 And I'm wondering, same question:  
 24 What in your background in education  
 25 qualifies you to give an expert 1:42PM

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1 opinion about quality of teachers?") 1:42PM  
 2 THE WITNESS: I didn't give an expert  
 3 opinion about the quality of teachers. I gave an  
 4 expert opinion about the relationship between  
 5 quality teachers and effects on student learning, 1:43PM  
 6 and that was based on a summary of research. So if  
 7 you're asking what expertise do I have, or what  
 8 qualifications do I have to read educational  
 9 research, interpret that, and then summarize that,  
 10 in my CV I think speaks for itself. 1:43PM  
 11 BY MS. READ-SPANGLER:  
 12 Q. And then in the next-to-last sentence, it  
 13 says:  
 14 "...the CDE requires teachers to  
 15 meet specific requirements in order 1:43PM  
 16 to be credentialed."  
 17 What are the specific requirements that  
 18 CDE sets forth?  
 19 A. I don't know off the top of my head.  
 20 Q. Where did you -- what's the basis for that 1:43PM  
 21 statement?  
 22 A. Basically, there's documents on the web  
 23 that define what it is that teachers have to do in  
 24 order to be credentialed.  
 25 Q. Do you recall what documents those are? 1:43PM

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1 A. No, not off the top of my head. There's a 1:43PM  
 2 section, I believe, on the web site around  
 3 certification that talks about those things.  
 4 Q. On Page 46, it's a Table 21: Correlations  
 5 of Selected Students and School Characteristics with 1:44PM  
 6 API Scores. That's the table I alluded to earlier.  
 7 It talks about relationships.  
 8 And I'm wondering -- and it may not be on  
 9 this table at all, but do you know what the  
 10 strongest predictor -- what single factor is the 1:44PM  
 11 strongest predictor, or if there is a single factor,  
 12 of what the strongest predictor of API score is?  
 13 A. That would -- that really depends on how  
 14 you're doing the modeling.  
 15 If you're looking at just a straight -- 1:45PM  
 16 that variable that correlates most strongly with the  
 17 API?  
 18 Q. Yes.  
 19 A. On this table it would be the percent of  
 20 free and reduced lunch students in a school. 1:45PM  
 21 Q. So, simply stated, it's socioeconomic  
 22 status?  
 23 MR. ROSENBAUM: Mischaracterizes his  
 24 testimony.  
 25 MS. READ-SPANGLER: Well, let me -- 1:45PM

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1 THE WITNESS: If you take free and reduced 1:45PM  
 2 lunches a proxy for SES, but that doesn't  
 3 necessarily really incorporate all SES factors.  
 4 BY MS. READ-SPANGLER:  
 5 Q. Let me just ask this: Isn't it true that 1:45PM  
 6 socioeconomic status is the strongest predictor of  
 7 API score?  
 8 MR. ROSENBAUM: Foundation.  
 9 THE WITNESS: Yeah, I can't answer that.  
 10 Because I haven't done a full SES analysis. And -- 1:45PM  
 11 yeah, I haven't done an SES analysis, so I can't  
 12 answer that.  
 13 BY MS. READ-SPANGLER:  
 14 Q. If you wanted to analyze that, how would  
 15 you go about doing it? 1:45PM  
 16 A. I would ideally try to get student level  
 17 test scores, student level SES information, and get  
 18 school classroom level and school level SES  
 19 information, as well as a number of other pieces of  
 20 information related to what's being -- what students 1:46PM  
 21 are exposed to in schools, and try to do a  
 22 multilevel model.  
 23 Q. What if you only had available to you  
 24 school-level data? Would that affect the way you  
 25 would do the analysis? 1:46PM

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1 A. It would affect the conclusions I draw. 1:46PM  
 2 It goes back to the ecological fallacy. I  
 3 mean, you're talking about the impact on  
 4 individuals.  
 5 And, as I talk about in the report, when 1:46PM  
 6 you start aggregating and trying to make estimates  
 7 about impacts, what's affecting individual  
 8 performance based on aggregate information, you can  
 9 get very misleading results.  
 10 Q. On Page 54 -- 1:47PM  
 11 MR. ROSENBAUM: Of the report?  
 12 MS. READ-SPANGLER: Yes.  
 13 MR. ROSENBAUM: Off the record for a  
 14 minute.  
 15 (Discussion off the record.) 1:47PM  
 16 MS. READ-SPANGLER: Back on the record.  
 17 Q. Are you at Page 54?  
 18 A. Yes, I am.  
 19 Q. Yesterday, Paul asked you with regard to  
 20 the various bullet points, which are goals for a 1:48PM  
 21 comprehensive accountability system, what -- I think  
 22 he asked you what the state could do regarding some  
 23 of those goals.  
 24 And I want to ask you what you think each  
 25 of my clients could do regarding those goals. But 1:48PM

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1 let me just ask it, and it's going to be compound. 1:49PM  
 2 If I ask you what the Department of  
 3 Education, the State Board of Education and the  
 4 Superintendent of Public Instruction could or should  
 5 be doing with respect to each of these, will you be 1:49PM  
 6 able to give me any sort of answer?  
 7 A. I really can't for -- I can't because I  
 8 don't fully understand, as I said, the politics and  
 9 the way that the organizational structure works.  
 10 I'm not familiar enough with the details 1:49PM  
 11 of how that works to be able to really answer who --  
 12 how those different people should -- should work  
 13 towards these goals.  
 14 Q. Okay.  
 15 MS. READ-SPANGLER: I have no further 1:50PM  
 16 questions.  
 17 MR. ROSENBAUM: Thank you very much.  
 18 THE WITNESS: Is it too cold now?  
 19 MR. SALVATY: I'll be brief. I can just  
 20 sit here, actually. 1:50PM  
 21 MS. READ-SPANGLER: If she can hear okay.  
 22 THE REPORTER: I think I can hear you.  
 23 MR. ROSENBAUM: Do you want to stand?  
 24 MR. SALVATY: I'd like to come over right  
 25 behind professor Russell. 1:51PM

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1 EXAMINATION (CONTINUING) 1:51PM  
 2 BY MR. SALVATY:  
 3 Q. Mr. Russell, did you do any investigation  
 4 to find out what, if anything, schools are doing  
 5 with API data? 1:51PM  
 6 A. No, I did not.  
 7 Q. Did you do any investigation to find out  
 8 what, if anything, districts are doing with API  
 9 data?  
 10 A. No. 1:51PM  
 11 Q. Did you do any investigation to find out  
 12 what schools or districts are doing to analyze the  
 13 relationship between inputs and outputs?  
 14 A. What individual schools --  
 15 MR. ROSENBAUM: Foundation. 1:51PM  
 16 THE WITNESS: What individual schools and  
 17 districts?  
 18 BY MR. SALVATY:  
 19 Q. Yes.  
 20 A. No, I have not. 1:52PM  
 21 Q. Did you interview any school officials to  
 22 find out whether they find the API to be useful?  
 23 A. No.  
 24 Q. Did you interview any district officials  
 25 to find out whether they find the API to be useful? 1:52PM

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1 A. No. 1:52PM  
 2 Q. How about teachers or parents?  
 3 A. We surveyed some teachers, not directly  
 4 for this, but as part of the National Board survey.  
 5 Q. Did you -- in your survey, did you include 1:52PM  
 6 a question about whether the respondents found the  
 7 API to be useful?  
 8 A. It wasn't specific to the API. It was a  
 9 national survey, so it was specific to the state  
 10 testing program that was in place, or -- I can't 1:52PM  
 11 remember if we call it testing or assessment or  
 12 program.  
 13 Q. Did it include a question about whether  
 14 the respondents found the state testing program to  
 15 be useful? 1:52PM  
 16 A. I would have to look at the questions  
 17 again. Do you mind if I look?  
 18 Q. I don't mind.  
 19 (Pause in proceedings.)  
 20 MR. ROSENBAUM: It's vague as to what you 1:53PM  
 21 mean by "used for."  
 22 I mean, are you asking -- I take it you're  
 23 asking, is there a question on the -- is there a  
 24 question on the survey that says is the state test  
 25 useful? That's what you want to know? 1:53PM

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1 MR. SALVATY: Yes. 1:53PM  
 2 MR. ROSENBAUM: Okay.  
 3 THE WITNESS: Does it ask that  
 4 specifically in those words? No. I mean, there's  
 5 questions that come close. 1:54PM  
 6 BY MR. SALVATY:  
 7 Q. What are the questions that come close?  
 8 A. For example, one --  
 9 Q. Where are you referring to? Can I ask?  
 10 A. That's Table 20. 1:54PM  
 11 "Overall, the benefits of the  
 12 state-mandated testing program are worth the  
 13 investment of time and money."  
 14 Only 27.6 percent agree scores on the  
 15 state-mandated test accurately reflect the quality 1:54PM  
 16 of education students have received. 21 percent  
 17 agree.  
 18 I don't know.  
 19 MR. ROSENBAUM: Do you want him to go  
 20 through Table 16, 17, 18, 19? 1:54PM  
 21 MS. FANELLI: 20.  
 22 MR. ROSENBAUM: 20? He's testified to  
 23 this a lot. You're welcome to ask these questions,  
 24 but --  
 25 THE WITNESS: There's questions that are 1:55PM

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1 related to, you know, how teachers view the test, 1:55PM  
 2 and the utility of the tests broadly. "Utility" in  
 3 the sense of representing what students know and  
 4 what students are learning and the quality of  
 5 education that they're receiving. 1:55PM  
 6 MR. ROSENBAUM: I just want to be clear,  
 7 because I don't want it to be incomplete.  
 8 Do you want him to read -- he's got a  
 9 number of tables. Do you want him to go through  
 10 every one of these tables and tell you whether or 1:55PM  
 11 not they bear in any way on useful?  
 12 MR. SALVATY: No, I didn't ask for that.  
 13 MR. ROSENBAUM: Okay, thank you.  
 14 BY MR. SALVATY:  
 15 Q. Did you participate in administering this 1:55PM  
 16 survey that you're referring to?  
 17 A. What do you mean by "participate"?  
 18 Q. Did you formulate any of the questions?  
 19 A. Yes, I did.  
 20 Q. You did. 1:55PM  
 21 A. I couldn't tell you off the top of my head  
 22 which ones, though.  
 23 Q. Okay. Did you -- did you participate in  
 24 coming up with the methodology?  
 25 A. Yes, I did. 1:56PM

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1 Q. How did you participate in that? 1:56PM  
 2 A. Well, there's a number of people involved  
 3 in -- in developing the surveys. And so we would --  
 4 I mean, how far back do you want to go? From the  
 5 very beginning? 1:56PM  
 6 Q. When did your work on this begin?  
 7 A. Two-and-a-half, three years ago. I forget  
 8 when we got the grant specifically.  
 9 It goes as far as back as writing the  
 10 proposal to the foundation that funded the grant to 1:56PM  
 11 getting the money, and then reviewing a large number  
 12 of surveys that had done -- been conducted in the  
 13 past, looking at items from those that we think  
 14 might be useful. Using those and the literature to  
 15 define the domains or the sets of questions that we 1:56PM  
 16 would want to be asking.  
 17 Q. This was a survey of teachers --  
 18 MR. ROSENBAUM: Hold on. Did you finish  
 19 your answer?  
 20 THE WITNESS: No. I mean, it goes -- I go 1:57PM  
 21 on.  
 22 MR. SALVATY: It's okay. I really would  
 23 like to just ask a few more specific questions on  
 24 it.  
 25 MR. ROSENBAUM: These are not really 1:57PM

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1 brush-up questions, so -- 1:57PM  
 2 MR. SALVATY: That's why I'm trying to  
 3 move on.  
 4 MR. ROSENBAUM: I appreciate.  
 5 BY MR. SALVATY: 1:57PM  
 6 Q. We talked about this today. I don't need  
 7 you to go over again what you've already said.  
 8 This was a survey of teachers; is that  
 9 correct?  
 10 A. Yes, I was. 1:57PM  
 11 Q. Do you know how many California teachers  
 12 were surveyed?  
 13 A. I believe it was 433, but I'm not -- I  
 14 believe that's what the number.  
 15 Q. Do you know how the decision was made to 1:57PM  
 16 come up with the number of California teachers to be  
 17 surveyed?  
 18 A. Oh, pardon me. I believe that's the  
 19 number of respondents. I don't know the number of  
 20 surveys sent out to California. 1:57PM  
 21 Q. Do you know how many teachers there are in  
 22 California's public schools?  
 23 A. No, not off the top of my head.  
 24 Q. Are you able to give a ballpark estimate?  
 25 MR. ROSENBAUM: Foundation. Speculation. 1:58PM

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1 THE WITNESS: No, I wouldn't want to just 1:58PM  
 2 guess.  
 3 You asked a question before that I didn't  
 4 answer.  
 5 MR. SALVATY: I'm sorry? 1:58PM  
 6 MR. ROSENBAUM: He said it was okay.  
 7 THE WITNESS: Okay.  
 8 BY MR. SALVATY:  
 9 Q. About your work on the survey?  
 10 A. No, about how the teachers were selected. 1:58PM  
 11 Q. Oh, okay. Please do answer that.  
 12 A. We contracted with -- now I forget the  
 13 name of the company -- Market Data Retrieval, that  
 14 has a list of teachers nationwide. It's fair --  
 15 it's commonly used by educational researchers to 1:58PM  
 16 basically get a population sample. It's probably --  
 17 I'm gonna guess it includes about 95 percent of the  
 18 teachers that had been teaching the year before,  
 19 usually.  
 20 We had defined -- we had classified states 1:58PM  
 21 into different types of testing programs, based on  
 22 the stakes for students and stakes for teachers.  
 23 Then within each of those samples, those -- those  
 24 groups, teachers were selected. And I don't  
 25 remember all the details. It's described in the -- 1:59PM

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1 in that report that you were sent. California was 1:59PM  
 2 classified into one of those groups, and then  
 3 teachers were pulled from that.  
 4 Q. Okay. Thank you.  
 5 Other than this survey, putting this 1:59PM  
 6 survey aside you've been talking about, did you  
 7 interview any teachers in California to find out  
 8 whether they find the API to be useful?  
 9 A. No, I did not.  
 10 Q. Did you interview any parents to find out 1:59PM  
 11 whether they find the API to be useful?  
 12 A. I did not, no.  
 13 Q. You testified that, in your opinion,  
 14 educators generally agree on what things are  
 15 essential for learning; is that correct? 2:00PM  
 16 A. Yeah, generally, yeah.  
 17 Q. Do you believe educators generally agree  
 18 on what makes a good teacher?  
 19 MR. ROSENBAUM: Vague. Vague and  
 20 ambiguous. 2:00PM  
 21 THE WITNESS: Yeah, I don't know. I don't  
 22 know. That's the best I can say.  
 23 BY MR. SALVATY:  
 24 Q. Do you believe that educators generally  
 25 agree on the def- -- definition of a qualified 2:00PM

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1 teacher? 2:00PM  
 2 A. I don't know.  
 3 Q. Do you believe educators generally agree  
 4 about the best ways to improve student learning?  
 5 A. I'd say that -- no. 2:00PM  
 6 Q. Do you believe educators generally agree  
 7 about the role technology should play in the  
 8 classroom?  
 9 A. No, I would say there's not agreement yet.  
 10 MR. ROSENBAUM: Many of these questions 2:01PM  
 11 are outside the scope of this report.  
 12 BY MR. SALVATY:  
 13 Q. Do you believe educators generally agree  
 14 about the role instructional materials should play  
 15 in the classroom? 2:01PM  
 16 A. Do you mean the way in which the pedagogy  
 17 used --  
 18 Q. Yes.  
 19 A. -- or the existence of those?  
 20 Q. The pedagogy. 2:01PM  
 21 A. No, I don't think there's an agreement on  
 22 pedagogy.  
 23 Q. Do you believe educators generally agree  
 24 about how to improve the quality of school  
 25 facilities? 2:01PM

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1 A. I can't answer that question. 2:01PM  
 2 There's a big difference between how you  
 3 do things and the things that should be done. So  
 4 it's difficult for me to answer questions when  
 5 you're asking is there agreement on how, versus 2:02PM  
 6 whether it should be done. It's two different --  
 7 two different concepts.  
 8 Q. Do you have an opinion about whether Rhode  
 9 Island will need to make major changes to its  
 10 accountability program in order to comply with the 2:02PM  
 11 NCLB?  
 12 A. It depends what you mean by "major."  
 13 Q. Well, I just mean common -- we talked  
 14 about this yesterday. I think you talked about  
 15 stability in the system, and you explained that 2:02PM  
 16 there had not really been any major changes to the  
 17 Rhode Island accountability program since 1986; is  
 18 that correct?  
 19 A. Right.  
 20 Q. Do you have an opinion about whether Rhode 2:02PM  
 21 Island will need to make major changes to its  
 22 accountability program, using that term as we used  
 23 it yesterday, in order to comply with the NCLB?  
 24 A. I don't believe they need to make major  
 25 changes to the program in the grades in which 2:02PM

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1 they're currently testing. 2:02PM  
 2 They will need to make additions, in the  
 3 sense that they need to test more grades. But I --  
 4 as I understand it, they won't have to make any  
 5 changes in those tests -- the grades that they're 2:03PM  
 6 already testing.  
 7 Q. Do you have an opinion about whether  
 8 Connecticut will need to make major changes to its  
 9 accountability program in order to comply with the  
 10 NCLB? 2:03PM  
 11 A. Again, it's basically the same thing, I  
 12 think. If anything, they would just need to test  
 13 more grades. But I, off -- off the top of my head,  
 14 I can't remember if that's even true or not in  
 15 Connecticut. 2:03PM  
 16 Q. How about Maine?  
 17 A. Yeah, Maine will have to make some major  
 18 changes.  
 19 Q. In your opinion, does Maine have a stable  
 20 accountability system? 2:03PM  
 21 MR. ROSENBAUM: Vague.  
 22 THE WITNESS: I -- I can't answer that or  
 23 not. I would need to review the history.  
 24 BY MR. SALVATY:  
 25 Q. Of the states' accountability programs 2:04PM

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1 that you have looked at, which would you 2:04PM  
 2 characterize as stable?  
 3 A. Texas has been stable. I think Maryland's  
 4 has been pretty stable.  
 5 MR. ROSENBAUM: Paul, these are not 2:04PM  
 6 brush-up questions. This is not the way you  
 7 characterize it. I'm not going to give you much  
 8 more time.  
 9 THE WITNESS: I would say -- we talked  
 10 about Connecticut. I mentioned Rhode Island. 2:04PM  
 11 I'd say since the M test was introduced,  
 12 it's been borderline -- that's in Massachusetts.  
 13 It's borderlining on being stable.  
 14 BY MR. SALVATY:  
 15 Q. Any others? 2:05PM  
 16 A. I'd have to look at the histories more  
 17 closely in the other states to be able to classify  
 18 them.  
 19 Q. I think this morning you were talking  
 20 about the difficulties that districts would face if 2:05PM  
 21 they had to develop their own tests, their own  
 22 accountability programs; is that right?  
 23 A. Yes.  
 24 MR. ROSENBAUM: That mischaracterizes a  
 25 little bit. 2:05PM

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1 BY MR. SALVATY: 2:05PM  
 2 Q. Do you have an opinion about whether it  
 3 would make sense for a state to develop tests to be  
 4 used statewide, and then to leave input analysis to  
 5 the individual districts or schools? 2:05PM  
 6 A. Input analysis or input data collection?  
 7 Q. Input data collection and analysis.  
 8 A. I mean, I -- this morning, I talked about  
 9 desirability and probably cost-effectiveness of the  
 10 state creating a -- some type of system that 2:06PM  
 11 includes a set of tools that the districts and  
 12 schools could use to collect that information, and  
 13 that that information would then be made available  
 14 to -- at the school level, the district level and at  
 15 the state level. 2:06PM  
 16 So if you're asking me do I think that  
 17 the -- should the schools be responsible for  
 18 developing the instrumentation and defining all the  
 19 elements, input elements that would be collected, I  
 20 think the state should play a role in that. 2:06PM  
 21 Q. Why do you believe the state should play a  
 22 role in that?  
 23 A. Cost effectiveness. Quality of  
 24 instruments. And also develop -- helping develop --  
 25 just the state's been effective in developing 2:07PM

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1 content, essentially content standards and 2:07PM  
 2 performance standards. Whether people like them or  
 3 not, they've been effective in developing them.  
 4 The state, I think, should play a role in  
 5 developing of -- developing opportunity-to-learn 2:07PM  
 6 standards. Pardon me.  
 7 Q. What do you mean by a cost effectiveness?  
 8 A. Again, if you have a large number of  
 9 districts trying to develop essentially the same  
 10 instrument in each district, you're going to have a 2:07PM  
 11 handful of people working on that process.  
 12 If you did it at the state level, you'd  
 13 still have a handful of people, but it wouldn't be  
 14 replicated across all the districts. So you are  
 15 going to save an enormous amount of money. 2:07PM  
 16 Q. I think you testified this morning that  
 17 you do not believe the state should do school-level  
 18 analysis of data for every single school. Is that  
 19 right?  
 20 A. I don't think the state should be doing 2:08PM  
 21 the analysis in producing an individual kind of  
 22 school report. That's effectively look- -- looking  
 23 at the relationships between inputs and outputs.  
 24 Q. Do you believe the school -- excuse me.  
 25 Do you believe the state should do such an 2:08PM

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1 analysis for some number of schools in the state? 2:08PM  
 2 MR. ROSENBAUM: It's vague. Ambiguous.  
 3 THE WITNESS: Yeah, again, it depends on  
 4 what the agreed-upon purpose of the whole  
 5 accountability system is. 2:09PM  
 6 I mean, I think earlier today we talked a  
 7 little bit about the evaluators and whether there  
 8 should be an evaluator in every school. And I think  
 9 there's a role the state should play in -- in kind  
 10 of checking, or monitoring, if you will, on some 2:09PM  
 11 occasional basis -- I'm not sure what that time  
 12 frame should be -- what schools and/or districts are  
 13 really finding. So there should be some kind of  
 14 validation of that self-reflection process, the  
 15 findings from the self-reflection process. You 2:09PM  
 16 know, Rhode Island does it essentially every five  
 17 years as part of the five-year cycle.  
 18 So something along those lines, I think  
 19 the state should -- should play a role in. I  
 20 just -- I'm not sure exactly what it should look 2:10PM  
 21 like.  
 22 BY MR. SALVATY:  
 23 Q. Do you have an opinion about whether  
 24 implementation of the NCLB will have a positive  
 25 effect on education, in your eyes? 2:10PM

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1 A. It's too early to really say. 2:10PM  
 2 Q. You don't have an opinion one way or the  
 3 other right now?  
 4 MR. ROSENBAUM: He just answered.  
 5 THE WITNESS: I -- I have concerns about 2:10PM  
 6 it, but I don't have an opinion as to whether it's  
 7 going to be effective or not. It's too early to  
 8 know.  
 9 BY MR. SALVATY:  
 10 Q. What are your concerns about it? 2:10PM  
 11 A. I'm -- my main concern is that it's gonna  
 12 lead to a -- even increase -- well, increase,  
 13 decrease, if you will. The decrease of concern and  
 14 focus on inputs in -- and what schools are actually  
 15 doing in order to meet some of the growth 2:11PM  
 16 expectations laid out in that legislation.  
 17 I also have some concerns about funding  
 18 that the federal government will provide to -- to  
 19 states to help them support some of the things that  
 20 many of the states are gonna have to do in order to 2:11PM  
 21 be in compliance.  
 22 Q. Why are you concerned that it's going to  
 23 lead to a decreased focus on inputs?  
 24 A. Because from my perspective, the  
 25 legislation basically is focusing on outputs, and it 2:11PM

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1 doesn't -- it doesn't really provide any reason for 2:11PM  
 2 schools to try to explain why they're obtaining  
 3 increases in their test scores. And, so, in some  
 4 settings, schools, districts and/or states are  
 5 likely to do whatever it takes to have those -- 2:12PM  
 6 those increases, irregardless of how they're doing  
 7 it.  
 8 Q. Let me just follow up on one thing you  
 9 mentioned this morning.  
 10 You said -- you mentioned the standards, 2:12PM  
 11 Standards Reference Exam. And I think you said  
 12 that's the test that's being used in Rhode Island?  
 13 A. The New Standards Reference Exam.  
 14 Q. What is the New Standard Reference Exam?  
 15 A. It's a criterion-referenced standardized 2:12PM  
 16 test, initially developed by the New Standards  
 17 group -- I forget their official name -- that the  
 18 Resnicks had founded.  
 19 And the test was eventually acquired, I  
 20 believe it was by Harcourt-Brace. So it's a 2:13PM  
 21 commercially available Criterion Reference Test.  
 22 Q. Is that test being used in any states  
 23 other than Rhode Island?  
 24 A. I believe Vermont is using it.  
 25 Q. Do you have an opinion about the quality 2:13PM

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1 of that test? 2:13PM  
 2 A. Well, it's well-aligned with the New  
 3 Standards which Rhode Island has adopted.  
 4 So if -- if you're talking about a test  
 5 that's -- essentially, which test is aligned with 2:13PM  
 6 the state standards in Rhode Island, I don't really  
 7 have much of a concern about that aspect of it.  
 8 I can't really speak to the reliability of  
 9 scoring of student responses. I haven't seen any  
 10 evidence. 2:13PM  
 11 Q. You mentioned the New Standards.  
 12 Is that -- is that the standards that  
 13 were -- well, let me back up.  
 14 Did Rhode Island develop its own contents  
 15 standards? 2:14PM  
 16 A. They adopted the new standards.  
 17 Standards. It's confusing.  
 18 Q. Is "New Standards" in capital letters,  
 19 capital New, capital Standards?  
 20 A. Yeah. Let me just -- well, ask your 2:14PM  
 21 question. I'm sorry.  
 22 Q. What the are the "New Standards," capital  
 23 New, capital Standards?  
 24 A. Again, it came out of the project that the  
 25 Lor- -- that the Resnicks have lead. I don't 2:14PM

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1 remember who the funding agent was it for now. But 2:14PM  
 2 they developed -- they worked with a group of -- a  
 3 number of people to develop standards in the English  
 4 language arts; mathematics.  
 5 I can't remember if there are social study 2:14PM  
 6 standards or not. There might be science standards  
 7 too. I don't remember all the different areas.  
 8 And then they developed tests that were  
 9 aligned with those standards.  
 10 As I said, Rhode Island adopted the 2:14PM  
 11 standards, and then started using them, the tests  
 12 that were developed to be aligned with the  
 13 standards.  
 14 Q. Are any other states using the New  
 15 Standards? 2:15PM  
 16 A. I don't know.  
 17 Q. Do you know when the New Standards were  
 18 developed?  
 19 A. It was during the early to mid-'90s.  
 20 Q. What about the Standards Reference Exam; 2:15PM  
 21 do you know when that was developed?  
 22 A. Sometime after the standards, but I -- I  
 23 don't know the exact dates.  
 24 Q. Do you have an opinion about how the  
 25 quality of the New Standards compares to 2:15PM

1 California's content standards? 2:16PM  
 2 MR. ROSENBAUM: Foundation. Vagueness.  
 3 THE WITNESS: No, I haven't done a  
 4 systematic comparison. I'm not really an expert in  
 5 developing -- I'm not a curricular expert, so I 2:16PM  
 6 can't really say.  
 7 To be clear, when I talk about Rhode  
 8 Island and the standards and the New Standards  
 9 Reference Exam, in the report I'm certainly not  
 10 suggesting -- and in my testimony, I'm not 2:16PM  
 11 suggesting that California adopt those, just to be  
 12 clear.  
 13 MR. SALVATY: All right. I have no  
 14 further questions at this time.  
 15 MR. ROSENBAUM: Thank you very much. No 2:16PM  
 16 questions.  
 17 MS. SHARGEL: Could we have a minute  
 18 before? I'm sorry. Could I just go off the record  
 19 for a second. Take a three-minute break.  
 20 MR. SALVATY: Do you have a couple 2:17PM  
 21 questions?  
 22 MS. SHARGEL: Yeah.  
 23 (Discussion off the record.)  
 24 MR. SALVATY: Are we back on?  
 25 Q. I have one question that I forgot to ask, 2:22PM

1 and I'd like to ask it. I can do it either now -- 2:22PM  
 2 MR. ROSENBAUM: Go ahead.  
 3 BY MR. SALVATY:  
 4 Q. I wanted to ask Professor Russell just to  
 5 identify a document I found. 2:22PM  
 6 A. Okay.  
 7 Q. It's document Bates No. PLTF-XP-MR 2834.  
 8 A. Yes.  
 9 Q. What is this document?  
 10 A. Yeah, you're right. I totally forgot 2:23PM  
 11 about this.  
 12 I read a draft of a paper by these folks,  
 13 and, so, these are comments that I was sending to  
 14 them.  
 15 Q. When did you read that? 2:23PM  
 16 A. I have no recollect- -- until I saw this,  
 17 I have no recollection of doing this. I'm guessing  
 18 it would have been -- I don't even know.  
 19 MR. ROSENBAUM: Don't guess.  
 20 THE WITNESS: I don't even know. It would 2:23PM  
 21 have been a while ago.  
 22 BY MR. SALVATY:  
 23 Q. Did you review any other draft reports by  
 24 other experts?  
 25 A. I really don't -- God, I just don't 2:23PM

1 remember. 2:23PM  
 2 Q. Did you ever discuss your comments here  
 3 with the individuals who wrote the report?  
 4 A. I know what this was from. This is the --  
 5 for the summer conference that was held in July. I 2:24PM  
 6 wasn't able to attend, so I had written up my  
 7 comments and send it to them. That's what this is  
 8 from.  
 9 And so this is -- I believe we are asked  
 10 as part of this to review one other report, one -- 2:24PM  
 11 another person's report, and at the meeting, people  
 12 present their comments, and again, because I  
 13 couldn't attend, I sent these. I believe that's  
 14 what this is.  
 15 Q. Okay. Did I -- I can't remember if you 2:24PM  
 16 answered my question.  
 17 Do you remember -- did you ever speak to  
 18 Valerie Lee, Douglas Ready or Kevin Welner about  
 19 their report on school overcrowding?  
 20 A. To the best of my knowledge, I did not. 2:24PM  
 21 I sent this because I was unable to  
 22 participate in that part of the conference via phone  
 23 when they were talking about my report.  
 24 Q. Do you still have a copy of this draft  
 25 report referenced here? 2:25PM

1 A. I seriously doubt it. There's no reason 2:25PM  
 2 for me to save it.  
 3 Q. Who did you send this document to, this  
 4 memo?  
 5 A. I don't know for sure, but I -- 2:25PM  
 6 MR. ROSENBAUM: Don't guess.  
 7 THE WITNESS: It would have been someone  
 8 who was preparing -- helping prepare for that  
 9 conference. I don't know who that person would have  
 10 been. 2:25PM  
 11 MR. SALVATY: Okay. I don't have any  
 12 further questions about this. I just want to mark  
 13 it as the next in order. Thank you.  
 14 THE WITNESS: Thank you.  
 15 (Deposition Exhibit 7 was marked for 2:25PM  
 16 identification and is annexed hereto.)  
 17 MS. SHARGEL: I just have a few questions  
 18 to follow up on Paul's questions.  
 19  
 20 EXAMINATION (CONTINUING) 2:25PM  
 21 BY MS. SHARGEL:  
 22 Q. On Page 17, Roman numeral xvii, xviii --  
 23 MR. ROSENBAUM: Hold on a minute. Get the  
 24 report back. What's on top of the page, please?  
 25 17. 2:26PM



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1 MS. SHARGEL: Top of the page, new 2:26PM  
 2 paragraph, "PSAA requires."  
 3 MR. SALVATY: I brought an extra copy.  
 4 THE WITNESS: Thank you, Paul.  
 5 MS. READ-SPANGLER: Roman numeral xvii. 2:26PM  
 6 MR. ROSENBAUM: O'Melveny did this.  
 7 THE WITNESS: It's no better than ours.  
 8 MR. SALVATY: That's right, it isn't. Are  
 9 the -- pages aren't on.  
 10 THE WITNESS: They got cut off. 2:26PM  
 11 MR. SALVATY: It's in 3.2.  
 12 MR. ROSENBAUM: Here it is.  
 13 MR. SALVATY: Section 3272.  
 14 THE WITNESS: Is it real 17 or Roman xvii?  
 15 MS. READ-SPANGLER: Roman. 2:26PM  
 16 BY MS. SHARGEL:  
 17 Q. Looking at this list, beginning at the  
 18 second half of the page, "Access to quality  
 19 teachers" or "Access to Books" --  
 20 A. Yes. 2:26PM  
 21 Q. -- and going on to the following page, is  
 22 it fair to say that that's a list of the key inputs  
 23 that a school should be looking at?  
 24 MR. ROSENBAUM: Vague.  
 25 THE WITNESS: Well, I say in the first 2:27PM

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1 sentence here, "Programs and practices of interest 2:27PM  
 2 might include but should not be limited to:"  
 3 MS. SHARGEL: Right.  
 4 THE WITNESS: So, you know, it's not for  
 5 me to decide where the key inputs that a state 2:27PM  
 6 should be collecting information about.  
 7 I mean, again, I talked about a process  
 8 that should occur, where a group is defining  
 9 opportunity-to-learn standards. But it seems to me  
 10 that things like these would likely end up in that 2:27PM  
 11 type of a document that summarizes those  
 12 opportunity-to-learn standards.  
 13 BY MS. SHARGEL:  
 14 Q. Okay. Do you have any opinion as to what  
 15 the opportunity-to-learn standards would look like 2:27PM  
 16 for any one of these inputs for the State of  
 17 California?  
 18 Do you have any recommendation?  
 19 A. No. Again, I'm not an expert in -- in  
 20 these -- each of these individual areas. 2:28PM  
 21 MR. ROSENBAUM: I think that question's  
 22 vague and ambiguous.  
 23 BY MS. SHARGEL:  
 24 Q. Okay. But you don't -- so I mean, is it  
 25 fair to say, then, you don't have any specific idea 2:28PM

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1 as to what California should implement as an 2:28PM  
 2 opportunity-to-learn standard vis-a-vis each of  
 3 these inputs, or any one of these inputs?  
 4 MR. ROSENBAUM: Any idea whatsoever?  
 5 BY MS. SHARGEL: 2:28PM  
 6 Q. Any opinion.  
 7 A. You mean about how I would define "access  
 8 to quality teachers" ?  
 9 Q. No. I mean, do you have any  
 10 recommendation to the State of California as to what 2:28PM  
 11 the opportunity-to-learn standard would be?  
 12 A. Well, it would be a series of -- I would  
 13 call it standards instead of standard. And it would  
 14 include a series of basically inputs that are  
 15 deemed, you know, minimally essential to call 2:28PM  
 16 something a -- a decent functioning school.  
 17 Q. Do you have any opinion as to what  
 18 California should deem minimally essential for  
 19 access to quality teachers, or access to books,  
 20 or -- 2:29PM  
 21 MR. ROSENBAUM: He's already testified  
 22 about that.  
 23 BY MS. SHARGEL:  
 24 Q. -- adequacy of school facilities?  
 25 MR. ROSENBAUM: He's testified about all 2:29PM

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1 of those. He's referred to the report and he 2:29PM  
 2 answered a bunch of questions on that. That's not  
 3 an appropriate come-back question.  
 4 I mean, I can quote you his answers, but  
 5 this was gone into at considerable length. 2:29PM  
 6 THE WITNESS: I mean, again, I wouldn't --  
 7 I don't think I have the expertise to say what the  
 8 proper ratio of students to textbooks should be. It  
 9 seems to me it ought to be one-to-one, but I don't  
 10 know. I'm not an expert in -- 2:29PM  
 11 MS. SHARGEL: Okay.  
 12 THE WITNESS: -- instructional materials.  
 13 I'm not an expert in school facilities.  
 14 BY MS. SHARGEL:  
 15 Q. And you don't have any specific 2:29PM  
 16 recommendations for what the opportunity-to-learn  
 17 standard should look like for each one of these?  
 18 MR. ROSENBAUM: Yeah, I'm really --  
 19 MS. READ-SPANGLER: Can you let her finish  
 20 her question. 2:30PM  
 21 MR. ROSENBAUM: Yeah, but I want an  
 22 opportunity to object.  
 23 MS. SHARGEL: Did you hear my question?  
 24 MS. READ-SPANGLER: I didn't actually hear  
 25 the question. 2:30PM

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1 (Record read as follows: 2:30PM  
 2 "Q. And you don't have any  
 3 specific recommendations for what  
 4 the opportunity-to-learn standard  
 5 should look like for each one of 2:30PM  
 6 these?")  
 7 MR. ROSENBAUM: He has answered that  
 8 question repeatedly.  
 9 This is what you -- too many of your  
 10 questions take his long, complicated and thoughtful 2:30PM  
 11 answers, and try to boil it down to a simple  
 12 statement that misrepresents what he testified.  
 13 He had -- mischaracterizes his testimony.  
 14 He has gone over these matters at length in his  
 15 report in testimony, and it's been asked and 2:30PM  
 16 answered.  
 17 And I'm going to strongly object to this.  
 18 THE WITNESS: I mean, if you're asking  
 19 what do I think the document should look like that  
 20 contains the opportunity-to-learn standards? 2:30PM  
 21 BY MS. SHARGEL:  
 22 Q. No. What do you think the  
 23 opportunity-to-learn standards --  
 24 MR. ROSENBAUM: Asked and answered.  
 25 ////

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1 BY MS. SHARGEL: 2:30PM  
 2 Q. -- should be?  
 3 A. Again, it's not a standard, it's  
 4 standards. It's a series of standards.  
 5 MR. ROSENBAUM: Completely 2:30PM  
 6 mischaracterizing his testimony. It's not  
 7 appropriate.  
 8 MS. SHARGEL: Okay.  
 9 THE WITNESS: As I said, programs and  
 10 practice of interest might include -- so you can 2:31PM  
 11 substitute opportunity-to-learn standards of  
 12 interest might include, but should not be limited to  
 13 all the things that I list here.  
 14 How you go about defining what access to  
 15 what a quality teacher is, that's not my area of 2:31PM  
 16 expertise.  
 17 MS. SHARGEL: Okay. That's all I wanted  
 18 to know.  
 19 Q. And just finally, aside from cost  
 20 effectiveness, is there any reason why you don't 2:31PM  
 21 think that opportunity-to-learn standards should not  
 22 vary by district according to each district's  
 23 specific needs?  
 24 MR. ROSENBAUM: That mischaracterizes his  
 25 testimony also. He laid out several factors about 2:31PM

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1 that, and that was just one of them. And it's not 2:31PM  
 2 an appropriate question.  
 3 THE WITNESS: Okay. I'm sorry, can you  
 4 ask it again?  
 5 MS. SHARGEL: I'm sorry. I didn't mean 2:31PM  
 6 the mischaracterize your testimony --  
 7 THE WITNESS: What was the question?  
 8 BY MS. SHARGEL:  
 9 Q. Aside from cost effectiveness, are there  
 10 other reasons why each district should not implement 2:32PM  
 11 its own opportunity-to-learn standards according to  
 12 its own needs?  
 13 A. Well, I didn't talk about -- I don't  
 14 believe I talked about districts developing their  
 15 own opportunity-to-learn standards. I think I 2:32PM  
 16 talked about districts developing instruments and  
 17 methodologies and systems for collecting that  
 18 information. And that when I was talking about  
 19 that, in addition to the cost, there's the expertise  
 20 needed to develop quality instruments. And then -- 2:32PM  
 21 I mean, again, as I talked about at length, I think  
 22 in order for the system, the state system, to really  
 23 understand what's happening, what -- basically,  
 24 yeah, what's happening, you wouldn't -- you need to  
 25 have common information collected across settings. 2:32PM

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1 Q. Are there any other reasons why each 2:33PM  
 2 district shouldn't be developing its own  
 3 opportunity-to-learn standards --  
 4 A. Again --  
 5 Q. -- on its own -- 2:33PM  
 6 MR. ROSENBAUM: You're mischaracterizing  
 7 his testimony.  
 8 MS. SHARGEL: Sorry, I didn't mean to.  
 9 Q. -- methodology?  
 10 A. For collecting that? 2:33PM  
 11 Q. Yes.  
 12 A. Besides the cost, besides the lack of  
 13 expertise, and besides the lack of common comparable  
 14 aggregate -- aggregatable information, no, I can't  
 15 think of anything else off the top of my head. 2:33PM  
 16 Q. Do you have any knowledge about LAUSD's  
 17 expertise in developing meth- -- methodology for  
 18 collecting input information?  
 19 A. No, I don't.  
 20 MR. ROSENBAUM: Foundation. Vagueness. 2:33PM  
 21 MS. SHARGEL: No further questions.  
 22 MR. ROSENBAUM: Okay.  
 23 MR. SALVATY: Thank you.  
 24 MR. ROSENBAUM: Thank you very much. You  
 25 all have a nice weekend. 2:33PM

1 (Discussion off the record.) 2:34PM  
 2 MR. ROSENBAUM: Whatever you want to  
 3 supply the reporter is going to be the stipulation,  
 4 it's fine with me.  
 5 MR. SALVATY: Okay.  
 6 (TIME NOTED: 2:34 P.M.)  
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1 STATE OF CALIFORNIA ) ss:  
 2 COUNTY OF LOS ANGELES )  
 3  
 4 I, KATHY KELLOGG, CSR No. 6591, do  
 5 hereby certify:  
 6  
 7 That the foregoing deposition of MICHAEL  
 8 RUSSELL was taken before me at the time and place  
 9 therein set forth, at which time the witness was  
 10 placed under oath and was sworn by me to tell the  
 11 truth, the whole truth, and nothing but the truth;  
 12  
 13 That the testimony of the witness and all  
 14 objections made by counsel at the time of the  
 15 examination were recorded stenographically by me,  
 16 and were thereafter transcribed under my direction  
 17 and supervision, and that the foregoing pages  
 18 contain a full, true and accurate record of all  
 19 proceedings and testimony to the best of my skill  
 20 and ability.  
 21  
 22 I further certify that I am neither counsel for  
 23 any party to said action, nor am I related to any  
 24 party to said action, nor am I in any way interested  
 25 in the outcome thereof.

1 I declare under penalty of perjury  
 2 under the laws of the State of California  
 3 that the foregoing is true and correct.  
 4 Executed on \_\_\_\_\_, 2003,  
 5 at \_\_\_\_\_, \_\_\_\_\_.  
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 SIGNATURE OF THE WITNESS

1 IN WITNESS WHEREOF, I have subscribed my name  
 2 this 10th day of March, 2003.  
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 8 KATHY KELLOGG, CSR No. 6591  
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VOLUME I

FRIDAY, FEBRAURY 21, 2003

WITNESS EXAMINATION

MICHAEL RUSSELL, Ph.D.

(By Mr. Hajela)	500
(By Ms. Shargel)	516, 652
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DEPOSITION EXHIBIT  
MICHAEL RUSSELL, Ph.D.

NUMBER	DESCRIPTION	IDENTIFIED
7	Two-page document titled, "School Overcrowding"; Bates stamped PLTF-XP-MR 2834 to -35	652