

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

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

9 vs.

No. 312236

10 STATE OF CALIFORNIA, DELAINE EASTIN,
11 State Superintendent of Public
12 Instruction, STATE DEPARTMENT OF
13 EDUCATION, STATE BOARD OF EDUCATION,
14 Defendants.

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15 Deposition of
16 PHILLIP EDWIN SPEARS
17 Volume I, Pages 1 through 269
18 Wednesday, October 31, 2001

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22 Reported by:
23 TRACY LEE MOORELAND
24 CSR No. 10397
25 Job No. 29131

APPEARANCES

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2
3 For the Plaintiffs Eliezer Williams, et al.:

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17 State Board of Education:

18 DEPARTMENT OF JUSTICE
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25 /

APPEARANCES, cont.

1
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10 Pajaro Valley Unified School District:

11 LOZANO & SMITH
12 BY: JUDD JORDAN, ESQ. (present from page 8)
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1 BE IT REMEMBERED, that on Wednesday, October
2 31, 2001, commencing at the hour of 10:07 a.m., thereof,
3 at the offices of Morrison & Foerster, 400 Capitol Mall,
4 26th Floor, Sacramento, California, before me,
5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in
6 the State of California, there personally appeared
7 PHILLIP EDWIN SPEARS,
8 called as a witness herein, who, having been duly sworn
9 to tell the truth, the whole truth, and nothing but the
10 truth, was thereupon examined and interrogated as
11 hereinafter set forth.
12 ---o0o---
13 EXAMINATION BY MR. ROSENBAUM
14 Q. How are you, Mr. Spears?
15 A. I'm good.
16 Q. Could you state your name, please, and spell it
17 just for the record.
18 A. My name is Phillip Edwin Spears, P-h-i-l-l-i-p,
19 Edwin, E-d-w-i-n, Spears, S-p-e-a-r-s.
20 Q. Okay. And it's Mr. Spears?
21 A. Yes.
22 Q. Thanks for being here, Mr. Spears.
23 Have you ever been deposed before?
24 A. Yes.
25 Q. On how many occasions?

1 A. Three.
 2 Q. And can you tell me roughly the dates of those
 3 prior depositions?
 4 A. I was -- one was in the mid '80s, around '85.
 5 I've had one in '98, and most recently 2001.
 6 Q. Okay. I'm not interested in any depositions
 7 involving personal business of yours. The three
 8 depositions that you referenced, sir, were they in
 9 relationship to your official duties?
 10 A. Yes.
 11 Q. And the one in the mid '80s, can you just
 12 generally tell me what the subject matter -- there was a
 13 case involved; is that right?
 14 A. Yes.
 15 Q. Can you tell me your best recollection as to
 16 what that case involved?
 17 A. It was a personnel issue.
 18 Q. This is when you were a principal?
 19 A. Yes.
 20 Q. And in 1998 can you tell me, to the best of
 21 your recollection, what the subject matter of the
 22 deposition was?
 23 A. It was a case involving nonstudents coming upon
 24 the campus and not departing as requested.
 25 Q. And somebody brought a lawsuit to permit the

1 students to come on the campus, the nonstudents to come
 2 on campus, is that it?
 3 A. They brought a lawsuit under a civil rights
 4 issue that they had access to the campus.
 5 Q. Okay. And then you also mentioned that there
 6 was a deposition in 2001?
 7 A. Yes.
 8 Q. And to the best of your recollection, could you
 9 tell me, please, what the subject matter of that
 10 deposition was?
 11 A. It relates to accommodations for special ed
 12 students for the high school -- California high school
 13 exit exam.
 14 Q. That's the case that was filed in
 15 San Francisco; is that right?
 16 A. I don't know.
 17 Q. Or by a San Francisco outfit?
 18 A. I don't know.
 19 Q. Okay. How many days were you deposed in that
 20 deposition?
 21 A. One so far.
 22 Q. And I take it that the deposition isn't
 23 complete so far as you know?
 24 A. That's my understanding.
 25 Q. Okay. Am I correct, sir, that you're generally

1 familiar with the procedures that are followed in a
 2 deposition?
 3 A. Yes.
 4 Q. Okay. And you've had a chance to discuss with
 5 your counsel today the general procedures that we'll be
 6 following?
 7 A. Yes.
 8 Q. Let me make a few comments. If you have any
 9 questions, please feel free to ask me. Okay?
 10 A. Yes.
 11 Q. You need to answer audibly for the reporter.
 12 A. Okay.
 13 (Mr. Jordan entered the room.)
 14 MR. ROSENBAUM: This is Mr. Jordan.
 15 THE WITNESS: Morning.
 16 MR. JORDAN: Good morning.
 17 MR. ROSENBAUM: Off the record.
 18 (Discussion held off the record.)
 19 Q. BY MR. ROSENBAUM: Mr. Spears, I'm going to be
 20 asking you some questions with respect to a lawsuit
 21 called Williams versus the State of California. It's
 22 not my intent to trick or to deceive you, but just to
 23 get your best answers to the questions I'm asking.
 24 Do you understand that?
 25 A. Yes.

1 Q. So, therefore, if any of my questions are
 2 unclear or if you want any of my questions repeated, I'm
 3 pleased to either give you further explanation about the
 4 questions or to restate them or to repeat them.
 5 Do you understand that?
 6 A. Yes.
 7 Q. Otherwise, I'm going to assume that you're
 8 answering the questions as fully and as fairly as you
 9 possibly can.
 10 Do you understand that?
 11 A. Yes.
 12 Q. And I know you're aware from the prior
 13 depositions and from this morning that you were
 14 administered an oath as part of this deposition.
 15 A. Yes.
 16 Q. So that even though we're here in a conference
 17 room, you're testifying under the same pains and
 18 penalties and perjuries as if we were in a formal court.
 19 Do you understand that?
 20 A. Yes.
 21 Q. Okay. At the end of the deposition, or
 22 sometime thereafter, you'll get a booklet.
 23 Have you received those booklets in the past
 24 with questions from the lawyers and your answers?
 25 A. Yes.

1 Q. Okay. And you're aware, sir, that you'll have
2 an opportunity to review your answers and to make any
3 changes that you'd like to make if you feel that further
4 explanation or clarification is required.

5 Do you understand that?

6 A. Yes.

7 Q. Okay. But I want you to understand that I or
8 myself or any of the counsel are free to comment on any
9 changes that you make and draw whatever inferences we
10 think are appropriate.

11 Do you understand that?

12 A. Yes.

13 Q. So, again, it's important that you answer these
14 questions as fully and as fairly as you possibly can.

15 Do you understand that?

16 A. Yes.

17 Q. Okay. Any questions? Do you have any
18 questions about what we'll be doing here?

19 A. No.

20 MS. READ-SPANGLER: Before we get rolling,
21 should we -- can we do our usual two stipulations,
22 namely that we will have 45 days from the date we
23 receive his last deposition transcript to make his
24 corrections, and that all deposition objections are
25 deemed joined by all other counsel, except yourself,

1 Q. Or any summaries of depositions?

2 A. No.

3 Q. Have you discussed with anyone -- let me strike
4 that.

5 Do you know individuals who have been deposed
6 in this case?

7 A. Yes.

8 Q. Okay. Who is that?

9 A. I think Paul Warren, but I'm not absolutely
10 positive.

11 Q. Do you know Bill Padia?

12 A. Yes.

13 Q. Okay. Do you know Ms. Burnham, Lorie Burnham?

14 A. No.

15 Q. Do you know Tom Henry?

16 A. No.

17 Q. Okay. Do you know who Ms. Burnham is?

18 A. No.

19 Q. Do you know who Mr. Henry is?

20 A. No.

21 Q. Okay. Do you know Eleanor Clark-Thomas?

22 A. No.

23 Q. Did you have any discussions with Mr. Warren
24 about his deposition?

25 A. No.

1 unless you'd like to be deemed joined? Is that okay?

2 MR. ROSENBAUM: Sure. That's fine with me.

3 MS. READ-SPANGLER: That is okay with you,
4 Judd?

5 MR. JORDAN: Yeah.

6 Just so you know who I am, I represent Los
7 Angeles Unified School District here.

8 Q. BY MR. ROSENBAUM: Mr. Spears, could you state
9 your present position, please.

10 A. I'm the director of the standards and
11 assessment division, California Department of Education.

12 Q. And how long have you been director of this
13 division?

14 A. Sixteen months.

15 Q. And did you have any duties or responsibilities
16 with respect to this division prior to your becoming
17 director?

18 A. No.

19 Q. Okay. And for purposes of this deposition,
20 Mr. Spears, did you read any documents or portions of
21 documents?

22 A. No.

23 Q. Have you looked at any of the depositions in
24 this case?

25 A. No.

1 Q. Or have you ever had any discussions with
2 Mr. Warren about this case?

3 A. No.

4 Q. Have you ever been in a meeting in which this
5 case was discussed?

6 A. Not that I recall.

7 Q. Okay. And have you ever had any discussions
8 with Mr. Padia about his deposition?

9 A. No.

10 Q. Or have you ever had any discussions with
11 Mr. Padia about this case?

12 A. No.

13 Q. With the exception of your counsel, have you
14 had any discussions with anybody about this case?

15 A. No.

16 Q. Have you attended meetings with Superintendent
17 Eastin just in general?

18 A. Yes.

19 Q. And at any of those meetings was this case
20 mentioned?

21 A. I don't recall it being mentioned.

22 Q. Okay. If I asked you the same question -- do
23 you know who Marsha Bidwell is?

24 A. Yes.

25 Q. Have you -- have you ever been present with

1 Marsha Bidwell when this case was discussed?
 2 MS. READ-SPANGLER: Let me caution you, if you
 3 were and it was when she was still acting as counsel,
 4 legal counsel for the Department, then you don't need to
 5 answer.
 6 MR. ROSENBAUM: I'll reframe that question.
 7 Q. What position does Marsha Bidwell have at the
 8 present time, so far as you know?
 9 A. She's director of a division within our branch.
 10 Q. Okay. And have you been at meetings with her
 11 when she has been acting in that capacity?
 12 A. No.
 13 Q. Okay. Do you know Mr. Hill?
 14 A. I know a Mr. Hill.
 15 Q. Scott Hill?
 16 A. Yes.
 17 Q. Have you ever been at any meetings with
 18 Mr. Hill at which this case was discussed?
 19 A. No.
 20 Q. Okay. Help me learn a little bit about your
 21 background, if I can, Mr. Spears. You told me that you
 22 became director of this division 16 months ago,
 23 approximately?
 24 A. Yes.
 25 Q. So help me do some math here.

1 A. June 5th of 2000.
 2 Q. Okay. And prior to that, you were a principal;
 3 is that right?
 4 A. Yes.
 5 Q. Where was that?
 6 A. Rocklin Unified School District.
 7 Q. And I just want to trace back. How long were
 8 you a principal at Rocklin?
 9 A. Nine years.
 10 Q. Okay. Where is Rocklin?
 11 A. It's approximately 20 miles east of Sacramento.
 12 Q. Okay. And prior to serving as principal at
 13 Rocklin, did you have a position -- an educational
 14 position?
 15 A. Yes.
 16 Q. What was that?
 17 A. Principal of Portola Junior, Senior High
 18 School.
 19 Q. In Southern California?
 20 A. No.
 21 Q. Do you know there is a Portola there?
 22 A. Yes.
 23 Q. Where was your Portola?
 24 A. Plumas County.
 25 Q. Can you spell that?

1 A. P-I-u-m-a-s.
 2 Q. Okay. And how long were you principal at
 3 Portola -- junior and senior, is that what it was?
 4 A. Yes.
 5 Q. How long were you a principal at Portola
 6 Junior, Senior?
 7 A. Eleven years.
 8 Q. Okay. And prior to Portola, what was your --
 9 what were you doing?
 10 A. I was principal.
 11 Q. Where?
 12 A. Fairfield High School.
 13 Q. Where is that?
 14 A. It's in Fairfield, California.
 15 Q. Where is that?
 16 A. It's 50 miles west of Sacramento.
 17 Q. Did you ever have a position north of
 18 Sacramento? Withdraw that question.
 19 How long were you principal at Fairfield?
 20 A. Two years.
 21 Q. Okay. And prior to that, can you tell me what
 22 you were doing?
 23 A. I was dean of students.
 24 Q. Where?
 25 A. Fairfield High School.

1 Q. What's the difference between the dean of
 2 students and the principal?
 3 A. Pay. No. The dean of students, in this
 4 particular position, I was responsible for attendance
 5 and discipline. Principal is more responsible for the
 6 overall operation of the school.
 7 Q. And prior to serving as dean of Fairfield High
 8 School, what did you do?
 9 A. I was principal.
 10 Q. Where was that?
 11 A. Falls Elementary School.
 12 Q. Where is that?
 13 A. Fairfield.
 14 Q. Okay. And how long were you principal at Falls
 15 Elementary?
 16 A. Two years.
 17 Q. Okay. And prior to serving as principal at
 18 Falls Elementary, what did you do?
 19 A. I was a teacher.
 20 Q. At Falls Elementary?
 21 A. No.
 22 Q. Where?
 23 A. Grange Middle School.
 24 Q. Where is Grange Middle School?
 25 A. Fairfield.

- 1 Q. And what did you teach?
 2 A. Industrial technology.
 3 Q. To what grade?
 4 A. 7th and 8th.
 5 Q. Okay. And prior to serving as a teacher at
 6 Grange Middle School, what did you do?
 7 A. I was a teacher.
 8 Q. Where was that?
 9 A. Crystal Intermediate School.
 10 Q. C-r-y-s-t-a-l?
 11 A. Yes.
 12 Q. And where is Crystal Middle School?
 13 A. Suisun.
 14 Q. Where do you get these cities, Mr. Spears? How
 15 do you spell that?
 16 A. S-u-i-s-u-n, I think.
 17 Q. S-u-i-s what?
 18 A. S-u-i-s-u-n.
 19 Q. Where is Suisun?
 20 A. Adjacent to Fairfield, same school district.
 21 Q. Okay. Did you teach industrial technology
 22 there?
 23 A. Yes.
 24 Q. Anything else?
 25 A. One time.

- 1 Q. What was that?
 2 A. A course in geography.
 3 Q. Okay. And how long were you a teacher at
 4 Crystal Middle School?
 5 A. Four years.
 6 Q. And what about before Crystal?
 7 A. I was a student.
 8 Q. I hesitate to ask you, but where?
 9 A. Chico, California.
 10 Q. Okay.
 11 A. California State University Chico.
 12 Q. That's where you graduated from?
 13 A. Yes.
 14 Q. Undergraduate or graduate?
 15 A. Both.
 16 Q. What was your undergraduate degree in?
 17 A. Industrial technology, minor geography.
 18 Q. Okay. And then you graduated with a BA; is
 19 that right?
 20 A. Yes.
 21 Q. And then you went to Chico State graduate
 22 school?
 23 A. Yes.
 24 Q. Okay. Is that what it's called?
 25 A. Yes.

- 1 Q. What year was that? Let me go back.
 2 You got your BA in what year?
 3 A. '68.
 4 Q. Okay. And then you went to Chico State
 5 graduate school directly?
 6 A. Yes.
 7 Q. Okay. And you graduated -- you got a graduate
 8 degree at Chico State?
 9 A. I got my teaching credential first.
 10 Q. Okay. And was it in a particular area or
 11 specialty?
 12 A. Yes.
 13 Q. What was that?
 14 A. Industrial technology and geography.
 15 Q. Okay. Did you take any courses in
 16 administration?
 17 A. Not at that time.
 18 Q. Okay. And then when did you get your teaching
 19 credential?
 20 A. 1969.
 21 Q. Okay. And then did you continue at Chico
 22 State?
 23 A. Yes.
 24 Q. Directly?
 25 A. No.

- 1 Q. You returned to Chico State at some point; is
 2 that right?
 3 A. Yes.
 4 Q. When was that?
 5 A. '71.
 6 Q. Okay. So you went to teach at Crystal Middle
 7 School, and then you went back to Chico State; is that
 8 right?
 9 A. Yes.
 10 Q. And then you went back in 1971 for what
 11 purpose?
 12 A. I went back, entered the master's program in
 13 school administration.
 14 Q. Okay. And did you get a master's?
 15 A. Yes, finished my work and got my administrative
 16 credential for the state of California.
 17 Q. Okay. And when did you get the administrative
 18 credential?
 19 A. '75.
 20 Q. Okay. Were you there from 1971 through 1975
 21 taking classes?
 22 A. Clarify what is "there".
 23 Q. I know. Did you take classes at Chico State
 24 during the years 1971 through 1975?
 25 A. Yes, I did.

1 Q. Okay. And did you do a thesis paper?
 2 A. Yes.
 3 Q. Do you remember what the subject matter was?
 4 A. Construction technology.
 5 Q. Did you specialize in any particular area or
 6 areas while you were pursuing your master's?
 7 A. No.
 8 Q. Did you actually get a master's?
 9 A. No.
 10 Q. Okay. Any other postgraduate work subsequent
 11 to 1975?
 12 A. Taking classes, but not anything that led to
 13 either a degree or a credential or a certification.
 14 Q. Can you tell me approximately how many classes
 15 you took?
 16 A. In addition to --
 17 Q. Yeah, this is post 1975.
 18 A. I don't recall.
 19 Q. A handful?
 20 A. Less than 10.
 21 Q. Okay. Any of them in administration?
 22 A. Directly, no.
 23 Q. Have you ever taken courses in the subject
 24 matter of accountability?
 25 MS. READ-SPANGLER: Objection. Vague and

1 ambiguous as to "accountability."
 2 MR. ROSENBAUM: Go ahead.
 3 THE WITNESS: No.
 4 Q. BY MR. ROSENBAUM: How about statistics?
 5 A. One.
 6 Q. When was that?
 7 A. During my administrative credential work.
 8 Q. Do you consider yourself an expert in
 9 statistics?
 10 A. No.
 11 Q. Do you know what psychometrics is?
 12 A. Somewhat.
 13 Q. What's your understanding, your best
 14 understanding?
 15 A. Psychometrics has to do with testing and
 16 measurement, and specifically the development process of
 17 tests.
 18 Q. Okay. Do you consider yourself an expert in
 19 psychometrics?
 20 A. No.
 21 Q. Have you ever written any papers in
 22 psychometrics?
 23 A. No.
 24 Q. Sitting here today, can you tell me the names
 25 of people whom you consider to be experts in

1 psychometrics? Withdraw that question.
 2 Is there anyone whom you consider to be an
 3 expert in psychometrics?
 4 A. Yes.
 5 Q. Who is that?
 6 A. Bill Schmidt.
 7 Q. Okay. Anyone else?
 8 A. Richard Wiley.
 9 Q. Okay.
 10 A. Excuse me, David Wiley.
 11 Q. Okay. Anyone else?
 12 A. Richard Wolf.
 13 Q. Okay. W-o-l-f?
 14 A. Yes.
 15 Q. Anyone else?
 16 A. Ed Haertel.
 17 Q. How do you spell his last name, please?
 18 A. I think it's H-a-r-t-e-l (sic), and I'm not
 19 sure if it's one "L" or two L's.
 20 Q. Okay. Anyone else?
 21 A. And I'm not sure if it has a "D" in it.
 22 Not that I recall.
 23 Q. Who is Mr. Schmidt?
 24 A. Mr. Schmidt is a psychometrician that consults
 25 with our division.

1 Q. Do you know by whom he is employed?
 2 A. I'm not sure. I think it's University of
 3 Michigan.
 4 Q. Okay. Who is Mr. Wiley?
 5 A. He's a psychometrician.
 6 Q. And do you know by whom he is employed?
 7 A. No, I don't.
 8 Q. Okay. He's not employed by the Department of
 9 Education?
 10 A. No, he's not.
 11 Q. Have you met with Mr. Wiley?
 12 A. Yes.
 13 Q. And for what purpose?
 14 A. For the same purposes. They consult and give
 15 us advice in test development issues.
 16 Q. Okay. And Mr. Wolf, who is Mr. Wolf?
 17 A. He's a psychometrician.
 18 Q. And by whom is he employed?
 19 A. I'm not sure.
 20 Q. Not the Department of Education?
 21 A. No.
 22 Q. Same relationship with him as with Mr. Schmidt
 23 and Mr. Wiley?
 24 A. Yes.
 25 Q. And Mr. Haertel, who is he?

- 1 A. I believe he's a psychometrician, but he may
2 have other expertise, so I'm not absolutely sure about
3 his necessary type of work that he does, but he advises
4 us in the same way on issues related to test
5 development.
6 Q. Do you know by whom he's employed?
7 A. Stanford University.
8 Q. Okay. Do you have a staff, Mr. Spears?
9 A. Yes.
10 Q. Okay. How large is your staff?
11 A. Forty-eight people, approximately.
12 Q. Do you have any psychometricians on your staff?
13 A. Yes.
14 Q. Who is that?
15 A. Jim Grissom.
16 Q. Who is Mr. Grissom?
17 A. He's a consultant in the standards and
18 assessment division.
19 Q. Does he work full time for the division?
20 A. Yes.
21 Q. Does he have a particular title?
22 A. Consultant, research consultant.
23 Q. Okay.
24 A. Research and evaluation consultant.
25 Q. Okay. I neglected to ask you, Mr. Spears, do

- 1 you have a vitae or a resume?
2 A. Yes.
3 Q. Where would -- do you keep a copy of it?
4 A. Yes.
5 Q. Where do you keep it?
6 A. Home.
7 Q. In a little file at home?
8 A. Yes.
9 Q. Okay. Does the file have a name?
10 A. No.
11 Q. Okay. Like in your desk or -- you'd know where
12 to find it, right?
13 A. Maybe.
14 Q. Okay. Has Mr. Schmidt ever prepared written
15 documents for either you or your division?
16 A. Yes.
17 Q. On what subject?
18 A. I can't recall.
19 Q. Okay. Would they be maintained somewhere in
20 your office?
21 A. I would assume they are.
22 Q. Do you know how they would be maintained, I
23 mean, is there a Schmidt file?
24 A. No, I would not.
25 Q. Okay. When you need something, whose name do

- 1 you yell to find it?
2 A. It would probably be Richard Diaz.
3 Q. Who is Mr. Diaz?
4 A. He is a manager in my office.
5 Q. Okay. How about Mr. Wiley, has he ever
6 prepared written documents or papers for either you or
7 your division so far as you know?
8 A. Yes, he has.
9 Q. Do you know on what subject matters?
10 A. No, I do not.
11 Q. How about Mr. Wolf, has he ever prepared
12 written documents or papers?
13 A. I don't know, but I would assume so, yes.
14 Q. Do you know the subject matters on which
15 he's --
16 A. No, I don't.
17 Q. Do you know approximately how many papers
18 Mr. Schmidt has prepared?
19 A. No, I don't.
20 Q. Or Mr. Wolf?
21 A. No, I do not.
22 Q. Or Mr. Wiley?
23 A. No, I do not.
24 Q. And Mr. Haertel, has he ever prepared any
25 documents or papers for you or your division?

- 1 A. Not to my knowledge.
2 Q. Okay. How about Mr. Grissom, has he ever
3 prepared any documents, papers, memorandums?
4 A. Yes.
5 Q. On what subject matters?
6 A. I would say that it would have to do with test
7 development issues or --
8 MS. READ-SPANGLER: If you don't know for sure,
9 don't guess and don't assume.
10 THE WITNESS: I don't know for sure.
11 Q. BY MR. ROSENBAUM: Do you know regarding what
12 test or tests he may have prepared documents?
13 A. No, not in total.
14 Q. Tell me what you do remember. On the high
15 school exit exam, has he prepared any paper or memoranda
16 on that subject?
17 A. Yes.
18 Q. On the STAR test?
19 A. Yes.
20 Q. On the English language development test?
21 A. Yes.
22 Q. On the Golden State test?
23 A. Yes.
24 Q. On any other tests that you can recall?
25 A. Not to my knowledge.

1 Q. Okay. If I wanted to find copies of the papers
2 that Mr. Grissom has prepared, where would I look?
3 A. Probably in our division.
4 Q. Are they kept in a file? Let me break that
5 down.
6 I take it you received copies of those
7 documents; is that right?
8 A. Yes.
9 Q. Okay. Would you have kept those documents?
10 A. Some, not all.
11 Q. Okay. The ones that you would have maintained,
12 how would you have kept them?
13 A. File.
14 Q. Would that file have a particular name?
15 A. It would have a variety of names.
16 Q. Okay.
17 A. Specific to the topic.
18 Q. That's what I was going to ask. Do you have a
19 file on the high school exit exam?
20 A. Yes, I do.
21 Q. And a file on the English language development
22 test?
23 A. Yes, I do.
24 Q. And do you have a file on the Stanford-9?
25 A. I don't think I have a file specifically on

1 Stanford-9.
2 Q. Do you have a file on the STAR test?
3 A. Yes.
4 Q. Okay. Do you have a file on the API?
5 A. I don't know.
6 Q. Okay. Does your office, Mr. Spears, have any
7 responsibilities with respect to NAEP? Let me strike
8 that.
9 Do you know what the NAEP test is, N-A --
10 A. Yes.
11 Q. What's your understanding of what it is?
12 A. The NAEP test is a test that is administered by
13 the United States Department of Education designed to
14 give information about student achievement across our
15 states.
16 Q. Does your office have any duties or
17 responsibilities with respect to the NAEP test?
18 MR. SALVATY: Objection. Vague and ambiguous.
19 THE WITNESS: Yes.
20 Q. BY MR. ROSENBAUM: What are those duties and
21 responsibilities?
22 MR. SALVATY: Same objection.
23 THE WITNESS: I would describe it as we are
24 what I would consider to be a liaison between the
25 federal government and the administration of the test in

1 the state of California.
2 Q. BY MR. ROSENBAUM: What does that mean, that
3 you're a liaison?
4 A. We assist in helping those folks responsible
5 for the NAEP test do the job that they are -- they need
6 to do in terms of getting the test administered in the
7 state.
8 Q. Do you have anything to do with the actual
9 construction of the exam?
10 MR. SALVATY: Objection. Vague and ambiguous.
11 THE WITNESS: No.
12 Q. BY MR. ROSENBAUM: Or the preparation of the
13 exam?
14 MR. SALVATY: Same objections.
15 THE WITNESS: No.
16 Q. BY MR. ROSENBAUM: The persons who we talked
17 about before, Mr. Grissom, Mr. Schmidt, Mr. Wolf,
18 Mr. Wiley, Mr. Haertel, to the best of your
19 recollection, have they ever prepared any papers or
20 memorandum relating to the NAEP test?
21 A. I don't know.
22 Q. You're not aware of any sitting here?
23 A. No.
24 Q. Have you ever reviewed any materials relating
25 to the NAEP test?

1 MS. READ-SPANGLER: Objection. It's overbroad.
2 Vague and ambiguous as to "materials."
3 THE WITNESS: Yes.
4 Q. BY MR. ROSENBAUM: What have you looked at?
5 A. Scores.
6 Q. Anything besides scores?
7 A. E-mails.
8 Q. Anything else besides scores and e-mails?
9 A. No.
10 Q. And was there a purpose for which you looked at
11 the scores?
12 A. Yes.
13 Q. What was that?
14 A. To be familiar with the scores and -- that's
15 it.
16 Q. To your knowledge, has the division ever
17 undertaken to see if there's any relationship between
18 the scores on the NAEP test and the scores on the STAR
19 test or the high school exit exam test or the English
20 language development test?
21 MS. READ-SPANGLER: Objection. Compound.
22 MR. SALVATY: Objection. Vague and ambiguous.
23 MR. ROSENBAUM: It's definitely compound, but I
24 wanted -- I can break it down.
25 THE WITNESS: You've got to clarify.

1 Q. BY MR. ROSENBAUM: Sure. When you looked --
 2 has the division, to the best of your knowledge,
 3 Mr. Spears, ever attempted to see whether or not there's
 4 any relationship between the scores on the NAEP test and
 5 the scores on the STAR test?
 6 MR. SALVATY: Objection. Vague and ambiguous.
 7 "Relationship."
 8 THE WITNESS: Not to my knowledge.
 9 Q. BY MR. ROSENBAUM: Okay. And what about the
 10 scores on the NAEP test and the scores on the English
 11 language development test, has your division, to the
 12 best of your knowledge, ever looked to see whether or
 13 not there's any relationship there?
 14 MR. SALVATY: Same objection.
 15 THE WITNESS: Not to my knowledge.
 16 Q. BY MR. ROSENBAUM: And same thing with the high
 17 school exit exam, has your division ever, to the best of
 18 your knowledge, looked to see whether there's any
 19 relationship between the scores on the high school exit
 20 exam and the scores on the NAEP test?
 21 MR. SALVATY: Same objection.
 22 THE WITNESS: Not to my knowledge.
 23 Q. BY MR. ROSENBAUM: Okay. When you looked at
 24 the scores -- when did you look at the scores of the
 25 NAEP test?

1 A. I don't recall.
 2 Q. Do you know what time of year NAEP is
 3 administered?
 4 A. I don't know.
 5 Q. Do you know to whom it's administered?
 6 A. Yes.
 7 Q. To whom?
 8 A. Students grades 4 and 7.
 9 Q. And is it administered annually, so far as you
 10 know?
 11 A. You have to clarify the question.
 12 Q. Is it administered each year?
 13 MS. READ-SPANGLER: In California, I'm
 14 assuming.
 15 MR. ROSENBAUM: In California. Thank you.
 16 THE WITNESS: I don't know.
 17 Q. BY MR. ROSENBAUM: Okay. Do you know to how
 18 many students in California it's administered?
 19 A. No.
 20 Q. Do you know how the students are selected?
 21 MR. SALVATY: Objection. Lacks foundation.
 22 Vague and ambiguous.
 23 THE WITNESS: They're selected by the United
 24 States Department of Education and the folks that run
 25 the test.

1 Q. BY MR. ROSENBAUM: Do you know the methodology
 2 that's used?
 3 A. No.
 4 Q. When you looked at the scores -- strike that.
 5 On how many occasions have you looked at the
 6 NAEP scores, so far as you recall?
 7 MS. READ-SPANGLER: Objection. Vague and
 8 ambiguous.
 9 Are you talking about maybe one set of scores
 10 that he's looked at repeatedly, or different sets of
 11 NAEP scores for different administrations?
 12 MR. ROSENBAUM: That's a good point.
 13 Q. The scores are reported each year; isn't that
 14 right?
 15 A. The scores have been reported, that I've looked
 16 at, the one year that I've been in this position.
 17 Q. Okay. And did you compare the scores of
 18 California students with the scores of other students in
 19 other states?
 20 A. I looked at the report.
 21 Q. And did you draw any conclusions from looking
 22 at that report?
 23 MS. READ-SPANGLER: Objection. Vague and
 24 ambiguous as to "conclusions."
 25 THE WITNESS: You need to clarify. I'm not

1 sure what you're asking.
 2 Q. BY MR. ROSENBAUM: Let's break it down a little
 3 bit. When you say "the report," what report are you
 4 referring to?
 5 A. The report that's issued by the U.S. Department
 6 of Education that shows the scores of each state.
 7 Q. Okay. And do you know what subject matter or
 8 subject matters the NAEP test covers?
 9 A. Math and English language arts.
 10 Q. And when you looked at the report, did you pay
 11 particular attention to how California students did?
 12 A. I wouldn't describe it as particular. I looked
 13 at what California students scored.
 14 Q. And what did you find?
 15 MR. SALVATY: Objection. Document speaks for
 16 itself.
 17 THE WITNESS: That the scores were at the lower
 18 end of the scale.
 19 Q. BY MR. ROSENBAUM: Lower end of the national
 20 scale?
 21 A. Yes.
 22 Q. Okay. And when you say "lower end," what do
 23 you mean by that?
 24 MR. SALVATY: Objection. Document speaks for
 25 itself.

1 THE WITNESS: For me lower end is somewhere
 2 below the 25th-percent ranking.
 3 Q. BY MR. ROSENBAUM: Okay. And is it true for
 4 both math and English language arts, as far as you
 5 recall?
 6 MR. SALVATY: Same objection. Document speaks
 7 for itself.
 8 THE WITNESS: I'm not sure.
 9 Q. BY MR. ROSENBAUM: Okay. Did you have any
 10 discussions with anybody about the NAEP report?
 11 A. Yes.
 12 Q. With whom?
 13 A. Folks within my office, as well as the state
 14 superintendent of instruction.
 15 Q. Okay. And the state superintendent, that's
 16 Superintendent Eastin?
 17 A. Yes.
 18 Q. Did you have discussions of the NAEP results
 19 with the superintendent on more than one occasion?
 20 A. I don't recall.
 21 Q. Was it in person or was it by telephone, or was
 22 it some other method?
 23 A. In person.
 24 Q. Okay. And approximately when did that take
 25 place?

1 A. I think July of 2001, but I'm not absolutely
 2 positive that it was July.
 3 Q. Was it in her office?
 4 A. Yes.
 5 Q. Okay. And was anyone else present?
 6 A. Yes.
 7 Q. Who else?
 8 A. Mark Fetler, and there are others, but I don't
 9 recall who they were specifically.
 10 Q. Who is Mr. Fetler?
 11 A. He's administrator in my office.
 12 Q. Okay. He's part of your staff?
 13 A. Yes.
 14 Q. Does he have a particular position?
 15 A. Yeah, he's administrator.
 16 Q. And what are his duties and responsibilities?
 17 A. He is the administrator over five of our
 18 testing programs.
 19 Q. Which programs are they?
 20 A. The California English language development
 21 test, ACE test, physical fitness test, GED test, and
 22 California high school proficiency exam.
 23 Q. What's the ACE test?
 24 A. Assessment of career education.
 25 Q. And what's the GED exam?

1 A. The GED exam is a federally administered test
 2 for high school equivalency.
 3 Q. And what's the proficiency exam?
 4 A. It's a California administered test for a high
 5 school diploma proficiency -- equivalency, excuse me.
 6 Q. Okay. How do you spell Mr. Fetler's name?
 7 A. F-e-t-l-e-r.
 8 Q. Is Mark with a "K" or a "C"?
 9 A. "K."
 10 Q. And do you recall how many other people were
 11 present at this meeting?
 12 A. No.
 13 Q. And to the best of your recollection, what were
 14 the circumstances of this meeting, how did it come
 15 about, did you ask to meet with the superintendent, did
 16 she call the meeting, so far as you know? I'm just
 17 trying to figure out how the meeting was initiated.
 18 A. It was prior to the release of the results for
 19 the math, 1999 results, I believe.
 20 Q. And the results, you're talking about the NAEP
 21 results?
 22 A. Yes.
 23 Q. But was it after the English results had been
 24 released?
 25 A. I don't know.

1 Q. And did the superintendent ask you to come to
 2 discuss matters?
 3 A. No.
 4 Q. How did you happen to be there?
 5 A. We suggested that we have the meeting to share
 6 with her California's results.
 7 Q. California's results on the NAEP test; is that
 8 right?
 9 A. Yes.
 10 Q. And somebody made a presentation to the
 11 superintendent?
 12 MR. SALVATY: Objection. Vague.
 13 Q. BY MR. ROSENBAUM: Am I overly formalizing
 14 this?
 15 A. Yes.
 16 Q. You got in there and you started talking about
 17 the results?
 18 A. I don't think the conversation centered on
 19 results, I think that here's the results, wanted you to
 20 have some information about it in preparing whatever --
 21 for your information in your action, or whatever you --
 22 how you would like us to proceed. It was more that kind
 23 of a conversation.
 24 Q. Did your division prepare a summary of the
 25 results for the superintendent?

1 A. I don't think so.
 2 Q. Did you give her -- what did you give her, if
 3 anything?
 4 A. I don't recall specifically what we gave her.
 5 Q. To the best of your recollection, Mr. Spears,
 6 what did you say during this meeting?
 7 MR. SALVATY: Other than what he's already
 8 testified to?
 9 THE WITNESS: You have to help me out.
 10 MR. SALVATY: Vague and ambiguous.
 11 Q. BY MR. ROSENBAUM: I'm just trying to figure
 12 out what was said to the meeting. To the best of your
 13 recollection, why don't you tell me what the discussion
 14 was at this meeting.
 15 A. I think the discussion focused on the fact that
 16 there seems to be, at least from a California
 17 perspective, that the demographics that -- the
 18 demographics -- let me take that back, not demographics,
 19 that comparing California scores to other states in some
 20 respects is problematic as it relates to California's
 21 populations and demographics versus other states.
 22 Q. Why is that?
 23 MR. SALVATY: Objection. Vague and ambiguous.
 24 THE WITNESS: You have to help me out. When
 25 you say why is that --

1 Q. BY MR. ROSENBAUM: When you use the word
 2 "problematic," what do you mean?
 3 A. That you may not necessarily be comparing the
 4 demographics of one state versus the demographics of
 5 California, and the results may not -- there may be some
 6 influence over the results based upon the student
 7 populations that are taking the tests from one state
 8 versus another state.
 9 Q. Okay. And what's the basis of that conclusion?
 10 A. I would say that it has to do with California
 11 may have a higher population of EL students than other
 12 states perhaps, would be one example.
 13 Q. Can you think of any other examples?
 14 MR. SALVATY: Objection. Vague and ambiguous.
 15 THE WITNESS: No.
 16 Q. BY MR. ROSENBAUM: And do you know how many EL
 17 students took the NAEP exam in California?
 18 MS. READ-SPANGLER: Are you asking a number or
 19 a percentage?
 20 MR. ROSENBAUM: I was going to do both. Either
 21 one.
 22 THE WITNESS: No.
 23 Q. BY MR. ROSENBAUM: Do you know the percent of
 24 EL students in California compared to other states?
 25 A. No.

1 Q. What do you recall the superintendent saying?
 2 A. I don't recall.
 3 Q. If there were a larger percentage of EL
 4 students in California taking the NAEP exam as compared
 5 to other states, in your mind would that have an effect
 6 on the results?
 7 MR. SALVATY: Objection. Vague and ambiguous.
 8 MS. READ-SPANGLER: And calls for speculation.
 9 Incomplete hypothetical.
 10 THE WITNESS: Repeat the question.
 11 Q. BY MR. ROSENBAUM: I'm just trying to
 12 understand the basis of what you expressed to her a
 13 little bit more.
 14 My question to you is -- if it's just
 15 speculation, I don't want you to speculate. In your
 16 mind, if more EL students -- strike that.
 17 In your mind, if a higher percentage of EL
 18 students were taking the California exam than in other
 19 states, would that influence the results?
 20 MS. READ-SPANGLER: Objection. Calls for
 21 speculation. Incomplete hypothetical.
 22 MR. SALVATY: Vague and ambiguous.
 23 MS. READ-SPANGLER: You can go ahead and
 24 answer.
 25 THE WITNESS: I'll go ahead and do that. I'm

1 trying to think of my answer. I don't know.
 2 Q. BY MR. ROSENBAUM: Okay. Did you ever make any
 3 inquiry to find out?
 4 A. No.
 5 Q. Did you ever direct anyone on your staff to
 6 undertake such an inquiry?
 7 A. No.
 8 Q. Did the superintendent direct you to do any
 9 follow-up regarding the NAEP test?
 10 A. Yes.
 11 Q. What did she ask you to do?
 12 A. Prepare a letter to send to the unit or
 13 division or folks responsible in Washington for the
 14 test.
 15 Q. In the Department of Education, the United
 16 States Department of Education?
 17 A. Yes.
 18 Q. Now, besides preparing that letter, did she ask
 19 you to do any other follow-up regarding NAEP?
 20 A. No.
 21 Q. Has he ever asked you to do any other follow-up
 22 regarding NAEP?
 23 A. No.
 24 Q. Has anyone ever asked you to do any other
 25 follow-up regarding NAEP?

- 1 A. No.
- 2 Q. And when I say "you," I mean either you or your
3 division so far as you know. Same answers?
- 4 A. I don't know.
- 5 Q. And the letter, Mr. Spears, did the
6 superintendent discuss with you what she wanted the
7 content to be about?
- 8 A. Yes.
- 9 Q. What was that?
- 10 A. That there would be a letter raising the issue
11 that NAEP should take into consideration in reporting
12 scores, issues of the samples of students that may be
13 taking the tests may not be the same from state to
14 state.
- 15 Q. Was such a letter prepared?
- 16 A. Yes.
- 17 Q. And who prepared it, so far as you know?
- 18 A. Mark Fetler.
- 19 Q. And if I wanted to see a copy of that letter,
20 how would I get that?
- 21 A. From the superintendent.
- 22 Q. Okay. Does your office, so far as you know,
23 have a copy of that letter?
- 24 A. I don't know.
- 25 Q. Was that letter prepared on or about July 2001?

- 1 A. I don't recall.
- 2 Q. But somewhat shortly after the meeting?
- 3 A. Yes.
- 4 Q. Did you review the letter?
- 5 A. Yes.
- 6 Q. Okay. You signed off on it before it was sent
7 to the superintendent?
- 8 A. Yes.
- 9 Q. Okay. And what's your best recollection of the
10 contents of that letter?
- 11 A. I don't recall.
- 12 MS. READ-SPANGLER: Objection. The document
13 speaks for itself.
- 14 Q. BY MR. ROSENBAUM: Did you discuss the contents
15 of that letter with any of the consultants that you
16 mentioned to me earlier?
- 17 A. No.
- 18 Q. Do you know if anyone else was involved in the
19 preparation of the letter in your division besides
20 Mr. Fetler?
- 21 A. No.
- 22 Q. To your knowledge, did a response to the letter
23 ever come from the Department of Education in
24 Washington?
- 25 A. I believe so.

- 1 Q. Okay. Did you ever see a response?
- 2 A. I think I did, but I'm not absolutely positive.
- 3 Q. Do you think you have a copy of it in your
4 office?
- 5 A. I don't know.
- 6 Q. Okay. What's your best recollection as to what
7 the return letter from the Department of Education said?
- 8 MR. SALVATY: Objection. Calls for
9 speculation.
- 10 THE WITNESS: I don't remember the details of
11 the letter.
- 12 Q. BY MR. ROSENBAUM: Tell me what you remember
13 the best that you can recall.
- 14 A. The only thing I could do is make some kind of
15 statement that is -- that would kind of portray the
16 intent of the letter.
- 17 Q. Okay. Do that, please.
- 18 A. Basically that they understood the
19 superintendent's concern and would take it under
20 consideration as they go about their work in
21 administering the NAEP and reporting scores. Something
22 to that effect.
- 23 Q. Do you know if, in fact, there were ever any
24 changes made in the way NAEP selected its samples?
- 25 MR. SALVATY: Objection. Vague and ambiguous.

- 1 THE WITNESS: No.
- 2 Q. BY MR. ROSENBAUM: Or the way it reported its
3 data?
- 4 A. No.
- 5 Q. Okay. You don't know, that's what you're
6 telling me?
- 7 A. Right.
- 8 Q. Did you ever have any subsequent discussions
9 about the response with the superintendent or anyone on
10 her staff?
- 11 A. I don't recall.
- 12 Q. Or with Mr. Fetler?
- 13 A. I assume I did, but I don't recall.
- 14 Q. You don't recall any of the contents?
- 15 A. No.
- 16 Q. Okay. To your knowledge, Mr. Spears, was there
17 ever any follow-up as to the characteristics of the
18 schools at which the California students attended who
19 took the NAEP test?
- 20 MS. READ-SPANGLER: Objection. Vague and
21 ambiguous as to "characteristics of the schools."
- 22 THE WITNESS: Could you restate the question.
- 23 Q. BY MR. ROSENBAUM: Let me tell you what I'm
24 trying to find out. What I want to know, did your
25 division, so far as you know, ever say, let's take a

1 look at the schools where the kids who took the NAEP
 2 test go to find out information about those schools?
 3 A. Not to my knowledge.
 4 Q. Okay. To find out whether or not they were
 5 taught by emergency-credentialed or fully-credentialed
 6 teachers?
 7 A. Not to my knowledge.
 8 Q. Or whether or not they had textbooks?
 9 A. Not to my knowledge.
 10 Q. Or whether or not they were in overcrowded
 11 schools?
 12 A. Not to my knowledge.
 13 Q. Were you ever directed to undertake any such
 14 inquiry?
 15 MS. READ-SPANGLER: What inquiry?
 16 MR. ROSENBAUM: To find out anything about the
 17 schools or the conditions of learning where these kids
 18 attended school.
 19 THE WITNESS: No.
 20 Q. BY MR. ROSENBAUM: Did you ever direct anybody
 21 on your staff to do that?
 22 A. No.
 23 Q. Any reason why not?
 24 A. It's not within my authority.
 25 Q. Do you know if anybody within the Department of

1 Education ever did that?
 2 A. Not to my knowledge.
 3 Q. Okay. When you say it's not within your
 4 authority, what do you mean by that?
 5 A. I don't just do work that I decide we ought to
 6 do. I think someone else has to either approve that
 7 work or direct the work.
 8 MR. ROSENBAUM: Off the record for a minute.
 9 (Recess taken.)
 10 Q. BY MR. ROSENBAUM: You doing okay, Mr. Spears?
 11 A. Yes.
 12 Q. Okay. You've told me -- tell me, sir, what you
 13 understand to be the duties and responsibilities of your
 14 division.
 15 A. We are responsible for the administration of
 16 state assessments and tests in California.
 17 Q. What's the difference between an assessment and
 18 a test, as you understand it?
 19 A. They're one and the same.
 20 Q. And in addition to the tests that you mentioned
 21 earlier, are there other tests which your division
 22 administers?
 23 A. No.
 24 Q. Maybe my question was unclear. Do you
 25 administer the high school exit exam?

1 A. We do not -- indirectly we have responsibility
 2 for supervision of our contractor that actually does the
 3 physical administration of the test.
 4 Q. Okay. So your division -- we'll get into this.
 5 Your division is involved in selecting the contractor;
 6 is that right?
 7 A. Yes.
 8 Q. Okay. And it's out of your shop? Your shop
 9 has the primary responsibility for the high school exit
 10 exam in terms of selecting a contractor and evaluating
 11 the contractor's performance; is this right?
 12 MS. READ-SPANGLER: Objection. Compound.
 13 THE WITNESS: Yeah, that would -- you need to
 14 rephrase the question.
 15 Q. BY MR. ROSENBAUM: Why don't you tell me what
 16 your division does with respect to the high school exit
 17 exam.
 18 A. We are responsible for preparing the request
 19 for proposals. We go through the process, select the
 20 contractor. The request for proposal outlines the scope
 21 of work that the contractor will do in relationship to
 22 the test. We monitor the contract, we monitor the
 23 program development, and we make sure that the
 24 contractor receives payment for work completed, and we
 25 play a role in approving the work of the contractor as

1 they perform the duties that they've agreed to perform
 2 through the contract.
 3 Q. Okay. And what about with respect to STAR 9,
 4 does your office have duties and responsibilities -- do
 5 you call them the STAR tests, or what do you call them?
 6 A. STAR program.
 7 Q. Does your division have duties and
 8 responsibilities with respect to the STAR program?
 9 A. Yes.
 10 Q. And when we say STAR, that's S-T-A-R, all caps?
 11 A. Yes.
 12 Q. And that stands for?
 13 A. State testing and reporting.
 14 Q. Okay. And what duties and responsibilities
 15 does your division have with respect to the STAR
 16 program?
 17 A. Similar to the high school exit exam.
 18 Q. And you've talked to me already a little bit
 19 about the California English language development test.
 20 A. Yes.
 21 Q. That's the acronym is C-E-L-D-T?
 22 A. Yes.
 23 Q. And what duties and responsibilities does your
 24 division have with respect to that?
 25 A. Similar to the high school exit exam.

1 Q. And the same thing with respect to the Golden
2 State exam?
3 A. Yes.
4 Q. Is that -- what it's called, the Golden State
5 exam?
6 A. Yes.
7 Q. What is the Golden State exam?
8 A. It's a recognition program for high-achieving
9 students.
10 Q. Okay. Does your division, Mr. Spears, have any
11 duties or responsibilities with respect to the API?
12 A. Indirectly.
13 Q. Okay. You know what the API is?
14 A. Yes.
15 Q. What is it?
16 A. Academic performance index.
17 Q. And when you say "indirectly," what do you mean
18 by that?
19 A. The results of our tests are provided to the
20 division that does that work, that's our -- that's the
21 role we play.
22 Q. And what's your understanding of the division
23 that does that work?
24 When you say "that work," you mean the work of
25 administering that index?

1 A. Yes.
2 Q. What's your understanding of what division
3 administers the API?
4 MS. READ-SPANGLER: Objection. Vague and
5 ambiguous as to "administers the API."
6 THE WITNESS: Could you clarify what --
7 Q. BY MR. ROSENBAUM: Do you have anything to do
8 with the bonuses that are handed out?
9 A. No.
10 Q. Or the determination of how the index should be
11 set up?
12 A. No.
13 Q. Or modifications to the index?
14 A. No.
15 Q. Okay. Do you know who does?
16 A. I think --
17 Q. If you don't know, just say so.
18 A. It's a division, it's Bill Padia's division
19 within our branch.
20 Q. And does your office have any duties or
21 responsibilities with respect to the II/USP?
22 MS. READ-SPANGLER: Objection. Vague and
23 ambiguous as to "duties" and "responsibilities."
24 THE WITNESS: No.
25 Q. BY MR. ROSENBAUM: Okay. Do you know who does?

1 A. No.
2 Q. Okay. And does your office have any duties or
3 responsibilities with respect to the CCR?
4 MS. READ-SPANGLER: Objection. Vague and
5 ambiguous as to "duties" and "responsibilities."
6 THE WITNESS: Not to my knowledge.
7 Q. BY MR. ROSENBAUM: Do you know what the CCR is?
8 A. Do I know what the CCR stands for?
9 Q. Yeah.
10 A. Compliance review, but I don't know the
11 first --
12 Q. Have you ever looked at any reports prepared by
13 the CCR?
14 A. Yes.
15 Q. For what purpose?
16 A. I happen to have been a principal of a school
17 that had a CCR.
18 Q. Okay. Since you've had the position as head of
19 the division, have you had the occasion to look at any
20 CCR reports?
21 A. No.
22 Q. Do you know what FCMAT is, F-C-M-A-T?
23 A. No.
24 Q. Do you know what WASC, W-A-S-C?
25 A. Yes.

1 Q. Since you've been head of the division, have
2 you had any occasion to look at any reports or materials
3 of WASC?
4 A. No.
5 Q. Help me understand the chain of command,
6 Mr. Spears. To whom do you report?
7 A. The name of the person?
8 Q. Yes.
9 A. Paul Warren.
10 Q. Just for the record, what's Mr. Warren's
11 position?
12 A. He's a deputy superintendent.
13 Q. Do you know if he has anything else attached to
14 that title?
15 A. Accountability branch, I believe.
16 Q. And so far as you know, to whom does Mr. Warren
17 report?
18 A. Scott Hill.
19 Q. Okay. And to whom does Mr. Hill report?
20 A. State Superintendent Eastin.
21 Q. Okay. And has that been the chain of command
22 so long as you've been head of the division, so far as
23 you know?
24 A. Yes.
25 Q. And do you have regular staff meetings with

1 Mr. Warren?
 2 MR. SALVATY: Objection. Vague and ambiguous,
 3 "regular."
 4 THE WITNESS: You need to tell me what a staff
 5 meeting means.
 6 Q. BY MR. ROSENBAUM: That's a good point. Do you
 7 meet with Mr. Warren?
 8 A. Yes.
 9 Q. On a regular basis?
 10 A. Once a week, scheduled.
 11 Q. I'm familiar with that. Are other persons
 12 present at the scheduled meetings when they take place?
 13 A. On occasion.
 14 Q. Okay. Is it sometimes just you and Mr. Warren
 15 meeting?
 16 A. Yes.
 17 Q. Is that because everybody else ducks out?
 18 A. No.
 19 Q. Okay. And for what purpose -- what's your
 20 understanding of the purpose for which you're meeting
 21 with Mr. Warren?
 22 A. It's a meeting that's designed to -- for him to
 23 receive briefings from me on the work of our division,
 24 as well as for him to influence or assign work to the
 25 division.

1 Q. Okay. And do you submit written reports on
 2 occasion to Mr. Warren, reports or memoranda?
 3 A. We do many reports, but I don't know that they
 4 were specifically for his purposes and his eyes only.
 5 Q. Okay. And do you meet with Mr. Hill?
 6 A. Occasionally.
 7 Q. In the 16 months since you've been in the
 8 division, how many times have you met with Mr. Hill?
 9 A. What are you looking for, in terms of number of
 10 times?
 11 MS. READ-SPANGLER: Estimate the times.
 12 Q. BY MR. ROSENBAUM: Half dozen, one or two
 13 times?
 14 A. I would say that I meet with Mr. Hill -- what
 15 do you mean by meeting?
 16 Q. I don't mean just walking by him in the hall
 17 and exchanging pleasantries.
 18 A. Sitting down in his office with myself or him
 19 or others?
 20 Q. Exactly.
 21 A. I'd say once or twice a week probably.
 22 Q. Okay. For what purpose?
 23 A. It could be for the purpose of him asking
 24 questions about certain issues, topics, preparation of
 25 board items, information gathering, assigning work,

1 those kinds of things.
 2 Q. And you've already told me one meeting you had
 3 with the superintendent. Have you had other meetings
 4 with the superintendent since you took over?
 5 A. Yes.
 6 Q. On how many occasions would you say?
 7 A. With myself in the room and others for a
 8 variety of topics that we may be meeting about, is that
 9 what you're asking?
 10 Q. Yes, sir.
 11 A. Two or three times a month.
 12 Q. And is that how it is, usually a meeting with
 13 other people as well?
 14 MR. SALVATY: Objection. Vague and ambiguous.
 15 Q. BY MR. ROSENBAUM: You told me about one
 16 meeting regarding NAEP. Have there been other meetings
 17 at which -- have there been one-on-one meetings with you
 18 and the superintendent?
 19 A. No.
 20 Q. Have there been meetings with the
 21 superintendent and you and a few people from your staff?
 22 A. Yes.
 23 Q. On what subject matters? NAEP is one of them;
 24 is that right?
 25 A. That would be one.

1 Q. Any other subject matters you recall?
 2 A. I would say that the subject matter would run
 3 the gamut of all of the testing programs that we happen
 4 to be responsible for.
 5 Q. How is your staff -- you told me there's
 6 20-some people on your staff?
 7 A. No, there's 46.
 8 Q. Sorry. I was anticipating budget cuts.
 9 MS. READ-SPANGLER: That's cold.
 10 Q. BY MR. ROSENBAUM: Do you have a hierarchy in
 11 your staff?
 12 A. Yes.
 13 Q. Okay. Tell me how your staff is organized
 14 generally.
 15 A. We're organized into four units, with each of
 16 those units having responsibilities for the work of our
 17 division.
 18 Q. And what are those units?
 19 A. We have -- well, I don't recall the specific
 20 title. I can describe what the work of each of those
 21 units is.
 22 Q. That's fine.
 23 A. We have communications and policy division --
 24 unit, excuse me.
 25 Q. Okay.

1 A. We have high school exit exam unit. We have
 2 STAR and GSE unit.
 3 Q. GSE is the Golden State exam?
 4 A. Yes. And we have the unit that would be
 5 responsible for the other five testing programs that
 6 I've described before. Would you like me to list them
 7 again for you?
 8 Q. Sure.
 9 A. Okay. That would be GED, CHSPE.
 10 MS. READ-SPANGLER: Why don't you say the
 11 letters for her.
 12 THE WITNESS: California high school
 13 proficiency exam. ACE, A-C-E, physical fitness test,
 14 California English language development test.
 15 Q. BY MR. ROSENBAUM: And who is head of the high
 16 school exit unit?
 17 A. Jan Chladek.
 18 Q. How do you spell her last name?
 19 A. Oh, man.
 20 Q. It's okay. And who is head of the STAR, GSE
 21 unit?
 22 A. Richard Diaz.
 23 Q. And the five other tests, who is head of that?
 24 A. Fetler, Mark Fetler.
 25 Q. And who is head of the communications and

1 policy unit?
 2 A. Robert Anderson.
 3 Q. And what does the communications and policy
 4 unit do?
 5 A. Their main role and responsibility is more on
 6 the side of communications. We try to make sure that
 7 the field is informed and has all of the information and
 8 tools necessary to effectively implement the state's
 9 testing programs.
 10 Q. When you say field, the schools, is that what
 11 you mean?
 12 A. County offices, school districts and schools.
 13 Q. When you -- I understand the communications
 14 part. What does the policy part mean, or is that
 15 subsumed under that?
 16 A. Oftentimes we are responsible for preparing for
 17 State Board meetings, proposals related to policy, which
 18 the State Board of Education has responsibility for.
 19 Q. Do you appear regularly at the State Board of
 20 Education?
 21 MS. READ-SPANGLER: Objection. Vague and
 22 ambiguous as to "regularly."
 23 Q. BY MR. ROSENBAUM: Do you attend their
 24 meetings?
 25 A. Yes.

1 Q. Do you attend all their meetings so far as you
 2 can?
 3 A. Yes.
 4 Q. Do you typically make presentations at those
 5 meetings?
 6 A. Yes.
 7 Q. I take it, Mr. Spears, when you were principal
 8 at all those schools, the tests that we're talking about
 9 were administered at your schools; is that right?
 10 MR. SALVATY: Objection. Vague and ambiguous.
 11 MS. READ-SPANGLER: Compound.
 12 MR. ROSENBAUM: It's a crummy question. I'll
 13 join in the objection.
 14 Q. The high school exit exam, was that ever
 15 administered at any schools that you were principal of?
 16 A. No.
 17 Q. Was the STAR program?
 18 A. Yes.
 19 Q. How about the GED?
 20 A. No.
 21 Q. How about the ACE?
 22 A. No.
 23 Q. How about the physical fitness?
 24 A. Yes.
 25 Q. How about the English language development?

1 A. No.
 2 Q. How about the CHSPE?
 3 A. CHSPE is not physically administered in any
 4 schools in the state of California.
 5 Q. That's what I thought.
 6 Now, with the exception of your experience as
 7 principal with the administration of the tests that
 8 you've just acknowledged to me, did you have any other
 9 experience with any of those tests prior to taking the
 10 job as head of the division?
 11 MS. READ-SPANGLER: Objection. Vague and
 12 ambiguous.
 13 THE WITNESS: You're going to have to help me
 14 out. What do you mean by "experience"?
 15 Q. BY MR. ROSENBAUM: Well, right now I just want
 16 to ask a universe question.
 17 Did you have any experience in terms of
 18 administering them or formulating them or critiquing
 19 them or reviewing the test other than administering them
 20 as a principal?
 21 A. No.
 22 Q. Are you familiar with the phrase "high-stakes
 23 testing"?
 24 A. Yes.
 25 Q. What's your understanding of what that means?

1 A. That associated with the tests are some kind of
 2 impact or consequence.
 3 Q. Okay. And with the exception of -- do you
 4 consider any of the tests that we've just been talking
 5 about to be high-stakes testing within the meaning that
 6 you just described?
 7 A. Yes.
 8 Q. Which ones?
 9 A. High school exit exam, yes.
 10 Q. Any others?
 11 A. STAR, yes.
 12 Q. Any others?
 13 A. California English language development test,
 14 maybe.
 15 Q. Why do you say "maybe"?
 16 A. At some future time perhaps it could become a
 17 part of making judgments about schools or kids.
 18 Q. Has that time occurred yet, so far as you know?
 19 A. No.
 20 Q. Okay. Are you aware of any plans for that to
 21 occur, specific plans?
 22 A. One.
 23 Q. What's that?
 24 A. The results being posted on the Internet, so
 25 that would be the only thing that I would --

1 Q. Do you know if that's supposed to happen?
 2 A. Yes, it is.
 3 Q. When is that?
 4 A. It will be sometime after the first of the
 5 year.
 6 Q. By school?
 7 A. Yes.
 8 Q. By classroom?
 9 A. What do you mean "by classroom"?
 10 Q. Say by a particular --
 11 A. Grade level?
 12 Q. Yeah.
 13 A. Yes.
 14 Q. By particular classes in a school?
 15 MR. SALVATY: Objection. Vague and ambiguous.
 16 THE WITNESS: No.
 17 MR. ROSENBAUM: Okay.
 18 THE WITNESS: You want me to finish the rest?
 19 MR. ROSENBAUM: I'm sorry, go ahead.
 20 THE WITNESS: No, that's fine.
 21 MR. ROSENBAUM: I didn't mean to cut you off.
 22 THE WITNESS: No, I'm finished.
 23 Q. BY MR. ROSENBAUM: Do you have an understanding
 24 as to why the results are going to be posted on the
 25 Internet?

1 A. For the California English language development
 2 test?
 3 Q. Yeah.
 4 A. Because the law says you'll report the scores
 5 on the Internet.
 6 Q. Okay. And why do you consider that maybe
 7 high-stakes testing? Am I understanding your answer
 8 correctly?
 9 A. Whenever you make public results of students'
 10 test scores, I would imagine that there is potential for
 11 comparison, and whenever you're comparing school to
 12 school, there is a potential for it becoming something
 13 more than just a test that you're giving.
 14 Q. Have you ever written anything about
 15 high-stakes testing?
 16 A. No.
 17 Q. Have you ever read any literature about
 18 high-stakes testing?
 19 MR. SALVATY: Objection. Vague and ambiguous.
 20 About the phrase high-stakes testing, or about
 21 the tests he's talking about?
 22 MS. READ-SPANGLER: It's overbroad as to
 23 literature too.
 24 Q. BY MR. ROSENBAUM: I'm not interested at this
 25 point whether or not you've read reports about the high

1 school exit exam, for example.
 2 What I'm interested in -- when you told me
 3 you're aware of the phrase high-stakes testing, I take
 4 it you mean that you're aware of that as -- in what
 5 context are you aware of that?
 6 MS. READ-SPANGLER: Other than what he already
 7 defined for you?
 8 MR. ROSENBAUM: Yeah.
 9 THE WITNESS: I'm aware of it in just to --
 10 because I'm doing this work, I think it's intuitive or
 11 part of the process that you're talking about, learning
 12 about, listening to, and as a result you become a little
 13 more educated about those kinds of topics.
 14 Q. BY MR. ROSENBAUM: Have you ever read any
 15 literature or research in general about high-stakes
 16 testing?
 17 MR. SALVATY: Objection. Vague and ambiguous.
 18 THE WITNESS: For the specific reason of
 19 finding out more about that topic?
 20 MR. ROSENBAUM: Yes.
 21 THE WITNESS: No, not specifically for that
 22 reason.
 23 Q. BY MR. ROSENBAUM: Okay. Have you ever read
 24 any critiques or criticisms of high-stakes testing?
 25 MR. SALVATY: Objection. Vague and ambiguous.

1 Are you talking about the tests -- specific
 2 tests he's talking about?
 3 MR. ROSENBAUM: I'm talking in general about
 4 high-stakes testing.
 5 MR. SALVATY: Objection. Vague and ambiguous.
 6 THE WITNESS: I could not name any particular
 7 books, articles that I've read in relationship to those,
 8 but I have read a great deal of material during the time
 9 that I've been in this position about testing in general
 10 from the states across the nation or California.
 11 Q. BY MR. ROSENBAUM: That's other than test
 12 results; is that right?
 13 A. Yes.
 14 Q. Are there persons whom you consider to be
 15 experts in the area of high-stakes testing?
 16 MR. SALVATY: Objection. Vague and ambiguous.
 17 THE WITNESS: That I know?
 18 MR. ROSENBAUM: That you're aware of. You
 19 don't have to personally know them. You may know of
 20 them.
 21 THE WITNESS: No.
 22 Q. BY MR. ROSENBAUM: Okay. Now, as part of your
 23 duties and responsibilities, Mr. Spears, do those duties
 24 and responsibilities include determining whether or not
 25 California public students have textbooks?

1 A. No.
 2 Q. Or whether or not they have access to core
 3 curriculum?
 4 MR. SALVATY: Objection. Vague and ambiguous.
 5 MS. READ-SPANGLER: Objection. Vague and
 6 ambiguous as to "access" and "core curriculum."
 7 THE WITNESS: Restate the question.
 8 Q. BY MR. ROSENBAUM: Let me come back. Do part
 9 of your duties and responsibilities include determining
 10 whether or not students have emergency-credentialed
 11 teachers?
 12 A. No.
 13 Q. Or fully-credentialed teachers?
 14 MR. SALVATY: Objection. Vague and ambiguous.
 15 THE WITNESS: No.
 16 Q. BY MR. ROSENBAUM: Or teachers qualified to
 17 teach the subject matters to which they're assigned?
 18 MS. READ-SPANGLER: Objection. Vague and
 19 ambiguous as to "qualified to teach the subject matters
 20 to which they're assigned."
 21 THE WITNESS: No.
 22 Q. BY MR. ROSENBAUM: Or whether or not students
 23 attend overcrowded schools?
 24 MS. READ-SPANGLER: Objection. Vague and
 25 ambiguous as to "overcrowded."

1 THE WITNESS: No.
 2 Q. BY MR. ROSENBAUM: Or multi-track schools?
 3 A. No.
 4 Q. Or the health and safety conditions of any of
 5 those schools?
 6 MS. READ-SPANGLER: Objection. Vague and
 7 ambiguous as to "health and safety conditions."
 8 THE WITNESS: No.
 9 Q. BY MR. ROSENBAUM: Or whether or not the
 10 teachers are qualified to teach the subject matters
 11 covered on the tests which you administer?
 12 MS. READ-SPANGLER: Objection. Vague and
 13 ambiguous as to "qualified to teach."
 14 THE WITNESS: Go back to the preface of each of
 15 those statements.
 16 Q. BY MR. ROSENBAUM: Do part of your duties and
 17 responsibilities include determining whether or not
 18 California public students have teachers who are
 19 qualified to teach the subject matters covered on the
 20 tests which you administer?
 21 MS. READ-SPANGLER: Same objection.
 22 THE WITNESS: No.
 23 Q. BY MR. ROSENBAUM: Do you know if anybody in
 24 the state of California has that duty or responsibility?
 25 MR. SALVATY: Objection. Vague and ambiguous.

1 THE WITNESS: I don't know.
 2 Q. BY MR. ROSENBAUM: Do you know if anybody in
 3 the state of California has the duty or responsibility
 4 to determine whether or not California public students
 5 have textbooks?
 6 A. No.
 7 Q. Or have emergency-credentialed teachers?
 8 A. No.
 9 Q. Or are in overcrowded schools?
 10 MS. READ-SPANGLER: Objection. Vague and
 11 ambiguous as to "overcrowded."
 12 THE WITNESS: No.
 13 Q. BY MR. ROSENBAUM: Were any of the -- or health
 14 and safety conditions of schools?
 15 MS. READ-SPANGLER: Objection. Vague and
 16 ambiguous as to "health and safety conditions."
 17 THE WITNESS: No.
 18 Q. BY MR. ROSENBAUM: Okay. Were any of the
 19 schools at which you were a principal or a teacher what
 20 you would consider to be an overcrowded school?
 21 MS. READ-SPANGLER: Objection. Vague and
 22 ambiguous as to "overcrowded."
 23 Maybe you should back up and ask him what he
 24 considers to be overcrowded first.
 25 THE WITNESS: I'm not sure what would be your

1 description of overcrowded so I could apply that rule to
 2 the schools where I've been principal.
 3 Q. BY MR. ROSENBAUM: Are you familiar with the
 4 phrase "overcrowded school"? Have you heard that
 5 phrase?
 6 A. Yes.
 7 Q. Do you have an understanding in your own mind
 8 as to what that means to you?
 9 A. I have an opinion about it.
 10 Q. What is that?
 11 A. That the school has reached capacity of the
 12 number of students it will hold, and that there are more
 13 students on the campus than the school was designed to
 14 house.
 15 Q. Any of the schools at which you were a teacher
 16 or principal fit that description?
 17 MS. READ-SPANGLER: Objection. Calls for an
 18 expert opinion and a legal conclusion.
 19 MR. SALVATY: Objection. Calls for speculation
 20 also.
 21 THE WITNESS: Yes.
 22 Q. BY MR. ROSENBAUM: Which one or ones?
 23 MS. READ-SPANGLER: Same objections.
 24 THE WITNESS: Two.
 25 Q. BY MR. ROSENBAUM: Which ones?

1 A. Fairfield High School and Rocklin High School.
 2 Q. And what's the basis of your conclusion that
 3 Fairfield was?
 4 A. We had to add relocatable buildings.
 5 Q. Did you go on multi-track?
 6 A. No.
 7 Q. Why did you have to add relocatable buildings?
 8 What is a relocatable building, first of all?
 9 A. It's a classroom.
 10 Q. How many did you have to add?
 11 A. I don't recall.
 12 Q. And was there a period of time in which the
 13 Fairfield school was, in your judgment, overcrowded in
 14 which you didn't have relocatable buildings on campus?
 15 A. No.
 16 Q. And the other school is Rocklin?
 17 A. Yes.
 18 Q. And what's the basis of your conclusion that
 19 that was an overcrowded school?
 20 A. Same.
 21 Q. And was there ever a time in which there wasn't
 22 a relocatable building on campus that was needed?
 23 A. No.
 24 Q. Were any of the schools at which you were
 25 principal or teacher multi-track schools?

1 A. No.
 2 Q. What was the -- if you know -- strike that.
 3 When you were principal, were you involved in
 4 the hiring of teachers?
 5 MS. READ-SPANGLER: Objection. Compound.
 6 MR. SALVATY: Vague and ambiguous.
 7 THE WITNESS: Yes.
 8 Q. BY MR. ROSENBAUM: Okay. And did you have
 9 teachers at any of the schools at which you were
 10 principal who were emergency credentialed?
 11 MS. READ-SPANGLER: Objection. Calls for
 12 speculation and it's compound.
 13 THE WITNESS: Yes.
 14 Q. BY MR. ROSENBAUM: What was the largest
 15 percentage of emergency-credentialed teachers you had at
 16 any school you were principal, as best you recall?
 17 A. Number or percentage?
 18 Q. Percentage.
 19 A. I don't recall.
 20 Q. Was there ever more than 20 percent?
 21 A. No.
 22 Q. Ever more than 10 percent?
 23 A. Could be.
 24 Q. How many schools can you best estimate? Is it
 25 between, say, 10 and 20?

1 MR. SALVATY: Objection. Vague and ambiguous.
 2 THE WITNESS: None.
 3 Q. BY MR. ROSENBAUM: And when you said -- when
 4 you were thinking about the 10 percent schools, which
 5 schools were you thinking of, what school or schools?
 6 A. Could have been any one of the three.
 7 Q. As principal at your schools, was one of your
 8 responsibilities staff development for teachers?
 9 MS. READ-SPANGLER: Objection. Vague and
 10 ambiguous as to staff development of teachers.
 11 THE WITNESS: On specific topics, or just in
 12 general?
 13 MR. ROSENBAUM: Just in general.
 14 THE WITNESS: Yes.
 15 Q. BY MR. ROSENBAUM: And did you either
 16 personally, Mr. Spears, or assign individuals, to help
 17 teachers become fully credentialed?
 18 MR. SALVATY: Objection. Vague and ambiguous
 19 as to "fully credentialed."
 20 THE WITNESS: I'm not familiar with teachers
 21 helping other teachers becoming fully credentialed.
 22 MR. ROSENBAUM: That's because my question
 23 wasn't clear.
 24 Q. First of all, when you hear the phrase "fully
 25 credentialed," what do you understand that to mean?

1 A. That California has issued a certificate of
 2 teaching that is clear to teach the subject identified
 3 on the credential, they've met all the requirements.
 4 Q. You were a fully credentialed teacher; is that
 5 right?
 6 A. Yes.
 7 Q. And was it one of your objectives as a
 8 principal to have emergency-credentialed teachers become
 9 fully-credentialed teachers?
 10 A. Not my objective.
 11 Q. Is that one of the things -- did you concern
 12 yourself with that?
 13 A. No.
 14 Q. When you say "not my objective," what do you
 15 mean by that?
 16 A. I don't have any authority over folks getting
 17 their credentials, not getting their credentials, or
 18 providing services for them to get their credentials.
 19 Q. Did you ever encourage teachers who were
 20 emergency credentialed to become fully credentialed?
 21 MR. SALVATY: Objection. Vague and ambiguous.
 22 THE WITNESS: Yes.
 23 Q. BY MR. ROSENBAUM: At all the schools or some
 24 of the schools that you were principal?
 25 MR. SALVATY: Same objection.

1 THE WITNESS: Yes.
 2 Q. BY MR. ROSENBAUM: Okay. Which one?
 3 A. All of them.
 4 Q. Okay. And when I used the word
 5 "encouragement," what did you understand that to mean?
 6 I can break that down.
 7 You verbally encouraged them, told them it was
 8 a good idea?
 9 MR. SALVATY: Objection. Vague and ambiguous.
 10 THE WITNESS: Verbally encouraged them.
 11 Q. BY MR. ROSENBAUM: Anything else, any other
 12 form of encouragement?
 13 A. No.
 14 Q. Okay. Why did you do that?
 15 A. Well, I think that in each of my school
 16 districts, in order to continue service within the
 17 school district, and if you are in possession of an
 18 emergency credential, there's a process for having that
 19 emergency credential approved for you to be in a
 20 classroom teaching and that in order to continue your
 21 service, you must be making some kind of positive
 22 progress towards a credential, which are rules that need
 23 to be taken care of by someone that's outside of the
 24 school, not me personally.
 25 Q. And do you agree with that?

1 A. I have no opinion.
 2 Q. Okay. In any of the schools where you were
 3 principal, were there students who didn't have textbooks
 4 in courses where the teachers used textbooks?
 5 MR. SALVATY: Objection. Vague and ambiguous.
 6 MS. READ-SPANGLER: Calls for speculation and
 7 it's compound.
 8 MR. ROSENBAUM: If you know.
 9 THE WITNESS: Repeat the question.
 10 Q. BY MR. ROSENBAUM: Sure. As a principal, did
 11 you undertake to find out if students had textbooks in
 12 their classes?
 13 A. No.
 14 Q. Or other basic instructional materials?
 15 A. No.
 16 Q. Okay. Did you assign somebody else that
 17 responsibility?
 18 A. Yes.
 19 Q. Who?
 20 A. The teachers.
 21 Q. Okay. And did teachers ever come to you and
 22 say, I don't have books or enough books for my students?
 23 A. Yes.
 24 Q. Okay. And what did you do when you were told
 25 that?

1 MR. SALVATY: Objection. Vague and ambiguous.
 2 Do you want a list of every time?
 3 MS. READ-SPANGLER: Yeah. It's compound.
 4 MR. ROSENBAUM: I appreciate that.
 5 Q. Did that happen frequently?
 6 A. It happened. I don't know that I would
 7 classify it as frequently, infrequent, regularly. It
 8 happened.
 9 Q. Okay. And were you concerned when that
 10 happened?
 11 MR. SALVATY: Objection. Vague and ambiguous.
 12 THE WITNESS: Yes.
 13 Q. BY MR. ROSENBAUM: Why is that?
 14 MR. SALVATY: Objection. Vague and ambiguous
 15 again.
 16 THE WITNESS: I believe that it was one of --
 17 as a principal, it's my responsibility to be concerned
 18 for teachers' work.
 19 Q. BY MR. ROSENBAUM: And why would teachers
 20 telling you that they didn't have books or enough books
 21 fall within that concern?
 22 A. That's part of your responsibilities as a
 23 school principal.
 24 Q. Okay.
 25 A. At least from my perspective.

1 Q. What would you do when the teachers came to you
2 and told you that?
3 MR. SALVATY: Objection. Vague and ambiguous.
4 Same problem as before.
5 MS. READ-SPANGLER: Calls for speculation.
6 Incomplete hypothetical.
7 THE WITNESS: I would say on a personal level I
8 would try to -- within my authority, to make sure that I
9 had helped secure the materials that are necessary for
10 the teacher to do their work.
11 Q. BY MR. ROSENBAUM: Did you regard that as an
12 important thing to do?
13 A. Yes.
14 Q. Why is that?
15 A. I think when you take the job, that's part of
16 your job.
17 Q. To your knowledge, were there ever classrooms
18 where students went without textbooks -- periods where
19 students were without textbooks?
20 MS. READ-SPANGLER: You're talking about the
21 schools at which he was principal?
22 MR. ROSENBAUM: Yeah.
23 MS. READ-SPANGLER: Objection. Compound.
24 MR. SALVATY: Objection. Vague and ambiguous
25 also.

1 THE WITNESS: Yes.
2 Q. BY MR. ROSENBAUM: Okay. What's the basis of
3 that answer?
4 A. You had new students come to the school and you
5 are presently out of textbooks or did not have
6 textbooks, and so you could not issue a textbook to the
7 student.
8 Q. To your knowledge, any other reason besides
9 that?
10 MR. SALVATY: Objection. Vague and ambiguous.
11 THE WITNESS: I don't know.
12 Q. BY MR. ROSENBAUM: Okay. To your knowledge,
13 were there ever classrooms where students went without
14 textbooks for as long as a semester?
15 MR. SALVATY: Objection. Vague and ambiguous.
16 THE WITNESS: I don't recall.
17 Q. BY MR. ROSENBAUM: Sitting here today, can you
18 think of any such occasions?
19 A. No.
20 Q. Okay. Do you know if there are students in the
21 state of California, public students in the state of
22 California who do not have textbooks in their
23 classrooms?
24 A. No.
25 Q. You don't know?

1 A. I don't know.
2 Q. Have you ever made an inquiry to find out?
3 A. No.
4 Q. Have either you or your division ever made an
5 inquiry to find out?
6 A. No.
7 Q. Do you know who, if anybody, in the state of
8 California has a responsibility to find out whether
9 students have textbooks in their classrooms?
10 A. I don't know.
11 Q. Okay. Do you know if there are teachers in the
12 state of California who are not qualified to teach the
13 materials covered on the tests which you administer?
14 MR. SALVATY: Objection. Vague and ambiguous.
15 MS. READ-SPANGLER: As to "qualified."
16 THE WITNESS: I don't know.
17 Q. BY MR. ROSENBAUM: Okay. Have you ever been
18 directed to undertake any such investigation in order to
19 find out?
20 MS. READ-SPANGLER: Objection. Vague and
21 ambiguous as to "qualified."
22 THE WITNESS: No.
23 Q. BY MR. ROSENBAUM: Or have you ever directed
24 anyone on your staff to try to find out?
25 MS. READ-SPANGLER: Same objection.

1 THE WITNESS: No.
2 Q. BY MR. ROSENBAUM: Okay. When you heard the
3 word "qualified" in the question, what did you
4 understand that to mean?
5 A. I don't know.
6 Q. When you were a principal, were you concerned
7 that the teachers in your schools were qualified to
8 teach the materials they were supposed to teach?
9 MR. SALVATY: Objection. Vague and ambiguous.
10 MS. READ-SPANGLER: As to "qualified to teach."
11 THE WITNESS: Yes.
12 Q. BY MR. ROSENBAUM: And what did you understand
13 that to mean?
14 A. It can mean a variety of things.
15 Q. Why don't you tell me what the variety is.
16 A. It can mean that they have the skills, the
17 knowledge associated with the subject area that they're
18 teaching, they have the personal attributes that make
19 them a qualified person to interact and work with young
20 people that walk into their classroom, they're
21 motivated, they're self-directed, they're intelligent.
22 It's everything about a person.
23 Q. Okay. Do you know if there are teachers in the
24 state of California, using your definition of qualified,
25 who are not qualified to teach the subject matters

1 covered on the exams which are administered?
 2 MR. SALVATY: Objection. Asked and answered.
 3 MS. READ-SPANGLER: He's asking if you have
 4 personal knowledge of this.
 5 THE WITNESS: No.
 6 Q. BY MR. ROSENBAUM: And specifically, sir, with
 7 respect to the criteria you mentioned about whether or
 8 not they have the knowledge of the subject matters that
 9 are covered on your exam, do you know if there are
 10 teachers in the state of California who lack that
 11 knowledge?
 12 MR. SALVATY: Objection. Vague and ambiguous.
 13 THE WITNESS: No.
 14 Q. BY MR. ROSENBAUM: You've never been directed
 15 to find that out?
 16 A. No.
 17 MR. SALVATY: Same objection.
 18 Q. BY MR. ROSENBAUM: Do you know if anybody in
 19 the state of California has that responsibility, to find
 20 out?
 21 A. I don't know.
 22 Q. Okay. Do you know, Mr. Spears, whether or
 23 not -- strike that.
 24 Have you or anyone in your division ever
 25 attempted to analyze the results of the STAR program to

1 THE WITNESS: I have not been directed.
 2 Q. BY MR. ROSENBAUM: Okay. And to your
 3 knowledge, nobody in your division has?
 4 A. No.
 5 MS. READ-SPANGLER: Same objection.
 6 Q. BY MR. ROSENBAUM: Okay. And to your
 7 knowledge, Mr. Spears, have either you or anyone in your
 8 division looked into the question whether or not there's
 9 a relationship between the results of the STAR program
 10 and whether or not students had emergency-credentialed
 11 teachers?
 12 MS. READ-SPANGLER: Objection. Vague and
 13 ambiguous as to "results of the STAR program" and
 14 "relationship."
 15 MR. SALVATY: And "looked into."
 16 THE WITNESS: No.
 17 Q. BY MR. ROSENBAUM: Same thing with respect to
 18 the high school exit exam, have either you or anyone in
 19 your division ever looked to see whether or not there's
 20 any relationship between the results on the high school
 21 exit exam and whether or not students had
 22 emergency-credentialed teachers?
 23 MS. READ-SPANGLER: Objection. Vague and
 24 ambiguous as to "looked," "relationship" and "results."
 25 THE WITNESS: No.

1 see if there is any relationship between those results
 2 and whether or not students have textbooks in their
 3 classrooms?
 4 MS. READ-SPANGLER: Objection. Vague and
 5 ambiguous as to "results" and "relationship."
 6 MR. SALVATY: Objection. Vague and ambiguous.
 7 THE WITNESS: Not to my knowledge.
 8 Q. BY MR. ROSENBAUM: Same question with respect
 9 to the high school exit exam.
 10 MS. READ-SPANGLER: Same objection.
 11 THE WITNESS: Repeat the question.
 12 Q. BY MR. ROSENBAUM: Sure. To your knowledge,
 13 have either you or anyone in your division ever examined
 14 the results of the high school exit exam to see whether
 15 or not there is any relationship between the results and
 16 whether or not students had textbooks in their classes?
 17 A. No.
 18 MS. READ-SPANGLER: Objection. Vague and
 19 ambiguous as to "examined" and "relationship."
 20 Q. BY MR. ROSENBAUM: And I take it neither you
 21 nor your division have ever been directed to inquire
 22 about whether or not such a relationship exists; is that
 23 right?
 24 MS. READ-SPANGLER: Objection. Vague and
 25 ambiguous as to "relationship."

1 Q. BY MR. ROSENBAUM: Do you know if anyone has in
 2 the state of California?
 3 MS. READ-SPANGLER: Same objections.
 4 THE WITNESS: No.
 5 Q. BY MR. ROSENBAUM: Same thing for the STAR
 6 program, do you know if anyone has looked at that?
 7 MS. READ-SPANGLER: Same objections.
 8 THE WITNESS: No.
 9 Q. BY MR. ROSENBAUM: Now, if I talk not about
 10 emergency-credentialed teachers or having textbooks, but
 11 overcrowding or going to a multi-track school or
 12 particular characteristics of schools, like temperature
 13 in classrooms, would your answer change?
 14 I'm glad to break that down, but I just want to
 15 save some time.
 16 A. My answer would be no.
 17 Q. Have you or anyone in your division ever looked
 18 into the question of whether or not any relationship
 19 exists between the results of the STAR program and
 20 numbers of English learners or percent of English
 21 learners at schools?
 22 MS. READ-SPANGLER: Same objections.
 23 THE WITNESS: You've got to ask me again.
 24 Q. BY MR. ROSENBAUM: I'm interested to know
 25 whether or not you or anyone in your division has ever

1 looked into the question of whether or not there's a
 2 relationship between the results of STAR program testing
 3 and the number or percent of English learners at
 4 particular schools?
 5 A. Not to my knowledge.
 6 Q. Same thing with respect to the high school exit
 7 exam?
 8 MS. READ-SPANGLER: Objection. Vague and
 9 ambiguous as to "looked into," "relationship" and
 10 results of the STAR program.
 11 THE WITNESS: No.
 12 Q. BY MR. ROSENBAUM: Do you know if anyone in the
 13 state of California has ever investigated whether or not
 14 there's any relationship between the results on the high
 15 school exit exam and number or percent of English
 16 learners at schools?
 17 MS. READ-SPANGLER: Objection. Vague and
 18 ambiguous as to "investigated" and "results,"
 19 "relationship."
 20 THE WITNESS: No.
 21 Q. BY MR. ROSENBAUM: Same thing with respect to
 22 the STAR program?
 23 MS. READ-SPANGLER: Same objections.
 24 THE WITNESS: No.
 25 Q. BY MR. ROSENBAUM: You're not aware of any?

1 A. No.
 2 Q. When you say no, you're saying no, I'm not
 3 aware of any?
 4 A. I'm not aware.
 5 Q. Let me ask you some questions with respect to
 6 the high school exit exam, if I could.
 7 Do you have an understanding of what the
 8 purpose of the high school exit exam is?
 9 A. As it is stated in the law, that would be what
 10 I would define as the purpose.
 11 Q. And what's your understanding of what the law
 12 states that the purpose is?
 13 A. To raise the level of achievement for students
 14 in the state of California with respect to reading,
 15 writing and mathematics.
 16 Q. When you say "achievement," what do you mean by
 17 that?
 18 A. I don't mean anything by it. I'm just
 19 repeating what the law says. I do not have a qualifier
 20 that would describe what that achievement means, other
 21 than to improve achievement whatever improve achievement
 22 means.
 23 Q. In your mind do you have a definition of what
 24 improve achievement means?
 25 A. No.

1 Q. Has anyone ever given you any guidelines or
 2 directives to understand that?
 3 A. No.
 4 Q. And have you ever asked anybody on your staff
 5 to come up with a description of what that means?
 6 A. No.
 7 Q. Were you involved in the development of the
 8 high school exit exam for California?
 9 MR. SALVATY: Objection. Vague and ambiguous.
 10 MS. READ-SPANGLER: As to "involved" and
 11 "development."
 12 THE WITNESS: I'm not sure what you would mean
 13 by involved, how I was involved, or what.
 14 Q. BY MR. ROSENBAUM: Your division -- you don't
 15 need to repeat this.
 16 Your division has certain responsibilities with
 17 respect to the high school exit exam; is that right?
 18 A. Yes.
 19 Q. I just want to understand the time sequence.
 20 When you became division -- head of the division, the
 21 high school exit exam, had it been launched already?
 22 MS. READ-SPANGLER: Objection. Vague and
 23 ambiguous as to "launched."
 24 THE WITNESS: Yes, what does that --
 25 Q. BY MR. ROSENBAUM: Was it in process, was

1 there --
 2 MS. READ-SPANGLER: Objection. Vague and
 3 ambiguous as to "process."
 4 Q. BY MR. ROSENBAUM: I want to know if it was a
 5 work in progress when you came to the division?
 6 A. Yes.
 7 Q. And had it -- had a high school exit exam or a
 8 field test of the high school exit exam been
 9 administered prior to your becoming head of the
 10 division?
 11 MS. READ-SPANGLER: Objection. Compound.
 12 THE WITNESS: Repeat that again because I want
 13 to --
 14 MR. ROSENBAUM: Let's go through it.
 15 THE WITNESS: There are two questions there.
 16 MR. ROSENBAUM: I know there are.
 17 Q. The high school exit exam has been
 18 administered; is that right?
 19 A. Yes.
 20 Q. And has it ever been administered as a field
 21 test?
 22 MR. SALVATY: Objection. Vague and ambiguous.
 23 MR. ROSENBAUM: It is vague and ambiguous.
 24 Q. Was there ever a field test for the high school
 25 exit exam administered, to your knowledge?

1 MR. SALVATY: Objection. Vague and ambiguous
 2 as to "field test."
 3 THE WITNESS: There were items field tested.
 4 Q. BY MR. ROSENBAUM: Okay. And was that prior to
 5 your becoming head of the division, so far as you know?
 6 A. I don't know for sure if there were items field
 7 tested before I came to the division.
 8 Q. Since you became head of the division, were
 9 there any field tests conducted of --
 10 A. Yes.
 11 Q. Okay. And of items, or the whole deal?
 12 A. Of items.
 13 Q. When you say "items," what do you mean by that?
 14 A. Questions.
 15 Q. Okay. And on how many occasions?
 16 MS. READ-SPANGLER: Objection. Calls for
 17 speculation.
 18 THE WITNESS: Two.
 19 Q. BY MR. ROSENBAUM: Can you give me the
 20 approximate dates, please.
 21 A. The spring of 2000 and the fall of 2000.
 22 Q. Okay.
 23 A. Excuse me. And as well as the spring of 2001.
 24 Q. Now, in addition to those three occasions, do
 25 you know how many field tests of items occurred prior to

1 the spring of 2000, if any?
 2 A. No, I don't.
 3 Q. Okay. Did you ever look at any results of any
 4 of the field tests prior to when you became head of the
 5 division?
 6 MS. READ-SPANGLER: Objection. Vague and
 7 ambiguous as to "results."
 8 THE WITNESS: I have not looked at results of
 9 the field tests.
 10 Q. BY MR. ROSENBAUM: When you say "results of the
 11 field tests," what do you mean by that?
 12 MR. SALVATY: Did you say results of the
 13 field --
 14 MS. READ-SPANGLER: Yeah, he did.
 15 THE WITNESS: I did say that.
 16 Q. BY MR. ROSENBAUM: How kids did on particular
 17 questions, is that what you mean?
 18 A. Yes, it would be the statistical analysis of
 19 the items that would be associated with the results of a
 20 field test.
 21 Q. And were there also occasions since you've
 22 become head of the division in which the actual high
 23 school exit exam was administered, it counted?
 24 MR. SALVATY: Objection. Vague and ambiguous.
 25 MS. READ-SPANGLER: As to "counted."

1 MR. SALVATY: And "actual."
 2 Q. BY MR. ROSENBAUM: Do you know what I mean by
 3 that?
 4 A. Yes.
 5 Q. Yes, you know what I mean by that?
 6 A. Yes. Yes.
 7 Q. Okay. On how many occasions?
 8 A. On how many occasions?
 9 Q. What do you mean --
 10 MS. READ-SPANGLER: Do you know what he meant
 11 by that?
 12 Q. BY MR. ROSENBAUM: On how many occasions has it
 13 been administered in which the results counted?
 14 MS. READ-SPANGLER: Objection. Vague and
 15 ambiguous as to "counted."
 16 THE WITNESS: Two.
 17 Q. BY MR. ROSENBAUM: Okay. And what do you mean
 18 when you say counted, results counted?
 19 A. A student can pass or a student cannot pass,
 20 did not pass.
 21 Q. And a student passes means that he or she needs
 22 not take the high school exit exam again, right?
 23 A. Yes, that is correct.
 24 Q. And on what two occasions?
 25 A. March of 2001 and May of 2001.

1 Q. Now, your division, was it involved in the
 2 development of the particular questions that were used
 3 on the high school exit exam?
 4 Let's break that down. Did you write the
 5 questions? Did anyone in your division write any of the
 6 questions?
 7 A. No.
 8 MS. READ-SPANGLER: Objection. Lacks
 9 foundation.
 10 Q. BY MR. ROSENBAUM: Okay. Did you -- who did,
 11 so far as you know? I don't mean the individual, but
 12 who was the vendor or the contractor who did?
 13 A. American Institute for Research, better known
 14 as AIR.
 15 Q. Okay. All caps, right?
 16 A. Yes.
 17 Q. Okay. Did you or, to your knowledge, people
 18 on -- strike that.
 19 Did you meet with AIR and discuss with them the
 20 questions that should be asked?
 21 MS. READ-SPANGLER: Him personally?
 22 MR. ROSENBAUM: Yes.
 23 THE WITNESS: Alone, myself, just me or --
 24 Q. BY MR. ROSENBAUM: You may have been
 25 accompanied by other persons, but you were part of a

1 meeting with -- let's break that down some more.
 2 With whom in AIR did you deal on the question
 3 of high school exit exams, was it a particular
 4 individual or individuals?
 5 MS. READ-SPANGLER: Again, him personally or --
 6 was that a yes?
 7 MR. ROSENBAUM: Yes.
 8 THE WITNESS: A variety of people at AIR. I've
 9 had occasion to be in meetings where it was more than
 10 one person.
 11 Q. BY MR. ROSENBAUM: Is there a person who is
 12 head of the project for AIR, as far as you know?
 13 A. Yes.
 14 Q. Who is that?
 15 A. Paul Williams.
 16 Q. Do you know what Mr. William's position is?
 17 A. I don't know his exact title, no.
 18 Q. Okay. Do you know what his qualifications are?
 19 MS. READ-SPANGLER: Objection. Vague and
 20 ambiguous as to "qualifications."
 21 THE WITNESS: No.
 22 Q. BY MR. ROSENBAUM: Okay. Did you give -- did
 23 you or your division give AIR any specifications with
 24 respect to the questions to be asked on the high school
 25 exit exam?

1 MS. READ-SPANGLER: Objection. Vague and
 2 ambiguous as to "specifications."
 3 THE WITNESS: You've got to help me out here
 4 just a little bit.
 5 Q. BY MR. ROSENBAUM: For example, was AIR
 6 instructed to develop questions regarding certain
 7 subject matters?
 8 A. I wouldn't use the term subject matter.
 9 Q. Okay. What term would you use?
 10 A. Standards.
 11 Q. Okay. Were they actually given a set of
 12 standards?
 13 A. Yes.
 14 Q. Were they given textbooks?
 15 A. Not to my knowledge.
 16 Q. Were they given course materials or
 17 instructional materials?
 18 MS. READ-SPANGLER: Objection. Calls for
 19 speculation.
 20 THE WITNESS: I don't know.
 21 Q. BY MR. ROSENBAUM: Okay. Not to your
 22 knowledge?
 23 A. Not to my knowledge.
 24 Q. Were they given anything besides standards in
 25 terms of formulating the questions, so far as you know?

1 A. Not to my knowledge.
 2 Q. Okay. When you say "standards," what are you
 3 referring to?
 4 A. I'm referring to the California content
 5 standards for English language arts and math that were
 6 selected to be measured on the high school exit exam.
 7 Q. You said California content standards for math?
 8 A. Math and English language arts that were
 9 selected to be measured on the high school exit exam.
 10 Q. Okay. Any other subject areas besides English
 11 language arts and math?
 12 A. No.
 13 Q. Okay. And to your knowledge, do you know
 14 personally, Mr. Spears, whether or not there are
 15 students in the state of California who do not have
 16 textbooks that are aligned with the math standards that
 17 you just referred to?
 18 MS. READ-SPANGLER: Objection. Vague and
 19 ambiguous as to "aligned."
 20 THE WITNESS: I don't know.
 21 Q. BY MR. ROSENBAUM: How about the English
 22 language arts standards, do you know if there are
 23 students who do not have textbooks or other basic
 24 instructional materials that are aligned with the
 25 standards for English language arts?

1 MS. READ-SPANGLER: Same objection.
 2 THE WITNESS: I don't know.
 3 Q. BY MR. ROSENBAUM: Do you know if anyone in
 4 your division knows whether or not there are students in
 5 California's public schools who did not have textbooks
 6 aligned with -- textbooks or other basic instructional
 7 materials aligned with the math standards?
 8 MR. SALVATY: Objection. Calls for
 9 speculation.
 10 MS. READ-SPANGLER: Same objection.
 11 THE WITNESS: I don't know the extent to what
 12 schools have or don't have in relationship to aligned
 13 textbooks in general across the state of California.
 14 Q. BY MR. ROSENBAUM: Do you know if anyone in
 15 your division does?
 16 MS. READ-SPANGLER: Same objection.
 17 THE WITNESS: I don't know.
 18 Q. BY MR. ROSENBAUM: Have you ever directed
 19 anyone on your staff to investigate the extent to which
 20 students have textbooks aligned with these standards?
 21 MS. READ-SPANGLER: Same objection.
 22 THE WITNESS: No.
 23 Q. BY MR. ROSENBAUM: If I were talking not about
 24 textbooks but teachers with the knowledge included in
 25 these standards, do you know whether or not there are

1 public students in California who have teachers who are
 2 not knowledgeable in the subject areas covered by the
 3 math standards?
 4 MS. READ-SPANGLER: Objection. Calls for
 5 speculation.
 6 THE WITNESS: No.
 7 Q. BY MR. ROSENBAUM: Do you know if anybody
 8 knows?
 9 MR. SALVATY: Objection. Calls for speculation
 10 of many people.
 11 THE WITNESS: No.
 12 Q. BY MR. ROSENBAUM: Same thing with respect to
 13 the English language arts, you'd give me the same
 14 answers?
 15 A. Yes. No.
 16 Q. Now, after --
 17 MR. ROSENBAUM: Let's go off the record for a
 18 minute.
 19 (Recess taken.)
 20 (Nancy Lozano no longer present.)
 21 Q. BY MR. ROSENBAUM: With respect to the March
 22 2000 administration of the exam, were there the
 23 recommendations that that exam be administered as a
 24 field test, so far as you know?
 25 MS. READ-SPANGLER: Objection. Vague and

1 ambiguous as to "recommendations."
 2 Do you want to maybe specify by whom, or are
 3 you asking in the whole world?
 4 MR. ROSENBAUM: I'm talking broadly.
 5 MS. READ-SPANGLER: Globally.
 6 THE WITNESS: I wouldn't use the term "field
 7 test."
 8 Q. BY MR. ROSENBAUM: Okay. What term would you
 9 use?
 10 A. Practice.
 11 Q. And why don't you tell me the difference in
 12 your mind between a practice test and a field test.
 13 A. A practice would be for the benefit of schools
 14 and students, not necessarily for the test development
 15 process. And I equate field test as something to do
 16 with the development of the test.
 17 Q. Okay. Thank you. To your knowledge, who was
 18 in favor of the test being a practice test?
 19 A. At the time?
 20 Q. Yes.
 21 A. I think the Department of Education was in
 22 favor of that. I think the State Board of Education was
 23 in favor of that.
 24 Q. When you say "the Department of Education was
 25 in favor of that," what do you mean by that?

1 A. The superintendent.
 2 Q. And did you have an understanding as to what
 3 her reasons were?
 4 MR. SALVATY: Objection. Calls for
 5 speculation.
 6 THE WITNESS: Yes.
 7 Q. BY MR. ROSENBAUM: What was your understanding?
 8 A. One is that it would improve the test
 9 development process.
 10 Q. Okay. And did you have an understanding as to
 11 how it would improve the development?
 12 A. Yes.
 13 Q. What was that?
 14 A. That a test of this type is best served by
 15 giving the test required to the whole population for a
 16 census administration, and through a census
 17 administration you get additional information and data
 18 about aspects of the test that may help you in creating
 19 a good test.
 20 Q. And prior to March 2000, am I correct, sir,
 21 that it had never been given to the entire census; is
 22 that right?
 23 A. That's correct.
 24 Q. Do you know what the largest percentage was to
 25 which it had been administered?

1 MS. READ-SPANGLER: Prior to March 2000?
 2 MR. ROSENBAUM: Yes.
 3 THE WITNESS: It had not been administered to
 4 anyone prior to March 2000.
 5 Q. BY MR. ROSENBAUM: And do you know -- you told
 6 me before that there were items that had been field
 7 tested before?
 8 A. Yes.
 9 Q. Do you know how many items?
 10 A. No.
 11 Q. Do you know if any of the items that were field
 12 tested actually were on the test when it was
 13 administered in March 2000?
 14 A. It was administered in March 2001, not March
 15 2000.
 16 Q. I'm sorry, March 2001.
 17 A. All of the items that were field tested that
 18 were on the test of March of 2001.
 19 Q. Do you know what percentage of the items
 20 actually administered in March 2001 were field tested
 21 previously?
 22 MS. READ-SPANGLER: He just told you, all of
 23 them.
 24 THE WITNESS: All of them. 100 percent.
 25 Q. BY MR. ROSENBAUM: Okay. Did you have an

1 opinion as to whether or not the March 2001
 2 administration -- I need to go back and clarify
 3 something.
 4 The test was administered in March 2001; is
 5 that right?
 6 A. Yes.
 7 Q. Was it administered in March 2000 as well?
 8 A. No.
 9 Q. It was not?
 10 A. No.
 11 Q. And so on how many occasions has it been
 12 administered?
 13 MS. READ-SPANGLER: Objection. Asked and
 14 answered.
 15 MR. ROSENBAUM: I know it was.
 16 THE WITNESS: Two.
 17 Q. BY MR. ROSENBAUM: And when was the second
 18 time?
 19 A. May of 2001.
 20 Q. Okay. Now, did you have an opinion as to
 21 whether or not the March 2001 test should be
 22 administered as a practice test?
 23 A. Personally?
 24 Q. Yes.
 25 A. Yes.

1 Q. And what was your opinion?
 2 A. Yes.
 3 Q. And what was the reason?
 4 A. For the purposes of test development.
 5 Q. Should have been a practice test?
 6 A. Yes.
 7 Q. Now, besides the Department of Education --
 8 strike that.
 9 You also told me that so far as you know, the
 10 State Board of Education believed that the test should
 11 be administered as a practice test, the March 2001 test?
 12 A. Yes.
 13 Q. And is one of the ways you know that is because
 14 you attended State Board of Education meetings at which
 15 this matter was discussed?
 16 A. Yes.
 17 Q. And were you asked to give your opinion as
 18 those meetings?
 19 A. No.
 20 Q. Did you give your opinion at those meetings?
 21 A. No.
 22 Q. What is your understanding as to the reasons as
 23 to why the State Board of Education wanted the March
 24 2001 test to be administered as a practice test?
 25 A. The secretary of education raised the issue

1 with the Board, and the Board supported the position of
 2 the administration that they would pursue legislation to
 3 make it a practice test.
 4 Q. Okay. And when you say "the secretary of
 5 education," whom do you mean by that?
 6 A. John Mockler (ph.) at the time.
 7 Q. And what's your understanding as to the reason
 8 why legislation was to be pursued?
 9 A. For the purposes that I've described.
 10 Q. Am I right, sir, that a reason that legislation
 11 had to be pursued is because you had to amend or change
 12 prior legislation?
 13 MS. READ-SPANGLER: Objection. Calls for a
 14 legal conclusion.
 15 Q. BY MR. ROSENBAUM: Is that your understanding?
 16 A. The law had to be changed in order to
 17 administer it as a practice or -- yes.
 18 Q. And did you have an understanding of whether or
 19 not the governor's office supported the administration
 20 of the March 2001 exam as a practice test?
 21 A. Only by way of the secretary of education,
 22 which is an arm of the governor's office, saying that
 23 this would be a good thing to do.
 24 Q. Do you know anybody who was opposed to the
 25 administration of the March 2001 test as a practice

1 test?
 2 A. The legislation was opposed to that because
 3 they did not change the law.
 4 Q. Okay. Did anyone at AIR, so far as you know,
 5 have an opinion as to whether or not the March 2001 test
 6 should be administered as a practice test?
 7 A. I don't recall.
 8 Q. Okay. Specifically do you know if Mr. Williams
 9 had a view?
 10 A. I don't know his view. I would assume he did,
 11 but I don't know.
 12 Q. Do you know what HumRRO is?
 13 A. Yes, I do.
 14 Q. Okay. Cap H-, small u-m, cap R-R-O?
 15 A. Yes.
 16 Q. What is HumRRO?
 17 A. The independent evaluator of the high school
 18 exit exam.
 19 Q. Were you involved in selection of HumRRO as an
 20 independent evaluator?
 21 A. No.
 22 Q. Do you know who was? Was that your
 23 predecessor?
 24 A. I don't know.
 25 Q. Okay. Who was your predecessor, by the way?

- 1 A. Gwen Stevens.
 2 Q. And how do you spell Stevens?
 3 A. S-t-e -- I'm not sure if it's S-t-e-v. I'm not
 4 sure which spelling is used.
 5 Q. Do you know if Ms. Stevens had a predecessor?
 6 A. I don't know.
 7 Q. Okay. Do you know where Ms. Stevens is now?
 8 A. She works in the Department.
 9 Q. Do you know what her position is?
 10 A. No.
 11 Q. Do you know if the independent evaluator had a
 12 position as to whether or not the March 2001 test should
 13 be a practice test?
 14 A. Yes.
 15 Q. What was that?
 16 A. I think they supported the concept of a
 17 practice test.
 18 Q. Okay. And do you have an understanding as to
 19 why?
 20 A. For the reasons I've stated.
 21 Q. Did you ever hear the concern expressed that
 22 the high school exit exam would be more legally
 23 defensible if the March 2001 test were administered as a
 24 practice test?
 25 A. Not that I recall.

- 1 Q. At the time the March 2001 test was
 2 administered, was it known at that time that it was
 3 going to be a practice test?
 4 MR. SALVATY: Objection. Vague and ambiguous.
 5 Known by whom?
 6 MR. ROSENBAUM: That's a good objection.
 7 Sorry.
 8 Q. As it was being administered, to your
 9 knowledge, was it an open question whether or not it
 10 would be a practice test or not?
 11 A. No.
 12 Q. At the time it was administered, it had been --
 13 it could only go forward as a test that would count; is
 14 that right?
 15 A. Yes.
 16 Q. Okay. And at the time that the March 2001 test
 17 was administered, had passing scores been established?
 18 A. No.
 19 Q. Okay. And were you personally involved in the
 20 establishment of passing scores?
 21 A. You have to describe "involved."
 22 Q. Okay. Let me withdraw that question for a
 23 moment.
 24 While you were -- I think you told me this.
 25 While you were -- subsequent to your becoming head of

- 1 the division, there were some field tests; is that
 2 right?
 3 A. Yes.
 4 Q. And just bear with me if I didn't get this
 5 right. On two occasions; is that right?
 6 A. That's correct.
 7 Q. Now, did you look at the results of the field
 8 test?
 9 A. No.
 10 Q. To your knowledge, did anyone in your division
 11 look at the results of the field test?
 12 A. Yes.
 13 Q. Who was that?
 14 A. I would assume Jan Chladek and Lily Roberts.
 15 Q. And what's the basis of that assumption?
 16 A. That's their program that they work on.
 17 Q. Okay. And did they make any recommendations as
 18 a result of the field test that you're aware of?
 19 A. Recommendations related to?
 20 Q. Anything involving the test, the exam.
 21 A. Subsequent to the administration of the field
 22 test, before the field test?
 23 Q. Subsequent to the administration of the field
 24 test.
 25 A. I don't know.

- 1 Q. Okay. To your knowledge, did anyone in your
 2 division look at the results of the field test and
 3 compare them to whether students had
 4 emergency-credentialed teachers?
 5 A. No.
 6 Q. Anyone say, for example, let's look at these
 7 results and see if there's a difference in terms of
 8 student performance where students have had
 9 emergency-credentialed teachers and where they have not?
 10 A. No.
 11 Q. Nothing like that?
 12 A. Not to my knowledge.
 13 Q. Okay. And you never directed anyone to conduct
 14 any such analysis; is that right?
 15 A. No.
 16 Q. And if I asked you the same sort of question
 17 about textbooks or other basic instructional materials,
 18 would your answer be the same? Anyone look at the
 19 results of the field test and say, let's compare the
 20 results for students who had textbooks as opposed to
 21 students who didn't have textbooks?
 22 A. No, and not to my knowledge.
 23 Q. Okay. At some point passing scores were
 24 established for the March 2001 test; is that right?
 25 A. Yes.

- 1 Q. And can you give me an approximate date when
2 those scores were established?
3 A. It was either at the June 2001 or July 2001
4 State Board meeting.
5 Q. Okay. And you were at that meeting; is that
6 right?
7 A. Yes, I was.
8 Q. And you talked to the Board about passing
9 scores; is that right?
10 A. Yes, I did.
11 Q. And you told them they had two choices in
12 setting a passing grade; is that right?
13 Did you say to the State Board in sum or
14 substance, here are a couple of choices you have, you
15 can use the results in the fall field test on some
16 13,000 students to set marks, or you can use the results
17 on both the field and the actual test, did you say that
18 in sum or substance?
19 A. In June or July?
20 Q. Yeah.
21 A. I don't think I said that in June or July.
22 Q. Did you ever say that?
23 A. I don't think I said that in June or July.
24 Q. Did you ever say that at some subsequent time?
25 A. I don't know that I would have said that. All

- 1 I can tell you is that there were discussions that if
2 we -- could we use the results of the field test in
3 order to establish a passing score on this test, so that
4 was the question.
5 Q. Okay. And when you say "this test," which test
6 do you mean?
7 A. The high school exit exam.
8 Q. But are you referring to the March 1 or the --
9 there was no -- I'm withdrawing what I'm saying.
10 The test you told me -- the exam was
11 administered in March, and it was also administered in
12 May?
13 A. Yes.
14 Q. At the time the May exam was administered, had
15 passing scores been set by then?
16 A. No.
17 Q. So the passing scores that were set, they
18 applied to both the March and the May exam?
19 A. Yes.
20 Q. And they were the same passing scores?
21 A. Yes.
22 Q. What's your understanding as to the process by
23 which passing scores were established, how did it
24 happen?
25 A. For this test?

- 1 Q. For the May and March ones.
2 A. The results of the March administration were
3 used, not the results of the May administration.
4 Q. Were the results of any of the field tests
5 used?
6 A. No.
7 Q. Did you have a view as to whether or not the
8 results of any of the field tests should be used in
9 setting the passing scores?
10 A. Yes.
11 Q. What was your view?
12 A. My view would be that I would personally --
13 based upon conversation, work within our division, that
14 we would prefer that it be developed off of a live
15 administration or a larger population of students.
16 Q. Meaning the actual test; is that right?
17 A. Yes, under the circumstances that it existed at
18 the time.
19 Q. What does that mean?
20 A. Well, we were going to administer the test
21 live, and the question was are we going to try to
22 establish a passing score off of field test results and
23 have a passing score established before the test was
24 actually given, or is it better -- and that was part of
25 the process as well in terms of establishing the passing

- 1 score; that is, is it better to have it a live test that
2 counts and/or was it better to have it as a practice
3 test, which we didn't know at the time, in order to use
4 those results to establish a passing score versus using
5 the field test. And it was preferable to use the actual
6 test administration rather than the field test
7 administration.
8 Q. To your knowledge, are there other states that
9 have high school exit exams?
10 A. There are other states that have some form of a
11 requirement of a test in order to receive a diploma. I
12 don't know that I would classify them necessarily as a
13 high school exit exam.
14 Q. Do you know how passing scores are set in any
15 of those states?
16 MS. READ-SPANGLER: Objection. Compound.
17 THE WITNESS: I don't know.
18 Q. BY MR. ROSENBAUM: Do you know if scores -- if
19 passing scores are set before or after the
20 administration of the exam?
21 A. I don't know.
22 Q. Do you know if anyone in your division knows
23 that?
24 A. I don't know.
25 Q. There was debate as to what the passing scores

- 1 should be; isn't that right?
- 2 A. How would you -- I mean, debate by who?
- 3 Q. Let's break this down. How many passing scores
- 4 were established, one for math and one for English; is
- 5 that right?
- 6 A. Yes.
- 7 Q. Any other passing scores?
- 8 A. No.
- 9 Q. Okay. Now, there were different views as to
- 10 what the passing scores should be for math; isn't that
- 11 right?
- 12 A. Different?
- 13 Q. Didn't different people have different views as
- 14 to what the math scores should be?
- 15 A. I'm sure that many folks had an opinion as to
- 16 what the passing score should be, so I'm not sure.
- 17 Q. Did your division have a recommendation as to
- 18 the passing score for the math?
- 19 A. The superintendent had a recommendation for the
- 20 passing score.
- 21 Q. And did you make recommendations to the
- 22 superintendent, you or your division make
- 23 recommendations to the superintendent as to what the
- 24 passing score should be for math?
- 25 A. No.

- 1 Q. What about for the English language arts?
- 2 A. No.
- 3 Q. Did your division have any involvement at all
- 4 in terms of --
- 5 A. Yes.
- 6 Q. What was the nature of the involvement?
- 7 A. The nature of the involvement was working with
- 8 our contractor that pursued the process for establishing
- 9 what the passing score would be.
- 10 Q. Okay. And what was -- when you say "working
- 11 with our contractor," again, you're referring to AIR?
- 12 A. Yes.
- 13 Q. And what do you mean by working with AIR?
- 14 A. There was a procedure established for
- 15 determining what that -- what the ultimate result would
- 16 be when the State Board decided -- approved the passing
- 17 score for the test. There was a process that we went
- 18 through.
- 19 Q. Okay. Help me understand, Mr. Spears, what you
- 20 mean by that.
- 21 Tell me if I've got this wrong. Do you mean
- 22 once the score was established, you would work with them
- 23 in terms of administering it, or do you mean something
- 24 else?
- 25 A. No, I mean that there is -- you don't just pick

- 1 out of the sky, oh, this sounds like a good passing
- 2 score. There is a procedure that we went through in
- 3 order to reach the point of actually recommending to the
- 4 State Board what the passing score would be.
- 5 Q. Okay. And what's your understanding of what
- 6 that procedure consisted of?
- 7 A. You take -- after you have the results of the
- 8 test, you form what is called a standards setting panel,
- 9 and the standards setting panel uses a process that has
- 10 been approved by the State Board to develop a
- 11 recommendation for a passing score.
- 12 That panel's work comes forward and then there
- 13 are discussions with the board staff, CDE, contractor.
- 14 People begin to look at those scores, and ultimately
- 15 develop a recommendation that moves forward to the State
- 16 Board for their consideration.
- 17 Q. And who was on that panel?
- 18 A. The standards setting panel?
- 19 Q. Yes.
- 20 A. That panel was made up of teachers, it was made
- 21 up of school administrators, it was made up of parents,
- 22 it was made up of business members. Let's see if I've
- 23 left anybody out here. Higher education.
- 24 Q. "Higher education" means what?
- 25 A. College-, university-type folks.

- 1 Q. Did the panel have meetings, so far as you
- 2 know?
- 3 A. Yes, they did have a meeting.
- 4 Q. Okay.
- 5 A. They had a meeting.
- 6 Q. And that was in Sacramento?
- 7 A. That was in San Diego.
- 8 Q. And did you attend that meeting?
- 9 A. Yes, I did.
- 10 Q. Did you make a presentation at the meeting?
- 11 A. Not specifically a presentation, no.
- 12 Q. Did you participate in the meeting?
- 13 A. I was an observer of the meeting.
- 14 Q. Okay. And the panel made recommendations both
- 15 for a math score and for an English language arts score?
- 16 A. There were two panels, one for math, one for
- 17 English language arts.
- 18 Q. Do you know who selected the members of each of
- 19 those panels?
- 20 A. The members were selected by the state
- 21 superintendent and approved by the State Board.
- 22 Q. Okay. And were you involved in the
- 23 decision-making as to who would be on the panels?
- 24 A. No.
- 25 Q. Was anyone from your division on either of the

1 panels?
 2 A. No one from the Department was on the panels.
 3 Q. To your knowledge, were there any specific
 4 criteria established as to what the passing score should
 5 be?
 6 MR. SALVATY: Objection. Vague and ambiguous.
 7 Q. BY MR. ROSENBAUM: You've told me that there's
 8 a protocol. I'm not asking you about that. I'm asking
 9 something different.
 10 Was there any criteria as to how to figure out
 11 what the passing score should be?
 12 A. No, that was the job of the panel.
 13 Q. So, to your knowledge, there was no criteria
 14 established by -- specifically by the Department of
 15 Education?
 16 MR. SALVATY: Objection. Vague and ambiguous
 17 as to "criteria." You already talked about a process.
 18 Q. BY MR. ROSENBAUM: I don't mean the process. I
 19 mean how to figure out -- how to think about what the
 20 passing score should be.
 21 Any criteria in that respect that you were
 22 aware of?
 23 MR. SALVATY: Same objection.
 24 THE WITNESS: The process had a criteria.
 25 Q. BY MR. ROSENBAUM: What was the criteria as you

1 understood it?
 2 A. The content that was on the test, that's what
 3 the panel made their judgment about, was what should a
 4 student know and be able to do in relationship to the
 5 content that was measured on this test.
 6 Q. When you say what a student should be able to
 7 do, what do you mean by that?
 8 A. In order to receive a passing score, what do
 9 they have to demonstrate on this test in order to pass.
 10 Q. Were there written documents that discuss what
 11 a student should know?
 12 A. No.
 13 Q. Okay. Were there any written documents that
 14 gave guidance as to how much a student should know?
 15 A. No.
 16 Q. Okay. Any documents as to what it would mean
 17 to get a 70-percent score as opposed to a 50-percent
 18 score or a 90-percent score?
 19 MR. SALVATY: Objection. Vague and ambiguous.
 20 MS. READ-SPANGLER: And calls for speculation.
 21 MR. SALVATY: Can I just get some
 22 clarification? I don't understand what documents we're
 23 talking about. I think I got lost somewhere.
 24 Q. BY MR. ROSENBAUM: Did the Department, to your
 25 knowledge, develop any documents saying, well, this is

1 what a 50-percent score would be?
 2 A. No.
 3 Q. Did anybody develop such documents, so far as
 4 you know?
 5 A. Not to my knowledge.
 6 Q. Okay. Now, the panel at the San Diego meeting,
 7 am I correct, sir, that it made recommendations for each
 8 of the scores, each of the panels made recommendations?
 9 A. Yes, they did.
 10 Q. What's your recollection, sir, as to the score
 11 for the math?
 12 MR. SALVATY: Are you talking passing score?
 13 MR. ROSENBAUM: Yes. Thank you.
 14 THE WITNESS: Well, I need to make a statement
 15 to you so that I can try to state this correctly. There
 16 is a scale score and then there's the number of
 17 questions and -- number of items correct and percent
 18 correct. So any time you pick a place on the test or
 19 present a number of items, there's also a scale score
 20 that's associated with that, so the panel is working
 21 with both of those.
 22 For the purposes here, since that's the way it
 23 went to the Board, they did select a percentage of the
 24 items necessary to pass the test in their
 25 recommendation. I recall it to be in the area of 70

1 percent for both English language arts and math.
 2 Q. BY MR. ROSENBAUM: And just so we're talking
 3 about the same vocabulary, the 70 percent, is that
 4 different than a scale score, or is that the scale
 5 score?
 6 I can ask that question better. What do you
 7 mean by a "scale score"?
 8 A. When students receive their reports, they are
 9 going to receive whether they passed or failed the test
 10 in terms of a scale score. It takes a 350 scale score
 11 in order to receive a passing score on that test.
 12 The reason you use a scale score is that from
 13 year to year any individual test may be easier, may be
 14 harder, so when you scale the test, you're making sure
 15 that you are having an equivalent result. If you
 16 determine that this test on this particular year at this
 17 particular time is harder, you may have to get less
 18 items correct in order to reach that same scale score.
 19 Q. Okay.
 20 A. So that's the purpose for the scale score.
 21 Like on the SAT, you're going to get a 600 or an 800, if
 22 you get a perfect score, and you may not -- and each
 23 individual time that that test is administered that
 24 those students are going to have to have the same
 25 percent of questions correct.

1 Q. Same number of items correct?
 2 A. Correct. Exactly.
 3 Q. 350, is that equal to 70 times 5, is that how
 4 you get that?
 5 A. No, it's arbitrary.
 6 Q. Okay. Did you agree with the recommendation
 7 for 70 percent in --
 8 A. Myself personally?
 9 Q. Yeah.
 10 A. I didn't have an opinion about it.
 11 Q. You did not?
 12 A. No.
 13 Q. Do you know if anyone in the division did?
 14 MS. READ-SPANGLER: Have an opinion?
 15 MR. ROSENBAUM: Yes.
 16 THE WITNESS: I don't know.
 17 Q. BY MR. ROSENBAUM: Okay. Do you know if
 18 Mr. Warren did?
 19 A. No, I'm just assuming he did.
 20 Q. Did he ever express it, to your knowledge?
 21 A. No.
 22 Q. Now, the panel made the recommendation. Did
 23 that recommendation then go to the superintendent?
 24 A. Yes.
 25 Q. Okay. Is that the route from --

1 A. Yes.
 2 Q. And to your knowledge, did the
 3 superintendent -- strike that.
 4 Did the superintendent have any discussions
 5 with you about whether or not to accept the
 6 recommendation?
 7 A. Me personally?
 8 Q. Yeah.
 9 A. I don't recall.
 10 Q. Anyone in your division?
 11 A. Oh, there were many discussions about the
 12 recommendation.
 13 Q. Were there discussions on your staff about it?
 14 A. Yes, I'm sure there were discussions.
 15 MS. READ-SPANGLER: Don't assume. He's asking
 16 if you know.
 17 THE WITNESS: There were discussions about it.
 18 Q. BY MR. ROSENBAUM: Did you regard it as one of
 19 the responsibilities of your division to say to the
 20 superintendent, we agree with the recommendations of the
 21 panel, we disagree with the recommendations of the
 22 panel, and to supply reasons either way?
 23 A. No, we did not. We did not express it in terms
 24 of we agree or we disagree.
 25 Q. You didn't endorse it or reject it; is that

1 right?
 2 A. That's correct.
 3 Q. The superintendent -- as I understand the
 4 process, the superintendent then made a recommendation
 5 to the State Board; is that right?
 6 A. Yes.
 7 Q. Okay. And she was not bound to accept the
 8 recommendation of the panels; is that right?
 9 A. That's right.
 10 Q. And do you know what she recommended to the
 11 State Board?
 12 A. Yes, I do.
 13 Q. And did she recommend adopting the panel's
 14 recommendations?
 15 A. No, she did not.
 16 Q. What did she recommend?
 17 A. She recommended a 55 percent correct for math
 18 and 60 percent correct for English language arts.
 19 Q. 55 and 65?
 20 A. 55 and 60.
 21 Q. I'm sorry. And did you have any involvement in
 22 that decision-making in terms of input, as far as you
 23 remember?
 24 MR. SALVATY: Objection. Vague and ambiguous.
 25 THE WITNESS: No.

1 Q. BY MR. ROSENBAUM: Did you have an opinion, you
 2 personally have an opinion as to whether 55 was better
 3 than 70, or 60 was better than 70?
 4 A. No.
 5 Q. Do you know if anybody in your division did?
 6 A. No.
 7 Q. Do you know if Mr. Warren or Mr. Hill did?
 8 A. No.
 9 Q. Now, do you have an understanding as to the
 10 reasons as to why the superintendent recommended 55 for
 11 math and 60 for English language arts?
 12 A. Yes.
 13 Q. And what's your understanding.
 14 A. My understanding basically goes back to the
 15 statement that was brought forward, and that plays into
 16 that the impact of a passing score has some influence
 17 over perhaps where that passing score is going to be
 18 placed based upon the numbers of students that are going
 19 to pass or not pass at any one of these junctures, when
 20 you're talking about the whole span.
 21 Secondly, at that point in time the capacity
 22 perhaps of this particular cohort of students in
 23 relationship to where they may be in relationship to
 24 having additional instruction to pass the test another
 25 time when they retake the test, and that the State Board

1 always has the option to raise the level of the passing
 2 score for other students and to reexamine that at any
 3 given time.
 4 Q. So 55 and 60 are not fixed into the future; is
 5 that right?
 6 A. For this particular group of students, it
 7 probably is, but for other cohorts of students it may
 8 not be.
 9 Q. And why do you say for this particular cohort
 10 it's fixed?
 11 A. You can't -- it would be very difficult to
 12 change the passing score when you've already said to a
 13 group of students you've now passed and either lower or
 14 raise it for that same group of students.
 15 Q. Okay. Now, when you say "this particular
 16 cohort," who is this cohort?
 17 A. Members of the class of 2004, the freshmen
 18 students that are taking the test.
 19 Q. Okay. So these were 9th graders?
 20 A. Yes, they were.
 21 Q. In the future 9th graders will not take the
 22 exam; is that right?
 23 A. That's correct.
 24 Q. So what you're saying is there are additional
 25 occasions on which these 9th graders will have an

1 A. No, not of particular students necessarily, the
 2 capacity of schools to support the learning of students
 3 in order to pass the test.
 4 Q. What do you mean by that?
 5 A. Those that have not passed the test by law are
 6 required to receive some kind of support to have them
 7 develop the necessary knowledge and skills in order to
 8 be successful on the test.
 9 Q. And when you say the "capacity of schools to
 10 support," what do you mean?
 11 MS. READ-SPANGLER: Objection. Calls for a
 12 legal conclusion.
 13 THE WITNESS: I think we are talking in terms
 14 of the capacity of the numbers of students that they
 15 are --
 16 Q. BY MR. ROSENBAUM: I'm focusing on the phrase
 17 "capacity of schools." What do you mean by that?
 18 A. The larger the number of students versus the
 19 smaller the number of students.
 20 Q. Do you mean by "capacity to support," the
 21 ability of the schools to educate the kids to the
 22 information that's tested on the exam?
 23 A. No, I don't think that's what I meant.
 24 Q. Then I'm confused.
 25 A. It's about the numbers of students. The more

1 opportunity to pass the exam if they don't pass it the
 2 first time; is that correct?
 3 A. Yes.
 4 Q. They'll have up to nine times in total; is that
 5 right?
 6 A. This particular group of students, if they took
 7 it as a volunteer, they will have that plus seven.
 8 Q. Okay. When you say "as a volunteer," why do
 9 you say as a volunteer?
 10 A. Because they were not required to take it as
 11 freshmen, it was a voluntary test.
 12 Q. Do you know how many students took it?
 13 A. Approximately.
 14 Q. How many?
 15 A. 370,000.
 16 Q. Do you know what percent of that cohort that
 17 is?
 18 A. It's close to 90 percent.
 19 Q. Okay. And for that time plus the seven times
 20 the passing scores will be 55 and 60, is that right?
 21 That's your understanding?
 22 A. Yes.
 23 Q. And when you told me several questions ago the
 24 capacity of particular students that pass, did I
 25 understand you correctly?

1 students there are, the more difficult perhaps it is to
 2 work with those numbers. So we're talking about the
 3 impact of the test. The lower the score, the more
 4 students pass, you have fewer students that have not
 5 passed, and so therefore you're going to have fewer
 6 students that you have to work with. So it's about the
 7 numbers of students, it's not about their ability to
 8 educate them.
 9 Q. Okay. And --
 10 MS. READ-SPANGLER: Are we getting to a good
 11 stopping point?
 12 MR. ROSENBAUM: Yeah, we are. Let me just ask
 13 one more question.
 14 Q. The superintendent recommended 55 and 60; is
 15 that right?
 16 A. Yes.
 17 Q. And the State Board of Education, what did it
 18 end up adopting?
 19 A. 55 and 60.
 20 MR. ROSENBAUM: We can take a break here.
 21 (Lunch recess taken.)
 22 Q. BY MR. ROSENBAUM: I want to go back to just
 23 one matter. One of the exams which you administer is
 24 the Golden State exam; is that right?
 25 A. Yes.

1 Q. And that is for -- is that for high-achieving
 2 students, is that -- how would you characterize it?
 3 A. It's a recognition program for high-achieving
 4 students.
 5 Q. And is it an exam?
 6 A. Yes, it is.
 7 Q. And who is eligible to take the exam?
 8 A. Students are eligible to take the exam based
 9 upon the local district's decision as to whether or not
 10 they're going to offer the exam, and you're eligible to
 11 take the exam based upon course enrollments.
 12 Q. What does that mean?
 13 A. Well, if you want to take the Algebra I Golden
 14 State exam, you have to have been enrolled and just
 15 completed an Algebra I course.
 16 Q. Did I understand you right, districts have the
 17 option of offering it; is that right?
 18 A. Yes.
 19 Q. Is there any criteria, or is it totally up to
 20 the district?
 21 A. Yes, totally up to the district.
 22 Q. And in how many subjects is it offered?
 23 A. Thirteen.
 24 Q. How does it work, if you score a certain
 25 mark --

1 1.2 million.
 2 Q. Okay.
 3 A. Statewide.
 4 Q. And that's out of how many students in the
 5 system? That's not a good question.
 6 What grades are eligible to take the exam?
 7 A. Grades 8 through 12.
 8 Q. So that 1.2 million comes out of the 8 through
 9 12 grade universe; is that right?
 10 A. Yes.
 11 Q. Do you know what percent of all students in
 12 grades 8 to 12 in the California public schools that 1.2
 13 million represents?
 14 A. No, I can't answer that question because there
 15 are multiple test takers. There are 1.2 million tests
 16 taken, it doesn't necessarily mean there are 1.2 million
 17 students taking the test.
 18 Q. Do you know how many individual test takers
 19 there are?
 20 A. No.
 21 MR. SALVATY: Objection. Vague as to time
 22 also.
 23 Are we talking about 2001 or 2000?
 24 MR. ROSENBAUM: That's a good objection.
 25 Q. The 1.2 million, for what year or years does

1 A. Yeah, if you receive a certain score, you can
 2 receive some kind of honor designation, whether it be
 3 recognition, honors or high honors based on your score
 4 on the test.
 5 Q. I see. Is there any cash benefit to it?
 6 A. Potentially.
 7 Q. What does that mean?
 8 A. Under the STAR program the governor has a
 9 scholarship program that offers students scholarship
 10 monies based upon test scores in the STAR program, as
 11 well as GSE, international baccalaureate or advanced
 12 placement courses.
 13 (Mr. Hajela entered the room.)
 14 Q. BY MR. ROSENBAUM: Do you know the number of
 15 students who take the Golden State exam, separate
 16 students? A student, for example, would take the exam
 17 in algebra and in American history, right?
 18 A. Yes.
 19 Q. But has anyone broken down the number of
 20 students?
 21 A. Total?
 22 Q. Total, yeah.
 23 A. Yes.
 24 Q. Do you know what the number is?
 25 A. I'm going to give you an approximate number of

1 that represent?
 2 A. This would be 2000, 2001 school year.
 3 Q. Okay. And in your experience, does that number
 4 stay about the same from year to year?
 5 A. It has increased from each year. There's a
 6 little -- the number increases each year.
 7 Q. Do you know the degree to which it increases?
 8 A. No.
 9 Q. Is it a big increase?
 10 A. No.
 11 Q. Now, to your knowledge, Mr. Spears, has anyone
 12 in your division looked at the characteristics of the
 13 schools from which the test takers come?
 14 MR. SALVATY: Objection. Vague and ambiguous
 15 as to "characteristics."
 16 THE WITNESS: Not to my knowledge.
 17 Q. BY MR. ROSENBAUM: Have they, for example,
 18 looked at the percent of emergency-credentialed teachers
 19 at the schools?
 20 A. Not to my knowledge.
 21 Q. Or whether kids have textbooks or other
 22 instructional materials?
 23 A. Not to my knowledge.
 24 Q. Or any other characteristic of a school that
 25 you're aware of?

- 1 A. Not to my knowledge.
 2 Q. Have you ever been directed to undertake any
 3 such data collection or examination?
 4 A. No, I have not.
 5 Q. And to your knowledge, has anyone in the state
 6 of California ever looked to see what the
 7 characteristics of the schools are where test takers for
 8 the Golden State exam come?
 9 A. No.
 10 MR. SALVATY: Objection. Vague and ambiguous.
 11 THE WITNESS: Not to my knowledge.
 12 Q. BY MR. ROSENBAUM: Let's come back to the high
 13 school exit exam -- stay with Golden State exam for one
 14 minute. You have to make a certain score to get honors
 15 or high honors, is that how it works?
 16 A. On the GSE?
 17 Q. Yeah.
 18 A. Yes.
 19 Q. Do you know what percent of the, say, 1.2
 20 million test takers score honors or above?
 21 A. No, I do not.
 22 Q. Do you know if it's in the ballpark of 50
 23 percent, 70 percent?
 24 A. I can't -- I have no way of saying at this
 25 moment.

- 1 Q. I just asked you a set of questions about the
 2 schools from which the test takers come. Do you
 3 remember that just a few moments ago?
 4 A. Yes.
 5 Q. Has anyone ever tried to compare the schools
 6 where the students who passed the GSE or scored honors
 7 on the GSE as opposed to the schools where students were
 8 below honors?
 9 A. Not to my knowledge.
 10 Q. With respect to any of the scores on GSE,
 11 there's been no increase, as far as you know, along the
 12 lines that I've been asking?
 13 A. No, not to my knowledge.
 14 Q. Okay. Thank you. Now, you were talking to me
 15 before we broke for lunch about the setting of the
 16 passing marks. When is the high school exit exam
 17 scheduled next to be administered?
 18 A. Spring of 2002.
 19 Q. And I take it there have not been passing
 20 scores set for that administration; is that right?
 21 A. Yes, the passing scores that have been set are
 22 for that administration.
 23 Q. In other words, let me see if I understand
 24 this. In March and May of 2001, 9th graders took the
 25 exam; is that right?

- 1 A. Yes.
 2 Q. Did 10th graders take the exam?
 3 A. No.
 4 Q. 11th or 12 graders?
 5 A. No.
 6 Q. Now, in March of 2002 it will be administered
 7 again?
 8 A. Yes.
 9 Q. And the 9th graders who took it previously,
 10 they will take it again as 10th graders again if they
 11 didn't pass it?
 12 A. Yes.
 13 Q. Okay. Will an 11th grade cohort take it?
 14 A. In 2002?
 15 Q. Yes.
 16 A. No.
 17 Q. And a 12th grader will not take it?
 18 A. No.
 19 Q. And you've already told me that the 9th grade
 20 isn't going to take it next year, right?
 21 A. Yes.
 22 Q. Then is the plan to administer the test again
 23 in 2003?
 24 A. Yes.
 25 Q. Okay. And in that year 10th graders will take

- 1 the exam; is that right?
 2 A. Yes.
 3 Q. As well as the cohort that's been moving along;
 4 is that right?
 5 A. Yes.
 6 Q. Now, for the 10th graders taking the exam in
 7 2003, has a passing grade been set for that exam yet?
 8 MS. READ-SPANGLER: Objection. Calls for
 9 speculation.
 10 THE WITNESS: Unless -- no.
 11 Q. BY MR. ROSENBAUM: Were you starting to say
 12 something else?
 13 A. No.
 14 Q. Do you know if the process for selecting a
 15 passing grade for the 10th grade cohort in 2003 will be
 16 the same process as was used this last time?
 17 A. There has not been a decision -- I need to say
 18 this. I think it will help the question. I do not
 19 believe there has been a decision that, in fact, there
 20 will be a new passing score or won't be a new passing
 21 score. So I think the State Board has the option to say
 22 that we want to have another standard setting process
 23 for this new cohort of students and establish a new
 24 passing score, at least look at that before we make a
 25 decision. I don't think anyone is even at the point of

1 deciding whether or not there is going to be a different
 2 passing score.
 3 Q. Were you present at any meetings in which the
 4 superintendent was present at which the issue of whether
 5 or not to accept the panel's recommendations was
 6 discussed?
 7 MR. SALVATY: Objection. Vague and ambiguous.
 8 MS. READ-SPANGLER: Other than the State Board
 9 meeting that we talked about?
 10 MR. ROSENBAUM: Other than the State Board
 11 meeting.
 12 THE WITNESS: I can't answer the question as
 13 you've asked it because I don't think it was a
 14 discussion as to whether or not we're going to accept
 15 it. It was not in that tone.
 16 Q. BY MR. ROSENBAUM: Was it more like what number
 17 should we select, is that what it was? I don't want to
 18 make you go for a needle in a haystack. What was it,
 19 what was the nature of the discussion? Strike that.
 20 Subsequent to the panel's selection, there were
 21 meetings which you attended at which the superintendent
 22 was present at which the passing scores were discussed;
 23 isn't that right?
 24 A. Yes.
 25 Q. Okay. And that includes the State Board

1 meeting and it includes other meetings as well; is that
 2 right?
 3 A. Yes.
 4 Q. And at some of the other meetings, besides the
 5 State Board meeting, the superintendent was present.
 6 Was Mr. Warren also present?
 7 A. Could have been, may not have been.
 8 Q. Was the secretary for education present?
 9 A. Not in my meetings I was in.
 10 Q. Anyone whom you regarded as from the governor's
 11 office?
 12 A. With the superintendent?
 13 Q. Yes.
 14 A. Not that to my knowledge.
 15 Q. Okay. Were you ever at a meeting with anyone
 16 from the governor's office at which the subject matter
 17 of the passing marks for the high school exit exam was
 18 discussed?
 19 A. No.
 20 Q. Okay. Now, approximately how many meetings
 21 were you at with the superintendent where the subject
 22 matter of the passing mark was discussed subsequent to
 23 the panel's recommendation?
 24 A. A couple.
 25 Q. Okay. And was there discussion at either or

1 both of those meetings of what will be the impact in
 2 terms of the numbers of kids passing or failing based
 3 upon the passing score selected?
 4 MS. READ-SPANGLER: Objection. Vague and
 5 ambiguous as to "impact."
 6 THE WITNESS: Yes.
 7 Q. BY MR. ROSENBAUM: Okay. What was discussed in
 8 that regard?
 9 A. I don't know that -- what would be discussed is
 10 that if -- there were a variety of cut points decided,
 11 and each of those, along with them, obviously has some
 12 impact in terms of the result of how many students would
 13 pass or not pass, so it wasn't one particular score, it
 14 was a variety of scores.
 15 Q. Okay. And did you ever hear the superintendent
 16 say, well, if we pick this score, this number of kids
 17 are going to pass, and if we pick that score, a more or
 18 less number of kids will pass?
 19 A. She didn't have to say that, we were telling
 20 her. We gave her that information, so it wasn't
 21 something that she created it, it was something that she
 22 was provided.
 23 Q. You gave the superintendent information about
 24 the number of kids passing and failing the exam at
 25 particular cut points; is that right?

1 A. Yes, we did.
 2 Q. Okay. And what was the range of cut points
 3 that you looked at?
 4 MS. READ-SPANGLER: What do you mean by
 5 "range"?
 6 MR. SALVATY: Objection. Vague and ambiguous.
 7 Q. BY MR. ROSENBAUM: Was it, for example, from 55
 8 to 90?
 9 MS. READ-SPANGLER: Percent?
 10 MR. ROSENBAUM: Yeah.
 11 MR. SALVATY: Is this for math and arts?
 12 MR. ROSENBAUM: Yes, English language arts.
 13 THE WITNESS: I would estimate the range
 14 between 50 and 70.
 15 Q. BY MR. ROSENBAUM: Okay. And tell me how you
 16 broke it down. You broke it down by total number of
 17 students, that was one thing you looked at, this will be
 18 the total number of students that will pass at each of
 19 these scores?
 20 A. Yes.
 21 Q. Did you also break it down by race and
 22 ethnicity?
 23 A. Yes.
 24 Q. Did you also break it down by socioeconomic
 25 status?

1 A. Not by those terms.
 2 Q. Okay. Tell me how else you broke it down
 3 besides total and race and ethnicity.
 4 A. Gender.
 5 Q. Okay.
 6 A. Socioeconomic advantaged, disadvantaged, so I
 7 guess that goes to what you just asked.
 8 Q. Okay.
 9 A. Special education, receiving special education
 10 services, not receiving special education services.
 11 English learner, non-English learner. I think that's
 12 it.
 13 Q. When you say socioeconomic advantaged and
 14 disadvantaged, what do those terms mean?
 15 A. In this case it was whether or not you're
 16 receiving free or reduced lunch.
 17 Q. Okay. Did you also break it down by the nature
 18 of schools?
 19 MS. READ-SPANGLER: Objection. Vague and
 20 ambiguous as to "nature of schools."
 21 Do you have an understanding what he means by
 22 that?
 23 THE WITNESS: No. Thank you.
 24 Q. BY MR. ROSENBAUM: Did you look, for example,
 25 at -- did you characterize certain schools as at-risk

1 schools, was that a phrase that you used?
 2 A. No.
 3 Q. Did you look at schools based on their API
 4 rankings?
 5 A. What do you mean by "look at schools"?
 6 Q. Did you say to the superintendent, provide
 7 information to the superintendent if we use these cut
 8 scores, the pass rate at schools in the 10th decile or
 9 the 1st decile, this will be the pass rate?
 10 A. Not for the superintendent, I don't believe.
 11 We may have -- I don't necessarily -- I don't recall
 12 exactly what we did. We did -- not in relationship to
 13 the API, but in relationship to the schools that
 14 participated in the exam, we formed some form of a
 15 decile to get the numbers of schools, but not specific
 16 schools, the numbers of schools that were -- based upon
 17 the results of the exam.
 18 Q. Did you rank -- did you say, well, at a certain
 19 set of schools the pass rate will be 80 percent and
 20 above, and at a certain set of schools it will be 70
 21 percent and above, et cetera?
 22 A. No.
 23 Q. Okay. Did anyone ever ask you to take a look
 24 at the API index and see how different schools,
 25 different high schools, what the passage rate would be

1 at different high schools under different cut scores?
 2 MR. SALVATY: Objection. Vague and ambiguous.
 3 MS. READ-SPANGLER: I don't like to make
 4 foundational objections, but have we established that
 5 they even did it by school?
 6 MR. ROSENBAUM: I'm glad to do that.
 7 Q. Did you give the superintendent information as
 8 to how different schools -- how students at different
 9 schools would do, pass rates at different cut scores?
 10 A. Let me see if I can explain how this worked.
 11 If we were to divide all of the schools into deciles of
 12 results, lowest-performing schools in relationship to
 13 the high school exit exam, versus highest-performing
 14 schools in relationship to the high school exit exam, we
 15 did produce some information that said on this test the
 16 bottom portion of the schools, this would be how many
 17 students would pass or fail in that particular group of
 18 students, that was the average pass rate for the
 19 lowest-performing schools on the high school exit exam,
 20 this is the pass rate for the highest-performing schools
 21 on the high school exit exam.
 22 Q. When you say "highest-performing" and
 23 "lowest-performing?"
 24 A. Had the highest number of students passing or
 25 not passing, numbers of students passing or not passing.

1 Q. Was it also broken down by percents of the
 2 cohort?
 3 MR. SALVATY: Objection. Vague and ambiguous.
 4 Q. BY MR. ROSENBAUM: Say you had a school that
 5 had a lot of 9th graders, so you might expect -- even if
 6 20 percent of those kids passed, it might be a large
 7 number of students. Did you look at percents at all?
 8 A. No.
 9 Q. You just looked at gross numbers of students
 10 and that's how you characterized schools as high
 11 performing or low performing?
 12 MS. READ-SPANGLER: Objection. Misstates his
 13 testimony.
 14 MR. ROSENBAUM: I'm just trying to understand
 15 it.
 16 THE WITNESS: There are two issues going on
 17 here, one is that we don't know which kids participated
 18 in the test at any given school because there may be 500
 19 freshmen, they had 40 kids participate, they had 400
 20 kids participate. So you're looking at information that
 21 says that these particular groups of students, which we
 22 don't know anything about the populations that took the
 23 test necessarily, other than what we've described
 24 earlier, we don't know. We're just saying that of that
 25 group of students, it may have been a school of 50 kids

1 and they had six kids take the test, none of them
 2 passed, they're going to have a much lower passing rate
 3 perhaps than this school up here that had 50 kids, five
 4 of them took the test and all five of them passed.
 5 So we're ranking those schools with that
 6 information, we're not looking at other information that
 7 would say this is a school that's in the API over here
 8 at this decile versus a school that's at the top decile,
 9 we did not do that.
 10 Q. BY MR. ROSENBAUM: And you didn't look at
 11 schools to see whether or not they were part of the
 12 II/USP program; is that right?
 13 A. No, we did not.
 14 Q. I take it what you're also telling me is that
 15 say a school had 50 kids who were 9th graders, you don't
 16 know whether or not six of those kids took the exam or
 17 45 kids took the exam; is that right?
 18 A. At an individual school?
 19 Q. Yeah.
 20 A. Yes, we do know that.
 21 Q. You do know that?
 22 A. Yes.
 23 Q. Did you ever calculate the percentage of kids
 24 at the school who took it?
 25 A. No.

1 Q. Did you ever calculate the percentage of the
 2 kids taking the exam at the school who passed; in other
 3 words, if there were 45 kids who took the exam and five
 4 of them pass, then one -- then the pass rate of kids
 5 taking it at that school was one out of 11?
 6 A. I don't think that we did that for state
 7 purposes. Obviously we did that for the individual
 8 schools when we gave them their scoring information.
 9 Q. But you didn't give that information to the
 10 superintendent as far as you know?
 11 A. Not to my knowledge.
 12 Q. And she never asked you about that?
 13 A. No.
 14 Q. Did you ever look at the lowest-performing
 15 school and see if you could identify any characteristics
 16 about those schools as compared to the
 17 highest-performing schools?
 18 MS. READ-SPANGLER: Objection. Vague and
 19 ambiguous as to "characteristics."
 20 THE WITNESS: No.
 21 Q. BY MR. ROSENBAUM: For example, the percent of
 22 emergency-credentialed teachers at the lowest-performing
 23 schools versus the highest-percentage school?
 24 MS. READ-SPANGLER: Same objection.
 25 THE WITNESS: No.

1 Q. BY MR. ROSENBAUM: Or whether or not students
 2 had textbooks at the lowest-performing schools compared
 3 to the highest-performing schools in their core classes?
 4 MR. SALVATY: Objection. Vague and ambiguous.
 5 THE WITNESS: No.
 6 Q. BY MR. ROSENBAUM: Okay. And do you remember,
 7 just your best estimate based upon your recollection,
 8 what the pass rate was at the lowest-performing schools
 9 under the 55-percent cut point as opposed to the
 10 70-percent cut point?
 11 MR. SALVATY: Objection. Vague and ambiguous
 12 as to "pass rate."
 13 Is it rate of test takers, total students?
 14 MS. READ-SPANGLER: Calls for speculation.
 15 Q. BY MR. ROSENBAUM: You were telling the
 16 superintendent -- you were giving her percent pass
 17 rates, isn't that right, 20 percent at this school, 50
 18 percent at this school; is that right?
 19 MR. ROSENBAUM: Objection. Misstates his
 20 testimony.
 21 THE WITNESS: Yes.
 22 Q. BY MR. ROSENBAUM: And do you remember what the
 23 percent pass rates were at the lowest-performing
 24 schools?
 25 A. No.

1 Q. Do you know if they were in the neighborhood of
 2 8 percent?
 3 A. I don't remember.
 4 Q. Who prepared these -- they were data sheets; is
 5 that right?
 6 A. Yes.
 7 Q. Who prepared the data sheets?
 8 A. The contractor.
 9 Q. And the contractor being AIR?
 10 A. AIR.
 11 Q. And do you have copies of those?
 12 A. I don't personally have copies of those.
 13 Q. Was the name of the woman Jan -- what's her
 14 name?
 15 A. Jan Chladek.
 16 Q. Would she have them?
 17 MS. READ-SPANGLER: Calls for speculation.
 18 Objection.
 19 THE WITNESS: I would assume she does.
 20 Q. BY MR. ROSENBAUM: Now, was there ever any
 21 discussion at the meeting with the superintendent where
 22 somebody said, well, we can't use the 70 percent pass
 23 rate because then the numbers of kids passing at the
 24 lowest performing schools would just be too low, did
 25 anyone say that in sum or substance?

1 A. No, I don't recall anyone saying that.
 2 Q. Was that a concern as far as you know?
 3 MR. SALVATY: Objection. Vague and ambiguous.
 4 Concern of whose?
 5 THE WITNESS: I don't know.
 6 Q. BY MR. ROSENBAUM: Now, after the cut score was
 7 established, was your division asked to do any follow-up
 8 with respect to the high school exit exam?
 9 A. I just drifted off someplace. Ask that
 10 question again.
 11 MS. READ-SPANGLER: I think you mean passing
 12 score.
 13 Q. BY MR. ROSENBAUM: Is cut score the same thing
 14 as passing score?
 15 A. Yes.
 16 Q. After the passing score was established, was
 17 your division, to your knowledge, asked to do anything
 18 with respect to the high school exit exam, any
 19 follow-up?
 20 MR. SALVATY: Objection. Vague and ambiguous
 21 as to "follow-up."
 22 Q. BY MR. ROSENBAUM: Did the superintendent give
 23 you any directives after the passing score was set?
 24 A. No.
 25 Q. Did Mr. Warren or Mr. Hill?

1 A. No.
 2 Q. Or Ms. Bidwell?
 3 A. No.
 4 Q. Okay. The exam that was given to the 9th
 5 grade -- strike that.
 6 The exam that will be given to the 10th grade
 7 next year, to your knowledge, will that be the same exam
 8 that will be given to every 10th grade class?
 9 MR. SALVATY: Objection. Calls for
 10 speculation.
 11 MS. READ-SPANGLER: Vague and ambiguous.
 12 MR. ROSENBAUM: I'm asking if you know. That's
 13 not speculation.
 14 MS. READ-SPANGLER: Can you read back the
 15 question?
 16 THE WITNESS: What do you mean by a "10th grade
 17 class"?
 18 Q. BY MR. ROSENBAUM: The 10th grade next year is
 19 going to take it in March of 2002, take the high school
 20 exit exam?
 21 A. That's the first opportunity.
 22 Q. And then the 10th grade class in March of 2003
 23 will take the high school exit exam; is that right?
 24 A. Yes.
 25 Q. Is that going to be the same exam, the same

1 questions, if you know?
 2 MR. SALVATY: Object. Again, it calls for
 3 speculation. I just say that because it's the future.
 4 MR. ROSENBAUM: If you know.
 5 THE WITNESS: Some of the questions will be the
 6 same from administration to administration.
 7 Q. BY MR. ROSENBAUM: If you know, will it be a
 8 particular percent of the questions that will be the
 9 same?
 10 A. Yes.
 11 Q. What percent?
 12 A. In the area of 20 percent.
 13 Q. Okay. Was there any effort that you're aware
 14 of, Mr. Spears, to try to find out the reasons why
 15 students failed the high school exit exam, try to
 16 identify causes or reasons?
 17 A. On the part of the Department?
 18 Q. Yes.
 19 MR. SALVATY: Objection. Vague and ambiguous.
 20 MS. READ-SPANGLER: And calls for speculation.
 21 THE WITNESS: On the part of the Department,
 22 no.
 23 Q. BY MR. ROSENBAUM: Okay. Or why certain
 24 schools had high pass rates, any attempt to uncover the
 25 causes or reasons that might contribute to that?

1 MS. READ-SPANGLER: Same objections.
 2 MR. SALVATY: Yeah, same.
 3 THE WITNESS: On the part of the Department?
 4 MR. ROSENBAUM: Yes.
 5 THE WITNESS: No.
 6 Q. BY MR. ROSENBAUM: Did you ever direct anybody
 7 on your staff to try to identify the causes why pass
 8 rates were higher at some schools as opposed to other
 9 schools?
 10 A. No.
 11 Q. And why is that?
 12 A. No authority to do that.
 13 Q. Okay. Do you know who, if anyone, has the
 14 authority to do that in this state?
 15 A. No.
 16 Q. Okay. Have you been -- strike that.
 17 What is your understanding, Mr. Spears, as to
 18 when the high school exit exam requirements are to
 19 become effective?
 20 MR. SALVATY: Objection. Vague and ambiguous.
 21 Requirements become effective.
 22 MS. READ-SPANGLER: I think you need to clarify
 23 that.
 24 Q. BY MR. ROSENBAUM: Do you understand what I
 25 mean?

1 A. Effective in what way?
 2 Q. Meaning if -- you're a high school senior and
 3 you haven't passed the exam during the opportunities
 4 given, at some point if you haven't passed the exam, you
 5 don't -- you're not permitted to graduate from a
 6 California high school; isn't that right?
 7 A. You're not permitted to receive a diploma,
 8 right.
 9 Q. Okay. Thank you. And when is that -- what is
 10 your understanding as to when --
 11 A. 2004, graduating class of 2004.
 12 Q. Okay. That's the 9th grade class that took the
 13 exam, is that right, that's that cohort?
 14 A. Yes.
 15 Q. Now, have you been present at any discussions
 16 about whether or not that date ought to be postponed?
 17 MS. READ-SPANGLER: To the extent you've had
 18 discussions with the governor's staff, which I don't
 19 know if he has or not --
 20 MR. ROSENBAUM: I know where you're going. I
 21 don't agree with it, but I'll break it down.
 22 Q. Put aside the governor's staff and legislators
 23 or legislative staff. Have you had any discussions with
 24 members of your staff about the possibility of
 25 postponing the date, the effective date?

1 MS. READ-SPANGLER: And I'll object to the
 2 extent it calls for a legal conclusion.
 3 THE WITNESS: We have not initiated
 4 conversation about postponing the date. We have no
 5 authority to postpone the date.
 6 Q. BY MR. ROSENBAUM: When you say "we," you mean?
 7 A. Our division.
 8 Q. Have you been in any discussions at which the
 9 superintendent was present at which the subject matter
 10 of postponing the date has been raised?
 11 A. I don't recall.
 12 Q. Or with Mr. Warren or Mr. Hill or Ms. Bidwell
 13 after she --
 14 A. Not with Ms. Bidwell, the other two, yes.
 15 Q. And on how many occasions?
 16 A. I don't recall that.
 17 Q. More than one?
 18 A. It's not like we had a meeting to discuss
 19 postponing the date. I mean, that was a conversation
 20 that was going on in Sacramento and, generally speaking,
 21 before the test was given, and so I think that that was
 22 not only with our office. There was conversation about
 23 that or heard about them, and so it may have been in
 24 that context.
 25 Q. Okay. And have you been at meetings of the

1 State Board of Education where the subject matter of
 2 postponing the effective date of the high school exit
 3 exam have been discussed?
 4 MS. READ-SPANGLER: Open sessions?
 5 MR. ROSENBAUM: Open sessions, yes.
 6 THE WITNESS: I don't recall.
 7 Q. BY MR. ROSENBAUM: Okay. The discussions that
 8 you referred to a few moments ago in which Mr. Hill and
 9 Mr. Warren were present, how many would you -- how many
 10 discussions?
 11 A. I would be unable to put a number on it. Few.
 12 Q. Did you express your views as to whether or not
 13 it should be postponed?
 14 A. No.
 15 Q. Do you have a view?
 16 A. No.
 17 Q. If I asked you today, based on what you know
 18 today should it be postponed, do you have an opinion?
 19 A. I have an opinion.
 20 Q. What is that?
 21 A. My opinion at this point in time is that it
 22 should not be postponed.
 23 Q. And why is that?
 24 A. Because I think it is counterproductive to
 25 schools in general, that we're sending mixed messages,

1 that to leave vagueness or not being clear as to what's
 2 going on, I don't think that's a fair situation for
 3 students and kids. So that would be my point of view,
 4 either you are or you aren't, and something in between
 5 is confusing.
 6 Q. See if I understand what you're telling me. If
 7 it came out today that it was going to be postponed, it
 8 would have an impact on the integrity of the exam being
 9 administered in the next several years, is that your
 10 point?
 11 MR. SALVATY: Objection. Vague and ambiguous.
 12 Misstates testimony.
 13 THE WITNESS: I think it just causes confusion
 14 because now we have some kids that have passed and they
 15 took the test, and now I'm not taking the test and is
 16 the test counting. So it's that scenario for me more
 17 than it is whether or not the test should remain in
 18 force or not remain in force.
 19 There may be circumstances or information that
 20 we get at some point in time that I'm assuming the Board
 21 or the state or the governor or someone might decide
 22 that this is the right move to make. Personally, I
 23 don't know that that's going to happen.
 24 Q. BY MR. ROSENBAUM: What do you recall
 25 Mr. Warren saying about the subject matter of

1 postponement of the date?
 2 A. At the initial stages early on I think that
 3 postponement of the date was in conjunction with the
 4 idea of whether it's a practice test in the development
 5 process, you know, that it might be better that we
 6 postpone the date to a later time.
 7 Q. And --
 8 A. I think that was a recommendation also that
 9 came from the independent evaluation, so there was
 10 conversation that was happening around that topic.
 11 Q. And it was connected to the decision to make
 12 the first administration -- the administration in March
 13 a practice exam; is that right?
 14 A. Yeah. I think that was part of it, yes.
 15 Q. Did you ever say in sum or substance,
 16 Mr. Spears, that fewer than one third of students
 17 statewide scored high enough to be considered proficient
 18 and that's reflective that there's more work to do, did
 19 you ever say that in sum or substance?
 20 A. Don't recall.
 21 Q. Is that your view?
 22 A. Say that again for me.
 23 MR. SALVATY: Objection. Vague and ambiguous.
 24 Q. BY MR. ROSENBAUM: Because of the passage rate
 25 that's reflective, that there's more work to do?

1 A. I could have said something, but I don't know
 2 that I did.
 3 Q. Okay. And when you say you could have said
 4 something, what's the basis of that answer?
 5 A. If every student has not passed, there's more
 6 work to do to help those students that haven't passed
 7 pass the test, I would assume.
 8 Q. When you say "more work to do," what do you
 9 mean by that?
 10 A. Working with the students that have not passed
 11 to pass the test.
 12 Q. Okay. And why is that important?
 13 A. Because they're not going to receive a diploma
 14 if they do not pass the test.
 15 Q. And that would include work by teachers, is
 16 that right, work by teachers with the students?
 17 A. Yes.
 18 Q. And that would be teachers who are
 19 knowledgeable in the subject matters that are tested on
 20 the exam?
 21 MS. READ-SPANGLER: Objection. Leading.
 22 MR. SALVATY: Objection. Vague and ambiguous
 23 too.
 24 Q. BY MR. ROSENBAUM: To your knowledge, have
 25 projections been made as to the likely passage rate, the

1 likely total passage rate of members of the 2004 class
 2 in English or math?
 3 A. No.
 4 Q. No one in your division, so far as you know,
 5 has ever been asked to prepare such figures?
 6 A. No, not to my knowledge.
 7 Q. Do you know how you would go about figuring
 8 that out?
 9 A. No.
 10 Q. Do you have anyone in your office whom you
 11 believe -- about whom you're confident could figure that
 12 out, could make reasonable estimates?
 13 MS. READ-SPANGLER: Objection. Calls for
 14 speculation.
 15 THE WITNESS: No, not at this time I don't.
 16 Q. BY MR. ROSENBAUM: Okay. Are you familiar,
 17 Mr. Spears, with the phrase "opportunity to learn" in
 18 the context of the high school exit exam?
 19 A. I've heard the term used, yes.
 20 Q. Sometimes that's referred to as OTL?
 21 A. Okay.
 22 Q. Okay. See, it's been a worthwhile afternoon
 23 for you, hasn't it?
 24 Do you have an understanding as to what
 25 opportunity to learn means in the context of the high

1 school exit exam?
 2 MR. SALVATY: Objection. Vague and ambiguous.
 3 MS. READ-SPANGLER: Yeah, are you asking for
 4 his understanding or the understanding of everyone else?
 5 MR. ROSENBAUM: I'm asking for your
 6 understanding, if you have one.
 7 THE WITNESS: I have an understanding.
 8 Q. BY MR. ROSENBAUM: Okay. And what's that based
 9 on? How did you come to that understanding?
 10 A. I would say through my day-to-day work.
 11 Q. Okay. And do you know if your understanding is
 12 shared by other persons in your division?
 13 A. No.
 14 Q. Or other persons in the Department?
 15 A. No.
 16 Q. Have you ever received any directives from any
 17 of your superiors as to the meaning of opportunity to
 18 learn?
 19 A. No.
 20 Q. Have you ever received any memoranda that
 21 discusses what opportunity to learn means?
 22 A. No.
 23 Q. Have you ever asked anyone on your staff to
 24 come up with a definition or a set of criteria as to
 25 what opportunity to learn means?

- 1 A. Not that I recall.
 2 Q. Okay. And to your knowledge, has anyone in
 3 your division ever come up with any criteria of what
 4 opportunity to learn means or a definition?
 5 A. I don't recall that, no.
 6 Q. To your knowledge, has anyone in the Department
 7 of Education ever come up with any criteria as to what
 8 opportunity to learn means?
 9 MR. SALVATY: Objection. Vague and ambiguous
 10 as to "criteria."
 11 MR. ROSENBAUM: In the context of a high school
 12 exit exam.
 13 THE WITNESS: I don't know.
 14 Q. BY MR. ROSENBAUM: You're not aware of any?
 15 A. No.
 16 Q. Or a definition?
 17 A. No.
 18 Q. What is your understanding as to what it
 19 includes, what it means?
 20 A. Have students had an opportunity to learn the
 21 content that is measured on the test.
 22 Q. Do you have an any-more-specific definition
 23 than that?
 24 A. No.
 25 Q. Have you ever been at any meetings where the

- 1 concept of opportunity to learn in the concept of the
 2 high school exit exam was discussed?
 3 A. Repeat the question.
 4 Q. Sure. Have you ever attended any meetings
 5 where the concept opportunity to learn in the context of
 6 the high school exit exam was discussed?
 7 A. Yes.
 8 Q. And when did those meeting or meetings take
 9 place?
 10 A. I can't identify the specific meetings.
 11 Q. What do you recall being said about opportunity
 12 to learn at the meeting?
 13 A. I would frame it in understanding where schools
 14 were in relationship to standards implementation in the
 15 state of California, since the test is based upon
 16 standards.
 17 Q. Okay. And what do you mean by that,
 18 understanding where schools were at?
 19 A. Have schools implemented standards-based
 20 instruction in their schools.
 21 Q. Okay. Are there schools, to your knowledge, in
 22 California that have not done that?
 23 A. I don't know.
 24 Q. Have you ever been directed to identify schools
 25 that have not implemented --

- 1 A. I have not been directed to do that.
 2 Q. Either across the board standards or standards
 3 in particular areas?
 4 A. No.
 5 Q. Okay. Do you know if anyone in your division
 6 has been directed to do that?
 7 A. No.
 8 Q. Do you know if anybody in the Department has
 9 been directed to do that?
 10 A. I don't know.
 11 Q. Okay. And you haven't directed anybody in your
 12 division to examine as to what schools have implemented
 13 standards; is that right?
 14 A. No.
 15 Q. Okay. Any reason why not, except that it's not
 16 part of your authority?
 17 A. Correct.
 18 Q. Do you know whose authority it is part of, if
 19 anyone?
 20 A. No.
 21 Q. Okay. Do you have an opinion, Mr. Spears, as
 22 to whether or not there are California public students
 23 who have not received an opportunity to learn?
 24 A. I don't know.
 25 Q. Do you know if there's been any survey or

- 1 investigation to find out whether or not there are
 2 students in California who have not received an
 3 opportunity to learn?
 4 MR. SALVATY: Objection. Vague and ambiguous.
 5 MS. READ-SPANGLER: I'm assuming that you're
 6 still using this solely in the context of the high
 7 school exit exam.
 8 MR. ROSENBAUM: Yes.
 9 THE WITNESS: Yes, I am aware of a survey.
 10 Q. BY MR. ROSENBAUM: And who conducted that
 11 survey?
 12 A. HumRRO.
 13 Q. Okay. And was that part of the contract
 14 specifications, to conduct such a survey?
 15 A. We entered into a contract with HumRRO to do a
 16 survey.
 17 Q. And what was your understanding of the purpose
 18 of the survey?
 19 A. To determine the status of standards
 20 implementation in schools in the state of California.
 21 Q. Okay. And has that survey -- is it one survey
 22 or is it more than one survey that's been conducted on
 23 the subject?
 24 A. I believe one survey.
 25 Q. And do you know when that survey was conducted?

1 A. The fall of 2000.
 2 Q. Okay. To your knowledge, there hasn't been any
 3 subsequent survey by HumRRO or anybody else, is that
 4 right, on this subject matter?
 5 A. As far as I know, yes.
 6 Q. This fall 2000 survey, was that of high
 7 schools?
 8 A. I believe it was districts that had high
 9 schools.
 10 Q. Districts that had high schools?
 11 A. Yes.
 12 Q. And was it just -- it was of principals and
 13 teachers and testing school coordinators, isn't that
 14 right, if you know? Let me break it down.
 15 A. Okay.
 16 Q. First of all, was the survey of principals?
 17 Did the survey include principals?
 18 A. Well, the reason I'm hesitating in the way that
 19 you're asking is that the survey did not go directly to
 20 principals or teachers, it went to a district level
 21 person, and that district level person had
 22 responsibility for getting information from principals
 23 and teachers, so it didn't go directly to them.
 24 Q. I really appreciate that. Do you know if the
 25 plan was to get it to principals at all schools in a

1 that's not one of your division's responsibilities, to
 2 detect and deal with testing irregularities and
 3 cheating; is that right?
 4 A. You have to describe for me responsibility with
 5 respect to that.
 6 Q. What, if anything, is your division supposed to
 7 do with respect to testing irregularities?
 8 A. They are reported to us.
 9 Q. Okay. You're not the detection mechanism; is
 10 that right?
 11 A. No, we're not.
 12 Q. Okay. Who, if anyone, is responsible for
 13 detecting testing irregularities?
 14 A. Within the Department?
 15 Q. Yeah.
 16 A. Not anyone that I know of.
 17 Q. Okay.
 18 A. I don't know.
 19 Q. Were there reports to your division about --
 20 let me strike that.
 21 In your mind is there a difference between
 22 cheating and testing irregularities?
 23 A. Cheating on the part of adults or students?
 24 Q. Let's say if it's cheating by adults, then it's
 25 a testing irregularity?

1 district, middle, elementary and high schools?
 2 A. I don't recall.
 3 Q. Okay. Let me come back to that. Is one of the
 4 duties and responsibilities of your division with
 5 respect to the high school exam to monitor whether
 6 cheating occurs?
 7 A. No, we do not monitor whether cheating occurs
 8 ourselves.
 9 Q. Or testing irregularities, is that a term of
 10 art you're familiar with?
 11 A. Yes. We don't monitor testing irregularities.
 12 Q. What's your understanding of what "testing
 13 irregularities" means?
 14 A. Testing irregularity would occur if a test is
 15 administered outside of the rules that are established
 16 for that administration.
 17 Q. Okay. And that could include what, that could
 18 include improper assistance to students?
 19 A. Yes.
 20 Q. It could include -- what else could it include?
 21 A. It could include some violation of the test
 22 administration rules, it could include giving a student
 23 assistance that is not acceptable, or it could include
 24 mishandling of test materials.
 25 Q. Okay. And you told me a few moments ago,

1 A. Yes.
 2 Q. And if it's cheating by students, it's --
 3 A. Cheating.
 4 Q. Okay. Did you have reports of cheating on the
 5 March 2002 high school exit exam?
 6 A. No.
 7 Q. Or the May 2002 high school exit exam?
 8 A. No, not to my knowledge.
 9 Q. Okay.
 10 MR. SALVATY: 2002?
 11 THE WITNESS: 2001.
 12 Q. BY MR. ROSENBAUM: You understood that's the
 13 question I meant?
 14 A. Yeah.
 15 Q. From that do you take it that there was no
 16 cheating on the March or May 2001 high school exit exam?
 17 MS. READ-SPANGLER: Objection. Calls for
 18 speculation.
 19 THE WITNESS: By who?
 20 MR. ROSENBAUM: By students.
 21 THE WITNESS: I don't know.
 22 Q. BY MR. ROSENBAUM: Do you know if anybody
 23 knows?
 24 A. Probably the person that cheated probably
 25 knows.

1 Q. With the exception of those individuals.
 2 A. I don't know. I don't know.
 3 Q. Okay. How about testing irregularities, does
 4 your division receive any reports of testing
 5 irregularities on the March or May 2001 high school exit
 6 exam?
 7 A. I don't recall that there was.
 8 Q. If there had been, would there be documents
 9 that would reflect that?
 10 A. That would reflect what?
 11 Q. Would there be a file somewhere in the division
 12 that would keep records of reported testing
 13 irregularities?
 14 MS. READ-SPANGLER: He's going to ask for all
 15 these later, so he wants to find out the easiest way to
 16 get them.
 17 THE WITNESS: If there is a report of any
 18 inconsistencies with the tests that have come to us, we
 19 would maintain a record of that, yes.
 20 Q. BY MR. ROSENBAUM: But sitting here today,
 21 you're not aware of any testing irregularities?
 22 A. Well, again, I guess based on the description I
 23 gave you, the answer is no.
 24 Q. Okay. You have a future as a lawyer,
 25 Mr. Spears.

1 Was there any results that weren't entirely
 2 kosher that came to your attention?
 3 MS. READ-SPANGLER: Objection. Vague and
 4 ambiguous as to "kosher." I'm kidding.
 5 THE WITNESS: No, the only issues that came to
 6 my attention that caused us some concern in relationship
 7 to that was the fact that all the test booklets may not
 8 have been returned, or booklets were taken into people's
 9 possession and sent out to a newspaper, so that we were
 10 concerned about the security of the test and the
 11 exposure of the items. But in terms of the
 12 administration of the test with students and the way
 13 that those administrations were handled, I'm not aware
 14 of any testing irregularities.
 15 Q. BY MR. ROSENBAUM: To your knowledge, were
 16 copies or portions of the exam released to individuals
 17 who did not have authority to have those documents?
 18 A. It's our understanding that happened, but I
 19 don't know specifically any -- right now any specific
 20 instances.
 21 Q. And what's the basis of your understanding that
 22 that happened?
 23 A. Reports that came to our office.
 24 Q. And what sorts of reports are you referring to?
 25 A. A reporter calling you and asking you questions

1 and saying, well, I'm looking at a copy of the test
 2 right now as I'm talking to you.
 3 Q. Okay. Did you retrieve any copies from
 4 unauthorized persons?
 5 A. No.
 6 Q. Did you make any attempt to do that?
 7 A. Yes, we did.
 8 Q. And what happened?
 9 A. I can't -- we'd have to ask the people in my
 10 office. I don't know right now off the top of my head.
 11 Q. Approximately how many reporters did you talk
 12 to?
 13 A. One.
 14 Q. From what newspaper?
 15 A. I don't recall that.
 16 Q. Were --
 17 A. In fact, I was not the actual person that
 18 talked to them.
 19 Q. Who was that?
 20 A. I think it was Doug Stone, who is --
 21 Q. Press officer?
 22 A. Press officer, yes.
 23 Q. Did a newspaper or newspapers report questions,
 24 publish questions that were on the high school exit
 25 exam?

1 MS. READ-SPANGLER: Objection. Calls for
 2 speculation.
 3 THE WITNESS: I don't recall.
 4 MR. ROSENBAUM: Okay.
 5 THE WITNESS: Can we take a break?
 6 MR. ROSENBAUM: Sure.
 7 (Recess taken.)
 8 Q. BY MR. ROSENBAUM: Mr. Spears, you're okay?
 9 A. Okay.
 10 Q. Were there any procedures in place, so far as
 11 you know, for detecting cheating on the high school exit
 12 exam?
 13 A. Not for that specific reason.
 14 Q. What does that mean?
 15 A. We have testing monitors around the state that
 16 went into schools prior to the test, during the test,
 17 and after the test to observe.
 18 Q. Okay. Were they -- did you have testing
 19 monitors in all locations where the --
 20 A. No.
 21 Q. Do you know what percent?
 22 A. No, I don't.
 23 Q. Who actually administered the exam?
 24 A. School personnel.
 25 Q. Okay.

- 1 A. Or district personnel.
 2 Q. AIR personnel did not administer it; is that
 3 correct?
 4 A. No.
 5 Q. And you had no outside administrators at any
 6 other locations?
 7 A. No.
 8 Q. Okay. At the present time, to your knowledge,
 9 Mr. Spears, is test preparation available for the high
 10 school exit exam?
 11 Do you know what I mean by test preparation?
 12 A. Yes.
 13 Q. Which is what? Just for the record, what's
 14 your understanding?
 15 A. Those would be any sort of materials that would
 16 help students or help schools or help teachers or help
 17 parents in preparing to take the exam.
 18 Q. Right. That's one aspect that I was thinking
 19 about. Another is, you're aware that there are private
 20 entities, like Princeton Review that conduct test
 21 preparation for certain high-stakes exams?
 22 A. I'm not aware of that.
 23 Q. Are you aware there are --
 24 A. Generally speaking, not that specific one.
 25 Q. Okay.

- 1 A. I'm aware, generally speaking, there are
 2 companies, publishers that develop test preparations
 3 across the nation for any variety of tests that may be
 4 given.
 5 Q. And do you know if there is test preparation
 6 available from professional companies for the high
 7 school exit exam?
 8 A. There may be. I haven't seen them.
 9 Q. Do you know if there are plans by any major
 10 companies, like Princeton Review or Miller, or any of
 11 the companies to have review, professional review for
 12 the high school exit exam?
 13 A. It's my understanding there are companies, but
 14 to name them by specific name, I can't do that.
 15 Q. I'm not interested in the particular names.
 16 But it is your understanding that there are companies
 17 that will offer test preparation for the high school
 18 exit exam; is that right?
 19 A. I don't know that they exist at this present
 20 time, in other words, I haven't seen them. There may
 21 be, but I haven't seen them.
 22 Q. Have you heard about that, that that's going to
 23 happen?
 24 A. No.
 25 Q. Okay. If it did -- strike that.

- 1 Has your division discussed the possibility
 2 that there will be professional test preparation
 3 companies that will be available to students?
 4 A. No, we haven't.
 5 Q. Do you know if anybody has?
 6 A. I don't know.
 7 Q. If you knew that there would be a professional
 8 test company, test preparer companies that would offer
 9 preparation for the high school exit exam, would that
 10 affect your thinking in any way about the administration
 11 of the exam?
 12 A. No.
 13 MS. READ-SPANGLER: Objection.
 14 MR. SALVATY: Objection. Vague and ambiguous.
 15 MS. READ-SPANGLER: Calls for speculation.
 16 Incomplete hypothetical.
 17 THE WITNESS: I don't know might be a better
 18 answer.
 19 Q. BY MR. ROSENBAUM: Did you ever ask the -- did
 20 you ever make a request for more resources for staff
 21 members to monitor districts and investigate claims of
 22 cheating?
 23 And now I'm not limiting it to the high school
 24 exit exam, it could be for the STAR program.
 25 A. Did I ever ask?

- 1 Q. Did your division ever ask, so far as you know?
 2 A. No. Wait a minute. Excuse me. I need to take
 3 that back, because we did prepare -- we did prepare a
 4 BCP budget request for funding, for lack of a better
 5 word right now, investigators, test investigators, adult
 6 irregularity test investigators.
 7 Q. And for what year did you do that?
 8 A. I think that particular budget change proposal
 9 was developed in the summer of 2000.
 10 Q. And why was that prepared?
 11 MS. READ-SPANGLER: Other than what he just
 12 said?
 13 Q. BY MR. ROSENBAUM: Do you want to add anything
 14 to what you just said? Why did you feel there was a
 15 need for that?
 16 A. We didn't feel there was a need. Let me put it
 17 this way, it was not necessarily that we had a feeling
 18 for a need, it was a feeling that this was a workload
 19 that had occurred that perhaps we could use some
 20 assistance in carrying out this type of work.
 21 Q. Okay. When you say "a workload that had
 22 occurred," what does that refer to?
 23 A. Well, if you get a report of a test
 24 irregularity, we have no capability manpowerwise to
 25 necessarily take care of it or work on it.

1 Q. And was that mainly with respect to the STAR
2 program?

3 A. Yes, it was.

4 Q. Okay. And do you recall how much money the
5 division asked for?

6 A. No, I don't.

7 Q. Was that request approved by the
8 superintendent, so far as you know?

9 A. Yes, I would assume it was.

10 Q. Okay. And when you say that you had no
11 capacity to -- I don't want to put words in your mouth
12 if I misunderstood you.

13 Did you tell me a few moments ago you didn't
14 have the capacity to investigate it yourself, is that
15 right, the division?

16 A. Well, there are two issues, authority to
17 investigate, and staff in order to carry that out or
18 funding to do such work, whether it be travel. There
19 are a variety of issues surrounding that topic that --

20 Q. And you have the authority, isn't that right,
21 to investigate claims, "you" being the division?

22 MR. SALVATY: Objection. Vague and ambiguous.

23 MS. READ-SPANGLER: And it calls for a legal
24 conclusion.

25 THE WITNESS: I don't know.

1 MS. READ-SPANGLER: But that would be
2 misleading.

3 THE WITNESS: So I'm assuming that that
4 particular BCP ended up in dollars being placed in the
5 governor's budget act to support the employment of test
6 investigators.

7 Q. BY MR. ROSENBAUM: Do you have an opinion as to
8 how many test investigators you'll be able to hire if
9 you get the money?

10 A. Two at the most.

11 Q. And the summer of 2000 request, in your mind
12 did you have a number of investigators that you were
13 seeking?

14 A. I don't recall.

15 Q. Do you know if it was more than two?

16 A. No, I don't.

17 Q. So that would be two investigators for the
18 entire state of California?

19 A. Yes.

20 Q. And that would be for all the exams you
21 administer, or would it just be for the STAR program?

22 A. This was for STAR.

23 Q. Help me understand this. The high school exit
24 exam that was administered in March and May of 2001,
25 that was prepared and administered by AIR; is that

1 Q. BY MR. ROSENBAUM: Okay. In your experience
2 has the division ever investigated any claims of testing
3 irregularities?

4 A. Directly?

5 Q. Yes.

6 A. Not to my knowledge.

7 Q. Or claims of cheating?

8 A. Not to my knowledge.

9 Q. Okay. And the legislative -- the BCP request,
10 that was turned down; isn't that right?

11 MR. SALVATY: Objection. Misstates testimony.
12 Asked and answered.

13 THE WITNESS: In the governor's budget act for
14 2000 -- for the fiscal year 2001, 2002, there is money
15 for test investigators right now as we speak.

16 Q. BY MR. ROSENBAUM: Okay. You asked for it in
17 2000, is that right, in the summer of 2000, that's what
18 you told me?

19 A. Yes.

20 Q. That request was turned down; is that right?

21 MS. READ-SPANGLER: I really hate to make
22 things easier for you, but the BCP is for the next
23 budget year.

24 THE WITNESS: So we do it in 2000 for 2001.

25 MR. JORDAN: So the short answer is no.

1 right?

2 A. Yes.

3 Q. And, again, it had been an independent
4 evaluator, and that independent evaluator was HumRRO; is
5 that right?

6 A. Yes.

7 Q. And the field test that preceded the March and
8 May administrations, was that field test also prepared
9 by AIR?

10 A. Yes.

11 Q. Now, the high school exit exam to be
12 administered this coming March, March 2002, will that
13 would be prepared and administered by AIR?

14 A. No.

15 Q. Okay. And who will prepare and administer
16 that?

17 A. ETS.

18 Q. And were you involved in -- I take it a
19 decision was made to utilize ETS instead of AIR; is
20 that right?

21 A. No, it wasn't a decision either/or. It
22 happened to be that ETS was the successful bidder.

23 Q. When did you put out bidding for the next set
24 of exams?

25 A. June of 2001.

1 Q. Was there dissatisfaction --
 2 A. Excuse me, I don't know the exact month, so
 3 let's say -- I'm going to put it this way, it was the
 4 spring of 2001, but I'm not sure of the exact month
 5 right now.
 6 Q. Okay. Thank you. Were there any other bidders
 7 besides ETS?
 8 A. Yes.
 9 Q. Who else bid?
 10 A. AIR, ETS, NCS Pearson, and Harcourt.
 11 Q. Was there dissatisfaction in the division, to
 12 your knowledge, with respect to AIR's performance on the
 13 high school exit exam or any of the field tests?
 14 A. No.
 15 Q. Any dissatisfaction at all with AIR?
 16 A. Well, it depends on what you're meaning by --
 17 in general, dissatisfaction? I think whenever you're in
 18 a business relationship, there are going to be times
 19 that there may be, but in general there was not
 20 dissatisfaction.
 21 Q. Are you aware of any concerns about AIR's
 22 performance?
 23 A. No, I am not.
 24 Q. When ETS -- the bids for the high school exit
 25 exam, were there any deficiencies in AIR, ETS, NCS

1 Pearson or Harcourt?
 2 MS. READ-SPANGLER: Objection. Vague and
 3 ambiguous as to "deficiencies."
 4 THE WITNESS: I don't know that.
 5 Q. BY MR. ROSENBAUM: Okay. To your knowledge,
 6 does ETS have any experience with respect to high school
 7 exit exams?
 8 A. I don't know.
 9 Q. Okay. Who in your division was in charge of
 10 the bidding process?
 11 A. What do you mean by "in charge"? Ultimately
 12 I'm in charge.
 13 Q. Okay. Did you hear any concerns or criticisms
 14 of the design of the high school exit exam?
 15 A. From?
 16 MR. SALVATY: Objection. Vague and ambiguous.
 17 MR. ROSENBAUM: From anyone in your division.
 18 THE WITNESS: No.
 19 Q. BY MR. ROSENBAUM: Or from anyone in the
 20 Department?
 21 A. No.
 22 Q. Or from any outside consultants?
 23 A. No.
 24 Q. Did you get any concerns or criticisms
 25 expressed to you about the design of the high school

1 exit exam?
 2 MR. SALVATY: Objection. Calls for
 3 speculation. Vague and ambiguous as to "design" and as
 4 to time.
 5 THE WITNESS: No. No.
 6 Q. BY MR. ROSENBAUM: Okay. Have you personally,
 7 Mr. Spears, made any recommendations regarding possible
 8 changes to the high school exit exam as a consequence of
 9 the experience to date?
 10 A. We have not recommended any changes at this
 11 point.
 12 Q. Have you heard of any recommendations for
 13 changes to the high school exit exam?
 14 MR. SALVATY: Objection. Vague and ambiguous.
 15 THE WITNESS: In what context?
 16 MR. ROSENBAUM: From any quarter.
 17 THE WITNESS: I mean, there are lots of folks
 18 that may talk about changes to the high school exit exam
 19 and changing the con -- but I'm not sure in what context
 20 or what --
 21 MR. ROSENBAUM: I'm really asking you a global
 22 question in any context, either as to the content or the
 23 administration of the exam.
 24 MS. READ-SPANGLER: He already testified that
 25 80 percent of the questions change each time.

1 MR. ROSENBAUM: I don't mean the specific
 2 questions, but anything about -- preparation for the
 3 high school exit exam, anything that relates to the high
 4 school exit exam.
 5 THE WITNESS: There's been comments about those
 6 kinds of things, but I don't know -- no, I can't think
 7 of anything that would be of significance based upon
 8 what you're saying, no.
 9 Q. BY MR. ROSENBAUM: Does the exam include
 10 multiple choice questions?
 11 A. Yes.
 12 Q. Is it a 100-percent multiple choice?
 13 A. Mathematics, yes, English language arts, no.
 14 Q. And the English language arts, what percent,
 15 approximately, is multiple choice?
 16 A. Well, there are 80 or 82 multiple choice
 17 questions, and two constructed response questions.
 18 Q. And what's a "constructed response question"?
 19 A. A student writes an essay, two essays.
 20 Q. Are those essays graded separately?
 21 MR. SALVATY: Objection. Vague and ambiguous.
 22 MR. ROSENBAUM: No, it's totally a stupid
 23 question.
 24 Q. My question is, when you report the score for
 25 the English language arts section, do you get separate

1 scores on multiple choice and the constructed response
 2 sections, or are they integrated together?
 3 A. You get one score, they're integrated together
 4 for one score.
 5 Q. If I'm a student and I get my score, can I
 6 figure out what I got on the constructed response part
 7 as opposed to the multiple choice part?
 8 A. Yes.
 9 Q. The scores on the constructed response section,
 10 were they generally higher or lower than the scores on
 11 the multiple choice part?
 12 A. I don't know.
 13 Q. Okay. Did you make data reports as to how
 14 students in California did on the constructed response
 15 part?
 16 A. Not to my knowledge. I don't think so.
 17 Q. My understanding, Mr. Spears, is that for some
 18 constructed responses that they were left blank; is that
 19 correct?
 20 MS. READ-SPANGLER: You mean the students
 21 didn't write an essay?
 22 MR. ROSENBAUM: Yeah.
 23 Q. Do you know if that's right?
 24 A. I'm assuming, yes, that that's true, that there
 25 were some that were left blank.

1 Q. What's the basis of that answer?
 2 A. From the scoring we were told that there were
 3 some essay reports that came in that maybe had the
 4 student name or the information, but there was not an
 5 essay there.
 6 Q. Do you know how many?
 7 A. No.
 8 Q. Is that recorded anywhere?
 9 A. I don't know if it is or not. The contractor
 10 may have that information, but I don't think we have
 11 that information.
 12 Q. Did you -- did the division do any follow-up on
 13 any -- to find out why some of the constructed response
 14 questions were left blank?
 15 MS. READ-SPANGLER: Objection. Vague and
 16 ambiguous as to "follow-up."
 17 THE WITNESS: No, not to my knowledge.
 18 Q. BY MR. ROSENBAUM: Do you know if anybody did?
 19 A. Not to my knowledge.
 20 Q. Okay. What language was the high school exit
 21 exam administered in?
 22 A. English.
 23 Q. English exclusively?
 24 A. Yes.
 25 Q. To your knowledge, was there any discussion

1 about administering the exam in other languages?
 2 A. No.
 3 Q. Okay. Did the division retain any consultants
 4 to review the results of the high school exit exam, to
 5 your knowledge?
 6 A. Independent evaluator, HumRRO.
 7 Q. Besides them?
 8 A. No. No, I don't think so.
 9 Q. If a student fails the high school exit exam on
 10 the March or the May administration -- strike that.
 11 Why were there two administrations, one in
 12 March and one in May, was one a makeup exam?
 13 A. The May administration was identified as the
 14 makeup exam for the March administration.
 15 Q. Okay. So the administration is supposed to
 16 occur in March; is that right?
 17 A. Yes.
 18 Q. Now, if a student fails the high school exit
 19 exam, what, if anything, does the division of
 20 accountability do?
 21 MR. SALVATY: Objection. Vague and ambiguous.
 22 MS. READ-SPANGLER: Division of accountability?
 23 MR. ROSENBAUM: Yeah, that's your division.
 24 MS. READ-SPANGLER: No, standards and --
 25 MR. ROSENBAUM: I'm sorry, standards and

1 assessment.
 2 THE WITNESS: The question again.
 3 Q. BY MR. ROSENBAUM: If a student fails the high
 4 school exit exam, what, if anything, does your division
 5 do?
 6 MR. SALVATY: Objection. Vague and ambiguous.
 7 Is this in 2001 or 2002?
 8 MR. ROSENBAUM: I appreciate that.
 9 Q. If a student fails the March or the May
 10 administration of the high school exit exam, what, if
 11 anything, did your division do?
 12 MR. SALVATY: Objection. Vague and ambiguous.
 13 THE WITNESS: We didn't do anything.
 14 Q. BY MR. ROSENBAUM: Okay. To your knowledge,
 15 sir, if a student failed the March or May administration
 16 of the high school exit exam, what, if anything, did the
 17 State Board of Education do?
 18 MR. SALVATY: Objection. Vague and ambiguous.
 19 As to that student what do they do, as to the
 20 student that failed, or what do they do in general? I'm
 21 unclear.
 22 THE WITNESS: I'm not sure I know what you're
 23 referring to, what they would do.
 24 Q. BY MR. ROSENBAUM: Let me break it down. What,
 25 if anything, did the State Board of Education do with

1 respect to a student who failed the March or May
 2 administration of the high school exit exam with respect
 3 to the particular student, did the State Board --
 4 A. I have no knowledge what they did or if they
 5 did anything.
 6 Q. Or with respect to the particular school where
 7 they attended?
 8 A. I do not know.
 9 Q. Or the particular classes that the student was
 10 enrolled in?
 11 A. I don't know.
 12 Q. And if I changed it not to the State Board of
 13 Education but to the secretary of education, what, if
 14 anything, did the secretary of education do?
 15 A. I don't know.
 16 Q. With the same line of questions I asked you; is
 17 that right?
 18 A. It would be I don't know.
 19 MR. SALVATY: And object as vague and ambiguous
 20 again to this whole line.
 21 Q. BY MR. ROSENBAUM: With respect to the
 22 Department of Education, what, if anything, did the
 23 Department of Education do if a student failed the high
 24 school exit exam on March or May of 2001 with respect to
 25 a particular student?

1 MR. SALVATY: Objection. Vague and ambiguous.
 2 MS. READ-SPANGLER: Calls for speculation.
 3 THE WITNESS: I don't know what the Department
 4 did.
 5 Q. BY MR. ROSENBAUM: Or with respect to a
 6 particular school which the student attended?
 7 MS. READ-SPANGLER: Same objection.
 8 THE WITNESS: I don't know what they did.
 9 Q. BY MR. ROSENBAUM: Or the particular district
 10 in which the student attended school?
 11 MS. READ-SPANGLER: Same objections.
 12 THE WITNESS: I don't know what the Department
 13 did.
 14 Q. BY MR. ROSENBAUM: Okay. Or if it did
 15 anything; is that right?
 16 A. Yes.
 17 Q. Were there schools, Mr. Spears, where 10
 18 percent of the students failed the math part of the
 19 exam, 10 percent or more?
 20 MS. READ-SPANGLER: Objection. Calls for
 21 speculation.
 22 THE WITNESS: I don't know.
 23 Q. BY MR. ROSENBAUM: 50 percent or more?
 24 MS. READ-SPANGLER: Still calls for
 25 speculation.

1 MR. SALVATY: Objection. Vague and ambiguous
 2 also.
 3 THE WITNESS: Do I know of a specific school or
 4 by name or?
 5 Q. BY MR. ROSENBAUM: My first question, do you
 6 know if there were schools where 10 percent or more of
 7 the students failed the math part of the high school
 8 exit exam administered in March?
 9 A. That took it?
 10 Q. Yeah.
 11 A. Of kids that took the test?
 12 Q. Yeah.
 13 A. Ask me that question again.
 14 Q. Sure. I'm sorry. And I appreciate the
 15 correction. Were there schools where 10 percent of the
 16 students who took the high school exit exam failed the
 17 math part of the exam?
 18 MS. READ-SPANGLER: Objection. Calls for
 19 speculation.
 20 THE WITNESS: I don't know.
 21 Q. BY MR. ROSENBAUM: 50 percent or more? If I
 22 said any percent, would your answer be the same, you
 23 don't know?
 24 A. Well, I don't know how many schools at what
 25 rates had students passing or not passing to make -- to

1 just make a yes on any -- you could name every
 2 percentage and I could either say yes or no and I could
 3 be right or I could be wrong, so I don't have the
 4 knowledge without having the data in front of me to look
 5 at to say, oh, yeah, there's that many schools, so I
 6 don't know.
 7 Q. And the data you would need is what?
 8 A. I would have to have the results of the tests
 9 for the schools.
 10 Q. And you have those in your office?
 11 A. I have them on the Internet.
 12 Q. Does it tell you what percent of the students
 13 at the school of those taking the exam failed or passed
 14 as opposed to --
 15 A. Yes, it does.
 16 Q. You talked to me a few moments ago about a
 17 survey of teachers and principals that was prepared by
 18 HumRRO. Do you remember that?
 19 A. Yes.
 20 Q. As I understand the route here, the survey went
 21 to the district and then the district distributed it to
 22 teachers and principals; is that right?
 23 MS. READ-SPANGLER: Objection. Calls for
 24 speculation.
 25 THE WITNESS: The details of how it got to -- I

1 don't know.
 2 Q. BY MR. ROSENBAUM: Did your division play any
 3 role in the preparation of the actual survey itself?
 4 A. Yes, they did.
 5 Q. And who was involved in your division?
 6 A. Staff that works on the high school exit exam.
 7 Q. And did you review the survey instrument before
 8 it went out so far as you know?
 9 A. Yes, I did.
 10 Q. And why did you review the survey instrument?
 11 A. I guess to give my perspective as other people
 12 on the staff at a meeting would look at the survey and
 13 say are these the kinds of things that we want to
 14 survey.
 15 Q. And what did you understand to be the purpose
 16 of the survey?
 17 A. The words that I would describe the survey
 18 would be to find out the situation in schools as it
 19 relates to implementation of standards-based instruction
 20 and/or schools' perception of student preparedness in
 21 relationship to the standards.
 22 Q. Let's break that down, please. With respect to
 23 the first point, the situation in schools as it relates
 24 to the implementation of -- what did you say?
 25 A. Standards-based instruction.

1 Q. Did you think that was an important matter to
 2 survey?
 3 A. I don't know that I'd necessarily use the term
 4 "an important matter to survey." I think that that's
 5 information that the State Board wanted to have.
 6 Q. Okay. Do you know for what purpose?
 7 A. I guess to help them in their decision-making
 8 process about the high school exit exam in terms of the
 9 policies that they would be deciding on.
 10 Q. And then another purpose was for the schools'
 11 perception of student preparedness for the exam; is that
 12 right?
 13 A. I think there were questions related to that,
 14 yes.
 15 Q. And did you regard that as an important matter
 16 to survey?
 17 A. I don't know that I would necessarily put a
 18 qualifier on it as important. I think that that was
 19 something that the Board also wanted information about.
 20 Q. To your knowledge, were there any prior surveys
 21 that were sensitive to either of the objectives you just
 22 identified for me?
 23 A. I don't recall.
 24 Q. Okay. You don't recall if any existed?
 25 A. Not an official survey necessarily. The only

1 reason I'm hesitating is that I knew that the
 2 independent evaluator, HumRRO, obviously was doing some
 3 other study and analysis, and I don't know necessarily
 4 if it took a survey form or if they -- I just don't
 5 recall.
 6 Q. And you reviewed each and every one of the
 7 survey questions; is that right? You reviewed the
 8 entire survey; is that right?
 9 A. I read the survey. I don't know if I'd put it
 10 in the form of reviewing.
 11 Q. And if you had concerns or suggestions, you
 12 passed those on; is that right?
 13 A. Yes.
 14 Q. To whom did you do that?
 15 A. HumRRO.
 16 Q. And who at HumRRO in particular?
 17 A. Laurie Wise.
 18 Q. And how do you spell her last name?
 19 A. It's Lawrence, so it's a guy. We call him
 20 Laurie. L-a-u-r-i-e.
 21 Q. Did you, in fact, pass on --
 22 A. I won't tell him what you said.
 23 Q. Did you, in fact, have some concerns that you
 24 expressed, suggestions?
 25 A. We had suggestions. I don't know if they were

1 concerns.
 2 MR. ROSENBAUM: Let's go off the record a
 3 moment.
 4 (Recess taken.)
 5 Q. BY MR. ROSENBAUM: You doing okay?
 6 A. I'm good.
 7 Q. Let's mark as Exhibit 148 a portion of a
 8 document or a portion of a turnover, discovery turnover.
 9 It's been Bates stamped DOE 93080 through 93098, and the
 10 first page has the letterhead HumRRO and date May 15,
 11 2001, subject matter, re, colon, California high school
 12 exit examination, paren, C-A-H-S-E-E, all caps, close
 13 parens, hyphen, longitudinal survey spring 2001.
 14 I'm going to have this marked, Mr. Spears, and
 15 then ask you if you'd take a look at it. You don't have
 16 to go into detail, but you're free at any point to look
 17 at it in as much detail as you like, and also supply
 18 counsel with copies of it.
 19 (Exhibit SAD-148 was marked.)
 20 Q. BY MR. ROSENBAUM: I'm placing what's been
 21 marked as Exhibit 148 in front of you. My first
 22 question, Mr. Spears, is just having taken a look at
 23 Exhibit 148, do you recognize it?
 24 A. I believe it's the survey that we've been
 25 discussing.

1 Q. Okay. Thank you. Incidentally, to the best of
2 your knowledge, will HumRRO remain as the independent
3 evaluator for subsequent high school exit exams
4 administered by California?

5 MS. READ-SPANGLER: Objection. Calls for
6 speculation.

7 THE WITNESS: They have, I think, a three-year
8 contract, and when that three-year contract is up, I
9 would assume that we would have another process to
10 select a contractor, and if they were a successful
11 bidder and if, in fact, we continued to have an
12 independent evaluator, perhaps they would be. I know
13 they have a three-year contract.

14 Q. BY MR. ROSENBAUM: Do you know when that
15 expires?

16 A. The exact date, no. I think they're probably a
17 year and a half into the contract.

18 Q. Okay. Directing your attention, Mr. HumRRO --

19 A. Mr. Witness.

20 Q. -- Mr. Spears, to 93081 of Exhibit 148.

21 A. Let me refocus here.

22 Q. You can answer these as Mr. HumRRO.

23 A. Remind me to tell you a story when we're done.

24 Q. You see where it says at the top of 93081 --
25 strike that.

1 Let's go back to 93080. See where it says what
2 are we asking you to do on Exhibit 148, 93080, about
3 two-thirds of the way down the page?

4 A. Yes.

5 Q. There's one principal survey; is that right?

6 A. Yes.

7 Q. And there's one testing coordinator survey,
8 school site testing coordinator survey?

9 A. Yes.

10 Q. And turning the page to 93081, there are two
11 teacher survey packets, is that right, to be completed
12 by two teachers, one a language arts teacher, and the
13 other an algebra teacher or other appropriate
14 mathematics course teacher?

15 A. Yes.

16 Q. Those were to be the individuals from each
17 school surveyed who would fill out the survey; is that
18 your understanding?

19 A. Yes.

20 Q. Okay. Algebra was tested on the exam, is that
21 right, on the exam administered in March?

22 A. A portion of the questions were algebra
23 questions.

24 Q. Okay. And as a result of the administration of
25 the exam, was there a concern, to your knowledge, that

1 there weren't enough algebra teachers in the school
2 system, the California school system?

3 MR. SALVATY: Objection. Vague and ambiguous.

4 THE WITNESS: Concern by who?

5 Q. BY MR. ROSENBAUM: By persons within the
6 Department. Did you hear that concern expressed?

7 A. I've heard that concern expressed. Yes, I
8 would say that that concern has been expressed, but to
9 identify the specific place or who or what would be very
10 difficult.

11 Q. What exactly is the concern that you heard?

12 A. The availability of math teachers in the state
13 of California is a difficult circumstance right now,
14 that there is a shortage of math teachers.

15 Q. That's no secret, right?

16 A. I don't know.

17 Q. When you say "math teachers," what do you mean?

18 A. I guess teachers that will be -- that's their
19 area of study and their work.

20 Q. Do you know for what grades? Is it all across
21 the board, K through 12, as far as you know?

22 MS. READ-SPANGLER: Is what? You were asking
23 about a concern, and he told you that he'd heard that as
24 a concern, and I think you said it's a fact.

25 MR. ROSENBAUM: Well, his testimony speaks for

1 itself.

2 Q. Are we talking about K through 12?

3 A. No, I don't think we're talking K through 12.

4 Q. What do you think we're talking?

5 A. I think we're talking where it's
6 content-specific courses, high school -- middle school,
7 high school.

8 Q. Help me understand some lingo here. When you
9 told me earlier this morning about a clear credential --
10 did you use that phrase? Did I understand you
11 correctly?

12 A. Yes.

13 Q. What is a clear credential?

14 MS. READ-SPANGLER: Objection. Calls for a
15 legal conclusion.

16 MR. ROSENBAUM: Based on your understanding.

17 THE WITNESS: A clear credential, from my
18 understanding, would be that the teacher has met all of
19 the requirements necessary to be authorized to teach a
20 specific subject and is not -- does not have to continue
21 additional work.

22 Q. BY MR. ROSENBAUM: Help me understand this, can
23 one get a clear credential in math, or do you get a
24 clear credential in algebra, a clear credential in
25 geometry? How broken down is it?

1 A. It's math, mathematics.
 2 Q. Okay. And do you know whether or not in the
 3 state of California there are teachers teaching math who
 4 do not have clear credentials in math?
 5 MS. READ-SPANGLER: Objection. Calls for
 6 speculation.
 7 THE WITNESS: I don't know specifically at this
 8 point in time if there are or aren't, so for me to make
 9 that judgment, I'm not prepared to make that judgment
 10 today.
 11 Q. BY MR. ROSENBAUM: And no one has ever asked
 12 you to look into that subject matter, right?
 13 A. No.
 14 Q. And your division has never tried to see
 15 whether or not there was a relationship between how
 16 students did on the math part of the high school exit
 17 exam and whether or not they had teachers with clear
 18 credentials in math; is that right?
 19 MR. SALVATY: Objection. Vague and ambiguous.
 20 Asked and answered, I think.
 21 THE WITNESS: No.
 22 Q. BY MR. ROSENBAUM: Now, when you said to me
 23 earlier "algebra teachers," what do you mean by algebra
 24 teachers?
 25 A. Did I say algebra teachers?

1 Q. I thought you did. I don't want to put words
 2 in your mouth.
 3 A. I don't recall saying algebra teachers.
 4 Q. At the high schools where you were principal,
 5 did you have -- was algebra offered?
 6 MS. READ-SPANGLER: Objection. Compound.
 7 THE WITNESS: Algebra was offered in the high
 8 schools that I was principal, yes.
 9 Q. BY MR. ROSENBAUM: In any of the high schools,
 10 did you have teachers whom you believed to be qualified
 11 to teach algebra?
 12 MS. READ-SPANGLER: Objection. Vague and
 13 ambiguous as to "qualified."
 14 MR. ROSENBAUM: I'll withdraw that.
 15 Q. Who had the knowledge of the subject matter
 16 algebra?
 17 MR. SALVATY: Objection. Vague and ambiguous.
 18 Calls for speculation.
 19 THE WITNESS: I mean, that would be my opinion
 20 about whether or not they had the knowledge to. So I'd
 21 have to state, in my opinion, that I believe that the
 22 teachers that I had had the knowledge to teach the
 23 course.
 24 Q. BY MR. ROSENBAUM: Do you know if there are
 25 teachers in the state of California who were teaching

1 algebra who aren't knowledgeable about the algebra
 2 standards?
 3 A. I don't know that, no.
 4 Q. Do you know why it was decided that two
 5 teachers should be given the surveys as opposed to, say,
 6 more than two teachers, why it was just limited to two
 7 teachers?
 8 A. One for each content area.
 9 Q. But why it was just one per each content area
 10 rather than, for example, every teacher in that content
 11 area?
 12 MR. SALVATY: Objection. Assumes facts not in
 13 evidence.
 14 THE WITNESS: It would be conjecture on my part
 15 at this time to recall why that decision was made.
 16 Q. BY MR. ROSENBAUM: The survey itself did not go
 17 to every high school; isn't that right?
 18 MS. READ-SPANGLER: Objection.
 19 THE WITNESS: I'm going to have to --
 20 Q. BY MR. ROSENBAUM: Look at page 93080 of
 21 Exhibit 148. Feel free to look at it as much as you
 22 want. The first paragraph says, your district was
 23 selected as part of a sample of schools to participate
 24 in the collection of longitudinal information related to
 25 the California high school exit examination. The sample

1 was drawn from a database of high schools provided by
 2 the standards and assessment division of the California
 3 Department of Education.
 4 Do you see that?
 5 A. Yes.
 6 Q. Is it correct, sir, that the survey did not go
 7 to every high school in the state?
 8 MS. READ-SPANGLER: He's not asking you to
 9 interpret that document, he's asking for your
 10 recollection.
 11 THE WITNESS: I don't know that the survey went
 12 directly to any high schools in the state of California.
 13 Q. BY MR. ROSENBAUM: Okay. Let me see if I
 14 restate this. The reason you told me that is it may
 15 have gone to the district and then the district
 16 distributed it; is that right?
 17 A. Yes.
 18 Q. Do you know if there were respondents to the
 19 survey in every high school in the state?
 20 A. I don't know that.
 21 Q. Do you know how large a sample was selected by
 22 your division?
 23 A. I think we selected every district that had a
 24 high school. I think every district that has a high
 25 school got this letter.

1 Q. Did you give any instructions as to how many
2 high schools the survey should be distributed --
3 A. I don't recall that.
4 Q. Would you have this information somewhere if I
5 wanted to see what schools were --
6 A. We would have that in our division, yes.
7 MS. READ-SPANGLER: Make sure you let him
8 finish his question before you answer.
9 THE WITNESS: Okay. I'm sorry.
10 Q. BY MR. ROSENBAUM: Why did you think it was
11 important for teachers to fill out the survey?
12 A. We were looking for a variety of perspectives.
13 Q. And perspectives that would be for -- strike
14 that.
15 For what purpose?
16 MR. SALVATY: Objection. Vague and ambiguous.
17 THE WITNESS: We want just not one perspective,
18 so we want to be able to see how different folks in the
19 school community would respond to the questions.
20 Q. BY MR. ROSENBAUM: Okay. To your knowledge,
21 sir, was there ever any consideration of getting the
22 perspective of more than one teacher in each of these
23 subject areas from a particular school?
24 A. I don't recall.
25 Q. Directing your attention, sir, to page 93083 of

1 what's been marked as Exhibit 148.
2 Do you have that page in front of you?
3 A. Yes.
4 Q. And specifically directing your attention to
5 question No. 7 of page 93083. And I don't want to
6 inadvertently confuse you. If you look in the upper
7 right-hand corner, you see it says principal name?
8 A. Yes.
9 Q. This is the survey that went to the principals;
10 isn't that right?
11 A. Yes.
12 MS. READ-SPANGLER: Objection. The document
13 speaks for itself.
14 Q. BY MR. ROSENBAUM: Directing your attention to
15 question No. 7 on page 93083 of Exhibit 148, do you see
16 where it says -- there are three bubbles and then it
17 says, increase the proportion of teachers, continuing at
18 about the same proportion of teachers, and decreasing
19 the proportion of teachers working out of credential.
20 Do you see that?
21 A. Yes.
22 Q. What's your understanding of what "working out
23 of credential" means?
24 MS. READ-SPANGLER: Objection. The document
25 speaks for itself.

1 Are you asking him to interpret what this
2 means?
3 MR. ROSENBAUM: I'm asking him for his
4 understanding.
5 THE WITNESS: They're teaching in a content
6 area that is not authorized by their credential.
7 Q. BY MR. ROSENBAUM: And what's your
8 understanding as to why this question was asked, No. 7,
9 on page 93083, Exhibit 148?
10 A. To gather information as to the status of math
11 teachers in the state of California.
12 Q. Why would it be important to gather information
13 on the status of math teachers in the state of
14 California with respect to that question?
15 MR. SALVATY: Objection. Vague and ambiguous.
16 MS. READ-SPANGLER: Calls for speculation.
17 THE WITNESS: It would be my opinion, but not
18 necessarily why the question ended up on the survey.
19 Q. BY MR. ROSENBAUM: What's your opinion, sir?
20 A. That that would give you some information as to
21 the shortage or lack of teachers that are credentialed
22 in the state of California teaching math.
23 Q. And would that affect, in your opinion, sir,
24 the opportunity to learn of students, the opportunity to
25 learn math for purposes of the high school exit exam?

1 MR. SALVATY: Objection. Vague and ambiguous.
2 MS. READ-SPANGLER: Calls for speculation.
3 THE WITNESS: I don't know.
4 Q. BY MR. ROSENBAUM: Do you know what, if
5 anything, was done with these survey results on question
6 No. 7 on Exhibit 148?
7 MR. SALVATY: Objection. Vague and ambiguous.
8 THE WITNESS: They were tabulated.
9 Q. BY MR. ROSENBAUM: And after they were
10 tabulated, do you know what, if anything, was done with
11 that tabulation?
12 A. They were presented to the State Board of
13 Education.
14 Q. Were they presented to the superintendent, so
15 far as you know?
16 A. Yes, they would be presented because they would
17 be a part of the Board items.
18 Q. Do you know what, if anything, the State Board
19 of Education did with respect to the tabulation for
20 question No. 7 on page 93083 of Exhibit 148?
21 MR. SALVATY: Objection. Vague and ambiguous.
22 THE WITNESS: No.
23 Q. BY MR. ROSENBAUM: Or by the superintendent?
24 MR. SALVATY: Same objection.
25 THE WITNESS: No.

1 Q. BY MR. ROSENBAUM: Or by anybody within the
2 Department?
3 A. No.
4 Q. Were you ever directed to do any follow-up with
5 respect to that information?
6 A. No.
7 Q. Okay. Specifically directing your attention to
8 the response bubble, increasing the proportion of
9 teachers working out of credential, do you see that?
10 A. Yes.
11 Q. Okay. Do you know if there was any follow-up
12 to determine why at particular schools where that bubble
13 was marked in the proportion of teachers working out of
14 credential was increasing, any attempt to find out the
15 cause or causes of that, as far as you know?
16 MR. SALVATY: Objection. Vague and ambiguous.
17 MS. READ-SPANGLER: And assumes facts not in
18 evidence.
19 THE WITNESS: I don't know.
20 Q. BY MR. ROSENBAUM: You didn't get any
21 directions to do any follow-up on that; is that right?
22 A. No.
23 Q. Nobody in your division did so far as you know?
24 A. Not to my knowledge.
25 Q. At any meeting that you were at with other

1 persons from the Department, was there ever any
2 discussion, to your knowledge, about finding out why
3 proportion of teachers working out of credential were
4 increasing at certain schools?
5 MS. READ-SPANGLER: Objection. Assumes facts
6 not in evidence.
7 THE WITNESS: Not to my knowledge.
8 Q. BY MR. ROSENBAUM: This item, No. 7 on Exhibit
9 148, to your knowledge were the results of that
10 discussed at any meetings that you were present?
11 MR. SALVATY: Objection. Vague and ambiguous,
12 "results."
13 THE WITNESS: No, not to my knowledge.
14 Q. BY MR. ROSENBAUM: Do you know if the
15 Department does anything to -- strike that.
16 Any attempt, to your knowledge, Mr. Spears, to
17 see if there was any relationship between the passage
18 rates at schools -- the passage rates on the high school
19 exit exam in schools where the bubble increasing the
20 proportion of teachers working out of credential was
21 marked as opposed to decreasing the proportion of
22 teachers?
23 MR. SALVATY: Objection. Vague and ambiguous
24 as to "relationship." Asked and answered.
25 MS. READ-SPANGLER: And assumes facts not in

1 evidence.
2 THE WITNESS: Not to my knowledge.
3 Q. BY MR. ROSENBAUM: Okay. To your knowledge,
4 sir, did your division do anything to attempt to reverse
5 the trend in schools where principals marked increasing
6 their proportion of teachers working out of credential?
7 MS. READ-SPANGLER: Objection. Assumes facts
8 not in evidence. Vague and ambiguous.
9 THE WITNESS: No.
10 Q. BY MR. ROSENBAUM: Did you ever receive any
11 directions to make any effort to reverse the trend?
12 MS. READ-SPANGLER: Same objections.
13 THE WITNESS: No.
14 Q. BY MR. ROSENBAUM: Okay. Do you regard that as
15 part of your authority?
16 A. No.
17 Q. Do you know whose authority that is, if
18 anybody, in the Department of Education?
19 A. No.
20 Q. Okay. Let me ask you, please, to take a look
21 at question No. 11 on page 93084 of what's been marked
22 as Exhibit 148. Do you see that?
23 A. Yes.
24 Q. Okay. And looking at question 11 on Exhibit
25 148, do you know why -- strike that.

1 What is your understanding as to why principals
2 were asked how their school was configured?
3 A. I don't recall why we asked that question.
4 Q. Okay. Sitting here today, can you think of any
5 reasons why that would be a question to ask, a useful
6 question to ask for purposes of this survey?
7 MS. READ-SPANGLER: Objection. Calls for
8 speculation. Incomplete hypothetical.
9 THE WITNESS: No.
10 Q. BY MR. ROSENBAUM: Looking at question No. 12
11 on page 93084 of what's been marked as Exhibit 148, do
12 you have an understanding as to why that question was
13 asked for purposes of this survey?
14 A. It would be directly speculation on my part at
15 this point in time as to why that was asked.
16 Q. Do you personally have an opinion as to whether
17 or not that's a useful question to ask?
18 A. I have an opinion.
19 Q. What is it?
20 A. That you're trying to identify the type of
21 school that's responding, because some schools -- I
22 mean, you want to know how they're configured just for
23 the purposes of knowing that, how many are 9 through 12,
24 how many are 10 through 12, how many are 7, 8, 9.
25 Q. I may have not have been clear. I'm thinking

1 in particular about question No. 12.
 2 A. I'm looking at 13.
 3 Q. That deals with the number of academic class
 4 periods.
 5 A. I don't recall why we asked the question. I
 6 have an opinion about it.
 7 Q. What's your opinion?
 8 A. That would give you some information as to
 9 whether or not, at least from my perspective, looking at
 10 it from a principal point of view, if you were on a
 11 block schedule or a nonblock schedule.
 12 Q. What does that mean?
 13 A. You have fewer classes per day, but longer
 14 periods of time.
 15 Q. Okay. And why would that be useful to know?
 16 A. I'm not sure. I don't know.
 17 Q. Okay. Let me ask you, if you would,
 18 Mr. Spears, to look at No. 17 on what's been marked as
 19 Exhibit 148, and that's at page 93085. Do you have that
 20 in front of you?
 21 A. Yes.
 22 Q. What's your understanding, if any, sir, as to
 23 why that question was asked, estimate your current
 24 graduate rate? I'm talking about the top part of 17.
 25 And then it's seniors overall, and then it's broken down

1 by race or ethnicity.
 2 A. I think it's just an attempt to gather
 3 additional information about those different ethnic
 4 groups and their success in high school.
 5 Q. And why would that be useful to know?
 6 A. This information would give you -- there would
 7 be some comparative analysis between this and success on
 8 the high school exit exam.
 9 Q. Do you know if that was ever compiled, that
 10 comparison?
 11 A. No, it was not, to my knowledge.
 12 Q. Do you know why not?
 13 A. No.
 14 Q. Okay. Do you know -- does the State compile
 15 dropout data, dropout rate data?
 16 A. I don't know.
 17 Q. Okay. You've never been asked to compile any
 18 such data?
 19 A. No.
 20 Q. Okay. Let me ask you, please, Mr. Spears, to
 21 take a look at page -- at No. 25b at page 93087 of
 22 what's been marked as 148, what is your estimate of the
 23 percentage of students in your school --
 24 A. What question?
 25 Q. 25b.

1 A. 25b.
 2 Q. It reads, what is your estimate of the
 3 percentage of students in your school who know what
 4 knowledge and skills are covered by the exam. Do you
 5 see that?
 6 A. Yes.
 7 Q. Okay. And directing your attention then to 25b
 8 at 93087 of 148, what's your understanding as to why
 9 that question was asked?
 10 A. It was an attempt to find out the awareness on
 11 the part of students about the content on the high
 12 school exit exam.
 13 Q. Okay. And why is that useful to know for
 14 purposes of this survey?
 15 A. Part of the law in the state of California is
 16 that you are making students and parents aware that
 17 there is a high school exit exam.
 18 Q. Okay. Help me understand this. Do you
 19 interpret this question as meaning do you know if
 20 there's an exam, or do you know -- how do you interpret
 21 this question? What do you interpret this question to
 22 be?
 23 MR. SALVATY: Objection. Document speaks for
 24 itself.
 25 MR. ROSENBAUM: I know, but I want his

1 interpretation. Go ahead.
 2 THE WITNESS: I think the question is asking do
 3 students have knowledge -- do they know the knowledge
 4 and skills that will be tested when they take the exam.
 5 Q. BY MR. ROSENBAUM: Do they know, for example,
 6 the information that's going to be on the exam?
 7 A. Yes.
 8 MS. READ-SPANGLER: That's not how I read it at
 9 all. I read it, just for the record, not that anyone
 10 cares, do they know what subject matters will be tested.
 11 MR. JORDAN: What they're supposed to know, not
 12 do they know the stuff they're supposed to know.
 13 THE WITNESS: Right.
 14 MS. READ-SPANGLER: You said do they know --
 15 MR. JORDAN: The information.
 16 MS. READ-SPANGLER: -- the information, versus
 17 do they know that there's algebra, geometry, you know,
 18 the content. Whatever. You should be the one
 19 explaining.
 20 MR. ROSENBAUM: I don't want the lawyers to
 21 testify about this.
 22 THE WITNESS: They're asking the student do you
 23 know what's going to be on the test that you're going to
 24 be taking, the content of the test or what is going to
 25 be covered.

1 Q. BY MR. ROSENBAUM: And what does that mean,
 2 does that mean -- do you know, for example -- as counsel
 3 said, do you know if algebra is going to be on the test,
 4 geometry is going to be on the test, or do you know the
 5 quadratic?
 6 MR. SALVATY: Objection. Calls for
 7 speculation.
 8 Q. BY MR. ROSENBAUM: What was your understanding
 9 what this question was trying to get at?
 10 MS. READ-SPANGLER: If you have one.
 11 THE WITNESS: Let me read it one more time.
 12 Q. BY MR. ROSENBAUM: What's your understanding?
 13 A. What percentage of your students are prepared
 14 to take this exam.
 15 Q. And why is that useful to know?
 16 A. It goes to the basis of the status of standards
 17 implementation and preparedness in preparing students
 18 for the exam.
 19 Q. Okay. And did your division do -- undertake
 20 any actions with respect to those schools where the
 21 response was 50 percent or less?
 22 A. No.
 23 Q. At any percent or less?
 24 A. No.
 25 Q. Do you know if anybody did in the Department of

1 Education?
 2 A. No.
 3 Q. You don't know; is that right?
 4 A. I don't know.
 5 Q. Okay. Did you ever direct any member of your
 6 staff to undertake any follow-up?
 7 A. No.
 8 Q. And that's because it's not part of your
 9 authority as you understand it?
 10 A. No, that's presuming that I would just do that.
 11 I don't know if it's a matter of authority necessarily.
 12 Q. But you wouldn't do that unless you were
 13 directed to?
 14 A. No, I would not.
 15 Q. Okay. And I take it nobody directed you to do
 16 it; is that right?
 17 A. No, they didn't.
 18 Q. Okay. In any of the meetings you've ever
 19 attended since you've been head of this division, was
 20 there any discussion about undertaking any follow-up
 21 with respect to where there were schools where the
 22 principals said that some percentage of students weren't
 23 prepared?
 24 MR. SALVATY: Objection. Vague and ambiguous.
 25 THE WITNESS: Are you asking me about a

1 specific school?
 2 MR. ROSENBAUM: To go into -- well, a
 3 particular school or schools in general.
 4 MR. SALVATY: Objection. Vague and ambiguous,
 5 and assumes facts not in evidence.
 6 MS. READ-SPANGLER: And I think it misstates
 7 what the document asks.
 8 MR. SALVATY: I do too.
 9 THE WITNESS: We did not have the information
 10 about the specific -- the identity of schools that
 11 filled these surveys out. It was done in an anonymous
 12 format.
 13 Q. BY MR. ROSENBAUM: So when you compiled this
 14 data -- your division compiled the data?
 15 A. No.
 16 Q. HumRRO compiled the data?
 17 A. Yes.
 18 Q. And when HumRRO -- HumRRO gave a report of the
 19 data; is that right?
 20 A. Yes.
 21 Q. And that report had broken down the responses,
 22 the total number of responses and what those responses
 23 were; is that right?
 24 A. Yes.
 25 Q. But it did not identify the schools from which

1 the responses came?
 2 A. No.
 3 Q. So far as you know, nobody from the Department
 4 has ever attempted to go back and find out the schools
 5 from which particular responses were given; is that
 6 right?
 7 MR. SALVATY: Objection. Assumes that's
 8 possible. Assumes facts not in evidence.
 9 THE WITNESS: No, there's no ability to do
 10 that.
 11 Q. BY MR. ROSENBAUM: And the reason there's no
 12 ability to do that is because the -- why isn't there an
 13 ability to do that?
 14 A. We don't know the identity of who filled out
 15 the surveys or the schools. That was not reported. The
 16 school's identity, the district's identity were not
 17 maintained, in other words, they knew that they were
 18 doing this anonymously.
 19 Q. So do the actual survey instruments exist
 20 today, so far as you know?
 21 A. I don't know that. They do not exist in our
 22 office. The actual surveys that were sent in?
 23 Q. Yeah.
 24 A. We do not have them.
 25 Q. More particularly, if you look at page 93083 of

1 what's been marked as Exhibit 148, that's the first
 2 page, right?
 3 A. Uh-huh.
 4 Q. You're saying yes? I'm just translating your
 5 "uh-huh" to --
 6 A. Yes.
 7 Q. In the upper right-hand corner it says
 8 principal name and school name?
 9 A. Yes.
 10 Q. You're telling me that that information is not
 11 maintained by the Department, right?
 12 A. No.
 13 Q. Do you know if HumRRO has maintained that
 14 information?
 15 A. I don't think they do. I think that that was
 16 destroyed, but I can't answer that absolute.
 17 Q. Was there ever any talk about not having the
 18 survey being administered anonymously? Strike that.
 19 Not having the names of the schools --
 20 Was there ever any talk about -- to your
 21 knowledge, was there ever any discussion about having
 22 the names of the schools reported to the Department of
 23 Education?
 24 A. No, we never intended or anticipated having
 25 that happen.

1 Q. Why is that?
 2 A. Why did we choose to have an anonymous survey,
 3 anonymity protected?
 4 Q. Yeah.
 5 A. We felt that we would get better information.
 6 Q. Why is that?
 7 A. Because schools may be hesitant to report to
 8 what is seen as an overseeing body information if they
 9 knew that their school or their names or their districts
 10 were a part of the survey.
 11 Q. Why do you think that is?
 12 MR. SALVATY: Objection. Calls for
 13 speculation.
 14 THE WITNESS: That there may be a consequence
 15 for them or there may be some exposure, or someone may
 16 tell a newspaper what they had said. It was some
 17 self-protection for those school districts, teachers,
 18 principals, administrators that were filling out the
 19 survey.
 20 Q. BY MR. ROSENBAUM: Subsequent to the receipt of
 21 these results from this survey on what's been marked as
 22 148, has there ever been any discussion, to your
 23 knowledge, about trying to find -- either have a new
 24 survey or trying to find out the names of schools
 25 where -- to answer these sorts of questions?

1 A. Not to my knowledge.
 2 Q. So there's no way to compare the actual results
 3 of a school on the high school exit exam with the
 4 responses on any of the HumRRO surveys; is that right?
 5 A. No way.
 6 Q. Anyone ever say it would be a good thing if we
 7 could make those comparisons?
 8 A. No.
 9 Q. Okay. Directing your attention, sir, to what's
 10 been marked as 148, page 93088. Look, sir, if you would
 11 at question No. 29. Do you have that in front of you?
 12 A. Yes.
 13 Q. Okay. And the second bubble down says, our
 14 current textbooks align well with the content standards.
 15 Do you see that?
 16 A. Uh-huh.
 17 Q. You're saying yes?
 18 A. Yes. Excuse me.
 19 Q. Around 4:00 we get a lot of uh-huhs.
 20 Do you think that's a useful question to know
 21 for purposes of the survey?
 22 A. I wouldn't put a descriptor as "important." It
 23 was another attempt to gather information as to what was
 24 happening in schools in the state of California.
 25 Q. Did you think that was a useful fact to know,

1 whether or not the principal thought that her current
 2 textbooks aligned well with the content standards?
 3 A. I don't have an opinion about that.
 4 Q. How about third from the bottom on question No.
 5 29 at page 93088 of what's been marked as Exhibit 148,
 6 our district has adopted algebra as a graduation
 7 requirement, do you think that's a useful response to
 8 know for purposes of the survey?
 9 A. I just think it's gathering another piece of
 10 information. I don't know that I would describe it as
 11 any more important or less important than any of the
 12 questions that are asked there.
 13 Q. I'm asking you, though, something slightly
 14 different. Do you think that would be a useful thing to
 15 know? I mean, did you say, well, we don't need to know
 16 that information?
 17 A. No. I guess it got on to the survey, so I'm
 18 assuming that as we looked at the survey, we thought,
 19 okay, we can ask that question and it might give us some
 20 information about schools.
 21 Q. What sort of information do you think it would
 22 give you about schools that would be useful for purposes
 23 of the California high school exit exam?
 24 MR. SALVATY: Objection. Asked and answered.
 25 THE WITNESS: I can't recall what our

1 discussions were about why we wanted that on there or
 2 didn't want that on there at the time.
 3 Q. BY MR. ROSENBAUM: How about the bubble below
 4 that, our district, parents, or school, is hiring only
 5 teachers certified in their field, do you see that?
 6 A. Yes.
 7 Q. Do you think that's a useful question to know
 8 for purposes of the administration of the high school
 9 exit exam?
 10 MS. READ-SPANGLER: Objection. Calls for
 11 speculation.
 12 THE WITNESS: I don't know if it is or not.
 13 Q. BY MR. ROSENBAUM: Let me ask you to turn to
 14 question No. 35 on Exhibit 148 at page 93090. Do you
 15 see that?
 16 A. Yes.
 17 Q. Okay. Do you think that's a useful question
 18 for purposes of the high school exit exam, based on your
 19 knowledge of English language arts standards assessed by
 20 the CAHSEE, what percent of your students do you think
 21 will meet those standards by the end of 10th grade?
 22 A. Yes.
 23 Q. Why is that?
 24 A. I think it gives you some information about the
 25 curriculum of the school and whether or not its students

1 are enrolled in standards-based courses.
 2 Q. How is it useful if you don't know the school
 3 from which the information is coming?
 4 A. Well, the intent was not to find out about
 5 individual schools, the intent was to find out what
 6 circumstances existed in the state of California as a
 7 whole.
 8 Q. But how is that useful if you don't know the
 9 schools that are greater than 95 percent and you don't
 10 know the schools that are fewer than 50 percent?
 11 MR. SALVATY: Objection. Asked and answered.
 12 THE WITNESS: I think that has to do with the
 13 State Board of Education, whether they find it useful or
 14 not in making their decisions about --
 15 Q. BY MR. ROSENBAUM: Would you find it useful as
 16 head of the division if you didn't know the school from
 17 which that information came?
 18 MS. READ-SPANGLER: Objection. Calls for
 19 speculation. Incomplete hypothetical.
 20 THE WITNESS: Useful in what way?
 21 MR. ROSENBAUM: Useful for any purposes
 22 relating to the California high school exit exam.
 23 MR. SALVATY: Objection. Asked and answered.
 24 THE WITNESS: I don't know that it would be
 25 useful for the work of the standards and assessment

1 division.
 2 Q. BY MR. ROSENBAUM: Why is that?
 3 A. We develop tests, we don't -- for the state of
 4 California based upon the law, so I don't know that it
 5 would or wouldn't.
 6 Q. Okay.
 7 MR. JORDAN: Just for the record, was the
 8 question would it be helpful if you didn't know?
 9 MS. READ-SPANGLER: Are you asking her to read
 10 back the question?
 11 MR. ROSENBAUM: No. Why don't you save that
 12 for when you come back to your question.
 13 MR. JORDAN: Sure. I'll have the transcript
 14 then too.
 15 Q. BY MR. ROSENBAUM: Look, sir, if you would, at
 16 question No. 40 on what's been marked as Exhibit 148.
 17 Do you see where F is, our district's current level
 18 standards in English and writing? Comes after the
 19 prompt, which of the following do you consider to be a
 20 factor in your students' success in meeting the
 21 requirements of the CAHSEE, question mark, all caps,
 22 parens, mark one response for each possible factor,
 23 close parens. Do you see F and G?
 24 A. Yes.
 25 Q. Okay. Do you think those are useful responses

1 to know for purposes of the high school exit exam?
 2 A. I would assume that it would be important for
 3 the Board to know.
 4 Q. Why is that?
 5 A. In their decision-making process about the high
 6 school exit exam.
 7 Q. How?
 8 MS. READ-SPANGLER: Objection. Calls for
 9 speculation.
 10 THE WITNESS: I don't -- I don't -- it gives
 11 them information on -- as the survey was designed, to
 12 find out the status of implementations of standards in
 13 the state of California.
 14 Q. BY MR. ROSENBAUM: Anything else that you want
 15 to add to your answer?
 16 A. No.
 17 Q. I don't have any more questions on Exhibit 148.
 18 Was Harcourt involved with the high school exit
 19 exam?
 20 A. No.
 21 MS. READ-SPANGLER: Objection. Vague and
 22 ambiguous as to "involved."
 23 Q. BY MR. ROSENBAUM: Mr. Spears, are you aware of
 24 any research, literature regarding the subject of the
 25 use of a single test to make high-stakes decisions?

1 MR. SALVATY: Objection. Vague and ambiguous
 2 as to "high-stakes decisions."
 3 THE WITNESS: Am I aware of any research?
 4 MR. ROSENBAUM: Yeah.
 5 THE WITNESS: No, no specific research.
 6 Q. BY MR. ROSENBAUM: Do you know what -- okay.
 7 Let me change subject matter for a little bit.
 8 You told me about the -- it's called the --
 9 what did you call it, the STAR --
 10 MS. READ-SPANGLER: Program?
 11 Q. BY MR. ROSENBAUM: -- the STAR program, right?
 12 A. Uh-huh.
 13 Q. And the STAR program this year, the year 2001,
 14 what does it consist of, what are the components of it?
 15 A. It has a norm reference test and it has
 16 California standards test.
 17 Q. Okay. And the norm reference test, is that the
 18 Stanford-9?
 19 A. Yes, Stanford-9 Form T.
 20 Q. And then you also said it has a component -- a
 21 standards --
 22 A. California standards test.
 23 Q. Okay. Now, how many years has the Stanford 9
 24 Form T been given?
 25 A. 2002 will be the fifth year.

1 Q. Okay. The Stanford-9 Form T, that component,
 2 has that remained the same for each of the four years
 3 which it has been administered so far?
 4 A. Yes.
 5 Q. Okay. Does that mean that 3rd -- what grades
 6 are administered the Stanford-9 Form T?
 7 A. 2 through 11.
 8 Q. And does your answer mean that every year grade
 9 2, a student in grade 2 gets the same questions as the
 10 grade 2 student did the year before for the year it's
 11 been --
 12 A. Yes.
 13 Q. And that's true for each of the grades 2
 14 through 11?
 15 A. Yes.
 16 Q. Okay. Now, the standard -- the California
 17 standards part, that has not been the same every year;
 18 is that right?
 19 Let's break it down. The first year that the
 20 STAR program was administered was what, 1998?
 21 A. Correct.
 22 Q. Okay. And there was no California standards
 23 form then; is that right?
 24 A. Yes. Correct. Before my time, that's what I
 25 meant to say.

1 Q. In 1999 there was no California standards
 2 component; is that correct?
 3 A. I don't think that's correct. I think there
 4 was standards tests in math and English language arts.
 5 Q. Okay. In 1999?
 6 A. Yes.
 7 Q. Okay. And how about in 2000? I'm just talking
 8 about the California standards part.
 9 A. I think you're right, it's 2000 that's the
 10 first year of the standards test.
 11 Q. Okay. So '98, no California standards; '99, no
 12 California standards. First California standards is
 13 math and English in 2000; is that right?
 14 A. Yes.
 15 Q. And tell me if I'm talking some sense here or
 16 not. Can you quantify the percent of the STAR program
 17 that is California standards as opposed to Stanford-9
 18 Form T?
 19 A. In which content area?
 20 Q. In math.
 21 A. In math it's 15 questions from the norm
 22 reference test and 50 questions that are unique, for a
 23 total of 65.
 24 Q. In the year 2000 or now?
 25 A. I don't know in 2000, I'm just saying for now.

1 Q. There was another module of questions that was
 2 added in 2001, isn't that right, California standards?
 3 A. No. In math?
 4 Q. No, no, I meant a different subject area.
 5 A. Yes.
 6 Q. I'm confusing you here. Let's break this down.
 7 Do you know in 2000 for math what percent of the
 8 questions were norm reference Stanford-9 Form T and what
 9 percent were California standards questions?
 10 A. In math?
 11 Q. Yeah.
 12 A. I don't know the percent. I think I know the
 13 number of questions.
 14 Q. Okay.
 15 A. 15 were off the norm reference test, and 50
 16 were unique in math.
 17 Q. What does "unique in math" mean?
 18 A. That means they were new items, developed items
 19 by the contractor.
 20 Q. Okay. Were they -- Form T is like an
 21 off-the-shelf exam; is that right?
 22 A. Yes.
 23 Q. And Form T could be administered in 49 other
 24 states or any other state that uses the Stanford-9; is
 25 that right?

1 A. Yes.

2 Q. The unique questions, does that mean that they
3 were only for California students?

4 A. Yes.

5 Q. Okay. And were they specifically aligned with
6 California standards?

7 A. Yes.

8 MR. SALVATY: Objection. Vague and ambiguous.

9 Q. BY MR. ROSENBAUM: And when you get your grade,
10 your mark on your STAR program, does it differentiate
11 between your score on the California standards and the
12 norm reference part?

13 A. When you get your grade? You don't get a
14 grade, so --

15 Q. You get a score, right?

16 A. You get a score.

17 Q. Does it differentiate between your score on the
18 California standards part and the norm reference part?

19 A. Yes, you get a score for each.

20 Q. And has your division done any analysis to
21 determine whether or not students who do well on the
22 norm referenced also do well on the California standards
23 part?

24 MS. READ-SPANGLER: Objection. Vague and
25 ambiguous as to "analysis".

1 THE WITNESS: Not to my knowledge.

2 Q. BY MR. ROSENBAUM: Or who do poorly on the norm
3 referenced and whether or not they do poorly -- I want
4 to see if there's any relationship. Have you done any
5 inquiry to find out?

6 MS. READ-SPANGLER: Objection. Vague and
7 ambiguous as to "analysis" and "relationship."

8 THE WITNESS: Not to my knowledge.

9 Q. BY MR. ROSENBAUM: Do you know if anybody has?

10 MS. READ-SPANGLER: Same objections.

11 THE WITNESS: Within the Department?

12 MR. ROSENBAUM: Within the Department.

13 THE WITNESS: Not to my knowledge.

14 MS. READ-SPANGLER: Same objections.

15 THE WITNESS: I don't know.

16 Q. BY MR. ROSENBAUM: In 2000 will the format
17 change -- let's stay with math for a moment.

18 MR. SALVATY: Objection. Vague and ambiguous.

19 Q. BY MR. ROSENBAUM: -- between norm referenced
20 and California standards?

21 A. No.

22 MR. SALVATY: Objection. Vague as to "format."

23 Q. BY MR. ROSENBAUM: It will still be 15 and 50?

24 A. Yes.

25 Q. And will it be the same 50 as was given in 2001

1 for each grade?

2 A. No.

3 Q. It will be a set of all new questions?

4 A. 50 percent of the questions will be new.

5 Q. Okay. And who makes up those questions? Does
6 Harcourt make up those questions?

7 A. Yes.

8 Q. And let's do the same thing with English. In
9 the first year, 1998, it was a 100 percent norm
10 reference, is that right, in English?

11 MS. READ-SPANGLER: Objection. Asked and
12 answered.

13 THE WITNESS: I don't know. I wasn't there at
14 the time.

15 Q. BY MR. ROSENBAUM: What about 1999?

16 A. I don't know.

17 Q. Okay. How about 2000?

18 A. 2000, I know.

19 Q. What is that?

20 A. 2000, it was a combination of norm reference
21 test and unique items.

22 Q. Okay. And do you know what the breakdown was?

23 A. Yes, I do.

24 Q. What was that?

25 A. It's for grades 2 and 3, there's a total of 75

1 items, and 55 of those come from the norm reference test
2 in English language arts, reading and writing. For
3 grades 4 through 11, it's 90 items, with 55 from the
4 norm reference test again, and 35 unique items.

5 Q. Okay. The norm reference questions, I take,
6 based on your earlier answer, they're the same every
7 year?

8 A. Yes.

9 Q. And are they multiple choice questions?

10 A. Yes.

11 Q. Any essay questions, or what did you call them,
12 construct --

13 A. Constructed response.

14 Q. Yeah, constructed response.

15 A. In 2001 there were two constructed response
16 questions in grades 4 and 7 in writing.

17 Q. Okay. In 2002 will it be the same format in
18 the context of norm referenced versus California
19 standards questions?

20 A. In English language arts?

21 Q. Yes.

22 A. Yes.

23 Q. And there will still be two constructed
24 response questions for grades 4 and 7?

25 A. Yes.

1 Q. And are there other -- there are other subject
2 areas for the STAR program; is that right?
3 A. Yes.
4 Q. Okay. What are the other subject areas?
5 A. In norm reference or standards tests?
6 Q. Both. Let's start with norm reference.
7 A. In norm reference at grades 9 through 12 we
8 have history social science and science norm referenced.
9 We have spelling in grades 2 through 8 in the norm
10 reference portion.
11 Q. And now, in 2002, am I correct, sir, that the
12 Stanford-9 is not going to be used?
13 A. It's anticipated that it will not be used.
14 Q. Okay. And has there been contract
15 specifications for a new test?
16 A. We're in the process as we speak.
17 Q. Okay. And when do you expect them to be
18 finished, the contract specs?
19 MR. SALVATY: Objection. Vague and ambiguous.
20 MS. READ-SPANGLER: Calls for speculation.
21 THE WITNESS: We will do the request for
22 proposal or the designation for the norm reference test
23 when the Board makes a decision as to how they intend to
24 contract for the next three-year period.
25 Q. BY MR. ROSENBAUM: Okay. And do you know --

1 maybe this isn't in your jurisdiction, Mr. Spears, but
2 do you know -- the API each year looks at growth on the
3 STAR program, is that right, growth or decline; is that
4 right?
5 A. That's the basis, yes.
6 Q. Okay. Do you know if there is a protocol in
7 place as to what happens between the year that the
8 Stanford-9 ends and the following year?
9 MR. SALVATY: Objection. Vague and ambiguous.
10 Q. BY MR. ROSENBAUM: Do you know what I mean?
11 A. Yes, I know what you mean. I can't respond. I
12 don't know what that protocol is.
13 Q. Do you know if there's been any discussion
14 about that?
15 MR. SALVATY: Same objection.
16 THE WITNESS: I don't know.
17 Q. BY MR. ROSENBAUM: Okay. Now, the -- just a
18 couple other general questions on this. The Stanford-9,
19 what language is it administered in?
20 A. English.
21 Q. Is it administered in Spanish?
22 A. No.
23 Q. Okay. And to your knowledge, there are English
24 learners, English language learners who take the
25 Stanford-9; is that right?

1 A. There are students that are identified as
2 English learners that take the Stanford 9, yes.
3 Q. Has there been any analysis or inquiry, to your
4 knowledge, as to how English learners do, English
5 language learners do on the Stanford-9 as opposed to
6 students who are not designated English language
7 learners?
8 MR. SALVATY: Objection. Vague.
9 MS. READ-SPANGLER: And ambiguous.
10 THE WITNESS: We report the scores.
11 Q. BY MR. ROSENBAUM: Beyond that?
12 A. No.
13 Q. Okay. Let's talk about reporting the scores.
14 You report the scores on the Internet; is that right?
15 A. I don't personally, but my division does.
16 Q. Your division does; is that right?
17 A. The Department reports the scores.
18 Q. You don't stand up like a weatherperson and
19 just read them off?
20 A. No.
21 Q. How are they reported, are they reported by
22 district, school district?
23 A. Yes, they are.
24 Q. Are they reported by school?
25 A. Yes, they are.

1 Q. Are they reported by grade?
2 A. Yes, they are.
3 Q. Are they reported by classroom?
4 MR. SALVATY: Objection. Vague.
5 THE WITNESS: On the Internet, no.
6 Q. BY MR. ROSENBAUM: Are they reported by student
7 on the Internet?
8 A. By an individual student?
9 Q. Student, you know, by a code name or a number
10 or anything like that?
11 A. No.
12 Q. Are the results separately reported to the
13 superintendent? Does she get any different results than
14 those that appear on the Internet?
15 MS. READ-SPANGLER: Objection. Vague and
16 ambiguous.
17 THE WITNESS: Not to my knowledge.
18 Q. BY MR. ROSENBAUM: Or the State Board of
19 Education?
20 MS. READ-SPANGLER: Same objection.
21 THE WITNESS: Not to my knowledge.
22 Q. BY MR. ROSENBAUM: Or the legislature or the
23 governor's office?
24 A. Not to my knowledge.
25 Q. Are there any reports made to anyone about the

1 STAR program broken down by classroom?
 2 MS. READ-SPANGLER: Objection. Calls for
 3 speculation.
 4 MR. SALVATY: Objection. Vague and ambiguous.
 5 THE WITNESS: Not to my knowledge.
 6 Q. BY MR. ROSENBAUM: Were you personally
 7 involved, Mr. Spears, in the decision to use the
 8 Stanford 9 Form T?
 9 A. No.
 10 Q. Were you ever consulted about it?
 11 A. No.
 12 Q. More generally, were you ever consulted about
 13 the use of a nationally normed reference test?
 14 A. No.
 15 Q. Why are you smiling?
 16 A. I wasn't working at the Department at the time
 17 they were making that decision.
 18 Q. Okay. Have you ever expressed a view about the
 19 use of a nationally normed reference test as part of the
 20 STAR program?
 21 MR. SALVATY: Objection. Vague and ambiguous.
 22 THE WITNESS: Repeat that question.
 23 Q. BY MR. ROSENBAUM: Sure. Have you ever
 24 expressed a viewpoint about the use of a nationally
 25 normed reference test as opposed to, say, a California

1 standards test?
 2 A. Yes, I have.
 3 Q. What have you said?
 4 A. Typically it would be in the area of what would
 5 be the purpose of having a norm reference test in your
 6 assessment program.
 7 Q. And what have you said?
 8 A. That it gives information as to how students in
 9 California are performing in relationship to a normed
 10 group, a nationally normed group of students.
 11 Q. Do you support the inclusion of a nationally
 12 normed reference test as part of the STAR program?
 13 A. I don't support or not support.
 14 Q. Okay. Do you know -- do you know anything
 15 about the characteristics of the nationally -- the
 16 national sample that was used to norm reference the
 17 Stanford-9 test?
 18 A. I have seen the description of that sample.
 19 Q. Okay. And do you have it in written form
 20 somewhere, the description of the sample?
 21 A. I don't know that I have it right now. I've
 22 seen it. I don't necessarily know where it is.
 23 Q. You saw a piece of paper or papers that
 24 describe it?
 25 A. Yes. Uh-huh.

1 Q. And what's your best recollection as to what
 2 are the characteristics you saw, comparison?
 3 A. I'm not able to describe it.
 4 Q. Do you know the percent of the national sample
 5 that was from California?
 6 A. No, I don't know that.
 7 Q. Do you know the percent of the sample that was
 8 English language learner?
 9 A. No, I don't at this moment.
 10 Q. Okay. Do you remember anything about the
 11 characteristics?
 12 A. No, I can't say that I would without looking at
 13 it.
 14 Q. Okay. Norm referencing, help me understand
 15 this, Mr. Spears. Norm referencing is not the same
 16 thing as whether or not the test covers materials and
 17 information that is part of the California standards; is
 18 that right?
 19 MR. SALVATY: Objection. Vague and ambiguous.
 20 THE WITNESS: I don't understand your question.
 21 Q. BY MR. ROSENBAUM: Let me see if I can explain
 22 it more clearly. What norm reference means is we gave
 23 this test to a particular set of kids and this is how
 24 those kids did on that test; isn't that right?
 25 There were so many kids from New York and there

1 were so many kids from California, and there were so
 2 many kids that were English language learners and there
 3 were so many kids that were African-American, isn't that
 4 what norm reference means, we look at the sample who was
 5 given the test and how they did on it?
 6 A. I don't know if I would describe it that way.
 7 Q. What does it mean?
 8 A. It means the test was given, as you described,
 9 to students selected from across this nation from every
 10 state in the union. After the test is administered,
 11 that whole body of students has a performance on that
 12 test, and half of the students -- they're divided up
 13 equally into how they did so that that's how you get
 14 percentiles. There were percents of students in each of
 15 those categories.
 16 Q. Okay. Now, to your knowledge, what percent of
 17 the Stanford 9 Form T test in the area of math covers
 18 information that is covered by the California -- that is
 19 covered by California standards?
 20 A. I can't respond to that question today. I
 21 don't know.
 22 Q. And if I just change the subject matter to
 23 English or history or spelling or social science or
 24 science, would you be able to tell me?
 25 A. No.

1 Q. Is that information recorded anywhere, so far
2 as you know?
3 A. I don't know that it is.
4 Q. Okay. And so there may be questions on the
5 Stanford-9 Form T that cover information that was not
6 taught to California students as part of the California
7 standards; is that right?
8 A. I don't know.
9 Q. Okay. And have you ever been directed to take
10 a look at the Stanford-9 Form T and see what percent of
11 the questions on that test cover information that is
12 part of the California standards?
13 A. I've never been asked to do that.
14 Q. Do you know if anybody in your division has
15 ever been asked to do that?
16 A. I think that that was part of the criteria for
17 the selection of the test or recommendations that the
18 superintendent brought from the test back when they were
19 first selected, but I was not here during that time.
20 Q. So you don't have a clue as to what, if any,
21 the -- the answer to that was?
22 A. No, I don't. No.
23 Q. Okay. And was history social science and
24 science on the -- on the Stanford 9? Strike that.
25 You probably answered this and I just don't get

1 it. Stanford-9 Form T, that has a math component and an
2 English component?
3 A. A reading and writing specifically, which we
4 combine to call English language arts.
5 Q. And a math component?
6 A. Yes.
7 Q. And a history component?
8 A. At grades 9 through 12.
9 Q. And social science 9 through 12?
10 A. Yes.
11 Q. And a science 9 through 12?
12 A. Yes.
13 Q. Those three subjects, history, social science
14 and science, have they always been part of the
15 Stanford-9?
16 A. Let me correct you. It's history social
17 science is one. It's a history test on the Stanford-9.
18 History social science is one content, they're not two
19 separate contents.
20 Q. History/social science?
21 A. Yes, that's it.
22 Q. Has that always been part of the Stanford-9
23 since it's been administered in California?
24 MS. READ-SPANGLER: Objection. Calls for
25 speculation.

1 THE WITNESS: I think so.
2 Q. BY MR. ROSENBAUM: How about the science part?
3 A. I think so.
4 Q. How about the spelling part for the younger
5 grades?
6 A. I think so.
7 Q. Okay. And sitting here today, do you know what
8 portion of those questions include information that is
9 part of California standards that are required to be
10 taught to California students?
11 A. No.
12 Q. Now, in the year 2000 you told me that the
13 California standards questions were added, is that
14 right, for the first time?
15 A. I said I think -- I think that 2000 was the
16 first year, and I don't know if it was '99, but -- so --
17 Q. Were more California standards questions added
18 in 2001?
19 A. No, I think they've always been the same
20 number.
21 Q. Were more subject areas added in 2001?
22 A. Yes.
23 Q. What other subject areas?
24 A. History social science and science.
25 Q. So what did they do, did they subtract some of

1 the --
2 A. No, those are unique stand-alone tests that
3 were brand-new in 2001.
4 Q. Okay. So kids took more questions -- had more
5 questions to answer in 2001 than they did in 2000?
6 A. In grades 9 through 12, yes.
7 Q. In 2002 there is a plan to add more? Is there
8 a plan to add other --
9 A. No. Yes, there is one test, yes, being added.
10 Q. What's that?
11 A. That's a grade 8 and 9 general mathematics
12 test.
13 Q. Is there a reason that you're aware of as to
14 why the California standards questions were added?
15 A. To what?
16 Q. They were added for the first time, we think,
17 in 2000; is that right?
18 MR. SALVATY: Objection. Misstates testimony.
19 MR. ROSENBAUM: I don't think it does.
20 Q. Your best recollection is there were California
21 standards questions that were added in 2000; is that
22 right?
23 A. To math and English language arts, yes.
24 Q. Do you have an understanding as to why they
25 were added?

1 A. Yes.
 2 Q. Why is that?
 3 A. That there is a movement to give more status
 4 and emphasis to standards based tests than the norm
 5 reference tests.
 6 Q. And do you know why that is?
 7 A. I think for the reasons that we've talked
 8 about, that the norm reference test may not necessarily
 9 be aligned to standards instruction in the state of
 10 California, and that we want to reinforce
 11 standards-based instruction in schools by offering tests
 12 that presumably are assessing standards-based
 13 instruction.
 14 Q. Okay. Thanks. Do you have any direction from
 15 the superintendent or any of your superiors as to
 16 contract specifications with respect to this norm
 17 reference versus California standards questions?
 18 MS. READ-SPANGLER: Objection. Vague and
 19 ambiguous.
 20 THE WITNESS: I don't think I understand.
 21 Q. BY MR. ROSENBAUM: Well, I can understand that.
 22 It wasn't a clear question. Anyone say to you, look,
 23 the next time when Stanford-9 runs out, this time we
 24 want a test that has 50-percent norm reference,
 25 zero-percent norm reference, 100-percent norm

1 referenced?
 2 A. No, that has not been any direction that I have
 3 received.
 4 Q. Okay. Or 50 percent aligned with California
 5 standards, zero percent aligned, 100 percent aligned?
 6 A. No.
 7 In reference to the norm reference test, if, in
 8 fact, the new test is selected?
 9 Q. Yeah.
 10 A. No.
 11 Q. Okay. In psychometrics, Mr. Spears, are you
 12 familiar with the phrase "reliability," like the
 13 reliability of a test?
 14 A. Yes.
 15 Q. And do you know what that means?
 16 A. I would be hesitant to give you a description.
 17 Q. Okay. And do you know the word "validity"?
 18 A. Yes.
 19 Q. What does that mean to you? If you're not
 20 comfortable --
 21 A. Yeah, I'd prefer not to do that.
 22 Q. And if this is an unfair question, just tell
 23 me. Have you heard any concerns expressed regarding the
 24 reliability of the STAR program?
 25 MS. READ-SPANGLER: Objection. Vague and

1 ambiguous as to "reliability."
 2 MR. SALVATY: And "concerns."
 3 THE WITNESS: Directly to me?
 4 MR. ROSENBAUM: Let's start there, yeah.
 5 THE WITNESS: No.
 6 Q. BY MR. ROSENBAUM: Have you just generally
 7 heard any concerns expressed regarding reliability of
 8 the STAR program?
 9 MR. SALVATY: Same objection.
 10 THE WITNESS: I don't know that I would express
 11 it in terms of concerns expressed. There is a
 12 reliability coefficient that the Board tries to maintain
 13 which is somewhere in the range of .85 to .9 on
 14 standards tests.
 15 Q. BY MR. ROSENBAUM: Okay. And do you know if
 16 that's been maintained?
 17 A. To tell you right now each of the tests, no.
 18 Q. Okay. I asked you when we talked about -- when
 19 we talked about the high school exit exam, I asked you
 20 whether we talked about cheating, and let me ask you the
 21 same sorts of questions with respect to the STAR
 22 program.
 23 Does your office -- at the current time, does
 24 the division at the current time have any duties or
 25 responsibilities for detecting cheating in the STAR

1 program?
 2 MR. SALVATY: Using the same definition as
 3 earlier?
 4 MR. ROSENBAUM: Yeah.
 5 THE WITNESS: The only thing that we do in
 6 relationship to the STAR exam is we do an erasure
 7 analysis that the contractor does for us which gives us
 8 some information.
 9 Q. BY MR. ROSENBAUM: And besides the erasure
 10 analysis, any other protocol or procedures for detecting
 11 cheating by your division?
 12 A. Only reports that we would receive and our
 13 response to those reports, but we do not do anything
 14 that we are initiating.
 15 Q. Does anyone, to your knowledge, in the
 16 Department of Education have any duties or
 17 responsibilities with respect to detecting cheating in
 18 the STAR program?
 19 A. Not to my knowledge.
 20 Q. Okay. And same question with respect to
 21 testing irregularities, does your division have any
 22 duties or responsibilities with respect to detecting
 23 testing irregularities?
 24 A. Not to my knowledge.
 25 Q. Or does anybody in the Department of Education?

1 A. Not to my knowledge.
 2 Q. And erasure analysis, what does that mean?
 3 A. When an individual student's test answer sheets
 4 are scored, there's an electronic analysis of the
 5 erasures on that test, and that means an answer was
 6 erased and another answer marked.
 7 Q. And is there a red flag like if there's, say,
 8 70 percent of erasures are from wrong to right?
 9 A. Well, we look at standard deviation from what
 10 is the -- what is the average in the state of California
 11 for a particular test, and if there is -- if they get
 12 outside of a parameter, then it causes us to examine the
 13 circumstances for that.
 14 Q. When you say outside the parameter, you mean
 15 for erasures generally?
 16 A. Erasures generally, just number of erasures.
 17 Q. Okay. Help me understand what this means.
 18 Does this mean that -- for your office to get involved,
 19 isn't it true that you have to find a certain number of
 20 departures from the standard deviation at a particular
 21 school?
 22 MR. SALVATY: Objection. Vague and ambiguous,
 23 "involved."
 24 MR. ROSENBAUM: I don't want this to be
 25 unclear. I don't want any of my questions to be

1 A. I don't know what the percentage is.
 2 Q. Do you know if it's more or less than 2
 3 percent?
 4 A. No, I don't.
 5 Q. Has it been -- has it been the same for each
 6 year?
 7 A. I can only speak for 2001.
 8 Q. And what did you do, you look at a certain
 9 number of classrooms; is that right?
 10 A. We get an analysis from the contractor, from
 11 the scorer, and we set some type of parameter, we want
 12 to see all of the groups of students that have erasures
 13 beyond a number of standard deviations of the mean
 14 erasures for the state as a whole.
 15 Q. So you then get that subset of classrooms; is
 16 that right?
 17 A. Yes.
 18 Q. What do you do with it?
 19 A. We would -- staff would look at it.
 20 Q. What does that mean "staff would look at it"?
 21 A. They would look at the number of erasures, and
 22 they would also examine the percent of erasures from
 23 wrong to right to see if that would cause concern.
 24 Q. Okay. And have there been -- have you found
 25 instances of what you believe to be cheating in 2001?

1 unclear.
 2 Q. If you get a particular student's paper and it
 3 comes out that that kid had a very high number of
 4 erasures beyond the standard of deviation, does that
 5 mean --
 6 A. It wouldn't be on an individual student.
 7 Q. It's by the school; is that correct?
 8 A. It would be on groups of students.
 9 Q. Is there a number?
 10 A. Classroom of students.
 11 Q. What does that mean?
 12 A. A teacher's class; in other words, a class of
 13 kids, 30 kids, 15 kids, 20 kids, you would be looking at
 14 a whole group of students.
 15 Q. Is that what you do, you look at a classroom as
 16 opposed to a school?
 17 A. Yes. Or could you look at a school, except
 18 looking at a school is very difficult because you
 19 don't --
 20 Q. You look at the 2 percent of the state's
 21 classrooms that have the highest number of erasures; is
 22 that right?
 23 MR. SALVATY: Objection. Vague as to time.
 24 THE WITNESS: I don't think it's 2 percent, no.
 25 Q. BY MR. ROSENBAUM: It's less than 2 percent?

1 A. I don't know that I would describe it as what
 2 we believe to be cheating or what we believe to be far
 3 enough outside that the probability that those erasures
 4 occurred by chance are pretty great that that would not
 5 be happening.
 6 Q. Pretty remote?
 7 A. Yes.
 8 Q. Okay. And then what do you do under those
 9 circumstances?
 10 A. We notify the school superintendent.
 11 Q. Do you do anything else beyond that?
 12 A. We ask them to do an investigation of the
 13 circumstances.
 14 Q. Are there any State procedures as to how that
 15 investigation is to take place?
 16 A. No.
 17 Q. Does the district report back to you?
 18 A. Yes.
 19 Q. Do they have a set time in which to conduct --
 20 A. Yes, we try to set the time.
 21 Q. And in 2001 --
 22 A. It would be 2000. I misspoke before. It's
 23 2000, not 2001.
 24 Q. For the 2000 administration, is that what we're
 25 talking about?

1 A. Yes.
 2 Q. Can you give me a ballpark number as to how
 3 many districts you asked to conduct investigations?
 4 A. It was somewhere between 50 and 60.
 5 Q. Okay. And do you know how many classrooms that
 6 represented?
 7 A. This minute, no, I don't.
 8 Q. Is that recorded somewhere?
 9 A. Yes.
 10 Q. Where is that?
 11 A. It's in our office.
 12 Q. Okay. And then they report back to you whether
 13 or not they think it's a high probability cheating took
 14 place?
 15 A. Yes.
 16 Q. Okay. And did any districts report back to you
 17 that they thought cheating took place?
 18 A. I'm not going to use the word "cheating"
 19 because that's not the word we used. Adult
 20 irregularities, yes, there were some districts that felt
 21 there were adult irregularities.
 22 Q. Okay. Do you remember how many?
 23 A. No.
 24 Q. Okay. Now, were there any reports that there
 25 were student irregularities?

1 A. Yes, we've had reports that there are student
 2 irregularities.
 3 Q. Okay. Students copying from other students,
 4 for example; is that right?
 5 A. Well, it could be that a student gave other
 6 students a piece of paper that had information about the
 7 answers on the test or they were sharing answers or the
 8 test was removed from them, or those kinds of things.
 9 Q. Did you document to a degree about which you
 10 have confidence that there were adults who had given
 11 answers to students?
 12 A. We have a record of those kinds of instances
 13 that we have verified that that has occurred, yes.
 14 Q. And did you verify in some instances that
 15 teachers in preparing students gave them answers to the
 16 questions?
 17 A. No, I don't think that that was anything that
 18 we verified. We may have verified that they engaged in
 19 an improper test practice.
 20 Q. By giving them the actual questions that --
 21 A. Or questions that are a facsimile of.
 22 Q. And do you recall how many instances of that
 23 you found?
 24 A. No, I don't.
 25 Q. And you have stated publically that the number

1 of reports of these irregularities have increased from
 2 year to year; isn't that right?
 3 A. Well, I can only speak for two years. We have
 4 an increase in the number of reports in 2001 versus
 5 2000.
 6 Q. Okay. And have the 2001 reports been
 7 investigated yet?
 8 A. They're in process at this time.
 9 Q. Do you have an expected date as to when that
 10 will be concluded?
 11 A. In terms of reported to us?
 12 Q. Yes.
 13 A. If it's not done, we're fairly close to having
 14 that done at this point in time.
 15 Q. But the actual investigation is being done by
 16 the district?
 17 A. Right.
 18 Q. None of your people are involved in that
 19 process?
 20 A. No.
 21 Q. Have you had the concern expressed to you that
 22 one of the concerns about the Stanford-9 Form T being
 23 administered each year is that it facilitates these
 24 sorts of irregularities, where the teachers can give
 25 students questions or facsimiles of the questions?

1 MR. SALVATY: Objection. Vague and ambiguous.
 2 THE WITNESS: I can't say that, no.
 3 Q. BY MR. ROSENBAUM: Okay. Is that a concern of
 4 yours with respect to utilizing the same questions every
 5 year?
 6 A. No, I don't have a concern about that.
 7 Q. Can you tell me the number of reports that you
 8 had, can you give me a ballpark number?
 9 A. For this year?
 10 Q. Yeah.
 11 A. Again, I don't have it in front of me, but it's
 12 in my office. I think it's somewhere in the 70 plus.
 13 That's what I recall, 70-plus reports that we've
 14 received.
 15 Q. Okay.
 16 A. From a variety of sources.
 17 Q. Okay. And what would those variety of sources
 18 include?
 19 A. It would be a teacher, could be a parent, could
 20 be a reporter, could be a self-reporting of a school
 21 superintendent, of a principal, so a variety of people
 22 may report to us.
 23 Q. Have there been -- let me ask if this is within
 24 your bailiwick of information. If there's cheating, a
 25 school or a teacher can be disqualified from getting an

1 API bonus; isn't that right?
 2 A. A school's scores can be deemed to be invalid.
 3 Q. Okay. Has that happened?
 4 A. Yes, it has.
 5 Q. And on how many occasions?
 6 A. I can't answer how many.
 7 Q. You have a record of that?
 8 A. Yes, we do.
 9 Q. Do you know if a teacher has been denied a
 10 bonus because of that?
 11 A. An individual teacher while all other teachers
 12 might get it in a school?
 13 Q. It would be the whole set of teachers, is that
 14 what you're telling me?
 15 A. Yes, it's either all or none, right.
 16 Q. And that happened in -- you've answered that.
 17 To your knowledge, did Harcourt communicate to
 18 the superintendent concerns about results?
 19 MS. READ-SPANGLER: Objection. Vague and --
 20 are you done with your question?
 21 Q. BY MR. ROSENBAUM: Let me state it for you
 22 generally, and then if you need me, I'll be more
 23 specific.
 24 Did Harcourt communicate to the superintendent
 25 that it looked at the changes in scores from year to

1 year and that some of the results appeared to suggest
 2 irregularities, testing irregularities?
 3 MS. READ-SPANGLER: Objection. Calls for
 4 speculation.
 5 THE WITNESS: Not to my knowledge. I don't
 6 have any knowledge of any kind of conversation or report
 7 like you've described.
 8 MR. ROSENBAUM: Okay. Let's go off the record.
 9 (The deposition concluded at 4:55 p.m.)
 10
 11 ---oOo---
 12
 13 Please be advised that I have read the foregoing
 14 deposition. I hereby state there are:
 15
 16 (check one) _____ NO CORRECTIONS
 17 _____ CORRECTIONS ATTACHED
 18
 19 _____
 20 Date Signed
 21
 22 _____
 PHILLIP EDWIN SPEARS
 23
 24 Case Title: Williams vs State, Volume I
 25 Date of Deposition: Wednesday, October 31, 2001
 ---oOo---

1 DEPONENT'S CHANGES OR CORRECTIONS
 2 Note: If you are adding to your testimony, print the
 3 exact words you want to add. If you are deleting from
 4 your testimony, print the exact words you want to
 5 delete. Specify with "Add" or "Delete" and sign this
 6 form.
 7 DEPOSITION OF: PHILLIP EDWIN SPEARS, VOL. I
 CASE: WILLIAMS VS STATE
 8 DATE OF DEPOSITION: WEDNESDAY, OCTOBER 31, 2001
 9 I, _____, have the following
 10 corrections to make to my deposition:
 11
 12 PAGE LINE CHANGE/ADD/DELETE
 13
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
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 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 PHILLIP EDWIN SPEARS DATE

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

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3 1801 I Street, Suite 100
4 Sacramento, California 95814

5 Mr. Phillip Edwin Spears
6 721 Capitol Mall, Sixth Floor
7 Sacramento, CA 95814

8 Re: Williams vs State, Volume I
9 Date Taken: Wednesday, October 31, 2001
10 Dear Mr. Spears:
11 Your deposition is now ready for you to read, correct,
12 and sign. The original will be held in our office for
13 45 days from the date of this letter.
14 If you are represented by counsel, you may wish to
15 discuss with him/her the reading and signing of your
16 deposition. If your attorney has purchased a copy of
17 your deposition, you may review that copy. If you
18 choose to read your attorney's copy, please fill out,
19 sign, and submit to our office the DEPONENT'S CHANGE
20 SHEET located in the back of your deposition.
21 If you choose to read your deposition at our office, it
22 will be available between 9:00 a.m. and 4:00 p.m.
23 Please bring this letter as a reference.
24 If you do not wish to read your deposition, please sign
25 here and return within 45 days of the date of this
letter.

19 PHILLIP EDWIN SPEARS DATE
20 Sincerely,

21 TRACY LEE MOORELAND, CSR
22 Esquire Deposition Services
23 Job No. 29131

24 cc: Mark Rosenbaum, Esq. Judd Jordan, Esq.
25 Paul Salvaty, Esq. Kara Read-Spangler, Esq.
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4 Sacramento, California 95814

5 MORRISON & FOERSTER
6 ATTN: LEECIA WELCH, ESQ.
7 429 Market Street
8 San Francisco, CA 94105-2482

9 Re: Williams vs State
10 Deposition of: Phillip Edwin Spears, Vol. I
11 Date Taken: Wednesday, October 31, 2001

12 Dear Ms. Welch:

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

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

18 _____ The witness has waived signature.

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

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

23 _____ Other:

24 Sincerely,

25 TRACY LEE MOORELAND, CSR
Esquire Deposition Services
Ref. No. 29131