

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

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ELIEZER WILLIAMS, et al.,	)Case No.
	)312 236
Plaintiffs,	)Volume II
	)(Pages 134-282)
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.  
WEDNESDAY, JANUARY 8, 2003  
9:06 A.M.

REPORTED BY:

DENISE A. ROSS  
CSR NO. 10687

1 Deposition of ROSS E. MITCHELL, Ph.D.,  
2 Volume II, taken on behalf of the Defendants, at  
3 400 South Hope Street, 16th Floor, Los Angeles,  
4 California, on WEDNESDAY, JANUARY 8, 2003, at  
5 9:06 A.M., before DENISE A. ROSS, CSR No. 10687.

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1 LOS ANGELES, CALIFORNIA  
2 WEDNESDAY, JANUARY 8, 2003; 9:06 A.M.

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

7  
8 EXAMINATION

9 BY MS. DAVIS:

10 Q. Dr. Mitchell, in your opinion, do students  
11 in all Concept 6 schools have inadequate access to  
12 educational resources?

13 MR. VILLAGRA: I'm sorry. Was that  
14 "adequate" or "inadequate"?

15 MS. DAVIS: "Inadequate."

16 THE WITNESS: Wait. Now I'm confused  
17 because I don't think what I thought I heard is what  
18 you said.

19 Can you read the question again?

20 BY MS. DAVIS:

21 Q. In your opinion, do all students in  
22 Concept 6 schools have inadequate access to  
23 educational resources?

24 A. There are several pieces to the question.  
25 I need to break it down to respond to it.

1 Concept 6 calendar school will not have adequate  
2 resources.

3 Q. That doesn't really answer my question.  
4 What I want to know is -- let's try to come about  
5 this a different way. Maybe I can get an answer.

6 Do all Concept 6 schools offer inadequate  
7 access to educational resources?

8 And you mentioned something in your last  
9 answer, linking the calendar type to the resource.

10 And I want to know if you think there's a link  
11 between the calendar of Concept 6 and inadequate  
12 access to educational resources.

13 A. There is a relationship between calendar  
14 structure and resource adequacy.

15 Q. Now, do all Concept 6 calendar schools  
16 offer inadequate access to educational resources?

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

19 MS. READ-SPANGLER: No. He keeps referring  
20 to "resources." She's asking about "educational  
21 resources."

22 MR. VILLAGRA: Objection; asked and  
23 answered, misstates testimony.

24 THE WITNESS: If we could hear the question  
25 again, so I can make sure that I'm hearing it right

1 Students in Concept 6 schools -- your  
2 question refers to all schools identified as  
3 Concept 6. The question does not separate the --  
4 does not make in a positive or negative sense a  
5 distinction by "students," some students, all  
6 students, particular students. That part is  
7 important for how I respond.

8 And the following piece is "inadequate  
9 resources." The connection that I cannot make  
10 explicitly is whether that's to be understood as  
11 inadequate resources will be the situation for all  
12 students, because the kind of resource is important  
13 and because -- that is, for example, social  
14 resources -- not all of them are readily and  
15 specifically constrained by the school; so it is  
16 imaginable that students could have adequate social  
17 resources -- maybe not optimal, but adequate social  
18 resources independent of the calendar.

19 Since we're looking at all Concept 6  
20 schools, the calendar structure is the piece  
21 identified for linkage to resources. The calendar  
22 structure for Concept 6 is a multitrack structure.  
23 The Concept 6 calendar schools in California do not  
24 make equivalent provision of resources across  
25 tracks; so there is a risk that a student in a

1 since other people are saying that it's not being  
2 heard correctly. If I can hear the question again,  
3 please.

4 MS. DAVIS: Can you just read back my last  
5 question, please?

6 (Record read as follows:

7 "QUESTION: Now, do all Concept 6  
8 calendar schools offer inadequate  
9 access to educational resources?")

10 MR. VILLAGRA: Same objections.

11 THE WITNESS: Here I need to make a  
12 distinction between the nature of the question  
13 you're asking and the nature of the empirical study  
14 I performed for my expert report.

15 The way I understand your question, I would  
16 be required to do a site-by-site investigation on a  
17 set of resource criteria and assess each site and  
18 then be able to declare that all, some or none of  
19 the sites have adequate educational resources.

20 The investigation I performed was a  
21 statistical investigation, which discusses the  
22 matter of the pattern across sites and the  
23 probability that any given site might or might not  
24 have adequate resources. And that's a different  
25 kind of question posed and a different kind of data

1 gathering activity, which means that the work I did  
2 does not directly address, as I specified, what I  
3 understand your question to be.

4 BY MS. DAVIS:

5 Q. Are you saying that there is a probability  
6 that all Concept 6 schools do not offer adequate  
7 access to educational resources?

8 A. Yes.

9 Q. But you are not saying that all Concept 6  
10 schools necessarily offer inadequate access to  
11 educational resources; correct?

12 A. There's just enough in that, I'd like to  
13 hear it again to make sure that I can give the most  
14 succinct response.

15 (Record read as follows:

16 "QUESTION: But you are not saying  
17 that all Concept 6 schools necessarily  
18 offer inadequate access to educational  
19 resources; correct?")

20 THE WITNESS: Based upon my empirical  
21 investigation, I cannot state unequivocally that in  
22 all cases, Concept 6 schools can be shown to offer  
23 inadequate educational resources, I believe was the  
24 phrase that you used.

25 ////

1 assessments. So that to say all schools are of a  
2 particular kind is not a possible conclusion from a  
3 statistical analysis unless there is no variability.  
4 In the presence of variability, the conclusion has  
5 to be probabilistic, which means that there is  
6 underlying variability from case to case in the  
7 California data that all cases are not perfectly  
8 equivalent.

9 Q. I appreciate that on the statistical  
10 analysis. I just want to make sure that I get an  
11 answer to the question that I asked.

12 And the question was: In your opinion, do  
13 all non-Concept 6 multitrack schools -- and, again,  
14 I'm using that term as defined in your expert  
15 report -- offer inadequate access to educational  
16 resources?

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

19 THE WITNESS: I believe I've recently said  
20 that given the understanding of the nature of my  
21 investigation, the answer is --

22 Now I've got the order of positive and  
23 negative lost here. One more time.

24 BY MS. DAVIS:

25 Q. In your opinion, do all non-Concept 6

1 BY MS. DAVIS:

2 Q. In your opinion, do all not-Concept-6  
3 multitrack schools -- and I'm using that as defined  
4 in your expert report -- offer inadequate access to  
5 educational resources?

6 A. The -- given the same kind of discussion I  
7 just offered about the nature of the investigation,  
8 I would have to offer the same conclusion.

9 Q. Why don't you tell me what that conclusion  
10 is.

11 A. Well, because I want to respond to your  
12 question, but I believe that in essence I have  
13 responded to it already relative to Concept 6, I  
14 need to back up a little bit and recover what I've  
15 said here.

16 The investigations that I have undertaken,  
17 particularly the statistical analysis presented in  
18 the expert report, are dependent upon assumptions of  
19 the validity of statistical analysis, which is that  
20 you are trying to develop confidence about whether  
21 or not differences exist and, if possible, trying to  
22 develop estimates of how likely differences would be  
23 encountered.

24 And that's not the same thing as saying  
25 that you have perfect individual-by-individual case

1 multitrack schools offer inadequate access to  
2 educational resources?

3 A. So all linked to not adequate in your  
4 question?

5 Q. Correct.

6 A. And my answer relative to Concept 6 is the  
7 same for those that are not Concept 6, that based on  
8 the nature of my analysis, I cannot unequivocally  
9 state -- because of underlying variability, I cannot  
10 say that all is perfectly linked to not.

11 Q. Is that a "no"?

12 MR. VILLAGRA: Objection; asked and  
13 answered.

14 THE WITNESS: Given the prior  
15 understanding, an answer of "no" I believe is now  
16 acceptable.

17 BY MS. DAVIS:

18 Q. So is the answer "no"?

19 MR. VILLAGRA: Objection; asked and  
20 answered.

21 THE WITNESS: Given what I have said, yes,  
22 the answer is "no."

23 BY MS. DAVIS:

24 Q. Do you know how many school districts in  
25 California operate Concept 6 schools?

1 A. That was faster than I was listening.  
 2 Again, please.  
 3 Q. Do you know how many school districts in  
 4 California operate Concept 6 schools?  
 5 MR. VILLAGRA: And when you refer to  
 6 "Concept 6 schools," are you using the term as he  
 7 has used it in his report?  
 8 MS. DAVIS: Yes.  
 9 THE WITNESS: I know that I gave a precise  
 10 number in the report. What that number was, I no  
 11 longer remember.  
 12 BY MS. DAVIS:  
 13 Q. You don't recall sitting here today how  
 14 many school districts operate Concept 6 schools; is  
 15 that correct?  
 16 MR. VILLAGRA: Objection; asked and  
 17 answered.  
 18 THE WITNESS: How many what?  
 19 BY MS. DAVIS:  
 20 Q. School districts in California.  
 21 A. School districts?  
 22 Q. Yes, school districts.  
 23 A. Not how many schools, but school districts?  
 24 Q. Yes.  
 25 A. Precisely I'm not sure, but the number is

1 small enough that if I were to say "four," I  
 2 wouldn't be wrong by much.  
 3 Q. Do you recall the names of any of the  
 4 school districts operating Concept 6 schools in  
 5 California?  
 6 A. Yes.  
 7 Q. Can you give me the names?  
 8 A. I can remember some of the names. I'm not  
 9 sure I can remember all of them. I remember  
 10 Los Angeles Unified School District. I don't  
 11 remember what kind of school district Palmdale is,  
 12 but Palmdale schools; Lodi, something with Vista in  
 13 it, I think -- and that's four. And if there's a  
 14 fifth, I don't remember what it is.  
 15 Q. In preparing your reports, in looking at  
 16 Concept 6 schools, did you review the performance of  
 17 Concept 6 schools by district?  
 18 MR. VILLAGRA: Objection; vague as to  
 19 "performance."  
 20 THE WITNESS: Did I do it by district? I  
 21 believe what I did by district for the Concept 6  
 22 schools was to take a look at their characteristics  
 23 that I utilized in my analyses. And the  
 24 characteristics that I utilized in my analyses are  
 25 in the report, things like race, ethnicity, free and

1 reduced price lunch enrollment, English language  
 2 learner population, proportion of teachers fully  
 3 certified or on emergency credential, API scores.  
 4 Are there other characteristics in my  
 5 report? There might be that I'm not remembering,  
 6 but I'm certain those were included.  
 7 MS. READ-SPANGLER: Move to strike as  
 8 nonresponsive.  
 9 BY MS. DAVIS:  
 10 Q. The question was: Did you review the  
 11 performance of Concept 6 schools by district?  
 12 MR. VILLAGRA: Objection; vague and  
 13 ambiguous.  
 14 THE WITNESS: If what I just said is not  
 15 helpful, then I need some help. I need to know what  
 16 you mean by "performance."  
 17 BY MS. DAVIS:  
 18 Q. API scores.  
 19 A. Okay. I just said that.  
 20 Q. But did you look at Concept 6 schools in a  
 21 lump of all Concept 6 schools in California, or did  
 22 you analyze how Concept 6 schools perform by  
 23 district?  
 24 MR. VILLAGRA: Just for the record, I think  
 25 that's a very different question from what was asked

1 previously.  
 2 MS. DAVIS: I disagree.  
 3 THE WITNESS: I think I began by saying, I  
 4 was trying to recollect what it was that I examined  
 5 by district and that included API score in that list  
 6 of characteristics I examined.  
 7 BY MS. DAVIS:  
 8 Q. Do you know what the performance of  
 9 Concept 6 schools in the Lodi School District is?  
 10 A. Do I know what that level is?  
 11 Q. Yes.  
 12 A. In terms of specifying an average or a  
 13 range, no, I can't do that for you right now. I  
 14 would have to refer to my data.  
 15 Q. Did you look into that when preparing your  
 16 report?  
 17 A. Yes, I took a look at what was happening in  
 18 terms of what kind of API scores there were in  
 19 various districts.  
 20 MR. HAJELA: Lynne, can we do an attorney  
 21 side bar here?  
 22 Can we take a break for a second?  
 23 MS. DAVIS: Yes.  
 24 (Recess taken.)  
 25 ////

1 BY MS. DAVIS:

2 Q. Dr. Mitchell, when is the last time you  
3 reviewed your expert report prepared in this case?

4 A. I read through it on the flight here, which  
5 was Saturday, and reviewed a few sections on Sunday  
6 as well.

7 Q. Now, Concept 6 schools have instructional  
8 minutes equal to the typical 180-day schools; is  
9 that correct?

10 A. If they're operating as specified by law,  
11 they should have the same number of minutes, yes.

12 Q. To your knowledge, are there any studies  
13 that find that the multitrack year-round calendar is  
14 a negative for student achievement?

15 MR. VILLAGRA: Objection to the term  
16 "multitrack year-round calendar." It's vague.

17 THE WITNESS: The question that you raise  
18 brings to my mind -- though I'm not sure if it's  
19 exactly the right response, brings to my mind the  
20 reports produced by the Technical Design Group; so I  
21 think that's an appropriate answer to your question.

22 BY MS. DAVIS:

23 Q. You said that the report by the Technical  
24 Design Group brings to mind my question. I'm  
25 wondering --

1 multitrack year-round calendar track-to-track  
2 differences. What else? What else? My 1999 paper  
3 addresses this question.

4 Q. That's the paper authored with Douglas  
5 Mitchell?

6 A. Right.

7 Oh, what else? There's a technical report  
8 that was prepared by, I believe, White and Cantrell  
9 in the Los Angeles Unified School District that  
10 examines this question.

11 Q. Do you know what year -- a year on that  
12 technical report?

13 A. I'm not as sure the exact year. I know I  
14 cite it in my expert report.

15 Q. So it's the report that you cited to?

16 A. Correct. Let's see if there are others  
17 that I can name for you right now. There aren't  
18 others I can name for you right now, but there are  
19 others.

20 Q. What is the Technical Design Group?

21 A. By "What is the Technical Design Group?" do  
22 you mean what is that a shorthand for?

23 Q. Yes.

24 A. That's a shorthand for a group of roughly  
25 half a dozen persons, which includes Eva Baker and

1 A. I'm not exactly sure if I understand the  
2 question well enough to know if there are other  
3 studies that I should name than that one because the  
4 language you used brings my mind to language similar  
5 to my own expert report, and that language in my  
6 expert report I remember using when making specific  
7 reference to those studies. That's not an  
8 exhaustive list of studies that have been produced  
9 identifying negative association between the  
10 multitrack year-round calendar and student  
11 achievement.

12 Q. What are the other studies?

13 A. Let's see if I can be specific for you.

14 One study, the authors are Quinlan, Emmett and  
15 George -- I think that's the right list of authors.  
16 That may be around 1987. That was an evaluation of  
17 achievement by schools in California, which included  
18 separating out calendar types. Let's see. Burns's  
19 technical report is an analysis that includes --

20 Now, wait a second. I've got to stop  
21 there. I would need to refer to things I've written  
22 to be certain about how to characterize this report.  
23 I believe that it includes the distinction between  
24 traditional and multitrack calendar school  
25 achievement differences. I know it includes within

1 Brian Stecher -- who else? I'm not sure who else --  
2 that work together to develop the statistical  
3 methods used for school characteristic index  
4 calculation, API score calculation, similar school  
5 ranks. I'm not sure what other activities right  
6 now, and that this was a group put together in  
7 response to the PSAA, which I believe stands for  
8 Public Schools Accountability Act of -- when was  
9 it -- 1999, I think. That's my understanding of  
10 what the Technical Design Group is a shorthand for.

11 Q. Did this study by the Technical Design  
12 Group find that the multitrack calendar caused  
13 negative student achievement?

14 MR. VILLAGRA: Objection; misstates  
15 testimony.

16 MS. DAVIS: I'm asking a question.

17 MR. VILLAGRA: It misstates the testimony.  
18 He hasn't referred to a study. I think he's  
19 referred to plural.

20 BY MS. DAVIS:

21 Q. To the Technical Design Group -- are you  
22 referring to a study that's not cited in your  
23 report, or are you referring to the study that's  
24 cited in your report for the Technical Design Group?  
25 How many studies relate to the --

1 A. Okay. There are a number of documents that  
2 the Technical Design Group has authored that are  
3 posted on the California Department of Education  
4 website. I believe I cite two of them in my expert  
5 report.

6 Q. Which report are you talking about in  
7 response to my question, asking for studies  
8 regarding the achievement of students in multitrack  
9 calendars?

10 MR. VILLAGRA: Objection; misstates  
11 testimony.

12 THE WITNESS: Let me see if I get your  
13 question. You wish to know from me which report  
14 authored by the Technical Design Group provides the  
15 finding that there is a negative association between  
16 the multitrack year-round calendar and student  
17 achievement in California schools?

18 Q. Yes.

19 A. I don't know off the top of my head the  
20 title or number of that document. I know that I  
21 cite it in my expert report. And I know that I cite  
22 more than one document, but my recollection at this  
23 time is not clear as to whether or not both of them  
24 provide estimates of that association between the  
25 multitrack year-round calendar and achievement or

1 MR. VILLAGRA: Objection; vague and  
2 ambiguous as to "cause."

3 THE WITNESS: My recollection is that that  
4 report was similar to the Technical Design Group  
5 report in that the effort was to determine whether  
6 or not there was any association between the  
7 calendar and student achievement.

8 There's some language in your question that  
9 I did not offer in that response; so if you'll give  
10 me the question again, I'll try to be direct to your  
11 language, because I know that I didn't use all of  
12 your language.

13 MS. DAVIS: Why don't you read back the  
14 question.

15 (Record read as follows:

16 "QUESTION: Did this study find that  
17 the multitrack calendar caused  
18 negative student achievement?")

19 THE WITNESS: There's another piece to your  
20 question which I need to address, so that I can be  
21 clear about what I'm trying to say. We may have to  
22 go one more cycle here in order to get there. And  
23 that is your statement about causes negative  
24 achievement is -- implies a different finding than  
25 having a negative association or a negative impact.

1 only one of them, so that I'd like to be more  
2 precise. But without having the documents to refer  
3 to, it would be careless of me to try to tell you  
4 right now.

5 Q. Do any of the reports that you read by the  
6 Technical Design Group find that the multitrack  
7 calendar causes negative student achievement?

8 MR. VILLAGRA: Objection; vague and  
9 ambiguous as to "causes."

10 THE WITNESS: My understanding of the  
11 analysis provided by the Technical Design Group is  
12 to identify association, not causation.

13 BY MS. DAVIS:

14 Q. You also mentioned a report by -- and  
15 correct me if I'm wrong here. Is it Quinlan Emmett  
16 group?

17 A. I don't remember the order, and I'm not  
18 exactly sure if I remember the names right for the  
19 second and third author. Quinlan I know is the  
20 first author. Yes, I mentioned that.

21 Q. Did you rely on this report in preparing  
22 your expert report?

23 A. I cited it, yes.

24 Q. Did this study find that the multitrack  
25 calendar caused negative student achievement?

1 To say "causes negative achievement," to me  
2 implies that someone's absolute level of achievement  
3 is expected to go down rather than to increase less,  
4 that in a statistical analysis, where you compare  
5 achievement outcomes -- when two groups are  
6 different and you are comparing to the reference  
7 group, your group of comparative interests, for  
8 example, in this case, the reference group is the  
9 traditional on the single-track calendar and the --  
10 well, wait. I've got to back up a second.

11 The Quinlan report singles out single track  
12 from multitrack; so the reference is the traditional  
13 calendar.

14 So if you are to look at the impact or more  
15 precisely the regression coefficient for the  
16 identification of a multitrack year-round -- if that  
17 number is negative, it's often referred to as a  
18 negative achievement impact. That doesn't mean that  
19 there's negative achievement. It means that  
20 comparatively speaking, they're not achieving as  
21 highly, so it's a careful issue of inference  
22 associated with the statement.

23 And I just want to make that clear about  
24 what it is one extracts from such analyses and  
25 reports so that we're on the same page about

1 language.

2 So now the next cycle. I remember the  
3 question. You don't have to read it again.

4 Substituting the language distinction that  
5 I offered here that you can't say "causes negative  
6 achievement," but if you ask -- how would you say it  
7 more precisely? The way it's phrased right now, I  
8 think it would need a lot of editing to get the  
9 language in a way that makes me comfortable. But  
10 the implication of the question is not missed. I  
11 understand the implication of your question.

12 For me, the implication of the question is,  
13 is this a study of causation. And the answer to  
14 that is no, it's not a study of causation.

15 BY MS. DAVIS:

16 Q. And you mean the Quinlan study that you  
17 cited in your report? Is that what you were just  
18 referring to?

19 A. Correct, I was trying to finish the answer  
20 on the Quinlan report question.

21 Q. You also mentioned the Burns technical  
22 report.

23 Is that also cited in your report?

24 A. Yes.

25 Q. Did the Burns technical report find that

1 A. That paper did not pursue that question  
2 explicitly. It provided a descriptive analysis of  
3 differences at the time. The developmental question  
4 of things happening over time was examined at the  
5 between tracks within multitrack year-round calendar  
6 schools. So it's like my understanding of Burns's  
7 report, the question is a different kind of question  
8 that's the focus of the Mitchell and Mitchell paper  
9 of 1999. It does not pursue the question of  
10 causation as a between-school analysis.

11 Q. You also mentioned a technical report by  
12 White and Cantrell, which in your report is cited,  
13 and it's a 2001 report.

14 A. Uh-huh.

15 Q. Did this report find that the multitrack  
16 calendar caused less improvement in student  
17 achievement than the single-track schools?

18 MR. VILLAGRA: Objection; vague and  
19 ambiguous as to "cause" and "less improvement."

20 THE WITNESS: I'm sorry. But at this time,  
21 my recollection of that report is not as clear as it  
22 needs to be to answer your question with confidence.

23 BY MS. DAVIS:

24 Q. In your report, you discuss the inclusion  
25 of a binary or dichotomous indicator for whether or

1 the multitrack calendar caused negative student  
2 achievement?

3 MR. VILLAGRA: Objection; vague and  
4 ambiguous as to "cause" and "negative achievement."

5 THE WITNESS: My strong recollections in  
6 relation to the Burns report is in relation to my  
7 work on studying differences within multitrack  
8 year-round calendar schools. I don't have the kind  
9 of recollection that gives me confidence at this  
10 time to talk about whether an effort was made to  
11 have claims about causation for that report because  
12 my emphasis in the study of that report and its  
13 value to me in understanding what's known about  
14 multitrack year-round calendar schooling is its  
15 analysis of the separation of characteristics,  
16 including achievement across tracks within the  
17 schools, not the between-school comparison question  
18 that you're raising.

19 BY MS. DAVIS:

20 Q. You also mentioned your 1999 paper that you  
21 authored with Douglas Mitchell.

22 Did this paper find that multitrack  
23 calendar resulted -- let me step back, not  
24 "resulted" -- caused less improvement in student  
25 achievement than single-track schools?

1 not a school is on a multitrack year-round calendar  
2 in the School Characteristics Index.

3 What is a binary indicator?

4 A. It means that it is either true or it is  
5 not.

6 Q. What is a dichotomous indicator?

7 A. That's one of those multisyllabic words  
8 that people use to say the same thing.

9 Q. Do you know why this indicator is included  
10 in the School Characteristics Index?

11 A. What I know I can say right now is that  
12 when I was studying the description of the  
13 responsibility of the Technical Design Group to  
14 produce its model included the requirement to  
15 acknowledge the school's calendar as either being  
16 multitrack or not.

17 Q. Now, the question is: Do you know why the  
18 indicator is included in the School Characteristics  
19 Index?

20 A. I have no personal knowledge of the  
21 historical development of the charge given to the  
22 Technical Design Group, and so I'm having some  
23 difficulty understanding exactly what you mean by  
24 "to know" in order to respond with the kind of "yes"  
25 or "no" that often is preferred when you phrase a



1 question this way.

2 Q. Do you know -- I'm just wondering, the  
3 indicator is in there.

4 Do you know why it was put into the School  
5 Characteristics Index?

6 MR. VILLAGRA: Well, apart from what he  
7 said already, that the technical group is required  
8 to put it in there --

9 MS. READ-SPANGLER: That's not a reason.  
10 Has anyone told him? Has he read anyplace?

11 MR. REED: Why don't you try, "Do you have  
12 any understanding with respect to why?"

13 MS. READ-SPANGLER: Yes.

14 MS. READ-SPANGLER: If you don't know, you  
15 don't know, and that's a fine answer. It's always  
16 okay to say you don't know.

17 MR. VILLAGRA: Well, apart from his answer  
18 that he has no knowledge of the charge given to the  
19 technical group, I think that's the difficulty that  
20 he's having for his understanding of what he's being  
21 asked for.

22 MS. READ-SPANGLER: Maybe he can't provide  
23 any more knowledge beyond that, and that's fine. I  
24 think we're just trying to clarify that.

25 THE WITNESS: For me -- and this is why I

1 might be included in the School Characteristics  
2 Index?

3 A. I don't believe I explicitly sought out  
4 that information.

5 Q. In your report, you claim that the  
6 inclusion of the multitrack year-round calendar  
7 indicator in the student characteristics index  
8 infers that schools on traditional calendars are not  
9 otherwise comparable with schools on multitrack  
10 year-round calendars without some compensation for  
11 their differences.

12 Do you recall this statement from your  
13 report?

14 A. Yes.

15 Q. If I told you that the inclusion of the  
16 indicator was there simply as a tool for the  
17 Department of Education to keep track of the number  
18 of multitrack year-round schools that operate in  
19 California, would this change your statement that  
20 the multitrack year-round schools and traditional  
21 calendar schools are not comparable without some  
22 kind of compensation for their difference?

23 MR. VILLAGRA: Objection; vague and  
24 ambiguous and misleading.

25 THE WITNESS: My response to a statement

1 want to know what you mean by "knowledge." Is it  
2 the degree to which I am supposed to be an insider  
3 on the discussion that produced the charge given to  
4 the Technical Design Group? The answer to that is  
5 no, I'm not an insider. I was not invited to that  
6 conversation.

7 BY MS. DAVIS:

8 Q. Have you heard anything as to why this  
9 indicator is included in the School Characteristics  
10 Index?

11 A. I have been around some discussions about  
12 the development of the charge for the Technical  
13 Design Group. I don't remember anymore whether or  
14 not school calendar was included in those  
15 discussions. I was around very few, and these were  
16 brief and not intentional.

17 So I sort of don't know if I don't know in  
18 the sense that I can't say with certainty that I  
19 actually know something in that way. I don't know  
20 that I can say that I know something in that way  
21 because I don't remember whether or not the calendar  
22 came up in these very few instances where I might  
23 know if it had come up. This was a while ago.

24 Q. That's fine.

25 Did you ever ask anybody why the indicator

1 like that is I would find that hard to believe  
2 because the state has been in the habit of knowing  
3 what calendar on which schools operate for decades  
4 and has kept track of it. It has been a regular  
5 practice. There was a brief time -- I didn't mean  
6 to say "brief." I'm not going to be more specific  
7 than that because my recollection isn't clear --  
8 when it was not possible to get that data directly  
9 from the state when requested. But historically,  
10 that has been the habit of the state, to know that  
11 information before the PSAA was ever in the  
12 twinkling of the policy maker's imagination.

13 Q. In my question, though, let's assume it's  
14 just in there to keep track of the number of the  
15 multitrack schools operating in California.

16 MR. VILLAGRA: And when you say "in there,"  
17 where are we talking about?

18 MS. DAVIS: In the School Characteristics  
19 Index.

20 MR. VILLAGRA: Objection; misleading.

21 MS. READ-SPANGLER: How?

22 MR. VILLAGRA: She's assuming what the  
23 purpose of the School Characteristics Index is.

24 MS. READ-SPANGLER: It's a hypothetical.

25 MR. VILLAGRA: Yeah. And if at this time

1 the hypothetical is incorrect, it's misleading.  
 2 MS. READ-SPANGLER: Well, then say  
 3 "incomplete hypothetical."  
 4 MR. VILLAGRA: Objection; incomplete  
 5 hypothetical. Well, actually, to be more accurate,  
 6 incorrect hypothetical.  
 7 MS. READ-SPANGLER: Okay. Assumes facts  
 8 not in evidence because you don't know if it's an  
 9 incomplete hypothetical.  
 10 THE WITNESS: As a matter of practice, a  
 11 variable would not be included in a statistical  
 12 effects model if it genuinely was not believed to be  
 13 important.  
 14 MS. READ-SPANGLER: Let me explain  
 15 something about depositions.  
 16 MR. VILLAGRA: He's going to finish his  
 17 answer.  
 18 MS. READ-SPANGLER: He needs to understand  
 19 when a hypothetical is presented --  
 20 MR. VILLAGRA: He's finishing his question.  
 21 If you have a problem with the answer and you think  
 22 it's nonresponsive, you can move to strike it  
 23 afterwards.  
 24 MS. READ-SPANGLER: I will. But when we  
 25 take a break, you should explain to him how to

1 answer hypotheticals.  
 2 MR. VILLAGRA: Well, you know what? During  
 3 the break, some folks might want to read what the  
 4 SCI is about and what it does.  
 5 MR. ELIASBERG: Professor Mitchell, maybe it  
 6 would help if she read back the beginning of your  
 7 answer.  
 8 THE WITNESS: As a matter of precision, I  
 9 don't carry the title "professor."  
 10 MR. ELIASBERG: Fair enough. But would it  
 11 help if we read back the answer?  
 12 THE WITNESS: I think if we just read back  
 13 the question and start afresh is probably the place  
 14 to begin.  
 15 MS. DAVIS: I think we have to go two  
 16 questions up to get the -- starting with "if I told  
 17 you the inclusion...."  
 18 (Record read as follows:  
 19 "QUESTION: If I told you that the  
 20 inclusion of the indicator was there  
 21 simply as a tool for the Department of  
 22 Education to keep track of the number  
 23 of multitrack year-round schools that  
 24 operate in California, would this  
 25 change your statement that the

1 multitrack year-round schools and  
 2 traditional calendar schools are not  
 3 comparable without some kind of  
 4 compensation for their difference?")  
 5 THE WITNESS: Given what I've observed and  
 6 given that hypothetical statement to respond to and  
 7 ignoring historical precedent, which troubles me a  
 8 lot, I would say something to the effect of you have  
 9 included something in your model that indicates that  
 10 something is up, that there are differences and that  
 11 the other variables included in your model don't  
 12 account for it. There is a remaining difference,  
 13 and you might wish to attend to it.  
 14 MS. DAVIS: Okay. That's not responsive.  
 15 MS. READ-SPANGLER: Move to strike as  
 16 nonresponsive.  
 17 MR. ELIASBERG: Do you have another  
 18 question?  
 19 MS. DAVIS: I'd like him to answer the  
 20 question that I've already asked.  
 21 MR. VILLAGRA: Objection; asked and  
 22 answered.  
 23 THE WITNESS: Let me hear it again so that  
 24 I can try to narrow in on things.  
 25 ///

1 (Record read as follows:  
 2 "QUESTION: If I told you that the  
 3 inclusion of the indicator was there  
 4 simply as a tool for the Department of  
 5 Education to keep track of the number  
 6 of multitrack year-round schools that  
 7 operate in California, would this  
 8 change your statement that the  
 9 multitrack year-round schools and  
 10 traditional calendar schools are not  
 11 comparable without some kind of  
 12 compensation for their difference?")  
 13 THE WITNESS: No, it would not change my  
 14 conclusion.  
 15 BY MS. DAVIS:  
 16 Q. Why not?  
 17 A. I think I answered that in the response  
 18 which you moved to strike.  
 19 Q. Why don't you answer that now.  
 20 Why not? Why wouldn't it change your  
 21 statement?  
 22 A. Because the model indicates a difference  
 23 that was not accounted for by other variables  
 24 entered in the model. The two are not perfectly  
 25 comparable. If they were perfectly comparable,

1 there would be no effect measured. That's not the  
 2 right term. "Measure" is not the right term.  
 3 "Effect calculated" is the right term.  
 4 MS. DAVIS: Why don't we take a break for a  
 5 minute.  
 6 (Recess taken.)  
 7 BY MS. DAVIS:  
 8 Q. In your expert report, did you compare  
 9 student achievement in multitrack year-round schools  
 10 with student achievement in single-track schools  
 11 with the same socioeconomic status?  
 12 MR. VILLAGRA: Objection; vague and  
 13 ambiguous.  
 14 THE WITNESS: The implication that I derive  
 15 from that statement is about methodology. And the  
 16 language I would use to explore what you mean would  
 17 be a matched-pair design, that is to say, taking one  
 18 group given some particular characteristic, like  
 19 traditional single-track year-round calendar and  
 20 another group which has multitrack year-round  
 21 calendars and then compare them as matched on one or  
 22 more relevant characteristics. A matched-pair  
 23 design is not the design that was utilized to  
 24 produce the findings in my report.  
 25 ////

1 BY MS. DAVIS:  
 2 Q. Did you compare multitrack schools with  
 3 single-track schools with the same API similar  
 4 school state ranked scores?  
 5 MR. VILLAGRA: Objection; vague and  
 6 ambiguous.  
 7 THE WITNESS: That's got enough technical  
 8 words, I'd like to hear it again, please.  
 9 MS. DAVIS: Go ahead.  
 10 (Record read as follows:  
 11 "QUESTION: Did you compare  
 12 multitrack schools with single-track  
 13 schools with the same API similar  
 14 school state ranked scores?")  
 15 THE WITNESS: Here's -- there's some  
 16 ambiguity in that statement in that precisely what  
 17 you mean might change my answer. So what I'm trying  
 18 to do now is figure out if I can respond to that  
 19 question in a way that -- what I can't do for you  
 20 right now is the way that question is worded, it  
 21 doesn't offer for me an immediate mapping on to a  
 22 methodology of comparison.  
 23 And so it's not straightforward for me to  
 24 say "Yes, I did that" or "No, I didn't do that,"  
 25 because I know what I did. And depending on exactly

1 what you mean, I may have done that and I may not  
 2 have done that.  
 3 But what you're asking isn't -- it isn't  
 4 making that -- because it's unlike the previous  
 5 question -- the previous question I could say to you  
 6 what that sounds like to me and, therefore, which  
 7 methodology would be implied by the statement and  
 8 then I was able to tell you "yes" or "no, I didn't  
 9 do that."  
 10 This present statement doesn't produce for  
 11 me the same ability to recognize the implied  
 12 methodology, and so it makes it difficult for me to  
 13 tell you "yes" or "no, I didn't do that."  
 14 BY MS. DAVIS:  
 15 Q. In your report, did you look at API similar  
 16 school state ranked scores by school calendar?  
 17 MR. VILLAGRA: And the question is whether  
 18 it's in the report or whether he recalls it being in  
 19 the report?  
 20 BY MS. DAVIS:  
 21 Q. Do you recall it being in your report?  
 22 A. I guess at this point, I -- I think it  
 23 would be easier for me to be timely and responsive  
 24 if questions about my report could be answered with  
 25 my report in front of me.

1 Q. That's fair enough.  
 2 But do you recall in preparing your report  
 3 looking at API similar school state ranked scores by  
 4 school calendar?  
 5 A. The distribution of API similar school  
 6 ranks was presented and discussed for each of the  
 7 three calendar types identified in the report; so  
 8 yes, I recall doing that.  
 9 Q. Do you recall how the multitrack calendars  
 10 and the single-track calendars compare?  
 11 MR. VILLAGRA: Objection; vague and  
 12 ambiguous --  
 13 THE WITNESS: On the --  
 14 MR. VILLAGRA: -- as to "multitrack  
 15 calendar."  
 16 THE WITNESS: The comparison is on the API  
 17 similar school rank?  
 18 BY MS. DAVIS:  
 19 Q. Yes.  
 20 A. And the comparison on that distribution is  
 21 across the three calendar types specified?  
 22 Q. I mean, if it's easier for you to break out  
 23 non-Concept 6 versus single track and then Concept 6  
 24 versus single track, that's fine.  
 25 A. Okay. In that case -- so now I understand

1 what's embedded in the question. If I could hear  
 2 the question again, now I can proceed to answer.  
 3 (Record read as follows:  
 4 "QUESTION: Do you recall how the  
 5 multitrack calendars and the  
 6 single-track calendars compare?")  
 7 THE WITNESS: The distribution of similar  
 8 school ranks for the three groups, single-track  
 9 calendars of the traditional or other varieties with  
 10 the multitrack year-round calendar groups, which are  
 11 offered as Concept 6 or not Concept 6 -- the  
 12 distribution of rank scores -- similar scorings --  
 13 The first basic finding is they're not  
 14 identical.  
 15 Let's see. What do I recall about the  
 16 nature of the details about their difference?  
 17 What I recall is that as you proceed along  
 18 the distribution from lowest similar school rank to  
 19 highest similar school rank -- what precisely --  
 20 okay.  
 21 I have to take a different approach to it,  
 22 based on what I can recall presently.  
 23 For those receiving the highest ranks, the  
 24 proportion receiving highest similar school rank is  
 25 the rank produced after trying to account for school

1 characteristics, which -- which if we need to  
 2 discuss what that does, we can get into that later.  
 3 For the highest rank, there is a greater  
 4 proportion of schools on the traditional and other  
 5 single-track calendars compared with the proportion  
 6 receiving the highest rank on the multitrack  
 7 calendars.  
 8 What else can I recall?  
 9 Somewhere in the very lowest ranks --  
 10 precisely which rank score, I can't recall right  
 11 now. At least Concept 6 multitrack year-round  
 12 schools of relatively higher proportion receiving  
 13 these lowest similar school ranks and the  
 14 single-track traditional calendar schools -- what  
 15 that relative proportion is, I would need to refer  
 16 to a report before I make a claim.  
 17 MS. DAVIS: Can we take just a break for  
 18 about two minutes? Is that okay?  
 19 MR. VILLAGRA: Sure.  
 20 (Recess taken.)  
 21 MS. DAVIS: I'm going to mark as exhibit  
 22 Mitchell I the expert report entitled "Segregation  
 23 in California's K-12 Public Schools; Biases in  
 24 Implementation, Assignment and Achievement with the  
 25 Multitrack Year-Round Calendar," offered by Ross E.

1 Mitchell.  
 2 (Whereupon, Exhibit Mitchell 1  
 3 was marked for identification.)  
 4 BY MS. DAVIS:  
 5 Q. Dr. Mitchell, is this the report that you  
 6 prepared in this case --  
 7 MR. REED: While we're waiting for  
 8 Dr. Mitchell to look at this, can we ask the court  
 9 reporter to put time indicators in the transcript,  
 10 because of all the breaks and whatnot? This is one  
 11 of several examples in which Dr. Mitchell is taking  
 12 a lot of time to review the document, Just so we  
 13 have the relationship between the time and the text.  
 14 Is that okay?  
 15 MR. VILLAGRA: Uh-huh. And just for  
 16 everybody's clarity, it looks like Exhibit B, when  
 17 it printed, there's a note for the definition of  
 18 certain symbols.  
 19 MS. DAVIS: Right.  
 20 MR. VILLAGRA: And there's a blank.  
 21 MS. READ-SPANGLER: There is a blank.  
 22 MR. VILLAGRA: And so the blank should be  
 23 that sort of octagon or how many sides that is.  
 24 That's what that should be.  
 25 MS. DAVIS: That's odd.

1 MR. VILLAGRA: It probably didn't pick up  
 2 from Word.  
 3 MS. DAVIS: But it's in the actual chart?  
 4 MR. VILLAGRA: Yes.  
 5 MS. DAVIS: That's the strange thing.  
 6 Okay.  
 7 MR. VILLAGRA: I think it's across all of  
 8 them.  
 9 MR. REED: I'm sorry, Hector?  
 10 MR. VILLAGRA: Do you see on Exhibit B,  
 11 figure 1, the note values marked by the symbols  
 12 asterisk and blank. The blank should be what's in  
 13 the box in the figure as that hexagon or octagon or  
 14 whatever it is.  
 15 MS. READ-SPANGLER: Would you mind if we  
 16 have Dr. Mitchell, like, draw that onto the one  
 17 that's going to be attached, because otherwise it's  
 18 going to be blank on all the printing?  
 19 MR. REED: So is it the case that he was  
 20 using invisible ink?  
 21 (Discussion held off the record.)  
 22 THE WITNESS: And we had some exchange  
 23 about what that -- things -- I'm going to say, the  
 24 report -- because this is not precisely what I  
 25 remember being the report, I feel myself in an

1 awkward position. I know it's a trivial difference  
2 in terms of the substance of all the questions that  
3 follow, but I just from the standpoint of, is this  
4 what I intended to submit, this is not perfectly  
5 identical to what I intended to submit. So I don't  
6 know.

7 MS. DAVIS: It sounds like maybe we should  
8 just wait.

9 MR. VILLAGRA: Or we could put on the  
10 record that it's the signature page that appears to  
11 be the difference.

12 THE WITNESS: Well, the signature page and  
13 the figures, the symbol.

14 MR. REED: Can I suggest we go on with the  
15 understanding that those are the trivial differences  
16 in the report from that which you signed and  
17 delivered?

18 THE WITNESS: Right. I just --

19 BY MS. DAVIS:

20 Q. So we're okay? We're good?

21 A. I think so. I was just trying to find out  
22 what the rules are here so that when I say something  
23 is true that I don't find myself in a position where  
24 I've said something that later I would want to say  
25 "No, that's not true. That's not what I meant."

1 That's all. I'm just trying to be clear here.

2 Was the discussion about these details  
3 recorded?

4 MR. REED: Yes.

5 THE WITNESS: Okay. So I can now proceed  
6 with what I have in front of me.

7 BY MS. DAVIS:

8 Q. Let's turn to figure 12.

9 A. Okay.

10 Q. Dr. Mitchell, let me know when you've had a  
11 chance to review figure 12.

12 A. I'm at figure 12. I recognize it, yes.

13 Q. Does this refresh your memory as to how  
14 multitrack schools compared to single-track schools  
15 in terms of API similar school state rank scores?  
16 And you have the 2001 figure.

17 A. This figure 12 represents part of my  
18 analysis of the distribution of similar schools  
19 state rank scores, and I recognize it. I understand  
20 what it means. I can answer questions about this  
21 figure or the figures that follow that also relate  
22 to similar school state rank scores. After  
23 reviewing those as well, I will be happy to do so.

24 Q. You're saying you want to review the next  
25 figure to --

1 A. What I'm saying is figure 13 and figure 14  
2 are additional analyses of this relationship between  
3 school calendar and similar schools state rank  
4 scores, that figure 12 does not represent the only  
5 figure developed to analyze that relationship.

6 Q. Well, how do the multitrack schools and the  
7 single-track schools compare in figure 12?

8 A. In figure 12?

9 Q. Right.

10 A. Okay. Figure 12 is a box and whiskers  
11 plot, and in the report I describe how to read one  
12 of these plots in terms of how it characterizes  
13 breaks in the distribution. And the only apparent  
14 difference highlighted by this figure is the  
15 position of the median, which is the line, which I  
16 believe --

17 Here's another difference between what I  
18 believe I originally submitted, and this is -- I  
19 believe I originally submitted color figures. I  
20 don't know if they were filed or the black and --  
21 the gray-scale version was produced for filing.

22 Q. I've only seen the --

23 MS. READ-SPANGLER: We didn't get color.

24 THE WITNESS: Okay. Because -- let me back  
25 up on that. I do remember being concerned about

1 whether or not color would be able to be reproduced  
2 and filed. And I did print out an identical set of  
3 figures in gray scale; so that is to say this  
4 Exhibit B, being concerned that the colors either  
5 would not be acceptable or would not be readily  
6 reproduced for distribution were produced in  
7 gray-scale printout.

8 So when I made these figures, that box,  
9 which is gray, was yellow. And it was easier to see  
10 in the color printout than in the gray-scale  
11 printout that the line inside the box was more bold  
12 than the box itself.

13 MS. READ-SPANGLER: The median?

14 THE WITNESS: The median -- the line  
15 representing the median was a little more bold in  
16 its printing in the color figure, because as I look  
17 at this, I don't see much distinction in the  
18 boldness of that line relative to the outline of the  
19 box. I was prepared to refer to it in the way that  
20 I remembered the color figures, and it's not so  
21 obvious that when I look at that, that that's a  
22 bolder line. I just want to be able to refer to the  
23 same thing everybody is looking at in a way that  
24 makes sense. Yeah, yours is not as gray as mine  
25 within the box, but your lines are all the same.

1 So back to the question -- back to what I  
2 was saying.  
3 The line representing the median is at a  
4 higher similar school state rank of 6 for the  
5 traditional single-track group. And the line  
6 representing the median is at a lower similar school  
7 state rank of 5 for both of the multitrack  
8 year-round calendar groups. So in this figure,  
9 that's the only observable difference I'm able to  
10 discuss for figure 12.

11 BY MS. DAVIS:

12 Q. There's no difference among school  
13 calendars for the 25th percentile and the  
14 75th percentile; is that correct?

15 MR. VILLAGRA: Objection; compound, vague.

16 THE WITNESS: In the distribution -- there  
17 are three distributions that are represented by  
18 these box and whiskers plot. In the distribution,  
19 the similar school rank at the 25th percentile,  
20 which is -- a little loosely speaking means -- and  
21 I'll use an example, because the real numbers make  
22 saying what that percentage point is hard to  
23 calculate off the top of my head.

24 If you had 100 schools, the 25th school  
25 would be at the 25th percentile as you rank them up.

1 order to pull a piece of the scale out that  
2 preserves the ability to see the shape of the  
3 distribution of rank scores from the lowest to the  
4 highest count.

5 And then on the other scale is the count  
6 for multitrack schools. And that scale has a much  
7 smaller range, both absolutely in terms of its  
8 minimum and maximum range, for example, 10 to  
9 90 schools at any given rank. And that range was  
10 chosen in order to have both the multitrack  
11 year-round calendar subgroup line graphs appear on  
12 the same graph and not have any empty space for  
13 where no school counts exist.

14 Let's see.

15 The horizontal axis has the 10 possible  
16 similar school ranks, 1 through 10. And so you  
17 start at rank 1. And if you wanted to know how many  
18 schools received that rank for each of the three  
19 calendar groups routinely identified in the report,  
20 you go to the "1," you read up. You find the  
21 symbol.

22 For example, the first symbol you encounter  
23 as you work up is a square, and the square is the  
24 symbol used for the traditional single-track  
25 calendar schools. That means, to find out roughly

1 And the position there has the same rank across the  
2 three distributions, similarly at the  
3 75th percentile.

4 BY MS. DAVIS:

5 Q. Why don't we talk about figure 13 and  
6 figure 14. I have to admit to having a little  
7 trouble understanding the graphs. So if we could  
8 walk through them, that would be helpful.

9 A. Okay. For figure 13, to start --

10 Q. Okay.

11 A. Okay. This is a line graph with two  
12 scales. And there are separate scales because this  
13 is about counting the number of schools at each  
14 similar school's rank. And there are many more  
15 schools in California on the traditional calendar  
16 and some -- and other kinds of single-track  
17 calendars which are included with the traditional  
18 calendar year, many more.

19 And so the -- that scale would move that  
20 line far away from the other lines, if I had a  
21 single scale; so the scale for how many traditional  
22 single-track schools there are is on the right. So  
23 if you look at the bottom, you'll see that I bound  
24 or pull out from the scale the range of 540 to 660  
25 schools as a count at a given particular rank in

1 what count that corresponds to, you read on the  
2 right-hand scale. And that count is somewhere  
3 between 540 and 560, which are the intervals marked  
4 on the scale closer to 560.

5 Immediately above that square is a circle,  
6 which is the symbol for multitrack Concept 6  
7 schools; so I look to the left-hand scale to find  
8 out what that count corresponds to, because it's a  
9 multitrack school and that count corresponds to  
10 something slightly greater than 20.

11 And then, finally, to get all of the three  
12 groups at state similar school ranks of 1, I can go  
13 up to the diamond, which is the symbol for the  
14 multitrack not-Concept-6 schools, and that count is  
15 70. And I get that from the left-hand scale.

16 And so it's possible to go across all ranks  
17 and see what the count is. The other thing that  
18 this graph allows you to do is see how those counts  
19 compare across ranks, where the counts are higher on  
20 a given rank both absolutely and within a given  
21 calendar group.

22 So, for example, if I follow the circles,  
23 which are all at the lower part of the graph from  
24 left to right, and the circles are multitrack  
25 Concept 6 schools, I can compare their heights. And

1 that tells me relatively which rank was more or less  
2 commonly represented for multitrack Concept 6  
3 schools.

4 So for ease of identification, I'll take  
5 the one we just talked about and then go to the  
6 other end, which is easy to pick out at 10. And the  
7 number of schools at rank 1 is in the low 20s and  
8 the number of schools at rank 10 appears to be in  
9 the mid teens, which means when you compare it,  
10 there are more schools on the multitrack Concept 6  
11 calendar that received a similar schools rank of 1  
12 than received a similar schools rank of 10.

13 I think right now that's what strikes me as  
14 a valuable discussion about how to read it and what  
15 it allows you to do.

16 Q. I appreciate that. Can we walk through  
17 14 -- figure 14 as well?

18 A. Sure.

19 Figure 14 -- it's title is "Shift Function  
20 Comparison of the Distribution Characteristics of  
21 California'S 2001 API Similar Schools Rank Scores  
22 for the Multitrack Year-round Calendar Groups in  
23 Reference to the Traditional Single-Track Year-Round  
24 Calendar Group."

25 In fairness to your response about

1 reference group?

2 For example, if two distributions are  
3 identical in their shape but every -- and in this  
4 case we have API scores; so I'll try to push the  
5 example toward this to improve being on track.

6 If all schools in one group have  
7 distribution of a particular shape for their API  
8 scores and all schools in another group have a  
9 distribution of the same shape but they all do  
10 relatively better, then you'll have horizontal lines  
11 to compare, because if the shape is identical, then  
12 when you take one distribution and compare it to  
13 another, for distributions of identical shape, you  
14 have horizontal lines that are displaced from each  
15 other by how much they differ in their measure.

16 If lines are not horizontal, then the shape  
17 of the distribution differs as well as the value.

18 Q. When you say "shaping," what do you mean by  
19 that?

20 A. Is it appropriate to grab a piece of paper  
21 and draw a picture? Well, we can talk pictures if  
22 everybody can imagine a bell curve. Is everybody  
23 okay with that image?

24 Bell curve has a nice property related to  
25 it that I can -- that can raise a specific question.

1 difficulty quickly and readily understanding graphs,  
2 this one is a less common representation seen in the  
3 literature, so that I would not assume equal  
4 familiarity with the layout here and what it means  
5 relative to the previous figure.

6 A shift function is a fancy name for -- but  
7 it embeds this. It's a fairly straightforward  
8 interpretation, I hope.

9 If you were to have a full graph of the  
10 distribution, which the previous figure isn't  
11 exactly the one to use to leap to this graph, but it  
12 is a layout. If you take all the scores and lay  
13 them out and then ask, "Okay. After I get" -- and  
14 here -- I've got to slow down a little bit.

15 By "decile" -- decile is 10th percentile;  
16 so 10, 20, 30, 40, 50, 60, 70, 80, 90. And those  
17 numbers are on the top of the graph. The horizontal  
18 axis is visible on the top of the graph in this  
19 case, not the bottom, where people are used to  
20 finding it, the scale for the horizontal axis. So  
21 in order to get this --

22 First of all, it's explicitly a comparative  
23 graphic strategy. A shift function requires you to  
24 have a reference group, because what you're asking  
25 is how does the distribution shift relative to the

1 If you have two distributions represented by a bell  
2 curve and they are identical in their standard  
3 deviation, they have the same shape, but they may  
4 not have the same mean, you may have a higher mean  
5 for one group than the other, then a shift function  
6 will have the reference group on the horizontal axis  
7 and the line that represents that shift function  
8 will be a horizontal line that will be displaced up  
9 or down depending on whether the mean is higher or  
10 lower. Well, reverse that. If the mean is  
11 higher --

12 My reference group has a mean of 50. The  
13 group I'm comparing it with has a mean of 40. They  
14 both have bell-shaped distributions with the same  
15 standard deviation. The reference group with the  
16 mean of 50 now defines the horizontal axis. The  
17 group being compared with the mean of 40 will have a  
18 shift function which is a horizontal line displaced  
19 10 units below the horizontal axis because the mean  
20 differs by that much. So each -- at each place they  
21 are different by that much, and that will represent  
22 the displacement.

23 If that comparison group had a higher mean,  
24 then it would have a positive value and it would be  
25 a horizontal line. Now, when the shapes differ,

1 then the shift function need not be horizontal  
2 anymore.

3 For example, when I first learned this  
4 method, the study was about whether exposing  
5 newborns to their mother's heartbeat after birth  
6 facilitated increase in weight -- that newborns  
7 would gain weight more or less rapidly. And what  
8 was found is that for low birth weight infants,  
9 exposure to their mother's heartbeat had a positive  
10 impact on increasing weight gain but not for high  
11 birth weight infants.

12 And so that meant that the response was not  
13 linear. It had a differential shape; so the shift  
14 function for that would not be a horizontal line but  
15 would be a curve showing a greater shift at the low  
16 birth weight end reducing to no shift at the high  
17 birth rate end.

18 So that's what shift functions are about,  
19 is to see is response or difference constant across  
20 the distribution or does it vary depending on where  
21 you look in the distribution.

22 So this graphic sets the traditional  
23 single-track calendar school as the reference group,  
24 and so the squares are all found on the horizontal  
25 axis of 0, just to emphasize that. That's not

1 following deciles relative to the traditional  
2 single-track calendar.

3 At the 30th percentile -- no. Wait.

4 You see a line from the 30th percentile  
5 going down one similar school rank, so that at the  
6 40th percentile, the not-Concept-6 multitrack  
7 year-round schools are now at that position in the  
8 distribution one similar school rank lower and at  
9 each of the deciles in the distribution, that these  
10 positions in the distribution remain one similar  
11 school rank lower than the traditional single-track  
12 calendar schools.

13 MS. READ-SPANGLER: You lost me at the  
14 first decile.

15 MS. DAVIS: I was going to say, Hector, I  
16 think it makes sense -- maybe with the graphs, is it  
17 okay if we just have questions interpreting the  
18 graphs that anybody can ask?

19 MR. VILLAGRA: One thing that I might point  
20 out is that there is text that goes along with the  
21 graphs.

22 MS. READ-SPANGLER: We've all read it, and  
23 this one in particular --

24 MR. VILLAGRA: Sure. Go ahead.

25 MS. READ-SPANGLER: I didn't even

1 conventional. If you look in the literature, you  
2 won't find everybody plotting the reference group on  
3 the horizontal axis. In some fields this is a more  
4 common representation and everybody knows to assume  
5 that.

6 So the traditional single-track calendar is  
7 on the horizontal axis at 0, and then there are two  
8 shift functions, one for each of the two multitrack  
9 year-round calendar groups, the not Concept 6 and  
10 the Concept 6.

11 Like in figure 13, not Concept 6 schools  
12 are represented by diamonds and Concept 6 schools  
13 are represented by circles. So in this graphic, if  
14 you were to follow the multitrack Concept 6 school  
15 shift function, you would find that at the first  
16 decile or the 10th percentile, all distributions  
17 have the same value, and so they're all on the 0.  
18 There's no displacement between any of the shift  
19 functions and the reference group. They all start  
20 at the 10th percentile being represented by the same  
21 similar school rank.

22 At the 20th percentile, the multitrack  
23 Concept 6 schools are not represented by the same  
24 similar school rank, and so they're shifted down by  
25 one. And that remains that way for all of the

1 understand what you meant when you said -- I'm  
2 sorry. I'm just an attorney -- "All distributions  
3 have the same value at the first decile." I'm not  
4 sure what you're meaning by that.

5 THE WITNESS: You know how the bell-shaped  
6 curve has a low tail that rises up to its highest  
7 point at the mean and then comes down out to a new  
8 tail?

9 MS. READ-SPANGLER: Right.

10 THE WITNESS: At the relatively low part of  
11 the beginning tail -- precisely where is it's  
12 10 percent, I would have to look it up. But it's --  
13 if you're looking at sort of the big central part  
14 and then it comes out, it's out in that lower part,  
15 the first cut, 10 percentile.

16 You asked at that point, what's the similar  
17 schools rank, because all the schools have different  
18 ranks and you order them out and you say "Okay.  
19 We've gone through 10 percent of the schools. What  
20 do they rank at that point?" Whatever it is, it's  
21 the same.

22 MR. HAJELA: And it's a one in all three  
23 cases; is that correct?

24 THE WITNESS: Is that true?

25 MR. HAJELA: I don't know.



1 THE WITNESS: I could figure it out if I  
2 had a calculator.  
3 MR. HAJELA: It's okay. I'm understanding  
4 what you're saying.  
5 THE WITNESS: It might be two. It's  
6 certainly not -- well, is it certainly not? I would  
7 venture a guess that it's not three. One is  
8 probably the best guess to hazard without making the  
9 estimate, but we can make the estimate from the  
10 other graph. So I could make that estimate for you,  
11 because the other graph allows me to make that  
12 estimate, but it's not directly from observation  
13 that I can make that estimate. I have to have the  
14 total number of schools, and then I have to figure  
15 out how many gets me to 10 percent. And then I  
16 figure out which of those ranks is where I've  
17 arrived when I've counted that many schools.  
18 MR. HAJELA: Let me ask it differently  
19 because I do think I understand what you're saying.  
20 So if you're at the 20th percentile of  
21 Concept 6 schools, your similar school rank will be  
22 exactly one below whatever it was for traditional  
23 schools?  
24 THE WITNESS: Right. And that's by virtue  
25 of the measure that they have discrete integer steps

1 in the measure, that that exactness is the result of  
2 the nature of the measure.  
3 So when I take each distribution and I  
4 count in how many schools gets me to 10 percent of  
5 that distribution, whatever that similar school rank  
6 is, it's the same for all of them. When I count in  
7 another however many schools it takes me to get to  
8 20 percent of them, that number is the same for the  
9 traditional single track and for the not Concept 6,  
10 but that number is one less for the Concept 6.  
11 So then I just keep counting along how many  
12 gets me another 10 percent and I ask what's the  
13 value in the distribution for each of these three  
14 groups. If there is a difference, then the function  
15 will shift away from the reference group.  
16 MS. DAVIS: Do you have any more questions?  
17 MR. HAJELA: I'm sorry. No.  
18 BY MS. DAVIS:  
19 Q. Do you feel that you've --  
20 Are you done explaining the figure, or did  
21 you have more?  
22 A. Well, from my standpoint, everybody here  
23 needs to feel that they understand. And I shouldn't  
24 consider myself done until --  
25 Q. That is a tall order.

1 MS. READ-SPANGLER: We can be here for  
2 weeks.  
3 MR. VILLAGRA: At some point -- I've let  
4 this go and had you answer a narrative, but you  
5 should be answering questions.  
6 MS. DAVIS: So we're all satisfied.  
7 MS. READ-SPANGLER: I'm going to look again  
8 at lunch. If I have more specific questions, I'll  
9 have Lynne ask you. But I just feel stupid now,  
10 basically.  
11 BY MS. DAVIS:  
12 Q. Okay. Now, in looking at figure 12 --  
13 actually, you know what? Don't look at figure 12.  
14 Why don't we look at page 20 of the report, which  
15 talks about figure 12, now that we all have it in  
16 front of us. And at page 20, you said that there's  
17 a bias in the calculation of the SCI, which is the  
18 basis for establishing similarity in order to  
19 determine the similar schools rank.  
20 And I'm wondering what the bias is that you  
21 were referring to.  
22 A. Okay. In the following sentence to --  
23 where I use the word, there is a -- where I have the  
24 phrase, "There is a bias in the calculation of the  
25 SCI, "I go on to identify what it is that should be

1 attended to in order to understand that similar  
2 school ranks have embedded within them something  
3 that should not be ignored.  
4 And what's embedded within them is that  
5 there is a non-zero association, which is referred  
6 to here as a negative weight. There's a non-zero  
7 association between the multitrack year-round  
8 calendar and the school's API score.  
9 What that means is that there has been an  
10 adjustment to the API score for the purpose of  
11 comparing schools to create a similar school rank  
12 that is related to the calendar itself, so that  
13 these are not pure comparisons without the calendar  
14 being considered, as my graphic is a -- separates  
15 out calendar groups.  
16 And ideally, that separation would show the  
17 magnitude of the differences in totality, but it  
18 does not because the model used to assign the  
19 similar school rank has already made some  
20 adjustment, because the calendars are different.  
21 That's that negative weight that adjusts the  
22 relative ranking of the school, because it operates  
23 on a multitrack year-round calendar.  
24 And that means that I do not have an  
25 unbiased representation of the differences between

1 the calendar groups. It's biased towards making  
2 them similar.

3 Q. What is the adjustment in the model that  
4 you're referring to?

5 A. The SCI, the School Characteristics Index,  
6 is the basis for establishing similarity when  
7 comparing schools to make similar school ranks. One  
8 of the factors included to accommodate differences  
9 in order to identify what is similar -- for example,  
10 very rarely would anybody quibble about the fact  
11 that if you have a school with a very high level of  
12 student poverty and you wanted to compare it to a  
13 school with no student poverty that there needs to  
14 be some way to gain perspective on that difference  
15 in the student composition of the school.

16 Well, that's one of the things that's  
17 included in the School Characteristics Index. The  
18 indicator on that is proportion of students on free  
19 and reduced price lunch. So that's something that  
20 comes up a lot in conversation among educators about  
21 whether or not it's fair to compare how things turn  
22 out at one school with another.

23 MR. HAJELA: Hector, can I ask a  
24 clarification question?

25 So is there a calculation that adjusts the

1 separate out multitrack year-round schools from the  
2 others, is that that model has proposed an  
3 adjustment related to the calendar itself.

4 MR. HAJELA: So the index has a scale from  
5 one number to another and the fact that your  
6 multitrack shifts you up or down on that scale?

7 THE WITNESS: Right.

8 BY MS. DAVIS:

9 Q. And why is multitrack given a negative  
10 weight?

11 Or is multitrack given a negative weight?

12 A. The result --

13 MR. VILLAGRA: I'm sorry. What's the  
14 question posed? Is it the first one or the second  
15 one?

16 BY MS. DAVIS:

17 Q. Is the multitrack given a negative weight?

18 A. Yes, the result of the model calculations  
19 to produce the School Characteristics Index includes  
20 a negative weight for the multitrack year-round  
21 indicator.

22 Q. Why is it negative?

23 A. It means that after holding all other  
24 things equal in the way that a statistical  
25 calculation does that, there remains a difference

1 rank? Or on the other hand, do you simply compare  
2 them to the different set of schools? You can deal  
3 with it two different ways.

4 THE WITNESS: Right. The calculation is  
5 the calculation of the index; so that then gives you  
6 a number that you can use to position schools  
7 relative to each other. So the School  
8 Characteristics Index is that thing being  
9 calculated, and it includes all of the conditions  
10 specified which can be referenced in that Technical  
11 Design Group report. That's the index used to find  
12 schools that are comparable.

13 If two schools have the same or nearly the  
14 same index value, they are considered similar  
15 schools. And I don't remember exactly the rule that  
16 was used to say how far away from each other they're  
17 allowed to be to come to that cluster of similar  
18 schools. It's specified -- I don't remember the  
19 rule used.

20 And in order to get that score to be  
21 compared, the multitrack year-round was included in  
22 the model to produce the index. And the multitrack  
23 year-round as an indicator has a non-zero  
24 contribution to calculation of that index, and  
25 that's the bias that I'm referring to when I try to

1 between multitrack year-round calendar schools and  
2 traditional single-track schools, that all the other  
3 things included in the model do not remove all of  
4 the differences. There remains a difference; so the  
5 weight is different from zero and that by negative  
6 it means that the API score -- adjusted API score  
7 that is holding all other things equal is lower. If  
8 it were positive, it would be higher. But the  
9 weight is negative means that it is lower.

10 Q. Who has made the weight negative?

11 MR. VILLAGRA: Objection; vague and  
12 ambiguous as to "made."

13 BY MS. DAVIS:

14 Q. If you made --

15 Who has assigned a negative weight to  
16 multitrack schools?

17 A. This is a finding presented by the  
18 Technical Design Group.

19 MS. DAVIS: Do you want to break for lunch?

20 MR. VILLAGRA: I just wasn't sure how he  
21 was feeling. We broke yesterday at a little after  
22 12:00, and we started a little earlier.

23 I don't know how you feel.

24 THE WITNESS: I think maybe it's okay to  
25 pause for a moment about pacing.

1 MR. VILLAGRA: We can go off the record.  
 2 MS. DAVIS: Okay.  
 3 (Whereupon at 11:45 a.m. a lunch  
 4 recess was taken, and the proceedings  
 5 reconvened at 1:11 p.m.)  
 6 BY MS. DAVIS:  
 7 Q. Dr. Mitchell, in your opinion, how does the  
 8 negative weight that we were discussing before the  
 9 lunch break affect the comparison of multitrack  
 10 year-round and single-track schools with the similar  
 11 schools ranking?  
 12 MR. VILLAGRA: Objection; vague and  
 13 ambiguous.  
 14 I'm not sure I understand the question.  
 15 BY MS. DAVIS:  
 16 Q. How does the negative weight factor in to  
 17 the comparison of multitrack year-round schools and  
 18 single-track schools?  
 19 A. Operationally what that weight does is  
 20 takes a particular index score and moves it down so  
 21 that the index value in the absence of the negative  
 22 weight, assuming all the other weights would remain  
 23 the same, would be higher.  
 24 I think I'm going to try that again because  
 25 I'm not sure if I got it right.

1 If we took all the weights we have and set  
 2 aside for a moment the multitrack weight, produced  
 3 an index score, then include the multitrack weight,  
 4 because it's negative, the index score goes down.  
 5 That's operationally what that weight does.  
 6 Q. Can you give me an example?  
 7 A. You mean, can I lay out the calculation to  
 8 show you how that works?  
 9 Q. I don't think you need to lay out the  
 10 calculation. I guess if you're saying "index score"  
 11 of -- I don't know.  
 12 Are you saying there's a --  
 13 What score are you talking about?  
 14 A. The School Characteristics Index is the  
 15 index to which we've been referring. That's my  
 16 presumption when I shorten it and just say "index."  
 17 Q. So if you want to just take an example, a  
 18 school has a score of, you know, "X" number, and  
 19 then -- without the multitrack included, and then  
 20 you include the multitrack.  
 21 What happens?  
 22 A. "X" becomes smaller.  
 23 Q. I think I'm following you.  
 24 You know what?  
 25 While I'm thinking about it, let's

1 substitute in this copy of your report. We'll keep  
 2 it as the same exhibit number.  
 3 And if you could, just look over that  
 4 report and let me know if that's the report you  
 5 submitted in connection with this case.  
 6 MR. VILLAGRA: Just to be clear for the  
 7 record, this copy of the exhibit now has a  
 8 declaration by Jack London attached to it, and  
 9 Dr. Mitchell's report is attached to it as an  
 10 exhibit.  
 11 THE WITNESS: Okay. This appears to be a  
 12 faithful reproduction of the report I prepared and  
 13 submitted and the attached declaration page, which I  
 14 have also been provided with.  
 15 BY MS. DAVIS:  
 16 Q. I just wanted to get a point of  
 17 clarification on the box plot, and that is just in  
 18 regard to the whiskers. And if you want to just  
 19 look at figure 1, I think -- I just want to know  
 20 what the specific range of the whiskers is in your  
 21 box plots.  
 22 A. If I could back up a second just because an  
 23 earlier conversation about the nitpicky little stuff  
 24 in the report. It has symbols indicated in the  
 25 figure notes. For some reason a square was

1 substituted for the circular octagonal figure in the  
 2 figure. This seems to me to be perfectly adequate.  
 3 There's a star figure as appears in the figure, and  
 4 there's an open symbol as appears in the figure. So  
 5 I think it is understandable.  
 6 Q. Is this different than what you submitted?  
 7 A. It's a type-font issue. There was font  
 8 substitution when it was printed; so the printer  
 9 provided that square instead of the -- as the open  
 10 symbol instead of the circular octagonal symbol.  
 11 Just one of those wonderful technological glitches.  
 12 That was font substitution.  
 13 Q. Okay.  
 14 A. So figure 1 --  
 15 Q. And I just want to use this as an example  
 16 so I can better understand all the figures. I'm  
 17 just trying to understand the specific range of the  
 18 whiskers.  
 19 A. Okay.  
 20 Q. What is the range of the whiskers?  
 21 MR. VILLAGRA: Objection; vague and  
 22 ambiguous.  
 23 THE WITNESS: I guess what might be  
 24 appropriate is something like the earlier discussion  
 25 to try to make sure that what I believe I'm

1 representing in the figure has been stated.  
 2 Figure 1 is probably a difficult example,  
 3 though. You want to stick with figure 1 as the  
 4 example to go through?

5 BY MS. DAVIS:

6 Q. If there's -- you think that's particularly  
 7 difficult, I guess we could use another one.

8 A. Okay. Let me see if I can spot one that's  
 9 an easier one. Okay. The first one that's easy is  
 10 figure 2. It doesn't have all the features  
 11 potentially possible, so that if we wanted to  
 12 include all the possible features of the plot, we  
 13 should go to figure 3.

14 MS. READ-SPANGLER: I was just thinking ten  
 15 might be clearer.

16 THE WITNESS: Okay. Ten is fine, too.

17 MS. READ-SPANGLER: Three is just kind of  
 18 squishy.

19 THE WITNESS: Yeah. Let me look at ten.  
 20 Ten works, too. The one thing that's not in ten is  
 21 the presence of the star symbol, but otherwise it's  
 22 fine.

23 MS. READ-SPANGLER: How about eleven?

24 THE WITNESS: Okay. Eleven actually helps  
 25 to exemplify one of the issues related to using

1 those scores reach farther out than you would have  
 2 expected as a result of sampling.

3 And so the circle or not perfectly round,  
 4 maybe more like octagon, and star symbols indicate  
 5 that there are five cases in the Concept 6  
 6 distribution that have values outside of the range  
 7 that would have been expected for the size of the  
 8 sample assuming an underlying normal distribution.  
 9 Whereas in the case of the not-Concept-6 and the  
 10 traditional calendar schools, all of the scores  
 11 observed are within the range of scores that would  
 12 be expected based on this sampling assumption.

13 MS. DAVIS: Hector, if you don't object,  
 14 can I just make sure that nobody else has a question  
 15 in interpreting the box plot?

16 MR. VILLAGRA: Sure.

17 MS. READ-SPANGLER: I do. This might have  
 18 been a bad example.

19 I'm wondering for any given one of these  
 20 box and whisker plots, is there, like, a standard  
 21 calculation of the range for whiskers?

22 THE WITNESS: Yes. I don't know the  
 23 algorithm by heart. I can look it up. These are  
 24 generated through a computational algorithm. It  
 25 defines where those points should be and precisely

1 this; so eleven works. So we'll do eleven.

2 The whiskers in figure 11 are present for  
 3 all three calendar groups, but not in exactly the  
 4 same way. The box part boxes in the middle  
 5 50 percent from 25 to 75 percent of the  
 6 distribution. Then the whiskers extend out and  
 7 the -- in the case of the traditional single-track  
 8 calendar, they extend out to the full range of 1 to  
 9 10. For the state rank score at -- the bottom  
 10 whisker is at 1 and the top one is at 10.

11 What that tells you is that the range of  
 12 the scores in the distribution in this case is the  
 13 full range of possible measure from 1 to 10. And  
 14 unlike the plot for the Concept 6 schools, there are  
 15 no cases that sit outside the range of scores that  
 16 it would be expected in a statistical sense of  
 17 expectation.

18 The whiskers say to you how far out given  
 19 the sample of scores you would -- given statistical  
 20 assumptions of an underlying normal distribution,  
 21 that bell-shaped curve that people are familiar  
 22 with, how far out the range of observed scores  
 23 should extend. Any observed score outside of the  
 24 whiskers is called an outlie or extreme score,  
 25 because based on the sample of scores observed,

1 how that algorithm operates. I don't walk around  
 2 with that in my head.

3 MS. READ-SPANGLER: If I ask if it was one  
 4 half times the interquartile range, you wouldn't  
 5 know?

6 THE WITNESS: It's one of those things I  
 7 leave in remote memory. I look it up if I need to  
 8 know it. There's some things that I take advantage  
 9 of the fact. If I'm going to talk about it and I  
 10 know I'm going to talk about it, like when I'm  
 11 giving a lecture, I will go to my remote memory on  
 12 the shelf, pull it out and remind myself what's the  
 13 precise definition.

14 MS. READ-SPANGLER: That's something that I  
 15 would want to know when he comes back next time.  
 16 Would you want us to write you a letter to get him  
 17 to look it up before he comes back?

18 MR. VILLAGRA: Sure. That would be great;  
 19 so there's no question about what it is that you're  
 20 asking about. That would be perfect.

21 MS. DAVIS: Anything else?

22 MR. REED: I had a question.

23 MR. VILLAGRA: Just to be clear, in terms  
 24 of allowing this, this is being done in the interest  
 25 of moving things along quicker; so this should

1 factor into the necessity of maybe a third day, if  
2 at all.

3 MR. REED: I'm trying to interpret in  
4 figure 11 -- the box is supposed to be the 25th --  
5 I'm sorry. It's supposed to represent that cluster  
6 of values between the 25th and 75th percentile. In  
7 figure 11, under the multitrack Concept 6 bar, what  
8 does that mean for the lowest quartile? Where is  
9 that represented in that particular plot?

10 THE WITNESS: What that means is that all  
11 of the lowest quartile has the same value as the  
12 beginning of the next quartile; so there's no  
13 dispersion away. If in the table below the figure,  
14 the 25th percentile is located at a state rank of  
15 1, that's the lowest possible score on the scale,  
16 which means that from 0 to 25 everybody stacked up a  
17 singular score at that point, which is the edge of  
18 the box.

19 MR. REED: Okay. Thanks.

20 BY MS. DAVIS:

21 Q. Dr. Mitchell, in your report, in what year  
22 or years did you look at student achievement in  
23 multitrack schools?

24 MR. VILLAGRA: Hold on a second. Just to  
25 be clear, when did he do his analysis, or what was

1 You want to take a break?  
2 (Recess taken.)

3 BY MS. DAVIS:

4 Q. Why didn't you analyze data -- and I'm  
5 talking about the figures that are included in your  
6 report at Exhibit B -- for years other than 2001?

7 A. I'm trying to remember the various  
8 considerations that I had at the time. I know one  
9 of them was simply time, how much data could I  
10 collect and analyze in the time frame that was  
11 presented to me for production of the report. It  
12 was a very large time difference between the time  
13 presented to me to provide the report in full draft  
14 and the time that it finally got filed. And so I  
15 don't think I really had any extra time to work on  
16 it, in any great attention anyway, after that  
17 initial date. But in the time frame I had to make  
18 judgment, there was only so much data I could  
19 handle. And that was one of the considerations for  
20 why this --

21 At that time, this was the most current  
22 state data that I could access to examine the  
23 question. And what appeared to be most relevant was  
24 to say -- was to begin with the question of how do  
25 things stand now, where that was now.

1 the year of the data that he was using?

2 MS. DAVIS: Year of the data. I don't know  
3 if there was one year or more than one year. That's  
4 what I'm trying to find out.

5 THE WITNESS: The data analyzed that led to  
6 the generation of these figures was the data  
7 utilized for the 2001 API scores.

8 BY MS. DAVIS:

9 Q. Did you analyze data for any other year?

10 A. In the generation of these figures and  
11 tables --

12 Q. Yeah, well in the generation of the figures  
13 and tables.

14 A. If we restrict the discussion to the  
15 generation of these figures and tables, that is the  
16 time frame analysis.

17 Q. Did you analyze data anywhere else in your  
18 report for years other than 2001?

19 A. In other research activities -- for  
20 example, the 1999 Mitchell and Mitchell paper, I  
21 have looked at the relationship between the calendar  
22 and the calendar track for different years than  
23 2001.

24 Before you start the next one --

25 Q. Sure.

1 The accessibility of state-level data other  
2 than this set that would allow me to pursue the  
3 question was quite limited should I have had time,  
4 because prior to the adoption of the Stanford 9 as  
5 the state-level test that all schools must utilize  
6 in standardized testing of their students, there was  
7 no common statewide measure of student achievement;  
8 so if I had time and resources, I could imagine at  
9 least collecting any other data sets available and  
10 asking the same questions.

11 But time and resource constraints,  
12 relevancy considerations, access possibilities --  
13 those, I'm sure, I took into account when making the  
14 decision to look at the 2001 data. If there were  
15 other considerations, I can't declare with  
16 confidence right now.

17 Q. In looking at your figures at Exhibit B of  
18 your report, can you tell if multitrack year-round  
19 schools are improving year to year in terms of  
20 student achievement?

21 A. My analysis does not offer achievement  
22 growth trajectory-type analysis, which it seems to  
23 me the question you're proposing is: Is there in  
24 this presentation of figures 1 through 14 an  
25 analysis of achievement growth trajectories?

1 The answer to that is "no."

2 Q. Is there analysis of achievement growth  
3 trajectory contained in your expert report?

4 A. My recollection, as I'm thumbing through  
5 the report here, is that I did not include that  
6 discussion, but I'm looking for it to figure out if  
7 I did.

8 What is not exactly achievement growth type  
9 trajectory discussion but bears some resemblance to  
10 it is included on page 25. But to be precise, there  
11 is no explicit discussion of an analysis of  
12 achievement growth trajectories in the report.

13 Q. In your report, you claim that "B" track  
14 "ghettoizes" the poor and ELL students with the  
15 least experienced and least qualified teachers.

16 On what do you base your opinion that  
17 "B" track is "ghettoized"?

18 MR. VILLAGRA: Objection; compound,  
19 misstates the record and ambiguous.

20 THE WITNESS: What is meant by the  
21 sentence, where data are available -- it is clear  
22 that the least popular track ghettoizes the poor and  
23 English language learning students with the least  
24 experienced and least qualified teachers in the  
25 school, which is found on page 25.

1 on "B" track?

2 A. My examination of student and teacher  
3 identified data by track within the school districts  
4 where I have available data from which I have had  
5 data made available to me.

6 Q. Do you have any opinion as to why there is  
7 a particular group concentration on "B" track?

8 MR. VILLAGRA: Objection to the extent that  
9 it calls for him to speculate as to why it happens.

10 THE WITNESS: By -- bad start --

11 There are some reasons that are sure to be  
12 identified in the research literature, and then  
13 there are some reasons that I remember being offered  
14 in conversations at times -- what I'm doing is I'm  
15 bragging here that these conversations I'm not going  
16 to be able to produce for you in the same way that  
17 we went through yesterday with whom and when. There  
18 are conversations I've had where reasons have been  
19 offered.

20 For example, in the research literature,  
21 there is an explicit statement that in the Oxnard  
22 school district, it seemed expedient to encourage  
23 children of migrant families -- no -- to encourage  
24 the families to enroll their children on "B" track.  
25 That is to say it was an active recruitment policy

1 What is meant by that is there is  
2 substantial concentration of poor and English  
3 language learner students on the "B" track and  
4 that's the same place where there's substantial  
5 concentration of low experience and not fully  
6 credentialed teachers, so that like a neighborhood  
7 ghetto, there is a clear character that can be  
8 ascribed to it by virtue of the clear concentration  
9 of a particular group.

10 BY MS. DAVIS:

11 Q. Why do you think there's a clear  
12 concentration of a particular group on "B" track?

13 A. To answer that question --

14 MR. VILLAGRA: Objection to the extent it  
15 calls for speculation.

16 Are you asking what his basis is for making  
17 that conclusion?

18 MS. DAVIS: Sure.

19 Q. What's your basis for making that  
20 conclusion?

21 A. It appears to me now that I'm not sure what  
22 question I'm answering; so I'm happy to listen again  
23 so that I can answer it.

24 Q. What is the basis for your conclusion that  
25 there is a clear concentration of a particular group

1 by the school district to encourage differential  
2 enrollment on the "B" track; so that's one reason  
3 why such concentration is observed.

4 BY MS. DAVIS:

5 Q. And in Oxnard, the migrant families were  
6 encouraged to enroll in "B" track in order to  
7 increase average daily attendance -- now I'm reading  
8 from your report at page 25 -- since the  
9 subpopulation was known to take extended vacations  
10 during January well after the Christmas holidays  
11 when there was little demand for their labor.

12 Am I understanding it that there was a  
13 policy to encourage migrant families to the "B"  
14 track so they would miss less school?

15 MR. VILLAGRA: Is the question whether  
16 that's what you're understanding or whether your  
17 understanding is correct?

18 MS. DAVIS: Whether my understanding is  
19 correct.

20 MR. VILLAGRA: Okay.

21 THE WITNESS: The -- let's see. How do I  
22 need to say this?

23 At this time, my recollection is that the  
24 report from which that summary was derived, that  
25 summary statement discussed that -- as the

1 motivation for that policy, that there was a desire  
2 to increase the average daily attendance of this  
3 subgroup by encouraging their enrollment on the  
4 "B" track because the "B" track was not in session  
5 in January and that this subgroup was not often in  
6 attendance for some portion of January.

7 That's my recollection of why it is that  
8 this statement is here, to exemplify that there is  
9 at least one case where it is clear that a policy  
10 decision was made to create in the non--

11 What's the word people like to use in the  
12 perjorative? That is to say, "ghetto" has a  
13 negative connotation when you say it often. In part  
14 I intend it; but in part, it's also important to  
15 know that it's a word that has a meaning that need  
16 not necessarily be negative.

17 But that, this produced a ghetto. This  
18 produced a concentration of people with similar  
19 characteristics and that this is an example of  
20 declared reasoning behind this outcome of locating a  
21 ghetto on a particular track on a multitrack  
22 year-round school.

23 BY MS. DAVIS:

24 Q. You say that the term "ghetto" is not  
25 always a negative.

1 So that's why I qualify this with without  
2 examination of potential consequences other than the  
3 declared objective, it would sound reasonable and  
4 has been evidenced in at least one other case as the  
5 kind of logic employed for the adoption of an  
6 alternative calendar.

7 Q. But my question was: You said  
8 "ghettoizing" is not always a negative term.

9 Are you saying that the term "ghettoizing"  
10 with respect to the Oxnard practices is negative in  
11 this case?

12 MR. VILLAGRA: Objection; asked and  
13 answered. Objection; incomplete hypothetical.

14 THE WITNESS: I think I said that I was not  
15 concerned about being sure that the reader would be  
16 free of the negative connotation, because from what  
17 I've been able to observe, I think the negative  
18 connotation should be confronted when trying to make  
19 a judgment about whether or not this is a good thing  
20 or a bad thing.

21 BY MS. DAVIS:

22 Q. Are you using the connotation negatively?

23 MR. VILLAGRA: Objection to "using." It's  
24 vague and ambiguous.

25 THE WITNESS: In order to build some

1 Do you think it's a negative in looking at  
2 Oxnard's policy to encourage migrant workers to  
3 enroll their children on "B" track so that they miss  
4 less school?

5 A. The declared reason standing alone without  
6 consideration of other consequences as a result of  
7 the policy I believe would be fairly well received.  
8 An example of a single-track year-round school in  
9 terms of this calendar strategy for responding to  
10 family behavior that's important is that one school  
11 district of which I'm aware -- they went to a  
12 single-track year-round calendar to try to capture  
13 this no school in January effect without going to  
14 multitrack because they didn't need to necessarily  
15 take that path.

16 They discovered that a consequence was they  
17 didn't have students missing school in January, but  
18 they were missing school in July. So this rationale  
19 clearly seemed like a logical rationale to this  
20 other school district. I don't know whether they  
21 used this report to motivate it. What I'm saying is  
22 that it seemed like a logical rationale and they  
23 discovered that there was another consequence. They  
24 solved the problem of absence in January and created  
25 a problem with absence in July.

1 context for my use of the term, to help clarify what  
2 I'm trying to accomplish by its use, I'm looking at  
3 page 9. And what I believe would be a fair  
4 inference by the reader is that ghettoizing is to  
5 emphasize isolation or extreme concentration,  
6 depending on how you want to think about it; that  
7 is, you can think about a group being isolated on a  
8 particular track. And what do I mean by "isolated"?  
9 I mean that they're extremely concentrated there and  
10 very low representation on the other tracks.

11 BY MS. DAVIS:

12 Q. My question was: Are you in your report  
13 using "ghettoizing" negatively?

14 A. In the sense that "negative" means to raise  
15 concern that something is problematic, yes.

16 Q. And you're using that term negatively with  
17 respect to Oxnard's policy as reported in your  
18 report?

19 MR. VILLAGRA: Objection; vague and  
20 ambiguous.

21 THE WITNESS: I believe that it is  
22 problematic to have a policy that explicitly  
23 concentrates one identifiable group on an attendance  
24 track such that it is isolated from the remaining  
25 school population by virtue of that assignment.

1 BY MS. DAVIS:

2 Q. And why is that?

3 MR. VILLAGRA: In the abstract or with  
4 respect to concentration and isolation on "B" track?

5 MS. DAVIS: In response to his response,  
6 which seemed to me to be more in the abstract.

7 THE WITNESS: Yesterday we discussed what I  
8 was trying to get at by using the term "social  
9 resources." This is where I think it's important to  
10 become concerned about isolation and extreme  
11 concentration, that if you have a very extreme  
12 concentration of a particular group, especially when  
13 that group is known to have academic achievement  
14 risks, they -- the members of that group  
15 concentrated on that track have very limited access  
16 by virtue of the structure of the calendar to the  
17 remaining student body and thereby have  
18 significantly reduced probability that they can  
19 develop relationships or, in other words, build a  
20 social network with those persons who might serve as  
21 resources to their membership in the school, their  
22 access to -- for example, in the case of children of  
23 migrant families, models of fluent English and  
24 fluent English discourse.

25 And these are considerations that must be

1 THE WITNESS: At this point I feel as  
2 though I should have more to say but that nothing is  
3 coming to mind at present, which --

4 MR. VILLAGRA: Do you feel we should take a  
5 break?

6 THE WITNESS: That might be a more  
7 efficient way to use the time than everybody hanging  
8 around waiting for me to think of something to say,  
9 or we could go on to another question and revisit  
10 it. But I do feel sort of in a mental holding  
11 pattern where nothing is moving.

12 MR. ELIASBERG: It's been about an hour.  
13 It may be a logical time for a break anyway.

14 MS. DAVIS: That's fine. Let's take a  
15 break.

16 (Recess taken.)

17 BY MS. DAVIS:

18 Q. Dr. Mitchell, before we started talking  
19 about Oxnard specifically, we were talking about  
20 research and literature regarding the reasons why  
21 there is a particular group concentrated on "B"  
22 track. And you had started with Oxnard as  
23 literature on that topic. And I'm wondering if  
24 there's any more research or literature you're aware  
25 of.

1 taken into account, not merely whether or not you  
2 can improve your ADA.

3 BY MS. DAVIS:

4 Q. Anything else?

5 A. What I'm trying to figure out in responding  
6 to your question is the degree to which "anything  
7 else" means do I have other thoughts or  
8 considerations about isolation being problematic, or  
9 do I have thoughts and considerations about  
10 isolation being problematic in reference to the  
11 statement about Oxnard School District?

12 Q. Well, let's take them both.

13 Why is isolation problematic other than  
14 what you just mentioned in your last response in the  
15 situation in Oxnard, if anything?

16 A. Outside of what I've said so far, I don't  
17 feel as though I'm in a position to offer a timely  
18 and thoughtful response as it regards the Oxnard  
19 School District example.

20 Q. Any other thoughts as to isolation being a  
21 negative outside of the Oxnard school context?

22 MR. VILLAGRA: We're still talking about  
23 isolation on a particular track?

24 MS. DAVIS: Uh-huh. Isolation, and he also  
25 says "isolation or concentration."

1 A. Yes.

2 Q. And what is the research or literature? If  
3 you could, give me titles and authors.

4 A. With respect to within multitrack  
5 year-round schools with track-to-track differences,  
6 there's a paper presented at the American  
7 Educational Research Association by Ruth Knudsen in  
8 something like 1995. There's a paper in  
9 Anthropology and Educational Quarterly by -- I think  
10 the author -- the first one here -- I'm not sure I'm  
11 going to get it right. I think her name is Marjorie  
12 Orellana Faustich, and the second author is Barrie  
13 Thorne.

14 I don't remember which of the Burns and  
15 Mason papers talk about track-to-track differences  
16 within multitrack year-round schools. I'm pretty  
17 sure that at least one of them is cited in my 1999  
18 Mitchell and Mitchell paper. In fact, most of the  
19 literature on this question is cited in that paper.  
20 I say "most" because I'm not sure whether I got it  
21 all cited in that paper or not. And if it's not  
22 there, I've given you the ones I can easily remember  
23 at this time.

24 Well, two names popped into my head right  
25 after I said that.



1 It was a dissertation that was submitted at  
 2 Northern Arizona University by -- I believe the name  
 3 is Janet Stimson. I think she also had some brief  
 4 summary article published in Thrust for Educational  
 5 Leadership, but that summary article doesn't really  
 6 give you access to what she learned in her  
 7 dissertation in a meaningful way. And by  
 8 "meaningful" I mean access to the particulars of the  
 9 methodologies so that you could subject it to  
 10 scholarly peer review. That's not available to you  
 11 in the summary article in Thrust for Educational  
 12 Leadership.

13 I just said two names popped in. Who is  
 14 the other name? Oh, Robert Burns -- the paper cited  
 15 in this report. I don't remember precisely where  
 16 now in the report -- his paper.

17 I don't remember other than the ones cited  
 18 about the Oxnard Unified -- it's not a unified  
 19 district. It's a -- School District is the title.

20 Other than that paper cited, I don't  
 21 recollect that within school track-to-track  
 22 difference analysis was provided again by Norman  
 23 Brekke.

24 With not exactly the same level of  
 25 attention to the question, the White and Cantrell

1 this report. But I'm not clear on that. These  
 2 papers have been part of what I thought about,  
 3 worked on for several years now. And to distinguish  
 4 between whether or not I've reviewed them for this  
 5 purpose or for other purposes, the clarity of the  
 6 distinction isn't available to me right now.

7 Q. For which school districts do you have data  
 8 showing concentrations of particular groups on  
 9 "B" track?

10 A. I'm trying to think how many districts are  
 11 named in that research literature.

12 Los Angeles Unified School District  
 13 identifies itself in the technical report.

14 Q. In the technical report?

15 A. The White and Cantrell technical report.

16 Q. Okay.

17 A. I believe, but I'm not certain, that  
 18 Ruth Knudsen identified Long Beach schools in her  
 19 paper, but I'm not certain of that. Either  
 20 Bob Burns or Janet Stimson -- Bob Burns is Robert  
 21 Burns -- one of those two places identified, I  
 22 think -- I'm not sure the district. For some reason  
 23 I know which district that is. That district is  
 24 San Bernardino Unified School District, and that  
 25 since I never talked to either of them, I know that

1 paper cited does discuss that there are, within  
 2 school track-to-track, differences in multitrack  
 3 year-round schools.

4 At this time, no others are coming to mind  
 5 that I can give you sufficient reference information  
 6 to identify them.

7 Q. Did you consider the literature that you  
 8 just listed in preparing your expert report in this  
 9 case?

10 A. Those papers named and others may be  
 11 included which I cannot name for you, that is to  
 12 say, I have to hold in reservation, which I can't  
 13 right now recollect for you, were all considered  
 14 either directly or indirectly, because as I  
 15 mentioned, these papers are cited in that 1999  
 16 paper, which, of course, the 1999 paper was also  
 17 used in developing my understanding to write this  
 18 report.

19 Q. Which of the literature did you consider  
 20 directly in preparing your expert report?

21 A. Certainly if it's cited in the expert  
 22 report, I have absolutely no doubt I considered it  
 23 directly. All of the papers that I named, I have a  
 24 sense but not a certainty that they're readily named  
 25 because I reviewed them directly in preparation of

1 if they had a confidentiality agreement, they did  
 2 not breach it. And for me to know that, I believe  
 3 that they were actually named in one of those two  
 4 documents.

5 As already discussed, the Oxnard school  
 6 district has been identified.

7 Who else?

8 In the work conducted jointly by Burns and  
 9 Mason, I'm not sure if they identified districts or  
 10 not. There are several in their data, and I just  
 11 don't recollect whether or not they identified the  
 12 districts that participated in their research  
 13 activities.

14 To the best of my recollection, that's the  
 15 list of names of districts identified in the  
 16 research literature by name that I can provide to  
 17 you.

18 Q. Do you have any data independent from the  
 19 data contained in the research literature?

20 A. If you exclude my own work --

21 Q. What do you mean by your own work? The  
 22 work that you said that you can't disclose what the  
 23 names of the school districts are? Is that what  
 24 you're referring to?

25 MR. VILLAGRA: I think the question was

1 focused on your own work.

2 BY MS. DAVIS:

3 Q. Yes.

4 What data do you have that's independent of  
5 what you just mentioned within the literature?

6 A. I think we're going down a dangerous path  
7 that I have to avoid here, because if I make any  
8 mention of any inclusion or exclusion, I risk  
9 identifying the identity of the school districts  
10 that provided me with data.

11 Q. So you're not going to tell me if you have  
12 any independent data?

13 A. Well, in the sense that the data is an  
14 independent act of collection that does not overlap  
15 with the data collected by other researches, either  
16 by virtue of time or place, I can confirm that I  
17 have independent data, that my data is not  
18 re-analysis of other people's data. I did not go to  
19 other researchers and use their data for my research  
20 activity.

21 Q. For what school districts do you have  
22 independent data?

23 A. I can't answer that question.

24 Q. And why can't you answer that question?

25 MR. VILLAGRA: Asked and answered.

1 multitrack schools are improving year to year in  
2 terms of student achievement?

3 MR. VILLAGRA: And I'm going to object to  
4 this as vague and ambiguous.

5 And just to clarify, improving with respect  
6 to themselves? With respect to --

7 MS. DAVIS: Let's say with respect to  
8 themselves. Let's start there.

9 MS. READ-SPANGLER: You're only limiting it  
10 to California?

11 MS. DAVIS: Yeah.

12 THE WITNESS: Can we redo the question  
13 because it seems to have been added or amended as a  
14 result of your exchange?

15 BY MS. DAVIS:

16 Q. I'm talking about California schools. And  
17 what -- you said you have data.

18 What I want to know is: Sitting here  
19 today, do you have any idea if multitrack year-round  
20 schools are improving year to year in terms of  
21 student achievement?

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

24 THE WITNESS: Because of the complexity of  
25 constructing an answer to that question in a way

1 THE WITNESS: We went through this  
2 yesterday.

3 MS. READ-SPANGLER: We're just trying to  
4 make a record.

5 THE WITNESS: I guess for me what's  
6 problematic is I think we have an extensive --

7 MS. READ-SPANGLER: I think we're just  
8 trying to say it's confidential, and we just want it  
9 on the record.

10 THE WITNESS: Okay. I cannot answer  
11 because that information is confidential.

12 BY MS. DAVIS:

13 Q. Do you have any idea if multitrack  
14 year-round schools in California are improving year  
15 to year in terms of student achievement?

16 MR. VILLAGRA: Objection; asked and  
17 answered, vague and ambiguous as to "improving,"  
18 incomplete hypothetical as well.

19 THE WITNESS: I have data which would serve  
20 to allow me to perform an analysis about --  
21 pertaining to the question of is there year to year  
22 change in student achievement for multitrack  
23 year-round schools that are located in California.

24 BY MS. DAVIS:

25 Q. Sitting here today, do you know if

1 that I could present to others, I haven't tried to  
2 construct my analyses to make what seems to be a  
3 rather general claim embedded in your question in  
4 order to help understand what I'm saying here. If  
5 you were -- let me back up a little bit.

6 Academic -- standardized academic  
7 achievement tests performance is generally what  
8 people consider when raising this question. If you  
9 want to confine yourself to that measure, that helps  
10 to zero in on things.

11 BY MS. DAVIS:

12 Q. That's fine.

13 A. Okay. The next consideration is what  
14 precisely you want to look at when confining it to  
15 that set of measurements. For example, are you  
16 asking are third-grade scores changing from year to  
17 year, or are individual student achievement  
18 trajectories rising at a different rate? Some of  
19 that kind of question I have explored and some of it  
20 I have not. And depending on how you define it, the  
21 answer could easily be straightforwardly "no" or it  
22 could be "yes" or it could be "in part."

23 Q. What have you explored?

24 A. What I have explored is the --

25 Now I've got to back up because maybe where

1 I'm going -- now that we've pushed this a little, I  
2 may be able to simplify my answer. If you read your  
3 question again, rather than going into a lot of  
4 details, now I know where I'm going and I think the  
5 answer is actually easier to give you.

6 Q. I'm wondering, you said you've explored  
7 changes in multitrack school performance. I'm  
8 wondering what you've explored.

9 A. Right.

10 What I was trying to say is that you had an  
11 earlier question which is different from that, which  
12 I think I actually have a simple answer for. And  
13 I'm trying to figure out whether you want me to go  
14 back and answer it now that I've started to say I  
15 am, for lack of a better expression, guilty of  
16 thinking out loud and, therefore, arriving at my  
17 ability to know what I've done in a way that I can  
18 respond to your question.

19 Q. If you think we can backtrack, that's fine.  
20 Can --

21 A. We've got two questions on the table now;  
22 so I'm feeling in an awkward situation.

23 MS. DAVIS: Let's go back two questions.

24 (Record read as follows:

25 "QUESTION: I'm talking about

1 A. That there is a relationship between the  
2 persistence in or the change between a given  
3 calendar track and the comparative level of  
4 achievement that students have attained based on  
5 those histories of persistence or change in tracks.

6 So, for example, if you compare students  
7 who all have just a year of persistence in a given  
8 track and then ask the same -- and compare the  
9 differences in achievement among the groups on the  
10 different tracks and then ask for students who have  
11 three years of persistence, what is the difference  
12 in achievement of students across the tracks, is  
13 that consistent or is it different -- that I have  
14 explored.

15 And my findings are that students who  
16 have -- who are on the "B" track are -- as a group,  
17 the average achievement among those students on the  
18 "B" track is lower than all other tracks for  
19 students who have only been on a given track for a  
20 year. And after three years of persistence on a  
21 given track, the distance -- the achievement gap  
22 between students on "B" track and in this particular  
23 research case, the high achievement track, "C"  
24 track -- that gap is larger among those students who  
25 have three years' persistence, so that you'll find

1 California schools. And what -- you  
2 said you have data.

3 "What I want to know is: Sitting  
4 here today, do you have any idea if  
5 multitrack year-round schools are  
6 improving year to year in terms of  
7 student achievement?")

8 THE WITNESS: With respect to the question  
9 of a whole school analysis -- and it sounds a little  
10 bit maybe like I'm revisiting what I said, but what  
11 I'm trying to say is that no, I don't have whole  
12 school opinions about improvement in academic  
13 achievement. The distinction is the question about  
14 within schools on academic -- on calendar tracks  
15 versus the whole school and what's happened with it,  
16 I have not explored in any depth or detail the whole  
17 school characterization.

18 BY MS. DAVIS:

19 Q. Have you explored the calendar tracks  
20 within schools?

21 A. Yes.

22 Q. And what have been your findings?

23 A. With respect to the standardized academic  
24 achievement test scores?

25 Q. Yes.

1 that those who have only been there a year, there's  
2 a difference. After three years, that comparative  
3 difference is larger yet.

4 Q. You said you explored this.

5 Is this in something you've already  
6 written?

7 A. In the 1999 Mitchell and Mitchell.

8 Q. Do you know if any multitrack schools in  
9 California have improved year to year in terms of  
10 student achievement?

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

13 THE WITNESS: I have not explicitly  
14 examined the question of given some index of school  
15 level academic performance whether or not there is  
16 valid and reliable indication that one or more  
17 multitrack year-round schools has increased its  
18 score on that index of achievement.

19 BY MS. DAVIS:

20 Q. You said you haven't specifically examined  
21 this. I'm just wondering, do you know? Have you  
22 heard from any source?

23 A. I have a nonspecific recollection that  
24 there are schools that operate on a multitrack  
25 year-round that have posted a higher API score in

1 one year relative to a previous year.  
 2 Q. What did you mean by "nonspecific  
 3 recollection"?  
 4 A. I can't tell you for which school this  
 5 information was offered and not because I'm  
 6 protecting confidentiality but because I just don't  
 7 remember. I just -- I don't remember.  
 8 Q. Okay. You state in your report that there  
 9 is a clear pattern of segmentation of students and  
 10 teachers across tracks structured by state and local  
 11 policies.  
 12 And I'm wondering what state and local  
 13 policies you're referring to.  
 14 MR. VILLAGRA: Objection; compound.  
 15 THE WITNESS: Is there a page?  
 16 BY MS. DAVIS:  
 17 Q. You can look at 18.  
 18 A. So the sentence -- "This situation was  
 19 clearly structured by state and local policies...."?  
 20 Q. Right.  
 21 A. So we are literally on the same page now?  
 22 Q. Yes.  
 23 A. And now I need to do you the courtesy of  
 24 making sure I understand the question and we're on  
 25 the same page.

1 Q. Sure.  
 2 A. So if we can ask it again or have it read  
 3 back or something, that would be a big help.  
 4 Q. Well, looking at page 18, you said you  
 5 found a "clear pattern of segmentation of students  
 6 and teachers across tracks in response to and  
 7 reinforcing the tracking of various instructional  
 8 programs, and the situation was clearly structured  
 9 by state and local policies."  
 10 And I want to take them separately, and I  
 11 want to know which state policies and which local  
 12 policies you're referring to. So let's start with  
 13 state policies.  
 14 A. Okay. What I mean by "state policies" here  
 15 is that, first of all, the existence of schools  
 16 utilizing multitrack year-round calendar is, in  
 17 part, in response to state incentives to create such  
 18 situations. Additionally, there are policies about  
 19 the identification of students for programs and then  
 20 the delivery of that curricular instructional  
 21 program. And that requirement influences how  
 22 schools structure delivery on a multitrack calendar.  
 23 I think that those are the points of  
 24 largest importance. If there are others, unless I'm  
 25 failing to recollect my thinking at the time of this

1 writing, that's probably sufficient with respect to  
 2 state policies.  
 3 Q. You spoke about "state incentives."  
 4 What state incentives are you talking  
 5 about?  
 6 A. Qualification for school building funds.  
 7 Q. What local policies were you referring to?  
 8 A. Depending on the locality, different kinds  
 9 of policies have been implemented. One issue that  
 10 was common at the time of the writing of the 1999  
 11 paper -- it's my understanding that it's not  
 12 necessarily as common, but I don't have definitive  
 13 data, just an understanding based upon the issue  
 14 being brought up -- is the structure of collective  
 15 bargaining agreements, that when a teacher would  
 16 apply for a job initially or apply for a vacancy for  
 17 a position within the district, that position would  
 18 be designated by attendance track.  
 19 And I have had conversations that lead me  
 20 to believe that some school districts have revisited  
 21 that provision in their collective bargaining  
 22 agreements, but I'm not exactly sure which districts  
 23 or whether or not that ended up becoming the  
 24 structure of the collective bargaining agreement.  
 25 We're on local policies still; right?

1 Q. Correct.  
 2 A. I'm just trying to keep myself focused  
 3 here.  
 4 Parental expression of preference or  
 5 choice, if you prefer, is a policy which is  
 6 important as it pertains to the segmentation of  
 7 students across tracks. When this policy is adopted  
 8 and implemented, it usually takes the structure of  
 9 the sign-up queue. There's some particular date at  
 10 which time parents express their preference for  
 11 track enrollment. And that mechanism carries all  
 12 the baggage of differential ability to exercise  
 13 expression preference.  
 14 Other local policies I'm aware of that have  
 15 structured the segmentation of the student body by  
 16 track is to make within the school catchment area  
 17 further division of residential zones of attendance  
 18 for the particular attendance tracks within the  
 19 school.  
 20 Sort of interplay between state and local  
 21 policy, but it's basically a local decision, is the  
 22 concentration of curricular or programming  
 23 opportunities to a particular track. That creates  
 24 segmentation of the student body so that you may end  
 25 up with a Gate track or bilingual track. Sometimes

1 particular attendance tracks have special education  
2 programs or teachers assigned to that particular  
3 attendance calendar. Sometimes programs like band  
4 or choir will be limited to a particular track  
5 because the teacher needs to be assigned to a  
6 particular attendance track in order to have a  
7 regular contract.

8 So those are several examples of local  
9 policies that produce student segmentation and  
10 teacher segmentation across tracks.

11 Q. Anything else?

12 A. I'm not sure that I've been exhaustive.

13 Q. I'd like you to be exhaustive if you can be  
14 exhaustive. If you need to think about it, that's  
15 fine.

16 A. What I can offer you at this time is that I  
17 don't find anything else mentioned in the expert  
18 report submitted.

19 Q. In your report, you claim that incentive  
20 tracking occurs when Gate classes are assigned to  
21 tracks less popular with the more affluent parents  
22 of Gate students.

23 Is this what you referred to earlier as  
24 "ghettoizing"?

25 MR. ELIASBERG: You say he claims this. On

1 attendance track where you have the ability to  
2 identify it as being relatively homogenous.

3 And so it's a lot like ghettoizing, but I  
4 have some reservation simply because in practice and  
5 in observation, you don't get the same concentrating  
6 effect because the numbers are smaller. But it is  
7 intentional isolation of an identified group on a  
8 particular attendance track. That's -- if it's fair  
9 to assume that a district really wants all of those  
10 students together in those classes, then the intent  
11 is to produce programmatic isolation on a particular  
12 attendance track.

13 From the empirical standpoint, the result  
14 is not to produce that isolation because the  
15 declaration of that targeted program services is not  
16 sufficient incentive that families who have children  
17 identified for Gate program services have their  
18 children enrolled on that less popular track.

19 In the case of one school district of which  
20 I'm aware, it fairly evenly split the Gate  
21 population across two attendance tracks because some  
22 parents were responsive to the incentive and some  
23 were not.

24 Q. What school district are you talking about?

25 A. If my memory serves me correctly, at the

1 what page are you saying this is on?

2 MS. DAVIS: Page 19.

3 MR. VILLAGRA: Is this an example of  
4 "ghettoizing," or is this all he meant by  
5 "ghettoizing"?

6 MS. DAVIS: Is this an example -- I asked  
7 him if he considers this ghettoizing.

8 THE WITNESS: As an empirical result or as  
9 an intention?

10 BY MS. DAVIS:

11 Q. Let's take both.

12 What about as an intention?

13 A. With respect to the Gate program and  
14 requiring the assumption that the school intends to  
15 truly have all Gate-identified students in classes  
16 for Gate-program services, that would be from the  
17 standpoint of the program label an effort to produce  
18 isolation on a particular track, which is  
19 producing -- isolation --

20 The thing that it doesn't do, which makes  
21 it difficult to call it "ghettoizing," is that Gate  
22 enrollment is generally not so large that the entire  
23 attendance track would be dominated by Gate student  
24 enrollment. So that the kind of understanding of  
25 ghettoization is not just isolation but producing an

1 time I was informed of this, that was Redlands  
2 Unified School District.

3 Q. Anything else on the empirical?

4 A. I think I said what I have to say. Nothing  
5 else is coming to mind right now.

6 Q. You state at page 10 of your report that:  
7 "Multitrack year-round calendar is not  
8 sought after by the public and its  
9 imposition by state and local policies  
10 resist it when possible."

11 Do you recall that statement in your  
12 report? It's at page 10.

13 A. That sounds familiar. Where is that?

14 Q. It should be page 10.

15 A. Ten -- so that begins at the top of page 9  
16 and --

17 Q. Well, the sentence starts on page 10.

18 A. I see. Okay. I'm with you now. All  
19 right.

20 Q. What is the basis for this statement?

21 A. Let's see. I recollect at some point  
22 having read -- well, I looked at multiple sources to  
23 which to attribute this. I'm trying to see if I  
24 recollect specifics for you.

25 One example that stands out in my mind was

1 a news report related to -- I believe it was  
 2 deliberations by the board of the Fresno schools  
 3 where parents' and teachers' statements to the board  
 4 where that they didn't want the multitrack  
 5 year-round calendar because they feared it would  
 6 produce segregated tracks and particular advantages  
 7 and disadvantages to individual tracks within the  
 8 multitrack year-round calendar and that -- I believe  
 9 that the news report also went on to say that the  
 10 strongly voiced dissent induced the board to drop  
 11 consideration of a multitrack year-round calendar.

12 That one stands out as something I read a  
 13 long time ago. When I say "a long time ago," I mean  
 14 around the beginning of the implementation of  
 15 class-size reduction policy in California.

16 Q. And when is that? What time frame?

17 A. I'm not precisely sure when Fresno  
 18 considered it; somewhere -- gosh, I'm not sure. It  
 19 feels like a long time ago; so I would just have to  
 20 guess. I can't tell you precisely.

21 Q. What is "a long time ago" in your mind?

22 A. Well, given the date of the policy, it  
 23 can't be any longer ago than '97. My sense -- my  
 24 impression in my memory is this was an early  
 25 response; so it would have been more like '97 than

1 change and the need to be aware if you're a school  
 2 administrator that this is a consideration you have  
 3 to take into account if you're going to adopt and  
 4 proceed to implement a multitrack year-round  
 5 calendar where it doesn't already exist.

6 The legislative analyst's office issued a  
 7 report in 1990, 1991, somewhere around there, which  
 8 was offering a critique of the existing structure of  
 9 incentives related to the adoption of multitrack  
 10 year-round calendars by schools in California. And  
 11 one of the issues discussed in that report was the  
 12 recognition that school districts had developed  
 13 strategies to evade the attention of actually  
 14 maintaining operation on a multitrack year-round  
 15 calendar and that the policy language had to be  
 16 tightened up in order to ensure that those school  
 17 districts that sought state building funds actually  
 18 followed through with putting schools on multitrack  
 19 year-round calendars.

20 I don't recollect whether that report -- in  
 21 fact, my recollection of that report is that that  
 22 language was not careful as to whether or not this  
 23 was an anecdotal description as opposed to a  
 24 widespread occurrence. I don't think that  
 25 distinction was offered in the report, but it may

1 it would have been '99, but I'm not certain. That  
 2 one stands out.

3 Other examples -- I remember reading  
 4 somewhere, which I got off of ERIC -- and I don't  
 5 remember precisely the author or the title. That is  
 6 to say, I can't tell you right now -- a document  
 7 where a principal had written up his experience with  
 8 proposing and implementing a multitrack year-round  
 9 calendar and how it was that he handled initial  
 10 opposition to the proposal.

11 My understanding is that this statement --

12 I'm sort of shifting here because to give  
 13 you other specifics, nothing is coming to mind  
 14 presently. It doesn't mean that there isn't  
 15 anything else. It's just not coming to mind.

16 My recollection is that the National  
 17 Association for Year-Round Education has  
 18 documentation that discusses the need to consider  
 19 public opposition to proposal to shift from a  
 20 traditional calendar to a multitrack year-round  
 21 calendar or even to a single track year-round  
 22 calendar for that matter.

23 And the reason I bring that up is because I  
 24 see that as representative of the development of a  
 25 common understanding that this is an unpopular

1 have been.

2 Q. Anything else?

3 A. I have a recollection of reading a news  
 4 report that may have occurred after the preparation  
 5 of this report -- so I'm not sure exactly how to  
 6 deal with that. That is to say, now I'm not sure  
 7 whether or not this was used in preparation of this  
 8 statement or not. I'm not sure -- by the  
 9 Superintendent Romer of the LA School District,  
 10 which suggested to me that the district perceived,  
 11 at least the Concept 6 calendar, an undesirable  
 12 calendar to have implemented within the district.  
 13 But that's different from what serves as the basis  
 14 for the preparation of that statement.

15 There are other things which I am certain  
 16 have occurred since this report was drafted, which I  
 17 will not mention because, of course, I know  
 18 certainly those were not influential.

19 I think I remember reading a newspaper  
 20 report citing a Lodi School District official about  
 21 the undesirability of the multitrack year-round  
 22 calendar as a way to schedule attendance in that  
 23 district.

24 I remember reading more than one statement  
 25 by -- Mr. Payne's first name -- Thomas Payne in

1 places -- in newspaper interviews. And where else?  
 2 I'm having a hard time separating precisely where  
 3 the statements that said to the effect that adopting  
 4 a multitrack year-round is a Band-Aid strategy was  
 5 utilized. That shorthand is in reference to an  
 6 understanding that school districts would prefer to  
 7 not adopt a multitrack year-round calendar if there  
 8 were another strategy available to them.

9 I don't recollect whether or not those  
 10 newspaper interviews and/or the declaration in  
 11 either -- in any of those sources -- I don't  
 12 recollect clearly whether or not Thomas Payne  
 13 explicitly acknowledged that there would be public  
 14 disfavor of the idea.

15 I do recollect, but not with the same level  
 16 of precision, at the time that I read that story  
 17 about the deliberations -- the public meeting of the  
 18 Fresno school board, that there were other school  
 19 districts that were having these same public  
 20 deliberations about whether or not the multitrack  
 21 year-round calendar was a desired strategy to employ  
 22 for coping with the need to find space if the  
 23 class-size reduction initiative were to be  
 24 implemented or simply to find space because  
 25 overcrowding was an issue.

1 I believe, but I can't say that this is  
 2 actually true with certainty, that I read some brief  
 3 articles written by district administrators. By  
 4 that I mean like a superintendent or assistant  
 5 superintendent in Thrust for Educational Leadership  
 6 that talked about the trials and challenges  
 7 associated with adopting and implementing a  
 8 multitrack year-round calendar, including the issue  
 9 of whether or not the community, the public, was  
 10 favorable to this policy.

11 I don't know whether that's sufficient to  
 12 describe the nature of everything that I have had  
 13 the opportunity to read to develop an opinion in  
 14 order to include that statement or if there are  
 15 other characterizations or specifications that I can  
 16 offer at this time.

17 Q. No. I just really wanted the names of the  
 18 sources and time frame.

19 A. Okay.

20 MS. DAVIS: Why don't we take a break?

21 (Recess taken.)

22 BY MS. DAVIS:

23 Q. Before we took a break, you listed a number  
 24 of documents or sources. And I'm wondering if you  
 25 considered these sources in preparing your report --

1 your expert report in this case, to be precise.

2 A. As an addendum to the list of things that  
 3 could be identified, I wanted to make sure that  
 4 explicitly included, because it was cited here, the  
 5 Shields and Oberg book as a source that can be named  
 6 for you.

7 Q. Okay.

8 A. One of the reasons I bring that up is to --  
 9 in making the distinction between items explicitly  
 10 considered for review for preparation of this report  
 11 compared with items I happen to recall today that  
 12 have through the history of my research in this area  
 13 stayed with me or otherwise alerted me to issues to  
 14 attend to in research in this field -- and I believe  
 15 it to be true that all of the documents explicitly  
 16 reviewed for the preparation of this report are  
 17 either cited or in that mass of documents that were  
 18 photocopied.

19 For example, at least a dozen newspaper  
 20 articles are in that mass of documents of resources  
 21 considered. And so that I know that on this point,  
 22 documents explicitly reviewed or considered, or  
 23 whatever the right word is to use here, I guess I  
 24 reserve that I might be mistaken, but I believe it  
 25 to be true that I cited or provided all of those

1 references on this point.

2 MS. READ-SPANGLER: Move to strike as  
 3 nonresponsive.

4 BY MS. DAVIS:

5 Q. The question was: In preparing your expert  
 6 report in this case, did you consider the sources  
 7 that you had mentioned prior to the break?

8 A. Some of them --

9 MR. VILLAGRA: Objection; vague and  
 10 ambiguous as to "consider."

11 THE WITNESS: Some of those sources to  
 12 which I referred prior to the break are included in  
 13 the mass of documents that was explicitly collected  
 14 and provided as materials reviewed in preparation of  
 15 this report.

16 An example of those things which I recalled  
 17 for you prior to the break in my effort to recollect  
 18 the extent of my experience in studying this  
 19 topic -- an example of one which was not explicitly  
 20 reviewed or considered would be that discussion of  
 21 the Fresno School Board deliberation that was  
 22 covered in the news. That one happened to pop up in  
 23 my mind in response to your question. I don't have  
 24 any recollection of that one explicitly influencing  
 25 me when I wrote this report, but that doesn't mean

1 that it didn't because it is, for lack of a better  
2 expression, part of the depths of my knowledge on  
3 the topic.

4 I have a history on this topic, not just a  
5 singular visitation to it as a result of preparation  
6 of this report. And making the distinction is that  
7 what was considered for the preparation of this  
8 report of those things that are in this deep history  
9 knowledge base of things that are in my head from  
10 those things which I would attribute to the explicit  
11 activity of putting this report together, I believe  
12 I've answered the question, that some of those  
13 things listed were provided because they were  
14 explicitly considered for the preparation of this  
15 report and that other things, like the instance of  
16 the news report on the Fresno School Board  
17 decision -- I don't know how to classify that  
18 precisely because when I read it and -- today,  
19 precisely what role it played in my activities and  
20 deliberations in the writing of this report, it's  
21 hard to specify.

22 BY MS. DAVIS:

23 Q. So do you even know if today there would be  
24 resistance in Fresno to implementing multitrack  
25 schools?

1 BY MS. DAVIS:

2 Q. You said in your report that multitrack  
3 year-round calendar is not sought after by the  
4 public. I asked you for the basis of the statement.  
5 One of the things you mentioned was an article that  
6 you had read in a newspaper regarding Fresno  
7 schools.

8 A. Uh-huh.

9 Q. And now you're telling me that you may or  
10 may not --

11 What I'm trying to figure out is, you may  
12 or may not have considered this in preparing your  
13 report.

14 A. What I'm --

15 MR. VILLAGRA: Is there a question?

16 BY MS. DAVIS:

17 Q. Yes.

18 Did you consider this in preparing your  
19 report?

20 MR. VILLAGRA: Objection; asked and  
21 answered.

22 MS. DAVIS: I don't agree that it's been  
23 asked and answered.

24 MR. VILLAGRA: It's okay.

25 Objection; asked and answered, misstates

1 MR. VILLAGRA: Objection; vague and  
2 ambiguous, assumes facts.

3 THE WITNESS: I guess I feel like that's a  
4 misdirect from a previous question because today is  
5 after my preparation of this report. And knowledge  
6 about what's happening today could not have  
7 influenced the statements we were discussing in my  
8 report.

9 BY MS. DAVIS:

10 Q. Then let's say as of the date that you  
11 completed your report, did you have any knowledge if  
12 there was resistance in Fresno regarding the  
13 implementation of multitrack schools?

14 MR. VILLAGRA: Objection; vague and  
15 ambiguous and assumes facts.

16 THE WITNESS: If you give me a time frame  
17 for when it is I'm supposed to know if there is any  
18 expression of evidence of resistance to multitrack  
19 year-round schools in Fresno, then I can respond to  
20 that. I have told you previously that I do know of  
21 an instance, and tried to specify the time frame, in  
22 which I'm aware of that instance of resistance to  
23 implementation or even adoption, let alone  
24 implementation, of multitrack year-round calendars  
25 in Fresno.

1 the witness's testimony.

2 THE WITNESS: I think in order to answer  
3 your question I need a precise and clear definition  
4 of what constitutes "consideration," because I think  
5 you're picking on me.

6 BY MS. DAVIS:

7 Q. I'm looking for the basis of your statement  
8 in the report.

9 A. Okay.

10 MR. VILLAGRA: There's still no question.

11 BY MS. DAVIS:

12 Q. What is the basis for the statement in your  
13 report that says "Multitrack year-round calendar is  
14 not sought after by the public and its imposition by  
15 state and district policies resisted when possible"?

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

18 MS. DAVIS: Again, I disagree.

19 THE WITNESS: I have made a good-faith  
20 effort to recollect those sources of information  
21 that give me basis to form an opinion. What I do  
22 not have available to me now is a sufficiently  
23 precise definition of "consideration" to distinguish  
24 between those things which are explicitly pursued  
25 and considered in the time frame of the initiation



1 of the preparation report and its final drafting as  
 2 opposed to those things which I carry with me as a  
 3 result of knowing something that has a history  
 4 longer than the engagement with the task of writing  
 5 the expert report.  
 6 BY MS. DAVIS:  
 7 Q. Did you review the Fresno newspaper account  
 8 in preparation of your expert report in this case?  
 9 A. With respect to the time frame of the  
 10 initiation of the expert report, my knowledge of the  
 11 content of that newspaper report precedes my  
 12 awareness of this suit or the possibility that I  
 13 would be considered to write a report in reference  
 14 to it.  
 15 Q. Have you maintained a copy of this  
 16 newspaper article?  
 17 A. No.  
 18 Q. You also mentioned a NAYRE document.  
 19 Did you review this document in preparation  
 20 of your report --  
 21 MR. VILLAGRA: You're referring to the  
 22 National Association of Year-Round Education.  
 23 MS. DAVIS: Yes.  
 24 Q. -- in preparation of your expert report in  
 25 this case?

1 A. I know what I can tell you in reference to  
 2 that organization's literature is that I visited  
 3 their website to review their postings on more than  
 4 one occasion. Which postings I reviewed  
 5 specifically during this time period as opposed to  
 6 what I was aware of prior to, I cannot make a  
 7 distinction.  
 8 Q. Is your answer "I don't know" if --  
 9 MR. VILLAGRA: Objection; asked and  
 10 answered.  
 11 THE WITNESS: If the phrase "I don't know"  
 12 is preferable to "I cannot make a distinction," then  
 13 I will say yes, I do not know.  
 14 BY MS. DAVIS:  
 15 Q. Thank you.  
 16 You also mentioned some legislative  
 17 analysis.  
 18 A. I'm sorry. What?  
 19 Q. Some legislative analysis.  
 20 MS. READ-SPANGLER: I think he said  
 21 Legislative Analyst's Office, LAO.  
 22 BY MS. DAVIS:  
 23 Q. I'm sorry. LAO.  
 24 Did you review --  
 25 What is it that you reviewed?

1 I have it down as legislative analysis, but  
 2 I'm sensing that's not precise enough.  
 3 A. I don't remember the title of the report.  
 4 I remember that it was released, like, 1990 or 1991.  
 5 It was authored by the Legislative Analyst's Office.  
 6 I did read it and review it explicitly for the  
 7 preparation of this report, and it should have been  
 8 included in the documents provided.  
 9 MR. HAJELA: It's cited as footnote 6 on  
 10 page 7.  
 11 MS. DAVIS: Okay. That makes it easy.  
 12 MR. VILLAGRA: It's in the production.  
 13 BY MS. DAVIS:  
 14 Q. Any other documents or studies that support  
 15 your statement that multitrack year-round calendars  
 16 are not sought after by the public other than what  
 17 you've already testified to?  
 18 MR. VILLAGRA: And just to draw your  
 19 attention, Dr. Mitchell, there was a motion to  
 20 strike your answer where you mentioned Shields and  
 21 Oberg; so --  
 22 MS. DAVIS: There was?  
 23 MS. READ-SPANGLER: I guess I should have  
 24 struck the latter portion.  
 25 MR. VILLAGRA: So just to be perfectly

1 clear, you might want to restate it for the record  
 2 now.  
 3 THE WITNESS: Outside of the book authored  
 4 by Shields and Oberg cited in my expert report, I  
 5 have no specific recollection that I can offer at  
 6 this time outside of my perception that there are  
 7 likely to be additional documents other than those  
 8 explicitly named that were provided -- I don't know.  
 9 What's the term? There was a stack of documents  
 10 that was provided and included in those. An example  
 11 are some newspaper reports to which I referred I  
 12 read some newspaper reports.  
 13 I don't have specific recollections of  
 14 authors, dates and titles to provide you outside of  
 15 the cited Shields and Oberg report to add to what  
 16 was said before the break.  
 17 BY MS. DAVIS:  
 18 Q. Okay. At footnote 5 on page 10, you say  
 19 that:  
 20 "You should note that within a few years  
 21 of implementation, the majority of  
 22 parents who responded to opinion  
 23 surveys, at least in the limited  
 24 number of districts for which there is  
 25 data, have expressed satisfaction with

1 their multitrack year-round schools."  
 2 Do you see that statement on page 10 at  
 3 footnote 5?  
 4 A. Yes, I see the statement.  
 5 Q. What opinion surveys are you referring to  
 6 here?  
 7 A. If by "which opinion surveys" I'm referring  
 8 to you mean can I provide for you specific authors,  
 9 titles and dates that provided those findings, at  
 10 this time I'm working on trying to remember with  
 11 specificity.  
 12 I know that in -- now, I'm not sure which  
 13 one -- the Shields and Oberg authored document,  
 14 maybe the book cited here, at least some of those  
 15 papers are cited. My experience with those  
 16 documents in terms of original readings is several  
 17 years ago. I believe that I'm correct in  
 18 remembering that one of the original documents was a  
 19 survey conducted by the Riverside Unified School  
 20 District. I know there are others. At this time, I  
 21 can't recall for you when or where.  
 22 Q. Do you know approximately how many opinion  
 23 surveys there are out there that you were relying  
 24 upon in making this statement?  
 25 A. It's hard for me to make an estimate when I

1 can only produce a reasonable recollection of one  
 2 that I can name. I'm not sure.  
 3 Q. Did you review the opinion surveys in  
 4 preparing your expert report?  
 5 MR. VILLAGRA: Objection; vague and  
 6 ambiguous.  
 7 THE WITNESS: I'm not sure if I reviewed  
 8 the original documents in preparation for this  
 9 report or only documents which reminded me of their  
 10 existence by citing them. I don't -- I'm not sure.  
 11 BY MS. DAVIS:  
 12 Q. Do you remember --  
 13 Do you know the dates of any of these  
 14 opinion surveys?  
 15 A. I can't recall. I would only be guessing  
 16 in order to answer the question.  
 17 Q. Are the opinion surveys generated by school  
 18 districts?  
 19 MR. VILLAGRA: Objection; vague and  
 20 ambiguous as to "generated."  
 21 THE WITNESS: If I'm right, because I  
 22 believe I'm right, about my recollection of the  
 23 Riverside Unified School District having done this,  
 24 their research and evaluation office would certainly  
 25 have done it themselves. In all the cases in which

1 I have any kind of recollection at this time, it was  
 2 the practice of the school district to, through its  
 3 own personnel -- I don't recollect any specific  
 4 mention of contracting somebody to do the survey.  
 5 It doesn't mean it didn't happen. I do have  
 6 recollection of school districts having their own  
 7 personnel carry out such surveys.  
 8 BY MS. DAVIS:  
 9 Q. Did you provide plaintiffs' counsel with  
 10 any of the opinion surveys?  
 11 A. Here I'm stuck with the problem of specific  
 12 recollection because all of the documents I  
 13 explicitly sought and collected in response to the  
 14 preparation of this expert report I provided with  
 15 the exception, I believe, of the one noted. I think  
 16 I made an explicit note of not being able to recover  
 17 my own copy of the Robert Burns report.  
 18 I remember having a discussion with  
 19 plaintiffs' counsel about being able to possibly  
 20 acquire a copy from the California Educational  
 21 Research Cooperative which sponsored the preparation  
 22 of that report.  
 23 Q. What report are you referring to?  
 24 A. The Robert Burns report that's cited in one  
 25 of the footnotes here in the expert report.

1 Outside of that instance, anything that I  
 2 considered explicitly in terms of getting ahold of  
 3 it, reading it, reviewing it, beginning with the  
 4 initiation of the preparation of this report, I  
 5 believe to have been collected and provided to  
 6 plaintiffs' counsel. That's one of the reasons why  
 7 I put forward the qualification that I'm not sure if  
 8 for this report I reviewed the original opinion  
 9 survey documents or squared my recollection of them  
 10 with them having been cited in reviewed documents,  
 11 like the Shields and Oberg book; so I'm on fuzzy  
 12 territory here.  
 13 Q. I just want to be clear on this point; so  
 14 I'm going to ask you: Do you remember if you  
 15 provided the opinion surveys to plaintiffs' counsel?  
 16 MR. VILLAGRA: Objection; assumes facts.  
 17 THE WITNESS: I don't have any specific  
 18 recollection of having an original opinion survey  
 19 document that I could provide to plaintiffs'  
 20 counsel.  
 21 MR. REED: Are you asking about original  
 22 surveys, because some of the text that is provided  
 23 in the documents do include opinion survey  
 24 documents?  
 25 MS. DAVIS: That's what he said, some of

1 the text he's reviewed, particularly the Shields and  
2 Oberg, have it in there.

3 MS. READ-SPANGLER: I think the confusion  
4 is due to the sort of positivity of --

5 We shouldn't really have to guess which  
6 ones he's referring to, Hector. That's why she's  
7 trying to clarify it.

8 BY MS. DAVIS:

9 Q. I know that you said that some opinion  
10 survey data was contained in Shields and Oberg and  
11 that you cite to that in your report.

12 Do you know if opinion survey or opinion  
13 survey data is contained in any of the other  
14 research you reviewed in preparation of the report?

15 A. I don't have specific recollection.

16 Q. In your report at page 7, you state -- and  
17 this is in 1B -- that:

18 "Those are a variety of substantiated  
19 claims for reduced overall costs  
20 associated with implementation of the  
21 multitrack year-round calendar. Not  
22 all sites or districts realize cost  
23 savings."

24 Do you see that in your report?

25 A. Yes, I do.

1 Q. What is the basis for this statement?

2 A. My recollection is that there were two  
3 finance documents produced by the California  
4 Educational Research Cooperative around '89, '90,  
5 which I believe both of them included Jane Zycowski  
6 [phonetic] as an author -- first author on one, and  
7 maybe David Huff [phonetic] was first author on the  
8 other.

9 What else?

10 I believe this topic is reviewed in a  
11 Shields and Oberg book.

12 Right now I'm not sure.

13 Q. You're not sure about what?

14 A. What else to provide you with as a  
15 reference.

16 Q. You said you believe this topic was  
17 reviewed by or in the Shields Oberg book.

18 Do you know if the topic was reviewed in  
19 that book?

20 A. I know that the topic of finance or cost --  
21 I don't exactly remember what the term is that's  
22 appropriate -- is discussed in the Shields and Oberg  
23 book. I know that I read the entire book during the  
24 period of time I prepared this report.

25 I get the feeling here that somehow that

1 doesn't seem to have answered your question.

2 Q. I'm just wondering, "yes" or "no," do you  
3 know if this topic is covered in the Shields and  
4 Oberg book?

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

7 MS. DAVIS: I don't feel that I have an  
8 answer yet.

9 MR. VILLAGRA: Objection; asked and  
10 answered.

11 THE WITNESS: Well, then, I guess, the  
12 restatement is "yes."

13 BY MS. DAVIS:

14 Q. So you know -- okay. All right. We'll  
15 leave it at that.

16 Going back to the two finance documents you  
17 mentioned, did those documents find that not all  
18 school districts have realized overall cost savings  
19 associated with multitrack year-round calendars?

20 MR. VILLAGRA: Objection; compound.

21 BY MS. DAVIS:

22 Q. You can take each document separately, if  
23 you would like.

24 A. At this time, I can't make a distinction in  
25 order to do that for you.

1 Q. Okay.

2 A. I know I haven't answered something else,  
3 but I've lost track now of what's left to be  
4 answered.

5 Q. Do you recall if in the two finance  
6 documents that you mentioned, if they find -- if  
7 there was a finding that not all districts have  
8 realized overall cost savings associated with  
9 multitrack year-round calendar?

10 MR. VILLAGRA: Same objection.

11 THE WITNESS: At this time I don't  
12 specifically recollect to which document I should  
13 attribute that finding.

14 BY MS. DAVIS:

15 Q. Is it your testimony that you think there  
16 is -- one of the two documents does have that  
17 finding -- does come to that conclusion?

18 A. No. I mean more generically that of the  
19 documents reviewed, for me it is at present a blur  
20 as to which one is the source of which summary  
21 finding in my review of matters that have been  
22 discussed in the literature related to multitrack  
23 year-round school.

24 Q. Do you know what sites or districts have  
25 not realized overall cost savings associated with

1 multitrack year-round calendar?

2 A. At this time, I can't name any particular  
3 site or district.

4 Q. Do you know how many districts have not  
5 realized overall cost savings associated with the  
6 multitrack year-round calendar?

7 A. At this time, I can't provide such a  
8 specific answer.

9 Q. Did you provide the two finance documents  
10 that you mentioned earlier by the California  
11 Educational --

12 What is it?

13 A. Research Cooperative?

14 Q. -- Research Cooperative -- thank you -- to  
15 plaintiffs' counsel?

16 A. I don't have a copy of the one that I  
17 believe is authored by David Huff as first author,  
18 so would not have it to provide. As to the review  
19 first authored by Jane Zycowski, I know I have a  
20 copy. I believe that plaintiffs' counsel already  
21 had a copy. If that's not true, then I'm -- then I  
22 have an error of omission.

23 Q. Did you rely on the two finance documents  
24 when you wrote the statement in your report  
25 regarding overall cost savings in the multitrack

1 year-round calendar?

2 MR. VILLAGRA: Objection; assumes facts.

3 THE WITNESS: I know that the review of the  
4 report first authored by Zycowski was explicitly  
5 reviewed by me since the initiation of the  
6 preparation of this report. The other I know I read  
7 during the time I worked at the California  
8 Educational Research Cooperative. Since I don't  
9 have my own copy, I would speculate that I did not  
10 explicitly review it during the period of time that  
11 this report was prepared.

12 MS. DAVIS: My watch stopped.

13 Does anybody have the time?

14 MR. VILLAGRA: Quarter of 5:00.

15 MS. DAVIS: Okay.

16 Q. You claim in your report -- and I'm  
17 referring to page 10 now -- that maintenance and  
18 refurbishment can be difficult to schedule and  
19 occasionally requires disruption of the regular  
20 instruction day to accommodate facility and staffing  
21 demands?

22 A. Point 7 on page 10?

23 Q. Yes.

24 What is the basis for this statement?

25 MS. READ-SPANGLER: Maybe we should

1 year-round calendar?

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

4 How is this different from what documents  
5 formed the basis of that opinion?

6 MS. DAVIS: I'm just trying to clarify. We  
7 went through a whole line of questioning. He --

8 MS. READ-SPANGLER: When she asked that  
9 before and he listed all those documents, it became  
10 very clear later that he included some that he  
11 hadn't relied on; so I think that's a fair question.

12 MR. VILLAGRA: Do you understand the  
13 distinction?

14 THE WITNESS: No, I don't get how this is  
15 different.

16 BY MS. DAVIS:

17 Q. Well, why don't you just answer the  
18 question. I'm confused now because you're saying  
19 you didn't have a copy of one of the reports. You  
20 might not have provided plaintiffs' counsel with  
21 another one of the reports.

22 So what I want to know is did you rely on  
23 these two finance reports when writing your  
24 statement in your expert report in this case  
25 regarding overall costs associated with the

1 clarify, when we're asking for the basis of the  
2 statements in your report, that means the things you  
3 used, considered, relied on when writing that  
4 statement in the report. And that way we won't have  
5 to double back like we just did to find out if you  
6 just listed something that really you didn't think  
7 about when you wrote.

8 MR. VILLAGRA: I'm going to object as to  
9 mischaracterizing his testimony that way. He's  
10 talking about -- very explicitly about things he  
11 used when writing this report, and he's talking  
12 about having background knowledge on these things.  
13 And you're making distinctions on what he was  
14 relying on and what he was not relying on. And he's  
15 trying to explain in the context of the answers what  
16 he was doing as the basis.

17 And I'm going to instruct the witness to  
18 keep doing what he's doing as he's been answering  
19 the questions as they have been put to him. And  
20 that's what he's supposed to do.

21 THE WITNESS: I know we agreed we're on the  
22 same place on page 10.

23 BY MS. DAVIS:

24 Q. Right.

25 A. I think you followed up with a question,

1 but I'm not sure.

2 Q. I want to know what the basis is for this  
3 statement.

4 A. Okay. My personal observation of events  
5 that occurred in the Riverside Unified School  
6 District and in the San Bernardino City School  
7 District, which, of course, occurred before this  
8 report was ever initiated; so this is background  
9 knowledge.

10 I can't remember right now the author's  
11 name, but there was an article in Thrust for  
12 Educational Leadership, I think, but I'm not certain  
13 that the author was a superintendent or assistant  
14 superintendent in Azusa Unified School District, and  
15 this specific issue was reported in relation to his  
16 experience administering the operation of the  
17 multitrack year-round calendar in that district.  
18 And that I read during the period when this report  
19 was prepared and should be in the documents  
20 provided.

21 Precisely where else -- I'm not sure where  
22 else. Nothing else is coming to mind presently.

23 Q. What were your personal observations in  
24 Riverside that form the basis of your statement?

25 A. I have specific recollection of an occasion

1 MR. VILLAGRA: Okay.

2 MS. DAVIS: I think we should probably talk  
3 a little bit on the record about continuing the  
4 deposition of Dr. Mitchell. The parties discussed  
5 this earlier off the record. Hector, I don't want  
6 to mischaracterize what you said.

7 I'm under the understanding that you said  
8 that you would agree to produce Dr. Mitchell for at  
9 least one additional day of deposition. I think  
10 it's the state's position that we'll probably need  
11 more than a day, not me personally, but in just  
12 looking at who else needs to ask questions. But  
13 I'll let everybody speak for themselves here.

14 MR. HAJELA: For the record, yeah, I think  
15 we'll need more than one day as well.

16 MS. READ-SPANGLER: I would agree with  
17 that.

18 MR. REED: I would agree.

19 MR. HAJELA: In terms of the process of  
20 scheduling it, Hector, are you going to come up with  
21 some dates and circulate them?

22 MR. VILLAGRA: Yes, we will. And at this  
23 point, all we will agree to is the third day,  
24 although we won't categorically reject the  
25 possibility of the fourth day. That's all we're

1 where students were rotated out of their regular  
2 classroom into the library so that classroom carpets  
3 could be -- old classroom carpets could be removed  
4 and new carpeting could be installed.

5 Q. Was this a multitrack school?

6 A. Yes.

7 Q. How many tracks?

8 A. It was a four-track school.

9 Q. Any other personal observations in  
10 Riverside that form the basis of your statement?

11 A. No, there was no other occasion where I was  
12 able to be personally present to observe this sort  
13 of behavior.

14 Q. What were the personal observations in  
15 San Bernardino that form the basis of your  
16 statement?

17 A. I was anticipating that question. I'm  
18 trying to remember, and right now I can't. If it  
19 comes to me, I'll let you know; but right now I  
20 can't remember.

21 MS. DAVIS: I'm almost thinking that it  
22 might be wise, since we're very close to  
23 five o'clock and I know Dr. Mitchell has to catch a  
24 train, that we stop here because I don't know if  
25 we'll get through another question in time.

1 agreeing to at this point is that third day.

2 MS. READ-SPANGLER: On what basis are you  
3 limiting it?

4 MR. VILLAGRA: The fact that the deposition  
5 was noticed for two days.

6 MS. READ-SPANGLER: There really never was  
7 a notice, but go ahead.

8 MR. VILLAGRA: How many days were  
9 scheduled? The fact that other depositions have  
10 been scheduled or noticed for three days, some with  
11 much longer reports than this one, and the fact that  
12 I think that there is or should be a full and fair  
13 opportunity in three days to get through  
14 Dr. Mitchell's testimony or there could have been.  
15 I mean, that's the basis for it. But I mean, we'll  
16 have to see.

17 MR. HAJELA: Can we proceed, though --  
18 I appreciate that, and you may want to  
19 argue that. But when you pick the days to schedule,  
20 can you make sure there's two? And then if you  
21 decide you're not producing him for the second,  
22 that's fine. But flying him out for two one-day  
23 opportunities isn't ideal.

24 MR. VILLAGRA: I will try to avoid that.

25 MR. REED: As the person who may end up

1 with an opportunity to question on only that fourth  
 2 day, I'm not sure I join in his characterization of  
 3 that being fine, but I mean, that's obviously the  
 4 concern of interveners.  
 5 MR. VILLAGRA: Sure.  
 6 MR. REED: Whatever concerns or arguments  
 7 may exist between plaintiffs and defendants with  
 8 respect to whether time was efficiently used or not,  
 9 our ox not need be slaughtered in the process.  
 10 MR. HAJELA: Just to clarify, I mean, it's  
 11 fine for you to make whatever argument you want --  
 12 MR. ELIASBERG: I understood it that way,  
 13 rather than you selling Kevin down the river.  
 14 MR. VILLAGRA: We should make the court  
 15 reporter's life easier. I guess at this point I  
 16 think we should just go to the stipulation. I'm  
 17 sure the court reporter has better things to do.  
 18 MS. DAVIS: I have to ask you guys what the  
 19 practice has been. Why don't we go off the record.  
 20 (Discussion held off the record.)  
 21 MS. DAVIS: Dr. Mitchell is going to review  
 22 his deposition transcript and make any changes to  
 23 the deposition transcript within 45 days of  
 24 receiving the transcript. In terms of the original,  
 25 we're going --

1 Are we holding on that question?  
 2 MS. READ-SPANGLER: Actually, doesn't the  
 3 45 days need to be from the date it was sent by the  
 4 court reporter because it's going to be too hard to  
 5 know when he received it?  
 6 MS. DAVIS: I've done --  
 7 MR. VILLAGRA: I think the 45 days,  
 8 particularly with him on the East Coast -- if you  
 9 can send it to us and -- you can start the time  
 10 running from the date we get it. That's fine.  
 11 MS. DAVIS: That's fine.  
 12 MR. VILLAGRA: So stipulated?  
 13 MS. DAVIS: Yes.  
 14 (Whereupon, the deposition adjourned  
 15 at 5:07 p.m.)  
 16 -o0o-  
 17  
 18  
 19  
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 21  
 22  
 23  
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 25

DECLARATION

1  
 2  
 3  
 4  
 5 I hereby declare I am the deponent in the  
 6 within matter; that I have read the foregoing  
 7 deposition and know the contents thereof, and I  
 8 declare that the same is true of my knowledge except  
 9 as to the matters which are therein stated upon my  
 10 information or belief, and as to those matters, I  
 11 believe it to be true.  
 12 I declare under the penalties of perjury of  
 13 the State of California that the foregoing is true  
 14 and correct.  
 15 Executed on the \_\_\_\_\_ day of \_\_\_\_\_  
 16 2003, at \_\_\_\_\_, California.  
 17  
 18  
 19  
 20  
 21 \_\_\_\_\_  
 22 ROSS E. MITCHELL, Ph.D.  
 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 \_\_\_\_\_  
 24 Denise A. Ross  
 25 CSR No. 10687