

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, et al.,)
)
 Plaintiff,)
)
 vs.) No. 312236
)
STATE OF CALIFORNIA, et al.,)
)
 Defendants.)
_____)

DEPOSITION OF HERBERT J. WALBERG
Los Angeles, California
Tuesday, July 8, 2003
Volume 2

Reported by:
SHERRYL DOBSON, RPR

CSR No. 5713

JOB No. 43698

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

1 ELIEZER WILLIAMS, et al.,)
2)
3 Plaintiff,)
4)
5 vs.) No. 312236
6)
7 STATE OF CALIFORNIA, et al.,)
8)
9 Defendants.)

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11
12 Deposition of HERBERT J. WALBERG,
13 Volume 2, taken on behalf of
14 Plaintiffs, at 555 West 5th Street,
15 35th Floor, Los Angeles, California,
16 beginning at 8:58 a.m. and ending at
17 4:55 p.m. on Tuesday, July 8, 2003,
18 before SHERRYL DOBSON, Certified
19 Shorthand Reporter No. 5713.
20
21
22
23
24
25

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2
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JORDAN BLUMENFELD-JAMES
MELISSA ROUDABUSH

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1 Los Angeles, California, Tuesday, July 8, 2003
2 8:58 a.m. - 4:55 p.m.
3
4 HERBERT J. WALBERG,
5 having been previously duly sworn, was examined and
6 testified further as follows:
7
8 EXAMINATION (Resumed)
9 BY MR. ROSENBAUM:
10 Q You know you're still under oath?
11 A Yes.
12 Q Last night did you review any documents
13 relating to this case?
14 A No.
15 Q Or do any work related to the case?
16 A No.
17 Q Did you have any discussions with Ms. Koury
18 either last night or yesterday afternoon or this morning
19 about the deposition?
20 A Just incidental conversation about the timing
21 and how are things going.
22 Q Okay. Doctor, do you know someone named
23 Margaret Wang?
24 A Yes.
25 Q W-a-n-g?

1 A Yes.
 2 Q Okay.
 3 A She is deceased.
 4 Q Oh, gosh.
 5 In the past -- when did she die?
 6 A She passed away about two years ago. And her
 7 name is actually pronounced Wang.
 8 Q Wang, thank you.
 9 Have you written articles with her?
 10 A I have.
 11 Q Okay. And one of the articles you wrote with
 12 her involves classroom management; is that right?
 13 A Well, I wrote a lot with her. I don't
 14 particularly remember that. If you have a copy, I could
 15 look it over.
 16 Q Okay. Is there another person -- I don't know
 17 if it's a man or a woman -- Haertel, H-a-e-r-t-e-l?
 18 A Geneva Haertel.
 19 Q This would be a piece both with Ms. Wang
 20 Ms. Haertel and you --
 21 A Yes.
 22 Q -- about classroom management; is that correct?
 23 A Well, I did a lot of writings with them and I
 24 did a lot of writings in general. So it's just not
 25 standing out in my mind.

1 Q Classroom management is a subject matter you've
 2 given thought to; isn't that right?
 3 A I have. I do remember one article that we
 4 wrote together that did have classroom management as one
 5 aspect.
 6 Q You talked about the importance of classroom
 7 management on student learning?
 8 A In one article that I can distinctly remember,
 9 I think that classroom management was one of a number of
 10 things that we wrote about.
 11 Q Okay. And do you have a view as to the
 12 importance of classroom management on student learning?
 13 A Yes.
 14 MS. KOURY: Objection. Vague.
 15 BY MR. ROSENBAUM:
 16 Q And what's your view?
 17 A Well, I remember from what I said yesterday,
 18 most of the things I'm interested in revolve around
 19 achievement, and that's the way I see most things and
 20 evaluate them. So I think that effective -- better
 21 class management is associated with greater gains in
 22 achievement.
 23 Q And one of the reasons that classroom
 24 management has a positive effect on student learning is
 25 group alerting; is that right?

1 MS. KOURY: Objection to the extent that
 2 mischaracterizes his testimony.
 3 BY MR. ROSENBAUM:
 4 Q My question, sir, is one of the reasons that
 5 classroom management has a beneficial impact on student
 6 learning because of group alerting? Familiar with that
 7 phrase?
 8 MS. KOURY: Vague.
 9 THE WITNESS: I may have written that, but I don't
 10 remember that particular phrase.
 11 BY MR. ROSENBAUM:
 12 Q Okay. Why don't you tell me the reasons that
 13 you believe classroom management has a beneficial impact
 14 student achievement.
 15 A Well, again, I need to refer to the original
 16 article, but I think -- and I'm not sure that we're
 17 talking about the same article.
 18 Q You know what? I don't -- for purposes of this
 19 discussion, I don't care whether it was one article or
 20 20 articles. I'm just interested in your views --
 21 A Okay.
 22 Q -- about classroom management. I'm not testing
 23 you on a particular article.
 24 A Yeah.
 25 Q So my question to you is: Could you tell me,

1 please, the reasons why you think that classroom
 2 management has a beneficial impact on student learning?
 3 MS. KOURY: Objection. Calls for a narrative.
 4 THE WITNESS: I think that classroom management may
 5 have a beneficial effect on achievement for a number of
 6 reasons. I'm not sure that I can name them all right
 7 now, but it implies the wise use of time.
 8 It's a little bit similar -- we can look at
 9 management in a similar way that we talked about
 10 alignment yesterday, but instead of aligning, let's say,
 11 State standards with content, you might be aligning the
 12 particular goals for the lesson that day to what you're
 13 teaching in that lesson. So I think it's like many
 14 forms of management, you need to make choices about how
 15 you're going to allocate your resources. And the
 16 resources here mainly being classroom time.
 17 So much of it, if I try to think of a central
 18 concept, it would be the allocation of time with respect
 19 to the goals of the lesson and also with respect to what
 20 the students actually need to know. So it would be
 21 wasteful to teach them things that they already know,
 22 and it would be, similarly, wasteful to teach them
 23 things that they're yet incapable of learning. So it's
 24 sort of targeting the lesson on what the kids need to
 25 know.

1 BY MR. ROSENBAUM:

2 Q Thank you.

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

5 MS. KOURY: Objection. Assumes facts.

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

8 BY MR. ROSENBAUM:

9 Q Okay.

10 A Which I think encompasses time on task.

11 Q Tell me what that means too.

12 A Which?

13 Q Amount of instruction.

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

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

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

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

24 A Sure.

25 Q -- understanding.

1 A I try to think about ways to avoid the
2 problem. It is a major problem in the United States,
3 but it's hard to do systematic writing and systematic
4 research on it, especially large scale, when people
5 report rates that are differing in their calculations.

6 And there've been a lot of disputes about drop-out rate.

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

9 A No.

10 Q Have you made any investigation to find out?

11 A No.

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

15 A No.

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

19 MS. KOURY: Calls for speculation.

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

24 BY MR. ROSENBAUM:

25 Q Okay. And do you know how -- have you written

1 Is part of effective classroom management
2 increasing the amount of instruction, as you've used
3 that phrase?

4 MS. KOURY: Objection to the extent it
5 mischaracterizes his testimony. It also calls for
6 speculation beyond the expert's opinions in this
7 matter.

8 THE WITNESS: I think classroom instruction may
9 have to do with, as you suggested, increasing the amount
10 of time, but I think I would particularly emphasize the
11 wise use of a given amount of time.

12 BY MR. ROSENBAUM:

13 Q Okay. Thank you.

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

16 A Yes.

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

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

25 Q You have used a different term?

1 articles with Chester Finn?

2 A I can think of one, yes.

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

5 A Dr. Finn.

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

8 A Yes.

9 Q On multiple occasions?

10 A Yes.

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

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

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

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

25 Q Okay. When you say standardize, what do you

1 mean by that?

2 A I mean that this is a little bit analogous to
3 everyone carrying their own yardstick, and you need to
4 have a standard yardstick in order to be able to compare
5 drop-out rate with one school and another.

6 Q Have you given thought to the causes of
7 drop-out?

8 MS. KOURY: Objection. Vague.

9 THE WITNESS: I have given some thought to it, yes.

10 BY MR. ROSENBAUM:

11 Q Do you have an opinion as to what are principal
12 causes of drop-out?

13 MS. KOURY: Objection. Vague, overbroad.

14 THE WITNESS: Well, I would be much less sure about
15 it than the nine factors that we were talking about
16 yesterday. But I think those nine factors, especially
17 over child's time -- I mean the time in school, not just
18 one year -- would be indicative. And I think
19 particularly important would be what I called yesterday
20 the home environment or curriculum of the home plus
21 neighborhood circumstances and particularly poverty as
22 a -- because there's a number, I think, of valid studies
23 have indicated relationships between poverty and
24 achievement and poverty and drop-out rates.

25 BY MR. ROSENBAUM:

1 drop-out rate, as I mentioned, is -- I want to say
2 largely a problem of poverty and related factors. And
3 schools and school districts can reach out to parents
4 and give them information about what they can do at home
5 to encourage the child's verbal development, vocabulary,
6 giving them -- call it enriched experiences so that
7 they're better prepared for school.

8 They can also reach out and make the school
9 welcoming to parents and encourage them to become
10 involved in the program, to tell them about the child's
11 work, what's expected of the child, but also the child's
12 strengths and weaknesses. And I think those are some of
13 the major things that schools could do.

14 Q When you talk about schools reaching out to
15 parents -- and correct me if I'm wrong, but I take it
16 that's connected to the factors in your nine factors
17 involving home curriculum? I don't think I'm saying
18 that right.

19 MS. KOURY: Objection to the extent it
20 mischaracterizes his testimony. It's also overbroad.

21 THE WITNESS: Well, I call it by various things.
22 Home environment.

23 BY MR. ROSENBAUM:

24 Q Okay.

25 A Curriculum of the home or parent school

1 Q Okay. And do you think that schools can do
2 anything to reduce drop-out rates?

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

5 THE WITNESS: Yes.

6 BY MR. ROSENBAUM:

7 Q Okay. And tell me what you think schools can
8 do to reduce drop-out rates.

9 A I think that they can -- well, you know, I'm
10 very interested in these nine factors, and I think that
11 those are conducive to higher levels of achievement.
12 And I think when children are achieving more, they
13 become more enthusiastic about their schooling, they
14 become more motivated. Like kids that are not doing
15 well, I think in high school one of the reasons --
16 causes of drop-out rates are actually in the first six
17 years of life in the elementary school.

18 And high school kids that are prone to drop out
19 begin to realize that they are not achieving at
20 sufficient levels. So I think that the curriculum of
21 the home, among the nine factors, is especially
22 important. I think you asked about what schools can do.

23 Q Yes.

24 A Schools -- there have been various types of
25 programs in which schools can reach out. The problem of

1 programs. So I think I know what you mean.

2 Q And the reach out is connected to that factor;
3 is that right?

4 A In general, but you could say that the home
5 environment is what the child actually encounters in the
6 home perhaps.

7 Q I see.

8 A But in addition to that, the school might be
9 able to intervene and attempt to show parents some
10 things that they could do to make the child better --
11 help the child to be better prepared for school and
12 during the school years.

13 Q Do you know, sir, whether or not there are any
14 schools in California that do this sort of reaching out
15 that you just described to me?

16 MS. KOURY: Objection. Calls for speculation,
17 overbroad, it's beyond the expert opinions in this
18 matter.

19 THE WITNESS: I haven't studied that, so I don't
20 know.

21 BY MR. ROSENBAUM:

22 Q Okay. Do you know if, as -- does the API
23 measure drop-out rate?

24 A I'm unsure the calculations of the API.

25 Q Okay. In the New York case, Doctor, you

1 testified, if I understood your testimony correctly,
 2 that the regent's exam was pegged at a ninth grade
 3 level; is that right?
 4 MS. KOURY: Vague.
 5 BY MR. ROSENBAUM:
 6 Q Ninth grade reading level.
 7 A I testified to something along that line. I
 8 don't remember if it was exactly ninth grade.
 9 Q Okay. Did you undertake an analysis in the New
 10 York case as to what the reading level was for -- it's
 11 called the RCT; isn't it?
 12 A I think it was. I don't remember what that
 13 stands for.
 14 Q Okay. That's the exam that all students have
 15 to take?
 16 A The name that I know it by is the regent's
 17 examination.
 18 Q Okay.
 19 A But maybe "R" in RCT stands for it.
 20 Q Let's use that phrase.
 21 Regarding the regent's examination, did you
 22 undertake an analysis to determine what reading level
 23 that examination was set at, pegged at?
 24 MS. KOURY: Objection. Vague.
 25 THE WITNESS: I don't think that I did an original

1 analysis of the test.
 2 BY MR. ROSENBAUM:
 3 Q Okay.
 4 A You know, in the -- I may have looked at it,
 5 but I didn't make any numerical estimates of the test
 6 itself.
 7 Q But others have; is that right?
 8 MS. KOURY: Calls for speculation.
 9 THE WITNESS: I'm really unsure of that. I had the
 10 impression that it might have.
 11 BY MR. ROSENBAUM:
 12 Q Do you know what the reading level is for the
 13 California high school exit exam?
 14 A No.
 15 Q Have you undertaken any inquiry to find out?
 16 A No.
 17 Q Or the Stanford 9?
 18 A No.
 19 Q Or any test that's part of the assessment test?
 20 A Only in the sense that I --
 21 Q The California assessment test, sorry.
 22 A I know that the SAT 9 and other tests like it
 23 often give a grade level equivalent. And I'm not sure
 24 that's still reported for the Stanford 9 but off --
 25 there are various ways to report test scores, and often

1 they're reported at a grade level.
 2 Q But do you know if that's done at this time
 3 with --
 4 A No.
 5 Q -- respect to the Stanford 9?
 6 MS. KOURY: Calls for speculation beyond this
 7 expert's opinion. It's also vague and overbroad.
 8 Go ahead.
 9 THE WITNESS: I don't know.
 10 BY MR. ROSENBAUM:
 11 Q Have any California districts, to your
 12 knowledge, banned homework?
 13 MS. KOURY: Objection. Calls for speculation
 14 beyond this expert's opinion. It's also overbroad and
 15 vague.
 16 THE WITNESS: I don't know.
 17 BY MR. ROSENBAUM:
 18 Q Have you ever made any inquiry to find out?
 19 MS. KOURY: Same objections.
 20 THE WITNESS: No.
 21 BY MR. ROSENBAUM:
 22 Q Does the California accountability system that
 23 you referenced in your report and that we discussed
 24 yesterday -- does it have any components that deal
 25 specifically with homework that you're aware of?

1 MS. KOURY: Objection. Vague, overbroad.
 2 THE WITNESS: I don't know.
 3 BY MR. ROSENBAUM:
 4 Q Okay. Have you made any inquiry to find out?
 5 A No.
 6 Q Okay. The legislation that implemented the
 7 California accountability system, have you read that
 8 legislation?
 9 A I don't remember reading it.
 10 Q Okay. Or any regulations that were promulgated
 11 thereto?
 12 A I may --
 13 MS. KOURY: Objection. Vague.
 14 THE WITNESS: I may have gotten some of these
 15 documents, but -- and just casually looked at them, but
 16 I -- they don't stand out in my mind.
 17 BY MR. ROSENBAUM:
 18 Q Okay. You're not sure whether -- you don't
 19 have any specific recollection of them?
 20 A No.
 21 Q Okay. And you didn't rely on them --
 22 A No.
 23 Q -- for purposes of your report?
 24 A No.
 25 Q Okay. You're doing fine. Just let me finish

1 my -- your lawyer will say the same thing. Just let me
 2 finish my question.
 3 A Yes. And I --
 4 Q It makes it easier for the reporter.
 5 A I just did it again. I regret it, and I'm
 6 sorry.
 7 Q Do you know in California, Doctor, the percent
 8 of teachers in "K" through 12 public schools that
 9 utilize -- who utilize textbooks for purposes of
 10 homework?
 11 MS. KOURY: Objection. Asked and answered.
 12 I'm sorry, I withdraw that objection.
 13 Vague, overbroad.
 14 Go ahead.
 15 THE WITNESS: No.
 16 BY MR. ROSENBAUM:
 17 Q Okay. Did you make any -- ever make any
 18 inquiry to find out?
 19 MS. KOURY: Overbroad --
 20 THE WITNESS: No.
 21 MS. KOURY: -- vague.
 22 BY MR. ROSENBAUM:
 23 Q If we weren't talking about California, how
 24 about across the country? Anywhere in the country or
 25 across the country, do you have any information about

1 the number or percentage of teachers who utilize
 2 textbooks for purposes of homework?
 3 MS. KOURY: Vague, overbroad, calls for speculation
 4 beyond this expert's opinion.
 5 THE WITNESS: No.
 6 BY MR. ROSENBAUM:
 7 Q And have you ever made any inquiry to find out?
 8 MS. KOURY: Same objections.
 9 THE WITNESS: No.
 10 BY MR. ROSENBAUM:
 11 Q Okay. You've -- earlier this year, Doctor, you
 12 spoke at a Texas Public Policy Foundation function; is
 13 that right?
 14 A No.
 15 Q No?
 16 Were you scheduled to speak at one?
 17 A Yes.
 18 Q Okay. Did you submit any papers to that
 19 foundation?
 20 MS. KOURY: Objection. Vague.
 21 THE WITNESS: No.
 22 BY MR. ROSENBAUM:
 23 Q Okay. Do you know -- you know, I probably
 24 asked you this earlier this morning, but I'm just going
 25 to -- I want to ask it a different way.

1 Do you know what the high school graduation
 2 rate is in California?
 3 MS. KOURY: Asked and answered --
 4 THE WITNESS: No.
 5 MS. KOURY: -- calls for speculation beyond this
 6 expert's opinions.
 7 BY MR. ROSENBAUM:
 8 Q Or in any of the schools in California?
 9 MS. KOURY: Calls for speculation beyond this
 10 expert's opinions, asked and answered.
 11 THE WITNESS: No.
 12 BY MR. ROSENBAUM:
 13 Q Okay. I take it you haven't made any attempt
 14 to compare the high school graduation rates of schools
 15 and their API scores?
 16 MS. KOURY: Objection. Calls for speculation,
 17 beyond this expert's opinions.
 18 THE WITNESS: I haven't done that.
 19 BY MR. ROSENBAUM:
 20 Q Or high school graduate -- compare high school
 21 graduation rates with particular factors at schools?
 22 MS. KOURY: Calls for speculation, beyond this
 23 expert's opinions. It's also vague. Go ahead.
 24 THE WITNESS: I didn't do that.
 25 BY MR. ROSENBAUM:

1 Q Okay. You know what I mean by factors at
 2 schools?
 3 A Factors in schools?
 4 Q In schools.
 5 A I'm assuming you're thinking about things like
 6 socioeconomic status and size of the school and things
 7 like that.
 8 Q That's perfect, or percent emergency
 9 credentialed teachers or access to instruction
 10 materials, any of those sorts of factors.
 11 A I haven't done any such study.
 12 Q Do you know if anybody has?
 13 MS. KOURY: Calls for speculation beyond this
 14 expert's opinion.
 15 THE WITNESS: No.
 16 BY MR. ROSENBAUM:
 17 Q Do you know if the State of California has?
 18 A No.
 19 MS. KOURY: Same objection.
 20 BY MR. ROSENBAUM:
 21 Q Do you know if there's any way to use the
 22 California assessment system to make those sorts of
 23 comparisons?
 24 MS. KOURY: Objection. Overbroad, vague, calls for
 25 speculation.

1 Go ahead.

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

4 BY MR. ROSENBAUM:

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

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

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

10 A Right.

11 Q -- to your knowledge.

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

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

19 Go ahead.

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

24 BY MR. ROSENBAUM:

25 Q Okay. When you say you don't know what's

1 have the book, I could look at the passage.

2 BY MR. ROSENBAUM:

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

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

11 Did you ever say that, in sum or substance?

12 MS. KOURY: Objection. The document speaks for
13 itself, calls for speculation.

14 Go ahead.

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

17 BY MR. ROSENBAUM:

18 Q That's your view?

19 MS. KOURY: Objection. Vague.

20 THE WITNESS: Let me hear it again.

21 BY MR. ROSENBAUM:

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

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

25 Q Okay.

1 available, what are you referring to?

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

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

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

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

11 MS. KOURY: Objection. Asked and answered.

12 THE WITNESS: No.

13 BY MR. ROSENBAUM:

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

16 A Yes.

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

21 Do you remember saying that, in sum or
22 substance?

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

25 THE WITNESS: I think I would need to -- if you

1 A Well, I need to look at the document to refresh
2 my memory. And if we're going to be working on this,
3 maybe I ought to look at both of them.

4 Q You're right. I'll be glad to share that with
5 you a bit later.

6 You testified in a case in Dallas?

7 A Yes.

8 Q That was a desegregation case?

9 A Yes.

10 Q That was approximately when?

11 A Perhaps six weeks ago.

12 Q Had you previously testified in Dallas?

13 MS. KOURY: Vague.

14 THE WITNESS: Well, I gave a deposition for the
15 Dallas case.

16 BY MR. ROSENBAUM:

17 Q All right. Now, help me out here, Doctor.

18 When we talked yesterday about cases that you were
19 involved in this year, I don't remember you mentioning
20 the Dallas case.

21 A I forgot it.

22 Q Okay. That's a desegregation case?

23 A It is.

24 Q And what's the nature of your testimony in that
25 case?

1 A It's that the Dallas school -- the Dallas
2 school system had made excellent strides in achievement
3 which exceeded the state strides or gains, and that
4 scores of African-American and Hispanic students had
5 especially gone up and that they -- this had to do with
6 a unitary hearing, and that it was my feeling that the
7 superintendent of the Dallas schools, who was formerly
8 the State superintendent of Texas, had been in a
9 leadership position, who had -- and he had developed the
10 No Child -- he had developed legislation in Texas and
11 enacted it throughout the State that is now the model
12 for the No Child Left Behind Federal act, which I think
13 is extremely promising to increase achievement. And he
14 was enacting the same kinds of things in Dallas.

15 So I may have mentioned some other things, but
16 that's more or less the essence of what I said.

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

19 A Mike Moses.

20 Q On whose behalf did you testify?

21 A The school board.

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

24 A Yes.

25 Q How much have you been paid?

1 A Might be around \$12,000.

2 Q How about last year?

3 A How much last year?

4 Q Yes.

5 A Might have been about 40.

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

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

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

13 BY MR. ROSENBAUM:

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

17 MS. KOURY: Mischaracterizes his testimony.

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

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

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

25 Q Okay. And when you used the word

1 "outstanding," what did you mean by that?

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

4 Q Are there any schools in California that you
5 believe are doing an outstanding job in educating
6 children? Let me strike that.

7 Have you undertaken an investigation to
8 determine whether or not there are any schools in
9 California that are doing an outstanding job in
10 educating children, as you used that word in Dallas?

11 MS. KOURY: Objection. Overbroad.

12 THE WITNESS: I don't know.

13 BY MR. ROSENBAUM:

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

16 MS. KOURY: Vague.

17 MR. ROSENBAUM: Let me restate that question.

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

21 MS. KOURY: Beyond his expert report.

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

24 BY MR. ROSENBAUM:

25 Q Okay. Tell me, Doctor, as to public education,

1 "K" through 12 public education, what do you believe are
2 the principal purposes of "K" through 12 public
3 education?

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

6 BY MR. ROSENBAUM:

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

9 A I don't remember.

10 Q You know what? I don't want to put you through
11 it. If I did it, I'll check.

12 Have you read any studies critical of the Texas
13 accountability system?

14 A Yes.

15 MS. KOURY: Objection. Vague.

16 BY MR. ROSENBAUM:

17 Q Assessment system.

18 MS. KOURY: Vague.

19 THE WITNESS: Yes.

20 BY MR. ROSENBAUM:

21 Q Okay. What study or studies have you read that
22 fall into that category?

23 A Well, the only one that I know of, one of the
24 authors, I believe, was Steven Klein of the Rand
25 Corporation in Santa Monica.

1 Q Okay. Do you know Steve Klein?
 2 A I think I know him from many years ago.
 3 Q Okay.
 4 A I haven't seen him for a long time.
 5 Q Okay. Have you read other articles by Steven
 6 Klein?
 7 A At one time or another I may have.
 8 Q Okay.
 9 A I used to be a colleague of his, and so I might
 10 have seen something that he did.
 11 Q Where were you a colleague of his?
 12 A Educational Testing Service.
 13 Q And do you regard him as an expert in the area
 14 of testing?
 15 MS. KOURY: Objection. Vague, overbroad.
 16 THE WITNESS: I guess it depends on what we mean by
 17 expert. I think he's carried out a number of studies.
 18 I don't think that his analysis of the Texas system was
 19 valid. I don't remember it in great detail. I think it
 20 might have been a little bit ill-prepared or not
 21 properly thought through or not sufficiently vetted or
 22 evaluated by his colleagues or others.
 23 BY MR. ROSENBAUM:
 24 Q Do you know where this study appeared?
 25 A Well, as far as I know, it was a Rand report.

1 Q Okay. Do you know if it was peer-reviewed?
 2 A As I recall, there was a footnote in the study
 3 saying that it did not go through the normal
 4 peer-reviewing procedures, but was a more -- it was
 5 intended to be timely rather than going through the
 6 normal procedures.
 7 Q Okay. And Doctor, tell me why you believe that
 8 his analysis was, if I got your words right,
 9 ill-prepared and not valid.
 10 A Because when I read it at the time, it did not
 11 appear that he had done anything as comparable -- that
 12 was comparable to the study that he was criticizing that
 13 was done by Grissmer. And it had not gone through, as I
 14 recall, the proper -- or the normal Rand procedures, nor
 15 had it been published in a peer-review journal.
 16 Q When you say he had not done the same things as
 17 Grissmer, what are you referring to?
 18 A Grissmer did a much more ambitious study that
 19 was longer and detailed and greatly documented, and I
 20 think Klein's was shorter and -- I think there were some
 21 other problems with it that I don't recall at the time.
 22 Q Do you recall the methodology that Klein used?
 23 A No.
 24 Q Are you aware of any other studies critical of
 25 the Texas accountability system?

1 A No.
 2 Q Have you ever undertaken an inquiry to collect
 3 all of the scholarship, pro and con, about the Texas
 4 accountability system?
 5 MS. KOURY: Vague.
 6 THE WITNESS: No.
 7 BY MR. ROSENBAUM:
 8 Q Okay. Are you aware of any studies critical of
 9 the North Carolina accountability system?
 10 A The only one that I know was, I think Klein may
 11 have been -- and when I say Klein, I think there were
 12 several authors. It's just that I remember his name
 13 because I knew him many years ago.
 14 But that one was also critical -- or let's -- I
 15 should say it wasn't so much critical of Dallas and
 16 North Carolina. It was critical of Grissmer's study.
 17 And Grissmer's study had analyzed North Carolina and
 18 Texas, because they had made high gains on the national
 19 assessment.
 20 Q Okay. So we're talking about the same article?
 21 A We are.
 22 Q Okay.
 23 A Except I may have mischaracterized it in saying
 24 that -- I may have said they criticized Texas or North
 25 Carolina. I meant to say they criticized the Grissmer

1 study.
 2 Q Okay. And maybe you already answered this
 3 question.
 4 Do you know the methodology Klein used when he
 5 talked about the Grissmer study?
 6 A No.
 7 Q Okay. Have you undertaken any inquiry or
 8 analysis to determine what the literature is regarding
 9 pros and cons of North Carolina accountability system?
 10 MS. KOURY: Objection. Vague.
 11 THE WITNESS: I haven't made a specific study of
 12 North Carolina.
 13 BY MR. ROSENBAUM:
 14 Q Okay. Have you ever advocated a formal
 15 national curriculum?
 16 MS. KOURY: Objection. Vague.
 17 THE WITNESS: I think that in various writings I
 18 have said that there are advantages of a uniform
 19 curriculum. There may also be disadvantages, of
 20 course. But I was speaking about this a little bit
 21 yesterday, in terms of the uniform State curriculum, but
 22 I think it also applies at a national level.
 23 BY MR. ROSENBAUM:
 24 Q Okay. When you used "uniform curriculum" in
 25 your answer just now, you were referring to the national

1 curriculum?
 2 A Uniform national curriculum.
 3 Q Okay, thanks.
 4 And do you think that the advantages outweigh
 5 the disadvantages?
 6 MS. KOURY: Objection. Vague, overbroad.
 7 THE WITNESS: I think that it would actually take a
 8 commission and a thorough study to weigh and try to
 9 quantify the benefits and the cost of doing that. It
 10 would depend on the circumstances, the time, the public
 11 opinion and things of that nature.
 12 BY MR. ROSENBAUM:
 13 Q Do you have a personal view?
 14 MS. KOURY: Objection. Vague, overbroad.
 15 THE WITNESS: I do.
 16 BY MR. ROSENBAUM:
 17 Q What is that?
 18 A It's ambivalent.
 19 Q In thinking about a national curriculum, is it
 20 your view that one of the consequences of not having a
 21 national curriculum is that things tend to be reduced to
 22 their lowest common denominator?
 23 MS. KOURY: Objection. Vague, overbroad.
 24 THE WITNESS: I don't know if I've ever written
 25 that, but I think there may be a degree of plausibility

1 about it.
 2 BY MR. ROSENBAUM:
 3 Q Tell me what that means to you.
 4 A If everyone would have to agree on a standard,
 5 the standard might turn out to be lower, because people
 6 might have a tendency to set a standard that they could
 7 easily achieve, as we were speaking about yesterday. So
 8 there might be a danger in what you mention.
 9 Q I thought your view was actually the other
 10 way. I thought your view was that, by not having a
 11 rigorous formal national curriculum -- let me strike
 12 that.
 13 You've advocated rigorous State uniform
 14 curricula; isn't that right?
 15 A Yes.
 16 Q Okay. And I thought your view was that that
 17 same principle ought to apply at the national level.
 18 Am I wrong?
 19 MS. KOURY: Objection. Argumentative.
 20 THE WITNESS: I think that State level uniform
 21 curriculum has many merits. Could have some dangers
 22 too. But I think when you talk about a national
 23 curriculum, it violates the principle that we've had in
 24 the United States of State control of education rather
 25 than national control or Federal control. And I think

1 this is a matter of -- it's not technical, but it has a
 2 value judgment, and I'm not sure -- I mean, I could
 3 point out -- and I have pointed out and we've talked
 4 about the advantages of a uniform curriculum, but I
 5 don't necessarily think that I'm wise enough to
 6 determine what it should be.
 7 BY MR. ROSENBAUM:
 8 Q Okay. Do you know, Doctor, what you can tell
 9 from the API, from an API score?
 10 MS. KOURY: Vague and ambiguous, overbroad.
 11 THE WITNESS: Well, I --
 12 MS. KOURY: Also calls for a narrative.
 13 Sorry.
 14 BY MR. ROSENBAUM:
 15 Q I don't want you to guess. I just want to know
 16 if you know what you can tell from an API score.
 17 A I can give you my impression.
 18 Q Well, I don't want you to --
 19 A Okay.
 20 Q No, I don't want to constrain your testimony.
 21 If you know, tell me. If you're guessing or
 22 speculating, as your attorney has said many times, I
 23 don't want you to do that.
 24 MS. KOURY: If you understand the question.
 25 THE WITNESS: I can tell you what I think is a

1 major component of -- and we talked about it yesterday.
 2 And I can -- and that's the value added.
 3 BY MR. ROSENBAUM:
 4 Q Okay.
 5 A But that's a measure of progress.
 6 Q Anything else?
 7 A I don't remember the other details of the
 8 calculations or the variables that enter the formula.
 9 Q Okay. Do you know the percent of "K" through
 10 12 public education funding that is borne by the State
 11 of California?
 12 A No.
 13 Q Do you know how California compares with
 14 respect to its percent of "K" through 12 public
 15 education funding compared to other states?
 16 MS. KOURY: Calls for speculation, beyond this
 17 expert's opinion. Also vague and overbroad.
 18 THE WITNESS: No.
 19 BY MR. ROSENBAUM:
 20 Q Okay. You probably just answered this.
 21 You don't know if it's more or less than 50
 22 percent in California?
 23 MS. KOURY: Same objections.
 24 THE WITNESS: I don't know the percentage.
 25 BY MR. ROSENBAUM:

1 Q Okay. Am I correct, sir, that one of your
2 concerns is that the amount of funding that comes from
3 the State can affect the prerogatives of local
4 decision-making?

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

8 Go ahead.

9 THE WITNESS: I think I need the question again.

10 BY MR. ROSENBAUM:

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

13 A Yeah. Calls the tune.

14 Q Calls the tune.

15 You've used that phrase?

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

18 Q Okay.

19 A But if you say so, I believe you.

20 Q Okay.

21 A I would stand by that. That -- I mean, I don't
22 mean to say it's an ironclad rule and numerical and all
23 those other things, but there is a folk wisdom about it,
24 and I do believe that, as states have picked up a bigger
25 share of spending on education, legislators have been

1 sure today that I would actually make a strong
2 recommendation. I think it might also depend very
3 heavily on things that I don't claim any expertise
4 about, like legislation, political science, public
5 opinion, things of that nature.

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

8 Would you ever recommend that local school
9 districts have the authority to raise their own funds
10 for education?

11 MS. KOURY: Objection. Incomplete hypothetical.

12 BY MR. ROSENBAUM:

13 Q Have you ever made that recommendation?

14 A Yes, I think I have.

15 Q Okay.

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

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

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

1 more assertive in putting more standards and regulating
2 schools.

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

5 MS. KOURY: Overbroad, vague.

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

11 BY MR. ROSENBAUM:

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

14 MS. KOURY: Objection. Vague, overbroad.

15 BY MR. ROSENBAUM:

16 Q For public education "K" through 12.

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

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

25 A Well, I've written a bit about it, but I'm not

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

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

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

19 Q Okay. Did you ever state, in sum or substance,
20 or write, in sum or substance, "Viewing self-interest as
21 primary, our founders held that governance alone cannot
22 protect people from their own representatives in public
23 service. The very size of big city school systems
24 allows for concealment, obfuscation and insulation from
25 citizen influence. In the shadows of big cities, those

1 who speak for and serve the poor may put their own
 2 interests first"?

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

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

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

9 BY MR. ROSENBAUM:
 10 Q That's consistent with your views?
 11 A Yes.

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

14 BY MR. ROSENBAUM:
 15 Q And can you tell me the basis for that view,
 16 sir?
 17 A I think the --

18 MS. KOURY: Objection to the extent that that quote
 19 is taken out of context, and the document speaks for
 20 itself.
 21 Go ahead.

22 THE WITNESS: Yeah, you know, I think I really
 23 should be looking at the documents themselves to get a
 24 better idea of what context it was, but I -- in answer
 25 to your question, I think that big city school systems

1 have often been less effective and less efficient than
 2 suburban schools and rural schools and smaller cities
 3 school systems, and I think that that is a major
 4 problem.

5 BY MR. ROSENBAUM:
 6 Q Why is that?
 7 A I think because of some of the capitalization
 8 ideas that I mentioned to you earlier and because larger
 9 units of government can sometimes be insensitive to
 10 local needs.

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

13 MS. KOURY: Objection to the extent that this calls
 14 for speculation, beyond this expert's opinion, also
 15 vague.

16 Go ahead.

17 THE WITNESS: I think I need to have that -- I'm
 18 sorry, I need to have the question again.

19 BY MR. ROSENBAUM:
 20 Q Sure. I'd be glad to do that, or if you'd
 21 like, I can have your last answer read back. I wasn't
 22 calling on you to speculate. I was just trying to
 23 clarify your views.

24 MR. ROSENBAUM: So why don't we have the doctor's
 25 last answer and then my question, please, read back.

1 (The record was read as follows:
 2 "A I think because of some of the
 3 capitalization ideas that I mentioned
 4 to you earlier and because larger units
 5 of government can sometimes be
 6 insensitive to local needs.
 7 "Q Okay. And when you say major
 8 problem, what do you mean by that?")

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

13 BY MR. ROSENBAUM:
 14 Q Okay. And what's the evidence you're referring
 15 to?
 16 A The capitalization idea that I mentioned
 17 earlier, and also, I've written on this subject myself
 18 in an empirical study.

19 Q Okay. And can you tell me what you wrote in
 20 that empirical study?
 21 MS. KOURY: Objection. Calls for speculation.

22 THE WITNESS: Well, it was -- I don't know, maybe
 23 15 years ago that I wrote the article, but it had to do
 24 with an analysis of 38 states, and it looked at the
 25 average size school and the average size district and

1 the demographics of the area and looked at those three
 2 things in regression analyses, and it showed that the
 3 larger the average size school and the larger the
 4 average size district in the state, other things being
 5 equal -- that is, the demographic factors -- the poorer
 6 the achievement.

7 BY MR. ROSENBAUM:
 8 Q Okay. Are there school districts in California
 9 that you would consider as big city school systems or
 10 larger school districts, as you've used that phrase?
 11 MS. KOURY: Objection. Vague, ambiguous. It calls
 12 for speculation, beyond this expert's opinions in this
 13 matter.

14 Go ahead.

15 THE WITNESS: Yes.

16 BY MR. ROSENBAUM:
 17 Q What are they?
 18 A Well, it either would be the normal definition
 19 of city size. I wouldn't set necessarily a cutoff, but
 20 obviously Los Angeles, Sacramento, San Francisco would
 21 be larger than the smaller places.

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

24 Q Okay. I appreciate that.
 25 Are you familiar, Doctor, with the phrase

1 "choice plan," in terms of public education -- in terms
2 of education, I'm sorry.

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

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

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

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

15 BY MR. ROSENBAUM:

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

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

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

23 BY MR. ROSENBAUM:

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

1 what do you mean by that?

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

7 Q And the quality of the core education too?

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

11 BY MR. ROSENBAUM:

12 Q If you know.

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

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

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

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

24 BY MR. ROSENBAUM:

25 Q Let me just -- I'm not trying to slice this

1 MS. KOURY: Same objections.

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

4 BY MR. ROSENBAUM:

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

7 MS. KOURY: Objection. Vague.

8 THE WITNESS: Charter schools?

9 BY MR. ROSENBAUM:

10 Q Are State funds used for charter schools?

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

14 THE WITNESS: I'm not certain.

15 BY MR. ROSENBAUM:

16 Q Okay. But you would advocate that?

17 MS. KOURY: Same objections. Also argumentative.

18 Go ahead.

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

24 BY MR. ROSENBAUM:

25 Q Is -- when you say parental attractiveness,

1 real fine. I just want to know if it's your view, based
2 on the surveys that you're referencing, that parents
3 like the education that their kids get at charter
4 schools.

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

8 Go ahead.

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

11 BY MR. ROSENBAUM:

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

14 MS. KOURY: Objection.

15 THE WITNESS: Yes.

16 MS. KOURY: Mischaracterizes his testimony.

17 BY MR. ROSENBAUM:

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

20 MS. KOURY: Objection. Mischaracterizes his
21 testimony.

22 THE WITNESS: That's all I mean.

23 BY MR. ROSENBAUM:

24 Q Okay.

25 A Well, maybe I should add one other thing to it

1 that would be helpful --

2 Q Sure.

3 A -- to the conversation. I think that the very
4 fact that parents want to send their kids to charter
5 schools is indicative that they like them.

6 Q Okay. And is parent attractiveness, as you
7 used that phrase -- is that important?

8 MS. KOURY: Objection. Vague.
9 Important to what?

10 THE WITNESS: I think -- yes, I think it leads to
11 greater parental involvement. I think parents, like
12 American citizens, like to be able to choose. I think
13 it's constructive.

14 BY MR. ROSENBAUM:

15 Q Why is parent involvement important?

16 A Well, some psychological studies indicate that
17 if you choose something, you're more apt to like it.
18 And secondly, I know that people's taste differ. Some
19 might like a core curriculum. Others might like, say, a
20 classic curriculum. Others might like an emphasis on
21 the arts and music.

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

1 two.

2 Q But I -- I don't want to put words in your
3 mouth.

4 I take it you regard that important to
5 increasing student achievement?

6 A Yes.

7 Q And why -- for the reason --

8 A And when you say "it," you're talking about
9 home -- parental involvement?

10 Q Yes.

11 A Well, I think research is a little less clear
12 on that. I think, with respect to home environment,
13 it's very clear. There've been a lot of studies, and I
14 think they're very consistent.

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

17 A I think it's promising, plausible and maybe we
18 have suggestive evidence, but I don't think it's quite
19 as clear as some of the other things that I mentioned
20 earlier, the more psychological studies that actually
21 make observations of the children at home and use more
22 careful methodology.

23 Q But it's a recommendation of yours, right, to
24 attempt to increase and deepen parent involvement; is
25 that correct?

1 have preferences. And so I think that choice within
2 some constraints is useful. Particularly when we think
3 if we have a State accountability system to be sure that
4 they're learning the major school subjects.

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

7 Is parent involvement -- you've told me it's
8 important to student achievement.

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

10 A It's one of the nine factors. I generally call
11 it more home environment or curriculum of the home. I
12 think home -- parental involvement is something a little
13 bit bigger than what I normally think of it.

14 Would you want me to explain?

15 Q I sure would.

16 A It means that -- that parents might -- when I
17 was talking about home environment's what you do in the
18 home. And to some extent related to the school. But
19 parental involvement might mean serving on an advisory
20 board to the school, volunteering in the school.

21 Q Interacting with the teachers?

22 A Interacting with the teachers, things of that
23 nature.

24 Q And you --

25 A There's a little bit of overlap between those

1 MS. KOURY: Objection. Vague.

2 THE WITNESS: Other things being equal, and I think
3 it is plausible and probable that it will be helpful to
4 achievement.

5 BY MR. ROSENBAUM:

6 Q Okay, thanks.

7 Do you know if the California accountability
8 system has any components that deal with parent
9 involvement?

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

12 Go ahead.

13 THE WITNESS: No.

14 BY MR. ROSENBAUM:

15 Q And have you ever made any inquiry to find out?

16 A No.

17 Q Okay.

18 A When you say inquiry, I think you're talking
19 about a systematic inquiry. I mentioned to you
20 yesterday, to try to be complete -- you know, I said
21 that I had given some talks out here, and I'm sure I may
22 have mentioned this. And so we may have had
23 conversations about it. But they don't stand out in my
24 mind.

25 Q Okay. Beyond the materials that we talked

1 about yesterday, Doctor -- and I don't want you to have
 2 to repeat yourself -- are there any other materials that
 3 you specifically recall examining on plaintiffs'
 4 Internet site?
 5 A Aside from what we explicitly mentioned?
 6 Q Yes.
 7 A Not -- we didn't mention the whole page, of
 8 course, and I'm sure I looked at that. But aside from
 9 that, I don't remember anything else.
 10 Q Okay, thanks.
 11 MS. KOURY: When you reach a good breaking point.
 12 MR. ROSENBAUM: Sure. Right now is fine.
 13 MS. KOURY: Great. Thank you.
 14 (Brief recess taken.)
 15 BY MR. ROSENBAUM:
 16 Q You're doing all right, Doctor?
 17 A I am. Thank you.
 18 Q Okay. The -- are you familiar with the
 19 initials -- it's all caps, H-U-M-R-R-O, HUMRRO? Have
 20 you ever seen that?
 21 A Yes.
 22 Q Okay. Do you know what HUMRRO is?
 23 A I only have a vague idea.
 24 Q Do you have enough confidence in your idea to
 25 state what you think it is?

1 MS. KOURY: Is it an estimate or a guess?
 2 THE WITNESS: It's an estimate.
 3 BY MR. ROSENBAUM:
 4 Q All right. Tell me what your estimate is.
 5 A I think the first letter stands for "human,"
 6 and I think they have done a lot of social science and
 7 psychological research for the military and for other
 8 organizations.
 9 Q Do you know if they've done anything with
 10 respect to the California accountability system?
 11 A No.
 12 Q Or any of the tests administered --
 13 A No.
 14 Q -- in California?
 15 A No.
 16 Q I wondered, Doctor, if we could put Exhibit 1
 17 in front of you again.
 18 Do you have that?
 19 Okay. And Doctor, Exhibit 1 consists of your
 20 report, your CV and Mr. Salvaty's declaration; is that
 21 right?
 22 A Yes. You know, I don't know that term.
 23 Declaration applies to this first page -- first three
 24 pages.
 25 Q Yeah.

1 A Okay.
 2 Q Actually, here's a surprise for you, Doctor.
 3 On the cover -- see where it says, "Expert
 4 Witness Declaration re Herbert J. Walberg"?
 5 A Yes.
 6 Q Okay. That's a reference to Mr. Salvaty's
 7 declaration. I just want to let you know.
 8 If you could please turn to Page 4 of your
 9 report. Not your CV, but the report.
 10 I'm not referencing Page 4 now. Do you know
 11 what CCR stands for?
 12 A No.
 13 Q Have you ever heard of the coordinated
 14 compliance review?
 15 A I don't recall it.
 16 Q Okay. Do you know if it has anything to do
 17 with the California assessment system or accountability
 18 system?
 19 A I don't know.
 20 Q Okay. I take it you've never looked at a CCR
 21 report?
 22 A Pardon me?
 23 Q To your knowledge, you've never looked at a
 24 CCR --
 25 A No.

1 Q -- report?
 2 Or a FCMAT report?
 3 A Or what?
 4 MS. KOURY: Asked and answered.
 5 MR. ROSENBAUM: You're right.
 6 BY MR. ROSENBAUM:
 7 Q On Page 4, looking, sir -- and again, as I told
 8 you yesterday, you feel free -- with respect to any of
 9 my questions, if I direct you to a part of your report,
 10 I don't want you to feel constrained. If you need to
 11 look at other sections to get the contextual basis, you
 12 absolutely can do that, all right?
 13 A Yes. Thank.
 14 Q On Page 4, looking in the fifth paragraph down
 15 under Roman numeral I, do you see the phrase
 16 "Legislatively-enacted options"?
 17 A Yes.
 18 Q That's in the final sentence of that section?
 19 A I do.
 20 Q Okay. What did you mean by that?
 21 MS. KOURY: Objection to the extent the document
 22 speaks for itself.
 23 THE WITNESS: (Reviews documents.)
 24 What I'm trying to say there is that I think
 25 that there's -- what shall we call it in plain

1 language? -- wiggle room and that the legislation may
2 not be complete in detail and there's room for the
3 department to interpret or have some latitude in how
4 quickly and to what extent they enact various aspects of
5 the legislation.

6 BY MR. ROSENBAUM:

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

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

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

14 Q Let's come back to that later on.

15 That's later in the report?

16 A I need to check to be sure.

17 Q Why don't you do that.

18 A All right.

19 (Witness reviews documents.)

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

1 MS. KOURY: Objection. Incomplete hypothetical,
2 also calls for speculation, beyond this expert's
3 opinions.

4 THE WITNESS: This could be done by looking at the
5 relationship of achievement test scores for a given
6 unit, the school, a district, State or even a nation, in
7 relation to how much that unit expends in monetary terms.

8 BY MR. ROSENBAUM:

9 Q Okay. Did you do that with respect to any part
10 of the California accountability system?

11 A Not explicitly.

12 Q Okay. Do you know if anyone has precise
13 methodology you talked about?

14 A For California or ever?

15 Q For California.

16 A No.

17 Q Okay. Do you know if anyone has, with respect
18 to any state accountability system? And I'm speaking
19 specifically about the methodology that you described
20 for me as how to determine whether a particular program
21 or system is cost effective.

22 A For any particular state.

23 Q Yes.

24 A No.

25 Q Okay.

1 Department of Education.

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

4 A Not that I can think of now.

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

7 A Fifth -- in what paragraph?

8 Q The first paragraph, I'm sorry.

9 A Ah, yeah.

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

11 A Yes.

12 Q Could you define fully what you meant by that.

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

15 THE WITNESS: In that sentence I'm contrasting
16 effective with cost effective, and what I mean by
17 effective is it's likely to raise achievement, but cost
18 effective means that it's likely to raise achievement
19 for a given thousand dollars of expenditures. So it's
20 also called efficiency.

21 BY MR. ROSENBAUM:

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

1 MR. ROSENBAUM: Abe, we're on Page 4 of --

2 MR. HAJELA: Thank you.

3 MR. ROSENBAUM: -- Dr. Walberg's report.

4 Q Tell me, Doctor -- still on Page 4 of Exhibit
5 1, five lines down from the top -- what did you mean by
6 the word "balanced"?

7 MS. KOURY: Objection. The document speaks for
8 itself, to the extent the word is taken out of context.

9 Go ahead.

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

17 BY MR. ROSENBAUM:

18 Q Okay. Thank you.

19 When the accountability system was first
20 implemented in California, sir -- do you know what the
21 date of that was?

22 A No.

23 Q When it was first implemented, do you know what
24 incentives were in place, as you use the word
25 "incentives" throughout your report?

1 MS. KOURY: Objection. Vague.
 2 THE WITNESS: Were in place in California?
 3 BY MR. ROSENBAUM:
 4 Q As part of the accountability system. Strike
 5 that.
 6 Do you know if there were any incentives that
 7 were in place as part of the accountability system when
 8 it was first operated?
 9 A I don't know.
 10 Q And do you know if any incentives were added
 11 during the course of its implementation through the
 12 present?
 13 MS. KOURY: Objection. Vague. It's also somewhat
 14 asked and answered.
 15 THE WITNESS: I think there were incentives related
 16 to the accountability system, but I don't know when they
 17 were in place, whether they were in place in the
 18 beginning or whether they were added along the way.
 19 BY MR. ROSENBAUM:
 20 Q Which ones are you thinking about?
 21 A Charter schools, the publication of the State
 22 test scores -- well, when I say charter schools, I mean
 23 chartering failing schools.
 24 Q Okay. Have any -- any other, sir?
 25 A Not that I can think of.

1 Q Okay. Have there been -- you consider
 2 chartering failed schools a incentive rather than a
 3 sanction?
 4 A Well, I sometimes use the incentive -- term
 5 "incentive" to include sanctions.
 6 Q Okay.
 7 A Just kind a negative incentive or disincentive.
 8 Q Okay. Have any failed schools been chartered
 9 in California?
 10 A I don't know.
 11 Q Have you ever made any investigation or inquiry
 12 to find out?
 13 A No.
 14 Q Do you know if any sanctions have been
 15 administered in California as part of the accountability
 16 system?
 17 MS. KOURY: Asked and answered.
 18 THE WITNESS: You said schools.
 19 BY MR. ROSENBAUM:
 20 Q Yes.
 21 A Well, sets of schools. I don't know if it's
 22 part of the present -- well, the answer to your question
 23 is yes.
 24 Q Okay, yes, what? I'm sorry.
 25 A Yes, I do know of schools that have been

1 sanctioned in California.
 2 Q Which schools?
 3 A It's the Compton education -- Compton district.
 4 Q And was that part of the California
 5 accountability system, as you've defined it?
 6 A I'm unsure of whether the timing of both of
 7 those, both the legislation and when it was sanctioned.
 8 Q Okay. And do you know if any other schools
 9 were sanctioned as part of the California accountability
 10 system?
 11 A No.
 12 Q Okay. Have you made any inquiry to find out?
 13 A No.
 14 Q Have there been any studies or investigations,
 15 to your knowledge, as to the effectiveness of the
 16 incentives or sanctions that are part of the California
 17 accountability system?
 18 MS. KOURY: Objection. Vague.
 19 THE WITNESS: That doesn't necessarily mean that it
 20 would have to be done in California; is that right?
 21 BY MR. ROSENBAUM:
 22 Q I'm talking about of California schools. I'm
 23 talking about the -- my question -- I just bollocksed it
 24 all up.
 25 I'm interested in the California accountability

1 system.
 2 A Yes.
 3 Q Have there been any investigations or
 4 inquiries, to your knowledge, about the effectiveness of
 5 the incentives that are part of the California
 6 accountability system?
 7 A I don't know of any.
 8 Q Okay. And you've never undertaken any?
 9 A No.
 10 Q How would you go about doing that?
 11 MS. KOURY: Objection.
 12 BY MR. ROSENBAUM:
 13 Q If you know.
 14 MS. KOURY: Sorry.
 15 Incomplete hypothetical.
 16 THE WITNESS: Well, there might be various ways to
 17 do it, and I described a couple of them yesterday, as
 18 general research designs. One way to do it is to look
 19 at the series of test scores over a long period of time
 20 and plot them on a chart. You could use sophisticated
 21 techniques, but basically, to explain it, if you saw a
 22 surge in test scores with the introduction of an
 23 accountability system or a gradual increase in the
 24 scores, that might be an indication, not a perfect
 25 indication, that the accountability system was working.

1 BY MR. ROSENBAUM:

2 Q Okay. Have there been any investigation or
3 inquiry, to your knowledge, about the effectiveness of
4 sanctions that are part of the California accountability
5 system?

6 MS. KOURY: Objection. Vague.

7 THE WITNESS: When you say sanctions and
8 incentives, I'm assuming you mean a specific study of
9 California.

10 BY MR. ROSENBAUM:

11 Q Yes.

12 A Okay. I don't know of any.

13 Q And have you ever undertaken any?

14 A No.

15 Q Okay. Do you know if there are any plans in
16 California to investigate the effectiveness of
17 incentives that are part of the California plan?

18 A No.

19 MS. KOURY: Calls for speculation.

20 BY MR. ROSENBAUM:

21 Q Have you made any inquiry to find out?

22 A No.

23 Q Do you know if there's any plans to investigate
24 the effectiveness of sanctions that are part of the
25 California effectiveness -- California accountability

1 hypothetical.

2 THE WITNESS: And I'm assuming that you would want
3 to compare the scores over time.

4 BY MR. ROSENBAUM:

5 Q Well, would you want to do that?

6 MS. KOURY: Incomplete hypothetical.

7 THE WITNESS: Well, if I wanted to know -- we were
8 talking about an accountability system and how to
9 measure its effect.

10 BY MR. ROSENBAUM:

11 Q Right.

12 A If I did, I mentioned that it would be good to
13 have tests over time.

14 Q Right.

15 A And looking for surge. So if that's our
16 purpose, then -- and you're saying if the test changed
17 during the course of that, as I understand your question.

18 Q Right.

19 A Then it would introduce large complications.

20 Q Tell me what those large complications are.

21 A It could be that a later version of the test
22 was more difficult or less difficult and that it might
23 have been improperly calibrated. And there are
24 sometimes disputes about how tests should be
25 calculated -- calibrated. Sometimes they require fairly

1 system?

2 MS. KOURY: Objection. Vague.

3 THE WITNESS: No.

4 BY MR. ROSENBAUM:

5 Q Have you made any inquiry to find out?

6 A No.

7 Q You told me yesterday, I think -- and I don't
8 want to mischaracterize your testimony, so just correct
9 me if I'm wrong -- that the test administered as part of
10 the accountability system has not been identical each
11 year. It's changed from year to year; is that correct?

12 MS. KOURY: Objection to the extent it
13 mischaracterizes his testimony and vague.

14 BY MR. ROSENBAUM:

15 Q I don't want to mischaracterize your testimony,
16 so let me ask you.

17 Do you know if the test has changed from year
18 to year?

19 MS. KOURY: Vague.

20 THE WITNESS: I don't know for certain.

21 BY MR. ROSENBAUM:

22 Q Okay. If the test did change, Doctor, what
23 should be done, in terms of comparing results from year
24 to year?

25 MS. KOURY: Objection. Vague, also incomplete

1 large scale studies, and there's not universal agreement
2 on how to do it.

3 Q Okay. When you say improperly calibrated, what
4 do you mean by that?

5 A I mean that it -- well, I could give you an
6 example.

7 Q Sure.

8 A Or maybe I'll try to give you a general
9 statement, then an example.

10 But you'd like to say that 50 last year on a
11 test is the same as the 50 this year. But if the
12 test -- and you just -- let's say -- and so you said
13 well, we're going to take 50 percent as indicating 50,
14 and the test was much harder this year. And so kids got
15 50 percent right this year, whereas, they got 50 percent
16 right last year, but if the test differed, then it's --
17 they would -- it would seem that they had the same
18 result from year to year, but they actually had
19 increased in their achievement levels. So that is an
20 example.

21 Now, there are much more sophisticated ways of
22 doing it, but --

23 Q How would you calibrate it? If you know.
24 Let's use your hypothetical.

25 How would you go about calibrating it? Do you

1 feel it's within your area of expertise to tell me
2 that?

3 MS. KOURY: Objection. Incomplete hypothetical,
4 calls for speculation, beyond this expert's opinions.

5 THE WITNESS: Well, I chaired a couple of -- at
6 least one panel, and we're concerned about this in the
7 national assessment. So I don't purport to do it myself
8 or ever have done it, but I'm familiar with -- a little
9 bit with the methodology.

10 BY MR. ROSENBAUM:
11 Q Do you -- can you tell me what the methodology
12 would be? You've told me the global difficulty in
13 making the comparison.

14 A Yes.

15 Q Can you tell me what the methodology would be
16 to calibrate it properly?

17 MS. KOURY: Objection. Incomplete hypothetical.

18 THE WITNESS: Only by name and superficially.

19 BY MR. ROSENBAUM:
20 Q Tell me what you mean by name.

21 A Well, there's -- this is called item response
22 theory. And there are two major points of view about
23 it. I happen to have studied with -- my dissertation
24 advisor, the foremost exponent of what's called the
25 Rausch model, which -- it was a Danish mathematician who

1 equated scores for the military, and it's called
2 sometimes the single parameter model. And there is
3 another school of thought -- it's called a
4 three-parameter model -- and they make slightly
5 different assumptions, but those assumptions can -- are
6 disputed.

7 Q Do you take a side one way or the other?

8 MS. KOURY: Objection. Vague.

9 THE WITNESS: I don't think that I would advocate
10 one or the other.

11 BY MR. ROSENBAUM:
12 Q Okay. And in Texas, Doctor, do you know if --
13 do you know what the Texas exam's called?

14 A Well, it recently changed. I believe it was
15 called the TAAS and now it's called the TAKS, if I'm --

16 Q T-A-A-S?

17 A I think that's the older test, yes.

18 Q The first five years of the Texas exam, did it
19 change?

20 A I don't know.

21 Q Okay. How about the North Carolina exam? Do
22 you know if it changed?

23 A I don't know.

24 MS. KOURY: Calls for speculation.

25 BY MR. ROSENBAUM:

1 Q Has the exam now changed in Texas, besides its
2 name?

3 MS. KOURY: Calls for speculation.

4 THE WITNESS: I think a major change was made, and
5 I'm not sure the test has actually been administered or
6 not.

7 BY MR. ROSENBAUM:
8 Q Okay. Do you know what, if anything, they're
9 doing to calibrate the results --

10 A No.

11 Q -- for comparison purposes?

12 A No.

13 Q Have you ever done any inquiry to find out?

14 MS. KOURY: Wait until he finishes.

15 THE WITNESS: Sorry.

16 No.

17 BY MR. ROSENBAUM:
18 Q Has the North Carolina test ever changed?

19 MS. KOURY: Objection. Calls for speculation.

20 THE WITNESS: I don't know.

21 BY MR. ROSENBAUM:
22 Q Okay. Do you know if there's an essay
23 component to the California accountability system?

24 A No.

25 Q No, you don't know?

1 A I don't know.

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

3 MS. KOURY: Asked and answered yesterday.

4 THE WITNESS: No.

5 BY MR. ROSENBAUM:
6 Q Do you know -- maybe you already answered this,
7 but do you know how much money the State spent -- the
8 State of California spent on incentives as part of its
9 accountability system?

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

12 THE WITNESS: No.

13 BY MR. ROSENBAUM:
14 Q Have you made any inquiry or investigation to
15 find out?

16 MS. KOURY: Same objections.

17 THE WITNESS: No.

18 BY MR. ROSENBAUM:
19 Q Same questions for sanctions.
20 Have you -- do you know how much money has been
21 spent on sanctions?

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

24 THE WITNESS: No.

25 BY MR. ROSENBAUM:

1 Q Do you know if California -- the Department of
2 Education has a -- has personnel that deal with
3 intervention in local schools as part of the
4 accountability system?

5 MS. KOURY: Objection. Vague, overbroad.

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

8 BY MR. ROSENBAUM:

9 Q Do you know for a fact whether or not --

10 A No.

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

13 MS. KOURY: Argumentative.

14 THE WITNESS: No.

15 BY MR. ROSENBAUM:

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

18 Do you know what if any its budget is?

19 MS. KOURY: Objection. Asked and answered.

20 MR. ROSENBAUM: It was asked and answered.

21 Q You don't have to answer that.

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

25 MS. KOURY: No need.

1 MS. KOURY: Objection. Overbroad.

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

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

18 BY MR. ROSENBAUM:

19 Q Do you have a position on that?

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

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

3 BY MR. ROSENBAUM:

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

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

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

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

17 A Yes.

18 Q I started that in the middle of the sentence,
19 but do you see --

20 A Yes.

21 Q -- where I'm referencing?

22 If you've answered this, just tell me.

23 Do you think it's an appropriate role --
24 Federal role to set education standards for U.S.
25 students and measure progress in achieving them?

1 Q Why do you say that?

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

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

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

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

11 I guess I might add one point to it, that it
12 has -- despite the fact that both political parties
13 and -- have strongly voted for it in Congress and there
14 was much, much support, and I think there's a
15 swelling -- a ground swell of support for accountability
16 systems -- and not just support, but we're seeing them
17 being implemented in a gradual way -- that I -- that one
18 can be hopeful, but on the other hand, controversies
19 have ensued, and there's been various types of
20 criticisms and arguments about whether the standards are
21 too high or too low or whatever.

22 So some of it has to do with the principles,
23 you might say, but some of it has to do with the way
24 it's implemented and whether -- and how well it's
25 accepted.

1 BY MR. ROSENBAUM:
 2 Q If -- did you -- did you testify about the
 3 law?
 4 MS. KOURY: Objection. Vague.
 5 BY MR. ROSENBAUM:
 6 Q When it was -- you know, when it was being
 7 considered.
 8 Did you testify?
 9 A In Congress?
 10 Q Yeah.
 11 A No.
 12 Q Did you submit testimony?
 13 A No.
 14 Q Did the Hoover Institute submit testimony?
 15 MS. KOURY: Calls for speculation.
 16 THE WITNESS: Not to my knowledge.
 17 BY MR. ROSENBAUM:
 18 Q Or the Heartland -- is it the Heartland
 19 Institute?
 20 MS. KOURY: Calls for speculation.
 21 THE WITNESS: I'm associated with the Heartland
 22 Institute --
 23 BY MR. ROSENBAUM:
 24 Q I know.
 25 A -- as we mentioned yesterday. As far as I

1 know, Heartland did not submit anything.
 2 Q Okay. Do you -- if it were up to you, would
 3 there be certain changes that you would make to the No
 4 Child Left Behind Act for purposes of improving student
 5 achievement?
 6 MS. KOURY: Objection. Incomplete hypothetical,
 7 overbroad, calls for speculation, also calls for a
 8 narrative.
 9 THE WITNESS: I haven't studied all the aspect of
 10 the legislation. It's extremely complicated. I
 11 understand it's about 200 pages long and has many, many
 12 provisions. And I think, in order to give a
 13 recommendation or feel that I could come up with a
 14 conclusion or recommendation that would be reasonable,
 15 I'd have to spend a lot more time on it.
 16 BY MR. ROSENBAUM:
 17 Q Are you aware that there's a provision of the
 18 law that deals with the requirement to have qualified
 19 teachers in the schools?
 20 MS. KOURY: Objection. Calls for a legal
 21 conclusion. It's also vague.
 22 THE WITNESS: I think -- you are reminding me of
 23 that, and I think I do remember that.
 24 BY MR. ROSENBAUM:
 25 Q Okay. What do you remember?

1 A I think there's -- is a provision like that.
 2 Q What would be your definition of a qualified
 3 teacher, Doctor?
 4 MS. KOURY: Calls for speculation.
 5 THE WITNESS: Well, if feasible, I would like to
 6 define well-qualified teachers as those that raise
 7 achievement of their students.
 8 BY MR. ROSENBAUM:
 9 Q Okay. Anything else?
 10 A Well, I'm assuming the obvious things, that
 11 they do that within the law and they -- and within the
 12 normal range of activities of teachers.
 13 Q Okay. Have you -- we've gone into this a
 14 little bit yesterday, but have you ever at any point
 15 argued that programs under Title I should be
 16 eliminated?
 17 MS. KOURY: Objection. Asked and answered. It's
 18 also vague and overbroad, calls for speculation.
 19 Go ahead.
 20 THE WITNESS: I have been a critic of Chapter 1,
 21 Title I, and I have labeled it a failure and, in some
 22 cases, I have -- I think I have said that it should be
 23 abolished, because it is ineffective.
 24 BY MR. ROSENBAUM:
 25 Q And the basis -- and when you said failure,

1 what did you mean by that?
 2 A What I mean is it's been very, very expensive
 3 and has not reduced the poverty gap.
 4 Q And by poverty gap you mean what?
 5 A The gap between children who are poor and those
 6 who are not poor.
 7 Q Okay. And when did you first advocate that
 8 position, as far as you can recall?
 9 MS. KOURY: Objection. It calls for speculation,
 10 beyond this expert's opinions in this matter.
 11 THE WITNESS: Well, I may have talked about it, but
 12 in writing it might have been -- oh, as long as 20 years
 13 ago. But I'm -- as I mentioned to you before, and I
 14 remind myself, I'm uncertain about dates.
 15 BY MR. ROSENBAUM:
 16 Q Okay. Have you -- have you written more than
 17 one article on the subject?
 18 MS. KOURY: Objection. Vague.
 19 THE WITNESS: On Chapter 1 --
 20 BY MR. ROSENBAUM:
 21 Q Yeah.
 22 A -- Title I?
 23 Q Yeah. The position that you just set out for
 24 me.
 25 MS. KOURY: Objection. Vague and overbroad.

1 THE WITNESS: I think I may have written that
 2 several times. Sometimes incidentally.
 3 BY MR. ROSENBAUM:
 4 Q Okay. Are you aware, Doctor, that in the past
 5 few years, there was an initiative on the California
 6 ballot that dealt with vouchers?
 7 MS. KOURY: Objection. Calls for speculation.
 8 It's also beyond this expert's opinions in this matter.
 9 THE WITNESS: I'm aware that there was a proposed
 10 legislation.
 11 BY MR. ROSENBAUM:
 12 Q And what is your understanding of what its
 13 contents were?
 14 MS. KOURY: Objection. Calls for speculation,
 15 beyond this expert's opinions. It also calls for a
 16 narrative.
 17 Go ahead.
 18 THE WITNESS: I know a little more than that it was
 19 proposed and failed.
 20 BY MR. ROSENBAUM:
 21 Q Okay. Did you take a position on it?
 22 MS. KOURY: Calls for speculation, beyond this
 23 expert's opinions in this case.
 24 THE WITNESS: On the California legislation?
 25 BY MR. ROSENBAUM:

1 Q Yeah.
 2 A Or in general?
 3 Q On the California legislation.
 4 A I don't recall making a recommendation.
 5 Q Does that mean you didn't or you don't recall?
 6 MS. KOURY: Objection. Asked and answered, it's
 7 also argumentative.
 8 Go ahead.
 9 THE WITNESS: I don't remember ever doing that. I
 10 don't think I did.
 11 BY MR. ROSENBAUM:
 12 Q Okay. Do you know that President Bush has
 13 recently made recommendations regarding vouchers?
 14 MS. KOURY: Objection. Vague.
 15 I'm not sure if that's a question.
 16 Go ahead.
 17 THE WITNESS: I remember seeing a news clip
 18 sometime maybe in the last week or so that he had done
 19 that.
 20 BY MR. ROSENBAUM:
 21 Q Okay. What's your understanding of what he
 22 did?
 23 MS. KOURY: Objection. Calls for speculation,
 24 beyond this expert's opinions. It's also vague.
 25 THE WITNESS: Little more than that.

1 BY MR. ROSENBAUM:
 2 Q Could I ask you, please, Doctor, to turn to
 3 Page 8 of Exhibit 1, your report.
 4 And appreciate, Doctor -- again, you read as
 5 much as you need to, but I'm interested in particular in
 6 the insert quote which is footnoted to Locke, Shar,
 7 Saari, S-a-a-r-i, and Latham. And I'm reading from it.
 8 "Goals affect performance by directing attention,
 9 mobilizing effort, increasing persistence, and
 10 motivating strategy development. Goal setting is most
 11 likely to improve task performance when the goals are
 12 specific and sufficiently challenging, feedback is
 13 provided, the experimenter or manager is supportive and
 14 assigned goals are accepted by the individual."
 15 Do you see that quote?
 16 A Yes.
 17 Q Do you have an opinion, sir, as to whether or
 18 not any of plaintiffs' experts with whom you are
 19 familiar in their reports would take opposition to that
 20 quote?
 21 MS. KOURY: Objection -- are you finished?
 22 MR. ROSENBAUM: Hmm-hmm.
 23 MS. KOURY: Objection. Vague, ambiguous,
 24 overbroad, calls for speculation.
 25 THE WITNESS: I don't know.

1 BY MR. ROSENBAUM:
 2 Q Now, what's your understanding in that quote of
 3 the meaning of the word "feedback"?
 4 Do you see that?
 5 A (Witness reviews documents.)
 6 Q My first question is: Do you see where the
 7 word "feedback" appears?
 8 A Yes.
 9 Q Okay. Thank you.
 10 What's your understanding of the meaning of
 11 that word?
 12 A Feedback is a psychological term that's used to
 13 indicate when the person being monitored is given
 14 information about how they're doing.
 15 Q Okay. Are students given feedback as part of
 16 the California accountability system? Do you know?
 17 A Well, at least in one sense, I think they are.
 18 Q What's that?
 19 A That is at least in an indirect sense, as a
 20 part of taking the test, they know where their school
 21 stands.
 22 Q Okay.
 23 A And I --
 24 Q Any other feedback you're aware that students
 25 receive?

1 A Not that I have -- directly have heard.
 2 Q Okay. Have you ever made any inquiry to find
 3 out?
 4 A No.
 5 Q Do you know if students receive feedback as
 6 part of the California high school exit exam?
 7 MS. KOURY: Objection. Vague.
 8 THE WITNESS: I don't know.
 9 BY MR. ROSENBAUM:
 10 Q Okay. Have you ever made any inquiry to find
 11 out?
 12 A No.
 13 Q Do you -- are you aware, sir, of the percent of
 14 teachers in California who use textbooks in core
 15 academic subjects?
 16 MS. KOURY: Objection. Asked and answered. It
 17 also calls for speculation, beyond this expert's
 18 opinions.
 19 THE WITNESS: No.
 20 BY MR. ROSENBAUM:
 21 Q Okay. And if I broke it down to different
 22 subject matters -- English, language arts, math,
 23 science, history, civics, foreign language -- would your
 24 answer be the same?
 25 MS. KOURY: Objection.

1 THE WITNESS: Yes.
 2 MS. KOURY: Asked and answered.
 3 THE WITNESS: Pardon me.
 4 BY MR. ROSENBAUM:
 5 Q Do you know if anyone has made any inquiry to
 6 find out --
 7 MS. KOURY: Objection. Asked and answered, calls
 8 for speculation, beyond this expert's opinions.
 9 MR. ROSENBAUM: Let me just finish my question.
 10 MS. KOURY: Sorry.
 11 BY MR. ROSENBAUM:
 12 Q -- regarding either generally or for any of
 13 those subjects.
 14 MS. KOURY: Are you finished?
 15 MR. ROSENBAUM: Yes.
 16 MS. KOURY: Objection. Asked and answered, calls
 17 for speculation, beyond this expert's opinions.
 18 THE WITNESS: I had the impression that Jeanne
 19 Oakes had looked into textbook availability, and she may
 20 have had some figures on that, but I don't remember it
 21 well.
 22 BY MR. ROSENBAUM:
 23 Q Okay. Putting aside Dr. Oakes, do you know if
 24 anyone else in the state of California has?
 25 A No.

1 MS. KOURY: Same objections.
 2 BY MR. ROSENBAUM:
 3 Q Or if the State Government has?
 4 MS. KOURY: Same objections.
 5 THE WITNESS: No.
 6 BY MR. ROSENBAUM:
 7 Q Do you know what Dr. Oakes's conclusions were?
 8 MS. KOURY: Objection. Calls for speculation.
 9 THE WITNESS: I don't remember well.
 10 BY MR. ROSENBAUM:
 11 Q Okay. Just want to point -- she's stepping on
 12 your toes; it's not the other way around.
 13 THE WITNESS: As long as you paused and raised that
 14 question, I think we all owe an apology to this
 15 wonderful person.
 16 MR. ROSENBAUM: We'll stipulate to that.
 17 Q Do you know -- have you reviewed any of
 18 California's standards, the academic standards?
 19 MS. KOURY: Objection. Asked and answered.
 20 MR. ROSENBAUM: I don't think it was, actually.
 21 Q Let me be clear what I'm talking about. We
 22 talked yesterday about the fact that the State has
 23 formulated rigorous academic standards.
 24 Do you remember that?
 25 A Yes.

1 Q Okay. Have you reviewed any of those
 2 standards?
 3 MS. KOURY: Objection. Vague.
 4 THE WITNESS: Not in detail.
 5 BY MR. ROSENBAUM:
 6 Q In any way at all?
 7 A Only in the sense that I have looked at
 8 independent analyses of the standards.
 9 Q Okay. But have you actually looked at the
 10 standards themselves?
 11 MS. KOURY: Asked and answered.
 12 THE WITNESS: No.
 13 BY MR. ROSENBAUM:
 14 Q Okay. And when you say independent analysis of
 15 standards, what do you mean by that?
 16 MS. KOURY: Objection. This was asked and
 17 answered. He testified about this yesterday, but go
 18 ahead.
 19 MR. ROSENBAUM: Okay.
 20 Q I'll defer to your lawyer and hold her
 21 responsible if we lose the case.
 22 Do you know, sir, whether or not there is a
 23 greater percentage of white students who have access to
 24 textbooks in core curriculum subjects than
 25 African-Americans in California?

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

4 THE WITNESS: No.

5 BY MR. ROSENBAUM:

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

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

10 THE WITNESS: No.

11 BY MR. ROSENBAUM:

12 Q No, you don't know?

13 A I don't know.

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

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

18 THE WITNESS: No.

19 BY MR. ROSENBAUM:

20 Q Do you know if the State of California has?

21 MS. KOURY: Objection. Calls for speculation,
22 beyond this expert's opinions, vague, ambiguous go
23 ahead.

24 THE WITNESS: No.

25 BY MR. ROSENBAUM:

1 Q Do you know John Bishop?

2 A Yes.

3 Q Who is he?

4 A He's an economist at Cornell University.

5 Q Is he affiliated with Hoover in any way?

6 A No.

7 Q Has he ever spoken at Hoover, sofar as you know?

8 A Sofar as I know, he hasn't spoken there, but he
9 could have.

10 Q Okay. How do you know him?

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

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

18 MS. KOURY: Objection. Vague.

19 THE WITNESS: No.

20 BY MR. ROSENBAUM:

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

25 He looked at curriculum-based external

1 Q Or if anyone in California has?

2 MS. KOURY: Same objections.

3 THE WITNESS: No.

4 BY MR. ROSENBAUM:

5 Q Do you know if the information's available to
6 make that determination?

7 MS. KOURY: Objection. Vague and ambiguous,
8 overbroad, calls for speculation, beyond this expert's
9 opinions.

10 THE WITNESS: No.

11 BY MR. ROSENBAUM:

12 Q To your knowledge, does the State of California
13 have any information regarding the availability of
14 textbooks in "K" through 12 public schools?

15 MS. KOURY: Objection. Asked and answered a couple
16 times, and calls for speculation, beyond this expert's
17 opinions.

18 THE WITNESS: I don't know.

19 BY MR. ROSENBAUM:

20 Q Okay. You talked about a study by John Bishop.
21 Do you recall that?

22 A Yes.

23 Q Okay. That's at Page 9 of your report, Exhibit
24 1?

25 A Yes.

1 examinations; is that right?

2 A Yes.

3 Q Do you know what the nature of the particular
4 curriculum-based external examinations were that he
5 looked at?

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

8 Q I'm sorry, what?

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

13 And in addition, that you said what else do I
14 know about it, I am somewhat familiar with the advanced
15 placement program, New York State Regents, in
16 particular.

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

19 A Okay.

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

22 A I believe he did.

23 Q Okay. Did he study any other examinations?

24 A They're mentioned in the second paragraph.

25 Q Okay. And your testimony, sir, is that he

1 studied the advanced placement program, the New York
2 State Regent examination, and what else? I want to
3 break that down. It's a sloppy question.

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

6 MS. KOURY: Objection. Vague.

7 BY MR. ROSENBAUM:

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

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

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

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

18 Q Did he study every state examination?

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

23 Q Okay. Do you see any differences at all
24 between the tests that are administered in California as
25 part of the accountability system and any of the tests

1 Bishop study that I would -- would cause me to recommend
2 that it would not be published.

3 BY MR. ROSENBAUM:

4 Q Okay. Would you raise any criticisms at all?

5 MS. KOURY: Objection. Asked and answered, calls
6 for a -- or it's an incomplete hypothetical, calls for
7 speculation.

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

10 BY MR. ROSENBAUM:

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

14 A I believe it's pronounced Kiel.

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

17 Do you see that?

18 A Yes.

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

21 MS. KOURY: Calls for speculation.

22 BY MR. ROSENBAUM:

23 Q If you know.

24 A A variant of regression analysis.

25 Q Okay. And what do you mean by a variant of

1 that he studied as part of his analysis?

2 MS. KOURY: Objection. Vague, overbroad, compound.

3 You can answer to the extent you can.

4 THE WITNESS: Do I see any differences?

5 BY MR. ROSENBAUM:

6 Q Yes, sir.

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

11 Q Okay. Do you have any criticisms of the
12 methodology of the Bishop study for purposes -- for the
13 purposes -- let me strike that.

14 First, you know what peer review is?

15 A Yes.

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

18 A Yes.

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

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

25 THE WITNESS: I don't remember any faults of the

1 regression analysis?

2 A Well, it was a regression analysis, but
3 economists have special procedures that they use.

4 Q Okay. Are you familiar with those procedures
5 that the economists use?

6 A Somewhat.

7 Q Tell me what that means.

8 A Well, I read about them.

9 Q Do you feel conversant in them?

10 MS. KOURY: Objection. Vague.

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

13 BY MR. ROSENBAUM:

14 Q Okay. Do you see any differences between the
15 data that was considered -- strike that.

16 Did the Kiel Institute look at particular
17 examinations, if you know?

18 MS. KOURY: Vague.

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

22 BY MR. ROSENBAUM:

23 Q Okay. Do you know how many examinations?

24 A Not offhandedly.

25 Q Do you know anything about the nature of those

1 examinations?
 2 A Generally.
 3 Q What do you know?
 4 A I know that they were standardized tests and
 5 that they had high degrees of reliability and validity.
 6 Q Okay. And do you --
 7 A Before you go on, maybe I should add one more
 8 point. I also know that they were carefully screened by
 9 an international group from various countries to be sure
 10 that there was adequate content on the test and that it
 11 was not unfair from one country to another.
 12 Q What's that mean?
 13 A Well, to give you an example, if we gave a test
 14 of American history to people from France and Japan,
 15 that would not be, in a sense, fair to them or even
 16 useful comparison, but if we talked about physics or
 17 mathematics or reading, then it would be a much more
 18 comparable thing.
 19 Q Why would that be unfair?
 20 A To compare French and Japanese students with
 21 American students on American history?
 22 Q Do --
 23 A Is that your question?
 24 Q No, you answered it fine.
 25 If they had done what you said, test Germans on

1 A Yes.
 2 Q Okay. Those are standard scientific
 3 expressions as ways of analyzing tests; isn't that right?
 4 A Yes.
 5 Q Okay. And what does it mean for a test to be
 6 reliable?
 7 A I like to think of it as shooting at a circular
 8 target, and if you thought of a rifle shooting at a
 9 target, it means -- if you held a rifle in the same
 10 position, it will hit the same spot every time.
 11 However, to be valid it would have to hit the center of
 12 the target.
 13 So you could have a very reliable test, but the
 14 test doesn't measure what you wanted to measure. So
 15 that's the distinction I think of when I think about
 16 reliability versus validity.
 17 Q That's the best description I've ever heard of
 18 that.
 19 Does --
 20 A Thank you.
 21 Q Are there numerical measures of reliability and
 22 validity for tests?
 23 A Yes.
 24 MS. KOURY: Objection. Incomplete hypothetical,
 25 overbroad.

1 American history or Japanese on Brazilian history, would
 2 that affect the reliability or the validity of the
 3 exam?
 4 MS. KOURY: Objection. Incomplete hypothetical.
 5 It's also vague and ambiguous and compound.
 6 THE WITNESS: Well, I think it would affect the
 7 validity of the comparison, certainly.
 8 BY MR. ROSENBAUM:
 9 Q Why's that?
 10 A Well, because the students in the other
 11 countries would not have been exposed to that particular
 12 content.
 13 Q Okay. And when you use the word "validity"
 14 here, what -- tell me the definition you're using.
 15 A Well, I'm thinking of the validity of the
 16 comparison that -- I mean, you could make the comparison
 17 that the test itself might be equally reliable, but the
 18 comparison would be invalid, or you'd have to make some
 19 adjustment for the degree to which students had been
 20 exposed to the subject matter.
 21 Q Do you know how to make those adjustments?
 22 A I know of some ways to do it.
 23 Q Okay. Now, just so we are speaking the same
 24 language here, several times you've used the phrases
 25 about tests "reliable" and "valid."

1 Go ahead.
 2 THE WITNESS: Yes.
 3 BY MR. ROSENBAUM:
 4 Q Do you know whether or not the reliability has
 5 been computed for any of the tests associated with the
 6 California accountability system?
 7 MS. KOURY: Objection. Overbroad.
 8 THE WITNESS: I'm nearly certain that the SAT
 9 reports extensive reliability estimates.
 10 BY MR. ROSENBAUM:
 11 Q Okay. The SAT is what kids in high school take
 12 for college?
 13 A I was talking about -- I'm sorry, I meant the
 14 SAT 9, SAT 9, Stanford achievement test 9.
 15 Q Do you know what the reliability is for the
 16 Stanford 9 -- let's start there.
 17 MS. KOURY: Overbroad.
 18 THE WITNESS: It wouldn't be a single number. It
 19 would be multiple numbers, and I would know roughly what
 20 the range of that would be.
 21 BY MR. ROSENBAUM:
 22 Q Do you know -- again, I don't want you to be
 23 guessing.
 24 MS. KOURY: Objection. Calls for speculation,
 25 beyond this expert's opinions in this matter.

1 THE WITNESS: Well, I am familiar with the
 2 reliabilities that are required for published commercial
 3 tests in order to be marketed to schools.
 4 BY MR. ROSENBAUM:
 5 Q Okay. And what are those ranges?
 6 A Well, I would think that they would have to
 7 have reliabilities generally above .80.
 8 Q Okay. And do you know, sir, for a fact whether
 9 or not the tests that have been administered to
 10 California public education students "K" through 12, as
 11 part of the California accountability system, have been
 12 found to be reliable?
 13 MS. KOURY: Objection. Overbroad, also calls for
 14 speculation, beyond this expert's opinions in this
 15 matter.
 16 THE WITNESS: Well, as I said earlier, I am
 17 familiar with the SAT 9, as it's called, and I know that
 18 that is considered to be a reliable test.
 19 BY MR. ROSENBAUM:
 20 Q Okay. But -- I don't want to you change your
 21 answer just because I'm changing my question a little
 22 bit, but I want to be very precise about my question.
 23 The first question: Do you know -- the SAT 9
 24 you can pull off the shelf, right? You can just
 25 purchase the SAT 9; isn't that right?

1 A Yes.
 2 Q Okay. Is that the test that was given to
 3 California students as part of the accountability
 4 system, or were there some modifications made? Do you
 5 know?
 6 A I'm unsure.
 7 Q Okay. So my question now is: Do you know
 8 whether or not a reliability measure has been taken for
 9 the -- for any of the tests that were given to students
 10 as part of the California accountability system?
 11 MS. KOURY: Vague, also calls for speculation,
 12 beyond this expert's opinions in this matter.
 13 THE WITNESS: No.
 14 BY MR. ROSENBAUM:
 15 Q Okay. Now, tell me -- you told me what
 16 validity means.
 17 Is validity also susceptible to a numerical
 18 measure?
 19 A It can be.
 20 Q Okay. And do you know whether or not the
 21 validity has been calibrated for any of the tests that
 22 were administered to California public education
 23 students as part of the California assessment system?
 24 MS. KOURY: Objection. Overbroad, calls for
 25 speculation, beyond this expert's opinions, it's also

1 vague.
 2 THE WITNESS: Only the kinds of inferences that we
 3 talked about yesterday, that independent analyses of the
 4 California system had indicated a good alignment, which
 5 is another way of thinking about test validity.
 6 BY MR. ROSENBAUM:
 7 Q Okay. But do you know the -- whether or not
 8 the validity has been specifically calculated for any of
 9 the tests that were administered to California "K"
 10 through 12 students as part of the accountability
 11 system?
 12 MS. KOURY: Objection. Asked and answered, calls
 13 for speculation, beyond this expert's opinions.
 14 Go ahead.
 15 THE WITNESS: You mentioned calculation. That
 16 implies numerical and --
 17 BY MR. ROSENBAUM:
 18 Q Yeah.
 19 A -- I don't know of any numerical study.
 20 Q Okay. And did you ever make any inquiry to
 21 find out either the reliability score or the validity
 22 score, if any had been calculated?
 23 A No.
 24 Q Now, you -- if I understand you right, sir, if
 25 a -- let me see if I understood your testimony a little

1 bit earlier.
 2 If a person from Great Britain and a person
 3 from the United States takes a test on U.S. history, if
 4 I understood you correctly, you told me that adjustments
 5 can be made to the scores to reflect the different
 6 exposure to the material tested; is that right?
 7 MS. KOURY: Objection to the extent it
 8 mischaracterizes his testimony. It's also incomplete
 9 hypothetical and goes beyond the expert's opinions.
 10 THE WITNESS: I'm sorry, I need to have the
 11 question again.
 12 BY MR. ROSENBAUM:
 13 Q Yeah, I think you -- let me see if I understood
 14 you correctly.
 15 If two students in different countries are
 16 given the same test but they didn't have the same
 17 exposure to the material tested, do I understand you
 18 correctly to say that adjustments can be made to their
 19 scores to accommodate the differences in the information
 20 to which each student was exposed?
 21 MS. KOURY: This is an incomplete hypothetical,
 22 calls for speculation, beyond this expert's opinions.
 23 THE WITNESS: It would be possible to use some
 24 techniques to equate the scores to make them more
 25 comparable.

1 BY MR. ROSENBAUM:

2 Q Now, I think I told you -- you told me
3 yesterday -- and I don't want to mischaracterize your
4 testimony.

5 Do you know if all students who took -- all "K"
6 through 12 students who took the tests that are
7 administered as part of the California accountability
8 system were exposed equally to the information that was
9 on the test? And I stated that a little bit
10 inelegantly, so I want to clarify what I mean.

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

18 Am I understanding your testimony correctly?

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

23 BY MR. ROSENBAUM:

24 Q Do you understand my question?

25 A (No audible response)

1 BY MR. ROSENBAUM:

2 Q Do you know if there are some students who have
3 been exposed to a hundred percent of the information,
4 other students 75 percent, other students 25 percent?

5 MS. KOURY: Objection. Overbroad, calls for
6 speculation, beyond this expert's opinions.

7 THE WITNESS: I don't know.

8 BY MR. ROSENBAUM:

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

10 MS. KOURY: Same objections.

11 THE WITNESS: No.

12 BY MR. ROSENBAUM:

13 Q Do you know if there's been any discussion
14 about that at the State level?

15 MS. KOURY: Objection. Vague, ambiguous, overbroad
16 and calls for speculation, beyond this expert's
17 opinions.

18 THE WITNESS: No.

19 BY MR. ROSENBAUM:

20 Q Or anywhere?

21 MS. KOURY: Same objections.

22 THE WITNESS: I don't know about anything like that
23 in California.

24 BY MR. ROSENBAUM:

25 Q Okay. The techniques to equate scores that you

1 Q Okay. It's cumbersome. So let me start over.
2 Let's just talk about a particular grade.

3 Do fifth graders take the tests that are part
4 of the California accountability system?

5 A I'm unsure.

6 Q Do sixth graders?

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

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

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

15 THE WITNESS: I don't know.

16 BY MR. ROSENBAUM:

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

18 A No.

19 Q Do you know what the range of exposure to the
20 information tested on the exams as part of the
21 California accountability system is among students in
22 the state of California?

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

25 THE WITNESS: No.

1 talked to me about --

2 A Yes.

3 Q -- do you know if that's been discussed at the
4 State level?

5 MS. KOURY: Objection. Vague.

6 THE WITNESS: No.

7 BY MR. ROSENBAUM:

8 Q Or by anyone who's involved with the California
9 assessment system, accountability system?

10 MS. KOURY: Objection. Vague.

11 THE WITNESS: I'm unaware of it.

12 BY MR. ROSENBAUM:

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

15 A No.

16 Q Okay. Who graded the exams in the Bishop
17 study?

18 MS. KOURY: Calls for speculation.

19 THE WITNESS: As I say in the fourth paragraph,
20 often these kinds of examinations are graded by people
21 other than the students or the teachers, and my
22 experience in international studies and U.S. testing
23 policy is that they might be simply teachers other than
24 the teachers' own, but sometimes commercial test
25 companies make them up or hire groups to do it. If it's

1 a technical examination, such as mathematics and
2 physics, they might use graduate students who are very
3 knowledgeable about the subject.

4 BY MR. ROSENBAUM:

5 Q Do you know who grades the exams that are part
6 of the California accountability system that you've
7 described and as we've been talking about?

8 A No.

9 MS. KOURY: Objection. Vague.

10 BY MR. ROSENBAUM:

11 Q Did you ever make any inquiry to find out?

12 A No.

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

19 MS. KOURY: Objection. Vague, overbroad.

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

22 BY MR. ROSENBAUM:

23 Q Yes, sir.

24 A Well, I am aware that there are differences,
25 but I haven't studied the content of the California

1 MS. KOURY: Objection. Mischaracterizes his
2 testimony.

3 MR. ROSENBAUM: Well, I don't want to
4 mischaracterize it.

5 Q That also part of your assumption for the
6 Bishop study?

7 MS. KOURY: Still mischaracterizes his testimony,
8 but go ahead.

9 THE WITNESS: I think there may be variations on
10 it. I mean, most of these things are to degrees. But I
11 think they generally assume that the aligned
12 instructional materials are provided.

13 BY MR. ROSENBAUM:

14 Q Okay. Same thing for the Kiel study?

15 A Yes.

16 Q Okay.

17 A And again, to varying degrees.

18 Q Okay. Within the definition that you just gave
19 me in your prior answer, the meaning of that?

20 MS. KOURY: Vague.

21 THE WITNESS: Could I have the quote of what --

22 BY MR. ROSENBAUM:

23 Q Sure, absolutely.

24 MR. ROSENBAUM: Why don't you read back his prior
25 answer. I'm sorry.

1 tests.

2 Q Okay. Do you know in the Bishop study whether
3 or not students had access to textbooks?

4 MS. KOURY: Objection. Calls for speculation.

5 THE WITNESS: I don't specifically know that.

6 BY MR. ROSENBAUM:

7 Q Or whether or not they had access to textbooks
8 aligned with the information tested in the exams that
9 were looked at by the Bishop study?

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

12 THE WITNESS: Yes.

13 BY MR. ROSENBAUM:

14 Q What do you -- what's your understanding?

15 A Well, I think even the term "curriculum-based
16 external examinations" implies that there was kind of
17 alignment and that, having worked a lot in other
18 countries and with the big scholars from other places,
19 I'm aware that there is -- particularly, when you have
20 this national curriculum, that it's well understood what
21 it is and that the -- both the instruction and
22 instructional media, including textbooks, tend to be
23 associated with it to varying degrees.

24 Q And that students would have access to those
25 materials?

1 (The record was read as follows:

2 "I think there may be variations on
3 it. I mean, most of these things are
4 to degrees. But I think they generally
5 assume that the aligned instructional
6 materials are provided.")

7 THE WITNESS: And then your question is?

8 BY MR. ROSENBAUM:

9 Q For Kiel, same answer?

10 A Yes.

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

14 MS. KOURY: Vague.

15 MR. ROSENBAUM: It is a little bit vague.

16 Q Access -- whether all students in "K" through
17 12 public education have access to -- equal access to AP
18 courses in California.

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

22 THE WITNESS: I don't know.

23 BY MR. ROSENBAUM:

24 Q Okay. Have you ever made any inquiry to find
25 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

1 about yesterday, I think it's important to suit the
 2 instruction to the level that the students are capable
 3 of, and it should not go too far beyond what they're
 4 capable of learning, nor should it teach the same things
 5 that they already know.
 6 So I think -- I would hesitate to make a
 7 recommendation that all students would have access to a
 8 course that did not have the prerequisites. That had
 9 not demonstrated that they had the prerequisite
 10 knowledge or in fact took the prerequisite courses.
 11 BY MR. ROSENBAUM:
 12 Q Okay. Do you think, sir -- I don't -- that one
 13 race or ethnicity has more ability to learn than another
 14 race or ethnicity? I mean, I know your answer to that,
 15 but I just want to make it as a predicate. Do you think
 16 that?
 17 MS. KOURY: Objection. Calls for speculation,
 18 beyond this expert's opinions in this case.
 19 THE WITNESS: I don't think one race is more -- has
 20 higher ability than another.
 21 BY MR. ROSENBAUM:
 22 Q Of course not.
 23 And do you know, sir, whether or not schools
 24 attended by -- let's start with elementary schools --
 25 schools attended by predominantly -- that are attended

1 predominantly by African-Americans have the same access
 2 to curricula offerings as elementary schools attended by
 3 predominantly white students?
 4 MS. KOURY: Objection. Vague, overbroad, calls for
 5 speculation beyond this expert's opinions in this case.
 6 THE WITNESS: I don't know.
 7 BY MR. ROSENBAUM:
 8 Q How about middle schools? Same question.
 9 MS. KOURY: Objection. Vague, ambiguous,
 10 overbroad, calls for speculation beyond this expert's
 11 opinions in this case.
 12 THE WITNESS: Excuse me. We're still talking about
 13 California; are we not?
 14 BY MR. ROSENBAUM:
 15 Q Yes, I am.
 16 A Yes, I don't know.
 17 Q How about if I changed it from
 18 African-Americans to Latinos? Would that make a
 19 difference in your answer?
 20 MS. KOURY: Same objections.
 21 BY MR. ROSENBAUM:
 22 Q Either of your answers.
 23 A No.
 24 Q If I changed low SES to high SES, would that
 25 make a difference?

1 MS. KOURY: Same objections. Calls for speculation
 2 beyond this expert's opinions in this case.
 3 THE WITNESS: No.
 4 BY MR. ROSENBAUM:
 5 Q If you found out that students in middle
 6 schools in courses -- in schools that were predominantly
 7 Latino or predominantly African-American or
 8 predominantly students of color or predominantly low SES
 9 had a lower access to curricular offerings than white
 10 students or high SES students, would you be concerned?
 11 MS. KOURY: Objection. Vague and ambiguous about
 12 "concern." Also is incomplete hypothetical and calls
 13 for speculation beyond this expert's opinions in this
 14 case.
 15 THE WITNESS: I'd have to study the situation to
 16 determine the possible causes of it. I wouldn't want to
 17 make a blanket statement.
 18 BY MR. ROSENBAUM:
 19 Q What would you look at, sir?
 20 MS. KOURY: Objection. Incomplete hypothetical,
 21 calls for speculation beyond this expert's opinions.
 22 THE WITNESS: Well, we would need to know the
 23 specifics of how this problem arose and, as I indicated
 24 to you, it might -- there can be a whole bunch of
 25 different reasons why students might take one course

1 versus another. And one of them might be the students
2 or parents preferences for them.

3 Another reason, as I was mentioning before, is
4 that they may not be ready for a particular course if
5 the school itself did not offer prerequisite courses and
6 maybe that was a decision that had been made at the
7 school district level to, let's say, offer Spanish
8 instead of French or German instead of Russian. So I
9 think it's very hard to make a blanket statement like
10 that. I think you need to study the particular
11 circumstances.

12 BY MR. ROSENBAUM:

13 Q Okay. Do you have a view -- if there were two
14 students, sir, who were equally capable of studying
15 calculus, do you have a view as to whether or not they
16 should have equal access to a calculus course,
17 irrespective of what school they attend?

18 MS. KOURY: Objection. Incomplete -- sorry, were
19 you finished?

20 MR. ROSENBAUM: (No audible response)

21 MS. KOURY: Objection. Incomplete hypothetical,
22 calls for speculation beyond this expert's opinions in
23 this matter.

24 THE WITNESS: And your -- you're saying they have
25 equal ability and could they -- should they have access

1 Q Okay. Do you know if there are schools in
2 California where students have to come in over their
3 breaks to take AP course work?

4 MS. KOURY: Objection. Vague.

5 THE WITNESS: I don't know.

6 BY MR. ROSENBAUM:

7 Q Let me ask you, sir, if you would look,
8 please, at Page 10 of the report. But the section I'm
9 going to talk to you about actually begins on Page 9.
10 It's your section on benefits for standards for
11 migrating poor and minority students.

12 Do you see that?

13 A Yes.

14 Q Do you have a basis to believe that any of
15 plaintiffs' experts believe that standards are not
16 beneficial for migrating poor and minority students?

17 MS. KOURY: Objection. Vague, overbroad.

18 THE WITNESS: I don't know their views on that
19 point.

20 BY MR. ROSENBAUM:

21 Q Okay. Do you know, sir, what the assignment
22 practices are of schools in California with respect to
23 students transferring schools?

24 MS. KOURY: Objection. Vague.

25 THE WITNESS: No.

1 to a calculus course.

2 BY MR. ROSENBAUM:

3 Q Equal access, yeah.

4 A Equal access.

5 That's your question?

6 Q Yes.

7 A Well, I would say, other things being equal, it
8 would be desirable if they had equal opportunity.

9 Q Okay. Why is that?

10 A I think it's a principle of fairness.

11 Q Okay.

12 MS. KOURY: When we're at a good breaking point,
13 can we take a break?

14 MR. ROSENBAUM: Sure. We can take a break now.
15 (Brief recess taken.)

16 BY MR. ROSENBAUM:

17 Q Regarding, sir, the Bishop study that we talked
18 about, do you know what the nature of the questions were
19 on that study? And let me tell you what I mean by
20 that. I mean do you know if they were multiple choice,
21 essay, some combination, some other form of question?

22 A Well, I'd have to be making an informed guess,
23 but I didn't examine the specific examination.

24 Q Okay. How about the Kiel study?

25 A Same thing.

1 BY MR. ROSENBAUM:

2 Q Okay. Do you know if any part of the statute
3 that created the California accountability system that
4 we've been talking about says anything about maintaining
5 records that follow students?

6 MS. KOURY: Calls for a legal conclusion.

7 THE WITNESS: I don't know.

8 BY MR. ROSENBAUM:

9 Q Okay. Do you know if other state
10 accountability systems have provisions dealing with
11 maintaining student records that follow the students?

12 MS. KOURY: Compound, overbroad, calls for a legal
13 conclusion.

14 THE WITNESS: I'm aware that some states do that.

15 I haven't made any recent studies of the present status
16 of the programs. And I do know that some records are --
17 in Massachusetts and Tennessee, for example, have
18 required student records across time of achievement
19 scores.

20 BY MR. ROSENBAUM:

21 Q Does California? Do you know?

22 A I don't know.

23 Q Have you made any inquiry to find out?

24 A No.

25 Q Directing your attention, sir, to Page 10,

1 benefits of standards for minorities and poor students.
 2 Do you see that?
 3 A Hmm-hmm.
 4 Q Do any of plaintiffs' experts, in your
 5 judgment, believe that standards are not beneficial for
 6 minorities and poor students?
 7 MS. KOURY: Asked and answered.
 8 THE WITNESS: I don't know their views --
 9 BY MR. ROSENBAUM:
 10 Q Okay.
 11 A -- on this point.
 12 Q Okay. The education -- let me direct your
 13 attention, sir, to Page 11 of Exhibit 1, your report.
 14 And again, it's in -- the section starts on the prior
 15 page, and continues to the next page. So you feel free
 16 to review as much as you need.
 17 At Page 11, you have an indented set of
 18 quotes. Is that a fair characterization?
 19 A Yes.
 20 Q Okay. And those indented set of quotes are
 21 cited to Footnote 13?
 22 A Yes.
 23 Q Okay. Do you know, sir, if the California
 24 accountability system that you discuss in your report
 25 and we've been talking about -- I'm just going to keep

1 using the shorthand the California accountability
 2 system.
 3 Is that okay?
 4 A Hmm-hmm.
 5 Q You understand that?
 6 A Yes.
 7 Q -- whether the California accountability system
 8 has any provisions regarding increasing instructional
 9 time in reading and math in order to help students meet
 10 standards?
 11 A I don't know.
 12 Q Okay. Have you made any inquiry to find out?
 13 A No.
 14 Q Do you know, sir, whether or not, as part of
 15 the California accountability system, there is a
 16 devotion of a larger proportion of funds to support
 17 professional development focused on changing
 18 instructional practice?
 19 MS. KOURY: Objection. Vague.
 20 THE WITNESS: I don't know.
 21 BY MR. ROSENBAUM:
 22 Q Okay. Do you know anything about, in
 23 California, what is done with respect to professional
 24 development focused on changing instructional practice?
 25 MS. KOURY: Objection. Vague, also calls for

1 speculation beyond this expert's opinions.
 2 THE WITNESS: Only in the one or two lectures that
 3 I gave to teachers out here some years ago.
 4 BY MR. ROSENBAUM:
 5 Q Tell me what you mean by that.
 6 A Well, I mentioned yesterday that -- in answer
 7 to one of your questions that I had -- I've forgotten
 8 the context of it, but I think I mentioned that I had
 9 given some talks to teachers and administrators, and it
 10 was in a professional development workshop. So as a
 11 consequence of that experience, I had an impression of
 12 what at least one place was doing in professional
 13 development.
 14 Q Beyond that?
 15 A I haven't made any systematic study.
 16 Q Do you know, sir, if, as part of the California
 17 accountability system, there is any provision for
 18 evaluating teachers?
 19 MS. KOURY: Objection. Vague and calls for
 20 speculation beyond this expert's opinions.
 21 THE WITNESS: I don't know.
 22 BY MR. ROSENBAUM:
 23 Q Okay. Do you know if any teachers have been
 24 promoted or lost their jobs or been disciplined as a
 25 function of the California accountability system?

1 MS. KOURY: Objection. Vague, overbroad.
 2 THE WITNESS: I don't know.
 3 BY MR. ROSENBAUM:
 4 Q Have you made any inquiry to find out?
 5 A No.
 6 Q Do you know if, as a result of the California
 7 accountability system, teacher performance has
 8 improved?
 9 MS. KOURY: Objection. Vague.
 10 THE WITNESS: I don't know.
 11 BY MR. ROSENBAUM:
 12 Q Okay. Have you made any inquiry to find out?
 13 A No.
 14 Q Do you know, sir, whether -- and if I
 15 substitute the word "principal" for "teachers" in the
 16 prior questions, would your answers be the same?
 17 A Yes.
 18 Q Okay. And do you know -- see the phrase,
 19 "assess student work," on Page 11? It's in bold. It's
 20 in the first bullet -- it's not really a bullet. The
 21 first indented quote.
 22 Do you see that?
 23 A Yes.
 24 Q Okay. Do you know, sir, whether or not the
 25 California State standards have been utilized, as part

1 of the accountability system, to assess student work?
 2 Within the same meaning that you have here on this
 3 page.
 4 A I don't know the degree to which State
 5 standards have been used in California to assess student
 6 work.
 7 Q Okay.
 8 A Aside from publishing the examination and
 9 things of that nature.
 10 Q Okay. Do you know, sir -- and have you made
 11 inquiry to find out?
 12 A No.
 13 Q Okay. Do you know, Doctor, whether or not, as
 14 part of the California accountability system, there are
 15 provisions or programs or policies that focus efforts to
 16 involve parents on helping students meet standards?
 17 MS. KOURY: Objection. Asked and answered.
 18 THE WITNESS: I don't know.
 19 BY MR. ROSENBAUM:
 20 Q Okay. Have you made any inquiry to find out?
 21 A No.
 22 Q Do you know, sir, whether or not the California
 23 accountability system has real consequences for adults
 24 in the schools within the meaning of that phrase as it's
 25 used on Page 11, as you understand it?

1 A Only by inference.
 2 Q Okay. Do you have any specific knowledge?
 3 A Not of any particular schools, no.
 4 Q Okay. Can you cite me a single instance where
 5 there's been a real consequence for an adult in the
 6 school as part of the California accountability system?
 7 A No.
 8 MS. KOURY: Objection. Overbroad.
 9 BY MR. ROSENBAUM:
 10 Q The education trust study that you referenced,
 11 Doctor, do you have any concerns or criticism -- strike
 12 that.
 13 Are you familiar with the methodology utilized
 14 in that study?
 15 A Yes.
 16 Q Okay. What's your understanding about what the
 17 methodology consisted of?
 18 A It's explained in the first -- the first
 19 paragraph under Point 4. They attempted to find schools
 20 that had high percentages of students in poverty and yet
 21 had relatively high levels of achievement.
 22 Q Okay. Were there any California schools that
 23 were part of that study?
 24 A I can't -- I don't know for sure.
 25 Q Okay. Did you ever make any inquiry to find

1 out?
 2 A No.
 3 Q Why is that?
 4 A I didn't consider that it was important.
 5 Q Okay. And do you have any concerns or
 6 criticisms regarding the methodology used in the
 7 education trust study?
 8 A No.
 9 Q Okay. Let me direct your attention to Page 12
 10 of Exhibit 1. Same proviso, you can look at it as much
 11 as you'd like.
 12 Incidentally, sir, in the education trust
 13 study, the schools that you just talked to me about, in
 14 those schools, sir, did students -- do you know if
 15 students had access to instructional materials or
 16 textbooks aligned with the standards-based curriculum?
 17 MS. KOURY: Objection. Vague, ambiguous,
 18 overbroad, calls for speculation beyond this expert's
 19 opinions.
 20 THE WITNESS: I think that that's implicit in the
 21 first indented point.
 22 BY MR. ROSENBAUM:
 23 Q Okay. Do you know anything about the
 24 qualifications of the teachers in any of the schools
 25 that were looked at?

1 A In the education trust study?
 2 Q Yes, sir.
 3 A No.
 4 Q Okay.
 5 A Aside from what's listed on Page 11.
 6 Q Okay. Let me take you back -- I'm sorry, sir.
 7 Let me take you back to Page 11.
 8 Fourth paragraph down in the indented quote, do
 9 you see the sentence, "Implement comprehensive systems
 10 to monitor individual student progress and provide extra
 11 support to students as soon as it's needed"? Do you see
 12 that?
 13 A Yes.
 14 Q Okay. Do -- as part of the California
 15 accountability system, is there any requirement or
 16 policies or practices that deal with providing extra
 17 support to students as soon as it's needed?
 18 MS. KOURY: Objection. Vague.
 19 THE WITNESS: I don't know.
 20 BY MR. ROSENBAUM:
 21 Q Do you know if there are any schools in the
 22 state of California "K" through 12 public schools that
 23 provide extra support to students as soon as it's
 24 needed?
 25 MS. KOURY: Objection. Vague, ambiguous.

1 THE WITNESS: I don't know.
 2 BY MR. ROSENBAUM:
 3 Q Okay. Is that important?
 4 MS. KOURY: Objection. Vague.
 5 BY MR. ROSENBAUM:
 6 Q Providing extra support to students as soon as
 7 it's needed.
 8 A I think doing that tends to enhance student
 9 achievement.
 10 Q You've talked about that in your analyses of
 11 the -- I call it the matrix, but I don't -- your nine
 12 factors.
 13 A Yes.
 14 Q Okay.
 15 A It's not one of the nine factors, but it's part
 16 of quality of instruction.
 17 Q Okay. And the next sentence, sir, "Four out of
 18 five of the top performing high poverty schools had
 19 systematic ways to identify and provide early support to
 20 students in danger of falling behind in their
 21 instruction."
 22 Do you see that?
 23 A Yes.
 24 Q Do you know whether or not the California
 25 accountability system has systematic ways to identify

1 way to activities that address parents' knowledge of
 2 standards"? Do you see that part of it?
 3 A Yes.
 4 Q Any part of the California accountability
 5 system that you're familiar with that provides or deals
 6 with activities addressing parents' knowledge of
 7 standards?
 8 A I don't know.
 9 Q Do you know if there's any school in California
 10 "K" through 12 public education that addresses parents'
 11 knowledge of standards?
 12 MS. KOURY: Objection to the extent it takes this
 13 quote out of context and also vague and ambiguous.
 14 Go ahead.
 15 THE WITNESS: I don't know.
 16 BY MR. ROSENBAUM:
 17 Q Is that important?
 18 MS. KOURY: Objection. Vague.
 19 BY MR. ROSENBAUM:
 20 Q Parents know of the standards?
 21 MS. KOURY: Objection. Vague.
 22 Go ahead.
 23 THE WITNESS: I would give a similar answer to what
 24 I had said earlier, that I think that this is probably
 25 associated with higher levels of achievement.

1 and provide early support to students in danger of
 2 falling behind in their instruction?
 3 A No.
 4 Q Did you make any inquiry to find out?
 5 A No.
 6 Q Do you know if there are any schools in the
 7 state of California that have systematic ways to
 8 identify and provide early support to students in danger
 9 of falling behind in their instruction?
 10 A No.
 11 Q Do you know if the State does anything,
 12 accountability system or otherwise, to identify and
 13 provide early support to students in danger of falling
 14 behind in their instruction?
 15 MS. KOURY: Objection. Vague, ambiguous,
 16 overbroad, calls for speculation.
 17 THE WITNESS: Only the things that we've talked
 18 about so far, they're making the test results publicly
 19 available and available to educators.
 20 BY MR. ROSENBAUM:
 21 Q Okay. Look, if you would, please, sir, at the
 22 fifth paragraph in this quote on Page 11. If you've
 23 already answered, just tell me.
 24 See the sentence, "In these schools,
 25 traditional roles for parents as fund-raisers are giving

1 BY MR. ROSENBAUM:
 2 Q Okay. And let's finish the sentence.
 3 "Encourage their" -- being parents -- "involvement in
 4 curriculum and involve them in student's work."
 5 Do you see that?
 6 A Yes.
 7 Q Same questions, Doctor.
 8 Do you know if -- does any part of the
 9 California accountability system deal with encouraging
 10 parents' involvement in curriculum and involving them in
 11 reviewing student's work?
 12 MS. KOURY: Objection. The document speaks for
 13 itself. To the extent that the quote is taken out of
 14 context, it is vague.
 15 THE WITNESS: Not beyond the point that I mentioned
 16 earlier, that the -- making the test scores available
 17 might be one component or is one component of informing
 18 parents, which might induce them to become more involved
 19 in those ways.
 20 BY MR. ROSENBAUM:
 21 Q Do you know what the standards are available at
 22 schools in California?
 23 MS. KOURY: Objection. Vague.
 24 THE WITNESS: For example, being posted on the
 25 walls or available in books and things of that nature?

1 BY MR. ROSENBAUM:
 2 Q Yeah.
 3 A I don't know.
 4 Q Do you know if parents are informed that they
 5 can have access to the standards if they want to see
 6 them?
 7 MS. KOURY: Objection. Vague, calls for
 8 speculation.
 9 THE WITNESS: I don't know.
 10 BY MR. ROSENBAUM:
 11 Q Do you know if they're distributed to parents?
 12 MS. KOURY: Same objections.
 13 THE WITNESS: I don't know.
 14 BY MR. ROSENBAUM:
 15 Q Do you know if they're on the Internet?
 16 MS. KOURY: Objection. Vague, calls for
 17 speculation.
 18 THE WITNESS: I don't know.
 19 BY MR. ROSENBAUM:
 20 Q Okay. Have you made any inquiry to find out
 21 any of the last four subject matters? I'll be glad to
 22 do them separately but --
 23 A No.
 24 Q Okay. Do you believe that all California
 25 students can meet the State standards, sir? Do you have

1 an opinion?
 2 MS. KOURY: Objection. Vague and ambiguous, calls
 3 for speculation beyond this expert's opinions.
 4 THE WITNESS: All California students --
 5 BY MR. ROSENBAUM:
 6 Q Yes.
 7 A -- did you say?
 8 I think there may be some exceptions for
 9 students that may be profoundly disabled or something of
 10 that nature, but if we're talking about the normal run
 11 of students, I have no reason to believe that,
 12 ultimately, they could meet the standards.
 13 Q That --
 14 A They could not meet the standards, sorry.
 15 Q And could you tell me the basis for your
 16 answer, please?
 17 A I think that many human beings can achieve
 18 much, much more than we have -- would normally think
 19 about, and I think, with an effective system, many
 20 students could achieve at very, very high levels.
 21 Q And if -- as a professional, sir, it is
 22 disappointing to you that U.S. students don't; isn't
 23 that right?
 24 MS. KOURY: Objection. Argumentative.
 25 THE WITNESS: I am disappointed in the relative

1 performance of American students compared to those in
 2 other countries.
 3 BY MR. ROSENBAUM:
 4 Q Relative performance and performance over time;
 5 isn't that right? Going back to when the publication "A
 6 Nation at Risk" came out?
 7 MS. KOURY: Objection. Misleading,
 8 mischaracterizes his testimony.
 9 Go ahead.
 10 MR. ROSENBAUM: I'm making a question. I'm not
 11 characterizing his testimony.
 12 MS. KOURY: Same objections.
 13 BY MR. ROSENBAUM:
 14 Q You're disappointed at their performance; isn't
 15 that right?
 16 A Yes.
 17 Q You're disappointed at their performance
 18 compared to students in other countries?
 19 MS. KOURY: Objection. Vague.
 20 THE WITNESS: I am.
 21 BY MR. ROSENBAUM:
 22 Q You don't think an American is -- American
 23 student is inherently not as bright as a Japanese
 24 student; isn't that right?
 25 A Absolutely not. They're of equal ability.

1 Q But the Japanese students have -- you've
 2 written extensively about how the Japanese students have
 3 achieved well beyond what U.S. students have; haven't
 4 you?
 5 A Yes.
 6 Q And you're also concerned, are you not, sir,
 7 about the failure to -- of U.S. students to improve over
 8 the last few decades; isn't that right?
 9 MS. KOURY: Objection. Overbroad.
 10 THE WITNESS: That's right.
 11 BY MR. ROSENBAUM:
 12 Q Okay. And why are you disappointed?
 13 MS. KOURY: Objection. Calls for a narrative.
 14 THE WITNESS: Well, I think it's implicit to the
 15 things you said about my views. I think that American
 16 students are equally able, yet they don't achieve at the
 17 levels of students in other countries. I think it's
 18 economically important. I think it's of great benefit
 19 to individual students and their families, to our
 20 country.
 21 BY MR. ROSENBAUM:
 22 Q When you say great benefit to individual
 23 students and their families, what do you mean by that?
 24 A Well, I think a student that achieves more in
 25 school is more likely to go to college, to succeed in

1 college, to get better jobs, to -- from the various
2 studies that suggest that, if you have a better
3 education, you're more healthy, participate in civic
4 affairs and things of that --

5 Q What about the quality -- I'm sorry, go ahead.

6 A So I think there are a great number of benefits
7 of education, and I think if our system were more
8 effective and efficient, it would benefit individual
9 students and their families, their parents, but also
10 their -- later on, when they get married and so on,
11 would benefit our country as a whole.

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

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

16 MS. KOURY: Objection.

17 BY MR. ROSENBAUM:

18 Q Do you know?

19 MS. KOURY: Sorry. Overbroad.

20 Go ahead.

21 THE WITNESS: I haven't made a specific study.

22 BY MR. ROSENBAUM:

23 Q How about in Texas?

24 MS. KOURY: Same objection.

25 THE WITNESS: Same answer.

1 Q Okay.

2 A They might have comparisons between their
3 school and the state average, and in addition to simply
4 having the test scores, so to speak, they would have the
5 kinds of proficiency levels that we talked about
6 yesterday, and in addition to that, some states might
7 make available to individual parents and students their
8 actual scores.

9 Q Okay.

10 A Maybe I left one thing out too, which I think
11 is significant, that increasingly, states are providing
12 that the same kind of information, not just on the score
13 at one time, but the change from the previous year.

14 Q Okay. Let me -- let me direct your attention,
15 sir, to Page 13. And the Ed Week study.

16 Do you see that?

17 A Yes.

18 Q Look at Number 8, assistance to low performing
19 schools.

20 Do you see that?

21 A Yes.

22 Q As part of California's accountability system,
23 are there provisions for the provision or delivery of
24 assistance to low performing schools?

25 A Well, I take this as a careful study, and I --

1 BY MR. ROSENBAUM:

2 Q In any state?

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

7 Q I'm -- sure.

8 I'm thinking now, sir, about the accountability
9 tests, the tests that are administered as part of the
10 accountability system.

11 Do you know what sort of feedback students get
12 in any other state?

13 MS. KOURY: Objection. Compound, overbroad.

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

17 BY MR. ROSENBAUM:

18 Q Yeah.

19 A I would know generally, yes.

20 Q What do they get?

21 A Generally, they would have reports on their
22 schools as how their school ranked within their
23 district, how their district might compare with other
24 districts. I don't mean to say all states have this.
25 I'm describing different variations.

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

3 Q Well, do you know of your own knowledge, sir,
4 what assistance, if any, is provided to low performing
5 schools as part of the California accountability system?

6 A No.

7 Q Have you made any inquiry to find out?

8 A No.

9 Q Okay. On Page 14, sir, Doctor, you talked to
10 me several times today and yesterday about value added.

11 A Yes.

12 Q What does that mean, as you've used it?

13 A Generally speaking, it means taking into
14 consideration the gains that a student has made that --
15 and often it can be thought of as a -- to give an
16 example, a test this year in relation to the test scores
17 in the previous year. There are various ways to
18 calculate it, but that is in essence.

19 Q Does the California accountability system take
20 in consideration the gains a student has made from year
21 to year? Do you know?

22 A When you say a student, I'm not sure that it's
23 calculated for individual student. My impression was
24 that it was done for a whole school.

25 Q Do you know that for a fact?

1 A I have --
 2 MS. KOURY: Objection. Argumentative.
 3 THE WITNESS: That's my best impression. But I
 4 haven't -- I don't -- I haven't looked at it or gone
 5 into a school to find out if that's actually been done.
 6 BY MR. ROSENBAUM:
 7 Q Okay. Do you know if it's done for individual
 8 students?
 9 MS. KOURY: Objection.
 10 THE WITNESS: No.
 11 MS. KOURY: Asked and answered.
 12 THE WITNESS: I don't know.
 13 BY MR. ROSENBAUM:
 14 Q Okay. Each year, sir, in a school, a cohort
 15 leaves and a new cohort comes in; isn't that right?
 16 MS. KOURY: Objection. Vague.
 17 Go ahead.
 18 THE WITNESS: Well, it's not a certainty, but I
 19 think in many instances that happens, yes.
 20 BY MR. ROSENBAUM:
 21 Q Well, isn't -- why isn't it a certainty? If
 22 you have a middle school that's -- that deals with
 23 Grades 7, 8 9, doesn't the 9th grade, by and large,
 24 leave and the 7th grade, by and -- a 7th grade come in?
 25 A Oh, I misunderstood your question. I thought

1 you were talking about students that might move away --
 2 Q Yeah.
 3 A -- students that might move in.
 4 Q Yeah. I'm not talking about -- I agree with
 5 you, there may be a number of students who stay or go
 6 away. But --
 7 A Okay, thank you. I now understand, I think,
 8 your question.
 9 Q Okay.
 10 A And what you say, I think, is true.
 11 Q Okay. Does the API or the -- does the API take
 12 into consideration the change in cohorts?
 13 A I don't know.
 14 Q Okay. Have you made any inquiry to find out?
 15 A No.
 16 Q Do you know if some states do?
 17 MS. KOURY: Objection. Calls for speculation
 18 beyond this expert's opinions.
 19 THE WITNESS: Only in a general sense.
 20 BY MR. ROSENBAUM:
 21 Q Well, I don't know what that means.
 22 A It -- what I mean by that is that states vary
 23 in the sophistication of their systems, and some states
 24 go as far as having -- or restricting their indexes of
 25 value added to only the students that have been in the

1 school on both occasions, which could be the very best
 2 way to do it.
 3 Q Does California do that?
 4 A I don't know.
 5 Q Have you made inquiry to find out?
 6 A No.
 7 Q Directing your attention to Page 14, the
 8 O'Donnell program that you talk about, sir -- do you see
 9 that?
 10 A Yes.
 11 Q My understanding from your text here is that
 12 the foundation paid teachers and students a hundred
 13 dollars for each exam, AP exam, passed; is that right?
 14 A Yes.
 15 Q Okay. Does the California accountability
 16 system pay students to pass exams or to do well on
 17 exams?
 18 A Not to my knowledge.
 19 Q Okay. Do you -- do you know, sir -- do you
 20 have any -- any concerns about applying the
 21 conclusion -- your conclusions with respect to the
 22 O'Donnell program to the California accountability
 23 system?
 24 MS. KOURY: Objection. Vague.
 25 THE WITNESS: I do have reservations.

1 BY MR. ROSENBAUM:
 2 Q What are those reservations?
 3 A Well, I haven't recommended it in the first
 4 place, but it would be very, very expensive, and I would
 5 like to see more studies like this actually done before
 6 launching something like this in a whole state.
 7 Q Do you personally advocate paying kids money to
 8 do well on exams?
 9 A I think it's a very controversial matter, and
 10 I -- I would advocate further experimentation of this
 11 kind.
 12 Q Okay. But failing that experimentation, do you
 13 personally advocate it, sitting here today?
 14 MS. KOURY: Vague.
 15 THE WITNESS: I think that this would be a very
 16 radical thing to do, and I would not recommend it
 17 offhandedly.
 18 BY MR. ROSENBAUM:
 19 Q Okay. One of your -- if I understand -- you
 20 know, I keep saying this wrong. Your achievement --
 21 there are achievement factors? Is that what they are?
 22 What do you call them?
 23 A I call them the nine factors or the nine
 24 productivity factors.
 25 Q All right. One of your nine productivity

1 factors deals with motivation; is that right?
 2 A Yes.
 3 Q And you find motivation to be a -- one of a
 4 proven -- a proven -- strike that.
 5 You find that there's a
 6 scientifically-established relationship between
 7 motivation and student achievement; isn't that right?
 8 A Yes.
 9 Q Okay. Do you have any belief that any of
 10 plaintiffs' experts would disagree with that?
 11 MS. KOURY: Objection. Vague, calls for
 12 speculation.
 13 Go ahead.
 14 THE WITNESS: I don't know their views --
 15 BY MR. ROSENBAUM:
 16 Q Okay.
 17 A -- on that.
 18 Q And do you -- have you ever written, sir, about
 19 the importance of intrinsic motivation?
 20 A I'm sure I've mentioned it in some of my
 21 writings. I don't recall right now.
 22 Q You're not opposed -- I shouldn't read your
 23 report here as saying that you're opposed to intrinsic
 24 motivation?
 25 MS. KOURY: Objection. Argumentative, vague.

1 BY MR. ROSENBAUM:
 2 Q Or should I?
 3 MS. KOURY: Same objections.
 4 THE WITNESS: Well, I think that -- I mean, always
 5 what I'm interested in is causal effects in
 6 achievement. And I think there have been demonstrations
 7 that people respond to incentives in a wide variety of
 8 circumstances.
 9 I think that intrinsic motivation in the first
 10 place is very, very difficult to measure. Because you
 11 have to ask people, and it's hard to know whether
 12 they're really intrinsically motivated or not
 13 relative to someone else. So it's, in the first place,
 14 difficult to measure it.
 15 But secondly, even if you find a correlation --
 16 and I think that there are consistent correlations
 17 between measures of intrinsic motivation and
 18 achievement, but we can be less sure about the causal
 19 connection. So I would make that distinction.
 20 I would also say, in favor of intrinsic
 21 motivation, that it is a wonderful thing when it
 22 happens, because people that love their work often put
 23 huge amounts of efforts into it, and sometimes that can
 24 be even more important than extrinsic motivation. But
 25 in order to recommend a program, I think there's some

1 causal uncertainties about it. But it -- both kinds
 2 need to be taken into consideration.
 3 Forgive me for that long answer.
 4 BY MR. ROSENBAUM:
 5 Q No, no. I appreciate it.
 6 Does the California accountability system -- do
 7 you know, sir, if it has provisions for extrinsic
 8 motivation?
 9 A Well, aside from what we've mentioned about
 10 publicizing the test scores, I think that that would be
 11 one example.
 12 Q Are you aware of any others?
 13 A No.
 14 Q Okay. Did you pay your son to get good
 15 grades?
 16 MS. KOURY: Objection. Vague. It goes beyond
 17 the -- calls for speculation beyond this expert's
 18 opinions.
 19 THE WITNESS: I think -- I don't think I ever gave
 20 him money to get good grades.
 21 BY MR. ROSENBAUM:
 22 Q Okay. Maybe you just answered this question.
 23 Not just answered, but maybe you just previously
 24 answered this question.
 25 Do you have a view as to whether any of

1 plaintiffs' experts oppose the use of incentives as part
 2 of an accountability system?
 3 MS. KOURY: Asked and answered, calls for
 4 speculation.
 5 THE WITNESS: I don't know their views on that
 6 point.
 7 BY MR. ROSENBAUM:
 8 Q Or sanctions?
 9 MS. KOURY: Same objections.
 10 THE WITNESS: I don't remember reading about that.
 11 BY MR. ROSENBAUM:
 12 Q Okay. Do you -- the Chicago study that you
 13 mentioned --
 14 A Excuse me. I sometimes think of things after.
 15 I do remember at least Jeanne Oakes had some
 16 reservations about -- I think what she called
 17 motivational factors in contrast to what she was
 18 advocating. So I take that as at least some reservation
 19 by one expert about motivation. I don't know whether
 20 she made it extrinsic or intrinsic in mind.
 21 Q What did you understand her to mean?
 22 A In connection with this point?
 23 Q Yeah.
 24 A I think she was contrasting what she was
 25 advocating with a point of view that would be extrinsic

1 motivation or possibly extrinsic motivation and saying
 2 that we could not rely upon motivation, but we had to
 3 rely on regulation.
 4 Q Okay. Where in her report does she say that?
 5 MS. KOURY: Calls for speculation, since he doesn't
 6 have the report in front of him.
 7 BY MR. ROSENBAUM:
 8 Q I'm glad to put the report in front of you.
 9 But are you confident that's her position?
 10 MS. KOURY: Argumentative.
 11 THE WITNESS: Well, it's -- it's some months ago
 12 that I read it. So it could be that my memory is
 13 fallible. I thought I remembered some passage in there.
 14 BY MR. ROSENBAUM:
 15 Q Okay. The Chicago study that you referred
 16 to -- do you see that on Page 14?
 17 A Yes.
 18 Q Then it carries over to Page 15; is that right?
 19 A Yes.
 20 Q Okay. Do you have any concerns -- are you
 21 familiar with -- strike that.
 22 Is it part of the California accountability
 23 system, sir, that students who lag behind national -- or
 24 I'll say state grade level standards are given the
 25 choice of being retained in a grade or succeeding in an

1 intensive academic summer school program, as you utilize
 2 that phrase -- those phrases in your report?
 3 MS. KOURY: Objection. Vague.
 4 THE WITNESS: I don't know.
 5 BY MR. ROSENBAUM:
 6 Q Okay. Do you know if any school in California
 7 has a program or policy such that students who lag
 8 behind national or state grade level standards are given
 9 a choice of being retained in grade or succeeding in an
 10 intensive academic summer school program?
 11 MS. KOURY: Objection. Vague, calls for
 12 speculation.
 13 THE WITNESS: I don't know.
 14 BY MR. ROSENBAUM:
 15 Q Do you have any concerns about utilizing the
 16 Chicago study that you're referring to for purposes of
 17 analyzing California's accountability system?
 18 MS. KOURY: Overbroad, vague.
 19 THE WITNESS: Your question started out with do I
 20 have any reservations?
 21 BY MR. ROSENBAUM:
 22 Q Yeah.
 23 A Yes, I would have reservations.
 24 Q What would those reservations be?
 25 A Because California is not the same as Chicago.

1 So I wouldn't want to draw a radical recommendation that
 2 would suddenly be transferred here, because I think that
 3 that would -- in the first place, it was a controversial
 4 program, and -- I'm sorry, I'm giving a muddled answer.
 5 Q Any other reservations?
 6 A There may be cost implications about it. It
 7 may be a kind of a violation of local control. It would
 8 deny -- I think that we're talking about statewide
 9 policy, at least that's what I have in mind.
 10 Is that acceptable to you?
 11 Q If it is to you, sure.
 12 A Okay. Well, if we're talking about statewide
 13 policy, it sort of denies local districts autonomy and
 14 discretion in designing their programs.
 15 Q Does the California accountability system,
 16 sir -- do you know if the California accountability
 17 system provides for school autonomy over personnel and
 18 operations?
 19 MS. KOURY: Objection. Vague, ambiguous and
 20 overbroad.
 21 THE WITNESS: I don't know the extent to which
 22 those provisions are made.
 23 BY MR. ROSENBAUM:
 24 Q Okay. Do you know if the California
 25 accountability system provides for competition from

1 privately-governed schools?
 2 MS. KOURY: Objection. Vague, overbroad, calls for
 3 speculation.
 4 THE WITNESS: I don't know.
 5 BY MR. ROSENBAUM:
 6 Q Do you know if the California accountability
 7 system provides for teacher discretion over teaching
 8 methods?
 9 A I think that the -- the new legislation shifts
 10 more -- it does provide some autonomy and discretion on
 11 the part of districts, schools and teachers.
 12 Q Which new legislation are you talking about?
 13 A The accountability legislation.
 14 Q And give me the basis of your answer, please.
 15 A Because I think it shifts the -- since we're
 16 talking about the division of labor, meaning that the
 17 State of California, as we've talked about it, with the
 18 various entities involved, the Governor, the Legislature
 19 and the Department of Education, are taking more
 20 responsibility for setting goals and setting standards
 21 and measuring them and monitoring them, publicizing the
 22 degree to which they're attained, and this has the
 23 effect, in my opinion, of leaving more autonomy and
 24 discretion to local districts and schools to --
 25 Q How -- sorry, go ahead.

1 A To emphasize more how to accomplish the
2 standards.

3 Q Your view is that the California -- the
4 legislation that created the California accountability
5 system enlarged teacher discretion over teaching methods
6 from what it previously was?

7 MS. KOURY: Objection to the extent that
8 mischaracterizes his testimony.

9 BY MR. ROSENBAUM:

10 Q I don't mean to characterize your testimony. I
11 just want to know if that's your position.

12 A I think it encourages that division of labor
13 that I've described.

14 Q Okay. Well, maybe you just answered that, but
15 is it your testimony that it increases teacher
16 discretion over teaching methods?

17 MS. KOURY: Objection to the extent it
18 mischaracterizes his testimony. It's also vague.

19 Answer to the extent you know.

20 THE WITNESS: I think that the California
21 legislation reflects the national tendency these days
22 for people in governing positions to set standards and
23 leave more and more control over operations, including
24 teaching methods, to local decision making.

25 BY MR. ROSENBAUM:

1 Q Are you opposed to restricting teacher
2 discretion over teaching methods?

3 MS. KOURY: Objection. Incomplete hypothetical.
4 Sorry, were you finished?

5 Objection. Incomplete hypothetical.

6 THE WITNESS: I think it's useful for teachers to
7 have discretion over the methods that they use.

8 BY MR. ROSENBAUM:

9 Q Do you know the practices of Los Angeles
10 Unified School District with respect to teaching
11 reading?

12 MS. KOURY: Objection. Vague and ambiguous and
13 overbroad, calls for speculation.

14 Go ahead.

15 THE WITNESS: I haven't made a specific study of
16 that.

17 BY MR. ROSENBAUM:

18 Q Have you ever looked at a California School
19 Report Card?

20 MS. KOURY: Objection. Vague.
21 Are you referring to the -- well, never mind.
22 Go ahead.

23 THE WITNESS: I may -- I don't specifically
24 remember doing that.

25 BY MR. ROSENBAUM:

1 Q Okay.

2 MR. HAJELA: Mark, can I ask one question so we
3 have --

4 MR. ROSENBAUM: Not quite. Not quite. I'm sorry,
5 I just want to --

6 MR. HAJELA: That's fine.

7 MR. ROSENBAUM: -- finish this up.

8 Q Let me ask you, sir, on Page 15 -- see the
9 sentence -- again, you read as much as you'd like to.
10 I'm looking at the last sentence in Paragraph
11 1. What -- "They had had extensive testing, school
12 report cards, high school exit examinations, and
13 consequences for school staff."

14 Do you see that sentence?

15 A I do.

16 Q Okay. Again, feel free to look at as much as
17 you like to put it in a context with which you're
18 comfortable.

19 What did you understand the word "extent" --
20 what did you mean by the word "extensive" there?

21 MS. KOURY: Objection to the extent that takes the
22 phrase out of the context.

23 Go ahead.

24 THE WITNESS: "Extensive" generally means -- and I
25 think it meant in this case as well -- that more grade

1 levels or even all grade levels were tested and all
2 major subjects were tested.

3 BY MR. ROSENBAUM:

4 Q Okay. And what did you mean by consequences
5 for school staff?

6 A Among other things, this might mean that the
7 publication of the test scores would be gratifying to
8 those that had high scores and had made good gains, that
9 in some cases they would be threatened by reconstitution
10 or replacement in the staff, that they might be -- the
11 students might be allowed to go to other schools in the
12 area or that the school might be offered to be
13 chartered.

14 MR. ROSENBAUM: Okay. I think we're at the
15 breaking point.

16 Can I ask you to come back after lunch and --

17 MR. HAJELA: Sure.

18 MR. ROSENBAUM: This is the time we said we'd take
19 our break.

20 Q You doing all right?

21 A Yes, thank you.

22 MS. KOURY: Off the record?
23 (Lunch recess taken from 12:11 p.m. to
24 1:24 p.m.)

25 BY MR. ROSENBAUM:

1 Q You doing okay, Doctor?
 2 A I am. Thank you.
 3 Q Could you do me a favor? Could you take a
 4 look, please, at Page 44 of Exhibit 1, your report.
 5 A I have it.
 6 Q Tell me what that is. That's Table 1,
 7 percentages of students meeting State and national
 8 proficiency standards for eighth grade mathematics; is
 9 that right?
 10 A That's the title of the table.
 11 Q Okay.
 12 A And in a sense, I think it conveys the meaning.
 13 Q Sorry? What?
 14 A I think it conveys the meaning.
 15 Q Okay. How are -- the states go from
 16 Connecticut, at the top, to Louisiana, at the bottom?
 17 A Yes.
 18 Q Tell me what that order means.
 19 A Well, they're actually in order of the
 20 national, which is in the second numerical column.
 21 Q Okay.
 22 A So you see Connecticut has a 34, then
 23 Massachusetts, and they decline as you go down the
 24 table.
 25 Q Okay.

1 A It could be ordered in any way, but that
 2 enables you to compare states with respect to national
 3 assessment scores.
 4 Q Why did you choose to put them that way? Or
 5 did you choose to put them in that way?
 6 A I don't -- I think they may have been
 7 originally reported that way, but I think it's a
 8 reasonable way to report it, because you want to know
 9 which states did well and which states did poorly, and
 10 it makes it more visible that way.
 11 Q And the states that did well at the top and
 12 states did poorly at the bottom? Am I reading that
 13 right?
 14 A Yeah.
 15 Q Let me ask you, sir, to look at Page 13 of your
 16 report.
 17 A I'm there.
 18 Q Okay. The Number 6 says, "Statewide student
 19 identification system under development."
 20 Do you see that?
 21 A Yes.
 22 Q Do you know to what extent, if any, California
 23 has a statewide student identification system?
 24 A No.
 25 Q Okay. Have you made any inquiry to find out?

1 A No.
 2 Q Okay. You know, I don't think I've asked you,
 3 sir, what -- you are a proponent of accountability when
 4 it comes to education, "K" through 12 education; is that
 5 right?
 6 A That's correct.
 7 Q Tell me what you understand to be the values of
 8 accountability for public education.
 9 A Well, I think we did discuss that a bit
 10 yesterday, but I'd be glad to --
 11 Q Sure.
 12 A -- mention it again.
 13 I think my criterion for most of the things
 14 that I'm concerned about is achievement, and I think
 15 accountability --
 16 Q Can I just ask you to speak up a little bit?
 17 A I think that my major criterion for evaluating
 18 policies and practices is whether they effectively raise
 19 achievement or not. Secondly, cost effectively do that,
 20 within a -- traditionally, within the law. And I'm
 21 convinced that accountability in general and in human
 22 affairs, or at least American human affairs, with
 23 respect to American schools, promotes achievement.
 24 Q Okay. Do you have a view as to whether or not
 25 any of plaintiffs' experts would disagree with the

1 statement you just gave?
 2 MS. KOURY: Objection. Calls for speculation.
 3 THE WITNESS: I don't know their views on that.
 4 BY MR. ROSENBAUM:
 5 Q Okay. Let me direct your attention again to
 6 Page 16 of Exhibit 1. And the first full paragraph
 7 there. Again, feel free to refer to whatever you'd like
 8 to get full context if you need to.
 9 The first full paragraph reads, "Points 2 and
 10 3, contrary to plaintiff experts, establish that
 11 successful schools are autonomous over personnel,
 12 operations, and teaching methods"; is that right?
 13 A Yes.
 14 Q Which plaintiff experts are you referring to,
 15 sir?
 16 A I think that the general tenor of Jeanne Oakes'
 17 synthesis report suggests that. I think that her
 18 special report on instructional meeting curriculum
 19 suggests that, and the two that I concentrated on,
 20 Mintrop and Russell.
 21 Q Okay. And what do you mean by "autonomous" in
 22 that sentence?
 23 A It means that the staff within the school and,
 24 to some extent, the local school board that governs it
 25 and other people that may be involved in the school can

1 make decisions about the delivery of programs, selection
2 of resources and have a lot of flexibility on what they
3 can do.

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

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

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

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

19 MS. KOURY: Vague.

20 THE WITNESS: No.

21 BY MR. ROSENBAUM:

22 Q What do you mean?

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

1 BY MR. ROSENBAUM:

2 Q Okay. Let me give it to you.

3 MR. ROSENBAUM: Okay. Let me mark as Exhibit 2 to
4 this deposition a document, multi-page document, bearing
5 the caption of this case and specifically saying,
6 "Expert Witness Declaration re Michael Russell."

7 I'm going to have this marked and provided to
8 you, Dr. Walberg, and I'm going to supply your counsel
9 with a copy.

10 (Plaintiff's Exhibit 2 was marked for
11 identification by the court reporter.)

12 THE WITNESS: If I may, I'd like to refer to my
13 own report, because I may have referred to it there.

14 BY MR. ROSENBAUM:

15 Q Sure. Let me just ask you a few predicate
16 questions, though.

17 Do you see that Exhibit 2 in front of you at
18 this time?

19 A I do.

20 Q Would you mind just inspecting it? I'm going
21 to let you spend as much time as you'd like on it. I
22 just need to identify it for the record.

23 A Yes, this appears to be -- the Plaintiff
24 Exhibit Number 2 is called "Expert Witness Declaration
25 of Michael Russell."

1 entities there.

2 Q I don't know what that means.

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

5 Q Well --

6 A The Governor.

7 Q I'm sorry, go ahead.

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

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

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

22 MS. KOURY: Objection. Asked and answered.

23 Go ahead.

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

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

6 MS. KOURY: Objection. Vague, overbroad.

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

9 BY MR. ROSENBAUM:

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

12 A No.

13 MS. KOURY: Same objection.

14 THE WITNESS: Sorry.

15 BY MR. ROSENBAUM:

16 Q Go ahead, sir.

17 A (Witness reviews documents.)

18 THE WITNESS: May I have that question back?

19 (The record was read as follows:

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

24 THE WITNESS: I can give you one instance that I
25 mention in my own report that might save us some time.

1 BY MR. ROSENBAUM:

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

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

7 Q Sure.

8 A It's a fairly long report.

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

11 You both there?

12 MS. KOURY: Hmm-hmm.

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

21 BY MR. ROSENBAUM:

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

1 MS. KOURY: I'm going to object to the extent that
2 it was already asked and answered. He had previously
3 given a response to that, and he was specifically now
4 citing to you Russell's report, but you can continue.

5 BY MR. ROSENBAUM:

6 Q Go ahead, you can answer.

7 A I -- when I view this -- or as I did view this
8 in the context of Russell's report, he seemed to be
9 emphasizing that these inputs would be measured and they
10 would be monitored and they would be specified by the
11 State authorities and would be required in all schools
12 to a larger degree than they presently are. So that the
13 extent to which these became regulations, people within
14 the schools, teachers, principals, even school boards,
15 would have less autonomy to make the decisions
16 themselves.

17 Q Make what decisions?

18 A About what textbooks to use, whether to have
19 summer school, the length of homework, things of that
20 nature.

21 Q Does the California accountability system
22 provide for any restrictions on what textbooks schools
23 are to use?

24 MS. KOURY: Objection. Vague, overbroad.

25 THE WITNESS: I don't know this for certain. I

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

3 THE WITNESS: I may have even misunderstood the
4 question.

5 BY MR. ROSENBAUM:

6 Q Well, let me -- let's go back.

7 You said --

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

10 BY MR. ROSENBAUM:

11 Q I'm sorry, did you finish?

12 A I think I'm all right.

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

17 A Yes.

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

20 A Yes.

21 Q Is that right?

22 A Yes.

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

1 have an impression, if you'd like that.

2 BY MR. ROSENBAUM:

3 Q Well, you -- I want you to answer it as you
4 wish to answer. Don't guess, but I want you to give
5 your best answer.

6 MS. KOURY: If you have a basis for the answer,
7 based on research that you've done, or an estimate,
8 you're allowed to give that.

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

11 MS. KOURY: Right.

12 THE WITNESS: Yes. I think that California has a
13 reputation of being more prescriptive, with respect to
14 textbooks, than other states.

15 BY MR. ROSENBAUM:

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

19 MS. KOURY: Objection. Vague.

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

24 BY MR. ROSENBAUM:

25 Q Well, do you have an opinion, sir, whether or

1 not the California accountability system reduces the
2 autonomy of schools over personnel, operations and
3 teaching methods with respect to the selection of
4 textbooks?

5 MS. KOURY: Objection. Vague and overbroad. It's
6 also been asked and answered.

7 Go ahead.

8 THE WITNESS: I think to the extent to which
9 textbooks are limited in the chooses that can be made
10 may also have effects -- not only in the choices that
11 could be made, obviously, but it could affect the
12 teaching methods, because sometimes a particular
13 textbook might require one instructional method over
14 another.

15 BY MR. ROSENBAUM:

16 Q Okay. Do you oppose that?

17 MS. KOURY: Objection. Vague.

18 THE WITNESS: All these things have cost and
19 benefits. And I think that local autonomy can be very,
20 very valuable. So if you subscribe to the sorts of
21 things, then there is a sacrifice to local discretion,
22 and which I think is a valuable thing to have within a
23 school or a district.

24 BY MR. ROSENBAUM:

25 Q If you've answered my question just tell me,

1 Q Can you tell me, sir, does Mr. Russell advocate
2 a particular bureaucratic regulation or set of
3 bureaucratic regulations?

4 MS. KOURY: Objection -- I'm sorry, were you done?

5 Objection. Vague, ambiguous, calls for
6 speculation.

7 THE WITNESS: I don't remember that in his report.
8 I have the impression that he would -- excuse me. Maybe
9 I ought to have that question again.

10 MR. ROSENBAUM: Sure. Go ahead.

11 (Record read.)

12 BY MR. ROSENBAUM:

13 Q I don't want you guessing. I want you to
14 follow Ms. Koury's admonition as to how to answer the
15 question.

16 MS. KOURY: Calls for speculation.

17 Answer to the extent that you have a basis for
18 that, having read his report. Go ahead.

19 THE WITNESS: I don't remember an explicit
20 description.

21 BY MR. ROSENBAUM:

22 Q How about Mr. Mintrop? Does he -- does he set
23 out a specific bureaucratic regulation?

24 MS. KOURY: Objection. Vague, calls for
25 speculation.

1 sir, but I'm asking you: Do you oppose the -- what the
2 California accountability system requires with respect
3 to the selection of textbooks as reducing the autonomy
4 of schools?

5 MS. KOURY: Objection. Asked and answered. He
6 just testified about that.

7 MR. ROSENBAUM: He hasn't answered it.

8 Q Go ahead.

9 A I see this as, not opposition so much, but
10 seeing it as a cost to what you just described, and that
11 cost is local autonomy. So on those grounds I would
12 have reservations about it.

13 Q Do you think the cost -- maybe you did just
14 answer.

15 Do you think the costs outweigh the benefits?

16 MS. KOURY: Objection. Asked and answered.

17 THE WITNESS: I think that it is -- would be very
18 difficult to ascertain both the cost and the benefits.

19 BY MR. ROSENBAUM:

20 Q Why is that?

21 A Because I think that a large, detailed and
22 complicated, expensive study would have to be made to
23 estimate the monetary costs, the cost of possible
24 psychological impairment, morale in the school district,
25 things of this nature.

1 BY MR. ROSENBAUM:

2 Q Or set of regulations?

3 A Well, I'm not sure I would call them
4 regulations, in the sense that it would be ready for
5 legislative enactment, but I do think that he calls for
6 the inspectorate system, which would be a form of
7 regulation or could be considered to be a form of
8 regulation.

9 Q Your testimony is that Mintrop specifically
10 called for the inspectorate system, as utilized in Great
11 Britain?

12 MS. KOURY: Objection. Mischaracterizes his
13 testimony, or to the extent it does. His testimony is
14 what it is. I'm not sure that that was a question.

15 BY MR. ROSENBAUM:

16 Q Is that your testimony, sir, that, based on
17 your reading of the Mintrop report, that he specifically
18 calls for the institution of the inspectorate system in
19 California, as used in England?

20 MS. KOURY: It's also argumentative and asked and
21 answered.

22 Go ahead.

23 THE WITNESS: I don't think that he recommends
24 exactly the English system, because obviously, there are
25 historical precedents, laws and all those other sorts of

1 things, but I think that he does recommend something
2 like the English inspectorate.

3 BY MR. ROSENBAUM:

4 Q Tell me -- I want to know fully, sir, what you
5 think he recommends.

6 What's the system or set of bureaucratic
7 regulations or the bureaucracy that, upon your reading
8 of the Mintrop report, you state that he recommended?

9 MS. KOURY: Objection. It calls for speculation.
10 It's asked and answered.

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

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

19 BY MR. ROSENBAUM:

20 Q Sure.

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

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

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

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

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

10 BY MR. ROSENBAUM:

11 Q Thank you.

12 A May I clarify one thing?

13 Q Sure.

14 A For now we're going to be looking only at the
15 Russell report.

16 Q For right now.

17 A (Witness reviews documents.)

18 Mr. Rosenbaum, one other question. Would you
19 like to have me try to find all instances or a few
20 more?

21 Q All instances, sure.

22 A (Witness reviews documents.)

23 Another question. May I mark this, so that I
24 can come back to it easily?

25 Q Sure. I am -- unless you have an objection,

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

3 BY MR. ROSENBAUM:

4 Q I'm just going to have you identify it, then
5 come back to something.

6 A All right.

7 Q Okay.

8 A This is the expert witness declaration of
9 Heinrich Mintrop, Ph.D.

10 Q That's the report you're familiar with?

11 A Yes.

12 Q And it's been marked by the reporter as Exhibit
13 3?

14 A Yes, it is.

15 Q Go back to the Russell report, please.

16 Any other example besides the examples that you
17 provided me that demonstrate to your satisfaction that
18 Russell takes a contrary view to Points 2 and 3 that you
19 state establish that successful schools are autonomous
20 over personnel, operations and teaching methods?

21 MS. KOURY: That he can think of, as he sits here
22 right now, having reviewed it for a few minutes?

23 MR. ROSENBAUM: No, that's really an unfair
24 characterization, Vanessa. As I told him, he can take
25 as much time as he wants.

1 Vanessa.

2 MS. KOURY: I prefer you -- yeah, go ahead.

3 BY MR. ROSENBAUM:

4 Q Just for the record, the Exhibit 2 you're
5 looking at, that has no -- using a pencil?

6 A Well, I'm just erasing it.

7 Q No, no, no. You're welcome -- I just want to
8 make clear for the record. You're free to do what you
9 like.

10 You're using a pencil; is that right?

11 A Yes.

12 Q And there's no pencil marks in the report, as
13 it stands right now; is that right?

14 A Well, I'm just looking --

15 Q Well, I just want to establish that the pencil
16 marks are yours. No, go ahead and do it.

17 A Well, rather than confusing things, I think
18 I'll just mark it on a separate piece of paper.

19 Q Do as you choose, but you're certainly welcome
20 to mark it. I don't have any objection.

21 A (Witness reviews documents.)

22 Q Doctor, you take as much time as you need. I
23 just want to reflect that it is 2:23 now. But you take
24 all the time you want.

25 A Thank you.

1 (Witness reviews documents.)
 2 Q Doctor, what page are you on?
 3 A I'm on Page Roman XX.
 4 Q Okay. I'd be pleased to have you cite me what
 5 examples you've found so far.
 6 Did you take notes during your review?
 7 A I did.
 8 Q How many pages?
 9 A Two.
 10 Q Okay.
 11 A Well, I should say a page and a half.
 12 Q Okay.
 13 A That doesn't -- part of the first page has some
 14 notes from earlier.
 15 Q I'm going to let you, obviously, look at them,
 16 but I'd like to have those marked as Exhibit 4, please.
 17 (Plaintiff's Exhibit 4 was marked for
 18 identification by the court reporter.)
 19 BY MR. ROSENBAUM:
 20 Q Go ahead.
 21 A And you want examples of Points 2 and 3, which,
 22 just to remind myself, is where he -- or Dr. Russell is
 23 contrary to advocating the principle of school autonomy
 24 over personnel and operations and teachers' discretion
 25 over teaching methods.

1 Q Yeah.
 2 And just for the record, why don't you define
 3 what you meant by "autonomous" on Page 16 of your
 4 report.
 5 MS. KOURY: That was asked and answered.
 6 MR. ROSENBAUM: It may have been. If you represent
 7 it was, I'm glad not to repeat that.
 8 MS. KOURY: I'll represent that it was.
 9 MR. ROSENBAUM: Okay.
 10 MS. KOURY: If I'm wrong, you're welcome to ask it
 11 again later.
 12 MR. ROSENBAUM: Okay.
 13 Q Go ahead, Doctor.
 14 A With which question?
 15 Q You don't need to -- I take Ms. Koury's
 16 representation.
 17 Why don't you give me the examples that you
 18 found in the review -- it's 2:31 -- as to the review
 19 that you conducted.
 20 A Okay. Page IV, at the center or middle of the
 21 page, Page -- these are all Roman numerals.
 22 Q Okay.
 23 A Page VI.
 24 Q Can you tell me -- Page IV -- Page Roman
 25 numeral IV, and where are you saying, sir? Why don't

1 you read me the sentence or sentences that you're
 2 referring to.
 3 Do you mind doing that?
 4 A Sure.
 5 All right. One sentence is just about in the
 6 middle of the page, just a little bit above it. It
 7 begins with "Given this role."
 8 Would you like me to read the sentence?
 9 Q You're talking about the sentence that begins
 10 "Given this role" and ends "knowledge developed"?
 11 A Yes.
 12 Q Okay. You don't need to read it.
 13 A All right.
 14 Okay. The next example is on Page VI.
 15 Q Page Roman numeral VI?
 16 A Yes. These are all Roman numeral.
 17 Q Thank you.
 18 A This is in the last paragraph, and there's a
 19 mention of focus on inputs and inputs affecting outputs
 20 and receiving the essentials required for learning.
 21 Q Is there a particular sentence or sentence?
 22 A Well, I could -- I just made some notes on some
 23 of the phrases in the sentences, but I could identify
 24 the actual sentence if it's helpful to you.
 25 MS. KOURY: You should fully answer his question.

1 THE WITNESS: All right.
 2 BY MR. ROSENBAUM:
 3 Q Go ahead.
 4 A I need to find it exactly.
 5 Q Oh, I'm sorry.
 6 A All right. The first mention is the first
 7 sentence in the last paragraph, "A system like
 8 California's, which ranks rewards and punishes schools
 9 based upon outcomes without requiring and assisting them
 10 to provide quality inputs, is not only extremely limited
 11 in terms of its ability to direct positive change, it is
 12 damaging in and of itself."
 13 Q Okay. Thank you.
 14 A And the next sentence -- actually, the next two
 15 sentences also.
 16 Q Okay.
 17 A I'll read those. "Such a" -- or should I?
 18 Q It's up to Ms. Koury, but you -- I'll take your
 19 representation it's the next two sentences.
 20 MS. KOURY: That's fine.
 21 THE WITNESS: Okay. The next is on VII, near the
 22 top, and let me identify it more precisely for you.
 23 (Witness reviews documents.)
 24 That's the first full sentence.
 25 BY MR. ROSENBAUM:

1 Q Begins with the word "while"?

2 A Yes.

3 Q Thank you.

4 A Then in the middle of that page -- let me find

5 it.

6 (Witness reviews documents.)

7 The sentence is the third sentence in the first

8 full paragraph, "Because these external factors play a

9 role in high test scores, they may be" -- "they may

10 overcome poor educational practices employed within a

11 high performance school."

12 Q Okay. Thank you.

13 A (Witness reviews documents.)

14 And the next sentence also, "That is, a school

15 could be high scoring on tests and meet performance

16 standards and accountability system, despite a low

17 quality of educational practices."

18 Q Okay. Thank you.

19 A And the next sentence, "Requiring all schools

20 to place their performance in the context of the

21 practices they employ, the resources they provide and

22 the performance of schools that serve similar students

23 would be more likely to lead to improvements in the

24 quality of education."

25 Q Okay.

1 A And also the next sentence, "By requiring all

2 schools to consider the relationship between inputs and

3 outputs, inputs are more likely to occur in low as well

4 as high performance schools."

5 Q Okay.

6 A That's all I have for that page.

7 Q Okay. Thank you.

8 A Forgive me. It's the last partial sentence,

9 which is on the last line that begins with "without a

10 full understanding of the factors that influence the

11 final figures, whether they be the financial bottom

12 line, the tally of judging scores or summary of test

13 scores desirable, high performance numbers can be the

14 product of undesirable practices."

15 Q Okay.

16 A And the next sentence, "Little light is shed on

17 the cause of undesirable outcomes."

18 Q Okay.

19 A And then also on page Roman numeral VIII. This

20 is the first full paragraph, "Because the system does

21 not require schools to be accountable for adequately

22 providing the inputs that will allow children to

23 succeed," and then there's mentioning of various

24 factors, "and because the State has no means to assess,

25 let alone address schools' input needs, many students of

1 California go without the factors that matter most in

2 improving their academic, social and work-related skills

3 and knowledge."

4 Q Okay.

5 A And then the last paragraph on that page, four

6 lines up from the bottom, "Several other studies have

7 also shown that the quality of instruction that students

8 experience impacts their learning. When students are

9 repeatedly exposed to low quality teaching, their

10 low" -- "their learning suffers. The State knows this.

11 The State also knows which schools have the highest

12 percentage of uncredentialed teachers. That is

13 schools" -- going on to the next page -- "where low

14 quality teaching is prevalent."

15 And then on the third line on Page IX, the

16 sentence beginning, "In this instance, the State knows

17 that a particular factor contributes to failure. It

18 even knows where that failure exists, but the system is

19 set up so that this information is not valued and is

20 effectively ignored."

21 Q Okay.

22 A Actually, the last sentence of that paragraph

23 too, which continues, "Furthermore, unlike

24 uncredentialed teachers, most factors that impair

25 student learning are not even measured by the State,"

1 and then examples are given, inadequate facilities,

2 textbook unavailability, et cetera.

3 Next one is on Page VIX.

4 Q Do you have the cites on your notes?

5 A They're rough cites about in what part of the

6 page, like top, middle and bottom.

7 Q Do you have words there or --

8 A I took some words from the sentence to remind

9 me which sentence --

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

11 A Sure.

12 Q That's fine. We can just keep this as an

13 exhibit.

14 A All right. May I get those notes back?

15 Q Sure. I mean, they're Exhibit 4, and at some

16 point we can make a copy, and they're going to be

17 attached to your deposition.

18 A Okay.

19 MS. KOURY: I'm going to object to the extent that

20 those notes are used to answer his questions, since

21 those are notes, not his testimony about the specific

22 examples he was purporting to give.

23 BY MR. ROSENBAUM:

24 Q Okay. Dr. Walberg, have you -- have you

25 conducted any inquiry to determine whether or not there

1 are any bureaucratic regulations that now exist as a
2 result of the California accountability system, such
3 that their costs outweigh their benefits, as you've used
4 those terms?

5 A No.

6 Q Okay. Do you -- have you conducted any
7 analysis to determine whether any of plaintiffs' experts
8 recommendations would supplant existing bureaucratic
9 regulations, so as to be more effective and cost
10 effective than existing regulations?

11 MS. KOURY: Objection. Overbroad, vague.

12 THE WITNESS: Your question began with have I
13 conducted any studies?

14 BY MR. ROSENBAUM:

15 Q Yeah.

16 A Not --

17 MS. KOURY: Sorry, go ahead.

18 THE WITNESS: Not explicit studies, but I am aware
19 of the general tenor of their reports.

20 BY MR. ROSENBAUM:

21 Q Okay. But -- maybe you just answered it. I
22 don't want to belabor it.

23 Have you specifically looked into the question
24 whether or not any of the recommendations of plaintiffs'
25 experts would supplant existing bureaucratic

1 that question.

2 Q Is one of Mr. Russell's criticisms that the
3 California accountability system reduces the autonomy of
4 teachers with respect to curriculum and teaching
5 techniques?

6 MS. KOURY: Calls for speculation, the document --
7 or Mr. Russell's report speaks for itself. To the
8 extent that you're asking his opinion about those
9 conclusions is a separate question.

10 THE WITNESS: May I have that question again?

11 BY MR. ROSENBAUM:

12 Q Sure.

13 Does -- is Russell critical of California's
14 accountability system for limiting teacher autonomy in
15 curriculum and teaching techniques?

16 MS. KOURY: Objection. Vague.

17 If you understand it, you can answer.

18 THE WITNESS: Does he criticize the California
19 system for not regulating teaching methods/practices?

20 BY MR. ROSENBAUM:

21 Q No.

22 Does he criticize the California accountability
23 system as reducing the autonomy of teachers with respect
24 to their teaching and curriculum techniques?

25 MS. KOURY: Objection. Vague.

1 regulations, so as to be more effective and cost
2 effective than the existing regulations?

3 MS. KOURY: Objection. Again, vague and ambiguous
4 and overbroad.

5 THE WITNESS: I don't know.

6 BY MR. ROSENBAUM:

7 Q You don't know what?

8 A I don't know whether the plaintiff experts have
9 substituted one set of -- if I understood your question,
10 are suggesting that the regulations that they're
11 suggesting would supplant existing regulations.

12 Q You haven't looked specifically into that
13 question?

14 A I'm sorry?

15 Q You haven't looked specifically into that
16 question?

17 MS. KOURY: Objection to the extent that
18 mischaracterizes his question.

19 THE WITNESS: No.

20 BY MR. ROSENBAUM:

21 Q Do you know how the State -- do you know
22 whether the State now monitors textbooks in schools?

23 MS. KOURY: Objection. Asked and answered several
24 times.

25 MR. ROSENBAUM: I think you're right. Withdraw

1 THE WITNESS: Well, I think in one way he does.
2 Because he speaks about narrow -- problems of narrow
3 testing.

4 BY MR. ROSENBAUM:

5 Q Okay.

6 A There may be other instances, too, that I can't
7 bring to mind.

8 Q Okay. Did you mention that in your report?

9 A I think that I did, but I need to go over
10 carefully to be sure.

11 Q It would be your practice to mention that in
12 your report?

13 MS. KOURY: Objection. Vague, overbroad.

14 THE WITNESS: Well, if I -- if I was looking at
15 another scholar's report or another expert's report, I
16 would -- I would criticize things that I think are
17 inappropriate or ill-founded.

18 BY MR. ROSENBAUM:

19 Q And you think that's inappropriate and
20 ill-founded?

21 MS. KOURY: Objection. Vague.

22 THE WITNESS: And the "it" refers to?

23 BY MR. ROSENBAUM:

24 Q Russell's criticism of the California
25 accountability system as limiting teacher autonomy and

1 curriculum and teaching techniques.
 2 MS. KOURY: Objection. Mischaracterizes his
 3 testimony.
 4 I think his answer was not specifically the way
 5 you worded it.
 6 MR. ROSENBAUM: Just make your objection, Counsel.
 7 THE WITNESS: I think he criticizes the California
 8 accountability system misguidedly for narrowing the
 9 curriculum to things that can be measured on tests.
 10 BY MR. ROSENBAUM:
 11 Q Okay. My question's a little bit different.
 12 So if I'm not being clear, I want to do better.
 13 Does Russell criticize the California -- is
 14 one of -- strike that.
 15 Is one of California -- is one of Russell's
 16 criticisms of the California accountability system that
 17 it reduces teacher autonomy when it comes to curriculum
 18 and curriculum choices and teaching method choices?
 19 A I think I understand your question. My answer
 20 is the same.
 21 But may I express it in my own words --
 22 Q Sure.
 23 A -- to be sure I understand?
 24 Q Sure.
 25 A I think he has reservations about an

1 outcome-based system and that, particularly, he has
 2 reservations about the tests used in California,
 3 particularly the SAT 9 and other proposed tests, and he
 4 in that -- and that's -- I think one of the reasons for
 5 it is he thinks it impairs or narrows the teacher's
 6 autonomy to choose teaching methods and textbooks to
 7 those that can be measured in tests.
 8 Q Okay. And you think that's ill-founded?
 9 A I don't think he's made a strong case for it,
 10 and I don't agree with him.
 11 Q Have you undertaken any analysis to determine
 12 whether or not those practices exist?
 13 MS. KOURY: Vague.
 14 THE WITNESS: In California?
 15 BY MR. ROSENBAUM:
 16 Q Yeah.
 17 A No.
 18 Q Do you know if anybody has?
 19 A Well, I think Mr. Russell did some analysis
 20 along those lines.
 21 Q Besides Mr. Russell?
 22 A Well, and aside from the things that we've
 23 already talked about and the independent analyses of the
 24 California testing and accountability system, I don't
 25 know of anything else.

1 Q Did the independent analyses that you're
 2 referencing -- did they specifically look into the
 3 question about whether or not one consequence of the
 4 system is the narrowing of the curriculum?
 5 MS. KOURY: Objection. Vague.
 6 THE WITNESS: I think that they assume that a
 7 certain narrowing would be constructive, because the
 8 curriculum would be focused on what leaders in the state
 9 felt was most important for students to learn.
 10 BY MR. ROSENBAUM:
 11 Q And you think that's what Russell's objecting
 12 to?
 13 A I think his worry is more whether these things
 14 can be tested with regular standardized tests,
 15 particularly those that are used in California.
 16 Q When you say "these things," what do you mean
 17 by that?
 18 A These what?
 19 Q When you say "these things," what do you mean
 20 by that?
 21 A The standards, attain the standard proficiency
 22 levels.
 23 Q You are aware that there are emergency
 24 credentialed teachers in "K" through 12 public schools
 25 in California?

1 MS. KOURY: Asked and answered.
 2 MR. ROSENBAUM: I know it is. It's just a
 3 predicate question.
 4 THE WITNESS: I didn't hear you.
 5 BY MR. ROSENBAUM:
 6 Q You're aware that --
 7 A I didn't hear your response to --
 8 Q I was just being --
 9 MS. KOURY: Doesn't matter.
 10 BY MR. ROSENBAUM:
 11 Q I was just saying -- we have wasted more --
 12 this is a very cost-ineffective thing we're doing right
 13 now.
 14 You're aware that there are emergency
 15 credentialed teachers in "K" through 12 public schools?
 16 A Yes.
 17 Q Do you have an opinion, Doctor, as to whether
 18 or not the hiring of those teachers is an exercise
 19 of -- strike that.
 20 Do you have an opinion as to whether or not the
 21 hiring of emergency credentialed teachers in "K" through
 22 12 public schools in California is a function of those
 23 schools exercising autonomy, as you've defined that
 24 word?
 25 MS. KOURY: Objection. Vague, calls for

1 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.

1 Q But if you're uncomfortable, take a --

2 A No, go ahead.

3 Q Okay. Same question, sir.

4 Do you believe that in schools in California --
5 "K" through 12 public schools in California, where
6 teachers cannot assign textbooks to students because of
7 their unavailability, that's a function of schools
8 exercising autonomy, as you use that word?

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

12 THE WITNESS: I don't understand the question.

13 BY MR. ROSENBAUM:

14 Q Let's assume there's a school in California
15 where kids don't have -- where teachers cannot assign
16 textbooks to their kids because they're not available,
17 okay? You with me so far?

18 A You mean there are no textbooks available?

19 Q There are no textbooks available for their
20 students in California -- not in California -- strike
21 that -- there are no textbooks available for their
22 students in the particular school where they're
23 teaching, okay? So their kids don't have textbooks.

24 My question to you is: Do you consider that an
25 example of those schools exercising autonomy, as you've

1 Q My question is: With all the emergency
2 credentialed teachers who are hired in "K" through 12
3 public schools -- do you think all their hirings is a
4 reflection of schools exercising autonomy, as you've
5 defined that word?

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

8 THE WITNESS: I don't know.

9 BY MR. ROSENBAUM:

10 Q Have you made any inquiry to find out?

11 A (No audible response)

12 Q Do you know what percentage of emergency
13 credentialed teachers hired in the "K" through 12 public
14 education system in California is an exercise of schools
15 autonomy, as you've defined that word?

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

18 THE WITNESS: I don't know.

19 BY MR. ROSENBAUM:

20 Q Okay.

21 A Mr. Rosenbaum, if you're pausing for a minute,
22 I think I might like a short break.

23 Q I'm glad to give you a break. I just have one
24 more question in this series.

25 A Fine.

1 defined the word "autonomy"?

2 MS. KOURY: Objection. Incomplete hypothetical,
3 calls for speculation beyond this expert's opinions,
4 it's overbroad and vague.

5 If you have an opinion, go ahead.

6 THE WITNESS: Well, I'd have to examine that
7 particular school, study it and find out if --

8 BY MR. ROSENBAUM:

9 Q What would you look for?

10 MS. KOURY: Objection. Incomplete hypothetical.

11 THE WITNESS: I think I would go in with an open
12 mind, but among the things -- hypotheses that I might
13 entertain is maybe it's all very progressive
14 computer-assisted instruction, and so that might be --
15 that could conceivably be a very good thing.

16 It's also -- several other possibilities are
17 that the people within that school have decided to pay
18 themselves very, very high salaries and deny textbooks
19 to children. In which case I don't think that's in the
20 interest of the children. So there are a great variety
21 of things that could happen, and I think that I would
22 need to make a study of it to determine whether it was
23 an autonomous choice and whether it was a reasonable
24 choice.

25 BY MR. ROSENBAUM:

1 Q What would the -- I'm not interested in the
2 reasonable choice part right now. What I'm interested
3 in is -- what would be the criteria that you would apply
4 to decide whether or not it was an autonomous choice?

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

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

13 BY MR. ROSENBAUM:

14 Q Okay. That's not my question.

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

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

22 Go ahead.

23 BY MR. ROSENBAUM:

24 Q Go ahead.

25 A Well, I'm going to go back to what I said

1 BY MR. ROSENBAUM:

2 Q Do you know what Concept 6 is?

3 A No.

4 Q Do you think overcrowding at a school, as we
5 talked about that yesterday, is a function of schools
6 exercising autonomy, as you've used that word?

7 MS. KOURY: Vague, overbroad, calls for
8 speculation.

9 THE WITNESS: Well, to the extent that the school
10 made the decision and considered various types of
11 tradeoffs to spending less on that and more on something
12 else, I think that that -- to the extent that that is
13 true, I think that it indicates a greater degree of
14 autonomy in the school.

15 BY MR. ROSENBAUM:

16 Q Okay. Do you know to what extent that is
17 true?

18 MS. KOURY: Objection. Incomplete hypothetical.

19 BY MR. ROSENBAUM:

20 Q In California.

21 MS. KOURY: Sorry. Incomplete hypothetical, calls
22 for speculation.

23 THE WITNESS: No.

24 BY MR. ROSENBAUM:

25 Q Let me direct your attention, sir, to Page 16

1 before, if I may.

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

4 Go ahead.

5 A I would look at -- I would look at that and
6 find out whether the students are achieving or not. And
7 if they were achieving, I would take as a hypothesis
8 there must be good things about -- I mean, they were
9 achieving well, I would take it as a hypothesis there
10 must be good things here.

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

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

22 Q Okay.

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

25 (Brief recess taken.)

1 of your report.

2 Again, look at as much you'd like.

3 You see -- at the bottom of the page, the last
4 paragraph. "If students are to meet world standards" --
5 actually, the sentence begins with the word "first."
6 "First, if students are to meet world standards, policy
7 makers and educators need to measure their progress and
8 find out what works best."

9 Do you see that?

10 A Yes.

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

12 A I think it's useful to, as we've talked about,
13 to have accountability, and especially accountability
14 that measures progress. And I think it's useful for
15 educators to be acquainted with professional literature
16 that indicates what things work best.

17 Q Can you tell me how you go about finding out
18 what works best?

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

21 MR. ROSENBAUM: Yes.

22 THE WITNESS: I think there are a number of ways.

23 There are a number of professional journals. There is
24 the research organization, such as the American
25 Educational Research Association, the International

1 Academy of Education, the U.S. Department of Education,
2 journals such as Educational Leadership that often have
3 articles on things that work better than others. Phi
4 Delta Kappan are other examples, and there are, of
5 course, other books on that subject.

6 In addition to that, professional associations
7 of various kinds have workshops and annual conventions
8 which they might -- not that they've done the research
9 themselves, but they've synthesized research in a useful
10 way and present it to practitioners.

11 BY MR. ROSENBAUM:

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

16 MS. KOURY: Objection. Overbroad, vague, calls for
17 speculation.

18 THE WITNESS: I think it allows for it. I think
19 that professionals have the capacity to be members of
20 organizations and read the kind of books and articles
21 and journals that I had mentioned earlier.

22 BY MR. ROSENBAUM:

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

25 A Well, I don't -- I have never -- I haven't

1 A Yes.

2 Q Then I said -- my next question's: Did you
3 ever make any inquiry to find out?

4 A I did not.

5 Q Okay. Thank you.

6 At the top of Page 17, first full paragraph, do
7 you see the phrase "systematic testing"?

8 A Yes.

9 Q What do you mean by that?

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

16 Q Okay.

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

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

23 A Yes.

24 Q -- paragraph.

25 Is that part of the California accountability

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

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

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

14 MS. KOURY: Objection. Vague, overbroad.

15 THE WITNESS: I don't know.

16 BY MR. ROSENBAUM:

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

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

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

1 system, as you understand it? Do you know?

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

12 Q That's not exactly my question.

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

17 MS. KOURY: Objection. Asked and answered to the
18 extent that he just provided the answer.

19 THE WITNESS: Only in the broad sense that I just
20 mentioned.

21 BY MR. ROSENBAUM:

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

24 A As a consequence of the accountability --

25 Q Yes.

1 A The State accountability system? No.
 2 Q Did you ever make any inquiry to find out?
 3 A No.
 4 Q Okay. We're talking about weekly or even more
 5 frequent examinations.
 6 You understood that was part of my question?
 7 A Yes.
 8 Q Okay. Same question, sir, about two sentences
 9 later. See where it says, "frequent quizzes"? "In
 10 addition, frequent quizzes encourage students to be
 11 prepared for classes" --
 12 A Yes.
 13 Q -- do you see that?
 14 Do you know, sir, whether or not there is any
 15 part of the California accountability system that
 16 involves the administration of frequent quizzes, as you
 17 use that phrase?
 18 A Only in the sense that I said before.
 19 Q Do you know if in fact, as a consequence of the
 20 California accountability system, whether or not
 21 classrooms are administering frequent quizzes?
 22 A I've not made any study of that or visited
 23 classrooms, so I don't know.
 24 Q Okay. Page 17, sir. Third full paragraph,
 25 "Few professionals or other workers want to be held

1 accountable; but, in education, our nation's welfare and
 2 students' lives are at stake."
 3 What do you mean by that?
 4 A I still haven't found it.
 5 Q I'm sorry.
 6 A You said Page 17.
 7 Q I did. And it's the second sentence in the
 8 third full paragraph.
 9 The paragraph begins, "Third."
 10 Do you have the sentence in front of you?
 11 A I have it now. Yes, thank you.
 12 Q There's actually two sentences there. So you
 13 can answer them separately or together, as you choose.
 14 A Both the one that says, "Few professionals" and
 15 "Tests help"?
 16 Q "Few professionals or other workers want to be
 17 held accountable; but, in education, our nation's
 18 welfare and students' lives are at stake."
 19 By two sentences, I meant what's separated by a
 20 semicolon.
 21 A Ah, okay.
 22 And your question is?
 23 Q What's the basis for that statement or
 24 statements?
 25 A Well, the first part is personal experience and

1 reading in psychology and other fields and talking with
 2 professionals that -- and being knowledgeable that
 3 professional accountability is not necessarily desired
 4 by those who are being held accountable.
 5 And the second part --
 6 Q Why do you think that is?
 7 MS. KOURY: Objection. Vague.
 8 THE WITNESS: I think accountability can be
 9 painful. It can require more effort for people to
 10 comply with it. It may have the appearance of being
 11 fair or unfair. It can lead to misunderstandings and
 12 strife between managers and especially professionals but
 13 other workers. Those are some of the reasons.
 14 BY MR. ROSENBAUM:
 15 Q Okay. And then the second portion of that
 16 sentence, sir? "But in education, our nation's welfare
 17 and students' lives are at stake."
 18 A And you want to know what I mean by that?
 19 MS. KOURY: The basis for --
 20 BY MR. ROSENBAUM:
 21 Q I want to know the basis for it.
 22 A I think I discussed that earlier this morning,
 23 when I talked about the benefits of education.
 24 Q Okay. Go to the last sentence in that
 25 paragraph.

1 A Yes.
 2 Q Again, feel free to contextualize it if you'd
 3 like.
 4 The last sentence says, "For children in
 5 poverty and related conditions, schools provide the best
 6 or only opportunity to rise above their circumstances."
 7 What's your basis for that statement, sir?
 8 A The basis of that statement is they may not
 9 have the opportunities to -- that have been generated in
 10 their homes and neighborhoods and communities where they
 11 may have the possibility of being in a good school that
 12 could help them or achieve tests that they have in the
 13 first 18 years of life, which is achievement and other
 14 things that schools hope to accomplish.
 15 Q Do you think any plaintiffs' experts -- do you
 16 have a view, sir, whether any of the plaintiffs' experts
 17 would disagree with that statement?
 18 MS. KOURY: Objection. Overbroad, vague, calls for
 19 speculation.
 20 THE WITNESS: I don't know.
 21 BY MR. ROSENBAUM:
 22 Q How about the sentence we went over a few
 23 moments ago, the one that began, "Few professionals or
 24 other workers"? Do you have a view as to whether or not
 25 any of plaintiffs' experts disagree with that

1 statement?

2 MS. KOURY: Same objection. Vague, overbroad,
3 calls for speculation.

4 THE WITNESS: I don't know.

5 BY MR. ROSENBAUM:

6 Q Okay. Are you aware, sir, of any surveys
7 regarding the preferences of the public civic leaders
8 and students as to spending on education?

9 MS. KOURY: Objection. Vague, overbroad, calls for
10 speculation.

11 BY MR. ROSENBAUM:

12 Q It's actually compound, but my question is --
13 and you can break it down -- the public, civic leaders
14 and students. You can talk about them as a group or
15 separate them.

16 A You were pointing at something in my report?
17 Would it be something that I would refer to?

18 Q I just picked those words out. I'm not asking
19 you about the contents. I wouldn't do that.

20 MS. KOURY: Could you repeat the question, please?

21 MR. ROSENBAUM: You know what? I'll break it down.

22 Q Are you aware, sir, of any surveys regarding
23 the views of the public towards more spending on
24 education?

25 MS. KOURY: Objection. Vague, overbroad.

1 weight those surveys should be given weight --

2 MS. KOURY: Objection. Vague, overbroad.

3 BY MR. ROSENBAUM:

4 Q -- by education theorists?

5 MS. KOURY: Vague, overbroad, calls for
6 speculation.

7 THE WITNESS: Well, I think education theorists
8 should know a lot of things, and one of the things that
9 they might want to know and should know about is
10 particularly the thing that you asked me about.

11 BY MR. ROSENBAUM:

12 Q Why is that important?

13 A I think that it's just, to be an informed
14 person in writing about education theory, you ought to
15 be acquainted with public opinion, among other things.

16 Q Just because it makes you a well-rounded person
17 or for any other reason?

18 MS. KOURY: Objection. Vague.

19 THE WITNESS: Well, not so much because of a
20 well-rounded person but -- I thought you asked about
21 education theorists.

22 BY MR. ROSENBAUM:

23 Q Yeah.

24 Is there a specific reason or reasons, with
25 respect to educational theorists, that you think they

1 Go ahead.

2 THE WITNESS: I am aware that studies have been
3 made of that question.

4 BY MR. ROSENBAUM:

5 Q Okay. And what studies are you referring to?

6 MS. KOURY: Same objection. Overbroad.

7 THE WITNESS: I'm not sure I can name them. I
8 think that the Kappan has made surveys of that nature.
9 And there may be other groups as well.

10 BY MR. ROSENBAUM:

11 Q K-a-p-p-a-n?

12 A Yes.

13 Q Do you know what the results of those studies
14 are?

15 A I don't remember them in detail.

16 Q Do you remember anything about them?

17 MS. KOURY: Calls for speculation.

18 THE WITNESS: I only have such a weak impression,
19 I'd rather not say.

20 BY MR. ROSENBAUM:

21 Q Okay. Do you know when those surveys were
22 undertaken?

23 A I think that they've been done over a period of
24 perhaps the last 10 or 15 years.

25 Q Do you think those studies should be given

1 ought to be knowledgeable about the public's attitudes
2 towards, say, education spending?

3 A Is there a particular reason why they should
4 know?

5 Q Yeah.

6 A And that's especially aside from what you
7 mentioned earlier, to be a well-rounded person.

8 Q Yeah.

9 A Yes, I think there is.

10 Q What is that?

11 A I think that they are -- should be as well
12 informed about educational matters.

13 Q How about public officials? Do you think they
14 should pay attention to -- well, strike that.

15 Have there been surveys, to your knowledge,
16 sir -- you know, I'm not just talking about California.
17 I'm talking about anywhere in the country.

18 A That's what I'm assuming.

19 Q That's what I thought.

20 Have there been surveys, Doctor, as to public
21 preferences regarding availability of textbooks for
22 students?

23 MS. KOURY: Objection. Vague, overbroad, calls for
24 speculation.

25 THE WITNESS: I don't know.

1 BY MR. ROSENBAUM:

2 Q Or conditions of facilities?

3 MS. KOURY: Vague, overbroad, calls for
4 speculation.

5 THE WITNESS: I don't know.

6 BY MR. ROSENBAUM:

7 Q Have you ever made any inquiry/investigation to
8 determine whether such surveys exist that I referred to
9 in my last two questions?

10 MS. KOURY: Compound.

11 THE WITNESS: No.

12 BY MR. ROSENBAUM:

13 Q In Footnote 28, sir, you state, as part of that
14 footnote, "It should be noted that the public sees some
15 limitations on current systems of accountability in
16 testing."

17 Do you see that?

18 A Yes.

19 Q What's the basis for that statement, please?

20 A There were a couple of items -- I don't
21 remember what they were -- that -- and I don't remember
22 the fractions of people that had some reservations about
23 current accountability in testing.

24 Q Do you recall what limitations you're referring
25 to here?

1 whole story, right?

2 MS. KOURY: Objection --

3 BY MR. ROSENBAUM:

4 Q There are some limitations -- I'm sorry
5 Vanessa -- there are some limitations that the public
6 holds beyond -- in addition to the statements that
7 I've -- that you've included on Page 19?

8 A Yes.

9 Q Okay. And my question is: Is there some
10 reason why you did not specifically spell out what those
11 limitations were?

12 A Well, I'm trying to remember what I was
13 thinking at the time, but I think that they were
14 probably -- part of it had to do with not everybody
15 agreed, but part of it might have been some other items,
16 and I also was motivated to some extent by concision.
17 There was -- and some of these also may not have been
18 very relevant to the point -- to the -- to the points
19 that I was making.

20 Q Do you recall what the limitations were?

21 A No.

22 Well, I should say that I had mentioned one,
23 that you don't have hundred percent in those columns.

24 Q Okay. Directing your attention to Page 21,
25 looking at the bottom of the page, do you see there's a

1 A Not offhandedly.

2 Q Any reason you didn't include the specific
3 attitudes either in the footnote or the text, why you
4 didn't spell them out?

5 MS. KOURY: Objection. Vague.

6 Go ahead.

7 THE WITNESS: Well, I think I had -- if I look at
8 the table on the next page, I have seven items about the
9 public, and they're all generally quite favorable
10 towards testing and accountability. But not every one
11 was favorable, and there may have been a couple other
12 items that were less favorable than these, but I -- I
13 felt, just to be intellectually honest, I needed to note
14 that, so if someone wanted to go look it up, they could
15 do that.

16 BY MR. ROSENBAUM:

17 Q My question is a little bit different.

18 Is there any reason why you didn't put those --
19 those statements in the text of your report?

20 MS. KOURY: Objection. Vague, calls for
21 speculation.

22 Go ahead.

23 BY MR. ROSENBAUM:

24 Q You assisted the reader in Footnote 28 tell --
25 by telling the reader the table on Page 19 isn't the

1 quotation from Russell?

2 A Yes.

3 Q Here's a sentence from that -- the second
4 sentence from that quote, "Setting aside the several
5 proposed and implemented versions of the current PSAA,
6 California has put into place five distinct systems
7 within a ten-year period.

8 Is that statement true or false, sir? Let me
9 strike that.

10 Do you know if that statement's true or false?

11 MS. KOURY: Calls for speculation.

12 THE WITNESS: I don't know.

13 BY MR. ROSENBAUM:

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

16 A No.

17 Q Next sentence, "The current PSAA itself keeps
18 changing."

19 Do you know whether or not that statement is
20 true or false?

21 A I'm not sure I totally know the full meaning of
22 that, but I would say that I don't know that that's true
23 or false.

24 Q Okay. What's your understanding of what that
25 means?

1 A Well, I don't know whether it means changing
2 annually or changing day by day or monthly or changing
3 into a test -- doesn't seem to be very specific. Except
4 in the next sentence he does seem to give an example.

5 Q Okay. Let's assume it doesn't mean moment by
6 moment or month by month, but that changes take place.

7 My question to you is -- maybe you've already
8 answered -- do you know whether that's true or false?

9 A No.

10 Q Okay. The next sentence --

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

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

16 A Yes.

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

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

24 Q Okay. Next sentence, "Recently, one of the
25 'key components,'" in quotation marks, "of the PSAA

1 Q Did you ever make any inquiry to find out what
2 proposition -- what impact Proposition 13 had on public
3 education in California?

4 MS. KOURY: Objection. Calls for speculation
5 beyond this expert's opinions. It's also somewhat asked
6 and answered.

7 THE WITNESS: I don't know.

8 BY MR. ROSENBAUM:

9 Q Okay. You have done analysis, sir, of -- well,
10 let me strike that.

11 You have considered the question of whether or
12 not classroom size reduction -- meaning the
13 teacher-student ratios -- has a beneficial effect on
14 achievement; haven't you?

15 A The --

16 MS. KOURY: Objection. Overbroad.

17 THE WITNESS: The verb was "studied," did you say,
18 or "reviewed" or --

19 BY MR. ROSENBAUM:

20 Q Yeah, that's why I changed the verb.

21 You've thought about that question?

22 A Yes, I have.

23 Q Have you yourself conducted an independent
24 analyses?

25 A Only in the sense that I've synthesized studies

1 system, Teacher Bonuses" -- cap "T," cap "B" -- "was
2 targeted for elimination by the Governor due to a budget
3 shortfall, and the State Board of Education is changing
4 vendors for the State testing system."

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

8 A I don't.

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

11 A (No audible response)

12 Q Do you know what Proposition 13 is?

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

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

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

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

21 BY MR. ROSENBAUM:

22 Q Okay. Do you know what AB 1275 is?

23 A No.

24 Q Did you ever make any inquiry to find out?

25 A No.

1 and I'm aware of syntheses, and I have undoubtedly given
2 some effect sizes of how big an effect class size
3 reduction might have.

4 Q You've synthesized other scholars' surveys?

5 A Yes.

6 Q And analyses; is that right?

7 A Yes.

8 Q Okay. Have you -- do you know whether or not
9 there was a classroom size reduction program in
10 California?

11 A I do.

12 Q And do you know what its impact was on staffing
13 teachers in California schools with fully-credentialed
14 teachers?

15 MS. KOURY: Objection. Calls for speculation
16 beyond this expert's opinions, overbroad.

17 THE WITNESS: Well, I read a little bit about it
18 in the press. I haven't made an explicit study of it or
19 a careful review.

20 BY MR. ROSENBAUM:

21 Q So the answer is no?

22 MS. KOURY: Objection. Mischaracterizes his
23 testimony.

24 BY MR. ROSENBAUM:

25 Q Well, I don't want to mischaracterize your

1 testimony.

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

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

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

9 MS. KOURY: Objection. Calls for speculation.

10 BY MR. ROSENBAUM:

11 Q In California.

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

15 THE WITNESS: I don't know.

16 BY MR. ROSENBAUM:

17 Q Ever make any inquiry to find out?

18 A No.

19 Q Are there -- strike that.

20 Do you have a view, sir, as to whether any of
21 plaintiffs' experts want a complete repeal of existing
22 legislation that sets up California's accountability
23 system?

24 MS. KOURY: Objection. Calls for speculation.
25 It's also overbroad.

1 BY MR. ROSENBAUM:

2 Q Okay. In the area of "K" through 12 public
3 education, Doctor, do you believe that it's ever
4 justifiable to not accommodate the preferences of the
5 electorate?

6 MS. KOURY: Objection. Vague, incomplete
7 hypothetical, calls for speculation.

8 THE WITNESS: I'd like the question read back.

9 BY MR. ROSENBAUM:

10 Q Sure.

11 In your report you talk about preferences of
12 electorate.

13 That's a phrase you use?

14 A Yes.

15 Q What do you mean by that?

16 A This means the preferences of the citizens if
17 they vote.

18 Q Okay. And my question to you is: With respect
19 to "K" through 12 public education, do you think it's
20 ever justifiable not to accommodate the preferences of
21 the electorate?

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

24 THE WITNESS: Yes.

25 BY MR. ROSENBAUM:

1 THE WITNESS: I don't know their views on that
2 point.

3 BY MR. ROSENBAUM:

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

7 MS. KOURY: Objection. Calls for speculation.

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

10 BY MR. ROSENBAUM:

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

15 MS. KOURY: Calls for speculation.

16 THE WITNESS: No.

17 BY MR. ROSENBAUM:

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

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

24 Go ahead.

25 THE WITNESS: I don't know.

1 Q When is that, sir?

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

6 Q Any other circumstances?

7 A Not that I can think of right now.

8 Q Tell me what you mean by illegal.

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

12 Q Could it be against the Constitution too?

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

15 THE WITNESS: Are we talking about California?

16 BY MR. ROSENBAUM:

17 Q Sure.

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

20 Q What about the United States Constitution?

21 MS. KOURY: Calls for a legal conclusion.

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

1 United States Constitution?
 2 BY MR. ROSENBAUM:
 3 Q Yes.
 4 A The answer is no.
 5 Q Why is that?
 6 A I consider the U.S. Constitution our founding
 7 document, and I think from it all else follows.
 8 Q At Page 24, sir -- I'm sorry, I just want to go
 9 back to your prior answer. One more clarification, if
 10 you wouldn't mind.
 11 When you used the phrase "arbitrarily
 12 discriminatory," what do you mean by that?
 13 A If it were discriminatory against males or
 14 females or one ethnic group or another or it were a
 15 geographic -- people who lived in a particular
 16 geographical area. I think those are some of the
 17 examples.
 18 Q What do you mean discriminatory against -- did
 19 you say against a racial group? I don't want to
 20 misrepresent your words.
 21 MS. KOURY: I'm sorry, I couldn't hear you.
 22 BY MR. ROSENBAUM:
 23 Q I don't want to misrepresent your words.
 24 Did you say discriminatory against a racial
 25 group?

1 A Could we have it read back?
 2 (The record was read as follows:
 3 "If it were discriminatory against
 4 males or females or one ethnic group or
 5 another or it were a geographic --
 6 people who lived in a particular
 7 geographical area. I think those are
 8 some of the examples.")
 9 MR. ROSENBAUM: Okay. My mistake. I substituted
 10 "racial" for "ethnic."
 11 Q When you say discriminatory against one ethnic
 12 group or another, what did you mean by that?
 13 A It could be the standard meanings from, say, No
 14 Child Left Behind. Examples are African-American,
 15 Hispanics or Latinos, Anglos or -- I think "racial," as
 16 the term is used, is a broader and somewhat more
 17 controversial term. "Ethnic group" is inclusive and
 18 less controversial.
 19 Q Okay. Help me out here.
 20 What do you mean by -- I appreciate your
 21 clarifying what you mean by ethnic. What do you mean by
 22 discriminatory against one ethnic group? How do you
 23 know if something's discriminatory against one ethnic
 24 group, based on your understanding?
 25 MS. KOURY: Objection. Vague, overbroad. Also

1 calls for a legal conclusion.
 2 THE WITNESS: How do you know if a school policy is
 3 discriminatory against an ethnic group?
 4 BY MR. ROSENBAUM:
 5 Q I'm trying -- yeah. You gave that as an
 6 example.
 7 A Yes.
 8 Q And I'm trying to understand what you mean by
 9 discriminatory.
 10 A If it abridged their opportunities or it
 11 abridged their autonomy, if it -- and again, I'm talking
 12 about legal issues here, and I want to -- I want to say
 13 that I'm not an expert on these issues.
 14 Q Okay.
 15 A But if it -- let me think about it for a
 16 minute.
 17 I think I mentioned denied them opportunities,
 18 autonomy in the district, if it broke the law more
 19 frequently against that -- or it violated the law more
 20 frequently against that particular group, I think those
 21 would be some examples.
 22 Q What do you mean by abridged?
 23 A Lessened.
 24 Q Okay. Doctor, I think you may have already
 25 answered this question, and if you have, just tell me

1 that, okay?
 2 Looking at Page 24, after your quotes --
 3 incidentally, do you know if there are any surveys about
 4 how the public feels about Governor Davis's performance
 5 regarding "K" through 12 public education?
 6 MS. KOURY: Overbroad, calls for speculation.
 7 THE WITNESS: I don't know of any survey that has
 8 looked specifically at K-12 education as by Governor
 9 Davis.
 10 BY MR. ROSENBAUM:
 11 Q Do you think if there were such a survey,
 12 educational theorists should pay attention to that?
 13 MS. KOURY: Objection. Incomplete hypothetical,
 14 calls for speculation.
 15 THE WITNESS: I don't know.
 16 BY MR. ROSENBAUM:
 17 Q Okay. Now, directing your attention to
 18 approximately the middle of Page 24, you can
 19 contextualize as much as you'd like.
 20 "Given such cuts, plaintiff experts cavalierly
 21 recommend radical and costly recommendations that could
 22 draw funds away from successful programs already in
 23 place, particularly standards-based reform."
 24 A I see it.
 25 Q Do you see that?

1 A Yes.
 2 Q Now, put aside standards-based reform for a
 3 moment.
 4 Have you conducted an analysis to determine
 5 what, if any, programs already in place are successful,
 6 as you use that term?
 7 A In California?
 8 Q Yeah.
 9 MS. KOURY: Objection. Vague.
 10 THE WITNESS: I haven't made an explicit study of
 11 that, but I am aware that in every state -- and I have
 12 no reason to believe that California's different -- that
 13 schools vary in their effectiveness and efficiency, and
 14 the reasons why they may be effective or efficient is
 15 that some use more successful programs than others.
 16 BY MR. ROSENBAUM:
 17 Q Okay. And do you know if anyone in the State
 18 of California has undertaken an analysis to determine
 19 which programs are successful?
 20 MS. KOURY: Objection. Overbroad.
 21 BY MR. ROSENBAUM:
 22 Q As you use that word. And I'm talking
 23 about "K" through 12 public education programs.
 24 MS. KOURY: Overbroad, calls for speculation.
 25 THE WITNESS: Well, I am aware that there are a

1 great number of educational researchers in California,
 2 and they have studied questions of quality of teaching
 3 and things of that nature. So I think that studies have
 4 been done here.
 5 I can't name one, as we sit here, but I have
 6 every reason to believe that California, being a big
 7 state and having a number of distinguished universities
 8 that have been interested in such problems, have studied
 9 this to some extent.
 10 BY MR. ROSENBAUM:
 11 Q Do you know how much money was spent in
 12 California on classroom size reduction?
 13 A No.
 14 Q Do you consider classroom size reduction a
 15 successful program?
 16 MS. KOURY: Objection. Calls for speculation.
 17 THE WITNESS: In California?
 18 BY MR. ROSENBAUM:
 19 Q Yes.
 20 A I read a Rand report that was not favorable
 21 towards the results. It didn't seem to indicate that
 22 class size reduction had had the positive benefits that
 23 had been hoped for.
 24 Q That's Brian Stecher's report?
 25 A I think he may have been the author.

1 Q Do you regard him as a competent researcher?
 2 MS. KOURY: Objection. Calls for speculation.
 3 THE WITNESS: I don't know him terribly well, but I
 4 think the Rand Corporation is a fairly well-regarded
 5 think tank.
 6 BY MR. ROSENBAUM:
 7 Q Okay. As you read the report, did you consider
 8 the methodology that was utilized to reach the
 9 conclusions?
 10 A I don't remember the report very well right now.
 11 Q Okay. Would you have any problems, sir, with
 12 abolishing the classroom size reduction program in
 13 California?
 14 MS. KOURY: Objection. Calls for speculation
 15 beyond this expert's opinions; also, overbroad and an
 16 incomplete hypothetical.
 17 THE WITNESS: No objections to that particular
 18 legislation come to my mind, as we sit here. To
 19 abolishing, that is to say.
 20 BY MR. ROSENBAUM:
 21 Q Okay. Do you know how much money that would
 22 save?
 23 MS. KOURY: Objection. Calls for speculation
 24 beyond this expert's opinions. It's also an incomplete
 25 hypothetical.

1 THE WITNESS: I don't know.
 2 BY MR. ROSENBAUM:
 3 Q Okay. Do you -- you have repeatedly expressed
 4 objections to bilingual education?
 5 MS. KOURY: Objection. Mischaracterizes his prior
 6 testimony.
 7 THE WITNESS: You mean in my writings?
 8 BY MR. ROSENBAUM:
 9 Q Yeah.
 10 A I have serious reservations about bilingual
 11 education, as it's been practiced.
 12 Q Okay. And do you -- would you have any
 13 objection -- do you know how much money it would save
 14 California if bilingual education were abolished?
 15 MS. KOURY: Objection. Calls for speculation
 16 beyond this expert's opinions. It's also an incomplete
 17 hypothetical.
 18 THE WITNESS: Not if more effective programs were
 19 put in place.
 20 BY MR. ROSENBAUM:
 21 Q You don't -- what's the question -- what's
 22 your -- what's your answer? Your answer is that you
 23 don't know how much it would save?
 24 A (No audible response)
 25 Q My question is: Do you know how much it would

1 save -- strike that.
 2 You don't think bilingual education is
 3 successfully improving student achievement; is that
 4 right?
 5 MS. KOURY: Objection. Calls for speculation
 6 beyond this expert's opinions.
 7 THE WITNESS: I think, by and large, bilingual
 8 education -- or sometimes called transitional bilingual
 9 education -- has not promoted effectively the learning
 10 of English language learners.
 11 BY MR. ROSENBAUM:
 12 Q Okay. And you also think there are more
 13 cost-effective ways of assisting English learners to
 14 learn English; isn't that right?
 15 A Yes.
 16 MS. KOURY: Objection. Calls for speculation
 17 beyond this expert's opinions.
 18 THE WITNESS: Yes.
 19 BY MR. ROSENBAUM:
 20 Q Okay. Would you have any objection to
 21 abolishing bilingual education in California and
 22 replacing it with those cost-effective methods?
 23 MS. KOURY: Objection. Incomplete hypothetical,
 24 calls for speculation beyond this expert's opinions.
 25 THE WITNESS: Well, I would have some of the same

1 reservations that I expressed about radically changing
 2 California policy. I would want to study it and so on.
 3 But offhandedly, I think, as a general principle, if we
 4 could either save money or have more effective programs,
 5 we ought to do that.
 6 BY MR. ROSENBAUM:
 7 Q Okay. And you also have expressed objection to
 8 special education, as it's practiced in the United
 9 States; is that right? Special education policies and
 10 programs?
 11 MS. KOURY: Objection. Vague, overbroad.
 12 THE WITNESS: Yes.
 13 BY MR. ROSENBAUM:
 14 Q Okay. And you think there are more effective
 15 and cost-effective ways of assisting disabled children
 16 than present special education policies and programs; is
 17 that right?
 18 MS. KOURY: Objection. Overbroad, calls for
 19 speculation beyond this expert's opinions.
 20 BY MR. ROSENBAUM:
 21 Q And I'm using "effective" and "cost-effective"
 22 as you've used it throughout your report.
 23 A Well, I don't want to say that all special
 24 education programs are effective, but by and large, many
 25 of them are.

1 Q Ineffective, you mean?
 2 A Pardon me?
 3 Q Ineffective.
 4 A Yeah, ineffective.
 5 But I would say, on average, they've been less
 6 effective than are desirable, and I think that other
 7 solutions to that problem should be considered.
 8 Q Okay. And would you have any objection to
 9 replacing existing special education programs in
 10 California that are, in your judgment, ineffective and
 11 not cost effective with other programs to assist the
 12 disabled?
 13 MS. KOURY: Objection. Calls for speculation
 14 beyond this expert's opinion. It's also an incomplete
 15 hypothetical.
 16 THE WITNESS: If I understood your question -- I'm
 17 going to answer fully to be sure that I understood it.
 18 BY MR. ROSENBAUM:
 19 Q Sure.
 20 A That if we have effective or cost effective, or
 21 both, programs for special education relative to those
 22 that are in place now, then I would recommend new
 23 programs.
 24 Q Do you know how much money that would save in
 25 California?

1 MS. KOURY: Objection. Incomplete hypothetical,
 2 calls for speculation beyond this expert's opinions.
 3 THE WITNESS: Well, I didn't mean to imply that it
 4 would save any money at all, because I mean, one thing
 5 that could be done is you would spend the same amount of
 6 money and you would choose more effective programs and,
 7 therefore, wouldn't necessarily save money, but it would
 8 be more effective.
 9 BY MR. ROSENBAUM:
 10 Q Okay. But one of your objections to many
 11 special education programs is that they're not cost
 12 effective; isn't that right?
 13 MS. KOURY: Objection. Misleading, also calls for
 14 speculation beyond this expert's opinions.
 15 THE WITNESS: I think I've emphasized more
 16 effectiveness in my writings several years ago on
 17 special education, and I've sometimes noted that it's
 18 extremely expensive. But I don't want to single out
 19 cost effectiveness alone, because I'm also interested in
 20 effectiveness.
 21 BY MR. ROSENBAUM:
 22 Q Do you know what Proposition 98 is?
 23 A No.
 24 Q Do you consider yourself an expert on
 25 California's school funding system?

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?

22 MS. KOURY: Objection. Vague.

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 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.

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 I think I should also mention that I may have
2 been sent lots of things that I didn't examine. So I'm
3 a little -- when I say I don't remember, I could have
4 received it but just didn't remember it.

5 Q Can you think of anything you received that you
6 didn't examine?

7 A No.

8 Q Looking, sir, at Page 26, do you see where it
9 says, "California's standards-based accountability is
10 compatible with the substantial requirements of" --

11 A Excuse me, I haven't found it yet.

12 Q I know. My mistake.

13 A What paragraph?

14 Q I'm looking in the carryover paragraph from
15 Page 25. And I inadvertently started in the middle of
16 the sentence, which I apologize. So let's start at the
17 beginning of the sentence.

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

23 Do you see that?

24 A Yes.

25 Q The substantial requirements that you're

1 referring to there, do you consider any of those
 2 requirements as interfering with local control, as
 3 you've defined that in your report?
 4 MS. KOURY: Objection. Vague. It's also compound.
 5 THE WITNESS: I think that the No Child Left Behind
 6 Act could have that effect.
 7 BY MR. ROSENBAUM:
 8 Q Okay. And when I said local control, that's a
 9 synonym, in your mind, for the autonomy of local school
 10 boards; is that right?
 11 A And schools.
 12 Q And schools, yeah.
 13 And what requirements --
 14 A By the way, to be complete, the central office
 15 administrators.
 16 Q Thank you.
 17 Can you give me the basis for that answer with
 18 respect to those requirements? That's an inelegant
 19 question.
 20 What requirements are you referring to?
 21 MS. KOURY: In that particular sentence?
 22 MR. ROSENBAUM: In his last answer.
 23 THE WITNESS: I need to have my answer read back.
 24 MR. ROSENBAUM: Sure.
 25 (The record was read as follows:

1 "Unlike operational mandates
 2 preferred by plaintiffs, moreover,
 3 California's standards-based
 4 accountability is compatible with the
 5 substantial requirements of the new
 6 Federal No Child Left Behind Act.'
 7 "Do you see that?
 8 "A Yes.
 9 "Q The substantial requirements
 10 that you're referring to there, do you
 11 consider any of those requirements as
 12 interfering with local control, as
 13 you've defined that in your report?
 14 "A I think that the No Child Left
 15 Behind Act could have that effect.")
 16 BY MR. ROSENBAUM:
 17 Q Tell me the basis for that answer, sir.
 18 A I think that No Child Left Behind Act could --
 19 may threaten the autonomy of states and districts and
 20 schools, to some extent, because my understanding of the
 21 act is that if schools don't conform sufficiently to
 22 that act, there is a threat that the federal funds would
 23 be withdrawn.
 24 Q Okay. Could it -- could it interfere with the
 25 autonomy of local school boards and staff and schools in

1 other ways besides what you've just defined?
 2 MS. KOURY: Objection. Calls for a legal
 3 conclusion, also an incomplete hypothetical, calls for
 4 speculation.
 5 THE WITNESS: I don't understand the question.
 6 BY MR. ROSENBAUM:
 7 Q You gave me one example of how it could
 8 interfere with autonomy. You talked about the
 9 possibility of withholding funds.
 10 Am I getting that right?
 11 A Yes.
 12 Q Are there other examples that you can think of
 13 with respect to the substantial requirements of the No
 14 Child Left Behind Act that, in your judgment, would
 15 interfere with the autonomy of local school boards,
 16 local schools and administration and staff?
 17 MS. KOURY: Calls for speculation.
 18 THE WITNESS: You mean would there be any other
 19 influence of No Child Left Behind aside from withdrawing
 20 federal funds?
 21 BY MR. ROSENBAUM:
 22 Q Yes. That affects the autonomy of local
 23 entities.
 24 A It's conceivable to me that it could.
 25 Q And what's the basis for that answer, please?

1 A I think that it's going to make outcomes even
 2 more salient than they are today, and that it will call
 3 even more attention to that. And so it's possible that
 4 districts and schools may need to conform more fully to
 5 State standards and possibly, in the long-term future,
 6 to national standards.
 7 Q Do you find that objectionable?
 8 MS. KOURY: Objection. Vague.
 9 THE WITNESS: I think that there's some -- as I've
 10 said with many of these things, some cost and benefits.
 11 BY MR. ROSENBAUM:
 12 Q Okay. Tell me what you think the costs are,
 13 sir.
 14 A I think it is a cost to the American tradition
 15 of local control of schools in many respects, and also,
 16 we've had a tradition of State control of schools. And
 17 to the extent that the act may be carried forward, there
 18 is a possible threat to autonomy of schools, districts
 19 and states.
 20 Q Can you think of other examples besides the two
 21 you've given me?
 22 A Examples of?
 23 Q How it could interfere with local -- with the
 24 autonomy of local entities.
 25 MS. KOURY: Objection. Calls for speculation.

1 THE WITNESS: Well, I could give you some
2 hypotheticals, if that would be useful.

3 BY MR. ROSENBAUM:

4 Q Sure.

5 A We're talking about those anyway, because we're
6 talking about what might happen in the future.

7 Q Sure.

8 A Well, it could be that states, California and
9 other states, that do receive considerable federal
10 funds, if they were sufficiently worried about it, could
11 be even more prescriptive than they presently are with
12 respect to local districts and schools, and they may do
13 that with respect to either outcomes or inputs or both.

14 Q Do you think, sir, that -- the reduction of the
15 funds that we're talking about, do you think that that
16 would have a deleterious effect on students in the
17 public school -- "K" through 12 public school system?

18 MS. KOURY: Objection. Calls for speculation, it's
19 an incomplete hypothetical.

20 THE WITNESS: Well, I can't be sure, because at
21 least in the past, some of the federal programs that we
22 talked about earlier have not been all that effective,
23 and they've been mandated from Washington. So I can't
24 be sure that the local schools would actually be hurt by
25 that. Certainly, it would diminish the funds for

1 Have I understood you correctly?

2 MS. KOURY: Somewhat mischaracterizes his
3 testimony.

4 THE WITNESS: I think maybe I -- my mind wandered
5 or something. I think some points I was talking about
6 the cost of autonomy, and then when I mentioned federal
7 funds being withdrawn, I was talking more about
8 financial costs.

9 BY MR. ROSENBAUM:

10 Q Okay. Regarding the costs of autonomy that you
11 identified with respect to the consequences of the No
12 Child Left Behind Act, have you, in your own mind,
13 weighed those costs against the benefits from the No
14 Child Left Behind Act and decided whether or not the
15 benefits outweigh the cost?

16 MS. KOURY: Objection. Compound, calls for
17 speculation beyond this expert's opinions, and it's an
18 incomplete hypothetical.

19 THE WITNESS: I haven't done that. I think that
20 that would be a very sizable undertaking and very
21 difficult one.

22 BY MR. ROSENBAUM:

23 Q Okay.

24 MS. KOURY: I don't want to interrupt, but if you
25 come to a good breaking point, I wouldn't mind taking a

1 education.

2 BY MR. ROSENBAUM:

3 Q Do you think that would have a negative impact
4 on education -- public education, "K" through 12, in
5 California?

6 MS. KOURY: Calls for speculation beyond this
7 expert's opinions, calls for -- it's an incomplete
8 hypothetical.

9 THE WITNESS: I think it could or it couldn't,
10 depending on whether the programs chosen were more
11 effective or less effective than what would be required
12 by current federal legislation.

13 BY MR. ROSENBAUM:

14 Q Do you -- have you -- the costs that you have
15 talked to me about for several questions -- you know
16 what I'm referring to, right?

17 A We were talking about federal costs.

18 Q Right.

19 A Or federal contributions.

20 Q You know what? My question -- I want to be --
21 really pinpoint my question here.

22 You have talked to me for the past several
23 minutes about the cost to local autonomy and local
24 control from the requirements of the No Child Left
25 Behind Act.

1 break.

2 MR. ROSENBAUM: Sure. Let's do that.

3 (Brief recess taken.)

4 BY MR. ROSENBAUM:

5 Q You doing all right?

6 A Yes.

7 Q Do you have an opinion, sir, as to what
8 revisions, if any, would have to be made to the
9 California educational system in light of the No Child
10 Left Behind Act, as the current system now stands, if
11 the recommendations of plaintiffs' experts were to be
12 implemented?

13 MS. KOURY: Objection. Overbroad. It's also vague
14 and calls for a legal conclusion.

15 THE WITNESS: I haven't made a study of that, so
16 I'm not prepared.

17 BY MR. ROSENBAUM:

18 Q Okay. Tell me what you mean, sir, on Page 26
19 by "educators' professional discretion."

20 A Where on Page 26?

21 Q I'm sorry, it's in the middle of the page. It
22 follows the number 5, period.

23 A Is it the first sentence following?

24 Q I'm sorry, what?

25 No, no. I just -- you see, it's in bold --

1 A Oh, yes. Yes.
 2 Q "Violation of educators' professional
 3 discretion."
 4 A Just let me have a chance to read the paragraph.
 5 Q Sure.
 6 A (Witness reviews documents.)
 7 Okay. I've read the context, and I'm afraid I
 8 need to have the question again.
 9 Q I just want to know what you mean by the phrase
 10 "profession discretion," as it appears on Page 26 of
 11 Exhibit 1, your report.
 12 A I think it's explained in the paragraph
 13 following, Point 5.
 14 Q Okay. Do you -- maybe you answered this, and
 15 if you did, just tell me.
 16 Do you have an opinion, sir, as to whether the
 17 No Child Left Behind Act violates educators'
 18 professional discretion in any way?
 19 MS. KOURY: Objection. Calls for a legal
 20 conclusion, also calls for speculation.
 21 THE WITNESS: I'm not sure of that.
 22 BY MR. ROSENBAUM:
 23 Q Do you have an opinion as to whether or not the
 24 California accountability system, as it presently
 25 exists, violates educators' professional discretion in

1 any way?
 2 MS. KOURY: I'm sorry, I couldn't hear you, Mark.
 3 BY MR. ROSENBAUM:
 4 Q Do you have an opinion, Doctor, as to whether
 5 or not California's accountability system violates
 6 educators' professional discretion in any way?
 7 A I wouldn't use the term "violate."
 8 Q Okay. What word, if any, would you
 9 substitute?
 10 MS. KOURY: Objection to the extent it's been asked
 11 and answered, but go ahead.
 12 THE WITNESS: Well, I think I explained in the
 13 report, and we've talked about the division of labor.
 14 And so I think that California, like some other
 15 states -- or many other states, is focusing on outcomes
 16 and leaving a lot of professional discretion and board
 17 discretion, for that matter, to local districts and
 18 schools.
 19 BY MR. ROSENBAUM:
 20 Q Do you think the California accountability
 21 system, as it now exists, enlarges educators'
 22 professional discretion?
 23 MS. KOURY: Objection. Vague as to time frame.
 24 THE WITNESS: In some respects it does.
 25 BY MR. ROSENBAUM:

1 Q In some respects does it diminish it?
 2 A Yes.
 3 Q How is that?
 4 A Well, as I was mentioning the division of
 5 labor, I think, as I was saying, that states are now
 6 moving towards an outcomes-emphasized system, and to
 7 some extent local school boards and educators in schools
 8 have less autonomy over the outcomes of education, but
 9 corresponding to that, there is a general understanding
 10 that they would have a corresponding increase in their
 11 autonomy over the programs, so that they can meet the
 12 standards in the way that they feel is consistent with
 13 their professional educational judgments and also the --
 14 the educators' as well as the school board's views on
 15 what their -- the children in that district or that
 16 school most need.
 17 Q Okay. Is there anything in any of -- do you
 18 have a view, sir, whether or not there's anything in any
 19 of plaintiffs' expert reports that makes it more
 20 difficult for superintendents and principals to remove
 21 bad teachers, as you've used those words?
 22 MS. KOURY: Objection. Calls for speculation.
 23 THE WITNESS: I need to have the question again.
 24 MR. ROSENBAUM: Could you please read that back?
 25 (Record read)

1 THE WITNESS: Only in one sense, and that is that
 2 the requirements that the plaintiff witnesses seem to
 3 want would draw attention away from teacher evaluation,
 4 teacher improvement and possible legal actions against
 5 teachers.
 6 BY MR. ROSENBAUM:
 7 Q What's the basis for that answer, sir?
 8 A Knowledge of how school systems work.
 9 Q Anything else?
 10 A Well, aside from what I've said, I can't think
 11 of anything else.
 12 Q What do you mean by knowledge of how school
 13 systems work?
 14 A Well, I've been a student of education for many
 15 years, and I've visited a lot of schools and advised
 16 schools and been in litigation. So I'm -- I'm a product
 17 of the school system and done research on it. So it's
 18 been my experience that educators can't do everything.
 19 And so sometimes it's -- as may be more broadly in human
 20 nature, that it's better for people to do a few things
 21 very well rather than trying to do everything and being
 22 mediocre at it.
 23 Q Do you have any empirical evidence to support
 24 your conclusion that plaintiffs' expert reports could
 25 make it more difficult for superintendents and

1 principals to remove bad teachers?
 2 MS. KOURY: Objection. Vague.
 3 THE WITNESS: Well, I didn't mean to say that the
 4 reports did, but in your -- I think you're saying if we
 5 enacted what they wanted to do --
 6 BY MR. ROSENBAUM:
 7 Q Yeah. The recommendations.
 8 A Yeah.
 9 No, I don't have any empirical evidence,
 10 because, obviously, they haven't -- the recommendations
 11 haven't taken place.
 12 Q Okay. Are there any studies or analyses that
 13 you could point me to that would support your
 14 conclusion?
 15 MS. KOURY: Objection. Asked and answered.
 16 THE WITNESS: Only indirect studies.
 17 BY MR. ROSENBAUM:
 18 Q Which studies would those be?
 19 A Those would be studies of the effects of
 20 accountability on educational achievement that suggested
 21 an emphasis on that leads to higher levels of
 22 achievement and to simultaneously try to regulate inputs
 23 would draw energies, time and money away from that into
 24 what the plaintiffs' experts would like to have.
 25 Q Okay. Can you conceive of any circumstances by

1 which emphasis on inputs would enhance -- strike that.
 2 Can you conceive of any circumstances, sir, by
 3 which student achievement results on the Stanford 9
 4 could result from the lack of inputs?
 5 MS. KOURY: Objection. Vague, calls for
 6 speculation.
 7 THE WITNESS: Let me try to repeat the question to
 8 be sure I got it.
 9 Can I --
 10 BY MR. ROSENBAUM:
 11 Q Sure.
 12 A -- think of any circumstances in which the -- I
 13 think it'd be better to have it read again.
 14 MR. ROSENBAUM: Sure.
 15 THE WITNESS: Sorry.
 16 (The record was read as follows:
 17 "Can you conceive of any
 18 circumstances, sir, by which student
 19 achievement results on the Stanford 9
 20 could result from the lack of inputs?")
 21 THE WITNESS: Yes.
 22 BY MR. ROSENBAUM:
 23 Q And what would those circumstances be?
 24 A Well, if there weren't any inputs at all, I
 25 don't think students would learn. That would be an

1 example.
 2 Q Can you think of any other circumstances?
 3 MS. KOURY: Calls for speculation, incomplete
 4 hypothetical.
 5 THE WITNESS: If students were not presented with
 6 instruction, if they were -- some of the things that
 7 we've already talked about. If they were given
 8 instruction that was too hard or too difficult -- things
 9 of that nature -- it would impair their more limited --
 10 inputs of that nature, in my view, would diminish
 11 achievement.
 12 BY MR. ROSENBAUM:
 13 Q What if they weren't given instruction that was
 14 tested on the Stanford 9?
 15 MS. KOURY: Objection. Calls for speculation,
 16 incomplete hypothetical.
 17 THE WITNESS: And you would like to know what would
 18 happen on the Stanford 9 results?
 19 BY MR. ROSENBAUM:
 20 Q My question is: Do you have an opinion whether
 21 or not low achievements -- low student achievement
 22 results on the Stanford 9 could result from that?
 23 MS. KOURY: Objection. Incomplete hypothetical,
 24 calls for speculation.
 25 THE WITNESS: I think that content coverage, which

1 the instruction matches the test, will be associated
 2 with higher scores.
 3 BY MR. ROSENBAUM:
 4 Q Okay. And what's the basis for that answer?
 5 A A woman named Rebecca Barr and Robert Drebbin
 6 have done studies -- vigorous observational studies of
 7 that, and the studies that we've mentioned earlier, the
 8 Tin studies showed that in a great number of countries.
 9 Aside from that, it's somewhat common sensical.
 10 Q You think the information from other countries
 11 is relevant to your conclusion?
 12 A Yes.
 13 Q Why is that?
 14 A Because other studies have -- other studies
 15 have greater variations in curriculum exposure than you
 16 would find within a state or within the United States.
 17 So I think that comparative studies of various countries
 18 can be quite informative about principles.
 19 Q Okay. I've asked you a variation of the
 20 question I'm about to ask you, but I'll ask you a
 21 separate question here.
 22 Do you know whether or not English learners in
 23 California do not have access to core curriculum, as
 24 you've used that phrase? "K" through 12 public
 25 education students.

1 MS. KOURY: Objection. Calls for speculation,
 2 calls for speculation beyond this expert's opinions.
 3 THE WITNESS: I don't know.
 4 BY MR. ROSENBAUM:
 5 Q Have you made any inquiry to find out?
 6 A No.
 7 Q Would it concern you if that were the case?
 8 MS. KOURY: Objection. Vague.
 9 THE WITNESS: Yes.
 10 BY MR. ROSENBAUM:
 11 Q Why is that?
 12 MS. KOURY: Incomplete hypothetical, calls for
 13 speculation.
 14 Go ahead.
 15 THE WITNESS: Because I think it would be unfair
 16 and wouldn't be doing the right thing, wouldn't be --
 17 wouldn't lead to achievement of a significant portion of
 18 the state's students.
 19 BY MR. ROSENBAUM:
 20 Q When you say unfair, what do you mean by that?
 21 A Well, they would be treated differently than
 22 other students.
 23 Q Would it affect the integrity of the API?
 24 MS. KOURY: Objection. Incomplete hypothetical,
 25 calls for speculation.

1 THE WITNESS: I haven't studied the API in detail,
 2 especially its technical features and all the variables
 3 that go into it, so I don't know.
 4 BY MR. ROSENBAUM:
 5 Q Okay. Do you know -- strike that.
 6 If it were documented, sir, that ELs did not
 7 have access to core curriculum, as you've used that
 8 phrase, what, if anything, do you think the State of
 9 California should do?
 10 MS. KOURY: Objection. Incomplete hypothetical,
 11 calls for speculation beyond this expert's opinions.
 12 THE WITNESS: I don't know.
 13 BY MR. ROSENBAUM:
 14 Q Okay. Have you ever given any thought to that
 15 question?
 16 MS. KOURY: Same objection.
 17 THE WITNESS: No.
 18 BY MR. ROSENBAUM:
 19 Q If I changed it to just students, period, not
 20 EL students -- if it were documented that there were
 21 students without access to core curriculum, do you have
 22 an opinion as to what the State of California should
 23 do?
 24 MS. KOURY: Objection. Incomplete hypothetical,
 25 calls for speculation.

1 THE WITNESS: I haven't studied it, so I don't
 2 know.
 3 BY MR. ROSENBAUM:
 4 Q Okay. You haven't given any thought to that
 5 question; is that correct?
 6 A Correct.
 7 Q Incidentally, sir, looking at Page 27 of your
 8 report -- do you have that in front of you?
 9 A Yes.
 10 Q Exhibit 1.
 11 A Yes.
 12 Q You see under -- where it says 7, period,
 13 "Resistance to standards and tests"?
 14 A Yes.
 15 Q Okay. And you quote from the Oakes synthesis
 16 report at Page 29.
 17 A Yes.
 18 Q Do you see, sir, where it says, "lack of
 19 resources and capacity"?
 20 A Yes.
 21 Q What did you understand Dr. Oakes to mean by
 22 that phrase?
 23 A (Witness reviews documents.)
 24 And the phrase is the "lack of resources and
 25 capacity" that you referred me to?

1 Q Exactly.
 2 A I think she might have been referring to -- she
 3 didn't make -- I don't remember where it came from in
 4 her report, but I think, as I sit here, that she was
 5 referring to financial instructional media and other
 6 sorts of resources and capacity of the school to deliver
 7 those things.
 8 Q Okay. Do you know if a -- strike that.
 9 In your report, sir, you refer to an individual
 10 named Fine, F-i-n-e.
 11 A Can you direct me to that page?
 12 Q Sure. Page 29.
 13 A That's at the last part of the first paragraph.
 14 Q That's where it is.
 15 A Yes. I found it.
 16 Q Okay.
 17 A And your question is?
 18 Q Do you know what Fine's first name is?
 19 A I think it's Michelle.
 20 Q Okay. Do you know if she submitted a report in
 21 this case?
 22 A No.
 23 Q Make any effort to find out?
 24 A I don't remember making any effort to find out.
 25 Q Okay. Looking at the sentence, sir, that is in

1 the indented quote, "Schools are intimate places where
2 youths construct identities, build a sense of self, read
3 how society views them, develop the capacity to sustain
4 relations, and forge the skills to initiate change,"
5 period.

6 Do you see that?

7 A Yes.

8 Q Do you agree or disagree with that statement?

9 A Well, I need to analyze each part, I suppose.

10 Q Why don't we do that.

11 "Schools are intimate places where youths
12 construct identities."

13 Do you agree or disagree with that statement?

14 A Well, I can't say that they're always
15 intimate. They could be rather public. I mean, it's --
16 students are in front of other people, and they're in
17 large classes, and sometimes they're in public
18 assemblies.

19 Q All right. Let's subtract the word "intimate."

20 Schools are places where youths construct
21 identities. Do you --

22 A Well, I don't -- I'm not sure I understand what
23 "construct identities" means.

24 Q Okay.

25 A So I'm not sure I could agree or disagree with

1 of context it was used.

2 THE WITNESS: I'm somewhat uncertain what that
3 means.

4 BY MR. ROSENBAUM:

5 Q Okay. What do you think it means? Or maybe
6 you don't have a view as to what it means.

7 A Well, it'll be speculation on my part.

8 Q All right. Schools are places where youths
9 develop the capacity to sustain relations.

10 Do you have a view -- do you understand -- do
11 you have an understanding of what that means?

12 A I'm not sure that I understood exactly what she
13 meant by that. I guess I could say what I think it
14 means.

15 Q Why don't you do that.

16 A I think what's being referred to here is the
17 positive social relations among students and other
18 people in the school.

19 Q Okay. Taking your understanding, Doctor, do
20 you agree or disagree with the statement that schools
21 are places where youths develop the capacity to sustain
22 relations?

23 A Well, I think in some instances they are. In
24 other instances they may not be.

25 Q Okay. And as to the part of your answer where

1 that phrase.

2 Q Okay. Schools are places where youths build a
3 sense of self.

4 Do you agree or disagree with that statement?

5 MS. KOURY: Objection. Vague. Also objection, to
6 the extent it takes the phrase out of the context it was
7 used.

8 THE WITNESS: Well, I could agree with the point
9 that the schools may affect self-concept.

10 BY MR. ROSENBAUM:

11 Q What's the basis of your answer?

12 A Personal experience, visiting schools, talking
13 with teachers, general educational knowledge.

14 Q Kind of common sense; isn't it?

15 A I'm sorry?

16 Q Kind of common sense; isn't it?

17 MS. KOURY: Objection. Mischaracterizes his
18 testimony.

19 THE WITNESS: Yeah, I think to some extent it is
20 common sense.

21 BY MR. ROSENBAUM:

22 Q And do you agree or disagree with the statement
23 that schools are places where youths read how society
24 views them?

25 MS. KOURY: Objection to the extent it's taken out

1 you say that, in some instances, they are, what's the
2 basis of that statement?

3 A I think if a student has a good experience
4 within the school and makes friends and develops good
5 relationships with teachers and things of that nature
6 can be -- it can foster and sustain social relations, as
7 I've described.

8 Q That's common sense too; isn't it?

9 A Yes.

10 Q And the statement, "Schools are places where
11 youths forge the skills to initiate change," do you have
12 an understanding of what that means?

13 A Well, I don't want to say that I understand
14 what Fine had in mind. But I -- I could think of some
15 things that might mean to an ordinary person or what it
16 might mean to myself.

17 Q Let's talk about you.

18 What does it mean to you?

19 A I think this could probably -- could include a
20 variety of things, but given my interest in achievement,
21 it might have to do with the knowledge and skills that
22 you acquire at schools, such as reading, mathematics,
23 science, civics, history, geography and other subjects,
24 so that you would have a better understanding of things
25 that you would understand how to acquire and form

1 independent judgments, and so that you would have a
2 better basis for initiating change in your life or
3 school circumstances or other things.

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

7 MS. KOURY: Objection. Vague.

8 Do you mean --

9 BY MR. ROSENBAUM:

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

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

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

19 BY MR. ROSENBAUM:

20 Q Common sense also; isn't it?

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

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

25 BY MR. ROSENBAUM:

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

5 Do you see that?

6 A Yes.

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

9 A I don't understand that sentence.

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

16 Do you see that?

17 A Yes.

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

24 MS. KOURY: Objection. Vague.

25 In addition to the quote that he's citing

1 here?

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

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

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

11 A I don't know.

12 Q Can you think of anything in her report that
13 would cause you to believe that she doesn't believe that
14 a purpose of public education is mastery of knowledge
15 and skills in subjects of civics, history, geography,
16 mathematics, science and literature?

17 A Only between the lines, in the sense that she
18 quoted this particular point, which leaves out those
19 things, and that's the point that I'm making here. And
20 I didn't see -- I don't -- at least I don't remember now
21 and I don't remember seeing anything that's explicitly
22 stated that is similar to this sentence.

23 Q Okay. And do you have a view, sir, as to
24 whether or not, putting aside Dr. Oakes, any of
25 plaintiffs' experts do not believe that a purpose of

1 public education is mastery of knowledge and skills in
2 the subjects of civics, history, geography, mathematics,
3 science and literature?

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

6 THE WITNESS: I don't know.

7 BY MR. ROSENBAUM:

8 Q Okay. Does Dr. Oakes ever mention
9 constructivism in her report, any of her reports?

10 MS. KOURY: Calls for speculation.

11 THE WITNESS: I don't remember, but she uses the
12 term "construct identities" here, which is not the term
13 "constructivism," but it's a similar term.

14 BY MR. ROSENBAUM:

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

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

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

21 Isn't that --

22 A Yes.

23 Q -- right?

24 So by the inclusion of the quote from Dr. Fine
25 that includes the phrase "construct identities," do you

1 conclude that Dr. Oakes is referencing constructivism?
 2 A I don't know for sure.
 3 Q Okay. And do you know, sir, whether or not
 4 there are any "K" through 12 public schools in
 5 California that practice constructivism, as you've
 6 defined that phrase?
 7 MS. KOURY: Calls for speculation.
 8 THE WITNESS: No.
 9 BY MR. ROSENBAUM:
 10 Q Okay. And do you -- so I take it you don't
 11 know what the achievement results would be of any
 12 schools that espouse constructivism in California?
 13 MS. KOURY: It's argumentative.
 14 THE WITNESS: Is your question do I understand what
 15 the causal relations are or --
 16 BY MR. ROSENBAUM:
 17 Q No. My question isn't clear.
 18 With respect to the assessment tests that are
 19 part of the California accountability system that we
 20 have been talking about, do you know what -- whether or
 21 not -- what the achievement results are as to any
 22 schools in California that espouse constructivism?
 23 A I don't know.
 24 Q Have you undertaken any inquiry to find out?
 25 A No.

1 Q Incidentally, are teachers prohibited in
 2 California from using constructivist's methods?
 3 A I don't know.
 4 Q Did you ever make any inquiry to find out?
 5 A No.
 6 Q Do you consider yourself an expert on
 7 constructivism?
 8 A Well, I don't espouse it, and I think it's a
 9 rather difficult matter even to identify precisely. I'm
 10 not sure there are -- there is agreement on exactly what
 11 it means.
 12 Q Directing your attention, sir, at -- strike
 13 that.
 14 Did Russell talk about constructivism or allude
 15 to constructivism, in your mind?
 16 A I'd have to read his report.
 17 Q Do you have any recollection of that occurring?
 18 A Not offhandedly.
 19 Q Do you know if staff development programs that
 20 the State of California sponsors teach teachers
 21 constructivist methods?
 22 A I don't know.
 23 MS. KOURY: Objection. Vague.
 24 BY MR. ROSENBAUM:
 25 Q Have you ever made any inquiry to find out?

1 A No.
 2 Q Let me direct your attention, sir, to Page 30.
 3 Under "B," do you see where it -- you're
 4 quoting from Russell.
 5 Do you see that? It's the indented quote.
 6 A Yes.
 7 Q And you say, "California's attempt" -- you
 8 don't say; you quote Russell as stating, "California's
 9 attempt to establish an educational accountability
 10 system over the past decade has been tumultuous."
 11 Do you see that?
 12 A Yes.
 13 Q Do you -- what did you understand that to mean?
 14 A I understand it to mean that it was
 15 controversial and that there were changes in policy.
 16 Q Do you have a view as to whether that was true
 17 or false?
 18 A I'm sorry, I didn't hear you.
 19 Q I'm sorry, I didn't speak loudly enough.
 20 Do you have a view as to whether or not that
 21 was true or false?
 22 A I haven't explicitly studied it, but I have --
 23 I'm aware from newspaper accounts and other commentaries
 24 that there were disagreements about the California test
 25 system.

1 Q Okay. So just help me out here.
 2 Does that mean you have a view as to whether
 3 it's true or false or you have a little bit of
 4 information but not enough to come to a conclusion or
 5 something else?
 6 A Well, I can try to relate it to what you gave
 7 me for context here. I'm not sure that I would
 8 characterize it as tumultuous, but I do know that there
 9 was controversy and that there were changes.
 10 Q Have you specifically undertaken an inquiry or
 11 investigation to determine the degree of tumult, if any,
 12 that characterized California's attempt to establish an
 13 educational accountability system over the past decade?
 14 MS. KOURY: I think you just testified about that,
 15 but go ahead.
 16 THE WITNESS: No.
 17 BY MR. ROSENBAUM:
 18 Q Do you know who -- strike that.
 19 Help me understand, sir. Looking at Page 33 of
 20 your report, Exhibit 1 -- you look at it as much as
 21 you'd like. I'm interested in the first full sentence
 22 that appears on that page, but as I said, don't hesitate
 23 to refer back or forward if you'd like.
 24 Do you see the sentence that says on Page 33,
 25 Exhibit 1, "Nor, does he estimate the monetary and other

1 costs of serving all schools at the same time nor of the
2 proposed inspectorate nor what programs would be cut,"
3 dash, "all of which are critical, in view of the State's
4 huge deficit"? Do you see that sentence?

5 A I do.

6 Q I'm just interested in the meaning of your
7 phrase here.

8 See where you say "serving all schools at the
9 same time"?

10 A Yes.

11 Q What does that mean?

12 A Well, I have the literal definition in mind,
13 that every school in the state would -- would change,
14 and this would be the total cost.

15 Q You've used a phrase in some of your writings,
16 "curricular coherence"?

17 A Yes.

18 Q What does that mean?

19 A Well, I think it's been a while since I used
20 the term, but I think I had in mind when I wrote it is
21 similar to what we've used the term "alignment." It
22 could -- I think we've -- you and I have been talking
23 about this more at the State level, but you could think
24 of curricular alignment within a district or within a
25 school, or you could even think of a specific class

1 Q I'm talking about -- you were just talking
2 about the entire state; isn't that right?

3 A Yes.

4 Q Okay. Now I want to know if it could affect
5 the API score of a particular school.

6 A Well, to the extent that the school did not
7 align its curriculum and instruction to the standards,
8 then it could have a lower score on the test, which
9 would imply a lower score on the API.

10 Q Okay. The education trust study that we talked
11 about earlier this afternoon uses the phrase "poverty
12 schools" or -- let me -- you used the phrase "poverty
13 schools" in talking about the education trust study; is
14 that right?

15 A It might have said school -- I don't remember
16 the exact phrase, but I think I know what you mean.

17 Q Okay. Tell me what -- just so we're talking
18 about the same thing.

19 A It's a high percentage of students in the
20 school that are in poverty.

21 Q Do you know, sir, whether or not there are any
22 poverty schools, as you just defined that, in the state
23 of California that are doing well in student
24 achievement?

25 MS. KOURY: Objection. Overbroad, calls for

1 where the teacher aligns his or her goals -- or rather,
2 aligns his or her curriculum and instruction with his or
3 her goals.

4 Q Are there -- do you know the -- strike that.

5 Are there students in the public schools -- "K"
6 through 12 public school system in California at the
7 present time, sir, in schools where there is not
8 curricular -- curriculum coherence -- curricular
9 coherence?

10 A I think either is correct. I don't know.

11 Q Have you made any inquiry to find out?

12 A No.

13 Q If there was not curricular coherence, could
14 that affect the validity of the API?

15 MS. KOURY: Objection. Vague, calls for
16 speculation, incomplete hypothetical.

17 THE WITNESS: To some extent it could.

18 BY MR. ROSENBAUM:

19 Q Tell me why.

20 A If it's not a perfect system, then it might
21 lack alignment or curricular coherence, as I've used the
22 term.

23 Q Might it affect the score, the API score?

24 A Now, we're talking about all the state or parts
25 of the state or if there's some schools --

1 speculation.

2 THE WITNESS: I don't know of any personally.

3 BY MR. ROSENBAUM:

4 Q Or doing well -- maybe you just answered this,
5 but doing well in California's accountability system?

6 MS. KOURY: Objection. Vague, also calls for
7 speculation.

8 THE WITNESS: I don't know.

9 BY MR. ROSENBAUM:

10 Q Have you made any inquiry to find out?

11 A No.

12 To be complete in the answer, I need to say
13 that, as somewhat of a statistician, that I'm well aware
14 that if you take any large population of schools that
15 are in high poverty, you're going to have some that do
16 better than others.

17 So by inference, I would say there must be
18 those sorts of schools within any large set of schools,
19 but I personally don't know of them in California.

20 Q Okay. I appreciate that. So let me ask a
21 different question.

22 I'm not talking about relative to one another.
23 I'm asking you -- you have, throughout your testimony,
24 talked to me about schools doing well, meaning that they
25 score high.

1 Am I understanding you correctly?

2 A It could be score high, but it also -- which
3 means relative to one another, where you would take the
4 average and compare a school with the average. But
5 another meaning of it is that you have substantial
6 percentages of students that are at advanced or
7 proficient levels.

8 Q Okay.

9 A Either one.

10 Q Okay. Either definition --

11 A Yes.

12 Q -- you just gave me, do you know if there are
13 poverty schools in the state of California, by either
14 definition, that are doing well?

15 MS. KOURY: Objection. Compound, also calls for
16 speculation.

17 THE WITNESS: I don't know of any particular
18 schools.

19 BY MR. ROSENBAUM:

20 Q Okay. And you've not undertaken any inquiry;
21 is that right?

22 A I have not.

23 Q Okay. Do you know if anybody has in the State
24 of California?

25 A No.

1 scholar.

2 What's the basis for your answer?

3 MS. KOURY: Calls for speculation.

4 Go ahead.

5 THE WITNESS: Well, I don't like to give an opinion
6 just -- I like to give facts if I know them. So I would
7 like to -- prefer to talk about things that -- where I
8 can, that I've done the research myself, preferably, or
9 that I'm well aware of many people doing research on
10 it.

11 And that goes back to the point that we were
12 discussing, I think, earlier this morning, the study of
13 38 states, in which it was shown that the larger the
14 average size district, other things being equal,
15 including demographics and spending, big cities have a
16 tendency to do less well on tests.

17 BY MR. ROSENBAUM:

18 Q Any other bases, sir?

19 A Well, we talked about capitalization theory.

20 Q Any other theories? Any other bases, I'm
21 sorry.

22 A Well, we were talking about capitalization
23 theory, we also talked about the psychological knowledge
24 and the tendency for people in smaller districts to be
25 more knowledgeable about their children's needs and to

1 Q Okay.

2 A When I say no and I've said no to other
3 questions, I can't think of any at the present moment.

4 Q You have stated in the past, have you not, sir,
5 that you believe that children in inner cities have been
6 neglected by school districts?

7 MS. KOURY: Objection. Overbroad, calls for
8 speculation.

9 THE WITNESS: Well, I think in the context of any
10 of my writings on that, I don't want to say that all
11 children have or they've all been neglected in all
12 cities, but as a generalization, many students in big
13 cities have been neglected.

14 BY MR. ROSENBAUM:

15 Q By school districts?

16 A Yes.

17 Q Can you tell me the basis for your answer,
18 please?

19 MS. KOURY: Objection. Overbroad, calls for
20 speculation. To the extent that this is reference to
21 various works that he's done, vague.

22 BY MR. ROSENBAUM:

23 Q I just want your views. I don't care about any
24 particular piece of literature that you've written, or
25 testimony. I just want to know your views as a

1 have a greater proportional influence, board elections
2 and personally meeting board members and making their
3 views known, things of that nature.

4 Q Any other basis, sir?

5 A Not that I can think of now.

6 Q For purposes of Exhibit 1, your report, did you
7 conduct any independent research?

8 MS. KOURY: Objection. Vague, but go ahead.

9 THE WITNESS: I don't know what you mean by
10 independent research.

11 BY MR. ROSENBAUM:

12 Q Well, did you do -- as your footnotes and text
13 demonstrate, you relied upon -- let me strike that.

14 Did you do any research, for purposes of this
15 report -- any independent research, for purposes of the
16 report, that you had not previously undertaken?

17 MS. KOURY: Still vague.

18 Do you mean -- well, vague. I'm not sure -- if
19 you understand the question, you can answer.

20 THE WITNESS: Well, I can tell you what I did. I
21 did research, broadly speaking, and then I read the
22 other experts' reports. I was familiar with things done
23 by me. I cited some of my own studies that were
24 certainly done independently.

25 All of this was independent, and I read some

1 other things, some of which I had read in the past, and
2 I re-reviewed them again.

3 So the broad definition, I would say, of
4 research, yes, I -- could be that even all of my -- all
5 of the research I did and reported here was independent,
6 especially in the sense, too, that I knew that I had
7 autonomy to write what I wanted.

8 BY MR. ROSENBAUM:

9 Q Okay. I appreciate that.

10 Did you conduct any new studies for purposes of
11 this report?

12 A Only in the sense that I just described.

13 Q Okay.

14 A Maybe I should even define what I would call a
15 study, so to speak.

16 Q Sure.

17 A Because that's a new term that's not completely
18 coincident with --

19 Q Sure.

20 A -- research.

21 I haven't done any -- as a consequence of this
22 I haven't -- when I say study, I usually mean that it's
23 something prepared for a refereed publication, and I
24 haven't done that in this report.

25 Q Do you intend to publish this report?

1 A I hadn't really thought about it.

2 MR. ROSENBAUM: Okay. Let's go off the record.
3 (Discussion off the record)

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9 I, HERBERT J. WALBERG, do hereby declare under
10 penalty of perjury that I have read the foregoing
11 transcript; that I have made such corrections as noted
12 herein, in ink, initialed by me, or attached hereto;
13 that my testimony as contained herein, as corrected, is
14 true and correct.

15 EXECUTED this ____ day of _____,
16 _____, at _____, _____.

17
18
19 _____
HERBERT J. WALBERG
Volume 2

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2
3
4 I, the undersigned, a Certified Shorthand
5 Reporter of the State of California, do hereby certify:
6 That the foregoing proceedings were taken
7 before me at the time and place herein set forth; that
8 any witnesses in the foregoing proceedings, prior to
9 testifying, were placed under oath; that a verbatim
10 record of the proceedings was made by me using machine
11 shorthand, which was thereafter transcribed under my
12 direction; further, that the foregoing is an accurate
13 transcription thereof.

14 I further certify that I am neither financially
15 interested in the action nor a relative or employee of
16 any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date subscribed
18 my name.

19
20
21 Dated: _____
22
23

24 _____
SHERRYL DOBSON
CSR No. 5713
25