

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 No. 312 236
)
STATE OF CALIFORNIA; DELAINE)
EASTIN; STATE SUPERINTENDENT)
OF PUBLIC EDUCATION; STATE)
DEPARTMENT OF EDUCATION;)
STATE BOARD OF EDUCATION,)
)
 Defendants.)
)

STATE OF CALIFORNIA,)
)
 Cross-complainant,)
)
 vs.)
)
SAN FRANCISCO UNIFIED SCHOOL)
DISTRICT, et al.,)
)
 Cross-defendants.)

)

DEPOSITION OF S.E. PHILLIPS, PH.D., J.D.

Los Angeles, California

Monday, August 4, 2003

Volume I

Reported by:
LORI SCINTA, RPR
CSR No. 4811
JOB No. 43712

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

3
4 ELIEZER WILLIAMS, et al.,)
5)
6 Plaintiffs,)

7 vs.) No. 312 236
8)

9 STATE OF CALIFORNIA; DELAINE)
10 EASTIN; STATE SUPERINTENDENT)
11 OF PUBLIC EDUCATION; STATE)
12 DEPARTMENT OF EDUCATION;)
13 STATE BOARD OF EDUCATION,)

14)
15 Defendants.)

16 STATE OF CALIFORNIA,)
17)

18 Cross-complainant,)

19 vs.)

20 SAN FRANCISCO UNIFIED SCHOOL)
21 DISTRICT, et al.,)

22)
23 Cross-defendants.)
24)
25)

Deposition of S.E. PHILLIPS, PH.D., J.D.,
Volume 1, taken on behalf of Plaintiffs, at 555
West 5th Street, Suite 3500, Los Angeles,
California, beginning at 9:10 A.M. and ending
at 4:55 P.M. on Monday, August 4, 2003, before
LORI SCINTA, RPR, Certified Shorthand Reporter
No. 4811.

1 APPEARANCES:

2 For Plaintiffs:

3 AMERICAN CIVIL LIBERTIES UNION
4 FOUNDATION OF SOUTHERN CALIFORNIA
5 BY: MARK D. ROSENBAUM
6 Attorney at Law
7 1616 Beverly Boulevard
8 Los Angeles, California 90026-5752
9 (213) 977-9500

10 - and -

11 AMERICAN CIVIL LIBERTIES UNION
12 NORTHERN CALIFORNIA
13 BY: KATAYOON MAJD
14 Attorney at Law
15 1663 Mission Street, Suite 460
16 San Francisco, California 94103
17 (415) 621-2493

18 For Defendant and Cross-complainant State of California:

19 O'MELVENY & MYERS LLP
20 BY: DAVID HERRON
21 Attorney at Law
22 400 South Hope Street, 15th Floor
23 Los Angeles, California 90071-2899
24 (213) 430-6000
25

1 INDEX
2 WITNESS: EXAMINATION

3 S.E. PHILLIPS, PH.D., J.D.

4 Volume 1

5 BY MR. ROSENBAUM

5

6 EXHIBITS
7 (None)

8 INFORMATION REQUESTED
9 (None)

10 REFERENCE REQUESTED
11 (None)

12 INSTRUCTION NOT TO ANSWER

13 Page	14 Line
15 106	16 11, 22
17 108	18 24
19 109	20 15

1 Los Angeles, California, Monday, August 4, 2003
2 9:10 A.M. - 4:55 P.M.

3 S.E. PHILLIPS, PH.D., J.D.,
4 having been first duly sworn, was examined and testified
5 as follows:

6 EXAMINATION

7 BY MR. ROSENBAUM:

8 Q Doctor, can you state your full name for the
9 record, please.

10 A S.E. Phillips. P-h-i-l-l-i-p-s.

11 Q And it's Dr. Phillips?

12 A Yes.

13 MR. ROSENBAUM: David, we have a question about
14 the subpoena but I'd rather not take Dr. Phillips's time
15 right now and we can talk about it at a break.

16 MR. HERRON: Yes.

17 BY MR. ROSENBAUM:

18 Q Dr. Phillips, you have been deposed before?

19 A Yes.

20 Q Have you ever conducted depositions yourself?

21 A No.

22 Q You are a lawyer, though?

23 A Yes.

1 Q How many times have you been deposed?
 2 A Twice as an expert.
 3 Q And I'm not really interested in the content of
 4 any other case but have you been deposed on other cases,
 5 as well?
 6 A As a fact witness in another case.
 7 Q I'm sorry. How many cases?
 8 A One other.
 9 Q Did it have anything to do with education or
 10 testing?
 11 A Yes.
 12 Q Just tell me briefly what the nature of that
 13 other case was.
 14 A It was about a test-scoring error on a
 15 standard -- standardized test.
 16 Q Where was that?
 17 A In Minnesota.
 18 Q And then you have been deposed on two other
 19 occasions?
 20 A Yes.
 21 Q One was in the Texas case?
 22 A That's correct.
 23 Q When was that, approximately?
 24 A Spring of 1999.
 25 Q And then were you also deposed in another

1 California case?
 2 A Yes.
 3 Q What case was that?
 4 A San Francisco Unified School District, et al.,
 5 several other districts, versus the State --
 6 Q Okay.
 7 A -- and other defendants.
 8 Q And in the first case you testified as an
 9 expert for the State of Texas?
 10 A Yes.
 11 Q And in the California case you testified on
 12 behalf of the State of California?
 13 A Yes.
 14 Q Okay. So I take it you're generally familiar
 15 with the procedures and practices of a deposition?
 16 A Yes.
 17 Q Okay. And you have had a chance to talk them
 18 over with Mr. Herron?
 19 A Yes.
 20 Q Let me briefly review it, then, with you in any
 21 case. If you have any questions I want you to feel free
 22 to ask me. Okay?
 23 A Yes.
 24 Q This is a deposition in the case Williams
 25 versus the State of California.

1 You are aware of that?
 2 A Yes.
 3 Q Okay. And it's not my intent to try to trick
 4 you or deceive you but rather to gather information
 5 that's relevant to this lawsuit.
 6 Do you understand that?
 7 A Yes.
 8 Q Okay. Therefore, if you don't understand any
 9 of my questions, just ask me to repeat them or clarify
 10 or restate them and I'll be glad to do that.
 11 Do you understand that?
 12 A Yes.
 13 Q Otherwise, I'm going to assume that you're
 14 answering the questions as fully and as fairly as you
 15 possibly can.
 16 Do you understand that?
 17 A Yes.
 18 Q You know just a few moments ago the reporter
 19 administered an oath to you and I know you don't need
 20 any lessons about the importance of that oath.
 21 Is that correct?
 22 A Yes.
 23 Q And just as in the other depositions,
 24 Dr. Phillips, at the conclusion of the deposition, you
 25 know you get a copy of the deposition itself, my

1 questions, your answers, any of Mr. Herron's comments?
 2 You know that?
 3 A Yes.
 4 Q And you can make any changes you'd like to that
 5 deposition, but you are aware that either myself or any
 6 counsel are free to draw whatever inferences we think
 7 are appropriate from the changes you make.
 8 Do you understand that?
 9 A Yes.
 10 Q So, again, it's important that you answer as
 11 fully and as fairly as you possibly can.
 12 Do you understand that?
 13 A Yes.
 14 Q Any reason we shouldn't go forward?
 15 A Not that I know.
 16 Q Dr. Phillips, in preparation for this
 17 deposition, did you review any documents?
 18 A Yes.
 19 Q What did you review, please.
 20 A My expert witness report.
 21 Q Okay. Any other documents?
 22 A I reread Dr. Russell's report.
 23 Q Any other reports -- any other documents that
 24 you reviewed?
 25 A I reviewed some data on the web. I don't know

1 if you would call that a document, exactly.
 2 Q Okay. What data was that?
 3 A I went back and verified the location of some
 4 of the data in the charts and tables in my report.
 5 Q When you say "location," what do you mean by
 6 that?
 7 A I'm sorry. I didn't hear that.
 8 Q When you say "the location of the data," you
 9 mean the sources --
 10 A Where it can be found on the web.
 11 Q When did you do that?
 12 A Earlier this week.
 13 Q And do you remember what data in particular or
 14 what tables in particular you were concerned with?
 15 A Data on district and school scores.
 16 Q Okay.
 17 A I don't recall the table numbers, specifically.
 18 Q When you say "school scores," you mean API
 19 scores?
 20 A API scores and test scores.
 21 Q And "test scores," you mean STAR data?
 22 A Yes.
 23 Q Approximately how long did you spend doing
 24 that?
 25 A A few hours.

1 Q Why did you do that?
 2 MR. HERRON: Objection. Asked and answered.
 3 BY MR. ROSENBAUM:
 4 Q Any other reason besides that you just wanted
 5 to check out the location?
 6 A There had been questions from the plaintiffs'
 7 side about location of data, and the attorneys asked me
 8 about where these things could be found.
 9 Q When you say "the attorneys," that includes
 10 Mr. Herron?
 11 A It was not Mr. Herron, no.
 12 Q Who was it?
 13 A Mr. Choate.
 14 Q You -- since you became involved in this case,
 15 you have worked with certain attorneys from the
 16 O'Melveny & Myers firm?
 17 A Yes.
 18 Q Who have you worked with?
 19 A Paul Salvaty, Peter Choate and now David
 20 Herron.
 21 Q When did you meet Mr. Herron?
 22 A Last night.
 23 Q Was it pleasant?
 24 A Yes.
 25 Q How long --

1 MR. HERRON: That's how Mark feels as well
 2 whenever he meets me.
 3 BY MR. ROSENBAUM:
 4 Q How long did you meet with Mr. Herron?
 5 A Two to three hours.
 6 Q Okay. Where did you meet?
 7 A At his office.
 8 Q Did he review any documents with you?
 9 A We talked a bit about my expert witness report.
 10 Q Was anyone else present besides Mr. Herron and
 11 you?
 12 A No.
 13 Q And what was said about your expert report?
 14 A We talked about the general areas that would
 15 probably be covered in the deposition.
 16 Q What areas were those?
 17 A The description of the API, the awards and
 18 interventions, and the critique of the Russell report.
 19 Q Incidentally, you read the Russell report for
 20 purposes of your report and your involvement in this
 21 case; is that correct?
 22 A Yes.
 23 Q Did you read any of the other expert reports on
 24 the side of plaintiffs?
 25 A I skimmed some of them.

1 Q Which ones?
 2 A Oh, it's been a while ago. I don't know that I
 3 remember all of them.
 4 Q Did you read any of Dr. Oakes' reports?
 5 A I believe she had a summary report.
 6 Q Yes.
 7 A And I did skim that one.
 8 Q Did you read Heinrich Mintrop's report?
 9 A I don't recall that at this point.
 10 Q Okay. How about Linda Darling-Hammond?
 11 A I'm not sure. That name is familiar. I may
 12 have.
 13 Q Do you have any recollection of having read her
 14 report or the contents of that report?
 15 MR. HERRON: Objection. Asked and answered.
 16 THE WITNESS: Not specifically at this time.
 17 BY MR. ROSENBAUM:
 18 Q Okay. How about the Grubb report? Did you
 19 read the Grubb report?
 20 A I don't recall that.
 21 Q Okay. How about the Koski report?
 22 A I don't recall.
 23 Q Can you remember any other reports that you
 24 read, submitted by plaintiffs?
 25 A Not at this time.

1 Q Okay. Now, you mentioned -- I don't want to
2 mischaracterize what you said.
3 Do you affirmatively remember reading the Oakes
4 summary report? I think you used the word "skimming,"
5 so I don't want to mischaracterize it.
6 A I did skim that report. I did skim others but
7 I don't recall the names or the specifics of it.
8 Q Do you remember anything about the content of
9 any of the other reports that you took a look at?
10 A Only that they were related to issues raised in
11 this case.
12 Q Did you rely on any of the information in any
13 of these other reports in the preparation of your
14 report?
15 A No.
16 Q And that includes the Oakes report?
17 A Yes.
18 Q What, if anything, do you remember about the
19 Oakes summary report?
20 MR. HERRON: Objection. Overbroad, vague and
21 ambiguous.
22 You may respond if you're able.
23 THE WITNESS: Can you be more specific about
24 what you're asking?
25 BY MR. ROSENBAUM:

1 Q Sure. David's right. I am deliberately asking
2 a very broad question because I'm trying to find out if
3 you have any recollection at this time of any of the
4 contents of the summary report.
5 If you can answer that "yes" or "no," then I
6 can narrow it down.
7 A Some.
8 (Discussion off the record.)
9 MR. ROSENBAUM: Back on the record.
10 Q Do you recall anything that Dr. Oakes wrote
11 about the testing program in the -- that the State of
12 California utilizes, the assessment program?
13 A Nothing specific at this time.
14 Q Did you "inform" your preparation of the
15 report?
16 A No.
17 Q Was it suggested to you that you read or skim
18 any of the other reports?
19 MR. HERRON: Other than Dr. Oakes?
20 MR. ROSENBAUM: Yeah. Just generally.
21 Q You mentioned that you remember skimming a few
22 reports, and I want to know whether you did that of your
23 own idea or someone suggested that to you or some
24 documentation --
25 A I was told about them in the very early

1 discussions of this case and looked at them for
2 background to understand what the case was about.
3 Q Do you remember anything that Dr. Oakes said
4 about the State's accountability system?
5 A Nothing specific.
6 Q Anything that you do remember about her report
7 sitting here today?
8 A Just that it was a summary of the issues in the
9 case.
10 Q What is your understanding of what the issues
11 in the case are?
12 A With respect to what?
13 Q Just generally. I don't mean necessarily with
14 respect to Dr. Oakes, but do you have an understanding
15 that there are certain issues involved in this case?
16 A In a general way.
17 Q Okay. Tell me the basis of your answer,
18 please.
19 A Having read and skimmed various reports and the
20 plaintiffs' liability statement, the issues that are
21 dealt with.
22 Q What are the issues that you understand to be
23 involved in this case?
24 A I'd appreciate if you would be more specific.
25 I think it was like a 400-page document. There are a

1 lot of things in there.
2 Q Yeah. You said to me a few moments ago that --
3 you used the phrase "issues in the case," and I just
4 want to know what you understand the issues to be.
5 MR. HERRON: Objection. Relevance.
6 THE WITNESS: Perhaps that wasn't the best
7 wording to use. Perhaps I just should have said
8 "background information about the case."
9 BY MR. ROSENBAUM:
10 Q Do you have a belief as to whether or not there
11 are any issues in this case?
12 MR. HERRON: Objection. Harassing.
13 THE WITNESS: I believe there are disagreements
14 between the plaintiffs and the defendants.
15 BY MR. ROSENBAUM:
16 Q Okay. What do you understand those
17 disagreements to be?
18 MR. HERRON: Objection. Calls for speculation,
19 vague and ambiguous, overbroad, irrelevant.
20 You may respond if you know what he's asking.
21 You're asking her insofar as her report.
22 Perhaps she can respond to that; otherwise, my
23 objections are stated.
24 THE WITNESS: My focus in this case was
25 specifically on Mr. Russell's report and the various

1 issues that were raised in that report.

2 I am not really prepared today to talk about
3 issues more generally than that.

4 MR. ROSENBAUM: Can I have the witness' answer
5 read back, not this one but the one prior to that,
6 please.

7 (The record was read as follows:

8 "THE WITNESS: I believe there are
9 disagreements between the plaintiffs and
10 the defendants.")

11 BY MR. ROSENBAUM:

12 Q Doctor, I want to know what you meant when you
13 said "disagreements."

14 What are the disagreements that you understand
15 to exist between the parties?

16 MR. HERRON: Objection. Vague and ambiguous,
17 asked and answered, calls for speculation, and
18 irrelevant.

19 If you're asking her to the extent that those
20 disagreements exist with regard to the subject matter of
21 her report, perhaps you can respond. If you know what
22 he's asking, you may respond.

23 THE WITNESS: Insofar as my report is
24 concerned, I deal with the issues raised by
25 Dr. Russell. I have not address the issued -- any other

1 BY MR. ROSENBAUM:

2 Q I want to know what you meant when you said
3 "disagreements," all the disagreements that you were
4 thinking about.

5 MR. HERRON: Same objections.

6 THE WITNESS: I was thinking only of the fact
7 that a lawsuit is proceeding, and when that is the case,
8 there are differences of opinion. They include some of
9 the issues that are talked about in my report.

10 BY MR. ROSENBAUM:

11 Q Can you tell me, please, Doctor, all the
12 disagreements that you had in mind when you used that
13 word?

14 MR. HERRON: Same objections. I think she has
15 responded, and we're not going to listen to any more of
16 these same questions being asked.

17 Respond, if you may -- or if you can.

18 I think what he's asking is: What do you
19 understand the dispute to be? And if you have something
20 to add beyond what you have already said, you may do so.

21 THE WITNESS: I understand one of the issues in
22 the dispute to be about the accountability system.

23 BY MR. ROSENBAUM:

24 Q Okay. Do you understand there to be any other
25 issues in the case about which there are disagreements?

1 issues in the case.

2 BY MR. ROSENBAUM:

3 Q That may or may not be the case, Doctor, but
4 you're a lawyer and you know I'm entitled to ask
5 questions. And when you use the word "disagreements," I
6 want to know fully what you meant by that.

7 MR. HERRON: Well, then, ask a question that
8 has something to do with her report and she'll respond.

9 MR. ROSENBAUM: I don't have to. I don't have
10 to ask a question.

11 MR. HERRON: I'll tell you what: Objection.
12 Relevance, calls for speculation, vague and ambiguous,
13 asked and answered and harassing. There is absolutely
14 nothing you're going to gain from this.

15 Go ahead.

16 BY MR. ROSENBAUM:

17 Q Go ahead, Doctor.

18 A Would you repeat the question, please.

19 MR. ROSENBAUM: Could I have the answer read
20 back, please, that I asked previously to have read
21 back.

22 (The record was read as follows:

23 "THE WITNESS: I believe there are
24 disagreements between the plaintiffs and
25 the defendants.")

1 MR. HERRON: Same objections.

2 You may respond.

3 THE WITNESS: I know there are a variety of
4 expert witnesses and expert witness reports on a variety
5 of topics. I specifically looked only at the ones
6 related to the accountability system and standardized
7 testing in California.

8 BY MR. ROSENBAUM:

9 Q Okay. That's not really my question, though.

10 Do you understand there to be any other
11 disagreements or issues other than the accountability
12 system that you refer to?

13 MR. HERRON: Same objections.

14 But you may respond.

15 THE WITNESS: I just don't know what more to
16 add. My focus was on the accountability system. I
17 didn't focus on any other issues.

18 BY MR. ROSENBAUM:

19 Q Okay. Did you read any cases relating to this
20 case?

21 A Not that I recall.

22 Q Did you read the Butt case?

23 A No.

24 Q Did you read any -- besides the disclosure
25 statement and the expert reports to which you refer, did

1 you read any other filings in this case?
 2 A Not that I recall.
 3 Q Did you read any summaries of this case
 4 prepared by counsel?
 5 A No.
 6 Q Okay. Did you read the complaint in this case?
 7 A No.
 8 Q And for what purpose did you read the liability
 9 disclosure statement?
 10 A Background.
 11 Q Okay. Was it suggested to you that you read
 12 that?
 13 A As part of those early discussions, I was told
 14 about the plaintiffs' website and the various things
 15 that were on it were described to me. And then as
 16 background, I went and chose things to read and skimmed
 17 various documents.
 18 Q Okay. What other documents did you skim or
 19 read besides the liability disclosure statement?
 20 A I believe Dr. Russell's report was on that
 21 website. I read that.
 22 Q Okay. You don't have to repeat for me what you
 23 said about the other expert reports but any other
 24 documents besides those that you've listed?
 25 A Nothing additional.

1 Q How did you choose to read the liability
 2 disclosure statement?
 3 MR. HERRON: Objection. Vague and ambiguous.
 4 THE WITNESS: I guess I don't understand what
 5 you're asking me.
 6 BY MR. ROSENBAUM:
 7 Q Why did you decide to read that document?
 8 A I expected it to give background about the
 9 case.
 10 Q What did you understand the case to be about
 11 after you read that document?
 12 MR. HERRON: Objection. Asked and answered
 13 about 15 questions before.
 14 THE WITNESS: I really don't recall. That was
 15 a long time ago.
 16 BY MR. ROSENBAUM:
 17 Q Okay. Doctor, when you said to me a few
 18 moments ago that you understood that one of the issues
 19 in the case involved the accountability system --
 20 Is that correct?
 21 A Yes.
 22 Q Okay. -- what is your understanding of what
 23 defines that issue?
 24 MR. HERRON: Objection. Vague and ambiguous.
 25 THE WITNESS: Can you ask me something more

1 specific?
 2 BY MR. ROSENBAUM:
 3 Q Sure. You said that one of the issues involved
 4 the accountability system. Why don't you tell me what
 5 you meant by that statement?
 6 A Well, the accountability system is a very big
 7 program and has a lot of facets to it, and there are a
 8 lot of different areas that Dr. Russell addressed in his
 9 report and I have addressed in my response in my report,
 10 so this is a really broad area.
 11 Can you direct me to the area you would like to
 12 talk about?
 13 Q Could you tell me what you understand to be the
 14 principal differences between the plaintiffs and the
 15 State over the State's accountability system?
 16 MR. HERRON: Objection. Calls for a very, very
 17 lengthy narrative, vague and ambiguous.
 18 MR. ROSENBAUM: That's okay.
 19 MR. HERRON: Respond if you're able.
 20 THE WITNESS: Basically, I think my report has
 21 about 50 pages of response to that, and it covers a
 22 number of different areas. Would you like me to go
 23 through specifically?
 24 BY MR. ROSENBAUM:
 25 Q That would summarize all the disagreements that

1 you articulated between the plaintiffs and the State
 2 over the accountability system?
 3 MR. HERRON: Objection. Vague and ambiguous in
 4 the use of the word "that."
 5 THE WITNESS: It represents my response to
 6 Dr. Russell's criticisms.
 7 BY MR. ROSENBAUM:
 8 Q Did you review any of the expert reports
 9 submitted by the State of California?
 10 A No.
 11 Q Is there any reason why not?
 12 A I don't have them. They weren't given to me.
 13 Q Have you been -- in the Texas case that you
 14 were involved with, did you work with any of the --
 15 strike that.
 16 Do you know the names of any of the State's
 17 experts besides yourself?
 18 A Yes.
 19 Q Who do you know?
 20 A Dr. William Mehrens.
 21 Q Who?
 22 A Dr. William Mehrens.
 23 Q Okay. Who else?
 24 A Rosalie Porter.
 25 Q Okay.

1 A That's all I recall.
 2 Q Which case are you referring to?
 3 A I thought you were asking me about the Texas
 4 case.
 5 Q Okay. How about in the California case? Do
 6 you know the names of any of the California experts
 7 besides yourself?
 8 MR. HERRON: You mean SFUSD, or this case?
 9 MR. ROSENBAUM: I'm sorry. The Williams case.
 10 THE WITNESS: The which case?
 11 BY MR. ROSENBAUM:
 12 Q Our case.
 13 A Do I know other experts?
 14 Q For the State.
 15 A I don't recall.
 16 Q Okay. When you met with Mr. Herron last night,
 17 you mentioned one of the subjects that was discussed was
 18 the API.
 19 A Yes.
 20 Q What did Mr. Herron say to you about the API?
 21 MR. HERRON: Nothing intelligible.
 22 You may respond.
 23 THE WITNESS: Just that it would probably be
 24 one of the areas of questioning in the deposition.
 25 BY MR. ROSENBAUM:

1 Q Okay. And what else did he say about the API
 2 or that area?
 3 A I don't think he said anything specific about
 4 the API.
 5 Q And he also talked about the Russell report?
 6 A He indicated that would be one of the areas of
 7 questioning.
 8 Q Okay. And what did he say about the Russell
 9 report?
 10 A That we would probably spend some detailed time
 11 on that, since a large section of my report was devoted
 12 to that.
 13 Q Did he suggest to you any possible questions
 14 that would be asked about the Russell report?
 15 A Nothing specific that I recall.
 16 Q Did he suggest any possible questions that
 17 could be asked about the API?
 18 A I think he mentioned that awards and
 19 interventions would probably be discussed in connection
 20 with it.
 21 Q What did he say about awards and interventions
 22 with respect to the API?
 23 MR. HERRON: Objection. Calls for a narrative,
 24 vague and ambiguous.
 25 THE WITNESS: That I would be asked questions

1 about it.
 2 BY MR. ROSENBAUM:
 3 Q What else did he say?
 4 A Nothing else that I recall.
 5 Q Did he talk about any other areas that he
 6 thought might be covered?
 7 A Those are the ones that I remember at this
 8 time.
 9 Q Okay. What else do you remember Mr. Herron
 10 saying?
 11 A He talked about deposition process.
 12 Q Okay. About how long did he spend on that?
 13 MR. HERRON: Please don't say "too long."
 14 THE WITNESS: I don't recall. We did parts of
 15 it at different parts during the discussion. I don't
 16 think it was particularly lengthy.
 17 BY MR. ROSENBAUM:
 18 Q Okay. What did you say about the API, if
 19 anything?
 20 A I don't recall that we really discussed any of
 21 the technical issues around that, just subjects which
 22 might be covered in the questioning.
 23 Q What subjects?
 24 A Like the API.
 25 Q Can you tell me what else Mr. Herron said

1 during this meeting?
 2 A We talked about my flight into L.A.
 3 Q How long did that take?
 4 MR. HERRON: The flight or the discussion?
 5 MR. ROSENBAUM: The discussion.
 6 THE WITNESS: It's all I recall at this point.
 7 BY MR. ROSENBAUM:
 8 Q Can you tell me anything else that Mr. Herron
 9 said with respect to the contents of this deposition?
 10 A He told me to listen to the questions
 11 carefully, to tell the truth, to ask for a break if I
 12 needed one.
 13 Q Of the two to three hours that you met with
 14 Mr. Herron, can you tell me anything else of content
 15 that was said by either you or him?
 16 A We talked some about my career.
 17 Q What was said about your career?
 18 A Information about what I've done over the
 19 years.
 20 Q How long did that take?
 21 A I really don't know.
 22 Q Brief? Lengthy? How would you characterize
 23 it?
 24 A I just don't recall. I don't have any basis
 25 for estimating that. I wasn't thinking about it that

1 way.
 2 Q What time did you meet with him?
 3 A Our meeting probably started pretty close to
 4 5 o'clock.
 5 Q Okay. Doctor, you teach at Cooley Law School,
 6 is that right, or you --
 7 A At one time I did.
 8 Q When did you do that?
 9 A It would have been the early '90s.
 10 Q And what subject matters did you teach?
 11 A I taught an elective course on legal issues in
 12 assessment.
 13 (Discussion off the record.)
 14 BY MR. ROSENBAUM:
 15 Q How many years did you teach the course on
 16 legal issues in assessment?
 17 A One.
 18 Q And did you teach any other courses at Cooley?
 19 A No.
 20 Q Was that a course of your own design?
 21 A Yes.
 22 Q And did you use any reading materials for your
 23 students?
 24 A Yes.
 25 Q What did you use?

1 A A variety of sources on different issues. Some
 2 were cases, some were research reports.
 3 Q What were the research reports that you recall?
 4 A It's been a long time ago. I don't recall any
 5 more.
 6 Q You don't recall any more?
 7 A I would have to go back and look at my files to
 8 know that.
 9 Q What files do you maintain on that? Do you
 10 have a file called "Legal Issues In Assessment" or "Law
 11 School" or something like that?
 12 A I think I have a file with the materials that
 13 were duplicated for the course.
 14 Q Okay. And were some of the research reports
 15 authored by you?
 16 A Probably.
 17 Q Do you remember who else you -- who else
 18 authored reports that you had your students read?
 19 A I just don't specifically recall what I used in
 20 that course. I've taught variations of that in other
 21 contexts, and I just can't distinguish what I might have
 22 used in different situations.
 23 Q Okay. Did they read any treatises or
 24 textbooks?
 25 MR. HERRON: Objection. Asked and answered the

1 last two questions ago.
 2 You may respond.
 3 THE WITNESS: No.
 4 BY MR. ROSENBAUM:
 5 Q Did they read particular cases?
 6 A Yes.
 7 Q Which cases?
 8 MR. HERRON: Objection. Relevance.
 9 THE WITNESS: Again, I don't know that I can
 10 recall all of that at this point.
 11 BY MR. ROSENBAUM:
 12 Q Just give me your best recollection, please.
 13 MR. HERRON: If you have one.
 14 THE WITNESS: I just don't remember for sure
 15 what I used in that course as opposed to other ones, so
 16 I just don't specifically recall what was in there
 17 without going back and checking.
 18 BY MR. ROSENBAUM:
 19 Q Now, you told me that you have taught, if I
 20 understand you correctly, a variance of that course in
 21 another context.
 22 Am I understanding you correctly?
 23 A Similar subject matter, yes.
 24 Q Where have you taught similar subject matter?
 25 A Michigan State University.

1 Q Okay. Is there a particular course or courses
 2 where you have taught that similar subject matter?
 3 A Yes.
 4 Q What are those courses?
 5 A Are you asking for names of courses?
 6 Q Yes.
 7 A I don't recall that specifically. The subject
 8 matter was Legal Issues in Assessment.
 9 I think it was offered as a seminar course
 10 originally and then later may have had its own number
 11 and course title.
 12 Q Are you still teaching that course?
 13 A No.
 14 Q Over what period of time did you teach either
 15 the seminar or the course?
 16 A About an eight-year period.
 17 Q Okay. Can you give me that -- when it started?
 18 A It was in the '90s.
 19 Q Do you know when you stopped teaching it?
 20 A About 1999.
 21 Q Are you still an associate professor at
 22 Michigan State?
 23 A No.
 24 Q Do you have any professorship at Michigan
 25 State?

1 A No.
 2 Q Anywhere?
 3 A No.
 4 Q Okay. And why did you stop teaching at
 5 Michigan State?
 6 A That was a very hard decision to make, but I
 7 did so to give my daughter a special educational
 8 opportunity. I left a full professor-tenured position,
 9 which took a lot of thinking and a lot of consideration.
 10 Q Sure. I'm not interested, Doctor, in whether
 11 you -- the materials I'm about to ask about were used at
 12 Cooley as opposed to Michigan State. I'm just
 13 interested in the subject area.
 14 So without distinguishing between campuses, can
 15 you tell me whether or not students read cases?
 16 A Yes.
 17 Q Okay. And, again, I don't care whether it was
 18 at Cooley or Michigan State. Can you tell me the names
 19 of what courses you recall?
 20 MR. HERRON: Objection. Asked and answered, in
 21 part.
 22 You may respond.
 23 THE WITNESS: Can you be more specific about
 24 the area that you're interested in? There are a large
 25 number of areas that were covered in a course like that.

1 BY MR. ROSENBAUM:
 2 Q Okay. Tell me the areas that were covered.
 3 A Well, I'm not sure I'll recall all of them.
 4 We covered high school exit testing.
 5 Q Okay.
 6 A Testing accommodations.
 7 Q Okay. Opportunity to Learn?
 8 A That would be part of exit-level testing.
 9 Q Any other areas?
 10 A I believe we covered the Golden Rule
 11 settlement.
 12 Q Okay. Any others?
 13 A I just don't recall specifically anything else
 14 at this time.
 15 Q All right. With the High School Exit
 16 Examination -- am I characterizing that correctly?
 17 A Yes.
 18 Q Okay. Have you testified in any High School
 19 Exit Examination cases?
 20 A Yes.
 21 Q Which cases?
 22 A The case in Texas.
 23 Q Texas. And what case or cases do you recall
 24 having your students read on this subject area?
 25 A The Debra P. case.

1 Q Any others?
 2 A Not that I recall at this time.
 3 Q Why did you have them read the Debra P. case?
 4 MR. HERRON: Objection. Relevance.
 5 THE WITNESS: It's an important case in the
 6 area.
 7 BY MR. ROSENBAUM:
 8 Q Why is that?
 9 A It was the first case in which the court
 10 imposed specific requirements on exit-level programs.
 11 Q What did you understand those requirements to
 12 be?
 13 A Notice and curricular validity.
 14 Q When you say "curricular validity," what do you
 15 mean by that?
 16 A Curricular validity is the match of what is
 17 being taught to what is being tested.
 18 Q Did you agree or disagree or somewhere in
 19 between with the holding in the Debra P. case?
 20 MR. HERRON: Objection. Relevance, calls for
 21 speculation, since she doesn't have the case before her.
 22 Your -- you may respond if you're able.
 23 THE WITNESS: I'm not sure if I understand your
 24 question. If you mean did I use it? Did I teach it to
 25 my students? Has it been an important part of

1 consulting and assisting states in meeting believable
 2 requirements, the answer is yes.
 3 BY MR. ROSENBAUM:
 4 Q Did you agree with the judge's holding,
 5 personally?
 6 MR. HERRON: Objection. Asked and answered the
 7 question before and all the other objections to the
 8 prior question.
 9 THE WITNESS: As I indicated, I don't see it as
 10 a matter of agreement or disagreement. It is the law in
 11 this country, and I follow the law and I teach my
 12 clients how to follow the law.
 13 BY MR. ROSENBAUM:
 14 Q Did you ever express an opinion in any of your
 15 classes as to whether the judge's decision in your view
 16 was correct or incorrect?
 17 A Not in that way. We analyzed the evidence, the
 18 opinion, the basis for the opinion in the case.
 19 Q Did you think it was a sound analysis by the
 20 judge?
 21 MR. HERRON: Objection. Asked and answered the
 22 third and fourth questions before.
 23 You may respond yet again.
 24 THE WITNESS: I never saw the actual data from
 25 the case, particularly in the curricular validity area.

1 I understood the general notion of the information that
2 was presented. And that formed a basis of understanding
3 what a court might require.

4 BY MR. ROSENBAUM:

5 Q Thank you. Let me see if I can particularize
6 my question a little bit more. I appreciate your
7 answer, Doctor.

8 What I'm concerned about is -- I'm not
9 interested for purposes of this question how -- the
10 application of the facts to the judge's holding as to
11 what the law requires.

12 I'm interested, Doctor, whether or not you have
13 a view as to whether or not you think that his holding
14 as to the necessity of notice and curricular validity,
15 whether you have an opinion as to whether you agree or
16 disagree with that as a matter of law.

17 MR. HERRON: Objection. Asked and answered
18 four times now. This is the last time.

19 You may respond again.

20 MR. ROSENBAUM: You know, David, you can make
21 any objections you want. I would appreciate the
22 courtesy of just making an objection. It hasn't been
23 responded to.

24 What the doctor has articulated, which I
25 appreciate, as to why she thinks it is important and

1 class or to any other entities with whom you consult as
2 to your views as to the correctness or incorrectness of
3 the Debra P. decision?

4 A I don't recall having made any statements like
5 that.

6 Q Okay. When you say that the judge -- I don't
7 want to mischaracterize you. You said the judge created
8 new requirements at the time?

9 A Yes.

10 Q When you say "new requirements," what do you
11 mean by that?

12 A Notice and curricular validity.

13 Q And in Texas, in the Texas case in which you
14 worked, did you independently undertake an analysis to
15 determine whether all students received the information
16 upon which they were tested?

17 A I relied on data collected by the State.

18 Q Okay. What was the data that the State
19 collected?

20 MR. HERRON: If you recall.

21 MR. ROSENBAUM: That you relied upon.

22 THE WITNESS: There were multiple sources of
23 data. I may not recall everything at this point.

24 BY MR. ROSENBAUM:

25 Q Do the best you can.

1 what she does with it.

2 Q But I haven't yet received an answer and I will
3 state it until I do as to whether or not you, Doctor,
4 have a personal view as to whether or not the judge was
5 correct or incorrect in his holding as to the necessity
6 of notice and curricular validity.

7 MR. HERRON: Objection. Four times now. The
8 speech is unnecessary.

9 You may respond again.

10 THE WITNESS: In terms of responding to
11 specifics of the case, I would have to go back and
12 review specific areas.

13 My focus is on the psychometrics of decisions.
14 And, at that time, there was no psychometric standard
15 that addressed that, so the court created a new
16 requirement and since then the standards have responded
17 to that. And there are now psychometric bases for
18 judging that.

19 Often, in a case like that, there are
20 statements that you both agree and disagree with and
21 that would be specific to the opinion and I would have
22 to review that to give you a specific answer.

23 BY MR. ROSENBAUM:

24 Q Sitting here today, do you have any
25 recollection of any statement you made either in your

1 A First of all, the Texas has a state-mandated
2 curriculum so that was the impetus of that. The State
3 also collected information from teachers at the time
4 that the test was piloted.

5 There also was very extensive documentation and
6 information about the test development process in which
7 teachers review all of the items prior to when they are
8 used on the test, and they review them for a variety of
9 factors that are relevant.

10 Q Okay. When you say "teachers review," all
11 teachers? Some teachers?

12 MR. HERRON: Objection. Calls for
13 speculation -- I'm sorry.

14 Calls for speculation.

15 THE WITNESS: At any one time, it's a selected
16 group of teachers but they rotate it so that over time a
17 large number of teachers in the state are involved.

18 BY MR. ROSENBAUM:

19 Q Is that a continuous process, if you understand
20 it?

21 A Yes.

22 Q Okay. And what was your conclusion based on
23 the data that you're talking about as to whether or not
24 students in Texas who were tested were taught the
25 information on which they were tested on?

1 MR. HERRON: Objection. Vague and ambiguous.
 2 THE WITNESS: My conclusion was that the test
 3 met all relevant psychometric standards, including that
 4 one.
 5 BY MR. ROSENBAUM:
 6 Q Okay. Did you ever reach a determination as to
 7 what percent of students in Texas were taught the
 8 information upon which they were tested?
 9 MR. HERRON: Objection. Vague and ambiguous.
 10 You may respond.
 11 THE WITNESS: I'm not quite sure what you mean
 12 by that.
 13 BY MR. ROSENBAUM:
 14 Q Okay. Did 100 percent of students in Texas --
 15 strike that.
 16 The test that you looked at, which Texas test
 17 was that?
 18 Was that TAAS?
 19 A Yes.
 20 Q And did you form a conclusion as to the percent
 21 of students who took TAAS who were taught the
 22 information which they were tested on?
 23 A I'm not sure I understand the nature of your
 24 question or how one would do that.
 25 Q Okay.

1 A Are you asking for each and every student did I
 2 determine whether or not that student had each and every
 3 skill that was tested on the test?
 4 Q I'm asking you: Tell me your definition again
 5 of "curricular validity"?
 6 A Are you talking about from the Debra P. case?
 7 Q Do you have a definition that you utilize in
 8 your work?
 9 A There are different definitions used in
 10 different contexts. The court case had one. Much of
 11 the research has other ones, so we actually use more
 12 than one.
 13 Q Okay. When you testified in Texas, did you
 14 utilize a definition of "curricular validity"?
 15 A I don't recall being asked that specifically.
 16 I may have. I don't remember.
 17 Q Was one of the issues about which you testified
 18 in Texas whether or not the TAAS met professional
 19 standards of curricular validity?
 20 A Yes.
 21 Q Did you utilize a definition, a professional
 22 standards of curricular validity, for purposes of your
 23 testimony?
 24 A I utilized what the standard required.
 25 Q Okay. What was your understanding of what the

1 standard required?
 2 A The standard requires that information be
 3 collected to support the conclusion of curricular
 4 validity. It doesn't specify any particular kind or
 5 type of evidence.
 6 Q Okay. And tell me the basis of your answer.
 7 MR. HERRON: Objection. Vague and ambiguous.
 8 MR. ROSENBAUM: It is a little vague.
 9 Q When you said -- could I have her answer read
 10 back, please.
 11 (The record was read as follows:
 12 "A The standard requires that
 13 information be collected to support the
 14 conclusion of curricular validity. It
 15 doesn't specify any particular kind or
 16 type of evidence.")
 17 BY MR. ROSENBAUM:
 18 Q What do you mean, "the conclusion of curricular
 19 validity"?
 20 A A professional determination that the standard
 21 has been satisfied.
 22 Q What does it take to satisfy that standard?
 23 MR. HERRON: Objection. Vague and ambiguous,
 24 calls for speculation, overbroad.
 25 THE WITNESS: I don't think there is a single

1 definition of what constitutes that. You collect all
 2 the relevant evidence and then make a professional
 3 determination if that is enough to satisfy the standard.
 4 BY MR. ROSENBAUM:
 5 Q What is your understanding of what that
 6 standard requires?
 7 MR. HERRON: Same objections and asked and
 8 answered.
 9 THE WITNESS: It doesn't specify particular
 10 evidence that must be collected. It simply specifies
 11 that you must look at that issue.
 12 BY MR. ROSENBAUM:
 13 Q But how do you determine whether or not the
 14 standard is met? Are there particular criteria that you
 15 as a professional rely upon?
 16 MR. HERRON: Vague and ambiguous as to
 17 "unspecified context," asked and answered.
 18 You may respond.
 19 THE WITNESS: In both Florida and Texas, the
 20 testing programs were upheld. We know what kinds of
 21 evidence was presented in those cases, so those are both
 22 examples of sufficient evidence to satisfy the standard.
 23 BY MR. ROSENBAUM:
 24 Q My question is: Do you, Doctor, as an expert,
 25 have criteria that you utilize to determine whether or

1 not the standard for curricular validity is satisfied or
2 not?

3 MR. HERRON: In Texas?

4 MR. ROSENBAUM: As an expert, generally.

5 THE WITNESS: It's going to depend on the
6 specific state program that I'm looking at.

7 BY MR. ROSENBAUM:

8 Q Why is that?

9 A Well, for example, in Florida, they did not
10 have a state-mandated curriculum. In Texas, they
11 did. So it depends on the circumstances.

12 Q Where there is a state-mandated curriculum, do
13 you utilize criteria to determine whether or not the
14 standard of curricular validity has been satisfied?

15 A There aren't specific enumerated criteria. You
16 look at all the facts and circumstances surrounding the
17 program and all of the available evidence surrounding
18 the program.

19 Q All right. Maybe you just answered this and if
20 you did, I don't want to burden you here.

21 But just so I'm crystal clear here, do you
22 yourself utilize specific criteria to determine whether
23 or not the standard of curricular validity has been
24 satisfied in circumstances where there is state-mandated
25 curriculum?

1 Q Okay. And from the professional judgment of
2 adequacy of evidence, do you -- have you relied upon any
3 specific criteria to make those judgments?

4 MR. HERRON: Objection. Vague and ambiguous,
5 vague as to time, vague as to context or circumstances,
6 overbroad.

7 You may respond.

8 THE WITNESS: No specific list of criteria. I
9 look at all the available evidence.

10 BY MR. ROSENBAUM:

11 Q Okay. Do you -- have you undertaken any
12 investigation -- strike that.

13 Do you know, Doctor -- what you described to me
14 a few moments ago about teachers on a continuing basis
15 reviewing the test, do you remember you talked to me
16 about that in Texas?

17 A Reviewing the test items, yes.

18 Q Does that take place in California, so far as
19 you know?

20 A Yes.

21 Q Okay. What is your basis for your answer?

22 A Personal knowledge.

23 Q Okay. And when you say "personal knowledge,"
24 what do you mean by that?

25 A Information that I have acquired while working

1 A I use the existing case law as a guideline.

2 Q Anything else?

3 A Professional judgment of the adequacy of the
4 evidence.

5 Q Anything else?

6 A I think that covers it.

7 Q When you say "existing case law," what do you
8 mean -- what cases -- strike that.

9 When you say "existing case law," what case law
10 are you referring to?

11 A The Debra P. and GI Forum cases.

12 Q What is your understanding of what that
13 existing case law requires in terms of criteria?

14 MR. HERRON: Objection. Vague and ambiguous.

15 THE WITNESS: In both cases, the judge was
16 presented with a set of evidence and the judge decided
17 that it was adequate to meet the curricular validity
18 standard.

19 BY MR. ROSENBAUM:

20 Q What is your understanding of what criteria, if
21 any, the judge utilized to make that determination?

22 A As I recall at this point without having
23 re-reviewed the cases, the judge didn't articulate a
24 specific list of criteria but looked at all of the
25 available evidence.

1 in California.

2 Q Okay. And is that true for all the STAR tests?

3 MR. HERRON: Objection. Vague and ambiguous.

4 BY MR. ROSENBAUM:

5 Q If you know.

6 MR. HERRON: Calls for speculation.

7 THE WITNESS: Are you referring to the
8 standards tests or the norm reference test?

9 BY MR. ROSENBAUM:

10 Q Let's break that down. I was about to do
11 that. With respect to the norm reference test, do you
12 know if that's done?

13 A The norm reference test is constructed by the
14 publisher, and the publisher has individuals who review
15 the items in the test development process.

16 Q Okay. You know my question dealt with
17 California teachers. Do California teachers review the
18 norm reference test questions in preparation of the
19 test?

20 A The test publishers select people nationally
21 from all over the country. I would expect that there
22 have been some California teachers that may have been
23 involved. I don't have personal knowledge.

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

25 A The specific number of California teachers that

1 review --
 2 Q Yes.
 3 A -- the test?
 4 No.
 5 Q Okay. Or if any California teachers in fact
 6 review the questions on the norm reference test?
 7 A And you're talking about test development --
 8 Q Yes.
 9 A -- during the actual development of the test?
 10 Q Yes.
 11 A Again, because they are national representative
 12 and they also try to represent people of diverse
 13 backgrounds, I would expect that there probably are.
 14 I think the publisher has lists of participants
 15 and one could find that out.
 16 Q Have you ever undertaken any such inquiry to
 17 find out?
 18 A No.
 19 Q Okay. With respect to the non-norm -- and
 20 that's true of both the Stanford 9 and the California
 21 Achievement Test?
 22 A What's true?
 23 Q Strike that.
 24 Do you have personal knowledge of how the
 25 Stanford 9 is prepared?

1 MR. HERRON: Objection. Vague and ambiguous.
 2 THE WITNESS: What do you mean "personal
 3 knowledge"?
 4 BY MR. ROSENBAUM:
 5 Q You used that phrase a few moments ago.
 6 Have you undertaken a specific investigation or
 7 inquiry to determine how the Stanford 9 questions are
 8 prepared?
 9 A I reviewed the technical manual and have been
 10 involved in some discussions about that.
 11 Q Okay. You know the test called the California
 12 Achievement Test?
 13 A Yes.
 14 Q Does that have another name, by the way?
 15 A They sometimes call it by an acronym CAT 6.
 16 Q Is that an off-the-shelf test?
 17 A Yes.
 18 Q Have you undertaken any inquiry to determine
 19 how those questions are prepared?
 20 A Again, I reviewed the technical manual.
 21 Q When you were in Texas, Doctor, did you -- to
 22 your knowledge, was there any inquiry or investigation
 23 ever undertaken as to whether or not there were students
 24 who were not -- who took the exam who were not given
 25 access to the information tested on the exam, all the

1 information?
 2 MR. HERRON: Objection. Calls for speculation.
 3 THE WITNESS: You mean by anyone?
 4 BY MR. ROSENBAUM:
 5 Q Yeah.
 6 A I don't think I would know everything that has
 7 been done in that regard.
 8 Lots of school districts do investigations on
 9 various things that I would not know about.
 10 Q Okay. I'm not interested in what you don't
 11 know about. I'm interested: Do you know if there was
 12 any investigation or inquiry or survey by anybody as to
 13 whether or not students taking -- all students taking
 14 the TAAS were taught all the information that was tested
 15 on that examination?
 16 A The State collected curricular validity
 17 evidence.
 18 Q Right. But -- if you just answered it, then
 19 just bear with me here. But did any of that curricular
 20 validity evidence include whether or not all students
 21 had been taught that information?
 22 MR. HERRON: Objection. Calls for speculation,
 23 vague and ambiguous.
 24 THE WITNESS: It included asking teachers their
 25 opinions.

1 BY MR. ROSENBAUM:
 2 Q As to whether or not what?
 3 A Students were being taught the information
 4 tested or had the skills required to answer particular
 5 test questions.
 6 Q Do you know sitting here today whether or not
 7 there were any students in Texas who did not have access
 8 to the information taught on the TAAS exam?
 9 MR. HERRON: Objection. Calls for speculation,
 10 vastly overbroad and unfair.
 11 You may respond if you're able.
 12 THE WITNESS: What I can say about that is
 13 Texas law requires those skills to be taught. So to the
 14 extent that didn't happen in some place, it would
 15 certainly have violated Texas law.
 16 BY MR. ROSENBAUM:
 17 Q Do you know what --
 18 A Also, students had opportunities for
 19 remediation if they had not learned it the first time
 20 around.
 21 Q Okay.
 22 A So there were multiple opportunities.
 23 Q But my question is a little different.
 24 Do you know if there were, in fact, any
 25 students who were not exposed to the information that

1 was being taught?

2 MR. HERRON: Same objections.

3 THE WITNESS: Do you mean prior to the first
4 testing or after remediation?

5 BY MR. ROSENBAUM:

6 Q Say, prior to the first testing.

7 A I don't know.

8 Q Okay.

9 A Texas law required that they be so exposed.

10 Q Does California law require that, do you know?

11 MR. HERRON: Objection. Vague and ambiguous in
12 the use of the term "that."

13 MR. ROSENBAUM: Actually, I'll withdraw that
14 question for a moment.

15 Q Are you referring to a specific Texas law when
16 you say "Texas law requires that"?

17 MR. HERRON: Vague and ambiguous. Object on
18 that basis.

19 You may respond.

20 THE WITNESS: It is in Texas statutory law that
21 teachers must teach the state curriculum.

22 BY MR. ROSENBAUM:

23 Q Is there a similar California law -- strike
24 that.

25 Do you know if there is an analogous California

1 evidence ought to be collected to determine whether or
2 not curricular validity exists?

3 MR. HERRON: Objection. Vague and ambiguous,
4 vague as to time, vague as to context.

5 THE WITNESS: I typically talk about the
6 evidence in both the Florida and the Texas cases that
7 the judge found sufficient.

8 BY MR. ROSENBAUM:

9 Q How many states have you consulted with on the
10 subject matter of curricular validity of state
11 assessment tests?

12 A Over the course of my career, I've probably
13 consulted with 20 to 25 states. I don't recall
14 specifically which ones had discussions on that topic.

15 Q Okay. Have you ever made a determination that
16 curricular validity did not exist with respect to a
17 state assessment test?

18 A Are you talking about my collecting
19 independently evidence on that point?

20 Q Well, no, not necessarily. Either collecting
21 the evidence independently or looking at the evidence
22 that the State or some other entity collected.

23 A Usually, I talk to states in the formative
24 stage before they have collected evidence. My only
25 evaluation has been in Texas in that court case.

1 law?

2 A I don't believe there is a specific curricular
3 mandate in California.

4 Q Okay. And if I -- when you go around and
5 consult, Doctor, is one of the areas of your
6 consultation how to determine whether or not curricular
7 validity exists?

8 MR. HERRON: Objection. Vague and ambiguous.

9 THE WITNESS: I wouldn't put it quite that
10 way. What I do is review legal requirements and
11 psychometric requirements and help clients determine
12 what evidence they might collect and how to put together
13 a case about curricular validity.

14 BY MR. ROSENBAUM:

15 Q Okay. And when you say "legal requirements,"
16 what do you mean by that?

17 A What has come out of the Debra P. and the GI
18 Forum cases.

19 Q Tell me what you understand that to be.

20 MR. HERRON: Objection. Asked and answered.

21 THE WITNESS: That users of tests, particularly
22 states, in this case, are required to collect evidence
23 of curricular validity.

24 BY MR. ROSENBAUM:

25 Q Okay. And do you make suggestions as to what

1 Q Have you specifically undertaken an
2 investigation to determine whether the California test
3 has curricular validity?

4 A You're asking again if I collected data on
5 that?

6 Q No. I'm asking whether or not -- I want to see
7 if I understand you right.

8 You told me that in Texas, you looked at data
9 that had been collected by others and made a judgment as
10 to whether or not the TAAS had curricular validity.

11 Am I understanding you right?

12 A Whether or not it met professional standards,
13 yes.

14 Q Have you ever undertaken a similar
15 investigation with respect to California?

16 MR. HERRON: Vague and ambiguous as to the
17 context, vague and ambiguous as phrased.

18 THE WITNESS: I have discussed the issue of
19 curricular validity. I have read evidence presented by
20 the outside evaluator on the high school exit program.
21 I have not conducted any specific analysis of my own.

22 MR. HERRON: Mark, we've been going over an
23 hour so --

24 MR. ROSENBAUM: We have, and just as long --
25 can I just take about two or three questions, and I'll

1 take a break?

2 MR. HERRON: Sure.

3 BY MR. ROSENBAUM:

4 Q You talked to California in the formative
5 stages of the High School Exit Exam; is that right?

6 A Yes.

7 Q And you -- did you talk to California in the
8 formative stages of the STAR program?

9 A Yes.

10 Q Did you -- have you -- maybe you answered this
11 and if you did, just bear with me here.

12 Have you undertaken an investigation looking at
13 data, either that you collected or that others
14 collected, to make an independent assessment as to
15 whether or not the California STAR test at any point met
16 standards, professional standards of curricular
17 validity?

18 MR. HERRON: Objection. Asked and answered,
19 overbroad.

20 You may respond.

21 THE WITNESS: The STAR test is not a High
22 School Exit Exam.

23 BY MR. ROSENBAUM:

24 Q I know that.

25 A And the curricular validity standard applies to

1 believe they have legal and professional standards with
2 respect to curricular validity?

3 A Well, curricular validity applies when
4 high-stakes decisions are being made about individual
5 students. The STAR program does not do that.

6 MR. ROSENBAUM: Okay. Let's take a break.

7 Thank you.

8 MR. HERRON: Okay.

9 (Recess taken.)

10 BY MR. ROSENBAUM:

11 Q Back on the record, Doctor.

12 A Yes.

13 Q Are you doing okay?

14 A Yes.

15 Q Doctor, did you review any depositions that
16 have been conducted in this case?

17 A Yes.

18 Q Which ones?

19 A Michael Russell.

20 Q Any others?

21 A Bill Padia.

22 Q Any others?

23 A I don't think so. That's all I recall.

24 Q Okay. Did you have any depositions summarized
25 for you by counsel?

1 high school exit exams.

2 Q It does not apply to the STAR exam; is that
3 correct?

4 MR. HERRON: Objection. Vague and ambiguous.

5 THE WITNESS: If you're referring to the
6 Debra P. and the GI Forum cases, those were about high
7 school exit exams and, so, I would conclude they apply
8 specifically to high school exit exams.

9 BY MR. ROSENBAUM:

10 Q The standards and requirements for curricular
11 validity is what we're talking about?

12 A As they were articulated by the court, yes.

13 Q Okay. Do you as a professional, you may have
14 just -- just answer this question for me and just say to
15 me, "I answered it."

16 Do you regard the STAR test, the STAR
17 assessment test, as having any requirement for
18 curricular validity?

19 Let me back up.

20 You told me that the High School Exit Exam
21 administered by California, there are requirements for
22 curricular validity, as you understand, legal and
23 professional requirements; is that right?

24 A Yes.

25 Q What about the STAR assessment test? Do you

1 A No.

2 Q When did you review the Russell and Padia
3 depositions?

4 A I don't remember exactly when that was. It was
5 during the course of the preparation of my report.

6 Q How did you -- did you choose on your own to
7 review Padia's deposition, or was it recommended to you?

8 A I think I became aware that it was available
9 and may have asked for it. I actually don't recall
10 specifically how that came about.

11 Q Okay. And do you recall whom you asked for
12 purposes of obtaining the deposition?

13 A Paul Salvaty.

14 Q Is Mr. Salvaty the only attorney with whom you
15 worked during the preparation of your report or did you
16 also work with Mr. Choate?

17 A I did not work with Mr. Choate at that time.

18 Q I take it you didn't work with Mr. Herron
19 during that time.

20 A No.

21 Q Okay. And did you ever meet with
22 Mr. Salvaty personally?

23 A No.

24 Q Okay. You dealt with him by telephone?

25 A Yes.

1 Q Did you deal with him by email?
 2 A I don't think so.
 3 Q Okay.
 4 A I think it was all phone.
 5 Q Did you ever receive instructions or
 6 suggestions not to use email?
 7 A No, I don't recall that.
 8 Q I take it you are email conversant.
 9 A I have an email account.
 10 Q Okay. Not all of us can say that.
 11 And when -- were you contacted by Mr. Salvaty
 12 about this case?
 13 A I think I may have first been contacted by
 14 somebody in the Attorney General's office.
 15 Q Okay.
 16 A I don't actually recall.
 17 Q With whom in the Attorney General's office have
 18 you had discussions regarding this case?
 19 A Mr. Egan.
 20 Q Anyone else?
 21 A I think her name is Read Spangler, something
 22 like that.
 23 Q Okay. Anyone else?
 24 A No.
 25 Q Have you had discussions with anyone in the

1 Department of Education, the California Department of
 2 Education, about this case?
 3 A Not discussions about the case, but I've asked
 4 for materials from individuals.
 5 Q Okay. Whom have you spoken with to get
 6 materials?
 7 A Phil Spears.
 8 Q Anyone else?
 9 A I talked to Bill Padia.
 10 Q Anyone else?
 11 A I may have talked to some secretaries and other
 12 folks. I just don't recall.
 13 Q Have you talked to anyone involved with the
 14 State Board of Education, either Board members or staff
 15 members about this case?
 16 A Yes.
 17 Q Who?
 18 A Rae Belisle.
 19 Q Anyone else?
 20 A Karen Steentofte.
 21 Q Spell that name, please.
 22 A That's -- I'm not sure I know the exact
 23 spelling of it. It's something like
 24 S-t-e-e-n-t-h-o-f-t-e, but I'm not sure.
 25 Q First name is Karen?

1 A Yes. Yes.
 2 Q Who is that, as far as you know?
 3 A She is legal counsel to the Board.
 4 Q Anyone else associated with the State Board?
 5 A I talked to some -- I'm not sure if "secretary"
 6 is the right word, but other folks like that.
 7 Q Okay. And have you spoken to anyone in the
 8 Governor's office about this case?
 9 A No, I don't think so. I don't recall any.
 10 Q Any other State official or personnel you've
 11 spoken to with respect to this case?
 12 A No.
 13 Q Have you spoken to any school district
 14 personnel, any school district, about this case?
 15 A Not that I can recall.
 16 Q Have you spoken to any County Board of
 17 Education people about this case?
 18 A Not that I recall.
 19 Q Have you ever visited a California public
 20 school?
 21 A Not that I recall.
 22 Q Have you spoken to any teachers or students,
 23 parents of students, about this case?
 24 A Not that I recall.
 25 Q Have you ever spoken to any principals or local

1 administrators about this case?
 2 A Not that I recall.
 3 Q Have you ever spoken with any California public
 4 school teachers, period?
 5 A You mean any time ever in my career, anywhere?
 6 Q Well, I don't mean if you were sitting on an
 7 airplane and said, "I am a teacher," but I mean in terms
 8 of your professional, have you ever spoken with any
 9 California public school teachers that you recall?
 10 A You mean as like part of my consulting?
 11 Q Yes. That would be fine.
 12 A I have -- I don't think I've consulted with any
 13 school districts in California, so no official
 14 consulting.
 15 Q Okay. Or principals?
 16 MR. HERRON: Objection. Asked and answered.
 17 THE WITNESS: Again, I don't think I've done
 18 consulting for districts specifically.
 19 I give a lot of talks, though, in different
 20 places and it's very possible that some school district
 21 people have attended those.
 22 BY MR. ROSENBAUM:
 23 Q Okay. What was your discussion with Mr. Spears
 24 about -- strike that.
 25 Did you know Mr. Spears -- do you know him?

1 A Yes.
 2 Q How do you know him?
 3 A When he came to the Department, I met him at a
 4 meeting.
 5 Q When he first got his job with the Department
 6 is that what you --
 7 A When he joined the Department, yes.
 8 Q When was that, approximately?
 9 A Two or three years ago, I think.
 10 Q Okay. And do you know Mr. Padia, personally?
 11 A I know him professionally.
 12 Q I'm sorry. Thank you.
 13 Do you know Mr. Hill professionally?
 14 A I have met him, yes.
 15 Q Okay. Mr. Warren?
 16 A I have met him.
 17 Q Superintendent Eastin?
 18 A I may have been in a meeting that she attended
 19 once. I don't know that we've ever had any individual
 20 contact.
 21 Q And how do you know Rae Belisle?
 22 A In her professional work with the Board.
 23 Q Let's break that down a little bit, if you
 24 don't mind.
 25 You have consulted with the State of

1 California; is that correct?
 2 A Yes.
 3 Q Okay. And when did you first consult with the
 4 State of California?
 5 A Late '90s.
 6 Q Okay. Can you give me a more approximate date
 7 than that? 1998? 1997? 1999?
 8 A I think it was around 1997.
 9 Q What was the nature of your relationship?
 10 MR. HERRON: Vague and ambiguous.
 11 MR. ROSENBAUM: I can break that down a little
 12 bit.
 13 Q You served as a consultant?
 14 A Yes.
 15 Q For the Department of Education? The State
 16 Board of Education? Some other entity --
 17 A The State Board of Education, initially.
 18 Q Okay. And did the State Board come to you for
 19 purposes of seeing if you would consult with the Board?
 20 A Yes. They contacted me.
 21 Q And to the best of your recollection, that
 22 would be sometime around 1997?
 23 A Yes.
 24 Q And was there a person or persons who contacted
 25 you?

1 A I believe it was the executive director of the
 2 Board.
 3 Q Do you recall who that was?
 4 A No, I don't remember the name.
 5 Q Do you recall if it was a man or a woman?
 6 A I think it was a man.
 7 Q And you were in Kentucky at the time?
 8 A No.
 9 Q Where were you?
 10 A I believe I was in Michigan at that time.
 11 Q Okay. And what was your understanding of what
 12 you were being invited to do?
 13 A Review proposals submitted by publishers for
 14 the STAR program.
 15 Q And what was your understanding as to what you
 16 were -- as to what the purpose of your review was to be?
 17 A To provide judgment and information to inform
 18 the Board's selection of a contractor for the STAR
 19 program.
 20 Q Can you speak up just a little bit to help the
 21 reporter, please.
 22 And can you tell me a little more specifically
 23 what you mean by "judgment and information" so as to
 24 inform the selection process?
 25 I'm interested: Judgment about what?

1 A Psychometric quality of the tests.
 2 Q And, incidentally, when you say "psychometric
 3 quality," what do you mean by that?
 4 A It's a broad term that encompasses the
 5 standards and professional judgment.
 6 Q All right. I don't know what you mean by that,
 7 when you say "standards." Help me to understand that.
 8 A There are standards that have been developed
 9 for the profession in which various members of the
 10 profession participated.
 11 Q Those are published standards?
 12 A Yes.
 13 Q And did you understand your job to assess
 14 different candidates for the test according to those
 15 professional standards?
 16 A What do you mean by "candidates"?
 17 Q Whether to use the Stanford 9 or some other
 18 test.
 19 A The publishers put forward proposals for use of
 20 their tests in the program, and we reviewed the specific
 21 proposals that had been put forward.
 22 Q And when you say "we," who are you referring
 23 to?
 24 A The State Board had a group of people they
 25 asked to do this review for them.

1 Q Okay. And do you know how large a group that
2 was?

3 A No.

4 Q Did the group meet together?

5 A No.

6 Q Were there conference calls?

7 A No.

8 Q So --

9 A Not that I recall, anyway.

10 Q So you were supposed to prepare -- let me
11 strike that.

12 Were you supposed to prepare a written
13 evaluation of the different publishers' proposals?

14 A We responded to a form that was given to us
15 that asked specific questions. It wasn't really a
16 written analysis, as you describe it, like a report.

17 Q Okay. How many proposals did you evaluate?

18 A It was just a few. I don't recall exactly.
19 Maybe three.

20 Q Okay. Maybe you already answered this for me,
21 Doctor, but the analysis, was it open-ended or was it to
22 respond specifically to certain questions that were on a
23 form?

24 Am I being clear? I want to know if they said,
25 "Hey, what do you think about this," and you wrote an

1 Q What did you understand, if anything, about the
2 purpose of the test?

3 MR. HERRON: Objection. Vague and ambiguous,
4 calls for speculation.

5 THE WITNESS: I believe The Assessment Act
6 stated the purpose of the STAR testing program and
7 directed that a norm reference test be selected and gave
8 the Board the authority to do that.

9 BY MR. ROSENBAUM:

10 Q Okay. When you say The Assessment Act, you
11 mean the PSAA?

12 A No.

13 Q What did you mean?

14 A I don't remember its exact name. I think it
15 has Leroy Greene in it, Leroy Greene something
16 Assessment.

17 Q What do you recall, Doctor, were the -- strike
18 that.

19 Were there any standards or criteria that were
20 to be applied to the norm reference test in the Act?

21 A The statute listed some criteria, yes.

22 Q And you understood your job to familiarize
23 yourself with that criteria and apply them to the
24 publishers' proposals per the form that you were
25 provided? Am I getting your job down right?

1 analysis, or were there --

2 A No.

3 Q There were particular questions you were
4 supposed to answer; is that right?

5 A Yes.

6 Q And --

7 MR. HERRON: Let him finish his question before
8 you respond. You guys are stepping on one another.

9 BY MR. ROSENBAUM:

10 Q Do you know who prepared that form?

11 A No.

12 Q Did you have a contact person with the Board
13 with whom you dealt on these questions?

14 A Yes.

15 Q And who was that?

16 A As I said, it was the executive director.

17 Q Okay. And over what period of time did you --
18 strike that.

19 You conducted an analysis of the various
20 publishers' proposals; is that right?

21 A I read through boxes of materials.

22 Q Okay. What did those boxes of materials
23 contain?

24 A Supporting information about the test being
25 proposed.

1 A In a general way. The form embodied specifics
2 related to those criteria that appeared in the statute.

3 Q Okay. And over what period of time did you
4 conduct this evaluation?

5 A We had a very short timeline to do this. I
6 remember that. It was probably a few weeks.

7 Q Okay. Did you express any concerns about the
8 length of time that you had to conduct the review?

9 MR. HERRON: Objection. Vague and ambiguous.
10 You may respond.

11 THE WITNESS: I may have complained about it at
12 the time. One often does.

13 BY MR. ROSENBAUM:

14 Q Okay. And were you paid for purposes of this
15 evaluation?

16 A Yes.

17 Q How much were you paid?

18 A I don't recall.

19 Q Can you give me a ballpark number?

20 MR. HERRON: Objection. Calls for speculation.

21 BY MR. ROSENBAUM:

22 Q I mean, are you talking about \$500? \$20,000?
23 \$100,000?

24 MR. HERRON: Objection. Compound.

25 THE WITNESS: I just don't remember how they

1 did it. I don't remember if it was a fixed amount or an
2 hourly rate.

3 BY MR. ROSENBAUM:

4 Q Do you have an hourly rate that you charge
5 typically?

6 A Yes.

7 Q Did you have one in 1997?

8 A I'm sure I did.

9 Q Do you recall what it was in 1997?

10 A I'm not sure. I've had varying rates over
11 time, and I just don't remember exactly about that.

12 Q Do you maintain financial records?

13 A For what?

14 Q For purposes of your consultation.

15 A Yes.

16 Q Okay. Would you have records that would
17 reflect how much you were paid?

18 A Nothing that would go back that far, no.

19 Q Was a contract executed with the State Board of
20 Education?

21 A Probably. I don't remember specifically, but
22 there's usually some written record of that either in
23 letter form or in contract form.

24 Q Okay. And did you recommend usage of the
25 Stanford 9 as the norm reference test?

1 Q Now, maybe you answered this for me. If you
2 did, bear with me.

3 Besides checking out the psychometric criteria,
4 did you have any other mandate in terms of what you were
5 supposed to look for?

6 MR. HERRON: Objection. Vague.

7 MR. ROSENBAUM: I'll clarify that.

8 Q You were to look to see if these proposals met
9 psychometric standards that you described to me; is that
10 right?

11 A Yes.

12 Q Did you have any other job, as you understood
13 it, in terms of evaluating these proposals?

14 A There was no other job specified in this
15 activity.

16 Q Okay. So you determined that all the proposals
17 met the professional psychometric standards; is that
18 right?

19 A Yes.

20 Q Were you ever asked to state your preference as
21 to which of the proposals you thought the State should
22 go with?

23 A No.

24 Q Did you ever express any such judgment?

25 A Not that I recall.

1 A We were not asked to do that.

2 Q In your mind, did you form a judgment as to how
3 you would rank order the candidates of the publishers'
4 proposals?

5 A We did not rank order the proposals.

6 Q But in your mind did you say, "This is where I
7 think the State really ought to go"?

8 A No. My job was to look at each of the
9 individual tests and determine whether or not they met
10 the criteria.

11 Q Did you make a determination as to whether or
12 not the Stanford 9 met the criteria?

13 A Yes.

14 Q What was your judgment?

15 A That it did meet the criteria.

16 Q Were there any standards of criteria among
17 those professional standards that you had any question
18 about the Stanford 9?

19 A No, I don't recall any.

20 Q Did you determine whether or not any of the
21 other publishers' proposals met the criteria?

22 A Yes.

23 Q What did you determine?

24 A I determined that they all met the psychometric
25 criteria specified.

1 Q And you told me that at the beginning you were
2 doing the work for the State Board of Education; is that
3 right?

4 A Yes.

5 Q Was there any other State entity that you also
6 did this piece of the -- this work for? That is,
7 looking at these norm reference tests?

8 A You're asking did I do it twice?

9 Q No. I'm asking if there was any other entity
10 that you also were consulting for besides the State
11 Board on this task.

12 A I don't understand your question. The Board
13 contacted me and asked me to do this and I did.

14 Q Okay. Now, that's the first work that you've
15 ever done for any California State entity; is that
16 right?

17 A That's the first that I recall. I've done a
18 lot of things in my professional career, and so I may be
19 forgetting something, but that's the first thing I
20 remember at this point.

21 Q All right. After the work with respect to
22 evaluating the psychometric quality as you have
23 described it to me, did there come a time that you did
24 other consulting work for the State of California --

25 A Yes.

1 Q -- or it's various entities?
 2 A Yes.
 3 Q When would be the next occasion?
 4 A It would have been shortly after that
 5 activity. Probably 1998.
 6 Q Okay. And what was the nature of that
 7 activity?
 8 A I don't remember all the specifics of the
 9 different meetings. They invited me to several
 10 different meetings in which they asked me to present
 11 things, and actually if you look at my report, it's in
 12 there, the different ones.
 13 Q Okay.
 14 A Maybe that would be helpful.
 15 Q That would be.
 16 A It's on page 2 under "California Consulting."
 17 Q Okay. Thank you.
 18 A And it's at the bottom of the right-hand column
 19 where it starts, "My work with the Department..." and
 20 then it lists the various meetings and presentations
 21 that were involved.
 22 Q All right.
 23 So you were involved with setting performance
 24 standards in March of 1998; is that right?
 25 A Yes.

1 Q What is that?
 2 A You mean what does that topic involve?
 3 Q Yes.
 4 A It involves deciding how good is "good enough"
 5 on a test, what score is required to pass or to achieve
 6 a certain level of proficiency.
 7 Q Okay. And you tell me if this is right. Is
 8 that the same thing as a cut score?
 9 A That word is also used, yes.
 10 Q Was this in reference to the High School Exit
 11 Exam or a STAR assessment test or something else or some
 12 combination?
 13 A At that time, I don't think the legislation on
 14 the High School Exit had been passed, though people
 15 might have been thinking about one.
 16 I believe the meeting was more in general about
 17 setting standards on statewide assessments. And a
 18 variety of people were invited to come and speak on that
 19 issue.
 20 Q Did you have an understanding that this related
 21 to the Stanford 9 and what the proficiency levels would
 22 be?
 23 MR. HERRON: Objection. Asked and answered.
 24 You may respond.
 25 THE WITNESS: This predated that. I think the

1 work that was in progress involved the content
 2 standards.
 3 BY MR. ROSENBAUM:
 4 Q I see, or I think I see.
 5 Your understanding of what was going on was
 6 that the State was in the process of developing content
 7 standards for different curricular areas; is that right?
 8 A Yes.
 9 Q And you understood your objective here was to
 10 talk to them -- well, with respect to the different
 11 content areas, what should we say is sufficient mastery
 12 of a particular subject matter?
 13 Am I getting this right?
 14 MR. HERRON: Objection. Misconstrues prior
 15 testimony.
 16 MR. ROSENBAUM: I don't want to misconstrue
 17 your testimony.
 18 Q Why don't you tell me. I'm sure I'm garbling
 19 it here.
 20 A There certainly were standards being developed
 21 in different content areas. My job was not to address
 22 the content areas but to address the process of
 23 standards setting more generally, which includes both
 24 content and performance.
 25 Q When you say "content," what do you mean by

1 that?
 2 You said -- the first thing you said is it
 3 involves content; is that right?
 4 A Yes.
 5 Q What does that mean?
 6 A The specific skills that the State expects to
 7 be taught to students in particular subject matter at
 8 specified grade levels.
 9 Q Did you talk about particular subject areas,
 10 what it should be in math, what it should be in language
 11 arts, for example?
 12 MR. HERRON: Objection. Vague.
 13 THE WITNESS: If you're asking whether I made
 14 specific content recommendations in subject matter
 15 areas, the answer is no.
 16 BY MR. ROSENBAUM:
 17 Q What did you do?
 18 MR. HERRON: Objection. Vague.
 19 THE WITNESS: I gave a presentation about
 20 setting standards.
 21 BY MR. ROSENBAUM:
 22 Q And can you tell me: Have you made similar
 23 presentations in the past?
 24 A I'm sure I have, yes.
 25 Q Can you just give me a synopsis of what you

1 said, what --

2 A That's been a long time ago. Without looking
3 at notes or something about it, I don't really recall
4 specifically what was addressed in that particular
5 meeting.

6 I know they were allowed to ask questions and
7 there were lots of questions.

8 Q Okay. Who was your audience?

9 A I believe it was a committee or committees that
10 were involved in this standards development process.

11 Q Okay.

12 A And probably State people, as well.

13 Q Okay. And this was in Sacramento?

14 A I believe so.

15 Q Who invited you?

16 A I don't recall. Probably someone from the
17 Department, I would guess.

18 Q Were you paid for this presentation?

19 A Yes.

20 Q How much were you paid?

21 MR. HERRON: If you know.

22 THE WITNESS: I think my hourly rate back then
23 was probably 150 an hour, but I'm not sure exactly when
24 different rates were in effect.

25 BY MR. ROSENBAUM:

1 BY MR. ROSENBAUM:

2 Q Okay. And when you say "advisory committee
3 meetings" here on page 2 of your report for the months
4 that I mentioned, what advisory committee are we talking
5 about?

6 A This was I believe within the Department of
7 Education.

8 Q Do you know what you were advising on?

9 A I don't recall specifically, but it was issues
10 related to statewide testing.

11 Q And would that -- that would include the STAR
12 program?

13 A Yes.

14 Q Would that also include the High School Exit
15 Exam?

16 A It has more recently, but at that time I
17 believe they still were not actually doing the High
18 School Exit.

19 I think that came later.

20 Q Can you give me your best recollection, please,
21 of what the subject matter -- strike that.

22 Approximately how many meetings did you attend?

23 A I believe just the two that are listed.

24 Q Were there meetings that you participated in by
25 telephone?

1 Q And what is your best recollection if any as to
2 how many hours you billed for for this activity?

3 MR. HERRON: If you have one.

4 THE WITNESS: The meeting itself took a day,
5 and then there was some preparation, I assume, for the
6 presentation, so something over a day, I would expect.

7 BY MR. ROSENBAUM:

8 Q Okay. Did you submit anything in writing?

9 A You mean my billing?

10 Q No. No. I'm sorry. Like a paper or --

11 A No.

12 Q Okay. All right. Then did the -- strike that.

13 Now, you also, as reflected on page 2 of your
14 report, attended advisory committee meetings and the
15 dates include November 1998 and January 1999.

16 A Yes.

17 Q Okay. Incidentally, Doctor, how do you know
18 this? I mean, do you have records that reflect the
19 content that's stated here in your report?

20 MR. HERRON: Vague. Object on that basis.

21 THE WITNESS: This description is a
22 continuation of a record that began when I started doing
23 expert witness work in states, and I have kept a record
24 and continued to add to it with each report that I
25 write.

1 A Not that I recall.

2 Q Okay. And do you remember more specifically
3 what the subject matter of either the November or the
4 January meetings were?

5 A I have no specific recollection of that.

6 Q Did the subject matter of the Stanford 9 come
7 up?

8 A The Stanford 9 was the selected test for the
9 STAR testing program, so I would expect it probably did.

10 Q Okay. And do you remember anything that was
11 said about the Stanford 9 at either of those meetings?

12 A I have no specific recollection of that.

13 Q Can you tell me, to the best of your
14 recollection, who was the audience for the November '98
15 meeting?

16 A Those were not presentations. Those were
17 participatory committee meetings.

18 Q You were part of an advisory committee --
19 strike that.

20 You were part of an advisory committee?

21 A Yes.

22 MR. HERRON: Objection. Asked and answered.

23 BY MR. ROSENBAUM:

24 Q Did that advisory committee have a name?

25 A Probably, but I don't know what it was.

1 Q Okay.
 2 A The Department might have had some name for it.
 3 Q Okay. Did it have a chair, a chairperson?
 4 A I don't think so.
 5 Q Okay. Do you know who ran that meeting?
 6 A Probably someone from the Department.
 7 Q Do you remember who that was?
 8 A No.
 9 Q Okay. Who else, to the best of your
 10 recollection, served on the advisory committee that met
 11 November 1998?
 12 A I don't recall.
 13 Q Okay. Was there -- do you remember anybody
 14 else who was on that committee?
 15 A No, I don't recall who was involved who --
 16 MR. HERRON: Will you please let her finish her
 17 answers.
 18 MR. ROSENBAUM: I'm sorry.
 19 MR. HERRON: You have been cutting her off
 20 quite a bit now.
 21 MR. ROSENBAUM: I'm sorry.
 22 Q Go ahead. Do you remember?
 23 A He probably did not attend the meeting would be
 24 my best guess. I don't --
 25 Q We're talking about Padia?

1 A -- remember. Yes.
 2 Q Okay. Why do you say he probably would not
 3 have?
 4 A Because I believe the focus was on the STAR
 5 program and the assessment part of the program, and so I
 6 think it would have been assessment staff that attended.
 7 Q To the best of your recollection, was one of
 8 the issues for either the November or the January
 9 meeting or both whether or not the Stanford 9 should
 10 continue to be used?
 11 A I don't recall that.
 12 Q Or whether or not there should be -- you know
 13 what I mean when I say "augmentation questions"?
 14 A There were augmentation questions.
 15 Q Right. My question is: Was there discussion
 16 at either of those meetings about the use of
 17 augmentation questions?
 18 A That probably was discussed.
 19 Q Do you remember anything about that subject
 20 matter?
 21 MR. HERRON: At that meeting?
 22 MR. ROSENBAUM: At either of the meetings.
 23 THE WITNESS: I don't remember the specifics
 24 now.
 25 BY MR. ROSENBAUM:

1 Q Were you -- were those meetings more than one
 2 day? Let's start the November 1. Was that more than a
 3 one-day meeting?
 4 A I don't actually recall specifically, but
 5 probably not. I think they were one-day meetings.
 6 Q Each of them?
 7 A I believe so.
 8 Q Do you remember anything else about any of the
 9 subject matters discussed?
 10 MR. HERRON: At either meeting?
 11 MR. ROSENBAUM: Yes.
 12 THE WITNESS: I don't have any specific
 13 recollection, but I expect that there was a lot of
 14 discussion around psychometric issues and testing
 15 issues.
 16 BY MR. ROSENBAUM:
 17 Q Okay. When you say "psychometric testing
 18 issues," what do you mean by that?
 19 A Things like the augmentation.
 20 Q Anything else?
 21 A I don't have any specific recollection of what
 22 we discussed at those meetings.
 23 Q Okay. Were you paid hourly or was there a
 24 fixed sum that you were paid for your work on these
 25 committees?

1 A It was probably at an hourly or daily rate, I
 2 expect.
 3 Q Do you know what your daily rate was in
 4 November 1998?
 5 A I think it was \$1,500.
 6 Q Okay.
 7 A But, again, I don't remember specifically when
 8 different rates were used.
 9 Q And in January 1999, do you remember what your
 10 daily rate was?
 11 A It was probably the same.
 12 Q Did you do preparation work for those committee
 13 meetings?
 14 MR. HERRON: Objection. Vague.
 15 THE WITNESS: Again, I don't have a specific
 16 recollection but it's possible they sent us materials to
 17 read prior to the meeting.
 18 BY MR. ROSENBAUM:
 19 Q Okay. And would you have billed for your
 20 review of those materials?
 21 MR. HERRON: Objection. Calls for speculation.
 22 THE WITNESS: If I did specific preparation
 23 prior to the meeting, I would have billed for that
 24 time.
 25 BY MR. ROSENBAUM:

1 Q Okay. Do you remember anything else about
2 those meetings besides what we've discussed?
3 A I have no specific memory, no.
4 Q Okay. Thank you.
5 And then you also made a presentation on
6 "Opportunity to Learn" and "Testing Accommodations" in
7 November 1999; is that right?
8 A Yes.
9 Q All right. Now, help me understand
10 this. That's two subject matters, right? "Opportunity
11 to Learn" is one subject matter and "Testing
12 Accommodations" is another subject matter; is that
13 right?
14 A Yes.
15 Q And Testing Accommodations, that has to deal --
16 that deals with children who have special educational
17 needs; is that right?
18 A The Testing Accommodations portion?
19 Q Yes.
20 A Yes.
21 Q Okay. And that presentation, was that
22 accompanied by a written memo or document that you
23 prepared?
24 A Not that I recall.
25 Q Okay. And you gave an oral presentation; is

1 that right?
2 A Yes.
3 Q That was in Sacramento?
4 A Yes, I believe so.
5 Q And --
6 MR. HERRON: Please let her finish her
7 questions -- her responses.
8 BY MR. ROSENBAUM:
9 Q At whose invitation?
10 A I don't recall specifically. It may have been
11 both the Board and the Department.
12 Q And do you know who was your audience?
13 MR. HERRON: Objection. Vague and ambiguous.
14 THE WITNESS: The presentation I think was made
15 specifically as part of a State Board meeting, and as
16 I'm sure you know, lots of people attend those. And I
17 have no specific recollection of who else might have
18 been in the audience for that.
19 BY MR. ROSENBAUM:
20 Q Okay. Did you ever meet with any State
21 official besides members of the State Board of Education
22 to talk about Opportunity to Learn?
23 MR. HERRON: Objection. Vague as to time,
24 vague and ambiguous as phrased.
25 BY MR. ROSENBAUM:

1 Q In California.
2 MR. HERRON: You may respond, if you
3 understand.
4 THE WITNESS: I don't think I ever had any
5 specific meetings other than that presentation that were
6 directed at that topic, specifically.
7 BY MR. ROSENBAUM:
8 Q Okay. And were you paid for that presentation?
9 A Yes.
10 Q Do you recall if it was an hourly or a daily
11 rate?
12 A I don't recall which way it was billed. I
13 traveled, so probably on a daily rate.
14 Q And do you bill for your travel?
15 MR. HERRON: Objection. Vague and ambiguous.
16 THE WITNESS: I don't understand what you're
17 asking me. I bill for my time to give presentations and
18 consult.
19 BY MR. ROSENBAUM:
20 Q Okay. And that time includes the actual
21 presentation itself; is that right?
22 A Yes.
23 Q And does it include the time that you spend
24 traveling to the site of the presentation, to and from?
25 A In this case, likely not. There have been some

1 occasions when that has been the case.
2 Q And to the best of your recollection, was this
3 presentation about Opportunity to Learn and Testing
4 Accommodations, was that an all-day meeting?
5 A I believe the Board meeting probably was. My
6 portion of it did not take the whole day, but I was
7 there basically for the day and I gave my presentation
8 when it was my turn on the agenda. And then there was
9 some question and answer afterwards.
10 Q Okay. Thank you.
11 And did you review any documents that others
12 prepared about either Opportunity to Learn or Testing
13 Accommodations?
14 MR. HERRON: Objection. Vague and ambiguous as
15 phrased and as to time.
16 MR. ROSENBAUM: At any point.
17 THE WITNESS: I assume you mean in connection
18 with preparation for this presentation, this meeting?
19 BY MR. ROSENBAUM:
20 Q Let's start there, yeah.
21 A I don't have any specific recollection, but I
22 probably did in preparing my remarks. And I may have
23 reviewed materials that were sent to me if there were
24 agenda item materials, something like that, but I don't
25 recall specifically.

1 Q Were you ever part of a team that was formed to
2 deal with Opportunity to Learn issues in California?
3 A Not that I recall.
4 Q Okay. Or Testing Accommodations issues?
5 MR. HERRON: Objection. Vague.
6 THE WITNESS: Not that I recall.
7 MR. HERRON: Sorry.
8 BY MR. ROSENBAUM:
9 Q Did you have an understanding at the time you
10 made this presentation, Doctor, as to whether or not the
11 Opportunity to Learn and the Testing Accommodations, did
12 it relate to the STAR program or the High School Exit
13 Exam or both or something else?
14 MR. HERRON: Objection. Compound, there are
15 about four questions there; vague and ambiguous.
16 You may respond, if you understand.
17 THE WITNESS: I believe this presentation
18 predated the High School Exit Exam, so I would expect
19 that it was focused primarily on the STAR program.
20 But I don't have any specific recollection of
21 that. There may have been question or discussion,
22 thinking ahead to the High School Exam.
23 BY MR. ROSENBAUM:
24 Q And then you also have performed consultation
25 regarding the High School Exit Exam beginning in

1 September 2000?
2 A Yes.
3 Q And who first contacted you about serving in
4 that capacity?
5 A It was either someone from the Board or the
6 Department. I don't remember at this point specifically
7 who.
8 Q Okay. And what was your understanding of what
9 you were asked to do at the beginning?
10 A My understanding was that they were forming a
11 small technical advisory committee to advise both the
12 Department and the Board on issues related to the
13 statewide testing program.
14 Q And when you say "statewide testing program,"
15 do you mean the High School Exit Exam or do you mean
16 STAR, or something else?
17 A Both.
18 Q And you were asked to be part of that advisory
19 committee?
20 A Yes.
21 Q And how many persons are on that -- were on
22 that advisory committee at the beginning?
23 A Four.
24 Q Has that number remained the same throughout?
25 MR. HERRON: Objection. Calls for speculation.

1 THE WITNESS: In terms of the outside experts
2 that were asked to come and participate, to the best of
3 my knowledge, yes.
4 BY MR. ROSENBAUM:
5 Q Speak up just a little bit.
6 You served on the advisory committee for its
7 entire duration?
8 A Yes.
9 Q And does that committee still exist?
10 A To the best of my knowledge, yes.
11 Q Okay. When was the last meeting?
12 MR. HERRON: Objection. Calls for speculation,
13 vague and ambiguous.
14 MR. ROSENBAUM: It's actually vague.
15 Q When I say "meeting," did you have personal
16 meetings at which people attended in person?
17 A We had professional technical advisory
18 committee meetings in which the experts came to
19 Sacramento and Department Board personnel participated.
20 Q How many such meetings have you attended?
21 MR. HERRON: Objection. Vague.
22 THE WITNESS: When this first began, I think we
23 had two or three meetings a year.
24 BY MR. ROSENBAUM:
25 Q For how many years?

1 A Well, up until the present, I think there was
2 at least one meeting last year, there may have been
3 two. I just don't recall exactly.
4 I do a lot of technical advisory committee
5 work, and it's hard to keep track of how many and in
6 which states, so I just don't remember exactly.
7 Q Okay. And can you give me the names of the
8 other persons who were -- you understood to be experts
9 who were on the committee at its formation?
10 A Yes.
11 Q Who were they?
12 A Tom Fisher, Mary Lyn Bourque, Ed Haertel.
13 Q Have they continued on the committee, so far as
14 you know?
15 A The best of my knowledge, yes.
16 Q So it's been the same four of you?
17 A Yes.
18 Q Okay. And you told me that you have come to
19 Sacramento to attend meetings?
20 A Yes.
21 Q Are there also conference calls from time to
22 time?
23 MR. HERRON: Objection. Vague and ambiguous.
24 MR. ROSENBAUM: Relating to your work.
25 THE WITNESS: Usually, the meetings have been

1 in person. There may have been a conference call. I
2 don't recall any specific ones.

3 BY MR. ROSENBAUM:

4 Q Okay. What have been the subject matters that
5 this committee has concerned itself with?

6 MR. HERRON: Objection to the extent it calls
7 for speculation.

8 You may respond.

9 THE WITNESS: I don't have a specific
10 recollection of individual meetings, but it's generally
11 information about the statewide testing program.

12 BY MR. ROSENBAUM:

13 Q Let me suggest some subjects and you tell me if
14 these are among the subjects that the committee has
15 considered over the course of its existence.

16 Has the committee been concerned as to whether
17 or not the High School Exit Exam should be postponed,
18 the administration of it?

19 A I don't believe we've been specifically asked
20 that question.

21 Q Okay. Have you dealt with the question of cut
22 scores for the High School Exit Exam?

23 MR. HERRON: Objection. Vague.

24 THE WITNESS: I don't have any specific
25 recollection, but it's likely that we discussed that at

1 Stanford 9?

2 MR. HERRON: Objection. Calls for speculation.

3 THE WITNESS: I don't recall specifically. Our
4 initial task I think was focused on High School Exit,
5 but we may have discussed issues related to the STAR
6 program, as well. I just don't recall, for sure.

7 BY MR. ROSENBAUM:

8 Q What issues do you recall being discussed about
9 the STAR program?

10 A I don't have any specific recollection about
11 that.

12 Q At some point, there was a decision to replace
13 the Stanford 9 with the CAT 6; is that right?

14 A Yes. The Board made that determination.

15 Q Did the committee concern itself at all with
16 that subject matter, whether or not the Stanford 9
17 should be continued, whether or not it should be
18 replaced by another norm reference exam, whether or not
19 the CAT 6 should be used?

20 I'm asking about a variety of subject matters,
21 but I'm doing it to see if any of those subject matters
22 were matters that you think the committee discussed?

23 MR. HERRON: Objection. Compound.

24 You may respond.

25 THE WITNESS: You've covered a lot of territory

1 some point.

2 BY MR. ROSENBAUM:

3 Q Okay. Were there any meetings at which you
4 discussed the results of High School Exit Exam?

5 MR. HERRON: Same objection.

6 THE WITNESS: Again --

7 MR. HERRON: You may respond.

8 THE WITNESS: Again, I don't have any specific
9 recollection but it's likely that we did so.

10 BY MR. ROSENBAUM:

11 Q What subject matters do you recall being
12 discussed about the High School Exit Exam?

13 MR. HERRON: At the meetings this is, right?

14 MR. ROSENBAUM: At the meetings or in
15 connection with your work on this committee.

16 THE WITNESS: I don't have a specific
17 recollection of particular topics, but anything related
18 to the development of a high school exit exam is likely
19 to have been discussed at some point.

20 BY MR. ROSENBAUM:

21 Q Okay. Including the reliability of the exam?

22 A Yes.

23 Q And the validity of the exam?

24 A Yes.

25 Q And were there discussions about the

1 there.

2 I don't recall being asked for a specific
3 recommendation but the SAT 9 may well have been
4 discussed during those meetings.

5 As you know, the CAT 6 was just recently
6 adopted, so that's fairly new to the program and I don't
7 recall being asked for a specific recommendation about
8 that.

9 BY MR. ROSENBAUM:

10 Q Did the committee look at results of the SAT 9?

11 A Again, I have no specific recollection but I
12 imagine we did look at data.

13 Q What did you regard, Doctor, as your -- the
14 scope of your areas of concern in terms of your work on
15 this committee?

16 MR. HERRON: Objection. Vague and ambiguous in
17 the use of the term "areas of concern."

18 THE WITNESS: My task in serving on the
19 committee was to give psychometric advice to the Board
20 and to the Department in response to their queries to us
21 as a committee.

22 BY MR. ROSENBAUM:

23 Q Okay. Do you have a file that would include
24 documents relating to your work on this committee?

25 A No.

1 Q Okay. Did you get -- did you get written
2 requests for particular opinions from the Board?
3 A Typically, no.
4 Q You worked with the executive director of the
5 State Board? Strike that.
6 Who was your contact person or persons for the
7 State Board?
8 A For the TAC committee meetings? T-A-C,
9 Technical Advisory Committee?
10 Q Yes.
11 A I believe it was primarily Paul Warren.
12 Q Okay. What about Rae Belisle?
13 A I talked to Rae from time to time.
14 Q Okay. Now, Mr. Warren left his position with
15 the Department; isn't that right?
16 A That's my understanding.
17 Q Okay. Did someone replace him insofar as you
18 know in terms of being the contact person for the
19 committee?
20 MR. HERRON: Her contact person?
21 MR. ROSENBAUM: Yeah.
22 THE WITNESS: I guess I don't know who his
23 replacement is and have not had contact with his
24 replacement, to the best of my knowledge.
25 BY MR. ROSENBAUM:

1 Q Okay. This committee -- this question is not
2 limited to TAC, but have you given opinions as to
3 whether or not the administration of the California High
4 School Exit Exam should occur or not?
5 MR. HERRON: Objection. Vague and ambiguous.
6 MR. ROSENBAUM: It is a little bit vague.
7 Q You're aware that there has been a postponement
8 of the implementation of the California High School Exit
9 Exam; is that right?
10 A Not exactly. I'm aware that HumRRO gave a
11 report and that the Board was to act on that.
12 I have not received any information about any
13 Board action.
14 Q Have you been consulted as to your views as to
15 whether or not there should be any cessation in the
16 implementation of the California High School Exit Exam?
17 MR. HERRON: Vague and ambiguous as to the use
18 of the term "cessation." I object on that ground.
19 THE WITNESS: I have been consulted with
20 respect to psychometrics related to the HumRRO report
21 that was prepared.
22 BY MR. ROSENBAUM:
23 Q Tell me what you mean by that.
24 A I was asked questions about the report.
25 Q And when you say "psychometrics," just so we're

1 talking the same language, why don't you tell me what
2 you mean by that word.
3 A The sum of professional standards, experience
4 and knowledge about testing and assessment.
5 Q And HumRRO has done more than one report with
6 respect to the High School Exit Exam; is that right?
7 MR. HERRON: Objection. Calls for speculation.
8 THE WITNESS: Yes, I believe that to be true.
9 BY MR. ROSENBAUM:
10 Q How many reports?
11 MR. HERRON: Same objection.
12 THE WITNESS: They -- as I recall, they do a
13 report every year, and then they did this additional
14 report about implementation dates.
15 BY MR. ROSENBAUM:
16 Q And regarding this last report, Doctor, what is
17 your understanding of what the HumRRO recommendation
18 was?
19 MR. HERRON: Objection. Assumes facts not in
20 evidence.
21 THE WITNESS: I don't think I can speak to that
22 directly without having the report in front of me. I
23 haven't seen it very -- I haven't reviewed it recently.
24 BY MR. ROSENBAUM:
25 Q Okay. Do you have an opinion as to whether or

1 not there should be a delay -- a postponement of the
2 implementation of the High School Exit Exam?
3 A To what time?
4 Q I don't think my question is as clear as it
5 should be.
6 My first question is this: Do you have an
7 opinion as to whether or not there should be a delay in
8 the administration of the High School Exit Exam to
9 students?
10 MR. HERRON: Objection. Vague and ambiguous as
11 to time, vague and ambiguous as to whether it concerns
12 recent Board action.
13 You may respond.
14 THE WITNESS: My understanding is the test has
15 been administered and is being administered to students,
16 and I think that should continue.
17 BY MR. ROSENBAUM:
18 Q Why is that?
19 A So whether or not there are consequences for
20 graduation, there is a need to continue to develop the
21 exam, to develop questions, to maintain its quality.
22 Q And why is that?
23 A So that whenever the Board decides it should be
24 implemented, it will be ready to do so.
25 Q Okay. Do you have -- have you expressed that

1 view to anybody?
 2 A I expect I probably have.
 3 Q To whom?
 4 A Probably to an attorney in the Attorney
 5 General's office.
 6 Q Who is that?
 7 A Tracy Stinson.
 8 Q Have you expressed it to anybody associated
 9 with the State Board?
 10 A Probably to Rae Belisle.
 11 Q Do you recall what if anything she responded?
 12 MR. HERRON: I object as attorney-client
 13 privilege. I have to instruct her not to answer.
 14 Ms. Belisle was general counsel for the Board.
 15 BY MR. ROSENBAUM:
 16 Q Did you express it to anyone else besides
 17 Ms. Belisle associated with the State Board?
 18 A Anyone at the State Board, you're asking?
 19 Q Or a staff of the State Board?
 20 A Karen Steentofte might have been involved in
 21 those discussions. I don't actually recall.
 22 Q What did you say?
 23 MR. HERRON: Objection and instruct you not to
 24 answer based on attorney-client privilege. Karen
 25 Steentofte was Rae Belisle's replacement.

1 BY MR. ROSENBAUM:
 2 Q When did you talk to Ms. Belisle?
 3 A I don't recall specifically.
 4 Q Within the last couple of months?
 5 A I expect so.
 6 Q Okay. I'm going to ask the question again,
 7 what you said to Ms. Belisle.
 8 Ms. Belisle was serving as executive director
 9 at that point, David.
 10 MR. HERRON: That may be, but let's find out
 11 about the discussion.
 12 Was the discussion in the last couple of months
 13 on this topic?
 14 MR. ROSENBAUM: That was the question, David,
 15 and she's answered it.
 16 MR. HERRON: Well, no, she hasn't answered the
 17 timing part of it. I'm glad to let her answer if that
 18 was Rae's position.
 19 MR. ROSENBAUM: Let's have the witness' last
 20 full answer read back, please, my question and her
 21 answer.
 22 MR. HERRON: It would be easier just to ask her
 23 when --
 24 MR. ROSENBAUM: No. Read it back.
 25 MR. HERRON: This is ridiculous.

1 (The record was read as follows:
 2 "Q When did you talk to
 3 Ms. Belisle?
 4 "A I don't recall specifically.
 5 "Q Within the last couple of
 6 months?
 7 "A I expect so.")
 8 MR. HERRON: Ask her about the topic of the
 9 conversation.
 10 MR. ROSENBAUM: I did ask that.
 11 Q What did you say to Ms. Belisle -- what did you
 12 say to Ms. Belisle within the last two to three months
 13 about the subject matter of the High School Exit Exam?
 14 A Let me clarify, first, that my discussions with
 15 Rae Belisle began when she was counsel to the Board.
 16 This discussion has been going on for some time
 17 as you probably know and most of the discussion occurred
 18 earlier on. And any conversation I had in the last
 19 couple of months was a follow-up to those conversations
 20 that we had.
 21 Q Okay.
 22 A And Karen Steentofte may have been involved in
 23 that, also.
 24 Q Okay. Right now, I'm not interested, without
 25 waiving my position, in the earlier discussions that you

1 had with Ms. Belisle about the High School Exit Exam
 2 when you believe she was serving as general counsel.
 3 My question now is: With the follow-up
 4 discussions that you had since she became executive
 5 director, can you tell me what the substance of those
 6 discussions were regarding the High School Exit Exam?
 7 MR. HERRON: Objection based on the
 8 attorney-client privilege and I instruct you not to
 9 answer to the extent that Karen Steentofte was attending
 10 the meetings that you had with Rae Belisle on that
 11 topic.
 12 MR. ROSENBAUM: Dr. Phillips has stated she has
 13 no specific recollection that any attorney was at that
 14 meeting.
 15 Q Go ahead. What did you say?
 16 MR. HERRON: That's false.
 17 You may respond, based on my instruction.
 18 THE WITNESS: I am going to follow his
 19 instruction.
 20 MR. ROSENBAUM: You know, David, the witness
 21 has expressed considerable opinion about the High School
 22 Exit Exam in the course of her report.
 23 MR. HERRON: Uh-huh.
 24 MR. ROSENBAUM: I'm entitled to get all her
 25 views about the High School Exit Exam --

1 MR. HERRON: Sure.
 2 MR. ROSENBAUM: -- that she has expressed. And
 3 whereas I don't believe that the objection is well
 4 taken, in any position, you can't shield an expert's
 5 views by reliance on High School Exit Exam. I'm
 6 entitled to the full scope of her views on that matter.
 7 MR. HERRON: Right. Go ahead and ask her and
 8 anything that's not privileged she is glad to tell you,
 9 but she wasn't serving as an expert when she was talking
 10 to counsel when she contracted on the -- for the CDE
 11 and the Board.
 12 You're entitled to ask her what she expressed
 13 in her report and please ask her about everything that's
 14 not privileged and we'll gladly answer.
 15 MR. ROSENBAUM: I'm --
 16 MR. HERRON: You're saying you're entitled to
 17 something that's privileged? Is that right?
 18 MR. ROSENBAUM: I'm saying she's not entitled
 19 to assert a privilege, which isn't well taken in the
 20 first place, about the subject matter of a purported
 21 expert's testimony as to statements that she's made.
 22 MR. HERRON: She was acting in the role of a
 23 consultant, not an expert when she consulted with the
 24 lawyers for the Board. That's absolutely privileged
 25 and, you know --

1 MR. ROSENBAUM: My position is clear.
 2 I take it you're not going to permit me to
 3 inquire into -- are you going to permit me to inquire
 4 into any of her statements about the High School Exit
 5 Exam to Rae Belisle?
 6 MR. HERRON: Sure.
 7 BY MR. ROSENBAUM:
 8 Q Could you tell me what you have stated to
 9 Ms. Belisle about the High School Exit Exam for purposes
 10 of this question when she was not serving as general
 11 counsel?
 12 MR. HERRON: And when Karen Steentofte was not
 13 present, you may respond to that question.
 14 THE WITNESS: Are you asking now in general
 15 about anything about the High School Exit Exam --
 16 BY MR. ROSENBAUM:
 17 Q Yes.
 18 A -- at all?
 19 I don't, again, recall specific conversations.
 20 We talked about psychometric issues related to that exam
 21 and the requirements for defensibility of high school
 22 exit exams.
 23 Q You talked about those issues with Rae Belisle
 24 when she was not general counsel?
 25 A I believe that's -- yes, I believe that's true.

1 Q What did you say?
 2 A Again, I don't remember the specific
 3 conversations but we talked about essentially the
 4 requirements were legal defensibility on a high school
 5 exit exam and what the psychometric implications of
 6 those would be.
 7 Q When did those discussions take place?
 8 A As I indicated, they've gone on for a long
 9 time. Those began when she was general counsel to the
 10 Board, and when she came back as executive director,
 11 they have continued in the vein of the same kinds of
 12 discussion we had had before.
 13 Q Tell me a single thing that you said.
 14 MR. HERRON: Objection. Asked and answered.
 15 THE WITNESS: Again, I don't recall the
 16 specifics of any particular conversation. I expect that
 17 we probably talked about the Debra P. requirements and
 18 the GI Forum case.
 19 MR. HERRON: We've been going about an hour, so
 20 when you get to a convenient stopping point.
 21 MR. ROSENBAUM: Sure. Give me a few questions
 22 here.
 23 Q Do you -- can you tell me anything else you
 24 said about the High School Exit Exam to Rae Belisle?
 25 A Again, nothing tied to a specific conversation

1 but I expect we probably talked about the standards and
 2 the parts of the standards that are related to high
 3 school exit exams.
 4 Q Did you talk about whether or not California's
 5 High School Exit Exam met those standards?
 6 A Again, no specific recollection, but I expect
 7 we probably did.
 8 Q Do you -- did you state your view as to whether
 9 or not California was in compliance with those
 10 standards?
 11 MR. HERRON: Objection. Assumes facts not in
 12 evidence.
 13 THE WITNESS: These conversations weren't
 14 really evaluations. They were more an exploration of
 15 the issues and the factors to be considered.
 16 BY MR. ROSENBAUM:
 17 Q Tell me what you said with respect to the
 18 exploration of the issues.
 19 MR. HERRON: Objection. Asked and answered
 20 several times.
 21 THE WITNESS: Again, I don't remember any
 22 specific conversation, but I expect that we talked about
 23 issues related to test development, validity,
 24 reliability, other items contained in the standards.
 25 BY MR. ROSENBAUM:

1 Q Did you ever have a discussion with Rae Belisle
2 about whether or not the High School Exit Exam should be
3 suspended in its administration?

4 A I've already indicated to you I don't think
5 administration should be suspended.

6 Q That's not my question. My question is: Did
7 you ever have a discussion with Rae Belisle where you
8 expressed your view as to whether or not the
9 administration should be suspended or not?

10 A We did not talk about suspension of the
11 administration, as far as I recall.

12 Q One more question. Did you ever have a
13 discussion with Rae Belisle about whether or not the
14 implementation as to whether or not it should be counted
15 for purposes of getting a diploma, did you ever have
16 that discussion with Rae Belisle?

17 MR. HERRON: Did you say "counted"?

18 MR. ROSENBAUM: Yeah, whether or not if you
19 pass or fail --

20 MR. HERRON: Oh.

21 MR. ROSENBAUM: -- that should affect whether
22 or not you can graduate from high school.

23 THE WITNESS: Yes.

24 BY MR. ROSENBAUM:

25 Q Okay. What did you say?

1 Q Okay. Doctor, when did you first learn about
2 the Williams case?

3 A Are you asking for a date?

4 Q Yeah.

5 A I think it would have been November or December
6 of last year.

7 Q Okay. Do you recall the circumstances under
8 which you learned about it?

9 A An attorney called me to ask if I would be
10 interested in serving as an expert witness in the case.

11 Q That was Mr. Salvaty?

12 Oh, no. That was Mr. Egan?

13 A I don't remember who I talked to first, but it
14 would have been one of those two.

15 Q What was said about the case at that time?

16 A We had a discussion about my general role as an
17 expert witness, the issues that I might address.

18 Q What was said about the issues you might
19 address?

20 A I don't have a specific recollection of that,
21 but generally I think we talked about the API, the
22 accountability system, and then Dr. Russell's report.

23 Q Anything else you recall?

24 A Not at the moment.

25 Q Okay. Was compensation discussed?

1 A We talked about the psychometric factors that
2 would be involved in such a decision.

3 Q Did you ever state your view as to whether or
4 not it should be implemented, the California High School
5 Exit Exam?

6 A What I think I stated was certain conditions
7 that should be met prior to its implementation in order
8 for that implementation to be defensible.

9 Q What conditions did you say should be met?

10 A The legal requirements, notice, Opportunity to
11 Learn, following the psychometric standards.

12 Q And did you ever express a view as to whether
13 or not those standards had been met in California?

14 A I don't have, nor have I reviewed, sufficient
15 evidence to offer a professional conclusion.

16 What I did do is offer hypothetical
17 alternatives. If this is the case, then this. If
18 something else is the case, something else.

19 It was up to I believe the Department and the
20 Board to determine whether or not those conditions had
21 been met.

22 MR. ROSENBAUM: Okay. We can take a break
23 now. Thanks, Doctor.

24 (Recess taken.)

25 BY MR. ROSENBAUM:

1 A Yes.

2 Q What was discussed?

3 A I told them what my rates were.

4 Q Okay. What rate did you quote?

5 A \$300 an hour for reports and consulting, \$500
6 an hour for deposition and court testimony.

7 Q So I'm helping you here.

8 And how much have you received to date for your
9 work on this case?

10 A I think it's just under \$95,000.

11 Q And did you receive any materials? I'm talking
12 about this early call.

13 A Oh, as part of that telephone call?

14 Q Yes.

15 A No.

16 Q Did you subsequently receive any materials
17 relating to the preparation of your report or your
18 testimony?

19 A From?

20 Q From counsel.

21 A Yes.

22 Q What did you receive?

23 A I received Michael Russell's deposition and
24 some materials that were produced in conjunction with
25 that, or perhaps prior to. I'm not sure when that

1 actually happened.

2 Q Did you read the Russell deposition in its
3 entirety?

4 A Yes, I believe I did.

5 Q Did you receive dailies on the Russell
6 deposition? Do you know what I mean by a "daily"?

7 A I don't think so. I received it all after the
8 deposition was completed.

9 Q Did you consult with Mr. Salvaty regarding the
10 conduct of Russell's deposition?

11 MR. HERRON: Objection. Vague and ambiguous.
12 BY MR. ROSENBAUM:

13 Q I mean, did he say, "Can you -- here's what I'm
14 thinking of asking" or "What do you think I should
15 ask?"

16 Did you help him with the preparation of the
17 deposition?

18 A I don't think he asked me in that way. We did
19 talk about Dr. Russell's report and about the work that
20 I was doing in critiquing that report.

21 Q And that was prior to his deposition, as far as
22 you know?

23 A I think at least some of the conversations
24 were.

25 Q Did you ever suggest any questions that he

1 potential expert in this case?

2 A Since I had already done work in California, I
3 was certainly known to the Department and the Board. I
4 don't know specifically.

5 Q Bear with me. I know some of this we covered
6 so I'm not going to dwell on it.

7 You've done work on the High School Exit Exam;
8 is that right?

9 A I have consulted.

10 Q You consulted on the Stanford 9?

11 A Yes.

12 Q You consulted on the CAT 6?

13 A I wouldn't say I specifically consulted on
14 that.

15 Q Did you consult on the subject matter of a new
16 norm reference exam?

17 A That issue may have come up in discussions.

18 Q You consulted on Opportunity to Learn?

19 A I gave a presentation, yes.

20 Q You consulted on Testing Accommodations?

21 A Again, I gave a presentation and, yes, I've
22 done some consulting in the area.

23 Q I'm sorry. Did you do consulting on the API?

24 A Not specifically, no.

25 Q When you say -- did you generally give

1 should ask of Russell?

2 A I don't have any specific recollection of that
3 but I may have.

4 Q Okay. Did you ever suggest any subject areas
5 that Mr. Salvaty should explore in the deposition?

6 A Again, I don't have any specific recollection
7 of that, but I probably talked to him about the work I
8 was doing for my report and that certainly might have
9 suggested areas of inquiry. And I...

10 Q Did you read the entirety of Russell's report?

11 MR. HERRON: Asked and answered four questions
12 ago.

13 MR. ROSENBAUM: You're right. I did.

14 Q Did you read the entirety of Dr. Russell's
15 deposition?

16 A Yes, I believe I did.

17 Q And the materials that accompanied it, did you
18 read those in their entirety?

19 MR. HERRON: Objection. Vague and ambiguous.

20 THE WITNESS: The information that I understood
21 to be part of that production I skimmed through. I
22 don't know if I read everything that was in there.

23 BY MR. ROSENBAUM:

24 Q Do you have an understanding, Doctor, as to how
25 your name came to the attention of counsel as a

1 consultation on the API?

2 A My consulting work involved the actual
3 assessment instruments, which are part of the API. I
4 was not consulted in the actual development of the API
5 measure.

6 Q Okay. Did you do any consultation as to how
7 the API should be calibrated?

8 A No.

9 Q Or how it should be calculated?

10 A No.

11 Q Did you do any consultation on the II/USP?

12 A No.

13 Q How about the awards part of the API?

14 A Not that I recall.

15 Q Or on the intervention part of the
16 accountability system?

17 A Not that I recall.

18 Q With respect -- I think you told me that you
19 did do consultation in terms of performance standards;
20 is that right?

21 A I gave a presentation about that, yes.

22 Q Did you make any suggestions about other
23 experts to testify in this case?

24 MR. HERRON: Objection. Vague and ambiguous.

25 THE WITNESS: I don't recall being asked that

1 question.

2 BY MR. ROSENBAUM:

3 Q Okay. Do you recall volunteering?

4 A No.

5 Q Can you tell me, Doctor, how you went about
6 performing your assignment? And I'll try to break this
7 down a little bit.

8 I take it you read -- you told me you read the
9 Russell report, right?

10 A Yes.

11 Q And you read the liability disclosure
12 statement?

13 A I skimmed it. I paid most attention to the
14 portions dealing with the API and the assessment
15 instruments.

16 Q Okay. And did you -- what else did you read
17 for purposes of preparing this report?

18 MR. HERRON: Objection. Calls for a narrative.

19 THE WITNESS: That's so voluminous an answer.
20 Essentially everything that's cited in the footnotes of
21 my report is material that I reviewed or read during its
22 preparation.

23 BY MR. ROSENBAUM:

24 Q Okay. Anything else that's not specifically
25 cited in the report?

1 to its submission to the court?

2 A I don't know.

3 Q Any indication Mr. Herron read the report?

4 A You -- what?

5 Q Withdraw that question.

6 How many drafts did you submit to Mr. Salvaty?

7 MR. HERRON: If you recall.

8 THE WITNESS: I think there was just one. I
9 know he reviewed it at least once.

10 BY MR. ROSENBAUM:

11 Q How did he get a copy?

12 A I sent it to him.

13 Q Did he send you a copy back with notes?

14 A I think we talked about it over the phone.

15 Q Okay. Did you ever receive any written notes
16 from him either on your report or separate?

17 A I may have. I don't recall specifically. I
18 know we talked about it on the phone and I don't
19 remember if he sent follow-up or not.

20 Q Okay. What did Mr. Salvaty -- was there more
21 than one phone conversation?

22 A I don't recall specifically, but there may have
23 been.

24 Q Okay. And what do you recall Mr. Salvaty
25 saying to you about the report?

1 A Not that I recall.

2 Q Did you submit drafts to Mr. Egan of your
3 report?

4 A No.

5 Q To anyone in the Attorney General's office?

6 A No.

7 Q Did you have any assistance in the preparation
8 of this report, graduate assistant or other experts?

9 A No.

10 Q Did you submit drafts to anyone at the
11 O'Melveny & Myers firm?

12 A Yes.

13 Q That was Mr. Salvaty?

14 A Yes.

15 Q Anyone else?

16 A I don't believe so. He may have shared it with
17 others.

18 Q Did he say that he had shared it with others at
19 any point?

20 A I don't recall for sure, but I -- it's
21 possible.

22 Q Why do you say that?

23 A Well, for example, I know Mr. Herron has seen
24 it and has a copy.

25 Q Okay. Do you know if Mr. Herron saw it prior

1 A Basically, the version that he saw it, it was
2 incomplete and he said that he liked what he saw and
3 would like me to finish the remainder that I had
4 outlined but not yet finished the analysis.

5 Q Had you previously sent him an outline of the
6 report?

7 A No.

8 Q Okay. And did you send with him -- with the
9 report, did you send him an outline?

10 MR. HERRON: If you recall.

11 THE WITNESS: There wasn't specifically an
12 outline but there were sections left open in the report
13 where additional pieces would be inserted.

14 BY MR. ROSENBAUM:

15 Q What else did he say about the substance of
16 your report?

17 A As I recall, we basically discussed issues
18 about finishing the work that was not yet completed.

19 Q Did he have any substantive comments about the
20 report?

21 MR. HERRON: Objection. Asked and answered.
22 You may respond again.

23 THE WITNESS: I don't recall any specific
24 suggestions, but he may have made some comments on
25 things he thought were not real clear that he didn't

1 understand and may have asked me about.
 2 BY MR. ROSENBAUM:
 3 Q Okay. Do you remember what those subject areas
 4 were?
 5 A I don't recall specifically. I think they
 6 tended to be the more technical sections.
 7 Q Okay. How long did -- how many conversations
 8 did you have with him about the draft?
 9 A I don't recall.
 10 MR. HERRON: Objection. Asked and answered.
 11 THE WITNESS: I don't really recall. At least
 12 one and there may have been more than that.
 13 BY MR. ROSENBAUM:
 14 Q How long was that conversation, the one that
 15 you recall?
 16 A I don't recall.
 17 Q Was it more than 20 minutes?
 18 A I just don't recall. It may have been.
 19 Q I mean, was it five minutes? Was it an hour?
 20 Can you give me what it was closer to?
 21 A I just really don't remember.
 22 Q Is every word in this report your words?
 23 MR. HERRON: Objection. Vague.
 24 MR. ROSENBAUM: I'm sorry.
 25 THE WITNESS: I have quoted a number of sources

1 directly, statutes, sometimes other reports and so on,
 2 and those are noted and footnoted.
 3 BY MR. ROSENBAUM:
 4 Q I appreciate your clarification. Except where
 5 as noted as a quotation to some source, are all the
 6 words in this report your words?
 7 MR. HERRON: Objection. Vague and ambiguous.
 8 You may respond.
 9 THE WITNESS: If you're asking did I write it
 10 all myself, the answer is yes.
 11 BY MR. ROSENBAUM:
 12 Q Okay. Does any section of this report appear
 13 in any prior reports not related to this case?
 14 MR. HERRON: By "reports," you mean expert
 15 reports?
 16 MR. ROSENBAUM: Yes.
 17 MR. HERRON: Sorry.
 18 THE WITNESS: Oh, maybe I didn't understand
 19 it. Are you talking about the text of what I wrote in
 20 here?
 21 BY MR. ROSENBAUM:
 22 Q Yes.
 23 A That's not quoting from --
 24 Q I'm not interested in particular quotations of
 25 statutes that appear in the statute books or quotations

1 from other experts or from Russell's report that appear
 2 in Russell's report or other treatises or materials.
 3 I'm just saying of your text --
 4 Do you know what I mean by that?
 5 A I think so, yes.
 6 Q -- were there any portions of the report that
 7 appear in other reports that were prepared for other
 8 cases?
 9 A Not verbatim but certainly the content and the
 10 subject matter appears in other reports.
 11 Q Tell me what reports you're referring to.
 12 A I have written a lot of professional documents,
 13 research reports, expert witness reports, and so on that
 14 include some of the content of this and would have
 15 similar subject matter.
 16 Q Do you know what SAIT is?
 17 A No. I don't think I do.
 18 Q Do you know what FCMAT is, F-C-M-A-T, all caps?
 19 A I don't think so. If you told me what it stood
 20 for, maybe I would recognize it.
 21 Q Fiscal Crisis Management Assistance Team.
 22 A No, I don't know anything about that.
 23 Q Do you know what CCR is?
 24 A What does it stand for?
 25 Q Coordinated Compliance Review.

1 A I don't know about that.
 2 Q Do you know -- you mentioned in your report
 3 WASC, W-A-S-C, the accreditation committee.
 4 A Oh, the West -- what is it? Western --
 5 Q -- Association --
 6 A Yes.
 7 Q Have you read any reports that WASC has
 8 prepared?
 9 A No.
 10 Q You defined for me several minutes ago
 11 "psychometrics."
 12 Are there certain treatises, Doctor, that you
 13 regard as expert treatises in the subject area of
 14 psychometrics?
 15 A There are many professional works that one
 16 might consult in that area on a variety of subjects.
 17 Q Have you authored any treatises in the area of
 18 psychometrics?
 19 A No.
 20 Q Have you authored any -- what is the difference
 21 between psychometrics and statistics?
 22 A Psychometrics focuses primarily on tests and
 23 test instruments.
 24 Statistics is a tool that psychometricians use
 25 in analyzing test instruments.

1 Q Have you authored any books or treatises in the
2 area of statistics?
3 A Let me go back for a minute and clarify.
4 I was assuming when you were asking before
5 that you were asking specifically about a textbook. I
6 have authored a number of articles on issues and subject
7 matter related to psychometrics and many of them have
8 used statistics.
9 Q Okay. I think I asked this but I want to be
10 clear and I appreciate your clarification.
11 Have you authored any books or treatises in the
12 area of psychometrics?
13 MR. HERRON: As compared to reports?
14 MR. ROSENBAUM: As opposed to --
15 MR. HERRON: As opposed --
16 MR. ROSENBAUM: -- scholarly writings that
17 appeared in publications or journals.
18 THE WITNESS: I have done one book-length work
19 that was on legal issues in testing.
20 BY MR. ROSENBAUM:
21 Q And what is the name that?
22 A You know, I don't remember the exact --
23 Q It's in your vita?
24 A It's the only one that says "Handbook" on it.
25 Q And have you authored any books or treatises in

1 the area of statistics?
2 A Nothing that was specifically focused on
3 statistics per se. I use statistics as a tool in the
4 work that I do.
5 Q You know what a regression analysis is?
6 A I'm sorry. Say that --
7 Q Do you know what a regression analysis is?
8 A Yes.
9 Q Of course you do. What is a regression
10 analysis?
11 A That's the statistical tool for using one
12 variable to predict another.
13 Q Did you conduct any regression analyses for
14 purposes of this case?
15 A No.
16 Q Any reason why not?
17 A I relied on the work that had been done by
18 others.
19 Q What work are you referring to?
20 A The work of the Department.
21 Q What work specifically with respect to the
22 Department are you referring to?
23 A The work in setting up the Similar Schools
24 Index.
25 Q Any other work?

1 MR. HERRON: Objection. Her report lists all
2 of this.
3 BY MR. ROSENBAUM:
4 Q Go ahead.
5 Please don't coach like that, David.
6 MR. HERRON: It's not coaching.
7 BY MR. ROSENBAUM:
8 Q Go ahead.
9 A The bulk of the data analysis referred to in my
10 report comes from work that was done by the Department.
11 Q Are you aware of any other regression analyses
12 besides what you previously referred to regarding
13 Similar Schools?
14 MR. HERRON: Vague and ambiguous. Object on
15 that ground.
16 Can we have that read back, please.
17 (Record read.)
18 MR. HERRON: Okay. You may respond if you
19 understand what he's asking.
20 THE WITNESS: I understand you're asking about
21 regression analyses to develop a Similar Schools Index?
22 BY MR. ROSENBAUM:
23 Q Is that what you were referring to when you
24 talked to me about Similar Schools?
25 A That was the Department's analysis that I

1 referred to that used the regression technique.
2 Q Are you aware of any other regression analyses
3 that were done with respect to this case?
4 MR. HERRON: Objection. Vague and ambiguous.
5 THE WITNESS: There may have been something
6 cited in Dr. Russell's report. I don't quite remember
7 now exactly what he relied on.
8 BY MR. ROSENBAUM:
9 Q Anything else come to mind?
10 A Nothing I can recall at the moment.
11 Q Okay. Were you ever asked to conduct --
12 perform any regression analyses for purposes of this
13 case?
14 A Not that I recall.
15 Q Mr. Salvaty ever say to you, "Do you think any
16 regression analysis would be useful for purposes of your
17 report or for purposes of this case?"
18 Anything in sum or substance like that?
19 A I don't recall anything like that.
20 Q Okay. Did it ever cross your mind that
21 regression analyses might be useful for purposes of your
22 report or this case other than what you already referred
23 to?
24 MR. HERRON: Objection. Vague and ambiguous,
25 calls for speculation.

1 THE WITNESS: My focus in terms of doing the
2 report was on the specific items I had been asked to
3 address, and that's what I did. And there was
4 sufficient data and information already in existence in
5 the Department to do that task, in my judgment.

6 BY MR. ROSENBAUM:

7 Q When you say "the specifics items" that you
8 were asked to address, what are those "specific items"?

9 A The API, the interventions and awards that went
10 with the API and how it has evolved over time and
11 evaluation of Dr. Russell's report.

12 MR. HERRON: We're at noon, Mark. Any time
13 you're ready.

14 MR. ROSENBAUM: Sure. Why don't we take a
15 break now.

16 (At the hour of 12:00 P.M., a luncheon
17 recess was taken, the proceedings
18 to resume at 1:00 P.M.)

19 (At the hour of 1:13 P.M., the proceedings
20 resumed at the same place, the same
21 persons being present.)

22 EXAMINATION (Resumed)

23 MR. ROSENBAUM: Back on the record.

24 Q Are you doing okay, Doctor?

25 A Yes.

1 Q What was the nature of that data analysis?

2 A It was information that had been collected on a
3 standardization and we were summarizing the data.

4 Q What sort of data?

5 A It was all test data.

6 Q What was the -- was it a study? Was it an
7 analysis? What was it that you were doing?

8 A They were revising norm reference tests.

9 Q Which one or ones?

10 A It was the Stanford Achievement Test.

11 Q Did that become the Stanford 9?

12 A No. This was earlier.

13 Q Did you have anything to do with the
14 development of the Stanford 9?

15 A Only that data analysis on the revision.

16 Q Okay. Tell me the relationship between that
17 data analysis and the ultimate development of the
18 Stanford 9.

19 A That was the work that was done after the test
20 had been given in the standardization sample.

21 Q What were you looking for? To improve the
22 reliability of the test? To improve the validity of the
23 test?

24 A To report norms and other information about the
25 test as developed.

1 Q Doctor, do you know what an II/USP action plan
2 is?

3 A Yes.

4 Q Have you ever read an II/USP action plan?

5 A No.

6 Q You did some work for The Psychological
7 Corporation?

8 A Yes.

9 Q What is that? That's a cap P, cap C.

10 A That's a testing company.

11 Q Where is it located?

12 A At the time that I did the work, it was located
13 in New York City, I believe.

14 Q Did it work on particular tests -- that's not a
15 good question.

16 Tell me what it did.

17 MR. HERRON: Calls for speculation.

18 BY MR. ROSENBAUM:

19 Q At the time -- you worked with Psychological
20 Corporation, right?

21 A I worked with them on a project, yes.

22 Q Can you tell me the nature of that project,
23 please.

24 A It was a data analysis on standardized norm
25 reference tests.

1 Q What does that mean?

2 MR. HERRON: Objection. Vague and ambiguous.

3 THE WITNESS: Can you be a little more
4 specific about --

5 BY MR. ROSENBAUM:

6 Q Probably not. I don't know what it means to
7 report norms about the test. Is that what you said?

8 A Yes.

9 Q What does that mean?

10 MR. HERRON: Objection. Vague and ambiguous.

11 MR. ROSENBAUM: I am just trying to get an
12 understanding here.

13 Q Did you help develop the questions? Did you
14 look at questions and say, "This is a question that
15 should be maintained on the test" or -- I am clueless.
16 I don't get exactly what you did. I'm trying to figure
17 it out.

18 A No, I did not do those things that you
19 mentioned.

20 Q Tell me what was your objective.

21 A It was to analyze the data from the
22 standardization.

23 Q For what purpose?

24 A For the purpose of developing the norms and
25 reporting on the test instrument.

1 Q When you say "developing the norms," what does
2 that mean?
3 A That means producing the tables that users
4 refer to --
5 Q Okay.
6 A -- when they give the test.
7 Q Who publishes the Stanford 9?
8 MR. HERRON: Currently?
9 MR. ROSENBAUM: Currently.
10 THE WITNESS: Harcourt Educational Measurement.
11 BY MR. ROSENBAUM:
12 Q Have you ever done any work with Harcourt
13 Educational Measurement?
14 A Yes.
15 Q What have you done?
16 A Consulting work.
17 Q Tell me what the nature of that consulting work
18 has been, please.
19 A I don't recall the specifics. It's been a
20 while since I've done anything, but specific questions
21 that they had, that they wanted me to respond to.
22 Q Can you speak up just a little bit.
23 MR. HERRON: It's hard. Can we move the
24 microphone closer to her?
25 (Discussion off the record.)

1 BY MR. ROSENBAUM:
2 Q Approximately when -- did you consult with
3 Harcourt Educational Measurement on more than one
4 occasion?
5 A Yes.
6 Q On approximately how many occasions?
7 A Maybe three or four.
8 Q Can you tell me the year or years when that
9 occurred?
10 A Somewhere around 1986, '87 --
11 Q Are you still available to them to consult?
12 MR. HERRON: Mark, I'm going to ask again that
13 you please allow her to complete her response to your
14 questions before you pose another one.
15 BY MR. ROSENBAUM:
16 Q I cut you off. I'm sorry.
17 A Would you ask that again, please.
18 Q If you didn't complete your prior answer,
19 please go ahead.
20 A I was going to state that was the first one and
21 the others have been since then.
22 Q When since 1986-87?
23 A I don't remember the specific years, but
24 probably in the '90s.
25 Q Within the last five years?

1 A One probably has been, yes.
2 Q Within the last two or three years?
3 A Possibly the last three.
4 Q Okay. And did any of those consultations
5 involve the Stanford 9?
6 A Not directly. They involve statewide testing
7 programs that may have been using that test. I don't
8 recall what specific test was involved.
9 Q Okay. To the best of your recollection, what
10 was the nature of the last consultation that you
11 performed with Harcourt Educational Measurement?
12 A It was in regard to data analysis on an
13 equating they had done.
14 Q Was it a particular state -- did it involve a
15 particular State Assessment Test?
16 A Yes.
17 Q Which one?
18 A Georgia.
19 Q You don't recall one way or the other whether
20 Georgia used the Stanford 9; is that right?
21 A I don't recall for sure which test was at issue
22 at that time.
23 Q Okay. It could have been the Stanford 9?
24 A Possibly.
25 Q Okay. And are you still available to Harcourt

1 Educational Measurement if they seek your services and
2 they're acceptable to you?
3 MR. HERRON: Objection. Vague and ambiguous.
4 THE WITNESS: I don't know that I would say
5 "available." I consult on a project-by-project basis
6 when requested to do so.
7 BY MR. ROSENBAUM:
8 Q Were you paid by Harcourt Educational
9 Measurement on the three occasions we're talking about?
10 A Yes.
11 Q Can you tell me how much you were paid on the
12 last occasion, please.
13 MR. HERRON: If you recall.
14 THE WITNESS: I'm not sure if my new rate was
15 in effect then or not, so I'm not sure. If it was, it
16 would be the 300 an hour.
17 BY MR. ROSENBAUM:
18 Q And can you give me your best estimate as to
19 how many hours you put into the last assignment?
20 MR. HERRON: If you have one.
21 THE WITNESS: Maybe half a day.
22 BY MR. ROSENBAUM:
23 Q And do you recall how many hours you worked on
24 either of the prior two occurrences?
25 A I don't recall the specifics on that, no.

1 Q Okay. And who publishes the CAT 6?
 2 A I believe that's CTB McGraw Hill.
 3 Q Have you ever done consultation for CTB
 4 McGraw Hill?
 5 A Not that I recall.
 6 Q Do you know who was involved with the
 7 development of the California High School Exit Exam?
 8 MR. HERRON: Objection. Vague.
 9 MR. ROSENBAUM: Was it -- you're right. That
 10 was a vague question.
 11 Q Was there a particular testing company that was
 12 involved in the development of the California High
 13 School Exit Exam?
 14 A Yes.
 15 Q Which one was that?
 16 A AIR.
 17 Q That's all caps, right?
 18 A Yes.
 19 Q And have you ever done any consultation work
 20 for AIR?
 21 A Yes.
 22 Q Okay. And on how many occasions?
 23 A I don't recall how many meetings we had. It
 24 was on -- all on a single project and occurred probably
 25 over a two-year period.

1 Q What was the nature of that project?
 2 A It involved the development of the Voluntary
 3 National Test.
 4 Q What is the Voluntary National Test?
 5 A That was a testing initiative under the prior
 6 Administration.
 7 Q Prior Administration, you mean the Clinton
 8 Administration?
 9 A Yes.
 10 Q What was that two-year period of time?
 11 A Probably roughly '97 to '99.
 12 Q Were you paid for that work?
 13 A Yes.
 14 Q Approximately how much were you paid for that
 15 work over that period of time?
 16 A I believe 1,500 a day for the meetings and we
 17 had several one- or two-day meetings. I don't really
 18 recall how many days total it was.
 19 Q Okay. Does AIR still exist?
 20 A Yes, as far as I know.
 21 Q Did you interview anyone for purposes of the
 22 reports you prepared in this case?
 23 A Yes.
 24 Q Whom did you interview?
 25 A Bill Padia.

1 Q Okay. Anyone else?
 2 A Ed Haertel.
 3 Q Anyone else?
 4 A Not that I can recall.
 5 Q Did you take notes of your interview with
 6 Mr. Padia?
 7 A No.
 8 Q Did you tape-record it?
 9 A No.
 10 Q Was it an in-person or telephone interview?
 11 A By phone.
 12 Q What was the nature of that interview?
 13 MR. HERRON: Objection. Vague and ambiguous.
 14 THE WITNESS: It involved background
 15 information on the accountability program and
 16 information on where documents and source material were
 17 located.
 18 BY MR. ROSENBAUM:
 19 Q What was the -- did you -- you sought certain
 20 background information on the accountability program; is
 21 that right?
 22 A Yes.
 23 Q What information did you seek?
 24 A Basically an overview of the program.
 25 Q How long was the discussion or discussions with

1 Mr. Padia?
 2 A Several hours.
 3 Q Okay. And did you have more than one
 4 discussion with him?
 5 A Yes, I did.
 6 Q On how many?
 7 A Oh, I don't recall for sure. Probably two or
 8 three.
 9 Q Did Mr. Padia express any concerns about the
 10 accountability program?
 11 A Not that I recall.
 12 Q Or about the assessment system?
 13 A Not that I recall.
 14 Q Any reason you didn't take notes?
 15 A The purpose of the discussions from my point of
 16 view were to help me gain the big picture, so to speak,
 17 about the program. In terms of the specifics of my
 18 report, I went to the original source material in the
 19 documents to rely on for writing it.
 20 Q Then you also had a discussion or discussions
 21 with Mr. Haertel?
 22 A Yes.
 23 Q That's H-a-e-r-t-e-l; is that right?
 24 A I believe that's correct.
 25 Q How many discussions did you have with him?

1 A About the same, two to three.
 2 Q Were they by telephone or in person or some
 3 combination?
 4 A By phone.
 5 Q How long did those discussions take?
 6 A I would say several hours.
 7 Q What was the nature of your discussion with
 8 Mr. Haertel?
 9 A The same sort of background information about
 10 the program.
 11 Q Why did you seek to talk to Mr. Haertel?
 12 MR. HERRON: You mean Haertel?
 13 MR. ROSENBAUM: Haertel. Yes.
 14 THE WITNESS: Haertel, yes.
 15 Because he had been involved in the PSAA
 16 Advisory Committee and the Technical Design Group.
 17 BY MR. ROSENBAUM:
 18 Q Did you take any notes of your discussion with
 19 Mr. Haertel?
 20 A No.
 21 Q Did Mr. Haertel express any concerns about the
 22 accountability program?
 23 A Not that I recall.
 24 Q Or about the assessment system?
 25 A Not that I recall.

1 Q Incidentally, when we talk about California's
 2 assessment system, what do you take that to include?
 3 A The assessments given by the State as part of
 4 the STAR program and the High School Exit Examination.
 5 Q Why do you include the High School Exit
 6 Examination?
 7 A Because it's a State test.
 8 Q Okay. Any other reason?
 9 MR. HERRON: Objection. Vague and ambiguous.
 10 THE WITNESS: Because it's part of the State
 11 assessment program.
 12 BY MR. ROSENBAUM:
 13 Q Okay. Do you know a Brian
 14 Stecher, S-t-e-c-h-e-r.
 15 A I've heard the name. It sounds familiar. I
 16 don't know him personally.
 17 Q Do you know what involvement he's had with
 18 respect to the accountability program in the State of
 19 California?
 20 MR. HERRON: Objection. Vague and ambiguous.
 21 THE WITNESS: I'm not sure. I think he might
 22 have been on one of the advisory committees.
 23 BY MR. ROSENBAUM:
 24 Q Okay. Do you know what involvement he had, if
 25 any, with respect to the California assessment system?

1 MR. HERRON: Objection. Asked and answered the
 2 question before, vague and ambiguous, calls for
 3 speculation.
 4 You may respond.
 5 THE WITNESS: Other than what I mentioned, no.
 6 BY MR. ROSENBAUM:
 7 Q Okay. Do you know what -- the group that you
 8 talked to me about this morning -- let me strike that.
 9 Do you know what the Technical Design Group
 10 is?
 11 A Yes.
 12 Q What is the Technical Design Group?
 13 A It was a group created as an offshoot of the
 14 PSAA Advisory Committee to deal specifically with the
 15 statistical and technical issues associated with the
 16 API.
 17 Q Okay. Are you a member of that group?
 18 A No.
 19 Q Do you know who is?
 20 MR. HERRON: Currently?
 21 MR. ROSENBAUM: That's a good question.
 22 THE WITNESS: I know that it's generally
 23 testing and statistical people. I have seen the list,
 24 but I couldn't repeat it to you without looking again.
 25 BY MR. ROSENBAUM:

1 Q Okay. Have you ever spoken at any point to
 2 anyone who you understood to be a member of the
 3 Technical Design Group?
 4 A Yes.
 5 Q Who?
 6 A Ed Haertel.
 7 Q Anyone else?
 8 A Not that I recall.
 9 Q Do you know what the PSAA Advisory committee
 10 is?
 11 A Yes.
 12 Q Does one presently exist?
 13 A To the best of my knowledge, yes.
 14 Q And do you know who is presently a member of
 15 the advisory committee, the PSAA Advisory Committee?
 16 A Again, I have seen the list of those members
 17 but could not repeat them to you without looking at the
 18 list.
 19 Q Have you ever made presentations to the
 20 Technical Design Group?
 21 A Not that I recall, but they could have been
 22 present, some members of that group, at presentations I
 23 made to the Board or the Department.
 24 Q Are those the presentations we talked about
 25 previously?

1 A Yes.
 2 Q And have you ever made presentations, so far as
 3 you know, to the PSAA Advisory Committee?
 4 A Not that I recall. Again, individual members
 5 may have attended other presentations.
 6 Q And have you ever spoken to any members whom
 7 you understood to be part of the PSAA Advisory
 8 Committee?
 9 A Yes.
 10 Q With whom have you spoken?
 11 A Ed Haertel.
 12 Q Anyone else?
 13 A Not that I recall.
 14 Q Do you know what the CDE Policy and Evaluation
 15 Division is?
 16 A I'm aware of it, yes.
 17 Q What is your understanding of what it is?
 18 MR. HERRON: Objection. Vague and ambiguous.
 19 THE WITNESS: I'm sure I don't have a complete
 20 understanding of all the functions of that department,
 21 but one of the functions is the API and the
 22 accountability program.
 23 BY MR. ROSENBAUM:
 24 Q Have you ever spoken, to your knowledge, to
 25 anybody who is part of the CDE Policy and Evaluation

1 and issues with regard to the Stanford 9 were discussed
 2 in that group, so he may have expressed views.
 3 I don't remember any specific views or any
 4 specific thing he said, but he was part of those
 5 discussions.
 6 BY MR. ROSENBAUM:
 7 Q Do you remember if he ever expressed any
 8 specific concern about the use of the Stanford 9?
 9 A I don't recall that.
 10 Q It's possible, you just don't remember one way
 11 or the other?
 12 A I don't remember his or anyone else's specific
 13 comments on any particular issue.
 14 Q Did anyone as part of the Technical Advisory
 15 Committee ever express any concerns about the use of the
 16 Stanford 9 as part of the California assessment system?
 17 MR. HERRON: Objection. Calls for speculation.
 18 THE WITNESS: Are you referring to in Technical
 19 Advisory Committee meetings?
 20 BY MR. ROSENBAUM:
 21 Q Let's start there, yes.
 22 A I don't recall anything that specific.
 23 Q Okay.
 24 A Our discussions were more about how it was used
 25 in the psychometric issues surrounding --

1 Division?
 2 MR. HERRON: Objection. Asked and answered.
 3 THE WITNESS: Yes.
 4 BY MR. ROSENBAUM:
 5 Q Who is that?
 6 A Bill Padia.
 7 Q Anyone else?
 8 A His assistant, Clair Rultiner.
 9 Q Anyone else?
 10 A I think I may have spoken to a couple other
 11 people, but I don't recall.
 12 Q Okay. Have you ever heard Mr. Padia ever
 13 express any concern about the use of the Stanford 9 as
 14 part of the California assessment system?
 15 A Not that I recall.
 16 Q Or the CAT 6?
 17 A Not that I recall.
 18 Q Have you ever heard Mr. Haertel express any
 19 concern about the use of the Stanford 9 as part of the
 20 California assessment system?
 21 MR. HERRON: Could you hear that question?
 22 THE WITNESS: Yes.
 23 MR. HERRON: Okay.
 24 THE WITNESS: As I indicated this morning, Ed
 25 Haertel is a member of the Technical Advisory Committee

1 Q Did anyone -- I'm sorry.
 2 Did anyone ever express any concerns about the
 3 use psychometrically of the Stanford 9 in any of these
 4 committee meetings?
 5 A I don't recall any comments like that.
 6 Q Or the CAT 6?
 7 A Not that I recall.
 8 Q If I don't limit my question to part of the
 9 committee meeting but anyone whom you knew to be a
 10 member of TAC, did you ever hear anyone express any
 11 concerns about the use of the Stanford 9 in the
 12 California assessment system?
 13 A Not that I recall.
 14 Q Same question with respect to the CAT 6?
 15 A Not that I recall.
 16 Q Okay. Did you ever hear anyone express any
 17 concerns about the California High School Exit Exam as
 18 part of TAC?
 19 MR. HERRON: Objection. Vague and ambiguous.
 20 THE WITNESS: That topic was discussed
 21 extensively by the Technical Advisory Committee in the
 22 form of options and alternatives.
 23 BY MR. ROSENBAUM:
 24 Q My question is -- I appreciate that.
 25 My question is: Did you ever hear any concerns

1 expressed about the High School Exit Exam in any TAC
2 meeting?

3 MR. HERRON: Objection. Asked and answered,
4 vague and ambiguous.

5 THE WITNESS: What I am suggesting to you is
6 that we addressed specific issues or psychometric data
7 regarding that exam, not an overall determination of
8 concern about it in total.

9 BY MR. ROSENBAUM:

10 Q That's not my question, though. My question is
11 concerning total.

12 My question is specifically calibrated to say
13 any concerns whatsoever. It doesn't have to be about
14 the whole exam. Any concern about any part of it or any
15 psychometric issue regarding the California High School
16 Exit Exam, any component of the exam? Any part of the
17 implementation?

18 Any concerns whatsoever about the California
19 High School Exit Exam?

20 MR. HERRON: Objection. Compound, vague and
21 ambiguous, asked and answered.

22 THE WITNESS: When -- as a Technical Advisory
23 Committee, we discussed the High School Exit Exam. We
24 are concerned about lots of things: Concerned about
25 defensibility, concerned about meeting psychometric

1 more of the psychometric standards?

2 A We gave the Department our best advice about
3 what we believe they needed to do in order to meet those
4 standards.

5 Q Okay. And my question is a little bit
6 different.

7 My question is: Was there ever any concern
8 expressed, to your knowledge, by anyone at a TAC meeting
9 that there were problems with the High School Exit Exam
10 meeting one or more psychometric standards?

11 MR. HERRON: Objection. Vague and ambiguous.
12 You may respond.

13 THE WITNESS: We were all concerned that the
14 Department develop, obtain and document the best
15 evidence possible on all of the relevant standards. And
16 we were concerned that they do a thorough job of that
17 and we provided guidance to them on what we thought
18 should be done, what additional evidence they might
19 collect, and so on.

20 BY MR. ROSENBAUM:

21 Q Did you have specific concerns about the High
22 School Exit Exam meeting one or more specific
23 psychometric standards?

24 A I was concerned that they have evidence to
25 document each of the relevant standards.

1 standards. And all those things get discussed at those
2 meetings.

3 BY MR. ROSENBAUM:

4 Q What concerns were expressed about the
5 defensibility of the California High School Exit Exam?

6 MR. HERRON: Objection. Calls for speculation.

7 THE WITNESS: I don't recall what any
8 particular individual said with regard to that.

9 BY MR. ROSENBAUM:

10 Q Can you tell me anything that was said in any
11 TAC meeting regarding the defensibility of the
12 California High School Exit Exam?

13 A I don't remember anything specifically. I can
14 tell you generally that the concerns are what we
15 discussed this morning: Meeting the standards set by
16 court cases, meeting the psychometric standards set by
17 the profession.

18 Q Were there specific concerns expressed about
19 the California High School Exit Exam regarding meeting
20 specific psychometric standards?

21 A We were concerned that they meet all the
22 standards that are relevant.

23 Q Was there ever any concern expressed by anybody
24 at a TAC meeting of which you are aware that the
25 California High School Exit Exam would not meet one or

1 Q Okay. In looking at -- in evaluating the exam,
2 were you concerned that the exam might not meet one or
3 more specific psychometric standards?

4 MR. HERRON: Objection. Vague as to time.

5 MR. ROSENBAUM: At any point.

6 THE WITNESS: My job, as I saw it, was to
7 identify for them what the relevant standards were and
8 what evidence they needed to collect and document in
9 order to meet that standard, and I was concerned that
10 they do it well for all standards that were relevant.

11 BY MR. ROSENBAUM:

12 Q Okay. But my question is: Did you personally
13 ever have any concern that the High School Exit Exam
14 might not meet one or more specific psychometric
15 standards?

16 MR. HERRON: Objection. Vague as to time,
17 vague as --

18 MR. ROSENBAUM: At any --

19 MR. HERRON: -- to the way it's phrased.

20 MR. ROSENBAUM: I'm sorry.

21 Q At any point.

22 MR. HERRON: Asked and answered.

23 THE WITNESS: If you're asking if I provided
24 advice that they needed to do certain things that may
25 yet not have been done at a particular point in time to

1 develop the defensible assessment, yes.
 2 BY MR. ROSENBAUM:
 3 Q What advice did you give in that regard?
 4 A I don't recall the specifics of that but it's
 5 the same issues that we talked about this morning: The
 6 court requirements and the requirements in the
 7 psychometric standards.
 8 Q There are a lot of psychometric standards,
 9 right?
 10 A Yes.
 11 Q Were there particular standards that you were
 12 concerned about that you gave advice on?
 13 A I was concerned about and gave advice on all of
 14 the ones that are relevant to this particular
 15 examination.
 16 Q Which ones are those?
 17 A In order to give you a good answer to that, I
 18 would need to have the standards in front of me and then
 19 I could point to the particular chapters and standards
 20 for you.
 21 Q All right. I will get those for you but
 22 sitting here today, can you remember any of the
 23 standards that you articulated recommendations about
 24 based on your concerns?
 25 A I can talk about topics that will be covered.

1 I can't cite specific standards without having that in
 2 front of me.
 3 Q What were the topics?
 4 A Validity, reliability, standards-setting,
 5 equating, test administration, test development.
 6 Q What were your concerns about test development?
 7 MR. HERRON: Objection. Assumes facts not in
 8 evidence, vague as to time.
 9 THE WITNESS: The test standards specify
 10 certain things that a test developer should do when
 11 developing a test, and one of the things that TAC did
 12 was discuss with the Department different ways that they
 13 could meet that requirement.
 14 BY MR. ROSENBAUM:
 15 Q And one of the things that the standards call
 16 for are the administration of pilot tests; isn't that
 17 right?
 18 A I don't recall whether the standards mandate
 19 that as such, but that is an activity that is typically
 20 conducted in test development.
 21 Q And you recommended that pilot tests, certain
 22 pilot tests be conducted with respect to the High School
 23 Exit Exam; isn't that true?
 24 MR. HERRON: Objection. Argumentative.
 25 THE WITNESS: I believe the TAC discussed that

1 issue and that it would have been the general
 2 recommendation of the group that that occur.
 3 BY MR. ROSENBAUM:
 4 Q And did that occur?
 5 A I understand that it did, yes.
 6 Q Are you certain of that?
 7 MR. HERRON: Objection. Asked and answered the
 8 question before.
 9 THE WITNESS: My recollection of the
 10 discussions in the meeting is that there were pretest
 11 data available for the items.
 12 BY MR. ROSENBAUM:
 13 Q Did you find personally that the pretest data
 14 met the professional standards, as you understood them?
 15 MR. HERRON: Objection. Vague and ambiguous,
 16 overbroad, assumes facts not in evidence.
 17 THE WITNESS: I don't recall actually looking
 18 at the pretest data. This was an activity that was
 19 described to us in the meeting.
 20 BY MR. ROSENBAUM:
 21 Q Okay. Were you professionally satisfied that
 22 the pretest data satisfied what the State of
 23 California -- you believe the State of California should
 24 do to meet the psychometric standards?
 25 MR. HERRON: Objection. Vague and ambiguous.

1 MR. ROSENBAUM: I'll ask that question
 2 differently. I'll withdraw it.
 3 Q Did you undertake any investigation or inquiry
 4 to specifically determine whether or not the pretest
 5 data that was discussed at the meeting met the
 6 psychometric standards, as you understood them, for test
 7 development?
 8 A I did not do any independent analysis.
 9 Q Do you know if anybody did?
 10 A Not that I'm aware of.
 11 Q Okay. Now, when you say "validity," what do
 12 you mean by that?
 13 MR. HERRON: Objection. Asked and answered.
 14 THE WITNESS: Let me back up a minute.
 15 Your prior question, that could be construed to
 16 be part of the external evaluators' analysis of the
 17 test.
 18 BY MR. ROSENBAUM:
 19 Q Okay.
 20 A So I think there may be some information there
 21 about that issue.
 22 Q Do you know whether there is or not?
 23 A I don't think I can speak to that in any detail
 24 without reviewing those reports to see exactly what was
 25 there.

1 Q When you used the word "validity" a few moments
2 ago in talking about the psychometric standards, what
3 did you mean by that?

4 A Measuring -- accurately measuring what you
5 intend to measure.

6 Q Help me understand this, Doctor.

7 Are there such things as validity scores or
8 validity indices?

9 MR. HERRON: Objection. Vague.

10 THE WITNESS: "Validity" is primarily a
11 judgmental process. Sometimes there are statistics that
12 are presented as one piece of evidence in judging
13 validity.

14 BY MR. ROSENBAUM:

15 Q Okay. And when you say sometimes statistics
16 are presented, what do you mean by that?

17 MR. HERRON: I'm sorry. I didn't hear the
18 question. His voice is dropping off.

19 (Record read.)

20 THE WITNESS: I mean that statistical numerical
21 information can be a part of the evidence in describing
22 the validity of the test.

23 BY MR. ROSENBAUM:

24 Q Were such statistics utilized with respect to
25 evaluating the validity of the California High School

1 Q Report, any evaluation.

2 A The external evaluator has looked at the
3 validity of the test.

4 Q Do you know if the external evaluator utilized
5 statistics in evaluating the validity of the California
6 High School Exit Exam?

7 A Again, I haven't looked at those reports in a
8 long time, but I believe there is statistical
9 information presented as part of that analysis.

10 Q Who was the external evaluator of the
11 California High School Exit Exam?

12 A HumRRO.

13 Q And were you involved in any way in the
14 selection of HumRRO to be the external evaluator?

15 A Not that I recall.

16 Q Have you ever done any consulting work for
17 HumRRO?

18 A Not that I recall.

19 Q Did you ever specifically express any concerns
20 about the validity of the California High School Exit
21 Exam?

22 MR. HERRON: Objection. Vague as to time.

23 THE WITNESS: As I indicated, in the Technical
24 Advisory Committee we were concerned with all of the
25 standards in that there be adequate documentation of

1 Exit Exam?

2 MR. HERRON: Objection. Calls for speculation.

3 MR. ROSENBAUM: If you know.

4 THE WITNESS: What statistics are you referring
5 to?

6 BY MR. ROSENBAUM:

7 Q Well, you told me a few moments ago that
8 sometimes statistics can be used to help evaluate the
9 validity of the test.

10 Am I understanding you correctly?

11 A Yes.

12 Q Were statistics utilized with respect to the
13 California exit exam in the manner in which you just
14 described for me?

15 MR. HERRON: Objection. Calls for speculation.

16 MR. ROSENBAUM: If you know.

17 THE WITNESS: By whom?

18 BY MR. ROSENBAUM:

19 Q By anybody.

20 MR. HERRON: Same objection.

21 THE WITNESS: I don't know what everybody might
22 have done in that regard.

23 BY MR. ROSENBAUM:

24 Q Do you know if anyone has done that?

25 A Are you asking specifically for a report?

1 those standards. That would be one of them.

2 BY MR. ROSENBAUM:

3 Q How do you document the validity of the test?

4 A What kind of test are you referring to?

5 Q A statewide assessment test.

6 A Norm reference test? Standards test?

7 Q Standards test.

8 A A standards test is developed based on content
9 standards that have been developed and approved by the
10 State. Items are written to those standards, and then
11 the items are evaluated individually by content experts
12 and persons of diverse background for their match to the
13 content standards.

14 Q How do you go -- help me -- break down this
15 process for me.

16 I take it part of the process is look at the
17 standards themselves to see what the content of the
18 standards are.

19 Is that part of the process you just described
20 to me?

21 A Yes.

22 Q Okay. And then part of the process is you make
23 a determination as to whether or not the content that's
24 reflected in the standards appears in the curriculum
25 that students are supposed to be taught; is that right?

1 A That's not part of the validity determination
2 that you are asking about.

3 Q Okay. Is it part of any of the determination
4 with respect to the psychometric standards?

5 MR. HERRON: Objection. Vague and ambiguous.
6 You may respond if you understand what he's
7 asking you.

8 THE WITNESS: Well, if you're asking about
9 curricular validity, then the issue of curriculum would
10 be relevant in that case.

11 BY MR. ROSENBAUM:

12 Q Okay. And how do you go about finding out if
13 the content that is reflected in the content standards
14 appears in the curriculum that teachers teach? How do
15 you do that?

16 MR. HERRON: Objection. Vague and ambiguous,
17 assumes facts not in evidence.

18 THE WITNESS: There are several methods for
19 collecting evidence that's relevant to curricular
20 validity.

21 BY MR. ROSENBAUM:

22 Q Tell me what those several methods are, please.
23 A One method is to survey teachers.
24 Q Okay. Any other methods?
25 A Looking at district scope and sequence

1 information or other information about the curriculum.

2 Q Okay. Any other methods?

3 A Looking at textbooks and instructional
4 materials.

5 Q Any other methods?

6 A That's all I can recall at the moment.

7 Q Okay. With respect to the first one, surveying
8 teachers, is there a professional method as to how that
9 survey is to be conducted that you subscribe to?

10 A There is no one particular method for doing
11 that.

12 Q Okay. Is there a number or a percentage of
13 teachers in the subject area that you believe should be
14 surveyed?

15 MR. HERRON: Objection. Assumes facts not in
16 evidence, vague and ambiguous.

17 THE WITNESS: There aren't, to my knowledge,
18 specific criteria such as you're describing.

19 BY MR. ROSENBAUM:

20 Q Are the criteria that you as a professional
21 utilize to judge whether or not the survey is sufficient
22 for purposes of establishing curricular validity?

23 A I think it's a matter of professional judgment,
24 looking at all the facts and circumstances of the
25 sampling and the data collection.

1 Q If -- you've given advice -- am I correct that
2 you've given advice about establishing curricular
3 validity?

4 A Yes.

5 Q You've done that scores of times?

6 A A number of times.

7 Q What do you tell your audience -- strike that.
8 Your audience in those circumstances, they are
9 often State Boards of Education or Department of
10 Education staffs? Is that right?

11 Is that typically who you're talking with?

12 A Can be.

13 Q Okay. Or advisory groups on technical issues
14 with respect to tests for states; is that right?

15 A It can be.

16 Q What do you tell them as to how you establish
17 curricular validity with respect to surveying teachers?
18 What do you tell them to do?

19 MR. HERRON: Objection. Calls for a narrative,
20 vague and ambiguous, overbroad.

21 THE WITNESS: First of all, there's a lot that
22 can be said in that area, so you might be asking for a
23 two-hour discussion here about a topic.

24 And there are not specific criteria but,
25 rather, the discussion focuses on what you want to look

1 for and what are the various factors that would be
2 important to do the best job that you can do.

3 BY MR. ROSENBAUM:

4 Q What are those factors?

5 MR. HERRON: Objection. Vague and ambiguous,
6 incomplete and improper hypothetical.

7 THE WITNESS: It's very difficult to answer a
8 question like that in the abstract, because it depends
9 on the specific facts and circumstances of the
10 particular assessment in question.

11 BY MR. ROSENBAUM:

12 Q Has such a survey been undertaken, to your
13 knowledge, with respect to the California High School
14 Exit Exam?

15 A I believe the external evaluator has collected
16 data relevant to curricular validity.

17 Q Have you examined that data?

18 A I have read the report.

19 Q Okay. And did you have any problems with the
20 methodology that the external evaluator utilized with
21 respect to his survey of teachers concerning curricular
22 validity?

23 A With surveys, there are always issues that you
24 look at in evaluating a survey. One of them is response
25 rate. It's nice to get everyone to respond but you

1 rarely do.

2 I think the evaluator said in the report that
3 they didn't get as large a response rate as they had
4 hoped to or would have liked to.

5 Q Were you concerned about the integrity of the
6 results based upon the response rate?

7 MR. HERRON: Objection. Vague and ambiguous.
8 You may respond if you understand.

9 THE WITNESS: I don't really know what you mean
10 about "integrity." It would have been nicer to have had
11 more participation if they could have.

12 I read the report to say that they made every
13 effort possible to get people that they had requested
14 responses from to respond, including following up on the
15 data.

16 BY MR. ROSENBAUM:

17 Q But my question is -- well, did you disregard
18 the -- did you say, "Well, then, I just can't pay
19 attention to the data that they've collected because the
20 response rate is too low"?

21 A No.

22 Q Okay. And why is that?

23 MR. HERRON: Objection. Vague and ambiguous.
24 Why is what?

25 You may respond if you have the faintest idea

1 rates that HumRRO obtained when it took the teacher
2 surveys?

3 A How did I take them into account to do what?

4 Q Did you draw any conclusions from them? I
5 mean, did you say, "This teacher survey is not worth
6 looking at because the response rate is too low"?

7 Did you say, "I'm not going to give it a lot of
8 credence because the response rate is too low" or did you
9 say, "I think the response rate is sufficient for me to
10 draw conclusions"?

11 MR. HERRON: Objection. Assumes facts not in
12 evidence, compound.

13 THE WITNESS: I read the report with the
14 awareness that they had not obtained responses from
15 everyone but that they had used diligence to get as much
16 information as they could and, certainly, any
17 information is better than not having information and
18 having to guess.

19 So the information is well worth paying
20 attention to, as you put it.

21 BY MR. ROSENBAUM:

22 Q Okay. Now, you also told me a second method
23 involves -- I may not have gotten this quite correct so
24 correct me if I'm wrong here -- district scope and
25 sequence information.

1 what he's talking about.

2 THE WITNESS: Can you rephrase that to tell me
3 what --

4 BY MR. ROSENBAUM:

5 Q Sure. If the response rate had been a 10th of
6 a percent of the teachers who -- to whom the surveys had
7 been sent, would you have said -- would you have
8 regarded that as a sufficient response rate to pay
9 attention to the results, to form judgments based upon
10 those results?

11 A I expect the evaluator would not have gone
12 forward with the study under those circumstances.

13 Q All right. With respect to the response rate
14 that HumRRO received when it conducted these surveys,
15 when you looked at those response rates, at any point
16 did you say, "These response rates are too low for me to
17 draw any conclusions from them"?

18 MR. HERRON: Objection. Vague and ambiguous,
19 asked and answered.

20 THE WITNESS: I wouldn't say that they're too
21 low to draw any conclusions. The response rate is a
22 variable or a caution you take into account when you
23 look at the results.

24 BY MR. ROSENBAUM:

25 Q How did you take into account the response

1 Is that right?

2 A Yes.

3 Q What does that mean?

4 A That's information they develop in a subject
5 area that delineates what's to be taught at each grade
6 level and sometimes additional information about use of
7 the materials in doing so.

8 Q Was that done with respect to the California
9 High School Exit Exam?

10 MR. HERRON: Objection. Calls for speculation.

11 THE WITNESS: I didn't personally do that.

12 BY MR. ROSENBAUM:

13 Q Do you know if it was done at all?

14 A I believe the external evaluator talked to
15 district personnel and that may have been part of that
16 discussion when they were talking about the content of
17 the test and the curriculum.

18 It's also possible that the department people
19 looked at that, as well.

20 Q Do you know for a fact whether the Department
21 people did do that?

22 A I know that there are ongoing discussions with
23 school people about these issues. I don't have any
24 specific knowledge or recollection of that activity.

25 Q Okay. Regarding the survey of the teachers you

1 were talking about several moments ago, has that ever
2 been done, to your knowledge, with respect to any part
3 of the STAR assessment program?

4 MR. HERRON: Objection. Vague.

5 THE WITNESS: This goes back to what we talked
6 about this morning, that curricular validity is
7 appropriate when you're making high-stakes decisions
8 about individual students.

9 BY MR. ROSENBAUM:

10 Q The third method that you talked to me about
11 was textbook -- looking at textbooks and other
12 instructional methods; is that right?

13 A Other instructional materials.

14 Q I'm sorry. Why is that a method that is
15 utilized professionally?

16 A Many courses are structured around textbooks
17 and the content of textbooks, so that is one way of
18 finding out what information was contained in a
19 particular course.

20 Q Okay. And do you know if that has been done
21 with respect to the California High School Exit Exam at
22 any point for purposes of establishing curricular
23 validity?

24 A The High School Exit Exam, as are the STAR
25 standards exams, was developed to match the California

1 Q Did you ever disagree with any of the
2 recommendations that -- strike that.

3 The recommendations from TAC go to the State
4 Board; is that right?

5 A Not formally like that.

6 Q To whom do they go?

7 A As I recall, I don't think there are formal
8 recommendations that go anywhere.

9 We have a discussion with Department and Board
10 members present of various topics related to the State
11 assessment system.

12 Q And did TAC formulate certain recommendations
13 that were passed on to these personnel?

14 A Not in a formal sense.

15 Q You talked to me earlier about the phrase
16 "Opportunity to Learn"; is that right?

17 A I believe you mentioned it this morning.

18 Q Okay. And you gave a presentation about
19 Opportunity to Learn in California?

20 A Yes.

21 Q What is your definition of the phrase
22 "Opportunity to Learn"?

23 MR. HERRON: Objection. Vague and ambiguous,
24 calls for speculation, vague as to --

25 MR. ROSENBAUM: Actually, I will --

1 standards.

2 And, as I understand the textbook adoption
3 process, one of the things they do is look at the match
4 of the textbook content to the standards, so I believe
5 there was some analysis along those lines that was done.

6 Q Okay. And you approved of that as a
7 methodology for establishing curricular validity?

8 A I think it's a useful piece of evidence.

9 Q Why is that?

10 MR. HERRON: Objection.

11 THE WITNESS: Why is what?

12 BY MR. ROSENBAUM:

13 Q Why is it a useful piece of evidence?

14 A Because, as I indicated, textbooks are used to
15 define the content of courses and the instruction
16 sequence and State -- the State Board adopted textbooks
17 that they felt most closely matched the California
18 standards in the requisite subjects and grades.

19 Q Within TAC, Dr. Phillips, did you ever express
20 any opposition to any of the recommendations that came
21 out of that committee?

22 MR. HERRON: Objection. Vague.

23 THE WITNESS: I don't understand really the
24 nature of your question.

25 BY MR. ROSENBAUM:

1 MR. HERRON: -- context.

2 MR. ROSENBAUM: Actually, I will reframe that
3 question.

4 Q Do you have a definition of "Opportunity to
5 Learn"?

6 MR. HERRON: Same objection.

7 THE WITNESS: I don't have a specific
8 definition. There is a way in which it's used typically
9 in a psychometric sense.

10 BY MR. ROSENBAUM:

11 Q Okay. And what way is that?

12 A That is a word that has been used more recently
13 in a similar way that curricular validity is used, and
14 many people understand those terms to mean essentially
15 the same thing.

16 Q Is that your understanding?

17 A That's generally how the terms are used.

18 Q Okay. And would that mean, Doctor, based on
19 what you told me this morning and then repeated this
20 afternoon, that -- would you apply Opportunity to Learn
21 to the STAR assessment system?

22 MR. HERRON: Objection. Vague and ambiguous,
23 calls for speculation.

24 THE WITNESS: As I indicated this morning, the
25 curricular validity requirement which was often also

1 referred to as Opportunity to Learn applies to tests
2 where there are high stakes for individual students, a
3 high stakes for individual students that are on the High
4 School Exit Exam but not on the STAR test.

5 BY MR. ROSENBAUM:

6 Q And regarding Opportunity to Learn, are there
7 certain criteria that you apply based on your
8 professional expertise to determine whether or not
9 Opportunity to Learn has been provided to students?

10 MR. HERRON: Vague and ambiguous. Object on
11 that basis. Calls for speculation, overbroad.

12 THE WITNESS: As I indicated this morning, it's
13 a matter of looking at -- looking at and evaluating all
14 the available evidence.

15 BY MR. ROSENBAUM:

16 Q Well, if I said to you, "Doctor, I want you to
17 tell me all the available evidence that you would think
18 would be pertinent to an Opportunity to Learn analysis
19 with respect to the California High School Exit Exam,"
20 what evidence would you point me to?

21 MR. HERRON: Objection. Incomplete and
22 improper hypothetical, calls for speculation, vague and
23 ambiguous.

24 You may respond.

25 THE WITNESS: If you're asking for specific

1 to determine whether or not students have received
2 Opportunity to Learn; isn't that true?

3 MR. HERRON: Objection. Argumentative,
4 overbroad, vague and ambiguous, assumes facts not in
5 evidence.

6 THE WITNESS: If you're asking me what kinds of
7 information might be in a talk on Opportunity to Learn
8 or that dealt with curricular validity, typically I
9 would talk about the court cases and the particular data
10 that was collected in those cases that the judge found
11 satisfied professional requirements; talk about the
12 psychometric standards and what they say; and about
13 different ways going about collecting the kinds of
14 information and types of information that might be
15 collected in that regard.

16 BY MR. ROSENBAUM:

17 Q Okay. I don't want you to have to repeat
18 yourself, but I also want to make sure I have a complete
19 answer from you.

20 The types of data that you tell your audiences
21 to collect, is that what we been talking about: These
22 teacher surveys, the district scope of information and
23 the textbooks and other instructional materials? Is
24 that what you tell them to focus on?

25 A I --

1 kinds of evidence that might be collected about
2 curricular validity, it would be the methods and
3 evidence we already talked about: The textbooks,
4 surveying teachers, and so on.

5 BY MR. ROSENBAUM:

6 Q Okay. And did you -- when you spoke -- when
7 you made your presentation in California about
8 Opportunity to Learn and Testing Accommodations,
9 I just want to focus on the Opportunity to Learn part,
10 did you tell your audience what evidence should be
11 collected to determine whether or not Opportunity to
12 Learn criteria would be satisfied?

13 A I actually don't recall specifically what was
14 in that particular talk, so I can't say.

15 Q Okay. But the talk that you gave in
16 California, isn't it true that it's similar to other
17 talks that you've given to other state bodies on similar
18 subjects?

19 MR. HERRON: Objection. Vague.

20 THE WITNESS: The content, topics, et cetera
21 that were covered are similar to topics that are
22 discussed in other forums as you suggested.

23 BY MR. ROSENBAUM:

24 Q Okay. And when you talk in these forums, you
25 tell your audience what sort of data should be collected

1 Q I don't want to leave anything out.

2 A I don't direct them to collect anything
3 specifically. I explain to them that curricular
4 validity is established by all different types of
5 evidence and I talk about the types and I talk about
6 what was considered sufficient in the particular court
7 cases.

8 And then it's up to the particular client or
9 state department of education to decide what -- which
10 methods they're going to pursue and how they're going to
11 do that.

12 Q Okay. In -- the California High School Exit
13 Exam has a number of different subject areas; isn't that
14 right?

15 A Well, if you're asking what tests students
16 take, there is an English language arts test, there is a
17 mathematics test.

18 Q Any other subject areas that you're aware of?

19 A At this time, I believe it's just the two
20 subject areas.

21 Q Do you know if they are planning to expand
22 that, the subject areas?

23 A I'm not sure if there are any immediate plans
24 to do that. There have been discussions about the
25 possibility of testing in other areas.

1 Q Do you have a recommendation --
 2 MR. HERRON: Objection --
 3 BY MR. ROSENBAUM:
 4 Q -- as to whether or not to expand to other
 5 areas?
 6 MR. HERRON: Same objection. Vague and even
 7 ambiguous.
 8 THE WITNESS: Can you reask the question,
 9 please?
 10 BY MR. ROSENBAUM:
 11 Q Yeah. Have you ever made a recommendation that
 12 the High School Exit Exam include other subjects areas
 13 besides English language arts and mathematics?
 14 A The content of a particular state's exam is a
 15 policy decision that should be made by a policy body.
 16 It's up to the State of California, in my judgment, to
 17 decide what areas they want to test, what areas they
 18 want to have standards.
 19 My job is to tell them how to do that in a
 20 psychometrically appropriate way.
 21 Q So I take it that means you have never said to
 22 anybody, "You should include other subject areas besides
 23 English language arts and mathematics as part of the
 24 High School Exit Exam"?
 25 A My recommendations are psychometric.

1 Q Okay. To your knowledge -- let me make a
 2 foundation question.
 3 Have you ever undertaken any investigation to
 4 determine whether or not students who have taken --
 5 strike that.
 6 Students can take the California High School
 7 Exit Exam at different points in their school career;
 8 isn't that right? 9th grade? 10th grade? 11th grade?
 9 A No.
 10 Q When -- when -- can they take it on more than
 11 one occasion?
 12 A Yes.
 13 Q Do you know on how many occasions they can take
 14 it?
 15 A I don't remember for sure how many. Probably
 16 at least five.
 17 Q Okay. And is it the same exam they take each
 18 time?
 19 A No.
 20 Q And why are they changed?
 21 A For security.
 22 Q Okay. And --
 23 MR. HERRON: Mark, we've been going an hour, if
 24 you'd like to break at a convenient time.
 25 MR. ROSENBAUM: Yeah. Just give me a few more

1 minutes. Is that okay?
 2 Q Are there -- have you ever undertaken an
 3 investigation, Doctor, to determine whether or not there
 4 are students who have taken the mathematics part of the
 5 California High School Exit Exam who have not had access
 6 to the information tested on that exam?
 7 A I have not done any investigations of that type
 8 independently.
 9 Q Okay. And if I change the question from
 10 mathematics to English language arts, the same answer?
 11 A Same answer with respect to studies?
 12 Q I shortcut the question too much.
 13 Have you undertaken any investigation to
 14 determine whether or not there are California students
 15 who have taken the English language arts portion of the
 16 California High School Exit Exam who have not had access
 17 to the information tested on that exam?
 18 A You're referring now to curricular validity,
 19 instruction on the California standards that are
 20 covered?
 21 Q Yes.
 22 A I've not done any independent investigation.
 23 Q Okay. Has anyone, to your knowledge, on the
 24 Technical Advisory Committee undertaken such
 25 investigations?

1 A I don't know.
 2 Q Okay. Sitting here today, do you -- do you
 3 have a view as to whether or not there are students who
 4 have taken the mathematics part of the California High
 5 School Exit Exam who have not had access to the
 6 information tested on that exam?
 7 MR. HERRON: Objection. Calls for speculation.
 8 BY MR. ROSENBAUM:
 9 Q I don't want you to speculate so if you -- if
 10 it's just pure speculation, just tell me that.
 11 A I haven't collected information on that matter.
 12 Q Okay. And same question with respect to
 13 English language arts, and I take Mr. Herron's
 14 admonition about speculation.
 15 Do you have a view as to whether or not there
 16 are California public school students who have taken the
 17 California High School Exit Exam English language arts
 18 section who have not had access to the information
 19 tested on that exam?
 20 MR. HERRON: Same objection.
 21 THE WITNESS: Again, I've not collected any
 22 information about that.
 23 MR. ROSENBAUM: Okay. We can take our break
 24 now. Thanks.
 25 MR. HERRON: Okay.

1 (Recess taken.)

2 BY MR. ROSENBAUM:

3 Q Doctor, you know, I think I have been able -- I
4 think I was negligent, Doctor, in getting an answer.

5 Did -- and if you did answer this for me, I
6 apologize.

7 Are there certain treatises that you regard as
8 expert treatises in the area of psychometrics?

9 A There are certain textbooks that are used in
10 instructional courses in the area and certain reference
11 works that are used by many or most psychometricians.

12 Q What are the reference works that you regard to
13 be expert in the area of psychometrics?

14 A Essentially, I guess you're asking me for
15 what's in a typical psychometrician's library, which
16 often is very large over the years. A lot of different
17 things that people rely on.

18 Q But I'm interested in you.

19 What treatises or reference books do you rely
20 upon as an expert in the area of psychometrics?

21 A That depends a lot on the issue I'm dealing
22 with.

23 Q Say we're talking about state assessment tests.
24 Are there particular -- particular treatises or
25 reference books you rely upon?

1 MR. HERRON: Objection. The question calls for
2 a narrative, vague and ambiguous.

3 You may respond.

4 THE WITNESS: There are lots of people who have
5 knowledge and training in that area whom I respect. I
6 hesitate to even think about a list without something in
7 front of me. Very easy to forget, leave people out. I
8 don't even really know where to begin exactly.

9 BY MR. ROSENBAUM:

10 Q Tell me the names of the persons you do
11 consider that you recall at this time.

12 A You're asking for just people in general or --

13 Q Experts in the area of educational measurement.

14 MR. HERRON: Objection. Vague and ambiguous.

15 THE WITNESS: If you could be a little more
16 specific about the kind of expertise you're talking
17 about, I could probably respond more directly.

18 BY MR. ROSENBAUM:

19 Q I'm talking about, for example, the area of
20 reliability, validity of statewide assessment tests.

21 MR. HERRON: Do you have his question clearly
22 in mind?

23 BY MR. ROSENBAUM:

24 Q We can break that down further. First with
25 respect to standards-based tests.

1 MR. HERRON: Objection. Vague and ambiguous,
2 overbroad.

3 You may respond.

4 THE WITNESS: Again, it depends on what aspect
5 of the state tests you're talking about.

6 BY MR. ROSENBAUM:

7 Q What about regarding establishing reliability
8 or validity?

9 A There are a number of different textbooks that
10 deal with those issues. There's also the standards, of
11 course. There is a work called "Educational
12 Measurement" that's put out about every 10 years or so
13 that collects information on those various topics by
14 leading scholars in the field.

15 Q Who is the author or who are the authors of
16 Educational Measurement?

17 A Each time it has an editor and the editors are
18 different.

19 Q Who was the last editor of which you're aware?

20 A Robert Brennan.

21 Q Do you regard Robert Brennan as an expert in
22 the area of educational measurement?

23 A Yes.

24 Q Anyone else whom you regard as an expert in the
25 area of educational measurement?

1 MR. HERRON: Again, if you know what he's
2 asking, go ahead and respond.

3 THE WITNESS: No, I'm really not sure I do.

4 Normally when I'm asked a question like that,
5 people ask me with regard to something specific they're
6 interested in addressing. "Validity" in general is a
7 huge subject and one would probably recommend someone
8 different depending on what the specific application
9 was.

10 BY MR. ROSENBAUM:

11 Q Tell me, then, Doctor, tell me the persons in
12 the field of educational measurement whom you regard as
13 expert.

14 MR. HERRON: Objection. Vague and ambiguous.

15 You may respond. He's just asking you to do
16 your best. He understands you may not remember
17 everyone, but feel free to do your best.

18 THE WITNESS: I'm sorry. Coming up with names
19 like that off the top of my head is hard. I'm not good
20 at doing that.

21 BY MR. ROSENBAUM:

22 Q Okay. You have -- you have qualified as an
23 expert in assessments in litigation, is that right, test
24 assessment?

25 A My area of expertise is psychometrics.

1 Q Okay. Do you consider your area of expertise
2 intervention programs as part of the accountability
3 programs?
4 MR. HERRON: Objection. Vague.
5 MR. ROSENBAUM: It is vague and I'll break it
6 down.
7 Q Do you have an understanding of the meaning of
8 the phrase "intervention programs" as part of
9 accountability systems?
10 A I'm familiar with the interventions that are
11 part of the API system and the accountability in
12 California.
13 Q Okay. And do you consider yourself an expert
14 as to intervention programs like the intervention
15 programs that are part of the API?
16 MR. HERRON: Objection. Vague.
17 THE WITNESS: If you mean how to best go about
18 them or in terms of carrying them out, I have not been
19 involved in that kind of work. My work is involved with
20 the psychometric aspects of an accountability program.
21 BY MR. ROSENBAUM:
22 Q Okay. Have you done any publishing in the
23 scholarly journals or in books or textbooks with respect
24 to intervention programs of the type you described?
25 A Not that I recall.

1 Q Do you know, Doctor, the percentage of students
2 in California who are in courses where their teachers
3 utilize textbooks as a primary method to communicate
4 standards-based material?
5 MR. HERRON: Objection. Vastly overbroad,
6 calls for speculation, vague and ambiguous.
7 THE WITNESS: I don't know any specific
8 numbers, but, in general, most teachers rely on some
9 textbook or instructional materials in their courses,
10 and the State Board has approved textbooks for that
11 purpose.
12 BY MR. ROSENBAUM:
13 Q And could you tell me, please, the basis for
14 that answer.
15 MR. HERRON: Objection. Vague.
16 You may respond.
17 THE WITNESS: I believe I saw minutes of Board
18 meetings in which textbook adoption issues were part of
19 that agenda.
20 BY MR. ROSENBAUM:
21 Q Doctor, are there states, to your knowledge,
22 that have assessment tests that are 100 percent aligned
23 with state standards?
24 A What do you mean by "100 percent aligned"?
25 Q I mean -- well, you used the word "aligned" in

1 your report; isn't that right?
2 A I think that's true.
3 Q What did you mean by it?
4 MR. HERRON: You'll have to point her to a
5 specific part of the report.
6 MR. ROSENBAUM: It's throughout her report,
7 actually. Let's see if I can shortcut this. I'm not
8 trying to trick her. I'm just trying to get a common
9 vocabulary here.
10 Q When you talk about "alignment" in your
11 report -- and if want to look at your report, I don't
12 care. That's fine.
13 But when you talked about "alignment," were you
14 talking in the same terms we were talking earlier when
15 we spoke of curricular validity?
16 MR. HERRON: Objection. Vague.
17 THE WITNESS: No.
18 BY MR. ROSENBAUM:
19 Q Okay. What did you mean by "align"?
20 A Alignment as it's typically used in
21 psychometrics has to do with whether or not the items on
22 the tests are testing specific standards that have been
23 articulated by the State.
24 In other words, the match -- whether each item
25 in the tests can be mapped to a particular standard for

1 that grade and subject.
2 Q Okay. To your knowledge, has there been any
3 analysis to determine degrees of alignment with State
4 standards with respect to the California High School
5 Exit Exam?
6 MR. HERRON: Objection. Vague. Her report
7 speaks for itself on this point, as well.
8 THE WITNESS: The test specifications for the
9 High School Exit Exam were drawn from the standards and
10 each item that appears on the test is evaluated for
11 whether or not it matches the test specifications, which
12 in turn are drawn from the standards.
13 BY MR. ROSENBAUM:
14 Q Okay. Thanks.
15 What about with respect to the STAR assessment
16 system? At any point, to your knowledge, has there been
17 an analysis to determine alignment of questions on the
18 STAR assessment system with State standards?
19 A Yes.
20 Q Okay. And who has undertaken that analysis?
21 A Are you asking about the norm reference test or
22 the standards test?
23 Q Both, but we can break it down, if you'd like.
24 With respect to the -- what did you call the
25 second part?

1 A The standards test.
 2 Q Yes. With respect to the standards test, has
 3 there been an alignment analysis?
 4 A That is done as part of the test development
 5 activity.
 6 Q And to your knowledge has there been an
 7 evaluation to the degree of alignment between the
 8 questions on the norm reference test and State standards
 9 at any point in the existence of the STAR system?
 10 A Yes.
 11 Q Okay. And who has conducted that evaluation?
 12 MR. HERRON: Objection. Calls for speculation.
 13 MR. ROSENBAUM: If you know.
 14 THE WITNESS: The test publisher.
 15 BY MR. ROSENBAUM:
 16 Q Okay. And your testimony is that the test
 17 publisher has specifically evaluated the degree to which
 18 questions on the -- let's break it down, on the
 19 Stanford 9 are aligned with California State standards?
 20 A Yes.
 21 Q And has that been for every year in which the
 22 California -- the Stanford 9 was utilized as part of the
 23 STAR assessment system?
 24 MR. HERRON: Objection. Calls for speculation.
 25 BY MR. ROSENBAUM:

1 Q If you know.
 2 A I am aware of an analysis that was done prior
 3 to the adoption of the Stanford 9 as the STAR norm
 4 reference test.
 5 There may have been additional work done by the
 6 publisher and/or the Department in subsequent years,
 7 particularly with respect to the augmentation and the
 8 augmented tests.
 9 Q Okay. But with respect to the Stanford 9, do
 10 you know whether the Department of Education has
 11 undertaken an alignment analysis?
 12 A That is with respect to the Stanford 9.
 13 Q Okay. With respect to the questions that are
 14 not the augmented questions, do you know if that
 15 analysis has taken place?
 16 MR. HERRON: Objection. Vague.
 17 THE WITNESS: Can you say that one more time
 18 for me, please?
 19 BY MR. ROSENBAUM:
 20 Q Sure. Let me see if I understand it.
 21 The Stanford 9 has a set of norm reference
 22 questions that are utilized throughout the country.
 23 Is that right?
 24 A No.
 25 Q Okay. Is the Stanford 9 that's administered in

1 California the same as the Stanford 9 that's
 2 administered in Pennsylvania? Are there portions of the
 3 Stanford 9 that are identical?
 4 MR. HERRON: Objection. Calls for
 5 speculation.
 6 Go ahead.
 7 BY MR. ROSENBAUM:
 8 Q If you know.
 9 A No.
 10 Q Has there been -- there are certain questions
 11 on the Stanford 9 that are norm referenced?
 12 A The entire Stanford 9 is norm referenced.
 13 Q Okay. And maybe you answered this for me, but
 14 your testimony is that publisher did an alignment
 15 analysis of the Stanford 9 with the California state
 16 standards?
 17 MR. HERRON: Objection. Asked and answered,
 18 same question.
 19 Go ahead.
 20 THE WITNESS: Yes, at the initiation of the
 21 program.
 22 BY MR. ROSENBAUM:
 23 Q Okay. And how did they go about doing that, do
 24 you know? I don't want you to guess.
 25 A I know in a general way how those things are

1 done. I don't know specifically who did what to produce
 2 that analysis in that case.
 3 Q Generally, what's done?
 4 A Generally content experts have a copy of the
 5 state standards that are being matched and a copy of the
 6 test, and item by item they look at the standards to see
 7 if the test item measures something in the standards.
 8 Q Okay. And do you repeat those results in one
 9 of your tables in your report?
 10 A I do report some alignment data in my report,
 11 yes.
 12 Q That the Stanford 9 publisher evaluated from
 13 that evaluation?
 14 A Yes.
 15 Q Okay. And was there alignment data that you
 16 did not report from the Stanford 9 analysis of
 17 California standards that didn't get into your report?
 18 A Yes.
 19 Q Okay. And how did you decide what data you put
 20 in and what data you didn't put in?
 21 A I used the data that I was able to obtain.
 22 Q Okay. What does that mean? I mean, was there
 23 data that you sought from the Stanford 9 evaluation that
 24 you were unable to obtain?
 25 A Yes.

1 Q Okay. What data was that?
 2 A That was alignment data by objective.
 3 Q By objective?
 4 A Yes.
 5 Q What do you mean by "objective"?
 6 A The California standards are organized into
 7 objectives, and this would be a compilation of items
 8 matching objectives.
 9 Q Okay. Is that -- is that Table 1?
 10 A Yes.
 11 (Discussion off the record.)
 12 BY MR. ROSENBAUM:
 13 Q Do you know David Rogosa?
 14 A I don't know him personally.
 15 Q You never had a conversation with him?
 16 A Not that I recall.
 17 Q Have you ever heard him make a presentation?
 18 A Not that I recall.
 19 Q Have you reviewed all of his reports with
 20 respect to -- who is David Rogosa -- strike that.
 21 What is your understanding of who David Rogosa
 22 is with respect to the California assessment system?
 23 A I believe he's a member of the Technical Design
 24 Group.
 25 Q And has he prepared reports as -- in his

1 capacity with respect -- with regard to the Technical
 2 Design Group, so far as you know?
 3 A He has prepared reports about the California
 4 system and California data. I don't know in what
 5 capacity he did those.
 6 Q Do you know how many reports he has prepared?
 7 A No.
 8 Q How many -- have you read his reports?
 9 A I've read several.
 10 Q Which reports have you read?
 11 A I've read reports that are on the California
 12 Department of Education website.
 13 Q Okay. Have you evaluated the methodology that
 14 David Rogosa utilized for purposes of those reports?
 15 MR. HERRON: Objection. Vague and ambiguous.
 16 THE WITNESS: Can you tell me which methodology
 17 you have in mind?
 18 BY MR. ROSENBAUM:
 19 Q Well, let me start with a broad question and
 20 then we can narrow it a little bit.
 21 Have you reviewed his methodology to determine
 22 whether or not it meets professional standards?
 23 MR. HERRON: Objection. Vague and ambiguous,
 24 overbroad.
 25 THE WITNESS: I've read several of his reports

1 and used some of his data in my report that I thought
 2 was useful and relevant.
 3 BY MR. ROSENBAUM:
 4 Q Did you disagree with any of the methodology
 5 that you saw Rogosa use in any of his reports?
 6 MR. HERRON: Objection. Vague, assumes facts
 7 not in evidence.
 8 THE WITNESS: As I indicated, I don't even know
 9 how many he's done total.
 10 BY MR. ROSENBAUM:
 11 Q Just the ones you read?
 12 A The ones that I specifically cited to in my
 13 report I read in detail and believe that his analyses
 14 were relevant and useful in this context.
 15 Q My question is a little bit different.
 16 When you read over his reports, in any of the
 17 reports that you read did you have any concerns about
 18 any of the methodology he utilized for any purpose?
 19 MR. HERRON: Objection. Asked and answered,
 20 calls for speculation, overbroad, vague and ambiguous.
 21 You may respond.
 22 THE WITNESS: I'm not sure what you mean about
 23 "concerns." I was concerned with the information he was
 24 presenting and its relevance to the particular topics
 25 that I was discussing, and I felt that it was useful and

1 appropriate information for that purpose.
 2 BY MR. ROSENBAUM:
 3 Q Okay. If my question is not clear, I
 4 apologize. I'll try to clarify it for you.
 5 What I'm concerned about is this. I'm not
 6 limiting my question to those portions of his reports
 7 that you extracted and discuss in your report.
 8 I'm saying: The universe of the reports that
 9 you read, was there any point where you said, "I don't
 10 believe that the methodology that Rogosa is utilizing
 11 meets professional psychometric standards"?
 12 A I don't recall that.
 13 Q Okay. Have you, Doctor, undertaken any
 14 analysis regarding the effect of the California budget
 15 that was just passed -- strike that.
 16 Did you know that California just enacted a
 17 budget?
 18 A I think I heard that on the news.
 19 Q Have you undertaken any inquiry to determine
 20 the effect of that budget on the STAR system?
 21 MR. HERRON: You mean since yesterday when the
 22 budget passed?
 23 MR. ROSENBAUM: Well, let's start there. Yeah.
 24 THE WITNESS: No.
 25 BY MR. ROSENBAUM:

1 Q Had you looked at any budget proposals?
 2 A The budget is totally beyond the scope of what
 3 I looked at in my report.
 4 Q Okay.
 5 A My opinions are based on psychometric topics
 6 and issues.
 7 Q Do you know how the budget cuts will affect the
 8 STAR system, if at all?
 9 A I don't know what's in the budget or not in it.
 10 Q Okay. You talked to me -- you mentioned
 11 earlier that one of your concerns that you discussed
 12 with Mr. Herron was the awards part of the California
 13 assessment system; is that right?
 14 A I don't recall it being a concern. I recall it
 15 being a topic --
 16 Q Oh.
 17 A -- that he indicated I was likely to be
 18 questioned about in the deposition.
 19 Q Okay. Well, he was right.
 20 MR. HERRON: It's just your normal
 21 circumstances.
 22 MR. ROSENBAUM: Very sharp.
 23 Q Has the awards -- I want to make sure we're
 24 talking the same vocabulary.
 25 Has the awards program -- is that a phrase that

1 you're comfortable with, "the awards portion of the
 2 assessment program"?
 3 A There are awards that are part of the API
 4 accountability system.
 5 Q And you talk about those awards in your report,
 6 right?
 7 A Yes.
 8 Q Okay. Has the awards -- have the awards
 9 changed since the implementation of the program, so far
 10 as you know?
 11 A Yes.
 12 Q Okay. And how have they changed, to your
 13 understanding?
 14 A My recollection is that there were three
 15 different types of awards in the first year of the
 16 program --
 17 Q Which was what? What was the first year?
 18 A I have a chart that talks about that.
 19 Do you want me to just list them for you?
 20 They're in Chart 10 of my report.
 21 Q Yeah. No, my question -- I cut you off.
 22 And, David, if it's possible, I don't have a
 23 colored report, with colors. It's very attractive.
 24 MR. HERRON: It is attractive.
 25 MR. ROSENBAUM: If one could be supplied --

1 MR. HERRON: Yeah. Unfortunately, I don't have
 2 one either but I'll look.
 3 MR. ROSENBAUM: Thank you.
 4 Q When did the program start? Not the awards
 5 program but the assessment system. What is your
 6 understanding of when the assessment system began?
 7 A I believe 1998 was the first year of the
 8 assessment program.
 9 Q And there were three different types of awards
 10 as part of that program; is that right?
 11 A No.
 12 Q Tell me the different types that you're aware
 13 of.
 14 A There were no awards as part of that program.
 15 Q Okay. And did there come a time when awards
 16 were added to the program?
 17 MR. HERRON: I'll just object. I mean, you can
 18 ask her these questions but as you pointed out when I
 19 was deposing Dr. Rogosa, they're all set forth in her
 20 report.
 21 MR. ROSENBAUM: They are and I'm not going to
 22 spend her time -- I'm just using it as a predicate
 23 question.
 24 MR. HERRON: Okay.
 25 BY MR. ROSENBAUM:

1 Q When did the first awards appear as part of the
 2 program?
 3 A As part of the assessment program that you're
 4 asking about?
 5 Q Yes.
 6 A They aren't part of the assessment program.
 7 Q As part of the accountability program.
 8 A I believe that was in 1999.
 9 Q Okay. And do you have an understanding as
 10 to -- do you think that --
 11 A Let me just correct that. I think it was the
 12 1999-2000 academic year. I think maybe the first awards
 13 weren't actually given until 2000.
 14 Q What's your understanding of the purpose of the
 15 awards?
 16 A To reward schools that need certain criteria
 17 for awards eligibility.
 18 Q Now, is it part of your area of expertise as a
 19 psychometrics expert to make a judgment as to the value
 20 of those awards as part of an accountability program?
 21 MR. HERRON: Objection. Vague and ambiguous.
 22 BY MR. ROSENBAUM:
 23 Q Is that within the scope of your expertise?
 24 MR. HERRON: Same objection.
 25 THE WITNESS: Awards are considered an

1 important part of an accountability system, and they're
 2 something that psychometricians discuss, particularly
 3 with respect to motivation to do well on assessments
 4 that are part of an accountability system.
 5 BY MR. ROSENBAUM:
 6 Q Okay. Is motivation important to the validity
 7 and reliability of an assessment system?
 8 MR. HERRON: Objection. Vague and ambiguous.
 9 THE WITNESS: Motivation is important in
 10 getting students to do their best on a test.
 11 BY MR. ROSENBAUM:
 12 Q Okay. And why is that important?
 13 A Why is what important?
 14 Q For purposes of an assessment system, to get
 15 students to do their best?
 16 A If you want to get an accurate assessment of
 17 what a student knows and can do, you want them to give
 18 the tests their best effort.
 19 Q Okay. Now, as part of your work on TAC, did
 20 you concern yourself with the existence of the awards
 21 programs?
 22 A No.
 23 Q Okay. Have you, yourself, undertaken any
 24 analysis to determine the impact of the award systems as
 25 part of the California assessment program -- or

1 accountability program?
 2 A What do you mean by "impact"?
 3 Q The degree to which they had influence,
 4 performance.
 5 MR. HERRON: Objection. The report speaks for
 6 itself, vague and ambiguous.
 7 THE WITNESS: I did collect data and report
 8 data about the awards program and about what's happened
 9 to test scores and API measures over time.
 10 MR. ROSENBAUM: Okay. The three -- I'm just
 11 making this as a predicate, David.
 12 Q The three types of awards, what are they?
 13 A The GPA. The Governor's Performance Awards;
 14 the AB 1114 awards, which are their certificated staff
 15 performance incentive act awards; and the SB 1667
 16 awards, which are the school site employee performance
 17 bonus awards.
 18 Q You're looking at a particular chart in your
 19 report?
 20 A Yes.
 21 Q Which is that?
 22 A Chart 10.
 23 Q Thank you. And the Governor's Performance
 24 Awards, who is eligible for those awards?
 25 A Schools that met eligibility criteria for the

1 program.
 2 Q Who is eligible for the AB 1114 awards?
 3 A Those were school teachers and principals.
 4 Q Okay. And who was eligible for the SB 1667
 5 awards?
 6 A Staff at the school site, plus the school.
 7 Q To your knowledge, have there been any awards
 8 as part of the California accountability program that
 9 students are eligible for?
 10 A Well, certainly the High School Exit Exam for
 11 individual students is tied to a diploma. I don't know
 12 if you're classifying that as an award.
 13 There may be awards given by individual
 14 schools, and I think there are assessments in the State
 15 assessment system that may give awards, but I don't
 16 think as -- if you're asking about the API
 17 accountability by itself, I'm not aware of any awards to
 18 individual students on that.
 19 Q Okay. Okay.
 20 Did TAC ever recommend that there be an awards
 21 program for individual students either as part of the
 22 STAR system or as part of the High School Exit Exam?
 23 MR. HERRON: Objection. Calls for speculation.
 24 THE WITNESS: I don't recall any discussions
 25 along those lines.

1 BY MR. ROSENBAUM:
 2 Q Okay. The Governor's Performance Awards, do
 3 those still exist, to your knowledge?
 4 A I believe they were given for two years and
 5 then discontinued.
 6 Q Do you know the reason they were discontinued?
 7 A My understanding was that no resources were
 8 available.
 9 Q Okay. And did you have a view as to whether or
 10 not those awards should be continued?
 11 MR. HERRON: Objection. Vague as to time,
 12 vague and ambiguous as phrased.
 13 MR. ROSENBAUM: That's a good point.
 14 Q At the time they were discontinued, did you
 15 know that was on the table, that there was consideration
 16 of discontinuing them?
 17 A I don't think so.
 18 Q Okay. Did you regard the Governor's
 19 Performance Awards as important to the purpose of the
 20 accountability system?
 21 A I think both awards and interventions are
 22 important in accountability systems.
 23 Q Why is that?
 24 MR. HERRON: Objection. Vague.
 25 THE WITNESS: Why is what?

1 BY MR. ROSENBAUM:

2 Q Why are awards important to an accountability
3 system?

4 A As incentives and rewards to schools for
5 improving performance.

6 Q Did you ever express any concern about the
7 discontinuation of the Governor's Performance Awards?

8 A I don't think I was ever asked about that.

9 Q In your own mind, did you ever have any concern
10 about the discontinuance of the Governor's Performance
11 Awards?

12 A My understanding is that was a policy decision
13 that was made for which I don't have adequate
14 information or knowledge to evaluate.

15 Q Psychometrically, did you have any concerns
16 about the discontinuance of the Governor's Performance
17 Awards?

18 MR. HERRON: Objection. Vague and ambiguous.
19 You may respond.

20 THE WITNESS: I don't think that's a
21 psychometric issue.

22 BY MR. ROSENBAUM:

23 Q Okay. The AB 1114 awards, to your knowledge,
24 do they still exist?

25 MR. HERRON: I think you had an extra "1" in

1 they still exist?

2 A Again, I believe they were only given during
3 the first year.

4 Q Okay. And do you know why they were
5 discontinued?

6 A Again, it's my understanding that it was a
7 resource issue.

8 Q Okay. And did you -- same question I asked you
9 before: Do you know -- did you know that a
10 discontinuation of the SB 1667 awards was on the table
11 before it actually happened?

12 A I don't think so.

13 Q Okay. And at any of your TAC meetings, did the
14 discontinuation of any of the awards we've just been
15 talking about, the Governor's Performance Award, the
16 1114 or the 1667 awards, did the subject matter of their
17 discontinuation ever come up?

18 MR. HERRON: Objection. Calls for speculation.

19 THE WITNESS: I don't recall any discussions
20 about that.

21 BY MR. ROSENBAUM:

22 Q Okay. When you spoke to audiences of State
23 officials about the start-up of the State accountability
24 program, did you ever talk about the value of awards?

25 A I didn't do that.

1 there.

2 MR. ROSENBAUM: I probably did. 1114. AB
3 1114.

4 THE WITNESS: I believe they were only given
5 the first year.

6 BY MR. ROSENBAUM:

7 Q And when -- do you know why they're no longer
8 continued?

9 A My understanding is that was another budget
10 consideration.

11 Q And I don't want you to have to go through the
12 whole litany of the response you just did for me, but
13 did you know that the discontinuation of the 1114 awards
14 was on the table?

15 A You mean before the decision was made?

16 Q Yeah.

17 A I don't think so.

18 Q Okay. And from a psychometric point of view,
19 in terms of psychometric objectives, did you ever feel
20 any concern about the discontinuation of the AB 1114
21 awards?

22 A Again, that's not a psychometric decision.

23 Q Why isn't that a psychometric decision?

24 A That's a policy decision.

25 Q Okay. And the SB 1667 awards, do you know if

1 Q Okay. You didn't. What didn't you do?

2 A I didn't speak to people about the start-up of
3 the accountability system.

4 Q When you talked to them about the start-up of
5 the assessment system, did you ever talk about the value
6 of awards as part of the accountability program?

7 MR. HERRON: Objection. Assumes facts not in
8 evidence, vague and ambiguous.

9 MR. ROSENBAUM: What did you say?

10 MR. HERRON: Assumes facts not in evidence,
11 vague and ambiguous.

12 MR. ROSENBAUM: Okay.

13 THE WITNESS: When the assessment program
14 began, there was no accountability system.

15 BY MR. ROSENBAUM:

16 Q Okay. At any point in any of your discussions,
17 did you ever talk about the value of awards as part of
18 the accountability program?

19 A I wasn't consulted about the accountability
20 program, per se.

21 Q Okay. Did you give any thought to talking to
22 David Rogosa as part of the preparation of your report?

23 A That's hard to say. I don't remember. I
24 thought about talking to a lot of people and I didn't
25 really have time to do a lot of that and determined that

1 the best information and best evidence was written
 2 documentation, and I did make a decision to go after
 3 that.
 4 Q Okay. To your knowledge, did -- strike that.
 5 Did Mr. Salvaty ever talk about David Rogosa?
 6 MR. HERRON: Objection. Calls for speculation.
 7 THE WITNESS: Not that I recall.
 8 BY MR. ROSENBAUM:
 9 Q To your knowledge, was there ever any
 10 discussion about David Rogosa preparing a report or
 11 testifying in this case? Did you ever hear anything
 12 about that?
 13 A Not that I recall at this time.
 14 Q You're familiar with the phrase "educational
 15 accountability"? We have been talking about that?
 16 A I specifically deal with the California
 17 accountability system in my report.
 18 Q Okay. And have you dealt with other
 19 accountability systems of states?
 20 MR. HERRON: Objection. Asked and answered.
 21 THE WITNESS: Yes.
 22 BY MR. ROSENBAUM:
 23 Q Okay. And what's your definition of the phrase
 24 "educational accountability"?
 25 MR. HERRON: Objection. Vague and ambiguous.

1 THE WITNESS: Accountability programs are
 2 generally understood to be assessment programs that are
 3 used to evaluate schools.
 4 BY MR. ROSENBAUM:
 5 Q Okay. And for what purposes?
 6 MR. HERRON: Objection. Vague and ambiguous.
 7 THE WITNESS: Are you asking in general or for
 8 California, specifically?
 9 BY MR. ROSENBAUM:
 10 Q Let's start out -- is there a difference in
 11 your mind between in general or for California?
 12 A Different states do somewhat different things
 13 in accountability programs.
 14 Q What is your understanding of the purpose of
 15 California's accountability system?
 16 A Well, probably the statute best speaks to that,
 17 which I do quote in my report.
 18 Q It's really a colorful report.
 19 (Discussion off the record.)
 20 THE WITNESS: Would you like me to read the
 21 relevant section that's on page 11?
 22 BY MR. ROSENBAUM:
 23 Q You can just point me to what you consider to
 24 be the purpose of the California accountability system.
 25 A Well, they listed the purpose in the

1 statute. This is the PSAA statute and it's on page 11
 2 at the bottom of the page.
 3 I guess that -- that one actually is the
 4 purpose of the schooling. It's actually at the end of
 5 that portion that -- this lays the predicate. The first
 6 sections lay the predicate --
 7 Q Okay.
 8 A -- for the purpose of the accountability
 9 system.
 10 Well, they list several things that are true.
 11 They state the purpose of the public school system and
 12 the interests of the people of California to ensure
 13 certain things about education for students.
 14 And they cite information about recent
 15 assessment results and then the last portion says,
 16 "To remedy this, the State is in need
 17 of an immediate and comprehensive
 18 accountability system to hold each of the
 19 State's public schools accountable for the
 20 academic progress and achievement of its
 21 pupils within the resources available to
 22 schools."
 23 Q Okay.
 24 A And that's quoted specifically from the
 25 statute.

1 Q And you adopt that as the purpose of your
 2 understanding of the accountability system for
 3 California?
 4 A I used the State's decision about that, yes.
 5 Q And within that -- and that's at page 11 of
 6 your report?
 7 A Yes.
 8 Q And the phrase that you just read to me,
 9 "...within the resources available to schools," do you
 10 see that phrase?
 11 A Yes.
 12 Q What would you understand that to mean?
 13 A That schools should use whatever resources they
 14 have available to teach academic knowledge and content
 15 standards as specified by the State to the students --
 16 to all students in the school.
 17 Q Tell me, Doctor, what you understand the word
 18 "resources" to mean.
 19 MR. HERRON: Objection. Vague.
 20 THE WITNESS: I think answering that question
 21 would be somewhat speculative. I think you're really
 22 asking me what did the legislature mean, and the best
 23 information on that would be to read some of the
 24 legislative analysis and proceedings to see how they use
 25 that word.

1 BY MR. ROSENBAUM:

2 Q Actually, that's not what I'm asking you.

3 When you saw the word "resources" in the
4 section that you just read, what did you understand it
5 to mean?

6 MR. HERRON: Objection. Assumes facts not in
7 evidence, calls for --

8 MR. ROSENBAUM: I'm glad to step back on that.

9 Q Did you have an understanding -- when you read
10 the subsection (d) that appears at page 11 of your
11 report and you saw the word "resources," did you have an
12 understanding of what that word meant?

13 A I do not know specifically what the legislature
14 intended when they enacted it that way. "Resources" are
15 often generally assumed to include human resources,
16 fiscal resources.

17 Q Okay.

18 A Any other materials that the school may have.

19 Q But did you have -- was that your definition or
20 did you not have a definition? I just want to know what
21 you considered the word "resources" to mean, if
22 anything?

23 MR. HERRON: Objection. Asked and answered.

24 THE WITNESS: I don't think I really thought
25 about a definition because that was not the focus of the

1 Q Are there other components?

2 A Yes.

3 Q What are they?

4 A Oh, again, without something in front of me, I
5 don't know if I can give you a complete list.

6 There's the Golden State exam, there's an
7 English language development test.

8 This is what I can think of.

9 Q Do you know if the Golden State exam is still
10 administered in California?

11 A Last I heard, it was, but there were
12 discussions about whether it could be replaced.

13 I don't know if a final decision has been made
14 on that.

15 Q Did your committee consider the question of
16 whether or not it should be replaced?

17 MR. HERRON: "It" being the Golden State exam?

18 MR. ROSENBAUM: Yeah.

19 THE WITNESS: We had a more global discussion
20 about overlap among assessments and options that might
21 allow some of that overlap and duplication to be
22 eliminated.

23 BY MR. ROSENBAUM:

24 Q Do you personally hold a view as to whether or
25 not the Golden State exam should continue to be

1 report.

2 The report focused on the accountability of the
3 public schools and how the accountability system and the
4 API were implemented to that end.

5 BY MR. ROSENBAUM:

6 Q Thank you. Have you ever given any
7 consideration to comparing the fiscal resources
8 available to schools in California with the fiscal
9 resources available to schools in other states?

10 MR. HERRON: Vague. Object on that basis.

11 THE WITNESS: I have not done any analyses that
12 compare the school resources between states.

13 BY MR. ROSENBAUM:

14 Q Do you consider that within your area of
15 expertise, the question of physical resources for
16 schools?

17 A I don't think that's a psychometric issue.
18 It's certainly outside the scope of the opinions
19 expressed in my report.

20 Q You told me that the California assessment
21 system consists of the STAR system and the California
22 High School Exit Exam.

23 Do I understand you correctly?

24 A Those are two components in the California
25 assessment system.

1 administered?

2 A Again, that's not a psychometric decision.
3 That's a policy decision.

4 What I do is help the State think about how to
5 achieve its purposes and when they decide to administer
6 a test for a particular purpose, how to do that in a
7 psychometrically defensible way.

8 Q Do you know how much money has been spent to
9 date on the STAR system by the State of California?

10 MR. HERRON: Objection. Beyond the scope of
11 her report, calls for speculation.

12 You may respond.

13 THE WITNESS: My report doesn't deal with that
14 issue and I don't know.

15 BY MR. ROSENBAUM:

16 Q Did you ever make any inquiry to find out?

17 MR. HERRON: Same objections. Relevance.

18 You may respond.

19 THE WITNESS: That particular issue is not part
20 of the opinions expressed in the report. They are
21 limited to psychometric issues.

22 BY MR. ROSENBAUM:

23 Q Okay. And if I asked you the same questions
24 with respect to the California High School Exit Exam,
25 the same answers: Do you know how much money has been

1 spent to date on the California High School Exit Exam by
2 the State of California?

3 A Are you talking about test development or
4 administration?

5 Q Development, administration, analysis.

6 A Again, that's outside the scope of the report.

7 Q Okay. And you never made any inquiry to find
8 out?

9 A I may have seen information related to that, but
10 it's not part of the analysis or material that I
11 collected specifically for purposes of the report.

12 Q Do you recall anything about the information --
13 I know you said you may have seen this, so I don't want
14 to put words in your mouth, but do you have a specific
15 recollection of having seen any specific information on
16 that subject?

17 A I don't recall any specific numbers.

18 Q Okay.

19 MR. ROSENBAUM: Off the record.

20 (Discussion off the record.)

21 BY MR. ROSENBAUM:

22 Q You performed some work for the Riverside
23 Publishing Company; is that right?

24 A I have consulted with them, yes.

25 Q What is the Riverside Publishing Company?

1 A They publish work keys which may be used by
2 some districts. I don't know for sure.

3 Q What is a "work key"?

4 A It's related to skills that are important for
5 employment.

6 MR. ROSENBAUM: We can take a break. Thanks.
7 (Recess taken.)

8 MR. ROSENBAUM: Back on the record.

9 Q Doctor, you told me you have read the PSAA; is
10 that right?

11 A Yes.

12 Q You read it in its entirety?

13 A Yes, I believe I did.

14 Q Insofar as you know, you read implementing
15 regulations of the PSAA?

16 A I'm not sure what you are referring to.

17 Q Have you read any regulations that deal with
18 the PSAA?

19 A The Board has passed various things. If you're
20 referring to Board action, yes.

21 Q Have you made a diligent effort as far as you
22 can to keep apprised of those Board actions?

23 A I made an attempt to read all of the Board
24 actions that dealt with the API.

25 Q Okay. Regarding the statute, in your judgment,

1 A It's another test publishing company.

2 Q Do they publish any tests that are used by
3 California, so far as you know?

4 A As a statewide, state-administered test --

5 Q Yes.

6 A -- is that what you're asking?

7 If you're asking about right now in the current
8 assessment program, not that I'm aware.

9 Q Have they in the past, to your knowledge?

10 A They publish a test that has been used by some
11 districts in the state in the past.

12 Q What test is that?

13 A Iowa Test of Basic Skills.

14 Q You have done some work as a consultant for the
15 American College Testing Program?

16 A I worked for the American College Testing
17 Program.

18 Q And do they -- do they publish any tests that
19 are used statewide in California so far as you know at
20 the current time?

21 A They publish tests that are given in the state
22 of California.

23 Q The ACT test?

24 A Yes.

25 Q Any other?

1 Doctor, has California ever been out of compliance with
2 the statute?

3 MR. HERRON: Objection. Beyond the scope of
4 her expert report, calls for a legal conclusion. It's
5 not what she's been asked to testify to as an expert.
6 Vague and ambiguous.

7 You may respond.

8 THE WITNESS: I believe that is correct, that
9 it's beyond the scope of the report and it's not
10 something that I'm prepared at this moment to provide an
11 opinion on.

12 BY MR. ROSENBAUM:

13 Q Okay. You know, Mr. Herron can preserve his
14 objections if he would like about the scope your report,
15 but my question to you is: Has California ever been out
16 of compliance with the PSAA?

17 MR. HERRON: All the same objections, asked and
18 answered.

19 THE WITNESS: I believe that's beyond the scope
20 of my report, and I'm not prepared at this point without
21 having further information to make such a judgment.

22 BY MR. ROSENBAUM:

23 Q What information would you -- when you say
24 you're not prepared, what do you mean by that?

25 A That was not something that I looked at in the

1 scope of preparing this report.
 2 Q But I'm not interested just in the scope of
 3 your preparing this report. I'm saying at any time
 4 since you have been familiar with the statute and the
 5 implementation, have you ever had a judgment that
 6 California was out of compliance?
 7 I'm not limiting my question to what's in your
 8 report or what you state was involved in the preparation
 9 of your report.
 10 MR. HERRON: All the same objections, asked and
 11 answered and vague and ambiguous.
 12 THE WITNESS: I have not collected or studied
 13 any data to answer that question.
 14 BY MR. ROSENBAUM:
 15 Q Do you know what a single outcome measure is?
 16 A It would be helpful if you defined what you
 17 mean by that.
 18 Q Do you know the phrase "outcome measure"?
 19 A Yes.
 20 Q What is your understanding of what that means?
 21 MR. HERRON: Objection. Vague and ambiguous.
 22 THE WITNESS: In a general way, an outcome
 23 measure is a variable that is measured as a result of
 24 implementing or as a result of different values of an
 25 independent variable.

1 BY MR. ROSENBAUM:
 2 Q Okay. Does the California assessment system
 3 have an outcome measure or measures?
 4 A For what?
 5 Q For any purpose? Does it -- in your judgment,
 6 does the California assessment system, the STAR system,
 7 have an outcome measure?
 8 A The STAR system has test scores for students in
 9 different grades in different subject areas.
 10 Q Does the STAR system have any other outcome
 11 measures?
 12 A If you're talking about data collected as part
 13 of the assessment system, there are test scores
 14 collected for the STAR tests. There is test score data
 15 for the High School Exit Exam. There is test score data
 16 for any of the other exams that are given statewide.
 17 Q Okay. By the way, when we say STAR system, do
 18 you include the California High School Exit Exam as part
 19 of that system?
 20 A It's part of the California assessment system
 21 but it has its own statute. It's not part of The
 22 Assessment Act.
 23 Q Does -- to your knowledge, does the California
 24 assessment system have outcome measures other than test
 25 result data?

1 MR. HERRON: I'm sorry. Could we have that
 2 read back?
 3 (The record was read as follows:
 4 "Q Does -- to your knowledge, does the
 5 California assessment system have outcome
 6 measures other than test result data?")
 7 THE WITNESS: I don't know really how to answer
 8 that because the assessment system is composed of tests,
 9 and tests produce test scores. So the assessment system
 10 has test scores.
 11 There is other data that's collected on the
 12 student answer sheets, demographic data, for example.
 13 And whether or not it's an outcome measure depends on
 14 what kind of study you're talking about.
 15 A measure that's an outcome variable in one
 16 study might be an independent variable in another study.
 17 BY MR. ROSENBAUM:
 18 Q Okay. If I ask you the same question but with
 19 respect to the California accountability system, do you
 20 regard that as having outcome measures other than the
 21 test result data?
 22 A The outcome measure is the API.
 23 Q All right. And do you -- in your experience,
 24 do other states have outcome measures other than
 25 measures like the API?

1 MR. HERRON: Objection. Calls for
 2 speculation.
 3 You may respond.
 4 THE WITNESS: If you're asking whether other
 5 states in their accountability programs produce
 6 statistics like an API, they do.
 7 BY MR. ROSENBAUM:
 8 Q And do states -- states with which you're
 9 familiar that have accountability systems, do they have
 10 measures other than API-like measures?
 11 A Measures of what? For what purpose? I don't
 12 understand what you're asking.
 13 Q I can understand that.
 14 For example, do other states as part of their
 15 accountability system produce graduation rates as part
 16 of their data, as part of their -- strike that, as part
 17 of their outcome measures?
 18 A Produce it?
 19 Q Do they consider graduation rates as part of
 20 their outcome measures in your experience?
 21 A If you're asking whether other states have
 22 collected graduation rate data, yes, they have done so.
 23 Q Okay. Has California?
 24 MR. HERRON: Objection. Vague and ambiguous.
 25 THE WITNESS: California may have collected

1 some graduation rate data. If you're asking if they
 2 have complete statewide data, I think not at this time.
 3 BY MR. ROSENBAUM:
 4 Q What states do have complete statewide data on
 5 graduation rates, to your knowledge?
 6 A As I'm using the term "complete," I'm thinking
 7 of all schools reporting data.
 8 I believe Texas has all schools reporting data.
 9 Q Any other states, to your knowledge?
 10 A I'm sure there are others, but I don't recall
 11 off the top of my head.
 12 Q Okay. And do you know how Texas goes about
 13 doing that, what methodology they utilize?
 14 A At the time of the Texas lawsuit, I knew
 15 something about that methodology, but it's been a long
 16 time since I've looked at any of that information, and I
 17 couldn't state any of that with precision at this point.
 18 Q Have you ever stated as part of your work on
 19 TAC that California should collect graduation data
 20 statewide?
 21 A The TAC is involved only with the assessment
 22 portion of the system.
 23 Q Okay. In any of your capacity as a consultant
 24 to the State of California, have you ever recommended
 25 that the statewide graduation data be collected?

1 A I don't think I've been asked that specific
 2 question. I've been asked about psychometric issues and
 3 that's not a psychometric issue.
 4 Q Do you have a view as to whether or not
 5 California should collect statewide graduation data or
 6 do you regard that outside your area of expertise?
 7 A I view that as a policy issue that's outside
 8 the scope of my report, and I'm not prepared to offer an
 9 opinion on that right now.
 10 Q Okay. Maybe you just answered this. If I
 11 change my question and said instead of statewide
 12 graduation data, talked about statewide dropout data,
 13 would all your answers be the same as you gave me?
 14 A I'm not sure. I think you better ask the
 15 question.
 16 Q That's fair. That's fair.
 17 Does Texas collect statewide dropout data?
 18 MR. HERRON: Objection. Vague as to time.
 19 THE WITNESS: I'm not sure exactly what they're
 20 doing right now. At the time of the lawsuit, they did a
 21 special study about dropouts.
 22 BY MR. ROSENBAUM:
 23 Q Do you know how they conducted that survey,
 24 what the methodology was?
 25 A Again, I read that at the time and was familiar

1 with it, but I haven't looked at it for a long time and
 2 would need to reread it to give you any specifics.
 3 Q Does California collect statewide dropout
 4 data?
 5 A Again, I believe the situation is that they may
 6 have data for some schools and some districts, but I
 7 don't believe they have it for everyone at this point in
 8 time.
 9 Q Have you ever looked at any dropout data for
 10 the State of California?
 11 A I don't recall having seen any.
 12 Q Do you -- do you feel it's within your area of
 13 expertise to state what's an appropriate methodology for
 14 collecting dropout data?
 15 A Dealing with methodologies of data collection
 16 is part of psychometrics and statistics.
 17 Q Okay. Do you have a view as to how dropout
 18 data ought to be compiled statewide?
 19 A In California, you're asking?
 20 Q Yeah.
 21 A Again, that's outside the scope of my report.
 22 I have not looked at relevant information about that and
 23 I'm not prepared to offer an opinion on that --
 24 Q Okay.
 25 A -- at this point.

1 Q Have you looked at the effect of dropouts on
 2 statewide assessment results in any state?
 3 MR. HERRON: Objection. Vague and ambiguous.
 4 THE WITNESS: I have looked at data in other
 5 states about that issue.
 6 BY MR. ROSENBAUM:
 7 Q Which states?
 8 A In Texas.
 9 Q Okay. And when did you do that?
 10 A 1999.
 11 Q Okay. Are you familiar with recent reports
 12 regarding dropouts as they potentially affect the
 13 statewide assessment system in Texas?
 14 MR. HERRON: Objection. Vague. Sorry.
 15 THE WITNESS: I don't know what reports you're
 16 referring to.
 17 BY MR. ROSENBAUM:
 18 Q Have you seen any reports in the news media
 19 about the effect of dropouts on statewide assessment
 20 results in Texas?
 21 MR. HERRON: Objection. Vague and ambiguous.
 22 THE WITNESS: I think you need to tell me what
 23 reports you're talking about for me to be able to say --
 24 BY MR. ROSENBAUM:
 25 Q Sure. Have you seen any information in the

1 last month or so about dropouts in the Houston area and
2 the effect -- as affecting the statewide assessment
3 results?

4 A You're talking about information in a city
5 newspaper?

6 Q City newspaper, New York Times, Washington
7 Post, any of those?

8 A I don't recall seeing anything like that.

9 Q Have you ever attended any meetings with
10 Superintendent O'Connell?

11 A Not that I recall.

12 Q Or Kerry Mazzoni?

13 A That's possible, but I don't recall anything
14 specific.

15 Q Okay. In any of your writings, Doctor, to the
16 best of your recollection, have you ever cited Herbert
17 Walberg?

18 A I don't recall anything specific. It's
19 possible.

20 Q How about Christine Rossell?

21 A The name is familiar. I think I've read some
22 of her work. I don't recall any specific citation to
23 it.

24 Q Do you know what area or areas she could be
25 considered an expert in?

1 Have you ever cited anyone named Podgursky?

2 A Can you say that more clearly for me, please?

3 Q Doubtful. Podgursky? Podgorsky?

4 A And you're asking what?

5 Q Have you cited -- I think you answered my
6 question.

7 A Not that I recall.

8 Q How about Carolyn Hoxby?

9 A Say that one more time.

10 Q Carolyn Hoxby?

11 A Not that I recall.

12 Q Do you know John Mockler?

13 A I've met him.

14 Q Have you ever served on any committees with
15 John Mockler?

16 A He's attended some meetings that I've
17 attended. We have not been members of the same
18 committee, per se, as far as I know.

19 Q Okay. Which meetings did you recall him
20 attending?

21 A He's attended some of the Technical Advisory
22 Committee meetings.

23 Q Regarding the High School Exit Exam?

24 A Yes.

25 Q Regarding any other subject areas?

1 A I don't recall at this point.

2 Q Okay. How about Anita Summers? Have you ever
3 cited anything written by Anita Summers in any of your
4 publications?

5 A Not that I recall.

6 Q Okay. Or Richard Berk?

7 A Not that I recall.

8 Q Or Erik Hanushek?

9 A Yes.

10 Q Have you cited Erik Hanushek?

11 A Yes.

12 Q In what capacity?

13 A I cited it in my report.

14 Q Other than in your report?

15 A I don't recall anything else.

16 Q Okay. Did someone suggest that you cite Erik
17 Hanushek in your report?

18 A Not that I recall.

19 Q Did someone supply you with writings of his and
20 suggest that you take a look at those writings for
21 purposes of your report?

22 A Not that I recall.

23 Q Have you ever cited Margaret Raymond?

24 A Not that I recall.

25 Q What is Podgursky's name?

1 A Whatever was discussed the day that he
2 attended.

3 Q Okay. Have you ever had any discussions with
4 Mr. Mockler about the High School Exit Exam?

5 A We certainly had discussions in the Technical
6 Advisory Committee meetings in which he participated,
7 among others.

8 Q Okay. And did he ever express any views
9 regarding implementation of the California High School
10 Exit Exam?

11 MR. HERRON: During those meetings?

12 MR. ROSENBAUM: Let's start there. Yeah.

13 THE WITNESS: I don't recall anything specific.

14 BY MR. ROSENBAUM:

15 Q Do you know who Gary Hart is?

16 A Well, if you're talking about the person who
17 ran for president at one time --

18 Q Um --

19 A -- I've heard of that.

20 (Discussion off the record.)

21 BY MR. ROSENBAUM:

22 Q Do you have an opinion, Doctor, as to what are
23 the major principal components of California's
24 accountability system?

25 A Yes. And they are shown in one of the charts

1 of my report.
 2 Chart No. 1.
 3 Q Okay. Did you prepare that chart?
 4 A Yes, I did.
 5 Q Why -- in that report, the -- on Chart 1, the
 6 "Stanford Test (the California test) Standards Test" and
 7 the "High School Exit Exam," they are under the category
 8 labeled "Assessments."
 9 Do you see that?
 10 A Yes.
 11 Q They're in bold and then below them are the
 12 "English Language Test" and the "Alternate Assessment."
 13 Do you see that?
 14 A Yes.
 15 Q Is there any reason you put the Stanford test,
 16 the California test, the standards test and the High
 17 School Exit Exam tests in bold as opposed to the fainter
 18 print?
 19 A Yes.
 20 Q Why is that?
 21 A Why is?
 22 Q Why did you -- you prepared this chart; is that
 23 right?
 24 A Yes.
 25 Q Okay. Why did you put Stanford tests,

1 standards test and High School Exit Exam in bold print?
 2 A Because they are currently part of the
 3 accountability system.
 4 Q Do you regard the English language test and the
 5 alternate assessment as part of the accountability
 6 system?
 7 A Those are assessments that are being considered
 8 for implementation in the API but they have not yet been
 9 implemented.
 10 Q Thanks.
 11 Do you consider there to be a relationship or
 12 an interconnectedness among the Stanford test -- when I
 13 say "the Stanford test," I'm going to use it
 14 interchangeably with "the California test" until I say
 15 otherwise, among the -- among the -- I'm going to start
 16 over.
 17 In your vision of the accountability system of
 18 California, do you believe there is an
 19 interconnectedness among the three components that you
 20 list under "Assessment" the Stanford test, the Standards
 21 test and the High School Exit Exam?
 22 MR. HERRON: Objection. Asked and answered.
 23 THE WITNESS: There are things they have in
 24 common. There are things that are different.
 25 BY MR. ROSENBAUM:

1 Q Okay. In terms of fulfilling the purpose of
 2 the accountability system as you understand it, do you
 3 perceive a relationship among those three tests?
 4 MR. HERRON: Same objections.
 5 THE WITNESS: They measure different parts of
 6 the knowledge and skills that schools are accountable
 7 for teaching students in California.
 8 BY MR. ROSENBAUM:
 9 Q Okay. For example, what part does the
 10 standards test measure that the California test does
 11 not?
 12 MR. HERRON: Objection. Vague and ambiguous,
 13 calls for speculation.
 14 THE WITNESS: The standards tests are designed
 15 to specifically measure the California standards, the
 16 content standards in various grades and subject areas,
 17 so they measure some things that are in the standards
 18 but not on the norm reference test.
 19 BY MR. ROSENBAUM:
 20 Q Okay. And the High School Exit Exam, does it
 21 measure some things that are not on the standards test?
 22 A Probably not. They're both drawn from the same
 23 set of standards, the High School Exit Exam test. They
 24 have selected particular standards as the minimum
 25 requirement for a high school diploma.

1 Q And does the High School Exit Exam measure
 2 certain matters that are not on the California test or
 3 the Stanford test?
 4 MR. HERRON: Objection. Calls for speculation.
 5 BY MR. ROSENBAUM:
 6 Q If you know.
 7 A I don't think I have adequate information at
 8 this point to answer that very specifically.
 9 Q Okay. Now, on your Chart 1, you have an oval
 10 under "Assessment." It's kind of a drop-down from the
 11 "Assessments." And then there is an oval and it says,
 12 "Attendance Rates and Graduation Rates."
 13 Do you see that?
 14 A Yes.
 15 Q Why did you include attendance rates and
 16 graduation rates as part of this column?
 17 A That is data that is in the statute but has not
 18 yet been implemented in the accountability system. And
 19 it's not really an assessment per se, which is why it's
 20 dotted, but it is specific pieces of data that might be
 21 included in the future.
 22 Q And do you have an opinion -- well, strike
 23 that.
 24 Have you undertaken any inquiry as to determine
 25 when attendance rates will be part of the accountability

1 system, if ever?

2 MR. HERRON: Objection. Asked and answered,
3 the report speaks for itself.

4 You may respond.

5 THE WITNESS: My understanding is that the
6 Department is considering that and no final decision has
7 yet been made.

8 BY MR. ROSENBAUM:

9 Q No final decision has been made as to what?

10 A The date of implementation.

11 Q Do you know what, if any, dates are being
12 considered?

13 A I don't know how to answer that. I know that
14 it's under discussion.

15 Q Okay. Do you have a view as to what data
16 sources have to be available before attendance rates
17 could be reported as part of the assessment system?

18 A The data has to be collected at the statewide
19 level.

20 Q Okay. And has that been done?

21 MR. HERRON: Objection. Calls for speculation.

22 BY MR. ROSENBAUM:

23 Q If you know.

24 A My understanding is that there's data available
25 for some districts but not all.

1 in the report, but with respect to graduation rates,
2 just as a predicate question, does the State have
3 statewide data as to graduation rates?

4 MR. HERRON: Objection. Asked and answered.

5 MR. ROSENBAUM: I know it has. I'd just like
6 to use it as a predicate here.

7 THE WITNESS: It's my understanding, as I said,
8 that data is available for some but not all districts.

9 BY MR. ROSENBAUM:

10 Q Do you know the percent of the districts?

11 A No.

12 Q Or the percent of the students for which the
13 data is available?

14 A No.

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

16 A I may have heard information about that at some
17 time, but I just don't recall any of it specifically.

18 Q And in your report, you talk about the sum of
19 money that would be required to collect the graduation
20 data?

21 A There was an estimate that had been given.

22 Q Do you know what the reliability of that
23 estimate is?

24 A Well, let me -- I want to look and see --

25 Q Sure.

1 Q Do you know what percent of districts --

2 A No.

3 Q -- it's available for? Or what percent of
4 students it's available for?

5 A No.

6 Q Or the status of development of a data
7 collection system for the districts where the data is
8 not available?

9 MR. HERRON: Objection. Calls for speculation.

10 THE WITNESS: My understanding is that it's a
11 several-year process to do that.

12 BY MR. ROSENBAUM:

13 Q When you say "several," what do you mean by
14 that?

15 A Something on the order of three to five years.

16 Q Okay. And do you know how much money it will
17 cost to do that?

18 A There was an estimate --

19 Q You don't have to go through -- it's in your
20 report, right?

21 A It's in the report, yes.

22 Q Do you know if that money has been allocated
23 for purposes of securing attendance data?

24 A I don't know.

25 Q And, again, I don't want you to tell me what's

1 A -- exactly what I said about that.

2 Q Okay.

3 A It came from a Department report that was
4 prepared for the Governor and the legislature.

5 Q What page are you reading from?

6 A This is page 27, bottom of the left-hand
7 column.

8 Q Thanks. And have you undertaken any specific
9 analysis yourself as to the reliability of that
10 estimate?

11 A That's beyond the scope of the report.

12 Q Okay. Do you know if the money has been
13 allocated for that purpose?

14 A As I already said, I don't know.

15 Q You're referring to the portion of your text
16 that responds -- that is attached to Footnote 104; is
17 that right?

18 A Yes.

19 Q Okay. What is your understanding, if any --
20 strike that.

21 Do you have an understanding as to the purpose
22 of compiling graduation rate data as part of the State's
23 assessment system?

24 A It's specifically mentioned in the statute.

25 Q Do you have an understanding as to why it was

1 specifically mentioned in the statute?

2 MR. HERRON: Objection. Calls for speculation.

3 THE WITNESS: I have not read any of the
4 legislative history about that, so I don't know what was
5 in the legislators' minds when they did that.

6 BY MR. ROSENBAUM:

7 Q Sitting here today, can you think, based on
8 your experience, training as a psychometrician, as to
9 why that graduation rate data would be compiled as part
10 of an assessment system?

11 MR. HERRON: Objection. Calls for speculation,
12 asked and answered.

13 THE WITNESS: That in my mind is not a
14 psychometric's question. That is a policy issue.

15 BY MR. ROSENBAUM:

16 Q Okay. Same thing regarding attendance rates.
17 Do you know why it was included as part of the statute?

18 MR. HERRON: Calls for speculation, asked and
19 answered. I object on those grounds.

20 THE WITNESS: Again, I didn't write the
21 legislative history and I don't know what was in the
22 legislators' minds when they did that.

23 BY MR. ROSENBAUM:

24 Q Do you have a view as to whether attendance
25 rates would be useful as part of a statewide assessment

1 A I believe that's high school, again.

2 Q Okay. And do you know if -- if there is
3 currently a history test that has been developed for
4 purposes of the State assessment system -- I want to --
5 let me start over.

6 I'm not talking about the California High
7 School Exit Exam unless I say otherwise. I'm just
8 talking about the STAR system, okay?

9 A Okay.

10 Q Is there a history/social science test that is
11 administered as a part of the middle school assessment
12 system?

13 A Not so far as I recall. I have a table in here
14 that shows what's administered at various levels.

15 On page 18, this was current --

16 MR. HERRON: You're referring to your report?

17 THE WITNESS: Yes, page 18 of my expert witness
18 report that's on the right-hand column, and it gives the
19 revised content area weights for each of the tests at
20 the elementary level and at the high school level. And
21 this goes through 2002. And, at that point, in the
22 middle school area, there was an ELA standards test and
23 a math standards test and those were the only two.

24 BY MR. ROSENBAUM:

25 Q Do you have an understanding as to when, if at

1 system?

2 A Again, that's beyond the scope of the report.
3 It's not a psychometric issue. It's a policy issue.

4 Q Doctor, it's your understanding, is it not,
5 that there are California standards tests in the area of
6 science and social studies -- social science that are
7 administered as part of -- that are administered at the
8 high school level; is that right?

9 A Yes.

10 Q Okay. We're talking about the STAR system
11 here, right?

12 A Yes.

13 Q Okay. And do you know for what period of time
14 they have been administered at the high school level?

15 A The history standards test came into the API I
16 believe in 2002, and it would have been administered for
17 at least a year prior to that, maybe more. Probably
18 more. I don't know for sure which year it was first
19 administered.

20 Q How about science?

21 A Science is not yet in the accountability
22 measure, at least through 2002.

23 But I believe some tests have been administered
24 on a field-test basis.

25 Q At what level?

1 all, there would be a history test -- history/social
2 science test administered at the middle school level?

3 A I believe I recall discussions about developing
4 that, but I'm not sure what the timeline is.

5 Q Do you know if that development is underway
6 with respect to the history/social science set of
7 questions for the middle school State assessment
8 system?

9 A I just don't recall what stage that's in.

10 Q Have you made any inquiry to find out?

11 A Say again?

12 Q Have you made any inquiry to find out?

13 A As I said, there were discussions about it but
14 I just don't recall the specifics. I would have to go
15 back.

16 Q Do you have a view as to whether or not a
17 history/social science set of questions should be made
18 part of the statewide assessment system, the STAR
19 system, at the middle school level?

20 A Again, that's beyond the scope of my report.
21 That's not a psychometric issue. That is a policy issue
22 to be decided by the State.

23 Q Is there a science assessment as part of the
24 middle school statewide assessment system?

25 A That's not currently in the API.

1 Q Okay. Do you know if there are plans to add a
2 science -- a set of science questions?

3 A Again, I don't remember the specifics of it,
4 but I expect that there are plans because the federal
5 legislation requires it.

6 Q Okay. Do you know what the state of those
7 plans are, if at all?

8 A I know there have been discussions about it but
9 I don't recall specifically what the timelines are.

10 Q And do you have a view as to whether or not
11 science questions should be part of the statewide
12 assessment system, the STAR system, for the middle
13 school level?

14 A I know that the federal legislation requires
15 it, so I believe the State should do so.

16 Q What if there were no federal legislation?
17 Would you have a view as to whether or not that should
18 be included?

19 MR. HERRON: Objection. Incomplete and
20 improper hypothetical, calls for speculation, vague and
21 ambiguous.

22 You may respond.

23 THE WITNESS: Again, that's not a psychometric
24 question. That's a policy issue for California to
25 decide in the absence of such legislation.

1 Q Okay. Are you -- do you know what -- the
2 definition that California is now considering with
3 respect to "highly qualified teacher" for purposes of
4 the federal legislation?

5 A I have not seen the current definition, no.

6 Q Do you -- are you familiar with California's
7 credentialing system for teachers?

8 A I've had a little exposure to it. It's been a
9 while, again, and I don't know that I would recall any
10 of the specifics about it.

11 Q Do you know what the qualifications are, for
12 example, for an intern?

13 MR. HERRON: Objection. Vague as to time,
14 calls for speculation, beyond the scope.

15 THE WITNESS: What I know about is
16 certification tests that are given to certify teachers
17 in California.

18 BY MR. ROSENBAUM:

19 Q Okay. Do you know the requirements for
20 different categories of credentialing?

21 A I did see those at one time, but I don't recall
22 them specifically at this point.

23 Q Have you ever consulted with respect to the
24 certification tests that are given as part of
25 California's teacher credentialing system?

1 BY MR. ROSENBAUM:

2 Q Have you consulted with anyone in the State of
3 California regarding compliance with the No Child Left
4 Behind Act?

5 A I wouldn't characterize it as compliance, but I
6 have had discussions about what is contained in that
7 legislation.

8 Q With whom?

9 A I believe that has been discussed at TAC
10 meetings.

11 Q Okay. And what do you recall about those
12 discussions? And I'm limiting my question to the No
13 Child Left Behind Act.

14 A Well, there are several parts of it. As you
15 know, it's quite long and extensive. Can you direct me
16 to the portions that you're interested in?

17 Q Have you had discussions regarding the
18 definition of a qualified teacher?

19 MR. HERRON: Highly qualified teacher?

20 MR. ROSENBAUM: Highly qualified teacher.
21 Thank you.

22 THE WITNESS: I don't think that topic was
23 discussed in the TAC. The topics would have been
24 limited to assessment issues.

25 BY MR. ROSENBAUM:

1 A Yes.

2 Q Okay. What's been the nature of that
3 consultation?

4 A Again, that's been a while ago now and I don't
5 remember all the specifics of that. They had a --
6 my recollection is that they had a report that had been
7 written that was related to some considerations about
8 revising the tests, and I was asked to join a meeting in
9 which that report was being discussed.

10 Q When was that, approximately?

11 A Very early this year. January, February, I
12 think.

13 I really don't recall very exactly.

14 Q Who asked you to join the discussion?

15 A Karen Steentofte.

16 Q And did you review any materials with -- strike
17 that.

18 Let me see if I understand. You attended a
19 meeting at which this subject matter was discussed; is
20 that right?

21 A I attend by phone.

22 Q Okay. And did you review any materials in
23 preparation for that report -- that discussion?

24 A Yes.

25 Q What materials did you look at?

1 A I don't recall all of the things that I had.
 2 I had some information, bulletins about the
 3 testing program. I believe there was the report that I
 4 referred to. And there may have been other things that
 5 I just don't recall at this point.
 6 Q Did those materials form any basis for any of
 7 your conclusions in your report?
 8 A No.
 9 Q Okay. And did you express any opinions in the
 10 course of that meeting?
 11 A I'm sure I did, but I don't recall any
 12 specifics of the discussion.
 13 Q Do you recall any views that you expressed in
 14 that call?
 15 A No, I can't even remember what was in the
 16 report, and I'm sure the opinions were related to the
 17 specifics of the report.
 18 Q Dr. Phillips, we talked earlier this afternoon
 19 about the awards part of the accountability system.
 20 Do you recall that?
 21 A I recall your asking questions about that.
 22 Q Do you know how much money the State of
 23 California has spent on the awards part of the
 24 accountability system?
 25 MR. HERRON: I was just going to say, let him

1 Performance Award column on Chart 10.
 2 Do you see that?
 3 A Yes.
 4 Q And do you see where it says, I suppose it's
 5 the third box down, "Intended to be fully funded at \$150
 6 per student to all schools meeting conditions."
 7 Do you see that?
 8 A Yes.
 9 Q The \$150 per student, that number, is there a
 10 psychometric basis to that number, so far as you know?
 11 A No. That's a policy question.
 12 Q Okay. Do you know what the policy
 13 considerations were that led to the establishment of
 14 that number?
 15 A I know that there was a rationale and I think I
 16 heard someone talk about that at some point, but I don't
 17 remember any of the specifics about that.
 18 Q All right.
 19 A I think they had a basis for coming up with
 20 that number.
 21 Q A policy basis?
 22 A Yes.
 23 Q Okay. And where it says under the
 24 "Certificated Staff, 1114" column, do you see that?
 25 A Yes.

1 finish his question. You're kind of cutting him off
 2 there.
 3 THE WITNESS: I'm sorry.
 4 MR. ROSENBAUM: That's okay.
 5 THE WITNESS: In my report, in Chart 10, I list
 6 the funds for the three different awards that we talked
 7 about for the years in question.
 8 The SB 1667 at the time I wrote the report, I
 9 had the proposed amount. I didn't have final
 10 confirmation of what that actual number was. I have the
 11 others listed there.
 12 MR. ROSENBAUM: Okay. Off the record.
 13 (Discussion off the record.)
 14 BY MR. ROSENBAUM:
 15 Q The numbers, that's in the first row; is
 16 that --
 17 A Yes.
 18 Q All right. Where did you get those numbers
 19 from?
 20 A There was an update about awards on the
 21 California Department of Education website, and I took
 22 it off of those materials.
 23 Q Help me understand something about
 24 psychometrics, Doctor.
 25 Let's look, for example, at the Governor's

1 Q Okay. A thousand teachers in schools with the
 2 largest API growth get \$25,000 each.
 3 Do you see that?
 4 A Yes.
 5 Q Okay. Is there a psychometric basis to that
 6 \$25,000 figure so far as you know?
 7 A No. That was a policy decision about
 8 apportioning the available money.
 9 Q Okay. And the same thing for all the numbers
 10 in that box?
 11 A Yes.
 12 Q Okay. And --
 13 A If you're referring to numbers of teachers
 14 getting a certain amount of money.
 15 Q Thanks. And where it says in the first row,
 16 227 million, 144.3 million, then 100 million, then 350
 17 million proposed, do you see those numbers we had talked
 18 about earlier?
 19 A Yes.
 20 Q Okay. Is there a psychometric basis to any of
 21 those numbers?
 22 A My understanding is that those numbers were
 23 determined through the budgeting process, through
 24 decisions made by the legislature informed by the
 25 Governor, by the Department and so on.

1 Again, that would be a policy decision, not a
2 psychometric decision.

3 Q Okay. Thanks.

4 Is there or has there been, to your knowledge,
5 a sanctions component to the California accountability
6 system?

7 A There are consequences written into the
8 statute.

9 Q Do they have a psychometric basis, so far as
10 you know?

11 A That, again, would be a policy decision.

12 Q Okay. And, to your knowledge, have the -- you
13 call it "Consequences." I mean, that's what I call it
14 with my kids.

15 Do you have -- and they're equally effective.

16 Do you -- do you know whether or not the
17 "Consequences" section of the statute have changed since
18 the PSAA was first implemented?

19 MR. HERRON: Objection.

20 MR. ROSENBAUM: That's a sloppy question. I'm
21 going to withdraw it.

22 Q The "Consequences" part of the California
23 accountability program, to your knowledge has that
24 changed since the program was first implemented?

25 A I believe there was a senate bill revision to

1 A -- though I'm not quite sure exactly what
2 you're referring to, since we aren't talking about
3 specific changes. But I would say in general, they
4 would be policy decisions.

5 Q Okay. Do you know how much money has been
6 spent on consequences with respect to the California
7 accountability system?

8 MR. HERRON: Objection. Vague and ambiguous,
9 calls for speculation.

10 THE WITNESS: That's beyond the scope of my
11 report and something I did not investigate as part of my
12 work.

13 MR. ROSENBAUM: Okay.

14 THE WITNESS: Unless you're talking about money
15 for the II/USP interventions. I do have some
16 information of data about that --

17 BY MR. ROSENBAUM:

18 Q Okay.

19 A -- in my report.

20 Q Where are you referring to?

21 (Discussion off the record.)

22 THE WITNESS: Chart 19 has some information
23 about that and Tables 13 A, B and C.

24 (Discussion off the record.)

25 THE WITNESS: Would you like to see it in

1 the accountability act that changed a number of things
2 and also codified decisions that had been made by the
3 Board in implementing it.

4 I don't remember the specifics of that, but I
5 think the Department has a chart that shows that.

6 Q Okay. Have the consequences changed, to your
7 knowledge, over time?

8 A I recall that there were changes to the II/USP
9 portion, and there are some consequences for schools
10 that are unsuccessful in that program. So there may
11 have been changes.

12 I don't recall specifically what they were
13 without looking at that chart again to see what was in
14 the original act and comparing it with what it was
15 changed to if it was.

16 Q Okay. Have you -- the changes that were made,
17 is there a -- to your knowledge, is there a psychometric
18 basis for those changes?

19 MR. HERRON: Objection. Vague and ambiguous.

20 BY MR. ROSENBAUM:

21 Q The changes to the II/USP program that you're
22 referring to.

23 A I believe that that's primarily a policy
24 issue --

25 Q Okay.

1 color?

2 BY MR. ROSENBAUM:

3 Q I would very much. I'd like to have it,
4 actually.

5 A You can't have it permanently. But, anyway,
6 that's --

7 Q The dollars spent that are reflected on Chart
8 19, to your knowledge, are there any psychometric bases
9 for those numbers?

10 MR. HERRON: Objection. Vague.

11 THE WITNESS: My understanding is that had --
12 it was allocated on a per-pupil basis and the amount to
13 allocate per pupil was a policy decision.

14 BY MR. ROSENBAUM:

15 Q Now, Chart 19 deals with the funding for
16 schools attended by the named plaintiffs; is that right?

17 A It's a certain set of schools attended by named
18 plaintiffs.

19 Q Okay. I appreciate that qualification.

20 Have you compiled the total amount of dollars
21 spent on sanctions or interventions for the entire
22 state, not just the schools attended by some of the
23 named plaintiffs?

24 MR. HERRON: Objection. Asked and answered, in
25 part.

1 THE WITNESS: That's beyond the scope of the
2 report. I believe that the Department would have that
3 information, and I think that sanctions are different
4 than the interventions. So that would probably be a
5 separate analysis.

6 BY MR. ROSENBAUM:

7 Q Have you undertaken any effort to ascertain
8 that data for your sanctions or interventions, the
9 amount of money that's been spent statewide?

10 A Again, it's beyond the scope of my report --

11 Q Okay.

12 A -- dealing with the API and evaluating
13 Dr. Russell's report.

14 Q Regarding the -- we talked earlier,
15 Dr. Phillips, about the State's content standards in
16 different subject areas.

17 Do you remember that?

18 A Yes.

19 Q To your knowledge, did any of the plaintiffs'
20 experts ever criticize the use of content standards in
21 specific subject areas?

22 A As I indicated before, as background I skimmed
23 a few reports early on but the focus of my analysis was
24 on the API and Dr. Russell's report --

25 Q All right.

1 BY MR. ROSENBAUM:

2 Q We can start there, yes.

3 A My recollection is that most of his focus was
4 on the accountability system and how data was used in
5 the accountability system, and most of his criticisms
6 were aimed there.

7 He may have said something about the standards
8 but I'm not recalling it at this point. I think I would
9 probably have to review the report, skim the report to
10 look for that.

11 MR. ROSENBAUM: Okay. We can take a break
12 now.

13 (Recess taken.)

14 BY MR. ROSENBAUM:

15 Q Doctor, are you doing okay?

16 A Yes.

17 MR. ROSENBAUM: David, are you doing okay?

18 MR. HERRON: Barely.

19 I'm fine.

20 BY MR. ROSENBAUM:

21 Q I wonder, Doctor, if you could turn, please, to
22 page 11 of your report.

23 Okay. And you see in the second column, you
24 quote from the legislature and you state, "(c)," in
25 parens, small c in parens, "Recent assessments indicate

1 A -- and I'm not in a position at this point to
2 offer any opinions about what other experts may or may
3 not have said.

4 Q Did -- other experts besides Russell, you mean?

5 A Yes.

6 Q Okay. Did -- did Michael Russell ever
7 criticize the use of content standards, to your
8 knowledge, in specific subject areas?

9 MR. HERRON: Objection. Vague and ambiguous.

10 THE WITNESS: I'm not quite sure what you
11 mean. He criticized the entire accountability program
12 of which the standards are a part.

13 BY MR. ROSENBAUM:

14 Q Do you recall specific criticism by Mike
15 Russell as to the use of content standards?

16 A This --

17 MR. HERRON: I know a question is
18 pending and --

19 MR. ROSENBAUM: Yes, there is.

20 MR. HERRON: -- she'll answer it, but can we
21 take a break when we get a chance here?

22 MR. ROSENBAUM: Yes, there is.

23 THE WITNESS: You're asking about whether he
24 criticized specifically what was in the content
25 standards adopted by California?

1 that many pupils in California are not now, generally,
2 progressing at a satisfactory rate to achieve a
3 high-quality education."

4 Do you see that?

5 A Yes.

6 Q Do you have an understanding of what
7 "assessments" were referred to there?

8 A Again, I haven't examined the legislative
9 history about this, so I don't know specifically what
10 the legislatures were looking at.

11 This Act was passed in 1999, which means they
12 would have had the 1998 STAR data available at that
13 time.

14 And there had been California assessment
15 programs prior to that, so it's possible they had some
16 of that data, but I don't know firsthand what they
17 actually looked at.

18 Q Okay. And did you -- did you ever make any
19 inquiry to find out?

20 A As I said, I did not examine the legislative
21 history.

22 Q And the phrase "satisfactory rate," do you see
23 that?

24 A Yes.

25 Q Did you have an understanding of what that

1 meant?

2 MR. HERRON: Objection. Calls for speculation.

3 THE WITNESS: Again, you're asking me what the
4 legislatures had in mind, and I really don't know.

5 BY MR. ROSENBAUM:

6 Q Okay. That's a fair enough answer. I just
7 want to clarify my question, though.

8 I'm asking: When you read it, did you have an
9 understanding in your mind as to what "satisfactory
10 rate" meant?

11 MR. HERRON: Objection. Calls for speculation,
12 vague and ambiguous.

13 THE WITNESS: My sense is that those terms need
14 to be understood in the context of where they've come
15 from, and the best answer to that is to look at the
16 legislative intent of it.

17 BY MR. ROSENBAUM:

18 Q Okay. And see the phrase "high-quality
19 education"?

20 A Yes.

21 Q Did you have an understanding of what that
22 phrase meant?

23 MR. HERRON: Objection. Calls for speculation,
24 assumes facts not in evidence, vague.

25 THE WITNESS: Again, this was something the

1 be difficult to reconstruct this many years past that
2 time.

3 Q If you were to set up the methodology, and
4 again, if I -- if you feel I'm taking you outside your
5 area of expertise, you just tell me.

6 But if I were asking you: How would you
7 construct a methodology to determine the cause or causes
8 as to why many pupils in California were not -- are not
9 now or were not then generally progressing at a
10 satisfactory rate to achieve a high-quality education,
11 could you do that?

12 Could you develop such a methodology?

13 MR. HERRON: Objection. Compound, incomplete
14 and improper hypothetical, calls for speculation and
15 it's vague.

16 THE WITNESS: The best way to answer a
17 causation question is to do a true experiment to have an
18 idea of factors and programs that you believe are
19 important, and then you randomly assign students to one
20 program or another and then observe the outcome.

21 At this point, it would be a retrospective
22 analysis. You're not in a position to go back and
23 assign kids to different treatments or programs.

24 BY MR. ROSENBAUM:

25 Q Has that ever been done in California?

1 legislature wrote and I don't know what was in their
2 mind when they wrote it or how they were defining it.

3 BY MR. ROSENBAUM:

4 Q Okay. Do you have an opinion as to why many
5 pupils in California were not now -- strike that.

6 With respect to the second phrase "Many pupils
7 in California are not now, generally, progressing at a
8 satisfactory rate to achieve a high-quality education,"
9 do you have an opinion as to the cause for that
10 phenomena?

11 A Again, that's beyond the scope of my report.

12 Q Why is that?

13 A It's not something I was asked to focus on in
14 writing the report.

15 Q Okay. If you were to try to find out the basis
16 why "...many students in California are not now,
17 generally, progressing at a satisfactory rate to achieve
18 a high-quality education," is it within your scope of
19 expertise to develop a methodology to figure that out?

20 A It's within the scope of psychometrics to look
21 at and analyze test data. It's up to policymakers to
22 decide what they want to do about that.

23 And this particular act was passed in 1999 and,
24 so, whatever data they had perhaps is reflected in the
25 legislative intent. But beyond that, I think it would

1 MR. HERRON: Objection. Calls for speculation.

2 BY MR. ROSENBAUM:

3 Q To your knowledge?

4 A I don't know specifically about what's been
5 done in California but, in general, it's a very
6 difficult thing to do.

7 Q Why is that?

8 MR. HERRON: Objection. Vague.

9 THE WITNESS: Why is what?

10 BY MR. ROSENBAUM:

11 Q Why is that a difficult thing to do?

12 A The randomly assigning kids to treatments?

13 Q Yes.

14 A Because parents and educators resist.

15 Q Do you have an opinion why that is?

16 A In general -- I can't speak for any specific
17 parent or any specific situation but, in many cases,
18 parents don't want their children experimented on and
19 don't want, for example, a neighborhood school to be
20 broken up into these kids go to this treatment and these
21 kids go to this other one.

22 Q Again, if I'm taking you out of an area that
23 you don't feel comfortable -- taking you into an area
24 you don't feel comfortable, just tell me.

25 Do you think it's important to find out why

1 kids are not progressing at a satisfactory rate to
2 achieve a high-quality education within the state?
3 MR. HERRON: Objection. Vague and ambiguous,
4 calls for speculation, overbroad.

5 You may respond. If you want it reread, she'll
6 reread it.

7 THE WITNESS: I think it's important for
8 schools to evaluate the progress of their students and
9 parents to evaluate the progress of their children and
10 to be concerned about that progress and take steps to
11 find out why they're not doing well if they're not and
12 to remediate those problems.

13 BY MR. ROSENBAUM:

14 Q Why is that important?

15 MR. HERRON: Objection. Vague.

16 THE WITNESS: It's important to parents and to
17 the schools that students and -- their children and
18 students learn the knowledge and skills that the State
19 has deemed important for them to know.

20 BY MR. ROSENBAUM:

21 Q When we were talking much earlier about the
22 Texas program and the High School Exit Exam, the TAAS
23 test, is the -- strike that.

24 Is the TAAS test, T-A-A-S, is that a high
25 school exam equivalent?

1 Q Do you know: Does California have a
2 State-mandated remediation component like Texas?

3 A To the best of my knowledge, I don't believe
4 it's in the statute.

5 Q Do you know to what extent if any the sorts of
6 programs you just described for me, before school, pull
7 out during school, Saturday programs, after-school
8 programs, take place in California with respect to kids
9 who fail the High School Exit Exam?

10 A Oh, you're limiting it now just to the High
11 School Exist Exam?

12 Q Let's start there, yeah.

13 A It's my understanding that schools do provide
14 special classes for students who don't pass on their
15 first attempt.

16 Q Do you know to what extent that's done?

17 MR. HERRON: Objection. Vague and ambiguous.

18 THE WITNESS: Again, that's beyond the scope of
19 the report and I don't have the data at this point to be
20 prepared to respond to that.

21 BY MR. ROSENBAUM:

22 Q Do you know whether or not that data has been
23 collected?

24 A I believe the Department has some information
25 about that.

1 A The term "TAAS" was used for tests given at the
2 elementary level as well as at the high school level.

3 Q Okay. And I believe you told me this morning
4 that there was a remediation component to it if kids
5 didn't do well.

6 Is that right?

7 A With respect to the High School Exit Exam for
8 students who were not successful when they took that
9 exam, there was mandated remediation to assist them in
10 getting the skills.

11 Q Do you know what that consisted of, that
12 remediation component?

13 A I heard some descriptions by some school
14 districts of things that they did in their remediation
15 programs.

16 Q Okay. And tell me to the best of your
17 recollection what were some of those things that
18 districts did.

19 A Well, again, I wouldn't attempt to characterize
20 what everybody was doing, to be comprehensive or
21 complete, but some of the things they talked about were
22 before-school programs, time during the school day that
23 was pull-out time at lunchtime or during study hall
24 kinds of periods, after-school programming, Saturday
25 programming.

1 Q Do you know if it has systematically sought to
2 collect the data as to the existence or nonexistence of
3 remediation programs like you described?

4 MR. HERRON: Objection. Vague and ambiguous.

5 THE WITNESS: Without looking at the
6 information, I can't characterize at this point what
7 that information might look like.

8 BY MR. ROSENBAUM:

9 Q Under the TAAS system that we're talking about,
10 does remediation -- do the sorts of remediation programs
11 that you articulated for me, do they exist for kids
12 other than kids taking the High School Exit Exam
13 component?

14 A Yes.

15 Q This is in Texas?

16 A Yes.

17 Q So if kids -- can you -- if kids -- strike
18 that.

19 Texas has several proficiency levels, is that
20 right, for its exam?

21 A Which exam were you referring to?

22 Q The TAAS exam.

23 MR. HERRON: Misconstrues prior testimony.
24 Object on that basis.

25 You may respond.

1 THE WITNESS: The TAAS test is no longer being
 2 given in Texas.
 3 BY MR. ROSENBAUM:
 4 Q Okay. The new exam is what? Do you know what
 5 its acronym is?
 6 A TAKS.
 7 Q TAKS? How do you spell that?
 8 A T-A-K-S. Texas Assessment of Knowledge and
 9 Skills I believe is the acronym.
 10 Q So when Governor Bush thought they hadn't added
 11 new taxes...
 12 Terribly funny.
 13 Under TAKS, are there different proficiency
 14 levels?
 15 A There are two.
 16 Q And they are?
 17 A I should say there are two standards that have
 18 been set that divides the test scores into three levels:
 19 Does not meet the standard, meets the standards and
 20 commended.
 21 Q Is that for all grade levels?
 22 A I believe that applies to all of the grades and
 23 subjects administered in the TAKS program.
 24 Q And does -- the remediation programs, do they
 25 still exist as part of the TAKS system?

1 A I believe so.
 2 Q And do kids who fall in the lowest proficiency
 3 level -- what is that, do not meet standards? Is that
 4 what you said it was?
 5 A Did not meet the standard.
 6 Q Okay. And did those children as part of the
 7 State-mandated program receive some sort of
 8 remediation?
 9 Is that your understanding?
 10 A You're talking about the High School Exit Exam?
 11 Q Not -- talking about all grade levels.
 12 MR. HERRON: Do you want the question again?
 13 THE WITNESS: No.
 14 There is mandated remediation for specific
 15 tests at specific grade levels where there are
 16 high-stakes decisions being made for individual
 17 students.
 18 BY MR. ROSENBAUM:
 19 Q Okay. Is that consistent with your
 20 recommendations when you talk to states about
 21 Opportunity to Learn, that those programs exist?
 22 MR. HERRON: Objection. Vague and ambiguous,
 23 overbroad.
 24 THE WITNESS: When we have discussions about
 25 High School Exit Exams with high stakes for students,

1 remediation is one of the components that I discuss in
 2 terms of the success of the Texas litigation.
 3 BY MR. ROSENBAUM:
 4 Q Okay. What do you say with regard to that
 5 element?
 6 A That the judge cited that as one the factors in
 7 determining that the test met legal standards.
 8 Q Okay. Do you know if there has ever been any
 9 discussion in California about implementing such a
 10 remediation component as a part of any of the assessment
 11 tests used in the state?
 12 MR. HERRON: By anyone in California at any
 13 time?
 14 MR. ROSENBAUM: Yeah.
 15 MR. HERRON: Oh, my goodness. Calls for
 16 speculation.
 17 MR. ROSENBAUM: No.
 18 Q I'm just asking to your knowledge.
 19 A I would expect lots of school districts have
 20 lots of discussions about how to remediation students
 21 who aren't successful on the High School Exit Exam,
 22 possibly in other areas, as well. I have no personal
 23 knowledge of what those discussions are.
 24 Q Okay. To your knowledge, has there ever been
 25 any discussion in the State about a State-mandated

1 remediation component as part of the State's assessment
 2 system?
 3 A That would be done by the legislature and
 4 statute if it were done, and I am not privy to those
 5 discussions.
 6 MR. ROSENBAUM: Okay. I'm at a convenient
 7 breaking point.
 8 MR. HERRON: Okay.
 9 MR. ROSENBAUM: I appreciate your patience,
 10 Doctor.
 11 See you tomorrow morning at 9 o'clock.
 12 (At the hour of 4:55 P.M., the deposition
 13 was adjourned until 9 o'clock A.M., Tuesday,
 14 August 5, 2003.)
 15 * * *
 16 * * *
 17 * * *
 18 * * *
 19 * * *
 20 * * *
 21 * * *
 22 * * *
 23 * * *
 24 * * *
 25 * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, S.E. PHILLIPS, Ph.D., J.D., do hereby declare under penalty of perjury that I have read the foregoing transcript of my deposition; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____, 20____, at _____, _____.
(City) (State)

S.E. PHILLIPS, Ph.D., J.D.
Volume 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: _____

LORI SCINTA, RPR
CSR No. 4811