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15 San Francisco, California 94103
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16 Attorneys for Plaintiffs
17 ELIEZER WILLIAMS, etc., *et al.*

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

20 ELIEZER WILLIAMS, a minor, by Sweetie
Williams, his guardian ad litem, *et al.*, each
21 individually and on behalf of all others
similarly situated,

22 Plaintiffs,

23 v.

24 STATE OF CALIFORNIA, DELAINE
EASTIN, State Superintendent of Public
Instruction, STATE DEPARTMENT OF
25 EDUCATION, STATE BOARD OF
EDUCATION,

26 Defendants.
27

No. 312236

**DECLARATION OF LEECIA WELCH IN
SUPPORT OF PLAINTIFFS'
DESIGNATION OF REBUTTAL WITNESS
GARY ORFIELD**

Date Action Filed: May 17, 2000

1 I, LEECIA WELCH, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of California. I am an
3 associate at the law firm of Morrison & Foerster LLP, counsel of record for plaintiffs Eliezer
4 Williams, et al. ("plaintiffs") in this action. I have personal knowledge of the facts stated herein
5 and could testify competently to them if called to do so.

6 2. Plaintiffs have provided a list of the persons whose expert opinion testimony the
7 plaintiffs intend to offer on rebuttal at trial of this action, either orally or by deposition testimony.
8 The list includes Gary Orfield, to whom this declaration refers.

9 3. Dr. Orfield has agreed to testify at trial.

10 4. Dr. Orfield will be sufficiently familiar with the pending action to submit to a
11 meaningful oral deposition concerning the specific testimony, including any opinions and their
12 bases, that he is expected to give at trial.

13 5. Dr. Orfield is not charging a fee for providing deposition testimony, consulting
14 with the attorneys for plaintiffs, or for his research and other activities undertaken in preparation
15 of the attached rebuttal expert report.

16 6. Attached to my declaration as Exhibit A and incorporated by this reference is a
17 *curriculum vitae* providing Dr. Orfield's professional qualifications, pursuant to section
18 2034(f)(2)(A) of the California Code of Civil Procedure.

19 7. Attached to my declaration as Exhibit B and incorporated by this reference is
20 Dr. Orfield's rebuttal expert report. The following is a brief narrative statement of the general
21 substance of the testimony that Dr. Orfield is expected to give at trial, pursuant to section
22 2034(f)(2)(B) of the California Code of Civil Procedure. Dr. Orfield rebuts opinions offered in
23 the expert reports of State experts Eric Hanushek, Herbert Walberg, Anita Summers, Christine
24 Rossell, Margaret Raymond, and Caroline Hoxby. In particular, Dr. Orfield responds to and
25 reorients the political philosophy underpinnings of many of the State experts' conclusions;
26 identifies the basic flaw in State experts' argument that the absence of scientific proof necessarily
27 undermines an inference of a causal relationship; notes that social class and parent education are
28 not unchangeable influences on students' education in the way State experts claim; addresses

1 effective components of state accountability programs and the flaw in State experts' reification of
2 test score gains as gains in education; and explains that State experts are incorrect in arguing that
3 increased State involvement in education necessarily disenfranchises parents. Dr. Orfield
4 concludes that providing students with a decent place to learn, a trained teacher, and a book to
5 learn from has been self-evident as a minimum standard for treating children decently in this
6 society and for creating places where children are going to work. The foregoing statements are
7 only a general summary of the issues and conclusions discussed and documented more fully in
8 Dr. Orfield's rebuttal expert report, attached as Exhibit B.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11 Executed at San Francisco, California, this 15th day of September, 2003.

12
13 
14 _____
15 Leecia Welch

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EXHIBIT A

GARY ORFIELD

VITA

Addresses: Harvard Graduate School of Education
Gutman 442, 6 Appian Way
Cambridge, Massachusetts 02138

The Civil Rights Project
125 Mount Auburn St., 3rd Floor
Cambridge, MA 02138

Telephones: 617-496-4824 or 617-496-6367

Present Position: Professor of Education and Social Policy, Harvard University
Co-Director, Civil Rights Project at Harvard University

Professional Experience:

Professor, University of Chicago, in the following units:
Political Science, Social Sciences in the College, Education, and Committee on
African and Afro-American Studies
Lecturer, School of Law, 1981-1991
Professor of Political Science and Member, Institute of Government, University of Illinois
at Urbana-Champaign, 1977-82.
Guest Scholar, Brookings Inst., 1972, 1981-82.
Research Associate, Brookings, 1973-1977
Consultant, Senate Committee on Labor and Public Welfare, 1976
Scholar-in-Residence, U.S. Civil Rights Commission, 1972-1973
Assistant Professor, Princeton Univ., 1969-1973
Assistant Professor, Univ. of Virginia, 1967-1969
Intern, Office of Management Planning, Agency for International Development, 1963

Governmental Appointments:

Chairman, Study Group on School Desegregation, National Institute of Education,
1978-81.
Court-Appointed Expert, Los Angeles(1978-79), St. Louis(1980-81), and San Francisco
(1981-82, 1987-2000) School Desegregation. Cases
Member and Chair of Evaluation and Screening Committee,
Project Self Sufficiency (HUD employment and housing demonstration), Cook County,
Illinois, 1985-86.
Vice Chairman, Mayor's First Source Task Force, Mayor Harold Washington, Chicago,
1985-88.

Academic Training:

B.A., *summa cum laude*, University of Minnesota, 1963
M.A., political science, University of Chicago, 1965
Ph.D., political science, University of Chicago, 1968

Academic Honors:

Phi Beta Kappa
Minnesota All-College Scholar
General Motors Scholar
Woodrow Wilson Fellow
Danforth Fellow
Falk Fellow,
Brookings Institution Research Fellow
Center for Advanced Study Fellow, Univ. of Illinois, Urbana
Spencer Foundation Senior Fellow Award
Charles M. Merriam Award, American Political Science Association

Professional Activities:

Co-Director (with Christopher Edley, Jr. of Harvard Law School)
of the Civil Rights Project
Adjunct Fellow, Joint Center for Political Studies and
Member of Social Policy Task Force
Member, American Political Science Association, Congressional Fellowship Advisory
Committee, 1976-78
Member, American Political Science Association, Committee on the Status of Blacks in
the Profession, 1987-90
Member, American Political Science Association, Nominating Committee for National
Officers, 1992-93
Consultant, APSA Division of Educational Affairs and High School Curriculum Project.
Midwest Political Science
Association, Section Chair and Program Committee Member, Annual Meeting, 1979 Member
Nominating Committee, 1980.
Member National Review Panel on School Desegregation Research and American Academy
of Arts and Science Task Force on
Urban School Desegregation. Consultant, U.S. Commission on Civil Rights, Rand Corp.,
Applied Urbanetics, Ford Foundation, Justice Department, Dept. of Housing and Urban
Development, National Institute of Education, Senate Committee on Labor and
Public Welfare, Kentucky Commission on Human Relations,
American Indian Policy Review Commission, Education
Commission of the States, Illinois Office of Education,
National School Boards Association of, Minnesota Dept. of Education
Member, Editorial Boards, *Policy Studies Journal*, *Teachers College Record*, *American
Journal of Education*, *Evaluation Studies Review Annual*, *Equity and Excellence*,
Integrated Education, *Soundings*, *Educational Researcher*, advisory committee
Harvard Education Letter & School Policy Legal Insider,
Associate Editor, *American Journal of Education*, 1982-88.

Member, Board of Directors, Policy Studies Organization
Chairman, National Institute of Education Study Group on Desegregation Research.
Member, Research Advisory Committee, U.S. Civil Rights Commission's National School
Desegregation Study, 1984-85.
Research Director, Chicago Fair Housing Alliance, 1985-87.
Director, National School Desegregation Research Project, 1986-88.
Director, Metropolitan Opportunity Project, 1986-92
Director, Illinois Budget Analysis Project, 1987-92.
Director, Indiana Youth Opportunity Project 1991-1996.
Director, Harvard Project on School Desegregation, 1992-98

Courses Taught:

American Government, Urban Policy Analysis (Housing), Law and Society, President and Congress, Intergovernmental Relations, Legislative Process, State and Local Government, Administrative Process, Problems in Administrative Management, Administrative Institutions, Urban Politics, Government and Black America, Congress and Urban Policy; The Politics of Food: Production, Regulation and Distribution, Manpower Policy, Housing Policy and Urban Communities, Policy Analysis, Field Research Project in Public Policy, Class Action Litigation, Social Policies of the Sixties, Government and Minority Rights, Education Policy, Social Science and Law, Bureaucratic Politics, State Government and Policy Making, Minority Opportunities in the Contemporary U.S., Higher Education: Institutions and Policy, Government and Metropolitan Communities, Civil Rights Remedies: Theories and Consequences, Poverty, Public Policy and Urban Schools, Politics and Policy Cycles; Education Policy and Law, Access to College, Racial Change, Immigration and Metropolitan America; Education Policy and Urban Poverty; Civil Rights Enforcement Seminar.

University and Community Participation (years of service omitted):

President, liberal arts student government, University of Minnesota.
Organizer of state-wide student volunteer program on Minnesota Indian reservations.
Founder, Movement for a New Congress and Board Member, Congressional Action Fund.
Member, Board of directors, Fund for an OPEN Society.
Member, National Advisory Board, National Federation for Neighborhood Diversity
Member, National Advisory Board , Leadership Council for Metropolitan Open
Communities
Chairman, Task Force on Devolution of Power to the States, Southern Education
Foundation
Member, Research Advisory Committee, Chicago Panel on Public School Finances
Member and Chair, Research Advisory Committee, Chicago Urban League

Member, Board of Directors, Chicago Urban League
Member, Board of Advisors, Designs for Change,
Member, National Advisory Committee, NAACP Archives and Library
Board Member, The Regional Partnership, 1989-91.
Member, Advisory Committee, Constitutional Rights Foundation, Chicago.
Edmonds-Peabody PTA (Washington) vice president.
Volunteer work in many political campaigns
Volunteer work with Ralph Nader, 1966.
Member Advisory Boards or faculty associate of the following:
Urban Education Advisory Board, ASCD, Council of Urban
Boards of Education, National School Boards Association,
Community 2000, Leadership Conference on Civil Rights,
Poverty and Race Research Center, Hispanic Border
Leadership Initiative, International Reading Association,

Research Grants and Contracts:

Carnegie Corporation
Ford Foundation
Spencer Foundation
Joyce Foundation
MacArthur Foundation
Mott Foundation
Woods Charitable Fund
U.S. Dept. of Housing and Urban Development
Southern Education Foundation
Schwartz Foundation
Primerica Foundation
Lilly Endowment
Gunn Foundation
Smith-Richardson Foundation
Mellon Foundation
Rockefeller Foundation
Graustein Foundation

Publications

Books, Journals, Edited Works, Reports:

2002-2000

With Frankenberg and Lee. "The Resurgence of School Segregation." *Educational Leadership*. (December

2002/January 2003).

With Frankenburg and Lee. *A Multiracial Society with Segregated Schools Are We Losing the Dream?* The Civil Rights Project, Harvard University, 2003

“Forward” in *Percent Plans in College Admissions: A Comparative Analysis of Three States' Experiences*. Horn and Flores, The Civil Rights Project, Harvard University, 2003.

“Forward,” *Who Should We Help? The Negative Social Consequences of Merit Scholarships*. Edited by Donald E. Heller and Patricia Marin. August 23, 2002.

“Commentary on Affirmative Action, X Percent Plans, and Latino Access to Higher Education in the Twenty-first Century”. In *Latinos Remaking America*. Edited by Suárez-Orozco and Páez. Berkeley: University of California Press, 2002.

“Forward in M. Moses, *Embracing Race: Why We Need Race-Conscious Education Policy*. New York: Teachers College Press, 2002.

With Losen, Daniel, eds., *Racial Inequity in Special Education*. Cambridge: Harvard Education Press, 2002.

“Response,” *Poverty & Race* (September/October 2001) Vol 10, No. 5, pg 5

“Why Data Collection Matters: The Role of Race and Poverty Indicators in American Education.” In *In Pursuit of Equity in Education: Using International Indicators to Compare Equity Policies*. Edited by Hutmacher, Cochrane and Bottani .The Netherlands: Kluwer Academic Publishers, 2001.

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With Kornhaber, Mindy, eds., *Raising Standards or Raising Barriers? Inequality and High-Stakes Testing in Public Education*. Washington, D.C.: Century Foundation Press, 2001.

“Metropolitan School Desegregation: Impacts on Metropolitan Society.” In *In Pursuit of a Dream Deferred: Linking Housing and Education Policy*. Edited by Powell, Kearney and Kay. New York: Peter Lang Publishing, 2001.

“The 1964 Civil Rights Act and American Education.” In *Legacies of the 1964 Civil Rights Act*. Edited by Grofman, Bernard. Virginia: The University Press of Virginia, 2000.

“Latinos in School: The Most Segregated... Soon the Largest Minority.” *DRCLAS NEWS*, Rockefeller Center for Latin American Studies, Harvard University, Spring: 15-17 (2000).

Indicators of Race and Poverty and American Education, report prepared for OECD-INES Ad Hoc Group on Equity Indicators, 2000.

“Politica Educativa y Equidad.” In *Perspectivas Sobre La Reforma Educativa*. Edited by Juan Carlos Navarro, Katherine Taylor, Andres Bernasconi and Lewis Tyler. USAID, 2000.

“Our Resegregated Schools.” *Principal*, vol. 79, no. 5, May: 6-11 (2000).

"Exit and Redevelopment." *Boston Review*, vol. 25, no. 3, Summer: 15-16 (2000).

"The 1964 Civil Rights Act and American Education." In *Legacies of the 1964 Civil Rights Act*. Edited by Bernard Grofman. Charlottesville, University of Virginia Press, 2000.

With John Yun *Resegregation and American Schools*, Harvard Civil Rights Project, June 1999, Reprinted in part, *Primer*, vol. 2, no. 4 (January 2000): 1-6.

1999-1995

With Lebowitz, Holly, eds., *Religion, Race and Justice in a Changing America*. New York: Century Foundation, 1999.

With Dean Whitley, *Diversity and Legal Education: Student Experiences in Leading Law Schools*, Harvard Civil Rights Project, July 1999.

"School Desegregation in the United States." *Encarta Africana*, 1999.

With Michal Kurlaender. "In Defense of Diversity: New Research and Evidence from the University of Michigan." *Equity and Excellence in Education*, vol. 32, No. 2, September: 31-35 (1999).

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"Facts, Not Fads in Title 1 Reform," *Harvard Education Letter*. November/December (1999).

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“Comment on Schools and Disadvantaged Neighborhoods.” In *Urban Problems and Community Development*. Edited by Ronald Ferguson and William T. Dickens. Washington: Brookings Institution: 369-374 (1999).

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Editor, *Chilling Admissions: The Affirmative Action Crisis and the Search for Alternatives*. Cambridge: Harvard Project on Civil Rights, 1998.

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"Public Opinion and School Desegregation." *Teachers College Record*, vol. 96., no. 4, Summer: 654-670, 1995.

"Congress and Civil Rights: from Obstacle to Protector." In *African Americans and the Living Constitution*. Edited by John Hope Franklin and Genna Rae McNeil. Washington: Smithsonian Institution Press: chapter 9, 1995.

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1994-1990

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"Urban Schooling and the Perpetuation of Job Inequality in Metropolitan Chicago." In *Urban Labor Markets and Job Opportunity*. Washington: Urban Institute, 1992.

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With Carole Ashkinaze, *The Closing Door: Conservative Policy and Minority Opportunity*. Chicago: University of Chicago Press, 1991.

"Segregation and Discrimination." In *Housing: Symbol, Structure, Site*. Edited by Lisa Taylor. New York: Rizzoli, 1990: 48-49.

"With Lawrence Peskin. Metropolitan High Schools: Income, Race, and Inequality." In *Education Politics for the New Century*. Edited by Douglas E. Mitchell and Margaret E. Goertz. London: Falmer Press, 1990: 27-53.

"Wasted Talent, Threatened Future: Metropolitan Chicago's Human Capital and Illinois Public Policy." In *Creating Jobs, Creating Workers*. Edited by Lawrence Joseph. Chicago: University of Chicago Center for Urban Research and Policy Studies, 1990: 1-32.

"Policy Analysis." In *Latinos and Blacks in the Cities: Policies for the 1990s*. Edited by Harriett D. Romo. Austin,

Texas: Lyndon B. Johnson School of Public Affairs, 1990.

With Faith Paul. "Changing Patterns of Opportunity in Higher Education." *Special issue of American Journal of Education*. Vol. 98, No. 4 August (1990).

"Do We Know Anything Worth Knowing about the Educational Effects of Magnet Schools?" In *Choice and Control in American Education*. Edited by William H. Clune and John F. Witte. London: Falmer Press, 1990: 119-123.

"Public Policy and College Opportunity." *American Journal of Education*, Vol. 98, No. 4, August: 317-350 (1990).

1989-1980

With Franklin Monfort and Melissa Aaron. 1989. *Status of School Desegregation, 1968-1986. Segregation, Integration, and Public Policy: National,*

State, and Metropolitan Trends in Public Schools. Alexandria: National School Boards Association.

"Opportunities for Minorities: New Focus of Concern for Higher Education." *Change*, May-Jun,: 50-53, 1989.

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"Race and the Liberal Agenda: The Loss of the Integrationist Dream, 1965-1974." In *The Future of Social Policy in the United States*. Edited by Margaret Weir, Ann Shola Orloff and Theda Skocpol. Princeton: Princeton Univ. Press, 1988: 313-355.

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"Exclusion of the Majority: Shrinking College Access and Public Policy in Metropolitan Los Angeles." *Urban Education*, Vol. 20, No. (Fall, 1988) 147-163.

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With Faith Paul. "Declines in Minority Access: A Tale of Five Cities." *Educational Record*, Vol. 68, No. 4 (Fall /Winter 1988): 56-62.

James W. Fossett. "Market Failure and Federal Policy: Low Income Housing in Chicago 1970-1983." In *Divided Neighborhoods: Changing Patterns of Racial Segregation*. Edited by Gary Tobin. Beverly Hills, Sage Public, 1987: 158-180.

"The Costs of Housing Discrimination and Segregation: An Interdisciplinary Social Science Statement." In *Divided Neighborhoods*. Edited by Gary Tobin. Beverly Hills, Sage Public, 1987: 158-180. Principal author of statement by 28 social scientists, also published separately by Leadership Council for Metropolitan Open Communities.

With Franklin Monfort and Rosemary George. *School Segregation in the 1980s: Trends in the United States and Metropolitan Areas*. Washington: Joint Center for Political Studies, 1987.

Member, Committee on Women's Employment and Related Social Issues, National Academy of Sciences, which prepared the following report: *Women's Work, Men's Work: Sex Segregation on the Job*. Washington: National Academy Press, 1986.

"Federal Indian Policy, 1945-1960." In *Indian Self-Rule*. Edited by Kenneth R. Philip. Salt Lake City: Howe Brothers, 1986.

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"Budgets and Big City Education." In *Education Policy in an Era of Conservative Reform*. Edited by Marguerite Barnett and Philip V. White. New York: AMS Press, 1986: 120-168.

"Hispanic Education: Challenges, Research and Policies." *American Journal of Education*, vol. 95, no.1 (November: 1986) 1-25.

"Minorities and Suburbanization." In *Critical Perspectives in Housing*. Edited by Rachel G. Bratt, Chester Hartman and Ann Meyerson. Philadelphia: Temple University Press, 1986: 221-230.

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"Knowledge, Ideology and School Desegregation." *Metropolitan Education*, No. 1, (Spring, 1986) 92-99.

"Ghettoization and its Alternatives." In *The New Urban Reality*. Edited by Paul Peterson Washington: Brookings Inst, 1985.

"Race and the Federal Agenda: The Loss of the Integrationist Dream," Working Paper 7. Washington: Project on the Federal Social Role, 1985: 1-43.

With Nathaniel Jackson. *New Federalism in the New South: An Assessment of Community Development Block Grants*, Co-author. Atlanta: Southern Education Foundation, 1985.

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Latinos in Metropolitan Chicago. Edited with Ricardo Tostado. Chicago: Latino Institute, 1983.

Public School Desegregation in the United States, 1968-1980. Washington: Joint Center for Political Studies, 1983. Reprinted, in part, in Miller, Lamar, *Toward a Strategy of Urban Integration: Lessons for School and Housing Policy From Twelve Cities*. New York: Ford Foundation, 1981.

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"Housing Patterns and Desegregation Policy." In *Effective School Desegregation: Equity, Quality and Feasibility*. Edited by Willis Hawley. Beverly Hills, Sage Publications, 1981.

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Senate Judiciary Committee:

September 1969: Haynsworth Supreme Court nomination hearings

January 1970: Carswell Supreme Court nomination hearings:

November 1971: Rehnquist nomination hearings

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Senate Select Committee on Equal Educational Opportunity:

October 1970: Feasibility of desegregation

House Judiciary Committee:

March 1972: Antibus amendment to Constitution

Senate Labor and Public Welfare Committee:

1967; written testimony on Indian policy

August 1969: Memorandum to Subcommittee on Indian Education on reorganization of BIA

Senate Interior Committee: September 1973: Menominee Restoration Act

House Government Operations Committee: November 1975: Revenue Sharing

House Education and Labor Committee:

June 1977: Bilingual education

September 1979: Incentives for Voluntary Metropolitan Integration

1981: Civil Rights Enforcement

October 1985: Assessment of Job Training Partnership Act December 1989:

Office for Civil Rights Enforcement of Policies against Discrimination

Senate Committee on the Judiciary, Subcommittee on the Constitution

July 1977: Anti-busing legislation

1982: Proposals to restrain judicial remedies in school desegregation cases

House Subcommittee on Indian Affairs

May 1973: Menominee Restoration Act

House Subcommittee on Civil and Constitutional Rights

September 1982: Reagan civil rights enforcement record; Los Angeles School case

September 1982: Report on study prepared for subcommittee from U.S.

U.S. Dept. of Education data showing national and regional progress on desegregation from 1968-1980

March 1985: Civil Rights Restoration Act of 1985

House Select Committee on Children, Youth and Families:

March 1987: Race Relations and Adolescents

Joint Economic Committee:

April 1992: Urban Poverty and Development

Participation in Civil Rights Cases:

Los Angeles: testified as witness on report prepared as court-appointed expert
St. Louis: testified first as witness for U.S. Dept. of Justice and then, several times, on reports prepared as court-appointed expert
Seattle: testified as witness for Seattle Board of Education
Denver: testified as witness for NAACP Legal Defense Fund and Mexican American Legal Defense Fund
Tampa (pupil competency test litigation) testified as witness for Bay Area Legal Services
Omaha: gave deposition as witness for Justice Dept.
Houston: testified as witness for Justice Dept.
Little Rock: deposition on report prepared by desegregation assistance center for Little Rock Board of Education, testified many years later as court-appointed expert
Memphis: testified as witness for NAACP Legal Defense Fund
Dayton and Columbus: assisted in drafting of social science brief submitted by plaintiffs to the Supreme Court
Kansas City: testified as witness for the NAACP Legal Defense Fund & testified as witness of renewal of plan
Chicago: deposition on enforcement of *Gautreaux* housing desegregation
Cincinnati: deposition on subsidized housing segregation case for legal services office
Hamilton County deposition on subsidized housing segregation case
Ohio: for legal services office
Milwaukee: deposition on metropolitan desegregation for Milwaukee School Board
Austin: Affidavit on impact of return to neighborhood schools
Chicago: testified as witness for integrated South suburban communities against the National Association of Realtors
Louisiana: deposition on racial equity and desegregation of state higher education System in *U.S. v. Louisiana* as witness for Southern University system
Oklahoma City: deposition on housing discrimination case
Chicago: Testified as witness for Leadership Council on Metropolitan Opportunities in Fair housing case
South Suburban Housing Center: testified as a witness for Center against National Association of Realtors suit against Fair housing practices
Hartford: testified for plaintiffs on metro school equity case NAACP Legal Defense Fund, Puerto Rican Legal Defense Fund, and Connecticut Civil Liberties Union & Testified later on adequacy of remedy
Philadelphia: testimony on case on University of Pennsylvania scholarships for Philadelphia students
DeKalb Co., GA: helped draft social science brief to Supreme Court
Rockford Illinois: testimony on desegregation case for plaintiffs
Louisville: testimony on desegregation case for school board
Rochester, N.Y.: affidavit on metropolitan inequality case
Lynn, MA: affidavit and testimony on desegregation case
University of Washington Law School: affidavit on affirmative action case
University of Michigan: testimony on Law School affirmative action case San Francisco: served as Court-appointed expert, special master, and chair of Consent Decree Advisory Committee

EXHIBIT B

I am a Professor of Education and Social Policy at Harvard University. Much of my research, teaching, and consulting has focused on issues concerning education reform, educational policy, and race. Among my current or recent courses are "Education Policy and Urban Poverty," "Access to College," and "Immigration, Racial Change and the 21st Century Metropolis."

I have been appointed by judges and have provided expert testimony for parties many times. During the past five or so years, I have testified or given depositions or filed reports in the following cases to the best of my recollection:

- school desegregation cases in San Francisco, California; San Rafael, California; Lynn, Massachusetts; St. Louis, Missouri; Rockford, Illinois; New Castle County, Delaware; Little Rock, Arkansas; Indianapolis, Indiana; and Louisville-Jefferson County
- housing segregation case in Baltimore;
- metropolitan educational equity cases in Hartford, Connecticut and Rochester, New York;
- the law school admissions/affirmative action litigation at the University of Washington.
- cases involving educational testing and bilingual education in Massachusetts

My curriculum vita is attached to this report.

It has always been my policy not to charge for my services as an expert for any party in litigation to avoid any possible conflict of interest or apparent conflict of interest with my research work; I am not being paid for my work on this case. The only exception has been when I have been appointed as an expert by courts, where I see no conflict of interest.

It is also generally my policy not to produce new written work as an expert for the same reasons. Rather, I offer testimony about scholarship I have already carried out, the body of research of other scholars, or research carried out under my supervision where students or others are paid for their own work.

At the request of plaintiffs' counsel, I reviewed the reports of State experts Eric Hanushek, Herbert Walberg, Anita Summers, Christine Rossell, Margaret Raymond, and Caroline Hoxby. I briefly summarize the opinions I expect to offer in this case as follows:

In my assessment, the State expert reports frequently offer amateur political philosophy and history that would not pass a freshman introductory political science course and is certainly outside the expertise of these witnesses. As a political scientist who has taught

and written about the basic institutions of the federal government and taken graduate comprehensive exams in political philosophy, the statements seem both patronizing and stunningly naïve. The State experts' lectures to the Court about the nature of government imagine that we live in some kind of a direct democracy when in fact that was the Founding Fathers' great fear. We live in a constitutional republic. The State experts neglect the nature of the American compact, which is that there are things that are not decided by current majorities and are fundamental to our stability and freedom as a society. An immigrant science professor from Taiwan put it best at the celebration of the bicentennial of the U.S. Constitution I participated in, in Mobile, Alabama. He said, in essence, that to know the true value of a Constitution, you must consider what we have done that we would not do otherwise. If the Constitution were just about what we would do anyway, we would not need it. So he convinced the University of South Alabama to celebrate the cases that Alabama lost, the cases that freed the state from apartheid and injustice. The genius of the American constitutional system is that there are things that are preconditions for popular government that are more basic than any temporary majority.

The State experts offer a nonsensical argument that if one does not have a scientific equation that proves that something exists through statistical analysis of measured data that can reasonably support an inference of a causal relationship, then the thing does not exist. This is a basic misreading of an important scientific principle expressed by the logical positivists—if a relationship cannot be reduced to measurable components, measured systematically and related to each other through valid statistical techniques, it is not proved scientifically. That is correct but the conclusion that something that has not been measured that way does not exist and cannot be known is absurd. No one may have measured a tree you walk by on a path but it does exist and you know it exists. No one has measured whether or not people would be less likely to be willing to work in my office if it was dangerous to come here, there were filthy toilets, the machines did not work and there were no supplies, but I know it.

In fact, many things exist, and some are obviously true, that have not been measured. Good quantitative methods are often based first on rich qualitative understandings. If one does not have a general impression, a hypothesis, about how things may work, how can the researcher know what to measure or what his or her measurements mean, or whether or not there may be some underlying cause even more powerful that has not yet been measured?

It is a fundamental misunderstanding to think that something has to be operationalized and measured to exist; a thing merely has to be operationalized to be proven scientifically. I have not performed a literature review to search out studies regarding the importance to students of decent school facilities, books and instructional materials, but the need for each of these falls into the category of obvious facts that need not be proven. The reason why little research has been done on these issues in the U.S. is that they are considered obvious and the researcher would be thought to be studying something stupid and they are simply part of the consensus in middle class communities where researchers and people who fund research live. I have been a teacher for thirty years,

my wife and one of my daughters were teachers, I have been intimately involved with schools in the Washington, D.C. and Chicago Public Schools where my children went, I have taught hundreds of teachers who work in all kinds of schools all over the world, and I am becoming increasingly involved with research in Latin America. I have never met a teacher who did not think that books and instructional materials were an essential part of learning. I have been in many schools where they were obviously lacking and teachers were trying to fill the gap with their own money. My opinion is that it is a shocking neglect of basic professional ethics for educators who know better to pay experts to testify for conclusions I would guess none of them follow in their own college classes and none of the state education officials believe.

Providing kids with a decent place to learn, a trained teacher, and a book to learn from has been self-evident as a minimum standard for treating children decently in this society and for creating places where children are going to work. If the research does not yet show that students need trained teachers, decent school facilities, and instructional materials, then the right research just has not yet been done.

If one follows the intellectual debate over Professor Hanushek's work, one can easily see the danger of reaching firm conclusions on the basis of a lack of statistical relationships in a set of equations. For many years, those findings were deeply influential, and they certainly influenced my thinking. Then came critical analyses by experts like Prof. Larry Hedges at the University of Chicago, Prof. Fred Mosteller and Richard Light at Harvard and others concluding that the selection and classification of studies, the method of analysis or even the basic reliance on statistical analysis rather than true experiments led to fundamentally incorrect conclusions. One does not need to untangle the econometric equations or the arguments about unmeasured background variance or anything else to conclude that there is, at least, strong doubt about the validity of both the method and conclusions used in some of the basic education production function arguments. In my mind, it is deeply presumptuous for professors who lead privileged lives and whose children are richly supplied to educational opportunities to rely on equations that cannot in their nature give final answers to argue that what teachers who work with children believe to be essential can be dismissed as unnecessary.

The State experts agree that trained teachers are essential for learning; in my view the state of California and Congress in the No Child Left Behind Act establish credentials as a proxy, however imperfect, for teacher training. The same state government that imposes and defends in federal court its teacher tests that lead to credentials, arguing that they are essential to quality comes back and argues that they make no difference—it seems deeply disingenuous.

It is simply crazy to think that it is not true that books are necessary for learning; I challenge anybody to think how you're going to learn algebra if you don't have a problem set to take home and instructions for how to use it. I would never dream of teaching a course without books and I know the teachers I train all agree that they need books in their classes.

It is terribly important for schools to have decent facilities both to attract and keep decent teachers and to influence the motivation and sense of dignity of the students. Schools in grim and depressing disrepair—with broken windows that are not replaced, failure to paint or refurbish for decades, and toilets that lack toilet paper, for example—represent constant marks of disrespect. Things like having a personal classroom, having a place to prepare classes, having a safe place to park, are very important to teachers feeling respected and wanting to work in a building.

Social class and parent education levels are very important for students but not unchangeable influences in the way the State's experts claim. Certainly parent education, income, and all the things associated with that in our society are closely linked to student performance. But schools are important and sometimes do make a tremendous difference. I've had students at Harvard whose parents were California farmworkers or from the worst urban ghettos and they often tell of a teacher who saw their potential and got them in advanced classes or convinced their parents to change schools. The problem is that stories like this are so rare and resources are usually distributed in ways that reinforce unequal outcomes. As Herbert Walberg recognizes, schools are often the only hope that we have to offer people who have unequal life chances in this country. Schools themselves can and do have some effect on student learning. The very first thing we have to do is make sure we provide schools that have some semblance of decent opportunity for all the kids.

In general, the State experts reify test score gains as gains in education, but that is not an adequate definition. The idea of reducing all educational outcomes to performance on single tests is absurd, as the testing profession and the National Academy of Sciences report on testing have recognized. A productive state accountability system would take account of the kinds of multiple outcomes that Anita Summers describes, such as graduation rates, dropout rates, course taking, and college preparedness. California is a very, very complicated place to measure outcomes because the State has so many language minority students, such extreme economic polarization, extreme segregation, high mobility, and so many different dimensions of inequality.

California's accountability system, even within the testing portion, certainly cannot be described as a national model. The state did, for example, develop and implement a sophisticated math reform and assessment policy which was producing very positive changes studied by Prof. David Cohen at the University of Michigan and others. The system came under fierce ideological attack and was suddenly abandoned under Governor Pete Wilson and replaced with off-the-shelf tests, the Stanford Nine, which was not related to the state's curriculum efforts. Now a third testing system, with high stakes features that fly in the face of much informed professional judgment is being implemented together with new grade level tests required by the No Child Left Behind Act signed in 2002. This is hardly a stable or validated system even within its own terms.

A State accountability system must measure multiple outcomes and connect those measures to effective interventions, particularly given the sanctions that the state will

be imposing under state and federal education reforms. With high accountability visited on students and schools, at a minimum the state must take account of the kinds of conditions essential for an opportunity to learn, including, but not limited to, access to trained teachers, instructional materials, and decent school facilities.

Increased State involvement in educational equality does not by its nature disenfranchise parents, as both Margaret Raymond and Caroline Hoxby charge. In fact, parent involvement in low-income schools tends to be very small and very uninformed. Absent State involvement, low-income schools will very likely have little or no parent involvement. We have seen this in studies of resegregated high poverty neighborhood schools and in many studies my students have written of the schools where they taught or volunteered. A National Academy of Science study of school volunteers shows the same thing as did a study we conducted of 5000 parents in Indiana. Parents with low educational levels typically have little knowledge or involvement with their schools. But State involvement could, and should, encourage and foster increased parent involvement. Parents without college education tend to respond best to things they can see like grades and report cards. If there were accountability that gave parents usable information, we might see low-income parents seeing their schools more accurately and involved more; appropriate State action could foster such accountability.