

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN FRANCISCO

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4 ELIEZER WILLIAMS, a minor, by
Sweetie Williams, his guardian ad litem,
5 et al., each individually and on behalf
of all others similarly situated,
6 Plaintiffs,

vs.

No. 312236

7 STATE OF CALIFORNIA, DELAINE EASTIN,
State Superintendent of Public
8 Instruction, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF EDUCATION,
9 Defendants.

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Deposition of
WILLIAM (BILL) L. PADIA
Volume I, Pages 1 through 240
Wednesday, April 18, 2001

Reported by:
TRACY LEE MOORELAND
CSR No. 10397

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1 APPEARANCES

2

3 For the Plaintiffs Eliezer Williams, et al.:

4 ACLU FOUNDATION OF SOUTHERN CALIFORNIA

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17 For the Defendant State of California:

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19 BY: FRAMROZE M. VIRJEE, ESQ.

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21 Los Angeles, California 90071

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23

24 /

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1 APPEARANCES, cont.

2

3 For the Defendant Delaine Eastin, State Superintendent

4 of Public Instruction, State Department of Education,

5 State Board of Education:

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12 For the Defendants Los Angeles Unified School District

13 and Pajaro Valley Unified School District:

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19 The Intervener:

20 CALIFORNIA SCHOOL BOARD ASSOCIATION

21 BY: JUDY CIAS, ESQ.

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23 West Sacramento, California 95691

24

25 Also present: Cheryl Tiner, Department of Education

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1 BE IT REMEMBERED, that on Wednesday, April 18,

2 2001, commencing at the hour of 10:01 a.m., thereof, at

3 the Law Offices of Morrison & Foerster LLP, 400 Capitol

4 Mall, Suite 2300, Sacramento, California, before me,

5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in

6 the State of California, there personally appeared

7 WILLIAM (BILL) L. PADIA,

8 called as a witness herein, who, having been duly sworn

9 to tell the truth, the whole truth, and nothing but the

10 truth, was thereupon examined and interrogated as

11 hereinafter set forth.

12 ---o0o---

13 EXAMINATION BY MR. ROSENBAUM

14 Q. How are you?

15 A. I'm fine.

16 Q. Could you state your name for the record.

17 A. My name is William Padia, P-a-d-i-a.

18 Q. How are you, Mr. Padia?

19 A. I'm fine, thank you.

20 Q. Have you ever been deposed before?

21 A. Yes.

22 Q. Yes?

23 A. Yes.

24 Q. On how many occasions?

25 A. Twice.

1 Q. And I don't need the details, but can you just
 2 tell me generally what those cases were about?
 3 A. Yes, one was the lawsuit for San Francisco and
 4 Berkeley filed against the State regarding STAR testing
 5 of English language learners.
 6 Q. Is that the Comite case?
 7 A. No.
 8 Q. That's a different case. Go ahead.
 9 A. The other case was a personal medical
 10 malpractice suit that I brought against Kaiser.
 11 Q. Okay. And the first case, when were you
 12 deposed, what year?
 13 A. I believe it was 2000.
 14 Q. Okay. I take it, then, you're generally
 15 familiar with the procedures that we follow in a
 16 deposition?
 17 A. Yes.
 18 Q. You had a chance to discuss those with your
 19 attorney?
 20 MR. VIRJEE: Objection. Calls for
 21 attorney/client privilege.
 22 Q. BY MR. ROSENBAUM: You had a chance to
 23 generally discuss those with your attorney?
 24 MR. VIRJEE: Objection. Calls for
 25 attorney/client privilege.

1 MR. ROSENBAUM: You can answer.
 2 THE WITNESS: Yes.
 3 Q. BY MR. ROSENBAUM: Okay. I'm going to briefly
 4 review them. If you've got any questions, you feel free
 5 to ask me.
 6 Mr. Padia, I'm here with other counsel to
 7 conduct a deposition in a case called Williams versus
 8 the State of California. We're here to try to elicit
 9 some information that's pertinent to this lawsuit.
 10 Do you understand that?
 11 A. Yes.
 12 Q. It's not my intent to try to trick or deceive
 13 you with any of my questions, therefore, if you've got
 14 any questions about any question that I ask, whether you
 15 want me to restate the question or explain what I mean,
 16 please feel free to ask me, and I'll be glad to restate
 17 the question or clarify it for you.
 18 Do you understand that?
 19 A. Yes.
 20 Q. Otherwise, I'm going to assume that you're
 21 answering my questions as asked and answering them as
 22 fully and as fairly as you possibly can.
 23 Do you understand that?
 24 A. Yes.
 25 Q. At the end of the deposition there's going to

1 be a booklet prepared. It's going to have my questions,
 2 your answers, any other comments that counsel may have
 3 made during the course of the deposition.
 4 Do you understand that?
 5 A. Yes.
 6 Q. And you'll have an opportunity to review that
 7 deposition and to make any changes that you feel are
 8 appropriate with respect to any of your answers.
 9 Do you understand that?
 10 A. Yes.
 11 Q. But I want you to know that either myself or
 12 any counsel are free to draw any inferences that we may
 13 think are appropriate from any changes that you make.
 14 Do you understand that?
 15 A. Yes.
 16 Q. So, again, it's important that you answer these
 17 questions as fully and as fairly as you possibly can.
 18 Do you understand that?
 19 A. Yes.
 20 Q. Is it Dr. Padia?
 21 A. Yes.
 22 Q. Okay. I'm sorry. And you understand that even
 23 though we're in an informal setting here today, Doctor,
 24 that you're testifying under the same pains and
 25 penalties of perjury as if we were in a formal court of

1 law?
 2 A. I understand.
 3 Q. Any reason why we shouldn't go forward?
 4 A. None.
 5 MR. ROSENBAUM: Let's mark as Exhibit 29 a copy
 6 of a document that your counsel prepared for me, and I
 7 believe --
 8 MR. VIRJEE: Objection. That assumes facts not
 9 in evidence. There's no evidence that she or anybody
 10 prepared that.
 11 MS. READ SPANGLER: Join.
 12 MR. ROSENBAUM: I misspoke. I meant presented
 13 to me.
 14 (Exhibit 29 was marked.)
 15 Q. BY MR. ROSENBAUM: Let me have you look at
 16 what's been marked as Exhibit 29.
 17 Do you have that in front of you?
 18 A. Yes, I do.
 19 Q. Do you recognize that?
 20 A. Yes.
 21 Q. What is that?
 22 A. It's a brief description of my work at the
 23 Department and my career.
 24 Q. Okay. Do you have a more lengthier resume or
 25 vitae?

- 1 A. No, I don't have one prepared.
 2 Q. Okay. You're the only person I know named
 3 doctor who doesn't have a lengthy resume.
 4 A. Because I'm not job hunting.
 5 Q. There are other positive reasons that also
 6 reflect on you also because of that.
 7 You have been at the Department for a long
 8 time?
 9 A. Yes.
 10 Q. Okay. What's your present position?
 11 A. Presently I'm a director of the policy and
 12 evaluation division.
 13 (Mr. Jordan entered the room.)
 14 Q. BY MR. ROSENBAUM: Okay. How long have you
 15 been director of the policy and evaluation division?
 16 A. I've been director since 1988. It wasn't
 17 always called the policy and evaluation division, but
 18 it's essentially the same division since 1988.
 19 Q. What was its prior title?
 20 A. The office of program evaluation and research.
 21 It was called research evaluation and technology at one
 22 point.
 23 Q. Help me. The title just before the present
 24 title was office of program evaluation?
 25 A. Yeah, and research.

- 1 MR. VIRJEE: And research.
 2 Q. BY MR. ROSENBAUM: Okay. And before that?
 3 A. After that it was called research evaluation
 4 and technology.
 5 Q. Okay. And if I understood you correctly,
 6 notwithstanding the name changes, it's had the same
 7 duties and responsibilities; is that correct?
 8 A. More or less.
 9 Q. Okay. And prior to 1988, can you tell me what
 10 you did before that?
 11 A. Yes, I was the administrator in charge of the
 12 special studies unit within the office of program
 13 evaluation and research. I held that position from 1978
 14 through 1988.
 15 Q. Okay. And prior to that?
 16 A. Prior to that I was a consultant, civil service
 17 classification from 1976 to 1978, in the office of
 18 assessment.
 19 Q. Within the Department of Education?
 20 A. Yes, within the office of program evaluation
 21 and research.
 22 Q. Okay. And prior to that?
 23 A. Prior to that I was in graduate school.
 24 Q. Okay. And where were you in graduate school?
 25 A. At the University of Colorado at Boulder.

- 1 Q. And what degree did you get from Boulder?
 2 MR. VIRJEE: You mean graduate school?
 3 MR. ROSENBAUM: Yeah.
 4 THE WITNESS: Graduate degrees. In 1973, I
 5 received a master's in education and research, in 1975 a
 6 Ph.D. in education and research.
 7 Q. BY MR. ROSENBAUM: When did you get your Ph.D.?
 8 A. 1975.
 9 Q. What was the subject of your dissertation?
 10 A. The subject was the analysis of the interrupted
 11 time series and the consequences of model
 12 misidentification.
 13 Q. And where did you do your undergraduate work?
 14 A. At the University of Colorado Boulder.
 15 Q. And graduated there in what year?
 16 A. 1966.
 17 Q. And do you have a degree?
 18 A. In mathematics.
 19 Q. Okay. So after graduate school, you worked
 20 exclusively for the Department of Education in
 21 California?
 22 A. That's correct.
 23 Q. Okay. And your master's and your Ph.D., they
 24 were involved with education administration; is that
 25 correct?

- 1 A. No, not education administration, but a
 2 research methodology, statistics, educational testing
 3 and measurement, and a program evaluation methodology.
 4 Q. Okay. Notwithstanding the modesty of a
 5 one-page resume, do you consider yourself an expert in
 6 the area of assessment for educational testing?
 7 MR. VIRJEE: Objection. Vague and ambiguous as
 8 to "testing."
 9 MR. ROSENBAUM: Go ahead. You can answer the
 10 question.
 11 MR. VIRJEE: If you understand it.
 12 THE WITNESS: I'm a little unclear about the
 13 meaning of the word "expert."
 14 Q. BY MR. ROSENBAUM: Are there areas that you
 15 consider yourself to be an expert in?
 16 MS. READ SPANGLER: He just said he was unclear
 17 on the meaning of "expert." Maybe you want to --
 18 Q. BY MR. ROSENBAUM: Do you have specialized
 19 knowledge?
 20 A. Yes, I have specialized knowledge in research
 21 methodology, evaluation methodology, statistics and
 22 testing and measurement.
 23 Q. Testing and what?
 24 A. Measurement.
 25 Q. Have you published in any of those areas?

1 A. I've prepared a number of papers. I have a
 2 couple publications over the years that I've done.
 3 Q. What do those publications concern?
 4 A. They would be mostly on research methodology.
 5 Q. With respect to educational matters?
 6 A. Yes.
 7 Q. Can you tell me specifically, please.
 8 A. No, I don't have the titles. I don't remember.
 9 Q. I don't mean the titles, but what were the
 10 areas that you looked at?
 11 A. I don't recall. It's been a number of years
 12 since I've published those.
 13 Q. You have no recollection of what they were,
 14 beyond?
 15 MS. READ SPANGLER: Beyond what he just told
 16 you?
 17 MR. ROSENBAUM: Yes.
 18 THE WITNESS: No, I don't.
 19 Q. BY MR. ROSENBAUM: Do you have copies of your
 20 publications?
 21 A. I'm sure they're available, yes.
 22 Q. Do you remember where they were published?
 23 A. No.
 24 Q. Where would you maintain copies of your
 25 publications?

1 A. Probably back in the office.
 2 Q. Would they be in a particular file?
 3 A. I assume they would be in a file, yes.
 4 Q. Do you know the name of that file?
 5 A. No, I don't.
 6 Q. If I wanted to find it, short of rummaging
 7 through your office, how would I go about doing that?
 8 A. How would you do it or how would I do it?
 9 Q. How would you do it?
 10 A. I would go to my secretary or my assistant and
 11 ask them to find it.
 12 Q. Okay. Now, do you from time to time also give
 13 talks or speeches?
 14 A. Yes, I do a lot of that.
 15 Q. And there particular subject matters that you
 16 give talks and speeches on?
 17 A. Yes.
 18 Q. Can you tell me what those are, please?
 19 MR. VIRJEE: Objection. Vague as to time.
 20 MS. READ SPANGLER: Join.
 21 THE WITNESS: Most recently I give talks on the
 22 accountability system in the state of California.
 23 Q. BY MR. ROSENBAUM: Okay. Can you tell me other
 24 subject matters in the last five years?
 25 A. I'm sorry?

1 Q. Other subject matters that you've spoken on.
 2 MR. VIRJEE: In the last five years --
 3 MR. ROSENBAUM: Yes.
 4 MR. VIRJEE: -- was his time frame.
 5 THE WITNESS: I've spoken on evaluation
 6 methodology and statistical analysis.
 7 Q. BY MR. ROSENBAUM: Okay. And the
 8 accountability system, have you given more than one talk
 9 about California's accountability system?
 10 A. Yes.
 11 MR. VIRJEE: Objection. Vague as to time.
 12 Q. BY MR. ROSENBAUM: And incidentally when you
 13 used the word "accountability," what do you mean by
 14 that?
 15 A. By accountability, at least over the past two
 16 years, I'm referring specifically to legislation that
 17 was passed in 1999. The bill was Senate Bill 1X on the
 18 Public School Accountability Act, which we refer to as
 19 PSAA.
 20 Q. All caps?
 21 A. All caps.
 22 Q. And that was passed in 1999?
 23 A. Yes.
 24 Q. So the talks that you've given are on PSAA?
 25 A. Correct.

1 Q. Okay. And can you give me a ballpark figure of
 2 how many talks you think you've given in the last two
 3 years with respect to PSAA?
 4 MR. VIRJEE: Objection. Vague and ambiguous as
 5 to "talks."
 6 MS. READ SPANGLER: Join.
 7 THE WITNESS: Yeah, I would like clarification
 8 on what you mean by "talks."
 9 Q. BY MR. ROSENBAUM: I don't mean just a casual
 10 discussion. I mean where you've made a presentation at
 11 a conference, seminar or symposium.
 12 A. I probably make four or five presentations a
 13 year and testimony in the legislature.
 14 Q. Have you testified this year regarding PSAA in
 15 front of the legislature?
 16 A. Yes.
 17 Q. On how many occasions?
 18 A. This year, just once so far.
 19 Q. How about last year?
 20 A. Last year, probably two or three times.
 21 Q. And the year before?
 22 A. I don't recall.
 23 Q. Okay. Do you have copies of your testimony?
 24 A. No.
 25 Q. Do you have a set speech that you use or work

1 off of?
 2 A. No.
 3 MR. VIRJEE: For the testimony?
 4 MR. ROSENBAUM: Yes.
 5 Q. Do you have notes that you use?
 6 A. No.
 7 Q. Just talk off the top of your head?
 8 A. No, I make up notes for the particular talk I'm
 9 giving, and then I discard them.
 10 Q. Okay. You have spoken about PSAA at
 11 conferences involving persons with similar positions
 12 throughout the country?
 13 A. Yes.
 14 Q. And where have you done that?
 15 A. All the presentations I've given have been
 16 within the state of California.
 17 Q. Okay. And who attend these meetings?
 18 MS. READ SPANGLER: Objection. Calls for
 19 speculation.
 20 MR. VIRJEE: Calls for speculation. Join.
 21 MR. ROSENBAUM: Go ahead.
 22 THE WITNESS: With respect to national
 23 participation, it would be through a group called the
 24 council of chief state school officers.
 25 Q. BY MR. ROSENBAUM: Council of chief state

1 school officers?
 2 A. Yes. I gave one presentation to that group.
 3 The other presentations involved various groups
 4 in California. The primary one would be a group that I
 5 formed called the evaluators group, which consists of
 6 people in evaluation and testing positions in districts
 7 throughout the state of California. And we do two
 8 meetings a year with those groups.
 9 Q. Okay. With respect to the presentations that
 10 you were just talking to me about regarding the PSAA,
 11 have there been papers you published or presented that
 12 people at these meetings received that you prepared or
 13 that you approved?
 14 A. Generally we do not prepare special papers for
 15 those presentations, but rather rely on the Internet as
 16 our source of communication. So all the papers that we
 17 would use are on our Internet site.
 18 Q. And when you say on your -- help me understand
 19 this. You refer the listeners to your web page; is that
 20 right?
 21 A. Correct.
 22 Q. And are there particular parts of the web page
 23 that you refer people to?
 24 A. Sometimes.
 25 Q. Can you tell me what they would be?

1 A. PSAA web page.
 2 Q. Okay. Any other?
 3 MR. VIRJEE: Objection. Calls for speculation.
 4 Vague and ambiguous.
 5 THE WITNESS: There may be others, but I don't
 6 recall.
 7 Q. BY MR. ROSENBAUM: Okay. And the evaluators
 8 group -- Dr. Padia, there is a PSAA advisory group; is
 9 that right?
 10 A. That's correct.
 11 Q. Is that different than the evaluators group?
 12 A. Yes.
 13 Q. Tell me the difference, please.
 14 A. The PSAA advisory committee is a statutorily
 15 formed committee that is appointed by the state
 16 superintendent of public instruction to advise both her
 17 and the State Board on matters relating to the
 18 implementation of the Public School Accountability Act.
 19 The evaluators group, in contrast, is an
 20 informal group of evaluators and testing people in
 21 districts and counties throughout the state of
 22 California who are charged with implementing both the
 23 testing system and the accountability system within
 24 their districts or counties.
 25 Q. And you formed that group?

1 A. Yes, I formed it 15 to 20 years ago.
 2 Q. Okay. And obviously that predated PSAA; is
 3 that right?
 4 A. Yes.
 5 Q. And what was -- was that in reference to any
 6 particular -- strike that.
 7 Pursuant to what authority did you form that
 8 group?
 9 MR. VIRJEE: Objection. Calls for speculation.
 10 Also vague and ambiguous as to "authority."
 11 MS. READ SPANGLER: Join.
 12 THE WITNESS: What is your question, sir?
 13 Q. BY MR. ROSENBAUM: Pursuant to what authority
 14 did you do that?
 15 MR. VIRJEE: Same objections.
 16 MS. READ SPANGLER: Join.
 17 THE WITNESS: Through the superintendent's
 18 authority.
 19 Q. BY MR. ROSENBAUM: And what's your
 20 understanding of what that authority consists of?
 21 A. I have no idea.
 22 Q. Okay. Anyone ever say you were acting out of
 23 bounds when you formed that?
 24 A. No.
 25 Q. Okay. And the evaluators group, does it

1 prepare papers or reports on its work?
 2 A. No.
 3 Q. And 20 years ago, 15 or 20 years ago, what sort
 4 of activities was it your understanding that that group
 5 would undertake?
 6 MR. VIRJEE: What was his understanding 15 or
 7 20 years ago? Is that your question, Mark?
 8 It's vague and ambiguous.
 9 MR. ROSENBAUM: Yeah, 15 to 20 years ago.
 10 MS. READ SPANGLER: Join.
 11 THE WITNESS: By and large the conversations
 12 over the years have always centered on either the State
 13 testing program, whatever form of accountability existed
 14 at that time, and whatever evaluation work went on.
 15 Q. BY MR. ROSENBAUM: And how would -- are you the
 16 chair of the evaluators group? Are you the head of the
 17 evaluators group?
 18 A. It's not an informal group -- it is an informal
 19 group, rather, and as such there is no charter for it,
 20 there's no chair for it. Being from the State, we
 21 simply assemble people together in an informational
 22 meeting to give them information about activities of the
 23 State.
 24 Q. I see. And there are people from school boards
 25 in the evaluators group; is that correct?

1 A. No, that's not correct.
 2 MR. VIRJEE: Objection. Vague and ambiguous as
 3 to "from school boards."
 4 Q. BY MR. ROSENBAUM: Are there people there from
 5 schools?
 6 MR. VIRJEE: Objection. Vague and ambiguous as
 7 to "schools," "from schools."
 8 MS. READ SPANGLER: Join.
 9 THE WITNESS: There are people who are employed
 10 by school districts and county offices of education.
 11 That's the majority of them. I can't say that there was
 12 ever somebody from a particular school or not. More
 13 than likely at some time.
 14 Q. BY MR. ROSENBAUM: Okay. And when you say it's
 15 "informational," what did you mean by that?
 16 MR. VIRJEE: I think the word he used was
 17 informal not informational, but I may be mistaken.
 18 MS. READ SPANGLER: He said informational.
 19 THE WITNESS: Actually, I said both
 20 informational and informal.
 21 When I say informational, we give them
 22 information about the implementation of whatever bill
 23 that we're working on that particular year.
 24 Q. BY MR. ROSENBAUM: Do you ever charge them to
 25 undertake certain tasks, you should go out and conduct

1 certain evaluations, anything like that?
 2 A. No.
 3 Q. Okay. Did you ever prepare in the 15 or 20
 4 years any documents or materials for their examination
 5 or use?
 6 A. I don't understand your question.
 7 Q. I attend a meeting. Is it possible that I
 8 could receive from you, or from the State, materials
 9 about particular testing procedures or mechanisms?
 10 A. Yes, that would be possible.
 11 Q. Okay. And at the meetings this year did you
 12 hand out or did the State hand out any written
 13 materials?
 14 MR. VIRJEE: Objection. Calls for speculation.
 15 MS. READ SPANGLER: Assumes facts not in
 16 evidence.
 17 THE WITNESS: I don't recall.
 18 Q. BY MR. ROSENBAUM: Do you have a file on the
 19 evaluator groups?
 20 A. No.
 21 Q. Okay. Did you ever distribute any materials
 22 regarding the PSAA?
 23 MR. VIRJEE: Objection. Vague as to time.
 24 THE WITNESS: At those meetings, as I indicated
 25 before, we did not distribute specific materials on the

1 PSAA, but rather relied on our web site as the source.
 2 Q. BY MR. ROSENBAUM: Now, before the PSAA, what
 3 were the -- what were the matters that you discussed
 4 with this group?
 5 Let's go back before 1999, the five years
 6 before 1999, say. What were some of the matters that
 7 you discussed with this group?
 8 MR. VIRJEE: Objection. Overbroad.
 9 THE WITNESS: Are you talking about 1994?
 10 MR. ROSENBAUM: Between 1990 and 1999.
 11 Q. Did you talk about CLAS, C-L-A-S?
 12 A. Yes, CLAS would have been discussed.
 13 Q. And can you think of other subject matters that
 14 you had discussed with them?
 15 A. We may have discussed whatever evaluation work
 16 was going on, and we may have discussed any other
 17 current issue. I don't really recall.
 18 Q. When you use the word "evaluation," what do you
 19 mean by that?
 20 A. By evaluation I mean occasionally the
 21 legislature in a bill requires an evaluation of a
 22 program that it funds. So typically at the Department,
 23 especially in my division, the legislature provides
 24 money, we put out an RFP, we select a contractor, and we
 25 monitor the contract.

1 Q. Okay. In the years that you have been with the
2 office of policy and evaluation and its predecessor
3 names, have you ever conducted evaluations on matters
4 that were not specifically funded by the legislature?
5 MR. VIRJEE: Objection. Vague and ambiguous as
6 to "evaluation."
7 MS. READ SPANGLER: Join.
8 THE WITNESS: Occasionally over the period we
9 did conduct what we would call internal studies or
10 evaluation on various issues.
11 Q. BY MR. ROSENBAUM: Okay. And I take it,
12 therefore, that most of the evaluations are those that
13 you contract out with; is that right?
14 A. Correct.
15 Q. Okay. And as to these internal studies, did
16 you supervise those studies?
17 A. Not all of them, but most of them I did.
18 Q. And can you tell me the subject matters of
19 those studies?
20 MR. VIRJEE: Objection. Vague as to time.
21 MS. READ SPANGLER: Join.
22 THE WITNESS: I don't have a specific memory of
23 all of the studies.
24 Q. BY MR. ROSENBAUM: Tell me the ones you
25 remember, please.

1 MR. VIRJEE: Same objection. Vague as to time.
2 THE WITNESS: There are a number of
3 evaluations. I don't quite know where to start in this.
4 If you're interested in a list, we could provide you a
5 list.
6 MR. ROSENBAUM: I would really appreciate that.
7 Q. How about this year, are there any internal
8 studies that are presently taking place?
9 A. Yes.
10 Q. And what is the subject matter of those
11 internal studies?
12 A. We're conducting one study that's required by
13 the federal government as part of a program called
14 Comprehensive School Reform Design or, CSRD, all caps,
15 and an informal study of a program which is part of PSAA
16 called the Immediate Intervention of the Performing
17 Schools Program or II/USP.
18 Q. II/USP, correct?
19 A. II/USP, all caps.
20 Q. And both of those studies are internally being
21 conducted; is that right?
22 A. Yes.
23 Q. And are you in charge of both of them?
24 MR. VIRJEE: Objection. Vague and ambiguous as
25 to "in charge."

1 MS. READ SPANGLER: Join.
2 Q. BY MR. ROSENBAUM: Help me understand the
3 language here. If I say supervising officer, is that
4 the right phrase?
5 A. No.
6 Q. What's the right phrase?
7 A. The evaluations are being conducted in my
8 division.
9 Q. Do you oversee them? Do you have oversight
10 responsibility?
11 A. Ultimately the direct oversight would be
12 through the unit manager of the awards and evaluation
13 unit within my division.
14 Q. Who is the unit manager for the CSRSD study?
15 A. Linda Carstens, C-a-r-s-t-e-n-s.
16 Q. And is there a completion date scheduled for
17 that, a target date?
18 A. No, it's an ongoing study. We are on the verge
19 of publishing the first-year results.
20 Q. When do you think that will be out?
21 A. There are draft versions out now. It's being
22 edited in-house.
23 Q. Okay. And who is the unit manager of PSAA,
24 that study, internal study?
25 MR. VIRJEE: The II/USP?

1 MR. ROSENBAUM: Yeah. II/USP.
2 THE WITNESS: It's the same study. They're
3 combined together, so it would be Linda.
4 Q. BY MR. ROSENBAUM: I don't quite understand the
5 difference between CSRSD and II/USP. I know one is
6 federal and one is state.
7 Is there any other difference?
8 A. CSRSD is essentially a subset of II/USP.
9 Q. When you say a "subset," what do you mean by
10 that?
11 A. It's included under the Public School
12 Accountability Act under the general category of II/USP.
13 There are two types of funding, one is the general fund
14 schools, and the other fund is the federally-funded
15 schools know as CSRSD schools.
16 Q. So it's the same program, but different pots of
17 money; is that right? Am I getting that right?
18 A. That's more or less correct.
19 Q. And CSRSD schools, are those Title 1 schools?
20 A. I believe most of them are Title 1 schools.
21 Q. Is there another way of thinking about what
22 schools are in CSRSD?
23 A. The way we characterize CSRSD schools is that
24 they are schools that were ready to implement right in
25 the first year of II/USP, in contradiction or

1 contradistinction to the general fund II/USP schools
 2 which needed a year of planning. Typically that's the
 3 distinction.
 4 Q. Okay. The first -- were those all volunteers?
 5 A. Yes.
 6 Q. Okay. Now, how about last year, are there any
 7 internal studies -- strike that.
 8 You said to me that the CSRD report that -- is
 9 it Dr. or Ms. Carstens?
 10 A. Doctor.
 11 Q. -- that Dr. Carstens was the unit manager for
 12 when do you expect that to be in its final form?
 13 MR. VIRJEE: Objection. Asked and answered.
 14 THE WITNESS: My best estimate would be within
 15 the next two months.
 16 Q. BY MR. ROSENBAUM: Okay. The II/USP study, is
 17 that going to be the same document?
 18 A. Yes.
 19 Q. Okay. How about last year, Doctor, were there
 20 any internal studies that you're aware of that your
 21 office prepared?
 22 A. My recollection is that we did a short study of
 23 a procedure, a statistical procedure called value-added
 24 model.
 25 Q. What's that?

1 A. It's a statistical model whereby students' test
 2 scores essentially come with them to the school, and the
 3 analysis seeks to determine the effects that that
 4 particular school had on that child with respect to
 5 their achievement growth that year. So, in other words,
 6 it seeks to treat analysis in a cohort longitudinal way
 7 as opposed to the cross-sectional way.
 8 Q. You're trying to isolate the impact of a school
 9 on achievement; is that right?
 10 A. That's correct.
 11 Q. And when you say "achievement," what do you
 12 mean by that?
 13 A. That's a -- I need to have more information.
 14 Q. Well, you just used the word "achievement" in
 15 talking about this study, and I'm just trying to
 16 understand what you mean by that.
 17 MR. VIRJEE: So in that context?
 18 MR. ROSENBAUM: Yeah. I appreciate that.
 19 Yeah.
 20 THE WITNESS: What I mean by achievement are
 21 test scores.
 22 Q. BY MR. ROSENBAUM: When you say "test scores,"
 23 what test scores are you thinking about in this context?
 24 A. Whatever test scores are available. Within
 25 California it would be the SAT-9.

1 Q. And just for purposes of the reporter, that's
 2 S-A-T, all caps, hyphen, 9; is that right?
 3 A. Yes.
 4 Q. And SAT-9 is what?
 5 A. It's a nationally-normed referenced test that's
 6 given in the state of California as part of the State
 7 testing program.
 8 Q. Okay. And who is the unit manager for the
 9 value-added model study?
 10 A. Linda Carstens.
 11 Q. And can I get a copy of that?
 12 A. Yes, it's on our web site.
 13 Q. Okay. And who receives these things?
 14 Typically who receives these reports?
 15 MR. VIRJEE: Objection. Calls for speculation.
 16 Also vague and ambiguous as to "receives."
 17 MS. READ SPANGLER: Join.
 18 THE WITNESS: Typically we put them up on our
 19 web site for whomever wants to look at it. Occasionally
 20 we will send them to the legislature, occasionally we
 21 will distribute them throughout the Department. There's
 22 no fixed way of dissemination on these.
 23 Q. BY MR. ROSENBAUM: To your knowledge, Doctor,
 24 who decided we ought to do a study on the value-added
 25 model?

1 A. I did.
 2 Q. And how did you make that determination?
 3 A. Because it's a potentially useful model to use
 4 within the State of California.
 5 Q. For what purpose?
 6 A. For purposes of judging school achievement.
 7 Q. Did you think the study was well done?
 8 A. The study was essentially an analysis of what
 9 has already been developed for the state of Tennessee,
 10 so it was more or less an explanation of that rather
 11 than original work.
 12 Q. Okay. The methodology for this particular
 13 study, the value-added model study, did it involve
 14 looking at particular schools in California?
 15 A. No.
 16 Q. What Dr. Carstens did, you tell me if this is
 17 right or wrong, she learned as much as she could about
 18 what was going on in Tennessee, and then she put down
 19 her conclusions and analysis in this report; is that
 20 right?
 21 A. Correct.
 22 Q. What were the conclusions?
 23 MR. VIRJEE: Objection. The document speaks
 24 for itself.
 25 MS. READ SPANGLER: Join.

1 THE WITNESS: To the best of my recollection,
 2 the conclusions were that it was a potentially useful
 3 model for California at the point in which we would have
 4 a student information system.
 5 Q. BY MR. ROSENBAUM: Okay. You anticipated my
 6 next question.
 7 The Tennessee model depends upon having certain
 8 information; is that right?
 9 A. That's correct.
 10 Q. What's the information it requires?
 11 MR. VIRJEE: Objection. The document speaks
 12 for itself.
 13 THE WITNESS: I'm not an expert on the
 14 Tennessee system. My impression is that it requires
 15 individual level pupil data across a number of years, so
 16 it requires a student information system.
 17 Q. BY MR. ROSENBAUM: A statewide student
 18 information system?
 19 A. A statewide student information system.
 20 Q. And California doesn't have one; is that right?
 21 A. No, California has the beginnings of a
 22 statewide information system, but it's not fully
 23 implemented.
 24 Q. Okay. And you've publically talked about that
 25 before; isn't that right?

1 A. Yes.
 2 Q. And what's your best estimate as to when that
 3 system will be completed?
 4 A. That particular development of that system is
 5 not under me, but I believe that the people who are
 6 responsible for developing the system give the estimate
 7 of three to five years.
 8 Q. Okay. You've publically said maybe around
 9 2005?
 10 A. I publically have said three to five years.
 11 Q. Okay. And that system includes dropout
 12 rates --
 13 MR. VIRJEE: Objection. Calls for speculation.
 14 MR. ROSENBAUM: -- is that right, the
 15 information that's included?
 16 MR. VIRJEE: The Tennessee system or the system
 17 in California?
 18 MR. ROSENBAUM: The one in California. Please
 19 strike that.
 20 Q. Is there any legislation that, to your
 21 understanding, mandates the creation of this system?
 22 A. Yes.
 23 Q. What's that legislation?
 24 A. I'll correct what I said. I said yes, that
 25 there is legislation that's established in the system,

1 it does not mandate it.
 2 Q. What does it do?
 3 A. At this point it's a voluntary system.
 4 Q. What legislation are you referring to?
 5 A. I don't recall.
 6 Q. Okay. And does the -- do you know who
 7 introduced the legislation?
 8 A. No, I don't.
 9 Q. What would be the information that would be
 10 included in the California system, to the best of your
 11 understanding?
 12 A. It would be information on students, such as
 13 their test scores, program participation, schools of
 14 attendance, and a host of other information that I can't
 15 recall at this point.
 16 There is in existence what is called a data
 17 dictionary, and the system is fairly well flushed out
 18 from that respect.
 19 Q. Okay. And this information you just told me
 20 about, Tennessee has that information, has a statewide
 21 system?
 22 MR. VIRJEE: Objection. Calls for speculation.
 23 Lacks foundation.
 24 MS. READ SPANGLER: Join.
 25 THE WITNESS: I'm not sure whether it's the

1 entire state or whether it's a certain district within
 2 Tennessee.
 3 Q. BY MR. ROSENBAUM: Do other states have it, to
 4 your knowledge?
 5 MS. READ SPANGLER: Objection. Calls for
 6 speculation.
 7 THE WITNESS: Some states have similar
 8 information systems. Examples would be Florida, Texas,
 9 New York.
 10 Q. BY MR. ROSENBAUM: Any others you can think of?
 11 A. There are others, but I don't know them.
 12 Q. Who is in charge of that, so far as you know,
 13 in the State of California?
 14 A. The system is called CSIS, C-S-I-S, all caps,
 15 which stands for California Student Information
 16 Services, and the person in the Department who is in
 17 charge of it is Lynn Baugher, B-a-u-g-h-e-r.
 18 Administratively the system is funded and run through
 19 FCMAT.
 20 Q. F-C-M-A-T, all caps?
 21 A. Yes. And the executive director of the CSIS
 22 portion, who is employed by FCMAT, is -- I can't think
 23 of his name right now. I'll get it for you.
 24 Q. Thank you. And to your knowledge, Doctor --
 25 strike that.

1 This subject of student information, that has
 2 come up with respect to what should be included in terms
 3 of getting to API rankings; is that right?
 4 MR. VIRJEE: Objection. Vague and ambiguous.
 5 MS. READ SPANGLER: Join. It's leading too.
 6 THE WITNESS: I wouldn't put it that way.
 7 Q. BY MR. ROSENBAUM: How would you put it?
 8 MR. VIRJEE: Objection. Vague and ambiguous
 9 and nonsensical.
 10 How would he put what?
 11 Q. BY MR. ROSENBAUM: How would you rephrase what
 12 I said?
 13 MS. READ SPANGLER: We're not going to have --
 14 THE WITNESS: Ask me a question and I'll answer
 15 it.
 16 Q. BY MR. ROSENBAUM: The API is based on scores
 17 on the Stanford-9; is that right?
 18 A. That's correct.
 19 Q. And there has been talk about expanding the
 20 basis for information for rankings beyond the
 21 Stanford-9; is that right?
 22 A. Correct.
 23 MS. READ SPANGLER: Objection. Leading. Calls
 24 for speculation.
 25 Q. BY MR. ROSENBAUM: And some of the expansion

1 that's been talked about would depend upon having more
 2 student information; isn't that right?
 3 MS. READ SPANGLER: Objection. Leading. Calls
 4 for speculation.
 5 THE WITNESS: No, most of the discussion about
 6 the API centers on adding additional indicators.
 7 Now, it is true that if we had a student
 8 information system fully functioning in the state of
 9 California, that some of the indicators would be
 10 available that aren't available now.
 11 Q. BY MR. ROSENBAUM: And which indicators are
 12 those?
 13 MS. READ SPANGLER: Objection. Calls for
 14 speculation.
 15 THE WITNESS: The primary indicator that's in
 16 the bill would be graduation ratings.
 17 Q. BY MR. ROSENBAUM: When you say "in the bill,"
 18 what are you referring to?
 19 A. I'm referring to the PSAA.
 20 Q. What about attendance, is that another?
 21 A. Yes, attendance is in the bill as well.
 22 Q. Okay. And is there a statewide system of
 23 maintaining information regarding attendance?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "statewide system."

1 MS. READ SPANGLER: Join.
 2 THE WITNESS: The data that's collected for
 3 attendance is not suitable for use in the API at this
 4 point.
 5 Q. BY MR. ROSENBAUM: So far as you know, the
 6 statute we talked about, that also mentions attendance
 7 rates, doesn't it?
 8 MR. VIRJEE: Which statute?
 9 MR. ROSENBAUM: PSAA in 1999.
 10 THE WITNESS: Yes.
 11 Q. BY MR. ROSENBAUM: Okay. Now, the student
 12 information system that we've been talking about, if and
 13 when it is fully developed, would that include
 14 information about the schools at which students attend?
 15 MS. READ SPANGLER: Objection. Calls --
 16 MR. VIRJEE: Objection. Calls for speculation.
 17 MS. READ SPANGLER: Join.
 18 If you know.
 19 He's already told you he's not the person
 20 developing this.
 21 THE WITNESS: I'm not sure whether the system
 22 includes information about the school. But one could
 23 look at it, if you're getting program participation data
 24 from an individual pupil, you are gathering information
 25 on what programs exist in that school, so it's a

1 secondary inference of the data, not a primary.
 2 Q. BY MR. ROSENBAUM: When you say "program
 3 participation," what do you mean by that?
 4 A. I mean Title 1, migrant, State bilingual,
 5 special ed, and the like.
 6 Q. Any other information, either primary or
 7 secondary, that the system would include regarding
 8 schools?
 9 MR. VIRJEE: Objection. Calls for speculation.
 10 MS. READ SPANGLER: Objection. Calls for
 11 speculation.
 12 THE WITNESS: I think you pretty much exhausted
 13 my level of knowledge about this.
 14 Q. BY MR. ROSENBAUM: So far as you know, is there
 15 a statewide system of information regarding students
 16 that contains information about schools which they
 17 attend?
 18 MR. VIRJEE: Objection. Vague and ambiguous.
 19 THE WITNESS: I'm not aware of one.
 20 Q. BY MR. ROSENBAUM: Has there ever been any
 21 discussion about setting up such a system in your
 22 experience?
 23 MR. VIRJEE: Calls for speculation.
 24 MR. ROSENBAUM: That you're aware of.
 25 THE WITNESS: I'm not aware of it.

1 Q. BY MR. ROSENBAUM: Have you yourself ever
2 thought, gee, this would be a useful tool for the State
3 to have?
4 A. No, my thoughts would have been more associated
5 with pupil level data.
6 Q. And why is that?
7 A. Because we don't now have the capability of
8 tracking pupils as they migrate through the system in
9 the state of California.
10 Q. And why is that?
11 A. Because we don't have a student information
12 system.
13 Q. Okay. In your experience, the breadth of your
14 experience, sir, has there ever been a study to your
15 knowledge, that had looked at the characteristics of
16 different schools and attempted to determine whether or
17 not it has any relationship to student achievement?
18 MS. READ SPANGLER: Are you talking about in
19 California, or anyplace?
20 MR. ROSENBAUM: In California.
21 THE WITNESS: It's a very general question.
22 It's difficult for me to answer.
23 MR. ROSENBAUM: Why don't you do the best you
24 can.
25 MR. VIRJEE: If you don't understand the

1 question and can't answer it, then tell him so.
2 Remember, he told you if you answer the question, he's
3 going to assume you understood it and your answer is
4 responsive.
5 THE WITNESS: Could you restate the question.
6 Q. BY MR. ROSENBAUM: In your experience with the
7 Department of Education, has there ever been a study, to
8 your knowledge, that has looked at the question of what
9 are the characteristics of particular schools and tried
10 to relate that to student achievement data?
11 MS. READ SPANGLER: Objection. Vague and
12 ambiguous as to characteristics of schools.
13 MR. VIRJEE: Join. Also overbroad.
14 MS. READ SPANGLER: Join.
15 THE WITNESS: There have been a number of
16 studies that might use some characteristics of students
17 at a school. And, therefore, draw conclusions about
18 them.
19 An example would be in the '70s and '80s we ran
20 a lot of studies on Title 1 and state comp ed.
21 Q. BY MR. ROSENBAUM: What about the 1990s?
22 A. Well, we recently completed an external study
23 on the effect of middle and high schools. It was done
24 by a contractor at American Institutes of Research.
25 Q. Can you think of any other studies?

1 A. Not offhand, no.
2 Q. Okay. When you say "external study," that's a
3 contracted-out study?
4 A. Yes.
5 Q. Okay. Any other internal studies that you're
6 aware of besides what you've talked to me about,
7 conducted last year?
8 A. Not that I recall.
9 Q. How about the year before?
10 A. I can't recall.
11 Q. Can you recall any other internal studies that
12 the Department has conducted under your office?
13 MS. READ SPANGLER: Ever?
14 Objection. Overbroad. Vague as to time.
15 THE WITNESS: There is a -- we have a list of
16 studies that we've done over the years.
17 Q. BY MR. ROSENBAUM: Can you think of any
18 other --
19 MR. VIRJEE: Objection. Asked and answered.
20 THE WITNESS: We did a study one time on
21 student cheating, we did a study on year-around schools.
22 There are probably a list of 50 or 60 studies over the
23 last 15 or 20 years that we've done.
24 Q. BY MR. ROSENBAUM: And "we've," we're talking
25 about the internal studies?

1 A. It would be a mixture of internal studies and
2 external required studies.
3 Q. "External required," is that what you said?
4 A. Required evaluations that I referred to
5 earlier.
6 Q. Okay. And if I wanted to get copies of those
7 50 to 60 studies, how would I go about doing that?
8 MR. VIRJEE: Objection. Compound. Calls for
9 speculation.
10 MS. READ SPANGLER: Join.
11 THE WITNESS: I'm not even sure we have copies
12 of those, but we probably have titles of them.
13 Q. BY MR. ROSENBAUM: I take it you have copies of
14 at least some of those 50 to 60 studies; is that right?
15 A. Yes.
16 Q. Where would they be maintained?
17 A. They would be maintained in my office.
18 Q. Are they in a bookcase? How do you keep them?
19 MR. VIRJEE: Objection. Compound.
20 THE WITNESS: I don't know. I don't keep them.
21 Q. BY MR. ROSENBAUM: Who keeps them?
22 A. My secretary.
23 Q. If you, not me, wanted to get a hold of those,
24 how would you go about doing that?
25 A. I would ask my secretary or assistant to find

1 the list and ask them to get it.
 2 Q. Okay.
 3 A. If it were available.
 4 Q. Okay. Now, your first job with the Department
 5 was as a consultant; is that right?
 6 A. Correct.
 7 MR. VIRJEE: Objection. Asked and answered.
 8 Q. BY MR. ROSENBAUM: And that, you said, was
 9 within the office of assessment? Is that what it was
 10 called?
 11 A. It was within the office of program evaluation
 12 and research, specifically within the office of
 13 assessment.
 14 At that time the assessment office was within
 15 the office of program evaluation and research. Later
 16 on, in the mid '80s, it was moved to under the
 17 curriculum division instead of evaluation and research
 18 division.
 19 Q. Who was the superintendent of schools at that
 20 time?
 21 MR. VIRJEE: At what time?
 22 MR. ROSENBAUM: '76 to '78.
 23 THE WITNESS: That would be Wilson Riles,
 24 R-i-l-e-s.
 25 Q. BY MR. ROSENBAUM: Were you a consultant on

1 particular matters?
 2 A. I worked on the State testing system which at
 3 that time was called the California Assessment Program.
 4 Q. And those would be tests that were administered
 5 to students throughout the system?
 6 A. Correct.
 7 Q. And was there a Stanford-9 in those days?
 8 A. No.
 9 Q. Stanford.9 in those days?
 10 A. Maybe that. There was a Stanford test in those
 11 days, but the State at that time developed our own
 12 tests.
 13 Q. Okay. And there were a number of tests that
 14 the State used, is that right, at that time?
 15 MR. VIRJEE: Objection. Vague as to time.
 16 MS. READ SPANGLER: Leading.
 17 THE WITNESS: What time frame?
 18 MR. ROSENBAUM: '76 to '78.
 19 THE WITNESS: All the tests they used at that
 20 time were under the generic name California Assessment
 21 Program. They were tested at various grade levels.
 22 Q. BY MR. ROSENBAUM: And were those multiple
 23 choice questions?
 24 A. Yes.
 25 Q. Exclusively?

1 A. Yes.
 2 Q. Okay. And your job was to -- help me
 3 understand this. What was your job specifically with
 4 respect to the California Assessment Program?
 5 A. Well, to the best of my recollection, I did
 6 analysis of some of the test results.
 7 Q. And for what purpose?
 8 A. The Department prepared an annual report on
 9 testing, and it required different kinds of analysis for
 10 that report.
 11 Q. And was that annual report published?
 12 A. Yes, it was.
 13 Q. Does the Department continue to publish annual
 14 reports on its testing?
 15 MS. READ SPANGLER: Objection. Calls for
 16 speculation.
 17 THE WITNESS: The Department now produces
 18 Internet reports. At that time, back in the '70s, there
 19 was no Internet, at least in common use at that point,
 20 so paper reports were prepared at the end of the year,
 21 which included a summary of the achievements in the
 22 state of California.
 23 Q. BY MR. ROSENBAUM: Okay. Those reports, are
 24 they maintained by the Department?
 25 MR. VIRJEE: Which reports, the Internet

1 reports or the annual reports?
 2 MR. ROSENBAUM: The annual reports, back then.
 3 THE WITNESS: I have no idea.
 4 Q. BY MR. ROSENBAUM: If I wanted to get a hold of
 5 one from that period, '76, '78, could I do that?
 6 MR. VIRJEE: Objection. Calls for speculation.
 7 MS. READ SPANGLER: Join.
 8 MR. VIRJEE: He just said he doesn't know if
 9 they're maintained.
 10 THE WITNESS: If I wanted to do it, I would
 11 call the assessment office and ask them.
 12 Q. BY MR. ROSENBAUM: Who would you talk to there?
 13 A. The director of assessment, Phil Spears,
 14 S-p-e-a-r-s.
 15 Q. Okay. And your job was to, you said, analyze
 16 the test results; is that right?
 17 A. Yes.
 18 Q. For what purpose would you analyze those test
 19 results? I don't mean for purposes of the annual
 20 report. I mean, what would you be looking at?
 21 A. We would be looking at summary results for
 22 various subgroups, for example, ethnic groups and
 23 gender.
 24 Q. Okay. How about SES?
 25 A. And SES, yes. Those are economic status.

1 Q. Okay. Would you make comparisons between test
2 results in California and test results in other states
3 or across the country?
4 MR. VIRJEE: Did he do that during this period
5 of time?
6 MR. ROSENBAUM: Yeah.
7 THE WITNESS: No, I did not.
8 Q. BY MR. ROSENBAUM: Did the Department, so far
9 as you know?
10 A. I believe they did.
11 Q. Okay. And did you also look at issues like
12 student/teacher ratio?
13 A. I can't recall.
14 Q. Okay. At that time -- and if you've already
15 answered this, tell me that. At that time did you
16 personally look at questions that -- what were the
17 characteristics of schools where kids did well as
18 opposed to characteristics of schools where kids did not
19 perform so well?
20 MS. READ SPANGLER: Objection. Vague and
21 ambiguous as to "characteristics of schools."
22 MR. VIRJEE: Also asked and answered.
23 MS. READ SPANGLER: Join.
24 THE WITNESS: I can't recall.
25 Q. BY MR. ROSENBAUM: Okay. Can you recall ever

1 doing that yourself?
2 MR. VIRJEE: Objection. Asked and answered.
3 Also vague and ambiguous as to "characteristics of
4 schools."
5 MS. READ SPANGLER: Join.
6 THE WITNESS: My recollection is that the
7 Department conducted a study called the high/low study,
8 which looked at schools where achievement was better
9 than expected and schools where achievement was less
10 than expected, and tried to contrast what was going on
11 in those schools.
12 This is a similar methodology to the earlier
13 study which I referenced that American Institutes of
14 Research did for us recently.
15 Q. BY MR. ROSENBAUM: The former study, not the
16 more recent one, do you know when that was undertaken?
17 A. My best estimate is late '70s, early '80s.
18 Q. Okay. And do you know who undertook that
19 study?
20 A. It was within the division of office of program
21 evaluation and research, but I don't know specifically
22 who did it.
23 Q. Okay. Do you remember names of anyone who was
24 associated with it?
25 A. No.

1 Q. Do you know if that study still exists?
2 A. I don't know.
3 Q. Okay. Do you know what the findings of that
4 study were?
5 A. No.
6 Q. Okay. To your knowledge, sir, has there ever
7 been an inquiry or an investigation by your office
8 looking at whether or not schools have textbooks for
9 students -- let me restate that -- whether or not
10 students at schools receive textbooks?
11 A. To the best of my knowledge, my division, at
12 least, under me, has never done that.
13 Q. Has never done that?
14 A. No.
15 Q. Have you ever heard of that being done anywhere
16 in the Department?
17 A. No.
18 Q. If you've just answered this, tell me. How
19 about anything with respect to textbooks, whether
20 students have their own textbooks, whether they have to
21 share textbooks, whether they can take textbooks home,
22 whether or not their textbooks are outmoded or whether
23 they're current, any of those matters been looked into
24 by your office?
25 A. No.

1 Q. Or anyone in the Department of Education, so
2 far as you know?
3 MR. VIRJEE: Calls for speculation.
4 THE WITNESS: I can't answer for others in the
5 Department. I'm not aware of it.
6 Q. BY MR. ROSENBAUM: Have you ever heard of such
7 a study?
8 A. I'm not aware of it.
9 Q. Thank you. Has there ever been any discussion
10 about looking into that question, so far as you know?
11 MR. VIRJEE: That he's been involved in?
12 MR. ROSENBAUM: That he knows, that he's ever
13 heard of.
14 MR. VIRJEE: Calls for speculation.
15 THE WITNESS: I'm not aware of any.
16 Q. BY MR. ROSENBAUM: Ever cross your mind that
17 would be an interesting thing to look at?
18 A. Frankly, no.
19 Q. Why is that?
20 MS. READ SPANGLER: Objection. That's just
21 kind of nonsensical.
22 MR. VIRJEE: Calls for speculation.
23 MS. READ SPANGLER: Why didn't it cross his
24 mind?
25 MR. ROSENBAUM: Yes.

1 MS. READ SPANGLER: How can you answer that?

2 MR. VIRJEE: Calls for speculation as to why or
3 why not.

4 MR. ROSENBAUM: Go ahead. You can answer.

5 THE WITNESS: We have a full menu of things to
6 do.

7 Q. BY MR. ROSENBAUM: No one's ever directed you
8 to do that?

9 A. No one's ever directed me to do that. It would
10 not have occurred to me on the natural to do that.

11 Q. How about the credentialing of teachers. One
12 of the provisions of PSAA talks about the credentialing
13 of teachers. Do I have that generally right?

14 MR. VIRJEE: The Act speaks for itself.

15 MS. READ SPANGLER: Join.

16 MR. ROSENBAUM: Your understanding is what I'm
17 asking about obviously.

18 MS. READ SPANGLER: It wasn't obvious from your
19 question.

20 THE WITNESS: The question is, sir? I'm sorry.

21 Q. BY MR. ROSENBAUM: PSAA, your understanding,
22 does it include, at some point, discussion about
23 different levels of credentialing of teachers?

24 A. Yes, there is a mention in the bill of teacher
25 credentialing, and the reference is with respect to the

1 the commission of teacher credentialing.

2 Q. In your experience, sir, with the Department of
3 Education, has there ever been a study or an evaluation
4 of the impact of students being taught by
5 emergency-credentialed teachers?

6 MR. VIRJEE: Objection. Calls for speculation.
7 Lacks foundation for what might have been done outside
8 of his division or his personal knowledge.

9 MS. READ SPANGLER: And vague as to time.

10 THE WITNESS: I'm not aware of any particular
11 studies that would answer your questions.

12 Q. BY MR. ROSENBAUM: Any studies involving
13 looking at emergency-credentialed teachers that you're
14 aware of?

15 MR. VIRJEE: Same objection. Also vague and
16 ambiguous as to "studies," "involving."

17 MS. READ SPANGLER: Join.

18 THE WITNESS: Certainly possible if the
19 commission of teacher credentialing would have done
20 something like that, but it also depends on what you
21 mean by study.

22 Q. BY MR. ROSENBAUM: Okay. Let's break that down
23 a little bit. Any inquiry, investigation or evaluation
24 of emergency-credentialed teachers in schools that
25 you're aware of?

1 development of what we call the similar schools ranks.
2 It's an indicator that's used in the generation of those
3 ranks.

4 Q. Okay. And you tell me if I've got this right.
5 It looks at whether or not teachers are credentialed,
6 whether or not they are emergency credentialed, whether
7 or not they're teaching in their subject of competence;
8 is that right?

9 MR. VIRJEE: Objection. The Act speaks for
10 itself.

11 MS. READ SPANGLER: Join.

12 THE WITNESS: I'm not sure about the -- we do
13 look at credentials, emergency credentials.

14 Q. BY MR. ROSENBAUM: And when you hear the phrase
15 "emergency credentialed," what's your understanding of
16 what that means?

17 A. I don't have a deep understanding of what that
18 means. That would come from the commission of teacher
19 credentialing. I know it's something short of a full
20 credential.

21 Q. Okay. How about fully credentialed, do you
22 have an understanding of what that means?

23 A. A vague sense of what it means.

24 Q. What's your vague sense?

25 A. Means they have satisfied the requirements of

1 MR. VIRJEE: Objection. Calls for speculation,
2 and also vague and ambiguous as to "inquiry" regarding
3 those issues.

4 MS. READ SPANGLER: And vague as to time.

5 THE WITNESS: Probably the only thing that I
6 think that I recall is the analysis of a percent of
7 credentialed teachers and emergency-credentialed
8 teachers by decile of the API. That was an analysis. I
9 wouldn't call it a study or an investigation, it was
10 simply a correlation analysis.

11 Q. BY MR. ROSENBAUM: And help me understand this,
12 sir. You just distinguished for me between an analysis
13 and a study or an evaluation.

14 Tell me the distinction, Doctor, that you were
15 thinking about.

16 A. Well, for example, if there's a correlation
17 between decile rank and percent of credentialed
18 teachers, that's simply an analysis finding. It would
19 not go into why is there a correlation and whether or
20 not it's causal.

21 Q. Okay. So let me see if I understand you
22 correctly. You're not aware of any study or evaluation
23 with respect to emergency-credentialed teachers; is that
24 right?

25 A. Correct.

1 MR. VIRJEE: Objection. Asked and answered.
 2 Q. BY MR. ROSENBAUM: And you've never been
 3 directed to undertake such an evaluation?
 4 A. Correct.
 5 Q. And I take it you've never directed any of your
 6 staff to do that?
 7 A. Correct.
 8 Q. Any reason why not?
 9 MR. VIRJEE: Objection. Vague and ambiguous
 10 and nonsensical.
 11 THE WITNESS: We have a full menu of work to
 12 do, and typically we would not undertake something that
 13 would be that expensive to do, short of legislative
 14 fiat.
 15 Q. BY MR. ROSENBAUM: And, again, I apologize if
 16 I've already asked this question. I take it from your
 17 answer, you're not specifically aware of any such study
 18 or evaluation anywhere else in the Department of
 19 Education?
 20 MR. VIRJEE: Objection. Asked and answered.
 21 Also vague and ambiguous.
 22 THE WITNESS: Correct, I'm not aware of it.
 23 Q. BY MR. ROSENBAUM: And you haven't heard of any
 24 such study?
 25 A. Within the Department?

1 Q. Yes, sir.
 2 A. No.
 3 MR. VIRJEE: Same objections.
 4 Q. BY MR. ROSENBAUM: Have you ever heard anyone
 5 say, in your experience, it would be a good idea to find
 6 out what the impact of having emergency-credentialed
 7 teachers is for students?
 8 A. Well, there's somewhat of a national debate
 9 going on on this issue, and I believe the researcher
 10 Linda Darling-Hammond has looked into this fairly
 11 extensively.
 12 Q. You regard her as an expert in this area?
 13 A. Yes.
 14 MR. VIRJEE: Calls for speculation.
 15 Q. BY MR. ROSENBAUM: Why is that?
 16 A. Because she's well-published in this area and
 17 has a high regard among my colleagues.
 18 Q. Have you read materials by her?
 19 MS. READ SPANGLER: On this specific topic, or
 20 on any topic?
 21 MR. ROSENBAUM: Just period.
 22 THE WITNESS: I've read some of them, but I
 23 can't describe what they would be.
 24 Q. BY MR. ROSENBAUM: Have you read anything she's
 25 written on this question about emergency-credentialed

1 teachers?
 2 A. Not that I recall.
 3 Q. And I don't want to run you through a set of
 4 questions that you already answered, but when I asked
 5 you a set of questions about emergency-credentialed
 6 teachers and were you aware of any studies or
 7 evaluations, would your answers be the same if I
 8 reframed the question and asked about fully credentialed
 9 teachers?
 10 A. Correct.
 11 Q. You said to me that there was an analysis that
 12 looked at whether or not there was -- strike that.
 13 Your testimony was that an analysis had been
 14 conducted that looked at the numbers or percentages of
 15 emergency-credentialed teachers by deciles; is that
 16 right?
 17 A. Correct.
 18 Q. Do you know when that analysis was undertaken?
 19 A. Within the last year.
 20 Q. Do you know who did that?
 21 A. We did in my division.
 22 Q. Is there a particular person who had principal
 23 responsibility?
 24 A. It would have been done in another unit in my
 25 division called the education planning and information

1 center.
 2 Q. Was there a particular person there who had
 3 principal charge of that?
 4 A. The manager of that unit Pat McCabe,
 5 M-c-C-a-b-e.
 6 Q. And have the results of that analysis been
 7 published?
 8 MR. VIRJEE: Objection. Vague and ambiguous as
 9 to "published."
 10 THE WITNESS: It wasn't a study that one writes
 11 up and publishes, it was simply a computer run which
 12 examined the percent of emergency teachers by deciles.
 13 Q. BY MR. ROSENBAUM: You're talking to the
 14 world's most ignorant person about computers.
 15 I take it that if you can do a computer run, it
 16 means that you have the information and you can --
 17 MS. READ SPANGLER: Run it through the
 18 computer.
 19 Q. BY MR. ROSENBAUM: -- run it through the
 20 computer and press some buttons and you can make certain
 21 correlations; is that right?
 22 A. Yes.
 23 Q. Was that the dumbest question you've ever
 24 heard?
 25 A. No.

1 Q. Okay. And that's because there are different
2 databases that you can find out whether or not certain
3 things exist with respect to certain deciles; is that
4 right?
5 A. Correct.
6 Q. Am I getting close to the dumbest questions
7 you've ever heard?
8 A. No.
9 MS. READ SPANGLER: Objection. Vague as to
10 time.
11 Q. BY MR. ROSENBAUM: Now, that computer run, did
12 you actually physically look at it?
13 A. Yes.
14 Q. If I wanted to obtain a copy of it, how would I
15 go about doing that?
16 A. It would probably be easier for you just to run
17 the analysis yourself. The data are all up on the
18 Internet.
19 Q. Do you recall what the findings were?
20 A. Generally what the findings were, yes.
21 Q. Could you tell me, sir.
22 A. They showed that the percent of emergency
23 credentials went up as decile rank went down.
24 Q. Okay. Let's understand what deciles mean here.
25 There are ten deciles, right?

1 A. Correct.
2 Q. And the tenth decile, that's the highest
3 performing decile?
4 A. Correct.
5 Q. There's at least two indexes that I'm familiar
6 with. There's the absolute index and there's the
7 similar schools index; is that right?
8 A. Yes.
9 Q. And when you hear the phrase "absolute index,"
10 what does that mean?
11 A. That means -- the word we use for it is
12 statewide decile rank.
13 Q. In the statewide decile rank, not every school
14 is included, is it?
15 A. That's correct.
16 Q. The schools that didn't have certain
17 participation numbers to qualify for the API, they would
18 not be included?
19 A. That's not correct.
20 Q. Which schools would not be included?
21 A. The schools that would not be included are the
22 schools that for one reason or another did not have an
23 API, and the set of small schools and the set of
24 alternative schools and the set of special ed schools.
25 So there are approximately 8,000 schools in California.

1 We have an API for around 7,200 of them.
2 Q. And how many, approximately, are special ed?
3 MR. VIRJEE: How many what?
4 MR. ROSENBAUM: Schools.
5 MR. VIRJEE: Objection. Vague and ambiguous as
6 to "special ed."
7 How many have special ed students, special ed
8 programs?
9 MS. READ SPANGLER: Join.
10 MR. VIRJEE: How many are excluded because
11 they're special ed?
12 Vague and ambiguous.
13 THE WITNESS: There are some schools that are
14 exclusively devoted to special ed that are run by county
15 offices of education. The numbers are quite small, but
16 I don't know what they are.
17 Q. BY MR. ROSENBAUM: How about "alternative
18 schools," what did you mean by that?
19 A. Alternative schools, the word alternative
20 schools is an extremely vague term, but for purposes of
21 PSAA, I believe there are around 1,100 alternative
22 schools.
23 Q. And what does an alternative school mean, what
24 does it include?
25 MR. VIRJEE: For purposes of PSAA?

1 MR. ROSENBAUM: Yeah.
2 THE WITNESS: We have a specific definition of
3 what an alternative school is for purposes of PSAA, and
4 I can't give you a detailed definition, but by and large
5 schools are required to examine their population against
6 the standard, and they're typically schools that would
7 treat a very specialized population, such as pregnant
8 minors and the like. But that data is available.
9 Q. BY MR. ROSENBAUM: Okay. You also said small
10 schools. Those are schools, I take it, that are -- have
11 a small total enrollment; is that right?
12 A. Small schools for the purposes of PSAA are
13 schools that have less than 100 pupils tested.
14 Q. Now, you could have -- you tell me if I'm right
15 about this. You could have a school with less than 100
16 tested because of waivers and exemptions; is that right?
17 A. Correct.
18 Q. And also because kids were absent; is that
19 right?
20 MR. VIRJEE: Calls for speculation.
21 THE WITNESS: If they were absent and not
22 tested during the makeup period, that's correct.
23 Q. BY MR. ROSENBAUM: Okay. And are there small
24 schools that aren't on the PSAA because of the number of
25 waivers and exemptions that were administered?

1 MR. VIRJEE: Objection. Lacks foundation.
 2 Calls for speculation.
 3 MS. READ SPANGLER: Join.
 4 THE WITNESS: The rule is less than 100 tested.
 5 I can't answer that.
 6 Q. BY MR. ROSENBAUM: Do you know how many small
 7 schools?
 8 A. 4 or 500.
 9 Q. Do you know what the range of their enrollments
 10 are? I'm not talking about PSA enrollments, I'm talking
 11 about general enrollments.
 12 A. Anywhere from 2 or 3 up to 100.
 13 Q. You also said there were some schools that
 14 didn't have an API?
 15 A. Those would be the schools.
 16 Q. Those are the categories, small, alternative
 17 and special ed?
 18 A. Yes. And there is another set of schools that
 19 would not receive an API.
 20 Q. Which are those schools?
 21 A. Those schools would be in the case if they had
 22 excessive opt-outs, parent opt-outs. If they had over
 23 15 percent opt-outs, they would not receive an API.
 24 Q. Over 15 percent, you said?
 25 A. Uh-huh.

1 Q. Now, the test for purpose of the API was
 2 administered in 1998, 1999 and the year 2000 so far; is
 3 that right?
 4 A. No, that's not accurate.
 5 Q. Okay. 1999 and 2000?
 6 A. Yes, for the purposes of the API, the tests --
 7 the API began in 1999.
 8 Q. Okay. So you don't use 1998 data for purposes
 9 of API?
 10 MR. VIRJEE: Objection. Vague and ambiguous.
 11 THE WITNESS: For purposes of API we do not use
 12 1998 data.
 13 Q. BY MR. ROSENBAUM: And for purposes of II/USP
 14 you do not use 1998 data?
 15 A. No, for purposes of II/USP we --
 16 Q. You did?
 17 A. I'm sorry, I have to correct that. I don't
 18 think that we used '98 data for II/USP, we used 1999
 19 data for II/USP. Before we had API, the first cohort
 20 selection had to use the SAT-9 data. We didn't have the
 21 API developed by then.
 22 Q. Now, I want to come back to the 15 percent in a
 23 minute.
 24 But there were also schools that your
 25 department disqualified because of cheating, is that

1 right, disqualified from the rewards program?
 2 A. We call it testing irregularities involving
 3 adults.
 4 MR. VIRJEE: Objection. Vague and ambiguous as
 5 to "cheating."
 6 Q. BY MR. ROSENBAUM: Are they part of the API,
 7 those testing irregularity schools?
 8 MR. VIRJEE: The ones that were disqualified?
 9 MR. ROSENBAUM: Yeah.
 10 THE WITNESS: The procedure is if we learn of
 11 testing irregularities for an adult, that their API is
 12 invalidated for that year.
 13 Q. BY MR. ROSENBAUM: Okay. So in trying to
 14 figure out who is in the API index -- strike that -- who
 15 is in the ten deciles and who is not, schools that had
 16 been disqualified because of irregularities, they would
 17 not be included?
 18 MR. VIRJEE: Objection. Vague as to time.
 19 THE WITNESS: It would depend on when they were
 20 disqualified. If we learned of it after we did the
 21 decile rankings, they would have been included and we
 22 would actually have gotten a published decile ranking.
 23 Q. BY MR. ROSENBAUM: Then are they pulled?
 24 A. Yes.
 25 Q. Okay. How many schools fall into that

1 category, the category of either that are pulled
 2 afterwards or they don't make it to the API because of
 3 testing irregularities?
 4 A. My best estimate is less than 20.
 5 Q. Okay. And the 15-percent schools, when you use
 6 the phrase "opt out," what did you mean by that?
 7 A. The law allows for a parent or guardian to
 8 request that their child be exempted from the STAR
 9 testing.
 10 Q. And the law is the PSAA of 1999?
 11 A. No.
 12 Q. What law are we talking about?
 13 A. I don't know what the specific law is.
 14 Q. And is that referred to as a waiver or an
 15 exemption?
 16 MR. VIRJEE: Objection. Vague and ambiguous.
 17 Referred to by whom, in the law?
 18 THE WITNESS: We refer to it in the office as a
 19 parent opt-out.
 20 Q. BY MR. ROSENBAUM: Okay. Help me understand
 21 this. In your office, sir, what is meant by a waiver?
 22 MR. VIRJEE: Objection. Vague and ambiguous.
 23 In what context?
 24 THE WITNESS: The context that we in my office
 25 think of a waiver is as a waiver to the State Board of

1 Education with respect to the Education Code or
2 regulation.
3 Q. BY MR. ROSENBAUM: And how about an exemption,
4 what's that mean?
5 MR. VIRJEE: Same objection. Vague and
6 ambiguous as to context. Compound and overbroad.
7 THE WITNESS: We typically don't use the word
8 "exemption."
9 Q. BY MR. ROSENBAUM: Okay. Now, your office
10 received reports that at some schools parents were
11 encouraged to opt out; isn't that right?
12 MS. READ SPANGLER: Objection. Leading.
13 MR. VIRJEE: Also vague and ambiguous as to his
14 "office" and "reports."
15 THE WITNESS: My office doesn't receive those
16 kind of reports.
17 Q. BY MR. ROSENBAUM: But you heard of that?
18 MR. VIRJEE: Did he personally hear about that?
19 MR. ROSENBAUM: Yes.
20 MR. VIRJEE: Objection. Vague and ambiguous.
21 THE WITNESS: My sense is that people in the
22 assessment office have had reports like that.
23 Q. BY MR. ROSENBAUM: And your sense is based on
24 what?
25 A. I'm sorry?

1 Q. What's the basis for your answer?
2 A. Speaking with people in that office.
3 Q. Who?
4 A. The director, Phil Spears.
5 Q. Do you know, sir, how many schools are in this
6 15 percent or greater category?
7 MR. VIRJEE: Objection. Vague as to time.
8 MS. READ SPANGLER: Join.
9 THE WITNESS: For the 2000 API, my best
10 estimate is 75 schools.
11 Q. BY MR. ROSENBAUM: And how about the 1999 API?
12 A. We did not collect that information in '99.
13 Q. I'm sorry, what?
14 A. We did not collect that information in '99 by
15 school.
16 Q. When you said to me before, sir, that as you go
17 up the deciles -- strike that.
18 The thing about the deciles -- am I pronouncing
19 deciles right?
20 A. Yes.
21 Q. Ten deciles, that's the highest performing; is
22 that right?
23 A. Right.
24 MR. VIRJEE: Objection. Asked and answered.
25 Q. BY MR. ROSENBAUM: And one is the lowest?

1 MR. VIRJEE: Objection. Asked and answered.
2 THE WITNESS: Yes.
3 Q. BY MR. ROSENBAUM: When you said your
4 understanding -- as you go up the deciles, the numbers
5 of emergency-credentialed teachers drop, is that your
6 understanding?
7 A. That's correct.
8 Q. Okay. And was that consistent all the way up?
9 A. Correct.
10 MR. VIRJEE: Objection. Calls for speculation.
11 Q. BY MR. ROSENBAUM: Do you recall, sir, what the
12 percentages were at the lowest deciles?
13 A. I would estimate around 5 percent.
14 Q. 5 percent emergency credentialed?
15 A. I'm sorry, that's the highest decile.
16 Q. 5 percent around 1 -- I'm sorry.
17 A. 5 percent at the tenth decile and near the
18 linear drops down to, I would estimate, 25 percent in
19 the first decile.
20 Q. Okay. And based upon your experience and
21 training, sir, do you draw any conclusions from that
22 data?
23 MR. VIRJEE: Objection. Calls for speculation.
24 Lacks foundation.
25 THE WITNESS: There's no causal conclusion that

1 I draw from that. It's simply a reflection of what is.
2 Q. BY MR. ROSENBAUM: Okay. Now, has anyone
3 said -- to your knowledge, has anyone in the Department
4 said, we ought to go in and study this analysis to find
5 out whether or not a causal effect exists?
6 MR. VIRJEE: Calls for speculation.
7 THE WITNESS: I believe we went down this track
8 earlier, and I said I didn't know of any, no.
9 Q. BY MR. ROSENBAUM: Has anyone, to your
10 knowledge, in the Department ever said -- strike that.
11 In your experience, has your office ever
12 studied or evaluated the subject matter of the physical
13 facilities at which kids go to school?
14 A. No.
15 Q. Or looked at the -- whether or not a
16 relationship exists between the physical facilities and
17 achievement levels of kids?
18 A. No.
19 Q. Okay. To your knowledge, has anyone in the
20 Department of Education ever undertaken either of those
21 studies or evaluations?
22 MR. VIRJEE: Calls for speculation.
23 THE WITNESS: Not to my knowledge.
24 Q. BY MR. ROSENBAUM: Ever heard that subject
25 discussed, it would be an interesting matter for us to

1 look into?
 2 A. No.
 3 Q. Okay. Have you ever suggested it to your
 4 staff?
 5 A. No.
 6 Q. Now, you made a distinction for me earlier
 7 between an analysis on one hand and a study and an
 8 evaluation on the other.
 9 Do you remember that?
 10 A. Yes.
 11 Q. Okay. Has your office ever undertaken an
 12 analysis of the question of physical facilities at the
 13 schools where kids attend?
 14 MR. VIRJEE: Objection. Overbroad.
 15 THE WITNESS: No. I'm not even aware of what
 16 data would even be available regarding the physical
 17 facility itself.
 18 Q. BY MR. ROSENBAUM: So far as you know, data has
 19 not been collected looking at the characteristics of
 20 physical facilities of the student schools in
 21 California; is that right?
 22 MR. VIRJEE: Objection. Calls for speculation.
 23 Also vague and ambiguous as to "physical facilities."
 24 MS. READ SPANGLER: Join. Also leading.
 25 THE WITNESS: As far as I know, that's correct.

1 Q. BY MR. ROSENBAUM: Okay. And you've never
 2 heard any discussions, we ought to look into that?
 3 A. No.
 4 Q. Okay. And how about over -- and I take it --
 5 again, I don't want to put words in your mouth, but I
 6 take it, based on your answers earlier, this never
 7 crossed your mind, to undertake either an analysis or a
 8 study; is that right?
 9 A. I don't recall whether it did. It may well
 10 have.
 11 Q. But sitting here today, you can't remember?
 12 A. No.
 13 Q. And you've been under quite a few
 14 superintendents; isn't that right?
 15 MR. VIRJEE: Objection. Vague and ambiguous as
 16 to "quite a few."
 17 THE WITNESS: Correct.
 18 Q. BY MR. ROSENBAUM: You've been under Wilson
 19 Riles, right?
 20 A. Yes.
 21 Q. And who followed Wilson Riles?
 22 A. Bill Honig (ph.).
 23 Q. And who followed Superintendent Honig?
 24 A. Dave Dawson.
 25 Q. And who followed Superintendent Dawson?

1 A. Delaine Eastin.
 2 Q. Have you met with them from time to time?
 3 A. Yes.
 4 Q. On a regular basis?
 5 MR. VIRJEE: Vague and ambiguous as to
 6 "regular." Also compound as to which superintendents
 7 you're talking about.
 8 MS. READ SPANGLER: Join.
 9 THE WITNESS: If the meaning of your question
 10 is did I have a regular set-up, calendared meeting on a
 11 periodic basis with any of those superintendents, the
 12 answer is no.
 13 Q. BY MR. ROSENBAUM: But did you talk with them
 14 from time to time?
 15 A. Yes.
 16 Q. They consulted with you?
 17 MR. VIRJEE: Objection. Compound.
 18 MS. READ SPANGLER: Vague and ambiguous as to
 19 "consulted."
 20 THE WITNESS: I wouldn't put it they consulted
 21 with me. They would tell me what to do.
 22 Q. BY MR. ROSENBAUM: Well, we have a second piece
 23 of evidence of your modesty, Doctor.
 24 Did any of the superintendents ever say to
 25 you -- did they ever talk to you about the impact of

1 facilities on kids, physical facilities?
 2 A. No.
 3 Q. Or textbook availability?
 4 A. I don't recall.
 5 Q. Or instructional material availability?
 6 A. I don't recall.
 7 Q. Or teacher credentials, teacher expertise?
 8 MR. VIRJEE: What was the last one, I'm sorry?
 9 MR. ROSENBAUM: I'll break it up.
 10 Q. Teacher credentials?
 11 A. With respect to this recent analysis that I
 12 described earlier, I did have a conversation with -- I
 13 shared the results of the analysis with Superintendent
 14 Eastin.
 15 Q. Prior to that sharing, any discussion you
 16 recall with any of the superintendents?
 17 A. No.
 18 Q. Okay. And when was your discussion with
 19 Superintendent Eastin?
 20 A. Within the last year.
 21 Q. Okay. Can you tell me, was anyone else
 22 present?
 23 A. I don't recall.
 24 Q. Okay. Do you remember what you said to her?
 25 A. I don't recall.

1 Q. Do you remember what she said to you?
 2 A. I don't recall.
 3 Q. Okay. Do you remember the occasion, how this
 4 happened?
 5 A. It was probably related to when we did the
 6 press release on the October release of the API.
 7 Q. Who wrote that press release, so far as you
 8 know?
 9 A. We have a communications department. They
 10 wrote it.
 11 Q. Okay. And you approved it?
 12 A. I don't approve it. The superintendent
 13 approves it and they write it.
 14 Q. Did you edit it?
 15 A. I looked at it. I made suggestions.
 16 Q. Okay. How about temperatures in classrooms,
 17 has your office ever undertaken any study or evaluation
 18 with respect to temperatures in classrooms?
 19 A. No.
 20 Q. Or the impact of temperatures in classrooms on
 21 student performance?
 22 A. No.
 23 Q. Any analysis?
 24 MR. VIRJEE: Objection. Asked and answered.
 25 You said "analysis," "study," "evaluation."

1 MR. ROSENBAUM: Bear with me.
 2 Q. Any analysis?
 3 MR. VIRJEE: Okay. Objection. Asked and
 4 answered.
 5 THE WITNESS: No, we didn't do anything on
 6 that.
 7 Q. BY MR. ROSENBAUM: Are you aware of any study
 8 or evaluation in the Department of Education as to the
 9 question of temperatures in classrooms?
 10 A. I'm not aware of any study.
 11 Q. Or the impact of temperatures in classrooms on
 12 students?
 13 A. No.
 14 Q. Any studies in the Department?
 15 A. Not that I'm aware of.
 16 Q. Does the data exist, so far as you know?
 17 A. As far as I know, no.
 18 MR. VIRJEE: Calls for speculation.
 19 Q. BY MR. ROSENBAUM: What's the basis of your
 20 answer?
 21 MR. VIRJEE: Objection. Calls for speculation.
 22 Lacks foundation.
 23 THE WITNESS: It's not something that I would
 24 know from the database that I'm familiar with.
 25 Q. BY MR. ROSENBAUM: Do the databases you look at

1 have any information regarding the physical facilities
 2 of schools?
 3 A. Not to the best of my knowledge.
 4 Q. Or textbook availability?
 5 A. No.
 6 Q. Or instructional material availability?
 7 A. No.
 8 Q. Okay. How about, sir, overcrowding? Are you
 9 familiar with that phrase with respect to schools?
 10 A. I'm familiar with the phrase, yes.
 11 Q. What's your understanding of what that means?
 12 A. I have no idea.
 13 Q. Okay. Have you ever used that phrase,
 14 overcrowding?
 15 A. No.
 16 Q. Okay. Have you -- are you aware of any
 17 analysis or evaluation that your office has conducted
 18 with respect to overcrowding?
 19 A. I'm not aware of anything we did.
 20 Q. The questions I ask you, if I said to you,
 21 besides your office, external evaluations, you described
 22 it earlier, would your answer be the same?
 23 A. That's correct.
 24 Q. Any external evaluation with respect to
 25 overcrowding?

1 A. No.
 2 Q. Have you ever been directed, see what the
 3 impact of overcrowding is on kids' performance?
 4 A. No, I've never been directed.
 5 Q. Have you ever requested that be undertaken?
 6 A. No.
 7 Q. Any reason why not?
 8 MR. VIRJEE: Objection. Calls for speculation.
 9 Lacks foundation.
 10 THE WITNESS: It's not a typical indicator that
 11 we would use, nor do we have the data as far as I know.
 12 Q. BY MR. ROSENBAUM: When you say we don't have
 13 the data, are you aware of any such data in the
 14 Department of Education?
 15 MR. VIRJEE: Objection. Calls for speculation.
 16 THE WITNESS: Since I don't know what the
 17 definition of overcrowding is, I wouldn't be able to
 18 answer whether or not the data was there.
 19 Q. BY MR. ROSENBAUM: Have you been at meetings or
 20 discussions where overcrowding at schools has been
 21 discussed?
 22 A. No.
 23 Q. Okay. In your analyses -- you do analyses all
 24 the time of test results in schools throughout
 25 California; is that right?

1 A. Yes.
 2 Q. Okay. And do you break down your data by
 3 elementary school, middle school and high school from
 4 time to time?
 5 A. Yes.
 6 Q. Why do you do that?
 7 A. Because the tests are different at those
 8 levels.
 9 Q. Okay. Are you aware, sir, that there are
 10 schools in California that are multi-track schools?
 11 A. Multi-track year-around schools?
 12 Q. Yes, sir.
 13 A. Yes.
 14 Q. Do you break down the data by whether or not
 15 schools are multi-tracked year-around or not?
 16 A. Yes.
 17 Q. Okay. Why do you do that?
 18 A. It's part of the PSAA law.
 19 Q. Before the PSAA law, did you do that, did your
 20 office do that?
 21 A. We did a study in the '80s on multi-track
 22 year-around schools.
 23 Q. Okay. Since that data -- since that study,
 24 have you done any?
 25 A. Not that I can recall.

1 Q. No external study either?
 2 A. No.
 3 Q. No one said, let's take a look at the impact of
 4 multi-tracks now or within the past five years?
 5 MR. VIRJEE: Objection. Calls for speculation.
 6 MS. READ SPANGLER: Join.
 7 THE WITNESS: Not that I recall.
 8 Q. BY MR. ROSENBAUM: How about prior to that
 9 study?
 10 That study was taken sometime in the early to
 11 mid-1980s; is that right?
 12 MR. VIRJEE: Objection. Asked and answered.
 13 THE WITNESS: I believe so.
 14 Q. BY MR. ROSENBAUM: How about prior to that
 15 study, any external or internal studies, evaluations or
 16 analyses regarding multi-track schools?
 17 MS. READ SPANGLER: Objection. Calls for
 18 speculation.
 19 THE WITNESS: Not that I'm aware of.
 20 Q. BY MR. ROSENBAUM: Or their impact on student
 21 performance?
 22 A. Not that I'm aware of.
 23 Q. Incidentally, do you know what Concept 6 is?
 24 A. Concept 6 is a form of year-around schooling
 25 that I believe is being implemented in Los Angeles

1 Unified.
 2 Q. Do you know if it's implemented anywhere
 3 outside of LA?
 4 A. I'm not even positive it's being implemented in
 5 LA.
 6 Q. What's your understanding of what Concept 6
 7 means?
 8 MR. VIRJEE: Objection. Lacks foundation.
 9 THE WITNESS: I don't know. I can't give you a
 10 definition.
 11 Q. BY MR. ROSENBAUM: Have you ever broken down
 12 data that you've looked at by schools on Concept 6?
 13 A. Not that I'm aware of. I don't believe that we
 14 have the information that would distinguish the type of
 15 year-around school.
 16 Q. And "we" being your office?
 17 A. Yes.
 18 Q. And so far as you know, the Department of
 19 Education?
 20 MR. VIRJEE: Objection. Calls for speculation.
 21 THE WITNESS: I'm not sure what other areas the
 22 Department would have. To the best of my knowledge,
 23 there may be somebody who is in charge of year-around
 24 schools in the Department who would know that.
 25 MS. READ SPANGLER: Can we go off the record?

1 Could we take a break?
 2 MR. ROSENBAUM: Sure can.
 3 (Recess taken.)
 4 (Ms. Cias not present.)
 5 Q. BY MR. ROSENBAUM: Doctor, with respect to
 6 libraries, has your office undertaken any study or
 7 evaluation as to availability of libraries in schools?
 8 A. We did a study in the '80s on California school
 9 libraries.
 10 Q. Okay. Anything since then?
 11 A. No.
 12 Q. Again, when I say your office, I mean either
 13 external or internally. Do you understand that?
 14 MR. VIRJEE: Internal or external. Internal
 15 coming from his office?
 16 MR. ROSENBAUM: Right.
 17 MR. VIRJEE: External of his office, but
 18 internal of the Department.
 19 MS. READ SPANGLER: What?
 20 MR. ROSENBAUM: I'll accept that for now.
 21 Q. Any evaluation or study in the Department of
 22 Education, to your knowledge, regarding availability of
 23 libraries?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "availability of libraries." Also calls for

1 speculation.
 2 MS. READ SPANGLER: Join.
 3 THE WITNESS: The only study that I can think
 4 of regarding libraries we did in the '80s, and that was
 5 the one I just told you about.
 6 Q. BY MR. ROSENBAUM: And that's throughout your
 7 entire tenure?
 8 A. Yes.
 9 Q. You used the word "study." Was there ever an
 10 analysis of the availability of libraries that you're
 11 aware of in the Department?
 12 A. There was a lot of analysis in the study that
 13 we did.
 14 Q. But that one study aside, besides that one
 15 study, any other analysis?
 16 A. Not that I'm aware of.
 17 Q. The study that you were referring to, can you
 18 give me your best estimate as to when that was
 19 undertaken?
 20 A. My best estimate would be mid '80s.
 21 Q. And why was that study undertaken, so far as
 22 you know?
 23 A. That study was an internal special study, and I
 24 don't recall the exact reason why we started it.
 25 Q. Okay. And were you involved with the study?

1 MR. VIRJEE: Vague and ambiguous as to
 2 "involved."
 3 MS. READ SPANGLER: Join.
 4 THE WITNESS: I was a manager of the special
 5 studies unit in which the study was conducted.
 6 Q. BY MR. ROSENBAUM: You reviewed the study?
 7 A. Yes.
 8 Q. Were you involved in the planning methodology?
 9 MR. VIRJEE: Same objection. Vague and
 10 ambiguous as to "involved."
 11 THE WITNESS: I was the manager, so I had some
 12 involvement in it, yes.
 13 Q. BY MR. ROSENBAUM: What are the duties and
 14 responsibilities of a manager?
 15 MR. VIRJEE: Objection. Vague and ambiguous.
 16 Overbroad.
 17 MS. READ SPANGLER: Join.
 18 THE WITNESS: Common definition of management
 19 at the Department, first-line managers are called
 20 Administrator I's. They are responsible for the usual
 21 management issues involving personnel, plus review of
 22 the work that goes on in the unit.
 23 Q. BY MR. ROSENBAUM: I take it that that resulted
 24 in a document being prepared?
 25 A. Correct.

1 Q. And to the best of your recollection, Doctor,
 2 what -- strike that.
 3 If I wanted to get a copy of that, how would I
 4 do that?
 5 MR. VIRJEE: Calls for speculation.
 6 THE WITNESS: There's probably a copy available
 7 in my office.
 8 Q. BY MR. ROSENBAUM: Okay. And to the best of
 9 your recollection, who received copies of that? Did the
 10 legislature?
 11 MR. VIRJEE: Objection. Calls for speculation.
 12 Vague and ambiguous as to "received."
 13 THE WITNESS: I don't recall whether we sent it
 14 to the legislature. We may well have.
 15 Q. BY MR. ROSENBAUM: How about the
 16 superintendent?
 17 A. The superintendent got it, and beyond that, I'm
 18 not sure.
 19 Q. What about the State Board?
 20 A. I don't recall.
 21 Q. Okay. Do you regularly attend meetings of the
 22 State Board of Education?
 23 A. Since the passage of the PSAA I do.
 24 Q. You've attended all of the meetings, all of the
 25 regularly-scheduled meetings?

1 MR. VIRJEE: All past the passage of the PSAA,
 2 is that your question?
 3 MR. ROSENBAUM: Yes.
 4 THE WITNESS: I typically attend some portion
 5 of the Board.
 6 Q. BY MR. ROSENBAUM: But it's too much to take to
 7 stay through the entire meeting? I'll protect your job
 8 on that, sir.
 9 The library analysis that you talked to me
 10 about, the study and analysis, to the best of your
 11 recollection, what were the findings?
 12 A. Well, I hesitate to say anything without
 13 reviewing the document, because I think I would probably
 14 mischaracterize it.
 15 (Ms. Cias entered the room.)
 16 Q. BY MR. ROSENBAUM: I don't want you to guess.
 17 Tell me what methodology that was utilized.
 18 A. I don't recall.
 19 Q. Were all schools examined to see whether or not
 20 they had libraries?
 21 A. We probably would have conducted a sample of
 22 schools rather than going for a survey of the entire
 23 state.
 24 Q. Do you have any recollection as to whether or
 25 not every school in that sample had libraries?

1 A. I don't recall.
 2 Q. Okay. Was there any follow-up done to that
 3 study, so far as you know?
 4 MR. VIRJEE: Objection. Vague and ambiguous as
 5 to "follow-up."
 6 MS. READ SPANGLER: Join.
 7 THE WITNESS: I don't recall.
 8 (Ms. Tiner left the room.)
 9 Q. BY MR. ROSENBAUM: I take it -- correct me if
 10 I'm wrong here -- that the study made recommendations?
 11 A. Yes.
 12 Q. Okay. Do you know whether or not the
 13 recommendations were followed?
 14 MR. VIRJEE: Objection. Calls for speculation.
 15 Lacks foundation.
 16 THE WITNESS: Since I don't recall the
 17 recommendations, I couldn't say as to whether they were
 18 followed.
 19 Q. BY MR. ROSENBAUM: Sitting here today, do you
 20 know if all schools have libraries?
 21 MS. READ SPANGLER: Objection. Vague and
 22 ambiguous as to the term "schools."
 23 Are you limiting it to public schools in
 24 California?
 25 MR. ROSENBAUM: Yeah, all my questions are

1 about public schools.
 2 THE WITNESS: I don't know.
 3 Q. BY MR. ROSENBAUM: Okay. I take it your office
 4 hasn't made any inquiry to find out in the past ten
 5 years?
 6 MR. VIRJEE: Objection. Asked and answered.
 7 He's already told you about the studies he
 8 recalls about libraries.
 9 MR. ROSENBAUM: Go ahead.
 10 THE WITNESS: Other than the study about the
 11 libraries, I can't recall anything.
 12 Q. BY MR. ROSENBAUM: And you're not aware of
 13 anyone in the Department or any office in the Department
 14 undertaking such a study or report?
 15 MR. VIRJEE: Objection. Asked and answered.
 16 THE WITNESS: I'm not aware of it.
 17 Q. BY MR. ROSENBAUM: To your knowledge, sir, is
 18 there a database that would identify whether or not a
 19 school has a library?
 20 A. If it were on a database, it would probably be
 21 on the CBEDS file.
 22 Q. Okay. But you're not aware of any other
 23 database that would include that information?
 24 A. Well, part of CBEDS includes the PAIF, which is
 25 the Professional Assignment Information Form, whereby

1 one could learn if a certificated librarian was at that
 2 site. Whether or not there's a library, I couldn't say.
 3 Q. But that would be a clue?
 4 MR. VIRJEE: Objection. Calls for speculation.
 5 MR. ROSENBAUM: I'll withdraw that.
 6 Q. In your work, sir, with the exception of this
 7 one study, you've never had any occasion to check the
 8 CBEDS' file to see whether or not this data exists about
 9 the existences of libraries or certificated librarians?
 10 A. Not that I recall.
 11 Q. And no one in your office has, so far as you
 12 know?
 13 A. So far as I know.
 14 Q. And no one in the Department has, so far as you
 15 know?
 16 A. No.
 17 Q. I want to go back a moment. You talked to me a
 18 little bit about Linda Darling-Hammond and her work
 19 regarding credentialed teachers.
 20 Do you remember that?
 21 A. Yes.
 22 Q. Can you give me the names of anyone else whom
 23 you believe to be an expert in this area?
 24 MR. VIRJEE: Objection. Misstates his
 25 testimony.

1 THE WITNESS: That's the only name that comes
 2 to mind.
 3 Q. BY MR. ROSENBAUM: How about computers,
 4 Dr. Padia? You've spent some time looking into the
 5 question of the importance of computers in classrooms;
 6 is that right?
 7 (Ms. Tiner entered the room.)
 8 MR. VIRJEE: Objection. Vague and ambiguous.
 9 Vague as to time.
 10 MS. READ SPANGLER: Join. Also leading.
 11 MR. VIRJEE: Also vague and ambiguous as to
 12 "importance of computers in classrooms."
 13 THE WITNESS: I was in charge of the
 14 educational technology area for five years.
 15 Q. BY MR. ROSENBAUM: Part of your duties and
 16 responsibilities there involved examining whether or not
 17 schools had computers?
 18 MS. READ SPANGLER: Objection. Leading.
 19 THE WITNESS: As I recall, there were a couple
 20 of private companies that did surveys in the state of
 21 California to ascertain which schools had computers and
 22 how many they had. I don't believe that the Department
 23 collected that data separately.
 24 Q. BY MR. ROSENBAUM: And also, sir, whether or
 25 not schools were wired for computers; is that right?

1 MR. VIRJEE: What about it?
 2 MS. READ SPANGLER: Yeah.
 3 MR. VIRJEE: Did the private companies do that,
 4 did he do that? What's your question?
 5 Q. BY MR. ROSENBAUM: Did the private companies do
 6 that?
 7 MR. VIRJEE: Objection. Calls for speculation.
 8 Lacks foundation.
 9 MS. READ SPANGLER: Join.
 10 THE WITNESS: I believe the private company did
 11 collect information about the wiring capabilities.
 12 Q. BY MR. ROSENBAUM: Has your office ever
 13 undertaken a study or evaluation looking at numbers of
 14 computers per student in schools?
 15 A. During the period of time that educational
 16 technology was under me, we did help prepare a report
 17 called C-Cubed, which stood for compute, compete,
 18 connect, or maybe I got the order mixed up. And in that
 19 report there was an analysis of the state of both
 20 computers and wiring, I believe, in California, and
 21 estimates of what it would take to wire the entire
 22 state.
 23 Q. Okay. Has there been a follow-up study to
 24 that, to your knowledge?
 25 A. There may well have been in the current

1 educational technology area, but I'm not aware of it.
 2 Q. You haven't seen any such follow-up; is that
 3 right?
 4 A. No.
 5 Q. Has your office ever attempted to look at the
 6 relationship between the availability of computers and
 7 student performance?
 8 A. No.
 9 Q. Or ranking with respect to API?
 10 A. No.
 11 Q. Or what schools are performing above
 12 expectations or underperforming schools?
 13 A. No.
 14 Q. Has anyone in the Department looked at that, so
 15 far as you know?
 16 A. So far as I know, no.
 17 Q. Have you ever heard any directive to undertake
 18 such an inquiry anywhere in the Department, that the
 19 Department ought to undertake such an inquiry?
 20 A. I'm not aware of it.
 21 Q. You've never directed anyone to do that?
 22 A. No.
 23 Q. Any reason why not?
 24 A. It's not on the list of the sort of areas that
 25 we're primarily interested in now, nor do I know whether

1 or not the data is even available.
 2 Q. Whether or not there's a database where you
 3 could get that information; is that right?
 4 A. Correct.
 5 Q. Okay. And when I asked you about libraries,
 6 has your office looked into the question about the
 7 relationship between availability of libraries and
 8 student performance?
 9 MR. VIRJEE: Objection. Asked and answered.
 10 MS. READ SPANGLER: And vague and ambiguous as
 11 to the term "availability of libraries."
 12 THE WITNESS: Not that I'm aware of.
 13 Q. BY MR. ROSENBAUM: Okay. You're not aware of
 14 any such inquiry or study or analysis in the State?
 15 MR. VIRJEE: Objection. Asked and answered.
 16 THE WITNESS: Not that I'm aware of.
 17 Q. BY MR. ROSENBAUM: Okay. It says on what's
 18 been marked as Exhibit 29, the last sentence -- do you
 19 have that in front of you, sir?
 20 A. I didn't.
 21 Q. Directing your attention, it says, his views on
 22 these areas reflect two decades of practical experience
 23 at the state level with policy analysis and program
 24 evaluation.
 25 Do you see that?

1 A. Yes.
 2 Q. Okay. And still looking at Exhibit 29 in that
 3 sentence -- strike that.
 4 Did you prepare this document?
 5 A. Yes.
 6 Q. Okay. And when you used the phrase "practical
 7 experience," what do you mean by that?
 8 A. I mean experience in the implementation of
 9 various programs as opposed to the theoretical vision of
 10 these programs.
 11 Q. And when you say "theoretical vision," what do
 12 you mean by that?
 13 A. What I mean is someone who designs a particular
 14 program without knowledge of how it actually works.
 15 Q. Have you yourself been in classrooms in the
 16 state?
 17 A. Yes.
 18 Q. Okay. This year?
 19 A. No.
 20 Q. Last year?
 21 A. No.
 22 Q. When was the last time?
 23 A. It would be 1990.
 24 Q. Okay. And what was the occasion for that?
 25 A. The only time that I personally would be in

1 classrooms would be with respect to the California
2 School Recognition Program, which is often called the
3 Distinguished Schools Program. We do site validations
4 of their applications, and typically I would conduct one
5 visit a year.

6 Q. To a particular school?

7 A. To a particular school.

8 Q. And you did that in 1990, thereabouts?

9 A. That's just an estimate.

10 Q. How many of those site visits would you say you
11 made in your career?

12 MR. VIRJEE: Site visits as part of the
13 Distinguished School Program?

14 THE WITNESS: I'd estimate five.

15 Q. BY MR. ROSENBAUM: Besides those five
16 occasions, have you had occasion to be in classrooms
17 otherwise?

18 MR. VIRJEE: Objection. Vague and ambiguous.
19 Overbroad.

20 You mean when he was in kindergarten?

21 MS. READ SPANGLER: Do you mean in California?

22 MR. ROSENBAUM: Yeah, in California.

23 THE WITNESS: As part of my duties I typically
24 would not go to a classroom, except for the cases that I
25 mentioned.

1 Q. BY MR. ROSENBAUM: So the answer is no?

2 A. Yes, it is.

3 Q. On those site visits, would there be a typical
4 number of classrooms that you would visit?

5 A. The typical number would be three to five
6 classrooms.

7 Q. Okay. And that site visit would be for one
8 school?

9 A. Yes.

10 Q. Okay. And that was at a school that got a
11 distinguished school award; is that right?

12 A. Yes.

13 Q. What is a distinguished school award?

14 A. The Distinguished Schools Program is
15 administered by the Department and recognizes
16 approximately 5 percent of schools in the state on an
17 annual basis, alternating between elementary schools one
18 year and middle and high schools the next year. The
19 schools are given a flag and there is a ceremony that
20 takes place that the State Board superintendent comes
21 to. Typically it's in Disneyland, but not always.

22 Q. We won't comment on that.

23 MR. VIRJEE: I think you just did.

24 Q. BY MR. ROSENBAUM: So you come for the awards
25 ceremony; is that right? Is that what you did?

1 MS. READ SPANGLER: Objection. Misstates his
2 testimony.

3 THE WITNESS: Are you asking whether I go to
4 the awards ceremony?

5 MR. ROSENBAUM: Yes.

6 THE WITNESS: Yes, that program is run in my
7 division, so I'm responsible for it.

8 Q. BY MR. ROSENBAUM: Okay. Doctor, in your
9 experience in the office and its predecessor names, you
10 have personally been involved with how many different
11 evaluations, would you estimate?

12 MR. VIRJEE: Objection. Vague and ambiguous as
13 to "evaluations" and "personally been involved."

14 MS. READ SPANGLER: Join.

15 THE WITNESS: I couldn't possibly estimate.

16 Q. BY MR. ROSENBAUM: Hundreds?

17 MR. VIRJEE: Same objections.

18 THE WITNESS: Greater than zero, less than
19 1,000.

20 Q. BY MR. ROSENBAUM: And those evaluations, they
21 include recommendations?

22 MR. VIRJEE: Objection. Overbroad and
23 compound.

24 MS. READ SPANGLER: Join.

25 Q. BY MR. ROSENBAUM: You said they -- your answer

1 was they typically include recommendations; is that
2 right?

3 A. Yes.

4 Q. And do you do -- strike that.

5 Can you think of any recommendations that have
6 been followed up on by the Department?

7 MR. VIRJEE: Objection. Calls for speculation.
8 Lacks foundation.

9 MS. READ SPANGLER: Vague and ambiguous as to
10 "followed up on."

11 MR. ROSENBAUM: You know, I think that was
12 vague.

13 Q. Can you think of any recommendations that have
14 been implemented?

15 MR. VIRJEE: Objection. Overbroad, compound.
16 Vague as to "implemented."

17 THE WITNESS: I can't answer that question.

18 Q. BY MR. ROSENBAUM: Because?

19 A. Because it's too vague.

20 Q. Well, the reports make recommendations; is that
21 right?

22 A. Yes.

23 Q. And some of -- to whom are those
24 recommendations directed?

25 MR. VIRJEE: Objection. Compound.

1 MS. READ SPANGLER: And calls for speculation.

2 MR. VIRJEE: Also vague as to time.

3 THE WITNESS: The recommendations vary. Some
4 reports spell out who the recommendation is for
5 specifically, for the legislature, sometimes for the
6 State Board, sometimes for the Department.

7 Q. BY MR. ROSENBAUM: Okay. Sitting here today,
8 can you think of any recommendations that were directed
9 to the legislature that were, in fact, implemented?

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "implemented." Also calls for speculation.

12 THE WITNESS: The report, called Steering by
13 Results, had a recommendation to implement an
14 accountability program. PSAA is, by and large, the
15 practical result of that theoretical work.

16 Q. BY MR. ROSENBAUM: Okay. And the
17 accountability system that -- the title of that report
18 was Steering by Results; is that right?

19 A. Yes.

20 Q. The accountability, did that study spell out
21 the sort of accountability system that the office
22 believed ought to be developed?

23 MR. VIRJEE: Objection. The document speaks
24 for itself.

25 MS. READ SPANGLER: Join.

1 Q. And the definition of a "matrix test" is?

2 A. It's a test where not every pupil receives the
3 same test items, but that when combined across the
4 schools, there's a very good estimate of achievement at
5 that school across a wide variety of objectives.

6 Q. Okay. And to the best of your knowledge, sir,
7 why did this group recommend a matrix test for purposes
8 of accountability?

9 A. Because it was the most efficient way to get
10 school level estimates of achievement.

11 Q. Why is that?

12 A. Because the individual student doesn't have to
13 take as many items because you don't give individual
14 student results back, and you can test a larger number
15 of items very efficiently by giving different people
16 different items.

17 Q. The purpose is to find out how the school is
18 performing as opposed to any individual students; is
19 that right?

20 A. That's correct.

21 Q. Okay. And the matrix test, sir, is that
22 exclusively a multiple-choice test, or does it have a
23 variety of different items?

24 MR. VIRJEE: Objection. Overbroad. Calls for
25 speculation.

1 THE WITNESS: I'm sorry, I didn't understand
2 your question.

3 Q. BY MR. ROSENBAUM: Steering by Results, you're
4 telling me that recommended the establishment of an
5 accountability program; is that right?

6 A. Yes.

7 Q. And prior to -- when was that report put
8 together?

9 A. I believe it was 1997 or '98.

10 Q. And what was your involvement with that?

11 A. It was a legislatively mandated advisory group
12 to prepare the report, and I was staff to that group.

13 Q. Were there other CDE staff assigned?

14 A. Well, my staff was there, yes.

15 Q. Okay. So it was under your supervision?

16 A. Yes.

17 Q. And were all the recommendations of this report
18 implemented by the legislature?

19 A. No.

20 Q. Okay. Which ones were not?

21 A. I can't recall all the recommendations, but one
22 specific example would be that the report called for a
23 matrix sample test to be used in the State
24 accountability system. And the current State testing
25 system is on a matrix test.

1 THE WITNESS: The word matrix test is
2 independent of the kind of items that are given. They
3 could either be multiple choice or could be constructed
4 response or could be a writing sample. All of those
5 could apply to the matrix test or any other type of
6 test.

7 Q. BY MR. ROSENBAUM: Do you know why that
8 recommendation was not accepted?

9 A. I have no idea.

10 Q. No one consulted with you?

11 A. No.

12 Q. So far as you know, no one consulted with
13 anyone in your office?

14 A. No.

15 MR. VIRJEE: Objection. Calls for speculation.

16 Q. BY MR. ROSENBAUM: Or anyone in the Department?

17 MR. VIRJEE: Objection. Calls for speculation.

18 MS. READ SPANGLER: Join.

19 THE WITNESS: I'm not aware of it.

20 Q. BY MR. ROSENBAUM: Were you consulted about the
21 use of the Stanford-9?

22 A. No.

23 Q. Anyone ever say to you, do you think we should
24 just exclusively rely on the Stanford-9?

25 A. No.

1 Q. Anyone in your department, so far as you know,
2 consulted with respect to -- strike that.
3 The assessment test for purposes of the API,
4 that exclusively relies on the Stanford-9; is that
5 right?
6 MR. VIRJEE: Objection. Vague as to time.
7 MS. READ SPANGLER: Join.
8 THE WITNESS: The API is currently constructed
9 and relies exclusively on the SAT-9, but will not in the
10 future.
11 Q. BY MR. ROSENBAUM: And anyone, to your
12 knowledge, consulted in your department, the Department
13 of Education, as to whether or not it was a good idea to
14 use the Stanford-9 exclusively?
15 A. Is your question a question of why the SAT-9
16 was used as part of the State assessment program?
17 Q. I appreciate that. I'll break it down.
18 The first question is, did anyone, so far as
19 you know, speak to anyone in the Department about
20 exclusively just using a single testing instrument?
21 MR. VIRJEE: Objection. Vague and ambiguous.
22 Did they talk to him about that in any context?
23 Did they ask him whether that was a good idea?
24 Your question is overbroad, vague and
25 ambiguous.

1 MS. READ SPANGLER: Actually, can you read back
2 the question?
3 THE WITNESS: Could you rephrase it?
4 MR. ROSENBAUM: I think I ought to. Let me ask
5 it a slightly different way.
6 Q. So far as you know, Doctor, was anyone in the
7 Department ever consulted as to their judgment as to
8 whether or not just the Stanford-9 should be used?
9 MR. VIRJEE: Objection. Vague and ambiguous as
10 to "judgment."
11 THE WITNESS: Be used where?
12 MR. ROSENBAUM: For purposes of assessment.
13 THE WITNESS: The entire process of selecting
14 assessment instruments in the state of California is a
15 highly visible process involving input from the State
16 Board, from the superintendent, the Department and the
17 legislature, so the presumption is that the Department
18 was actively involved in giving their perspective on
19 those issues.
20 Q. BY MR. ROSENBAUM: Did anyone ever ask you?
21 A. I was not involved in that.
22 Q. Okay. Did you ever express an opinion as to
23 whether or not the Stanford-9 should be used
24 exclusively?
25 A. No.

1 Q. Do you have a viewpoint on that?
2 MR. VIRJEE: Objection. Vague and ambiguous as
3 to "used exclusively."
4 THE WITNESS: Do I have a view on the
5 Stanford-9 used for what purposes?
6 MR. ROSENBAUM: For purposes of assessment for
7 the State accountability system.
8 MR. VIRJEE: Objection. Vague as to time.
9 THE WITNESS: If your question is about --
10 MS. READ SPANGLER: You don't need to rephrase
11 his question. If you don't understand it, then he needs
12 to fix it.
13 THE WITNESS: I don't understand it.
14 Q. BY MR. ROSENBAUM: I understood you to say that
15 the Stanford-9 presently is the exclusive measure of
16 assessment for purposes of the State accountability
17 system; isn't that right?
18 A. That's correct.
19 Q. And that's been the case in 1999, 2000 and
20 2001; isn't that right?
21 A. No.
22 Q. Okay. That is the case presently?
23 MR. VIRJEE: Objection. Vague and ambiguous as
24 to "presently."
25 THE WITNESS: That's the case for 1999 and

1 2000.
2 Q. BY MR. ROSENBAUM: Okay. And the reason it's
3 not 1998 is because there was no system?
4 A. There was not an API in 1998, but the
5 Stanford-9 was used.
6 Q. And you've publically stated that additional
7 instruments should be used; isn't that right?
8 MS. READ SPANGLER: Objection. Leading.
9 MR. VIRJEE: Also vague and ambiguous as to
10 "additional estimates." Also asked and answered.
11 We went through this earlier.
12 MS. READ SPANGLER: Join.
13 THE WITNESS: The law requires additional
14 indicators to be used and they are reflected in law.
15 Q. BY MR. ROSENBAUM: And you think that's a good
16 idea, to use additional indicators based on your
17 professional judgment and experience?
18 A. Yes, I do.
19 Q. Why is that?
20 A. The reason is that when you're looking at
21 boiling down the achievement of a school to one number,
22 one generally would like the most possible indicators in
23 that number to fully reflect the range of achievement of
24 that school.
25 Q. And why is that?

1 A. Because different instruments measure different
2 things, and the more that you can measure about a school
3 and reflect it, the better the measure is, the more
4 valid it is.
5 Q. Do you know any professional who disagrees with
6 you?
7 MR. VIRJEE: About what?
8 MR. ROSENBAUM: His last answer. His last
9 answers.
10 MS. READ SPANGLER: Answers?
11 THE WITNESS: No, I don't.
12 MR. VIRJEE: Objection. Vague and ambiguous.
13 MS. READ SPANGLER: And compound.
14 Q. BY MR. ROSENBAUM: And do you know why just the
15 Stanford-9 is used?
16 MR. VIRJEE: Objection. Vague as to time.
17 MS. READ SPANGLER: Calls for speculation.
18 THE WITNESS: Stanford-9 is used in the API
19 because it's the only instrument that's given across
20 public schools in the state of California that can be
21 used.
22 Q. BY MR. ROSENBAUM: Do you know why it's the
23 only instrument that -- strike that.
24 Before the Stanford-9 there were other
25 instruments that were used across the state of

1 California; isn't that right?
2 MS. READ SPANGLER: Objection. Vague as to
3 time.
4 THE WITNESS: There were a variety of national
5 tests that were used across the state, yes.
6 Q. BY MR. ROSENBAUM: Okay. Were there ever any
7 state-normed tests?
8 A. Yes, the California Assessment Program used a
9 state-normed test.
10 Q. When did that program end?
11 A. My best estimate would be 1992, although I
12 believe there was one year, maybe 1999, that it went
13 away briefly.
14 Q. And since 1992, on or about 1992, has any
15 state-normed test been administered to students in
16 California, so far as you know?
17 A. I believe the CLAS test yielded state norms.
18 For that matter, any test can yield state norms if it's
19 given across the state.
20 Q. My question is a little bit different. The
21 Stanford-9 is nationally normed; is that right?
22 A. Yes.
23 Q. What does that mean?
24 A. For the Stanford-9, for example, it was normed
25 in 1995 with a representative sample of pupils across

1 the nation.
2 Q. Do you know what percent of that national group
3 included California students?
4 A. No.
5 Q. Okay. And do you know if it was more or less
6 than 2 percent?
7 A. I don't know.
8 Q. Okay. Do you know, sir, in the national-normed
9 group -- am I using the right phrase here?
10 A. Yes.
11 Q. -- do you know the percent of EL students?
12 A. No.
13 Q. Do you know what the percent of EL students in
14 California is?
15 A. This year?
16 Q. Yes.
17 A. I believe it's between -- approximately 25
18 percent.
19 Q. If I said that the national norm for Stanford
20 for EL students was 2 percent, would that sound correct
21 to you?
22 MS. READ SPANGLER: Objection. Calls for
23 speculation.
24 MR. VIRJEE: Lacks foundation.
25 THE WITNESS: I wouldn't have an opinion since

1 I'm not aware of it.
2 Q. BY MR. ROSENBAUM: Anyone ever say, so far as
3 you know, we ought to be careful about using a
4 nationally-normed test where those national norms don't
5 match California? Ever hear that viewpoint expressed?
6 A. It's a viewpoint that's occasionally expressed
7 in the newspaper articles and at the State Board and
8 other places.
9 Q. You've heard of that from members of the State
10 Board?
11 A. In public testimony.
12 Q. Do you agree or disagree with that?
13 A. Could you rephrase the question?
14 Q. Sure. Do you have any problems with using a
15 nationally-normed test for California students?
16 MR. VIRJEE: Objection. Vague and ambiguous.
17 Vague as to time.
18 MR. ROSENBAUM: For purposes of a statewide
19 accountability system.
20 MR. VIRJEE: Objection. Vague and ambiguous.
21 Vague as to time.
22 THE WITNESS: No, I don't.
23 Q. BY MR. ROSENBAUM: Why is that?
24 A. Because the Stanford-9 is a reasonable test of
25 the basic skills, and the issue involving norms is

1 really irrelevant because the norms are fixed at a point
 2 in time and our accountability system would allow
 3 students to show progress against that norm group over
 4 time. It's a very good measure of how pupils in the
 5 state of California do on a basic schools test.
 6 Q. Now, I think you told me earlier that the
 7 assessment instrument will not always be just the
 8 Stanford-9; is that right?
 9 A. Yes.
 10 Q. Do you know when that's going to change?
 11 A. The assessment system is up for reauthorization
 12 this year. The last time that the SAT-9 will be in use
 13 will be the year 2002. Beginning in 2003 some new tests
 14 will be used, yet to be determined.
 15 Q. And have there been recommendations formed yet?
 16 A. Well, there's an active discussion going on
 17 with respect to the legislation that would reauthorize
 18 the STAR program, S-T-A-R, all caps. The actual
 19 recommendation of the test would come out of a
 20 competitive bid.
 21 Q. Okay. Does your office have a viewpoint as to
 22 what should be used?
 23 MR. VIRJEE: Objection. Vague and ambiguous.
 24 As to which testing instruments should be used?
 25 MR. ROSENBAUM: Yeah, instrument or

1 instruments.
 2 THE WITNESS: My office --
 3 MR. VIRJEE: Let's make sure we're talking
 4 about the same thing here. Are you asking about what
 5 testing instrument ought to be used or assessment
 6 instrument, because those are different things.
 7 MR. ROSENBAUM: I think the question is quite
 8 clear.
 9 MR. VIRJEE: He's answering different questions
 10 different ways.
 11 MR. ROSENBAUM: I think the question is quite
 12 clear, but I'll accommodate you.
 13 Q. What you were talking about, there's discussion
 14 regarding whether or not the state should continue to
 15 use the Stanford-9; is that right?
 16 A. No, that's not right.
 17 Q. Exclusively, whether it should be used
 18 exclusively?
 19 A. That's a different issue than the one you
 20 were -- you were asking me how long the Stanford-9 would
 21 be used.
 22 Q. Right. What are the possibilities that are out
 23 there that you're aware of?
 24 MR. VIRJEE: Regarding what?
 25 MR. ROSENBAUM: What should be used.

1 MR. VIRJEE: For what?
 2 MR. ROSENBAUM: Purposes of assessment.
 3 MR. VIRJEE: Under the current program, or just
 4 for a test?
 5 Vague and ambiguous.
 6 This is the same problem I raised just a minute
 7 ago.
 8 MR. ROSENBAUM: For purposes of fulfilling --
 9 THE WITNESS: The purpose of State assessment,
 10 the law specifies quite clearly what is to be used. We
 11 have no opinion on that. We simply, at my office, take
 12 the output of the assessment systems and move it into
 13 the API.
 14 Q. BY MR. ROSENBAUM: Okay. The use of the
 15 Stanford-9 for purposes of PSAA, does that measure
 16 school performance, is that its purpose, to measure
 17 school performance?
 18 A. The accountability system and the PSAA measure
 19 school performance, yes.
 20 Q. Not student performance?
 21 A. School performance as an aggregate of
 22 individual performance. The unit of analysis for the
 23 accountability system is the school, not the people.
 24 Q. Or the classroom?
 25 A. Or the classroom.

1 Q. Okay. You were telling me, Doctor, about your
 2 positions. You told me, sir, between 1978 and 1988 you
 3 were the administrator of the special studies unit; is
 4 that right?
 5 A. Correct.
 6 MR. VIRJEE: Objection. Asked and answered.
 7 Q. BY MR. ROSENBAUM: Tell me what the special
 8 studies unit is.
 9 MR. VIRJEE: Objection. Asked and answered.
 10 MS. READ SPANGLER: Is or was?
 11 MR. ROSENBAUM: Was.
 12 THE WITNESS: It was a unit that conducted
 13 mandated evaluations, special studies requested by the
 14 legislature, the legislative analyst, the Department of
 15 Finance, or by the superintendent of public instruction.
 16 Q. BY MR. ROSENBAUM: "Mandated" means one of
 17 those bodies specifically directed that it take place,
 18 is that right, the evaluation to take place?
 19 A. Yes, usually in the form of a bill, a budget
 20 bill or a trailer bill.
 21 Q. And what were your duties and responsibilities
 22 as administrator?
 23 A. The very ones I described to you before about
 24 the Administrative I responsibilities in the Department.
 25 Q. Okay. And then since 1988, you've been

1 involved with -- tell me if this is correct -- research,
2 evaluation and technology, office of program evaluation
3 and research, and policy and evaluation division; is
4 that right?

5 A. Yes.

6 Q. Okay. Now, with respect to policy and
7 evaluation division, could you tell me, sir -- could you
8 state fully, please, what are the duties and
9 responsibilities of that division.

10 A. The division has three separate units, the
11 first is the unit titled educational planning and
12 information center. That unit is responsible for the
13 research and development on the API.

14 The second unit is the awards unit. That unit
15 is responsible for the monetary and nonmonetary awards
16 under PSAA, and a few other programs that are
17 nonmonetary.

18 The third unit is the analysis and evaluation
19 unit, and it is the successor of the special studies
20 unit, with the addition of the analysis capability.

21 Q. And this office or this division, does it have
22 any duties or responsibilities with respect to school
23 accountability report cards?

24 A. Yes.

25 Q. Okay. And does it have any duties and

1 that?

2 A. Yes.

3 Q. Okay. There are teacher awards; is that right?

4 A. Yes.

5 Q. And there are -- are there also independently
6 certificated staff awards?

7 A. Yes.

8 Q. Okay. And are there other awards?

9 A. Yes.

10 Q. What are they?

11 A. Well, with respect to API-based awards, there
12 are three separate programs. The first is the
13 government's performance award, and this year we let out
14 227 million on that.

15 There is the school site employee bonus award,
16 which was funded at 350 million this year, and is for
17 use for both certificated and classified staff at the
18 school.

19 And finally there is the certificated
20 performance award, staff performance award, which is
21 funded at \$100 million, and it includes awards for
22 teachers or certificated staff up to \$25,000, 10,000 and
23 \$5,000.

24 Q. Okay. And are you involved at all in the
25 determination as to what the budget for any of those

1 responsibilities with respect to high school exit exams?

2 A. No.

3 Q. How about grade promotions?

4 MR. VIRJEE: Objection. Vague and ambiguous.

5 MS. READ SPANGLER: Join.

6 THE WITNESS: No, we don't have
7 responsibilities for anything in grade promotion.

8 Q. BY MR. ROSENBAUM: Okay. You mentioned that
9 you have responsibility with respect to the API; is that
10 right?

11 A. Yes.

12 Q. And you also have responsibility with respect
13 to the II/USP?

14 A. I do not have the program responsibility for
15 II/USP. My office simply does the selection of schools
16 based on whatever the existing criteria are.

17 Q. And then that's handed over to someone else?

18 A. Yes.

19 Q. To whom is -- who has the principal
20 responsibility for the actual execution of that program?

21 A. Wendy Harris.

22 Q. And where is Wendy Harris, what office?

23 A. She's a division director for the division of
24 school support and networks, or something like that.

25 Q. Okay. And the awards, you're in charge of

1 items should be?

2 MR. VIRJEE: Objection. Vague and ambiguous as
3 to "involved." Also vague as to time.

4 THE WITNESS: The way the budget process works
5 is that the government or the legislature that is
6 responsible for the funding, on occasion they would ask
7 for estimates from the Department of Education about how
8 much something would cost, if it were funded at
9 such-and-such a level. We would then respond.

10 Q. BY MR. ROSENBAUM: Okay. And the 227 million,
11 to your knowledge, sir, did the Department of Education
12 have a recommendation as to what that sum should be?

13 A. Yes.

14 Q. And the recommendation was in the neighborhood
15 of 500 million?

16 A. That's correct.

17 Q. And do you know how that 500 million was
18 calculated?

19 A. Yes, we ran the estimates. Since we didn't
20 have the actual values, we did simulations and based it
21 on those simulations.

22 Q. Okay.

23 A. And multiplied by what the bill said, which was
24 up to \$150 per ADA. So we multiplied the total number
25 of pupils that we estimated would be eligible for awards

1 and multiplied it times 150, and we got approximately
 2 450 to 500 million.
 3 Q. Do you have any knowledge, sir, as to why it
 4 was reduced from 500 to 227 million?
 5 MR. VIRJEE: Objection. Calls for speculation.
 6 THE WITNESS: I believe the Department of
 7 Finance had a much lower estimate than we had.
 8 Q. BY MR. ROSENBAUM: Do you know how they did
 9 their calculations?
 10 A. No, I don't.
 11 Q. Did you ever talk to anybody from the
 12 Department of Finance about this matter?
 13 A. Only to the extent that we sent our information
 14 over to them.
 15 Q. Did you have any substantive discussion with
 16 them?
 17 A. No.
 18 Q. Who in the Department of Finance dealt with
 19 this, so far as you know?
 20 A. I don't recall.
 21 Q. Okay. And as a result of the 227 million as
 22 opposed to 500 million, the per student sum was reduced;
 23 is that right?
 24 MR. VIRJEE: Objection. Misstates his
 25 testimony. He didn't say it was 500 million.

1 THE WITNESS: If you use 227 million and you
 2 divide it into the eligible population, you get \$68.
 3 Q. BY MR. ROSENBAUM: \$68?
 4 A. 68.
 5 Q. Now, besides the school accountability report
 6 card, the API, the awards units, and the analysis and
 7 evaluation unit, other duties and responsibilities that
 8 your division has?
 9 A. I think that pretty much covers it.
 10 Q. And the school accountability report card, what
 11 are the duties and responsibilities of your division
 12 with respect to that?
 13 A. We're responsible for staffing an advisory
 14 group, which is making recommendations to the
 15 superintendent and the State Board regarding various
 16 issues around the school accountability report card as
 17 laid out in Senate Bill 1635, which was passed last
 18 year.
 19 Q. And what is your understanding, Doctor, as to
 20 what that bill provides for with respect to the school
 21 accountability report card?
 22 MR. VIRJEE: Objection. The bill -- the
 23 statute speaks for itself.
 24 THE WITNESS: Without the bill in front of me,
 25 I can't cover all the aspects of it. But essentially it

1 requires the Department to develop a template for local
 2 use and provides, to the extent available, data for
 3 districts and schools to use in the development of the
 4 school accountability report card, and provide
 5 information to the State Board of Education so they can
 6 define the various elements that could go into the
 7 school accountability report card.
 8 Q. BY MR. ROSENBAUM: When you say "template,"
 9 what do you mean by that?
 10 A. A template would be essentially a format of how
 11 to report the data.
 12 Q. Okay. And what is your understanding, Doctor,
 13 as to why a school accountability report card is
 14 required?
 15 MR. VIRJEE: Objection. Lacks foundation.
 16 Calls for speculation.
 17 THE WITNESS: The initial requirement for
 18 school accountability report cards came out of
 19 Proposition 98, which was passed, I believe, in 1988 or
 20 '89.
 21 Q. BY MR. ROSENBAUM: And were you personally
 22 involved in developing -- strike that.
 23 Has a template been developed?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to time.

1 THE WITNESS: The original proposition did
 2 require the development of a template through an
 3 advisory group, and I staffed that advisory group.
 4 Q. BY MR. ROSENBAUM: Staffed it for the
 5 Department of Education?
 6 A. Yes.
 7 Q. Anyone else from the Department there?
 8 A. There were other staff there, yes.
 9 Q. Did you have any specific responsibilities?
 10 A. The responsibility was to do what the advisory
 11 group advised.
 12 Q. Okay. And was a template, in fact, created?
 13 A. Yes.
 14 Q. And when was that?
 15 A. Probably a year after the proposition passed.
 16 Q. Okay. And then was that template, so far as
 17 you know, made available to schools throughout the
 18 State?
 19 A. Yes.
 20 Q. And it's your understanding that all schools
 21 are supposed to prepare a school accountability report
 22 card?
 23 A. Yes.
 24 Q. And that's to be done every year?
 25 A. Yes.

1 Q. Okay. And the elements that are to be included
 2 in the school accountability report card, what's your
 3 understanding as to how those elements are to be
 4 decided? What elements are included?
 5 MR. VIRJEE: Objection. Vague as to time.
 6 Also the statute speaks for itself.
 7 MS. READ SPANGLER: Join.
 8 THE WITNESS: The original proposition required
 9 certain elements, and over the years there have been
 10 various pieces of legislation that add additional
 11 elements, up to and including this last bill, SB 1635.
 12 They are all now currently part of the Educational Code.
 13 Q. BY MR. ROSENBAUM: Any parts of the report card
 14 that are not legislatively mandated?
 15 A. Well, the original elements were passed by a
 16 proposition, so they wouldn't be legislatively mandated.
 17 Q. I'm sorry. Either by proposition or the
 18 legislature.
 19 A. Not that I'm aware of.
 20 Q. So far as you know, sir, do all schools prepare
 21 each year a school accountability report card?
 22 MR. VIRJEE: Calls for speculation.
 23 THE WITNESS: They have a requirement to
 24 prepare it. I have no way of knowing whether they do or
 25 not.

1 Q. BY MR. ROSENBAUM: Do you know if anyone in the
 2 Department's monitoring to see whether or not each
 3 school, in fact, prepares a school accountability report
 4 card?
 5 A. No.
 6 Q. Okay. They are to be prepared annually?
 7 A. Yes.
 8 Q. Okay. And do you know, over your tenure, sir,
 9 whether or not anyone in the Department has ever
 10 monitored the degree to which schools, in fact, prepare
 11 these report cards?
 12 MR. VIRJEE: Objection. Calls for speculation.
 13 THE WITNESS: No.
 14 Q. BY MR. ROSENBAUM: Okay. I take it you've
 15 never been directed to undertake such an analysis?
 16 MR. VIRJEE: An analysis or a monitoring?
 17 You've now changed the question. Analysis of the report
 18 cards, or monitoring of whether they're being completed?
 19 MR. ROSENBAUM: An analysis of whether or not
 20 they are, in fact, prepared each year.
 21 THE WITNESS: The Department has no legislative
 22 mandate or authority to conduct such an analysis.
 23 Q. BY MR. ROSENBAUM: Okay. Do you know if anyone
 24 in the State has ever monitored to see whether or not
 25 the report cards are, in fact, annually prepared?

1 A. Not to my knowledge.
 2 Q. Or whether or not those that are prepared
 3 include all the required criteria?
 4 MS. READ SPANGLER: Objection. Calls for
 5 speculation.
 6 MR. VIRJEE: Objection. Calls for speculation.
 7 THE WITNESS: I don't know.
 8 Q. BY MR. ROSENBAUM: Or the degree of accuracy of
 9 those report cards?
 10 MS. READ SPANGLER: Objection. Calls for
 11 speculation.
 12 MR. VIRJEE: Join.
 13 THE WITNESS: I'm not aware of it.
 14 Q. BY MR. ROSENBAUM: In your work, sir, have you
 15 ever utilized school accountability report cards?
 16 MR. VIRJEE: Objection. Vague and ambiguous as
 17 to "utilized."
 18 MS. READ SPANGLER: Join.
 19 THE WITNESS: I can't think of a situation
 20 where we would formally use the school accountability
 21 report card.
 22 Q. BY MR. ROSENBAUM: Okay. Now, you told me that
 23 the name of your division is the policy and evaluation
 24 division; is that right?
 25 A. Correct.

1 MR. VIRJEE: Objection. Misstates his
 2 testimony. Vague as to time.
 3 Q. BY MR. ROSENBAUM: And to whom do you report?
 4 A. I currently report to the deputy superintendent
 5 for the accountability branch.
 6 Q. And who is that?
 7 A. Paul Warren.
 8 Q. Is it Dr. Warren or Mr. Warren?
 9 A. Mr. Warren.
 10 Q. Do you have regular meetings with Mr. Warren?
 11 A. Yes.
 12 MR. VIRJEE: Vague and ambiguous as to
 13 "regular."
 14 MS. READ SPANGLER: Join.
 15 THE WITNESS: Yes.
 16 Q. BY MR. ROSENBAUM: How frequently?
 17 THE WITNESS: Approximately every two weeks.
 18 Q. BY MR. ROSENBAUM: He has a staff meeting; is
 19 that right?
 20 A. We have what we call a one-on-one meeting every
 21 two weeks.
 22 Q. In his office?
 23 A. Typically it's in my office.
 24 Q. Okay. And help me understand the
 25 organizational structure here. There's the policy and

1 evaluation division, right? And you report to
 2 Mr. Warren. Mr. Warren's office is what? What's the
 3 name of --
 4 A. He is the deputy in charge of the
 5 accountability branch.
 6 Q. Okay. Incidentally, when you say the word
 7 "accountability," what's your understanding of the
 8 meaning of that?
 9 MR. VIRJEE: Objection. Asked and answered.
 10 MS. READ SPANGLER: Objection. Asked and
 11 answered.
 12 MR. VIRJEE: That's one of the first questions
 13 you asked.
 14 Q. BY MR. ROSENBAUM: Now, are there people -- are
 15 there offices that are lateral to your office? There's
 16 policy and evaluation. Are there other offices, to your
 17 knowledge, that report to Mr. Warren?
 18 A. Yes, there are two other offices that report to
 19 him.
 20 Q. What are those?
 21 A. That would be the standards and assessment
 22 office, and the -- I believe it's the compliance
 23 division.
 24 Q. Compliance what?
 25 A. Division.

1 Q. Okay. Do you know, sir, who is head of the
 2 compliance division?
 3 A. It's Stu Greenfeld.
 4 Q. Okay. And do you know who is head of standards
 5 and assessment?
 6 A. Phil Spears.
 7 Q. Okay. And then Mr. Warren, to whom does he
 8 report, so far as you know?
 9 A. He reports to Chief Deputy Superintendent Scott
 10 Hill.
 11 Q. Okay. And to whom -- is it Mr. Hill or
 12 Dr. Hill?
 13 A. Mr.
 14 Q. To whom does Mr. Hill report?
 15 A. To the Superintendent of Public Instruction,
 16 Delaine Eastin.
 17 Q. Now, do you have meetings with Mr. Spears and
 18 Dr. Greenfeld, regular meetings?
 19 MR. VIRJEE: Objection. Vague and ambiguous as
 20 to "regular."
 21 MS. READ SPANGLER: Join.
 22 THE WITNESS: There are occasional, what we
 23 call, division director meetings that Mr. Warren would
 24 call where the three of us would meet with him.
 25 Q. BY MR. ROSENBAUM: Anyone else present at those

1 meetings?
 2 A. He has an assistant that's sometimes present.
 3 Q. Okay. Are minutes kept of those meetings?
 4 A. No.
 5 Q. How frequently do they occur?
 6 MR. VIRJEE: Objection. Vague as to time.
 7 THE WITNESS: In the last year that Mr. Warren
 8 has been there, we've had two meetings.
 9 Q. BY MR. ROSENBAUM: Okay. Now, have you ever
 10 met with anyone in the governor's office, governor's
 11 staff with respect to your duties and responsibilities?
 12 A. By governor -- could you clarify what you mean
 13 by "governor's staff."
 14 Q. Well, have you ever met with Governor Davis?
 15 A. No.
 16 Q. Have you ever met with his education secretary?
 17 A. Yes.
 18 Q. Which one?
 19 A. I want to correct that. Not his current
 20 education secretary.
 21 Q. Okay. His current education secretary is?
 22 A. Karri Mazzoni.
 23 Q. Did you ever meet with her when she was in the
 24 legislature?
 25 A. No.

1 Q. Okay. Anyone on her staff?
 2 MR. VIRJEE: On Ms. Mazzoni's staff while she's
 3 been secretary, or while she was in the legislature?
 4 MR. ROSENBAUM: Yeah, assemblyperson on the
 5 staff.
 6 MR. VIRJEE: Your question was vague and
 7 ambiguous.
 8 So while she was a legislator.
 9 THE WITNESS: I don't recall meeting with any
 10 of her staff.
 11 Q. BY MR. ROSENBAUM: Now, her predecessor was
 12 John Mockler?
 13 A. Correct.
 14 Q. And did you ever meet with Secretary Mockler
 15 while he was secretary?
 16 A. Yes.
 17 Q. Okay. On how many occasions?
 18 A. Approximately two to three.
 19 Q. Can you tell me what the subject matter of
 20 those meetings were?
 21 A. Would be briefings on the API mostly.
 22 Q. And anyone from John Mockler's staff that you
 23 meet with besides John Mockler?
 24 MR. VIRJEE: Objection. Vague as to time.
 25 THE WITNESS: You mean when he was in as

1 secretary of education?
 2 MR. ROSENBAUM: Right.
 3 THE WITNESS: Other staff may have been
 4 present, but I don't recall.
 5 Q. BY MR. ROSENBAUM: He just wanted a report from
 6 you on the API; is that right?
 7 A. Yes.
 8 Q. Do you remember approximately when those
 9 meetings took place?
 10 A. No, I don't.
 11 Q. And then his predecessor was Sue Burr?
 12 A. Yes.
 13 Q. Did you ever meet with Sue Burr?
 14 A. Yes.
 15 Q. On how many occasions?
 16 A. I can't recall, but I do know that Sue Burr
 17 attended the PSAA advisory committee meetings.
 18 Q. Okay. Besides those meetings, did you ever
 19 meet with her?
 20 A. Yes.
 21 Q. On how many occasions?
 22 A. A couple probably.
 23 Q. What was the subject matter of those?
 24 A. Again, briefing on API, PSAA generally.
 25 Q. Did anyone come with you from your office?

1 A. Yes, typically I would go with either Scott
 2 Hill or Paul Warren, when Paul was there, but he wasn't
 3 there during Sue Burr's tenure.
 4 Q. Okay. And what about Sue Burr's predecessor,
 5 who was that?
 6 A. Gary Hart.
 7 Q. Did you ever meet with Gary Hart while he was
 8 in that office?
 9 A. Yes.
 10 Q. On how many occasions?
 11 A. I would guess two or three occasions.
 12 Q. What was the subject matter of that?
 13 A. Again, this was the very early stages of the
 14 PSAA development, so to brief him on our progress.
 15 Q. Okay. So it's fair to say that your meetings
 16 with the secretaries of education, from Hart to Mazzoni,
 17 if they took place, they dealt with the PSAA; is that
 18 right?
 19 A. Yes.
 20 Q. Okay. Did you have any meetings with
 21 secretaries of education prior to Gary Hart's tenure?
 22 A. There wasn't a secretary -- wait. I don't
 23 recall when the secretary of education office was set
 24 up, but I think it was in Pete Wilson's administration,
 25 just before that, and I was not involved in any of those

1 meetings.
 2 Q. Okay. Help me understand, will you, Doctor.
 3 What's the differences between your division and
 4 standards and assessment and compliance?
 5 A. Standards and assessment division is
 6 responsible for the statewide assessment system. The
 7 compliance division is responsible for all the
 8 compliance work that goes on in the Department.
 9 Q. With federal and state mandates?
 10 A. Yes. And I'm responsible for the -- mostly for
 11 the accountability system under PSAA.
 12 Q. How does the school accountability report card
 13 fit into that?
 14 A. School accountability report card is in my
 15 division.
 16 Q. But why?
 17 MS. READ SPANGLER: Objection. Calls for
 18 speculation.
 19 THE WITNESS: It's essentially just an
 20 historical fact from early on in Prop. 98, the fact that
 21 I did it and that we developed the template, so it
 22 stayed with me.
 23 Q. BY MR. ROSENBAUM: Is there a person or persons
 24 in your office that have primary responsibility with
 25 respect to the school accountability report card?

1 A. Yes, that's Linda Carstens.
 2 Q. What does your division do with respect to the
 3 school accountability report card?
 4 MR. VIRJEE: Objection. Asked and answered.
 5 MS. READ SPANGLER: Join.
 6 THE WITNESS: The responsibilities of my
 7 division in the Department with respect to the school
 8 accountability report cards are extremely limited.
 9 We're required to develop the template. Historically
 10 that's all we've been required to do.
 11 And to the extent that any information in
 12 subsequent pieces of legislation were required to be
 13 produced by the Department, we would work with other
 14 people in the Department to ensure that the data is
 15 available to the districts for use.
 16 Q. BY MR. ROSENBAUM: How often does that happen?
 17 MR. VIRJEE: Objection. Calls for speculation.
 18 THE WITNESS: How often does what happen?
 19 MR. ROSENBAUM: Somebody else wants to --
 20 THE WITNESS: I'm sorry?
 21 MR. ROSENBAUM: Strike that.
 22 Q. Help me understand this. When you say PSAA,
 23 one of those A's is assessment, right?
 24 A. No.
 25 Q. No, it's not, is it?

1 That's one of those trick questions.
 2 MR. VIRJEE: The ones he promised he wouldn't
 3 ask.
 4 MR. ROSENBAUM: But I'm withdrawing it, so I'm
 5 keeping my word.
 6 Q. Help me understand. What is the difference?
 7 You've given me a definitional difference, but
 8 operationally what's the difference between what you do
 9 and what standards and assessments does?
 10 MR. VIRJEE: Objection. Asked and answered.
 11 MS. READ SPANGLER: Calls for speculation.
 12 THE WITNESS: Standards and assessment is
 13 involved in the implementation of the statewide
 14 assessment system, which is currently called STAR.
 15 My division is responsible for the Public
 16 School Accountability Act. The intersection is that we
 17 used the products out of the assessment office for use
 18 in the API when they are ready.
 19 Q. BY MR. ROSENBAUM: Okay. Now, in your office,
 20 as you told me several times now, it's policy and
 21 evaluation, right?
 22 A. Yes.
 23 Q. Okay. What is your understanding, sir, of what
 24 the word "policy" means?
 25 MR. VIRJEE: Objection. Vague and ambiguous.

1 THE WITNESS: Word "policy" in this sense would
 2 be in the sense of policy that is used in the phrase
 3 public policy; in other words, what is the effects of
 4 different policies in the field of education.
 5 Q. BY MR. ROSENBAUM: In the state of California?
 6 A. Yes.
 7 Q. Okay. And when you use the phrase "public
 8 policy," what does that mean?
 9 A. It means policy related to public agencies,
 10 such as health and welfare, education, and the like.
 11 Q. Okay. But your shop is limited to education;
 12 is that right?
 13 A. Correct.
 14 Q. And I take it -- you correct me if I'm wrong,
 15 I take it that it is one of your duties and
 16 responsibilities as head of that division to familiarize
 17 yourself with the public policies of the State of
 18 California as regards to education; is that right?
 19 MR. VIRJEE: Objection. Vague and ambiguous as
 20 to "public policies."
 21 MS. READ SPANGLER: Join. Leading.
 22 THE WITNESS: That is not a job description for
 23 my job.
 24 Q. BY MR. ROSENBAUM: Okay. Do you know if anyone
 25 in the State of California has that job description?

1 MR. VIRJEE: Vague and ambiguous as to "job
 2 description," and calls for speculation.
 3 THE WITNESS: State superintendent of public
 4 instructions and the State Board of Education, by law,
 5 is required to deal with policy issues. The Department
 6 deals with administrative issues.
 7 Q. BY MR. ROSENBAUM: And when you say
 8 "administrative," what do you mean by that?
 9 A. We're responsible for administrating the
 10 various pieces of legislation, Education Code and
 11 regulations.
 12 Q. I'm sorry, you said you're responsible for
 13 administering the various Education Code?
 14 A. Yes.
 15 Q. And the various regulations?
 16 A. Yes.
 17 Q. Anything else?
 18 A. Well, there would be federal pieces of
 19 legislation as well.
 20 Q. You tell me if I'm wrong here, but I take it
 21 from your answer that your understanding of the policy
 22 that you're to administer, that policy is set by
 23 Education Code, by regulations, or by federal statute of
 24 regulations; is that correct?
 25 MR. VIRJEE: That misstates his testimony. He

1 didn't say he was to administer policy. He said he was
 2 to administer the Education Code, legislation,
 3 regulations.
 4 MS. READ SPANGLER: Join. Leading.
 5 THE WITNESS: Policy is embodied in the very
 6 things that you mentioned. That's what we do.
 7 Q. BY MR. ROSENBAUM: And to your knowledge, sir,
 8 is it embodied anywhere else?
 9 MR. VIRJEE: Objection. Vague and ambiguous.
 10 THE WITNESS: Not to my knowledge.
 11 Q. BY MR. ROSENBAUM: Okay. You've never been
 12 told it exists anywhere else; is that right?
 13 A. Right.
 14 Q. You've never been told that you're supposed to
 15 administer anything else?
 16 A. No.
 17 MR. ROSENBAUM: Let's go off the record for a
 18 moment.
 19 (Lunch recess taken.)
 20 Q. BY MR. ROSENBAUM: Doing okay?
 21 A. Yes.
 22 Q. Dr. Padia, help me understand how your office
 23 is organized. Who reports to you?
 24 A. The three managers that I mentioned before
 25 report to me directly.

- 1 Q. I apologize if you told me their names. One is
2 Linda Carstens?
3 A. Yes.
4 Q. How do you spell her last name?
5 A. C-a-r-s-t-e-n-s.
6 Q. And then there is -- is it Ms. McBride?
7 A. Pat, Patrick McCabe. And Patrick Chladek,
8 C-h-l-a-d-e-k.
9 Q. Spell that again, please?
10 A. C-h-l-a-d-e-k.
11 Q. Okay. And Dr. Carstens, is it C-a-r-s-t-e-n-s,
12 you said?
13 A. Yes.
14 Q. What are her responsibilities?
15 A. She's the manager of the analysis and
16 evaluation unit.
17 Q. Okay. And Pat McBride (sic)?
18 A. Pat McCabe is the manager of the Educational
19 Planning and Information Center, which we called EPIC,
20 E-P-I-C, all caps.
21 Q. That's cool. And the last person, Pat Chladek?
22 A. Chladek (pronunciation). And he's the manager
23 of the awards unit.
24 Q. The which one, awards?
25 A. Awards

- 1 Q. What does EPIC do?
2 A. EPIC is responsible, as I said earlier, for the
3 research and development work on the API.
4 Q. Analysis and evaluation does what?
5 MR. VIRJEE: Objection. Asked and answered.
6 Q. BY MR. ROSENBAUM: I want to know the
7 relationship between analysis evaluation and research
8 and development.
9 How do they interface with each other?
10 A. The analysis evaluation does the mandated
11 evaluations, and they provide additional analysis
12 capability for the division.
13 Q. Do you have regular staff meetings?
14 A. Yes.
15 Q. How often do they occur?
16 A. Every Monday morning.
17 Q. Are there minutes maintained of those meetings?
18 A. No.
19 Q. Okay. And who is there besides the three
20 managers?
21 MR. VIRJEE: Objection. Vague and ambiguous as
22 to time.
23 MS. READ SPANGLER: Assumes facts not in
24 evidence.
25 THE WITNESS: Typically we begin the morning

- 1 with the classified staff and my assistant, Cheryl
2 Tiner.
3 Q. BY MR. ROSENBAUM: How do you spell her name?
4 A. T-i-n-e-r.
5 Q. Okay. She's your --
6 A. Administrative assistant.
7 Q. Okay. What's "classified staff" mean?
8 A. That means the office technicians and the
9 secretaries.
10 Q. Okay. So you start the meeting with them, you
11 start --
12 A. Yes.
13 Q. And then what happens?
14 A. We review the events of the coming week, and
15 then once we go around the table and talk about all the
16 events, then the support staff leaves and then me, the
17 managers, and Ms. Tiner stay and discuss substantive
18 issues for the week.
19 Q. Okay. So how large is -- Linda Carstens, does
20 she have a staff in analysis and evaluation in addition
21 to -- I'm not interested in support staff at this stage.
22 Does she have a staff?
23 A. Yes.
24 Q. How many people are a part of that?
25 A. The professional staff?

- 1 Q. Yes.
2 A. Approximately eight.
3 Q. Okay. How about Pat McCabe?
4 A. Approximately eight.
5 Q. And the last person?
6 A. Likewise, approximately eight.
7 Q. Okay. So is it around 26 professionals in your
8 shop?
9 A. Approximately.
10 Q. Okay. Prior to this deposition, Doctor, did
11 you review any documents or materials?
12 A. No.
13 Q. Okay. Did you bring any documents or materials
14 with you?
15 A. No.
16 MS. READ SPANGLER: Well, other than the CV or
17 blurb or whatever you want to call it. Of course, I
18 really brought that so --
19 Q. BY MR. ROSENBAUM: Have you had any discussions
20 about this lawsuit with anyone in the Department of
21 Education?
22 A. Casual conversations when a newspaper article
23 comes out about the article, but nothing formal.
24 Q. Have you seen the complaint that was filed in
25 this case?

1 A. No.
 2 Q. Have you seen any documents related to this
 3 case?
 4 A. No.
 5 Q. Do you know what discovery is in a lawsuit?
 6 A. Roughly, yes.
 7 Q. Okay. Were you asked at any point to assist or
 8 to provide answers for discovery?
 9 MR. VIRJEE: Objection to the extent it calls
 10 for attorney/client privileged information.
 11 MS. READ SPANGLER: Join.
 12 MR. ROSENBAUM: Go ahead.
 13 MS. READ SPANGLER: Actually, can you read back
 14 that question?
 15 (Record read.)
 16 THE WITNESS: So I answer?
 17 MS. READ SPANGLER: Yeah, it's a yes or no
 18 question. Answer.
 19 THE WITNESS: I guess I don't understand the
 20 question.
 21 Q. BY MR. ROSENBAUM: I don't want the content, I
 22 just want to know if something happened.
 23 Did anyone come to you and say to you in sum or
 24 substance, can you help provide some information for
 25 discovery, or could you answer some interrogatories for

1 purposes of this case?
 2 MR. VIRJEE: I'm sorry, Mark, but that does ask
 3 for content, and I'll object on the grounds of
 4 attorney/client privilege.
 5 MS. READ SPANGLER: I'll join and instruct him
 6 not to answer.
 7 MR. ROSENBAUM: I'm going to object to
 8 Mr. Virjee's objection. He doesn't have an
 9 attorney/client relationship with this, and I'm not --
 10 Q. Have you done -- have you, to your knowledge,
 11 answered any questions with respect to discovery in this
 12 case?
 13 MR. VIRJEE: Objection. To the extent it calls
 14 for attorney/client privileged communication.
 15 MS. READ SPANGLER: Join.
 16 MR. ROSENBAUM: Go ahead. You can answer that.
 17 THE WITNESS: Could you repeat the question.
 18 Q. BY MR. ROSENBAUM: Sure. To your knowledge,
 19 have you answered any discovery questions in this case?
 20 A. No.
 21 Q. Have you seen any --
 22 A. I don't recall.
 23 Q. Have you seen any interrogatories in this case?
 24 A. I don't recall seeing any.
 25 Q. Do you know what an interrogatory is?

1 A. It's a question, isn't it?
 2 Q. Right. Have you seen any written
 3 interrogatories in this case?
 4 A. Not that I recall.
 5 Q. Okay. When is the first time you learned about
 6 this case?
 7 MS. READ SPANGLER: Aside from anything you
 8 might have learned through an attorney/client
 9 communication.
 10 THE WITNESS: I believe it was the newspaper
 11 article when the thing first hit.
 12 Q. BY MR. ROSENBAUM: Okay. In the Sacramento
 13 Bee?
 14 A. Probably.
 15 Q. You said you had some casual discussions about
 16 this case?
 17 A. Yes.
 18 Q. Putting aside attorneys for a moment, with
 19 whom?
 20 A. I don't recall.
 21 Q. Anybody in the Department of Education?
 22 A. It would be probably with colleagues.
 23 Q. Okay. Have you heard Superintendent Eastin
 24 talk about this case?
 25 A. No.

1 Q. Mr. Warren?
 2 A. No.
 3 Q. Mr. Hill?
 4 A. No.
 5 Q. Linda Carstens?
 6 A. I may have. We may have discussed it at one of
 7 the staff meetings.
 8 Q. One of those Monday meetings were you talking
 9 about?
 10 A. Yes.
 11 Q. Okay. Anybody from the State Board of
 12 Education?
 13 A. No.
 14 Q. Anybody from the governor's office?
 15 A. No.
 16 Q. Anybody from O'Melveny & Myers?
 17 MR. VIRJEE: Objection to the extent it calls
 18 for an attorney/client privileged communication.
 19 MS. READ SPANGLER: Join.
 20 MR. ROSENBAUM: Go ahead.
 21 THE WITNESS: Am I supposed to answer this
 22 question?
 23 MS. READ SPANGLER: Yeah. It's a yes or no
 24 question.
 25 THE WITNESS: Yes.

1 Q. BY MR. ROSENBAUM: Okay. And was that
2 Mr. Virjee?
3 MS. READ SPANGLER: I'm going to object on the
4 attorney/client privilege and instruct him not to
5 answer.
6 MR. ROSENBAUM: Do you have any authority for
7 objecting to conversations between Dr. Padia and a
8 member of O'Melveny & Myers?
9 MS. READ SPANGLER: Yes, it's attorney/client
10 privilege.
11 MR. ROSENBAUM: I understand that's your
12 objection. Do you have authority for that?
13 MR. VIRJEE: We don't have to give authority
14 for anything. You can ask him questions and he can
15 respond, and if you want to litigate the issue, we will.
16 MS. READ SPANGLER: If you want to move to
17 compel, that's fine.
18 MR. ROSENBAUM: I'll take that as a no.
19 MR. VIRJEE: You can take it however you want.
20 He didn't give you an answer and we're not going to.
21 Q. BY MR. ROSENBAUM: On how many occasions have
22 you spoken about this case with someone from O'Melveny
23 & Myers?
24 MS. READ SPANGLER: I'm going to object on the
25 attorney/client privilege and instruct him not to

1 answer.
2 Q. BY MR. ROSENBAUM: On the occasion or occasions
3 on which you spoke with a member of O'Melveny & Myers
4 was anyone else present?
5 MS. READ SPANGLER: I'm going to object. It
6 assumes facts not in evidence. Attorney/client
7 privilege. Attorney work product. And I'm going to
8 instruct him not to answer.
9 MR. ROSENBAUM: Doesn't assume any facts in
10 evidence, I'm asking him if something happened.
11 MS. READ SPANGLER: No, you said on the
12 occasions when, yadda, yadda, yadda, and that assumes
13 that there were occasions when that happened. In any
14 event, I've instructed him not to answer.
15 MR. ROSENBAUM: I didn't use the phrase "yadda,
16 yadda, yadda."
17 I take it if I ask any questions along this
18 line, you're going to object?
19 MS. READ SPANGLER: That's correct.
20 Q. BY MR. ROSENBAUM: Dr. Padia, at how many staff
21 meetings was this case discussed?
22 A. My best estimate, we discussed it once.
23 Q. When was that?
24 A. I have no memory of when it might be.
25 Q. Was it within the last month?

1 A. It would be sometime between the first
2 newspaper article and today.
3 Q. Okay. And who was present at that meeting, to
4 the best of your recollection?
5 A. If it was the morning staff meeting, then my
6 staff would be there.
7 Q. And what was said at that meeting regarding
8 this case?
9 A. I don't recall.
10 Q. Did you say anything?
11 A. I don't recall who brought it up or -- it was
12 just a casual observation about the lawsuit.
13 Q. And can you just tell me your best recollection
14 as to what the nature of that observation was?
15 A. No. I don't recall.
16 Q. You don't remember a single thing about the
17 conversation?
18 A. No, I don't.
19 Q. Any other discussions you've had regarding this
20 case?
21 A. No, not that I recall.
22 Q. Has your office done any studies or evaluations
23 with respect to the subject of the English learners?
24 MR. VIRJEE: Could you repeat the question,
25 please.

1 (Record read.)
2 THE WITNESS: We had an external evaluation of
3 bilingual education that occurred, I believe, in the --
4 sometime in the '80s, and I can't be more specific than
5 that.
6 Q. BY MR. ROSENBAUM: Do you know who performed
7 that evaluation?
8 A. I'd have to check my records, but my memory of
9 it, though I could be wrong, is that Berman & Wyler
10 performed that evaluation.
11 Q. Who, please?
12 A. A company called Berman & Wyler.
13 Q. Do you know where Berman & Wyler are located?
14 A. They were, at that time, in Berkeley, and I
15 don't believe they are together anymore.
16 Q. To the best of your recollection, sir, could
17 you tell me what the subject matter of that evaluation
18 was?
19 A. Without seeing the actual study proposal, I
20 believe that it was looking at the different types of
21 delivery systems for bilingual education and trying to
22 get an attempt at the efficacy of each of those delivery
23 systems.
24 Q. When you say "delivery system," what do you
25 understand that to mean?

1 A. I mean like Mervyn program, one-way, two-way
2 structures, English, things like that.

3 Q. What precipitated that evaluation taking place?

4 A. It was a legislatively-mandated evaluation.

5 Q. Okay. Do you remember what the findings were?

6 A. No, I don't remember.

7 Q. Has your office, sir, ever done an
8 investigation as to -- I'm sorry, has it ever done an
9 analysis or evaluation as to the qualifications of
10 teachers in the state of California teaching English
11 learners?

12 A. No.

13 Q. To your knowledge, has anyone in the Department
14 of Education ever undertaken such an analysis or
15 evaluation?

16 MR. VIRJEE: Calls for speculation.

17 THE WITNESS: I'm not aware of it.

18 Q. BY MR. ROSENBAUM: You've obviously never been
19 directed to do so?

20 A. That's correct.

21 Q. Nor have you ever asked anybody on your staff
22 to do so?

23 A. That's correct.

24 Q. Any reason why not?

25 A. That wasn't our mission.

1 Q. You told me earlier, sir, with respect to
2 the -- you talked to me earlier about the different
3 deciles. Has there been any study to see what the
4 percentage of English learners are in schools in those
5 different deciles?

6 MR. VIRJEE: Are you asking whether he's done
7 that?

8 MR. ROSENBAUM: No. I said, to your
9 knowledge --

10 MR. VIRJEE: You did say to your knowledge.

11 MR. ROSENBAUM: -- has any study been
12 undertaken.

13 THE WITNESS: Not a study as such, but I
14 believe an analysis has occurred that simply counted the
15 percentage of ELLs by decile.

16 Q. BY MR. ROSENBAUM: Who undertook that analysis?

17 A. I've seen it, I think, in a document the CTA
18 put out, California Teachers Association.

19 Q. Apart from that study, sir, has anyone in the
20 Department of Education undertaken any such study?

21 MR. VIRJEE: Calls for speculation.

22 MR. ROSENBAUM: So far as you know.

23 THE WITNESS: We have not studied the issue.
24 We used the data and the analysis of the similar
25 schools' ranks in the API.

1 Q. BY MR. ROSENBAUM: Tell me what you mean by
2 that answer.

3 A. The percent of English language learners at a
4 school is one of the 14 background factors that we use
5 to generate similar school ranks for the API.

6 Q. Okay. Thank you. Now, in addition, beyond
7 that, has anyone in the Department looked at what the
8 results are, how many -- what the percent of ELs are in
9 the first deciles compared to any of the other deciles?

10 MR. VIRJEE: Objection. Calls for speculation.

11 MS. READ SPANGLER: Join.

12 MR. ROSENBAUM: So far as you know.

13 THE WITNESS: I wouldn't know about it.

14 Q. BY MR. ROSENBAUM: Okay. You've never been
15 directed to undertake any such study or analysis or
16 evaluation?

17 A. No.

18 Q. And you're not aware of anybody in the
19 Department of Education who's done that?

20 A. I'm not aware of it, no.

21 Q. Do you know the results of the CTA study?

22 MR. VIRJEE: Objection. The document speaks
23 for itself.

24 MS. READ SPANGLER: And mischaracterizes his
25 testimony.

1 MR. ROSENBAUM: Go ahead.

2 THE WITNESS: The results. There were a number
3 of charts in the CTA report. It's probably a 30-page
4 report. What are you referring to?

5 Q. BY MR. ROSENBAUM: Do you know -- in terms of
6 the numbers of ELs in each decile, do you --

7 A. I don't know the numbers. I couldn't quote
8 those numbers.

9 Q. Do you know who actually did the -- you
10 characterized this as a study or an analysis?

11 A. An analysis.

12 Q. Do you know who did the analysis for CTA?

13 A. No.

14 Q. Do you know what methodology was utilized?

15 A. No, I don't, but they used our data that's up
16 on the Internet.

17 Q. Okay. So I take it from the database that you
18 have, it's possible to compute the numbers of ELs in
19 each decile; is that right?

20 A. That would be correct.

21 Q. And the average number of ELs per school; is
22 that right?

23 MR. VIRJEE: Average number per school?

24 MR. ROSENBAUM: In each decile.

25 MR. VIRJEE: In each decile?

1 MR. ROSENBAUM: Yes.
 2 MS. READ SPANGLER: So schools in those
 3 deciles.
 4 THE WITNESS: The answer is yes to both, but we
 5 typically report it out as a percent at the school for
 6 ELL.
 7 Q. BY MR. ROSENBAUM: And nobody's asked you to
 8 compile that data; is that right?
 9 A. They are compiled.
 10 Q. But nobody's asked you to print it out and
 11 provide it; is that right?
 12 A. Right.
 13 MR. VIRJEE: Objection. Vague and ambiguous as
 14 to "provide."
 15 MS. READ SPANGLER: Join.
 16 Q. BY MR. ROSENBAUM: Okay. Now, the similar
 17 schools index, that is not used for purposes of the
 18 awards; is that right?
 19 A. That's correct.
 20 Q. And what do you call them, 14 background
 21 characteristics?
 22 A. Yes.
 23 Q. Who decided what characteristics would go into
 24 the similar schools?
 25 A. The legislature.

1 Q. Okay. And where did you get your data as to
 2 numbers of ELs?
 3 A. We get it from the schools themselves.
 4 Q. The background characteristics, sir, that the
 5 legislature prescribed, were you personally consulted as
 6 to what background characteristics ought to be included?
 7 A. No.
 8 Q. So far as you know, was anyone in your office?
 9 A. No.
 10 Q. So far as you know, was anyone in the
 11 Department of Education?
 12 MR. VIRJEE: Objection. Calls for speculation.
 13 THE WITNESS: As I indicated before in a
 14 similar question like this, when legislation proceeds
 15 through the various houses, there are hearings, and
 16 Department staff attend hearings and sometimes are asked
 17 their opinion on things. I personally was not asked
 18 about this. I can't say whether or not others in the
 19 Department were asked.
 20 Q. BY MR. ROSENBAUM: Okay. You're not aware of
 21 anyone who was asked?
 22 A. No.
 23 Q. And are you aware at all as to how the
 24 background characteristics were determined?
 25 A. No.

1 Q. What's your opinion, sir, if you have one, as
 2 to whether or not -- strike that.
 3 What's the purpose of the similar schools
 4 index, as you understand it?
 5 A. The purpose is much like you have in athletic
 6 leagues when you have the different categories, sort of
 7 to level the playing field so that schools can compare
 8 performance with schools that are much like them
 9 demographically.
 10 Q. When you say "level the playing field," what do
 11 you mean by that phrase?
 12 A. I mean all other things equal, they would be
 13 the same.
 14 Q. Do you personally feel, sir, that the 14
 15 characteristics that were utilized -- strike that.
 16 The 14 characteristics, are they weighted
 17 equally in determining the similar source index?
 18 A. No.
 19 Q. How are they weighted?
 20 A. The indicators are the result of a process and
 21 a statistical procedure called multiple linear
 22 regression, and it's a stepwise multiple linear
 23 regression so that the variables that are selected first
 24 are those that have the highest correlation with test
 25 scores. And, once the effect of that indicator is

1 removed, then looks at the next highest correlation
 2 among the remaining indicators and moves that variable
 3 in, and so on, until all the variables are in. And the
 4 weightings are a direct consequence, in fact, derivative
 5 of the multiple linear regression procedure.
 6 Q. And when you say "correlation," correlation
 7 with what?
 8 A. Test scores on the SAT-9.
 9 Q. "Test scores on the SAT-9," does that mean
 10 school test scores, is that what we're talking about?
 11 A. Yes.
 12 Q. And to your knowledge, sir, this multiple
 13 linear regression, did it -- strike that.
 14 This multiple linear regression, that took
 15 place with respect to these 14 variables; is that right?
 16 A. Correct.
 17 Q. Do you know if a multiple linear regression was
 18 run with any variables other than the 14 variables?
 19 MR. VIRJEE: Objection. Vague as to time.
 20 MS. READ SPANGLER: Join.
 21 THE WITNESS: We didn't run it with any other
 22 variables.
 23 Q. BY MR. ROSENBAUM: To your knowledge, has
 24 anyone looked at any other variables besides these 14
 25 variables?

1 A. Anybody who downloads our data file could run a
 2 regressional correlation with anything they come up
 3 with, but to my knowledge, no one has done that and
 4 reported it back to me.
 5 Q. And you've never been asked to look at other
 6 variables; is that right?
 7 A. No.
 8 Q. And to your knowledge, no one in your office
 9 has been used to look at other variables?
 10 A. No, we simply use the variables that are under
 11 law.
 12 Q. Have you ever given any thought as to whether
 13 any other variables should have been considered?
 14 MR. VIRJEE: Objection. Lacks foundation.
 15 Calls for speculation.
 16 THE WITNESS: Basically, no. From a
 17 statistical perspective, nearly all the variability that
 18 could be accounted for is there with the set of
 19 indicators, so we would not, on our own, go beyond the
 20 law.
 21 Q. BY MR. ROSENBAUM: Okay. Now, one of the
 22 variables is percent English learners in the school; is
 23 that right?
 24 A. Correct.
 25 Q. Do you know -- I take it, you don't know why

1 Q. Okay. SCS, is that one of the 14?
 2 A. Yes, that was one of the ones that I didn't
 3 mention. The other one I just recalled is whether or
 4 not it's a year-around school.
 5 Q. I'm sorry, what?
 6 A. Whether or not it's a year-around school.
 7 Q. Okay. Now, you told me that -- I take it, you
 8 are an expert in multiple linear regression; is that
 9 right?
 10 A. I wouldn't characterize myself as an expert in
 11 it. We have people we work with that I would consider
 12 as experts.
 13 Q. Okay. And the step methodology, as you
 14 indicated to me, that ranks them in order of the degree
 15 to which they influence the correlation; is that right?
 16 A. It selects them based on the highest
 17 correlation.
 18 Q. What was the highest correlation of the 14?
 19 A. I believe it was socioeconomic status.
 20 Q. And help me understand this, sir, different of
 21 these variables account for so much variation; is that
 22 right?
 23 A. That's correct.
 24 Q. Okay. And do you know how much variation the
 25 SCS accounted for?

1 that one was selected; is that right?
 2 A. That's correct.
 3 Q. And can you tell me the other variables,
 4 please.
 5 MR. VIRJEE: Objection. The statute speaks for
 6 itself.
 7 THE WITNESS: There are the seven ethnic
 8 indicators, percent ELL, percent mobility at schools,
 9 average class size, and I can't remember the other two.
 10 Q. BY MR. ROSENBAUM: Okay. Now, the similar
 11 schools index, sir, what is your understanding of --
 12 strike that.
 13 To your knowledge, does the Department of
 14 Education use the similar schools index for any policy
 15 purposes?
 16 MR. VIRJEE: Objection. Vague and ambiguous as
 17 to "use."
 18 MR. ROSENBAUM: Go ahead.
 19 THE WITNESS: No, we don't use it for any
 20 policy purposes.
 21 Q. BY MR. ROSENBAUM: Okay. In your experience,
 22 do you know if anyone does?
 23 A. There is nothing in the law that allows the
 24 Department to use the similar school ranks for any
 25 limitation other than reporting of them.

1 A. I don't recall off the top of my head.
 2 Q. What's your best estimate?
 3 MR. VIRJEE: If you have one.
 4 THE WITNESS: I prefer not to estimate.
 5 Q. BY MR. ROSENBAUM: Okay. How could I find that
 6 information out?
 7 A. It's on our web site.
 8 Q. Will it tell me how much SCS accounted for?
 9 A. We have technical tables that can give an
 10 intercorrelation matrix, yes.
 11 Q. Who did this in your office? Was there one
 12 person or more than one?
 13 A. That was done under Pat McCabe's unit, the EPIC
 14 unit.
 15 Q. Okay. What was the second?
 16 A. I'm sorry?
 17 Q. The second correlation, second greatest
 18 correlation.
 19 A. I would only be guessing at this point. I
 20 would rather have the data in front of me, and then I
 21 could respond.
 22 Q. Okay. How is SCS data obtained?
 23 A. It's obtained from the districts and schools.
 24 Q. Okay. Do you know what data is utilized? Is
 25 it school lunch data?

1 MR. VIRJEE: Objection. Compound.
 2 THE WITNESS: I do know what data are used.
 3 There are two sources of data that are used. One is
 4 free and reduced lunch, and the other is educational
 5 level of the parent.
 6 Q. BY MR. ROSENBAUM: If I use the word reliable,
 7 you know what I mean in terms of statistics, right?
 8 A. I know what I mean when I use the word
 9 reliable. I don't know what you mean.
 10 Q. That's a good point. What do you mean?
 11 A. Reliable means that you would get essentially
 12 the same value if you asked it again.
 13 Q. You're familiar with the words valid and
 14 validity?
 15 A. Yes.
 16 Q. What's your understanding of what that means?
 17 A. Validity refers to whether or not the thing
 18 you're measuring, you're collecting, actually measures
 19 the construct that you're after.
 20 Q. Do you think SCS data is reliable that you use?
 21 MR. VIRJEE: Objection. Vague and ambiguous.
 22 Reliable for what?
 23 MR. ROSENBAUM: I'm going to withdraw the
 24 question for a minute.
 25 Q. There are problems in reporting parent

1 education levels at some schools; isn't that right?
 2 A. Yes.
 3 MR. VIRJEE: Objection. Calls for speculation.
 4 Lacks foundation.
 5 Q. BY MR. ROSENBAUM: And what's the basis for
 6 your answer, sir?
 7 A. Some districts don't collect parent information
 8 on their highest level of education.
 9 Q. Do you know how many districts fall into that
 10 category?
 11 A. No, I don't.
 12 Q. Do you know if it's more or less than 50?
 13 A. My guess would be -- estimate would be much
 14 less than 50.
 15 Q. Okay. Do you have an opinion as to whether or
 16 not the SCS data that's collected for purposes of the
 17 similar school index is reliable data?
 18 A. Yes, I believe it to be reliable.
 19 Q. And what's the basis of that?
 20 A. Because we use a combination of free and
 21 reduced lunch and parent education level. Combination
 22 of the two seems to produce a reliable statistic at the
 23 school level.
 24 Q. And how do you check that out? Strike that.
 25 Do you check it out? Do you do any

1 verification?
 2 MR. VIRJEE: Objection. Vague and ambiguous as
 3 to "check out" and "verification."
 4 THE WITNESS: We have the districts look at the
 5 data that they reported to us and determine whether or
 6 not they believe it to be accurate.
 7 Q. BY MR. ROSENBAUM: Go back a moment. You've
 8 already told me several times that you do evaluations
 9 sometimes, and then sometimes there are external
 10 evaluations; is that right?
 11 A. Yes.
 12 Q. How is it decided whether or not an evaluation
 13 is to be done by your office or by an external group or
 14 individual?
 15 A. Typically it's decided by the legislature. If
 16 the legislation within a particular bill requires
 17 evaluation, then it becomes an external evaluation.
 18 Q. Because?
 19 A. Because it's required in the legislation. It
 20 literally says the CDE will conduct an external
 21 evaluation.
 22 Q. And then am I correct, sir, your office decides
 23 who actually does the external evaluation?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "decides."

1 THE WITNESS: My office conducts a process
 2 which leads ultimately to the selection of a contractor
 3 to do the evaluation.
 4 Q. BY MR. ROSENBAUM: Who makes the decision?
 5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to "decision."
 7 THE WITNESS: Who signs the contract?
 8 MR. ROSENBAUM: No.
 9 Q. There are competitors, right?
 10 A. Yes.
 11 Q. And who decides which among the competitors
 12 actually gets the contract?
 13 A. We typically will bring in a few people from
 14 local districts or counties, the legislative analyst,
 15 Department of Finance, departmental people and sometimes
 16 outside experts who conduct a rigid evaluation process,
 17 and out of that process is the recommended winner based
 18 on technical merit. So among those bidders that pass
 19 our technical merits screening, the one that has the
 20 lowest bid receives the award.
 21 Q. And have you personally been involved in that
 22 process?
 23 A. Yes, but not for a number of years.
 24 Q. Have you, sir, ever undertaken any study or
 25 evaluation with respect to whether teachers teaching

1 English learners are qualified to teach them?
 2 MR. VIRJEE: Objection. Asked and answered.
 3 MS. READ SPANGLER: Objection. Asked and
 4 answered.
 5 THE WITNESS: As I indicated before, the answer
 6 is we have not.
 7 Q. BY MR. ROSENBAUM: Now, do you know -- are you
 8 familiar with the unit -- the CCR unit?
 9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to "familiar."
 11 THE WITNESS: Yes.
 12 Q. BY MR. ROSENBAUM: And what's your
 13 understanding of what that unit does?
 14 A. My understanding is that they do conduct
 15 district reviews relative to compliance issues, which
 16 are issues that relate to whether or not districts and
 17 schools are following the regulations and law and
 18 Education Code.
 19 Q. That's part of Dr. Greenfeld's area; is that
 20 right?
 21 A. Correct.
 22 Q. Have you personally ever looked at any results
 23 of any of the CCR evaluations?
 24 A. No.
 25 Q. Any of the reports?

1 A. No.
 2 Q. To your knowledge, has anyone in your office?
 3 A. Not to my knowledge.
 4 Q. You've never directed anyone to look at those
 5 reports?
 6 A. No.
 7 Q. Do you know what they include?
 8 A. No, I don't.
 9 Q. Do you know, sir, what the present per-pupil
 10 spending amount is for the state of California?
 11 A. No, I don't.
 12 Q. Okay. Do you know where California ranks in
 13 per-pupil spending?
 14 A. I don't have personal knowledge of the ranking.
 15 Q. What's your understanding?
 16 A. My understanding, based on when I hear my
 17 superintendent give speeches, is that we're ranked very
 18 low on per-pupil spending.
 19 Q. When is the last time -- your superintendent is
 20 my superintendent too, Superintendent Eastin?
 21 A. Yes.
 22 Q. Okay. When's the last time you heard her talk
 23 about that?
 24 A. I don't recall.
 25 Q. Within the last year or two?

1 A. It's possible.
 2 Q. Okay. You told me earlier, sir, that you,
 3 since the AP -- PSAA, you have attended State Board of
 4 Education meetings?
 5 MR. VIRJEE: Objection. Misstates his
 6 testimony.
 7 MR. ROSENBAUM: I don't think so.
 8 Q. Have you attended State Board of Education
 9 meetings?
 10 A. Typically I attend meetings for a portion of a
 11 meeting where I have an actual item in front of the
 12 Board.
 13 Q. And prior to passage of the PSAA, had you ever
 14 attended a State Board of Education meeting?
 15 A. Yes.
 16 Q. For purposes of making reports?
 17 A. For either the purpose of making reports or to
 18 simply observe.
 19 Q. Okay. Are there meetings in the Department of
 20 Education that you regularly attended?
 21 MR. VIRJEE: Other than what he's testified to?
 22 MR. ROSENBAUM: Other than what you previously
 23 testified to.
 24 THE WITNESS: Would you restate the question.
 25 Q. BY MR. ROSENBAUM: Sure. As Mr. Virjee states,

1 you've told us about certain meetings that you attend in
 2 the Department of Education, right?
 3 A. Certain meetings?
 4 Q. Meetings.
 5 A. Yes, I attend meetings at the Department of
 6 Education.
 7 Q. You don't have to repeat any of the meetings
 8 that you've already told me about.
 9 Are there other meetings that you've attended,
 10 sir, regularly attend?
 11 MS. READ SPANGLER: Currently?
 12 THE WITNESS: The only other meeting that I
 13 would attend modestly regularly is a meeting called
 14 leadership team.
 15 Q. BY MR. ROSENBAUM: What's a leadership team?
 16 A. This is a meeting that occurs on the first, I
 17 believe it's Tuesday, of every month where everyone in
 18 the Department who is a division director and above
 19 meets with the executive staff.
 20 Q. The executive staff, that includes
 21 Superintendent Eastin?
 22 A. Sometimes it includes her.
 23 Q. Who else does that include?
 24 A. It's the two chief deputies and the deputies.
 25 Q. Okay. Are there minutes maintained of those

1 meetings, so far as you know?
 2 A. I don't believe there are minutes.
 3 Q. Have you made presentations at those meetings?
 4 A. Yes.
 5 Q. About API?
 6 A. Yes.
 7 Q. Anything else?
 8 A. No.
 9 Q. Do you know what the pupil promotion and
 10 retention program is?
 11 A. I have a vague familiarity with it, yes.
 12 Q. Do you have any duties or responsibilities with
 13 respect to that?
 14 A. Not currently.
 15 Q. Does your office currently?
 16 A. No.
 17 Q. In the past have you had responsibilities?
 18 A. Yes.
 19 Q. What did they entail?
 20 MR. VIRJEE: Objection. Vague as to time.
 21 THE WITNESS: When the bill first passed, and I
 22 don't recall the bill number, my office brought together
 23 an advisory group to create some materials related to
 24 the promotion and retention law. The basic purpose was
 25 to provide information to districts.

1 Q. BY MR. ROSENBAUM: Does that body still exist?
 2 A. The advisory committee does not exist, but the
 3 work that we did out of there, I believe is up on the
 4 Internet somewhere.
 5 Q. How would I find that?
 6 MR. VIRJEE: Objection. Calls for speculation.
 7 MS. READ SPANGLER: Join.
 8 THE WITNESS: Do a search on our Internet site.
 9 Q. BY MR. ROSENBAUM: For pupil promotion and
 10 retention?
 11 A. Yes.
 12 Q. Do you know when it ceased existing, the
 13 committee?
 14 A. The committee was just a brief committee. It
 15 was an ad hoc committee that we put together to give us
 16 advice. I believe that we only met maybe two times.
 17 Q. And approximately when?
 18 A. I'd say three or four years ago.
 19 Q. Okay. Dr. Padia, do you ever meet with parent
 20 groups?
 21 A. Rarely.
 22 Q. When was the last time?
 23 A. There would be two situations where I might
 24 interact with a parent group. One would be on a school
 25 site visit through the California school recognition

1 program where we'd meet with parents at the school. The
 2 other would be in cases where I might have given
 3 presentations at, say, the PTA convention.
 4 Q. Do you remember the last PTA convention you
 5 attended?
 6 A. No, I don't.
 7 Q. It wasn't this year or last year?
 8 A. No, it was well over ten, maybe longer.
 9 Q. Do you know what CSBA is?
 10 A. Yes, I do.
 11 Q. Have you ever met with any representatives of
 12 CSBA?
 13 A. Yes.
 14 Q. When was that?
 15 A. CSBA people are on our Committee. In fact, the
 16 co-chair of our committee is Holly Covin who is -- works
 17 for CSBA.
 18 Q. And the committee you're referring to is the
 19 advisory committee?
 20 A. The PSAA advisory committee, yes.
 21 Q. What about CTA?
 22 MR. VIRJEE: What about CTA?
 23 Q. BY MR. ROSENBAUM: Did you ever meet with CTA?
 24 A. I don't meet formally with CTA. There are CTA
 25 representatives on the PSA advisory committee.

1 Q. Put aside the advisory committee. Have you met
 2 with CTA?
 3 MR. VIRJEE: Objection. Asked and answered.
 4 THE WITNESS: No, I have not.
 5 Q. BY MR. ROSENBAUM: Or CSBA?
 6 MR. VIRJEE: Objection. Asked and answered.
 7 THE WITNESS: Or CSBA.
 8 Q. BY MR. ROSENBAUM: Okay. We've been talking,
 9 sir, about the API. API stands for Academic and
 10 Performance Index; is that right?
 11 A. Yes.
 12 Q. Can you tell me, sir, what your understanding
 13 of the Academic and Performance Index is?
 14 A. The API is an index that runs in value between
 15 200 and 1,000. It is a single number that is, at this
 16 point in time, entirely derivative of the Stanford-9
 17 results at a school.
 18 Q. And there was an API -- was there an API index
 19 in 1999?
 20 A. Yes.
 21 Q. And then another one in 2000?
 22 A. There was the 2000 API. We refer to them by
 23 name and year, so there's a 1999 API, and there's a 2000
 24 API, base year and growth.
 25 Q. And do you know who the authors of the

1 Stanford-9 are?
 2 A. I have no idea.
 3 Q. Do other states, to your knowledge, have
 4 counterparts to the API?
 5 MR. VIRJEE: Objection. Vague and ambiguous.
 6 THE WITNESS: I believe that -- give me a
 7 second.
 8 MR. ROSENBAUM: Sure.
 9 THE WITNESS: Kentucky has an index that's
 10 constructed similarly to the API. In fact, the API
 11 construction as we have it now is loosely based on the
 12 Kentucky model.
 13 Q. BY MR. ROSENBAUM: Any other states, sir, to
 14 your knowledge?
 15 MR. VIRJEE: Same objection. Vague and
 16 ambiguous.
 17 THE WITNESS: I'm not aware of any other states
 18 that have a specific index.
 19 Q. BY MR. ROSENBAUM: Okay. When you say "loosely
 20 based," what do you mean by that?
 21 A. Kentucky's system is a system where pupils are
 22 mapped into categories and each category is given a
 23 particular rating. They are multiplied in sum for a
 24 single value for a school, so to that extent we have a
 25 similar system. The ratings are different, the

1 categories are different. That's why it's loosely based
 2 on that.
 3 Q. Do you know if the Kentucky system, sir, relies
 4 exclusively on the Stanford-9?
 5 A. I don't think it relies on any part of the
 6 Stanford-9.
 7 Q. Okay. So as far as you know, California is the
 8 only state to rely exclusively on the Stanford-9; is
 9 that right?
 10 MS. READ SPANGLER: Objection. Misstates his
 11 testimony. Leading.
 12 MR. VIRJEE: Also vague as to time.
 13 MS. READ SPANGLER: Join.
 14 THE WITNESS: Is your question --
 15 MS. READ SPANGLER: If you don't understand his
 16 question, he needs to fix it.
 17 THE WITNESS: I don't understand your question.
 18 Q. BY MR. ROSENBAUM: At this time, sir, is
 19 California the only state that exclusively relies upon
 20 Stanford-9?
 21 MR. VIRJEE: That's the same question. He just
 22 told you he didn't understand.
 23 Objection. Vague and ambiguous, and vague as
 24 to time.
 25 He's already told you he doesn't understand the

1 question.
 2 THE WITNESS: I still don't understand the
 3 question.
 4 Q. BY MR. ROSENBAUM: Okay. The API relies
 5 exclusively on the Stanford-9 for its index; is that
 6 right?
 7 MR. VIRJEE: Objection. Vague as to time.
 8 MR. ROSENBAUM: For its assessment.
 9 MR. VIRJEE: Objection. Vague and ambiguous as
 10 to time.
 11 THE WITNESS: For the present.
 12 Q. BY MR. ROSENBAUM: Do you know any other state
 13 that relies exclusively on Stanford-9 for assessment at
 14 the present time?
 15 MS. READ SPANGLER: Objection. Vague and
 16 ambiguous as to "assessment."
 17 THE WITNESS: I don't have any knowledge of
 18 that.
 19 Q. BY MR. ROSENBAUM: You mean you don't know of
 20 any other state?
 21 A. I simply don't know the answer to the question,
 22 whether or not some states do. Stanford-9 is used
 23 throughout the country. No doubt there are states that
 24 use it exclusively, would be my guess. It's simply a
 25 guess because I don't know.

1 Q. What does Kentucky rely upon on?
 2 A. They have their own locally-developed tests.
 3 Q. Do you know if they use any nationally-normed
 4 test?
 5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to "use."
 7 THE WITNESS: I'm not aware of whether or not
 8 any nationally-normed test is either part of their
 9 assessment system or is included in their index.
 10 Q. BY MR. ROSENBAUM: Has your office, sir, ever
 11 conducted any sort of evaluation to look at assessment
 12 systems used in other states?
 13 MS. READ SPANGLER: Objection. Vague and
 14 ambiguous as to the term "assessment systems."
 15 THE WITNESS: No, we have never conducted an
 16 evaluation of assessments in other states.
 17 Q. BY MR. ROSENBAUM: Or any survey just to find
 18 out the existence of assessment systems in other states?
 19 MS. READ SPANGLER: Same objection.
 20 THE WITNESS: On occasion we've called other
 21 states to determine what they used, and there are also
 22 national publications that list the assessment systems
 23 for various states.
 24 Q. BY MR. ROSENBAUM: But I take it from your
 25 answer, your office has never systematically looked at

1 that question; is that right?
 2 A. Our interests would not be what other state
 3 assessment systems look like, but more of what our
 4 system looks like and what we can learn from other
 5 states that have an index, such as Kentucky.
 6 Q. And why is that?
 7 A. Because my office doesn't have a choice on what
 8 assessment we have, that's legislatively mandated.
 9 There's no point for us to look at anything else.
 10 Q. And what other states has your office called,
 11 to your knowledge, regarding assessment systems?
 12 A. I believe we've had contact with Texas,
 13 Kentucky, Philadelphia. That's not a state, but we've
 14 had contact with Philadelphia.
 15 Q. Why?
 16 A. They use the SAT-9 exclusively and they have an
 17 index.
 18 Q. Which one does?
 19 A. Philadelphia.
 20 Q. And why talk to Texas?
 21 A. Because we thought that they might be
 22 considering an index.
 23 Q. And what did you learn?
 24 A. I'm sorry?
 25 Q. What did you learn?

1 A. I don't have the -- I didn't learn of the
 2 results of that conversation. My best estimate is that
 3 they don't have an index at this point, but they're
 4 still considering it.
 5 Q. Okay. What about Kentucky, what did you learn
 6 about Kentucky?
 7 MR. VIRJEE: Other than what he's already
 8 testified to?
 9 THE WITNESS: Kentucky has an index.
 10 Q. BY MR. ROSENBAUM: And what did you learn about
 11 Philadelphia in addition to the fact that they
 12 exclusively rely upon Stanford-9?
 13 A. They have an index loosely related to ours.
 14 Q. What do you mean when you say "loosely
 15 related"?
 16 A. In the same fashion I described earlier with
 17 respect to Kentucky.
 18 Q. Do you know how it's used by Philadelphia?
 19 A. No, I don't.
 20 Q. Do you know if anyone inquired as to how it was
 21 used?
 22 MR. VIRJEE: Objection. Vague and ambiguous.
 23 THE WITNESS: I don't recall.
 24 Q. BY MR. ROSENBAUM: Okay. The Stanford-9 in
 25 California for the year 1999, what languages was it

1 administered to -- in?
 2 That's two prepositions and they are both
 3 sitting there, and one should go.
 4 MR. VIRJEE: Compound.
 5 MS. READ SPANGLER: Objection. Dangling
 6 preposition.
 7 Q. BY MR. ROSENBAUM: In what languages was the
 8 Stanford-9 administered in 1999?
 9 A. Stanford-9 is English language only.
 10 Q. Same for 2000?
 11 A. Yes.
 12 Q. Do you know, sir, how many English learners
 13 there are in Spanish in the state of California?
 14 MR. VIRJEE: Objection. Asked and answered.
 15 THE WITNESS: I'd estimate that there are
 16 25-percent English language learners, and I believe that
 17 75 percent of the 25 percent are in Spanish.
 18 Q. BY MR. ROSENBAUM: Okay. And correct me if I'm
 19 wrong, sir, there's something like 80 languages spoken
 20 in the school system; isn't that right?
 21 MR. VIRJEE: Objection. Lacks foundation.
 22 Calls for speculation.
 23 Q. BY MR. ROSENBAUM: Is that right?
 24 A. It sounds reasonable.
 25 Q. And do you know how many languages there are

1 for English learners?
 2 MS. READ SPANGLER: What?
 3 Q. BY MR. ROSENBAUM: How many different languages
 4 do English learners concentrate in? We talked about
 5 Spanish. How many other languages?
 6 MR. VIRJEE: Objection. Vague and ambiguous.
 7 Unintelligible.
 8 MS. READ SPANGLER: Join. I don't know what
 9 you're asking.
 10 MR. ROSENBAUM: Go ahead.
 11 Q. What other languages?
 12 A. For every language that is spoken at home,
 13 different language spoken at home and they have pupils
 14 in the school system, that is a language the English
 15 language learner would speak.
 16 Q. Was there any discussion of which you're aware,
 17 sir, expressing concern about the fact that the
 18 Stanford-9 was only administered in English?
 19 MR. VIRJEE: Objection. Vague as to time.
 20 Calls for speculation.
 21 THE WITNESS: Could you rephrase your question.
 22 Q. BY MR. ROSENBAUM: Yeah. You participated or
 23 were present at discussions with the use of the
 24 Stanford-9 for purposes of the API; isn't that correct?
 25 A. That's correct.

1 Q. In any of those discussions, sir, was a concern
2 raised about the fact that it was only administered in
3 English?

4 A. It was a topic of discussion in the PSAA
5 advisory committee, yes.

6 Q. How about in the legislature, do you know if it
7 was a topic there?

8 A. It wasn't a topic of any of the hearings I
9 attended so I don't know.

10 Q. In your discussions with any of the secretaries
11 of education that we talked about earlier, was the
12 subject raised that it was only administered in English,
13 was it raised in any of those discussions?

14 A. No, not that I recall.

15 Q. Okay. And at any of the meetings of the State
16 Board of Education was the concern raised that it was
17 only administered in English?

18 MR. VIRJEE: Objection. Calls for speculation.
19 Lacks foundation.

20 THE WITNESS: I don't have any personal
21 knowledge of it. I didn't observe it.

22 Q. BY MR. ROSENBAUM: Now, you mentioned that --
23 anyplace else besides the advisory committee? I'll
24 withdraw that question.

25 You have -- you're aware that teachers have

1 A. Regarding the Stanford-9 and the API, yes.

2 Q. And some of those letters dealt with the fact
3 that it was administered only in English?

4 A. I can't recall one that was that specific.

5 Q. Okay. How do you know that you've heard from
6 teachers on this subject?

7 A. Because I've heard -- I've been at -- had
8 conversations with the assessment director.

9 Q. Mr. Spears?

10 A. Mr. Spears.

11 Q. Okay. And have there been concerns expressed
12 by principals?

13 MR. VIRJEE: Objection. Calls for speculation.

14 MS. READ SPANGLER: Join.

15 THE WITNESS: I really can't say as to
16 occupational levels who had concerns or not.

17 Q. BY MR. ROSENBAUM: How about from members of
18 local Boards of Education?

19 A. I can't say.

20 MR. VIRJEE: Objection. Calls for speculation.

21 MS. READ SPANGLER: Join.

22 Q. BY MR. ROSENBAUM: You said that there were
23 discussions at advisory committee meetings, is that
24 right, over the subject of the administration of the
25 Stanford-9 only in English?

1 views about the use of the Stanford-9 for purposes of
2 the API; is that right?

3 MR. VIRJEE: Objection. Vague and ambiguous.
4 Overbroad. Calls for speculation.

5 THE WITNESS: My office hears occasionally from
6 teachers that have concerns, yes.

7 Q. BY MR. ROSENBAUM: How does that take place?

8 A. Typically from letters.

9 Q. Do you keep those letters?

10 A. They're part of the correspondence that the
11 Department has.

12 Q. Where are they maintained?

13 A. It's maintained through the executive office.

14 Q. Where is that? Is that Superintendent Eastin's
15 office?

16 A. Yes.

17 Q. You get letters and then you pass it on to the
18 superintendent's office?

19 A. No, the superintendent gets letters, passes
20 them on to us if it's related to the API. If it's
21 related to just testing, itself, it goes to the
22 assessment division. They would get the lion's share of
23 the letters, not me.

24 Q. And you've seen letters directed to you from
25 the superintendent's office regarding the Stanford-9?

1 A. No, it wasn't over administration of Stanford-9
2 in English since that's the law. The discussion related
3 to how those results might or might not be used in the
4 API.

5 Q. Okay. Is it fair to say, sir, that there were
6 objections to using the results of the Stanford-9
7 because it was administered only in English?

8 A. There were objections to the use of the
9 Stanford-9 for the ELL population.

10 Q. Okay. And who expressed those concerns?

11 MR. VIRJEE: At these advisory or council
12 meetings?

13 MR. ROSENBAUM: Right.

14 THE WITNESS: I'd have to check the minutes of
15 the meetings to say who exactly, but I do recall one
16 individual in particular on this. Her name was Shelly
17 Speigel-Coleman. She works for Los Angeles Unified
18 School District. Perhaps it's a county office. I don't
19 recall.

20 Q. BY MR. ROSENBAUM: Was this expressed at more
21 than one meeting?

22 A. Yes.

23 Q. Approximately how many?

24 A. There were a series of four or five meetings
25 where this issue came up.

1 Q. Would this have been the principal issue that
 2 was discussed at these four or five meetings?
 3 A. No, there were a lot of issues. This was very
 4 early on in the development of the API. There were
 5 numerous issues of what the API would look like, if it
 6 would be included and counted or not counted. This was
 7 not an insignificant issue.
 8 Q. Why do you say that?
 9 A. Because it was discussed at a portion of every
 10 meeting.
 11 Q. Okay. And earlier when you told me 25 percent,
 12 that's 25 percent of the California student population?
 13 A. I believe so.
 14 Q. And what is the California student population,
 15 to the best of your knowledge?
 16 A. Roughly six million.
 17 Q. Okay. In addition to this individual from the
 18 Los Angeles School District, anyone else that you --
 19 MR. VIRJEE: That misstates his testimony. He
 20 stated it might have been the county office.
 21 Q. BY MR. ROSENBAUM: From either the Los Angeles
 22 School District or the county, anyone else that you
 23 recall?
 24 MS. READ SPANGLER: I'm sorry, can you read
 25 back the question.

1 MR. ROSENBAUM: I'll just redo it.
 2 Q. Anyone else that you remember besides her?
 3 A. Yes, another member who was quite vocal on this
 4 was Eugene Garcia, the dean of the School of Education
 5 UC Berkeley.
 6 Q. What was his position, as you understand it?
 7 A. I'm not sure I can adequately portray his
 8 position, but I believe the argument was to exclude all
 9 ELLs from the calculation in the API.
 10 Q. And did he -- what was the reasons, as best you
 11 remember, sir, as to why Dean Garcia objected to
 12 inclusion of ELLs for purposes of calculating the API?
 13 A. I don't feel comfortable paraphrasing his
 14 argument. I would hope you'd talk to him directly.
 15 Q. He asked you to resign from the committee over
 16 this issue; isn't that right?
 17 A. That's correct.
 18 Q. How was he on the committee in the first place?
 19 A. The superintendent selected him.
 20 Q. Were you consulted as to who should be on this
 21 committee?
 22 A. I made some initial recommendations, and then
 23 the superintendent accepted them or not and added in the
 24 people that she wanted on the committee. This was her
 25 committee.

1 Q. Did you recommend Dean Garcia?
 2 A. I don't recall.
 3 Q. Do you know him personally?
 4 MR. VIRJEE: Objection. Vague and ambiguous as
 5 to "personally."
 6 MS. READ SPANGLER: And vague as to time.
 7 THE WITNESS: I've known him professionally
 8 over the years.
 9 Q. BY MR. ROSENBAUM: You respect him as an
 10 educator?
 11 A. I have respect for him and his views, yes. I
 12 don't agree with him.
 13 Q. And what's the basis of your respect for his
 14 views?
 15 MR. VIRJEE: Objection. Vague and ambiguous.
 16 THE WITNESS: For his views of what?
 17 MR. ROSENBAUM: I was just using your phrase.
 18 Q. If I understood you correctly, you said you
 19 have respect for his views, is that right?
 20 MR. VIRJEE: He also said he didn't agree with
 21 them.
 22 MR. ROSENBAUM: I understand that. With
 23 respect to his views, I'm just trying to figure out what
 24 the basis of that answer is.
 25 MR. VIRJEE: Other than common courtesy.

1 MR. ROSENBAUM: That's an inappropriate
 2 comment.
 3 MR. VIRJEE: No, it's not. It's a very
 4 appropriate comment. The question is vague and
 5 ambiguous.
 6 MS. READ SPANGLER: Join.
 7 MR. ROSENBAUM: Go ahead, sir.
 8 THE WITNESS: He is an individual who speaks
 9 with a lot of passion and a lot of feeling.
 10 MR. ROSENBAUM: A lot of what, please?
 11 THE WITNESS: Of feeling. And so I have
 12 respect for someone who stands up for what he believes.
 13 Q. BY MR. ROSENBAUM: Was there any response that
 14 you recall, sir, to the comments of either him or the
 15 woman you've mentioned from Los Angeles regarding their
 16 concerns?
 17 A. Well, there was a spirited debate over the
 18 course of two or three meetings.
 19 Q. Did you say anything on this subject, sir?
 20 A. The staff's role was not to comment on these
 21 deliberations, but rather to listen.
 22 Q. So the answer is --
 23 A. The staff would mention something in the way of
 24 clarifying comments, factual comments, but not with
 25 comments of opinion.

1 Q. You didn't regard that as your position, as you
 2 place, to respond substantively?
 3 A. If it was a factual question. But the purpose
 4 of the committee is to listen to the committee members
 5 and take their perspective.
 6 Q. Regarding, sir, your discussion with me earlier
 7 about validity, have there been any tests, to your
 8 knowledge, of the validity of the Stanford-9 as applied
 9 to English learners?
 10 A. I'm not aware of any.
 11 Q. Or its reliability?
 12 A. I have -- the reliability?
 13 Q. For English learners.
 14 A. I have no knowledge of that.
 15 Q. You were never asked to find out its validity
 16 or its reliability with respect to English learners?
 17 A. That wouldn't have been my job. That would
 18 have been done in the assessment division.
 19 Q. Do you know if that was done in the assessment
 20 division?
 21 A. I have no idea.
 22 Q. Now, tell me your understanding, please, as to
 23 how the API was developed. Let me strike that.
 24 So far as you know, are there any plans in the
 25 future to administer the Stanford-9 in any other

1 language besides English?
 2 A. So far as I know, there are no plans on it.
 3 Q. Who publishes the Stanford-9?
 4 A. Harcourt Educational Measurement.
 5 Q. Okay. And do you know, sir, whether or not
 6 anyone has ever expressed any concerns to Harcourt about
 7 it appearing only in English?
 8 A. Not to my knowledge.
 9 Q. Okay. I want to return to the question I asked
 10 you a moment ago. Can you tell me, please, your
 11 understanding as to how the API was developed?
 12 A. It's a very broad question. It would help me
 13 if you could narrow it a little bit so I could be more
 14 responsive.
 15 Q. I will in just a second. Has there been any
 16 investigation, analysis or evaluation as to how English
 17 language learners did on the API -- on the Stanford-9?
 18 MR. VIRJEE: Objection. Asked and answered.
 19 THE WITNESS: I believe the assessment division
 20 actually publically reports on the Internet the scores
 21 of the English learners on the Stanford-9.
 22 Q. BY MR. ROSENBAUM: Let me ask a question that's
 23 a little more refined than that. To your knowledge, has
 24 anyone in your office looked into the question about
 25 whether or not ELL students did better or worse than

1 what would have been expected on the Stanford-9 in
 2 California?
 3 MS. READ SPANGLER: Objection. Vague and
 4 ambiguous as to better than expected.
 5 THE WITNESS: To my knowledge, we wouldn't have
 6 done that.
 7 Q. BY MR. ROSENBAUM: How about the assessment
 8 division, do you know if they did it?
 9 MS. READ SPANGLER: Same objection.
 10 THE WITNESS: As I say, they report the results
 11 out so they can look at it and see if one number is
 12 larger than the other.
 13 Q. BY MR. ROSENBAUM: Do you know if there's been
 14 any specific analysis or evaluation beyond just the
 15 reporting of the numbers?
 16 A. I'm not aware of any.
 17 Q. Okay. Anywhere in the Department of Education,
 18 so far as you know?
 19 A. So far as I know.
 20 Q. Okay. And you've never been asked to look into
 21 this question?
 22 A. No.
 23 Q. Okay. And you've never directed anybody on
 24 your staff to look into this question?
 25 A. No.

1 Q. Okay. And why is that?
 2 A. We're not involved in assessment. That's not
 3 our job. Our job is to construct the API.
 4 Q. Okay. And in constructing the API -- your
 5 office constructed the API?
 6 MR. VIRJEE: Objection. Vague and ambiguous as
 7 to "constructed the API."
 8 THE WITNESS: My office calculates the API.
 9 Q. BY MR. ROSENBAUM: Based on what the
 10 legislature gives you?
 11 MR. VIRJEE: Objection. Vague and ambiguous.
 12 Overbroad.
 13 THE WITNESS: Based on what the legislation
 14 directed and the State Board approved.
 15 Q. BY MR. ROSENBAUM: Okay. Has anyone on the
 16 State Board ever asked you your judgment, sir, as to the
 17 fairness of the API?
 18 MS. READ SPANGLER: Objection. Vague and
 19 ambiguous as to the term "fairness."
 20 THE WITNESS: Not that I recall.
 21 Q. BY MR. ROSENBAUM: Or anyone in your office?
 22 MS. READ SPANGLER: Same objection.
 23 THE WITNESS: If you could clarify more what
 24 you mean by fairness, then perhaps I could respond.
 25 Q. BY MR. ROSENBAUM: You're familiar with the

1 word fairness?
 2 A. Yes.
 3 Q. Tell me what your understanding is.
 4 MR. VIRJEE: Objection. Overbroad as to in
 5 what context.
 6 MR. ROSENBAUM: Go ahead, sir.
 7 THE WITNESS: I would go to a dictionary and
 8 look it up. I have a working knowledge of the word
 9 "fairness."
 10 Q. BY MR. ROSENBAUM: Okay. Tell me your
 11 understanding as to how the API was developed.
 12 A. The API was developed by a process that began
 13 with the formulation of the PSAA advisory group, and
 14 that group formed an additional committee called the
 15 Technical Design Group or TDG, all caps.
 16 Q. TDG?
 17 A. T, as in Tango. Technical Design Group, yes.
 18 That group consisted of two members of the PSAA and
 19 various experts across the state. They made
 20 recommendations to the PSAA advisory committee who, in
 21 turn, made recommendations to the superintendent and to
 22 the State Board regarding the construction and
 23 calculation of the API.
 24 Q. Okay. And who were the members of the TDG?
 25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to time.
 2 THE WITNESS: The current members of the TDG
 3 are the two PSAA advisory committee members, which are
 4 Professor Ed Hartell, Stanford; Professor Eva Baker at
 5 UCLA; Brian Stecher at the Rand Corporation, R-a-n-d;
 6 Mark Wilson, professor at UC Berkeley; Mike Martinez,
 7 professor at UC Irvine; Ted Bartell, director of
 8 evaluation and research, Los Angeles Unified School
 9 District; Tej, T-e-j, Pandey, P-a-n-d-e-y, a former
 10 employee of the department of assessment, who has since
 11 retired, and there's one more member who I can't think
 12 of right now. But, again, all of this is also up on our
 13 Internet site.
 14 Q. BY MR. ROSENBAUM: These individuals who you
 15 mentioned, I want to see if I understand you, these
 16 persons, were they involved in the actual development of
 17 the API?
 18 A. Yes. Yes.
 19 Q. And they made a set of recommendations to the
 20 superintendent and to the State Board?
 21 MR. VIRJEE: Objection. Misstates his
 22 testimony.
 23 THE WITNESS: Their recommendation was to the
 24 PSAA advisory committee.
 25 Q. BY MR. ROSENBAUM: And then the PSAA advisory

1 committee made recommendations to the superintendent; is
 2 that right?
 3 MR. VIRJEE: Objection. Asked and answered.
 4 THE WITNESS: Yes, to the superintendent and
 5 the State Board.
 6 Q. BY MR. ROSENBAUM: And to your knowledge, sir,
 7 the recommendations that the TDG put together, were they
 8 adopted without change or modification by the PSAA?
 9 A. Say again, please.
 10 Q. Were there -- they made a set of
 11 recommendations, you told me, to the PSAA?
 12 MS. READ SPANGLER: Advisory group?
 13 MR. ROSENBAUM: I'm sorry, advisory committee.
 14 Q. Right?
 15 A. Yes.
 16 Q. Were their recommendations accepted without
 17 modification or deletion?
 18 MR. VIRJEE: By the PSAA?
 19 MR. ROSENBAUM: Yeah.
 20 THE WITNESS: I can best characterize it as an
 21 interaction between the two groups, and so I can't say
 22 that their recommendations were always accepted, but
 23 there was agreement, generally, among the PSA advisory
 24 committee before it went to the State Board.
 25 Q. BY MR. ROSENBAUM: Okay. And then the

1 recommendations that went to the State Board, did the
 2 State Board accept them as presented to them?
 3 A. As I recall, the State Board accepted nearly
 4 every recommendation, with the exception of the
 5 recommendation on the English language learners.
 6 Q. So the TDG, did it recommend, sir, that English
 7 language learners be excluded?
 8 Was the recommendation that English language
 9 learners take the Stanford-9 but it not be included as
 10 part of the API or that they not take the Stanford-9, or
 11 something else?
 12 MS. READ SPANGLER: Objection.
 13 MR. VIRJEE: Whose recommendation?
 14 MR. ROSENBAUM: The TDG.
 15 THE WITNESS: The TDG did not make a
 16 recommendation on the ELL issue.
 17 Q. BY MR. ROSENBAUM: Did the PSA -- did the
 18 advisory committee do it?
 19 A. Yes.
 20 Q. What was its recommendation?
 21 A. Their recommendation, as I recall it, was to
 22 exclude English language learners from the API for any
 23 pupil who had been in the system for less than two
 24 years.
 25 Q. And what was the reason given, if any, sir, for

1 that?

2 A. There was no reason given in the
3 recommendation.

4 Q. But there were reasons discussed in the
5 committee meetings?

6 A. There was a lot of discussion in the committee
7 meetings.

8 Q. What were the reasons that you remember being
9 offered in support of that exclusion?

10 A. The argument in support of the exclusion was
11 that those people felt the test was invalid for English
12 language learners.

13 Q. And what were the reasons given as to why it
14 was believed that the test was invalid for those English
15 language learners?

16 A. Their argument was based on the fact that if
17 you put a test in front of somebody who can't read the
18 language, it would be an invalid test.

19 Q. Do you have a view on that, sir?

20 A. I believe that if someone can't read the
21 language, it would be invalid, yes.

22 Q. Why is that?

23 A. Because you can't read what the test questions
24 are.

25 Q. And then the State Board of Education rejected

1 that recommendation?

2 A. State Board of Education rejected the
3 recommendation to exclude ELLs for two years.

4 Q. And was that unanimous?

5 A. It passed. I don't know whether it was
6 unanimous.

7 Q. Did a representative from the governor's office
8 speak to the State Board about this matter?

9 MR. VIRJEE: Objection. Calls for speculation.
10 Lacks foundation.

11 MS. READ SPANGLER: Join.

12 THE WITNESS: I don't have a clear recollection
13 of that. I'd have to go back to the Board tapes to see
14 it.

15 Q. BY MR. ROSENBAUM: Okay. And were there
16 representatives from the governor's office, to your
17 knowledge, at the meetings of the State Board of
18 Education while the API was developed?

19 MR. VIRJEE: Can you repeat the question?

20 MR. ROSENBAUM: No. It was a poor question.

21 Q. The State Board meetings that were taking place
22 when the API was developing, to the best of your
23 knowledge, was a representative or representatives of
24 the governor's office at one or more of those meetings?

25 A. Yes.

1 Q. And who was that?

2 A. It varied over time depending on who was at the
3 secretary's office.

4 Q. Whom are the persons whom you recall?

5 A. I recall Sue Burr, who was interim secretary,
6 and John Mockler.

7 Q. Okay. And Sue Burr's position was that there
8 should not be an exclusion; isn't that right?

9 A. Clarified that there already is an exclusion
10 for some ELLs in the API construction, and that is for
11 pupils who had not been in the district for at least one
12 year. So with respect to the API calculations, ELL
13 pupils are included if they've already been in a year.

14 Q. Okay. I'm not talking about that exclusion
15 right now. But with respect to the exclusion that the
16 advisory committee had recommended, Sue Burr opposed
17 that; isn't that true?

18 A. She spoke in favor of following the law rather
19 than the recommendation that the advisory committee came
20 up with, yes.

21 Q. Okay. And what about John Mockler?

22 A. John Mockler was not the interim secretary at
23 that point in time, so I couldn't say.

24 Q. To the best of your recollection, what were the
25 reasons that Sue Burr gave for her position?

1 A. Against the law.

2 Q. Did she say anything about the validity of the
3 test under those circumstances?

4 A. No, not that I recall.

5 Q. Were there other recommendations that the
6 advisory committee made to the State Board of Education
7 that were not accepted?

8 A. I can't recall. There may have been some
9 recommendations that the Board changed during the
10 meeting, but by and large they accepted the majority of
11 the recommendations.

12 Q. Was there a recommendation about whether the
13 Stanford-9 should be the exclusive test for purposes of
14 the API?

15 A. The recommendation would have been phrased in a
16 way that would say the Stanford-9 is the only measure we
17 have for the API, therefore the committee proposes to
18 use the Stanford-9, otherwise there would not be an API.

19 Q. Did anyone say, the law says we should be using
20 more than the Stanford-9 and we shouldn't set this up
21 until we've got more than the Stanford-9, anyone say
22 that in sum or substance?

23 A. Anyone where?

24 Q. At the advisory committee.

25 A. I've characterized the advisory committee as

1 accepting the Stanford-9 as the sole indicator with the
 2 hope that very quickly other indicators would be added,
 3 especially the standards-based tests.
 4 Q. But the law says --
 5 MR. ROSENBAUM: Can I have that last answer
 6 read back to me, please.
 7 (Record read.)
 8 Q. BY MR. ROSENBAUM: This was taking place in
 9 what year, sir?
 10 MS. READ SPANGLER: This what?
 11 MR. ROSENBAUM: These discussions of the
 12 advisory committee and then the State Board meetings.
 13 THE WITNESS: The law, I believe, was signed in
 14 April of '99. The discussions, we met for the first
 15 committee in May of '99, so the discussions would have
 16 been over the summer.
 17 And as I recall, the Board finally adopted what
 18 we call the API framework, which are the general
 19 principles of developing the API, in November of '99,
 20 and then later developed -- approved, rather, the
 21 document called the 1999 base-year API, which is the way
 22 the API is calculated subsequent to that, and I don't
 23 recall the exact Board meeting when that occurred.
 24 Q. BY MR. ROSENBAUM: And what was your
 25 understanding, Doctor, as to what the basis of that hope

1 was?
 2 A. That was a general expression of desire that
 3 California students, as measured by the API, be given a
 4 test that is specifically designed and based on
 5 California standards, such as would be the case in the
 6 standards-based tests.
 7 Q. Okay. And when you say "a general expression,"
 8 what do you mean by that?
 9 A. I would say the majority of the people on the
 10 committee at one time or another expressed that.
 11 Q. Anyone not express that? Anyone oppose that?
 12 A. Not that I recall.
 13 Q. And you personally, sir, you shared that hope;
 14 isn't that right?
 15 MR. VIRJEE: What hope?
 16 MR. ROSENBAUM: The hope that there be a
 17 standards-based test added to the Stanford-9.
 18 Q. You shared that hope, sir?
 19 A. Yes.
 20 Q. Why is that?
 21 A. For the same reason that the other committee
 22 members expressed, and that is that the standard-based
 23 tests are a direct reflection of California standards.
 24 Q. And the Stanford-9 is not; is that correct?
 25 A. Stanford-9 was developed as a national norm

1 reference test. It was not developed to California
 2 specific standards, which were not even in existence at
 3 the time the Stanford-9 was developed.
 4 Q. So the answer to my question is it's not?
 5 A. No, that isn't the answer to the question.
 6 There are many portions on the Stanford-9 that would be
 7 aligned with the California standards.
 8 Q. Has anyone to your knowledge, sir, taken --
 9 undertaken to determine what percentage, if any, of the
 10 Stanford-9 is aligned with California's curriculum
 11 standards for the 1999 test?
 12 A. I believe that exercise has gone on in the
 13 assessment division.
 14 Q. Do you know what the results are?
 15 A. No, I don't.
 16 Q. What about for the 2000 test?
 17 A. I don't know.
 18 Q. At any meeting of the State Board of Education,
 19 did Sue Burr ever say, we shouldn't go forward with the
 20 API until we have a California standards-based test as
 21 part of the overall testing?
 22 A. No.
 23 Q. Okay. Help me understand --
 24 MR. VIRJEE: Mark, when you get a chance.
 25 MR. ROSENBAUM: We can take a break.

1 (Recess taken.)
 2 Q. BY MR. ROSENBAUM: You doing okay?
 3 A. Yes.
 4 Q. Doctor, to your knowledge, was Superintendent
 5 Eastin ever presented with the recommendation of the
 6 committee with respect to English language learners?
 7 A. Yes.
 8 Q. When did that take place?
 9 A. Well, it would have been just before that
 10 particular item was heard on the Board, and I don't know
 11 what meeting that was.
 12 Q. Do you know where that occurred?
 13 MR. VIRJEE: Where she was presented with it?
 14 MR. ROSENBAUM: Yeah.
 15 THE WITNESS: At headquarters.
 16 Q. BY MR. ROSENBAUM: Were you present?
 17 A. The way these things work is that I would send
 18 out the recommendations from the committee by paper to
 19 her, and then if she had a question about it, she would
 20 call me or others. So when she first saw it, I have no
 21 idea, and I don't recall being in a specific meeting
 22 with her on this subject.
 23 Q. But do you remember a discussion involving her
 24 on this subject matter?
 25 A. A vague memory of the discussion, yes.

1 Q. And when, approximately, did that take place?
 2 A. Again, it would be sometime just before the
 3 Board meeting. I'd say within a month of the Board
 4 meeting.
 5 Q. What was said, to the best of your
 6 recollection?
 7 A. I'm sorry?
 8 Q. What was said, to the best of your
 9 recollection?
 10 A. We presented the recommendations of the
 11 committee, had a discussion about what the law said, and
 12 the superintendent came down and signed what the law
 13 said.
 14 Q. Did she express any views that you heard
 15 regarding application for English language learners?
 16 A. I believe that she expressed a reluctance to go
 17 against the recommendation. She had said it publically
 18 in board meetings as well. But as she said, the law is
 19 the law.
 20 There was a further discussion about the fact
 21 that if these pupils were left out of the accountability
 22 system one more year, that it would create a
 23 disincentive for districts to actually attend to these
 24 kids in a proper pedagogical style.
 25 Q. Under the system that had been set up; is that

1 right?
 2 A. No, under the recommendation from the PSA
 3 advisory committee which would have excluded them for an
 4 additional year. She felt discomfort with that because
 5 they would not be part of the mainline accountability
 6 system. And with all the awards based on the API, it
 7 would have been a disincentive for districts to spend
 8 instructional time with those students when you could
 9 raise your API scores by not attending to them.
 10 Q. Was there any discussion about setting up an
 11 alternative so as to include these students?
 12 A. The alternative discussions both in the
 13 advisory committee and at the State Board and with the
 14 superintendent all centered around the discussion of the
 15 possible inclusion of the SABE and the yet to be
 16 developed English language development test, which is
 17 going to be on line this year.
 18 Q. Could you spell SABE?
 19 A. SABE is all caps, S-A-B-E.
 20 Q. And that stands for?
 21 A. I don't know.
 22 Q. "S" stands for Spanish, right?
 23 A. It's a Spanish language test that is part of
 24 the STAR system, and it's put out by CTB McGraw Hill.
 25 Q. What was the discussion that you recall about

1 the use of the SABE?
 2 A. The discussion in the committee meetings?
 3 Q. Yes.
 4 A. The discussion centered around either a
 5 substitution of the SAT-9 for the SABE, or some way of
 6 bringing the SABE into the accountability system.
 7 Q. Did the advisory commission recommend that
 8 specifically?
 9 A. No.
 10 Q. Okay. Was the subject -- was the subject
 11 raised specifically with the superintendent about using
 12 the SABE or the other alternative that you mentioned?
 13 A. I don't recall about the SABE.
 14 Q. What about the other system?
 15 A. I believe that she was aware of the -- it was
 16 part of the discussion that eventually the ELD tests
 17 would come on line and there was some hope that it would
 18 become part of the accountability system.
 19 Q. What was the basis of that hope?
 20 A. That it was a test that was given to all
 21 English language learners, as opposed to SABE, which is
 22 only given to a select group. And the main criterion
 23 for use as an indicator in the API is that it's given to
 24 everyone.
 25 Q. When is that supposed to come on line?

1 A. I believe that the ELD testing begins this next
 2 fall.
 3 Q. Okay. And is that a nationally-normed, or is
 4 that a California standards-based test?
 5 A. I'm not sure that I know enough about the ELD
 6 to be able to characterize it as either. It's more like
 7 a standards test in the sense that it gives discrete
 8 levels of proficiency on a scale like from 1 to 5, but
 9 I'm not familiar with the details of the test.
 10 Q. Okay. The Stanford-9, sir, for grades 2
 11 through 8, does it ask questions regarding history?
 12 MR. VIRJEE: Objection. Calls for speculation.
 13 Lacks foundation.
 14 MS. READ SPANGLER: Join.
 15 THE WITNESS: I'm not familiar with the
 16 specifics of whether or not history is in the elementary
 17 level or whether it's specifically at the upper levels
 18 in history, social science. I don't believe it is a
 19 subsection in grades 2 through 8.
 20 Q. BY MR. ROSENBAUM: Okay. What about social
 21 studies?
 22 MR. VIRJEE: Objection. Calls for speculation.
 23 Lacks foundation.
 24 MS. READ SPANGLER: Join.
 25 THE WITNESS: I've never looked at the test

1 questions on the Stanford-9, so I can't answer that
 2 question.
 3 Q. BY MR. ROSENBAUM: Are the test questions, sir,
 4 the same from year to year on the Stanford-9?
 5 A. Yes.
 6 MS. READ SPANGLER: Objection. Calls for
 7 speculation.
 8 MR. JORDAN: I didn't hear your question.
 9 Q. BY MR. ROSENBAUM: Are the test questions the
 10 same on the Stanford-9 from year to year?
 11 MS. READ SPANGLER: Objection. Calls for
 12 speculation.
 13 MR. VIRJEE: Join.
 14 THE WITNESS: Stanford is a nationally-normed
 15 test, and as such it's immutable from the time that it
 16 was normed in 1995 to the present. It would be the
 17 same.
 18 Q. BY MR. ROSENBAUM: Okay. Immutable means it
 19 doesn't change?
 20 A. Yes.
 21 Q. And was the concern ever expressed at any of
 22 the advisory committee meetings that -- about this fact,
 23 that the questions were immutable, and therefore would
 24 remain the same from year to year?
 25 A. Yes.

1 Q. Okay. And what was said regarding that?
 2 A. The general concern expressed by some members
 3 was that the Stanford-9 is not as secure as it could be,
 4 and that the same test is given year after year. So the
 5 worry was over the insecurity of the test, whether or
 6 not copies of the test would get out and it would be
 7 easy to gain access the system. That was the concern.
 8 Q. And do you know who expressed those concerns?
 9 A. No, I don't.
 10 Q. Did your office come across some episodes
 11 where, in fact, teachers were reported as providing
 12 answers to students on the Stanford-9?
 13 MR. VIRJEE: Objection. Vague and ambiguous as
 14 to "providing answers."
 15 THE WITNESS: No.
 16 Q. BY MR. ROSENBAUM: Did you hear reports of
 17 that?
 18 MR. VIRJEE: Same objection. Vague and
 19 ambiguous.
 20 THE WITNESS: Not that specific question, no.
 21 Q. BY MR. ROSENBAUM: Okay. You used the
 22 phrase -- the word "irregularities" earlier, right?
 23 A. Yes.
 24 Q. What do you define irregularities to mean?
 25 A. The phrase is testing irregularities involving

1 an adult.
 2 Q. What does that mean?
 3 A. That means that the teacher who gave the test
 4 broke protocol from the testing manual.
 5 Q. And what's "protocol" mean?
 6 A. There are a series of instructions in the
 7 testing manual that teachers have to follow regarding
 8 the administration of the Stanford-9.
 9 Q. And your office did learn of some testing
 10 irregularities; is that right?
 11 A. That's correct.
 12 MR. VIRJEE: Objection. Vague as to time.
 13 Q. BY MR. ROSENBAUM: And that was for 1999?
 14 A. There may have been some in 1999. I'm not
 15 aware of them.
 16 Q. What about 2000?
 17 A. Yes.
 18 Q. Okay. And what testing irregularities did your
 19 office learn of?
 20 MR. VIRJEE: Objection. Overbroad.
 21 MS. READ SPANGLER: Join.
 22 THE WITNESS: As a part of clarification, my
 23 office does not learn of these directly. The assessment
 24 office knows of them and reports them to us. When
 25 they're reported to us, regulations require us to

1 invalidate the API.
 2 Q. BY MR. ROSENBAUM: Is an investigation done by
 3 State personnel regarding reports of irregularities?
 4 MR. VIRJEE: Objection. Vague and ambiguous as
 5 to "investigation."
 6 THE WITNESS: There's a process that is set up
 7 to deal with these issues.
 8 Q. BY MR. ROSENBAUM: And what involvement, if
 9 any, does your office have in that process?
 10 A. The majority of the work goes on in the
 11 assessment office. We simply take the results of the --
 12 whatever the assessment office tells us and either
 13 validate or not the API.
 14 Q. Okay. And did you invalidate some APIs?
 15 A. Yes.
 16 MR. VIRJEE: Objection. Vague and ambiguous as
 17 to time.
 18 Q. BY MR. ROSENBAUM: In 1999?
 19 A. No.
 20 Q. In 2000?
 21 A. Yes.
 22 Q. Okay. And how many did you invalidate?
 23 MR. VIRJEE: Objection. Vague and ambiguous as
 24 to "how many."
 25 THE WITNESS: I believe there were reported

1 irregularities by the districts themselves, around 12.
 2 There were an additional 50 irregularities that arose
 3 from the erasure analysis, so that approximately 60
 4 schools' APIs were declared invalid, but ultimately
 5 about 25 of those were reinstated.
 6 Q. BY MR. ROSENBAUM: Through a waiver?
 7 A. No.
 8 Q. How?
 9 A. Through a discussion with the Department
 10 assessment staff.
 11 Q. Okay. Now, of the ones that were invalidated,
 12 sir, that means that they were not eligible for awards?
 13 A. That's correct.
 14 Q. And the II/USP program, are they also
 15 ineligible for that program?
 16 A. No.
 17 Q. Okay. And staff at those schools, would they
 18 be eligible for the awards?
 19 A. No.
 20 Q. Okay. Now, in terms of the protocol, sir, is
 21 it the intent of the API, to your understanding, that
 22 all students take the Stanford-9 under similar
 23 conditions?
 24 MR. VIRJEE: Objection. Vague and ambiguous.
 25 Are you asking him the protocol for the

1 THE WITNESS: Generally speaking, a
 2 nationally-normed reference test is given under standard
 3 conditions. That's why it's called a nationally-normed
 4 test. Under conditions that were similar to the norm
 5 group. So it would be desirable to have the conditions
 6 equal.
 7 Q. BY MR. ROSENBAUM: When you say "conditions
 8 equal," what do you mean by that?
 9 A. Whatever conditions were present in the norming
 10 sample.
 11 Q. Okay. And why is that desirable?
 12 A. Because the comparisons of test scores are made
 13 with reference to the norm population.
 14 Q. Okay. Do you know, sir, whether or not the
 15 Stanford-9 in 1999 was administered under equal
 16 conditions throughout the state of California?
 17 MR. VIRJEE: Objection. Calls for speculation.
 18 Lacks foundation.
 19 THE WITNESS: I have no knowledge of this.
 20 Q. BY MR. ROSENBAUM: Do you know if any inquiry
 21 was made to determine whether or not the Stanford-9 was
 22 administered in 1999 under equal conditions?
 23 MR. VIRJEE: Objection. Vague and ambiguous as
 24 to "inquiry." Also overbroad.
 25 THE WITNESS: I have no knowledge of that.

1 test-taking procedures that he was talking about?
 2 Vague and ambiguous as to "protocols."
 3 MS. READ SPANGLER: Join.
 4 MR. VIRJEE: Also lacks foundation. Calls for
 5 speculation.
 6 There's been no evidence that he has any
 7 test-taking knowledge for the Stanford-9.
 8 MS. READ SPANGLER: Join with respect to
 9 speculation.
 10 THE WITNESS: My office isn't responsible for
 11 the administration of SAT-9, so I don't have any
 12 knowledge of this.
 13 Q. BY MR. ROSENBAUM: Okay. You told us about
 14 your expertise in tests and assessments. This is an
 15 area that you've studied; is that right?
 16 A. I studied it in graduate school, yes.
 17 Q. You've talked about it?
 18 A. Yes.
 19 Q. Okay. And just based on your expertise and
 20 training, sir, should students take an assessment under
 21 similar circumstances if it's a statewide administered
 22 test?
 23 MS. READ SPANGLER: Objection.
 24 Mischaracterizes his testimony.
 25 He didn't say he had expertise.

1 Q. BY MR. ROSENBAUM: Any study or analysis or
 2 evaluation?
 3 A. Not that I'm aware of.
 4 Q. Your office was never asked to do that?
 5 A. No.
 6 Q. You don't know if anybody in the Department of
 7 Education was asked to do that?
 8 A. I don't know that.
 9 Q. Okay. Did you hear, sir, as to whether or not
 10 students at some schools received preparation for the
 11 Stanford-9 --
 12 MS. READ SPANGLER: Objection. Vague and
 13 ambiguous --
 14 MR. ROSENBAUM: -- in 1999?
 15 MS. READ SPANGLER: -- with respect to the term
 16 "preparation."
 17 THE WITNESS: Would you repeat the question.
 18 Q. BY MR. ROSENBAUM: Did some kids get
 19 preparation in their schools for the Stanford-9?
 20 MS. READ SPANGLER: Same objection.
 21 MR. VIRJEE: Objection. Calls for speculation.
 22 MS. READ SPANGLER: Join.
 23 THE WITNESS: I have no personal knowledge of
 24 that.
 25 Q. BY MR. ROSENBAUM: Did you hear about that?

1 A. I have no personal knowledge about it.
 2 Q. Did your office ever undertake any study or
 3 analysis or evaluation?
 4 A. No, we didn't.
 5 MS. READ SPANGLER: Same objection.
 6 Q. BY MR. ROSENBAUM: Do you know if anyone in the
 7 Department of Education did?
 8 MS. READ SPANGLER: Same objection.
 9 MR. VIRJEE: Calls for speculation.
 10 THE WITNESS: I have no knowledge of that.
 11 MR. ROSENBAUM: Let's mark as Exhibit 30 a
 12 document. In the upper right-hand corner it says pages
 13 33 through 37. It is a document that under the
 14 heading -- headline says, it's scary, schools say, of
 15 State test. And I'm going to ask that this be marked as
 16 Exhibit 30 and handed to the witness and also provided
 17 to counsel.
 18 (Exhibit 30 was marked.)
 19 Q. BY MR. ROSENBAUM: Doctor, you are absolutely
 20 free to look at these documents I'm going to give you to
 21 whatever extent you'd like, or you can briefly look at
 22 it and when I ask you questions, you should feel free to
 23 review this to whatever degree you'd like.
 24 Have you had a chance to read what has been
 25 marked as Exhibit 30?

1 A. Yes.
 2 Q. And directing your attention, sir, to what is
 3 in the upper right-hand corner of -- marked as page 34
 4 of Exhibit 30. Would you mind directing your attention
 5 to that page, please.
 6 Do you have that?
 7 A. Yes.
 8 Q. Okay. And still on page -- what's marked as
 9 page 34 of Exhibit 30, do you see the sentence that
 10 says, legislators realize the shortcomings, but decided
 11 it was better to start somewhere, said Bill Padia,
 12 director of the office of policy and evaluation in the
 13 Department of Education.
 14 Do you see that?
 15 A. I see that.
 16 Q. There's no other Bill Padia in the Department
 17 that you're aware of?
 18 A. Not that I'm aware of.
 19 Q. Do you recall making that statement?
 20 A. No, I don't.
 21 Q. Okay. Do you agree or disagree with that
 22 statement?
 23 A. I believe I attended the lunchtime hearings. I
 24 mean, there was some expression that the API is a work
 25 in progress and that later on it would only be the

1 SAT-9, but it was better to start than not.
 2 Q. When you say a "work in progress," what's your
 3 understanding of what that means?
 4 A. As with any accountability system, you start
 5 off with what you have, and then over time you develop
 6 additional, robust indicators that come into the system.
 7 Q. When you say "robust indicators," what do you
 8 mean by that?
 9 A. Indicators that would hold up well
 10 statistically.
 11 Q. And have you seen any analysis to see whether
 12 or not the Stanford-9 is a robust indicator?
 13 MR. VIRJEE: Objection. Vague and ambiguous.
 14 MS. READ SPANGLER: Join.
 15 THE WITNESS: Yes.
 16 Q. BY MR. ROSENBAUM: Okay. What have you seen?
 17 A. The reliability of the Stanford-9, technically,
 18 is more than adequate for API purposes.
 19 Q. Do you see the statement, sir, he said other
 20 states, such as Texas and Florida, had information
 21 systems in place before they instituted their
 22 accountability systems, California did it the other way,
 23 the opposite way, he said.
 24 Do you see that?
 25 A. Yes.

1 Q. Did you make that statement?
 2 A. I don't recall making it.
 3 Q. Do you agree with it?
 4 A. Yes.
 5 Q. And what's the basis of your answer?
 6 A. Fact.
 7 Q. And you see the sentence that says, a high
 8 school exit exam now under development could come on
 9 line in 2000, the first year when 10th graders must take
 10 it?
 11 MS. LHAMON: 2002.
 12 MR. ROSENBAUM: 2002. I'm sorry.
 13 Q. On page 34 of Exhibit 30, do you see that?
 14 A. Yes.
 15 Q. Did you make that statement? Do you recall
 16 making that statement?
 17 MR. VIRJEE: Objection. Misconstrues the
 18 document.
 19 MR. ROSENBAUM: You're right. I apologize.
 20 MR. VIRJEE: It does not reference that to
 21 Mr. Padia at all.
 22 MR. ROSENBAUM: You're right.
 23 Q. Is that an accurate statement, sir?
 24 MR. VIRJEE: Objection. Calls for speculation.
 25 Also vague as to time.

1 MS. READ SPANGLER: Join.
 2 MR. VIRJEE: Accurate statement as of when?
 3 THE WITNESS: I believe the next year, which
 4 would be the 2001, 2002 school year, 10th graders will
 5 be required to take the high school exit exam for the
 6 first time.
 7 Q. BY MR. ROSENBAUM: And are there plans, to your
 8 knowledge, to incorporate that as part of the API?
 9 MS. READ SPANGLER: "That" being the high
 10 school exit exam?
 11 MR. ROSENBAUM: Right.
 12 THE WITNESS: Yes, there are plans. There are
 13 discussions going on about how that might happen and
 14 when it might happen.
 15 Q. BY MR. ROSENBAUM: Is it definite that that's
 16 going to happen?
 17 A. It's required by law.
 18 Q. Is it definite it's going to happen in the year
 19 2002?
 20 A. What's definite is the high school exit exam
 21 will occur in 2002. It isn't definite that it will be
 22 part of the API.
 23 Q. Do you know what it will depend on?
 24 MR. VIRJEE: Objection. Calls for speculation.
 25 Lacks foundation.

1 MS. READ SPANGLER: Join.
 2 THE WITNESS: There are a lot of complicated
 3 issues about bringing an indicator on line, particularly
 4 with the high school exit exam.
 5 Until we've analyzed all the possibilities and
 6 looked at various ways to bring it on line prior to it
 7 being 2004 so that everyone would have an opportunity to
 8 pass it, I can't say as to whether or not it would be in
 9 the API before that or not, but our hope is that we
 10 could put it in as early as possible.
 11 Q. BY MR. ROSENBAUM: Okay. Do you see the next
 12 sentence on page 34 on what's been marked Exhibit 30?
 13 Padia said, it's not clear when the student information
 14 system will be available, although students are
 15 targeting 2005.
 16 MR. VIRJEE: Although officials are targeting.
 17 MR. ROSENBAUM: I'm sorry, although officials
 18 are targeting 2005.
 19 Q. Do you see that?
 20 A. Not yet.
 21 MR. VIRJEE: Same paragraph, last sentence.
 22 THE WITNESS: Yes, I do see it.
 23 Q. BY MR. ROSENBAUM: Did you make that statement?
 24 A. It's possible.
 25 Q. Is it accurate?

1 MR. VIRJEE: Objection. Asked and answered.
 2 THE WITNESS: As I told you earlier, the people
 3 in the Department that are working on this project three
 4 to five years.
 5 Q. BY MR. ROSENBAUM: Looking, sir, at second full
 6 paragraph of page 34 on Exhibit 30, do you see the
 7 sentence, the focus on one test wasn't the intention of
 8 the state law creating the academic performance index,
 9 State officials said?
 10 Do you see that, second full paragraph at the
 11 top?
 12 A. Yes.
 13 Q. I'm just interested in the sentence -- the part
 14 of the sentence that says, the focus on one test wasn't
 15 the intention of the state law creating the academic
 16 performance index.
 17 Do you agree with that, sir?
 18 MR. VIRJEE: Objection. Lack of foundation.
 19 Calls for speculation. Also calls for a legal
 20 conclusion which this witness is not capable of
 21 providing.
 22 MS. READ SPANGLER: Join.
 23 THE WITNESS: The law calls for the
 24 introduction of many indicators. It also quite clearly
 25 specifies that those indicators cannot become part of

1 API until they're deemed of sufficient quality.
 2 Q. BY MR. ROSENBAUM: What about -- you see the
 3 same paragraph, page 34, Exhibit 30, the API was
 4 supposed to incorporate schools' scores from a variety
 5 of tests, as well as measures such as student and staff
 6 attendance and graduation rates. Do you see that?
 7 A. Yes.
 8 Q. Is that your understanding?
 9 A. The law calls for a variety of tests and it
 10 does call for staff attendance and graduation, so, yes.
 11 Q. Do you know who Jim Cox is?
 12 A. Yes.
 13 Q. Who is Jim Cox?
 14 A. He was the -- in the district administration
 15 where I went to high school.
 16 Q. Where what?
 17 A. In Aurora, Colorado. When I was a high school
 18 student.
 19 Q. Well, this deposition has just taken an
 20 interesting turn.
 21 In addition to that Jim Cox -- what became of
 22 that Jim Cox?
 23 A. It is the same Jim Cox who now works as a
 24 consultant across the state on matters of testing.
 25 Q. Okay. How did he treat you as a lad?

1 Are you familiar -- you said he works as a
2 consultant across the state?
3 A. Yes.
4 Q. Have you ever utilized him as a consultant?
5 A. No.
6 Q. Okay. School districts do, so far as you know?
7 A. Yes.
8 Q. Have you seen his work?
9 MR. VIRJEE: Objection. Vague and ambiguous.
10 When he was a lad?
11 MS. READ SPANGLER: When who was a lad?
12 Q. BY MR. ROSENBAUM: Are you familiar with his
13 work as a testing consultant?
14 A. I'm familiar with some of the work that he's
15 done recently.
16 Q. And does that -- let me ask you, sir, how do
17 you regard him as a professional in the area of being a
18 testing consultant?
19 MR. VIRJEE: Lacks foundation. Calls for
20 speculation.
21 There's been no evidence that this witness has
22 any significant knowledge about his acumen in that area.
23 THE WITNESS: I haven't analyzed his materials
24 from a critical point of view, so I really can't
25 comment.

1 Q. BY MR. ROSENBAUM: When you said that -- let me
2 see if I have your testimony. You said that the
3 districts utilize him as a testing consultant. That's
4 your understanding?
5 MR. VIRJEE: Objection. Asked and answered.
6 THE WITNESS: Yes.
7 Q. BY MR. ROSENBAUM: Okay. Over what period of
8 time, so far as you know?
9 MR. VIRJEE: Objection. Calls for speculation.
10 THE WITNESS: I'm not really sure how long he's
11 been doing this.
12 Q. BY MR. ROSENBAUM: Do you know what districts?
13 A. No.
14 Q. Okay. Let me read you the first paragraph here
15 on page 34 of what's been marked as Exhibit 30. Some
16 administrators have taken the advice of Anaheim testing
17 consultant, Jim Cox, who has identified four pollutants
18 that can affect test scores, but that don't relate to
19 the quality of instruction. They are the physical
20 environment, such as whether the classroom is heated,
21 well-lighted and free of noise, whether students and
22 staff take this test seriously, students' test-taking
23 skills, such as eliminating obviously wrong answers, and
24 alignment of the test with what's taught in the
25 classroom.

1 Do you see that paragraph, sir?
2 A. Yes, I do.
3 Q. Do you agree, sir, that physical environments,
4 such as whether the classroom is heated, well-lighted
5 and free of noise can affect test scores?
6 MR. VIRJEE: Objection. Calls for speculation.
7 Lacks foundation.
8 There's no evidence that the witness has any
9 expertise in that area.
10 MS. READ SPANGLER: Join.
11 THE WITNESS: To answer that I would have to
12 see studies that vary the temperature in
13 randomly-assigned students and then came up with a
14 statistical test that said under certain circumstances
15 how much an effect would 10 degrees of temperature have,
16 and I've never seen anything like that.
17 Q. BY MR. ROSENBAUM: Okay. So you have no
18 opinion with respect to that statement, sir?
19 A. I would have an opinion if it's 250 degrees
20 that the pupil couldn't do that test, yes.
21 Q. Do you have an opinion other than if it's 250
22 degrees, sir, with respect to the statement, which is
23 whether the classroom is heated, well-lighted and free
24 of noise?
25 MR. VIRJEE: Objection. Calls for speculation.

1 Lacks foundation.
2 There's been no evidence that this witness is
3 competent to testify in this area.
4 MS. READ SPANGLER: Also compound.
5 MR. VIRJEE: Calls for expert opinion.
6 THE WITNESS: I have no opinion.
7 Q. BY MR. ROSENBAUM: Do you have an opinion, sir,
8 as to whether or not whether students and staff take the
9 test seriously, whether or not that can affect test
10 scores?
11 MR. VIRJEE: Same objections.
12 MS. READ SPANGLER: Join.
13 MR. VIRJEE: Also vague and ambiguous as to
14 "take the test seriously."
15 THE WITNESS: Once again, I'm not aware of any
16 studies that work on motivation, although I believe
17 there are probably some in the literature, but I'm not
18 aware of their conclusions.
19 Q. BY MR. ROSENBAUM: Okay. How about students'
20 test-taking skills, such as eliminating obviously wrong
21 answers, do you have an opinion as to whether that can
22 affect test scores?
23 MR. VIRJEE: Same objection. Lacks foundation.
24 Calls for speculation.
25 There's no evidence this witness is competent

1 to testify in this area. Calls for an expert opinion.
 2 MS. READ SPANGLER: Join.
 3 THE WITNESS: Once again, I would have to see a
 4 study under controlled situations that indicated what
 5 that effect would be, if there is, indeed, an effect.
 6 Q. BY MR. ROSENBAUM: What about alignment of the
 7 test with what's taught in the classroom, do you have an
 8 opinion about whether that can affect test scores?
 9 MR. VIRJEE: Same objections.
 10 MS. READ SPANGLER: Join.
 11 THE WITNESS: Once again, depending on the
 12 level of the alignment, you can map specific items on
 13 that test, you can't make a conclusion.
 14 Q. BY MR. ROSENBAUM: Do you have an opinion as to
 15 what level of alignment is required?
 16 A. No, I don't.
 17 Q. What?
 18 A. I don't.
 19 Q. Do you agree with Mr. Virjee, these are areas
 20 where you're not competent?
 21 MR. VIRJEE: You don't have to take his
 22 reference to what my objection was.
 23 MR. ROSENBAUM: Your objection speaks for
 24 itself.
 25 MR. VIRJEE: It absolutely does speaks for

1 itself.
 2 MR. ROSENBAUM: Go ahead.
 3 MR. VIRJEE: You don't have to take his
 4 assumption as to what my objection means.
 5 THE WITNESS: I don't feel qualified to answer
 6 these questions without data in front of me.
 7 Q. BY MR. ROSENBAUM: Okay. Have you ever made
 8 any investigation to determine data -- whether or not
 9 data exists in any of the areas that we're talking about
 10 here?
 11 A. No, I haven't.
 12 Q. Okay. To your knowledge, has anyone in the
 13 Department of Education?
 14 A. I'm not aware of anyone.
 15 Q. Okay. And you've never been directed to do so?
 16 A. No.
 17 MR. ROSENBAUM: Okay. Let's go off the record
 18 for a minute.
 19 (Discussion held off the record.)
 20 MR. ROSENBAUM: Dr. Padia has left with the
 21 consent of all of us.
 22 Off the record we had a discussion about
 23 resuming this deposition. He's available on the 27th.
 24 We'll explore that date in conjunction with another
 25 deposition that is scheduled, and counsel will agree to

1 talk tomorrow in the morning and try to schedule these
 2 depositions accordingly to meet the witness' schedule.
 3 And I want to be clear that the deposition was
 4 noticed as a day-to-day deposition, but we'll
 5 accommodate the schedules. And we are pleased to resume
 6 these depositions on any day, including Mondays and
 7 Tuesdays.
 8 MS. READ SPANGLER: Well, just to be clear,
 9 since you're saying how the depo was noticed, you only
 10 asked us to give you a day.
 11 We didn't necessarily anticipate that all of
 12 these would go two days, and therefore it's an
 13 availability issue, not us disregarding your depo
 14 notice, not to mention our agreement that they would be
 15 on Wednesdays and Thursdays.
 16 MR. ROSENBAUM: All the depositions were
 17 noticed day to day.
 18 MS. READ SPANGLER: That's right.
 19 MR. VIRJEE: The deposition notices did not
 20 come in until after you had asked us to get a schedule,
 21 which we did, and we asked for single days because you
 22 didn't ask us to get more than a day.
 23 MS. READ SPANGLER: That's right. Not blocks
 24 of time.
 25 MR. JORDAN: Seems like the only thing that's

1 up in the air is whether the lady can go a second day.
 2 If she can't, then we'll have the second session of this
 3 going on April the 27th. If she can, then we'll
 4 probably have it May the 4th, right?
 5 MR. VIRJEE: I think we should note that we've
 6 been very cooperative in scheduling the days as soon as
 7 we can. Clark-Thomas was scheduled right in the next
 8 week. We're not trying to delay anything.
 9 We'll work to get the days in as soon as we
 10 can, but we can't guarantee that the dates that have
 11 been set for quite some time, that the witnesses are
 12 going to be available for a second or a third or fourth
 13 day because we did not schedule it that way because we
 14 were not asked to.
 15 MS. READ SPANGLER: With the level that these
 16 people are, it's just they have very busy schedules.
 17 MR. ROSENBAUM: We would appreciate with
 18 respect to subsequent depositions that have been set, if
 19 inquiry could be made, if it hasn't already, about
 20 successive days.
 21 MS. READ SPANGLER: And as I told Catherine in
 22 front of you, I believe, we are looking into that and
 23 we'll try to have people arrange their schedules
 24 accordingly. But, again, to the extent they've already
 25 made plans or have board meetings or whatever, we're

1 just going to have to work around their schedules.
 2 MR. VIRJEE: I suppose what we should do is
 3 inquire and say if they aren't available for second
 4 days, do you want us to find consecutive days when they
 5 are available, or do you want to go forward with the
 6 first day of the depo and look for days in the future.
 7 We don't have to be on the record.
 8 MR. ROSENBAUM: We absolutely don't have to be
 9 on the record.
 10 (The deposition concluded at 4:38 p.m.)
 11 ---o0o---
 12 Please be advised that I have read the
 13 foregoing deposition. I hereby state there are:
 14
 15 (check one) _____ NO CORRECTIONS
 16 _____ CORRECTIONS ATTACHED
 17
 18 _____
 19 Date Signed
 20
 21 _____
 22 WILLIAM (BILL) L. PADIA
 23
 24 Case Title: Williams vs State
 25 Date of Deposition: Wednesday, April 18, 2001
 ---o0o---

1 REPORTER'S CERTIFICATE
 2
 3 I certify that the witness in the foregoing
 4 deposition,
 5 WILLIAM (BILL) L. PADIA,
 6 was by me duly sworn to testify the truth, the whole
 7 truth, in the within-entitled cause; that said
 8 deposition was taken at the time and place therein
 9 named; that the testimony of said witness was reported
 10 by me, a duly certified shorthand reporter and a
 11 disinterested person, and was thereafter transcribed
 12 into typewriting.
 13 I further certify that I am not of counsel or
 14 attorney for either or any of the parties to said cause,
 15 nor in any way interested in the outcome of the cause
 16 named in said deposition.
 17 IN WITNESS WHEREOF, I have hereunto set my hand
 18 this 26th day of April, 2001.
 19
 20
 21
 22 _____
 23 TRACY LEE MOORELAND, CSR 10397
 24 State of California
 25

1 DEPONENT'S CHANGES OR CORRECTIONS
 2 Note: If you are adding to your testimony, print the
 3 exact words you want to add. If you are deleting from
 4 your testimony, print the exact words you want to
 5 delete. Specify with "Add" or "Delete" and sign this
 6 form.
 7 DEPOSITION OF: WILLIAM (BILL) L. PADIA, VOL. I
 8 CASE: WILLIAMS VS STATE
 9 DATE OF DEPOSITION: WEDNESDAY, APRIL 18, 2001
 10 I, _____, have the following
 11 corrections to make to my deposition:
 12
 13 PAGE LINE CHANGE/ADD/DELETE
 14
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____

 WILLIAM (BILL) L. PADIA DATE

1 ESQUIRE DEPOSITION SERVICES
 2 Certified Shorthand Reporters
 3 1801 I Street, Suite 100
 4 Sacramento, California 95814
 5
 6 Dr. William (Bill) Padia
 7 State Department of Education
 8 721 Capitol Mall, 4th Floor
 9 Sacramento, CA 95814
 10 Re: Williams vs State, Volume I
 11 Date Taken: Wednesday, April 18, 2001
 12
 13 Dear Dr. Padia:
 14
 15 Your deposition is now ready for you to read, correct,
 16 and sign. The original will be held in our office for
 17 30 days from the date of this letter.
 18
 19 If you are represented by counsel, you may wish to
 20 discuss with him/her the reading and signing of your
 21 deposition. If your attorney has purchased a copy of
 22 your deposition, you may review that copy. If you
 23 choose to read your attorney's copy, please fill out,
 24 sign, and submit to our office the DEPONENT'S CHANGE
 25 SHEET located in the back of your deposition.
 If you choose to read your deposition at our office, it
 will be available between 9:00 a.m. and 4:00 p.m.
 Please bring this letter as a reference.
 If you do not wish to read your deposition, please sign
 here and return within 30 days of the date of this
 letter.

 WILLIAM (BILL) L. PADIA DATE
 Sincerely,
 TRACY LEE MOORELAND, CSR
 Esquire Deposition Services
 Job No. 25378
 cc: Mark Rosenbaum, Esq. Helene Silverberg, Esq.
 Catherine Lhamon, Esq. Peter Eliasberg, Esq.
 Framoze Virjee, Esq. Kara Read Spangler, Esq.
 Judd Jordan, Esq. Judy Cias, Esq.

1 ESQUIRE DEPOSITION SERVICES
2 Certified Shorthand Reporters
3 1801 I Street, Suite 100
4 Sacramento, California 95814

5 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
6 ATTN: MARK D. ROSENBAUM, ESQ.
7 1616 Beverly Boulevard
8 Los Angeles, California 90026

9 Re: Williams vs State
10 Deposition of: William (Bill) L. Padia, Vol. I
11 Date Taken: Wednesday, April 18, 2001

12 Dear Mr. Rosenbaum:

13 We wish to inform you of the disposition of this
14 original transcript. The following procedure is being
15 taken by our office:

16 _____ The witness has read and signed the
17 deposition. (See attached.)

18 _____ The witness has waived signature.

19 _____ The time for reading and signing
20 has expired.

21 _____ The sealed original deposition is
22 being forwarded to your office.

23 _____ Other:

24 Sincerely,

25 TRACY LEE MOORELAND, CSR
Esquire Deposition Services
Ref. No. 25378