

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

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

DEPOSITION OF HERBERT J. WALBERG  
Los Angeles, California  
Monday, July 7, 2003  
Volume I

Reported by:  
SHERRYL DOBSON, RPR

CSR No. 5713

JOB No. 43697

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 2 FOR THE COUNTY OF SAN FRANCISCO  
 3  
 4 ELIEZER WILLIAMS, et al., )  
 )  
 5 Plaintiff, )  
 )  
 6 vs. ) No. 312236  
 )  
 7 STATE OF CALIFORNIA, et al., )  
 )  
 8 Defendants. )

9 \_\_\_\_\_ )  
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 11  
 12 Deposition of HERBERT J. WALBERG,  
 13 Volume 1, taken on behalf of  
 14 Plaintiffs, at 555 West 5th Street,  
 15 35th Floor, Los Angeles, California,  
 16 beginning at 9:29 a.m. and ending at  
 17 4:52 p.m. on Monday, July 7, 2003,  
 18 before SHERRYL DOBSON, Certified  
 19 Shorthand Reporter No. 5713.  
 20  
 21  
 22  
 23  
 24  
 25

1 APPEARANCES:  
 2  
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 20 MELISSA ROUDABUSH  
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 22  
 23  
 24  
 25

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1 Los Angeles, California, Monday, July 7, 2003  
 2 9:29 a.m. - 4:52 p.m.  
 3  
 4 HERBERT J. WALBERG,  
 5 having been first duly sworn, was examined and testified  
 6 as follows:  
 7  
 8 EXAMINATION  
 9 BY MR. ROSENBAUM:  
 10 Q Dr. Walberg, how are you?  
 11 A I am fine. Thank you.  
 12 Q I apologize. I was told 9:30. I should have  
 13 checked it out better. Sorry to make you wait.  
 14 A Not a problem.  
 15 Q You've been deposed many times?  
 16 A Perhaps about two dozen times.  
 17 Q Okay. So I take it you're generally familiar  
 18 with the rules and procedures?  
 19 A Yes. But if there's something important that I  
 20 should know, from your point of view -- this is the  
 21 first time I've testified in California.  
 22 Q Okay. Well, the sun only shines in  
 23 California.  
 24 A Glad to hear it.  
 25 Q You've been deposed many times, but I will be

1 glad to go over the general rules and procedures.  
 2 You've had a chance to talk them over with your  
 3 attorney?  
 4 A I did.  
 5 Q Okay. I'm going to be asking you some  
 6 questions regarding the case Williams versus State of  
 7 California. It's not my intent to try to trick you or  
 8 deceive you but rather to get the fullest, most complete  
 9 answers I can.  
 10 Do you understand that?  
 11 A Yes.  
 12 Q Therefore, if you don't understand any of my  
 13 questions or you simply want my questions repeated, just  
 14 ask me and I'll be glad to clarify or restate the  
 15 questions.  
 16 Do you understand that?  
 17 A Yes.  
 18 Q You know, of course, that you're testifying  
 19 under oath, and even though we're in an informal setting  
 20 here, you're testifying under the same pains and  
 21 penalties of perjury as if you were in a court of law.  
 22 Do you understand that?  
 23 A Yes.  
 24 Q And you know that at the end of the deposition,  
 25 you'll get a copy of a booklet -- you'll get a booklet.

1 It's got my questions, your answers, other attorneys'  
 2 questions, your counsel's comments or questions. And  
 3 you'll have an opportunity to review that.  
 4 Do you know that?  
 5 A I didn't know that, but I'm glad to hear it.  
 6 Q Okay. Well, you'll --  
 7 A I assumed it, I should say, because I've done  
 8 it almost every time.  
 9 Q Okay. Well, you'll get a chance to review your  
 10 deposition, and you're actually free to make any changes  
 11 to any of your answers that you desire.  
 12 Do you understand that?  
 13 A Actually, let me ask about that. You mean, in  
 14 other words, I could change it to something -- I thought  
 15 I -- in depositions I had to say this is what I said,  
 16 and it was miss-copied or misread.  
 17 Q No, actually, you're free to change your  
 18 answers, to expand, contract, change things.  
 19 A I didn't realize that. I'm glad you told me.  
 20 Q Okay. But I do want you to understand that, if  
 21 you do change any of your answers, either myself or any  
 22 of the counsel in this case are free to comment on those  
 23 changes, and to draw whatever inferences we think are  
 24 appropriate, including unfavorable inferences.  
 25 So you understand that?

1 A Yes.  
 2 Q So again, it's terribly important that you  
 3 answer as fully and fairly as you possibly can.  
 4 Do you understand that?  
 5 A Yes.  
 6 Q Any reason we shouldn't go forward?  
 7 A Not that I know of.  
 8 Q Okay.  
 9 MR. ROSENBAUM: Let's go off the record for a  
 10 moment.  
 11 (Discussion off the record)  
 12 BY MR. ROSENBAUM:  
 13 Q Dr. Walberg, when did you first learn of the  
 14 Williams case?  
 15 A I'm a little shaky on dates, but it might have  
 16 been nine or twelve months ago.  
 17 Q Okay. And could you tell me --  
 18 A Oh, excuse me. That's when I was first  
 19 contacted by the attorneys, but I had read about it, I  
 20 think, in the newspapers, perhaps when it was first  
 21 announced.  
 22 Q Okay. And do you remember which newspapers you  
 23 read about it in?  
 24 A No.  
 25 Q Was it the L.A. Times or the New York Times?

1 A I subscribe to a search of education issues and  
 2 all kinds of issues, and I remember seeing it.  
 3 Q Okay. And did you form any conclusions or have  
 4 any impressions about the case when you first read about  
 5 it?  
 6 A No.  
 7 Q Do you remember reading -- help me understand  
 8 this service.  
 9 This service actually prints out articles that  
 10 are related to education?  
 11 A It scans about 300 newspapers and other sources  
 12 of information, and -- but it's strictly confined to  
 13 education -- school issues.  
 14 Q Okay. What's the name of the service?  
 15 A I can't tell you the name. I don't remember.  
 16 Q Okay. And then do you remember how many  
 17 articles you read?  
 18 A There might have been one or two. I didn't pay  
 19 much attention to it at the time.  
 20 Q Where were you? What state? I mean were you --  
 21 A I assume I was home in Chicago.  
 22 Q Okay. That's where you reside?  
 23 A Yes.  
 24 Q You teach at the University of Illinois at  
 25 Chicago?

1 A I do.  
 2 Q Then did you have any discussions about the  
 3 case or come in contact with any other information about  
 4 the case between the time you initially learned of it  
 5 and nine or twelve months ago?  
 6 A No.  
 7 Q Okay. And then approximately nine or twelve  
 8 months ago, you were contacted by an attorney or  
 9 attorneys?  
 10 A Yes.  
 11 Q And what was the -- was it e-mail? Phone?  
 12 A I received a phone call.  
 13 Q Okay. And from whom?  
 14 A Paul Salvaty, as I recall.  
 15 Q Okay. And did you know Mr. Salvaty before that  
 16 call?  
 17 A No.  
 18 Q Did you have any connection with O'Melveny &  
 19 Myers before that call?  
 20 A No.  
 21 Q And what did Mr. Salvaty say?  
 22 A He said that he -- he described the case to me  
 23 and the legal issues and some of the education issues  
 24 and asked me if I would be willing to consider being an  
 25 expert in the case.

1 Q Okay. And to the best of your recollection,  
 2 Doctor, how did he describe the case to you?  
 3 A I'm not sure that I remember that with  
 4 clarity. I think he volunteered to send me the legal  
 5 documents -- it was called a Complaint that you folks  
 6 had done -- and perhaps there were some answers by the  
 7 defendants and other material about the case. And then  
 8 he may have said a few words about it as well as what he  
 9 might be asking me to be working on.  
 10 Q Okay. Do you remember anything he said about  
 11 the case, in terms of descriptive words?  
 12 A Well, I do remember that he said it was being  
 13 brought by the ACLU on behalf of some client districts,  
 14 and he may have briefly described the issues in the  
 15 case, but I don't remember that clearly.  
 16 Q What's your best recollection as to what he  
 17 said about the issues?  
 18 A I think he may have said -- and this might have  
 19 been something -- explaining what he wanted me to do,  
 20 and that was the plaintiffs wanted more detailed  
 21 operational -- detailed study and monitoring of school  
 22 board and school operations, which was in contrast to  
 23 California's -- I'll call it the State's approach to  
 24 having emphasis on educational outcomes.  
 25 And he may have mentioned at that time some of

1 the particular reports that had been written by  
 2 plaintiff witnesses, and I think he may have mentioned  
 3 Mr. Russell and Mr. Mintrop and perhaps one or two other  
 4 witnesses that he would particularly like me to consider  
 5 reviewing.  
 6 Q Okay. He said the case involved a more  
 7 detailed study and monitoring of school board operations  
 8 in contrast to the State's output system? Am I getting  
 9 that right?  
 10 A Yes.  
 11 Q And do -- besides Russell and Mintrop, do you  
 12 recall what other experts he talked about?  
 13 MS. KOURY: Objection. Assumes facts.  
 14 THE WITNESS: I'm sorry, I didn't hear.  
 15 MS. KOURY: That's okay. I was just objecting for  
 16 the record.  
 17 BY MR. ROSENBAUM:  
 18 Q Russell, Mintrop, did he mention any other  
 19 experts?  
 20 A Yes, he did. Eva Baker, as a kind of an  
 21 overview of the case.  
 22 Q Eva Baker?  
 23 A Maybe I have the name wrong. I need to look at  
 24 my report.  
 25 (Witness reviews documents.)

1 I'm sorry, got the name wrong. It's Jeanne  
 2 Oakes.  
 3 Q Okay. You're reviewing a document right now?  
 4 A Yes.  
 5 Q What is that?  
 6 A It's my report.  
 7 Q Okay. Any others besides Russell, Mintrop and  
 8 Oakes?  
 9 A No.  
 10 You're asking me what he --  
 11 Q Yeah.  
 12 A -- asked me to do.  
 13 Q Right.  
 14 A So the answer is no.  
 15 Q And then did you ask any questions?  
 16 A Well, I probably did at the time.  
 17 Q Can you give me your best recollection?  
 18 A Well, I think I asked him about how long things  
 19 would be and whether we were going to meet and whether I  
 20 would need to write a report. He didn't mention those  
 21 things, and I would have asked questions about it.  
 22 Those kinds of questions.  
 23 Q How long did he say it would be? I'm  
 24 interested in that.  
 25 A I don't remember what the time lines were. I

1 do remember that I thought I could fit it into my  
2 schedule, and so I -- I wanted to give him an answer yes  
3 or no and maybe.

4 Q Did you request any documents?

5 A Well, I don't remember whether he volunteered  
6 to send me these reports or whether I asked for them,  
7 but obviously, the Oakes and Mintrop and Russell reports  
8 I would have wanted to have. And I don't know if they  
9 were on the Internet about that time or whether he had  
10 to send them to me.

11 Q Okay. Prior to the phone call from  
12 Mr. Salvaty, had you ever heard of Michael Russell?

13 A No.

14 Q Or Mintrop?

15 A No.

16 Q Or Jeanne Oakes?

17 A Yes, Jeanne Oakes.

18 Q In what circumstances had you heard of her?

19 A I had met her on several occasions, and she is  
20 active in educational research. So I know the name.

21 Q Okay. Have you ever spoken with her?

22 A Yes, I have.

23 Q When was that?

24 (Discussion off the record)

25 BY MR. ROSENBAUM:

1 A Not that I can recall.

2 Q Okay. Then you either received or you accessed  
3 some materials; is that right?

4 A Yes.

5 Q Okay. And you accessed the Mintrop report, the  
6 Russell report and the Oakes report?

7 A Yes.

8 Q More than one of the Oakes -- do you know how  
9 many reports Oakes did for this case?

10 A I think there were two.

11 Q Okay. And how many of those reports did you  
12 access?

13 A I read the general report more carefully, and I  
14 superficially looked over the more specialized report.

15 Q The report about textbooks?

16 A Yes.

17 Q That's what you mean by the specialized report?

18 A Yes.

19 Q Okay. When you spoke with Mr. Salvaty, did he  
20 ask you for any suggestions as to other potential  
21 experts for the State?

22 A I don't recall specifically. He might have.

23 Q Do you recall any other names being raised?

24 A He may have mentioned or I may have mentioned  
25 some of the people who are -- were working for

1 Q And on how many occasions have you met Jeanne  
2 Oakes?

3 A Well, it's very vague in my mind. I've been to  
4 many, many meetings over the last 30 years, and I may  
5 have her mixed up with someone else, but I think that we  
6 may have had a meeting at the convention of the American  
7 Educational Research Association.

8 Q When was that?

9 A Oh, I -- could have been ten years ago.

10 Q Okay. And have you ever spoken with her, as  
11 far as you remember?

12 A I think we were at a meeting, some sort of an  
13 advisory committee meeting together. So you know, we  
14 might have incidentally spoken over coffee or something  
15 of that nature.

16 Q Do you recall the subject matter?

17 A No.

18 Q And when you say an advisory committee meeting,  
19 what was the advisory committee?

20 A I have a very, very vague memory of all this.  
21 So I don't want to be very specific about it, because  
22 I'm afraid I'd be wrong.

23 Q Okay. And besides this one meeting that you're  
24 referencing regarding the advisory committee, any other  
25 discussions that you've had with her?

1 defendants.

2 Q Okay. Who would they be?

3 A Well, I -- I'm working from very faulty memory --  
4 MS. KOURY: He's not asking you to speculate. Only  
5 if you have a basis for that information.

6 THE WITNESS: May I have the question again?

7 BY MR. ROSENBAUM:

8 Q Sure.

9 I'm interested in the names of other experts  
10 who came up in the conversation.

11 A I don't remember exactly.

12 Q Okay. Did you ask for the names of other  
13 plaintiffs' experts?

14 A I might have, but I don't remember distinctly.

15 Q Did the name -- did Hanushek's name come up?

16 A It might have.

17 Q Okay. And when you say it might have, why do  
18 you say that?

19 A Because I don't have a clear memory of it.

20 Q Okay. How about Rossell?

21 A Now that you mention her name, I think it might  
22 have come up.

23 Q Do you remember who raised it?

24 A No.

25 Q What was said about her?

1 A No.  
 2 Q No memory whatsoever?  
 3 A Only in the sense that she is an expert on  
 4 bilingual education.  
 5 Q That came up in a conversation?  
 6 A It may have.  
 7 Q Did you ask who was the -- who, if anybody, was  
 8 an expert for bilingual education for the plaintiffs?  
 9 A I don't remember asking that.  
 10 Q Okay. Did any other names come up? Did  
 11 Traiman come up?  
 12 A I don't recall her being mentioned.  
 13 Q Okay. Phillips?  
 14 A And we're still talking about the initial  
 15 conversation?  
 16 Q Yes, I am.  
 17 A I don't remember her being mentioned.  
 18 Q Okay. Which of the State's experts have you  
 19 worked with in the past in litigation?  
 20 A Worked in litigation or in any --  
 21 Q I'm going to break it down.  
 22 Let's start in litigation.  
 23 A Rossell, Hanushek. Those are the ones that  
 24 come to mind. If you name them -- I haven't tried to  
 25 memorize everybody that's on the defendant's side.

1 Q Have you read the State's -- any of the State's  
 2 experts' reports besides your own?  
 3 A No.  
 4 Q When -- am I pronouncing his name wrong? Is it  
 5 Hanushek?  
 6 A Hanushek.  
 7 Q Hanushek?  
 8 A Hanushek, I think. Shek.  
 9 Q Shek, okay.  
 10 On how many occasions have you worked with  
 11 Christine Rossell in litigation?  
 12 A It might have been three or four.  
 13 Q Okay. Do you remember which cases?  
 14 A Well, this goes back many years. So I -- I  
 15 can't name the cases.  
 16 Q You've testified in desegregation cases?  
 17 A I have, yes.  
 18 Q And did you work with Christine Rossell in any  
 19 desegregation cases?  
 20 A Let me have the question again, just so I have  
 21 it exactly.  
 22 Q Sure.  
 23 I'm generally trying to find out what cases you  
 24 worked with other of the State's experts, and I'm  
 25 asking, with respect to Christine Rossell, whether or

1 not you worked with her on any desegregation --  
 2 A And worked with her means any kind of work at  
 3 all.  
 4 Q Yes.  
 5 A Even whether it -- even if depositions weren't  
 6 given or things of that nature.  
 7 Q Sure.  
 8 A Yeah, well, the two that I remember, I think,  
 9 are Minneapolis and Saint Paul.  
 10 Q You're distinguishing between Minneapolis and  
 11 Saint Paul?  
 12 A There were two separate cases.  
 13 Q Okay. Do you know roughly when that was?  
 14 A It might have been about five or six years ago.  
 15 Q Okay. And what was the nature of your  
 16 relationship with Christine Rossell in those two cases?  
 17 A Well, she was another expert in the case.  
 18 Q Okay. Now, you've also testified in school  
 19 finance cases?  
 20 A Yes.  
 21 Q Okay. And did you work with Christine Rossell  
 22 on any school finance case?  
 23 A One that I definitely remember is New York City.  
 24 Q The coalition case?  
 25 A Yes.

1 Q And any other cases -- any other school finance  
 2 equity cases?  
 3 A Not that I can recall.  
 4 Q Okay. And have you --  
 5 A Mr. Rosenbaum, I need to say, about the last  
 6 few questions, that my memory is a bit dim about these  
 7 things, as I've tried to indicate, and so I may have  
 8 gotten them mixed up. I've been in a lot of cases, and  
 9 I don't have a good memory for who was in them.  
 10 Q How many cases have you testified in?  
 11 A All together, over any case at all --  
 12 Q Yeah.  
 13 A -- education case?  
 14 Q I'm not interested in a personal injury case or  
 15 an auto injury case, but I mean, as an expert witness in  
 16 an education case.  
 17 A I would guess maybe 18 or 20.  
 18 Q Okay. And we just reviewed the fact that you  
 19 testified in desegregation cases and you testified in  
 20 financial equity cases.  
 21 A Yes.  
 22 Q Any other type of case that you've testified in?  
 23 A That testimony includes deposition?  
 24 Q Yes, it would.  
 25 A I think I gave a deposition in Oakland,

1 California, and Berkeley on bilingual cases.  
 2 Q Okay. Help me out.  
 3 Oakland and Berkeley or just --  
 4 A They were separate cases.  
 5 Q And in the Oakland bilingual case, for whom did  
 6 you testify?  
 7 A I think in both cases I testified for the  
 8 school board. And again, my memory is a bit shaky on  
 9 that, because I -- I only gave -- I didn't testify at  
 10 trial. So it's not, you know, very salient in my mind.  
 11 Q Was there a trial in the Oakland case?  
 12 MS. KOURY: Calls for speculation.  
 13 BY MR. ROSENBAUM:  
 14 Q If you know. I'm sorry.  
 15 Do you know if there was a trial in the Oakland  
 16 case?  
 17 A I'm not sure whether it was settled or what  
 18 happened.  
 19 Q How about the Berkeley case? Do you know if  
 20 there was a trial in the Berkeley case?  
 21 A I'm unsure.  
 22 Q Okay. And did Christine Rossell -- was she  
 23 involved, so far as you know, in either the Oakland or  
 24 the Berkeley case?  
 25 A I think she was involved in both.

1 Q Okay.  
 2 A And when I say I think, I'm trying to draw this  
 3 from memory as best I can.  
 4 Q Okay. And you've also worked on the same side  
 5 of litigation where you testified with Eric Hanushek?  
 6 A Yes.  
 7 Q And how many cases?  
 8 A I think -- I think it may only be one, and that  
 9 was the one that I mentioned.  
 10 Q The New York case?  
 11 A Yes.  
 12 Q Okay. Can't think of any other cases?  
 13 A Not offhand.  
 14 Q Okay. Anyone else that you're aware of who's  
 15 testified for the State?  
 16 MS. KOURY: Objection. Vague.  
 17 MR. ROSENBAUM: It is vague.  
 18 Q Any other case that you worked on with experts  
 19 who are assisting the State?  
 20 A Well, to tell you the truth, I can't even think  
 21 of the other experts right now. If you name them, I  
 22 could tell you.  
 23 Q Okay. We said Phillips.  
 24 A Now, does this include even preparation without  
 25 testimony?

1 Q Yeah.  
 2 A Yes. I worked with Phillips in the past. Now,  
 3 I don't mean to say directly, but we were on the same  
 4 side.  
 5 Q What case was that?  
 6 A That was a California case having to do with  
 7 the nature of testing.  
 8 Q What case was that?  
 9 A I don't know the -- do you call it the  
 10 caption? But there was -- it had to do with the nature  
 11 of the testing program here in California.  
 12 Q Can you be more specific when you say the  
 13 testing program?  
 14 A I think it had to do with --  
 15 MS. KOURY: I'm just going to -- just interrupt for  
 16 a second.  
 17 To the extent that any of this information is  
 18 confidential, if you were hired as a consultant, in  
 19 which case it was privileged, you need not reveal that  
 20 information. But to the extent it was not privileged or  
 21 confidential, you can reveal it.  
 22 THE WITNESS: I appreciate that. Thank you.  
 23 I think this is long over now.  
 24 And your question was?  
 25 BY MR. ROSENBAUM:

1 Q What was the nature of the testing program?  
 2 A I think San Francisco and one or two other  
 3 cities didn't want to test all of the children in the  
 4 schools, and they wanted to exclude some children from  
 5 the testing program and the State wanted to have them  
 6 all tested. And that was the essence of the case.  
 7 Q Are we talking about the Stanford 9 or not?  
 8 A I think that was a part of it.  
 9 Q My question is confusing. I confused my  
 10 question there.  
 11 The test that was involved, what's your  
 12 recollection as to what test that was?  
 13 A I think it was the Stanford 9 and perhaps some  
 14 tests that had been developed for -- specifically for  
 15 California.  
 16 Q And when was this?  
 17 A It might have been five or so years ago.  
 18 Q Okay. And do you know what the resolution of  
 19 the case was?  
 20 A I think it was settled.  
 21 Q Do you know what the nature of the settlement  
 22 was?  
 23 A I think that the four plaintiff districts  
 24 agreed to test the children.  
 25 Q Did you give a deposition in that case?

1 A No.  
 2 Q Or prepare a report?  
 3 A I don't think I even prepared a report.  
 4 Q Okay. Were you paid for your assistance?  
 5 A Yes.  
 6 Q How much were you paid?  
 7 A I don't remember.  
 8 Q Give me a ballpark number.  
 9 A Well, maybe I put in --  
 10 MS. KOURY: Don't speculate on the basis for your  
 11 answer.  
 12 BY MR. ROSENBAUM:  
 13 Q Do you typically charge an hourly rate?  
 14 A Yes.  
 15 Q What's that rate?  
 16 A 250 or 300.  
 17 Q And are you charging that rate in this case?  
 18 A Yes.  
 19 Q Which one?  
 20 A I'd have to look at the original documents.  
 21 Q Okay. And can you give me your best estimate,  
 22 if you have one, as to the number of hours you put in  
 23 the testing case?  
 24 A It might have been 25 hours.  
 25 Q Okay. And you had some relationship with Susan

1 Phillips in that case?  
 2 A Well, I'm not sure I had any -- I'm not sure I  
 3 should say that. I don't remember even talking to her,  
 4 but she was a witness for the State.  
 5 Q Okay.  
 6 A And I remember reading her report and learning  
 7 about -- a bit about her.  
 8 Q What did you understand your role to be in the  
 9 testing case, beyond being an expert?  
 10 A My role was to look at the psychology of  
 11 testing and whether it would be harmful or not to  
 12 students.  
 13 Q Okay. And did you form a conclusion?  
 14 A Yes.  
 15 Q What was that?  
 16 A That testing is actually conducive to higher  
 17 levels of learning.  
 18 Q Okay. And did you do any specific analysis  
 19 with respect to that conclusion in California, or were  
 20 you basing on prior research and expertise?  
 21 MS. KOURY: Objection. Compound.  
 22 THE WITNESS: I based my conclusions on published  
 23 research.  
 24 BY MR. ROSENBAUM:  
 25 Q Okay. And was any of that research your

1 research?  
 2 A I think it may have been.  
 3 Q What would that have been?  
 4 A I don't remember.  
 5 Q Are you sure that you relied upon your own  
 6 research?  
 7 A Well, I'm sure, in the sense that I've done a  
 8 lot of scholarship over 40 years, and so I would draw  
 9 upon those things, and often I would cite my own work.  
 10 Q But my question is: Do you recall any specific  
 11 research that you relied upon?  
 12 MS. KOURY: Objection. Asked and answered.  
 13 THE WITNESS: No.  
 14 BY MR. ROSENBAUM:  
 15 Q Okay. Were you involved --  
 16 A You know, I think I should correct one thing  
 17 that I was -- we were just talking about. When you say  
 18 research, of course, I read a lot of documents that were  
 19 supplied to me that I found myself. But I wouldn't call  
 20 them -- I wouldn't call those documents research. They  
 21 were, you know, background materials, the Complaint,  
 22 things of that nature. So I did review those. So that  
 23 is one form of research.  
 24 Q Okay. Did you -- were you involved in any way,  
 25 Doctor, in the selection of the experts on behalf of the

1 State in this case? That can mean anything. Making  
 2 suggestions? Vetting names? Giving your opinion about  
 3 different individuals? Any involvement whatsoever?  
 4 MS. KOURY: Objection. Overbroad.  
 5 THE WITNESS: I don't have a distinct memory of  
 6 discussing that.  
 7 BY MR. ROSENBAUM:  
 8 Q Were names run by you?  
 9 MS. KOURY: Objection. Asked and answered.  
 10 THE WITNESS: I don't remember that.  
 11 BY MR. ROSENBAUM:  
 12 Q Okay. Now, do you have an understanding as to  
 13 how your name came to Mr. Salvaty's attention?  
 14 A No.  
 15 Q Okay. Now, after -- you received the  
 16 Complaint? You recall that? Either received or you  
 17 pulled it off the Internet?  
 18 A One of the two, yes.  
 19 Q Okay. And you read the Complaint?  
 20 A Yes.  
 21 Q Okay. And you received the Mintrop report?  
 22 A Yes.  
 23 Q And I'm using received; I don't care how you  
 24 got it.  
 25 A Okay.



1 Q And Russell?  
 2 A Yes.  
 3 Q And the two Oakes reports?  
 4 A Yes.  
 5 Q Okay. Any other documents at this time? We're  
 6 talking about the initial time.  
 7 A Well, I don't -- I'm not even saying that I got  
 8 those all at once.  
 9 Q Okay.  
 10 A But you're asking have I looked at any of the  
 11 other reports.  
 12 Q Well, I am now, yeah.  
 13 A They're mentioned on Page 6 of my --  
 14 Q Okay.  
 15 A To be complete. Norton Grubb, Laura Goe,  
 16 William Koski, Thomas Sobol. Those are the other  
 17 reports.  
 18 Q Okay. Did you know who Thomas Sobol was?  
 19 A Yes.  
 20 Q Okay. And did you know who Bill Koski was?  
 21 A No.  
 22 Q Or Norton Grubb?  
 23 A No.  
 24 Q Or Laura Goe?  
 25 A No.

1 Q And for what purpose did you read the Grubb  
 2 report?  
 3 MS. KOURY: Objection. Vague.  
 4 THE WITNESS: Well, I don't remember now. I think  
 5 I may have mentioned in here some problems with it, and  
 6 so -- I was free to look at any of the reports. I think  
 7 at least at a later time period they were all available  
 8 on the Internet. So I scanned ones that I thought might  
 9 be of interest to me.  
 10 BY MR. ROSENBAUM:  
 11 Q Besides the ones we've talked about, Russell,  
 12 Mintrop, the two Oakes reports, Grubb, Goe, Koski and  
 13 Sobol, have you looked at any of the other plaintiffs'  
 14 expert reports?  
 15 A Not that I recall.  
 16 Q Okay. And how did you decide to read the Grubb  
 17 report? What was the criteria -- or tell me what your  
 18 thought process was that led you to read that report.  
 19 A I think that it might have had something to do  
 20 with the other reports, and I -- in reading Dr. Oakes's  
 21 general report, there may have been some things in it  
 22 that looked interesting to me. And then so I -- I was  
 23 free to look at any of the reports, and so I had --  
 24 these seemed somewhat relevant to what I was asked to  
 25 do.

1 Q Okay. And when you say somewhat relevant, what  
 2 do you mean by that?  
 3 A Well, it meant that it would be worthwhile  
 4 looking them over to see how they relate to the ones  
 5 that I was more specifically asked to look at.  
 6 Q Okay. And when you said what I was asked to  
 7 do, what do you mean by asked to do? What were you  
 8 asked to do?  
 9 A I stick by what I said in the nature of the  
 10 request. I was actually asked to review the plaintiffs'  
 11 experts reports, particularly the synthesis report by  
 12 Jeanne Oakes and the reports of Michael Russell and  
 13 Heinrich Mintrop and asked to describe the background  
 14 and reasons for the K-12 -- or the background and  
 15 reasons of K-12 school accountability and to comment on  
 16 the reports from these perspectives.  
 17 Q I don't know what you mean by from these  
 18 perspectives. Tell me what you mean.  
 19 A From the perspectives of school accountability.  
 20 Q And just so we're talking the same language,  
 21 when you say school accountability, could you define  
 22 fully what you mean by that.  
 23 A There is a huge amount of interest these days  
 24 in how schools should be evaluated, and something like  
 25 49 states have developed testing systems so that they

1 can compare the performance of one school with another  
 2 or one district with another or one state with another.  
 3 And so they have testing results of various kinds. And  
 4 they have also specified various proficiency levels,  
 5 such as basic, proficient and advanced and typically  
 6 calculate the percentages of students that achieve those  
 7 various levels.  
 8 And they -- States tend to -- and this is an  
 9 ongoing process; not all of them are in the same  
 10 state -- report these test results publicly, typically  
 11 on the Internet, but make them available to newspapers.  
 12 And some states have carrots-and-sticks incentives of  
 13 various kinds for schools to -- and districts to  
 14 improve. So that's what I mean by the general area of  
 15 K-12 accountability.  
 16 Q The testing system you just talked about; is  
 17 that right?  
 18 A Well, I think it goes beyond just testing. It --  
 19 Q I want your fullest definition.  
 20 MS. KOURY: Objection. Calls for a narrative.  
 21 BY MR. ROSENBAUM:  
 22 Q Go ahead.  
 23 A I need to have the question again.  
 24 Q Sure.  
 25 I want to know -- when you use the phrase

1 "school accountability," I want to know exactly what you  
2 mean by that.

3 MS. KOURY: Objection. Vague.

4 In terms of the context used in this particular  
5 sentence that he just referred to in his report?

6 MR. ROSENBAUM: No. In the context of the answer  
7 he gave me two questions ago.

8 THE WITNESS: I may be a little misunderstanding  
9 here, but I thought I answered that when I described  
10 accountability systems around the country that not only  
11 have testing but have levels of proficiency.

12 BY MR. ROSENBAUM:

13 Q I see.

14 Incidentally, do you know the levels of  
15 proficiency in the California testing system at this  
16 time?

17 A I did at one time when I studied it, but I  
18 don't know it offhand.

19 Q Can you tell me any of the proficiency levels?

20 A Not at this moment.

21 Q Okay. And incidentally, in preparation for  
22 this deposition, did you review any documents?

23 A Yes.

24 Q What documents did you review?

25 A My report.

1 Q Sure. I don't want to do that right now, but  
2 I'll let you do that.

3 A Okay.

4 Q Now, when you read Dr. Oakes's synthesis  
5 report -- you know what I'm referring to by that, right?

6 A Yes.

7 Q The names of a number of experts for plaintiffs  
8 are mentioned in that report; isn't that right?

9 A Yes.

10 Q How did you choose which among those experts  
11 you would read their reports? Let me strike -- let me  
12 give you a little predicate there.

13 You didn't read every report of every expert  
14 mentioned in the synthesis report; isn't that right?

15 A That's right.

16 Q How did you choose which reports you were going  
17 to go and read?

18 A Well, I was originally asked to concentrate on  
19 Russell and Mintrop, but I felt that several of the  
20 other reports might be related to the questions that  
21 they took up in their reports. And so I chose the ones  
22 that I thought might be related to those two.

23 Q Okay. Did Mr. Salvaty tell you why he wanted  
24 you to look at Oakes, Mintrop and Russell?

25 A I think he did.

1 Q Did you review any other reports?

2 A No.

3 Q Did you review the Oakes report? The Mintrop  
4 report?

5 A No.

6 Q And when did you review your report?

7 A In the last couple of days.

8 Q Can you be more specific?

9 A Well, I -- you mean which days?

10 Q Well, did you read it this morning?

11 A No.

12 Q Last night?

13 A No.

14 Q Yesterday?

15 A Yes.

16 Q When?

17 A I didn't read it yesterday either. I read it  
18 the day before yesterday.

19 Q Okay.

20 A And then I read it the day before the day  
21 before yesterday.

22 Q Okay.

23 A Incidentally, I had a couple changes that I  
24 wanted to make in the report. At some point I'd like to  
25 do that.

1 Q What did he say?

2 A My memory is that he said that the Oakes'  
3 synthesis could give me a good overview of the  
4 plaintiffs' position and that he wanted me to  
5 concentrate on Mintrop and Russell.

6 Q Did he say why?

7 A Well, I don't distinctly remember that, but I  
8 assume that he felt that I would know --

9 MS. KOURY: Don't guess. Just what you remember.

10 THE WITNESS: Okay. I don't remember.

11 BY MR. ROSENBAUM:

12 Q What was your assumption as to why he wanted  
13 you to read those reports?

14 A Because I've -- have written in those areas.

15 Q When you say those areas, what do you mean?

16 A The areas that they wrote about in their  
17 reports.

18 Q Tell me what those areas are.

19 A Testing and accountability and, in the case of  
20 Mintrop, inspectorate system or proposed inspectorate  
21 system.

22 Q Okay. You've written about the inspectorate  
23 system?

24 A Well, I generally -- I'm aware of it, since  
25 I've -- let me have the question again.

1 Q Let me restate the question.  
 2 When you say the inspectorate system, what do  
 3 you mean by that?  
 4 A Well, I take it to mean what Mintrop meant, but  
 5 in addition to that --  
 6 Q Tell me what you took that -- I didn't mean to  
 7 cut you off. Go ahead.  
 8 A I was also familiar with the English system,  
 9 and so I took those as sources for what the inspectorate  
 10 system means.  
 11 Q Okay.  
 12 A And might apply to California.  
 13 Q What do you mean might apply to California?  
 14 A Well, I think Mintrop was suggesting that the  
 15 English inspectorate system should be used here in  
 16 California.  
 17 Q What's the basis of that statement?  
 18 A I think that's what he said in his report.  
 19 Q Okay. And have you ever written -- is there  
 20 any other inspectorate system that you're thinking about  
 21 besides the British inspectorate system?  
 22 A That I'm thinking about?  
 23 Q Yeah.  
 24 MS. KOURY: Objection. Vague.  
 25 BY MR. ROSENBAUM:

1 Q When you used the phrase two questions ago  
 2 "inspectorate system," were you thinking about any other  
 3 system besides the British system?  
 4 A Not that I can bring to mind.  
 5 Q Okay. Have you ever done any writing about the  
 6 inspectorate system, the British inspectorate system?  
 7 A Not that I can recall.  
 8 Q Have you ever testified about the British  
 9 inspectorate system?  
 10 A No.  
 11 Q Have you ever done any reading about the  
 12 British inspectorate system?  
 13 A Yes.  
 14 Q What have you read?  
 15 A I read the report or the book by the chief  
 16 inspector.  
 17 Q The book that's referred to in the report?  
 18 A Yes.  
 19 Q Have you had any --  
 20 A And you know, I've -- incidentally -- let me  
 21 have the question again. I'm sorry, I've forgotten --  
 22 Q My first question was: Have you ever read  
 23 anything about the inspectorate system? And I believe  
 24 your answer was you read the book that's in your report;  
 25 is that right?

1 A Yes.  
 2 Q Okay. Now, my next question's: Have you read  
 3 anything else about the British inspectorate system?  
 4 A Yes.  
 5 Q What else have you read?  
 6 A Incidentally, I've read about the British  
 7 inspectorate system over many years, because I'm  
 8 somewhat familiar with it and I've worked a bit in  
 9 Europe on various kinds of projects and interested in  
 10 international education. So I'm -- I'm familiar with --  
 11 just in the course of, not particularly researching it,  
 12 but as a matter of incidental learning.  
 13 Q Okay. Have you read anything else about the  
 14 British inspectorate system besides the book that's  
 15 referenced in your report?  
 16 MS. KOURY: Asked and answered.  
 17 THE WITNESS: Not that I can recall.  
 18 BY MR. ROSENBAUM:  
 19 Q Okay. And have you ever made a search for  
 20 research about the British inspectorate system?  
 21 MS. KOURY: Objection. Vague.  
 22 MR. ROSENBAUM: It is a little bit vague.  
 23 Q Have you ever made an investigation or research  
 24 for published materials regarding the British  
 25 inspectorate system?

1 MS. KOURY: Still vague.  
 2 THE WITNESS: I can't bring anything to mind  
 3 except -- unless I might have cited it in here.  
 4 BY MR. ROSENBAUM:  
 5 Q Okay. But if you --  
 6 A If you would like me to look, I can check that.  
 7 Q Sure, go ahead.  
 8 A (Witness reviews documents.)  
 9 I see that I had cited the economist of '03 and  
 10 the only other reference is to Chris Woodhead, who was  
 11 the chief inspector in England.  
 12 Q That's the book you were talking about?  
 13 A Yes.  
 14 Q Okay. Now, have you ever met Mr. Woodhead?  
 15 A Yes.  
 16 Q Okay. And have you had conversations with  
 17 Mr. Woodhead?  
 18 A Well, I participated in a seminar when he  
 19 spoke, and I may have said something.  
 20 Q What was the nature of that seminar?  
 21 A He was explaining what he had -- his  
 22 experiences in being the chief inspector.  
 23 Q Okay. And the economist article that you're  
 24 referencing --  
 25 A Yes.

1 Q Okay. You're looking at your copy of your  
2 report --  
3 A Yes.  
4 Q -- right now.  
5 Is that an article that you independently  
6 found, or was that supplied to you by Mr. Salvaty or an  
7 attorney --  
8 A No, I found that myself.  
9 Q Okay. And how did you go about doing that?  
10 A I read it every week.  
11 Q I see.  
12 Sitting here today, do you know what the volume  
13 of literature is out there regarding the British  
14 inspectorate?  
15 MS. KOURY: Objection. Vague, overbroad.  
16 THE WITNESS: Well, I'm aware that much has been  
17 written about it.  
18 BY MR. ROSENBAUM:  
19 Q Okay. When you say much, what do you mean by  
20 that?  
21 A Well, I -- in the course of general reading, as  
22 a scholar in education, I've seen many references to it,  
23 particularly as applied, not only in England, but it was  
24 used in the British colonial system, where they had  
25 inspectors that would go to various countries. And I

1 worked with international organizations, and so I would  
2 hear about it, and I read reports where it might have  
3 been proposed to change the inspectorate or increase it  
4 or to get rid of it or whatever. So as a matter of  
5 incidental reading, I have come across references to it  
6 over perhaps 30 years.  
7 Q Okay. Can you name me any of those reports or  
8 articles or writings?  
9 A No.  
10 Q Okay. Have you ever read anything positive  
11 about the British inspectorate?  
12 MS. KOURY: Objection. Vague, overbroad.  
13 THE WITNESS: I don't recall anything positive.  
14 BY MR. ROSENBAUM:  
15 Q Okay. Have you ever --  
16 A Wait a minute. Sorry. Well, of course Mintrop  
17 is very positive about it.  
18 Q Besides Mintrop?  
19 A No.  
20 Q Have you ever read anything in opposition to  
21 Mr. Woodhead's book with respect to the inspectorate?  
22 A Any criticisms of his book?  
23 Q Yes.  
24 A No.  
25 Q Okay. Now, when was this meeting at which you

1 were present and Mr. Woodhead was present?  
2 A I'm a little vague about these dates, but it  
3 might have been seven or nine months ago.  
4 Q Okay. And where did that happen?  
5 A At Stanford University.  
6 Q Who sponsored that?  
7 A The Hoover Institution.  
8 Q Okay. And are you involved with the Hoover  
9 Institution?  
10 A Yes.  
11 Q What's the nature of your involvement?  
12 A I edit books, write chapters, write short  
13 articles, participate in meetings.  
14 Q Okay. Do they pay you a salary?  
15 A No.  
16 Q Do you have an office at the Hoover Institute?  
17 A No.  
18 Q Okay. Do you have a title with respect to the  
19 Hoover Institute?  
20 A Yes.  
21 Q What's that?  
22 A Distinguished visiting fellow.  
23 Q Okay. And when did you become a distinguished  
24 visiting fellow?  
25 A I think it -- I was appointed around '01 or the

1 year before.  
2 Q I'm sorry, when?  
3 A '01 or the year before.  
4 Q Okay. And that continues till today?  
5 A Yes.  
6 Q Okay. And was there a title to this -- was it  
7 a seminar? Was that what it was?  
8 A I would call it that.  
9 Q Okay. And did it have a title? Subject matter?  
10 A It may have. I don't remember.  
11 Q Do you remember what the subject matter was?  
12 A It was as I mentioned earlier, his book.  
13 Q Okay. And who else spoke at the symposium, or  
14 was on a panel?  
15 A Someone may have introduced him, but I don't  
16 recall who it was. And he made a presentation. Then  
17 there was a discussion.  
18 Q Okay. Okay. Now, after Mr. Salvaty made this  
19 initial contact with you -- did there come a time when  
20 there was a subsequent conversation between you and  
21 Mr. Salvaty?  
22 A Yes.  
23 Q Okay. And approximately when was that?  
24 A I don't remember the dates. I may have talked  
25 to him several times on the phone.

1 Q Okay. And did you ever meet with Mr. Salvaty  
2 in person?  
3 A Yes.  
4 Q Where was that?  
5 A At Stanford.  
6 Q And approximately when was that?  
7 A It might have been about seven or eight months  
8 ago.  
9 Q Okay. Was that shortly after he initially  
10 contacted you?  
11 A It might have been a month or two later.  
12 Q Okay. And was any -- tell me how that worked.  
13 Did you meet with him in an office or room?  
14 A Well, we met in a room like this, like a  
15 conference room.  
16 Q Okay. And at whose offices?  
17 A Well, I think it was a conference room rather  
18 than someone's office.  
19 Q Okay. Whose conference room?  
20 A It was at the Hoover Institution.  
21 Q Okay. And was anyone else present besides  
22 Mr. Salvaty and you?  
23 A Yes.  
24 Q Who else?  
25 A We're including conference calls, right?

1 Q Yeah.  
2 A Carolyn Hocksby, by conference call, Eric  
3 Hanushek, Maggie Raymond and myself and Mr. Salvaty.  
4 Q Okay. Carolyn Hocksby, are you aware that  
5 she's an expert for the State?  
6 A Yes.  
7 Q Okay. And have you ever been involved with her  
8 in any litigation?  
9 A No.  
10 Q Okay. And I think you told me, but just to be  
11 clear, have you ever been involved in any litigation  
12 with Ms. Raymond?  
13 A No.  
14 Q Dr. Raymond.  
15 Okay. And was this the first time that there  
16 had been a discussion, to your knowledge -- well, was  
17 this the first time that there had been a discussion  
18 with you, an attorney and other experts regarding this  
19 case?  
20 A No.  
21 Q Okay. Tell me what you're thinking about, in  
22 terms of --  
23 A Well, unless you meant the whole combination of  
24 those people.  
25 Q No.

1 A But I had indicated I had talked to Mr. Salvaty  
2 several times.  
3 Q Okay.  
4 A This is the first time that I met him and  
5 other -- the other people I mentioned were also present.  
6 Q Okay. And between the time that Mr. Salvaty  
7 first contacted you and this conference -- I'm going to  
8 call it a conference meeting at the Hoover Institute,  
9 had you had any discussions about this case with anyone  
10 at the Hoover Institute?  
11 A Not that I recall.  
12 Q Or with any other experts in the case?  
13 A Not that I recall.  
14 Q Or with anyone else from O'Melveny & Myers?  
15 A I didn't speak to anyone aside from  
16 Mr. Salvaty.  
17 Q Okay. Have you ever spoken -- putting aside  
18 Vanessa for a moment, have you -- actually, that wasn't  
19 very elegant.  
20 Putting aside any preparation for this  
21 deposition, have you had any discussions about this case  
22 with anyone else at O'Melveny & Myers?  
23 A Well, to be complete, I got a message from  
24 Vanessa through another attorney, but it was just about  
25 where we were going to meet.

1 Q Okay. Is this -- when did you first meet her?  
2 A Last night.  
3 Q Okay. And prior to that meeting, had you had  
4 any meetings or discussions with anyone else at  
5 O'Melveny & Myers prior to -- well, had you had any --  
6 with the exception of Mr. Salvaty, have you had any  
7 discussions involving this case with any other lawyer  
8 from --  
9 A No.  
10 Q -- O'Melveny? Okay.  
11 And how many personal meetings did you have  
12 with Mr. Salvaty?  
13 A Just one.  
14 Q Okay. And that's at the Hoover Institute?  
15 A Yes.  
16 Q Okay. And how long did this meeting at the  
17 Hoover Institute take place that we're talking about  
18 with Hocksby and Hanushek, Raymond?  
19 A I think it might have been about five hours.  
20 Q Okay. And did you receive any documents in  
21 preparation for that meeting beyond what you've already  
22 told me?  
23 A No.  
24 Q Okay. And you reference in your report,  
25 Doctor, a number of reports or documents that you looked

1 at for purposes of this case.  
 2 Do you know what I'm referring to?  
 3 A Yes.  
 4 Q Okay. Had you read all those documents by the  
 5 time of this meeting?  
 6 MS. KOURY: Objection. Vague.  
 7 THE WITNESS: The meeting at Hoover Institution?  
 8 BY MR. ROSENBAUM:  
 9 Q Yeah.  
 10 A Had I read all of these by then?  
 11 Q Yeah.  
 12 A I don't know. Because I hadn't -- I may have  
 13 come across some of these later.  
 14 Q Okay.  
 15 A So I can't say that.  
 16 Q Okay. And at the five-hour meeting was  
 17 anyone -- was Hanushek present?  
 18 A Yes.  
 19 Q Okay. And --  
 20 A I need to say something. When I tell you about  
 21 hours and things like that, I -- it was a long time  
 22 ago. I'm doing a lot of other things, and with regard  
 23 to these dates, I want to be sure that there's a degree  
 24 of uncertainty around them.  
 25 Q Okay. And Hanushek was present?

1 A Yes.  
 2 Q And was Dr. Raymond present?  
 3 A Yes.  
 4 Q And Carolyn Hocksby was present by telephone?  
 5 A Yes.  
 6 Q Anyone else present at any other point during  
 7 the conversation?  
 8 A Not that I remember.  
 9 Q Okay. Had you received any e-mails about this  
 10 case prior to that meeting?  
 11 MS. KOURY: Objection. Vague.  
 12 THE WITNESS: About the meeting or just had I ever  
 13 received any e-mails?  
 14 BY MR. ROSENBAUM:  
 15 Q Let's break it down.  
 16 First of all, had you ever received any e-mails  
 17 about this case?  
 18 MS. KOURY: Objection. Vague.  
 19 BY MR. ROSENBAUM:  
 20 Q Prior to the meeting.  
 21 A Well, I think I may have had some  
 22 correspondence with Mr. Salvaty about various things.  
 23 Q Okay. And have you conducted a search for all  
 24 those e-mails?  
 25 A My e-mails?

1 Q Yeah.  
 2 A You mean on my -- search for them on my own  
 3 computer?  
 4 Q Yes, sir.  
 5 A Well, I just keep them in a file. But I  
 6 haven't searched them.  
 7 Q Okay. Have you turned that file over to your  
 8 attorney?  
 9 A I don't remember that.  
 10 Q Okay. Approximately how many e-mails have you  
 11 had with Mr. Salvaty?  
 12 A Oh, I don't think very many. I think it had to  
 13 do with what time we're going to meet and things of that  
 14 nature. I don't have a clear memory of it.  
 15 Q What's your best recollection? A dozen? 50?  
 16 A Oh, nothing like that. I think it had to do  
 17 with dates and things of that nature, if at all. I  
 18 really have to go there to look at them to --  
 19 Q Do you keep a file?  
 20 A Yes.  
 21 Q What -- does that file have a name?  
 22 A Yes.  
 23 Q What's the name of that file?  
 24 A CA, California.  
 25 Q Okay. And is anything else in that file

1 besides e-mails that reference the Williams case?  
 2 A Yes.  
 3 Q What else?  
 4 A Well, there's a lot of -- I often read things  
 5 on the Web that may or may not be related, and as it  
 6 emerged what I was writing about, I might have put  
 7 things that I looked at the Internet on the -- in that  
 8 file in case I might want to look at it later on.  
 9 Q Okay. Did you exchange faxes with Mr. Salvaty  
 10 during the course of the preparation of your report?  
 11 A No.  
 12 Q Okay. Did you have telephone calls?  
 13 A Yes.  
 14 Q How many is your best estimate?  
 15 A My best estimate is perhaps five.  
 16 Q Okay. And what was said at this Hoover  
 17 Institute meeting?  
 18 MS. KOURY: Objection. Vague, calls for a  
 19 narrative.  
 20 THE WITNESS: Well, I think various people there  
 21 expressed their understandings of the plaintiffs'  
 22 position and what they might be writing about in their  
 23 reports.  
 24 BY MR. ROSENBAUM:  
 25 Q Okay. What did Dr. Hanushek say?

1 MS. KOURY: Assumes facts.  
 2 THE WITNESS: I'm sorry?  
 3 MS. KOURY: I'm sorry, assumes facts.  
 4 BY MR. ROSENBAUM:  
 5 Q Did each of the people speak, Hanushek,  
 6 Raymond, yourself?  
 7 A Yes, I think they all spoke.  
 8 Q Okay. What did Dr. Hanushek say?  
 9 A I don't remember.  
 10 Q Do you remember a single thing he said?  
 11 MS. KOURY: Asked and answered, somewhat  
 12 argumentative.  
 13 THE WITNESS: I don't remember what he said.  
 14 BY MR. ROSENBAUM:  
 15 Q Do you remember anything that Raymond said?  
 16 A No.  
 17 Q Do you remember anything that Hocksby said?  
 18 A No.  
 19 Q Do you remember anything that Mr. Salvaty said?  
 20 A Yes.  
 21 Q What did he say?  
 22 A He said that we needed to be very careful and  
 23 deliberate and that we needed to be cautious about  
 24 writing things down that might be discoverable, as I  
 25 recall, and he seemed to be a very careful attorney.

1 Q What did you take that to mean, to be very  
 2 careful, very deliberate, very cautious about writing  
 3 things down?  
 4 A I think the idea was that it was normal -- what  
 5 do you call it? Attorney-client relationships, that we  
 6 might have to share various kinds of things and so, if  
 7 we wrote something down, that it was a summary or an  
 8 evaluation of some point, it -- and didn't get it  
 9 exactly right, then it might not be advantageous or it  
 10 might not -- it could be confusing later on.  
 11 And so what I took that was that the sense that  
 12 we needed to be careful about writing things down.  
 13 Q Did -- what else did Mr. Salvaty say?  
 14 A That's all I can remember.  
 15 Q What did you say?  
 16 A I -- as I recall, I said -- I think by that  
 17 time it may have been decided that I would look at  
 18 Mintrop and Russell, and so I -- I may have described a  
 19 few points that they made and how that I might be  
 20 commenting on it.  
 21 Q What were the points that you referenced  
 22 regarding Mintrop?  
 23 A Well, for example, with respect to Mintrop,  
 24 that his advocacy of the British inspectorate system,  
 25 and with respect to Russell, his objections to the

1 California accountability system.  
 2 Q Okay. What did you say about Mintrop's  
 3 advocacy of the British inspectorate?  
 4 A Well, I don't have a clear memory, but I had  
 5 previously heard from Chris Woodhead, participating in  
 6 the seminar, and I think I may have mentioned his  
 7 comments.  
 8 Q What comments did you mention that Mr. Woodhead  
 9 said?  
 10 A That the inspectorate system in England had  
 11 failed, in his view.  
 12 Q Okay. What else did you say about -- what  
 13 else, if anything, did you say about what Mr. Woodhead  
 14 said?  
 15 A That's all I can remember.  
 16 Q Okay. Do you remember anything else  
 17 Mr. Woodhead said at the seminar?  
 18 A No.  
 19 Q Okay. And --  
 20 A Well, I should say nothing that isn't written  
 21 in my report.  
 22 Q Okay.  
 23 A Or that I can bring to mind now.  
 24 Q Okay. And regarding Russell's objections to  
 25 the testing system, what did you say about that?

1 A I don't recall.  
 2 Q Okay. Do you recall anything else you said at  
 3 that meeting?  
 4 A No.  
 5 Q Okay. Have you given me your fullest and best  
 6 recollection of what was said at that meeting?  
 7 A Yes.  
 8 Q Can you tell me anything else that was said in  
 9 substance at that meeting by any of the participants?  
 10 A No.  
 11 Q Okay. Did there come a time during which you  
 12 had any other discussions with Carolyn Hocksby about  
 13 this case or her report?  
 14 A Well, I saw her at a couple of occasions, and  
 15 we might have been -- as we call it, the California  
 16 case, but I don't remember that clearly.  
 17 Q Anything of substance?  
 18 A No.  
 19 Q Did you have any additional discussions with  
 20 Hanushek?  
 21 A No.  
 22 Q Or with Raymond?  
 23 A I talked on the phone with Raymond on, I think,  
 24 on one occasion.  
 25 Q When was that?

1 A It might have been five or six months ago.  
 2 Q Did the subject of this case come up?  
 3 A Yes.  
 4 Q That was the purpose of the call?  
 5 A I think in part, yeah.  
 6 Q Okay. And what was said?  
 7 A Well, I -- I was asking -- she did a big study  
 8 of charter schools, and I asked her more about it and  
 9 how it was coming, because it was of keen interest to  
 10 me. And then I may have mentioned to her, how was your  
 11 work going in California. It was, you know, sort of  
 12 polite conversation.  
 13 Q What do you remember of substance about that?  
 14 A Nothing.  
 15 Q Any other discussions with any other experts  
 16 about this case?  
 17 A Not that I can remember.  
 18 Q Did you have anyone work with you on your  
 19 report?  
 20 MS. KOURY: Objection. Vague.  
 21 THE WITNESS: Mr. Salvaty -- I asked him if he  
 22 would look for any typos or things of that nature or  
 23 statements that might be vague or unclear, and he gave  
 24 me some comments on it.  
 25 BY MR. ROSENBAUM:

1 Q Okay. Anyone else with whom you received  
 2 assistance in preparation of this report?  
 3 A No.  
 4 Q Did you use any graduate assistants or any  
 5 consultants, anyone else?  
 6 A No.  
 7 Q You showed your drafts -- you showed the drafts  
 8 of this report to Mr. Salvaty?  
 9 A Yes.  
 10 Q And how many drafts did you do for this report?  
 11 A This may be the third draft. And to be  
 12 complete, by the way, it was my impression that he may  
 13 have shared it with a couple other attorneys.  
 14 Q What's the basis of that impression?  
 15 A I think I recall him saying something about  
 16 sharing it with one or two other people.  
 17 Q Okay. And did he give you the names of those  
 18 persons?  
 19 A He might have mentioned Joe Egan, but I'm not  
 20 certain about that.  
 21 Q Do you know who Joe Egan is?  
 22 A Yes.  
 23 Q Who's that?  
 24 A He's an attorney that works for the State.  
 25 Q Was he at the meeting at the Hoover Institute?

1 A Now that you mention it, I think he was there,  
 2 at least part of the time, by telephone.  
 3 Q Okay. Anyone else there by telephone?  
 4 A Not that -- no, I don't think so.  
 5 Q Okay. And besides Mr. Egan, did Mr. Salvaty  
 6 mention anyone -- you said -- let me strike that.  
 7 You said it was your impression that he had  
 8 shared it with other individuals, other counsel?  
 9 A Yeah, one or two other attorneys, including  
 10 possibly Mr. Egan.  
 11 Q Anyone else's name?  
 12 A He may have mentioned a name, but I don't  
 13 remember it.  
 14 Q Okay. Did you ever talk with Mr. Egan, with  
 15 the exception of the Hoover Institute meeting?  
 16 A Yes.  
 17 Q Who else? I mean when else?  
 18 A I thought you said had you ever talked to  
 19 Mr. Egan aside from the Hoover meeting.  
 20 Q That's my question. That's correct.  
 21 A Yes, I did.  
 22 Q Okay. On how many other occasions?  
 23 A Maybe two.  
 24 Q And approximately when were those conversations?  
 25 A I think once when we were just getting started

1 and maybe several months later.  
 2 Q Okay. When you say when we were getting  
 3 started, what do you mean by that?  
 4 A Well, I had to fill out -- sign contracts and  
 5 things of that nature.  
 6 Q Your contract is with the State of California;  
 7 is that right?  
 8 A (No audible response)  
 9 Q I'll state it more generally.  
 10 With whom is your contract?  
 11 A You know, I haven't made a good distinction  
 12 between the various entities involved. I just think of  
 13 it as the State of California, but I --  
 14 Q Okay.  
 15 A There's so many parties involved that I don't  
 16 want to say something wrong.  
 17 Q Okay. So one conversation was with Mr. Egan,  
 18 and part of the subject matter was the professional  
 19 financial relationship involved --  
 20 A Yes.  
 21 Q -- in this case?  
 22 Was there any conversation about the substance  
 23 of the report or the substance of the case?  
 24 A No.  
 25 Q Then you had another conversation with Mr. Egan?



1 A Yes.  
 2 Q When was that?  
 3 A Several months later.  
 4 Q Okay. And what was the subject matter at that  
 5 time?  
 6 A It was more about the contractual relationships.  
 7 Q Okay. What's your understanding of what the  
 8 contractual relationship is?  
 9 MS. KOURY: Objection. The document speaks for  
 10 itself.  
 11 THE WITNESS: May I have the question again?  
 12 BY MR. ROSENBAUM:  
 13 Q Sure.  
 14 What's your understanding of what your  
 15 contractual relationship is?  
 16 A Does that mean what my responsibilities are?  
 17 Q That's part of it, sure.  
 18 A Well, I was to read those two reports that I've  
 19 referred to, mostly, and also then the Oakes synthesis  
 20 and then write a report and to be deposed, to testify at  
 21 trial.  
 22 Q Okay. And how much have you been paid to date  
 23 with respect to this case?  
 24 A I haven't made a -- I haven't totalled it.  
 25 Q Can you give me your best estimate?

1 A Might be around \$45,000.  
 2 Q Okay. And what's your understanding as to how  
 3 you'll be paid for testimony at trial? Still on an  
 4 hourly basis?  
 5 A Yes.  
 6 Q How much do you make as a -- you're a -- what's  
 7 your title at the University of Illinois?  
 8 A I'm emeritus research professor of education  
 9 and psychology.  
 10 Q Okay.  
 11 A And university scholar.  
 12 Q Okay. And they pay you a salary?  
 13 A Yes.  
 14 Q How much do they pay you?  
 15 A \$30,000 a year.  
 16 Q Okay. And do you get a payment from the Hoover  
 17 Institute?  
 18 A I do.  
 19 Q How much do you get from the Hoover Institute?  
 20 A Well, it depends on what I do.  
 21 Q Tell me what that means.  
 22 A It means if I write a long essay, I get a  
 23 certain amount, if I write an editorial, if I  
 24 participate in a meeting, if I go to Stanford for  
 25 meetings, or Washington.

1 Q Did the Hoover Institute pay you for your  
 2 involvement in this case?  
 3 A No.  
 4 Q Did they do any sort of subsidy, in terms of  
 5 your involvement in this case?  
 6 A No.  
 7 Q And what was the amount of money received from  
 8 the Hoover Institute last year?  
 9 A I would have to just make a rough --  
 10 Q Give me your best estimate on this.  
 11 A Maybe \$25,000.  
 12 Q Okay. And how about to date this year? Is  
 13 it -- let me make the clear.  
 14 Is it January to January or June to June that  
 15 you get paid by the Hoover Institute, or is it just as  
 16 work is done?  
 17 A Work is done.  
 18 Q Okay. How much have you been paid since  
 19 January 1 this year from the Hoover Institute, your best  
 20 estimate?  
 21 A Maybe 5 or \$10,000.  
 22 Q Okay. And besides the Hoover Institute and the  
 23 University of Illinois, do you have any other regular  
 24 sources of income?  
 25 A Yes.

1 Q What are they?  
 2 A Well, I --  
 3 Q I'm not interested in your stocks or  
 4 investments, but I mean, salaried or payments like  
 5 Hoover.  
 6 A Yeah. I have an appointment at the Midatlantic  
 7 Laboratory for Student Success.  
 8 Q What is that, the Midatlantic --  
 9 A It's one of ten regional educational  
 10 laboratories in the United States.  
 11 Q And where is that located?  
 12 A At Temple University.  
 13 Q What do you do with respect to that position?  
 14 A I edit -- I plan conferences and edit books.  
 15 Q Okay. Do you get an annual salary or --  
 16 A Yes.  
 17 Q Okay. What's your annual salary?  
 18 A \$80,000.  
 19 Q Okay. Any other sources of income? Again, I'm  
 20 not interested in investments.  
 21 MS. KOURY: I'm going to object. This is outside  
 22 the realm of this testimony --  
 23 THE WITNESS: You mean generally speaking over time.  
 24 BY MR. ROSENBAUM:  
 25 Q Let's say this year, for example.

1 MS. KOURY: Just for the record, I'm objecting.  
 2 This is outside the scope of his opinions.  
 3 You can go ahead and answer.  
 4 THE WITNESS: Well, I was on another litigation  
 5 that I've already mentioned.  
 6 BY MR. ROSENBAUM:  
 7 Q Okay. Put aside litigation for a moment.  
 8 A (Witness reviews documents.)  
 9 I'm doing a project with -- at the Kennedy  
 10 School at Harvard University.  
 11 Q Okay.  
 12 A (Witness reviews documents.)  
 13 Q What's the nature of that project?  
 14 A We are evaluating education management  
 15 organizations in the United States.  
 16 Q Tell me what you mean by educational management  
 17 organizations.  
 18 A These are for-profit firms that provide  
 19 education to children.  
 20 Q Like Edison?  
 21 A Yes.  
 22 Q Okay. And who's paying you there?  
 23 A The Kennedy School -- well, the principal  
 24 investigator of the project is appointed at Kennedy, and  
 25 there's a Boston foundation that actually makes the

1 payments.  
 2 Q Okay. How much do you receive from that?  
 3 A You mean, like, this year?  
 4 Q Sure.  
 5 A I think it'll be in the range of about \$50,000.  
 6 Q Did you receive money from this project last  
 7 year?  
 8 A Yes.  
 9 Q How much?  
 10 A 17-5.  
 11 Q Okay. Any other sources of income in the  
 12 nature we're talking about?  
 13 A Not that I can think of.  
 14 MS. KOURY: When you have a moment, can we stop for  
 15 a quick break?  
 16 MR. ROSENBAUM: We sure can.  
 17 Q And I presume you know this, Doctor, but any  
 18 time you need a break, you just let me know, okay?  
 19 A So we'll stop now?  
 20 Q We can take a break now, sure.  
 21 A Thanks.  
 22 (Brief recess taken.)  
 23 BY MR. ROSENBAUM:  
 24 Q At the meeting at the Hoover Institute, did you  
 25 receive any documents?

1 A No.  
 2 Q Was there an agenda?  
 3 MS. KOURY: Objection. Vague.  
 4 THE WITNESS: There wasn't a written agenda.  
 5 BY MR. ROSENBAUM:  
 6 Q There was or there was not?  
 7 A There was not a written agenda.  
 8 Q Okay. Did Mr. Salvaty announce an agenda?  
 9 Doesn't have to be that formal.  
 10 A Well, he might have said something to the fact,  
 11 here's what we're going to talk about, but I don't have  
 12 clear memory of it.  
 13 Q Okay. Do you remember what he said you were  
 14 going to talk about?  
 15 MS. KOURY: Asked and answered. He's already  
 16 testified.  
 17 BY MR. ROSENBAUM:  
 18 Q Generally?  
 19 A I'm sorry?  
 20 Q Do you remember generally what he may have  
 21 said?  
 22 MS. KOURY: Asked and answered.  
 23 THE WITNESS: I think he -- he may have gone over  
 24 who the various parties were in the case and general  
 25 sorts of things and may have mentioned the witnesses

1 that had been -- that were going to be working with the  
 2 State and what they might be testifying about.  
 3 BY MR. ROSENBAUM:  
 4 Q Whom did he say?  
 5 A Well, I don't have a clear memory of that.  
 6 Q Do you remember any of the witnesses he  
 7 referenced?  
 8 A Well, I do definitely remember that he  
 9 described the people in the -- who were participating in  
 10 the meeting.  
 11 Q Okay. What'd he say about Dr. Hocksby?  
 12 A Well, I don't remember the detail of what he  
 13 said about them, but I just remember that he may have  
 14 characterized what they were going to be working on.  
 15 Q Do you remember anything about his  
 16 characterizations?  
 17 A No.  
 18 Q Did you take any notes at the meeting?  
 19 A No.  
 20 Q Did anyone -- did you observe anyone taking  
 21 notes at the meeting?  
 22 A I don't remember.  
 23 Q Were you instructed not to take any notes at  
 24 the meeting?  
 25 A I think we were just cautioned about what we

1 write down.  
 2 Q Do you know what an intervenor is in a lawsuit?  
 3 A Vaguely.  
 4 Q What's your understanding?  
 5 A It's not the plaintiff, it's not the defendant,  
 6 but it's someone who has an interest in the case and has  
 7 been designated by the Court as being able to  
 8 participate in depositions and trial.  
 9 Q That's pretty good. That's better than most  
 10 law students could say.  
 11 Do you know who, if anyone is an intervenor in  
 12 this case?  
 13 A Well, my understanding is that there may be  
 14 several, one of which is the California School Boards  
 15 Association.  
 16 Q Okay. Any others?  
 17 A I do think that there may be others, but I  
 18 don't know who they are.  
 19 Q Where did that understanding come from about  
 20 the California School Board Association?  
 21 A I think perhaps Mr. Salvaty or Ms. Koury  
 22 mentioned them to me.  
 23 Q Okay. And have you had any discussions with  
 24 any representative or attorney relating to any of the  
 25 intervenors in this case?

1 A No.  
 2 I'm sorry. I -- we spoke this morning a little  
 3 bit, just socializing, but I don't -- we didn't -- you  
 4 said about this case; didn't you?  
 5 Q Yeah.  
 6 A Okay. I'm sorry, I -- my answer -- my earlier  
 7 answer stands.  
 8 Q Okay. And when you said "you," you're  
 9 referring to Ms. Koury?  
 10 MS. KOURY: No. I think he was referring to --  
 11 sorry, I shouldn't be answering.  
 12 Go ahead. Who were you referring to?  
 13 BY MR. ROSENBAUM:  
 14 Q Who were you referring to?  
 15 A To our colleague at the other end of the  
 16 table. Abe.  
 17 Q Abe.  
 18 You met with Ms. Koury about this case?  
 19 A Yes.  
 20 Q And that was last night?  
 21 A Yes.  
 22 Q For what period of time?  
 23 A About 45 minutes.  
 24 Q Okay. And what did Ms. Koury say to you?  
 25 A She went over the rules of deposition.

1 Q Okay. Anything else?  
 2 A Well, just social.  
 3 Q Okay. And how about this morning? Did you  
 4 talk with her this morning?  
 5 A Well, we just met, chatted a little bit on the  
 6 way over, but not -- nothing about the case.  
 7 Q Okay. What did she say about the case  
 8 yesterday?  
 9 A Well, she gave me the rules for depositions.  
 10 Q Anything else?  
 11 A Well, there may have been some incidental  
 12 conversation.  
 13 Q Was there any discussion about the sorts of  
 14 questions you might get asked?  
 15 A I think she may have said a few things like  
 16 that.  
 17 Q What'd she say?  
 18 A She said that you might ask me about the other  
 19 witnesses and -- that is on both sides and that you  
 20 might be rather thorough in your examination.  
 21 Q Okay. Did you review any depositions in this  
 22 case?  
 23 A No.  
 24 Q Or any summaries of depositions?  
 25 A No.

1 Q Or any -- you know what an interrogatory is,  
 2 right?  
 3 A No.  
 4 Q Okay.  
 5 A Wait a second. I think I may have been sent  
 6 some -- I think that there were some interrogatories  
 7 that I may have glanced at, and it may be cited in my  
 8 report. But I don't have a distinct memory.  
 9 If you want me -- want to wait a minute here,  
 10 I'll take a look.  
 11 Q Did you look at interrogatories that are not  
 12 referenced in your report?  
 13 A No.  
 14 Q Who sent you those interrogatories?  
 15 A Mr. Salvaty.  
 16 Q Did you specifically request those  
 17 interrogatories, or did he send you a set of  
 18 interrogatories?  
 19 MS. KOURY: Objection. Vague.  
 20 THE WITNESS: I don't remember the exact context,  
 21 but he -- he may have said something to the effect that  
 22 these might be useful to you if you're writing on that  
 23 topic.  
 24 BY MR. ROSENBAUM:  
 25 Q The interrogatories?

1 A Yeah.  
 2 Q That's what you're referring to, right?  
 3 A Oh, I'm sorry. What I thought you meant was  
 4 depositions --  
 5 Q Okay.  
 6 A -- of previous -- people who had already  
 7 testified.  
 8 Q Okay.  
 9 A That's what he sent me.  
 10 Q He sent you depositions?  
 11 A Yeah.  
 12 Q And had you specifically requested any  
 13 depositions by name?  
 14 A No.  
 15 Q Did you ask to see any depositions?  
 16 A I think he may have suggested, and I said,  
 17 yeah, that might be useful. Why don't you send them.  
 18 So I definitely received them.  
 19 Q Okay.  
 20 A I have found it now.  
 21 Q What page of the report are you referring to?  
 22 A Well, I have the deposition of Dr. Russell  
 23 that's mentioned on Page 26.  
 24 Q Okay. Did you request any documents that were  
 25 not otherwise sent -- that were not sent to you --

1 that's not a good question.  
 2 Did you request any documents relating to this  
 3 case?  
 4 MS. KOURY: Objection. Vague.  
 5 Requests of one of the attorneys at O'Melveny,  
 6 I take it, you're asking?  
 7 MR. ROSENBAUM: Yes.  
 8 THE WITNESS: Did I ask them for documents?  
 9 BY MR. ROSENBAUM:  
 10 Q Yes.  
 11 A Well, only as I mentioned earlier. We had  
 12 conversations about what I might look at, and so they  
 13 might have said -- and I don't recall whether they sent  
 14 me the original reports of Russell and the others. As I  
 15 recall, they went on the Internet later, so I could have  
 16 access without asking for things. So we may have had  
 17 some conversations before they became available.  
 18 Q Okay. But sitting here today, can you recall  
 19 requesting any documents relating to this case?  
 20 A From the attorneys?  
 21 Q Yeah.  
 22 A No.  
 23 Q Or from anybody else relating to this case.  
 24 A Yes.  
 25 Q What did you request?

1 A Not from the -- this is from the attorneys  
 2 only?  
 3 Q No, now I'm not dealing with the attorneys. I  
 4 want to know if you requested documents from anybody  
 5 else relating to this case.  
 6 A In one case that I can remember, yes.  
 7 Q What's that?  
 8 A It was something referenced in my report, a  
 9 letter to the State Board of Education from Lee  
 10 Cronbach.  
 11 Q Okay. Can you spell that for the reporter?  
 12 A C-r-o-n-b-a-c-h.  
 13 Q Okay. And of whom did you make that request?  
 14 A From a professor -- I'm trying to think of his  
 15 name to mind. He's a -- he teaches at the University of  
 16 Kentucky, I believe. I can't bring his name to mind,  
 17 but I had known him in the past, and I knew that he knew  
 18 about -- I'm not being responsive to your question, I'm  
 19 afraid.  
 20 Q All right.  
 21 A I wandered off.  
 22 Could I have the question again?  
 23 Q Sure.  
 24 Did you request documents of anyone besides  
 25 attorneys related to this case?

1 A Yes.  
 2 Q And who was that? From whom?  
 3 A From a professor at the University of Kentucky.  
 4 Q Okay. And what's the name of that professor?  
 5 A I can't bring the name to mind.  
 6 Q And why did you request that document?  
 7 A Because I had seen it once and didn't keep it  
 8 and I knew that he had it, and so I asked him, if he  
 9 still had a copy, to send it to me.  
 10 Q Any other documents?  
 11 A No.  
 12 Q And did you do any Internet research relating  
 13 to this case?  
 14 MS. KOURY: Objection. Vague, overbroad.  
 15 THE WITNESS: Only incidentally.  
 16 BY MR. ROSENBAUM:  
 17 Q Sitting here today, can you recall any specific  
 18 research you did off the Internet relating to this case?  
 19 A Well, I am very interested in K-12 education.  
 20 So I track a lot of things that go on. There's  
 21 several -- there are at least two people that get all  
 22 kinds of newspaper articles and reports and -- I also  
 23 read the Wall Street Journal, New York Times, especially  
 24 for education articles.  
 25 Q Okay. Let me see if I can make my question

1 clearer for you, Doctor.

2 The first question I have for you is: Did you  
3 systematically undertake any research on the Internet  
4 relating to this case?

5 MS. KOURY: Objection. Vague, overbroad.

6 THE WITNESS: No.

7 BY MR. ROSENBAUM:

8 Q Okay. Did you --

9 A And I -- just to be precise, you said -- what  
10 was the adjective you used?

11 Q The adverb was "systematically."

12 A Systematically, no.

13 Q Okay.

14 A But incidentally, yes.

15 Q Okay. And when you say incidentally, I take  
16 that to mean, in your general interest about education,  
17 you may come across certain matters; is that right?

18 A Yes.

19 Q Okay. And through that -- your incidental  
20 involvement with educational issues on the Internet, did  
21 you come across any materials that you incorporated in  
22 your report?

23 A Not that I can think of offhand, and if I did,  
24 I think I would cite them in here --

25 Q Okay.

1 other than what you may already have been familiar  
2 with?

3 MS. KOURY: Asked and answered.

4 THE WITNESS: The systematic part was a careful  
5 reading of Mintrop, Russell and Baker.

6 BY MR. ROSENBAUM:

7 Q Oakes?

8 A Sorry. Yes, and Oakes.

9 Q Okay. So the answer is no with that exception;  
10 is that right?

11 MS. KOURY: Objection. Mischaracterizes his  
12 testimony. It's also asked and answered.

13 THE WITNESS: Aside from incidental things that  
14 I've mentioned and things that I'm already familiar  
15 with, I didn't make any computer searches or go to the  
16 library to hunt down things that had been referred to.

17 I did mention that I obtained -- or did I  
18 mention? I know it's cited here. I wanted to get an  
19 actual copy of the book by Woodhead, for example,  
20 because that was published, I think -- at least I heard  
21 about the publication subsequent to hearing him.

22 I'm afraid I've wandered off your question.

23 Have I answered it?

24 BY MR. ROSENBAUM:

25 Q Yeah, I think so.

1 A -- if I thought that they were relevant.

2 Q Or that you relied upon in preparation of your  
3 report?

4 A Well, what I relied upon would be in my  
5 footnotes.

6 Q Okay. And putting aside the Internet, now, did  
7 you systematically undertake any research with respect  
8 to preparation of your report?

9 MS. KOURY: Objection. Vague.

10 THE WITNESS: Well, I'm an educational scholar, in  
11 the sense that I'm familiar with many different issues.  
12 So you could say that I've been preparing for it for 30,  
13 40 years.

14 BY MR. ROSENBAUM:

15 Q Okay.

16 A And I -- you know, I go to the library -- I'm  
17 very interested in state issues, so I've read a lot  
18 about it at various times. So I could call upon those  
19 things. And some of it I have in my computer. Reports  
20 that I might pick up on the Internet, for example, I  
21 sometimes deposit them in a special file, and I can  
22 search for them and things of that nature.

23 Q All right. My question -- I appreciate that  
24 answer, but my question now is: Did you systematically  
25 undertake to do any research with respect to this case

1 Is there anything you want to add to that  
2 answer?

3 A That's all I can think of.

4 Q Okay. Had you read Mr. Woodhead's report prior  
5 to your listening to him --

6 A No.

7 Q Okay.

8 A I didn't even know he had a book.

9 Q Okay. Were you involved in inviting him to the  
10 Hoover Institute?

11 A No.

12 Q Okay. Do you know who was?

13 A No.

14 Q Okay. Have you read his book?

15 A Yes.

16 MS. KOURY: Asked and answered.

17 BY MR. ROSENBAUM:

18 Q Cover to cover?

19 A I wouldn't -- I wouldn't say that I've read it  
20 carefully page by page, but I did -- I did read it.

21 Q Okay. Did -- in the preparation of your  
22 report, Doctor, did you speak with any State officials  
23 in the area of education?

24 A From California?

25 Q Yes.

1 A No.  
 2 Q Okay. Do you know any State officials in  
 3 California in the area of education?  
 4 MS. KOURY: Objection. Vague, overbroad.  
 5 THE WITNESS: Officials, meaning executives from  
 6 the State?  
 7 BY MR. ROSENBAUM:  
 8 Q Okay.  
 9 A No.  
 10 Q Okay. Do you know -- strike that.  
 11 Did you speak to any principals in the  
 12 preparation of your report?  
 13 A No.  
 14 Q Any teachers?  
 15 A No.  
 16 Q Students?  
 17 A No.  
 18 Q Parents?  
 19 A No.  
 20 Q Okay. Have you ever spoken with any State  
 21 officials in education in California?  
 22 MS. KOURY: Objection. Vague, overbroad.  
 23 THE WITNESS: In connection with this case?  
 24 BY MR. ROSENBAUM:  
 25 Q You've already answered that; haven't you?

1 A I thought I did, yeah.  
 2 Q I mean, have you ever spoken to any State  
 3 officials of education in California?  
 4 A Ever.  
 5 Q Ever.  
 6 A Well, it doesn't stand out in my mind, but I've  
 7 participated in meetings and I've given lectures that  
 8 I'm sure Californians have come to.  
 9 Q But sitting here today, can you name any  
 10 Californians who have come to any of your lectures or  
 11 presentations?  
 12 MS. KOURY: Objection. Vague, overbroad.  
 13 THE WITNESS: The only one I can think of  
 14 offhandedly is that former Governor Wilson has an  
 15 appointment at the Hoover Institute. I think that he  
 16 may have been at one of our meetings.  
 17 BY MR. ROSENBAUM:  
 18 Q Okay.  
 19 A You say talk to him. I'm not sure that we had  
 20 an individual conversation, but we've -- I think we were  
 21 in a seminar together or he may have spoken or someone  
 22 else may have spoken and he may have commented.  
 23 Q Okay. But you don't have a recollection of any  
 24 specific conversation --  
 25 A No.

1 Q -- with Governor Wilson?  
 2 A No.  
 3 Q Okay. When was that?  
 4 A Oh, it might have been 18 months ago.  
 5 Q Okay.  
 6 A I have a very uncertain recollection of these  
 7 dates.  
 8 Q Okay. And have you ever spoken with any  
 9 teachers in California in K-12 public education?  
 10 A Ever?  
 11 Q Yeah.  
 12 MS. KOURY: Overbroad.  
 13 THE WITNESS: I've given lectures to teachers and  
 14 I've had "Q" and "A" and things of that nature.  
 15 BY MR. ROSENBAUM:  
 16 Q Okay. But can you -- do you have any specific  
 17 recollection of any conversations with any California  
 18 "K" through 12 public education teachers?  
 19 MS. KOURY: Objection. Asked and answered. He  
 20 just testified about that. But go ahead.  
 21 THE WITNESS: Well, I do remember giving some  
 22 lectures here in California, and there were some  
 23 teachers there and principals and others.  
 24 BY MR. ROSENBAUM:  
 25 Q That's not quite my question, though.

1 My question is: Did you have any conversations  
 2 that you can recall with teachers in the California "K"  
 3 through 12 public education system?  
 4 A You said conversations.  
 5 Q Yeah.  
 6 A Well, would that include "Q" and "A"?  
 7 Q It would include "Q" and "A."  
 8 A Yes. The answer's --  
 9 Q Can you remember the content of any of those  
 10 "Q" and "A"?  
 11 A Well, I have given a lecture on -- yes.  
 12 Q Okay.  
 13 A And I had given a lecture -- I've given several  
 14 lectures out here, and -- on how to raise achievement,  
 15 and so people would ask me questions and I would give  
 16 them long, you know, lists of things that can be done  
 17 that most effectively and efficiently promote  
 18 educational achievement in schools. And so people often  
 19 ask me to describe in more detail some of the things  
 20 that I mentioned or perhaps they didn't understand a  
 21 point I made or perhaps they disagreed with my point and  
 22 wanted to challenge me on that. So it was a typical "Q"  
 23 and "A" about how to raise achievement.  
 24 Q Okay. Can you speak up a little bit just --  
 25 can you hear okay?

1 MR. HAJELA: Yeah. Fine. Thanks.  
 2 BY MR. ROSENBAUM:  
 3 Q I appreciate that answer, Doctor. Let me be a  
 4 little more specific.  
 5 Sitting here today, do you remember any  
 6 specific questions and answers from persons who you  
 7 understood to be teachers in the California public  
 8 school system?  
 9 MS. KOURY: Objection. Asked and answered.  
 10 THE WITNESS: I don't remember the specifics of the  
 11 conversation. Just the types of questions that I would  
 12 get.  
 13 BY MR. ROSENBAUM:  
 14 Q Okay. And same question with respect to  
 15 principals or administrators in the "K" through 12  
 16 public education system.  
 17 A Same answer.  
 18 Q Okay. And do you personally know anyone in the  
 19 California Department of Education?  
 20 MS. KOURY: Objection. Vague.  
 21 THE WITNESS: No.  
 22 BY MR. ROSENBAUM:  
 23 Q Okay. To your knowledge, have you had any  
 24 discussions with anyone in the California Department of  
 25 Education?

1 A With respect to this case?  
 2 Q Well, let's start there, yeah.  
 3 A No.  
 4 Q Okay. Just generally?  
 5 A Ever?  
 6 Q Yeah.  
 7 A Well, I mentioned another -- I once advised the  
 8 State Board of Education in California, and I think the  
 9 superintendent -- the State superintendent may have been  
 10 a participant and during the other case involving the  
 11 SAT 9 and other tests, I may have spoken to officials,  
 12 especially in the testing department.  
 13 Q Do you have any specific recollection of the  
 14 discussions, if any, regarding the testing system?  
 15 A Yes.  
 16 Q With California Department of Education?  
 17 A Yes.  
 18 Q Okay. With whom did you have discussions?  
 19 A I think it was either a committee or it was the  
 20 State board.  
 21 Q Okay. And --  
 22 A That is to say, a committee of the board or the  
 23 full board. I don't -- I don't remember -- I  
 24 participated by conference call, so --  
 25 Q Okay. What do you remember about that

1 discussion?  
 2 A It had to do with the nature of the California  
 3 testing system and what would be the best test to use.  
 4 Q Okay. What do you specifically remember about  
 5 that discussion?  
 6 A Well, I -- this sounds awful, but I remember  
 7 what I said.  
 8 Q Okay. And what did you say?  
 9 A I said that I thought that they ought to use,  
 10 at least for the time being, the Stanford achievement  
 11 test.  
 12 Q Okay. Approximately when was that?  
 13 A Might have been two or three years ago.  
 14 Q Okay. And who was on the other end of the  
 15 phone, to your understanding?  
 16 A The State Board of Education board members.  
 17 Q Do you know which ones or how many? Strike  
 18 that.  
 19 Do you know how many?  
 20 A No, I -- as I say, I participated by conference  
 21 call. There were some other -- they had several experts  
 22 to advise them, and I was the only one on the conference  
 23 call. I mean, I was the only one that telephoned in.  
 24 The rest were actually there.  
 25 Q Do you remember anything that was said on the

1 other side of that telephone?  
 2 A Well, I remember some of the questions that  
 3 they raised.  
 4 Q Okay. What were the questions that were  
 5 raised?  
 6 A The questions -- I think the chief question was  
 7 how to plan revisions in the State testing program.  
 8 Q Okay. And what do you mean how to plan  
 9 revisions?  
 10 A I think that the California testing system has  
 11 undergone a lot of revisions, and -- over time, and they  
 12 wanted to have a high quality system that would be cost  
 13 effective and that would be reliable and valid and that  
 14 would enable them to have good information on how the  
 15 students in the schools were doing, as well as each  
 16 student. Those are some of the primary considerations.  
 17 Q Okay. And help me understand this, Doctor.  
 18 At the time that you were on this conference  
 19 call, was the Stanford 9 already in use in California?  
 20 A By the State?  
 21 Q Yeah.  
 22 A I think it was. It was almost certainly  
 23 involved with some schools, and it might have been a  
 24 State-required test.  
 25 Q What -- you know what the API is, right?

1 A Yes.  
 2 Q Was the API -- had it been set up?  
 3 A I don't think so.  
 4 Q Okay.  
 5 A But I'm uncertain on that.  
 6 Q Does this have anything to do with whether the  
 7 Stanford 9 should be used as part of the API?  
 8 A I don't remember that particular part.  
 9 Q Now, do you remember anything else that was  
 10 said on the other end of the telephone?  
 11 A Not by me but by the board members?  
 12 Q Correct.  
 13 A Or the other experts?  
 14 Q Correct.  
 15 A I remember a few general things.  
 16 Q What do you remember?  
 17 A They were pretty much as I was mentioning to  
 18 you, that they felt that they ought to have a reliable  
 19 and valid test, they ought to be practical tests, would  
 20 be desirable to have individual information on each  
 21 student. I think I remember also that it appeared that  
 22 couldn't be done instantaneously, that it had to evolve  
 23 over time.  
 24 Q Okay. What do you mean by that?  
 25 A I meant that there were certain -- I think at

1 that time not everything had been perfectly aligned. So  
 2 the test needed further development, and the standards  
 3 might have had to have some reconsideration. And so  
 4 this was not viewed as a one-time decision, but rather,  
 5 what are the next steps that need to be accomplished.  
 6 Q Do you know what the PSAA is?  
 7 A I remember that acronym from here, but I need  
 8 to be reminded.  
 9 Q Okay. Now, putting aside this -- this was a  
 10 discussion with relationship to this lawsuit; is that  
 11 right? Not the Williams lawsuit but the testing  
 12 lawsuit.  
 13 A No. No, this was something separate.  
 14 Q It was separate.  
 15 A Yes.  
 16 Q I see.  
 17 Any other discussions that you can recall with  
 18 individuals whom you understood to be personnel within  
 19 the Department of Education?  
 20 A Ever at any time?  
 21 Q Yeah.  
 22 A I think --  
 23 MS. KOURY: Overbroad.  
 24 THE WITNESS: -- I've mentioned it.  
 25 BY MR. ROSENBAUM:

1 Q Have you ever visited any California schools,  
 2 "K" through 12 public schools?  
 3 A Not that I can think of.  
 4 Q Okay. Was it ever suggested to you by  
 5 Mr. Salvaty or anyone else that that might be a good  
 6 idea?  
 7 A I don't think so.  
 8 Q Okay. Did you ever ask if you could visit some  
 9 "K" through 12 schools?  
 10 A Not that I remember.  
 11 Q Okay. The three drafts that you mentioned, do  
 12 you still have copies of those drafts?  
 13 A No.  
 14 Q Why is that?  
 15 A Because --  
 16 MS. KOURY: Objection. Vague.  
 17 THE WITNESS: -- I think it's advisable to keep a  
 18 really good copy of the final draft, because I once had  
 19 the experience of working on a project that went through  
 20 nine stages, and they accidentally published the fifth  
 21 stage.  
 22 BY MR. ROSENBAUM:  
 23 Q That's --  
 24 A Easy to get manuscripts mixed up.  
 25 Q That's the only reason?

1 A Yes.  
 2 Q Now --  
 3 A Well, I -- I mean, there is another reason. I  
 4 mean, it sounds trivial, but you know, with -- I work a  
 5 lot at home. I don't have huge amounts of storage  
 6 space. So I don't keep all the things that I would come  
 7 across in a lawsuit.  
 8 Q Okay. Now, Mr. Salvaty, I think you testified  
 9 to me earlier -- if I mischaracterize it, just let me  
 10 know.  
 11 He offered some discussions from time to time  
 12 about your drafts; is that right?  
 13 A Yes.  
 14 Q Okay. And were his suggestions orally, in  
 15 writing or both?  
 16 A (No audible response)  
 17 Q How did he do that? How'd he give you  
 18 suggestions?  
 19 A He marked them on a -- he marked up a hard  
 20 copy.  
 21 Q Okay. And then how did you -- did you see the  
 22 marked-up hard copy?  
 23 A Yes, he sent it to me.  
 24 Q And he sent it to you by fax or express mail or --  
 25 A He either --



1 Q -- e-mail?  
 2 A -- mailed it or FedExed.  
 3 Q Ever by e-mail?  
 4 A No.  
 5 Q Okay. And do you have copies of his mark-ups?  
 6 A No.  
 7 Q What happened to those?  
 8 A I threw them away --  
 9 Q Okay.  
 10 A -- when I was finished.  
 11 Q And on how many occasions did he send you  
 12 those?  
 13 MS. KOURY: Objection. Asked and answered.  
 14 THE WITNESS: Well, I think I did three drafts, and  
 15 he sent me -- he sent comments on the first draft; he  
 16 sent comments on the second draft. This is the final  
 17 draft that he did not comment on.  
 18 BY MR. ROSENBAUM:  
 19 Q Okay. And did he give you any memos or -- any  
 20 memos about your drafts?  
 21 A No.  
 22 Q Okay. Were the mark-ups in ink or typewritten?  
 23 A No, they were on the manuscript in ink.  
 24 Q Okay. And what do you recall of those  
 25 mark-ups?

1 MS. KOURY: Asked and answered.  
 2 THE WITNESS: They were useful comments, because  
 3 some of my language is a bit technical and may be  
 4 unclear. And so he might have said -- you know, put a  
 5 question mark, what does this mean, or something like  
 6 that. And in some cases it was -- you know, even if  
 7 you're an experienced writer, noun-verb agreement, you  
 8 know, things like that.  
 9 BY MR. ROSENBAUM:  
 10 Q Okay. Is every word in this report your word?  
 11 A Except for the quotes, of course.  
 12 Q Right. But otherwise, every word is your  
 13 writing --  
 14 A That's right.  
 15 Q -- your words? Okay.  
 16 Can you explain to me, Doctor, what was the  
 17 process you utilized in the preparation of your report?  
 18 MS. KOURY: Objection. Vague, calls for a  
 19 narrative.  
 20 THE WITNESS: We've gone over that a little bit,  
 21 and I'm not sure I'm going to add to what I'd said  
 22 earlier. But I first -- well, I read at least at one  
 23 point the Oakes report and then --  
 24 BY MR. ROSENBAUM:  
 25 Q Both the Oakes reports, right?

1 A Well, I read the synthesis first, because I  
 2 thought it would give me an overview of the case. And  
 3 then I read more carefully Mintrop and Russell reports.  
 4 And then at some point -- I don't remember the order,  
 5 but I -- after I got a better understanding of what they  
 6 were saying, I read the other reports that I mentioned  
 7 earlier and that are mentioned in my report. And then  
 8 from there I may have sort of compared one against the  
 9 other.  
 10 Q Okay. How many times have you read the Mintrop  
 11 report?  
 12 A Well, I would say I read it once carefully, but  
 13 as I went through it, I underlined and put stars and  
 14 dogeared pages so that I could refer back to it. So I  
 15 guess I would say once carefully, but then referred to  
 16 it at -- specific points as I began writing -- as I  
 17 began outlining and writing.  
 18 Q Okay. And how about the Russell report? How  
 19 many times did you read that?  
 20 A I think that was roughly the same.  
 21 Q Okay. And how about the Oakes synthesis report?  
 22 A The same.  
 23 Q Okay. Now, I don't want to mischaracterize  
 24 your testimony. Help me out here.  
 25 You said you read the Mintrop report carefully?

1 A Yes.  
 2 Q Okay. And the same with the Russell report?  
 3 A Yes.  
 4 Q Did you read the synthesis report with the same  
 5 degree of care?  
 6 A No.  
 7 Q Okay. And why is that?  
 8 A Because I was asked to do only two things. I  
 9 mean, there was a high priority on those two. And the  
 10 other was just for rather background information.  
 11 Q Okay. And did you read the Koski report?  
 12 A I read the -- all the reports that I had  
 13 mentioned earlier.  
 14 Q Okay. And the Mintrop report that you  
 15 underscored and dogeared, do you still have a copy of  
 16 that report?  
 17 A I don't know. I haven't been back to that file  
 18 for some time. I'm not sure whether I kept it or not.  
 19 Q Okay. Where is that file?  
 20 A It's at home.  
 21 Q And does it have a name?  
 22 A Well, it would -- I mean, it's -- referring to  
 23 Mintrop's report.  
 24 Q I know. I think I'm not being clear.  
 25 Did you put the Mintrop report in an accordion

1 file or a --  
 2 A No, I just put it in a big -- I have these big  
 3 black boxes, and I just throw a lot of stuff in there.  
 4 Q Okay. And does that big black box have a name?  
 5 A Yes.  
 6 Q What's it called? A big black box?  
 7 A No, CA.  
 8 Q CA, okay.  
 9 Do you have a big black box for Iowa, Georgia,  
 10 other states?  
 11 MS. KOURY: Objection. Vague, ambiguous.  
 12 MR. ROSENBAUM: That's not a good question.  
 13 Q And did you mark up the Oakes report also?  
 14 A I may have made a few underlinings on it. I  
 15 remember that list well.  
 16 Q Did you keep that report?  
 17 A I think I may still have a copy, but I'm not  
 18 sure.  
 19 Q Same thing for Russell?  
 20 A Hmm-hmm.  
 21 Q Same thing for Koski?  
 22 A Yes.  
 23 Q And Grubb and Goe?  
 24 A Yes.  
 25 Q Okay. Now, you also mention in your report

1 that you read the liability disclosure statement?  
 2 A You say that I mentioned in my report that I  
 3 read it?  
 4 Q Yeah.  
 5 A Uh-huh. I think I did get that, and I did read  
 6 it.  
 7 Q Okay. And did you mark that up in the same way  
 8 that you described how you marked up Mintrop and Russell?  
 9 A I don't remember.  
 10 Q Okay. And for what purpose did you read the  
 11 liability disclosure statement?  
 12 A Well, I think perhaps Mr. Salvaty had sent it  
 13 to me, and it was implied that I should -- would have  
 14 the opportunity to look it over, so I did.  
 15 Q Okay. And explain to me, Doctor, how did you  
 16 go about writing the report?  
 17 You've told me that the first step was that you  
 18 reviewed the documents we've discussed; is that right?  
 19 A Yes.  
 20 Q What was the next step?  
 21 MS. KOURY: Objection. Asked and answered.  
 22 THE WITNESS: Well, I compared and contrasted them  
 23 and -- and then I made some notes on some of the  
 24 principal points that they had made. And then began to  
 25 organize and outline. That evolved into the -- what you

1 see here as the table of contents.  
 2 BY MR. ROSENBAUM:  
 3 Q Okay. Table of contents in your report?  
 4 A Yeah.  
 5 Q Okay. And where did you make those notes?  
 6 A I think I -- by that time I started keying  
 7 things in my computer.  
 8 Q What does that mean?  
 9 A Well, I use Word, and it has an outline  
 10 feature. And so I probably went through a couple of  
 11 outlines to try to see if it had a logical coherent  
 12 nature.  
 13 Q Okay. And over what period of time did you  
 14 actually do the drafting of the report?  
 15 A It might have been about four to six weeks.  
 16 Q Okay. And how did you decide what you were  
 17 going to put in the report and what you didn't -- what  
 18 you kept out of the report?  
 19 MS. KOURY: Objection.  
 20 BY MR. ROSENBAUM:  
 21 Q Give me a sense of your mental processes in  
 22 determining what you were going to include in your  
 23 report.  
 24 MS. KOURY: Objection. Overbroad, vague and  
 25 ambiguous. It's also compound.

1 THE WITNESS: Well, I went -- you know, as I  
 2 mentioned earlier, I made various underlinings,  
 3 underscorings of various kinds, and I began to see what  
 4 outlay might fit together one way or the other in  
 5 various categories and subcategories and where there  
 6 might be overlap and how they would compare with the  
 7 other reports that I wasn't specifically asked to look  
 8 at.  
 9 And I had noted weaknesses, particularly in  
 10 Russell and Mintrop, or things that I could not agree  
 11 to. And I looked at -- I thought to myself what are  
 12 their reasons why these were -- the things that they  
 13 were recommending would not be very workable.  
 14 BY MR. ROSENBAUM:  
 15 Q Okay. Were there any statements in the Mintrop  
 16 report that you agreed with?  
 17 MS. KOURY: Objection. Overbroad.  
 18 THE WITNESS: Well, I think in the Mintrop report,  
 19 he did have the idea to some extent -- I'm not sure it  
 20 was explicitly stating that learning of California  
 21 students should be improved, and I certainly would agree  
 22 with that. There may have been other matters that were  
 23 mentioned that I -- if I reread the report that I could  
 24 agree to.  
 25 BY MR. ROSENBAUM:

1 Q Sitting here today, can you think of anything  
 2 else?  
 3 A No.  
 4 Q Okay. And how about the Russell report?  
 5 Anything in the Russell report you agreed with?  
 6 A I think he also would agree to the point that  
 7 I've mentioned and that Mintrop and others have  
 8 mentioned that many people would agree to that were  
 9 concerned about higher levels of learning in all the  
 10 states.  
 11 Q What does that mean?  
 12 A It means that there is a huge amount of public  
 13 concern, not only in California but in other states --  
 14 and in other countries, for that matter -- about  
 15 improving the achievement levels of children in schools.  
 16 Q Okay. When you say achievement level, what do  
 17 you mean by that?  
 18 A I mean the kinds of tests that are used and  
 19 accountability schemes that we talked about earlier in  
 20 the 49 states and the national assessment of educational  
 21 progress.  
 22 Q Help me understand you.  
 23 When you -- what do you mean by the phrase  
 24 "achievement level"?  
 25 MS. KOURY: Asked and answered.

1 THE WITNESS: Well, achievement is the content  
 2 of -- the student's mastery of the content on the tests  
 3 and the learning that takes place, and when I say level,  
 4 a number of states now have used these proficiency  
 5 levels, like basic, proficient and advanced, and are  
 6 reporting the percentages of children who reach each one  
 7 of those levels.  
 8 BY MR. ROSENBAUM:  
 9 Q Okay. Do you know the percentage of California  
 10 students K-12 that are basic, as you just defined it?  
 11 A No.  
 12 Q Or proficient?  
 13 A No.  
 14 Q Or advanced?  
 15 A No.  
 16 MS. KOURY: Objection. Vague.  
 17 BY MR. ROSENBAUM:  
 18 Q When you say basic, what do you mean by that?  
 19 A Well, I was on the National Assessment  
 20 Governing Board, and we originated those terms. And  
 21 different people mean different things by them. But the  
 22 core term is "proficient," which means that we -- at  
 23 least according to some of our original thinking, was  
 24 that you are capable of going on to the next grade  
 25 level.

1 Q Okay.  
 2 A And then basic --  
 3 Q I'm sorry.  
 4 A -- is somewhat below that, not desirable. And  
 5 then we had to have another category called below  
 6 basic. And then that fits into the scheme that has one  
 7 level higher than proficient called advanced.  
 8 And a lot of states have adopted that  
 9 terminology or something like it, but they define --  
 10 they are variations in how they define it for various  
 11 subject matters and for various states.  
 12 Q Okay. You gave me four categories. I just  
 13 want to make sure I've got them right. Proficient,  
 14 basic, below basic and advanced.  
 15 Do I have them right?  
 16 A Yes.  
 17 Q And the National Assessment Governing Board,  
 18 that's responsible for NAEP; isn't that right?  
 19 A Yes.  
 20 Q Have you made any inquiry, for purposes of this  
 21 test, as to the percent of numbers of students "K"  
 22 through 12, public schools, that are below basic in  
 23 California?  
 24 A No, not in California.  
 25 Q Or basic for California?

1 A No.  
 2 Q Or proficient?  
 3 A No.  
 4 Q Or advanced?  
 5 A Well, I have come across reports, and I --  
 6 California does not stand out in my mind. I think that  
 7 they have not participated as much in NAEP as some other  
 8 states. That's been more recently. So --  
 9 Q Okay. But sitting here today, can you give me  
 10 the percentages of California students in any of those  
 11 four categories?  
 12 A No.  
 13 Q At any point in time?  
 14 A No.  
 15 Q Okay. And do you know whether or not  
 16 California participated in the last NAEP examinations?  
 17 A Well, I have the -- I think that they recently  
 18 started participating.  
 19 Q Okay. Don't look at your report yet.  
 20 Do you know when they started participating?  
 21 A No.  
 22 Q Okay. Do you know on how many occasions  
 23 they've participated?  
 24 A No.  
 25 Q Do you know when the most recent results of the

1 NAEP was announced?  
 2 A For the nation?  
 3 Q Yes.  
 4 A I think it may have been something like three  
 5 months ago.  
 6 Q Okay. And do you know where California fell --  
 7 A No.  
 8 Q Okay. Did you make any attempt to investigate  
 9 where California fell on the NAEP test? For purposes of  
 10 this case or otherwise.  
 11 A Well, I had already written my report, and I  
 12 understood that that was all I would need to do.  
 13 Q Okay.  
 14 A So I didn't do any further research.  
 15 Q Okay.  
 16 A And I didn't particularly look up California or  
 17 any other state or even read the latest reports very  
 18 carefully.  
 19 Q Okay. Have you read the latest reports at all?  
 20 A I mentioned to you that I scanned a number of  
 21 things, and I have -- came across news accounts.  
 22 Q Can you tell me any facts or data regarding the  
 23 most recent results from NAEP?  
 24 A Yes.  
 25 Q What can you tell me?

1 A That there's been a long concern about what's  
 2 sometimes called stagnant scores on NAEP in the major  
 3 subject areas, and the large percentages of students  
 4 that are below basic and basic and the fewer than  
 5 desirable at the advanced level, and the latest scores  
 6 show that that hasn't changed much.  
 7 Q Do you know if it's decreased?  
 8 A Well, I think if you take a lot of different  
 9 scores, you're going to find a few that go up and a few  
 10 that go down. My impression is that there hasn't been a  
 11 fundamental or essential major change that -- one or two  
 12 might go up and one or two might go down, but it's  
 13 basically -- well, let's say, simply put, it's been  
 14 unchanged for some years.  
 15 Q If you just answer -- if you've already  
 16 answered this, just tell me.  
 17 Do you know what California did, whether it  
 18 stayed stagnant, up, down, whatever?  
 19 A I didn't look into California specifically.  
 20 Q Okay. Now, prior to this last administration  
 21 of NAEP the last -- my question's unclear.  
 22 Prior to the last announcement of NAEP results,  
 23 when was the one prior to that?  
 24 A Well, I haven't been on the board for about 15  
 25 years. So I don't follow it as closely as I used to.

1 Q Okay. You don't follow NAEP results? That's  
 2 what you're referring to?  
 3 A I incidentally follow them, unless I have some  
 4 specific purpose in mind.  
 5 Q Okay. Sitting here today, can you tell me when  
 6 the time before the most recent time was with respect to  
 7 reporting of NAEP results?  
 8 A No.  
 9 Q Okay. Or the time before that?  
 10 MS. KOURY: Calls for speculation.  
 11 BY MR. ROSENBAUM:  
 12 Q I don't want to you speculate. If you don't  
 13 know, just tell me.  
 14 A I don't know.  
 15 Q Okay. Do you know what California did the time  
 16 before this time?  
 17 A No.  
 18 MS. KOURY: Objection. Asked and answered.  
 19 THE WITNESS: No.  
 20 BY MR. ROSENBAUM:  
 21 Q Or at any prior time?  
 22 MS. KOURY: Asked and answered.  
 23 THE WITNESS: No.  
 24 BY MR. ROSENBAUM:  
 25 Q Okay. If I asked you the same questions, but

1 instead of "K" through 12, talked about elementary  
 2 students, middle school students or high school students  
 3 taking the test, would your answers be any different?  
 4 A No.  
 5 Q Okay. Now, were you involved in the  
 6 development of the NAEP test?  
 7 MS. KOURY: Objection. Vague.  
 8 BY MR. ROSENBAUM:  
 9 Q I don't want to make that vague for you.  
 10 Do you know what I mean by -- when did NAEP  
 11 come into being, if you know?  
 12 A About 30 years ago.  
 13 Q Okay. And were you involved in the process  
 14 that led to the development of that NAEP test 30 years  
 15 ago?  
 16 A No.  
 17 Q Okay. Have you looked at the NAEP test at any  
 18 point?  
 19 MS. KOURY: Objection. Vague.  
 20 BY MR. ROSENBAUM:  
 21 Q Do you know what I mean by that?  
 22 A When I was on the governing board, I would  
 23 occasionally look at test items.  
 24 Q Okay. And did you ever make any suggestions as  
 25 to changes -- possible changes or modifications to the

1 NAEP test?

2 MS. KOURY: Objection. Vague, overbroad.

3 THE WITNESS: Well, the governing board sets  
4 policy. So I've participated in many discussions of  
5 what the -- I was the chairman of the design and  
6 analysis committee that came up with these four -- four  
7 or five categories that I mentioned to you. So I  
8 made -- I participated in discussions, made suggestions  
9 and chaired the committee and voted on various policies.

10 BY MR. ROSENBAUM:

11 Q Okay. In fact, you were a proponent of these  
12 different categories; isn't that true?

13 MS. KOURY: Objection. Leading, mischaracterizes  
14 his testimony.

15 THE WITNESS: I thought that they would be useful.

16 BY MR. ROSENBAUM:

17 Q Why'd you think that?

18 A Because I think that in -- previous to that  
19 test, scores had been reported as averages and standard  
20 deviations of percentiles, and that simply gives the  
21 students ranking against other students.

22 Q And in your scholarly writings, you have on  
23 many occasions referred to NAEP results; isn't that  
24 true?

25 A Yes.

1 MS. KOURY: Objection. Vague.

2 THE WITNESS: (No audible response)

3 BY MR. ROSENBAUM:

4 Q Did you say no?

5 A I said no.

6 Q Okay. Thank you.

7 And when you say NAEP is innovative, what do  
8 you mean by that?

9 A I mean that it was the first test to use random  
10 samples to gauge American students' achievement. And I  
11 consider that a very significant innovation.

12 Q Why is that?

13 A Because SAT scores and ACT scores are taken on  
14 a voluntary basis, and they're not random samples and  
15 they can be extremely misleading.

16 Q Why is that?

17 MS. KOURY: Objection. Vague.

18 THE WITNESS: The chief reason is that -- let's say  
19 the scholastic aptitude tests are used more frequently  
20 in the East and West Coasts and the AC tests are used --  
21 that's American college tests -- are used more  
22 frequently in the Midwest.

23 BY MR. ROSENBAUM:

24 Q Okay.

25 A So you have different fractions of students

1 Q And why do you do that?

2 A Because I believe it's the best test in  
3 possibly the world.

4 Q Why do you think that?

5 A Because it has random samples, random samples  
6 of regions, and then when I was on the board it went to  
7 give individual state information. And it is -- I  
8 believe it had been innovative and used new procedures,  
9 and yet it's been both effective and cost effective. I  
10 think that many, many scholars and policy makers refer  
11 to it, and it also plays a central role in the new  
12 federal legislation No Child Left Behind.

13 Q Okay. And that central role was what?

14 A The what?

15 Q The central role you're referring to in No  
16 Child Left Behind, what is that?

17 A If the State wants to get Federal money, which  
18 is a sizable proportion of the budgets, and especially  
19 in urban school districts, where you have a lot of poor  
20 children, it risks the possibility of not getting the  
21 Federal funds unless the State participates in the  
22 national assessment of educational progress.

23 Q And if you answered this for me, just tell me.

24 Do you know how long California's participated  
25 in the NAEP test?

1 that are taking the test. In addition, if you look at,  
2 let's say, a 30- or 40-year period, more and more  
3 students are going into higher education, and so it  
4 doesn't produce valid comparisons.

5 Q Why is that?

6 A Because you need to have either the total  
7 population or random samples of the population in order  
8 to make a legitimate or a valid inference.

9 Q Any other innovative features about NAEP?

10 A They have -- NAEP has not only dealt with the  
11 major subject areas, but it has created some tests that  
12 are not often given in schools. There is, for example,  
13 a test of economics, which is not normally tested in  
14 schools.

15 I think there may be some other reasons, but I  
16 can't think of them right now.

17 Q Okay. When you say major subject areas, what  
18 do you mean by that?

19 A Reading, mathematics, civics, history,  
20 geography. Those I consider to be the major subjects  
21 within schools.

22 Q Okay.

23 A And to some extent perhaps music, art, music  
24 and physical education.

25 Q Does NAEP test on art, music or physical

1 education?

2 A I don't think it tests on physical education,  
3 and I'm unsure, since it's been roughly 15 years ago  
4 that I served on it, whether they do the other ones now.

5 Q Okay. And I believe you told me that NAEP --  
6 another distinguishing feature of NAEP is that it's cost  
7 effective?

8 A Yes.

9 Q What do you mean by that?

10 A Well, it uses a sampling procedure, so that it  
11 enables us to -- especially for policy makers and  
12 educators and parents and citizens, it's the only test  
13 that enables us to make a valid inference as to whether  
14 test scores are going up or going down. And it also  
15 enables -- when it first began, it gave -- took random  
16 samples of regions, and it enabled us to compare, say,  
17 New England with the South. But now what's called state  
18 NAEP, and you can make valid comparisons of one state  
19 with another.

20 Q Okay. And let me see if I have this right.

21 You said it's the only test that permits you to  
22 make valid comparisons? Is that your testimony?

23 A Yes.

24 Q Okay.

25 A Valid comparisons of states and regions and --

1 BY MR. ROSENBAUM:

2 Q Okay. Any reason why not? Strike that.

3 In some of your writings you have compared  
4 results on State assessment tests with results on the  
5 NAEP tests for particular states; isn't that right?

6 MS. KOURY: Objection. Vague, overbroad.

7 THE WITNESS: I think I have, yes.

8 BY MR. ROSENBAUM:

9 Q Okay. And why did you do that?

10 A Because I thought it was important to know  
11 where the states ranked in comparison to national  
12 rankings and whether each state had rigorous or  
13 less-rigorous criteria for being proficient.

14 Q And when you say rigorous or less-rigorous --  
15 what? Criteria?

16 A Yes.

17 Q Okay. What do you mean by that?

18 A I mean if you would get proficient on the state  
19 test, you might not be proficient by NAEP standards.  
20 And so there's a discrepancy between the rigor of the  
21 two sets of standards in the tests.

22 Q And what possible conclusions could you draw if  
23 you found that sort of discrepancy?

24 A Well, it begins to allow you -- and it should  
25 help the states and citizens of the state to say -- to

1 now, there may be -- and I'm speaking here of a national  
2 basis too. Some states are now moving towards a system  
3 where they can compare, let's say, schools in districts  
4 within the state, but they can't compare their  
5 performance to another state unless they have some means  
6 of calibration.

7 Q Now, in some of your writings, Doctor, if I  
8 understand them correctly, you have used NAEP -- you  
9 have compared state assessment tests with NAEP; isn't  
10 that right?

11 A I think I have that in this report.

12 Q Your report you submitted in this case?

13 A Yeah. Let me check that.

14 Q Okay. You're looking at --

15 A Yeah, it's on Page 44.

16 Q Okay. And have you compared -- well, let me  
17 strike that.

18 A And I should say, when you said you compared,  
19 this is taken from another report, that I'm just  
20 reproducing the results.

21 Q Okay. Okay. Have you compared results on the  
22 NAEP tests with the results on the California assessment  
23 test?

24 MS. KOURY: Objection. Vague, overbroad.

25 THE WITNESS: No.

1 be critical if their state did poorly on NAEP, but it  
2 did well on the state test, that the state tests are not  
3 very rigorous.

4 Q Okay. And what's the basis --

5 A And on the other hand, if they did well on NAEP  
6 and less well on the State test, it would show them that  
7 they had rather stringent criteria for being proficient.

8 Q Okay. And have you conducted that sort of  
9 comparison for California?

10 A No.

11 Q Okay. Do you know if anybody has?

12 A Well, they could have, but I don't know about  
13 it. In the analysis that I reported here, done by  
14 someone else, California was not included as of '02.

15 Q Okay.

16 A But that may be just for this particular  
17 subject; I don't know.

18 Q Okay. When you say "here," you're talking  
19 about Page 44 of your report; is that right?

20 A Yes.

21 Q And have you undertaken any inquiry or analysis  
22 to see whether or not such comparisons have been made  
23 between NAEP California results and the results on the  
24 California assessment test?

25 A I have not --

1 Q Okay.  
 2 A -- investigated that.  
 3 Q Okay. If I asked you this question before, you  
 4 bear with me and just tell me that.  
 5 Do you know if, on the California assessment  
 6 test, for any year that it's been in existence, since  
 7 the API was formed, do you know if there's a proficiency  
 8 standard, proficiency category the way you talked to me  
 9 about NAEP?  
 10 MS. KOURY: Objection.  
 11 BY MR. ROSENBAUM:  
 12 Q I think the question's a little confusing, so  
 13 let me break it down.  
 14 You told me that one of the categories for NAEP  
 15 is proficient.  
 16 A Yes.  
 17 Q Okay. Does California assessment test, since  
 18 the advent of API -- does it have a proficient category  
 19 also?  
 20 A I don't remember.  
 21 Q Okay. You don't remember any of the  
 22 categories?  
 23 MS. KOURY: Objection. Mischaracterizes his  
 24 testimony.  
 25 BY MR. ROSENBAUM:

1 Q I don't mean to characterize your testimony.  
 2 Do you remember any of the categories?  
 3 A No.  
 4 Q Okay. Do you know how students broke out on  
 5 the test? How many were -- even if we don't know the  
 6 formal title, how many were at the top, how many were at  
 7 the middle, how many were at the bottom?  
 8 A No.  
 9 MS. KOURY: Objection. Vague and ambiguous.  
 10 BY MR. ROSENBAUM:  
 11 Q Did you ever make any inquiry to find out?  
 12 A No.  
 13 Q Any reason why not?  
 14 A Well, I was asked to concentrate on the two  
 15 reports, and I didn't consider that relevant to what I  
 16 was writing about.  
 17 Q Okay. Did you ever make comparisons from year  
 18 to year?  
 19 MS. KOURY: Objection. Vague --  
 20 THE WITNESS: For California?  
 21 MS. KOURY: -- and ambiguous.  
 22 MR. ROSENBAUM: Yeah, it is vague.  
 23 Q Year to year on the assessment test since the  
 24 advent of the API. I'm not talking about NAEP now.  
 25 MS. KOURY: Objection. Vague, ambiguous,

1 overbroad.  
 2 THE WITNESS: I didn't study that.  
 3 BY MR. ROSENBAUM:  
 4 Q You never looked at -- just I want to be clear  
 5 here.  
 6 You never looked at the results on -- for the  
 7 API for individual schools or districts from year to  
 8 year; is that true?  
 9 MS. KOURY: Objection. Vague and ambiguous.  
 10 THE WITNESS: I never looked at the API for  
 11 individual schools in California.  
 12 BY MR. ROSENBAUM:  
 13 Q Or for districts?  
 14 A Or for districts. But I might have come across  
 15 some of that in the Mintrop and Russell reports. I  
 16 don't particularly remember it. And I have at one time  
 17 had the data from the California system on computer  
 18 and -- this might have been four, five years ago. So I  
 19 did -- I am -- I have compared districts and states.  
 20 I'm sorry, districts and schools within California.  
 21 Q How long has the API been in existence?  
 22 A I don't know.  
 23 Q Okay. And can you -- did you ever specifically  
 24 compare districts' performances from year to year on the  
 25 API?

1 MS. KOURY: Objection. Asked and answered, also  
 2 vague and ambiguous.  
 3 THE WITNESS: I don't think so.  
 4 BY MR. ROSENBAUM:  
 5 Q Okay. Or how students generally in California  
 6 did on the API from year to year?  
 7 MS. KOURY: Objection. Overbroad.  
 8 THE WITNESS: I don't think that I've -- aside from  
 9 what I've already mentioned, have not made analyses of  
 10 the API. I have made analyses of test scores in  
 11 California for purposes unrelated to this case.  
 12 BY MR. ROSENBAUM:  
 13 Q Okay. But for this case, you didn't undertake  
 14 any analysis of test scores in California?  
 15 MS. KOURY: Objection. Misstates his testimony.  
 16 THE WITNESS: That's right.  
 17 BY MR. ROSENBAUM:  
 18 Q Okay. And you didn't rely upon any such  
 19 analyses for purposes of your report; isn't that also  
 20 true?  
 21 A Not that I recall.  
 22 Q Okay. And you know what a regression analysis  
 23 is, of course?  
 24 A Yes.  
 25 Q Okay. And you perform thousands of regression

1 analyses in your lifetime?  
 2 A I have.  
 3 Q More than you care to remember?  
 4 A Yes.  
 5 Q Okay. Did you do any for purposes of this  
 6 report?  
 7 A No.  
 8 Q Or for this case?  
 9 A No.  
 10 Q Were you asked to do any?  
 11 A No.  
 12 Q Did you give any consideration of conducting  
 13 any regression analyses?  
 14 A Well, it may have entered my mind, but it was  
 15 not -- I don't think -- would not have been relevant to  
 16 what I was asked to do.  
 17 Q Okay. Sitting here today, do you remember what  
 18 may have entered your mind with respect to perhaps  
 19 performing regression analyses?  
 20 A No.  
 21 Q Okay. Now, you are aware that in some of the  
 22 reports you've looked at, there is a reference to a  
 23 Harris survey?  
 24 A I vaguely remember that.  
 25 Q What, if anything, do you remember?

1 A Next to nothing. I just remember seeing  
 2 "Harris report" or something like that at one point.  
 3 Q Okay. So is it next to nothing or nothing that  
 4 you remember?  
 5 A I will say nothing.  
 6 Q Okay. So in any of your discussions with  
 7 Mr. Salvaty, did the question come up about taking a  
 8 survey of teachers in California?  
 9 A Not that I remember.  
 10 Q Or in the meeting -- the meeting at the Hoover  
 11 Institute which Ms. Hocksby -- Dr. Hocksby participated  
 12 by telephone, any discussion about the Harris survey at  
 13 that point?  
 14 A Not that I remember.  
 15 Q Or about whether it'd be a good idea to conduct  
 16 a survey of teachers in California?  
 17 A I don't remember anything like that.  
 18 Q Tell me what you -- do you know what the Harris  
 19 survey was?  
 20 MS. KOURY: Objection. Asked and answered.  
 21 THE WITNESS: No.  
 22 BY MR. ROSENBAUM:  
 23 Q Okay. Do you know --  
 24 A If you wanted to tell me about it, maybe it  
 25 would refresh my memory, but I just gave an honest

1 answer, in the sense that you said Harris, and I vaguely  
 2 remembered coming across that name.  
 3 Q Okay. Well, I'm assuming all your answers are  
 4 honest, Doctor.  
 5 Do you know the results of the Harris survey?  
 6 A No. I hardly -- I can't remember it.  
 7 Q Okay. And was any section of your report taken  
 8 from other writings that you've done in the past?  
 9 MS. KOURY: Objection. Vague and ambiguous.  
 10 BY MR. ROSENBAUM:  
 11 Q Do you know what I mean by that?  
 12 A Well, I've maintained some ideas over a long  
 13 time period, if -- that's certainly represented here,  
 14 and I haven't changed my mind about a lot of these  
 15 things. And secondly, I've written about some of these  
 16 things before and I have a table in front of me here  
 17 that was used by -- that was originally developed by  
 18 Chester Finn and Marci Kanstoroom, and I reproduced  
 19 that, not only in this report but other reports that  
 20 I've done.  
 21 Q How about -- you're referring to Page 45 of  
 22 your report?  
 23 A Yes.  
 24 Q Thank you. And what about the actual text of  
 25 the report? Are there any portions of the text of your

1 report that, in sum or substance, appear in other of  
 2 your writings?  
 3 MS. KOURY: Objection. Vague and ambiguous,  
 4 overbroad.  
 5 THE WITNESS: Well, I'm taking this as an example.  
 6 I may have had --  
 7 BY MR. ROSENBAUM:  
 8 Q "This" just so --  
 9 A Page 45.  
 10 Q The table there, right?  
 11 A Yeah.  
 12 Q Okay.  
 13 A I may have had material on this in previous  
 14 writings, and I inserted that commentary, probably  
 15 modifying it slightly, to make the point that this table  
 16 makes.  
 17 Q Okay. Besides the table on Page 45, as you sit  
 18 here today, any other text that was -- appeared in other  
 19 writings that you've done that appears in this report?  
 20 MS. KOURY: Objection. Vague and ambiguous, asked  
 21 and answered.  
 22 THE WITNESS: I would need to go through the report  
 23 page by page in order to determine that.  
 24 BY MR. ROSENBAUM:  
 25 Q Okay. We'll do that.



1 As we go through the report, if you find  
2 sections that appear to you to have appeared in other  
3 writings, I'd just appreciate it if you'd point it out  
4 to me, okay?

5 A I'm doing the best I can, but I want to listen  
6 to your questions carefully, too, and I've got so many  
7 things in my mind.

8 Q Fair enough.

9 Let's go off the record.

10 (Discussion off the record)

11 (Lunch recess taken from 11:43 a.m. to  
12 12:55 p.m.)

13 BY MR. ROSENBAUM:

14 Q Dr. Walberg, doing okay?

15 A I am, thank you.

16 Q Over the lunch hour did you look at any  
17 documents?

18 A No.

19 Q Did you look at your report at all?

20 A No.

21 Q Did you have any discussions with Ms. Koury  
22 about the deposition or the case?

23 A Yes.

24 Q What did you talk about?

25 A She mentioned to me that I could look at the

1 Q Do you have any recollection of seeing any  
2 declarations in this case?

3 A Well, I think you mentioned one earlier. Was  
4 it something declaration of the plaintiffs -- I can't  
5 remember quite what you said.

6 Q Did you look at -- this is what I'm getting  
7 at.

8 Do you have any recollection of seeing any  
9 declarations in this case, any statements by any  
10 students, teachers, administrators in this case?

11 A I think that I may have gotten depositions, and  
12 I may have gotten declarations too. And I may have  
13 superficially reviewed them.

14 Q Do you recall anything about their content?

15 A No.

16 Q Did you rely on them in the preparation of your  
17 report?

18 A I would need to look at my report again.

19 Q That's fine.

20 A (Witness reviews documents.)

21 The only reference I find is the deposition of  
22 Russell that I had mentioned earlier.

23 Q Okay. And no declarations?

24 A I don't find any reference there, and I don't  
25 remember looking at it or relying upon it.

1 report when I -- whenever I chose to, and she reminded  
2 me of something that I told her about, that I have a  
3 tendency to answer before people finish their questions.

4 Q Okay. Anything else?

5 A I think those are the things that I remember  
6 about the deposition.

7 Q Okay. Do you know what a declaration is?

8 A Only vaguely. Maybe you ought to explain it --

9 Q Do you know what an affidavit is?

10 A Let me see if I'm right.

11 Q Sure.

12 A That's when someone would sign a document and  
13 have it notarized, and it becomes evidence in hearings  
14 or at trial.

15 Q Sure.

16 If I say to you a declaration, it's pretty much  
17 the same thing, except it's not notarized. Does that  
18 sound right to you?

19 A I take your word for it.

20 Q Okay. Have you ever seen a declaration in a  
21 lawsuit?

22 A Well, you know, I don't always notice these  
23 legal terms, like Complaint and things of that nature.

24 Q Okay.

25 A I probably have.

1 Q Okay. And that's after having an opportunity  
2 to go through your report just now?

3 A Yeah.

4 Q Are you presently involved in other active  
5 cases, Doctor?

6 A Yes.

7 Q Which ones?

8 A South Carolina.

9 Q Anything else?

10 A I'm not sure I've been announced, so maybe I  
11 need to -- I'm not sure if I should disclose that.

12 MS. KOURY: To the extent you were hired as a  
13 consultant in cases and your retention is confidential,  
14 you should just say that.

15 THE WITNESS: Yeah. I --

16 BY MR. ROSENBAUM:

17 Q I don't agree with that objection, but I'm not  
18 going to press it at this time. But let me ask you some  
19 questions. As I said, I don't think the objection is  
20 meritorious, but I don't have a desire to put you in a  
21 compromising position.

22 Can you tell me the nature of the case? Is it  
23 a desegregation case? Is it --

24 A You mean the one I didn't disclose?

25 Q Yeah.

1 A By the way, I wanted to comment on it too. If  
 2 I had an opportunity to call the attorney, and then I  
 3 could say is it all right if I mention this or not, but  
 4 I -- it's just beginning, and I haven't really done  
 5 anything on it.  
 6 Q Again, I'm going to respect your wishes here.  
 7 But can you tell me the nature of the case?  
 8 A Sure. I'd be glad to do that. Well, of  
 9 course, I haven't really gotten into it very much and I  
 10 just said that I would be available, but it's a school  
 11 finance case involving another state.  
 12 Q Okay. And the South Carolina case, do you know  
 13 the name of the case, by chance?  
 14 A (No audible response)  
 15 Q Can you tell me the character of that case?  
 16 A It's having to do with whether poorer districts  
 17 should receive more money from the State.  
 18 Q And who's retaining you in that case?  
 19 A The State.  
 20 Q Any other active cases?  
 21 A No.  
 22 Q Are any of the desegregation cases you've  
 23 worked on still alive?  
 24 A No.  
 25 Q What about the New York case? You're still

1 involved in that; aren't you?  
 2 A Well, I think that's over.  
 3 Q Help me, Doctor, get some insight into the way  
 4 you prepare a report -- you've talked to me at length; I  
 5 don't want to go back over what you've told me.  
 6 When you write do you consider yourself having  
 7 a style? Straightforward? I mean, do you have a way of  
 8 writing that's characteristic of you?  
 9 MS. KOURY: Objection. Vague, ambiguous,  
 10 overbroad.  
 11 THE WITNESS: Well, I could say I have a  
 12 motivation, and that is to be clear, above all other  
 13 things.  
 14 BY MR. ROSENBAUM:  
 15 Q Okay.  
 16 A And I try to work at that. I'm not always  
 17 successful, but I strive to do that.  
 18 Q Okay. Do you use hyperbole or exaggeration?  
 19 MS. KOURY: Objection. Vague, ambiguous,  
 20 overbroad, argumentative.  
 21 THE WITNESS: I think I have at various times in my  
 22 career, but I think I've tried to avoid using that kind  
 23 of language in litigation.  
 24 BY MR. ROSENBAUM:  
 25 Q Okay. And certainly, in this case?

1 A Well, you know, I'd have to read my report  
 2 again. Maybe I said something there or -- I might have  
 3 quoted other people who used it.  
 4 Q Okay. But did you, as a method, on any report  
 5 attempt to use hyperbole or exaggeration as you recall?  
 6 A I would attempt to do the opposite.  
 7 Q Okay. And in the discussion that you told me  
 8 about this morning, where you were on the telephone and  
 9 there were members of the board on the other end?  
 10 A Yes.  
 11 Q Do you remember how many other persons were on  
 12 the other end?  
 13 A Well, I wasn't even there, so I --  
 14 Q Wasn't a good question.  
 15 Did people -- was there an introductions made?  
 16 A I don't distinctly remember that, although I --  
 17 you know, it would be odd if there weren't. But I don't  
 18 remember that.  
 19 Q Do you have a recollection in your own mind as  
 20 to how many people you thought were on the other end of  
 21 the phone?  
 22 MS. KOURY: Objection. Vague, ambiguous, calls for  
 23 speculation.  
 24 THE WITNESS: Well, I was nearly certain that there  
 25 were more than two, but it could have been considerably

1 more. Well, let's see, more than four.  
 2 BY MR. ROSENBAUM:  
 3 Q Okay. And you recommended in the course of  
 4 that conversation the usage of the Stanford 9; is that  
 5 right?  
 6 A Yes.  
 7 MS. KOURY: Objection.  
 8 BY MR. ROSENBAUM:  
 9 Q Were there other tests that were being  
 10 considered that were mentioned in that discussion?  
 11 MS. KOURY: Objection. Asked and answered.  
 12 THE WITNESS: I think at least hypothetically.  
 13 BY MR. ROSENBAUM:  
 14 Q Were there particular tests that were  
 15 mentioned?  
 16 A I'm not sure they had a name. I don't remember  
 17 the name of any alternative, although I -- I think  
 18 alternatives -- an alternative methodology was mentioned.  
 19 Q And what was the alternative methodology?  
 20 A To developing new tests.  
 21 Q For the State to develop its own tests?  
 22 A Or to commission, put it out for contract.  
 23 Q Okay. And the new test, was it to have certain  
 24 characteristics, as you understood it?  
 25 A Yes.

1 Q What were those characteristics?  
 2 A It was to match the test content with the  
 3 California standards that had been specified.  
 4 Q Okay. Is another word for "match," "align" ?  
 5 A Yeah.  
 6 Q And at the time, sir, did the Stanford 9 align  
 7 with the California standards?  
 8 A Not perfectly.  
 9 Q To what extent?  
 10 MS. KOURY: Calls for speculation.  
 11 THE WITNESS: I actually didn't study that. So I'm  
 12 not -- I think -- it was my impression, from what I knew  
 13 and from what the other experts had done and what they  
 14 had studied, that it was a reasonably good match, but it  
 15 wasn't perfect.  
 16 BY MR. ROSENBAUM:  
 17 Q Okay. You never personally investigated the  
 18 degree of alignment? Is that a fair statement?  
 19 A Ever? At any time?  
 20 BY MR. ROSENBAUM:  
 21 Q Sorry, at the time of this phone call or prior  
 22 to it.  
 23 A Only in the sense that several of the other  
 24 experts -- at least one was from California, very  
 25 familiar with the system, and she made some comments.

1 And I had no reason to believe that she was wrong. So --  
 2 Q Prior to that conversation, had you done any  
 3 investigation as to the degree of alignment with the  
 4 California standards?  
 5 A No.  
 6 Q The person whom you're identifying as the  
 7 expert who was making statements?  
 8 A Yes.  
 9 Q Do you know that person's name?  
 10 A I've forgotten it.  
 11 Q Had you spoken to - is it a him or a her?  
 12 A It's a her.  
 13 Q Had you spoken to her prior to that  
 14 conversation?  
 15 A No.  
 16 Q Had you made recommendations prior to that  
 17 conversation about the use or non-use of the Stanford 9  
 18 prior to that conversation?  
 19 MS. KOURY: Objection. Vague and ambiguous,  
 20 overbroad.  
 21 THE WITNESS: Prior to the conversation with the  
 22 board?  
 23 BY MR. ROSENBAUM:  
 24 Q Yes.  
 25 A Is that what you're asking me?

1 Q Yes, sir.  
 2 A Or the discussion?  
 3 I never met her before that.  
 4 Q Okay. But that's not my question. My question  
 5 is: Had you spoken with either board members or  
 6 officials or anyone prior to that conversation in which  
 7 you recommended the use of the Stanford 9?  
 8 MS. KOURY: Objection. Overbroad, compound.  
 9 THE WITNESS: I think I had one or two telephone  
 10 calls, in which they asked me if I would participate in  
 11 this advisory conversation, and I was -- I don't  
 12 remember them asking me about what my position would  
 13 be. It might have been kind of a lower-level official  
 14 that was lining up times and things like that and said,  
 15 we want to talk about these things.  
 16 BY MR. ROSENBAUM:  
 17 Q Okay. Okay. Do you know what the STAR system  
 18 is, S-T-A-R, all caps?  
 19 A Just a little bit.  
 20 Q Tell me everything you know about what the STAR  
 21 system is.  
 22 A The STAR system was -- I'm going to review my  
 23 report.  
 24 Q Okay. But before you review your report, I'm  
 25 going to ask you if -- to tell me everything you know

1 about what the STAR system is.  
 2 MS. KOURY: Objection. Calls for a narrative,  
 3 overbroad.  
 4 THE WITNESS: Well, I would want to check it in my  
 5 report, but -- to refresh my memory, since it's a long  
 6 time ago that I wrote this and I read about it at  
 7 various times.  
 8 But it was my impression that the STAR system  
 9 was a system that was tried many years ago here in  
 10 California, and it was to use a number of what might be  
 11 called exotic items that normally would not be given on  
 12 standardized tests, particularly for surveys of a whole  
 13 state or large numbers of people.  
 14 BY MR. ROSENBAUM:  
 15 Q Tell me what you mean by exotic items.  
 16 A These would be non-multiple choice items or  
 17 items that would require extended responses;  
 18 particularly, writing, laboratory experiments, use of  
 19 calculators and computers, physical objects, team  
 20 projects.  
 21 Q And to the best of your recollection, Doctor,  
 22 over what period of time was the STAR system used?  
 23 A To the best of my recollection, it was only --  
 24 now, I want to remind you that I really need to look at  
 25 this to --

1 Q I understand.  
 2 A You're asking me offhandedly, off the top of my  
 3 head.  
 4 It might only have been used once or twice.  
 5 Q Do you know during what period of time?  
 6 A It could have been, oh -- you mean how long the  
 7 time period was that it was used?  
 8 Q That's a good question, but let -- my first  
 9 question is: Over what years?  
 10 A I'm not really sure. It might have been, let's  
 11 say, six years ago.  
 12 Q Okay. And again, I don't want you to guess,  
 13 but just tell me the best of your knowledge.  
 14 Was the STAR system ever part of a California  
 15 assessment system?  
 16 A Oh, yes.  
 17 Q And do you know to whom it was administered?  
 18 MS. KOURY: Objection. Vague.  
 19 THE WITNESS: Yes.  
 20 BY MR. ROSENBAUM:  
 21 Q Who whom?  
 22 A To elementary and secondary students in  
 23 California.  
 24 Q Public school students?  
 25 A Yes.

1 Q Do you know anything about the results of the  
 2 STAR test?  
 3 A I know about --  
 4 MS. KOURY: Objection. Overbroad.  
 5 THE WITNESS: I know something about the technical  
 6 qualities of the test that was used.  
 7 BY MR. ROSENBAUM:  
 8 Q Okay. Let's break it down.  
 9 First of all, do you know anything about the  
 10 results of the STAR test?  
 11 MS. KOURY: Objection. Overbroad.  
 12 THE WITNESS: No.  
 13 BY MR. ROSENBAUM:  
 14 Q Okay. What do you know about the technical  
 15 qualities?  
 16 A It was overly ambitious and it was -- it tried  
 17 to do things that were very, very difficult to do, and  
 18 it was unsuccessful.  
 19 Q Okay. And when was it -- when did it cease  
 20 being utilized?  
 21 MS. KOURY: Calls for speculation.  
 22 THE WITNESS: And again, I was very vague about  
 23 dates, and I'm really not sure about that. You know, I  
 24 try to do the best I can to answer the question --  
 25 BY MR. ROSENBAUM:

1 Q Okay.  
 2 A But I want to emphasize strongly, these are  
 3 rough guesses --  
 4 Q Okay.  
 5 A -- and estimates. Some of the things, I think,  
 6 are referred to in here --  
 7 Q Okay.  
 8 A -- and I just happened to read about it again  
 9 in the Russell report. I have not even thought about it  
 10 in a number of years.  
 11 Q Okay.  
 12 A So may I have the question again?  
 13 Q Sure.  
 14 When was it -- when did its administration  
 15 cease?  
 16 MS. KOURY: Calls for speculation.  
 17 THE WITNESS: It might have been three to five  
 18 years ago.  
 19 BY MR. ROSENBAUM:  
 20 Q Okay. And do you know -- do you know what  
 21 C-E-L-D-T is, all caps?  
 22 A I don't remember that acronym.  
 23 Q Okay. And do you know the acronym or the  
 24 letters API?  
 25 A Yes.

1 Q What's API stand for?  
 2 A I think it stands for academic performance  
 3 index.  
 4 Q Okay. And do you know how it's calculated?  
 5 A Only sort of generally.  
 6 Q Tell me everything you know about how it's  
 7 calculated.  
 8 MS. KOURY: Objection. Overbroad, calls for a  
 9 narrative.  
 10 THE WITNESS: It follows a principle of value  
 11 added, and it tries to take into consideration, not the  
 12 status score of how a student or a school does at a  
 13 single point in time, but it measures how much progress  
 14 has been made over the previous year.  
 15 BY MR. ROSENBAUM:  
 16 Q Okay.  
 17 A So the major emphasis -- but the API in  
 18 California has a couple of variants on it, and I don't  
 19 know the details of those variants.  
 20 Q Have you ever investigated to find out what  
 21 those variants were?  
 22 MS. KOURY: Objection. Vague.  
 23 THE WITNESS: I think I have read about it in the  
 24 reports, and I've come across it in just general reading  
 25 on education. Education news media, things of that

1 nature. And there have been references -- there were  
2 references to it in the -- particularly in Russell's  
3 report.

4 BY MR. ROSENBAUM:

5 Q Can you tell me what any of those variants are?  
6 A No.

7 Q Okay. Did you specifically look at API scores  
8 of any particular schools?

9 A No.

10 MS. KOURY: Asked and answered.

11 BY MR. ROSENBAUM:

12 Q Did you ever look at the -- do you know if the  
13 California Department of Education has a Web site?

14 A Yes.

15 Q For purposes of this case, did you ever look at  
16 their Web site?

17 A I may have, but I don't distinctly remember  
18 looking at it.

19 Q Okay. Do you remember seeing anything on there  
20 today? I know you said you're not sure you did, so it's  
21 not --

22 A No, I didn't -- I don't remember seeing  
23 anything on there. Since I can't even remember seeing  
24 it.

25 Q Did you rely on anything on the Web site for

1 not graduating from high school.

2 BY MR. ROSENBAUM:

3 Q Maybe you just answered this; you tell me if  
4 you did.

5 But I want to know whether or not you, Doctor,  
6 consider the California exit exam to be part of the  
7 State's accountability system.

8 MS. KOURY: Objection. Asked and answered.

9 BY MR. ROSENBAUM:

10 Q It's yes or no.

11 MS. KOURY: It's also vague. Just gave you  
12 testimony on that.

13 THE WITNESS: Broadly speaking, yes.

14 BY MR. ROSENBAUM:

15 Q Okay. Tell me -- for the reasons you just  
16 stated in your previous answer?

17 MS. KOURY: Objection. Vague.

18 THE WITNESS: What are the --

19 BY MR. ROSENBAUM:

20 Q I want to know --

21 A Why did --

22 Q -- why you --

23 A -- I say yes?

24 Q Yeah.

25 A Because, broadly speaking, you could say that

1 purposes of your report?

2 A No.

3 Q Do you know what the California high school  
4 exit exam is?

5 A All I know is that it is an exit exam. My  
6 understanding is that it's required for high school  
7 graduation.

8 Q Okay. Do you know what its present status is?

9 A No.

10 MS. KOURY: Objection. Vague.

11 BY MR. ROSENBAUM:

12 Q Have you made any investigation or inquiry to  
13 find out information about the California high school  
14 exit exam?

15 MS. KOURY: Vague, overbroad.

16 THE WITNESS: No.

17 BY MR. ROSENBAUM:

18 Q Do you recall the California high school exit  
19 exam as part of California's accountability system?

20 MS. KOURY: Same objections.

21 THE WITNESS: Well, I think it's related to it. It  
22 is one of the incentives within the broad system of  
23 accountability. And it sort of puts teeth into  
24 assessment and accountability, because my understanding  
25 is that students who don't pass that examination risk

1 accountability includes assessments, criteria for --  
2 let's say proficiency, and consequences. And an exit  
3 exam is an example of one consequence of an  
4 accountability system.

5 Q Tell me, Doctor, do you -- do you regard it as  
6 an integral part of the California accountability  
7 system?

8 MS. KOURY: Objection. Asked and answered.

9 THE WITNESS: What does an integral mean?

10 BY MR. ROSENBAUM:

11 Q Let's -- do you regard it as an essential part  
12 of it?

13 MS. KOURY: Objection. Vague.

14 THE WITNESS: Well, I could say that I think it's a  
15 helpful part of it.

16 BY MR. ROSENBAUM:

17 Q Why do you say that?

18 A Because I think that incentives cause people to  
19 behave in certain ways, and the threat of not graduating  
20 from high school can cause students to put in more  
21 effort and cause teachers to raise their classroom  
22 standards and things of that nature.

23 Q Do you know if that's happened?

24 MS. KOURY: Objection. Vague, overbroad.

25 THE WITNESS: In California?

1 BY MR. ROSENBAUM:

2 Q Yeah. I'll ask the question differently.

3 Have you taken any investigation/inquiry to  
4 determine whether or not the consequences that you've  
5 described have in fact occurred as a result of the  
6 administration of a high school exit exam?

7 A Of the --

8 Q California high school exit exam.

9 A No.

10 Q Okay. Now, do you know on how many occasions  
11 the high school exit exam has been administered?

12 A No.

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

14 A No.

15 Q Do you know if there are plans to administer it  
16 this coming school year?

17 A No.

18 Q Okay. Tell me, Doctor, everything you believe  
19 to be part of California's accountability system.

20 MS. KOURY: Objection. Overbroad.

21 THE WITNESS: Well, I think it's the several things  
22 that I had mentioned earlier, the testing system, a  
23 reporting system, having standards for the tests and  
24 having a system of consequences for good and bad  
25 performance.

1 MS. KOURY: Calls for speculation.

2 THE WITNESS: -- sure.

3 BY MR. ROSENBAUM:

4 Q Do you know to what extent the SAT 9 -- during  
5 the period of time that it was being administered as  
6 part of the California accountability system, do you  
7 know what its alignment is with the State standards?

8 A I have an impression.

9 Q Well, as your counsel has said to you, right  
10 now I'm not interested in your impression. I want to  
11 know whether or not you've undertaken any  
12 inquiry/investigation to find out the degree of  
13 alignment that the SAT 9 is with California standards  
14 for any year that it's been administered.

15 MS. KOURY: Objection. Overbroad, compound.

16 THE WITNESS: I know indirectly about the alignment  
17 of the SAT 9 or the California standards.

18 BY MR. ROSENBAUM:

19 Q That's not my question.

20 My question is: Have you independently  
21 undertaken any inquiry or investigation to determine the  
22 extent of alignment with the State standards of the SAT  
23 9 during any year it's been administered as part of the  
24 California accountability system?

25 MS. KOURY: Objection. Asked and answered, it's

1 BY MR. ROSENBAUM:

2 Q Tell me, Doctor, all the testing systems that  
3 are part of the California accountability system.

4 MS. KOURY: Objection. Overbroad.

5 THE WITNESS: I think the SAT 9 or the later  
6 version and perhaps some exams that had been made up  
7 here in California, but I haven't looked into the most  
8 recent examinations.

9 BY MR. ROSENBAUM:

10 Q When you say most recent, what do you mean by  
11 that?

12 A Well, something may have happened in the last  
13 year or so that I don't know about.

14 Q Okay. And you made no inquiry to find out?

15 A Pardon me?

16 Q Have you made any inquiry to find out?

17 A No.

18 Q Why is that?

19 A Because I had independent -- I didn't consider  
20 it was important for me to do that in writing this  
21 report.

22 Q How many years, if any, has the SAT 9 been  
23 administered as part of the California accountability  
24 system?

25 A I'm not --

1 argumentative. He already testified.

2 THE WITNESS: If you mean that as have I examined  
3 the SAT 9 test myself in relation to the California  
4 State standards and I've looked at -- made an item by  
5 item comparison, the answer is no.

6 BY MR. ROSENBAUM:

7 Q Okay. That's helpful. Now I want to ask you  
8 my next question.

9 Have you done any research to see if anyone has  
10 determined the extent to which it is aligned -- the SAT  
11 9 is aligned with California standards for any year in  
12 which it's been administered?

13 MS. KOURY: Objection. Overbroad, vague and  
14 ambiguous.

15 THE WITNESS: I would say at least indirectly, yes,  
16 I have.

17 BY MR. ROSENBAUM:

18 Q For how many of the years in which it's been  
19 administered?

20 A Probably one of the most recent years, within  
21 the last three years.

22 Q Do you know which year?

23 A Not offhand, no.

24 Q Okay. What's your best judgment base -- when  
25 you say indirectly, what do you mean by that?

1 A Well, others have looked into this question.  
 2 Q Can you name me any of those others?  
 3 A If I looked at my report I could.  
 4 Q Okay. Sitting here today, can you name me any  
 5 of the others?  
 6 A Without looking at the report?  
 7 Q Yes.  
 8 A You know, I'm under oath, so I don't want to --  
 9 I don't want to make this a test of memory.  
 10 Q Of course.  
 11 A But three independent groups have ranked the  
 12 California system, and they typically look at test and  
 13 alignment with standards, and California has ranked  
 14 rather well on all, as I recall all three reports.  
 15 Q Okay. And sitting here today, do you know the  
 16 degree to which it's been aligned?  
 17 A I couldn't give a number, but I can give a  
 18 ranking.  
 19 Q Well, I'm not interested in a ranking. I'm  
 20 interested -- you mean a ranking among other states?  
 21 A Yes.  
 22 Q Okay. But do you have a percent?  
 23 MS. KOURY: Objection. Vague.  
 24 THE WITNESS: I don't have a percent.  
 25 BY MR. ROSENBAUM:

1 Q Or the -- you understand, when I say percent, I  
 2 mean the extent to which it's been aligned?  
 3 A Well, I -- the rankings have been qualitative  
 4 and they haven't been -- they don't give percentages, if  
 5 that's what you're asking.  
 6 Q When you say qualitative, what do you mean by  
 7 that?  
 8 A Well, in some instances they give states "A,"  
 9 "B," "C," "D," "E," and in other cases they just rank  
 10 them to how good they are.  
 11 Q In comparison to other states?  
 12 A Yeah.  
 13 MR. ROSENBAUM: Could I have the witness' answer?  
 14 I think it's five or six questions back. Give me the  
 15 fifth one back and the sixth one back.  
 16 (Discussion off the record)  
 17 BY MR. ROSENBAUM:  
 18 Q Is the Stanford 9 used now?  
 19 MS. KOURY: Calls for speculation.  
 20 BY MR. ROSENBAUM:  
 21 Q As part of the California's accountability  
 22 system?  
 23 A I don't know.  
 24 Q Okay. And today do you know what its alignment  
 25 is with State standards, the Stanford 9? I'm sorry, the

1 test -- well, actually, let me stay with that question.  
 2 Then -- I'm going to start over, because I confused you.  
 3 Today do you know what the alignment is of the  
 4 Stanford 9 with the California State standards?  
 5 A I don't know the absolutely latest alignment.  
 6 Q Degree of alignment?  
 7 A Degree of alignment.  
 8 Q Okay. The test that is utilized as part of the  
 9 California accountability system for public school  
 10 students "K" through 12, do you know what the  
 11 alignment -- the extent of the alignment is of that test  
 12 with California State standards?  
 13 MS. KOURY: Objection. Vague, ambiguous.  
 14 THE WITNESS: Maybe I misunderstood, but I thought  
 15 I had answered that earlier.  
 16 BY MR. ROSENBAUM:  
 17 Q Maybe you did, and if you did just say --  
 18 A Well, I'll be glad to answer it again. Could I  
 19 have it, just be sure.  
 20 Q Sure.  
 21 MR. ROSENBAUM: Could you read back my last  
 22 question, please.  
 23 (The record was read as follows:  
 24 "The test that is utilized as part  
 25 of the California accountability system

1 for public school students 'K' through  
 2 12, do you know what the alignment --  
 3 the extent of the alignment is of that  
 4 test with California State standards?"  
 5 THE WITNESS: Yes.  
 6 BY MR. ROSENBAUM:  
 7 Q Okay. What is it?  
 8 A It is very high ranking in the United States.  
 9 I shouldn't say very high, but it's highly ranked among  
 10 other states.  
 11 Q Okay. But absolutely as the state itself, do  
 12 you know what degree it's aligned with State standards?  
 13 MS. KOURY: Asked and answered. He already  
 14 testified.  
 15 THE WITNESS: That would call for some sort of a  
 16 percentage of matching, and I have not done that study,  
 17 and I don't know of anyone else who has done that study.  
 18 BY MR. ROSENBAUM:  
 19 Q Okay. And when the API is calculated, do you  
 20 know, Doctor, the degree to which the score reflects  
 21 answers on questions that are aligned with State  
 22 standards?  
 23 MS. KOURY: Objection. Vague and ambiguous.  
 24 THE WITNESS: No.  
 25 BY MR. ROSENBAUM:

1 Q Do you know how the API is calculated?  
 2 A Well, we talked about that earlier.  
 3 Q Okay.  
 4 A I mentioned the value added part.  
 5 Q Okay. But beyond that do you know?  
 6 MS. KOURY: Asked and answered.  
 7 THE WITNESS: Only what I said earlier.  
 8 BY MR. ROSENBAUM:  
 9 Q Tell me what you said earlier.  
 10 A I think I said it was based on value added, so  
 11 that we would compare this latest test scores of  
 12 students to how well they had done before. But I know  
 13 that California has a couple of variations on that, and  
 14 I don't remember what they are.  
 15 Q Okay. Are those variations discussed in your  
 16 report?  
 17 A No.  
 18 Q Okay. Now, do you know the degree to which the  
 19 California high school exit exam is aligned with State  
 20 standards?  
 21 A Numerically?  
 22 Q Yes.  
 23 A No.  
 24 Q Okay. Have you ever made any inquiry to find  
 25 out?

1 A Pardon me?  
 2 Q Ever made any inquiry to find out?  
 3 A No.  
 4 Q Okay. Now --  
 5 A Well, only in the sense that we've already  
 6 talked about, that indirect way, where I examined  
 7 independent analyses of various states.  
 8 Q Has there ever been an independent analysis, to  
 9 your knowledge, that discusses the California high  
 10 school exit exam?  
 11 A I think, when these analyses were done, they  
 12 took that into consideration, along with other things.  
 13 Q Do you know that for sure?  
 14 MS. KOURY: Objection. Argumentative.  
 15 THE WITNESS: No.  
 16 BY MR. ROSENBAUM:  
 17 Q Now, you feel free to take a look at your  
 18 report, and you take as much time as you need.  
 19 Can you tell me the degree to which the  
 20 Stanford 9 is aligned with State standards for any year  
 21 it's been administered as part of the California  
 22 accountability system? And you have your report in  
 23 front of you. You take as much time as you need.  
 24 MS. KOURY: Can you repeat the question, please?  
 25 I'm sorry.

1 (Record read.)  
 2 MS. KOURY: Asked and answered.  
 3 THE WITNESS: (Reviews documents.)  
 4 In answer to your question, I --  
 5 BY MR. ROSENBAUM:  
 6 Q Let me just say, you've had an opportunity to  
 7 review your report?  
 8 A Well, quickly, yes.  
 9 Q You take as much time as you need, sir. We've  
 10 got as much time as you want.  
 11 A You know, since it's a very, very important  
 12 question, I think I'd like to have it repeated, as you  
 13 may.  
 14 Q Sure.  
 15 You've been reviewing your report for the past  
 16 several minutes; isn't that correct?  
 17 A Yes.  
 18 Q Okay.  
 19 (The record was read as follows:  
 20 "Can you tell me the degree to  
 21 which the Stanford 9 is aligned with  
 22 State standards for any year it's been  
 23 administered as part of the California  
 24 accountability system?")  
 25 BY MR. ROSENBAUM:

1 Q And again, I want to say to you, Doctor, you  
 2 take as much time as you need. If you need more time,  
 3 you're welcome to it.  
 4 A (Witness reviews documents.)  
 5 Q You're going back to your report? I just want  
 6 the record to reflect that.  
 7 A What?  
 8 Q You're going back to your report? That's fine --  
 9 A Yes.  
 10 Q -- I just want the record to reflect that.  
 11 A (Witness reviews documents.)  
 12 The answer to your question is yes.  
 13 Q Okay. And what page or pages are you referring  
 14 to in the report?  
 15 A Between -- it's in my discussion of the  
 16 Brookings report in "Education Week," Carnow and Lobe,  
 17 and my memory of the --  
 18 Q What page are you referring to?  
 19 A If you need the page numbers, I'll get them for  
 20 you.  
 21 (Witness reviews documents.)  
 22 The first page is 13.  
 23 Q Okay. And where on Page 13?  
 24 A This is the reference to the Finn-Kanstoroom  
 25 and the "Education Week" -- they're Footnotes 16 and 17.



1 Q Okay.  
 2 A And they're described in the text.  
 3 Q Okay. And can you show me where on that page,  
 4 if anywhere, it states to what extent the Stanford 9 is  
 5 aligned with State standards?  
 6 MS. KOURY: Objection to the extent the document  
 7 speaks for itself. It's also vague and ambiguous.  
 8 You can go ahead.  
 9 THE WITNESS: It doesn't say that explicitly, but I  
 10 draw an inference from remarks on that -- from material  
 11 on that page.  
 12 BY MR. ROSENBAUM:  
 13 Q Do you know if the Finn and Kanstoroom study --  
 14 K-a-n-s-t-o-r-o-o-m -- at any place in that report  
 15 states the degree to which the Stanford 9 is aligned  
 16 with State standards?  
 17 MS. KOURY: Objection to the extent that document  
 18 speaks for itself.  
 19 THE WITNESS: I do know that they took that into  
 20 consideration making their rankings.  
 21 BY MR. ROSENBAUM:  
 22 Q That's not my question.  
 23 Do you know if that report at any point -- the  
 24 Finn and Kanstoroom report, at any place in that report  
 25 states the extent to which the Stanford 9 is aligned

1 with California State standards?  
 2 MS. KOURY: Objection. Argumentative, asked and  
 3 answered. He already testified about that.  
 4 THE WITNESS: I'm not aware that it makes an  
 5 explicit reference to the Stanford 9 test, but I am  
 6 aware that they looked at the alignment of the tests  
 7 that were used in the various states in relation to the  
 8 standards part of the accountability system.  
 9 BY MR. ROSENBAUM:  
 10 Q Just answer this question. I don't mean to be  
 11 disrespectful, but I just want to know.  
 12 Do you know whether or not the Finn and  
 13 Kanstoroom study that's referenced here identifies the  
 14 extent to which the California test is aligned with  
 15 State standards?  
 16 MS. KOURY: Objection. Argumentative, asked and  
 17 answered. He just testified about that.  
 18 THE WITNESS: I take that as a -- I make an  
 19 inference from the criteria that they use to rank the  
 20 states that they made a judgment that the test was well  
 21 aligned.  
 22 BY MR. ROSENBAUM:  
 23 Q Was what?  
 24 A The test -- the California test, including SAT,  
 25 at the time that this was given, and the standards were

1 well aligned.  
 2 Q What do you mean by well aligned?  
 3 A That means that they were reasonably well  
 4 matched.  
 5 Q What does reasonably well matched mean?  
 6 A It means that the content of the test  
 7 reflected -- and that the knowledge and the skills  
 8 required on the test were similar in nature to the --  
 9 what is required in the standards.  
 10 Q Tell me what you mean by similar.  
 11 MS. KOURY: Objection. Vague.  
 12 MR. ROSENBAUM: It's his word.  
 13 THE WITNESS: That the -- there are strong  
 14 similarities -- let's -- how shall I express this? That  
 15 items on the test would tap or measure the degree to  
 16 which the students had attained various standards.  
 17 BY MR. ROSENBAUM:  
 18 Q More than 75 percent alignment?  
 19 A Well, I don't -- I don't remember them  
 20 giving -- as I mentioned earlier, I don't think -- I  
 21 don't know of numerical ratings on this. I think it was  
 22 probably a subjective reading and based on judgment.  
 23 Q Was there any numerical index or any numerical  
 24 estimation of the degree of alignment?  
 25 A Only in the sense that you -- at least in one

1 sense, I should say, that if the tests were well  
 2 aligned, you would tend to get a higher grade. If they  
 3 were poorly aligned, you would get a bad grade.  
 4 Q But I'm asking you for a number or degree to  
 5 which it's aligned.  
 6 Do you know if the Finn study includes such a  
 7 number?  
 8 A On only that specific point.  
 9 Q Yes.  
 10 A Again, I think --  
 11 Q Let's stay with this right now.  
 12 A Well, they do have a table in here --  
 13 Q Oh, sure.  
 14 A -- and I'd like to refer to the table if I  
 15 may.  
 16 If you want to look with me on Page 45.  
 17 Q Okay.  
 18 A They mention that California is one of the  
 19 states that has solid standards and strong  
 20 accountability. And if you go back to Page 13, I define  
 21 what they are, and -- shall I -- I'll give you the --  
 22 it's on the fourth line, if you'd like to look at it  
 23 with me.  
 24 Q On which page?  
 25 A I now want to go back to Page 13, where we

1 were.

2 I'm looking at the fourth line.

3 Q Okay.

4 A It says, "Good accountability systems are  
5 aligned with the standards and include report cards,  
6 ratings of schools, rewards for successful schools,  
7 authority to reconstitute failing schools," et cetera.  
8 So there -- that criterion doesn't specifically mention  
9 the SAT and it doesn't specifically mention the  
10 numerical degree of overlap, but it does -- by that  
11 criterion, it was weighed in their rankings.

12 Q Okay. And Doctor, if I ask you, as a  
13 methodologist, how would you go about figuring out the  
14 degree of alignment of an assessment test with State  
15 standards, how would you go about doing that?

16 MS. KOURY: Objection. Incomplete hypothetical,  
17 vague and ambiguous.

18 THE WITNESS: It might be a fairly sizable  
19 undertaking, but I think I would say that that should be  
20 done first even before you have the test. You should  
21 specify and interpret the -- you have the set standards  
22 that have presumably been generated by one authoritative  
23 group, and then you should examine those standards very,  
24 very carefully and the content -- let's say the  
25 knowledge and the skills that are implied in those

1 if I get them wrong, and if I get them wrong -- you said  
2 reasonably match -- you can look at the test and see  
3 whether it's reasonably matched, whether the test -- you  
4 know what? I don't want to mischaracterize you.

5 MR. ROSENBAUM: Why don't you read me back  
6 Dr. Walberg's answer two questions ago.

7 (The record was read as follows:

8 "It might be a fairly sizable  
9 undertaking, but I think I would say  
10 that that should be done first even  
11 before you have the test. You should  
12 specify and interpret the -- you have  
13 the set standards that have presumably  
14 been generated by one authoritative  
15 group, and then you should examine  
16 those standards very, very carefully  
17 and the content -- let's say the  
18 knowledge and the skills that are  
19 implied in those standards, you specify  
20 them in greater detail often than many  
21 states have already done.

22 "And so these become the test  
23 specifications. And then you may have  
24 a commercial test, a standardized test  
25 that has been brought together at great

1 standards, you specify them in greater detail often than  
2 many states have already done.

3 And so these become the test specifications.  
4 And then you may have a commercial test, a standardized  
5 test that has been brought together at great expense and  
6 great care and has high degrees of reliability and  
7 validity. If you find a reasonable match, then you  
8 might say that's sufficiently well aligned that it could  
9 be used or it could be used temporarily.

10 Or you may say that that test is not as aligned  
11 as we might like it, we'll use it temporarily, or we  
12 have to have an entirely new test, in which you would  
13 have to commission the test that would be built to the  
14 specifications that I just described.

15 BY MR. ROSENBAUM:

16 Q Okay. I want to ask you a few questions  
17 regarding that answer.

18 First, sir, can you state with certainty  
19 whether or not anyone has in fact determined numerically  
20 the extent to which questions on the Stanford 9 were  
21 aligned or matched with State standards? Do you know  
22 for a fact whether anybody's done that?

23 A No, I don't know that. Numerically, now,  
24 you're asking.

25 Q Now, you gave me three categories. You tell me

1 expense and great care and has high  
2 degrees of reliability and validity.  
3 If you find a reasonable match, then  
4 you might say that's sufficiently well  
5 aligned that it could be used or it  
6 could be used temporarily.

7 "Or you may say that that test is  
8 not as aligned as we might like it,  
9 we'll use it temporarily, or we have to  
10 have an entirely new test, in which you  
11 would have to commission the test that  
12 would be built to the specifications  
13 that I just described.")

14 BY MR. ROSENBAUM:

15 Q Now, the Stanford 9 -- strike that.

16 When you said reasonable match, tell me what  
17 you mean by reasonable.

18 A Well, I think it's a judgment, and I would  
19 characterize it as being a process. It means that you  
20 would have some authoritative people, people that are  
21 experts, particularly, in the subject matter, if it's,  
22 for example, mathematics and others, who are well  
23 acquainted with the field and well acquainted with what  
24 students are able -- could be -- have the potential to  
25 learn, and they would make judgments about the

1 alignment.

2 Q Do you know, sir -- do you know, sir, whether  
3 or not, in any year the Stanford 9 has been  
4 administered, whether or not any of its mathematics  
5 sections have been 50 percent aligned with State  
6 standards?

7 MS. KOURY: Objection. Overbroad, compound.

8 THE WITNESS: I don't know that.

9 BY MR. ROSENBAUM:

10 Q Were any of its language arts sections?

11 MS. KOURY: Same objections.

12 BY MR. ROSENBAUM:

13 Q Has been 50 percent aligned with State  
14 standards.

15 A I don't know the answer to that question.

16 Q For any grade.

17 A I don't know.

18 Q Okay. Do you know, sir, the subject matters  
19 the Stanford 9 has tested on?

20 A In general or in California?

21 Q In California. Thank you.

22 A Well, I think I do, but I don't know for  
23 certain what the, you know, specific subjects are. I  
24 assume they're the normal subjects that you study in  
25 school.

1 THE WITNESS: I don't know.

2 MS. KOURY: -- for speculation.

3 BY MR. ROSENBAUM:

4 Q Ever made any inquiry to find out?

5 A Only in the sense that I looked at the ratings  
6 of the California system.

7 Q Incidentally -- strike that.

8 I asked you a question a few moments ago about  
9 50 percent.

10 A Yes.

11 Q Do you remember that question?

12 I don't want to waste your time. If I put in  
13 any other number -- 75 percent, 25 percent -- would your  
14 answer be the same?

15 MS. KOURY: Vague and ambiguous.

16 THE WITNESS: I don't know the numerical degree of  
17 the alignment.

18 BY MR. ROSENBAUM:

19 Q Okay. In your head do you have a degree of  
20 alignment that you associate with a reasonable match?

21 A In a manner of speaking I do.

22 Q Why don't you tell me what it is.

23 A More is better and takes time.

24 Q Beyond that?

25 A I would be very reluctant to give a specific

1 Q I don't want to mischaracterize your answer.  
2 Do you know?

3 A For certain, no.

4 Q Is it reflected anywhere in your report?

5 A No.

6 Q Okay. Do you know if, in your other studies --  
7 you talk about core curriculum? Let me strike that.

8 You talked to me this morning -- bear with me  
9 here.

10 Do you remember talking to me this morning  
11 about core subject matters?

12 MS. KOURY: Objection. Vague and ambiguous.

13 THE WITNESS: I may have used that term.

14 BY MR. ROSENBAUM:

15 Q Okay. And you use it to mean a -- math,  
16 English, civics, social studies, science; is that  
17 right? Did I say it right?

18 A Yes. I remember that now.

19 Q Okay. And does -- has the Stanford 9, as part  
20 of the California assessment system -- has it tested on  
21 all those areas?

22 MS. KOURY: Calls for speculation.

23 BY MR. ROSENBAUM:

24 Q For each year it's been administered.

25 MS. KOURY: Calls --

1 number, because I think that they can be very misleading  
2 and I -- yeah.

3 Q Do you know to what --

4 MS. KOURY: I'm sorry, were you finished with your  
5 answer?

6 THE WITNESS: Finished enough, I guess, thanks.

7 BY MR. ROSENBAUM:

8 Q No, I don't want to cut you off. You finish as  
9 much you like.

10 A Well, I don't want to drift away from your  
11 question either.

12 I do think that -- well, I think what -- the  
13 other things I was going to say were not completely  
14 responsive to what you asked.

15 Q Okay. Would you say -- and if you're not in a  
16 position to tell me foundationally, you just tell me  
17 that.

18 Would you say that, for every year that the  
19 Stanford 9 has been administered as part of the  
20 California accountability system, that there's been a  
21 reasonable match, as you used that phrase?

22 MS. KOURY: Compound.

23 BY MR. ROSENBAUM:

24 Q And if you're not in a position to answer, just  
25 tell me.

1 A I think that three authoritative sources have  
2 ranked the California system very highly, and one of the  
3 major criteria is alignment. But I'm also aware that it  
4 takes states time to do these things, as much as five to  
5 ten years to do it. I have a strong impression that the  
6 California system is first rate as it is now and is  
7 going to get better in the future.

8 Q Okay. But that's not my question of course.  
9 My question is: Do you -- well, why don't we  
10 read back my question, please.

11 (The record was read as follows:

12 "Would you say that, for every year  
13 that the Stanford 9 has been  
14 administered as part of the California  
15 accountability system, that there's  
16 been a reasonable match, as you used  
17 that phrase?"

18 BY MR. ROSENBAUM:

19 Q I want to modify that. Not for every year, for  
20 any year.

21 MS. KOURY: Objection. Compound, overbroad, asked  
22 and answered.

23 THE WITNESS: Are we still using the adjective  
24 "reasonable"?

25 BY MR. ROSENBAUM:

1 MS. KOURY: Objection. Asked and answered. I  
2 think he testified, yes, he gave an explanation.

3 BY MR. ROSENBAUM:

4 Q I think you did.

5 Were there -- the Stanford 9, it's an  
6 off-the-shelf test; is that right?

7 MS. KOURY: Objection. Vague and ambiguous.

8 THE WITNESS: Yes, it's a published commercial test.

9 BY MR. ROSENBAUM:

10 Q Okay. Do you know if the Department of  
11 Education considered other commercial exams?

12 A At the time they made the decision about SAT?

13 Q Yeah.

14 A SAT 9?

15 I don't know for sure, no.

16 Q Sitting here today, sir, does California have  
17 any test that's part of its accountability system that's  
18 a hundred percent aligned with State standards?

19 MS. KOURY: Objection. Vague.

20 THE WITNESS: You mean are all the tests aligned  
21 with all the standards?

22 BY MR. ROSENBAUM:

23 Q No.

24 A Or is any test perfectly aligned with any given  
25 standard?

1 Q That's your word, yes.

2 A Yeah. Well, I think it -- given all the things  
3 that I've mentioned, yes, it has been reasonable. It  
4 doesn't mean that it meets certain numerical criteria,  
5 but I think, given the circumstances, cost, benefits and  
6 the other things, that it is reasonably well aligned and  
7 has been.

8 Q Each and every year?

9 MS. KOURY: Objection. Overbroad, compound.

10 THE WITNESS: I think the vision is that it will --  
11 that, given what was available at the time, that it was  
12 a good choice for the California system -- State  
13 department to choose that particular test. Since it was  
14 reflected, in part, the California standards.

15 BY MR. ROSENBAUM:

16 Q Okay. But that's not my question.

17 MR. ROSENBAUM: Could you read back my question,  
18 please.

19 (The record was read as follows:

20 "Would you say that, for every year  
21 that the Stanford 9 has been  
22 administered as part of the California  
23 accountability system, that there's  
24 been a reasonable match, as you used  
25 that phrase?"

1 Q I think the latter, but I want to be clear  
2 about this.

3 I want to know if any test that's administered  
4 in the State of California, as part of its  
5 accountability system, is a hundred percent aligned with  
6 State standards.

7 MS. KOURY: Objection. Overbroad, vague.

8 BY MR. ROSENBAUM:

9 Q No questions -- let me do a predicate question.

10 If it's aligned, that means that the  
11 information that is tested for in the question can be  
12 found in the State standards; isn't that right?

13 A Yes.

14 Q Okay. Now, my question to you is: Is there  
15 any test that is now administered, as part of the  
16 California State assessment system, that is a hundred  
17 percent aligned with State standards?

18 A Well, I apologize for giving a longer answer,  
19 but --

20 Q Why don't you -- you answer it any way you  
21 want, but --

22 A All right.

23 Q -- why don't you answer it yes or no, then give  
24 me an explanation.

25 A Well, I don't know for sure.

1 Q Okay.

2 A But I do want to say that it's almost  
3 impossible to have a perfect alignment, because  
4 standards can change, and it wasn't clear to me whether  
5 you were talking about the total test or subparts of the  
6 test or particular items on the test. And it's my view  
7 that different parts of a test and different items are  
8 aligned to various degrees with standards in any state,  
9 and I don't think that any -- I don't know of any state  
10 that has what I would want to defend as a perfect  
11 alignment.

12 Q Okay. I'm going to break that down a little  
13 bit.

14 To your knowledge, sir, have the California  
15 State standards for any subject matter changed over the  
16 last year?

17 A I don't know.

18 Q Last two years?

19 A I don't know.

20 Q Last three years?

21 A I don't know if they've changed.

22 Q At any point in time?

23 MS. KOURY: Objection. Overbroad.

24 THE WITNESS: I don't know.

25 BY MR. ROSENBAUM:

1 Q Okay. Do you know, sir, whether any part of  
2 any California test, as you've just defined it for me --  
3 that is, a piece of the California assessment  
4 system -- is a hundred percent aligned with State  
5 standards?

6 A I don't know that.

7 Q Okay. Now, same set of questions, but I'm  
8 going to change my numbers. Not a hundred percent, but  
9 75 percent.

10 Do you know if any California test that's  
11 administered as part of the State assessment system is  
12 75 percent aligned with State standards?

13 A I don't know.

14 MS. KOURY: Objection. Vague and ambiguous,  
15 overbroad.

16 BY MR. ROSENBAUM:

17 Q Any part of any California test that's  
18 administered as part of the assessment system is 75  
19 percent aligned with State standards?

20 MS. KOURY: Objection. Vague and ambiguous,  
21 overbroad.

22 BY MR. ROSENBAUM:

23 Q Do you know?

24 A I don't know.

25 Q If I change the number to 50 percent or 25

1 Q Okay. Do you know if any part of any test --  
2 when you say part of a test, what do you mean by that?

3 A Well, if we take any standardized test, such as  
4 the California achievement test or the Iowa test, they  
5 would have a total score -- let's say, to give an  
6 example, reading -- but they might have a sub-score for  
7 vocabulary and another one for reading comprehension.  
8 They might have another section on analogies. And  
9 beyond that they may have even more specific things,  
10 like an ability to summarize what's in a reading  
11 passage.

12 And in order to find out the degree of  
13 alignment, if you would want to do that, you would have  
14 to make a very close detailed analysis of each standard  
15 and each item on the test to -- and then you could take  
16 the -- if you wanted an overall estimate, you could  
17 calculate the numerical percentages.

18 Q Okay. Do you know if it's ever been done with  
19 respect to any California test?

20 MS. KOURY: Objection. Overbroad.

21 THE WITNESS: I don't know.

22 BY MR. ROSENBAUM:

23 Q Okay. Regarding --

24 A I should say I don't know, beyond what I had  
25 said earlier about the indexes of alignment.

1 percent, would your answers be the same to my two  
2 questions?

3 MS. KOURY: Objection. Vague and ambiguous,  
4 compound.

5 THE WITNESS: Yes.

6 BY MR. ROSENBAUM:

7 Q Okay. Do you know, sir, whether or not there  
8 are -- there have ever been -- strike that.

9 Do you know, sir, whether the Stanford 9 was  
10 administered this past year?

11 A I don't know that for sure.

12 Q Okay. Do you know whether or not there are  
13 students in the state of California who took the  
14 California high school exit exam who did not have access  
15 to instructional materials that were aligned with State  
16 standards?

17 MS. KOURY: Objection. Overbroad, compound.

18 THE WITNESS: Do I know that?

19 BY MR. ROSENBAUM:

20 Q Yes.

21 A I don't know that.

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

24 A No.

25 Q Okay. With respect to the -- any of the tests

1 that are part of the California assessment system, do  
2 you know if there are students in the state of  
3 California who did not have access to instructional  
4 materials that were aligned with the State standards  
5 that were tested on that test?

6 A I don't know.

7 MS. KOURY: Objection.

8 BY MR. ROSENBAUM:

9 Q And have you ever made any inquiry to find  
10 out?

11 MS. KOURY: Objection. Overbroad, compound.

12 This goes beyond his expert opinion.

13 Go ahead.

14 THE WITNESS: No.

15 BY MR. ROSENBAUM:

16 Q I wonder, sir, if we could mark --  
17 incidentally -- were there other pages in your report  
18 that you wanted to refer me to?

19 A I had a couple -- I had about four or five --

20 Q Go ahead.

21 A -- minor corrections --

22 Q No, I'm sorry. But remember, you referred me  
23 to Pages 13 and 45 when I asked you questions about the  
24 STAR report. And I had invited you to look at the  
25 report.

1 Were there any other pages you wanted me to  
2 look at to answer my question?

3 A Well, I thought I was looking at that about the  
4 alignment.

5 Q Yeah.

6 A I think I only mentioned Finn, and then you  
7 asked me a lot of questions about Finn.

8 Q Right.

9 A And Kanstoroom. I could have gone on.

10 Q Go ahead.

11 A Okay. And I'm sorry, but could you remind --  
12 the question is whether it's -- whether the State  
13 standards are aligned with --

14 Q I want to ask you -- well, I had a bunch of  
15 questions, but we'll get to all of them.

16 The Finn and Kanstoroom study that is cited in  
17 Footnote 16 on Page 13, that's what we've been talking  
18 about?

19 A Yes.

20 Q Do you know the methodology that Finn and  
21 Kanstoroom used?

22 A I do, in the sense that I've summarized that at  
23 the top of the -- in the first page of the -- the first  
24 paragraph on the page.

25 Q All right. But my question's a little bit

1 different.

2 Do you know how they determined what their  
3 methodology was to determine whether or not the systems  
4 they studied were aligned with standards? Do you know  
5 specifically the methodology they used?

6 MS. KOURY: Objection. Vague, asked and answered.

7 THE WITNESS: Yes.

8 BY MR. ROSENBAUM:

9 Q What was the methodology they used?

10 A They examined the -- all of the accountability  
11 components and made ratings of the degree of the things  
12 that I had just mentioned in that paragraph to the  
13 extent to which these state systems had conformed to  
14 their criteria.

15 Q Well, do you know how they determined -- strike  
16 that.

17 Looking at Page 45, do you know how Finn and  
18 Kanstoroom defined "solid"?

19 A Well, it's defined on the top of Page 13.

20 Q Show me where.

21 A It's the first -- it's described in the first  
22 paragraph.

23 I could -- want me to read the relevant  
24 passages again?

25 Q Sure.

1 A Okay. "Policy analysts have begun rating the  
2 states for both standards and accountability, which to  
3 be most effective, must presumably go together. Good  
4 standards are rigorous, clear, written in plain English,  
5 communicate what is expected of students, and can be  
6 assessed. Good accountability systems are aligned with  
7 standards and include school report cards, ratings of  
8 schools, rewards for successful schools, authority to  
9 reconstitute failing schools; for example, by replacing  
10 the staff, and the actual exercise of such legislated  
11 consequences. Table 2 shows that only five states,  
12 Alabama, California, North Carolina, South Carolina, and  
13 Texas, have solid standards and strong accountability  
14 systems."

15 Q Incidentally, have you personally evaluated the  
16 systems of Alabama -- the system of Alabama?

17 MS. KOURY: Objection. Vague.

18 BY MR. ROSENBAUM:

19 Q Accountability system of Alabama?

20 A No.

21 Q Or of North Carolina?

22 MS. KOURY: Objection. Vague.

23 THE WITNESS: Only in the incidental sense that I  
24 talked about this morning.

25 BY MR. ROSENBAUM:

1 Q Do you feel like you're an expert on the North  
2 Carolina system?  
3 A Well, I don't claim expertise in all of these  
4 states. Or even -- including North Carolina and Alabama.  
5 Q How about South Carolina?  
6 MS. KOURY: Objection. Vague.  
7 THE WITNESS: I think I know something about the  
8 South Carolina system.  
9 BY MR. ROSENBAUM:  
10 Q How about Texas?  
11 A I know some things about it.  
12 Q Do you consider yourself an expert on the Texas  
13 accountability system?  
14 A Well, expert is a -- I need to define  
15 "expert." I feel that expert -- you're talking about a  
16 legal context, it's someone who's actually made very  
17 careful study of the issues, and I have not studied the  
18 system of Texas, but I am aware of writings on that  
19 system.  
20 Q Okay. Have you studied, as you just described  
21 it, South Carolina's system?  
22 A Yes.  
23 Q Would you consider yourself an expert on the  
24 California system?  
25 A Well, certainly on some aspects of it.

1 Q What aspect?  
2 A The aspects that we've been talking about  
3 today, but I don't consider myself an expert on, let's  
4 say, the numerical degree of alignment or the  
5 calculation of the API and certain other things that you  
6 asked me about.  
7 Q Tell me what you do consider yourself an expert  
8 on with respect to California's assessment system.  
9 A Well, I think it would be things that are  
10 represented in this report.  
11 Q What does that mean?  
12 A It means that if I wrote about it here, that I  
13 stand by it and I've studied it. I feel confident in  
14 coming to conclusions about it.  
15 Q Do you know to what extent -- do you know how,  
16 if at all, Finn and Kanstoroom weighed these different  
17 criteria, the standards, the alignment, the actual  
18 exercise of legislated consequences, all that you got  
19 through reading to me -- do you know how they weighed  
20 those different categories in determining whether or not  
21 a system was "A," "B," "C," "D" or "F"?  
22 MS. KOURY: Objection. Compound, overbroad, also  
23 vague.  
24 THE WITNESS: Well, I don't know the mental  
25 processes, but I do know that it was subjectively done.

1 BY MR. ROSENBAUM:  
2 Q Do you know how it was subjectively done, what  
3 criteria, if any, Finn and Kanstoroom used?  
4 A Well, I read the report, and I somewhat vaguely  
5 remember the methodology, and I felt at the time that it  
6 seemed to be reasonable to me and I had the impression,  
7 as I mentioned to you, that it was about the best that  
8 could be done, in the sense that it would be very, very  
9 difficult to have numerical ratings and compare them  
10 from one to another of the specific components. So in  
11 the end it's -- it's a judgment that people make.  
12 Q Okay. But do you know subjectively how they  
13 made those judgments, Finn and Kanstoroom?  
14 MS. KOURY: Asked and answered.  
15 THE WITNESS: Well, yes, in the sense that I  
16 described.  
17 BY MR. ROSENBAUM:  
18 Q Beyond that?  
19 A Well, I mentioned earlier that -- I didn't  
20 mention this in the last answer to this, is that they  
21 would have -- they examined the documents from the  
22 states and made their judgments on that basis.  
23 Q What does it mean, examined the documents from  
24 the states?  
25 A Well, they would look the standards; they would

1 look at the tests; they would look at the descriptions,  
2 might look at legislation, things of that nature.  
3 Q Do you know for a fact they did all that?  
4 MS. KOURY: Objection. Argumentative, asked and  
5 answered.  
6 THE WITNESS: I have the impression that, when I  
7 read the report, it seemed to be about as good as it  
8 could be done. But I don't remember all the details of  
9 the methodology, and I don't -- you know, I didn't  
10 participate in it with them and I didn't ask them about  
11 it.  
12 BY MR. ROSENBAUM:  
13 Q Okay. Maybe you just answered this. I don't  
14 want your impressions, as your lawyer has said several  
15 times. I want to know if you've said for a fact --  
16 MS. KOURY: I've never said that for the record. I  
17 said I don't want you to speculate. Don't  
18 mischaracterize my statements.  
19 BY MR. ROSENBAUM:  
20 Q I don't want you to speculate.  
21 Do you know for a fact that they carried out  
22 the processes that you described?  
23 MS. KOURY: Objection. Argumentative, asked and  
24 answered. He already testified about it to the extent  
25 of his knowledge.

1 THE WITNESS: I had to make an inference from their  
2 report that they carried out a detailed examination, and  
3 I remember reading that when I first looked at the  
4 report.

5 BY MR. ROSENBAUM:

6 Q Do you know who Chester Finn is?

7 A Yes.

8 Q Who is he?

9 A He is the president of the Fordham Foundation.

10 He is former assistant secretary of education. He is  
11 the chairman of the Hoover task force, Koret task  
12 force. And he's former professor of education at  
13 Vanderbilt.

14 Q What's the Hoover task force?

15 A That's the one we talked about earlier this  
16 morning.

17 Q And who --

18 A Well, I'm sorry, maybe we didn't talk about  
19 it. Because I talked about a meeting; didn't we. That  
20 was just of the experts. But there was also a task  
21 force, and not a -- some of the people on the task force  
22 are not testifying in this case.

23 Q Okay. And who's Marci Kanstoroom?

24 A She's a Ph.D. in public policy analysis from  
25 the Kennedy School at Harvard and was an associate of

1 Q Go ahead.

2 A Okay.

3 (Witness reviews documents.)

4 I find one reference to the STAR test in my  
5 report. It's on Page 37.

6 Q Thank you.

7 And can you tell me where you're referring?

8 A It's last sentence of the first quote.

9 Q Okay. Does that refresh your recollection as  
10 to what the components of the STAR test are, the STAR  
11 system?

12 A Not any more specifically than what we've  
13 already talked about.

14 Q Okay. And you had an opportunity to review  
15 your report?

16 A Just now?

17 Q Yes.

18 A Yes.

19 Q Do you want to look at it any further for --

20 A No.

21 Q -- purposes of this question?

22 Do you know, Doctor, what WASC is, W-A-S-C, all  
23 caps?

24 A I think I remember coming across that term in  
25 some of the reports, but I don't presently remember what

1 Chester Finn. I don't recall her title. It was  
2 something like -- I think it was director of research at  
3 the Fordham Foundation.

4 Q Does she have any relationship to the Hoover  
5 Institute?

6 A No.

7 I think she was once nominated or scheduled to  
8 come to one of the meetings, but I think that she didn't  
9 come.

10 Q Okay. Now, were there other pages in this  
11 report that you wanted me to look at?

12 A Well, I -- I didn't -- you know, you're welcome  
13 to look at them, but I think you were asking me about  
14 alignment and you were asking for the justification of  
15 the question. And after I'd mentioned the -- as I  
16 recall, started talking about Finn and Kanstoroom, we  
17 didn't get to the others. So if you want me to mention  
18 those, I could do that.

19 Q You know, I was -- that's true, I did ask you  
20 that question. I also asked you a question -- and you  
21 indicated to me at one point you wanted to look at your  
22 report -- as to what the components were of the STAR  
23 system.

24 Is that mentioned anywhere in your report?

25 A I would have to look at that again.

1 it stands for.

2 Q Did you do any research or investigation to  
3 determine what it stands for?

4 MS. KOURY: Objection. Vague.

5 THE WITNESS: I don't remember that acronym.

6 BY MR. ROSENBAUM:

7 Q Okay.

8 A Aside from having seen it once.

9 Q Okay. But that's not quite my question.

10 Do you -- did you do any inquiry or  
11 investigation to determine what WASC is?

12 A Aside from reading the materials that we've  
13 already talked about, no.

14 Q Do you know what FCMAT is, all caps?

15 A FCMAT.

16 Q Is that familiar to you?

17 A It's not ringing a clear bell.

18 Q Okay. Do you know what II/USP is, I-I, slash,  
19 U-S-P?

20 A It's another acronym that was used in some of  
21 the previous reports.

22 Q Is that ringing any bells for you?

23 A Only in the sense that I remember coming across  
24 that term.

25 Q Do you know what it means?



1 A No.  
 2 Q Do you know anything about what II/USP is?  
 3 A I can't remember what it stands for, nor what  
 4 it means.  
 5 Q Okay. Did you do any investigation to find out  
 6 what II/USP is?  
 7 A No.  
 8 Q Okay.  
 9 A Not that I can remember right now.  
 10 Q Okay. Do you know, sir, whether or not there  
 11 are students in the state of California who do not have  
 12 access to textbooks in core curriculum subjects where  
 13 the teachers would like to use textbooks?  
 14 MS. KOURY: Objection. Overbroad, calls for  
 15 speculation.  
 16 THE WITNESS: I haven't investigated that, so I  
 17 don't know.  
 18 BY MR. ROSENBAUM:  
 19 Q For any reason, do you know?  
 20 MS. KOURY: Overbroad, compound.  
 21 THE WITNESS: I don't know.  
 22 BY MR. ROSENBAUM:  
 23 Q Okay. Do you know if there are teachers in the  
 24 state of California who would like to use textbooks in  
 25 core curriculum subjects who do not have those textbooks

1 A I am.  
 2 Q All right. In the South Carolina case that you  
 3 mentioned, have you been paid this year as part of that  
 4 case?  
 5 A Yes.  
 6 Q How much have you been -- how much have you  
 7 made this year from that case?  
 8 A This year.  
 9 Q Yes.  
 10 A It might be in the range of about \$35,000.  
 11 Q Okay. And how about last year?  
 12 A Might be about \$25,000.  
 13 Q The prior year?  
 14 A I think I started working last year.  
 15 Q Okay. How much money did you make from expert  
 16 consulting in litigation last year?  
 17 A You know, I'd almost have to consult my records  
 18 to figure that out.  
 19 Q Okay. I'd appreciate if you could do that, but  
 20 can you give me a ballpark number?  
 21 A Well, I'd even hesitate to call it a ballpark,  
 22 because I do a lot of other things, and I don't -- I  
 23 haven't thought about it that way.  
 24 Q Okay. How about this year?  
 25 A So far?

1 available for their students?  
 2 MS. KOURY: Objection. Overbroad, compound, beyond  
 3 this expert's opinions.  
 4 THE WITNESS: I don't know.  
 5 BY MR. ROSENBAUM:  
 6 Q Have you made any independent investigation to  
 7 find out?  
 8 MS. KOURY: Same objections.  
 9 THE WITNESS: Not aside from looking at the reports.  
 10 BY MR. ROSENBAUM:  
 11 Q Okay. Same question for any year.  
 12 Do you know if there are teachers in any year  
 13 who do not have textbooks available for core curriculum  
 14 subjects that they'd like to make available to their  
 15 students?  
 16 MS. KOURY: Objection. Asked and answered,  
 17 overbroad, calls for speculation, beyond this expert's  
 18 opinions.  
 19 THE WITNESS: I don't know.  
 20 MR. ROSENBAUM: Okay. Let's -- off the record for  
 21 a moment.  
 22 (Discussion off the record)  
 23 (Brief recess taken.)  
 24 BY MR. ROSENBAUM:  
 25 Q Doing okay, Doctor?

1 Q Yeah.  
 2 A It might be -- worse than ballpark, but maybe  
 3 40,000 so far.  
 4 Q Okay. And --  
 5 A Maybe a little bit more than that, now that I  
 6 think of it. Maybe 50,000.  
 7 Q Okay. That's from the South Carolina case, the  
 8 Williams case and this other case, the other case being --  
 9 A I haven't been paid anything in the other case.  
 10 Q Okay. So it'd be from Williams and South  
 11 Carolina?  
 12 A Yeah.  
 13 Q I take it you're being paid for the deposition,  
 14 this deposition?  
 15 A I haven't asked, but I assume it.  
 16 Q Well, if you need a lawyer, Dr. Walberg, we do  
 17 have fair contingency rates.  
 18 Do you know what your hourly is for the  
 19 deposition?  
 20 A It's the same as my regular fee.  
 21 Q Ask for more.  
 22 A Thank you.  
 23 Q Okay. Dr. Walberg, do you have children?  
 24 A I have a grown man as a child. Wait a minute.  
 25 Let me -- I have a boy that's 36 years old.

1 Q What?  
 2 A I have a boy -- a man who's -- I have a son who  
 3 is 36 years old.  
 4 Q I told you I wasn't going to ask trick  
 5 questions, but looks like I have.  
 6 And does he act like a boy or a man? Forget  
 7 it.  
 8 MS. KOURY: He'll get in trouble. Don't answer  
 9 that.  
 10 BY MR. ROSENBAUM:  
 11 Q And did he go to school in Chicago? I'm  
 12 talking about "K" through 12.  
 13 A He went to school in Oak Park.  
 14 Q In Oak Park?  
 15 Did he go to public school or private school?  
 16 A Public.  
 17 Q And when you -- you told me earlier that you  
 18 reviewed the liability disclosure statement.  
 19 A Yes.  
 20 Q Okay. Were there any schools that you read  
 21 about in the liability disclosure statement that you  
 22 said, if the facts are as stated in the liability  
 23 disclosure statement, I wouldn't want my son to go to  
 24 that school?  
 25 MS. KOURY: Objection. Incomplete hypothetical,

1 vague and ambiguous and overbroad.  
 2 THE WITNESS: I don't really have a very clear  
 3 memory of that report. I think I may have just been  
 4 sent it, and I -- I am unfamiliar with the legal issues,  
 5 and so I didn't read it as carefully as I might like,  
 6 and it was some months ago. So I don't have a clear  
 7 memory of it to be able to answer your questions.  
 8 BY MR. ROSENBAUM:  
 9 Q All right. If you just answered it, you tell  
 10 me. But at the time you read it, do you recall saying,  
 11 there are schools here that I wouldn't want my child to  
 12 go to?  
 13 MS. KOURY: Objection. Incomplete hypothetical,  
 14 asked and answered.  
 15 BY MR. ROSENBAUM:  
 16 Q If the facts were true.  
 17 A I don't remember the report sufficiently well  
 18 to answer your question.  
 19 Q Did you draw any conclusions from the report?  
 20 MS. KOURY: Objection. Overbroad.  
 21 BY MR. ROSENBAUM:  
 22 Q By report, I mean the liability disclosure  
 23 statement.  
 24 MS. KOURY: Same objection.  
 25 THE WITNESS: No, I don't think I drew any

1 conclusions that had to do with my work here.  
 2 BY MR. ROSENBAUM:  
 3 Q Okay. Earlier you used the word "impression."  
 4 Did you form any impressions from reviewing the  
 5 liability disclosure statement?  
 6 MS. KOURY: Overbroad.  
 7 THE WITNESS: No.  
 8 MR. ROSENBAUM: Okay. Let's mark Dr. Walberg --  
 9 let's go off the record.  
 10 (Discussion off the record)  
 11 MR. ROSENBAUM: Okay. Let me have marked as  
 12 Exhibit 1 to the Herbert Walberg deposition a document  
 13 with the caption of the Williams case, and then it says,  
 14 "Expert Witness Declaration re Herbert J. Walberg,  
 15 Ph.D."  
 16 I'm going to have it marked and placed in front  
 17 of you and supply counsel with copies.  
 18 (Plaintiff's Exhibit 1 was marked for  
 19 identification by the court reporter.)  
 20 BY MR. ROSENBAUM:  
 21 Q Do you have what's been marked as Exhibit 1?  
 22 A Yes.  
 23 Q Okay. You know, just for the record's sake,  
 24 let me put this in front of you rather than your copy,  
 25 okay? This is one you should refer to. It's official

1 razzmatazz.  
 2 Okay. And you don't -- you spend as much time  
 3 as you need at any point with respect to any of my  
 4 questions, Doctor, but right now, if you could very  
 5 briefly take a look through that report and see if you  
 6 recognize it.  
 7 All I'm going to ask you is: Is this your  
 8 report in the Paul Salvaty declaration?  
 9 A (Witness reviews documents.)  
 10 Okay. I'm ready for your questions.  
 11 Q All right. You recognize this document?  
 12 A I do.  
 13 Q What is this document?  
 14 A It's two documents. One is my CV and the other  
 15 is my report for this case.  
 16 Q Okay. Now, here's the most important question  
 17 of this deposition.  
 18 On Page 5 of your vita, what inspired you to  
 19 teach a course on emergency medicine for travelers and  
 20 explorers?  
 21 A I didn't teach it. I was a student.  
 22 Q I see. Okay.  
 23 All right. You wanted to make some  
 24 corrections; is that right?  
 25 A Yes.

1 Q Okay. Why don't you tell me where.  
 2 A All right.  
 3 Page 17.  
 4 Q Okay. We're not talking about your vita?  
 5 We're talking about the --  
 6 A That's right.  
 7 Q -- report itself; is that right?  
 8 A Yes.  
 9 If you look at the first full paragraph on Page  
 10 17, the last line, it says, "when." I'd like to say  
 11 "in" instead.  
 12 Q I'm not following you.  
 13 Where are we?  
 14 A All right. It's Page 17, first full paragraph,  
 15 last line, says, "Their objectivity when." I'd like to  
 16 change that to "in."  
 17 Q Okay. Thank you.  
 18 A And the next one is on Page 30, Footnote 46.  
 19 There's a comma after the 46. I'd like to remove that.  
 20 Q Done.  
 21 A And on Page 31, the center heading Number 2 has  
 22 an extra "I" in "inspections." And I'd like to have it  
 23 spelled correctly.  
 24 Q I'd like to leave that the way it is. Okay.  
 25 You want to remove the second "I" -- third "I,"

1 actually.  
 2 A Yeah.  
 3 And on the bottom of Page 33 is a Footnote 39,  
 4 and on the second line from the bottom, it -- towards  
 5 the end there's a space there, and there should be a --  
 6 see the extra space between "find" and "to"?  
 7 Q Yes.  
 8 A It should be "it."  
 9 Q Okay.  
 10 A And the sentence should end with a question  
 11 mark instead of a period.  
 12 And then the final correction is Page 37. The  
 13 first line of the last paragraph. It says "audaciously  
 14 calls" and I want to change "calls" to "states."  
 15 Q I'm not following you.  
 16 Where is that, please?  
 17 A Page 37.  
 18 Q Okay.  
 19 A Last paragraph, first line.  
 20 Q Last full paragraph?  
 21 A No, last paragraph.  
 22 Q Okay. Russell and -- audaciously states.  
 23 Thank you.  
 24 A These are pretty minor, but I wanted to correct  
 25 them.

1 Q Okay. Thanks.  
 2 A While we're on the subject, may I ask the  
 3 attorney as to whether I can make these corrections and  
 4 then send in a revised report, or what's your pleasure  
 5 on that?  
 6 Q You can talk that over with Vanessa.  
 7 A Okay.  
 8 Q All right. At Page 4, on the sixth line down --  
 9 A We're on my CV or the report?  
 10 Q No, the report.  
 11 Do you have that?  
 12 A Yes.  
 13 Q Okay. Directing your attention to Page 4 of  
 14 Exhibit 1, sixth line down --  
 15 A Wait. Sorry.  
 16 Q You okay?  
 17 A Yeah.  
 18 Q All right. I'm not going to be talking about  
 19 your CV for a while.  
 20 A That line begins with "accord"? You said Page  
 21 4 --  
 22 Q Yeah, "accord," but the sentence actually  
 23 begins with, as you see, the prior line.  
 24 "In accord with the successful precedents of  
 25 other states and nations, the State" -- then you have

1 parentheses -- "(here meaning the Legislature, Governor  
 2 and California Department of Education)."  
 3 Do you see that?  
 4 A Yes.  
 5 Q Okay. When you use "State" throughout this  
 6 report, is that what you mean?  
 7 A Yes.  
 8 Q The Legislature, Governor and California  
 9 Department of Education?  
 10 A Yes.  
 11 Q Was that your definition or was that supplied  
 12 to you by your counsel?  
 13 A It was my definition, because I didn't  
 14 always -- I didn't know who did what, and I thought I  
 15 would use a generic term rather than using seven words  
 16 each time.  
 17 Q Okay. To your knowledge, does the Governor of  
 18 the state of California have responsibilities with  
 19 respect to the delivery of education?  
 20 MS. KOURY: Objection. Vague.  
 21 BY MR. ROSENBAUM:  
 22 Q "K" through 12 public education.  
 23 MS. KOURY: Vague.  
 24 THE WITNESS: I'm sure the Governor has  
 25 responsibilities, but I -- I'm not a legal scholar or

1 political scientist, so I don't -- and I haven't  
2 specifically studied the division of labor in  
3 California. So I don't claim any particular expertise  
4 on that question.

5 BY MR. ROSENBAUM:

6 Q So do you know what, if any, responsibilities  
7 the Governor has with respect to delivery of  
8 education -- "K" through 12 public education?

9 MS. KOURY: Objection. Asked and answered, calls  
10 for a legal conclusion.

11 THE WITNESS: No, I don't know his responsibilities.

12 BY MR. ROSENBAUM:

13 Q How about the Legislature? Do you know what,  
14 if any, responsibilities the State Legislature has with  
15 respect to the delivery of "K" through 12 public  
16 education?

17 MS. KOURY: Calls for a legal conclusion.

18 THE WITNESS: I don't know what their  
19 responsibilities are.

20 BY MR. ROSENBAUM:

21 Q Okay. How about the California Department of  
22 Education? Do you have an understanding as to what, if  
23 any, its responsibilities are with respect to the  
24 delivery of public -- "K" through 12 public education?

25 MS. KOURY: Objection. Calls for a legal

1 opportunity"?

2 MS. KOURY: Objection. Calls for a legal  
3 conclusion.

4 THE WITNESS: I have written on that subject, and  
5 there are a lot of different definitions. And I have  
6 not adopted a single definition that I use in my work.

7 BY MR. ROSENBAUM:

8 Q Okay. I appreciate that.

9 What's your understanding of the meaning of the  
10 phrase?

11 A Well, my understanding is that it's an issue of  
12 great legal contentiousness and, as I mentioned,  
13 different people have different ideas about what it  
14 means.

15 Q Do you -- I don't want to cut you off. Go  
16 ahead.

17 A So I mean, among the -- I could mention some  
18 differences among them, if that would be helpful to you.

19 Q I don't think it would be. I'm interested in  
20 whether or not you yourself have a definition that you  
21 rely upon for the phrase "equal educational  
22 opportunity."

23 MS. KOURY: Objection. Overbroad, also calls for a  
24 legal conclusion.

25 THE WITNESS: I think any time that I would use

1 conclusion.

2 THE WITNESS: As in the other cases, I don't know  
3 the division of labor, and I don't know who does what.  
4 I only would know a general matter that applies to most  
5 states.

6 BY MR. ROSENBAUM:

7 Q Well, in general, what is the -- what are the  
8 duties and responsibilities -- strike that.

9 In general, sir, what is your understanding of  
10 the duties and responsibilities of the State of  
11 California when it comes to the delivery of "K" through  
12 12 public education?

13 MS. KOURY: Objection. Overbroad, calls for a  
14 narrative. Also calls for a legal conclusion.

15 Go ahead.

16 BY MR. ROSENBAUM:

17 Q If you know.

18 A I don't know.

19 Q Okay. Are you familiar with -- well, that's  
20 consulting.

21 You're familiar with the phrase "equal  
22 educational opportunity"?

23 A I've seen that phrase many times.

24 Q Okay. Do you have a definition of the phrase  
25 that's comfortable to you, "equal educational

1 that phrase, I would tend to define it for the  
2 particular purposes that I was writing about, and I was  
3 very -- I was interested in this question about 30 years  
4 ago and I did make an analysis of various ways of  
5 defining it, sort of a taxonomy of definitions. It's  
6 not something that I've thought about recently, and it's  
7 not something that I claim to be an expert in.

8 BY MR. ROSENBAUM:

9 Q Okay. You wrote this piece in 1974, about,  
10 right?

11 A What's that?

12 Q You wrote that taxonomy piece in 1974?

13 MS. KOURY: Objection. Vague.

14 THE WITNESS: Can you help me a little more with it  
15 than '74?

16 BY MR. ROSENBAUM:

17 Q In or about 1974, is that -- strike that.

18 In your last answer you told me you wrote a  
19 piece about it, about equal educational opportunity.

20 A Yes.

21 Q Was that piece written at or about 1974?

22 A I don't know offhand. I've written dozens and  
23 dozens of -- it was -- the one I'm thinking of right now  
24 was in a chapter in a book that I edited, and I don't  
25 know when the book was published.

1 Q Can you give me a rough date?  
 2 A That might -- it might be somewhere around that  
 3 time.  
 4 Q Okay. Now, maybe you've already answered that,  
 5 and I don't want to belabor this.  
 6 Did you consider the question of equal  
 7 educational opportunity in preparing your report,  
 8 Exhibit 1 for the Williams case?  
 9 MS. KOURY: Vague.  
 10 THE WITNESS: I don't think it was something that I  
 11 was asked to do, and it was not on my mind when I wrote  
 12 the report.  
 13 BY MR. ROSENBAUM:  
 14 Q To your knowledge, are there children in public  
 15 schools "K" through 12 in the state of California who do  
 16 not have equal educational opportunity?  
 17 MS. KOURY: Objection. Calls for a legal  
 18 conclusion and beyond the expert's opinions and vague  
 19 and ambiguous.  
 20 THE WITNESS: I haven't made a specific study of  
 21 that, so I don't have an opinion.  
 22 BY MR. ROSENBAUM:  
 23 Q Okay. Do you know the phrase "educational  
 24 equity"?  
 25 A I've heard that phrase.

1 Q Okay. Is that a phrase you use?  
 2 A I don't remember using it, but I've done a lot  
 3 of writing and I could have used it somewhere.  
 4 Q Okay. Sitting here today, do you have a  
 5 definition of the phrase "educational equity"?  
 6 MS. KOURY: Calls for a legal conclusion.  
 7 THE WITNESS: I think I would need to think more  
 8 about it and look at the latest scholarship on that  
 9 question. And again, it's like some of those other  
 10 words. They're legal, and I think they're beyond my ken  
 11 and -- you know, I would hesitate to write about them  
 12 unless I felt that I knew the topic quite well.  
 13 BY MR. ROSENBAUM:  
 14 Q And you didn't regard that as part of your  
 15 charge for this report, considering educational equity?  
 16 A That's right.  
 17 Q And if you just answered this question, you  
 18 just tell me.  
 19 In your understanding, does the State of  
 20 California have any duties or responsibilities with  
 21 respect to ensuring equal educational opportunity for  
 22 public school students in Grades K through 12?  
 23 MS. KOURY: Objection. Calls for a legal  
 24 conclusion, also vague and ambiguous.  
 25 THE WITNESS: I think that's a legal phrase that

1 may be used, and it probably has to do with the  
 2 Constitution, legislation, things of that nature, which  
 3 I have not studied. So I'm very reluctant to answer  
 4 that.  
 5 BY MR. ROSENBAUM:  
 6 Q Okay. Are there -- are there entities, sir, at  
 7 the State level that have duties or responsibilities  
 8 with respect to the delivery of public education, Grades  
 9 K through 12?  
 10 MS. KOURY: Objection. Calls for a legal  
 11 conclusion.  
 12 BY MR. ROSENBAUM:  
 13 Q I'm -- in this question and all the questions,  
 14 I'm asking in your understanding.  
 15 MS. KOURY: Same objection.  
 16 THE WITNESS: Well, it would be my understanding  
 17 and my impression, but I'm not offering an expert  
 18 opinion, that the people that -- or the groups that  
 19 we've discussed earlier have some of those major  
 20 responsibilities.  
 21 BY MR. ROSENBAUM:  
 22 Q But you can't define any of those?  
 23 MS. KOURY: Objection. Mischaracterizes his  
 24 testimony.  
 25 MR. ROSENBAUM: Well, you're right -- you're not

1 right, but I'm not going to pursue that.  
 2 Q Any others besides the Legislature, the  
 3 Governor and the California Department of Education,  
 4 with the proviso that you've already told me what you  
 5 know about those?  
 6 MS. KOURY: Calls for a legal conclusion.  
 7 THE WITNESS: Let me have the question again,  
 8 please.  
 9 BY MR. ROSENBAUM:  
 10 Q Sure. I'll do it again.  
 11 I want to know if there are State entities,  
 12 excluding the Legislature, Governor and California  
 13 Department of Education, that have duties or  
 14 responsibilities with respect to the delivery of "K"  
 15 through 12 public education.  
 16 MS. KOURY: It's also vague and ambiguous.  
 17 THE WITNESS: It would call for speculation on my  
 18 part, although I could make some assumptions and give an  
 19 impression, but I don't think you want that.  
 20 BY MR. ROSENBAUM:  
 21 Q Okay. Does California have a State Board of  
 22 Education?  
 23 A Yes.  
 24 Q Okay. Do you know how, if at all, its duties  
 25 and responsibilities differ from the California

1 Department of Education?

2 MS. KOURY: Objection. Calls for a legal  
3 conclusion, calls for speculation.

4 THE WITNESS: I haven't studied that question.

5 BY MR. ROSENBAUM:

6 Q Or -- again, I'm just interested in your  
7 understanding -- how, if at all, its duties and  
8 responsibilities differ from the California State  
9 Superintendent of Public Instruction.

10 MS. KOURY: Objection. Vague, also calls for a  
11 legal conclusion.

12 THE WITNESS: I haven't studied that, and I'm not  
13 an expert on governance issues.

14 BY MR. ROSENBAUM:

15 Q Okay. Besides the chapter that you mentioned  
16 to me, have you done any other writing regarding equal  
17 educational opportunity?

18 MS. KOURY: Objection. Overbroad.

19 THE WITNESS: Well, I edited a book on the subject  
20 one time. And I may have written a paper or a chapter  
21 some years ago when I was quite interested in this topic.

22 BY MR. ROSENBAUM:

23 Q But do any come to mind right now?

24 MS. KOURY: Do you mean specific names other than  
25 what he's already testified about?

1 definition comes to mind?

2 A Well, it would be -- certainly wouldn't be an  
3 expert definition. It would be a large ratio of  
4 students to the square footage.

5 Q Do you know if there are any overcrowded  
6 schools in the state of California, by your definition?

7 A No.

8 Q You don't know?

9 A I don't know.

10 Q Have you ever made any inquiry or investigation  
11 into --

12 A No.

13 Q Do you know if there are children in the state  
14 of California "K" through 12 public school system who  
15 are bused out of their home schools because of  
16 overcrowding?

17 MS. KOURY: Objection. Calls for -- I'm sorry,  
18 goes beyond the expert's opinions.

19 Go ahead.

20 THE WITNESS: I don't know.

21 BY MR. ROSENBAUM:

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

24 A No.

25 MS. KOURY: Same objection.

1 MR. ROSENBAUM: Yeah.

2 THE WITNESS: I wrote one or two papers in a  
3 journal called "Kappan," on that topic, now that I think  
4 about it.

5 BY MR. ROSENBAUM:

6 Q Do you know when that was?

7 A Not offhand.

8 Q Anything else come to mind?

9 A Well, I don't think that -- I can't think of  
10 anything, aside from what I've already mentioned, where  
11 the central topic was educational -- equal educational  
12 opportunity or educational equity.

13 Q Okay. Thank you.

14 You've testified in other cases about -- you've  
15 used the phrase "overcrowded schools"; is that right?

16 A I can't think of it, but I would not be  
17 surprised if I have.

18 Q Do you have a definition in your own mind as to  
19 what an overcrowded school is?

20 A Well, it's a facilities question. Usually  
21 people who are facilities experts testify about those  
22 kinds of things. I don't remember anything that I've  
23 written about that, although I don't want to say that I  
24 haven't.

25 Q If I use the phrase "overcrowded schools," what

1 BY MR. ROSENBAUM:

2 Q Do you know if there -- do you know what the  
3 phrase "emergency credentialed teacher" means?

4 MS. KOURY: Calls for a legal conclusion.

5 BY MR. ROSENBAUM:

6 Q Let me strike that.

7 Have you ever heard of the phrase "emergency  
8 credentialed teacher"?

9 MS. KOURY: Objection. Vague.

10 THE WITNESS: I think I've come across that phrase  
11 in various things that I've read.

12 BY MR. ROSENBAUM:

13 Q Okay. And now let me take Ms. Koury's  
14 suggestion.

15 Have you heard the phrase "emergency  
16 credentialed teacher" with respect to the state of  
17 California?

18 A I may have read that phrase in the plaintiff  
19 expert reports.

20 Q Okay. And did you attach a meaning to that  
21 phrase when you came across it in the expert report?

22 A Do you mean did it occur to me what that  
23 probably meant?

24 Q Yes.

25 A Yes.

1 Q What occurred to you?  
 2 A It would mean that that person might not have  
 3 a -- the normal credentials.  
 4 Q And what do you -- I'm sorry.  
 5 A And would be allow to teach on a temporary  
 6 basis.  
 7 Q Okay. When you say normal credentials, what do  
 8 you mean by that?  
 9 A It would -- might mean that the person has a  
 10 baccalaureate in education, and that usually implies  
 11 they've done some practice teaching. If it's a subject  
 12 like mathematics, they might have -- I'm talking, now,  
 13 generally rather than California, which -- is that what  
 14 you --  
 15 Q I'm talking about California.  
 16 A Well, then I -- I don't want to -- you asked me  
 17 what I thought it meant.  
 18 Q Yeah. You -- go ahead.  
 19 A I -- if it's specifically about California, I  
 20 haven't really studied that. I was -- I was thinking  
 21 what does it mean in general. So I was giving a general  
 22 answer. But I don't want to say that I know about it in  
 23 California.  
 24 Q When you came across that phrase in some  
 25 plaintiff experts reports, did you attach any specific

1 Q Okay. I don't know what you mean by "full  
 2 credentials."  
 3 MS. KOURY: Objection. Asked and answered.  
 4 THE WITNESS: Well, that's -- I'm sorry.  
 5 That's what I was talking about before, that  
 6 they wouldn't -- they might not have such  
 7 requirements -- now, again, I didn't study this in  
 8 California, but you -- I think you're asking me what I  
 9 thought it meant.  
 10 BY MR. ROSENBAUM:  
 11 Q Exactly right.  
 12 A So that's what I was -- sort of thought the  
 13 meaning was, because it's a term that's -- that may not  
 14 be the exact term used in other places, but it's a  
 15 well-known phenomenon around the country.  
 16 Q Okay. Did you finish your answer?  
 17 A Well, I was just going to add that, you know,  
 18 they wouldn't -- typically, they would have to have a  
 19 baccalaureate, which would -- in education, they would  
 20 have to have certain kinds of education courses. They  
 21 would have to have practice teaching. And if it were,  
 22 for example, high school mathematics, they would have to  
 23 have a certain number of mathematics courses.  
 24 Q Do you know if there are "K" through 12 public  
 25 schools in the state of California where 50 percent or

1 meaning to it?  
 2 MS. KOURY: Asked and answered.  
 3 THE WITNESS: I assumed that I knew what it meant.  
 4 BY MR. ROSENBAUM:  
 5 Q Okay. And tell me what your assumption is  
 6 fully, please.  
 7 A That it at least -- as I said earlier, that  
 8 these teachers did not have the full credentials that  
 9 they -- that would be required by California State law.  
 10 Now, again, that was an assumption. I didn't study it.  
 11 But you asked me what I thought it meant.  
 12 Q You didn't do any further investigation to find  
 13 out?  
 14 A No.  
 15 Q And when you -- again, maybe you answered this,  
 16 but I just want to be clear.  
 17 For purposes of looking at those expert  
 18 reports, what did you assume "full credentials" meant?  
 19 MS. KOURY: Objection. Calls for a legal  
 20 conclusion, also goes beyond this expert's opinions.  
 21 THE WITNESS: Well, I think I answered that.  
 22 They're lacking full credentials. They were given a  
 23 temporary position until they either got them or were  
 24 replaced.  
 25 BY MR. ROSENBAUM:

1 more of the teachers are emergency credentialed, as you  
 2 understood that phrase?  
 3 MS. KOURY: Objection. Vague and ambiguous,  
 4 overbroad, goes beyond this expert's opinions.  
 5 THE WITNESS: I don't know.  
 6 BY MR. ROSENBAUM:  
 7 Q Or more than 90 percent?  
 8 MS. KOURY: Same objections.  
 9 THE WITNESS: I don't know.  
 10 BY MR. ROSENBAUM:  
 11 Q Any percent I put in there, you'd give me the  
 12 same answer?  
 13 MS. KOURY: Overbroad.  
 14 THE WITNESS: Yes.  
 15 MS. KOURY: Compound.  
 16 BY MR. ROSENBAUM:  
 17 Q Do you know if anyone has investigated whether  
 18 or not there is any correlation between results on the  
 19 tests used as part of the California assessment system  
 20 and schools -- and percentage of emergency credentialed  
 21 teachers in the schools?  
 22 MS. KOURY: Objection. Vague and ambiguous, also  
 23 compound.  
 24 BY MR. ROSENBAUM:  
 25 Q Do you understand my question, sir?

1 A Let me restate it in my own words.  
 2 Q Thanks.  
 3 A You're asking me percentages of credentialed  
 4 teachers that are related in schools to the amount that  
 5 students learn? In California.  
 6 Q On the scores. On the achievement test, how  
 7 they performed on the achievement test.  
 8 A And you're asking me if I know of a study of  
 9 that in California?  
 10 Q If anyone's investigated or if you know of any  
 11 studies.  
 12 A I don't know.  
 13 Q Have you ever made any inquiry to find out?  
 14 A No.  
 15 Q You didn't regard that as relevant to the  
 16 report?  
 17 MS. KOURY: Objection. Argumentative.  
 18 THE WITNESS: It was not one of the things I was  
 19 asked to do, nor did I try to investigate it.  
 20 BY MR. ROSENBAUM:  
 21 Q Okay. Do you know if there are schools in --  
 22 "K" through 12 public schools in the state of California  
 23 that don't have libraries?  
 24 MS. KOURY: Objection. Vague and ambiguous, also  
 25 overbroad, calls for speculation.

1 THE WITNESS: I don't know.  
 2 BY MR. ROSENBAUM:  
 3 Q Okay. Ever make any inquiry to find out?  
 4 A No.  
 5 Q Do you know if there are schools in the state  
 6 of California that do not meet statutory health and  
 7 safety standards? I'm talking about "K" through 12  
 8 public schools.  
 9 MS. KOURY: Objection. Calls for a legal  
 10 conclusion, also overbroad.  
 11 THE WITNESS: I don't know.  
 12 BY MR. ROSENBAUM:  
 13 Q Do you know if there are statutory health and  
 14 safety standards for schools in the state of  
 15 California?  
 16 MS. KOURY: Same objections.  
 17 THE WITNESS: I don't know.  
 18 BY MR. ROSENBAUM:  
 19 Q In your experience, Dr. Walberg, in other  
 20 states, do you know of any state -- are there  
 21 states -- strike that.  
 22 Do you know, sir, whether or not there are high  
 23 schools in the "K" through 12 public school system where  
 24 there are no computers in the classrooms?  
 25 MS. KOURY: Calls for speculation, overbroad, goes

1 beyond this expert's opinions.  
 2 THE WITNESS: I don't know.  
 3 BY MR. ROSENBAUM:  
 4 Q And you never did any investigation to find out?  
 5 MS. KOURY: Same objections.  
 6 BY MR. ROSENBAUM:  
 7 Q Is that right?  
 8 A That's right.  
 9 Q I asked you several moments ago about whether  
 10 or not you were aware of any studies or investigations  
 11 to see whether or not there was any relationship or  
 12 correlation between scores on achievement tests that are  
 13 part of the State assessment system and number of  
 14 percentages of teachers with full or emergency  
 15 credentials.  
 16 Remember I said --  
 17 A Yes.  
 18 Q -- just a few moments ago?  
 19 If I changed it to other factors, like  
 20 existence of libraries or access to textbooks or  
 21 technology in the classroom, would your answer be the  
 22 same?  
 23 MS. KOURY: Objection. Overbroad, compound.  
 24 If you're able to answer that --  
 25 BY MR. ROSENBAUM:

1 Q I'm glad to break it down to each and every  
 2 one. I just wanted to save time.  
 3 A And you're talking about California?  
 4 Q I certainly am.  
 5 A Okay. I don't know of any such studies.  
 6 Q For any factors; is that right?  
 7 MS. KOURY: Same objections.  
 8 THE WITNESS: Yes.  
 9 BY MR. ROSENBAUM:  
 10 Q Okay.  
 11 A Right. For any factors. I don't know of any  
 12 studies like that in California alone.  
 13 Q Okay. And have you ever made any inquiry to  
 14 find out?  
 15 A No.  
 16 Q Do you have an opinion, sir, whether or not the  
 17 citizens of the state of California are satisfied with  
 18 the system of "K" through 12 public education in the  
 19 state?  
 20 MS. KOURY: Objection. Vague, ambiguous,  
 21 overbroad.  
 22 THE WITNESS: I don't know.  
 23 BY MR. ROSENBAUM:  
 24 Q Okay. Do you know if there have been any  
 25 surveys as to satisfaction or dissatisfaction of



1 citizens of the state of California with the system of  
 2 "K" through 12 public education in the state?  
 3 MS. KOURY: Vague, ambiguous.  
 4 THE WITNESS: I'd like to look at my report again.  
 5 BY MR. ROSENBAUM:  
 6 Q Let me just ask you right now, do you recall  
 7 any such studies?  
 8 A I think I referred to one survey in my report,  
 9 and I don't know if it was for California or the nation.  
 10 Q Okay. Why don't you take a look.  
 11 A (Witness reviews documents.)  
 12 Okay. I don't know of any survey in California.  
 13 Q Okay. Did you ever make any inquiry or  
 14 investigation to see if such a survey existed?  
 15 A No.  
 16 Q You didn't regard that as relevant to your  
 17 preparation of this report?  
 18 MS. KOURY: Objection. Mischaracterizes his  
 19 testimony.  
 20 THE WITNESS: Well, in a vague sense, it might be  
 21 somewhat relevant, but it was not what I was asked to  
 22 do, nor what I accepted that I would do.  
 23 BY MR. ROSENBAUM:  
 24 Q Okay. When you say, in a vague sense, it could  
 25 be somewhat relevant, what do you mean by that?

1 A Well, I think that people's opinions about  
 2 schools could be relevant to some of the things that  
 3 we've been talking about, and if people are happier with  
 4 the schools, especially parents, their children might do  
 5 better.  
 6 Q Why is that?  
 7 A Because I think it is an indication -- not a  
 8 wonderful indication, but it's some indication that the  
 9 parents are satisfied with the school and they're  
 10 engaged in the school, they feel involved in the  
 11 schools, and in one sense they're judges of the school.  
 12 So something like that could conceivably be relevant.  
 13 Q Okay. You help me to see if I understand you  
 14 right.  
 15 You have frequently testified and written about  
 16 nine factors that contribute to academic achievement; is  
 17 that right?  
 18 A That's right.  
 19 Q And one of those factors has to do with the  
 20 role of parents in education; isn't that right?  
 21 A That's right.  
 22 Q And when you say to me that parent feelings  
 23 about schools could affect -- could be related -- that's  
 24 what you're talking about, right, if they're more  
 25 satisfied, it's more likely that they'll be involved in

1 the schools?  
 2 MS. KOURY: Objection. Mischaracterizes the  
 3 testimony.  
 4 THE WITNESS: I think that that might be a part of  
 5 it, but it's not all of it.  
 6 BY MR. ROSENBAUM:  
 7 Q Okay. You can -- why don't you elaborate the  
 8 disparate part.  
 9 A Well, I think that if parents are well informed  
 10 about the school and if they are -- read to their  
 11 children when they're younger and have the children read  
 12 to them, if they encourage children to watch  
 13 constructive television programs and discuss the  
 14 programs with them, they take them to museums, help them  
 15 plan family vacations together, work on their  
 16 vocabulary, go into the school and get to know the  
 17 teachers and something about the curriculum of the  
 18 program and are generally stable and affectionate to the  
 19 children, then their children, other things being equal,  
 20 will tend to be higher achievers.  
 21 Q Okay. And sir, with respect to those  
 22 indices -- can I call them indices?  
 23 A Sure.  
 24 Q Is that part of the California assessment  
 25 system, any of those indices?

1 MS. KOURY: Objection. Vague, ambiguous.  
 2 BY MR. ROSENBAUM:  
 3 Q As you understand it.  
 4 A I don't know.  
 5 Q Okay. Is the State of California, to your  
 6 knowledge, involved in "K" through 12 public education  
 7 in California?  
 8 A Is the State involved in --  
 9 Q (No audible response)  
 10 A In K-12 education?  
 11 Q Yes.  
 12 MS. KOURY: Objection. Vague, overbroad.  
 13 THE WITNESS: Well, yes, in the sense that the  
 14 State is responsible for the education -- for providing  
 15 K-12 education.  
 16 BY MR. ROSENBAUM:  
 17 Q Okay. And what's the basis for that answer?  
 18 MS. KOURY: Calls for a legal conclusion; it's  
 19 overbroad.  
 20 THE WITNESS: Well, I think that's my general  
 21 knowledge of other states, and how those state systems  
 22 of education work.  
 23 BY MR. ROSENBAUM:  
 24 Q When you say responsible, what do you mean by  
 25 that?

1 A I mean the -- we're talking about these  
2 three -- we're talking about these same three entities  
3 that we talked about before, the Legislature, Governor  
4 and California Department of Education?

5 Q It's your deposition, Doctor. You tell me.

6 A Well, I'll talk about those.

7 Q Okay.

8 A I know that in most states that that -- those  
9 three groups have major responsibilities for setting the  
10 goals, setting the standards, establishing policies,  
11 responding to legislation and judicial decisions and  
12 things of that nature. And in trying to ensure high  
13 quality.

14 So I think that that's pretty true in all the  
15 states in the United States, and in my readings  
16 incidental and in this case, I have no reason to think  
17 that that doesn't apply to California.

18 Q Can you tell me everything that you're aware of  
19 that the State of California does with respect to "K"  
20 through 12 public education?

21 MS. KOURY: Objection. Overbroad, calls --

22 BY MR. ROSENBAUM:

23 Q In California.

24 MS. KOURY: Sorry. Objection. Overbroad, calls  
25 for a narrative.

1 that that doesn't apply to California."

2 THE WITNESS: I guess the only thing I would add  
3 to that is that -- that in recent years there's been a  
4 greater emphasis on accountability.

5 BY MR. ROSENBAUM:

6 Q Do you consider yourself an expert on  
7 California school finances?

8 A No.

9 Q Okay. Do you know if all schools receive the  
10 same amount of money from the State of California?

11 A No.

12 Q Made any investigation or inquiry to find out?

13 A No.

14 Q Okay.

15 Do you think -- if you're not in a position to  
16 answer this, I don't want you to belabor the point.

17 Do you think California schools receive too  
18 much money from the State?

19 MS. KOURY: Objection. Vague and ambiguous.

20 THE WITNESS: I don't know.

21 BY MR. ROSENBAUM:

22 Q Or from the Federal Government?

23 MS. KOURY: Same objection.

24 THE WITNESS: I don't know.

25 BY MR. ROSENBAUM:

1 I take it you want anything that he's not  
2 already testified to, but go ahead.

3 MR. ROSENBAUM: I'm not sure he's testified to  
4 anything specifically, because I haven't inquired as to  
5 that.

6 Q You tell me everything that you know that the  
7 State of California does, in terms of its involvement  
8 with respect to "K" through 12 public education.

9 MS. KOURY: Overbroad, calls for a narrative.

10 Answer to the extent you know.

11 THE WITNESS: May I have my last answer read back?

12 MR. ROSENBAUM: Sure.

13 (The record was read as follows:

14 "I know that in most states that  
15 that -- those three groups have major  
16 responsibilities for setting the goals,  
17 setting the standards, establishing  
18 policies, responding to legislation and  
19 judicial decisions and things of that  
20 nature. And in trying to ensure high  
21 quality.

22 "So I think that that's pretty true  
23 in all the states in the United States,  
24 and in my readings incidental and in  
25 this case, I have no reason to think

1 Q Okay. Do you know how much money schools get  
2 from the State of California?

3 A No.

4 Q Do you know where California stands, in terms  
5 of per-pupil expenditure, in relationship to other  
6 states?

7 A No.

8 Q Have you ever made inquiry to find out?

9 A No.

10 You mean in this case?

11 Q Well, let's start here, yeah. For this case or  
12 for purposes of this case.

13 A No.

14 Q Have you ever examined how schools spend their  
15 money in the state of California?

16 MS. KOURY: Objection. Vague and ambiguous, goes  
17 beyond this expert's opinions.

18 THE WITNESS: No.

19 BY MR. ROSENBAUM:

20 Q Do you know if the State of California gives  
21 money to "K" through 12 public schools for specific  
22 purposes?

23 Do you know what I mean by that? I don't want  
24 to be confusing on that.

25 Sometimes you give money to an entity and you

1 say, spend it as you choose. Sometimes you give money  
2 to an entity and say, you have to use it for a specific  
3 purpose.

4 My question to you is: Do you know to what  
5 extent, if any, the State of California gives money to  
6 "K" through 12 public schools with specific purposes  
7 attached?

8 MS. KOURY: Objection. Vague and ambiguous, calls  
9 for a legal conclusion, also overbroad.

10 THE WITNESS: No.

11 BY MR. ROSENBAUM:

12 Q Or whether it does that at all?

13 MS. KOURY: Same objections.

14 THE WITNESS: No.

15 BY MR. ROSENBAUM:

16 Q Okay. And I take it for both those questions  
17 you just answered, you haven't made any inquiry to find  
18 out?

19 A That's right.

20 Q Okay. Have you looked at any proposed budget  
21 for this coming year for the -- for educational purposes  
22 in the state of California?

23 A Only indirectly, as mentioned in my report.

24 Q What does that mean?

25 A Well, I think I refer to the budget crisis in

1 A Especially as it applies to the California  
2 system?

3 Q I'm sorry, what?

4 A Especially as it applies to the California  
5 system?

6 Q Yes.

7 A Or are we talking about incentives in general  
8 for all states?

9 Q Well, you've written a lot about incentives;  
10 haven't you?

11 A I have. Well, I wouldn't say a lot, but I have  
12 written about incentives.

13 Q What's the definition of "incentives" that  
14 you've used?

15 A I would say it's a condition or object that  
16 tends to reinforce behavior to encourage more of it.

17 Q Okay. And are there any such incentives in the  
18 California assessment system today?

19 A Yes.

20 Q Have any -- have there been any changes in the  
21 incentives available in the California assessment system  
22 in the past two years?

23 MS. KOURY: Objection. Vague.

24 BY MR. ROSENBAUM:

25 Q Do you understand my question?

1 California. So I know that that would -- might affect  
2 the education spending.

3 Q Do you know if it -- if there are any  
4 proposals, such that it would affect the budget -- the  
5 education spending for public schools "K" through 12?

6 A I don't know.

7 Q Okay. Have you made any specific inquiry to  
8 find out?

9 A No.

10 Q Okay. The California assessment system that  
11 we've been talking about today, do you know how much  
12 money the State of California has spent on that to date?

13 A No.

14 Q Or for any particular year?

15 A No.

16 Q Have you made any inquiry to find out?

17 A No.

18 Q With respect to the California assessment  
19 system we're talking about, are there any incentives in  
20 that system right now?

21 MS. KOURY: Objection. Vague, overbroad.

22 THE WITNESS: Yes.

23 BY MR. ROSENBAUM:

24 Q Okay. And why don't you tell me what you  
25 understand the word "incentive" to mean.

1 A I'm uncertain. I don't know.

2 Q Okay. Or in the past three years?

3 A I don't know the timing of the various  
4 components of the program.

5 Q Okay. What are the incentives that presently  
6 exist in -- I want you to be sure on this. So I mean, I  
7 don't want -- I want to be clear on my question.

8 Do you know for a fact, sir, whether or not  
9 there are any present incentives in the California  
10 assessment system today?

11 A I know that there are some. I don't know which  
12 ones are in place, but I think I know of some -- or at  
13 least one that's in place now.

14 Q Okay. What is that?

15 A That's the publication of the test scores by  
16 school and by district.

17 Q Okay. And besides that, are you aware of any  
18 other incentives in the system?

19 A I think I mentioned several in my report, if I  
20 have a --

21 Q Let me just ask you, off the top of your head,  
22 if you're aware of any.

23 A Well, we talked earlier about the exit  
24 examination. I consider that an incentive -- part of an  
25 incentive system.

1 Q Okay. Any others?

2 A I don't know if it's in place yet or not, and  
3 I'm, you know, mentioning things that are legislated  
4 rather than necessarily already being used in schools.

5 Just had in my mind a minute ago -- oh. My  
6 understanding is that schools can be chartered in the  
7 state if they've repeated -- they've repeatedly failed.

8 Q Okay. And what's your definition of "charter"?

9 A Charter school is a school that operates on  
10 public funds but is privately governed.

11 Q Okay. And what's the basis for your answer  
12 that schools can be chartered if they -- what's the  
13 phrase?

14 MR. ROSENBAUM: Go back two answers.  
15 (The record was read as follows:

16 "A I don't know if it's in place  
17 yet or not, and I'm, you know,  
18 mentioning things that are legislated  
19 rather than necessarily already being  
20 used in schools.

21 "Just had in my mind a minute  
22 ago -- oh. My understanding is that  
23 schools can be chartered in the state  
24 if they've repeated -- they've  
25 repeatedly failed."

1 Q Sure. I want an example of a poor API score.

2 A Well, I'm not sure I can give you a specific  
3 example, but it would -- my understanding is the ranking  
4 of how well the school -- each school has done in their  
5 achievement progress in the past year. And so schools  
6 that have done relatively poorly would have a relatively  
7 low ranking.

8 Q You sure about that answer?

9 MS. KOURY: Objection. Argumentative.

10 THE WITNESS: I'm not sure of it.

11 BY MR. ROSENBAUM:

12 Q Okay. When you say relatively low, can you  
13 give me -- is there a numerical number attached to  
14 that? Is there some other -- how do I -- what's a  
15 relatively -- what is a relatively low score, if you  
16 know?

17 A I don't know.

18 Q Okay. And have there been -- maybe you already  
19 answered this.

20 Have there, sir, been schools that have  
21 repeatedly failed, as you defined it?

22 A I don't know.

23 Q Have you made any investigation or inquiry to  
24 find out?

25 A No.

1 MR. ROSENBAUM: Let me break that down.

2 Q When you say repeatedly failed, what does that  
3 mean?

4 A That means they've failed more than one year in  
5 a row.

6 Q What does failed mean?

7 A That they have gotten, for example, a poor API  
8 score or other indexes.

9 Q What's a poor API score?

10 A We talked about this earlier -- and I'm not an  
11 expert of the API, but my understanding is that it is a  
12 value-added index of how much the students have learned  
13 in the past year.

14 Q My question is: What's a poor API score? What  
15 do you mean by that phrase?

16 A It would mean that they would have a relatively  
17 low ranking on that index.

18 Q Give me an example.

19 MS. KOURY: Objection. Calls for --

20 BY MR. ROSENBAUM:

21 Q If you can.

22 MS. KOURY: Incomplete hypothetical.

23 Go ahead.

24 THE WITNESS: Let's have the question again.

25 BY MR. ROSENBAUM:

1 Q Do you know if more schools have failed than  
2 have succeeded?

3 A No.

4 Q Okay. Have you made any inquiry to find out?

5 A No.

6 Q Okay. I asked you a series of questions  
7 earlier about whether or not anyone had looked into the  
8 question about whether or not there were any factors  
9 that related or correlated with scores on the assessment  
10 tests.

11 Do you remember that? Talked about emergency  
12 credentialed teachers and --

13 A Yes.

14 Q Do you know if anyone's done that with respect  
15 to the California high school exit exam, looked at  
16 scores and seen whether or not there were any factors  
17 that correlated with the results on the California high  
18 school exit exam?

19 MS. KOURY: Objection. Vague and ambiguous,  
20 overbroad, compound.

21 THE WITNESS: I don't know of any such study.

22 BY MR. ROSENBAUM:

23 Q Okay. And have you made any inquiry to find  
24 out?

25 A No.

1 Q Do you believe, sir, that -- do you know if  
2 there have been any public schools in the state of  
3 California that have been chartered, based on your --  
4 the way you described it to me?

5 A I think there are quite a few schools that have  
6 been chartered, but I don't know if they've been -- that  
7 present variation on it has been enacted yet.

8 Q Okay. Have you made any inquiry to find out?

9 A No.

10 Q Okay. You're a big supporter of charter  
11 schools; isn't that right?

12 MS. KOURY: Mischaracterizes his testimony.

13 Go ahead.

14 THE WITNESS: I think charter schools are promising.

15 BY MR. ROSENBAUM:

16 Q Can you give me any examples in California  
17 where -- that support that conclusion?

18 MS. KOURY: Objection. Calls for speculation,  
19 incomplete hypothetical.

20 THE WITNESS: Maggie Raymond or Margaret Raymond  
21 just recently completed a study that showed, as I  
22 recall, that elementary charter schools did as well as  
23 regular elementary schools and, as I recall, secondary  
24 schools actually did better than regular schools.

25 BY MR. ROSENBAUM:

1 assessment system that you believe that have not been  
2 successful in raising achievement?

3 MS. KOURY: Objection. Vague.

4 THE WITNESS: When you say not raising achievement,  
5 you mean not raising achievement in California?

6 BY MR. ROSENBAUM:

7 Q Yes, sir.

8 A Well, I think that assumes that it has raised  
9 achievement in California.

10 Q Do you know if it has raised achievement in  
11 California?

12 A I don't know if it has or not.

13 Q Have you made any inquiry to find out?

14 A In one sense I have.

15 Q What's that?

16 A I'm familiar with the research on  
17 accountability of various states, and so the factors  
18 that are present or principles that the California  
19 system has built upon have been proven about as well as  
20 can be proven in major studies done in different  
21 countries and also in the United States.

22 Q If you were to set up a research methodology to  
23 determine whether or not the State assessment system has  
24 actually resulted in increasing student achievement, how  
25 would you go about doing that?

1 Q Okay. Do you know what the average SES was in  
2 any of those schools that she looked at?

3 MS. KOURY: Objection. Calls for speculation, the  
4 study speaks for itself.

5 THE WITNESS: I don't remember that.

6 BY MR. ROSENBAUM:

7 Q Do you know if any of those were -- you've used  
8 the phrase in some of your ratings -- high poverty  
9 schools?

10 MS. KOURY: Objection. Calls for speculation,  
11 study speaks for itself.

12 THE WITNESS: I don't remember reading about that.

13 BY MR. ROSENBAUM:

14 Q Do you -- do you think, sir, that there are any  
15 activities that the State of California is involved with  
16 with respect to "K" through 12 public education that it  
17 should end?

18 MS. KOURY: Objection. Vague.

19 THE WITNESS: I don't have any specific knowledge.  
20 I think some programs are effective and others aren't,  
21 but I haven't made a study of it in California, so I  
22 can't answer that question.

23 BY MR. ROSENBAUM:

24 Q Okay. Are you in a position to tell me, sir,  
25 whether or not there are any parts of the State

1 MS. KOURY: Objection. Vague. Also calls for --  
2 or is an incomplete hypothetical.

3 BY MR. ROSENBAUM:

4 Q I want to make a predicate question to be fair  
5 to you.

6 Do you know how you would go about doing that?

7 MS. KOURY: Same objections. Incomplete  
8 hypothetical.

9 THE WITNESS: I know some bad ways to do it, and I  
10 don't know of any good ways to do it. If it had to be  
11 in California alone.

12 BY MR. ROSENBAUM:

13 Q Okay. When you say bad way, what do you mean  
14 by that?

15 A Well, one way that it could be done is to  
16 simply look at the test scores in California --

17 Q I'm sorry -- go ahead.

18 A Is to look at the test scores -- provided you  
19 had a standardized test that was given to all the  
20 students, or a random sample, and to trace the progress  
21 of achievement over a number of years. And when -- if  
22 you found that there was a surge in achievement upon the  
23 introduction of an accountability system or that when  
24 the accountability system was put in place, the scores  
25 gradually went up, then it might be a very weak

1 indication that the system was working. But could be  
2 attributable to a lot of other factors as well.

3 So I don't think a study of a single state  
4 would be very definitive.

5 Q In fact, you've written fairly extensively,  
6 isn't it true, about not jumping to conclusions based on  
7 just looking at year-to-year scores on standardized  
8 tests, for reasons you've just talked to me about; isn't  
9 that right?

10 MS. KOURY: Objection. Vague and ambiguous,  
11 overbroad, calls for speculation, also  
12 mischaracterizes -- or to the extent it mischaracterizes  
13 his testimony.

14 Go ahead.

15 THE WITNESS: I have written on need for caution  
16 about looking at just changes in test scores and called  
17 for statistical adjustments. You mentioned regression  
18 analysis earlier, for example. And so I think drawing  
19 causal conclusions from passive data from a single state  
20 might be uncertain and misleading.

21 BY MR. ROSENBAUM:

22 Q Okay.

23 A I'm not sure that I answered that completely.  
24 May I have -- can you repeat your question? Because I  
25 thought that there was another aspect that I didn't

1 Q Do you know if California adjusts its scores by  
2 regression?

3 A I think California uses the API system, which  
4 is regression-like, but I don't think it's explicitly  
5 based on regression.

6 Q Do you know what a SARC is, S-A-R-C?

7 A No.

8 Q Okay. I apologize if I asked this question  
9 before, so you just tell me if you've already answered  
10 this.

11 Has the California accountability system, as we  
12 have been talking -- as you use that phrase in your  
13 report, has it changed over the past three years?

14 MS. KOURY: Asked and answered.

15 BY MR. ROSENBAUM:

16 Q Did you answer those questions for me?

17 MS. KOURY: I just want to assert a couple more  
18 objections. It's also overbroad and vague.

19 THE WITNESS: Well, I think I may have answered it,  
20 but if you like, I'll answer it again.

21 BY MR. ROSENBAUM:

22 Q Okay.

23 A I haven't studied the changes from year to  
24 year. So I'm ill-informed about that.

25 Q Thank you.

1 think of.

2 MR. ROSENBAUM: Why don't you read back the last  
3 question.

4 (The record was read as follows:

5 "In fact, you've written fairly  
6 extensively, isn't it true, about not  
7 jumping to conclusions based on just  
8 looking at year-to-year scores on  
9 standardized tests, for reasons you've  
10 just talked to me about; isn't that  
11 right?")

12 BY MR. ROSENBAUM:

13 Q Do you want your answer read back too?

14 A No. It's reminded me of what I forgot to  
15 mention.

16 On the other hand, I emphasize in my writings  
17 and with you already today the value of a value-added  
18 score. So that is year to year, and so I think that a  
19 year-to-year score is better -- that is, it -- adjusted  
20 by regression or looking at the percentages of students  
21 that increase in proficiency categories and things of  
22 that nature has somewhat -- has some value, particularly  
23 when -- if you would, for example, compare California  
24 with other states. And that might be a more, I think,  
25 scientifically-valid study.

1 Do you know if there are any provisions in  
2 front of the Legislature right now dealing with the  
3 California assessment system, as you've used that  
4 phrase?

5 A No.

6 Q You don't know?

7 A I don't know.

8 Q Okay. You've made no inquiry to find out?

9 A I did not.

10 Q Is there an essay part to the California  
11 assessment system; do you know?

12 A I don't know.

13 Q Made any inquiry to find out?

14 A No.

15 Q Do you believe that the State of  
16 California -- strike that.

17 Does California have a textbook adoption  
18 system?

19 A I believe it does.

20 Q Do you know that for a fact?

21 MS. KOURY: Objection. Argumentative.

22 BY MR. ROSENBAUM:

23 Q I just don't want you guessing, because you  
24 used the word "believe."

25 A I've read that it has, that Texas and

1 California are known for having fairly prescriptive  
2 policies.  
3 Q Okay.  
4 A I don't know the current state of affairs.  
5 Q Can you give me any description of how the  
6 system works, adoption system, the textbook adoption  
7 system?  
8 MS. KOURY: Objection. Calls for a narrative;  
9 also, vague and ambiguous, beyond this expert's  
10 testimony.  
11 THE WITNESS: I haven't studied it, so I don't  
12 claim any expertise on it.  
13 BY MR. ROSENBAUM:  
14 Q Okay. Do you think that a state should  
15 establish academic standards to apply to all districts?  
16 A I think it's desirable.  
17 Q Okay. And why is that?  
18 A Because I think it's the State's role,  
19 according to precedent and according to logic, and I  
20 think there's evidence that -- empirical evidence to  
21 support the idea that states should have accountability  
22 systems, should have standards, and to measure progress  
23 on those standards.  
24 Q Help me understand this.  
25 When you say "logic" and "precedent" in your

1 it, except Iowa have accountability systems. Second --  
2 and these are all over the United States, of course, and  
3 so 49 of them.  
4 The Democrats and Republicans in Congress voted  
5 overwhelmingly for the No Child Left Behind Act, which  
6 is -- Federal act, which is probably the most  
7 extraordinary legislation that we've ever had, and that  
8 has clear accountability provisions in it. So among  
9 other things, I think our elected officials, typically,  
10 being legislators and governors and others, have done  
11 these things, and I think that their decisions should  
12 count very heavily.  
13 But in addition to that, I think that there  
14 have been a number of authoritative studies that  
15 indicate the value of having accountability systems in  
16 the state. And in nations, for that matter.  
17 Q Okay. Have you finished your answer?  
18 A Yes.  
19 Q Okay. Do you think that a State establishing  
20 academic standards to apply to all districts undermines  
21 school district prerogatives?  
22 MS. KOURY: Objection. Vague and ambiguous,  
23 overbroad, also incomplete hypothetical.  
24 THE WITNESS: Well, I think it constrains the  
25 districts to focusing on what raises achievement in the

1 answer, why do you think it's important for the State to  
2 set standards?  
3 A California or states in general?  
4 Q My question was about any state.  
5 A Yeah.  
6 Q Did you understand it that way?  
7 A Well, I didn't know, so I'm glad you told me.  
8 Q I take it your answer would remain the same,  
9 though.  
10 My question --  
11 A Yeah.  
12 Q -- was intended to talk about all states.  
13 A Okay.  
14 Q Would you change your answer in any way now  
15 that you know that?  
16 A Well, I'm not -- did I answer? I'm sorry.  
17 Q Who's on first? Let's start over.  
18 My question is this: Do you think it's  
19 appropriate for a State to establish academic standards  
20 to apply to all districts?  
21 A Yes.  
22 Q Okay. And tell me why you think that.  
23 A Well, I think that there are a number of  
24 reasons. I hope I can think of them all. One is that  
25 it's highly precedented that all states, as I understand

1 eyes of the Legislature, Governor and others, and  
2 experts who participate in formulating the standards, to  
3 what those people think are important to learn in the  
4 state, so that they lose some autonomy. But on the  
5 other hand, they can focus very sharply on the  
6 operations that will increase achievement by the State  
7 standards.  
8 So I think that it's a useful division of labor.  
9 BY MR. ROSENBAUM:  
10 Q Whatever loss of autonomy results, it's your  
11 judgment that it's worth it in the name of increasing  
12 academic achievement; is that right?  
13 MS. KOURY: Objection. Mischaracterizes his  
14 testimony; it's also asked and answered. He already  
15 testified about this.  
16 THE WITNESS: Well, I think that there's nearly  
17 universal agreement that we need to -- our students need  
18 to be achieving more. So I certainly subscribe to it.  
19 And I think that there are, as I say, these precedents  
20 around the country, and I think there's also evidence  
21 that having a good accountability system does in fact  
22 raise achievement. To say whether that outweighs the  
23 loss of autonomy is fairly subjective.  
24 BY MR. ROSENBAUM:  
25 Q Well, what's your view?

1 A I think -- I think they definitely should,  
 2 because I think that achievement is enormously  
 3 important, and we need to focus sharply on it.  
 4 Q And if I asked you the same question about  
 5 undermining individual school prerogatives, would your  
 6 answer be the same?  
 7 MS. KOURY: Objection. Vague and ambiguous; it's  
 8 also incomplete hypothetical.  
 9 THE WITNESS: Yes.  
 10 BY MR. ROSENBAUM:  
 11 Q Okay. And --  
 12 A May I explain one point --  
 13 Q Sure.  
 14 A -- from my previous answer?  
 15 Q Sure.  
 16 A I guess I'm a little reluctant to say I should  
 17 come in here and say what California should do, or any  
 18 expert. I think it's a -- you know, the decision of the  
 19 elected officials of the State. So I was a little --  
 20 the way you asked me, do I think it's a good idea, I  
 21 think it does, but I don't think I'm in a position of  
 22 telling other people what to do, but I think I do know  
 23 something about, if you do this, that will happen.  
 24 MR. ROSENBAUM: Okay. Can you do me a favor and  
 25 just mark that piece of the transcript and we'll come

1 back to it later, please.  
 2 MR. HAJELA: Does the reporter need a break?  
 3 (Discussion off the record)  
 4 (Brief recess taken.)  
 5 BY MR. ROSENBAUM:  
 6 Q Let me direct your attention, Doctor, on Page 4  
 7 of what's been marked as Exhibit 1, to the second full  
 8 paragraph.  
 9 Now, for any of my questions, you feel free --  
 10 I'm going to direct you to particular portions of your  
 11 report, but I want you to know that you are always free  
 12 to review as much of your report as you want. I don't  
 13 want to take anything out of context, and if you need to  
 14 look at more than what I'm directing you to, you go  
 15 ahead and do that.  
 16 Do you understand that?  
 17 A Hmm-hmm.  
 18 Q Okay. Are you saying yes?  
 19 A Yeah, I am.  
 20 Q The second paragraph on Page 4 of Exhibit 1,  
 21 "The plaintiffs' experts seek to turn back the clock to  
 22 a failed system of testing and a failed top-down scheme  
 23 of close regulation of operations, burdensome reporting,  
 24 and costly monitoring of the policies and practices of  
 25 districts and schools -- this at a time when the State

1 of California is severely pressed financially and  
 2 educators are in the midst of enacting the carefully  
 3 planned accountability system."  
 4 Do you see that sentence?  
 5 A Yes.  
 6 Q Which of plaintiffs' experts, in your judgment,  
 7 seek to turn back the clock to a failed system of  
 8 testing?  
 9 A That would be chiefly Russell, but the others  
 10 may have mentioned it.  
 11 Q Okay. I hear you use the adverb "chiefly."  
 12 My question is: Do any of the other experts  
 13 besides Russell, in your judgment, seek to turn back the  
 14 clock to a failed system of testing?  
 15 A Not that I recall.  
 16 Q Okay. Any reason you didn't qualify that in  
 17 this sentence?  
 18 A Qualify what?  
 19 Q That the only expert whom you believe sought to  
 20 turn back the clock to a failed system of testing was  
 21 Russell.  
 22 MS. KOURY: Objection. It mischaracterizes his  
 23 testimony.  
 24 BY MR. ROSENBAUM:  
 25 Q Well, I don't want to mischaracterize your

1 testimony.  
 2 Do you want to look at the other reports and  
 3 see if any of the other experts seek to turn back the  
 4 clock to a failed system of testing except Russell?  
 5 I've got the other reports you cited with me.  
 6 A I don't think we have the time to do that.  
 7 Q We have all the time you need. And I'm glad to  
 8 give you those reports to look at. So -- but I -- I  
 9 don't want to mischaracterize your testimony.  
 10 My question is: Does any other expert, in your  
 11 judgment, besides Michael Russell seek to turn back the  
 12 clock to a failed system of testing? And I have the  
 13 other reports here. You're absolutely free to look at  
 14 those reports.  
 15 A Well, I think Russell was most clearly in favor  
 16 of that, but now that I think of it, the Oakes synthesis  
 17 report agreed with Russell on that point, and so I would  
 18 certainly say that Oakes in that as well.  
 19 And I didn't get a chance to mention  
 20 something -- I think we got distracted by another  
 21 matter. I didn't intend this sentence to say that every  
 22 expert made each one of those points. That's the way  
 23 you seem to be reading it.  
 24 Q Okay.  
 25 A So I -- you know, later on I mentioned each --



1 what the expert said. But I didn't -- this is a kind of  
2 a summary or, as it says here, summary of opinions and  
3 so on. So I didn't try to spell out the details in this  
4 paragraph.

5 Q Okay. Now, when you use the phrase "close  
6 regulation of operations," what do you mean by that?  
7 I'm sorry, I'm -- "a top-down scheme of close regulation  
8 of operations."

9 What do you mean by that?

10 A My understanding is that the plaintiffs, let's  
11 say, as a collective would like to have detailed  
12 regulations of operations, that they would like to  
13 specify what textbooks -- not textbooks so much, but  
14 what specific features of operations the schools will be  
15 required to enact, and they would have a monitoring  
16 system with the inspectorate model to see that the  
17 schools had actually done those things.

18 Q That's not quite the question I asked.

19 My question is: What does the phrase "close  
20 regulation of operations mean," "top-down scheme of  
21 close regulation of operations" mean? I'm not asking it  
22 in terms of plaintiffs' experts. I'm asking it in terms  
23 of what did you mean by that phrase, "a top-down scheme  
24 of close regulation of operations"?

25 MS. KOURY: Objection. Asked and answered. He

1 have specifications of what those things should be, and  
2 "close" means that it would be highly detailed and  
3 close -- monitored frequently and intensively.

4 BY MR. ROSENBAUM:

5 Q Okay. Using your definition, sir, which you  
6 courteously just gave to me, have you undertaken any  
7 inquiry or investigation to determine whether or not the  
8 State of California now runs -- strike that -- whether  
9 the State of California has now any top-down scheme of  
10 close regulation of operations in its "K" through 12  
11 public education system?

12 MS. KOURY: Objection. Vague.

13 THE WITNESS: I haven't made a detailed study of  
14 that, and it's more in the nature of my experiences  
15 coming here and reading the other experts' reports and  
16 being familiar with California and other states, and  
17 especially with respect to the past, when people are  
18 moving away from -- in other states, including  
19 California, are moving away from this close regulation  
20 of operations and moving more towards an outcome system  
21 with a division of labor, so the -- as I was mentioning  
22 earlier, the State sets the standards and the test and  
23 things of that nature, and leaves the operation of the  
24 schools largely to the school boards and school people.

25 BY MR. ROSENBAUM:

1 testified about that.

2 THE WITNESS: I was attempting here to characterize  
3 what the plaintiffs' experts had said, and I gave you my  
4 understanding of what their point of view was.

5 BY MR. ROSENBAUM:

6 Q Okay. I'm trying to understand.

7 What is a "close regulation of operations," as  
8 you use that phrase?

9 MS. KOURY: Objection. Asked and answered.

10 MR. ROSENBAUM: I don't think it has.

11 Q I'm not -- I want to know what that phrase  
12 means -- what is a close regulation of operations?

13 MS. KOURY: For a point of clarification, do you  
14 mean in the context that he used it in this paragraph?  
15 Because to the extent that that's what you're asking, my  
16 objection stands. Asked and answered, argumentative.

17 You can go ahead and repeat yourself if you  
18 want.

19 THE WITNESS: Well, we know what operations means.  
20 This is what the people in the schools do. The  
21 teaching, the curriculum, the development, testing and  
22 things of that nature, class sizes and the various  
23 choices that a teacher and a principal might have, and  
24 it also pertains to district decisions to some extent.

25 Regulation of those means that the State would

1 Q Okay. Is the answer to my question no?

2 Have you undertaken any investigation to  
3 determine whether or not California now has any top-down  
4 schemes of -- scheme of close regulation of operations  
5 in its "K" through 12 public education system?

6 MS. KOURY: Objection. Asked and answered to the  
7 extent it -- objection to the extent it mischaracterizes  
8 his testimony. He answered the question.

9 THE WITNESS: I haven't made a study of that.

10 BY MR. ROSENBAUM:

11 Q And when you say "burdensome reporting" in the  
12 sentence, could you tell me the definition you're using  
13 for "burdensome"?

14 A I was attempting to characterize what the  
15 plaintiffs' experts had been calling for.

16 Q What does "burdensome" mean?

17 A It means that it's difficult to carry out.

18 Q Okay. And using your definition, does the  
19 State of California's "K" through 12 public education  
20 system now require any reporting?

21 MS. KOURY: Objection. Vague, overbroad.

22 BY MR. ROSENBAUM:

23 Q If you know.

24 A I don't know for sure, but I assume it does.

25 Q Okay. And do you have -- have you undertaken

1 any investigation to determine whether or not the State  
2 of California requires any "burdensome reporting," as  
3 you defined that phrase?

4 MS. KOURY: Vague, overbroad.

5 THE WITNESS: Well, I think it's a relative matter,  
6 and I think that they have some regulations and --  
7 regulations, almost by definition, are burdensome, but  
8 my understanding here -- or what I had in mind was that  
9 the plaintiffs' experts would favor substantial  
10 increases in what I call the burdensome reporting.

11 BY MR. ROSENBAUM:

12 Q Okay. If you just answered, then you just tell  
13 me, but do you know whether or not California now  
14 requires "burdensome reporting," as you used that  
15 phrase --

16 MS. KOURY: Asked and answered.

17 BY MR. ROSENBAUM:

18 Q -- in its "K" through 12 public education  
19 system?

20 MS. KOURY: Same objection. Asked and answered.  
21 He's testified.

22 THE WITNESS: I think relatively reporting, they --  
23 they have some reporting, and some of it may be  
24 burdensome. My point here was that the plaintiff  
25 experts would be calling for more of it than California

1 A I don't know.

2 Q Okay. If there were some reporting that was  
3 burdensome that was required by the State of California  
4 in its "K" through 12 public education system, would you  
5 recommend that it be abolished?

6 MS. KOURY: Objection. Incomplete hypothetical,  
7 calls for speculation.

8 THE WITNESS: I think I would look at any kind of  
9 reporting on the basis of benefits and its costs.

10 BY MR. ROSENBAUM:

11 Q Tell me --

12 A And also whether it conforms to the legal  
13 system in California. So some things would be  
14 necessary, such as civil rights abuses or perhaps health  
15 and safety regulations, things of that nature. But my  
16 principle would be that the reporting that's done, to  
17 the extent that it harms achievement by distracting  
18 people from concentrating on achievement itself, should  
19 be looked at with skepticism.

20 Q Have you undertaken any investigation to  
21 determine whether or not there is any reporting that is  
22 now required by the State of California in its "K"  
23 through 12 public education system that harms  
24 achievement in the way you've just defined?

25 MS. KOURY: Objection. Asked and answered.

1 presently has.

2 BY MR. ROSENBAUM:

3 Q Do you know what, if any, other reporting that  
4 is required is burdensome now in the "K" through 12  
5 public education system that's required by the State?

6 A No.

7 Q Would you recommend that any burdensome  
8 reporting that is required by the State of California in  
9 its "K" through 12 public education system be  
10 abolished?

11 MS. KOURY: Objection. Vague and ambiguous,  
12 incomplete hypothetical.

13 THE WITNESS: You mean completely abolished?

14 BY MR. ROSENBAUM:

15 Q Yes.

16 A Any aspect?

17 Q The burdensome reporting that exists.

18 MS. KOURY: Objection. Incomplete hypothetical.

19 THE WITNESS: I'm not sure I understand your  
20 question.

21 BY MR. ROSENBAUM:

22 Q Okay. Let's break it down.

23 Tell me what reporting the State of California  
24 now requires in its "K" through 12 public education  
25 system. If you know.

1 THE WITNESS: No.

2 BY MR. ROSENBAUM:

3 Q Okay. How would you go about doing that?

4 MS. KOURY: Objection.

5 BY MR. ROSENBAUM:

6 Q If you know.

7 MS. KOURY: Incomplete hypothetical.

8 THE WITNESS: How would I determine whether the  
9 reporting is burdensome?

10 BY MR. ROSENBAUM:

11 Q That's a good place to start.

12 A I would do log studies. I would interview  
13 people. I would look at the forms and make -- perhaps  
14 make some judgment about how long it might take to fill  
15 out those forms. Those are some of the starting points.

16 Q Log studies? Is that what you said?

17 A Well, you might want to ask people how long  
18 they spend to take -- to do something, but another is to  
19 ask them to fill out a -- some forms or questionnaires  
20 as to how many -- what did you do today and how much of  
21 it had to do with regulations.

22 Q Have you -- have you done that with respect to  
23 any of the reporting requirements in the State?

24 A No.

25 Q Have you looked at any of the forms in this

1 state that have to be filled out?  
 2 A No.  
 3 Q Have you interviewed any people with respect to  
 4 any of the reporting requirements in the state?  
 5 A No.  
 6 Q Do you have any estimates of the cost of  
 7 reporting requirements in "K" through 12 public  
 8 education, any of the reporting requirements in the  
 9 state?  
 10 MS. KOURY: Objection. Incomplete hypothetical.  
 11 THE WITNESS: No.  
 12 BY MR. ROSENBAUM:  
 13 Q When you say costly, the phrase "costly  
 14 monitors the policies and practices of districts and  
 15 schools," what do you mean by the word "costly"?  
 16 A I mean that it requires expenditures of time,  
 17 effort and money.  
 18 Q Okay. And using your definition, is there any  
 19 costly monitoring of policies and practices of districts  
 20 and schools in the State of California now requires?  
 21 A It's my assumption that there are costs of  
 22 regulation and monitoring and completing regulations  
 23 that are required.  
 24 Q Okay. And any of those -- any of those  
 25 requirements, if you know, that you would characterize

1 the third line of -- on Paragraph 2 of Page 4 of Exhibit  
 2 1?  
 3 A I haven't made an analysis of the present  
 4 system.  
 5 Q You've not taken any analysis at all of  
 6 regulations that are required as a part of the State's  
 7 "K" through 12 public education system?  
 8 MS. KOURY: Objection. Mischaracterizes his  
 9 testimony.  
 10 Are you referring to costs of the regulations?  
 11 Is that what you --  
 12 MR. ROSENBAUM: I'm asking if he looked at any  
 13 regulations at all.  
 14 Q Have you looked at any regulations, any  
 15 existing regulations?  
 16 MS. KOURY: Vague, overbroad.  
 17 Answer to the extent you understand.  
 18 THE WITNESS: I didn't make any specific study of  
 19 that in connection with this case.  
 20 BY MR. ROSENBAUM:  
 21 Q Okay. Maybe you just answered this.  
 22 Any monitoring requirements you would recommend  
 23 that the State abolish?  
 24 A I would have to study the present requirements  
 25 in order to make a recommendation.

1 as costly in the way you use it on Page 4 of Exhibit 1  
 2 in the second full paragraph, third line?  
 3 MS. KOURY: Objection. Vague.  
 4 THE WITNESS: I didn't -- I'm not sure that I got  
 5 your question.  
 6 BY MR. ROSENBAUM:  
 7 Q Sure.  
 8 I want to know whether or not you would  
 9 characterize -- if you know whether you would  
 10 characterize any of the monitoring that now takes place  
 11 as costly, in the sense that you use that word in the  
 12 second full paragraph on Page 4 of Exhibit 1.  
 13 MS. KOURY: Objection. Vague, overbroad, calls for  
 14 a narrative.  
 15 THE WITNESS: I think what I had in mind here is  
 16 that I'm characterizing what the plaintiffs said and  
 17 whether there is -- whether there are regulations and  
 18 whether there are costly regulations now, they seem to  
 19 be calling for regulations and monitoring of regulations  
 20 that would be even more costly.  
 21 BY MR. ROSENBAUM:  
 22 Q All right. My question to you is: Do you know  
 23 if at the present time there are -- the State is  
 24 requiring costly monitoring of policies and practices in  
 25 districts and schools, in the way you use that phrase in

1 Q Okay. And what would be the criteria that you  
 2 would apply to make that recommendation?  
 3 MS. KOURY: Objection. Incomplete hypothetical,  
 4 calls for speculation.  
 5 THE WITNESS: Well --  
 6 BY MR. ROSENBAUM:  
 7 Q If you know.  
 8 A That is, what would I need to do in order to  
 9 come to a conclusion about it?  
 10 Q Sure.  
 11 A Well, I would need to study the legislative  
 12 requirements and the department's interpretation of  
 13 those, and I might want to interview people in school  
 14 districts or in schools and ask them a lot of specific  
 15 questions about what they did that's burdensome, what  
 16 was unnecessary, and I might make some judgment about  
 17 the financial costs of it. Those are some of the things  
 18 that would come into consideration.  
 19 Q Okay. Do you know whether anyone has  
 20 interviewed teachers in "K" through 12 public education  
 21 in California to determine whether or not they would  
 22 like access to textbooks for their students in "K"  
 23 through 12 classes?  
 24 MS. KOURY: Objection. Vague, overbroad, compound.  
 25 THE WITNESS: I think I saw in one of the reports

1 that there was a reference to a study that had been made  
2 about availability of textbooks, teachers' perceptions  
3 of it.

4 BY MR. ROSENBAUM:

5 Q What study was that?

6 A I'm a bit uncertain, but I think it was  
7 referred to in the Oakes synthesis report and perhaps  
8 also in her special report.

9 Q Besides that study, do you know if there's been  
10 any interviewing of teachers to see what they'd like in  
11 that regard?

12 A Not that I can bring to mind.

13 Q Okay. Or whether it would be -- well, strike  
14 that.

15 Tell me, Doctor, on Page 4 in the second full  
16 paragraph, what do you mean by "a radical systemic  
17 change"? What do you mean by the phrase "radical  
18 systemic change"?

19 MS. KOURY: Objection to the extent the document  
20 speaks for itself.

21 THE WITNESS: Well, radical means that it is very  
22 substantial. Systemic means that it would affect the  
23 whole system, so to speak, all levels of education.

24 BY MR. ROSENBAUM:

25 Q And when you say -- all what of education? All

1 depend on what the third grade teacher has taught.

2 And in addition to that, the various studies  
3 that I've cited in this report indicate that states and  
4 nations that have standards and means of assessing them  
5 have done better than comparable nations that haven't  
6 had them.

7 Q Any other reasons?

8 A Well, maybe all the other reasons that go along  
9 with accountability, that it provides public information  
10 on how well the schools are doing, which I think is  
11 healthy in a democratic society.

12 Q Okay. And any other circumstances in which you  
13 recommended systemic changes?

14 A That I've recommended in writing or --

15 Q In writing or in testimony with respect to  
16 public education.

17 A I didn't know your other question.

18 MS. KOURY: Let me object, to the extent it  
19 mischaracterizes his testimony, but go ahead and clarify  
20 the record.

21 THE WITNESS: I may have answered your last  
22 question wrongly, then. I'm a little confused.

23 BY MR. ROSENBAUM:

24 Q Okay. What did you think you were answering?

25 A Why we should have an accountability system in

1 what?

2 A Aspects or levels.

3 Q Okay. Have you ever recommended systemic  
4 changes to a system of education?

5 MS. KOURY: Objection. Vague, ambiguous,  
6 overbroad.

7 BY MR. ROSENBAUM:

8 Q In any context.

9 A Well, I think I'm on -- I can't name where it  
10 is right now. I can't think of it. But I certainly --  
11 one meaning of "systemic" is the meaning that I've been  
12 using, that we've been discussing today, and that is the  
13 alignment aspects. So to the extent that that is  
14 considered to be systemic, yes, I have.

15 Q Okay. Why have you made that recommendation?

16 A Because I think that the standards and testing  
17 and their alignment are beneficial for student  
18 achievement.

19 Q Why is that?

20 A Because, among other reasons, if you have a  
21 system of standards in a whole state and children move  
22 from one place to another, especially poor children,  
23 they're not going to get a radical shift in their  
24 curriculum. They're going to have the -- be studying  
25 the same content. So the fourth grade teacher can

1 the state -- in states or in the state of California.

2 Q Well, there was a set of whys, but let me ask  
3 you another question.

4 Are there circumstances in your professional  
5 career, Doctor, in which you have advocated for systemic  
6 change in public education? I thought you gave me one  
7 example. But it doesn't matter.

8 Tell me, sir -- and the record'll speak for  
9 itself.

10 Tell me, sir, whether or not you have advocated  
11 systemic changes in public education in any context in  
12 your experience.

13 MS. KOURY: Objection to the extent it's -- or  
14 vague, ambiguous, overbroad.

15 THE WITNESS: I think in some of my writings  
16 I've -- when you say public education, that's on a  
17 mass-policy basis, but I distinctly remember that I've  
18 written about the importance of testing, for example,  
19 and I may have also said that the tests should be  
20 aligned with what people are trying to do.

21 BY MR. ROSENBAUM:

22 Q Okay.

23 A Now, I specifically remember that. I probably  
24 have -- I need to think more about it, but -- it's not  
25 coming to my mind right now, but I probably -- I

1 certainly believe that. I just can't think of places  
 2 where I may have said it. But it's certainly possible  
 3 that I've written in the last few years. It's just my  
 4 ardent belief.

5 Q Okay.

6 A So if I haven't, I'm sorry, but I haven't.

7 Q There's still time.

8 Can you think of any other circumstances in  
 9 which you've advocated systemic change in the area of  
 10 public education besides what you've already described  
 11 to me?

12 A Well, it's certainly in this report.

13 Q Okay. Any other circumstances?

14 A Well, and I'm sure I've said things like that  
 15 to my students at various times.

16 Q Okay. I'm -- I mean, can you think of other  
 17 specific circumstances that don't relate to testing, for  
 18 example, where you've advocated systemic change in  
 19 public education?

20 MS. KOURY: Objection. Vague, overbroad.

21 THE WITNESS: Well, I've written on the broad  
 22 subject of accountability and I've talked about states  
 23 that have accountability systems and the fact that they  
 24 do better. I know that I've characterized the work of  
 25 John Bishop at Cornell University, a guy named Woessmann

1 who's done international studies, and I've mentioned the  
 2 virtue -- or really, you can say the evidence that  
 3 they've produced -- that accountability systems produce  
 4 higher levels of achievement.

5 And I think that that may have been the context  
 6 that I was thinking of systemic, but I may have written  
 7 sometime at some other point about systemic.

8 BY MR. ROSENBAUM:

9 Q What -- I'm sorry, have you finished your  
 10 answer?

11 A Yes.

12 Q When is systemic change warranted with respect  
 13 to public education, "K" through 12 public education, in  
 14 your mind?

15 MS. KOURY: Objection. Overbroad, vague, also  
 16 calls for -- or is an incomplete hypothetical.

17 THE WITNESS: When it'll increase achievement and  
 18 not violate laws, would have public acceptance, when  
 19 it's preceded in other places. Those would be some  
 20 of the considerations.

21 BY MR. ROSENBAUM:

22 Q Can you think of any others?

23 A Feasibility, cost might be considerations.

24 Q Any others?

25 A Not that come to mind now.

1 Q Okay. Still on Page 4, sir, looking at the  
 2 fourth full paragraph under your "Summary of Opinions"  
 3 section, do you see where it says, "Experience in other  
 4 states with successful accountability systems suggests  
 5 that they require five or more years to have substantial  
 6 positive effects"?

7 A Yes.

8 Q Okay. In -- are there particular states that  
 9 you believe have had substantial positive effects, as  
 10 you've defined those words in this sentence?

11 A Yes.

12 Q Which states?

13 A Texas and North Carolina.

14 Q And what's the basis for your conclusion with  
 15 respect to Texas?

16 A Well, there were a study -- studies were done  
 17 on both of them that I describe in my report,  
 18 sophisticated regression studies that just were able to  
 19 discount a lot of other factors, and they indicated that  
 20 these systems did better.

21 And the basis of that was that they had gained  
 22 substantially on the tests that we talked about earlier,  
 23 the national assessment of educational progress.

24 Q Do you know, sir, whether or not students in  
 25 Texas had access to standards-based textbooks?

1 MS. KOURY: Objection. Vague.

2 THE WITNESS: No.

3 BY MR. ROSENBAUM:

4 Q Okay. Did you ever make any inquiry to find  
 5 out?

6 A No.

7 Q Did the regression analysis look at that factor?

8 A I don't think so.

9 Q Okay. How about North Carolina? Do you know  
 10 if students in North Carolina had access to aligned  
 11 standards-based textbooks or other instructional  
 12 materials?

13 MS. KOURY: Objection. Vague, overbroad.

14 THE WITNESS: I'm going to take a look at my  
 15 report, see if I can refresh my memory.

16 BY MR. ROSENBAUM:

17 Q Sure.

18 A (Witness reviews documents.)

19 Okay. I've located the study I was thinking  
 20 of, and I regret that I have to ask you to repeat the  
 21 question.

22 Q Sure.

23 What page are you on?

24 A On Page 12.

25 Q Thank you.

1 And the study you're referencing is what?  
 2 A Is Grissmer, Grissmer and Flanagan.  
 3 Q Okay. And my question, sir, is -- you're  
 4 talking about Footnote 15 specifically, right?  
 5 A Yes.  
 6 Q Do you know whether or not students in North  
 7 Carolina during the period of time that this study dealt  
 8 with had access to aligned standards based textbooks?  
 9 MS. KOURY: Objection. Vague, overbroad.  
 10 THE WITNESS: Yes, and I can now answer for Texas  
 11 as well.  
 12 If you'd look at the itemized list of five  
 13 factors in the first full paragraph, Item Number 3, it  
 14 says, "aligned curricula and instruction to State  
 15 standards and tests." And I take "curricula" to mean,  
 16 broadly, textbooks and instruction.  
 17 BY MR. ROSENBAUM:  
 18 Q All right. But my question's a little bit  
 19 different.  
 20 Do you know if students had text -- actually  
 21 had textbooks that were aligned -- or maybe you just  
 22 answered it for me.  
 23 Here's my question: Do you know if students in  
 24 Texas and North Carolina actually had access to  
 25 instructional materials that were aligned with State

1 standards and tests?  
 2 MS. KOURY: Same objections. Vague, ambiguous  
 3 overbroad.  
 4 THE WITNESS: Well, the second word is "curricula,"  
 5 and when I use that term, I understand that to mean  
 6 textbooks and instructional media. What it says here is  
 7 that curricula and instruction to State standards so --  
 8 BY MR. ROSENBAUM:  
 9 Q The answer is they did?  
 10 A They did, yes.  
 11 Q Thank you.  
 12 A Again, maybe I should say this is  
 13 generalization. I can't say that every student in the  
 14 state had it, but, relatively speaking, they were  
 15 aligned.  
 16 Q Do you know, sir, whether or not the California  
 17 system provides for frequent testing, practice and  
 18 reteaching for students in need of it, as it's  
 19 characterized on Page 12 of your report?  
 20 A Where is it on Page 12?  
 21 Q I'm looking at the text data -- I'm sorry. I'm  
 22 sorry.  
 23 Well, you were -- in the California assessment  
 24 system, sir, are there -- are there sanctions?  
 25 MS. KOURY: Objection. Vague.

1 BY MR. ROSENBAUM:  
 2 Q As you use that word in your report.  
 3 A Mr. Rosenbaum, I discovered just now as we were  
 4 pausing that I made an error in my previous answer.  
 5 Q Okay.  
 6 A And I'd like to correct it, if I may.  
 7 Q Sure.  
 8 A You were asking me about the aligned curricula  
 9 in Texas and North Carolina.  
 10 Q I was asking you whether or not students in  
 11 Texas and North Carolina had --  
 12 A Yes.  
 13 Q -- access to aligned standards-based textbooks.  
 14 A Yes. And I was looking at the wrong list.  
 15 Q Okay.  
 16 A It's actually the second list, and it's Item 1,  
 17 and it actually says explicitly textbooks.  
 18 Q All right. So your answer is yes, they did  
 19 have access?  
 20 A Yes.  
 21 Q Okay. Thank you.  
 22 Are there -- are there sanctions in the  
 23 California assessment system?  
 24 MS. KOURY: Vague.  
 25 BY MR. ROSENBAUM:

1 Q As you use the word "sanctions" throughout your  
 2 report.  
 3 A In a manner of speaking, there are.  
 4 Q What are they?  
 5 A That's what we had talked about earlier, the  
 6 publication of test scores if the schools don't do  
 7 well --  
 8 Q You already answered that, right?  
 9 A Yeah.  
 10 Q The National Assessment Governing Board -- let  
 11 me strike that.  
 12 When did you finish this report?  
 13 A I had the date on the front. April of '03.  
 14 Q Okay. And you'll -- at the top of each page  
 15 you see where it says, "Privileged and Confidential  
 16 Attorney-Client Work Product"?  
 17 A Yes.  
 18 Q What's that mean? Strike that.  
 19 Did you put that on each page?  
 20 A Yes.  
 21 Q Okay. And were you directed to do that?  
 22 A Not for this case.  
 23 Q For other cases?  
 24 A Yes.  
 25 Q Okay. And why did you do that?

1 A Because I was asked to by the attorneys.  
 2 Q In other cases?  
 3 A Yes.  
 4 Q Okay.  
 5 A I mean, I think I know the reason for it, but  
 6 I -- I was once cautioned to do that, and I didn't hear  
 7 any objection to it, so I left it there.  
 8 Q Okay. Why do you think the reason is? What do  
 9 you think the reason is?  
 10 MS. KOURY: Objection. Calls for speculation.  
 11 Go ahead.  
 12 THE WITNESS: It's probably a legal, you know,  
 13 question for an attorney, but if I had made errors in an  
 14 earlier draft or something of that nature, we wouldn't  
 15 have a chance to correct it.  
 16 (Interruption in the proceedings)  
 17 (Brief recess taken.)  
 18 BY MR. ROSENBAUM:  
 19 Q Looking at Page 7 of your report, Doctor, do  
 20 you see where it says, in the first paragraph of Exhibit  
 21 1, Page 7, "Despite more than a hundred and 30 billion  
 22 in current annual rates of 8 billion on  
 23 federally-sponsored programs for children in poverty,  
 24 the poverty gap, as exemplified in Chart 2 remained  
 25 largely unchanged"?

1 A Yes.  
 2 Q Okay. What are the federally-sponsored  
 3 programs you're referring to?  
 4 A Chapter 1, Title I.  
 5 Q Okay. And in any of plaintiffs' experts'  
 6 reports that you're familiar with, did any of  
 7 plaintiffs' experts recommend spending money on Title I?  
 8 A I don't --  
 9 MS. KOURY: Objection. Vague.  
 10 THE WITNESS: I don't recall it.  
 11 BY MR. ROSENBAUM:  
 12 Q Or any of the programs referred to in that  
 13 sentence?  
 14 A Well, I don't remember it specifically, but  
 15 they may have mentioned other Federal programs.  
 16 Q Well, my question is: Do you have any  
 17 recollection of any of plaintiffs' experts, in his or  
 18 her report, urging money to be spent on the sorts of  
 19 programs you're referring to in this sentence?  
 20 A No.  
 21 Q Okay. Incidentally, do you think the Federal  
 22 Government should reduce its expenditures on "K" through  
 23 12 public education?  
 24 MS. KOURY: Objection. Vague and ambiguous,  
 25 overbroad, beyond these experts' opinions in this case.

1 MR. ROSENBAUM: It's in the report.  
 2 Q Go ahead.  
 3 A Well, I think that the Federal Government has  
 4 spent money inefficiently, and I think that the new  
 5 legislation is much more constructive, that in fact it  
 6 is going to spend more money. And no one can predict  
 7 the future, but I think, since it has heavy  
 8 accountability regulations or provisions, it is going  
 9 to -- it has some hope to improve achievement.  
 10 Q That's not the question.  
 11 Do you think the Federal Government should  
 12 reduce its expenditures on "K" through 12 public  
 13 education?  
 14 MS. KOURY: Objection. Asked and answered, it's  
 15 also argumentative. He just testified about that.  
 16 THE WITNESS: I don't think I have any opinion  
 17 currently that goes beyond what I just said.  
 18 BY MR. ROSENBAUM:  
 19 Q Do you think -- is Title I still in existence?  
 20 A Yes.  
 21 Q Do you know how much money the Federal  
 22 Government spends on Title I each year?  
 23 A I think, as it says here, about 8 million a  
 24 year.  
 25 Q Do you think --

1 A But I should say, too, I think this coming year  
 2 it's going to be substantially more.  
 3 Q Do you think that the Federal Government should  
 4 reduce the amount of money it spends on Title I?  
 5 MS. KOURY: Objection. Asked and answered.  
 6 THE WITNESS: Well, I think spending the money on a  
 7 specific purpose that is constructive and has a proven  
 8 track record is probably advisable, but there are  
 9 many -- many aspects of making a recommendation about  
 10 that, including the American heritage of State control.  
 11 And we do not -- many other countries in the  
 12 world have ministries of education, in which the  
 13 ministry prescribes what all students in the country  
 14 will pursue and -- it's not clear that this is  
 15 completely advisable for the United States, and I think  
 16 there have been some objections to that. I think there  
 17 are legal -- complex legal and psychometric and research  
 18 questions involved. And I don't presume to have the  
 19 wisdom to make a broad statement about it.  
 20 BY MR. ROSENBAUM:  
 21 Q I'm sorry, sir, I don't understand your answer.  
 22 When you used the word "it" in that last  
 23 answer, I don't know what you were referring to.  
 24 A I'm referring to the No Child Left Behind Act.  
 25 Q I'm talking about Title I.

1 That's what you're referencing on Page 7, the  
 2 first paragraph; is that right?  
 3 A Yes.  
 4 Q My question to you is: Should the Federal  
 5 Government, in your expert opinion, reduce its  
 6 expenditures on Title I?  
 7 MS. KOURY: Objection. Asked and answered. It's  
 8 argumentative. He just set forth his testimony about  
 9 that.  
 10 THE WITNESS: No.  
 11 BY MR. ROSENBAUM:  
 12 Q No?  
 13 A It should not spend less money. I think it  
 14 should -- I agree -- or I endorse the idea that they're  
 15 going to spend more money, but I think they're going to  
 16 be spending more money on a more constructive purpose  
 17 than they have in the past.  
 18 Q Should -- the programs that you're referencing  
 19 on Page 7, where you talk about \$8 billion in  
 20 federally-sponsored programs, that's not No Child Left  
 21 Behind; isn't that right?  
 22 MS. KOURY: Objection. Argumentative.  
 23 MR. ROSENBAUM: Well, I'll restate the question.  
 24 Q The federally-sponsored program -- are the  
 25 federally-sponsored programs that you're referencing on

1 THE WITNESS: May I have the question again,  
 2 please?  
 3 (The record was read as follows:  
 4 "Well, do you recommend, based on  
 5 your expert opinion, that the Federal  
 6 Government reduce, in whole or part,  
 7 any of the \$8 billion it presently  
 8 spends annually on the  
 9 federally-sponsored programs that you  
 10 reference on Page 7?")  
 11 THE WITNESS: Well, there's a premise there that I  
 12 can't accept, because my understanding is that the  
 13 spending will be increased substantially. So it's  
 14 not -- that is what it was currently, but it's going to  
 15 be higher.  
 16 In addition to that, I don't necessarily think  
 17 that the projected expenditures in the future should be  
 18 lowered, given the fact that we have -- this is  
 19 constructive legislation.  
 20 BY MR. ROSENBAUM:  
 21 Q Okay. I'm not interested, for purposes of this  
 22 question, in the amount of money. I'm interested in --  
 23 do you think any of the federally-sponsored programs  
 24 that you referenced on Page 7 in the first full  
 25 paragraph of Exhibit 1 should be abolished?

1 Page 7 in the first paragraph, the fourth line -- are  
 2 those programs programs that are part of No Child Left  
 3 Behind, as you understand it?  
 4 MS. KOURY: Objection. Vague.  
 5 THE WITNESS: My understanding of No Child Left  
 6 Behind is that states that do not comply with having  
 7 good accountability systems and reporting on outcomes  
 8 jeopardize their contribution -- the Federal  
 9 contributions to the State. And so they are -- they're  
 10 different, but they're tied together.  
 11 BY MR. ROSENBAUM:  
 12 Q Well, do you recommend, based on your expert  
 13 opinion, that the Federal Government reduce, in whole or  
 14 part, any of the \$8 billion it presently spends annually  
 15 on the federally-sponsored programs that you reference  
 16 on Page 7?  
 17 MS. KOURY: Objection. Asked and answered.  
 18 MR. ROSENBAUM: It hasn't been answered yet.  
 19 MS. KOURY: I think it has a couple times.  
 20 MR. ROSENBAUM: He danced away from it at least  
 21 three times.  
 22 MS. KOURY: Objection. Asked and answered,  
 23 argumentative.  
 24 BY MR. ROSENBAUM:  
 25 Q Go ahead. Maybe I'll get the answer.

1 MS. KOURY: Should be abolished?  
 2 MR. ROSENBAUM: Yes.  
 3 THE WITNESS: I think I'm only referring to one  
 4 program here, which is Chapter 1, Title I.  
 5 BY MR. ROSENBAUM:  
 6 Q Okay.  
 7 A And I presently don't think that it should be  
 8 abolished, given the new legislation.  
 9 Q Do you think that there are any programs that  
 10 the Federal Government now expends money on for purposes  
 11 of "K" through 12 public education that should be  
 12 eliminated?  
 13 MS. KOURY: Objection. Overbroad, compound.  
 14 THE WITNESS: I think that some of the Federal  
 15 programs have been relatively unsuccessful and that they  
 16 need to be revised to make them more probable of being  
 17 successful. If the Federal Government is unable to do  
 18 that, then eventually, I think that they should be  
 19 abolished.  
 20 BY MR. ROSENBAUM:  
 21 Q Which programs are you thinking about?  
 22 A Well, I haven't made a specific study of this,  
 23 but over the years some aspects of special education and  
 24 bilingual education have indicated that the children,  
 25 notwithstanding very large expenditures, have not



1 necessarily benefited from being in those programs. But  
 2 in some cases, they do, and so in my view, both of those  
 3 programs should be -- and in fact, I think they are  
 4 being reconsidered now to have a sharper focus on  
 5 whether the programs help students or not.  
 6 Q Any other programs?  
 7 A That's what comes to mind right now.  
 8 Q Okay. When you say, in Paragraph 4, sir,  
 9 failed schools -- that's the first two words of the  
 10 first sentence.  
 11 A Yes.  
 12 Q Tell me your definition of failed schools.  
 13 A Schools that don't achieve well.  
 14 Q Maybe you already answered that.  
 15 Do you know how many schools -- well, when you  
 16 say well, what do you mean by that?  
 17 A That have relatively high scores on achievement  
 18 tests.  
 19 Q That what?  
 20 A That have relatively high scores on achievement  
 21 tests.  
 22 Q For failed schools?  
 23 A I'm sorry, the opposite, that have relatively  
 24 low scores.  
 25 Q And you don't know -- do you know how many such

1 failed schools exist in California?  
 2 A No.  
 3 Q You're depressed about the state of schools in  
 4 the United States; aren't you?  
 5 MS. KOURY: Objection. Vague, ambiguous.  
 6 THE WITNESS: I think schools in the United States  
 7 should be doing much better than they are presently  
 8 doing.  
 9 BY MR. ROSENBAUM:  
 10 Q Okay. Do you think that's true in California  
 11 as well?  
 12 A I have no reason to think that it isn't the  
 13 case, just as it is in the other states.  
 14 Q And you've thought this way for a long time?  
 15 MS. KOURY: Objection. Vague.  
 16 THE WITNESS: Well, I guess I began to think about  
 17 it perhaps 20, 25 years ago, and increasingly, as I  
 18 learned more about it and more studies came along, I  
 19 felt more strongly about it. Or let's say confident.  
 20 BY MR. ROSENBAUM:  
 21 Q Okay. Still on Page 7, at Paragraph 4, sir, of  
 22 what's been marked as Exhibit 1, do you know the  
 23 methodology that the Department of Labor used to  
 24 estimate how much illiteracy costs in those eight  
 25 Southern states?

1 A I don't remember the specific and detailed  
 2 methodology.  
 3 Q Okay. Do you remember concluding that -- well,  
 4 strike that.  
 5 Did you have any criticisms of the methodology  
 6 that the Department of Labor utilized? I should ask the  
 7 predicate question.  
 8 Did you familiarize yourself with the  
 9 methodology at the time you first learned of this report  
 10 or sometime thereafter?  
 11 A Not with the original report.  
 12 Q Okay. Did you subsequently do that?  
 13 A No.  
 14 Q How would you go about estimating the cost of  
 15 illiteracy in a particular state?  
 16 MS. KOURY: Objection. Vague, overbroad,  
 17 incomplete hypothetical.  
 18 THE WITNESS: Well, there are a number of ways you  
 19 could do it. You could do a regression analysis of  
 20 countries or of states and you could estimate the effect  
 21 of achievement on earnings, and from that you could  
 22 project, for any given state that had -- let's say if it  
 23 was a certain level of achievement, you could make a  
 24 projection of how -- how much that affected earnings.  
 25 Another -- another possible approach to it, as

1 you're looking at various kinds of costs, would be  
 2 what's mentioned here, the average annual budget for  
 3 employee training. And if you knew that much in a  
 4 training had to do with elementary and mathematics and  
 5 reading and other skills that should be learned at  
 6 schools, then you could make some estimate.  
 7 BY MR. ROSENBAUM:  
 8 Q To your knowledge, have there been any  
 9 estimates of the cost of illiteracy in California?  
 10 A I don't know of them.  
 11 Q Do you know what the extent of illiteracy is in  
 12 California?  
 13 A No.  
 14 Q Are there other debilitating effects on the  
 15 economy other than those that have been identified here,  
 16 lost productivity, substandard work, unrealized taxes,  
 17 unemployment claims and social problems?  
 18 A Yes.  
 19 Q What are they -- first of all, what do you  
 20 understand "social problems" to mean?  
 21 A Well, I had my mind on your first question.  
 22 Was there other problems that it causes?  
 23 Q Yeah.  
 24 A Was that the first part?  
 25 Q Sure. We can start there.

1 A Okay. You want to have educated jurors and  
2 voters. We want to have citizens that are civically  
3 active -- civic -- active in civic participation. I  
4 think mastery of knowledge and skills makes people more  
5 interesting and raises the level of culture. I think  
6 there are a lot of benefits of higher levels of  
7 achievement.

8 Q And when you see the phrase "social problems"  
9 here at Paragraph 4 of -- on Page 7 of Exhibit 1, what  
10 do you understand that to mean?

11 A Well, among some of them that are mentioned  
12 here that you just mentioned was unemployment, I regard  
13 as a social problem.

14 Q Anything else?

15 A I don't know if it has been proven, but  
16 certainly, various studies have indicated that people  
17 who are less well educated are more likely to wind up in  
18 jail or prison.

19 Q Okay. And sir, we didn't limit our concern  
20 just to the economy, but more broadly talk about  
21 debilitating effects on the society from failed  
22 schools.

23 Could you identify such effects -- put aside  
24 the economic reasons that you've given me.

25 MS. KOURY: Objection. Vague, overbroad.

1 A Yes.

2 Q That's what you are by training?

3 A Yes.

4 Q And are there debilitating effects, in your  
5 experience, from failed schools on the psychology of  
6 individuals who attend those schools?

7 MS. KOURY: Objection. Vague, incomplete  
8 hypothetical.

9 THE WITNESS: Well, I'm -- I would be getting out  
10 of my area of expertise to some extent, because I'm  
11 sharply focused on achievement and learning.

12 BY MR. ROSENBAUM:

13 Q Okay. I don't want you to go out of your  
14 expertise, but if you can answer the question  
15 comfortably, fine. If you can't, just say so.

16 A Well, maybe I -- I want to be sure that I  
17 answer it accurately.

18 May I have it again, please.

19 (The record was read as follows:

20 "And are there debilitating  
21 effects, in your experience, from  
22 failed schools on the psychology of  
23 individuals who attend those schools?")

24 THE WITNESS: I think this is very difficult --  
25 would be very difficult to prove, and I can't bring the

1 THE WITNESS: You mean aside from the things that  
2 I've already mentioned?

3 BY MR. ROSENBAUM:

4 Q Yeah. I -- your sentence here talks about the  
5 debilitating effects on the economy.

6 That's the topic sentence; is that right?

7 A Yes.

8 Q Okay. And that's what this paragraph is  
9 concerned with, principally? Am I understanding  
10 correctly?

11 A Yes.

12 Q Okay. Now what I'm saying to you, if I asked  
13 you, do failed schools have debilitating effects on the  
14 society, putting aside the economy, which we've talked  
15 about, do you believe there are such debilitating  
16 effects?

17 A Yes.

18 Q Okay. And what do you base that on?

19 A It's the things that I had mentioned earlier.  
20 I think part of it is common sense, but also,  
21 statistical studies show, for example, that people who  
22 wind up in prison are less well educated. So there are  
23 such studies that indicate effects, not only on the  
24 economy, but the society.

25 Q You are an educational psychologist?

1 study to mind right now that has actually shown that.

2 BY MR. ROSENBAUM:

3 Q Okay. Do you regard yourself as an expert in  
4 that area?

5 A I'm -- that would be a question of a clinical  
6 psychology, pathology, as I understood your question,  
7 and mental disease and things of that nature, and this  
8 is not an area that I claim any expertise in.

9 Q Okay. You told me about a meeting at the  
10 Hoover Institute at which -- is it Dr. Hanushek?

11 A Yes.

12 Q -- attended.

13 Dr. Hanushek is an economist; is that right?

14 A Yes.

15 Q And besides that meeting, have you had any  
16 discussions with him about this case?

17 MS. KOURY: Asked and answered.

18 THE WITNESS: I think any conversations I may have  
19 had with him would be totally incidental at other places  
20 where I've seen him aside from that meeting.

21 BY MR. ROSENBAUM:

22 Q Okay. And have you ever had a discussion with  
23 him -- doesn't have to relate to this case, but have you  
24 ever had a discussion with him about trying to determine  
25 what the cost in California is on the economy from

1 failed schools?  
 2 A No.  
 3 Q Okay. Do you know if he's ever undertaken any  
 4 such analysis?  
 5 A In California?  
 6 Q Well, let's start there.  
 7 A I don't know if he's done that in California.  
 8 Q Okay. How about in the United States?  
 9 A Yes.  
 10 Q The cost of failed schools?  
 11 A Well, if you take my definition of failed  
 12 schools, which is low achievement, he's related  
 13 achievement to economic growth.  
 14 Q Okay. And do you know what his conclusions  
 15 are?  
 16 MS. KOURY: Calls for speculation.  
 17 THE WITNESS: I read a chapter that he once wrote,  
 18 and I'm familiar with -- somewhat familiar with his main  
 19 point.  
 20 BY MR. ROSENBAUM:  
 21 Q Which is what, as you understand it?  
 22 A That low achievement is predictive of or the  
 23 cause of a weaker economy.  
 24 Q Do you know what S-4 is?  
 25 A No.

1 Q Okay. You and I talked earlier, sir, about  
 2 Page 45 of your report. You actually referenced it.  
 3 A Yes.  
 4 Q And did any of plaintiffs' experts state  
 5 that -- well, strike that.  
 6 Let me ask you to please turn to Page 8 of your  
 7 report. Again, you feel free to read as much as you  
 8 need to to answer my question.  
 9 At the end of the second full paragraph under  
 10 the Section C, do you see the sentence in the last  
 11 sentence, "Without this division of labor, local  
 12 districts might set easy to reach, unmeasurable or  
 13 obfuscated goals"?  
 14 A Yes.  
 15 Q Okay. What's the basis for that conclusion?  
 16 A Well, I've mentioned some of the reasons in  
 17 other parts of the report, but I think it's this  
 18 constructive division of labor that I referred to  
 19 earlier. And just as a board of a firm needs to hold  
 20 divisions and executives accountable for the results,  
 21 there's a tendency these days for State boards to hold  
 22 districts and schools accountable for the results. And  
 23 if they -- if you leave it to people to evaluate  
 24 themselves, they often give higher ratings than an  
 25 objective observer might, or a numerical comparison.

1 Q Why do you think that is?  
 2 A I think it's to some extent human nature, that  
 3 people might claim that they're better than other people  
 4 think that they are or better than they -- I don't mean  
 5 to say they're braggarts, necessarily, but I provided a  
 6 table in the back that shows that many of the states  
 7 rate themselves higher than the national assessment  
 8 does.  
 9 Q When you say -- I'm sorry, go ahead.  
 10 A But I have just observed in people sometime --  
 11 you know, when you say whose fault was it, well, it's  
 12 hard to find somebody to say, it's completely my fault.  
 13 It was somebody else's fault. And so I do think it's  
 14 partly a matter of human nature, and even committees and  
 15 groups of people, to be less objective in evaluating  
 16 themselves than an outsider might be.  
 17 Q Okay. If you just answered this question, just  
 18 tell me. I don't want to -- specifically, you say in  
 19 this sentence on Page 8, with respect to -- "Without  
 20 this division of labor, local districts might set easy  
 21 to reach, unmeasurable or obfuscated goals."  
 22 I'm really focusing now on the "easy to reach,  
 23 unmeasurable or obfuscated goals" part of the sentence.  
 24 A Yes.  
 25 Q Why do you think districts might do that?

1 A Well, I think if a person doesn't want to be  
 2 evaluated, they might give rather general goals or  
 3 unmeasurable or say that -- to give an easy-to-reach  
 4 goal because it's practically guaranteed -- well, I  
 5 should take them one at a time.  
 6 Easy to reach means that you're -- you don't  
 7 have to put forth any effort or energy or time in order  
 8 to reach it. So if you don't want to appear to be not  
 9 performing well, you might say easy to reach.  
 10 Unmeasurable and obfuscated means that it's  
 11 difficult to have an objective indication of what you've  
 12 done. So if you don't want to be held accountable, you  
 13 would tend to specify goals like that.  
 14 Q That's reflective of your experience and  
 15 research, this conclusion?  
 16 A Yes.  
 17 Q Okay.  
 18 MR. ROSENBAUM: Let's go off the record a second.  
 19 (Discussion off the record)  
 20 MR. ROSENBAUM: Doctor, thanks very much for your  
 21 attention. And wish you a nice evening.  
 22 MS. KOURY: Can we go off the record?  
 23 (Discussion off the record)  
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I, HERBERT J. WALBERG, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.

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HERBERT J. WALBERG  
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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand, which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: \_\_\_\_\_

\_\_\_\_\_  
SHERRYL DOBSON  
CSR No. 5713