

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 KRISTIN M. PERRY, et al.,)
4 Plaintiffs,)
5 v.) No. 09-CV-2292 VRW
6 ARNOLD SCHWARZENEGGER, in)
7 his official capacity as)
8 Governor of California,)
9 et al.,)
10 Defendants.)
11
12 Washington, D.C.
13 Tuesday, November 3, 2009
14 Deposition of DAVID GEORGE BLANKENHORN III, called
15 for examination by counsel for Plaintiffs in the
16 above-entitled matter, the witness being duly sworn
17 by CHERYL A. LORD, a Notary Public in and for the
18 District of Columbia, taken at the offices of COOPER
19 & KIRK PLLC, 1523 New Hampshire Avenue N.W.,
20 Washington, D.C., at 9:41 a.m., and the proceedings
21 being taken down by Stenotype by CHERYL A. LORD, RPR,
22 CRR.

1 APPEARANCES:

2

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10

11 ALSO PRESENT:

12 Mia Marbury, videographer

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1 resistance and kind of a very -- very dramatic
2 rejectionist approach to the requirement of -- to the
3 issue of desegregation.

4 And for example, when the schools were
5 required to be closed for a number of weeks in
6 January of 1971, about 50 percent of all the white
7 students in the system left immediately to attend
8 private segregated schools. And the posture of the
9 white rule (phonetic) elites of the city was one of
10 complete and total resistance to desegregation in
11 every way they could muster.

12 And the conclusion I reached in my study
13 was that that was a very harmful -- reaction harmful
14 to society, harmful to African American people,
15 harmful to the best interest of the state and of the
16 country, and harmful to the possibility of racial
17 reconciliation in the South.

18 Q. During your undergraduate time at Harvard,
19 did you take course work in anthropology?

20 A. No.

21 Q. Did you take course work in psychology?

22 A. I don't think so.

1 Q. Did you take course work in history?

2 A. Yes.

3 Q. Do you recall specific aspects of history
4 on which you had course work as an undergraduate?

5 A. I was primarily interested in the subject
6 of labor history.

7 Q. What is labor history?

8 A. It's the history of working people and
9 their institutions.

10 Q. Did you take any undergraduate course work
11 in sociology?

12 A. Well, yes.

13 Q. Do you recall on what subjects?

14 A. Well, there was -- I recall for example a
15 course in social theory. I recall a course in --
16 taught by Professor David Riesman on the -- I think
17 it was called the American character, I think, and
18 anyway, Professor Riesman's a very prominent
19 sociologist, sociology Professor at Harvard who
20 became kind of a mentor of mine, so those would be my
21 recollections off the top.

22 Q. Okay. Did you have any undergraduate

1 course work on the subject of marriage?

2 A. Well, in the history -- in the history
3 course, I studied -- my focus was more on labor
4 history, but there were some foci in that -- in that
5 study on marriage in the South, but there was no
6 course specifically or entirely devoted to the topic
7 of marriage.

8 It was more just one component of -- of --
9 of historical work, one of -- one of many aspects of
10 society that would be studied in the course.

11 Q. Okay. And that component specifically
12 concerned marriage in the south of the United
13 States?

14 A. Well, I was mostly interested in labor
15 history as I mentioned, but I also had a special
16 interest in southern labor history, so that was the
17 focus of my work more -- most -- even more
18 specifically than labor history generally was,
19 southern labor history, the history of slavery, the
20 history of -- the history of working people and their
21 insti- -- and institutions affecting them in the
22 South.

1 Q. Was one of the things that you studied the
2 division of labor within married families?

3 A. It's a topic that came up, but it's not a
4 topic that I studied intensely or specifically as a
5 major area of study.

6 Q. Did you have any undergraduate course work
7 on child welfare?

8 A. I don't think I took a course with that
9 term in the title. I'm not sure, but I don't think
10 so.

11 I took some courses involving the issue of
12 welfare, public assistance, and so forth, and issues
13 of child well-being were fairly prominent in some of
14 those studies.

15 Q. Did you have any undergraduate course work
16 that addressed sexual orientation?

17 A. No.

18 Q. Okay. You then received a master's in
19 comparative social history from the University of
20 Warwick, in Coventry, England.

21 Correct?

22 A. Yes.

1 Q. What is comparative social history?

2 A. It's comparing the social history of 2 or
3 more societies.

4 Q. Was that a master's program in which you
5 attended classes with other people, or was it more of
6 a tutorial study, or something different?

7 A. There were I think 11 or 12 of us in the
8 program. We met once or twice a week to discuss our
9 readings, and then I worked with my tutor on my
10 thesis.

11 Q. Okay. And your thesis was called,
12 cabinetmakers in Victorian Britain, a study of 2
13 trade unions.

14 A. Yes.

15 Q. And can you describe just briefly what
16 your ultimate conclusions or opinions were in that
17 thesis?

18 A. It was a study of 2 British trade unions
19 in the 19th century, one trade union of cabinetmakers
20 that catered primarily to the more highly trained and
21 highly paid cabinetmakers that were paid in a certain
22 way and treated a certain way, achieved a certain

1 social standing as a result of their position.

2 And then the more broadly based industrial
3 workers. They were -- they did not -- had not gone
4 through the same apprenticeship programs. They
5 received lower pay and less status, less protection
6 generally speaking.

7 And it was a comparison of those 2 trade
8 unions. And I was interested really in the emergence
9 of the British labor party and the emergence of
10 socialism as a -- as a political ideal that was
11 important to a lot of working class people in
12 Britain.

13 And I was interested in the comparative
14 contributions of those 2 trade unions in -- in
15 shaping the emergence of the British labor party and
16 shaping the kind of history of British working
17 people.

18 Q. Okay. Did you conduct any study of
19 anthropology in the course of your master's program?

20 A. No.

21 Q. Did you conduct any study of psychology in
22 the course of your master's program?

1 A. No.

2 This was history. This was a history
3 program. This was a study of comparative social
4 history. That was the rubric.

5 Q. Okay. All right.

6 Have you received any other education
7 post-high school other than your college degree and
8 your master's?

9 A. No.

10 Q. You don't hold a Ph.D.?

11 A. No.

12 Q. Now, you're the founder and president of
13 the Institute for American Values.

14 Correct?

15 A. Yes.

16 Q. When did you found the Institute for
17 American Values?

18 A. Incorporated in 1987.

19 Q. Why did you found the Institute for
20 American Values?

21 A. I was -- I had been a -- I had been a
22 VISTA volunteer and a community organizer, and I was

1 And they were not -- they were not typically paid by
2 us but would voluntarily participate in our
3 activities. Sometimes they were reimbursed for their
4 expenses or sometimes they were paid honorary for
5 papers.

6 But the idea was to bring together a
7 diversity of scholars from across the human sciences
8 to focus on issues of family and child well-being,
9 and that's what we did.

10 Q. When you say to participate in your
11 programs, what are the programs in which the
12 Institute for American Values engages?

13 A. Currently?

14 Q. Let's take currently.

15 A. We have 3 program areas.

16 The first is called marriage and families.
17 And it looks at issues of -- of marriage and family
18 life.

19 And then the second area is called thrift
20 and generosity, and it looks at areas of how we as a
21 society think about the use of our resources and
22 particularly money.

1 And then the third area is called east
2 jihad reason, and that is a dialogue project bringing
3 together U.S. scholars of civil society with their
4 Arab and Muslim counterparts from the Middle East and
5 north Africa for a process of dialogue and exchange
6 in an effort to clarify disagreements and identify
7 areas of agreement on issues of civil society.

8 Q. Are you personally involved in each of the
9 3 program areas?

10 A. Yes.

11 Q. Has the marriage and family program area
12 existed from the time of the founding of the
13 Institute for American Values?

14 A. Yes.

15 Q. When was the thrift and generosity program
16 initiated?

17 A. Well, we began work in the topic I think
18 about 4 years ago, approximately 4 years ago. And --
19 and I think that's the answer. I think that's the
20 answer.

21 We -- the reason I'm hesitating is because
22 we actually gave it a name, center for thrift and

1 generosity, fairly recently, about 6 or 8 months ago,
2 but our work in the topic began about 4 years ago.

3 Q. And when did you work on the topic of the
4 east jihad -- east jihad reason?

5 A. That began in 2002.

6 Q. And are there other program areas that
7 have existed previously but no longer?

8 A. For a while, we had an area that we tended
9 to call civil society, and that's no longer a rubric
10 that we organize our program under, but there was a
11 period of several years in which we did.

12 Q. And let's take the marriage and family
13 program area.

14 What sorts of initiatives or activities
15 does the Institute for American Values engage in
16 within that program area?

17 A. Currently?

18 Q. Let's take currently, sure.

19 But let me clarify.

20 I'm sorry.

21 A. There's about 14 projects. I can go
22 through them all if you wish or --

1 Q. What I'm most interested to start is a
2 more general description of types of projects rather
3 than specific.

4 A. Well, we're interested in looking at the
5 status and future of marriage as a social
6 institution.

7 Q. Do you conduct seminars?

8 A. By, seminars, do you mean -- what do you
9 mean by, seminars?

10 Q. Presentations where scholars will speak to
11 and teach people who will choose to attend.

12 A. Yes, we've done that.

13 Q. Okay. Do you sponsor writings?

14 A. Yes.

15 Q. Do you pay scholars who are not employed
16 by the Institute for American Values to conduct
17 research on particular issues?

18 A. Yes.

19 Q. Are there others of general categories of
20 actions along those lines that you engage in that I
21 haven't mentioned?

22 A. We issue what we call reports. That would

1 book, excluding the advance, the advance was I think
2 40,000 dollars, and then the book did sell enough to
3 recoup that and to start giving me royalties, and I
4 think the total royalties and fees for reprints and
5 whatnot have added up to about approximately a
6 hundred thousand dollars since the book was published
7 in 1995.

8 Q. Okay.

9 A. That's an estimate, but I think it's a
10 reasonably accurate one.

11 Q. Okay. Your CV then lists a -- lists the
12 books that you've authored or edited.

13 Is this a true and complete list of all
14 books of which you're the author or editor?

15 A. Yes, I believe it is.

16 Q. Okay. In paragraph 4 of your report -- if
17 you move off the CV for one moment -- paragraph 4 of
18 your report talking about the Future of Marriage --

19 A. M-hm.

20 Q. -- says that you drew on your continuing
21 anthropological history and cultural study of the
22 institution of marriage.

1 Do you see that?

2 A. Yes.

3 Q. What is your continuing anthropological,
4 historical, and cultural study of the institution of
5 marriage?

6 A. Reading and reflecting on the texts in the
7 field.

8 Q. Anything else?

9 A. Discussions with other scholars.

10 Q. Anything else?

11 A. I think reading and reflecting on the
12 texts and conversing with other scholars broadly
13 defined in seminars and in informal ways as well, I
14 think that would constitute the majority of what I
15 mean when I say, continuing study.

16 Q. Okay. Have you ever published work in a
17 peer-reviewed journal?

18 A. I don't believe so.

19 Q. Do you have a basic understanding of what
20 the term peer-reviewed journal means?

21 A. Yes.

22 Q. What does that mean as you use that

1 phrase?

2 Let me ask it a better way.

3 When you say you don't believe you've ever
4 published work in a peer-reviewed journal, how are
5 you defining a peer-reviewed journal?

6 A. Well, in the academic world, the -- it's a
7 common practice for journals -- to -- prior to
8 publication of an article, they would circulate that
9 article to a group of scholars whose judgments they
10 would view as trustworthy and valuable. And they
11 would seek -- the editor would seek to get the
12 comments of those scholars on the article.

13 And then they may or may not ask the
14 author to revise the article based on those comments.
15 And then they would decide whether or not to publish
16 the article as possibly revised based on the comments
17 of the peer review.

18 That's my understanding.

19 Q. Okay. And you've never had your work
20 published in a journal that follows that procedure?

21 A. Well, we at the Institute for American
22 Values follow that procedure for all of our work, but

1 I -- I don't think that's what you're asking me.

2 Q. Right.

3 A. I think perhaps you're asking me, have I
4 published -- had published an article in a mag- -- in
5 a journal that is not affiliated with the Institute
6 for American Values that has this process of peer
7 review.

8 And the hon- -- I don't -- it's possible
9 that I have, but I don't think I have, and I cannot
10 now recall an instance that I have, although it's --
11 I don't think I have.

12 Q. Okay. And was it your testimony --

13 A. Primarily, most of my things get published
14 by our organization.

15 Q. Right.

16 A. We have a peer-review process in place
17 that I think is really -- you know, meets that
18 function, but I think you're asking me a different
19 question.

20 Q. Well, when you say that the Institute for
21 American Values has a process in place that meets
22 that function, do you mean to say that you follow

1 what you understand to be the procedures of peer
2 review as adhered to by journals that would generally
3 be acknowledged in academia as peer-reviewed
4 journals?

5 A. Yes.

6 Q. And can you describe it in more detail
7 what that process is?

8 A. Well, yes.

9 Q. Okay. Please do.

10 A. The most recent example would be a journal
11 that we're -- will be published -- the issue will be
12 published next month. And the editor is -- a member
13 of our institute team commissioned the articles from
14 scholars, and then drafts of those articles were
15 shown to other scholars in the field that he had
16 identified as competent people whose opinions would
17 be valuable, and they offered comments on those
18 articles.

19 And then those articles were -- those
20 comments were a part of the revision of those
21 articles prior to publication. And that is what I
22 understand to be the process of peer review, and

1 that's what we did.

2 And we commonly do that with -- with our
3 publications. We have that process. We identify
4 other scholars whose opinions we value.

5 I -- I have been asked to review articles
6 by journals, which I've done, so --

7 Q. Is all of your own writing subjected to
8 that process that you're describing?

9 A. Well, with trade books such as the case
10 with Fatherless America or the Future of Marriage,
11 the trade industry does not typically require or
12 expect that process to happen, although in each case,
13 with my writings, I on my own did undertake that
14 process.

15 For example, with -- well, I did -- I
16 asked other scholars to review the manuscript in
17 draft form, and I took their comments into account as
18 I did my revisions, but that was not a required
19 part -- that was not required by the publisher. In
20 the trade book world, that is not typically a
21 requirement established by the publisher.

22 Q. What do you mean by, a trade book?

1 A. I mean that it -- it's just a term -- it's
2 a term that -- it -- the books are -- are -- it's a
3 book that's -- that's not -- the boundaries are
4 getting blurrier and blurrier, but commonly, if you
5 would say an academic book, you would mean a book
6 that's published by University Press, and they
7 commonly have a very -- they would require such a
8 process.

9 And I've worked with them and actually --
10 pretty sure I've had chapters of books published in
11 that way -- pretty sure I have.

12 Trade publishers are intended for a
13 somewhat broader audience, and they tend to be a
14 little bit less -- what's the right word? -- they
15 tend to -- I think they're intended for a -- more of
16 a bookstore audience that's a little broader, so --

17 MR. THOMPSON: Chris, we've been going
18 about an hour and -- I don't know -- 8 or 10 minutes.

19 Would it be okay if we took a short break?

20 MR. DUSSEAULT: Absolutely. Sure.

21 THE VIDEOGRAPHER: Here marks the end of
22 videotape number 1, the tape of the deposition of

1 Did the report conclude that it was
2 important for children not only that there be 2
3 married parents but that those people be the ones who
4 actually created the child?

5 A. I can't recall if that report at that time
6 made -- established that level of detailed language.
7 I don't -- I know my own thoughts about it, but I
8 don't know that that report used those words.

9 Q. Okay. Let's -- let's turn our focus --

10 A. It may have. I just don't recall whether
11 it did or it didn't.

12 Q. Okay. Thank you.

13 Let's turn the focus a bit to this case in
14 particular.

15 You've been retained by counsel for the
16 defendant intervenors to offer expert opinions in
17 this case.

18 Correct?

19 A. Yes.

20 Q. What study if any have you made of the
21 plaintiffs' allegations in this case?

22 A. What study have I made of the plaintiffs'

1 allegations?

2 Well, I've -- I reviewed the expert
3 testimony of Nancy Cott. And I have as a matter of
4 my work for a number of years now, I've tried to
5 follow these issues as best I can.

6 I think that's -- that's the answer.

7 Q. Okay. Have you reviewed the -- let me ask
8 a foundational question.

9 Do you know what a complaint is?

10 A. I'm not a lawyer. I'm not familiar with
11 legal terms.

12 Q. Okay. If I represent to you that a
13 complaint is a document that plaintiffs file that
14 states their basic allegations about the case, that
15 generally it's what starts the case, have you to the
16 best of your knowledge reviewed the complaint file by
17 plaintiffs in this action?

18 A. I have not.

19 Q. Have you reviewed any briefs filed by
20 parties and submitted to the court in this case?

21 A. I mentioned Nancy Cott's testimony.
22 That's all to the best of my knowledge.

1 Q. Okay.

2 A. I've read a lot of the court cases, but I
3 think you're asking a different question. I think
4 you're asking this specific case --

5 Q. Right.

6 A. -- documents related to this specific
7 case.

8 And the answer is that other than having
9 reviewed the Cott testimony and -- I have not read
10 additional documents that I recall, any additional
11 documents.

12 Q. Do you have a basic understanding of what
13 this case is about?

14 A. I think I do.

15 Q. Okay. What is that understanding?

16 MR. THOMPSON: And I'll object to the
17 extent it calls for a legal conclusion.

18 But go ahead.

19 A. My understanding is that the Proposition 8
20 initiative in California was passed and that that
21 established that -- I guess you could say it
22 established or reestablished the man-woman customary

1 definition of marriage.

2 And my further understanding is that the
3 plaintiffs in this case are seeking to have that --
4 have that -- have that law replaced by a different
5 understanding, and that they're seeking to object to
6 the -- the -- the law as it was established by the
7 proposition -- by the Prop 8 initiative and that they
8 are alleging that their rights are violated by this
9 law, and they're seeking to have it overturned in the
10 courts.

11 And that's my general understanding.

12 BY MR. DUSSEAULT:

13 Q. Okay. Now, you referred to Proposition 8.

14 I've reviewed your report, and I didn't
15 see any reference in your report to Proposition 8 by
16 name; is that correct?

17 A. That's correct.

18 Q. Why did you choose in your report not to
19 specifically address Proposition 8?

20 A. Because I don't -- I wanted in the report
21 to state what I felt to be the foundational issues as
22 I saw them and as best I was able to understand them.

1 And so I chose to speak about the cross-cultural
2 meaning of marriage as a -- as a social institution,
3 and the purposes of marriage as a social institution
4 and the trends currently in society toward what in
5 the report are termed deinstitutionalization and what
6 some of the likely consequences of
7 deinstitutionalization could be.

8 And that is the area of this topic in
9 which I thought the most about and I feel like I have
10 the most to say.

11 I don't -- my views about political
12 matters or legislative struggles in various states,
13 although it's something that I try to understand, I
14 sought in the document to really say what based on my
15 knowledge I thought was the most important thing to
16 say about this.

17 So that's what I did.

18 Q. Did you make any specific study of the
19 campaign to pass Proposition 8?

20 A. No.

21 Q. Did you make any study of the motivation
22 of the actual voters who passed Prop 8?

1 A. If by, study, you mean a scholarly study,
2 the answer would be no.

3 Q. Okay.

4 A. In the course of my work, I talked with
5 people on both sides of that case and sought out
6 their views and opinions in conversation, but I
7 didn't make a scholarly investigation.

8 Q. I think you testified earlier that you
9 have been retained by counsel for the defendant
10 intervenors, who I'll represent are the official
11 proponents of Proposition 8.

12 In preparing your report, have you
13 interviewed any of the official proponents of
14 Proposition 8?

15 A. Well, as I mentioned, I've spoken to these
16 proponents over the -- over time in my capacity as a
17 person who is active in the public discussion of this
18 issue, but I did not specifically establish a format
19 of doing personal interviews that were for the
20 purposes exclusively of writing this document.

21 Q. And let me clarify what may be an
22 ambiguity in the question.

1 I wasn't interested for this question in
2 whether you talked to proponents meaning people who
3 are in favor of Prop 8. There are a number of
4 specific individuals who are the officially
5 recognized proponents of the ballot initiative who
6 are responsible for putting the initiative on the
7 ballot and then working to pass it.

8 Have you spoken with any of those
9 individual people?

10 A. I've spoken with people who were active in
11 the -- who were active in the Proposition 8 campaign
12 on -- you know, on the side of -- of the pro-same-sex
13 marriage side.

14 And I've discussed their views and sought
15 out their views, but I'm not aware that I -- I
16 don't -- I don't think I have spoken to the
17 individual couples, either of the couples who are
18 the -- who are the plaintiffs in the case. I have
19 not interviewed them.

20 Q. Right.

21 So let me -- and I wasn't asking about any
22 of the legal terms -- or confusing -- I wasn't asking

1 if you talked to the plaintiffs.

2 I'm asking if you talked to any of the
3 named defendant intervenors who the Cooper & Kirk
4 firm represent, the people who more than just
5 favoring Prop 8 actually were the official proponents
6 of the ballot initiative.

7 Do you know if you've talked to any of
8 them?

9 MR. THOMPSON: And just as a helpful
10 clarification, I mean, maybe using the names of those
11 5 people --

12 MR. DUSSEAULT: I was wondering if I had
13 that handy.

14 MR. THOMPSON: If you don't, we can get
15 them. Maybe we can move on, and we'll get those 5
16 names for you.

17 (Mr. Cooper left the room.)

18 MR. DUSSEAULT: Sure.

19 That would be great.

20 BY MR. DUSSEAULT:

21 Q. In the course of preparing your expert
22 report, have you studied communications between the

1 campaign that was trying to pass Prop 8 and the
2 voters?

3 A. No.

4 Q. Have you viewed any internal documents
5 from the campaign to pass Prop 8 regarding their
6 strategy for getting voters to support it?

7 A. No.

8 Q. Did you have any role in the campaign to
9 pass Prop 8?

10 A. Yes.

11 Q. What was your role?

12 A. I was asked by the editorial page editor
13 of the Los Angeles Times to write an opinion piece
14 regarding my views on marriage that would be relevant
15 to the Prop 8 discussion, and I did so.

16 Q. Was that to the best of your recollection
17 your sole involvement in Prop 8?

18 A. Yes.

19 (Mr. Cooper entered the room.)

20 BY MR. DUSSEAULT:

21 Q. Mr. Cooper was kind enough to bring me the
22 names of his clients.

1 So let me ask: Have you ever spoken with
2 Dennis Hollingsworth?

3 A. No.

4 Q. Have you ever spoken with Gail Knight?

5 A. No.

6 Q. Have you ever spoken with Martin
7 Gutierrez?

8 A. No.

9 Q. Have you ever spoken with Hak-Shing
10 William Tam, T-A-M?

11 A. No.

12 Q. Have you ever spoken with Mark Jansson?

13 A. No.

14 Q. Have you spoken with anyone who you
15 understood to be employed by protect marriage, dot,
16 com?

17 A. No.

18 Q. Have you ever --

19 A. I'm not saying I haven't spoken with such
20 a person. I'm saying I'm not aware of having spoken
21 with such a person.

22 Q. Best I can get, yeah.

1 Thank you.

2 Have you ever spoken with someone who you
3 understood to be a campaign consultant or political
4 consultant for protect marriage, dot, com?

5 A. I've spoken with someone who I think might
6 be but is not -- I don't know for a fact that she is.

7 Q. Who are you thinking of?

8 MR. THOMPSON: Well, now, wait a minute.

9 Does this implicate any of the issues that
10 we're fighting about in terms of identifying people?

11 MR. COOPER: If -- if the witness is
12 referring to someone who was engaged professionally
13 by the campaign as a paid consultant adviser or
14 advertising rep, or some such thing as that, then it
15 would not.

16 Otherwise, it likely would, and I would
17 ask you to ask the witness not to reveal a name.

18 A. I'm not aware of anybody who worked for
19 the campaign. I'm not saying I haven't spoken to
20 anybody who worked for the campaign. I'm saying I'm
21 not aware of having spoken to anybody who had that
22 formal role in the campaign.

1 BY MR. DUSSEAULT:

2 Q. I mean, I'll ask: The woman who you had
3 in mind who you don't know if she was involved in the
4 campaign or not, who is that person?

5 A. I'd rather not say, because I don't feel
6 it's right to be speculative about something I just
7 don't know about. I -- I should not have guessed
8 about something that I don't have accurate knowledge
9 of.

10 BY MR. DUSSEAULT:

11 Q. It's fair. It's not that important.
12 Have you ever talked with someone named
13 Frank Schubert?

14 A. No.

15 Q. Are you offering any opinions in this case
16 about the actual motivation of voters in passing Prop
17 8?

18 A. No.

19 Q. Are you offering --

20 A. Not in this report.

21 Q. Are you offering any opinions in your
22 report about the actual motivation of the official

1 proponents of Prop 8?

2 A. Not in this report, no.

3 Q. Okay. Do you know whether Proposition 8
4 says anything at all about the rights of gay and
5 lesbian people to have and raise children?

6 MR. THOMPSON: Objection to the extent it
7 calls for a legal conclusion.

8 But go ahead.

9 A. I'm -- I'm not aware of the -- I can't
10 recall now having memorized or been familiar with the
11 specific language.

12 BY MR. DUSSEAULT:

13 Q. Is it your best recollection that what
14 Proposition 8 did was propose a constitutional
15 amendment that defined marriage as being between one
16 man and one woman?

17 A. It's -- it's my understanding that
18 Proposition 8 reestablished the man-woman customary
19 basis of marriage in California law.

20 Q. Okay. Do you have any recollection that
21 Proposition 8 also said anything about who could
22 raise children?

1 A. I -- I'm not aware of what it says about
2 that issue.

3 Q. Okay. Do you know whether Prop 8 says
4 anything about the obligation of parents who create a
5 child to stay with and raise that child?

6 A. I'm not aware of what the proposition's
7 specifically language is on that issue.

8 Q. Okay. Do you have any knowledge of
9 whether Prop 8 says anything about a child's right to
10 be raised by 2 parents that created that child?

11 A. Again, I'm not aware of any specific
12 language that may or may not be in the proposition
13 regarding that specific issue. That's why I did not
14 discuss it in this -- in this report.

15 Q. So to be clear: You're not trying to
16 offer any opinions about what Prop 8 actually does or
17 doesn't do?

18 A. In this report?

19 Q. Yeah.

20 MR. THOMPSON: And let me just object that
21 that's vague.

22 But go ahead.

1 A. Well, let me just tell you what I'm trying
2 to do in this report.

3 BY MR. DUSSEAULT:

4 Q. Fair enough.

5 A. I'm trying to offer my views based on
6 study and reflection about the meaning and purpose of
7 marriage in human groups. And then I'm trying to
8 bring that perspective to bear on the current trends
9 in society that in my view are driving toward what I
10 term deinstitutionalization.

11 And I am arguing -- I am concluding that
12 this trend of deinstitutionalization is -- has the
13 effect of weakening marriage as a pro-child social
14 institution and that, you know, good people of
15 goodwill who bear no animus toward their fellow
16 citizens on the basis of sexual orientation can and
17 do believe that this trend of deinstitutionalization
18 is potentially harmful to society, and therefore --
19 and therefore have -- have -- have the concern and
20 the goal to arrest or to -- to -- to halt the trend
21 toward deinstitutionalization.

22 And my report is an attempt to -- to state

1 why these are very important matters to society and
2 to children and why they have to do with the
3 fundamental role and purpose of marriage in human
4 groups. So that's really the purpose of my report.

5 That's what I'm trying to do in the
6 report. That was my goal.

7 Q. Now, I won't try and recite that back. I
8 couldn't.

9 But as I heard it and took notes, I didn't
10 hear any reference to same-sex marriage.

11 Was that intentional?

12 A. It wasn't intentional, no.

13 I do discuss the issue of same-sex
14 marriage in the report.

15 Q. Right.

16 A. But I was seeking to answer the question
17 of what my main goal is in the report, which is to
18 make an assessment about the nature and purpose and
19 role of marriage in societies.

20 In my evaluation of same-sex marriage in
21 the report comes under the rubric as you will -- as
22 you'll see in the report, it comes under this

1 category of the trends that aim -- that -- that have
2 the effect of deinstitutionalizing, that have the
3 effect of changing marriage from a pro-child public
4 institution to a matter of private ordering that's
5 based on the affection between the spouses and whose
6 public purposes are defined by them and them alone.

7 This transformation of marriage that
8 scholars call deinstitutionalization is the analytic
9 heart of what I was trying to drive at, and the
10 purpose of focusing in the report about the meaning
11 and purpose of marriage in human groups was to
12 establish the likely consequences of
13 deinstitutionalization in the United States.

14 And I say in the report that the advocacy
15 of same-sex marriage is one important aspect of the
16 trend toward deinstitutionalization, and that persons
17 of goodwill can and are concerned about that dynamic,
18 that process, that trend, and seek with proper and
19 good motives to -- to have a different outcome.

20 That -- that's really my argument.

21 Q. Now -- so with that background of your
22 argument and we've established that you don't

1 specifically address Prop 8 in particular, I also
2 didn't see any reference in your report to the state
3 of California in particular.

4 Is that also true?

5 A. That's correct.

6 Q. And I take it the reason that you chose
7 not to discuss anything about California in
8 particular is the same as the reason you chose not to
9 discuss Prop 8?

10 A. The reason I chose not to include a
11 specific discussion of California is because I felt
12 that the primary contribution I could make to this
13 discussion would be to establish the cross-cultural
14 nature and purpose of marriage in human groups, and
15 therefore, focusing specifically on California while
16 it would have been possible did not comport or did
17 not fit or did not easily fit into the -- my main
18 goal in the report.

19 Q. Okay. May I ask just a couple specific
20 questions on this California issue.

21 I take it you haven't done any particular
22 study of what rights gay and lesbian couples

1 currently have in California to create and raise
2 children?

3 A. If you mean, have I undertaken a formal
4 academic study of it that results in a published
5 article or study, the answer would be no.

6 If you are asking me, am I generally aware
7 based on conversations with people and having tried
8 to follow the public and professional discussions of
9 this, the answer would be yes, I think to some
10 degree, I am aware.

11 Q. Okay. And what I meant was for purposes
12 of preparing an expert report to be used in this
13 case, did you do any particular study to attempt to
14 familiarize yourself with what California currently
15 allows in terms of same-sex couple -- couples having
16 and raising children?

17 A. I -- I did not specifically and for the
18 purposes only of writing this report engage in
19 special study of that topic.

20 But as a matter of my daily work in the
21 field of thinking about and being a public spokes- --
22 being a -- speaking publicly and writing on the issue

1 of marriage, I believe that I am generally familiar
2 with the topic that you're raising.

3 Q. Okay. And what is your general
4 understanding about California's policy as to the
5 right of same-sex couples to have and raise
6 children?

7 A. Well, I believe that there's a domestic
8 partnership provision, and I believe that provision
9 is -- has many features that bear upon adding
10 stability and recognition to -- to -- to -- to -- to
11 those gay and lesbian families that are -- that
12 participate in that institution.

13 And I'm aware that in California as in any
14 other locations, the gay and lesbian persons can and
15 do adopt, and I'm aware that the ability of gay and
16 lesbian persons as well as heterosexual people to --
17 to participate in -- to -- to -- to -- to -- to make
18 use of third-party participation in procreation is --
19 is not prohibited.

20 Q. Now, you have offered in your report your
21 own personal opinion that you are not in support of
22 same-sex marriage.

1 Correct?

2 A. That's correct.

3 Q. Do you support domestic partnerships such
4 as exist in California?

5 A. Well, recently, I wrote an article with
6 Jonathan Rauch, who is I think a well-known proponent
7 of same-sex marriage.

8 We coauthored a piece in The New York
9 Times where we suggested as -- as a way of trying to
10 have some -- some -- I don't want to say compromise,
11 but some -- some way that the 2 sides could come
12 together around something positive.

13 We suggested an idea that there would
14 be -- we use the term civil unions, but we proposed
15 that under certain circumstances, there would be
16 federal recognition of civil unions.

17 And so that would be an example I think of
18 the kind of thing you're -- you're talking about.

19 Q. I guess what I'm more interested in is --
20 your report states -- and we'll go through it in
21 detail -- your reasons that you concluded that you
22 cannot support same-sex marriage.

1 Applying those same factors and reasoning
2 and concerns to California's existing domestic
3 partnership law, do you, David Blankenhorn, support
4 domestic partnership law?

5 MR. THOMPSON: And just to be clear: Are
6 you asking for his personal opinion or --

7 MR. DUSSEAU: Yes, because I understand
8 him to offer his personal opinion in the report as to
9 marriage.

10 A. I -- I think the answer is yes, but I
11 would feel that in order to speak definitively to
12 that issue, I would need to be more aware than I am
13 now of all of the different details and aspects of
14 the issue.

15 I'm not a resident of California. I --
16 and although I know generally -- I for years now have
17 been a part of the broad discussion about domestic
18 partnerships and civil unions, and I have the views
19 that I have stated to you, I feel that in order to
20 say in a kind of definitive, clearcut way that I
21 support this particular piece of legislation in this
22 particular state of which I am not a resident feel

1 that I would need to be more familiar with all of the
2 different aspects of it, but I believe as a -- as
3 a -- I believe that the answer to your question given
4 that caveat is yes.

5 BY MR. DUSSEAULT:

6 Q. Okay. As you sit here today and
7 considering all the same factors that lead you to not
8 be able to support same-sex marriage, do you support
9 laws that allow gay and lesbian couples to adopt
10 children?

11 A. Yes.

12 Q. And considering the same factors that lead
13 you to the conclusion that you cannot support
14 same-sex marriage, do you support laws that allow gay
15 and lesbian couples to use as you put it I think
16 third-party assistance in procreation?

17 A. I have very serious concerns about that
18 practice, whether it's practiced by heterosexuals
19 or -- or homosexuals. I haven't worked out a
20 complete position on every single aspect of it, but I
21 have serious concerns about that general cluster of
22 activities.

1 THE VIDEOGRAPHER: Going off the record.

2 The time on the video screen is 12 o'clock and 38
3 seconds.

4 (Discussion off the record.)

5 THE VIDEOGRAPHER: Here marks the end of
6 videotape number 2 taken in the deposition of
7 Mr. David Blankenhorn III. Going off the record.
8 The time on the video screen is 12:01 and 38 seconds.

9 (Recess.)

10 THE VIDEOGRAPHER: Here begins videotape
11 number 3 taken in the deposition of Mr. David
12 Blankenship III -- I'm sorry -- Blankenhorn III.
13 Going back on the record. The time on the video
14 screen is 12:11 and 54 seconds. Please continue.

15 BY MR. DUSSEAULT:

16 Q. Mr. Blankenhorn, if you would turn,
17 please, to your index of materials considered in
18 exhibit 1.

19 You were testifying before our break about
20 certain studies in which you've been involved.

21 Are any of those studies that you're
22 referring to included in this index of materials

1 considered?

2 A. I'm pretty sure the answer is no, but I
3 just want to double-check.

4 Q. Please.

5 (Pause.)

6 A. In items 46 and 47, I have played an
7 indirect role in -- in those publications, but I did
8 not play a direct role as a primary researcher or
9 investigator.

10 BY MR. DUSSEAULT:

11 Q. What role did you --

12 A. Well, those individuals were colleagues of
13 mine, and I participated in them -- in reviewing
14 those works and helping them to in one case get them
15 published, and -- yeah, that was it.

16 Q. So you provided comments to --

17 A. Yes.

18 Q. Which one of the 2 was published -- or did
19 you assist in getting published?

20 I'm sorry.

21 A. Well, I -- the comments for number 46, and
22 then the state of our unions is a publication that

1 currently my institute puts out beginning in the year
2 2009.

3 In the year 2005, when this specific thing
4 was published, my organization had no formal
5 connection to it, but both Popenoe and Whitehead were
6 long-time friends and colleagues, and I was involved
7 informally in -- in participating in that, so that's
8 all I meant to say.

9 I wasn't involved as a researcher or
10 writer. I think I reviewed it in draft form, but I
11 didn't play a shaping role in it.

12 Q. When you say they're colleagues, what do
13 you mean?

14 You said that Mr. Popenoe and
15 Ms. Whitehead are colleagues.

16 Did you mean that you worked at the same
17 place at any point in time?

18 A. David Popenoe was a member of the board of
19 my organization for several years. And Barbara Dafoe
20 Whitehead was a staff member for several years and is
21 currently a staff member after a period of about 10
22 years when she was not a staff member.

1 Q. Other than what you said about those 2
2 entries, no other items on your list of materials
3 considered that are studies that you were involved
4 in?

5 A. That's correct.

6 Q. Do you have a rough sense of how many
7 studies you've been involved in in the manner that
8 you were describing before the break?

9 A. I'd really have to go back over a period
10 of many years to give you a -- the right answer.

11 5 to 10 maybe.

12 Q. And to the best of your recollection, did
13 they all involve marriage and family?

14 A. No.

15 Q. I realize it's tough, but to the best of
16 your ability, how many studies would you say you've
17 been involved in in the manner you describe that
18 relate to marriage and the family?

19 A. 5 to 10 --

20 Q. Okay.

21 A. -- something like that.

22 Q. Now, with respect to the materials that

1 are listed here, it's described as an index of
2 materials considered.

3 Do you intend this to be an exhaustive
4 list of everything that you've considered in forming
5 your opinions?

6 A. Do I consider this list to be exhaustive
7 in all of -- in shaping my views?

8 Q. Of everything that you have considered in
9 coming to the opinions you offer in this case.

10 A. If you're asking me, are there things that
11 I have read and reflected upon that have shaped my
12 overall view on the subject of marriage that are not
13 listed in this index, the answer would be yes.

14 Q. Okay. What I'm trying to ask is, you
15 describe these materials as an index of materials
16 considered.

17 How did you determine what documents make
18 the cut of something considered and what documents
19 don't?

20 A. Well, I was really trying to follow the
21 format that would typically be used in a footnoted
22 publication. I was -- I wasn't -- I'm not familiar

1 with the -- this is the first time I've provi- --
2 done this for this kind of court situation, and I was
3 simply relying upon my experience in writing
4 academic-style articles.

5 And I was simply trying to follow the
6 conventions of citation that would be customary in
7 those situations.

8 Q. Okay. Are all of the documents included
9 on your index of materials considered documents to
10 which there's a specific citation in the report
11 itself?

12 A. I believe that's true. I -- I -- I -- I
13 would have to go through and visit -- revisit every
14 single instance and just double-check --

15 Q. Okay.

16 A. -- but to the best of my recollection, the
17 answer to that is yes.

18 Q. Okay. Now, have you -- for each of the
19 materials listed here, have you read the entire
20 document?

21 A. If you mean every word of every page of
22 every document, the answer would be no.

1 60, yes.

2 61, yes.

3 BY MR. DUSSEAULT:

4 Q. Mr. Blankenhorn, do you consider yourself
5 to be an expert in any field that is relevant to the
6 opinions you're offering in this case?

7 A. Yes.

8 Q. What field -- in what field do you
9 consider yourself to be expert?

10 A. Marriage, fatherhood, and family
11 structure.

12 Q. And did you develop that expertise through
13 the process of reading, reflecting, and talking to
14 others that you described earlier?

15 A. And writing.

16 Q. And writing.

17 A. Yes.

18 And public speaking and testimony and
19 academic seminars.

20 Q. I'm sorry.

21 What was the last?

22 A. Academic seminars.

1 Even if they're doing so based on a view
2 that they're doing it just for an adult committed
3 relationship.

4 Right?

5 A. That's correct.

6 Q. And even if they're doing so because they
7 have the view that it's important to have children
8 and protect them?

9 A. The law -- the institution generally
10 speaking does not inquire into motivations.

11 Q. As long as it's a man and a woman?

12 A. Correct.

13 Q. Okay.

14 A. Well, there are other features too. There
15 are other structural features.

16 The other 2 principle ones would be 2 and
17 sex, as it's understood to be a sexual relationship.
18 Those are the 3 core features.

19 Q. The only point I'm trying to make is, if a
20 man and a woman meet each of the defined core
21 features of marriage, they can marry regardless of
22 their motivations.

1 A. The institution does not require into
2 motivations.

3 Q. If marriage is fundamentally a pro-child
4 or a child-centric --

5 A. Actually, may I just correct this
6 statement.

7 I mean to say that the legal structure
8 that societies typically erect to support marriage
9 doesn't inquire into the motivations.

10 If the level of the civil society, the
11 supported network that surrounds the couple as they
12 marry in a house of worship that they may be getting
13 married in, the inputs of the neighbors and friends
14 who come to the wedding and send gifts and so forth
15 and offer their support, the relatives that they
16 are -- the extended families that are joined together
17 through the marriage, in all of these ways,
18 motivations are deeply attended to and much -- much
19 examined.

20 I meant to say merely as a matter of the
21 law that the society erects to protect the
22 institution, there are very many potentially reasons

1 why the law cannot and should not inquire into
2 motivation.

3 Q. If marriage is fundamentally a pro-child
4 and child-centric social institution, why are people
5 who cannot together procreate allowed to marry one
6 another?

7 A. That's a very important question and a
8 very significant question.

9 And I'm afraid I might try your patience
10 if I gave you my full -- my full answer to it, but
11 would you like me to begin?

12 Q. Yeah. I've got only 7 hours.

13 Yeah, I mean, understanding that we have a
14 lot to cover, give -- give me the best answer you
15 can.

16 A. I wrote about this extensively.

17 Q. And I've read -- I've read your book and
18 I've read the report, but this particular question,
19 just give me the best answer you can.

20 MR. THOMPSON: And just so the record is
21 clear: Do you want his full answer, or do you want
22 his best summary answer?

1 MR. DUSSEAULT: Well, you know, if his
2 full answer is 14 hours, I don't think you want his
3 full answer. You're going to cut me off.

4 BY MR. DUSSEAULT:

5 Q. But let's not -- why don't we get the best
6 answer you can. If it gets to a point where I have
7 to raise my hand and say, let's do something else,
8 I'll try.

9 A. Okay. My conclusion based on looking at
10 the weight of evidence is that the assertion that
11 infertility or childlessness within marriage amounts
12 to a kind of a precursor of -- or prefiguring of or
13 justification for the principles that underlie
14 same-sex marriage -- I believe that that assertion is
15 based in a very profound misunderstanding of the role
16 and meaning of marriage in human groups, a
17 misunderstanding that is tectonic and fundamental in
18 nature and not trivial.

19 And so I want to try to express myself
20 clearly on this point.

21 The way humans procreate is fundamentally
22 and overwhelming through the sex act, and therefore,

1 since the sex act can and does take place inside and
2 outside of marriage and always has, we do not need
3 marriage in order to procreate.

4 Marriage happens because of we are
5 embodied as sexual creatures and that when the male
6 and female of the species have sexual intercourse,
7 commonly, that can result in a child being conceived.
8 And so that procreation does not need marriage to
9 happen.

10 And it has never been the intention of
11 marriage as a social institution to prop up the
12 concept of procreation or to ensure it or to make
13 sure it happens or to require all people within an
14 institution to procreate or to send around
15 investigative personnel to say, have you procreated
16 enough, or to say to people who are married, if you
17 have not procreated, you're somehow insufficiently
18 married, or, we should revoke your license.

19 There has never even been anything
20 remotely close to that in the idea in the history of
21 human thought with respect to marriage. So that we
22 have to first of all be clear that procreation occurs

1 through the sex act and does not need marriage.

2 Therefore, we do not inquire into the
3 fertility status of couples prior to marriage. And
4 the institution of marriage is agnostic on the
5 question of fertility just as -- for -- for actually
6 similar reasons to it -- similar to agnosticism on
7 the of question sexual orientation.

8 We do not stand at the gate of marriage
9 and inquire about people's fertility intentions or
10 status any more than we ask them about the nature of
11 their sexual desires. On the other hand, the
12 fundamental purpose of the institution is to make it
13 insofar as we can make it possible as a society that
14 those children that are born are raised in a stable
15 home by their natural mother and father.

16 The purpose of the institution is to see
17 that those children that are born are born to the
18 married mother and father. That's the aim of the
19 institution.

20 So that is why we do not go to couples to
21 who seek to marry and inquire as to their desire to
22 have children, because their desire to have children

1 is not -- is not a relevant consideration as much as
2 it is the fact that if they -- all those who do have
3 children should be married.

4 So that the -- so that marriage is not a
5 production order for children. Marriage is a
6 permission slip to have children. It says, it's okay
7 for you to have a child now that you are married.

8 That's the fundamental human idea that
9 Bronislaw Malinowski famously called the principle of
10 legitimacy. And I quoted that in many -- many other
11 examples. I gave you 8 or 10. I could have given
12 you 800 I think of the same thought expressed by all
13 these scholars.

14 So they have -- they have stated very
15 clearly that in all of marriage's variation across
16 time and culture, there has been this constant idea
17 that marriage is essentially a permission slip to
18 have children.

19 Or I'm using the term permission slip
20 loosely, because I just mean to say -- if I may
21 just -- I'm sorry for the lengthiness, but I'm
22 working my way here if you can just give me another

1 moment.

2 I would use the analogy of driving -- of a
3 driver's license. You -- I have a driver's license.
4 I suspect that most of us here do, and we probably
5 all drive cars.

6 But no one goes around and inquires as to
7 your intention to drive a car when you get a driver's
8 license. They don't revoke your driver's license if
9 you don't own a car.

10 I don't own a car, for example. And no
11 one has tried to revoke my driver's license. I
12 almost never drive one, and no one has said, oh, you
13 can't have a driver's license.

14 The point of a driver's license is not to
15 guarantee that we have enough people driving cars.
16 The point of a driver's license is to guarantee that
17 everyone who does drive a car is qualified to do so.

18 And that is really the analogy that I'm
19 trying to establish here. And that is why those
20 people who argue that the existence of infertility or
21 the existence of voluntary childishness --
22 childlessness somehow constitutes some, you know,

1 gotcha argument on the issue of why we should allow
2 gay marriage, they really I believe are in my view
3 really engaging -- they really are misunderstanding
4 this institution at a very deep level.

5 I also want to make a final point in this
6 regard, which is that there is a very -- actually --
7 I'm sorry -- I want to make 2 very quick final
8 points, and then I'll stop.

9 One point is that there is a great deal of
10 variability in the status of infertility in
11 childishness -- childlessness. The couple may decide
12 at some point in their marriage that they do not want
13 to have children, but that opinion may change over
14 time.

15 And even the physical elements of
16 infertility are almost never known prior to the
17 marriage. Very few couples get married knowing for
18 certain that there's infertility. And even when
19 infertility problems emerge, there are -- sometimes
20 it doesn't prevent them from having a child, so this
21 very practical nature of the -- of the variability of
22 the status such that it's subjective to human --

1 changed through human opinion and agency and change
2 in the -- how are bodies are working related to
3 sexual reproduction make it a complete impracta- --
4 impracticability, even if one wanted to to somehow
5 inquire prior to marriage about the fertility
6 intentions of the couple.

7 There's another reason why we don't this
8 and why no one in the history of the world as ever
9 managed to do this, and that is because we don't need
10 to. People like to have sex. They frequently have
11 sex. And they don't -- we don't need to order them
12 to do it. We don't need to stand at the gate of
13 marriage and make sure they're going to do it. We
14 don't need to tell them that they have to have
15 children.

16 People commonly want children. The
17 overwhelming majority of married people in the United
18 States and throughout all of history have had
19 children. And we don't need to order them to do it.
20 We don't need to issue a production quota. We don't
21 need to stand around and inquire as to their status
22 about the intention to procreate.

1 All we have to do is literally let nature
2 take its course. It would be like, why do we have to
3 have an order -- do we want to order birds to sing
4 and fish to swim. People have sex, and that sexual
5 activity produces children.

6 And the point is not to stand around
7 permitting it or mandating it. The point is to
8 regulate it in the interests of the social life of
9 the child.

10 And in order to achieve that goal, humans
11 have created an institution called marriage. All of
12 the scholars of the modern era, all of them with very
13 few exceptions have commonly acknowledged that, no,
14 this is not a controversial assertion, that this is
15 the fundamental purpose of marriage in human groups.

16 So I've taken a moment to answer this
17 question at some length because it's a very important
18 one. It is widely and deeply misunderstood in the
19 public discussion.

20 And those who use the argument in the way
21 that you're doing I believe really -- I -- I think
22 have not sufficiently thought through the role and

1 meaning of marriage.

2 Q. Okay. I think you may have read a good
3 bit into my question that I didn't intend, because I
4 don't think I said anything about requiring
5 procreation or anything.

6 I know --

7 A. Well, I'd --

8 Q. -- the things you've talked about quite a
9 bit.

10 A. I'd like to go back and find out what the
11 question is.

12 (Talking at the same time.)

13 A. I would like to know what the question
14 was, because I do believe that was exactly the
15 implication.

16 MR. THOMPSON: It's all right. It's all
17 right.

18 MR. DUSSEAULT: No.

19 Let's read it back. I'd like to see if
20 what he said is connected to what he was asked.

21 (The reporter read the record as
22 follows:

1 "Question: If marriage is
2 fundamentally a pro-child and
3 child-centric social institution, why
4 are people who cannot together
5 procreate allowed to marry one
6 another?")

7 A. To me, the implication of that question is
8 really that somehow the argument would be that they
9 should not be allowed, and you were asking me to
10 explain why they are allowed.

11 And I think that my answer was admittedly
12 lengthy but careful attempt to answer that question
13 quite exactly.

14 BY MR. DUSSEAULT:

15 Q. The only point I was trying make is, I
16 don't think there's anything in that question about
17 requiring people to procreate.

18 The question is people who demonstrably
19 cannot procreate together, let's say 2 octogenarians
20 they both admit, yep, we can't procreate together.
21 Even though you view marriage as fundamentally a
22 pro-child institution, our society would allow these

1 2 people who admittedly and without reservation
2 concede that they will never have a child to marry
3 one another.

4 True?

5 A. The older people?

6 Q. Yeah.

7 A. Well, there are, as I say in the report,
8 and as I have tried to state in an earlier answer to
9 your question, there are 3 basic forms that have --

10 Q. I'm sorry.

11 Can I just get an answer to the question,
12 which is just, would they be allowed to marry?

13 A. I am answering the question.

14 Q. You can't say yes or no if they would or
15 not?

16 A. I have to answer this in the way I think
17 is going to give you the accurate answer that you're
18 looking for.

19 MR. THOMPSON: You can answer it, yes, no,
20 or, I can't answer it yes or no. If that's what
21 Mr. Dusseault wants you to answer, you can say, yes,
22 no, or, I can't answer it yes or no.

1 THE WITNESS: Could you repeat the
2 question?

3 MR. THOMPSON: If Mr. Dusseault is willing
4 to let you give a more complete answer.
5 Go ahead.

6 THE WITNESS: I'll -- I'll --

7 MR. DUSSEAULT: I just want the answer to
8 the actual question.

9 If you can just repeat it.

10 (Discussion off the record.)

11 (The reporter read the record as
12 follows:

13 "Question: The only point I was
14 trying make is, I don't think there's
15 anything in that question about
16 requiring people to procreate.

17 "The question is people who
18 demonstrably cannot procreate
19 together, let's say 2 octogenarians
20 they both admit, yep, we can't
21 procreate together. Even though you
22 view marriage as fundamentally a

1 pro-child institution, our society
2 would allow these 2 people who
3 admittedly and without reservation
4 concede that they will never have a
5 child to marry one another.

6 "True?")

7 BY MR. DUSSEAULT:

8 Q. Let me try and ask a better question.
9 That demonstrated that I can ask a much better
10 question.

11 You would agree that throughout society,
12 people who have absolutely zero chance of creating a
13 child and admit to as much are still permitted to
14 marry one another if they want to.

15 True?

16 A. Yes.

17 Q. Okay. And despite that fact, it is still
18 your view -- strike that.

19 Despite the fact that people with an
20 admitted complete lack of capability to make a child
21 are permitted to marry, it is still your view that
22 marriage is fundamentally a pro-child institution.

1 Correct?

2 A. Yes.

3 Q. Okay. This point you made about marriage
4 as a permission slip to have children, what's the
5 percentage of children in the U.S. today who are born
6 outside of marriage to the extent you know?

7 A. About 38.

8 Q. So in -- in the United States today,
9 marriage is not practically a permission slip that's
10 needed to have children.

11 Correct?

12 A. Well, most children it is.

13 I would say -- first of all, I view that
14 statistic of 38 percent as a deep tragedy, and I've
15 spent my lifetime professionally speaking trying to
16 speak out in favor of us pursuing ideas and practices
17 and values that would lower that rate significantly
18 to where we'd be a more humane and pro-child society.

19 But even -- even acknowledging that 38
20 percent, that's still leaves a majority of children
21 that are born to their own 2 married parents. In
22 fact a majority of children today right now, a

1 majority of children are born to their own 2 married
2 parents.

3 So it's not true that that conception of
4 marriage is nonexistent or negligible or has been
5 completely eliminated from our public practice and
6 our private consciousness and so forth.

7 Q. Okay. I want to be sure I understand this
8 core analogy that you made because I think I've seen
9 it in writing too.

10 You're -- you're saying that your argument
11 is supported because, you know, the fact that
12 somebody has a car, and we don't ask them to
13 demonstrate that they're actually driving it.

14 A. Driver's license is what I said.

15 Q. Okay. So it's not a car.

16 It's a driver's license?

17 A. I said that -- what I -- it's perhaps an
18 inappropriate analogy.

19 I was trying to compare a marriage license
20 and a driver's license. I was trying to say that the
21 license itself in both cases means that if you do the
22 thing, you have been deemed qualified and -- and --

1 or it has been deemed that the activity that you're
2 going to engage in is socially approved.

3 And in one case, it would be driving a
4 car, and in the second case, it would be having a
5 child. But in neither case is there some mandate
6 that every person who has the license either drive
7 the car or have the child.

8 That was the analogy I was trying to make.

9 Or to take the point that you were trying
10 to raise before, is it -- is it a violation of the
11 principle of drivers' licenses, the institution of
12 drivers' licenses -- is it a violation of -- does --
13 does it violate and do violence to the norms embodied
14 in that institution that I as a holder of a driver's
15 license and one of the small minority of people who
16 do not drive, and I'm saying that it does not.

17 And I'm saying that the same is true in
18 the case of married people, the small minority of
19 married people who do not have children.

20 Q. But to take the analogy into the debate
21 over equal marriage -- marriage rights, isn't a
22 lesbian couple where the woman is pregnant and about

1 to have a child and the couple is about to raise that
2 child -- aren't they just about starting to drive the
3 car?

4 A. They're about ready to have a child. She
5 is about ready to have a child.

6 Q. Okay.

7 A. But remember the first point I made was
8 that the issue is not what you're calling
9 procreation. The issue is not, can a woman become
10 pregnant.

11 Q. Okay.

12 A. Marriage is not required for a woman to
13 become pregnant.

14 Marriage is a social institution that
15 tries to structure things such that whenever a woman
16 does become pregnant, she and the man who inseminated
17 her are going to be the legal and social parents of
18 the child that is born.

19 That's the whole -- that's the idea.
20 That's why we have marriage. If we did not have that
21 idea as a species, we would almost certainly not have
22 marriage.

1 Q. And in your view, it comes down to it
2 being the natural mother and the natural father
3 together?

4 A. Well, what is commonly called and by
5 everyone mothers and fathers.

6 Now, those are the terms that we humans
7 use. We use "mothers" and "fathers" to designate
8 those individuals whose sexual union brought us into
9 the world.

10 And we use them to mean -- we use the term
11 to mean typically not only the biological genitor,
12 but also the social and legal parents. We have a
13 very important exception to that principle when it
14 comes to adoption, and -- but that -- that said,
15 that's -- those are the terms we use, mother and
16 father.

17 So when somebody says, my mother, or, my
18 father, what they typically mean is that there was a
19 man who had -- who had a sexual act with my mother
20 and I was born as a result, and then after I was
21 born, that man and that woman had a commitment to me
22 and to one another to -- to invest in me and to

1 support me and nurture me and raise me.

2 That -- that is what we mean when we say,
3 mother and father.

4 Q. Okay. If marriage is a fundamentally a
5 pro-child or child-centric institution in the way
6 that you've now elaborated on, why do we allow people
7 who have previously had children and walked away from
8 them and not raise them to do it again?

9 MR. THOMPSON: Objection, vague.

10 BY MR. DUSSEAULT:

11 Q. Yeah.

12 I don't mean "do it again" meaning walk
13 away.

14 I mean to get married again.

15 A. To get married again?

16 Typically, I'm not aware of examples -- I
17 just want to think about this a moment, but marriage
18 has been typically institutionally silent and not
19 inquisitive when it comes to the subject of one's
20 subjective intentions. I think that's really the
21 best way I know how to say it.

22 It does not inquire into your character.

1 It does not inquire into your moral beliefs. It does
2 not inquire into whether you have committed past bad
3 acts. It does not assess whether or not you are a
4 competent person.

5 It does all those things by the way with
6 respect to adoption, which is a very different
7 situation. But with respect to what's generally
8 viewed as the right to marry, society does not step
9 in to in any legally significant way other than age
10 of majority and a few other really simple things --
11 it does not inquire into past conduct or future
12 intentions.

13 Q. All right. So if marriage --

14 A. Just the way it does not inquire into the
15 nature of one's sexual desires.

16 Q. But if marriage is primarily a pro-child
17 institution that's intended as you elaborated to
18 assure as best we can that a child will be raised by
19 the mother and father that created them, why on earth
20 don't we inquire into intentions or maybe somewhat
21 more clearly, past record, past evidence that one
22 doesn't live up to that conduct?

1 A. Well, that's an excellent question. I
2 would have to reflect on it more to give you a full
3 answer.

4 But one answer I want to allow -- or want
5 to suggest at least tentatively is that marriage in
6 some way is a prelegal social institution. It's what
7 scholars call a natural social institution, in that
8 it exists in all known human societies and everywhere
9 in human history.

10 And so it's not a creature of law in the
11 sense that, say, you couldn't imagine a thing
12 happening without the law. You can -- the thing can
13 and does happen and could -- and probably in our
14 history has happened without the law.

15 Law is a strengthening -- law seeks to be
16 one of many ways that we recognize, strengthen, and
17 orient the institution toward its purposes, but it is
18 not a creature of law. And so I think in that
19 natural sense, probably the -- I guess you might say
20 a certain simplicity to the institution emerged that
21 you -- the rules -- the rules are quite few and quite
22 objective, and they don't require investigative

1 committees and social workers and court-appointed
2 psychiatrists and -- and professional therapists, and
3 so on.

4 They just require that you be adults, that
5 you be not biologically related to one another in a
6 close way. They require that you be a man and a
7 woman, that it be a sexual relationship, and that it
8 be only 2 of you.

9 Those are really it. The subjective
10 nature of your conduct, et cetera, et cetera,
11 sometimes I -- sometimes I wish we could have higher
12 standards, but the institution does not -- does
13 not -- and I'm not only speaking of the United
14 States.

15 I'm speaking across history and cultures.
16 It does not get into the business of evaluating the
17 character or personal credentials of the applicant.

18 MR. THOMPSON: We've been going about an
19 hour.

20 Would this be a --

21 MR. DUSSEAULT: That's fine --

22 MR. THOMPSON: -- okay time to take a

1 break?

2 MR. DUSSEAULT: Sure.

3 THE VIDEOGRAPHER: Here marks the end of
4 videotape number 4 taken in the deposition of
5 Mr. David Blankenhorn III. Going off the record.
6 The time on the video screen is 14:41 and 32 seconds.

7 (Recess.)

8 THE VIDEOGRAPHER: Here marks the
9 beginning of videotape number 5, taken in the
10 deposition of Mr. David Blankenhorn III. Going back
11 on the record. The time on the video screen is 14:53
12 and 37 seconds. Please continue.

13 BY MR. DUSSEAULT:

14 Q. Mr. Blankenhorn, let's go to your report
15 to paragraph 17, which is on page 5.

16 And I'll just read this into the record,
17 and I have a couple of questions about it.

18 It says: A principal purpose of this
19 declaration to the court is to insist based on
20 overwhelming -- based on an overwhelming body of
21 scholarly evidence that intelligent, fair-minded
22 persons of goodwill who bear no animosity to their

1 So the question of what they call kin
2 altruism is decisive on this issue. And while it is
3 theoretically possible that a mother with a child
4 could gain the protection and support and partnership
5 of just any old man out there, it is highly unlikely
6 that that happens. The human record is completely
7 clear on this point.

8 Q. Okay. You talked about adoption earlier,
9 I think called it an exception. But in the case of
10 adoption, certainly it's quite common, isn't it, for
11 a man and a woman to raise a child from birth where
12 perhaps neither one has a biological bond, but they
13 both act to protect the child.

14 True?

15 A. That's true.

16 But the proposition that the existence of
17 adoption as a valuable and pro-child institution
18 somehow justifies changing our marriage laws to allow
19 same-sex partners to marry in my view is --
20 represents a very fundamental misunderstanding of the
21 purpose of adoption and what it does and what it
22 means.

1 And I bring up this point because in the
2 public conversation about gay marriage, it's very
3 typical for advocates to bring up this question
4 about, well, because we have adoption, therefore, it
5 doesn't really matter about the biological ties.

6 And of course in my view, based on my
7 study of the evidence, that is just a fundamental
8 misunderstanding of adoption, of what is adoption.
9 So if you would like to discussion what is adoption,
10 what are its purposes, how do we understand it in
11 relationship to the 2 biological-parent married
12 couple home, I'd be happy to do that in any length
13 that you wish.

14 Q. Well, what I'm trying to do with the
15 questions I'm actually asking you is go at some of
16 the -- some of the issues that I think are raised by
17 the way you're describing the situation.

18 And what you said in your prior answer I
19 believe was that while it's theoretically possible
20 that someone who is not a biological parent might
21 raise the child, as a practical matter, people are
22 not likely to take that on for someone who is not

1 their own child.

2 But you would agree that our society is
3 replete with examples of people doing just that in
4 the context of adoption.

5 A. If you're asking me, do adoptive parents
6 raise children who are not biologically related to
7 them, the answer is yes.

8 Q. Okay. Do you have any reason to doubt
9 that the partner of a gay person or a lesbian person
10 who marries them and they adopt a child together and
11 they take that child into their home at birth would
12 be any less committed to raising the child and
13 providing for the child and providing for the mother
14 than if they created the child biologically?

15 MR. THOMPSON: Objection, vague.

16 A. If you're asking me, do I have any reason
17 to believe that as a class or as a category that
18 lesbian couples are less loving or less attentive or
19 less caring toward their children than heterosexual
20 couples, the answer is that I do not have any
21 evidence to support such a conclusion.

22 BY MR. DUSSEAULT:

1 BY MR. DUSSEAULT:

2 Q. Let me try and clarify.

3 An adopted child might be born in poverty
4 to 2 abusive parents and face a very difficult
5 future, might be born into what's a very promising,
6 happy situation, but for whatever reason the couple
7 decides not to have it.

8 Is your position that you support adoption
9 the same in both situations?

10 A. Maybe the best way to answer it is to say
11 why I support gay adoption.

12 Q. Okay.

13 A. In my view, in an ideal situation, an
14 optimal situation in a society that was most oriented
15 to thriving and success, the married couple -- the
16 married couple who has been investigated by the state
17 and found to be competent parents, prospective
18 parents, would be at the head of the queue with
19 respect to adoption of children who are in
20 institutional care because their natural parents are
21 either unwilling or unable to care for them
22 adequately.

1 However, we are not in such a situation
2 like that in the United States, because we have very
3 many children who are languishing in these state
4 facilities in which their needs are I believe in
5 general not being well served.

6 And the option for them practically is
7 between remaining in those institutions and often
8 going into a home that is not a mature, competent,
9 married couple who's been investigated by the state
10 and found to be a good prospective parent.

11 So that my -- there's a prudential
12 judgment here, so that while I would wish in ideal
13 circumstances to have certain -- these married
14 couples at the head of the queue, I recognize that,
15 A, that's not the way we do it now, and, B, the
16 real-world choices for many of these children are
17 such that the real question policymakers face is, do
18 we want to have them to continue to remain in these
19 institutions when the care is impersonal and
20 minimalist, or do we want them to go into a home
21 headed by one or more gay or lesbian people who would
22 provide loving homes for these children.

1 And given that choice, I believe that
2 policymakers should allow and even encourage the --
3 this form of adoption by gay and lesbian couples
4 because it is in the best interests of these specific
5 children to have that outcome.

6 Q. So would you limit gay and lesbian
7 adoption to situations where the child is in some
8 peril if not adopted?

9 A. I don't believe I said that.

10 Q. That's why I asked.

11 A. Would I limit gay adoption to situations
12 where a child is imperiled?

13 Q. Right.

14 So you talk about children being in
15 institutions. Let's assume that a couple that could
16 raise a child but chooses not to for their own
17 personal reasons wants to give the child up for
18 adoption to a gay and lesbian couple.

19 A. M-hm.

20 Q. Would that affect your view as to whether
21 that should be permitted?

22 A. Well, as I said, I believe in an ideal

1 world that the married couple should be given
2 preference when it comes to adoption.

3 But I also said that in the actual world
4 that we live in now, that is in many localities not
5 the case.

6 Q. Let me be clear.

7 I'm not talking about who has preference
8 to adopt, a married couple or a gay and lesbian
9 couple.

10 I'm talking about a gay and lesbian couple
11 that wants to adopt a child --

12 A. Do I --

13 Q. You talked about a child that absent
14 adoption would in some institution.

15 I'm saying what if the circumstances were
16 different where the child would not be at risk, not
17 be in an institution, but the parents who created the
18 child want to give the child up.

19 A. To a gay or lesbian couple.

20 Q. Yes.

21 A. I would not be in favor of prohibiting
22 that act.

1 biological offspring cannot have spent one day
2 outside the care of these parents?

3 Or what would be your definition of
4 continuous?

5 Q. Well, I'm trying to distinguish it from,
6 say, a step situation where a child may have 2
7 biological parents until they're 10 years old and
8 then the mother gets div- -- the parents get divorced
9 and the mother marries another --

10 A. There are --

11 Q. -- person.

12 A. -- many studies that compare those 2
13 -- (indiscernible).

14 Q. Okay. I'm talking about where the family
15 unit is -- and I've seen this in the literature --
16 intact throughout the child's dependent years, so
17 same father, same mother, or same 2 parents, but
18 there is no biological connection between one or both
19 of the parents and the child.

20 Has there been any comparison --

21 A. The closest thing --

22 Q. -- in that situation?

1 A. -- we have would be those studies that
2 compare the 2 married biological parents -- for the
3 sake of shorthand, perhaps we can at all it intact.

4 Would that be okay?

5 Q. Sure.

6 A. And then compare children who have been
7 adopted at very early ages -- let's say in infancy --
8 by 2 married parents. There have been such studies.

9 Q. And have they shown there to be difference
10 in outcomes for the children who are biologically
11 connected to both parents versus those who are not?

12 A. My view of the weight of evidence on this
13 is that there -- yes.

14 The studies are not completely uniform.
15 There's some diversity in -- in the field, and it's a
16 little bit of an embryonic field of research, but my
17 reading of the evidence is that the weight of
18 evidence suggests that there are differences between
19 those 2 groups in terms of child outcomes.

20 And I am for example directing a study now
21 that looks at exactly this question. And the
22 research will be published in the next year or so,

1 and the preliminary data do suggest the differences
2 that I've described.

3 The differences -- well, that's the
4 answer.

5 Q. What -- give for me the names or authors
6 of published studies that have compared 2 intact
7 families, one where there's a biological connection
8 between both parents and the child and one where one
9 or both of parents is not biologically connected to
10 the child.

11 A. Well, there is -- there is a body of
12 literature on -- on this issue, and I would have to
13 go back and refresh my -- I would have to go back and
14 pull together the -- what I consider to be the best
15 or most representative studies for you. I'd be happy
16 to do that.

17 Q. But you can't as you sit here even name
18 one study that has compared those 2 family
19 situations?

20 A. I'm telling you with confidence that such
21 studies exist, that I've over the 20-year period that
22 I've been looking at this broad cluster of questions,

1 I've tried to familiarize myself with these studies.
2 And I'm aware of the general weight of evidence in
3 them.

4 If you want me right now without any
5 ability to refer to anything to give you specific
6 titles of articles and authors and years of
7 publication, my answer is that I would be happy to do
8 that, but I can't do it right now on this moment
9 without any ability to confirm anything.

10 Q. And you don't include any of those studies
11 on your list of materials considered, do you?

12 A. Well, I don't think I discuss this
13 particular issue in my paper.

14 Q. Well, you've -- you've discussed what you
15 describe as the need of a child to be raised by the 2
16 parents who created the child.

17 Right?

18 A. I do discuss that, yes.

19 Q. Okay. And you have cited to several
20 studies that address this child welfare issue and
21 that use the word biological when talking about the
22 parents.

1 Correct?

2 A. That's correct.

3 Q. Okay. But you don't to support your
4 positions cite to any of the studies that you say
5 have actually compared an intact family where both
6 parents are biologically the creators of the child --

7 A. -- (indiscernible) -- I --

8 Q. -- and an intact family where one or both
9 of them is not/adopt (phonetic).

10 Correct?

11 A. Well, I am reasonably confident that a
12 number of these sources that I'm citing here discuss
13 this issue.

14 For example --

15 Q. Like?

16 A. -- I'm reasonably confident that David
17 Popenoe in his article discusses it. I'm fairly
18 certain that McLanahan and Sandefur discuss it. I'm
19 reasonably confident that Amato discusses it.

20 As I said, in the Child Trends study, I
21 just don't know how they're looked -- I don't know if
22 they broke out the adoptive category in the way that

1 you're suggesting that would have been useful, and I
2 agree with you.

3 Q. Well, let me ask you this.

4 In --

5 A. But it's not an unusual question. It's
6 common among scholars, and there have been -- there
7 have been efforts to answer it. I think in -- I'm
8 reasonably sure, including by the specific people
9 that I'm citing there.

10 Q. Do you know whether any of the sources
11 that you quote from in paragraph 37 broke out
12 adoptive families from the biological group?

13 A. It's common in the scholarship to do that.

14 Q. Okay. But do you have any actual support
15 for the premise that any of them did that?

16 A. As I just stated, I would have to go back
17 and read the -- I would have to go back and re-read
18 the document specifically for this question of how
19 they treated the question of adoptive children, but
20 as a general rule, I can say to you with quite a
21 level of confidence that it is frequently done, and I
22 can also report to you that the general finding is

1 that the outcomes are not identical and that those
2 children raised in adoptive homes suffer from
3 somewhat poor outcomes on some important variables
4 than do those children raised in biological intact
5 married couple homes.

6 This is a -- this is a finding in the
7 field. And it's not -- it's not -- because of the --
8 because of the -- because of the closeness of the
9 differential, it's not true that every study finds
10 this, because remember -- recall, then, the
11 discussion of adoption.

12 Adoption is the family form that most
13 rigorously seeks to mimic the married couple form.
14 And so it would be natural to assume that the best
15 outcomes for children in the -- if I may use a
16 shorthand, nontraditional, would be in adoption.

17 Q. But wouldn't --

18 A. And that is in fact true.

19 Q. Wouldn't a same-sex couple that married if
20 it were permitted to do so, quote, unquote, mimic
21 this -- as you use that word -- the traditional
22 marriage form?

1 A. No.

2 Q. Only because of the gender -- excuse me --
3 the sex of the participants?

4 A. Yes.

5 Q. Okay.

6 A. And for what that difference -- for what
7 that difference means to marriage's central purpose,
8 which is to unite the male and female in a pair bond
9 that is child rearing in nature.

10 So, yes, the fact that -- the fact of the
11 man marrying the woman -- I mean, the man marrying
12 the man or a woman marrying a woman would constitute
13 a very seismic and radical negation of this
14 fundamental principle of marriage historically as a
15 human institution. That's not a nontrivial
16 difference.

17 Q. Okay. Are you aware of studies showing
18 that children raised from birth by a gay or lesbian
19 couple, have worse outcomes than children raised from
20 birth by 2 biological difference-sex parents?

21 A. No.

22 Q. Okay. Let's take a look at the Amato

1 identification.)

2 BY MR. DUSSEAULT:

3 Q. Now, you referred earlier today to having
4 been asked by the LA Times to do an op ed piece
5 during the Prop 8 campaign?

6 A. Yes.

7 Q. Is this exhibit 7 your -- that op ed
8 piece?

9 A. Yes.

10 Q. Okay. Now, I'd like to direct your
11 attention to the second page of exhibit 7 and
12 particularly the last paragraph.

13 You say: Legalized same-sex marriage
14 almost certainly benefits those same-sex couples who
15 choose to marry as well as the children being raised
16 in those homes.

17 Do you see that?

18 A. Yes.

19 Q. Do you continue to hold that view today?

20 A. Yes.

21 Q. But your view is that although both gay
22 and lesbian couples and the children being raised by

1 gay and lesbian couples would benefit from being
2 permitted to marry --

3 A. Would likely benefit.

4 Q. Would likely benefit.

5 Sorry.

6 Well, would almost certainly benefit --

7 A. Yes.

8 Q. -- is the way you put it.

9 Right?

10 A. Yes.

11 Q. That the -- what you see as the potential
12 harm to society as a whole through further
13 deinstitutional- -- deinstitutionalization of
14 marriage outweighs that interest.

15 Correct?

16 A. Correct.

17 Q. Okay.

18 A. I would say outweighs that -- those needs.

19 Q. Okay.

20 A. Or those -- the better way to say it would
21 be outweighs our concern for those goods.

22 Q. Okay. Now, we've talked a fair bit

1 already about deinstitutionalization.

2 What does deinstitutionalization mean as
3 you use that term?

4 A. It's a term in the literature that refers
5 to the -- the changes in an institution that reduce
6 its coherence, integrity, structure, transparency,
7 and ability to perform its functions, and an overall
8 synonym that we might use is "weakening."

9 Q. Okay. That was going to be one of my
10 questions.

11 Is change to rules of an institution by
12 definition deinstitutionalization or only if it
13 weakens the institution?

14 A. No.

15 I would say you would have change -- you
16 could have changes that would strengthen the
17 institution. Sure. And there are many examples of
18 such changes historically.

19 Q. And could you have the elimination of
20 rules that have been core rules of an institution
21 where eliminating that rule actually strengthens the
22 institution?

1 MR. THOMPSON: Objection, vague.

2 A. Well, I don't believe that you could
3 change the rules of opposite sex or 2 and at the same
4 time strengthen the institution.

5 BY MR. DUSSEAULT:

6 Q. And I wasn't intending to ask specifically
7 about marriage.

8 A. Oh.

9 Q. So I'm not asking about marriage. We're
10 just talking about institutions.

11 A. Oh, any institution.

12 Q. Yes.

13 A. Could -- could what happen?

14 Q. So --

15 A. Could you change a rule and have it
16 strengthen the institution?

17 Q. And let's say it's a -- it's a central,
18 long-standing ruling of an institution.

19 Could there be a circumstance where
20 changing a central, longstanding rule of an
21 institution does not result in deinstitutionalization
22 because it does not harm the institution?

1 MR. THOMPSON: Objection, vague and beyond
2 the scope --

3 A. I -- I just -- I honestly don't --

4 MR. THOMPSON: -- of the report to talk
5 about institutions other than marriage.

6 A. Yeah.

7 I honestly don't feel able to comment
8 competently on that kind of a broad question.

9 BY MR. DUSSEAULT:

10 Q. Well, let me -- because I think in order
11 to understand your opinions, I have to have some
12 understanding of what deinstitutionalization means as
13 a concept.

14 Right?

15 A. Yes.

16 Q. So without getting into the specifics of
17 applying it to marriage, can you -- well, what I'm
18 trying to understand is, does the change of a rule
19 that you would describe as a fundamental,
20 long-standing-pillar rule of an institution
21 necessarily equal deinstitutionalization?

22 MR. THOMPSON: Same objection.

1 A. I would just have to -- I think perhaps if
2 you could offer me an example of what you're talking
3 about or a specific -- I guess an example would be
4 helpful.

5 BY MR. DUSSEAULT:

6 Q. I'm not sure I have one.

7 I was wondering if you actually might have
8 one from study.

9 A. I was just trying to think of one off the
10 top of my head.

11 I was thinking about baseball, since I
12 like basketball and I'm watching the World Series,
13 and I was thinking what if they changed the
14 fundamental rule of baseball such as the number of
15 players that could be fielded at any one time and
16 would that weaken the institution necessarily. If
17 you could field 10 players rather than 9 at any one
18 time, would that necessarily weaken the institution.

19 In that particular case, completely
20 speculatively, having no basis in careful reflection
21 or scholarship, I would say that it would be likely
22 to weaken the institution because it would seem that

1 people were acting capriciously with respect to its
2 fundamental and long-standing rules, but that I would
3 not say categorically that it would necessarily
4 weaken the institution.

5 Q. Okay. And you describe
6 deinstitutionalization of marriage as a trend that's
7 been going on for some time.

8 Correct?

9 A. Yes.

10 Q. Okay. I think we were talking about this
11 earlier. This is -- no. Actually, I was thinking of
12 something else.

13 When did the trend of
14 deinstitutionalization of marriage begin?

15 A. That's a really difficult question to
16 answer.

17 I think I might have to reflect on it
18 really carefully, because marriage has -- there's
19 never been a period of marriage where it has been
20 completely static. And so there have been -- pretty
21 regularly there have been changes and -- and
22 adaptations of the institution in response to social

1 circumstances and so forth.

2 So I don't -- the issue of
3 deinstitutionalization as I and other scholars are
4 using the term generally refer to the following
5 trends: high rates of divorce, high rates of
6 out-of-wedlock child bearing, high rates of
7 nonmarital cohabitation, and a diminution in the norm
8 of marital permanence.

9 And those I think 4 or 5 trends that --
10 and possib- -- possibly some scholars would include a
11 reduced proportion of the adult life cycle spent of
12 mar- -- in the married state, although some do and
13 some don't, and some scholars include the concept of
14 familism as a cultural value, the way -- familism,
15 F-A-M-I-L-I-S-M, familism -- they include that as the
16 respect that society gives to the institutions of
17 marriage and the family.

18 But I would say speaking personally that
19 the primary drivers and indicators of
20 deinstitutionalization in the scholarly literature
21 that I've studied have been the ones that I
22 enumerated, and the most important being divorce and

1 out-of-wedlock child bearing and nonmarital
2 cohabitation.

3 And as we discussed earlier, those trends
4 while slowly increasing for some time in the United
5 States experienced a kind of takeoff or ignition in
6 the 1970s and then through the 1980s, and they
7 experienced a slight diminution in the mid-1990s, and
8 now most of them are increasing again.

9 Q. So let's look at -- at paragraph 42 of
10 your report. I think you discuss many of these
11 things.

12 MR. THOMPSON: It's page 16.

13 A. Got it.

14 BY MR. DUSSEAULT:

15 Q. Okay. And you say: With respect to
16 marriage, what are some of the specific
17 manifestations -- I think you meant of the trend of
18 deinstitutionalization.

19 And then you talk about rising divorce
20 rates, nonmarital cohabitation and unwed child
21 bearing, loosening of legal regula- -- regulation of
22 the many aspects of marriage, the mainstreaming of

1 third-party participation in procreation and assisted
2 repro- -- reproductive technologies, and the rising
3 demand for and reality of same-sex marriage.

4 Are those the same factors you were trying
5 to list before?

6 A. Well, this list includes those -- those
7 that I would consider the current -- current drivers
8 of the trend.

9 When I was speaking before, I thought we
10 were addressing the question of how -- when did the
11 trend take off and what were the driving factors
12 when -- and so now if we're speaking of the current
13 and emerging trend of deinstitutionalization, most
14 scholars would include the issue of third-party
15 participation in procreation, and a great number
16 would include the rising demand far (phonetic) in
17 reality of same-sex marriage, and most scholars would
18 I think view all -- each of these as -- well, all the
19 scholars that look at the issue of
20 deinstitutionalization would -- many scholars who
21 look at the issue of deinstitutionalization would
22 recognize these as the customary list or a -- a -- a

1 noncontroversial list.

2 Q. Okay. You -- in paragraph 42, you
3 describe these things as manifestations of
4 deinstitutionalization.

5 One thing I'm trying to understand is, are
6 they manifestations or results of
7 deinstitutionalization, or are they causes of
8 deinstitutionalization?

9 A. This is a question that -- that scholars
10 struggle with tremendously. It's very hard -- if you
11 just take this list, it's very hard, and according to
12 the most respected scholars in the field in my view,
13 impossible actually to accurately disentangle these
14 from one another and to attribute numerically what
15 proportion of causality of deinstitutionalization can
16 be attributed to each one.

17 It -- it cannot be done. And I'm unaware
18 of anyone who has competently even attempted to do
19 so. And I'm aware of many reputable scholars who
20 have stated essentially categorically that it cannot
21 be done because of the nature of social change in
22 this instance.

1 When you have a cluster of trends that are
2 occurring simultaneously and are to some large degree
3 mutually reinforcing governed by the similar logics,
4 many of the effects are overlapping, they reinforce
5 one another and have feedback loops in all kind of
6 ways.

7 And even if we project into the future and
8 imagine some result, either positive or negative, it
9 will be very, very hard for scholars to be able to go
10 back and offer precise measurements of how much of
11 the trend can be -- is caused by one or the other.

12 I have my own guesses about which are the
13 major ones, and I have listed them here. But it is
14 not -- it is not possible to be accurate, to speak
15 accurately and competently about degrees of
16 causation.

17 I would just say, my assessment based on
18 careful reflection and the reading of the literature,
19 it is -- it is not possible to speak accurately about
20 degrees of causation.

21 Q. Okay. Would you agree that the trend of
22 the deinstitutionalization of marriage as you see it

1 was under way long before the issue of same-sex
2 marriage became one of serious debate.

3 A. Well, if we -- if we'll -- if we accept as
4 a working idea the idea that there was a kind of
5 ignition in the 1970s, and if we further stipulate
6 that it was probably in the early 1990s that the
7 issue of same-sex marriage emerged with some force on
8 the national agenda, then, yes, there would be that
9 period of -- between the '70s and the '90s that the
10 deinstitutionalization was -- was occurring in
11 measurable -- in discernible ways that were prior to
12 the emergence of same-sex marriage as a -- as a -- as
13 a significant issue of public policy debate.

14 Q. Okay. Assume hypothetically that there
15 were no same-sex marriage at all in America.

16 Do you believe that the trend of
17 deinstitutionalization of marriage would reverse
18 itself?

19 A. Whether or not the trend reverses itself
20 is not some preordained process or preordained
21 script.

22 It is dependent upon choices that people

1 make now and in the near future. So it -- the
2 question of human agency is central here. The --
3 there's nothing -- it is not a preordained process.
4 It's -- it's an event in freedom and in public
5 argument.

6 And so whether or not the trend reverses
7 itself depends on whether or not we change our
8 thinking and improve our thinking about what is
9 marriage and how much we value it. If we are able to
10 change our thinking about what is marriage and how we
11 value it, we have a -- in my view a reasonable, even
12 a good chance of changing the trend toward
13 reinstitutionalization.

14 If we do not, then it's likely that the
15 trend of deinstitutionalization will continue
16 indefinitely. But whether or not that happens
17 depends upon the actions of people now.

18 Q. Okay. And it depends upon the actions of
19 people now in numerous areas outside of same-sex
20 marriage as well.

21 Correct?

22 A. That's correct.

1 Q. Okay. Is it your view that permitting
2 same-sex marriage would contribute to the
3 deinstitutionalization of marriage in such a way that
4 parents in heterosexual relationships would no longer
5 stay with and parent their kids?

6 MR. THOMPSON: Would no --

7 BY MR. DUSSEAULT:

8 Q. Would no longer stay with and parent their
9 children.

10 A. I don't believe that as an immediate and
11 proximate consequence of changing the law in one
12 locality that those heterosexual parents in that
13 locality would immediately and dramatically flee
14 their children or cease to parent their children or
15 cease to view themselves as the providers for and
16 protectors of their children.

17 I don't believe that would happen, because
18 that is not the way social change happens in this
19 case. Social change happens in this case in a much
20 more broad and tectonic way, and it reflects the slow
21 but very important changing of the meaning of the
22 institution itself.

1 And the effect would not -- the effects
2 would not be immediate and localized in the way your
3 question suggests in my view.

4 Q. Okay. But again whether it's immediate
5 and localized, are you offering the opinion that
6 allowing same-sex couples to marry would lead people
7 in heterosexual couples whether in the short term or
8 the long term not to raise their children who
9 otherwise would have?

10 MR. THOMPSON: Objection, vague.

11 A. I believe that the -- that if we were to
12 embrace same-sex marriage as a public policy in the
13 United States, I believe it would contribute to the
14 deinstitutionalization of marriage such that marriage
15 would accelerate and -- and -- and deepen a
16 transition from being understood fundamentally as a
17 pro-child public institution to being a private adult
18 relationship that is viewed essentially as a matter
19 of private ordering.

20 And I believe that a consequence of that
21 conceptual switch, that reconceptualization of
22 marriage aided by law, encouraged and supported by

1 law -- I believe that a consequence of that change
2 would be more and more children growing up outside
3 the protections of their own mother and father
4 raising and caring for them together.

5 BY MR. DUSSEAULT:

6 Q. Okay. Is there any data that you have
7 seen suggesting that in jurisdictions where same-sex
8 marriage has been permitted it has led to a
9 deinstitutionalization such that heterosexual couples
10 who might otherwise have had children and raised them
11 within marriage are not doing so?

12 A. Well, as I mentioned, there's no reason to
13 believe that the effects of this policy change would
14 be immediate and localized in the way you're
15 suggesting, and because there's no reason to believe
16 that it would be that case, I have not searched for
17 it, and I have also not encountered any evidence of
18 that nature.

19 Q. Okay.

20 A. But I haven't looked for it because I
21 wouldn't expect it.

22 Q. Okay. Let's look at paragraphs 47 through

1 A. That's correct.

2 Q. All right. Now, let's turn to what I
3 marked previously as exhibit 2, your Future of
4 Marriage book.

5 A. Do you want me to refer to that now?

6 Q. Yes, please.

7 MR. THOMPSON: Page?

8 MR. DUSSEAULT: Page 205.

9 BY MR. DUSSEAULT:

10 Q. Now, I will represent to you based on my
11 review of pages 205 through 208 of this book that the
12 19 specific answers to the question that you present
13 in your report are virtually word for word the
14 negative consequences that are stated in this text
15 with the exception that 5 of them that are included
16 in your book are omitted in the report.

17 Is that true?

18 A. I don't -- I'm not sure about the number
19 5, but I have no reason to doubt it.

20 Q. Okay.

21 A. There were certainly some that I omitted.

22 Q. Okay. So the way you arrived at the 19

1 specific answers to the question was by drawing on
2 this list of negative consequences in your book.

3 Correct?

4 A. Yes.

5 Q. Okay. So let's --

6 A. That was one way I did it, yes.

7 Q. Well, do you agree that the consequences
8 that you include in your report from your book are
9 virtually word for word recitations of what's in the
10 book?

11 A. Yes, I do.

12 Q. So what is the other way that you did it
13 rather than taking them from your book?

14 A. Well, I tried to think freshly as best I
15 could about it, because in the book, as I say, this
16 list was developed by a group of people that included
17 both proponents and opponents of same-sex marriage.

18 It was a dialogue project that we met for
19 3 times and we came up with this -- well, we -- we
20 came up with the material that is the -- we came up
21 with a list of negative, positive, and other.

22 And the list that I have done in this book

1 as I state in the book represents my good-faith
2 effort to report on the results of that dialogue
3 project. When I thought about this report, I did my
4 best to focus on those statements that I personally
5 found the most compelling and consistent with my
6 views, and I decided to make the choice based on my
7 own views, because I was no longer expected to be
8 faithful to a representation of a group process.

9 So that is one way in which I used -- I
10 did something other than simply transcribe lists.

11 Q. Okay.

12 A. And secondly, I tried to think through for
13 the purposes of this report which of the consequences
14 in each category that I viewed as the most compelling
15 and least subject to, you know, provoke controversy.
16 I tried to assess those ones that I thought would to
17 me seemed to be the most clear.

18 Q. Okay.

19 A. And so in those 2 ways, I used my own
20 judgment on the matter.

21 Q. All right. So let's walk through the way
22 you describe in the book how you come up with the

1 list in the book.

2 So you said there were 3 1-day seminars,
3 one in New York City, one in Washington, D.C., and
4 one in Atlanta in 2004.

5 Correct?

6 MR. THOMPSON: Page are you on?

7 MR. DUSSEALT: 202.

8 Sorry.

9 MR. THOMPSON: Okay.

10 BY MR. DUSSEALT:

11 Q. So there were 3 1-day seminars, one in New
12 York City, one in D.C., and one in Atlanta.

13 Correct?

14 A. Yes.

15 Q. And approximately 40 participants?

16 A. Yes.

17 Q. Okay. Who decided who would be invited?

18 A. I chaired those meetings, and I was the
19 final judge of who was invited, and as a way of
20 issuing the invitations, I tried to consult with
21 other respective participants about what would
22 constitute excellence from our point of view in the

1 construction of the list.

2 Q. Okay. Were the participants the same at
3 all 3 meetings?

4 A. They were largely the same although not
5 exactly.

6 Q. Okay. Then this is the second full
7 paragraph on page 202, you say that: Each meeting
8 followed the same format. After some introductory
9 discussion in which each participant expressed her or
10 his primary questions and concerns, we conducted a
11 group thought experiment.

12 Is that a true and correct description of
13 what the group did?

14 A. Well, the phrase group thought experiment
15 is my own. I'm not saying that other people formally
16 agreed to something called a group thought
17 experiment, but that's my characterization of what we
18 did, and I believe it's an accurate one.

19 Q. Okay. And then you describe it as a -- as
20 a game that had 3 rules.

21 Correct?

22 A. I do use that word.

1 I don't mean game in the frivolous sense
2 of the term. I just meant the activity of what we
3 did.

4 Q. Okay. First, we stipulated that gay
5 marriage like almost any major social change would be
6 likely to generate a diverse range of consequences,
7 some of which would be positive and some negative.

8 So that was agreed upon by the group at
9 the outset?

10 A. That was the -- that was the stipulated
11 premise of the meeting.

12 Q. Okay. Second, we agreed to work together
13 as a group to specify as many of those likely
14 consequences as possible, both good and bad.

15 So the goal was to come up with as many
16 things as you could.

17 Right?

18 A. On all 3 levels.

19 Q. On all 3 levels?

20 A. That's correct.

21 Q. Okay. And third, we agreed that
22 everybody's ideas count.

1 A. Yes.

2 Q. What does that mean?

3 A. It just means that we wouldn't exclude
4 from the list ideas that were strongly argued by some
5 of the group, that there wouldn't be a voting process
6 whereby, say, a 70 percent majority of the group
7 could say that something that the other 30 percent
8 wanted was illegitimate or not worthy of being
9 listed.

10 Q. Okay. Then you talked about how you used
11 chalkboards and poster paper to work together to come
12 up with the list.

13 Correct?

14 A. Yes.

15 Q. And there was a list of positive
16 consequences, a list of negative consequences, and
17 then a list of other consequences where there may
18 have been some disagreement about how to characterize
19 it.

20 A. That's correct.

21 Q. Okay. And the result of -- of this
22 thought experiment and white boarding are the lists

1 that follow on pages 203 through 208 of your report.

2 Correct?

3 A. Yes.

4 That -- that -- those are -- that is my
5 good-faith effort to be faithful to that, but I want
6 to stipulate, and I believe I said so in the book,
7 that I did not seek or obtain the approval of all
8 these people in this -- for these formulations. I
9 believe that I conformed to our understanding of what
10 we could and couldn't do, but I -- I -- I'm speaking
11 for myself here. I'm not attaching other people's
12 names to this list.

13 I'm saying that based on this activity
14 which I've described accurately and which we've now
15 reviewed, an exercise occurred over a 3-day period.
16 And this list is my and my alone effort to be
17 faithful to report the results of that activity.

18 Q. Okay. But let me be clear: When you say,
19 my and my alone, your goal is to accurately --
20 accurately report what people put up on the white
21 board through the process that we just described.

22 A. That's correct.

1 Q. Okay. All right.

2 So the methodology if you will with coming
3 up with this list was the meetings, thought
4 experiment, white boarding process that's been
5 described.

6 A. That's correct.

7 Q. Okay. Now, is there any reason that you
8 didn't include the list of positive consequences, for
9 example, in your report on this subject?

10 A. Well, I believe that if you look at the
11 report, we will see on page 19 a section called goods
12 in conflict, and I seek over a 3-page portion of the
13 report to state as clearly as I can this conception
14 of goods in conflict and the idea that there are --
15 there re positives as well as negatives to -- to --
16 to -- to -- on any -- no matter where one comes down
17 on this, there are possible positives and possible
18 negatives. And I tried as carefully as I could to --
19 to make that crystal-clear to the reader.

20 When it -- when you go to the section on
21 deinstitutionalization under the category called,
22 where is the harm, I viewed it as my goal in that

1 section to list the -- to give specificity and to
2 exemplify as concretely as I could what that
3 concept of deinstitutionalization, how it would
4 look as -- as it relates to the potential of changing
5 our marriage laws to permit same-sex couples to
6 marry.

7 So I did not consider in that section that
8 I should list the possible benefits of same-sex
9 marriage for those 2 reasons, the first one being
10 that I already had said as clearly as I knew how that
11 I viewed this as goods in conflict in which the --
12 the -- the -- the consequences were likely to be
13 diverse in good versus good and not good versus bad,
14 but when it came time to try and explain to the
15 reader what I meant by the term
16 deinstitutionalization as it related to same-sex
17 marriage, it seemed logical to confine my discussion
18 to those factors that would exemplify that trend of
19 deinstitutionalization.

20 Q. Okay.

21 A. So I was not attempting at all to hide
22 or -- or not state my view about the goods in

1 conflict thesis, but I was trying to remain true to
2 my purpose of trying to explicate this concept of
3 deinstitutionalization.

4 Q. Okay. So you talked before about the
5 filter that you tried to apply to the list of
6 negative consequences when converting that into a
7 report on the court of potential harm of same-sex
8 marriage.

9 And I think you described that process as
10 basically thinking about and reflecting on them and
11 seeing which ones you believe you could support?

12 A. And also that I felt were the most
13 compelling and least likely to generate disagreements
14 and dissensus.

15 In other words I felt that these were the
16 ones that seemed to be the most compelling and
17 important ones for the purposes of explicating my
18 argument about deinstitutionalization.

19 D-I-S-S-E-N-S-U-S, I think.

20 Q. Okay. And with respect to the 19
21 consequences -- I know you said you couldn't endorse
22 the exact number -- but with respect to the 19

1 of societal readers with respect to same-sex marriage
2 and same-sex parenting, that practice was eliminated
3 and is currently eliminated from British medical
4 practice.

5 And I could give you many, many other
6 examples of the same thing, but --

7 BY MR. DUSSEAULT:

8 Q. I don't think you need to to answer my
9 question, but that's okay.

10 Let's talk about number 5 on your list.

11 A. I think I tried to answer the question of,
12 could I tell you why the trend toward same-sex
13 marriage would contribute to the public idea that
14 children do not really need a mother and father. So
15 my belief is that these examples I've given you are
16 very crystal-clear.

17 Q. Thanks.

18 I want to ask you about number 5.

19 MR. THOMPSON: Let's go off the record.

20 THE VIDEOGRAPHER: Going off the record,
21 18:01 and 53 seconds.

22 (Recess.)

1 THE VIDEOGRAPHER: Going back on the
2 record. The time on the video screen 18:05 and 45
3 seconds. Please continue.

4 BY MR. DUSSEAULT:

5 Q. Mr. Blankenhorn, who were to the best you
6 can recall as you sit here today the people who
7 participated in this thought experiment?

8 A. I'm not comfortable giving their names
9 because we agreed at the outset that the participants
10 would not be a matter of public disclosure.

11 Q. Okay. I -- I -- I resp- -- I understand
12 that, but I don't think whether you're comfortable
13 telling me is necessarily the standard we can have
14 with a protective order.

15 MR. THOMPSON: What about if you put it
16 under -- this portion of it under seal and if you
17 ever need to use it, then we can talk about it.

18 MR. DUSSEAULT: Yeah.

19 I think or -- under seal, I mean, agree
20 that it's --

21 MR. THOMPSON: Lawyers' eyes only.

22 MR. DUSSEAULT: Yeah, lawyers' eyes only.

1 MR. THOMPSON: So what this means, David,
2 is, if they want to use it -- and this won't count --
3 if they want to use it outside -- if anyone other
4 than Gibson Dunn or San Francisco or Boies Schiller
5 want to look at it, you know, there's going to be
6 further conversation.

7 THE WITNESS: What happens if people start
8 calling these people up and asking questions about
9 this meeting?

10 MR. DUSSEAULT: Do you guys want to go off
11 the record for a second?

12 MR. THOMPSON: Yeah.

13 Let's go off the record for a second.

14 THE VIDEOGRAPHER: Going off the record.
15 The time on the video screen is 18:06 and 59 seconds.

16 (Discussion off the record.)

17 THE VIDEOGRAPHER: Going back on the
18 record. The time on the video screen is 18:10 and 9
19 seconds. Please continue.

20 BY MR. DUSSEAULT:

21 Q. Okay. Mr. Blankenhorn, we've -- we've had
22 some discussion of this off the record, but let's go

1 back on now and discuss it.

2 Let me ask you again: Who were the 40
3 people who participated in coming up with the list of
4 negative consequences of allowing same-sex marriage?

5 A. The rules of our meeting, which I
6 believe were stated by me in the book, I believe,
7 were that we would -- none of the participants in
8 the book would publicize the names of other
9 participants.

10 And so for that reason, I don't feel
11 comfortable sharing those names with you now.

12 Q. Okay. And again as I said, whether you --

13 MR. DUSSEAULT: I don't believe there's
14 any basis for not answering a question because a
15 witness doesn't feel comfortable. It doesn't appear
16 to be a subject of privilege.

17 BY MR. DUSSEAULT:

18 Q. So I would ask you to name the people.
19 Are you tell me that you refuse to do
20 so?

21 A. I am.

22 MR. DUSSEAULT: Okay. Given the hour and

1 where we are, I think that we'll mark this, state our
2 objection to it, and reserve our rights to resume if
3 necessary and to use the witness's declining to
4 answer against him.

5 But with that said, we'll go ahead and
6 move on.

7 BY MR. DUSSEAULT:

8 Q. You mentioned earlier that I think the
9 only document you've read in this case was -- sorry.

10 Let me make that clear.

11 The only document generated specifically
12 in this case that you've read is the report of Nancy
13 Cott?

14 A. I said that in formulating this report,
15 this was the main document that I recall reading
16 carefully, yes.

17 Q. Well, no.

18 Let me make this clear.

19 Didn't you say that it was the only
20 document created in the litigation, you know, briefs,
21 transcripts, et cetera, that you recalled reading,
22 the Cott report?