

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

ELIEZER WILLIAMS, et al.,)
)
 Plaintiff,)
)
 vs.)
)
)
STATE OF CALIFORNIA, et al.,)
)
 Defendants.)

)

No. 312236

DEPOSITION OF CHARLES BALLINGER
Los Angeles, California
Monday, June 23, 2003
Volume I

Reported by:
SHERRYL DOBSON, RPR

CSR No. 5713

JOB No. 43687

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

1 ELIEZER WILLIAMS, et al.,)
2)
3 Plaintiff,)
4)
5 vs.) No. 312236
6)
7 STATE OF CALIFORNIA, et al.,)
8)
9 Defendants.)

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11
12 Deposition of CHARLES BALLINGER,
13 Volume 1, taken on behalf of
14 Plaintiffs, at 555 West 5th Street,
15 35th Floor, Los Angeles, California,
16 beginning at 9:35 a.m. and ending at
17 5:02 p.m. on Monday, June 23, 2003,
18 before SHERRYL DOBSON, Certified
19 Shorthand Reporter No. 5713.
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1 APPEARANCES:
2
3 For Plaintiffs:
4 MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND
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11 For Defendant:
12 O'MELVENY & MYERS
13 BY: LYNNE M. DAVIS
14 Attorney at Law
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18
19 Also Present:
20 MARIO ACCOSTA
21 CATHERINE MEZA
22 CLAIRE SCHAEFER
23 ANNA REYNOSO
24 VASCO BIBAO-BASTIDA
25

1 Los Angeles, California, Monday, June 23, 2003
2 9:35 a.m. - 5:02 p.m.
3
4 CHARLES BALLINGER,
5 having been first duly sworn, was examined and testified
6 as follows:
7
8 EXAMINATION
9 BY MR. VILLAGRA:
10 Q Would you please state your name for the
11 record.
12 A My name is Charles Ballinger. That's B, as in
13 boy, a-l-l-i-n-g-e-r.
14 Q And would you please state your address?
15 A Home address?
16 Q Yes.
17 A 4891 Jellett -- that's J-e-l-l-e-t-t -- Street,
18 San Diego 92110.
19 Q Have you ever been deposed before?
20 A Yes.
21 Q How many times?
22 A Once.
23 Q When was that?
24 A Would have been about 1986.
25 Q What type of case was it?

1 A It was civil. Had to do with a financial
2 matter.
3 Q That was a number of years ago.
4 Would you like me to run through the
5 instructions for the deposition?
6 A Fine.
7 Q If you don't understand a question, please ask
8 me to clarify it. If you answer, the assumption will be
9 that you understood the question fully and are providing
10 a truthful and complete answer.
11 Do you understand that?
12 A Yes.
13 Q You are under oath. I'm going to be asking you
14 questions, and the court reporter will be taking my
15 questions and your answers down. You will need to
16 verbalize your answers, not shake or nod your head.
17 Please try to wait for my question to be completed, so
18 the court reporter doesn't have to take two people's
19 testimony down at once.
20 If at any point you remember something that
21 you'd like to add to a prior answer, just let me know.
22 If you need a break for any reason, just let me know.
23 Do you understand what I've explained to you?
24 A I do.
25 Q Is there any reason why you're unable to

1 provide truthful testimony today?
2 A Not that I'm aware of.
3 Q Are you currently taking any medication?
4 A I'm not.
5 Q How did you first hear about the Williams case?
6 A It was with a call from Lynne Davis, attorney
7 at O'Melveny & Myers.
8 Q When was that?
9 A It was the week before Christmas of 2002.
10 Q And did you speak with Ms. Davis then?
11 A I did, by telephone.
12 Q And what was the conversation about?
13 A She mentioned that there was a case called
14 Williams versus State of California, that I was
15 suggested as a person knowledgeable about multi-track
16 year-round education, would I be interested in being a
17 party to the discussion.
18 Q Did she say who you were suggested by?
19 A Not specifically. She said only that several
20 people up and down the state had suggested my name, but
21 she gave me no particular persons.
22 Q Do you recall anything else that Ms. Davis said
23 to you during that conversation?
24 A Just general, that we would be in touch. I was
25 ready to leave on a trip, holiday trip, and so it was a

1 relatively short conversation, as I recall.
2 Q Did you agree to speak again at a later date?
3 A Yes.
4 Q Did you in fact speak at a later date?
5 A Yes.
6 Q Do you recall when that was?
7 A I don't know the exact date, but it was after
8 the Christmas holiday.
9 Q Was that a short conversation as well?
10 A Relatively short, yes.
11 Q What was discussed during this second
12 conversation?
13 A Essentially, it was a review of the first
14 conversation, that I was being asked to be an expert
15 witness in this particular case on the topic of
16 multi-track year-round education.
17 Q So during the second conversation, you agreed
18 to be a witness for the State on multi-track
19 year-round education?
20 A That's true.
21 Q Did you discuss anything else?
22 A Not that I'm aware of.
23 Q Did you have any further conversations with
24 Ms. Davis?
25 A Over the next several -- when? When are you

1 referring to?
2 Q When was your next conversation with her?
3 A I can't give you an exact time.
4 Q Can you give me an approximate month?
5 A No. It would have been less than a month.
6 Q What do you recall discussing during this third
7 conversation with Ms. Davis?
8 A We talked a little bit about compensation. We
9 talked again about the nature of the whole case, the
10 overall -- in general terms, and again, they would be
11 back in touch with me later.
12 Q What did Ms. Davis tell you about the nature of
13 the case?
14 A That it was a case that had been brought by
15 several parties, had several parts to it, and I was to
16 focus primarily on multi-track year-round education,
17 which was my area of expertise.
18 Q Was there a discussion of who the several
19 parties in the case were?
20 A The Mexican American Legal Defense Fund was
21 mentioned, ACLU was mentioned. Those are the only two
22 that come to mind now.
23 Q And do you recall any discussion about the
24 several parts of the case?
25 A Only in general terms. I don't know all of the

1 particular parts to the case even now.
 2 Q Did Carolyn Kneese come up during any of these
 3 first three conversations that you had?
 4 A Yes.
 5 Q When did her name come up?
 6 A Probably in the second conversation.
 7 Q And what was the discussion about Carolyn
 8 Kneese?
 9 A I suggested Carolyn Kneese was a person who had
 10 done a lot of research in the field of
 11 year-round education, generally, and specifically in
 12 multi-track year-round education, and she would
 13 certainly be one that I would like to rely on for
 14 information.
 15 Q Why would you like to rely on Carolyn Kneese
 16 for information?
 17 A Well, because she's the nation's leading
 18 scholar on the topic of year-round education.
 19 Q And I take it that you don't consider yourself
 20 the nation's leading scholar on the topic of year-round
 21 education?
 22 A I don't think I am. I don't profess to be a
 23 scholar, in the sense of doing original research work.
 24 I consider myself a K-12 practitioner, and so I would
 25 probably be one of the nation's leading voices in

1 support of year-round education, but no, I would not
 2 consider myself the nation's leading scholar.
 3 Q What do you mean by a leading voice in support
 4 of year-round education?
 5 A Well, my background is that I've been -- was
 6 executive director of the National Association for
 7 Year-Round Education for 20 years. And in that
 8 position, I became the association's chief spokesperson
 9 on the topic of year-round. And so, consequently, as a
 10 result of that office, I was called upon in several ways
 11 to be a spokesperson for the organization and for the
 12 topic of year-round education.
 13 Q And you have not conducted original research
 14 into the area of year-round education?
 15 A I have not.
 16 Q And is that why you felt it would be helpful to
 17 involve Carolyn Kneese?
 18 A Yes, sir.
 19 Q Any other reason?
 20 A No.
 21 Q Okay. We were talking about a third
 22 conversation with Ms. Davis.
 23 Do you recall a fourth conversation?
 24 A Yes.
 25 Q When would that have been?

1 A I have no idea.
 2 Q Approximately?
 3 A I don't.
 4 Q Do you recall what was discussed during the
 5 fourth conversation?
 6 A I'm not sure.
 7 Q Do you recall any other conversations with
 8 Ms. Davis?
 9 A Several of them.
 10 Q Okay.
 11 A But I could not put them in sequence for you
 12 from this point on.
 13 Q Do you recall any of what was discussed during
 14 those subsequent conversations?
 15 A Yes.
 16 Q Can you tell me what was discussed?
 17 A Again, general outline of the case,
 18 particularly focusing on the topic of multi-track
 19 year-round education, some discussion of the role of
 20 Carolyn Kneese, Dr. Carolyn Kneese. I remember some
 21 discussion about depositions and what might be involved
 22 with that. And that sort of general thing.
 23 Q Anything else that you can recall?
 24 A Not right now.
 25 Q What was the discussion about the role of

1 Carolyn Kneese?
 2 A Well, the discussion had to do with whether she
 3 would be writing a paper, whether she would also become
 4 an expert witness.
 5 Q Anything else?
 6 A I think that's it.
 7 Q What was the discussion about whether she would
 8 write a paper?
 9 A Well, I felt that she would be very helpful in
 10 gathering together the latest data on the topic of
 11 multi-track and year-round education in general. And I
 12 don't consider myself a researcher, and I asked that she
 13 be considered for the role of either writing the paper
 14 or becoming an expert witness, simply to make sure we
 15 had the latest information.
 16 Q And do you recall anything else about the
 17 discussion regarding whether Ms. Kneese would write a
 18 paper?
 19 A I do not.
 20 Q Do you recall the discussion about whether
 21 Ms. Kneese would testify in the case?
 22 A Well, I remember there was a discussion about
 23 whether she would, yes.
 24 Q What was the discussion?
 25 A Well, it was more a matter of whether her role

1 should be as an expert witness, discussing, or whether
2 she would simply write the paper. And the decision was
3 made to simply have her write a paper.

4 Q Who made that decision?

5 A I can't tell you who made that decision, but it
6 was not me.

7 Q You don't know who made the decision?

8 A I do not, no.

9 Q Do you recall anything that you said to
10 Ms. Davis about whether Ms. Kneese should testify in the
11 case?

12 A At first I urged that she be an expert witness,
13 but as we talked further, it became pretty clear that
14 her role could very well be the writing of a paper,
15 which is really what I needed on my behalf, which was to
16 be sure I was up to date with the latest information.

17 Q Why did you initially urge that Ms. Kneese be
18 an expert witness?

19 A Simply because I did not feel that I was a
20 primary researcher. So consequently, I thought that she
21 would fill a role which I could not fill.

22 Q So initially, you felt that a primary
23 researcher should be the expert witness on multi-track
24 year-round education?

25 A Well, I'll pick up on your word "the." No,

1 Q Do you recall anything else that you said to
2 Ms. Kneese during that call?

3 A No. It was a very short call, because, again,
4 it was around the holiday time.

5 Q And what was Ms. Kneese's response to what you
6 told her about the case?

7 A Well, she said she was very busy -- she's a
8 professor at a university, working with graduate
9 students -- but she would be happy to do what she could
10 to help.

11 Q When was your next discussion, if you had one,
12 with Ms. Kneese?

13 A It was right after the holidays, after I came
14 back to San Diego.

15 Q What was the discussion then?

16 A Again, picking up on the idea that I needed her
17 help. She, once again, demurred, saying she had a heavy
18 load at the university, but she would be glad to do what
19 she could.

20 Q How do you know Carolyn Kneese?

21 A I know her from her activities in year-round
22 education. I first became acquainted with her and her
23 work about 1995, around 1995, because I learned that she
24 was doing work in the field of year-round education.

25 Q Is she in any way affiliated with the National

1 she -- I recommended her as another expert witness, not
2 the expert witness.

3 Q So an expert witness in addition to yourself?

4 A In addition, right.

5 Q Okay. Do you recall anything Ms. Davis said
6 about whether Ms. Kneese should be an expert witness in
7 the case?

8 A I don't recall that she took a strong position
9 one way or another. I don't recall that she ever
10 opposed that, that possibility.

11 Q And Ms. Kneese eventually did write a paper?

12 A She did. And a good one.

13 Q Have you had any discussions with Ms. Kneese
14 about the case?

15 A Yes.

16 Q When was the first discussion?

17 A It was immediately after the first call from
18 Ms. Davis, asking me to be an expert witness.

19 Q And what was the discussion?

20 A The discussion was that I would like her help
21 in the case, that I had recommended that she be
22 considered as an expert witness, but that even if that
23 didn't transpire, that I still would seek her help in
24 providing me the latest research information on
25 multi-track.

1 Association of Year-Round Education?

2 A She was not at that time. I did not know her
3 at that time. She later served on the board of
4 directors of the association. She is not currently a
5 member of the board.

6 Q During what period did she serve on the board?

7 A From about 19 -- from about 2000 to 2002.

8 Q Has she held any other positions with the
9 National Association of Year-Round Education?

10 A No. And her position was held because, on the
11 board of directors, we have a position for a university
12 representative, and she was that representative for the
13 two-year period that I gave you.

14 Q Has the -- if I use the acronym NAYRE, will you
15 understand what --

16 A I will.

17 Q -- I'm talking about?

18 Has NAYRE always had a university position on
19 its board?

20 A Not always, but it has for the last several
21 years.

22 Q Can you list for me the first university
23 representative?

24 A I'm not sure I can give you the first, but I
25 can tell you who has held that position the longest and

1 for most of those years. That was Dr. David Mussatti.

2 Q Would you please spell his last name.

3 A Yes. M-u-s-s-a-t-t-i. Who's at Sierra Nevada
4 College, Incline Village, Nevada.

5 Q And apart from Carolyn Kneese, do you recall
6 anyone else who has held that position on the board?

7 A At this moment I can't.

8 Q If you recall, you'll let me know?

9 A I will.

10 Q Would you describe Carolyn Kneese as a
11 proponent of year-round education?

12 MS. DAVIS: Objection. Vague and ambiguous.

13 BY MR. VILLAGRA:

14 Q Do you understand the question?

15 A I understand the question.

16 When you say proponent, that brings up a lot of
17 discussion. I don't think she's a proponent in the
18 sense that she's an activist. I think her research has
19 led her to believe that there's real value and
20 possibilities in year-round education. And I take that
21 as a different stance than to say she's a proponent.

22 I'm a proponent. I'm not sure she is. She's a
23 researcher and, consequently, a researcher needs to keep
24 some objectivity in looking at the data, coming up with
25 certain conclusions.

1 Q And you said that she was not an activist.

2 What do you mean by activist?

3 A She does not go out on speaking tours, as I
4 do. When called upon, she gives her best judgment as to
5 the facts, as she knows them, about year-round education
6 and does that at conferences. But other than the usual
7 kind of university work, she does not go out discussing
8 it in the same sense I do.

9 Q Is there anything else that you intend to
10 convey by saying that she's not an activist other than
11 what you've just explained to me?

12 A I think that'll be it for now.

13 Q Okay. And you said earlier that you described
14 yourself as an activist for year-round education?

15 A I'm a strong proponent of year-round, yes.

16 Q And by that you mean that you go out on
17 speaking tours?

18 A Yes, I do.

19 Q You mentioned that she was not an activist,
20 because she gives her best judgment --

21 A Yes.

22 Q -- as to the facts, as she knows them.

23 A That's correct.

24 Q If you're an activist, what is it that you do?

25 A Well, I -- when I was at the association -- you

1 understand, I'm emeritus now, so I don't have the calls
2 as I used to.

3 I would go out to school districts on their
4 call, at their request, invitation, to speak to members
5 of the public, a public meeting or a school board or
6 teaching staff or a group of administrators. I have
7 often been on radio talk shows, where I've been --
8 talked with the radio host or -- and/or call-in
9 questions from viewers. Reporters talk to me.

10 There was rarely a day went by that I didn't in
11 some way or another advocate for the concept of
12 year-round education, either from my office or on tour.

13 Q There was rarely a day when you did not
14 advocate for year-round education when you were
15 executive director?

16 A That's correct.

17 Q Before I digress, we were talking about your
18 conversations with Carolyn Kneese about the case.

19 A Yes.

20 Q We had finished talking about your second
21 conversation with her.

22 Do you recall a third conversation with her?

23 A Well, I recall there was a third one, yes.

24 Q Do you recall when it was?

25 A I do not.

1 Q What do you recall about the conversation?

2 A I don't know any -- I don't remember any
3 specifics.

4 Q Do you remember the conversation in general
5 terms?

6 A Just that I wanted her help, and she said,
7 "Yes, I'll help."

8 Q Do you recall any further conversations with
9 Carolyn Kneese?

10 A Oh, several, yes.

11 Q Okay. Do you recall the substance of those
12 conversations?

13 A Mostly where she was, "Are you working on the
14 paper?" Yes.

15 She would ask me, "How are you doing?" Because
16 I was in the process of writing as well. And the
17 conversations were what you call normal back-and-forth
18 conversations.

19 Q Was any of the back-and-forth done in writing?

20 A Very little.

21 Q And when you say very little, what was done in
22 writing?

23 A There was an occasional e-mail, which I turned
24 over to the attorney on my right, Ms. Davis, and other
25 than those e-mails, everything else was by telephone.

1 Q When did you turn those e-mails over to
2 Ms. Davis?

3 A A week and a half or so ago.

4 Q Did you have any discussions with your
5 colleagues at NAYRE regarding the case?

6 A Very little.

7 Q And who did you speak with?

8 A Of the current staff there now, no one,
9 actually.

10 Q You spoke with some former staff, I assume?

11 A No, actually, I talked with a couple board of
12 directors that I was involved with the case. But I did
13 not talk with current staff there.

14 Q Who were those board of directors?

15 A One was a professor at San Jose State, Marsha
16 Speck, Dr. Marsha Speck. I talked with another former
17 member of the board, Mr. Sam Pepper, of Yuma, Arizona,
18 and another member of the board, Dr. Ann Grooms, of
19 Cincinnati, Ohio.

20 Q Anyone else?

21 A On the board? I think that's pretty much it.

22 Q Why did you speak with Ann Grooms about the
23 case?

24 A Oh, just because she's in the field of
25 education. She runs an educational consulting service

1 I asked if I could get a copy of his latest article on
2 the topic of modified school calendars, what I would
3 call year-round education.

4 Q What did you discuss the first time you spoke
5 with Harris Cooper in April?

6 A In April. I told him that I was involved in
7 the Williams versus State of California case. I knew he
8 was in the process of writing a juried article, and
9 wondered when it was coming out and whether I could have
10 access to his latest findings. He said yes.

11 And the call in May was to find out how I could
12 get it.

13 Q When you say a juried article, what do you
14 mean?

15 A Well, by that I mean it's peer-reviewed.

16 Q Was it important to you that the Harris Cooper
17 paper that he was working on was going to be
18 peer-reviewed?

19 A Oh, yes. Sure.

20 Q Why?

21 A Well, because that is the way educational
22 research articles are considered substantive articles.
23 When you publish an article that's been peer-reviewed,
24 that means that other scholars have looked at the
25 article, made suggestions, or maybe say, this is not

1 in Cincinnati. We talked about the fact that I was in
2 the case. No details about the substance of the case at
3 all. More informational than substantive. And the same
4 would be true with both Mr. Pepper and Dr. Speck.

5 Q Thanks. Those were my next questions.

6 Other than the people you've just told me
7 about, Carolyn Kneese, Marsha Speck, Sam Pepper, Ann
8 Grooms, if any of them actually apply, did you speak
9 with any other researchers about the Williams case?

10 A Yes.

11 Q Who?

12 A Dr. Harris Cooper.

13 Q Where is he?

14 A He's currently at the University of Missouri
15 Psychology Department.

16 Q Why did you -- I'm sorry, strike that.

17 How many times did you speak with Harris
18 Cooper?

19 A Twice.

20 Q Do you recall when the first time was?

21 A The first time was in April of this year, at
22 the annual meeting of the American Educational Research
23 Association.

24 Q When was the second time?

25 A Second time was probably last month, May, when

1 quality writing or quality research.

2 So consequently, when it appears in a journal
3 of substance, such as the publications of the American
4 Educational Research Association, you have some feeling
5 that at least this is a substantive article that needs
6 to be looked at. Doesn't mean you have to accept
7 everything in the article. Simply means that it's been
8 peer-reviewed and is considered of substance.

9 Q And when you spoke with Harris Cooper in May,
10 what did he tell you about the release?

11 A He said, "It's not yet out, but," he says,
12 "it's supposed to be published this month, supposed to
13 be released this month, but I can give you my working
14 copy."

15 Q Did he give you a working copy?

16 A Well, he sent it by e-mail. But that is now
17 published and is available in published form.

18 Q Did you cite that latest Harris Cooper study in
19 your report?

20 A I did not, because it was not yet available.

21 I wish it had been.

22 Q Did you speak with any teachers regarding your
23 involvement in the Williams case?

24 A Not that I recall.

25 Q Did you speak with any school administrators

1 regarding your involvement in the case?
 2 A Yes.
 3 Q Who?
 4 A I talked with Larry Carletta, who's on the
 5 administrative team at Los Angeles Unified School
 6 District, and I called him to ask for any late
 7 information he might know about on the topic of
 8 year-round education and student achievement results.
 9 Q Did you speak with any other administrators
 10 regarding your involvement in the case?
 11 A No more that I can recall right now.
 12 I'll take that back. Yes. There was another
 13 administrator I talked with, Pete McHugh, who's an
 14 associate superintendent at the Vista Unified School
 15 District.
 16 Q Would you please spell his last name.
 17 A Yes. M-c, capital, H-u-g-h.
 18 Q Did you speak with any other administrators
 19 regarding the case?
 20 A None others that I can recall right now.
 21 Q How do you know Larry Carletta?
 22 A Well, he is one of the persons in the central
 23 office at Los Angeles Unified that looks at year-round
 24 education, housing of students. I don't know his exact
 25 title right now, but he's been one of my primary

1 contacts in the last few years in the central
 2 administrative offices when I was looking for
 3 information about year-round in Los Angeles Unified.
 4 Q Did you know him from the year-round advisory
 5 committee?
 6 MS. DAVIS: What do you mean by year-round advisory
 7 committee?
 8 BY MR. VILLAGRA:
 9 Q Do you know, Mr. Ballinger, what the year-round
 10 advisory committee is?
 11 A I do, as a matter of fact. I know of several
 12 advisory committees. So tell me which one you're
 13 referring to.
 14 Q Do you know one in the California Department of
 15 Education?
 16 A I do.
 17 Q Is that where you know Larry Carletta --
 18 A I know him from there. I knew him before that,
 19 but yes, I knew him from there as well.
 20 Q How do you know Pete McHugh?
 21 A Vista Unified is one of the districts in San
 22 Diego County that has year-round education. Besides my
 23 work with the association, I was for many years the
 24 coordinator and director of year-round education for the
 25 San Diego County Office of Education. It's a service

1 agency for the various local school districts in San
 2 Diego County, of which Vista Unified is one.
 3 And so consequently, I've known Pete McHugh for
 4 several years.
 5 Q What was your discussion with Larry Carletta?
 6 A Asked him if he had any recent research
 7 information on student achievement in year-round
 8 education in Los Angeles Unified, just asking whether we
 9 had up-to-date information.
 10 Q And what did he say?
 11 A Well, he said, "Do you have the White and
 12 Cantrell studies for 2001 and 2002?"
 13 And I said, "No, I don't have copies of those."
 14 He asked about the reports back in -- what was
 15 it? '87, '88.
 16 I said, "Yes, I already have those in my files,
 17 have those -- have had those for many years."
 18 So he said, "Well, I'll send you copies of the
 19 latest White and Cantrell reports."
 20 Q Was that all you can remember of the discussion
 21 with Larry Carletta?
 22 A Correct.
 23 Q What did you discuss with Pete McHugh?
 24 A I asked him if he could make available
 25 achievement test scores for the students at Vista

1 Unified.
 2 Q And what did he say?
 3 A He said yes.
 4 Q Did he make those available to you?
 5 A Yes, he did.
 6 Q What did you do with those test scores?
 7 A I looked at them, and then I sent them off to
 8 Carolyn Kneese.
 9 Q Did you produce that test data to your counsel?
 10 A I believe so, but I'm not sure.
 11 MR. VILLAGRA: Lynne, is there any way we could
 12 double-check that that was included in the production?
 13 MS. DAVIS: Yes. I will make a call this
 14 afternoon.
 15 MR. VILLAGRA: Okay.
 16 Q Did you also obtain test data from the Lodi
 17 Unified School District?
 18 A I did.
 19 Q How did you obtain that test data?
 20 A I obtained that from the director of research
 21 for the district. And I did not mention her a while ago
 22 during -- when you said administration. I was thinking
 23 another level of administration.
 24 Q What was her name?
 25 A I don't recall right now. Doesn't quickly come

1 to mind.
 2 Q But you obtained test data?
 3 A Yes.
 4 Q And you passed that on to Carolyn Kneese as
 5 well?
 6 A I did.
 7 Q Do you recall what the test data from Vista
 8 showed?
 9 A I can't give you a summary now, no.
 10 Q Do you recall what the test data from Lodi
 11 showed?
 12 A Again, I can't give you a summary now.
 13 Q Besides Ms. Davis, have you spoken with any
 14 other lawyers in this case?
 15 A Yes.
 16 Q Who?
 17 A I've spoken with Tony Seferian, Kara
 18 Read-Spangler, and Joe Egan.
 19 Q Anyone else?
 20 A Not that I'm recalling right now.
 21 Q Do you recall what you discussed with Tony
 22 Seferian?
 23 A Yes.
 24 Q How many conversations did you have with him?
 25 A I may have had three.

1 Q Can you parse them out for me?
 2 A The first time I spoke with him it was a
 3 conference call, and it was a general discussion of the
 4 case and a discussion of the Mitchell paper submitted
 5 for the plaintiffs.
 6 Q You mentioned it was a conference call.
 7 A Yes.
 8 Q Do you know who else was on the phone call?
 9 A Ms. Davis was on the call, and
 10 Ms. Read-Spangler was on the call.
 11 Q Was Mr. Seferian on the call?
 12 A Yes.
 13 Q Was anyone else on the call?
 14 A Me.
 15 Q Was Carolyn Kneese on the call?
 16 A Oh, dear. I don't recall right now whether she
 17 was or not.
 18 Q Do you recall what the discussion was about the
 19 Mitchell paper?
 20 A Yes.
 21 Q What was it?
 22 A We reviewed the whole paper. When I say we, we
 23 all listened. I did most of the talking about the
 24 Mitchell paper and went through it and told them points
 25 of disagreement, points where I thought he was off base,

1 areas where I had a differing point of view, that sort
 2 of thing.
 3 Q Do you recall when this conference call
 4 occurred?
 5 A Probably late January.
 6 Q When this conference call occurred, had you
 7 already received the paper from Carolyn Kneese?
 8 A No.
 9 Q When you referred to points of disagreement,
 10 points where you felt Dr. Mitchell was off base, places
 11 where you and he had differing points of view, are all
 12 those formulations of the same idea?
 13 MS. DAVIS: Objection. Compound.
 14 THE WITNESS: I'm not sure what you're asking me,
 15 really.
 16 BY MR. VILLAGRA:
 17 Q Are points of disagreement different than
 18 places where you and he had differing points of view?
 19 A I'm still not sure what you're asking me.
 20 Q Are those mutually-exclusive categories for
 21 you?
 22 A All right. Repeat the two categories, if you
 23 would.
 24 Q Points of disagreement, points where he was off
 25 base.

1 A I do consider those two separate categories,
 2 yes.
 3 Q Okay. What were the points of disagreement?
 4 A I thought he was overly broad in his conclusion
 5 that multi-track year-round education was detrimental to
 6 the student -- detrimental to student achievement of
 7 those students in multi-track year-round education. In
 8 other words, I just simply disagreed with his overall
 9 conclusions.
 10 Q Were there any other points of disagreement
 11 that you recall?
 12 A Well, I thought he hadn't really surveyed the
 13 whole field of year-round education and didn't give a
 14 complete picture of the field, as I know it.
 15 Q Anything else?
 16 A Not at this time.
 17 Q What were the points where you reported
 18 Dr. Mitchell was off base?
 19 A Well, I thought he misunderstood several points
 20 that he raised in his paper. One of those points had to
 21 do with -- well, there's several. One had to do with
 22 whether student achievement was harmed by a multi-track
 23 program. I felt that he was off base, because most of
 24 the research that I'm aware of says that student
 25 achievement is not harmed by multi-track.

1 I thought he was off base when he spoke of
2 multi-track being detrimental to student activities. I
3 thought he was off base when he spoke that the API SSR
4 program had a factor in there that seemed to say that
5 multi-track was detrimental and, therefore, there needed
6 to be some adjustment to test scores. That sort of
7 thing. I thought he was off base in his opinion.

8 Q Any other areas where you thought he was off
9 base?

10 A I'd have to look at that document. I'd be glad
11 to do that if you would like to go through it.

12 Q Well, based on what you recall having reported
13 during the conference call, do you recall anything else
14 that you said he was off base on?

15 A Not right now. Be glad to have you submit his
16 paper, and I'd be glad to go through it page by page
17 with you.

18 Q We will.

19 A Okay.

20 Q Trust me.

21 Do you recall what places you reported having
22 differing points of view with Dr. Mitchell?

23 A I'm not sure what you mean by places.

24 Q I thought that's what you had said earlier,
25 that there were places where you had differing points of

1 substantive; I recall that.

2 Q What about the third conversation with him?

3 A Same sort of thing. It was more
4 administrative. I think the only time I ever really had
5 a substantive conversation was the conference call,
6 which I've just mentioned.

7 Q And you mentioned speaking with
8 Ms. Read-Spangler.

9 A Yes.

10 Q Was that -- how many times did you speak with
11 her?

12 A Just the one time.

13 Q During the --

14 A And it was --

15 Q -- conference call?

16 A -- that conference call, yes.

17 Q What about Joe Egan? How many times did you
18 speak with him?

19 A I've spoken with Mr. Egan maybe four times.

20 Q What did you speak with him about?

21 A Always it had to do with more the
22 administrative parts of this situation with my being an
23 expert witness.

24 Q And what do you mean by the administrative --

25 A Well, it was more an hourly rate, what would

1 view.

2 A Oh, okay. I was speaking of certain points in
3 his paper.

4 Q Okay.

5 A Page by page.

6 Q Do you recall any of those?

7 A Not unless I had the paper in front of me.

8 Q Okay.

9 A And I think I responded to several of those
10 points in my paper.

11 Q Was there any other discussion during that
12 first conference call other than the Mitchell paper?

13 A No.

14 Q I believe we were talking about the times when
15 you spoke with Tony Seferian.

16 When was the second time you spoke with Tony
17 Seferian?

18 A I can't give you the exact time.

19 Q Do you recall a second conversation?

20 A It was very short, and it was more
21 technical/administrative. Nothing of substance, as I
22 recall, about the report or anything like that.

23 Q What were the technical/administrative points?

24 A Probably had something to do with the -- I'm
25 not sure. I'm just not sure. But it was not

1 you agree to, will you be willing to be an expert
2 witness, that sort of thing.

3 Q What did you receive your bachelor of arts in?

4 A You're asking for a major?

5 Q Yes.

6 A History, American history.

7 Q And your master's?

8 A American history again.

9 Q And your Ph.D.?

10 A Was in curriculum and instruction K-12. I
11 didn't go into education until after I'd received my
12 bachelor's and master's. So I'm a late-comer to the
13 field.

14 Q In receiving your doctorate in curriculum and
15 instruction K through 12, did you take any course work
16 addressing year-round education?

17 A No.

18 Q Have you subsequently taken any university
19 courses?

20 A On year-round education?

21 Q In anything.

22 A Since the Ph.D.

23 Q Yes.

24 A Just general interest courses.

25 Q Such as?

1 A Oh, I took a couple of psychology courses in
2 the -- at UC San Diego that were just evening classes.
3 They were simply auditing kind of situations, not for
4 credit.

5 Q And nothing in the field of education?

6 A No.

7 Q I want to start with some of the terms we're
8 going to be using a lot --

9 A Okay.

10 Q -- over the next few days.

11 How would you describe year-round education?

12 A Are you asking for a definition?

13 Q Yes.

14 A Okay.

15 Q Thanks.

16 A Year-round education we consider to be a
17 rearrangement of the school calendar in such a way that
18 the summer vacation is shortened to some degree. And
19 within that general definition, there are a lot of
20 varieties of calendars.

21 Q There are single-track and multi-track --

22 A There is --

23 Q -- year-round programs?

24 A There are single-track, multi-track, and
25 extended year programs.

1 Q What are the different types of year-round
2 calendars that there are?

3 A Oh, there's 25 or so. But let me just outline
4 maybe those that are most used.

5 Q Okay.

6 A The two that are rather equal in numbers would
7 be 60-20 and 45-15. 60-20 is what we might call a
8 trimester system. Remembering that the school year is
9 usually somewhere around a hundred and 80 days of
10 instruction, you very quickly see that a 60-20 is a
11 division of the hundred and 80 days into three periods
12 of 60 days.

13 We're talking school days, now, Monday through
14 Friday, so that those 60 days translate into 12 weeks.
15 The 20 days of vacation would translate into one month
16 of vacation. So in that particular program, students
17 are in school for 12 weeks, on vacation for four weeks.

18 And 45-15 would be essentially a quarter
19 system. Students are in school for 45 school days.
20 That's the equivalent of nine weeks. And then they're
21 on vacation for 15 school days, which is equivalent of
22 three weeks. Other common calendars go by names like
23 90-30, Concept 6, modified Concept 6, and then there are
24 all kinds of variations. There's 60-15, there is
25 50-15. There's 25-5. There's what is called

1 individualized calendar. There are a lot of varieties.

2 In other words, all of them take the hundred
3 and 80 days and massage them in some way. But all of
4 them to be concluded a year-end calendar. From our
5 perspective at the association, no vacation period
6 should be longer than eight weeks in length. If it's
7 longer than that, we do not include it in our directory.

8 Q And that is the NAYRE's position, that a
9 vacation should be no longer than eight weeks?

10 A That's correct. And that's an arbitrary line,
11 but it's the one that we agreed to.

12 Q When did the NAYRE agree to that position,
13 that a vacation should be no longer than eight weeks?

14 A It was one that kind of developed over a period
15 of time. As the various calendars began to be devised,
16 we realized that we had to simply draw a line somewhere
17 to make a distinction on those schools that we should
18 include in our national directory and those that we
19 shouldn't.

20 Understand that in some states the school
21 year's considerably different than ours. For example,
22 Minnesota is one usually considered to have a shorter
23 school year, at a hundred and 70 days. And so you could
24 have districts with 12 weeks, even 13 weeks of vacation,
25 depending on how the school year was set up. I remember

1 in Nashville, Tennessee, having a summer vacation of 12
2 and a half weeks, for example.

3 So over a period of time, I think it just kind
4 of grew, and we finally decided eight weeks would be the
5 cutoff line. And part of that was because of the
6 Concept 6 calendar, because there were schools that were
7 in session all year, but the Concept 6 calendar does
8 have eight weeks of vacation. So that was certainly one
9 of the major considerations in that defining line.

10 Q And the consideration was to include the
11 Concept 6 calendar?

12 A Yes. Because there were students in school all
13 year, and those schools would surely be year-round
14 schools.

15 Q To your knowledge, is there any disagreement
16 within the NAYRE about the length of vacations?

17 A Oh, sure. Sure.

18 Q What is the disagreement?

19 A Well, the disagreement is more an academic
20 one. When we're talking about forgetting, for example,
21 there would be some in the field of year-round education
22 who would argue that a student really ought not to be on
23 vacation for longer than six weeks. And there are even
24 some in the field who way say vacations really ought not
25 to be longer than a month at a time.

1 So yes, there's disagreement, academic
2 disagreement. And I think I stated from the very
3 beginning that the eight weeks is an arbitrary line, but
4 one of the considerations was the Concept 6 calendar,
5 because it did have the eight-week vacation period.

6 Q Can you name for me any of the folks in the
7 field who believe that a year-round vacation should be
8 no longer than six weeks?

9 MS. DAVIS: Vague and ambiguous.

10 Do you mean folks -- you said folks in the
11 field. Are you looking at NAYRE or anybody?

12 MR. VILLAGRA: Anybody in the field.

13 MS. DAVIS: Okay.

14 THE WITNESS: No, you know, I really can't. I've
15 not seen that written at all. The discussions I'm
16 speaking of are the kind of discussions we might have
17 around a table, where there's some discussion about why
18 did we choose eight weeks. The board of directors, for
19 example, back in the early '90s raised that question,
20 at what point should we be arbitrary.

21 It's like anything else that we do in law or in
22 education. What's magic about a hundred and 80 days,
23 for example. We finally just have a common agreement
24 and move on from that point. So the answer is -- short
25 answer is no, I can't give you a specific name. It's --

1 it was just kind of a round table discussion.

2 BY MR. VILLAGRA:

3 Q And if I refer to single-track year-round
4 programs, you'll know what I'm referring to?

5 A I would, yes.

6 Q And if I refer to multi-track year-round
7 programs, you'll know?

8 A I think, so.

9 Q After receiving your master's, you taught at
10 Union Township Schools; is that right?

11 A That's correct.

12 Q Are those public schools?

13 A They are.

14 Q Did you teach at one school or more than one
15 school?

16 A One school.

17 Q What school was that?

18 A It was called Westchester Elementary.

19 Q And what grade levels were included in the
20 school?

21 A I taught seven and eight. The school itself
22 had K-8. I taught seven/eight.

23 Q Did you teach any subjects in particular?

24 A English and history.

25 Q Was Westchester Elementary on a traditional

1 calendar?

2 A It was.

3 Q And next you taught at the Princeton City
4 Schools?

5 A I did.

6 Q Was that at one school?

7 A Princeton City Schools is a school system K-12,
8 with many schools involved. Suburban Cincinnati.

9 Q Did you teach at one or --

10 A It taught at one school. It was a junior --
11 senior high school, Princeton High School.

12 Q What subjects did you teach?

13 A English and history, grades seven and eight.

14 Q Was that on a traditional calendar as well?

15 A Yes.

16 Q And then you worked as an instructor at the
17 Laboratory School at Ohio State University?

18 A That's correct.

19 Q What were your duties?

20 A I was an instructor there. I taught history at
21 the high school level. Students were mostly 11th and
22 12th graders.

23 Q And was the Laboratory School run on a
24 traditional calendar?

25 A It was.

1 Q You then worked as an administrative intern at
2 the Parma City Schools.

3 A That's correct.

4 Q What were your duties there?

5 A I was learning to be a school administrator.

6 It was a program conducted by Ohio State University. It
7 would be the same as what we'd call an intern today,
8 administrative intern.

9 Q And then you were assistant superintendent of
10 schools for the North Canton City Schools?

11 A That's correct.

12 Q What were your duties there?

13 A Mostly curriculum and instruction duties,
14 developing curriculum, instructional programs for the
15 system K-12.

16 Q While you were assistant superintendent of
17 schools for North Canton City Schools, were there any
18 year-round schools?

19 A No.

20 Year-round had not come into being in the
21 modern era yet.

22 Q Let me skip a few items and go on to when you
23 became coordinator of year-round education for the San
24 Diego County Office of Education.

25 What year was that?

1 A 1971. I began there in August of '71.
 2 Q And you later became director?
 3 A Yes.
 4 Q When was that?
 5 A Somewhere around '95, '96.
 6 Q And I believe you mentioned the County Office
 7 of Education earlier, that it served the school
 8 districts within San Diego County?
 9 A That's correct.
 10 Q And in what way does it serve the districts?
 11 A Well, it provides several services. It
 12 provides curriculum services, provides business
 13 services, provides special education services, provides
 14 services for the courts of San Diego County in the
 15 juvenile detention program, educational part of the
 16 juvenile detention program. Several different services
 17 to the 40-plus school districts in the County.
 18 Q And what were your duties?
 19 A When I came in August of '71, I was brought
 20 there as a generalist in the field of curriculum and
 21 instruction. That had been my background, my training.
 22 Within about three months after arriving, I was asked
 23 what I knew about year-round education. I said
 24 nothing. And so I was assigned that particular area,
 25 because our first year-round school had just opened up

1 in San Diego County in July of that year, about three
 2 months earlier.
 3 So I learned very quickly what the topic was
 4 and became the office's point person on the topic of
 5 year-round.
 6 Q Was it a full-time position?
 7 A Yes.
 8 You mean on the topic of year-round?
 9 Q No.
 10 A But yes --
 11 Q The coordinator --
 12 A I was full-time coordinator, yes. Part of the
 13 professional staff there.
 14 Q When you first began working in the County
 15 Office of Education, how many schools were there under
 16 its jurisdiction?
 17 A Thinking back to '71. I don't know how many
 18 schools, but I believe there were about 45 school
 19 districts.
 20 Q And in that first year in '71, the first
 21 year-round schools opened?
 22 A In San Diego County. They were the first
 23 multi-track in the state of California, as a matter of
 24 fact. So they were not the first year-round schools in
 25 California, but they were the first multi-track.

1 Q How many operated on single-track calendars, if
 2 you recall?
 3 A In San Diego County?
 4 Q Yes.
 5 A Zero.
 6 Q And how many operated on multi-track calendars?
 7 A There were seven that first year.
 8 Q Were any of them on the Concept 6 calendar?
 9 A No.
 10 Q Or Concept 6 modified?
 11 A No.
 12 Q When you left the County Office of Education,
 13 how many schools operated on single-track calendars?
 14 A When I left. When I -- that'd be 1998.
 15 I'm going to have to give you kind of a general
 16 estimate now. I would guess in the neighborhood of
 17 around a hundred and 60.
 18 You said single-track --
 19 Q Single-track year-round.
 20 A I'm sorry, that's all of the schools. Around a
 21 hundred and 60 year-round schools. I would -- all I can
 22 give you is a kind of an educated guess at this point.
 23 I'd have to go back to the files and search through and
 24 see how many there actually were in 1998. I would
 25 guess, though, that about 65 percent of those were

1 single-track and about 35 were multi-track. 35 percent
 2 were multi-track.
 3 San Diego had an interesting development over
 4 the years. It started out multi-track and moved very
 5 heavily into single-track programs.
 6 Q When was that?
 7 A Over that period from '71 to '98, when I left
 8 the County office.
 9 Q And do you know why that was?
 10 A Well, yes. Students come in waves, if you
 11 will. As enrollment grows and they grow faster than
 12 buildings can be built to properly house students,
 13 multi-track schedules are often implemented to handle
 14 the over-enrollment. But as people got heavily into the
 15 year-round concept, many teachers felt this is a good
 16 idea for kids, because, by having the shorter vacation
 17 periods, there's less forgetting that occurs.
 18 The traditional school calendar is not a
 19 calendar for education, never has been, never will be.
 20 And so when multi-track was no longer needed, most
 21 teachers and most parents actually urged the districts
 22 to stay on the year-round idea, though only single-track
 23 was needed.
 24 Q Out of all the schools in San Diego County, how
 25 many were -- what percentage were converted to

1 year-round education by the time you left?

2 A Oh, I would guess around 30 percent for the
3 county. Give or take a few percentage points.

4 Q Why were more schools not converted to
5 year-round education?

6 A Because it takes time to make the change.
7 We're really changing attitudes of people, both
8 professional staff and parents, and urging them to
9 consider a year-round schedule.

10 Q Was there opposition in San Diego County while
11 you were there to conversion of schools to year-round
12 calendars?

13 A Oh, sure. Sure.

14 Q Who did the opposition come from?

15 A Depends on the school community. Sometimes
16 opposition would come from parents. Sometimes
17 opposition would come from teachers. It would change by
18 school. And that's true, not just in San Diego County,
19 but that's true all over the country. Different groups
20 have different interests in any kind of change. We're
21 talking change, and change will always be good for some
22 and not good for others.

23 Q What do you mean by good for some but not for
24 others?

25 A Well, different people view change in different

1 ways. Whenever any kind of change is proposed, there
2 will be people in a community who will say yes, that's
3 the way to go. There will be other people who will say,
4 no, it's not. Now, they may do so for different
5 reasons, both yes or no. But I don't know of anything
6 in my lifetime where a change has been suggested that
7 it's been without question or without some opposition.

8 Now, if you make a good case, sometimes that
9 opposition fades away. And that's why I think in San
10 Diego County we have had pretty good success in
11 developing our year-round schools. But your question
12 originally was has there been opposition, and the answer
13 is yes.

14 MR. VILLAGRA: I think we'll pause there.

15 MS. DAVIS: Okay.

16 (Lunch recess taken from 10:46 a.m. to
17 12:27 p.m.)

18 BY MR. VILLAGRA:

19 Q In 1980 you founded the NAYRE?

20 A I didn't found it. It was founded in 1972. I
21 became what was then called executive secretary, now
22 executive director, in 1980.

23 Q Do you know who founded the NAYRE?

24 A Group of educators and some laypeople. There
25 was a conference in San Diego that year, 1972, and the

1 organization was drawn up at that time, and it was an
2 all-volunteer at that time, all-volunteer organization.

3 Q When you became executive director, was it
4 still a volunteer organization?

5 A It was.

6 Q Did you receive any salary?

7 A No.

8 Q What were your duties as executive director?

9 A Kind of to be the point person for gathering
10 information about the concept, being able to direct
11 people to sources of information about year-round
12 education, that sort of thing.

13 Q Were you making any kind of independent
14 assessment of information or simply gathering the
15 information?

16 A Simply gathering the information.

17 MS. DAVIS: And you mean when he was executive
18 director?

19 MR. VILLAGRA: Yes.

20 Q And was that true for all 20 years --

21 A Yes.

22 Q -- when you were executive director?

23 A We did no research on our own.

24 Let me clarify that. We did no research of
25 student test scores and that sort of thing. There are

1 different kinds of research, and we certainly did the
2 kind of research that anybody could do, in the sense of
3 gathering information and that sort of thing. I would
4 often go to the library and look up materials. So let's
5 say we did the gathering of information; we didn't do
6 any direct student test score kind of research.

7 Q Just to be clear, you said you did the type of
8 research that anybody could do.

9 A Well, in the sense of going to a library, yes.

10 But I would hope, with my background and so on, I was
11 looking for things that maybe a layperson would not. So
12 I want to be clear about that.

13 Q Did you receive any compensation for your work
14 at the NAYRE?

15 A Not in the early years. It was in the later
16 years that I began to move more directly into a paid
17 situation. We got a grant from the Kellogg Foundation
18 in about 1990, I believe, small grant, and at that time
19 the board of directors bought some of my time from the
20 San Diego County Office of Education. In the first
21 couple of years it was 25 percent of the County's time,
22 and then from that period through the end of the decade,
23 it moved into a full-time position by the time I retired
24 in 2000.

25 Q So by the time you retired in 2000, you were a

1 full-time employee at the NAYRE?
 2 A Of the association, that's correct.
 3 Q Were you still receiving a salary from the San
 4 Diego County Office of Education?
 5 A No. I really have two retirements, so let me
 6 be clear. I retired from the San Diego County Office of
 7 Education in 1998. The last two years I served full
 8 time with the association, full-time salary from the
 9 association only.
 10 Q When did your salary at the NAYRE become full
 11 time?
 12 A At least by 1996. So there are two years
 13 there, anyway, 1996 to 1998, where the association was
 14 buying my time full time from the County Office of
 15 Education.
 16 Q Let me see if I understand.
 17 A Sure.
 18 Q The association was buying a hundred percent of
 19 your time from '96 to '98 from the San Diego County
 20 Office of Education.
 21 A That's right.
 22 MS. DAVIS: I believe he said about from '96 to
 23 '98.
 24 THE WITNESS: Correct.
 25 BY MR. VILLAGRA:

1 Q Were you still working for the San Diego County
 2 Office of Education?
 3 A Not directly, no. That was a way to keep my
 4 State retirement going. And the NAYRE was also buying,
 5 not just salary, but also, I was able to keep fringe
 6 benefits going, and the association paid for those. But
 7 technically, I retired from the County, then, in 1998,
 8 even though the association had been buying my time from
 9 the County before that.
 10 Q What was your salary in 1996, if you recall?
 11 A I don't recall.
 12 Q Do you have any idea what it was?
 13 A I would suspect somewhere around 65,000.
 14 Q What about in 1997?
 15 A Those years were on the San Diego County
 16 scale. I was paid by scale at the County office scale.
 17 I don't remember what it was then in '97.
 18 Q What about '98?
 19 A By then I was being paid by the association.
 20 It was right at 70 to 72,000, and my last year it was
 21 right around 60,000.
 22 Q Your last year being '99?
 23 A Well, half of 2000. I retired in June of 2000,
 24 June 30th.
 25 Q As executive director of NAYRE, did you also

1 receive honoraria?
 2 A Very rarely. Yes, on occasion. Most of the
 3 time I tried to have the districts, if they paid my way
 4 or whatever, run that through the association general
 5 fund, so I didn't -- very rarely took an honorarium. I
 6 would suspect over -- well, I'll leave it there.
 7 Q So most of the time, if there was payment for
 8 an appearance, you had it paid to the association --
 9 A Association.
 10 Q -- general fund?
 11 A So I took only a salary, yes.
 12 Q And since 2000 you've been emeritus?
 13 A Correct.
 14 Q And what are your duties now?
 15 A Very few. Once in a while I answer telephone
 16 calls, seeking information. I attend the conferences --
 17 the association puts on the annual conference -- and
 18 sometimes do a session at the annual conference, session
 19 or two, and of course, being an expert witness in this
 20 case.
 21 Q Anything else?
 22 A No.
 23 Q And since your retirement in 2000, you don't
 24 receive a salary --
 25 A No.

1 Q -- from the NAYRE?
 2 A No.
 3 Q Do you continue to make speaking appearances?
 4 A I haven't in my retirement. Except for the
 5 annual conference sessions, which I mentioned just prior.
 6 Q And when you speak at the annual conference,
 7 are you paid for that?
 8 A No. No, I didn't do it to make a lot of
 9 money. I did it because I believe in the subject.
 10 Q What's your compensation for your work in this
 11 case?
 12 A \$250 an hour.
 13 Q Is there any cap on how much you can receive?
 14 A There is.
 15 Q What is that?
 16 A It was first at 50,000. It has now been
 17 extended to 60,000.
 18 Q When was it extended?
 19 A Within the past month.
 20 Q Why was it extended?
 21 A Because of the -- I'd already used up enough
 22 hours to meet the first cap, and we had not yet gone to
 23 deposition, preparation for the deposition.
 24 Q Have you already been paid \$50,000?
 25 A I have been.

1 Q Do you have any expectation of how much total
2 income you're going to receive from your work in this
3 case?

4 A At this point it would be the cap of 60,000.

5 Q Do you have any expectation of the cap being
6 extended again?

7 A At this point I have no expectation of that.

8 Q What is the mission of the NAYRE?

9 A To serve as a repository of information about
10 year-round education, to serve as a dispenser of
11 information about year-round education, to be a service
12 organization to schools throughout the nation and,
13 indeed, throughout the world that want to know what the
14 concept is.

15 Q And when you say a repository of information
16 about year-round education, does that include
17 information pro and con?

18 A Oh, yes, sure. Oh, yes. We need to be sure
19 that we know what is being said about the topic.

20 Q Why is it important?

21 A Well, you're always in a better position to
22 talk about your field of knowledge if you know what
23 others are saying as well as what you are saying. So we
24 try to keep abreast of what opponents say about
25 year-round education.

1 Q Then you said that the NAYRE is also a
2 dispenser of information.

3 A Yes. We get requests nearly every day for
4 information. The requests come in from school districts
5 and from individual schools, sometimes from parents,
6 sometimes from college students, sometimes from high
7 school students that need to write a paper on a
8 controversial topic or something like that. And so
9 those requests come in constantly. And we generally
10 send packets of information out to those who inquire.

11 Q Is there a charge for those packets?

12 A Sometimes yes, and sometimes no. Depends on
13 what the request is. If the request has publications
14 involved that are costly to the association, we may ask
15 for reimbursement for those publications. If it's a
16 high school student who is simply wanting some general
17 information, sometimes three or four pages is enough for
18 them, so that we don't charge for.

19 Q And among the publications that the NAYRE
20 dispenses, are those pro and con on year-round education?

21 A Not ordinarily. They ordinarily would be
22 descriptive of the topic, what the research says. But
23 we do not get into what others are saying. That's not
24 our role. Others can speak for themselves.

25 Q So the publications that are dispensed are

1 generally in favor of year-round education; is that fair?

2 A They're generally in favor, yes. Though, if
3 you talk -- if we're talking about research studies,
4 such as those that Harris Cooper or Carolyn Kneese have
5 done, obviously, some of those talk about some points of
6 study that might have some negativity to it. But that's
7 not a problem, because very little that we do in this
8 world is perfect. So when those research studies
9 indicate, you know, that here or there something may
10 have a negative aspect to it, we would include that as
11 part of the research study, obviously.

12 Q If I were to call the NAYRE and request
13 publications, would the Harris Cooper study be included?

14 A The latest one, no. Because it's too -- I just
15 got my copy within the last week and a half. But his
16 prior study on summer learning loss, we did reprint
17 that, and we did -- we do include that in a lot of our
18 informational packets.

19 And the material that Carolyn Kneese -- same
20 way. She did one publication for us, although both of
21 those folks, you know, have done publications -- well,
22 Dr. Cooper's never done anything for NAYRE. Dr. Kneese
23 has. But she's also done several publications for
24 professional journals on her own, not under our
25 auspices.

1 Q When you say that Carolyn Kneese did one
2 publication for the NAYRE, what do you mean?

3 A She did a synthesis of research studies, and a
4 synthesis is looking at a whole body of research and
5 essentially doing a synopsis on what the findings were
6 and then coming to some general conclusions about those
7 findings.

8 Q Was she paid by the NAYRE for --

9 A No.

10 Q -- preparing her synthesis?

11 A No.

12 Q When you say she did it for the NAYRE, what
13 does that mean?

14 A Well, in the sense that we sponsored it. We
15 asked her to do that, and she agreed to do that. And so
16 we have published it under our name, our sponsorship, so
17 to speak.

18 Q You mentioned that the NAYRE is also a service
19 organization.

20 A Hmm-hmm.

21 Q What does that mean?

22 A Well, we serve to the degree that we can. From
23 time to time a school district says, can you come and
24 talk to our community or our staff about year-round
25 education, and the answer usually is yes. Tell us when

1 and where. And we try to do that. So in that sense,
 2 it's a service to districts upon their request.
 3 Q And is there a charge for that service?
 4 A Depends on what the situation is. Sometimes
 5 yes; sometimes no. Often it's for expense only.
 6 Sometimes there's an honorarium involved. But I think,
 7 almost without exception, that honorarium goes to the
 8 general fund. If we bring outsiders in, not part of the
 9 staff, we will sometimes pay them, but staff generally
 10 does not get an honorarium.
 11 Q Would you say the goal of the NAYRE is to
 12 promote year-round education?
 13 MS. DAVIS: Vague and ambiguous as to "goal."
 14 BY MR. VILLAGRA:
 15 Q Do you understand the question?
 16 A I do, but repeat it so I make sure I get what
 17 you're trying to find.
 18 Q Would you say the goal of the NAYRE is to
 19 promote year-round education?
 20 A I would say it is a goal. I don't think it is
 21 the goal.
 22 Q Is a goal of the NAYRE to assist districts in
 23 the conversion of schools to the year-round calendar?
 24 A That certainly would be one of the activities
 25 of the association, yes.

1 Q Is a goal of the NAYRE to increase the number
 2 of schools operating on --
 3 A I would say --
 4 Q -- year-round calendars?
 5 A -- that's true, yes.
 6 I'm going to say something here, if I may. In
 7 the newest Cooper research, he points out that he
 8 receives 77 studies from NAYRE. This is in his latest
 9 article. And he mentions in that article that there's
 10 always suspicion, when you get materials from an
 11 advocacy group, that these materials may be slanted one
 12 direction or another.
 13 But he does point out -- and I'd like to say
 14 this for the record -- that he found that our research
 15 was very balanced, that it seemed to fit exactly with
 16 the whole body of research that they looked at, and they
 17 went through 500 studies on year-round. So while we're
 18 an advocacy group, we think we are fair, and we think we
 19 have a complete picture of the research.
 20 Q Did you and your counsel discuss at lunch the
 21 Harris Cooper study?
 22 A No.
 23 Q Why did you feel compelled to make the
 24 statement you just made?
 25 A Because you were talking about a goal, the goal

1 of the association, and I want to make sure, while we're
 2 an advocacy group and certainly want to increase the
 3 number of schools, at the same time I want to be fair
 4 enough to my profession to say that we recognize that
 5 here and there there may be some problems. But overall,
 6 we're believers in year-round education. We want to see
 7 it develop and grow. And sometimes we wonder why all
 8 schools aren't year-round. It's so good for students.
 9 Q You would like to see all schools convert to
 10 the year-round calendar?
 11 A I would eventually, yes. Doesn't have to
 12 happen tomorrow. I'm willing to let it develop
 13 naturally.
 14 Q When you say we are believers in year-round
 15 education --
 16 A Well, those of us in the year-round movement.
 17 I'm speaking generally there.
 18 Q And you see it as a movement?
 19 A I do. In the sense that there are lots of
 20 schools out there and believers in the idea.
 21 Q Harris Cooper notwithstanding, are you familiar
 22 with anyone who has criticized the NAYRE for not being
 23 fair in its analysis of year-round education?
 24 MS. DAVIS: If anyone ever?
 25 MR. VILLAGRA: Yes, that he's aware of.

1 MS. DAVIS: Okay.
 2 THE WITNESS: Restate your question, please.
 3 MR. VILLAGRA: Would you read it back, please.
 4 (Record read)
 5 THE WITNESS: The answer is yes.
 6 BY MR. VILLAGRA:
 7 Q Can you give me a list of those you know of?
 8 A Tell me what you're asking. Are you asking for
 9 names of critics or --
 10 Q Names would be fine.
 11 A Yes.
 12 Q And just to be specific, for not being fair in
 13 the assessment of year-round education.
 14 A Sure. One group that says that we're not fair
 15 is a group called Time to Learn.
 16 MS. DAVIS: I'm sorry, was that Time to Learn?
 17 THE WITNESS: Time to Learn, yes.
 18 MS. DAVIS: Okay.
 19 BY MR. VILLAGRA:
 20 Q Anyone else?
 21 A Occasionally, there would be people in an
 22 audience where I would speak who would stand and say, I
 23 don't think you're being fair. You're not giving the
 24 complete picture.
 25 When it comes to groups, though, I think Time

1 to Learn is the primary group.
 2 Q Anyone that you know of by name?
 3 A In that group?
 4 Q In any group. Any individual.
 5 A Well, in that group, I know a couple of
 6 individuals over the years.
 7 Q What are their names?
 8 A One was Quinn Raspberry, and I think the
 9 current person leading that group is a lady by the name
 10 of Billie Bussard.
 11 Q Anyone else that you can think of who has been
 12 critical of the NAYRE for not being fair --
 13 A Right now other names aren't coming to mind.
 14 Q We talked a little bit about the service that
 15 the NAYRE provides.
 16 Are those consulting services?
 17 A Can be.
 18 Q What would the consulting services entail?
 19 A Well, if a district were to call us and say,
 20 we're doing a study of the feasibility of year-round
 21 education, would you come and join the discussion, the
 22 answer would be yes, we will. And so we'd come. And it
 23 could take different forms. It could be a group of
 24 people sitting in a room like we're in today, round
 25 table, and maybe spend the whole day talking about the

1 feasibility of whether year-round is something the
 2 district should enter into now or sometime in the
 3 future. That would be a consultancy.
 4 Q Would the consultancy entail actually
 5 conducting the feasibility study?
 6 A It could, but we haven't done that very often.
 7 Most districts choose to do their own feasibility. I
 8 can't recall our ever doing a full feasibility study.
 9 So the answer would be no, we really haven't done that.
 10 Q Have you provided consulting services to
 11 districts about the feasibility of converting to
 12 year-round education?
 13 MS. DAVIS: Individually or through NAYRE?
 14 MR. VILLAGRA: Through NAYRE. Thanks.
 15 THE WITNESS: Yeah. Repeat your full question,
 16 please.
 17 BY MR. VILLAGRA:
 18 Q Have you provided consulting services, as part
 19 of the NAYRE, to districts assessing the feasibility of
 20 converting --
 21 A We have, yes.
 22 Q -- to year-round education?
 23 Have you personally?
 24 A Have I personally?
 25 Q Yes.

1 A Yes, I think so, yes.
 2 Q Do you recall the last time you did so?
 3 A I don't.
 4 Q Do you recall the name of the district?
 5 A I don't.
 6 Q How many times would you say that you provided
 7 that type of consulting service to a district?
 8 A We're talking broadly, now, about feasibility.
 9 I probably have worked with, I would guess, maybe 60
 10 districts over the 20 years that I worked as executive
 11 director.
 12 Q And in those 60 districts, have you ever made a
 13 recommendation that conversion to year-round education
 14 was not feasible?
 15 A No.
 16 I want to back up. There's an assumption that
 17 I did the feasibility. I think your question was, as I
 18 recall it, have I been consultant to a feasibility
 19 study. So I didn't do the feasibility study.
 20 Therefore, I really wasn't in a position to do the
 21 recommendation.
 22 Q So you just answered questions about --
 23 A I answered questions, helped them gather data,
 24 helped them -- put them in touch with other districts
 25 that were similar to theirs and that sort of thing. But

1 no, I've not been in position to make a recommendation
 2 pro or not pro.
 3 Q And you mentioned the conferences that the
 4 NAYRE puts on.
 5 A Yes.
 6 Q Is there one conference a year that is put on?
 7 A There's an annual conference, yes.
 8 Q Are there any conferences besides the annual
 9 conferences?
 10 A We do some regional conferences or statewide
 11 conferences, yes.
 12 Q How long has the NAYRE done an annual
 13 conference? How many years back?
 14 A Actually, before NAYRE was formed as an
 15 organization. I think the first one was in 1969. The
 16 organization formed as an organization three years
 17 later, in '72.
 18 Q Currently, where are the regional conferences
 19 that are put on?
 20 A I'm not directly involved these days, so I
 21 can't tell you right now today where the regional
 22 conferences are.
 23 Q What about as of 2000, when you retired?
 24 A Regional, we had one in Seattle. We had one
 25 in -- let me back up for a minute.

1 School people think of a year as being July 1st
2 through June 30th. I retired on June 30th. So my year
3 may include part of 1999.

4 Q That's okay.

5 A But during that last year, Seattle would be
6 one, Virginia -- trying to think where we were in
7 Virginia. I think -- we moved around a little bit,
8 so -- sorry, I can't think of the name of the city in
9 Virginia. Had one in Virginia. We were in Atlanta.
10 That's all that comes to mind quickly.

11 Q Okay. And what about the statewide
12 conferences? Where were they held as of 2000?

13 A I don't recall that.

14 Q Do you know why in 2000 Seattle was chosen as
15 the site for a regional conference?

16 A Sometimes it depends on local people who are
17 willing to do the work at the local level to find a
18 hotel, to set up that sort of thing. And the
19 association does have some regional organizations that
20 meet from time to time. Not on a regular basis. There
21 was a group in the Oregon-Washington area and British
22 Columbia. They had wanted a conference, and so we
23 worked with them to put on a conference.

24 Q Are there speakers at the annual conference?

25 A Yes.

1 A Dr. Kneese has spoken at our conferences.
2 Though she's done individual sessions, not a general
3 session. And hers were always on what the research says.

4 Q I take it from your last comment that Harris
5 Cooper spoke at general sessions?

6 A Yes.

7 Q Okay.

8 A Where everybody's included. While Dr. Kneese
9 spoke more at smaller, individual sessions on what the
10 research says about year-round education.

11 Q Okay. Any other researchers that you can think
12 of?

13 A Well, Dr. Mussatti, Dr. Speck, people who are
14 involved more directly with the organization do as well.

15 Q You would describe Mussatti and Speck as more
16 involved with the NAYRE?

17 A Well, they're both on the board of directors.
18 Dr. Kneese was for two years, not now. Dr. Cooper's
19 never been on the board, not directly. He's -- he's not
20 a year-round person, per se. He's a university
21 researcher, and is very clear about his position in that
22 regard.

23 Dr. Kneese is as well, but she has been such --
24 so involved in her research with year-round that we do
25 always want to include her, because she's so

1 Q And do you know who is invited to speak, in
2 terms of categories of people, at the annual conference?

3 A Lots of school practitioners. That would be
4 classroom teachers, principals, superintendents, school
5 board members, university personnel, occasionally
6 someone from parks and recreation or camps.

7 Q Anyone else that you can think of, in terms of
8 category?

9 A I think that would include most categories.

10 Q Are speakers paid?

11 A Ordinarily, not. Unless they're what we call a
12 general session speaker, and most of those were not paid.

13 Q Do university researchers speak at the annual
14 conference?

15 A On occasion.

16 Q Do you recall any of the university researchers
17 who have spoken at NAYRE annual conferences by name?

18 A Sure.

19 Q Could you name them for me?

20 A Well, one would be Dr. Harris Cooper.

21 Q When did he speak?

22 A He spoke at the conferences in February of
23 2000, I believe, and I believe he spoke also at the
24 annual conference in February of '99.

25 Q Can you recall any other university researcher?

1 knowledgeable about what the research says.

2 Q What -- forgive me, I don't remember the first
3 name. What has Mussatti --

4 A David Mussatti.

5 Q -- David Mussatti addressed at the annual
6 conference?

7 A Well, he usually does a report on the synopsis
8 of research, if you will. He is more a generalist, and
9 so he's played a role, where he's tried to collect
10 research studies from all over and say, in his session,
11 these are the research studies I found which I think are
12 important. I don't think he himself has conducted the
13 kind of research that Dr. Kneese and Dr. Cooper have
14 done.

15 Q Okay. And what about Speck?

16 A Again, she's more of a generalist, does much of
17 the same thing. She has a little bit different interest
18 too. I think her interests are more in administration.
19 I think she's in the department of administration as
20 part of the education program up at San Jose State.

21 By the way, Dr. Speck is a former principal of
22 a multi-track high school in Lodi. So she's a
23 practitioner who actually has worked in a multi-track
24 high school.

25 Q Do you know what calendar the --

1 A Concept 6.
 2 Q Do you know whether Lodi has any Concept 6 high
 3 schools as of today?
 4 A As of today, I don't believe so, no.
 5 In fact, it's my understanding that Lodi has
 6 built some new buildings and no longer needs the Concept
 7 6 schedule.
 8 Q Can you think of any other researchers who have
 9 spoken at NAYRE annual conferences?
 10 A I can't right now recall other names.
 11 Q Do you know who Don Glines is?
 12 A I do.
 13 Q Who is he?
 14 A Don Glines is a person who has a long and
 15 varied career in several field of education. He is
 16 known primarily for being a futurist. Dr. Glines was
 17 one of the original people who met together to formulate
 18 our organization, NAYRE, and worked for many years as a
 19 consultant on year-round education for the California
 20 Department of Education in Sacramento.
 21 Dr. Glines also had one of the very earliest
 22 year-round schools in the nation when he was director of
 23 a futuristic school at Mankato State University,
 24 Mankato, Minnesota, called the Wilson School. He's
 25 still very much involved in NAYRE. He is a person who

1 thinks way ahead of most of the rest of us.
 2 Q Do you know what his involvement in the NAYRE
 3 is as of today?
 4 A He is now retired from the California
 5 Department of Education, so he, like I, comes to the
 6 conferences, usually does a session at the -- a session
 7 or two at the annual conference. So his role is very
 8 similar to mine, kind of an elder statesman, if I can
 9 use that terminology.
 10 Q And the session or two that Don Glines does at
 11 the conference, what subject does he address?
 12 A It depends on what the needs are, but he often
 13 talks about year-round education as something that
 14 people should do for the philosophical reasons, not just
 15 for housing.
 16 Now, he's not opposed to using multi-track to
 17 provide space for students, but he is always encouraging
 18 districts to say, first think about the philosophy and
 19 how you can use that philosophy to help students, then,
 20 if the occasion demands it, implement your multi-track
 21 as a way of doing what's right for kids in an
 22 over-enrollment situation.
 23 Q Would you describe Don Glines as a respected
 24 colleague of yours?
 25 A Yes. I certainly respect him.

1 Q Would you describe him as a proponent of
 2 year-round education?
 3 A I would say yes.
 4 Q Do you know who Marilyn Stenvall is?
 5 A I do.
 6 Q Who is she?
 7 A She is my successor as executive director at
 8 the National Association for Year-Round Education. I
 9 hired her originally to be one of our consultants.
 10 Q And did she succeed you in 2000?
 11 A She did. She was also -- I'll say it another
 12 way. She also opened up a year-round high school in the
 13 Sweet Water Union High School District in San Diego,
 14 East Lake High School, which opened as a 45-15
 15 single-track high school.
 16 Q Would you describe Marilyn Stenvall as a
 17 respected colleague of yours?
 18 A I would.
 19 Q Would you describe her as a proponent of
 20 year-round education?
 21 A I would.
 22 Q I asked you earlier about the California
 23 Department of Education's Year-Round Education Advisory
 24 Committee.
 25 A Yes.

1 Q Are you currently a member?
 2 A I am not.
 3 Q When were you a member?
 4 A Until I retired in 2000.
 5 Q And starting when?
 6 A Oh, dear. I don't recall exactly the year that
 7 advisory committee was started. I would guess -- and
 8 this is just a guess -- around 1995-96.
 9 Q Do you believe you were a member of the
 10 committee from about 1995-96 to 2000?
 11 A I believe so, yes.
 12 Q How did you become a member?
 13 A I don't know. I was called and asked to be a
 14 member, and I think it's because of my role at the
 15 association as executive director.
 16 Q Who were you called and asked by?
 17 A Tom Payne.
 18 Q And who is Mr. Payne?
 19 A He is currently the consultant on year-round
 20 education at the California Department of Education.
 21 Q And for the court reporter, is his name spelled
 22 P-a-y-n-e?
 23 A That's correct.
 24 Q Did Mr. Payne tell you why he appointed you to
 25 the committee?

1 A Well, he told me that I was one of the leading
2 voices advocating year-round education as knowledgeable
3 as anybody. But at that time I was playing a dual
4 role. I was still with the County Office of Education.
5 So I became a member, technically, of the advisory
6 committee, as somebody from one of California's
7 legally-constituted school systems. But he also was
8 quite aware of my work with the association.

9 Q When you became a member of the committee, did
10 any other representative of the NAYRE also become a
11 member of the advisory committee?

12 A I'm not sure that was true at the very
13 beginning. Later one of my colleagues joined me often
14 at those meetings.

15 Q And who was that?

16 A That was Dr. Richard Alcorn.

17 Q Is it your understanding that Richard Alcorn
18 was an actual member of the committee?

19 A Had developed to that, yes.

20 Q And what was his role at the NAYRE?

21 A He had been a principal of year-round schools,
22 both single-track and multi-track, at San Diego Unified
23 School District. He retired from San Diego Unified and
24 came to work with us on a part-time basis.

25 Q And what was his title?

1 of Education what their function is.

2 BY MR. VILLAGRA:

3 Q But in terms of your understanding --

4 A My understanding, it was to be just that,
5 advisory. And from time to time, we were told,
6 remember, you're only advisory.

7 Q Did you have an understanding as to whom was
8 being advised?

9 A Yes. It was for the division that had the
10 year-round portfolio.

11 Q Was that the school facility's --

12 A School --

13 Q -- planning division?

14 A -- facility's planning division, right.

15 Q When you were a member did the year-round
16 advisory committee hold meetings?

17 A On occasion.

18 Q Were they regularly-scheduled meetings?

19 A No. They were on call, and usually maybe twice
20 a year.

21 Q Do you recall whether minutes were kept of the
22 meetings?

23 A I don't recall.

24 Q Did the year-round education advisory committee
25 issue any reports, to your knowledge?

1 A Consultant.

2 Q Have any other members of the NAYRE or
3 representatives of the NAYRE served on the advisory
4 committee, to your knowledge?

5 A Not to my knowledge. I wouldn't be surprised
6 as what my successor has become a member of the
7 committee since my retirement.

8 Q Why would that not surprise you?

9 A Well, I would hope that she would still be
10 invited to be a voice on that committee.

11 Q Why would you hope that she would still be --

12 A Well, she has a broader perspective. When you
13 work in a national office like that, you not only have a
14 broad perspective in California, but you also see what
15 schools outside of California are doing with the concept
16 of year-round.

17 Q To your knowledge, has a representative of any
18 organization opposed to year-round education been a
19 member of the advisory committee?

20 A Not to my knowledge.

21 Q To your knowledge, what are the year-round
22 education advisory committee's functions?

23 MS. DAVIS: Vague and ambiguous as to "functions."

24 THE WITNESS: I'm not sure I can answer that.

25 You'd have to ask somebody at the California Department

1 MS. DAVIS: Vague and ambiguous as to "reports."

2 THE WITNESS: I don't remember any reports, no.

3 BY MR. VILLAGRA:

4 Q Do you recall any of the issues that the
5 year-round education advisory committee addressed?

6 A Oh, sure. Sure. And facilities were certainly
7 one of them. But for the most part, we talked about how
8 year-round education could help both students in their
9 academic achievement and also how multi-track,
10 particularly, could be utilized to ease any facility
11 problems that districts might have.

12 Q Anything else that you can think of?

13 A I think that's primarily it, yes.

14 Q What can you tell me about the discussions at
15 the year-round education advisory committee about how
16 year-round education could help academic achievement?

17 A I think within the group there was pretty
18 general consensus that by lessening the vacation period,
19 the length of the summer vacation period, that students
20 would be helped, less forgetting, less need for review
21 in the fall, and that sort of thing. So we often talked
22 about the correctness of the concept. So academically,
23 I think we were pretty much in an agreement in that
24 regard.

25 Q Anything else that you can recall?

1 A Academically, no.

2 Q And when you say consensus within the group,
3 which individuals are you specifically thinking of?

4 A Those who are members of the advisory committee.

5 Q Would you name those for me.

6 MS. DAVIS: In what year?

7 MR. VILLAGRA: He's talking about a consensus about
8 the academic benefits of year-round education. And I'm
9 trying to figure out who was in that group that reached
10 that consensus.

11 THE WITNESS: Well, there were several of us who
12 were participants. I mentioned some already. I would
13 be one, and Dr. Alcorn would be one. Tom Payne was
14 involved in those discussions, Larry Carletta from Los
15 Angeles Unified, and before him -- oh, dear. She was
16 principal at Garfield High School. I'll probably think
17 of her name here in a minute. Can't right now.

18 Oh, Maria Tostado. And -- let's see. There
19 was a representative from Lodi whose name is escaping me
20 right now. Wasn't expecting to name all the people on
21 the committee or I would have reviewed that list. But
22 you have an idea, at least.

23 And usually, there would be about nine or ten
24 of us, and I've given you five or six names there. Oh,
25 Tom Crellin would sometimes be there. Crellin is

1 Oh, Leroy Small was a member of that committee
2 on a regular basis.

3 Q And was he involved in the consensus about
4 academic achievement?

5 A I think so, yes. He was also at the California
6 Department of Education, had been superintendent of a
7 year-round school district here in California before he
8 went to the department, Santa Maria.

9 Q You mentioned Tom Crellin of the California
10 Association of Year-Round Education.

11 Is the CYARE affiliated with the NAYRE?

12 A It is. It's one of our state chapters.

13 Q So is it fair to say that at some point you,
14 Mr. Alcorn and Mr. Crellin were all on the year-round
15 education advisory committee?

16 A That's true.

17 Q So three out of the nine or ten members would
18 have been affiliated with the NAYRE?

19 A In some way or another, yes.

20 Q To your knowledge, did the year-round education
21 advisory committee ever address the issue of financial
22 incentives to districts for year-round education?

23 A We talked about it, yes.

24 Q Can you tell me what the discussion was?

25 MS. DAVIS: Vague and ambiguous.

1 C-r-e-l-l-i-n. He represented the California
2 Association for Year-Round Education, CAYRE. And he was
3 a retired principal at San Diego Unified, retired
4 year-round principal.

5 BY MR. VILLAGRA:

6 Q I appreciate your efforts at remembering. I
7 can't remember what I ate yesterday for lunch.

8 So when you were talking about the consensus
9 about achievement, it was the folks that you have
10 mentioned?

11 A That's correct.

12 Q Now, in terms of the second item that you
13 mentioned, which was the feeling that multi-track could
14 ease any facilities problems, was there a consensus
15 around that issue as well?

16 A I think there was consensus, yes, that, yes,
17 multi-track could ease facilities problems.
18 Over-enrollment is really the problem, over-enrollment,
19 not facilities -- it's over-enrollment, is the focus of
20 the problem, not the facilities, usually.

21 Q And would you say the same individuals were
22 involved in those discussions as well?

23 A Oh, yes. And the personnel did change from '96
24 through 2000. But those people were, for the most part,
25 mainstays.

1 THE WITNESS: That's a rather broad question that
2 you're asking me. So why don't you repeat again what
3 you'd like me to respond to.

4 The answer was yes, we talked about the
5 incentives the State offered, yes.

6 BY MR. VILLAGRA:

7 Q What do you recall about the year-round
8 education advisory committee's discussions about
9 incentives for year-round education?

10 A Well, usually we talked about the deadlines.
11 We talked about what districts needed to do to be
12 granted those incentive funds. We talked about State
13 requirements -- State requirements to be involved in the
14 program. We talked about the trade-offs to be involved
15 with the program.

16 Q Anything else that you can think of?

17 A I think that generally covers it.

18 Q Do you recall what year the year-round
19 education advisory committee first addressed the issue
20 of incentives?

21 A Probably almost from the beginning. Because
22 that law was in place before the committee was formed,
23 the advisory committee was formed.

24 Q And what's your understanding of when that law
25 providing incentives for year-round education first

1 began?

2 A I don't recall the exact date. Must have been
3 around 1989, something like that. I'm not sure the
4 incentives started that early, but that's when the law
5 was being discussed, anyway.

6 Q What's your understanding of what the
7 incentives that the 1989 law provided were?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: I don't think it was called
10 incentives at the beginning. That's a term that was put
11 on them afterwards by various people, both pro and con.

12 The intent originally was to encourage
13 districts to look at the multi-track as a concept. The
14 State was facing a very difficult situation.
15 Proposition 13 had come into law in 1978. It became
16 very difficult for districts to pass bond issues.
17 Districts were falling further and further behind in
18 both building new buildings and refurbishing existing
19 buildings.

20 And so as I recall, this law was a way of
21 saying to districts, if you will consider using
22 multi-track, the State will help you with some of the
23 costs that may be incurred in the transition to
24 multi-track. And it was later that the word
25 "incentives" began to be used more frequently.

1 BY MR. VILLAGRA:

2 Q Is it your understanding that, initially, the
3 incentives or the help was in defraying the costs in the
4 transition?

5 A There was some of that at the beginning, yes.

6 Q What else was there in the beginning?

7 A Well, then, of course, there was the money that
8 would be available. And I don't recall what the
9 original amounts were, but there were some moneys
10 involved. There was both startup money, and then there
11 was another part that was what's now called incentive
12 money.

13 Q To your knowledge, was that program that you
14 believe was the subject of the law in 1989 -- to your
15 knowledge, was that program ever modified?

16 A It was modified slightly. The basic concept
17 was the same throughout, though. I believe.

18 Q And when you say throughout, what are you
19 talking about?

20 A Well, the idea we will provide some moneys if
21 you will involve yourselves in multi-track year-round
22 education. That part of it was pretty much consistent
23 throughout. There were -- there was some tweaking later
24 on of the law, but nothing that I would consider
25 substantial, I guess.

1 Q So money was made available if districts would
2 convert to multi-track year-round calendars; is that
3 correct?

4 A That's correct. After converting.

5 Q After converting.

6 A The money came after the district made a local
7 decision.

8 Q Are you familiar with the year-round incentive
9 payments advisory committee?

10 A No.

11 Q Do you believe you were ever a member?

12 A No.

13 Q Did the year-round education advisory committee
14 ever provide assistance to a year-round incentive
15 payments advisory committee, to your knowledge?

16 A Read the question again.

17 MR. VILLAGRA: Would you read that back, please.

18 (Record read)

19 (Ms. Anna Reynoso and Mr. Vasco Bibao-Bastida
20 enter the deposition room.)

21 THE WITNESS: Not to my knowledge.

22 BY MR. VILLAGRA:

23 Q Do you know who Tom Bancroft is?

24 A I know Tom Bancroft.

25 Q Who is he?

1 A Tom Bancroft was for a long time the
2 legislative advocate for the Los Angeles County Board of
3 Education. Upon his retirement from that position, he
4 served as a legislative advocate for ACSA, for something
5 like five years, ACSA being the Association of
6 California School Administrators. He also for one year
7 was the legislative advocate for NAYRE.

8 Q Do you recall what year that was?

9 MS. DAVIS: What year what was?

10 BY MR. VILLAGRA:

11 Q That he was legislative advocate for the
12 NAYRE.

13 A I don't. It was his first year after
14 retirement, and I don't remember the exact year.

15 Q Do you recall, in 1990, the Legislative Analyst
16 Office preparing a report on the year-round incentive
17 program?

18 A I do.

19 Q What do you recall?

20 A That there was such a report.

21 Q Do you recall having any involvement with that
22 report?

23 A What do you mean by involvement?

24 Q Did you review drafts of the Legislative
25 Analyst Office report before it was published?

1 A I did not review drafts, no.
 2 Q Did you speak with -- I'll use the acronym LAO
 3 staff who was writing the report --
 4 A I did.
 5 Q -- while they were writing it?
 6 You did?
 7 A Yes.
 8 Q Do you recall who you spoke with?
 9 A There were two people, and I can't recall
 10 either names. I haven't seen or talked with them for
 11 maybe ten years. So their names aren't coming to me
 12 right now. Sorry.
 13 Q Do you recall what you spoke with those two LAO
 14 staff people about?
 15 A We talked about the incentive money. We talked
 16 about year-round education in general. We talked about
 17 single-track versus multi-track. And may have gotten
 18 into discussion whether the, quote, "incentive money,"
 19 end quote, really was an incentive, of whether it took
 20 care of the issue, and I think there was some discussion
 21 at the LAO office about whether the incentives needed to
 22 be continued.
 23 Q Anything else that you can think of?
 24 A No.
 25 Q And in terms of single-track versus

1 multi-track, do you recall what that discussion was?
 2 A Yes.
 3 Q What was it?
 4 MS. DAVIS: With the two individuals?
 5 MR. VILLAGRA: Yes.
 6 Thanks.
 7 THE WITNESS: And I'm not sure I talked with those
 8 two individuals together, by the way. I think it was
 9 separately.
 10 But be that as it may, yes, the discussion was
 11 the value of single-track versus multi-track,
 12 academically, and I believe one of those staff members
 13 may have had a child in a single-track program.
 14 BY MR. VILLAGRA:
 15 Q And do you recall what the discussion of the
 16 value was?
 17 A Yes. I think that staff member quickly picked
 18 up on the value of the single-track, the shortening of
 19 the vacation periods so there was less forgetting.
 20 Q What about the value of multi-track?
 21 A There was clear feeling, I think --
 22 understanding would be a better word, a clear
 23 understanding that multi-track was an absolute necessity
 24 for districts facing severe over-enrollment. I don't
 25 know whether there was acceptance, but there was

1 certainly an understanding of the need for it.
 2 Q What do you mean when you say that there was an
 3 understanding and not necessarily an acceptance?
 4 A I don't know how they personally felt about
 5 multi-track. I don't mean to convey -- I'm not trying
 6 to speak for them. I'm just -- but I do remember --
 7 they had a clear understanding of the need for
 8 multi-track.
 9 Q And did you share that understanding about the
 10 absolute necessity of multi-track year-round education
 11 for districts facing severe over-enrollment?
 12 A Whenever I needed to and could, yes.
 13 Q And do you still today share that --
 14 A Oh, yes, sure.
 15 MS. DAVIS: Let him finish the question for the
 16 sake of the court reporter.
 17 BY MR. VILLAGRA:
 18 Q Sorry, I tend to trail off, because I'm trying
 19 to keep all these terms straight.
 20 A Sure. You're doing very well.
 21 Q We'll see by Wednesday if you still think
 22 that.
 23 A Oh, I may differ with you before Wednesday's
 24 over, but you're doing very well so far.
 25 Q Do you recall what the discussion was about

1 incentive money and, specifically, what you mentioned
 2 about whether the money was really an incentive or not?
 3 A I don't recall all the details. So I'm -- I
 4 would have a hard time really describing the full nature
 5 of that discussion. That's been over ten years ago now.
 6 Q What about the discussion regarding whether the
 7 incentives needed to be continued? Do you recall any of
 8 that?
 9 A I do recall that. And I do recall that I urged
 10 that they be continued well into the future, because I
 11 said the growth in California's going to continue, from
 12 what we read from demographers. And districts are going
 13 to face the need for utilization of multi-track, and the
 14 encouragement the State is giving is something that
 15 needs to be continued for some years to come. So yes, I
 16 did encourage the continuation of that.
 17 Q Did you encourage it for any other reason other
 18 than the reasons you've just described?
 19 A Well, always for academic reasons. The
 20 academic reasons are there whether it's single-track or
 21 multi-track.
 22 Q And you believed that then as well?
 23 A Then as well, yes. We didn't have the research
 24 support that we have now for that idea, but we certainly
 25 believed it then, as we do now. We have good research

1 behind what we believe now.

2 Q But then you did not have good research behind --

3 A Neither of the Kneese or Cooper reports were
4 available to us. Hadn't been done yet at the time of
5 the conversation you're talking about.

6 Q When you talk about good research --

7 A There were districts -- there were district
8 reports, but there weren't the meta-analyses that
9 Drs. Kneese and Cooper have done.

10 Q And when you talk about good research, are
11 there any studies that you mean to include other than
12 the Kneese and Cooper studies?

13 A Those are the two major meta-analyses, as we
14 call them. And those were not available in those
15 earlier years.

16 Q So even before Kneese and Cooper could confirm
17 the academic benefits of multi-track year-round
18 education, you believed that there were academic
19 benefits to multi-track --

20 A Yes, and I'll tell you why. Excuse me for
21 moving in too fast in answering.

22 That's because I remember so distinctly in
23 1979, while I was at the San Diego County Office of
24 Education and kind of looking at the concept and being
25 coordinator of year-round education for the County.

1 Nevertheless, it was in 1979 that a classroom teacher
2 from Escondido Union District, giving a report about her
3 experiences in year-round, said, what we're finding as
4 teachers is students come back from these shorter
5 vacations not having forgotten as much. Year-round
6 education has positive educational value for students.

7 When that teacher said that very dramatically
8 and very directly, it opened up a whole new world to
9 me. And as I talked with teachers from that point on, I
10 would ask them often, do you find that students are
11 forgetting less than when you were working on a
12 traditional calendar? And almost always the answer was
13 yes, they forget less.

14 So that by the time we have these discussions
15 that we're talking about with the LAO and so on, I was a
16 firm believer by that time.

17 Q Have you spoken with any teachers who teach at
18 Concept 6 schools in California about whether their
19 students forget less?

20 A I have.

21 Q Can you tell me how many?

22 A In L.A. Unified, for example, which uses
23 Concept 6, maybe five or six teachers at the high school
24 level.

25 Q What about outside of LAUSD?

1 A Right now I'm not recalling.

2 Q Have you spoken with any teachers at Lodi
3 Unified School District about whether students forget
4 less on the Concept 6 calendar?

5 MS. DAVIS: Asked and answered.

6 THE WITNESS: I don't recall teachers at Lodi. I
7 talked with staff members, but they weren't classroom
8 teachers.

9 BY MR. VILLAGRA:

10 Q Do you recall speaking with teachers at
11 Palmdale Unified School District --

12 MS. DAVIS: Same objection.

13 BY MR. VILLAGRA:

14 Q -- about students forgetting less on the
15 Concept 6 calendar?

16 MS. DAVIS: Same objection.

17 THE WITNESS: Palmdale didn't begin Concept 6 until
18 I retired. They were on the 60-15 at that time.

19 BY MR. VILLAGRA:

20 Q But since your retirement you haven't --

21 A No.

22 Q -- spoken to any teachers at Palmdale?

23 A No.

24 Q Have you spoken to any teachers at the Vista
25 Unified School District about whether students forget

1 less on the Concept 6 calendar?

2 MS. DAVIS: Asked and answered.

3 THE WITNESS: I believe I did, couple of teachers.

4 BY MR. VILLAGRA:

5 Q Two or three?

6 A Two.

7 Q When did you speak with those teachers at Vista
8 about --

9 A Probably seven, eight years ago.

10 Q And when did you speak to those teachers at
11 LAUSD?

12 A Probably in the early '90s.

13 Q Do you recall what the recommendations of the
14 LAO were regarding year-round incentives?

15 MS. DAVIS: Was this in a certain year?

16 MR. VILLAGRA: I'm sorry. In 1990.

17 THE WITNESS: I recall that the LAO said that this
18 needed to be reviewed. I do not at this point remember
19 exactly the wording.

20 BY MR. VILLAGRA:

21 Q What was the "this" that had to be reviewed?

22 A The whole program needed to be looked at by the
23 Legislature.

24 Q Do you recall any other aspect of the
25 recommendation?

1 A Do you have it?
 2 Q Yep.
 3 A All right. I would like to see it.
 4 Q Do you recall whether you disagreed with the
 5 LAO's report?
 6 A As I said a while ago, I did urge continuation
 7 of the program.
 8 MR. VILLAGRA: I want to mark as an exhibit a
 9 document that's Bates numbered -- and I'll go by the top
 10 Bates number -- STATE-EXP-CB 0685 through to 0731.
 11 (Plaintiff's Exhibit 1 was marked for
 12 identification by the court reporter.)
 13 THE WITNESS: It's been many years since I've seen
 14 this document.
 15 MS. DAVIS: Did you want him to look at a certain
 16 portion of this?
 17 BY MR. VILLAGRA:
 18 Q Feel free to --
 19 MS. DAVIS: It's a long document, so --
 20 BY MR. VILLAGRA:
 21 Q Feel free to flip through it and make sure it
 22 is what you think it is.
 23 A It is. And the names of the two people I
 24 talked with are here.
 25 Q Okay.

1 A Nancy Anton was one and Ray Reinhart was the
 2 other.
 3 This is a very lengthy report. What is it you
 4 want me to look at specifically?
 5 Q If you'd take a look at -- on Page 3 of the
 6 report, and that is Bates numbered State EXP --
 7 MS. DAVIS: This is the Bates number.
 8 MR. VILLAGRA: Sorry.
 9 MS. DAVIS: That's okay.
 10 You want him to read the entire page?
 11 BY MR. VILLAGRA:
 12 Q Specifically, I want to turn your attention to
 13 the heading, "The State's Interest in Year-Round
 14 Schools" and the information listed under there.
 15 A Hmm-hmm. I see it.
 16 Q Have you had a chance to review it?
 17 A (No audible response)
 18 MS. DAVIS: Did you read it?
 19 THE WITNESS: Hmm-hmm.
 20 MS. DAVIS: Okay.
 21 BY MR. VILLAGRA:
 22 Q The first bullet point says, "We find that the
 23 State's primary" -- and "primary" is italicized --
 24 "interest in year-round education is its potential for
 25 reducing school district's demands for limited State

1 resources to construct new school facilities."
 2 Do you see that?
 3 A I see that.
 4 Q Do you agree that the State's primary interest
 5 in year-round education is its potential for reducing
 6 school district demand for limited State resources?
 7 A You said "is." So that makes it current.
 8 I would say that's not the only State interest
 9 at this time. At the time this report was written,
 10 since it was referring to SB -- what? I guess 813 and
 11 so on. It may have been the State's primary interest in
 12 that particular bill. But right now I would not agree
 13 that that's the only interest for the State.
 14 Q So as of 1990 -- and the report on front says
 15 April 1990 -- you would agree that the State's primary
 16 interest in year-round education was its potential for
 17 reducing the demand for limited State resources?
 18 MS. DAVIS: Is your question would he agree?
 19 THE WITNESS: Yeah. Is that your question, do I
 20 agree?
 21 BY MR. VILLAGRA:
 22 Q As of 1990 --
 23 A I don't agree. I can't speak for the people
 24 who wrote this report.
 25 Q I'm not asking about the people who wrote the

1 report.
 2 As of 1990 did you agree that that was the
 3 State's primary interest?
 4 A No.
 5 Q No.
 6 And why not?
 7 A Because I think year-round education has
 8 educational value, and I think the State has an interest
 9 in helping to raise student achievement.
 10 Q And that answer was true as well --
 11 A Then as now.
 12 Q Okay.
 13 A I've never waived from that point of view.
 14 Q And when this document talks about year-round
 15 education reducing the demand for limited State
 16 resources, you understand it to be referring to
 17 multi-track year-round education?
 18 A Yes.
 19 Q How is it that multi-track year-round education
 20 reduces the demand for State resources?
 21 A After Proposition 13, it became very difficult
 22 for local districts to pass bond issues. Consequently,
 23 there was increasing political demand that the State
 24 provide resources to help local districts meet the
 25 demand for more student seats. So consequently, the

1 State was in a position to -- I'll backtrack a minute
2 here.
3 It was easier at that time for the State to
4 pass a school construction bond issue, because the State
5 bond issue only required a majority vote, while local
6 bond issues required a two-thirds majority vote in order
7 to pass. So the State then became a provider of money
8 to help local districts meet the needs at the local
9 level. That's my understanding of the situation.
10 Q Okay. Correct me if I'm wrong, but doesn't
11 multi-track year-round education reduce the demand for
12 facilities funding only on the assumption that the
13 facilities are never actually built?
14 A No, I don't think that would be correct. If a
15 school has an over-enrollment situation or a district
16 has an over-enrollment situation, even if multi-track is
17 implemented, that district may still continue to grow to
18 the degree that it will require some additional building
19 down the line. So multi-track is put into place to
20 handle a current over-enrollment problem.
21 And we've had a number of schools, school
22 communities, in the state that have only needed
23 multi-track for two, three, four years until the
24 buildings came on-line or the bulge of students moved on
25 through to another level.

1 Q Do you see the next bullet point?
2 A Yes.
3 Q It says, "Other reasons why the State might be
4 interested in promoting year-round education, besides
5 its potential to reduce the need for new funds for
6 school facility construction, either have not been
7 conclusively established or are not strongly enough in
8 the State's interest to merit the provision of financial
9 incentives."
10 A Yes.
11 Q Do you see that?
12 A I do.
13 Q As of 1990, did you agree that other reasons
14 why the State might be interested in promoting
15 year-round education, besides reducing the need for new
16 funds for school facility construction, were not
17 conclusively established?
18 A I was not convinced, and that was part of my
19 discussion with the staffers at the LAO. I've always
20 maintained that there was a State interest in promoting
21 the year-round concept to increase student achievement
22 levels. They felt, as a group, obviously, that it had
23 not been as well established as it might be. But I
24 certainly didn't feel that way.
25 That was part of the discussion I remember

1 having with the two staffers. Why can't you folks make
2 that more strongly worded? But I did not help to write
3 the report.
4 Q So you disagreed with this --
5 A Then and now.
6 Q And now, I take it, you disagree, based on the
7 work of Harris Cooper and Carolyn Kneese; is that right?
8 A That's correct. And others.
9 Q Including the studies that they reviewed in
10 their meta-analyses?
11 A That's correct, yes.
12 Q As of 1990 why did you disagree?
13 A Because I thought that listening to teachers,
14 school administrators, what they had found after
15 implementation of year-round education, gave enough
16 proof for me that it was the right concept. There were
17 also the first of the studies coming on line that later
18 were used by Dr. Kneese and Dr. Cooper to do their
19 meta-analyses.
20 At the time this report was written, as I say,
21 those were just starting to appear in larger numbers.
22 Much of the research that has established clearly the
23 academic efficacy of year-round education has really
24 been in the last decade and a half. And of course, I
25 don't know which of the research reports LAO staff

1 looked at, even. So I don't know why they formed the
2 opinion that they did.
3 Q But you disagreed with their description of the
4 state of the research in 1990?
5 A Conclusively established?
6 Q Yes.
7 A Well, I disagreed with their general feeling.
8 In research there's always a question of whether
9 anything is absolutely established. Very little in our
10 world is absolutely established, conclusively
11 established.
12 Q Did you object then that the research on
13 year-round education was being held to too high a
14 standard?
15 A Not necessarily too high, but I think
16 year-round education ought to be at the same standard as
17 the traditional school schedule. Most of our critics
18 don't hold the traditional calendar to the same standard
19 they want to hold the year-round calendar.
20 Q I want to turn your attention now to Page 16,
21 and it's the Bates Number 0702.
22 A Okay.
23 Q At the very bottom of the page, it says, "In
24 other words" --
25 A I'm not following you.

1 Q I'm sorry?

2 The second column, if you look at the very last --

3 A "In other words," okay. Got it.

4 Q "In other words, what appears to be motivating
5 school districts to implement year-round programs is
6 their recognition that funding provided through
7 lease-purchase programs will not become available
8 quickly enough to meet pressing needs for additional
9 capacity."

10 Did you agree then that that was what was
11 motivating school districts to implement multi-track
12 year-round programs?

13 MS. DAVIS: What was the -- what you described, the
14 lease-purchase program?

15 MR. VILLAGRA: Yes, the --

16 MS. DAVIS: Okay.

17 BY MR. VILLAGRA:

18 Q That funding through that program would not
19 become available quickly enough to meet pressing needs
20 for additional capacity.

21 A Well, keep in mind that the funds came after
22 the implementation of year-round education. Districts
23 usually do not implement multi-track until after some
24 careful review of both the enrollment situation and/or
25 the political climate that the district may find itself

1 starts "Chart 5."

2 A Okay.

3 Q If you look at the third sentence, it starts,
4 "As the chart shows, the number of pupils qualifying for
5 year-round school incentive payments has been steadily
6 increasing over this entire period. More importantly,
7 this trend appears to be strongly related to, and
8 explainable by, the extent of demand for State school
9 facilities aid."

10 Do you see that?

11 A I do.

12 Q Was it your understanding in 1990 that
13 districts were converting to multi-track year-round
14 programs as the demand for State school facility funds
15 grew?

16 A I didn't see it that way then; I don't now.
17 Along with this chart has to be the understanding that
18 student enrollment in California was growing greatly
19 during this same period of time. It was the growth, the
20 over-enrollment, that caused districts to look at
21 multi-track, not the funds themselves.

22 Now, once a district may have decided it was
23 going to have to implement multi-track, then the funds
24 became a factor in that, knowing that the funds might --
25 might be available. Not every district got those funds

1 in. So the district may have already gone through a
2 three- to five-year period before implementation of
3 multi-track.

4 These funds the State offered didn't come until
5 after implementation. So districts were always saying
6 the funds are after the fact, not before the fact. So
7 yes, districts often recognized that they didn't become
8 available to meet the pressing needs for additional
9 capacity.

10 Q The funds that you're talking about not
11 becoming available, which funds are you referring to?

12 A The incentive moneys, as you called them
13 earlier.

14 Q I took the -- and correct me if I'm wrong. I
15 took this to be referring to the lack of funding from
16 the State to build new facilities.

17 A Well, that would be part of it, I think, yeah.
18 But I think it's probably -- I'd have to read through
19 several paragraphs before and after. Right at this
20 point, unless I've read the whole thing through here, I
21 want to just leave my statement right there.

22 Q Okay. Let me turn your attention still to Page
23 16.

24 A Okay.

25 Q It's in the second column. The paragraph

1 right away. And that's part of the discussion that we
2 had just a moment ago a little bit lower on this same
3 page.

4 But I don't recall any district in the state
5 ever saying, we want to go multi-track just to get that
6 money.

7 Q Do you believe the State's incentives for
8 year-round education have had an effect on the extent of
9 the use of multi-track calendars?

10 A Your words were "an effect." And I suspect,
11 yes. I'd have to say yes to that. I'm not sure it was
12 the overriding effect, but there was an effect.

13 Q Would you characterize the effect as
14 significant?

15 A I'm not sure whether I'd say significant. It
16 was a positive effect; in that, districts knew that
17 there would be some help from the State if they entered
18 into a multi-track program. But because of the
19 political difficulty in persuading districts to finally
20 implement multi-track, I don't think there was any
21 district that ever went into multi-track just for the
22 money. There was too much political effort that had to
23 go in before that.

24 Q Do you know what the Coalition for Adequate
25 School Housing is?

1 A Yes. Called C.A.S.H. sometimes.
 2 MS. DAVIS: Are you about to go into a new line of
 3 questioning? Would this be a good time to go for a
 4 bathroom break?
 5 MR. VILLAGRA: We can go off the record.
 6 (Brief recess taken.)
 7 BY MR. VILLAGRA:
 8 Q When we left off we were talking about
 9 C.A.S.H., the Coalition for Adequate School Housing.
 10 What's your understanding of what C.A.S.H. is?
 11 A I understand C.A.S.H. to be exactly what its
 12 name is. It's a committee for adequate school housing.
 13 Q Do you have any understanding of what their
 14 purpose is?
 15 A Well, their purpose, certainly, is to look at
 16 the facilities issue. There certainly have been some
 17 discussion about C.A.S.H. in my lunch circles and so on
 18 to the degree of saying that they're really folks who
 19 want to build more buildings and often are made up of
 20 facilities personnel in the various school districts.
 21 Q When you say the subject of some discussion in
 22 lunch circles, what do you mean?
 23 A Well, in year-round education we saw the
 24 C.A.S.H. group as simply wanting to build buildings.
 25 Q Did you see them as wanting anything else?

1 A No. I think I'll leave it there.
 2 Q Would you characterize C.A.S.H. as being
 3 opposed to year-round education?
 4 A No. Because I know some of the people on that
 5 committee, and some of the people were actually in favor
 6 of the concept. There were some who were in favor of
 7 year-round education, though they wanted it more in the
 8 single-track version rather than the multi-track
 9 version.
 10 Obviously, these are people who are dealing
 11 with housing, and so consequently, they would prefer new
 12 buildings over the use of multi-track. But I know some
 13 of the people in the group, and they are in favor of the
 14 year-round concept.
 15 Q Who are the people you know in the group?
 16 A Tom Robinson at the San Diego County Office of
 17 Education worked actively with C.A.S.H. Kelvin Lee,
 18 superintendent of a school district outside of
 19 California, a multi-track school district, by the way,
 20 was a member of that group and, in fact, chaired one of
 21 their reports.
 22 John Mock for a time, I believe, was part of
 23 that group. And Mr. Murdoch, Jim Murdoch, James
 24 Murdoch, was part of that group. Those are some of the
 25 personnel I recall quickly.

1 MR. VILLAGRA: Let me introduce as Plaintiff's
 2 Exhibit 2 a report that is Bates numbered State 73347
 3 through 73360.
 4 (Plaintiff's Exhibit 2 was marked for
 5 identification by the court reporter.)
 6 BY MR. VILLAGRA:
 7 Q Did you have a chance to review it?
 8 MS. DAVIS: Did you want him to review a certain
 9 part? It's a multi-page document.
 10 THE WITNESS: I see the document in front of me.
 11 BY MR. VILLAGRA:
 12 Q Have you seen this document previously?
 13 A I have.
 14 Q When did you see it?
 15 A Several years ago, right after it came out.
 16 Q Do you recall reviewing it then?
 17 A I do.
 18 Q Throughout the report there's references to
 19 MTYRE.
 20 Do you have an understanding as to what that
 21 refers to?
 22 A Multi-track year-round education.
 23 Q I want to specifically have you look at Page
 24 73348. And under the heading "Challenges of MTYRE," it
 25 says, "The implementation of MTYRE calendars creates" --

1 and this is underlined from here on out -- "unique
 2 challenges that are related to either capacity of the
 3 school or number of instructional days."
 4 Do you see that?
 5 A I see that.
 6 Q Do you believe that implementation of MTYRE
 7 creates any unique challenges?
 8 A Well, sure. Sure. You're implementing a new
 9 system, so there are challenges.
 10 Q Does it create challenges unique -- does it
 11 create unique challenges related to the capacity of the
 12 school facility?
 13 A I would have worded this differently. The
 14 school facility is a static entity. It was built with a
 15 certain number of students involved. The challenge
 16 would not be the school -- the capacity of the school
 17 facility. The challenge would be to handle the
 18 enrollment -- the number of enrollees within that stated
 19 capacity of the school facility.
 20 Q Would implementation of MTYRE create any other
 21 challenges related to the school facility, in your
 22 opinion?
 23 A Well, you always have a challenge in counting
 24 the number of seats that are available, rooms available
 25 and that sort of thing, and then when you think of a

1 multi-track, you have to be sure that you put all the
2 factors involving the static building into
3 consideration. So it's a challenge, as any new program
4 would be.

5 Q And do you believe that the implementation of
6 MTYRE creates unique challenge related to the number of
7 instructional days?

8 A It may. Doesn't have to, but may.

9 Q How might it?

10 A Well, it depends on the amount of
11 over-enrollment that the school district is working
12 with. Most of the multi-track calendars in use right
13 now do not have a lessening of instructional days.

14 Q But some do?

15 A Yes.

16 Q Which are those?

17 A Concept 6, modified Concept 6.

18 Q Any others?

19 A Not that I'm aware of.

20 Q And apart from lessening the number of
21 instructional days, is there a unique challenge related
22 to the number of instructional days in any other way?

23 A Not that I'm aware of.

24 Q So is it fair to say that you would agree that
25 the implementation of MTYRE calendars creates unique

1 Q So you have no understanding of why someone
2 would characterize MTYRE as problematic?

3 A I could understand why some might. I don't
4 know what the authors of this report had in mind when
5 they wrote it.

6 Q The sentence refers to the lesser of several
7 evils.

8 Do you have an understanding as to what those
9 other several evils might be?

10 A I do not. But I can tell you this. When this
11 report came out, I was on the phone within a day after I
12 saw it and complaining about this language. I thought
13 it was not good language and was quite concerned about
14 it. In fact, I was upset with it.

15 Q Who did you phone?

16 A I don't remember who I phoned, but I do know
17 that within a period of time -- not that first phone
18 call, but sometime later, I did speak even with Kelvin
19 Lee, the chair of this committee, and said to him that I
20 was not pleased with the language used in this report.

21 Q And what did Kelvin Lee say to you?

22 A Well, he obviously saw it differently than I
23 did.

24 I don't think multi-track is an evil. You
25 don't ascribe an administrative plan like that as evil.

1 challenges related to either capacity of the school
2 facility or number of instructional days?

3 A Well, I couldn't -- I said that conditionally a
4 while ago, that it's not the facility that creates the
5 challenge, it's the amount of over-enrollment within
6 that facility, and the number of instructional days may
7 or may not have a challenge to it, depending on which
8 calendar is needed to handle the problem of
9 over-enrollment.

10 Q So with the caveats that you provided, you
11 agree with this statement?

12 A I agree there are challenges. I don't agree
13 with the way this is worded here.

14 Q I want to turn your attention now to Page
15 73350. Under the heading "Why MTYRE?"

16 The very first sentence says, "MTYRE calendars,
17 while problematic, were seen as" -- and "the lesser of
18 several evils" is underlined -- "by many school
19 districts."

20 Do you see that?

21 A I see that.

22 Q Do you believe that MTYRE is problematic?

23 A No. And I don't know what was meant there by
24 "problematic." I don't know what the authors had in
25 mind when they used that word.

1 And I don't think these other alternatives that they may
2 have had in mind are evil either.

3 Now, there may be some choices to be made, and
4 some choices are better than others, obviously, but this
5 kind of language is like saying candidates for office,
6 we finally select the least of them -- you know, the
7 least wrong with them or whatever. I would like to see
8 things written more in a positive way than a negative
9 way, as this language is.

10 Q So you're of the opinion that some choices are
11 better than others?

12 A Yes.

13 Q What are the other choices to multi-track
14 year-round education?

15 MS. DAVIS: Other choices for what?

16 BY MR. VILLAGRA:

17 Q Do you understand the question?

18 A Not clearly, no.

19 Q For a district that's experiencing
20 over-enrollment, what are the other options besides
21 multi-track year-round education?

22 A To handle the over-enrollment?

23 Q Yes.

24 A Okay. Yeah, there are several different ways.

25 One way, of course, is to have double sessions. One way

1 is to have extended days, which is a modification of
2 double sessions. A school district could redraw
3 attendance boundaries. A school district can put
4 portables on space available. Portable classrooms, I'm
5 talking about, or relocatable classrooms, as they're
6 sometimes called.

7 You can bus students to other nearby schools.
8 There are about eight different options that are
9 available. And of course, one option is to build new
10 buildings.

11 Q Do you recall any other options that a district
12 has to handle over-enrollment?

13 A I've named most of those eight, I believe. I
14 may have left one out.

15 Q Do you believe that converting schools to
16 multi-track year-round education is better than all the
17 other options you listed for me?

18 A Yes, I do. Now, if money is available, of
19 course, schools can be built. But that is subject to
20 the will of the people and whether or not they pass bond
21 issues. But assuming that money is not available and
22 there's an over-enrollment problem, then obviously, the
23 district has to choose among these other options.

24 And among those other options, multi-track is
25 the only one that has an educational component to it,

1 going home 5:30, 6:00 o'clock, when it's already dark.
2 So in California, parents mightily resist double
3 sessions because of the safety factors involved. And
4 that goes up through at least about junior of high
5 school. Anyway, let's say 15, anyway.

6 Parents are not wanting their children in any
7 darkened hours coming and going or going to school --
8 coming from or going to school.

9 Q Can you think of any other disadvantages to
10 double session?

11 A In some ways it's been implemented, the day is
12 shortened. If you start at 7:30, for example, and
13 dismiss that first group at noon, you've got, at the
14 most, five and a half hours at the school, and with
15 passing time and all that sort of thing that we
16 ordinarily have in school, there's a relatively short
17 period of instructional time daily, and so consequently,
18 the complaint is that there's a very short period of
19 time for teachers to work the instructional program.

20 Q Any other disadvantages you can think of to
21 double session?

22 A It's -- yes. There's difficult -- there would
23 be difficulty in the management of such a program. For
24 example, do you need two principals? Principal for the
25 morning group and principal for the second group. If

1 and that educational component is the smaller vacation
2 periods, which means less forgetting on the part of the
3 students.

4 Q So if money for new schools were available,
5 multi-tracking would not be the best option?

6 A Wouldn't be needed. So wouldn't -- you
7 wouldn't have the whole range of options. Wouldn't be
8 needed. Because all of those options are only after the
9 fact of over-enrollment.

10 Q What do you think the disadvantages of double
11 session are?

12 A Double sessions are usually implemented in such
13 a way that one group of students come in very early in
14 the day, other groups of students leave late in the
15 day.

16 The problem with a double session, first and
17 foremost, is that, with younger children, parents do not
18 want their children either walking to school or waiting
19 for a bus in early winter hours when it may not yet be
20 daylight. If a child needs to be at school at 7:00 or
21 7:30, for example, and has to walk in certain months
22 of -- winter months, it may still be dark or just barely
23 light. And so parents resist that.

24 At the other end of the day, for the second
25 group that comes in, children -- younger children may be

1 you have one person managing both groups, that's a very
2 heavy load, because essentially it's a double load,
3 double planning for curriculum sessions and all the
4 things that go with that.

5 And of course, if you've got double sessions,
6 you've got two teachers using one room, at least two
7 teachers using one room. One teacher using the room in
8 the morning session, another teacher in the afternoon
9 for that session. And suppose the morning teacher wants
10 to rearrange all the chairs. The class and the teacher
11 leaves and those chairs have all been rearranged.
12 Teacher in the afternoon doesn't like it that way. That
13 means the afternoon teacher and/or students need to come
14 in and rearrange all those chairs again. So there are
15 some real problems.

16 And what is it? Murphy's law comes into
17 effect, the neatnik always follows the sloppy.

18 Q Can you think of any other disadvantages to --

19 A That's enough, I think.

20 Q Do you see any benefits to double session?

21 A No, other than one option for handling
22 over-enrollment.

23 Q Okay. I'll start one step back, because I
24 think I understand how double session alleviates
25 over-enrollment.

1 How do extended days alleviate over-enrollment?
 2 A That's a variation of double sessions. In
 3 schools that have tried this, the first group is in for
 4 half a day. The second group comes in before the lunch
 5 period and is there for the last part of the first
 6 group. So there's some commonality in the middle of the
 7 day. That can provide a situation where some of the
 8 common activities, such as band, for example, can happen
 9 during that time, because both groups are in then.
 10 The problem with the extended day, of course,
 11 is that you have all of the students, the very problem
 12 you're trying to avoid, on campus at the same time. So
 13 the common areas are overcrowded. You've got the
 14 library's overcrowded, the lunchroom's overcrowded, the
 15 gymnasium's overcrowded, the bathroom's overcrowded.
 16 All of those are overcrowded for a portion in the center
 17 of the day. So you really haven't relieved the problem
 18 of over-enrollment, too many kids for the existing
 19 space.
 20 Q Since it is a modification of double session, I
 21 assume it has all the disadvantages the double session
 22 had?
 23 A Most of those disadvantages, yes.
 24 Q Does it have any other unique disadvantages,
 25 apart from what you just told me?

1 A No, I think that's it.
 2 Q I believe the third option you mentioned was
 3 redrawing district attendance areas.
 4 A That's correct.
 5 Q Attendance boundaries.
 6 What are the disadvantages to that?
 7 A Well, districts sometimes do that as a way of
 8 handling the over-enrollment. The disadvantages are
 9 that parents will sometimes say, I moved into the
 10 district to attend Smith school, just to give it a
 11 name. We bought our house or we moved here specifically
 12 for this staff, this situation. You've redrawn the
 13 boundaries, and now you're telling me I need to go to
 14 another school. That's not fair.
 15 If you told me years before I made this move,
 16 that might have been all right, but I came here with the
 17 understanding, almost like a contract, this is the
 18 school my children would go to. Parents usually are
 19 very resistant to the idea of redrawing attendance
 20 boundaries.
 21 Q Any other disadvantages that you can think of?
 22 A It has some pretty heavy political trappings to
 23 it.
 24 Q What do you mean by that?
 25 A Well, parents who are unhappy in this often

1 become activists to work with the school board or even
 2 to not reelect them the next time around.
 3 Q Any other disadvantages that you can think of?
 4 A (No audible response)
 5 Q That was a no?
 6 A No. Sorry.
 7 Q The next option you mentioned was temporary
 8 portable or relocatable classrooms.
 9 What are the disadvantages to those?
 10 A There comes a certain point where you really
 11 can't put more relocatables on the space available.
 12 There's a finite amount of space on an existing school
 13 campus. Most schools in California use that as the
 14 first option, and relocatables are brought onto the
 15 existing space, even before multi-track is implemented.
 16 There are some problems with that besides using
 17 up play space or recreational areas, which young people
 18 must have. And the State requires by law. Some of
 19 those problems are that many of these relocatables wear
 20 out very quickly. They very quickly have creaky sounds
 21 and other kinds of problems that aren't real conducive
 22 to a good educational environment.
 23 But in one study which the association had done
 24 for us, the authors of that study found that at a
 25 certain point of over-enrollment, multi-track is

1 actually cheaper than the use of relocatables. Most
 2 district financial people agree with that analysis and
 3 say, once the enrollment gets to be a hundred and 15
 4 percent over the capacity that the school was originally
 5 built for, the district has to make a very clear
 6 decision which is the most cost effective, more
 7 relocatables or multi-track year-round education.
 8 And almost always, from a financial point of
 9 view, multi-track is the preferred way as a way of
 10 saving money for the district. Money spent on
 11 relocatables is money not available for the education of
 12 students. Because so often that money comes out of the
 13 day-by-day operational funds. And so consequently,
 14 that's money not available to help in the instructional
 15 program for students.
 16 Q Any other disadvantages that you can think of
 17 of temporary portable classrooms?
 18 A None other than the often-used statement
 19 there's nothing so permanent as a temporary portable.
 20 Q Mark Twain would have fun with that.
 21 A That's often said in administrative circles in
 22 education.
 23 Q The last alternative that you mentioned was
 24 busing students.
 25 A Yes.

1 Q And I assume that you bus them from an
 2 over-enrolled school to a --
 3 A Under-utilized school, yes.
 4 Q What are the disadvantages of that?
 5 A The disadvantage of that is the students are
 6 out of their neighborhood, away from their friends, but
 7 also, there's the situation of they're being bused for
 8 45 minutes or an hour one way, which makes the day very
 9 long for the students being bused, very tiring, and it's
 10 also situation where parents often find it more
 11 difficult to participate in school activities.
 12 At least at the elementary level, most parents
 13 prefer to have their children, if at all possible, at
 14 the neighborhood school, unless we're talking about a
 15 specialized program, like a magnet program.
 16 Q Can you think of any other disadvantages to
 17 busing students for over-enrollment?
 18 A I think that says it pretty well.
 19 Q Would it also have the same disadvantage as
 20 portable classrooms, where money spent on busing is not
 21 money spent on classroom instruction?
 22 A Well, that's possible. There are certain
 23 transportation moneys that are available, but yes, it's
 24 possible.
 25 Q Going back to Exhibit 2 --

1 A Which would be the C.A.S.H. report?
 2 Q Yes.
 3 You mentioned that you spoke with Mr. Lee about
 4 the language.
 5 Do you agree, though, that MTYRE calendars were
 6 seen as a lesser of several evils by many school
 7 districts?
 8 A Some school districts may have put it that
 9 way. I happen not to agree with it, but it's possible
 10 that some did.
 11 Q Are you familiar with any district
 12 administrators who have voiced that opinion to you?
 13 A No, not to me.
 14 Q The very next sentence says, "The acceptance of
 15 a MTYRE calendar by school districts was" -- and the
 16 rest of the sentence is underlined -- "facilitated by a
 17 series of legislatively-approved incentives."
 18 Do you see that?
 19 A I see that.
 20 Q Do you agree that the acceptance of the MTYRE
 21 calendar was facilitated by a series of
 22 legislatively-approved incentives?
 23 A It was facilitated, it wasn't caused by. What
 24 they're saying here is it made it a little easier to
 25 accept MTYRE, multi-track year-round education, because

1 of the legislative-approved incentives, but it doesn't
 2 say it caused the district to consider it in the first
 3 place.
 4 Q We were talking earlier about how the
 5 incentives worked, and you mentioned that the incentives
 6 came to the district after implementation of a
 7 multi-track year-round calendar.
 8 A Hmm-hmm.
 9 Q Is that your understanding of what an
 10 operational grant is?
 11 A That's correct.
 12 Q In the next paragraph the report says, "School
 13 districts were also given" -- and this is underlined --
 14 "higher eligibility for funding from State school
 15 construction bonds" -- end the underlining -- "if they
 16 were 30 percent MTYRE (grades K through 6) or building
 17 an MTYRE school."
 18 Do you see that?
 19 A I see that.
 20 Q So was there some form of incentive that was
 21 given to school districts before they actually
 22 implemented multi-track programs?
 23 A Well, there was a small startup grant that
 24 allowed the district to study the feasibility of
 25 implementing multi-track year-round education. So that

1 would have come before the operational grant. The
 2 operational grant always came after implementation.
 3 Q Do you understand the higher eligibility for
 4 funding --
 5 A Yes.
 6 Q -- from State school --
 7 A Yes.
 8 Q -- construction funds to also be an incentive?
 9 A Well, you have to understand this in the
 10 context of the time. The State had very little money to
 11 go around to all the districts asking for the money to
 12 help build schools.
 13 Again, we have to understand at this time
 14 Proposition 13 was in effect, which required a
 15 two-thirds vote at the local level for school
 16 construction bonds. Since it was so difficult to get
 17 bonds passed at that time and as California student
 18 enrollment continued to grow at a very rapid pace,
 19 districts up and down the state -- we have, what, a
 20 thousand plus districts in the state. Many of those
 21 districts were clamoring for this State money.
 22 If you have too little money to meet the demand
 23 or the requests for this money, how do you set up a
 24 system to give it to those who are most needy. The
 25 system is talking of -- is talked about in this

1 sentence, if those districts were at least 30 percent
2 multi-track year-round or were building a school
3 designated or built for multi-track year-round
4 education, obviously, these people were really serious.
5 We've got a heavy over-enrollment situation. We need
6 help. With limited money, you give it to the most
7 needy.

8 Q So is it fair to say that if a district was 30
9 percent MTYRE, it was experiencing severe
10 over-enrollment?

11 A It was considered to be more severe, yes.

12 Q Would you agree that it was severely
13 over-enrolled?

14 MS. DAVIS: Where? At 30 percent?

15 MR. VILLAGRA: Yes.

16 MS. DAVIS: Okay.

17 THE WITNESS: See, that's a minimum. So that's at
18 least 30 percent MTYRE. So some districts were well
19 over that. Some were completely multi-track, for
20 example. So to be given the highest ranking on this
21 list -- the greater the percentage of MTYRE, the more
22 eligible you were with the limited amount of money
23 available.

24 BY MR. VILLAGRA:

25 Q Would it be fair to say, then, that the greater

1 A I see that.

2 Q Do you agree that adoption of MTYRE severely
3 restricts the instructional calendar?

4 A I don't.

5 Q Why not?

6 A Well, because the instructional program goes on
7 irrespective of the calendar. If you've got a full
8 hundred and 80 days, teachers have the ability to cover
9 the same kind of program as before. So I happen not to
10 believe that the instructional program is restricted in
11 the way I believe the authors are speaking of here.

12 Q How do you believe they are describing it as
13 being restricted?

14 A I don't know, because I --

15 MS. DAVIS: Calls for speculation.

16 BY MR. VILLAGRA:

17 Q Do you have an understanding of what they might
18 be referring to in the restriction of the instructional
19 calendar?

20 A I really don't know what they have in mind here.

21 Q Okay. At the bottom of the page it says, The
22 authors of this paper support improving educational
23 opportunities for all the children in our state. We
24 believe that in order to accomplish the goal of
25 improving educational opportunities, two objectives must

1 percentage of MTYRE enrollments in the district, the
2 greater the severity of its over-enrollment?

3 A Repeat that for me, please.

4 MR. VILLAGRA: Would you read that back, please.
5 (Record read)

6 THE WITNESS: I think that would be fair, yes.

7 BY MR. VILLAGRA:

8 Q You talked about this as being part of a
9 mechanism to give money to those districts that are most
10 needy.

11 Do you see in the parentheses in that same
12 paragraph the note, "Although school districts committed
13 to reduction in new facility construction entitlements
14 along with the adoption of an MTYRE calendar and their
15 enrollment capacity was calculated to include the
16 increased capacities" -- I'm sorry. I have to strike
17 that. Looks like there are a few words missing here and
18 there from this.

19 Okay.

20 I want to look now at the paragraph that says
21 "Impacts of Legislation on MTYRE Schools." And it's the
22 first, second, third sentence. "The adoption of MTYRE
23 by a school district severely restricts its facility
24 flexibility and instructional calendar."

25 Do you see that?

1 be met." The second is to -- and this is underlined --
2 "eliminate the overcrowded schools in our state (MTYRE)
3 by funding the construction of new schools."

4 Do you see that?

5 A I see that.

6 Q Do you disagree that that should be a goal of
7 improving educational opportunities?

8 A I don't disagree that we need to build more
9 schools in our state to help alleviate the problem of
10 over-enrollment. I want to be clear about that. Even
11 if districts implement multi-track for over-enrollment,
12 with the increasing influx of students, there's always
13 going to be a need for new buildings. So I don't have
14 any problem with trying to eliminate overcrowding. But
15 I certainly have a problem with eliminating MTYRE as an
16 option to handle over-enrollment.

17 Q But all things being equal and money not being
18 an issue, would you rather have enough schools built so
19 that you could handle over-enrollment without reliance
20 on MTYRE?

21 A Well, your condition was there money was not
22 the issue. If money's available, we can build as many
23 schools as the public is willing to pay for. I don't
24 have any problem with that. And multi-track is always a
25 solution to a prior problem. The prior problem is

1 over-enrollment.

2 So multi-track would never be utilized unless
3 there is a problem of over-enrollment. If there's not a
4 money problem, there's plenty of money for school
5 buildings, fine.

6 Q Do you believe the authors of this paper,
7 Exhibit 2, were charged with an agenda to attack
8 multi-track year-round education?

9 MS. DAVIS: Calls for speculation.

10 THE WITNESS: That I don't know.

11 BY MR. VILLAGRA:

12 Q To your knowledge, has the year-round education
13 advisory committee addressed legislative proposals
14 regarding the Concept 6 calendar?

15 A Read your question for me again, please.

16 MR. VILLAGRA: Would you read that back, please.
17 (Record read)

18 THE WITNESS: Not before I left it in 2000. I
19 can't speak to whether they have since then.

20 BY MR. VILLAGRA:

21 Q Do you recall a legislative proposal regarding
22 Concept 6 being put before the year-round education
23 advisory committee in 1992?

24 MS. DAVIS: Asked and answered.

25 THE WITNESS: I don't recall that.

1 districts, just a hundred 70 school days, is usually at
2 the top of states -- in the top ten of states as far as
3 achievement levels. So it's not the number of days, per
4 se, that makes a difference, but rather, the quality of
5 the instruction on the days that the students are in
6 school.

7 Now, if there's quality instruction and money
8 is available for a longer year, I advocate a longer
9 year, and I have during -- I did during the 20 years
10 that I served as executive director.

11 Q Why do you believe the school year should be
12 longer?

13 A Well, as I just mentioned, if there's quality
14 instruction occurring and money is available for a
15 longer year, then I think we're doing something good for
16 students to have a longer school year. A longer school
17 year is undefined, of course. Are we talking five
18 days? Are we talking 15? Probably depends on the
19 amount of money available, and it depends on what the
20 parents want. After all, they're part of the
21 decision-making process.

22 Q How much longer would you like to see the
23 school year?

24 A Actually, to be truthful, I've a philosophical
25 position which says a hundred 60 days would be as good

1 BY MR. VILLAGRA:

2 Q Do you believe that the reduced number of
3 in-class school days on the Concept 6 calendar raises
4 serious reservations about its educational efficacy?

5 A I think it raises questions. I don't agree
6 that it does or has to.

7 Q Why does it raise questions?

8 A Well, if you have fewer days, I think it's fair
9 to ask the question are the students getting an equal
10 education. But raising the question as a fair question
11 doesn't mean that it follows that they are getting an
12 unequal education or that they do not have an equity
13 situation.

14 Q Do you believe that the school year should be
15 longer than it currently is?

16 A If money is available and people would like to
17 have it, I would encourage that, yes.

18 Q Have you encouraged the longer school year as
19 part of your work for the National --

20 A I have.

21 Q -- Association for Year-Round Education?

22 A I have. But I want to be clear. I don't take
23 the position that there's any magical number of school
24 days that are required for a full education. For
25 example, Minnesota, which has, many of its school

1 as 200 if the quality of instruction is available for
2 the hundred and 65 days or hundred 63 days. It's the
3 quality of instruction that's the key, not just the
4 number of days. However, if there is really fine
5 quality and the money is available, I'm in favor of a
6 longer school year.

7 Q Extending it to 200 days?

8 A Even to 200 days. And I've seen some fine
9 programs that go even longer than 200.

10 Q How long have those programs been?

11 A Well, we have one year-round school I know that
12 has 240 days. It's a private school, not a public
13 school. But that's a choice situation. And again, if
14 parents are willing to pay for it in that private school
15 situation, that's fine. That's a family situation. But --

16 Q And I assume, if money's not available, a
17 hundred 65 -- the reduction to hundred and 65 days would
18 be okay by you, assuming quality?

19 A If the quality is there, that's right.

20 MS. DAVIS: He also said hundred 63 days I believe.

21 THE WITNESS: Yeah, I said hundred 63 as well.

22 MS. DAVIS: Past testimony.

23 THE WITNESS: I said or even a hundred 63 when I
24 was speaking of a hundred 65 days.

25 BY MR. VILLAGRA:

1 Q Oh, really?
 2 I want to mark Exhibit 3. It's a document
 3 Bates numbered STATE-EXP-CB 741.
 4 (Plaintiff's Exhibit 3 was marked for
 5 identification by the court reporter.)
 6 BY MR. VILLAGRA:
 7 Q Giving you shorter documents now.
 8 A Yes.
 9 Q Have you had a chance to review it?
 10 A I have seen it, yes.
 11 Q Have you seen this previously?
 12 A I have.
 13 Q Do you believe you were a member of the
 14 year-round education advisory committee when this agenda
 15 was prepared in 1992?
 16 A I believe I was.
 17 Q Do you recall --
 18 A Although this seems to be earlier than I recall
 19 the committee being formed earlier this morning when we
 20 spoke. But be that as it may, I think I was in from the
 21 beginning. So yes, I think I was probably part of this.
 22 Q Do you believe, then, that you were on the
 23 year-round education advisory committee from at least
 24 November 1992 to 2000?
 25 A I think this refreshes my memory, and the

1 answer would be yes, I think I was.
 2 Q At Roman numeral II it says, "A reconsideration
 3 of Concept 6."
 4 A Yes.
 5 Q Do you recall what prompted the reconsideration?
 6 A Well, I don't recall what prompted this
 7 particular discussion, no.
 8 Q Were there other discussions within the
 9 committee about Concept 6?
 10 A There have been, yes, sure.
 11 Q What do you recall about those other
 12 conversations?
 13 A Well -- and this goes back to a question which
 14 you asked me a while ago. You spoke about legislation.
 15 Q Yes.
 16 A And I was thinking of a specific bill. I don't
 17 recall that there was any specific bill. But there's
 18 always discussion about the Concept 6, because it's the
 19 only calendar -- multi-track calendar that requires
 20 fewer than a hundred and 80 days. And so that has
 21 always been the basis for open discussion about Concept
 22 6.
 23 Q Within the committee?
 24 A Within the committee. And within our
 25 year-round movement.

1 Q Okay. What was the discussion within the
 2 committee about Concept 6?
 3 A It's whether Concept 6 does provide a quality
 4 education because of the shorter school year.
 5 Q And was there ever any discussion about
 6 determining whether the quality of the Concept 6
 7 calendar was equal to that of other school calendars in
 8 California?
 9 A When you say determining, did we plan to do a
 10 study of some kind?
 11 Q (No audible response)
 12 A I don't recall that we ever talked about doing
 13 a study, but we certainly have a philosophical
 14 discussion regularly from time to time over the years
 15 about Concept 6.
 16 Q What do you recall about the philosophical
 17 discussion about Concept 6 in the year-round education
 18 advisory committee?
 19 A It was always whether Concept 6, with its
 20 shorter school year, provided a quality education. I
 21 was one of those who took the position that it could.
 22 It wasn't the number of days or the calendar that made
 23 the difference, it was the quality of instruction within
 24 the program itself.
 25 That's true, by the way, for any calendar,

1 including the traditional calendar. You can have bad
 2 teaching, bad instruction, in a traditional calendar the
 3 same as you could have in a Concept 6 calendar.
 4 Q How many times over the years do you think this
 5 issue of Concept 6 and its quality came up within the
 6 year-round education advisory committee?
 7 A I would say I can recall at least four
 8 discussions of it.
 9 Q Can you estimate when they occurred?
 10 A I can't.
 11 Q Do you recall who was involved in any of those
 12 discussions?
 13 A Well, certainly, the folks who are listed here
 14 on the agenda would be part of those who were involved
 15 within the discussion. That would include -- do you
 16 want me to read the names?
 17 Q That's okay. No.
 18 Going back to this exhibit, though, do you
 19 recall a presentation by Duwayne Brooks about Concept 6?
 20 A I believe I do, yes.
 21 Q What do you recall about his presentation?
 22 A He was wondering about the wisdom of Concept 6
 23 and whether there should be any kind of formal action,
 24 either as a recommendation of the committee or not.
 25 Q What form would the action have taken?

1 A This is an advisory committee. So at the most
2 it could be a recommendation that Concept 6 be
3 discontinued, for example.

4 Q Was there ever a discussion of discontinuing
5 the Concept 6 calendar?

6 A Oh, sure. That was the discussion -- part of
7 the discussion.

8 Q What do you recall about that discussion?

9 A I recall that there were differences in point
10 of view within the room. And I was one of those who
11 said that Concept 6 absolutely had to be kept as an
12 option. It's the one that takes care of the greatest
13 amount of over-enrollment.

14 Q Who do you recall agreeing with your position
15 regarding Concept 6?

16 A I don't really recall.

17 Q Who do you recall advocating the contrary
18 position?

19 A I think Duwayne Brooks himself raised the
20 issue. And I don't think this was any disagreement in
21 what you'd call a really -- it was a nice easy
22 discussion among scholars or educators. And so I
23 don't -- I don't remember any kind of a knock-down type
24 of discussion. It was just, is this a wise idea to
25 continue it or not.

1 And I was one of those who said we have no
2 choice in California but to continue it. My point was
3 it has to be a local decision, depending on the amount
4 of over-enrollment at the local level. It's not
5 something the State should decide.

6 Q Why not?

7 A Because the State's not closest to what the
8 factors are. The over-enrollment is within a local
9 district or even within one of the schools in the
10 district, and so that's a decision that really has to
11 come at the local level, decided in agreement among
12 parents, educators, school board members and the
13 community.

14 Q When you say not closest to the factors, what
15 factors do you mean?

16 A The over-enrollment and the choice of calendars
17 that need to be made and that sort of thing.

18 One goes into Concept 6 only after considering
19 the degree of over-enrollment, and that's a judgment
20 that has to be made at the local level, it seems to me.

21 Q Aren't there choices, though, that the State
22 prevents localities from making?

23 A Oh, sure.

24 Q And why shouldn't the choice of Concept 6 be
25 one?

1 A Because in doing so, the severity of the
2 impactment at a local site may be so severe that there
3 would be some real problems at the local level. For
4 example, if the State said, you cannot use Concept 6 and
5 the district finds itself with an enrollment at a
6 hundred and 40 percent or above the stated capacity of
7 the school, either you're going to have too many kids
8 and not enough seats on a given day or you're going to
9 have to turn to Concept 6 to handle that
10 over-enrollment.

11 The State has no real reason to eliminate that
12 option as one of the calendars. Which is what I said
13 during the discussion November 12th, 1992.

14 MR. VILLAGRA: I'm going to mark Exhibit 4. It's a
15 three-page document and at top the Bates number is
16 STATE-EXP-CB 742 through 744.

17 (Plaintiff's Exhibit 4 was marked for
18 identification by the court reporter.)

19 MS. DAVIS: Do you want him to read the entire
20 document?

21 BY MR. VILLAGRA:

22 Q Have you had a chance to look through it?

23 A I've looked through it, yes.

24 Q Have you ever seen Exhibit 4 before?

25 A I don't remember it. But that doesn't mean I

1 haven't seen it before.

2 Q I want to turn your attention to the first
3 page, the cover memo.

4 It says, "I would appreciate your reviewing it
5 and sharing your comments ASAP with us so it will be a
6 collective recommendation."

7 Do you see that?

8 A I see that.

9 Q Do you recall sharing any comments about the
10 attached legislative proposal?

11 A The same kinds of comments that I've been
12 speaking to here previously. I don't remember that this
13 went forth, but -- in a specific law. It's possible
14 but -- not law, but specific bill.

15 Q Do you recall whether there was --

16 A At this time.

17 Q Do you recall whether there was a collective
18 recommendation from the committee on this proposal?

19 MS. DAVIS: At that time?

20 MR. VILLAGRA: Yes.

21 THE WITNESS: At that time.

22 I do not recall that. And I don't believe
23 there was a collective recommendation.

24 BY MR. VILLAGRA:

25 Q Do you know who wrote the proposal?

1 A I don't.
 2 Q On Page 2, numbered 743, at the bottom of the
 3 paragraph that's listed -- or headed "Problem," the very
 4 last sentence says, "Most educators feel the school year
 5 should be longer" --
 6 A Just a minute. I'm not with you.
 7 Oh, I can see it. Okay.
 8 Q I'm sorry.
 9 Do you see that?
 10 A Hmm-hmm.
 11 Q Do you agree that most educators feel the
 12 school year should be longer and not shorter?
 13 MS. DAVIS: At that time?
 14 MR. VILLAGRA: Generally.
 15 MS. DAVIS: Okay.
 16 THE WITNESS: I'm not sure that's true. When we
 17 say most educators, I'm not sure how most educators feel
 18 about the school year, whether it should be longer,
 19 shorter or the same. There would be another option,
 20 which would be to leave it where it is. And I really
 21 don't know what that would be.
 22 BY MR. VILLAGRA:
 23 Q Earlier I asked you about whether the Concept 6
 24 calendar raises serious reservations about its
 25 educational efficacy, and you said it raised various

1 a normal discussion within our field of education.
 2 Q And I assume that the Kneese study answered for
 3 you any reservations that there might be about the
 4 Concept 6 calendar; is that correct?
 5 A That's correct.
 6 But once again, we always have to understand,
 7 the prior problem is over-enrollment, and the degree of
 8 over-enrollment determines the kind of calendar that is
 9 chosen for that school.
 10 Q You talked about your participation in the
 11 year-round education advisory committee.
 12 Have you participated in any other education
 13 committees in California? State-sponsored.
 14 A State-sponsored, no.
 15 Q To your knowledge, are multi-track year-round
 16 calendars more prevalent than single-track year-round
 17 calendars in California?
 18 A In California, yes. That's not true nationally.
 19 Q Can you estimate the percentages in California?
 20 A I don't know what it would be for the school
 21 year. So I won't provide that answer.
 22 Q What about for last school year?
 23 A I don't know last year's either.
 24 Q What about the year before?
 25 MS. DAVIS: Where are we, now, in academic years?

1 questions.
 2 The sentence above the one that we just looked
 3 at says, "Yet the number" -- "the reduced number of
 4 in-class school days inherent to the Concept 6
 5 calendar," in parentheses, "17 fewer than the average
 6 raises serious reservations about its educational
 7 efficacy."
 8 Do you disagree with this characterization
 9 about the serious reservations?
 10 A No, I think people of goodwill can have serious
 11 reservations about a program like Concept 6. But
 12 remember, this was before Carolyn Kneese began doing her
 13 work, where she looked at the results of students in
 14 multi-track year-round schools, including Concept 6
 15 schools. So at this time we didn't have the kind of
 16 data which we have now today.
 17 Q So is it fair to say that in 1992, you didn't
 18 have data to support or to answer the serious
 19 reservations about the Concept 6 calendar?
 20 A Well, we had some. We certainly had the two
 21 reports from Los Angeles Unified that were done by Joan
 22 Herman and her group. And we knew that students were at
 23 least at an equivalency level with other students. But
 24 anybody in any field could have serious reservations
 25 about a calendar like a Concept 6. That certainly is in

1 What does that make it? 2000, the 2000-2001?
 2 BY MR. VILLAGRA:
 3 Q 2001-2002.
 4 Is that a year that you're familiar with the
 5 data?
 6 A Let's cut through all this to say that I
 7 believe, in California, roughly, two-thirds of our
 8 year-round schools are multi-track and the other
 9 one-third are single-track.
 10 Q Is California unique, in terms of the problems
 11 of multi-track year-round calendars?
 12 A Certainly -- what do you mean by unique?
 13 Q Relative to other states in the United States,
 14 is there any other that has two-thirds of its year-round
 15 schools on multi-track calendars?
 16 A Not that I am aware of, no.
 17 Q Do you know what the highest percentage in any
 18 other state is of implementation of the multi-track as
 19 opposed to the single-track calendar?
 20 A I couldn't give you a percentage.
 21 Q In states outside of California, do you know
 22 how extensive the use of Concept 6 is?
 23 A At the present time, it is not extensive.
 24 Concept 6 was first started in Colorado, has been used
 25 in Florida as well as California, but I think at the

1 present time Concept 6 is only utilized in California.
 2 Q You mentioned earlier that there were
 3 discussions within the association, the National
 4 Association of Year-Round Education, about Concept 6.
 5 A Hmm-hmm.
 6 Q Have you had discussions within the NAYRE about
 7 not supporting the Concept 6 calendar?
 8 A No, I don't think we've ever had that kind of
 9 discussion. The discussion's always been is this the
 10 best way to go. The typical kind of educational
 11 philosophical discussion.
 12 I think it's always fair to raise questions
 13 about everything we do, the same as we ought to be
 14 raising questions about the traditional calendar and
 15 what it does to students by continuing that old calendar
 16 with that long summer vacation. Every calendar should
 17 be up for review all the time.
 18 So yes, we've had our discussions about Concept
 19 6. I think that's what one ought to do, always
 20 challenge the current thinking.
 21 Q To your knowledge, is the traditional calendar
 22 used to deal with the problem of over-enrollment?
 23 A Traditional calendar?
 24 Q (No audible response)
 25 A No.

1 There's over-enrollment in traditional calendar
 2 schools same as in year-round schools, but it's not
 3 utilized to deal with the overcrowding.
 4 Q To your knowledge, what is the most utilized
 5 year-round calendar in California?
 6 A I would suspect right now it's probably 60-20.
 7 Q Do you know what the second-most utilized is?
 8 A Probably 45-15.
 9 Q And the third most-utilized?
 10 MS. DAVIS: Calls for speculation.
 11 THE WITNESS: I wouldn't know whether it's Concept
 12 6 or whether it's 90-30, but it very well may be Concept
 13 6.
 14 BY MR. VILLAGRA:
 15 Q And how do you know that?
 16 A Just from having lived with it for a while.
 17 Q Do you have an opinion as to why 60-20 is the
 18 most popular year-round calendar in California?
 19 A Probably has to do with the length of the
 20 vacation periods. One month many people like,
 21 particularly teachers or parents. And the reason for
 22 that is the 45-15 has a three-week break. 60-20 has a
 23 four-week break. For those teachers who psychologically
 24 have to come down from the previous teaching period,
 25 that ruins two or three or four days, where they're

1 putting things away and closing up that period of
 2 academic work, and those same teachers, psychologically,
 3 may be the kind that have to start up three or four or
 4 five days before the new term begins.
 5 For those teachers there's still a three-week
 6 period for vacation or for graduate work or whatever
 7 else needs to be done. So they find it a little bit
 8 more manageable. I would suspect that's a big factor
 9 with teachers.
 10 With parents, gives a little bit more option as
 11 to which week is taken for family vacation. Very
 12 rarely, by the way, to families take more than one week
 13 at a time for a vacation.
 14 Q In your opinion, is there any other reason why
 15 60-20 is the most popular year-round calendar?
 16 A Some people like the trimester idea as a way of
 17 organizing curriculum.
 18 Q Anything else?
 19 A I think that'll do it for now.
 20 Q Do you have any idea why 45-15 is the
 21 second-most popular year-round calendar?
 22 A 45-15 is liked by many people because it's
 23 essentially a quarter system. Quarter system has been
 24 around the United States for the last six or seven
 25 decades, 60, 70 years. Many of our colleges and

1 universities are on quarter systems. So it's a very
 2 common pattern.
 3 For teachers who have taught for many years on
 4 the semester system, a quarter is simply a half of a
 5 semester. So they have to do very little reorganization
 6 of their curriculum. So some teachers and parents
 7 prefer a 45-15 or a quarter program over the trimester
 8 60-20 program.
 9 Q Any other reason that you can think of?
 10 A I think that's it.
 11 Q Assuming that Concept 6 is the third-most
 12 popular calendar in California -- year-round calendar,
 13 do you have any reason why that -- do you have any
 14 opinion why that might be?
 15 A I think you're using the word "popular"
 16 incorrectly, if I may say so. It's utilized rather than
 17 popular.
 18 Q That's fine.
 19 A If you don't mind my --
 20 Q Sure.
 21 A -- correcting --
 22 Q Let's use prevalent.
 23 A Prevalent.
 24 It's prevalent because a large number of
 25 schools in California are severely over-crowded.

1 "Over-enrollment" is a better word than "over-crowded."

2 Q And is Concept 6 the best calendar to address
3 severe over-enrollment?

4 A If we're talking about enrollment above a
5 hundred and 40 percent of stated capacity, the answer is
6 yes.

7 Q And over-enrollment above a hundred and 40
8 percent of stated capacity, you would deem serious --
9 severe over-enrollment?

10 A Yes. There -- you can use the -- some of the
11 other multi-track calendars at that level, hundred and
12 40. But once it begins to go over -- tip over a hundred
13 and 40, district really has to consider a three-track
14 rather than a four-track calendar.

15 And by the way, "over-enrollment" is really
16 better than "over-crowding," because a school can be
17 very large or very small. It's having the number of
18 seats rather than the size of the school or anything
19 like that. So "over-enrollment" is really a better term
20 to be used.

21 Q Are you aware of Tom Payne's opinion that
22 Concept 6 is a facility strategy?

23 A I am.

24 Q Do you agree with his opinion?

25 A I think that's a fair statement, yes.

1 Q Are you familiar with Dr. Ross Mitchell's study
2 from 1999 entitled "Student Segregation and Achievement
3 Tracking in Year-Round Schools"?

4 A Is that a study where there are two authors,
5 two Drs. Mitchell?

6 Q Yes.

7 A Okay. Then I am aware of that study.

8 Q What's your opinion of that study?

9 MS. DAVIS: Assuming you have an opinion.

10 THE WITNESS: Well, I think it's an interesting
11 study.

12 BY MR. VILLAGRA:

13 Q Why do you think so?

14 A Well, he raises some particular issues which I
15 think are issues that need to be looked at. My first
16 reaction when I read the article was, rather than the
17 calendar being the issue, from my perspective, it was an
18 issue of administration.

19 If there were imbalances in the calendars, then
20 there needs to be some corrective administrative action
21 to lessen that in the following school year. So I saw
22 it as a discussion of administrative actions rather than
23 a discussion of segregation as was worded in the title.

24 Q To your knowledge --

25 MS. DAVIS: He just looked at his watch.

1 Q Why do you think that?

2 A Well, because, in my experience, Concept 6 has
3 been introduced at the point where there is a severe
4 case of over-enrollment. I can't recall any case where
5 it was introduced without that factor of severe
6 over-enrollment.

7 I'll put it another way. 45-15, 60-20, 90-30
8 have been done in single-track version as well as
9 multi. I don't ever recall the Concept 6 program being
10 other than multi-track, which says the sort of thing
11 which Mr. Payne spoke to; that is, if you've got a
12 severe over-enrollment, Concept 6 has to be one of the
13 options available.

14 Q To your knowledge, how long has the Concept 6
15 calendar been in existence?

16 A It would --

17 MS. DAVIS: In California or just anywhere?

18 BY MR. VILLAGRA:

19 Q Anywhere in the United States.

20 A It began in Colorado. I would guess right
21 around 1973 or '4, 1974.

22 Q So in the last 29 or 30 years, to your
23 knowledge, no school has ever implemented Concept 6 on a
24 single-track -- in a single-track form?

25 A No.

1 Do you want to take a break?

2 THE WITNESS: I think it's time for a break, if you
3 don't mind.

4 (Brief recess taken.)

5 BY MR. VILLAGRA:

6 Q Before the break we were talking about the 1999
7 Mitchell and Mitchell study, and you mentioned that the
8 issues identified in the study, in your opinion, were
9 more the result of lax administration; is that correct?

10 A That's correct.

11 Q To your knowledge, does the California
12 Department of Education regulate how multi-track
13 year-round calendars are implemented; and, specifically,
14 how students are assigned to different tracks?

15 MS. DAVIS: Compound.

16 THE WITNESS: And what do you mean by regulate?

17 BY MR. VILLAGRA:

18 Q Does the State of California issue any
19 regulations dealing with student assignment to tracks at
20 multi-track year-round calendar schools?

21 A By regulations, if we mean formal regulations,
22 required regulations, I think the answer is no.

23 Q Some kind of enforceable rule.

24 A I don't believe there is such.

25 Q So the lax administration that Drs. Mitchell

1 identified could be going on at other schools, for all
 2 you know?
 3 MS. DAVIS: At other schools other than what was
 4 identified in the --
 5 MR. VILLAGRA: Yes.
 6 MS. DAVIS: -- Mitchell Mitchell -- okay.
 7 THE WITNESS: I don't know whether it is going on
 8 at other schools.
 9 BY MR. VILLAGRA:
 10 Q And the State certainly does nothing to prevent
 11 it?
 12 A Nothing, I think, is too strong. There
 13 certainly have been discussions. There certainly have
 14 been some guidelines and that sort of thing. But I
 15 don't think there is -- there are formal regulations as
 16 such, required regulations.
 17 Q Did you have any other opinion about the
 18 Mitchell and Mitchell study from 1999 other than that
 19 the calendar was not really the issue but the
 20 administration of the school?
 21 MS. DAVIS: Can we get a title? Do you have just a
 22 title of that? I knew it at one point --
 23 MR. VILLAGRA: "School Segregation and Achievement
 24 Tracking in Year-Round Schools."
 25 THE WITNESS: At this point I'll say no. You may

1 have some follow-up questions you wish to talk about,
 2 but I gave you the general reaction, which is what I'll
 3 stay with for the time being.
 4 MS. DAVIS: Do you have the document?
 5 MR. VILLAGRA: I just want to know what his general
 6 reaction was. He gave me one point. I want to know if
 7 there's anything beyond --
 8 THE WITNESS: That is the major point.
 9 BY MR. VILLAGRA:
 10 Q Are there any minor points?
 11 A Well, he was not talking about Concept 6.
 12 Because in the article there's a discussion of four
 13 tracks. So it would be a different calendar than
 14 Concept 6, for example. And I know he talked about
 15 B-track in that situation.
 16 B-track in a four-track calendar does not
 17 necessarily mean the same as B-track in a Concept 6
 18 calendar. So I didn't see applicability to other
 19 situations from that article. I thought the article was
 20 a snapshot of the school or schools that he saw in his
 21 particular -- their particular study. Not his, but
 22 their particular study.
 23 Q And you saw limited applicability because he
 24 was not studying Concept 6 schools?
 25 A I saw -- not limited applicability. What I saw

1 was this was a report on a snapshot of a specific
 2 situation.
 3 Q What do you mean by a snapshot of a specific
 4 situation?
 5 A What they reported on was what they saw in a
 6 specific situation. We don't know how many schools were
 7 involved, because I haven't seen the schools identified
 8 yet to this point. So what they saw -- they reported on
 9 what they saw in a rather prescribed situation.
 10 Q But you don't know how many schools were the
 11 subject of the study?
 12 A I don't.
 13 Q Did you share --
 14 A But I will -- it was very limited, but I don't
 15 know the number.
 16 Q How do you know it was very limited?
 17 A Just because of the report. The size that they
 18 were talking about just inferred that it was a very
 19 limited number.
 20 Q You inferred that?
 21 A I inferred that from reading it, yes.
 22 Q Do you recall sharing the study, the Mitchell
 23 study, with any of your colleagues?
 24 A Yes.
 25 Q Who did you share it with?

1 A Dr. Carolyn Kneese.
 2 Q Did you share it with anyone else?
 3 A She's the only one that I recall at this moment.
 4 Q Do you recall sharing it with members of
 5 NAYRE's research committee?
 6 A Who is NAYRE's research committee?
 7 Q Do you have any understanding of what that
 8 might be?
 9 A Well, there's not a standing research
 10 committee. There are some groups that have worked
 11 together. So I may have shared it with some of the
 12 people involved, but certainly not with a standing
 13 committee, as such.
 14 Q Who might those people be other than --
 15 A Well, it could be --
 16 Q -- Carolyn Kneese?
 17 A Sorry. Could be Dr. Mussatti, for example.
 18 Could have been Dr. Speck. But I really don't recall
 19 who within our organization I shared it with. But I do
 20 remember very specifically sharing it with Dr. Kneese
 21 for her reaction.
 22 Q And what was her reaction?
 23 A Pretty much the same as mine, which was it was
 24 a picture -- it was a snapshot picture of a specific
 25 situation. But other than that, I can't speak for her.

1 Q In terms of what she conveyed to you, what else
2 did she convey about the study?
3 A I don't recall at this time.
4 Q And when was it that you shared the study with
5 Carolyn Kneese?
6 A After it was published.
7 Q Have you had any discussions with Carolyn
8 Kneese subsequent to that initial conversation about the
9 study?
10 A Yes, as a part of her report that was submitted
11 in this case. Because she does refer to it in that
12 report.
13 Q And how does she refer to it in her report, in
14 your recollection?
15 A Well, she has a whole section referring to that
16 report -- to the Mitchell report in her report. She
17 discusses it.
18 Q Do you recall what she says about it?
19 A I'd like to have the document in front of me.
20 I'd recall it better at that point.
21 Q You may recall it better, but do you recall
22 anything about what she said?
23 A She told what they said. So she reported
24 faithfully, I believe, what they said in that report.
25 Q Did she make any criticism of the report? Did

1 she state any opinion about the report?
2 A Just what's in the report.
3 MR. VILLAGRA: I want to mark as exhibit --
4 THE WITNESS: In her report.
5 MR. VILLAGRA: -- 5 a document Bates numbered
6 STATE-EXP-CB 1408.
7 (Plaintiff's Exhibit 5 was marked for
8 identification by the court reporter.)
9 BY MR. VILLAGRA:
10 Q Have you had a chance to review Exhibit 5?
11 A Yes.
12 Q Do you know what it is?
13 A It's an e-mail from me to Carolyn Kneese.
14 Q Do you recall when the last time you saw it was?
15 A About a week and a half ago, when I took it off
16 my computer.
17 Q I want to turn your attention to the third
18 paragraph, specifically, the third sentence. It says,
19 "As you know, I've taken a steady position over many
20 years that multi-track is, in and of itself, never a
21 problem."
22 Do you see that?
23 A I do.
24 Q What do you mean by, in and of itself,
25 multi-track is never a problem?

1 A Multi-track is always a response to a prior
2 situation. And I've said that here today couple of
3 different times. The problem is always
4 over-enrollment. Multi-track is a solution to the prior
5 problem.
6 Q So by virtue of it being a response to a
7 problem, it's never a problem?
8 A No, I don't see it as a problem. It's always a
9 solution to a prior problem. It's often miss -- the
10 problem is often miss-identified, but the problem is
11 always over-enrollment.
12 Q Given that you use the phrase "in and of
13 itself," are there problems associated with the
14 multi-track calendar that are not inherent to the
15 calendar?
16 MS. DAVIS: Vague and ambiguous.
17 BY MR. VILLAGRA:
18 Q Are there problems inherent in its
19 implementation that are not inherent in the calendar?
20 MS. DAVIS: Same objection.
21 THE WITNESS: Whenever you implement a new
22 procedure there are, quote, "problems," end quote, that
23 have to be solved. So when you implement a multi-track
24 calendar, some other changes will occur within the
25 school life. So in that sense, there is a problem.

1 We're not talking about that as being the same
2 kind of situation as in the sentence which I wrote to
3 Carolyn Kneese. The problem that causes a multi-track
4 calendar is always over-crowding, always over-crowding.
5 Over-enrollment, really.
6 Q And when you say that multi-track is, in and of
7 itself, never a problem, are you referring to all
8 multi-track year-round calendars?
9 A What I'm referring to is it's always
10 over-enrollment -- or almost always over-enrollment that
11 requires a solution such as multi-track.
12 What I try to do in my talks across the
13 country -- which I'm doing here -- is to get people to
14 understand where the problem lies and what the solution
15 is or can be.
16 Q Have you also taken a steady position over many
17 years that Concept 6 is, in and of itself, never a
18 problem?
19 A Same with Concept 6 as the other calendars. It
20 is a solution to a prior problem of over-enrollment.
21 Q Why is over-enrollment a problem, in your
22 opinion?
23 A Well, if you don't have enough seats for
24 students in a school, that is a problem.
25 Q In what way?

1 A Well, it's not easy to stand for 45, 50,
2 hundred minutes, whatever the class period might be, and
3 listen to a lecture or watch a demonstration, whatever
4 it is. So not having a seat would be a problem.

5 Q In what other ways would over-enrollment be a
6 problem?

7 A Well, you have impacting of the common areas,
8 lunchroom, restroom facilities, gymnasium, library,
9 hallways, all the common areas.

10 Q Any other ways?

11 A That says it, I think.

12 Q The last sentence in the paragraph says, "Of
13 course, finding solutions to overcrowding is not easy
14 when taxpayers are unwilling to pay for a solution, such
15 as new schools."

16 A Yes.

17 Q Do you see that?

18 A Yes.

19 Q You pointed out that the term should be
20 "over-enrollment," but here you are referring to
21 over-crowding.

22 A I do.

23 Q Do you sometimes refer to over-crowding instead
24 of over-enrollment?

25 A I do sometimes. But in this situation I've

1 BY MR. VILLAGRA:

2 Q Dr. Ballinger, you're in the business of
3 helping schools deal with over-enrollment.

4 You don't have an opinion as to what causes
5 over-enrollment?

6 A Well, the common parlance would be, if you have
7 too many students within a given geographical area,
8 there is a school building there, these students are all
9 assigned to this particular school, obviously, you have
10 a case of over-enrollment if there are more students
11 than there are seats available in the school.

12 So you have to go back to the geographical area
13 called the school attendance area, and if there are too
14 many students, then that's the cause of the
15 over-enrollment.

16 Q But you're not -- you don't have an opinion as
17 to what causes there to be too many students in an
18 attendance area?

19 A There could be several. Could be birth rate,
20 could be moving in, it could be -- I think those are the
21 two chief causes.

22 Q Could not building new schools be a cause of
23 over-enrollment above and beyond stated school capacity?

24 A After the fact of people moving in or birth
25 rate increasing. Obviously, new schools have to be

1 tried to use "over-enrollment" to distinguish -- it's
2 not the size of the school but whether seats are
3 available. Our smallest multi-track school is only 300
4 some students.

5 Q Where do you believe the real problem lies?

6 MS. DAVIS: Vague and ambiguous.

7 THE WITNESS: Yes, I don't know what you're asking
8 me there.

9 BY MR. VILLAGRA:

10 Q In the previous sentence it says, "I've never
11 understood why it is so difficult for people to see
12 where the real problem lies."

13 What did you mean by "where the real problem
14 lies"?

15 A There I was referring to over-enrollment as
16 being the problem. Multi-track is almost always a
17 response to a prior situation, which is
18 over-enrollment. There's no need for multi-track,
19 ordinarily, unless there's over-enrollment.

20 Q What are the causes of over-enrollment?

21 A Too many students.

22 Q What are the causes of having too many students?

23 A That could be lots of causes.

24 MS. DAVIS: Calls for speculation.

25 THE WITNESS: Yeah.

1 thought of as part of the solution to eventual
2 over-enrollment, but -- yes, certainly, new schools
3 would help to alleviate the over-enrollment problem.

4 Q But would the absence of building schools
5 contribute to over-enrollment?

6 A Oh, sure. As population increases, even with
7 the implementation of multi-track, eventually, there
8 will be a need for more schools.

9 Q Is class size reduction a cause of
10 over-enrollment at the school level?

11 A It can be, yes.

12 Q Has it been in California?

13 A It has been.

14 Q How do you know that?

15 A Well, because a number of schools were at
16 capacity before class size reduction, and once class
17 size reduction was put into place, that meant more
18 classrooms were needed. And if more rooms were not
19 available, then multi-track had to be looked at as a
20 possible solution.

21 Q So beyond birth rate and new students moving
22 in, class reduction contributes to over-enrollment?

23 A It can, yes.

24 Q And it has in California?

25 A And it has.

1 Q In that last sentence in the paragraph that we
2 were looking at, you refer to taxpayers being unwilling
3 to pay for a solution.

4 What are you referring to?

5 A The long history over the last couple of
6 decades where we had in California Proposition 13 and
7 its two-thirds requirement.

8 And by the way, California's not the only state
9 where it's difficult to pass bond issues. In the sense
10 that both Dr. Kneese and I look at the situation on a
11 national scale as well as state. I was just referring
12 to the general atmosphere, which is an anti-tax
13 atmosphere.

14 Q Would you say, then, that Prop 13 has
15 contributed to over-enrollment in California?

16 A In an indirect way. In that, it's more
17 difficult to build new schools. But the items that
18 we've talked about, which is increased birth rate, new
19 move-ins and even class size reduction, have really
20 impacted as well.

21 Q To your knowledge, are taxpayers the only ones
22 who can fund new school construction in California?

23 A Well, yes, in the broad sense of passing bond
24 issues. There are impact fees that builders can pay and
25 that sort of thing, which can help pay for

1 Q And we talked about what the lax administration
2 was. But here you don't refer to the snapshot-in-time
3 criticism that you mentioned earlier.

4 A Yes.

5 Q Do you know why you did not include that here?

6 A I don't. And I think it's just a general
7 conversational sentence here. In a formal proceeding
8 such as we're in, I don't think I would speak to her
9 point of view. When I say I think we were both of the
10 opinion, that's kind of a conversational style, and at
11 that time I didn't know that you would be reading it.
12 So I wouldn't have said that if I'd known you were going
13 to bring it up today.

14 Q It's always the way.

15 MS. DAVIS: Nothing's safe from the lawyers.

16 MR. VILLAGRA: I want to introduce as Exhibit 6 --
17 actually, take that back.

18 Q Do you recall writing to Dr. Mitchell regarding
19 his study, his 1999 study?

20 MS. DAVIS: Assumes facts.

21 THE WITNESS: I'm not sure whether I ever did or
22 not. I don't remember.

23 BY MR. VILLAGRA:

24 Q Is that something you typically do, write to a
25 researcher who has written a study on year-round

1 construction. But even those people who pay those fees
2 are taxpayers, so ultimately, yes, taxpayers.

3 Q But I take it that you're referring to
4 taxpayers' willingness to approve school construction
5 bonds?

6 A For the most part, yes.

7 Q How else can the State fund school
8 construction, if you know?

9 A Well, there could be other moneys from other
10 tax sources. The Government could -- the Legislature
11 could use some general fund moneys, if they chose to, to
12 build schools, for example. But there's a lot of call
13 for those same sources of money.

14 Q So finding solutions to overcrowding is not
15 simply limited to taxpayers' approving school
16 construction bonds; is that right?

17 A Not solely. But taxpayers passing bond issues
18 is the primary way we build schools in California.

19 Q In the next paragraph, the very last sentence
20 of it, you write, "I think we were both of the opinion
21 that the Mitchells were talking about a situation that
22 was not caused by multi-track but, rather, by lax
23 administration of multi-track."

24 Do you see that?

25 A I see that.

1 education?

2 A Oh, sure. I do that, yeah.

3 Q Do you recall advising Dr. Mitchell that he
4 should clarify that his study addressed multi-track and
5 not single-track year-round education?

6 A I think I did. I don't remember whether I
7 wrote that or said that to him, but I -- I've talked
8 with him as well at a conference and may have said that
9 rather than written it.

10 Q Why would you have advised him to make that
11 distinction between multi-track and single-track?

12 A Because our critics across the country just use
13 the term "year-round education." They often don't
14 identify whether they're talking about single-track,
15 multi-track or extended year. So I always encourage,
16 not only Drs. Mitchell, but anyone else who are writing
17 in the field to be more specific about the kind of
18 year-round education they're talking about.

19 Q Any other reason?

20 A That's the primary reason.

21 Q And are you always careful to distinguish
22 between multi-track and single-track year-round schools?

23 A It depends on whether we're talking about the
24 philosophical concept or whether we're talking about the
25 implementation of year-round education. If we're

1 talking about implementation, I'm very careful about
2 it.

3 Q Why?

4 A Well, because single-track is different from
5 multi-track. Pneumonia's different than influenza.
6 Single-track's different than multi-track.

7 Q Do you recall advising Dr. Mitchell that
8 California was unique, given the prevalence of
9 multi-track as opposed to single-track schools?

10 A Ask me the question again, please.

11 MR. VILLAGRA: Would you read that back, please.

12 (Record read.)

13 MS. DAVIS: Are we talking about Ross Mitchell?

14 MR. VILLAGRA: Yes.

15 THE WITNESS: When you say advise, what are you
16 referring to?

17 BY MR. VILLAGRA:

18 Q Telling him.

19 A I may have told him that.

20 Q Okay. Do you recall why you told him that?

21 A I'm not sure whether it was part of a
22 conversation at American Educational Research
23 Association meeting or not, but -- yes, I think I said
24 that to him at some time or other.

25 Q Do you recall why you did that?

1 administration of multi-track year-round schools in
2 California?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: I certainly have raised that issue in
5 my discussions, yes.

6 BY MR. VILLAGRA:

7 Q In what discussions have you raised it?

8 A Well, even before -- even prior to the Mitchell
9 report. I've always encouraged administrators to be
10 very careful that tracks are as balanced as they can be,
11 so that there's no impression given to the public at
12 large that certain tracks are only for one kind of
13 student. For example, I think they have to be very
14 careful that one track doesn't become Anglo, another
15 track African-American, another track Hispanic, and so
16 on.

17 Q And why is it important not to give that
18 impression to the public, that one kind of student is
19 for one type of track?

20 A Because I believe in integration in schools,
21 and so, consequently, you have to be careful not to get
22 into the situation where it looks like you're
23 segregating students.

24 Q Do you know whether the State of California
25 compiles data regarding the race and ethnicity of

1 A Well, if it's this session that I'm talking
2 about, he had said something in a public forum, and I
3 may have said something to him afterwards that I thought
4 he hadn't presented what I thought would be an accurate
5 picture. So I may have clarified that.

6 Q When you read Dr. Mitchell's paper -- when did
7 you first read his paper, his 1999 paper?

8 A I don't remember.

9 Q Do you think it was shortly after it was
10 published?

11 A Within the year.

12 Q When you read Dr. Mitchell's paper, did you
13 believe that he had been charged with an agenda to
14 attack year-round education?

15 A I'm not sure that it was an agenda. I felt
16 that in some ways he had attacked year-round education.

17 Q In what ways did you think that he had attacked
18 year-round education?

19 A Well, I thought he wasn't as careful in
20 delineating what he was actually studying. As I
21 mentioned a while ago, I saw it as an administrative
22 situation. He did not write to that effect in the
23 paper.

24 Q Since publication of Dr. Mitchell's paper, have
25 you advocated for any kind of rules to prevent lax

1 students by track at multi-track year-round schools?

2 A I don't believe there's a good record of that,
3 no.

4 Q So how are you or anyone else supposed to know
5 whether tracks are balanced by race and ethnicity?

6 A I don't know. But it's just a philosophical
7 position of mine that we have to be very careful about
8 that sort of thing.

9 Q Now we'll introduce Exhibit 6.

10 It's a two-page letter, Mr. Ballinger, on NAYRE
11 letterhead.

12 A Okay.

13 (Plaintiff's Exhibit 6 was marked for
14 identification by the court reporter.)

15 BY MR. VILLAGRA:

16 Q Have you had a chance to review Exhibit 6?

17 A I have, yes.

18 Q What is it?

19 A It's a letter which I wrote to Ross Mitchell.

20 Q And looking at the second page, is that your
21 signature?

22 A That is my signature.

23 Q When you asked Dr. Mitchell to distinguish
24 between single-track and multi-track year-round schools,
25 were you trying to avoid the results of Dr. Mitchell's

1 study as being seen to apply to single-track year-round
2 schools?

3 A I believe that's true, partly. Partly, yes.

4 Q In what way is that not true?

5 A I don't know right now. I would have to go
6 back to the article itself, which I haven't read for
7 many months ago.

8 Q And in the first line you refer to the paper,
9 "Student Segregation and Achievement Tracking in
10 Year-Round Schools," as being both interesting and
11 provocative.

12 Do you see that?

13 A Yes.

14 Q Do you recall why you thought it was
15 interesting and provocative?

16 A Any article on year-round education is
17 interesting to me. So I said that.

18 Q Is any paper on year-round education also
19 provocative to you?

20 A Could be. But usually I use the word
21 "provocative" when it's one that stirs me up a little
22 bit.

23 Q What do you mean by "stirs me up a little bit"?

24 A Well, the tenor of his article was one that I
25 was concerned about. That's why I wrote the letter.

1 share with you in a few days after I gather responses
2 from research committee members."

3 Does that refresh your recollection as to who
4 the research committee might have been?

5 A You'll notice that those are not capital
6 letters on "research committee." So it is the people
7 that I talked about a while ago, Carolyn Kneese for
8 one. I think I may have sent it off, as I said, to
9 Dr. Mussatti and so on. But there never has been a
10 formal research committee. So I sent that out and I got
11 very little back. Most of those people did not share
12 anything with me.

13 Q Did you eventually share additional comments
14 with Dr. Mitchell?

15 A Only in the conversation we had at AERA. Sofar
16 as I know, that's the only conversation I've ever had
17 with him.

18 Q Did you publish any kind of response to
19 Dr. Mitchell?

20 A No.

21 Q Have you in the past published responses to
22 papers written regarding year-round education?

23 A What do you mean by papers?

24 Q Research papers, like Dr. Mitchell's.

25 A Well, I have -- this kind of response I've

1 Q What do you mean by the tenor?

2 A Well, as I share here, I thought he wasn't
3 clear that he was speaking only about multi-track
4 schools and only about a specific situation. In other
5 words, I was saying, in effect, you can't generalize
6 across the nation.

7 Q And why was that? Why could you not
8 generalize?

9 A Because it was a snapshot of a particular
10 situation.

11 Q Where does it say that?

12 A I'm saying that right now.

13 Q Oh, okay.

14 Is it fair to say -- I took it, reading this
15 letter, that it was not fair to generalize because
16 California is unique, given the prevalence of year-round
17 multi-track education.

18 A Do you have his article in front of you? Or
19 with you?

20 Q I'm not sure.

21 A I'd like to see that before I comment further.

22 Q In the last paragraph on the first page -- I'm
23 sorry, the last paragraph on the second page.

24 A Okay.

25 Q "There are additional comments which I will

1 written to a couple other researchers and asked for them
2 to clarify what they meant in the future.

3 MS. DAVIS: I'm just going to state a belated
4 objection. Vague and ambiguous as to "publish."

5 MR. VILLAGRA: That's what I was going to actually
6 ask him now.

7 MS. DAVIS: Okay.

8 BY MR. VILLAGRA:

9 Q I didn't mean private correspondence like
10 that. I meant sort of something for public
11 dissemination.

12 A Well, sometimes I say, our critics say
13 something to that effect, sure.

14 Q Have you ever made a comment like that,
15 published a comment like that, about Dr. Mitchell's
16 study?

17 A Well, I haven't published anything about his
18 study. So what are you referring to now? Have I
19 written a letter like this?

20 Q Have you published in the NAYRE Web site, for
21 example, any kind of comment that relates directly to
22 Dr. Mitchell's study?

23 A I don't recall.

24 Q In any NAYRE materials that you have been
25 responsible for preparing, have you made any direct

1 comment to Dr. Mitchell's study?
 2 A Not that I'm recalling at the moment.
 3 Q What, in your opinion, are the advantages of a
 4 multi-track year-round calendar?
 5 A The advantages?
 6 Q Yes.
 7 A It's a solution to the problem of
 8 over-enrollment.
 9 Q Anything else?
 10 MS. DAVIS: Vague and ambiguous as to "advantages."
 11 BY MR. VILLAGRA:
 12 Q Do you understand the question?
 13 A Well, sure. There are certain financial
 14 advantages to multi-track. Multi-track is a
 15 financially-sound way to handle over-enrollment.
 16 Q Anything else?
 17 A Not right now.
 18 Q Given what you've said so far, is it fair to
 19 say that the principal advantage of a multi-track
 20 year-round calendar is its ability to expand the
 21 seating -- sorry, the enrollment capacity of a school?
 22 A That's certainly the primary advantage, sure.
 23 Q Do you believe that there are disadvantages to
 24 operating a multi-track school?
 25 A Compared with what?

1 Q Compared with the traditional school,
 2 traditional calendar school.
 3 A Well, I have problem with your word
 4 "disadvantages."
 5 Q You were able to answer the question about
 6 advantages. So --
 7 A Yes.
 8 Q -- just not advantages.
 9 A Well, no, I don't see it as being
 10 disadvantages. I don't deny that there are certain
 11 issues involved with implementation of multi-track, but
 12 I don't see those as disadvantages.
 13 Q So you see no disadvantages, as such, to
 14 implementation of a multi-track year-round calendar; is
 15 that correct?
 16 A Not as I think of the word "disadvantage."
 17 Q Okay.
 18 A But I want to be clear. I'm not denying that
 19 there are in certain situations that develop with the
 20 implementation of multi-track.
 21 Q Using your terminology, what are the issues
 22 regarding implementation of a multi-track year-round
 23 calendar?
 24 A Change itself would be the first one.
 25 Q What do you mean by that?

1 A Well, whenever you have a change, there are all
 2 kinds of things that have to be looked at.
 3 Q Anything else?
 4 A Well, you have to make some choices.
 5 Q In terms of what?
 6 A Which calendar are we going to look at, when
 7 are we going to make a change, if we do, what do we need
 8 to do to prepare for the change.
 9 Q Anything else?
 10 A There's a whole list of things that have to be
 11 considered when the change is made.
 12 Q But those are the only issues that come to mind
 13 right now about implementing a multi-track year-round
 14 calendar?
 15 A I think those are some of the major ones, yes.
 16 Q Do you believe that there are particular
 17 advantages to the Concept 6 calendar?
 18 MS. DAVIS: Vague and ambiguous as to "advantages."
 19 In comparison to what?
 20 BY MR. VILLAGRA:
 21 Q Relative to other school calendars.
 22 A Yes, I do.
 23 Q What are they?
 24 A It is the one calendar that serves to handle
 25 the greatest amount of over-enrollment.

1 Q And what percentage is that?
 2 A Well, usually we -- consideration of Concept 6
 3 comes somewhere around the point of a hundred and 40
 4 percent of stated capacity of existing buildings.
 5 Q And how much additional enrollment can a
 6 Concept 6 school have beyond its stated capacity?
 7 A Are you speaking of a maximum?
 8 Q Yes.
 9 A I'm not sure I can give you an exact
 10 percentage. That will depend on the building itself.
 11 Q 50 percent would not be a maximum?
 12 A Not necessarily.
 13 By 50 percent what are you saying?
 14 Q A 50 percent increase in enrollment --
 15 A Over capacity? No, it could be go beyond that.
 16 Q It could go beyond that, okay.
 17 In your opinion, does the Concept 6 calendar
 18 have its own particular disadvantages relative to other
 19 school calendars?
 20 A Well, certainly, the shorter school year would
 21 be one of those questions that could be raised.
 22 Q So I take it that you're not referring to that
 23 as a disadvantage so much as an issue.
 24 A It's an issue. Surely is an issue.
 25 Q So is it your opinion that the Concept 6

1 calendar has no disadvantages, as such, relative to
 2 other school calendars that only raise certain issues?
 3 A I would use the word "issues" rather than
 4 disadvantages. Again, we have to look at what the
 5 problem is. In the real world, where we practitioners
 6 work, you offer a solution to the existing problem.
 7 Q What are the other issues that you believe are
 8 associated with the Concept 6 calendar relative to other
 9 school calendars?
 10 MS. DAVIS: Assumes there are other issues.
 11 BY MR. VILLAGRA:
 12 Q If there are any. It sounds wonderful.
 13 A Well, I think that's the primary issue, is the
 14 number of days of instruction.
 15 Q Are you familiar with the year-round education
 16 program guide?
 17 A Whose?
 18 Q Put out by the School Facilities Planning
 19 Division.
 20 A In general way, yes.
 21 Q Have you ever reviewed it?
 22 A I have not.
 23 Q Have you had any role in the development of the
 24 guide?
 25 A No real role, no.

1 Q Do you know who wrote it?
 2 A I don't.
 3 Q I show you a document we'll mark as Exhibit 7.
 4 It's a document Bates numbered STATE-EXP-CB 848 through
 5 867.
 6 (Plaintiff's Exhibit 7 was marked for
 7 identification by the court reporter.)
 8 BY MR. VILLAGRA:
 9 Q Have you had a chance to review it?
 10 A I have it before me. I haven't reviewed it as
 11 such.
 12 Q Have you ever seen this document before?
 13 A Not this particular one.
 14 Q Are you sure?
 15 A Well, it has the date of 2000-2001. That's
 16 after I retired. So I'm pretty sure that I haven't seen
 17 this particular one.
 18 Q I just ask, because the Bates number identifies
 19 it as a document produced to you.
 20 MS. DAVIS: To him or by him?
 21 MR. VILLAGRA: By him, I guess.
 22 MS. DAVIS: Okay.
 23 MR. VILLAGRA: The "CB," right?
 24 MS. DAVIS: I think so. I can't remember how --
 25 MR. VILLAGRA: Okay.

1 MS. DAVIS: -- they were Bates numbered.
 2 BY MR. VILLAGRA:
 3 Q But you've seen program guides like this?
 4 A Yeah, I've seen like this, yes.
 5 Q I want you to turn to Page 8. In the lower
 6 left-hand corner there's page numbers, probably the
 7 easiest way to see it. A list of pros and cons of
 8 year-round education programs.
 9 The first pro listed is school site
 10 accommodates 20 to 30 percent more students.
 11 Do you see that?
 12 A I see that.
 13 Q Do you agree that that's a pro of year-round
 14 education?
 15 A Yes.
 16 Q Do you agree that that only applies to
 17 multi-track year-round education?
 18 A Yes.
 19 Q The next pro -- I'm sorry, when you say that
 20 you agree that it is a pro, why do you agree that it is
 21 a pro of year-round education?
 22 A Because it's listed here as a pro.
 23 Q But your personal opinion is that it is
 24 something to commend the --
 25 A Yes, I would use that in my own lectures.

1 Yeah, sure.
 2 Q The next --
 3 A Although I wouldn't say just 20 to 30 percent.
 4 Q What would you say?
 5 A Well, it can go up to 60 percent even.
 6 Q The next pro listed in the guide is increased
 7 retention in some studies.
 8 Do you see that?
 9 A I see that.
 10 Q Do you agree that that's a pro of multi-track
 11 year-round education?
 12 A I would agree that that's a pro.
 13 Q And not just of single-track?
 14 A That's true.
 15 Q Can you name for me studies showing increased
 16 retention from year-round education programs?
 17 A Sure. Those meta-analyses of Dr. Kneese and
 18 Dr. Cooper would certainly speak to that.
 19 Q And what those studies would show, according to
 20 you, is increased retention from year-round education?
 21 A Increased retention in year-round programs, yes.
 22 Q Okay. And would those studies address
 23 single-track and multi-track year-round?
 24 A They do.
 25 Q Are you familiar with any studies showing no

1 increased retention from year-round education programs?
 2 A Yes. I'm having a little problem with this
 3 language, "increased retention." That would not be my
 4 word.
 5 Q Okay.
 6 A I didn't write this.
 7 Q What phrase would you use? Less forgetting?
 8 A Less forgetting. And I would use "increased
 9 student achievement."
 10 Q Are you familiar with studies showing no
 11 increased student achievement for students in year-round
 12 programs?
 13 A Where the achievement rate is flat?
 14 Q Yes.
 15 A Yes, sure.
 16 Q What are those studies?
 17 A Those are incorporated even within some of the
 18 studies reviewed in the meta-analyses of Drs. Cooper and
 19 Kneese.
 20 Q Are you familiar with any other other than
 21 those cited by Kneese and Cooper?
 22 A Oh, I could probably in time list some, but
 23 right now I'm not quickly calling to mind one.
 24 Q The next pro listed is teachers are able to
 25 earn more money if they choose to teach extra sessions

1 or substitute.
 2 A Some people could consider that a pro. Yes,
 3 sure.
 4 Q Do you consider it a pro of year-round
 5 education?
 6 A It could be, sure. Yes.
 7 Q Why?
 8 A Well, some teachers need to earn more money,
 9 and rather than their going out and teaching -- or
 10 working outside the field -- I certainly think it's a
 11 good idea if teachers choose to do so.
 12 Q Is it a pro for teachers?
 13 A It's a pro for teachers, sure.
 14 Q Is it a pro for students, in your opinion?
 15 A I don't think it has anything to do with
 16 students.
 17 Q Okay. Are there any studies, to your
 18 knowledge, about the extent to which teachers avail
 19 themselves of the opportunity to teach extra sessions or
 20 substitute on year-round programs?
 21 A There's no study, no formal study that I'm
 22 aware of. But we certainly know that this happens.
 23 Q Anecdotally?
 24 A Anecdotally, sure.
 25 Q The next pro listed is increased public

1 perception of teachers as a profession.
 2 Do you agree that that's a pro of year-round
 3 education?
 4 A It can be, yes.
 5 Q Do you believe it is?
 6 A I believe, in general, it is.
 7 Q How is that a pro?
 8 A There are members of the general public who
 9 say, teachers only work nine months a year. They've got
 10 three months off. That's a pretty good deal. If they
 11 want to work longer -- no. If they want to earn more
 12 money, they should work longer, work all 12 months, like
 13 I do.
 14 And so when teachers are working in the field
 15 by teaching the extra sessions or substituting when
 16 they're off track in a multi-track program, that says to
 17 people, sure, they're working all year. They deserve
 18 the extra money.
 19 Q Are you familiar with any studies showing
 20 increased public perception of teachers --
 21 A No.
 22 Q -- as a profession?
 23 A Not in a formal way.
 24 Q Any kind of survey?
 25 A Not that I am aware of.

1 Q Teachers on Concept 6 calendars only teach
 2 eight months of school; is that correct?
 3 A Yes.
 4 Q So they would have to teach an extra month of
 5 extra session or as a substitute just to get back up to
 6 nine months?
 7 A Not necessarily, because they teach an extra
 8 long day. So their salaries would probably -- I'm not
 9 absolutely sure of this. They're most likely to be the
 10 same as other teachers on a hundred-and-80-day schedule
 11 because of the extra time.
 12 Q But in terms of the perception of the public,
 13 they work eight months out of the year?
 14 A There may be some members of the public, I
 15 would suspect. Generally speaking, most members of the
 16 public wouldn't make a difference between eight months
 17 and nine months.
 18 Q Do you believe, for most members of the public,
 19 it would make a difference between nine months and ten
 20 months?
 21 A Not in a big way. I think most members of the
 22 public who use that as an argument would really like to
 23 see teachers work 12 months. With some vacation time
 24 included.
 25 Q The next pro listed in the guide is lower cost

1 per student than acquisition of site and building.
 2 Do you agree that's a pro of year-round
 3 education?
 4 A It can be, yes.
 5 Q Are you familiar with studies showing that to
 6 be the case?
 7 A Yes. Again, I wouldn't have worded it this way
 8 myself, but I know what they're working towards.
 9 Q How would you have worded it?
 10 A Well, I would have said that costs per student
 11 go down as the number of units involved are increased.
 12 That is, the economic principle that greater numbers can
 13 mean shared costs, and the per-unit cost goes down
 14 accordingly. So here it's a quick shorthand way of
 15 saying what I said in more words. So I'm fussing about
 16 the way it's worded, I know, though the intent.
 17 Q You mention that you're aware of studies
 18 showing this?
 19 A Oh, yes.
 20 Q Can you name some of the studies for me?
 21 A Sure. The one by Coleman published by the
 22 association is one. Coleman and Freeburn, actually.
 23 Q Any other studies?
 24 A Some school districts have done studies.
 25 Q What school districts?

1 A Well, there's one multi-track district -- not
 2 the whole district, but they have several multi-track
 3 schools, in Colorado, the Cherry Creek School District.
 4 They had Price Waterhouse do a financial study of their
 5 multi-track program, and the conclusion was it's a lower
 6 cost per pupil in the multi-track program than the
 7 comparison traditional calendar schools.
 8 There was one done with a district in Texas,
 9 done by Arthur Andersen before Arthur Andersen got into
 10 its trouble, where they looked at the multi-track
 11 program and concluded as well that there were lower
 12 costs per pupil.
 13 Q Am I mistaken or -- you seem to be talking
 14 about lower cost per pupil, some kind of economy of
 15 scale, and this seems to be addressed to lower cost per
 16 pupil than buying a new site and putting --
 17 A Yeah.
 18 Q -- a new building on it.
 19 A I think I said originally I wouldn't have
 20 worded it this way at all.
 21 Q All right.
 22 A But I know what the intent is.
 23 Q Okay.
 24 A I would agree with what I think they are
 25 intending.

1 Q Why would you have not worded it the way that
 2 it is?
 3 A Because I would have talked more about the
 4 economy of scale, to use that phrase.
 5 Q Do you know whether the studies that you
 6 referred to looked at increased administrative costs on
 7 the multi-track programs?
 8 A Yes.
 9 Q Did they look at increased maintenance costs?
 10 A Yes.
 11 Q Did they take into account the increased wear
 12 and tear on buildings?
 13 A Yes. The Coleman and Freeburn study really got
 14 into all of that in a very fine way. But again, those
 15 costs all have to be shared on the larger number of
 16 pupils. So the per-unit cost or per-pupil cost does go
 17 down.
 18 Q The next pro listed in the guide is vandalism
 19 school sites reduced.
 20 Do you understand what that means?
 21 A I know the intent. Again, I did not have
 22 anything to do with this.
 23 What they're referring to is a couple of
 24 districts have pointed out that their vandalism cost
 25 went down after implementation of the year-round

1 education. And that's because the school is in use more
 2 of the time, with custodians on duty in evening hours
 3 throughout the year.
 4 In graduate school a hundred years ago I
 5 learned that the worst month for school vandalism is
 6 August, and that's when traditional schools are out and
 7 students are just about ready to think about coming back
 8 and they're bored with summer.
 9 Q What were the districts that you mentioned that
 10 have looked at this issue?
 11 A Chula Vista in San Diego County was certainly
 12 one that did a vandalism study that I remember.
 13 Q Any others?
 14 A I'm not sure, but I think Oxnard may have done
 15 a study in this regard too.
 16 Q How many year-round schools were part of the
 17 Chula Vista study?
 18 A I can't be sure right now.
 19 Q What about Oxnard?
 20 A Can't be sure.
 21 Q Do you agree that vandalism sites -- what is
 22 it? Vandalism school sites reduced is a pro of
 23 year-round education?
 24 A Not as it's worded here. I would rephrase it
 25 to say vandalism costs are reduced.

1 Q And in that sense, do you understand it to be a
2 pro?

3 A I do.

4 Q The next one is kindergarten students can enter
5 when ready instead of waiting until September.

6 Do you understand what that refers to?

7 A I understand the intent, yes.

8 Q What do you understand the intent to be?

9 A If a student is of age in July and the
10 year-round school year has started in July, they can
11 start at that point rather than waiting until the
12 traditional calendar opens up in September.

13 Q Now, can they begin in July, only assuming
14 space permits?

15 A Well, if we're in a multi-track situation,
16 yes. But since the majority of our schools in the
17 nation are single-track, they can enter when that school
18 year begins, whatever it might be.

19 Q But this is a California guide.

20 A It's a California guide.

21 Q So in most California schools --

22 A It would be a multi-track situation in most
23 schools, yes. And so some of the tracks would be
24 available in July.

25 Q Are you aware of any studies showing early

1 multi-track schools move into multi-track at a
2 relatively small percentage above stated capacity. So
3 they may have freed up three, four, five rooms that are
4 available for intersessions. If however, a school is
5 impacted at a hundred and 40 percent, hundred 50
6 percent, those schools are less likely to have rooms in
7 the building that are available for intersession
8 classes.

9 And the second part of my answer was some of
10 us -- and I'm one of those -- argue that intersession
11 classes could be held in spaces other than the school
12 building.

13 Q Why do you believe that?

14 A Well, because I think students can learn in
15 space other than schools. In buildings other than
16 school buildings.

17 Q Are you aware of studies comparing achievement
18 of students in classrooms as opposed to students not in
19 classrooms?

20 A None that I could identify for you, no.

21 Q What is your belief based on, then?

22 A It's a professional view that students learn
23 outside of school as well as in school. A class in the
24 arts, for example, could take place at an art museum.
25 An intersession class in music could take place at a

1 enrollment of kindergarten students?

2 A I do not.

3 Q The next pro listed is intersessions offer time
4 to supplement instruction.

5 Do you agree that that's a pro of year-round
6 education?

7 A Yes. In my opinion, it's one of the strongest
8 pros of year-round education.

9 Q What is intersession?

10 A Intersession is the time between instructional
11 periods. It literally means between sessions. So it is
12 another word for vacation time.

13 Q And during intersessions, students can take
14 remediation courses?

15 A They can.

16 Q Is this a pro that's limited to single-track
17 year-round education?

18 A No.

19 Q In what sense to intersessions offer time to
20 supplement instruction to students on multi-track
21 year-round calendars?

22 A It's a function of the degree of over-crowding,
23 and it's a function of whether classes can be offered in
24 spaces other than the school building itself.

25 In the first part of the answer, some of our

1 music venue of some kind. I don't think these classes
2 necessarily have to take place only in the schoolhouse.

3 Q Is it a challenge to offer remediation sessions
4 at multi-track year-round schools?

5 A It can be.

6 Q And it can be, I assume, at schools that are
7 impacted at the hundred 40, hundred --

8 A The greater degree of enrollment, the greater
9 degree of challenge.

10 Q And the challenge is to provide equal
11 opportunities when not in a classroom setting?

12 A Yes, sure.

13 Q I may have skipped a pro. Students may advance
14 academically when ready, if space permits.

15 Do you understand what that refers to?

16 A I'm not sure.

17 Q If you don't have an understanding, I don't
18 want you to guess. If you do, please let me know.

19 A I wouldn't want to speculate, I think, on what
20 was meant by the author of this.

21 Q I may have to talk to the author, since he's
22 from the Department of Education, about grammar and --
23 the next pro listed is some families prefer staggered
24 vacation schedules.

25 Do you see that?

1 A I do.

2 Q Do you agree that that's a pro of year-round
3 education?

4 A I think that's a pro, yes.

5 Q Why do you believe that?

6 A Well, in this society we live in today,
7 increasingly families take their vacations at different
8 times of the year. Unlike the agricultural economy of
9 some decades ago, where summer was the preferred
10 vacation for some, not available for those directly
11 involved in agriculture.

12 Our society today allows families to take
13 vacations throughout the year. And in my office
14 sometimes I would get a call from a family saying, we
15 moved into a community. Do you know where the
16 year-round schools are? My husband or my wife can only
17 get a vacation in a certain month of the year. So we
18 have to find a school that allows us to do that. So I
19 would say that's a pro, and I do understand the author's
20 intent here.

21 Q Are you aware of any surveys about when
22 families take vacations in California?

23 A Not educational surveys, but I certainly have
24 seen surveys done by travel groups reported in USA Today
25 and some travel magazines that I subscribe to that talk

1 work patterns.

2 Do you see that?

3 A I do.

4 Q Do you agree that that's a pro?

5 A I think so, and it really follows from the
6 previous one about staggered vacation schedules.

7 Q Is it more or less a restatement of the prior
8 point --

9 A Yes.

10 Q -- in your opinion?

11 A I think so, yes.

12 Q District incurs fewer capital costs.

13 Do you see that?

14 A I do.

15 Q Do you agree that that's a pro?

16 A It can be, yes.

17 Q And I take it it's a pro in the situation where
18 over-enrollment subsidizes; is that correct?

19 A No, I think it's more when there is a state of
20 over-enrollment. If you have over-enrollment and you
21 don't have the money, then, obviously, you're going to
22 save costs by using a multi-track program.

23 Q Since you're not building a new facility to
24 deal with the over-enrollment, you have a multi-track
25 program in its place?

1 about how families are increasingly taking vacation in
2 all seasons of the year.

3 Q And what have those references been based on?
4 Have they been based on empirical studies?

5 A I think so, yes. One was sponsored by the
6 Hilton Corporation, as I recall.

7 Q Do you recall what that was called?

8 A I don't. I have it in my files somewhere.

9 Q Was it a national study?

10 A I believe so.

11 Q Do you recall what it showed?

12 A Not in detail, no.

13 Q Do you recall whether it showed that most
14 people take vacations over the summer?

15 A I think the intent of the article was to say
16 that families are increasingly taking vacations in all
17 seasons of the year.

18 Q Are you aware of any educational --
19 professional education publications dealing with this
20 issue of when families go on vacation?

21 MS. DAVIS: Asked and answered.

22 THE WITNESS: Not other than what I've already said.

23 BY MR. VILLAGRA:

24 Q The next pro listed is provides calendar
25 options that more closely fit changing life styles and

1 A Well, that's right. That would be the
2 circumstance.

3 Q And I guess what I'm wondering is, but if the
4 over-enrollment doesn't subsidize and you still have to
5 build additional facilities, where have you saved money
6 in capital costs?

7 A Well, you haven't saved them at the point where
8 you have to build more buildings, obviously, but you're
9 assuming, in the way I heard what you were talking
10 about, that there will not be a subsidizing of enrollment
11 and there may be. Because students do come in waves.

12 We have some districts where there's ever-increasing
13 enrollment, but we have had other districts where the
14 over-enrollment is for a very short period of time, like
15 three and four years. So those districts do incur fewer
16 capital costs. They don't have over-capacity.

17 Q Well, LAUSD, for example, has 45 percent of its
18 students, I believe, on multi-track programs.

19 A Hmm-hmm.

20 Q Over-enrollment has not subsided.

21 A That's true.

22 Q So has the district, the L.A. Unified School
23 District, incurred fewer capital costs?

24 A I can't answer that specifically, because I
25 don't know. But L.A. is only one district out of the

1 thousand in California. While it's a very major
2 district, and I don't want to downplay that, we have a
3 lot of other districts that use multi-track year-round
4 education.

5 Q The next pro, the last pro, is savings in
6 insurance costs.

7 Do you see that?

8 A I do.

9 Q Do you understand what that means?

10 A I'm not sure. And I don't want to speculate on
11 that.

12 Q Okay. I want to turn now to the cons.

13 MS. DAVIS: Can I run to the bathroom before we do
14 that?

15 MR. VILLAGRA: Sure.

16 MS. DAVIS: And what time do you want to end?
17 We're at about 4:30 now.

18 MR. VILLAGRA: Can we say about 5:30? Is that okay
19 with everybody?

20 MS. DAVIS: Is that okay with you, Dr. Ballinger?

21 THE WITNESS: Okay.

22 MS. DAVIS: Okay. If I could just take about five
23 minutes.

24 (Brief recess taken.)

25 BY MR. VILLAGRA:

1 A Not all of it. But some of it, yes. But if a
2 union contract or a scheduling, if it's not a union
3 contract, is set up in such a way, I don't see that it
4 has to be overtime.

5 Q And is this necessarily a con at single-track
6 year-round schools?

7 A No.

8 Q Only at multi-track?

9 A It would be multi-track at all if it's a con,
10 yes.

11 Q And you believe that this point is overstated?

12 A I do. I do.

13 Q And are you aware of what contracts districts
14 have in California at multi-track schools for custodial
15 services?

16 A At some, yes.

17 Q Which ones?

18 A Well, Los Angeles Unified, for example, I know
19 has a custodial contract. And for them it may very well
20 be overtime. I can't speak to the contract right now,
21 but that wouldn't be true in all of our multi-track
22 districts.

23 Q The next con is some maintenance requires more
24 than 15 to 20 days to be completed.

25 Do you see that?

1 Q The first con listed is inconclusive evidence
2 that academic achievement improves with year-round
3 education calendar.

4 Do you see that?

5 A I see that.

6 Q Do you agree that that's a con of year-round
7 education?

8 A I don't agree, because I don't agree that it's
9 inconclusive.

10 Q And do you not believe that it's inconclusive
11 based on anything other than the Kneese and Cooper
12 meta-analyses that you've referred to?

13 A And 30 years of experience with the topic.

14 Q So you disagree with this first item?

15 A I do.

16 Q The second con is maintenance must be done at
17 night and on weekends, parentheses, "all overtime."

18 Do you see that?

19 A I do.

20 Q Do you agree that that's a con of year-round
21 education?

22 A I don't agree, because I don't agree that it's
23 all overtime.

24 Q Do you agree that maintenance must be done at
25 night and on weekends?

1 A I see that.

2 Q Do you agree that's a con -- and I assume,
3 again, that's multi-track year-round?

4 A Well, I tell you what my problem is with this
5 particular statement. Some maintenance requires 15 to
6 20 days in traditional calendar schools, single-track
7 year-round schools, multi-track year-round schools. I
8 don't see that it has anything to do with year-round
9 education, per se.

10 Q At all?

11 A At all. You know, there's a lot of
12 maintenance, even in a traditional calendar school, that
13 takes 15 to 20 days to complete.

14 Q If you could put off the maintenance that took
15 15 to 20 days to be completed and you did it over the
16 summer vacation, wouldn't you avoid any interference
17 with the educational --

18 A In a traditional calendar school that's true,
19 yeah.

20 Q So isn't that a way in which this would be a
21 disadvantage at a multi-track year-round school, that
22 the maintenance would be ongoing throughout the school
23 day?

24 A In some situations, it could be, yes.

25 Q The next con says, "At intermediate and high

1 school grade levels, family disruptions may ensue."
 2 Do you see that?
 3 A I do. I see that.
 4 Q Do you agree that that's a con of multi-track
 5 year-round education?
 6 A Again, I would have worded that differently. I
 7 think what the author's intent here is to say that at --
 8 in some situations elementary students may be on one
 9 calendar, secondary students may be on a traditional
 10 calendar, and so that may be a family disruption.
 11 I think probably we could save time here to say
 12 that, certainly, all of these probably have been
 13 arguments that have been offered by opponents of
 14 year-round education, and while I wouldn't necessarily
 15 agree with everything that's listed here, I think the
 16 author's trying to be fair to list those things that he
 17 or she has heard over time or read somewhere.
 18 Q I appreciate that might save time --
 19 A Yes.
 20 Q -- but we're going to go item by item.
 21 MS. DAVIS: Good try. Nice try.
 22 BY MR. VILLAGRA:
 23 Q Do you disagree, then, that this is a con of
 24 year-round education?
 25 A It doesn't have to be, but it may be in some

1 situations.
 2 Q Okay. The next con listed is teachers pack and
 3 move everything after every session.
 4 Do you see that?
 5 A I do.
 6 Q Do you agree that that's a con of multi-track
 7 year-round education?
 8 A It's a problem area to be solved. To that
 9 degree I would agree that probably most people would say
 10 it should be listed as a con.
 11 Q Because it's a problem to be solved?
 12 A Yeah, sure.
 13 Q Do you believe that it is a problem that has
 14 been solved at all multi-track year-round schools in
 15 California?
 16 A In some schools, yes.
 17 Q In some?
 18 A Yes.
 19 Q But not all?
 20 A Well, I don't know that it has been in all, but
 21 I do know that it has been in some.
 22 Q Which ones do you know that it has been solved?
 23 A Well, for example, I've heard of districts that
 24 custodians come in, help with the packing, move the
 25 materials for the teachers, and so on. So teachers have

1 minimal amount to do in the packing and unpacking. But
 2 I can't speak -- you know, how many. I just know it --
 3 I've heard those sessions at conferences.
 4 Q Any districts in California?
 5 A I believe so, yes.
 6 Q How many?
 7 A Well, I know the Oxnard School District bought
 8 movable carts, I guess is the right word, and I believe
 9 there custodians come in and move those for teachers.
 10 So it's certainly a problem to be solved, I'll grant
 11 that.
 12 Q And you'll grant that it's not necessarily
 13 solved at every multi-track school?
 14 A I would grant that.
 15 Q The next con is athletic scheduling and other
 16 activities, parentheses, such as band, are a problem.
 17 Do you agree that that's a con of --
 18 A Can be. Doesn't have to be. For example,
 19 athletics go on by season. So I don't see that as being
 20 a particular problem. Band can be in the scheduling of
 21 it. Doesn't have to be. It can be handled properly.
 22 For example, a teacher at Huntington Park High
 23 School is one who has come to our conferences several
 24 times to talk about how he handled his band situation,
 25 and he used the multi-track schedule to his advantage by

1 using off-sessions as times for rehearsal with small
 2 groups of people to prepare for the large performance
 3 the way a symphony orchestra does it. Symphony
 4 orchestras only rehearse a few times before the
 5 concerts, because individual sections are expected to
 6 come prepared.
 7 In band in most traditional high schools, we do
 8 band all together at the same time. So if the concept
 9 remains, we got to have everybody all the time every day
 10 for a hundred and 80 days all the time at the same time,
 11 it can be a problem. It doesn't have to be a problem.
 12 Q Do you know whether that band teacher at
 13 Huntington Park High School puts in extra hours?
 14 A I don't know.
 15 Q So he may be doing something above and beyond?
 16 A He may be. I don't know.
 17 MS. DAVIS: Calls for speculation.
 18 MR. VILLAGRA: I think the speculation was in the
 19 assumption that he was taking care of the problem.
 20 Q The next problem -- or the next pro -- sorry,
 21 the next con is communication among staff/staff training
 22 is disrupted when 25 percent are absent at all times.
 23 Do you see that?
 24 A I see that.
 25 Q Do you agree that that is a con of multi-track --

1 A Some people would list it as a con.
 2 Q Do you agree?
 3 A Not entirely.
 4 Q Why not?
 5 A Because I don't think staff training always has
 6 to be done when everyone is there.
 7 Q And why do you believe that?
 8 A Because other professions don't require
 9 everyone to be there at the same time. Do all attorneys
 10 have all their in-service sessions at the same time? Do
 11 all doctors have all of their in-service at the same
 12 time? I just -- I don't agree that everyone has to be
 13 there at the same time.
 14 Q Do you see any benefit to conducting
 15 teacher/staff training with all the teachers present?
 16 A Well, the benefit would be only having to do it
 17 once. But other than that, I don't think it's a
 18 requirement that everyone be there for any kind of
 19 communication or staff training.
 20 Q What about in terms of consistency? Is there
 21 any advantage to doing a staff training once?
 22 MS. DAVIS: Vague and ambiguous as to
 23 "consistency."
 24 THE WITNESS: I don't see any particular advantage
 25 of doing it once. You know, do we teach every English

1 class the same way every day? I think that's just not a
 2 requirement.
 3 BY MR. VILLAGRA:
 4 Q Are you aware of teachers who complain about
 5 staff training being disrupted --
 6 A Yes.
 7 Q Is that a prevalent complaint about multi-track
 8 year-round education?
 9 A It's a common complaint. How prevalent it is I
 10 don't know, but it's a common complaint.
 11 Q The next con is transportation may have
 12 increased costs.
 13 Do you see that?
 14 A I do.
 15 Q Do you understand why there would be increased
 16 transportation costs?
 17 A Well, if you have a multi-track program, you
 18 would be running your buses more days of the year. And
 19 even if single-track, that you would be running your
 20 buses at different days when the traditional calendar
 21 schools are on summer vacation.
 22 But my point has always been, why are those
 23 costs always given to the year-round calendar? Why
 24 don't we attribute half of those costs to the
 25 traditional calendar? They could be on a different

1 schedule, and those costs wouldn't be there. So I just
 2 don't accept that that should all be attributed to
 3 year-round education.
 4 Q Do you disagree, then, that this is a con of
 5 year-round education?
 6 A In some situations, people would list that as a
 7 con. I just don't agree that it should be given only to
 8 year-round education.
 9 Q The next con listed is current facilities may
 10 not be designed for year-round education. Storage of
 11 materials is an on-site problem.
 12 Do you see that?
 13 A I see that.
 14 Q Do you agree that that's a con of the
 15 multi-track year-round --
 16 A It can be, yes.
 17 Q Do you agree that it is?
 18 A In some situations, yes.
 19 Q Are you aware of situations where it has been a
 20 problem?
 21 A Yes.
 22 Q Where?
 23 A If you've got a very old building, for example,
 24 and there's a heat problem, for example, and the intent
 25 is to air condition that building for all-year use,

1 particularly in warmer climates of California, then
 2 there may be a problem to be overcome, how do you air
 3 condition an older building that was not designed for
 4 that in the first place. That's just one kind of
 5 example. It can be done, but it takes some work
 6 sometimes.
 7 Q Are you aware of districts in California where
 8 that has become a problem?
 9 A I couldn't specify one, but I'm aware that it
 10 has been.
 11 Q And what about in terms of the storage of
 12 materials? Do you agree that that's a con?
 13 A It can be, yes.
 14 Q Are you aware of instances where it has become
 15 a problem, actual districts?
 16 A Yes. And that's why districts have had to buy
 17 storage carts to move materials out as teachers rotate
 18 in and out.
 19 Q The next con listed is increased placement of
 20 children in combination classes.
 21 Do you see that?
 22 A I do.
 23 Q Do you have an understanding as to what
 24 combination classes are?
 25 A Oh, I do.

1 Q What are they?

2 A That's where you would have at least two grade
3 levels in one classroom.

4 Q And why does multi-track year-round education
5 lead to increased placement of children in combination
6 classes?

7 A I saw that one, and I have a problem with
8 that. I'm not sure that it's true that multi-track
9 increases it over a traditional calendar situation, for
10 example. It may, but I'm not sure that it is that much
11 more prevalent.

12 Q So you disagree?

13 A I disagree that it can -- I agree that it can
14 happen. I'm not -- I'm disagreeing that it's
15 increased. Because I know of combination classes in
16 traditional calendar schools. So I don't know what the
17 prevalence is, percentage-wise, one over the other.

18 Q So you can't say whether multi-tracking leads
19 to increased placement in --

20 A I can't --

21 Q -- combination classes?

22 A -- no.

23 Q Are you aware of any studies that address that
24 issue?

25 A Dr. Mitchell refers to some in his papers that

1 So some districts would say, yes, that is
2 true. Others would say, well, we hire them anyway.
3 That's just one job they have to do.

4 Q And to that extent you disagree?

5 A To that extent I would disagree.

6 Q The next con listed is children jumping tracks
7 causing a possible loss of community identity and
8 scheduling problems.

9 Do you have an understanding as to what that
10 refers to?

11 A I do not.

12 Q Do you believe that jumping tracks could refer
13 to what's known as cross-tracking?

14 MS. DAVIS: Calls for speculation.

15 THE WITNESS: I don't know what the author has in
16 mind here.

17 BY MR. VILLAGRA:

18 Q The next con listed is administrative costs to
19 cover principal's vacation.

20 Do you agree that that's a con of the
21 multi-track year-round programs?

22 A I suppose it can be in a few instances. Most
23 of our multi-track schools are so large that there's an
24 assistant principal, and so I don't know what the author
25 has in mind here, to tell you the truth.

1 have been done there at UC Riverside, but I -- I'm not
2 familiar with those papers. So I don't know of any such
3 studies.

4 Q The next con listed is increased administrative
5 costs for designing schedules.

6 Do you see that?

7 A I do.

8 Q Do you agree that that's a con of --

9 A It can be, yes.

10 Q This one, though, isn't phrased in terms of
11 "may" or "can be."

12 Do you agree that there are increased
13 administrative costs for designing schedules in
14 multi-track year-round schools?

15 A There can be. I'll tell you why I'm hesitating
16 on that. Some districts will say it's the role of the
17 assistant principal and the counselors to design a
18 schedule. That's what we pay them to do. So they don't
19 see it as an increased cost.

20 Other districts will attribute it to a
21 different situation. They'll say, yes, it takes so much
22 time to do this. Therefore, this percentage of their
23 time has to be allocated to the administrative costs for
24 designing schedules. It's more of an accounting
25 situation.

1 Q Do you believe that it is the practice to hire
2 somebody to cover the principal's vacation?

3 A I don't think that's a common practice, but I
4 won't say that it's never done.

5 Q So you're not aware one way or the other?

6 A No.

7 Q The next con listed is not recommended that the
8 educational calendar be facilities-based.

9 Do you have an understanding as to what that
10 refers to?

11 A I'm not sure.

12 Q Do you know what it would mean for a calendar
13 to be facilities-based?

14 A I would have to speculate on what the author
15 had in mind here when writing it as it is. And I won't
16 speculate at this point.

17 Q I won't ask you to.

18 The last con listed is may be more difficult to
19 accommodate legislated school reform such as extended
20 school year and mandatory summer school.

21 Do you see that?

22 A I see that.

23 Q Do you agree that that's a con of multi-track
24 year-round education?

25 A It may be in some situations. It doesn't

1 always have to be.
 2 Q In what situations would it be?
 3 A Well, if you have a Concept 6 school where it
 4 is very heavily impacted and the school year's at a
 5 hundred and 63 days, it may be more difficult to extend
 6 the school year throughout the state of California as
 7 things currently stand.
 8 But we've already found out a way to have the
 9 equivalent minutes instruction, so that a
 10 hundred-and-63-day school year is the instructional
 11 minutes equivalent of a hundred and 80 days. If the
 12 State legislature were to, for example, extend the
 13 school year to a hundred and 85 and we still had the
 14 severely-impacted schools with over-enrollment, I would
 15 presume those additional five days could be attributed
 16 to minutes the same as we're doing right now with the
 17 hundred-and-80-day year.
 18 So when the author says may be more difficult,
 19 the author's not saying that it's impossible. It's just
 20 more difficult.
 21 Q Do you believe that it is impossible at Concept
 22 6 schools to extend the number of days on the school
 23 year beyond a hundred and 63?
 24 A Actual days?
 25 Q Yes.

1 A If we're talking about classes on the campus,
 2 yes. But if we say that some classes or some credit
 3 programs can be held off campus, then you can extend
 4 that school year indefinitely.
 5 MR. VILLAGRA: Can we go off the record?
 6 (Discussion off the record)
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 9 I, CHARLES BALLINGER, do hereby declare
 10 under penalty of perjury that I have read the foregoing
 11 transcript; that I have made such corrections as noted
 12 herein, in ink, initialed by me, or attached hereto;
 13 that my testimony as contained herein, as corrected, is
 14 true and correct.
 15 EXECUTED this ____ day of _____,
 16 _____, at _____, _____.
 17
 18
 19 _____
 20 CHARLES BALLINGER
 21 Volume 1
 22
 23
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 2
 3
 4 I, the undersigned, a Certified Shorthand
 5 Reporter of the State of California, do hereby certify:
 6 That the foregoing proceedings were taken
 7 before me at the time and place herein set forth; that
 8 any witnesses in the foregoing proceedings, prior to
 9 testifying, were placed under oath; that a verbatim
 10 record of the proceedings was made by me using machine
 11 shorthand, which was thereafter transcribed under my
 12 direction; further, that the foregoing is an accurate
 13 transcription thereof.
 14 I further certify that I am neither financially
 15 interested in the action nor a relative or employee of
 16 any attorney of any of the parties.
 17 IN WITNESS WHEREOF, I have this date subscribed
 18 my name.
 19
 20
 21 Dated: _____
 22
 23 _____
 24 SHERRYL DOBSON
 25 CSR No. 5713