

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

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

DEPOSITION OF CHARLES BALLINGER  
Los Angeles, California  
Thursday, June 26, 2003  
Volume IV

Reported by:  
DAVID OCANAS  
CSR No. 12567  
Job No. 43690

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

3  
4 ELIEZER WILLIAMS, et al., )  
5 )  
6 Plaintiffs, )  
7 )  
8 vs. ) No. 312236  
9 )  
10 STATE OF CALIFORNIA, et al., )  
11 )  
12 Defendants. )  
13 )  
14 )  
15 )

16 Deposition of CHARLES BALLINGER,  
17 Volume IV, taken on behalf of  
18 Plaintiffs, at 555 West 5th Street,  
19 Suite 3500, Los Angeles, California,  
20 beginning at 9:37 A.M. and ending at  
21 4:34 P.M. on Thursday, June 26, 2003,  
22 before DAVID OCA-AS, Certified  
23 Shorthand Reporter No. 12567.  
24  
25

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3 CHARLES BALLINGER  
4 Volume IV

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2  
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CLAIRE SCHAEFER  
MONIQUE FUENTES  
GABRIELLE SOLEDAD

1 Los Angeles, California, Thursday, June 26, 2003  
2 9:37 A.M. - 4:34 P.M.  
3  
4 CHARLES BALLINGER,  
5 having been previously duly sworn, was examined and  
6 testified as follows:  
7

8 EXAMINATION  
9 BY MR. VILLAGRA:

10 Q Good morning. If I could have you turn  
11 your attention to Exhibit 12, your report at page  
12 32.

13 First full paragraph, do you see the  
14 reference to: "Some school districts tracking the  
15 gifted and talented education program  
16 on less preferred attendance tracks."

17 A I do.

18 Q In the next sentence, you say:  
19 "The purpose of this type of  
20 attendance tracking is to insure that  
21 the less preferable tracks are not  
22 relegated only to students with lower  
23 socioeconomic status."

24 Do you see that?

25 A I do.

1 Q What do you mean by "regulated only to  
2 students with lower socioeconomic status"?

3 A I'm here trying to negate critic's  
4 allegations that sometimes students from lower  
5 socioeconomic status, are put into tracks that they  
6 might not otherwise prefer.

7 I don't think that is true.

8 So the sentence is, particularly, the --  
9 particularly, the second sentence is some districts  
10 make sure that a track, which may be less  
11 preferred, is not seen as simply one to be filled  
12 up with students from a lower socioeconomic status.

13 Q You say some districts make sure that the  
14 less preferable tracks are not relegated with  
15 students with lower socioeconomic status.

16 How many districts in California are you  
17 aware of that make sure that the less preferable  
18 tracks are not relegated in that way?

19 A I don't have any idea; I have not made  
20 that study.

21 Q In your opinion, are there some districts  
22 operating multitrack year-round schools in  
23 California that do not make sure that less  
24 preferable tracks are not relegated to students  
25 with lower socioeconomic status?

1 A Yes. Some districts do try, at the  
2 beginning, in the procedures that they set up  
3 before enrollment commences, some kind of balancing  
4 procedures in terms of ethnicity, race,  
5 socioeconomic status.

6 And if the school is large enough, it's  
7 possible there could be gifted and talented or GATE  
8 programs, as we call them, on each of the tracks.

9 Q Other than by doing something at the  
10 beginning in terms of balancing the tracks, how  
11 else might a school district insure that the less  
12 preferable tracks are not relegated only to  
13 students with lower socioeconomic status?

14 MS. DAVIS: Calls for speculation.

15 THE WITNESS: The district could insure  
16 that those policies continue, not just at the  
17 implementation point, but throughout.

18 BY MR. VILLAGRA:

19 Q How would a district do that?

20 A Well --

21 MS. DAVIS: Same objection.

22 THE WITNESS: It would be incumbent on the  
23 administrators to keep watching the enrollment.

24 There is not major change in attendance  
25 tracks once the initial enrollment occurs.

1 A That would be the same part of the study I  
2 have not done.

3 Q To the best of your opinion, sitting here  
4 today, it may be true that some districts in  
5 California operating multitrack year-round schools  
6 are relegating students with lower socioeconomic  
7 status to less preferable tracks?

8 A I couldn't answer that without doing the  
9 study.

10 Q You mentioned that "the purpose of this  
11 type of attendance tracking," and by that, I take  
12 it you mean putting the gifted and talented program  
13 on a less preferred track; is that correct?

14 A Read the question to me.

15 (Record read.)

16 A Yes.

17 BY MR. VILLAGRA:

18 Q That the purpose of putting the gifted and  
19 talented program on a less preferred track is to  
20 insure that the less preferable tracks are not  
21 relegated to students with lower socioeconomic  
22 status.

23 How else might a school district insure  
24 that the less preferable tracks are not relegated  
25 only to students with lower socioeconomic status?

1 There is an occasional change, but it's  
2 not a major change.

3 BY MR. VILLAGRA:

4 Q Are there any other ways, to your  
5 knowledge, that a school district could insure that  
6 the less preferable tracks are not relegated only  
7 to students with lower socioeconomic status?

8 MS. DAVIS: Same objection.

9 THE WITNESS: I'm not coming up with  
10 anything else right now.

11 BY MR. VILLAGRA:

12 Q You just testified about the different  
13 ways that a district might insure that the less  
14 preferable tracks are not relegated only to  
15 students with lower socioeconomic status.

16 How do you know of those various methods?

17 A Through the various conferences, seminars  
18 on year-round education that I have attended for  
19 over 30 years.

20 Q You mentioned some districts try, at the  
21 beginning, to maintain balance in tracks in terms  
22 of race, ethnicity, and socioeconomic status.

23 Do you recall that?

24 A Yes.

25 Q Does that imply that some do not?

1 MS. DAVIS: Vague and ambiguous.  
 2 THE WITNESS: I can't determine that until  
 3 I have done the study, which may be a good study to  
 4 do here in the future.  
 5 BY MR. VILLAGRA:  
 6 Q Why might it be a good study?  
 7 A It would be good to see a status report.  
 8 Q What if the status report showed that some  
 9 districts were relegating students with lower  
 10 socioeconomic status to the less preferable tracks?  
 11 MS. DAVIS: Assumes facts not in evidence,  
 12 incomplete hypothetical.  
 13 THE WITNESS: If it showed what you  
 14 suggested, it might happen.  
 15 I think I would say the same thing as I  
 16 said yesterday when we were talking about  
 17 philosophy.  
 18 If I were still executive director, I  
 19 would encourage, either through spoken or written  
 20 word, the balancing of the tracks, that it occurred  
 21 to the greatest degree possible.  
 22 BY MR. VILLAGRA:  
 23 Q Do you believe that the State of  
 24 California should encourage, through spoken and  
 25 written word, balance across tracks in multitrack

1 year-round school, to the greatest extent possible?  
 2 MS. DAVIS: Vague and ambiguous, asked and  
 3 answered.  
 4 THE WITNESS: I would have the same  
 5 response for the State.  
 6 Any of us would have to do the study  
 7 before we would have any idea what we need to say.  
 8 BY MR. VILLAGRA:  
 9 Q Do you understand you were retained as an  
 10 expert witness in this case by the State of  
 11 California?  
 12 A I do.  
 13 Q What do you understand the State of  
 14 California to be; what do you understand the entity  
 15 that retained you to be?  
 16 A The State of California would be the state  
 17 government of California, the legal agency called  
 18 the State of California.  
 19 Q If a district did not place its gifted  
 20 and talented education program on less preferred  
 21 tracks, would the result be that the less  
 22 preferable tracks would be relegated only to  
 23 students with lower socioeconomic status?  
 24 MS. DAVIS: Incomplete hypothetical,  
 25 assumes facts not in evidence, calls for

1 speculation.  
 2 THE WITNESS: Not necessarily, depends on  
 3 the size.  
 4 There are a lot of different factors that  
 5 might come into play.  
 6 BY MR. VILLAGRA:  
 7 Q But it could?  
 8 A It might be possible.  
 9 I don't think it's likely in a multitrack  
 10 situation, simply because we're already talking  
 11 about large numbers.  
 12 That's why we have -- why we're  
 13 considering multitrack.  
 14 Q Why would it not be likely by virtue of  
 15 the large numbers?  
 16 A Well, if we're talking about a school  
 17 large enough to have multitrack, usually we would  
 18 have enough GATE sections that there would be the  
 19 likelihood of GATE in each one of the tracks.  
 20 But, again, we really have to do some kind  
 21 of a census to find out what the real picture is.  
 22 Q In this discussion here, on page 32, are  
 23 you assuming that the GATE program has been placed  
 24 on all tracks at the multitrack year-round school?  
 25 A What I'm doing in this paragraph is

1 responding to Dr. Mitchell and his comment when he  
 2 finds fault with the practice of some districts  
 3 which he assumes he knows or has heard of or  
 4 whatever, I don't know.  
 5 But anyway, I mentioned it; so I'm  
 6 responding to his comment.  
 7 Q In responding to his comment, are you  
 8 assuming that at that school, in that district,  
 9 that the GATE program has been placed on all tracks  
 10 at multitrack year-round schools?  
 11 MS. DAVIS: Calls for speculation, he  
 12 doesn't know what district.  
 13 THE WITNESS: I wouldn't be able to  
 14 respond to the question until I have done the kind  
 15 of study or census that I mentioned a while ago.  
 16 BY MR. VILLAGRA:  
 17 Q When you referred to the practice of  
 18 tracking the gifted and talented education program  
 19 on less preferred tracks, are you talking about  
 20 putting the GATE program only on less preferred  
 21 tracks?  
 22 A Not necessarily.  
 23 Q What is it that you're referring to?  
 24 A Again, I go back.  
 25 I only brought it up here because

1 Dr. Mitchell did.  
 2 I'm responding to his remarks.  
 3 Q That's fine.  
 4 I'm trying to understand what your respond  
 5 is.  
 6 Are you assuming, in responding to him,  
 7 that when a school tracks a GATE program on less  
 8 preferred attendance tracks, that it is putting the  
 9 GATE program only on the less preferred attendance  
 10 tracks?  
 11 MS. DAVIS: Vague and ambiguous, calls for  
 12 speculation.  
 13 THE WITNESS: I don't have any way of  
 14 knowing what they are doing unless I were to see  
 15 the school and the picture at that school.  
 16 BY MR. VILLAGRA:  
 17 Q So you really can't offer an opinion as to  
 18 whether the example that Dr. Mitchell cited is a  
 19 good or a bad one, can you?  
 20 MS. DAVIS: Vague and ambiguous.  
 21 THE WITNESS: No. As I have said here a  
 22 couple of times, really responding to his comment,  
 23 I respond to it in the way I think it should be  
 24 responded to.  
 25 That's all I'm doing.

1 BY MR. VILLAGRA:  
 2 Q I'm entitled to understand what the  
 3 substance of your response is.  
 4 When you refer to a practice of some  
 5 school districts, what are you referring to; what  
 6 is that practice?  
 7 A Well, there is an assumption in his  
 8 comment, I am taking the same assumption, if this  
 9 is occurring.  
 10 Q What is it that "this is occurring"?  
 11 A What's talked about here, putting a GATE  
 12 on a less preferred attendance track.  
 13 That if districts are doing that, they are  
 14 making sure that a particular track is not  
 15 relegated only to lower socioeconomic students.  
 16 Q Are you assuming within the practice, the  
 17 GATE program is put exclusively on less preferred  
 18 attendance tracks?  
 19 A Not at all.  
 20 Q Are you assuming it is placed on all  
 21 tracks?  
 22 A I'm not assuming that either.  
 23 I'll go back to what I said.  
 24 I wouldn't have any idea until I were to  
 25 do a census of the school and get a picture.

1 Q At the end of the paragraph, you say that,  
 2 in this example: "The district is trying to  
 3 insure..."  
 4 A Excuse me, where are you now?  
 5 Q The sentence starts in both examples.  
 6 A Okay.  
 7 Q I just want to deal with the GATE example.  
 8 You say that "The school districts were  
 9 attempting to insure there were  
 10 enriched opportunities across all  
 11 tracks as in the GATE example."  
 12 Do you see that?  
 13 A I see that.  
 14 Q If the GATE program was placed only on the  
 15 less preferred attendance tracks, how does that  
 16 enrich opportunities across all tracks?  
 17 A If the assumption is that it's only on one  
 18 track, the example is only one track, it may only  
 19 mean they have only got one group of GATE students  
 20 to put on any track.  
 21 And they may have chosen that particular  
 22 track.  
 23 But it doesn't tell us what happens with  
 24 the other tracks.  
 25 Q And it doesn't necessarily enrich the

1 opportunities on the other tracks, does it?  
 2 A It wouldn't if there were only one GATE  
 3 class and if they were only put on one track.  
 4 Q I'm going to turn your attention to  
 5 page 36, on this same Exhibit 12.  
 6 Under Heading "A," you described  
 7 Dr. Mitchell's finding in his expert report.  
 8 Do you see that?  
 9 A Yes.  
 10 Q In the second sentence you write:  
 11 "The Concept 6 category, as well as  
 12 the multitrack not-Concept 6  
 13 category, are alike at Rank 5.  
 14 While the traditional single-rank  
 15 category is ranked as a 6.  
 16 The circumstance Dr. Mitchell  
 17 indicates might be due to the fact  
 18 that a particular locale contributes  
 19 variability."  
 20 Do you see that?  
 21 A I do.  
 22 Q I just want to focus on the first part of  
 23 this statement.  
 24 "The Concept 6 category, as well as the  
 25 multitrack category not-Concept 6,

1 are alike at Rank 5."  
 2 What do you mean by that?  
 3 A I mean, simply, that's what Dr. Mitchel  
 4 said.  
 5 And I'm taking this information from his  
 6 report.  
 7 MR. VILLAGRA: I want to mark as  
 8 Exhibit 29, a report by Ross E. Mitchell, entitled:  
 9 "Segregation in California, K Through  
 10 12, Public Schools: By season  
 11 implementation, assignment, and  
 12 achievement with a multitrack  
 13 year-round calendar."  
 14 (Deposition Exhibit 29,  
 15 Report by Ross E. Mitchell, entitled:  
 16 Segregation in California K Through  
 17 12, Public Schools, was marked for  
 18 identification by the Court  
 19 Reporter.)  
 20 BY MR. VILLAGRA:  
 21 Q Do you know what Exhibit 29 is?  
 22 A I have Exhibit 29 in front of me.  
 23 Q Do you know what it is?  
 24 A It's a report by Dr. Ross E. Mitchell,  
 25 entitled: Segregation in California's K-12, Public

1 Schools; in implementation, assignment, and  
 2 achievement with the multitrack year-round  
 3 calendar.  
 4 Q You have reviewed a copy of Exhibit 29,  
 5 previously?  
 6 A I have, previously.  
 7 Q And at page 36 of Exhibit 12, when you  
 8 talk about having taken this statement from  
 9 Dr. Mitchell's report, you're referring to  
 10 Exhibit 29; is that correct?  
 11 A Yes.  
 12 Q Can you show me where, in Exhibit 29,  
 13 Dr. Mitchell finds that the Concept 6 category, and  
 14 the multitrack not-Concept 6 categories, are alike  
 15 at Rank 5?  
 16 A That may take a while.  
 17 It's been several weeks since I have  
 18 looked at this.  
 19 If you'll give me some time.  
 20 MS. DAVIS: Are you including the tables  
 21 in the back?  
 22 That's what Mitchell is representing.  
 23 Are you including that as part of his  
 24 report?  
 25 MR. VILLAGRA: I handed him an exhibit.

1 If you want to, indicate to your witness  
 2 to look at the tables.  
 3 MS. DAVIS: Do you want a sentence from  
 4 Dr. Mitchell, or do you consider the tables as part  
 5 of his report?  
 6 MR. VILLAGRA: I believe the witness's  
 7 testimony was that this is what Dr. Mitchell said.  
 8 MS. DAVIS: That's what I'm asking.  
 9 MR. VILLAGRA: He wants to show me where  
 10 Dr. Mitchell said that.  
 11 (Discussion off the record.)  
 12 THE WITNESS: I'm not finding the exact  
 13 words in his report.  
 14 From paging 20 to 22, he does talk about  
 15 the ranks.  
 16 Particularly on page 22, there are the box  
 17 plots that he has put in the back of his report.  
 18 I believe this particular information came  
 19 from an earlier draft of Dr. Kneese's report.  
 20 And I believe we went through these box  
 21 plots, and that's where I got the information.  
 22 But I would have to go back to my working  
 23 notes, which are in San Diego, to see where this  
 24 specifically came from.  
 25 But it originally came from his discussion

1 on pages 20 through 22, where he talks about, for  
 2 example, on page 22, first full sentence:  
 3 "Summarily, the left-hand scale  
 4 makes it possible to see that the  
 5 most frequent similar schools' rank  
 6 for the Concept 6 multitrack schools  
 7 is a two.  
 8 And the least frequent link is a  
 9 10 and so on."  
 10 I believe we looked at the box plots and  
 11 came up with this.  
 12 I cannot point to a specific reference in  
 13 Dr. Mitchell's report, right now.  
 14 BY MR. VILLAGRA:  
 15 Q Let's try to backtrack; you had a lot in  
 16 there.  
 17 You mentioned working notes.  
 18 Did you produce to defense counsel your  
 19 working notes?  
 20 A No.  
 21 Q Why not?  
 22 A I was told: In the draft stage, that  
 23 would be considered draft.  
 24 Everything I did was in draft form.  
 25 When I say "working notes," I meant

1 including the drafts.

2 I don't keep separate notes, as such.

3 Q What are the working notes, then?

4 A The drafts; I work on my drafts.

5 Q Are there handwritten notes on the drafts?

6 A Just as I revised things and that sort of  
7 thing.

8 Q You said that "we looked at the box plots  
9 and came up with this."

10 Who is the "we"?

11 A Dr. Kneese and I went through this, and  
12 see if we could ferret out to see what Dr. Mitchell  
13 was talking about here, and looked at the box plots  
14 in the back of the report.

15 Q Was anyone else involved?

16 A Not in those discussions.

17 Q Were you and Kneese able to ferret what it  
18 was that Dr. Mitchell was talking about?

19 A I believe this was part of the discussion.

20 I can't speak for Dr. Kneese.

21 I may have misunderstood what she told me.

22 This is what my understanding was when I  
23 wrote this.

24 Q What was your understanding based on?

25 A Discussions with her.

1 conducted by Dr. Mitchell in his report?

2 A I can make a judgment as to my reaction.

3 Q Can you make a judgment about the  
4 statistical analyses?

5 MS. DAVIS: The actual tables or what  
6 Mitchell has represented what the tables mean?

7 BY MR. VILLAGRA:

8 Q Let's talk, first, about the tables?

9 A I looked at those tables.

10 I went through the tables with Dr. Kneese.

11 To tell you the truth, I didn't understand  
12 them very well.

13 Q Do you understand any of the methodology  
14 that Dr. Mitchell may or may not have used to  
15 generate these tables?

16 A I have a layman's knowledge, and that's as  
17 far as I'll go with that.

18 Q So is it fair to say, in this case, you're  
19 not offering an expert opinion as to anything to do  
20 with statistical analyses?

21 A That's correct.

22 Q Are you offering, in the case, an expert  
23 opinion on the effects of multitrack year-round  
24 education on student achievement?

25 A Not personally.

1 Q Was it based on any independent analysis  
2 you did of Dr. Mitchell's work?

3 A As I said the other day, I'm not a  
4 researcher myself.

5 So I don't do independent reviews.

6 Q So you're paraphrasing here, what Carolyn  
7 Kneese told you about Mitchell's analysis?

8 A I'm writing here, what I understood from  
9 her analysis.

10 I could be wrong.

11 Q Do you take issue with any of the  
12 statistical analyses conducted by Dr. Mitchell as  
13 reflected here in Exhibit 29?

14 A I'm not sure what you're asking me.

15 Q Do you have the ability to assess the  
16 methodology used by Dr. Mitchell in conducting his  
17 statistical analyses in this report?

18 A As a professional, not expert in the field  
19 of statistical analysis, I would have to say I can  
20 read through and make a personal judgment.

21 But I'm not an expert in statistical  
22 analysis, and I don't claim to be.

23 Q That's what I'm asking.

24 Do you feel capable or able to offer a  
25 judgment regarding the statistical analyses

1 I'm in conjunction with the paper written  
2 by Dr. Kneese for this same case.

3 Q If Dr. Kneese had not prepared her paper,  
4 would you have any independent basis to offer an  
5 opinion, an expert opinion, about the effects of  
6 multitrack year-round education on student  
7 achievement?

8 MS. DAVIS: On the paper in this case?

9 MR. VILLAGRA: Yes.

10 THE WITNESS: I would have some reason to  
11 have an expert opinion from three decades of  
12 working in the field.

13 Would I -- I'll just leave it there, yes.

14 BY MR. VILLAGRA:

15 Q What did you mean by that?

16 A Over the years, one has a certain sense of  
17 what year-round education can do and not do.

18 The same as a teacher in a classroom has a  
19 sense about what students can do and not do, even  
20 prior to tests that may be given or achievement --  
21 standardized achievement tests that may be given.

22 Q You have, based on your experience, a  
23 sense of the achievement of students in multitrack  
24 year-round schools?

25 A Yes. I have read as much as I can, the

1 reports that come out.

2 Not only Dr. Kneese's work, but  
3 Dr. Cooper's most recent report also.

4 So I think -- those reports confirm the  
5 sense that I have had, although I'm not a  
6 researcher and, again, I don't claim to be.

7 Q You can't speak to the propriety or  
8 impropriety of the analyses made by Harris Cooper?

9 A I can in a surface way, but I can't to a  
10 great degree.

11 Q Can you speak to the propriety or  
12 impropriety of the analyses of Carolyn Kneese?

13 A I can in a general way.

14 But I'm not the researcher, so I have to  
15 rely on her analyses.

16 Q When you say you have offered an opinion  
17 on Harris Cooper's analyses "in a surface way,"  
18 what do you mean?

19 A Dr. Cooper has a reputation as an expert  
20 in the procedures of meta-analysis.

21 Outside of any work he's done on summer  
22 learning laws and year-round education, that's one  
23 of his areas of expertise.

24 He's in the psychology department.

25 He's not in the education department.

1 it was called in those years -- the Department of  
2 Evaluation for the California Department of  
3 Education and had been there for several years.

4 So she had done a considerable amount of  
5 work in the field of evaluation of schools in  
6 California.

7 Q With respect to the Quinlan report, do you  
8 have to rely on her background as being sufficient  
9 to offer those opinions?

10 A I think she's had enough background to  
11 offer her opinions, yes.

12 Q What about Dr. Mitchell, do you believe  
13 that he had sufficient background to offer the  
14 opinions reflected in Exhibit 29?

15 A I think he has background to offer his  
16 opinions, sure.

17 Q Do you know what a shift-function analysis  
18 is?

19 A I'm familiar with the term.

20 But I'm not an expert in that area.

21 Q Have you ever done one?

22 A I have not done one.

23 Q Do you know how one should be done  
24 properly?

25 A I do not.

1 This is part of his work.

2 He's trained this way.

3 When he comes out with his analyses, one  
4 has to assume he has some knowledge about what he's  
5 doing.

6 Q Why does one have to assume that?

7 A Well, whenever it comes to expert  
8 analyses, one has to rely on the background of the  
9 person in order to have a fair understanding of  
10 whether this person's work is something valid  
11 enough to look at and respond to.

12 Q We talked yesterday, about a report by  
13 Resnick in the Oakland Unified School District.

14 Do you have to assume that she was  
15 qualified to offer the opinions?

16 A I don't know her background.

17 It's a different circumstance.

18 The backgrounds I know of is Dr. Cooper  
19 and Dr. Kneese.

20 Q What about Claire Quinlan, who prepared a  
21 report on multitrack year-round education; do you  
22 know anything about her background?

23 A I do.

24 Q What do you know about her background?

25 A She was with the -- I don't remember what

1 Q Can you say whether Dr. Mitchell did his  
2 shift analysis properly or not?

3 A I cannot.

4 Q I want to direct your attention to  
5 Figure 12.

6 A Of his report?

7 Q Of Exhibit 29; it appears to be Figure 12.

8 The appendix, do you see Figure 12; do you  
9 see for the traditional single-track category, the  
10 median rank is 6?

11 A I do.

12 Q Do you see that for the multitrack  
13 not-Concept 6, the median rank is 5?

14 A And the other one is 5.

15 And that's where I got this in my report.

16 Q Do you believe that's where you got this  
17 from?

18 A It probably is.

19 I could not find that as I was looking  
20 through the pages.

21 Q Do you have a sufficient understanding to  
22 interpret Figure 12?

23 A Myself, no.

24 Q Do you understand Figure 12 to say that  
25 the Concept 6 category, and the multitrack



1 not-Concept 6 category, are alike at Rank 5, while  
2 the traditional single-track category is ranked as  
3 a 6?

4 A I see that.

5 And in this box plot, I would have a quick  
6 judgment that's what it says.

7 Again, I'm not an expert.

8 But that appears -- on the surface, it  
9 appears to be so.

10 Q But you're not sure whether that's the  
11 proper interpretation of this figure?

12 A I wouldn't swear to it in court or in a  
13 deposition.

14 Q I want to go back to your report,  
15 Exhibit 12, page 38.

16 The second full sentence, it says:

17 "Given the choice, teachers  
18 typically choose to avoid a school or  
19 track with harder-to-teach students  
20 such as those with limited English  
21 language proficiency."

22 Do you see that?

23 A I do.

24 Q Yesterday we talked about less preferred  
25 tracks.

1 common understanding within my field of education.

2 Because there are articles, from time to  
3 time, in the professional literature suggesting  
4 ways of encouraging teachers to work with  
5 harder-to-teach students.

6 BY MR. VILLAGRA:

7 Q What do you understand harder-to-teach  
8 students to be?

9 A Harder to teach could include the limited  
10 English language, as I say here.

11 It could be special-education students.

12 It could be disinterested students.

13 It could be students who have some

14 criminal background.

15 It could be -- I'll just leave it there,  
16 students of that kind.

17 Q Any other type of student that comes to  
18 mind that you believe are harder-to-teach students?

19 A Not right at the moment.

20 Q If harder-to-teach students were equally  
21 distributed across tracks, there would be no way  
22 for a teacher to pick one track over another in  
23 terms of harder-to-teach students; is that correct?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: I don't know. I just don't

1 You spoke about them in terms of what  
2 parents would prefer.

3 Are there less preferred tracks, in your  
4 opinion, at multitrack year-round schools in terms  
5 of what teachers would prefer?

6 MS. DAVIS: Vague and ambiguous.

7 THE WITNESS: There may be, but different  
8 teachers may choose different tracks for their own  
9 reasons.

10 BY MR. VILLAGRA:

11 Q Are you aware of any study that has looked  
12 at the distribution of teachers by experience level  
13 across tracks in multitrack schools?

14 MS. DAVIS: Vague and ambiguous as to  
15 "experience."

16 THE WITNESS: I have not done any research  
17 of a study of that kind, myself.

18 BY MR. VILLAGRA:

19 Q Are you aware of any?

20 A Not right at the moment.

21 Q Is it fair to assume from this sentence,  
22 that the less preferred tracks by teachers are  
23 those with harder-to-teach students?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: Well, I know that is a

1 know.

2 BY MR. VILLAGRA:

3 Q You have no idea?

4 A No.

5 Probably would depend, to some degree, on  
6 a union contract and what that contract might allow  
7 or not allow.

8 Q Here it says: "Given a choice."

9 Let's assume the teacher has a choice.

10 If I'm a teacher and I would like to avoid  
11 hard-to-teach students, how would I do that?

12 MS. DAVIS: Vague and ambiguous.

13 BY MR. VILLAGRA:

14 Q Wouldn't I pick the track that has the  
15 fewest harder-to-teach students?

16 MS. DAVIS: Calls for speculation.

17 THE WITNESS: You might.

18 But this sentence doesn't just talk about  
19 tracks; it talks about school as well.

20 BY MR. VILLAGRA:

21 Q It says school or track?

22 A Yes.

23 Q Is it true for track?

24 A I just don't know.

25 Q Is this an overstatement, then?

1 A No.

2 I think when I use school or track, I am  
3 including the whole picture.

4 Q Are you assuming when you describe the  
5 whole picture, that there are some tracks that have  
6 more harder-to-teach students than other tracks?

7 A There may, I don't know.

8 Q Isn't that a necessary assumption of your  
9 statement, here?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: That's a possibility.

12 And I suspect that's why I made it so  
13 general, school or track.

14 BY MR. VILLAGRA:

15 Q So it might not be so true with respect to  
16 track, as it is with respect to school; is that  
17 what you're saying now?

18 A What's not true?

19 Q That teachers would pick a track to avoid  
20 harder-to-teach students?

21 A Again, it's a possibility.

22 But I would need to have some actual data  
23 to make a final judgment.

24 Q So you have no data to support this  
25 statement?

1 There is some speaking to this particular  
2 problem in that report.

3 I haven't seen the data from LAUSD to see  
4 what the disparity is.

5 Because White and Cantrell found this.

6 And I knew that in this report, I speak to  
7 this in conjunction with what we just discussed  
8 above.

9 Q Let me be clear.

10 When you write "this problem," what is the  
11 problem?

12 A This problem of teachers avoiding the  
13 harder-to-teach student which was mentioned in the  
14 White and Cantrell report.

15 Q You say, for example, "LAUSD"?

16 A Correct.

17 Q Do you have any other example of a  
18 district changing its approach to teacher selection  
19 and union contract?

20 A I don't at the present.

21 Q When you say "the problem may dissipate,"  
22 is it also true that the problem may not dissipate?

23 A I think that would be assumed in the  
24 language.

25 But I don't know, one way or the other.

1 A In the sense that I talked about it a  
2 while ago, there are articles within the literature  
3 saying we need to find incentives to encourage  
4 teachers to teach in schools or tracks with  
5 harder-to-teach students.

6 So that problem has to be there or there  
7 wouldn't be the discussion.

8 I don't have firsthand knowledge of what  
9 some of those problems are.

10 Q Based on the research that you have seen,  
11 have you seen any discussion of whether certain  
12 tracks have more harder-to-teach students than  
13 other tracks at multitrack year-round schools?

14 A I have not seen that, no.

15 Q Still on the same page, 38, you say:

16 "This problem, though, may  
17 dissipate as districts change their  
18 approach to teacher selection and  
19 union contract."

20 Do you see that?

21 A Yes.

22 Q What's the problem you're referring to?

23 A This is in the White and Cantrell Report  
24 as I mentioned here in my paper, a couple of  
25 sentences later.

1 Q I want to turn back to page 21 of your  
2 report.

3 In the first full paragraph, I believe  
4 it's the last sentence: "Absent from these  
5 figures..."

6 Do you see that?

7 A I see that.

8 Q "Absent from these figures, however, is  
9 any analysis of factors such as the  
10 population growth in the communities  
11 utilizing Concept 6, the numbers of  
12 students from single-parent families  
13 attending the comparison schools, and  
14 the socioeconomic status of the  
15 families in the comparison schools."

16 Do you see that?

17 A I do.

18 Q Is this a point that you made based on  
19 your discussion with Carolyn Kneese about  
20 Dr. Mitchell's report?

21 A It very well may be.

22 Q You don't know?

23 A I don't remember the exact discussion.

24 Q Do you believe that socioeconomic status  
25 is absent from Dr. Mitchell's analysis?

1 MS. DAVIS: What analysis? Vague and  
2 ambiguous.  
3 THE WITNESS: That's a different question.  
4 What are you referring to?  
5 BY MR. VILLAGRA:  
6 Q Here, at the start, you say: "Absent from  
7 these figures..."  
8 And you have a citation to pages 1 through  
9 14 of Dr. Mitchell's report.  
10 A Those are the box plot pages.  
11 Q So it's the figures?  
12 A The figures, yes.  
13 Q Do you believe that absent from  
14 Dr. Mitchell's figures, is any analysis of the  
15 socioeconomic status of the families in the  
16 comparison schools?  
17 A I believe that when I wrote this, yes.  
18 Q Do you know whether Dr. Mitchell could  
19 have analyzed any of these factors in his figures?  
20 A There's no way I would know whether he did  
21 or didn't.  
22 Q You don't know whether he did or not?  
23 A In the box plots, no, I don't.  
24 Q Do you know how he might have gone about  
25 incorporating these factors into his figures?

1 A No. I don't know whether he did or not.  
2 I'm simply saying I don't see those in his  
3 box plots.  
4 That's all I'm saying there.  
5 Because the pages 1 through 14 are the box  
6 plot pages.  
7 I had a separate section where those box  
8 plots came in, in the separate staple, and were  
9 attached to -- I had to use those page numbers.  
10 Q When I read "absent from these figures," I  
11 should be reading: I don't see these figures in  
12 any analysis?  
13 A That's right.  
14 Q All right.  
15 A Absent -- the box plots don't tell us some  
16 of these other factors.  
17 Q The box plots don't tell us, or you don't  
18 see that reflected in the box plots?  
19 A I don't see it, anyway. I didn't see it.  
20 Q Do you believe that Dr. Mitchell should  
21 have included analysis of the number of students  
22 from single-parent families attending the  
23 comparison schools in generating his figures?  
24 A It might have been helpful; it might have  
25 given us a more complete picture.

1 Q You said "it might have been"?  
2 A Yes.  
3 Q But not necessarily?  
4 A I don't know.  
5 Q And the last factor, why do you believe it  
6 would have been helpful to include the numbers of  
7 students from single-parent families attending the  
8 comparison schools?  
9 A It would have been of interest to see  
10 whether there is a comparison between the various  
11 groups, whether these factors come into play, and  
12 what happens in the box plots, for example.  
13 Q Are you aware of any study on the subject  
14 of multitrack year-round education that has looked  
15 at that number of students from single-parent  
16 families attending the comparison schools?  
17 A None is coming quickly to mind.  
18 It doesn't mean that it isn't available.  
19 I just can't bring one to mind.  
20 Q Do you believe that it would have been  
21 helpful to include population growth in the  
22 community utilizing Concept 6 as Dr. Mitchell  
23 generated his figures?  
24 A Yes.  
25 Q Why?

1 A Again, it would be one of the factors to  
2 see why the schools were on a multitrack schedule.  
3 Q Don't we know why they are on multitrack  
4 schedules?  
5 A Because of over-enrollment, yes.  
6 Q So what would the population growth tell  
7 us?  
8 A It might tell us that there was a very  
9 rapid increase in population over a short period of  
10 time.  
11 And that the schools were working with the  
12 situation which was very difficult for them.  
13 Q Might it show anything else?  
14 A That's enough for now.  
15 Q Meaning, you can't think of anything else?  
16 A Not at the present time.  
17 Q I want to refer you back to Exhibit 24.  
18 A All right.  
19 Q If I could turn your attention to page 2  
20 of Exhibit 24.  
21 A All right.  
22 Q I know we talked about this yesterday.  
23 Listed on page 2, are the characteristics  
24 included by the California Department of Education,  
25 in the school characteristics index; is that right?

1 A We talked about it, yes.  
 2 Q Is my understanding of it right; these are  
 3 the factors included in the school characteristics  
 4 index?  
 5 MS. DAVIS: The document speaks for  
 6 itself.  
 7 THE WITNESS: Yes.  
 8 And I note, it says on this page:  
 9 "The similar characteristics include, but are not  
 10 limited to..."  
 11 So there are some that are listed here.  
 12 BY MR. VILLAGRA:  
 13 Q All right.  
 14 A I don't know what the others would be.  
 15 Q Do you believe this is an incomplete list?  
 16 A I don't know.  
 17 That's the language used here on the paper  
 18 you're referring to.  
 19 Q Do you have any knowledge as to whether  
 20 this PSAA, the Public School Accountability Act  
 21 of '99, specifies in terms of what factors are to  
 22 be included in the similar characteristics index?  
 23 A On this page 2 that you're referring to  
 24 there, there is a list of factors.  
 25 Q Can you look at the factors listed; can

1 Q So you don't believe that average parent  
 2 educational level reflects socioeconomic status of  
 3 families?  
 4 A That's a factor that they list here,  
 5 socioeconomic status, as well as free or reduced  
 6 price lunch program.  
 7 It does not tell us the economic status of  
 8 the family.  
 9 Q All right.  
 10 A Overall status of the family.  
 11 Q So the California Department of Education,  
 12 in constructing the school characteristics index,  
 13 did not include the numbers of students from  
 14 single-parent families or the socioeconomic status  
 15 of families?  
 16 MS. DAVIS: I object, mischaracterizes his  
 17 prior testimony and the documents.  
 18 It's included but not limited to.  
 19 MR. VILLAGRA: I'm asking a summation.  
 20 Is that a fair conclusion?  
 21 (Record read.)  
 22 THE WITNESS: The answer is "yes," it did  
 23 not.  
 24 BY MR. VILLAGRA:  
 25 Q I want to turn your attention to page 31

1 you tell me whether the numbers of students from  
 2 single-parent families is included as a factor in  
 3 the PSAA in the school characteristics index?  
 4 MS. DAVIS: As listed here?  
 5 MR. VILLAGRA: Yes.  
 6 THE WITNESS: I don't see it on this page.  
 7 BY MR. VILLAGRA:  
 8 Q Do you believe that the number of students  
 9 from single-parent families is a factor taken into  
 10 account in the school characteristics index?  
 11 MS. DAVIS: Asked and answered.  
 12 THE WITNESS: I don't see that as I look  
 13 at this page.  
 14 BY MR. VILLAGRA:  
 15 Q Do you see where socioeconomic status of  
 16 families is listed?  
 17 A It does say "pupil socioeconomic status."  
 18 I assume that would be family as well.  
 19 But that's an assumption.  
 20 Q If you look at page 3, I believe there is  
 21 an operational definition.  
 22 Do you believe that includes socioeconomic  
 23 status of families?  
 24 A Here, it does not include socioeconomic  
 25 status of families.

1 of your report, Exhibit 12.  
 2 At the very top of the page, you write:  
 3 "Dr. Oaks and Dr. Mitchell also  
 4 claim that the multitrack year-round  
 5 calendar fosters curriculum tracking,  
 6 alleging the course offerings are not  
 7 equal across tracks."  
 8 Do you see that?  
 9 A Yes, curriculum vitae.  
 10 Q You go on to say that "curriculum vitae  
 11 tracking is not unique to the multitrack year-round  
 12 calendar."  
 13 Do you see that?  
 14 A I do.  
 15 Q What I want to know is whether you have an  
 16 opinion as to whether the multitrack year-round  
 17 calendar fosters curriculum tracking?  
 18 A I don't know that it does.  
 19 Q You don't know one way or the other?  
 20 A I don't.  
 21 Because I haven't done that particular  
 22 study.  
 23 Q You haven't done that; are you aware of  
 24 any studies that have looked at that, whether  
 25 multitrack year-round calendar fosters curriculum

1 tracking?

2 A I don't know that it does foster.

3 And I haven't done such a study to  
4 determine one way or the other.

5 Q You haven't done a study; are you aware of  
6 any studies?

7 A I have not.

8 And I don't agree it fosters curriculum  
9 tracking.

10 Q Why don't you agree?

11 A There's no evidence.

12 I have seen, just by being a practitioner  
13 in the field for many years, that the multitrack  
14 year-round calendar fosters curriculum tracking  
15 anymore than a traditional calendar fosters  
16 curriculum tracking.

17 Curriculum tracking is -- is done at  
18 almost every high school that I'm aware of.

19 Q Let's assume that's true.

20 Do you know whether curriculum tracking  
21 occurs to a greater extent in multitrack year-round  
22 schools than in other schools?

23 A Not that I'm aware of.

24 Q You said there's no evidence that you've  
25 seen that the multitrack year-round calendar

1 courses the students are taking are considerably  
2 different in a multitrack high school as compared  
3 to a traditional high school, if there are patterns  
4 that would be significantly different.

5 Q What do you mean by "significantly  
6 different"?

7 A Huge difference between what a multitrack  
8 program and numbers of course offerings and  
9 students taking those course offerings would be  
10 from a comparable traditional high school or,  
11 probably, several multitrack schools compared with  
12 -- with several comparable traditional calendar  
13 high schools.

14 Q What would a huge difference be in your  
15 opinion?

16 A Just a completely different picture.

17 Q Can you give me any idea?

18 A At this point, I can't.

19 Q Would you also look at the curriculum and  
20 course offerings offered on each track at a  
21 multitrack year-round school to determine whether  
22 the multitrack year-round calendar fosters  
23 curriculum tracking?

24 A I might.

25 Q All right.

1 fosters curriculum tracking.

2 If you were looking for such evidence that  
3 the multitrack year-round calendar fosters  
4 curriculum tracking, what would you look for?

5 MS. DAVIS: Assumes facts not in evidence.

6 THE WITNESS: I would probably look to see  
7 if there was a much different picture of curriculum  
8 or course offerings in students taking them and  
9 that sort of thing.

10 It would be quite a different picture than  
11 what we would see in a traditional calendar school.

12 If I was doing the study, that's probably  
13 where I would start.

14 I don't know.

15 I might rethink that as I got into it.

16 Often when you do some kind of a survey or  
17 study, once you get into it, you realize that you  
18 need to look at different kinds of things.

19 So this is all speculative on what I might  
20 do.

21 BY MR. VILLAGRA:

22 Q When you say "a much different picture,"  
23 in terms of curriculum and course offerings, what  
24 do you mean?

25 A Well, I would see whether the kinds of

1 A But I compare that with the similar-sized  
2 traditional high school to do the comparison.

3 Q When you say "similar-sized traditional  
4 high school to do the comparison," what do you  
5 mean?

6 A If one of the tracks had 1,000 pupils  
7 enrolled, I would look at a 1,000-pupil traditional  
8 high school to see whether the pictures are  
9 comparable or not.

10 Q If there were 1,000 students on one track  
11 and it were a Concept 6 school, wouldn't you expect  
12 there to be 2,000 students at the school site at  
13 any given time?

14 A There would be.

15 Q Why wouldn't you compare to a  
16 2,000-student traditional high school?

17 A I wouldn't because I don't think that's a  
18 fair comparison.

19 The fairer comparison would be 1,000  
20 pupils with 1,000 pupils, by the structure of the  
21 way we set up class offerings, scheduling, and so  
22 on.

23 Q And when you say "it's not a fair  
24 comparison," what do you mean?

25 A Just what I said.

1 It's not a fair comparison, all right?  
 2 The beauty of a multitrack school is that  
 3 there is the possibility for cross-tracking.  
 4 So students in those multitrack schools  
 5 may have a greater possibility of having additional  
 6 course offerings than a traditional calendar  
 7 school.  
 8 Q When you say that, you're basing that on a  
 9 comparison to a 1,000-seat traditional high school?  
 10 A 1,000-seat track on a multitrack with  
 11 1,000 students in a traditional calendar.  
 12 Q If I compare 2,000 students at the  
 13 multitrack track high school who are at the school  
 14 site on any given day, to a 2,000-seat traditional  
 15 calendar high school, who would you expect to have  
 16 greater availability of courses?  
 17 A I won't accept that.  
 18 Because I don't think you can do that.  
 19 Q I believe in the deposition, I'm entitled  
 20 to ask you?  
 21 A You're entitled.  
 22 And I'm entitled to answer, which I don't  
 23 think that would be a fair comparison.  
 24 Q And the court reporter, I'm sure, wrote  
 25 down that it wasn't fair.

1 So let me have you make the comparison  
 2 anyway.  
 3 What would be the result if you compared  
 4 the two tracks at a Concept 6 high school of 1,000  
 5 students, each with the students at a 2,000-seat  
 6 traditional high school, which group of students  
 7 would you expect to have greater access to  
 8 curriculum offerings?  
 9 MS. DAVIS: Incomplete hypothetical,  
 10 assumes facts not in evidence.  
 11 Calls for speculation.  
 12 THE WITNESS: I wouldn't have any way of  
 13 judging that until I saw what the course offerings  
 14 were.  
 15 I just don't know.  
 16 That could change school-by-school, too,  
 17 you know.  
 18 It's very speculative.  
 19 I don't know.  
 20 I would have to see some examples.  
 21 BY MR. VILLAGRA:  
 22 Q How can you say that looking at one track,  
 23 compared to 1,000 students at a traditional  
 24 calendar high school, isn't that speculative as to  
 25 whether a student, given the ability to

1 cross-track, would have greater access to courses?  
 2 MS. DAVIS: That mischaracterizes his  
 3 prior testimony.  
 4 THE WITNESS: That's not speculation.  
 5 BY MR. VILLAGRA:  
 6 Q Why not?  
 7 A It's reality.  
 8 A traditional school -- students in a  
 9 traditional calendar school would not have the  
 10 possibility of cross-tracking.  
 11 There is nothing to cross-track to.  
 12 So it's a reality.  
 13 Q Do you have any idea of how many students  
 14 in Concept 6 high schools in California, this year,  
 15 have cross-tracked?  
 16 A I don't have a number.  
 17 Q How about last year?  
 18 A No.  
 19 Q For any year?  
 20 A No.  
 21 Q You have no idea what percentage of  
 22 students cross-tracked?  
 23 A No.  
 24 MS. DAVIS: Asked and answered.  
 25 MR. VILLAGRA: Let's take a break.

1 (Recess taken.)  
 2 BY MR. VILLAGRA:  
 3 Q I'm going to turn your attention to your  
 4 report, Exhibit 12, page 35.  
 5 The last paragraph, starts with  
 6 "moreover."  
 7 A Yes.  
 8 Q You write:  
 9 "Students off-track at times when  
 10 various school activities occur, are  
 11 invited to participate..."  
 12 Do you see that?  
 13 A Yes.  
 14 Q Are you aware of what the participation  
 15 rate is of students off-track at times when various  
 16 school activities occur?  
 17 MS. DAVIS: Vague and ambiguous.  
 18 THE WITNESS: I'm not.  
 19 BY MR. VILLAGRA:  
 20 Q So all those students off-track, at times  
 21 when the school activities occur, might be invited;  
 22 you don't know whether the students participate in  
 23 the activities; you don't know at what rate the  
 24 students participate?  
 25 MS. DAVIS: Asked and answered.

1 THE WITNESS: That's correct.  
 2 BY MR. VILLAGRA:  
 3 Q Are you aware of any studies looking at  
 4 the participation rates of students off-track at  
 5 times when school activities occur?  
 6 A I'm not.  
 7 Q Have you spoken with any administrators at  
 8 multitrack year-round schools about the  
 9 participation rates of students off-track when  
 10 school activities occur?  
 11 MS. DAVIS: Vague and ambiguous.  
 12 THE WITNESS: Yes, about their  
 13 participation.  
 14 No, as to the rate.  
 15 BY MR. VILLAGRA:  
 16 Q So in those conversations with  
 17 administrators, or based on those conversations,  
 18 you don't know whether students off-track,  
 19 participate at the same rate as students on-track  
 20 in school activities?  
 21 A I don't know.  
 22 Q Have you spoken with any teachers about  
 23 the participation rates of students off-track at  
 24 times when various school activities occur?  
 25 A I have not.

1 Q Do you think that would be an interesting  
 2 subject to look at?  
 3 A Could very well be, yes.  
 4 Q Why might it be?  
 5 A Just to get a picture of what is happening  
 6 in multitrack schools.  
 7 Q Would you expect, based on your  
 8 experience, the participation rates to be equal  
 9 between students off-track and students on-track  
 10 when school activities occur?  
 11 MS. DAVIS: Vague and ambiguous, calls for  
 12 speculation.  
 13 THE WITNESS: I would think -- with some  
 14 activities, yes, sure.  
 15 BY MR. VILLAGRA:  
 16 Q But not for others?  
 17 A I just don't know.  
 18 Q I want to turn your attention to page 41,  
 19 the last bullet point, in that last sentence, you  
 20 say: "There's no evidence that the quality and  
 21 quantity of maintenance is somehow  
 22 impaired by the calendar or that  
 23 instructional time is lost."  
 24 Do you see that?  
 25 A I do.

1 Q What do you mean by "evidence"?  
 2 A There's no study that shows that the  
 3 quality and quantity of maintenance is compared by  
 4 the calendar or that instructional time is lost.  
 5 I know of no such study.  
 6 Q When you refer to "evidence," do you mean  
 7 anything other than a study?  
 8 A I don't even know of anecdotal evidence  
 9 where a calendar has caused that.  
 10 Q You're not aware of anecdotal evidence  
 11 where the calendar has caused impairment in  
 12 instructional time; is that correct?  
 13 MS. DAVIS: Due to maintenance?  
 14 MR. VILLAGRA: Yes.  
 15 THE WITNESS: That's correct.  
 16 BY MR. VILLAGRA:  
 17 Q When you say "caused by the calendar,"  
 18 what do you mean?  
 19 A The calendar itself does not do the  
 20 maintenance -- nor no maintenance.  
 21 There are other factors that make the  
 22 difference.  
 23 So the calendar is not a problem with the  
 24 maintenance.  
 25 Q But what if, as a result of being on a

1 multitrack year-round calendar, school maintenance  
 2 must occur at times when school is in session;  
 3 would you say, then, that the calendar has caused  
 4 the impairment in instructional time?  
 5 A I wouldn't know that that is so.  
 6 Q Why not?  
 7 A Well, I don't know what the impairment of  
 8 time might have been in a particular circumstance.  
 9 You're giving me a hypothetical here.  
 10 I just don't know what you might be  
 11 referring to.  
 12 Q Is it possible that maintenance could  
 13 impair instructional time at a multitrack  
 14 year-round school?  
 15 MS. DAVIS: Calls for speculation.  
 16 THE WITNESS: It could at any calendar  
 17 school.  
 18 There would be breakdown in the plumbing.  
 19 It would have to be repaired wherever that  
 20 might be.  
 21 BY MR. VILLAGRA:  
 22 Q When you said that there was no study on  
 23 this subject, do you mean no study showing that  
 24 maintenance impairs or reduces instructional time  
 25 or no study one way or the other?

1 A There's no study one way or the other.  
 2 Q In the absence of a study, how would you  
 3 go about looking for evidence as to whether  
 4 maintenance does impair instructional time at a  
 5 multitrack year-round school?  
 6 MS. DAVIS: Vague and ambiguous.  
 7 THE WITNESS: I would have to think about  
 8 that one for awhile.  
 9 I would set up such a study.  
 10 BY MR. VILLAGRA:  
 11 Q Would you speak to school administrators.  
 12 A That would be one source.  
 13 It wouldn't be a highly definitive study.  
 14 I could get some feel for it, I would  
 15 suspect.  
 16 Q What would the other sources be?  
 17 A You could talk about maintenance people,  
 18 building some facility staff, whatever district  
 19 might have in way of personnel, working with  
 20 maintenance.  
 21 Q Would you also speak to teachers?  
 22 A Teachers might be a source.  
 23 Q Anyone else?  
 24 A Not at this time.  
 25 Q What about students?

1 A A -- students may be a source where you  
 2 could get some anecdotal information.  
 3 But students don't usually have a complete  
 4 picture of what is going on.  
 5 Q Why do you say that?  
 6 A They may see that some repairs are taking  
 7 place.  
 8 They may see that because the plumbing  
 9 went out or water wasn't available on a given day  
 10 school was held.  
 11 But that is outside of the calendar.  
 12 That has to do with facilities, not the  
 13 calendar.  
 14 Q I want to turn your attention to page 43.  
 15 The Heading "B," it says:  
 16 "Dr. Oaks."  
 17 At the end of that full paragraph, you  
 18 criticize for relying on newspaper articles.  
 19 Do you see that?  
 20 A Yes.  
 21 Q How many studies are you aware of  
 22 specifically addressing the Concept 6 calendar?  
 23 A I couldn't give you a number offhand.  
 24 MS. DAVIS: Vague and ambiguous.  
 25 BY MR. VILLAGRA:

1 Q Yesterday we saw some studies that LAUSD  
 2 conducted regarding Concept 6.  
 3 A The two White and Cantrell studies.  
 4 Is that what you're referring to?  
 5 Q Yes.  
 6 A Yes.  
 7 Q Are those two of the studies that you're  
 8 aware of that refer to Concept 6?  
 9 A Yes.  
 10 Q Are you aware of the LAUSD in the  
 11 late '80s conducting a study on Concept 6 schools?  
 12 A I am.  
 13 There were two, rather than one.  
 14 Q Two in the late '80s?  
 15 A Yes.  
 16 Q Other than those we just talked about, can  
 17 you think of any other study that addresses  
 18 Concept 6?  
 19 MS. DAVIS: Objection.  
 20 THE WITNESS: I can't right now.  
 21 But Concept 6 has been in other states.  
 22 There may be studies that I may not be  
 23 aware of.  
 24 BY MR. VILLAGRA:  
 25 Q Did you cite any studies in your paper

1 regarding the experience with Concept 6 in other  
 2 states?  
 3 A I did not, in my paper.  
 4 Q Why not?  
 5 A Because I did not have them in -- there  
 6 have been some studies on financial results in  
 7 Colorado with Concept 6 that I'm aware of.  
 8 But I didn't cite those because they  
 9 weren't applicable to this particular paper.  
 10 Q Do you believe that more research has to  
 11 be done into the Concept 6 calendar?  
 12 MS. DAVIS: Vague and ambiguous.  
 13 THE WITNESS: I would welcome any research  
 14 into any phase of our year-round education program.  
 15 So the answer is yes.  
 16 Any research is a step ahead.  
 17 BY MR. VILLAGRA:  
 18 Q Compared to other year-round calendars,  
 19 would you say that there are more or fewer studies  
 20 addressing the Concept 6 calendar?  
 21 MS. DAVIS: Vague and ambiguous.  
 22 THE WITNESS: My answer would have to be  
 23 speculative since there are far more 60-20, 45-15  
 24 calendars in far more districts than what we would  
 25 have in schools or districts on Concept 6.



1 My speculation would be that there are  
 2 more studies on other calendars than Concept 6,  
 3 yes.  
 4 But I don't know that for a fact.  
 5 BY MR. VILLAGRA:  
 6 Q Do you believe that it is always  
 7 inappropriate for a researcher to rely on newspaper  
 8 articles?  
 9 A What do you mean by "rely on"?  
 10 Q Here, you refer to Dr. Oaks's reliance on  
 11 newspaper articles.  
 12 What did you mean by "Dr. Oak's reliance"?  
 13 A I thought she cited a large number of  
 14 newspaper articles, or cited to those newspaper  
 15 articles, rather, quite a few times.  
 16 Once in awhile, a researcher may use a  
 17 newspaper article as anecdotal or an interesting  
 18 story.  
 19 But, usually, researchers don't use  
 20 newspaper articles as the source of specific data  
 21 having to do with a calendar or anything else for  
 22 that matter.  
 23 Q I appreciate that.  
 24 But do you believe that it is  
 25 inappropriate for a researcher to rely on newspaper

1 report?  
 2 BY MR. VILLAGRA:  
 3 Q I'm just asking for your recollection.  
 4 A Right at the moment, I'm not coming up  
 5 with specific studies.  
 6 She referred to -- as I recall, she  
 7 referred to the White and Cantrell study.  
 8 So yes, she did.  
 9 Q Do you believe her reliance on newspaper  
 10 articles, given that she also relied on studies,  
 11 research studies on multitrack year-round education  
 12 is evidence of the lack of well-researched support  
 13 for her theories?  
 14 A Well, to some degree, yes.  
 15 Q But to some degree, no?  
 16 A To -- I have to leave -- my sentence  
 17 speaks for itself.  
 18 I made the statement.  
 19 I'll leave it there.  
 20 Q That's actually what we're here to  
 21 understand, which is, what it is that you meant by  
 22 that.  
 23 I take it that you mean that, to some  
 24 extent, you believe that to be true.  
 25 But to some extent, you don't believe it

1 articles?  
 2 A Depends on what it is they are relying on.  
 3 Q Does it also depend on the particular  
 4 subject matter?  
 5 A No.  
 6 I would think a researcher would need to  
 7 be careful on most any subject matter.  
 8 Q Did Dr. Oaks rely on anything other than  
 9 newspaper articles in her report, to your  
 10 recollection?  
 11 MS. DAVIS: Objection.  
 12 Dr. Oaks's report speaks for itself.  
 13 THE WITNESS: She did rely on other  
 14 things, too, yes.  
 15 BY MR. VILLAGRA:  
 16 Q Did she cite research in the field of  
 17 multitrack year-round education?  
 18 MS. DAVIS: Same objection.  
 19 THE WITNESS: She cited to things that  
 20 would be relative to multitrack year-round  
 21 education, yes.  
 22 BY MR. VILLAGRA:  
 23 Q Did she cite studies regarding Concept 6?  
 24 MS. DAVIS: Same objection.  
 25 THE WITNESS: May I look at the Oaks

1 to be true.  
 2 To what extent do you believe it to be  
 3 true that Dr. Oaks's reliance on newspaper articles  
 4 is evidence of the lack of well-researched support  
 5 for her theories?  
 6 A I think I'll let the statement for speak  
 7 itself.  
 8 Q I'm entitled to know what your intent was  
 9 in saying this.  
 10 MS. DAVIS: If you clarify the question.  
 11 BY MR. VILLAGRA:  
 12 Q Do you believe, quoting your own words,  
 13 that, "Dr. Oak's reliance on newspaper articles is  
 14 the evidence of the lack of  
 15 well-researched support for her  
 16 theories regarding the Concept 6  
 17 calendar?"  
 18 A I do to the degree that she should cite  
 19 other sources than newspaper articles for such  
 20 things, as there are not available intercession  
 21 classes, when the newspaper articles themselves  
 22 said that there were students in intercession  
 23 classes.  
 24 Q Anything else?  
 25 A That's enough for now.

1 Q So only to that degree do you believe that  
2 Dr. Oaks's reliance on newspaper articles is  
3 evidence of the lack of well-researched support for  
4 her theories?

5 A I spoke of intercession.

6 She cited to the newspaper articles that  
7 students had trouble finding jobs.

8 Even while those newspaper articles  
9 suggested that students were in jobs during the  
10 intercession time, I think her reliance on  
11 newspaper articles is not -- is evidence of the  
12 lack of well-researched support for her  
13 contentions.

14 Q Anything else?

15 A That's all.

16 Q Just to the degree that she cited  
17 newspaper articles about intercession classes, and  
18 students off-track finding jobs.

19 Just to that extent, do you believe that  
20 her reliance on newspaper articles is evidence of  
21 the lack of well-researched support for her  
22 theories?

23 A Those are definitely two examples.

24 Q Can you think of any others?

25 A Not at the moment.

1 who did find a job, does that refute her point, in  
2 your opinion?

3 MS. DAVIS: Mischaracterizing his  
4 testimony.

5 THE WITNESS: It may refute it to a  
6 degree.

7 BY MR. VILLAGRA:

8 Q To a degree?

9 A Yes.

10 Q But to a degree it may not?

11 A To a degree it may not.

12 Q When you talk about Dr. Oaks citing  
13 newspaper articles regarding the lack of  
14 availability of intercession classes, do you recall  
15 whether Dr. Oaks cited any other support for the  
16 proposition that there was limited availability of  
17 intercession at multitrack year-round schools?

18 MS. DAVIS: Objection.

19 Dr. Oaks's report speaks for itself.

20 THE WITNESS: I think she referred to a  
21 statement made by another party.

22 I'm not remembering what it is right now.

23 BY MR. VILLAGRA:

24 Q What do you mean by "another party"?

25 A I think she quoted someone in one of her

1 Q Did you understand Dr. Oaks to say there  
2 were no intercession classes available on  
3 multitrack year-round calendars?

4 A She spoke on the lack of availability of  
5 intercession classes, even as she cited to articles  
6 where students in the articles talked about having  
7 intercession classes.

8 Q I appreciate that.

9 I want to find out what your understanding  
10 was of what she said.

11 Do you understand her to be saying that  
12 there were no intercession classes available at  
13 multitrack year-round school?

14 A In an absolute sense, I can't say that.

15 She inferred that it was very rare.

16 Q She implied or you inferred?

17 A I inferred that.

18 Q She didn't say that?

19 A I don't recall that, whether she made it  
20 absolute.

21 Q All right.

22 A I would have to go to the report and check  
23 that out, again.

24 Q So if the students off-track have trouble  
25 finding jobs, and you find an example of a student

1 instances.

2 But I can't say right now.

3 Q Do you recall whether she quoted  
4 Gordon Wohlers regarding the limited availability  
5 of intercession at multitrack year-round schools?

6 MS. DAVIS: Same objection.

7 THE WITNESS: I said, I believe she quoted  
8 someone.

9 I can't remember who it was.

10 So I don't know whether it was

11 Gordon Wohlers or not.

12 BY MR. VILLAGRA:

13 Q I want to turn your attention to page 44,  
14 still on your report, Exhibit 12.

15 You're discussing here, "the Lou Harris  
16 survey."

17 Do you see that?

18 A Yes.

19 Q Have you seen the Lou Harris study that  
20 Dr. Oaks cites in her report?

21 A I have seen it.

22 Q You have seen it?

23 A Yes.

24 Q When did you see it?

25 A When the materials were delivered to me

1 that are pertinent to this particular aspect of  
 2 this case.  
 3 Q Did you ask to be sent the Harris survey?  
 4 A No.  
 5 Q You state in the second sentence:  
 6 "Initially, Dr. Oaks's report  
 7 provides no information as to how  
 8 this survey was conducted."  
 9 Do you see that?  
 10 A Yes.  
 11 Q Do you have any knowledge as to how this  
 12 survey was conducted?  
 13 A I don't.  
 14 And she didn't either.  
 15 Q How do you know that?  
 16 A I don't recall, anywhere, that she said  
 17 how it was conducted.  
 18 Q So if she didn't say in her report how the  
 19 Harris survey was conducted, your assumption is you  
 20 don't know how it was conducted?  
 21 A I said it provides no information, her  
 22 report doesn't.  
 23 I'm not assuming whether she knows or not.  
 24 Q I asked you, Mr. Ballinger, do you have  
 25 any knowledge as to how the survey was conducted,

1 the Harris survey?  
 2 And you said you did not.  
 3 And you said she did not either?  
 4 A I said in her report she provides no  
 5 information.  
 6 That's what I say here in my report.  
 7 Q You don't know whether she knows?  
 8 A I don't know whether she does or not.  
 9 MR. VILLAGRA: The transcript will speak  
 10 for itself.  
 11 MS. DAVIS: He said twice, she provides no  
 12 information.  
 13 BY MR. VILLAGRA:  
 14 Q Have you looked at the Harris survey?  
 15 A I have looked at it.  
 16 Q Have you looked at how it was conducted?  
 17 A Not really, no.  
 18 I saw the questions.  
 19 I saw responses.  
 20 But I didn't go further, no.  
 21 Q Did you have any reason to dispute the  
 22 methodology of the survey?  
 23 A I didn't have any reason to.  
 24 Q Did you object to any of the questions you  
 25 saw in the Harris survey?

1 MS. DAVIS: Vague and ambiguous.  
 2 THE WITNESS: Many of the questions were  
 3 well beyond items that I was interested in.  
 4 So -- you know, I only focused on the one  
 5 she speaks to in my report.  
 6 So I really didn't go into any detail with  
 7 the rest of the survey.  
 8 BY MR. VILLAGRA:  
 9 Q And the question that you're referring to,  
 10 specifically, is whether teachers felt that the  
 11 multitrack year-round schedule interfered with  
 12 their ability to cover the curriculum?  
 13 A Yes.  
 14 Q Did you have any opinion about that  
 15 question?  
 16 A I do give my opinion here, later.  
 17 Q About the phrasing of the question?  
 18 A Not the phrasing of the question.  
 19 I accepted it at face value.  
 20 Q At the bottom of this paragraph, you say:  
 21 "In my experience, I suspect that  
 22 42 percent of teachers, teaching on  
 23 any calendar, would respond they  
 24 could not cover all of the curriculum  
 25 they hoped to, because there is too

1 much to teach in the time available."  
 2 Do you see that?  
 3 A Yes.  
 4 Q Why do you say, "I suspect"?  
 5 A Because I have been in teacher lunchrooms  
 6 often enough at the end of the school term to hear  
 7 teachers say: I wish I had more time to cover the  
 8 material.  
 9 I said that same thing in my first year of  
 10 teaching in 1958.  
 11 I have heard teachers over the years say  
 12 the same thing.  
 13 It's a common complaint.  
 14 It has nothing to do with the calendar.  
 15 Most subject areas, if there were more  
 16 time, you could cover more material.  
 17 I say that here.  
 18 Q Have you conducted a survey?  
 19 MS. DAVIS: Vague and ambiguous.  
 20 BY MR. VILLAGRA:  
 21 Q Have you conducted a survey as to whether  
 22 teachers on the multitrack year-round calendar  
 23 believe that the schedule interferes with their  
 24 ability to cover the curriculum?  
 25 A I have not done the survey.

1 Q How many teachers have you heard make the  
2 claim that there is not enough time to teach the  
3 entire curriculum?

4 A Dozens, if not more.

5 Q Dozens, if not more in the span of 45  
6 years?

7 A 43 -- 45, yes.

8 Q Would you agree that's not necessarily a  
9 very high number?

10 MS. DAVIS: Vague and ambiguous,  
11 argumentative.

12 BY MR. VILLAGRA:

13 Q Do you believe that's an adequate  
14 scientific sample?

15 MS. DAVIS: Vague and ambiguous.

16 THE WITNESS: My knowing?

17 BY MR. VILLAGRA:

18 Q Yes.

19 A I think it's such a common complaint, I  
20 was reacting, saying: I'm surprised the 42 percent  
21 isn't higher.

22 Most teachers would say that they can't  
23 cover the material.

24 I don't think it has anything to do with  
25 the calendar.

1 THE WITNESS: I don't know what the  
2 teacher would mean in that particular circumstance.

3 It could mean that, I suppose it could  
4 mean something else.

5 BY MR. VILLAGRA:

6 Q So the 42 percent of California teachers  
7 who feel that the multitrack year-round schedule  
8 interferes with their ability to cover the  
9 curriculum may be saying that the multitrack  
10 year-round schedule affords them too little time to  
11 cover the curriculum; is that correct?

12 MS. DAVIS: Asked and answered.

13 THE WITNESS: I don't know.

14 But it could be.

15 BY MR. VILLAGRA:

16 Q I want to look at page 45 of the same  
17 exhibit.

18 The first full paragraph you say:

19 "Dr. Oaks claims in Concept 6  
20 calendar, and presumably, all  
21 multitrack year-round calendars harm  
22 students."

23 Do you see that?

24 A Yes.

25 Q What do you mean by "harm students"?

1 Q You have no --

2 A I have no study I have done on my own.

3 Q Are you aware of any study?

4 A No.

5 It's the first time I have seen a question  
6 like this.

7 Q You refer to the complaint that "there is  
8 simply too much to teach in the time available."

9 Do you see that?

10 A Yes.

11 Q Do you understand that complaint to be the  
12 equivalent of a teacher saying that the multitrack  
13 year-round schedule interferes with their ability  
14 to cover the curriculum?

15 MS. DAVIS: Vague and ambiguous.

16 THE WITNESS: A teacher may say that.

17 I don't know what else to say.

18 A teacher could say that.

19 BY MR. VILLAGRA:

20 Q Do you believe, though, that a teacher who  
21 says that the multitrack year-round schedule  
22 interferes with his or her ability to cover the  
23 curriculum, means there is simply too much to teach  
24 in the time available?

25 MS. DAVIS: Calls for speculation.

1 A I believe she had made the case that the  
2 Concept 6 calendar, in particular, was harmful to  
3 the achievement of students.

4 I just don't think there is evidence to  
5 support her idea.

6 Q When she made the case that Concept 6 was  
7 harmful to students, did you understand her to be  
8 saying that it was harmful with respect to anything  
9 other than student achievement?

10 A That was her primary focus.

11 Q Did her focus include any other subject?

12 A She spoke about access to student  
13 activities which we talked about awhile ago, access  
14 to summer jobs, that sort of thing, which would be  
15 presumably harmful to students.

16 Q Did she also address access to courses?

17 MS. DAVIS: The document speaks for  
18 itself.

19 THE WITNESS: She did.

20 And lack of availability of coursework.

21 BY MR. VILLAGRA:

22 Q To your recollection, when she made the  
23 case that Concept 6 was harmful, did she refer to  
24 anything other than students achievement, access to  
25 activities and jobs, and access to courses?

1 MS. DAVIS: Same objection.  
 2 THE WITNESS: She spoke of loss of  
 3 instructional time.  
 4 BY MR. VILLAGRA:  
 5 Q To your recollection, did she address  
 6 anything else?  
 7 MS. DAVIS: Same objection.  
 8 BY MR. VILLAGRA:  
 9 Q In terms of the harm to students from the  
 10 Concept 6 calendar?  
 11 MS. DAVIS: Same objection.  
 12 THE WITNESS: Those are the things I  
 13 recall, right at the moment.  
 14 BY MR. VILLAGRA:  
 15 Q The third sentence, down from the one we  
 16 were just looking at, it says:  
 17 "One would have to believe that  
 18 students in those first seven  
 19 multitrack year-round schools, had  
 20 they been truly harmed, would have,  
 21 by now, shown to be damaged citizens  
 22 of the State."  
 23 Do you see that?  
 24 A Yes.  
 25 Q What do you mean by "damaged citizens of

1 the State"?  
 2 A I would think by this time, three decades  
 3 later, if these folks felt they had been harmed by  
 4 having been in a multitrack school, they would be  
 5 saying: Hi, I'm an example of a student harmed by  
 6 a multitrack year-round calendar.  
 7 We would be hearing and they would say:  
 8 I'm damaged. I was damaged by the calendar that I  
 9 went to school under.  
 10 It just hasn't happened.  
 11 Q You mentioned three decades of experience.  
 12 Three decades of experience with what?  
 13 A With multi-tracking in California.  
 14 It began in 1971.  
 15 Q How many decades of experience has there  
 16 been with Concept 6 in California?  
 17 A Nearly as long, but not quite as long.  
 18 I can't give you an exact year.  
 19 Q Other than people coming forward and  
 20 saying: I'm an example of a student harmed by the  
 21 calendar.  
 22 Or: I was damaged by the calendar.  
 23 What do you mean by "damaged citizens of  
 24 the State"?  
 25 A I was referring, there, to what I just

1 said.  
 2 These would be people who would come  
 3 forward and say: I was hurt by the multitrack  
 4 calendar in the school I was attending.  
 5 Q Are you aware of any of the plaintiffs in  
 6 the case, stating that they are examples of  
 7 students harmed by the Concept 6 calendar?  
 8 A I have not seen anything like that.  
 9 Q You haven't?  
 10 A Not that I recall.  
 11 Q Did you ask to see declarations of  
 12 students at Concept 6 schools in California?  
 13 MS. DAVIS: From this case?  
 14 MR. VILLAGRA: Yes.  
 15 THE WITNESS: I didn't specifically ask  
 16 for that, no.  
 17 BY MR. VILLAGRA:  
 18 Q Why not?  
 19 A I just asked for the materials I needed.  
 20 And those were presented to me.  
 21 MS. DAVIS: Calls for a legal conclusion.  
 22 I think there was some confusion as to  
 23 what the declaration was.  
 24 Maybe we straightened it out.  
 25 You talked about it on the first day.

1 And he wasn't sure what that meant.  
 2 BY MR. VILLAGRA:  
 3 Q You say there's no evidence supporting the  
 4 theory that Concept 6 harms students?  
 5 A I do.  
 6 Q You say that the lack of evidence is that  
 7 there aren't people coming forward saying that they  
 8 are examples of students harmed by the Concept 6  
 9 calendar; is that correct?  
 10 A No.  
 11 Adults who have been harmed.  
 12 I'm talking about adults.  
 13 Q So if adults were to come forward and say  
 14 they were harmed by the Concept 6 calendar, you  
 15 would take that as evidence of its harm?  
 16 A Not necessarily.  
 17 We could probably, then, begin examining  
 18 why and how and so on.  
 19 Q Why would you consider it evidence if it  
 20 came from an adult and not from a current student?  
 21 A I think time would show clearly what the  
 22 picture might be, whether, indeed, there was damage  
 23 and that sort of thing.  
 24 But there is no evidence, that I'm aware  
 25 of, that there have been diminution of achievement

1 results because of a multitrack year-round  
2 calendar.

3 Q We're looking at the harm that you  
4 referred to here in terms of damaged citizens?

5 A Right.

6 Q Do you think it would have been helpful to  
7 you, to look at the statements made by students in  
8 the Concept 6 calendar in California, submitted in  
9 this case?

10 MS. DAVIS: Calls for speculation.

11 THE WITNESS: It may have been, but I  
12 don't know.

13 BY MR. VILLAGRA:

14 Q Would it have been helpful to review the  
15 deposition testimony of any students at Concept 6  
16 schools in California, that have been taken in this  
17 case?

18 MS. DAVIS: Same objection.

19 THE WITNESS: It may have been.

20 BY MR. VILLAGRA:

21 Q Why might it have been?

22 A Just to see what might be said, what the  
23 circumstances might have been.

24 Just to get a clearer, better picture.

25 Q Have you requested that counsel obtain,

1 said, I'm not an educational researcher.

2 I don't get into the details.

3 I don't want to leave the conclusion that

4 I have no reason to understand conclusions that the  
5 authors have presented.

6 As a practitioner, as to all practitioner  
7 -- as all practitioners do, we have to rely on the  
8 conclusions presented to us by researchers as a  
9 basis for moving ahead with our work.

10 I feel I have done that over the years.

11 In this particular instance, I read the  
12 Mitchell report.

13 I did as we noted, I think on the first  
14 day, wrote a letter to Dr. Mitchell.

15 I told him I would hope, in the future, he  
16 would specify which kind of year-round education he  
17 was talking about and that sort of thing.

18 I'll just leave it there.

19 Q All right.

20 A I will say one more thing.

21 All of us practitioners have to do what I  
22 said.

23 We have to rely on others to provide us  
24 with the research.

25 And hopefully, we act on it in a

1 for you, any of the data underlying the 1999  
2 Mitchell and Mitchell study we spoke about  
3 yesterday?

4 A Did I ask --

5 (Record read.)

6 A I didn't request data from the Mitchell  
7 reports from the counsel, no.

8 BY MR. VILLAGRA:

9 Q Why not?

10 A Because I had already read that Mitchell  
11 report.

12 So I didn't ask for additional data.

13 Q So the report sufficed?

14 A I had a general idea what they were  
15 saying.

16 These are the two co-authors.

17 Q Is there any other reason why you have not  
18 requested the data underlying the '99 Mitchell and  
19 Mitchell study?

20 A They gave some summary of their data in  
21 the report itself.

22 When I read it, I had no further reason to  
23 ask for the data.

24 That goes back to a point which we skirted  
25 around several times, which is, I've pretty clearly

1 constructive way for the benefit of students.

2 I think over the years I have done that.

3 I think I probably interpret these studies  
4 as well as my colleagues do.

5 Q Who are you referring to as your  
6 colleagues?

7 A Any colleagues in the education field.

8 Q Do you consider Dr. Mitchell a colleague  
9 of yours in the education field?

10 A I do.

11 And I do Dr. Oaks.

12 And I do educators, including classroom  
13 teachers.

14 We're all colleagues in terms of we're all  
15 trying to do what's best for students.

16 Q Do you believe that Dr. Mitchell has any  
17 greater ability to assess work done by other  
18 researchers in the education field than you do?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: It depends on what level  
21 we're talking about.

22 He's a researcher, which I'm not.

23 He's in a position to make judgments that  
24 I'm not in a position to make.

25 BY MR. VILLAGRA:

1 Q What judgments can Dr. Mitchell make that  
2 you can't?

3 A The adequacy of the research methodology  
4 in particular reports.

5 Q Any other judgments that Dr. Mitchell can  
6 make that you cannot?

7 A I'll leave it at that.

8 Q Meaning, you can't think of anything else?

9 A Not at the moment.

10 Q What do you mean by "the adequacy of  
11 research methodology"?

12 A In that -- in the field of educational  
13 research, there is certain parameters that  
14 researchers have developed, certain ways of looking  
15 at data.

16 And he would be in a better position to  
17 judge that adequacy than I would.

18 But when it comes to conclusions, I can  
19 read as well and act on what my understanding is of  
20 those conclusions.

21 Q Would it be fair to state that you have to  
22 take the research studies and their conclusions  
23 more at face value, given that you can't judge the  
24 adequacy of the research methodology?

25 MS. DAVIS: Vague and ambiguous.

1 A To some degree, yes.

2 I would also go to other colleagues in the  
3 field.

4 If, for example, there is a study on  
5 special education, I'm not in the special education  
6 area.

7 But I have seen it in the research  
8 journal.

9 I would go to a colleague, let's say at my  
10 place of employment, like San Diego County Office  
11 of Education.

12 I would say on occasion: Did you see such  
13 and such a report? Do you agree with it?

14 That sort of thing.

15 I would try to fully inform myself.

16 Q If I presented you with a research paper  
17 now, and prevented you from speaking to other  
18 education researchers, you would not be able to  
19 assess the adequacy of the research methodology; is  
20 that correct?

21 A Depends on the kind of methodology.

22 If it's a survey report, that sort of  
23 research, I might be able to make some judgments.

24 Whether it was -- whether questions were  
25 well prepared, if we're talking about certain kinds

1 THE WITNESS: Fortunately, so often, these  
2 research studies have follow-up reports and studies  
3 where other researchers make judgments about the  
4 adequacy of those reports.

5 I try to read, faithfully, those reports.

6 I subscribe to journals put out by the  
7 American Educational Research Association.

8 I try to follow the debate back and forth  
9 about the adequacy.

10 So I feel that I'm fully informed and try  
11 to keep up with what the research is saying.

12 But I certainly have never tried to get  
13 into the field -- into the business myself of  
14 making those kinds of statements as to the -- to  
15 other researchers about the adequacy of their  
16 reports.

17 BY MR. VILLAGRA:

18 Q So when it comes to assessing the  
19 conclusions of a given research study, you look to  
20 the judgments expressed by other researchers about  
21 those conclusions?

22 MS. DAVIS: That mischaracterizes the  
23 testimony.

24 BY MR. VILLAGRA:

25 Q Is that correct?

1 of research, the response would be no.

2 I'm not in a position to make some  
3 judgments about a particularly -- research study  
4 gets heavily into statistics, let's put it that  
5 way.

6 Q Would you say that the report  
7 by Dr. Mitchell, submitted in this case, relies  
8 heavily on statistical analysis?

9 A His box plots certainly represents some  
10 data as he sees it.

11 There is some statistics involved in that.

12 I did see those tables, those box plots.

13 Q Is that a yes?

14 A What was the original question?

15 (Record read.)

16 A There is some reliance on statistical  
17 analysis.

18 I don't know what you mean by "heavily."

19 BY MR. VILLAGRA:

20 Q Do you believe there is reliance on  
21 statistical analyses in the Resnick study?

22 A That one -- I saw some tables.

23 But I don't know the degree of reliance.

24 Q You don't know one way or the other?

25 A No, I saw the tables.

1 Q The Quinlan studies, did that rely on some  
2 statistical analysis?

3 A Yes.

4 Q The White and Cantrell analysis from  
5 LAUSD, I'll refer to both of them from 2001 and  
6 2002.

7 MS. DAVIS: 2002 hasn't been in evidence;  
8 it hasn't been introduced here.

9 MR. VILLAGRA: You're right.

10 THE WITNESS: We talked about it.

11 MS. DAVIS: We can have a general  
12 understanding.

13 BY MR. VILLAGRA:

14 Q You understand there were two studies?

15 A Yes.

16 Q Do you believe that both of those White  
17 and Cantrell studies rely on statistical analyses?

18 A I believe they do.

19 But I didn't see any of that.

20 What I really saw was the summary report  
21 that they presented to the Board of Education.

22 I believe it went to the Board of  
23 Education.

24 Q All right.

25 A I believe there were some tables, but not

1 Q In the first line, Carolyn Kneese writes:  
2 "Thank you for giving me this opportunity," triple  
3 exclamation point.

4 A Yes.

5 Q What's the opportunity that she's  
6 referring to?

7 A First, I haven't given her anything.

8 The opportunity, it's the chance to work  
9 through some of this data on multitrack year-round  
10 education.

11 This case has given us the reason to look  
12 more thoroughly into the achievement data on  
13 multitrack.

14 For a researcher, this is an opportunity.

15 Q Anything else?

16 A That's all.

17 Q You said you "didn't give her anything,"  
18 what do you mean by that?

19 A I didn't give her this chance -- the case;  
20 I guess, gave her this chance.

21 Q Did you suggest to the defendant, State of  
22 California, that Carolyn Kneese would be someone  
23 they should contact about being an expert witness  
24 in this case, in the Williams' case?

25 MS. DAVIS: Asked and answered, vague and

1 really detailed statistical analyses.

2 MR. VILLAGRA: I want to mark as  
3 Exhibit 30, an e-mail from C. Kneese to  
4 Mr. Ballinger.

5 It's Bates NO. State-EXP-CB 1419.

6 (Deposition Exhibit 30,

7 E-mail from C. Kneese to

8 Mr. Ballinger, was marked for

9 identification by the Court

10 Reporter.)

11 BY MR. VILLAGRA:

12 Q Have you had a chance to review  
13 Exhibit 30?

14 A Yes.

15 Q Do you know what it is?

16 A It's an e-mail message from Dr. Carolyn  
17 Kneese to me. "Subject: Hello."

18 Q Have you reviewed this e-mail, previously?

19 A Yes.

20 Q When was the last time you saw a copy of  
21 what is Exhibit 30?

22 A This is the fourth day.

23 I think I said earlier, about a  
24 week-and-a-half.

25 Now it's been two weeks.

1 ambiguous as to "expert."

2 THE WITNESS: I did say to the State of  
3 California that Dr. Kneese was the most  
4 knowledgeable person in the U.S. on the topic of  
5 year-round education.

6 And she would be a person for them to  
7 consider.

8 BY MR. VILLAGRA:

9 Q She was, in fact, considered?

10 MS. DAVIS: Calls for speculation.

11 THE WITNESS: I don't know what the State  
12 did with that information.

13 BY MR. VILLAGRA:

14 Q You have no knowledge as to whether  
15 Carolyn Kneese was considered by the defendant,  
16 State of California, to provide testimony in this  
17 case?

18 A I can't speak to that directly, no.

19 Q Can you speak to it indirectly?

20 MS. DAVIS: Calls for speculation.

21 THE WITNESS: I don't really know what  
22 happened up in Sacramento.

23 BY MR. VILLAGRA:

24 Q You've never had a discussion with Carolyn  
25 Kneese about what happened in Sacramento?



1 A Only --  
 2 MS. DAVIS: Vague and ambiguous.  
 3 THE WITNESS: Only to the degree that:  
 4 Has the State asked you to do something?  
 5 Because I did suggest her name as someone  
 6 to look to.  
 7 BY MR. VILLAGRA:  
 8 Q Did Carolyn Kneese tell you whether the  
 9 State asked her to do anything?  
 10 A Yes.  
 11 Q What did she say?  
 12 A She said: "I've been asked to do a paper  
 13 on research results having to do with  
 14 multitrack year-round education."  
 15 Q Has she said whether she will be paid by  
 16 the defendant, State of California, to prepare her  
 17 paper?  
 18 MS. DAVIS: Vague and ambiguous.  
 19 THE WITNESS: Yes. She told me that she  
 20 was to be paid by the State of California for her  
 21 work.  
 22 BY MR. VILLAGRA:  
 23 Q Did she say how much she was to be paid  
 24 for her work?  
 25 A Yes, she did.

1 Q How much?  
 2 A \$250 an hour.  
 3 Q With any cap?  
 4 A I'm not sure about the cap.  
 5 So that would be speculation on my part.  
 6 Q Has she mentioned how much she has been  
 7 paid?  
 8 A No, she hasn't.  
 9 Q Did you and Carolyn Kneese have any  
 10 discussions about whether studies of student  
 11 achievement on year-round calendars commingled  
 12 findings from single-track and multitrack schools?  
 13 A Yes.  
 14 Q What was the discussion?  
 15 A The discussion had to do with the fact  
 16 that there were three studies where the result of  
 17 single-track year-round and multitrack year-round  
 18 were commingled.  
 19 Q Do you recall anything else about the  
 20 discussion?  
 21 A Yes.  
 22 Q What else?  
 23 A The fact that when the results were  
 24 commingled, the results looked more negative for  
 25 year-round education than when they were separated

1 out.  
 2 Q Do you remember anything else about the  
 3 discussion?  
 4 A I asked: Why would that be so?  
 5 Dr. Kneese explained it to me.  
 6 And in layman's terms, my recollection  
 7 would be she was saying: In effect, we don't know  
 8 why. It's a statistical anomaly.  
 9 Q Was anything else said between you and  
 10 Carolyn Kneese about whether studies of student  
 11 achievement on year-round calendars commingled  
 12 findings from single-track and multitrack schools?  
 13 A I think I have given a substance of the  
 14 discussion.  
 15 Q Did you and Carolyn Kneese discuss whether  
 16 the Quinlan study commingled findings of  
 17 single-track and multitrack schools?  
 18 A Yes.  
 19 Q What was the significance of the Quinlan  
 20 study?  
 21 A It had to do with the Quinlan findings  
 22 where the two kinds of year-round education had  
 23 been commingled.  
 24 Q Anything else?  
 25 A No.

1 Q Did you ask Carolyn Kneese to explain to  
 2 you whether the Quinlan study commingled studies of  
 3 single-track and multitrack schools?  
 4 A We talked about it.  
 5 I asked the question: Why would this  
 6 happen, and what were the results?  
 7 Those kinds of questions.  
 8 Q Did you ask whether the finding of  
 9 single-track and multitrack schools were commingled  
 10 in the Quinlan study?  
 11 A I don't know whether I asked it.  
 12 But we did talk about it.  
 13 Q What was the discussion?  
 14 A Just as I said.  
 15 It had to do more with the fact that in --  
 16 when the two kinds of year-round education are  
 17 commingled, the results are -- the results look  
 18 more negative than when the results for  
 19 single-track and multitrack are separated out.  
 20 They look positive when they are  
 21 separated.  
 22 It looks negative when they are  
 23 commingled.  
 24 Q What looks positive when separated?  
 25 A Each of the kinds of year-end education,

1 single-track and multitrack.

2 Q In a study where single-track and  
3 multitrack findings have been commingled, the  
4 findings regarding single-track schools are pulled  
5 out, they look better than when the results are  
6 commingled?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: They can look before, yes.

9 BY MR. VILLAGRA:

10 Q They may not?

11 A I don't know on that.

12 MR. VILLAGRA: I want to mark as  
13 Exhibit 31, an e-mail from Charles Ballinger to  
14 Carolyn Kneese, dated February 14, 2003, and Bates  
15 No., it's State EXP-CB 1421.

16 (Deposition Exhibit 31,  
17 E-mail from Charles Ballinger to  
18 Carolyn Kneese, was marked for  
19 identification by the Court  
20 Reporter.)

21 MR. VILLAGRA: Feel free to look at the  
22 entire e-mail.

23 BY MR. VILLAGRA:

24 Q Have you had a chance to look at  
25 Exhibit 31?

1 Q What do you mean "Dr. Quinlan had teased  
2 out some of the scores"?

3 A She had looked at some of the scores for  
4 multitrack schools and did what is called a  
5 regression analysis.

6 Q A regression analysis that was specific to  
7 the multitrack year-round schools?

8 A Yes, I believe that's right.

9 So there was not, necessarily,  
10 contradiction.

11 They were talking about different things  
12 in different ways.

13 Q In the second full paragraph, you have a  
14 quote from Dr. Oaks's paper.

15 The quote says:

16 "As researchers recently noted,  
17 the only study of year-round  
18 education to distinguish between  
19 multitrack and single-track  
20 year-round schools, the statewide  
21 study of California schools  
22 commissioned by the CDE,  
23 California Department of Education,  
24 found that multitrack schools scored  
25 below predicted levels, even after

1 A Yes.

2 Q What is it?

3 A It's a an e-mail from me to  
4 Carolyn Kneese.

5 "Subject: Addition to your paper."

6 Q Did you write this e-mail?

7 A Yes.

8 Q You've seen this e-mail, previously?

9 A I have.

10 Q Last sentence says:

11 "The obvious question, Oaks says,  
12 citing Dr. Mitchell, that the Quinlan  
13 study operated single-track and  
14 multitrack schools.

15 You said the scores were  
16 commingled, can you help me?"

17 Did you receive an answer from

18 Carolyn Kneese on that answer?

19 A I believe I did.

20 Q What was the analysis?

21 A Verbally, when we talked about it, she  
22 tried to explain to me that the scores were  
23 commingled.

24 That also, Dr. Quinlan had teased some of  
25 the scores and had done a regression analysis.

1 controlling for socioeconomic status  
2 while the less prevalent single-track  
3 year-round schools scored at or  
4 slightly above predicted levels."  
5 Do you see that?

6 A Yes.

7 Q Based on your conversation with Carolyn  
8 Kneese, do you believe that statement that I quoted  
9 is true?

10 A It's the only study.

11 No. That was part of the question here in  
12 the second -- Dr. Kneese said only her  
13 meta-analysis had been conducted.

14 But they were looking at different kinds  
15 of things.

16 So Dr. Kneese helped to clarify what that  
17 was.

18 Q Do you agree that the Quinlan study  
19 distinguished between multitrack and single-track  
20 year-round schools?

21 A Yes, that was later my understanding.

22 That's true, yes.

23 Q Do you know whether as of '99, the Quinlan  
24 study was the only study of year-round education to  
25 distinguish between multitrack and single-track

1 schools?  
 2 A Carolyn Kneese had done that in a study  
 3 subsequent to the Quinlan study in '87.  
 4 Q Did you and Carolyn Kneese discuss the  
 5 work of Bradley J. McMillan?  
 6 A Yes.  
 7 Q What did you discuss?  
 8 A Her first inquire to me was: Have you  
 9 heard of the McMillan study?  
 10 And my response was: Yes.  
 11 And she didn't know where he could be  
 12 located; I did.  
 13 So I supplied the information to her.  
 14 And she reported to me that, subsequently,  
 15 she had talked personally with Mr. McMillan.  
 16 Q Is there a particular study about  
 17 Bradley J. McMillan that you and Carolyn Kneese  
 18 were discussing?  
 19 A Yes. His report -- his statewide report,  
 20 "Year-round Education in North Carolina."  
 21 Q Do you recall any other discussion, other  
 22 than what you have described for me now, about  
 23 Bradley J. McMillan's statewide evaluation?  
 24 A The fact that his was a study -- his study  
 25 also commingled single-track and multitrack scores.

1 Q Any other discussion?  
 2 A I can't recall, right at the moment.  
 3 Q Do you recall whether Bradley J. McMillan  
 4 found no significant difference in achievement for  
 5 single-track and multitrack schools as compared to  
 6 traditional calendar schools?  
 7 MS. DAVIS: Vague and ambiguous.  
 8 THE WITNESS: I believe that was his  
 9 conclusion.  
 10 He did also note there were higher scores  
 11 for what might be called "educationally  
 12 disadvantaged students."  
 13 That was a notation in his report.  
 14 Q Did you find anything else about the  
 15 findings that Bradley J. McMillan made in his study  
 16 of year-round schools in North Carolina?  
 17 A I believe that's the substance of the  
 18 report.  
 19 Q Is the finding of no significant  
 20 difference for single-track and multitrack students  
 21 as compared to students in traditional calendar  
 22 schools, consistent with the findings of  
 23 Carolyn Kneese?  
 24 A I'll go back to Mr. McMillan's study.  
 25 He did find positive results for the

1 schools, both single-track and multitrack.  
 2 It was not a statistically significant  
 3 difference.  
 4 He reported it that way.  
 5 I don't want to leave the impression that  
 6 he found anything negative at all.  
 7 In fact, he found slight gains.  
 8 But gains, what he called, "not  
 9 significant gains."  
 10 Q Do you have any understanding of what  
 11 criteria Bradley J. McMillan used in determining  
 12 whether the gains were significant or not?  
 13 MS. DAVIS: Vague and ambiguous.  
 14 THE WITNESS: I believe he used  
 15 North Carolina scores.  
 16 I don't know which test North Carolina  
 17 uses.  
 18 BY MR. VILLAGRA:  
 19 Q But in terms of determining whether the  
 20 gains were statistically significant or not, do you  
 21 know how he made that determination?  
 22 A I would have to presume he used the usual  
 23 way that researchers determines significant gains.  
 24 Q What's that?  
 25 A Certain co-efficient level.

1 Q Do you recall whether Bradley J. McMillan  
 2 found that the differences in student achievement,  
 3 were not of practical significance?  
 4 MS. DAVIS: The document speaks for  
 5 itself.  
 6 THE WITNESS: That would go along with  
 7 statistical significance.  
 8 It's the same idea.  
 9 BY MR. VILLAGRA:  
 10 Q Do you recall whether Bradley J. McMillan  
 11 said that there is currently no specific scientific  
 12 evidence to support the contention that dividing  
 13 the long summer vacation period into smaller  
 14 pieces, helps alleviate some of the "forgetting"  
 15 that occurs over the summer in traditional school  
 16 programs?  
 17 MS. DAVIS: Document speaks for itself.  
 18 THE WITNESS: I believe he said that, yes.  
 19 BY MR. VILLAGRA:  
 20 Q Do you believe whether Bradley J. McMillan  
 21 said that:  
 22 "Despite several studies on the  
 23 topic, most existing research on  
 24 year-round education and achievement  
 25 suffers from important methodological

1 limitations"?

2 A Yes.

3 MS. DAVIS: Are you asking if he recalls?

4 You're reading from the document.

5 THE WITNESS: I just heard it read.

6 I do recall that.

7 BY MR. VILLAGRA:

8 Q Do you recall if Bradley J. McMillan

9 stated that few of the studies on year-round

10 education have been subjected to the peer-review

11 process?

12 MS. DAVIS: Same objection, the document

13 speaks for itself.

14 THE WITNESS: Yes.

15 BY MR. VILLAGRA:

16 Q Do you recall whether in Carolina, in

17 North Carolina, what the distribution was of

18 year-round schools between single-track and

19 multitrack calendars?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: It's very heavily

22 single-track in North Carolina.

23 Only one district has multitrack.

24 BY MR. VILLAGRA:

25 Q Do you recall whether any of the

1 between single-track and multitrack schools?

2 MS. DAVIS: The document speaks for

3 itself, assumes facts not in evidence.

4 THE WITNESS: I would agree it would be

5 important to have more studies.

6 I think I said that a while ago.

7 I'm open to all kinds of studies.

8 BY MR. VILLAGRA:

9 Q Do you disagree with Bradley J. McMillan's

10 conclusion that "there's no scientific evidence to

11 support the contention that dividing

12 the long summer vacation period into

13 smaller pieces, helps alleviate some

14 of the "forgetting" that occurs over

15 the summer in traditional school

16 programs"?

17 MS. DAVIS: Same objection.

18 THE WITNESS: I don't agree there.

19 I'm not sure whether he factored in the

20 kind of studies about some learning laws that

21 Dr. Cooper and his team did.

22 I think the better way of saying that --

23 Mr. McMillan may have overstated the situation

24 there.

25 But he'll have to speak for himself.

1 year-round programs in North Carolina were

2 voluntary?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: Most of them in North

5 Carolina are voluntary.

6 BY MR. VILLAGRA:

7 Q Do you recall whether Bradley J. McMillan

8 concluded that future studies of year-round schools

9 should address the possible differences between

10 single-track and multitrack schools?

11 A Yes.

12 MS. DAVIS: Same objection, the document

13 speaks for itself.

14 THE WITNESS: Yes. I heard him say that

15 at the meeting of the American Educational Research

16 Association, that there needs to be more studies.

17 BY MR. VILLAGRA:

18 Q When was that meeting?

19 A It would have been about four years ago.

20 Q All right.

21 A Maybe three years ago; excuse me, around

22 that period of time.

23 Q Do you disagree with Bradley J. McMillan's

24 conclusion that the future studies of year-round

25 schools should address the possible differences

1 BY MR. VILLAGRA:

2 Q Do you recall whether in his study,

3 Bradley J. McMillan cited to the Harris Cooper

4 meta-analysis from '96?

5 A I might react it may be an overbroad

6 statement on his part.

7 He said it and he believes it.

8 Q Would you have any other reaction?

9 A No, not at this time.

10 Q Do you disagree with Bradley J. McMillan's

11 conclusion that most existing research on

12 year-round education and achievement suffers from

13 important methodological limitations?

14 MS. DAVIS: Same objections.

15 THE WITNESS: I don't disagree with that.

16 BY MR. VILLAGRA:

17 Q Do you recall whether one of the studies

18 he cited as "suffering from important

19 methodological limitations," was a study by

20 Richard Alcorn?

21 A I don't recall that.

22 Q Do you recall whether one of the studies

23 that Bradley J. McMillan cited as "suffering from

24 important methodological limitations," was the

25 Gandara and Fish study that you referred to

1 yesterday?

2 A I don't recall that.

3 I do know there has been some discussion  
4 about that.

5 And others say: Depends on what they were  
6 looking at, whether the  
7 methodological report -- whether the  
8 methodological basis of the report  
9 suffers or not.

10 What Mr. McMillan was looking at, may have  
11 been quite different than what Drs. Alcorn and  
12 Gandara and Fish were looking at.

13 And so, the methodology may be different.

14 Q Do you agree with Bradley J. McMillan's  
15 conclusion that the question of whether the  
16 distribution of time across the calendar year might  
17 be responsible for any achievement advantages for  
18 year-round schools, has yet to be addressed in the  
19 research?

20 MS. DAVIS: Same objections.

21 THE WITNESS: I would like to hear the  
22 question.

23 (Record read.)

24 MS. DAVIS: Calls for speculation as to  
25 what he's referring to as "research."

1 MS. DAVIS: The document speaks for  
2 itself.

3 THE WITNESS: Page 18 is one of those  
4 pages.

5 19 would be a page where I quote from her  
6 report.

7 MR. VILLAGRA: We might be able to save  
8 some time.

9 BY MR. VILLAGRA:

10 Q I understand that in several places, you  
11 quoted her paper?

12 A Yes.

13 Q Did you incorporate anything that she  
14 wrote without attracting authorship to her?

15 A Not that I recall.

16 Q I want to introduce Exhibit 32.

17 (Deposition Exhibit 32,  
18 E-mail from Charles Ballinger to  
19 Carolyn Kneese, was marked for  
20 identification by the Court  
21 Reporter.)

22 MR. VILLAGRA: It's an e-mail from Charles  
23 Ballinger to Carolyn Kneese.

24 It's Bates stamp State-EXP-CB 1439.

25 BY MR. VILLAGRA:

1 THE WITNESS: This is before Dr. Kneese  
2 did a report for this case.

3 And before Dr. Cooper and his team had  
4 published it's report, which was just out, I just  
5 got my copy two weeks ago, the more research,  
6 research reports have, helped to answer the comment  
7 that you just read to me.

8 BY MR. VILLAGRA:

9 Q Is it fair to say that you disagree based  
10 on subsequent research?

11 A On subsequent research, yes.

12 MS. DAVIS: We're afternoon.

13 Is this a break time?

14 (Recess taken.)

15 BY MR. VILLAGRA:

16 Q Did you incorporate into your paper,  
17 submitted in this case, any material written by  
18 Carolyn Kneese?

19 A Yes.

20 Q What did you incorporate?

21 A I'll go to the report.

22 Q You're looking, now, at Exhibit 12.

23 A Yes.

24 Q Could you tell me page numbers or  
25 headings?

1 Q Have you had a chance to review  
2 Exhibit 32?

3 A Yes.

4 Q What is it?

5 A There are two e-mails.

6 The first is from Carolyn Kneese to me.

7 The first -- by sequence, not what appears  
8 on the page, but the first in sequence is from  
9 Dr. Kneese to me.

10 And the second is a response from me to  
11 Dr. Kneese.

12 Q You have seen a copy of Exhibit 32,  
13 previously?

14 A Yes.

15 Q I just want to look at the third sentence  
16 at the top. You write:

17 A My e-mail to her?

18 Q Yes.

19 "I still want to incorporate more of your  
20 material."

21 Do you see that?

22 A Yes.

23 Q What do you mean by "incorporate more of  
24 your material"?

25 A Well, at the time, I thought she had far

1 more substance in her paper than what I  
 2 incorporated in mine.  
 3 So I was saying:  
 4 I want to reread yours. And, if  
 5 possible, work more of your material  
 6 into my paper.  
 7 That's all.  
 8 Q When you refer to work more of her  
 9 material into your paper, what did you mean?  
 10 A I thought she had good things that she  
 11 pointed out.  
 12 I hoped to bolster my paper by some of the  
 13 things she said.  
 14 Q What do you mean by her material?  
 15 A The substance of her paper.  
 16 Q Her paper?  
 17 A Yes.  
 18 Q All right.  
 19 A I didn't do much more.  
 20 In fact, I don't recall that I did  
 21 anymore.  
 22 But be that as it may, that was a goal at  
 23 that time.  
 24 Q When you say that there was "far more  
 25 substance in her paper than in yours"?

1 A I didn't say that.  
 2 Q At that point, what do you mean?  
 3 A I don't think I said that.  
 4 If I did, I misspoke.  
 5 I thought she had a very substantive  
 6 paper.  
 7 There were more points in her paper than  
 8 what I had incorporated into my paper.  
 9 I just, simply, was saying: I hope to  
 10 incorporate more of your material.  
 11 That's all I'm saying or I was saying.  
 12 Q In the e-mail from Carolyn Kneese, her  
 13 second paragraph, it says:  
 14 "I hope the fax I sent you is  
 15 informative about residual scores."  
 16 Do you see that?  
 17 A Yes.  
 18 Q Do you recall a fax about residual scores?  
 19 A Yes.  
 20 Q Do you recall whether you produced that  
 21 fax to defense counsel?  
 22 A That, I don't recall.  
 23 Q Do you recall whether you reviewed your  
 24 files for correspondence from Carolyn Kneese to  
 25 you?

1 A I did review that.  
 2 And I thought I submitted all of the  
 3 exchanges between us.  
 4 Q Do you recall what the residual scores fax  
 5 was about?  
 6 A I don't -- I don't recall it right at the  
 7 moment.  
 8 Q Did you rely on this fax about residual  
 9 scores in preparing your report?  
 10 A I don't believe so, no.  
 11 MR. VILLAGRA: I'm going to mark as  
 12 Exhibit 33, a document entitled: "Lodi Unified  
 13 School District, Star 2002 Results by School,"  
 14 revised 9-5-02.  
 15 (Deposition Exhibit 33,  
 16 Lodi Unified School District, Star  
 17 2002 Results by School, was marked  
 18 for identification by the Court  
 19 Reporter.)  
 20 MR. VILLAGRA: I'm not going to ask you to  
 21 go through it.  
 22 Take a look at it to see what it appears  
 23 to be.  
 24 BY MR. VILLAGRA:  
 25 Q Does Exhibit 33 appear to be a copy of the

1 data from Lodi Unified School District that you  
 2 forwarded on to Carolyn Kneese?  
 3 A Yes it is.  
 4 MS. DAVIS: It's not a copy of the actual  
 5 data from Dr. Ballinger.  
 6 It's a copy that Tony Seferian got from  
 7 you.  
 8 THE WITNESS: It appears to be a copy of  
 9 what I got from her.  
 10 MR. VILLAGRA: Exhibit 34, it's entitled:  
 11 "Vista Unified School District, National  
 12 Percentiles for CTBS and SAT 9."  
 13 (Deposition Exhibit 34,  
 14 Vista Unified School District, was  
 15 marked for identification by the  
 16 Court Reporter.)  
 17 BY MR. VILLAGRA:  
 18 Q Does Exhibit 34, to you, appear to be a  
 19 copy or a reproduction of the data you passed on to  
 20 Carolyn Kneese regarding Vista Unified School  
 21 District?  
 22 A It appears to be very similar to what I  
 23 passed on to her.  
 24 MS. DAVIS: It's from Tony Seferian.  
 25 BY MR. VILLAGRA:

1 Q Apart from Exhibit 33 and 34, did you send  
2 Carolyn Kneese any other data regarding  
3 Lodi Unified or Vista Unified School Districts?

4 A Yes, I did.

5 Q What was that data?

6 A That data was a master's thesis written by  
7 an employee of Lodi Unified.

8 It would be available in libraries.

9 Q Maybe just to clarify, these Exhibits, 33  
10 and 34, appear to me to be raw data?

11 A Those are raw data.

12 Nothing in addition to those in terms of  
13 raw data.

14 Q Did you speak with Carolyn Kneese about  
15 the data contained in Exhibit 33?

16 A To the extent that: Here is some data for  
17 you to look at; that's all.

18 I very quickly passed it on to her for her  
19 review.

20 Q Did you have any other discussions  
21 regarding the data in Exhibit 33 with  
22 Carolyn Kneese?

23 A Yes. In the sense that she said she had  
24 received them, had looked at them, that sort of  
25 thing.

1 (The deposition of DR. CHARLES  
2 BALLINGER was reconvened at 1:59  
3 P.M.)

4  
5 DR. CHARLES BALLINGER,  
6 having been previously placed under oath, testified  
7 further as follows:

8  
9 EXAMINATION (CONTINUING)  
10 BY MR. VILLAGRA:

11 Q Turning your attention back to your  
12 report, Exhibit 12, page 35.

13 First full paragraph: "Furthermore,  
14 enrichment programs occur all year-round..."

15 The sentence continues; do you see that?

16 A Yes.

17 Q What do you mean by "enrichment programs"?

18 A Enrichment programs can be any kind of new  
19 information that helps to provide experiential  
20 background for students, hopefully to prepare them  
21 for future lessons.

22 Q Can you name for me an example of an  
23 enrichment program?

24 A A trip to an art museum would be an  
25 enrichment program.

1 Q Did she tell you what she thought upon  
2 looking at the data contained in Exhibit 33?

3 A Not other than what she included in her  
4 report.

5 Q And regarding Exhibit 34, did you have any  
6 discussions with Carolyn Kneese about the data  
7 contained there?

8 A Not other than the kind I have just spoken  
9 about, Lodi.

10 Q She didn't tell you her assessment of the  
11 data contained in Exhibit 34?

12 A None other than what she has in her  
13 report.

14 MR. VILLAGRA: We can stop now.

15  
16 (The luncheon recess was taken at  
17 12:27 TIME P.M.)

18  
19  
20  
21  
22  
23  
24  
25

1 Q Can you think of any other examples?

2 A A trip to a music venue, stage shows,  
3 recreation areas, visits with businesses, all kinds  
4 of activities could provide enrichment for  
5 students.

6 There are more, but I think that suffices  
7 to give an example.

8 Q Would a swimming program count as an  
9 enrichment program, in your opinion?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: It could.

12 BY MR. VILLAGRA:

13 Q How might it?

14 A If it would be part of a physical  
15 education program which is considered part of a  
16 school experience, it could very well be an  
17 enrichment program.

18 Particularly, if there is really an  
19 instructor who helps students to improve, help  
20 students to do things correctly in terms of  
21 swimming.

22 Q When you say "enrichment programs occur  
23 all year-round," what's your support for that  
24 statement?

25 A I'm speaking on a community-wide basis,

1 within a community, particularly urban communities,  
2 there are just untold experiences that students  
3 could have, and those occur throughout the year.

4 Q Is this based on any particular  
5 investigation you conducted into the availability  
6 of enrichment programs?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: It's what I have experienced  
9 myself.

10 And I go on in the next sentence to say, I  
11 speak of the arts fields, for example.

12 Some of the best enrichment experiences  
13 don't occur during the summer, but, rather, in  
14 other seasons of the year.

15 Q Did you conduct any kind of study to  
16 compare enrichment programs offered over the summer  
17 as opposed to those offered at other times during  
18 the year?

19 A No formal study.

20 Q Are you aware of any such study?

21 A No formal study, no.

22 Q All right.

23 A This is just based on my own experience.

24 Q All right.

25 A I say that, in my experience.

1 human piece of knowledge.

2 I would think anybody could come to that  
3 conclusion.

4 Q Have you conducted any kind of calculation  
5 to see if for every experience that an off-track  
6 student may miss, there is another experience  
7 students on-track may miss?

8 A I think that's common knowledge.

9 Q Besides common knowledge, do you have any  
10 other basis for that?

11 A Not at this point.

12 MR. VILLAGRA: I want to mark as  
13 Exhibit 35, a document entitled: "Comparison of  
14 Student Achievement and Student and Teacher  
15 Characteristics in Multitrack Year-Round and  
16 Single-Track Traditional School Calendars," update  
17 from 2000 to 2001, authored by Jeffrey White and  
18 Steven Cantrell.

19 It's dated July, 2002, Bates Numbered  
20 State-EXP-CB 0398 through 0429.

21 (Deposition Exhibit 35,  
22 Comparison of Student Achievement and  
23 Student and Teacher Characteristics, was  
24 marked for identification by the  
25 Court Reporter.)

1 Q In your experience as a resident of  
2 San Diego?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: As a resident of San Diego  
5 and other communities before that.

6 BY MR. VILLAGRA:

7 Q All right?

8 A Also in my experience as an educator.

9 Q In what way does your experience as an  
10 educator provide you with knowledge about the  
11 availability of enrichment programs all year-round?

12 A I have seen field trips through  
13 experiences throughout the year.

14 I know the teachers well and encourage  
15 students to avail themselves to activities on their  
16 own and weekends and evenings, that sort of thing.

17 Q The last part of this paragraph:

18 "For every experience that an  
19 off-track student may miss, there is  
20 another experience that students  
21 on-track may miss."

22 Do you see that?

23 A I do.

24 Q How do you know that?

25 A I think that would just be an everyday

1 BY MR. VILLAGRA:

2 Q Have you had a chance to review  
3 Exhibit 35?

4 A I have it in front of me, yes.

5 Q What is it?

6 A It's a report authored by Jeffrey White  
7 and Steven Cantrell, dated July of 2002, entitled:  
8 "Comparison of Student Achievement and Teacher and  
9 Student Characteristics in Multitrack Year-Round  
10 and Single-Track Traditional School Calendars."

11 Q You've seen a copy of Exhibit 35,  
12 previously?

13 A I have.

14 Q Have you reviewed a copy of Exhibit 35 in  
15 preparing your report in this case?

16 A I reviewed it, yes.

17 Q If I could turn your attention to the  
18 Roman Numeral V, State-EXP-CB 0402?

19 A Yes.

20 Q Would it be okay if I refer this to the  
21 2002 LAUSD; do you understand what I'm referring  
22 to?

23 A It would be better if it was White and  
24 Cantrell.

25 Q The 2002 White and Cantrell study?



1 A Yes.  
 2 Q If you look at the second paragraph, the  
 3 second sentence, it says:  
 4 "Single-track schools have the highest  
 5 performance followed by three-track  
 6 schools, then four-track schools."  
 7 Do you see that?  
 8 A Yes.  
 9 Q Do you have any reason to dispute the  
 10 finding in the 2002 White and Cantrell, that  
 11 single-track schools have the highest performance  
 12 followed by three-track schools, and then  
 13 four-track schools?  
 14 A I don't have any reason to dispute it at  
 15 this time.  
 16 Q Skipping two sentences, do you see the  
 17 sentence that starts with "variations"?  
 18 A Yes.  
 19 Q The next sentence starts with "a clear  
 20 pattern."  
 21 A I see it.  
 22 Q Do you dispute the finding in the 2002  
 23 White and Cantrell study, that a clear pattern is  
 24 evident such that the most desirable track on  
 25 either multitrack calendar exhibits higher

1 performance than in other tracks?  
 2 MS. DAVIS: Vague and ambiguous.  
 3 THE WITNESS: I can't dispute that's what  
 4 they are saying here.  
 5 BY MR. VILLAGRA:  
 6 Q Do you have any basis to disagree with  
 7 their finding?  
 8 A Not at the moment, no.  
 9 Q Do you have any idea what the authors,  
 10 White and Cantrell, might be referring to when they  
 11 use the term "most desirable tracks"?  
 12 MS. DAVIS: Calls for speculation.  
 13 THE WITNESS: I don't at this point,  
 14 because they don't identify tracks here.  
 15 BY MR. VILLAGRA:  
 16 Q If you could, look at page 4.  
 17 A Arabic Numeral 4?  
 18 Q Yes, 0406.  
 19 At the very bottom of the page, second to  
 20 last line, it says "in high schools."  
 21 A I'm with you.  
 22 Q "In high schools, this pattern was  
 23 reversed. In spring 2000, single-  
 24 and three-track gains were  
 25 equivalent.

1 In spring 2001, single-track  
 2 outperformed three-track schools by  
 3 half a point in each subject."  
 4 Do you see that?  
 5 A I do.  
 6 Q Do you have any reason to dispute this  
 7 finding in this 2002 White and Cantrell study?  
 8 MS. DAVIS: Vague and ambiguous, this  
 9 pattern hasn't really been identified.  
 10 Do you want him to read up a little bit?  
 11 You started with "this pattern was reversed."  
 12 MR. VILLAGRA: Yes. Let's start over.  
 13 BY MR. VILLAGRA:  
 14 Q Do you dispute the finding that between  
 15 2000 and 2001, single-track schools, single-track  
 16 high schools outperformed three-track high schools  
 17 by half a point in each subject?  
 18 MS. DAVIS: Vague and ambiguous, calls for  
 19 speculation.  
 20 THE WITNESS: I see that is their  
 21 statement here, yes.  
 22 BY MR. VILLAGRA:  
 23 Q Do you have any reason to dispute it?  
 24 A Not at this point.  
 25 Q Page 6, Arabic Numeral 6, State-EXP-CB

1 0408, second paragraph says:  
 2 "A track in multitrack schools are the  
 3 most desirable tracks for teachers."  
 4 Do you see that?  
 5 A I see that.  
 6 Q Do you have any reason to dispute this  
 7 finding in the 2002 White and Cantrell study?  
 8 MS. DAVIS: Vague and ambiguous, calls for  
 9 speculation.  
 10 THE WITNESS: Not at this point.  
 11 BY MR. VILLAGRA:  
 12 Q Do you know why A track in multitrack  
 13 schools would be the most desirable tracks for  
 14 teachers?  
 15 MS. DAVIS: Asked and answered.  
 16 THE WITNESS: At this point, I don't have  
 17 any reason to speculate as to why.  
 18 BY MR. VILLAGRA:  
 19 Q Just to be clear, I believe yesterday when  
 20 we talked about preferable and nonpreferable  
 21 tracks, we were talking about parent preferences;  
 22 is that correct?  
 23 A Yes.  
 24 Q I'm going to turn your attention, next, to  
 25 page 10, State-EXP-CB 0412, the paragraph at the

1 bottom that starts "as in the model 1."  
 2 Do you see that?  
 3 A Yes.  
 4 Q If you go to the fourth sentence of the  
 5 paragraph, it begins, "for three-track schools."  
 6 A I see it.  
 7 Q It says:  
 8 "For three-track schools,  
 9 B track has a negative effect on  
 10 reading and math performance in all  
 11 schooling levels.  
 12 And C track has a negative effect  
 13 on reading performance in elementary  
 14 and middle schools."  
 15 Do you see that?  
 16 A Yes.  
 17 Q Do you have any reason to dispute the  
 18 finding in the 2002 White and Cantrell study, that  
 19 in Concept 6 schools, B track has a negative effect  
 20 on reading and math performance at all schooling  
 21 levels?  
 22 MS. DAVIS: Vague and ambiguous, calls for  
 23 speculation.  
 24 THE WITNESS: Repeat that question.  
 25 (Record read.)

1 THE WITNESS: I don't know what the  
 2 authors are really saying here.  
 3 They are saying this is a status report.  
 4 So they are saying that -- on a certain --  
 5 on certain scores, I'm not certain they are saying  
 6 because of B track or other factors.  
 7 This seems, to me, more of a status report  
 8 of what is.  
 9 BY MR. VILLAGRA:  
 10 Q What makes you think that?  
 11 A Just because I'm not sure that as I read  
 12 this, they are saying it's a causal effect.  
 13 (Record read.)  
 14 A I'll accept this is what they are saying.  
 15 I'm saying, though, in addition, I'm not  
 16 sure that they are really saying what it sounds  
 17 like they are saying.  
 18 BY MR. VILLAGRA:  
 19 Q In your opinion, to the extent that the  
 20 report suggests a causal link between B track in  
 21 reading and math performance, you would dispute  
 22 this statement?  
 23 MS. DAVIS: Mischaracterizes his  
 24 testimony.  
 25 BY MR. VILLAGRA:

1 Q Is that correct?  
 2 A I think I would have go back to what I  
 3 said.  
 4 I think this is giving a status report of  
 5 what is.  
 6 And it's not, in any way, trying to say it  
 7 has as a way of saying it causes.  
 8 Q So this status report is that B track has  
 9 a negative effect on reading and math performance?  
 10 A No. It's saying here, that B track has  
 11 some lower scores in reading and math, and whatever  
 12 the comparison was, which I don't have in front of  
 13 me.  
 14 Q Would you look up at the top of the page?  
 15 A I do.  
 16 Q Do you see where it says:  
 17 "Model 2, investigates the effect  
 18 of school track on 2001 SAT 9 NCE  
 19 score for each multitrack calendar  
 20 controlling for student initial 2000  
 21 NCE score and school demographics  
 22 using the following equations"?  
 23 A I see that.  
 24 Q Do you understand what that means?  
 25 A I understand the words to this point.

1 Q What do you understand those words to  
 2 mean?  
 3 A It says: "The Model 2 investigates the  
 4 effect of school tracks for each multitrack  
 5 calendar controlling for the student normal curve  
 6 equivalent" and so on.  
 7 But it's got a colon and it goes on.  
 8 Q Do you understand those equations?  
 9 A I do not.  
 10 Q Do you have subscriptions to any  
 11 professional periodicals?  
 12 A I do.  
 13 Q Which ones?  
 14 A EDUCATIONAL LEADERSHIP, put out by the  
 15 Association of Supervision and Curriculum  
 16 Development.  
 17 I subscribe to EDCAL which is a newsletter  
 18 of the Association of California's School  
 19 Administrators.  
 20 I subscribe to the JOURNAL OF EDUCATION  
 21 RESEARCH, put out by the American Educational  
 22 Research Association.  
 23 I subscribe to THE PRINCIPAL, put out by  
 24 the National Association of Elementary School  
 25 Principals.

1 I subscribe to PHI DELTA KAPPA N, which is  
 2 a publication of the Phi Delta Educational  
 3 Honorary.  
 4 Q Anything else that you can think of?  
 5 A I subscribe to the EDUCATIONAL RESEARCHER,  
 6 which is another journal of the American Education  
 7 Research Association.  
 8 I subscribe to EDUCATION WEEK, which is a  
 9 weekly newsletter out of Washington D.C., which is  
 10 a compendium on newspapers and special articles on  
 11 special subjects.  
 12 Q Any other subscriptions to professional  
 13 periodicals?  
 14 A I have, in the past, subscribed to  
 15 THE ADMINISTRATOR, the professional journal of the  
 16 American Association of School Administrators.  
 17 Those are the ones that come to mind,  
 18 quickly.  
 19 Q The only one that you identified as a past  
 20 professional periodical that you subscribed to is  
 21 The Administrator.  
 22 Is it fair for me to assume that all the  
 23 others that you have named are current  
 24 subscriptions?  
 25 A Yes.

1 Q How long have you subscribed to  
 2 EDUCATIONAL LEADERSHIP?  
 3 A Probably around 30 years.  
 4 Q And what about EDCAL?  
 5 A That would be in the last three years.  
 6 Q THE JOURNAL OF EDUCATION RESEARCH?  
 7 A I probably have had that in the order of  
 8 20 years.  
 9 Q THE PRINCIPAL?  
 10 A 15 years.  
 11 Q PHI DELTA KAPPA N?  
 12 A 25.  
 13 Q EDUCATIONAL RESEARCHER?  
 14 A It would be the same time as for the other  
 15 AERA publication.  
 16 Q Which one was that?  
 17 A JOURNAL OF EDUCATIONAL RESEARCH.  
 18 Q And ED WEEK, how long would that be?  
 19 A 15 years.  
 20 Q When did you have your subscription to THE  
 21 ADMINISTRATOR?  
 22 A Up through my requirement in 2000 and  
 23 probably had had that -- probably for ten years.  
 24 Q If you could turn to Exhibit 12, your  
 25 report.

1 Your CV, it's not numbered.  
 2 But it appears after the declaration up  
 3 front.  
 4 A Yes.  
 5 Q Do you see where it says "professional  
 6 publications"?  
 7 A Yes.  
 8 Q Are the items listed here all of what you  
 9 deem your professional publications?  
 10 MS. DAVIS: Vague and ambiguous.  
 11 THE WITNESS: Are these all my  
 12 publications?  
 13 BY MR. VILLAGRA:  
 14 Q Yes.  
 15 A I don't believe so, no.  
 16 Q Are the items listed here your most recent  
 17 publications?  
 18 MS. DAVIS: Vague and ambiguous as to  
 19 publication.  
 20 BY MR. VILLAGRA:  
 21 Q Let me step back.  
 22 The heading here is "Professional  
 23 Publications," what did you mean by a publication?  
 24 A Where it's been published in a journal, a  
 25 situation -- let's just say, journal by one of the

1 professional organizations.  
 2 Q What do you mean by "professional  
 3 organizations"?  
 4 A Some of the organizations I mentioned to  
 5 which I have subscriptions.  
 6 Q Can you think of any things that you have  
 7 written that you would describe as a professional  
 8 publication that are not listed here?  
 9 A I'm not remembering any right now.  
 10 Q If you look at the fourth item up from the  
 11 bottom of this list of "Professional Publications,"  
 12 there is a citation to Ballinger, Charles:  
 13 "It's Good for Students, It's  
 14 Good for the Community," from  
 15 U.S.A. TODAY, January 14th, 1986.  
 16 Do you see that?  
 17 A I see that.  
 18 Q Do you consider that to be a professional  
 19 publication?  
 20 A Not in the sense as the others.  
 21 Q Can you identify for me any other items  
 22 that you don't believe qualifies for professional  
 23 publications as you have described the term to me  
 24 today?  
 25 A The CAMPING magazine is outside our field.

1 It is a professional journal of another  
2 group who invited me to write an article for their  
3 particular clientele.

4 They did so for the professional field of  
5 year-round education.

6 Q Can you name for me the professional  
7 periodicals that you have written for?

8 MS. DAVIS: Other than what's listed here?

9 MR. VILLAGRA: Yes.

10 THE WITNESS: I can't at this time.

11 BY MR. VILLAGRA:

12 Q Have you ever taught in the area of  
13 education at a university?

14 A Yes.

15 Q What university?

16 A I have taught at Bucknell University.

17 Q What did you teach?

18 A I taught curriculum.

19 Q When did you teach?

20 A In the summer of -- I'm going to say in  
21 the summer of '68, 1968.

22 Q Do you have any other teaching experience  
23 at a university other than the summer that you  
24 taught at Bucknell?

25 A Only as I've been invited to come and

1 Q How many times were you at the Cal State  
2 campus near Vasalia?

3 A Once.

4 Q What did you do?

5 A I spoke about my experience in year-round  
6 education as a part of a graduate administration  
7 class.

8 Q Was it during a single lecture that you  
9 spoke?

10 A Yes. All of these would be a single  
11 lecture.

12 Q At the University of San Diego, how many  
13 times?

14 A Same, once.

15 Q At National University?

16 A Once.

17 Q And was the University of San Diego also a  
18 graduate and administrative class?

19 A Yes.

20 Q And National University?

21 A Yes.

22 Q Did you, as executive director of the  
23 NAYRE, provide an address; did NAYRE provide an  
24 address at each yearly conference?

25 A Yes.

1 instruct classes at the invitation of a professor  
2 or instructor.

3 Q What was the specific course you taught at  
4 Bucknell?

5 A I forget the exact title, it was a  
6 curriculum development course at the graduate  
7 level.

8 Q Would you name for me all of the  
9 university professors who have invited you to speak  
10 and address their classes?

11 A You know, I can't really recall their  
12 names right now.

13 Q Is it more than one?

14 A Yes.

15 Q Can you name for me the universities?

16 A Sure. Let's see, I have been at  
17 California State University.

18 It's up in the middle part of the state.

19 It's up in the Vasalia area.

20 It's the name of a county up there.

21 Q Can you think of any other?

22 A I've been at the University of San Diego.

23 I've been at National University.

24 It's been some years back, so I'm not  
25 remembering.

1 Q What, in your opinion, was the purpose of  
2 the address at the yearly NAYRE conference?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: It was to be a status report  
5 and a look at the field in general.

6 BY MR. VILLAGRA:

7 Q Anything else?

8 A That's what it was.

9 Back in the early years, we called it a  
10 "status report."

11 Q Was it the purpose of your address at the  
12 yearly conference of the NAYRE?

13 A To give attendees a sense of where the  
14 educational year-round movement was and where it's  
15 going, yes.

16 Q Do you consider yourself a part of the  
17 year-round education movement?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: Yes.

20 BY MR. VILLAGRA:

21 Q What's the goal of the movement?

22 A The goal, two or three-fold; the goal is  
23 to provide better education for the students.

24 It's to be a resource of information about  
25 year-round for educational policy makers, for

1 university researchers, for parents, students, and  
2 teachers who may inquire about year-round  
3 education.

4 Q Anything else?

5 A Also to prepare the best information to  
6 make available to others about the topic.

7 In other words, to provide some  
8 publications on the topic.

9 Q Anything else?

10 A No.

11 Q Is part of the year-round education  
12 movement, in your opinion, to eliminate the  
13 traditional school calendar?

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: Our goal is to encourage the  
16 increase and the use of year-round education which,  
17 I would presume, eventually lead to abandonment of  
18 the traditional school calendar.

19 BY MR. VILLAGRA:

20 Q When you talk about increasing the number  
21 of year-round schools, would you yourself prefer  
22 to see growth in single-track as opposed to  
23 multitrack year-round education?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: I would first like to see

1 multitrack program.

2 Obviously, single-track is much easier to  
3 launch, to implement than multitrack is.

4 So absent any issue of over-enrollment,  
5 obviously, single-track is the way for districts to  
6 go.

7 Q You mentioned single-track is much easier  
8 to launch than multitrack.

9 Is single-track also easier to sustain  
10 than multitrack?

11 MS. DAVIS: Vague and ambiguous.

12 A Yes.

13 MR. VILLAGRA: I want to mark as  
14 Exhibit 36, a document entitled: "Annual Report to  
15 the Association on the Status of Year-round  
16 Education," Dr. Charles Ballinger, executive  
17 director, and it's dated February 9th, '93.

18 (Deposition Exhibit 36,  
19 Annual Report to the Association on  
20 the Status of Year-round Education, was  
21 marked for identification by the  
22 Court Reporter.)

23 THE WITNESS: It does use the word  
24 "status," as I said, in the earlier years.

25 BY MR. VILLAGRA:

1 growth in single-track education.

2 Single-track is what most schools in the  
3 United States would adopt because most schools  
4 aren't overcrowded.

5 Multitrack is always a response to a prior  
6 problem of over-enrollment.

7 So I would encourage multitrack to the  
8 degree there is a problem of over-enrollment that  
9 needs to be addressed.

10 BY MR. VILLAGRA:

11 Q Would you prefer to see increased growth  
12 in single-track year-round education as opposed to  
13 multitrack year-round education?

14 A Absent the issue or problem of  
15 over-enrollment, the answer would be yes.

16 I would encourage single-track.

17 Q Why?

18 A Because it's administratively easier to  
19 do.

20 It doesn't call for as much change on the  
21 part of people in the school district.

22 It doesn't have some of the factors such  
23 as we discussed yesterday and the day before,  
24 changing schedules, changing transportation routes,  
25 and that sort of thing, that would come with the

1 Q Have you had a chance to review  
2 Exhibit 36?

3 A Yes.

4 Q All right.

5 A I have it in front of me.  
6 I haven't reviewed it yet.

7 Q Please take a moment to review it.

8 A Okay.

9 Q Have you had a chance to review  
10 Exhibit 36?

11 A I have.

12 Q What does it appear to be to you?

13 A It appears to be a speech that I gave at  
14 the 24th Annual Conference of the Association, in  
15 Las Vegas, February of '93.

16 Q You prepared this speech?

17 A I did.

18 Q I want to direct your attention to the  
19 first page, which is No. 2, and the first  
20 paragraph, the third sentence says: "The year  
21 1992."

22 Do you see that?

23 A Yes.

24 Q "The year '92 was another good one for  
25 year-round education."

1 "And I am able to present a positive  
2 report for the 11th year in a row."  
3 Do you see that?  
4 A Yes.  
5 Q What, in your opinion, is a good year for  
6 year-round education?  
7 A Any time there is growth in the year-round  
8 movement, which I would consider to be a good year  
9 of any kind.  
10 Q What do you mean by "growth of any kind"?  
11 A It could be the number of schools that  
12 implemented year-round education.  
13 It could be the number of districts that  
14 implemented year-round education.  
15 It could be in the number of states where  
16 there is at least one or more year-round programs.  
17 Those are the kind of factors that I  
18 looked at.  
19 Q Anything else?  
20 A Those are the three primary ones.  
21 Q And so, if there was a decrease of any  
22 kind in the number of schools or districts or  
23 states using year-round education, would that mark  
24 a bad year for you?  
25 MS. DAVIS: Vague and ambiguous?

1 THE WITNESS: Not necessarily, if there  
2 was growth elsewhere.  
3 On occasion, one of those figures would  
4 fluctuate.  
5 But as long as the overall sense of it was  
6 growth, I considered it a good year.  
7 Year-round operates in a political  
8 context, so these figures shift slightly.  
9 BY MR. VILLAGRA:  
10 Q What do you mean by "political context"?  
11 A Decisions are made by elected boards of  
12 education.  
13 Q Here you state you're presenting a  
14 positive report for the 11th year in a row?  
15 A Yes.  
16 Q I guess that would go back to 1982?  
17 A That would be when I started giving these  
18 reports, yes.  
19 Q So 1982 is when you started giving  
20 reports.  
21 And between 1982 and 1993, all your  
22 reports, your status reports to the NAYRE were  
23 positive?  
24 A Yes.  
25 Q What about your reports from 1994 to 2000,

1 were they positive as well?  
2 A They were positive as well, yes.  
3 Q Did you ever present a negative report on  
4 year-round education as executive director of the  
5 NAYRE at a yearly conference?  
6 MS. DAVIS: Vague and ambiguous.  
7 THE WITNESS: I did not.  
8 BY MR. VILLAGRA:  
9 Q In the next paragraph, you report growth  
10 in year-round education.  
11 And you report:  
12 "An increase from  
13 1.35 million students to 1.75 million  
14 students and from 1,668 schools to  
15 2,049 schools and from  
16 23 states to 26 states."  
17 Do you see that?  
18 A Yes.  
19 Q When you're reporting the enrollment in  
20 year-round education, are you combining students  
21 both at single-track and multitrack schools?  
22 A In this instance, I am.  
23 Q All right.  
24 A It may also include extended-year schools  
25 as well, which we consider a separate category, or

1 at least we list them in a separate category.  
2 Q I want to turn your attention to, I know  
3 they seem to have two page numbers, it's either  
4 three or four.  
5 Do you see that?  
6 A Our first page here is page 2.  
7 MS. DAVIS: You see, one says "3 and 4."  
8 THE WITNESS: All right.  
9 BY MR. VILLAGRA:  
10 Q The very last paragraph, the one at the  
11 bottom, it says:  
12 "Perhaps the most significant  
13 development this school year has been  
14 the shift in numbers of single-track  
15 schools."  
16 Do you see that?  
17 A Yes.  
18 Q Do you recall why you believed the shift  
19 in numbers of single-track schools was the most  
20 significant development in this school year, 1993?  
21 A Yes.  
22 Q Why?  
23 A Because school districts across the  
24 country were beginning to pick up on the  
25 educational values involved in the concept of

1 year-round education.

2 Before this point, the majority of schools  
3 had adopted year-round education in a multitrack as  
4 a response to overcrowding.

5 I thought it was highly significant that  
6 the educational values were beginning to be seen  
7 and accepted in more districts across the country.

8 Q What do you mean by "educational values"?

9 A The possibility of less learning laws.

10 The possibility of higher achievement  
11 scores, those kinds of factors.

12 Q Do you believe it is significant that in  
13 California, multitrack year-round education  
14 continues to constitute a much higher percentage of  
15 year-round schools than single-track schools?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: Significant in what sense,  
18 numbers?

19 BY MR. VILLAGRA:

20 Q In numbers of students.

21 A I think it's a significant factor in  
22 California that the largest numbers are multitrack  
23 schools.

24 I think that only represents a response to  
25 the heavy population growth of this state.

1 they have not looked at multitrack.

2 Q Do you believe that it is still true today  
3 that since most American and Canadian schools are  
4 not overcrowded, they don't need to use the  
5 multitrack system?

6 A Speaking of the nation as a whole, that's  
7 true, yes.

8 Q Do you believe that most schools in  
9 California are not overcrowded?

10 MS. DAVIS: Vague and ambiguous, calls for  
11 speculation.

12 THE WITNESS: It's speculative in terms of  
13 the degree of over-enrollment which determines the  
14 efficacy of multitrack programs, not just the fact  
15 that someone declares the school to be overcrowded.

16 BY MR. VILLAGRA:

17 Q Here in this paper, you say most American  
18 schools are not overcrowded?

19 A And do not need to use the multitrack  
20 system.

21 Q Let me phrase it that way, then.

22 Do you believe most schools in California  
23 are not overcrowded and do not need to use the  
24 multitrack system?

25 A At this point, apparently not.

1 Q Why would you say it's a "significant  
2 factor"?

3 A Significant factor in terms of numbers.

4 Here, in the state, the majority of  
5 students in year-round programs are in multitrack  
6 programs that's quite different than the rest of  
7 the nation.

8 So that, in itself is significant.

9 It's just a matter of what is.

10 I'm describing what is.

11 Q In the very last sentence, the very next  
12 page, Labeled 4 and 5.

13 A I see that.

14 Q The first full sentence says:

15 "The growth of single-track  
16 schools will continue since most  
17 American and Canadian schools are not  
18 overcrowded and do not need to use  
19 the multitrack system."

20 Do you see that?

21 A Yes.

22 Q Do you believe that is still true today,  
23 that most American and Canadian schools are not  
24 overcrowded?

25 A Yes. And certainly to the degree that

1 Q Why do you say "apparently not"?

2 A Because they haven't -- they haven't had  
3 or don't have the need to implement multitrack.

4 Understand the school may be overcrowded  
5 with 102 percent, that doesn't mean -- that does  
6 not mean that multitrack is warranted, yet at that  
7 point.

8 Q In the next sentence, you say:

9 "However, I want to affirm the  
10 importance of the multitrack as a  
11 solution to overcrowded facilities  
12 and as a way to save districts both  
13 space and money."

14 Do you see that?

15 A Yes.

16 Q Do you still affirm the importance of  
17 multitrack as a solution to overcrowded facilities  
18 and to save districts both space and money?

19 A Yes.

20 Q Why?

21 A It's a time-tested way to handle  
22 over-enrollment.

23 And it's a way to save both space and  
24 money.

25 Q For any other reason?

1 A Those are the reasons to use multitrack.  
 2 Q Do you affirm the importance of multitrack  
 3 as an educational calendar?  
 4 A Yes.  
 5 Q Why did you not, if you remember, affirm  
 6 the importance of multitrack as an educational  
 7 calendar in this address in 1993?  
 8 A I don't know.  
 9 I was focusing more on its importance for  
 10 over-enrollment and financial difficulties.  
 11 But I could have easily have done that.  
 12 I was focusing more on its usual reason  
 13 for implementation.  
 14 In retrospect, I should have said it has  
 15 educational value as well.  
 16 Q Why should you have said that?  
 17 A Because I left it out.  
 18 And I should have done it, as I look back  
 19 on the report right now.  
 20 Q You mentioned that you affirmed the  
 21 importance of multitrack as a solution to  
 22 overcrowded facilities and as a way to save  
 23 districts both space and money, because it's the  
 24 usual reason for its implementation.  
 25 What do you mean by "usual reason for its

1 is a way of handling over-enrollment, within  
 2 limited financial resources.  
 3 Q Anything else?  
 4 A No.  
 5 Q Are times of limited financial resources  
 6 the only times, in your opinion, when the  
 7 importance of multitrack has to be acknowledged?  
 8 A No, it's not the only time.  
 9 If financial times are good and there is  
 10 still a problem of over-enrollment, multitrack  
 11 would still be a viable option to handle the  
 12 problem.  
 13 Q Why did you choose not to acknowledge  
 14 forthrightly, the importance of multitrack in times  
 15 when financial resources were not limited?  
 16 MS. DAVIS: Vague and ambiguous.  
 17 THE WITNESS: I'm not sure what you're  
 18 asking me there.  
 19 BY MR. VILLAGRA:  
 20 Q Here, in this speech, you talk about  
 21 acknowledging forthrightly, the importance of  
 22 multitrack in times of limited financial resources.  
 23 Why did you not acknowledge the importance  
 24 of multitrack when times were not limited in  
 25 financial resource?

1 implementation"?  
 2 A With one or two exceptions, every time  
 3 it's been implemented, it's been in response to  
 4 over-enrollment.  
 5 I want to say throughout my speech, I  
 6 reiterate the educational values of year-round  
 7 education.  
 8 Multitrack is one part of the year-round  
 9 movement.  
 10 It's understood that I believe in the  
 11 educational values, even though I don't  
 12 specifically say it here.  
 13 Q In the next sentence you say:  
 14 "In these times of limited  
 15 financial resource, we need  
 16 acknowledge forthrightly the  
 17 importance for multitrack."  
 18 Do you see that?  
 19 A Yes.  
 20 Q Why does the importance of multitrack need  
 21 to be acknowledged in times of limited financial  
 22 resource?  
 23 A It's a way of encouraging those districts  
 24 that sent representatives to this conference, that  
 25 were new to the field, to remember that multitrack

1 A I think every year, irrespective of the  
 2 financial times; I would today.  
 3 Q So do the financial times add anything to  
 4 you in terms of the importance of multitrack?  
 5 A Sure. It is a way of saving money  
 6 compared with other options to handle  
 7 over-enrollment at a certain point.  
 8 And we usually say it's somewhere  
 9 between 115 to 100 percent of over-enrollment.  
 10 It is cheaper to implement multitrack than  
 11 it is to continue to add relocate-ables.  
 12 But we acknowledge, up until that point,  
 13 relocate-ables are cheaper than multitrack.  
 14 If you have a limited financial situation,  
 15 there is still over-enrollment as a problem to be  
 16 solved.  
 17 Obviously, then, we need to remind people  
 18 that multitrack is a viable solution.  
 19 Q I may get the percentages wrong.  
 20 If a school is over-enrolled up  
 21 to 110 percent, did you say?  
 22 A I think it's usually up to 115 percent.  
 23 Q It's cheaper to use temporary  
 24 relocate-able classrooms than to implement a  
 25 multitrack year-round program?



1 A That's true, just looking at the financial  
2 aspects.  
3 There may be other considerations, like  
4 lack of space to put on the relocate-ables.  
5 But all -- but other things being equal,  
6 that is something that we have put out in one of  
7 our publications.  
8 Q All things being equal, if I'm a school  
9 administrator and my school is 110 percent  
10 over-enrolled, would you encourage me to use  
11 temporary portable classrooms or to implement a  
12 multitrack year-round program?  
13 MS. DAVIS: Incomplete hypothetical,  
14 assumes facts not in evidence.  
15 THE WITNESS: I might say, yes.  
16 I might say to an administrator:  
17 Look at your finances involved.  
18 Look at your space involved. Make a  
19 decision as to your best judgment.  
20 I would do that in any case as a  
21 professional.  
22 But in most of our instances that we have  
23 looked at, we say multitrack comes at the point  
24 where you're at about 115 to 120 percent of  
25 overenrollment of stated capacity of the original

1 school.  
2 BY MR. VILLAGRA:  
3 Q Can you recall for me an instance, any  
4 time in the past, where you have encouraged a  
5 school administrator to use temporary portable  
6 classrooms rather than implement a multitrack  
7 year-round program?  
8 MS. DAVIS: Vague and ambiguous.  
9 THE WITNESS: I know I have.  
10 I couldn't specify a district right now.  
11 BY MR. VILLAGRA:  
12 Q Apart from space and resources, financial  
13 resources, what other factors do you think a school  
14 should consider in deciding whether to use  
15 temporary relocate-able classrooms or implement a  
16 multitrack year-round program?  
17 MS. DAVIS: Vague and ambiguous.  
18 THE WITNESS: I think those are the two  
19 most important factors.  
20 BY MR. VILLAGRA:  
21 Q Can you think of any others?  
22 A Not at the moment.  
23 Q I'm going to turn your attention to the  
24 page that's Numbered 6, and then 7.  
25 The middle paragraph, do you see that?

1 A Yes.  
2 Q The last sentence says:  
3 "The traditional school calendar  
4 is not an educational calendar now;  
5 it has never been and never will be.  
6 It must give way to something  
7 better," exclamation point.  
8 Do you see that?  
9 A Yes.  
10 Q What do you mean by an "educational  
11 calendar"?  
12 A It's not a calendar "designed for  
13 educational values."  
14 It simply grew up in accordance with our  
15 history.  
16 It's essentially an economic calendar, not  
17 an educational calendar.  
18 Q What do you mean a traditional calendar  
19 was not designed for educational values?  
20 A The traditional calendar came about  
21 because of its response to the economic condition  
22 of the time.  
23 Our country was an agriculturally based  
24 economy.  
25 And the school calendar recognized that

1 many students were needed on the farms and ranches  
2 of prior decades.  
3 Q What do you mean that the traditional  
4 calendar grew up in response to economic times?  
5 A There is some historical documents that  
6 indicate that in the 1800s, for example, in some  
7 communities, the school calendar in largely rural  
8 areas was just -- was six months in length, which  
9 was quite clearly responding to the growing seasons  
10 of the Midwest, for example.  
11 That is, school would take up in the fall  
12 soon after the corn was in, soon after the harvest  
13 was in, including corn.  
14 And especially for older children, school  
15 was out in midspring at the point where the older  
16 children could be helpful on the farms and ranches  
17 of that era.  
18 Over a period of time, that's six months  
19 of school, six months off, it became a period of  
20 nine months in school, three months off.  
21 So the traditional calendar is essentially  
22 a response to the economics of the nation.  
23 Q When you say that the traditional calendar  
24 was not designed for educational values, do you  
25 mean anything other than what you have just told me

1 now?

2 A I said what I mean.

3 Q If the traditional calendar were not an  
4 educational calendar, wouldn't you expect to see  
5 damaged citizens?

6 A Might. The question would be if we had a  
7 different calendar, would they be better educated.

8 Q No. The question is: If the traditional  
9 calendar is not an educational calendar, wouldn't  
10 you expect to see students, who went to schools on  
11 an educational calendar, to grow up to be damaged  
12 citizens?

13 MS. DAVIS: Vague and ambiguous.

14 I'm assuming you're referring to the  
15 discussion we had earlier?

16 MR. VILLAGRA: His use of the term.

17 THE WITNESS: They might have learned more  
18 if they had been on another calendar.

19 Maybe in that sense they were damaged.

20 BY MR. VILLAGRA:

21 Q All right.

22 A And they didn't reach their fullest  
23 potential.

24 Q Could the same be true of students who  
25 have attended school on the Concept 6 calendar?

1 opportunity for forgetting on a Concept 6 than some  
2 of the other year-round calendars.

3 But less, perhaps, would be true if they  
4 were on a traditional calendar.

5 Q So relative to other year-round calendars,  
6 you believe that students on a Concept 6 calendar  
7 may have been damaged?

8 MS. DAVIS: Objection, mischaracterizes  
9 his prior testimony.

10 THE WITNESS: They may have a greater  
11 degree of forgetting which, in turn, would mean  
12 some effect on the overall achievement.

13 Concept 6 is always a response to another  
14 problem.

15 BY MR. VILLAGRA:

16 Q At page 8, the very next page, the first  
17 full paragraph, you write:

18 "The strongest argument for  
19 year-round education has yet to be  
20 fully recognized or fully  
21 implemented."

22 Do you see that?

23 A Yes.

24 Q What's the strongest argument for  
25 year-round education that as of at least '93, had

1 A Less so than a traditional calendar.

2 Q Why do you say that?

3 A Because there would be less fewer periods  
4 of forgetting, less lengthy periods for forgetting.

5 I would have to say less so than if they  
6 were on a traditional calendar.

7 Q The Concept 6 calendar may have prevented  
8 students, educated at Concept 6 schools, to reach  
9 their full potential; is that correct?

10 MS. DAVIS: Mischaracterizes his  
11 testimony.

12 THE WITNESS: No. I'm only comparing it  
13 to a traditional calendar.

14 BY MR. VILLAGRA:

15 Q You said "less so."

16 I guess that means, to some extent, they  
17 may have been damaged by the Concept 6 calendar?

18 MS. DAVIS: Mischaracterizes his prior  
19 testimony.

20 Q Is that correct?

21 A To the degree that there is a longer  
22 vacation period, there is more forgetting.

23 I think we said that several times.

24 They would be more forgetting.

25 I acknowledge that there would be more

1 yet to be fully recognized or implemented?

2 A It was the implementation of intercession  
3 programs in our year-round schools.

4 Q Does intercession, in your opinion,  
5 continue to be the strongest argument for  
6 year-round education that has been yet to be fully  
7 recognized or implemented?

8 A Yes.

9 Q Why do you believe that?

10 A I think intercessions are wonderful  
11 opportunities, throughout the year, to remediate  
12 either by enrichment or by remediation itself.

13 The problems that may have arisen through  
14 that school year -- I think it's unwise to wait  
15 until the end of nine months to say to students:  
16 Come back to summer school, now we'll remediate.

17 It's too late.

18 Intercession has the -- it provides the  
19 opportunity to look at what students have done in  
20 the first learning period.

21 And, if possible, correct problems that  
22 may have arisen so those students are, then, ready  
23 during the next scheduled learning period to move  
24 right ahead with the rest of the class.

25 Q So what you're saying, that the

1 opportunity provided by intercession remains not  
2 fully recognized or implemented?

3 MS. DAVIS: Mischaracterizes his prior  
4 testimony.

5 THE WITNESS: It's certainly  
6 underutilized.

7 BY MR. VILLAGRA:

8 Q What do you mean by that?

9 A Not all of our year-round schools, either  
10 multitrack or single-track have intercessions.

11 Q Some do not have intercessions at all?

12 A That's correct.

13 I'm speaking now on a national scale.

14 Q To your knowledge, do any multitrack  
15 year-round schools in California, not provide any  
16 intercession at all?

17 A I don't know of any that don't provide any  
18 at all.

19 Q Do you believe that some multitrack  
20 year-round schools in California, underutilize the  
21 intercession as a time to remediate, provide  
22 remediation to students?

23 A I do.

24 And much of it is finance rather than just  
25 space.

1 There may have to be some additional  
2 instructional resources made available at other  
3 sites.

4 There may have to be certain kinds of  
5 additional personnel hired in addition to the  
6 teacher.

7 Factors of that kind, all of which cost  
8 money.

9 Q Do you believe that in Concept 6 schools  
10 in California, intercession remains underutilized?

11 A Yes.

12 MS. DAVIS: Asked and answered.

13 Q Why do you believe that?

14 MS. DAVIS: Asked and answered.

15 THE WITNESS: Because with the limited  
16 space that is available, and as long as people  
17 think of only doing intercession within the four  
18 walls, I believe that intercession is  
19 underutilized.

20 BY MR. VILLAGRA:

21 Q If you could turn to the next  
22 page, 8 and 9.

23 The very last paragraph starts:

24 "The discussion about lengthening  
25 the school year is important and most

1 If we ever fully realize what year-round  
2 education can do for students, it will be at the  
3 point where we can afford to run programs for  
4 whatever student problems occur to the greatest  
5 degree we can attack those problems.

6 Q You think it is matter of financial  
7 resources that prevents districts from preventing  
8 multitrack year-round programs from fully utilizing  
9 the intercession period?

10 MS. DAVIS: Mischaracterizes his prior  
11 testimony.

12 THE WITNESS: That's certainly one of the  
13 primary factors.

14 BY MR. VILLAGRA:

15 Q Is there anything else other than  
16 financial resources?

17 A In some schools there would be a limit to  
18 the space available as long as they try to do it  
19 within the four walls of the school house.

20 Q If you tried to provide intercession at a  
21 site off the school campus, would additional  
22 resources be necessary?

23 A May very well be.

24 Q Resources to bus students wherever?

25 A That's one kind of thing.

1 of us in the year-round movement  
2 welcome the possibility of a longer  
3 year."

4 Do you see that?

5 A Yes.

6 Q You've discussed, previously, that you  
7 would welcome the possibility of a longer year; is  
8 that correct?

9 A If financial resources are available, yes.

10 Q If financial resources were available,  
11 would you oppose extending the Concept 6 year  
12 from 163 to 180 days?

13 A Not at all.

14 Q Why not?

15 A Because if money were available, we could  
16 use outside spaces.

17 And that would be fine to have a longer  
18 year for Concept 6 students or any other students.

19 Q Do you think it would be to the benefit of  
20 students at Concept 6 schools to attend a school  
21 year that was 180 days instead of 163?

22 MS. DAVIS: I object to the extent we  
23 covered this previously on other days.

24 Go ahead.

25 THE WITNESS: If good things are happening

1 to students and poor students, then more days would  
2 always be desirable.

3 As long as there is an optional quality to  
4 that, too.

5 I do have some philosophical problems with  
6 just adding days without letting families make  
7 choices whether they choose to have those  
8 additional days.

9 BY MR. VILLAGRA:

10 Q What do you mean by the "optional  
11 quality"?

12 A Summer school is an option.

13 That's additional education.

14 If the money is made available for a  
15 program where all students in single-traditional  
16 and multitrack could all have 210 days of  
17 instruction, I would like to see that option.

18 That's a personal philosophical view.

19 As we covered before, I don't think the  
20 exact number of days is the real important factor  
21 in learning instructional efficacy.

22 The quality of instruction between an  
23 interaction between student and pupil is more  
24 important than the number of days.

25 Q When you support the extended year, do you

1 school.

2 BY MR. VILLAGRA:

3 Q I know we spoke about research on summer  
4 learning laws.

5 Here, at the end, you say: "Certainly not  
6 10 to 12 weeks."

7 Is it your position that a summer vacation  
8 should not be as long as ten weeks?

9 A It is.

10 Q And based on the research on learning  
11 laws?

12 A Yes.

13 Q All right.

14 A Just simply, the longer we're away from  
15 anything, the more loss occurs.

16 MR. VILLAGRA: Let's take a break.

17 (Recess taken.)

18 BY MR. VILLAGRA:

19 Q You mentioned that the traditional  
20 calendar was not designed for educational reasons.

21 Do you remember that?

22 A That's correct.

23 Q What are the criteria you determined  
24 whether a calendar was designed for educational  
25 reasons?

1 always support it with that caveat?

2 A I have tried to, yes.

3 Q If you could turn to page 10 and 11, there  
4 is a large paragraph in the middle that begins:  
5 "Increasingly."

6 A Yes.

7 Q If you look in about the middle, there is  
8 a series of questions.

9 A Yes.

10 Q "How long does a summer vacation need to  
11 be?"

12 A Yes.

13 Q "Three weeks? Four weeks? Five weeks?  
14 Certainly not ten to 12 weeks!"

15 Do you see that?

16 A Yes.

17 Q Do you have an opinion how long summer  
18 vacation needs to be?

19 MS. DAVIS: We have gone through this in  
20 great detail on another day.

21 THE WITNESS: I don't have a specific  
22 recommendation.

23 I have acknowledged that the association  
24 has suggested that, wherever possible, summer  
25 vacation be no longer than six weeks away from

1 A The original purposes for which it was  
2 implemented.

3 The single-track year-round calendar was  
4 done for educational reasons, it was actually an  
5 extended year.

6 The first calendar in the modern era which  
7 was in 1968, and the intent was to provide a  
8 different kind of educational program for students.

9 Q And you mentioned that you thought that  
10 the traditional calendar was developed for economic  
11 reasons.

12 Do you remember that?

13 A Yes, and social reasons.

14 Q And is it the same process that in looking  
15 to see whether a calendar was designed for economic  
16 reasons, you look at the intended purposes for  
17 which the calendar was created?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: That's what I am looking at,  
20 yes.

21 BY MR. VILLAGRA:

22 Q That's how you would do it?

23 A That's my statement and that's what I was  
24 looking at.

25 Q Would you say that the multitrack calendar

1 was designed for educational reasons?  
 2 A Multitrack took the basic idea of  
 3 year-round education.  
 4 And it was not designed for further  
 5 education.  
 6 It was designed to meet the problem of  
 7 over-enrollment.  
 8 Q Would you say that the multitrack  
 9 year-round calendar was designed for educational  
 10 reasons?  
 11 A No. It was designed to meet the problem  
 12 of over-enrollment.  
 13 Q Would you say that the Concept 6 was  
 14 designed for educational purposes?  
 15 A No. It was designed to address the  
 16 problem of over-enrollment.  
 17 Q How do you know that?  
 18 A That was the reason given when the first  
 19 Concept 6 calendar was implemented in Colorado.  
 20 MR. VILLAGRA: Exhibit 37, a document  
 21 entitled: "Year-round Education and Overview,  
 22 1985," authored by Charles Ballinger.  
 23 (Deposition Exhibit 37,  
 24 Year-round Education and Overview, was  
 25 marked for identification by the

1 A Yes.  
 2 Q The next sentence says:  
 3 "So, sometimes criticisms of  
 4 year-round education come to the  
 5 national office in this fashion.  
 6 It's more work, it's more  
 7 involved, it's disruptive.  
 8 Most criticism is reflective of  
 9 multitrack."  
 10 Do you see that?  
 11 A Yes.  
 12 Q Do you believe, sitting here today, that  
 13 multitrack year-round education is more work?  
 14 A Yes.  
 15 MS. DAVIS: Let him finish.  
 16 BY MR. VILLAGRA:  
 17 Q More work than what?  
 18 A More work than would be true on a  
 19 traditional calendar, for example.  
 20 Q What do you mean by more work?  
 21 A Instead of having all students and faculty  
 22 moving on the same calendar in a multitrack, there  
 23 is a staggered schedule.  
 24 So it is more work in the central office  
 25 to keep track of students and faculty as to whether

1 Court Reporter.)  
 2 BY MR. VILLAGRA:  
 3 Q Have you had a chance to review  
 4 Exhibit 37?  
 5 A It appears to be a speech that I gave  
 6 in 1985.  
 7 Q If I could turn your attention to looking  
 8 at the top of page 3?  
 9 A Okay.  
 10 Q The first complete sentence says:  
 11 "There are sure to be extra administrative details  
 12 to be handled in a multitrack."  
 13 A I'm not following you.  
 14 Q There are page numbers at the top and  
 15 bottom.  
 16 I'm using the page numbers at the top.  
 17 A Okay.  
 18 Q Do you see the first complete sentence:  
 19 "There are sure to be extra  
 20 administrative details to be handled  
 21 in a multitrack situation (some staff  
 22 such as principals and secretaries  
 23 have more details to handle and  
 24 greater responsibility)."  
 25 Do you see that?

1 they are on-track or off-track.  
 2 Q Is it more work for any other reason?  
 3 A There is an implementation factor that  
 4 comes into play.  
 5 Q Designing the calendar?  
 6 A Designing the calendar, convincing people  
 7 that we need to move in this direction, that sort  
 8 of thing.  
 9 There is a lot of work in implementing a  
 10 multitrack calendar at compared to a traditional  
 11 calendar that's been around for 100 years.  
 12 Q Is a multitrack year-round calendar more  
 13 work than a traditional calendar in any other way,  
 14 in your opinion?  
 15 A There are some other things, too.  
 16 It could be budgeting and so on.  
 17 Everything that needs to be looked at in  
 18 the changed process would need to be included.  
 19 Q Can you think of anything else?  
 20 A Not at that point.  
 21 Q When you say "multitrack year-round  
 22 education is more involved," what do you mean?  
 23 A It's a continuation of more work.  
 24 It's more involved in the sense that the  
 25 central office needs to keep track of which faculty

1 are on-track, which are off-track.  
 2 Same with students, which students are  
 3 on-track, which are off.  
 4 Communication would be more involved  
 5 because central office has -- always has to  
 6 remember that some students and faculty are gone at  
 7 a particular time.  
 8 And an announcement may be made.  
 9 Q Is multitrack year-round education more  
 10 involved than the traditional school calendar in  
 11 any other way, in your opinion?  
 12 A I think at this point, that's what comes  
 13 to mind.  
 14 Q When you say "multitrack year-round  
 15 education is disruptive," what do you mean?  
 16 A That's what people say.  
 17 What they have in mind, as I heard it, was  
 18 -- well, our sports schedules are going to change.  
 19 Or we won't be able to have a band.  
 20 Or we won't be able to see everyone at the  
 21 same time.  
 22 All our friends will be gone.  
 23 Those kinds of comments.  
 24 Q Disruptive in any other way?  
 25 A That's what I remember hearing.

1 Q What you're describing here, are comments  
 2 you remember coming to the national office of  
 3 NAYRE, about multitrack year-round education?  
 4 A It's disruptive that way, yes.  
 5 Q All right.  
 6 A It usually had to do with sports and  
 7 bands, the important things of a school calendar,  
 8 the most important, not just band, marching band.  
 9 Q The last sentence that I read says:  
 10 "Most criticism is reflective of multitrack."  
 11 A Yes.  
 12 Q What does that mean?  
 13 A Most comments that are negative towards  
 14 year-round education, revolve around the multitrack  
 15 implementation of year-round education.  
 16 Very rarely does someone speak against the  
 17 educational value in the single-track version of  
 18 year-round.  
 19 They sometimes will criticize the  
 20 implementation, how the process of implementing  
 21 single-track.  
 22 But almost never do I hear an educational  
 23 criticism.  
 24 Now with multitrack, it's also true that  
 25 very rarely is it really educational.

1 It's more all the factors that go into the  
 2 administration and the conduct of a multitrack  
 3 program.  
 4 Q Do you believe any of those factors that  
 5 go into the administration of the year-round school  
 6 can have any effect on education?  
 7 MS. DAVIS: Vague and ambiguous.  
 8 THE WITNESS: I think it can have an  
 9 effect.  
 10 That has to be compared to what the effect  
 11 would be if there was severe over-enrollment, if  
 12 all the students were on the campus at the same  
 13 time.  
 14 BY MR. VILLAGRA:  
 15 Q The last sentence, you say: "The problem  
 16 is the overcrowding of students in the limited  
 17 space."  
 18 Do you see that?  
 19 A Yes.  
 20 Q Do you believe that the State of  
 21 California, the entity that retained you to provide  
 22 testimony in this case, should do anything to  
 23 reduce the overcrowding of students into limited  
 24 space in California schools?  
 25 MS. DAVIS: Vague and ambiguous, assumes

1 facts not in evidence.  
 2 THE WITNESS: The State has done some  
 3 things to relieve the overcrowding of students in  
 4 limited space.  
 5 BY MR. VILLAGRA:  
 6 Q Do you believe it should do more?  
 7 MS. DAVIS: Vague and ambiguous.  
 8 THE WITNESS: If it's possible to do so,  
 9 yes.  
 10 BY. MR. VILLAGRA:  
 11 Q What are the things that you believe the  
 12 State has done, so far, to relieve the overcrowding  
 13 of students?  
 14 A It's offered several statewide bond issues  
 15 for the purpose of building new schools,  
 16 refurbishing older schools, and even to provide  
 17 some encouragement for the use of multitrack as  
 18 another way of handling over-enrollment.  
 19 Q Anything else?  
 20 A Then, in the future, the State could  
 21 certainly do the same sort of thing.  
 22 Still easier to pass a bond issue  
 23 statewide than it is -- even with the 55 percent  
 24 that we currently have as of this day.  
 25 Q In the next paragraph, the second

1 sentence, you say:  
 2 "Our experience has shown that  
 3 school overcrowding tends to run in  
 4 7- to 9-year cycles, and then a  
 5 decline of school enrollment sets  
 6 in."  
 7 Do you see that?  
 8 A Yes.  
 9 Q Do you believe that still to be the case?  
 10 A I do on a national scale.  
 11 Most of our districts have used multitrack  
 12 for a period of time and not so at other times.  
 13 I said -- I used the word "tends."  
 14 I didn't say that was always true.  
 15 Q That raises my next question.  
 16 When you talk about the school  
 17 overcrowding tends to run in 7- to 9-year cycles,  
 18 are you referring to overcrowding at a school level  
 19 or at a district level?  
 20 A I don't remember when I said this exactly.  
 21 I think I was thinking of school level.  
 22 Q So nationally, the tendency for a school  
 23 to be over-enrolled is for a 7- to 9-year cycle?  
 24 A Yes.  
 25 Q You go on:

1 "To encourage those of you from  
 2 districts already administering  
 3 multitrack programs to prepare for  
 4 the future when the decline does  
 5 occur."  
 6 Do you see that?  
 7 A Yes.  
 8 Q So if a school were over-enrolled and  
 9 implemented a multitrack year-round program, once  
 10 the over-enrollment ended, you would encourage the  
 11 school to convert to a single-track year-round  
 12 calendar?  
 13 A Yes.  
 14 Q Why would you encourage that?  
 15 A Because of what I consider the inherent  
 16 educational values of a single-track calendar which  
 17 is less forgetting over the long summer of the  
 18 traditional calendar.  
 19 Q All right.  
 20 A Less forgetting than during the long  
 21 summer of the traditional school calendar.  
 22 Q Have you looked at the Concept 6 high  
 23 schools in LAUSD to determine how long each has  
 24 been implementing a multitrack year-round calendar?  
 25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: I haven't each, no.  
 2 BY MR. VILLAGRA:  
 3 Q Have you done that for any of the  
 4 Concept 6 high schools in LAUSD?  
 5 A No. I have not gone back to check how  
 6 many years have been on it or any of them.  
 7 Q Do you know, for example, whether at  
 8 Belmont High School, the overcrowding has run on  
 9 a 7- to 9-year cycle?  
 10 A No. It has not run on a 7 to 9 year  
 11 cycle.  
 12 Q It has not?  
 13 A No.  
 14 Q What about at Garfield High School?  
 15 A No.  
 16 Q What about Roosevelt?  
 17 A It hasn't been on that long to be in  
 18 a 7- to 9-year cycle.  
 19 Q What about Fremont?  
 20 A Same as the previous one.  
 21 Q Do you have any idea how long Belmont has  
 22 been on a Concept 6 schedule?  
 23 A No, not exactly.  
 24 Q Can you give me an estimate?  
 25 A I'm going to say right around 12 to 14

1 years, something in that period of time.  
 2 Q What about at Garfield, how long has it  
 3 been on the Concept 6 calendar?  
 4 A It would be roughly that same period of  
 5 time.  
 6 Q And Fremont?  
 7 A I can't say how long.  
 8 Q On page 8 of this Exhibit 37?  
 9 A Top number?  
 10 Q No. This time I was looking at the  
 11 bottom.  
 12 A Okay.  
 13 Q Do you see the first full paragraph in  
 14 this whole discussion of learning?  
 15 A Yes.  
 16 Q "I think we need to heed more of the  
 17 finding of the 1978 study of school calendars  
 18 conducted for the board of regents for the State of  
 19 New York titled: "Learning Retention and  
 20 Forgetting."  
 21 In the next sentence you state:  
 22 "The report, please understand,  
 23 was not sponsored by the year-round  
 24 movement since New York has never  
 25 had, to my knowledge, a year-round

1 school whether extended year or  
2 single or multitrack."  
3 Do you see that?

4 A Yes.

5 Q Do you recall why you pointed out that  
6 this report by the Board of Regents of the State of  
7 New York was not sponsored by the year-round  
8 movement?

9 A Well, so often, if it's a report that has  
10 a connection with a group such as ours, critics  
11 will say, if the -- if it was sponsored by,  
12 therefore it can't be accepted.

13 In this instance, I wanted to be sure to  
14 the listeners in my talk here, that I was saying  
15 this was outside of any contact that NAYRE had had  
16 with the study.

17 Therefore, it was important to realize it  
18 was coming from a nonyear-round source, and  
19 therefore may have more objectivity for some people  
20 than what might otherwise be so if it were already  
21 connected with year-round education.

22 Q For any other reason?

23 A No.

24 Q At the last full paragraph, the last  
25 sentence, you say:

1 and -- actually, more than equal.

2 Q But not necessarily at multitrack schools?

3 A At this time, I was still thinking within  
4 the box myself.

5 MR. VILLAGRA: I want to mark as  
6 Exhibit 38, it's an article by Charles Ballinger,  
7 entitled: UNLEASHING THE SCHOOL CALENDAR.

8 And it appears to have been published in  
9 THRUST in January of 1987.

10 (Deposition Exhibit 38,  
11 UNLEASHING THE SCHOOL CALENDAR, was  
12 marked for identification by the  
13 Court Reporter.)

14 THE WITNESS: I don't remember including  
15 this article in my declaration here.

16 MR. VILLAGRA: Can we help you out?

17 THE WITNESS: Yes, I did.

18 The fourth one listed.

19 BY MR. VILLAGRA:

20 Q Have you had a chance to look at  
21 Exhibit 38?

22 A Yes.

23 Q What is it?

24 A It's an article I authored for Thrust  
25 magazine, a publication for the Association of

1 "I say as emphatically as I can,  
2 I believe equal learning opportunity  
3 for average and below-average  
4 students would require more  
5 year-round school in at least the  
6 single-track, and perhaps the  
7 multitrack and extended-year modes."  
8 Do you see that?

9 A Yes.

10 Q Why did you say, if you recall, only,  
11 perhaps, with respect to the multitrack mode?

12 A Because I was giving recognition to the  
13 problem multitrack schools have with the extending  
14 of the year within the four walls.

15 After this speech, I don't know exactly  
16 the period of time, but I began speaking more and  
17 more with a fellow educator to say we have to think  
18 outside the box.

19 The box being the four walls of the school  
20 house.

21 Q So at this time in 1985, you believed that  
22 equal learning opportunity for average and  
23 below-average students would certainly be provided  
24 by single-track schools?

25 A It would be equal to traditional calendar

1 California School Administrators, and it's for  
2 January of 1987.

3 Q Can we go back for one second to  
4 Exhibit 37, the second to last page at the top,  
5 it's Numbered 7?

6 A Yes.

7 Q The second full paragraph.

8 A Yes.

9 Q It says:

10 "Now, to be fair, we must all  
11 recognize that scheduling classes in  
12 high school is always a problem, and  
13 scheduling in a multitrack situation  
14 is more difficult for the scheduler.

15 It's not always possible to offer  
16 all subjects to all students on all  
17 tracks."

18 Do you see that?

19 A Yes.

20 Q Do you believe that's still true?

21 A Yes.

22 Q In multitrack year-round schools in  
23 California?

24 A That's true.

25 Q All right.



1 A Any calendar, including multitrack.  
 2 Q Do you believe it is true at Concept 6  
 3 high schools in California?  
 4 MS. DAVIS: Asked and answered.  
 5 THE WITNESS: Yes.  
 6 MR. VILLAGRA: If you could turn to the  
 7 last page of this document, we've touched on this  
 8 topic a few times in terms of the length of a  
 9 vacation.  
 10 In the second full-length paragraph, what  
 11 is an optimum number of days of instruction for a  
 12 number of students?  
 13 You said:  
 14 "That question is opened for  
 15 further consideration.  
 16 I could make a good case for a longer  
 17 instructional year."  
 18 Do you see that?  
 19 THE WITNESS: I see that.  
 20 BY MR. VILLAGRA:  
 21 Q Do you believe that an optimum number of  
 22 instruction for students is still an option for  
 23 further consideration?  
 24 A I do.  
 25 Q If you were to make a case for a longer

1 instructional year, would you still make it with  
 2 the provisos you have listed here?  
 3 MS. DAVIS: Down below?  
 4 MR. VILLAGRA: It says:  
 5 "I would include a few more long  
 6 weekends here and there.  
 7 And I would alter the  
 8 instructional program so it's more  
 9 varied.  
 10 And I would like to expand the  
 11 kinds of programs we have, such as  
 12 enriched intercession and the  
 13 collegiate January concept for  
 14 special study."  
 15 Is that still an accurate statement of  
 16 your position on the longer instructional year?  
 17 MS. DAVIS: Vague and ambiguous.  
 18 THE WITNESS: Yes. In general, I would  
 19 say yes.  
 20 BY MR. VILLAGRA:  
 21 Q Would you add any other provisos?  
 22 A No. I think the enriched intercessions  
 23 would be ones that I really stress, which I have  
 24 already.  
 25 The collegiate January concept, in some

1 colleges, January is between semesters and used for  
 2 special -- like an intercession, really.  
 3 I think I could probably go along with  
 4 this.  
 5 I would reword this maybe a little  
 6 different.  
 7 But the ideas I would still hold to, yes.  
 8 Q I'm going back to the exhibit we just  
 9 introduced, Exhibit 38.  
 10 I'm going to No. 18, in the lower  
 11 left-hand corner.  
 12 In the middle column, the first full  
 13 paragraph.  
 14 A Yes.  
 15 Q It says:  
 16 "Quite clearly, multitrack  
 17 year-round education at the high  
 18 school requires careful planning and  
 19 constant watchfulness to see course  
 20 offerings so important to students  
 21 academic growth and subsequent  
 22 graduation are available to students  
 23 in a timely manner."  
 24 Do you see that?  
 25 A Yes.

1 Q What do you mean by "available to students  
 2 in a timely manner"?  
 3 A So that what they need is available to  
 4 them before they graduate as seniors.  
 5 Q Just to clear this up.  
 6 I know we have had a lot of discussion  
 7 about AP courses.  
 8 What are the corporation offerings, in  
 9 your opinion, that are important to economic growth  
 10 if AP growth is one of those?  
 11 Just let me know and we can put that to  
 12 one side.  
 13 MS. DAVIS: So you're quoting "to student  
 14 academic growth"?  
 15 MR. VILLAGRA: Yes.  
 16 THE WITNESS: All the basic courses, of  
 17 course.  
 18 Required courses are important for  
 19 graduation.  
 20 That's true whether a student is going on  
 21 to an institution of higher education or not.  
 22 So all of those courses would be what I'm  
 23 talking about here.  
 24 Then, any courses that we could call  
 25 college prepare courses, or courses preparing for

1 any institution of higher education, would also be  
2 what I have in mind here.

3 AP courses could be a part of that.

4 But there are courses that are just fine  
5 for interest to college that are not AP courses.

6 BY MR. VILLAGRA:

7 Q What about honors courses, where would  
8 those fall in?

9 A Honors would be, again, like AP classes.

10 Those are certainly enriched programs in  
11 preparation for college.

12 But you don't have to just have those  
13 classes in order to get into many institutions of  
14 higher education.

15 Q All right.

16 A I'm talking here, in general terms.

17 Q Are you familiar with what's known as  
18 the "A through G requirements"?

19 A I don't.

20 Q Do you believe all tracks at Concept 6  
21 high schools make available to students course  
22 offerings so important to students's academic  
23 growth and subsequent graduation?

24 A I do.

25 Q What's your basis for believing that?

1 have taken the courses necessary to be able to  
2 apply to the University of California and Cal State  
3 systems?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: I don't know whether that's  
6 done on any widespread scale or not.

7 I don't know.

8 BY MR. VILLAGRA:

9 Q Have you ever seen data indicating the  
10 figures?

11 A Not on what I call a statewide scale.

12 It might be there.

13 I haven't seen it.

14 Q Have you ever studied the graduation rates  
15 of Concept 6 high schools versus traditional  
16 calendar high schools in California?

17 A I haven't studied that, no.

18 Q If I use the term "college going rate,"  
19 would you know what I'm referring to?

20 A I'm not sure.

21 Q How would you describe the percentage of  
22 graduates from a particular high school, who have  
23 been accepted to a college?

24 A Technical colleges call themselves  
25 colleges as well.

1 A That's the basic role and purpose of the  
2 high school, any high school.

3 Q It's your assumption that Concept 6 high  
4 schools are doing that, or do you have evidence  
5 that that's being done?

6 A I'm assuming, at this point.

7 But the evidence is that graduates of  
8 these Concept 6 high schools are going on to  
9 institutions of higher learning.

10 So I have to assume these schools are  
11 providing the basic requirements necessary to get  
12 into colleges.

13 Q When you refer to evidence of students  
14 from these Concept 6 schools going to college, what  
15 did you mean?

16 A The fact that they are graduates from  
17 Garfield, Huntington Park, the various multitrack  
18 high schools that are going to four-year colleges.

19 Even though I haven't done a study, I  
20 would just say, obviously, these students have had  
21 the basic programs required to get into  
22 institutions of higher education.

23 Q To your knowledge, is the California  
24 Department of Education keeping statistics on the  
25 number of high school graduates in the state who

1 Students could go to a technical college  
2 who wouldn't have the kind of requirements for the  
3 University of California.

4 So that's why I'm not sure what you have  
5 in mind.

6 Q If we talked in terms of four-year  
7 colleges and universities.

8 A That more clearly defines what you're  
9 referring to.

10 Q Have you seen data comparing the number of  
11 students at Concept 6 high schools gaining  
12 admission to four-year colleges and universities as  
13 compared to students at traditional calendar  
14 schools?

15 A I haven't seen that data.

16 Q Do you think it would be useful to look at  
17 data showing those figures?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: It could be useful, sure.

20 BY MR. VILLAGRA:

21 Q To your knowledge, when calculating high  
22 school GPA, Grade Point Average, for applicants, do  
23 colleges and universities place additional weight  
24 on AP courses?

25 A Yes, they do. I can't speak for all

1 colleges.  
 2 I know some do.  
 3 Q Do you know whether the UC system does  
 4 that?  
 5 A I believe, generally.  
 6 But, again, I don't know whether that's  
 7 true for all campuses.  
 8 But, yes, there is some weight given to AP  
 9 courses, sure.  
 10 Q What do you mean by "some weight" is  
 11 given?  
 12 A There is usually an acknowledgment that a  
 13 student has been in an AP class and satisfactorily  
 14 completed the class.  
 15 Q To your understanding, would a grade of  
 16 "A" in an AP class, which would normally rate a  
 17 grade point average of 4.0, be weighted at a 5.0 at  
 18 a college or university that gave additional weight  
 19 for AP courses?  
 20 MS. DAVIS: Vague and ambiguous.  
 21 THE WITNESS: I'm not knowledgeable about  
 22 the weight given.  
 23 I do know there is some weight given.  
 24 BY MR. VILLAGRA:  
 25 Q Do you believe, given that some weight is

1 given to grades in AP courses, that if students at  
 2 Concept 6 high schools have limited access to AP  
 3 courses as compared to traditional calendar  
 4 students, that they are losing out on the  
 5 opportunity to have their grade point averages  
 6 scaled up when they apply for college admission?  
 7 MS. DAVIS: Vague and ambiguous, calls for  
 8 speculation, assumes facts not in evidence.  
 9 THE WITNESS: I don't know that I can  
 10 answer your question the way I understood it.  
 11 I know there are high schools here in  
 12 California, comprehensive high schools of fewer  
 13 than 300 pupils, that don't offer AP classes.  
 14 I don't know if those students from those  
 15 classes have a more difficult time getting into the  
 16 University of California system or the state  
 17 college system than a student from a high school  
 18 that does have AP classes.  
 19 I just -- I don't know the situation  
 20 there.  
 21 I can't respond to your question.  
 22 BY MR. VILLAGRA:  
 23 Q Is it possible, in your opinion, that a  
 24 student at a high school in California, with no AP  
 25 courses, would have a more difficult time gaining

1 admission to a college or university that does give  
 2 additional weight to race and AP courses?  
 3 MS. DAVIS: Objection to the form.  
 4 THE WITNESS: I don't know.  
 5 I don't know if there are affirmative  
 6 action programs for students from small high  
 7 schools or not.  
 8 BY MR. VILLAGRA:  
 9 Q Do you know whether the State of  
 10 California requires careful planning and constant  
 11 watchfulness of multitrack year-round high schools  
 12 to see the course offerings so important to  
 13 students' academic growth and subsequent graduation  
 14 are available to students in a timely manner?  
 15 A That was a long question.  
 16 (Record read.)  
 17 A Will you break that long question down to  
 18 me in individual parts?  
 19 BY MR. VILLAGRA:  
 20 Q Do you know whether the State of  
 21 California requires multitrack year-round high  
 22 schools to engage in careful planning to see that  
 23 course offerings so important to students' academic  
 24 growth and subsequent graduation are available to  
 25 students in a timely manner?

1 MS. DAVIS: Vague and ambiguous.  
 2 THE WITNESS: I don't know whether it does  
 3 or not.  
 4 BY MR. VILLAGRA:  
 5 Q Do you believe that the State of  
 6 California should?  
 7 MS. DAVIS: Same objection.  
 8 THE WITNESS: There may be some  
 9 interesting data gathered, whether it should or  
 10 not.  
 11 I'm not in a position to make that  
 12 judgment.  
 13 BY MR. VILLAGRA:  
 14 Q Why not?  
 15 A I'm just not in a position to.  
 16 Q When you say:  
 17 "Clearly, multitrack education at  
 18 the high school requires careful  
 19 planning and constant watchfulness."  
 20 What do you mean to convey by the word  
 21 "requires"?  
 22 A I think that "requires," from a  
 23 professional perspective of the role of high  
 24 school, is to prepare students to be productive  
 25 adult citizens in the society.

1 And all the things that goes with the  
2 meaning of that, if that's the high school's  
3 purpose, it seems to me, administrators, faculty,  
4 the professionals of the school have to have the  
5 careful planning and watchfulness to see that  
6 students are given the academic background to allow  
7 them to be as fully productive citizens as  
8 possible.

9 Q From a professional perspective?

10 A Yes.

11 Q Do you believe that the State of  
12 California should require multitrack year-round  
13 high schools to engage in careful planning and  
14 constant watchfulness that course offerings,  
15 important to students academic growth and  
16 subsequent graduation, are available to students in  
17 a timely manner?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: Who?

20 BY MR. VILLAGRA:

21 Q The State of California.

22 A From which you described from a  
23 professional perspective?

24 MS. DAVIS: Asked and answered.

25 THE WITNESS: I don't know how I feel,

1 identification by the Court  
2 Reporter.)

3 THE WITNESS: I see in front of me an  
4 article that I wrote for the National School Board  
5 Association.

6 BY MR. VILLAGRA:

7 Q You have had a chance to review  
8 Exhibit 39?

9 A I have looked it over, quickly.

10 Q Does it appear to be the article that you  
11 wrote?

12 A For the National School Board Association,  
13 yes.

14 Q In the second column, on the very first  
15 page, the very last sentence:

16 "Before you think we're going to  
17 go over ground that we already  
18 treaded on, I know we learned about  
19 learn loss over the summer."

20 The statement says:

21 "Three months away from formal  
22 instruction hinders language  
23 acquisition."

24 Do you see that?

25 A Yes.

1 whether the State should be doing that right at the  
2 moment.

3 BY MR. VILLAGRA:

4 Q Have you given that subject any thought,  
5 previously?

6 A Not the way you asked it.

7 But maybe I will from here on.

8 Q You haven't given that thought in the way  
9 that I have asked it?

10 A Not in the way you have asked it.

11 Q In what way have you given it thought?

12 A The kind of thing which I say here, which  
13 is people at the high schools, who are responsible  
14 to see that students are well prepared, should be  
15 doing their jobs.

16 That's what they are there to do.

17 At least at the local level, that should  
18 be done.

19 MR. VILLAGRA: I want to mark as  
20 Exhibit 39, a document entitled: "Year-Round  
21 Education, Learning More for Less," by Charles  
22 Ballinger, dated June 1990.

23 (Deposition Exhibit 39,  
24 Year-Round Education, Learning More  
25 for Less, was marked for

1 Q What do you mean by that?

2 A Pupils who are English language learners,  
3 whatever the language may be at the home, are very  
4 likely, during the three months away from classroom  
5 work where English is spoken or English acquisition  
6 is attempted, those students are very likely to  
7 revert to the language of the home during the three  
8 months away from language instruction, from the  
9 home or it could even be in the community,  
10 surrounding community of the home.

11 Q Okay.

12 A And those who deal with acquisition of  
13 language tell me that the longer the -- the  
14 steadier one uses a second language, the more  
15 proficient one will become in that language.

16 And so, I'm writing that three months away  
17 from formal instruction in language acquisition is  
18 important -- is important to reduce in order to aid  
19 in the acquisition of a new language or a second  
20 language.

21 Q You mentioned you were informed of this by  
22 those who deal with language acquisition?

23 A Yes.

24 Q Can you name for me anyone in particular?

25 A Discussion with Rosalia Salinas, who is

1 director of foreign languages at the San Diego  
2 County Office of Education.

3 Q Anyone else?

4 A And prior to her, Robert Landon, who,  
5 likewise, was coordinator of foreign languages at  
6 the San Diego County Office of Education.

7 Q Anyone else that you can recall?

8 A Not by name.

9 I've talked with classroom teachers who  
10 say -- who have confirmed that that is important.

11 Q Are you aware of any research supporting  
12 the proposition that three months away from formal  
13 instruction hinders language acquisition?

14 A I don't recall research that says -- that  
15 specifies three months.

16 What we're referring to is -- here is the  
17 three months of the traditional calendar.

18 It doesn't mean there isn't such research  
19 that speaks to the length of time away.

20 I just haven't been cognizant of it.

21 Q When you say you don't recall research  
22 dealing specifically with three months away from  
23 formal instruction, what did you mean?

24 A I was going up to the sentence before that  
25 where I'm talking about the long summer vacation of

1 Q Is it your opinion that a two 2-month  
2 vacation is better than one 3-month vacation in  
3 terms of language acquisition?

4 A That's my general feeling, yes.

5 Q What's your support for that?

6 A Just professional judgment, personal,  
7 professional judgment.

8 Q Can you point to any research?

9 A I cannot.

10 Q Have you talked to Rosalia Salinas about  
11 her opinion whether a two 2-month vacation is  
12 better than one 3-month vacation for acquisition  
13 for English language learners?

14 A I don't recall that kind of specific  
15 conversation.

16 Q Have you had that kind of conversation to  
17 that effect with anyone?

18 A Not to that specificity, no.

19 BY MR. VILLAGRA:

20 Q Do you know who Charlie Naylor (phonetic)  
21 is?

22 A I do.

23 Q Who is he?

24 A I don't know the exact title.

25 Let's say "director," for lack of

1 the traditional calendar.

2 My three months away is a reference to the  
3 summer vacation that I speak of in the previous  
4 sentence.

5 Q Are you aware of any research dealing with  
6 the length of time away from formal instruction and  
7 its effect on language acquisition?

8 A Not a specific study.

9 I can't refer to one.

10 Q You mentioned that the reason the time  
11 away from formal instruction would hinder language  
12 acquisition is that the student would revert to the  
13 language of the home during the vacation; is that  
14 right?

15 A Sure.

16 Q A student on a Concept 6 calendar, how  
17 long would they be on vacation?

18 A Two months.

19 Q And they would have two 2-month vacations?

20 A Yes.

21 Q An English language learner at a Concept 6  
22 school would have four months to revert to the  
23 language of home during vacation; is that correct?

24 A They would have four months, but not in a  
25 continuous fashion.

1 knowledge of his exact title, director at the  
2 British Columbia Federation of Teachers.

3 Q How do you know Charlie Naylor?

4 A I have read of the things he has written.

5 And I have spoken to him in person.

6 Q What, written by Charlie Naylor, have you  
7 reviewed?

8 A I believe I have read either an article  
9 that he wrote or snippets of an article he wrote  
10 about year-round education.

11 Q One article?

12 A Well --

13 Q Or snippets of one article?

14 A I don't know if it was one article.

15 But it was a series of quotations of his.

16 Q You said you have always spoken with him?

17 A Yes. I have met him in person.

18 Q How many times have you spoken with him?

19 A I think I have -- these are short

20 conversations, but maybe twice.

21 Q When was the first time you spoke with  
22 him?

23 A I met him first, at a meeting on  
24 year-round education in Vancouver, British  
25 Columbia.

1 I think that was only a typical greeting.  
 2 I had a short but a little longer  
 3 conversation with him at a meeting of the American  
 4 Educational Research Association.  
 5 Q When was that longer conversation?  
 6 A Probably about three or four years ago.  
 7 Q Have you spoken to him on any other  
 8 occasions?  
 9 A Not that I recall.  
 10 Q What did you discuss during the second  
 11 conversation about three or four years ago?  
 12 A Well, I told him I disagreed with his  
 13 point of view and I said:  
 14 As I read what you're saying,  
 15 much of it has come from material put  
 16 out by a group called "Time to  
 17 Learn," sponsored by the  
 18 International Association of  
 19 Amusement Parks and Attractions."  
 20 Q Did you discuss anything else?  
 21 A No, it was a short conversation.  
 22 Q What did he say?  
 23 A He said: "I disagree with you."  
 24 Q Do you recall whether Charlie Naylor has  
 25 concluded that many of the studies which show

1 increased educational achievement for students in  
 2 year-round schools, are published by the National  
 3 Association for Year-Round Education?  
 4 MS. DAVIS: Vague and ambiguous.  
 5 THE WITNESS: I think that he said that.  
 6 BY MR. VILLAGRA:  
 7 Q And you disagree with that conclusion?  
 8 A I disagree with that, because we don't  
 9 have that many studies.  
 10 Q Do you disagree with Charlie Naylor's  
 11 conclusion that the NAYRE appears evangelical in  
 12 its promotion of year-round education?  
 13 MS. DAVIS: Calls for speculation as to  
 14 Mr. Naylor.  
 15 THE WITNESS: I know he has written that.  
 16 I have seen that before.  
 17 I guess that's a matter of personal  
 18 judgment, whether we're evangelical in our  
 19 attitudes.  
 20 BY MR. VILLAGRA:  
 21 Q Do you consider yourself evangelical in  
 22 the promotion of year-round education?  
 23 MS. DAVIS: Vague and ambiguous.  
 24 THE WITNESS: I don't consider myself  
 25 evangelical, because I try to keep a rational tone

1 to my talks.  
 2 I'm an advocate, clearly.  
 3 And I make no presence otherwise.  
 4 But I don't think I'm evangelical.  
 5 BY MR. VILLAGRA:  
 6 Q When you say you "make no presence  
 7 otherwise," to being an advocate of year-round  
 8 education, what do you mean?  
 9 A As you asked me the first day of these  
 10 four days of deposition, I admitted right up front  
 11 that, yes, I'm an advocate.  
 12 And I don't back away from any other  
 13 suggestion.  
 14 But that doesn't mean that I -- I don't  
 15 see myself as being evangelical around -- I was  
 16 pleased in this most recent article published by  
 17 Dr. Cooper and his team that pointed out the  
 18 materials received from NAYRE were very fair and  
 19 balanced.  
 20 Because they double-checked to see whether  
 21 that would be true or not.  
 22 He pointed out that we sent articles that  
 23 were -- of a negative opinion, just as we did to  
 24 those that were positive.  
 25 Q Do you recall what those articles were

1 that you sent Harris Cooper that were negative?  
 2 A Opinions, like -- I think his request was,  
 3 send me everything that you possibly can.  
 4 So I went through all the files.  
 5 And I keep files such as Mr. Naylor's  
 6 comments.  
 7 I may have sent that sort of thing to him.  
 8 Q Are those the sort of materials that the  
 9 NAYRE publishes?  
 10 A No. We don't publish the kinds of  
 11 comments of that Mr. Naylor.  
 12 Because if you read all of his comments,  
 13 his articles, which I think you have in front of  
 14 you, I know for example, that a lot of those things  
 15 that he quotes from other sources come from the  
 16 materials that say "Put Out by Time to Learn,"  
 17 which over the years was sponsored by and paid for  
 18 by the International Association of Amusement Parks  
 19 and Attractions.  
 20 Q Do you disagree with Charlie Naylor's  
 21 conclusion that some of the research published by  
 22 the NAYRE appears methodologically suspect?  
 23 MS. DAVIS: Calls for speculation, vague  
 24 and ambiguous.  
 25 THE WITNESS: NAYRE has never done a

1 research study on its own.  
 2 It's always invited others to do it.  
 3 So, we published those three reports that  
 4 I mentioned a couple of days ago.  
 5 But we didn't do the research ourselves.  
 6 BY MR. VILLAGRA:  
 7 Q Do you disagree that some of the research  
 8 published by the NAYRE appears methodologically  
 9 suspect?  
 10 A I don't.  
 11 He certainly is entitled to his opinion.  
 12 Q One of the papers published by the NAYRE  
 13 was authored by, I don't remember his first name,  
 14 Winters?  
 15 A Walter Winters; Dr. Walter Winters.  
 16 Q Do you disagree with Charlie Naylor's  
 17 conclusion that Walter Winter's review of studies  
 18 published in '94 by NAYRE, only included studies  
 19 supplied by the NAYRE and failed to conduct even  
 20 the most basic of literature searches?  
 21 MS. DAVIS: Vague and ambiguous, calls for  
 22 speculation as to what Mr. Naylor is talking about.  
 23 THE WITNESS: I know he's incorrect in  
 24 that because we offered to talk to Winters about  
 25 all that we had available at the time, all that we

1 knew about at the time.  
 2 BY MR. VILLAGRA:  
 3 Q Have you investigated any of the  
 4 allegations by Charlie Naylor against NAYRE?  
 5 MS. DAVIS: Vague and ambiguous.  
 6 THE WITNESS: I have read many of those  
 7 comments, yes.  
 8 All of those you read so far, I have seen  
 9 before.  
 10 (Record read.)  
 11 MS. DAVIS: Vague and ambiguous.  
 12 THE WITNESS: Investigated further than my  
 13 own reaction; is that what you mean?  
 14 BY MR. VILLAGRA:  
 15 Q Have you taken any steps to determine  
 16 whether any of the allegations by Charlie Naylor  
 17 were accurate?  
 18 MS. DAVIS: I object that he's answered  
 19 that.  
 20 You can answer.  
 21 MR. VILLAGRA: If he has a gut-level  
 22 opinion?  
 23 MS. DAVIS: He told you he didn't.  
 24 That he sent not only documents that were  
 25 supportive of year-round but also negative.

1 He obviously knows that's not correct.  
 2 BY MR. VILLAGRA:  
 3 Q There are a number of allegations.  
 4 Did you investigate all of them to  
 5 determine whether they were true or not?  
 6 MS. DAVIS: Vague and ambiguous.  
 7 THE WITNESS: Most of them are untrue.  
 8 I didn't go further.  
 9 Since we have very limited resources at  
 10 NAYRE, there is a decision to be made whether you  
 11 spend time on positive forward movement or whether  
 12 you spend your time answering negative critics.  
 13 In this case, I was busy with the work of  
 14 the association and really haven't had time to  
 15 respond to all of these allegations.  
 16 BY MR. VILLAGRA:  
 17 Q When you say most of the allegations were  
 18 untrue?  
 19 A From my perspective, yes.  
 20 Q What do you mean by "from my perspective"?  
 21 A Sitting where I sat as executive director  
 22 of the association, I knew the kinds of things that  
 23 he charged just weren't true.  
 24 Q Did you ever consider, as executive  
 25 director of the NAYRE, taking any legal action

1 against Charlie Naylor for stating untruths in his  
 2 article about the NAYRE?  
 3 A No.  
 4 Q Why not?  
 5 A It's a democratic society, people are  
 6 entitled their points of views.  
 7 Q You never considered suit for defamation?  
 8 A No. I didn't think he defamed me  
 9 personally.  
 10 He's a critic of year-round education.  
 11 He was there the first time it was raised  
 12 by teachers in British Columbia.  
 13 He is a union leader and has his own  
 14 reasons for opposing the concept.  
 15 Q Why is it significant that Mr. Naylor is a  
 16 union leader?  
 17 A At a conference, the first conference in  
 18 British Columbia on the topic, I know in sitting in  
 19 one of the focus groups that he expressed his  
 20 opposition.  
 21 Q Expressed his opposition to what?  
 22 A To year-round education from the get-go.  
 23 Q What did you take from that?  
 24 A I took from that, that he was opposed to  
 25 year-round education and would do his best to block

1 its implementation in British Columbia.  
 2 Q How is that connected to his union  
 3 membership?  
 4 A As a member of the union, leader of the  
 5 union, he was going to use his power, if you will,  
 6 as a union leader to block its introduction into  
 7 the province of British Columbia or try to block  
 8 it.  
 9 Q Do you recall Charlie Naylor's allegation  
 10 that a number of NAYRE articles appear uncritical  
 11 and very limited in references with statements made  
 12 which are frequently unsubstantiated by evidence?  
 13 MS. DAVIS: Calls for speculation as to  
 14 what he's calling "articles."  
 15 THE WITNESS: I know he's made that  
 16 statement.  
 17 I don't know what he means by it.  
 18 BY MR. VILLAGRA:  
 19 Q You believe that to be untrue?  
 20 A I do.  
 21 Q One of the articles he cites in particular  
 22 is an article you authored in 1987?  
 23 A Yes.  
 24 Q It's entitled: "Year-Round School Where  
 25 the Learning Never Stops," published in PHI DELTA

1 KAPPA N EDUCATION in 1987?  
 2 A Yes.  
 3 Q He says:  
 4 "An example is the work of  
 5 Ballinger et al., unsubstantiated  
 6 claims of failure of traditional  
 7 calendar schools and the linkage  
 8 between the purported failure and the  
 9 traditional school calendar."  
 10 Do you still believe in the failure of  
 11 traditional calendar schools?  
 12 MS. DAVIS: Asked and answered.  
 13 THE WITNESS: I believe the way I  
 14 say it is a more positive way.  
 15 I believe that year-round education is a  
 16 better way to educate children than traditional  
 17 calendar.  
 18 BY MR. VILLAGRA:  
 19 Q As we discussed, at length, that's based  
 20 on your perception of the learning laws as  
 21 associated with the summer vacation in a  
 22 traditional calendar?  
 23 A That's correct.  
 24 MS. DAVIS: Mischaracterizes his prior  
 25 testimony.

1 THE WITNESS: Do you have additional  
 2 copies of that article?  
 3 MR. VILLAGRA: Sure.  
 4 BY MR. VILLAGRA:  
 5 Q Is that the primary factor?  
 6 A The learning laws, yes, it's the primary  
 7 factor.  
 8 It's not the only factor.  
 9 I took the intercession idea as a way for  
 10 quicker remediation.  
 11 Q But intercession is beyond the mandated  
 12 days of instruction on the calendar; is that  
 13 correct?  
 14 A Yes, it would be.  
 15 Q So when you're comparing a multitrack  
 16 year-round program, or even a single-track  
 17 year-round program that provides intercession,  
 18 wouldn't you have to make a comparison to a  
 19 traditional calendar year that is providing summer  
 20 school?  
 21 A We do.  
 22 We define intercession as -- the  
 23 instructional program in intercession as being  
 24 summer school rescheduled.  
 25 We say:

1 Think of it as summer school  
 2 rescheduled.  
 3 The difference is we don't wait  
 4 nine months.  
 5 If a problem occurs in October in a  
 6 traditional calendar school, often the remediation  
 7 doesn't begin to the following summer.  
 8 If intercession works as it should, that  
 9 remediation can begin more quickly.  
 10 Q Do you believe, when assessing the effects  
 11 on achievement of enrollment in a year-round school  
 12 versus a traditional calendar school, a researcher  
 13 should take into account whether students have been  
 14 afforded the opportunity to take intercession or  
 15 summer school?  
 16 MS. DAVIS: Vague and ambiguous.  
 17 (Record read.)  
 18 MS. DAVIS: Vague and ambiguous, calls for  
 19 speculation, overbroad.  
 20 THE WITNESS: I think it's wise to know,  
 21 if at all possible, whether intercessions are part  
 22 of achievement gains.  
 23 BY MR. VILLAGRA:  
 24 Q Why would it be wise?  
 25 A I think we need to know the impact of



1 intercessions.

2 We have reason to believe that they are  
3 very important to have any kind of study that  
4 defines or helps to define the impact of  
5 intercession.

6 I think it would be helpful to the  
7 profession, not just to those of us in year-round  
8 education.

9 Q Do you believe it's necessary to compare  
10 apples with apples to look at year-round schools  
11 and their intercession programs and traditional  
12 calendar schools and their summer programs?

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: Yes.

15 BY MR. VILLAGRA:

16 Q Why?

17 A To the greatest degree possible, it would  
18 be a more solid research effort.

19 Q What do you mean?

20 A A more careful research effort would be a  
21 better way to put that.

22 Q Do you have currently, sitting here today,  
23 any intention to do further work in the case?

24 A I don't know.

25 MS. DAVIS: Other than coming tomorrow?

1 into the school characteristics index for purposes  
2 of this case?

3 MS. DAVIS: On his own?

4 MR. VILLAGRA: Yes.

5 THE WITNESS: Probably not on my own.  
6 If I'm involved further, I may very well.

7 BY MR. VILLAGRA:

8 Q Who else would you need to involve to be  
9 able to look further into the school  
10 characteristics index?

11 MS. DAVIS: Assumes facts.

12 THE WITNESS: At this point, I wouldn't  
13 know who I would involve.

14 I could do more reading on my own, for  
15 example.

16 BY MR. VILLAGRA:

17 Q What would you read?

18 MS. DAVIS: Calls for speculation.

19 BY MR. VILLAGRA:

20 Q Do you know?

21 A I don't know.

22 Besides the State document here, I would  
23 have to go to some of the professional journals to  
24 see what might be said.

25 Q So sitting here today, you can't even tell

1 THE WITNESS: I have been asked to allow  
2 two more days for deposition.

3 I presume there would be further work.

4 BY MR. VILLAGRA:

5 Q Do you intend to do any further research  
6 into the academic performance index?

7 MS. DAVIS: For purposes of this case?

8 MR. VILLAGRA: Yes.

9 THE WITNESS: I may very well.

10 BY MR. VILLAGRA:

11 Q Do you have any intention to do that  
12 sitting here today?

13 A If I'm invited to be further involved in  
14 this case, I probably will look at some of that  
15 data, yes.

16 Q Have you had any discussions about  
17 invitations for further involvement in the case?

18 A No, I have not.

19 That's not been discussed yet.

20 Q Have you had any discussions with defense  
21 counsel about the school characteristics index and,  
22 specifically, whether you will do any further  
23 research into it for purposes of this case?

24 A No. I have not had that discussion.

25 Q Do you intend to do any further research

1 me what else you would look at besides the  
2 Technical Design Group document on the school  
3 characteristics index?

4 A I would go to journals to see what kind of  
5 articles have been written about the school  
6 characteristics indexes, if, indeed, there have  
7 been.

8 Q Why didn't you do that previously?

9 MS. DAVIS: Vague and ambiguous.

10 BY MR. VILLAGRA:

11 THE WITNESS: Like other practitioners, I  
12 have a day-by-day working knowledge.

13 I didn't -- I didn't see that as necessary  
14 for my report.

15 BY MR. VILLAGRA:

16 Q You didn't see it as necessary for your  
17 report?

18 A Not for further investigation as you're  
19 now suggesting.

20 Q Why not?

21 A Because I thought I had enough information  
22 for the kinds of things I said in my report.

23 Q Do you still believe you had enough  
24 information for the kinds of statement you made in  
25 your report for school characteristics index?

1 A For my report, yes.  
 2 Q Why do you think that?  
 3 A Simply because the report stands on its  
 4 own and says what I want it to say and tries -- I  
 5 think the report conveys what I wanted or needed to  
 6 say.  
 7 Q Don't you believe that you had the  
 8 application to describe the school characteristics  
 9 index accurately?  
 10 MS. DAVIS: Assume he hasn't described  
 11 accurately.  
 12 Q Do you believe you have described the  
 13 school characteristics index inaccurately?  
 14 A Not to my knowledge.  
 15 Q Not to your knowledge?  
 16 A That's correct.  
 17 MR. VILLAGRA: I have no further questions  
 18 at this time.  
 19 May we stipulate that copies of documents  
 20 attached to the deposition maybe used as originals.  
 21 And may we stipulate that the original of this  
 22 deposition be signed under penalty of perjury.  
 23 That the original be delivered to the  
 24 office of O'Melveny & Myers and Lynn Davis.  
 25 That the court reporter is relieved of

1 liability for the original of the deposition. That  
 2 the witness will have 45 days from the date of the  
 3 court reporter's transmittal letter to Lynn Davis  
 4 at O'Melveny & Myers for the witness to sign and  
 5 correct the deposition.  
 6 That the witness will notify all parties  
 7 in writing of any changes to the deposition. And  
 8 that if such changes or the signature are not  
 9 communicated within that time, any unsigned and  
 10 uncorrected copy may be used for all purposes as if  
 11 signed and corrected.  
 12 MS. DAVIS: So stipulated.  
 13  
 14 (TIME NOTED: 4:34 P.M.)  
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1  
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 8 I, CHARLES BALLINGER, do hereby  
 9 declare under penalty of perjury that I have read  
 10 the foregoing transcript; that I have made such  
 11 corrections as noted herein, in ink, initialed by  
 12 me, or attached hereto; that my testimony as  
 13 contained herein, as corrected, is true and  
 14 correct.  
 15 Executed this \_\_\_\_ day of \_\_\_\_\_,  
 16 2003, at \_\_\_\_\_, \_\_\_\_\_.  
 17 (City) (State)  
 18  
 19  
 20  
 21 \_\_\_\_\_  
 22 CHARLES BALLINGER  
 23 Volume IV  
 24  
 25

1  
 2  
 3 I, the undersigned, a Certified  
 4 Shorthand Reporter, do hereby certify:  
 5 That the foregoing proceedings were  
 6 taken before me at the time and place herein set  
 7 forth; that any witness in the foregoing  
 8 proceedings, prior to testifying, were placed under  
 9 oath; that a verbatim record of the proceedings was  
 10 made by me using machine shorthand which was  
 11 thereafter transcribed under my direction; further,  
 12 that the foregoing is an accurate transcription  
 13 thereof.  
 14 I further certify that I am neither  
 15 financially interested in the action nor a relative  
 16 or employee of any attorney of any of the parties.  
 17 IN WITNESS WHEREOF, I have this  
 18 date subscribed by name.  
 19  
 20 Dated: July 7, 2003  
 21  
 22  
 23 \_\_\_\_\_  
 24 DAVID OCANAS  
 25 CSR No. 12567