

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ELIEZER WILLIAMS, et al.,	) Case No.
	) 312 236
Plaintiffs,	) Volume I
	) (Pages 1-134)
v.	)
	)
STATE OF CALIFORNIA; DELAINE	)
EASTIN, State Superintendent of	)
Public Instruction; STATE	)
DEPARTMENT OF EDUCATION; STATE	)
BOARD OF EDUCATION,	)
	)
Defendants.	)
_____	)

DEPOSITION OF:

ROSS E. MITCHELL, Ph.D.  
TUESDAY, JANUARY 7, 2003  
9:41 A.M.

REPORTED BY:

DENISE A. ROSS  
CSR NO. 10687

1 Deposition of ROSS E. MITCHELL, Ph.D.,  
2 taken on behalf of the Defendants, at 400 South Hope  
3 Street, 16th Floor, Los Angeles, California, on  
4 TUESDAY, JANUARY 7, 2003, at 9:41 A.M., before  
5 DENISE A. ROSS, CSR No. 10687.

6  
7 APPEARANCES OF COUNSEL:

8  
9 FOR THE PLAINTIFFS:  
10 MEXICAN AMERICAN LEGAL DEFENSE AND  
11 EDUCATIONAL FUND  
12 BY: HECTOR O. VILLAGRA, ESQ.  
13 634 South Spring Street, 11th Floor  
14 Los Angeles, California 90014  
15 (213) 629-2512  
16 -and-  
17 ACLU OF SOUTHERN CALIFORNIA  
18 BY: PETER ELIASBERG, ESQ.  
19 1616 Beverly Boulevard  
20 Los Angeles, California 90026  
21 (213) 977-9500  
22  
23  
24  
25

1 APPEARANCES OF COUNSEL (continued):  
2 FOR THE INTERVENER CALIFORNIA SCHOOL BOARDS  
ASSOCIATION:

3 CALIFORNIA SCHOOL BOARDS ASSOCIATION  
4  
5 BY: ABE HAJELA, SPECIAL COUNSEL  
6  
7 555 Capitol Mall, Suite 1425  
8  
9 Sacramento, California 95814  
10  
11 (916) 442-2952

12 FOR THE INTERVENER LOS ANGELES UNIFIED SCHOOL  
DISTRICT:

13 STRUMWASSER & WOOCHEER LLP  
14 BY: KEVIN S. REED, ESQ.  
15 100 Wilshire Boulevard, Suite 1900  
16 Santa Monica, California 90401  
17 (310) 576-1233  
18  
19  
20  
21  
22  
23  
24  
25

1 APPEARANCES OF COUNSEL (continued):  
2  
3 FOR THE DEFENDANT THE STATE OF CALIFORNIA:  
4 O'MELVENY & MYERS LLP  
5 BY: LYNNE M. DAVIS, ESQ.  
6 400 South Hope Street  
7 Los Angeles, California 90071-2899  
8 (213) 430-6000  
9

10 FOR THE DEFENDANTS STATE SUPERINTENDENT OF PUBLIC  
INSTRUCTION, STATE DEPARTMENT OF EDUCATION, STATE  
BOARD OF EDUCATION:

11 STATE OF CALIFORNIA  
12 DEPARTMENT OF JUSTICE  
13 OFFICE OF THE ATTORNEY GENERAL  
14  
15 BY: KARA READ-SPANGLER, ESQ.  
16  
17 1300 I Street, Suite 1101  
18  
19 Sacramento, California 94244-2550  
20  
21 (916) 327-0356  
22  
23  
24  
25

I N D E X		
WITNESS	EXAMINATION	PAGE
ROSS E. MITCHELL, Ph.D.	(By Ms. Davis)	6
	Afternoon session	66

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

E X H I B I T S  
(none offered)

1 LOS ANGELES, CALIFORNIA  
2 JANUARY 7, 2003; 9:41 A.M.

3  
4 ROSS E. MITCHELL, Ph.D.,  
5 having been first duly sworn,  
6 was examined and testified as follows:

7 EXAMINATION

8 BY MS. DAVIS:

9 Q. Dr. Mitchell, my name is Lynne Davis. I'm  
10 an attorney at O'Melveny & Myers. I'm representing  
11 the State of California in this lawsuit.

12 Can you please state your name in full for  
13 the record?

14 A. Ross Edward Mitchell.

15 Q. Have you ever had your deposition taken  
16 before?

17 A. No.

18 Q. Have you talked with your attorney about  
19 the ground rules of depositions?

20 A. I've talked with plaintiffs' counsel about  
21 the ground rules of depositions. I don't -- I'm not  
22 retaining an attorney for this; so I don't know the  
23 standard language here in that regard.

24 Q. Why don't we just go over the ground rules  
25

1 a little bit. I ask the questions. I'll ask you to  
2 respond orally. No nodding or shaking your head  
3 because the court reporter needs to get my question  
4 and get your answer. The questions and answers are  
5 transcribed into a booklet. The booklet will be  
6 sent to you.

7 You'll have an opportunity to review the  
8 transcript and to make any changes. If you do make  
9 any changes, though, we can comment on that fact at  
10 trial. It's an informal setting, as you can see.

11 No courtroom, no judge, but it's as if you were  
12 testifying at trial.

13 Please tell me if you don't understand a  
14 question, and I'll try to rephrase; otherwise I'm  
15 going to assume that you understand my question.

16 Any questions?

17 A. Not so far.

18 Q. Have you recently consumed any medication  
19 or alcohol that would affect your ability to give  
20 your best testimony today?

21 A. No.

22 Q. In your opinion, why have multitrack  
23 year-round schools been implemented in California?

24 A. Just give me a moment here because that was  
25 sort of a radical shift here. We went from ground

1 rules to questions, and I was sort of waiting for  
2 more ground rules.

3 Q. Fair enough.

4 MS. READ-SPANGLER: While you're shifting,  
5 is Mr. Villagra representing you for purposes of the  
6 deposition today?

7 THE WITNESS: Again, this is a language  
8 piece that I don't entirely get. On the matter of  
9 objections relative to the interest of the  
10 plaintiff, that's what Mr. Villagra is here for.

11 But when you say "representing me" --

12 MS. READ-SPANGLER: That's all I wanted to  
13 know.

14 THE WITNESS: I don't have an attorney  
15 retained for legal protection in this activity.

16 MS. READ-SPANGLER: That's fine.

17 THE WITNESS: So I don't know exactly.

18 MS. READ-SPANGLER: That's what I wanted to  
19 know. Thanks.

20 MR. VILLAGRA: Would the court reporter  
21 please read back the question?

22 (Record read as follows:

23 "QUESTION: In your opinion, why  
24 have multitrack year-round schools  
25 been implemented in California?")

1 MR. VILLAGRA: Objection; calls for  
2 speculation.

3 THE WITNESS: Why have they been  
4 implemented?

5 Multitrack year-round schooling in  
6 California has complex history in that it's had  
7 different legal statuses over the course of several  
8 decades; so to say why, doesn't have a singular  
9 answer.

10 BY MS. DAVIS:

11 Q. When you say "different legal statuses"  
12 over the course of several decades, what are you  
13 referring to?

14 A. It's my recollection from reading various  
15 histories and statutes that depending on the  
16 calendar to which you refer, you have a different  
17 period in time in which its existence was possible  
18 in California, so that there are sort of multiple  
19 flavors, I guess is a loose word to use for the  
20 multitrack year-round calendar in California and not  
21 all of the flavors have been on the menu throughout  
22 the school history.

23 Q. In your opinion, have multitrack schools  
24 been implemented as a solution to any particular  
25 problems in California?

1 MR. VILLAGRA: Objection; vague as to the  
2 term "multitrack year-round schools."

3 THE WITNESS: I'm sorry. I lost my --  
4 Can we do the question again, please?

5 MS. DAVIS: Why don't we read the question  
6 back.

7 (Record read as follows:

8 "QUESTION: In your opinion, have  
9 multitrack schools been implemented as  
10 a solution to any particular problems  
11 in California?")

12 MR. VILLAGRA: Same objection.

13 THE WITNESS: Okay. Generally, the short  
14 answer would be yes.

15 BY MS. DAVIS:

16 Q. And what are the particular problems that  
17 you're saying that multitrack schools have been  
18 implemented as a solution for?

19 MR. VILLAGRA: Objection; vague as to  
20 "problems."

21 THE WITNESS: In my report, I think I use  
22 the terms "demographic" and "fiscal pressures." I'm  
23 not exactly sure precisely which words I used now,  
24 because the multitrack year-round calendar is a  
25 scheduling strategy responsive to issues of school

1 question.

2 THE WITNESS: I'm not clear what I didn't  
3 respond to. I'm happy to respond.

4 MS. READ-SPANGLER: Well, I think she asked  
5 if by "school population" you meant overcrowding,  
6 but you just defined overcrowding.

7 MR. VILLAGRA: Can we just simplify the  
8 deposition. Let's make sure it's just one attorney  
9 at a time that's taking it.

10 MS. READ-SPANGLER: I'm just trying to get  
11 him to answer the question.

12 MR. VILLAGRA: Well, I think Ms. Davis can  
13 do that if she feels the question wasn't answered.

14 THE WITNESS: I guess I don't understand  
15 the question clearly, then, if I haven't answered  
16 it, because I don't -- you have a perception as to  
17 my answer that I don't understand how I generated  
18 it. And I'd be happy to answer the question that I  
19 didn't answer. I just don't know what it is that  
20 I'm missing.

21 MS. READ-SPANGLER: I just was confused  
22 because I thought maybe I didn't understand the  
23 question, but I thought she was asking if you meant  
24 when you used the term "school population," you're  
25 referring to overcrowding. But then I thought you

1 population and funding.

2 BY MS. DAVIS:

3 Q. Now, when you say "school population" in  
4 your report, you mentioned overcrowding.

5 Is that what you mean by the problem of  
6 school population?

7 A. I agree that I used the word  
8 "overcrowding," and that by overcrowding I mean  
9 having more students enrolled than there is present  
10 seating capacity and the multitrack year-round  
11 calendar is an available response to that condition.

12 MS. READ-SPANGLER: Can you read back the  
13 question because I don't think he answered it?

14 (Record read as follows:

15 "QUESTION: Now, when you say  
16 "school population" in your report,  
17 you mentioned overcrowding.

18 "Is that what you mean by the  
19 problem of school population?")

20 MS. READ-SPANGLER: You just defined  
21 "overcrowding," but you didn't actually respond to  
22 her question.

23 MR. VILLAGRA: Is there a question on the  
24 table?

25 MS. READ-SPANGLER: Yeah, her original

1 defined "overcrowding"; so I just didn't understand.

2 Is that what you mean when you say "school  
3 population"?

4 MR. VILLAGRA: I'm going to object to the  
5 conduct of the deposition by tag team.

6 MS. READ-SPANGLER: I'm just trying to get  
7 him to clarify that one answer. We're not going to  
8 tag team.

9 MR. VILLAGRA: Well, if Ms. Davis feels it  
10 wasn't answered, then I think she should ask the  
11 follow-up question.

12 BY MS. DAVIS:

13 Q. Dr. Mitchell, in your opinion, are  
14 multitrack year-round schools a result of  
15 overcrowding?

16 MR. VILLAGRA: Objection to "result." It's  
17 vague.

18 THE WITNESS: A result of -- does -- it  
19 seems to me to say something to the effect of does  
20 overcrowding necessarily imply multitrack year-round  
21 calendar scheduling. If that's correct, then the  
22 answer is no. Multitrack year-round calendar  
23 scheduling is not a necessary direct result of  
24 overcrowding. There are alternative responses to  
25 overcrowding.

1 BY MS. DAVIS:

2 Q. Can overcrowding be one of the causes of  
3 multitrack year-round schools?

4 MR. VILLAGRA: Objection to "causes" as  
5 vague.

6 THE WITNESS: To say "cause" would imply  
7 that you have to come up with this as a response.  
8 And it seems to me that it's more complicated than  
9 that because, for example, the law has to allow this  
10 as a response. In the absence of its permission, it  
11 can never be a result of overcrowding. If the law  
12 explicitly defines the calendar as having a  
13 particular structure, then multitrack year-round  
14 calendar scheduling will never be the result of  
15 overcrowding because it will never be allowed.

16 If it is allowed, then it is a viable  
17 response to overcrowding and then it becomes an  
18 available strategy for school administration to  
19 employ the multitrack year-round calendar scheduling  
20 as a way to manage the school population given the  
21 existing school building.

22 BY MS. DAVIS:

23 Q. In your opinion, are multitrack year-round  
24 schools a response to overcrowding in California?

25 A. They are -- the implementation of the

1 I'm not sure if I've exhausted the list  
2 yet, but nothing else is coming to mind presently.

3 Q. In your opinion, how do you think the State  
4 of California should handle overcrowding in the  
5 schools?

6 MR. VILLAGRA: Objection; vague and  
7 ambiguous and calls for speculation.

8 THE WITNESS: How should it be done? This  
9 is -- I think before answering the question, I would  
10 like to try to characterize what I'm responding to,  
11 because it seems sort of like I get to wear somebody  
12 else's hat. I get to wear the legislature's hat or  
13 the superintendent's hat or the school board's hat  
14 or the appropriate authority making decisions. Or  
15 if this issue is to be a matter of remedy, then it's  
16 the judge's hat that I'm putting on.

17 How should overcrowding be handled is  
18 something which is not trivial to try to produce an  
19 answer to, and so I'm trying to figure out to what  
20 degree I'm in a position to respond to that  
21 question. I don't believe I addressed it in my  
22 report.

23 If you have overcrowding, you have to  
24 provide whatever comes to be the definition of  
25 adequate and appropriate school space for students

1 multitrack year-round calendar is one fairly common  
2 response to overcrowding.

3 Q. What are other responses to overcrowding?

4 A. One common response to overcrowding is the  
5 addition of portable or some call "relocatable  
6 classrooms" to the school grounds. Another response  
7 would be to build or acquire additional school  
8 grounds or facilities -- well, grounds themselves,  
9 of course, you can't in common practice hold school  
10 outside; so grounds with a building on it that --  
11 those are two clear additional strategies for coping  
12 with overcrowding.

13 Q. Any others?

14 A. In California, I'm not exactly sure of the  
15 prevalence of -- what's the term for it? It's  
16 something like split scheduling where some fraction  
17 of the student body arrives very early and leaves  
18 shortly after or before the next fraction of the  
19 student body arrives later in the day. That's  
20 another kind of response.

21 What else?

22 Redistributing students among available  
23 facilities is a response which can be done in a  
24 variety of ways, including redrawing neighborhood  
25 catchment areas and bussing students.

1 that gives them access to the state-mandated  
2 curriculum and the additional aspects of school  
3 programming that any other student might be given  
4 access to, including certified persons in  
5 appropriate positions. And that means attending to  
6 the existence of the program of offering as well as  
7 the building in which it takes place.

8 So I'm finding myself seeing a lot of  
9 contingencies in responding to overcrowding. I  
10 would -- I would like to sort of be able to lay out  
11 my thoughts and examine them in terms of consistency  
12 and coherence. I'm a little concerned that I've got  
13 enough swimming in my head here that I'm not going  
14 to come across clear. So I think I need to stop and  
15 ask you to give me maybe a rephrase that helps me  
16 pull my threads together, because I'm starting to  
17 lose my attention to the question. So if you -- if  
18 we just have her read back the question again, maybe  
19 that will help, or maybe I need something else.

20 MS. DAVIS: Why don't you read back the  
21 question.

22 (Record read as follows:

23 "QUESTION: In your opinion, how do  
24 you think the State of California  
25 should handle overcrowding in the

1 schools?")  
 2 MR. VILLAGRA: Same objections.  
 3 I also object as an incomplete  
 4 hypothetical.

5 THE WITNESS: I think to answer this  
 6 question, what I have to do is have a clear set of  
 7 goals and standards established in order to  
 8 proceed -- and I'm not sure that I have -- that  
 9 mandate that mission clearly defined to which I  
 10 could respond.

11 For example, to make myself clear why it is  
 12 that this is sort of an enormous question to answer  
 13 in the general hypothetical speculative construct  
 14 that it stands in now is that depending on what you  
 15 agree defines an appropriate standard for public  
 16 schooling, you might generate a different response.

17 For example, if you were to agree that as a  
 18 matter of state policy, no more than 5 percent of  
 19 second school students should be expected to enroll  
 20 in and have access to advanced placement courses,  
 21 that could help you constrain the demand to have  
 22 enough qualified persons and curricular materials  
 23 and so forth to meet that mandated objective for  
 24 school programming and it would possible to examine  
 25 whether or not that level of responsibility was

1 housing and have the same kind of housing as places  
 2 where nobody is playing catch up.  
 3 And that's a challenge which I don't  
 4 pretend to be able to propose the one and only  
 5 solution to. But it's a non-trivial challenge to be  
 6 responsive to the difference between public school  
 7 housing structured to catch up with population  
 8 that's running faster than anticipated and public  
 9 school housing that has no population pressure. And  
 10 that's so that --

11 One of my thoughts on the matter, to try to  
 12 boil it down, now that I've gotten clearer what I'm  
 13 trying to say here, is it has been historically and  
 14 appears to continue to be expected that a public  
 15 school building should be in place for the expected  
 16 students often in the neighborhood and that that  
 17 expectation is not always realized, particularly in  
 18 regions of the state where population growth is  
 19 rapid.

20 So I encourage serious consideration of how  
 21 to, to the best ability possible, provide equivalent  
 22 public school housing opportunities for students in  
 23 the state and to attempt to avoid public school  
 24 housing differences that are clear and potentially  
 25 unnecessarily different.

1 being attained because these kind of expectations  
 2 are necessary for building a model of implementation  
 3 which can then be examined for whether or not it's  
 4 viable.

5 And so without some constraints on the  
 6 mission and objectives for defining what kinds of  
 7 programming is the purpose and intent, it's very  
 8 difficult to answer such a broad question with any  
 9 specificity.

10 BY MS. DAVIS:

11 Q. Have you thought about how California  
 12 should handle overcrowding?

13 A. Yes, I have.

14 Q. And what are your thoughts?

15 A. One of my thoughts is that there needs to  
 16 be a responsiveness to uneven population growth in  
 17 the state, that certain parts of the state have been  
 18 and are likely to continue to have increasing  
 19 school-age population relative to other parts of the  
 20 state and that because that expectation is  
 21 reasonable and moderately predictable, there should  
 22 be advanced planning to house those students and  
 23 that one of the concerns that I have relative to  
 24 housing the students is that it's an activity that  
 25 requires foresight, that you can't play catch up on

1 Q. Have you thought about solutions to  
 2 overcrowding in California schools?

3 MR. VILLAGRA: Objection; asked and  
 4 answered and vague as to "solutions," incomplete  
 5 hypothetical.

6 THE WITNESS: The short answer is yes, I  
 7 have thought about what might be solutions to public  
 8 school housing issues.

9 Now, the question specifically included the  
 10 word "overcrowding"; is that correct?

11 BY MS. DAVIS:

12 Q. Yes.

13 A. I just want to make sure that I still had  
 14 my thoughts where they needed to go.

15 This is a matter of some complexity due to  
 16 the issue of needing to build scenarios responsive  
 17 to local conditions so that -- I'm trying to think  
 18 of some concise example that would be helpful here.  
 19 Let's see.

20 A community might see as a result of --

21 An example from my own experience would be  
 22 something in the opposite direction, but it's still  
 23 the issue. There were air force base closures in  
 24 California when the defense department was  
 25 downsizing its operations. One of the impacts of

1 that was that all of those air force families were  
2 transferred, and that changed the distribution of  
3 school-age children in the city.

4 One strategy that that city had available  
5 to it to respond to overcrowding in other  
6 neighborhoods was to, where it seemed appropriate,  
7 change the neighborhood catchment area to bring  
8 those students into the schools where school-age  
9 families had left.

10 So if local conditions have heterogeneity  
11 in overcrowding relative to school jurisdiction, one  
12 strategy for accommodating that is to use existing  
13 buildings and have students going to school at sites  
14 outside of the original catchment area, and that  
15 could be done by redrawing the catchment area or by  
16 having an explicit busing strategy or --

17 I'm not sure what else right now to state  
18 as a precise mechanism.

19 That's an example of the contingency on the  
20 local circumstance for accommodating overcrowding.  
21 Jurisdictional resources vary, and the response to  
22 the diversity of resources within the jurisdiction,  
23 I would expect, would strongly influence the kind of  
24 strategies that would be reasonable to employ.

25 Q. You said that you had thought about

1 MS. DAVIS: I want to know generally.

2 Q. Let's start at a state level.

3 A. Okay. At the state level, this is a  
4 different -- potentially different mechanism issue  
5 because unless the state takes back its delegation  
6 of authority to the local jurisdiction, it behaves  
7 differently. That's an important distinction  
8 between districts and the state, that presently the  
9 relationship between the states and the districts is  
10 that the state has delegated to local jurisdictions  
11 its authority to enact the rules and laws and  
12 regulations around public schooling.

13 So long as the state continues to delegate  
14 its authority to local jurisdictions, it constrains  
15 its behavior so that the kinds of mechanisms that I  
16 had been talking about relative to local behavior  
17 become mechanisms available to the state to consider  
18 if it takes back its authority from the local  
19 jurisdictions.

20 So long as the present delegation of  
21 authority persists, the state behaves as it has been  
22 in a different quality of role, that policies are  
23 developed often but not only in the structure of  
24 incentives to induce local jurisdictions to behave  
25 in particular ways because the state itself will not

1 solutions to overcrowding.

2 What are the solutions that you've thought  
3 about?

4 A. That was one example.

5 I think at some point --

6 Well, again, this is highly contextual; so  
7 let me try to think of another context example  
8 that's different in order to highlight another kind  
9 of solution that I've thought about, not being in  
10 the position to dictate the implementation of the  
11 solution or manage the resources that have to go  
12 with making that solution feasible.

13 It's one thing to have thought about it.  
14 It's another thing to see that it's useful. I need  
15 to express that caveat explicitly. I cannot today  
16 dictate that any solution that I've considered is  
17 going to be adequate. I feel awkward talking about  
18 solutions without making it clear that I can't make  
19 them happen just because I've thought about them.  
20 Let me think of another situation.

21 MR. VILLAGRA: Just as a clarification,  
22 when we're talking about solving overcrowding, do  
23 you mean at a school level? At a district level?  
24 At the state level? I think Dr. Mitchell is  
25 answering it in a very localized area.

1 direct local jurisdictions to behave that way.

2 The law relating to the multitrack  
3 year-round calendar is an example of that, that  
4 there is an incentive structure in place to induce  
5 school districts to behave in a particular way in  
6 response to overcrowding. That's a strategy that  
7 has been employed by the state; and that by doing  
8 so, the state leverages its capacity to be a  
9 provider of funds to a local jurisdiction by making  
10 contingent eligibility for funds on utilization of a  
11 particular policy like utilization of a multitrack  
12 year-round calendar.

13 So then with that as a preface, it's  
14 imaginable that the state could create a different  
15 incentive structure to incentivize different  
16 behaviors on the part of local school districts to  
17 respond to overcrowding if it so chose.

18 The other thing that the state could do as  
19 a potential solution is to -- and I'm not clear on  
20 the details of this any more, but there was ballot  
21 proposition that was put forward to create a pool of  
22 funds for additional school building construction.  
23 That's another expression historically of the state  
24 to find a solution of overcrowding, build more  
25 schools. Historically proposed by the state is to

1 have a multitrack year-round calendar to cope with  
2 overcrowding.

3 A potential solution that's on the books is  
4 to take away playground space in exchange for  
5 portable relocatable classrooms to increase the  
6 building capacity on the existing grounds.

7 I don't know the status of building lease  
8 regulations very well anymore, but that's another  
9 strategy. You don't have to buy new land and build  
10 a new building, but lease an existing structure that  
11 meets state requirements for safe school building  
12 and that's a strategy for housing excess student  
13 population.

14 I think I may be annoying you a little  
15 because I think what I've done instead of precisely  
16 answering your question is listing strategies that  
17 could be employed in any proposed package that could  
18 be labeled a solution. And if that's true, I  
19 apologize for being annoying. I'm trying to be  
20 clear about what I say, and I'm trying to exercise  
21 responsible judgment extemporaneously, and that's  
22 not the way I normally do report writing or other  
23 formal presentations. I spend some time, and I  
24 write out what I'm going to say. I examine it. I  
25 review my notes, documents and so forth and come in

1 standpoint of my knowledge as an empirical research  
2 scholar in the field, I don't think I can offer a  
3 singular opinion.

4 BY MS. DAVIS:

5 Q. It doesn't have to be a singular opinion.

6 A. So let me hear the question again, please,  
7 just the last question before I made my last  
8 statement.

9 (Record read as follows:

10 "QUESTION: And maybe I should just  
11 clarify. I'm not looking for a model  
12 of a policy proposal that is proposed  
13 to the legislature. I'm just looking  
14 for your opinion as to solutions of  
15 overcrowding of schools in  
16 California.")

17 MR. VILLAGRA: Same objection.

18 THE WITNESS: Now, to some degree, I feel  
19 as though I've answered that question, because as I  
20 stated, there are a variety of strategies that may  
21 be chosen to be employed to handle overcrowding and  
22 that those strategies and others that may or may not  
23 have yet been imagined are available to the  
24 construction of a solution.

25 The best I can do here in terms of what I

1 ready to go. And so I'm trying hard here to produce  
2 at least some portion of my capacity to respond  
3 without being irresponsible.

4 Is there a singular solution? No. Do I  
5 have a favorite mix? No. I haven't pressed that  
6 issue. I haven't tried to model the various mixes  
7 of available strategies to produce a singular policy  
8 proposal that would represent a solution to  
9 overcrowding. I'm not in the habit of producing  
10 these kinds of models where you -- it's not that I  
11 haven't ever done it. It's just that I'm in the  
12 habit of producing these models of policy proposals  
13 where you take the palliative solutions, some of  
14 which may be accepted or rejected and produce the  
15 scenario that then is laid out before the legislator  
16 or executive authority to finally adopt as state  
17 policy; so I think without another question, I'm at  
18 a place where I've sort of spun out.

19 Q. And maybe I should just clarify. I'm not  
20 looking for a model of a policy proposal that is  
21 proposed to the legislature. I'm just looking for  
22 your opinion as to solutions of overcrowding of  
23 schools in California.

24 MR. VILLAGRA: Vague as to "opinion."

25 THE WITNESS: All right. From the

1 think you're trying to press me to offer beyond that  
2 is personal opinion because of the nature of the  
3 work that I do that feeds into the report I  
4 generated, which is that I don't as a matter of  
5 professional practice generate proposed solutions.  
6 And so I can as a matter of my professional  
7 practice --

8 What's fair to say that I can do?

9 I could suggest -- given sufficient  
10 constraints of the intention, I could suggest better  
11 or worse strategies for constructing that solution.  
12 Without sufficient constraints about what the  
13 objectives are in constructing a solution, I'm left  
14 with too much play. It's -- without the demands,  
15 what it is that the solution has to fit within, it's  
16 just sort of raw speculation of the sort of etherial  
17 philosophical nature that my ability to talk about  
18 what appears to be a solution depends on being  
19 offered constraints within to construct it.

20 And so I don't find myself in a position  
21 where I could present to you a solution that I think  
22 would responsibly have enough specificity to be of  
23 any real value to anybody. In response to  
24 constraints about what people want to accomplish, I  
25 can begin to become sufficiently specific that I



1 could talk about a solution instead of an ideal.

2 MR. HAJELA: Can we go off the record for a  
3 minute?

4 MS. DAVIS: Why don't we take a break.  
5 (Recess taken.)

6 BY MS. DAVIS:

7 Q. Dr. Mitchell, in your expert report, you  
8 discuss overcrowding and fiscal constraints in  
9 California. Assume that those are the constraints  
10 that a solution to overcrowding must fit within.

11 In your opinion, what are the solutions to  
12 overcrowding in California schools?

13 MR. VILLAGRA: Objection; vague and  
14 ambiguous.

15 THE WITNESS: My reaction to your question  
16 is that having overcrowding and having fiscal  
17 constraints does not by itself get me to a point  
18 where I feel like I can do better than I've already  
19 done. The proposition that one or more solutions  
20 exists is -- the "more" is a lot more, without  
21 having sufficient specificity to box in what  
22 strategies must be eliminated or de-emphasized or  
23 preferred.

24 BY MS. DAVIS:

25 Q. You state in your report that there are

1 THE WITNESS: Now I'm at a loss about the  
2 technicality of this procedure. There was an  
3 interchange between the two of you.

4 MR. VILLAGRA: You still have to answer the  
5 question.

6 THE WITNESS: I'm still left with my own  
7 declarative response. I just want to make sure I  
8 understood that.

9 Let me think.

10 The report mentioned the portion of  
11 Hispanic students enrolled in the state's schools,  
12 the proportion of the English language learners  
13 enrolled in the state's schools and other things  
14 that I can't name for you precisely, but I'm sure  
15 that I could think of them. What I find right now  
16 is the dilemma between knowing about what I wrote in  
17 my report and knowing precisely what I said in my  
18 report.

19 If you have a copy of it, I'd be happy to  
20 respond to it exactly so I don't say something  
21 inaccurately, because I don't remember precisely the  
22 list, because my recollection of my report is I said  
23 "for example," not "that is." That is to say in my  
24 report, I believe that I did not say this is the  
25 exclusive list, but these are important factors that

1 social, political and economic circumstances unique  
2 to California and because of that you give  
3 substantially less weight to findings related to  
4 multitrack year-round calendars in other states.

5 What are the social, political and economic  
6 circumstances that you claim are unique to  
7 California?

8 MR. VILLAGRA: Objection; compound.

9 THE WITNESS: I know what that objection  
10 means. It means that plaintiffs' counsel perceives  
11 that you asked me more than one question.

12 BY MS. DAVIS:

13 Q. Do you understand the question?

14 A. So, unfortunately, that's allowed me to be  
15 distracted; so I owe you the courtesy of hearing the  
16 question again.

17 Q. Why don't I just ask you this: What are  
18 the social, political and economic circumstances you  
19 claim are unique to California?

20 MR. VILLAGRA: Objection. Sitting here  
21 today or those that he described in his report?

22 BY MS. DAVIS:

23 Q. Described in your report.

24 MR. VILLAGRA: The document speaks for  
25 itself, compound question.

1 contribute to California's uniqueness.

2 BY MS. DAVIS:

3 Q. Why don't we not limit the question to your  
4 report. Maybe that will make it easier.

5 Any thoughts regarding the social,  
6 political and economic circumstances you claim are  
7 unique to California.

8 MR. VILLAGRA: With respect to?

9 MS. DAVIS: As he's sitting here today,  
10 what are his thoughts.

11 MR. VILLAGRA: But with respect to  
12 multitracking?

13 MS. DAVIS: With respect to -- well, he's  
14 saying that there are social, political and economic  
15 circumstances unique to California and because of  
16 that, he didn't look to findings outside of  
17 California regarding multitrack schools.

18 MR. VILLAGRA: I just wanted to clarify  
19 that it was regarding multitracking.

20 MS. DAVIS: Okay.

21 THE WITNESS: I would like to make what I  
22 think is an important point of clarification in the  
23 exchange. I did not say that anything outside of  
24 California was irrelevant. That's the impression I  
25 got out of the exchange that just took place.

1 BY MS. DAVIS:

2 Q. Fair enough.

3 A. Any particular variable I cite may not by  
4 itself make California unique, but the collection  
5 quickly eliminates other states as perfectly  
6 comparable. The for instance is the percent  
7 enrollment of the Hispanic students in the state.  
8 Only California and New Mexico have plurality  
9 Hispanic enrollments in their state public schools.  
10 And then Texas and Arizona -- I'm not sure if there  
11 should be a fifth state listed -- have substantially  
12 high Hispanic enrollments but are not plurality  
13 enrollments. So it makes the border land a  
14 different mix than other states in the union. Then  
15 there are other important contributions to the mix  
16 in California that's worthy of attention when trying  
17 to --

18 I've got to back up for a second.

19 The reason that this is important to talk  
20 about is when states are looking for models of  
21 policy utilized by other states, or a better way to  
22 say that is in the presence of a problem without an  
23 obvious solution, one of the places to go looking  
24 for a model is policy in another state. What's  
25 important when trying to understand whether that

1 model is a good one is whether or not there's  
2 sufficient similarity that it should be viewed as  
3 comparable.

4 And so part of the reason for laying out  
5 California as being unique is I think it's important  
6 to signal that for other states looking at  
7 California, their ability to consider a solution may  
8 vary from California's ability to consider the same  
9 solution, and there may be a lot of uncertainties  
10 left over. But it's important to recognize that you  
11 have to be careful. That's important for me  
12 personally. It's an important preamble for why you  
13 make this statement about uniqueness or degree of  
14 uniqueness.

15 If I'm going to talk about a particular  
16 policy in California and then someone asks me the  
17 question, "Well, what about this policy in state  
18 'X'?" I need to know whether state "X" is enough  
19 like California on important variables to say  
20 whether or not it's an easy comparison or a very  
21 difficult comparison that requires close  
22 investigation. Is it easy to just say "Okay, if it  
23 happens there and it happens here, we should look at  
24 both places and say it's an easy comparison or we  
25 have to be more careful?"

1 That's why establishing uniqueness is  
2 important in the discussion, because without that,  
3 then I would be irresponsible putting less weight on  
4 anything that might be learned from another state.

5 California is different on Hispanic  
6 enrollment. It's different on grade and proportion  
7 of immigrant student population compared to many  
8 states. It's different on proportion of students  
9 qualifying for the free and reduced lunch program.  
10 It doesn't mean it's the most extreme. It's just  
11 different. It's different in its finance structure.

12 Not all states utilize property tax revenue  
13 the same way compared to California. And that's an  
14 important distinction and understanding. For  
15 example, the leverage of an incentive versus a  
16 mandate policy is the degree to which the state  
17 really controls incentives compared to the degree to  
18 which those jurisdictions which carry out the  
19 authority of the state control their budget with  
20 flexibility.

21 And California has probably -- I would have  
22 to go back and do my homework to say definitely --  
23 the longest standing history of constraint on access  
24 to property taxes or revenue base for school  
25 funding. California is enormous. It's the most

1 populous state in the union.

2 Because this question started around  
3 multitrack year-round calendar issues, it's linked  
4 to California's uniqueness. That's also a really  
5 big gigantic difference between California and other  
6 states. I did a count at one point. It was  
7 somewhere in the neighborhood of -- it was certainly  
8 more than 30. The number that comes to mind is 38  
9 states and the District of Columbia. Their total  
10 K-12 enrollment is approximately equal to the K-12  
11 enrollment on the multitrack year-round calendar --  
12 calendars plural, I should say -- in California.

13 So that's -- it's like saying there are  
14 more than 30 states in the country whose total  
15 enrollment is equivalent to the enrollment on only  
16 multitrack year-round calendar schools in  
17 California. That's -- so this is -- this is a  
18 qualitative difference between when you look at  
19 California today how it's different from other  
20 states.

21 Q. Any other social, political or economic  
22 circumstances you claim are unique to California  
23 with respect to multitrack schools?

24 MR. VILLAGRA: Objection; compound.

25 THE WITNESS: I have this nagging feeling

1 that I should be able to say "yes" and then follow  
2 with a list. But I'm not thinking of anything right  
3 now.

4 BY MS. DAVIS:

5 Q. Did you review any studies or findings  
6 relating to multitrack year-round schools outside of  
7 California in preparing your report?

8 A. Yes.

9 Q. Which studies did you review?

10 A. In terms of titles of studies and their  
11 authors, I can't give you that list off the top of  
12 my head. I'm fairly confident that in the volume of  
13 papers, reports, correspondences that I was required  
14 to list or provide -- what do I mean by "list"? I  
15 don't know what I mean by "list." So what I was  
16 required to provide or make a good-faith effort to  
17 recover to provide -- this is just as a for  
18 instance, to make sure we're on the same page.

19 What I mean here is I can think of without  
20 name or author, but just I can think of an instance  
21 of a technical report which I thought I had in my  
22 library and could make a photocopy of to include  
23 which I cited. I couldn't find it in my library; so  
24 I couldn't give that one. There's not a long list  
25 of those instances, but I just wanted to make that

1 Utah. That I know I specifically can recall for you  
2 right now without review of my documents. I know  
3 there are others. I'm having a hard time right now  
4 remembering precisely who, but I know there are  
5 others beyond that that are not California studies  
6 related to the issue of multitrack year-round  
7 calendar use in a state outside of California.

8 Q. You claim in your report that a student's  
9 educational program in multitrack year-round schools  
10 is likely restricted to the number of school days on  
11 the calendar and cannot be readily supplemented with  
12 additional days of instructional programming.

13 What do you mean by "additional days of  
14 instructional programming"?

15 A. By "additional days," I mean a day other  
16 than one specified on the school calendar as a  
17 regular day of instruction. A classic example is  
18 that Saturday is, in virtually all school districts,  
19 not a regular day of instruction, so that Saturday  
20 is a potential additional day of instruction because  
21 it's not currently scheduled.

22 Am I clear?

23 Q. Why do you believe that multitrack  
24 year-round schools are likely restricted to the  
25 number of days on the calendar?

1 clear.

2 Q. What's the name of that report that you  
3 couldn't locate to produce?

4 A. The author is Burns. The exact title, I'm  
5 not sure. And I'm fairly certain that it's included  
6 in a footnote of the expert report. But the  
7 thing --

8 I'd like to back up to what I was trying to  
9 say before, is that I provided a lot of stuff,  
10 documents, pieces of paper, with lists of studies  
11 that I reviewed. And I believe that it would be  
12 possible through that collection of papers to  
13 reconstruct a comprehensive list. I'm not 100  
14 percent certain that everything I read or reviewed  
15 in order to know what I know to write that expert  
16 report is included in there, but a whole lot of it  
17 is. So I know we could find those things there in  
18 order to name them and identify them.

19 Q. Do you recall any of the studies or  
20 findings relating to multitrack year-round schools  
21 outside of California that you reviewed in  
22 preparation of your report?

23 A. There are I don't know how many, but more  
24 than one written by Carolyn Shields and Steven Oberg  
25 and maybe other co-authors. And their work was in

1 A. In a sufficient number of cases to be  
2 worthy of note, the enrollment level at a multitrack  
3 year-round calendar school is high enough that at  
4 any given time, there is no available space to bring  
5 in students who are not supposed to be in attendance  
6 to receive instruction.

7 Q. And this would include Saturdays?

8 A. That is -- Saturday is an easy example, but  
9 a complex pragmatic response. Saturdays have  
10 problems beyond the fact that they're not already  
11 usually used, like conflict with religious  
12 observances, community and school decisions to use  
13 the building on Saturdays for things other than  
14 instruction, things like that.

15 What I generally consider when I talk about  
16 this is a Monday through Friday day, that's not a  
17 legal holiday or a necessary in-service day that has  
18 to be reserved for noninstructional purposes related  
19 to student instruction.

20 Q. You said there are sufficient number of  
21 cases where there's no available space.

22 Are you talking about all multitrack  
23 year-round calendars?

24 MR. VILLAGRA: Objection; vague,  
25 misleading.

1 THE WITNESS: Would you please reread the  
 2 question?  
 3 (Record read as follows:  
 4 "QUESTION: You said there are  
 5 sufficient number of cases where  
 6 there's no available space.  
 7 "Are you talking about all  
 8 multitrack year-round calendars?")  
 9 MR. VILLAGRA: Same objections.  
 10 THE WITNESS: Let me see if I understand  
 11 the question correctly.  
 12 At any school which employs a multitrack  
 13 year-round calendar, there may be one or more cases  
 14 that additional days of instruction outside of the  
 15 regular calendar cannot be scheduled.  
 16 Is that the right understanding?  
 17 BY MS. DAVIS:  
 18 Q. Well, let me see if I'm understanding you.  
 19 You're saying that in all of the multitrack  
 20 year-round calendars, some of the schools within  
 21 there do not have space for additional days of  
 22 instructional programming.  
 23 Is that what you're saying?  
 24 MR. VILLAGRA: Objection; vague and  
 25 ambiguous.

1 THE WITNESS: I think we'll get there.  
 2 Let's see. Let me try.  
 3 BY MS. DAVIS:  
 4 Q. Why don't we talk about the different  
 5 multitrack calendars.  
 6 A. Okay. We can do that.  
 7 Q. What are the different multitrack calendars  
 8 in California?  
 9 A. Just as a matter of clarification --  
 10 Q. Sure.  
 11 A. -- I'm putting my response on hold  
 12 because -- for now on the previous question? We're  
 13 just going to pick up a new question?  
 14 MR. VILLAGRA: She moved on.  
 15 BY MS. DAVIS:  
 16 Q. Sounds fine. Yeah.  
 17 A. I'm sorry.  
 18 Would you repeat the question, please?  
 19 MS. DAVIS: Go ahead.  
 20 (Record read as follows:  
 21 "QUESTION: What are the different  
 22 multitrack calendars in California?")  
 23 MR. VILLAGRA: Currently in use?  
 24 Theoretically possible?  
 25 ////

1 BY MS. DAVIS:  
 2 Q. That you considered in preparing your  
 3 expert report.  
 4 A. I would have a hard time giving you a  
 5 comprehensive list. The list is pretty long and is  
 6 available in a number of places, including the CDE  
 7 website, CDE being California Department of  
 8 Education. I can characterize multitrack year-round  
 9 calendars on some important variables in order to  
 10 engage the discussion presently, but I can't give  
 11 you a comprehensive list at present.  
 12 Q. When you talk about multitrack year-round  
 13 calendars in your report, what are you referring to?  
 14 A. When the attendance is structured such that  
 15 students are not all to be in attendance on the same  
 16 instructional days on the calendar -- for example,  
 17 if not all students are scheduled to receive their  
 18 instruction on, say, today is a weekday, January  
 19 7th, because some are not to be present, but to be  
 20 present on a different day, then you have multiple  
 21 attendance tracks, so that it is possible --  
 22 There are some cases where it occurs that  
 23 on some days all students are in attendance and on  
 24 other days some are in attendance and some are not.  
 25 This is a very rare circumstance for a multitrack

1 setting, exceptionally rare. The common  
 2 circumstance in California is that when some  
 3 students are present --  
 4 Okay. I've got to be more careful in order  
 5 to be clear here.  
 6 So I'll start with an example and then try  
 7 to produce a more general statement. If you look at  
 8 the Concept 6 calendar as an example, there are  
 9 three calendars -- three divisions in the school  
 10 calendar, attendance calendar, and that students are  
 11 enrolled in these divided segments of the calendar  
 12 such that at any given time, two-thirds of the total  
 13 school registrants are in attendance and one-third  
 14 are not and that --  
 15 Then at given periods of time during the  
 16 year, a particular third is not in attendance -- is  
 17 on nonattendance days and that third that had been  
 18 nonattendance comes back on. And that's the  
 19 standard way in which a multitrack year-round  
 20 calendar is used in California, that some fraction  
 21 of students is not in attendance while the remaining  
 22 fraction of students are in attendance and that they  
 23 cycle in and out of attendance so that there's a  
 24 roughly constant level of students in attendance at  
 25 any given time and roughly constant level of

1 students not in attendance.

2 And the dimensions that define this are the  
3 number of attendance tracks or divisions in the  
4 calendar and the structure of the cycle of days of  
5 attendance and days of nonattendance. These are the  
6 two key dimensions for defining the multitrack  
7 calendar.

8 Concept 6 has three tracks. Many schools  
9 have four tracks, if they have a multitrack  
10 year-round calendar. Some have five. And that  
11 means that you have fractions of the student body  
12 rotating in and out of attendance roughly in inverse  
13 proportion to the number of tracks. So one-third is  
14 out on a three-track school. One-fourth is out on a  
15 four-track school and so forth.

16 The cycle of how many days of attendance  
17 before nonattendance can vary as well. Such cycling  
18 is 90 days of attendance followed by 30 days of  
19 nonattendance; 60 days of attendance followed by 20  
20 days of nonattendance; 45 days of attendance  
21 followed by 15 days of nonattendance are examples of  
22 how to characterize the cycling of a multitrack  
23 year-round calendar.

24 And what makes this important is that it  
25 means that at any given time of the year, if you go

1 to look for a particular student, you may or may not  
2 find them in attendance, and that makes an important  
3 distinction from a single track or traditional  
4 calendar school, where at any given time of the  
5 year, barring a natural absence, you should find  
6 them in attendance because there's no reason for a  
7 student to be explicitly separated from the rest of  
8 the students assigned to that school.

9 Q. Now, in your report, you talk about  
10 Concept 6 multitrack schools, which you've  
11 explained, and then you have another group which you  
12 call the "not Concept 6 multitrack schools."

13 A. Right.

14 Q. Are you lumping all multitrack schools that  
15 aren't Concept 6 schools under that heading, "not  
16 Concept 6 multitrack schools"?

17 MR. VILLAGRA: Objection; the document  
18 speaks for itself, misleading.

19 THE WITNESS: I tried to be explicit in the  
20 report about what I mean by that. Somewhere in  
21 there I explicitly define what I mean to refer to  
22 throughout the remainder of the report as Concept 6  
23 and what I mean to refer to as the not Concept 6  
24 schools.

25 ////

1 BY MS. DAVIS:

2 Q. Do you remember how you defined the not  
3 Concept 6 schools?

4 A. A school designated as operating on  
5 multitrack year-round calendar that operates on a  
6 system of attendance that perfectly or nearly  
7 perfectly provides a 180-day school year and to  
8 distinguish that group of multitrack year-round  
9 schools from the group that operates on essentially  
10 a 163-day school year. That's the separation.

11 Q. So you said there are sufficient numbers of  
12 cases where there is no available space for  
13 additional instructional programming.

14 What multitrack calendars are you referring  
15 to in making that statement?

16 A. Largely the Concept 6 schools, but not  
17 solely the Concept 6 schools.

18 Q. So the sufficient number of cases where  
19 there's not available space for additional days of  
20 instructional programming -- what are you basing  
21 this statement on?

22 A. There are documents that refer to this  
23 problem that I cannot off the top of my head cite  
24 for you. There are direct statements that were  
25 offered to me during my time as a research fellow at

1 the California Educational Research Cooperative.  
2 These direct statements were offered by school  
3 district administrators, who -- at this distance  
4 from that time, I'm not certain who they were. And  
5 I think it would be inappropriate to speculate and  
6 name somebody if I'm incorrect.

7 There are other California School District  
8 employees with whom I have had conversations at  
9 professional conferences on this point who have  
10 verified that such circumstances continue to exist  
11 since I left the Cooperative. Again, I'm not sure I  
12 could name them for you.

13 Q. Anything else?

14 A. Not that I can think of at this time.

15 Q. So when you mention there were documents,  
16 what kinds of documents are you talking about?

17 A. Some -- I'm not sure which journal now. I  
18 think it was the source -- the journal source for  
19 these sorts of comments was most often Thrust for  
20 Educational Leadership. I believe that journal is  
21 published by the California School Administrators  
22 Organization, but I could be wrong on that point. I  
23 was trying to think where else in the journal-type  
24 literature.

25 I had something to tell you before I added

1 that parenthetical, and now I lost it. Hopefully it  
2 will come back to me.

3 Other documents -- I have reviewed some  
4 declaration documents relevant, I believe, to this  
5 suit, certainly relevant to other suits in  
6 California where school administrators made these  
7 claims on record.

8 Other documents -- I'm not sure whether --  
9 I'm just not sure. I know I read several, but I'm  
10 not sure whether I read this in any ERIC documents.  
11 I know I reviewed a number of ERIC documents, and I  
12 just can't tell you for sure. But I know that  
13 that's one of the places where this kind of  
14 information is often available to me, that some  
15 areas of research are not in the journals but in  
16 technical reports and district-produced reports that  
17 are then submitted to ERIC and thereby available for  
18 review.

19 So that's a point of speculation in terms  
20 of whether or not that's really the source.

21 Probably a bad thing to speculate.

22 Q. You mentioned declarations.

23 Who provided you with the declarations?

24 A. Plaintiffs' counsel.

25 Q. Did you review these documents in

1 kinds of documents during the time in which I  
2 prepared the report.

3 BY MS. DAVIS:

4 Q. And did you provide all of those documents  
5 to plaintiffs' counsel?

6 A. I believe I did, yes.

7 Q. You also mentioned direct statements by  
8 school administrators and that you couldn't recall  
9 necessarily who made the statements.

10 But do you recall when the statements were  
11 made?

12 A. I can define the time period but not the  
13 precise instances.

14 MR. VILLAGRA: And by "school  
15 administrators," are you referring to when he was at  
16 the Cooperative?

17 MS. DAVIS: He said he spoke to school  
18 administrators.

19 MR. VILLAGRA: But I think he identified  
20 two sets. If you want to ask for all of them --

21 MS. DAVIS: Yeah, let's ask for all of  
22 them.

23 THE WITNESS: All right. My recollection  
24 of what I said was that there were two classes of  
25 school personnel with whom I've had conversations,

1 connection with preparing your report?

2 MR. VILLAGRA: Just to be clear, "these  
3 documents," meaning all the documents he identified?

4 MS. DAVIS: Yes.

5 THE WITNESS: I had a different  
6 understanding of that; so I appreciate the  
7 clarification. And now I need to think about what  
8 my response should be. Okay.

9 I explicitly for the purpose of preparing  
10 the report, that is, explicitly for the purpose of  
11 being as comprehensive and as thorough as I could be  
12 in obtaining documents important to review, the  
13 kinds of documents mentioned, the journal  
14 publications, the declaration, the ERIC reports and  
15 other kinds of documents were reviewed for  
16 preparation of the report.

17 And I say "and other kinds of documents"  
18 because I don't have at this time a recollection of  
19 whether those other kinds of documents said anything  
20 about this issue of availability of additional  
21 instruction days. I just don't have any clear -- I  
22 don't have any recollection worthy of making comment  
23 about it at this time of whether or not other kinds  
24 of documents reviewed were sources of information  
25 for that point. But yes, I reviewed all of these

1 people who in my mind are characterized as  
2 administrators, and then there are other kinds of  
3 personnel. An example, to be clear of what I'm  
4 talking about, someone who works in the research and  
5 evaluation department would be an "other kind of  
6 personnel" rather than an administrator.

7 BY MS. DAVIS:

8 Q. Let's just take, then, the school  
9 administrators.

10 A. The time period in which I'm certain that  
11 those sorts of persons were the source of this kind  
12 of information was during the time I was a fellow at  
13 the California Educational Research Cooperative,  
14 which it was -- like started somewhere around  
15 January '97, I believe, and ended June 2001.

16 Is that right? Yeah.

17 Q. And you don't recall between January '97  
18 and June 2001 when these statements by school  
19 administrators were made?

20 A. Precisely, no, I couldn't, like, give you a  
21 date or a precise event.

22 Q. Do you recall --

23 A. I could --

24 Q. I'm sorry.

25 A. I could improve the probability of an event

1 simply because of the likelihood that I would have  
2 been talking to them; namely, there were quarterly  
3 meetings of the California Educational Research  
4 Cooperative at which school administrators were  
5 routinely in attendance. But that's not the only  
6 time I had conversations with school administrators.

7 Q. All right. You also mentioned other school  
8 personnel.

9 When have you spoken with other school  
10 personnel regarding additional days of programming  
11 in multitrack schools?

12 A. I try to make it a habit every time I  
13 attend a professional conference which -- I don't  
14 know what I want to follow that up with. I make it  
15 a habit to keep up as best I can when I attend  
16 professional research conferences to find people who  
17 might be able to give me insights or information  
18 about what's happening with this issue of the  
19 multitrack year-round calendar in California. And  
20 so those are the occasions.

21 Q. You state in your report that all of the  
22 space is in use all of the time on multitrack  
23 year-round calendars.

24 Are you saying that at every multitrack  
25 year-round school there's no available space for

1 combination-grade class that's -- it's one that  
2 name -- another name found in the research  
3 literature is multigrade class, which may be helpful  
4 in terms of bringing to mind the situation that the  
5 normative model for instruction, at least at the  
6 elementary level and at much of the secondary level,  
7 is that there is a graded curriculum. And a  
8 combination-grade class or a multigrade class is a  
9 classroom in which students who are designated as  
10 being in more than one grade and for whom they  
11 should be receiving grade appropriate curriculum are  
12 together. That's a combination or multigrade class.

13 MS. READ-SPANGLER: When I was in them,  
14 they called them split classes.

15 THE WITNESS: I'm not sure if I heard the  
16 term, but it makes sense. I haven't seen it in  
17 titles in the literature.

18 MS. READ-SPANGLER: It was a long time ago.

19 MS. DAVIS: Don't admit your age.

20 THE WITNESS: But the advantage to the  
21 label implies what is for some teachers a dilemma,  
22 and that is that their attention is split between  
23 multiple curriculum.

24 BY MS. DAVIS:

25 Q. You said combination-grade classes are

1 additional days of instruction?

2 MR. VILLAGRA: Objection; vague and  
3 misleading.

4 THE WITNESS: No.

5 BY MS. DAVIS:

6 Q. What was your answer?

7 A. My answer is "no." I -- what I mean by  
8 that -- I believe that sentence is a longer sentence  
9 and that phrase is part of a sentence for which it  
10 is the second part separated by a semicolon. It  
11 is -- what should I say? For lack of a better  
12 expression present, it is an effort to restate the  
13 earlier point in a way that exemplifies the nature  
14 of the problem where it exists.

15 Q. You claim in your report that  
16 combination-grade classes are frequently required in  
17 multitrack year-round schools.

18 What are combination-grade classes?

19 MR. VILLAGRA: Objection; compound.

20 THE WITNESS: I get the point of why he  
21 said that. It's important to keep track -- there's  
22 a preamble to your question, which isn't precisely  
23 the question. You asked me exactly what the -- I'm  
24 beginning to figure out how this game works. Okay.

25 So to address the question -- the

1 frequently required.

2 What do you mean by "frequently required"?

3 A. To -- a starting point that -- that's  
4 appropriate to get there. Once you define who is  
5 supposed to show up at school, then you have to  
6 define where they're supposed to routinely show up.  
7 The most common model in the elementary school is  
8 that students show up in a particular classroom with  
9 a particular teacher often for the whole day, not  
10 necessarily.

11 So that means that the school population  
12 gets divided up into classrooms. The challenge with  
13 dividing up into classrooms is distribution of  
14 students so that the appropriate number -- I say  
15 "appropriate" because sometimes there's really  
16 important special circumstances which define special  
17 education delivery; so there may be a different  
18 number from the regular education program.

19 But you have to get these students divided  
20 up into classes, and they have to have teachers  
21 assigned to them and that process is constrained by  
22 the number of teachers the site has to which  
23 students can be assigned. And so then students are  
24 distributed according to that constraint and  
25 important special case restraints, like special

1 education classrooms.

2 That's important if you end up -- say, in  
3 the game of numbers, you wanted to divide every  
4 classroom to have equally 20 students, but you did  
5 not have an integral multiple of 20 enrolled in the  
6 school. You have some left over. Well, what do you  
7 do with the left over? Do you assign them their own  
8 teacher, even if it's only four students, or do you  
9 redistribute the four students among the originally  
10 assigned classes? So there's a fundamental  
11 populating of classroom issues, period, for any  
12 school.

13 Q. You know what? I may have just asked a bad  
14 question.

15 I'm wondering if you know how many  
16 multitrack schools operate combination classes.

17 A. Precisely how many?

18 Q. It doesn't have to be precisely.

19 A. I can't give you a precise number, no.

20 Q. I don't need a precise number.

21 Do you have an estimate?

22 A. I don't think it would be responsible of me  
23 to provide an estimate without reviewing data I  
24 didn't review recently. I would be potentially very  
25 wrong.

1 Q. Did you look into this issue when you were  
2 preparing your report?

3 A. In what manner did I examine this? There  
4 are two ways that I can think of right now that I  
5 could have looked into it. One of which I'm certain  
6 of; the other of which I'm not certain. The one in  
7 which I'm certain is the number of students who are  
8 assigned as such to a multigrade or  
9 combination-grade situation. I don't know if I had  
10 time and opportunity to consider at any length the  
11 more direct answer to your question, which is  
12 precisely how many schools had that group of  
13 students.

14 Q. In your opinion, is the consequence of  
15 combination-grade classes lowered overall  
16 achievement and difficulty in maintaining teacher  
17 morale?

18 A. That sounds like the language of my report.  
19 The important statement relative to my professional  
20 practice as an empirical researcher is to point out  
21 that such statements, including that one, have a  
22 shorthand assumption behind them, and that is that  
23 these are probabilistic statements based on the  
24 comparative likelihood that such a problem exists.  
25 They don't have to be probabilistic, though, but

1 that's the common shorthand in the literature.

2 And I did not review in detail for this  
3 report precisely how many classrooms for which this  
4 is true in California. The thing that is true based  
5 on the shorthand is that there are more like that  
6 than there are not is a certainty. But the count of  
7 classrooms versus the expectation for the next  
8 classroom created is a different kind of question to  
9 answer when doing this kind of research.

10 Q. I'm wondering what you base the statement  
11 on that's contained in your report that the  
12 consequence of combination-grade classes is lowered  
13 overall achievement and difficulty maintaining  
14 teacher morale.

15 MR. VILLAGRA: Objection; asked and  
16 answered.

17 THE WITNESS: There are several papers in  
18 the research literature that address the question of  
19 student achievement in combination and multigrade  
20 classes. And, I guess, "several" is probably the  
21 right qualifier for this question of morale, though  
22 I'm not sure I'm as thoroughly familiar with that  
23 question as I am with the achievement question,  
24 though I am confident that my judgment of the  
25 literature on the question of teacher morale is

1 accurate. I'm not as confident that I could quickly  
2 locate in my notes or references or so forth those  
3 papers as quickly as I could locate the ones on  
4 achievement.

5 BY MS. DAVIS:

6 Q. What are the papers that you mentioned that  
7 address student achievement in multigrade classes?

8 A. There are some authors I can tell you about  
9 right now who certainly have done important work in  
10 this field, but I can't say that I can be  
11 comprehensive right now.

12 For example, Robert Burns and Duane Mason  
13 did substantial work in this area and have published  
14 in the most highly respected educational research  
15 journals their findings on this question. There's  
16 also a very important review of the massive  
17 literature on this question by -- I can't think of  
18 the guy's name now, but it appears in the Journal of  
19 Educational Research, which is one of the major  
20 journals for providing the field with responsible  
21 and peer-reviewed summaries of the volume of work  
22 done in the field. Those come to mind immediately.  
23 Right now, that's the best I can do for you.

24 Q. Did you consider these works in preparing  
25 your report?



1 A. Yes.

2 Q. Did you produce these works to plaintiffs'  
3 counsel?

4 MR. VILLAGRA: Objection; vague.

5 THE WITNESS: Produce? Did I photocopy or  
6 cite them to inform plaintiffs' counsel in some  
7 document? I believe so. If I didn't, it was not my  
8 intention to omit them. I can review what I have to  
9 make sure that they're there. But I spent a lot of  
10 time pulling all that together, and I think I  
11 covered it.

12 BY MS. DAVIS:

13 Q. Are there any studies that link  
14 combination-grade classes with teacher morale?

15 A. Yes, I believe that is true. I cannot cite  
16 for you precisely which studies do that. I would go  
17 to look as my first place to try to identify that  
18 the work of Burns and Mason and work they did with  
19 their researchers and co-authors.

20 Q. Now, you said you believe it's true that  
21 there are studies.

22 Do you know that there are studies that  
23 link combination-grade classes and teacher morale?

24 A. The statement "link" is why I qualified my  
25 response. For me, when you say "link" --

1 work done prior to when I became a fellow at the  
2 California Educational Research Cooperative, but  
3 those technical reports were produced under the  
4 banner of the Cooperative.

5 What else do I have by them other than  
6 that?

7 MS. READ-SPANGLER: Well, I was just trying  
8 to clarify, because you do cite in your report a  
9 combination report by Burns, but it's not Burns and  
10 Mason; so I was just wondering if you were talking  
11 about two separate things, but like I said, a  
12 co-authored article. But if you don't have a  
13 specific recollection, that's fine.

14 THE WITNESS: Yeah. I can clarify that  
15 point about the different -- between direct citation  
16 and the rest of this is that there's a whole wealth  
17 of documents that I read and considered in preparing  
18 my opinions presented in the report, not all of  
19 which I felt directed -- that's the wrong word --  
20 required direct reference. It's an exercise of  
21 authorship on my part. Since this is a report  
22 rather than a scholarly journal paper, to try to  
23 improve readability, by not having long sections of  
24 multiple authors and their dates following many  
25 sentences in the report -- it's just horrific in

1 Q. Let's go back to your statement in your  
2 report.

3 Are there any studies that find that a  
4 consequence of combination-grade classes is  
5 difficulty in maintaining teacher morale?

6 A. Yes.

7 MS. READ-SPANGLER: Can I just ask a  
8 question and clarify something? And Hector will  
9 probably object, but when you're talking about Burns  
10 and Mason, is that one paper or two? I'm not sure  
11 if you're saying that they co-authored something or  
12 it's two separate things.

13 THE WITNESS: Okay. Duane Mason and Robert  
14 Burns together have co-authored quite a number of  
15 studies. And right now I'm not making distinctions  
16 among them.

17 MS. READ-SPANGLER: Okay.

18 THE WITNESS: I can tell you, for example,  
19 that in the American Educational Research Journal  
20 and the American Journal of Education, which are two  
21 of the biggies in my field -- one of these days I'll  
22 get a paper there, too -- they have at least one  
23 paper in each of those published on their work on  
24 combination-grade classes. In addition, they have  
25 several technical reports, most of which is from

1 readability.

2 It's one of the things you endure when you  
3 read the research literature is to have to pass over  
4 sometimes literally lines of text before you get to  
5 the next sentence because of the long list of  
6 citations. I thought for the purposes of authorship  
7 of this report, it would not be helpful to walk that  
8 way.

9 MR. VILLAGRA: You're probably talking to  
10 the wrong audience. That's how we write too.

11 MS. DAVIS: It sounds like law review  
12 articles.

13 MR. VILLAGRA: At a good stopping point,  
14 can we take a rest room break?

15 MS. DAVIS: Let me ask one follow up.

16 Q. What are the studies that find that a  
17 sequence of combination-grade classes is difficult  
18 in maintaining teacher morale?

19 A. I think I said I couldn't tell you  
20 precisely which one. There may be more than one. I  
21 don't recollect precisely.

22 Q. Did you consider these studies in preparing  
23 your report?

24 A. Yes.

25 Q. And do you recall if you provided these

1 studies to plaintiffs' counsel?  
 2 MR. VILLAGRA: Objection; vague.  
 3 THE WITNESS: I think I said previously  
 4 that I believed that any study I considered is  
 5 either cited or in hard copy. But since I'm having  
 6 a hard time remembering which studies, I'm having an  
 7 even more difficult time remembering whether or not  
 8 they're in the stack.  
 9 MS. DAVIS: Okay. Why don't we take a  
 10 break.  
 11 (Whereupon at 12:06 p.m. a lunch  
 12 recess was taken, and the proceedings  
 13 reconvened at 1:21 p.m.)  
 14 BY MS. DAVIS:  
 15 Q. Dr. Mitchell, in your opinion, do all  
 16 students grouped together in the same grade level in  
 17 traditional calendar or single-track year-round  
 18 schools perform at the same level?  
 19 MR. VILLAGRA: Objection; vague and  
 20 ambiguous.  
 21 THE WITNESS: The statement is all  
 22 students, same level? For such a statement you  
 23 would never -- "never" -- that's always too strong,  
 24 just like "all" is too strong.  
 25 It would be very unlikely that you would

1 find all students performing at the same level if  
 2 that level is very precisely specified like a  
 3 particular score on an achievement test. So to --  
 4 If you would repeat the question, I can be  
 5 sure that I've given everything that I intended to  
 6 answer.  
 7 Would you repeat the question, please?  
 8 MS. DAVIS: Can you repeat the question?  
 9 (Record read as follows:  
 10 "QUESTION: Dr. Mitchell, in your  
 11 opinion, do all students grouped  
 12 together in the same grade level in  
 13 traditional calendar or single-track  
 14 year-round schools perform at the same  
 15 level?")  
 16 MR. VILLAGRA: Same objections.  
 17 THE WITNESS: The other piece of the answer  
 18 that I wanted to give that I haven't yet is related  
 19 to the example about a specific achievement score,  
 20 because performance need not be limited to student  
 21 achievement discussing the concept of performance  
 22 for students.  
 23 Yet, in general, the answer would still be  
 24 the same: All students are very unlikely to perform  
 25 on any measure at the same -- and by "same," I mean

1 one specific criteria designating same as offered --  
 2 I've got to back up on that.  
 3 If "same" means passing a threshold, that's  
 4 different from "same" meaning precise measure.  
 5 So what I mean by "it's very unlikely that  
 6 all students would have the same performance on any  
 7 measure" is that precise place on the scale of  
 8 measure. That's a different question from do all  
 9 students perform the same, if the question of  
 10 performance is have they passed some particular  
 11 threshold.  
 12 Then the question is where is the  
 13 threshold? And yet I would expect, based on my  
 14 experience of analyzing those available data on  
 15 student performance that I have seen, you're likely  
 16 to find at least a very few, if not many, that will  
 17 always drop below your threshold, unless your  
 18 threshold is at the bottom of the scale. And it's  
 19 impossible to not register on the scale.  
 20 The short summary of my response is the  
 21 question is too general to have a very clear and  
 22 definitive response.  
 23 BY MS. DAVIS:  
 24 Q. In your opinion, are there differences in  
 25 terms of knowledge and capabilities among students

1 in the same grade level within traditional and  
 2 single-track schools?  
 3 MR. VILLAGRA: Objection; compound, vague  
 4 and ambiguous.  
 5 THE WITNESS: You offered the two words  
 6 "knowledge" and "capabilities"; is that correct?  
 7 BY MS. DAVIS:  
 8 Q. Right.  
 9 A. Knowledge of something in particular and  
 10 capable of something in particular is important,  
 11 because in general, there's not one singular outcome  
 12 of schooling that's expected; so that's problematic  
 13 to answer.  
 14 Q. Is it typical to have more than one reading  
 15 group in a classroom as a result of different  
 16 reading abilities among students?  
 17 MR. VILLAGRA: Objection; vague and  
 18 ambiguous.  
 19 THE WITNESS: That's a question about  
 20 classroom practices, which is -- in that nature of  
 21 classroom practice, I don't believe I addressed that  
 22 in the report. I am not someone who routinely  
 23 researches the question of classroom within  
 24 classroom grouping practices; so at present, I can't  
 25 offer an expert opinion on that question.

1 BY MS. DAVIS:

2 Q. Do you know if classrooms --

3 A. I'm sorry. What?

4 Q. Do you know if classrooms have more than  
5 one reading group due to different reading abilities  
6 among students?

7 MR. VILLAGRA: Objection; vague and  
8 ambiguous.

9 THE WITNESS: I have knowledge based on my  
10 familiarity with research literature, with school  
11 professionals, that it is not uncommon to have  
12 reading level groups as part of elementary-level  
13 instructional practice.

14 BY MS. DAVIS:

15 Q. Is that your answer? Do you know, or do  
16 you not know?

17 MR. VILLAGRA: Objection; asked and  
18 answered.

19 THE WITNESS: I believe that I answered the  
20 question in the way that I know it.

21 BY MS. DAVIS:

22 Q. What's the answer?

23 THE WITNESS: Can we read back what I said?

24 MR. VILLAGRA: Sure.

25 MS. READ-SPANGLER: Can you read the

1 describe the nature of my knowledge. And then I  
2 provided you with my characterization of how I know.

3 BY MS. DAVIS:

4 Q. But you're saying you know? That's the  
5 question. The question is: Do you know?

6 MR. VILLAGRA: Objection; asked and  
7 answered.

8 THE WITNESS: Without the qualifications,  
9 it seems impossible to say "yes" or "no"; and so the  
10 answer in its entirety is the characterization of my  
11 knowledge.

12 BY MS. DAVIS:

13 Q. Is there typically a range of abilities or  
14 skill levels in any given grade?

15 MR. VILLAGRA: Objection; vague and  
16 ambiguous.

17 THE WITNESS: In order to help respond to  
18 this, I'll bracket two student achievement measures  
19 on standardized student achievement so that I can  
20 create the specificity needed to respond.

21 And the answer is on that basis, you would  
22 expect to observe a range of scores from any  
23 particular classroom on measure of standardized  
24 achievement. You would not expect to observe  
25 precisely and very nearly requires some technical

1 question first and then his answer?

2 (Record read as follows:

3 "QUESTION: Do you know if  
4 classrooms have more than one reading  
5 group due to different reading  
6 abilities among students?

7 "MR. VILLAGRA: Objection; vague and  
8 ambiguous.

9 "THE WITNESS: I have knowledge  
10 based on my familiarity with research  
11 literature, with school professionals,  
12 that it is not uncommon to have  
13 reading level groups as part of  
14 elementary-level instructional  
15 practice.")

16 MS. READ-SPANGLER: So is that a "yes,"  
17 because it was a "yes" or "no" question?

18 THE WITNESS: I contend it's not a "yes" or  
19 "no" question and contend that based on the nature  
20 of the proceeding, I am -- my role in this  
21 proceeding is as an expert, and I preceded that  
22 statement with "as an expert I can't offer an  
23 opinion," and so -- then you asked me to consider  
24 answering differently, and I did. And that response  
25 was qualified in the way that I think appropriate to

1 definition -- you would not expect precisely or very  
2 nearly precisely the same scores attained by all  
3 students and that -- in fact, that is the measure by  
4 which various computer algorithms examine for the  
5 possibility of cheating is the degree to which in a  
6 classroom responses are identical among students.

7 BY MS. DAVIS:

8 Q. You stated in your report that multitrack  
9 year-round schools are forced to offer certain  
10 courses on a limited number of attendance tracks  
11 which could and does lead to explicit curriculum  
12 tracking.

13 What do you mean by "curriculum tracking"?

14 A. Curriculum tracking, as I understand the  
15 term at present, is that a course of study -- an  
16 organized course of study is collected together in  
17 some explicit way. And in the case of the  
18 multitrack year-round calendar, it's collected  
19 together explicitly by the calendar. Curriculum  
20 tracking occurs in that way on multitrack year-round  
21 calendars.

22 Q. What's your assumption regarding explicit  
23 curriculum tracking based upon?

24 MR. VILLAGRA: Objection; misstates the  
25 document and testimony.

1 THE WITNESS: Okay. I'm sorry. I lost my  
2 train of thought.

3 Will you read the question, please?

4 (Record read as follows:

5 "QUESTION: What's your assumption  
6 regarding explicit curriculum tracking  
7 based upon?")

8 MR. VILLAGRA: Objection; vague and  
9 ambiguous, misstates the testimony.

10 BY MS. DAVIS:

11 Q. Why don't we back up. Why don't you give  
12 me an example of curriculum tracking.

13 A. Okay. One sort of curriculum tracking that  
14 I have observed is that the gifted and talented  
15 education program offerings are restricted to a  
16 single track on a multitrack year-round calendar.  
17 That's an example of explicit curriculum tracking on  
18 a multiyear-round tracking.

19 MS. READ-SPANGLER: What would be another  
20 example? I'm sorry to be slow on the uptake.

21 MR. VILLAGRA: I'm going to object to it.

22 MS. READ-SPANGLER: I'm just trying to  
23 understand it. Is that a problem for you? Would  
24 you like me to whisper to her for another example?

25 MR. VILLAGRA: I think that would be

1 California?

2 A. Right.

3 MR. VILLAGRA: By that you mean English  
4 language learner programs?

5 BY MS. DAVIS:

6 Q. Frequently assigned to a singular track.

7 A. Present practice at this time, my extensive  
8 awareness of it is not as great. I know that it is  
9 still happening, but I know that because of people I  
10 still know here in California with whom I  
11 occasionally correspond. So I know that the  
12 practice is not absent; but its extent presently,  
13 I'm less fully aware.

14 And to my knowledge, there is no readily  
15 available way to gather that information other than  
16 explicitly inquiring so that it would be difficult  
17 for anybody to know today who is not explicitly  
18 inquiring because it is not routinely documented,  
19 that practice.

20 Q. Who is telling you that ELL is frequently  
21 assigned to singular tracks in California now?

22 MR. VILLAGRA: Objection; misstates  
23 testimony, vague and ambiguous.

24 THE WITNESS: Let's see. I am not being  
25 told in the sense that people are seeking me out or

1 appropriate. If she doesn't feel the need to ask  
2 for another example, then she doesn't need to ask  
3 for another example. You're perfectly free to ask  
4 tomorrow or whenever.

5 MS. READ-SPANGLER: Then I think we'll end  
6 up backtracking more and it will just take longer  
7 than it already is.

8 BY MS. DAVIS:

9 Q. Why don't you give me another example of  
10 curriculum tracking?

11 A. Another example that I observed -- I've got  
12 to qualify this a little bit because there's been  
13 some dynamics in the definition of programs to  
14 English language learners in the United States over  
15 the past few years; so exactly what the label is and  
16 what this date character is, I'm less certain.

17 But what I observed when I had the  
18 opportunity to be in the field in California was  
19 that English language learner programs that were  
20 explicit and programmatic were frequently restricted  
21 to a singular attendance track in a multitrack  
22 year-round calendar operation. That's another  
23 example.

24 Q. Do you know if that's the case now or you  
25 were aware of that when you were in the field in

1 otherwise wishing to inform me. I am understanding  
2 in a very limited sense what's going on by virtue of  
3 the fact that it comes up in conversations which I  
4 influence by my interest in knowing what's going on  
5 with friends and colleagues here in California.

6 BY MS. DAVIS:

7 Q. Who are these conversations with?

8 A. Recent conversations have been primarily  
9 with my father.

10 Q. And who is your father?

11 A. Douglas Mitchell.

12 Q. And what does Douglas Mitchell do?

13 A. He's a professor of education at the  
14 University of California Riverside in the graduate  
15 school of education.

16 Q. Do you know what he's relying upon when  
17 telling you that ELL is frequently assigned to a  
18 singular track in California now?

19 MR. VILLAGRA: Objection; misstates  
20 testimony.

21 THE WITNESS: Because he and I have had a  
22 long-standing professional collaborative  
23 relationship as well as a family relationship, I  
24 trust that his opinion or information or statement  
25 in this regard would be informed appropriately, and

1 so I don't inquire of him what he's doing to find  
2 that out.

3 BY MS. DAVIS:

4 Q. Are you aware of any reasons for curriculum  
5 tracking?

6 A. Reason for curriculum tracking?

7 MR. VILLAGRA: Objection; vague and  
8 ambiguous, misleading.

9 THE WITNESS: In the ideal sense or in the  
10 empirical sense? That would help me a lot to  
11 respond.

12 BY MS. DAVIS:

13 Q. I don't know what you're talking about when  
14 you're saying "ideal sense."

15 A. Well, there are -- in the ideal sense,  
16 there are imagined reasons to track curriculum that  
17 people might propose which may or may not be  
18 realized in practice.

19 Q. Why don't you give me those, and then we'll  
20 go to empirical reasons.

21 A. Imagined reasons vary dramatically and may  
22 have no basis in reality or -- nor may they be well  
23 justified theoretically such as the belief that  
24 having students who presently have similar  
25 performance in a particular curricular domain will

1 benefit more by being grouped together in the  
2 curriculum tracked is another way to say that. And,  
3 therefore, it would be appropriate to create  
4 separate tracks for curriculum that students at some  
5 performance level or very similar will receive one  
6 kind of curriculum and students at a different kind  
7 of performance level will receive a different kind  
8 of curriculum.

9 Based on the idea -- frequently this is  
10 based on the idea that you are to meet students  
11 where they are when you design a curriculum.  
12 Historically in this country, there have been  
13 reasons that are no longer considered justifiable,  
14 like inferiority of the races. And I certainly  
15 don't espouse the idea that there is some essential  
16 inferiority of the races and would never propose  
17 that as a way to imagine delivering curriculum. But  
18 historically in this country that has been a reason  
19 for tracking curriculum.

20 So those are a couple of examples of how  
21 people reason that curricula should be tracked.

22 Q. And what are the empirical reasons?

23 A. By "empirical," I mean the various  
24 realities that schools encounter when programming  
25 the curriculum. And because there's variability,

1 I'm not sure I'm going to get you a comprehensive  
2 list today. One is availability of qualified  
3 instructional staff, that a school will deliver  
4 curriculum in a restricted manner because they don't  
5 have enough teachers who are qualified to deliver  
6 that curriculum at the level they would prefer, so  
7 that they track the curriculum to align with  
8 available staff resources. That's one reason.

9 Another would be in the case of a  
10 multitrack year-round calendar schedule, that  
11 scheduling creates -- and that's why it's in the  
12 name -- explicit tracks in the school.

13 And usually this scheduling encounters two  
14 issues that -- I'm not saying they're the only two,  
15 but they're the two that seem most prominent. One  
16 is -- one is the staffing question yet again, but it  
17 becomes consolidated into the calendar itself.  
18 There's a limited number of staff. They put them  
19 all together on the same track of the calendar.

20 The other is in the case of secondary  
21 schools' enrollment demand, that the school may or  
22 may not be able to stimulate enough enrollment to  
23 justify staffing the curriculum across all  
24 attendance tracks and, therefore, by virtue of the  
25 fact that enrollment isn't motivated or stimulated,

1 a school will offer the curriculum on a single  
2 track. And that will create explicit curriculum  
3 tracking.

4 I know what I just said isn't exhaustive,  
5 but there's enough to this that that's all I can  
6 give you in this chunk.

7 Q. Are there any studies which support your  
8 theory that multitrack year-round schools lead to  
9 explicit curriculum tracking?

10 MR. VILLAGRA: Objection; vague and  
11 ambiguous, misstates the testimony.

12 THE WITNESS: First of all, to characterize  
13 it as theory is to -- is to separate it from its  
14 empirical verification.

15 BY MS. DAVIS:

16 Q. Let's just say, then, your statement.

17 MR. VILLAGRA: Were you done with your  
18 prior answer?

19 MS. DAVIS: Before he goes on on theory, I  
20 just thought let's just limit it to his statement on  
21 curriculum tracking.

22 THE WITNESS: Well, in particular, there's  
23 my own work where I have looked at where programs  
24 are designated. There's also -- I can't tell you  
25 which one, but it's a Burns and Mason paper where

1 they also review the tendency to result in explicit  
2 curriculum tracking in multitrack year-round  
3 calendar schools.

4 Where else have I seen this?

5 Yes, there are other places. I cannot name  
6 them for you presently. I'm sure that by virtue of  
7 having asked the question, it will churn for a  
8 while.

9 BY MS. DAVIS:

10 Q. You mentioned your own work.

11 What do you mean? What's your own work in  
12 this area?

13 A. I have collected data from school districts  
14 where they have provided me with data identifying  
15 students for the various designated programs for  
16 which that data was available and --

17 Oh, boy. Now, I'm losing my train here; so  
18 let me back up. Hang on. My work --

19 Will you do me a favor, please? Would you  
20 read back what I've said so far?

21 (Record read as follows:

22 "ANSWER: I have collected data from  
23 school districts where they have  
24 provided me with data identifying  
25 students for the various designated

1 Q. And you said this study is available on  
2 ERIC?

3 A. That's correct.

4 Q. What's the name of the study?

5 A. "Student Segregation and Achievement  
6 Tracking on Year-Round Schools" -- "in Year-Round  
7 Schools." I'm not sure about that preposition.

8 MR. HAJELA: I'm sorry. For clarification,  
9 is this the same as the 1999 paper?

10 THE WITNESS: That's the date of the  
11 conference presentation.

12 MR. HAJELA: Okay. We're talking about the  
13 same thing?

14 THE WITNESS: Yeah.

15 BY MS. DAVIS:

16 Q. And is Douglas Mitchell also an author?

17 A. He's second author.

18 Q. You're the primary author?

19 A. That's correct.

20 Q. What districts did you study in completing  
21 the study?

22 A. By virtue of the nature of the relationship  
23 established with the district for data collection, I  
24 have an agreement not to name them, but it was  
25 explicitly part of the data collection process that

1 programs for which that data was  
2 available and --")

3 THE WITNESS: And to follow on that read  
4 back:

5 -- and the specific track on which they  
6 were enrolled at their multitrack year-round  
7 calendar school. That, in addition to explicit  
8 statements from the districts about their intent to  
9 program gave me ability to definitively --  
10 "definitively" -- that seems awfully strong, but  
11 it's pretty darn close to what I mean --  
12 unambiguously, probably a better word, determine  
13 that indeed certain programs of instruction are only  
14 offered on certain tracks and across all tracks at  
15 the various multitrack year-round calendar schools.

16 BY MS. DAVIS:

17 Q. Is this a study that you've published?

18 A. If by "publish" you mean is finished with  
19 all of the review and revisions necessary to appear  
20 in final printed form in a peer review journal, it's  
21 not quite done with that. It has been publicly  
22 distributed at a professional conference and has  
23 been made available through ERIC, the professional  
24 conference presentation dependent on peer review for  
25 the paper's acceptance.

1 identity not be established.

2 Q. But you relied upon this report in creating  
3 your expert report in this case?

4 A. That's not the only data on which I have  
5 relied.

6 Q. But did you rely on this report in  
7 preparing your expert report in this case?

8 A. It is among the reports on which I have  
9 relied.

10 Q. So is that a "yes"?

11 A. As long as I'm understood that it's not a  
12 singular "yes," yes, I did rely on it, but not  
13 solely on it.

14 Q. How many districts did you study?

15 A. For that particular paper, one urban  
16 district. There are other papers in preparation  
17 which include additional districts. But these  
18 papers have not been publicly distributed yet.

19 Q. And these papers that haven't been publicly  
20 distributed -- did you rely upon these papers in  
21 preparing your expert report in this case?

22 MR. VILLAGRA: Objection; vague and  
23 ambiguous.

24 THE WITNESS: I believe I stated in the  
25 report that the 1999 conference paper was the first

1 in the beginning of an ongoing series of  
2 investigations, though not in those words. So I  
3 believe I am on record as stating that I am  
4 continuing to examine and learn from the data I have  
5 collected from multiple districts what is the  
6 pattern of programming by track, student achievement  
7 by track and I'm not exactly sure what else to list  
8 at this time, but that's not all I looked at.

9 BY MS. DAVIS:

10 Q. That's not responsive to what I've asked.

11 A. Okay.

12 Q. I'm asking a very simple question.

13 A. I'm sorry.

14 Q. It's okay.

15 I just want to know, did you rely on these  
16 unpublished papers that you just mentioned in  
17 preparing your expert report for this case?

18 MR. VILLAGRA: Same objection.

19 THE WITNESS: I relied on my knowledge  
20 gained from my examination of data, which has yet to  
21 be presented in a form for public distribution.

22 BY MS. DAVIS:

23 Q. And your examination of data is contained  
24 in these unpublished papers; is that correct?

25 MR. VILLAGRA: Objection; assumes facts,

1 BY MS. DAVIS:

2 Q. No.

3 MR. VILLAGRA: Is the question here if  
4 there's an examination, whether his examination is  
5 contained in a paper or whether he has it in his  
6 mind?

7 BY MS. DAVIS:

8 Q. Did you draw on any of this information,  
9 this examination of the data, in preparing your  
10 report in this case?

11 A. Yes.

12 Q. And where are these unpublished papers?

13 A. These are defined as papers in preparation,  
14 which is in the technical way of talking about  
15 things in my business different from unpublished  
16 papers. An unpublished manuscript means something  
17 you could physically hand to somebody and they could  
18 examine it as a publicly distributed document that's  
19 never been submitted for publication. A paper in  
20 preparation means draft notes, data tables, other  
21 sources of reference that -- including the raw data  
22 themselves that are explicitly being examined for  
23 that purpose.

24 As I say this, based on what we've talked  
25 about earlier today, I realize this creates

1 misstates testimony.

2 THE WITNESS: If I could have the question  
3 again, please.

4 (Record read as follows:

5 "QUESTION: And your examination of  
6 data is contained in these unpublished  
7 papers; is that correct?")

8 THE WITNESS: I guess --

9 MR. VILLAGRA: Vague and ambiguous as to  
10 "contained."

11 THE WITNESS: What I'm trying to do here is  
12 try to deliver the appropriate intended response,  
13 and I am trying to figure out what it is I should be  
14 saying instead of what I'm not.

15 BY MS. DAVIS:

16 Q. I just want an answer.

17 MR. VILLAGRA: Objection; argumentative.

18 THE WITNESS: So if you are asking is there  
19 something I could give you that I haven't given for  
20 you to examine, that's a different kind of question  
21 than is there something I know that I have used to  
22 inform my judgment. And that's why I'm feeling like  
23 we're at an impasse.

24 Am I making sense?

25 ////

1 attention that I hadn't considered before, and that  
2 is whether or not there are some data tables I have  
3 that I should have printed out and included in the  
4 materials I provided to plaintiffs' counsel. That's  
5 a fair question, and I don't have a simple clear  
6 answer because everything I have is on the other  
7 coast and I am not in the habit of keeping drafts on  
8 file such that there may not be anything but the  
9 knowledge in my head to offer.

10 Q. Do you have the data you examined?

11 A. I have the raw data, yes.

12 Q. Where is the raw data?

13 A. Locked in my office.

14 Q. Did you provide the raw data to plaintiffs'  
15 counsel?

16 A. In its present form, my understanding is I  
17 can't do that because it's bound by confidentiality.  
18 It's identified data, and I have an agreement as a  
19 result of the human subjects review process with the  
20 university that human subjects are to be protected  
21 and their identities are to be protected.

22 Q. Have you provided any of this data to  
23 plaintiffs' counsel?

24 MR. VILLAGRA: Objection; vague and  
25 ambiguous.

1 THE WITNESS: Have I provided any of the  
2 data I believe I'm required to keep to myself to  
3 plaintiffs' counsel? No.

4 BY MS. DAVIS:

5 Q. I don't know if all of your data you're  
6 required to keep confidential or some of it.

7 I want to know, did you provide any of this  
8 to plaintiffs' counsel?

9 MR. VILLAGRA: Same objection.

10 THE WITNESS: Because no explicit request  
11 was made for unidentified data -- I have to back up.  
12 This is actually speculative, not definitive. I'm  
13 trying to figure out why it is that -- now that I  
14 understand the process better than I did at the time  
15 I worked on it and filed the report, whether or not  
16 I perceived this as something that should have been  
17 provided.

18 BY MS. DAVIS:

19 Q. The question is: Did you provide any of  
20 the data to plaintiffs' counsel?

21 MR. VILLAGRA: Same objection.

22 THE WITNESS: I provided my findings from  
23 the data. As I would in a manuscript, I would  
24 circulate in writing the report. As a matter of  
25 professional practice, you don't distribute your

1 Douglas Mitchell, you said you studied one school  
2 district.

3 How many schools were in the district that  
4 you studied?

5 A. I don't recollect off the top of my head.  
6 I believe it's specified in the report.

7 Q. Do you have an estimate?

8 A. No, I don't feel comfortable making an  
9 estimate.

10 Q. Do you know what percentage of these  
11 schools were multitrack year-round schools?

12 A. I know I specified it in that report.

13 Q. You don't recall sitting here right now?

14 A. No.

15 Q. You said that you, in preparing this  
16 report, the report that you authored with Douglas  
17 Mitchell, that you collected data from school  
18 districts.

19 What type of data did you collect?

20 A. Well, as to previous questions, I know it's  
21 specified in the report. I do have some  
22 recollection that I can offer presently: student  
23 achievement data; student demographic data,  
24 including information about which school -- in which  
25 school they are enrolled and to which classroom

1 data files. You distribute your findings.

2 BY MS. DAVIS:

3 Q. Okay. I'm going to say that's not  
4 responsive to my question.

5 Did you provide any of the data to  
6 plaintiffs' counsel?

7 MR. VILLAGRA: Objection; vague and  
8 ambiguous as to "any of the data."

9 THE WITNESS: I did not provide my data  
10 files to plaintiffs' counsel.

11 BY MS. DAVIS:

12 Q. And you said you did provide plaintiff with  
13 your findings in --

14 How did you provide plaintiff with your  
15 findings?

16 I'm not sure if I'm understanding you. Is  
17 that what's contained in the expert report, or did  
18 you provide them with something else?

19 A. I provided the expert report.

20 MR. VILLAGRA: Do you mind if we take a  
21 quick bathroom break?

22 MS. DAVIS: No problem.

23 (Recess taken.)

24 BY MS. DAVIS:

25 Q. In the report that you authored with

1 teacher they're assigned; and some program services  
2 designators -- what else do I recall? -- the data  
3 that identified the teacher to which they were  
4 assigned, the track to which they were assigned --  
5 if it was a multitrack year-round school --

6 That's what I can readily recall.

7 Q. Did you collect the data from the school  
8 district itself?

9 A. Yes.

10 Q. You also said that there were explicit  
11 statements of district employees regarding an  
12 intention to track students.

13 MR. VILLAGRA: Objection; misstates  
14 testimony.

15 BY MS. DAVIS:

16 Q. Who did you talk to? Who were the district  
17 employees?

18 MR. VILLAGRA: Same objection.

19 THE WITNESS: Earlier today, I made a  
20 comment that is something like that. Precisely what  
21 I said I don't remember from earlier today; so I'm  
22 not sure if that's precisely what I said.

23 There's -- the part to which I can respond easily,  
24 regardless of what exactly I said earlier, is that  
25 in the context of various research projects, I was



1 able to have conversations with various school  
2 district employees. Precisely which of those  
3 employees I had explicit conversations about  
4 multitrack year-round calendar policy, I'm not sure.  
5 I'm not sure. I'm not sure.

6 BY MS. DAVIS:

7 Q. Did you talk to district employees  
8 regarding tracking students in preparing the report  
9 that you authored with Douglas Mitchell?

10 A. Yes, I talked to district employees about  
11 program assignment related to the multitrack  
12 year-round calendar.

13 Q. And is it your testimony that you can't  
14 remember who you talked to?

15 MR. VILLAGRA: Objection; asked and  
16 answered.

17 THE WITNESS: I can remember the people  
18 with whom I talked to during data collection.  
19 Precisely what the nature of those conversations  
20 were, I can no longer be certain relative to that  
21 individual person that might be named.

22 BY MS. DAVIS:

23 Q. Who did you talk to in collecting data?

24 MR. VILLAGRA: Who by name or by title?

25 MS. DAVIS: By name and by title.

1 question of multitrack year-round calendar  
2 programming was collected in order to do my  
3 dissertation.

4 Does that make sense?

5 Q. Are you saying that you relied on some of  
6 your data in your dissertation in the report that  
7 you authored with Douglas Mitchell?

8 A. The data subjected to analysis for my  
9 dissertation was sufficiently rich to also be  
10 subjected to analysis for questions related to the  
11 multitrack year-round calendar, and a subset of that  
12 data was focused upon for analysis when generating  
13 the findings reported in 1999 with Douglas Mitchell.

14 Q. So you used a subset of the data from your  
15 dissertation in the report you authored with  
16 Douglas Mitchell?

17 A. Not exactly.

18 Q. What did you just say, then?

19 A. That in order to improve precision, there's  
20 an additional aspect, and that is the dissertation  
21 project collected more data that was subject to  
22 analysis for the dissertation. And so there is some  
23 data that was not subject to analysis for the  
24 dissertation that was subject to analysis for the  
25 report authored with Douglas Mitchell.

1 THE WITNESS: I can't give you an  
2 exhaustive list currently. I do know that people  
3 with whom I had conversations during data collection  
4 are named in the acknowledgment section of my  
5 dissertation. Whether or not those are the people  
6 with whom I had any explicit conversation about  
7 multitrack year-round calendar policy, I cannot say  
8 with any certainty.

9 BY MS. DAVIS:

10 Q. I'm confused. You mentioned your  
11 dissertation.

12 A. That's correct.

13 Q. Is -- your dissertation, I'm assuming, is  
14 different than the report we're talking about that  
15 you authored with Douglas Mitchell.

16 A. That's correct.

17 Q. So how does your dissertation factor into  
18 my question?

19 A. Because much of the data in my dissertation  
20 used to prepare my dissertation is -- I started  
21 myself down a sentence that doesn't finish with  
22 proper grammar. Let me try to start the sentence  
23 over again.

24 One of the projects on which I worked which  
25 resulted in data relevant to the analysis of the

1 Q. But you did use some of the data from your  
2 dissertation in the report authored with Douglas  
3 Mitchell?

4 A. Some of the data subject to analysis for  
5 the dissertation directly is the same data included  
6 in the analysis that resulted in the report authored  
7 with Douglas Mitchell.

8 Q. So that's a "yes"?

9 A. The part that makes it hard for me to  
10 answer "yes" or "no" is the care with which I have  
11 to say what I'm saying in order to be certain that  
12 what I understand about what I did is as clear as I  
13 can described today. And I feel a sort of shorthand  
14 quality to the language of your question so that I  
15 have to, in order to produce something that can  
16 be -- that might possibly be considered affirmative,  
17 I have to be sure that I say it in a way that  
18 satisfies me that I've been precise; so that's why  
19 I'm not simply saying "yes" or "no."

20 Q. I think the question calls for a "yes" or  
21 "no" answer. But let me try again to get an answer.

22 You used data in your dissertation. Some  
23 of that data you also used in the report authored  
24 with Douglas Mitchell.

25 Is that correct?

1 A. With that language, I'm more comfortable  
 2 with saying something that is more simply "yes."  
 3 Q. And is your answer "yes"?  
 4 A. I gave an answer that provides the  
 5 specificity that I feel defines what I did  
 6 accurately. And I said that your last phrasing of  
 7 the question is very close to something that could  
 8 get a simple "yes." It's not exactly the same  
 9 language. I feel comfortable with my language. I  
 10 feel very comfortable that the language you just  
 11 used gets me close enough that I'm even willing to  
 12 say the word "yes" to help be more productive in  
 13 answering your question.  
 14 Q. So I'll ask you again.  
 15 Is that a "yes"?  
 16 A. No.  
 17 Q. Let's try again.  
 18 Your dissertation contained data.  
 19 A. If I may --  
 20 Q. Okay.  
 21 A. "Contained" is the piece that had us in  
 22 trouble before.  
 23 Q. Okay. What is it about "contained" that  
 24 troubles you?  
 25 A. When you substituted the word "used," I was

1 more comfortable.  
 2 Q. So you used data in your dissertation?  
 3 A. But I'm going to be helpful here, without  
 4 you asking a question, because this is agony for all  
 5 of us.  
 6 MS. READ-SPANGLER: How about "analyze"?  
 7 Do you like that one?  
 8 BY MS. DAVIS:  
 9 Q. Let's pick a word.  
 10 A. Yeah, analyzed or subjected to analysis.  
 11 Q. Okay. Analyzed.  
 12 A. Uh-huh.  
 13 Q. So you analyzed data in your dissertation?  
 14 A. Correct. I analyzed data for my  
 15 dissertation.  
 16 Q. Did you then use some of the analyzed data  
 17 from your dissertation in the report that you  
 18 authored with Douglas Mitchell?  
 19 A. Okay. Let me present the language for the  
 20 second part. Some of that data was subjected to  
 21 analysis for the report authored with Douglas  
 22 Mitchell.  
 23 Q. Is it the same data, though, or did you do  
 24 additional analysis in your report with Douglas  
 25 Mitchell?

1 A. The analysis is not identical, and the  
 2 totality of the data is not identical.  
 3 Q. Okay. Well, what's the title of your  
 4 dissertation?  
 5 A. I believe it's in my vita attached to my  
 6 report. It should be. I don't know what the  
 7 experience is in law, but in my field, dissertation  
 8 titles are long and usually not memorable. And  
 9 it's, again, mostly a matter of prepositions that  
 10 gives me grief -- "Class-Size Reduction Policy" and  
 11 then the rest of it is something like -- I don't  
 12 remember. It was something like "Analysis Impact."  
 13 MR. REED: "Evaluating the Impact on  
 14 Student Achievement in California."  
 15 THE WITNESS: Precisely.  
 16 MS. READ-SPANGLER: Which one is that?  
 17 MR. REED: It's on page 3 of his C.V. near  
 18 the bottom of the page under "Technical Reports and  
 19 Underwritings."  
 20 MR. VILLAGRA: Just to be clear, it's  
 21 listed as his unpublished doctoral dissertation,  
 22 University of California Riverside.  
 23 MS. DAVIS: Do we have a date?  
 24 MS. READ-SPANGLER: 2001.  
 25 ////

1 BY MS. DAVIS:  
 2 Q. What was the nature of your dissertation?  
 3 You know what? Let's say "subject matter" -- the  
 4 subject matter of your dissertation.  
 5 A. The question of class-size reduction as an  
 6 education policy that has an identifiable impact on  
 7 student achievement.  
 8 Q. How did that subject matter relate to  
 9 multitrack year-round schools?  
 10 MR. VILLAGRA: How did it or how does it?  
 11 BY MS. DAVIS:  
 12 Q. How does it?  
 13 MR. VILLAGRA: If at all.  
 14 THE WITNESS: It has some relationship to  
 15 the question in California. For example, one of the  
 16 strategies employed by school districts in an effort  
 17 to implement the class-size reduction policy was to  
 18 change school calendar scheduling from a  
 19 single-track calendar of some sort to a multitrack  
 20 calendar. In that sense, it has a relationship to  
 21 class-size reduction policy.  
 22 Additionally, there were schools prior to  
 23 the implementation of class-size reduction in  
 24 California that already operated on the multitrack  
 25 year-round calendar, and that is a quality of the

1 school that is measurable and was known to impact  
2 the organization of schools and had known  
3 association with student achievement.

4 And so collecting information on whether or  
5 not schools were on a multitrack year-round was a  
6 necessary activity as part of data collection when  
7 evaluating an achievement impact by some other  
8 policy, because that would be an existing condition  
9 that is associated with student achievement and is,  
10 therefore, a necessary covariant in the modeling of  
11 student achievement impacts.

12 So those are two ways in which class-size  
13 reduction policy is associated with the multitrack  
14 year-round calendar.

15 BY MS. DAVIS:

16 Q. So back before we started talking about  
17 your dissertation, I'm just not sure if I ever did  
18 get an answer to this question.

19 You said you talked to school  
20 administrators --

21 A. Uh-huh.

22 Q. -- school employees, I should say, about  
23 student tracking in preparing your report with  
24 Douglas Mitchell.

25 A. Yes.

1 longer able to clearly recollect the distinction  
2 between those people I talked to about getting data  
3 and those people I talked to about the multitrack  
4 year-round calendar.

5 BY MS. DAVIS:

6 Q. Now, going back to --

7 You said you can't distinguish the people  
8 that you spoke with. Why don't you just give me all  
9 of the names.

10 A. That's how we got onto the dissertation, I  
11 think, was that I know at least some of the people  
12 with whom I spoke about data collection I named in  
13 the acknowledgment section. I seriously doubt  
14 that's a comprehensive list of all the people with  
15 whom I spoke.

16 Q. Do you have a comprehensive list anywhere?

17 A. No.

18 Q. Do you remember --

19 Can you give me any names?

20 A. Of the people with whom I've spoken about  
21 the data I collected during that time period?

22 Q. Yes.

23 A. Yes, I do remember some people with whom I  
24 spoke as a matter of collecting data during that  
25 time period. There's a problem we visited earlier,

1 Q. Do you remember the names of the people you  
2 spoke with?

3 MR. VILLAGRA: Objection; asked and  
4 answered.

5 THE WITNESS: This question sounds like  
6 it's maybe a little bit different from the last one,  
7 and so can I hear it one more time to make sure I  
8 can figure out whether it's different so I can  
9 answer it?

10 BY MS. DAVIS:

11 Q. You can answer even if it is different.

12 But why don't you go ahead --

13 A. But how I answer depends on if I understand  
14 the question correctly.

15 Q. That's fine.

16 Let's read back the question.

17 (Record read as follows:

18 "QUESTION: You said you talked to  
19 school administrators -- school  
20 employees, I should say, about student  
21 tracking in preparing your report with  
22 Douglas Mitchell.

23 "Do you remember the names of the  
24 people you spoke with?")

25 THE WITNESS: I think I said already I'm no

1 which I think we're okay here on this point, but I'm  
2 not sure. And this gives me some grief; so I need  
3 to pause for a minute and figure out what I'm saying  
4 here.

5 MR. HAJELA: If you're going to assert a  
6 privilege, you're allowed to consult your attorney.

7 MR. VILLAGRA: I was going to say,  
8 Dr. Mitchell, if you think you're getting close to  
9 the line of violating that agreement of not  
10 disclosing the identities because of the privilege,  
11 we can talk about that, if you'd like.

12 THE WITNESS: Well, since Mr. Villagra from  
13 MALDEF is here and willing to talk to me about this,  
14 why don't I take advantage of that and try to figure  
15 out what kind of ground I'm on.

16 MR. HAJELA: That's fair.

17 MS. DAVIS: Okay.

18 (Discussion held off the record.)

19 BY MS. DAVIS:

20 Q. Dr. Mitchell, before we took a break, there  
21 was a question pending.

22 Why don't we have the court reporter read  
23 the question back.

24 (Record read as follows:

25 "QUESTION: You said you can't

1 distinguish the people that you spoke  
2 with. Why don't you just give me all  
3 of the names.")  
4 BY MS. DAVIS:  
5 Q. Do you understand where we are now?  
6 A. (Witness nods head in the affirmative.)  
7 I find myself in a situation where I have a  
8 confidentiality agreement that I am professionally  
9 bound to keep and am not willing to violate that  
10 confidence.  
11 Q. Are you saying that this confidentiality  
12 agreement does not allow you to provide me with the  
13 names?  
14 A. I believe that to be the case.  
15 Q. And so you're not going to tell me the  
16 names; is that correct?  
17 A. At this time, that's correct.  
18 Q. Now, some you said were contained in an  
19 acknowledgment.  
20 Do you remember those names, and can you  
21 provide me with those names?  
22 MR. VILLAGRA: Objection; misstates  
23 testimony, misleading.  
24 THE WITNESS: Because what is at issue here  
25 is the data collected in confidence related to

1 multitrack year-round calendar studies, I feel bound  
2 to act in a manner that protects that confidence  
3 such that those districts remain unidentified.  
4 BY MS. DAVIS:  
5 Q. I don't think that's responsive to my  
6 question.  
7 I'm just asking if you can provide me with  
8 the names that are contained in an acknowledgment of  
9 your report.  
10 MR. VILLAGRA: Objection; asked and  
11 answered, misleading.  
12 THE WITNESS: My expert report does not  
13 contain such an acknowledgment.  
14 BY MS. DAVIS:  
15 Q. You mentioned an acknowledgment previously.  
16 What acknowledgment were you referring to?  
17 A. My class-size reduction policy  
18 dissertation.  
19 Q. So can you provide me with the names that  
20 were contained in the acknowledgment in your  
21 dissertation?  
22 MR. VILLAGRA: Objection; asked and  
23 answered.  
24 THE WITNESS: I think I have explained that  
25 we are in a realm where I have agreements about

1 protecting the identity of the districts whose data  
2 was analyzed for my research on the multitrack  
3 year-round calendar. And in that context, I believe  
4 it would be a violation of that confidence to name  
5 names.  
6 BY MS. DAVIS:  
7 Q. So is your answer "no," that you cannot  
8 provide me with the names contained in the  
9 acknowledgment of your dissertation?  
10 MR. VILLAGRA: Objection; misstates  
11 testimony.  
12 THE WITNESS: Let's see. I think what I  
13 have to stand by is I cannot name names in the  
14 context to the present deposition as an expert  
15 discussing the multitrack year-round calendar.  
16 BY MS. DAVIS:  
17 Q. So you told me you can't provide me with  
18 the names of the districts or the names of the  
19 school employees that you've spoken with.  
20 How would another expert in this field  
21 verify your findings with regard to the school  
22 district you studied?  
23 MR. VILLAGRA: Objection; assumes facts,  
24 incomplete hypothetical, misleading.  
25 THE WITNESS: Being not confronted with

1 that question presently by a peer seeking to  
2 scientifically verify or reproduce my findings, I'm  
3 not prepared to answer that question.  
4 BY MS. DAVIS:  
5 Q. Well, let's assume a peer is asking to  
6 verify your findings.  
7 How could a peer do so?  
8 A. I would be obligated to go to the district  
9 from whom I collected data and request that I may  
10 identify them, which I don't know whether that would  
11 result in identification. That's one strategy.  
12 Another strategy that I believe would be  
13 acceptable professionally is to remove all of the  
14 data elements from the data set that would make it  
15 possible to identify the district, so that remaining  
16 part of the data which is relevant to the study but  
17 does not reveal the district, if it is possible to  
18 do that. Then that unidentified data could be  
19 provided for re-analysis to a peer.  
20 Q. Was the report that you authored with  
21 Douglas Mitchell subjected to a peer review process?  
22 A. As I understand "peer review," yes.  
23 Q. What is your understanding of "peer  
24 review"?  
25 A. "Peer review" means that a manuscript

1 presenting a description of the study, literature  
2 you cited, theoretical propositions and so forth,  
3 findings, methodology, classic elements of a  
4 research paper are included. This manuscript is  
5 then reviewed, that is, read by, examined for its  
6 necessary completeness, precision and then subject  
7 to a critical examination of whether or not  
8 statements made and descriptions offered are  
9 sufficient that the findings can be believed to be  
10 true or accurate, or whatever the right word is,  
11 depending on the nature of the research question and  
12 the manuscript written.

13 And if peers are satisfied by the content  
14 of the manuscript and accept it for its contribution  
15 to the research literature, then it has passed peer  
16 review. That's how I understand "peer review."

17 Q. Who reviewed your report?

18 A. Peer review was anonymous, generally is. I  
19 don't know who reviewed the report.

20 Q. Where did you submit the report to peer  
21 review?

22 A. American Sociological Association for their  
23 1999 annual meeting, which was held in Chicago, in  
24 terms of what I understand to be the document to  
25 which you're referring.

1 Q. Did you discuss this confidentiality  
2 agreement with the school district -- with  
3 plaintiffs' counsel?

4 MR. VILLAGRA: Objection; vague and  
5 ambiguous.

6 THE WITNESS: Did I discuss that I have a  
7 confidentiality agreement?

8 BY MS. DAVIS:

9 Q. We took a break.

10 A. Correct, we took a break.

11 Q. Did you discuss the nature of your  
12 confidentiality agreement with plaintiffs' counsel?

13 A. Did I discuss the nature of the  
14 confidentiality agreement with plaintiffs' counsel?  
15 I discussed -- yes.

16 Q. What did you discuss?

17 A. That I need to understand what's going on  
18 here in this deposition because I have a  
19 confidentiality agreement where I have to protect  
20 identity and I need to be able to make a statement  
21 about what I have to do with that confidentiality  
22 agreement.

23 Is that the kind of --

24 Q. Did plaintiffs' counsel make any  
25 recommendations to you as to how to handle the issue

1 of the confidentiality agreement in this deposition?

2 MR. VILLAGRA: Objection; compound and  
3 vague.

4 THE WITNESS: In essence, plaintiffs'  
5 counsel said that it's my responsibility to decide  
6 whether or not to protect my confidentiality  
7 agreement.

8 BY MS. DAVIS:

9 Q. Okay. Now, turning back to the work that  
10 you mentioned here and in your report that you are  
11 currently working on with regard to multitrack  
12 schools, how many districts have you studied in  
13 relation to this work?

14 MR. VILLAGRA: Objection; vague, compound.

15 THE WITNESS: I believe, but I'm not  
16 certain, that in the expert report I declared that  
17 there are two additional school districts presently  
18 included in the analysis.

19 BY MS. DAVIS:

20 Q. So how many districts are you saying are  
21 included in the analysis?

22 MR. VILLAGRA: Objection; vague and  
23 ambiguous.

24 THE WITNESS: For the particular work I  
25 have in mind to which I'm referring, three

1 districts.

2 BY MS. DAVIS:

3 Q. I know you can't tell me the one  
4 district -- the name of the one district because of  
5 your confidentiality agreement.

6 What are the other two districts that are  
7 included in this work?

8 MR. VILLAGRA: Objection; assumes facts,  
9 misstates testimony.

10 THE WITNESS: For the purpose of research  
11 on multitrack year-round calendar issues, I believe  
12 myself to be obligated to hold the same confidence  
13 for the other two districts.

14 BY MS. DAVIS:

15 Q. Do you have an agreement with the other two  
16 districts that you're supposed to keep this  
17 information confidential?

18 MR. VILLAGRA: Objection; vague and  
19 ambiguous as to "agreement," assumes facts.

20 THE WITNESS: Precisely the description of  
21 the understanding I have with those districts at the  
22 time that understanding was established, I cannot  
23 recall. But I believe that their understanding  
24 would be the same as mine, that they expect not to  
25 be named for findings as a result of this research.

1 BY MS. DAVIS:

2 Q. My question is: Do you have any agreement  
3 with the other two districts, an explicit agreement,  
4 to keep them confidential?

5 MR. VILLAGRA: Objection -- same objections  
6 as before.

7 THE WITNESS: Because of the time between  
8 the current date and the beginning of data  
9 collection for the data subject to analysis for my  
10 studies for multitrack year-round calendar  
11 schooling, I cannot with confidence declare that I  
12 have an explicit agreement.

13 What I can state is that it is my  
14 understanding from the practices that were  
15 established and remain to be true in terms of my  
16 understanding of declaration of identity of school  
17 districts in a research study that the agreement is  
18 in the nature of unless I'm given explicit  
19 permission to name, I'm not to name. And there is  
20 no agreement declaring that I have explicit  
21 permission to name.

22 BY MS. DAVIS:

23 Q. And this is your understanding of your -- I  
24 don't want to say "explicit agreement," but your  
25 agreement with the other districts?

1 receiving -- in the receiving, will be revisited --  
2 that is to say, I have other obligations and stagger  
3 the time at which I work on things; so to say  
4 "present" is to say in recent time, both past and  
5 future, that my full-time job is not to research  
6 multitrack year-round calendars at present, but I  
7 continue to pursue that research, collect data,  
8 analyze research reports and so forth.

9 So if by "current" you mean in the last  
10 week, currently I'm not doing anything. The  
11 research question at present that is being examined  
12 is can the -- can inferences be made about the  
13 dynamics of enrollment on a multitrack year-round  
14 calendar track be related to student achievement  
15 trajectories. That's the focal question for what's  
16 receiving current attention.

17 Q. What inferences are you talking about?

18 MR. VILLAGRA: Objection; assumes facts.

19 THE WITNESS: For example, if a student is  
20 enrolled on "B" track and continues to be enrolled  
21 on "B" track, does that student have a different  
22 achievement growth trajectory than a student who is  
23 enrolled on "C" track and continues to be enrolled  
24 on "C" track?

25 Additionally, are the achievement

1 A. That's correct.

2 Q. Now, the other two additional districts and  
3 not the district that was included in your report  
4 with Douglas Mitchell -- how many schools are in  
5 each of the districts?

6 A. I can't tell you right now.

7 Q. You don't know?

8 A. I have a record that allows me to count. I  
9 don't have that with me.

10 Q. So sitting right here, you don't know?

11 A. That's correct. At this time, given what's  
12 available to me at present, I don't know.

13 Q. Do you know the percentage of multitrack  
14 schools in each of the districts?

15 MR. VILLAGRA: Objection; compound.

16 THE WITNESS: In each with precision, no.

17 BY MS. DAVIS:

18 Q. Do you have an estimate?

19 A. In one case, providing an estimate would  
20 risk revealing identity; so I cannot make an  
21 estimate at this time.

22 Q. What kind of research have you conducted  
23 thus far with respect to this ongoing study that  
24 you're working on?

25 A. The research that is presently underway and

1 trajectories related to changing tracks, because not  
2 all students once enrolled on a particular track  
3 persist on that track. If they change tracks, are  
4 those students evidencing different kinds of  
5 achievement trajectories than the students which  
6 stay on the track in which they're enrolled in the  
7 time frame for which we have data?

8 BY MS. DAVIS:

9 Q. What research methodology are you using in  
10 this work?

11 A. I am -- in a larger generalized statement  
12 of methodology, I'm employing statistical data  
13 analysis.

14 Q. Have you collected any data from the two  
15 school districts?

16 A. Yes.

17 Q. What kind of data have you collected?

18 A. The same kind of data I described  
19 previously in relation to the original first  
20 district. And I have to say, again, I listed  
21 several descriptions of kinds of data that was  
22 collected. And in the absence of having it in front  
23 of me to review to make sure I've said everything  
24 I've collected, I'm not certain that I can tell you  
25 the entirety of the varieties of data that were

1 collected. But it's the same kind of data so that I  
2 can look at the same variables.

3 Q. Have you spoken with any district employees  
4 in connection with this work?

5 MR. VILLAGRA: Objection; vague and  
6 ambiguous.

7 THE WITNESS: First I need to know what  
8 time frame.

9 BY MS. DAVIS:

10 Q. Any time frame, if it's in connection with  
11 your current research.

12 A. Well, just for my own clarity's sake, the  
13 reason I say "time frame" is for last week versus  
14 last year versus five years ago makes a difference  
15 whether or not that matters in responding to the  
16 question. So that's why I've asked; so across all  
17 time possibilities, yes.

18 Q. And I'm assuming you're going to tell me  
19 that because of this -- your belief that you can't  
20 disclose the names of the districts, you can't also  
21 disclose the names of the school employees that you  
22 spoke with.

23 MR. VILLAGRA: Is the question whether that  
24 assumption is correct?

25 MS. DAVIS: Yes. Thank you.

1 THE WITNESS: Yes, I have to maintain my  
2 obligation to protect that confidentiality  
3 agreement.

4 BY MS. DAVIS:

5 Q. And in maintaining that confidentiality  
6 agreement, you can't tell me the names of the school  
7 employees that you've spoken with?

8 A. I believe that would risk ready inference  
9 of who the districts are.

10 Q. Let's go back to where this all started.

11 In your opinion, does curriculum tracking  
12 occur in traditional or single-track calendar  
13 schools?

14 MR. VILLAGRA: Compound and vague and  
15 ambiguous.

16 THE WITNESS: You said "traditional or  
17 single-track calendar schools"? Did I hear that  
18 correctly?

19 BY MS. DAVIS:

20 Q. I believe that's --

21 You used those calendars together in your  
22 report; is that correct?

23 A. Well, the reason I say that is there's an  
24 important subtlety. If you say "single track," you  
25 include the traditional calendar. Single track

1 means not multitrack.

2 Q. For purposes of this deposition, should I  
3 just use -- why don't I just use "single-track  
4 calendar," and that will encompass, like you said,  
5 the traditional calendar as well.

6 Is that acceptable to you?

7 A. Certainly. As regards the expert report,  
8 that's the bulk of the characterization of  
9 difference.

10 Q. Okay.

11 A. That digression has caused me to lose the  
12 question; so can we go back to the question so I can  
13 try the answer again?

14 Q. In your opinion, does curriculum tracking  
15 occur in single-track calendar schools?

16 MR. VILLAGRA: Objection; vague and  
17 ambiguous.

18 THE WITNESS: My understanding of the  
19 research literature on this question is that  
20 curriculum tracking has been and continues to be  
21 observed in single-track calendar schools.

22 BY MS. DAVIS:

23 Q. You state in your report that:

24 "It is now clear that anyone wishing to  
25 determine whether or not they have

1 access to a school with adequate  
2 social and educational resources need  
3 only ask on which calendar it  
4 operates."

5 What do you mean by "social resources"?

6 MR. VILLAGRA: Objection; compound  
7 question.

8 THE WITNESS: In the statement you just  
9 provided, you're asking, when I use the term  
10 "social" to describe resources, what do I mean?

11 BY MS. DAVIS:

12 Q. Yes.

13 A. Okay. Social resources are those things  
14 that -- "thing" is a loose word. I think I'm going  
15 to work it definition through example.

16 One kind of social resource is a social  
17 network, meaning those people with whom you have  
18 contacts and can utilize those contacts for  
19 information, assistance. Another kind of social  
20 resource is interaction style that -- knowing how to  
21 respond to different situations with a different  
22 presentation of self, a different style of  
23 conversation.

24 These are social resources.

25 Q. Anything else?

1 A. I would not limit myself to those two  
2 examples. What I'm trying to do is parse some  
3 things that aren't necessarily readily separable.  
4 For example, not everybody would necessarily agree  
5 about to what degree a social resource is different  
6 from an educational resource if within your social  
7 network you have access to people who can provide  
8 tutoring or closer to home, within your family,  
9 whether or not your parents can assist you with  
10 homework or other social interactions that are  
11 directly facilitative for meeting the demands of  
12 schooling.

13 Whereas, such a thing as a qualified school  
14 teacher is easily understood to be an educational  
15 resource that might happen to be part of the social  
16 resource network in the neighborhood but is easily  
17 analytically distinguished.

18 Q. Are these social resources found outside of  
19 the school?

20 A. Not necessarily.

21 Q. Where are they found?

22 A. For example, within the school, your peers  
23 are part of your social network. They may not be  
24 the only people in your social network as a student,  
25 but your peers are generally part of your social

1 network. And they are there at school, are a  
2 resource to you socially. In some cases it is  
3 schooling that creates that part of your social  
4 network because you otherwise would never have  
5 encountered those individuals. And so you have  
6 social resources within the school as well as  
7 outside of the school.

8 Q. Are the social resources within the school  
9 outside of the realm of school administration?

10 MR. VILLAGRA: Objection; vague and  
11 ambiguous.

12 THE WITNESS: If by "school administration"  
13 you mean particular policies or practices that can  
14 be attributed to decisions made by educational  
15 professionals such as principals or teachers or  
16 superintendents, it is possible for the  
17 administration of school through those agents to  
18 influence the nature of a student's social  
19 resources.

20 BY MS. DAVIS:

21 Q. Are you saying that school resources -- I  
22 mean, social resources can or should be provided by  
23 a school?

24 MR. VILLAGRA: Objection.

25 THE WITNESS: No.

1 MR. VILLAGRA: Mischaracterizes his  
2 testimony.

3 THE WITNESS: I'm not saying that the  
4 statement you offered is an accurate  
5 characterization of what I said prior to.

6 BY MS. DAVIS:

7 Q. Well, what's your -- okay.

8 Are school resources -- I keep saying  
9 "school."

10 I mean, are social resources -- should they  
11 be provided by a school? Is that your opinion?

12 MR. VILLAGRA: Objection; asked and  
13 answered, mischaracterizes testimony.

14 THE WITNESS: There's an assumption about  
15 the division which needs to be examined in order to  
16 answer that question or to offer an opinion. The  
17 assumption is that somehow a social resource is  
18 explicitly and readily manageable as a discrete  
19 entity in the way that, say, a school desk is an  
20 entity. That kind of explicit particular fairly  
21 straightforward connection between that being  
22 intended to be provided and that thing provided is  
23 not nearly so direct in the matter of social  
24 resources, because social resources depend on the  
25 interactions between persons.

1 And those interactions between persons can  
2 be facilitated or impeded, but in the absence of  
3 radical total separation like imprisonment cannot be  
4 absolutely controlled in the same way that we think  
5 of as in being able to control a school desk.

6 MR. HAJELA: Can we take 10 minutes when  
7 you're done with this line?

8 MS. DAVIS: Why don't we break now.

9 (Recess taken.)

10 BY MS. DAVIS:

11 Q. Coming back from break, just to refresh  
12 your memory, we were talking about your statement in  
13 the expert report about adequate social and  
14 educational resources.

15 What did you mean by "educational  
16 resources"?

17 A. By "educational resources," I'm trying to  
18 capture those things -- the word "things" again.

19 There are purposes to which the  
20 establishment and conduct of schooling is targeted.  
21 For example, minimum levels of standardized academic  
22 achievement might be one of those purposes. An  
23 understanding of democratic constitutional  
24 government as practiced in this country might be one  
25 of those purposes. An understanding of a



1 money-based market economy might be one of those  
2 purposes. The habit of punctuality might be one of  
3 those purposes -- show up to school on time every  
4 day.

5 So those are examples of what I mean when I  
6 say there are purposes toward which schools were  
7 established.

8 Educational resources are those things  
9 which are readily identifiable with direct  
10 facilitation of accomplishing those purposes, such  
11 as having a teacher in the classroom, who if the  
12 purpose is to discuss our constitutional democracy  
13 understands that subject and can discuss it. If the  
14 purpose is daily attendance -- that's punctual -- to  
15 have the appropriate administrative or  
16 enforcement-type agents such as vice principals or  
17 truant officers that can ensure that that purpose is  
18 facilitated.

19 In addition to people, there are things  
20 like curricular materials. If you're going to talk  
21 about the Constitution, you ought to have a copy of  
22 it. That's an educational resource. Time dedicated  
23 to the purpose is a resource. There are other  
24 resources. Those are examples and not necessarily  
25 the best or the worst. They're just the ones that I

1 Q. Your statement in the report indicated, at  
2 least to me, that if I tell you what school calendar  
3 I'm on, then that necessarily tells you if I have  
4 access to social and educational resources.

5 Am I misunderstanding the statement?

6 A. In the case of the Concept 6 calendar, the  
7 kinds of social and educational resources likely to  
8 be experienced are circumscribed. I think that's  
9 the word I intend. In the case of other multitrack  
10 year-round calendars, experiences remain likely to  
11 be different from traditional or other single-track  
12 calendar schools.

13 Q. Are you claiming that students in all  
14 Concept 6 schools do not have adequate social and  
15 educational resources?

16 MR. VILLAGRA: Objection; misstates the  
17 testimony, vague and ambiguous, compound.

18 THE WITNESS: Which part of the question  
19 was all -- was it all Concept 6 schools?

20 BY MS. DAVIS:

21 Q. Uh-huh.

22 Are you claiming that students in all  
23 Concept 6 schools do not have adequate access to  
24 social and educational resources?

25 A. That's not the language of my report.

1 could offer quickly and presently.

2 So if you are trying to -- no, that gets me  
3 in another sentence I can't complete. Let me try it  
4 over.

5 Actually, I'm starting to lose it here; so  
6 maybe I just need to stop and let you ask another  
7 question. I'm drifting a little on this point.

8 Q. Because we took a break, I'm just going to  
9 read the statement from your report again so we can  
10 all remember it.

11 "It is now clear that anyone wishing to  
12 determine whether or not they have  
13 access to a school with adequate  
14 social and educational resources need  
15 only ask on which calendar it  
16 operates."

17 What did you mean by this statement?

18 A. In the probabilistic sense that one is  
19 seeking indicators for matching a goal or purpose to  
20 a particular decision that must be made, such as  
21 where to buy a home in order to have access to a  
22 particular school, the calendar on which the school  
23 operates is strongly associated with important  
24 indicators of experiences that are likely to be  
25 available if the child were to attend that school.

1 Q. You still need to answer the question.

2 A. I'm not done. I'm just --

3 Q. Fair enough.

4 A. Because of the variability among the  
5 students themselves, depending on the particular  
6 purpose in question, it would not be reasonable to  
7 say that all Concept 6 schools -- now I'm not  
8 exactly sure how to say the rest of it -- are a  
9 place where some students would be necessarily  
10 deprived of adequate social and educational  
11 resources.

12 Q. I'm not sure if I understand your answer  
13 fully.

14 Can you give me a "yes" or "no" answer to  
15 the question?

16 Can you just repeat the question back?  
17 (Record read as follows:

18 "QUESTION: Are you claiming that  
19 students in all Concept 6 schools do  
20 not have adequate access to social and  
21 educational resources?")

22 MR. VILLAGRA: Objection; asked and  
23 answered.

24 THE WITNESS: In part because schools  
25 themselves do not control all social resources, some

1 students will have adequate social resources  
 2 relatively independent of the school. Individual  
 3 variability makes tight precision difficult.  
 4 BY MS. DAVIS:  
 5 Q. Are you claiming that students in all  
 6 Concept 6 schools do not have adequate access to  
 7 educational resources?  
 8 A. I think I'm starting to lose my ability to  
 9 attend because I'm finding myself wanting to know  
 10 where the "all" was again. I'm trying to attend,  
 11 but I'm worried I'm just losing my ability to attend  
 12 to what you're asking fully.  
 13 Q. Are you having trouble testifying? I  
 14 mean --  
 15 A. I'm worried that may be becoming the case.  
 16 MS. READ-SPANGLER: Do we need to stop?  
 17 BY MS. DAVIS:  
 18 Q. Do we need to stop?  
 19 A. Based on the last handful of questions,  
 20 maybe that's true.  
 21 MR. HAJELA: It's okay.  
 22 MS. READ-SPANGLER: You can say "yes."  
 23 Okay?  
 24 THE WITNESS: I'm not sure if this is just  
 25 sort of a brief lull and I'll get it back in a

1 little while.  
 2 BY MS. DAVIS:  
 3 Q. We don't even want a brief lull. Let's put  
 4 it that way.  
 5 A. I've never done this before. I've never  
 6 tried to engage in something like this before.  
 7 MR. VILLAGRA: I think it's pretty fair to  
 8 assume that you will not get a second wind.  
 9 MS. READ-SPANGLER: Let me ask this: If  
 10 you have a headache -- if you don't have a  
 11 headache --  
 12 THE WITNESS: I feel light-headed.  
 13 MS. READ-SPANGLER: I guess that's close  
 14 enough. But really you should have a bad headache.  
 15 I'm teasing you today.  
 16 BY MS. DAVIS:  
 17 Q. She's just teasing you. She's saying that  
 18 essentially all depositions lead to a headache.  
 19 MS. READ-SPANGLER: Pretty much for  
 20 everyone in the entire room.  
 21 MS. DAVIS: 9:00 a.m. tomorrow.  
 22 MR. VILLAGRA: Thanks.  
 23 (Whereupon, the deposition adjourned  
 24 at 4:36 p.m.)  
 25 -o0o-

DECLARATION

1  
 2  
 3  
 4 I hereby declare I am the deponent in the  
 5 within matter; that I have read the foregoing  
 6 deposition and know the contents thereof, and I  
 7 declare that the same is true of my knowledge except  
 8 as to the matters which are therein stated upon my  
 9 information or belief, and as to those matters, I  
 10 believe it to be true.  
 11 I declare under the penalties of perjury of  
 12 the State of California that the foregoing is true  
 13 and correct.  
 14 Executed on the day of 2003,  
 15 at  
 16 , California.  
 17  
 18  
 19  
 20 \_\_\_\_\_  
 21 ROSS E. MITCHELL, Ph.D.  
 22  
 23  
 24  
 25

1 I, DENISE A. ROSS, a Certified Shorthand  
 2 Reporter for the State of California, do hereby  
 3 certify:  
 4 That prior to being examined, the witness  
 5 named in the foregoing deposition was by me duly  
 6 sworn to testify as to the truth, the whole truth,  
 7 and nothing but the truth pursuant to Section  
 8 No. 2093 of the Code of Civil Procedure;  
 9 That said deposition was taken before me at  
 10 the time and place therein set forth and was taken  
 11 down by me in shorthand and thereafter reduced to  
 12 typewriting via computer-aided transcription under  
 13 my direction;.  
 14 I further certify that I am neither counsel  
 15 for, nor related to, any party to said action, nor  
 16 in anywise interested in the outcome thereof.  
 17 IN WITNESS WHEREOF, I have hereunto  
 18 subscribed my name this day of  
 19 2003.  
 20  
 21  
 22 \_\_\_\_\_  
 23 Denise A. Ross  
 24 CSR No. 10687  
 25