Los Angeles, California, Tuesday, July 8, 2003
8:58 a.m. - 4:55 p.m.

HERBERT J. WALBERG,
having been previously duly sworn, was examined and
tested further as follows:

EXAMINATION (Resumed)

BY MR. ROSENBAUM:

Q You know you're still under oath?
A Yes.

Q Last night did you review any documents
relating to this case?
A No.

Q Or do any work related to the case?
A No.

Q Did you have any discussions with Ms. Koury
either last night or yesterday afternoon or this morning
about the deposition?
A Just incidental conversation about the timing
and how are things going.

Q Okay. Doctor, do you know someone named
Margaret Wang?
A Yes.

Q W-a-n-g?
MS. KOURY: Objection to the extent that mischaracterizes his testimony.

BY MR. ROSENBAUM: Q My question, sir, is one of the reasons that classroom management has a beneficial impact on student learning because of group alerting? Familiar with that phrase?

MS. KOURY: Vague.

THE WITNESS: I may have written that, but I don't remember that particular phrase.

BY MR. ROSENBAUM: Q Okay. Why don't you tell me the reasons that you believe classroom management has a beneficial impact on student achievement.

A Well, again, I need to refer to the original article, but I think -- and I'm not sure that we're talking about the same article.

Q You know what? I don't -- for purposes of this discussion, I don't care whether it was one article or 20 articles. I'm just interested in your views --

A Okay.

Q -- about classroom management. I'm not testing you on a particular article.

A Yeah.

Q So my question to you is: Could you tell me, please, the reasons why you think that classroom management has a beneficial impact on student learning?

MS. KOURY: Objection. Calls for a narrative.

THE WITNESS: I think that classroom management may have a beneficial effect on achievement for a number of reasons. I'm not sure that I can name them all right now, but it implies the wise use of time.

It's a little bit similar -- we can look at management in a similar way that we talked about alignment yesterday, but instead of aligning, let's say, State standards with content, you might be aligning the particular goals for the lesson that day to what you're teaching in that lesson. So I think it's like many forms of management, you need to make choices about how you're going to allocate your resources. And the resources here mainly being classroom time.

So much of it, if I try to think of a central concept, it would be the allocation of time with respect to the goals of the lesson and also with respect to what the students actually need to know. So it would be wasteful to teach them things that they already know, and it would be, similarly, wasteful to teach them things that they're yet incapable of learning. So it's sort of targeting the lesson on what the kids need to know.

Q Classroom management is a subject matter you've given thought to; isn't that right?

A I have. I do remember one article that we wrote together that did have classroom management as one aspect.

Q You talked about the importance of classroom management on student learning?

A In one article that I can distinctly remember, I think that classroom management was one of a number of things that we wrote about.

Q Okay. And do you have a view as to the importance of classroom management on student learning?

A Yes.


BY MR. ROSENBAUM: Q And what's your view?

A Well, I remember from what I said yesterday, most of the things I'm interested in revolve around achievement, and that's the way I see most things and evaluate them. So I think that effective -- better class management is associated with greater gains in achievement.

Q And one of the reasons that classroom management has a positive effect on student learning is group alerting; is that right?
BY MR. ROSENBAUM:

Q   Thank you.

And you've also given a lot of thought to the importance of time on task; is that right?


THE WITNESS:  Time on task is one thing.  I tend to use the term called the amount of instruction.

BY MR. ROSENBAUM:

Q   Okay.

A   Which I think encompasses time on task.

Q   Tell me what that means too.

A   Which?

Q   Amount of instruction.

A   It means, literally, the amount of time that students are being instructed, including self-instruction.

Q   So part of classroom management, if I understand you correctly, is maximizing amount of instruction; is that right?

A   I'm sorry, I need to have it again.  I missed the first part.

Q   I don't want to put words in your mouth.  I'm just trying to get a fuller --

A   Sure.

Q   -- understanding.

BY MR. ROSENBAUM:

Q   Okay.  Thank you.

You familiar with the phrase "drop-out," "drop-out rate"?

A   Yes.

Q   Okay.  How do you -- how do you, Doctor, calculate drop-out rate?

A   I tend to avoid the idea, because it is, I think, often very misleadingly and variously calculated.  And people throw that term around, but there are many ways to do it.  And the different states and different districts report it in different ways.  So when I can, I avoid that term.

Q   You have used a different term?

A   I try to think about ways to avoid the problem.  It is a major problem in the United States, but it's hard to do systematic writing and systematic research on it, especially large scale, when people report rates that are differing in their calculations.  And there's been a lot of disputes about drop-out rate.

Q   Okay.  Do you know what the drop-out rate is in California high schools?

A   No.

Q   Have you made any investigation to find out?

A   No.

Q   Do you know how California compares with other states or the national average with respect to drop-out rate?

A   No.

Q   Are there particular -- is there a particular individual or individuals whom you regard as an expert with respect to the subject matter of drop out?

MS. KOURY:  Calls for speculation.

THE WITNESS:  Well, the only name that I -- that comes to my mind offhandedly is Chester Finn, who has written a critical article about research on drop-out rates.

BY MR. ROSENBAUM:

Q   Okay.  And do you -- have you written articles with Chester Finn?

A   I can think of one, yes.

Q   Okay.  And have you appeared on symposiums with -- is it Dr. Finn or Mr. Finn?

A   Dr. Finn.

Q   Have you appeared on symposiums or seminars with Dr. Finn?

A   Yes.

Q   On multiple occasions?

A   Yes.

Q   Okay.  And do you -- do you know how Chester Finn computes drop-outs?

A   I'm not sure that he computes drop-outs himself.

Q   Okay.  Is there a methodology that you would use to compute drop-outs?

A   Well, if I had the circumstance that I had to do it for some purpose that I got very interested in it, I would probably start with Finn's article.  But then there are probably many, many other articles about it.  And I would evaluate the various means of calculating it.  And I would try to standardize, because we're often interested in comparisons that can be made.  And so I would try to take the most -- choose the most valid one.

Q   Okay.  When you say standardize, what do you
<table>
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<tr>
<td><strong>mean by that?</strong></td>
<td><strong>drop-out rate, as I mentioned, is -- I want to say</strong></td>
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<td>A I mean that this is a little bit analogous to</td>
<td>largely a problem of poverty and related factors. And</td>
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<td>everyone carrying their own yardstick, and you need to</td>
<td>schools and school districts can reach out to parents</td>
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<td>have a standard yardstick in order to be able to compare</td>
<td>and give them information about what they can do at home</td>
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<td>drop-out rate with one school and another.</td>
<td>to encourage the child's verbal development, vocabulary,</td>
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<td>Q Have you given thought to the causes of</td>
<td>giving them -- call it enriched experiences so that</td>
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<tr>
<td>drop-out?</td>
<td>they're better prepared for school.</td>
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<td>MS. KOURY: Objection. Vague.</td>
<td>They can also reach out and make the school</td>
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<td>THE WITNESS: I have given some thought to it, yes.</td>
<td>welcoming to parents and encourage them to become</td>
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<td>BY MR. ROSENBAUM:</td>
<td>involved in the program, to tell them about the child's</td>
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<td>Q Do you have an opinion as to what are principal</td>
<td>work, what's expected of the child, but also the child's</td>
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<td>causes of drop-out?</td>
<td>strengths and weaknesses. And I think those are some of</td>
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<td>MS. KOURY: Objection. Vague, overbroad.</td>
<td>the major things that schools could do.</td>
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<td>THE WITNESS: Well, I would be much less sure about</td>
<td>Q When you talk about schools reaching out to</td>
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<td>it than the nine factors that we were talking about</td>
<td>parents -- and correct me if I'm wrong, but I take it</td>
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<td>yesterday. But I think those nine factors, especially</td>
<td>that's connected to the factors in your nine factors</td>
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<td>over child's time -- I mean the time in school, not just</td>
<td>involving home curriculum? I don't think I'm saying</td>
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<td>one year -- would be indicative. And I think</td>
<td>that right.</td>
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<td>particularly important would be what I called yesterday</td>
<td>MS. KOURY: Objection to the extent it</td>
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<td>the home environment or curriculum of the home plus</td>
<td>mischaracterizes his testimony. It's also overbroad.</td>
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<td>neighborhood circumstances and particularly poverty as</td>
<td>THE WITNESS: Well, I call it by various things.</td>
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<td>a -- because there's a number, I think, of valid studies</td>
<td>Home environment.</td>
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<td>have indicated relationships between poverty and</td>
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<td>achievement and poverty and drop-out rates.</td>
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<td>BY MR. ROSENBAUM:</td>
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<tr>
<td><strong>Okay. And do you think that schools can do</strong></td>
<td>programs. So I think I know what you mean.</td>
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<td><strong>anything to reduce drop-out rates?</strong></td>
<td>Q And the reach out is connected to that factor;</td>
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<td>MS. KOURY: Objection. Vague, calls for</td>
<td>is that right?</td>
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<td>speculation beyond this expert's opinions.</td>
<td>A In general, but you could say that the home</td>
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<td>THE WITNESS: Yes.</td>
<td>environment is what the child actually encounters in the</td>
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<td>BY MR. ROSENBAUM:</td>
<td>home perhaps.</td>
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<td>Q Okay. And tell me what you think schools can</td>
<td>Q I see.</td>
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<td>do to reduce drop-out rates.</td>
<td>A But in addition to that, the school might be</td>
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<td>A I think that they can -- well, you know, I'm</td>
<td>able to intervene and attempt to show parents some</td>
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<td>very interested in these nine factors, and I think that</td>
<td>things that they could do to make the child better --</td>
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<td>those are conducive to higher levels of achievement.</td>
<td>help the child to be better prepared for school and</td>
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<td>And I think when children are achieving more, they</td>
<td>during the school years.</td>
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<td>become more enthusiastic about their schooling, they</td>
<td>Q Do you know, sir, whether or not there are any</td>
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<td>become more motivated. Like kids that are not doing</td>
<td>schools in California that do this sort of reaching out</td>
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<td>well, I think in high school one of the reasons --</td>
<td>that you just described to me?</td>
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<td>causes of drop-out rates are actually in the first six</td>
<td>MS. KOURY: Objection. Calls for speculation,</td>
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<td>years of life in the elementary school.</td>
<td>overbroad, it's beyond the expert opinions in this</td>
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<td>And high school kids that are prone to drop out</td>
<td>matter.</td>
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<td>begin to realize that they are not achieving at</td>
<td>THE WITNESS: I haven't studied that, so I don't</td>
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<td>sufficient levels. So I think that the curriculum of</td>
<td>know.</td>
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<td>the home, among the nine factors, is especially</td>
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<td>important. I think you asked about what schools can do.</td>
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<td>Q Yes.</td>
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<td>A Schools -- there have been various types of</td>
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<td>programs in which schools can reach out. The problem of</td>
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<td>programs. So I think I know what you mean.</td>
<td>Q Okay. Do you know if, as -- does the API</td>
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<td>Q And the reach out is connected to that factor;</td>
<td>measure drop-out rate?</td>
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<td>is that right?</td>
<td>A I'm unsure the calculations of the API.</td>
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<td>A In general, but you could say that the home</td>
<td>Q Okay. In the New York case, Doctor, you</td>
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testified, if I understood your testimony correctly, that the regent's exam was pegged at a ninth grade level; is that right?

MS. KOURY: Vague.

BY MR. ROSENBAUM:

Q Ninth grade reading level.

A I testified to something along that line. I don't remember if it was exactly ninth grade.

Q Okay. Did you undertake an analysis in the New York case as to what the reading level was for -- it's called the RCT; isn't it?

A I think it was. I don't remember what that stands for.

Q Okay. That's the exam that all students have to take?

A The name that I know it by is the regent's examination.

Q Okay.

A But maybe "R" in RCT stands for it.

Q Let's use that phrase. Regarding the regent's examination, did you undertake an analysis to determine what reading level that examination was set at, pegged at?


THE WITNESS: I don't think that I did an original analysis of the test.

BY MR. ROSENBAUM:

Q Okay.

A You know, in the -- I may have looked at it, but I didn't make any numerical estimates of the test itself.

Q But others have; is that right?

MS. KOURY: Calls for speculation.

THE WITNESS: I'm really unsure of that. I had the impression that it might have.

BY MR. ROSENBAUM:

Q Do you know what the reading level is for the California high school exit exam?

A No.

Q Have you undertaken any inquiry to find out?

A No.

Q Or the Stanford 9?

A No.

Q Or any test that's part of the assessment test?

A Only in the sense that I --

Q The California assessment test, sorry.

A I know that the SAT 9 and other tests like it often give a grade level equivalent. And I'm not sure that's still reported for the Stanford 9 but off --

Q The California assessment test, sorry.

A You're doing fine. Just let me finish.

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they're reported at a grade level.

Q But do you know if that's done at this time with --

A No.

Q -- respect to the Stanford 9?

MS. KOURY: Calls for speculation beyond this expert's opinion. It's also vague and overbroad.

BY MR. ROSENBAUM:

Q Have any California districts, to your knowledge, banned homework?

MS. KOURY: Same objections.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q Does the California accountability system that you referenced in your report and that we discussed yesterday -- does it have any components that deal specifically with homework that you're aware of?

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THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q Have you ever made any inquiry to find out?

A No.

Q The legislation that implemented the California accountability system, have you read that legislation?

A I don't remember reading it.

Q Okay. Or any regulations that were promulgated thereto?

A I may --


THE WITNESS: I may have gotten some of these documents, but -- and just casually looked at them, but I -- they don't stand out in my mind.

BY MR. ROSENBAUM:

Q Okay. You're not sure whether -- you don't have any specific recollection of them?

A No.

Q Okay. And you didn't rely on them --

A No.

Q -- for purposes of your report?

A No.

Q Okay. You're doing fine. Just let me finish.

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THE WITNESS: I don't know.
my -- your lawyer will say the same thing. Just let me finish my question.

A Yes. And I --

Q It makes it easier for the reporter.

A I just did it again. I regret it, and I'm sorry.

Q Do you know in California, Doctor, the percent of teachers in "K" through 12 public schools that utilize -- who utilize textbooks for purposes of homework?

MS. KOURY: Objection. Asked and answered.

I'm sorry, I withdraw that objection.

Vague, overbroad.

Go ahead.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q Okay. Did you make any -- ever make any inquiry to find out?

MS. KOURY: Overbroad --

THE WITNESS: No.

MS. KOURY: -- vague.

BY MR. ROSENBAUM:

Q If we weren't talking about California, how about across the country? Anywhere in the country or across the country, do you have any information about the number or percentage of teachers who utilize textbooks for purposes of homework?

MS. KOURY: Vague, overbroad, calls for speculation beyond this expert's opinion.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q Okay. You know what I mean by factors at schools?

A Factors in schools?

Q In schools.

A I'm assuming you're thinking about things like socioeconomic status and size of the school and things like that.

Q That's perfect, or percent emergency credentialed teachers or access to instruction materials, any of those sorts of factors.

A I haven't done any such study.

Q Do you know if anybody has?

MS. KOURY: Calls for speculation beyond this expert's opinions.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q Do you know if the State of California has?

A No.

MS. KOURY: Same objection.

BY MR. ROSENBAUM:

Q Do you know if there's any way to use the California assessment system to make those sorts of comparisons?

MS. KOURY: Objection. Overbroad, vague, calls for speculation.
Go ahead.

THE WITNESS: Only in a speculative sense. You don't want that, I think.

BY MR. ROSENBAUM:

Q Okay. So you're not aware of any way? I don't want you to speculate. So your answer is no?

A And you're asking me could it be done or has it been done?

Q You've already told me it hasn't been done --

A Right.

Q -- to your knowledge.

Now I'm asking you: Do you know whether the California accountability system could be utilized in a way to look at particular factors to see whether or not they influence high school graduation rates?

MS. KOURY: Same objections. Vague, overbroad, calls for speculation. It's also incomplete hypothetical.

Go ahead.

THE WITNESS: Well, I haven't studied it, so I don't really have a foundation for making a good recommendation how it would be done. I don't know what's available.

BY MR. ROSENBAUM:

Q Okay. When you say you don't know what's available, what are you referring to?

A Well, I don't know if the -- they have legitimate or valid rates -- drop-out rates are available and factors as one might want to study.

Q You don't know if any of that's available?

A I would need to investigate it and see if they are valid, and it would depend a lot on the purpose of the study as well.

Q Okay. But do you know whether or not the information even exists?

MS. KOURY: Objection. Asked and answered.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q Okay. You have edited a book on local school boards; is that right?

A Yes.

Q Okay. And you have stated, have you not, "I think" -- now I'm quoting, "I think a lot of school boards are taken in by the bureaucracy and fed the kind of attention that would please them"?

Do you remember saying that, in sum or substance?

MS. KOURY: Objection. The document speaks for itself.

THE WITNESS: I think I would need to -- if you have the book, I could look at the passage.

BY MR. ROSENBAUM:

Q All right. I'll get it to you.

How about this statement -- and you're certainly welcome to give me the same answer. "And since many of them -- referring to local school boards -- "are essentially" -- and school board members -- "are essentially amateurs and only stay on the board for two or three years, it's a way that the education establishment maintains the status quo"?

Did you ever say that, in sum or substance?


Go ahead.

THE WITNESS: I don't specifically remember that, but it sounds like something I may have said.

BY MR. ROSENBAUM:

Q That's your view?


THE WITNESS: Let me hear it again.

BY MR. ROSENBAUM:

Q Sure. Let me read you both statements. I'm not trying --

A Well, I don't remember the first one.

Q Okay.

THE WITNESS: Well, I haven't studied it, so I don't really have a foundation for making a good recommendation how it would be done. I don't know what's available.

BY MR. ROSENBAUM:

Q All right. Now, help me out here, Doctor. When we talked yesterday about cases that you were involved in this year, I don't remember you mentioning the Dallas case.

A I forgot it.

Q Okay. That's a desegregation case?

A It is.

Q And what's the nature of your testimony in that case?
A: It's that the Dallas school -- the Dallas school system had made excellent strides in achievement which exceeded the state strides or gains, and that scores of African-American and Hispanic students had especially gone up and that they -- this had to do with a unitary hearing, and that it was my feeling that the superintendent of the Dallas schools, who was formerly the State superintendent of Texas, had been in a leadership position, who had -- and he had developed the No Child -- he had developed legislation in Texas and enacted it throughout the State that is now the model for the No Child Left Behind Federal act, which I think is extremely promising to increase achievement. And he was enacting the same kinds of things in Dallas. So I may have mentioned some other things, but that's more or less the essence of what I said.

Q: Okay. Who is the individual to whom you're referring?

A: Mike Moses.

Q: On whose behalf did you testify?

A: The school board.

Q: And have you been paid this year for your work in this case?

A: Yes.

Q: How much have you been paid?

A: Might be around $12,000.

Q: How about last year?

A: How much last year?

Q: Yes.

A: Might have been about 40.

Q: Okay. And consistent with what you told me, you testified that the Dallas schools were doing an outstanding job in educating children; is that right?

MS. KOURY: Objection to the extent it mischaracterizes his testimony.

THE WITNESS: Well, I particularly would emphasize raising achievement scores.

BY MR. ROSENBAUM:

Q: "Outstanding," what did you mean by that?

A: I meant, numerically, that they had been making excellent strides in increasing test scores.

Q: Are there any schools in California that you believe are doing an outstanding job in educating children? Let me strike that. Have you undertaken an investigation to determine whether or not there are any schools in California that are doing an outstanding job in educating children, as you used that word in Dallas?

MS. KOURY: Objection. Overbroad.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q: Do you have an opinion as to how California's doing with respect to educating children?

MS. KOURY: Vague.

MR. ROSENBAUM: Let me restate that question.

Q: Have you undertaken an investigation to determine how California's doing, in terms of educating children?

MS. KOURY: Beyond his expert report.

THE WITNESS: Only in the sense that I -- what I've said in my report.

BY MR. ROSENBAUM:

Q: Okay. Tell me, Doctor, as to public education, "K" through 12 public education, what do you believe are the principal purposes of "K" through 12 public education?

MS. KOURY: Forgive me if I'm wrong, but I think this was asked and answered yesterday.

BY MR. ROSENBAUM:

Q: "K" through 12 public education, what do you believe are the principal purposes of "K" through 12 public education?

A: I don't remember.

Q: You know what? I don't want to put you through it. If I did it, I'll check. Have you read any studies critical of the Texas accountability system?

A: Yes.


BY MR. ROSENBAUM:

Q: Assessment system.

A: Yes.

MS. KOURY: Vague.

THE WITNESS: Yes.

BY MR. ROSENBAUM:

Q: Did you, Doctor? I don't want to go over what we covered yesterday.

A: I don't remember.

Q: You know what? I don't want to put you through it. If I did it, I'll check. Have you read any studies critical of the Texas accountability system?

A: Yes.


BY MR. ROSENBAUM:

Q: Assessment system.

A: Yes.

MS. KOURY: Vague.

THE WITNESS: Yes.

BY MR. ROSENBAUM:

Q: Did you say in court that the Dallas school board was doing -- the Dallas school system was doing an outstanding job in educating children?

A: I think I either said that about the board or I said it about Moses or I said it about both.

Q: Okay. And when you used the word "outstanding" when you talked about the Dallas performance?

MS. KOURY: Mischaracterizes his testimony.

MR. ROSENBAUM: I'm asking a different question, Vanessa.

Q: Okay. But in fact, you used the word "outstanding" when you talked about the Dallas performance?


BY MR. ROSENBAUM:

Q: "Outstanding" when you talked about the Dallas performance?


BY MR. ROSENBAUM:

Q: Assessment system.

A: Well, the only one that I know of, one of the authors, I believe, was Steven Klein of the Rand Corporation in Santa Monica.
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<tr>
<td>Q: Does the analyst's analysis of the Texas system compare to the study that was criticizing it in terms of methodology?</td>
<td>A: Yes. Because when I read it at the time, it did not appear that he had done anything as comparable as the study that was criticizing the Texas system that was done by Grissmer. And it had not gone through, as I recall, the proper procedures or the normal Rand procedures, nor had it been published in a peer-review journal.</td>
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<td>Q: Have you undertaken any inquiry to collect all of the scholarship, pro and con, about the Texas accountability system?</td>
<td>A: No.</td>
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<td>Q: Have you ever advocated a formal national curriculum?</td>
<td>A: No.</td>
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<td>Q: When you say you have not done the same things as Grissmer, what are you referring to?</td>
<td>A: Grissmer did a much more ambitious study than Klein's, which was longer and detailed and greatly documented, and I think Klein's was shorter and more of a summary.</td>
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<td>Q: Are you aware of any other studies critical of the Texas accountability system?</td>
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<td>A: As I recall, there was a footnote in the study saying that it did not go through the normal peer-reviewing procedures, but was more timely rather than going through the normal procedures.</td>
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A Uniform national curriculum.

And do you think that the advantages outweigh the disadvantages?

I think that it would actually take a commission and a thorough study to weigh and try to quantify the benefits and the cost of doing that. It would depend on the circumstances, the time, the public opinion and things of that nature.

Do you have a personal view?

I do.

What is that?

It's ambivalent.

In thinking about a national curriculum, is it your view that one of the consequences of not having a national curriculum is that things tend to be reduced to their lowest common denominator?

I don't know if I've ever written that, but I think there may be a degree of plausibility about it.

Tell me what that means to you.

If everyone would have to agree on a standard, the standard might turn out to be lower, because people might have a tendency to set a standard that they could easily achieve, as we were speaking about yesterday. So there might be a danger in what you mention.

I thought your view was actually the other way. I thought your view was that, by not having a rigorous formal national curriculum -- let me strike that.

You've advocated rigorous State uniform curricula; isn't that right?

Yes.

Okay. And I thought your view was that that same principle ought to apply at the national level.

Am I wrong?

MS. KOURY: Objection. Argumentative.

THE WITNESS: I think that State level uniform curriculum has many merits. Could have some dangers too. But I think when you talk about a national curriculum, it violates the principle that we've had in the United States of State control of education rather than national control or Federal control. And I think this is a matter of -- it's not technical, but it has a value judgment, and I'm not sure -- I mean, I could point out -- and I have pointed out and we've talked about the advantages of a uniform curriculum, but I don't necessarily think that I'm wise enough to determine what it should be.
Q. Okay. Am I correct, sir, that one of your concerns is that the amount of funding that comes from the State can affect the prerogatives of local decision-making?

MS. KOURY: Objection. Expert report speaks for itself. Also to the extent it mischaracterizes the witness' testimony.

A. Go ahead.

THE WITNESS: I think I need the question again.

BY MR. ROSENBAUM:

Q. He who pays the piper -- I forget the rest of that phrase.

A. Yeah. Calls the tune.

Q. Calls the tune.

A. You've used that phrase?

Q. Well, I'm sure that I've used -- I'm not sure I used it in this context.

A. Okay.

Q. But if you say so, I believe you.

A. Okay.

Q. I would stand by that. That -- I mean, I don't mean to say it's an ironclad rule and numerical and all those other things, but there is a folk wisdom about it, and I do believe that, as states have picked up a bigger share of spending on education, legislators have been more assertive in putting more standards and regulating schools.

Q. Okay. And what's the consequence of that, in your judgment?

MS. KOURY: Overbroad, vague.

THE WITNESS: It means that, to a larger extent than perhaps in the past, the states are calling the shots and determining policy that was once more the prerogative and left to the discretion or autonomy of local districts.

BY MR. ROSENBAUM:

Q. Would you recommend that states pay a lower percent of economic funding?


BY MR. ROSENBAUM:

Q. For public education "K" through 12.

A. I'm not sure that I'm in a position to actually make a recommendation on that. I do think that there are some benefits and some costs to it in order to really determine that. I mean, that's an extraordinary thing. It's a very complicated matter. And I think that I would prefer to reserve judgment or --

Q. Do you regard that as outside your area of expertise?

A. Well, I've written a bit about it, but I'm not sure today that I would actually make a strong recommendation. I think it might also depend very heavily on things that I don't claim any expertise about, like legislation, political science, public opinion, things of that nature.

Q. Have you ever looked -- would you recommend -- strike that.

A. Would you ever recommend that local school districts have the authority to raise their own funds for education?

MS. KOURY: Objection. Incomplete hypothetical.

BY MR. ROSENBAUM:

Q. Have you ever made that recommendation?

A. Yes, I think I have.

Q. Okay.

A. Or at least I have said that that is associated with higher levels of achievement.

Q. Okay. And what's the basis for that recommendation?

A. The basis is that what -- well, one basis of it is simply, as psychologists would say, information, that local boards can be more knowledgeable of what the children in that particular district need, what their values are. They -- and they can hold local officials more accountable for what they do.

However -- that would assume, however, that you would still have a State accountability system. In addition to that, there are economic studies that suggest that, as a general principle -- I believe it's called capitalization -- that if you have smaller units of government, people tend to be more engaged, because it's in their rational self-interest.

If you have to participate in a decision that involves 10 million people, you may have less incentive to vote. If you are in a smaller community, not only are you more perhaps knowledgeable, but you may be more in direct contact with school board members, and you can make your views known more easily.

So this capitalization idea that I just described has been associated with -- not just school studies, but studies of other public provisioning has been associated with a greater effectiveness and efficiency.

Q. Okay. Did you ever state, in sum or substance, "Viewing self-interest as primary, our founders held that governance alone cannot protect people from their own representatives in public service. The very size of big city school systems allows for concealment, obfuscation and insulation from citizen influence. In the shadows of big cities, those
who speak for and serve the poor may put their own
interests first”?

MS. KOURY: Objection to the extent that it --
well, go ahead.

I think your question was whether that was your
quote; is that right?

THE WITNESS: I don't remember those exact words,
but I wouldn't be surprised if it was.

BY MR. ROSENBAUM:

Q   That's consistent with your views?
A   Yes.

MS. KOURY: Objection to the extent that that quote
was taken out of context.

BY MR. ROSENBAUM:

Q   And can you tell me the basis for that view,
sir?
A   I think the --

MS. KOURY: Objection to the extent that that quote
is taken out of context, and the document speaks for
itself.

THE WITNESS: Yeah, you know, I think I really
should be looking at the documents themselves to get a
better idea of what context it was, but I -- in answer
to your question, I think that big city school systems
have often been less effective and less efficient than
suburban schools and rural schools and smaller cities
school systems, and I think that that is a major
problem.

BY MR. ROSENBAUM:

Q   Why is that?
A   I think because of some of the capitalization
ideas that I mentioned
earlier and because larger units of government can sometimes be
insensitive to local needs.

Q   Okay. And when you say major
problem, what do you mean by that?

THE WITNESS: Well, in the context of schools, it
means that, according to this theory -- and I think
there is some evidence for it -- larger school districts
perform less well.

BY MR. ROSENBAUM:

Q   Okay. And what's the evidence you're referring
to?
A   The capitalization idea that I mentioned
earlier, and also, I've written on this subject myself
in an empirical study.

Q   Okay. And can you tell me what you wrote in
that empirical study?

THE WITNESS: Well, it was -- I don't know, maybe
15 years ago that I wrote the article, but it had to do
with an analysis of 38 states, and it looked at the
average size school and the average size district and
the demographics of the area and looked at those three
things in regression analyses, and it showed that the
larger the average size school and the larger the
average size district in the state, other things being
equal -- that is, the demographic factors -- the poorer
the achievement.

BY MR. ROSENBAUM:

Q   Okay. Are there school districts in California
that you would consider as big city school systems or
larger school districts, as you've used that phrase?

MS. KOURY: Objection. Calls for speculation. It calls
for speculation, beyond this expert's opinions in this
matter.

THE WITNESS: Yes.

BY MR. ROSENBAUM:

Q   What are they?
A   Well, it either would be the normal definition
of city size. I wouldn't set necessarily a cutoff, but
obviously Los Angeles, Sacramento, San Francisco would
be larger than the smaller places.

Q   Oakland?
A   I don't know Oakland's size.

Q   Okay. I appreciate that.

Are you familiar, Doctor, with the phrase
"choice plan," in terms of public education -- in terms of education, I'm sorry.

A Well, I'm certainly familiar with the idea of choice in education. I guess choice plan must be describing various types of -- or kind of a taxonomy or typology of choices.

Q Okay. Have you looked into the question of the use of State funds for purposes of choice plans?

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions in this matter. It's also vague and ambiguous.

THE WITNESS: I don't recall ever doing a study of that, but I am familiar with the notion and the principle.

BY MR. ROSENBAUM:

Q Okay. And for example, do you know what the practice is in the state of Minnesota?

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions in this matter. It's also overbroad, vague.

THE WITNESS: I know some things about the choice plans in Minnesota.

BY MR. ROSENBAUM:

Q Okay. And specifically, with respect to the use of State funds?

MS. KOURY: Same objections.

THE WITNESS: I know that State funds are used for charter schools in Minnesota.

BY MR. ROSENBAUM:

Q Okay. When you used the phrase -- do you know if they are in California, by the way?


THE WITNESS: Charter schools?

BY MR. ROSENBAUM:

Q Are State funds used for charter schools?

MS. KOURY: Objection. Vague, calls for speculation, beyond this expert's opinions in this matter.

THE WITNESS: I'm not certain.

BY MR. ROSENBAUM:

Q Okay. But you would advocate that?

MS. KOURY: Same objections. Also argumentative.

THE WITNESS: I think that -- I think charter schools are a new innovative force in education and already that they are demonstrating parental attractiveness and, in some cases, even secondary schools, superior achievement.

BY MR. ROSENBAUM:

Q Is -- when you say parental attractiveness,

what do you mean by that?

A I mean that surveys of charter school parents, in contrast to other parents, indicate that they're happier with various aspect -- the facilities, the curriculum, the extra curricula kinds of things, and other characteristics of their school.

Q And the quality of the core education too?

MS. KOURY: Objection. Mischaracterizes his testimony. It also calls for speculation, beyond this expert's opinions in this matter.

BY MR. ROSENBAUM:

Q If you know.

A Are you asking me whether charter schools have a core curriculum?

Q No, I'm not. So I apologize for not making my question clear.

I'm asking if one of the features of the attractiveness to parents of the charter schools you're referencing to me is the quality of the curriculum delivery.

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions in this matter. It's also overbroad and an incomplete hypothetical.

BY MR. ROSENBAUM:

Q Let me just -- I'm not trying to slice this real fine. I just want to know if it's your view, based on the surveys that you're referencing, that parents like the education that their kids get at charter schools.

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions in this case, and it's also incomplete hypothetical. It's overbroad.

Go ahead.

THE WITNESS: I think that parents find the schools more attractive in all aspects that I am aware of.

BY MR. ROSENBAUM:

Q Okay. And does that include the delivery of basic education?

MS. KOURY: Objection.

THE WITNESS: Yes.

MS. KOURY: Mischaracterizes his testimony.

BY MR. ROSENBAUM:

Q And is parent -- and that's part of what you mean by parent attractiveness?

MS. KOURY: Objection. Mischaracterizes his testimony.

THE WITNESS: That's all I mean.

BY MR. ROSENBAUM:

Q Okay.

A Well, maybe I should add one other thing to it
A   There's a little bit of overlap between those
Q   And you --


Important to what?
THE WITNESS: I think -- yes, I think it leads to

BY MR. ROSENBAUM:
Q   Why is parent involvement important?
A   Well, some psychological studies indicate that
if you choose something, you're more apt to like it.
And secondly, I know that people's taste differ. Some
might like a core curriculum. Others might like, say, a
classic curriculum. Others might like an emphasis on
the arts and music.

And having various types of schools provides
choices for parents, and then, when they can choose
those schools for their children, I think they're more
satisfied, and certainly even the kids themselves may

have preferences. And so I think that choice within

some constraints is useful. Particularly when we think

if we have a State accountability system to be sure that

they're learning the major school subjects.

Q   The -- let me refine my question a little bit,
because maybe it wasn't clear to you.

A   It's part of your matrix; isn't that right?

Q   Yes.
A   And when you say "it," you're talking about
the home -- parental involvement?

Q   And why -- for the reason --
A   And when you say "it," you're talking about

home -- parental involvement?

Q   Yes.
A   Well, I think research is a little less clear
on that. I think, with respect to home environment,

it's very clear. There've been a lot of studies, and I

think they're very consistent.

Q   What's your view as to parent involvement and
its relationship to student achievement?

A   I think it's promising, plausible and maybe we
have suggestive evidence, but I don't think it's quite

as clear as some of the other things that I mentioned
earlier, the more psychological studies that actually

make observations of the children at home and use more
careful methodology.

Q   But it's a recommendation of yours, right, to
attempt to increase and deepen parent involvement; is

that correct?


THE WITNESS: Other things being equal, and I think

it is plausible and probable that it will be helpful to

achievement.

BY MR. ROSENBAUM:
Q   Okay, thanks.
A   Do you know if the California accountability
system has any components that deal with parent

involvement?

MS. KOURY: Objection. Asked and answered. It's
also overbroad and vague.

BY MR. ROSENBAUM:
Q   And have you ever made any inquiry to find out?
A   No.
Q   Okay.
A   When you say inquiry, I think you're talking
about a systematic inquiry. I mentioned to you

yesterday, to try to be complete -- you know, I said

that I had given some talks out here, and I'm sure I may

have mentioned this. And so we may have had

conversations about it. But they don't stand out in my

mind.
Q   Okay. Beyond the materials that we talked
about yesterday, Doctor -- and I don't want you to have to repeat yourself -- are there any other materials that you specifically recall examining on plaintiffs' Internet site?

A   Aside from what we explicitly mentioned?

Q   Yes.

A   Not -- we didn't mention the whole page, of course, and I'm sure I looked at that. But aside from that, I don't remember anything else.

Q   Okay, thanks.

MS. KOURY:  When you reach a good breaking point.

MR. ROSENBAUM:  Sure. Right now is fine.

MS. KOURY:  Great. Thank you.

(Brief recess taken.)

BY MR. ROSENBAUM:

Q   You're doing all right, Doctor?

A   I am. Thank you.

Q   Okay. The -- are you familiar with the initials -- it's all caps, H-U-M-R-R-O, HUMRRO? Have you ever seen that?

A   Yes.

Q   Okay. Do you know what HUMRRO is?

A   I only have a vague idea.

Q   Do you have enough confidence in your idea to state what you think it is?

MS. KOURY:  Is it an estimate or a guess?

THE WITNESS:  It's an estimate.

BY MR. ROSENBAUM:

Q   All right. Tell me what your estimate is.

A   I think the first letter stands for "human," and I think they have done a lot of social science and psychological research for the military and for other organizations.

Q   Do you know if they've done anything with respect to the California accountability system?

A   No.

Q   Or any of the tests administered -- in California?

A   No.

Q   -- in California? I wondered, Doctor, if we could put Exhibit 1 in front of you again.

A   Yes. You know, I don't know that term. Declaration applies to this first page -- first three pages.

Q   Okay.

THE WITNESS: (Reviews documents.)

Q   -- report?

A   Or a FCMAT report?

Q   What?

MS. KOURY:  Asked and answered.

MR. ROSENBAUM:  You're right.

BY MR. ROSENBAUM:

Q   On Page 4, looking in the fifth paragraph down under Roman numeral I, do you see the phrase "Legislatively-enacted options"?

A   Yes.

Q   That's in the final sentence of that section?

A   I do.

Q   Okay. What did you mean by that?

MS. KOURY:  Objection to the extent the document speaks for itself.

THE WITNESS: (Reviews documents.)

Q   What I'm trying to say there is that I think that there's -- what shall we call it in plain
language? -- wiggle room and that the legislation may not be complete in detail and there's room for the department to interpret or have some latitude in how quickly and to what extent they enact various aspects of the legislation.

BY MR. ROSENBAUM:

Q   Okay. And could you identify for me all the legislative -- strike that.

Could you identify for me all the legislatively-enacted options that you were thinking about when you wrote this phrase?

A   I think that I wrote them in here somewhere, and I could probably find that.

Q   Let's come back to that later on.

That's later in the report?

A   I need to check to be sure.

Q   Why don't you do that.

A   All right.

(Witness reviews documents.)

I found one place where I mention about the charter schools, and I also spoke earlier that the -- I had been advising the State Board of Education about the choice of tests to use. So these are options that the Legislature -- or the legislation left to the discretion -- or some discretion of the California State Department of Education.

Q   Okay. Were you thinking of any other options besides those that you just mentioned?

A   Not that I can think of now.

Q   Okay. Still on Page 4 of Exhibit 1, Doctor, the fifth line down --

A   Fifth -- in what paragraph?

Q   The first paragraph, I'm sorry.

A   Ah, yeah.

Q   Do you see the word or phrase "cost effective"?

A   Yes.

Q   Could you define fully what you meant by that.

MS. KOURY: Objection. The document speaks for itself.

THE WITNESS: I mean that it has the division of labor that we talked about yesterday and it has a balanced division of labor, and that another aspect of it is that the test and the standards are highly rated, and one of the aspects of being highly rated is to have a balanced curriculum. That is a comprehensive curriculum focused particularly on core subjects.

BY MR. ROSENBAUM:

Q   Okay. And as a research exercise, how would you go about determining whether or not a particular system or program was cost effective? How would you figure that out?

THE WITNESS: Were in place in California?

BY MR. ROSENBAUM:

Q As part of the accountability system. Strike that.

Do you know if there were any incentives that were in place as part of the accountability system when it was first operated?

A I don't know.

Q And do you know if any incentives were added during the course of its implementation through the present?

MS. KOURY: Objection. Vague. It's also somewhat asked and answered.

THE WITNESS: I think there were incentives related to the accountability system, but I don't know when they were in place, whether they were in place in the beginning or whether they were added along the way.

BY MR. ROSENBAUM:

Q Which ones are you thinking about?

A Charter schools, the publication of the State test scores -- well, when I say charter schools, I mean chartering failing schools.

Q Okay. Have any -- any other, sir?

A Not that I can think of.

---

Q Okay. Have there been -- you consider chartering failed schools a incentive rather than a sanction?

A Well, I sometimes use the incentive -- term "incentive" to include sanctions.

Q Okay.

A Just kind a negative incentive or disincentive.

Q Okay. Have any failed schools been chartered in California?

A I don't know.

Q Have you ever made any investigation or inquiry to find out?

A No.

Q Do you know if any sanctions have been administered in California as part of the accountability system?

MS. KOURY: Asked and answered.

THE WITNESS: You said schools.

BY MR. ROSENBAUM:

Q Yes.

A Well, sets of schools. I don't know if it's part of the present -- well, the answer to your question is yes.

Q Okay, yes, what? I'm sorry.

A Yes, I do know of schools that have been sanctioned in California.

Q Which schools?

A It's the Compton education -- Compton district.

Q And was that part of the California accountability system, as you've defined it?

A I'm unsure of whether the timing of both of those, both the legislation and when it was sanctioned.

Q Okay. And do you know if any other schools were sanctioned as part of the California accountability system?

A No.

Q Okay. Have you made any inquiry to find out?

A No.

Q Have there been any studies or investigations, to your knowledge, as to the effectiveness of the incentives or sanctions that are part of the California accountability system?


THE WITNESS: That doesn't necessarily mean that it would have to be done in California; is that right?

BY MR. ROSENBAUM:

Q I'm talking about of California schools. I'm talking about the -- my question -- I just bollocksed it all up.

I'm interested in the California accountability system.

Q Have there been any investigations or inquiries, to your knowledge, about the effectiveness of the incentives that are part of the California accountability system?

A I don't know of any.

Q Okay. And you've never undertaken any?

A No.

Q How would you go about doing that?

MS. KOURY: Objection.

BY MR. ROSENBAUM:

Q If you know.

MS. KOURY: Sorry.

Incomplete hypothetical.

THE WITNESS: Well, there might be various ways to do it, and I described a couple of them yesterday, as general research designs. One way to do it is to look at the series of test scores over a long period of time and plot them on a chart. You could use sophisticated techniques, but basically, to explain it, if you saw a surge in test scores with the introduction of an accountability system or a gradual increase in the scores, that might be an indication, not a perfect indication, that the accountability system was working.
BY MR. ROSENBAUM:
Q   Okay. Have there been any investigation or inquiry, to your knowledge, about the effectiveness of sanctions that are part of the California accountability system?
THE WITNESS: When you say sanctions and incentives, I'm assuming you mean a specific study of California.

BY MR. ROSENBAUM:
Q   Yes.
A   Okay. I don't know of any.
Q   And have you ever undertaken any?
A   No.
Q   Okay. Do you know if there are any plans in California to investigate the effectiveness of incentives that are part of the California plan?
A   No.
MS. KOURY: Calls for speculation.

BY MR. ROSENBAUM:
Q   Have you made any inquiry to find out?
A   No.

BY MR. ROSENBAUM:
Q   I don't want to mischaracterize your testimony, so just correct me if I'm wrong -- that the test administered as part of the accountability system has not been identical each year. It's changed from year to year; is that correct?
MS. KOURY: Objection to the extent it mischaracterizes his testimony and vague.

BY MR. ROSENBAUM:
Q   You told me yesterday, I think -- and I don't want to mischaracterize your testimony, so just correct me if I'm wrong -- that the test administered as part of the accountability system has not been identical each year. It's changed from year to year; is that correct?
MS. KOURY: Objection to the extent it mischaracterizes his testimony and vague.
BY MR. ROSENBAUM:
Q   I don't want to mischaracterize your testimony, so let me ask you. Do you know if the test has changed from year to year?
MS. KOURY: Vague.
THE WITNESS: I don't know for certain.

BY MR. ROSENBAUM:
Q   Okay. If the test did change, Doctor, what should be done, in terms of comparing results from year to year?
MS. KOURY: Objection. Vague, also incomplete

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BY MR. ROSENBAUM:
Q   Yes.
A   Okay. I don't know of any.
Q   And have you ever undertaken any?
A   No.
Q   Okay. Do you know if there are any plans in California to investigate the effectiveness of incentives that are part of the California plan?
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MS. KOURY: Calls for speculation.

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MS. KOURY: Vague.
THE WITNESS: I don't know for certain.

BY MR. ROSENBAUM:
Q   Okay. If the test did change, Doctor, what should be done, in terms of comparing results from year to year?
MS. KOURY: Objection. Vague, also incomplete
feel it's within your area of expertise to tell me
that?
MS. KOURY: Objection. Incomplete hypothetical, calls for speculation, beyond this expert's opinions.
THE WITNESS: Well, I chaired a couple of -- at least one panel, and we're concerned about this in the national assessment. So I don't purport to do it myself or ever have done it, but I'm familiar with -- a little bit with the methodology.
BY MR. ROSENBAUM:
Q Do you -- can you tell me what the methodology would be? You've told me the global difficulty in making the comparison.
A Yes.
Q Can you tell me what the methodology would be to calibrate it properly?
MS. KOURY: Objection. Incomplete hypothetical.
THE WITNESS: Only by name and superficially.
BY MR. ROSENBAUM:
Q Tell me what you mean by name.
A Well, there's -- this is called item response theory. And there are two major points of view about it. I happen to have studied with -- my dissertation advisor, the foremost exponent of what's called the Rausch model, which -- it was a Danish mathematician who...
Q. Do you know if California -- the Department of Education has a -- has personnel that deal with intervention in local schools as part of the accountability system?


THE WITNESS: I think there is provision to do that, and my impression that that's being done.

BY MR. ROSENBAUM:

Q. Do you know for a fact whether or not --
A. No.

Q. -- there's such a part of the Department of Education?

MS. KOURY: Argumentative.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q. Do you know -- well, maybe you just answered this.

Do you know what if any its budget is?

MS. KOURY: Objection. Asked and answered.

MR. ROSENBAUM: It was asked and answered.

Q. You don't have to answer that.

A. Since we're pausing again, I would like to apologize to both attorneys for not giving you a chance to finish and not giving you a chance --

MS. KOURY: No need.

THE WITNESS: -- to make objections. I regret that. I have a tendency to do that, and I apologize.

BY MR. ROSENBAUM:

Q. You're doing fine. Nobody's born to be a deponent, so you're doing fine. And if they are, they've got bigger problems.

Let me ask you, Doctor, if you could turn to Pages 5 and 6 of your report, Exhibit 1.

Now, again, I don't want you to tell me something that you've already told me. I don't want to waste your time.

"The National Assessment Governing Board referred to as the National School Board, given its mission to set education standards for U.S. students and measure progress in achieving them" -- do you see that on Page 5 and 6, the bottom of 5?

A. Yes.

Q. I started that in the middle of the sentence, but do you see --
A. Yes.

Q. -- where I'm referencing?

If you've answered this, just tell me.

Do you think it's an appropriate role --

Federal role to set education standards for U.S. students and measure progress in achieving them?

MS. KOURY: Objection. Overbroad.

THE WITNESS: Well, my answer is somewhat similar to pros and cons in having a minister of education in the United States or having the Federal Government control education. I think it depends on a lot of different things, and I don't claim to be experts in all of them, but I do think that NAEP, which the national board ran, does provide a calibration function, so that you can compare states, and it is, in my view, an excellent test.

So that Congress, that expends public funds, will know whether states -- whether the country as a whole is doing better or worse, and now it does provide information. Whether it should go further and now sanction school districts and, to some extent, take the place of what has been a traditional role of the State, I think, is somewhat questionable and perhaps debatable.

BY MR. ROSENBAUM:

Q. Do you have a position on that?

A. I think -- given the circumstances in public opinion and given feasibility, I think that legislation is probably -- and perhaps even plausibly -- constructive. But I think it actually remains to be seen as to whether it's going to have the effects that so many people have hoped for.

Q. Why do you say that?

A. Because a very wise person once said that prediction is difficult, especially if it involves the future.

Q. Well, beyond that, do you have specific concerns as to its success, as you've described it?

MS. KOURY: Objection. Asked and answered. He's testified about that.

THE WITNESS: I did say some pros and cons about State control and Federal control.

I guess I might add one point to it, that it has -- despite the fact that both political parties and -- have strongly voted for it in Congress and there was much, much support, and I think there's a swelling -- a ground swell of support for accountability systems -- and not just support, but we're seeing them being implemented in a gradual way -- that I -- that one can be hopeful, but on the other hand, controversies have ensued, and there's been various types of criticisms and arguments about whether the standards are too high or too low or whatever. So some of it has to do with the principles, you might say, but some of it has to do with the way it's implemented and whether -- and how well it's accepted.
By Mr. Rosenbaum:

Q. If -- did you -- did you testify about the law?


By Mr. Rosenbaum:

Q. When it was -- you know, when it was being considered. Did you testify?

A. In Congress?

Q. Yeah.

A. No.

Q. Did you submit testimony?

A. No.

Q. Did the Hoover Institute submit testimony?

Ms. Koury: Calls for speculation.

The Witness: Not to my knowledge.

By Mr. Rosenbaum:

Q. Or the Heartland -- is it the Heartland Institute?

Ms. Koury: Calls for speculation.

The Witness: I'm associated with the Heartland Institute --

By Mr. Rosenbaum:

Q. I know.

A. -- as we mentioned yesterday. As far as I know, Heartland did not submit anything.

Q. Okay. Do you -- if it were up to you, would there be certain changes that you would make to the No Child Left Behind Act for purposes of improving student achievement?

Ms. Koury: Objection. Incomplete hypothetical, overbroad, calls for speculation, also calls for a narrative.

The Witness: I haven't studied all the aspect of the legislation. It's extremely complicated. I understand it's about 200 pages long and has many, many provisions. And I think, in order to give a recommendation or feel that I could come up with a conclusion or recommendation that would be reasonable, I'd have to spend a lot more time on it.

By Mr. Rosenbaum:

Q. Are you aware that there's a provision of the law that deals with the requirement to have qualified teachers in the schools?


The Witness: I'm not familiar with that, and I think I do remember that.

By Mr. Rosenbaum:

Q. Okay. What do you remember?

A. I think there's -- is a provision like that.

Q. What would be your definition of a qualified teacher, Doctor?

Ms. Koury: Calls for speculation.

The Witness: Well, if feasible, I would like to define well-qualified teachers as those that raise achievement of their students.

By Mr. Rosenbaum:

Q. Okay. Anything else?

A. Well, I'm assuming the obvious things, that they do that within the law and they -- and within the normal range of activities of teachers.

Q. Okay. Have you -- we've gone into this a little bit yesterday, but have you ever at any point argued that programs under Title I should be eliminated?

Ms. Koury: Objection. Asked and answered. It's also vague and overbroad, calls for speculation.

Go ahead.

The Witness: I have been a critic of Chapter 1, Title I, and I have labeled it a failure and, in some cases, I have -- I think I have said that it should be abolished, because it is ineffective.

By Mr. Rosenbaum:

Q. And the basis -- and when you said failure, what did you mean by that?

A. I mean it's been very, very expensive and has not reduced the poverty gap.

Q. And by poverty gap you mean what?

A. The gap between children who are poor and those who are not poor.

Q. Okay. And when did you first advocate that position, as far as you can recall?

Ms. Koury: Objection. It calls for speculation, beyond this expert's opinions in this matter.

The Witness: Well, I may have talked about it, but in writing it might have been -- oh, as long as 20 years ago. But I'm -- as I mentioned to you before, and I remind myself, I'm uncertain about dates.

By Mr. Rosenbaum:

Q. Okay. Have you -- have you written more than one article on the subject?


The Witness: On Chapter 1 --

By Mr. Rosenbaum:

Q. Yeah.

A -- Title I?

Q. Yeah. The position that you just set out for me.

THE WITNESS: I think I may have written that several times. Sometimes incidentally.

BY MR. ROSENBAUM:

Q Okay. Are you aware, Doctor, that in the past few years, there was an initiative on the California ballot that dealt with vouchers?

MS. KOURY: Objection. Calls for speculation. It's also beyond this expert's opinions in this matter.

THE WITNESS: I'm aware that there was a proposed legislation.

BY MR. ROSENBAUM:

Q And what is your understanding of what its contents were?

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions. It also calls for a narrative.

Go ahead.

THE WITNESS: I know a little more than that it was proposed and failed.

BY MR. ROSENBAUM:

Q Okay. Did you take a position on it?

MS. KOURY: Calls for speculation, beyond this expert's opinions in this case.

THE WITNESS: On the California legislation?

BY MR. ROSENBAUM:

Q Yeah.

A Or in general?

Q On the California legislation.

A I don't recall making a recommendation.

Q Does that mean you didn't or you don't recall?

MS. KOURY: Objection. Asked and answered, it's also argumentative.

Go ahead.

THE WITNESS: I don't remember ever doing that. I don't think I did.

BY MR. ROSENBAUM:

Q Okay. Do you know that President Bush has recently made recommendations regarding vouchers?

MS. KOURY: Objection. Vague. I'm not sure if that's a question.

Go ahead.

THE WITNESS: I remember seeing a news clip sometime maybe in the last week or so that he had done that.

BY MR. ROSENBAUM:

Q Okay. What's your understanding of what he did?

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions. It's also vague.

THE WITNESS: Little more than that.
A Not that I have -- directly have heard.
Q Okay. Have you ever made any inquiry to find out?
A No.
Q Do you know if students receive feedback as part of the California high school exit exam?
THE WITNESS: I don't know.
BY MR. ROSENBAUM:
Q Okay. Have you ever made any inquiry to find out?
A No.
Q Do you -- are you aware, sir, of the percent of teachers in California who use textbooks in core academic subjects?
MS. KOURY: Objection. Asked and answered. It also calls for speculation, beyond this expert's opinions.
THE WITNESS: No.
BY MR. ROSENBAUM:
Q Okay. And if I broke it down to different subject matters -- English, language arts, math, science, history, civics, foreign language -- would your answer be the same?
MS. KOURY: Objection.
THE WITNESS: Yes.
MS. KOURY: Same objections.
BY MR. ROSENBAUM:
Q Or if the State Government has?
MS. KOURY: Same objections.
THE WITNESS: No.
BY MR. ROSENBAUM:
Q Do you know what Dr. Oakes's conclusions were?
MS. KOURY: Objection. Calls for speculation.
THE WITNESS: I don't remember well.
BY MR. ROSENBAUM:
Q Okay. Just want to point -- she's stepping on your toes; it's not the other way around.
THE WITNESS: As long as you paused and raised that question, I think we all owe an apology to this wonderful person.
MR. ROSENBAUM: We'll stipulate to that.
Q Do you know -- have you reviewed any of California's standards, the academic standards?
MS. KOURY: Objection. Asked and answered.
THE WITNESS: No.
BY MR. ROSENBAUM:
Q Okay. Have you reviewed any of those standards?
THE WITNESS: Not in detail.
BY MR. ROSENBAUM:
Q In any way at all?
A Only in the sense that I have looked at independent analyses of the standards.
Q Okay. But have you actually looked at the standards themselves?
MS. KOURY: Asked and answered.
THE WITNESS: No.
BY MR. ROSENBAUM:
Q Okay. And when you say independent analysis of standards, what do you mean by that?
MS. KOURY: Objection. This was asked and answered. He testified about this yesterday, but go ahead.
MR. ROSENBAUM: Okay.
Q I'll defer to your lawyer and hold her responsible if we lose the case.
A No.
Q Okay. Putting aside Dr. Oakes, do you know if anyone else in the state of California has?
A No.
Q I'll defer to your lawyer and hold her responsible if we lose the case.
A No.
Q Okay. Have you ever made any inquiry to find out?
A No.
Q Do you -- are you aware, sir, of the percent of teachers in California who use textbooks in core academic subjects?
MS. KOURY: Objection. Asked and answered.
THE WITNESS: Pardon me.
BY MR. ROSENBAUM:
Q Do you know if anyone has made any inquiry to find out --
MS. KOURY: Objection. Asked and answered.
THE WITNESS: I had the impression that Jeanne Oakes had locked into textbook availability, and she may have had some figures on that, but I don't remember it well.
BY MR. ROSENBAUM:
Q Okay. Putting aside Dr. Oakes, do you know if anyone else in the state of California has?
MS. KOURY: Objection. Vague, overbroad, calls for speculation, beyond this expert's opinions in this matter.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q   Do you know -- if I changed it to whites compared to Latinos, would your answer be the same?

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions, also overbroad and vague.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q   No, you don't know?

A   I don't know.

Q   Okay. Do you know -- have you made any inquiry to find out?

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions. It's also vague.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q   Do you know if the State of California has?

MS. KOURY: Same objections.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q   Or if anyone in California has?


THE WITNESS: No.

BY MR. ROSENBAUM:

Q   Okay. Regarding the Bishop study, sir, that you refer to at Page 9 of Exhibit 1, your report -- yeah, Page 9 -- do you see any differences between the curriculum based -- let me break this down a little bit.

A   He looked at curriculum-based external examinations; is that right?

Q   Do you know John Bishop?

A   Yes.

Q   Who is he?

A   He's an economist at Cornell University.

Q   Is he affiliated with Hoover in any way?

A   No.

Q   Has he ever spoken at Hoover, so far as you know?

A   So far as I know, he hasn't spoken there, but he could have.

Q   Okay. How do you know him?

A   He is a fellow of the International Academy of Education, and I think I participated in a conference at the Brookings Institution some years ago, where he spoke, and I have -- may have met him a couple of other occasions.

Q   Do you know the name of the statute that created the California accountability system?


THE WITNESS: No.

Q   Okay. Regarding the Bishop study, sir, that you refer to at Page 9 of Exhibit 1, your report -- yeah, Page 9 -- do you see any differences between the curriculum-based external examinations were that he looked at?

A   Somewhat. Aside from the fact that they are what I called them and he calls them. So --

Q   I'm sorry, what?

A   Aside from the fact that they are what he -- they have the characteristics that are implied by the name that he gave them, and then I use the same name that he used.

Q   Okay. First of all, let me ask you, sir, if you could just please speak up a little bit.

A   Okay.

Q   Did he study API examinations as part of his study?

A   Okay.

Q   Did he study any other examinations?

A   They're mentioned in the second paragraph.

Q   Okay. And your testimony, sir, is that he
studied the advanced placement program, the New York State Regent examination, and what else? I want to break that down. It's a sloppy question.

Are you certain, sir, that Bishop studied the advanced placement exams?


BY MR. ROSENBAUM:

Q   As part of the study that's referred to at Page 9 of your report.

A   My memory is that he served -- that he studied all of the examinations that are mentioned in the first sentence in the second paragraph.

Q   Okay. And what does U.S. state and Canadian provincial systems mean, in terms of examinations?

A   This would be a state system of examinations, such as the regents, that other states have been developing state systems.

Q   Did he study every state examination?

A   I think what he did -- and I'm a little bit uncertain, again, about the date. I think he contrasted states with state systems of examinations at a particular point in time versus those that did not.

Q   Okay. Do you see any differences at all between the tests that are administered in California as part of the accountability system and any of the tests that he studied as part of his analysis?


THE WITNESS: Do I see any differences?

BY MR. ROSENBAUM:

Q   Yes, sir.

A   Well, I haven't made a specific analysis of the content of the California State examinations. So I wouldn't be prepared to compare them with any of the others.

Q   Okay. Do you have any criticisms of the methodology of the Bishop study for purposes -- for the purposes -- let me strike that. First, you know what peer review is?

A   Yes.

Q   And you've -- have you participated in the peer review of scholarship?

A   Yes.

Q   Okay. If you were asked, as part of a peer review, to review the Bishop study that you're referencing on Page 9 of Exhibit 1, would you raise any criticisms?

MS. KOURY: Objection. Incomplete hypothetical, calls for speculation.

THE WITNESS: I don't remember any faults of the Bishop study that I would -- would cause me to recommend that it would not be published.

BY MR. ROSENBAUM:

Q   Okay. Would you raise any criticisms at all?

MS. KOURY: Objection. Asked and answered, calls for speculation.

THE WITNESS: I can't remember any faults of the study.

BY MR. ROSENBAUM:

Q   Okay. Let me direct your attention, then, sir, to the third paragraph. You refer to a -- am I pronouncing it right, a Kiel or Kiel?

A   I believe it's pronounced Kiel.

Q   Kiel, K-i-e-l -- a Kiel Institute of World Economics study.

A   Yes.

Q   Do you see -- what was the methodology that the Kiel Institute utilized?

MS. KOURY: Calls for speculation.

BY MR. ROSENBAUM:

Q   If you know.

A   A variant of regression analysis.

Q   Okay. And what do you mean by a variant of regression analysis?

THE WITNESS: I would not feel prepared to use advanced econometric techniques on my own.

BY MR. ROSENBAUM:

Q   Okay. Do you know how many examinations?

A   Not offhandedly.

Q   Do you know anything about the nature of those data that was considered -- strike that. Did the Kiel Institute look at particular examinations, if you know?

MS. KOURY: Vague.

THE WITNESS: It looked at the examinations that were given as a large scale cooperative international project.

BY MR. ROSENBAUM:

Q   Okay. Do you see any differences between the data that was considered -- strike that. Did the Kiel Institute look at particular examinations, if you know?

THE WITNESS: It looked at the examinations that were given as a large scale cooperative international project.

BY MR. ROSENBAUM:

Q   Okay. Do you know how many examinations?

A   Not offhandedly.

Q   Do you know anything about the nature of those examinations, if you know?
examinations?
A Generally.
Q What do you know?
A I know that they were standardized tests and that they had high degrees of reliability and validity.
Q Okay. And do you --
A Before you go on, maybe I should add one more point. I also know that they were carefully screened by an international group from various countries to be sure that there was adequate content on the test and that it was not unfair from one country to another.
Q What's that mean?
A To compare French and Japanese students with American students on American history?
Q Are there numerical measures of reliability and validity for tests?
A Yes.
Q Okay. And what does it mean for a test to be reliable?
A I like to think of it as shooting at a circular target, and if you thought of a rifle shooting at a target, it means -- if you held a rifle in the same position, it will hit the same spot every time.
Q Why would that be unfair?
A To compare French and Japanese students with American students on American history?
Q Do they have any official policy about which types of history they are allowed to test?
A There is a great deal of subjectivity.
Q Okay. And when you use the word "validity" here, what -- tell me the definition you're using.
A Well, I'm thinking of the validity of the comparison that -- I mean, you could make the comparison that the test itself might be equally reliable, but the comparison would be invalid, or you'd have to make some adjustment for the degree to which students had been exposed to the subject matter.
Q Do you know how to make those adjustments?
A I know of some ways to do it.
Q Okay. Now, just so we are speaking the same language here, several times you've used the phrases about tests "reliable" and "valid."
THE WITNESS: Well, I am familiar with the reliabilities that are required for published commercial tests in order to be marketed to schools.

BY MR. ROSENBAUM:
Q Okay. And what are those ranges?
A Well, I would think that they would have to have reliabilities generally above .80.

Q Okay. And do you know, sir, for a fact whether or not the tests that have been administered to California public education students "K" through 12, as part of the California accountability system, have been found to be reliable?

MS. KOURY: Objection. Overbroad, also calls for speculation, beyond this expert's opinions in this matter.

THE WITNESS: Well, as I said earlier, I am familiar with the SAT 9, as it's called, and I know that it is considered to be a reliable test.

BY MR. ROSENBAUM:
Q Okay. But -- I don't want to you change your answer just because I'm changing my question a little bit, but I want to be very precise about my question.

The first question: Do you know -- the SAT 9 you can pull off the shelf, right? You can just purchase the SAT 9; isn't that right?

A Yes.

Q Okay. Is that the test that was given to California students as part of the accountability system, or were there some modifications made? Do you know?

A I'm unsure.

Q Okay. So my question now is: Do you know whether or not a reliability measure has been taken for the -- for any of the tests that were given to students as part of the California accountability system?

MS. KOURY: Vague, also calls for speculation, beyond this expert's opinions.

BY MR. ROSENBAUM:
Q Okay. But do you know the -- whether or not the validity has been specifically calculated for any of the tests that were administered to California "K" through 12 students as part of the accountability system?

MS. KOURY: Objection. Asked and answered, calls for speculation, beyond this expert's opinions.

BY MR. ROSENBAUM:
Q Yeah.
A -- I don't know of any numerical study.

BY MR. ROSENBAUM:
Q Okay. And did you ever make any inquiry to find out either the reliability score or the validity score, if any had been calculated?

A No.

Q Now, you -- if I understand you right, sir, if a -- let me see if I understood your testimony a little bit earlier.

If a person from Great Britain and a person from the United States takes a test on U.S. history, if I understood you correctly, you told me that adjustments can be made to the scores to reflect the different exposure to the material tested; is that right?

MS. KOURY: Objection. Asked and answered.

BY MR. ROSENBAUM:
Q Yeah. If I think you -- let me see if I understood you correctly.

If two students in different countries are given the same test but they didn't have the same exposure to the material tested, do I understand you correctly to say that adjustments can be made to their scores to accommodate the differences in the information to which each student was exposed?

MS. KOURY: This is an incomplete hypothetical, calls for speculation, beyond this expert's opinions.

BY MR. ROSENBAUM:
Q Okay. But do you know the -- whether or not the validity has been specifically calculated for any of the tests that were administered to California public education students as part of the California assessment system?

MS. KOURY: Objection. Overbroad, also calls for speculation, beyond this expert's opinions, it's also vague.

THE WITNESS: Only the kinds of inferences that we talked about yesterday, that independent analyses of the California system had indicated a good alignment, which is another way of thinking about test validity.

BY MR. ROSENBAUM:
Q Okay. But do you know the -- whether or not the validity has been specifically calculated for any of the tests that were administered to California "K" through 12 students as part of the accountability system?

MS. KOURY: Objection. Asked and answered, calls for speculation, beyond this expert's opinions.

Go ahead.

THE WITNESS: You mentioned calculation. That implies numerical and --

BY MR. ROSENBAUM:
Q Yeah.
A -- I don't know of any numerical study.

Q Okay. And did you ever make any inquiry to find out either the reliability score or the validity score, if any had been calculated?

A No.

Q Now, you -- if I understand you right, sir, if a -- let me see if I understood your testimony a little bit earlier.

If a person from Great Britain and a person from the United States takes a test on U.S. history, if I understood you correctly, you told me that adjustments can be made to the scores to reflect the different exposure to the material tested; is that right?

MS. KOURY: Objection. The extent it mischaracterizes his testimony. It's also incomplete.

THE WITNESS: I'm sorry, I need to have the question again.

BY MR. ROSENBAUM:
Q Yeah, I think you -- let me see if I understood you correctly.

If two students in different countries are given the same test but they didn't have the same exposure to the material tested, do I understand you correctly to say that adjustments can be made to their scores to accommodate the differences in the information to which each student was exposed?

MS. KOURY: This is an incomplete hypothetical, calls for speculation, beyond this expert's opinions.

THE WITNESS: It would be possible to use some techniques to equate the scores to make them more comparable.
BY MR. ROSENBAUM:

Q  Now, I think I told you -- you told me yesterday -- and I don't want to mischaracterize your testimony. Do you know if all students who took -- all "K" through 12 students who took the tests that are administered as part of the California accountability system were exposed equally to the information that was on the test? And I stated that a little bit inelegantly, so I want to clarify what I mean.

I don't expect that a student in Grade 2 to have seen the same material that a student in Grade 12 did. So across a grade level, I think you told me yesterday that you were not aware whether or not all students had been exposed to the same degree to the information tested on the tests that are part of the California accountability system.

Am I understanding your testimony correctly?

MS. KOURY: I'm lost in the question, but vague and ambiguous, it calls for speculation, beyond this expert's opinions, and it's also an incomplete hypothetical.

BY MR. ROSENBAUM:

Q  Do you understand my question?

A  (No audible response)

BY MR. ROSENBAUM:

Q  Okay. It's cumbersome. So let me start over. Let's just talk about a particular grade. Do fifth graders take the tests that are part of the California accountability system?

A  I'm unsure.

Q  Do sixth graders?

A  I don't know which grades take the test.

Q  Okay. Do you know, sir, whether or not the -- in calculating APIs for individual schools, accommodations are made to equate scores based on differing exposure to the information tested?

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions. It's also vague and overbroad.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q  Have you ever made any inquiry to find out?

A  No.

Q  Okay. Did you ever make any inquiry to find out?

A  No.

BY MR. ROSENBAUM:

Q  Who graded the exams in the Bishop study?

MS. KOURY: Calls for speculation.

THE WITNESS: As I say in the fourth paragraph, often these kinds of examinations are graded by people other than the students or the teachers, and my experience in international studies and U.S. testing policy is that they might be simply teachers other than the teachers' own, but sometimes commercial test companies make them up or hire groups to do it. If it's
a technical examination, such as mathematics and physics, they might use graduate students who are very knowledgeable about the subject.

BY MR. ROSENBAUM:
Q   Do you know who grades the exams that are part of the California accountability system that you've described and as we've been talking about?
A   No.


BY MR. ROSENBAUM:
Q   Did you ever make any inquiry to find out?
A   No.

Q   Do you have any -- do you see any differences between the examinations studied as part of the Kiel Institute study and the tests that are administered and have historically been administered as part of the California accountability system, as we've been discussing that?


THE WITNESS: Am I aware of differences between the tests used in California and those in the Kiel study?

BY MR. ROSENBAUM:
Q   Yes, sir.
A   Well, I am aware that there are differences, but I haven't studied the content of the California tests.

Q   Okay. Do you know in the Bishop study whether or not students had access to textbooks?
MS. KOURY: Objection. Calls for speculation.

THE WITNESS: I don't specifically know that.

BY MR. ROSENBAUM:
Q   Or whether or not they had access to textbooks aligned with the information tested in the exams that were looked at by the Bishop study?

MS. KOURY: Objection. Vague, overbroad, calls for speculation, beyond this expert's opinions.

THE WITNESS: Yes.

BY MR. ROSENBAUM:
Q   What do you -- what's your understanding?
A   Well, I think even the term "curriculum-based external examinations" implies that there was kind of alignment and that, having worked a lot in other countries and with the big scholars from other places, I'm aware that there is -- particularly, when you have this national curriculum, that it's well understood what it is and that the -- both the instruction and instructional media, including textbooks, tend to be associated with it to varying degrees.

Q   And that students would have access to those materials?

(The record was read as follows:
"I think there may be variations on it. I mean, most of these things are to degrees. But I think they generally assume that the aligned instructional materials are provided.")

THE WITNESS: And then your question is?

BY MR. ROSENBAUM:
Q   Okay. For Kiel, same answer?
A   Yes.

Q   Okay. Talking about the advanced placement program, have you made any inquiry into access to AP courses in California?

MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions, it also asks for a legal conclusion.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:
Q   Have you ever made any inquiry to find out?
1 A No.
2 Q Do you know if anybody has?
3 A No.
4 MS. KOURY: Same objection.
5 BY MR. ROSENBAUM:
6 Q Do you think, sir, that all students in public
7 high school should have equal access to AP courses?
8 MS. KOURY: Objection. Calls for speculation
9 beyond his expert opinion. It's also vague and
10 ambiguous.
11 THE WITNESS: Not necessarily.
12 BY MR. ROSENBAUM:
13 Q Okay. Why is that?
14 A Because some students may not be prepared for
15 AP-level work.
16 Q What do you mean by prepared?
17 A You can't take calculus until you've had, let's
18 say, geometry, trigonometry, algebra.
19 Q Or prealgebra?
20 A Yes.
21 Q Do you think all students should have equal
22 access to the predicate courses?
23 MS. KOURY: Objection. Vague and ambiguous, calls
24 for speculation beyond this expert's opinions.
25 THE WITNESS: If I went back to what we talked
26 about yesterday, I think it's important to suit the
27 instruction to the level that the students are capable
28 of, and it should not go too far beyond what they're
29 capable of learning, nor should it teach the same things
30 that they already know.
31 So I think -- I would hesitate to make a
32 recommendation that all students would have access to a
33 course that did not have the prerequisites. That had
34 not demonstrated that they had the prerequisite
35 knowledge or in fact took the prerequisite courses.
36 BY MR. ROSENBAUM:
37 Q Okay. Do you think, sir -- I don't -- that one
38 race or ethnicity has more ability to learn than another
39 race or ethnicity? I mean, I know your answer to that,
40 but I just want to make it as a predicate. Do you think
41 that?
42 MS. KOURY: Objection. Calls for speculation, beyond this expert's opinions in this case.
43 THE WITNESS: I don't think one race is more -- has
44 higher ability than another.
45 BY MR. ROSENBAUM:
46 Q Of course not.
47 And do you know, sir, whether or not schools
48 attended by -- let's start with elementary schools --
49 schools attended by predominantly -- that are attended
50 predominantly by African-Americans have the same access
51 to curricula offerings as elementary schools attended by
52 predominantly white students?
53 MS. KOURY: Objection. Vague, overbroad, calls for
54 speculation beyond this expert's opinions in this case.
55 THE WITNESS: I don't know.
56 BY MR. ROSENBAUM:
57 Q How about middle schools? Same question.
58 MS. KOURY: Objection. Vague, ambiguous,
59 overbroad, calls for speculation beyond this expert's
60 opinions in this case.
61 THE WITNESS: Excuse me. We're still talking about
62 California; are we not?
63 BY MR. ROSENBAUM:
64 Q Yes, I am.
65 A Yes, I don't know.
66 Q How about if I changed it from
67 African-Americans to Latinos? Would that make a
68 difference in your answer?
69 MS. KOURY: Same objections.
70 BY MR. ROSENBAUM:
71 Q Either of your answers.
72 A No.
73 Q If I changed low SES to high SES, would that
74 make a difference?
75 MS. KOURY: Same objections. Calls for speculation
76 beyond this expert's opinions in this case.
77 THE WITNESS: No.
78 BY MR. ROSENBAUM:
79 Q If you found out that students in middle
80 schools in courses -- in schools that were predominantly
81 Latino or predominantly African-American or
82 predominantly students of color or predominantly low SES
83 had a lower access to curricular offerings than white
84 students or high SES students, would you be concerned?
85 MS. KOURY: Objection. Vague and ambiguous
86 about "concern." Also is incomplete hypothetical and calls
87 for speculation beyond this expert's opinions in this
88 case.
89 THE WITNESS: I'd have to study the situation to
determine the possible causes of it. I wouldn't want to
make a blanket statement.
90 BY MR. ROSENBAUM:
91 Q What would you look at, sir?
92 MS. KOURY: Objection. Incomplete hypothetical,
calls for speculation beyond this expert's opinions.
93 THE WITNESS: Well, we would need to know the
94 specifics of how this problem arose and, as I indicated
95 to you, it might -- there can be a whole bunch of
96 different reasons why students might take one course
versus another. And one of them might be the students or parents preferences for them.
Another reason, as I was mentioning before, is that they may not be ready for a particular course if the school itself did not offer prerequisite courses and maybe that was a decision that had been made at the school district level, let's say, offer Spanish instead of French or German instead of Russian. So I think it's very hard to make a blanket statement like that. I think you need to study the particular circumstances.

BY MR. ROSENBAUM:
Q   Okay. Do you have a view -- if there were two students, sir, who were equally capable of studying calculus, do you have a view as to whether or not they should have equal access to a calculus course, irrespective of what school they attend?
MS. KOURY: Objection. Incomplete -- sorry, were you finished?
MR. ROSENBAUM: (No audible response)
MS. KOURY: Objection. Incomplete hypothetical, calls for speculation beyond this expert's opinions in this matter.
THE WITNESS: And your -- you're saying they have equal ability and could they -- should they have access to a calculus course.

BY MR. ROSENBAUM:
Q   Equal access, yeah.
A   Equal access.
Q   That's your question?
A   Yes.
Q   Well, I would say, other things being equal, it would be desirable if they had equal opportunity.
Q   Okay. Why is that?
A   I think it's a principle of fairness.
Q   Okay.
MS. KOURY: When we're at a good breaking point, can we take a break?
MR. ROSENBAUM: Sure. We can take a break now.
(Brief recess taken.)

BY MR. ROSENBAUM:
Q   Regarding, sir, the Bishop study that we talked about, do you know what the nature of the questions were on that study? And let me tell you what I mean by that. I mean do you know if they were multiple choice, essay, some combination, some other form of question?
A   Well, I'd have to be making an informed guess, but I didn't examine the specific examination.
Q   Okay. How about the Kiel study?
A   Same thing.
benefits of standards for minorities and poor students.

Do you see that?

A   Hmm-hmm.

Q   Do any of plaintiffs' experts, in your
judgment, believe that standards are not beneficial for
minorities and poor students?

MS. KOURY:  Asked and answered.

THE WITNESS:  I don't know their views --

BY MR. ROSENBAUM:

Q   Okay.

A   -- on this point.

Q   Okay.  The education -- let me direct your
attention, sir, to Page 11 of Exhibit 1, your report.
And again, it's in -- the section starts on the prior
page, and continues to the next page.  So you feel free
to review as much as you need.

At Page 11, you have an indented set of
quotes.  Is that a fair characterization?

A   Yes.

Q   Okay.  And those indented set of quotes are
 cited to Footnote 13?

A   Yes.

Q   Okay.  Do you know, sir, if the California
accountability system that you discuss in your report
and we've been talking about -- I'm just going to keep
using the shorthand the California accountability
system.

Is that okay?

A   Hmm-hmm.

Q   You understand that?

A   Yes.

Q   -- whether the California accountability system
has any provisions regarding increasing instructional
time in reading and math in order to help students meet
standards?

A   I don't know.

Q   Okay.  Have you made any inquiry to find out?

A   No.

Q   Do you know, sir, whether or not, as part of
the California accountability system, there is a
devotion of a larger proportion of funds to support
professional development focused on changing
instructional practice?


THE WITNESS:  I don't know.

BY MR. ROSENBAUM:

Q   Okay.  Do you know anything about, in
California, what is done with respect to professional
development focused on changing instructional practice?

MS. KOURY:  Objection.  Vague, also calls for
speculation beyond this expert's opinions.

THE WITNESS:  Only in the one or two lectures that
I gave to teachers out here some years ago.

BY MR. ROSENBAUM:

Q   Tell me what you mean by that.

A   Well, I mentioned yesterday that -- in answer
to one of your questions that I had -- I've forgotten
the context of it, but I think I mentioned that I had
given some talks to teachers and administrators, and it
was in a professional development workshop.  So as a
consequence of that experience, I had an impression of
what at least one place was doing in professional
development.

Q   Beyond that?

A   I haven't made any systematic study.

Q   Do you know, sir, if, as part of the California
accountability system, there is any provision for
evaluating teachers?

MS. KOURY:  Objection.  Vague and calls for
speculation beyond this expert's opinions.

THE WITNESS:  I don't know.

BY MR. ROSENBAUM:

Q   Okay.  Do you know if any teachers have been
promoted or lost their jobs or been disciplined as a
function of the California accountability system?


THE WITNESS:  I don't know.

BY MR. ROSENBAUM:

Q   Okay.  Have you made any inquiry to find out?

A   No.

Q   Do you know, sir, whether -- and if I
substitute the word "principal" for "teachers" in the
prior questions, would your answers be the same?

A   Yes.

Q   Okay.  And do you know -- see the phrase,
"assess student work," on Page 11?  It's in bold.  It's
in the first bullet -- it's not really a bullet.  The
first indented quote.

Q   Do you see that?

A   Yes.

Q   Okay.  Do you know, sir, whether or not the
California State standards have been utilized, as part
of the accountability system, to assess student work?
Within the same meaning that you have here on this page.
A I don't know the degree to which State standards have been used in California to assess student work.
Q Okay.
A Aside from publishing the examination and things of that nature.
Q Okay. Do you know, sir -- and have you made inquiry to find out?
A No.
Q Okay. Do you know, Doctor, whether or not, as part of the California accountability system, there are provisions or programs or policies that focus efforts to involve parents on helping students meet standards?
MS. KOURY: Objection. Asked and answered.
THE WITNESS: I don't know.
BY MR. ROSENBAUM:
Q Okay. Have you made any inquiry to find out?
A No.
Q Do you know, sir, whether or not the California accountability system has real consequences for adults in the schools within the meaning of that phrase as it's used on Page 11, as you understand it?
A Only by inference.
Q Okay. Do you have any specific knowledge?
A Not of any particular schools, no.
Q Okay. Can you cite me a single instance where there's been a real consequence for an adult in the school as part of the California accountability system?
A No.
MS. KOURY: Objection. Overbroad.
BY MR. ROSENBAUM:
Q The education trust study that you referenced, Doctor, do you have any concerns or criticism -- strike that.
Are you familiar with the methodology utilized in that study?
A Yes.
Q Okay. What's your understanding about what the methodology consisted of?
A It's explained in the first -- the first paragraph under Point 4. They attempted to find schools that had high percentages of students in poverty and yet had relatively high levels of achievement.
Q Okay. Were there any California schools that were part of that study?
A I can't -- I don't know for sure.
Q Okay. Did you ever make any inquiry to find out?
A No.
Q Why is that?
A I didn't consider that it was important.
Q Okay. And do you have any concerns or criticisms regarding the methodology used in the education trust study?
A No.
Q Okay. Let me direct your attention to Page 12 of Exhibit 1. Same proviso, you can look at it as much as you'd like.
Incidentally, sir, in the education trust study, the schools that you just talked to me about, in those schools, sir, did students -- do you know if students had access to instructional materials or textbooks aligned with the standards-based curriculum?
MS. KOURY: Objection. Vague, ambiguous, overbroad, calls for speculation beyond this expert's opinions.
The WITNESS: I think that that's implicit in the first indented point.
BY MR. ROSENBAUM:
Q Okay. Do you know anything about the qualifications of the teachers in any of the schools that were looked at?
A In the education trust study?
Q Yes, sir.
A No.
Q Okay.
A Aside from what's listed on Page 11.
Q Okay. Let me take you back -- I'm sorry, sir. Let me take you back to Page 11. Fourth paragraph down in the indented quote, do you see the sentence, "Implement comprehensive systems to monitor individual student progress and provide extra support to students as soon as it's needed"? Do you see that?
A Yes.
Q Okay. Do -- as part of the California accountability system, is there any requirement or policies or practices that deal with providing extra support to students as soon as it's needed?
THE WITNESS: I don't know.
BY MR. ROSENBAUM:
Q Do you know if there are any schools in the state of California "K" through 12 public schools that provide extra support to students as soon as it's needed?
A Can't say.
THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q Okay. Is that important?


BY MR. ROSENBAUM:

Q Providing extra support to students as soon as it's needed.

A I think doing that tends to enhance student achievement.

Q You've talked about that in your analyses of the -- I call it the matrix, but I don't -- your nine factors.

A Yes.

Q Okay.

A It's not one of the nine factors, but it's part of quality of instruction.

Q Okay. And the next sentence, sir, "Four out of five of the top performing high poverty schools had systematic ways to identify and provide early support to students in danger of falling behind in their instruction."

Do you see that?

A Yes.

Q Do you know whether or not the California accountability system has systematic ways to identify and provide early support to students in danger of falling behind in their instruction?

A No.

Q Did you make any inquiry to find out?

A No.

Q Do you know if there are any schools in the state of California that have systematic ways to identify and provide early support to students in danger of falling behind in their instruction?

A No.

Q Do you know if the State does anything, accountability system or otherwise, to identify and provide early support to students in danger in their instruction?


THE WITNESS: Only the things that we've talked about so far, they're making the test results publicly available and available to educators.

BY MR. ROSENBAUM:

Q Okay. Look, if you would, please, sir, at the fifth paragraph in this quote on Page 11. If you've already answered, just tell me.

See the sentence, "In these schools, traditional roles for parents as fund-raisers are giving way to activities that address parents' knowledge of standards"? Do you see that part of it?

A Yes.

Q Any part of the California accountability system that you're familiar with that provides or deals with activities addressing parents' knowledge of standards?

A I don't know.

Q Do you know if there's any school in California "K" through 12 public education that addresses parents' knowledge of standards?

MS. KOURY: Objection to the extent it takes this quote out of context and also vague and ambiguous.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q Is that important?


Q Parents know of the standards?


THE WITNESS: I would give a similar answer to what I had said earlier, that I think that this is probably associated with higher levels of achievement.

BY MR. ROSENBAUM:

Q Okay. And let's finish the sentence.

"Encourage their involvement in curriculum and involve them in student's work."

Do you see that?

A Yes.

Q Same questions, Doctor.

Q Do you know if -- does any part of the California accountability system deal with encouraging parents' involvement in curriculum and involving them in reviewing student's work?

MS. KOURY: Objection. The document speaks for itself. To the extent that the quote is taken out of context, it is vague.

THE WITNESS: Not beyond the point that I mentioned earlier, that the -- making the test scores available might be one component or is one component of informing parents, which might induce them to become more involved in those ways.

BY MR. ROSENBAUM:

Q Do you know what the standards are available at schools in California?


THE WITNESS: For example, being posted on the walls or available in books and things of that nature?
BY MR. ROSENBAUM:

Q  Yeah.
A  I don't know.
Q  Do you know if parents are informed that they
can have access to the standards if they want to see
them?
MS. KOURY: Objection. Vague, calls for
speculation.
THE WITNESS: I don't know.
BY MR. ROSENBAUM:

Q  Do you know if they're distributed to parents?
MS. KOURY: Same objections.
THE WITNESS: I don't know.
BY MR. ROSENBAUM:

Q  Do you know if they're on the Internet?
MS. KOURY: Objection. Vague, calls for
speculation.
THE WITNESS: I don't know.
BY MR. ROSENBAUM:

Q  Okay. Have you made any inquiry to find out
any of the last four subject matters? I'll be glad to
do them separately but --
A  No.
Q  Okay. Do you believe that all California
students can meet the State standards, sir? Do you have
an opinion?
MS. KOURY: Objection. Vague and ambiguous, calls
for speculation beyond this expert's opinions.
THE WITNESS: All California students --
BY MR. ROSENBAUM:

Q  Yes.
A  -- did you say?
I think there may be some exceptions for
students that may be profoundly disabled or something of
that nature, but if we're talking about the normal run
of students, I have no reason to believe that,
ultimately, they could meet the standards.
Q  That --
A  They could not meet the standards, sorry.
Q  And could you tell me the basis for your
answer, please?
A  I think that many human beings can achieve
much, much more than we have -- would normally think
about, and I think, with an effective system, many
students could achieve at very, very high levels.
Q  And if -- as a professional, sir, it is
disappointing to you that U.S. students don't; isn't
that right?
MS. KOURY: Objection. Argumentative.
THE WITNESS: I am disappointed in the relative
performance of American students compared to those in
other countries.
BY MR. ROSENBAUM:

Q  Relative performance and performance over time;
 isn't that right? Going back to when the publication "A
Nation at Risk" came out?
MS. KOURY: Objection. Misleading,
mischaracterizes his testimony.

Go ahead.
MR. ROSENBAUM: I'm making a question. I'm not
characterizing his testimony.
MS. KOURY: Same objections.
BY MR. ROSENBAUM:

Q  You're disappointed at their performance; isn't
that right?
A  Yes.
Q  You're disappointed at their performance
compared to students in other countries?
THE WITNESS: I am.
BY MR. ROSENBAUM:

Q  You don't think an American is -- American
student is inherently not as bright as a Japanese
student; isn't that right?
A  Absolutely not. They're of equal ability.
Q  But the Japanese students have -- you've
written extensively about how the Japanese students have
achieved well beyond what U.S. students have; haven't
you?
A  Yes.
Q  And you're also concerned, are you not, sir,
about the failure to -- of U.S. students to improve over
the last few decades; isn't that right?
MS. KOURY: Objection. Overbroad.
THE WITNESS: That's right.
BY MR. ROSENBAUM:

Q  Okay. And why are you disappointed?
MS. KOURY: Objection. Calls for a narrative.
THE WITNESS: Well, I think it's implicit to the
things you said about my views. I think that American
students are equally able, yet they don't achieve at the
levels of students in other countries. I think it's
economically important. I think it's of great benefit
to individual students and their families, to our
country.
BY MR. ROSENBAUM:

Q  When you say great benefit to individual
students and their families, what do you mean by that?
A  Well, I think a student that achieves more in
school is more likely to go to college, to succeed in

36 (Pages 437 to 440)
college, to get better jobs, to -- from the various studies that suggest that, if you have a better education, you're more healthy, participate in civic affairs and things of that --

Q   What about the quality -- I'm sorry, go ahead.
A   So I think there are a great number of benefits of education, and I think if our system were more effective and efficient, it would benefit individual students and their families, their parents, but also their -- later on, when they get married and so on, would benefit our country as a whole.

Q   Let me direct your attention, sir, to Page 12 of Exhibit 1.

What sort of feedback do students get in North Carolina from the assessment system utilized there?

MS. KOURY:  Objection.

BY MR. ROSENBAUM:
Q   Do you know?
THE WITNESS:  I haven't made a specific study.

BY MR. ROSENBAUM:
Q   How about in Texas?
MS. KOURY:  Same objection.
THE WITNESS:  Same answer.

In any state?

A   Well, I know generally what kind of feedback students get in schools in states in general, but I haven't made specific studies of the two states you mentioned.

Q   I'm -- sure.
I'm thinking now, sir, about the accountability tests, the tests that are administered as part of the accountability system.

THE WITNESS:  Do I know what kind of feedback they get in various states from the testing or accountability program?

BY MR. ROSENBAUM:
Q   Yeah.
A   I would know generally, yes.
Q   What do they get?
A   Generally, they would have reports on their schools as how their school ranked within their district, how their district might compare with other districts.  I don't mean to say all states have this.
I'm describing different variations.

I haven't done the study myself, but I have no reason to doubt what it says.

Q   Well, do you know of your own knowledge, sir, what assistance, if any, is provided to low performing schools as part of the California accountability system?
A   No.
Q   Have you made any inquiry to find out?
A   No.
Q   Okay.  On Page 14, sir, Doctor, you talked to me several times today and yesterday about value added.
A   Yes.
Q   What does that mean, as you've used it?
A   Generally speaking, it means taking into consideration the gains that a student has made that -- and often it can be thought of as a -- to give an example, a test this year in relation to the test scores in the previous year.  There are various ways to calculate it, but that is in essence.

Q   Does the California accountability system take in consideration the gains a student has made from year to year?  Do you know?
A   When you say a student, I'm not sure that it's calculated for individual student.  My impression was that it was done for a whole school.
Q   Do you know that for a fact?
A I have --

MS. KOURY: Objection. Argumentative.

THE WITNESS: That's my best impression. But I haven't -- I don't -- I haven't looked at it or gone into a school to find out if that's actually been done.

BY MR. ROSENBAUM:

Q Okay. Do you know if it's done for individual students?

MS. KOURY: Objection. No.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q Okay. Each year, sir, in a school, a cohort leaves and a new cohort comes in; isn't that right?


THE WITNESS: Well, it's not a certainty, but I think in many instances that happens, yes.

BY MR. ROSENBAUM:

Q Well, isn't -- why isn't it a certainty? If you have a middle school that's -- that deals with Grades 7, 8, 9, doesn't the 9th grade, by and large, leave and the 7th grade, by and -- a 7th grade come in?

A Oh, I misunderstood your question. I thought you were talking about students that might move away --

Q Yeah.

A -- students that might move in.

Q Yeah. I'm not talking about -- I agree with you, there may be a number of students who stay or go away. But --

A Okay, thank you. I now understand, I think, your question.

Q Okay.

A And what you say, I think, is true.

Q Okay. Does the API or the -- does the API take into consideration the change in cohorts?

A I don't know.

Q Okay. Have you made any inquiry to find out?

A No.

Q Do you know if some states do?

MS. KOURY: Objection. Calls for speculation beyond this expert's opinions.

THE WITNESS: Only in a general sense.

BY MR. ROSENBAUM:

Q Well, I don't know what that means.

A It -- what I mean by that is that states vary in the sophistication of their systems, and some states go as far as having -- or restricting their indexes of value added to only the students that have been in the school on both occasions, which could be the very best way to do it.

Q Does California do that?

A I don't know.

Q Have you made inquiry to find out?

A No.

Q Directing your attention to Page 14, the O'Donnell program that you talk about, sir -- do you see that?

A Yes.

Q My understanding from your text here is that the foundation paid teachers and students a hundred dollars for each exam, AP exam, passed; is that right?

A Yes.

Q Okay. Does the California accountability system pay students to pass exams or to do well on exams?

A Not to my knowledge.

Q Okay. Do you -- do you know, sir -- do you have any -- any concerns about applying the conclusion -- your conclusions with respect to the O'Donnell program to the California accountability system?


THE WITNESS: I do have reservations.

BY MR. ROSENBAUM:

Q What are those reservations?

A I haven't recommended it in the first place, but it would be very, very expensive, and I would like to see more studies like this actually done before launching something like this in a whole state.

Q Do you personally advocate paying kids money to do well on exams?

A I think it's a very controversial matter, and I -- I would advocate further experimentation of this kind.

Q Okay. But failing that experimentation, do you personally advocate it, sitting here today?

MS. KOURY: Vague.

THE WITNESS: I think that this would be a very radical thing to do, and I would not recommend it offhandedly.

BY MR. ROSENBAUM:

Q Okay. One of your -- if I understand -- you know, I keep saying this wrong. Your achievement -- there are achievement factors? Is that what they are?

A I call them the nine factors or the nine productivity factors.

Q All right. One of your nine productivity
factors deals with motivation; is that right?
A Yes.
Q And you find motivation to be -- one of a proven -- a proven -- strike that.
You find that there's a scientifically-established relationship between motivation and student achievement; isn't that right?
A Yes.
Q Okay. Do you have any belief that any of plaintiffs' experts would disagree with that?
THE WITNESS: I don't know their views --
BY MR. ROSENBAUM:
Q Okay.
A -- on that.
Q And do you -- have you ever written, sir, about the importance of intrinsic motivation?
A I'm sure I've mentioned it in some of my writings. I don't recall right now.
Q You're not opposed -- I shouldn't read your report here as saying that you're opposed to intrinsic motivation?
MS. KOURY: Objection. Argumentative, vague.
BY MR. ROSENBAUM:
Q Or should I?
MS. KOURY: Same objections.
THE WITNESS: I think that intrinsic motivation in the first place is very, very difficult to measure. Because you have to ask people, and it's hard to know whether they're really intrinsically motivated or not or relative to someone else. So it's, in the first place, difficult to measure it. But secondly, even if you find a correlation -- and I think that there are consistent correlations between measures of intrinsic motivation and achievement, but we can be less sure about the causal connection. So I would make that distinction.
I would also say, in favor of intrinsic motivation, that it is a wonderful thing when it happens, because people that love their work often put huge amounts of efforts into it, and sometimes that can be even more important than extrinsic motivation. But in order to recommend a program, I think there's some causal uncertainties about it. But it -- both kinds need to be taken into consideration.
Forgive me for that long answer.
BY MR. ROSENBAUM:
Q No, no. I appreciate it.
Does the California accountability system -- do you know, sir, if it has provisions for extrinsic motivation?
A Well, aside from what we've mentioned about publicizing the test scores, I think that that would be one example.
Q Are you aware of any others?
A No.
Q Okay. Did you pay your son to get good grades?
MS. KOURY: Objection. It goes beyond the -- calls for speculation beyond this expert's opinions.
THE WITNESS: I think -- I don't think I ever gave him money to get good grades.
BY MR. ROSENBAUM:
Q Okay. Maybe you just answered this question. Not just answered, but maybe you just previously answered this question.
Do you have a view as to whether any of plaintiffs' experts oppose the use of incentives as part of an accountability system?
MS. KOURY: Asked and answered, calls for speculation.
THE WITNESS: I don't know their views on that point.
BY MR. ROSENBAUM:
Q Or sanctions?
MS. KOURY: Same objections.
THE WITNESS: I don't remember reading about that.
BY MR. ROSENBAUM:
Q Okay. Do you -- the Chicago study that you mentioned --
A Excuse me. I sometimes think of things after. I do remember at least Jeanne Oakes had some reservations about -- I think what she called motivational factors in contrast to what she was advocating. So I take that as at least some reservation by one expert about motivation. I don't know whether she made it extrinsic or intrinsic in mind.
Q What did you understand her to mean?
A In connection with this point?
Q Yeah.
A I think she was contrasting what she was advocating with a point of view that would be extrinsic
motivation or possibly extrinsic motivation and saying that we could not rely upon motivation, but we had to rely on regulation.

Q Okay. Where in her report does she say that?

MS. KOURY: Calls for speculation, since he doesn't have the report in front of him.

BY MR. ROSENBAUM:

Q I'm glad to put the report in front of you.

But are you confident that's her position?

MS. KOURY: Argumentative.

THE WITNESS: Well, it's -- it's some months ago that I read it. So it could be that my memory is fallible. I thought I remembered some passage in there.

BY MR. ROSENBAUM:

Q Okay. The Chicago study that you referred to -- do you see that on Page 14?

A Yes.

Q Then it carries over to Page 15; is that right?

A Yes.

Q Okay. Do you have any concerns -- are you familiar with -- strike that.

Is it part of the California accountability system, sir, that students who lag behind national -- or I'll say state grade levels are given the choice of being retained in a grade or succeeding in an

intensive academic summer school program, as you utilize that phrase -- those phrases in your report?


BY MR. ROSENBAUM:

Q Okay. Do you know if any school in California has a program or policy such that students who lag behind national or state grade levels are given a choice of being retained in grade or succeeding in an intensive academic summer school program?


THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q Do you have any concerns about utilizing the Chicago study that you're referring to for purposes of analyzing California's accountability system?

MS. KOURY: Overbroad, vague.

THE WITNESS: Your question started out with do I have any reservations?

BY MR. ROSENBAUM:

Q Yeah.

A Yes, I would have reservations.

Q What would those reservations be?

A Because California is not the same as Chicago.

privately-governed schools?


THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q Do you know if the California accountability system provides for teacher discretion over teaching methods?

A I think that the -- the new legislation shifts more -- it does provide some autonomy and discretion on the part of districts, schools and teachers.

Q Which new legislation are you talking about?

A The accountability legislation.

Q And give me the basis of your answer, please.

A Because I think it shifts the -- since we're talking about the division of labor, meaning that the State of California, as we've talked about it, with the various entities involved, the Governor, the Legislature and the Department of Education, are taking more responsibility for setting goals and setting standards and measuring them and monitoring them, publicizing the degree to which they're attained, and this has the effect, in my opinion, of leaving more autonomy and discretion to local districts and schools to --

Q How -- sorry, go ahead.
A To emphasize more how to accomplish the
standards.
Q Your view is that the California -- the
legislation that created the California accountability
system enlarged teacher discretion over teaching methods
from what it previously was?
MS. KOURY: Objection to the extent that
mischaracterizes his testimony.
BY MR. ROSENBAUM:
Q I don't mean to characterize your testimony. I
just want to know if that's your position.
A I think it encourages that division of labor
that I've described.
Q Okay. Well, maybe you just answered that, but
is it your testimony that it increases teacher
discretion over teaching methods?
MS. KOURY: Objection to the extent it
mischaracterizes his testimony. It's also vague.
THE WITNESS: I think that the California
legislation reflects the national tendency these days
for people in governing positions to set standards and
leave more and more control over operations, including
teaching methods, to local decision making.
BY MR. ROSENBAUM:
Q Are you opposed to restricting teacher
discretion over teaching methods?
MS. KOURY: Objection. Incomplete hypothetical.
Sorry, were you finished?
BY MR. ROSENBAUM:
Q Do you know the practices of Los Angeles
Unified School District with respect to teaching
reading?
MS. KOURY: Objection. Vague and ambiguous and
overbroad, calls for speculation.
THE WITNESS: I haven't made a specific study of
that.
BY MR. ROSENBAUM:
Q Have you ever looked at a California School
Report Card?
A Are you referring to the -- well, never mind.
THE WITNESS: I may -- I don't specifically
remember doing that.
BY MR. ROSENBAUM:
Q Okay.
MR. HAJELA: Mark, can I ask one question so we
have --
MR. ROSENBAUM: Not quite. Not quite. I'm sorry,
I just want to --
MR. HAJELA: That's fine.
MR. ROSENBAUM: -- finish this up.
Q Let me ask you, sir, on Page 15 -- see the
sentence -- again, you read as much as you'd like to.
I'm looking at the last sentence in Paragraph
1. What -- "They had had extensive testing, school
report cards, high school exit examinations, and
consequences for school staff."
A Do you see that sentence?
THE WITNESS: "Extensive" generally means -- and I
think it meant in this case as well -- that more grade
levels or even all grade levels were tested and all
major subjects were tested.
BY MR. ROSENBAUM:
Q Okay. And what did you mean by consequences
for school staff?
A Among other things, this might mean that the
publication of the test scores would be gratifying to
those that had high scores and had made good gains, that
in some cases they would be threatened by reconstitution
or replacement in the staff, that they might be -- the
students might be allowed to go to other schools in the
area or that the school might be offered to be
chartered.
MR. ROSENBAUM: Okay. I think we're at the
breaking point.
Q Can I ask you to come back after lunch and --
MR. HAJELA: Sure.
MR. ROSENBAUM: This is the time we said we'd take
our break.
Q You doing all right?
A Yes, thank you.
MS. KOURY: Off the record?
(Lunch recess taken from 12:11 p.m. to
1:24 p.m.)
Q: You doing okay, Doctor?
A: I am. Thank you.
Q: Could you do me a favor? Could you take a look, please, at Page 44 of Exhibit 1, your report.
A: I have it.
Q: Tell me what that is. That's Table 1, percentages of students meeting State and national proficiency standards for eighth grade mathematics; is that right?
A: That's the title of the table.
Q: Okay.
A: And in a sense, I think it conveys the meaning.
Q: Sorry? What?
A: I think it conveys the meaning.
Q: Okay. How are -- the states go from Connecticut, at the top, to Louisiana, at the bottom?
A: Yes.
Q: Tell me what that order means.
A: Well, they're actually in order of the national, which is in the second numerical column.
Q: Okay.
A: So you see Connecticut has a 34, then Massachusetts, and they decline as you go down the table.
Q: Okay.
A: It could be ordered in any way, but that enables you to compare states with respect to national assessment scores.
Q: Why did you choose to put them that way? Or did you choose to put them in that way?
A: I don't -- I think they may have been originally reported that way, but I think it's a reasonable way to report it, because you want to know which states did well and which states did poorly, and it makes it more visible that way.
Q: And the states that did well at the top and states did poorly at the bottom? Am I reading that right?
A: Yeah.
Q: Let me ask you, sir, to look at Page 13 of your report.
A: I'm there.
Q: Okay. The Number 6 says, "Statewide student identification system under development."
A: Yes.
Q: Do you know to what extent, if any, California has a statewide student identification system?
A: No.
Q: Okay. Have you made any inquiry to find out?
make decisions about the delivery of programs, selection of resources and have a lot of flexibility on what they can do.

Q  Okay. And what in Russell's report causes you to believe that he takes an opposite point of view?

A  I think that he is calling for more intense regulations of -- along with the general tenor of the plaintiff's side, of -- let me start that sentence over again.

I think that he is at least sympathetic to the idea of the general plaintiff position that heavy detailed regulation of operations would be desirable. And I think that that might come at the expense of outcome. And as I recall, too, that he even may make that distinction.

Q  Okay. Incidentally, do you -- when you say "autonomous," do you mean complete autonomy, absolute autonomy?

MS. KOURY:  Vague.

THE WITNESS:  No.

BY MR. ROSENBAUM:

Q  What do you mean?

A  Well, I think that they have to operate within the legal constraints and the constraints of the -- let's call it a state. Remember, I'm referring to three entities there.

Q  I don't know what that means.

A  The Legislature, the State Department of Education, and the school board.

Q  Well --

A  The Governor.

Q  I'm sorry, go ahead.

A  So you have the -- you have to operate within those constraints, and we have to be sure to follow civil rights procedures and not deny students entry into the school, things of that nature.

But aside -- within that framework, there are a lot of decisions that could be made about how to teach, what to teach, what textbooks to use, how much homework to assign, whether or not to have summer school and so on. And those are -- schools that have that -- have those options I would call more having a greater degree of autonomy.

Q  Okay. And tell me, sir, specifically with respect to Russell, where does he take a different position with respect to autonomy over operations?

MS. KOURY:  Objection. Asked and answered.

THE WITNESS:  I need to go through his report in detail.

Q  Okay. And incidentally, Doctor, under the statute and regulations that define California's accountability system, are schools autonomous over personnel, operations and teaching methods, as you use those phrases on Page 16 of Exhibit 1?


THE WITNESS:  I don't know the degree to which they are autonomous with respect to the things you mentioned.

BY MR. ROSENBAUM:

Q  Have you made any investigation or inquiry to find out?

A  No.

MS. KOURY:  Same objection.

THE WITNESS:  Sorry.

BY MR. ROSENBAUM:

Q  Go ahead, sir.

A  (Witness reviews documents.)

THE WITNESS:  May I have that question back?

(The record was read as follows:

"And tell me, sir, specifically with respect to Russell, where does he take a different position with respect to autonomy over operations?"

THE WITNESS:  I can give you one instance that I mention in my own report that might save us some time.\)
BY MR. ROSENBAUM:

Q. Well, I want you to answer as fully and completely as you can.

A. Well, without rereading the entire report, I can give you one example that would be helpful, and then I can go through the report as well.

Q. Sure.

A. It's a fairly long report.

On Page 34 of my report. I quote Russell -- maybe I ought to give you a chance to find it.

MS. KOURY: Hmm-hmm.

THE WITNESS: It's really the first sentence. "My main argument in this report is that California's accountability system, because it fails to measure inputs that determine the outputs it does measure, cannot provide information that will allow the State to exercise leadership required to provide all students with the educational opportunities they are entitled to."

BY MR. ROSENBAUM:

Q. Okay. How does that, in your mind, sir, demonstrate that Russell is opposed to the view that successful schools are autonomous over their operations?

MS. KOURY: Objection to the extent it mischaracterizes his prior testimony.

THE WITNESS: I may have even misunderstood the question.

BY MR. ROSENBAUM:

Q. Well, let me -- let's go back. You said --

MS. KOURY: I don't think he was finished with his answer.

BY MR. ROSENBAUM:

Q. I'm sorry, did you finish?

A. I think I'm all right.

Q. You write, at Page 16 of your report, "Points 2 and 3, contrary to plaintiff experts, establish that successful schools are autonomous over personnel, operations and teaching methods"; is that right?

A. Yes.

Q. And you told me that one of the experts whom you're referring to is Russell.

A. Yes.

Q. Is that right?

A. Yes.

Q. All right. I want to know how Russell, in his report, takes a position contrary to the position that successful schools are autonomous over operations.


THE WITNESS: That also includes research that I've read.

BY MR. ROSENBAUM:

Q. Okay. And do you regard that as curtailing the autonomy of schools over personnel, operations and teaching methods?


THE WITNESS: Well, I -- when you say the words that followed over, may not affect those directly, but it could conceivably affect the selection of instructional materials.

BY MR. ROSENBAUM:

Q. Well, do you have an opinion, sir, whether or
not the California accountability system reduces the
autonomy of schools over personnel, operations and
teaching methods with respect to the selection of
textbooks?
MS. KOURY: Objection. Vague and overbroad. It's
also been asked and answered.
Go ahead.
THE WITNESS: I think to the extent to which
textbooks are limited in the choices that can be made
may also have effects -- not only in the choices that
could be made, obviously, but it could affect the
teaching methods, because sometimes a particular
textbook might require one instructional method over
another.
BY MR. ROSENBAUM:
Q   Okay. Do you oppose that?
THE WITNESS: All these things have cost and
benefits. And I think that local autonomy can be very,
very valuable. So if you subscribe to the sorts of
things, then there is a sacrifice to local discretion,
and which I think is a valuable thing to have within a
school or a district.
BY MR. ROSENBAUM:
Q   If you've answered my question just tell me,
sir, but I'm asking you: Do you oppose the -- what the
California accountability system requires with respect
to the selection of textbooks as reducing the autonomy
of schools?
MS. KOURY: Objection. Asked and answered. He
just testified about that.
MR. ROSENBAUM: He hasn't answered it.
Q   Go ahead.
A   I see this as, not opposition so much, but
seeing it as a cost to what you just described, and that
cost is local autonomy. So on those grounds I would
have reservations about it.
Q   Do you think the cost -- maybe you did just
answer.
A   Do you think the costs outweigh the benefits?
MS. KOURY: Objection. Asked and answered.
THE WITNESS: I think that it is -- would be very
difficult to ascertain both the cost and the benefits.
BY MR. ROSENBAUM:
Q   Why is that?
A   Because I think that a large, detailed and
complicated, expensive study would have to be made to
estimate the monetary costs, the cost of possible
psychological impairment, morale in the school district,
things of this nature.
Q   I don't remember that in his report.
THE WITNESS: I have the impression that he would -- excuse me. Maybe
I ought to have that question again.
MR. ROSENBAUM: Sure. Go ahead.
(Record read.)
BY MR. ROSENBAUM:
Q   I don't want you guessing. I want you to
follow Ms. Koury's admonition as to how to answer the
question.
MS. KOURY: Calls for speculation.
A   Answer to the extent that you have a basis for
that, having read his report. Go ahead.
THE WITNESS: I don't remember an explicit
description.
BY MR. ROSENBAUM:
Q   How about Mr. Mintrop? Does he -- does he set
out a specific bureaucratic regulation?
MS. KOURY: Objection. Vague, calls for
speculation.
BY MR. ROSENBAUM:
Q   Can you tell me, sir, does Mr. Russell advocate
a particular bureaucratic regulation or set of
bureaucratic regulations?
MS. KOURY: Objection -- I'm sorry, were you done?
Objection. Vague, ambiguous, calls for
speculation.
THE WITNESS: I don't remember that in his report.
I have the impression that he would -- excuse me. Maybe
I ought to have that question again.
MR. ROSENBAUM: Sure. Go ahead.
(Record read.)
BY MR. ROSENBAUM:
Q   Or set of regulations?
A   Well, I'm not sure I would call them
regulations, in the sense that it would be ready for
legislative enactment, but I do think that he calls for
the inspectorate system, which would be a form of
regulation or could be considered to be a form of
regulation.
THE WITNESS: Your testimony is that Mintrop specifically
called for the inspectorate system, as utilized in Great
Britain?
MS. KOURY: Objection. Mischaracterizes his
testimony, or to the extent it does. His testimony is
what it is. I'm not sure that that was a question.
BY MR. ROSENBAUM:
Q   Is that your testimony, sir, that, based on
your reading of the Mintrop report, that he specifically
calls for the institution of the inspectorate system in
California, as used in England?
MS. KOURY: It's also argumentative and asked and
answered.
A   Go ahead.
THE WITNESS: I don't think that he recommends
exactly the English system, because obviously, there are
historical precedents, laws and all those other sorts of
things, but I think that he does recommend something
like the English inspectorate.

BY MR. ROSENBAUM:
Q Tell me -- I want to know fully, sir, what you
think he recommends.

WHAT'S THE SYSTEM OR SET OF BUREAUCRATIC
REGULATIONS OR THE BUREAUCRACY THAT, UPON YOUR READING
OF THE MINTROP REPORT, YOU STATE THAT HE RECOMMENDED?
MS. KOURY: Objection. It calls for speculation.

It's asked and answered.

He's already testified about this, not only
today, but yesterday, but go ahead, repeat your
testimony.

THE WITNESS: I think he's recommending a system of
bureaucratic regulations that would be brought about by
 inspecting the schools with respect to specific
operational requirements. If we needed details on that,
I would need to look through the whole report again.

BY MR. ROSENBAUM:
Q Sure.

MR. ROSENBAUM: Let me mark as Exhibit 3 to this
deposition a document captioned of this case, titled
expert witness declaration of Heinrich Mintrop, Ph.D.
Have it marked and supply counsel with a copy of it and
ask that it be placed in front of the witness, please.

(Plaintiff's Exhibit 3 was marked for
identification by the court reporter.)

BY MR. ROSENBAUM:
Q I'm just going to have you identify it, then
come back to something.
A All right.
Q Okay.
A This is the expert witness declaration of
Heinrich Mintrop, Ph.D.
Q That's the report you're familiar with?
A Yes.
Q And it's been marked by the reporter as Exhibit
3?
A Yes, it is.
Q Go back to the Russell report, please.
A Any other example besides the examples that you
provided me that demonstrate to your satisfaction that
Russell takes a contrary view to Points 2 and 3 that you
state establish that successful schools are autonomous
over personnel, operations and teaching methods?

MS. KOURY: That he can think of, as he sits here
right now, having reviewed it for a few minutes?
MR. ROSENBAUM: No, that's really an unfair
characterization, Vanessa. As I told him, he can take
as much time as he wants.

VANESSA.

BY MR. ROSENBAUM:
Q And I want to repeat that again, sir. You take
all the time you need. It's not a few minutes. You can
do it. We've got three more days, and we can come back
on Monday. You take as much time as you need to find
the examples that you relied upon.

MS. KOURY: Beyond what's cited in your report.

MR. ROSENBAUM: No. That's not my question.

THE WITNESS: Okay. I think I understand your
question.

BY MR. ROSENBAUM:
Q Thank you.
A May I clarify one thing?
Q Sure.
A For now we're going to be looking only at the
Russell report.
Q For right now.
A (Witness reviews documents.)
Q Another question. May I mark this, so that I
can come back to it easily?
Q Sure. I am -- unless you have an objection,
(Witness reviews documents.)

Q   Doctor, what page are you on?
A   I'm on Page Roman XX.
Q   Okay. I'd be pleased to have you cite me what examples you've found so far.
A   Did you take notes during your review?
Q   I did.
A   How many pages?
Q   Two.
A   Well, I should say a page and a half.
Q   That doesn't -- part of the first page has some notes from earlier.
A   I'm going to let you, obviously, look at them, but I'd like to have those marked as Exhibit 4, please.

BY MR. ROSENBAUM:
Q   Go ahead.

A   And you want examples of Points 2 and 3, which, just to remind myself, is where he -- or Dr. Russell is contrary to advocating the principle of school autonomy over personnel and operations and teachers' discretion over teaching methods.

Q   Yeah.
A   And just for the record, why don't you define what you meant by "autonomous" on Page 16 of your report.

MS. KOURY: That was asked and answered.
MR. ROSENBAUM: It may have been. If you represent it was, I'm glad not to repeat that.
MS. KOURY: I'll represent that it was.
MR. ROSENBAUM: Okay.
MS. KOURY: If I'm wrong, you're welcome to ask it again later.
MR. ROSENBAUM: Okay.
Q   Go ahead, Doctor.
A   With which question?
Q   You don't need to -- I take Ms. Koury's representation.
A   Why don't you give me the examples that you found in the review -- it's 2:31 -- as to the review that you conducted.
Q   Okay. Page IV, at the center or middle of the page, Page -- these are all Roman numerals.
A   Page VI.
Q   Can you tell me -- Page IV -- Page Roman numeral IV, and where are you saying, sir? Why don't

THE WITNESS: All right.

BY MR. ROSENBAUM:
Q   Go ahead.
A   I need to find it exactly.
Q   Oh, I'm sorry.
A   All right. The first mention is the first sentence in the last paragraph, "A system like California's, which ranks rewards and punishes schools based upon outcomes without requiring and assisting them to provide quality inputs, is not only extremely limited in terms of its ability to direct positive change, it is damaging in and of itself."
Q   Okay. Thank you.
A   And the next sentence -- actually, the next two sentences also.
Q   Okay.
A   I'll read those. "Such a" -- or should I?
Q   It's up to Ms. Koury, but you -- I'll take your representation it's the next two sentences.
MS. KOURY: That's fine.
THE WITNESS: Okay. The next is on VII, near the top, and let me identify it more precisely for you.
(Witness reviews documents.)
That's the first full sentence.
BY MR. ROSENBAUM:
California go without the factors that matter most in improving their academic, social and work-related skills and knowledge.

Q Okay.

A And then the last paragraph on that page, four lines up from the bottom, "Several other studies have also shown that the quality of instruction that students experience impacts their learning. When students are repeatedly exposed to low quality teaching, their low—"their learning suffers. The State knows this.

The State also knows which schools have the highest percentage of uncredentialed teachers. That is schools—going on to the next page—"where low quality teaching is prevalent."

And then on the third line on Page IX, the sentence beginning, "In this instance, the State knows that a particular factor contributes to failure. It even knows where that failure exists, but the system is set up so that this information is not valued and is effectively ignored."

Q Okay.

A Actually, the last sentence of that paragraph too, which continues, "Furthermore, unlike uncredentialed teachers, most factors that impair student learning are not even measured by the State."

and then examples are given, inadequate facilities, textbook unavailability, et cetera. Next one is on Page IX.

Q Do you have the cites on your notes?

A They’re rough cites about in what part of the page, like top, middle and bottom.

Q Do you have words there or--

A I took some words from the sentence to remind me which sentence--

Q Can I just take a look at it, please?

A Sure.

Q That’s fine. We can just keep this as an exhibit.

A All right. May I get those notes back?

Q Sure. I mean, they’re Exhibit 4, and at some point we can make a copy, and they’re going to be attached to your deposition.

A Okay.

MS. KOURY: I’m going to object to the extent that those notes are used to answer his questions, since those are notes, not his testimony about the specific examples he was purporting to give.

BY MR. ROSENBAUM:

Q Okay. Dr. Walberg, have you—have you conducted any inquiry to determine whether or not there

and also the next sentence, "By requiring all schools to consider the relationship between inputs and outputs, inputs are more likely to occur in low as well as high performance schools."

Q Okay.

A That’s all I have for that page.

Q Okay. Thank you.

A Forgive me. It’s the last partial sentence, which is on the last line that begins with "without a full understanding of the factors that influence the final figures, whether they be the financial bottom line, the tally of judging scores or summary of test scores desirable, high performance numbers can be the product of undesirable practices."

Q Okay.

A And the next sentence, "Little light is shed on the cause of undesirable outcomes."

Q Okay.

A And then also on page Roman numeral VIII. This is the first full paragraph, "Because the system does not require schools to be accountable for adequately providing the inputs that will allow children to succeed," and then there’s mentioning of various factors, ‘and because the State has no means to assess, let alone address schools’ input needs, many students of
are any bureaucratic regulations that now exist as a
result of the California accountability system, such
that their costs outweigh their benefits, as you've used
those terms?
A   No.
Q   Okay. Do you -- have you conducted any
analysis to determine whether any of plaintiffs' experts
recommendations would supplant existing bureaucratic
regulations, so as to be more effective and cost
effective than existing regulations?
MS. KOURY: Objection. Overbroad, vague.
THE WITNESS: Your question began with have I
conducted any studies?
BY MR. ROSENBAUM:
Q   Yeah.
A   Not --
MS. KOURY: Sorry, go ahead.
THE WITNESS: Not explicit studies, but I am aware
of the general tenor of their reports.
BY MR. ROSENBAUM:
Q   Okay. But -- maybe you just answered it. I
don't want to belabor it.
A   Have you specifically looked into the question
whether or not any of the recommendations of plaintiffs'
experts would supplant existing bureaucratic
regulations, so as to be more effective and cost
effective than existing regulations?
MS. KOURY: Objection. Again, vague and ambiguous
and overbroad.
THE WITNESS: I don't know.
BY MR. ROSENBAUM:
Q You don't know what?
A I don't know whether the plaintiff experts have
substituted one set of -- if I understood your question,
are suggesting that the regulations that they're
suggesting would supplant existing regulations.
Q You haven't looked specifically into that
question?
A I'm sorry?
Q You haven't looked specifically into that
question?
MS. KOURY: Objection to the extent that
mischaracterizes his question.
THE WITNESS: No.
BY MR. ROSENBAUM:
Q Do you know how the State -- do you know
whether the State now monitors textbooks in schools?
MS. KOURY: Objection. Asked and answered several
times.
MR. ROSENBAUM: I think you're right. Withdraw

Q Is one of Mr. Russell's criticisms that the
California accountability system reduces the autonomy of
teachers with respect to curriculum and teaching
techniques?
MS. KOURY: Calls for speculation, the document --
or Mr. Russell's report speaks for itself. To the
extent that you're asking his opinion about those
conclusions is a separate question.
THE WITNESS: May I have that question again?
BY MR. ROSENBAUM:
Q   Sure.

Does -- is Russell critical of California's
accountability system for limiting teacher autonomy in
curriculum and teaching techniques?
THE WITNESS: Does he criticize the California
system for not regulating teaching methods/practices?
BY MR. ROSENBAUM:
Q   No.

Does he criticize the California accountability
system as reducing the autonomy of teachers with respect
to their teaching and curriculum techniques?
THE WITNESS: Well, I think in one way he does.
Because he speaks about narrow -- problems of narrow
testing.
BY MR. ROSENBAUM:
Q   Okay.
A There may be other instances, too, that I can't
bring to mind.
Q   Okay. Did you mention that in your report?
A I think that I did, but I need to go over
carefully to be sure.
Q   It would be your practice to mention that in
your report?
THE WITNESS: Well, if I -- if I was looking at
another scholar's report or another expert's report, I
would -- I would criticize things that I think are
inappropriate or ill-founded.
BY MR. ROSENBAUM:
Q   And you think that's inappropriate and
ill-founded?
THE WITNESS: And the "it" refers to?
BY MR. ROSENBAUM:
Q Russell's criticism of the California
accountability system as limiting teacher autonomy and
curriculum and teaching techniques.

MS. KOURY: Objection. Mischaracterizes his testimony.

I think his answer was not specifically the way you worded it.

MR. ROSENBAUM: Just make your objection, Counsel.

THE WITNESS: I think he criticizes the California accountability system misguidedly for narrowing the curriculum to things that can be measured on tests.

BY MR. ROSENBAUM:

Q Okay. My question's a little bit different. So if I'm not being clear, I want to do better. Does Russell criticize the California accountability system for reducing teacher autonomy when it comes to curriculum and curriculum choices and teaching method choices?

A I think I understand your question. My answer is the same. But may I express it in my own words --

Q Sure.

A -- to be sure I understand?

Q Sure.

A I think he has reservations about an outcome-based system and that, particularly, he has reservations about the tests used in California, particularly the SAT 9 and other proposed tests, and he in that -- and that's -- I think one of the reasons for it is he thinks it impairs or narrows the teacher's autonomy to choose teaching methods and textbooks to those that can be measured in tests.

Q Okay. And you think that's ill-founded?

A I don't think he's made a strong case for it, and I don't agree with him.

Q Have you undertaken any analysis to determine whether or not those practices exist?

MS. KOURY: Vague.

THE WITNESS: In California?

BY MR. ROSENBAUM:

Q Yeah.

A No.

Q Do you know if anybody has?

A Well, I think Mr. Russell did some analysis along those lines.

Q Besides Mr. Russell?

A Well, and aside from the things that we've already talked about and the independent analyses of the California testing and accountability system, I don't know of anything else.

Q Did the independent analyses that you're referencing -- did they specifically look into the question about whether or not one consequence of the system is the narrowing of the curriculum?


THE WITNESS: I think that they assume that a certain narrowing would be constructive, because the curriculum would be focused on what leaders in the state felt was most important for students to learn.

BY MR. ROSENBAUM:

Q And you think that's what Russell's objecting to?

A I think his worry is more whether these things can be tested with regular standardized tests, particularly those that are used in California.

Q When you say "these things," what do you mean by that?

A These what?

Q When you say "these things," what do you mean by that?

A The standards, attain the standard proficiency levels.

Q You are aware that there are emergency credentialed teachers in "K" through 12 public schools in California?

MS. KOURY: Asked and answered.

MR. ROSENBAUM: I know it is. It's just a predicate question.

THE WITNESS: I didn't hear you.

BY MR. ROSENBAUM:

Q You're aware that --

A I didn't hear your response to --

Q I was just being --

MS. KOURY: Doesn't matter.

BY MR. ROSENBAUM:

Q I was just saying -- we have wasted more --

A Yes.

Q Do you have an opinion, Doctor, as to whether or not the hiring of those teachers is an exercise of -- strike that.

Q Do you have an opinion as to whether or not the hiring of emergency credentialed teachers in "K" through 12 public schools in California is a function of those schools exercising autonomy, as you've defined that word?

MS. KOURY: Objection. Vague, calls for
speculation beyond this expert's opinions.
2  THE WITNESS: I'm going to restate your question to
3  be sure that I understand it.
4  You're asking me whether the schools have
5  chosen to select uncredentialed teachers?
6  BY MR. ROSENBAUM:
7  Q  You gave me a definition of "autonomy."
8  A  Yes.
9  Q  And I'm saying, is that an example of the
10  exercise of autonomy, when schools choose to hire
11  emergency credentialed teachers?
12  MS. KOURY: Objection. Vague, calls for
13  speculation beyond this expert's opinions.
14  THE WITNESS: I think it can be, actually, in some
15  cases constructive, and in other cases it can be
16  unconstructive. I think it's not a particularly good
17  example, because actually, it doesn't follow what the
18  legislation would like. But I'm also aware that some
19  uncredentialed teachers can do quite well in schools.
20  BY MR. ROSENBAUM:
21  Q  But that's not my question.
22  My question is: Do you have an opinion as to
23  when -- whether it's good or bad, that's not my
24  question.
25  A  I see.

Q  My question is: With all the emergency
credentialed teachers who are hired in "K" through 12
public schools -- do you think all their hirings is a
reflection of schools exercising autonomy, as you've
defined that word?
MS. KOURY: Objection. Vague, calls for
speculation beyond this expert's opinions.
THE WITNESS: I don't know.
BY MR. ROSENBAUM:
Q  Have you made any inquiry to find out?
A  (No audible response)
Q  Do you know what percentage of emergency
credentialed teachers hired in the "K" through 12 public
education system in California is an exercise of schools
autonomy, as you've defined that word?
MS. KOURY: Objection. Vague, overbroad, calls for
speculation beyond this expert's opinions.
THE WITNESS: I don't know.
BY MR. ROSENBAUM:
Q  Okay.
A  Mr. Rosenbaum, if you're pausing for a minute,
I think I might like a short break.
Q  I'm glad to give you a break. I just have one
more question in this series.
A  Fine.

Q  But if you're uncomfortable, take a --
A  No, go ahead.
Q  Okay. Same question, sir.
Do you believe that in schools in California --
"K" through 12 public schools in California, where
teachers cannot assign textbooks to students because of
their unavailability, that's a function of schools
exercising autonomy, as you use that word?
MS. KOURY: Objection. Vague, overbroad,
argumentative, calls for speculation beyond this
expert's opinions.
THE WITNESS: I don't understand the question.
BY MR. ROSENBAUM:
Q  Let's assume there's a school in California
where kids don't have -- where teachers cannot assign
textbooks to their kids because they're not available,
o.kay? You with me so far?
A  You mean there are no textbooks available?
Q  There are no textbooks available for their
students in California -- not in California -- strike
that -- there are no textbooks available for their
students in the particular school where they're
teaching, okay? So their kids don't have textbooks.
My question to you is: Do you consider that an
example of those schools exercising autonomy, as you've
defined the word "autonomy"?
MS. KOURY: Objection. Incomplete hypothetical,
calls for speculation beyond this expert's opinions,
it's overbroad and vague.
If you have an opinion, go ahead.
THE WITNESS: Well, I'd have to examine that
particular school, study it and find out if --
BY MR. ROSENBAUM:
Q  What would you look for?
MS. KOURY: Objection. Incomplete hypothetical.
THE WITNESS: I think I would go in with an open
mind, but among the things -- hypotheses that I might
entertain is maybe it's all very progressive
computer-assisted instruction, and so that might be --
that could conceivably be a very good thing.
It's also -- several other possibilities are
that the people within that school have decided to pay
themselves very, very high salaries and deny textbooks
to children. In which case I don't think that's in the
interest of the children. So there are a great variety
of things that could happen, and I think that I would
need to make a study of it to determine whether it was
an autonomous choice and whether it was a reasonable
choice.
BY MR. ROSENBAUM:
Q   What would the -- I'm not interested in the reasonable choice part right now. What I'm interested in is -- what would be the criteria that you would apply to decide whether or not it was an autonomous choice?  

BY MR. ROSENBAUM:  All right. Let's take our break with an open mind to find out.  

Q   Okay.  

By MR. ROSENBAUM:  I'd actually like to go into the school a little bit hypothetical, and as I think I might have said earlier, I'd actually like to go into the school with an open mind to find out.  

THE WITNESS:  Well, I might not, in one sense, think that I wanted to make this the primary area of expertise -- or not expertise, but of a study for me to do. I would tend to look at whether the students in the school have gained on tests that tap the degree to which they've attained the standards.  

BY MR. ROSENBAUM:  Okay. That's not my question.   

My question is: What criteria, if any, would you apply to determine whether or not there was a -- this was an example of an exercise of autonomy?  

MS. KOURY:  To the extent that you cut him off while he was answering that question, it's asked and answered, but it's still an incomplete hypothetical, calls for speculation.  

BY MR. ROSENBAUM:  Go ahead.  

A   Well, I'm going to go back to what I said before, if I may.  

Q   You can answer it any way you want. I'm just entitled to a complete answer.  

BY MR. ROSENBAUM:  I would look at -- I would look at that and find out whether the students are achieving or not. And if they were achieving, I would take as a hypothesis there must be good things about -- I mean, they were achieving well, I would take it as a hypothesis there must be good things here.  

And one of the things I might entertain as a hypothesis is that perhaps they had more autonomy. Perhaps they had some terrific ideas. Perhaps there's some -- they chose to do these things and they didn't put a heavy emphasis or any emphasis on textbooks, they used alternative procedures.  

I do think it's a rather unusual circumstance that I've actually never personally studied. So this is a little bit hypothetical, and as I think I might have said earlier, I'd actually like to go into the school with an open mind to find out.  

Q   Okay.  

BY MR. ROSENBAUM:  All right. Let's take our break now.  

(Brief recess taken.)  

THE WITNESS:  First, if students are to meet world standards, policy makers and educators need to measure their progress and find out what works best.  

Again, look at as much you'd like. You see -- at the bottom of the page, the last paragraph. "If students are to meet world standards" -- actually, the sentence begins with the word "first." "First, if students are to meet world standards, policy makers and educators need to measure their progress and find out what works best."  

Q   Do you see that?  

BY MR. ROSENBAUM:  Yes.  

Q   Why is -- what's the basis for that statement?  

BY MR. ROSENBAUM:  Within the context of his previous answer?  

MS. KOURY:  Within the context of his previous answer?  

MR. ROSENBAUM:  Yes.  

THE WITNESS:  I think there are a number of ways. There are a number of professional journals. There is the research organization, such as the American Educational Research Association, the International
By Mr. Rosenbaum:

Q. Do you know if a part -- do you know, sir, whether a part of the California accountability system involves finding out what works best, as you use that phrase?


The Witness: I think it allows for it. I think that professionals have the capacity to be members of organizations and read the kind of books and articles journals that I had mentioned earlier.

By Mr. Rosenbaum:

Q. Do you know if that's taking place in California?

A. Well, I don't -- I have never -- I haven't given me your answer.

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visited schools here, and I haven't interviewed teachers. So I don't know the degree that California would differ from any other state.

I guess the exception there is, as I mentioned earlier, now that I think of it, I guess, yesterday, I did give talks to teachers here in California the last -- I don't know, 15 years or so. And so I was aware that there were teacher workshops and things that I was describing were available, and some at least were doing it.

Q. Do you know specifically, sir, whether or not the California accountability system is being utilized to find out what works best?


The Witness: I don't know.

By Mr. Rosenbaum:

Q. Okay. When you say, sir, at Page 17, systematic testing -- that's at the top of the page -- incidentally, did you ever make any inquiry to find out with respect to the prior question?

A. I'm sorry, I forgot what the question was.

Q. I was asking you about what works best. Do you know whether or not the California accountability system is being utilized to find out what works best, and you gave me your answer.

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system, as you understand it? Do you know?

A. Well, I've been using the term -- and I think we both have been using the term as kind of the State accountability system. But if we think broadly what teachers do, then they're certainly free to have weekly tests and things of that nature. In some ways you could say that an accountability system that emphasizes outcomes, whether they're measured once a year or more frequently, also has a tendency to encourage more frequent testing by classroom teachers using classroom tests.

Q. That's not exactly my question.

The first question is: Is there any part of the California accountability system with which you're familiar that specifically involves weekly or even more frequent examinations?

Ms. Koury: Objection. Asked and answered to the extent that he just provided the answer.

The Witness: Only in the broad sense that I just mentioned.

By Mr. Rosenbaum:

Q. Do you know if that in fact is taking place in any school in California?

A. As a consequence of the accountability system, I think there is being utilized to find out what works best, and you know whether or not the California accountability system is being utilized with respect to the prior question.

Q. What do you mean by that?

A. I think I had in mind when I wrote that that it was -- had some of the features that we talked about for a good testing program, that it was balanced, comprehensive, made an effort to test all grade levels and, as it says in the rest of the sentence, provide useful information.

Q. Okay.

A. I think what also goes along with it is the kinds of things we've been talking about, and that is that in this context, whether there's -- the testing is related to the standards.

Q. Okay. See where it says, "weekly or even more frequent examinations"? That's the next --

A. Yes.

Q. -- paragraph.

Is that part of the California accountability system as you understand it? Do you know?
reading in psychology and other fields and talking with
professionals that -- and being knowledgeable that
professional accountability is not necessarily desired
by those who are being held accountable.
And the second part --
Q Why do you think that is?
THE WITNESS: I think accountability can be
painful. It can require more effort for people to
comply with it. It may have the appearance of beingair or unfair. It can lead to misunderstandings and
strife between managers and especially professionals but
other workers. Those are some of the reasons.
BY MR. ROSENBAUM:
Q Okay. And then the second portion of that
sentence, sir? "But in education, our nation's welfare
and students' lives are at stake."
A And you want to know what I mean by that?
MS. KOURY: The basis for --
BY MR. ROSENBAUM:
Q I want to know the basis for it.
A I think I discussed that earlier this morning,
when I talked about the benefits of education.
Q Okay. Go to the last sentence in that
paragraph.

A Yes.
Q Again, feel free to contextualize it if you'd
like.
The last sentence says, "For children in
poverty and related conditions, schools provide the best
or only opportunity to rise above their circumstances."
What's your basis for that statement, sir?
A The basis of that statement is they may not
have the opportunities to -- that have been generated in
their homes and neighborhoods and communities where they
may have the possibility of being in a good school that
could help them or achieve tests that they have in the
first 18 years of life, which is achievement and other
things that schools hope to accomplish.
Q Do you think any plaintiffs' experts -- do you
have a view, sir, whether any of the plaintiffs' experts
would disagree with that statement?
MS. KOURY: Objection. Overbroad, vague, calls for
speculation.
THE WITNESS: I don't know.
BY MR. ROSENBAUM:
Q How about the sentence we went over a few
moments ago, the one that began, "Few professionals or
other workers"? Do you have a view as to whether or not
any of plaintiffs' experts disagree with that
1 statement?
2 MS. KOURY: Same objection. Vague, overbroad,
calls for speculation.
3 THE WITNESS: I don't know.
4 BY MR. ROSENBAUM:
5 Q Okay. Are you aware, sir, of any surveys
6 regarding the preferences of the public civic leaders
7 and students as to spending on education?
8 MS. KOURY: Objection. Vague, overbroad, calls for
speculation.
9 BY MR. ROSENBAUM:
10 Q It's actually compound, but my question is --
and you can break it down -- the public, civic leaders
and students. You can talk about them as a group or
separate them.
11 A You were pointing at something in my report?
12 Would it be something that I would refer to?
13 Q I just picked those words out. I'm not asking
you about the contents. I wouldn't do that.
14 MS. KOURY: Could you repeat the question, please?
15 MR. ROSENBAUM: You know what? I'll break it down.
16 Q Okay. And what studies are you referring to?
17 MS. KOURY: Same objection. Overbroad.
18 THE WITNESS: I'm not sure I can name them. I
think that the Kappan has made surveys of that nature.
And there may be other groups as well.
19 BY MR. ROSENBAUM:
20 Q K-a-p-p-a-n?
21 A Yes.
22 Q Do you know what the results of those studies
are?
23 A I don't remember them in detail.
24 Q Do you remember anything about them?
25 MS. KOURY: Calls for speculation.
26 THE WITNESS: I only have such a weak impression,
I'd rather not say.
27 BY MR. ROSENBAUM:
28 Q Okay. Do you know when those surveys were
undertaken?
29 A I think that they've been done over a period of
perhaps the last 10 or 15 years.
30 Q Do you think those studies should be given
weight those surveys should be given weight --
32 BY MR. ROSENBAUM:
33 Q -- by education theorists?
34 MS. KOURY: Vague, overbroad, calls for
speculation.
35 THE WITNESS: Well, I think education theorists
should know a lot of things, and one of the things that
they might want to know and should know about is
particularly the thing that you asked me about.
36 BY MR. ROSENBAUM:
37 Q Why is that important?
38 A I think that it's just, to be an informed
person in writing about education theory, you ought to
be acquainted with public opinion, among other things.
39 Q Just because it makes you a well-rounded person
or for any other reason?
40 MS. KOURY: Objection. Vague.
41 THE WITNESS: Well, I think education theorists
should know a lot of things, and one of the things that
they might want to know and should know about is
particularly the thing that you asked me about.
42 BY MR. ROSENBAUM:
43 Q Yeah.
44 Is there a specific reason or reasons, with
respect to educational theorists, that you think they
ought to be knowledgeable about the public's attitudes
towards, say, education spending?
45 A Is there a particular reason why they should
know?
46 Q Yeah.
47 A And that's especially aside from what you
mentioned earlier, to be a well-rounded person.
48 Q Yeah.
49 A Yes, I think there is.
50 Q What is that?
51 A I think that they are -- should be as well
informed about educational matters.
52 Q How about public officials? Do you think they
should pay attention to -- well, strike that.
53 Have there been surveys, to your knowledge,
sir -- you know, I'm not just talking about California.
54 I'm talking about anywhere in the country.
55 A That's what I'm assuming.
56 Q That's what I thought.
57 Have there been surveys, Doctor, as to public
preferences regarding availability of textbooks for
students?
58 MS. KOURY: Objection. Vague, overbroad, calls for
speculation.
59 THE WITNESS: I don't know.
BY MR. ROSENBAUM:
Q   Or conditions of facilities?
MS. KOURY:  Vague, overbroad, calls for speculation.
THE WITNESS:  I don't know.

BY MR. ROSENBAUM:
Q   Have you ever made any inquiry/investigation to determine whether such surveys exist that I referred to in my last two questions?
MS. KOURY:  Compound.
THE WITNESS:  No.

BY MR. ROSENBAUM:
Q   In Footnote 28, sir, you state, as part of that footnote, "It should be noted that the public sees some limitations on current systems of accountability in testing."

A   Yes.

Q   What's the basis for that statement, please?
A   There were a couple of items -- I don't remember what they were -- that -- and I don't remember the fractions of people that had some reservations about current accountability in testing.

Q   Do you recall what limitations you're referring to here?
A   Not offhandedly.
Q   Any reason you didn't include the specific attitudes either in the footnote or the text, why you didn't spell them out?
MS. KOURY:  Objection - Vague.
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A   Not offhandedly.
Q   Any reason you didn't include the specific attitudes either in the footnote or the text, why you didn't spell them out?
MS. KOURY:  Objection - Vague.
THE WITNESS:  Go ahead.
A Well, I don't know whether it means changing annually or changing day by day or monthly or changing into a test -- doesn't seem to be very specific. Except in the next sentence he does seem to give an example.

Q Okay. Let's assume it doesn't mean moment by moment or month by month, but that changes take place. My question to you is -- maybe you've already answered -- do you know whether that's true or false?

A No.

Q Okay. The next sentence --

A Well, I should say that I know that there have been some changes in the California testing system over the last 20 years.

Q Okay. But this sentence uses the adjective "current."

A Yes.

Q And your testimony is you don't know whether that's true or false, that sentence?

A Well, the sentence is almost self-contradictory, because it says current, but it says it's changing, and we've agreed that we're not talking about days or months. So I don't -- I'm not sure I understand that sentence.

Q Okay. Next sentence, "Recently, one of the 'key components,'" in quotation marks, "of the PSAA system, Teacher Bonuses" -- cap "T," cap "B" -- "was targeted for elimination by the Governor due to a budget shortfall, and the State Board of Education is changing vendors for the State testing system."

Now, let's break that down. What about the "teacher bonuses" part of that sentence? Is that true or false? Do you know if that's true or false?

A I don't.

Q What about the part regarding changing vendors? Do you know whether that's true or false?

A (No audible response)

Q Do you know what Proposition 13 is?

A Not exactly. I have just a general understanding of it.

Q Do you have an opinion as to what impact it's had on public education in California?

MS. KOURY: Objection. Calls for speculation beyond this expert's opinions.

THE WITNESS: I haven't explicitly studied that, so I don't want to guess about it.

BY MR. ROSENBAUM:

Q Okay. Do you know what AB 1275 is?

A No.

Q Did you ever make any inquiry to find out?

A No.
testimony.

Do you know what impact, if any, it's had on staffing classrooms in California public schools with fully-credentialed teachers?

A Not in any way that I could say as an expert opinion.

Q Okay. Are there State statutes, sir, that deal with the availability of textbooks?

MS. KOURY: Objection. Calls for speculation.

BY MR. ROSENBAUM:

Q In California.

MS. KOURY: I'm sorry. Somewhat asked and answered. Objection. Calls for speculation beyond this expert's opinions.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q Ever make any inquiry to find out?

A No.

Q Are there -- strike that. Do you have a view, sir, as to whether any of plaintiffs' experts want a complete repeal of existing legislation that sets up California's accountability system?

MS. KOURY: Objection. Calls for speculation.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q Do you have a view as to whether or not any of plaintiffs' experts support a complete dismantling of the current accountability system?

MS. KOURY: Objection. Calls for speculation.

THE WITNESS: I don't know if anyone -- any of the plaintiff experts would call for a complete dismantling.

BY MR. ROSENBAUM:

Q Do you know if any of the plaintiffs' experts call for a cessation of the administration of standards-based examinations for "K" through 12 students in public schools?

MS. KOURY: Calls for speculation.

THE WITNESS: No.

BY MR. ROSENBAUM:

Q Okay. Do you know if any of plaintiffs' experts call for -- are opposed to aligning curriculum with examinations administered to the state's public school students?

MS. KOURY: Calls for speculation. It's also vague.

Go ahead.

THE WITNESS: I don't know.

Q When is that, sir?

A I think when it would be illegal, when it would violate legislation, when it would be arbitrarily discriminatory, and if it were -- well, I said illegal, but if it were -- there were court orders against it.

Q Any other circumstances?

A Not that I can think of right now.

Q Tell me what you mean by illegal.

A Well, I think I sort of spelled it out in the last few phrases, against the law, against legislation and against court rulings.

Q Could it be against the Constitution too?

MS. KOURY: Objection. Calls for a legal conclusion, speculation.

THE WITNESS: Are we talking about California?

BY MR. ROSENBAUM:

Q Sure.

A I don't know. I don't know the California Constitution.

Q What about the United States Constitution?

MS. KOURY: Calls for a legal conclusion.

THE WITNESS: I think if it -- again, I agree, I'm not claiming to be an expert on law, nor the Constitution. But you're asking me if -- if the school officials should follow public preferences against the
United States Constitution?

BY MR. ROSENBAUM:
Q Yes.
A The answer is no.
Q Why is that?
A I consider the U.S. Constitution our founding document, and I think from it all else follows.
Q At Page 24, sir -- I'm sorry, I just want to go back to your prior answer. One more clarification, if you wouldn't mind.

When you used the phrase "arbitrarily discriminatory," what do you mean by that?

A If it were discriminatory against males or females or one ethnic group or another or it were a geographic -- people who lived in a particular geographical area. I think those are some of the examples.
Q What do you mean discriminatory against -- did you say against a racial group? I don't want to misrepresent your words.

MR. ROSENBAUM: Okay. My mistake. I substituted "racial" for "ethnic."
Q When you say discriminatory against one ethnic group or another, what did you mean by that?
A It could be the standard meanings from, say, No Child Left Behind. Examples are African-American, Hispanics or Latinos, Anglos or -- I think "racial," as the term is used, is a broader and somewhat more controversial term. "Ethnic group" is inclusive and less controversial.
Q Okay. Help me out here.
What do you mean by -- I appreciate your clarifying what you mean by ethnic. What do you mean by discriminatory against one ethnic group? How do you know if something's discriminatory against one ethnic group, based on your understanding?

MS. KOURY: Objection. Vague, overbroad. Also calls for a legal conclusion.

THE WITNESS: How do you know if a school policy is discriminatory against an ethnic group?

BY MR. ROSENBAUM:
Q I'm trying -- yeah. You gave that as an example.
A Yes.
Q And I'm trying to understand what you mean by discriminatory.
A If it abridged their opportunities or it abridged their autonomy, if it -- and again, I'm talking about legal issues here, and I want to -- I want to say that I'm not an expert on these issues.
Q Okay.
A But if it -- let me think about it for a minute.
I think I mentioned denied them opportunities, autonomy in the district, if it broke the law more frequently against that -- or it violated the law more frequently against that particular group, I think those would be some examples.
Q What do you mean by abridged?
A Lessened.
Q Okay. Doctor, I think you may have already answered this question, and if you have, just tell me that, okay?

Looking at Page 24, after your quotes -- incidentally, do you know if there are any surveys about how the public feels about Governor Davis's performance regarding "K" through 12 public education?

MS. KOURY: Overbroad, calls for speculation.
THE WITNESS: I don't know of any survey that has looked specifically at K-12 education as by Governor Davis.

BY MR. ROSENBAUM:
Q Do you think if there were such a survey, educational theorists should pay attention to that?
MS. KOURY: Objection. Incomplete hypothetical, calls for speculation.
THE WITNESS: I don't know.

BY MR. ROSENBAUM:
Q Okay. Now, directing your attention to approximately the middle of Page 24, you can contextualize as much as you'd like.
"Given such cuts, plaintiff experts cavalierly recommend radical and costly recommendations that could draw funds away from successful programs already in place, particularly standards-based reform."
A I see it.
Q Do you see that?
A   Yes.
Q   Now, put aside standards-based reform for a
moment.
Have you conducted an analysis to determine
what, if any, programs already in place are successful,
as you use that term?
A   In California?
Q   Yeah.
THE WITNESS: I haven't made an explicit study of
that, but I am aware that in every state -- and I have
no reason to believe that California's different -- that
schools vary in their effectiveness and efficiency, and
the reasons why they may be effective or efficient is
that some use more successful programs than others.

BY MR. ROSENBAUM:
Q   Okay. And do you know if anyone in the State
of California has undertaken an analysis to determine
which programs are successful?
MS. KOURY: Objection. Overbroad.
BY MR. ROSENBAUM:
Q   As you use that word. And I'm talking
about "K" through 12 public education programs.
MS. KOURY: Overbroad, calls for speculation.
THE WITNESS: Well, I am aware that there are a
great number of educational researchers in California,
and they have studied questions of quality of teaching
and things of that nature. So I think that studies have
been done here.
I can't name one, as we sit here, but I have
every reason to believe that California, being a big
state and having a number of distinguished universities
that have been interested in such problems, have studied
this to some extent.

BY MR. ROSENBAUM:
Q   Do you know how much money was spent in
California on classroom size reduction?
A   No.
Q   Do you consider classroom size reduction a
successful program?
MS. KOURY: Objection. Calls for speculation.
THE WITNESS: In California?
BY MR. ROSENBAUM:
Q   Yes.
A   I read a Rand report that was not favorable
towards the results. It didn't seem to indicate that
class size reduction had had the positive benefits that
had been hoped for.
Q   That's Brian Stecher's report?
A   I think he may have been the author.
Q   Do you regard him as a competent researcher?
MS. KOURY: Objection. Calls for speculation.
THE WITNESS: I don't know him terribly well, but I
think the Rand Corporation is a fairly well-regarded
think tank.
BY MR. ROSENBAUM:
Q   Okay. As you read the report, did you consider
the methodology that was utilized to reach the
conclusions?
A   I don't remember the report very well right now.
Q   Okay. Would you have any problems, sir, with
abolishing the classroom size reduction program in
California?
MS. KOURY: Objection. Calls for speculation
beyond this expert's opinions; also, overbroad and an
incomplete hypothetical.
THE WITNESS: No objections to that particular
legislation come to my mind, as we sit here. To
abolishing, that is to say.

BY MR. ROSENBAUM:
Q   Okay. Do you -- you have repeatedly expressed
objections to bilingual education?
MS. KOURY: Objection. Mischaracterizes his prior
testimony.
THE WITNESS: You mean in my writings?
BY MR. ROSENBAUM:
Q   Yeah.
A   I have serious reservations about bilingual
education, as it's been practiced.
Q   Okay. And do you -- would you have any
objection -- do you know how much money it would save?
MS. KOURY: Objection. Calls for speculation
beyond this expert's opinions. It's also an incomplete
hypothetical.
THE WITNESS: Not if more effective programs were
put in place.
BY MR. ROSENBAUM:
Q   You don't -- what's the question -- what's
your -- what's your answer? Your answer is that you
don't know how much it would save?
A   (No audible response)
Q   My question is: Do you know how much it would
save -- strike that.

You don't think bilingual education is
successfully improving student achievement; is that
right?

MS. KOURY: Objection. Calls for speculation
beyond this expert's opinions.
THE WITNESS: I think, by and large, bilingual
education -- or sometimes called transitional bilingual
education -- has not promoted effectively the learning
of English language learners.
BY MR. ROSENBAUM:
Q   Okay. And you also think there are more
cost-effective ways of assisting English learners to
learn English; isn't that right?
A   Yes.
MS. KOURY: Objection. Calls for speculation
beyond this expert's opinions.
THE WITNESS: Yes.
BY MR. ROSENBAUM:
Q   Okay. Would you have any objection to
abolishing bilingual education in California and
replacing it with those cost-effective methods?
MS. KOURY: Objection. Incomplete hypothetical,
calls for speculation beyond this expert's opinions.
THE WITNESS: Well, I would have some of the same
reservations that I expressed about radically changing
California policy. I would want to study it and so on.
But offhandedly, I think, as a general principle, if we
could either save money or have more effective programs,
we ought to do that.
BY MR. ROSENBAUM:
Q   Okay. And you also have expressed objection to
special education, as it's practiced in the United
States; is that right? Special education policies and
programs?
THE WITNESS: Yes.
BY MR. ROSENBAUM:
Q   Okay. And you think there are more effective
and cost-effective ways of assisting disabled children
than present special education policies and programs; is
that right?
MS. KOURY: Objection. Overbroad, calls for
speculation beyond this expert's opinions.
BY MR. ROSENBAUM:
Q   And I'm using "effective" and "cost-effective"
as you've used it throughout your report.
A    Well, I don't want to say that all special
education programs are effective, but by and large, many
of them are.
Q   Ineffective, you mean?
A    Pardon me?
Q   Ineffective.
A    Yeah, ineffective.
But I would say, on average, they've been less
effective than are desirable, and I think that other
solutions to that problem should be considered.
Q   Okay. And would you have any objection to
replacing existing special education programs in
California that are, in your judgment, ineffective and
not cost effective with other programs to assist the
disabled?
MS. KOURY: Objection. Calls for speculation
beyond this expert's opinion. It's also an incomplete
hypothetical.
THE WITNESS: If I understood your question -- I'm
going to answer fully to be sure that I understood it.
BY MR. ROSENBAUM:
Q   Sure.
A    That if we have effective or cost effective, or
both, programs for special education relative to those
that are in place now, then I would recommend new
programs.
Q   Do you know how much money that would save in
California?
1   A   No.
2   Q   On Page 25, sir, "If the state" -- I'm looking,
3      sir, at the second full paragraph.
4   "If the state were to mandate the budget for
5      textbooks and instructional media for all schools,
6      plaintiff experts argue, it would amount to a lavish and
7      unpromising experiment on 6 million California children
8      and youth, since the effects and costs are unestimated."
9      Do you see that?
10     A   Yes.
11     Q   Okay.  When you say mandate the budget, what do
12      you mean by that?
13     A   It would mean that the State would say exactly
14      how much would be spent on textbooks of a particular
15      kind.
16     Q   And using that definition, sir, which of
17      plaintiffs' experts argue for that result?  I'll restate
18      the question.
19      Do you know whether or not it's the view of
20      plaintiffs -- any of plaintiffs' experts to endorse that
21      result?
23     THE WITNESS:  I'm not sure that they have gone to
24      that extreme and stated it as explicitly as that.
25     BY MR. ROSENBAUM:
1   Q   Okay.  Are any of the recommendations of
2      plaintiffs' experts, in your judgment, incompatible with
3      the No Child Left Behind Act?
4     MS. KOURY:  Objection.  Vague, calls for
5      speculation.
6     THE WITNESS:  I think that the general thrust of
7      the -- several of the experts is to put more resources
8      into the measurement of monitoring of inputs and, to
9      some extent, that would draw time, energy and money away
10     from outcome evaluation, which is presently featured in
11      California -- state of California schools, and also, it
12      would tend to make it more difficult to enact No Child
13      Left Behind legislation, which also emphasizes outcomes.
14     BY MR. ROSENBAUM:
15     Q   Are any of the recommendations of plaintiffs'
16      experts, in your judgment, violative of the No Child
17      Left Behind Act?
18     MS. KOURY:  Objection.  Calls for a legal
19      conclusion, calls for speculation.
20     THE WITNESS:  I wouldn't use such a strong verb.
21     BY MR. ROSENBAUM:
22     Q   Okay.  Did you read all of Dr. Russell's
23      deposition?
24     A   I don't remember whether I read every word on
25      every page.
1   Q   Were you sent the entire deposition or portions
2      of it?
3     A   I don't remember.
4     MS. KOURY:  That assumes facts.
5     BY MR. ROSENBAUM:
6     Q   Were you sent Jeanne Oakes's deposition?
7     MS. KOURY:  Objection.  Assumes facts.
8     THE WITNESS:  I'm sorry, I didn't hear what you
9      said.
10    MS. KOURY:  It's okay.
11    THE WITNESS:  I don't remember receiving Jeanne
12      Oakes's deposition.
13    BY MR. ROSENBAUM:
14    Q   Or any parts of it?
15     A   No.
16     Q   No, you don't remember?
17     A   I don't remember.
18     Q   How about Mintrop?  Did you receive either all
19      of Mintrop's deposition or parts of Mintrop's
20      deposition?
21     A   I don't remember that either.
22     Q   How about Koski's deposition?
23     A   Whose?
24     Q   Bill Koski.
25     A   I don't remember it.
referring to there, do you consider any of those
requirements as interfering with local control, as
you've defined that in your report?

MS. KOURY: Objection. Vague. It's also compound.

THE WITNESS: I think that the No Child Left Behind
Act could have that effect.

BY MR. ROSENBAUM:

Q Okay. And when I said local control, that's a
synonym, in your mind, for the autonomy of local school
boards; is that right?
A And schools.
Q And schools, yeah.
A By the way, to be complete, the central office
administrators.
Q Thank you.
Can you give me the basis for that answer with
respect to those requirements? That's an inelegant
question.

What requirements are you referring to?

MS. KOURY: In that particular sentence?
MR. ROSENBAUM: In his last answer.
THE WITNESS: I need to have my answer read back.
MR. ROSENBAUM: Sure.

(The record was read as follows:

"Unlike operational mandates
preferred by plaintiffs, moreover,
California's standards-based
accountability is compatible with the
substantial requirements of the new
Federal No Child Left Behind Act.'

"Do you see that?
"A Yes.
"Q The substantial requirements
that you're referring to there, do you
consider any of those requirements as
interfering with local control, as
you've defined that in your report?
"A I think that the No Child Left
Behind Act could have that effect.")

BY MR. ROSENBAUM:

Q Tell me the basis for that answer, sir.
A I think that No Child Left Behind Act could --
may threaten the autonomy of states and districts and
schools, to some extent, because my understanding of the
act is that if schools don't conform sufficiently to
that act, there is a threat that the federal funds would
be withdrawn.

Q Okay. Could it -- could it interfere with the
autonomy of local school boards and staff and schools in
other ways besides what you've just defined?

MS. KOURY: Objection. Calls for a legal
conclusion, also an incomplete hypothetical, calls for
speculation.

THE WITNESS: I don't understand the question.

BY MR. ROSENBAUM:

Q You gave me one example of how it could
interfere with autonomy. You talked about the
possibility of withholding funds.

A Yes.
Q Are there other examples that you can think of
with respect to the substantial requirements of the No
Child Left Behind Act that, in your judgment, would
interfere with the autonomy of local school boards,
local schools and administration and staff?

MS. KOURY: Calls for speculation.

THE WITNESS: You mean would there be any other
influence of No Child Left Behind aside from withdrawing
federal funds?

BY MR. ROSENBAUM:

Q Yes. That affects the autonomy of local
entities.
A It's conceivable to me that it could.
Q And what's the basis for that answer, please?

A I think that it's going to make outcomes even
more salient than they are today, and that it will call
even more attention to that. And so it's possible that
districts and schools may need to conform more fully to
State standards and possibly, in the long-term future,
to national standards.

Q Do you find that objectionable?
THE WITNESS: I think that there's some -- as I've
said with many of these things, some cost and benefits.

BY MR. ROSENBAUM:

Q Okay. Tell me what you think the costs are,
sir.

A I think it is a cost to the American tradition
of local control of schools in many respects, and also,
we've had a tradition of State control of schools. And
to the extent that the act may be carried forward, there
is a possible threat to autonomy of schools, districts
and states.

Q Can you think of other examples besides the two
you've given me?
A Examples of?
Q How it could interfere with local -- with the
autonomy of local entities.
MS. KOURY: Objection. Calls for speculation.
THE WITNESS: Well, I could give you some hypotheticals, if that would be useful.

BY MR. ROSENBAUM:
  Q Sure.
  A We're talking about those anyway, because we're talking about what might happen in the future.
  Q Sure.
  A Well, it could be that states, California and other states, that do receive considerable federal funds, if they were sufficiently worried about it, could be even more prescriptive than they presently are with respect to local districts and schools, and they may do that with respect to either outcomes or inputs or both.
  Q Do you think, sir, that -- the reduction of the funds that we're talking about, do you think that that would have a deleterious effect on students in the public school -- "K" through 12 public school system?

MS. KOURY: Objection. Calls for speculation beyond this expert's opinions, and it's an incomplete hypothetical.

THE WITNESS: Well, I can't be sure, because at least in the past, some of the federal programs that we talked about earlier have not been all that effective, and they've been mandated from Washington. So I can't be sure that the local schools would actually be hurt by that. Certainly, it would diminish the funds for...
A Oh, yes. Yes.
Q "Violation of educators' professional discretion."
A Just let me have a chance to read the paragraph.
Q Sure.
A (Witness reviews documents.)
Okay. I've read the context, and I'm afraid I need to have the question again.
Q I just want to know what you mean by the phrase "profession discretion," as it appears on Page 26 of Exhibit 1, your report.
A I think it's explained in the paragraph following, Point 5.
Q Okay. Do you -- maybe you answered this, and if you did, just tell me.
Do you have an opinion, sir, as to whether the No Child Left Behind Act violates educators' professional discretion in any way?
MS. KOURY: Objection. Calls for speculation.
THE WITNESS: I'm not sure of that.

BY MR. ROSENBAUM:
Q Do you have an opinion as to whether or not the California accountability system, as it presently exists, violates educators' professional discretion in any way?
A I wouldn't use the term "violate."
Q Okay. What word, if any, would you substitute?
MS. KOURY: Objection: I'm sorry, I couldn't hear you, Mark.
BY MR. ROSENBAUM:
Q Do you have an opinion, Doctor, as to whether or not California's accountability system violates educators' professional discretion in any way?
A I wouldn't use the term "violate."
Q Okay. What word, if any, would you substitute?
MS. KOURY: Objection. Calls for speculation.
THE WITNESS: I need to have the question again.

MR. ROSENBAUM: Could you please read that back?
(Record read)

THE WITNESS: Only in one sense, and that is that the requirements that the plaintiff witnesses seem to want would draw attention away from teacher evaluation, teacher improvement and possible legal actions against teachers.

BY MR. ROSENBAUM:
Q What's the basis for that answer, sir?
A Knowledge of how school systems work.
Q Anything else?
A Well, aside from what I've said, I can't think of anything else.
Q What do you mean by knowledge of how school systems work?
A Well, I've been a student of education for many years, and I've visited a lot of schools and advised schools and been in litigation. So I'm -- I'm a product of the school system and done research on it. So it's been my experience that educators can't do everything.
And so sometimes it's -- as may be more broadly in human nature, that it's better for people to do a few things very well rather than trying to do everything and being mediocre at it.
Q Do you have any empirical evidence to support your conclusion that plaintiffs' expert reports could make it more difficult for superintendents and
principals to remove bad teachers?


THE WITNESS: Well, I didn't mean to say that the reports did, but in your -- I think you're saying if we enacted what they wanted to do --

BY MR. ROSENBAUM:

Q Yeah. The recommendations.

A Yeah.

No, I don't have any empirical evidence, because, obviously, they haven't -- the recommendations haven't taken place.

Q Okay. Are there any studies or analyses that you could point me to that would support your conclusion?

MS. KOURY: Objection. Asked and answered.

THE WITNESS: Only indirect studies.

BY MR. ROSENBAUM:

Q Which studies would those be?

A Those would be studies of the effects of accountability on educational achievement that suggested an emphasis on that leads to higher levels of achievement and to simultaneously try to regulate inputs would draw energies, time and money away from that into what the plaintiffs' experts would like to have.

Q Okay. Can you conceive of any circumstances by which student achievement results on the Stanford 9 could result from the lack of inputs?


THE WITNESS: Let me try to repeat the question to be sure I got it.

Can I --

BY MR. ROSENBAUM:

Q Sure.

A -- think of any circumstances in which the -- I think it'd be better to have it read again.

MR. ROSENBAUM: Sure.

THE WITNESS: Sorry.

(The record was read as follows: "Can you conceive of any circumstances, sir, by which student achievement results on the Stanford 9 could result from the lack of inputs?")

THE WITNESS: Yes.

BY MR. ROSENBAUM:

Q And what would those circumstances be?

A Well, if there weren't any inputs at all, I don't think students would learn. That would be an example.

Q Can you think of any other circumstances?

MS. KOURY: Calls for speculation, incomplete hypothetical.

THE WITNESS: If students were not presented with instruction, if they were -- some of the things that we've already talked about. If they were given instruction that was too hard or too difficult -- things of that nature -- it would impair their more limited -- inputs of that nature, in my view, would diminish achievement.

BY MR. ROSENBAUM:

Q What if they weren't given instruction that was tested on the Stanford 9?

MS. KOURY: Objection. Calls for speculation, incomplete hypothetical.

THE WITNESS: And you would like to know what would happen on the Stanford 9 results?

BY MR. ROSENBAUM:

Q My question is: Do you have an opinion whether or not low achievements -- low student achievement results on the Stanford 9 could result from that?

MS. KOURY: Objection. Incomplete hypothetical, calls for speculation.

THE WITNESS: I think that content coverage, which

which emphasis on inputs would enhance -- strike that.

Can you conceive of any circumstances, sir, by which student achievement results on the Stanford 9 could result from the lack of inputs?


THE WITNESS: Let me try to repeat the question to be sure I got it.

Can I --

BY MR. ROSENBAUM:

Q Sure.

A -- think of any circumstances in which the -- I think it'd be better to have it read again.

MR. ROSENBAUM: Sure.

THE WITNESS: Sorry.

(The record was read as follows: "Can you conceive of any circumstances, sir, by which student achievement results on the Stanford 9 could result from the lack of inputs?")

THE WITNESS: Yes.

BY MR. ROSENBAUM:

Q And what would those circumstances be?

A Well, if there weren't any inputs at all, I don't think students would learn. That would be an
MS. KOURY: Objection. Calls for speculation, calls for speculation beyond this expert's opinions.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q   Have you made any inquiry to find out?
A   No.
Q   Would it concern you if that were the case?
THE WITNESS: Yes.

BY MR. ROSENBAUM:

Q   Why is that?
MS. KOURY: Incomplete hypothetical, calls for speculation.

THE WITNESS: Because I think it would be unfair and wouldn't be doing the right thing, wouldn't lead to achievement of a significant portion of the state's students.

BY MR. ROSENBAUM:

Q   When you say unfair, what do you mean by that?
A   Well, they would be treated differently than other students.
Q   Would it affect the integrity of the API?
MS. KOURY: Objection. Incomplete hypothetical, calls for speculation.

THE WITNESS: I haven't studied the API in detail, especially its technical features and all the variables that go into it, so I don't know.

BY MR. ROSENBAUM:

Q   Okay. Do you know -- strike that.
A   If it were documented, sir, that ELs did not have access to core curriculum, as you've used that phrase, what, if anything, do you think the State of California should do?
MS. KOURY: Objection. Incomplete hypothetical, calls for speculation beyond this expert's opinions.
THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q   Okay. Have you ever given any thought to that question?
MS. KOURY: Same objection.
THE WITNESS: No.

BY MR. ROSENBAUM:

Q   If I changed it to just students, period, not EL students -- if it were documented that there were students without access to core curriculum, do you have an opinion as to what the State of California should do?
MS. KOURY: Objection. Incomplete hypothetical, calls for speculation.

THE WITNESS: I haven't studied it, so I don't know.

BY MR. ROSENBAUM:

Q   Okay. You haven't given any thought to that question; is that correct?
A   Correct.
Q   Incidentally, sir, looking at Page 27 of your report -- do you have that in front of you?
A   Yes.
Q   Exhibit 1.
A   Yes.
Q   You see under -- where it says 7, period, "Resistance to standards and tests"?
A   Yes.
Q   Okay. And you quote from the Oakes synthesis report at Page 29.
A   Yes.
Q   Do you see, sir, where it says, "lack of resources and capacity"?
A   Yes.
Q   What did you understand Dr. Oakes to mean by that phrase?
A   (Witness reviews documents.) And the phrase is the "lack of resources and capacity" that you referred me to?
Q   Exactly.
A   I think she might have been referring to -- she didn't make -- I don't remember where it came from in her report, but I think, as I sit here, that she was referring to financial instructional media and other sorts of resources and capacity of the school to deliver those things.
Q   Okay. Do you know if a -- strike that.
A   In your report, sir, you refer to an individual named Fine, F-i-n-e.
Q   Can you direct me to that page?
A   That's at the last part of the first paragraph.
Q   That's where it is.
A   Yes. I found it.
Q   Okay.
A   And your question is?
Q   Do you know what Fine's first name is?
A   I think it's Michelle.
Q   Okay. Do you know if she submitted a report in this case?
A   No.
Q   Make any effort to find out?
A   I don't remember making any effort to find out.
Q   Okay. Looking at the sentence, sir, that is in
the indented quote, "Schools are intimate places where youths construct identities, build a sense of self, read how society views them, develop the capacity to sustain relations, and forge the skills to initiate change," period.

Q   Do you see that?
A   Yes.
Q   Do you agree or disagree with that statement?
A   Well, I need to analyze each part, I suppose.
Q   Why don't we do that.
A   "Schools are intimate places where youths construct identities." Do you agree or disagree with that statement?
Q   Okay. Schools are places where youths construct identities. Do you --
A   Well, I don't -- I'm not sure I understand what "construct identities" means.
Q   Okay.
A   So I'm not sure I could agree or disagree with that phrase.
Q   Okay. Schools are places where youths build a sense of self.
A   Personal experience, visiting schools, talking with teachers, general educational knowledge.
Q   Kind of common sense; isn't it?
A   I'm sorry?
Q   Kind of common sense; isn't it?
A   I'm somewhat uncertain what that means. I guess I could say what I think it means.
Q   All right. Let's subtract the word "intimate."
A   Well, I don't -- I'm not sure I understand what "construct identities" means.
Q   Okay.
A   So I'm not sure I could agree or disagree with that phrase.
Q   Okay. What do you think it means? Or maybe you don't have a view as to what it means.
A   Well, it'll be speculation on my part.
Q   All right. Schools are places where youths develop the capacity to sustain relations.
A   Well, I think in some instances they are. In other instances they may not be.
Q   Okay. Taking your understanding, Doctor, do you agree or disagree with the statement that schools are places where youths develop the capacity to sustain relations?
A   Well, I think in some instances they are, what's the basis of that statement?
Q   Okay. What do you think it means? Or maybe you don't have a view as to what it means.
A   Well, it'll be speculation on my part.
Q   All right. Schools are places where youths develop the capacity to sustain relations.
A   I think in some instances they are. In other instances they may not be.
Q   Okay. Taking your understanding, Doctor, do you agree or disagree with that statement?
A   Yes.
Q   And the statement, "Schools are places where youths forge the skills to initiate change," do you have an understanding of what that means?
A   I'm not sure that I understood exactly what she meant by that. I guess I could say what I think it means.
Q   Why don't you do that.
A   I think what's being referred to here is the positive social relations among students and other people in the school.
Q   Okay. Taking your understanding, Doctor, do you agree or disagree with the statement that schools are places where youths develop the capacity to sustain relations?
A   Well, I think in some instances they are. In other instances they may not be.
Q   Okay. What do you think it means? Or maybe you don't have a view as to what it means.
A   Well, it'll be speculation on my part.
Q   All right. Let's subtract the word "intimate."
A   Well, I don't -- I'm not sure I understand what "construct identities" means.
Q   Okay.
A   So I'm not sure I could agree or disagree with that phrase.
Q   Okay. Schools are places where youths build a sense of self.
A   Personal experience, visiting schools, talking with teachers, general educational knowledge.
Q   Kind of common sense; isn't it?
A   I'm sorry?
Q   Kind of common sense; isn't it?
A   I'm somewhat uncertain what that means. I guess I could say what I think it means.
Q   All right. Let's subtract the word "intimate."
A   Well, I don't -- I'm not sure I understand what "construct identities" means.
Q   Okay.
A   So I'm not sure I could agree or disagree with that phrase.
Q   Okay. What do you think it means? Or maybe you don't have a view as to what it means.
A   Well, it'll be speculation on my part.
Q   All right. Schools are places where youths develop the capacity to sustain relations.
A   I think in some instances they are. In other instances they may not be.
Q   Okay. Taking your understanding, Doctor, do you agree or disagree with the statement that schools are places where youths develop the capacity to sustain relations?
A   Well, I think in some instances they are. In other instances they may not be.
Q   Okay. What do you think it means? Or maybe you don't have a view as to what it means.
A   Well, it'll be speculation on my part.
Q   All right. Let's subtract the word "intimate."
A   Well, I don't -- I'm not sure I understand what "construct identities" means.
Q   Okay.
A   So I'm not sure I could agree or disagree with that phrase.
independent judgments, and so that you would have a better basis for initiating change in your life or school circumstances or other things.

Q. Okay. And taking your understanding, Doctor, do you agree with that statement, as you've explained it?


Do you mean --

BY MR. ROSENBAUM:

Q. How you've understood the phrase -- the sentence "Schools are places where youths forge the skills to initiate change."

MS. KOURY: Objection. Vague to the extent it takes the phrase that was used out of context.

THE WITNESS: I think it could work other -- either way, as I mentioned before. Ideally, I like to have those things happen, but they may or may not happen, depending on the circumstances of the school.

BY MR. ROSENBAUM:

Q. Common sense also; isn't it?

MS. KOURY: Objection to the extent it mischaracterizes his testimony.

THE WITNESS: I think many people would agree with that.

BY MR. ROSENBAUM:

Q. Okay. And looking at the next sentence, sir, that you excerpted here on Page 29 of Exhibit 1, "These are the contexts where youths grow or they shrink."

Do you see that?

A. Yes.

Q. Do you have an understanding of what that sentence means?

A. I don't understand that sentence.

Q. Okay. The next sentence, sir, "In this conclusionary view, no allusion appears to mastery of knowledge and skills in the subjects of civics, history, geography, mathematics, science and literature that citizens and legislators expect to be subjects of study."

Do you see that?

A. Yes.

Q. Is there anything in Dr. Oakes's report that causes you to believe that a purpose -- that causes you to believe that she does not believe that a purpose of public education is, quote, "mastery of knowledge and skills in the subjects of civics, history, geography, mathematics, science and literature"?

MS. KOURY: Objection. Compound, calls for speculation.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q. Do you conclude from the appearance of the word "construct" in the phrase "construct identities" that she's talking about constructivism?

A. Are we talking about Dr. Fine or Dr. Oakes?

Q. Well, you mentioned that Dr. Oakes quoted Dr. Fine.

A. Isn't that --

Q. -- right?


In addition to the quote that he's citing here?

MR. ROSENBAUM: There is no quote being cited here.

Q. Do you -- I'll state the question differently, though.

Do you have a view as to whether or not Dr. Oakes does not believe that a purpose of public education is, quote, "mastery of knowledge and skills in the subjects of civics, history, geography, mathematics, science and literature"?

A. I don't know.

Q. Can you think of anything in her report that would cause you to believe that she doesn't believe that a purpose of public education is mastery of knowledge and skills in subjects of civics, history, geography, mathematics, science and literature?

A. Only between the lines, in the sense that she quoted this particular point, which leaves out those things, and that's the point that I'm making here. And I didn't see -- I don't -- at least I don't remember now and I don't remember seeing anything that's explicitly stated that is similar to this sentence.

Q. Okay. And do you have a view, sir, as to whether or not, putting aside Dr. Oakes, any of plaintiffs' experts do not believe that a purpose of public education is mastery of knowledge and skills in the subjects of civics, history, geography, mathematics, science and literature?

MS. KOURY: Calls for speculation.

THE WITNESS: I don't know.

BY MR. ROSENBAUM:

Q. Okay. Does Dr. Oakes ever mention constructivism in her report, any of her reports?

MS. KOURY: Calls for speculation.

THE WITNESS: I don't remember, but she uses the term "construct identities" here, which is not the term "constructivism," but it's a similar term.

BY MR. ROSENBAUM:

Q. Do you conclude from the appearance of the word "construct" in the phrase "construct identities" that she's talking about constructivism?

A. Are we talking about Dr. Fine or Dr. Oakes?

Q. Well, you mentioned that Dr. Oakes quoted Dr. Fine.

A. Isn't that --

Q. -- right?


In addition to the quote that he's citing that includes the phrase "construct identities," do you
conclude that Dr. Oakes is referencing constructivism?
A I don't know for sure.
Q Okay. And do you know, sir, whether or not there are any "K" through 12 public schools in California that practice constructivism, as you've defined that phrase?
MS. KOURY: Calls for speculation.
THE WITNESS: No.
BY MR. ROSENBAUM:
Q Okay. And do you -- so I take it you don't know what the achievement results would be of any schools that espouse constructivism in California?
MS. KOURY: It's argumentative.
THE WITNESS: Is your question do I understand what the causal relations are or --
BY MR. ROSENBAUM:
Q No. My question isn't clear.
With respect to the assessment tests that are part of the California accountability system that we have been talking about, do you know what -- whether or not -- what the achievement results are as to any schools in California that espouse constructivism?
A I don't know.
Q Have you undertaken any inquiry to find out?
A No.
Q Incidentally, are teachers prohibited in California from using constructivist's methods?
A I don't know.
Q Did you ever make any inquiry to find out?
A No.
Q Do you consider yourself an expert on constructivism?
A Well, I don't espouse it, and I think it's a rather difficult matter even to identify precisely. I'm not sure there are -- there is agreement on exactly what it means.
Q Directing your attention, sir, at -- strike that.
Did Russell talk about constructivism or allude to constructivism, in your mind?
A I'd have to read his report.
Q Do you have any recollection of that occurring?
A Not offhandedly.
Q Do you know if staff development programs that the State of California sponsors teach teachers constructivist methods?
A I don't know.
BY MR. ROSENBAUM:
Q Have you ever made any inquiry to find out?
school, or you could even think of a specific class of curricular alignment within a district or within a district. We could -- I think we've been talking about this more at the State level, but you could think about similar to what we've used the term "alignment." It's a high percentage of students in the present time, sir, in schools where there is not curricular -- curriculum coherence -- curricular coherence?

Q   Are there students in the public schools -- "K" through 12 public school system in California at the same time?  
A   Yes.

Q   What does that mean?
A   Well, I think it's been a while since I used the term. I have the literal definition in mind, that every school in the state would -- would change, and this would be the total cost.

Q   You've used a phrase in some of your writings, "curricular coherence"?
A   Yes.

Q   What does that mean?
A   I think it's been a while since I used the term. I have the literal definition in mind, that every school in the state would -- would change, and this would be the total cost.

Q   Serve all schools at the same time?  
A   Yes.

Q   Do you know, sir, whether or not there are any schools that are in poverty.
A   It's a high percentage of students in the school that are in poverty.

Q   Do you know, sir, whether or not there are any poverty schools, as you just defined that, in the state of California that are doing well in student achievement?
A   I don't know of any personally.

Q   I'm asking you -- you have, throughout your testimony, talked to me about schools doing well, meaning that they score high.
A   If it's not a perfect system, then it might lack alignment or curricular coherence, as I've used the term.

Q   Might it affect the score, the API score?
A   Now, we're talking about all the state or parts of the state or if there's some schools --
Am I understanding you correctly?
A   It could be score high, but it also -- which
means relative to one another, where you would take the
average and compare a school with the average. But
another meaning of it is that you have substantial
percentages of students that are at advanced or
proficient levels.
Q   Okay.
A   Either one.
Q   Okay. Either definition --
A   Yes.
Q -- you just gave me, do you know if there are
poverty schools in the state of California, by either
definition, that are doing well?
MS. KOURY: Objection. Compound, also calls for
speculation.
THE WITNESS: I don't know of any particular
schools.
BY MR. ROSENBAUM:
Q   Okay. And you've not undertaken any inquiry;
is that right?
A   I have not.
Q   Okay. Do you know if anybody has in the State
of California?
A   No.
Q   Okay.
A   When I say no and I've said no to other
questions, I can't think of any at the present moment.
Q You have stated in the past, have you not, sir,
that you believe that children in inner cities have been
neglected by school districts?
MS. KOURY: Objection. Overbroad, calls for
speculation.
THE WITNESS: Well, I think in the context of any
of my writings on that, I don't want to say that all
children have or they've all been neglected in all
cities, but as a generalization, many students in big
cities have been neglected.
BY MR. ROSENBAUM:
Q   By school districts?
A   Yes.
Q   Can you tell me the basis for your answer,
please?
MS. KOURY: Objection. Overbroad, calls for
speculation. To the extent that this is reference to
various works that he's done, vague.
BY MR. ROSENBAUM:
Q   I just want your views. I don't care about any
particular piece of literature that you've written, or
testimony. I just want to know your views as a
scholar.
A   What's the basis for your answer?
MS. KOURY: Calls for speculation.
Q   Go ahead.
A   THE WITNESS: Well, I don't like to give an opinion
just -- I like to give facts if I know them. So I would
like to -- prefer to talk about things that -- where I
can, that I've done the research myself, preferably, or
that I'm well aware of many people doing research on
it.
And that goes back to the point that we were
discussing, I think, earlier this morning, the study of
38 states, in which it was shown that the larger the
average size district, other things being equal,
including demographics and spending, big cities have a
tendency to do less well on tests.
BY MR. ROSENBAUM:
Q   Any other bases, sir?
A   Well, we talked about capitalization theory.
Q   Any other theories? Any other bases, I'm
sorry.
A   Well, we were talking about capitalization
theory, we also talked about the psychological knowledge
and the tendency for people in smaller districts to be
more knowledgeable about their children's needs and to
have a greater proportional influence, board elections
and personally meeting board members and making their
views known, things of that nature.
Q   Any other basis, sir?
A   Not that I can think of now.
Q   For purposes of Exhibit 1, your report, did you
conduct any independent research?
THE WITNESS: I don't know what you mean by
independent research.
BY MR. ROSENBAUM:
Q   Well, did you do -- as your footnotes and text
demonstrate, you relied upon -- let me strike that.
Did you do any research, for purposes of this
report -- any independent research, for purposes of the
report, that you had not previously undertaken?
MS. KOURY: Still vague.
Q   Do you mean -- well, vague. I'm not sure -- if
you understand the question, you can answer.
THE WITNESS: Well, I can tell you what I did. I
did research, broadly speaking, and then I read the
other experts' reports. I was familiar with things done
by me. I cited some of my own studies that were
certainly done independently.
All of this was independent, and I read some
other things, some of which I had read in the past, and I re-reviewed them again.

So the broad definition, I would say, of research, yes, I -- could be that even all of my -- all of the research I did and reported here was independent, especially in the sense, too, that I knew that I had autonomy to write what I wanted.

BY MR. ROSENBAUM:

Q   Okay. I appreciate that.

Did you conduct any new studies for purposes of this report?

A   Only in the sense that I just described.

Q   Okay.

A   Maybe I should even define what I would call a study, so to speak.

Q   Sure.

A   Because that's a new term that's not completely coincident with --

Q   Sure.

A   -- research.

I haven't done any -- as a consequence of this I haven't -- when I say study, I usually mean that it's something prepared for a refereed publication, and I haven't done that in this report.

Q   Do you intend to publish this report?

A   I hadn't really thought about it.

MR. ROSENBAUM: Okay. Let's go off the record.

(Discussion off the record)