

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

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

)

DEPOSITION OF DR. HERBERT WALBERG
Los Angeles, California
Wednesday, July 9, 2003
Volume III

Reported by:
DAVID OCANAS
CSR No. 12567
Job No. 43699

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

1 ELIEZER WILLIAMS, et al.,)
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3 Plaintiffs,)
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5 vs.) No. 312236
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7 STATE OF CALIFORNIA, et al.,)
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9 Defendants.)

10
11 Deposition of DR. HERBERT WALBERG,
12 Volume III, taken on behalf of
13 Plaintiffs, at 555 West 5th Street,
14 Suite 3500, Los Angeles, California,
15 beginning at 9:15 A.M. and ending at
16 2:25 P.M. on Wednesday, July 9, 2003,
17 before DAVID OCANAS, Certified
18 Shorthand Reporter No. 12567.
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LAURA BARRIOS
TRAVIS FLEMING

1 Los Angeles, California, Wednesday, July 9, 2003
2 9:15 A.M. - 2:25 P.M.
3

4 DR. HERBERT WALBERG,
5 having been duly sworn, was examined and testified
6 as follows:
7

8 EXAMINATION

9 BY MR. ROSENBAUM:

10 Q Good morning.
11 How are you?
12 A Well, thank you.
13 Q Since the conclusion of our deposition
14 yesterday, did you review any documents or any
15 materials relating to this case?
16 A Yes.
17 Q What did you look at?
18 A I looked at my report.
19 Q Anything else?
20 A No.
21 Q For what purpose did you look at your
22 report?
23 A To review it and bring it more fully to
24 mind.
25 Q Did you have any discussions with

1 Ms. Koury about your deposition or about the case?
 2 A Yes.
 3 Q When was that?
 4 A Yesterday afternoon, after we finished.
 5 Q Did you meet with her?
 6 A We left together and we sat down for a few
 7 minutes.
 8 Q Approximately how long?
 9 A It might have been five or ten minutes.
 10 Q What was said in that five or ten minutes?
 11 A I asked her how I was doing and whether
 12 she had any advice and --
 13 Q What did she say?
 14 A She said I needed to be careful about
 15 interrupting you.
 16 And also that I need to be careful about
 17 speculation.
 18 Q Anything else?
 19 A She -- I think she said -- I think she
 20 left the implication I needed to review some points
 21 in my report.
 22 Q She's very good at that, isn't she?
 23 A She's a very skilled attorney.
 24 Q Yes.
 25 Anything else that was said?

1 A Just socially.
 2 Q How long did you spend reviewing your
 3 report?
 4 A Maybe about 90 minutes.
 5 Q Were there particular sections of your
 6 report that you took a look at?
 7 A Yes.
 8 Q What was that?
 9 A I can give you the page numbers, the
 10 passages, whatever you would like.
 11 Q Sure.
 12 A I looked at page 13.
 13 Q Why did you do that?
 14 A I wanted to review the three different
 15 independent reviews of the California Test System.
 16 Since you asked me some questions about
 17 the specifics of California, since I depend on
 18 these, I wanted to review them to make sure I had
 19 all the points in there.
 20 So I looked at the Finn & Kanstoroom
 21 report.
 22 And I looked particularly at the
 23 Education Week report that enumerates the nine
 24 features, the California system, that makes it
 25 exemplary.

1 Q Go ahead.
 2 A Then I went to page 15.
 3 I, respondent, viewed the points that had
 4 been made by Martin Cornoy and Suzsanna Loeb about
 5 the nine states, including California, that were in
 6 the upper ranks in accountability systems.
 7 Because they had an extensive testing,
 8 school report cards, high school, exit examinations
 9 and consequences for school staff.
 10 Q All right.
 11 A Then to 27.
 12 Q All right.
 13 A I think that I was less specific than,
 14 perhaps, I should have been in answering several of
 15 your questions.
 16 You had asked me about whether the
 17 plaintiff's witnesses had reservations about
 18 outcome accountability and testing.
 19 Q Okay.
 20 A So on page 27, the first indented quote,
 21 this comes from the Oaks synthesis page.
 22 Page 29 speaks about reservations about
 23 relying on a test-based accountability system.
 24 And also, in the second indented
 25 paragraph, in the second sentence, begins:

1 "Test-based accountability is
 2 grounded in a wrongheaded assumption
 3 that the problem of lower and unequal
 4 achievement is attributable to the
 5 lack of motivation exhibited by
 6 students, teachers, school districts
 7 and parents."
 8 Q Okay.
 9 A I'm not quite finished.
 10 Then, in the last indented quote:
 11 "A test-based system presumes
 12 that adequate resources and
 13 conditions are present in the school
 14 system and available to all students.
 15 This presumption makes it
 16 possible to view unsatisfactory
 17 performance as a product either of
 18 the lack of motivation or flawed
 19 decisions of how to deploy resources
 20 effectively."
 21 I'm finished with that page.
 22 Then I want to go to 34.
 23 In the first paragraph, I point out that
 24 Russell dismisses the California's increases in
 25 testing achievement.

1 And I further point out that the Stanford
2 Achievement Test is highly regarded, used all over
3 the United States, and is a comprehensive test and
4 has certain other desirable features, contrary to
5 what Russell implies.

6 Then on the second indention, Russell
7 writes: "My main argument in reporting this
8 California's accountability system,
9 because it fails to measure the
10 inputs that determine the output it
11 does measure.

12 Cannot provide information that
13 will allow the State to exercise
14 leadership required to provide all
15 students with the educational
16 opportunities they are entitled to."

17 I point out there that the many precedents
18 and a lot of research support the idea of
19 outcome-based accountability.

20 Also in my paragraph, about two-thirds
21 down, beginning with "but neither," there is a
22 sentence that says:

23 "On the other hand, the State,
24 districts, and schools can draw upon
25 published psychological studies of

1 past classroom practices, curriculum
2 alignment, and other topics that have
3 considerable scholarly consensus
4 rather than taking on huge and
5 difficult research projects that
6 might further distract them from
7 their chief responsibility of raising
8 achievement."

9 In any case, they are just as unlikely to
10 turn into Russell's research agencies as they are
11 to rely on Mintrop's English-style inspectors.

12 Those are the points that I reviewed.

13 There was one other, page 33.

14 It's just a minor point, but I had
15 forgotten it.

16 That Russell himself points out that the
17 survey that he cites, indicates that California
18 teachers feel that the curriculum is aligned with
19 California tests.

20 Those are the points that I reviewed.

21 Q Let's go to page 27, where you took me a
22 few moments ago.

23 Do you have that, Exhibit 1?

24 A Yes.

25 Q You pointed us to a quote at the middle of

1 page 27.

2 Exhibit 1 is in front of you; you're using
3 your own copy?

4 A Yes.

5 Q The quote you read to me a few minutes
6 ago, it begins with the word "unfortunately"?

7 A Yes.

8 Q The last sentence in that quotation that
9 you excerpted: "Indeed, many State officials claim
10 that there are now (or will be very
11 shortly) enough resources and
12 investment in the system to deliver
13 an education to all students once
14 testing has leveraged sufficient
15 motivation across the State."

16 Do you see that sentence?

17 A Yes.

18 Q Do you know if that's true or false?

19 MS. KOURY: Calls for speculation.

20 THE WITNESS: In my readings of the
21 research literature and all the various studies
22 that I cite in here, I believe outcome-based
23 accountability is the most promising policy or
24 practice that will lead to better education for all
25 students.

1 BY MR. ROSENBAUM:

2 Q That's not my question.

3 My question is: Do you know if many State
4 officials claim that there are now, or will be very
5 shortly, enough resources in investment in the
6 system to deliver education to all students once
7 testing has leveraged sufficient motivation across
8 the State; do you know if that statement which you
9 excerpted on page 27, is true or false?

10 MS. KOURY: Objection, asked and answered.

11 THE WITNESS: I haven't heard them say
12 that.

13 BY MR. ROSENBAUM:

14 Q I don't mean to cut you off.

15 A I haven't heard them say that.

16 By inference, as I point out in other
17 parts of the report, 49 states now have these
18 accountability systems and subscribe to them on
19 these types of grounds.

20 Whether I have done the survey or, indeed,
21 whether Jenny Oaks has done just a survey, I don't
22 know.

23 Q When you see the word "State," here, what
24 do you take that to mean?

25 A I take it to mean -- I think I said in the

1 first few paragraphs of my report, I don't make a
2 distinction unless I specifically say it among the
3 Governor, the State Department of Education, and
4 the State Superintendent, plus the staffs of those
5 agencies.

6 Q But you understand that to be California;
7 is that right, where the word "State" appears; is
8 that your understanding?

9 A I hadn't actually made a distinction
10 between California and the nation.

11 If I look at the first sentence, it says
12 "the State."

13 And that looks, to me, like Dr. Oaks is
14 referring to California.

15 Q Do you know, sir, whether or not
16 California officials claim that there are now, or
17 will be very shortly, enough resources and
18 investment in the system to deliver an education to
19 all students once testing has leveraged sufficient
20 motivation across the State?

21 MS. KOURY: Asked and answered.

22 THE WITNESS: I don't know.

23 BY MR. ROSENBAUM:

24 Q Did you make any inquiry to find out?

25 MS. KOURY: Besides what he testified

1 Q Do you know the date of the title?

2 A I know the date -- when the paper was
3 presented.

4 Q That's fine.

5 A It was '02.

6 Q 2002?

7 A Right.

8 Q Any other new materials?

9 A Not that I can think of.

10 Q What other materials did you bring out
11 that you had previously examined?

12 A It was about ten papers having to do with
13 accountability.

14 Q Are they cited in your report?

15 A I think some are.

16 Q And some are not?

17 A Correct.

18 Q Do you rely on all of them for purposes of
19 your testimony or your report?

20 MS. KOURY: Objection, vague, overbroad.

21 THE WITNESS: The ones I rely on, I cite
22 in the report.

23 The others are more background reading

24 because it's an area of interest to me.

25 BY MR. ROSENBAUM:

1 about?

2 THE WITNESS: I don't know.

3 BY MR. ROSENBAUM:

4 Q All right.

5 A I'm sorry. To answer your question, I did
6 not make any investigation of that.

7 Q When you came out to California for your
8 deposition, besides your report, did you bring any
9 other materials with you relating to this case?

10 A Not directly related, but I have some
11 background materials on accountability.

12 I'm thinking of reading them.

13 Q Have you read them?

14 A No -- wait, wait a minute.

15 I have read them in the past, but some are
16 new to me.

17 Q What are the new ones, if you recall?

18 A One is a paper is by Eric Hanushek and
19 Margaret Raymond.

20 Q How did you get access to that?

21 A I think I got it off the Internet.

22 Dr. Hanushek may have sent it to me or
23 told me how to get it.

24 Q What's the name of that study?

25 A I don't know the title.

1 Q Do you rely on any others for purposes of
2 your testimony or your report, even as background?

3 A Not yet.

4 I think I made clear, a general background
5 and incidentals.

6 Since this is an area of interest to me,
7 I liked to read about, what I consider to be,
8 significant studies.

9 Q My question, I don't care whether it's
10 background or foreground: Did you rely on other
11 materials than what is cited in your report, even
12 as background?

13 MS. KOURY: Objection, vague.

14 THE WITNESS: If I had to say I relied on
15 something or I didn't rely on something, I relied
16 on the ones cited here.

17 The others are professional papers that I
18 happened to read.

19 BY MR. ROSENBAUM:

20 Q Did they inform your judgment or
21 conclusions in any way?

22 MS. KOURY: Objection, vague.

23 THE WITNESS: Only in the sense I have
24 been informed about accountability.

25 BY MR. ROSENBAUM:

1 Q Did that informing you about
2 accountability in any way, assist you in terms of
3 your analysis for purposes of this case?
4 MS. KOURY: Objection, overbroad and
5 vague.
6 If you're able to answer that anymore than
7 you already have, go ahead.
8 THE WITNESS: I may not be understanding
9 the question.
10 BY MR. ROSENBAUM:
11 Q If they, in any way, inform your knowledge
12 as it relates to your judgments in this case?
13 That's what I'm trying to find out, even
14 if it's background, incidental, that's what I'm
15 asking you.
16 A I would say background and incidental,
17 yes.
18 MR. ROSENBAUM: I haven't gotten those
19 papers.
20 MS. KOURY: I'm going to object to whether
21 or not that's discoverable.
22 The stipulation for discovery is written,
23 not the way you phrased that question.
24 I object to the implication those
25 documents need to be produced.

1 He indicated they were background
2 information.
3 That's so overbroad, it's ridiculous.
4 BY MR. ROSENBAUM:
5 Q What's the name of those papers?
6 MS. KOURY: If you're able to answer.
7 THE WITNESS: I don't think I can give you
8 the names offhandedly.
9 BY MR. ROSENBAUM:
10 Q Can you give me the names of the authors?
11 A I think I have the paper you referred to
12 yesterday, the Stecher paper.
13 I thought it was Klein.
14 You're talking about the Rand paper that
15 was critical of Grissmer?
16 Q The Texas paper?
17 A There was a Grissmer paper in Texas, and
18 then there was a Stecher paper that was disputed.
19 Q You had brought that up, previously?
20 A I think you brought it up.
21 Q Had you brought that paper out from
22 Illinois?
23 A I think I haven't.
24 Q I understand that.
25 Is it here in Los Angeles, the paper?

1 A Yes.
2 Q You brought that paper from Chicago to
3 Los Angeles?
4 A I did.
5 Q Why did you do that?
6 A For what I told you, I'm interested in the
7 general area of accountability.
8 And I wanted to read more about that
9 subject.
10 Q What other papers did you bring out?
11 A I have a paper that I -- I think I have
12 the paper that I recently wrote on the virtues of
13 accountability.
14 It's a short editorial.
15 I haven't really looked at the file
16 carefully; that's the only one I remember is the
17 one you reminded me about.
18 Q Where did this editorial appear, if you
19 know?
20 A In EDUCATION WEEK.
21 Q When did it appear?
22 A Maybe a month or two ago.
23 Q It's not cited in your report?
24 A No.
25 Q Can you remember the names of any of the

1 other authors of the papers?
2 A I mentioned Raymond and Hanushek.
3 Those are the only ones, aside from
4 Stecher and, I think, Klein.
5 Those are the only ones I can think of
6 offhandedly.
7 MR. ROSENBAUM: I'm asking for those
8 papers.
9 BY MR. ROSENBAUM:
10 Q Did you bring out the ED WEEK survey?
11 A No.
12 Q Or the Carnoy and Loeb paper?
13 A I may have that, I'm not sure.
14 Q Have you reviewed that recently?
15 A I don't think so.
16 Q Did you bring up the Finn & Kanstoroom
17 paper?
18 A No. I'm relying on my memory.
19 It was a folder and I put various things
20 in the folder.
21 I really have to look at the folder to
22 tell you with certainty.
23 MR. ROSENBAUM: I want that folder.
24 MS. KOURY: You want the folder?
25 He testified he brought that folder, not

1 related to this case, but general background
 2 information for accountability.
 3 He's an expert in accountability.
 4 You haven't established that he used any
 5 of those papers in drawing his conclusions in this
 6 report.
 7 Those papers weren't even read when he
 8 wrote this report.
 9 Your basis is very weak.
 10 BY MR. ROSENBAUM:
 11 Q You told me you testified in a number of
 12 cases previously, right?
 13 A Yes.
 14 Q Have you ever testified specifically on
 15 the subject matter of assessment systems?
 16 A I would say I nearly always testified on
 17 testing policy and test results.
 18 But as I recall, less so on the
 19 technicalities of testing.
 20 Q Have you ever testified on what you refer
 21 to as "the technicalities of testing"?
 22 A I may have been asked questions whether I
 23 considered some State test or a commercial test to
 24 be an adequate test or reliable or valid or
 25 something of that nature.

1 I think it's implied that if I used a test
 2 that I thought was reliable and valid -- my
 3 testimony has been more on policy, than making up
 4 the test, and things of that nature, as it is in
 5 this report.
 6 Q So maybe you just answered this, bear with
 7 me.
 8 To your best recollection, have you ever
 9 specifically testified regarding assessment
 10 systems?
 11 MS. KOURY: Asked and answered.
 12 THE WITNESS: I think only with respect to
 13 policy, but not with respect to technicalities.
 14 BY MR. ROSENBAUM:
 15 Q When you say "technicalities," what do you
 16 mean by that?
 17 A I'll give you the example of how to
 18 calculate APA index, for example, how to equate one
 19 test with another.
 20 Q Have you ever testified specifically with
 21 respect to State accountability systems?
 22 MS. KOURY: Objection, overbroad.
 23 THE WITNESS: I think I often referred to
 24 State accountability systems or at least the State
 25 test or the use of the State test.

1 But not how to make them up.
 2 Or can I call it, "the technicalities of
 3 it"?
 4 BY MR. ROSENBAUM:
 5 Q Have you ever testified about features of
 6 State accountability systems or testified in favor
 7 of; let's break it down:
 8 Have you ever testified regarding the
 9 elements of the State accountability
 10 system?
 11 MS. KOURY: Objection, vague.
 12 THE WITNESS: I testified here because we
 13 talk in this deposition.
 14 BY MR. ROSENBAUM:
 15 Q My question wasn't clear.
 16 Prior to this case, have you ever
 17 testified about the elements of a State
 18 accountability system?
 19 A Does that count reports?
 20 Q No.
 21 MS. KOURY: Do you mean submitting
 22 reports?
 23 THE WITNESS: In other words, it would
 24 only count depositions and hearings?
 25 BY MR. ROSENBAUM:

1 Q That's my question.
 2 A I can't bring any to mind.
 3 Q Have you ever previously testified about
 4 the qualities of a State accountability system?
 5 MS. KOURY: Objection, vague.
 6 THE WITNESS: Only in the sense they were
 7 implicit that I might have used State tests or
 8 commercial tests or standard tests or commercial
 9 tests that are required by states.
 10 It may have been -- I wouldn't use a test
 11 that was unreliable or invalid.
 12 So in some sense, by implication, I have
 13 testified.
 14 BY MR. ROSENBAUM:
 15 Q But other than that, have you ever
 16 testified about the quality of the State
 17 accountability system?
 18 A I can't bring any incidents to mind.
 19 Q Have you ever submitted a report for a
 20 court case in which you specifically analyzed a
 21 State accountability system?
 22 MS. KOURY: Objection, vague.
 23 THE WITNESS: Yes.
 24 BY MR. ROSENBAUM:
 25 Q Where was that?

1 A In Kansas.
 2 Q What case was that?
 3 A I don't know the name of the case.
 4 Q What was the issue in that case?
 5 A Whether the State accountability system
 6 well served the students in the State.
 7 And whether some districts might be more
 8 entitled to -- entitled to more funds than other
 9 districts.
 10 Q When was that?
 11 A It was several years ago.
 12 Q Can you be more specific than that?
 13 A Maybe two years ago.
 14 Q All right.
 15 A That was -- that's a point I want to bring
 16 up.
 17 I'm involved in Kansas, now.
 18 Q All right.
 19 A I've been in involved with them for a
 20 number of years.
 21 Testified once, but the case is
 22 continuing.
 23 And I anticipate testifying again.
 24 Q Is that the Brown case?
 25 A It was Brown, many years ago.

1 This is a different case.
 2 This is a school finance case.
 3 Q Have you been paid this year for that
 4 case?
 5 A Yes, I have.
 6 Q How much?
 7 A Perhaps 8 or \$10,000.
 8 Q How about last year?
 9 A I'm just roughly guessing; maybe 25,000.
 10 Q How about the year before?
 11 A I don't think I was paid before that.
 12 Q On whose behalf are you testifying?
 13 A The State.
 14 Q Has that case come to trial?
 15 A It hasn't.
 16 Q Have you been deposed in that case?
 17 A Yes.
 18 Q Do you know the name of the lawyer who
 19 deposed you?
 20 A I did once, but I've forgotten.
 21 Q What is your understanding, sir, as to
 22 what the issue in that case is?
 23 A I thought I just described that.
 24 Q Help me again.
 25 A The question is: Should some districts

1 get more money than other districts?
 2 And the issue is the district size.
 3 Some larger districts think they ought to
 4 be getting more money from the State.
 5 I'm sure there are many other aspects of
 6 it.
 7 That's what I take to mean, "the core
 8 essence of the case."
 9 MR. ROSENBAUM: Let's state, for the
 10 record, the system crashed.
 11 And we lost an answer or two.
 12 So if you'll bear with me, I'm going to
 13 ask you those questions.
 14 THE WITNESS: Fine.
 15 BY MR. ROSENBAUM:
 16 Q What's your position?
 17 MS. KOURY: Objection, vague, you mean
 18 what was his testimony?
 19 MR. ROSENBAUM: You haven't testified?
 20 THE WITNESS: I haven't testified.
 21 BY MR. ROSENBAUM:
 22 Q What's your expert opinion?
 23 A My expert opinion is that Kansas has an
 24 excellent school system, some of the highest test
 25 scores in the United States.

1 And the finance system should not be
 2 changed.
 3 Q You said "exemplary testing systems"?
 4 A At least the testing system.
 5 Q What's the nature of the testing system
 6 that's used in Kansas?
 7 A It's extensive.
 8 It has multiple choice tests.
 9 It's been very carefully worked out by
 10 local people with a high degree of psychometric
 11 expertise.
 12 Q Does Kansas use the Stanford 9?
 13 A No -- maybe some school districts do.
 14 But I don't think it's required by the
 15 State.
 16 Q There is a statewide assessment system in
 17 Kansas; is that right?
 18 A Yes.
 19 Q Does the statewide assessment system, so
 20 far as you know, rely on the Stanford 9?
 21 A I don't think it does.
 22 Q We talked yesterday and Monday, what an
 23 off-the-shelf test is.
 24 A Yes.
 25 Q The Stanford 9 is an example of an

1 off-the-shelf test?
 2 A Yes.
 3 Q You're agreeing with me?
 4 A Yes.
 5 Q Does Kansas use an off-the-shelf test as
 6 part of its State assessment system?
 7 A You're referring to the State?
 8 Q Yes.
 9 A No.
 10 The test was developed by local people in
 11 Kansas.
 12 Q Do you know what the percent alignment of
 13 the curriculum is between the curriculum taught in
 14 Kansas and the statewide test?
 15 A No.
 16 Q All right.
 17 A I think -- I'm following from the
 18 questions you asked me yesterday.
 19 You're talking about numerical alignment?
 20 Q Yes.
 21 A I don't think there has been such a study.
 22 Q Did you make an examination to determine
 23 whether it was the intent of the statewide
 24 assessment system to align the test questions and
 25 the information tested with the curriculum that's

1 taught?
 2 MS. KOURY: Objection, vague, overbroad,
 3 calls for speculation. Go ahead.
 4 THE WITNESS: I think that was one of the
 5 underlying purposes.
 6 BY MR. ROSENBAUM:
 7 Q Does Kansas have statewide standards?
 8 MS. KOURY: Objection, vague.
 9 THE WITNESS: That case is not on my mind
 10 right now.
 11 I don't remember whether they do or not.
 12 BY MR. ROSENBAUM:
 13 Q You prepared a report; is that right, in
 14 Kansas, for the Kansas case?
 15 A Yes.
 16 Q If I wanted to get a copy of that report,
 17 how would you identify it for me?
 18 MS. KOURY: Objection, vague.
 19 THE WITNESS: I would have to go home and
 20 get the title.
 21 BY MR. ROSENBAUM:
 22 Q You keep it in a file?
 23 A I have it on my copy.
 24 I may have a paper copy.
 25 Q You said you have a black box called

1 "California"?
 2 A Yes.
 3 Q Do you have a black box called "Kansas"?
 4 I don't care what color it is.
 5 A Yes.
 6 Q Is it in that box?
 7 A I think it is.
 8 But I'm almost certain it's on my
 9 computer.
 10 Q Do you know who else is testifying on
 11 behalf of the State of Kansas?
 12 A I know at least two other people.
 13 Q Who?
 14 A John Pojo (phonetic) and Douglas Glasnine
 15 (phonetic).
 16 Q Is Hanushek?
 17 A No.
 18 Q Is Raymond?
 19 A No.
 20 Q Potgorsky (phonetic)?
 21 A No.
 22 Q You know who Potgorsky is?
 23 A Yes.
 24 Q Have you ever testified with Potgorsky in
 25 any cases?

1 A Only in New York.
 2 Q Any expert in this case testifying, as you
 3 know, on behalf of the plaintiff or defendants?
 4 A Beside me, I don't think so.
 5 Q All right.
 6 A I should say, they were thinking about
 7 recruiting some other witnesses.
 8 So I don't know the current state of
 9 affairs.
 10 Q Did they ask you for your advice as to
 11 whom to recruit?
 12 A Yes.
 13 Q Did you make any recommendations?
 14 A Yes.
 15 Q Who did you recommend?
 16 A Hanushek.
 17 Q Anybody else?
 18 A No.
 19 Q Why did you recommended him?
 20 A Because I think he's one of the two of the
 21 most outstanding authorities of economics of
 22 education in the United States.
 23 Q Who is the other one?
 24 A Caroline Hocksby (phonetic).
 25 Q In your Kansas report, did you rely on the

1 ED WEEK survey?
 2 MS. KOURY: Calls for speculation.
 3 THE WITNESS: I don't remember.
 4 BY MR. ROSENBAUM:
 5 Q Did you rely on the Finn & Kanstoroom
 6 survey?
 7 MS. KOURY: Calls for speculation.
 8 THE WITNESS: I don't remember because I
 9 wrote that report sometime ago.
 10 BY MR. ROSENBAUM:
 11 Q When?
 12 A It might have been six months, or so, ago.
 13 Q Did you rely on the Carnoy and Loeb study?
 14 A No.
 15 Q Why is that?
 16 A I don't think it was published.
 17 Or I didn't know about it at the time.
 18 Q Did you visit any schools in Kansas?
 19 A No.
 20 MS. KOURY: Objection, vague.
 21 THE WITNESS: No, no.
 22 BY MR. ROSENBAUM:
 23 Q Did you talk to any principals or teachers
 24 in Kansas?
 25 A No.

1 Q Any students?
 2 A You're thinking of in connection with the
 3 case?
 4 Q Yes.
 5 A No, I didn't.
 6 Q Does Kansas have a Department of
 7 Education?
 8 A Yes.
 9 Q State Department of Education?
 10 A Yes.
 11 Q Did you speak to anyone there?
 12 A In the Department of Education?
 13 Q Yes.
 14 A I did.
 15 Q With whom did you speak?
 16 A State Superintendent and a person who had
 17 done a survey.
 18 And the person who was in charge of
 19 accountability.
 20 And maybe, incidentally, a few other
 21 people who are in the State office building.
 22 Q Do you have an opinion as to which is a
 23 superior system of accountability, in your mind,
 24 the Kansas system or the California system?
 25 MS. KOURY: Objection, vague, overbroad.

1 THE WITNESS: Do you mean which is better?
 2 BY MR. ROSENBAUM:
 3 Q That's a good question.
 4 A I think that California has more
 5 consistently ranked higher than Kansas, with
 6 respect to the quality of its accountability
 7 system.
 8 And according to independent and thorough
 9 surveys.
 10 Q Do you have an independent judgment as to
 11 which is a better survey?
 12 A I try to base things on established facts
 13 and well-known studies; that would be the basis.
 14 I would agree with three independent
 15 studies that have ranked California consistently,
 16 by thorough research, as being superior.
 17 Q When you use the word "better," what do
 18 you mean by that?
 19 A Maybe I need to have it --
 20 Q You asked me a few moments ago, did I mean
 21 better and I said sure.
 22 What do you mean by "better," when we were
 23 comparing the systems?
 24 A I mean highly ranked by independent
 25 assessments.

1 And that have gone into the specific
 2 features of the systems and ascertained whether
 3 they had some of the things that I had read to you
 4 this morning, as being exemplary features of
 5 excellent accountability systems.
 6 Q Would it be any problem to ask you for a
 7 copy of your Kansas report?
 8 MS. KOURY: Objection, vague.
 9 MR. ROSENBAUM: I want to get a copy of
 10 it.
 11 Would it be a problem?
 12 THE WITNESS: When I've been asked things
 13 like that, it goes through the attorneys.
 14 I could do that.
 15 That would be between you and Vanessa.
 16 MS. KOURY: We'll discuss it off the
 17 record.
 18 BY MR. ROSENBAUM:
 19 Q In the ED WEEK survey, do you know if any
 20 subjective judgments were made?
 21 A I like to refer to the section.
 22 Q You're looking at page 13 of your report?
 23 A Yes.
 24 I think many of these things are
 25 subjective.

1 But I think many of them can be fairly
2 objectively ascertained, such as whether the test
3 were given at various grade levels, whether the
4 tests have undergone external alignment review.

5 It's not if something is objective versus
6 subjective.

7 There are degrees of it.

8 I think this is relatively subjective.

9 Q Don't guess.

10 Do you know if there were any subjective
11 judgments made in the analysis, the ED WEEK
12 analysis?

13 MS. KOURY: Objection, asked and answered.

14 THE WITNESS: I wouldn't use the term
15 "analysis."

16 It was more straightforward, factual
17 reporting.

18 BY MR. ROSENBAUM:

19 Q Do you know if any subjective judgments
20 were made in the, you use the word, "survey"; isn't
21 that right?

22 A I use the word "survey," yes.

23 Q Do you know if there were any subjective
24 judgments made in the survey; do you specifically
25 know?

1 subjective," what did you mean by "things"?

2 A The nine points.

3 Q Which of the nine points were you
4 thinking?

5 A Think I was making a statement about all
6 of them that required some judgment.

7 To the extent it required judgment of
8 something that had been found or through interviews
9 or in specifications of State standards and
10 accountability systems, it required a human being
11 to make a judgment as to whether that feature was
12 present or not.

13 So I don't want to say -- when I use the
14 term "objective without an adjective," it's may be
15 too much to characterize.

16 It's not like physics.

17 It requires judgment.

18 And one person may differ a bit from
19 somebody else who might do it.

20 Q Do you know what, if any, criteria was
21 utilized to make the judgments in the ED WEEK
22 survey?

23 A My memory is that the ED WEEK surveys are
24 highly regarded.

25 It's one of the most influential journals

1 MS. KOURY: Objection, vague, also asked
2 and answered.

3 THE WITNESS: I think this was a
4 relatively objective survey.

5 But it's my view, however possible, to be
6 perfectly objective with respect to these kinds of
7 things.

8 BY MR. ROSENBAUM:

9 Q That's not quite my question.

10 Do you specifically know whether or not
11 there were any subjective judgments utilized in the
12 ED WEEK survey?

13 MS. KOURY: Objection, he answered that
14 question.

15 THE WITNESS: I don't think I can say
16 anything more about it.

17 BY MR. ROSENBAUM:

18 Q When you said to me, a few questions ago,
19 "many of these things were subjective," do you
20 remember saying that?

21 A What was I referring to?

22 Q Let's go back about four questions.

23 (Record read.)

24 BY MR. ROSENBAUM:

25 Q When you said "many of these things are

1 in the United States, widely read by policy makers.

2 As I recall, it was supported by a
3 distinctive foundation, The Spencer Foundation.

4 They consulted a great number of experts
5 as to what would be important to look at.

6 And that they would be well aware of the
7 necessity for having things like interrater
8 reliabilities.

9 So it might not depend, specifically, on a
10 single person.

11 But rather, for example, maybe two people
12 would do it independently, and then compare their
13 notes.

14 Q Do you know whether or not there was,
15 in fact, an attempt in the survey to have
16 interrater reliability?

17 MS. KOURY: With this specific survey?

18 MR. ROSENBAUM: Yes.

19 MS. KOURY: Asked and answered.

20 THE WITNESS: I don't remember,
21 specifically.

22 BY MR. ROSENBAUM:

23 Q Do you know any of the other criteria that
24 were utilized in making the judgments, the
25 subjective judgments you referred to?

1 MS. KOURY: Objection, vague.
 2 It also takes his prior response out of
 3 context.
 4 BY MR. ROSENBAUM:
 5 Q Go ahead.
 6 A I need the question again.
 7 Q Do you specifically know any of the
 8 criteria that were utilized in making judgments for
 9 purposes of the ED WEEK survey?
 10 A For any in this survey?
 11 Q For any or all of them.
 12 A I think they examined the descriptions of
 13 the State programs.
 14 Q Do you know that for a fact, what they
 15 did?
 16 MS. KOURY: Argumentative.
 17 You can answer the question.
 18 If you have a basis for that, you can
 19 repeat it.
 20 BY MR. ROSENBAUM:
 21 Q I want you to answer.
 22 If you have the facts or the basis for it.
 23 If you're guessing, don't guess.
 24 MS. KOURY: You're also asking him the
 25 same question twice.

1 And he answered it once.
 2 He's well aware, he's saying he already
 3 answered.
 4 Go ahead, if you want to repeat it.
 5 BY MR. ROSENBAUM:
 6 Q My question: Do you specifically know any
 7 other criteria that were utilized for any part of
 8 the EDUCATION WEEK survey?
 9 A I don't think I can add anything beyond
 10 what I already said.
 11 Q Tell me a single criteria that you're
 12 specifically aware of that was utilized?
 13 A As I said before, I base this judgment on
 14 reputation.
 15 I did not participate in the survey.
 16 I didn't guide it or advise it or look at
 17 the specific forms that they used.
 18 Q Did you make any specific investigation of
 19 the methodology that was utilized for purposes of
 20 the ED WEEK survey?
 21 A At the time I read it, I tried to read it
 22 carefully, if I saw any flaw, I would not use the
 23 study.
 24 Q In Kansas, when you talked about the
 25 quality of the assessment system utilized there, I

1 think you told me, several questions ago, that one
 2 of the things that you were impressed by was that
 3 the test was aligned with the statewide standards
 4 in Kansas; is that correct?
 5 MS. KOURY: Objection.
 6 THE WITNESS: Yes.
 7 BY MR. ROSENBAUM:
 8 Q Do all students in Kansas have access to
 9 textbooks or other basic instructional materials
 10 that are aligned with the statewide standards?
 11 MS. KOURY: Objection, calls for
 12 speculation.
 13 THE WITNESS: I don't know.
 14 BY MR. ROSENBAUM:
 15 Q Do you have an understanding of what the
 16 purpose of the ED WEEK survey was?
 17 MS. KOURY: Objection, to the extent he
 18 already testified about that, go ahead.
 19 THE WITNESS: I don't remember a statement
 20 of its purpose.
 21 I had an impression.
 22 BY MR. ROSENBAUM:
 23 Q As your counsel has repeatedly said to
 24 you, if you have a basis, fine.
 25 If you're guessing, I don't want to know.

1 A I don't know.
 2 Q Do you believe there are essential
 3 elements of a statewide accountability system as it
 4 relates to the K-12 public education system?
 5 MS. KOURY: Asked and answered.
 6 THE WITNESS: I think there are elements
 7 that I discussed in my report.
 8 And we did discuss yesterday, the most
 9 essential -- would you like to know what I think
 10 they are?
 11 BY MR. ROSENBAUM:
 12 Q Yes.
 13 A I think its standards and tests and some
 14 means of monitoring, providing incentives, and help
 15 for districts that are doing poorly.
 16 Q Anything else?
 17 A Perhaps I might add, transparency is
 18 another consideration, which is to say,
 19 understandable and clear to the people who use it.
 20 Q Do all the elements you just listed here,
 21 standards, tests, monitoring, incentives, help for
 22 districts that are doing poorly, and transparency,
 23 did I get those right; do all those exist in
 24 Kansas?
 25 MS. KOURY: Calls for speculation.

1 THE WITNESS: I would need to go back and
 2 read my report to verify those things.
 3 Certainly, they have the testing system.
 4 Certainly, they have standards.
 5 I think they have transparency.
 6 Could you let me know what I haven't
 7 mentioned?
 8 BY MR. ROSENBAUM:
 9 Q How about incentives?
 10 A They have incentives in the sense that the
 11 test results are published -- people are motivated,
 12 in part, by incentives whether they do well or
 13 badly on the tests.
 14 Q Any other incentives in Kansas?
 15 A Not that I can think of.
 16 Q How about monitoring, is there a
 17 monitoring system in Kansas?
 18 A Yes.
 19 Q Can you describe that for me?
 20 A There is a State appointed group that
 21 looks at the -- gathers information on how people
 22 are reacting to it and suggestions that they might
 23 have so they can make improvements in the system.
 24 Q How do they go about gathering that
 25 information in Kansas?

1 A They have public hearings.
 2 Q How many years has that system been in
 3 existence in Kansas?
 4 MS. KOURY: Calls for speculation.
 5 THE WITNESS: I don't know.
 6 BY MR. ROSENBAUM:
 7 Q Do they do that in California; do they
 8 have a similar monitoring system in terms of
 9 gathering that information and holding public
 10 hearings; do you know?
 11 MS. KOURY: Objection, vague.
 12 THE WITNESS: I don't remember.
 13 I could say that State Boards of Education
 14 normally have that responsibility to monitor what
 15 is going on and appoint groups if they feel that
 16 it's necessary.
 17 BY MR. ROSENBAUM:
 18 Q Do you know if that has been done in
 19 California?
 20 A No.
 21 Q Did you ever make any inquiry to find out?
 22 A No.
 23 Q Does Kansas provide help for districts
 24 doing poorly?
 25 MS. KOURY: Objection, vague.

1 THE WITNESS: I don't know.
 2 BY MR. ROSENBAUM:
 3 Q Did you ever make any inquiry to find out,
 4 in Kansas?
 5 A I don't remember or I don't know.
 6 I'm not sure that I was asked to look at
 7 that.
 8 Q Define what you mean by "transparency"?
 9 A I mean that it's clear to the people that
 10 would use the system as well as specified.
 11 It's in plain English so that educators,
 12 citizens, and students, administrators have a clear
 13 understanding of what the standards are.
 14 And the type of tests that are going to be
 15 used.
 16 Q Does that transparency exist in Kansas?
 17 A I think it does.
 18 Q What's the basis for your answer?
 19 A My reading of the State Board's documents.
 20 I looked at some newspapers.
 21 And I talked to State officials.
 22 Q The three independent studies that you
 23 relied upon in your report, in this case, that's
 24 the ED WEEK survey; that's one of them?
 25 A Yes.

1 Q The Finn study, that's the other one?
 2 A Yes.
 3 Q What's the third one?
 4 A Carnoy & Loeb.
 5 Q What you said to me, if I can synthesize,
 6 I don't want to mischaracterize your testimony.
 7 You said that you have relied upon those
 8 three studies in order to analyze the California
 9 accountability system; is that right?
 10 A Yes.
 11 Q That's because you regard these
 12 independent studies as having a high degree of
 13 credibility and integrity in terms of measuring
 14 State accountability systems; is that right?
 15 MS. KOURY: Objection, misstates his prior
 16 testimony.
 17 THE WITNESS: Yes. I regard them as
 18 authoritative.
 19 BY MR. ROSENBAUM:
 20 Q Do you think that it would be a failure of
 21 your professional standards not to use those three
 22 studies in your Kansas report?
 23 MS. KOURY: Objection, vague, overbroad,
 24 calls for speculation.
 25 You can answer.

1 THE WITNESS: Do I think it would be
 2 invalid for me not to use those three studies?
 3 BY MR. ROSENBAUM:
 4 Q That wasn't my question.
 5 (Record read.)
 6 MS. KOURY: Same objections.
 7 THE WITNESS: No. I don't think it would
 8 be a failure.
 9 BY MR. ROSENBAUM:
 10 Q At the time you wrote the Kansas report,
 11 the ED WEEK survey existed; is that right?
 12 MS. KOURY: Calls for speculation.
 13 You can answer.
 14 THE WITNESS: I don't remember the dates
 15 offhandedly.
 16 This was done in January.
 17 I don't remember when I might have read
 18 the ED WEEK study.
 19 It might have been several months later.
 20 BY MR. ROSENBAUM:
 21 Q Is the ED WEEK survey mentioned in the
 22 Kansas report?
 23 MS. KOURY: Calls for speculation, asked
 24 and answered.
 25 THE WITNESS: I don't think it is.

1 BY MR. ROSENBAUM:
 2 Q You submitted this report to the Court in
 3 Kansas?
 4 MS. KOURY: Calls for speculation.
 5 THE WITNESS: I was deposed on it.
 6 I assume it's gone to the Court.
 7 BY MR. ROSENBAUM:
 8 Q It's a Federal case, or is it a State
 9 case?
 10 A I think it's both.
 11 I'm uncertain about that; two separate
 12 hearings.
 13 Q Did you intend to bring the ED WEEK survey
 14 to the attention of the Court?
 15 MS. KOURY: Calls for speculation.
 16 THE WITNESS: I would need to consult with
 17 the attorney.
 18 Because I don't know what the rules are.
 19 It's been my experience you have to stick
 20 with your report, and you don't add new things
 21 later.
 22 BY MR. ROSENBAUM:
 23 Q If it were up to you, would you want to
 24 bring the ED WEEK survey to the attention of the
 25 Court?

1 MS. KOURY: Incomplete hypothetical.
 2 THE WITNESS: If I thought it was
 3 relevant, I would have a desire to bring it
 4 forward.
 5 BY MR. ROSENBAUM:
 6 Q Of course you would.
 7 Do you think it's relevant to the Kansas
 8 case?
 9 MS. KOURY: Objection, calls for
 10 speculation.
 11 THE WITNESS: I haven't thought about its
 12 relevance to the Kansas case.
 13 MS. KOURY: Let's take a break.
 14 MR. ROSENBAUM: Think about it, now.
 15 MS. KOURY: Let's take a break.
 16 MR. ROSENBAUM: No.
 17 Think about it, now.
 18 THE WITNESS: I would need to actually go
 19 back and read the Kansas case.
 20 It's not on my mind right now.
 21 I haven't read the report for a while.
 22 I don't know what's been cited or not
 23 cited.
 24 As I mentioned to you earlier, some of
 25 this had to do with the size of districts.

1 And that's what's on my mind about Kansas.
 2 I don't remember which of these several
 3 reports were cited or not.
 4 BY MR. ROSENBAUM:
 5 Q Didn't you tell me that one of the issues
 6 in the Kansas case, as you understood it, was the
 7 quality of the State assessment system?
 8 MS. KOURY: Objection, argumentative.
 9 To the extent it mischaracterizes his
 10 testimony.
 11 THE WITNESS: You said, "assessment."
 12 And I think I was speaking about
 13 accountability, which I regard as more broad.
 14 Assessment, in my view -- assessment
 15 focuses more on testing.
 16 In the Kansas case, I focused more on the
 17 test and also how -- how Kansas ranked among
 18 various states in the United States.
 19 Not on the quality of the accountability
 20 system, but rather the quality of the tests and the
 21 achievement in the State.
 22 BY MR. ROSENBAUM:
 23 Q Don't you rely on the ED WEEK survey in
 24 this case, to support your judgment of the quality
 25 of the California assessment system?

1 MS. KOURY: Objection, mischaracterizes
 2 his testimony.
 3 THE WITNESS: I'm making a distinction
 4 between accountability and assessment.
 5 And I think assessment is included within
 6 accountability.
 7 There are indications in the ED WEEK
 8 survey that have to do with the test.
 9 To some extent, I do rely on the ED WEEK
 10 survey for some testing information, but also,
 11 accountability aspects over this as well.
 12 BY MR. ROSENBAUM:
 13 Q Aren't you testifying in the Kansas case
 14 about the quality of the State accountability
 15 system?
 16 MS. KOURY: Objection, asked and answered,
 17 also argumentative.
 18 We have gone through this for a while.
 19 Can you answer to the extent you can?
 20 THE WITNESS: I'm chiefly -- with respect
 21 to that talking about the tests, rather than the
 22 total accountability system.
 23 BY MR. ROSENBAUM:
 24 Q But answer my question, please.
 25 Aren't you testifying in the Kansas case

1 about the quality of the Kansas accountability
 2 system?
 3 MS. KOURY: Objection, argumentative,
 4 asked and answered.
 5 He's given you his testimony on this
 6 issue.
 7 BY MR. ROSENBAUM:
 8 Q Yes or no?
 9 MS. KOURY: If you can, answer that in a
 10 yes or no fashion.
 11 THE WITNESS: I don't think I can answer
 12 yes or no.
 13 BY MR. ROSENBAUM:
 14 Q You cannot tell me; I want this really
 15 clear on the record.
 16 You cannot tell me whether or not, in the
 17 Kansas case, you are testifying about the quality
 18 of the Kansas accountability system?
 19 MS. KOURY: Objection, argumentative,
 20 asked and answered.
 21 If you want to tell him again, what you're
 22 testifying about.
 23 THE WITNESS: I would need to go back and
 24 read the report.
 25 It was done sometime ago.

1 I feel unprepared to answer that question
 2 with precision.
 3 BY MR. ROSENBAUM:
 4 Q The ED WEEK survey, you told me three
 5 questions ago that, in part, it concerns itself
 6 with the quality of the assessment system that is
 7 used in different states; is that correct?
 8 MS. KOURY: Objection, misstates prior
 9 testimony.
 10 THE WITNESS: Yes.
 11 BY MR. ROSENBAUM:
 12 Q Do you think that the ED WEEK survey is
 13 relevant to a judgment about the quality of the
 14 Kansas assessment system?
 15 MS. KOURY: Objection, argumentative,
 16 asked and answered about five times now.
 17 THE WITNESS: I don't have anything more
 18 to add.
 19 BY MR. ROSENBAUM:
 20 Q I really want this clear on the record.
 21 MS. KOURY: It is clear.
 22 MR. ROSENBAUM: It isn't clear.
 23 I want this clear.
 24 BY MR. ROSENBAUM:
 25 Q What is your answer to the question:

1 Whether or not the EDUCATION WEEK survey is
 2 relevant to the quality of the assessment system in
 3 Kansas; do you think there is any relevance to the
 4 EDUCATION WEEK survey, about the judgment of the
 5 Kansas assessment system?
 6 MS. KOURY: Objection, argumentative.
 7 MR. ROSENBAUM: You're coaching him.
 8 MS. KOURY: I'm not coaching.
 9 My objection, stands.
 10 BY MR. ROSENBAUM:
 11 Q I would appreciate it if you would give me
 12 your best answer.
 13 Do you believe that the EDUCATION WEEK
 14 survey is relevant to a judgment about the quality
 15 of the Kansas assessment system?
 16 MS. KOURY: The implication is he hasn't
 17 already done that.
 18 Asked and answered, argumentative.
 19 THE WITNESS: I think if I were to make a
 20 judgment on the Kansas system now, that I would
 21 look at the survey.
 22 BY MR. ROSENBAUM:
 23 Q If it were up to you, therefore, I assume
 24 you would want the EDUCATION WEEK survey brought to
 25 the attention of the Court in the Kansas case; is

1 that correct?

2 MS. KOURY: Objection, incomplete
3 hypothetical, calls for speculation.

4 THE WITNESS: If I thought that it was
5 relevant to the issues in the case, I would call it
6 to the Judge's attention, provided it was within
7 the rules of litigation.

8 BY MR. ROSENBAUM:

9 Q The Finn & Kanstoroom survey, that's at
10 footnote of 16, in the text that precedes it in
11 Exhibit 1, that's in 2001?

12 A Yes.

13 Q That's prior to your submission of your
14 report in the Kansas case; isn't that right?

15 A I think it was.

16 Q You told me you regard Finn & Kanstoroom
17 as outstanding experts in the area of analyzing
18 accountability systems?

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

21 THE WITNESS: I think their report is
22 authoritative.

23 BY MR. ROSENBAUM:

24 Q On assessment systems, too?

25 A I don't think they are as strong in

1 BY MR. ROSENBAUM:

2 Q With regard to the assessment systems,
3 putting aside these three studies, do you have an
4 independent expert opinion as to which assessment
5 system is superior, the Kansas system or the
6 California system?

7 MS. KOURY: Objection, calls for
8 speculation.

9 THE WITNESS: I haven't studied that.

10 MS. KOURY: Objection.

11 THE WITNESS: I would be reluctant to make
12 that judgment.

13 BY MR. ROSENBAUM:

14 Q Is there any reason you didn't bring the
15 Finn & Kanstoroom study to the attention of the
16 Court in the Kansas case?

17 MS. KOURY: Objection, calls for
18 speculation.

19 THE WITNESS: I don't even remember
20 whether I have it in the report or not.

21 BY MR. ROSENBAUM:

22 Q Can you think of any reason that you would
23 not bring it to the attention of the Kansas Court,
24 given your regard for that study?

25 MS. KOURY: Objection, calls for

1 assessment as they are in overall accountability.

2 Q Why is that?

3 A Their emphasis -- I made the distinction
4 earlier.

5 I regard assessment pertaining more to
6 testing systems.

7 Q Putting aside the three independent
8 reports, sir, tell me, do you have an independent
9 judgment as to whether the California system is
10 superior to the Kansas system; I'm talking about
11 the accountability system?

12 MS. KOURY: Objection, calls for
13 speculation.

14 You're asking for his personal opinion,
15 aside from his expert opinion?

16 BY MR. ROSENBAUM:

17 Q I'm asking for your expert opinion,
18 putting aside those three reports?

19 MS. KOURY: Objection, if you're able to
20 answer that.

21 THE WITNESS: I don't think I have -- I
22 can't answer that question without going on and
23 doing a new study on my own, if I ignore the
24 published literature that I regard as
25 authoritative.

1 speculation, assumes.

2 THE WITNESS: I think it's a question of
3 relevance.

4 I don't remember, at the time, whether I
5 thought it was relevant, or whether or not --
6 whether it wasn't relevant.

7 That was a big question.

8 BY MR. ROSENBAUM:

9 Q Do you think, today, it's relevant to
10 analyzing either the accountability system or the
11 assessment system in Kansas?

12 MS. KOURY: Objection, calls for
13 speculation, asked and answered.

14 THE WITNESS: I need to go back to and
15 read my report.

16 And read the purpose, what I had in mind
17 when I did it.

18 Actually, to see if I did cite it or not.

19 BY MR. ROSENBAUM:

20 Q Sitting here today, can you not tell me
21 whether or not you think the Finn & Kanstoroom
22 study is relevant to your analysis in Kansas,
23 without reviewing that report?

24 MS. KOURY: Objection, mischaracterizes
25 his testimony.

1 That's not what he said.
 2 THE WITNESS: Without reviewing the
 3 report, my own report and its purposes and what I
 4 was asked to do, I can't remember whether I cited
 5 it or not or whether it is -- whether it was
 6 relevant to the issues in the case.
 7 BY MR. ROSENBAUM:
 8 Q Would it be, sir, a failure of
 9 professional standards to fail to bring to the
 10 attention of a Court, a study that was relevant to
 11 the issue before the Court, because a scholar
 12 thought that the report was disadvantageous to his
 13 client's position?
 14 MS. KOURY: Objection, incomplete
 15 hypothetical, calls for speculation, also vague and
 16 overbroad.
 17 (Record read.)
 18 MS. KOURY: Same objections.
 19 THE WITNESS: I think if the report were
 20 directly relevant to the issues in the case, they
 21 should be mentioned.
 22 BY MR. ROSENBAUM:
 23 Q Why is that?
 24 MS. KOURY: Objection, incomplete
 25 hypothetical, calls for speculation.

1 THE WITNESS: Because I think it's the
 2 obligation to give the full picture.
 3 BY MR. ROSENBAUM:
 4 Q Why is that?
 5 MS. KOURY: Same objections, also vague.
 6 THE WITNESS: Because I think that the
 7 scholar has an obligation to say what things are,
 8 insofar as a scholar can.
 9 (Recess taken.)
 10 BY MR. ROSENBAUM:
 11 Q In your Kansas report, were there any
 12 articles that you cited that you did not cite in
 13 the California report?
 14 And I'm only talking about those portions
 15 of the report that deal with the Kansas
 16 accountability or the Kansas assessment system.
 17 MS. KOURY: Calls for speculation.
 18 THE WITNESS: I haven't looked at that
 19 report for some time.
 20 And I can't think of any instances.
 21 BY MR. ROSENBAUM:
 22 Q I don't know what you mean by "any
 23 instances"?
 24 A You asked me which reports were cited in
 25 one, and not the other?

1 Q Yes.
 2 A I can't think offhandedly, without
 3 reviewing the report, I can't think of any.
 4 Q Could you compare the California
 5 assessment system with the Kansas assessment
 6 system?
 7 MS. KOURY: Objection, overbroad, calls
 8 for a narrative.
 9 THE WITNESS: I think you said "could."
 10 I suppose I could, if I took the time and
 11 effort to do so.
 12 BY MR. ROSENBAUM:
 13 Q Why don't you do that?
 14 A I don't mean right now.
 15 I would have to research it.
 16 Q Sitting here today, can you tell me one
 17 distinguishing characteristic between the
 18 California assessment system and the Kansas
 19 assessment system?
 20 MS. KOURY: Objection, overbroad, calls
 21 for speculation, vague.
 22 Go ahead, if you can.
 23 THE WITNESS: One that comes to mind that
 24 is -- is that California, with respect to time, I
 25 think it's a bit more advanced.

1 BY MR. ROSENBAUM:
 2 Q What do you mean by that?
 3 A All these systems are evolving.
 4 And California's, I think, has evolved
 5 further and has the prospect of chartering schools,
 6 which you don't have in Kansas.
 7 Q Can you think of any other
 8 characteristics, sir?
 9 MS. KOURY: Objection, calls for
 10 speculation beyond the subject opinions in this
 11 matter; overbroad and calls for a narrative.
 12 THE WITNESS: Offhandedly, I don't think
 13 Kansas has been ranked as highly in the other
 14 surveys as California has.
 15 But I don't know, offhandedly, which
 16 features California is ranked better at.
 17 BY MR. ROSENBAUM:
 18 Q Did you look at the rankings during the
 19 break?
 20 A No.
 21 Q What's the basis of your statement?
 22 MS. KOURY: Objection, vague.
 23 THE WITNESS: I'm thinking about
 24 California this week.
 25 And I'm more familiar with California's

1 rankings.

2 And I reviewed my report last night, as I
3 mentioned to you earlier today, and I was reminded
4 how highly California is ranked.

5 BY MR. ROSENBAUM:

6 Q Did you talk to Ms. Koury during the
7 break?

8 A Yes.

9 Q What was said?

10 A I asked her how I was doing.

11 And she told me "fine."

12 And she, again, cautioned me about
13 interruptions, interrupting you, and interrupting
14 her.

15 That was it.

16 Q Nothing else?

17 A I think she said something about the time.

18 She was saying there might be a
19 possibility that we might finish earlier than
20 expected.

21 Q When you told me that California has
22 evolved further, do you remember telling me that a
23 few moments ago, what did you mean by that?

24 A I think California has been at it longer.

25 They have had some time to make some

1 and they are making adjustments along the way.

2 Q Are there any adjustments you would
3 recommend to the California assessment system
4 besides "steady as she goes"?

5 A Aside from what's being done now?

6 Q Tell me what's being done now.

7 A That they are making adjustments.

8 For example, continuing to make efforts to
9 align the tests to inform people, provide technical
10 assistance to districts, and so on.

11 I would simply -- I think -- there are
12 plans in place that would incorporate the
13 suggestions I may have.

14 So I think I may not make any suggestions.

15 Q You would make no suggestions?

16 MS. KOURY: Asked and answered.

17 THE WITNESS: I can't think of any
18 suggestions I would make, aside from what I have
19 already said.

20 BY MR. ROSENBAUM:

21 Q Tell me what you have already said?

22 A I said "steady as she goes," proceed.

23 Q All right.

24 A Keep the features that it presently has.

25 Q Was the ED WEEK survey, sir, that you cite

1 adjustments along the way.

2 I think these things take time.

3 For those reasons, I think they have been
4 ranked more highly.

5 Where other states have not, perhaps, done
6 as much as California.

7 Q Are there any adjustments you would
8 recommend to the Kansas system?

9 MS. KOURY: Objection, overbroad, calls
10 for speculation, beyond his expert opinions in this
11 matter.

12 THE WITNESS: Sitting here today, I don't
13 know of any that I might make.

14 BY MR. ROSENBAUM:

15 Q Are there any adjustments you would
16 recommend to the California accountability system?

17 A No.

18 Q Any adjustments you would recommend to the
19 California assessment system?

20 A I should say, steady as she goes.

21 I regard it very highly.

22 I don't think it's a perfect system.

23 I think these things take lots and lots of
24 time.

25 I think California is on a good course,

1 in your report, Exhibit 1, critical of California
2 in any way, California's accountability system?

3 MS. KOURY: Asked and answered, vague.

4 THE WITNESS: I don't mean to imply it was
5 perfect on every criterion.

6 But it ranked highly on the major
7 features.

8 And no criticism stands out in my mind,
9 presently.

10 BY MR. ROSENBAUM:

11 Q You read the entire survey?

12 MS. KOURY: Asked and answered.

13 THE WITNESS: I don't want to say I read
14 every number and every word and every rating.

15 I looked particularly at California's
16 analysis.

17 And I compared them, somewhat, with the
18 other states.

19 I didn't attempt to study all aspects of
20 the report, in detail, for other states.

21 BY MR. ROSENBAUM:

22 Q Has the Kansas accountability system been
23 in existence for five years or more?

24 MS. KOURY: Objection, asked and answered,
25 calls for speculation, if you know.

1 THE WITNESS: I don't know exactly when it
2 started.

3 BY MR. ROSENBAUM:

4 Q Have you undertaken any inquiry to
5 determine whether or not public schools in
6 California receive adequate financial resources?

7 MS. KOURY: Objection, overbroad, vague,
8 calls for speculation.

9 THE WITNESS: I haven't done a study like
10 that.

11 BY MR. ROSENBAUM:

12 Q How would you go about doing that?

13 MS. KOURY: Objection.

14 BY MR. ROSENBAUM:

15 Q Let me restate it.

16 Do you know how one would go about
17 properly studying whether or not all public schools
18 in California receive adequate financial resource?

19 MS. KOURY: Objection, overbroad,
20 incomplete hypothetical, calls for speculation.

21 THE WITNESS: It's not my area of
22 expertise.

23 BY MR. ROSENBAUM:

24 Q Incidentally, when I asked you the
25 question, what did you understand the word

1 was, whether I was helping somebody else to do it.

2 Probably wouldn't do it because it's an
3 area of education finance.

4 I would leave it to people who are more
5 expert than I am.

6 Q Have you ever compared, sir, the
7 availability of textbooks for students' core
8 curricular subjects in California, with any other
9 states?

10 MS. KOURY: Objection, calls for
11 speculation, it's already asked and answered.

12 THE WITNESS: No.

13 BY MR. ROSENBAUM:

14 Q How would you go about doing that, if you
15 know?

16 MS. KOURY: Objection, incomplete
17 hypothetical, calls for speculation.

18 THE WITNESS: I think I would give a
19 similar answer to what I said before.

20 I would need to know the purpose of the
21 study.

22 If I were doing it for somebody else, for
23 a particular purpose, that would determine the
24 methodology that I might use.

25 I also might be constrained by a budget or

1 "adequate" to mean?

2 A I think it's a legal term.

3 It's subject to much contention.

4 And I'm not sure there is a definition
5 that exists that is acceptable to all scholars.

6 Q Which is the one you use?

7 MS. KOURY: Assumes facts.

8 THE WITNESS: I think I need to look at it
9 in particular context of what I was writing, or the
10 conversation or whatever.

11 I don't have a standard definition of it,
12 even, myself.

13 BY MR. ROSENBAUM:

14 Q Have you undertaken to investigate whether
15 or not all public schools in California receive
16 sufficient financial resources, I'm attaching no
17 legal meaning to that; same answer?

18 MS. KOURY: Objection, calls for
19 speculation, incomplete hypothetical.

20 THE WITNESS: I haven't attempted to study
21 that.

22 BY MR. ROSENBAUM:

23 Q How do you define the word "sufficient"?

24 A I think I would have to define it in a
25 specific context, what my purpose of the research

1 time line or something of that nature.

2 BY MR. ROSENBAUM:

3 Q Do you know what CLAS is?

4 A I don't know what each letter stands for.

5 I know it was a test used here in
6 California some years ago.

7 Q Have you ever seen the CLAS test?

8 A No.

9 Q Do you know what sort of test it was?

10 MS. KOURY: Objection, vague.

11 THE WITNESS: In a general sense, I know.

12 BY MR. ROSENBAUM:

13 Q Tell me, please.

14 A I think it was a test that was initially
15 used for some accountability purposes.

16 And I think it had some multiple choice
17 items on it, as well as some constructive response
18 items of various kinds.

19 It was also a matrix test.

20 Q What is a "matrix test"?

21 A A matrix test is one that -- which only
22 some students in a particular class may take a
23 form, and then some other students will take
24 another form.

25 So not all the students will take the same

1 test.

2 Q Is NAPE a matrix test?

3 A I think most of it is, with some
4 exceptions.

5 Q What are the exceptions?

6 A There are core items that all students are
7 expected to respond to, for demographic purposes.

8 Q Did you undertake a literature search to
9 find all relevant scholarships regarding the CLAS
10 test?

11 MS. KOURY: Objection, overbroad.

12 THE WITNESS: I made no new search for
13 scholarships on that question.

14 BY MR. ROSENBAUM:

15 Q On page 37, sir, of Exhibit 1, do you have
16 that in front of you?

17 A Yes.

18 Q You quote from an advisory committee, you
19 quote from public session minutes, February 1, '99,
20 I'm referring to No. 56.

21 A Yes.

22 Q Did Mr. Salvaty supply that to you?

23 MS. KOURY: Calls for speculation.

24 THE WITNESS: I don't think so.

25 BY MR. ROSENBAUM:

1 about CLAS?

2 MS. KOURY: Calls for speculation.

3 THE WITNESS: Not to my knowledge.

4 BY MR. ROSENBAUM:

5 Q Does the Kansas assessment system have any
6 feature which you would consider analogous to the
7 API?

8 MS. KOURY: Objection, vague, overbroad,
9 calls for speculation.

10 THE WITNESS: I don't think that the
11 Kansas system, as I recall, has a value-added
12 feature that would be similar to the API.

13 BY MR. ROSENBAUM:

14 Q Is there a value-added component to the
15 Kansas test?

16 MS. KOURY: Objection.

17 BY MR. ROSENBAUM:

18 Q Is there a value-added component to the
19 Kansas assessment system?

20 A I don't think it has that feature.

21 Q Were you critical of the Kansas assessment
22 system for failure to have a value-added component
23 in your Kansas report?

24 MS. KOURY: Objection, calls for
25 speculation, also vague.

1 Q Why did you get those minutes?

2 A I think I found them on the Internet.

3 Q All right.

4 A I may have been -- as I mentioned to you
5 the first day, I had advised the California Board
6 of Education.

7 And I may have had that document, at some
8 point, and kept it.

9 Q Did you testify in front of The Board of
10 Education about CLAS?

11 A I wouldn't say it was only about CLAS.

12 It was -- I made some reference to CLAS
13 when they were considering it, some years after
14 CLAS had been done.

15 I made some reference to it and reminded
16 them -- I'm sorry, I'm drifting away from your
17 question.

18 Q Did you testify, either in writing or
19 orally, about CLAS, at or about February of '99?

20 MS. KOURY: Objection, vague.

21 THE WITNESS: I don't remember the date.

22 That doesn't sound like it's -- that it
23 would be wrong.

24 BY MR. ROSENBAUM:

25 Q Did the Hoover Institute have a position

1 THE WITNESS: Now I think of it, in one
2 sense, it did have value added.

3 I remember in my report -- I believe I
4 made some calculations of Kansas's value added in
5 comparison to other states.

6 That was not a distinct feature of Kansas.

7 But it did have very high value added.

8 I don't know if that's responsive to your
9 question.

10 BY MR. ROSENBAUM:

11 Q Did you compare the Kansas assessment
12 system or the Kansas accountability system with the
13 California assessment system or the California
14 accountability system?

15 MS. KOURY: Objection, vague, are you
16 referring to his report?

17 MR. ROSENBAUM: In your report.

18 THE WITNESS: I don't recall doing that.

19 BY MR. ROSENBAUM:

20 Q Why not?

21 MS. KOURY: Objection, assumes facts.

22 THE WITNESS: Because my focus was on the
23 test and was on the -- particular focus of the case
24 which was not so much the quality of the
25 accountability system, or even the assessment

1 system, but the issue of the size of the school
2 district which was the principle matter in the
3 case.

4 So I didn't consider some of the things
5 you've been raising, as highly relevant to Kansas,
6 as I recall.

7 BY MR. ROSENBAUM:

8 Q Help me out, sir, did you testify in
9 Kansas as an expert about the quality of the State
10 assessment system?

11 MS. KOURY: Objection, asked and answered
12 and argumentative.

13 THE WITNESS: I made some mention of it.

14 But it was not my principle testimony.

15 BY MR. ROSENBAUM:

16 Q Do you regard yourself as an expert in the
17 Kansas case, such that one of the areas that you're
18 concerned with is the quality of the Kansas
19 assessment system?

20 MS. KOURY: Objection, argumentative,
21 asked and answered.

22 Also to the extent you mischaracterized
23 his prior testimony.

24 THE WITNESS: My chief testimony has to do
25 with the size of the question.

1 have courts, either Federal or State, ever
2 commented on your testimony in published opinions?

3 MS. KOURY: Objection, overbroad, calls
4 for speculation, compound and vague as to
5 commented.

6 THE WITNESS: I remember a couple of
7 instances.

8 BY MR. ROSENBAUM:

9 Q Which ones?

10 A New York.

11 Q Which other ones?

12 A I don't remember the case.

13 I just remember the comment.

14 Q What was the comment?

15 A Now I remember the case, it was Cleveland,
16 Ohio.

17 Q What sort of case was that?

18 A Desegregation.

19 Q What did the Court say in Cleveland?

20 MS. KOURY: Calls for speculation.

21 THE WITNESS: They complemented my
22 preparation and testimony.

23 BY MR. ROSENBAUM:

24 Q Which Court was that?

25 A It was a Federal District Court in

1 And incidentally, I mentioned some of the
2 features of the assessment system.

3 To a small, other extent, the
4 accountability system.

5 I also, even more important than the
6 accountability system, as I indicated earlier,
7 looked at the actual test scores of Kansas.

8 Because I felt that was relevant to the
9 case.

10 BY MR. ROSENBAUM:

11 Q We got into this because I asked you,
12 initially, whether or not you had ever testified as
13 an expert in a case about the qualities of a State
14 accountability system.

15 What's the answer to my question, yes or
16 no?

17 A The answer is yes.

18 Q And Kansas is what you're citing?

19 A Yes, but I needed to be complete.

20 And so, it was not the main focus of the
21 case.

22 I felt I needed to give you a complete
23 answer.

24 Q Thank you.

25 In your experience, to your knowledge,

1 Cleveland.

2 Q Any other cases that come to mind?

3 A Not that I can think of.

4 Q Sir, do you believe that student morale is
5 a significant factor in academic achievement?

6 MS. KOURY: Objection, overbroad, calls
7 for speculation.

8 THE WITNESS: I do.

9 BY MR. ROSENBAUM:

10 Q When you use the word "morale," what do
11 you mean by that?

12 A I think it has different meanings and
13 different contexts.

14 I often call it morale or climate.

15 I use climate more often.

16 I often -- when I say that has to do with
17 the classroom climate, and I think you were asking
18 me what I meant.

19 So I what I mean by that, the way it's
20 measured is to have a -- have student
21 questionnaires:

22 Whether they get along well with
23 their fellow students.

24 Whether they think the lessons are
25 well organized.

1 Whether they feel that some students
2 are favored over others.
3 There are about 15 psychological or social
4 psychological dimensions of morale.
5 Q Do you believe that individual student
6 morale is a factor in achievement?
7 MS. KOURY: Objection, vague.
8 THE WITNESS: I think both the class
9 morale that is perceived by the whole class and the
10 individual are both predictive of achievement.
11 BY MR. ROSENBAUM:
12 Q Why is an individual predictive of
13 achievement?
14 A Because I think an individual may be happy
15 with the class.
16 But the rest of the class may not be or
17 visa versa.
18 So sometimes it's important, depending on
19 the research purposes, to know what the individual
20 student feels about the class.
21 Q Do you know if that's been done in
22 California?
23 MS. KOURY: Objection, overbroad, calls
24 for speculation.
25 BY MR. ROSENBAUM:

1 A Not separately, no.
2 Q What sort of questions are asked?
3 MS. KOURY: Objection, vague, incomplete
4 hypothetical.
5 THE WITNESS: A Lickert Scale which goes
6 from strongly agreed to strongly disagreed,
7 intermediate values of agree and disagree.
8 I'm telling you about one way that I have
9 done it.
10 Others have done it similarly or somewhat
11 different ways.
12 You have statements such as:
13 I look forward to going to class.
14 The class members know each other
15 very well.
16 The class knows what is going to
17 happen on the next day of the lesson.
18 The students are treated equally in
19 the class.
20 Questions of that nature.
21 BY MR. ROSENBAUM:
22 Q The question: "I look forward to going to
23 class."
24 I take it you consider that an important
25 question to ask?

1 Q Determination of individual student
2 morale, questioning students how they feel about
3 their classrooms?
4 A Well, not by observation, but by
5 inference, I think I do.
6 Q My question is, maybe you have answered
7 it: Have there been studies or surveys that you're
8 aware of, about individual student morale in
9 classrooms?
10 A There have been national studies and
11 surveys of various kinds that include morale
12 questions.
13 I imagine that California may have been
14 included in those.
15 Q What surveys are you thinking about?
16 A The national assessment; I have done
17 national surveys myself.
18 It's an active field of scholarly
19 research.
20 I can't name some here, in California.
21 Because there are national studies and
22 lots of research going on, I have no reason to
23 think that it's not been -- it hasn't been surveyed
24 in California.
25 Q Do you know the California results?

1 MS. KOURY: Objection, mischaracterizes
2 his testimony.
3 THE WITNESS: The basis, as I mentioned to
4 you for many things I do, it's whether it's related
5 to learning or not.
6 I may have given some with what we call a
7 "reverse polarity."
8 If you said there is a lot of favoritism
9 in this class, that would be negative.
10 With respect to the kinds of things I
11 mentioned to you, looking forward to going into the
12 class is one aspect of morale.
13 BY MR. ROSENBAUM:
14 Q Why do you ask that question?
15 A Because it is an aspect of morale and
16 related to how much students learn.
17 Q Why is that; why is it related to how much
18 students learn?
19 A I think it's a matter, perhaps, of common
20 sense.
21 That if you feel enthusiastic about the
22 class and you feel that there is favoritism --
23 there isn't favoritism and people get along with
24 one another, it's one of my nine factors.
25 And these things have to be taken into

1 consideration.
 2 I don't want to say this item is more
 3 important than another.
 4 But all these items have empirical
 5 justification.
 6 But most of them fit common sense as well.
 7 Q Is it your experience that some students
 8 are given the impression they can't learn or have
 9 low expectations or the program, the pedagogical
 10 program, is likely to be less effective?
 11 MS. KOURY: Objection, incomplete
 12 hypothetical, overbroad.
 13 THE WITNESS: I certainly think that's
 14 possible.
 15 BY MR. ROSENBAUM:
 16 Q Do you think it's probable?
 17 MS. KOURY: Objection, incomplete
 18 hypothetical, calls for speculation, argumentative.
 19 THE WITNESS: Statistically probable, but
 20 I can think of instances where it would be the
 21 opposite.
 22 BY MR. ROSENBAUM:
 23 Q Why do you think it's statistically
 24 probable?
 25 A Because I think if you have high

1 A No.
 2 Q You're familiar with the phrase "mastery
 3 learning"?
 4 A Yes.
 5 Q That's one of your nine factors or part of
 6 your nine factors?
 7 A It's part of one of the nine factors
 8 called "quality of instruction."
 9 Q Do you know if mastery learning is part of
 10 the California accountability system?
 11 MS. KOURY: Objection, overbroad.
 12 THE WITNESS: No.
 13 BY MR. ROSENBAUM:
 14 Q Have you ever made any inquiry to find
 15 out?
 16 A No.
 17 Q You support a full-day kindergarten,
 18 right?
 19 MS. KOURY: Objection, vague.
 20 THE WITNESS: I think all things being
 21 equal, a full day affords more opportunity than a
 22 half day.
 23 And it's beneficial to young children.
 24 BY MR. ROSENBAUM:
 25 Q Do you know whether all public elementary

1 expectations for yourself and they are somewhat
 2 determined by other people, then you'll -- if you
 3 have low expectations, you're less likely to learn
 4 well.
 5 If somebody, to be complete -- we have a
 6 term called the "John Henry effect."
 7 Psychological research indicates that
 8 someone who has been challenged or who has been put
 9 into a very competitive situation or said they
 10 couldn't do well, some people actually rise to that
 11 challenge.
 12 I'm not necessarily recommending that be
 13 instituted because the other one is more positive
 14 and constructive.
 15 When we talk about these things, we're
 16 talking about statistical generalizations, other
 17 than an iron rule.
 18 Q Have you ever heard of "the California
 19 master plan"?
 20 A I only heard about it.
 21 Q Did you make any inquiry to find out what
 22 it is?
 23 A No.
 24 Q Do you have any knowledge of what it
 25 involves?

1 schools in California have full-day kindergartens?
 2 MS. KOURY: Objection, calls for
 3 speculation.
 4 THE WITNESS: I don't know.
 5 BY MR. ROSENBAUM:
 6 Q Do you know if some elementary public
 7 schools in California have full-day kindergartens?
 8 MS. KOURY: Objection, calls for
 9 speculation.
 10 THE WITNESS: I haven't investigated that.
 11 BY MR. ROSENBAUM:
 12 Q Would you be concerned if there was a
 13 disparity, the fact that some elementary public
 14 schools have full-day kindergartens and others do
 15 not?
 16 MS. KOURY: Objection, compound, calls for
 17 speculation, vague.
 18 THE WITNESS: It would depend on the
 19 circumstances.
 20 BY MR. ROSENBAUM:
 21 Q What circumstances would you consider to
 22 be relevant?
 23 MS. KOURY: Objection, incomplete
 24 hypothetical, calls for speculation.
 25 THE WITNESS: Generally, there may be some

1 things that are more effective or a better use of
2 the money than a full-day kindergarten versus a
3 half-day kindergarten.

4 If the school district or a principal or a
5 set of teachers decided that was the case, and they
6 had a good scholarly basis for doing so, I think it
7 might be a reasonable choice.

8 BY MR. ROSENBAUM:

9 Q I take it you don't know the reasons in
10 California, why some schools would have full-day
11 and other schools would have half-day
12 kindergartens?

13 MS. KOURY: Objection, assumes facts,
14 calls for speculation.

15 THE WITNESS: I don't know.

16 BY MR. ROSENBAUM:

17 Q Do you know what I mean by the phrase
18 "undocumented," referring to a child or an
19 individual?

20 A No.

21 Q Have you ever heard the term "an
22 undocumented person"?

23 A I may have, but I can't think of the
24 circumstance.

25 Q You know the phrase "illegal alien"?

1 MS. KOURY: Objection, calls for a legal
2 conclusion, calls for speculation, beyond this
3 expert's opinions.

4 MR. ROSENBAUM: I don't want a legal
5 opinion.

6 I want an opinion based on your experience
7 and background as a scholar and research in the
8 area of education.

9 THE WITNESS: This is not something I have
10 systematically investigated.

11 And I don't have an opinion.

12 BY MR. ROSENBAUM:

13 Q We talked about this several minutes ago.

14 The surveys that you talked to me about
15 regarding morale, who should be surveyed to
16 determine whether or not there is a positive
17 individual student morale?

18 MS. KOURY: Objection, assumes facts,
19 calls for speculation, incomplete hypothetical.

20 BY MR. ROSENBAUM:

21 Q Do you know what I mean; students,
22 parents, theorists?

23 MS. KOURY: Incomplete hypothetical.

24 THE WITNESS: You're asking specifically
25 about student morale?

1 A Yes. I have heard that phrase.

2 Q What does that mean?

3 A It's a person from another country, who
4 has not gone through the immigration formalities or
5 is on a visa.

6 Q Are there children in the California
7 school system who are illegal aliens, do you know?

8 MS. KOURY: Objection, calls for
9 speculation.

10 THE WITNESS: I don't know.

11 BY MR. ROSENBAUM:

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

13 A No.

14 Q Are there children in the California
15 public school system who are children of illegal
16 aliens?

17 MS. KOURY: Objection, vague, calls for
18 speculation, beyond this expert's opinion.

19 THE WITNESS: I haven't studied that.

20 I don't know about the illegal
21 demographics of California.

22 BY MR. ROSENBAUM:

23 Q Do you have an opinion as to whether
24 illegal alien children should have the same access
25 or opportunities as children who are citizens?

1 BY MR. ROSENBAUM:

2 Q Yes.

3 A You could ask any of those people.

4 But the best person would be to ask a
5 student.

6 Q Why is that?

7 A Because I think this is a matter of
8 psychological perception.

9 And I think that a student, especially
10 under certain circumstances where they know that
11 they can report this in a confidential manner, when
12 they are not put on the spot, they have more
13 insight into their own feelings than a school board
14 member or teacher.

15 Q Why is that?

16 MS. KOURY: Objection, incomplete
17 hypothetical, vague.

18 THE WITNESS: I think other things being
19 equal, most people know their own minds better than
20 other people know their minds.

21 BY MR. ROSENBAUM:

22 Q In your experience, have you seen or
23 studied disparities between schools, public
24 schools?

25 MS. KOURY: Objection, vague.

1 THE WITNESS: I have done several studies,
2 yes.

3 BY MR. ROSENBAUM:

4 Q Some of those disparities have personally
5 and professionally concerned you?

6 MS. KOURY: Objection, vague, overbroad,
7 incomplete hypothetical.

8 THE WITNESS: To some extent they have.

9 BY MR. ROSENBAUM:

10 Q Can you tell me what disparities have had
11 an effect on you?

12 MS. KOURY: Objection, overbroad.

13 THE WITNESS: I think, finance.

14 When some students get more than others is
15 a cause of concern, with respect to money.

16 BY MR. ROSENBAUM:

17 Q Anything else?

18 A I'm also concerned, perhaps, even more
19 than when they are -- when -- when there are
20 disparities in achievement.

21 Q Have you seen disparities in schools that
22 you concluded, based on your expertise, resulted in
23 lower achievement in one school or set of schools
24 than another?

25 MS. KOURY: Objection, overbroad, calls

1 more money than others, they are within the same
2 State, sometimes; is that right?

3 MS. KOURY: Objection, incomplete
4 hypothetical, calls for speculation.

5 THE WITNESS: I'm familiar with the idea
6 that, in many states, there are discrepancies or
7 disparities in education spending.

8 BY MR. ROSENBAUM:

9 Q Why does that happen, based on experience?

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

13 Incomplete hypothetical, also vague.

14 THE WITNESS: I'm not an expert on school
15 finance.

16 I'm aware there are discrepancies.

17 I'm not talking necessarily about

18 California, but in property wealth.

19 That's a major determinate.

20 I'm also aware that the Federal Government
21 does give very sizable amounts of money to poor
22 children and bilingual -- corresponding to
23 allocations to bilingual.

24 And States give more money to special
25 education.

1 for speculation.

2 THE WITNESS: I don't think about these
3 things in terms of disparities.

4 I think some schools have certain
5 features.

6 And those schools have higher levels of
7 achievement than other schools who may not have
8 those features.

9 BY MR. ROSENBAUM:

10 Q When you see some schools that have these
11 features that lead predictively to higher
12 achievement, and other schools don't, that concerns
13 you; isn't that right?

14 MS. KOURY: Objection, mischaracterizes
15 his testimony.

16 THE WITNESS: I'm chiefly concerned about
17 raising the achievement level of all children.

18 I would like to do that across the entire
19 spectrum.

20 I'm also, to some extent, concerned about
21 inequalities of achievements.

22 And I think we need to work on that,
23 specifically, as well.

24 BY MR. ROSENBAUM:

25 Q When you have seen schools that receive

1 So there are a great number of reasons why
2 you could have differences of funding from one
3 school to another.

4 BY MR. ROSENBAUM:

5 Q Why do some schools, in your experience,
6 have features that lead predictively to higher
7 achievements than other schools?

8 MS. KOURY: Objection.

9 BY MR. ROSENBAUM:

10 Q Let me rephrase it.

11 You have seen schools in the same
12 state that have features that lead to predictively
13 the higher achievement, by your standards, as
14 opposed to other schools in a state.

15 I'm not talking about California.

16 I'm talking about your length of
17 experience.

18 Isn't that right?

19 MS. KOURY: Incomplete hypothetical,
20 vague, calls for speculation.

21 THE WITNESS: Let me ask you, you mean
22 literally seen, gone into schools?

23 BY MR. ROSENBAUM:

24 Q Have you done that; have you gone into
25 schools that you thought:

1 I've been to a number of schools
 2 in this State, and some of these
 3 schools have features that are more
 4 predictive than other schools.
 5 I'm talking now, about your own
 6 observations; have you done that?
 7 MS. KOURY: Objection, vague, calls for
 8 speculation.
 9 THE WITNESS: I missed the transition.
 10 I thought we were talking about finance.
 11 BY MR. ROSENBAUM:
 12 Q We're not talking about finance?
 13 A You're talking now, about some schools
 14 that have features that lead to higher achievement?
 15 Q I wanted to do this in tiers.
 16 Have you had personal observation in the
 17 same State, contemporaneously, around the same
 18 time, some schools in the State have features, by
 19 your judgment, that are predictively going to lead
 20 to higher achievement, and other schools don't;
 21 have you seen that, those sorts of disparities?
 22 MS. KOURY: Objection, overbroad, calls
 23 for speculation.
 24 THE WITNESS: To be complete, I wouldn't
 25 look -- I don't -- I wouldn't expect to find a

1 school that had all the features and another school
 2 that didn't have all the features.
 3 I think that almost any school has a
 4 mixture of those features.
 5 BY MR. ROSENBAUM:
 6 Q Have you seen some schools that you felt
 7 had a richer set of features that are predictively
 8 going to lead to higher achievement than other
 9 schools; I know your nine factors are all school
 10 factors; four factors are school factors?
 11 A I would say two are distinctly school
 12 factors.
 13 Others can be affected by the school.
 14 Q I'm not saying one has to have all the
 15 school factors and the other zero.
 16 You have seen schools that have more
 17 factors than other schools; isn't that right?
 18 MS. KOURY: Objection, calls for
 19 speculation, overbroad.
 20 THE WITNESS: I measure these things
 21 empirically.
 22 I don't go to the school, this school has
 23 good classroom morale.
 24 That may be misleading.
 25 I know a class within a school may have

1 high morale, and another class may have low morale.
 2 I don't make it my business to walk into a
 3 school and say, they are high at this and low at
 4 that.
 5 BY MR. ROSENBAUM:
 6 Q You have seen data that distinguishes
 7 between schools; isn't that right?
 8 MS. KOURY: Objection, vague, overbroad.
 9 THE WITNESS: Have I seen any data that
 10 distinguishes between these schools?
 11 BY MR. ROSENBAUM:
 12 Q As to the achievement factors.
 13 MS. KOURY: Objection, overbroad, calls
 14 for speculation.
 15 THE WITNESS: I generally analyze
 16 classrooms rather than whole schools.
 17 BY MR. ROSENBAUM:
 18 Q Have you seen data about classrooms, as to
 19 your factors, where you recorded disparities?
 20 A Yes.
 21 Q Why does that happen; why do those
 22 disparities exist, if you know?
 23 MS. KOURY: Objection, incomplete
 24 hypothetical, overbroad, calls for speculation.
 25 BY MR. ROSENBAUM:

1 Q Have you undertaken analysis as to the
 2 causes of those disparities?
 3 MS. KOURY: Objection, overbroad.
 4 THE WITNESS: My almost exclusive interest
 5 has not been in what causes the factors, what do
 6 the factors cause.
 7 I can't bring to mind -- now that I think
 8 about it a little bit more, it could be that State
 9 and local policies may affect the factors.
 10 I haven't done a study of that.
 11 BY MR. ROSENBAUM:
 12 Q I don't want you to speculate.
 13 Your answer is: You focus on how the
 14 factors cause or don't cause higher
 15 achievement; you don't focus on the
 16 cause, also, of those factors
 17 existing or not existing in
 18 classrooms.
 19 Am I understanding you properly?
 20 MS. KOURY: Objection, to the extent it
 21 mischaracterizes his testimony.
 22 Vague as to "factors."
 23 THE WITNESS: In other words, I study how
 24 the nine factors influence or cause achievement.
 25 But I have not made it my business to find

1 out what causes the factors.
 2 BY MR. ROSENBAUM:
 3 Q Is that correct?
 4 A Yes.
 5 Q Have you heard the phrase "political
 6 process"?
 7 A I'm sure I have.
 8 Q What meaning does that have for you?
 9 MS. KOURY: Assumes facts.
 10 THE WITNESS: Again, it's a legal matter.
 11 But I realize there are things like voting
 12 around formulating legislation.
 13 And I just have a lay knowledge of that.
 14 BY MR. ROSENBAUM:
 15 Q In your experience, sir, are you familiar
 16 with any cases that you think have resulted in
 17 greater educational opportunity for children?
 18 MS. KOURY: Objection, overbroad, calls
 19 for speculation, also calls for a legal conclusion.
 20 BY MR. ROSENBAUM:
 21 Q If that's an area you feel comfortable
 22 testifying about.
 23 A I don't think I want to talk about legal
 24 matters.
 25 I'm not an expert in that area.

1 Q Do you regard it within your area of
 2 expertise to tell me whether or not you've ever
 3 come across cases that, whether or not you believe
 4 there are cases, that have resulted in higher
 5 student achievement in public education?
 6 MS. KOURY: Objection, vague, overbroad.
 7 THE WITNESS: I haven't studied that
 8 question.
 9 BY MR. ROSENBAUM:
 10 Q You regard that as outside your area of
 11 expertise?
 12 A Yes.
 13 Q Do you know who James Guthrie is?
 14 A Yes.
 15 Q Have you ever talked to him about this
 16 case?
 17 A Yes.
 18 Q When was that?
 19 A It might have been nine months or ten
 20 months or so, ago.
 21 Q Do you know his partner?
 22 A Are you referring to Jim Smith?
 23 Q Yes.
 24 A Yes.
 25 Q Have you ever talked to Jim Smith about

1 this case?
 2 A Yes.
 3 Q When was that?
 4 A About the same time.
 5 Q Where did that discussion take place?
 6 A In South Carolina.
 7 Q How many discussions did you have with
 8 Guthrie?
 9 A We were visiting schools for a couple of
 10 days.
 11 And it may have come up a couple of times.
 12 Q What was said about this case with
 13 Guthrie?
 14 A I think I asked him if they were in the
 15 case.
 16 And they said: No, they had talked to,
 17 perhaps, even the plaintiff attorneys.
 18 I'm not sure of that.
 19 And because they had some initial contact,
 20 they were unable to be in the case just by the fact
 21 that their firm is in California.
 22 And Jim Guthrie, though he's in Vanderbilt
 23 in Tennessee, he was for many years at Berkeley and
 24 highly informed about California.
 25 Q Do you know who Debois is?

1 A The famous black writer?
 2 Q Yes.
 3 A I know he's a black writer.
 4 Q All right.
 5 A And very well known and highly regarded.
 6 Q Did you ever read THE SOULS OF BLACK FOLK?
 7 A Yes.
 8 Q Do you know his statement, "Black children
 9 need education, not redistribution"?
 10 A I don't remember that.
 11 Q Have you ever quoted that statement in sum
 12 or substance?
 13 MS. KOURY: Calls for speculation.
 14 THE WITNESS: I don't recall it.
 15 I may have quoted him.
 16 BY MR. ROSENBAUM:
 17 Q What does that statement mean to you,
 18 "Black children need education, not
 19 redistribution"?
 20 MS. KOURY: Calls for speculation.
 21 THE WITNESS: I think he may have meant --
 22 I guess I'm not sure what he meant by that
 23 statement.
 24 I guess I need to see it in context.
 25 BY MR. ROSENBAUM:

1 Q Do you have a view, sir, regarding the
2 importance of after-school activities?
3 MS. KOURY: Objection, overbroad, calls
4 for speculation.
5 THE WITNESS: Yes.
6 BY MR. ROSENBAUM:
7 Q What's your view?
8 A I think other things being equal, it's
9 good for children to be involved in an after-school
10 activity.
11 When -- especially if they are academic or
12 somewhat academic in nature.
13 Q When you say "other things being equal,"
14 what do you mean by that?
15 A If all other circumstances were the same
16 for children who didn't go to after-school
17 activities, in contrast to those that did, I would
18 expect, perhaps, a small or moderate achievement
19 advantage.
20 The extra work they would have done after
21 school.
22 Q Why is that?
23 A The way I tend to think about it is
24 quantity and quality.
25 They are getting more.

1 And although the quality of some
2 after-school programs are not -- is not that great,
3 it may be better than the alternatives that they
4 have.
5 Q After-school activities, do you know if
6 after-school activities are part of California's
7 accountability system?
8 A No.
9 Q Do you know if the California
10 accountability system measures or documents
11 after-school activities?
12 MS. KOURY: Objection, vague.
13 THE WITNESS: I don't know.
14 BY MR. ROSENBAUM:
15 Q Have you ever made any inquiry to find
16 out?
17 A No.
18 Q Do you know if there are disparities among
19 public schools in California, K to 12, about the
20 availability of after-school activities?
21 MS. KOURY: Objection, calls for
22 speculation.
23 THE WITNESS: I don't know.
24 BY MR. ROSENBAUM:
25 Q Have you ever made any inquiry?

1 A No.
2 Q If I changed the question from
3 after-school activities, to extracurricular
4 activities, are all your answers the same?
5 MS. KOURY: Compound.
6 THE WITNESS: I think my answer would be
7 the same.
8 BY MR. ROSENBAUM:
9 Q How would you go about determining if a
10 State accountability system was not working?
11 MS. KOURY: Objection, incomplete
12 hypothetical, calls for speculation.
13 THE WITNESS: I would say that -- let me
14 have it again.
15 BY MR. ROSENBAUM:
16 Q I'm not talking about any particular
17 state.
18 I'm just saying, if someone came to you
19 and said: We would like your help in figuring
20 out if our State accountability
21 system is working successfully or
22 not.
23 How would you go about figuring that out?
24 MS. KOURY: Objection, overbroad,
25 inappropriate, calls for speculation.

1 BY MR. ROSENBAUM:
2 Q I don't want you to apply to any
3 constraints, I want to know.
4 They say: We want your very best
5 judgment.
6 We want the very best research
7 model you can give us.
8 Tell me how you think we should
9 go about finding out whether the
10 State accountability system is not
11 working properly.
12 MS. KOURY: Incomplete hypothetical.
13 THE WITNESS: It would depend on the
14 circumstances, perhaps I would want more detail,
15 specifications.
16 BY MR. ROSENBAUM:
17 Q What questions would you want to know to
18 help you figure out about how to go about this?
19 A What is it about the educational
20 accountability system that you're concerned about?
21 What aspects of it would you like me to
22 investigate?
23 What do you consider to be the criteria?
24 Those might be -- normally, if someone
25 were to ask me to do something, I would have a

1 conversation with them to find out exactly what
 2 they had in mind.
 3 And from there -- I'll be glad to go on
 4 and answer the question you raised earlier.
 5 You asked me: How I would go about it?
 6 Then I would get a sense of what they
 7 wanted to do.
 8 And I would write a proposal and would
 9 come back to them and say:
 10 Is this what you had in mind?
 11 I would modify and carry it out.
 12 In answer to your previous question:
 13 How would I do it; what would be the
 14 likely procedures?
 15 Is that what you had in mind?
 16 Q Your answer was helpful to me.
 17 Do you have criteria you would apply to
 18 determine whether an accountability system is
 19 working successfully?
 20 MS. KOURY: Objection, overbroad.
 21 THE WITNESS: Yes.
 22 BY MR. ROSENBAUM:
 23 Q What are your criteria?
 24 A Thinking now, if somebody asked me to do
 25 this, the two things that would come to mind would

1 be hearings.
 2 And given my interest in achievement, I
 3 would look at test scores, across time, to see if
 4 there were increasing test scores.
 5 Another thing I might do is to -- if there
 6 were variations in the degree of implementation,
 7 that is to say, some districts took it very
 8 seriously and other districts did not, I might run
 9 various time of regression analyses to determine
 10 the relationship between the degree of
 11 accountability and the test scores.
 12 If the accountability system had various
 13 components to it, I might let the regression weigh
 14 each of those components to figure out which ones
 15 would be more important than others.
 16 Those would be some of initial thoughts
 17 about how to do it.
 18 Q Have you done any of those exercises for
 19 any state?
 20 A No.
 21 Q Do you know if anybody has?
 22 A Not with the specificity that I described,
 23 nor was it done for only a single state.
 24 Q When you say "increasing test scores,"
 25 would you be interested in all grades at which

1 tests were being administered?
 2 MS. KOURY: Objection, calls for
 3 speculation.
 4 THE WITNESS: I would need to know the
 5 circumstances.
 6 I still have in my mind, you asked me if
 7 somebody asked me to do it.
 8 BY MR. ROSENBAUM:
 9 Q Don't keep that in mind.
 10 I want your standards, your criteria; how
 11 you would go about it?
 12 When you said "increasing test scores," I
 13 want to know about your criteria.
 14 Would you be interested about all grades
 15 at which the test was being administered?
 16 MS. KOURY: Incomplete hypothetical, calls
 17 for speculation.
 18 THE WITNESS: With the proviso I would
 19 want to know the circumstances, even if I was
 20 completely to have -- do it any way I want, I would
 21 like to have test scores over time.
 22 BY MR. ROSENBAUM:
 23 Q For all grades for which the test is being
 24 administered?
 25 MS. KOURY: Objection, incomplete

1 hypothetical, calls for speculation.
 2 THE WITNESS: I would say, as a general
 3 principle, the more grades the better.
 4 BY MR. ROSENBAUM:
 5 Q Why is that?
 6 A You have a more comprehensive picture of
 7 how the students are doing.
 8 Q All right.
 9 A I should also say, more grades the better,
 10 but the cost considerations as well.
 11 Q Have you, in your experience, sir,
 12 published any article or study specific to the
 13 State of California?
 14 MS. KOURY: Objection, vague.
 15 BY MR. ROSENBAUM:
 16 Q Regarding public education?
 17 MS. KOURY: Overbroad.
 18 THE WITNESS: I don't recall any.
 19 BY MR. ROSENBAUM:
 20 Q Have you utilized data from K-12 public
 21 education in California, in any article or study
 22 which you've had published?
 23 A I have compared a number of states.
 24 And I take whatever data is available in
 25 all of the States.

1 But not all states, for example,
 2 participate in national assessment.
 3 I don't particularly remember using
 4 California's particular data point-in-mind
 5 analyses.
 6 Q Have you ever ignored available data
 7 because you were concerned that the inclusion of
 8 that data would alter your conclusion?
 9 MS. KOURY: Objection, vague, calls for
 10 speculation, incomplete hypothetical.
 11 THE WITNESS: The only circumstances that
 12 I can think of where I would do something like
 13 that, if the data point were suspect.
 14 I would call those outliers.
 15 So if we had an outlier, we would look at
 16 that data point and try to make some verification
 17 whether it was accurate or not.
 18 I think it would be scientifically wrong
 19 to leave out a point that would reverse a
 20 conclusion.
 21 BY MR. ROSENBAUM:
 22 Q Why is that?
 23 A Because it would not be scientifically
 24 honest.
 25 Q Do you know what the PPI report is?

1 Q When you talk about vouchers, that's one
 2 of the points you make, right, that minority
 3 families aren't happy with the education that kids
 4 are getting?
 5 MS. KOURY: Objection, calls for
 6 speculation, calling for opinions beyond this
 7 expert's expertise?
 8 THE WITNESS: I think I made that point.
 9 BY MR. ROSENBAUM:
 10 Q Do you have an opinion as to why these
 11 families are not content?
 12 MS. KOURY: Objection calls for
 13 speculation.
 14 BY MR. ROSENBAUM:
 15 Q Let me do a predicate here.
 16 What's the basis of your making that
 17 statement?
 18 MS. KOURY: Overbroad.
 19 THE WITNESS: My observation and
 20 experience in big cities.
 21 BY MR. ROSENBAUM:
 22 Q Do certain cities come to mind, certain
 23 big cities?
 24 A Chicago, New York.
 25 Q Any California cities?

1 A I think it --
 2 Q Public Policy Institute report?
 3 A I think that group has done a lot of
 4 reports.
 5 I don't know which one you mean.
 6 Q Are you familiar with a Public Policy
 7 Institute report that concluded that many minority
 8 families and those in poverty are not content with
 9 the education they are getting?
 10 MS. KOURY: Objection, calls for
 11 speculation, overbroad.
 12 THE WITNESS: I'm not familiar with that
 13 report.
 14 BY MR. ROSENBAUM:
 15 Q Have you seen any surveys or studies by
 16 anybody that come to that conclusion?
 17 MS. KOURY: Overbroad.
 18 THE WITNESS: I can't remember a
 19 particular survey, but I think I have seen those
 20 results in various places.
 21 BY MR. ROSENBAUM:
 22 Q Where?
 23 A As I say, I don't remember where I saw
 24 that, but I think that's been found in several
 25 surveys.

1 A I've spent less time in California.
 2 They don't really come to mind.
 3 Q Do you have an opinion as to why minority
 4 families feel this way?
 5 MS. KOURY: Objection, calls for
 6 speculation, incomplete hypothetical.
 7 THE WITNESS: I think minority families,
 8 more often than others, live in big cities, at
 9 least in the cities that I'm familiar with.
 10 And those big-city school systems tend to
 11 be less effective and less efficient than suburban
 12 systems or rural systems.
 13 So I think that minority voices are not
 14 heard as well and -- I think they can be more often
 15 treated indifferently by school staff and some
 16 related reasons.
 17 BY MR. ROSENBAUM:
 18 Q Can you amplify on the "related reasons"?
 19 MS. KOURY: Calls for speculation.
 20 BY MR. ROSENBAUM:
 21 Q I appreciate what you said.
 22 I'm giving you an opportunity to expand
 23 further.
 24 MS. KOURY: Calls for speculation,
 25 incomplete hypothetical.

1 THE WITNESS: Well, we talked, two days
2 ago, about capitalization effects.

3 Where if you're in a big organization,
4 it's hard to make your voice heard.

5 That would be part of it.

6 Big-city school systems are often more
7 complicated.

8 And they receive greater amounts of
9 Federal Funds, which cause a high degree of
10 bureaucracy, which may lead them to be less
11 conscious of what they needed to do for students in
12 the school.

13 BY MR. ROSENBAUM:

14 Q Is it correct, sir, when you made that
15 comment, or on some of the occasions when you made
16 that observation, you recommended voucher programs
17 as a way to assist minority families obtain better
18 education for their children?

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

22 THE WITNESS: I think that minority
23 families or other families in failing schools,
24 which are repeatedly failed, should be given an
25 opportunity to go to other schools, including

1 reviews, stated that African-American children have
2 benefited more than other comparable children, who
3 have been randomized in and out of these
4 schools by lottery, who have benefited from the
5 programs.

6 BY MR. ROSENBAUM:

7 Q There is really no defense for failing
8 schools, is there?

9 MS. KOURY: Objection, argumentative,
10 vague.

11 THE WITNESS: Well, the only defenses that
12 I can think of would be highly exotic.

13 BY MR. ROSENBAUM:

14 Q Such as?

15 A Terrible disease, bad tornado, something
16 that -- something of that nature that would be
17 extraordinary and catastrophic.

18 MS. KOURY: We've been going for over an
19 hour-and-a-half.

20
21 (The luncheon recess was taken at
22 11:45 A.M.)

1 charter schools or private schools.

2 And one mechanism of that is vouchers.

3 BY MR. ROSENBAUM:

4 Q Why do you believe that?

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

7 THE WITNESS: Because I think I have
8 preferences for that.

9 We have seen voucher programs given
10 privately by wealthy individuals.

11 They are highly over subscribed.

12 The point that you made earlier, that
13 minority families are often more -- are not as
14 content with the education system.

15 I think also, emerging research is showing
16 that charter schools are beneficial to children if,
17 for no other reason, the parents that send the
18 children there, according to surveys, they are
19 happier with the program.

20 Finally, two other points.

21 Some research suggests that presence of
22 private competition enhances public schools.

23 In the case of African-American students,
24 I think the research of Paul Peterson, at the
25 Kennedy School at Harvard, in 2 or 3 separate

1 (The deposition of HERBERT WALBERG was
2 reconvened at 12:59 A.M.)

3
4 HERBERT WALBERG,
5 having been previously placed under oath, testified
6 further as follows:

7
8 EXAMINATION (CONTINUING)

9 BY MR. ROSENBAUM:

10 Q How are you?

11 A Well, thank you.

12 Q You know you're still under oath?

13 A I realize that.

14 Q Did you review any documents or materials
15 over the break, lunch break?

16 A I looked at the Internet on my little cell
17 phone.

18 Q Anything that has to do with this case?

19 A No.

20 Q Did you have any discussions with counsel
21 about this case?

22 A Not about the case.

23 Q Did you ever support a proposed amendment
24 to the United States Constitution relating to
25 education?

1 A About 30 or 35 years ago, yes.
 2 Q That amendment, tell me what the substance
 3 of that amendment would have been, as you recall?
 4 A I really don't recall it very well.
 5 I think it was an argument for quality of
 6 educational opportunity or quality of -- equality
 7 of spending.
 8 Q And that education would be a fundamental
 9 right, turned U.S. constitution?
 10 A Yes.
 11 Q Why did you support that?
 12 A This was a long time ago; there was great
 13 equality within states.
 14 Some students had three times as much
 15 money spent on them as other students.
 16 There was a good deal of research
 17 precipitated by a 1966 report called "Equality of
 18 Educational Opportunity," that documented that.
 19 During that, those days, there were
 20 substantial differences and these were documented.
 21 This was for a magazine for professional
 22 educators.
 23 I thought they needed to know about it.
 24 Q Those disparities, they were both within
 25 and between states?

1 MS. KOURY: Objection, to the extent you
 2 mischaracterized his testimony.
 3 THE WITNESS: I don't know which one I
 4 emphasized the most in that case.
 5 I distinctly remember within State
 6 disparities, but I know I was aware of it.
 7 There were disparities among states as
 8 well.
 9 BY MR. ROSENBAUM:
 10 Q When you thought of fundamental rights,
 11 what did you think that meant?
 12 MS. KOURY: Objection calls for
 13 speculation.
 14 BY MR. ROSENBAUM:
 15 Q Within this amendment?
 16 A It was a long time ago.
 17 As I recall it now, not being an attorney,
 18 I think it -- I think I had in mind it would be an
 19 extremely important right.
 20 Q Would you support such a proposed
 21 amendment, today?
 22 A No.
 23 Q Why is that?
 24 A I think that schools have largely
 25 equalized expenditures.

1 And they now need to concentrate on what
 2 you call "productivity."
 3 Q All right.
 4 A I ought to explain that.
 5 I used that term, theory of productivity
 6 or productivity factors.
 7 What I mean by that is it's focused on
 8 outcomes and achievement.
 9 Q Do you think the Court should have a role
 10 with respect to the delivery of public education?
 11 MS. KOURY: Objection, overbroad, calls
 12 for speculation, calls for a legal conclusion.
 13 THE WITNESS: I haven't studied that.
 14 And I'm not a legal scholar.
 15 I'm reluctant to say.
 16 BY MR. ROSENBAUM:
 17 Q How much money, sir, is available to the
 18 State of California for K-12 public education?
 19 MS. KOURY: Objection, calls for
 20 speculation, asked and answered.
 21 THE WITNESS: I don't know.
 22 BY MR. ROSENBAUM:
 23 Q Have you made any inquiry to find out?
 24 MS. KOURY: Asked and answered.
 25 THE WITNESS: No.

1 BY MR. ROSENBAUM:
 2 Q Do you know how you go about doing that?
 3 MS. KOURY: Calls for speculation.
 4 THE WITNESS: Not as an expert.
 5 BY MR. ROSENBAUM:
 6 Q As an individual, have you?
 7 MS. KOURY: Calls for speculation.
 8 THE WITNESS: What was the question?
 9 BY MR. ROSENBAUM:
 10 Q How you would go about finding out how
 11 much money is available to the State of California
 12 for K-12 public education?
 13 MS. KOURY: Calls for speculation.
 14 THE WITNESS: As a nonexpert, I might ask
 15 someone else who I regarded as someone who is
 16 extremely knowledgeable.
 17 Or I might look for some public documents.
 18 I don't think I would pursue that since
 19 it's not my area.
 20 BY MR. ROSENBAUM:
 21 Q Do you have a view, sir, as to the
 22 appropriate role of a State in a public education
 23 system?
 24 MS. KOURY: Objection, asked and answered,
 25 calls for speculation.

1 THE WITNESS: Other than what I have
 2 already said in our deposition?
 3 BY MR. ROSENBAUM:
 4 Q Tell me what you already said.
 5 MS. KOURY: Overbroad.
 6 He testified that throughout the last two
 7 days of deposition.
 8 THE WITNESS: Are you looking for the
 9 essence of my view?
 10 BY MR. ROSENBAUM:
 11 Q Let's start there.
 12 A I think that it goes back to what we
 13 talked, considerably, with the division of labor,
 14 where the State works out a standard or commissions
 15 group and holds hearings to formulate standards.
 16 Or either develops it itself and/or
 17 commissions examinations.
 18 And builds an accountability system and
 19 delegates as much authority, autonomy, discretion
 20 to local districts.
 21 Q Who has the ultimate responsibility, in
 22 your view, for insuring that students in K-12
 23 public education receive equal educational
 24 opportunities?
 25 MS. KOURY: Objection, compound,

1 overbroad, calls for speculation, calls for a legal
 2 conclusion.
 3 BY MR. ROSENBAUM:
 4 Q What's your understanding based on your
 5 expertise?
 6 MS. KOURY: Same objections.
 7 THE WITNESS: I didn't hear you.
 8 BY MR. ROSENBAUM:
 9 Q I don't want you to pretend you're a
 10 lawyer, as an educational scholar?
 11 A It is a legal matter.
 12 I suppose, ultimately, it's the State
 13 constitution.
 14 Q Let me ask you, if you would, sir, turn to
 15 page 8 of Exhibit 1 of your report.
 16 A I have it.
 17 Q You see the sentence, I'm going to read
 18 you the sentence and give you time to find it.
 19 It's in the second full paragraph:
 20 "State policy makers set goals
 21 and measure progress, but unlike in
 22 the past, encourage local school
 23 districts and schools to plan and
 24 execute effective practices."
 25 Do you see that?

1 A Yes.
 2 Q Do you think the State has any
 3 responsibility beyond encouraging local school
 4 districts and schools with respect to the planning
 5 and executing of effective practices?
 6 MS. KOURY: Objection, to the extent it
 7 mischaracterizes the document.
 8 THE WITNESS: Well, I would say that my
 9 latter part of my statement captures the main
 10 purpose.
 11 But I think I'm assuming here, that the
 12 schools do this within the law.
 13 It protects civil rights and
 14 nondiscriminatory and things of that nature.
 15 BY MR. ROSENBAUM:
 16 Q I don't think that's responsive to my
 17 question.
 18 Does the State have any role besides the
 19 role of encouragement, the word you used is
 20 "encourage"; is that right?
 21 A Yes.
 22 Q That's the verb.
 23 You talked about the State setting goals
 24 and measuring progress.
 25 You talked about the State encouraging

1 local school districts and schools, am I right?
 2 A Yes.
 3 Q Does the State have any other duty or
 4 responsibility besides setting goals, measuring
 5 progress, and encouraging local school districts
 6 and schools to plan and execute effective
 7 practices?
 8 MS. KOURY: Objection, overbroad.
 9 MR. ROSENBAUM: It is overbroad.
 10 BY MR. ROSENBAUM:
 11 Q I'm interested in the issue of planning
 12 and executing effective practices.
 13 Does the State have any role, in your
 14 judgment, beyond encouraging districts to plan and
 15 execute effective practices?
 16 I'm interested with respect to the subject
 17 matter of planning and executing effective
 18 practices.
 19 Does it have a role beyond encouragement?
 20 MS. KOURY: Overbroad, asked and answered.
 21 MR. ROSENBAUM: You can object.
 22 You've been coaching all day today.
 23 MS. KOURY: I'm not going to get into this
 24 with you.
 25 Let's not waste time.

1 MR. ROSENBAUM: Your objection is noted.
 2 THE WITNESS: I think you asked me to
 3 focus on the word "encourage."
 4 That might be a bit understated.
 5 I think, if achievement did not rise, that
 6 states may have to go beyond that to do other
 7 things that we discussed in the last couple of
 8 days.
 9 BY MR. ROSENBAUM:
 10 Q Your son went to the Oak Park schools?
 11 A Yes.
 12 Q Can you tell me what elementary school he
 13 went to?
 14 MS. KOURY: Calls for speculation, beyond
 15 this experts's opinions.
 16 THE WITNESS: You said elementary school?
 17 BY MR. ROSENBAUM:
 18 Q Did he go to elementary, middle, and high
 19 school?
 20 A Yes.
 21 Q All in Oak Park?
 22 A Yes.
 23 Q All public schools?
 24 A Yes.
 25 Q What were the names of the schools?

1 A Oak Park River High School.
 2 I regret I don't remember the name of the
 3 elementary and middle.
 4 Q To your knowledge, were there any rats in
 5 any of his classes?
 6 MS. KOURY: Objection, calls for
 7 speculation.
 8 THE WITNESS: I'm not aware of anything
 9 like that.
 10 BY MR. ROSENBAUM:
 11 Q To your knowledge, did he ever have to
 12 share textbooks in his classroom with another
 13 student or students?
 14 MS. KOURY: Calls for speculation.
 15 THE WITNESS: I'm unaware of anything of
 16 that nature.
 17 BY MR. ROSENBAUM:
 18 Q Did he bring books home from school?
 19 A I don't have a clear memory of that.
 20 Q Did you ever study with him on his school
 21 work?
 22 A Occasionally, we may have talked about it
 23 a little bit.
 24 Q Did you ever visit his school?
 25 A Yes.

1 Q How far did you live from the school?
 2 A Well, his elementary school was about
 3 two-and-a-half blocks away.
 4 Q How about his middle school?
 5 A That was about -- I would say a mile
 6 and-a-half.
 7 Q How about high school?
 8 A Perhaps six blocks.
 9 Q He walked to elementary school sometimes?
 10 MS. KOURY: Objection, this whole line of
 11 questioning is beyond anything relevant.
 12 THE WITNESS: Did he walk to the school?
 13 BY MR. ROSENBAUM:
 14 Q Yes.
 15 A He walked to the elementary and to high
 16 school.
 17 He took a bus or was driven by someone
 18 else to the middle school.
 19 Q Have you ever undertaken any study to
 20 determine why teachers don't remain in schools?
 21 MS. KOURY: Objection, calls for
 22 speculation beyond this expert's opinions.
 23 THE WITNESS: I don't remember any
 24 particular study that focused on that alone.
 25 BY MR. ROSENBAUM:

1 Q I don't know what that means.
 2 My first question: Did you ever undertake
 3 any study; you conducted the study yourself or
 4 developed the study instrument or undertook any
 5 inquiry to determine why teachers remain in schools
 6 or don't remain in schools?
 7 A I don't remember ever having done a study
 8 focused on that.
 9 Q Do you consider yourself an expert as to
 10 the reason why teachers remain or don't remain in
 11 schools?
 12 A I haven't done a specific study.
 13 So I wouldn't cast myself as an expert.
 14 Q Are you familiar with any studies why
 15 teachers remain in schools or don't remain in
 16 schools, K-12 public schools?
 17 MS. KOURY: Objection, overbroad.
 18 THE WITNESS: I may have seen them in my
 19 reading over the years.
 20 BY MR. ROSENBAUM:
 21 Q Can you describe any of them to me, today?
 22 A I don't think I can.
 23 Q I wonder if you wouldn't mind turning to
 24 page 17 of Exhibit 1, your report?
 25 A Okay.

1 Q Directing your attention specifically to
2 the first full paragraph, I'm going to direct you
3 to the sentence where you made a correction.

4 I'm going to read into the correction that
5 you offered to us.

6 Do you see the sentence that says:
7 "When board members concentrate
8 on initiating programs and practices,
9 they may lose their objectivity in
10 evaluating educators' progress in
11 obtaining results."

12 Do you see that?

13 A Yes.

14 Q I'm reading that with your correction
15 included.

16 A It took me a minute to find it.

17 If you want me to say that you read it
18 correctly, read it again.

19 Q "When board members concentrate on
20 initiating programs and practices,
21 they may lose their objectivity in
22 evaluating educator's progress in
23 obtaining results."

24 Do you see that sentence?

25 A Yes.

1 Q Looking, sir, at page 17, again.

2 I'm going to ask you to please look at the
3 bottom of the page, the second-to-last line,
4 actually the third-to-last line.

5 Do you see the sentence that begins:
6 "They may assign"?

7 A Yes.

8 Q They may assign, for example, physical
9 measurements in geometry and essays
10 in history and literature.

11 Do you see that?

12 A Yes.

13 Q What did you mean by "literature"?

14 A I mean literature as broadly as is
15 represented in school, such as English courses,
16 courses in the literature of American, and
17 non-American cultures.

18 I think I had sort of the common sense and
19 ordinary meaning of literature, here.

20 Q I appreciate that.

21 Can you give me some examples, just to
22 fill it out?

23 A Well, if you were teaching American
24 history, you might have students writing an essay
25 about Edgar Allen Poe or Louisa Mauka.

1 Q Can you tell me the basis for that
2 statement?

3 A The basis of that statement is the lack of
4 division of labor between the board and the people
5 operating the schools.

6 When people have difficulty in evaluating
7 themselves objectively, I think it's the
8 responsibility of board members to describe -- to
9 be as objective as they can.

10 So this is undesirable.

11 In addition to that, it's kind of a
12 management principal of something called
13 "micromanagement," authority should be delegated.

14 I think both of those things apply to that
15 statement.

16 That's the basis of it.

17 Q Why is it important to be as objective as
18 they can?

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

21 THE WITNESS: Because I think their
22 ultimate responsibility is to the children.

23 It's important for them to be -- get hard
24 facts about how well the children are achieving.

25 BY MR. ROSENBAUM:

1 Q What about literature?

2 MS. KOURY: Vague.

3 THE WITNESS: I thought you were talking
4 about literature in the last question.

5 BY MR. ROSENBAUM:

6 Q I was, but your answer used history.

7 Your history was, for example American
8 history?

9 A Please continue.

10 Q I was asking about literature.

11 Your question adopted history.

12 That's why I came back with the question
13 about literature.

14 A Did I answer your question about
15 literature?

16 MS. KOURY: Was your answer relating to
17 literature?

18 MR. ROSENBAUM: Read back the witness's
19 last answer.

20 (Record read.)

21 THE WITNESS: I misunderstood.

22 I'll answer the question about the
23 history.

24 BY MR. ROSENBAUM:

25 Q No, about the literature.

1 A I did give the literature answer.
 2 If you ask me about history, I'll be glad
 3 to answer that, too.
 4 Q It's all right.
 5 The case is not going to turn on this
 6 point.
 7 Let's go to page 18.
 8 You used the phrase "local control" on
 9 this page.
 10 You see the last sentence:
 11 "They illustrate the strong
 12 citizen and parent preferences for
 13 higher standards with high-stake
 14 consequences, yet" (and the last
 15 point) "a strong preference for the
 16 American heritage of local control
 17 school operations."
 18 Do you see that sentence; what do you mean
 19 by "local control"?
 20 A I mean that local school boards, chiefly,
 21 but also to some extent, the people who work in the
 22 schools have a preference for making decisions
 23 about how they teach and the curriculum they follow
 24 and other decisions about school operations.
 25 Q Does it mean no State involvement,

1 whatsoever, as you used that phrase?
 2 MS. KOURY: Objection, argumentative.
 3 THE WITNESS: No.
 4 BY MR. ROSENBAUM:
 5 Q Explain to me what you mean with respect
 6 to presence or absence of State involvement,
 7 please.
 8 MS. KOURY: Overbroad.
 9 THE WITNESS: I think State involvement is
 10 a matter of degree.
 11 And it varies from state to state,
 12 according to traditions of that state.
 13 BY MR. ROSENBAUM:
 14 Q Do you know what the traditions, with
 15 respect to that, are in the state of California?
 16 A No.
 17 Q Have you made any inquiry to find out?
 18 A No.
 19 Q Page 18, right before the Caption G, you
 20 see the sentence before it and the last four words
 21 of that sentence: "history, literature, and
 22 science"?
 23 A Yes.
 24 Q What do you mean by "literature"?
 25 A I'm using the conventional term that

1 applies to American literature, world literature,
 2 the literature of various cultures that are studied
 3 in school.
 4 Q The writings of great authors, is that the
 5 conventional meaning?
 6 A Yes.
 7 Q Page 21, please.
 8 No. 3, you can look as much as you would
 9 like.
 10 I'm looking at the second full sentence:
 11 "As documented in the subsequent
 12 sections, plaintiff's experts seem to
 13 think none of what has already been
 14 accomplished, can be accomplished"
 15 Do you see that sentence?
 16 A Yes.
 17 Q Can you tell me what you mean by that
 18 sentence?
 19 A I would go back to the criticisms that I
 20 had mentioned previously.
 21 When you asked me to look at the
 22 reservations in the first 20 pages of the Russell
 23 report, for example, it had reservations about
 24 outcome-based accountability.
 25 Q Will you tell me what has been

1 accomplished; what did you consider as having been
 2 accomplished, that you believed plaintiff's experts
 3 think had not been accomplished?
 4 MS. KOURY: Objection to the extent that
 5 it mischaracterizes the document.
 6 BY MR. ROSENBAUM:
 7 Q Am I mischaracterizing that, sir, certain
 8 things have been accomplished and plaintiff's
 9 experts don't think they have been accomplished; am
 10 I reading that sentence right?
 11 A I think that's the gist of it.
 12 Q What do you think has been accomplished
 13 that plaintiff's experts think hasn't been
 14 accomplished?
 15 A My reading of what they said is, I have
 16 grave reserves about the California K-12
 17 accountability system.
 18 Q Let me direct your attention to
 19 Footnote 9?
 20 A Page 9, I have it.
 21 Q Do you see the cite to Dr. Woessmann?
 22 A Yes.
 23 Q Has this piece been peer reviewed, why
 24 some students in some countries do better?
 25 A I believe it has.

1 Q What's the basis for that answer?
 2 A Because it was customary of The Institutes
 3 to review those things.
 4 And I actually heard him speak about it
 5 one time and heard his peers were doing what he had
 6 done.
 7 Q When you say "The Institute," what do you
 8 mean by that?
 9 A Up above, it says: "The Institute of
 10 World Economics."
 11 Q Okay.
 12 MR. ROSENBAUM: I'm going to mark as
 13 Exhibit 5, a several-page document which bears the
 14 caption "Education."
 15 It's a six-page document and it's titled:
 16 "Is the Race to... The most educated," by Charlie
 17 Euchner.
 18 I'm going to have this marked as Exhibit 5
 19 for this deposition.
 20 (Deposition Exhibit 5,
 21 "Is the Race to... The Most
 22 Educated," by Charlie Euchner, was
 23 marked for identification by the
 24 Court Reporter.)
 25 BY MR. ROSENBAUM:

1 quoted accurately, sorry.
 2 I can imagine that I would have made that
 3 statement.
 4 Q What's the basis?
 5 A I can't say it was an exact quote.
 6 Q What's the basis for your answer that you
 7 have no reason to doubt that you made that
 8 statement?
 9 MS. KOURY: Objection, to the extent it
 10 mischaracterizes his testimony.
 11 THE WITNESS: The question was?
 12 BY MR. ROSENBAUM:
 13 Q I understand you to say you have no reason
 14 to think you didn't say that; is that correct?
 15 A That's correct.
 16 Q Why do you say that?
 17 A Because I think reporters from that
 18 particular newspaper and, particularly -- are
 19 careful in what they do.
 20 And I don't think that something I would
 21 have -- it was unlike my view at the time.
 22 Q All right.
 23 A In order to be complete, I thought of
 24 another reason.
 25 There was a lot of research, actually,

1 Q This is my question.
 2 Look at it as much as you would like.
 3 On the last page, there is a quote that's
 4 attributed to you.
 5 I want to know if you believe, in sum or
 6 substance that quote to be accurate.
 7 The paragraph reads:
 8 "Many experts point out that the
 9 absence of a formal national
 10 curriculum has resulted in less
 11 rigorous textbooks. "Things tend to
 12 be reduced to the lowest common
 13 denominator, because publishers are
 14 competing for several different
 15 school markets," says Mr. Walberg."
 16 I want to focus on the part that's in
 17 quotation marks.
 18 Have you said that, in sum or substance?
 19 A I need to say this is a statement in 1983,
 20 which is 20 years ago.
 21 I have no reason that I was misquoted by
 22 ED WEEK.
 23 Q Misquoted?
 24 A I have -- I'm sorry.
 25 I have no reason to doubt that I was

1 that had been done on that question, at least the
 2 question of -- it's called "dumbing down" of
 3 textbooks.
 4 I was familiar with that research.
 5 That's another reason why I believe that I
 6 said that.
 7 MR. ROSENBAUM: Let's mark, sir, as
 8 Exhibit 6, a five-page document, EDUCATION WEEK the
 9 title of the article is:
 10 "Decentralized or Disintermediate."
 11 It indicates it's by Margaret Wong and
 12 Herbert Walberg.
 13 THE WITNESS: I have the document.
 14 (Deposition Exhibit 6,
 15 "Decentralized or Disintermediate,"
 16 was marked for identification by the
 17 Court Reporter.)
 18 BY MR. ROSENBAUM:
 19 Q Is this, in fact, an article that you
 20 co-authored with Dr. Wong?
 21 A Yes.
 22 Q All right.
 23 A I'm pretty certain I wrote this article.
 24 I assume that it was taken off the
 25 Internet.

1 And it was an accurate copy.
 2 Q You can take as much time as you want for
 3 it.
 4 A I don't think that would be helpful.
 5 It would take a long time to read it.
 6 I'm not sure I could remember the exact
 7 words of the original.
 8 Q Let me ask you to look at page 4, of
 9 what's been marked as Exhibit 6.
 10 And specifically, you can look at it as
 11 much as you would like.
 12 The paragraph I'm interested in is the
 13 second from the bottom:
 14 "For schools that fail to meet
 15 basic standards, externally imposed
 16 best practices could be required.
 17 Successful educators could assist in
 18 suggesting these and evaluating
 19 progress. Schools that fail to make
 20 progress might be reconstituted with
 21 new leaders and staff.
 22 Alternatively, they might be
 23 closed, in which case their students
 24 could get scholarships to attend
 25 nearby public and private schools."

1 Do you see that?
 2 A Yes.
 3 Q Did you and Ms. Wong submit that paragraph
 4 to the publication of EDUCATION WEEK?
 5 A Yes.
 6 Q Is that your view, today?
 7 A I think it has changed, today.
 8 We have more research on accountability
 9 and its positive effect.
 10 I would put less weight on the idea of
 11 imposing best practices.
 12 That one in particular, I would probably
 13 put more weight on the other ones.
 14 Because we have more evidence on that
 15 point now -- on those points, I should say.
 16 Q The remaining points in that paragraph?
 17 A Yes.
 18 Q What did you mean by "best practices"?
 19 A We can go back to my nine factors,
 20 particularly quality of instruction, amount of
 21 time, parental involvement programs.
 22 We've talked about a couple of specifics
 23 in the last couple of days, mastery learning,
 24 direct instruction.
 25 Q You told me, a moment ago, you had put

1 less weight on that; is that right?
 2 A For failing schools, yes.
 3 Q Less weight?
 4 A Less weight -- as a technique for making
 5 them successful schools.
 6 I would put more weight on a more
 7 user-friendly approach of, perhaps, adjusting
 8 ideas.
 9 But also, I would emphasize schools that
 10 fail to make progress.
 11 I'm much more sympathetic these days or,
 12 even more than that, I would endorse more heavily
 13 the idea of reconstitution and closing failing
 14 schools and giving students scholarships to attend
 15 nearby public and private schools.
 16 Q Would you give zero weight to the best
 17 practices, that sentence?
 18 A That would depend on the circumstances and
 19 how badly the school had failed.
 20 And perhaps, doing a study of the school
 21 to find out whether it was a hopeless situation, to
 22 possibly improve things.
 23 It might be in some circumstances, this
 24 might work.
 25 MR. ROSENBAUM: Let's have marked as

1 Exhibit 7, a document that begins with the No. 55
 2 and it goes to page 72, entitled:
 3 "Teaching Methods," Herbert Walberg.
 4 (Deposition Exhibit 7,
 5 "Teaching Methods," was marked for
 6 identification by the Court
 7 Reporter.)
 8 BY MR. ROSENBAUM:
 9 Q Do you recognize this document?
 10 A I'm looking it over.
 11 Do we have the reference to the book?
 12 I want to be helpful.
 13 This looks like something that I probably
 14 wrote, but I can't identify where it came from.
 15 I wrote nearly 400 articles, and some of
 16 them were similar.
 17 Q Why do you say that it looks like
 18 something you wrote?
 19 A Because many -- I believe -- it has my
 20 name on it.
 21 And I can't imagine that you would not
 22 know something like that.
 23 The second reason, these topics look very
 24 familiar to me.
 25 Especially the nonfactors we talked about

1 and some of the other things, looks like me.
 2 Q Let me ask you, sir, page 57, Table 1,
 3 that's your nine factors, is that right?
 4 A Yes.
 5 Q Page 58 of Exhibit 7, do you have that in
 6 front of you?
 7 A Yes.
 8 Q Look at it as much as you would like.
 9 A All right.
 10 Q I'm looking, sir, at the second full
 11 paragraph.
 12 And specifically, "looking at learning
 13 about their children's academic strengths and
 14 weaknesses."
 15 It appears in the middle of the
 16 last full sentence.
 17 Do you see that?
 18 A We're looking at the second full
 19 paragraph?
 20 Q The sentence begins.
 21 A I found that.
 22 Q I take it you supported the programs that
 23 are cited here; is that right?
 24 A I do.
 25 Q You still do?

1 A I do.
 2 Q Why is it important for parents to learn
 3 about their children's academic strengths and
 4 weaknesses?
 5 MS. KOURY: Objection, asked and answered.
 6 BY MR. ROSENBAUM:
 7 Q Give me the gist of your answer.
 8 A Because I think that they can be more
 9 encouraging and more focused on providing the child
 10 with experiences that the child might need.
 11 And generally, being more academically
 12 stimulating parents at home.
 13 Q Now I would ask you, please to turn to
 14 page 6 of Exhibit 7.
 15 Do you have that in front of you?
 16 A I do.
 17 Q I'm directing your attention to the first
 18 full paragraph, do you see the sentence that
 19 begins: "'Systematic reforms' means that the three
 20 components of the curriculum-goals,
 21 textbooks, other teaching materials,
 22 and learning activities, and tests
 23 and other outcome assessments, are
 24 well matched in content and
 25 emphasis."

1 I would like to know the basis for that
 2 statement.
 3 You don't need to repeat what you told me
 4 before with respect to it.
 5 I take it that's still your view, today?
 6 A That's my view of the meaning of that term
 7 in that context, I should say.
 8 This is referring to more what goes on in
 9 the classroom.
 10 This is a chapter on teaching methods.
 11 Before we were talking about State level
 12 and things of that nature.
 13 Q Page 66.
 14 A Okay.
 15 Q All right.
 16 A I have it.
 17 Q You see in the first full paragraph, the
 18 phrase "peer tutors"?
 19 A Yes.
 20 Q What is that?
 21 A Peer tutoring, referring to the process of
 22 students tutoring one another.
 23 Q You advocate that?
 24 A Sometimes it's a student that equals in
 25 achievement or ability.

1 And sometimes it may be a student that
 2 might be older or might know the material better or
 3 has studied that and imparts ideas and skills to
 4 other students.
 5 Q You support peer tutoring?
 6 MS. KOURY: Objection, overbroad.
 7 THE WITNESS: As with many of these
 8 things, I'm trying to make a list of what I
 9 consider to be effective practices.
 10 But they always have to be considered in
 11 context.
 12 And if the teacher is not particularly
 13 skilled at it or if the students may not be
 14 enthusiastic -- there are a lot of circumstances.
 15 The point I'm trying to make, if they have
 16 a track record of being effective, I wouldn't urge
 17 one or another on a school district or a teacher or
 18 principal or State.
 19 BY MR. ROSENBAUM:
 20 Q Look at page 69.
 21 A I have it.
 22 Q In the second full paragraph, do you see
 23 in the last sentence, the name Valerie Lee,
 24 Footnote 5?
 25 A I see a reference to her in the footnote.

1 Q Who is Valerie Lee?
 2 A Valerie Lee is a professor of education
 3 and, possibly, sociology.
 4 Q Do you regard her as an expert?
 5 MS. KOURY: Overbroad.
 6 THE WITNESS: I think she's an expert in
 7 certain matters.
 8 And the matters that she's done some of
 9 the best work in the United States is Catholic
 10 schools.
 11 I'm less familiar with her other work.
 12 And I can't make a general statement about
 13 other things.
 14 MR. ROSENBAUM: Off the record.
 15 MR. ROSENBAUM: Let's mark as Exhibit 8, a
 16 one-page document, EDUCATION WEEK is the
 17 publication.
 18 The title is: "Panel Issues, Manifesto
 19 and Reform."
 20 (Deposition Exhibit 8,
 21 "Panel Issues, Manifesto and Reform," was
 22 marked for identification by the
 23 Court Reporter.)
 24 THE WITNESS: I have it.
 25 BY MR. ROSENBAUM:

1 It was somewhat judgmental, perhaps
 2 "manifesto" was a better term.
 3 Q Did that statement appear in the report?
 4 A I don't know.
 5 It was written nearly 20 years ago.
 6 Q Did you agree with that statement?
 7 MS. KOURY: Objection, vague.
 8 THE WITNESS: I would like to actually
 9 look at the document that Bronfenbrenner read for
 10 context.
 11 As it stands there, it seems to be
 12 reasonable to me.
 13 BY MR. ROSENBAUM:
 14 Q Has your methodology, to your knowledge,
 15 ever been criticized in a peer-review piece of
 16 scholarship?
 17 MS. KOURY: Overbroad.
 18 THE WITNESS: A lot of my writings,
 19 especially in the first 35 years, were in
 20 peer-review journals.
 21 Often, you get criticism in nearly
 22 everything you ever write in a peer-review journal,
 23 yes, it has.
 24 There may be other instances, which I
 25 can't bring to mind, where it's been -- in my

1 Q You have what's been marked as Exhibit 8,
 2 in front of you?
 3 A Yes.
 4 Q Were you involved in bringing together a
 5 group of approximately 27 educators, policy makers
 6 and scholars in the fall of 1984, at or about that
 7 time?
 8 A I was involved in this.
 9 Q What was the nature of your involvement?
 10 A I was one of two people who headed the
 11 deliberations.
 12 Q The other individual was Edward A. Wynne?
 13 A That's correct.
 14 Q There is a quote, "Urie," the first name;
 15 is that a man or a woman?
 16 A Man.
 17 Q His last name Bronfenbrenner.
 18 Do you see that?
 19 A Yes.
 20 Q Will you read that quote to yourself?
 21 A Yes.
 22 Q Would you characterize what the group
 23 issued as a manifesto?
 24 A I think that is a reasonable title.
 25 But it also could be called a "report."

1 field, in psychology and education, there are
 2 review articles.
 3 A review article might cite research that
 4 was done ten or so years ago.
 5 Or for some other reason, somebody might
 6 write a letter to the editor or something of this
 7 nature.
 8 So it's perfectly possible -- there has
 9 been that kind of criticism as well.
 10 BY MR. ROSENBAUM:
 11 Q Are you aware of any review articles that
 12 have criticized your methodology?
 13 MS. KOURY: Objection, asked and answered.
 14 THE WITNESS: I can now think of one, in
 15 particular.
 16 BY MR. ROSENBAUM:
 17 Q Which one is that?
 18 A That was in "The Review of Educational
 19 Research."
 20 Q Who authored that?
 21 A Geneva Harertel, Margaret Wong, and
 22 myself.
 23 Q What was the nature of the criticism?
 24 A It was considered to be one of the longest
 25 and most comprehensive synthesis that had been done

1 in the field of education.
 2 The editor asked to have it criticized by
 3 a number of scholars with different points of
 4 views.
 5 And we were given an opportunity to
 6 respond to it.
 7 Q Do you know when that appeared?
 8 A I don't know the date.
 9 Q I don't mean a day.
 10 A I don't know the date.
 11 Q Was it in the 1980s, '90s, after 2000?
 12 A I think it was, perhaps, in the late '80s
 13 or early '90s.
 14 MR. ROSENBAUM: I'll represent to you, I'm
 15 between 99 and 100 percent done.
 16 I need a couple of minutes.
 17 (Recess taken.)
 18 MR. ROSENBAUM: I'm done.
 19 I very much appreciate your patience.
 20 I know depositions are no fun, no matter
 21 how many times you've been deposed.
 22 I appreciate your courtesy and patience.
 23 THE WITNESS: I deeply admire the
 24 examination you did and your courtesy and how I
 25 felt.

1 And being nice about being able to take
 2 breaks and things of that nature.
 3 I'm grateful to you as well.
 4
 5 EXAMINATION
 6 BY MR. HAJELA:
 7 Q I have a few questions.
 8 My name is Abe Hajela, California School
 9 Board Association.
 10 We're intervenors in this action.
 11 I have a few questions.
 12 You know the Rules?
 13 A Yes.
 14 Q With regard to California, you mentioned
 15 in your report: "Likelihood of deep spending cuts
 16 due to the budget crisis in California"; is that
 17 correct?
 18 A Yes.
 19 I think I made an allusion to that point.
 20 Q Are you concerned these deep spending cuts
 21 will have a negative impact on public education in
 22 California?
 23 MS. KOURY: Calls for speculation.
 24 THE WITNESS: I think if there were
 25 radical budget cuts, it would affect the quality of

1 education in California.
 2 And it would likely depress educational
 3 achievement.
 4 I would be concerned as a citizen of the
 5 United States, about a state not doing well.
 6 BY MR. HAJELA:
 7 Q Why would radical spending cuts affect
 8 achievement?
 9 MS. KOURY: Calls for speculation.
 10 THE WITNESS: I could imagine specific
 11 instances.
 12 If there were no money at all for
 13 education, as one example.
 14 I don't know that that would happen.
 15 But if you didn't have any money, then the
 16 children wouldn't be able to go to school.
 17 It would be unlikely they would learn very
 18 much.
 19 BY MR. HAJELA:
 20 Q I don't want to mischaracterize your
 21 answer.
 22 So at some level, will you agree that
 23 funding is linked to student achievement?
 24 MS. KOURY: Objection, mischaracterizes
 25 his testimony.

1 Calls for speculation.
 2 THE WITNESS: That's an extremely
 3 contentious question.
 4 I think the authorities on that subject
 5 are Hocksby and Hanushek, that we talked about, and
 6 also Wilson (phonetic), as I mentioned in my
 7 report.
 8 In my view, the very best studies and
 9 synthesis indicated an inconsistent relationship
 10 between the two.
 11 On the other hand, I believe if you cut
 12 the money to zero, it would have an extraordinary
 13 effect.
 14 I also believe that if they were spent on
 15 the right things, it could have an extraordinarily
 16 constructive effect.
 17 I guess the conclusion, it's not the
 18 amount of money, it's how that money is used for
 19 effective programs.
 20 BY MR. HAJELA:
 21 Q If you cut it to zero, it will have a
 22 negative impact.
 23 If you cut it in half, would it have a
 24 negative impact on student achievement?
 25 MS. KOURY: Calls for speculation.

1 THE WITNESS: I wouldn't name numbers on
 2 those, because I haven't studied it sufficiently.
 3 BY MR. HAJELA:
 4 Q Turn to page 15 of your report.
 5 A I have it.
 6 Q Near the middle, you talk about four
 7 factors that consistently promote learning.
 8 Do you see those?
 9 A Yes.
 10 Q And I'll get to those factors in a second.
 11 After Factor No. 4, you have a sentence
 12 that includes a statement:
 13 "These factors are being
 14 successfully implemented in
 15 California."
 16 Do you see that?
 17 A Yes.
 18 Q Turn to Factors No. 2:
 19 "School autonomy over personnel and
 20 operations."
 21 How are those factors being successfully
 22 implemented in California?
 23 A My understanding is that the California
 24 system is highly outcome-based.
 25 And therefore, giving less weight to how

1 districts and schools operate.
 2 So there is a -- like, in other states
 3 around the country, there is a shift from minute
 4 regulation of operations, to great emphasis on
 5 outcomes.
 6 I believe that is happening in California.
 7 Q So is it your testimony that more
 8 attention on outcomes results in more school
 9 autonomy over personnel and operations?
 10 MS. KOURY: Objection, to the extent it
 11 mischaracterizes his testimony.
 12 THE WITNESS: I think that people can do
 13 so many things.
 14 If they try to do too many things, they
 15 can't do it well.
 16 So it's what economists may call
 17 "opportunity costs."
 18 You spend your energy and money on one
 19 thing, you take it away from other things.
 20 To the extent to which the board, State
 21 Board and other state officials with advice --
 22 consultation, as they have done, have taken a lot
 23 of care -- as much care in trying to improve
 24 things.
 25 With respect to outcomes, it can lead to

1 more decisions in the local level.
 2 BY MR. HAJELA:
 3 Q Do you have an opinion, or are you aware
 4 of when California, I'm talking about a year,
 5 adopted its outcome-based accountability system?
 6 A I'm not certain about the dates.
 7 Q Do you have an opinion whether school
 8 autonomy over personnel and operations has
 9 increased or decreased since that accountability
 10 system has been adopted?
 11 A I haven't made a specific observation or
 12 study of that.
 13 So I don't know for sure.
 14 Q How about if I asked you the same question
 15 about teacher discretion over teaching methods?
 16 A I would say only, in a general sense,
 17 that -- the State placing a greater emphasis on the
 18 outcome is likely to give local educators more
 19 discretion over teaching methods.
 20 Q But just to be clear, do you know whether
 21 teacher discretion over teaching methods has
 22 increased or decreased since the accountability
 23 system has been adopted?
 24 A In California?
 25 Q Yes.

1 A No.
 2 Q On page 26, looking at No. 5:
 3 "Violation of educators, professional
 4 discretion."
 5 This is in reference, I believe, to
 6 Dr. Russell's report; is that correct?
 7 For the record, this is a section on
 8 overall flaws in plaintiff's expert reports.
 9 Does the current system of public
 10 education in California, encourage educators'
 11 professional discretion?
 12 MS. KOURY: Objection, vague.
 13 THE WITNESS: I think there is a measure
 14 of discretion that may vary from school to school
 15 and district to district.
 16 I think it also can be changing over time.
 17 And I think the present legislation is
 18 likely to give more discretion at the local level.
 19 BY MR. HAJELA:
 20 Q Can you give me an example of how that is?
 21 A I'm the State Board and I say to district
 22 board:
 23 We're very interested in how well
 24 the students in your school are
 25 doing. But as time goes on, we're

1 going to give you more and more
2 discretion for the way you do things.
3 Over time, if you're doing well,
4 we're not going to be sanctioning you
5 or something of that nature. But if
6 you're doing poorly, we're going to
7 be prescribing things that you have
8 to do, providing technical services
9 and things of that nature.
10 It might become a more mandatory or
11 chartering a school or closing a school, allowing
12 students to go to other schools.
13 That gives an incentive for educators to
14 do the best they can, not to be bureaucratic, and
15 follow a set of rules.
16 But to rather use their best judgment
17 about the most effective practices and their
18 knowledge of the local children in the district to
19 come up with the best solutions.
20 Q My question probably wasn't clear.
21 I wasn't interested in a hypothetical
22 example, but an actual example in California.
23 A I can't give you an example.
24 Q How about No. 6:
25 "Undermining Superintendents and

1 Principals."
2 Does the current system of public
3 education in California give principals and
4 superintendents sufficient autonomy to remove
5 inefficient teachers?
6 A I think the basis of my statement here is
7 this is a national phenomenon and I refer to a
8 national survey.
9 It probably -- undoubtedly, it doesn't
10 exclude, but it was a national sample, but it's
11 specifically California.
12 Q Let me ask it differently.
13 Do you know, for California, whether the
14 current system gives principals and superintendents
15 sufficient autonomy to remove inefficient teachers?
16 MR. ROSENBAUM: Objection, does he have an
17 opinion?
18 MR. HAJELA: Yes.
19 THE WITNESS: Only by inference from
20 national surveys, but not specifically to
21 California.
22 BY MR. HAJELA:
23 Q Do you have any examples in mind, of
24 plaintiff's experts' opinions that would undermine
25 that autonomy of principals and superintendents?

1 A I think I cited something in the report
2 that occurred to me as examples, what you asked me
3 about.
4 Q That is the top of page 27?
5 I'm not clear where that is.
6 A I guess I need to look for it.
7 I don't think it's in this particular
8 area.
9 We're talking about autonomy -- maybe I
10 should have the question again.
11 Q I'm talking about autonomy to remove
12 inefficient teachers.
13 Maybe I want to say "ineffective."
14 I'm using your phrase here, at the bottom
15 of page 26: "Autonomy to remove ineffective
16 teachers."
17 A If it's California alone, I don't have any
18 evidence.
19 MS. KOURY: The question was about --
20 THE WITNESS: We're talking about national
21 studies.
22 One is cited somewhere in my report.
23 I could find it if you would like me to do
24 that.
25 MR. HAJELA: I don't have any other

1 questions.
2
3 EXAMINATION (CONTINUED)
4 BY MR. ROSENBAUM:
5 Q Have you undertaken any inquiry regarding
6 the policy practices, statutes, or regulations in
7 California that govern the removal of teachers?
8 A No.
9 Q Or removal of principals?
10 A No.
11 Q Or any other school personnel?
12 A No.
13 MR. ROSENBAUM: I don't have anything
14 further.
15 May we stipulate that copies of documents
16 attached to the deposition maybe used as originals.
17 And may we stipulate that the original of
18 this deposition be signed under penalty of perjury.
19 That the original be delivered to the
20 office of O'Melveny & Myers.
21 That the Court reporter is relieved of
22 liability for the original of the deposition.
23 That the witness will have 45 days from
24 the date of the Court reporter's transmittal letter
25 to O'Melveny & Myers, for the witness to sign and

1 correct the deposition.
 2 That the witness will notify all parties
 3 in writing, of any changes to the deposition.
 4 And that if such changes or the signature
 5 are not communicated within that time, any unsigned
 6 and uncorrected copy may be used for all purposes
 7 as if signed and corrected.
 8 MS. KOURY: So stipulated.
 9 MR. HAJELA: So stipulated.
 10
 11 (TIME NOTED: 2:25 P.M.)
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1
 2
 3 I, the undersigned, a Certified
 4 Shorthand Reporter, do hereby certify:
 5 That the foregoing proceedings were
 6 taken before me at the time and place herein set
 7 forth; that any witness in the foregoing
 8 proceedings, prior to testifying, were placed under
 9 oath; that a verbatim record of the proceedings was
 10 made by me using machine shorthand which was
 11 thereafter transcribed under my direction; further,
 12 that the foregoing is an accurate transcription
 13 thereof.
 14 I further certify that I am neither
 15 financially interested in the action nor a relative
 16 or employee of any attorney of any of the parties.
 17 IN WITNESS WHEREOF, I have this
 18 date subscribed by name.
 19
 20 Dated: July 19, 2003
 21
 22
 23 _____
 24 DAVID OCANAS
 25 CSR No. 12567

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 4
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 6
 7
 8
 9 I, HERBERT WALBERG, do hereby
 10 declare under penalty of perjury that I have read
 11 the foregoing transcript; that I have made such
 12 corrections as noted herein, in ink, initialed by
 13 me, or attached hereto; that my testimony as
 14 contained herein, as corrected, is true and
 15 correct.
 16 Executed this ____ day of _____,
 17 2003, at _____,
 18 (City) (State).
 19
 20
 21
 22 _____
 23 HERBERT WALBERG
 24 Volume III
 25