

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 Instruction, STATE)
DEPARTMENT OF EDUCATION, STATE)
BOARD OF EDUCATION,)
)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

DEPOSITION OF SUSAN E. PHILLIPS, PH.D.
Los Angeles, California
Wednesday, August 6, 2003
Volume 3

Reported by:
MARTI SUSAN DUNAYER

CSR No. 5687

JOB No. 43714

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 Instruction, STATE)
12 DEPARTMENT OF EDUCATION, STATE)
13 BOARD OF EDUCATION,)

14 Defendants.)

15 STATE OF CALIFORNIA,)

16 Cross-Complainant,)

17 vs.)

18 SAN FRANCISCO UNIFIED SCHOOL)
19 DISTRICT, et al.,)

20 Cross-Defendants.)

21 Deposition of SUSAN E. PHILLIPS, PH.D.,
22 Volume 3, taken on behalf of Plaintiffs at 555
23 West Fifth Street, Suite 3500, Los Angeles,
24 California, beginning at 9:03 a.m. and ending
25 at 4:46 p.m. on Wednesday, August 6, 2003,
before MARTI SUSAN DUNAYER, Certified
Shorthand Reporter No. 5687.

1 APPEARANCES:

2 For Plaintiffs:
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10 and
11 AMERICAN CIVIL LIBERTIES UNION,
12 NORTHERN CALIFORNIA
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1 INDEX
2 WITNESS EXAMINATION
3 SUSAN E. PHILLIPS, PH.D.
4 Volume 3

5 BY MR. ROSENBAUM 541

6 EXHIBITS
7 PLAINTIFFS' PAGE
8 2 Michael Russell's expert witness
9 declaration 717

10 INFORMATION REQUESTED

11 (None)

12 REFERENCE REQUESTED

13 (None)

14 INSTRUCTION NOT TO ANSWER

15 (None)

1 Los Angeles, California, Wednesday, August 6, 2003
2 9:03 a.m. - 4:46 p.m.

3
4 SUSAN E. PHILLIPS, PH.D.,
5 having been first duly resworn, was examined and
6 testified further as follows:

7 EXAMINATION (RESUMED)

8 BY MR. ROSENBAUM:

9 Q Good morning, Doctor. How are you?

10 A Good morning. Fine, thank you.

11 Q Doctor, did you have an opportunity to
12 review any -- Did you -- Strike that.

13 Did you review any documents or materials
14 relating to this deposition or this case last night?

15 A No.

16 Q Okay. Did you have any discussions about
17 the deposition with Mr. Herron or Mr. Salvaty or
18 anyone else?

19 A Yes.

20 Q With whom?

21 A Mr. Herron.

22 Q When was that?

23 A Last night.

24 Q What did you -- For how long?
25

1 A Just a few minutes.
 2 Q What did you talk about?
 3 A He told me to rest and relax.
 4 Q Okay. Is that what he's doing today?
 5 A I don't know.
 6 Q Doctor, a couple matters we discussed
 7 yesterday. I just would appreciate -- I just need a
 8 little more information, if you don't mind.
 9 You'll recall we spoke about the
 10 Stanford-9 and the CAT-6. Okay?
 11 A Yes.
 12 Q In your analysis of the Stanford-9
 13 proposal, was one of the concerns that you looked at
 14 the degree of alignment of the Stanford-9 with the
 15 state standards?
 16 MR. SALVATY: Objection. Vague.
 17 THE WITNESS: As you know it's been a number of
 18 years since I did that, and I haven't looked at that
 19 criteria sheet for some time. I would want to look at
 20 that and refresh my memory before I would want to
 21 comment on that.
 22 Q BY MR. ROSENBAUM: Okay. When a state
 23 that has standards uses a norm reference test as part
 24 of its standards based assessment program, is
 25 alignment a concern that you believe ought to be

1 addressed, alignment of the norm reference test with
 2 state standards?
 3 MR. SALVATY: Objection. Incomplete
 4 hypothetical.
 5 THE WITNESS: When any test is chosen for use
 6 in the state that has standards, alignment to the
 7 standards is one of the criteria for deciding among
 8 tests.
 9 Q BY MR. ROSENBAUM: Okay. Why is that?
 10 MR. SALVATY: Objection. Calls for
 11 speculation.
 12 THE WITNESS: Assuming that a state wishes to
 13 assess its state standards, a test that is better
 14 aligned to those standards will serve that purpose
 15 better. A state could have a different purpose in
 16 which that would not be the case.
 17 Q BY MR. ROSENBAUM: Which is better
 18 aligned to state standards -- Let me strike that,
 19 Doctor.
 20 Do you know what the SAT-10 is?
 21 A Yes.
 22 Q What is the SAT-10?
 23 A That's the most recent revision of the
 24 SAT-9, of the Stanford achievement test.
 25 Q Which is better aligned to state

1 standards, the SAT-10 or the CAT-6?
 2 MR. SALVATY: Objection. Vague. Which state
 3 standards?
 4 MR. ROSENBAUM: California standards, I'm
 5 sorry.
 6 THE WITNESS: As we discussed yesterday, from
 7 the data in Table 1 I don't currently have the data in
 8 front of me to adequately answer that question.
 9 Q BY MR. ROSENBAUM: Have you ever
 10 undertaken to examine which is better aligned to
 11 California's standards, the SAT-10 or the CAT-6?
 12 A As we discussed yesterday, I attempted
 13 to get the data that would answer your question and
 14 was not able to do so.
 15 Q Have you seen any writings or materials
 16 that evaluate which is better aligned to the state
 17 standards, the SAT-9 or the CAT-6?
 18 A As I indicated to you earlier, I have
 19 seen the alignment information provided by the
 20 publisher, and that is information that could be used
 21 to answer your question.
 22 Q The publisher of the CAT-6?
 23 Let me make my question better.
 24 When you say the publisher, who do you
 25 mean?

1 A The SAT-9 data came from the publisher.
 2 The CAT-6 was part of the proposal that was submitted.
 3 Q Have you seen any information at all that
 4 talks about the alignment of the CAT-6 with California
 5 standards?
 6 A Yes.
 7 Q And what information is that?
 8 A The information that we talked about out
 9 of Table 1 yesterday.
 10 Q And from the information that you have
 11 seen, Doctor, do you have a view as to which is better
 12 aligned with state standards, the SAT-10 or the
 13 CAT-6?
 14 MR. SALVATY: Objection. Lacks foundation.
 15 THE WITNESS: Your question is talking about
 16 SAT-10 data, which I have not seen.
 17 Q BY MR. ROSENBAUM: All right.
 18 Have you seen any discussion about the
 19 alignment of SAT-10 data with California state
 20 standards?
 21 MR. SALVATY: Objection. Asked and answered.
 22 THE WITNESS: As I indicated, I have not seen
 23 alignment data for SAT-10.
 24 Q BY MR. ROSENBAUM: Okay. From all the
 25 information that you have seen, Doctor, do you have a

1 view as to which is better aligned with California
 2 state standards, the SAT-9 or the CAT-6?
 3 MR. SALVATY: Objection. Lacks foundation.
 4 THE WITNESS: It's the same answer I already
 5 gave you: that I don't have the data in front of me
 6 to make that judgment.
 7 Q BY MR. ROSENBAUM: Have you ever --
 8 You have seen data regarding the
 9 alignment of SAT-9 with state standards; isn't that
 10 right?
 11 A Yes.
 12 Q And you have seen some data with respect
 13 to the alignment of the CAT-6 with state standards; is
 14 that right?
 15 A Yes.
 16 Q Okay. From that information do you have
 17 a viewpoint as to which is better aligned?
 18 MR. SALVATY: Objection. Asked and answered.
 19 THE WITNESS: As you will recall from our
 20 discussion yesterday, the SAT-9 data refers to
 21 strands; the CAT-6 data refers to objectives, so it's
 22 not directly comparable.
 23 Q BY MR. ROSENBAUM: Do you feel an opinion
 24 can be reached based on the information that you have
 25 seen or you think it's impossible to make a thoughtful

1 view based on the information you have seen as to
 2 which is better aligned with state standards, the
 3 SAT-9 or the CAT-6?
 4 MR. SALVATY: Objection. Lacks foundation,
 5 calls for speculation.
 6 THE WITNESS: I believe to make that judgment,
 7 one should have data on the same metric.
 8 Q BY MR. ROSENBAUM: And from whom did you
 9 -- Strike that.
 10 You attempted to get SAT-9 data or CAT-6
 11 data or both data as to alignment with state
 12 standards, additional data?
 13 A Both.
 14 Q Both.
 15 And from whom did you attempt to do that?
 16 A The department.
 17 Q And when did you attempt to do that?
 18 A While I was preparing my report.
 19 Q And from whom in particular?
 20 A Phil Spears.
 21 Q And what did Mr. Spears tell you?
 22 A Mr. Spears sent me what he had.
 23 Q Okay. And did you seek additional
 24 information?
 25 A Yes.

1 Q From whom?
 2 A From the board.
 3 Q From the state board?
 4 A Yes.
 5 Q And why did you go there?
 6 A Because I believed that they might have
 7 additional information that Phil Spears was not aware
 8 of.
 9 Q Anyone particular on the board with whom
 10 you had contact?
 11 A Yes.
 12 Q Who is that?
 13 A Rae Belisle.
 14 Q And when did you speak to Ms. Belisle or
 15 contact Ms. Belisle to get this information?
 16 A I don't recall specifically when that
 17 occurred. It was during preparation of the report.
 18 Q And what did Ms. Belisle tell you?
 19 A That that -- Like I said yesterday, that
 20 information had been marked "Confidential" by the
 21 publisher and could not be released.
 22 Q Did you contact the publisher?
 23 A No.
 24 Q Why is that?
 25 A The process would have required formal

1 approval by the publisher and then transmittal of the
 2 data, and there wasn't time to do that.
 3 Q When did you hear from Ms. Belisle that
 4 the information had been designated as confidential?
 5 MR. SALVATY: Objection. Asked and answered,
 6 calls for speculation.
 7 THE WITNESS: As I indicated, I don't recall
 8 specifically.
 9 Q BY MR. ROSENBAUM: How soon before the
 10 submission of your report?
 11 A I don't recall.
 12 Q Have you subsequently contacted the
 13 publisher to obtain this data or authorization to
 14 review the data regarding the alignment of the CAT-6
 15 with state standards?
 16 A No.
 17 Q Is there any reason why not?
 18 A I had already completed my report and
 19 used the information that I had available.
 20 Q Do you plan to contact the publisher to
 21 get access to information about the alignment of the
 22 CAT-6 with state standards?
 23 A Possibly.
 24 Q Well, what would it depend on?
 25 A Trial preparation.

1 Q Okay.
2 In your capacity as a member of the TAC
3 Committee, did you ever hear any discussion about the
4 alignment of the CAT-6 with state standards?

5 A Not that I recall.

6 Q Did you ever hear any discussion about a
7 comparison of the SAT-6 (sic) with either the SAT --
8 I'm sorry, CAT-6 with either the SAT-9 or the SAT-10
9 with respect to alignment with state standards?

10 A Not that I recall.

11 Q And with respect to any of your
12 consultation duties to the State of California, have
13 you ever heard any discussion about the relative
14 alignment of the CAT-6 with either the SAT-9 or
15 SAT-10?

16 A Not that I recall.

17 Q If it turned out that the CAT-6 was less
18 aligned with state standards than the SAT-9, would
19 that concern you?

20 MR. SALVATY: Objection. Vague and ambiguous,
21 incomplete hypothetical, calls for speculation.

22 THE WITNESS: You are assuming that a global
23 judgment can be made about that, and I would expect
24 the data to show that it might differ by grade level
25 and subject, so the decision would be more complex

1 includes components beyond the NRT exam.

2 Q BY MR. ROSENBAUM: What if we just were
3 talking about the NRT exam? Would it concern you,
4 then, if it turned out that the CAT-6 was less aligned
5 with state standards than the SAT-9 or the SAT-10?

6 MR. SALVATY: Objection. Incomplete
7 hypothetical, vague and ambiguous, calls for
8 speculation.

9 THE WITNESS: That's not the way the system
10 works. The proposals have to be accepted as a package
11 and so you have to balance the quality of the proposal
12 on all the components to make that decision.

13 Q BY MR. ROSENBAUM: But I'm just asking
14 you as a psychometrician for purposes of a statewide
15 standards based assessment test, would it concern you
16 if the CAT-6 turns out to be less aligned with state
17 standards than the SAT-9?

18 MR. SALVATY: Same objections.

19 THE WITNESS: If I understand your question
20 correctly, you are talking about any state that has a
21 statewide standards assessment program, and you are
22 talking about alignment of two tests when there are
23 multiple achievement tests that might be considered,
24 and also the state can consider building tests of its
25 own. So it's rarely, if ever, a matter of choosing

1 than that.

2 Q BY MR. ROSENBAUM: Okay. Well, if it
3 turned out that on balance the CAT-6 was less aligned
4 with state standards than the SAT-9, would that
5 concern you?

6 MR. SALVATY: Same objections.

7 What do you mean "concern"?

8 MR. ROSENBAUM: That's a phrase she uses
9 throughout her paper.

10 Q As a professional psychometrician, is
11 that a matter that would cause you to be concerned in
12 terms of the decision to use the CAT-6 as opposed to
13 the SAT-9?

14 MR. SALVATY: Same objections.

15 THE WITNESS: I believe you have to look at all
16 the facts and circumstances to make that judgment, and
17 I would not want to make it based on a hype- -- an
18 incomplete hypothetical like that.

19 Q BY MR. ROSENBAUM: Well, what other facts
20 and circumstances would you want to know in order to
21 make that judgment?

22 MR. SALVATY: Objection. Calls for her to
23 speculate.

24 THE WITNESS: One of the things that is
25 important to consider is the overall proposal, which

1 between two tests in the way that you describe.

2 Q BY MR. ROSENBAUM: Well, I want to limit
3 my question, Doctor, to California, and I'm talking
4 about a choice for California between the SAT-9 or the
5 CAT-6, or the SAT-10 and the CAT-6.

6 Under those circumstances, as a
7 psychometrician -- and I'm just asking you to answer
8 my question, not as a policymaker but as a
9 psychometrician. With respect to the use of a norm
10 reference test, would it concern you if it turned out
11 that the CAT-6 was less aligned with state standards
12 than the SAT-9?

13 MR. SALVATY: Objection. Incomplete
14 hypothetical, vague and ambiguous, calls for
15 speculation.

16 THE WITNESS: It's my understanding that in
17 California that was not the choice, there were
18 multiple --

19 Q BY MR. ROSENBAUM: That is not my
20 question, Doctor.

21 A That is part -- With all due respect,
22 sir, that is part of my psychometric advice to a
23 state, is looking at all the possibilities and
24 weighing all the options that are available based on
25 the number of criteria that are very important in the

1 program.

2 Q I'm entitled, Doctor, to ask you a
3 question in your capacity as an expert. That's the
4 question I'm asking you. I'm not asking you to bring
5 in any other variables or factors.

6 MR. SALVATY: You are not entitled to
7 speculation, Counsel. You are asking her to speculate
8 about an incomplete hypothetical and you haven't
9 provided nearly enough information for her to answer
10 the question.

11 MR. ROSENBAUM: No.

12 Q Go ahead, Doctor.

13 MR. SALVATY: I'll object that she's answered
14 it, and I think you are being argumentative.

15 THE WITNESS: If I were even to attempt to
16 answer a question like that, I would want to have the
17 data in front of me that show the alignment between
18 the two instruments.

19 Q BY MR. ROSENBAUM: Let's turn to Table 1,
20 Doctor.

21 Do you have that in front of you?

22 A Yes.

23 Q On the CAT-6 for Grade 11 mathematics,
24 the percent of standards assessed is 11 percent; is
25 that correct?

1 any, do you draw from those numbers with respect to
2 the use of the CAT-6 in that grade for purposes of a
3 State of California's assessment test?

4 MR. SALVATY: Objection. The table speaks for
5 itself.

6 THE WITNESS: I agree the numbers are what they
7 are.

8 Q BY MR. ROSENBAUM: Do you draw any
9 further -- Do you draw any conclusions, Doctor?

10 You are coaching. I would appreciate if
11 you don't do that. That's not a proper objection.

12 I'm asking as a psychometrician, who
13 comes here purporting to be an expert in this area,
14 whether or not you draw any conclusions.

15 MR. SALVATY: Objection. Vague and ambiguous.

16 Q BY MR. ROSENBAUM: Do you draw any
17 conclusions, Doctor, with those numbers with respect
18 to the use of the CAT-6 in Grade 11 mathematics for
19 purposes of California's assessment test?

20 A The conclusion is what the numbers say.

21 11 percent of the standards are assessed, 36 percent
22 of the items are aligned.

23 Q Draw any other conclusions, Doctor, than
24 just the -- reading to me the numbers themselves?

25 MR. SALVATY: Objection. Vague and ambiguous.

1 A Yes.

2 Q And the percent of aligned items is
3 36 percent; is that right?

4 A Yes.

5 Q So that means, if I understand it
6 correctly, that 8 of the 25 test items are aligned
7 with state standards on the mathematics test for
8 Grade 11.

9 Am I getting that right?

10 A If that's what 36 percent times 25 turns
11 out to be.

12 Q Does -- Well, the numbers that are on
13 the table -- You don't have to take my mathematics
14 here.

15 11 percent standards assessed and percent
16 aligned items 36 percent of the 25 test items for
17 Grade 11 mathematics, as a psychometrician, Doctor,
18 with respect to evaluating the degree of alignment and
19 assessment of standards on the statewide assessment
20 test that is norm referenced, do those numbers concern
21 you for that grade?

22 MR. SALVATY: Objection. Vague and ambiguous.

23 THE WITNESS: I don't understand what you mean
24 by "concern."

25 Q BY MR. ROSENBAUM: What conclusions, if

1 THE WITNESS: Conclusions about what?

2 Q BY MR. ROSENBAUM: The use of a CAT-6 in
3 Grade 11 mathematics for purposes of California's
4 statewide assessment system as you understand the
5 purpose of that program.

6 MR. SALVATY: Conclusions about the purpose of
7 the program?

8 Q BY MR. ROSENBAUM: Go ahead, Doctor.

9 MR. SALVATY: It's vague and ambiguous.

10 THE WITNESS: As I understand the purpose of
11 the program and would provide consulting advice to
12 California or any other state about use of a test, I
13 would not look at simply one grade and one subject. I
14 would look at all of the available data across all
15 subjects and grades.

16 Q BY MR. ROSENBAUM: How about looking at
17 Grades 2 through 11 mathematics, Doctor. Do you draw
18 any conclusions with respect to the use of the CAT-6
19 as a mathematics statewide assessment test for the
20 purposes of California's assessment program as you
21 understand it?

22 MR. SALVATY: Objection. Vague and ambiguous.

23 THE WITNESS: Again that's not all of the
24 relevant data for drawing conclusions in the way that
25 you are describing.

1 Q BY MR. ROSENBAUM: I'm just asking,
 2 Doctor. Have you drawn any conclusions?
 3 You are making the record here. Did you
 4 draw any conclusions?
 5 MR. SALVATY: Objection. Asked and answered.
 6 THE WITNESS: The conclusions are that the
 7 numbers are as given and we have the percents for two
 8 different indicators, for one subject, in Grades 2
 9 through 11.
 10 Q BY MR. ROSENBAUM: Doctor, if I came to
 11 you and said "For just purposes of assessing
 12 mathematics, this is the data that we have on the
 13 CAT-6, referring to what you have for Grades 2 through
 14 11 on the California Survey Test as reported on Table
 15 1. Do you have any concerns about the use of the
 16 survey test for purposes of the California assessment
 17 program as you understand it," what would your
 18 response be, please?
 19 MR. SALVATY: Objection. Incomplete
 20 hypothetical.
 21 THE WITNESS: My response would be that I want
 22 to know a lot more about your program, your purposes,
 23 how the test was going to be used, what other tests
 24 there were, and I would suggest to you that you look
 25 at multiple tests and consider multiple tests before

1 you make such a decision.
 2 Q BY MR. ROSENBAUM: Well, I want you to
 3 assume that the purposes, as I have said to you
 4 repeatedly, are the same purposes of California's
 5 assessment program, and I'm saying to you, Based on
 6 this data and your experience in the field, would you
 7 recommend the use of this test for the purposes of
 8 California's assessment program?
 9 MR. SALVATY: Objection. Incomplete
 10 hypothetical.
 11 THE WITNESS: Again as I indicated to you, the
 12 decision is just not that simple. The board had
 13 proposals to review that will include both standards
 14 tests and NRT tests, and the quality of both of those
 15 needed to be balanced.
 16 The board had also made a decision to
 17 reduce the weight of the NRT substantially, and that
 18 was the basis of moving to the survey test. And I
 19 believe given the data that was available, that was a
 20 reasonable action for the board to take.
 21 Q BY MR. ROSENBAUM: Doctor, you have
 22 talked to me yesterday about the Ed Week survey, the
 23 Ed Week study. Do you remember that?
 24 A If you are referring to the evaluation of
 25 state standards, yes.

1 Q Okay, that's what I'm referring to.
 2 And you told me you were familiar with
 3 the methodology that was utilized by Ed Week in
 4 evaluating state accountability systems -- I'm sorry,
 5 state assessment systems; do you remember that?
 6 A I told you I had relied on that article.
 7 Q Okay. Are you familiar with their
 8 methodology that Ed Week used to evaluate the
 9 assessment programs?
 10 A If you wanted to ask me specific
 11 questions I would like to refresh my memory on that
 12 and review those portions of the article again. As I
 13 indicated to you, there is some information in the
 14 footnote to the table about the specific areas in
 15 which they made their judgment.
 16 Q Are you familiar sitting here today with
 17 the methodology that Ed Week used to grade the
 18 assessment programs of states?
 19 MR. SALVATY: Objection. Vague.
 20 THE WITNESS: Let's look at the table again.
 21 It's Table 7. It's at the bottom just of
 22 the table, at the bottom, and it lists the Ed Week
 23 criteria.
 24 Q BY MR. ROSENBAUM: Do you have that in
 25 front of you?

1 A Yes.
 2 Q Okay. One of the criteria is align
 3 criterion reference assessments.
 4 Do you see that?
 5 A Yes.
 6 Q Okay. How would you grade, Doctor, the
 7 California Survey Test for mathematics that's
 8 reflected on Table 1 under that criteria?
 9 MR. SALVATY: Objection. Lacks foundation,
 10 calls for speculation.
 11 THE WITNESS: When they talk about aligned
 12 criteria referenced assessments, I am assuming that
 13 they are talking about the standards tests, and the
 14 standards tests are totally aligned.
 15 Q BY MR. ROSENBAUM: Okay. The criteria
 16 that precedes that, what table is that, please?
 17 A Table 7.
 18 Q Okay. What is the evaluation that you
 19 regard as related to the norm reference test?
 20 MR. SALVATY: Objection. Vague and ambiguous.
 21 THE WITNESS: I don't understand what
 22 evaluation you are talking about.
 23 Q BY MR. ROSENBAUM: Do you have an
 24 understanding as to whether Ed Week, as part of its
 25 assessment that you cite, examined the degree of

1 alignment of the norm reference test used by a state
2 with state standards?

3 MR. SALVATY: Could I have that question read
4 back again, please?

5 (The question was read.)

6 THE WITNESS: If you are talking about the
7 specific criteria listed in Table 7, that is not one
8 of the criteria listed.

9 Q BY MR. ROSENBAUM: Okay. Do you know if
10 Ed Week did consider the degree of alignment of a norm
11 reference test used by a state for state standards?

12 MR. SALVATY: Objection. Calls for
13 speculation.

14 THE WITNESS: In order to answer any questions
15 beyond what is specifically stated here in the data
16 that I used in my report, I would need to review that
17 report again.

18 Q BY MR. ROSENBAUM: If you were rating a
19 state's accountability system as to its assessment
20 program, standards based assessment program, would
21 you, Doctor, as an expert consider the degree of
22 alignment of a norm reference test with state
23 standards?

24 MR. SALVATY: Objection. Incomplete
25 hypothetical.

1 consider as part of its assessment program, so far as
2 you know, its evaluation, whether or not a state
3 relied only on a norm reference test?

4 A Again beyond what's in my report, I would
5 need to review that article in order to answer your
6 question.

7 Q Why would that be an important
8 consideration to you, Doctor, whether or not a state
9 used only a norm reference test for purposes -- the
10 purposes that I asked you?

11 MR. SALVATY: Objection. That assumes facts
12 not in evidence. The question made it sound like she
13 had testified to that. I don't believe she had.

14 MR. ROSENBAUM: She testified that she couldn't
15 do it unless she knew whether or not that was one of
16 the concerns.

17 Q And I'm asking, Why is that important to
18 you, Doctor?

19 MR. SALVATY: Objection. Misstates testimony.

20 MR. ROSENBAUM: No, it doesn't.

21 THE WITNESS: I think what I said to you is
22 that I would need to know more about the individual
23 programs, and I provided that as an example.

24 Q BY MR. ROSENBAUM: Why did you provide
25 that as an example, Doctor?

1 THE WITNESS: That would depend on the purpose
2 of the program and the specific components of the
3 program and how they were being used.

4 Q BY MR. ROSENBAUM: Well, I want you to --
5 Why would it concern -- Why would that be a factor?

6 A For example, a state might have only a
7 norm reference test.

8 Q Do you know any states that have only
9 norm reference tests?

10 A I know there have been states in the past
11 that have done that.

12 Q Presently do you know if there are any
13 states that have only a norm reference test?

14 A There may still be some states doing that
15 as they work on their standards and their program as
16 required under federal law.

17 Q They would be in violation of the federal
18 law if they only had a norm reference test; isn't that
19 right?

20 MR. SALVATY: Objection. Calls for a legal
21 conclusion, calls for speculation.

22 THE WITNESS: As I understand the requirements
23 of the law, they still have some time left in which to
24 comply.

25 Q BY MR. ROSENBAUM: Doctor, did Ed Week

1 MR. SALVATY: Objection. Argumentative.

2 THE WITNESS: I was attempting to answer your
3 question.

4 Q BY MR. ROSENBAUM: Well, why did you
5 think that was a significant point to make?

6 I don't know why you -- Why is that an
7 example relevant to your answer?

8 MR. SALVATY: Objection. Argumentative.

9 Q BY MR. ROSENBAUM: I'll ask the question
10 differently.

11 How would that affect your determination
12 as to whether or not the degree of alignment of a norm
13 reference test with state standards ought to be
14 considered in evaluating a state assessment system?

15 Why is that a consideration whether or
16 not the state is only using a norm reference test?

17 MR. SALVATY: Objection. Hypothetical.

18 THE WITNESS: I believe that your question was
19 originally asking me about procedures for making a
20 determination of a statewide program's alignment of
21 their tests with their state standards. And if a
22 state only has a norm reference test, that's the only
23 test with which one could do that calculation.

24 Q BY MR. ROSENBAUM: No, that's not what I
25 was asking you, Doctor.

1 I was asking you, In evaluating a
2 statewide assessment system would you consider the
3 degree of alignment with state standards of a norm
4 reference test that was used by the state? I'm asking
5 you that as a psychometrician, not as a policymaker.

6 MR. SALVATY: Objection. Incomplete
7 hypothetical, vague and ambiguous.

8 THE WITNESS: And as I explained, if I were
9 evaluating that program, and the only test included in
10 that program was a norm reference test, that would be
11 the only piece available for evaluation.

12 Q BY MR. ROSENBAUM: Well, are you saying
13 to me, Doctor, that if there are other pieces
14 available, like a standards test, you would not
15 consider the degree of alignment of the norm reference
16 test with the state standards for purposes of
17 evaluating the statewide assessment system?

18 Is that your testimony, Doctor?

19 MR. SALVATY: Objection. It was all an
20 incomplete hypothetical and examples were given and
21 now you are just harassing the witness.

22 Q BY MR. ROSENBAUM: Go ahead, Doctor.

23 A My understanding of this discussion is
24 that it started with the Ed Week criteria in which
25 they were looking at alignment of criterion referenced

1 doing with it.

2 Q BY MR. ROSENBAUM: Assume it's the same
3 purpose as California's assessment system that you
4 have just talked about with me.

5 MR. SALVATY: Same objections.

6 Is there a question actually?

7 MR. ROSENBAUM: Sure, there is. Doctor knows
8 what it is. It's whether or not she would consider
9 the degree of alignment of a norm reference test with
10 statewide standards in evaluating that assessment
11 system.

12 MR. SALVATY: Same objections.

13 THE WITNESS: Your additional information does
14 not tell me what's being reported or how the
15 information is being used.

16 Q BY MR. ROSENBAUM: Did Ed Week consider
17 that, Doctor?

18 MR. SALVATY: Objection. Asked and answered.

19 MR. ROSENBAUM: It wasn't asked and answered.

20 THE WITNESS: As I indicated, Ed Week had a
21 criterion of alignment of criterion referenced
22 assessments in four core subjects.

23 Q BY MR. ROSENBAUM: That's not my
24 question, Doctor.

25 You said depends what was reported. Did

1 assessments in four core subjects, and you asked me
2 about California. California has criterion reference
3 standards tests that are fully aligned, so they have
4 satisfied the criteria.

5 Q Move to strike as nonresponsive.

6 Answer my question, Doctor. My question
7 is not about what I originally asked you at the
8 beginning of this deposition. It's not related to
9 this question.

10 I'm asking you, As a psychometrician in
11 evaluating statewide assessment systems, would you
12 consider the degree of alignment of a norm reference
13 test used by a state as part of your analysis of that
14 statewide assessment system? That's the only question
15 before you right now.

16 MR. SALVATY: Objection. Incomplete
17 hypothetical, asked and answered repeatedly.

18 THE WITNESS: As I indicated to you earlier, I
19 would need more information about the program to
20 complete an evaluation.

21 Q BY MR. ROSENBAUM: But as part of the
22 evaluation would you consider the degree of alignment
23 of the norm reference test with state standards?

24 MR. SALVATY: Same objections.

25 THE WITNESS: Again it depends on what they're

1 Ed Week consider what was reported for the purpose --
2 as you have laid those out as reasons to not answer my
3 question?

4 MR. SALVATY: Objection. It's harassing, it's
5 argument.

6 THE WITNESS: I'm confused about your
7 question. You asked me as a psychometrician and now
8 you are asking me about a study that was done by Ed
9 Week. As a psychometrician, I can have additional
10 criteria beyond what Ed Week used in the particular
11 study.

12 Q BY MR. ROSENBAUM: Did you consider the
13 Ed Week study as a psychometric evaluation?

14 MR. SALVATY: Objection. Vague.

15 THE WITNESS: I considered the Ed Week study as
16 presentation of data that they had collected.

17 Q BY MR. ROSENBAUM: That's not my
18 question.

19 Did you consider the Ed Week study which
20 is cited on Table 7 of your report a psychometric
21 study?

22 MR. SALVATY: Same objection.

23 Q BY MR. ROSENBAUM: It's a "Yes" or "No"
24 question, Doctor.

25 A I don't know what you mean by a

1 psychometric study.

2 Q Have you ever heard the phrase
3 "psychometric study" before?

4 A I'm not sure I have.

5 Q Do you consider the standards utilized
6 by Ed Week that you lay out at Table 7 psychometric
7 standards?

8 MR. SALVATY: Objection. Vague.

9 THE WITNESS: When I use the term "psychometric
10 standards" I refer to the document that has been
11 produced by three professional organizations that
12 represents a consensus in the field.

13 Q BY MR. ROSENBAUM: Okay. Do you consider
14 the Ed Week study to be a study that evaluates
15 statewide assessment systems pursuant to psychometric
16 standards?

17 MR. SALVATY: Objection. Vague.

18 Q BY MR. ROSENBAUM: I'll change the word
19 "standards" to "psychometric criteria."

20 Do you consider the criteria that was
21 utilized by Ed Week in the study which you cite at
22 Table 7 to be psychometric criteria?

23 A There is psychometric information
24 presented and summarized. I'm not sure about your use
25 of the word "criteria."

1 hypothetical, asked and answered.

2 THE WITNESS: As I have indicated to you, I
3 would want to know a lot more about the program and
4 how the assessments were being used before I could
5 make that evaluation.

6 Q BY MR. ROSENBAUM: Assume the
7 assessments are being used in the way California uses
8 its assessment system.

9 MR. SALVATY: Same objections.

10 Q BY MR. ROSENBAUM: Are you unable to
11 answer the question, Doctor?

12 MR. SALVATY: That's -- She's answered your
13 question.

14 Q BY MR. ROSENBAUM: Just as part of -- I
15 just want the record real clear here.

16 Are you unable to answer the question as
17 I have posed it?

18 MR. SALVATY: Objection. She's answered the
19 question.

20 THE WITNESS: I believe you have not provided
21 sufficient information to be able to make a
22 determination.

23 Q BY MR. ROSENBAUM: Okay.

24 I told you what the purpose is. It's the
25 same purpose as California's assessment system.

1 Q Have you heard the phrase "psychometric
2 criteria"?

3 A I have heard you use it.

4 Q Anybody besides me ever use it or ever
5 read that phrase in all your years?

6 A That's not typically terminology that I
7 would use.

8 Q That's not my question, though, Doctor.

9 Have you seen that phrase, heard that
10 phrase?

11 A I may have. I don't recall.

12 Q Do you attach any meaning to that phrase?

13 A That's what I was trying to explain to
14 you. I didn't understand what you meant by that.

15 Q If -- In evaluating statewide
16 assessment systems throughout the country, would you
17 consider the degree to which the norm reference test
18 that is utilized by a state as part of its assessment
19 system, the degree of its alignment to state
20 standards -- would you personally, based on your
21 expertise, consider that as part of your evaluation of
22 the statewide assessment system?

23 Is that one of the criteria that you
24 would look at?

25 MR. SALVATY: Objection. Incomplete

1 What other information do you need?

2 MR. SALVATY: Object. It calls for
3 speculation.

4 THE WITNESS: How the assessment data is being
5 used in the state and what decisions are being made
6 based on that information.

7 Q BY MR. ROSENBAUM: Okay. You are to
8 assume it's exactly as California uses information.

9 A So --

10 MR. SALVATY: What's the question?

11 Q BY MR. ROSENBAUM: The question is
12 whether, as part of your evaluation, you would
13 consider the degree to which the norm reference test
14 as part of the assessment system is aligned with state
15 standards.

16 MR. SALVATY: Objection. Incomplete
17 hypothetical, asked and answered.

18 MR. ROSENBAUM: Of course it isn't incomplete,
19 but I'm going to take care of every variable the
20 doctor is concerned about here.

21 THE WITNESS: If you are asking me about
22 California, which it sounds like you are --

23 Q BY MR. ROSENBAUM: No, I'm not, Doctor.
24 I want you to answer the question that I ask and not
25 reframe my question.

1 I'm saying to you, You came in here and
 2 said you were an expert in psychometrics. I'm saying,
 3 As an expert in psychometrics asked to evaluate
 4 statewide assessment systems, would you consider the
 5 degree to which the norm reference test as part of the
 6 statewide assessment system -- the degree to which it
 7 is aligned to state standards as part of your
 8 evaluation? You told me you needed to know the
 9 purpose. I told you it's California's purpose.
 10 You told me you needed to know the use of
 11 it. I told you it's the same use as California.
 12 Would you as an expert, Doctor, consider
 13 the degree to which the norm reference test is aligned
 14 with state standards as part of the evaluation?
 15 That's my question, Doctor.
 16 MR. SALVATY: Objection. Incomplete
 17 hypothetical, argumentative, asked and answered
 18 repeatedly.
 19 Q BY MR. ROSENBAUM: Go ahead, Doctor.
 20 A As I understand your question, the
 21 hypothetical is all facts and circumstances the same
 22 as California.
 23 MR. SALVATY: Exactly.
 24 Q BY MR. ROSENBAUM: No, that's not my
 25 question, Doctor. That's not what I'm saying.

1 MR. SALVATY: That's the way I understand your
 2 question, Counsel.
 3 How do you say it's not related to
 4 California and then say assume it's just like
 5 California? Makes no sense.
 6 MR. ROSENBAUM: She's asked me what the purpose
 7 of the assessments are, and I said assume it's just
 8 like California's.
 9 Be quiet. Let me get my question.
 10 Q You asked me what the use is. I said the
 11 same as California's.
 12 Other states have the same purpose for
 13 their assessment system as California; isn't that
 14 true, Doctor?
 15 MR. SALVATY: Objection. Assumes facts not in
 16 evidence.
 17 MR. ROSENBAUM: Well, maybe she doesn't know.
 18 Q Do you know, Doctor, whether or not other
 19 statewide assessment systems have the same purpose as
 20 California?
 21 MR. SALVATY: Objection. Vague and ambiguous.
 22 Q BY MR. ROSENBAUM: Do you know, Doctor,
 23 whether that's true?
 24 A If you're asking about exactly the same
 25 language that's contained in the California statute,

1 probably not.
 2 If you are asking about general purposes
 3 of informing parents and evaluating schools, yes.
 4 Q Okay. Do you know any state that doesn't
 5 use a statewide assessment system for that purpose?
 6 A In some states in the past, tests have
 7 not produced individual student scores so there was no
 8 way to inform parents about their student's
 9 performance.
 10 Q That's not my question.
 11 My question is, Do you know currently any
 12 statewide assessment system that doesn't have the
 13 purpose that you just articulated?
 14 MR. SALVATY: Objection. Vague and ambiguous.
 15 THE WITNESS: Some states may not yet have
 16 assessments that produce individual student's scores.
 17 I don't know at this point whether they all have
 18 changed yet or not. Many are in process.
 19 Q BY MR. ROSENBAUM: Do you know any state
 20 that currently doesn't use its assessment data as
 21 California does?
 22 MR. SALVATY: Objection. Vague and ambiguous.
 23 THE WITNESS: Some states do not yet have fully
 24 developed accountability systems.
 25 Q BY MR. ROSENBAUM: Okay. With the

1 exception of those states that do not have fully
 2 developed accountability systems, do you know of any
 3 state that does not use its assessment system the same
 4 way California does?
 5 MR. SALVATY: Objection. Vague and ambiguous.
 6 THE WITNESS: When you use the words "the same
 7 way," that's difficult to interpret. Every program is
 8 different in some way. They're not alike across the
 9 states.
 10 Q BY MR. ROSENBAUM: Well, is there any
 11 state that has a fully developed system that doesn't
 12 use it for purposes of informing students and
 13 improving -- and parents and teachers and to improve
 14 academic performance of teachers, schools and
 15 districts?
 16 MR. SALVATY: Objection. Overbroad, vague and
 17 ambiguous.
 18 Q BY MR. ROSENBAUM: Do you know any fully
 19 developed system that doesn't have that as its
 20 purpose, Doctor?
 21 A I don't know what you mean by "fully
 22 developed."
 23 Q That's as you used it three times,
 24 Doctor.
 25 MR. SALVATY: Objection. Vague and ambiguous.

1 I don't understand the question.

2 THE WITNESS: I don't either.

3 Q BY MR. ROSENBAUM: Why don't you
4 understand, Doctor? We can sit here as long as you
5 need to. You used the phrase "fully developed" three
6 times, and then you asked me what I mean by "fully
7 developed."

8 That's not being responsive, Paul.
9 That's a witness who doesn't want to answer a question
10 properly.

11 MR. SALVATY: I really think the question is
12 incomprehensible so -- I know you are getting angry
13 and --

14 MR. ROSENBAUM: I'm not getting angry. I'm
15 staying very calm here. I'm going to stay here to
16 represent my client. I have to get my answers in
17 order to prepare this case. I'm not getting angry one
18 bit.

19 MR. SALVATY: You have gotten your answer,
20 Counsel.

21 MR. ROSENBAUM: No, I haven't got an answer
22 yet. I got an answer from a witness who used the
23 phrase "fully developed" three times and then said "I
24 don't know what that means." In all my years of
25 deposition I have never had that happen.

1 of the assessment system I was giving you one example
2 of the type of information I would need.

3 In the consulting work I do, I have not
4 ever been asked to make judgments of the type you're
5 asking without looking at the full and complete system
6 in its entirety.

7 Q BY MR. ROSENBAUM: Are you telling me,
8 Doctor, that it's impossible for you to rate as a
9 separate matter -- I'm going to restate this
10 question.

11 Are you telling me, Doctor, that in
12 evaluating a statewide assessment system, one of the
13 items that you would look at -- Let me strike that.

14 Are you telling me that in evaluating a
15 statewide assessment system that as one of the items
16 that you would consider, you would not include the
17 degree to which the norm reference test used by the
18 statewide assessment system is aligned with state
19 standards?

20 Would that be one of the items that you
21 would look at as part of your over all evaluation?

22 MR. SALVATY: Objection. Incomplete
23 hypothetical, asked and answered.

24 Q BY MR. ROSENBAUM: Or not?

25 A As I indicated, that would depend on all

1 MR. SALVATY: Oh, please.

2 THE WITNESS: Perhaps I should have said
3 "'fully developed' in the context of your question."

4 Q BY MR. ROSENBAUM: I'm using the same
5 phrase as -- the same way you do, Doctor.

6 A I don't believe you are using the words
7 that way I would use them.

8 Q Well, I want you to assume I am.

9 MR. SALVATY: That's impossible.

10 THE WITNESS: Could you restate your question,
11 please?

12 Q BY MR. ROSENBAUM: Sure, Doctor.

13 Are you able, Doctor, to tell me whether
14 or not, as a psychometrician who consults with states
15 about assessment systems, you would consider the
16 degree to which a statewide assessment system norm
17 reference test is aligned with state standards in
18 evaluating that system?

19 And you are to assume that the purpose
20 and the use of the system is the same as in California
21 and in other states which have fully developed
22 accountability systems.

23 MR. SALVATY: Objection. Incomplete
24 hypothetical.

25 THE WITNESS: When I talked about the purpose

1 the facts and circumstances surrounding the program.

2 Q Well, besides the purposes and the use,
3 which I have prescribed for you to be the same as
4 California's, what other facts and circumstances would
5 you want to know?

6 MR. SALVATY: Objection. Calls for
7 speculation. Incomplete hypothetical, as well.

8 THE WITNESS: As I indicated, I would want a
9 full and complete picture of the assessment system and
10 all of its components and how it worked.

11 Q BY MR. ROSENBAUM: Tell me, Doctor, why
12 you couldn't -- why you wouldn't, as one of the items
13 that you would look at, consider the degree to which
14 the norm reference test is aligned with state
15 standards.

16 MR. SALVATY: Objection. Misstates testimony.

17 Q BY MR. ROSENBAUM: Without knowing all
18 this other information. Why you wouldn't make that
19 one of the separate items that you would look at.

20 MR. SALVATY: Objection. Misstates the
21 testimony.

22 THE WITNESS: When I am asked to answer
23 questions like that as a consultant, the first thing I
24 do is look at the total program --

25 Q BY MR. ROSENBAUM: I'm not asking you as

1 a consultant. I'm asking you as an expert in this
2 case.

3 A My answer is still the same. I would
4 look at the entire program first and determine which
5 questions are appropriate to ask, depending on the
6 nature of the program.

7 Q Okay.

8 Doctor, you included as part of Table 11
9 a California public opinion poll; is that right?

10 A Yes.

11 Q Okay. How did you come into contact with
12 that poll?

13 How did you become aware of it?

14 A I obtained it from the California
15 Business for Education Excellence Foundation.

16 Q How did you first learn about that poll?

17 A As I recall, I think it was from talking
18 to someone at that organization.

19 Q Okay. Did anyone from the O'Melveny
20 firm suggest that you contact that organization?

21 A Not that I recall.

22 Q Did anyone from the O'Melveny firm inform
23 you about the existence of the poll?

24 A Not that I recall.

25 Q Did anyone -- anyone inform you about the

1 Q Okay. Are they helpful to you as a
2 psychometrician?

3 MR. SALVATY: Objection. Vague.

4 THE WITNESS: If you're asking whether
5 psychometric decisions are made based on public
6 opinion polls, the answer is no.

7 If you are talking about the technical
8 aspects like how you would equate a test or something
9 like that, public opinion polls would not be relevant
10 to something like that.

11 Q BY MR. ROSENBAUM: And, Doctor, let me
12 see if I understand.

13 That's how you approached your report?

14 You approached your report as a psychometrician; is
15 that right?

16 MR. SALVATY: Objection. Vague.

17 Q BY MR. ROSENBAUM: That was your intent?

18 A I approached the report to answer the
19 specific questions that I was asked to answer.

20 Q Okay. And did you do that in the
21 capacity as a psychometrician?

22 Is that how you analyzed it?

23 MR. SALVATY: Objection. Vague.

24 Q BY MR. ROSENBAUM: For example, did you
25 bring your own personal or political views into the

1 poll besides the people at the foundation?

2 A Not that I recall.

3 Q Okay. Why did you choose to include
4 public opinion poll data, that data, as part of your
5 report?

6 A That particular information was included
7 in response to information in Dr. Russell's report.

8 Q Okay. And have you looked at any other
9 polls, public opinion polls, of Californians besides
10 this poll that appears at Table 11?

11 A Probably, but I don't recall anything
12 specific.

13 Q Okay. For what purpose do you believe
14 public opinion polls are relevant in terms of a state
15 educational system?

16 MR. SALVATY: Objection. Assumes facts not in
17 evidence.

18 THE WITNESS: As I indicated, my purpose for
19 looking at that information had to do with assertions
20 made by Dr. Russell.

21 Q BY MR. ROSENBAUM: Okay. Do you believe
22 that the views on a public opinion poll are relevant
23 to a statewide educational system?

24 A Such polls provide information that may
25 be helpful to policymakers.

1 decision-making as to what to include in your report,
2 or did you do it as an expert in psychometrics?

3 MR. SALVATY: Objection. Vague and ambiguous.
4 I don't understand that distinction.

5 THE WITNESS: I sought to carry out the task
6 that I was given using the expertise that I have.

7 Q BY MR. ROSENBAUM: As a psychometrician?

8 A That's part of my expertise, yes.

9 Q Is there any other part of your expertise
10 that you relied on in this report besides your
11 expertise in psychometrics?

12 A I have training in the area of statistics
13 and use statistics widely in psychometrics.

14 Q Okay. Those were the two areas of your
15 expertise that you relied upon in answering the
16 questions as you understood them; is that right?

17 MR. SALVATY: Objection. Vague and ambiguous.

18 THE WITNESS: I relied on all the skills I have
19 to do the best job I could in answering the questions
20 I was asked to answer.

21 Q BY MR. ROSENBAUM: Okay. Doctor, in your
22 experience as an expert witness, have you ever given
23 opinions in cases or to your clients that you did not
24 feel were soundly based in psychometrics or
25 statistics?

1 A I have assisted clients in areas that one
2 probably wouldn't classify exclusively as
3 psychometrics or statistics.
4 Q Okay. Maybe you just answered my
5 question for me, but I'm going to narrow it a little
6 bit.
7 In the testing cases in which you have
8 worked on, the opinions that you have given to courts
9 or to your clients, have you always regarded those
10 opinions and your role as to ground those judgments in
11 sound psychometric and statistical principles as you
12 understand them?
13 A That's certainly been a major focus of
14 what I have done.
15 On occasion I probably have gone a bit
16 beyond that.
17 Q In what sense, Doctor?
18 A I have often discussed statutes, case law
19 and requirements that come out of case law with
20 clients.
21 Q Okay. Have you ever gone beyond that?
22 That is, we now talked about a universe
23 that includes psychometrics, statistics and your
24 analysis of case law and cases that I take with
25 respect to the latter that's based on your training as

1 a lawyer. Is that right?
2 A Yes, it's related to that.
3 Q Okay. Have you ever gone beyond that,
4 those areas, psychometrics, statistics and the legal
5 analysis that you described for me a few questions
6 ago?
7 MR. SALVATY: Objection. Vague as to "gone
8 beyond."
9 THE WITNESS: I have probably also had
10 discussions with clients regarding program evaluation,
11 regarding research studies.
12 Q BY MR. ROSENBAUM: Okay. How about --
13 So let's add that to our list.
14 Anything beyond that, Doctor?
15 A That's all I would --
16 MR. SALVATY: Objection. Vague.
17 Q BY MR. ROSENBAUM: Go ahead.
18 A That's all I recall at the moment.
19 Q Okay.
20 Want to take a break?
21 MR. SALVATY: Want to take about 10 minutes?
22 MR. ROSENBAUM: Sure.
23 (A recess was taken from
24 10:01 till 10:14.)
25 Q BY MR. ROSENBAUM: Doctor, did you have

1 any discussions with Mr. Salvaty about the deposition
2 during this break?
3 A Yes.
4 Q What was said?
5 A He asked me if I was tired and how I was
6 holding up.
7 Q Are you doing okay?
8 A Yes, I'm fine.
9 Q Good.
10 Doctor, do you know any states with the
11 exception of California that utilize the CAT-6 as part
12 of their statewide assessment system?
13 A I would need additional information to
14 answer that question.
15 Q What information would you need?
16 A I would need to find out who are the
17 users of the CAT-6 and how they're using the test
18 results.
19 Q Well, sitting here today are you aware of
20 any states that use the CAT-6 as part of their
21 statewide assessment systems?
22 A I can't name any for you. I wouldn't be
23 surprised if there were.
24 Q Have you undertaken any inquiry or
25 investigation to determine whether or not there are

1 any other states besides California that use the
2 CAT-6?
3 A No.
4 Q Why is that?
5 A It wasn't necessary to the conclusions in
6 my report.
7 Q Are there states, Doctor, that use norm
8 reference tests as part of their statewide assessment
9 systems?
10 A Yes.
11 Q Have you consulted with states
12 regarding --
13 Have you consulted with states that use
14 norm reference tests as part of their statewide
15 assessment systems?
16 A Yes.
17 MR. SALVATY: Besides California?
18 Q BY MR. ROSENBAUM: Besides California.
19 A Yes.
20 Q Which states?
21 A Texas.
22 I should probably qualify this, though,
23 that you ask "use." If you mean at the present time,
24 they may or may not, but did at the time at which I
25 was involved with consulting with them.

1 Q I appreciate that qualification. I am
 2 interested in at the time you were consulting with
 3 them.
 4 One of the reasons you told me that is
 5 because Texas no longer uses a norm reference test;
 6 isn't that right?
 7 A No, that's not why I said that.
 8 Q Okay. Texas does no longer use a norm
 9 reference test; isn't that right?
 10 A No.
 11 Q "No" what?
 12 A That's not correct.
 13 Q Okay. What norm reference test does
 14 Texas use?
 15 A I don't know which one they're currently
 16 giving.
 17 Q Okay. What other states have you
 18 consulted with that at the time you consulted the
 19 states used a norm reference test?
 20 A Arizona.
 21 Without going back and checking for sure,
 22 I just can't recall anything else.
 23 Q You can't recall any other states?
 24 A Nothing that comes to mind at the moment.
 25 Q What -- I'm sorry. Go ahead.

1 What other states have you consulted with
 2 regarding their assessment systems?
 3 A May I use this?
 4 THE REPORTER: (Gives document.)
 5 THE WITNESS: On Page 14 of my data there is a
 6 list of different states in which I have consulted
 7 over my career.
 8 Q BY MR. ROSENBAUM: Okay, looking at that
 9 list, Doctor, do any of those states -- did any of
 10 those states at the time you consulted with them use a
 11 norm reference test as part of their assessment
 12 systems?
 13 MR. SALVATY: Objection. Asked and answered.
 14 THE WITNESS: As I indicated to you, without
 15 checking other information it's difficult for me to
 16 say. Some of them have used it and discontinued it
 17 and reinstated it, or done various combinations like
 18 that, and I'm not sure at this point if my
 19 recollection is accurate in at the moment of when I
 20 actually was consulting with them versus other
 21 information that I might have had from other sources.
 22 Q BY MR. ROSENBAUM: In states where you
 23 have consulted, Doctor, have you ever considered the
 24 degree to which a norm reference test that is used as
 25 part of a state's assessment system is aligned with

1 the state standards?
 2 A Yes.
 3 Q Okay. And why have you done that?
 4 A Because it was appropriate in the context.
 5 Q Why was it appropriate in the context?
 6 MR. SALVATY: Objection. Vague, ambiguous,
 7 overbroad.
 8 THE WITNESS: I don't really know how to answer
 9 your question without having some specifics to tie it
 10 to that was related to the characteristics of the
 11 program.
 12 Q BY MR. ROSENBAUM: Well, when you say
 13 "appropriate in the context," what did you mean by
 14 that?
 15 A It was appropriate given the assessments
 16 being used and the sum total of the facts and
 17 circumstances surrounding the program.
 18 Q Have you ever recommended to a state that
 19 it not use a norm reference test because the test was
 20 insufficiently aligned with state standards?
 21 A I don't recall a recommendation like that.
 22 Q Have you ever recommended to the state
 23 that it utilize a norm reference test in whole or in
 24 part because of the degree of its alignment with state
 25 standards?

1 MR. SALVATY: I'm sorry, I think I lost track
 2 of that question. Could I have it read back, please?
 3 (The question was read.)
 4 THE WITNESS: I don't recall that.
 5 Q BY MR. ROSENBAUM: Okay.
 6 In states where you have consulted with
 7 respect to assessments -- assessment systems and where
 8 those states use norm reference tests, can you think
 9 of any occasion in which you did not consider the
 10 degree of alignment of the norm reference test with
 11 state standards?
 12 MR. SALVATY: Objection. Vague.
 13 THE WITNESS: Yes.
 14 Q BY MR. ROSENBAUM: What state or states
 15 were those?
 16 A Texas.
 17 Q Okay. And why not Texas?
 18 A Why not what?
 19 Q Why didn't you --
 20 Why didn't you consider that in Texas?
 21 A Because of the purpose of the norm
 22 reference test.
 23 Q What's the purpose of the norm reference
 24 test in Texas?
 25 A To get national norms.

1 Q Okay. Is it your understanding that
2 that's the purpose of a norm reference test in
3 California: to get national norms?
4 A That's one purpose.
5 Q Okay. Is it -- What do you understand
6 to be the other purposes of the norm reference test in
7 California?
8 A To provide information to students and
9 parents, to evaluate schools.
10 Q To provide what sort of information to
11 parents and students?
12 A To provide outcome measures in the
13 subject matter and the areas in which the Stanford or,
14 later, the CAT-6 includes items.
15 Q Do you have an understanding as to
16 whether or not the purpose of the norm reference test
17 in California is to have any relationship to mastery
18 of state standards?
19 A It's related to it.
20 Q I'm talking about the purpose of the use
21 of the norm reference test. Do you have an
22 understanding as to whether or not the purpose of the
23 use of the norm reference test in California is to
24 have any relationship to the mastery of state
25 standards?

1 What's your understanding, if any, of the
2 purpose?
3 A As I indicated, it's related to it.
4 Q How is it related to it?
5 A The norm reference test measures some of
6 the lower level skills contained in the standards at a
7 grade and subject, and also enabling skills or
8 prerequisite skills from earlier grades.
9 Q Okay. Doctor, do you know what a SARC
10 is, S-A-R-C?
11 A I don't recall for sure, but I think that
12 might be an acronym related to the School
13 Accountability Report Cards.
14 Q Okay. Have you -- What is a School
15 Accountability Report Card? What's your
16 understanding?
17 A I think I have a section in my report
18 that talks about that.
19 Q Before you look at your report, Doctor,
20 sitting here today without looking at your report can
21 you tell me what a School Accountability Report Card
22 is?
23 Please close your report.
24 MR. SALVATY: I mean, if he wants to get your
25 recollection, you can from memory if you are

1 comfortable answering.
2 THE WITNESS: In California there is a
3 statutory requirement that schools produce School
4 Accountability Report Cards each year. They are to
5 cover the previous three years. There is statutorily
6 listed criteria of what is to be included in those
7 report cards. The department is required to produce a
8 template which it has for that purpose, and also makes
9 available data that it has that is related to what the
10 districts are to report.
11 Q BY MR. ROSENBAUM: Thank you.
12 And have you -- In your consultation
13 work for the State of California, have you had any
14 involvement with the development or the implementation
15 of School Accountability Report Cards?
16 A No.
17 Q Have you read individual School
18 Accountability Report Cards?
19 A I have an example in my report.
20 Q Okay. Besides the example in your
21 report, have you read other School Accountability
22 Report Cards?
23 A Yes.
24 Q How many have you read?
25 A I don't recall for sure.

1 Q More than 10?
2 A Probably.
3 Q More than 20?
4 A Not sure.
5 Q Okay. How did you choose which School
6 Accountability Report Cards to read?
7 A I read report cards for schools attended
8 by the named plaintiffs.
9 Q Okay. Did you read any additional School
10 Accountability Report Cards?
11 A I may have looked at a few others. I
12 don't recall for sure.
13 Q Okay. Now, in -- Do you know if anyone
14 at the state level reviews state accountability report
15 cards for individual schools?
16 A My understanding is that they are
17 currently developing a process to do that. I don't
18 know yet if that's begun.
19 Q Okay. And what's your understanding as
20 to the state of that progress of -- Maybe you just
21 answered when you said you don't know whether it's
22 been done.
23 Do you know how far along in that process
24 the state is?
25 A No.

1 Q Do you know what the ultimate objective
2 of the process is?

3 A In terms of my understanding of it, it's
4 a check to see that the appropriate process is being
5 followed as mandated in the statute.

6 Q Okay. And do you know how that's going
7 to be done, how it's going to be determined, if the
8 appropriate process has been followed?

9 A No.

10 Q Have you ever made any inquiry to find
11 out?

12 A At the time I was preparing my report,
13 this was in the process, and I have not inquired since
14 then to see if it's been completed.

15 Q Okay. Do you know -- In the SARCs that
16 you looked at, Doctor, did any of those SARCs discuss
17 a problem of teacher misassignment to the school?

18 A I believe that's one of the areas that
19 they are required to address, so I would expect that
20 they did.

21 Q Okay. But that's not quite my question.
22 Do you have a recollection as to whether
23 or not any SARCs in fact addressed problems of teacher
24 misassignment?

25 A I don't have a specific recollection of

1 A If you are asking at the state level, I'm
2 not aware of any at this time.

3 Q Okay. At the county level, do you know
4 if there are any mechanisms that have been developed
5 by which problems identified in a SARC are to be
6 addressed?

7 A I'm not aware of any.

8 Q Do you know if at the local -- at the
9 district level there are any mechanisms that exist by
10 which problems identified in a SARC are to be
11 addressed?

12 A If you're asking me about specific
13 procedures in specific schools, I don't have any
14 information about that. But I would expect the
15 districts to be paying attention to that for their
16 schools and there to be something that they do as a
17 result of it.

18 Q Why would you expect that, Doctor?

19 A Because districts manage the schools
20 which are part of that district.

21 Q And have you done any analysis to find
22 out whether or not in fact districts do anything to
23 address the problems that are identified in SARCs?

24 A I didn't collect any information at the
25 district level.

1 a particular school.

2 Q Okay. Do you know, Doctor, whether or
3 not there is any mechanism by which problems that are
4 identified in a SARC are to be addressed?

5 A Yes.

6 Q And what is that?

7 A Schools participating in the II/USP
8 program.

9 Q Okay. Let me break that down a little
10 bit.

11 For schools that are not participating in
12 the II/USP program, do you know if there are any
13 mechanisms by which problems identified in a SARC are
14 to be addressed?

15 A It's possible that something along those
16 lines may be part of the departmental review. I'm not
17 aware whether or not they're doing that.

18 Q Okay. I don't want you speculating. If
19 your answer is -- you want to keep your answer
20 standing, that's fine. I just don't want you to
21 speculate.

22 My question is, Do you know whether or
23 not -- for schools that are not in the II/USP program
24 whether or not there is any mechanism by which
25 problems identified in a SARC are to be addressed?

1 Q Did you do anything to find out whether
2 or not districts have mechanisms by which they are to
3 address problems identified in SARCs?

4 A Same answer.

5 Q Have you looked at SARCs for successive
6 years to see if problems identified in one year
7 continue to successive years?

8 A No.

9 Q Any reason why not, Doctor?

10 A It was not necessary to the conclusions
11 of my report.

12 Q Have you done any follow-up at all to
13 determine whether or not any problems addressed in a
14 SARC were remedied by a school, a district, a county
15 or a state?

16 A As I indicated, I didn't collect any
17 additional data.

18 Q Did you, in reviewing the SARCs that you
19 talked to me about, see any SARCs that detailed
20 problems of overcrowding in the school?

21 A Again without looking at them I don't
22 recall what was specifically detailed in any
23 particular SARC.

24 Q Okay. Do you know whether or not anyone
25 is responsible at the state level for checking the

1 accuracy of SARCs for individual schools at the
2 current time?
3 A As I indicated, I don't know what --
4 where they are in the development of the monitoring
5 process.
6 Q Okay. Do you know whether anyone at the
7 county level is responsible for checking the accuracy
8 of SARCs for individual schools?
9 A I don't know.
10 Q Do you know if anyone at the district
11 level is responsible for checking the accuracy of
12 SARCs for individual schools?
13 A Again I don't have any specific
14 information about any particular district, but I would
15 expect that they would review those.
16 Q Why would you expect that?
17 A Because they're responsible for the
18 management of the schools that are part of their
19 district.
20 Q Do you know if the API takes into account
21 the information that is reported on SARCs?
22 MR. SALVATY: Objection. Vague.
23 THE WITNESS: If you are asking about the
24 numerical calculation, it's not a part of that number,
25 but it is part of the II/USP intervention process

1 that's associated with and determined by the API
2 measure.
3 Q BY MR. ROSENBAUM: And is it your
4 understanding of the II/USP program that it is
5 specifically to remedy the problems that are
6 identified in SARCs?
7 MR. SALVATY: Objection. Vague.
8 THE WITNESS: My understanding is that it's
9 designed to determine what problems are causing
10 students not to achieve and to address those.
11 Q BY MR. ROSENBAUM: Okay. That's not
12 quite my question, but I do appreciate that answer.
13 My first question, though, is, Doctor, do
14 you know -- Is there a requirement so far as you know
15 that is part of the II/USP program that the problems
16 that are specifically identified in SARCs are to be
17 addressed?
18 A As I recall, there are certain things
19 that are supposed to be addressed, and I think there
20 is maybe some overlap between those and the
21 information that would be available in a SARC.
22 Q Okay. But that's not quite my question.
23 Is it your understanding of the II/USP
24 program that the problems identified in SARCs are to
25 be addressed?

1 MR. SALVATY: Objection. Vague.
2 THE WITNESS: To the extent that they're
3 relevant to problems in student achievement, I would
4 say yes.
5 Q BY MR. ROSENBAUM: Okay. Does --
6 In the analysis that you did of SARCs,
7 did you regard the problems identified as relevant to
8 achievement based on your training and experience?
9 MR. SALVATY: I'm sorry, could I have that read
10 back?
11 (The question was read.)
12 MR. SALVATY: Objection. Vague, assumes facts
13 not in evidence.
14 THE WITNESS: First of all, I didn't actually
15 do what I would consider an analysis of SARCs. I
16 looked at some of them. And certainly there was
17 information relevant to student achievement that was
18 presented in those SARCs.
19 Q BY MR. ROSENBAUM: Okay. Were there
20 problems identified in the SARCs that you thought were
21 relevant to student achievement?
22 A As I indicated earlier, I don't have
23 specific recollection of what any particular school
24 put in their SARCs, but I would expect from what I
25 recall seeing that much of the information in there is

1 relevant to achievement.
2 Q Why is that?
3 A For example, I have an example in my
4 report and there are some graphs of student
5 performance that I recall and information related to
6 how the school had done in the past.
7 Q Okay. I'll come to that chart in a
8 moment, Doctor. So I'll go off on that.
9 Does the II/USP program in any of the
10 writings that -- Strike that. You reviewed --
11 What did you review to learn about the
12 II/USP program?
13 A As we talked about earlier, there was
14 information on the department Web site and information
15 in the statute and an external evaluator's report.
16 Q Okay. And anything that you read
17 regarding II/USP for purposes of this report, did it
18 mention SARCs?
19 A Without reviewing those documents, I
20 can't say.
21 Q Okay. Doctor, regarding Cohort 4 II/USP,
22 do you know what funding is available for that
23 cohort?
24 MR. SALVATY: Currently?
25 MR. ROSENBAUM: Yeah.

1 THE WITNESS: In terms of a dollar amount, I
2 don't know that off the top of my head.
3 Q BY MR. ROSENBAUM: Okay. Have you made
4 any inquiry to find out?
5 A I saw the Cohort 4 information up on the
6 department Web site, but I don't recall the numbers.
7 Q Okay. When did you see that?
8 A Within the last couple weeks.
9 Q Okay. And for what purpose did you look
10 at that?
11 A I was actually looking for something else.
12 Q Okay. Would it concern you, Doctor, if
13 there was a reduction in funding for the Cohort 4
14 II/USP as opposed to Cohort 3 or Cohort 2 or
15 Cohort 1?
16 MR. SALVATY: Objection. Vague and ambiguous,
17 incomplete hypothetical.
18 THE WITNESS: To evaluate that, I would need
19 more information.
20 Q BY MR. ROSENBAUM: What information would
21 you need, Doctor?
22 MR. SALVATY: Objection. Calls for
23 speculation.
24 THE WITNESS: I would need to know a lot more
25 about funding for the cohorts and how many schools

1 were involved, all the information about that program.
2 Q BY MR. ROSENBAUM: What do you mean, "all
3 the information about that program"?
4 A I just mean all relevant information
5 about the numbers and what they mean.
6 Q Well, what would you consider to be all
7 relevant information, Doctor?
8 MR. SALVATY: Objection. Incomplete
9 hypothetical.
10 THE WITNESS: I don't know that I can list
11 everything for you at this point.
12 Q BY MR. ROSENBAUM: Why don't you do the
13 best you can.
14 A As I sit here, I don't know how much
15 funding there was for any cohort or how it was
16 distributed, how it was used. I certainly would want
17 to know all of the budgetary information.
18 Q Did you investigate the budgetary
19 information for purposes of preparing your report, the
20 information you just listed for me?
21 MR. SALVATY: Objection. Vague.
22 THE WITNESS: I did report some funding
23 information in my report for specific schools.
24 Q BY MR. ROSENBAUM: Okay. With the
25 exception of that information, did you review any

1 other budgetary information or how the budget money
2 was used, what you just identified for me?
3 MR. SALVATY: Objection. Vague and ambiguous.
4 THE WITNESS: I may have seen some of that in
5 the materials that I looked at, but I don't recall it
6 specifically.
7 Q BY MR. ROSENBAUM: Did you undertake any
8 inquiry to determine how the money was used in the
9 II/USP program?
10 MR. SALVATY: Objection. Vague and ambiguous.
11 THE WITNESS: I didn't collect any independent
12 data along those lines.
13 Q BY MR. ROSENBAUM: Okay. Any reason why
14 not, Doctor?
15 A It wasn't necessary to the conclusions in
16 my report.
17 Q Do you know, Doctor, whether there is
18 anyone at the state level currently who is responsible
19 for ensuring that every school has submitted a SARC?
20 MR. SALVATY: Objection. Calls for
21 speculation.
22 THE WITNESS: Again, I assume that's part of
23 the monitoring process that's being developed, and I
24 don't know where they are in that process.
25 Q BY MR. ROSENBAUM: Okay. Do you know if

1 there is anyone at the county level that is
2 responsible for ensuring that every school has
3 submitted a SARC?
4 A I don't know.
5 Q Do you know if there is anyone at the
6 district level that is responsible for ensuring that
7 every school in that district has submitted a SARC?
8 A Again, I don't know anything specific
9 about a particular district, but I would assume that
10 they will be paying attention to that, particularly
11 because the state will be monitoring.
12 Q If a school lists on its SARC that
13 40 percent of its teachers are emergency credentialed,
14 do you know whether or not the state provides any
15 assistance in helping the school increase its
16 credentialing rates?
17 MR. SALVATY: Objection. Incomplete
18 hypothetical and vague and ambiguous.
19 THE WITNESS: The money a school receives as
20 part of award money under the API or intervention
21 money could be used for that purpose.
22 Q BY MR. ROSENBAUM: But that's not my
23 question.
24 My question is with respect to the SARC
25 program. If a school identifies that 40 percent of

1 its teachers are emergency credentialed on its SARC,
 2 do you know whether or not that triggers any sort of
 3 intervention by the state for purposes of increasing
 4 the state's -- the school's credentialing -- number of
 5 credentialing -- credentialed teachers?
 6 MR. SALVATY: Objection. Incomplete
 7 hypothetical, lacks foundation, calls for speculation.
 8 THE WITNESS: I'm not aware of anything along
 9 those lines.
 10 Q BY MR. ROSENBAUM: Okay. And if I change
 11 the percent from 40 percent to 50 percent to 70
 12 percent, does your answer remain the same?
 13 MR. SALVATY: Same objections.
 14 THE WITNESS: Same answer.
 15 Q BY MR. ROSENBAUM: Okay.
 16 Let me ask you, Doctor, if you could
 17 turn, please, to Page 32 of your report, which is
 18 Exhibit 1.
 19 Do you have that in front of you?
 20 A Yes.
 21 Q Okay. And in the first column, Doctor,
 22 there is a box which has a quote that you have taken
 23 from the Russell report. Do you see that?
 24 A Yes.
 25 Q And that reads, "A truly comprehensive

1 accountability system would ask schools to describe
 2 the programs and practices they have in place, the
 3 appropriateness of these programs and practices given
 4 specific context and background indicators, and the
 5 effect these programs have on a variety of student
 6 outcomes."
 7 Do you see that?
 8 A Yes.
 9 Q And you chose to put that sentence in
 10 your report; is that right?
 11 That was your independent decision to
 12 include that sentence?
 13 A Yes.
 14 Q Okay. What is your understanding of what
 15 Russell means by that sentence?
 16 A I think it speaks for itself.
 17 Q Okay. And do you agree or disagree with
 18 that statement, Doctor?
 19 A I disagree to the extent that it suggests
 20 that California accountability systems should be
 21 changed along the lines that he details in his report.
 22 Q Just asking you about the sentence,
 23 Doctor, and your interpretation. You told me a few
 24 minutes ago it speaks for itself. I'm not asking you
 25 to consider it in the context of anything Russell

1 said.
 2 I'm just saying, This sentence as you
 3 understand it, standing alone, do you agree or
 4 disagree with that statement?
 5 MR. SALVATY: Objection. Asked and answered.
 6 THE WITNESS: My answer is the same.
 7 Q BY MR. ROSENBAUM: Good.
 8 And, Doctor, you see the next sentence
 9 where you write, "But Russell also admitted in
 10 deposition that no state has what he considers to be a
 11 'truly exemplary accountability system'. "
 12 Do you see that?
 13 A Yes.
 14 Q And what do you understand the phrase
 15 "truly exemplary accountability system" to mean?
 16 A I assume that he was referring to an
 17 accountability system that satisfied all of the
 18 criteria detailed in his report.
 19 Q Okay. Do you believe that any state has
 20 a truly exemplary accountability system?
 21 MR. SALVATY: Objection. Vague and ambiguous.
 22 THE WITNESS: If you mean does any state -- is
 23 any state currently doing a good job of
 24 accountability, I would concur with the states listed
 25 in the Fordham report.

1 Q BY MR. ROSENBAUM: That isn't what I
 2 mean.
 3 What I mean right now is, Are there
 4 states that you believe have a truly exemplary
 5 accountability system?
 6 MR. SALVATY: Objection. Vague and ambiguous.
 7 THE WITNESS: In any system there are always
 8 things that can be changed and improvement, but I
 9 believe that the states listed in the Fordham report
 10 as being on the honor roll are doing an excellent job.
 11 Q BY MR. ROSENBAUM: What do you think can
 12 be changed and improved in California?
 13 A As indicated in my report, the API is a
 14 work in progress and the goal is to move in the
 15 direction of more standards based assessment, and that
 16 is currently in progress, and that I assume will
 17 continue as planned.
 18 Q Okay. In addition to that, Doctor, is
 19 there anything else that you think can be changed and
 20 improved in California?
 21 A With respect to the accountability --
 22 Q Yes.
 23 A -- program?
 24 Q Yes, Doctor.
 25 A There are other, additional proposals

1 under study for modifying the API which I think are
2 worthy of consideration. Those are listed on Page 27
3 of my report. I can go through them if you wish.

4 Q Let's just see what you're referring to
5 here, Doctor.

6 You are talking about the proposals that
7 you list in the second column of Page 27 of your
8 report and there is a box -- there are six boxes; is
9 that right?

10 A Yes.

11 Q Okay. Any other things that you think
12 can be changed and improved with respect to
13 California's accountability system?

14 A That's all that come to mind at the
15 moment.

16 Q Are there any things that you think can
17 be changed and improved in the California system that
18 are not presently proposed?

19 A Nothing I can think of at the moment.

20 Q Okay. Doctor, have you investigated all
21 of the statewide accountability systems that are
22 identified as on the Fordham Honor Roll?

23 Let's go through this.

24 Why don't you put Table 8 in front of
25 you. Do you have that now in front of you doctor?

1 is?

2 A No.

3 Q Okay. Do you know who M. Petrilli is,
4 besides one of the authors?

5 A I don't recall any other information.

6 Q Have you ever read anything by
7 M. Petrilli?

8 A It's possible. I don't recall.

9 Q Okay. Do you know anything about
10 M. Petrilli's background or areas of expertise?

11 A No.

12 Q Have you ever cited C. Finn in anything
13 you have written besides this document, this report?

14 A I don't recall.

15 Q Okay. And can you tell me, Doctor, the
16 methodology that was utilized for purposes of the
17 Fordham evaluation?

18 MR. SALVATY: Objection. Asked and answered.

19 THE WITNESS: The methodology of the report was
20 quite detailed and quite extensive. I can't give you
21 specifics on that without reviewing the document.

22 Q BY MR. ROSENBAUM: Can you give me any
23 specifics of it sitting here today?

24 A They went through state standards, as you
25 can see if you look on the previous page, English

1 A Yes.

2 Q And that's the Fordham Evaluation of
3 State Standards and Accountability Systems; is that
4 right?

5 A That's what's in Table 8.

6 Q Okay. Do you know who C. Finn is?

7 A He was one of the authors of the report.

8 Q Do you know what his first name is?

9 A I think it's Chester.

10 Q Okay. Have you read anything by Chester
11 Finn with the exception of the report data cited here?

12 A I think so.

13 Q What else have you read by him?

14 A I don't recall anything specific, but I
15 believe I have seen other things that he has written.

16 Q Can you tell me anything about his
17 background?

18 A No.

19 Q Can you tell me anything about his area
20 of expertise?

21 A I don't recall.

22 Q Do you know who M. Petrilli is?

23 P-e-t-r-i-l-l-i.

24 A Another one of the authors of the report.

25 Q Do you know what Petrilli's first name

1 language arts, history, geography, math and science.

2 They had a detailed list of criteria that they used to
3 have content experts evaluate the standards in each of
4 those areas for those states, and assigned a letter
5 grade based on the overall score that was part of that
6 evaluation.

7 Q Okay. If you were evaluating state
8 standards and accountability systems, is there
9 anything that you would consider that the Fordham
10 evaluation did not consider?

11 MR. SALVATY: Objection. Lacks foundation.

12 THE WITNESS: Before I could give an answer on
13 that I would need to re-review the Fordham report,
14 which I haven't looked at for a while.

15 Q BY MR. ROSENBAUM: At the time you looked
16 at the Fordham evaluation, Doctor, did you have any
17 criticisms of the methodology?

18 A I don't recall.

19 Q You don't recall whether or not you had
20 any criticisms?

21 A I don't recall anything.

22 Q What do you mean by that?

23 MR. SALVATY: What do you mean, "What do you
24 mean"?

25 Q BY MR. ROSENBAUM: When you say, "I don't

1 recall anything," you don't -- I don't know what that
2 means.

3 A You are asking me --

4 MR. SALVATY: Objection. Vague, ambiguous,
5 argumentative.

6 THE WITNESS: You seem to be asking me what was
7 in my mind at the time I wrote this report, and I'm
8 saying I don't recall anything.

9 Q BY MR. ROSENBAUM: Thank you.

10 Doctor, are you familiar with the Alabama
11 accountability system outside of its citation in the
12 Fordham study?

13 A If you're asking if I have ever done any
14 work in Alabama, the answer is yes.

15 Q Okay. Did you do work with respect to
16 the Alabama accountability system?

17 A I did work with respect to the Alabama
18 assessment system.

19 Q Okay. Did you do any work with respect
20 to the Alabama accountability system with the
21 exception of the Alabama assessment system?

22 MR. SALVATY: Objection. Vague and ambiguous.

23 THE WITNESS: Well, to clarify, the assessment
24 system is part of the accountability system in the
25 state.

1 A Again I wouldn't want to characterize the
2 system without refreshing my memory.

3 Q Does Alabama have a high school exit exam?

4 MR. SALVATY: Speaking currently?

5 Q BY MR. ROSENBAUM: Currently.

6 A It did at the time I consulted with
7 them. I'm not aware that they have abandoned it.

8 Q Okay. Are you familiar with North
9 Carolina's accountability system?

10 A Again if you are asking me if I have ever
11 done any work there, the answer is yes.

12 Q That isn't exactly what I'm asking you,
13 but I appreciate that.

14 Have you read the state standards,
15 educational standards, in Alabama?

16 A I looked at them when I worked there. I
17 think they may have been revised since I saw them.

18 Q Okay. Have you read them since you saw
19 them?

20 A Not that I recall.

21 Q Okay. Have you read --

22 Does North Carolina have state
23 standards?

24 A As I indicated, they did at the time that
25 I worked with them, and I believe they have been

1 Q BY MR. ROSENBAUM: I appreciate that.
2 I'm saying put that work aside. Did you do any other
3 work with respect to the Alabama accountability
4 system?

5 A No.

6 Q Okay. Besides your work with the Alabama
7 assessment system, have you undertaken any
8 investigation or inquiry with respect to the Alabama
9 accountability system?

10 A I looked for information on their Web
11 site.

12 Q When did you do that?

13 A In preparation of this report.

14 Q Okay. Can you tell me the components of
15 the Alabama accountability system with the exception
16 of the assessment system?

17 A I would need to look at that information
18 again to give you a detailed answer.

19 Q Can you give me -- tell me any other
20 component of the state's -- Alabama's accountability
21 system with the exception of its assessment system?

22 A I would not want to characterize the
23 system without refreshing my memory about it.

24 Q Does Alabama use a norm reference test
25 as part of its assessment system?

1 revised.

2 Q Okay. Did you read them at the time you
3 worked with them?

4 A My recollection is I believe I did look
5 at them.

6 Q Okay. Have you read the revised
7 standards?

8 MR. SALVATY: Objection. Assumes facts not in
9 evidence.

10 THE WITNESS: I don't recall having done so.

11 Q BY MR. ROSENBAUM: When did you work in
12 Alabama?

13 A 1994.

14 Q Okay. Have you done any work in Alabama
15 since 1994?

16 A Not that I recall.

17 Q Okay. Did you regard Alabama as having
18 solid standards as utilized by the Fordham study in
19 1994?

20 MR. SALVATY: Objection. Vague and ambiguous,
21 unintelligible.

22 THE WITNESS: The work that I did was not
23 related to standards at that time.

24 Q BY MR. ROSENBAUM: Okay. What was the
25 work related to?

1 A Accommodations on their high school
 2 graduation test.
 3 Q Okay. The work you did in North
 4 Carolina, was that to do with accommodations also?
 5 A No.
 6 Q Okay. What was that about?
 7 A That's been a while again. As best as I
 8 recall, they were talking about their accountability
 9 and assessment system.
 10 Q And when was that?
 11 A I don't recall the exact data on that.
 12 Q Was it in 1994 before?
 13 A I think it's more recent than that.
 14 Q Okay. Can you be more -- any more
 15 specific?
 16 A No.
 17 Q Did you do any independent analysis since
 18 your work at North Carolina regarding the
 19 accountability system in that state?
 20 A At the time I worked with them, are you
 21 asking?
 22 Q No. Since that time.
 23 A Oh, since it? I don't think so.
 24 Q Okay. Have you done any work in South
 25 Carolina?

1 A Not that I recall.
 2 Q Okay. Have you done any analysis of the
 3 accountability system in South Carolina?
 4 A Again as I indicated earlier, I did look
 5 for information on the Internet. I wouldn't call that
 6 a report or analysis, if that's the way you are using
 7 that term.
 8 Q How much time did you spend looking at
 9 the information about South Carolina on the Internet?
 10 A I don't recall.
 11 Q How much time did you spend looking on
 12 the Internet about the accountability system in
 13 Alabama?
 14 A I don't recall.
 15 Q Did you, Doctor, do any work in Florida
 16 regarding its accountability system?
 17 A Yes.
 18 Q And did that deal with accommodations or
 19 otherwise?
 20 A Yes.
 21 Q I don't know what "yes" is because it's
 22 an "or" question.
 23 A It did deal with accommodations.
 24 Q Did it deal with anything else besides
 25 accommodations?

1 A Yes.
 2 Q What else?
 3 A I was part of a technical advisory
 4 committee.
 5 Q When was that?
 6 A A few years ago.
 7 Q Okay. Have you ever done any analysis or
 8 evaluation of Florida's accountability system since
 9 you did work in Florida?
 10 A I don't think so.
 11 Q Okay. And did you do anything -- any
 12 work with respect to standards in Florida?
 13 A The work I did involved the assessment
 14 system which is related to the standards. I didn't
 15 work on the standards specifically, if you mean
 16 development of the standards.
 17 Q Have you done any work with the
 18 development of the standards in any state?
 19 A Not that I recall.
 20 Q Okay. And have you done any analysis of
 21 state standards, specific analysis of state standards
 22 in any state?
 23 MR. SALVATY: Objection. Vague and ambiguous.
 24 THE WITNESS: I'm not sure exactly what you
 25 mean by "analysis," but certainly the standards form

1 the basis of developing criterion referenced
 2 assessment instruments in many of the states in which
 3 I work so I often see the standards and there are
 4 discussions of them with respect to the test.
 5 Q BY MR. ROSENBAUM: But do you do
 6 anything, Doctor, with respect to analyzing the
 7 strength or the weakness of the state standards?
 8 A With respect to what?
 9 Q State academic standards in states across
 10 the country.
 11 MR. SALVATY: Objection. Vague.
 12 THE WITNESS: If you're asking, have I
 13 independently personally done a comparison of state
 14 standards across the country, the answer to that is no.
 15 Q BY MR. ROSENBAUM: Okay. Are there --
 16 Are you familiar with the accountability
 17 system in South Dakota, Doctor?
 18 A I don't think so.
 19 Q How about Utah?
 20 A Not that I recall.
 21 Q How about Hawaii?
 22 A Not that I recall.
 23 Q How about New Mexico?
 24 A Again like many other states, at one
 25 point I knew something about it. My information now

1 would be dated.
 2 Q Okay. How about Alaska?
 3 A No, I don't think so.
 4 Q How about Nebraska?
 5 A Some information but nothing recent.
 6 Q Okay. How about West Virginia?
 7 A I don't think so.
 8 Q How about Nevada?
 9 A Some information again.
 10 Q But would you characterize it as dated?
 11 A To some degree.
 12 Q Okay. How about Montana?
 13 A I don't think so.
 14 Q How about North Dakota?
 15 A Not that I recall.
 16 Q How about Indiana?
 17 A Some information.
 18 Q How would you describe the currency of
 19 your information about Indiana?
 20 A A few years old.
 21 Q Okay. Do you feel -- Can you tell me
 22 the components of the Indiana accountability system?
 23 MR. SALVATY: Objection. Vague.
 24 THE WITNESS: My knowledge of that system dealt
 25 with the high school graduation test.

1 Q BY MR. ROSENBAUM: Okay.
 2 How about New Hampshire?
 3 A Not that I recall.
 4 Q How about Georgia?
 5 A Some information.
 6 Q Would you describe the currency of that
 7 information?
 8 A Dated a few years.
 9 Q What does that information concern?
 10 A Assessment again.
 11 Q Okay.
 12 Are there individuals, Doctor, whom you
 13 regard as experts in the area of state accountability
 14 systems?
 15 A If you're looking for someone who would
 16 be familiar with all 50 state systems, I think that
 17 would be rare and difficult to find, except to the
 18 extent that certain authors have compiled information
 19 at a particular point in time and have that specific
 20 information about the systems. It probably would not
 21 be comprehensive knowledge.
 22 Q Are there -- Appreciate that answer.
 23 Are there individuals whom you regard as
 24 experts in the workings of state accountability
 25 systems, the components of state accountability

1 systems, the analysis of state accountability systems,
 2 those areas?
 3 MR. SALVATY: Objection. Vague and ambiguous,
 4 asked and answered.
 5 THE WITNESS: I don't know quite how to answer
 6 that. There are various components that you need in
 7 an accountability system, and states typically call on
 8 experts in a number of areas to assist them for those
 9 components.
 10 Q BY MR. ROSENBAUM: If I -- Do you
 11 consider yourself an expert in state accountability
 12 systems?
 13 A As I've indicated, I don't know what it
 14 means to be an expert in state accountability
 15 systems.
 16 Q Okay. Have you done any readings about
 17 state accountability systems with the exception of
 18 what you cite in your report?
 19 MR. SALVATY: Objection. Vague as to
 20 "readings."
 21 THE WITNESS: If you're talking about
 22 information that might appear in research reports, in
 23 state accountability results, in newspapers and so on,
 24 I am sure I have seen quite a lot of information about
 25 that topic.

1 Q BY MR. ROSENBAUM: Okay. Are you
 2 familiar with the accountability system in
 3 Massachusetts?
 4 A Yes, I know something about that.
 5 Q Okay. What do you know about that?
 6 A Again I don't think it's fair to
 7 characterize a state accountability or assessment
 8 system without reviewing relevant documents and having
 9 the appropriate information available.
 10 Q Well, sitting here today what do you know
 11 about the Massachusetts accountability system?
 12 A Again I hesitate to try to give any
 13 specifics without refreshing my recollection on that.
 14 Q Okay. When was the last time that you
 15 looked at information about Massachusetts'
 16 accountability system?
 17 A A little over a year ago.
 18 Q For what purpose?
 19 A For the purpose of meeting with the
 20 department to discuss it.
 21 Q Okay. The department of Massachusetts or
 22 department here?
 23 A The department in Massachusetts.
 24 Q And what did you consult with
 25 Massachusetts about?

1 Did you consult with Massachusetts?
 2 A Yes.
 3 Q On what subject matter?
 4 A About their assessment system.
 5 Q Okay. Are you familiar with any
 6 components of the Massachusetts accountability system
 7 with the exception of the assessment system?
 8 MR. SALVATY: Objection. Vague and ambiguous.
 9 THE WITNESS: I believe there was some
 10 information supplied to me, but I don't recall at this
 11 time.
 12 Q BY MR. ROSENBAUM: Okay. Are you
 13 familiar with Louisiana's accountability system?
 14 A Not that I recall.
 15 Q Oklahoma's accountability system?
 16 A Not that I recall.
 17 Q Maine's accountability system?
 18 A Not that I recall.
 19 Q Colorado's accountability system?
 20 A Some, but it's dated.
 21 Q Wyoming's accountability system?
 22 A Not that I recall.
 23 Q New York's accountability system?
 24 A Some, again.
 25 Q What are you familiar with with respect

1 to New York's accountability system?
 2 A Again I wouldn't want to try to
 3 characterize it without reviewing materials.
 4 Q Okay. Are you familiar with Illinois'
 5 accountability system?
 6 A Some information.
 7 Q Is it current information?
 8 MR. SALVATY: Object. Vague.
 9 THE WITNESS: Basically what I know about that
 10 is that they're in the process of revising it, and I
 11 don't know where that revision has gone at this point.
 12 Q BY MR. ROSENBAUM: Do you know anything
 13 else about Illinois' accountability system other than
 14 what you just told me?
 15 A Not without reviewing materials.
 16 Q Do you know anything about Hawaii's
 17 accountability system?
 18 MR. SALVATY: Objection. Asked and answered.
 19 THE WITNESS: You already asked me that one.
 20 Not that I recall.
 21 Q BY MR. ROSENBAUM: Sorry.
 22 Do you know anything about Ohio's
 23 accountability system?
 24 A Some.
 25 Q What do you know about Ohio's

1 accountability system?
 2 A Again I wouldn't want to characterize it
 3 without refreshing my memory about it.
 4 Q Okay. Do you know anything about
 5 Mississippi's accountability system?
 6 A Some.
 7 Q Okay. What do you know about
 8 Mississippi's accountability system?
 9 A Again I wouldn't want to characterize it
 10 without reviewing materials first.
 11 Q Doctor, do you have an opinion as to what
 12 the components of a statewide accountability system
 13 should include?
 14 MR. SALVATY: Objection. Incomplete
 15 hypothetical.
 16 THE WITNESS: Not --
 17 Q BY MR. ROSENBAUM: Go ahead, Doctor.
 18 A Not in the abstract.
 19 Q Okay. Have you ever done any writing as
 20 to what the components of a statewide accountability
 21 system should include?
 22 A Not that I recall.
 23 Q Have you ever read any journal, article
 24 or publications as to what are the components of a
 25 statewide accountability system?

1 A As I have indicated earlier, I have read
 2 quite a lot of information about accountability
 3 systems.
 4 Q Sitting here today can you cite me any of
 5 the pieces that you have read about statewide
 6 accountability systems other than what you've cited in
 7 your report?
 8 A I have seen information produced by
 9 various states about their programs. I have seen
 10 reports related to that put out by various
 11 organizations.
 12 Q Which organizations other than those
 13 cited in your report?
 14 A CCSSO.
 15 Q What is that?
 16 A Council of Chief State School Officers.
 17 Q Anything else?
 18 A NCEO.
 19 Q N-C-what?
 20 A NCEO.
 21 Q What's that?
 22 A I think it's National Center for
 23 Educational Outcomes, but I'm not sure about the
 24 specific words in that acronym.
 25 Q Did that deal with assessments?

1 A Yes.
 2 Q Okay. Anything else about the
 3 accountability systems with respect to assessments --
 4 I mean with the exception of assessments?
 5 MR. SALVATY: Objection. Vague, ambiguous.
 6 THE WITNESS: That's all that comes to mind at
 7 the moment.
 8 Q BY MR. ROSENBAUM: The CCSSO, did that
 9 deal with assessments?
 10 A Yes.
 11 Q Did it deal with anything else with
 12 respect to accountability systems besides assessments?
 13 A Yes.
 14 Q What else?
 15 A I don't recall all the specific
 16 information without looking at it again.
 17 Q Okay. Have you ever consulted with a
 18 state regarding parts of its accountability system
 19 with the exception of the consulting work that you
 20 have talked to me about regarding assessments and
 21 regarding accommodations?
 22 A If I understand your question correctly,
 23 I believe all of my consulting has involved the use of
 24 assessments in states and in their accountability
 25 systems.

1 Q Thank you.
 2 A I'm not sure what else you are asking
 3 about.
 4 Q Okay.
 5 Are you familiar with the accountability
 6 system in Kentucky?
 7 A Yes.
 8 Q And are you familiar with --
 9 Can you describe for me what the
 10 components of Kentucky's accountability system are?
 11 A Again I wouldn't want to characterize it
 12 without refreshing my memory.
 13 Q Did you do work in Kentucky?
 14 A Yes.
 15 Q When was that?
 16 You don't have to spend your time,
 17 Doctor. If it's in your Vita, that's fine.
 18 A I just don't remember the exact date. It
 19 would have been around mid-'90s, I think.
 20 Q Have you made an effort to inform
 21 yourself as to any developments with respect to its
 22 system since you did work there?
 23 A I have some updated information.
 24 Q Okay. When was the last updated
 25 information you received?

1 A I don't recall.
 2 Q Okay. Are you familiar with the
 3 accountability system in any state where you have not
 4 yourself performed consulting work?
 5 A Yes.
 6 Q Which state or states?
 7 A Ohio.
 8 Q Any others?
 9 A There may be others. Not that comes to
 10 mind at the moment.
 11 Q Okay.
 12 We have been going for a while. I'll be
 13 glad to take a break.
 14 MR. SALVATY: Okay, that sounds good.
 15 (A recess was taken from
 16 11:20 till 11:32.)
 17 Q BY MR. ROSENBAUM: Doctor, you doing
 18 okay?
 19 A Yes.
 20 Q Are you familiar, Doctor, with the
 21 accountability system in Arkansas?
 22 A Not that I recall.
 23 Q How about Virginia?
 24 A Some.
 25 Q Okay. Did you consult in Virginia?

1 A Yes.
 2 Q Okay. And on what subject matter or
 3 matters?
 4 A The state assessment system.
 5 Q When was that?
 6 A I don't recall exactly. It's been a few
 7 years ago.
 8 Q Okay. In the early 1990s? Mid 1990s?
 9 A The latter 1990s.
 10 Q Okay. Have you made any systematic
 11 effort to inform yourself about the State of
 12 Virginia's accountability system since the time of
 13 your consultation?
 14 A I don't recall.
 15 Q What do you know about Virginia's
 16 accountability system?
 17 Can you tell me the components of that
 18 system?
 19 A Again I wouldn't want to characterize it
 20 without the information in front of me.
 21 Q Are you familiar with Delaware's
 22 accountability system?
 23 A Some.
 24 Q Did you consult in Delaware?
 25 A Yes.

1 Q When was that?
 2 A I think it was in the early '90s.
 3 Q Have you made any systematic effort to
 4 apprise yourself of Delaware's accountability system
 5 since that time?
 6 A Not that I recall.
 7 Q Can you describe to me the components of
 8 Delaware's accountability system?
 9 A Again I wouldn't want to do that without
 10 refreshing my memory.
 11 Q Can you identify for me, Doctor, any
 12 academic or scholars who have written in the area of
 13 statewide accountability systems?
 14 MR. SALVATY: Objection. Vague and ambiguous.
 15 THE WITNESS: As I indicated earlier, states
 16 call on people with a variety of expertise to assist
 17 them, and those individuals write a variety of
 18 scholarly papers and articles about statewide
 19 accountability systems.
 20 Q BY MR. ROSENBAUM: Okay. Can you --
 21 Sitting here today, can you identify for
 22 me the name of any academic or scholar, person whom
 23 you believe -- who has written in the area of
 24 statewide accountability?
 25 MR. SALVATY: Objection. Vague and overbroad.

1 THE WITNESS: Again I don't believe any one
 2 individual writes in that area exclusively. They
 3 bring certain expertise that they have to some facet
 4 of the state accountability system, and there are lots
 5 and lots of people who do that.
 6 Q BY MR. ROSENBAUM: Okay. Can you tell me
 7 the names of those persons, any of those persons, at
 8 this time?
 9 A Not off the top of my head sitting here.
 10 Q Okay. Are you familiar with Idaho's
 11 accountability system?
 12 A Not that I recall.
 13 Q Are you familiar with Arizona's
 14 accountability system?
 15 A Some.
 16 Q And you consulted in Arizona?
 17 A Yes.
 18 Q On what subject matter or matters?
 19 A State assessment system.
 20 Q When was that?
 21 A I think it was in the latter '90s.
 22 Q Okay. And have you made any effort to
 23 keep yourself informed of developments in Arizona's
 24 accountability system since that time?
 25 A Some.

1 Q Okay. Can you tell me what the
 2 components of Arizona's accountability system is?
 3 A Not without refreshing my memory.
 4 Q Putting aside California for a moment,
 5 Doctor, I'm going to save time, but I don't want you
 6 to feel like you have to accommodate me on that.
 7 Can you name for me -- Can you identify
 8 for me the components of any state's accountability
 9 system?
 10 A I wouldn't want to --
 11 MR. SALVATY: Objection. Vague.
 12 Sorry, I was a little late there.
 13 THE WITNESS: I wouldn't want to do that
 14 without having current information in front of me.
 15 All of these systems are a moving target, particularly
 16 with the new federal legislation.
 17 Q BY MR. ROSENBAUM: Well, are you
 18 presently familiar with the components of any of the
 19 states' accountability systems with the exception of
 20 California?
 21 MR. SALVATY: Objection. Vague.
 22 THE WITNESS: Every state that I consulted in
 23 is in the process of deciding how to respond to the
 24 federal legislation and is making changes, and these
 25 changes happen daily. In order to have current

1 information, I would want to check before I
 2 characterized them.
 3 Q BY MR. ROSENBAUM: Okay. Are you
 4 familiar with Vermont's accountability system?
 5 A Not that I recall.
 6 Q Okay. How about Tennessee's?
 7 A Some.
 8 Q Did you consult in Tennessee?
 9 A No.
 10 Q What are you familiar with with respect
 11 to Tennessee?
 12 A Again I wouldn't want to characterize
 13 without refreshing my recollection on that.
 14 Q Okay. Are you familiar with Oregon's
 15 accountability system?
 16 A Yes.
 17 Q Okay. Did you consult with Oregon?
 18 A Yes.
 19 Q When was that?
 20 A Late '90s.
 21 Q Okay. Can you identify for me any of the
 22 components of Oregon's accountability system?
 23 A Again I would want to check the currency
 24 of that information.
 25 Q Okay. Are you familiar with

1 Connecticut's accountability system?
 2 A Not that I recall.
 3 Q Are you familiar with Maryland's
 4 accountability system?
 5 A Not that I recall.
 6 Q Are you familiar with Kansas'
 7 accountability system?
 8 A Some.
 9 Q What are you familiar with with regard to
 10 Kansas' accountability system?
 11 A The assessment system.
 12 Q Can you identify for me the components of
 13 Kansas' accountability system?
 14 A Again I wouldn't want to characterize it
 15 without checking the information.
 16 Q Okay.
 17 Are you familiar with Florida's
 18 accountability system?
 19 A Some.
 20 Q When did you do work in Kansas?
 21 A Late '90s.
 22 Q Okay. And have you systematically kept
 23 up with changes in that system since then?
 24 MR. SALVATY: Objection. Vague.
 25 THE WITNESS: I don't recall.

1 Q BY MR. ROSENBAUM: Okay. Are there
 2 states, Doctor, where academic performance has
 3 declined on statewide assessment systems over time?
 4 MR. SALVATY: Objection. Lacks foundation.
 5 THE WITNESS: I would need the data in front of
 6 me in order to be able to give you a complete answer
 7 on that.
 8 Q BY MR. ROSENBAUM: Okay. Are you
 9 familiar with Iowa's assessment system?
 10 A Yes.
 11 Q I'm sorry, strike that.
 12 You can answer that question. Go ahead.
 13 A Yes.
 14 Q Okay. Are you familiar with their
 15 statewide accountability system?
 16 MR. SALVATY: Objection. Vague and ambiguous.
 17 THE WITNESS: Some.
 18 Q BY MR. ROSENBAUM: Okay. Did you consult
 19 in Iowa?
 20 A Not that I recall.
 21 Q Okay. What's the currency of your
 22 information on Iowa's accountability system?
 23 A Probably a couple years old.
 24 Q Can you identify for me the components of
 25 Iowa's accountability program?

1 A I wouldn't want to characterize that
 2 without checking the information.
 3 Q Can you identify for me --
 4 Are you familiar with Minnesota's
 5 accountability system?
 6 A Some.
 7 Q Did you consult in Minnesota?
 8 A Yes.
 9 Q Can you identify for me the components of
 10 Minnesota's accountability system?
 11 A Again I wouldn't want to characterize it
 12 without checking my information.
 13 Q Okay. When did you consult in Minnesota?
 14 A Last year.
 15 Q Okay. Can you identify for me the
 16 components of Minnesota's accountability system as of
 17 last year?
 18 A Again I wouldn't want to characterize it
 19 without refreshing my memory.
 20 Q Okay. Are you familiar with Missouri's
 21 accountability system?
 22 A Not that I recall.
 23 Q Are you familiar with the State of
 24 Washington's accountability system?
 25 A Some.

1 Q Does Washington, D.C. have an
 2 accountability system? If you know.
 3 A I don't know.
 4 Q Does -- Did you consult in the State of
 5 Washington?
 6 A Yes.
 7 Q When was that?
 8 A Last year. Maybe the end of the year
 9 before.
 10 Q Okay.
 11 Doctor, I think I was probably negligent
 12 in this regard, and I don't want to put you through
 13 the burden of going over all the states again.
 14 When you consult on assessment systems,
 15 sometimes you consult on high school exit exams; is
 16 that right?
 17 A Yes.
 18 Q Okay. And then are there also occasions
 19 when you consult on other assessment programs, like
 20 the STAR program in California; is that right?
 21 A Yes.
 22 Q Okay. Have there been states where you
 23 have only consulted on the high school exit exam?
 24 A Yes.
 25 Q Okay. Which states are those?

1 A I don't know if my recollection here
 2 would be accurate enough to give you a complete list.
 3 One we already talked about was Alabama.
 4 Q Okay.
 5 A I think Florida was primarily high
 6 school exit. Other issues may have come up. I don't
 7 recall for sure.
 8 Q Okay.
 9 A That's all I recall at the moment that I
 10 would single out that way.
 11 Q And are there states where you have only
 12 consulted on the question of accommodations?
 13 A That's hard to say because part of doing
 14 that is you have to deal with the test that they're
 15 involved with.
 16 Q Does it help if I said "primarily on
 17 accommodations"?
 18 That is, you may have looked at the way
 19 the test was administered and the nature of the test,
 20 but it was really in the context of accommodations?
 21 A I would say typically no, that's not
 22 really done in isolation.
 23 Q Okay. Are you familiar with the
 24 accountability system in Wisconsin?
 25 A Not that I recall.

1 Q Okay. Are you familiar with the
 2 accountability system in Michigan?
 3 A Some.
 4 Q When did you consult in Michigan?
 5 A It was '90s. I'm not sure I can
 6 characterize the time better than that.
 7 Q Can you identify for me the components
 8 of Michigan's accountability system?
 9 A Again I wouldn't want to characterize
 10 that without checking.
 11 Q Have you done any systematic updating on
 12 information with respect to Michigan since you
 13 consulted?
 14 A I had some update.
 15 Q When was the last update you had on
 16 Michigan?
 17 A A few months ago.
 18 Q Was this information that was sent to you?
 19 A No.
 20 Q Okay. How did you get the information?
 21 A Orally.
 22 Q From whom?
 23 A Individuals in the department.
 24 Q Okay. Was that with respect to a
 25 possible case?

1 A No.
 2 Q Okay. How long did that conversation
 3 take?
 4 A I don't really recall.
 5 Q Was it about the assessment results or
 6 the assessment test in Michigan?
 7 A It was about the assessment, yes.
 8 Q Okay. Have you had any other updates
 9 regarding Michigan since you consulted there?
 10 A Not that I recall.
 11 Q Okay. Are you familiar with the
 12 accountability system in New Jersey?
 13 A Some.
 14 Q Okay. When did you consult in New Jersey?
 15 A I don't recall exactly.
 16 Q Can you identify for me any of the
 17 components in New Jersey of the accountability system?
 18 A I wouldn't want to characterize that
 19 without checking.
 20 Q Okay. Can you identify for me any of the
 21 components of the accountability system in New Jersey
 22 at any time?
 23 A I wouldn't want to attempt to do that
 24 without refreshing my recollection.
 25 Q Okay. If I asked you that question with

1 respect to Delaware, would your answer be the same?
 2 A Which question was that?
 3 Q The last question, that is, Can you
 4 identify any of the components of the accountability
 5 system at any time?
 6 A Again I would not want to do that without
 7 checking.
 8 Q Same for Georgia?
 9 A Yes.
 10 Q Louisiana?
 11 A Yes.
 12 Q All the states?
 13 A Yes.
 14 Q Okay.
 15 Are you familiar with the -- Strike
 16 that.
 17 Okay. Let me ask you if you wouldn't
 18 mind, Doctor, could you turn to Page 34?
 19 And you quote from Russell's report in a
 20 box that begins in the first column and continues on
 21 the second column of that page of your report,
 22 Page 34; is that right?
 23 A Yes.
 24 Q Looking at the first sentence here which
 25 is footnoted to the Russell report at Footnote 128,

1 "By requiring schools to actively describe the impacts
2 their inputs have on outputs, identify potential
3 problem areas, and establish short and long term
4 goals, educational benefits of accountability could be
5 more fully realized."
6 Do you see that statement?
7 A Yes.
8 Q What do you understand that to mean?
9 A Give me just a minute, if you would --
10 Q Sure.
11 A -- to check the context here of this.
12 Okay.
13 Q With respect to the sentence I read,
14 Doctor, do you agree or disagree with that statement?
15 Actually, my question -- my predicate
16 question was, What do you understand that sentence to
17 mean?
18 A I understood Dr. Russell to be suggesting
19 that California should change its current
20 accountability system to include input variables.
21 Q Okay. Do you agree or disagree with the
22 statement "By requiring schools to actively describe
23 the impacts their inputs have on outputs, identify
24 potential problem areas, and establish short and long
25 term goals, educational benefits of accountability

1 could be more fully realized"?
2 Do you agree or disagree with that
3 statement?
4 A As I understand that statement, it's an
5 assertion that California should change its
6 accountability system to match the criteria he
7 discusses in his report. And as I have detailed in
8 several sections of my report, I disagree with that.
9 Q Okay. On Page 34, Doctor --
10 Again feel free, Paul. As I have said
11 all along, you can read as much as you need for
12 context.
13 You use the phrase "multiple measures."
14 That's in the middle at the second paragraph of your
15 text on the second column on Page 34.
16 Do you see that?
17 A Yes.
18 Q What do you understand "multiple
19 measures" to mean?
20 What did you mean by the phrase "multiple
21 measures" there?
22 A A variety of data, a variety of
23 information.
24 Q Okay. What are the --
25 Does California's accountability system

1 as you understand it include multiple measures?
2 A Yes.
3 Q What are those multiple measures?
4 MR. SALVATY: Objection. Vague.
5 THE WITNESS: If you look at Page 18 of my
6 report, "Measures and their associate weights," I
7 listed --
8 Q BY MR. ROSENBAUM: Okay. Any others,
9 Doctor?
10 A I'm sorry, I didn't hear that question.
11 Q Any other multiple measures that are part
12 of California's accountability system as you
13 understand it, in addition to what you've just
14 referenced me?
15 MR. SALVATY: Objection. Overbroad.
16 THE WITNESS: There are other measures that are
17 planned for inclusion in the future.
18 Q BY MR. ROSENBAUM: Okay. Currently are
19 you aware of any other measures besides what you've
20 referenced to me?
21 A I am aware that consideration is being
22 given or may have already been given to what's going
23 to be included in the base for this year, and I
24 presume and believe that additional measures are part
25 of that, so there are probably some things here that

1 will be added -- that are being added this year that I
2 have not reflected in this table.
3 Q Maybe you just answered this, but do you
4 know what those measures are?
5 A If you look on Chart 9, the six-year
6 plan, so far that has been followed. It shows 2003
7 base adding the high school science standards test.
8 And others that appear in the next box
9 at 2004, if they were ready it's possible that they
10 might move them up.
11 Q Do you have any information that they are
12 ready?
13 A I don't know.
14 Q Have you made inquiry to find out?
15 A I haven't had any discussions with anyone
16 about that.
17 Q Okay. Do you support the use of multiple
18 measures?
19 A For what purpose? Where? When?
20 Q For the purposes that the legislature
21 identified for the state's accountability system.
22 A I believe the state board has made
23 reasonable decisions about inclusions of measures in
24 the California accountability system.
25 Q Do you personally support those

1 decisions?
 2 MR. SALVATY: Objection. Vague and ambiguous,
 3 asked and answered.
 4 THE WITNESS: Same answer.
 5 Q BY MR. ROSENBAUM: Are there any
 6 measures, Doctor, in the 2003 base --
 7 You see that on your chart?
 8 A Yes.
 9 Q -- that you would delete, that you would
 10 recommend deleting?
 11 MR. SALVATY: Objection. Incomplete
 12 hypothetical.
 13 THE WITNESS: On what basis? For what purpose?
 14 Q BY MR. ROSENBAUM: On any basis so as to
 15 advance the purpose of the accountability program that
 16 the legislature has defined.
 17 A As I indicated, the state board has made
 18 these decisions, and I think they have done it with an
 19 appropriate process and that their decisions are
 20 reasonable.
 21 Q Okay.
 22 You, at Page --
 23 We'll go off the record for a minute.
 24 (A discussion was held off the
 25 record at 11:59, briefly.)

1 A Yes.
 2 Q And do you see the phrase "...the ratio
 3 of textbooks per pupil..."?
 4 A Yes.
 5 Q Do you know how that's calculated?
 6 Strike that.
 7 What is your understanding of how the
 8 ratio of textbooks per pupil is to be calculated for
 9 purposes of the School Accountability Report Card?
 10 A Give me a minute. I want to see what the
 11 context of this is.
 12 Q Sure.
 13 Have you had a chance to review it,
 14 Doctor?
 15 A Yes.
 16 Q Can you tell me -- Well, let me ask you
 17 a foundational question.
 18 Do you know as part of the School
 19 Accountability Report Card process how ratio of
 20 textbooks per pupil is to be compiled/calculated?
 21 A I don't recall the specifics of that, but
 22 I believe the department has set up criteria for those
 23 things.
 24 Q Okay. Do you know for a fact whether
 25 that's the case?

1 Q BY MR. ROSENBAUM: Doctor, if you could
 2 please direct your attention to Page 33 of your
 3 report.
 4 Do you have that?
 5 A Yes.
 6 Q And at Page 33, am I correct that you
 7 discuss a School Accountability Report Card for
 8 Coronado Elementary School?
 9 Is that right?
 10 A Give me a minute to review it, please.
 11 Q I'm looking specifically at the second
 12 column, the first full paragraph.
 13 A Yes.
 14 Q Okay. How did you decide to include the
 15 accountability report card for Coronado Elementary
 16 School, as opposed to the other report cards that you
 17 reviewed?
 18 A I don't recall.
 19 Q Okay. I wonder if you could please
 20 direct your attention to Page 32 of your report.
 21 Do you see that?
 22 A Yes.
 23 Q And again directing your attention to the
 24 second column, and the 6 in parentheses.
 25 Do you see that?

1 A I understood that they were required to
 2 do that and that they had done so. Again, I don't
 3 recall the specifics of any particular variable.
 4 Q If the legislature had stated that the
 5 School Accountability Report Card should include
 6 information as to whether all students have access to
 7 textbooks in core curriculum subjects, would you find
 8 that reasonable as you used that word today?
 9 MR. SALVATY: Objection. Incomplete
 10 hypothetical, vague and ambiguous.
 11 THE WITNESS: What you're asking me I think is
 12 a policy decision, and the legislature is free to make
 13 any decisions it chooses. In that regard, the extent
 14 to which it's reasonable would be dependent on the
 15 context in which they did it, what else was part of
 16 it, and reasonable by whose standards, under what
 17 conditions.
 18 Q BY MR. ROSENBAUM: Sitting here today,
 19 can you think of anything that would be unreasonable
 20 about including a requirement as part of the report
 21 card process to compile information as to whether or
 22 not all students have access to textbooks in core
 23 curriculum subjects?
 24 A I believe it would be desirable to more
 25 clearly define what's meant by "access."

1 Q Okay. Whether or not students had
2 textbooks to use in class and to take home, if their
3 teachers desired to utilize textbooks for their core
4 curriculum subjects to communicate standards based
5 information. That's how I'm defining "access."
6 A I'm waiting for the question.
7 Q The question is, If that were the
8 definition, would you find that unreasonable?
9 MR. SALVATY: Objection. Incomplete
10 hypothetical.
11 Q BY MR. ROSENBAUM: Do you find anything
12 unreasonable about that requirement?
13 MR. SALVATY: Same objection.
14 THE WITNESS: Again I think a clarification
15 would be in order. What you said sounded like each
16 student would have two textbooks, one in class and one
17 to take home. I think you'd want to clarify exactly
18 what's meant by it, and again --
19 Q BY MR. ROSENBAUM: Let me stop you
20 there. I don't mean to cut your answer from you. I
21 just want to be clear.
22 Say it were clarified to mean it wouldn't
23 have to be two textbooks. It would just have to have
24 one textbook which would serve for both usage in the
25 classroom and to take home.

1 A In addition judging the reasonableness of
2 that would be -- would depend on the context in which
3 they did that and other information.
4 Q What do you mean "the context in which
5 they did that"?
6 A Well, in this case you are pulling a
7 piece out of a larger statute that has a number of
8 different factors associated with it. Certainly there
9 would be a context or a statute or some information
10 that this would be part.
11 Q Okay. I appreciate that. Say it
12 were part of the statute that you are looking at that
13 Page 32 were added, too, No. 6.
14 A If you are asking me personally --
15 MR. SALVATY: Same objection. Incomplete
16 hypothetical.
17 Go ahead.
18 THE WITNESS: If you are asking me personally,
19 I think I would need more information to judge the
20 reasonableness of that.
21 Q BY MR. ROSENBAUM: Can you tell me,
22 please, the other information you would need?
23 MR. SALVATY: Objection. Asked and answered.
24 THE WITNESS: Budgetary information.
25 Q BY MR. ROSENBAUM: What budgetary

1 information would you need?
2 A Information about whether schools had the
3 funds to be able to do what you're suggesting.
4 Q Okay.
5 This is a good time to take a break.
6 MR. SALVATY: Okay.
7 (Lunch recess from 12:07 till 1:20.)
8 EXAMINATION (RESUMED)
9 BY MR. ROSENBAUM:
10 Q Okay, back on the record.
11 You doing okay, Doctor?
12 A Yes.
13 Q Good.
14 Did you review any documents or materials
15 over the break?
16 A Yes, I did.
17 Q What did you look at?
18 A The Stanford Technical Manual.
19 Q Okay. Anything else?
20 A Yes.
21 Q What else?
22 A A document about the CAT-6.
23 Q Okay. Anything else?
24 A No.
25 Q Did you have any discussion about those

1 documents with anyone?
2 A Yes.
3 Q With whom?
4 A Mr. Herron and Mr. Salvaty.
5 Q What was discussed?
6 A That the SAT-9 technical manual was
7 indeed the document that I had reviewed and referred
8 to; that the other document was not.
9 Q Do you know if they're still --
10 I can ask you this, Paul.
11 Are you still trying to get the other
12 document?
13 MR. SALVATY: Yes.
14 MR. ROSENBAUM: Okay. Thank you.
15 MR. SALVATY: Sure.
16 MR. ROSENBAUM: Do you expect to get it?
17 MR. SALVATY: To tell you the truth, I can't
18 tell you. Mr. Herron is attempting to track the
19 document down and we hope to.
20 MR. ROSENBAUM: Thanks. Okay.
21 Back on the record. Or we have been on
22 the record.
23 Q Dr. Phillips, do you know who Paul Ciotti
24 is? C-i-o-t-t-i.
25 A An education reporter that covered the

1 Kansas City case, I believe.
 2 Q Are you checking your report now?
 3 A Yes.
 4 I know I cited that somewhere.
 5 Q Are you trying to find Page 35 --
 6 A Yes --
 7 Q -- and 36?
 8 A -- as a matter of fact.
 9 Q Okay.
 10 A Yes, that was correct. It's on Page 36.
 11 Q Do you know what Mr. Ciotti's background
 12 is?
 13 A I know that he's a reporter that covers
 14 education issues.
 15 Q Okay. For whom?
 16 Without looking at your report, can you
 17 answer that question?
 18 You are looking at it right now.
 19 A No, I just looked back.
 20 It's in Los Angeles.
 21 Q Why don't you close your book for a
 22 moment, please.
 23 Thank you.
 24 Do you know for whom he writes?
 25 A It's probably cited in the footnote, and

1 Q Okay. Have you ever done any research
 2 about him?
 3 A Not that I can recall.
 4 Q Okay. The publication that you cite, is
 5 that --
 6 Do you know what a peer-reviewed
 7 publication is, a peer-reviewed article is?
 8 A I know in a general way, yes.
 9 Q What is it?
 10 A In my field, peer review is to have other
 11 researchers in the same or related areas review
 12 articles for the editor prior to making a publication
 13 decision.
 14 Q Okay. In your Vita, Doctor, are some --
 15 are all of your publications peer-reviewed that you
 16 cite?
 17 A I would say most of what I have written
 18 is peer-reviewed in peer-reviewed journals in terms of the
 19 journal articles.
 20 Q Have you read anything about the Kansas
 21 City case other than the articles by Mr. Ciotti that
 22 you cite in your report?
 23 A I did have one other piece of information
 24 about that.
 25 Q Okay. I'll come to that in a minute.

1 I don't recall it.
 2 Q Okay. Has he written any books on
 3 education?
 4 A I think it's possible. I'm not sure.
 5 Q Okay. Have you read any books by him?
 6 A No.
 7 Q Do you know if he's written for any
 8 journals, scholar journals?
 9 A I don't know.
 10 Q Do you know whether he's written about
 11 education on any other subject other than the Kansas
 12 City case?
 13 A I haven't read any other specific
 14 articles that he wrote.
 15 Q Okay. Do you know, without looking at
 16 your report, for what publication or publications he's
 17 written?
 18 A If I knew, I don't recall now.
 19 Q Okay. Is he currently an education
 20 writer for any publication?
 21 A I don't know.
 22 Q Okay. Did you make any investigation or
 23 inquiry at any point to see what other articles he may
 24 have written in the area of education?
 25 A I didn't read any other writings by him.

1 But did you read any other articles about
 2 the Kansas City case other than what you cite in your
 3 report?
 4 A Not that I recall.
 5 Q Okay. Did you speak to anyone who was
 6 involved in the Kansas City case?
 7 A Not that I recall.
 8 Q Did you make any effort to interview
 9 anyone who was involved in the Kansas City case?
 10 A I did not do any interviews.
 11 Q Did you make any effort to locate or
 12 interview Mr. Ciotti?
 13 A I did not have any contact with him.
 14 Q Do you know where he is right now?
 15 A No.
 16 Q Okay. Did you review any of the court
 17 filings in the Kansas City case?
 18 A I didn't specifically for this report,
 19 but some years ago I may have seen some of those. I
 20 just don't recall it.
 21 Q Do you remember anything about the
 22 contents of the documents you may have seen?
 23 A I don't have any specific recollection at
 24 this point.
 25 Q Okay. And you didn't rely upon any for

1 purposes of your report?
 2 A No.
 3 Q The other piece of information that you
 4 are mentioning, can you -- could you tell me, please,
 5 what that is?
 6 A I can tell you in a general way.
 7 Q Okay.
 8 A And I don't even remember when this
 9 occurred, but at some time prior to my writing this
 10 report I had seen a documentary segment on one of the
 11 major newsmagazine shows.
 12 Q About what?
 13 A About the Kansas City case.
 14 Q Do you remember what show that was?
 15 A I don't remember which one it was.
 16 Q Did you rely upon anything you learned in
 17 that show for purposes of your report?
 18 A Only in the sense that what I read by
 19 Mr. Ciotti was consistent with what my general memory
 20 had been about the case.
 21 Q Do you know when that show was aired?
 22 A I don't recall.
 23 Q Or the name of the newsmagazine on which
 24 it appeared?
 25 A I don't recall.

1 Q Okay. Do you know the length of the
 2 segment?
 3 A I don't recall that.
 4 Q Okay. Do you know who, if anyone, was
 5 interviewed for purposes of that segment?
 6 A I don't recall.
 7 Q Okay. Have you done any investigation to
 8 look at the state of Kansas City schools at the
 9 present time?
 10 A I don't have any data or information in
 11 addition to what I have cited in my report.
 12 Q Okay. Did you make any inquiry to -- or
 13 investigation to attain more current data about the
 14 Kansas City schools other than what's reported in your
 15 report?
 16 A I did not collect any additional
 17 information.
 18 Q Any reason why not?
 19 A It was not necessary in writing my report.
 20 Q Do you know when the Kansas City case
 21 took place?
 22 A That information is contained in the
 23 report and I can tell you if you'll allow me to refer
 24 to it.
 25 Q Okay, but without reference to your

1 report, do you remember when the Kansas City case took
 2 place?
 3 A I don't recall the specific date.
 4 Q Do you know the decade or decades in
 5 which it took place without referring to your report?
 6 A I wouldn't want to speculate or guess.
 7 Q How did the --
 8 How many articles did you read by
 9 Mr. Ciotti?
 10 A I believe there were two different
 11 articles.
 12 Q Okay. And were they supplied to you by
 13 counsel?
 14 A No.
 15 Q Okay. How did you first become aware of
 16 the articles by Mr. Ciotti?
 17 A Searching the Internet.
 18 Q Okay. Were they ever mentioned to you by
 19 anyone?
 20 A Not that I recall.
 21 Q Did Mr. Salvaty mention them to you?
 22 A Not that I recall.
 23 Q Are you certain that he didn't mention
 24 them to you?
 25 A Yes.

1 Q Okay. Did any counsel for O'Melveny
 2 mention them to you?
 3 A Not that I recall.
 4 Q How did you conduct the research to find
 5 the articles?
 6 A I had recalled that segment that I had
 7 seen on a newsmagazine and I entered search terms to
 8 search for information specifically about that.
 9 Q Okay. Do you have any information about
 10 Kansas City schools other than what appears in your
 11 report?
 12 A No.
 13 Q Okay. Now, you also mentioned Sausalito
 14 schools; is that right?
 15 A Sausalito is mentioned in the quote that
 16 I excerpted.
 17 Q Okay. Did you do any --
 18 Do you know how many high schools there
 19 are in Kansas City?
 20 A No.
 21 Q How many elementary schools?
 22 A No.
 23 Q How many middle schools?
 24 A No.
 25 Q Do you know if there's been any court

1 action in that case since the appearance of
2 Mr. Ciotti's article?
3 A I don't know.
4 Q Okay.
5 Regarding Sausalito, how many high
6 schools are there in Sausalito?
7 A I think it may be an elementary district.
8 Q Are there any --
9 Do you know that for a fact? I don't
10 want you guessing.
11 A I don't recall for sure.
12 Q Okay. Do you know how many elementary
13 schools there are in Sausalito?
14 A At the time I pulled data, I think there
15 were three.
16 Q Okay. Do you know how many there are now?
17 A I have not checked since I pulled that
18 data. If it's changed in the last couple months, no.
19 Q Okay. Have you spoken to any school
20 official in Sausalito?
21 A Not that I recall.
22 Q Or any students in Sausalito?
23 A Not that I recall.
24 Q Or any parents of students in Sausalito?
25 A Not that I'm aware of specifically.

1 Q Okay. And have you spoken to any school
2 administrators in Sausalito?
3 A Not that I recall.
4 Q Okay. How did you become aware of the
5 situation you described in Sausalito?
6 A By Mr. Ciotti's report.
7 Q Okay. And you pulled test scores in
8 Sausalito; is that right?
9 A I obtained test scores off the Internet
10 for Sausalito.
11 Q Did you make any effort to verify any of
12 the information in Mr. Ciotti's article, independent
13 investigation or inquiry?
14 A I looked at the Sausalito data.
15 Q Other than that?
16 A I had my recollections of having seen the
17 newsmagazine article.
18 Q Okay. Other than that?
19 A Nothing else that I can recall.
20 Q Okay. Do you know what the class size is
21 now in Sausalito?
22 A Not off the top of my head.
23 Q Okay. Do you have an opinion --
24 Are the test scores the lowest in Marin
25 County?

1 A Well, if we could look at my table, I
2 think the data speaks for itself --
3 Q Sure.
4 A -- in terms of rankings.
5 Q Why don't we do that.
6 What are you looking at? You are looking
7 at the table --
8 A Just reviewing the context here to see --
9 Q Thanks.
10 You are looking at 37, Page 37?
11 A At the moment I'm looking at 36.
12 Q I'm sorry.
13 A Okay.
14 Q Okay. Are the test scores the lowest in
15 Marin County?
16 MR. SALVATY: Currently?
17 Q BY MR. ROSENBAUM: Yeah, currently. I'll
18 ask a foundational question.
19 As of the last reporting of results on
20 the state's assessments test, can you tell me where
21 Sausalito school stands -- scores stand with respect
22 to other scores in Marin County?
23 A Well, if you look at the bottom of the
24 table under 2002, the API's for the three elementary
25 schools ranked those schools 31 out of 41; 37 out of

1 41; and 41 out of 41. So one is at the very bottom,
2 the other two are very close to it.
3 Q Okay.
4 Do you know -- 41 means that there are
5 41 elementary schools in Sausalito? Is that your
6 interpretation of that data?
7 A No.
8 Q What is your interpretation?
9 A That there are 41 in Marin County.
10 Q Oh, I'm sorry. Of course that's right.
11 Have you looked at 2001 data?
12 A I may have. I don't recall.
13 Q You don't remember anything about the
14 results of that?
15 A Not off the top of my head.
16 Q Do you know what is spent per student in
17 -- what the district spends per student on an annual
18 basis in other elementary schools in Sausalito?
19 A Don't recall.
20 Q Did you make any inquiry to find out?
21 A I don't recall having seen that data but
22 may have somewhere.
23 Q Sitting here today, do you remember --
24 I mean, I understand you are saying you
25 are not sure that you saw it, but --

1 Well, do you remember any facts regarding
2 per-student spending in Marin County for either the
3 year 2002 or 2000?
4 A I don't recall if I did see them.
5 Q Okay. Have you undertaken any analysis
6 to look at API ranking by per-pupil annual spending?
7 MR. SALVATY: Other than what we have been
8 talking about?
9 Q BY MR. ROSENBAUM: Other than what we
10 have been talking about. In the State of California.
11 A Not that I recall.
12 Q Or anywhere in the United States?
13 A Not that I recall.
14 Well, there wouldn't be an API in other
15 places.
16 Q Okay, that's a fair point.
17 Have you looked across the country to
18 compare achievement on statewide assessment tests with
19 per-pupil spending anywhere in the country?
20 A At this point I don't recall having seen
21 that data.
22 Q Okay. Can you think of any explanation
23 as to why schools in Sausalito are in the lower
24 quarter of the API rankings for the elementary schools
25 in Marin County?

1 A I would need a lot more data to attempt
2 to answer that question.
3 Q What data would you need to have?
4 A Other information about the school and
5 the other schools in the county.
6 Q What information would you want to
7 collect?
8 MR. SALVATY: Objection. Calls for
9 speculation.
10 Q BY MR. ROSENBAUM: I don't want you to
11 speculate, Doctor. If you don't know at this time
12 what other information you would collect, just tell me.
13 A Well, if I were investigating that
14 question I would probably go back to the Internet and
15 pull available information on the SARCs, on the test
16 scores, on the API, all of the data that's currently
17 available about the schools. I would, if I were
18 actually researching this question, try to get as much
19 information as possible.
20 Q Have you ever researched that question
21 for any school, anywhere?
22 MR. SALVATY: I'm sorry, research what
23 question?
24 Q BY MR. ROSENBAUM: The question as to the
25 cause of --

1 If I use the phrase "low performance," is
2 that comfortable to you for what you've described for
3 the Sausalito schools?
4 A Low test score performance.
5 Q Okay, thanks.
6 Have you ever researched -- undertaken
7 any research to determine the causes of low test score
8 performance?
9 A Yes.
10 Q When did you do that?
11 A I don't remember the specific times.
12 Q Okay. For what school or schools?
13 A I don't remember what school it was.
14 Q Okay. Do you remember where it was
15 located?
16 A I think it was in Iowa, but I don't
17 recall very specifically.
18 Q Do you know when it was?
19 A It's been quite a few years ago.
20 Q More than 10?
21 A Yes.
22 Q Okay. Have you subsequently conducted
23 research for similar purposes?
24 A Not that I recall.
25 Q Okay. Do you remember the results of

1 what happened in Iowa? I know you are saying you
2 think it was in Iowa.
3 A I don't recall.
4 Q Okay. Did you publish your results?
5 A A research report was compiled. I don't
6 recall if it was ever published beyond that.
7 Q Okay. Who -- What did you do with the
8 research report?
9 A Again I don't have a very detailed
10 recollection of this. It was shared of course with
11 the school. May have been shared with others. I'm
12 not sure.
13 Q Okay. Do you remember what variables you
14 looked at?
15 A I don't remember any of the specifics
16 about it.
17 Q Okay. Have you looked into the question
18 at all, Doctor, in California as to the amount of
19 money districts spend per student across the state?
20 A I think I may have seen some information
21 from time to time about that.
22 Q Okay. Can you recall any of that
23 information now?
24 A Not off the top of my head, no.
25 Q Okay. Do you know where California ranks

1 as to other states in terms of per-pupil spending --

2 MR. SALVATY: Objection. Ambiguous.

3 Q BY MR. ROSENBAUM: -- at the current
4 time?

5 A I don't know.

6 Q Incidentally, the Sausalito site that you
7 have here on Page 36, the \$12,300, does that represent
8 the money that the district itself spends or the
9 school receives from the state or the state receives
10 from the state and federal government or the school
11 receives from the state, federal government and
12 district, or something else?

13 I'm trying to understand what that
14 \$12,300 represents, if you know.

15 A My recollection is that the report
16 described that in greater detail, and I don't recall
17 specifically what was said about that. The wording
18 suggests that it's a total, but one could find out I
19 think by going back to the original research.

20 Q Okay. Do you know anything else about
21 the characteristics of the schools in the Sausalito
22 elementary school district other than what appears at
23 Pages 36 and 37 of your report?

24 A I did see some additional information at
25 the time I printed the results off the Internet, but I

1 contractor.

2 Q Okay. And do you know what the findings
3 were?

4 A The question you're asking is very
5 broad. There isn't just a finding here. There are
6 pages, whole sections of reports' worth of information
7 that bears on that issue.

8 Q Okay. Tell me what you recall about the
9 findings regarding validity.

10 A First of all, validity isn't about
11 findings. Validity is about collecting evidence
12 that's related to the validity issue.

13 Q Okay. Fair point.

14 Incidentally, tell me your definition of
15 "validity" as we have been talking about it.

16 A Measuring what you intend to measure.

17 Q Okay. And were there any conclusions as
18 to whether the augmented SAT --

19 What was your understanding of what the
20 augmented SAT-9 was intended to measure?

21 A The California standards.

22 Q Okay. And were any conclusions drawn in
23 the report as to whether the augmented SAT-9 measured
24 what it was intended to measure?

25 MR. SALVATY: Objection. Overbroad.

1 don't recall it sitting here.

2 Q Okay. And do you know anything else
3 about --

4 Did you print out results for the other
5 Marin County elementary schools?

6 A Yes.

7 Q Okay. Do you know anything else about
8 the Marin -- the schools in the Marin County
9 elementary school district other than the Sausalito
10 schools, other than what appears at Pages 36 and 37 of
11 your report?

12 A Not that I recall at this time.

13 Q Okay. Doctor, if I use the phrase
14 "augmented SAT-9" what does that mean to you?

15 A That's the test that was given early in
16 the API program to -- or early in the assessment
17 program to assess California standards.

18 Q To your knowledge, was an evaluation of
19 the validity of the augmented SAT-9 ever undertaken?

20 MR. SALVATY: Objection. Vague and ambiguous.

21 THE WITNESS: Yes.

22 MR. SALVATY: Sorry.

23 Q BY MR. ROSENBAUM: Okay. And do you know
24 who undertook that analysis?

25 A The department in conjunction with the

1 THE WITNESS: Again, there weren't specific
2 conclusions. There was a large volume of evidence
3 presented on that issue.

4 Q BY MR. ROSENBAUM: Okay. And was there
5 any evidence presented that would suggest to you as an
6 expert that the augmented SAT-9 did not measure what
7 it was intended to measure?

8 MR. SALVATY: Objection. Overbroad.

9 THE WITNESS: Not that I recall.

10 Q BY MR. ROSENBAUM: Okay. Could you
11 compare for me the validity of the augmented SAT-9
12 with the SAT-9?

13 MR. SALVATY: Objection. Overbroad, vague and
14 ambiguous.

15 Q BY MR. ROSENBAUM: As part of the
16 California assessment system.

17 A I don't understand your question.

18 Q Okay.

19 What is your understanding -- Let me
20 strike that.

21 Are you familiar, Doctor, with the
22 staffing in the Department of Education with respect
23 to the intervention part of the II/USP program?

24 A I don't understand what you mean.

25 Q Do you know how large a staff there is?

1 MR. SALVATY: Let me just object. It assumes
2 facts not in evidence.
3 MR. ROSENBAUM: Well, that's a fair point.
4 Q Is there staffing at the state level with
5 respect to the intervention part of II -- of the
6 state's accountability system?
7 MR. SALVATY: Objection. Vague.
8 THE WITNESS: I know that there are people in
9 the department that work on that.
10 Q BY MR. ROSENBAUM: Okay. Do you know how
11 many?
12 A No.
13 Q Do you know what the budget is?
14 A No.
15 Q Do you know what resources are utilized?
16 MR. SALVATY: Objection. Vague and ambiguous
17 and overbroad.
18 MR. ROSENBAUM: That is a little vague.
19 THE WITNESS: I'm thinking about resources and
20 I don't really know what you are --
21 Q BY MR. ROSENBAUM: I know you are.
22 Do you know if the budget has increased
23 or decreased over the last three years?
24 MR. SALVATY: You are just talking about the
25 intervention of II/USP; correct?

1 MR. ROSENBAUM: Yeah.
2 Q Increase, decreased or remained the same?
3 A I don't know.
4 Q Have you made any inquiry to find out?
5 A I may have seen that data. I don't
6 recall it at this time.
7 Q Okay. Do you know --
8 Have you specifically compared
9 California's intervention program with the
10 intervention programs in other states?
11 A What intervention programs are you
12 referring to?
13 Q Such as II/USP.
14 MR. SALVATY: Objection. Vague and ambiguous.
15 THE WITNESS: In my mind, that's sort of like
16 comparing two state assessments that are written to
17 different sets of standards. It's sort of an apples
18 and oranges thing.
19 Q BY MR. ROSENBAUM: At Page 23, Doctor,
20 looking at the top of the second column, "The
21 Superintendent, with Board approval, may take over the
22 management of the school or may assign an intervention
23 team," do you see that sentence?
24 A Yes.
25 Q To your knowledge, has the

1 superintendent, with board approval, taken over the
2 management of any school?
3 A Can I have a minute here to --
4 Q Sure.
5 A -- check the context of this?
6 Q Sure.
7 A Okay.
8 Q To your knowledge, has the
9 superintendent, with board approval, taken over the
10 management of any school in California?
11 A Yes.
12 Q How many schools?
13 A I don't know.
14 Q Which schools?
15 A I think Compton was one, Oakland was
16 another.
17 Q I'm sorry, what's the other one?
18 A Oakland.
19 The sentence that you read refers to the
20 intervention program. The question that you asked, at
21 least as I heard it, didn't limit to that, and the two
22 examples I gave you were before that program.
23 Q Pursuant to the intervention program,
24 Doctor, has the superintendent, with board approval,
25 taken over the management of any schools?

1 A Not that I'm aware.
2 Q Have you ever made any inquiry to
3 determine whether or not the superintendent, with
4 board approval, has taken over the management of any
5 schools?
6 A I believe at the last TAC meeting it was
7 stated that they had not at that point.
8 Q Okay. Are there criteria that exist as
9 to when the superintendent, with board approval, may
10 take over the management of a school?
11 A I remember there was other statutory
12 language that went with this, including the piece that
13 I excerpted here about relation -- about specific
14 findings, and I don't recall the rest of that
15 statutory language without reviewing it.
16 Q Okay. So I don't want to put words in
17 your mouth. The answer is, you are not sure?
18 MR. SALVATY: Well, objection. That
19 mischaracterizes the testimony.
20 Q BY MR. ROSENBAUM: I don't want to
21 mischaracterize your testimony. I'm trying to
22 understand your answer.
23 A I believe there is additional statutory
24 language about how that's done that I just don't
25 recall.

1 Q Okay. Maybe you just answered this and
2 I'm not following correctly.

3 The language that you think may exist as
4 to how it is done, and your phrase how is it done,
5 does that mean that there are specific criteria that
6 exist as to -- I'm interested in in terms of the
7 circumstances under which the superintendent may take
8 over the management of a school.

9 Do you know if those criteria exist?

10 MR. SALVATY: Objection. Vague and ambiguous
11 and asked and answered.

12 THE WITNESS: Yeah, I don't know what
13 circumstances are. There have to be specific findings
14 as indicated in that language, and then there are also
15 projections afforded to principals if they're targeted
16 for replacement as part of the action. And there may
17 have been some other provisions as well that I just
18 don't recall.

19 Q BY MR. ROSENBAUM: Okay. Do you know if
20 the superintendent has assigned an intervention team
21 to any schools pursuant to the state's intervention
22 program?

23 A Schools that -- My understanding is that
24 schools that are in the intervention program have an
25 external evaluator and constitute a team to address

1 Q BY MR. ROSENBAUM: And you would need to
2 consult the language to fully answer my question; is
3 that correct?

4 A I think I would want to do that, yes.

5 Q You are aware, as you point out in your
6 report -- I'm directing your attention to Page 22 --
7 that -- and I'm looking at the first full sentence in
8 the second column of Page 22 of your report, Doctor.
9 "Participating schools were awarded state planning or
10 federal implementation grants of at least \$50,000."

11 See that?

12 A I see it --

13 Q Okay.

14 A -- that sentence.

15 Q Do you know what the federal
16 implementation grants relate to?

17 MR. SALVATY: Objection. Vague and ambiguous,
18 overbroad.

19 THE WITNESS: I'd like a minute to review the
20 context here of this.

21 Okay.

22 Q BY MR. ROSENBAUM: Okay. Do you know
23 program or programs those federal implementation
24 grants relate to?

25 MR. SALVATY: Objection. Vague, ambiguous and

1 the issues of the school from the very beginning and
2 continue on. So presumably those schools would
3 already have those teams in place. So I'm not sure
4 what you're referring to if you mean an additional
5 team beyond that.

6 Q Well, you tell me. When you use the
7 phrase "intervention team" on Page 23, in the first
8 sentence in the second column on Page 23, is that what
9 you meant by "intervention team," what you just
10 described to me?

11 A I would have to go back and look at the
12 statutory language carefully that surrounds that. It
13 appears that that might be a team that would run the
14 school in lieu of the superintendent doing it.

15 Q Do you know sitting here today whether or
16 not that's the case?

17 MR. SALVATY: Objection. Vague. As to what's
18 the case? I'm unclear.

19 MR. ROSENBAUM: A team assigned to run the
20 school, I believe is the significant part of her last
21 answer.

22 MR. SALVATY: Objection. Vague and ambiguous.

23 THE WITNESS: I think the statute would speak
24 more clearly to that if all of the language were in
25 front of us.

1 overbroad.

2 Q BY MR. ROSENBAUM: You are looking at
3 your report right now, Doctor?

4 A I was looking to see if it was in the
5 citation. I know I have seen that name before, but I
6 don't recall it.

7 Q Okay. Do you know how that program or
8 programs relates to the state's accountability system?

9 MR. SALVATY: Objection.

10 Q BY MR. ROSENBAUM: If at all.

11 MR. SALVATY: Objection. Vague and ambiguous.

12 THE WITNESS: It provides additional funding
13 for the intervention program.

14 Q BY MR. ROSENBAUM: Anything else?

15 A I don't know what you mean.

16 Q Besides providing money.

17 Are you certain it provides money in
18 addition to the state?

19 A My understanding is that the funds for
20 the intervention schools came both from federal and
21 state dollars.

22 Q Are you certain of that?

23 MR. SALVATY: Objection. That's argumentative.

24 THE WITNESS: That's my understanding.

25 Q BY MR. ROSENBAUM: Okay. Do you know

1 what the split is, how much comes from the state and
2 how much comes from the feds?

3 A I believe there are more schools funded
4 under the state money than under the federal, but I
5 don't recall the specific number.

6 Q Okay. Were you referring to something in
7 your report to answer that?

8 A I was looking to see if I had numbers of
9 schools, but I don't.

10 Q Okay. Doctor, you mentioned to me a few
11 moments ago that the department and the contractor
12 compiled evidence relating to the validity of the
13 augmented SAT-9?

14 A Yes.

15 Q Did you rely on any of that evidence in
16 preparing your report?

17 A Yes.

18 Q Okay.

19 MR. ROSENBAUM: Paul, I don't have that
20 information.

21 Q Do you have that information, Doctor?

22 A You were given part of it this afternoon.

23 Q Which part are you referring to?

24 A The Stanford Technical Manual.

25 Q Okay. Was there other evidence that you

1 A Yes.

2 Q Did you receive written materials as part
3 of your duties and responsibilities on the TAC
4 Committee that relate to the California high school
5 exam?

6 A Yes.

7 Q And also with respect to the Stanford-9,
8 written materials?

9 A It's possible.

10 Q Okay. Did you receive any materials on
11 the TAC Committee regarding II/USP?

12 A Not that I recall.

13 Q Okay. Did you rely on any of the
14 materials that you received as part -- on part of the
15 TAC Committee regarding the California high school
16 exit exam in preparing your report?

17 MR. SALVATY: Objection. Vague and ambiguous.
18 You mean did she refer to them again in preparing the
19 report?

20 Q BY MR. ROSENBAUM: Not necessarily refer
21 to them, but did they inform your knowledge that you
22 utilized in the report?

23 MR. SALVATY: Objection. Vague and ambiguous.

24 THE WITNESS: They informed my knowledge and
25 experience base with respect to the program. I did

1 relied upon regarding the validity of the augmented
2 SAT-9?

3 A Yes.

4 Q What is that information?

5 A My experience serving on the Technical
6 Advisory Committee.

7 Q Were there written materials that you
8 received on that committee that related to the
9 validity of the augmented SAT-9 that you did not hand
10 over to me this afternoon?

11 A There were written materials that we
12 looked at during the meetings.

13 Q Okay.

14 I don't have any of that, Paul.

15 Are there other written materials that
16 you have looked at in the course of your work
17 regarding the California high school exit exam, that
18 you looked at as part of your work on the TAC
19 Committee?

20 A Could you ask that one more time, please?

21 Q Yeah. I don't think I did too good of a
22 job on that.

23 You told me previously that one of the
24 subject matters that the TAC Committee considered was
25 the California high school exit exam?

1 not refer to them specifically for writing the report,
2 with the exception of the last report by the external
3 evaluator.

4 Q BY MR. ROSENBAUM: Okay. And that report
5 of the external evaluator regarding the high school
6 exit exam?

7 A Yes.

8 Q Now, I'm not asking you now if you
9 specifically quoted a particular report or information
10 that you received as part of the TAC Committee. But
11 in terms of the general body of information and
12 experience you rely upon, the documents that you
13 looked at as part of the TAC Committee, did they
14 inform you in a way that assisted you in preparing
15 this report?

16 MR. SALVATY: Objection. Vague and ambiguous.

17 THE WITNESS: As I indicated to you, I didn't
18 look at them specifically as part of the preparation,
19 but I knew about them and was aware of information
20 about the program through having gone through the
21 experience of attending the TAC meetings.

22 MR. ROSENBAUM: Okay, I haven't gotten those
23 materials either, Paul.

24 Can I take a quick bathroom break?

25 MR. SALVATY: Sure.

1 MR. ROSENBAUM: We have been close to an hour,
2 so let's break now.

3 MR. SALVATY: That's fine.

4 (A recess was taken from 2:08 till 2:20.)

5 Q BY MR. ROSENBAUM: Are you doing okay,
6 Doctor?

7 A Yes.

8 Q At Page 36 of your report you refer to
9 Paul Ciotti as a Los Angeles education writer. Do you
10 see that? It's at the top of the page, first column.

11 A Yes.

12 Q How do you know he's a Los Angeles
13 education writer?

14 A I don't recall specifically, but I think
15 I got that information off of my search on the
16 Internet.

17 Q Okay. Do you know what the source was?

18 A I don't recall specifically.

19 Q Do you believe, Doctor, that there are
20 any changes to California's accountability system that
21 Michael Russell advocates that could result in the
22 loss of federal funding?

23 MR. SALVATY: Objection. Calls for
24 speculation.

25 THE WITNESS: I don't think I have enough

1 Q BY MR. ROSENBAUM: Okay.

2 Could you please read back Dr. Phillips
3 answer, not to the last question but the prior
4 question?

5 (The answer was read.)

6 Q BY MR. ROSENBAUM: What do you mean "then
7 worry about outcomes"?

8 A I believe that he made a statement, which
9 I could find if I had time to leaf through my report
10 -- I believe I quoted it -- about needing to look at
11 inputs first and have the schools fix any problems
12 there, and then it would be appropriate after that to
13 hold schools accountable for outcomes --

14 Q Okay.

15 A -- meaning student achievement outcomes.

16 Q Okay.

17 And can you -- I'd appreciate it if you
18 could look through your report and find that statement
19 or statements.

20 Just for the record, you are looking at
21 your report right now, Doctor?

22 A Yes.

23 Q Okay.

24 MR. SALVATY: Counsel, do you want me to save
25 time or -- I don't want to assist the witness in any

1 information to be able to answer that question.

2 Q BY MR. ROSENBAUM: Okay.

3 A Although I would say that if the
4 assessment portion, the accountability piece, if
5 that's what you're referring to, was to replace the
6 outcome measures by input measures, it would be out of
7 compliance with the NCLB requirements.

8 Q You have read Michael Russell's report,
9 of course?

10 A Yes, I have read his report.

11 Q Is it your belief that that's what he's
12 advocating?

13 A My understanding is that he wants to put
14 input measures in first and take care of those, and
15 then worry about outcomes after that.

16 Q Okay. And so your criticisms of Michael
17 Russell, if I understand you correctly, they're based
18 upon that understanding of his objective?

19 MR. SALVATY: Objection. Vague, ambiguous and
20 overbroad.

21 THE WITNESS: I think my evaluation is set
22 forth in great detail in the report. It's very
23 voluminous. Dr. Russell's report is very voluminous
24 and I have taken each of the statements and assertions
25 individually and addressed them.

1 way. I was just thinking it might be better saving
2 time.

3 MR. ROSENBAUM: Let's let her find it.

4 MR. SALVATY: Okay.

5 THE WITNESS: Okay.

6 Q BY MR. ROSENBAUM: Okay. Have you had a
7 chance to review your report?

8 A Yes.

9 Q Did you find what you were looking for?

10 A Yes, I did.

11 Q Can you identify the statement or
12 statements?

13 A Yes.

14 On Page 34, it says, "Given that inputs
15 affect outcomes and that at times it is the inputs
16 that must be altered before outcomes are impacted,
17 schools must be allowed and encouraged to set goals
18 that focus first on the inputs."

19 Q Okay. Thank you.

20 Doctor, do you know what -- Let me
21 strike that.

22 Could you turn to Page 52 of your report,
23 please?

24 Do you see the box statement that you
25 quote from Russell "Aggregating scores at the school

1 level masks the successes and failures at the grade
2 and classroom levels"?

3 Do you see that statement?

4 A Yes.

5 Q Okay. Do you agree or disagree with that
6 statement?

7 A A school level index tells you about the
8 school as a whole. If you want to know about specific
9 subjects or specific grades, then you need to look at
10 that information to do that.

11 Q Thank you.

12 And the second box on Page 52 that
13 includes a Russell quote, let me read it to you,
14 please: "While aggregation at the grade or classroom
15 level may be a poor fix for this problem, it might
16 promote closer examination of practices and issues
17 within these smaller operational units."

18 Do you agree or disagree with that
19 statement?

20 A The context of both of the statements
21 that you quoted, as I recall it, was one of advocating
22 that the API should measure at a different level than
23 what it does, and there are many other issues to
24 consider in making that judgment, one of which is
25 accuracy and fairness to the schools given the sample

1 context was that he was suggesting that there was a
2 problem with the API. Because it was a school level
3 measure he was advocating that one use grade level or
4 classroom level data, and then he acknowledges,
5 however, later in the report what I quoted in that
6 box, that it's a poor fix for the problem that he has
7 identified.

8 Q What about the second part? Do you
9 think, Doctor, that aggregation at the grade or
10 classroom level might promote closer examination and
11 practices and issues within these smaller operational
12 units?

13 Do you have an opinion as to whether
14 that's true or false?

15 MR. SALVATY: Objection. Incomplete
16 hypothetical.

17 THE WITNESS: With respect to that piece, the
18 information is already available along those lines to
19 schools and districts, so they are already able to do
20 that.

21 Q BY MR. ROSENBAUM: Okay. That's not my
22 question, though.

23 My question is, Do you think it might
24 promote closer examination of practices and issues
25 within these smaller operational units?

1 sizes that are involved, and that issue was considered
2 by the PSAA Advisory Committee in determining to use a
3 single school indicator.

4 Q How do you know that that was considered?

5 A It was in the minutes and the reports
6 from those meetings.

7 Q Okay. My question, though, Doctor, is
8 regarding to this statement "While aggregation at the
9 grade and classroom level..." and I'm not going to
10 complete it because you see it.

11 That statement standing alone, do you
12 agree or disagree with it?

13 MR. SALVATY: Objection. Asked and answered.

14 THE WITNESS: To the extent that he says that
15 his own suggestion of looking at individual grades and
16 subjects may be a poor fix for this problem, to the
17 extent that he means the problem is that the API is a
18 school level measure and it's not an individual
19 measure, I think he is correct, that replacing it with
20 these other measures would not be accurate and fair to
21 schools as debated -- as indicated by the PSAA
22 Advisory Committee and the technical design group.

23 Q BY MR. ROSENBAUM: You think that's what
24 he's saying there?

25 A As I indicated, my recollection of the

1 MR. SALVATY: Objection. Asked and answered.

2 THE WITNESS: The word "it" appears to refer to
3 aggregation at the grade or classroom level.

4 Q BY MR. ROSENBAUM: I agree with that.

5 A Aggregation at the grade level is already
6 available, and as we discussed yesterday, districts
7 could obtain aggregation at the classroom level. So
8 this is already possible within the system.

9 Q I'm not asking you whether it's available
10 or not available. I'm asking whether you think
11 aggregation at the grade or classroom level might
12 promote closer examination of practices and issues
13 within these smaller operational units.

14 MR. SALVATY: It's been asked and answered.

15 MR. ROSENBAUM: It really hasn't, Paul. She is
16 saying she thinks that it already exists. That may or
17 may not be the case, but my question is a question as
18 to the precise statement that she quotes from Russell.

19 MR. SALVATY: Well, the answer that's already
20 down is a response to your question, I believe.

21 Q BY MR. ROSENBAUM: Do you think, Doctor,
22 that aggregation at the grade or classroom level might
23 promote closer examination of practices and issues
24 within these smaller operational units?

25 MR. SALVATY: Objection. Asked and answered,

1 incomplete hypothetical.

2 THE WITNESS: The context of that quote is
3 suggesting: If this were done, then something might
4 happen. The "if" part is already satisfied. The "if"
5 has already been done.

6 Q BY MR. ROSENBAUM: I'm asking you about
7 the second part. I'm not asking you any if's here.
8 There is no "if" in that statement.

9 I'm asking you as a stand-alone
10 statement -- Whether it came from Michael Russell or
11 John Doe, I'm asking you whether you think aggregation
12 at the grade or classroom level might promote closer
13 examination of practices and issues within these
14 smaller operational units.

15 That's my question. I don't care where
16 -- It's irrelevant to me whether the source is
17 Russell or John Doe.

18 MR. SALVATY: Objection. Incomplete
19 hypothetical, asked and answered.

20 THE WITNESS: I believe the context is relevant
21 because it talks about what might happen if something
22 were done, and that something has already been done,
23 so we're not in a position to see what might happen,
24 for example, in California if that information
25 remained available. It's already available.

1 NAEP test?

2 A Well, the NAEP test isn't published in
3 the same sense as a standardized achievement test.
4 The NAEP test is administered by the federal
5 government and it has had contractor assistance in
6 carrying out that activity.

7 Q Okay. Do you know who writes the NAEP
8 test or produces it?

9 A It's the government in conjunction with
10 the contracting support that it receives.

11 Q Do you know the source of the contracting
12 support that the government now receives?

13 A I believe ETS has had -- has done some of
14 that work. There may be others.

15 Q Do you know if ETS is currently doing
16 work related to NAEP?

17 A I would want to check before giving you
18 an answer on that.

19 Q Okay. Have you ever cited NAEP results
20 in any of your publications?

21 A Yes.

22 Q Okay. And for what purpose have you
23 cited NAEP results?

24 A NAEP results are cited in this document.

25 Q Okay. Besides this document, have you

1 Q BY MR. ROSENBAUM: That's your best and
2 fullest answer, Doctor? I want the record really
3 clear here.

4 A That's my response to the question that
5 you asked.

6 I will add, though, that if that data is
7 available, it is useful to districts and schools to
8 have that information, if that's what you're asking.

9 Q How do you think it's useful, Doctor?

10 A They can use it to evaluate their
11 programs.

12 Q You of course know what the NAEP test is,
13 N-A-E-P?

14 A If you're referring to the NAEP in my
15 report, yes.

16 Q Okay. Have you ever --
17 Who publishes NAEP?

18 A It's developed by a contractor to the
19 federal government.

20 Q Do you know the name of that contractor?

21 A I believe more than one contractor has
22 been involved --

23 Q Do you know currently --

24 A -- in that work.

25 Q Do you know currently who publishes the

1 ever cited NAEP results?

2 A I may have. I don't recall.

3 Q Okay. Directing your attention, Doctor,
4 to Page 41 of your report, do you have that in front
5 of you?

6 A Not yet.

7 Q Okay, direct your attention to the last
8 sentence in the first column. I'll read it to you:

9 "Because students and schools do not receive results"
10 -- referring to NAEP results -- "students are not
11 likely to be highly motivated in taking the NAEP test
12 and there is little incentive for schools to be
13 concerned about their performance."

14 Do you see that sentence?

15 A Yes.

16 Q Can you cite me any academic scholarship
17 that supports that statement?

18 A I'd like to take a minute to review the
19 context here.

20 Q Sure.

21 A Okay.

22 Q Do you know of any academic scholarship
23 that supports that statement, Doctor?

24 A There is test data available in other

25 states that clearly demonstrates differences in

1 student performance in motivated versus unmotivated
2 conditions.

3 Q Okay. I would like you to cite me any
4 study or survey or published paper that you believe
5 supports the statement "Because students in schools do
6 not receive NAEP results, students are not likely to
7 be highly motivated when taking the NAEP test and
8 there is little incentive for schools to be concerned
9 about their performance."

10 A It is well-known by psychometricians that
11 students perform better under motivated versus
12 unmotivated conditions. I believe that topic is
13 discussed in measurement textbooks.

14 Q Can you name those textbooks that you are
15 relying on for your answer?

16 A I have looked at a lot of textbooks over
17 the years.

18 Q You may well have, but I'm asking you to
19 cite me to any authority that you rely upon for this
20 statement or any part of this statement.

21 A I have relied on my knowledge and
22 experience in psychometrics to make that statement.

23 Q Can you cite any specific authority
24 beyond that general knowledge and experience?

25 A I believe that if I were to look back in

1 standard setting procedures; am I understanding you
2 correctly?

3 A Yes.

4 Q And what do you mean by "standard setting
5 procedure"?

6 A The method that was used to determine the
7 performance categories on the test.

8 Q Have you read any other criticisms of the
9 NAEP test?

10 A Not that I recall.

11 Q Okay. Do you know who are the users of
12 the NAEP test?

13 A Primarily the federal government.

14 Q Okay. And do you know for what purposes
15 the federal government uses the NAEP test?

16 MR. SALVATY: Objection. Lacks foundation.

17 THE WITNESS: Tracking the achievement of
18 students in specified subjects and grades over time.

19 Q BY MR. ROSENBAUM: Okay. And do you
20 disagree with that use by the federal government?

21 MR. SALVATY: Objection. Vague and ambiguous.

22 THE WITNESS: I don't understand what you mean
23 by "disagree."

24 Q BY MR. ROSENBAUM: Do you believe that
25 the NAEP test is a reliable and valid test for the

1 measurement textbooks I could find discussions of that
2 point. I also could obtain statewide data that would
3 support that statement.

4 Q Okay. Sitting here today, can you cite
5 to me any specific authority?

6 A I have just told you what I think the
7 authority is for that statement.

8 Q Okay.

9 Have you read any published criticisms of
10 the NAEP test?

11 A Yes.

12 Q Okay. And what have you --

13 What criticisms have you read?

14 A I read information about the standard
15 setting methodology used on the test.

16 Q Okay. And what are you referring to?
17 Particularly. I'm not interested in the substance at
18 this point. I want to know what article or articles
19 or book or books or paper or papers you're referring
20 to.

21 A I don't recall the name of it off the top
22 of my head.

23 Q Do you know when you read it?

24 A Several years ago.

25 Q Okay. And it was critical of the

1 purpose that you just stated?

2 A If you're asking me to comment
3 specifically on the technical quality of the test, I
4 would want to review the data and information about
5 that before offering such an opinion.

6 Q Okay.

7 Could you please read me the witness'
8 answer where she referred to the federal government
9 tracking? I think it was about two questions ago.

10 (The question and answer were read.)

11 Q BY MR. ROSENBAUM: Do you believe that's
12 an appropriate use of the NAEP test by the federal
13 government?

14 MR. SALVATY: Objection. Lacks foundation,
15 vague and ambiguous.

16 THE WITNESS: I don't understand what you mean
17 by "appropriate use."

18 Q BY MR. ROSENBAUM: You have no idea what
19 that means?

20 A You seem to be asking me if it's
21 acceptable for the government to want to do that, and
22 it seems to me that they can choose that if they wish.

23 Q Well, I'm not suggesting they're breaking

24 the law by doing it. I'm asking you if you as a

25 psychometrician believe that's an appropriate use of

1 the NAEP test given the characteristics of that test
2 as you are aware of them.

3 MR. SALVATY: I object. It's been asked and
4 answered and calls for speculation. Witness testified
5 she can't provide an opinion about the validity of
6 that test.

7 Q BY MR. ROSENBAUM: If you can't do it, I
8 want the record to reflect that. If you don't have a
9 view as to that, just let the record reflect that.

10 MR. SALVATY: It already does.

11 THE WITNESS: My general understanding is that
12 that test was designed specifically to serve that
13 purpose of the government. I have not looked at any
14 of the technical information recently and would wish
15 to do so before providing a technical opinion about
16 that test.

17 Q BY MR. ROSENBAUM: Okay. Looking at
18 Page 41, Doctor, the sentence that reads -- I'm in the
19 second full paragraph in the second column. You see
20 the sentence that starts with the word "Nonetheless"?
21 It's about two thirds of the way down on the last
22 paragraph on 41.

23 A Okay.

24 Q Okay. "Nonetheless, state determinations
25 of proficiency for a grade and content area should not

1 differences, you wouldn't expect the results to be
2 widely different, that is, you wouldn't expect one
3 test for proficiency in mathematics for the United
4 States at a particular grade level to be different by
5 a large amount from NAEP. Like the example I gave in
6 the next sentence, I used 80 percent, 25 percent, for
7 example. Even though they are different measures of
8 proficiency, you wouldn't expect that much
9 discrepancy.

10 Q Okay. My question really deals with the
11 latter part of your statement.

12 Why wouldn't you expect that the scores
13 would be widely different, as you use that phrase?

14 A What I had in mind as I wrote this was
15 the new NCLB standards that are requiring all states
16 to determine proficiency, and there it's an assumption
17 there that this is proficient on challenging content,
18 not proficient on low level, basic skills content,
19 enabling skills, that sort of thing.

20 Some statewide tests in the past have
21 been that, and so in that case you would get a
22 difference. But if you have a state standards test
23 that's challenging content for the subject and grade
24 level, then you would expect probably that scores
25 would rise more quickly on that, but still be

1 be extremely different from NAEP results."

2 Do you see that sentence?

3 A Yes.

4 Q Okay, what's the basis for that
5 statement, please?

6 A The context of that statement is in
7 regard to state standards tests versus the NAEP test,
8 state standards tests being directed specifically at
9 the state standards that are supposed to be taught in
10 the schools, the NAEP test developed to a set of
11 specifications put together by the federal government
12 in developing that test.

13 And the statement "and also that
14 proficiency is a category often on state tests." It's
15 also a category on NAEP, but it doesn't mean the same
16 thing in both instruments. And there is some other
17 things in my report that I also detailed ways in which
18 those tests are different.

19 So the statement is talking about the
20 fact before that that it is reasonable to expect the
21 state test to increase because the state standards are
22 being targeted faster than you might expect NAEP
23 results to change.

24 And the statement then refers to the fact
25 that even given all of those limitations and

1 reasonably close to the NAEP results.

2 Q Okay. And in the last sentence on
3 Page 41, Doctor, where you use the phrase "cause for
4 concern," do you see that?

5 "For example, if a state test indicated
6 that 80 percent of its students were proficient in
7 math and NAEP indicated 25 percent proficient, there
8 would be cause for concern."

9 Do you see that?

10 A Yes.

11 Q What do you mean by the phrase "cause for
12 concern"?

13 A What I just explained in my previous
14 answer.

15 Q Okay. What if the state test indicated
16 that 75 percent of its students were proficient in
17 math and NAEP indicated 30 percent proficient? Would
18 there be cause for concern, as you used that phrase?

19 A Let me put it this way: The larger the
20 difference that you see under the conditions that I
21 describe -- and it's very important that those
22 conditions be satisfied -- the more it's an anomalous
23 result, it's something you want to investigate.

24 Q Would there be cause for concern in your
25 mind if it were 75 percent of a state student's

1 proficient in math and NAEP indicated 30 percent
2 proficiency?

3 A It appears to me what you are looking
4 for is some demarcation of how big is too big, and I'm
5 not really prepared to give you an exact answer on
6 that.

7 I was simply trying to illustrate when
8 they are a lot different under the circumstances I
9 indicated, that would be an anomalous result.

10 Q Can you give me any better guide than 80
11 versus 25 percent?

12 A I might be able to do that if we were
13 talking about a particular state program and I had the
14 data and the information in front of me about what the
15 state standards test measured versus what NAEP
16 measured and other information about the sampling
17 error in the state.

18 Q Well, if the California test, the present
19 California test indicated that 75 percent of the state
20 students were proficient in math at the fourth grade
21 level and NAEP indicated 30 percent proficiency, would
22 that be a cause of concern for you?

23 MR. SALVATY: Objection. Incomplete
24 hypothetical, asked and answered.

25 THE WITNESS: To give a good answer to that I

1 produced that data. In a general way, though,
2 I would not expect to see that big a difference
3 in California.")

4 Q BY MR. ROSENBAUM: Is that the answer
5 you are referring to?

6 A Yes.

7 Q Thanks.

8 What about 55 percent of the state
9 students proficient in math on the California test and
10 NAEP indicated that 35 percent proficiency?

11 MR. SALVATY: Objection. Incomplete
12 hypothetical.

13 THE WITNESS: As I indicated to you before,
14 there is no gold standard here, there is no magic
15 difference, and you are just giving multiple different
16 hypotheticals, and I would do the same thing to try to
17 evaluate it: Look at the standards side by side and
18 try to figure out how similar they are, look at the
19 sampling of students that produced the data and then
20 think about whether, in light of all the available
21 information, that result was unexpected.

22 MR. ROSENBAUM: Okay, let's take a quick
23 break.

24 (Whereupon, Mr. Herron entered the
25 deposition room, and Mr. Salvaty

1 would want to put the California standards against the
2 NAEP standards and find out more about the sampling of
3 students that produced that data. In a general way,
4 though, I would not expect to see that big a
5 difference in California.

6 Q BY MR. ROSENBAUM: What about same
7 hypothetical: 65 percent and 35 percent, 65 percent
8 of California students at Grade 4 were proficient in
9 math on the state test and NAEP indicated 35 percent
10 proficiency?

11 MR. SALVATY: Objection. Incomplete
12 hypothetical.

13 THE WITNESS: Same answer I have already given.

14 Q BY MR. ROSENBAUM: Which one is that?

15 A The one I gave to your other set of
16 numbers.

17 Q Help me out here. Why don't you tell me
18 what that answer is.

19 A Could we have her read it back again?

20 Q Sure.

21 (The answer was read, as follows:

22 "THE WITNESS: To give a good answer to
23 that I would want to put the California
24 standards against the NAEP standards and find
25 out more about the sampling of students that

1 permanently exited the deposition room.)
2 (A recess was taken from 3:03 till 3:11.)

3 Q BY MR. ROSENBAUM: You doing okay,
4 Doctor?

5 A Yes.

6 Q Let me direct your attention to Page 28
7 of your report, please. Looking, Doctor, in the
8 second column, do you see the sentence that says, at
9 the bottom of the page, "Russell claims that the
10 purpose of California's accountability system is
11 unclear"?

12 A Yes.

13 Q Do you see that?

14 A I see that.

15 Q Where does Russell claim that in his
16 report?

17 MR. HERRON: Do you have a copy of the report?

18 MR. ROSENBAUM: I do.

19 Let's mark as Exhibit 2 to this
20 deposition a multi-paging document titled "Expert
21 Witness Declaration Re Michael Russell." I'll have
22 that marked and ask it be placed in front of the
23 witness, and provide counsel with a copy of it.

24 MR. HERRON: Thank you.

25 (Plaintiffs' Exhibit 2 was marked for

1 identification by the Court Reporter.)
 2 Q BY MR. ROSENBAUM: Doctor, just for the
 3 record, Exhibit 2 is now in front of you, the Russell
 4 report?
 5 A Yes.
 6 Q Okay.
 7 MR. HERRON: Dr. Phillips, the question I think
 8 is where he says this in his report. If you can
 9 answer that without reading the report, then please
 10 do.
 11 Q BY MR. ROSENBAUM: And you are also
 12 free --
 13 David, previously I asked a similar
 14 question, and Dr. Phillips reviewed her report.
 15 MR. HERRON: Mm-hmm.
 16 MR. ROSENBAUM: I don't have any objection to
 17 you doing that, either.
 18 MR. HERRON: Okay.
 19 Q BY MR. ROSENBAUM: So either, as David
 20 said, if you can do it without reference to the
 21 report; if you want to look at the report, that's
 22 fine; if you want to look at your own report, that's
 23 fine.
 24 MR. HERRON: Any luck?
 25 THE WITNESS: Not yet.

1 Q BY MR. ROSENBAUM: Doctor, you are up to
 2 Page 61 of the report; is that right?
 3 A I'm on Page 62.
 4 Q 62, I'm sorry.
 5 And 61 is the appendix, where the
 6 appendix begins?
 7 A Yes.
 8 Q And you have been going through each page
 9 of the report?
 10 A I have been skimming, skipping some
 11 sections.
 12 Q Okay. Well, I don't want to -- I
 13 certainly don't want to curtail your examination, but
 14 I'm pleased to limit my question to the first 61 pages
 15 of the report. So if you feel a need to go back and
 16 look at any of those first 61 pages, that's fine with
 17 me.
 18 A I don't recall that your question was
 19 limited to the report. I thought you asked me what
 20 was the source for that statement or where did I find
 21 that information.
 22 Q Sure, that was my question.
 23 I'll tell you what, Doctor. You can go
 24 ahead looking, if you like.
 25 Okay. Have you gone through the report

1 now, Doctor?
 2 A Yes, I have.
 3 Q Okay. Could you respond to my question,
 4 please?
 5 A Yes.
 6 I did not find the source of that
 7 information in the report. I now believe it must have
 8 been in the deposition testimony of Dr. Russell.
 9 Q Okay.
 10 Doctor, if I could ask you, please, could
 11 you turn to Page 30 of your report, please?
 12 Do you see where it says, "High school
 13 scores decreased during this period..."? I'm going to
 14 point you to it. It's in the second column and it's
 15 beneath the table. It's the second sentence beneath
 16 the table in Column 2.
 17 "High school scores decreased during this
 18 period but that may have been due to changes in the
 19 difficulty of the test because the reported results do
 20 not reflect equating of test forms across years."
 21 Again feel free to contextualize any what
 22 you'd like, but do you see the sentence I'm pointing
 23 to?
 24 A Yes, I do.
 25 Q Did you undertake any inquiry or

1 investigation to determine what the causes of the
 2 decrease of the high school scores were during the
 3 period that you refer to on this page?
 4 A I'd like to have a minute here to see
 5 where this comes from.
 6 Q Sure.
 7 A Okay.
 8 Q Okay. My question -- Can the question
 9 be read back?
 10 You took a look at Table 2-B just now?
 11 A Yes.
 12 Q Okay.
 13 Could I please have the last question
 14 read to the witness again?
 15 (The question was read.)
 16 THE WITNESS: The cause that I describe in this
 17 sentence you referred me to does not require a special
 18 inquiry to determine.
 19 Q BY MR. ROSENBAUM: Why is that?
 20 A Why is what?
 21 Q Why doesn't it require a specific inquiry?
 22 A Because one can tell from the data that
 23 that might be a factor.
 24 Q Can you think of any other factors that
 25 might explain the decrease of high school scores

1 during this period?

2 A The point of that sentence is to point
3 out that the data that's being compared is not on the
4 same scale, it's proportions across years for tests
5 that are not equated, so it may in fact be true that
6 the decrease didn't occur, it just appears to be a
7 decrease.

8 Q That's not my question. That's not
9 responsive.

10 My question is, Can you think of any
11 other explanations besides the explanation you
12 provided for the decrease in high school scores?

13 MR. HERRON: Objection. Calls for speculation.

14 Q BY MR. ROSENBAUM: I don't want you to
15 speculate, Doctor. If you can't think of any other
16 reasons without speculating, please follow your
17 attorney's admonition.

18 A Your question said the decrease, and the
19 sentence you referred me to indicates that it's not
20 clear that there necessarily was one. So I understand
21 your question to be asking me why those numbers are
22 negative in the table, and I believe that it may have
23 had something to do with equating, and without making
24 that adjustment I don't know whether they're negative
25 or not and I'm not in a position to speculate further

1 answered.

2 You may respond.

3 THE WITNESS: I've tried to give you the best
4 answer that I can with respect to my knowledge of the
5 system and the data that occurs there. And without
6 knowing for sure what the information is and just
7 pulling it out of context and changing it, I don't
8 know how to respond to that kind of question.

9 Q BY MR. ROSENBAUM: Doctor, on Page 30 if
10 you'd look at the sentence "High school performance
11 was relatively unchanged across the board, but may
12 improve when cohorts that receive standards based
13 instruction throughout elementary and middle school
14 reach the high school level," do you see that
15 sentence? It begins at the very bottom of Page 30 and
16 continues to the next page.

17 A Can you give me the beginning of that
18 sentence again?

19 Q Sure. It's the last sentence in the
20 first column on Page 30.

21 "High school performance was relatively
22 unchanged across the board, but may improve when
23 cohorts that receive standards based instruction
24 throughout elementary and middle school reach the high
25 school level."

1 about that data.

2 Q Can you think of any other explanation
3 for why the high school scores decreased besides the
4 one that you presented here?

5 MR. HERRON: Same objection.

6 THE WITNESS: The point I'm trying to make is
7 that I don't know that they did.

8 Q BY MR. ROSENBAUM: Your sentence says
9 "high school scores decreased," doesn't it, Doctor?

10 A I am referring specifically to the
11 information presented in the table above and
12 describing that information, and that information
13 shows negative numbers, and that's what I'm referring
14 to, is that tabular information, and that comes from
15 Table 2-B and the proportions that were unadjusted.

16 Q Not responsive. Third time.

17 Doctor, do you think there is any
18 possibility that the high school scores did decrease?

19 A I don't know for sure whether they did
20 or not or whether that's an artifact.

21 Q If they did decrease and it's not an
22 artifact, can you think of any explanations for why
23 they did decrease?

24 MR. HERRON: Objection. Incomplete, improper
25 hypothetical, calls for speculation, asked and

1 Do you see that sentence?

2 A Yes.

3 Q Okay. Can you think of any other outcome
4 that may result besides the possibility of improving
5 when cohorts receive standards based instruction
6 throughout elementary and middle school reach the high
7 school level?

8 A I don't understand what you're asking.

9 Q I'm saying, You said that the scores
10 might improve -- is that right? -- to the high school
11 performance?

12 A Under the condition that is described at
13 the end of that sentence.

14 Q Yeah.

15 Can you think of any other possibilities?

16 A Possibilities for what?

17 Q What might happen to the high school
18 performance scores when cohorts receive standards
19 based instruction throughout elementary and middle
20 school when those cohorts reach the high school level.

21 A I expect that those students would be
22 better prepared in terms of prerequisite and enabling
23 skills, and I would expect that would help them to do
24 better.

25 Q Can you attach a probability to that,

1 likelihood of that?
 2 How confident are you of that conclusion?
 3 A That would be speculation.
 4 Q Look at Page 31, if you would, please,
 5 Doctor. I'm interested in the first full paragraph on
 6 that page.
 7 Do you have that in front of you?
 8 A Yes.
 9 Q And the second sentence of the first full
 10 paragraph: "When additional data on changes in
 11 percent proficient or above become available in future
 12 years, the relative gains for these groups on that
 13 more meaningful metric can be determined."
 14 Do you see that?
 15 A Yes.
 16 Q What do you mean by "more meaningful
 17 metric"?
 18 Why did you use that phrase?
 19 A That data is reflective of the standards
 20 that have been set on those exams.
 21 Q Say that again, please.
 22 Or I can just have it repeated to me,
 23 please.
 24 (The answer was read.)
 25 Q BY MR. ROSENBAUM: Okay.

1 Q And the schools that you chose for
 2 inclusion are Cahuenga Elementary, Coronado
 3 Elementary, Edison-McNair Academy, Bunche Middle
 4 School, Luther Burbank Middle School, Dorsey Senior
 5 High School and Crenshaw Senior High School.
 6 Do I get that right?
 7 A Yes.
 8 Q Okay. And how -- Did you apply any
 9 criteria for selecting those schools for inclusion in
 10 Table 3-B and your discussion on Page 31 of your text?
 11 A Yes.
 12 Q What was that?
 13 A Those are schools attended by the named
 14 plaintiffs in this lawsuit.
 15 Q Okay. Were there other schools attended
 16 by the named plaintiffs in the lawsuit besides these
 17 schools on Table 3-B?
 18 A Yes.
 19 Q Okay. Why didn't you include any of the
 20 other schools?
 21 A The first selection that I made with
 22 respect to some later data that's in this report,
 23 Tables 13-A through C, involved all of the schools
 24 attended by the named plaintiffs that were listed in
 25 their liability statement as having problems with

1 And why would that be more meaningful?
 2 MR. HERRON: Objection. Vague.
 3 Q BY MR. ROSENBAUM: As you used that
 4 phrase on Page 31.
 5 MR. HERRON: Misconstrues testimony.
 6 THE WITNESS: The data prior to that time
 7 doesn't give you any standards based or any
 8 information based on standards being set with respect
 9 to quality of performance. That data does so.
 10 Q BY MR. ROSENBAUM: Thank you.
 11 Doctor, on Page 31, you specifically
 12 reference certain schools; is that right?
 13 A Where are you referring?
 14 Q Well, for example, you cite to
 15 Table 3-B. Do you see that citation?
 16 A I see a reference to Table 3-B.
 17 Q Okay. And could you turn to Table 3-B,
 18 please?
 19 Did you prepare Table --
 20 Do you have that in front of you?
 21 A Yes.
 22 Q I note yours is in color and mind tends
 23 not to be.
 24 Did you prepare Table 3-B?
 25 A Yes.

1 teacher quality.
 2 From that group of schools, I
 3 constructed this table to illustrate the differences
 4 in performance among those schools.
 5 So I chose schools at both ends of the
 6 continuum from the grouping that I had.
 7 Q Okay. Thanks.
 8 (A discussion was held off the record
 9 between the witness and her counsel.)
 10 MR. HERRON: She would like to take a break,
 11 please.
 12 MR. ROSENBAUM: Sure.
 13 MR. HERRON: Thank you.
 14 (A recess was taken from 4:06 till 4:15.)
 15 Q BY MR. ROSENBAUM: Doing okay, Doctor?
 16 A Yes.
 17 Q Okay.
 18 Doctor, do you know whether English
 19 learners -- whether or not there are any English
 20 learners in California who were not exposed to
 21 information that appeared on the STAR Assessment Test
 22 that they took at any point in the process?
 23 MR. HERRON: Objection. Vague and ambiguous,
 24 calls for speculation.
 25 THE WITNESS: As we have talked about earlier,

1 if you are talking about specific information about
2 individual students or individual schools, I don't
3 have any information like that.

4 Q BY MR. ROSENBAUM: Okay. And if you
5 already answered this for me, just bear with me, but
6 with respect specifically to English learners, did you
7 make any inquiry to determine whether or not there
8 were English learners or schools attended
9 predominantly by English learners where students did
10 not have access to information taught on the STAR
11 Assessment Test?

12 MR. HERRON: Same objections. Compound.

13 THE WITNESS: Same answer.

14 Q BY MR. ROSENBAUM: Could you turn to
15 Chart 16-A?

16 And you prepared that chart, Doctor?

17 A Yes.

18 Q If there were English learner students,
19 Doctor, who had not been exposed to information taught
20 on the Stanford tests referenced here, could that
21 explain any of the results that are reflected on this
22 chart?

23 MR. HERRON: Objection. Calls for speculation,
24 vague and ambiguous. Asked and answered in part.

25 THE WITNESS: It's not clear to me what results

1 Q I'm sorry. Thanks.

2 Do you have a view as to whether or not
3 the state's grants of \$50,000 resulted in improved
4 academic achievement at the schools receiving those
5 grants?

6 MR. HERRON: Objection. Calls for speculation,
7 vastly overbroad.

8 Q BY MR. ROSENBAUM: I don't want you to
9 speculate, Doctor. If you don't know or you haven't
10 thought about it, just tell me.

11 A There is information contained in the
12 external evaluator's reports for the first cohort of
13 students that received II/USP funding versus a group
14 that did not, and it was showing an initial trend
15 toward higher achievement for students in the cohort
16 that had received the funding.

17 Q Do you draw any conclusions from that
18 statement with respect to the impact of the \$50,000 on
19 academic achievement?

20 MR. HERRON: Objection. Asked and answered the
21 question before.

22 THE WITNESS: The grant that I'm thinking about
23 and referring to is in Chart 12-C, and it's a
24 comparison from 1997 to '98 school year, up to
25 2000-2001. This was prepared by the external

1 you're referring to.

2 Q BY MR. ROSENBAUM: Well, could it affect
3 the performance of the English learners and their
4 compare -- I'll break it down.

5 Could it affect the performance of
6 English learners that's reflected on Chart 16-A?

7 A Could what reflect their performance?

8 Q If there were English learner students
9 who had not been exposed to the information on the
10 Stanford tests that are referenced in this chart.

11 MR. HERRON: Same objections.

12 THE WITNESS: If you are asking me if English
13 learners had not been taught the skills tested by the
14 Stanford, if that would affect their performance, the
15 answer to that is yes, and that's true for any
16 student.

17 Q BY MR. ROSENBAUM: Okay. Let me ask you,
18 if you would, Doctor, to turn to Page 22.

19 You see -- I'm looking at the second
20 column, the first full sentence. We have talked about
21 this before. "Participating students (sic) were
22 awarded state planning or federal implementation
23 grants of at least \$50,000."

24 Do you see that sentence?

25 A Yes. It's "participating schools."

1 evaluator. And there are three different variables
2 there on which comparisons were made, and there seems
3 to be a general trend toward higher performance on API
4 and SAT-9 mathematics for the group that had the
5 II/USP funding.

6 Q BY MR. ROSENBAUM: Okay. And you may
7 have just answered this question, and if you did just
8 tell me that, but do you -- do you attribute the
9 growth that you referenced to me to the \$50,000 in
10 whole or in part?

11 A If you are asking whether one can
12 attribute causation to a particular variable, this is
13 trend data and it doesn't tell you what caused it. It
14 simply shows you that something changed. That was one
15 of the variables that was different. There may have
16 been others and you'll have to do a true experiment if
17 you want to be able to attribute causation. And to do
18 that, you have to hold everything else constant, which
19 is of course very difficult to do.

20 Q In a practical sense it's impossible,
21 isn't it, Doctor?

22 MR. HERRON: Objection. Argumentative, vague
23 and ambiguous.

24 THE WITNESS: It is done in the medical context
25 so it can be done. It typically has not been done

1 very often in an educational setting.
 2 Q BY MR. ROSENBAUM: Can you think of
 3 anyplace where it has been done in an educational
 4 setting?
 5 MR. HERRON: Objection. Vague.
 6 THE WITNESS: Yes.
 7 Q BY MR. ROSENBAUM: Where?
 8 A Where two instructional programs in a
 9 subject matter at a particular grade level are
 10 compared, where two matching schools are each randomly
 11 assigned to one of the programs and use it for some
 12 period of time.
 13 Q Can you think of any other examples in
 14 the education area that you are familiar with?
 15 A I'm sorry, I couldn't hear what you
 16 said. Can you do that once more?
 17 Q I can, but it's probably better if it's
 18 read back.
 19 (The question was read.)
 20 THE WITNESS: That's all that comes to mind at
 21 the moment.
 22 Q BY MR. ROSENBAUM: Okay. Thank you.
 23 Doctor, if you wouldn't mind, would you
 24 turn to Page 67, please.
 25 MR. HERRON: 67?

1 MR. ROSENBAUM: Right.
 2 Q Do you have that in front of you?
 3 A Yes.
 4 Q You see that sentence where it says, on
 5 the second full paragraph, "Even if some students drop
 6 out due to the challenge of higher standards, should a
 7 testing program designed to identify unsuccessful
 8 schools and students be abandoned because some
 9 students have given up?"
 10 Do you see that?
 11 A Yes.
 12 Q Okay. Does any of plaintiffs' experts --
 13 Do any of plaintiffs' experts to your
 14 knowledge advocate that position, that a testing
 15 program designed to identify unsuccessful schools and
 16 students should be abandoned because some students
 17 have given up?
 18 A Dr. Russell's report appears to take the
 19 position that there are certain negative
 20 characteristics that are caused by California's
 21 current accountability system, one of which is
 22 dropouts increasing, and implies that the program
 23 should be radically changed so that that doesn't
 24 happen.
 25 That position has also been taken in

1 other states.
 2 Q Okay. When you say "radically changed,"
 3 what do you mean by that?
 4 A Along the lines that Dr. Russell
 5 describes in his report: replacing the current
 6 program with inputs to start with that he has listed
 7 and then possibly adding outcomes later.
 8 Q Okay. And when you say "given up" what
 9 do you mean by that?
 10 A For example, on a high school exit
 11 examination if a student takes the test, say in 10th
 12 grade, and doesn't pass and has remediation
 13 opportunities offered to them by the school but
 14 chooses, instead, to drop out because of academic
 15 difficulties, then the student has stopped trying.
 16 Q Okay. Is that what you were referring to
 17 here on Page 67 of your report?
 18 A That's an example.
 19 Q Okay. Can you think of other examples?
 20 I want as full an understanding as I can get of what
 21 you meant here.
 22 A Nothing that comes to mind at the moment.
 23 Q Okay. Do you consider yourself an expert
 24 on dropout behavior?
 25 MR. HERRON: Objection. Vague.

1 THE WITNESS: This is like the question you
 2 asked before. I don't understand the meaning of
 3 "expert" in terms of a phrase like that.
 4 Q BY MR. ROSENBAUM: Okay.
 5 Have you -- Do you know the names of any
 6 scholars or academicians who have written about
 7 dropout behavior?
 8 A If you are talking about information on
 9 dropouts, some states have collected that information
 10 and have published reports about that.
 11 Q Okay. In addition to what you are
 12 talking about, are you familiar with any scholars or
 13 academicians that have written about dropout
 14 behavior?
 15 A I'm not clear what you mean about
 16 "dropout behavior."
 17 Q Well, you say here at Page 67 of your
 18 report "Dropping out is primarily a high school
 19 behavior."
 20 Do you see that? That's your third full
 21 paragraph on 67.
 22 A Yes.
 23 Q Okay. That's what I'm referring to.
 24 A In that context I'm simply describing
 25 that the act of dropping out is something that high

1 school students do.

2 Q Do you know -- Have you read --

3 Do you know the names of any scholars or
4 academicians who have written about dropping out as
5 you use that phrase in your report?

6 A I have read information about the issue
7 of dropouts. I don't recall the specific name of the
8 authors of that information, if that's what you're
9 asking.

10 Q Okay. Can you identify any individual
11 whose expertise you respect who has written about
12 dropouts?

13 MR. HERRON: Objection. Asked and answered.

14 THE WITNESS: Not that I can recall off the top
15 of my head at this time.

16 Q BY MR. ROSENBAUM: Okay. Have you done
17 any published writing about dropouts?

18 A Yes.

19 Q Okay. Outside of this report?

20 A Yes.

21 Q What writing is that?

22 A My expert witness report in Texas.

23 Q Okay. Anywhere else?

24 A Not that I recall at the moment.

25 Q Okay. Have you given thought, Doctor, as

1 A I think I would want to reread it before
2 I attempted to give you an answer on that.

3 Q Okay. Do you know who wrote that article?

4 MR. HERRON: Objection. Relevance.

5 THE WITNESS: I don't know if it had a by-line,
6 but if it did, I don't recall it.

7 Q BY MR. ROSENBAUM: Okay. The Texas
8 report that you reference, do you rely on any portion
9 of that report for any of your conclusions in this
10 report?

11 A It's cited in Footnote 251.

12 Q Okay.

13 MR. ROSENBAUM: David, I don't want to say
14 absolutely because I don't know absolutely. I don't
15 recall seeing that report.

16 Do you recall?

17 MS. MAJD: I think we might have it.

18 MR. ROSENBAUM: Okay. I'll take that
19 representation.

20 Q Do you recall according to the Texas
21 report whether there was any discussion as to why
22 students dropped out due to the testing requirement?
23 I'm looking at your phrase on Page 67 of your report.

24 MR. HERRON: Which phrase, Mark?

25 MR. ROSENBAUM: The sentence, David, is -- the

1 to the causes of dropping out?

2 MR. HERRON: Vague. Object on that ground.

3 THE WITNESS: I have reviewed information that
4 talked about causes of dropouts.

5 Q BY MR. ROSENBAUM: Okay. And what
6 information are you referring to?

7 A The study conducted by the State of Texas.

8 Q Okay. Besides that study, have you read
9 anything else about the causes -- have you given any
10 thought -- Strike that.

11 Besides that study, have you given any
12 thought to the causes of dropouts?

13 A I have read --

14 Q Should be "dropping out."

15 A I have read information in periodicals
16 about that.

17 Q What periodicals?

18 A There was an article -- I think it was a
19 newspaper, but I don't remember for sure -- that
20 talked about Hispanics dropping out.

21 Q Do you know when you read that article?

22 A Somewhere around the time of the Texas
23 case.

24 Q Okay. Do you remember anything about the
25 content of that article?

1 first column of 67, second full paragraph, "In Texas,
2 data indicated that the number of minority students
3 remediated as a result of the high school exit exam
4 far exceeded the number who may have dropped out due
5 to the testing requirement."

6 It's the ladder phrase I'm interested in.

7 MR. HERRON: Okay.

8 Q BY MR. ROSENBAUM: Do you know what the
9 number was?

10 A Which number?

11 Q Number that may have dropped out due to
12 the testing requirement that's in that report.

13 A I don't recall the exact numbers without
14 looking at it. It was an estimate based on the
15 information provided in the Texas report in which the
16 percent of students that they estimated may have
17 dropped out due to the testing requirement was very,
18 very small.

19 Q Have you undertaken any investigation or
20 inquiry to determine what has happened in Texas with
21 respect to dropping out, possibly due to the testing
22 requirement, since the issuance of this report, the
23 Texas report?

24 A I do not have any current data on that.

25 Q Have you attempted to get any?

1 MR. HERRON: Objection. Relevance.
 2 You may respond.
 3 THE WITNESS: I don't think that issue has come
 4 up at all.
 5 Q BY MR. ROSENBAUM: Okay. Doctor, do you
 6 have an understanding of the relief that plaintiffs
 7 are seeking in this case?
 8 A As I indicated to you earlier, I have not
 9 read the Complaint in this case.
 10 Q So the answer is "No"?
 11 I mean, you could arguably get an
 12 understanding of the relief that plaintiffs are
 13 seeking from some other source. That's why I'm asking
 14 that question.
 15 A I don't believe I have seen or read a
 16 clear statement about that that I can recall.
 17 Q Okay. I wonder if you could turn to
 18 Page 53. And I'm asking you if you would please look
 19 at the first full paragraph in the second column, the
 20 last sentence. "Potential volatility of school APIs
 21 comes not from errors in measuring individual students
 22 but from differences in cohorts from one year to the
 23 next."
 24 Do you see that?
 25 A Yes.

1 Q What did you mean by differences in
 2 cohorts of students from one year to the next?
 3 A The fact that they're different
 4 individuals.
 5 Q How are they different?
 6 How are the cohorts different -- do you
 7 know? -- from one year to the next?
 8 A I think that's what I just answered.
 9 They're different individuals.
 10 Q Has there been any analysis to your
 11 knowledge, Doctor, of the effects of the different
 12 cohorts on school APIs?
 13 A Yes.
 14 Q And who has undertaken that analysis?
 15 A Dr. Rogosa.
 16 Q And do you know what findings, if any, he
 17 reached?
 18 A I detail some of his findings in my
 19 report.
 20 Q Okay. That's what follows that sentence?
 21 A His research is talked about in the next
 22 paragraph following the one from which you read.
 23 Q Okay. Do you know what his methodology
 24 was to evaluate the differences in cohorts of students
 25 from one year to the next?

1 A I read his report. Actually, I read
 2 several of his reports.
 3 Q Okay. Did you have any concerns about
 4 the methodology that he utilized?
 5 A His methodology was reasonable given the
 6 questions that he was asking.
 7 Q Okay. Are you familiar with any
 8 criticisms of the API by David Rogosa at any point in
 9 the process?
 10 MR. HERRON: Objection. Vague and ambiguous.
 11 THE WITNESS: Not that I can recall.
 12 Q BY MR. ROSENBAUM: Are you familiar with
 13 any criticisms of the use of the Stanford-9 for
 14 purposes of the statewide assessment system by David
 15 Rogosa at any point since the implementation of the
 16 statewide assessment system?
 17 A Not that I can recall.
 18 Q Are you familiar with any criticisms of
 19 the high school exit exam by David Rogosa since the
 20 implementation of the high school exit exam?
 21 A Not that I can recall.
 22 Q Are you familiar with any criticism by
 23 David Rogosa of the use of the CAT-6 since the
 24 implementation of the assessment program?
 25 A Not that I can recall.

1 Q Are you familiar with any criticism by
 2 David Rogosa of the state's accountability program
 3 since the implementation of that program?
 4 MR. HERRON: Objection. Vague.
 5 THE WITNESS: Not that I can recall.
 6 Q BY MR. ROSENBAUM: When you spoke with
 7 Mr. Salvaty, did you take any notes on your
 8 conversations with him?
 9 MR. HERRON: Vague as to time.
 10 Q BY MR. ROSENBAUM: During the course of
 11 the preparation of your report.
 12 A Not that I recall.
 13 Q Dr. Phillips, can you think of any reason
 14 for a student to drop out in the face of an assessment
 15 test besides giving up?
 16 MR. HERRON: Objection. Asked and answered.
 17 THE WITNESS: In the Texas report that I cited
 18 there were a number of reasons given for students
 19 dropping out.
 20 Q BY MR. ROSENBAUM: Okay. And do you
 21 recall what those reasons were?
 22 A Without consulting the original source, I
 23 couldn't cite the whole list for you.
 24 I can give you a couple of examples.
 25 Q Okay.

1 A One was failing one or more academic
 2 courses.
 3 Q One was what?
 4 A Failing one or more academic courses.
 5 Q Okay. Can you think of any others?
 6 A Going to a trade or vocational school;
 7 getting married; going to work, taking a job.
 8 I know there were others, but that's all
 9 I can think of at the moment.
 10 Q Okay. Can you -- If a student doesn't
 11 receive the information in her courses that is tested
 12 on the assessment tests, do you think that could be a
 13 reason that could contribute to a student dropping
 14 out?
 15 MR. HERRON: Objection. Calls for speculation.
 16 Asked and answered.
 17 You may respond.
 18 THE WITNESS: Your use of the word "received"
 19 is a bit ambiguous.
 20 Q BY MR. ROSENBAUM: Isn't exposed, isn't
 21 taught that information.
 22 A If the student hasn't taken the course
 23 work that is necessary, the student won't be prepared,
 24 the student probably also won't be meeting other
 25 graduation requirements, as well, and so dropping out

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 5
 6 I, SUSAN E. PHILLIPS, PH.D., do hereby declare
 7 under penalty of perjury that I have read the
 8 foregoing transcript; I have made any corrections as
 9 appear noted, in ink, initialed by me; that my
 10 testimony as contained herein, as corrected, is true
 11 and correct.
 12 EXECUTED this _____ day of _____,
 13 20____, at _____, _____.
 14 (City) (State)
 15
 16 _____
 17 SUSAN E. PHILLIPS, PH.D.
 18 Volume 3
 19
 20
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 22
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 24
 25

1 due to academic difficulties is confounded with your
 2 question.
 3 Q Can you think of any reason that the
 4 student would not have been taught the information
 5 tested on the assessment test other than not having
 6 taken the course?
 7 MR. HERRON: Objection. Calls for speculation,
 8 asked and answered.
 9 THE WITNESS: I guess it's possible they might
 10 have been absent, missed content or had to drop out
 11 for an extended period of time due to illness on a
 12 temporary basis.
 13 Q BY MR. ROSENBAUM: Can you think of any
 14 other explanations besides the ones you have
 15 identified?
 16 MR. HERRON: Same objections.
 17 THE WITNESS: They might take the course but
 18 not have learned the material because they didn't
 19 apply themselves or do the homework.
 20 Q BY MR. ROSENBAUM: Can you think of any
 21 other explanations besides what you've identified?
 22 A That's all I can think of at the moment.
 23 MR. ROSENBAUM: Okay.
 24 Let's go off the record for a moment.
 25 MR. HERRON: Mm-hmm.