

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

)  
ELIEZER WILLIAMS, a minor, by )  
SWEETIE WILLIAMS, his guardian )  
ad litem, et al., each )  
individually and on behalf of all )  
others similarly situated, )  
)  
Plaintiffs, )  
)  
vs. ) No. 312236  
)  
STATE OF CALIFORNIA, DELAINE )  
EASTIN, State Superintendent of )  
Public Instruction, STATE )  
DEPARTMENT OF EDUCATION, STATE )  
BOARD OF EDUCATION, )  
)  
Defendants. )  
\_\_\_\_\_ )

DEPOSITION OF MICHAEL RUSSELL, Ph.D.  
Los Angeles, California  
Thursday, January 16, 2003  
Volume I

Reported by:  
CAROL ANN NELSON  
CSR No. 6974  
JOB No. 877316

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Defendants. )

Deposition of MICHAEL RUSSELL, Ph.D.,  
Volume 1, taken on behalf of Defendant State  
of California at 400 South Hope Street,  
14th Floor, Los Angeles, California  
beginning at 10:58 a.m. and ending at  
5:32 p.m. on Thursday, January 16, 2003,  
before CAROL ANN NELSON, Certified Shorthand  
Reporter No. 6974.

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EXHIBITS

DEFENDANT'S PAGE

1 Document entitled "EXPERT WITNESS  
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129 pages 20

2 Document entitled "Background  
Papers, Williams v. California,"  
Bates Nos. PLTF-XP-JO 07123  
through PLTF-XP-JO 07125; 3 pages 49

INFORMATION REQUESTED  
(NONE)

INSTRUCTION NOT TO ANSWER  
(NONE)

1 Los Angeles, California, Thursday, January 16, 2003  
2 10:58 a.m. - 5:32 p.m.

3  
4 MICHAEL RUSSELL, Ph.D.,  
5 having been first duly sworn, was examined and  
6 testified as follows:

7  
8 EXAMINATION

9 BY MR. SALVATY:

10 Q Good morning, Professor Russell. My name is  
11 Paul Salvaty. I represent the State of California in  
12 this case.

13 Would you please just state and spell your name  
14 for the record.

15 A It's Michael Russell, M-i-c-h-a-e-l  
16 R-u-s-s-e-l-l.

17 Q Have you ever been deposed before --

18 A I have not.

19 Q -- Mr. Russell?

20 Okay. Let me go over some of the ground rules  
21 about how a deposition works. You probably have already  
22 gone over some of these but just to make sure we both  
23 understand, I'll be asking you questions, you will be  
24 responding to my questions. It's important that we  
25 don't talk over each other, so please try to wait until

1 I finish my question before answering and I will try to  
2 do the same when you're answering. Do you understand  
3 that?

4 A Yes.

5 Q It's important that you give verbal responses  
6 to my questions because the court reporter will be  
7 transcribing everything we discuss, so nodding the head  
8 or gesturing doesn't translate well. Do you understand  
9 that?

10 A Yes, I do.

11 Q Okay. If you do not understand any of my  
12 questions, just let me know. I am happy to rephrase.  
13 And if you need to take a break, just let me know. I  
14 would ask that you don't ask to take a break while I  
15 have a question pending but you answer my question if  
16 you're able. Do you understand?

17 A Yes, I do.

18 Q Okay. Did you do anything to prepare for  
19 today's deposition?

20 A Yes, I did.

21 Q What did you do?

22 A I reread much of the material that I had  
23 discussed in my report, I had looked on the CDE web site  
24 to see what has evolved since I submitted the report,  
25 and I had two meetings with Mr. Rosenbaum and one in

1 which Sophie was present and John as well.

2 Q Okay. You said you reread much of the material  
3 that you reference in your report; is that right?

4 A Yes, I did.

5 Q What did you reread?

6 A Specifically?

7 Q Let me ask you this: Did you reread your  
8 report?

9 A Yes, I did reread the report as well, yes.

10 Q And you reread some of the backup material or  
11 some of the referenced material?

12 A Yeah, exactly, yeah.

13 Q Do you remember any of the specific things you  
14 reread?

15 A I read -- Let me just look at the reference and  
16 I can tell you exactly what I reread.

17 Basically I reread a number of the reports and  
18 minutes and meeting notes and so forth that were on the  
19 California Department of Ed web site. I reread some of  
20 Rogosa's work. I reread some of the work that's come  
21 out of CRESST. I didn't reread it specifically for  
22 this, but recently I've reread Linn's stuff for a class  
23 that I teach.

24 Q Which stuff was that? I'm sorry.

25 A Bob Linn's assessment and accountability and

1 complex performance base assessment.

2 I think that's pretty much -- pretty much it  
3 that's included in my list here.

4 Q Is everything that you reread identified in  
5 your list of references that's attached to your expert  
6 report?

7 A Everything that I reread?

8 Q To prepare for today's deposition.

9 A Yes. Yeah.

10 Q Okay. You referenced some CRESST stuff?

11 A Oh, yeah. That's --

12 Q Can you just explain what CRESST is?

13 A It's Center -- I can't remember exactly what  
14 the acronym stands for. It's a nationally funded center  
15 for testing standards and something. Evaluation I  
16 think.

17 Q How is "CRESST" spelled?

18 A CRESST or -ST. I can't remember.

19 Q Okay.

20 A It's not like the toothpaste. Yeah, there's  
21 two "S"s and one "T," so C- -- I don't know. It's not  
22 listed here so I'm not sure exactly. It's the Herman --  
23 two Herman articles which are really basically the same  
24 article anyways.

25 Q Which articles are you referring to?

1 A Student Assessment and Student Achievement in  
2 California Public Schools. It's really two different  
3 versions of the same report.

4 Q You mentioned two meetings with Mr. Rosenbaum.  
5 When were those meetings?

6 A One was yesterday afternoon and the other was  
7 the beginning of this month. I don't recall the date.  
8 It was just after New Year's.

9 Q Okay. And who was in attendance at yesterday's  
10 meeting?

11 A Mr. Rosenbaum, Sophie Fanelli, and John whose  
12 last name I forgot.

13 MR. NOLTE: Nolte.

14 THE WITNESS: Nolte.

15 MR. SALVATY: Thank you.

16 Q And how long was yesterday's meeting?

17 A I'd say three to three-and-a-half hours  
18 maximum.

19 Q And what did you discuss during yesterday's  
20 meeting?

21 A I was reminded of some of the procedures and  
22 how this would -- how the whole deposition would occur.  
23 I was reminded to answer everything honestly and  
24 truthfully to the best of my knowledge. We talked about  
25 a couple of issues that, you know, I had raised in my

1 report and we spent a lot of time trying to retrieve  
2 output from some data that had been analyzed. Really, I  
3 spent the time trying to retrieve it but it was during  
4 that meeting.

5 Q Okay. One important thing I should have  
6 mentioned, during your meeting did the lawyers explain  
7 that you would be testifying under penalty of perjury  
8 today?

9 A That was implied.

10 Q You understand that, though?

11 A Yes, I do.

12 Q And you understand that even though we're in  
13 this informal deposition setting that the oath you took  
14 the tell the truth has the same force as if we were in a  
15 court of law?

16 A Yes, I do.

17 Q You said you discussed a couple of issues  
18 raised in the report. What issues did you discuss?

19 A The Rhode Island accountability system that's  
20 in place. We talked a bit about the II/USP and the  
21 school accountability report cards and just -- I mean  
22 that's -- those are the main issues as I recall. The  
23 only -- The other issue was the -- some of my  
24 recommendations just that I make for how to improve the  
25 accountability system.

1 Q What did you discuss as far as the Rhode Island  
2 accountability system?

3 A I was just describing it again. I'm not sure  
4 if it was for my purposes or their purposes, but just  
5 describing what actually happens in that system.

6 Q Can you tell me anything more about what you  
7 discussed in your description?

8 A I just described the various components of it,  
9 who was involved, how IC schools are benefiting from it,  
10 why I think it's superior to what's occurring  
11 in many other states. That's basically it.

12 Q You say various components. Did you say what  
13 was involved, who was involved?

14 A I don't recall exactly what I said, but yeah,  
15 we would have talked about who participates in it and  
16 who -- how schools benefited, I think is what I said.

17 Q What components of Rhode Island's  
18 accountability system did you discuss?

19 A We talked about the tests that the state uses.  
20 We talked about the surveys it uses. We talked about  
21 the school self-evaluation that occurs. We talked about  
22 I guess the three-year cycle that they use for their  
23 improvement and goal setting. We talked about how an  
24 external person comes into the schools to help them as  
25 well. We talked about how there's multiple voices, data

1 sharing, easy access to information both by community  
2 members, school members, and people at the state level.

3 Q When you talked about the reasons it's superior  
4 to many other state accountability programs, what did  
5 you discuss on that subject?

6 A I think a few things I would have mentioned  
7 were that it had been in place for several years, it had  
8 been stable over the course of those several years, that  
9 it uses tests that are closely aligned with the  
10 standards, that it's looking at -- it asks schools to  
11 actively look at what they're doing both in terms of  
12 their strengths and weaknesses, ask schools to set  
13 goals, hold schools accountable for their goals,  
14 involves parents and community in the process as well,  
15 looks at changes in performance over a three-year period  
16 rather than a single year period. There's maybe more  
17 but that's what I recall off the top of my head.

18 Q Did you talk about how the Rhode Island  
19 accountability system or some of its features could be  
20 implemented in California?

21 A Not specifically how, no.

22 Q Okay. You said you also talked about the  
23 II/USP program?

24 A Yes.

25 Q What did you discuss on that subject?

1 A Basically, as I recall, just talking about how  
2 it's -- it's a voluntary program, that not everyone who  
3 ends up applying actually will participate or is funded  
4 for it, and that from my perspective it appears that  
5 information that's learned by the evaluators at the  
6 local level doesn't really reach the state level in a  
7 way that allows state to learn across settings or other  
8 schools to learn across settings.

9 Q You also talked about school accountability  
10 report cards?

11 A Uh-huh.

12 Q What did you talk about on that subject?

13 A Basically that there's some elements of the  
14 school accountability report card that seem on the  
15 surface similar to what Rhode Island is doing but that  
16 in reality -- the reality at least from my perception it  
17 falls short of what Rhode Island is doing, it really  
18 falls short of its potential value.

19 Q What are the elements that seem similar to  
20 Rhode Island?

21 A Well, it's a notion they're trying to create a  
22 school profile that captures a number of different  
23 elements or aspects of -- of what is occurring in the  
24 school and what impact it's having on -- on learning,  
25 but that it -- they're not easy to access particularly

1 Q Did you discuss anything else on the school  
2 accountability report cards subject?

3 A Not that I recall.

4 Q And then you said you talked about some of the  
5 recommendations --

6 A Yeah.

7 Q -- that are in your report?

8 What did you discuss on that subject?

9 A Basically how I came to view some of the --  
10 the -- some of the pieces of data that I list as things  
11 that ought to be looked at and, you know, really why I  
12 think those pieces of information are of value to be  
13 looking at across schools.

14 Q Which pieces of data?

15 A Oh, things like teacher preparation or teacher  
16 credentials quality, access to textbooks, school  
17 facility issues, graduation rates, retention rates.

18 Q During your meeting did you go over your  
19 report?

20 A No. Well, what do you mean by "go over your  
21 report"?

22 Q I mean did you discuss your report, sort of  
23 walk through parts of the report?

24 A No.

25 Q You did say you did review the report in

1 from a research or trying to understand what's happening  
2 across schools perspective, so that's -- you know,  
3 that's one of the differences.

4 Q Did you talk about any other differences?

5 A Yeah, I guess the other difference that I can  
6 recall highlighting was that the -- whereas Rhode  
7 Island, there's some guidance in what they're supposed  
8 to be doing in their self-evaluation and their goal  
9 setting process and the reports that they're required to  
10 complete for the state that it -- that it really is a  
11 template approach. The final product isn't really a  
12 template but more of a -- Rhode Island creates a model  
13 process rather than a model product.

14 Q Can you explain that a little further?

15 A Well, yeah. Well, basically the the State of  
16 California provides a template to schools that they  
17 basically fill in, and so the -- they have a template  
18 for the final product and the schools are providing  
19 information into that. Whereas in Rhode Island they  
20 specify types of activities that occur -- should occur  
21 while the school is doing the self-evaluation and how  
22 those activities actually occur is up to the school,  
23 and the focus of those activities are by and large up to  
24 the school, although they are asked to look at student  
25 achievement as well.

1 preparation for today's deposition?

2 A I did, yes.

3 Q In reviewing the report have you found any  
4 errors or inaccuracies in the report?

5 A The only error I need to check on this, it may  
6 be in one of my data tables; it looks like there's a  
7 typo, but I really did not have time to check this  
8 carefully yesterday. I saw it yesterday.

9 Q The error in the data table?

10 A Yeah.

11 Q Do you remember which data table it is?

12 A Not off the top of my head but it's --

13 MR. ROSENBAUM: Paul, you mischaracterized his  
14 testimony. He said possible errors, so the question is  
15 clear.

16 MR. SALVATY: That's fine. Thanks.

17 THE WITNESS: It was -- I don't recall off the  
18 top of my head but it's one of the tables 16 through  
19 20. One of the items when someone sent me the output it  
20 looked like there was a -- one of the numbers was wrong  
21 for one of the items. I don't recall which item it was.

22 BY MR. SALVATY:

23 Q Okay. But other than that you're not aware of  
24 any errors or inaccuracies in your report?

25 A No. No. There may be a couple of typos

1 but. . .

2 Q I think you said also in yesterday's meeting  
3 you spent some time trying to retrieve output from  
4 data --

5 A Yeah.

6 Q -- that you analyzed in the report; is that  
7 right?

8 A Yeah.

9 Q What is that data that you're referring to?

10 A There was a survey that the National Board on  
11 Educational Testing and Public Policy had done, a  
12 nationwide survey of teachers, and it asks a number of  
13 questions around teachers' perceptions and reactions and  
14 uses of state tests, and I had asked someone working on  
15 that project to run an analyses that we're doing for the  
16 nation only on California teachers.

17 Q Did you say you asked someone to run this? Was  
18 this yesterday that you asked them to run it?

19 A No, many -- way back when. I had to rerun it  
20 because apparently someone needed that document of some  
21 type and I didn't have it, so I asked her to rerun it.

22 Q Who did you ask to rerun that?

23 A Lisa Abrams.

24 Q Who is Lisa Abrams?

25 A She's a research associate within the National

1 Q Why don't we just go ahead and mark your report  
2 as Exhibit 1 so we can talk about it.

3 A Sure.

4 (Defendant's Exhibit 1 was marked for  
5 identification by the court reporter.)

6 BY MR. SALVATY:

7 Q You sort of touched upon this before, but have  
8 you done any further research for this case since you  
9 finalized this report that's Exhibit 1?

10 A I've -- I mean I read generally anything in the  
11 literature that appears or that someone passes on to me  
12 related to testing and accountability, so I've read  
13 documents since I've submitted this. Some of them have  
14 been passed on to me by people where I've stumbled upon  
15 them and thought "Oh, this is interesting in light of  
16 the case here," some of them are just interesting  
17 because I'm interested in assessment and testing and  
18 accountability in general. So I've read a lot probably  
19 since but I don't know if I would characterize it as for  
20 this case.

21 Q You haven't embarked on any additional research  
22 or any new projects?

23 A Specifically for this case?

24 Q For this case.

25 A No, I have not.

1 Board on Educational Testing and Public Policy. I  
2 believe that's her title.

3 Q And what did you ask her to do?

4 A I just asked her if she could rerun the  
5 frequencies for the items in that -- those tables I  
6 just -- I think it's 16 through 20 for California  
7 teachers only.

8 Q Is this something that she had done for you  
9 before?

10 A Yes. Originally, yeah.

11 Q And had you saved the materials that she had  
12 printed out, the output that she had printed out, the  
13 first time you asked her to run that data?

14 A I don't -- I don't recall. They may be in my  
15 files, they may not. I really don't know.

16 Q Let me ask you did you bring any documents to  
17 produce today?

18 A No.

19 Q I noticed you brought a copy of your expert  
20 report; is that right?

21 A Yep.

22 Q And does your copy have notations or --

23 A No.

24 Q -- anything on it?

25 A No.

1 Q You said you reviewed or went back onto the  
2 California Department of Education web site to see if  
3 there had been any new developments; is that fair?

4 A Right.

5 Q Did you find any new information that would  
6 impact the opinions that are laid out in your report?

7 A No.

8 Q Is there anything else you remember discussing  
9 during yesterday's meeting?

10 A The only other thing I remember is I was asked,  
11 you know, if I was to critique the report how would I --  
12 you know, what are some of the weaknesses that I would  
13 identify.

14 Q And what did you say on that subject?

15 A None.

16 MR. ROSENBAUM: The deposition is over. We can  
17 go home.

18 BY MR. SALVATY:

19 Q Did anyone else at the meeting raise possible  
20 criticisms or areas that they might critique the report?

21 A Not that I recall, no.

22 Q Okay. You mentioned another meeting that you  
23 had around the New Year, a little after New Year?

24 A Yeah.

25 Q How long was that meeting?

1 A It was a half -- a half day. It was over by  
2 lunchtime.

3 Q Where was that meeting?

4 A It was in my office.

5 Q And who was in attendance there?

6 A Just Mark and myself.

7 Q And what did you discuss in that meeting?

8 A Basically the same issues that we discussed  
9 yesterday by and large. It was really very -- very  
10 similar. I am trying to right now just think if there  
11 was any topics that came up during that first meeting  
12 that we didn't discuss yesterday. I can't think of  
13 anything off the top of my head.

14 Q Okay. Are you planning to do any additional  
15 research other than just reading the articles that come  
16 out, are you planning to do any new work in connection  
17 with this case?

18 A The only thing I have planned right now is to  
19 take sections of the report and turn it into a scholarly  
20 paper. That's the only thing I have planned at this  
21 time.

22 Q In preparing for today's deposition did you  
23 review any of the reports of the plaintiffs' other  
24 experts in this case?

25 A Yeah, I did review a couple of them.

1 Q Which ones did you read?

2 A The one by Professor Oakes, Jeannie Oakes.  
3 The -- I guess it was the synthesis report. I read  
4 sections of her textbook report. I read the sections of  
5 Linda Darling-Hammond's report. There was another  
6 report I can't remember who was the author now. It was  
7 either Mintrup or Grubb or -- I can't remember. That  
8 was about -- It was actually -- It was similar --  
9 focused on a similar topic to mine around kind of the  
10 rule of accountability systems, and I think that's it  
11 from what I recall.

12 Q Did you read the Koski report?

13 A I don't believe -- What's that title? I don't  
14 believe so.

15 Q Actually, I don't know the title offhand.

16 A Yeah, I don't believe so.

17 Q When did you read these reports?

18 A Over the last two weeks.

19 Q And why did you read the reports?

20 A I wanted to read the synthesis report mainly --  
21 well, just to see what it -- Jeannie wrote and then I  
22 read a few of the other -- I read the one that I can't  
23 recall who the author was again just to see what that  
24 person said because it seemed to be focusing on somewhat  
25 of a similar topic to what I explored. And Linda

1 Darling-Hammond's I read mainly because when I reread  
2 mine I noticed that I had really just referenced one  
3 study specifically around quality of teachers and I just  
4 wanted to see what more -- what more she had and really  
5 if her findings were consistent with what I had said.

6 Q I think you said you read sections of Linda  
7 Darling-Hammond's report and sections of Jeannie Oakes'  
8 textbook report; is that right?

9 A Yeah.

10 Q How did you decide what sections to read?

11 A I mean I read through the whole thing but when  
12 it started to be the same story I would skip forward to  
13 another section.

14 Q I understand. Okay.

15 Have you read any of the other expert reports  
16 in this case?

17 A Not to the -- No, I don't think so.

18 Q Did you ever review any -- any draft reports?

19 A Of -- Of someone else?

20 Q Yes.

21 A No.

22 Q When did you first hear about the Williams  
23 lawsuit?

24 A I was invited to write a scholarly paper around  
25 some of the issues in the case and I can't remember if

1 it was -- if it was initially presented as about the  
2 Williams case or just about some of the issues in  
3 California's accountability system. It would have been  
4 August, September of 2000.

5 Is that right? No, 2001. 2001. So, you know,  
6 a year and a half ago, basically.

7 Q And who invited you to write a paper?

8 A Initially George Madaus suggested that I should  
9 consider doing this. He had received an E mail from  
10 Jeannie Oakes and I guess he had recommended to Jeannie  
11 that I would be a good person to do a paper on this.  
12 So, you know, it was kind of a combination of George  
13 saying "Hey, listen. I got this E mail. You should  
14 think about doing this" and then Jeannie following up on  
15 George's recommendation.

16 Q Who is George Madaus?

17 A He's probably one of the leaders in the field  
18 of testing and assessment and accountability.

19 Q Where does --

20 A He's at Boston College.

21 Q How do you know him?

22 A He's a colleague. I've known him for ten  
23 years.

24 Q And what did he say about the Williams lawsuit  
25 and your potential involvement?

1 MR. ROSENBAUM: That mischaracterizes his  
2 testimony. You can ask him if he said anything about  
3 the Williams case.

4 MR. SALVATY: Okay. That's fine.

5 THE WITNESS: He didn't say anything about the  
6 Williams case.

7 BY MR. SALVATY:

8 Q Okay. What did he say?

9 A He had -- He was familiar with some work that I  
10 had done and proposals that I had written and worked on  
11 with the Massachusetts Department of Education around  
12 enhancing its accountability system, and he thought --  
13 he said this would be a good opportunity to try to apply  
14 some of the principles to another context and make some  
15 of these ideas more visible through a scholarly paper.

16 Q Do you remember anything else that he said at  
17 that time?

18 A No.

19 Q Did he tell you he had received an E mail from  
20 Jeannie Oakes?

21 A I don't recall if he told me that or if he  
22 forwarded it to me, but it was clear that he had.

23 Q What happened next in your involvement with  
24 this project?

25 A Well, as I said, Jeannie then followed up and

1 asking if I might be interested in writing an expert  
2 report as well.

3 Q Let me focus on your communications with  
4 Jeannie Oakes via E mail. What did you discuss with  
5 her?

6 A Again, I think, as I recall, all I did was  
7 outline some of the issues that I would -- I was  
8 considering exploring in a scholarly paper, and as I  
9 recall she said, "Oh, that sounds good." You know, if  
10 we had more than two or three exchanges, I'd be  
11 surprised. You know, as I recall it was just two --  
12 only two E mails, actually -- her inviting me, me  
13 responding with the issues, and her saying "That sounds  
14 good."

15 Q Did you save those E mails?

16 A I don't believe so. I turned over all the  
17 copies of E mails that I had. I'm always getting in  
18 trouble for having too many in my files.

19 Q Were the E mails you turned over, do you think  
20 that included all of your E mails?

21 MR. ROSENBAUM: Calls for speculation.

22 BY MR. SALVATY:

23 Q Do you recall?

24 A What was the question?

25 Q Were all of the E mails you had with Jeannie

1 asked me if I would be interested and then asked me what  
2 kind of issues I'd like to explore in this context of a  
3 scholarly paper. I was then invited to a I don't know  
4 if you want to call it a conference or a working  
5 meeting, you know, whatever, in L.A. --

6 It would have been November of '01 or '02? I  
7 can't -- Let's see. This is --

8 Q It would probably have to be '01, I would  
9 think.

10 A Yeah, it would have been November of '01,  
11 exactly.

12 (Continuing) -- at which I had kind of  
13 outlined -- I presented an outline of some of the issues  
14 I was thinking of exploring in my paper.

15 What was your question again?

16 Q I asked what happened next and it sounds like  
17 it was that Jeannie Oakes followed up --

18 A Yes.

19 Q -- and you spoke to her directly; is that  
20 right?

21 A I don't think we talked on the phone. I think  
22 it was by E mail. And then the conference, and then  
23 sometime within two months after the conference, it was  
24 probably -- probably in December, I don't recall exactly  
25 when, I had received a call from -- from Mark Rosenbaum

1 Oakes included in the documents that you turned over?

2 MR. ROSENBAUM: Speculation. Foundation.

3 THE WITNESS: I really have no idea. I -- I  
4 doubt it because I probably would have been required to  
5 clean out my box twice since I had turned that stuff  
6 over. I really have no idea.

7 BY MR. SALVATY:

8 Q When you talk about cleaning out your box, your  
9 E mail box, when do you do that? Is there some ordinary  
10 time that you do that or do you remember doing that --

11 A When I get a message from the network person  
12 saying "Hey, you're on the top ten list. Clean out your  
13 mailbox." And when I do that I clean out everything  
14 unless it has usually some important document or data or  
15 information that I just feel like I can't lose. I  
16 usually go from 4- or 5,000 down to 400.

17 Q I guess what I'm trying to find out is did you  
18 have any system whereby you would print out your E mails  
19 related to your project here and keep them somewhere?

20 A No.

21 Q Okay. When you were invited to prepare a  
22 paper, what issues did you outline as those that you  
23 would be interested in discussing?

24 A Pretty much everything that's in the report.  
25 You know, I was really interested -- I guess the one



1 thing I -- Let me put it this way: Everything that's in  
2 the report, the one issue that I didn't explore as fully  
3 in the report that I will likely explore in the  
4 scholarly paper is how technology can be used to  
5 accomplish a lot of what I suggest. That's the only  
6 thing I didn't more fully explore.

7 Q When you were invited to do a research paper,  
8 was compensation discussed?

9 A I don't recall when compensation was  
10 discussed. I can't remember if it was before I first  
11 talked to Mark or if it was after. I don't recall.

12 Q How have you been compensated in this case --  
13 for your work on this case?

14 A I was paid \$10,000 for writing the expert  
15 report.

16 Q And then how have you been compensated since  
17 writing the report?

18 A I haven't.

19 Q Do you have an hourly rate for the time that  
20 you're devoting to the case?

21 A I don't know. I don't know if I'll end up  
22 applying it or not. It kind of depends on how much time  
23 I end up spending.

24 Q What is that hourly rate?

25 A You know what? I don't recall. It was below

1 my normal hourly -- Well, my daily rate usually is \$800  
2 to \$1,000 depending on who it is, and it's below that  
3 and I don't recall what I actually said.

4 Q And have you been paid the \$10,000 for writing  
5 the expert report?

6 A Yes, I have.

7 Q How was that paid to you? I guess let me ask  
8 you: Who paid that money to you?

9 MR. ROSENBAUM: I think that's vague.

10 THE WITNESS: I believe it was a law firm. I  
11 don't recall who the check was from.

12 BY MR. SALVATY:

13 Q Okay. And were you paid the entire \$10,000  
14 before the report was written, after, or how did that  
15 happen?

16 A As I recall there was two \$5,000 checks. I  
17 don't recall when I received them. I -- I think they  
18 were before the final filing, if I recall correctly, but  
19 I really don't know for sure. I'd have to look at my  
20 bank statements to know.

21 Q Where would you look to find that information?

22 A My bank statements to see when I deposited  
23 \$5,000.

24 Q Do you have a file of documents related to your  
25 work in this case? Do you keep a file?

1 A Yeah, there's a file.

2 Q Do you have a name for the file?

3 A It's called "The Williams Case."

4 Q And how much is included in that file?

5 A That much.

6 Q About three inches of materials?

7 A Three to four inches of materials.

8 Q And what's in that file?

9 A There's probably some copies of articles.

10 There are a number of documents that I had printed out  
11 from the CDE web site. There's a copy of the report.

12 There may or may not be -- I don't recall -- a copy of  
13 the output from -- that Lisa had given me originally. I

14 think there's a copy of all the E mails that I had

15 printed out to turn over as well. I think I still have

16 those in there. There's probably a copy of the original  
17 filing as well, I think.

18 Q Anything else that you can think of?

19 A No.

20 Q Did you include in that file everything that

21 you have reviewed or relied upon in connection with your  
22 work on the case?

23 A In the -- In the file in my drawer?

24 Q Yes.

25 A No. No.

1 Q How did you decide what to include in that file  
2 and what not to include?

3 A Well, like books I wouldn't put in there  
4 because I have a bookshelf. I refer to that stuff for  
5 other things. Like the CD printouts I will -- I can't  
6 see myself using that for anything else except for the  
7 web -- for the Williams case, so I put them in there. I  
8 guess like copies of Rogosa's notes and stuff that are  
9 on the web I would have put in there because they're so  
10 specific to California.

11 Q Do you keep any notes?

12 A No.

13 Q How about drafts of the report that you --

14 A I have one draft that I've kept.

15 Q Were there other drafts at some point?

16 A I wrote over time?

17 Q Yes.

18 A Yeah.

19 Q What happened to those drafts?

20 A As I decided that the changes that I made were  
21 things I wanted to keep, I would just get rid of the  
22 other drafts.

23 Q Why did you keep one draft?

24 A Because I thought it was closest to the format  
25 of the scholarly paper and I'll likely go back to that

1 when I go back to my office and write the scholarly  
2 paper.  
3 Q Did you discuss drafts with the attorneys  
4 working on this case?  
5 A Yes, I did.  
6 Q What did you discuss on that subject?  
7 A They had some suggestions on reorganizing it.  
8 At some point -- A couple of places there's questions  
9 about clarifying what exactly I'm saying or trying to  
10 make -- asking questions to be sure that they understood  
11 what I was saying -- trying to say.  
12 Q Did you circulate the drafts that you prepared  
13 to the lawyers or anyone else?  
14 A I sent -- Yeah, I had sent drafts to -- to the  
15 lawyers a couple of times, probably three -- three times  
16 maybe. I guess every time I was told that these drafts  
17 had -- or the report had to be in, that there was some  
18 due date, I would send the current version, and it seems  
19 like the due date was always moving and then we would  
20 have conversations and I would make revisions and I  
21 would send over a version again.  
22 Q Did you ever discuss with the lawyers the  
23 subject of retaining drafts or keeping them or throwing  
24 them away?  
25 A No.

1 Q Let me ask you what happened next after your  
2 initial communications with Jeannie Oakes. I think you  
3 said you prepared an outline of the issues; is that  
4 right?  
5 A Yeah, I presented an outline at that November  
6 meeting.  
7 Q At some point you prepared the outline; right?  
8 A Yeah, on the plane, yeah.  
9 Q On the plane to the meeting?  
10 A Yeah.  
11 Q That was my question, when did you prepare  
12 that?  
13 A When did I formally write it into a single  
14 document?  
15 Q Yes.  
16 A That would have been probably on the plane or  
17 the day before I left.  
18 Q What work did you do between the time that you  
19 spoke to Jeannie Oakes and the time that you prepared  
20 your outline?  
21 A I didn't speak to her until after I had  
22 prepared my outline.  
23 Q Okay. Let me back up. I thought you had  
24 discussed your initial communications with Jeannie Oakes  
25 by E mail?

1 A E mail, yeah. Is that what you mean by  
2 "speak"?  
3 Q Yes, that's what I mean. That's my -- my bad.  
4 A I had just got information off the web site  
5 about what California was doing specifically with its  
6 accountability system, what it was, what it involved.  
7 Q So you did some research?  
8 A Yeah, just basically pulling stuff off the file  
9 to become familiar with the system.  
10 Q Do you know how much time you spent doing  
11 research?  
12 MR. ROSENBAUM: You mean at that point?  
13 BY MR. SALVATY:  
14 Q At that point before preparing your outline.  
15 A I'd say maybe two or three days reading  
16 materials before the outline. The outline was really  
17 around issues that any -- it wasn't necessarily specific  
18 to California. It's issues and really principles for  
19 any accountability system, not specific to California.  
20 It's any state accountability system should be meeting  
21 these.  
22 Q I don't know if I asked this: Did you keep  
23 that outline?  
24 A I probably -- I don't believe I did. Because I  
25 probably would have used it just when I started writing

1 the first draft of the report, I would have used it as  
2 headings and then filled in drafts and it became a  
3 living, organic file.  
4 Q Did you share the outline with anyone?  
5 A At the meeting I did, yeah.  
6 Q You discussed it orally I take it, right?  
7 A I projected it from my computer and then we  
8 discussed it for maybe ten minutes.  
9 Q Before your involvement with this project, were  
10 you familiar with California's accountability program?  
11 A Which one?  
12 Q The current program.  
13 A I was vaguely familiar with it. I didn't know  
14 all of the details.  
15 Q And how were you vaguely familiar with it?  
16 A Because I keep up with the literature in the  
17 field and some of the literature focuses on what  
18 different states were doing. I also had worked with  
19 some districts in California and I guess through just  
20 following up with those districts I was -- you know,  
21 became vaguely aware of some of the things that were  
22 changing.  
23 Q What did you know about the system?  
24 A I knew that they were using a standardized test  
25 at the time, off-the-shelf test; that they were trying

1 to combine scores for multiple grade levels and multiple  
 2 subjects into a single measure; that some moneys were  
 3 being given out to schools and teachers based on changes  
 4 in these kind of aggregate scores. That's it. That's  
 5 probably the extent of my knowledge at the time. I knew  
 6 a fair amount about the former -- well, I guess it's now  
 7 three or four generations old system, the CLAS as well  
 8 but. . .

9 Q And how had you become familiar with the CLAS  
 10 system? And I think you're referring to "CLAS" --

11 A Yes, yes.

12 Q -- CLAS system?

13 A Again, because it was a model -- at the time it  
 14 served as a model assessment, statewide assessment  
 15 system, that was trying to use various forms of  
 16 performance open-ended kind of measures. There was also  
 17 a lot of political issues that came up, so again in the  
 18 literature and the press I became aware of it. Again, I  
 19 had been working with some districts in California. I  
 20 teach courses on assessments, so I want to be familiar  
 21 with different approaches, different strategies states  
 22 are using.

23 Q All right. In talking about the current  
 24 system, you said you -- you're vaguely familiar with it  
 25 because you kept up with literature and had worked with

1 mean by "current" because "current" keeps changing.

2 BY MR. SALVATY:

3 Q I believe in your report you talk about the  
 4 current system. Do you understand what that term means?

5 A Meaning the API-based system --

6 Q Exactly.

7 A -- basically coming forward?

8 Q Yes.

9 A Right.

10 Q And so if that --

11 MR. ROSENBAUM: So you want to know if he  
 12 became familiar with the API system?

13 MR. SALVATY: Yes.

14 MR. ROSENBAUM: During that period of time?

15 THE WITNESS: During that course of that work?

16 I don't think so because I don't think it was actually  
 17 implemented until that funding had been exhausted but I  
 18 was still following what was happening in those  
 19 districts because I had working relationships with  
 20 them.

21 BY MR. SALVATY:

22 Q Did your working relationships with those  
 23 districts extend beyond 1998?

24 A In an informal way, yeah.

25 Q How did that relationship continue after 1998?

1 some districts in California; is that right?

2 A You mean prior to becoming involved in the  
 3 case?

4 Q Exactly.

5 A Yes.

6 Q Which districts had you worked with?

7 A San Diego and Long Beach.

8 Q And when did you work with them?

9 A I'd have to look at my resume. '95, '98 -- '95  
 10 to '98.

11 Q What had you done with them?

12 A We were working -- We had some funding from the  
 13 Edna McConnell-Clark Foundation to work with six  
 14 districts, urban districts, on basically their reporting  
 15 in an accountability context, so we were helping them  
 16 think through what kind of things would you want to  
 17 report to your constituents, what format, what kind of  
 18 data, how would you want to present that data, how can  
 19 you show the relationship between what you're doing and  
 20 the impact that you're having on student outcomes.

21 Q Had you in connection with that work had you --  
 22 Let me rephrase that.

23 As part of that work did you become familiar  
 24 with California's current accountability program?

25 MR. ROSENBAUM: Why don't you define what you

1 A In two forms. One was just, you know, through  
 2 running in -- You know, again, I don't know if this was  
 3 an informal working relationship so it's just in the  
 4 sense of keeping track of what people are doing. I was  
 5 curious if they had continued doing some of the things  
 6 that we had helped them begin, like using the report  
 7 format and collecting data from students about classroom  
 8 practices. You know, that's kind of it.

9 Q Who did you maintain this informal contact  
 10 with?

11 A You know, I can't remember the -- for Long  
 12 Beach I can't remember that person's name right now. In  
 13 San Diego it wasn't -- I didn't really maintain with a  
 14 person because there was a huge amount of turnover that  
 15 final year, but it was just basically trying to look at  
 16 documents available via the web to see if those things  
 17 were still there. And I was working on a paper as well  
 18 with Walt Haney in which we were describing -- where  
 19 we've described some of the work that we did in that  
 20 context. He had been following up more to see if some  
 21 of the schools were continuing with the work as well.

22 Q And what did you learn from your follow-up with  
 23 Long Beach and San Diego?

24 A That systematically across the districts

25 they -- they basically stopped doing what they had been

1 doing when they had the funding from the Edna  
2 McConnell-Clark Foundation and also that they -- you  
3 know, things had changed as well in terms of state  
4 requirements for accountability which led them to stop  
5 some of the practices that they had been doing.

6 Q Can you think of anything -- First, let me ask  
7 you is the -- did you make recommendations to Long Beach  
8 and San Diego as part of your work for those districts  
9 about what they should do?

10 MR. ROSENBAUM: This is during the '95 to '98  
11 period?

12 MR. SALVATY: Yes.

13 THE WITNESS: As a group the people involved in  
14 the project did. We would discuss various things and  
15 and then as a group make a recommendation.

16 BY MR. SALVATY:

17 Q Are those recommendations set forth in any  
18 documents?

19 A Not to the best of my knowledge. They might be  
20 described in the report to the foundation.

21 Q So a report was made and submitted to the  
22 foundation?

23 A Yeah, to account for what we've done, what we  
24 did with the funding.

25 Q And were the recommendations that you made,

1 school level, again, they stopped because they didn't  
2 have resources to support it. Although, as I recall,  
3 there were a few schools that continued doing it and  
4 whom various people had been involved in the project had  
5 continued to help them for maybe one or maybe two years  
6 at maximum.

7 MR. ROSENBAUM: Let's go off the record for a  
8 moment.

9 (Lunch recess.)

10 BY MR. SALVATY:

11 Q Professor Russell, I wanted to ask you next  
12 about the meeting of experts that occurred in about  
13 November of 2001; do you remember that?

14 A Yep.

15 Q Who was in attendance at that meeting?

16 A There was a large number of people. I mean the  
17 people, I can't recall very many of the names, but the  
18 names I do remember Jeannie Oakes was there, Linda  
19 Darling-Hammond was there, there was a handful of  
20 lawyers who were there, Mark I believe was among them,  
21 there was a number of other of the experts but I  
22 couldn't tell you off -- I don't know a lot of them  
23 personally so I couldn't tell you which -- which of the  
24 people who either filed reports or are contributing to  
25 the -- the book were there or not.

1 that the group made, were they implemented by Long Beach  
2 and San Diego?

3 MR. ROSENBAUM: Calls for speculation.

4 BY MR. SALVATY:

5 Q Do you know?

6 A To the best of my knowledge from what I recall,  
7 most of the things showed up in the reports and they did  
8 a lot of the data collection that we suggested as well.

9 Q And I think you testified that they had -- when  
10 you followed up with your informal follow-up you found  
11 that they were no longer doing those things; is that  
12 correct?

13 A On a systematic basis across the district,  
14 yeah.

15 Q Is that true for both San Diego and Long Beach?

16 A As I recall, yeah.

17 Q And do you know why that is?

18 MR. ROSENBAUM: Speculation, but you can answer  
19 if you know.

20 THE WITNESS: The -- The reports that we had  
21 helped them produce in the format, as I understand it  
22 they stopped that mainly because they no longer received  
23 funding. They didn't have the budget for it anymore  
24 because it was coming initially out of the foundation  
25 funds and the -- some of the data collection at the

1 Q Can you remember anyone else other than --

2 A If I looked at a list of names -- Actually, I  
3 couldn't even tell you for sure because I don't know  
4 those -- I don't know all the people.

5 Q Okay. And you said contributing to a book.  
6 What are you referring to?

7 A The -- The collection of scholarly papers that  
8 are -- I guess it's not really going to be a book  
9 anymore. It's going to be a series in the Teachers'  
10 College Record, but I think the original idea was that  
11 it would be a book.

12 Q How did you hear about the plan to prepare a  
13 book?

14 A It was during the -- either originally the E  
15 mail that Jeannie had sent to George or a subsequent E  
16 mail that she had sent to me.

17 Q Where was the meeting?

18 A It was here in L.A. at UCLA as I recall.

19 Q And how long did it last?

20 A It was a day, as I recall.

21 Q And what happened at the meeting?

22 A It started off, you know, kind of a continental  
23 breakfast kind of thing. A lawyer spoke for about 15  
24 minutes. I can't remember who -- who he was. And then  
25 several different people gave 10-, 15-minute

1 presentations on the things that they were thinking  
2 about writing about. And then following each  
3 presentation there was five, ten minutes of discussion,  
4 open discussion, amongst the groups and it just went on  
5 all day with different people presenting.

6 Q Do you remember how many presentations?

7 A I know there was at least ten I would say.

8 Q And do you remember who gave presentations?

9 A Again, I don't remember the names. I know  
10 Jeannie -- Actually, I can't even remember if Jeannie  
11 did. I do remember Linda Darling-Hammond, I believe.  
12 Yeah, I specifically remember her. I gave one. I mean  
13 there was -- There's many of them. As I said, I just  
14 don't know these people.

15 Q And you gave a 10- or 15-minute presentation?

16 A Yes.

17 Q Which outlined some of the topics that you were  
18 planning to discuss in your paper?

19 A In the paper, yeah.

20 Q And --

21 A Or at least was thinking about discussing.

22 Q Were any materials distributed at the meeting?

23 A Short of a reimbursement form for travel  
24 expenses, I don't remember anything. I can't remember  
25 if that was given to us at the meeting or via E mail

1 Q What do you remember vaguely?

2 A There was some discussion about kind of school  
3 financing issues. There was some about quality of  
4 teachers. There was some about English language  
5 learners. There was some discussion around learning  
6 resources like textbooks and technology, science  
7 materials. Those are the main ones that I remember off  
8 the top of my head. And accountability, of course, that  
9 I talked about.

10 Q Were you given any information about the  
11 lawsuit, the Williams lawsuit?

12 A I don't recall being given anything at the  
13 meeting.

14 Q Did anyone talk about the status of the lawsuit  
15 or the issues in the lawsuit?

16 A The only thing that someone talked about was  
17 what it would mean -- As I recall it we were asked at  
18 that time to consider potentially being an expert  
19 witness or using our papers in some form for the case  
20 and the lawyer that spoke at the beginning talked a  
21 little bit about what it means to be an expert witness.  
22 There were a number of people there my impression was  
23 that had not ever been an expert witness before and so  
24 there were questions about what that actually means.

25 Q Had you heard about the Williams lawsuit before

1 before or after the meeting.

2 Q Do you remember any of the -- was there  
3 discussion after your presentation?

4 A Yeah, there was.

5 Q Do you remember what the discussion was about?

6 A I can't -- I don't remember the specifics.

7 Q Do you remember whether your thoughts about  
8 what you would write changed in any way --

9 A No.

10 Q -- as a result of the meeting?

11 A No.

12 Q And my question was unclear. Let me just ask  
13 you: Did they --

14 A Did they what?

15 Q -- change?

16 Did your thoughts change as a result of  
17 anything?

18 A In that meeting?

19 Q In that meeting.

20 A I don't think so.

21 Q Do you remember any of the subjects -- other  
22 subjects that were discussed other than those presented  
23 in your talk?

24 A Yeah, vaguely I remember the topics of  
25 discussions, not the specifics.

1 this meeting?

2 A I -- I just don't -- I don't recall if and to  
3 what extent I was knowledgeable about the lawsuit before  
4 that meeting. I just don't recall. I can't remember if  
5 in that original Jeannie -- message that Jeannie sent if  
6 Williams was mentioned and if it was if it was really  
7 elaborated on. I just really don't remember. It was  
8 around that time -- It was between November and December  
9 when I really became knowledgeable what the case was  
10 about. I just don't remember if it was before or after.

11 Q Let me just show you a few documents here. We  
12 will mark them as exhibits. The first one is -- has a  
13 topic heading that says "Background Papers, Williams v.  
14 California" and the Bates numbers are PLTF-XP-JO 07123  
15 through -07125.

16 (Defendant's Exhibit 2 was marked for  
17 identification by the court reporter.)

18 BY MR. SALVATY:

19 Q Have you ever seen this document before?

20 A I've seen elements of this. I don't recall if  
21 I've seen this exact document.

22 Q What elements have you seen before?

23 A Like the layout of some of these topics.

24 Q Which topics?

25 A For example Education and the State's

1 Responsibility, Standards and Curriculum, Teachers and  
2 Teaching, State Governance, Educating English Learners.  
3 I just don't remember if it was this document or in  
4 another -- another form.

5 Q What was the context in which you saw some  
6 elements of this document?

7 A As I recall it it was in the context of a --  
8 more of a prospectus and I've also seen a more recent  
9 version that expands on each of these -- or many of  
10 these, again for that teachers' college document. This  
11 may have also -- I mean it's something similar to this  
12 is related to that meeting in November.

13 Q It looks like on the third page of this  
14 document there's -- there's a date there at the end it  
15 says August 22, 2001; do you see that?

16 A Yeah.

17 Q Does that refresh your memory about when you  
18 would have seen the elements?

19 A I wouldn't have seen it then.

20 Q Why do you say that?

21 A Because it wasn't -- I don't -- As I recall it  
22 wasn't until the semester started that George had made  
23 me known -- let me know about this, as I recall.

24 Q Do you remember when that first communication  
25 with George was?

1 A It would have been -- As I recall it was at the  
2 beginning of the semester which would have been either  
3 the very last week -- last couple days of August or  
4 first couple days of September.

5 Q You think it would have been after August 22,  
6 2001?

7 A As I recall, yeah. I'm trying to -- I'm trying  
8 to remember if I was even in the -- in the country  
9 then. Yeah, I just remember it being closer to the  
10 start of the semester or at the start of the semester.  
11 It may have been before that, but as I recall that's  
12 when it was.

13 Q Were you at some point given a timetable for  
14 completing work?

15 A I was given some dates that kept changing for  
16 completing the expert report.

17 Q When were you first given dates about  
18 completing the expert report?

19 A In December as I recall when I spoke with --  
20 with Mark after that meeting and as I recall it was like  
21 a January/February date.

22 Q And what dates were you given? What was --  
23 What was the schedule?

24 A Well, I was given a date at which my  
25 understanding was we needed the report to be submitted

1 and that was either the tail end of January or the  
2 beginning of February because I remember working pretty  
3 hard throughout January on this. And then, as I said  
4 before, the dates kept moving back, kept changing.

5 I also recall asking for at one point -- the  
6 date -- There wasn't a specific date mentioned initially  
7 and I work much better when there's a deadline, so I  
8 kept asking "What is the drop-dead date?" and it was  
9 either the end of January or beginning of February.

10 Q You talked about some of the elements of this  
11 paper that you remember seeing at some point. Did you  
12 incorporate any of the material -- or the information in  
13 this paper into your outline that you prepared on your  
14 way to the conference?

15 MR. ROSENBAUM: I don't think you laid a  
16 foundation that he even saw it before the conference.

17 But you can answer the question as best you  
18 can.

19 THE WITNESS: Not as I recall.

20 BY MR. SALVATY:

21 Q After the conference what happened next in your  
22 work on this project? I think you've testified that you  
23 remember getting a call from Mr. Rosenbaum?

24 A Right. Exactly.

25 Q Is that the next thing that happened after the

1 conference?

2 MR. ROSENBAUM: Your questions are really vague  
3 and asking for a narrative.

4 But you can answer as best you can.

5 THE WITNESS: Yeah, I mean until I received a  
6 call from Mark and essentially said that I would prepare  
7 a report, I didn't do anything, and I can't remember if  
8 that was 5 days or 15 days or 20 days after that  
9 meeting. But then after I said that and after I was  
10 told that they needed something at the tail end of  
11 January, beginning of February I then asked two people,  
12 Stacey Raczek and Jen Cowan, if they wanted to help me  
13 with this, and they both said yes. And then we -- I  
14 basically took that outline and I recall we had a  
15 meeting and we kind of divvied up areas that each of us  
16 would collect information on.

17 BY MR. SALVATY:

18 Q Okay. What were the two names that you just  
19 mentioned?

20 A They're in the report. Stacey Raczek -- You  
21 have to look in the report for her name -- and Jen  
22 Cowan. I don't know how to spell it.

23 Q Okay. So after the conversation with Mr.  
24 Rosenbaum, you held a meeting with -- with --

25 A With Stacey and Jen.

1 Q And how did you divvy up responsibility for the  
2 work?

3 A Partially on, you know, their expertise and  
4 partially on what people thought was most interesting.  
5 Again, I was -- at this point I was -- it was still and  
6 I guess I always think of this as more as kind of a  
7 scholarly endeavor than an expert report endeavor mainly  
8 because I've never done expert reports and I'm a  
9 scholar, so we kind of divvied up tasks in that -- you  
10 know, in terms of what's of most scholarly interest to  
11 those folks.

12 Q Can you remember anything more about how  
13 exactly different responsibilities were taken up?

14 What were the three people's roles in preparing  
15 the report?

16 A Well, in general Jen is very good at finding  
17 information, so if there's further information that we  
18 needed, for example, about some aspect of the  
19 accountability system in California or in looking -- at  
20 some point I was supplied with depositions, so Jen was  
21 very good at kind of going through the depositions and  
22 finding -- highlighting those sections. Not really --  
23 She didn't really highlight them but finding the pages  
24 where there was relevant testimony, so that's the type  
25 of work that Jen was -- was involved in doing. Stacey's

1 much better at kind of modeling and working with numbers  
2 and so she was working on, you know, a lot of this stuff  
3 that appears in the appendix in my report, you know,  
4 finding data that would be useful for the type of  
5 analysis that we were doing.

6 Q And then what did you focus your efforts on?

7 A Their roles as well as really looking more  
8 broadly at accountability.

9 Q And how did you go about your work from the  
10 time you decided to prepare a report to the completion?

11 A What do you mean?

12 Q Like how did you go about researching and  
13 preparing the report?

14 MR. ROSENBAUM: It's pretty vague, but answer  
15 as best you can.

16 THE WITNESS: You know, I tapped articles that  
17 I had in my files already from prior work, reread some  
18 of that; followed up on, you know, just things that are  
19 cited in those articles; you know, read through  
20 documents that were on the web site or which Jen was  
21 finding; read those sections of the deposition that she  
22 was saying seemed relevant to what we were doing; did  
23 some modeling, you know, playing around with data; you  
24 know, just things that I would do for any scholarly  
25 research.

1 BY MR. SALVATY:

2 Q And when did you complete your first draft of  
3 the report?

4 A It was towards the end of January, beginning of  
5 February. I don't recall. It was whenever that they  
6 told me they needed that first draft.

7 Q Who told you when they needed the first draft?  
8 Was that in your conversation --

9 A Well, they didn't tell me they needed a draft  
10 at that point. They told me they needed the report and  
11 that became the first draft because the date kept  
12 moving.

13 Q Okay. When you completed your first draft,  
14 what did you do with it?

15 A I sent it to -- I believe I sent it to Sophie  
16 but I don't recall if it was Sophie or Mark, but I  
17 believe it was Sophie. And I don't recall if it was an  
18 E mail or a hard copy the first time.

19 Q And did you show your draft to anyone else?

20 A Jen and Stacey saw it.

21 Q Anybody else?

22 A That first draft? I don't believe so.

23 Q And then did you receive comments on the draft  
24 from the attorneys?

25 A I received some suggestions, yeah.

1 Q Do you remember what the suggestions were?

2 A On the initial one? I don't remember exactly.  
3 I mean as I said earlier, over the course of whatever it  
4 was, six months, there were suggestions on restructuring  
5 some pieces of it so it was not as much as a scholarly  
6 paper but more of a report. In some cases they would  
7 ask questions "What do you mean here?" which led me to,  
8 you know, change the verbiage or expand on an idea.

9 Q When you say "they," who are we talking about?

10 A It would be either Sophie or -- or Mark.

11 Q Anybody else provide comments or suggestions?

12 A I know -- On that early version?

13 Q On the initial draft.

14 A No. As far as I recall, no.

15 Q How about on later drafts?

16 A At some point there was another meeting that  
17 was held during the summer, as I recall, of '02 which I  
18 was not able to attend, but I did join part of it via  
19 telephone and someone was making comments about or  
20 suggestions about -- about my -- my paper/report.

21 Q Do you remember who that was?

22 A I don't. I didn't know the person and it was  
23 actually kind of a lousy call because you know how  
24 conference calls are, you catch every other word.

25 Q Was it your impression that this person had

1 reviewed a draft of your report?

2 MR. ROSENBAUM: Speculation.

3 BY MR. SALVATY:

4 Q Could you tell?

5 A They were talking about my report, so it was  
6 clear that they had seen parts of it, probably the whole  
7 thing.

8 Q Okay. You said you got some comments about  
9 restructuring and making it not as much of a scholarly  
10 piece but more of an expert piece, I think; is that  
11 right?

12 A Yes.

13 Q What do you mean by that?

14 A Well, I -- in the earlier version I really  
15 began by kind of talking about accountability in general  
16 and some of the patterns in terms of putting  
17 accountability systems in place nationwide, talking --  
18 you know, really setting up more as a lit review and  
19 then going into a review of what's happened in  
20 California over the last -- really over the last 20 or  
21 30 years with testing and accountability and then moving  
22 into some of the shortcomings of the current system and  
23 then I believe I closed with suggestions on how to  
24 improve it. And the suggestions that I was given --  
25 There was also a whole series of modeling and technical

1 pieces in there, basically rates them in the middle of  
2 the report, and it was suggested that I refer to the  
3 analyses but move them to an appendix and to also, you  
4 know, get into the issues of California quicker and also  
5 create an executive summary. Again, that explored the  
6 issues.

7 Q Were you given suggestions in written form or  
8 were they in a conference call, or how did that happen?

9 A It was a conference call. It was -- We had a  
10 couple of conference calls during the spring. I -- I --  
11 I can't remember if it's two, three, maybe four.

12 Q And at each conference call did you discuss  
13 different drafts or were they discussing the same draft?

14 A We talked about two different drafts over the  
15 course of the spring and into the early summer,  
16 whenever these calls occurred. I just don't remember  
17 when they were.

18 Q Okay. So you completed your first draft at  
19 some point at the end of January; is that right?

20 A January, beginning of February.

21 Q Do you have any idea about how much time you  
22 spent putting together that first draft?

23 A Basically from the middle of December straight  
24 through that's all I did.

25 Q So was it about a month and a half; is that --

1 A I'd say two months, I mean if you go onto the  
2 beginning part of February.

3 Q And --

4 A And Stacey and Jen were working full time on  
5 that as well during that time period.

6 Q Now, at the same time did you have other job  
7 responsibilities at -- either research or teaching  
8 responsibilities that you had to deal with also?

9 MR. ROSENBAUM: "Same time" being that  
10 two-month time period?

11 MR. SALVATY: Exactly. Thank you.

12 THE WITNESS: I am trying to remember if I  
13 taught. I would have -- I can't remember if I taught  
14 that spring or not; but if I did, I would have -- it  
15 would have only occurred like during the last two weeks  
16 of my preparing that initial draft because it was winter  
17 break and -- I mean I had other projects going on but in  
18 the way my projects work is they're -- it's all kind of  
19 fungible in terms of time.

20 BY MR. SALVATY:

21 Q You say last two weeks. What time frame are  
22 you talking about?

23 A The tail end of January, beginning of February.

24 Q Do you remember what the time frame is for  
25 winter break or what it was that year?

1 A It -- It's usually the middle of December to  
2 the 20th or so. It varies. Sometimes it's the 16th.  
3 This year it was a little bit earlier. Sometimes  
4 classes don't start until like the 20th, 22nd, somewhere  
5 around there. I don't recall what it was that year. I  
6 don't even recall if I taught that spring. I don't  
7 remember. I could check.

8 Q Do you remember what other projects you had  
9 going on at the time?

10 A Yeah. We have a field initiated studies grant  
11 working on -- working with 22 districts. At that point  
12 surveys had been distributed and we were waiting for  
13 surveys to come back from -- from those districts so it  
14 was kind of downtime. And I think that's actually the  
15 only -- I was also working on the National Board project  
16 as well but at that point I was really just providing  
17 technical assistance. And other than that I was waiting  
18 for some funding to come in for a couple of other  
19 projects, but the funding didn't come in until March so  
20 we didn't start on that stuff until March.

21 Q What was the National Board project?

22 A That was the study of the impact of state  
23 testing programs on teacher practices and school  
24 practices.

25 Q And do you have any estimate about how many



1 hours you spent on that first draft, is that possible?  
 2 A Well, if it's two months, I would have been  
 3 working eight to ten hours a day for two months.  
 4 Q Okay. But you didn't keep track of that?  
 5 A No.  
 6 Q After your first draft was completed, you  
 7 mentioned you talked to lawyers about suggestions. Did  
 8 you do any further work in between the time you  
 9 circulated the draft and when you received comments?  
 10 A Work on the report itself?  
 11 Q Yes, or in relation to this project.  
 12 MR. ROSENBAUM: Pretty vague, but you can  
 13 answer.  
 14 THE WITNESS: I'm always doing work around  
 15 testing and accountability and it's always going to  
 16 relate to this. But as I recall it was a very focused  
 17 time and when the report was done it was -- it was off  
 18 my desk and it was time for me to pick up some other  
 19 project, so I remember kind of moving on. I knew I had  
 20 some other papers that I had to finish up as well, so  
 21 I'd have to say that beyond anything that I would read  
 22 as a scholar in general, no, I didn't do anything  
 23 specific for this.  
 24 BY MR. SALVATY:  
 25 Q And then you had a conference where you

1 A Right.  
 2 Q And then at some point did you circulate a  
 3 second draft?  
 4 A I would have sent a second draft to Sophie.  
 5 Q Do you remember when that was?  
 6 A I -- It was in the spring. I have no -- I  
 7 really don't know.  
 8 Q Do you remember if it was about a month after  
 9 the call, two months?  
 10 MR. ROSENBAUM: I think he's answered that.  
 11 THE WITNESS: I don't know. I don't know.  
 12 BY MR. SALVATY:  
 13 Q Okay. Then was there another conference to  
 14 discuss the second draft?  
 15 A I had a -- Yeah, there was another call where  
 16 we talked about it; and again, I don't remember the time  
 17 frames.  
 18 Q As far as the revisions you made to the first  
 19 draft, did you go do any specific additional research to  
 20 be incorporated into the draft or was it more  
 21 restructuring what was already contained in the first  
 22 draft?  
 23 A It was largely restructuring. For one of the  
 24 drafts -- I can't remember if it was two, three, four --  
 25 I made a request for some data that I could use to look

1 received suggestions. Do you remember the time frame of  
 2 that conference?  
 3 A I would guess it was in the beginning of March,  
 4 but I -- I really don't know for sure.  
 5 Q And forgive me if I asked this already: Did  
 6 you receive written comments or were they exclusively  
 7 just orally delivered in a phone conference?  
 8 A Yeah, we had a phone conference.  
 9 Q Did you take notes?  
 10 A I would have done it on my computer.  
 11 Q Did you save those?  
 12 A I would have made it right in the documents as  
 13 we were going along and it would have been revised.  
 14 Q Then what did you do? After receiving these  
 15 suggestions, did you then work on the report to work in  
 16 the suggestions?  
 17 A Yeah, I think I asked them when they need it  
 18 and rejuggled my schedule and did that, made revisions.  
 19 Q Do you remember what the time frame was as far  
 20 as when it was needed?  
 21 A No, I don't. I don't remember it being as  
 22 tight, though, but I really -- I don't have a  
 23 recollection.  
 24 Q So then you spent some time revising the draft;  
 25 is that right?

1 at drop-out rates and that data was sent to me and then  
 2 I did some analyses and incorporated that.  
 3 That's the only -- I mean the only other  
 4 additional analyses that I might have done between the  
 5 first and the second draft would have been the data that  
 6 we were talking about before, the analysis that we were  
 7 talking about before. I don't remember if that was in  
 8 the very first draft or between the first and second  
 9 draft. On the National Board project we had advanced to  
 10 such a state I then said "Hey, why don't we just run  
 11 this for California." I just don't remember if that was  
 12 in January, February, Marchish.  
 13 Q What comments did you receive on the second  
 14 draft?  
 15 A Again, as I recall, they were really kind of  
 16 structural. I was really reluctant again from the  
 17 scholarly perspective to move stuff into an appendices.  
 18 But as I recall that was really the main suggestion, was  
 19 to move some of the technical stuff into -- to  
 20 de-emphasize it basically.  
 21 Q Do you remember any other suggestions --  
 22 A Not really.  
 23 Q -- to that second draft?  
 24 A No.  
 25 Q And then the next step was to incorporate these

1 suggestions into a -- into another version of the  
 2 report; right?  
 3 A Yeah. Yeah.  
 4 Q Do you have any memory of that time frame?  
 5 A It would have been -- As I recall I did that  
 6 fairly quickly but I don't -- I don't remember if that  
 7 means a week or two weeks or less.  
 8 Q Okay. And then did you circulate another  
 9 draft? And this -- this is the third draft we're  
 10 talking about.  
 11 A I would have sent it again to Sophie.  
 12 Q And then what happened next as far as the  
 13 project?  
 14 A As I recall there was finally a final date set  
 15 and I really don't even know what that final date was.  
 16 And so I guess I was relieved that there was a final  
 17 date set and that would have -- I would have made some  
 18 more changes and had Jen and Stacey proof it again.  
 19 Q At some point you said you got -- there was a  
 20 second conference of experts?  
 21 A Yeah, in the summer.  
 22 Q Right. Were you invited to attend that?  
 23 A I was.  
 24 Q Who invited you to that?  
 25 A I can't recall if it was Jeannie or someone

1 that was working with Jeannie.  
 2 Q But you weren't able to attend that one?  
 3 A Yeah.  
 4 Q Do you know who attended that second meeting?  
 5 A I was not there. I really don't know.  
 6 Q Do you know where it was?  
 7 A I believe it was in Los Angeles. Yeah, UCLA, I  
 8 think, but I really don't know.  
 9 Q Do you remember how long that one was?  
 10 A I think it was a day, but I was -- I only  
 11 participated for about 15 minutes by phone so I really  
 12 don't know.  
 13 Q Do you remember what comments you received from  
 14 whoever it was on the phone regarding your report?  
 15 A I don't remember. I just remember thinking  
 16 that they weren't terribly useful.  
 17 Q Did you ever get any written communications  
 18 laying out the schedule for drafting the brief or when  
 19 it was due?  
 20 A No, I never got any schedule. I mean there  
 21 was -- it was either by phone me asking Sophie or it may  
 22 have been through an E mail saying, you know, "When do  
 23 you really need this thing?" But there was never like a  
 24 schedule on this date we need to have a draft, there was  
 25 never anything like that.

1 Q All right. Were you ever told why the schedule  
 2 was changing or anything about what was going on with  
 3 the schedule?  
 4 A Not specifically. I mean there was some --  
 5 Q How about generally?  
 6 A I heard there was a -- at some point someone  
 7 talking about an extension. I don't know who was asking  
 8 for an extension. I'm not even quite sure I know what  
 9 that means. That's -- That's all I really recall.  
 10 Q Did you ever circulate any draft reports to any  
 11 of the people you haven't identified so far?  
 12 A Draft reports?  
 13 Q Yes.  
 14 A I believe -- To the best of my knowledge the  
 15 only people who saw draft reports are Jen Cowan, Stacey,  
 16 and then I would have sent them directly to Sophie.  
 17 Then there was -- My understanding there's been reports  
 18 put up on the web site and I know that whoever  
 19 participated in that conference call saw a version -- I  
 20 don't know which version that person saw -- and I  
 21 believe -- I recall getting a comment by -- or a message  
 22 from David Berliner saying that he thought it was an  
 23 interesting report, too, so he must have seen it at some  
 24 point.  
 25 Again, I can't remember when -- It was late

1 spring, early summer that I recall -- when I recall  
 2 that. It may have even been the tail end -- I just  
 3 don't recall when that was.  
 4 Q Would that have been comments to the final  
 5 report, the draft report, or do you know?  
 6 A It would have been whatever was on the web, as  
 7 far as I know. It wasn't even like comments. It was  
 8 just like "Hey, interesting paper."  
 9 MS. READ-SPANGLER: Can I ask just one  
 10 clarifying question?  
 11 THE WITNESS: Sure.  
 12 MS. READ-SPANGLER: You keep referring to a web  
 13 site. I guess I misunderstood because originally I  
 14 thought you meant the CDE web site but now I think you  
 15 mean the ACLU or the plaintiffs' web site. Have you  
 16 been referring to different ones or always one in  
 17 particular?  
 18 THE WITNESS: Well, for the paper I'm referring  
 19 to I guess it's the plaintiffs' web site. I'm not even  
 20 quite sure who set that up. But prior I was -- in terms  
 21 of doing research I'm talking about the CDE web site.  
 22 MS. READ-SPANGLER: Thanks.  
 23 BY MR. SALVATY:  
 24 Q Did you ever talk to Walt Haney about your  
 25 report?

1 A Vaguely, yeah.  
 2 Q What did you talk about with Walt?  
 3 A Well, first of all let me explain. Walt's a  
 4 colleague whose door is about three down from me, so we  
 5 talk about a lot of things all the time so I've probably  
 6 had several conversations where I mentioned that we're  
 7 working on this or "Hey, look what we found. We did  
 8 this analysis, look what we found." And at the same  
 9 time he's been doing a lot of work on dropouts and  
 10 knowing that I'd been working on this -- this paper he  
 11 would say "Oh, you know this -- you know, would you be  
 12 interested in looking at the data we have when it's  
 13 ready?" so those types of things.  
 14 Q Did you ever show him your draft report or  
 15 final report?  
 16 A No. He may have seen the final report because  
 17 it's on the web site but I never showed it -- I never  
 18 asked him specifically to look at it.  
 19 Q Did you ever talk to Brian Stecher --  
 20 A Yes, I did.  
 21 Q -- at RAND?  
 22 A Yes, I did.  
 23 Q When did you talk to him?  
 24 A I think it was March -- February, Marchish, as  
 25 I recall but I'm not positive. It was in that time

1 frame, though.  
 2 Q What did you talk about with Mr. Stecher?  
 3 A I asked him really about his involvement in  
 4 some of the technical decisions and specifically I was  
 5 interested in some of the modeling that is discussed in  
 6 some of the documents, again available on the -- I guess  
 7 it was on the web site, trying to get some specifics as  
 8 to what was actually done.  
 9 Q What did he tell you?  
 10 A Not as much as I had hoped I'd be able to get  
 11 out of him. My recollection was that he said yeah,  
 12 there was some modeling that was done but it was -- it  
 13 wasn't anything extensive and that anything that was  
 14 done was done very quickly. And as I recall it, too, he  
 15 was a little unhappy with kind of the speed with which  
 16 some of the decisions were being made.  
 17 Q Okay. Let me back up a little bit.  
 18 Why did you call Brian Stecher?  
 19 A Because I wanted -- I wanted to get some more  
 20 information about the modeling than what actually  
 21 occurred during some of those early technical group  
 22 meetings.  
 23 Q How did you decide to call him?  
 24 A I was familiar with some of his work and I had  
 25 done some work with Dan Koretz and he and Dan Koretz had

1 a good relationship from the work that Dan does at RAND.  
 2 Q Is Dan Koretz someone at RAND, also?  
 3 Who is Dan Koretz?  
 4 A Dan Koretz again is one of the kind of leading  
 5 scholars in the accountability and assessment and has  
 6 been at RAND, he has been a part of the National Board  
 7 on Educational Testing and Public Policy and is  
 8 currently a professor at Harvard.  
 9 Q Who do you consider to be the leading scholars  
 10 in accountability and assessment?  
 11 A Well, I mean, it's a pretty broad field and  
 12 it -- there's different types of expertise within that  
 13 field, so if you're talking about technical expertise in  
 14 terms of test construction, you know, people like Ron  
 15 Hambelton and Howard Wainer, Al Beaton are probably  
 16 names off the top -- among the many that come to mind.  
 17 In terms of kind of large-scale issues, large-scale  
 18 testing issues, again Al Beaton who is kind of the  
 19 grandfather of NAEP would be there. Ina Mullis who's  
 20 doing TIMSS, Eugene Gonzalez who is doing TIMSS would be  
 21 in there.  
 22 MS. READ-SPANGLER: TIMSS?  
 23 MR. SALVATY: Wait. I'll ask about that.  
 24 Q Can you back up and just slow down with those  
 25 last couple of names. You mentioned Al Beaton, and then

1 what were the other two names?  
 2 A Ina Mullis.  
 3 Q Ina?  
 4 A Ina, I-n-a, Mullis, M-u-l-l-i-s, I believe.  
 5 Q And that is someone with TIMSS, T-I-M-S?  
 6 A Third International Math and Science Study and  
 7 the repeat study.  
 8 Q And what was the next name?  
 9 A Eugene Gonzalez.  
 10 So those are large-scale national and  
 11 international type testing programs. If you are talking  
 12 about test use issues, people like Bob Linn, Walt Haney,  
 13 George -- Well, let me slow down -- George Madaus, Dan  
 14 Koretz, Lorrie Shepard, Eva Baker, David Berliner. I  
 15 don't know. Those are people off the top of my head  
 16 that I can think of.  
 17 And then again in terms of accountability  
 18 practices I'd take Dan Koretz, Eva Baker, Bob Linn.  
 19 Kind of impacts of accountability and assessment Mary  
 20 Lee Smith would be in that group and myself. I mean  
 21 there's many more but those are the kind of people  
 22 who -- Let's put it this way: Those are the people  
 23 whose work I find to be most -- most informative and  
 24 valuable.  
 25 Q Who else is in that pool? I'd like to find out

1 the names of the other people that you can identify in  
2 each of the categories you just mentioned technical  
3 expertise. Does anyone else come to mind?

4 A Swami Nathan comes to mind; Bob Mislevy; you  
5 know, Linda Steinberg has done work in the area. I mean  
6 I'd have to look through all my files, really, to . . .

7 Q Okay. How about anyone else in the large-scale  
8 testing category?

9 Let me just ask you, what do you mean by  
10 "large-scale testing"?

11 A I mean like national sampling, you know, test  
12 construction and national sampling or international  
13 testing and sampling issues.

14 Not off the top of my -- I can't think of  
15 anyone else off the top of my head.

16 Q Okay. I think the next category you mentioned  
17 was test use?

18 A Yeah.

19 Q What do you mean by "test use"?

20 A Well, I mean when you think about a test and  
21 validity issues around testing, its validity really  
22 applies to how the test is being used as opposed to the  
23 test itself, so it's people who are familiar and have  
24 worked with states or districts or teachers either at  
25 the school level or classroom level around how you use

1 A Berliner would be in that category. Mary Lee  
2 Smith would be in there. I guess Audrey Amrein is  
3 emerging in that field.

4 Did I say Madaus?

5 Q I don't believe you said.

6 A Yeah, George would definitely be in that  
7 category. Jim Popham has come into that category  
8 recently.

9 Q Anyone else?

10 A Eva Baker has talked about it if I don't have  
11 her in there. Joan Herman I guess, too, along with  
12 they've collaborated with Eva. I would put Larry Rudner  
13 in the technical piece. Large-scale issues you could  
14 put John Poggio in that group.

15 Q The last category was impacts of  
16 accountability. What do you mean by that?

17 MR. ROSENBAUM: I don't recall that being a  
18 separate category.

19 MS. READ-SPANGLER: I think it was.

20 MR. ROSENBAUM: Okay.

21 THE WITNESS: I mean I guess just now I folded  
22 it in with the accountability, both using it with  
23 accountability and how teachers and schools react to  
24 accountability systems.

25 BY MR. SALVATY:

1 tests to inform decision making. You know, so it's  
2 people who are -- who understand tests, the strengths  
3 and the limitations of tests, and how they can be used  
4 in -- in -- to meet different purposes.

5 Q Can you think of anyone else in that category?

6 A Jim Popham would be in that category. I don't  
7 even remember who I said.

8 Q Bob Linn, Walt Haney, Madaus, Koretz, Shepard,  
9 Baker, Berliner, and now Popham.

10 A Pamela Moss would probably be in that group. I  
11 mean there's a whole category of special Ed and special  
12 needs types of issues. Jerry Tindal would be in that  
13 category. Randy Elliot Bennett has done some work in  
14 that area as well. There's a woman in Minnesota, too,  
15 whose name is escaping me right now who would be in that  
16 category.

17 Q How about anyone else you can think of?

18 A Not off the top of my head.

19 Q How about in the accountability category?

20 Let me first ask you, what do you mean by  
21 "accountability"?

22 A Using tests within an accountability system or  
23 for an accountability purpose.

24 Q I believe you mentioned Koretz, Baker, and  
25 Linn.

1 Q Okay.

2 A So I guess I would -- I'm not sure what I said  
3 originally, but when I was just talking I was merging  
4 those two.

5 Q You mentioned that these are the experts -- I  
6 think you said that these are the ones that you consider  
7 most useful, are the people who you consider to be  
8 experts in the field and who you rely upon?

9 A They're -- Yeah, they're the people off the top  
10 of my head who I find myself when they release a new  
11 study or a new report or a new paper it's something that  
12 I put at the top of my pile to be sure I read.

13 Q Are there any experts in the areas you've  
14 identified or people that are nationally prominent on  
15 these issues with whom you generally disagree or who you  
16 don't -- you don't rely on or yourself consider  
17 reliable?

18 A I'm not sure what you mean by "nationally  
19 prominent."

20 Q Let me try that again. It was pretty vague.

21 I am trying to remember what your word was, but  
22 it was I think -- Are there people who are recognized  
23 experts or people who publish in this area regularly  
24 with whom you generally disagree?

25 A Who publish in peer reviewed educational

1 journals?

2 Q Okay.

3 A We disagree in terms of what issue?

4 Q Well, I am just trying to find -- it sounded  
5 like you were defining a group of people that you  
6 respect and you're interested in what they have to say.  
7 I wondered if there's other people who study, research  
8 these same issues but you don't respect or follow what  
9 they're doing as carefully for whatever reason.

10 MR. ROSENBAUM: That's very compound and very  
11 vague.

12 THE WITNESS: Yeah, I'm not really -- I mean  
13 I'm not sure how to answer that question. There's -- I  
14 mean it's interesting. The people who are really what I  
15 see as the leaders in the field, people are considered  
16 in educational research and testing measurement who have  
17 training and background who are regular contributors to  
18 journals and association meetings like Educational  
19 Research Association, National Council on Measurement  
20 and Evaluation, some of the large-scale testing  
21 conferences.

22 There's not really a lot of disagreement among  
23 those people around a lot of these issues from my  
24 perspective. It tends to be people who are outside who  
25 don't have the training in testing issues where -- and

1 who are not really publishing in -- in peer reviewed  
2 educational journals who, from my perspective, put forth  
3 differing views or opinions, and that's why, you know, I  
4 mentioned Jim Popham. I'd say Jim Popham who has very  
5 solid technical grounding in testing and measurement  
6 issues previously I think stood out as having a very  
7 different view but in recent years he's basically  
8 acknowledged that he's changed his views, and that's the  
9 only person I can think of that's really -- has the  
10 expertise and training off the top of my head that --  
11 that had a meaningful and significant different view.

12 Q Let me ask you what kind of training do you  
13 think is necessary to assess a school's  
14 accountability -- a state's accountability program?

15 MR. ROSENBAUM: It's really vague.

16 MR. SALVATY: I am trying to follow up really  
17 on his question. He was talking about people who don't  
18 have the training who have views that are out of step  
19 with those who do have the training.

20 MR. ROSENBAUM: But he wasn't talking about a  
21 school's accountability program.

22 BY MR. SALVATY:

23 Q Okay. Let me back up.

24 What were you talking about when you're talking  
25 about necessary training?

1 A To look at test use and test use in the context  
2 of accountability systems.

3 Q Test use in the context of?

4 A An accountability program.

5 Q And what type of training do you feel is  
6 necessary to have expertise on that subject?

7 A You need training -- You need to understand  
8 testing and the intricacies of testing, test theory,  
9 item response theory, issues around appropriate use.  
10 You would need to be I would think intimately familiar  
11 with the standards, the testing standards put forth by  
12 AERA, APA, and NCME.

13 Q Can you layout what these three stand for?

14 A American Educationl Research Association; APA  
15 is American Psychological Association; and NCME, if I  
16 recall correctly, is National Council on Measurement and  
17 Evaluation. I believe it's "Evaluation." It might it  
18 might be "Education." No, I think it's "Evaluation."

19 Q Let me just ask one more question on this. You  
20 talk about Jim Popham, he held a different view and has  
21 now acknowledged that he had the wrong view; is that  
22 fair?

23 MR. ROSENBAUM: I don't think that's exactly  
24 what he --

25 THE WITNESS: I don't know if it's a wrong

1 view, but he's come around to believe that some of what  
2 he advocated and worked on -- Let's put it this way: He  
3 has said to some extent that if he knew what was going  
4 to happen in response to some of the work he's done he  
5 wouldn't have done it.

6 BY MR. SALVATY:

7 Q What had he advocated in the past?

8 A It was really a pretty test-based assessment  
9 accountability system. He was involved in Texas, among  
10 other states.

11 Q And what has he said about his past advocacy?

12 A Just as I said. I mean it's basically that had  
13 he known what was going to happen, that is that things  
14 were going to be so focused on the test rather than the  
15 domain, he -- he wouldn't have -- he wouldn't have been  
16 as involved in developing the systems.

17 Q Okay.

18 A That's my paraphrase, you know, basically of  
19 what he said.

20 Q I understand.

21 All right. Would anyone mind taking about a  
22 five-minute break?

23 MR. ROSENBAUM: No, I was going to suggest that  
24 we've been going about an hour and 15 minutes.

25 MR. SALVATY: Great. Good breaking point.

1 (Recess.)

2 BY MR. SALVATY:

3 Q Before I turn to your report, let me just ask  
4 you a couple of follow-up questions about your  
5 conversation with Brian Stecher.

6 A Sure.

7 Q Why did you contact him as a source for the  
8 whole process of developing the API?

9 MR. ROSENBAUM: I think that mischaracterizes  
10 his testimony and it's also -- he has answered part of  
11 it.

12 But you can amplify if you can.

13 THE WITNESS: I contacted him not around  
14 construction of the API but around some of the specific  
15 modeling that was mentioned in a couple of the -- I  
16 can't remember if they're meeting briefs or memos or  
17 reports but there was models -- modeling mentioned a  
18 couple of times. I was trying to get some more  
19 information on what he was actually doing.

20 BY MR. SALVATY:

21 Q Was it your understanding that he had actually  
22 participated in that modeling process?

23 A That he had been present when those models were  
24 discussed and presented.

25 Q And where did you get that understanding? What

1 MR. ROSENBAUM: Mischaracterizes his testimony.

2 BY MR. SALVATY:

3 Q I don't remember the exact words but --

4 A I mean as I recall it -- I don't remember  
5 exactly what I said, but as I recall I did not -- I did  
6 not get all the specifics of all the different models  
7 that were presented or how -- Yeah, I'll leave it at  
8 that.

9 Q And why weren't you able to get that  
10 information from him?

11 MR. ROSENBAUM: Speculation.

12 THE WITNESS: He didn't -- Well, two reasons:  
13 One, a fair amount of time had passed since those  
14 meetings had occurred and, second, based on what he had  
15 reported it did not sound like there was a lot of  
16 discussion about how the modeling was actually done. It  
17 was more a discussion of what the models were producing,  
18 you know, the potential effects.

19 BY MR. SALVATY:

20 Q Can you tell me a little more about what  
21 modeling we're talking about here? Modeling of what?

22 A Of different weighting systems for the API and  
23 the effects of different -- well, basically interim  
24 target, you know, where they should set the interim  
25 target and how that's going to affect the results

1 was the basis for your belief that he had been present?

2 A That he was a member of that committee and that  
3 during the committee meetings his models were presented  
4 and discussed.

5 Q Was he a member of the Technical Advisory  
6 Committee; is that what you're referring to?

7 A Yeah. Exactly. He also -- I mean he was also  
8 presented a couple of times at -- I forgot the name of  
9 this group, but it's a larger group. It's the API  
10 Advisory Committee or something. I'm not sure exactly  
11 what the title of it was but it was a larger group and  
12 he -- in that context he -- a couple of times at least  
13 he kind of summarized some of the discussion that had  
14 occurred during that technical advisory group.

15 Q Was there just one conversation?

16 A There was just one conversation.

17 Q Do you know how long it was?

18 Was it more than an hour?

19 A More than an hour?

20 Q Yes.

21 A No.

22 Q Was it more than a half hour?

23 A It was maybe 15 minutes to a half hour max.

24 Q And I think you said something like you didn't  
25 learn from him as much as you had hoped; is that --

1 statewide.

2 Q Did you try to contact anyone else who was  
3 involved with that modeling process?

4 A I -- I had tried to contact Mark Wilson -- I  
5 can't remember if it was specific to that or not -- but  
6 I had a hard time contacting him initially and then just  
7 kind of dropped the issue, mainly because it became  
8 clear from what Brian had said and as I looked more and  
9 more through the documentation that beyond what was  
10 presented in those documents -- I can't remember if it  
11 was five or six different models -- it seemed pretty  
12 clear that nothing else had been explored.

13 Q Okay. Let me, then, just direct you to your  
14 report, Exhibit A.

15 MR. ROSENBAUM: Exhibit 1.

16 MR. SALVATY: Exhibit 1. Thank you.

17 Q First, let me just ask you to refer to your CV,  
18 which I think is right under this first document, the  
19 declaration. If you go about three pages into it --

20 Do you see it?

21 A Yep.

22 Q (Continuing) -- is this CV accurate and  
23 current?

24 A Accurate in the sense that everything that's on  
25 here is true?

1 Q Yes.

2 A Yeah. There's stuff on here -- There's stuff  
3 that's not on here that I just for various reasons  
4 haven't included.

5 Q Does any of the stuff that you haven't included  
6 on here pertain to your qualifications to provide this  
7 report?

8 MR. ROSENBAUM: It's vague and overbroad.

9 THE WITNESS: Well, I will answer the question  
10 this way: I think that everything that's on here makes  
11 it pretty clear that I have expertise in testing and  
12 assessment and accountability issues.

13 BY MR. SALVATY:

14 Q How did you decide what to include on here and  
15 what not to include?

16 A Well, I created this for academic purposes, so  
17 I guess it was highlighting things that would be  
18 relevant to an academic audience.

19 Q Can you think of any -- anything right now off  
20 the top of your head that's not included on here that  
21 would be relevant to --

22 A There's probably some more recent projects that  
23 I'm involved in. I'm working on Talking Tactile Tablet,  
24 which is a peripheral tool that we're using to look at  
25 accommodation issues for blind and visually impaired

1 A There was three documents that were produced  
2 to -- I mean they're basically monographs.

3 Q What do you mean by "monographs"?

4 A It's longer than a paper, not quite a book, not  
5 published by, you know, a publishing house group.

6 Q Was this work done for the Rhode Island  
7 Department of Education?

8 A Yeah.

9 Q You said there were three papers --

10 MR. ROSENBAUM: Three monographs.

11 THE WITNESS: Monographs.

12 BY MR. SALVATY:

13 Q Monographs.

14 Monogram or monograph?

15 A -graph.

16 Q Did you rely on the research that you did here  
17 in preparing your expert report in this case?

18 A What do you mean by "rely on"?

19 Q Did you refer to any of the three --

20 A No.

21 Q Okay.

22 A I mean that work has informed my thinking about  
23 these issues but I didn't specifically cite or even  
24 review that work in preparation for this.

25 Q Is there any way to -- for me to obtain copies

1 students for state tests and other types of tests.

2 Q Talking Tactile Tablet?

3 A Tablet, yeah.

4 Q Who was that work for?

5 A A company called Touch Graphics who's received  
6 a grant from the U.S. Department of Education.

7 Yeah, I mean I think that's pretty much it.

8 Q Okay. I just want to touch upon a couple of  
9 items in your CV. On the first page -- Well, first of  
10 all, it says you're a senior research associate at the  
11 Center for the Study of Testing, Evaluation, and  
12 Educational Policy. Do you still hold that position?

13 A Yes.

14 Q One of the projects identified here is as  
15 Principal Investigator, Rhode Island Department of  
16 Education Standards-Based Reform?

17 A Yes.

18 Q It says you conducted an impact evaluation that  
19 focused on changes in teachers' practices as a result of  
20 statewide standards-based reform efforts --

21 A Yes.

22 Q -- do you see that?

23 A Yes.

24 Q Did you prepare a report that summarized your  
25 research on that subject?

1 of those three reports?

2 A Sure.

3 Q Can you tell me the names of them?

4 A They're listed in the back.

5 Q Okay. Are they in your reference material?

6 A In this?

7 Q Yes.

8 A No, because I don't refer to them. But they're  
9 in my -- the CV.

10 Q Okay. Great. If you can direct me to those.

11 A Working Wonders, they're all -- the three

12 Working Wonders documents.

13 Q Okay. Thank you.

14 A One of them is not terribly relevant.

15 Q Which one is that?

16 A A Collection of Student Work With Teacher  
17 Commentary. That's just a collection of student work  
18 with teachers' commentary that I kind of helped  
19 coordinate.

20 Q Okay.

21 MR. ROSENBAUM: How did you come up with that  
22 title?

23 THE WITNESS: It was a hard one. We worked  
24 hard on that one.

25 BY MR. SALVATY:

1 Q Okay. Let me then direct you to page little  
2 Roman numeral -- Romanette 1, first page of your expert  
3 report.

4 A Yeah.

5 MS. READ-SPANGLER: Romanette?

6 MR. HAJELA: Is that the appropriate term?

7 MR. SALVATY: Romanette.

8 Q All right. First --

9 A I guess -- The only thing I guess that might  
10 also be relevant in the CV, and I'm not sure exactly if  
11 it shows up at all -- It's confusing the way the  
12 organization is set up -- it's just my membership with  
13 the National Board on Educational Testing and Public  
14 Policy, because that's really another organization  
15 that's within the CSTEPP which is the Center for the  
16 Study of Testing, so it's kind of funny tiered.

17 Q Okay.

18 A It's mainly for political reasons within the  
19 school which you don't want to know about.

20 Q Let me actually start with page 4 and this is  
21 Romanette 4, the Nature of Assignment.

22 When you talk about the assignment, when were  
23 you given an assignment?

24 A I wasn't given an assignment in the formal  
25 sense but I guess it was when I agreed to prepare an

1 desired ways."

2 Do you see that?

3 A Uh-huh.

4 Q Why do you start with this overarching  
5 assumption? Why do you make this assumption?

6 A I mean this is basically to let the reader,  
7 whoever that may be, understand where I'm coming from,  
8 what -- basically what my bias is.

9 Q Did you do any analysis that would lead you to  
10 believe that an effective and educationally beneficial  
11 accountability system would encourage schools to focus  
12 on inputs, outputs, and the relationship between the two  
13 or by labeling it as an assumption are you saying this  
14 is the starting point of the analysis that you perform  
15 in your report?

16 MR. ROSENBAUM: That's vague and ambiguous,  
17 compound.

18 BY MR. SALVATY:

19 Q Do you understand?

20 A I guess I come to that belief through my  
21 experience over the last whatever, last decade  
22 basically, in working with schools and educational  
23 systems, and in those schools and projects that I've  
24 been involved in where there's been the most success I  
25 see these practices occurring. And so I didn't do any

1 expert report which would have been in -- you know,  
2 sometime in December of '01 I guess it was.

3 Q You start by talking about the overarching  
4 assumption in much of your opinion.

5 A Yeah.

6 Q Let me just read this for the record:

7 "The overarching assumption implicit in  
8 much of my opinion is that states (California  
9 included) provide funding and leadership for  
10 public education in order to provide all  
11 students with opportunities to develop  
12 academic, social, and work-related skills and  
13 knowledge so that they will be prepared to be  
14 productive, thoughtful, and active members of  
15 society. Given this role, I assume that  
16 state-level accountability systems should be  
17 designed to assist school systems in assessing  
18 the extent to which they provide an environment  
19 in which these academic, social, and  
20 work-related skills and knowledge develop.  
21 Thus, an effective and educationally beneficial  
22 accountability system would encourage schools  
23 to focus on inputs, outputs, and the  
24 relationship between the two--that is, the  
25 extent to which inputs impact outputs in

1 formal analyses to reach these conclusions but rather  
2 they emerge out of all the experiences I've had over the  
3 last decade or so. And it also emerges out of, you  
4 know, much of the literature on evaluation, you know,  
5 the need to look at inputs as well as outputs and  
6 understanding the relationships between those two.

7 Q Do you think that most educational experts  
8 agree that an accountability system should focus on  
9 inputs, outputs, and the relationship between the two?

10 MR. ROSENBAUM: It's really vague, overbroad.

11 THE WITNESS: I couldn't really answer that  
12 question. I think that most people that try to  
13 understand schools and the impact that schools have on  
14 students' learning believe that you need to look at  
15 those relationships. I'm not sure if everyone would  
16 define accountability -- I mean accountability has so  
17 many different meanings to so many different people so  
18 it's really difficult to characterize what other people  
19 believe.

20 BY MR. SALVATY:

21 Q When you talk about inputs and outputs, let me  
22 get your thoughts on what those terms mean.

23 When you talk about inputs, what are you  
24 referring to?

25 A Well, it's easier to talk about the outputs.



1 The outputs are in most cases the effects that we want  
 2 to have on students. Some of those are academic  
 3 effects, some of those social effects, some of those  
 4 habits-of-minds effects. And so the inputs are anything  
 5 that you might do with your students, conditions you  
 6 might provide your students, opportunities you might  
 7 provide your students, interactions that you may have  
 8 with your students or provide students an opportunity to  
 9 have that are likely to affect the outcome. So I mean  
 10 the inputs are a whole myriad of -- of things.

11 Q Can you give some examples of the inputs that  
 12 you have in mind?

13 A Well, I mean in the report I talk about a  
 14 number of them. You know, among them would be, you  
 15 know, providing students access to material textbooks,  
 16 technology, science equipment that's going to allow them  
 17 to learn science, social studies, math, whatever it may  
 18 be, providing students access to people that know how to  
 19 instruct in a given subject area. They could be -- I  
 20 don't think I necessarily include this although you  
 21 could -- the type of pedagogical -- pedagogy used in  
 22 classrooms given what it is you're trying to help  
 23 students learn. It could be as simple as -- as just the  
 24 setting in which the environment in which kids are  
 25 placed when they're learning. It's really pretty much

1 anything that you see happening in any school if you  
 2 just walk into it. It could be the amount of time that  
 3 students are exposed to a certain content area or a  
 4 skill, the amount of feedback they're getting.

5 Q Do you have an opinion about quantitatively how  
 6 much an accountability system should focus on inputs  
 7 versus outputs versus the relationship between them? Is  
 8 that something you quantify?

9 A No, because I really -- I don't see it as  
 10 separate. I don't see the focus on inputs as being  
 11 separate from the focus on outputs separate from the  
 12 focus on the relationship between the two. I mean it's  
 13 all -- it's a difficult thing to talk about in some  
 14 senses because everything is interrelated and to try to  
 15 focus on any one aspect of a system and ignore all the  
 16 other pieces in the system, it in many ways causes  
 17 confusion and can become misleading.

18 Q Next you state in your report that the  
 19 plaintiffs have asked me to answer two questions. The  
 20 first question is:

21 "Does California's current output-based  
 22 accountability system accurately and  
 23 sufficiently notify the State of whether  
 24 students receive essentials required for  
 25 learning?"

1 And two:

2 "If not, are there alternatives to  
 3 California's current accountability system?"  
 4 Do you see that?

5 A Uh-huh. Yes.

6 Q I want to get at a -- a sense for some of the  
 7 terms you're using here. When you talk about  
 8 "California's current output-based accountability  
 9 system," what are you referring to?

10 A Basically the API-based system, and at the time  
 11 I was referring to the system that was in place at that  
 12 time which is continuing to evolve but is in many ways  
 13 the same. And again, as, you know, talking about  
 14 accountability system, those pieces that are associated  
 15 with it like II/USP and the Governor's Award Program,  
 16 which is gone.

17 Q When you say the Governor's Award Program is  
 18 gone, what are you referring to?

19 A My understanding is that there isn't funding  
 20 for that, or at least there wasn't recently. I guess it  
 21 could be reinstated. My understanding is that it wasn't  
 22 funded.

23 Q Did you look at any other parts of California's  
 24 educational program outside the API-based accountability  
 25 system?

1 MR. ROSENBAUM: That's really so vague and  
 2 overbroad.

3 THE WITNESS: I mean some of the things I  
 4 looked at I talk about in here. I looked at the  
 5 standards as well.

6 BY MR. SALVATY:

7 Q Okay. Let me ask it more specifically.

8 Did you look at what the state is doing to  
 9 recruit credentialed teachers?

10 A No.

11 Q Did you look at what the state is doing to  
 12 train teachers?

13 A I stumbled upon some stuff on the web but I did  
 14 not specifically look at that because I don't see that  
 15 as part of the accountability system.

16 Q Okay. Did you look at what the state is doing  
 17 as far as textbook funding?

18 A Again, I stumbled upon some information about  
 19 that but I didn't look at that specifically because it's  
 20 not part of the accountability system.

21 Q Did you look at what the state is doing as far  
 22 as funding construction of new facilities?

23 A Again, I stumbled upon some information on the  
 24 web site but that wasn't part of the accountability  
 25 system.

1 MS. SHARGEL: I'm sorry. You're referring to  
2 the plaintiffs' web site or the CDE web site?

3 THE WITNESS: CDE. CDE.

4 MR. SALVATY: Thank you.

5 Q Did you attempt to analyze the state's system  
6 of financing its various educational programs?

7 A No, I did not.

8 Q Did you look at what the state is doing to  
9 comply with the No Child Left Behind Act?

10 A That act was kind of ambiguous when I was  
11 writing this and what the state was going to do. I've  
12 since seen just in the last two weeks some references to  
13 that but I haven't looked at that -- that carefully.

14 Q When you use the term "essentials required for  
15 learning," what are you referring to there?

16 A Again, it's -- it's the things that educators  
17 believe and pretty much agree are needed for -- for  
18 effective teaching and learning, things like access,  
19 easy access to materials, instructional materials;  
20 textbooks; lab equipment if you're teaching science;  
21 technology if it's appropriate for the curriculum area;  
22 teachers, good teachers; facilities that are going to  
23 allow for one to learn; adequate time to engage with  
24 curriculum material; decent feedback on what it is a  
25 student is -- a student's work. You know, there's

1 learning?

2 MR. ROSENBAUM: It's vague.

3 THE WITNESS: It depends on what it is you're  
4 trying to teach. If you're trying to teach someone how  
5 to write cursive, then a computer may not be essential  
6 for that task. But if you look at all the educational  
7 objectives that a K-12 system tries to achieve, then I  
8 think the things that I mentioned are -- and most people  
9 would agree those are essential.

10 BY MR. SALVATY:

11 Q When you talk about most educators, do you have  
12 anybody specific in mind?

13 A Just all the teachers that I've ever  
14 encountered, the researchers I've worked with, the body  
15 of literature on education.

16 Q When you went about analyzing this -- this  
17 first request, whether California's accountability  
18 system accurately and sufficiently notifies the state of  
19 whether students receive essentials required for  
20 learning, did you have a specific set of essentials in  
21 mind or is it just -- you've listed some things and  
22 you've said there are others and I'm wondering whether  
23 you had a specific list of essentials in mind or if you  
24 had some something else in mind?

25 A No, I -- I explored that question from my

1 others as well but it's -- it's a -- it's the things  
2 that schools try to put in place, every school tries to  
3 put in place for their students.

4 Q You said these are the things that experts  
5 believe and agree are needed for learning?

6 A I think I said "educators."

7 Q Educators.

8 You believe educators agree on what things are  
9 essential for learning?

10 A Yeah, I think there's general common sense  
11 consensus that if you're going to learn math, you need  
12 to be exposed to the math; if you're going to learn to  
13 use a computer, you need to have access to a computer;  
14 if you're going to learn lots of different things, it's  
15 better to have a good teacher than a teacher that's not  
16 very good; if you're going to be in a rainy community or  
17 a rainy setting, then you should have a building where  
18 you're not getting all wet all the time, or at least you  
19 should have a building. I mean that's just general  
20 common sense things that I think most educators -- I  
21 don't know. There may be some out there that disagree  
22 with some of them, but I think most educators do agree  
23 with these things.

24 Q Do you believe most educators agree that all of  
25 those things that you just mentioned are essential for

1 perspective or assumption that I outline above which is,  
2 you know, really kind of all the inputs or the -- many  
3 of the inputs. I mean some of the inputs are going to  
4 be very difficult to measure, and so I tended not to  
5 discuss those more difficult to measure inputs in the  
6 report.

7 But -- But I looked at the system from the  
8 perspective as does the system provide any information  
9 about inputs; and again, based on my assumption that you  
10 should be looking at the relationship between inputs and  
11 outputs, does this system provide a way to do that in a  
12 systematic, relatively easy manner.

13 Q In looking at whether California's system  
14 notifies the state of whether students are receiving  
15 essentials required for learning essentials, in thinking  
16 about inputs in your mind are all of the inputs you  
17 mentioned entitled to equal significance or are some  
18 more important than others?

19 A Again, it depends on what part of the  
20 curriculum you're looking at. It seems to me that  
21 something like quality teachers is probably a more  
22 universal input that you would want to look at across  
23 curricular areas. Something like access and use of  
24 technology may be less relevant for some curricular  
25 areas and for some gray areas than others. Similarly

1 things like textbooks, it depends on the curricular area  
2 and the grade level and, you know, what it is you're  
3 really trying to understand.

4 Q Well, I am looking at -- I am trying to  
5 understand more about your analysis, the analysis that  
6 you went through in reaching your opinions here, and I  
7 am wondering if in going about that analysis if you gave  
8 different weight to the different inputs that you have  
9 mentioned.

10 MR. ROSENBAUM: I think he just answered it.

11 THE WITNESS: I did not give weight. I -- My  
12 belief is if you believe that it's a valuable input, and  
13 by that I mean something that's likely to have a  
14 meaningful impact on students learning, then it's  
15 something they should be looking at systematically  
16 across schools and that once you have data  
17 systematically collected across schools you can then  
18 start looking at relationships and trying to really  
19 understand in what context, in what settings certain  
20 types of inputs are more -- more important, more  
21 meaningful.

22 BY MR. SALVATY:

23 Q I think you said you didn't look at -- you said  
24 many inputs are difficult to measure; is that right?

25 A Some, yeah.

1 qualified but at least certified teacher by establishing  
2 requirements for certification, and, you know, my  
3 assumption is that they establish those criteria because  
4 they believe that those things are more likely to make  
5 an effective quality, if you will, teacher. So  
6 something like whether a teacher is certified or not is  
7 fairly easy to measure.

8 Q How about whether a particular teacher is  
9 actually helping children learn, something more abstract  
10 like that?

11 MR. ROSENBAUM: What's the question?

12 BY MR. SALVATY:

13 Q Is that something that can be measured readily?

14 A You could -- You could -- You could -- I mean  
15 assuming you had the appropriate data you could make  
16 estimates on the extent to which a teacher is impacting  
17 the student learning, or affecting student learning if  
18 you will. Tennessee's value added system, for example,  
19 allows that to be done. But that's -- I mean it's a  
20 little bit different than measuring. I think what was  
21 the words you used, how much a teacher is helping a  
22 student? I mean it's a little bit different. It's  
23 really looking at how a teacher -- Teachers seem to be  
24 impacting students learning is measured by tests, in  
25 that case the Tennessee test.

1 Q And you didn't analyze those; is that right?  
2 You didn't attempt to analyze those in going through  
3 this analysis here?

4 A I wouldn't -- I wouldn't say I didn't analyze  
5 those. I didn't discuss those or include those in my  
6 list of recommendations.

7 Q Which are the inputs that in your opinion are  
8 difficult to measure?

9 A I think something like parent involvement might  
10 be difficult to measure. Something like what exactly  
11 teachers are doing with technology can be a difficult  
12 thing to measure. You can get down to the amount of  
13 time that students are spending doing different types of  
14 learning activities, that would become very difficult  
15 and burdensome to measure, although it would be very  
16 useful information. You know, it would just be very  
17 difficult to collect that information systematically.  
18 So it's those types of things. I think really when you  
19 get down to the instructional practice you start running  
20 into challenges in collecting that type of data.

21 Q Do you believe that measuring whether a student  
22 has a quality teacher is difficult to measure?

23 A I mean you can define "quality" in many  
24 different ways. It seems to me that California has and  
25 many other states have defined I'm not sure if it's

1 Q In your opinion is the quality of instructional  
2 material something that's difficult to measure?

3 A Again, it depends on how you're defining  
4 "quality." My understanding in California is that it  
5 was something like textbooks, for example, the state  
6 makes recommendations on textbooks -- appropriate  
7 textbooks and so you could look at the extent to which  
8 those appropriate textbooks -- those approved textbooks,  
9 if you will, are present and the numbers -- and the  
10 relationship between the number of students and the  
11 number of -- number of students that would be accessing  
12 those textbooks and how many are actually available for  
13 those students. It seems to me like that that would be  
14 fairly easy to measure.

15 Q Did you have a particular definition of quality  
16 of instructional materials when you performed your  
17 analysis in this case?

18 A I was thinking more -- more in the lines of  
19 the -- the instructional materials that would be  
20 required to teach the kids the state standards. So, for  
21 example, if a standard, you know, requires a student to  
22 do something with technology, the extent to which that  
23 technology is available for students to learn how to do  
24 whatever it is they're supposed to do with the  
25 technology. If students are supposed to learn algebra,

1 the extent to which there's materials approved by the  
2 state are present and available to the students.

3 Q And how about quality of learning environment,  
4 is that something that you believe to be difficult to  
5 measure?

6 MR. ROSENBAUM: Vague. Foundation.

7 THE WITNESS: I think you can measure or at  
8 least collect data -- I'm not sure if you can measure  
9 it -- but you collect data about the extent to which  
10 various features that would indicate the presence of --  
11 of quality facilities. So you could collect information  
12 that would provide a signal, if you will, as to extent  
13 to which there may be a problem with a facility. But of  
14 the three that we've talked so far, I'd say that's --  
15 that would be the more challenging one to collect  
16 information systematically on.

17 BY MR. SALVATY:

18 Q Why do you say that?

19 A Because in some cases there may be a little  
20 more judgment. I think like one of the things -- Let me  
21 just refer to this to make sure it's accurate. Yeah,  
22 for example, I talk about adequacy of school facilities.  
23 This is on page 17. Access to sanitary facilities,  
24 ratio of students, the functioning toilets. Well, you'd  
25 have to define what a functioning toilet is and there

1 may be some less reliability in terms of the way in  
2 which a rubric, if you will, would be applied as opposed  
3 to the number of approved textbooks present in a  
4 classroom. That's an easier thing to define and count.

5 Q In this question you also talk about whether  
6 the system accurately and sufficiently notifies the  
7 state, and I wonder if you have anything specific in  
8 mind when you're thinking of accuracy and sufficiency  
9 there.

10 A Well, those questions were put to me to answer,  
11 so my interpretation of those questions -- you know,  
12 because I didn't put that language there. That language  
13 was put there and I was asked to answer those questions.  
14 So in the sense of how did I interpret that; is that  
15 what you mean?

16 Q Yes, that's helpful. I appreciate you  
17 clarifying.

18 How were these questions communicated to you?

19 A I believe it was during one of the initial  
20 phone conversations.

21 Q One of the initial phone conversations with?

22 A With Mark. I believe it was with Mark. It may  
23 have been Sophie but I -- I mean those earlier  
24 conversations is when those questions were put to me.

25 Q Did you have any input to what these questions

1 would be or were they presented to you and then you set  
2 about answering them?

3 A I think the latter is probably more accurate.  
4 I don't remember refining them very much. I don't  
5 remember any conversations about refining them.

6 Q Okay. So what was your understanding of the  
7 terms "accurately and sufficiently notify the State"?

8 A Well, let me answer it this way: I looked at  
9 that phrase, if you will, that part of the question, in  
10 terms of the extent to which information that the state  
11 is currently collecting, does it provide the state the  
12 opportunity to look at the extent to which these  
13 essentials are present. I mean so in some sense it's a  
14 poorly worded question because a system isn't going to  
15 notify, really. I mean the system should provide  
16 information so that anyone who is using that information  
17 could come to discover that. So that's how I really  
18 approached that part of the question.

19 Q Okay. Did you have anything more concrete in  
20 mind when you set about trying to determine whether the  
21 system is accurate and sufficient?

22 A Well, I guess that question -- that part of it  
23 became pretty easy to answer pretty quickly because the  
24 system as it exists doesn't provide any information  
25 about these -- these essentials required for learning so

1 there was no, I didn't have to really try to define the  
2 accurate -- what I mean by "accurate" and what do I mean  
3 by "sufficient" in that context because it just doesn't  
4 exist.

5 Q In your conversations with the attorneys, did  
6 you discuss what the essentials required for learning  
7 were in the context of this question? You've talked  
8 about your views of what the essentials required for  
9 learning are, and I wonder if you talked about that in  
10 your conversation when these questions were posed for  
11 you.

12 A I think given the context of the -- I don't  
13 remember having a specific conversation where we  
14 attempted to define what the essentials required for  
15 learning were. We did have discussion, or probably more  
16 than one discussion, about what the essence of the case  
17 was and it was pretty clear that the essence of the case  
18 overlapped or at least as I understand the essence of  
19 the case had overlapped with, you know, what I see as  
20 the essentials required for learning and what I believe  
21 most educators believe are the essentials.

22 Q The next question:

23 "If not, are there alternatives to  
24 California's current accountability system?"  
25 What was your understanding of the term

1 "alternatives"? And what I'm asking for here is were  
2 you looking for better alternatives or were you looking  
3 for feasible alternatives or was it simply other  
4 options?

5 MR. ROSENBAUM: It's vague.

6 THE WITNESS: I -- I interpret that question to  
7 be is there something reasonable that is being done in a  
8 different state or could be done in the State of  
9 California included that would be an improvement over  
10 what's currently being done and which would meet what I  
11 see as the -- the -- I don't know -- the -- I don't  
12 know -- I don't want to say "definition" but the  
13 principles of a good accountability system.

14 BY MR. SALVATY:

15 Q Did you look at whether the alternatives you  
16 were considering could feasibly be implemented in  
17 California, was that something you looked at?

18 MR. ROSENBAUM: Vague. Foundation.

19 THE WITNESS: I considered it. I didn't do any  
20 kind of cost analysis but I considered it, and given  
21 that many of the things I was suggesting existed in some  
22 form in other places it seemed reasonable that they  
23 could be implemented in California as well.

24 BY MR. SALVATY:

25 Q Right before the questions in the last

1 than other systems.

2 Q Okay. And I understand that's your opinion but  
3 my question is a little bit different. My question is:  
4 In your opinion are there any states that currently have  
5 what you would consider to be an effective and  
6 educationally beneficial accountability system?

7 A I said yes.

8 Q And you named Rhode Island?

9 A Yes.

10 Q And you said aspects of Connecticut. I'd like  
11 to ask you if as a whole you would consider that system  
12 to be effective and educationally beneficial?

13 A To some extent. As I said, I think there's  
14 aspects of it that could be enhanced. For example, they  
15 don't collect sufficient information, in my opinion,  
16 around the context -- the context in which learning is  
17 occurring.

18 Q Are you able to say one way or the other  
19 whether you consider the system taken as a whole is  
20 educationally --

21 MR. ROSENBAUM: He's answered that twice.

22 MR. SALVATY: Well, I don't think I've gotten  
23 it -- an answer. I would like a yes or no answer if I  
24 could.

25 Q If you can't answer it yes or no, then that's

1 paragraph of this first paragraph under "Nature of  
2 Assignment" you refer to an effective and educationally  
3 beneficial accountability system; do you see that?

4 A Yes.

5 Q In your opinion do any states currently utilize  
6 an effective and educationally beneficial accountability  
7 system?

8 A Yeah, I think there are states that have  
9 effective and educationally beneficial accountability  
10 systems.

11 Q What states are those?

12 A I mean in the report I talk at length about  
13 Rhode Island, I talk a little bit about Connecticut  
14 although aspects of -- only aspects of Connecticut's are  
15 meeting what I -- Let's put it this way: I believe  
16 Connecticut's could be enhanced as well.

17 I guess if you look at it, you talked about No  
18 Child Left Behind, that provides funding that all states  
19 could apply for to enhance their assessment and  
20 accountability systems, so the implication is that at  
21 least from the federal level all states can do something  
22 to further improve their systems.

23 Q Okay.

24 A But there are systems in place that are much --  
25 I think much more effective and educationally beneficial

1 fine, you can say that.

2 MR. ROSENBAUM: He's answered it twice. He's  
3 answered it for you.

4 THE WITNESS: As I said, I really think that  
5 what Rhode Island is doing is -- is an effective and  
6 educationally beneficial accountability system.

7 If the question was which state has the most,  
8 in my opinion of the states -- Again, I'm not familiar  
9 with every state. I talk about ten or so states that I  
10 know fairly well and of those I think Rhode Island is  
11 the most effective and educationally beneficial.

12 BY MR. SALVATY:

13 Q Okay. Other than Rhode Island and aspects of  
14 Connecticut, are there any other states that you're  
15 familiar with that would meet that standard?

16 A I think that Rhode Island's -- Well, I'd say  
17 that Maine in some -- All though Maine's is very  
18 different than Rhode Island's, Maine's system -- I  
19 should say Maine may need to seriously revise their  
20 system in light of No Child Left Behind; but pre No  
21 Child Left Behind I think Maine's was also a very good  
22 system as well, although very different than Rhode  
23 Island's.

24 Q In your mind would Maine meet the standard that  
25 you've discussed here of being an effective and

1 educationally beneficial accountability system?

2 MR. ROSENBAUM: I think he's answered it

3 THE WITNESS: At the school level, yes.

4 BY MR. SALVATY:

5 Q What does that mean?

6 A I think what's happening in Maine allows  
7 schools to provide -- allows schools to improve  
8 themselves such that they're having a positive impact on  
9 student learning.

10 Q Can you explain some of the differences between  
11 Maine's system and Rhode Island's?

12 A Yeah. I guess the biggest difference in Maine  
13 is -- between Maine and Rhode Island, Rhode Island has a  
14 state -- a set of state tests that are used across the  
15 state whereas Maine has a more flexible system so that  
16 local school systems can develop their own assessments;  
17 so that in Rhode Island it's easier to look at  
18 differences across the state in terms of student  
19 learning and then the relationship between what schools  
20 are actually doing in impacting student learning. Maine  
21 gives much more local control to the schools and so it's  
22 more difficult at the state level to look across  
23 schools. That's the fundamental difference.

24 Q What is it about Maine's system that will need  
25 to be changed to comply with the No Child Left Behind

1 A It really depends on the system and the  
2 mechanism that's put in place. My fundamental belief is  
3 that you should have a system in place where pretty much  
4 everyone is participating so that, again, you can learn  
5 across the full spectrum. You know, again, it depends  
6 on the context in which you're trying to put something  
7 in place. Sometimes you do have to mandate it to get  
8 that. Other times if you have good relationships with  
9 your schools or whoever it is you're working with then  
10 you can strongly encourage.

11 Q You mentioned output-based accountability  
12 system, the phrase, "California's current output-based  
13 accountability system"; do you see that?

14 A Yes.

15 Q What do you mean when you talk about -- I think  
16 I know from reading your report but I would like you to  
17 explain what you're referring to when you call the  
18 accountability system an output-based accountability  
19 system. Again, I know that you didn't use this phrasing  
20 but what was your understanding?

21 A It's really the focus -- the sole focus on  
22 student learning is measured by tests.

23 Q Do some states use accountability systems that  
24 are not output based?

25 A All systems include an output component of it,

1 Act?

2 A They need a common measure, common test across  
3 all schools.

4 Q In this sentence you talk about an effective  
5 and educationally beneficial accountability system would  
6 encourage schools to focus on inputs, outputs, and the  
7 relationship between the two, and I want to ask you  
8 about the term "encourage." Do you think an adequate  
9 system needs to require schools to focus on those things  
10 or is it sufficient to encourage them or do you have a  
11 view one way or the other on that?

12 MR. ROSENBAUM: Vague. Compound. Incomplete  
13 hypothetical.

14 THE WITNESS: I guess I -- I intentionally  
15 didn't use the word "mandate" but I think that you can  
16 set up a mechanism or a system that, as I say, really  
17 strongly encourages without mandating and that's --  
18 that's the type of system I think would probably be the  
19 best and most beneficial.

20 BY MR. SALVATY:

21 Q Do you have anything more specific in mind when  
22 you talk about not using the word "mandate,"  
23 differentiate in your mind and think of strongly  
24 encourages, is there anything more concrete in your mind  
25 than that?

1 some include more.

2 Q How many states have an accountability system?

3 MR. ROSENBAUM: Vague. Foundation.

4 THE WITNESS: I believe in the beginning of  
5 this I said all states in one form or another have an  
6 accountability system or are in the process of putting  
7 one in place. You know, it's -- it's in flux in some  
8 sense in some states but it's there.

9 BY MR. SALVATY:

10 Q As far as you know do any states have the same  
11 accountability system?

12 A Of the states that I listed, I'm familiar with,  
13 none of them are exactly the same.

14 Q Are some of them almost the same or close to  
15 the same?

16 MR. ROSENBAUM: Vague.

17 THE WITNESS: Principally many of them are the  
18 same. I should say some are the same, not many.

19 BY MR. SALVATY:

20 Q Some are the same?

21 A Yeah, in principle.

22 Q What principle is the same in some of them? I  
23 know we're talking vaguely. We will turn the page here  
24 in a minute but --

25 A Like, for example, some states we use an

1 external off-the-shelf, if you will, standardized test  
 2 administered in a subset of grade levels and so in  
 3 principle it's basically the same system. You know,  
 4 they may be using a different test, they may be  
 5 administering it in different grade levels but  
 6 essentially it's the same approach. Other states will  
 7 be developing their own tests, they're relying to their  
 8 state standards. The state standards are different, the  
 9 tests would be different, but in essence it's the same  
 10 approach. Some states will use test scores and make  
 11 decisions -- certain types of decisions, other states  
 12 use them to make other types of decisions.

13 Q Do the states that you have looked at, do their  
 14 accountability systems have varying degrees of focus on  
 15 inputs, outputs, and the relationship between the two?

16 A Yeah, the focus varies.

17 MR. ROSENBAUM: Paul, let's go off the record  
 18 for a second.

19 MR. SALVATY: Off the record.  
 20 (Discussion off the record.)

21 MR. ROSENBAUM: I was checking and I talked to  
 22 Mike about his schedule. When the defendants were in  
 23 negotiations with us regarding availability and dates,  
 24 for a number of the witnesses you requested three days,  
 25 and that's been accommodated, and for Mike you

1 of the report or anything else that additional time is  
 2 necessary.

3 MR. HAJELA: But I don't thinking anyone  
 4 committed to finishing within the two days, either. I  
 5 don't recall that conversation.

6 MR. ROSENBAUM: Actually, there's been  
 7 commitment to finish by a particular day.

8 MS. READ-SPANGLER: Frankly I don't think that  
 9 that's true. I think what the agreement is that  
 10 plaintiffs would pick up a tab and if it exceeds that  
 11 then defendants would figure out how they would cover  
 12 that. I don't think you have any basis for limiting our  
 13 time with an expert especially if we're willing to pay  
 14 for the additional time; and I think, you know,  
 15 remember, what goes around comes around.

16 MR. ROSENBAUM: I think regarding the  
 17 negotiations that you're certainly correct, there were  
 18 negotiations about who was going to pay, but I think  
 19 that reenforces my point that if at any point you said  
 20 more time was going to be necessary, I would have  
 21 certainly dealt with that accordingly.

22 MR. SALVATY: I was not involved directly with  
 23 the negotiations but I can't believe that we have agreed  
 24 to only take two days of Professor Russell's  
 25 deposition. I don't think that was the intention or

1 specifically requested two, and so I'm going -- I'm  
 2 going to make him available for two days. It's  
 3 compounded by the fact that he's from Boston. And I  
 4 will certainly give you additional time to make up the  
 5 time we lost this morning and if there's some time on  
 6 the edges that you need, of course I'll be willing to  
 7 deal with that, but our position is two days is the  
 8 limit.

9 MR. SALVATY: Okay. We obviously disagree with  
 10 that. I think the report is long, there's a lot of  
 11 issues to explore.

12 MR. ROSENBAUM: Then you've had that report for  
 13 months, months and months, and you could have come back  
 14 to us and said "We need an additional day," and we've  
 15 received no -- no request whatsoever to extend it.  
 16 You've had plenty of time to look at this report.

17 MR. HAJELA: Mark, I just want to say from our  
 18 perspective I don't recall being involved in that  
 19 initial conversation of two or three days, but if two  
 20 days means intervenors don't have an opportunity to ask  
 21 any questions, it's going to be a problem for us.

22 MR. ROSENBAUM: Well, the dates have been  
 23 available to everybody and it's been known that some  
 24 witnesses have three days and some witnesses have two  
 25 days, and no one has ever said by virtue of the volume

1 that any implicit representation was made about that.  
 2 So we have a disagreement and we will figure it out.  
 3 But --

4 MS. READ-SPANGLER: Well, also, if that's the  
 5 position you're going to take from here on out, then we  
 6 may need to renegotiate a bunch of them because I can  
 7 tell you right now we're not going to be able to do  
 8 Linda Darling-Hammond's in two days.

9 MR. SALVATY: And we only have one day for hers  
 10 now because one day she's not available.

11 MS. READ-SPANGLER: It was my impression that  
 12 plaintiffs gave us dates and they gave us sets of two  
 13 days for Professor Russell. I don't think that we  
 14 agreed to limit it to two. In any event, we're wasting  
 15 our time even discussing it.

16 MR. ROSENBAUM: Okay.

17 MR. SALVATY: All right. Does anybody else  
 18 have anything to say? Okay.

19 Q Let's turn back to the report. Turning to the  
 20 next page of your report, Professor Russell, you're  
 21 talking -- in the Opinions and Conclusions section --

22 MR. ROSENBAUM: What page are you referring to,  
 23 please?

24 MR. SALVATY: It's Roman numeral five.

25 Q (Continuing) -- here you start this page by

1 stating:  
 2 "Over the past nine years, my research  
 3 activities have required me to become familiar  
 4 with educational assessment and accountability  
 5 systems in at least ten states, including  
 6 Massachusetts, Tennessee, Texas, Florida,  
 7 Maryland, Ohio, Michigan, Florida, Rhode  
 8 Island, Kentucky, Alaska, and most recently  
 9 California."  
 10 Do you see that?  
 11 A Yep.  
 12 Q You mention here becoming familiar with the  
 13 systems in at least ten states. Are there some other  
 14 states whose accountability systems you are familiar  
 15 with?  
 16 A Yes.  
 17 Q What states are those?  
 18 A I talked about Maine earlier, so Maine's one.  
 19 I have some notion of what's happening in Vermont as  
 20 well, Connecticut as well obviously because I talk about  
 21 that in the report. I have Maryland on there. I know  
 22 somewhat what's going on in North Carolina. Michigan is  
 23 on there. I'm vaguely familiar with what's happening in  
 24 Arizona and, yeah -- I mean yeah.  
 25 Q Any others?

1 A Well, yeah, there's -- I'd say just through  
 2 some research that we've done and what other researchers  
 3 have done they classify and they talk about all the  
 4 different state testing and accountability programs, so  
 5 in a sense in the literature there's some familiarity  
 6 with what's happening but I'm not -- I really don't know  
 7 from what I read in the literature specifically what's  
 8 happening.  
 9 Q Are you able to talk about some of the key  
 10 features of each of these accountability systems?  
 11 MR. ROSENBAUM: Vague.  
 12 THE WITNESS: I could -- I could off the top of  
 13 my head talk about parts of them but, you know, again  
 14 they -- so many of these systems change and have changed  
 15 since I've worked with people in some of these states.  
 16 BY MR. SALVATY:  
 17 Q Okay. How have you become familiar with  
 18 Massachusetts' system?  
 19 A Well, I live there and I've looked at a whole  
 20 assortment of issues related to what the system is  
 21 trying to do. I've done research on a number of the  
 22 schools there and again through that research have  
 23 become familiar with what the state's trying to do.  
 24 Q How about Tennessee?  
 25 A I had been doing some work with Co-NECT schools

1 in Memphis, so through this work I had become familiar  
 2 with what they were doing at the time.  
 3 Q Let me just back up. When did you do the work  
 4 relating to Massachusetts' system? Is that something  
 5 that's ongoing?  
 6 A It's ongoing, yeah.  
 7 Q When did you do this work in Tennessee with  
 8 Co-NECT schools?  
 9 A I have to look at my CV. It would have been  
 10 '95, '96, '97, somewhere in there, and then again --  
 11 It's really '95 through 2000 off and on.  
 12 Q Have you looked at their system since then?  
 13 A I haven't looked real closely at it since then,  
 14 no.  
 15 Q Do you know if it's changed at all since 2000?  
 16 MR. ROSENBAUM: Foundation.  
 17 THE WITNESS: I don't -- I don't know  
 18 specifically if it has.  
 19 BY MR. SALVATY:  
 20 Q How about Texas, what work have you done to  
 21 become familiar with the Texas accountability system?  
 22 A Again, I had worked with some Co-NECT schools  
 23 and had done some research and analysis of test scores  
 24 in those schools in Texas which required me to become  
 25 familiar with what the system was -- what the tests were

1 about and what the system was. Also through the work of  
 2 colleagues, you know, reading their drafts and looking  
 3 what they're doing I've become familiar with Texas.  
 4 Q When you mention colleagues, are you talking  
 5 about Walt Haney?  
 6 A Walt Haney and then the work of the board as  
 7 well.  
 8 Q What board are you referring to?  
 9 A The National Board on Educational Testing and  
 10 Public Policy.  
 11 Q When did you do this work relating to Texas?  
 12 A I'm sorry. When did I?  
 13 Q When.  
 14 A What was the question?  
 15 Q When did you do this work that pertained to the  
 16 Texas --  
 17 A The Co-NECT stuff would have been '99, 2000 I  
 18 believe. And then Walt's stuff is kind of ongoing.  
 19 National Board stuff has been over the last two or three  
 20 years.  
 21 Q What about Florida?  
 22 A Again, that was through my work with Co-NECT.  
 23 It would have been the same time frame as Tennessee.  
 24 Q So that's '95 to 2000?  
 25 A Yeah, exactly. It might even be '94. We



1 started a year earlier in Florida, I think. I think.  
 2 Q What about Maryland?  
 3 A Partly through Co-NECT and partly just because  
 4 it's always been -- Maryland has always done interesting  
 5 things, so for course preparation and just general  
 6 research I'm familiar with what they're doing. I also  
 7 looked at Maryland. I used that as a model for some  
 8 aspects of my book on technology and assessment. That's  
 9 unpublished, though. It's not listed.  
 10 Q It's unpublished?  
 11 A Yeah. It's being edited now.  
 12 Q Is that ongoing, your examination of Maryland's  
 13 accountability system, is that something that's still  
 14 ongoing?  
 15 A I wouldn't say that I'm examining it, just I  
 16 follow it because they're doing interesting things  
 17 there.  
 18 Q When you say you follow it, what do you mean?  
 19 When articles come out about it, you read those or --  
 20 A Yes, exactly. Or if there's -- I'm at a  
 21 conference and people from Maryland are there and  
 22 they're presenting, I will go see what they're  
 23 presenting, see what they're talking about.  
 24 Q How have you become familiar with Ohio's  
 25 accountability system?

1 A Again, partially through my work with Co-NECT  
 2 and I guess through work of colleagues and the National  
 3 Board.  
 4 Q And when was that work performed?  
 5 A '99, 2000, and kind of ongoing.  
 6 Q What do you mean when you say "kind of  
 7 ongoing"?  
 8 A Just by the work -- looking at the work of my  
 9 colleagues, reviewing the work of my colleagues.  
 10 Q How about Michigan?  
 11 A That was -- I was doing some work for Mosaic  
 12 Education which runs charter schools. They had some  
 13 charter schools in Michigan, so that would have been --  
 14 I don't know -- maybe three or four years ago when that  
 15 began.  
 16 Q Is that ongoing?  
 17 A No.  
 18 Q When did that work end?  
 19 A About a year, year and a half ago. I don't  
 20 recall exactly.  
 21 Q How about Florida?  
 22 A I have it listed twice.  
 23 Q Oh, you're right.  
 24 A There's another error.  
 25 Q How about Rhode Island?

1 A That goes back to the work I started to do on I  
 2 guess it was in '98. I guess I was actually familiar  
 3 with it before that because I've been asked to do some  
 4 consulting for one of their collaboratives as well  
 5 before -- prior to '98, but -- and again that's ongoing.  
 6 Q And how about Kentucky?  
 7 A That's mainly through -- Well, there's two  
 8 ways. One is they had a -- kind of a cutting-edge  
 9 system in place in the early '90s. One of my colleagues  
 10 is -- I'm not sure if he still is but at the time he was  
 11 on the technical advisory panel for it, so through him I  
 12 would hear updates. And then work through the Edna  
 13 McConnell-Clark project we also worked with a district  
 14 in Kentucky as well.  
 15 Q When was it that you became familiar with  
 16 Kentucky and its accountability system?  
 17 A That would go back to -- when I kind of entered  
 18 the field, '94, somewhere in there.  
 19 Q Is that work ongoing?  
 20 A '93.  
 21 I wouldn't say it's work but given that it had  
 22 a model system and it has been tweaking the system over  
 23 time. Again, it's similar to Maryland, if I see an  
 24 article about it I'll read it. If they're giving a  
 25 presentation at a conference, I will try to attend the

1 presentation. I am trying to do some collaborative work  
 2 with people in the Department of Ed there as well  
 3 around -- related to the Talking Tactile Tablet and  
 4 accommodation issues.  
 5 Q How about Alaska?  
 6 A Again, that was through my work with Co-NECT  
 7 going back to I think it was '94, '95 when I began  
 8 working with schools in Alaska.  
 9 Q What about Maine -- Let me just stop you real  
 10 quickly. When was the Co-NECT work for Alaska?  
 11 A I think it started -- It was either '94, '95 it  
 12 started and it would have lasted for, I believe, three  
 13 years.  
 14 Q Do you continue to follow what's going on in  
 15 Alaska with their accountability system?  
 16 A Not -- Not as closely as other states, no.  
 17 Q How about Maine?  
 18 MR. ROSENBAUM: Vague.  
 19 THE WITNESS: When did I become familiar with  
 20 it?  
 21 BY MR. SALVATY:  
 22 Q Yes.  
 23 A In the last -- I'd say the last  
 24 year-and-a-half, two years really as I started to follow  
 25 the laptop program and again through the Talking Tactile

1 Tablet and my association with CAST which I can never  
2 remember what it stands for. They do some collaborative  
3 work with them as well. And we have a collaborative  
4 proposal for enhancing state assessment systems.

5 Q Tell me about that. What is that, a  
6 collaborative -- What did you say? Collaborative?

7 A Proposal.

8 Q Proposal?

9 A Yeah.

10 Q For evaluating state systems?

11 A No, for enhancing. No Child Left Behind  
12 provides funding to enhance state assessment programs.  
13 There's four states -- Maine, New Hampshire, Vermont,  
14 and Rhode Island. They're partnered with EDC,  
15 Educational Development Center, us and CAST, too,  
16 working on enhancement issues.

17 Q You said you have some notion of what's  
18 happening in Vermont. How have you become familiar with  
19 Vermont's accountability system?

20 A Initially it was because they were using  
21 portfolios and more recently it's been basically through  
22 the grant proposal that we had put together. I also  
23 have a working relationship with some state technology  
24 people in Vermont as well.

25 Q And how about Connecticut, I don't believe

1 technology tests in particular. That's really the only  
2 thing I would continue to follow at this point.

3 Q And finally you said you're vaguely familiar  
4 with Arizona's system. How have you become familiar  
5 with that?

6 A Mainly just through literature, some studies  
7 have been done in Arizona. It's also been pretty  
8 controversial state. There's been a lot of controversy  
9 so it's been in the press as well.

10 Q Why has it been controversial?

11 A Mainly just how they're using test scores to  
12 make decisions about students in schools.

13 Q What about their use of test scores has been  
14 controversial, do you know?

15 A Yeah, using it to make decisions about --  
16 particularly about students and also about schools, but  
17 really it's the student focus.

18 Q Which of these programs are you most familiar  
19 with of those that you've identified?

20 MR. ROSENBAUM: Vague.

21 THE WITNESS: I know Massachusetts. I'd say  
22 Massachusetts and Rhode Island to the best of I think --  
23 Well, I know California pretty well, too, but we didn't  
24 talk about that. I'd say I have the most intimate  
25 knowledge of those two states of the ones that you

1 we've discussed that one yet. How have you become  
2 familiar with Connecticut's accountability system?

3 A Again, basically through the literature and  
4 it's next to Massachusetts so it's always been a good  
5 comparison when we were talking to people in the  
6 Massachusetts Department of Ed.

7 Q What about North Carolina, how have you become  
8 familiar with their accountability system?

9 A Only because it's been the focus of some other  
10 research, so through reading that research I've become  
11 familiar with it.

12 Q What research is that?

13 A It's mainly the Kane and Staiger work on the  
14 volatility of aggregate scores. I also I guess  
15 through -- North Carolina is one of the few states that  
16 have the technology test component, so then through my  
17 research on technology and testing I've looked at a  
18 little bit of how they're trying to test technology  
19 skills.

20 Q And when was it that you became familiar with  
21 the North Carolina system? What's the time period?

22 A Oh, probably I'd say in the last two years.

23 Q Is that something that you are continuing to  
24 follow?

25 A I'm following what they're doing with their

1 listed.

2 BY MR. SALVATY:

3 Q Which are you -- Well, let me ask you. How did  
4 you become familiar with California? I thought we had  
5 sort of touched upon that but let me just ask the  
6 question directly.

7 MR. ROSENBAUM: Asked and answered.

8 MR. SALVATY: He just said we didn't talk about  
9 that.

10 MR. ROSENBAUM: He said we hadn't talked about  
11 California per se.

12 BY MR. SALVATY:

13 Q Okay. Well, let's talk about it per se. How  
14 have you become familiar with California's  
15 accountability system?

16 A Again, it was really through CLAS that I first  
17 kind of started following what was happening, then  
18 through my work with Long Beach and San Diego, and then  
19 through an invitation from Jeannie to create a scholarly  
20 paper.

21 Q You've talked about how you became familiar  
22 with these different accountability systems. As part of  
23 your work on this case, did you specifically analyze the  
24 accountability systems of any of these states putting  
25 aside California?

1 MR. ROSENBAUM: It's vague.

2 THE WITNESS: I revisited some of them, not all  
3 of them. Simultaneous to my working on this I was  
4 working on my book which again I was looking at some of  
5 these system as well, Maryland and Michigan in  
6 particular. You know, as I said, we were developing a  
7 proposal so I became familiar with Maine in particular.  
8 BY MR. SALVATY:

9 Q Any others that you revisited in connection  
10 with your work on this case?

11 A I didn't really have to revisit Texas because  
12 nothing had really changed there and I -- I had a pretty  
13 good understanding of what they're doing. Tennessee,  
14 again, I had a pretty good understanding of -- of how  
15 that was operating. Yeah, I don't recall specifically  
16 revisiting any of the others.

17 Q Okay. Next you say:

18 "While none of these states have  
19 established what I consider to be exemplary  
20 accountability systems, some are much better  
21 than others."

22 Are there any states in your mind that have  
23 established what you consider to be exemplary  
24 accountability systems?

25 A No. I mean as I said before, the No Child Left

1 whatever area you thought it was going to impact over  
2 time and how that impacts differential given context.

3 Q Are there any specific features that you feel  
4 are necessary for what you would consider an exemplary  
5 accountability system?

6 MR. ROSENBAUM: It's vague.

7 THE WITNESS: In the report I talk at length  
8 how there's multiple components and multiple pieces to  
9 it. I think earlier I said it's very difficult to focus  
10 in on any one piece of it and try to put in place just  
11 one piece of it, so it's difficult to rank order what's  
12 the most important. I think there's certain principles  
13 or certain -- certain things that an exemplary system  
14 would have in place. It's not any one thing because it  
15 is a system.

16 BY MR. SALVATY:

17 Q Do you have in mind what those certain things  
18 are?

19 A Yeah. Again, I mean I talk about that at  
20 length in the report. I mean a couple of them I talk  
21 about is a way of looking at the inputs, outputs;  
22 measuring outputs broadly and ideally in multiple ways;  
23 being able to look at the relationship between those  
24 two; having data available to different people so that  
25 they can look at the data in different ways. And --

1 Behind has provided funding for all states to enhance.  
2 I think you can always enhance and improve their systems  
3 and I think that applies to all the states.

4 Q Well, when you use the term "exemplary" here,  
5 what do you mean?

6 A I guess I really mean one that meets all of --  
7 all of what I see as being potential uses and benefits  
8 of an accountability system.

9 Q What do you see as the potential uses and  
10 benefits of an accountability system?

11 A They should be useful to teachers, to schools,  
12 to communities, to district leaders, state leaders in  
13 looking at how -- You know, you can look at this at  
14 different levels -- how the things that you're putting  
15 into the system, the type of changes, the type of  
16 practices you're implementing are impacting student  
17 learning ideally measured in multiple areas, and that  
18 would allow for, again, people to look at effects and  
19 relationships between we will use the term inputs and  
20 outputs in different context.

21 And, you know, so in that framework you  
22 could -- if you're trying to make a systematic change at  
23 the classroom level, the school level, district level,  
24 or state level, the system would allow you to look at  
25 how that impacts student learning in whatever area --

1 And, you know, I think the -- an important piece of  
2 that, too, is providing opportunities for teachers,  
3 schools, districts, the state to actively reflect and  
4 account, explain what it is doing and what impact it's  
5 having.

6 Q You've talked about the idea of an exemplary  
7 accountability system. Do you have any opinion on  
8 whether any states have what in your opinion you would  
9 consider to be an adequate accountability system?

10 A I think -- I'm sorry. What was the question  
11 again?

12 Q We talked about the idea of an exemplary  
13 accountability system, and I wonder if you have in mind  
14 certain criteria that you feel are necessary for an  
15 adequate accountability system and I want to find out if  
16 you think there are any states that have what you would  
17 consider to be an an adequate accountability system.

18 A Yes.

19 Q What states are those?

20 A As I talked about before I think Rhode Island  
21 is an adequate system. I think for schools Maine has an  
22 adequate system. I mean those are the two that I would  
23 look at first.

24 Q Do you have an opinion about what states have  
25 what you would consider to be an inadequate system?

1 MR. ROSENBAUM: Beyond what he's testified to?  
2 I think he's answered that. And vague, it's also  
3 vague.

4 THE WITNESS: I mean that's a difficult  
5 question to answer because it's -- I guess there's  
6 different levels of inadequacy.

7 BY MR. SALVATY:

8 Q In your mind do you have a definition of  
9 "adequate" when you say you think Rhode Island and  
10 Maine -- Rhode Island has an adequate system, Maine for  
11 schools has an adequate system? What is your thought on  
12 what "adequate" means?

13 A Okay. Something in my mind that -- that is  
14 adequate for an accountability system is that it's --  
15 it's providing measures that are aligned with what it is  
16 you want students to be learning and is requiring  
17 schools to actively engage in reflecting and thinking  
18 about and setting goals related to both what it is  
19 they're doing and the impact that it has on student  
20 learning. Usually it's measured by those aligned  
21 tests.

22 MR. SALVATY: Would you mind reading that  
23 response back for me, please.

24 (Record read.)

25 BY MR. SALVATY:

1 Q What is the basis for that statement?

2 A The basis is looking carefully at what PSAA  
3 requires and what's been implemented in response to it.  
4 It does not come close to meeting what I just described  
5 and when I look across all the states -- Now when I look  
6 across all the states that California is one of the  
7 furthest for meeting that, quote, unquote, criteria for  
8 adequacies as you put it.

9 Q Okay. You've talked about that it would be  
10 near the bottom of the list. Can you be more precise?

11 A No.

12 Q Can you say where on the list of states that  
13 you've identified California would fall?

14 A Near the bottom. I mean I haven't specifically  
15 tried to rank them. I just think California would be  
16 near the bottom.

17 Q Can you tell me which of these states you've  
18 named here in your opinion have better accountability  
19 systems than California?

20 MR. ROSENBAUM: Foundation. Asked and  
21 answered.

22 THE WITNESS: I wouldn't call them better.  
23 They have elements that make them closer to meeting the  
24 criteria that we just discussed. You know, so, for  
25 example, Massachusetts has elements that their tests are

1 Q And you've touched upon this but let me just  
2 make sure I've got your complete answer.

3 Which of the accountability systems that  
4 you've -- that you're familiar with would meet those --  
5 that standard of adequacy that you've discussed? You  
6 said Rhode Island. You said Maine for schools. Any  
7 others?

8 A No. In terms of what we've -- the states we've  
9 talked about, I would say that's it.

10 I guess the other thing I would add just to  
11 clarify is that in terms of schools looking at what  
12 they're doing and how it's influencing outcomes that  
13 there is an opportunity for schools to really say or at  
14 least describe how it is their practices there -- what  
15 practices they're employing or changes they're making  
16 are leading to the changes in student performance.

17 Q Next sentence here is:

18 "If asked to rank the quality and utility  
19 of the systems in place in each of these  
20 states, the system currently in place in  
21 California (codified in the 1999 Public School  
22 Accountability Act....) would be near the  
23 bottom of the list."

24 Do you see that?

25 A Yes.

1 much more closely aligned with the standards. Tennessee  
2 is looking at student scores in terms of changes over --  
3 at the individual level over time. Maryland has a much  
4 better information system in place. Michigan has  
5 recently put in a much better information system. Rhode  
6 Island I've talked about. Kentucky has tests that are  
7 better aligned, so that puts -- I mean you could argue  
8 that Texas even has tests that are better aligned, so it  
9 may be -- Although, I mean, it's difficult to say  
10 because California's tests are changing, so I think with  
11 the new tests it may put it on par with Texas if we're  
12 going to try to do a formal ranking, but it's still near  
13 the bottom.

14 BY MR. SALVATY:

15 Q On the list of states that you've become  
16 familiar with, are there any that you would rank below  
17 California?

18 MR. ROSENBAUM: Asked and answered.

19 THE WITNESS: I -- It's -- It's -- There's  
20 several states that would -- Well, I shouldn't say  
21 "several." There's a handful of states that are if I  
22 was going to do a formal ranking right around California  
23 but I couldn't say for sure if one of them would be  
24 below or if there would be a tie. I mean that's what I  
25 mean, it's basically from my perspective near the

1 bottom.

2 BY MR. SALVATY:

3 Q What are the states that you would put in that  
4 category?

5 A I think Texas, California, potentially Ohio,  
6 although Ohio is kind of in flux right now.

7 Q What do you mean?

8 A Well, there's a lot of controversy over whether  
9 they're actually going to implement what they had  
10 intended to implement in terms of using the scores.

11 I haven't -- I don't know enough about Alaska's  
12 more recent system to -- to really say.

13 Q Are you able to, I mean in your opinion,  
14 identify any state that you think as a whole has a worse  
15 accountability system than California?

16 MR. ROSENBAUM: You've asked that any number of  
17 times.

18 THE WITNESS: Again, of the states that I'm  
19 more familiar with there's a handful that I kind of  
20 group near the bottom, California is among them. I mean  
21 from my perspective it's not really important where a  
22 state ranks, really. It's the extent to which they're  
23 providing an accountability system that's really helping  
24 schools, teachers, districts, state leaders understand  
25 what's happening in their schools and why changes are or

1 any written materials that document that work?

2 A The reports are in press and I think -- Yeah, I  
3 mean they're in press.

4 Q These reports, how do they attempt to compare  
5 and contrast the different --

6 A That's what I mean, the focus wasn't on  
7 comparing individual states in that research but rather  
8 classifying states into various stake levels they have  
9 for students and for teachers and then looking at how  
10 teachers and schools change their practices given the  
11 stake level of the testing program that's in place in  
12 the group of states that form that cell.

13 Q Do you know when those reports are going to go  
14 to press or when they'll be available?

15 A They're in final layout stages right now.  
16 The -- I know we've got to have them published or at  
17 least released by the end of February by the --  
18 according to the contract.

19 Q Did you review those materials in connection  
20 with preparing your report in this case?

21 A No, I did not.

22 Q You mentioned other researchers that have  
23 looked at different state accountability systems. What  
24 are you referring to there?

25 A Amber -- Whatever her name is. What is her

1 are not occurring.

2 BY MR. SALVATY:

3 Q I take it you didn't make any formal attempt to  
4 compare and contrast the features of these different  
5 state programs; is that right?

6 MR. ROSENBAUM: Vague. Asked and answered  
7 about a half a dozen times.

8 THE WITNESS: As I said, I'm familiar with a  
9 number of these states, whom I work with the National  
10 Board. We did classify these states using certain  
11 criteria. Other researchers that I've read have  
12 classified these states in different ways. But I did  
13 not develop a formal rubric and then assign, quote,  
14 unquote, scores in these states and then look at the  
15 ranking.

16 BY MR. SALVATY:

17 Q Okay. I think you mentioned some research that  
18 you've done that is classified of different programs.  
19 What are you referring to there?

20 A It's the work that we're doing with the  
21 National Board on Educational Testing and Public Policy,  
22 looking at how teachers and schools are changing or not  
23 changing their practices in response to state testing  
24 programs.

25 Q I don't think I've asked you this: Is there

1 name, Amerin? And Berliner. Arizona State  
2 University -- Audrey. I forget her last name.

3 Q What work have they done on this subject?

4 A Well, they -- they looked at -- The most recent  
5 work that they did was looking at evidence that the  
6 state accountability system has or has not impacted  
7 student learning and whether -- really what they were  
8 doing was looking at whether the changes in the state  
9 tests are reflected in other types of tests used in that  
10 state, and NAEP included.

11 Q Are you aware of any other studies or surveys  
12 that attempt to compare and contrast the features of  
13 different state accountability programs?

14 A Yeah, EDUCATION WEEK every year for at least  
15 the last couple of years have done a special issue that  
16 lays out the various features of the state testing  
17 programs. And then another organization I'm forgetting  
18 their name right now, Achieve I think it is -- I believe  
19 that's who it is -- every year for the last couple of  
20 years have been doing kind of classification rankings or  
21 whatever, ratings of these programs.

22 Q And did you review either of those materials?

23 A I had recently read them so I didn't  
24 specifically review them for this.

25 Q Actually, I should say are you aware of any

1 other surveys that compare and contrast the different  
2 accountability systems?

3 A I believe that Eric Hanushek has done some work  
4 looking at these systems as well and tries to classify  
5 them, although it's -- the reports that I've seen it's  
6 pretty unclear exactly how he's doing that. But yeah,  
7 that would be another example of someone doing that.

8 Q Any others?

9 A That have done -- been done in the last couple  
10 of years, I can't think of anything else off the top of  
11 my head. There's some work that had been done ten years  
12 ago but it's not terribly relevant given how much change  
13 has occurred.

14 Q Do you know what methodology was used by -- in  
15 any of these other surveys to compare and contrast the  
16 different systems?

17 MR. ROSENBAUM: Vague.

18 THE WITNESS: I know generally. I mean it's  
19 all detailed in most of the reports short of Hanushek's  
20 from what I can recall.

21 BY MR. SALVATY:

22 Q What is your general understanding?

23 MR. ROSENBAUM: Vague. Overbroad.

24 THE WITNESS: Everyone does different things.

25 BY MR. SALVATY:

1 Q Okay. Do you have any opinion about their  
2 accuracy?

3 MR. ROSENBAUM: Vague.

4 THE WITNESS: It's not really --

5 MR. ROSENBAUM: Vague and overbroad.

6 THE WITNESS: It's not really their accuracy  
7 that I would question, it's more the criteria that  
8 they're using.

9 BY MR. SALVATY:

10 Q Are your opinions consistent with those set  
11 forth in the ED WEEK state of the state report?

12 MR. ROSENBAUM: Vague. Foundation.

13 THE WITNESS: We use different criteria so  
14 there are differences.

15 BY MR. SALVATY:

16 Q In looking at California's accountability  
17 program, did you attempt to assess how closely aligned  
18 the state tests are to the standards?

19 A I did not look specifically at the -- No, I  
20 didn't look specifically -- myself I didn't look at it.  
21 I used work of other people.

22 Q Whose work did you rely on?

23 A It was really mainly, as I recall, the  
24 Herman/Baker work done down at CRESST. And I guess --  
25 You may have asked this question earlier and now that

1 Q Okay. How about ED WEEK?

2 A Well, ED WEEK's more of just a reporting of the  
3 state of the state -- I think that may actually even be  
4 the name of the report -- and they just describe what's  
5 in place in each -- each of the systems. They may give  
6 a ranking, actually. In fact they do because I talk  
7 about that a little bit here where they look -- I have  
8 the criteria laid out in here. I don't remember off the  
9 top of my head -- achieved as a similar thing. They  
10 have a set of criteria as to the type of tests being  
11 used, that is criterion versus norm reference. I think  
12 they may -- I don't know for sure -- but I believe they  
13 look at the extent to which it's aligned with the  
14 standards. That's another person, Schmidt, I believe  
15 has recently done some research looking at the alignment  
16 issue of the tests to standards.

17 What else was I saying? Oh, the decisions that  
18 are -- how it's being used, so the decisions that are  
19 being made. Those are the three criteria that -- that  
20 stand out.

21 Q And do you have an opinion of the rankings in  
22 ED WEEK, for example? Do you --

23 A Well, I think --

24 MR. ROSENBAUM: Vague.

25 BY MR. SALVATY:

1 you asked this question, I've since become aware of  
2 Schmidt's work, too, that is I looked at that, that  
3 issue. Although again, in California things are always  
4 changing, so I'm not sure how relevant Schmidt's work is  
5 to the current state of the state.

6 Q I think you testified that Massachusetts has  
7 tests that are more closely aligned than California's;  
8 do you remember that?

9 A Uh-huh.

10 Q What's the basis for that opinion?

11 A I have knowledge of how the tests are  
12 developed. I've looked carefully at which areas of the  
13 state frameworks of Massachusetts that are being tested  
14 by those tests and which are not and I know in  
15 California which tests are being used, you know, the  
16 SAT-9 soon to be the CAT-6, among others, and how those  
17 tests are developed and how those -- and off-the-shelf  
18 tests aligns with state frameworks or standards.

19 Q And I think you said Kentucky also is better  
20 aligned than California. What's the basis for that  
21 opinion?

22 A Again, I know how they're developed. Those  
23 tests were developed based on the -- the state  
24 frameworks.

25 Q For Maryland and Michigan you mentioned that

1 they have better information systems than California; is  
2 that right?

3 A Yeah.

4 Q How is Maryland's information system better  
5 than California's? What are you referring to there?

6 A Well, it has a lot of the same information that  
7 you can get through California but it's much easier to  
8 access all of the information in basically one visit to  
9 the web -- a visit to a single place on the web site,  
10 such as -- it's easier to access that information.  
11 Michigan, it's the same thing for Michigan.

12 Q Is there anything else that you have in mind  
13 when you're talking about Maryland and Michigan having  
14 better information systems?

15 A No. I mean that's really -- that's really what  
16 stands out in my mind. I think -- I can't recall for  
17 sure but I think Maryland may -- you may be able to  
18 follow students from school to school more easily within  
19 their system, too, but I can't remember off the top of  
20 my head if that's true or not.

21 Q For Texas you said that their tests are  
22 arguably better aligned than California; is that right?

23 A Yeah.

24 Q What did you mean by that?

25 A Well, again, they have a test that's developed

1 Q That you printed out and brought it in today?

2 A Yeah, I brought it in today.

3 Q Okay. So according --

4 A If I'm reading this correctly right now it's  
5 2001 when it was first -- according to this.

6 Q So which of the states that you've looked at  
7 use a norm reference test? I don't mean exclusively. I  
8 mean use one at all.

9 A Again, off the top of my head I don't think any  
10 of them but I'd have to go back and check to be sure.

11 Q Okay.

12 A I know that all the states that are on this  
13 list -- I can't say about Alaska because I haven't  
14 looked at Alaska recently, but all the other ones have  
15 developed a state test. I don't know off the top of my  
16 head if they also use a norm reference test.

17 MS. READ-SPANGLER: Do you want to take a  
18 break?

19 MR. SALVATY: Yes, let's take about five  
20 minutes, ten minutes.

21 (Recess.)

22 BY MR. SALVATY:

23 Q Professor Russell, next I'd like to talk to you  
24 about the -- sort of the history, the effort of  
25 California to put in place its current accountability

1 that's based on the state frameworks and California has  
2 developed some tests but they continue to use a norm  
3 reference, off-the-shelf test as well, so it depends on  
4 which aspects of the testing system in California you're  
5 looking at.

6 Q Which of the states that you've looked at use a  
7 norm reference test?

8 A California. All the others are -- Yeah, I  
9 believe all the other ones off the top of my head are --  
10 use some form of criterion-referenced test, I believe.

11 Q Do you know if California has plans to use some  
12 form of a criterion-referenced test?

13 A Yeah, I -- I mean they already are.

14 Q And since when have they done that, do you  
15 know?

16 A I believe -- I'd have to look. It was in 2001,  
17 if I have this right in this document. Is that right?  
18 Yeah, I believe it was 2001.

19 MS. READ-SPANGLER: What page are you looking  
20 at?

21 THE WITNESS: Page 2.

22 BY MR. SALVATY:

23 Q Of which?

24 A This is Changes to the API. It's a state  
25 document.

1 system.

2 A Yes.

3 Q At page Roman numeral five you state that  
4 California's attempt to establish an educational  
5 accountability system over the past decade has been  
6 tumultuous. What do you mean by that?

7 A Basically there's just been a number of changes  
8 and it's -- Again, since California's accountability  
9 system is an outcome-based system, that is it's focused  
10 on changes in the test scores, over the last ten years  
11 there's been a number of different testing programs that  
12 the state has put into place and then changed and then  
13 reformed in one or more ways.

14 Q I don't know if -- I hopefully didn't ask this  
15 before: Are any of the other -- Would you characterize  
16 any of the other accountability systems that you've  
17 looked at as output based?

18 MR. ROSENBAUM: Vague.

19 THE WITNESS: I think -- I think we -- I talked  
20 about that, that they -- most of them focus solely on  
21 changes in test scores which are an output.

22 BY MR. SALVATY:

23 Q Which ones focus solely on test scores?

24 MR. ROSENBAUM: Vague.

25 THE WITNESS: Pretty much all of them except

1 for really Rhode Island and Maine maybe. It kind of  
2 depends on how the school defines it within Maine, so  
3 that's more complicated to really describe.

4 BY MR. SALVATY:

5 Q At page 3 of your report you have a section  
6 here entitled "HISTORY OF EDUCATIONAL ASSESSMENT AND  
7 ACCOUNTABILITY IN CALIFORNIA" and I just direct you to  
8 that section.

9 A You're talking about real page 3?

10 Q Yes, real page 3.

11 A Yes.

12 Q Have you studied the history of implementing  
13 accountability systems in any other states, have you  
14 looked at this process in any other states that you're  
15 familiar with?

16 A I'm familiar with the process in several other  
17 states.

18 Q Which states have you -- are you familiar with  
19 on that issue?

20 A Massachusetts, Texas, Rhode Island, Tennessee,  
21 Kentucky. Those are the states I'd say -- Maryland as  
22 well, but those are the states that I'm most familiar  
23 with the history over the last ten years or so.

24 Q Do you feel that the history of California's  
25 efforts is relevant to your ultimate opinions in this

1 BY MR. SALVATY:

2 Q Would you say that the -- that California's  
3 history of educational assessment and accountability is  
4 more tumultuous than the other states that you've looked  
5 at?

6 A That I'm familiar with?

7 Q Yes.

8 A Without question.

9 Q Have you looked at the process surrounding the  
10 passage of the No Child Left Behind Act? Are you  
11 familiar with that process?

12 A What do you mean by "the process"?

13 Q Well, how that law came about. I am wondering  
14 if that was a tumultuous process in your opinion.

15 MR. ROSENBAUM: Foundation. Vagueness.  
16 Compound.

17 THE WITNESS: I don't understand how the  
18 passing of the law is a tumultuous process. I don't  
19 understand it.

20 BY MR. SALVATY:

21 Q Okay. That's fine.

22 Let me go through your report and where you  
23 talk about the five distinct -- the five separate  
24 assessment systems. First you talk about the California  
25 assessment program, 1972 to 1990. Actually, it's not

1 case? My question is: You know, is it relevant and how  
2 so, how does it fit into your responses to the two  
3 questions posed in your assignment?

4 MR. ROSENBAUM: Vague. Compound.

5 THE WITNESS: I think -- I think it is relevant  
6 at least right now because the -- the testing system,  
7 what is tested sends a signal to teachers as to what's  
8 important to teach, and if that signal is constantly  
9 changing it's very difficult for teachers and schools to  
10 really constantly be changing their emphases and  
11 developing long-term strategies for improving student  
12 learning is measured by these tests. And every  
13 indication is that at least for the next -- What's this  
14 say here? The next what? -- four years at least the  
15 system is going to continue to change in California.

16 BY MR. SALVATY:

17 Q In your opinion has -- Let me ask you this: Do  
18 you have an opinion as to why the system has been  
19 changing, as you say, over the past decade?

20 MR. ROSENBAUM: Speculation. Foundation.  
21 Vague.

22 THE WITNESS: I haven't investigated that  
23 myself as to the exact reasons as to why it's been  
24 changing. I could guess but I really have -- I haven't  
25 investigated it systematically.

1 quite accurate. First you refer to the steady and  
2 consistent systems in place in California during the  
3 1970s and 1980s. Do you see that?

4 A Yes.

5 Q What steady and consistent systems are you  
6 referring to there?

7 A The CAP, California Assessment Program.

8 Q Okay. And what do you mean when you call it  
9 steady and consistent?

10 A That it -- there was very little change then  
11 in that the tests that are being used, the formats of  
12 the tests, the focuses of the tests, the test  
13 administration design, sampling design, purpose.

14 Q Do you have an opinion about whether CAP was an  
15 effective system?

16 MR. ROSENBAUM: Vague.

17 THE WITNESS: In what sense do you mean  
18 "effective"?

19 BY MR. SALVATY:

20 Q In the sense that you use the term in your  
21 report effective and educationally beneficial system.  
22 And I am wondering in your opinion if the CAP program --

23 A It --

24 Q -- would meet that standard.

25 A I don't think that was -- I mean the purpose of



1 CAP was very different than the purpose of  
2 accountability today in California and really across the  
3 nation, so I don't think -- I can only -- its purpose  
4 was different. As I said before, when you're talking  
5 about tests, you can't talk about tests absent a  
6 discussion or understanding of purpose.

7 Q Okay. How was its purpose different?

8 A It was more of a -- As I understand it it was  
9 more of a monitoring tool or process at the state level  
10 and to some -- to a lesser extent at the school level.  
11 I mean it was at the school level, too. But the purpose  
12 was to provide information across the broad spectrums of  
13 the domains being tested, for that reason they're using  
14 matrix sampling, rather than trying to get individual  
15 test scores linked to schools to make decisions about  
16 schools.

17 Q Was it more focused on inputs than the current  
18 system?

19 A No, the CAP -- the assessment program was not.

20 Q Do you have an opinion about whether CAP was --  
21 was better or worse than the current system?

22 MR. ROSENBAUM: That's vague. Asked and  
23 answered. Foundation.

24 THE WITNESS: One of the things -- I guess one  
25 of the things that causes confusion for many people is

1 the simultaneous focus on an assessment or a test and an  
2 accountability. The two are separate. A test is  
3 something that's used as a tool within an accountability  
4 program or system and CAP really was more of a  
5 testing/slash assessment program that could be used for  
6 accountability purposes; but as I said, the  
7 accountability -- the meaning of that has changed.

8 So if you're to ask me are the features of the  
9 CAP, the tests themselves and the way that they're being  
10 administered that are more desirable than the current  
11 approach, I'd say yes, and that's the matrix sampling.  
12 It's more valuable, provides more valuable information  
13 across a domain, meaning a subject area.

14 Q And why do you believe matrix sampling is a  
15 more effective way to test?

16 MR. ROSENBAUM: That wasn't his testimony. You  
17 can ask him the basis to answer about matrix.  
18 Mischaracterizes his testimony.

19 MR. SALVATY: Okay.

20 MR. ROSENBAUM: And your question is way too  
21 vague.

22 THE WITNESS: Again, it's difficult to talk  
23 about the advantages of a certain type of test absent  
24 purpose; and so unless you really know why it is you're  
25 testing and what you want to do with it, it's difficult

1 to say whether matrix sampling is advantageous or not,  
2 so it depends on the context and the type of decisions  
3 and the types of -- the ways in which you want to use  
4 information.

5 So, for example, if you were using a test to  
6 make decisions about individual students, matrix  
7 sampling would not be advantageous. If you're trying to  
8 make decisions about impacts of classrooms or teachers  
9 or schools, matrix sampling can have potentially some  
10 benefits, again depending on the context.

11 Q Okay. Do you know why the CAP program was  
12 abandoned?

13 MR. ROSENBAUM: Foundation. Speculation.

14 BY MR. SALVATY:

15 Q I should say why it was replaced. You talk  
16 about the California learning assessment system that  
17 replaced --

18 MR. ROSENBAUM: Same objections.

19 BY MR. SALVATY:

20 Q Do you know why that happened?

21 A My understanding is that there was a movement  
22 in the late '80s towards standards, so new standards  
23 were developed. There was also some desire -- I'm not  
24 sure among who exactly -- to have individual scores.  
25 And there may have been other reasons as well, but those

1 two changes impacted the decision.

2 Q You mention on page 4 that calls for individual  
3 test scores rang loudly in 1990 and content-area  
4 frameworks were developed that focused on higher-order  
5 skills and then you say the CAP was abandoned because it  
6 was unable to produce reliable individual test scores.  
7 Do you see that?

8 A Yeah, student scores, yeah.

9 Q What's the basis for this information? You  
10 cite, Noble, 2000. Is that the basis for your statement  
11 here?

12 A For what? That it was unable to produce  
13 reliable and individual student scores?

14 Q Yes.

15 A No. In part it is, obviously, but it's more --  
16 more that matrix sampling in most cases and particularly  
17 in the way that it was implemented for CAP doesn't  
18 provide reliable -- just by the nature of the way it's  
19 implemented it doesn't provide reliable scores for  
20 individuals.

21 Q All right. Next you talk about the CLAS  
22 system. Do you have an opinion about whether CLAS was  
23 an effective and educationally beneficial system?

24 MR. ROSENBAUM: Objection. Foundation.

25 Vagueness.

1 THE WITNESS: Can you ask the question again?

2 BY MR. SALVATY:

3 Q Yes.

4 Do you have an opinion whether CLAS was an  
5 effective and educationally beneficial system?

6 MR. ROSENBAUM: The same.

7 THE WITNESS: Again, you're -- you're confusing  
8 the assessment -- set of assessments, which in this case  
9 is called a system, with an accountability system which  
10 are two -- two separate things. When I talk about  
11 effective and beneficial that's in terms of  
12 accountability system, not a test or a set of tests, so  
13 it's -- you know, it's apples and oranges.

14 BY MR. SALVATY:

15 Q You state here that despite the absence of a  
16 model upon which to build, California was able to  
17 produce a complex, valid, and reliable testing system  
18 that employed a mix of item formats in several subject  
19 areas. Do you see that?

20 MR. ROSENBAUM: It begins with the word "Yet."

21 THE WITNESS: Yes, I see it.

22 BY MR. SALVATY:

23 Q Sorry about that.

24 A Got it. Yes.

25 MR. ROSENBAUM: And, Paul, I take it you have

1 at that time.

2 Q You mentioned part of the statement is based on  
3 your own knowledge. What are you referring to?

4 A Just literature that I've read over -- over the  
5 years about the process and what happened and what they  
6 did and just the state of the art again through  
7 literature of testing and assessment practices at the  
8 time.

9 Q Is there any literature that you have in mind  
10 other than Cohen and Hill?

11 A What do you mean?

12 Q You are referring to the literature, and I am  
13 wondering whether you have any specific literature in  
14 mind.

15 A About what was happening at that time in terms  
16 of standards movement in terms of developing open-ended  
17 items and performance items?

18 Q Yes.

19 A Yeah, there's a whole body of literature.

20 Q What I really want to get at is the basis for  
21 your opinion that this testing system was a complex,  
22 valid, and reliable testing system. What's the basis  
23 for that opinion? Why do you think that?

24 A Well, it's complex again because it's using  
25 different types of item formats. It's complex because

1 no problem with him looking at the context in which  
2 you --

3 MR. SALVATY: Absolutely not.

4 MR. ROSENBAUM: Okay.

5 BY MR. SALVATY:

6 Q What's the basis for that opinion?

7 A Both what I know about the current state of  
8 assessment at that time as well as Cohen and Hill, which  
9 is cited.

10 Q What do you mean when you say "despite the  
11 absence of a model upon which to build"?

12 A Well, CLAS was trying to introduce some new  
13 types of item formats that had not been used really on a  
14 wide-scale basis prior to that and standards -- the  
15 notion of developing standards and developing tests then  
16 that are linked to that standards was relatively new at  
17 that time, so those two combined to not have a model in  
18 place, that is there weren't several other states, for  
19 example, that had already tried this.

20 Q What were you talking about when you talk about  
21 new types of item formats?

22 A Open-ended type of questions what are sometimes  
23 called performance assessments. Those items existed but  
24 they really had not been used at a -- at a state level  
25 or they were just starting to be used at a state level

1 it's linked to standards, valid and reliable. There  
2 were some -- There were some questions raised about  
3 reliability for a couple of the open-ended items. From  
4 the literature I've seen people make arguments on both  
5 sides of that. In terms of valid, again, the notion of  
6 validity is a difficult one to discuss because something  
7 isn't either valid or not valid. There's degrees of  
8 validity. And in the context of the way in which the  
9 CLAS tests were being used there's some fair amount of  
10 evidence that there was validity, that is that the tests  
11 were aligned with the standards, they weren't being in  
12 a -- used that was causing any harmful effects. They're  
13 providing useful information that was related to the  
14 domains and cognitive skills being tested.

15 Q You note here on the next paragraph that  
16 although the state did not attach any sanctions for  
17 schools that perform poorly on CLAS, the testing program  
18 was coupled with a system that supported school level  
19 review and reflection.

20 How was the testing program coupled with the  
21 system that supported school level review and  
22 reflection?

23 A It's described in part in the rest of the  
24 paragraph, the quality -- the program quality review.  
25 But as I recall, too, there was a significant amount of

1 funding and programs available to schools for  
2 professional development in helping teachers understand  
3 the standards and understand new ways of assessment, the  
4 value of some of these new assessment methods.

5 Q In the next section you state that CLAS fell  
6 victim to outcry from a small but vocal group of parents  
7 who objected to the personal nature of some of the  
8 questions. What are you referring to there?

9 A I don't recall the exact details but as I  
10 recall there was a couple of questions and reading  
11 passages that a small group of people, parents mainly,  
12 objected to and it -- again, as I recall it created  
13 quite a stir in the press and it just caused a lot of  
14 controversy and it then led to people really questioning  
15 the value of this and the goals and aims, and based on  
16 my reading of it really triggered a move to move away  
17 from the program.

18 Q And when you're talking about your reading of  
19 it, were you following the literature at the time or are  
20 you talking about the Noble cite here?

21 A A combination of the two. I did not go back to  
22 that literature when preparing this, though. That's  
23 kind of common knowledge, if you will, now.

24 Q It says here that concerns about the  
25 consistency on the scoring on the writing tests were

1 Q In the next section you talk about  
2 standards-based accountability, 1997 to 1998. It says  
3 halfway down that first paragraph:

4 "While this system returned much of the  
5 power and responsibility for assessing student  
6 learning to local districts, it was  
7 short-lived. In 1998, the Standardized Testing  
8 and Reporting program pushed aside  
9 district-level programs that employed multiple  
10 measures and replaced them with a single state  
11 standardized test, the SAT-9."

12 Do you know how this came about?

13 A You mean the political process for the change?

14 Q Yes.

15 A Not really, no.

16 Q Okay. Finally we turn to the public school  
17 accountability act, the current system. Let me -- I  
18 think you state in your report that -- And this is on  
19 page Roman numeral 6 you talk about this system.

20 MR. ROSENBAUM: Sorry, Paul. What page,  
21 please?

22 MR. SALVATY: Roman numeral six. Oh, I'm  
23 sorry. Roman numeral five.

24 Q On that last paragraph you say "The current  
25 PSAA itself keeps changing" and you cite recently one of

1 also raised.

2 What concerns are you referring to there?

3 A There's some concerns about Inter-Rater  
4 reliability for some of the writing questions. Again,  
5 you know, it probably occurred because it was a  
6 relatively new technology at the time.

7 Q Next is the pupil testing incentive program,  
8 1995 to 1997. Here you explain that under this program  
9 districts received \$5.00 for every student in grades 2  
10 through 10 who took a basic skills test that was  
11 approved by the State Board of Education and then you go  
12 on to say that unfortunately the board did not select  
13 and approve tests that were specifically aligned with  
14 the state standards. What tests were selected and  
15 approved by the board?

16 A There -- I don't recall the names of all the  
17 tests but they were off-the-shelf standardized tests. I  
18 think Stanford Achievement Test was one of them at the  
19 time and I just -- off the top of my head I don't  
20 remember the other ones.

21 Q When you say "off-the-shelf tests," what are  
22 you referring to?

23 A It's really tests that you can call a test  
24 publisher and make an order today and get that test.  
25 It's basically an already-developed test.

1 the key components.

2 MR. ROSENBAUM: I don't know where you're  
3 referring.

4 MR. SALVATY: I'm sorry. Page Roman numeral 5,  
5 second paragraph, "The current PSAA...."

6 MR. ROSENBAUM: "Itself keeps changing"?

7 MR. SALVATY: Yes. Exactly.

8 Q What do you mean when you say "The current PSAA  
9 itself keeps changing"?

10 MR. ROSENBAUM: You mean beyond what he's  
11 already testified to and the example that he gives in  
12 the sentence below it?

13 MR. SALVATY: Yes.

14 Q Are you talking about the legislation, that the  
15 legislation keeps changing?

16 A That's just effectively what it is and -- and  
17 really what -- Yeah, exactly that, what it is, what it  
18 looks like, what it comprises.

19 Q Are you talking about the legislation itself?

20 A No.

21 MR. ROSENBAUM: He just answered that.

22 THE WITNESS: I am talking about the system  
23 that arises because of the legislation.

24 BY MR. SALVATY:

25 Q Do you see these changes as a problem for the

1 effectiveness of the system?

2 MR. ROSENBAUM: Asked and answered. He went on  
3 at length about the mixed messages it gives, difficulty,  
4 the importance of stability. He's discussed it. I've  
5 been very patient but I -- I think he's really covered  
6 an awful lot of this before and it's all laid out in his  
7 report.

8 BY MR. SALVATY:

9 Q Okay. Do you have anything else to add on the  
10 changes -- the negative impacts the changes have had on  
11 the accountability system?

12 A It's not the impact that it has on the  
13 accountability system but the effect of the  
14 accountability system in schools and the messages it  
15 sends.

16 Q Okay. What changes are you referring to?  
17 You've identified one of the key components, teacher  
18 bonuses. What other changes are you referring to?

19 MR. ROSENBAUM: That misstates his testimony.  
20 He's also talked about how the test has changed. He's  
21 also talked about the changes that are going to occur in  
22 the future. He went over the list of all the things  
23 that are going to happen until 2004, whatever it was,  
24 -8, -6.

25 MR. SALVATY: Well, here he says "The current

1 Q What changes in the actual tests used are you  
2 referring to?

3 MR. ROSENBAUM: Beyond what he's already  
4 testified to? He's already said that they're changing  
5 from the SAT-9 to the CAT-6. He talked --

6 MS. READ-SPANGLER: There are other changes.  
7 Why don't you let the deponent talk to them.

8 THE WITNESS: There's been additions of new  
9 tests over time, the addition of the high school exit  
10 exams. There's been additions of criterion-referenced  
11 tests and those will continue to occur. As I -- You  
12 know, as I read the documents coming out of the state  
13 for it looks like five, six years at least every year  
14 there's a different formula used which occurs because  
15 every year there's a change to the tests that are being  
16 administered. There's also discussions about changes  
17 once if it ever occurs things like graduation rates are  
18 put in place. There's been discussions -- I don't think  
19 anything will come of it in the short term -- there's  
20 been discussions about if they can ever get an  
21 information system in place if that would then lead to  
22 further changes.

23 You know, just -- when you look at some of the  
24 other testing programs that are in place, just the tests  
25 used in other states, every year something new happens

1 PSAA itself keeps changing," and I'm wondering --

2 MR. ROSENBAUM: It says in the sentence before  
3 that I go into more details but he only uses that as one  
4 example. He's testified at length about the changes and  
5 the consequences. I'm just saying, Paul, can't -- you  
6 know, I just think it feels a little insensitive to him  
7 at 5:30 in the afternoon to ask him to go over things  
8 that he's gone over and that are laid out considerably  
9 in his report.

10 Go ahead. Anything else you want to add, go  
11 ahead. It's your deposition.

12 BY MR. SALVATY:

13 Q Is there anything else you want to add? I am  
14 wondering what changes you're referring to. I don't  
15 think you've covered all of this before. I disagree  
16 with --

17 A I am talking about the changes in terms of the  
18 way in which information as part of the system is being  
19 used, teachers' bonus is one example; the actual  
20 components of the system itself; the weightings given to  
21 the components; the actual tests that are used.

22 Q What are the changes in the weightings given to  
23 the components that you're talking about?

24 A Any time a test is added there's a change to  
25 the weighting factor, the weighting scheme if you will.

1 in California it appears, whereas in other states you  
2 have stability.

3 BY MR. SALVATY:

4 Q In your opinion are any of these changes  
5 beneficial, are they improving the effectiveness of the  
6 accountability system?

7 A I don't -- I don't think it will have  
8 improvements in the effectiveness of the accountability  
9 system until several changes occur and then there's  
10 stability.

11 Q Okay. What are those several changes you're  
12 talking about?

13 A An expansion from a focus on outputs to include  
14 inputs and present it and collect it in a way that  
15 allows teachers and schools and districts and people at  
16 the state level and researchers to look at the  
17 relationship between the two. Again, I talk about this  
18 in the report. I've talked about this before, the need  
19 for a system that requires schools to or at least  
20 strongly encourages, or whatever word you want to use,  
21 schools to actively look at themselves, identify their  
22 strengths and weaknesses, set goals, be held responsible  
23 for those goals.

24 Q Okay. I understand you've talked about  
25 improvements that can be made to the system, but my

1 question was: Are any of the changes that are currently  
2 planned --

3 MR. ROSENBAUM: I think he answered that.

4 THE WITNESS: I said no until there's  
5 stability. You're constantly changing the system which  
6 is sending a changed signal every year to schools, and  
7 until there's stability -- So if you were to ask me 20  
8 years down the road when everything is stable will it be  
9 better, maybe. But until there's stability, you  
10 really -- it's going to be difficult to have a system  
11 that's going to be beneficial.

12 MR. SALVATY: Okay. All right. Why don't we  
13 end for the day. And we can start tomorrow at 9:00 a.m.

14 MR. ROSENBAUM: I just want the record to  
15 reflect that we're prepared to meet earlier and -- but I  
16 understand that --

17 MS. READ-SPANGLER: Than 9:00?

18 MR. ROSENBAUM: Yeah.

19 MS. READ-SPANGLER: Can't we just agree to go  
20 till like 5:45 tomorrow?

21 MR. ROSENBAUM: Yes, but I am also making clear  
22 that we can also start earlier and still go to 5:45.

23 MR. SALVATY: What time did you want to start?

24 MR. ROSENBAUM: We can start whatever time  
25 accommodates you.

1 MR. SALVATY: Does anybody else have any  
2 thoughts on what time you want to start? We can start  
3 at -- We can start at 8:30. Can you -- Why don't we  
4 talk about it off the record.

5 (Discussion off the record.)

6 MS. SHARGEL: I agree with Abe that if ending  
7 tomorrow is going to preclude the district from asking  
8 its questions, and I have a substantial number of  
9 questions to ask, then we object to just limiting it to  
10 two days and I also agree with defendants that it's a  
11 very lengthy report that merits more than two days of  
12 questioning.

13 MR. SALVATY: All right. Thanks very much.

14 MR. ROSENBAUM: Thank you.

15 (The stipulation from the deposition of  
16 Michael Russell, Volume 2, is incorporated as  
17 follows:

18 MR. ROSENBAUM: Counsel will agree that the  
19 same stipulation that applied to Mitchell applies to  
20 Professor Russell. Okay?

21 MR. SALVATY: So stipulated.

22 MS. SHARGEL: So stipulated.

23 MR. HAJELA: So stipulated.

24 MS. READ-SPANGLER: So stipulated.

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I, MICHAEL RUSSELL, Ph.D., do hereby  
declare under penalty of perjury that I have read the  
foregoing transcript of my deposition; that I have made  
such corrections as noted herein, in ink, initialed by  
me, or attached hereto; that my testimony as contained  
herein, as corrected, is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

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MICHAEL RUSSELL, Ph.D.  
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I, the undersigned, a Certified Shorthand  
Reporter of the State of California, do hereby  
certify:

That the foregoing proceedings were taken  
before me at the time and place herein set forth; that  
any witnesses in the foregoing proceedings, prior to  
testifying, were placed under oath; that a verbatim  
record of the proceedings was made by me using a  
machine shorthand which was thereafter transcribed  
under my direction; further, that the foregoing is an  
accurate transcription thereof.

I further certify that I am neither  
financially interested in the action nor a relative or  
employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date  
subscribed my name.

Dated: \_\_\_\_\_

24  
25

\_\_\_\_\_  
CAROL ANN NELSON  
CSR No. 6974