

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
Tuesday, June 24, 2003
Volume 2

Reported by:
SHERRYL DOBSON, RPR

CSR No. 5713

JOB No. 43688

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 2, taken on behalf of
14 Plaintiffs, at 555 West 5th Street,
15 35th Floor, Los Angeles, California,
16 beginning at 8:59 a.m. and ending at
17 5:01 p.m. on Tuesday, June 24, 2003,
18 before SHERRYL DOBSON, Certified
19 Shorthand Reporter No. 5713.
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23
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25

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1 Los Angeles, California, Tuesday, June 24, 2003
2 8:59 a.m. - 5:01 p.m.

3
4 CHARLES BALLINGER,
5 having been previously duly sworn, was examined and
6 testified further as follows:

7
8 EXAMINATION (Resumed)

9 MR. VILLAGRA: When we left off yesterday we were
10 at Exhibit 7, and I want to mark now as Exhibit 8
11 another copy of the year-round program guide. And I
12 hope this is more legible than the one we were looking
13 at yesterday. So please take a look at it.

14 (Plaintiff's Exhibit 8 was marked for
15 identification by the court reporter.)

16 THE WITNESS: I don't believe this is the same
17 copy as yesterday, because there were two pages of
18 script yesterday.

19 MS. DAVIS: Yeah. Is this a different document?

20 MR. VILLAGRA: It's the year-round program
21 education guide. It was just printed out on a different
22 printer.

23 THE WITNESS: It's not the same document as
24 yesterday. The second page yesterday, you remember, had
25 the --

1 MS. DAVIS: I've got it. Yeah, it's not the same
2 one. I mean, it's fine if it's not, but just so we're
3 all in agreement that it's not the same document.

4 THE WITNESS: Yesterday's had this half page.

5 MR. VILLAGRA: It's not an important point. If you
6 look at the text, it's actually the same exact text.

7 MS. DAVIS: No, it's not the same text. I see a
8 paragraph on --

9 MR. DECAROULIS: Page 2 is missing.

10 MS. DAVIS: Exactly. It goes from Page 1 to Page
11 3. That's fine. We all have Page 2 in Exhibit 7. So
12 okay. There we go.

13 BY MR. VILLAGRA:

14 Q Have you had a chance to look at it?

15 A This morning? I just now received it. I'm
16 looking at it.

17 Q Does it appear to be to you the California
18 Department of Education School Facilities Planning
19 Division Year-Round Education Program Guide?

20 A It appears to be, yes.

21 Q Do you have any reason to believe that it's
22 not?

23 A I don't at this point.

24 Q If I could turn your attention to Page 4, and
25 they are marked at the top in the upper right-hand

1 corner. On the left-hand column there's a heading for
2 advantages.

3 Do you see that?

4 A I do.

5 Q And the first advantage listed is increased
6 school capacity by --

7 A Yes.

8 Q -- and if you move over to Concept 6, it says
9 33 percent.

10 Now, do you believe -- do you agree that that's
11 an advantage of the Concept 6 calendar, that it can
12 increase school capacity by 33 percent?

13 A Well, first place, that's incorrect. By all
14 calculations, it's 50 percent rather than 33 percent for
15 Concept 6 and modified Concept 6.

16 Q Thanks for that clarification.

17 The next advantage listed is provides for a
18 hundred and 80 days of instruction, and that is also --
19 that's checked for Concept 6.

20 Do you agree that that's an advantage of the
21 Concept 6 calendar?

22 A Well, that's incorrect as well. Currently,
23 Concept 6 and modified Concept 6 has a hundred and 63
24 days. So their chart is incorrect.

25 Q So that's not an advantage of Concept 6?

1 A Not to have a hundred and 80 days, yes.

2 MS. DAVIS: Objection. I think that
3 mischaracterizes his testimony. He's saying that's not
4 accurate. I don't know if he's saying that's not an
5 advantage.

6 THE WITNESS: Correct.

7 And I want to be clear too. If we're talking
8 about days, it would be a hundred and 63 days, not the
9 asterisk as here. But the hundred and 63 days is the
10 equivalent minutes of instruction.

11 BY MR. VILLAGRA:

12 Q That's fine. I think the record is clear from
13 yesterday on that.

14 A Okay.

15 Q And I thank you for the clarification.

16 But this is listed as an advantage of the
17 Concept 6 calendar. It's checked for the Concept 6
18 calendar, and you're telling me that it does not provide
19 for a hundred and 80 days of instruction; therefore,
20 what I want to know is, is this not an advantage of the
21 Concept 6 calendar?

22 A I don't know whether I really want to
23 characterize it as advantage/disadvantage. It just is.

24 Q Okay. The next advantage listed is breaks up
25 three-month traditional summer into two or more periods,

1 enhancing continuity and pacing of instruction.
 2 Do you see that?
 3 A I see that.
 4 Q And that is checked for the Concept 6 calendar.
 5 Do you see that?
 6 A I do.
 7 Q Do you agree that that's an advantage of the
 8 Concept 6 calendar?
 9 A I would agree with that, yes.
 10 Q And why would you agree that that's an
 11 advantage of the Concept 6 calendar?
 12 A I think whenever reduced -- when we reduce that
 13 long summer of forgetting, we actually enhance the
 14 continuity and pacing of instruction. So I would -- I
 15 would concur with that asterisk.
 16 Q The next advantage listed is provides multiple
 17 vacation options for students and staff, and that is
 18 also checked for Concept 6.
 19 Do you see that?
 20 A I do. And I would agree with that. And I
 21 don't know why there aren't asterisks for single-track
 22 and two tracks as well, on both of those, by the way.
 23 But I didn't put this chart together.
 24 Q And why do you believe that's an advantage of
 25 Concept 6?

1 A Well, I think for those who like to do things
 2 in seasons other than just summer, that would be an
 3 advantage.
 4 Q We talked yesterday about opportunities for
 5 salary enhancement. So I will skip that.
 6 The next advantage listed is provides for
 7 common three- to four-week summer vacation for all
 8 students and staff, and that is not checked for Concept
 9 6.
 10 Do you see that?
 11 A I do see that. And what is not spoken here is
 12 what's meant by summer vacation. In California, for
 13 example, summer can be June, July, August -- September
 14 is easily a summer month in California. So if summer
 15 vacation is just the common three months of June, July
 16 and August, then this would not be asterisked for the
 17 multi-tracks.
 18 Q But if summer were construed expansively, do
 19 you believe that it should be --
 20 A It would be -- I would asterisk if I made a
 21 note here that summer vacation stretched from June
 22 through September.
 23 Q Okay.
 24 A Because all calendars, including Concept 6,
 25 then, would have -- including Track B on Concept 6,

1 would have a summer vacation.
 2 Q The next advantage listed says, "Offers maximum
 3 opportunity for course offerings in a departmentalized
 4 program."
 5 Do you see that?
 6 A I do.
 7 Q Do you understand what that means?
 8 MS. DAVIS: Calls for speculation.
 9 BY MR. VILLAGRA:
 10 Q Do you have an understanding as to what's
 11 referred to?
 12 A I'm not sure. I'm not clear what the author
 13 had in mind here. So it would be speculative.
 14 Q The next advantage listed is provided space and
 15 funding allow, students may attend all four quarters.
 16 Do you see that?
 17 A I do see that.
 18 Q And that is not checked for Concept 6.
 19 A I do see that.
 20 Q Do you agree that that is not an advantage
 21 provided by the Concept 6 calendar?
 22 A Again, I would have to speculate what the
 23 author had in mind. For example, in Concept 6, though
 24 Concept 6 has six parts to the year, students attend
 25 four of those parts. So indeed, in Concept 6,

1 instructionally, it's a quarter program. So I would --
 2 I would have to speculate what the author had in mind.
 3 I could, perhaps, check Concept 6 if I knew
 4 what the author had in mind.
 5 Q Okay. The next advantage listed is retains a
 6 calendar which accommodates two semesters or four
 7 quarters.
 8 Do you see that?
 9 A I do.
 10 Q And that is not checked for Concept 6.
 11 A I do see that. And I would go back to my
 12 previous answer, which is, instructionally, since
 13 students attend four of the six periods, that could be
 14 considered, instructionally, a quarter system. But
 15 again, I would have to confer with the author, what
 16 really was meant here.
 17 Q The next advantage listed is requires fewer
 18 room changes, including startups and closing.
 19 Do you see that?
 20 A I do see that.
 21 Q And Concept 6 is checked there.
 22 A I do see that.
 23 Q Do you agree that that's an advantage offered
 24 by the Concept 6 calendar?
 25 MS. DAVIS: I'm just going to say calls for

1 speculation, to the extent that, you know, Dr. Ballinger
 2 may be guessing at what that means.
 3 BY MR. VILLAGRA:
 4 Q Do you have an understanding as to what that
 5 means?
 6 A Well, exactly so, what the attorney says.
 7 Because --
 8 Q If you don't have an understanding what's
 9 referred to, that's okay.
 10 A I don't have an understanding. My question
 11 would really be to the author, compared to what? And we
 12 don't have that information.
 13 Q Okay. How many room changes occur over the
 14 course of a school year on a traditional calendar?
 15 A Depends on whether we're talking elementary,
 16 middle, high. At the elementary level, if the teacher
 17 is assigned to one room and is assigned to that room all
 18 year, there may be no changes. At the high school
 19 level, for example, a teacher may be changing rooms at
 20 the end of a semester. So again, there's some
 21 variables, and I can't give you a specific answer.
 22 Q On Track A on the Concept 6 calendar, how many
 23 room changes would you expect?
 24 A There could be -- well, back up. When you say
 25 room changes, are you talking about in and out as being

1 one or two?
 2 Q When you answered for traditional calendar
 3 elementary schools, how were you considering the in and
 4 out?
 5 A One.
 6 Q One, okay. Counting in and out as one.
 7 A If we speak, then, of Concept 6, ordinarily,
 8 there would be two, then, in that case.
 9 Q And on Track B?
 10 A Track B, again, ordinarily, it would be two.
 11 It might be more, depending on how the program's
 12 organized.
 13 Q And on Track C?
 14 A Same. It would be, ordinarily, two.
 15 Q Can you diagram for me how Track B works, how
 16 the instructional blocks are divided?
 17 A I can, and I did for you in my paper.
 18 MS. DAVIS: Do you want to get out his paper?
 19 MR. VILLAGRA: No, actually, just for this purpose.
 20 Q If you could diagram --
 21 MS. DAVIS: I'm going to object that this isn't his
 22 paper. I mean, go ahead, but you know, he's already
 23 done this.
 24 THE WITNESS: I don't know why I should do that
 25 when it's in my paper very clearly.

1 BY MR. VILLAGRA:
 2 Q Okay. Would you mind doing it? There's no
 3 reason for not doing it.
 4 MS. DAVIS: You can go ahead and do it. I mean,
 5 our instruction is that it's in your document. There's
 6 no reason for --
 7 THE WITNESS: I'm going to refer to my document,
 8 because I'm not much of an artist. And I know you're
 9 probably driving at the break there between years.
 10 (Witness reviews documents.)
 11 MS. DAVIS: Do you have your paper?
 12 THE WITNESS: I think I do somewhere. Here it is.
 13 This is Track B in my figure.
 14 MS. DAVIS: I'm just going to say he's pointing at
 15 Page 8 of his expert report.
 16 BY MR. VILLAGRA:
 17 Q Well, Mr. Ballinger, as you're pointing to it,
 18 wouldn't there be three room changes on Track B?
 19 A Well, I said ordinarily. It depends on this
 20 particular part right here. There may be three, but not
 21 necessarily. If, for example, you've got a chemistry
 22 teacher here, that chemistry teacher may be assigned to
 23 the same room throughout. For that teacher there may
 24 not be the kinds of changes there could be for others.
 25 So if you remember, with my answer previously

1 on Track B, I see from your notes there on the paper you
 2 did note that I said, ordinarily, two; there may be
 3 more.
 4 Q What about at the elementary level? Would you
 5 expect three room changes?
 6 A Again, it depends on how the principal, the
 7 staff, have organized that. The teacher may be in the
 8 same room to start this period -- even though the
 9 students may change, the teacher may still have the same
 10 room. Depends on how it's organized.
 11 Q But isn't the teacher moving in in July, moving
 12 out in August, moving --
 13 A That's one.
 14 Q Okay.
 15 A To be consistent with what we said before.
 16 Q Sure.
 17 Moving in in November, moving out in March --
 18 that's two -- and moving in in May and moving out in
 19 June?
 20 A There's a -- in this situation, because you've
 21 got a carry-over into the next year, it is possible to
 22 have three there, yes.
 23 Q Okay. The next advantage listed is allows
 24 teachers and students to retain the same classrooms all
 25 year.

1 Do you see that?
 2 A That's correct, yes.
 3 Q And that is not checked as an advantage of
 4 Concept 6.
 5 Do you see that?
 6 A I see that.
 7 Q Do you agree that that is not an advantage
 8 afforded by the Concept 6 calendar?
 9 A Most of our multi-tracks have moving in and out
 10 of various rooms. So I would accept that.
 11 Q The next advantage listed is permits the
 12 addition of school days beyond the required
 13 hundred-and-80-day school year.
 14 Do you see that?
 15 A I do see that.
 16 Q And that is not checked as an advantage of
 17 Concept 6.
 18 Do you see that?
 19 A I do see that.
 20 Q Do you agree that that is not an advantage
 21 afforded by the Concept 6 calendar?
 22 A If the instructional program is thought of as
 23 only within the four walls of the schoolhouse, then it
 24 would -- that is correct, could not have a hundred and
 25 80 days. There could be additional school days outside

1 the four walls of the schoolhouse.
 2 Q So if you were off site, you could extend the
 3 school year?
 4 A You could, yes.
 5 Q To your knowledge, do any multi-track
 6 year-round schools in California provide for off-site
 7 instruction?
 8 A Yes. It could be other school buildings in the
 9 district. So that would be off site. Do they give
 10 credit courses elsewhere? Yes, in the sense that there
 11 may be some science camps run by the school districts or
 12 a County office.
 13 But certainly, in San Diego County, where I
 14 live, one school district buses all intersession classes
 15 to other buildings, so that the intersession programs
 16 are concentrated at one site, even though the students
 17 may come from various sites.
 18 Q What school district is that?
 19 A Well, it was South Bay Union School District.
 20 I think that program may have been cut back with the
 21 budgetary shortfall, but I know for several years that
 22 district offered that program. They operated both
 23 multi-track and single-track schools, and when the
 24 single-track schools were on vacation, that's when the
 25 multi-track schools, as well as the empty single-track

1 schools, had all of that intersession program at that
 2 one site.
 3 Q During what years do you believe that South Bay
 4 ran this program?
 5 A I couldn't give you the exact years now, but it
 6 was several years.
 7 Q Do you believe the program has now been
 8 terminated?
 9 A I don't know whether it's been fully
 10 terminated. It may have been cut back.
 11 Q Do you know what courses were offered during
 12 intersession?
 13 A It was an elementary district, so probably they
 14 were generalized courses. Mostly reading and math, I
 15 would suspect.
 16 Q Are you aware of any other districts?
 17 A I couldn't name one for you right at the
 18 moment.
 19 Q Now, looking at the heading "Disadvantages," it
 20 says, "Requires class rotation or teacher rover."
 21 Do you see that?
 22 A I do.
 23 Q Do you understand -- do you have an
 24 understanding of what the term "class rotation" means?
 25 A I do.

1 Q What do you understand it to mean?
 2 A In multi-track programs, as one group moves out
 3 of a room to go on vacation, another group, which would
 4 include students and teachers, moves into that room. So
 5 that's a rotation system.
 6 Q Do you have an understanding of what the term
 7 "teacher rover" means?
 8 A I do.
 9 Q What does it mean?
 10 A The rover system is where a class retains its
 11 classroom all year, but as that class and teacher --
 12 that group of class and teacher leaves for vacation
 13 periods, another group with teacher and students move
 14 into that classroom during the vacation period. But as
 15 the first group returns from vacation, it moves back
 16 into the same room that it vacated for the vacation
 17 period, and so that teacher would not be moving as often
 18 as we were talking about a while ago.
 19 So it's -- depends on how a school organizes
 20 itself, the number of in-and-out moves that would be
 21 occurring within a year.
 22 Q But would the roving teacher make more
 23 classroom moves than a non-roving teacher?
 24 A Oh, sure, and would make more than the kind of
 25 discussion we had a while ago.

1 Q And in reading this chart, this is checked as a
2 disadvantage of Concept 6.
3 Do you see that?
4 A I do see that.
5 Q Do you agree that this is a disadvantage of the
6 Concept 6 calendar?
7 A Yes. If we're comparing with a traditional
8 schedule, where you do not have the same kind of moving
9 in and out.
10 Q We talked about startups and endings.
11 I move to the third disadvantage, it says,
12 "Requires additional storage space for teachers and
13 students," and that is checked for Concept 6.
14 Do you see that?
15 A I do see that.
16 Q Do you agree that that's a disadvantage of the
17 Concept 6 calendar?
18 MS. DAVIS: I'm just going to object. Vague and
19 ambiguous as to "disadvantage."
20 I'm not sure -- disadvantage as to academic
21 achievement? Disadvantage as to teachers or
22 administration?
23 THE WITNESS: I agree with the statement requires
24 additional storage space.
25 BY MR. VILLAGRA:

1 Q Do you agree that that's a disadvantage?
2 A Again, compared to what? But it -- some people
3 might consider it a disadvantage, yes.
4 Q Do you?
5 A I don't, really, because I think that's one of
6 those problems can be solved. It's a solvable problem.
7 Q The next disadvantage listed says, "Requires
8 calendar which does not coincide with the traditional
9 school year calendar." And that is checked for Concept
10 6.
11 Do you see that?
12 A I see that, but I see that's checked for every
13 single calendar.
14 Q Do you agree that that is a disadvantage of the
15 Concept 6 calendar?
16 MS. DAVIS: Same objection.
17 THE WITNESS: I don't agree that it's a
18 disadvantage. I think that's wonderful that it's not
19 the same as traditional calendar, because I think the
20 traditional calendar is harmful to students.
21 BY MR. VILLAGRA:
22 Q The next disadvantage listed says, "Additional
23 demands placed upon cafeteria, custodial, maintenance,
24 instructional support and administrative services."
25 Do you see that?

1 A I see that.
2 Q And that is checked for Concept 6?
3 A I see that.
4 Q Do you agree that that is a disadvantage of the
5 Concept 6 calendar?
6 MS. DAVIS: Same objection.
7 THE WITNESS: Yes. And I would have to say, again,
8 it depends on what we're comparing it to. If you handle
9 more students, obviously, there are going to be
10 additional demands on the common areas and common
11 services. But that goes with the larger number of
12 pupils being attended to.
13 So I just see that as a natural situation that
14 occurs because of using a multi-track calendar. I don't
15 see it as a disadvantage. I don't -- I just see it
16 nothing other than what is.
17 BY MR. VILLAGRA:
18 Q Just sort of as a cost of doing business?
19 A That's right. That's right.
20 Q The next disadvantage listed is student testing
21 schedules will -- and it says, "defer from track to
22 track." I assume it should be "differ." And it's
23 checked for Concept 6.
24 Do you see that?
25 A I see that, yes.

1 Q Do you agree that that's a disadvantage of the
2 Concept 6 calendar?
3 MS. DAVIS: Same objection.
4 THE WITNESS: Again, it has to be compared to
5 what. For example, depends on when the test is given
6 during the year. In some cases, year-round students
7 might have an advantage because they'd have more days.
8 At other times of the year, it might be a disadvantage,
9 because they might have fewer days of instruction. So
10 it depends on when the test is given, what the purpose
11 of the testing is. So again, it depends on what we're
12 comparing it to.
13 BY MR. VILLAGRA:
14 Q You mentioned that in some cases -- and I
15 assume with respect to certain tests -- your contention
16 is that year-round students would have more days of
17 instruction before they took the test.
18 A Compared with traditional calendar, yes.
19 Q What tests would those be?
20 A Well, if you do a pretest at the beginning of
21 the year, for example, or close to the beginning of the
22 year, if year-round students began the school year in
23 July, for example, and tests were given early, let's
24 say, late August to see how students were doing,
25 year-round students would already have, depending on

1 when the test was given, three, four, even five weeks of
2 schooling.

3 On the other hand, if that test were given soon
4 after traditional calendar students returned in
5 September, let's say, early September, and the tests
6 were given a week or two after they returned, they
7 wouldn't have as many days of instruction.

8 So you know, depends on what the test is, why
9 it was given, when it was given, that sort of thing.

10 Q Are you familiar with the AP exams?

11 A Advanced placement?

12 Q Yes.

13 A I'm familiar with them.

14 Q When are they offered?

15 A It would be towards the end of the school year
16 for both traditional and year-round students.

17 Q In terms of students interested in taking the
18 AP exam, would students at a Concept 6 school on Track A
19 have more or fewer days before they took the test than a
20 student at a traditional calendar school?

21 A I'm not sure I can answer that specifically.
22 I'd have to get out an actual calendar and count. But
23 it wouldn't necessarily be a disadvantage for them.
24 Depends on when their intersession falls. If they have
25 a clear intersession before the testing, they can focus

1 Q Both of them have told you that?

2 A My recollection says yes.

3 Q Are you familiar with the Stanford 9
4 achievement test?

5 A A little bit, yes.

6 Q Do you know when that is offered?

7 A I don't know the exact date.

8 Q Do you believe that students at Concept 6
9 schools have more or less time before they take the test
10 than students at traditional calendar schools?

11 MS. DAVIS: You mean in school days?

12 MR. VILLAGRA: Yes. Thanks.

13 THE WITNESS: Some of the tracks, students may have
14 fewer days than traditional calendar schools.

15 BY MR. VILLAGRA:

16 Q Relative to the Stanford 9, then, do you
17 believe that that is a disadvantage of the Concept 6
18 calendar relative to the traditional calendar?

19 A It could be. It could be. But I believe -- I
20 believe SAT 9 has a factor in it where the number of
21 days of instruction are to be noted, and that is
22 factored in.

23 Q What do you mean by factored in?

24 A I don't know how they do it. So I can't go
25 further. But it's my understanding that there is to be

1 simply on preparing for that AP exam.

2 Q So do you believe that a student alone focusing
3 on the AP exam is as effective as a student in a
4 classroom with a teacher?

5 A Depends on the student, depends on the
6 situation. Some students do better working alone,
7 others do better in a group situation. And I do know
8 some of the high schools here in Los Angeles have had AP
9 class preparation sessions for those students in a group
10 during the intersession period, even though the student
11 were not in school.

12 Q What schools are you aware of that do that?

13 A Well, I believe Garfield said they've done some
14 of that sort of thing in the past. I don't know whether
15 other high schools have done that or not.

16 Q Is Garfield the only one you're familiar with?

17 A That's one I've heard about, yes.

18 Q And how are you familiar with Garfield doing
19 that?

20 A Well, I've had several conversations with
21 principals at that school. Maria Tostado, and after
22 that Tony Garcia.

23 Q And they have both told you about programs that
24 they run during intersession for AP prep?

25 A I've heard of that, yes.

1 a notation of the number of days of instruction the
2 students have had.

3 Q Do you believe that somehow the number of days
4 is statistically controlled for?

5 A I'm not sure just how they do that.

6 Q The next disadvantage listed is graduations,
7 parent conference days, annual music, athletic and other
8 events must be given specific accommodations.

9 Do you see that?

10 A I see that.

11 Q And that is checked for the Concept 6 calendar?

12 A I do.

13 Q Do you agree that that is a disadvantage of the
14 Concept 6 calendar?

15 MS. DAVIS: Same objection.

16 THE WITNESS: I don't know what the author means,
17 must be given specific accommodations. So I'm only
18 speculating why the author has checked this across --
19 for many of the calendars. So I just don't know what
20 the author has in mind here.

21 BY MR. VILLAGRA:

22 Q The next disadvantage listed says, "There is no
23 common vacation break of longer than three weeks for all
24 staff and students."

25 Do you see that?

1 A I do see that.
 2 Q And that is checked for the Concept 6 calendar?
 3 A I see that.
 4 Q Do you agree that that's a disadvantage of the
 5 Concept 6 calendar?
 6 MS. DAVIS: Same objection. Calls for speculation.
 7 THE WITNESS: That's a truism. Whether that's a
 8 disadvantage, I'd have to guess what the author had in
 9 mind.
 10 BY MR. VILLAGRA:
 11 Q What do you mean by it's a truism?
 12 A It is true that there's no common three-weeks
 13 break for all staff and students at the same time on a
 14 Concept 6 calendar.
 15 Q And you disagree that that is necessarily a
 16 disadvantage?
 17 A I disagree that that's a disadvantage. And
 18 that goes back to my comment yesterday that I don't
 19 agree that all in-service has to be done just at one
 20 time.
 21 Q The next disadvantage listed says, "Limits the
 22 school year to approximately a hundred and 63 days,
 23 which are lengthened to meet State requirements for
 24 cumulative annual minutes of instruction."
 25 Do you see that?

1 A I see that.
 2 Q And that is checked for the Concept 6 calendar?
 3 A I see that.
 4 Q Do you agree that that is a disadvantage of the
 5 Concept 6 calendar?
 6 MS. DAVIS: Same objection. Calls for speculation.
 7 THE WITNESS: I just simply would agree that that's
 8 what is. And I don't see that as a disadvantage.
 9 I just have to note now. I see this was done
 10 by La Canada Unified School District, which is not a
 11 year-round school district.
 12 BY MR. VILLAGRA:
 13 Q Why did you have to note that?
 14 A It's interesting that -- you know, I had some
 15 problems even understanding why some of these things
 16 were checked. But I see this was set up by
 17 non-year-round people.
 18 Q What do you mean by non-year-round people?
 19 A Well, it's a district that is not involved with
 20 year-round education. So they may see things as being
 21 advantage and disadvantage other than what some of us
 22 might who are heavily involved with year-round.
 23 Q So staff at a district that does not implement
 24 the year-round calendar would not necessarily see things
 25 the same way as you would?

1 A That's possible, sure.
 2 Q Is that what you believe has occurred here?
 3 A Again, I would have to speculate. I just -- I
 4 just noted that for the record.
 5 Go ahead.
 6 Q And what's the significance of noting that for
 7 the record?
 8 MS. DAVIS: Asked and answered.
 9 THE WITNESS: Again, I would have to say that
 10 sometimes people see things as a disadvantage when
 11 they've not experienced year-round that some of us who
 12 have experienced would see in a different way.
 13 BY MR. VILLAGRA:
 14 Q Have you ever seen the La Canada Unified School
 15 District feasibility study?
 16 A I have not.
 17 Q Do you have any way of knowing whether the
 18 experience of schools on multi-track year-round
 19 calendars was considered?
 20 A I don't know.
 21 Even note it says Osborne Architects 1998.
 22 Q For purposes of this case, in what area or
 23 areas do you claim to be an expert?
 24 A Well, I'm generally knowledgeable about
 25 year-round education, the concept, its implementation.

1 I have some knowledge of its extent and breadth across
 2 the United States, as well as here in California. I do
 3 know something about the way school districts have moved
 4 into or out of year-round education. So I guess I see
 5 myself as a general source person on the topic of
 6 year-round education.
 7 Q Anything else?
 8 A Not right now.
 9 Q And how did you acquire your expertise, as
 10 you've described it?
 11 A By having been with it for a long number of
 12 years, from 1971 until the present time.
 13 Q What do you perceive as your role in this
 14 case?
 15 A To be an expert witness for the State of
 16 California.
 17 Q What else?
 18 A To provide general information about
 19 multi-track year-round education and year-round
 20 education in general.
 21 Q Anything else?
 22 A Not at this time.
 23 Q And what do you understand to be the purpose of
 24 an expert witness?
 25 A To provide information about the topic at

1 hand. And there's a presumption that the expert witness
 2 has more information about the topic than others might
 3 have.
 4 Q Anything else?
 5 A That's all at this time.
 6 Q What was your specific assignment in this case?
 7 A What do you mean by assignment?
 8 Q Were you assigned a task by the State of
 9 California to perform?
 10 A I was assigned a task. I was asked to write a
 11 paper, giving my best judgment and information about the
 12 status of year-round education in general, and to
 13 respond to papers given by expert witnesses for the
 14 plaintiffs.
 15 Q Anything else?
 16 A Not at this point.
 17 Q Have you completed your assignment?
 18 A Not until at least the deposition is over, I
 19 presume. But I've completed my assignment until today.
 20 Q Do you intend to do any further work in this
 21 case outside of this deposition?
 22 MS. DAVIS: Calls for speculation.
 23 THE WITNESS: Depends on whether I'm asked to do
 24 more.
 25 BY MR. VILLAGRA:

1 Q Sitting here today, do you expect to do any
 2 further work in this case?
 3 A I have no idea.
 4 Q Do you expect to prepare an additional written
 5 report?
 6 A I do not know at this point.
 7 Q Did you request any documents from the State of
 8 California to prepare your -- strike that -- to carry
 9 out your assignment?
 10 A What do you mean by the State of California?
 11 Q I believe you said you were retained by the
 12 State of California.
 13 A That's correct.
 14 Q Did you receive any documents from the State of
 15 California?
 16 A I received documents from the State, yes.
 17 Q Did you request any documents from the State of
 18 California?
 19 A Yes, I think I said I needed to see various
 20 things that were already a part of the record.
 21 Q What did you ask to see?
 22 A Well, for example, when I heard that there were
 23 papers that had been prepared by expert witnesses for
 24 the plaintiffs, I asked for a copy of those papers, if
 25 those could be provided, and those were provided.

1 Q Which papers are you referring to?
 2 A I'm speaking of the paper that was prepared by
 3 Dr. Ross Mitchell and Dr. Jeanne Oakes.
 4 Q Do you recall the title of the paper by Jeanne
 5 Oakes?
 6 A (Witness reviews documents.)
 7 MS. DAVIS: He just wants to know if you remember
 8 it offhand.
 9 THE WITNESS: Oh, I do remember.
 10 BY MR. VILLAGRA:
 11 Q What was it?
 12 A If you asked for the specific title, I'll look
 13 and see what it was.
 14 Q She wrote several reports. I just want to make
 15 sure -- did you only see one report --
 16 A I only saw --
 17 Q -- by Jeanne Oakes?
 18 A -- the report that she had to do on year-round
 19 education, multi-track. More specifically, Concept 6,
 20 yes.
 21 Q Outside of those two papers by the expert
 22 witnesses, did you request any other documents from the
 23 State?
 24 A I said any other documents that would be
 25 helpful in my preparation -- in the preparation for my

1 report, I'd be glad to see, yes.
 2 Q So you left it to the discretion of the State
 3 of California?
 4 A I did.
 5 Q Do you recall what those other documents were?
 6 A There were a lot of them.
 7 Q Did you review any declarations submitted in
 8 this case?
 9 A What do you mean by declarations?
 10 Q Did you see anything entitled "Declaration by"
 11 or "Declaration of"?
 12 A I may have, but I don't remember.
 13 Q Do you know what an affidavit is?
 14 A I know what an affidavit is.
 15 Q Did you see any affidavits --
 16 A I don't believe I -- I don't recall any
 17 specific affidavits, no.
 18 Q Do you recall any specific declarations you may
 19 have seen?
 20 A As I just said, I may have, but I don't recall.
 21 Q Are you familiar with the State's IIUSP program?
 22 A I saw the terminology. I'm not familiar with
 23 it.
 24 Q Did you see any documents that appeared to be
 25 IIUSP documents?

1 A I did see that -- well, I saw that in some of
 2 the papers, but I do not recall where I saw that.
 3 Q Did you see anything that looked like an IIUSP
 4 remediation plan?
 5 A I don't recall anything like that.
 6 Q Did you review any transcripts of depositions
 7 in this case?
 8 A What do you mean by transcripts?
 9 Q At the conclusion of your deposition, a
 10 transcript will be prepared and submitted to you. All
 11 of the plaintiff experts, I believe, to date have been
 12 deposed.
 13 Have you seen transcripts of the depositions --
 14 A I have.
 15 Q Of who?
 16 A Of Drs. Mitchell and Oakes.
 17 Q Did you see any other transcripts of deposition
 18 other than those?
 19 A No.
 20 Q Do you believe you had the complete transcript
 21 of deposition for Dr. Mitchell?
 22 A I do not know whether it was complete. I
 23 believe it is complete, but I am not absolutely sure.
 24 Q Is there correspondence from the State showing
 25 what materials were provided to you?

1 MS. DAVIS: All of that's been produced, but I'll
 2 let him answer.
 3 THE WITNESS: Yes. There were indexes in some of
 4 the notebooks that were sent to me. I hesitated there,
 5 because I don't recall a specific letter, listing
 6 everything, but there was a cover letter, at least,
 7 saying that all relevant materials have been sent to
 8 you.
 9 BY MR. VILLAGRA:
 10 Q Do you recall how long it took you to review
 11 Dr. Mitchell's deposition?
 12 A Well, there was something like five different
 13 days. Took me quite a few hours.
 14 Q How many hours would you say?
 15 A Oh, I'd have to simply guess.
 16 Q Can you give me an estimate?
 17 A I would suspect it took a good -- probably 10,
 18 11 hours.
 19 Q What about the transcript of Jeannie Oakes?
 20 How long did it take you to review that?
 21 A I would probably guess around seven or eight
 22 hours.
 23 Q Do you recall how many days of deposition you
 24 reviewed for Jeannie Oakes?
 25 A I'm not recalling specifically right now how

1 many days. There were at least two.
 2 Q Do you believe there were more than four?
 3 A Well, from the transcripts, it appears like she
 4 was deposed more than four. I didn't see more than
 5 four, no.
 6 Q In carrying out your assignment in this case,
 7 did you speak with any administrators -- school
 8 administrators in California who have experience with
 9 the Concept 6 calendar?
 10 MS. DAVIS: You mean for purposes of this
 11 assignment, not --
 12 MR. VILLAGRA: In carrying out the assignment.
 13 MS. DAVIS: Okay. Because he may have talked to
 14 them, obviously, before this assignment. Okay.
 15 THE WITNESS: The only ones I contacted were the
 16 ones I mentioned yesterday. I mentioned that I
 17 contacted Larry Carletta to get late copies of
 18 achievement data results that he might know about that I
 19 might not have.
 20 BY MR. VILLAGRA:
 21 Q And Mr. McHugh?
 22 A Mr. McHugh and the director of testing for
 23 Lodi. Other than that, no.
 24 Q In carrying out --
 25 A Excuse me. I'll take that back. I did ask for

1 some results from Mel Mares.
 2 Q Who is Mel Mares?
 3 A Former principal of -- oh, dear, Bell or --
 4 Bell or Belmont, who is now working in one of the
 5 district -- administrative district offices.
 6 Q And what results did you request from Mel
 7 Mares?
 8 A What he knew about AP courses being covered in
 9 multi-track high schools.
 10 Q Multi-track high schools in California?
 11 A In Los Angeles Unified.
 12 I also made contact with a Mr. Alfonso Gill,
 13 who is a counselor with specific duties having to do
 14 with AP at Garfield High School in Los Angeles Unified.
 15 Q And what did you speak with Alfonso Gill about?
 16 A AP classes at Garfield.
 17 I believe I referred to those contacts in my
 18 paper, where I wrote about AP courses being offered.
 19 Q In carrying out your assignment in this case,
 20 did you speak with any teachers in California who have
 21 experience with the Concept 6 calendar?
 22 A No.
 23 Q In carrying out your assignment in this case,
 24 did you speak with any parents in California who have
 25 experience with the --

1 A No.
 2 Q -- Concept 6 calendar?
 3 In carrying out your assignment in this case,
 4 did you speak with any students in California who have
 5 experience with the Concept 6 calendar?
 6 A No.
 7 MS. DAVIS: I'm just going to object, because
 8 carrying out his assignment -- I mean, this is based on
 9 years of his work and experience. So he may have, you
 10 know, talked to teachers and administrators in the past
 11 that factored into his thinking but maybe not from the
 12 date, you know, we asked him to serve as an expert.
 13 MR. VILLAGRA: That's wonderful, but he didn't in
 14 the period he was carrying --
 15 MS. DAVIS: Okay.
 16 MR. VILLAGRA: -- out his assignment.
 17 MS. DAVIS: Okay.
 18 BY MR. VILLAGRA:
 19 Q Did anyone assist you in preparing your report?
 20 A Define what you mean by anyone.
 21 Q I believe "anyone" is a term without any
 22 limits.
 23 A Does that include secretary?
 24 Q Sure.
 25 A Yeah. In that sense, I had couple of people

1 who worked with me. But if you're talking about outside
 2 preparation, I wrote the report, the original report,
 3 myself, and no one wrote it but me. Did I seek some
 4 other help? Yes, I discussed with Dr. Kneese, for
 5 example, some points having to do with achievement
 6 results, but she did not write the paper for me; I wrote
 7 the paper, the original paper, myself.
 8 Q When you refer to the original paper, what are
 9 you referring to?
 10 A Well, I wrote a full paper, and then submitted
 11 it to defense counsel, and they took a look at what I
 12 had written.
 13 Q If there's an original paper, does that suggest
 14 that there's an unoriginal paper?
 15 A First draft. First draft.
 16 Q Okay. So you wrote the first draft?
 17 A I wrote the first draft myself completely, yes.
 18 Q And then what happened to that first draft?
 19 A Well, as I say, it was sent to defense
 20 counsel. Defense counsel reviewed it, made some
 21 suggestions for putting it less in academic terms and
 22 more direct, which I was glad to do. And after several
 23 drafts, finally submitted the paper.
 24 Q And when you say several drafts, is it fair to
 25 say that there were several rounds of review and

1 suggestions by defense counsel?
 2 A A couple of times, but I'm -- I'm an old
 3 English teacher, so I actually revised my own paper
 4 several times.
 5 Q Apart from Carolyn Kneese, did you send the
 6 paper to anyone else for review? Let's say apart from
 7 Carolyn Kneese and defense counsel.
 8 A No.
 9 Q Who at defense counsel -- which of defense
 10 reviewed your paper?
 11 A Lynne Davis.
 12 Q Anyone else?
 13 A I sent a copy to Mr. Seferian, Tony Seferian.
 14 And I don't know that I sent it to any other counsel.
 15 Mr. Seferian did not give me any suggestions. So
 16 essentially, the only attorney I really worked with was
 17 Lynne Davis.
 18 Q Do you recall any suggestions that Lynne Davis
 19 made about revising your original report?
 20 A Well, she helped me to be more direct in my
 21 language.
 22 Q Do you recall any specific instance?
 23 A No, I couldn't at this point point to anything.
 24 Q You said you discussed some points with Carolyn
 25 Kneese.

1 A Yes.
 2 Q Do you recall what those points were?
 3 A Usually, it had to do with academic results. I
 4 would say to her, "Dr. Kneese, I believe, as I read the
 5 record, I can say this. Do you think I'm off base?"
 6 And she would usually respond yes or no,
 7 depending on what the particular statement was.
 8 Q In terms of the report that was filed in this
 9 case, I take it, then, that Carolyn Kneese believes that
 10 you are on base, in terms of what you say?
 11 A I believe she does. I can't speak for her, but
 12 I think she thinks I have a fair report, yes.
 13 Q Do you recall any other issues outside of
 14 academic results that you discussed with Carolyn Kneese
 15 about your report?
 16 A No. Because she's not an administrator of
 17 year-round education programs, had not worked in them.
 18 So she really is not an expert on the administrative
 19 part. So I consulted with her only on her area of
 20 expertise, which are achievement results.
 21 Q And in terms of achievement results, do you
 22 recall any specific instance where you said to her, "As
 23 I read the record, I believe I can say this. Am I off
 24 base?" Do you recall any specific instance?
 25 A Sure. I would say -- I did say once, "I can't

1 find any record at all where students have been actually
 2 harmed by a multi-track year-round schedule. Do you
 3 know of any such instance?"
 4 And the answer was no.
 5 Q Any other specific instances?
 6 A That sort of general kind of comment, but no, I
 7 can't think of any other specifics.
 8 Q Do you know who Patricia Gandara is?
 9 A I do know her.
 10 Q Who is she?
 11 A Currently she is a professor at University of
 12 California, Davis.
 13 Q Did you and Carolyn Kneese have a conversation
 14 about Patricia Gandara in the preparation of your
 15 report?
 16 A I think I may have asked her -- or she may have
 17 asked me, "Do we know where Patricia Gandara stands on
 18 this?"
 19 Q And just to be clear, do you believe that
 20 Carolyn Kneese asked that question?
 21 A I don't recall. I think it was part of our
 22 e-mail exchange.
 23 Q Do you have an understanding as to why she
 24 might have asked where Patricia Gandara stood?
 25 MS. DAVIS: Calls for speculation.

1 THE WITNESS: It does call -- I don't know why she
 2 asked that, but I do know that they both worked
 3 together -- I'll go back. They both wrote a chapter in
 4 a book that was edited by Patricia Gandara. And so they
 5 had worked collaboratively as professionals.
 6 And Patricia Gandara actually was one of the
 7 leading forces to begin one of the multi-track programs
 8 called the 60-15 orchard plan here in California. So
 9 since Patricia Gandara was the generator, really, of the
 10 California public law that allowed the first four
 11 programs to begin -- first four orchard programs,
 12 multi-track, 60-15, I think it was just a natural
 13 question that Dr. Kneese had, where would Dr. Gandara
 14 stand on this issue of multi-track and whether it harms
 15 students or not.
 16 BY MR. VILLAGRA:
 17 Q Do you have an understanding of all the
 18 components of the orchard plan?
 19 A I don't know whether I know all of them, but I
 20 know some of them.
 21 Q Was it simply a multi-track year-round program?
 22 A All of those pilot programs were multi-track
 23 programs.
 24 Q Were there components, though, to the orchard
 25 program?

1 A There were.
 2 Q What were those other components?
 3 A It was a little bit different kind of program;
 4 in that, teachers did not move in and out of classrooms;
 5 the students moved in and out of the classroom. So one
 6 teacher was assigned five tracks within one classroom.
 7 So when a group of students was to go on vacation, that
 8 group of students went on vacation, and the teacher
 9 worked with the other four groups. When the group that
 10 had been on vacation came back to that classroom, a
 11 second group in that classroom went on vacation.
 12 So it was a little different kind of
 13 multi-track program; in that, the teacher did not rotate
 14 or rove; the students came and went according to their
 15 own individual schedule. So it was a pilot program.
 16 Q To your knowledge, were there any other
 17 components to the orchard program?
 18 A Well, teachers had a longer contract year.
 19 Q What do you mean by a longer contract year?
 20 A Well, teachers ordinarily are expected to teach
 21 a hundred and 80 days or their equivalent. In this case
 22 teacher's contract was extended to -- I don't know the
 23 exact number, but it would be somewhere around 210 days.
 24 Q Do you believe that there were any other
 25 components to the orchard plan other than those that you

1 described to me so far?
 2 A Well, there would be some curriculum
 3 components.
 4 Q What were the curriculum components?
 5 A Well, obviously, when you have one classroom
 6 and students are coming and going in at different time
 7 periods, teacher has to think in terms of units of
 8 instruction, perhaps three weeks at a time, and be sure
 9 to make -- to be clear with the students when they come
 10 back that there's a unit that needs to be covered. So
 11 it does change the delivery of curriculum.
 12 Q Anything else you can think of?
 13 A I think those are the main points.
 14 Q Did you and Carolyn Kneese have, in fact, a
 15 discussion about where Patricia Gandara stood?
 16 A I don't think we did, other than the asking of
 17 the question. I don't believe either one of -- I can't
 18 speak for Dr. Kneese. I know I never contacted
 19 Dr. Gandara.
 20 Q Would you expect Patricia Gandara to be
 21 supportive of Concept 6?
 22 MS. DAVIS: Calls for speculation.
 23 THE WITNESS: I have no idea how she feels about
 24 Concept 6.
 25 BY MR. VILLAGRA:

1 Q Did you and Carolyn Kneese have a discussion
2 about a paper written by Gene Glass titled "Time for
3 School, its Duration and Allocation"?

4 A We did by e-mail, yes. She suggested that I
5 get a copy of that.

6 Q Did you actually get a copy?

7 A I did. I pulled it off the Internet.

8 Q Did you review that paper?

9 A I looked at it, yes.

10 Q Do you recall the results of the paper?

11 A In general, I do.

12 Q What were they?

13 A His discussion was really a discussion of the
14 length of the school year, whether a longer year would
15 make much of a difference, and I believe his conclusion
16 was that it probably would not unless some very specific
17 things were done to make that longer year of value to
18 students.

19 My impression was that he came down saying that
20 specific number of days was not the important issue; it
21 was quality of instruction.

22 Q What was the substance of the discussion that
23 you and Carolyn Kneese had about Gene Glass and his
24 paper?

25 A Well, the question that I asked her was, if

1 adding days may not make much of a difference, the
2 simple adding of days may not make that much difference,
3 what about the other direction? If there are fewer
4 days, does that make much of a difference?

5 Q And what did Carolyn Kneese respond?

6 A She didn't know, but she said that's an
7 interesting question, or something to that effect.

8 Q Did she say anything else?

9 A Not that I can recall right now.

10 Q Do you recall any other aspect of your
11 discussion with Carolyn Kneese about Gene Glass and his
12 paper on the length of the school year?

13 A Right at the moment, I don't.

14 Q Do you believe that Gene Glass's paper -- and
15 it's entitled "Time for School, its Duration and
16 Allocation" -- supports the proposition that a hundred
17 and 63 days of instruction should be adequate?

18 MS. DAVIS: Calls for speculation.

19 THE WITNESS: He didn't speak about the hundred
20 and 63 days, so it would be speculative for me to
21 respond.

22 BY MR. VILLAGRA:

23 Q Do you believe that Gene Glass's paper supports
24 that proposition?

25 MS. DAVIS: Same objection.

1 THE WITNESS: I couldn't know one way or the other,
2 whether he would or would not support it. Wouldn't
3 know.

4 BY MR. VILLAGRA:

5 Q Not whether he would support it.

6 Do you read his paper as evidence supporting
7 the proposition that hundred and 63 days should be
8 adequate?

9 A I can't -- no, I don't think his paper speaks
10 to that at all. I'm the one who raised the question.
11 If it doesn't make any difference if we add days, does
12 it make any difference if we subtract days? I'm the one
13 who raised the question.

14 Q You raised the question.

15 A I raised the question.

16 Q Have you come to a conclusion?

17 A I personally have come to a conclusion that
18 it's not the specific number of days but how those days
19 are used. That's my conclusion.

20 Q And I take it that Gene Glass's paper on time
21 for school is not something that you read as supporting
22 that idea; is that correct?

23 MS. DAVIS: Asked and answered.

24 THE WITNESS: I don't know whether it -- I can't
25 speak for him and whether -- I'm the one who raised the

1 question. I'm the one who has the question of whether
2 it makes a difference in days. He was only speaking to
3 the issue of adding days. He didn't speak to the issue
4 of subtracting days.

5 BY MR. VILLAGRA:

6 Q Did you ultimately cite Gene Glass in your
7 paper?

8 A I'll have to check.

9 MS. DAVIS: Do you have his report?

10 MR. VILLAGRA: I thought he did.

11 THE WITNESS: I do.

12 MS. DAVIS: I forgot. We pulled it out earlier.

13 THE WITNESS: Give me a moment, please, until I
14 check this.

15 (Witness reviews documents.)

16 I don't list it in my resources and references
17 at the back, so I don't think I referred to him in my
18 paper, no.

19 BY MR. VILLAGRA:

20 Q Is there any reason why you did not cite Gene
21 Glass?

22 A I didn't think it added or subtracted to my
23 paper. So I just didn't get into his discussion.

24 Q To your knowledge, is Gene Glass critical of
25 the NAYRE?

1 A I can't -- I don't know whether he is or isn't.
 2 Q You've never written anything by Gene Glass,
 3 criticizing the NAYRE?
 4 A I don't know that I've read anything, no.
 5 MR. VILLAGRA: I'm not sure what time it is.
 6 MS. DAVIS: It's about five after 10:00.
 7 Do you want to take a break? Is this a good
 8 time --
 9 MR. VILLAGRA: Do you want to take a break?
 10 MS. DAVIS: Okay, fine.
 11 (Brief recess taken.)
 12 BY MR. VILLAGRA:
 13 Q You mentioned earlier that you asked Carolyn
 14 Kneese whether students were harmed by multi-track
 15 year-round education, whether there was evidence of
 16 that.
 17 Do you recall that testimony?
 18 A I do.
 19 Q Carolyn Kneese, you said, is knowledgeable
 20 about student achievement; is that correct?
 21 A That's correct.
 22 Q And student achievement measured how?
 23 A Well, it could be a variety of ways. Could be
 24 standardized test scores, could be -- that's the field
 25 she really works in, are standardized test scores.

1 There could be other ways of measuring, but let's leave
 2 it at that.
 3 Q But that's what she --
 4 A That's what she --
 5 Q -- studies?
 6 A That's what she studies, yes.
 7 Q So when you asked her whether students were
 8 harmed by multi-track year-round education, you
 9 understood her answer to deal with --
 10 A Achievement results.
 11 MR. VILLAGRA: Okay. We'll mark as Exhibit 9 an
 12 e-mail from Mr. Ballinger to Carolyn Kneese, and it's
 13 Bates numbered STATE-EXP-CB 1447.
 14 (Plaintiff's Exhibit 9 was marked for
 15 identification by the court reporter.)
 16 BY MR. VILLAGRA:
 17 Q Have you had a chance to review it?
 18 A I have.
 19 Q Do you know what this exhibit is?
 20 A This is an e-mail exchange from me to Carolyn
 21 Kneese, and a response from Carolyn Kneese back to me.
 22 Q Earlier --
 23 MS. DAVIS: Looks like it's the opposite maybe.
 24 THE WITNESS: Let's see.
 25 (Witness reviews documents.)

1 Hers came in at --
 2 BY MR. VILLAGRA:
 3 Q Looks like 9:56.
 4 A 9:56. So hers was to me, and I responded to
 5 her. That's the way it is, yeah. The paper shows it
 6 otherwise, but -- yes, the time would suggest hers came
 7 to me and then I responded.
 8 Q You mentioned earlier that you had raised a
 9 question regarding the Gene Glass study.
 10 A That's correct.
 11 Q Does this e-mail or your e-mail at the top of
 12 the page --
 13 A It is.
 14 Q -- look like that question?
 15 A Yes.
 16 Q So the question is: If it makes little or no
 17 difference in adding 15, 18, 20 days the a hundred and
 18 80, then doesn't it make little or no difference whether
 19 the school year is a hundred and 63 days or the
 20 additional 17 days to make 180?
 21 A Yeah. That's the question that I suggested a
 22 while ago I'd raised. It's a question.
 23 MR. VILLAGRA: I'm going to mark as Exhibit 10 --
 24 it's an e-mail, appears to be from Carolyn Kneese to
 25 Mr. Ballinger, and the Bates number is STATE-EXP-CB

1 1448.
 2 (Plaintiff's Exhibit 10 was marked for
 3 identification by the court reporter.)
 4 BY MR. VILLAGRA:
 5 Q Have you had a chance to review it?
 6 A I have.
 7 Q Do you know what Exhibit 10 is?
 8 A This is a response to my question about adding
 9 days, subtracting days, whether it makes a difference,
 10 the e-mail which we were just speaking of.
 11 Q And Dr. Kneese says that Glass says adding 10
 12 to 15 percent makes no achievement difference, but he
 13 does not say that subtracting 10 to 15 percent makes no
 14 difference, but you might/could interpret it that way.
 15 Do you see that?
 16 A I see that.
 17 Q Do you interpret the Glass study that way, to
 18 say that subtracting 10 or 15 percent makes no
 19 difference?
 20 MS. DAVIS: Asked and answered.
 21 THE WITNESS: I think I'm going to go back to my
 22 previous answer, which is I'm the one who raised the
 23 question. It's a provocative question. I don't have a
 24 final answer myself, and I did not use the Glass report
 25 finally in my report.

1 BY MR. VILLAGRA:
 2 Q Okay.
 3 A Because I just -- I don't know that there's any
 4 study out there that does the subtracting and makes that
 5 decision.
 6 Q So because the study didn't address that
 7 subject, you won't read it that way?
 8 A Yeah, I -- it's unfair to him to make a
 9 decision about what he's saying.
 10 MR. VILLAGRA: Okay. I want to mark as Exhibit 11
 11 a report by Gene Glass. It's put out by Arizona State
 12 University. And it's ten pages.
 13 (Plaintiff's Exhibit 11 was marked for
 14 identification by the court reporter.)
 15 THE WITNESS: (Reviews documents.)
 16 BY MR. VILLAGRA:
 17 Q Have you had a chance to go through it?
 18 A I have.
 19 Q Do you know what Exhibit 11 is?
 20 A I do. It's a report by Gene V. Glass of
 21 Arizona State University.
 22 Q And is this the report that you and Carolyn
 23 Kneese were discussing in your e-mails?
 24 A It is.
 25 Q And you did actually review this report in

1 preparing your report?
 2 A I looked it over, yes.
 3 Q If I could turn your attention to Page 6. And
 4 I want to look specifically at the very last paragraph,
 5 the second and third sentences.
 6 A Where are we again, please?
 7 Q Page 6.
 8 A Yes.
 9 Q The last paragraph.
 10 A Okay.
 11 Q And the second sentence starts, "However."
 12 A Hmm-hmm.
 13 Q "There is no credible evidence that the
 14 year-round calendar causes improved academic
 15 achievement."
 16 Do you see that?
 17 A I see that.
 18 Q Do you disagree with that conclusion by Gene
 19 Glass?
 20 A I do disagree with that.
 21 Q The very next sentence says, "How is it, then,
 22 that an idea whose benefits have eluded all objective
 23 attempts to discover them nonetheless engenders
 24 enthusiasm and loyalty to such a degree that it has its
 25 own national organization?"

1 Do you see that?
 2 A I see that.
 3 Q Do you believe that the idea -- the concept of
 4 year-round education has eluded all objective attempts
 5 to discover its benefits?
 6 A I don't think so. He does not have in hand,
 7 for example, the most recent Cooper report, nor does he
 8 really have the paper which Carolyn Kneese did in
 9 conjunction with the work we're doing here on this
 10 particular case. So what he says -- and this, I think,
 11 was some time ago, few months back -- I don't know the
 12 exact time that he wrote this.
 13 MS. DAVIS: Is there a date when he wrote this? I
 14 don't see it.
 15 BY MR. VILLAGRA:
 16 Q Is it your opinion, then, that this paper by
 17 Gene Glass is out of date?
 18 A I would say that he does not have available --
 19 did not have available to him at the time he wrote this
 20 the two reports done by Kneese and by Cooper.
 21 Q Do you have any idea whether his opinion would
 22 change if he saw the papers by Harris Cooper or Carolyn
 23 Kneese?
 24 A I would have no idea to know that. No way to
 25 know that.

1 Q On the same page, Page 6, the third paragraph
 2 says, "Not all studies have failed to find achievement
 3 advantages for the year-round calendar. Those that do
 4 claim advantages, however, stem disproportionately from
 5 an advocacy group that has grown up around this issue,
 6 the National Association of Year-Round Education."
 7 A For year-round education.
 8 Q For year-round education.
 9 And it parentheses it says, "Institutional
 10 memberships range from \$350 to \$750 per year, depending
 11 on the number of students that a school or school
 12 district has enrolled in year-round education," close
 13 parentheses. "NAYRE publishes its own research reports
 14 and avoids established peer-reviewed scholarly journals;
 15 copies of research reports outlining the benefits of the
 16 year-round calendar sell for about \$30. Negative
 17 studies have tended to come from researchers working in
 18 universities."
 19 Do you see that?
 20 A I see that.
 21 Q Do you disagree that those studies that claim
 22 advantages for the year-round calendar stem
 23 disproportionately from your organization, the NAYRE?
 24 A I disagree with Dr. Glass on that.
 25 Q Why do you disagree?

1 A Because the association has done very little in
2 the way of any kind of study on its own.

3 Q And when you read him -- when he says that the
4 studies stem disproportionately, do you understand him
5 to be referring to studies that the NAYRE has done
6 itself?

7 A Ask me the question again, please.

8 Q Do you understand Gene Glass to be referring to
9 studies that the NAYRE has done on its own?

10 MS. DAVIS: Calls for speculation.

11 THE WITNESS: Well, NAYRE has only sponsored three
12 reports that I'm aware of, one by Leslie Six, one by
13 Walter Winters and one by Carolyn Kneese. Each of those
14 were the syntheses of available research. We did not do
15 the research ourselves. Therefore, I think Dr. Glass is
16 way off base in his comments in this particular
17 paragraph.

18 BY MR. VILLAGRA:

19 Q When you say sponsored three reports, what do
20 you mean by "sponsored"?

21 A We asked the reviewers, Drs. Six, Winters and
22 Kneese, to review available scholarly articles or
23 quality research reports done by school districts to see
24 what the status of year-round education would be. Each
25 of these individuals then reviewed journals, journal

1 A We say to districts, we need to know what
2 year-round education is doing. So we encourage
3 districts to do a better job of research and not only in
4 student achievement but student attendance, teacher
5 attendance, cost analyses and that sort of thing.

6 And when graduate students would call me and
7 say, "I need to do a doctoral dissertation. Can you
8 give me some ideas that would be helpful to year-round
9 education?" I tell them of areas that I think we're
10 lacking, we need more achievement studies. We certainly
11 need more studies on the attendance of students.

12 What -- I'm going to request, now that we're
13 talking about Dr. Glass's comment here -- I'm going to
14 read into the record what Dr. Cooper has just written in
15 his most recent --

16 Q I'm sorry, Mr. Ballinger. You'll have
17 opportunities to be asked questions at the end of the
18 deposition, if you'd like, by your counsel, but, I'm
19 asking the questions right now.

20 MS. DAVIS: Yeah, you don't need to do that. We
21 appreciate your efforts to be thorough.

22 BY MR. VILLAGRA:

23 Q Do you disagree that the NAYRE avoids
24 established peer-reviewed scholarly journals?

25 A Not at all.

1 articles, report -- research reports that they knew of.
2 They chose those reports; the association did not.

3 Q And when the NAYRE sponsors someone to do a
4 report --

5 A We published those reports.

6 Q You published the reports?

7 A That's correct.

8 Q Do you pay the author for preparing the report?

9 A We paid -- yes, we did.

10 Q In each of those three instances?

11 A We did Dr. Six and Winters. I don't recall
12 whether we paid Dr. Kneese anything or not. I don't
13 believe we did.

14 Q Do you recall how much Leslie Six was paid
15 for --

16 A \$2,000.

17 Q And Walter Winters?

18 A \$2,000.

19 And I don't recall that we paid Dr. Kneese
20 anything. I don't believe we did.

21 Q Apart from sponsoring papers -- you mentioned
22 yesterday that NAYRE encourages research.

23 A We do.

24 Q How do you encourage research apart from
25 sponsoring it?

1 Q Why not?

2 A That's the only way we move ahead in the field
3 of education, is to have the latest and best data about
4 any of the things that go on in education. So we
5 don't -- we don't avoid peer-reviewed scholarly
6 journals.

7 Q Has the NAYRE ever sponsored research that was
8 published in a peer-reviewed scholarly journal?

9 A I don't know what he means by peer-reviewed, if
10 it's -- if it's research journals, no, we've not
11 sponsored anything that goes into educational research
12 journals. That's not our role.

13 Q In what sort of journals has the NAYRE
14 published?

15 A Well, I've written articles for various
16 journals, including the one of educational leadership,
17 put out by the Association for Supervision and
18 Curriculum Development, for example.

19 Q Is that journal peer-reviewed?

20 A No, that would be an educational journal for
21 practicing educators, for the most part.

22 By peer-reviewed here -- let's be clear. We're
23 talking about research journals that have been
24 peer-reviewed. And that journal is not that kind of
25 journal.

1 Q Okay. So do you disagree that the NAYRE avoids
2 established peer-reviewed scholarly journals?

3 A We don't avoid it. We don't do the reviews
4 ourselves, and so we have -- we just -- there's no way
5 we could even have anything available for peer-reviewed
6 research journals.

7 Q You could not have submitted the Leslie Six
8 report to a peer-reviewed education research journal?

9 A I wouldn't on the part of the association. I
10 wouldn't have objected if Dr. Six wished to do so. And
11 I certainly wouldn't object if Dr. Kneese right now were
12 to submit her paper for this case or the publication she
13 did for us at the association. That would be fine if
14 she chose to do that, as the author of the paper.

15 Q But I thought that the NAYRE sponsored the
16 research.

17 A We sponsored it; in that, we requested it and
18 we published the results. But when it comes to an
19 article for the scholarly journals, the author would be
20 the one to submit that for publication. I wouldn't see
21 the association as doing that.

22 Q Have you ever encouraged Leslie Six to publish
23 her paper or submit her paper to a peer-reviewed
24 scholarly journal?

25 A I did not -- I did not ask him to do that.

1 Q Have you ever encouraged Walter Winters to
2 submit his paper to a peer-reviewed scholarly journal?

3 A I have not, and he's deceased now, so that's
4 not possible.

5 Q Have you ever encouraged Carolyn Kneese to
6 submit her paper to a peer-reviewed scholarly journal?

7 A She has, as a matter of fact, submitted several
8 of her articles to peer-reviewed journals, and they have
9 been accepted and published. I have encouraged her,
10 with the paper she just finished, to submit that for
11 future journal articles, and I believe she is preparing
12 to do just that.

13 Q What about the prior paper that the NAYRE
14 sponsored by Carolyn Kneese? Did you encourage her to
15 submit that paper to a peer-reviewed scholarly journal?

16 A We did not, but much of that same material in
17 that booklet she had done for a peer-reviewed journal,
18 where she did a meta-analysis, and she refers to that
19 meta-analysis in the paper that she wrote.

20 Q So is the answer no?

21 A The answer's no, I've not specifically, no.

22 Q The last sentence says, "Negative studies have
23 tended to come from researchers working in
24 universities."

25 Do you see that?

1 A I see that, and I don't agree with that at all.

2 Q Why not?

3 A I don't know what studies he's referring to.

4 Q But even without knowing what studies he's
5 referring to, you disagree?

6 A I disagree. I don't think there are such
7 negative studies that have tended to come from
8 researchers in universities. If they're out there, I am
9 not aware of them.

10 Q Do copies of research reports outlining the
11 benefits of the year-round calendar sell from NAYRE for
12 about \$30?

13 MS. DAVIS: Vague and ambiguous, calls for
14 speculation to the extent we know what the author means.

15 THE WITNESS: The only thing that I think the
16 author could be referring to would be the latest one
17 that Dr. Kneese did for us, and the answer is yes, that
18 is about the price we've asked for it, but I've sent out
19 a lot of free copies of her report. So we're talking
20 about school districts, and I don't think \$30 is out of
21 line for the production and cost of copying and that
22 sort of thing.

23 BY MR. VILLAGRA:

24 Q And you believe that the charge of \$30 only
25 applies to school districts?

1 A Oh, no. Others might be asked to do that if
2 they write in, but I'm just saying, I've sent out a lot
3 of free copies. I can't say what my successor's doing
4 these days, but I certainly sent out a lot of free
5 copies of that report.

6 Q And just to make clear, how is it that you know
7 that copies of research reports from the NAYRE sell for
8 about \$30?

9 A The things that we put out have a varying
10 range. Usually from about \$7 -- I think one goes
11 considerably higher than \$30. I think \$30 is some
12 midpoint. So I'm saying that's probably within the
13 range. I don't know what the current fee is for it.

14 Q But within your experience, that sounds about
15 right?

16 A That sounds about right.

17 Q And do institutional memberships range from
18 \$350 to \$750 per year, depending on the number of
19 students the school or school district has enrolled in
20 year-round education?

21 A That is correct.

22 Q Do you believe that Gene Glass has been charged
23 with an agenda to attack year-round education?

24 MS. DAVIS: Calls for speculation.

25 THE WITNESS: I don't know whether he has an agenda

1 or not.
 2 MR. VILLAGRA: I'll submit as Exhibit 12 --
 3 THE WITNESS: My paper.
 4 MR. VILLAGRA: Labeled as the "Expert Witness
 5 Declaration" regarding Dr. Charles Ballinger, as well as
 6 the report by Dr. Ballinger that runs 47 pages and 6
 7 pages of references. Mark that as Exhibit 12.
 8 (Plaintiff's Exhibit 12 was marked for
 9 identification by the court reporter.)
 10 THE WITNESS: (Reviews documents.)
 11 BY MR. VILLAGRA:
 12 Q Have you had a chance to review it?
 13 A I see that this is the paper I submitted, yes.
 14 Q Does it appear to be a copy of the paper you
 15 submitted?
 16 A It appears to be, yes.
 17 Q And you prepared -- not the declaration that
 18 constitutes the first three pages, but the rest of it is
 19 yours?
 20 A That's correct.
 21 Q If I could turn your attention to Page 2, the
 22 second sentence, you write, "The multi-track year-round
 23 calendar not only allows schools to accommodate the
 24 growing number of students in California, as well as
 25 implement class size reduction policies, but also

1 Q The fifth was temporary classrooms.
 2 A That's one.
 3 Q Am I leaving anything out?
 4 A Redrawing boundary -- attendance boundary lines
 5 would be another.
 6 Q Can you think of any others?
 7 A Not right at the moment.
 8 Q Okay. Besides multi-track year-round
 9 education, what are the other ways in which school
 10 districts can implement class size reduction policies?
 11 MS. DAVIS: Vague and ambiguous.
 12 THE WITNESS: Repeat the question, please.
 13 BY MR. VILLAGRA:
 14 Q Besides multi-track year-round education, what
 15 are the other ways in which school districts can
 16 implement class size reduction policies?
 17 A Well, just by implementing --
 18 MS. DAVIS: Same objection.
 19 THE WITNESS: Just by implementing it, if there's
 20 not an overcrowding situation of the district, they
 21 would simply implement it. Multi-track would not be
 22 needed until the over-enrollment would occur.
 23 BY MR. VILLAGRA:
 24 Q In the beginning of the sentence you write,
 25 "The multi-track year-round calendar not only allows

1 reduces the learning loss -- particularly for
 2 disadvantaged students -- associated with the long
 3 summer vacation of the traditional school calendar."
 4 Do you see that?
 5 A I see that.
 6 Q When you refer to the multi-track year-round
 7 calendar, what do you mean?
 8 A The whole generic calendar options that we call
 9 multi-track calendars.
 10 Q So you intend to encompass all of them?
 11 A All of them.
 12 Q Besides multi-track year-round education, what
 13 are the other ways in which schools can accommodate the
 14 growing number of students?
 15 A We mentioned several of those in the deposition
 16 yesterday.
 17 Do you want me to review all those again?
 18 Q Just to recap, I believe you mentioned building
 19 schools, obviously, is one. The second you mentioned
 20 was double session.
 21 A That's one.
 22 Q The third was extended day.
 23 A That's one.
 24 Q The fourth was busing.
 25 A That's one.

1 schools to accommodate the growing number of schools in
 2 California" -- and we just touched on that -- "as well
 3 as implement class size reduction policies."
 4 A In those districts that need it, yes. Need to
 5 do so.
 6 Q So certain districts will not need to resort to
 7 multi-tracking at all to implement --
 8 A That's correct.
 9 Q -- class size reduction policies?
 10 In districts where there is overcrowding or
 11 over-enrollment, what are the other ways in which they
 12 can implement class size reduction policies?
 13 A Well, they can use portables, for example.
 14 Q Anything else?
 15 A They could build more buildings, of course.
 16 Q Anything else?
 17 A They could redraw attendance boundaries, if
 18 that would be required. Same sorts of things. Depends
 19 on whether there's an over-enrollment, which of the
 20 options they would use.
 21 Q So all the same options --
 22 A And the degree of -- and the degree of
 23 over-enrollment would help to choose which of the
 24 options they would need.
 25 Q Okay. So it would be the same options that a

1 district would have to deal with over-enrollment in
 2 general?
 3 A In general. I think in most instances, yes.
 4 Q I want to talk about what you refer to as the
 5 learning loss associated with the summer vacation.
 6 From your review, what do you believe the
 7 research on learning loss associated with the summer
 8 vacation shows?
 9 A Well, it shows that all students -- referring,
 10 now, to the major report done by Dr. Cooper and others.
 11 Q And just to be clear, the major report by
 12 Dr. Cooper is from 1996?
 13 A 1996, yes.
 14 MS. DAVIS: It's cited in the paper.
 15 THE WITNESS: It's cited in the paper, yes.
 16 All students lose in math skills.
 17 Disadvantaged students lose in reading, though middle
 18 class students tend to gain over the summer in reading.
 19 The disparity between disadvantaged students and others
 20 grows over a number of years, in part because of that
 21 summer learning loss. See, there's one more. There's a
 22 fourth one.
 23 (Witness reviews documents.)
 24 BY MR. VILLAGRA:
 25 Q I believe you're looking at Page 13?

1 A 12 and 13, yes.
 2 Q Yes.
 3 A I mentioned Number 1. I mentioned Number 2,
 4 Number 3 and Number 4, the detrimental effect of the
 5 traditional calendar summer vacation on student
 6 achievement appears to increase as grade levels increase.
 7 Q Is what you've written in your report what you
 8 understand the research on summer learning loss to show?
 9 A Certainly from Dr. Cooper's report, yes.
 10 Q Do you believe that the research on summer
 11 learning loss means that the year-round calendar is
 12 preferable to the traditional school calendar?
 13 A I would interpret that as one response to that
 14 research.
 15 Q What are the other responses to the research?
 16 A Well, summer school, of course, is another
 17 response to summer learning loss.
 18 Q Are there any other ways of interpreting the
 19 research on summer learning loss besides how you've
 20 interpreted it to express a preference for year-round
 21 calendar and also to, I assume, underscore the
 22 importance of summer school? How else can it be
 23 interpreted?
 24 A I'm not sure, really, what you're asking me
 25 there. I was thinking you were asking me as a

1 response.
 2 I would respond one way to alleviate that
 3 summer loss is through a year-round program, where you
 4 cut down on summer vacation. You then asked me what
 5 else there would be, and I said well, you could then, of
 6 course, do summer school. Now I'm not sure what you're
 7 asking me to --
 8 Q Okay. We'll go back. I thought you said you
 9 interpreted it as one response, meaning year-round
 10 calendar.
 11 A To the ways to alleviate summer learning loss.
 12 Okay. Yeah. Summer school would be another.
 13 Q You interpret that as another response?
 14 A (No audible response)
 15 Q Okay. What other responses do you interpret --
 16 what other responses do you interpret as being supported
 17 by the research on summer learning loss?
 18 MS. DAVIS: Vague and ambiguous.
 19 THE WITNESS: I don't know how to respond to your
 20 question.
 21 BY MR. VILLAGRA:
 22 Q Well, I assume that you think the year-round
 23 calendar is preferable, and that the summer learning
 24 loss research supports that proposition.
 25 A Well, the research itself only says what they

1 have found. The response is what people do with that
 2 research. And as a year-round educator, my way of
 3 alleviating that summer learning loss would be
 4 year-round education as the preferable way. But I would
 5 also -- I also know that having an adequate summer
 6 school program would be another way to respond to that
 7 learning loss.
 8 Q Do you believe there are any other ways?
 9 A Well, even though there's not a formal summer
 10 school, teachers could very well do some over-summer
 11 assignments, which, hopefully, they would check in the
 12 fall. But that is a very weak kind of program, and I
 13 really don't advocate that.
 14 Q I want to turn to Page 12 of your report.
 15 You write, under the heading "The Multi-Track
 16 Year-Round Calendar Reduces Learning Loss," "One of the
 17 chief purposes of introducing a year-round calendar
 18 (single or multi-track) is to stem the learning loss
 19 that occurs over the long summer vacation of the
 20 traditional calendar, a reform bolstered by considerable
 21 research."
 22 Do you see that?
 23 A I see that.
 24 Q What's the considerable research that you're
 25 referring to?

1 A In Dr. Cooper's study, which we referred to in
2 this same section, he has -- he and his group have done
3 what's called a meta-analysis of other research
4 reports. So in his meta-analysis, he looked at a whole
5 body of research reports, and they then did this study,
6 which was a summary of other research reports.

7 So when I say reform bolstered by considerable
8 research, I'm depending very heavily on Dr. Cooper's
9 team's meta-analysis.

10 Q Okay. And the reform is year-round education?

11 A That is a -- certainly, a reform, yes.

12 Q But the reform bolstered by considerable
13 research?

14 A A reform.

15 Q A reform bolstered by --

16 A Well, when you implement year-round calendars,
17 you have reformed the traditional school calendar.

18 Q Dr. Ballinger, I'm not sure if I'm being clear,
19 but I'm asking whether the reform that you're referring
20 to as being bolstered by considerable research is
21 year-round education.

22 A Yes.

23 Q Okay. At Page 13, Footnote 9, you refer to a
24 number of studies.

25 Do you see that?

1 A I see that.

2 Q To your knowledge, are all those studies part
3 of the Harris Cooper meta-analysis?

4 A I do not know at this point.

5 Q Okay. Did you review these studies
6 independently in preparing this report?

7 A Not all of them, no.

8 Q Which ones did you not review in preparing this
9 report?

10 A I did not review the Allinder report.

11 MS. DAVIS: I just want to clarify. Your question
12 is, in writing this report --

13 MR. VILLAGRA: Yes.

14 MS. DAVIS: -- not has he ever reviewed them.
15 Okay.

16 MR. VILLAGRA: Yes.

17 THE WITNESS: And I am familiar with the Entwistle
18 and Alexander. The Pelavin and David, I don't recall
19 whether I reviewed that for this report or whether I
20 simply knew about it from the past, that it just simply
21 escapes me.

22 BY MR. VILLAGRA:

23 Q Do you believe that you reviewed any of these
24 in preparing your report?

25 A Not extensively, no.

1 Q Okay. In your opinion, do all multi-track
2 year-round calendars reduce the learning loss that you
3 believe is associated with the summer vacation?

4 A I believe they do or will. Can I say that
5 happens in every single case? I don't know. But I
6 believe they do, ordinarily and generally.

7 Q Do you believe that, in a majority of schools
8 of multi-track year-round schools, the learning loss
9 associated with the summer vacation is reduced?

10 A I can't say that specifically, because I would
11 have to turn instead to the overall achievement results
12 of the schools involved. One would have to presume
13 that, if we cut down on the summer, we've cut down on
14 learning loss. If achievement scores have gone up, we'd
15 have to assume that we're doing something right.

16 And we think that our year-round schools are at
17 least on a par with or very slightly ahead of our
18 comparison with traditional calendar schools. So one
19 would have -- one would assume that we're reducing
20 summer learning loss.

21 Q So I take it the answer's no?

22 A I forget what the question is.

23 Q Can you say whether, in a majority of
24 multi-track year-round schools in California, the
25 learning loss associated with the summer vacation is

1 reduced?

2 MS. DAVIS: Asked and answered.

3 THE WITNESS: I believe --

4 MR. VILLAGRA: There was no answer.

5 THE WITNESS: There was no answer?

6 MS. DAVIS: Well, I think that was his answer, but
7 go ahead.

8 THE WITNESS: I would simply say it the same way.
9 I think we have reduced summer learning loss if we're
10 getting some achievement --

11 BY MR. VILLAGRA:

12 Q Do you know whether, in a majority of
13 multi-track year-round schools in California, there has
14 been a reduction in the learning loss associated with
15 the summer vacation?

16 MS. DAVIS: Same objection.

17 THE WITNESS: I can't say with certainty the number
18 of schools and so on. So we'll leave it at that.

19 BY MR. VILLAGRA:

20 Q Do you believe that all multi-track year-round
21 calendars reduce learning loss associated with the
22 summer vacation equally?

23 MS. DAVIS: Vague and ambiguous.

24 THE WITNESS: I can't say whether they do it
25 equally or not. There's been no study to that -- in

1 that regard.

2 BY MR. VILLAGRA:

3 Q So there's been no study as to whether
4 multi-track year-round education reduces summer learning
5 loss?

6 A The studies are whether there have been
7 achievement gains. There have been no specific studies
8 on whether learning loss has been reduced.

9 Q There's been no study, to your knowledge --

10 A No formal study, right. There are a lot of
11 anecdotal, where teachers say the learning loss has been
12 reduced, but not a formal study.

13 Q Do you believe that any multi-track year-round
14 calendars are better than others at reducing the
15 learning loss associated with the summer vacation?

16 A I would say, in general, the shorter the
17 vacation, the less learning loss is going to occur. And
18 in that sense, the shorter vacations of the 45-15,
19 60-20, would have less learning loss that might occur
20 than with those calendars with a longer vacation period.

21 Q Do you know, from your review of the research,
22 how the learning loss occurs? By that I mean, do you
23 know at what rate it occurs?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: Yeah, we're getting into an area that

1 Q Did the studies that you are referring to
2 address that subject?

3 A Yes.

4 Q And they addressed whether learning loss
5 increases over time?

6 A Yes.

7 Q What studies are you referring to?

8 A Oh, these are just general studies that I read
9 in preparation for my doctoral work and general course
10 work in the area of curriculum and instruction.

11 Q And those were studies you would have read
12 prior to 1971?

13 A Oh, some. And I've -- but I've read in the
14 field since then. I read professional journals all the
15 time.

16 Q What have you read since then that supports the
17 proposition that learning loss increases over time?

18 A I can't refer to specific articles right now.

19 Q Have you seen any articles dealing with
20 specifically whether summer learning loss increases over
21 time?

22 A What do you mean by over time? Beyond summer?

23 Q Well, if summer vacation were two months
24 instead of three, are you aware of any studies showing
25 that a two-month vacation would be better than a

1 I am not really an expert in.

2 BY MR. VILLAGRA:

3 Q I'm asking, to your knowledge, does the
4 learning loss occur at a steady rate over the summer
5 vacation?

6 MS. DAVIS: Same objection.

7 THE WITNESS: My -- the information I have is not
8 at a steady rate. It would depend a lot on individuals,
9 what their summer activities have been, whole lot of
10 factors.

11 So when you use the word "steady," that implies
12 that it's an equal portion on each day, and I don't know
13 that that's true.

14 BY MR. VILLAGRA:

15 Q You don't know one way or the other at what
16 rate the learning loss occurs?

17 A No. And I don't think you can really tell that
18 on an individual basis.

19 Q Do you believe that the learning loss increases
20 over time?

21 A Yes, it does.

22 Q How do you know that?

23 A The studies that I've read would suggest that
24 the longer one is away from information, the more
25 forgetting occurs.

1 three-month vacation?

2 A That I don't know of any specific study, no.

3 Q Do you know how early learning loss begins to
4 occur over the summer vacation?

5 MS. DAVIS: Vague and ambiguous, asked and
6 answered.

7 THE WITNESS: And what are you referring to by
8 early?

9 BY MR. VILLAGRA:

10 Q Does learning loss begin to occur one day out
11 of school?

12 A Oh, sure. Oh, sure. And I think a number of
13 studies suggest our greatest amount of learning occurs
14 within the first 24 to 36 hours.

15 Q The greatest amount of --

16 A Of loss occurs in the first 24 to 36 hours.

17 Q What percentage of the learning loss occurs in
18 those first --

19 A Oh, I can't give you that.

20 Q What's the research that you have seen that
21 supports the proposition that most of the learning loss
22 occurs in the first 24 to 36 hours?

23 A If you're asking me to refer to a specific
24 article, I can't right now.

25 Q Can you refer me to specific authors?

1 A I can't right now.
 2 Q Okay. And what happens to the learning loss
 3 after those first 36 hours?
 4 A Well, it continues. The longer we're away from
 5 something, the more forgetting occurs. But the greatest
 6 loss is within the short period of time after teaching
 7 occurs. Of course, that argues against winter vacation
 8 as well. It really argues against weekends; doesn't
 9 it?
 10 Q It seems to me that way.
 11 Do you know how much learning loss occurs after
 12 one week out of school?
 13 MS. DAVIS: Asked and answered.
 14 THE WITNESS: I can't give you a specific, no.
 15 BY MR. VILLAGRA:
 16 Q What about two weeks?
 17 A I can't.
 18 Q Four weeks?
 19 A I can't.
 20 MS. DAVIS: Same objection.
 21 BY MR. VILLAGRA:
 22 Q Six?
 23 A Can't.
 24 Q Eight?
 25 A Can't.

1 Q Ten?
 2 A Can't.
 3 Q Twelve?
 4 A Can't.
 5 Q If you turn to Page 4 of your report, the
 6 second sentence, under Heading V says, "The purpose of
 7 the reform is to shorten the summer vacation of the
 8 traditional calendar in order to reduce the summer
 9 learning loss that pervades the long three-month break."
 10 Do you see that?
 11 A I see that.
 12 Q How is it that summer learning loss pervades
 13 the three-month break?
 14 A The three-month break, what we call the summer
 15 vacation, is really what the whole study that Cooper
 16 did -- Cooper and his team did. They were talking about
 17 the loss that occurring over the three-month period of
 18 time. So when we talk about pervading the long
 19 three-month break, we're talking about the long summer
 20 break of the traditional calendar.
 21 Q Are you intending to make any comment on how
 22 learning loss progresses throughout the three-month
 23 break?
 24 A I'm not at this time, no.
 25 Q If you can't say how much learning loss occurs

1 after ten weeks, how do you know that any learning loss
 2 occurs from the tenth to the twelfth week on vacation?
 3 A Repeat the question for me, please.
 4 Q Well, I asked you earlier if you know how much
 5 learning loss had occurred after ten weeks --
 6 A Right.
 7 Q -- and you said you didn't know.
 8 How do you know that all the learning loss
 9 hasn't occurred after ten weeks and that there's been no
 10 additional learning loss in the next two weeks?
 11 A Well, that's one of those questions where 10
 12 weeks, 11 weeks, 12 weeks -- if loss occurs the longer
 13 we're away from information, continues to occur, then
 14 obviously, 12 weeks would have more loss than 10 weeks.
 15 But here in this sentence we're talking about
 16 the ordinary, customary three-month break of the summer
 17 vacation, and that's what reports such as Dr. Cooper's
 18 report speaks to.
 19 Q You're making a comment, though, about the
 20 learning loss pervading the three-month break, and I
 21 take that to be that learning loss occurs over the
 22 entire three-month break; is that correct?
 23 A I would say that, sure.
 24 Q But you just told me that you didn't know how
 25 much learning loss occurred after ten weeks.

1 A Yes, but I don't think that makes any
 2 difference, 10 weeks, 11 weeks, 12 weeks.
 3 Q Do you know whether all the learning loss has
 4 occurred after ten weeks?
 5 MS. DAVIS: Asked and answered.
 6 THE WITNESS: Yeah. If --
 7 BY MR. VILLAGRA:
 8 Q Do you know?
 9 A I do not know specifically whether it's 10
 10 weeks, 11 weeks, 12 weeks.
 11 Q Do you know whether it's eight weeks or six
 12 weeks?
 13 A Well, there's loss at six weeks; there's loss
 14 at eight weeks; there's loss at ten weeks. So I really
 15 don't know what you're trying to drive towards.
 16 Q The Harris Cooper study looked at students who
 17 were off for three months; is that correct?
 18 A That's correct.
 19 Q Did the Harris Cooper study --
 20 A Well, for the most part. Let's say, generally,
 21 three months.
 22 Q Did the Harris Cooper study assess how much
 23 students had lost at the six-week period?
 24 A Not that I recall.
 25 Q At the eight-week period?

1 A Not that I recall.
 2 Q At the ten-week period?
 3 A Not that I recall.
 4 Q So the Harris Cooper study only shows what
 5 happened after 12 weeks, but we don't know when the
 6 learning loss occurred; is that right?
 7 A I don't know whether it was 12 weeks. He
 8 looked at studies that had been done by other
 9 researchers and did a meta-analysis of those reports.
 10 So the original studies may have been different time
 11 periods. We don't know that. We'd have to go to each
 12 one of those studies and see what the time frame was.
 13 So he just looked at the summer break, and
 14 generally, that's a three-month break. But we don't
 15 know whether it was specifically 12 weeks.
 16 Q So you have not gone back to the Harris Cooper --
 17 A To each one --
 18 Q -- underlying studies --
 19 A No, I have not.
 20 Q -- to see how long the vacation break was?
 21 A I have not.
 22 Q What's the shortest vacation break offered on a
 23 multi-track year-round calendar?
 24 A On a multi-track calendar? Probably the three
 25 weeks of the 45/15.

1 Q Okay. And that's three weeks, excluding
 2 weekends?
 3 A Three weeks of school days, yes.
 4 Q So it ends up being three full calendar weeks?
 5 A Yes.
 6 Q What's the next-shortest vacation on a
 7 multi-track year-round calendar?
 8 A It would be the 60-20, which is a four-week
 9 vacation.
 10 Q What's the next-shortest?
 11 A It would be the 90-30, with a six weeks'
 12 vacation.
 13 Q What's the next-shortest?
 14 A It would be the Concept 6, with the eight-week
 15 vacation.
 16 Now, there's a modified Concept 6 in there, and
 17 I believe their vacation period would be the same as the
 18 60-20, one month.
 19 Q So on the Concept 6 calendar, students have
 20 two, two-month vacations?
 21 A That's correct.
 22 Q So students end up being out of school for four
 23 months?
 24 A That's correct.
 25 Q Wouldn't the Harris Cooper research suggest,

1 then, that students at Concept 6 calendar schools are at
 2 a disadvantage, because they are out of school for four
 3 months instead of three?
 4 A That may be that they would have less of an
 5 advantage than a 45-15 student, in terms of memory loss.
 6 Q Relative to a traditional calendar, would
 7 students at a Concept 6 school be at a disadvantage as a
 8 result of being out for four months, based on the
 9 research by Harris Cooper?
 10 A You can't think of it as four months. It's two
 11 months at a time, and that would be less away from the
 12 learning than the traditional calendar's three months.
 13 MR. VILLAGRA: Let me mark Exhibit 13. It's a
 14 study by Harris Cooper and others, entitled "The Effects
 15 of Summer Vacation on Achievement Test Scores: A
 16 Narrative and Meta-Analytic Review."
 17 (Plaintiff's Exhibit 13 was marked for
 18 identification by the court reporter.)
 19 MS. DAVIS: Was this provided by us -- it doesn't
 20 look like it -- or you?
 21 MR. VILLAGRA: No, it doesn't look like --
 22 MS. DAVIS: Okay. It might have been publicly
 23 available. Okay.
 24 BY MR. VILLAGRA:
 25 Q I know it's a long report. I just want you to

1 make sure that it is what you think it is. I'm only
 2 going to refer you to one page.
 3 A You don't want to go line by line through this
 4 report?
 5 Q No. You know, the report occasioned a lot of
 6 learning loss on my part when I read it.
 7 Have you had a chance to review it?
 8 A Yes.
 9 Q What is Exhibit 13?
 10 A It is a study entitled "The Effects of Summer
 11 Vacation on Achievement Test Scores: A Narrative and
 12 Meta-Analytic Review." It's a study done by Dr. Harris
 13 Cooper, as the lead author, the University of Missouri
 14 in Columbia, with a team of Barbara Knight, Tennessee
 15 State University, Kelly Carlton, James Lindsey, Scott
 16 Greathouse, who were at the University of Missouri,
 17 Columbia.
 18 Q And have you reviewed this previously, this
 19 report?
 20 A I've seen it previously, yes.
 21 Q When did you last review it?
 22 A Oh, read it all the way through? Some months
 23 back.
 24 Q When you were preparing your report?
 25 A I actually didn't read it all the way through

1 for preparing my report. I've read it all the way
2 through on previous occasions, but I didn't in preparing
3 the report.

4 Q I want to turn your attention to Page 263, the
5 very last sentence. Starts with "However."

6 A 263. At the very bottom?

7 Q Yes.

8 A Okay.

9 Q "However, proponents of calendar change cannot
10 take the findings about summer vacation to mean that any
11 alternative calendar is preferable to the present one."

12 Do you see that?

13 A I see that.

14 Q Do you have any reason to disagree with that
15 statement?

16 A I wouldn't have any reason at this time.
17 They're entitled to their view.

18 Q So you're reading the results of this study to
19 support year-round education, even though the authors
20 caution that that reading should not be made?

21 A Well, they're simply saying that it doesn't
22 mean that any alternative calendar is preferable to the
23 present one. They don't rule out that some may be
24 preferable to the traditional calendar.

25 Q So you're reading it to suggest that maybe some

1 their tripartite study that they were doing, and that
2 third part is year-round education itself. And I just
3 happen to know that this particular study is one part of
4 a much larger study that Dr. Cooper and team were
5 doing.

6 So they're saying at this point, those who read
7 our report on summer learning loss cannot go further and
8 say that alternative calendars are preferable. Let's
9 wait until we do that research and then see what we have
10 to say.

11 Q But that's what you have been saying about the
12 research on summer learning loss; isn't it?

13 A I have, because I've moved ahead and say, if
14 there is summer learning loss, it's important that
15 practitioners try to stem that learning loss, and one
16 way to do that is to reduce the summer vacation.

17 Q On what basis did you move ahead from the
18 findings of the Harris Cooper study?

19 MS. DAVIS: I'm going to object that that's the
20 finding of the Harris Cooper study. It says, "does not
21 assess." Doesn't say you cannot use or you should not
22 use an alternate calendar.

23 MR. VILLAGRA: No, I'm sorry. I was referring to
24 the finding on summer learning loss.

25 THE WITNESS: Repeat your question, please.

1 alternative calendar is preferable?

2 A They may be saying that. But I --

3 Q You're reading it in that way?

4 A That's the way I'm reading it, yes.

5 Q And you're reading it to suggest that all
6 year-round calendars are preferable to the present one?

7 A I don't think they're saying that. They're
8 saying that does not mean that any alternative calendar
9 is preferable to the present one.

10 Q In the next sentence it says, "For instance,
11 the present synthesis did not assess whether alternative
12 schedule calendars such as those that include the
13 present number of school days but distribute shorter and
14 more frequent vacations throughout the year are actually
15 more effective than the present calendar."

16 Do you see that?

17 A I see that.

18 Q Aren't they specifically stating that the
19 present synthesis should not be viewed to support
20 year-round education?

21 MS. DAVIS: The document speaks for itself.

22 BY MR. VILLAGRA:

23 Q I need to know your reading of it,
24 Mr. Ballinger.

25 A My reading is that they have a third part to

1 BY MR. VILLAGRA:

2 Q On what basis did you move ahead from the
3 Harris Cooper study on summer learning loss?

4 A On the basis that I see myself as an educator
5 who wants to do right by students, and the more summer
6 learning loss that we can stem, the better off students
7 will be.

8 Q Why did you not move ahead from the Gene Glass
9 study?

10 A Because as I said earlier, I don't think that
11 he really is that knowledgeable about the state of
12 year-round education.

13 Q One of the things that Gene Glass said, though,
14 is that adding 10 to 15 percent to the school calendar
15 would not show much appreciable effect. You asked the
16 question whether taking 10 or 15 percent would show much
17 appreciable effect.

18 You were unwilling to make that leap; is that
19 correct?

20 A At this point, yes.

21 Q Okay. Why were you willing to make the leap
22 from the Harris Cooper study, that its findings about
23 summer learning loss supported the year-round calendar,
24 when Harris Cooper -- when the authors themselves said
25 not to do that?

1 MS. DAVIS: I'm going to object. That's not what
 2 the document says. The document says, "The present
 3 synthesis does not assess whether alternative" --
 4 doesn't come to a conclusion.
 5 MR. VILLAGRA: Lynne, you know, if you want to make
 6 an objection, just don't make a speaking objection.
 7 Q The first sentence says, "Proponents of
 8 calendar change cannot take the findings about summer
 9 vacation to mean that any calendar" -- "any alternative
 10 calendar is preferable to the present one."
 11 And that's precisely what you've done; isn't
 12 it, Mr. Ballinger? You've --
 13 A No.
 14 Q -- read this study to suggest that year-round
 15 education is preferable to the traditional calendar?
 16 MS. DAVIS: Argumentative.
 17 THE WITNESS: I've read the whole study, and if
 18 you'll go on to the next page, 265, in the last
 19 paragraph, which is in the section called "Conclusions,"
 20 there is a sentence that says, "Proponents of school
 21 calendar changes appear correct in arguing that summer
 22 vacation has a negative impact on learning and that this
 23 impact is not equal across all students."
 24 I think that says to me that we're right in
 25 moving ahead. And so I wondered why you selected just

1 the one sentence and you didn't read the sentence that I
 2 just quoted.
 3 BY MR. VILLAGRA:
 4 Q Well, you know, maybe in another case you can
 5 depose me, but --
 6 A Okay.
 7 Q Do you read this sentence to suggest that
 8 Harris Cooper -- and I'll refer to Harris Cooper
 9 generally -- is supportive of year-round education?
 10 A Oh, I can't speak for him.
 11 Q Do you read this sentence, though, as support
 12 for the proposition that year-round education reduces
 13 summer learning loss?
 14 A I think it goes in that direction, yes.
 15 Q Goes in that direction?
 16 A Sure.
 17 Q Okay. But it doesn't support it?
 18 A Well, it says, "Proponents of calendar changes
 19 appear correct" -- "appear correct in arguing that
 20 summer vacation has a negative impact on learning and
 21 that this impact is not equal across all students."
 22 Q But it does not say that proponents of school
 23 calendar change appear correct in arguing for an
 24 alternative calendar; does it?
 25 A It doesn't go that far, yes.

1 Q But you do?
 2 A I do.
 3 Q I want to go back to Page 2 of your report.
 4 Your Heading IV, you write, "In their efforts to portray
 5 multi-track year-round education" --
 6 A Excuse me. I'm on the wrong Page 2.
 7 Okay.
 8 Q Under Heading IV.
 9 A Okay. Roman numeral IV?
 10 Q Yes.
 11 A Okay.
 12 Q "In their efforts to portray multi-track
 13 year-round education as unequal or substandard, it is
 14 significant that Drs. Oakes and Mitchell have lodged
 15 only complaints about the multi-track year-round
 16 calendar and offered no solutions to over-enrollment --
 17 all from the comfort of their ivory towers."
 18 Do you see that?
 19 A I see that.
 20 Q Why is that significant?
 21 A Well, it's significant; in that, school
 22 district people, practitioners, have a problem to solve,
 23 which is over-enrollment. They've not offered real-time
 24 solutions to over-enrollment in their papers.
 25 Q Is it significant in any other way?

1 A No, I think it's -- pretty well says what I had
 2 in mind.
 3 Q What do you mean by real-time solutions?
 4 A If the over-enrollment is here at the moment,
 5 something has to be done now, and so they've offered no
 6 real solutions to over-enrollment, current
 7 over-enrollment.
 8 Q Do you know what the current state of
 9 over-enrollment in California public schools is?
 10 A I know there are a lot of schools that are
 11 over-enrolled.
 12 Q Is that no?
 13 A In fact, we have -- I don't know what you're
 14 asking for there.
 15 Are you asking me how many schools have
 16 multi-track schools? Which would suggest
 17 over-enrollment?
 18 Q (No audible response)
 19 A Yeah, I mentioned that in the paper, as a
 20 matter of fact. There are 900 and -- 931 during the
 21 2002-2003 academic year. So we'd have to assume that
 22 those schools were over-enrolled to the degree that they
 23 needed to use multi-track as a solution to the
 24 over-enrollment.
 25 Q And so to determine the degree of

1 over-enrollment in California public schools, you
 2 referred to the number of multi-track schools; is that
 3 correct?
 4 A I did. I did.
 5 Q Do you know how long there has been multi-track
 6 year-round education in California public schools?
 7 A Since 1971.
 8 Q So is it safe to say that there has been
 9 over-enrollment in California public schools since 1971?
 10 A In some schools, yes, sure.
 11 Q And in the 32-plus years, there has been no
 12 real-time solution to over-enrollment; is that correct?
 13 A No, we do have a real-time solution to
 14 over-enrollment, and multi-track is one of those
 15 solutions.
 16 Q Was it your understanding that Drs. Oakes and
 17 Mitchell were supposed to offer solutions to
 18 over-enrollment?
 19 A I don't know what they were asked to do. So I
 20 can't answer the question.
 21 Q Why is it, then, significant that they did
 22 not?
 23 MS. DAVIS: Asked and answered.
 24 THE WITNESS: Well, it was significant because
 25 we're talking about over-enrollment, and the only one

1 that I saw was building schools, and that certainly is
 2 one of those alternatives we've listed, but right now,
 3 when a district is faced with over-enrollment,
 4 multi-track handles that problem.
 5 BY MR. VILLAGRA:
 6 Q So you did read Drs. Oakes and Mitchell to
 7 suggest the building of new schools?
 8 A Sure.
 9 Q Okay. And that is a solution to
 10 over-enrollment?
 11 A That is a solution.
 12 Q Okay.
 13 A And it's one that we use as well.
 14 Q So is it incorrect, then, for you to say that
 15 they offer -- that they lodged only complaints and
 16 offered no solutions to over-enrollment? Is that an
 17 overstatement?
 18 A Maybe the word "no" is a little strong. But --
 19 Q It's like a little pregnant.
 20 In the very next sentence you list a number of
 21 things that have contributed to over-enrollment. First
 22 you list the demographics of disadvantaged
 23 neighborhoods.
 24 A Where are we now, please?
 25 Q I'm sorry, still on Page 2.

1 A Page 2.
 2 Q Right after the sentence about Drs. Oakes and
 3 Mitchell.
 4 A Okay.
 5 Q Do you see the reference to demographics of
 6 disadvantaged neighborhoods?
 7 A I do.
 8 Q What do you mean by disadvantaged neighborhoods?
 9 A These would be less-affluent neighborhoods,
 10 which often have large numbers of children.
 11 Q Do you mean anything else by disadvantaged
 12 neighborhoods?
 13 A At this point, no.
 14 Q What do you mean by the demographics of
 15 disadvantaged neighborhoods?
 16 A I'm speaking of the large number of children
 17 coming from some of these neighborhoods.
 18 Q And how have the demographics of disadvantaged
 19 neighborhoods contributed to over-enrollment?
 20 A Well, if there are too many students who appear
 21 at the schoolhouse door, then there is a problem of
 22 overcrowding, and that problem of overcrowding needs a
 23 solution.
 24 Q The demographic is just simply large numbers of
 25 kids in certain neighborhoods that you labeled as

1 disadvantaged?
 2 A Ask me the question again, please.
 3 Q Is that the demographic that you're referring
 4 to?
 5 A What was the question, though, originally?
 6 Q I'm sorry, never mind.
 7 A Okay.
 8 Q The next item you list is limited availability
 9 of land suitable for educating school children.
 10 A Hmm-hmm.
 11 Q Do you see that?
 12 A I see that, yes.
 13 Q What do you mean by land suitable for educating
 14 school children?
 15 A Certain portions of land could be too close to
 16 some things like industrial plants. There could be
 17 freeway situation. Some parcels of land would be more
 18 desirable for educating children than others. And in
 19 California, as our population increases, the amount of
 20 land available decreases and certainly is limited. So
 21 that's what I had in mind there.
 22 Q Are you aware of any studies into the limited
 23 availability of land suitable for educating school
 24 children?
 25 A I can't refer to any studies. More newspaper

1 articles there.

2 Q Do you recall any newspaper articles
3 specifically?

4 A Well, obviously, one clear case would be the
5 current building of Belmont High School, the new Belmont
6 High School.

7 Q And that article addressed the limited
8 availability of land suitable for educating school
9 children?

10 A No, I'm just saying that was one example
11 whether the land is suitable for building or not.

12 Q Do you believe the land is suitable?

13 A I can't offer an opinion about that land.

14 Q To your knowledge, do school boards have powers
15 of eminent domain?

16 A They do.

17 Q How does the limited availability of land
18 suitable for educating school children contribute to
19 over-enrollment?

20 A Well, in some dense urban areas, while there
21 may be eminent domain, the cost may be prohibitive. And
22 so consequently, any school board has to make some
23 judgments about whether the land is really available or
24 not or certainly within the budget of the school
25 district.

1 Q Are you aware of any studies showing that the
2 costs of land may be prohibitive, in some dense urban
3 areas, for school districts?

4 A Oh, I can't point to any specific studies now,
5 no.

6 Q The next item you list is class size reduction
7 policies.

8 Do you see that?

9 A That's correct.

10 Q How do class size reduction policies contribute
11 to over-enrollment?

12 A Well, as the State moved to reduce class sizes
13 at the early grades, kindergarten through Grade 3, that
14 meant that fewer students could be housed in existing
15 classrooms. That, then, required more classrooms to be
16 made available for those students who would be excluded
17 from the 20-to-one class maximum allowed. Those
18 classrooms have to be made available somehow.

19 In many districts, since they were already
20 either at their limit, in terms of enrollment, or
21 over-enrolled, the class size reduction policies either
22 now caused over-enrollment or exacerbated
23 already-existing over-enrollment situations.

24 Q So California's legislative policy to reduce
25 class size in kindergarten through third grade, in your

1 opinion, either caused or distributed to over-enrollment
2 in California's public schools?

3 A Yes.

4 Q In the next item you refer to the remnants of
5 Proposition 13.

6 What do you mean by that?

7 A Well, Proposition 13 was in place from 1978
8 until our recent election, which reduced the two-thirds
9 requirement for bonds at the local level. And the
10 remnants is really recognition that we're in a changing
11 state now, when it comes to voting requirements.

12 Two-thirds has been now dropped to 55 percent.

13 Q And that's all you intend to convey by --

14 A That's really the basis for that, yes.

15 Q And throughout that period from '78 to whenever --

16 A What was it? 2002, I guess. I think it was
17 2002.

18 Q -- to 2002, State bonds could have been
19 approved with a majority plus one, right?

20 A That's right. And they were. Not always, but
21 they were, to a large extent.

22 Q The next item is the current crippling
23 financial climate in the state of California.

24 A Right.

25 Q Do you see that?

1 A Yes.

2 Q How has the current financial climate
3 contributed to over-enrollment?

4 A Districts are not willing to move out to
5 purchase anything that they absolutely don't have to.
6 So adding portables, that sort of thing, which will be a
7 cost to the local district, is something that certainly
8 a district's going to question, is this the most -- is
9 this the best financial way to handle the problem of
10 over-enrollment, or if these folks in year-round
11 education are saying that multi-track is a cheaper way
12 to go than use of relocatables.

13 In the current financial climate, I would hope
14 that school boards would pause and say, what is it that
15 we ought to be doing here.

16 I don't know that it's specifically the current
17 climate has contributed to over-enrollment, but that's
18 certainly a factor in the whole mix.

19 Q But over-enrollment has existed since at least
20 1971; wouldn't you say?

21 A At least, yes.

22 Q And the current crippling climate had no impact
23 on over-enrollment in the '70s, '80s and '90s?

24 A Well, in some districts the financial climate
25 might, but in general, I'll concede what you're saying,

1 yes.

2 Q And currently, if a district has a local
3 bond -- school construction bond that has been approved,
4 to what degree does the current financial climate affect
5 its ability to build new schools?

6 MS. DAVIS: You're saying in districts where a bond
7 has been approved?

8 MR. VILLAGRA: Yes.

9 MS. DAVIS: Okay.

10 BY MR. VILLAGRA:

11 Q Take LAUSD, for example. Measure K was
12 approved by L.A. County voters --

13 A Bond money is separate from general fund
14 moneys. So if the voters have said yes to school bonds,
15 then obviously, those can be built. But once those are
16 built, current financial situation does make a
17 difference, because that pot of money to operate those
18 schools that come on line may or may not be there to do
19 so. Or with new schools coming on, the existing pie --
20 the slices are going to have to be cut in smaller pieces
21 for each existing school.

22 So it may have an effect. It may not cause
23 overcrowding. It may very well have an effect.

24 Q And right after the current climate you say,
25 "among other things."

1 Is that how you understood my question?

2 A I wasn't sure. That's why I answered as I did.

3 Q Okay. Do you believe, over the last 30 years,
4 that the State of California has invested enough funds
5 in new school construction?

6 MS. DAVIS: What do you mean by State of
7 California? The State or the -- I mean, I just want to
8 make sure we're separating out the bonds that the voters --

9 MR. VILLAGRA: The entire state of California.

10 MS. DAVIS: Okay.

11 MR. VILLAGRA: All the funding that has been
12 available by the entity known as the State for new
13 school construction.

14 THE WITNESS: There's never enough money for
15 education. So no, California has not invested enough in
16 education.

17 BY MR. VILLAGRA:

18 Q And that includes new school construction?

19 A Includes new school construction.

20 Q To your understanding is State funding for new
21 construction predictable?

22 A What do you mean by --

23 MS. DAVIS: Vague and ambiguous.

24 THE WITNESS: -- predictable?

25 BY MR. VILLAGRA:

1 Do you recall what other things you had in mind?

2 A I don't.

3 Q What about the insufficient amount of State
4 funding for new construction over the last 30 years?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: What are you asking -- you say what
7 about it.

8 BY MR. VILLAGRA:

9 Q Has that contributed to over-enrollment?

10 A It may have.

11 Q How might it have?

12 A Well, when there's a limited amount of money
13 available to build new buildings, those buildings don't
14 get built and so over-enrollment can occur.

15 Q To your understanding, has the State investment
16 in new school construction been adequate to meet the
17 need for it over the last 30 years?

18 A Well, your question assumes that there's a
19 standard by which -- that meets adequacy. I don't know
20 what that standard is. There are those, certainly, in
21 the field of education who would argue that the State
22 has not kept up, but that's a political question as well
23 as an educational question.

24 Q I was referring to adequacy in terms of new
25 school construction.

1 Q Does the district, for example, know whether
2 it's going to have any funding for new school
3 construction next year from the State?

4 A In some instances, it will, yes.

5 Q How would it know?

6 A Well, as it goes through the priority listing
7 application for State funds. Once that has been granted
8 and approved, they would know that that money is going
9 to become available.

10 Q And what about in years when there has been no
11 State school construction bond approved? Can a district
12 predict how much funding it will receive --

13 A And when?

14 Q (No audible response)

15 A No, it can't.

16 Q It is not a steady stream that comes out yearly?

17 A No.

18 Q Do you believe that the incentives the State
19 has provided for multi-tracking have contributed to
20 over-enrollment?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: No, I don't.

23 BY MR. VILLAGRA:

24 Q Do you believe that the -- to your
25 understanding, is there a State law that permits the

1 Concept 6 calendar?
 2 A There is one.
 3 Q Do you believe that that provision in the
 4 Education Code that permits Concept 6 to exist has
 5 contributed to over-enrollment?
 6 A I don't think so, no.
 7 Q At Page 3 of your report, first full paragraph,
 8 the second sentence, you write, "Change, though, is
 9 coming."
 10 A Yes.
 11 Q What do you mean by change?
 12 A I'm referring to the following sentence, where
 13 it talks about how California voters passed the
 14 statewide bond of over 11 billion. That's not ever
 15 happened before, in my knowledge, in the state of
 16 California. The previous bond issues have been smaller
 17 than that.
 18 Q What are you referring to, though, in terms of
 19 change? Anything other than the bond itself?
 20 A Change in building new schools.
 21 Q Okay. Do you know whether that change in
 22 building new schools will reduce the number of
 23 multi-track year-round schools in California?
 24 MS. DAVIS: Calls for speculation.
 25 THE WITNESS: It may, but I don't know for sure.

1 BY MR. VILLAGRA:
 2 Q Do you know whether that change that you're
 3 referring to will result in the elimination of
 4 multi-track year-round calendars?
 5 MS. DAVIS: Same objection.
 6 THE WITNESS: It is speculative. Even though we're
 7 building new schools, we may have another surge of
 8 population growth, which may impact to the degree that
 9 we will still be using multi-track. Who knows what the
 10 future holds.
 11 BY MR. VILLAGRA:
 12 Q Well, if we don't know what the future holds,
 13 then how can we say that change is coming?
 14 A Because I'm referring here to the voters having
 15 a better attitude about passing bonds for building
 16 buildings. That doesn't mean that we will completely
 17 eliminate use of multi-track.
 18 Q Does it mean we're going to reduce
 19 over-enrollment?
 20 A I don't know. I just don't know.
 21 Q Okay.
 22 MS. DAVIS: Is this a -- at some point can we take
 23 a break? We've been going about an hour.
 24 MR. VILLAGRA: Sure.
 25 MS. DAVIS: And what time do you want to take

1 lunch?
 2 MR. VILLAGRA: 12:30. Is that okay?
 3 MS. DAVIS: We'll take a break now. That should be
 4 fine.
 5 (Brief recess taken.)
 6 BY MR. VILLAGRA:
 7 Q We were looking at Exhibit 12, which is your
 8 report, at Page 3, and you make reference to the
 9 November 2002 bond.
 10 Do you see that?
 11 A I see that.
 12 Q And you say, "The bond provides 11 billion for
 13 new school construction and building modernization."
 14 Do you see that?
 15 A I see that.
 16 Q Will building modernization address
 17 over-enrollment?
 18 MS. DAVIS: That calls for speculation.
 19 THE WITNESS: Ask me the question again, please?
 20 MR. VILLAGRA: Could you read it back, please.
 21 (Record read.)
 22 MS. DAVIS: Same objection.
 23 THE WITNESS: It may, in the sense that building
 24 modernization may allow some spaces to be used because
 25 of air conditioning, for example, that would not

1 otherwise be used.
 2 So I'm just giving you a "may." I can't point
 3 to specific examples.
 4 BY MR. VILLAGRA:
 5 Q Do you know how much of the 2002 bond was
 6 specifically targeted for new school construction?
 7 A Percentage, I do not know.
 8 Q So you don't know whether it's the entire 11
 9 billion?
 10 A I don't.
 11 Q Or whether it's 1 billion?
 12 A I don't.
 13 Q Do you know whether the 2002 school bond
 14 provides sufficient funding to eliminate current levels
 15 of over-enrollment?
 16 MS. DAVIS: Vague and ambiguous.
 17 THE WITNESS: I would say no, from what the State
 18 has reported as a backlog of requests for State help.
 19 So I'd say no.
 20 BY MR. VILLAGRA:
 21 Q So you have an understanding that there is a
 22 shortfall, in terms of funding --
 23 A Yes.
 24 Q -- as far as elimination of over-enrollment's
 25 concerned?

1 A Yes. Shortfall in requests made for
2 over-enrollment. I don't know whether -- the sense of
3 over-enrollment, what the quality of their requests are,
4 but yes, shortfall from requests.

5 Q So there's more demand for funding to address
6 over-enrollment than there is funding available?

7 A That's true.

8 Q In the next sentence you say, "Of course,
9 acquiring new land, complying with stringent
10 environmental standards established for land housing
11 school children, drawing up architectural plans and
12 actually building new schools will take time."

13 Do you see that?

14 A I see that.

15 Q What do you mean by stringent environmental
16 standards?

17 A Well, certain things have to be looked at
18 before schools can be built, and a district has to go
19 through the process of making sure that those standards
20 are looked at. So it's just part of the process of
21 taking the time to get from passing a bond issue to a
22 new building coming on line.

23 Q Are you expressing any opinion as to whether
24 the State's environmental standards are --

25 A No.

1 so consequently, that criticism is not going to be as
2 prevalent as it was before, obviously.

3 BY MR. VILLAGRA:

4 Q When you say the near future, what --

5 A Yes.

6 Q -- are you referring to?

7 A Oh -- well, as I go on to say, two of those
8 districts are going to -- two of the four that currently
9 use Concept 6 are going to continue -- discontinue it
10 for the 2003-2004 year. So the near future for those
11 districts would be within the next few months. That's
12 true. And the other two districts -- or at least the
13 third district, relatively soon. The fourth district
14 may be using it for a period of time yet.

15 Q When you referred to the two districts that
16 have announced plans to discontinue the calendar, what
17 two districts are you referring to?

18 A Vista would be one, Vista Unified, and --
19 trying to think which is which here. I think it's Lodi
20 that is going to discontinue the Concept 6 calendar.

21 Q How many Concept 6 schools did Vista Unified
22 School District have as of last year?

23 A Vista Unified had its elementary and middle
24 schools. I think they were around 15, 16 in number.

25 Q And how many did Lodi have on the Concept 6

1 Q -- excessively stringent?

2 A No, I'm not.

3 Q In the next paragraph you write, "Drs. Oakes
4 and Mitchell particularly criticize Concept 6 and the
5 modified Concept 6 calendars. These calendars, however,
6 are less likely to be used in the near future."

7 Do you see that?

8 A I see that.

9 Q What's the significance of these two Concept
10 6 -- these two forms of the Concept 6 calendar being
11 used less in the near future?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: What's the significance of that?

14 BY MR. VILLAGRA:

15 Q Uh-huh, to you.

16 A Well, Concept 6 is always used in a situation
17 of very heavy over-enrollment. And I'm saying here that
18 they are less likely to be used in the near future, from
19 information which I received.

20 Q Does that take away from the criticisms that
21 Drs. Oakes and Mitchell have lodged of the calendar?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: Oh, I would think they would probably
24 still have their same criticism of the calendar. What
25 I'm saying here is they're less likely to be used, and

1 calendar?

2 A I couldn't come up with an exact number right
3 now.

4 Q Do you know why Vista Unified decided to
5 discontinue the use of the Concept 6 calendar?

6 A I believe they passed a local bond issue.
7 There may have been other factors; I don't know.

8 Q Do you have any knowledge as to whether the
9 Vista Unified School District has decided to discontinue
10 the use of the Concept 6 calendar for educational
11 reasons?

12 A No, I don't know that.

13 Q Do you know why Lodi Unified School District
14 decided to discontinue the use of the Concept 6
15 calendar?

16 MS. DAVIS: Calls for speculation.

17 THE WITNESS: Again, I think that had to do with
18 new buildings coming on line.

19 BY MR. VILLAGRA:

20 Q Do you know whether the Lodi Unified School
21 District decided to discontinue the use of the Concept 6
22 calendar for educational reasons?

23 MS. DAVIS: Calls for speculation.

24 THE WITNESS: I don't know that either.

25 BY MR. VILLAGRA:

1 Q You refer to a third district that has plans to
2 discontinue Concept 6 in middle and high schools.
3 What district are you referring to?
4 A Well, I believe Los Angeles Unified has made a
5 move to try to move as many of its middle schools, for
6 example, as possible onto a four-track rather than the
7 three-track calendar. So this is Los Angeles Unified.
8 Q How many Concept 6 schools in L.A. Unified were
9 there --
10 A I couldn't give you the number right now.
11 Q Do you know how many will be discontinued in
12 the 2003-2004 year?
13 A I can't give you that number.
14 Q Is LAUSD -- does LAUSD have the greatest number
15 of Concept 6 schools in California?
16 A Yes.
17 Q Does it include the overwhelming number of --
18 A Yes.
19 Q -- Concept 6 schools?
20 Do you know why LAUSD has plans to discontinue
21 the Concept 6 calendar in its middle and high schools?
22 MS. DAVIS: Calls for speculation.
23 THE WITNESS: Repeat the question.
24 BY MR. VILLAGRA:
25 Q Just to be clear -- I'm trying to avoid you

1 speculating, by asking whether you know why.
2 So do you know why LAUSD has decided to
3 discontinue the Concept 6 calendar?
4 A I didn't hear the discussion. So I can't say.
5 Q You haven't read anything about it?
6 A Not in -- no.
7 Q You then go on to refer to a fourth district
8 that has plans to curtail Concept 6 where feasible.
9 What district are you referring to there?
10 A The other one. I'm thinking here. Oh, dear.
11 I remember we plotted this -- I plotted this out at the
12 beginning. I'm not sure which is which here, as I
13 said. It'd take me a little time to go through. Sorry.
14 Q Is it Palmdale?
15 A Palmdale is discontinuing. I know that.
16 But -- when it says, "where feasible," I'm thinking --
17 I'm not sure. Those are the four districts that all
18 have plans eventually, if possible, to curtail use of
19 Concept 6.
20 Q Okay.
21 A And modified Concept 6.
22 Q Do you know why Palmdale Unified School
23 District has plans to curtail the Concept 6 calendar?
24 A Not --
25 MS. DAVIS: Same objection.

1 THE WITNESS: -- specifically. And they've only
2 been on it for a year or two.
3 In fact, Palmdale had the 60-15 multi-track
4 program which Patricia Gandara championed, which we were
5 talking about a while ago. And they only moved to the
6 Concept 6 when they were so severely impacted with
7 over-enrollment.
8 BY MR. VILLAGRA:
9 Q In the last sentence on Page 3 that spills onto
10 Page 4, you refer to goals to alleviate
11 over-enrollment.
12 What do you mean by that?
13 A As goals to alleviate over-enrollment, that
14 would be the matter -- the bond issue in November 2002,
15 for example, which will go towards alleviating
16 over-enrollment.
17 Q In your opinion, should the State of California
18 have as a goal to alleviate over-enrollment in its
19 public schools?
20 A To the degree it can, yes. And to the degree
21 the public's willing to support that.
22 MR. VILLAGRA: I'm going to mark as Exhibit 14 a
23 one-page Internet printout entitled -- it has the logo
24 of the Palmdale School District, and it's titled
25 "Shaping the Future, Formando el Futuro."

1 (Plaintiff's Exhibit 14 was marked for
2 identification by the court reporter.)
3 MS. DAVIS: Is this from a certain Web site? I
4 just don't see a trailer.
5 MR. VILLAGRA: Yeah.
6 MS. SCHAEFER: It says the Web site in the last
7 paragraph.
8 MS. DAVIS: But I don't see a Web site printed
9 here, so I'm not sure. I wanted to make sure it was
10 printed off the Palmdale Web site.
11 THE WITNESS: (Reviews documents.)
12 BY MR. VILLAGRA:
13 Q Have you had a chance to review Exhibit 14?
14 A I have.
15 Q Have you ever seen this exhibit before?
16 A I have not.
17 Q Do you have any reason to believe that it is
18 not a document put out by the Palmdale School District?
19 A I have no reason to say it isn't, but I have no
20 reason to say it is. I just don't know.
21 Q In the first sentence it says, "Palmdale School
22 District is finally able to eliminate the year-round
23 three-track calendar and return to a traditional school
24 year," exclamation point.
25 Do you see that?

1 A I saw that.
 2 Q The year-round three-track calendar, do you
 3 understand that to be a reference to the Concept 6
 4 calendar?
 5 A I presume so, yes.
 6 Q In the next paragraph, the second sentence
 7 says, "The overwhelming majority of parent, teachers and
 8 staff voiced their support during the past two months,
 9 enabling the governing board of trustees to approve the
 10 change during last night's board meeting."
 11 Do you see that?
 12 A I see that.
 13 Q Do you have any reason to dispute that the
 14 overwhelming majority of parents, teachers and staff in
 15 the Palmdale School District voiced their support for
 16 elimination of the Concept 6 calendar in that district?
 17 A I have no reason to doubt this.
 18 Q In the next paragraph, after the reference to
 19 students attending a hundred and 80 days per year, it
 20 says, "That is an additional 17 days of instruction, up
 21 from the previous 163 under the three-track calendar,
 22 without any major interruptions."
 23 Do you see that?
 24 A I see that.
 25 Q Do you believe that the Concept 6 calendar

1 vacation schedule causes major interruptions?
 2 A The key word is "major." I don't see that as
 3 a major interruption. It is an interruption.
 4 Q How is --
 5 A But then so is the summer vacation of the
 6 traditional calendar an interruption.
 7 Q How would you characterize the Concept 6
 8 vacations, if not as major?
 9 A They're interruptions.
 10 Q Are they significant interruptions?
 11 MS. DAVIS: Vague and ambiguous.
 12 THE WITNESS: The same as major, significant.
 13 BY MR. VILLAGRA:
 14 Q The last sentence of that third paragraph says,
 15 "In the course of the student's K-8 attendance, this
 16 represents about a year and a half of added beneficial
 17 instructional school days by the time they are ready to
 18 move on into the high school."
 19 Do you see that?
 20 A I see that, yes.
 21 Q Do you agree that conversion from the Concept 6
 22 calendar to a traditional school calendar represents
 23 about a year and a half of added instructional school
 24 days from "K" through eighth grade?
 25 A If we're just talking counting days, it would

1 add days. Now, we're talking about K-8, so it'd be 17
 2 times 8 -- in eight years, that would not be a year and
 3 a half, no.
 4 Q How long would it be, in your opinion?
 5 A That'd be a hundred and 36 days, which would be
 6 less than a year. But it says in the course of a
 7 student's K-8 attendance, this represents about a year
 8 and a half. That would not be true. It would be at the
 9 most --
 10 Q Three-quarters?
 11 A Be two-thirds.
 12 MS. SCHAEFER: It'd be nine years.
 13 THE WITNESS: What's that?
 14 BY MR. VILLAGRA:
 15 Q Are you counting the kindergarten year?
 16 A No, I'm not. So -- thank you. I'd add one
 17 more year of 17 days. That would be a hundred and 53
 18 days, which now would be more the three-quarters that
 19 you were talking about, yes.
 20 Q Okay.
 21 A But that's only when we're counting days.
 22 Q Sure.
 23 Do you disagree with this decision by the
 24 Palmdale School District to eliminate the Concept 6
 25 calendar?

1 A I have no reason to disagree with it.
 2 Q Do you believe that any official of the
 3 Palmdale School District was charged with an agenda to
 4 attack the Concept 6 calendar?
 5 MS. DAVIS: That calls for speculation.
 6 THE WITNESS: I have no reason to know what their
 7 agenda might be.
 8 BY MR. VILLAGRA:
 9 Q Or whether there is even --
 10 A Or whether there is --
 11 Q -- in fact one?
 12 A Yeah, right.
 13 MR. VILLAGRA: I will mark as Exhibit 15 a
 14 one-page document, entitled "Vista Unified School
 15 District, A Message From the Superintendent Dr. Dave
 16 Cowles."
 17 (Plaintiff's Exhibit 15 was marked for
 18 identification by the court reporter.)
 19 MS. DAVIS: Hector, this document, again, doesn't
 20 have a Web site trailer.
 21 Did someone get this off of the Internet?
 22 MR. VILLAGRA: Yes.
 23 MS. DAVIS: Okay. And was it the Vista Unified
 24 School District Internet --
 25 MR. VILLAGRA: Yes.

1 MS. DAVIS: -- site?
 2 THE WITNESS: (Reviews documents.)
 3 MS. DAVIS: I'd just ask is this the entire
 4 message? I just want to make sure. It looks like
 5 that's probably --
 6 MR. VILLAGRA: Yes.
 7 MS. DAVIS: Okay.
 8 BY MR. VILLAGRA:
 9 Q Have you had a chance to review Exhibit 15?
 10 A I have.
 11 Q What does it appear to you to be?
 12 A It appears to be a message from the
 13 superintendent, Dr. Dave Cowles.
 14 Q Do you have any reason to believe that it is
 15 not a message from Dr. Dave Cowles?
 16 A I do not have any reason to believe that, no.
 17 Q To your knowledge, is Dave Cowles the
 18 superintendent of the Vista Unified School District?
 19 A It is my knowledge that he is.
 20 Q In the first paragraph, just beyond the bold,
 21 it says, "This headline was more than 12 years overdue.
 22 Implemented in 1989, the complicated schedule was
 23 intended a stopgap measure to get a school bond passed
 24 and some new schools built."
 25 Do you see that?

1 A I see that.
 2 Q Did you know whether Vista Unified School
 3 District intended multi-track year-round education as a
 4 stopgap measure?
 5 MS. DAVIS: Calls for speculation.
 6 THE WITNESS: I was present at the time, and they
 7 intended it to be a means of handling over-enrollment.
 8 BY MR. VILLAGRA:
 9 Q For a temporary period?
 10 A That I don't know.
 11 Q Do you believe that multi-track year-round
 12 education is a stopgap measure?
 13 A I don't see it as stopgap. I see it as a
 14 response to a prior problem of over-enrollment.
 15 Q Do you believe that the Concept 6 calendar is a
 16 stopgap measure?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: I don't see it that way. I see it as
 19 a response to over-enrollment.
 20 BY MR. VILLAGRA:
 21 Q Do you have any reason to question whether the
 22 Vista Unified School District intended multi-track
 23 year-round education as a stopgap measure?
 24 A I don't have any reason to know that.
 25 Q Do you believe that Vista Unified

1 Superintendent Dave Cowles, has been charged with an
 2 agenda to attack multi-track year-round education?
 3 MS. DAVIS: Calls for speculation.
 4 THE WITNESS: I don't know what his intent is or
 5 was.
 6 BY MR. VILLAGRA:
 7 Q Do you believe that Dr. Dave Cowles has been
 8 charged with an agenda to attack the Concept 6
 9 calendar?
 10 MS. DAVIS: Same objection.
 11 THE WITNESS: I don't know what his intent for an
 12 agenda is.
 13 MR. VILLAGRA: I'm going to mark as Exhibit 16 a
 14 newspaper article from the San Diego Union Tribune dated
 15 October 25, 2001, written by Sherry, S-h-e-r-r-y,
 16 Parmet, P-a-r-m-e-t. It is entitled "New School, New
 17 Boundaries."
 18 (Plaintiff's Exhibit 16 was marked for
 19 identification by the court reporter.)
 20 THE WITNESS: (Reviews documents.)
 21 Okay.
 22 BY MR. VILLAGRA:
 23 Q Have you had a chance to review Exhibit 16?
 24 A I have.
 25 Q What does it appear to you to be?

1 A It appears to be a reprint of an article in the
 2 San Diego Union Tribune.
 3 Q Do you have any reason to believe that it is
 4 not?
 5 A I have no reason to believe it is not.
 6 Q The seventh paragraph says, "'Multi-track
 7 scheduling put students at a disadvantage,' he said,
 8 'because students attend school 17 fewer days than other
 9 middle school students in California.'" And just above
 10 in the prior paragraph is the person who is quoted, Mike
 11 Vale, district director of facilities.
 12 Do you see that?
 13 A I see that.
 14 Q Do you disagree that Vista Unified School
 15 District's reliance on the Concept 6 calendar has put
 16 students at a disadvantage?
 17 MS. DAVIS: Vague and ambiguous as to
 18 "disadvantage."
 19 THE WITNESS: I don't know that there's been a
 20 disadvantage for Vista students.
 21 BY MR. VILLAGRA:
 22 Q You don't know one way or the other?
 23 A That's right.
 24 Q In the preceding paragraph, Mr. Vale is quoted
 25 as saying, "That just shows you how desperate we've

1 been."

2 A Yes.

3 Q Do you disagree that Vista Unified School
4 District's reliance on the Concept 6 calendar shows how
5 desperate the district has been?

6 A I don't know how desperate they were.

7 Q Do you --

8 A But essentially, all three articles, you know,
9 don't really talk to the problem that the districts
10 face. They really had no choice but to go to Concept
11 6. So what good the desperation would be. We had such
12 severe over-enrollment. So I don't know that it's
13 desperate calendar or desperate over-enrollment.

14 Q Do you believe -- do you have any reason to
15 believe that Mike Vale has been charged with an agenda
16 to attack the Concept 6 calendar?

17 MS. DAVIS: Calls for speculation.

18 THE WITNESS: I don't know whether he has an agenda
19 or not.

20 BY MR. VILLAGRA:

21 Q Do you believe that he does have an agenda to
22 attack the Concept 6 calendar?

23 A I have no way --

24 MS. DAVIS: Same objection.

25 THE WITNESS: I have no way of knowing.

1 Q Do you understand that to be a reference to the
2 Concept 6 calendar?

3 A I believe so, yes.

4 Q In the third paragraph there is another quote
5 attributed to Mike Vale. This quote says, "You have the
6 situation where the facilities program is driving the
7 education program. It should be the other way."

8 A I see that.

9 Q Do you see that?

10 A Yes.

11 Q Do you agree that the education program should
12 drive the facilities program?

13 A That would be an ideal.

14 Q And why would that be the ideal?

15 A The charge from the State or the charge from
16 the people in the state is to educate children. So
17 ideally, one would hope to have an idea of what the
18 education program should be and then have facilities
19 that would meet the needs for that educational program.
20 The reality may be different than the ideal, however.

21 And that's what Mr. Vale is speaking to.

22 Q Do you agree that Vista Unified School
23 District's reliance on Concept 6 shows that its
24 facilities program have been driving its education
25 program?

1 MR. VILLAGRA: I'm going to mark as Exhibit 17 an
2 article from the San Diego Union Tribune dated June
3 10th, 2000, again written by Sherry Parmet, entitled
4 "Vista Schools Dial for Dollars."

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

7 THE WITNESS: (Reviews documents.)

8 Okay.

9 BY MR. VILLAGRA:

10 Q Have you had a chance to review Exhibit 17?

11 A I've seen it.

12 Q What does it appear to you to be?

13 A It looks like an article from the San Diego
14 Union Tribune.

15 Q Do you have any reason to believe it's not?

16 A I have no reason to believe it's not.

17 Q At Page 3 of 5 --

18 A 3 of 5, okay.

19 Q Yes.

20 At the very top, there's a quote. It says,
21 "'We use a type of year-round scheduling that uses less
22 days than most schools in California,' quote, 'Vale
23 said.'"

24 Do you see that?

25 A I see that.

1 MS. DAVIS: Calls for speculation.

2 THE WITNESS: Yes. I don't know whether that's
3 true, other than the quote I see in front of me. But I
4 do have to note that if we use the same article --

5 BY MR. VILLAGRA:

6 Q I'm sorry, Mr. Ballinger --

7 A -- first page --

8 Q Mr. Ballinger --

9 A -- first page and the fourth paragraph down, I
10 note that Mr. McHugh says, "Currently, our test scores
11 are higher than ever," which I think says what we were
12 trying to say, that achievement scores have not been
13 hurt by the Concept 6.

14 MR. VILLAGRA: I'm going to move to strike that
15 answer as nonresponsive.

16 And Lynne, if you could instruct the witness.
17 You know, if he wants the opportunity to talk, you know,
18 you have questions you can ask him.

19 MS. DAVIS: If he feels like he's answering a part
20 of your question, then I'm going to let -- you know,
21 then he can answer.

22 MR. VILLAGRA: That wasn't part of the question.
23 That was a speech.

24 THE WITNESS: I don't think it was a speech. I was
25 reading from the article.

1 BY MR. VILLAGRA:
 2 Q If I told you that you had a situation in Vista
 3 Unified School District where the facilities program was
 4 driving the education program, would you have any reason
 5 to disagree?
 6 MS. DAVIS: Vague and ambiguous.
 7 THE WITNESS: If you told me that, I would have no
 8 reason to disagree that you told me that.
 9 BY MR. VILLAGRA:
 10 Q Do you have any reason to disagree with Mike
 11 Vale?
 12 A I have no reason at this point to disagree with
 13 what he said, as quoted here.
 14 MR. VILLAGRA: I'll mark as Exhibit 18 an article
 15 from the Lodi News-Sentinel, dated July 29, 2000, by
 16 Julie -- her last name is G-i-e-s-e -- and it's entitled
 17 Lodi Trustees May Add Days to School Year.
 18 (Plaintiff's Exhibit 18 was marked for
 19 identification by the court reporter.)
 20 THE WITNESS: (Reviews documents.)
 21 Okay.
 22 BY MR. VILLAGRA:
 23 Q Have you had a chance to review Exhibit 18?
 24 A I've looked at it.
 25 Q What does it appear to be?

1 A It appears to be a reprint from an article from
 2 the Lodi News-Sentinel newspaper.
 3 Q Do you have any reason to believe it's not?
 4 A I have no reason to believe it's not.
 5 Q Looking at the second-to-last paragraph on Page
 6 1, there's a reference to Superintendent Bill Huyet.
 7 Do you see that?
 8 A I see that.
 9 Q Do you understand Bill Huyet to be the
 10 superintendent at the Lodi Unified School District?
 11 A That's my understanding. At least at this
 12 time, year 2000.
 13 Q In the last paragraph he is quoted as saying,
 14 "It's a problem when the rest of the world is running on
 15 a hundred and 80 days. That's ten percent less."
 16 Do you see that?
 17 A I see that.
 18 Q Do you agree that it's a problem to be on a
 19 Concept 6 calendar when the rest of the world is running
 20 on a hundred and 80 days?
 21 A I don't see it as a problem. Obviously, the
 22 superintendent does.
 23 Q Do you have any reason to disagree with Bill
 24 Huyet's assessment of what's going on in the Lodi
 25 Unified School District?

1 MS. DAVIS: Vague and ambiguous as to what is going
 2 on in the Lodi School District.
 3 THE WITNESS: If I had a discussion with the
 4 superintendent, I would raise the question, why is that
 5 a problem?
 6 BY MR. VILLAGRA:
 7 Q Do you believe Superintendent Huyet has been
 8 charged with an agenda to attack Concept 6?
 9 MS. DAVIS: Calls for speculation.
 10 THE WITNESS: I don't know what his agenda might be.
 11 MR. VILLAGRA: I'll mark as Exhibit 19 an article
 12 from the Lodi News-Sentinel again. This one is dated
 13 July 18th, 2001, and the author is Julie Giese, and the
 14 article's entitled "Year-Round Calendar Blamed for Poor
 15 Ranks."
 16 (Plaintiff's Exhibit 19 was marked for
 17 identification by the court reporter.)
 18 MS. DAVIS: Hector, did you get any of this from
 19 the Oakes production, or is this all stuff you printed
 20 off?
 21 MR. VILLAGRA: This was off the Internet.
 22 MS. DAVIS: She produced several of the Lodi --
 23 MR. VILLAGRA: From these?
 24 MS. DAVIS: I'm not sure the exact ones, but
 25 they're ringing a bell.

1 BY MR. VILLAGRA:
 2 Q Have you had a chance to review Exhibit 19?
 3 A I have.
 4 Q What does it appear to be?
 5 A It appears to be a reprint of an article from
 6 the Lodi News-Sentinel.
 7 Q Do you have any reason to believe it's not?
 8 A I have no reason to believe it's not.
 9 Q If you could look at Page 2, the second
 10 paragraph. It says, "Huyet attributes some of the
 11 dismal scores to the Concept 6 year-round calendar,
 12 which gives students 17 less days in the classroom,
 13 compared to typical hundred-and-80-day calendar."
 14 Do you see that?
 15 A I see that.
 16 Q Do you have any reason to dispute
 17 Superintendent Huyet's attributing some of the Lodi
 18 USD's dismal test scores to the Concept 6 calendar?
 19 A I have no reason to dispute his saying that,
 20 but I certainly would question whether those dismal
 21 scores really came from the Concept 6 year-round
 22 calendar or whether there were other factors that were
 23 far more important.
 24 Q But that would be something for you to look
 25 into?

1 A It would be, and I would be happy to discuss it
 2 with the superintendent.
 3 Q You don't know whether Superintendent Huyet has
 4 or not looked into that issue?
 5 A I don't know, that's right, whether he's looked
 6 at the other factors. This is an easy one to point to.
 7 Q You pulled -- or you requested Lodi's test
 8 scores?
 9 A I did.
 10 Q For what year?
 11 A You know, I'm not sure. It was last year's, I
 12 believe, because this year's weren't available. So that
 13 would have been the 2001-2002 year, I believe.
 14 Q And did you request test scores from a single
 15 school year?
 16 A I believe so.
 17 Q Doesn't Carolyn Kneese suggest that studies
 18 should look at test scores over at least four years?
 19 A Yes. And I'm now thinking that that may have
 20 been longer. I don't remember. I passed those on to
 21 Carolyn Kneese, and I didn't focus on them particularly.
 22 Q You didn't look at them yourself?
 23 A I looked at them, but I didn't make a judgment
 24 about them.
 25 MS. DAVIS: And we're going to try to get those

1 from Carolyn Kneese for you.
 2 BY MR. VILLAGRA:
 3 Q The third paragraph up from the bottom, it
 4 says, "Statewide multi-track year-round schools
 5 performed largely below average when compared to similar
 6 schools," said Pat McCabe, administrative manager of the
 7 State Department Office of Policy and Education."
 8 A Yes.
 9 Q Do you see that?
 10 A I see that.
 11 Q Do you have any reason to dispute what's
 12 attributed here to Pat McCabe; namely, that statewide
 13 multi-track year-round schools performed largely below
 14 average when con compared to similar schools?
 15 A Well, I don't have any reason to dispute his
 16 saying that, but what we're not -- what we have to be
 17 careful of here is what we're saying. You see, is he
 18 saying that the schools performed largely below average
 19 because of -- and I don't think there's anything that
 20 says that.
 21 It's simply a statement that many of our
 22 multi-track schools come from communities where the
 23 socioeconomic status is a lower SES status, and that is
 24 a larger factor in achievement scores than the calendar.
 25 Q So you would want to know from this analysis

1 whether, when similar schools were considered, there was
 2 some kind of control for --
 3 A I would.
 4 Q -- socioeconomic status?
 5 A I would, yes.
 6 Q And if that had been done?
 7 A If that had been done, the statement might not
 8 be here. And I don't know but what the reporter
 9 misquoted Pat McCabe.
 10 Q Do you know who Pat McCabe is?
 11 A I've seen the name. I've never met Pat McCabe.
 12 Q Have you ever seen any statewide analysis of
 13 multi-track year-round school performance compared to
 14 similar schools?
 15 A I have, sure.
 16 Q Other than by Dr. Mitchell?
 17 A Yes.
 18 Q By whom?
 19 A Well, the best known is the report we usually
 20 call the Quinlan report.
 21 Q Are you aware of any other statewide study of
 22 California, looking at multi-track year-round
 23 performance?
 24 A Well, Dr. Mitchell's is a partial statewide
 25 look, but it's not a full report, as the Quinlan study

1 was. I don't know of any other what you'd call a full
 2 statewide report.
 3 MS. DAVIS: Hector, we're just about getting to
 4 12:30.
 5 MR. VILLAGRA: Is it?
 6 MS. DAVIS: Are we at a good point or --
 7 MR. VILLAGRA: This will go quickly, this last one.
 8 MS. DAVIS: Okay.
 9 MR. VILLAGRA: All right. I want to introduce as
 10 Exhibit 20 a document entitled "Making the Grade, A
 11 News-Sentinel Special Series on Education in the Lodi
 12 Unified School District." It's three pages.
 13 (Plaintiff's Exhibit 20 was marked for
 14 identification by the court reporter.)
 15 THE WITNESS: (Reviews documents.)
 16 BY MR. VILLAGRA:
 17 Q Have you had a chance to review this?
 18 A I've seen this, yes.
 19 Q What does Exhibit 20 appear to be to you?
 20 A Well, it appears to be a reprint of a
 21 News-Sentinel special, as it's called, from the
 22 News-Sentinel in Lodi, a newspaper in Lodi.
 23 Q Do you have any reason to believe that it is
 24 not?
 25 A I have no reason to believe it is not.

1 Q Are you familiar with the State's
2 Underperforming School Program?
3 A I am.
4 Q Do you know how that program works?
5 A Well, in underperforming schools, the State can
6 give a grant of money, can send in a team to help the
7 schools improve their test scores.
8 Q And is the school supposed to develop a plan to
9 improve its underperformance?
10 A I believe, ordinarily, that would be expected.
11 Q If you look at the first school, Heritage
12 Elementary, the first major barrier listed is the
13 Concept 6 calendar.
14 A I see --
15 Q Do you see that?
16 A -- that.
17 I see that.
18 Q Do you have any reason to dispute that the
19 Concept 6 calendar is a major barrier to academic
20 achievement at the Heritage Elementary School?
21 A I don't dispute their right to list that. I
22 think that the evidence does not show that the Concept 6
23 calendar is a barrier to improved achievement levels.
24 Q So the teachers and the staff at Heritage
25 Elementary may feel that way, but they may be wrong?

1 A They may be.
2 Q If you look at the next school, Lawrence
3 Elementary School.
4 A Yes.
5 Q The first major barrier is the Concept 6
6 calendar.
7 Do you see that?
8 A I see that.
9 Q Same question.
10 Do you have any reason to doubt that that is a
11 major barrier at Lawrence Elementary School?
12 A I would doubt that, but the teachers have
13 listed that.
14 Q And you would doubt that, based on your
15 knowledge of the field?
16 A I believe so, yes.
17 Q And the next school, Leroy Nichols Elementary
18 School, the second major barrier is the Concept 6
19 calendar.
20 A I see that.
21 Q Do you have any reason to dispute that the
22 Concept 6 calendar is a major barrier at Leroy Nichols
23 Elementary School?
24 A I have no reason to doubt that the teachers
25 have listed that.

1 Q Is it your understanding that it would only be
2 teachers, or could it also be school staff?
3 A Well, could be school staff. I don't know who
4 actually did this. And there's not even a date on
5 this. So I don't know when it was done, but we'll
6 assume it's current.
7 Q Woodbridge Middle School, the last major
8 barrier listed is the Concept 6 calendar.
9 Do you see that?
10 A I see that.
11 Q Do you have any reason to dispute that the
12 Concept 6 calendar is a major barrier at Woodbridge
13 middle school?
14 A I think the answer would be the same as all the
15 others.
16 Q Okay. Do you see, at Creek Side Elementary --
17 A I see that.
18 Q -- that Concept 6 is listed as a major barrier?
19 A I see that.
20 Q Do you see that at Oakwood Elementary --
21 A I see that.
22 Q -- Concept 6 is listed?
23 Do you see that at Sutherland Elementary,
24 Concept 6 is listed as a major barrier?
25 A Yes, I do.

1 Q Do you see that at Morada Middle School,
2 Concept 6 is listed as a major barrier?
3 A I see that, yes.
4 Q Do you have any reason to believe that Delta
5 Sierra Middle School is on the Concept 6 calendar or not?
6 A I do not know.
7 Q Do you know whether Bear Creek High School is
8 on the Concept 6 calendar?
9 A I don't think it is, no.
10 Q And when you see these schools listing major
11 barriers, what do you understand the major barriers to
12 be with respect to?
13 MS. DAVIS: Vague and ambiguous.
14 THE WITNESS: I'm speculating on it, but they
15 probably are referring to the fewer days as being a
16 barrier to improved test scores.
17 BY MR. VILLAGRA:
18 Q What do you base that understanding on?
19 MS. DAVIS: Calls for speculation.
20 THE WITNESS: I presume that they're saying that if
21 we had more days to instruct students, we could have a
22 better achievement level.
23 BY MR. VILLAGRA:
24 Q Why do you presume that and not the fact that
25 one-third of the teaching staff is always missing from

1 the school campus?
 2 MS. DAVIS: Calls for speculation.
 3 THE WITNESS: I don't know that having one-third of
 4 the teaching staff has any real major bearing or even
 5 any bearing at all on achievement test scores. That
 6 more is a fact -- a lot of other factors go into that
 7 more, I would think, than having one-third of the
 8 teachers off at any one time.
 9 MR. VILLAGRA: We can stop there.
 10 (Lunch recess taken from 12:38 p.m. to
 11 1:50 p.m.)
 12 MR. VILLAGRA: I'm going to mark as Exhibit 21 --
 13 THE WITNESS: May I correct the record?
 14 BY MR. VILLAGRA:
 15 Q Sure.
 16 A When we were talking about the four school
 17 districts and their status with Concept 6, I
 18 miss-identified the two who were doing it immediately.
 19 I think I said Vista and Lodi. That should have been
 20 Vista and Palmdale. The one except for the middle
 21 school was Lodi, and the one that has the long-term plan
 22 is Los Angeles Unified.
 23 BY MR. VILLAGRA:
 24 Q If we could go back to Exhibit 12, just to be
 25 clear about this. I'm looking at Page 3 of your

1 Q Have you reviewed it?
 2 A I've looked at it quickly.
 3 Q What is this Exhibit 21 appear to be?
 4 A It appears to be an article from L.A. Weekly,
 5 entitled "Do L.A. Public Schools Work?" It's a
 6 conversation with newly-appointed Superintendent Roy
 7 Romer.
 8 Q Do you have any reason to believe that it is
 9 not an article --
 10 A I have no reason to believe it is not.
 11 Q If I could turn your attention to Page 9 of
 12 13. The very last sentence that begins on that page, "I
 13 want this community to understand that they have had a
 14 cheap ride by putting kids in sardine can schools and
 15 they have not recognized the cost of operating, let
 16 alone building, adequate facilities. If you put 4,000
 17 kids into a middle school on triple tracks, you
 18 inevitably are going the save money, but quality goes
 19 out the door."
 20 Do you see that?
 21 A I see that, yes.
 22 Q Do you understand the reference to a school on
 23 triple tracks to be the Concept 6 calendar?
 24 A Probably, yes.
 25 Q Do you disagree with Superintendent Romer that

1 report.
 2 A Okay.
 3 Q So the first reference to the two that have
 4 announced plans to discontinue for the 2003-2004
 5 academic year are?
 6 A Vista and Palmdale.
 7 Q Vista and Palmdale.
 8 The third is Lodi?
 9 A Lodi. And the last one with the goal over the
 10 next several years would be Los Angeles Unified.
 11 Q And so if L.A. Unified has the long-term goal
 12 to eliminate Concept 6, does that suggest to you that it
 13 may be some time before Concept 6 is eliminated?
 14 A It may be, but it would have been an indefinite
 15 time period. I don't know what that would be.
 16 MR. VILLAGRA: I'll mark as Exhibit 21 an article
 17 from the L.A. Weekly dated December 1st through the 7th,
 18 2000, and it's entitled "Do L.A. Public Schools Work?
 19 The View From District Headquarters."
 20 (Plaintiff's Exhibit 21 was marked for
 21 identification by the court reporter.)
 22 BY MR. VILLAGRA:
 23 Q I know it's rather lengthy. I'll be asking you
 24 about a specific part. Feel free to go through it.
 25 A (Witness reviews documents.)

1 the community in Los Angeles, in LAUSD, has had a cheap
 2 ride by putting kids on Concept 6 calendars?
 3 MS. DAVIS: Vague as to "cheap ride."
 4 THE WITNESS: That's not my language. So I'll let
 5 him speak for himself there.
 6 BY MR. VILLAGRA:
 7 Q Do you disagree that putting kids on Concept 6
 8 calendars saves money?
 9 A It would compare to some other things, yes.
 10 Q Do you disagree that at Concept 6 schools,
 11 quality goes out the door?
 12 A I would disagree with the superintendent there.
 13 MS. DAVIS: Vague and ambiguous as to "quality."
 14 BY MR. VILLAGRA:
 15 Q Do you believe that Superintendent Romer has
 16 been charged with an agenda to attack the Concept 6
 17 calendar?
 18 MS. DAVIS: That calls for speculation.
 19 THE WITNESS: I don't know whether he has or not.
 20 MR. VILLAGRA: I want to mark as Exhibit 22 a
 21 document to the board of education of the City of Los
 22 Angeles from the superintendent of schools. It's dated,
 23 appears to be, January 14th, 2003.
 24 (Plaintiff's Exhibit 22 was marked for
 25 identification by the court reporter.)

1 THE WITNESS: (Reviews documents.)
 2 MS. DAVIS: Hector, this Bates number -- I think
 3 this was introduced at another deposition?
 4 MR. VILLAGRA: Oh, was it really?
 5 MS. DAVIS: It may have been.
 6 MR. VILLAGRA: I've never seen it.
 7 MS. DAVIS: I think LAUSD may have introduced it at
 8 Jeanne Oakes --
 9 THE WITNESS: (Witness reviews documents.)
 10 BY MR. VILLAGRA:
 11 Q Have you had a chance to review it?
 12 A I have. It's a long document, and I've only
 13 glanced over it. But yes, I have it in front of me.
 14 Q What does Exhibit 22 appear to be to you?
 15 A It appears to be a memo from the superintendent
 16 of schools, Mr. Roy Romer, to the L.A. Unified Board of
 17 Education.
 18 Q Have you ever seen this document before?
 19 A I have not.
 20 Q Were you aware of the reasons why LAUSD had
 21 decided to continue -- discontinue the Concept 6
 22 calendar where feasible?
 23 A I was not aware of any formal presentation. I
 24 did know that there was some discussion going on, but
 25 that's all.

1 Q In the paragraph entitled "Background," or
 2 under the heading "Background," the very last sentence
 3 says, "As a result of the analysis" --
 4 A Excuse me. I'm not with you yet.
 5 Q I'm sorry.
 6 A Under "Background."
 7 Q Uh-huh.
 8 A Got it.
 9 Q "As a result of the analysis, the
 10 superintendent has concluded that the best way to
 11 improve the instructional program for students is to
 12 convert to a hundred-and-80-day instructional calendar
 13 as soon as possible."
 14 Do you see that?
 15 A I see that, yes.
 16 Q Do you disagree with Superintendent Romer's
 17 conclusion that the best way to improve the
 18 instructional program for students in LAUSD is to
 19 convert to a hundred-and-80-day instructional calendar
 20 as soon as possible?
 21 A I don't know that I'm in a position to know
 22 what the best way is. Certainly is a way to improve.
 23 Q You have no reason to disagree, though, sitting
 24 here today?
 25 A No. If the local district wishes to do that

1 and has the room to do that, fine.
 2 Q In the next paragraph, the very last sentence,
 3 "The move to a calendar," do you see that?
 4 A Yes, I see that.
 5 Q "The move to a calendar of a hundred 80 days of
 6 instruction is the first of several policy changes that
 7 will be initiated under the superintendent's secondary
 8 redesign initiative to improve student achievement and
 9 close the achievement gap."
 10 Do you see that?
 11 A I see that.
 12 Q Do you believe that LAUSD's move away from the
 13 Concept 6 calendar to a hundred-and-80-day calendar will
 14 improve student achievement and close the achievement
 15 gap?
 16 MS. DAVIS: Calls for speculation.
 17 THE WITNESS: I don't know whether it will or not.
 18 It may, but it may not. What students know comes more
 19 from the interaction-between-teacher-and-pupil classroom
 20 atmosphere than it does from the number of days. But
 21 again, if a district wishes to do this as one measure
 22 and the room is available, fine.
 23 BY MR. VILLAGRA:
 24 Q If a district chose to improve student
 25 achievement by restricting the school calendar to a

1 hundred days of instruction, would you agree with that?
 2 MS. DAVIS: Incomplete hypothetical.
 3 THE WITNESS: Depends on -- I might. If it's a
 4 hundred instructional days, contact days, between
 5 teacher and pupil, but there are certain assignments for
 6 additional work. The contact days would not be as
 7 important as the overall instructional program. So I
 8 think I'm pretty consistent that it's not the number of
 9 days that makes the difference but, rather, what happens
 10 in the classroom. Or really, the interaction between
 11 teacher and pupil.
 12 BY MR. VILLAGRA:
 13 Q And if there are more days, aren't there more
 14 opportunities for interaction between teachers and
 15 pupils?
 16 A Direct interaction, of course, yes.
 17 Q Sure.
 18 Do you have any reason to dispute that LAUSD
 19 has instituted the policy of eliminating the Concept 6
 20 calendar --
 21 A May I go back for a minute?
 22 Q Sure.
 23 A You gave a hypothetical of a hundred days.
 24 California law specifies a certain minimum number of
 25 days. So I'm responding only to a hypothetical and not

1 any kind of actual situation.

2 Q That's okay.

3 A Yeah.

4 Q Fortunately, I'm not decreeing a hundred-day
5 calendar any time soon.

6 Do you have any reason to dispute that LAUSD
7 has instituted the policy of eliminating the Concept 6
8 calendar in order to improve student achievement and
9 close the achievement gap?

10 MS. DAVIS: Calls for speculation.

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

13 BY MR. VILLAGRA:

14 Q If LAUSD has done so, do you have any reason to
15 dispute that?

16 MS. DAVIS: Same objection.

17 THE WITNESS: I wouldn't dispute it, because I
18 think local people are closest to making the decision.
19 Probably, if I were in an academic setting, I might say,
20 are you really sure just adding days will make a
21 difference?

22 I would raise the question, but I think it's
23 fine if districts want to add more days, even up to 240
24 days, if that's what they think is best for students.

25 BY MR. VILLAGRA:

1 A Clearly, yes.

2 Q When you say, "to accommodate the needs of a
3 particular community," what do you mean?

4 A Well, a community that has tourism as a major
5 source of income for the community may change the
6 calendar to fit the needs of that particular community.

7 Q And what is that -- what is the need in a
8 community that has tourism as a major industry?

9 A Well, depending on what their major seasons
10 are. If summer is a major season where parents need to
11 be at a place of employment and would not really take a
12 vacation anyway with the children, a school community
13 could change the calendar, so that the primary vacation
14 period would not be summer but would, rather, be in an
15 off-season. And we do have that kind of example.

16 Q Are there any other examples of the needs of a
17 community that would explain why a community adopted a
18 single-track year-round calendar?

19 A Well, besides recreational/tourism kinds of
20 situations, community could do so, depending on a local
21 industry and its needs to keep running at particular
22 times.

23 I've been told, though I can't cite -- I
24 remember a conversation at one of our conferences, a
25 major business in one small community liked to take a

1 Q If a school is on Concept 6 and it feels that
2 240 days is best for students, can it provide 240 days
3 of instruction?

4 A It could not. Within the four walls of the
5 schoolhouse, it could not.

6 Q I want to go back to your report, Exhibit 12,
7 Page 4. Specifically, I'm looking at the second full
8 paragraph, and it's the second sentence. I'm sorry, the
9 third sentence.

10 "Single-track calendars are adopted, among
11 other reasons, to provide a more balanced and enriched
12 educational program, to reduce the learning loss that
13 occurs over a long summer vacation of the traditional
14 calendar and/or to accommodate the needs of a particular
15 community."

16 Do you see that?

17 A I see that, yes.

18 Q You say, "among other reasons."

19 What are those other reasons for adopting a
20 single-track year-round calendar?

21 A Well, these are certainly the three primary
22 ones. At this time I'm not coming up with the other
23 reasons.

24 Q Okay. But these are, indeed, the primary ones,
25 in your opinion?

1 very long Christmas holiday period, and so the school
2 calendar was altered to meet the need of the major
3 business of the community. Once they shut down for two
4 weeks, the business thought, it's a good idea to stay
5 closed for another three or four and use that as a major
6 vacation period.

7 Q We talked at some level about reducing learning
8 loss. I wanted to look at the first reason you listed
9 for adoption of single-track calendars, and that's to
10 provide a more balanced and enriched educational
11 program.

12 A Yes.

13 Q What do you mean by that?

14 A More balance would have to do with the calendar
15 where there are periods of instruction followed by
16 periods of vacation, rather than the disjointed
17 traditional school calendar, which lumps the majority of
18 vacation time all at one time in the summer. So I see
19 balanced as being a period in school, period out, period
20 back in, period out, and that sort of thing.

21 Q Anything else?

22 A That's it for balanced.

23 Q And when students are in school, they're in for
24 the same amount of time, and when they're out they're
25 out for the same amount of time?

1 A No. Because if the -- well, let's take the
2 45-15, for example. Students would be in school for
3 nine weeks, be on vacation for three weeks --
4 Q Oh, I'm sorry. I meant, when you're in school,
5 the in-school periods are always equal, and when you're
6 out of school, the out-of-school period are always
7 equal?
8 A They're nearly equal, but they aren't exact
9 because of legal holidays that fall haphazardly here and
10 there. So a 45-15 schedule, for example, one period may
11 be 43 days; another may be 47. So they're close to
12 equal but not always exactly equal.
13 Q And that's what you mean by balanced --
14 A Balanced, yes.
15 Q And when you say enriched educational program,
16 what are you referring to?
17 A Often schools with single-track calendars will
18 offer intersession classes, and so that's a good time to
19 enrich the educational program in several ways.
20 Q And why is it a good time?
21 A Well, because those intersessions can be used
22 for remediation or it could be enrichment to help the
23 remediation, and that -- that help comes soon after a
24 problem may occur in the life of a student, rather than
25 waiting until the following summer to try to correct the

1 problem that first surfaced back in October, for
2 example.
3 Q And is it also true that a single-track
4 calendar can provide an enriched educational program
5 because, during intersessions, all students are on
6 vacation?
7 A Sure, they can.
8 Q And so you could, theoretically, provide
9 intersessions to the entire student body?
10 A At one time, theoretically, you could. It's
11 not likely, because money's not available, but
12 theoretically, you could.
13 Q The next paragraph you write, "Multi-track
14 year-round education is typically implemented, among
15 other reasons, with the intention to provide additional
16 capacity to house students, maximize the efficient use
17 of resources, and/or to solve one or more administrative
18 or logistical problems."
19 Do you see that?
20 A I see that.
21 Q What are the other reasons for adoption of the
22 multi-track year-round calendar?
23 A I think those three actually state the real
24 major reasons for doing so. I'm now wondering why I
25 used that phrase. May be more stylistic than anything

1 else.
2 Q You say that those are the three primary
3 reasons.
4 Is any one of those three first among equals?
5 A Probably the first one is a major one, which is
6 to provide additional capacity to house students.
7 Q And how do you know that?
8 A Well, because that's what it's primarily used
9 for. A district approaches the topic to provide
10 additional capacity for an over-enrollment of students.
11 Q When you say, "maximize the efficient use of
12 resources," what are you referring to?
13 A Well, I'm referring there to the fact that
14 multi-track is cheaper than some of the other options,
15 most of the other options, to take care of
16 over-enrollment. And -- for example, it's cheaper to
17 have a multi-track than it is to provide a very large
18 number of relocatables on a campus. So that's what I
19 had in mind with that statement.
20 Q Did you also intend to capture the fact that,
21 once you've made an investment in a school building,
22 that it maximizes the use of that building as a resource
23 to use it all year round and not have it closed down for
24 portions of the school year?
25 A I didn't think in those terms. I was thinking

1 more of comparison with the other options.
2 Q And when you say, "solve one or more
3 administrative or logistical problems," I want you to
4 unpack that and -- are the administrative separate from
5 the logistical problems?
6 A They probably are more in concept with one
7 another. But the administrative problems, obviously,
8 would be what do we do with all these students within
9 existing capacity. So an administrator may first raise
10 the question, how am I going to house all these student
11 at the same time?
12 Or there was one short period of time where a
13 school was not typically overcrowded but wanted to free
14 up some rooms for special use purposes, like special
15 education rooms. So that school, for a short period of
16 time, went to a multi-track calendar to free up -- I
17 think it was something like four classrooms for special
18 purposes. That didn't last long, and I don't remember
19 the district, but I do remember the discussion about it.
20 So that would be the kind of a logistical
21 problem, how do we get these rooms for special purposes
22 without building new buildings or bringing in
23 relocatables.
24 Q And in that example that you just raised, how
25 long did the school stay on a multi-track calendar, if

1 you know?

2 A I don't know exactly, but I think it was a
3 couple of years.

4 Q Was that a school in California?

5 A I don't think so.

6 Q In the next sentence that spills over onto Page
7 5, you write, "Since multi-track year-round calendars
8 provide short vacation periods that reduce learning loss
9 and advanced student achievement, the implementation of
10 the multi-track year-round calendar also serves to
11 enhance school reform efforts."

12 Do you see that?

13 A I see that, yes.

14 Q What school reform efforts are you referring
15 to?

16 A Well, there's the large effort to raise student
17 achievement scores, and so when changes are made or
18 reforms are put into place to enhance that, then I would
19 consider that a school reform effort. And so
20 implementation of multi-track can also serve to enhance
21 the possibility of raising student test scores.

22 Q Can the implementation of multi-track, in your
23 opinion, serve to enhance any other school reform
24 efforts?

25 A It could.

1 not yesterday -- becoming one long day -- that a Concept
2 6 school could increase enrollment capacity by 60
3 percent.

4 A Could.

5 Q If a Concept 6 calendar is used to increase
6 enrollment capacity by 60 percent, don't you end up with
7 a school that, at any given point in the year, is still
8 over a hundred percent capacity?

9 A That could be, but I think the example was a
10 little different yesterday. We were talking about the
11 possibilities, in terms of what we might call loading,
12 in administrative speak. I think at least a very small
13 number of schools in either Vista or L.A., or maybe
14 both, had reached a hundred percent -- hundred and 60
15 percent of stated capacity, and yes, the school was
16 still overcrowded. And I don't mean to suggest
17 otherwise. But it'd be even worse if the multi-track
18 weren't in place.

19 Q But the multi-tracking doesn't necessarily
20 eliminate the condition of overcrowding at the school
21 site?

22 A It doesn't always. That's true. It helps,
23 does not completely eliminate.

24 Q Are you aware that Delain Eastin, when she was
25 superintendent of public instruction, said that she

1 Q Such as?

2 A Like the example I just gave, where school
3 decides that they -- the personnel could help a certain
4 group of students but there are no rooms available. If
5 the school needed a couple of rooms to do some special
6 project, it's possible that moving to a multi-track
7 would free up some space very quickly.

8 It's a possibility. I don't say that that's an
9 often occurrence, but we're talking here about
10 hypotheticals.

11 Q Any other school reform effort that you can
12 think of that would be enhanced by multi-track
13 year-round education?

14 A Well, in the sense that it provides fewer
15 students on campus. A smaller campus atmosphere could
16 very well enhance school reform efforts.

17 Q When would that be true?

18 A Whenever there's severe over-enrollment. If
19 there's an overcrowded campus, there's a feeling of
20 congestion, a greater degree of impersonality, and so
21 when we relieve the number of students on campus at any
22 one time, we actually, in my perspective, have a better
23 feel on campus, which should, in the long-run, help the
24 reform effort, whatever it might be.

25 Q You mentioned, I believe, earlier today, if

1 would love to get rid of Concept 6?

2 A I am aware of that.

3 Q Are you aware of that?

4 A Oh, that was discussion within our statewide
5 year-round advisory group, and it's certainly something
6 that was talked about around educational circles.

7 Q When you say the statewide advisory group, is
8 that the California Department of Education Year-Round
9 Education Advisory Committee?

10 A That's correct.

11 Q Okay. When do you recall that having been
12 discussed at the year-round education advisory
13 committee?

14 A After Superintendent Eastin talked about
15 extending the school year as one of her goals.

16 Q Do you recall when that was?

17 A Not exactly. It was after she was elected,
18 obviously, in her first term, but I don't recall how
19 long it was after she was elected before she stated that
20 as a goal.

21 Q What was the discussion within the year-round
22 education advisory committee about Superintendent
23 Eastin's proposal to extend the school year?

24 A Well, the discussion was, is it possible to
25 have a Concept 6 with a longer school year? The

1 discussion had two points. One view was no, you can't,
2 because these are already overcrowded schools, and
3 that's why these schools have a shorter school year.
4 They've had to implement the Concept 6 calendar. So you
5 really can't add more days. They're at their maximum in
6 the current situation.

7 There were others who would say, as I would,
8 that you can add more days to a Concept 6 calendar if we
9 can think outside the box and realize the school can
10 take place other than in the four rooms of the
11 schoolhouse.

12 Q Who were those who were of the position that
13 the Concept 6 school year could not be extended?

14 A I don't remember exactly. I think Tom Payne,
15 representing the department, or, really, representing
16 the point of view of the superintendent, spoke in those
17 terms.

18 Q Do you recall anyone else?

19 A Not at this time.

20 Q And who were those who were of the contrary
21 view, apart from yourself?

22 A You're looking at the primary spokesperson for
23 that point of view.

24 Q Do you remember anyone else who was present
25 during the discussion?

1 A I think to some degree he was, yes.

2 Q Do you recall any discussion by Tom Crellin?

3 A I don't.

4 Q What about Larry Carletta?

5 A Only to the degree that he spoke about the dire
6 situation, in terms of overcrowding in L.A. I don't
7 remember whether he agreed with my point of view or
8 not. I really don't.

9 Q And what about Maria Tostado?

10 A I don't remember either with her.

11 Q Was there ever any resolution within the
12 year-round education advisory committee about whether
13 the Concept 6 school year could be extended?

14 A I don't recall any real resolution. Now,
15 something may have happened after the last time I was on
16 the committee. While I retired in June of 2000,
17 actually, I hadn't attended a meeting for several
18 months. So I don't know what transpired since the last
19 meeting I attended.

20 Q Did you cease to be a member when you retired
21 from the NAYRE?

22 A Yes.

23 Q Over what period of time were there discussions
24 about extending the Concept 6 school year?

25 A It was during a large portion of the eight

1 A Oh, sure.

2 Q Who?

3 A Well, some of the same people that we've talked
4 about before who were general attenders. Certainly
5 Richard Alcorn would have been there. Tom Crellin
6 probably was there. Larry Carletta of L.A. Unified may
7 have been there, or he came in later. Maria Tostado was
8 there before he became the representative. So one or
9 the other would -- both may have been in the
10 discussion. It is a discussion that went on for some
11 period of time.

12 BY MR. VILLAGRA:

13 Q Do you recall anyone else who may have been
14 present?

15 A Personnel changed meeting by meeting, so -- I
16 can remember various people, but I don't know who would
17 sit in on those particular discussions.

18 Q Do you recall where Richard Alcorn was on this
19 question?

20 A I can't speak for him, but I would presume,
21 since he worked with us at the association, that he very
22 likely shared my point of view, just as Mr. Payne was
23 speaking along the same lines as Superintendent Eastin.

24 Q You understood Tom Payne to be representing an
25 institutional position?

1 years that Superintendent Eastin was in office, but I
2 don't recall exactly the start day of the discussion.

3 Q You mentioned that Larry Carletta discussed the
4 dire situation of overcrowding in Los Angeles.

5 A Yes.

6 Q What do you recall him saying about that?

7 A Well, he was talking more in terms of not only
8 are we terribly overcrowded now, but there are
9 projections to increase enrollment. And during much of
10 this time of the discussion, we were still under the
11 dictates of Proposition 13, which was that any bond
12 issue had to be approved by a two-thirds vote, and at
13 least at that time there was no knowledge that the
14 public was ready to vote new bonds at the two-thirds
15 level.

16 Q Do you recall whether Mr. Carletta was
17 discussing the dire situation in Los Angeles to make the
18 point that the Concept 6 school year could not be
19 extended in Los Angeles?

20 A I don't remember. Partly he was talking about
21 some new thinking about calendars. Mainly on the
22 drawing board, nothing that had been proposed to the
23 board.

24 Q Are you aware that Delain Eastin, while
25 superintendent of public instruction, said that schools

1 didn't move to Concept 6 because they were trying out
2 some educational innovation, but that it was a move of
3 desperation?

4 A I have seen that quote, yes.

5 Q Do you agree with her assessment of why schools
6 converted to Concept 6?

7 A Well, I think, in general, there's some truth
8 in what she says. Most of the time districts move to
9 multi-track to handle the problem of over-enrollment.
10 They don't think of moving there first for educational
11 reasons. That doesn't mean there isn't anything of
12 educational value in it, but clearly, it's
13 over-enrollment that causes districts to move towards a
14 multi-track program.

15 Q Do you believe Superintendent Delain Eastin to
16 have been charged with an agenda to attack the Concept 6
17 calendar?

18 MS. DAVIS: Calls for speculation.

19 THE WITNESS: I don't know what her agenda was. As
20 I mentioned a while ago, she wanted a longer school year
21 and was pretty clear about that.

22 BY MR. VILLAGRA:

23 Q Going back to Exhibit 12.

24 A Which exhibit is that?

25 MS. DAVIS: Your report.

1 THE WITNESS: Yes. All vacations break up
2 continuity of learning.

3 BY MR. VILLAGRA:

4 Q Do you believe that the Concept 6 vacation is
5 too long to maintain the continuity of learning that is
6 provided by other year-round calendars?

7 MS. DAVIS: Same objection.

8 THE WITNESS: I'd like to have that question read
9 back, please.

10 MR. VILLAGRA: Okay.

11 (Record read)

12 THE WITNESS: Well, it's certainly a longer
13 vacation period and does not have as much continuity as
14 a shorter vacation would. It is clearly longer. It is,
15 fortunately, shorter than the traditional calendar
16 vacation.

17 BY MR. VILLAGRA:

18 Q And it's shorter by 33 percent?

19 A Yeah, one month shorter, which would be 33
20 percent shorter than the traditional calendar, yes.

21 Q Do you believe there is 33 percent less
22 learning loss on the Concept 6 calendar vacations?

23 A I wouldn't know that.

24 Q In your opinion, what is the maximum length of
25 a vacation -- what should be the maximum length of a

1 BY MR. VILLAGRA:

2 Q Your report.

3 A Okay.

4 Q Sorry.

5 Page 4, that last sentence, you talk about
6 multi-track year-round calendars providing short
7 vacation periods.

8 Do you see that?

9 A I do.

10 Q Do you consider the vacation period on all
11 multi-track year-round calendars to be short?

12 A Certainly shorter than the traditional
13 calendar.

14 Q Is that what you intend to convey by "short
15 vacation periods"?

16 A I do.

17 Q So you believe that two-month Concept 6
18 vacation is a short vacation?

19 A It's shorter than the traditional calendar.

20 Q Are you aware of any studies that have assessed
21 learning loss on the two-month Concept 6 vacation?

22 A Learning loss, per se, no.

23 Q Do you believe that a two-month vacation breaks
24 up the continuity of learning?

25 MS. DAVIS: Vague and ambiguous.

1 vacation on a school calendar?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: I can't answer that question
4 directly. I can give you what a recommendation would
5 be.

6 A recommendation would be -- and this is what
7 NAYRE has published, so -- but that is, it's preferable
8 to have a vacation no longer than six weeks, and that's
9 an arbitrary line.

10 BY MR. VILLAGRA:

11 Q What do you mean by an arbitrary line?

12 A Well, like so much else, there simply has to be
13 a marking point, and so we, as a -- in the discussion, I
14 think, in board of directors or whatever, just kind of
15 agreed that from the research that we were aware of and
16 so on, we would urge districts not to have a longer
17 vacation than six weeks.

18 Q You said from the research that you were aware
19 of.

20 What research --

21 A It would be things like summer learning loss
22 research papers that Dr. Cooper refers to.

23 Q How long ago did the NAYRE come up with this
24 recommended vacation length of six weeks?

25 A I couldn't give you the exact date, but it's

1 been a few years.

2 Q 1992?

3 A Probably by that time or close thereafter we
4 had kind of settled on six weeks. Understand, this was
5 a recommendation that we were giving if districts asked.

6 Q Do districts ask?

7 A Sometimes.

8 Q So if a district were to ask you today, what
9 would you say? Would you say six weeks?

10 A I would say six weeks.

11 Q Would you say to them that a vacation longer
12 than six weeks breaks up the continuity of learning?

13 A I would say that that is less desirable than a
14 vacation period of six weeks, yes.

15 Q Have you ever discussed with Don Glines the
16 length of the Concept 6 vacation?

17 A I don't remember a specific conversation, but I
18 certainly have talked with Don Glines about these
19 things.

20 Q Have you ever spoken with Don Glines about how
21 long a vacation should be, a vacation away from school?

22 A I don't know that I have. He has particular
23 ideas about schooling, and I would let -- have to let
24 him speak for himself on that.

25 Q Are you aware of his particular ideas about the

1 special series on education in the Lodi Unified School
2 District. I don't see a specific date on this, but it
3 appears to be something the local newspaper in Lodi may
4 have had as a special article.

5 Q If I could have you turn your attention to Page
6 4 of 7.

7 Do you see the paragraph that's almost smack in
8 the middle of the page, "However, Glines said"?

9 A Yes.

10 Q Okay. And a couple of paragraphs up from there
11 there's a description of Glines, who works as a
12 consultant on year-round education.

13 Do you believe that to be Don Glines?

14 A It says so here, and I, then, would have to
15 believe that it is.

16 Q The article says, "Glines said the calendar" --
17 it seems to be referring to the Concept 6 calendar --
18 "has its shortfalls, particularly the two,
19 two-month-long vacations." And then this is a quote.
20 "'Six weeks should be the maximum time away from
21 school. Otherwise, it breaks up the continuity of
22 learning.'"

23 Do you see that?

24 A I see that.

25 Q Do you agree?

1 length of a maximum vacation from school?

2 A I don't know of a particular writing, but he
3 may have.

4 MR. VILLAGRA: I want to mark as Exhibit 23 a
5 seven-page printout of an article from the Lodi
6 News-Sentinel called "Making the Grade, News-Sentinel
7 Special Series on Education in the Lodi Unified School
8 District." And the specific title is "The Debate
9 Surrounding Concept 6, Does the Year-Round Program Help
10 or Hurt the Success of Education?" And I don't see a
11 date.

12 (Plaintiff's Exhibit 23 was marked for
13 identification by the court reporter.)

14 MS. DAVIS: Hector, did you say there was a date on
15 this?

16 MR. VILLAGRA: I didn't see a date.

17 MS. DAVIS: Okay.

18 THE WITNESS: (Reviews documents.)

19 Okay.

20 BY MR. VILLAGRA:

21 Q Have you had a chance to review Exhibit 23?

22 A It's a long document. I've glanced over it,
23 but not fully reviewed it.

24 Q What does it appear to be?

25 A It appears to be, again, a News-Sentinel

1 A Well, I just said that that's what I would
2 recommend. I didn't know that Don had ever -- excuse
3 me, Dr. Glines had ever directly said this, but I'm glad
4 he agrees with me.

5 Q Do you agree that the Concept 6 calendar has
6 its shortfalls, particularly the two, two-month-long
7 vacations?

8 A It has its shortfalls compared with some other
9 possibilities, but it's implemented for a specific
10 reason, and the problem is still there, which is
11 over-enrollment. So while it has its shortfalls, it has
12 to be implemented in certain situations.

13 Q And those would be situations of
14 over-enrollment?

15 A Severe over-enrollment.

16 Q If I could turn your attention to Page 3 of 7,
17 the second full paragraph.

18 Do you see "Concept 6 was chosen"?

19 A Okay.

20 Q "'Concept 6 was chosen not for educational
21 reasons,' said Bev Lacy, a retired Lodi Unified
22 administrator."

23 A Yes.

24 Q Do you have an understanding as to why Lodi
25 Unified chose the Concept 6 calendar?

1 MS. DAVIS: Calls for speculation.
 2 THE WITNESS: Because of severe over-enrollment.
 3 BY MR. VILLAGRA:
 4 Q Do you have any reason to disagree that Lodi
 5 Unified chose the Concept 6 calendar not for educational
 6 reasons?
 7 A I would have no reason to disagree. I've heard
 8 Bev Lacy say that. And she's a name that I couldn't
 9 remember yesterday, by the way, Bev Lacy. I know her.
 10 Q Is that who you spoke with to obtain the data?
 11 A No. No, she's long retired from Lodi.
 12 Q If I could turn your attention to Page 4, once
 13 again. The second paragraph says, "But easing
 14 overcrowded schools was always" --
 15 A Excuse me. I'm not with you.
 16 Second paragraph, okay.
 17 Q -- "was always the prevailing reason for using
 18 Concept 6,' Lacy said." And then there's a quote
 19 attributed to her. "We did the best with what we know
 20 in trying to find more room for kids."
 21 Do you see that?
 22 A I see that, yes.
 23 Q Do you agree that that's what Concept 6 is,
 24 doing the best that you can to find more room for kids?
 25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: I think that's a valid quote from
 2 Mrs. Lacy, yes.
 3 BY MR. VILLAGRA:
 4 Q Have you spoken with Bev Lacy about the Concept
 5 6 calendar?
 6 A Years ago.
 7 Q When was that?
 8 A Oh, that's probably more -- ten years or more.
 9 Q And these quotes that you see in this article
 10 are consistent with the conversations you have had with
 11 Bev Lacy?
 12 A That's correct.
 13 Q Okay. If I could turn your attention to the
 14 fourth paragraph up from the bottom.
 15 A Still --
 16 Q Still Page 4 of 7.
 17 "Concept 6 isn't chosen."
 18 Do you see that?
 19 "Concept 6 isn't chosen by districts for
 20 educational reasons,' said Marilyn Stenvall, executive
 21 director of the National Association for Year-Round
 22 Education."
 23 A I see that, yes.
 24 Q Do you agree with Ms. Stenvall's assessment
 25 that Concept 6 is not chosen by districts for

1 educational reasons?
 2 A Initially, I think that's correct, yes.
 3 Q Do you think that later districts come to
 4 accept multi-tracking for educational reasons?
 5 A I don't know whether they ever come to accept
 6 it. They accept it as a reality and use it for
 7 educational purposes once it's in place.
 8 Q But the educational benefits of multi-track
 9 year-round education by themselves are not enough to
 10 make a district convert to multi-tracking; is that
 11 correct?
 12 MS. DAVIS: Assumes facts.
 13 THE WITNESS: No, I think you're -- if you said
 14 Concept 6.
 15 Is that what you're referring to?
 16 BY MR. VILLAGRA:
 17 Q Yes.
 18 A Other than multi-tracking.
 19 Q Uh-huh.
 20 A I think that's right. It's always first for
 21 housing reasons.
 22 This also gives me some time line, because
 23 that's my successor.
 24 Q If I could turn your attention to Page 5 of 7.
 25 A Okay.

1 Q The second paragraph --
 2 A Second full paragraph?
 3 Q The first full paragraph.
 4 A First full paragraph.
 5 Q "Severe school overcrowding is what forced
 6 L.A. Unified to begin using the Concept 6 calendar in
 7 1980,' said Gordon Wohlers."
 8 Do you see that?
 9 A I do.
 10 Q Do you know who Gordon Wohlers is?
 11 A I do.
 12 Q Who was he?
 13 A He was associate superintendent of planning,
 14 assessment and research for the district. I believe
 15 he's retired at the moment.
 16 Q How did you meet Mr. Wohlers?
 17 A I think he actually was a principal of a
 18 multi-track school some years ago, and then moved to the
 19 central office and began work there on the issues
 20 surrounding overcrowding, over-enrollment.
 21 Q Did you come to respect the opinion of Gordon
 22 Wohlers?
 23 MS. DAVIS: Vague and ambiguous as to "opinion."
 24 THE WITNESS: I came to respect Gordon Wohlers. I
 25 don't know what opinion you're referring to.

1 BY MR. VILLAGRA:

2 Q Did you ever have discussion with Gordon
3 Wohlers about multi-track year-round education?

4 A Yes.

5 Q What were those discussions about?

6 A It had to do with what L.A. Unified was
7 doing -- going to have to do to handle the crunch of
8 student over-enrollment.

9 Q Do you recall what Mr. Wohlers told you about
10 what L.A. was going to have to do to handle the crunch
11 of student over-enrollment?

12 A Well, it was a general conversation. Not only
13 did he talk about use of multi-track calendars,
14 particularly Concept 6, but also some of the other means
15 the district used to handle over-enrollment.

16 Q Such as portables?

17 A Portables, busing.

18 Q And what did he say about having to use Concept
19 6 to handle the crunch of student over-enrollment?

20 A I don't recall a specific conversation about
21 Concept 6. We talked about the various calendars.
22 Because many years ago, the district actually had
23 something like six different calendars going on in the
24 district. So it was more the whole range of calendars
25 in a -- there may have been a specific conversation

1 Q If you could turn to Page 6 of 7. The tenth
2 paragraph says --

3 A Tenth full paragraph?

4 Q Yes.

5 "The biggest drawback."

6 Do you see that?

7 A Okay, see that.

8 Q "The biggest drawback of Concept 6 is you can
9 only get a hundred and 63 school days. That means there
10 are 17 less morning lessons."

11 And if you go up to the preceding paragraph, it
12 identifies the "he" as Bray, and up a few paragraphs
13 it's Superintendent Dick Bray of Hesperia Unified.

14 Do you see that?

15 A Oh, I see, yes. Yes.

16 Q Do you disagree with Superintendent Bray that
17 the biggest drawback of Concept 6 is that you can only
18 get a hundred 63 school days?

19 A Read the question again, please -- or have it
20 read back, please?

21 (Record read.)

22 MS. DAVIS: I'm going to just say calls for
23 speculation, in terms of what he meant by days. And I'm
24 referring to Dick Bray.

25 THE WITNESS: Yeah, I would say that I wouldn't

1 about Concept 6. I don't remember the details of it.

2 Q Go back to Exhibit 23. Still on Page 5 of 7.
3 The fourth full paragraph. It's a quote attributed to
4 Gordon Wohlers and it says, "Based on educational
5 theories, 180 days is better than a hundred 63 days."

6 Do you see that?

7 A I see that.

8 Q Did you ever have a discussion with Gordon
9 Wohlers about educational theory supporting the notion
10 that a hundred and 80 days is better than a hundred and
11 63?

12 A I don't ever recall that kind of discussion,
13 no.

14 Q Do you disagree with Gordon Wohlers' assessment
15 of educational theory supporting the notion that a
16 hundred and 80 days is better than a hundred 63 --

17 A No, I don't disagree with that.

18 Q Do you recall whether Hesperia Unified has used
19 the Concept 6 calendar?

20 A Yes, it has.

21 Q During what years?

22 A I couldn't give you the exact years. Some
23 years back.

24 Q But it has since eliminated it?

25 A Yes.

1 know exactly what he's talking about. But just at the
2 surface, I would say probably that is the biggest
3 drawback of Concept 6, yes.

4 BY MR. VILLAGRA:

5 Q When he refers in this article to 17 fewer
6 morning lessons, do you understand that to be 17 fewer
7 relative to the hundred and 80 offered on every other
8 school calendar?

9 A I wasn't quite sure what he was saying there.
10 So I can't give you an opinion. I don't know whether he
11 was meaning 17 fewer days or just what.

12 Q Okay. If you go down four paragraphs further,
13 "Lodi Unified officials" --

14 A I see that.

15 Q -- "admit the year-round calendar isn't the
16 best for children." And then there's a quote, "It
17 really affects learning," close quote, "Superintendent
18 Bill Huyet said." Open quote, "Adding a half hour
19 doesn't compensate for the lost days," close quote.

20 A I see that.

21 Q Do you disagree with Superintendent Bill Huyet
22 that adding a half hour to each school day does not
23 compensate for the lost total number of instructional
24 days?

25 A I would disagree with him there. I respect his

1 point of view, but I think I could discuss that with
2 him.

3 Q What would you explain to him?

4 A I would say it's not the number of days, it's
5 not exactly the number of minutes in the day but,
6 rather, the quality of the interaction between teacher
7 and pupil that is key.

8 Q Do you have any idea whether Superintendent
9 Bill Huyet took that into account?

10 MS. DAVIS: Calls for speculation.

11 THE WITNESS: I don't know.

12 BY MR. VILLAGRA:

13 Q We just touched on Hesperia.

14 Do you know of any other districts in
15 California over the last 30 years that have implemented
16 the Concept 6 calendar other than the four who had it as
17 of last year and Hesperia?

18 A Hesperia.

19 None that are coming to mind right now.

20 Q Do you have an understanding as to how many
21 school districts there are in California?

22 A There are over a thousand school districts.

23 Q So out of a thousand, five in the last 30 years
24 have had to use Concept 6?

25 A Something like that, yes.

1 misjudgments.

2 Q Do you believe that 30 years ago, it could have
3 been predicted which five districts would experience the
4 most severe over-enrollment?

5 MS. DAVIS: Calls for speculation, vague and
6 ambiguous.

7 THE WITNESS: Yeah, I wouldn't know the answer to
8 your question.

9 BY MR. VILLAGRA:

10 Q Do you believe that school construction funds
11 can be targeted to districts that face the problem of
12 over-enrollment?

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: I don't know how the large entity
15 called the State could do that. So I really can't give
16 you a better answer than that.

17 BY MR. VILLAGRA:

18 Q Do you know if the State can do that?

19 MS. DAVIS: Calls for speculation.

20 THE WITNESS: I suppose it could try. I don't know
21 whether it can.

22 BY MR. VILLAGRA:

23 Q Do you know whether the State has in the past,
24 in distributing school construction funds, given
25 priority to districts facing the problem of

1 Q I want to go back to your report, Exhibit 12,
2 Page 5.

3 And under the Heading A, "Over-enrollment," you
4 write, "Surrounded by fast growing communities and
5 fueled by class size reduction policies, many school
6 districts in California have faced or will face the
7 problem of over-enrollment."

8 Do you see that?

9 A I see that.

10 Q You say that some school districts will face
11 the problem of over-enrollment.

12 Can it be projected which school districts will
13 experience over-enrollment in the next, say, five years?

14 A It can be.

15 Q Can it be projected with a reasonable degree of
16 certainty?

17 A I don't know what the degree of certainty would
18 be. Demographers make predictions. How reasonable
19 those are, I can't say.

20 Q Have you looked at projections of growth in
21 enrollment over the last 20 years to see whether they
22 have been accurate in predicting the actual growth that
23 occurred in California public schools?

24 A They've been fairly close. There have been a
25 few misjudgments here and there, but not major

1 over-enrollment?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: Yeah, I'm not sure exactly what
4 you're asking me here.

5 BY MR. VILLAGRA:

6 Q Were you aware of any funding priorities under
7 Proposition 1A for school construction funds?

8 A Are you speaking of the priority programs for
9 receiving State funds?

10 Q Are you familiar with the term "priority
11 points"?

12 A Yes.

13 Q Okay. What does that --

14 A Somewhat.

15 Q What does that mean to you?

16 A Districts with the most severe overcrowding
17 were the ones who got points for moving up the list of
18 districts seeking money to help in the building of
19 schools.

20 Q And what's your understanding of what the
21 purpose of that program was?

22 A To give some help to those districts most
23 overcrowded.

24 Q So the State can target school construction
25 funds for -- to districts facing the most severe

1 over-enrollment?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: In that sense, the State can
4 certainly attempt to do that, yes.

5 BY MR. VILLAGRA:

6 Q Do you believe that the State should do that,
7 target funds to communities facing the most severe
8 over-enrollment?

9 MS. DAVIS: Same objection.

10 THE WITNESS: I would agree philosophically that
11 those districts facing the most over-enrollment should
12 be first in line to receive their fair share of whatever
13 moneys are available.

14 BY MR. VILLAGRA:

15 Q What do you mean by a fair share of the money
16 available?

17 A I think I'll just leave it what would seem fair
18 to those making the decisions.

19 Q If we could turn to Page 6 and the first full
20 paragraph, first sentence, you write, "Ordinarily a
21 school is considered full when capacity is reached,
22 over-enrolled or impacted when the number of enrollees
23 is five to 20 percent over the school's stated carrying
24 capacity, and severely over-enrolled or impacted when
25 the number of enrollees exceeds 20 percent over stated

1 A That's correct.

2 Q Nothing more than that?

3 A That's what I had in mind when I wrote it.

4 Q Would you turn to Page 8 of the same exhibit.

5 The last full sentence, you refer to the
6 successful configurations --

7 A I'm not sure where you are.

8 Q Page 8.

9 A I've got Page 8.

10 Q Under Heading B.

11 A Okay.

12 Q The very end of the sentence there's a
13 discussion of "Including insight into successful
14 configurations."

15 I take it that you're referring to the
16 successful configurations of the multi-track year-round
17 calendar?

18 A (Witness reviews documents.)

19 Repeat the question for me, please.

20 Q Okay.

21 MR. VILLAGRA: Would you mind reading that back,
22 please?

23 (Record read)

24 THE WITNESS: I am, yes.

25 BY MR. VILLAGRA:

1 capacity."

2 Do you see that?

3 A I see that, yes.

4 Q By this standard, would you say that all
5 Concept 6 schools in California are severely
6 over-enrolled or impacted?

7 A All that I'm aware of, yes.

8 Q In the next paragraph, the first sentence, you
9 write, "The degree of over-enrollment in a district or
10 school dictates which of a number of multi-track
11 year-round calendars can best serve local needs."

12 Do you see that?

13 A I see that.

14 Q What do you mean by "local needs"?

15 A Local needs would be the degree of
16 over-enrollment the local schools are facing. Once
17 there's a good picture of what that over-enrollment is,
18 then if multi-track is being considered as a response to
19 that over-enrollment, once the district has a feel for
20 what the degree of over-enrollment is, that helps to
21 make the decision about which of the calendars or the
22 number of tracks, really, would be chosen to help handle
23 that overcrowding.

24 Q So the local need is the need to accommodate
25 over-enrollment?

1 Q What are the unsuccessful configurations of the
2 multi-track year-round calendar?

3 A There have been districts that have tried to
4 utilize one or another calendars in situations that
5 really don't fit the choices made, and so that would be
6 an example of an unsuccessful configuration.

7 Q Can you give me an example of a situation where
8 a district chose a calendar that did not fit the choices
9 made?

10 A We had a district here in California that had a
11 severely over-enrolled high school. The district
12 decided that it would develop its own calendar. We had
13 some inkling of what that calendar might look like at
14 the national office.

15 We told that district that there might be some
16 inherent problems in the calendar that was being
17 considered. We advised against the implementation of
18 that calendar. The district went ahead and implemented
19 it anyway, and it was an unsuccessful configuration.

20 Q Do you recall what district this was?

21 A It was in Imperial County. It was in El Centro
22 and I'll have to be honest and say I don't know the
23 formal name of the district.

24 Q That's okay.

25 Do you recall what the inherent problems in the

1 calendar were that you saw?

2 A Yes. The district wanted to use a four-track
3 calendar. Usually, we have three of the four tracks in
4 school at one time, and one group is on vacation. This
5 district chose to start its program with one track in
6 school, the second track entering school a week later, I
7 think it was, a third track, then, after that, with the
8 fourth track continuing to -- for its complete vacation
9 period.

10 Well, it was an unworkable plan, because to
11 really get all the days in required in a year -- or the
12 equivalent minutes, but in this case it was days. You
13 really can't start it out in a staggered way that way.
14 Three groups of the four must be in school at the same
15 time.

16 We do encourage districts to look at new
17 calendars. That's why we now have as many calendars as
18 we do. So at the beginning we encouraged the district
19 to try to figure out a new calendar, but once we saw
20 what was happening there, we said, but you can't stagger
21 it in that fashion. That's going to breakdown, and it
22 did break down.

23 At the end of the year, of course, the calendar
24 was abandoned. Now, year-round education was blamed as
25 being unworkable, but it wasn't the year-round calendar;

1 A Some districts may have had minor
2 implementation problems, but not enough to cause a whole
3 dislocation like this school district.

4 Q Do you recall advising any other districts
5 against implementation of the multi-track year-round
6 calendar?

7 A Not as such. Not in the same way. We
8 sometimes say to a district, you need to really figure
9 out what your degree of over-enrollment is. We've had
10 districts say, we're overcrowded, and as we look at the
11 district, we don't see the degree of overcrowding that
12 they claim.

13 So we generally try to stay out of the picture,
14 in terms of saying, this is the right calendar or not.
15 We say, here's a whole range of calendars. You need to
16 choose a calendar based on your own local circumstances.

17 Q Why does -- if you know, why does the NAYRE
18 stay out of that decision as to which year-round
19 calendar should be implemented?

20 A We think that's really a local decision. So
21 we've never, so far as I know, taken a position that any
22 one of the calendars is preferable to another. We
23 really do try to stay away and say -- stay out of the
24 final decision stage, to say that is a local choice.

25 Q Have there ever been discussions within the

1 it was the administration of that calendar that was the
2 breakdown.

3 Q Well, was it really the implementation or the
4 design of it?

5 A Both.

6 Q And you say that that was unsuccessful.

7 Why?

8 A Simply because, with students coming and going
9 even to a greater degree, it was very difficult for
10 staff to keep track of students because of that
11 staggered start. A truly staggered start.

12 Q Was that calendar, in your opinion,
13 unsuccessful on any other measure other than the
14 difficulty of keeping track of students?

15 A That's what really broke it down, yes.

16 Q Can you think of any other examples where a
17 district has chosen a calendar that didn't fit the
18 choices made?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: Right at the moment I can't.

21 BY MR. VILLAGRA:

22 Q Is that the only unsuccessful configuration of
23 a multi-track year-round calendar that you can think of?

24 A To that degree, yes.

25 Q What about to any degree?

1 NAYRE about which year-round calendar is preferable?

2 A There've been some discussions, yes, sure.

3 Q What have those discussions been about?

4 A Well, the discussions have usually been, is the
5 quarter system better? Is the trimester system better?
6 What are the pluses and minuses of each? Is Concept 6
7 really what is required? Can one of the other calendars
8 do the job as well? That kind of discussion.

9 Q When you say discussion about whether Concept 6
10 really is required, what do you mean?

11 A Well, Concept 6 is invariably put into place
12 with severe over-enrollment. Local districts sometimes
13 don't fully understand what is meant by severe
14 over-enrollment, and so we will sometimes say, it may
15 not be the degree to which you are speaking. It may
16 seem overcrowded, but I need to do a census to see what
17 your projections are, because ordinarily Concept 6 is
18 chosen after the over-enrollment is at a level of 40
19 percent or so.

20 40 percent, again, is an arbitrary line.
21 Couple percents below couple or several percents above.
22 But around a hundred and 40 percent is when people begin
23 thinking in terms of Concept 6.

24 Q And is the reason why you would want a district
25 to make sure that it is severely impacted is to see

1 whether it could implement some other multi-track
 2 year-round calendar instead of Concept 6?
 3 A Yes.
 4 Q Because those other multi-track year-round
 5 calendars would be preferable to Concept 6?
 6 A Yes. Because of the shorter vacation period.
 7 Q I'm going to turn your attention to Page 10,
 8 under the heading Roman numeral IV.
 9 A VI?
 10 Q Sorry, VI, yes.
 11 The fourth sentence, "The reality is that
 12 educational opportunities differ among students for a
 13 number of reasons, with many of the differences
 14 attributable to factors and experiences wholly unrelated
 15 to the educational system and its adopted calendars, and
 16 these differing experiences cannot be categorized as
 17 necessarily unequal."
 18 Do you see that?
 19 A I see that.
 20 Q Is it your opinion that there are some
 21 differences in educational opportunities that are
 22 attributable to what you have labeled the educational
 23 system?
 24 A I'm sorry, I didn't actually hear the words,
 25 please.

1 MR. VILLAGRA: Would you please read that back.
 2 (Record read.)
 3 MS. DAVIS: Vague and ambiguous.
 4 THE WITNESS: I would say yes.
 5 BY MR. VILLAGRA:
 6 Q What are the differences in educational
 7 opportunities that you believe are attributable to the
 8 educational system?
 9 A Well, certainly, if some students take AP
 10 classes and others do not, AP classes are part of the
 11 system. So obviously, the learning opportunities would
 12 be different for different students. Same thing with
 13 the whole panoply of course offerings. The educational
 14 experiences and opportunities would be different for
 15 different students, largely at their own choice. So
 16 within the system there's certainly differences of
 17 opportunity.
 18 Q Can you think of anything else?
 19 A Not right at the moment.
 20 Q Do you believe that there are some differences
 21 in educational opportunity attributable to the school
 22 calendars adopted by the educational system?
 23 A I think the -- no, I think the opportunities
 24 are less having to do with calendar than with other
 25 kinds of situations within the school experience.

1 Q Why do you say that?
 2 A Well, calendars only are an arrangement of
 3 day -- an arrangement of time. And the opportunities
 4 for learning come within the classroom itself and -- not
 5 just within the classroom but all the experiences that
 6 make up school. The calendar's an arrangement of time
 7 and doesn't either -- doesn't necessarily have a major
 8 effect on learning opportunities.
 9 Q But can the school calendar have an impact on
 10 learning opportunities?
 11 A Oh, I suppose it could, yes.
 12 MR. VILLAGRA: I'm going to break from tradition.
 13 Could I ask for a break?
 14 MS. DAVIS: I was just going to ask for it. We've
 15 been going for about an hour 25. Sounds good.
 16 (Brief recess taken.)
 17 BY MR. VILLAGRA:
 18 Q Go back to Exhibit 12, your report, Page 11.
 19 The very top you write, "The geography, for example,
 20 provides different learning opportunities."
 21 Do you see that?
 22 A I see that, yes.
 23 Q And then you give an example.
 24 Can you explain how it is that, in your
 25 opinion, geography provides different learning

1 opportunities?
 2 A Well, what I was saying here, in effect, was
 3 the kind of education experience applies to a student in
 4 Berkeley may be different than what may be experienced
 5 by a student in San Diego. I was only trying to suggest
 6 separation by 400 plus miles or whatever, and so the
 7 experiences a student may have in Berkeley may be
 8 different from a student in San Diego, just by the
 9 nature of the part of the state that they're in.
 10 Q How would the opportunities for a student in
 11 Berkeley be vastly different from those than a student
 12 in San Diego?
 13 A Student in Berkeley would have a university
 14 right there at hand, in a smaller city, maybe the
 15 influence of a university, which a student in Palm
 16 Springs may not have, for example. There may be
 17 opportunities to do some work at the university for high
 18 school students, a student in Palm Springs -- I say a
 19 student in San Diego, but it could be other cities in
 20 California as well.
 21 San Diego, student at San Diego High, closer to
 22 the water than a student in, again, Palm Springs or
 23 Redding or whatever, and there might be different kinds
 24 of learning opportunities.
 25 Q Do you believe learning opportunities relative

1 to the world, basically?

2 A To the world around them, yes, sure.

3 Q Considering the four walls of a school, how is
4 a learning opportunity -- or how are the learning
5 opportunities of a student in Berkeley different from
6 those of a student in San Diego, or are they?

7 A They may be, depending on the teacher's
8 experience, what they bring to the classroom as part of
9 the learning experience, yes.

10 Q But not in terms of geography, necessarily?

11 A Within the classroom, may not be. But it may
12 be. If the teacher has hiking experience in one
13 situation but not in the other, that would be something
14 that might make a difference, sure.

15 Q But would these learning opportunities,
16 considering just the four walls of the school, be vastly
17 different for a student in Berkeley as opposed to a
18 student in San Diego?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: Well, the key word there is
21 "vastly." Within the four walls of a school, there may
22 be some similarity; could be considerably different.
23 Teacher may have a different philosophy, for example, of
24 how to impart the information, and so the learning
25 experiences could be quite different, even within the

1 unit on logic and how one thinks and then moves from
2 that direction on. Those would be vastly different
3 learning experiences, but the goal is to arrive at the
4 end in, at the least, meeting a minimum standard at the
5 end of the experience.

6 BY MR. VILLAGRA:

7 Q I take it that you don't believe the State can
8 legislate quality, in terms of geography, right?

9 MS. DAVIS: Assumes facts.

10 THE WITNESS: I'm not sure what you're asking me
11 there.

12 BY MR. VILLAGRA:

13 Q Well, we were led into this discussion about
14 your saying that there are some differences in
15 educational opportunities not attributable to the
16 educational system. So I take it that you're saying
17 that the State can't make Berkeley the equivalent of San
18 Diego.

19 A I don't think so.

20 Q And the State can't legislate that Teacher A
21 have the same exposure as Teacher B?

22 A I suppose it could, but that would be a very
23 controlled situation. I'm not sure the State really
24 wants to do that, or should do that in a democratic
25 society.

1 four walls of the schoolhouse.

2 BY MR. VILLAGRA:

3 Q Do you believe there's any baseline below which
4 learning opportunities in Berkeley should not fall and
5 neither should the learning opportunities in San Diego?

6 MS. DAVIS: Vague and ambiguous.

7 THE WITNESS: Well, I don't know quite how to
8 answer that question. There are standards in California
9 that have been drawn up, and one would hope that those
10 standards would be at least covered and, hopefully, met
11 at a particular grade level and so on. But otherwise, I
12 don't know really how to respond to your question.

13 BY MR. VILLAGRA:

14 Q Does it make sense to have standards in
15 California if geography makes learning opportunities
16 vastly different in Berkeley than in San Diego?

17 MS. DAVIS: Vague and ambiguous.

18 THE WITNESS: Well, the key is students learn a
19 particular body of knowledge. A teacher can use
20 different methods for getting there. What the State is
21 interested in is that the student is educated so that
22 person becomes a productive citizen in society.

23 When I talk about teachers having different
24 philosophies -- geometry, for example. One teacher may
25 start in a very linear fashion; another may start with a

1 Q But the State of California can legislate which
2 school calendars are implemented in its public schools;
3 can it not?

4 A It could, yes.

5 Q And the State of California can make funding
6 for new school construction available?

7 A It could to the degree that the public is
8 willing to accept the taxes necessary to raise the
9 funds.

10 Q And the State of California can predict growth
11 and student enrollment?

12 A It can have an educated prediction, yes.

13 Q I want to turn to Page 12 of your report, under
14 Heading A.

15 You say, "In their reports Drs. Oakes and
16 Mitchell imply that there's a causal relationship
17 between the multi-track year-round calendar and low
18 academic achievement."

19 Do you see that?

20 A I do.

21 Q Then in the next sentence you write, "In fact,
22 the evidence shows that the multi-track year-round
23 calendar does not cause or result in low academic
24 achievement."

25 A I did write that, yes.

1 Q Do you deny a causal relationship between the
2 calendar and academic achievement?

3 A What I denied here was causal relationship
4 between the calendar and low academic achievement.

5 Q And on what grounds do you deny that
6 relationship?

7 A The kind of research done by Dr. Kneese, for
8 example.

9 Q Anything else?

10 A That's the primary report I relied on.

11 Q Do you believe that there is a causal
12 relationship between multi-track year-round education
13 and high academic achievement?

14 A I do take the point of view that it -- not
15 necessarily in high. I take the position that there may
16 be a causal factor in improvement of achievement levels.

17 Q So is it fair to say that you believe that
18 there is a causal relationship between multi-track
19 year-round education and improved academic achievement?

20 A There can be.

21 Q Do you believe that there is a causal
22 relationship between those two things?

23 MS. DAVIS: Asked and answered.

24 MR. VILLAGRA: Well, that for it to be cause and
25 effect, it has to be true a hundred percent of the time.

1 cause low academic achievement.

2 Q Do you think that multi-track year-round
3 education can hurt academic achievement?

4 A Is that a hypothetical?

5 Q I don't think so.

6 A Can it ever hurt? I suppose it's conceivable
7 that, if it were a bad implementation, poor
8 administration, factors of that kind, in a situation
9 where there was a multi-track calendar, there might be
10 some low achievement. I'm not sure whether it would be
11 the calendar that caused it or whether the poor
12 administration of the calendar.

13 Q You keep trying to reinsert the word "cause,"
14 and I'm trying to take cause out in the same way you
15 took it out.

16 A Okay.

17 Q Do you think that multi-track year-round
18 education may hurt academic achievement?

19 MS. DAVIS: Asked and answered.

20 THE WITNESS: I think I did say, if it was poorly
21 administrated, it's possible.

22 BY MR. VILLAGRA:

23 Q In your opinion, how can a multi-track
24 year-round calendar be poorly implemented?

25 A Some of the things that I was alluding to just

1 MS. DAVIS: I don't necessarily agree.

2 THE WITNESS: It doesn't have to be true all the
3 time. Where I differ with Drs. Mitchell and Oakes, they
4 were saying it was the calendar that caused the low
5 achievement, in and of itself. What I would say is the
6 calendar may help; in that, it reduces the length of the
7 vacation period, the problem we've talked about, which
8 is the issue of forgetting over a longer period of
9 time.

10 In that sense, the calendar can help to
11 improve. I don't say it causes improvement, but I say
12 it helps in the improvement of achievement.

13 BY MR. VILLAGRA:

14 Q Okay. And is your basis for saying that the
15 work of Carolyn Kneese?

16 A Yes.

17 Q Anything else?

18 A That's primary.

19 Q Now, when you say that multi-track year-round
20 education may help improve achievement, isn't it also
21 true that multi-track year-round education may not help
22 improve academic achievement?

23 A It may not, in the sense that there are some
24 situations where the scores are rather static, but what
25 we are pretty sure of is that the calendar does not

1 a moment ago. If, for example -- well, I go back to the
2 district in Imperial County that I referred to.

3 If the calendar's been badly implemented and
4 there is general hubbub and distress because of that
5 calendar, the side effect could hurt the achievement of
6 students. But it wasn't the calendar, per se; it was
7 the poor implementation of the calendar.

8 Q I want to know in what ways the multi-track
9 year-round education calendar may be poorly implemented,
10 if you know.

11 MS. DAVIS: Asked and answered.

12 THE WITNESS: Once again, I would have to go back
13 to the same substance, which would be administrative
14 handling. If, for example, the administration had not
15 fully prepared staff for the change in calendars by some
16 in-service or if the counselors aren't prepared, that
17 could have some effect on the learning of students in
18 the long-run.

19 BY MR. VILLAGRA:

20 Q To be properly implemented, should a
21 multi-track year-round school develop and approve a
22 track preference and assignment policy, keeping in mind
23 the need for same schedules for family members?

24 A Could I have that question reread.

25 (Record read)

1 THE WITNESS: There are actually several parts to
2 your question. Which do you want me to speak to first?

3 BY MR. VILLAGRA:

4 Q Well, what do you understand to be the parts of
5 the question?

6 A Well, for example, families being kept together
7 on the same track. The Education Code actually says
8 that that is the way it should be done, unless there are
9 other circumstances, such as family choice, for
10 example. Some families don't want all of their children
11 on the same track.

12 But the Education Code does say, to the degree
13 possible, a family should be kept on the same track. So
14 that's one part of it.

15 Now, the rest of the question I need to have
16 read back again.

17 Q Do you believe that the California Department
18 of Education conducts any kind of assessment to see
19 whether schools are following that dictate that family
20 members be kept on the same schedule?

21 A I don't know whether it does or not.

22 Q Do you believe that, to be properly
23 implemented, a multi-track year-round school should
24 develop a track preference and assignment policy for
25 students?

1 in here.

2 MS. DAVIS: Here, you can look at mine if you want.

3 I mean, is that okay?

4 MR. VILLAGRA: Sure.

5 BY MR. VILLAGRA:

6 Q Do you remember the Bates numbers in the
7 right-hand corner?

8 A I do.

9 Q If you look at 0853.

10 A All right.

11 Q Point Number 9, it says, "Develop and approve a
12 track preference and assignment policy for students,
13 keeping in mind the need for same schedules for family
14 members."

15 Do you see that?

16 A I see that.

17 Q Do you disagree, then, that this is an
18 implementation step for multi-track year-round
19 education?

20 A I do agree that it needs to be a policy. I
21 don't know what the author had in mind by "assignment
22 policy."

23 Once families have chosen, you can then assign
24 them to that. So I really don't know what the author is
25 saying here with "assignment." I would agree there

1 MS. DAVIS: Vague and ambiguous.

2 THE WITNESS: I don't know what is meant by track
3 preference. I simply think the school districts ought
4 to have some preplanning on how enrollment should
5 occur. There need to be some procedures and policies in
6 place. And some districts -- districts do it in
7 different ways.

8 BY MR. VILLAGRA:

9 Q Do you believe that a district implementing
10 multi-track year-round education should have an
11 assignment policy for students to tracks?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: If by assignment, the administration
14 assigns people to tracks? Is that what you have in
15 mind?

16 BY MR. VILLAGRA:

17 Q Yes.

18 A My preference is that families choose their
19 track to the greatest degree possible. So I'm not much
20 in favor of an assignment, plan where students are
21 simply assigned by administrative fiat.

22 Q Can I have you pull out of the stack Exhibit
23 7.

24 A Okay. So this is today's.

25 MS. DAVIS: That's today's. I've got yesterday's

1 needs to be a policy.

2 Q Okay. Do you believe that the California
3 Department of Education does anything to monitor whether
4 districts have approved a track preference and
5 assignment policy for students?

6 MS. DAVIS: Calls for speculation.

7 THE WITNESS: You said the Department of Education
8 or --

9 BY MR. VILLAGRA:

10 Q Yes.

11 A Or the State? Department of Education.

12 Q (No audible response)

13 A I'm not sure whether they do or not.

14 Q Do you believe that a district implementing
15 multi-track year-round education should balance tracks
16 by ethnicity, ability, socioeconomic level and
17 educational need?

18 A To the degree possible, yes.

19 Q Why do you say that?

20 A Well, there are some circumstances where the
21 best option for students is to not have a strict
22 balance, in terms of ability, for example.

23 Remember -- if I can just give you a
24 for-instance. Because you may ask me a for-instance
25 anyway.

1 Q I have that habit.
 2 A I remember a discussion of about ten years
 3 ago. I don't remember the district. But there was a
 4 discussion of whether one of the tracks could be heavily
 5 Hispanic or -- no, strike that -- limited English
 6 speaking students, and the question that came up was, is
 7 this going to be a problem, in terms of civil rights.
 8 I remember I called the State and talked to
 9 somebody in the Office of Civil Rights. It may have
 10 been an office in the State Department of Education.
 11 And the response was, it depends on what the intent
 12 was. If the intent is to provide a quality educational
 13 program, then putting students together in one track so
 14 there's a very enriched program would pass muster,
 15 probably pass muster. But if the intent is to put a
 16 group of students there simply because of the category
 17 they're in, that would not be.
 18 Q Who gave you this advice?
 19 A It was somebody in the Office of Civil Rights,
 20 and I don't remember.
 21 Q Office of Civil Rights California? United
 22 States?
 23 A I think it was within the Department of
 24 Education. I don't even remember who it was I talked
 25 with.

1 But ordinarily, yes, I agree with the
 2 statement.
 3 Q If you could turn to the next page. The item
 4 listed Number 20. Ensure that air conditioning and
 5 insulation are able to provide summer comfort.
 6 Do you see that?
 7 A I see that.
 8 Q Do you believe that that is something that a
 9 district implementing multi-track year-round education
 10 has to do in order to properly implement its program?
 11 A No, I don't agree with that overall. Depends
 12 on the local circumstances. If you're talking about
 13 desert, that's one thing. If you're talking about a
 14 school within a half a mile of the ocean, that's quite
 15 another.
 16 Q But to the extent it's relevant, do you believe
 17 that a district should do this --
 18 MS. DAVIS: Vague and ambiguous.
 19 BY MR. VILLAGRA:
 20 Q -- provide summer comfort?
 21 MS. DAVIS: Vague and ambiguous.
 22 THE WITNESS: I do agree that there has to be
 23 consideration of summer comfort, yes.
 24 BY MR. VILLAGRA:
 25 Q And that's because multi-track year-round

1 education has students attending school over the summer
 2 months?
 3 A That certainly is part of it, yes.
 4 Q What's the other part?
 5 A Well, if we have summer school and we assume
 6 students can learn without air conditioning and
 7 insulation in that same circumstance, then I'm not sure
 8 that the year-round program has to be that much
 9 different.
 10 If we assume that -- if we assume students can
 11 learn in summer school in the current situation, then
 12 they can learn in year-round education. So I say it's
 13 the same for summer school and year-round programs being
 14 held in the summer. Whatever is right for the local
 15 circumstance. Including summer school.
 16 Q Number 23 says, "Develop a system to deliver
 17 electives and special services such as special day
 18 classes, psychological services, resource specialists
 19 and bilingual education."
 20 Do you see that?
 21 A I see that.
 22 Q Do you agree that that's an implementation step
 23 of a multi-track year-round school?
 24 A Yes, to the greatest degree possible.
 25 Q Do you know whether the California Department

1 of Education monitors whether districts have delivered a
 2 system -- have developed a system to deliver electives
 3 and special services?
 4 MS. DAVIS: Calls for speculation.
 5 THE WITNESS: I don't know whether they do or not.
 6 BY MR. VILLAGRA:
 7 Q Number 26 says, "Establish a system for teacher
 8 room rotational roving."
 9 Do you see that?
 10 A I see that.
 11 Q Do you believe that that's an implementation
 12 step for a multi-track year-round program?
 13 A It is for multi-track. I see that the heading
 14 of this section simply says "Year-Round Education."
 15 That step would just be for multi-track, yes.
 16 Q And do you believe that, to be properly
 17 implemented, a multi-track year-round school should
 18 establish a system for teacher room rotation or roving?
 19 A Has to to be multi-track, yes.
 20 Q Do you know whether the State California
 21 Department of Education has any monitors whether schools
 22 have implemented a system for teacher rotation or
 23 roving?
 24 MS. DAVIS: Calls for speculation.
 25 THE WITNESS: I don't know.

1 BY MR. VILLAGRA:
 2 Q Number 28 says, "Provide activities for
 3 connectedness for off-track employees and parents."
 4 Do you see that?
 5 A I see that.
 6 Q Do you agree that that's a step that a school
 7 should take in implementing a multi-track year-round
 8 program?
 9 A I do, yes.
 10 Q Do you know whether the State of California
 11 monitors whether districts provide activities for
 12 connectedness for those off-track?
 13 MS. DAVIS: Same objection.
 14 THE WITNESS: I don't know whether they do or not.
 15 BY MR. VILLAGRA:
 16 Q We were talking earlier about track preference
 17 and assignment.
 18 If you look at "B," Track Assignment
 19 Considerations -- and I believe you were mentioning an
 20 Education Code provision.
 21 Is that the one that you were referring to in
 22 1.a.?
 23 A It may be. I would need to check the Education
 24 Code to see whether that's the number.
 25 Q Number 2 says, "Use a fair, balanced track

1 MS. DAVIS: That calls for speculation.
 2 THE WITNESS: I agree with that.
 3 BY MR. VILLAGRA:
 4 Q Why do you believe that?
 5 A There's research that says that students who
 6 are further behind in their overall learning can learn
 7 from students who are moving ahead. To the degree that
 8 they're separated, those students who are further behind
 9 are not learning from their peers. And so to that
 10 degree, we do like to have heterogenous grouping to the
 11 greatest degree possible.
 12 Q Do you know whether the California Department
 13 of Education takes any steps to prevent schools from
 14 loading tracks by ability level?
 15 MS. DAVIS: Same objection.
 16 THE WITNESS: I don't know whether it does or not.
 17 BY MR. VILLAGRA:
 18 Q Do you know whether the State of California
 19 takes any steps to ensure that multi-track year-round
 20 programs are properly implemented?
 21 MS. DAVIS: Same objection. Vague and ambiguous.
 22 THE WITNESS: I don't know.
 23 BY MR. VILLAGRA:
 24 Q Do you believe that the State of California
 25 should have requirements in place to make sure that

1 assignment policy once track choice priorities have been
 2 honored."
 3 Do you see that?
 4 A I see that.
 5 Q Do you believe that that is a step that a
 6 district should take in implementing a multi-track
 7 year-round program?
 8 A I do.
 9 Q Do you agree that each track at a multi-track
 10 year-round school should mirror the ethnic and
 11 socioeconomic makeup of the whole school population?
 12 A To the greatest degree possible, yes.
 13 Q Do you know whether the California Department
 14 of Education takes any step to ensure that each track at
 15 a multi-track year-round school mirrors the ethnic and
 16 socioeconomic composition of the whole school?
 17 MS. DAVIS: Same objection.
 18 THE WITNESS: I don't know.
 19 BY MR. VILLAGRA:
 20 Q At Number 4 it says, "Do not," and it says,
 21 "Load tracks by ability level."
 22 Do you see that?
 23 A I see that.
 24 Q Do you agree that a multi-track year-round
 25 school should not load tracks by ability level?

1 multi-track year-round programs, where implemented, are
 2 implemented properly?
 3 MS. DAVIS: Vague and ambiguous as to
 4 "requirement."
 5 THE WITNESS: Would you read the question back,
 6 please?
 7 (Record read.)
 8 MS. DAVIS: Same objection.
 9 THE WITNESS: The difficult words are "properly
 10 implemented." I think the State's interests would be
 11 that students are learning, and things like that that
 12 are already assumed. So I'll just leave it at that.
 13 BY MR. VILLAGRA:
 14 Q Do you believe that the items we were just
 15 looking at on Exhibit 7, which are listed as
 16 implementing steps for implementing a year-round
 17 educational program are steps --
 18 A Excuse me, I'm not following you. Where are
 19 you talking?
 20 Q Where we were just looking.
 21 A This whole section called "Implementing"?
 22 Q Uh-huh.
 23 A Okay. Go ahead with -- I'm sorry.
 24 Q Can you tell me what steps here are not
 25 necessary for the proper implementation of a multi-track

1 year-round program, in your opinion?
 2 MS. DAVIS: Vague and ambiguous as to "necessary."
 3 Also, we didn't go over all of them. Do you
 4 want him to read --
 5 MR. VILLAGRA: Yeah.
 6 MS. DAVIS: -- them? Okay.
 7 THE WITNESS: (Reviews documents.)
 8 Well, one of those we've already gone over, for
 9 example. Ensure that air conditioning and insulation
 10 are able to provide summer comfort, that's one of those
 11 things that would be preferable. I don't know whether
 12 there'd be a State interest in saying you've got to do
 13 this, this, this.
 14 BY MR. VILLAGRA:
 15 Q Okay.
 16 A Seems to me local parents would want to make
 17 sure that there was a certain comfort level.
 18 Q You don't believe that's necessary.
 19 What other ones do you believe --
 20 A It may be necessary, but I'm not sure it's a
 21 State requirement.
 22 Q Okay. Let me try it this way.
 23 Looking at Number 1, select schools and grade
 24 levels, do you believe that is necessary to proper
 25 implementation of a multi-track year-round school?

1 MS. DAVIS: Vague and ambiguous.
 2 BY MR. VILLAGRA:
 3 Q Do you understand the question?
 4 A I do.
 5 Q Okay.
 6 A There has to be a selection, yes.
 7 Q Okay. Number 2, establish a process for
 8 resolving issues.
 9 Do you believe that is necessary to proper
 10 implementation of a multi-track year-round school?
 11 MS. DAVIS: Vague and ambiguous, calls for
 12 speculation as to what the document means.
 13 THE WITNESS: I'm having difficulty here, in the
 14 sense that I think these are things that should be
 15 done. Whether this should be a State requirement is
 16 quite another matter. So when you ask me this, I would
 17 respond by saying, yes, I think there should be a
 18 process established.
 19 BY MR. VILLAGRA:
 20 Q Do you believe that is necessary for proper
 21 implementation of a multi-track year-round education
 22 program?
 23 A I would say for proper implementation, yes.
 24 Q Okay. Number 3, do you understand what that
 25 refers to?

1 A I don't. I don't know what a pert chart is.
 2 Q Okay. Number 4, do you understand what that
 3 refers to?
 4 A I'd have to read the Ed Code section cited
 5 here.
 6 Q Okay. Number 5? Do you believe that is
 7 necessary to proper implementation of a multi-track
 8 year-round calendar?
 9 MS. DAVIS: Calls for speculation, again, as to
 10 what the document means.
 11 THE WITNESS: I think this is wise and probably
 12 required under union contracts.
 13 BY MR. VILLAGRA:
 14 Q Number 6, do you believe that is required for
 15 proper implementation of a multi-track year-round
 16 calendar?
 17 MS. DAVIS: Again, calls for speculation.
 18 THE WITNESS: In general, I would say yes.
 19 BY MR. VILLAGRA:
 20 Q Number 7, do you believe that is necessary to
 21 proper implementation of a multi-track year-round
 22 program?
 23 A That one I can't form an opinion on. It
 24 depends on how the school system is set up its own
 25 budgetary situation. Some districts do most of the

1 budgeting at the district level; some do some site-based
 2 budgeting. That one would be more difficult, I think,
 3 to respond to.
 4 Q Number 8, decide if year-round education will
 5 be implemented on a voluntary or mandatory basis for
 6 students and employees.
 7 Do you believe that's necessary to proper
 8 implementation of a multi-track year-round program?
 9 A I think so, yes.
 10 Q Number 9, develop and approve a track
 11 preference and assignment policy for students, keeping
 12 in mind the need for some schedules for family members;
 13 balance tracks by ethnicity, ability, socioeconomic
 14 level and educational need.
 15 Do you believe that that is necessary to proper
 16 implementation of a multi-track year-round program?
 17 A I do, and I stated that earlier.
 18 Q Number 10, develop and approve a track
 19 assignment policy for teachers and staff.
 20 Do you believe that's necessary to proper
 21 implementation of a multi-track year-round program?
 22 A I think so.
 23 Q Determine staff in-service schedule.
 24 Do you believe that's necessary to proper
 25 implementation of a multi-track year-round program?

1 A I don't think so, implementation. It may be
2 later, but not for implementation.

3 Q Number 12, do you believe that's necessary to
4 proper implementation of a multi-track year-round
5 program?

6 A Number 12. Yes.

7 Q Number 13, send track preference notice to
8 parents by early spring.

9 Do you believe that's necessary to proper
10 implementation of a multi-track year-round program?

11 A The sending of a notice, yes. I'm not sure
12 what's meant by early spring.

13 Q 14, notify parents as soon as possible of track
14 assignment.

15 Do you believe that's necessary to proper
16 implement station of a multi-track year-round program?

17 A Yes.

18 Q Develop a policy and system for track change
19 appeals.

20 Do you believe that's necessary to proper
21 implementation of a multi-track year-round program?

22 A Yes.

23 Q Develop a system for delivering services during
24 the summer; i.e., classroom supplies and textbooks, do
25 you believe that's necessary to proper implementation of

1 to the degree possible.

2 Q Okay. Number 25, modify transportation system
3 as required, including routes, number of buses and
4 service schedules.

5 A Oh, yes.

6 Q That's necessary?

7 A Oh, yes.

8 Q 26, establish a system for teacher room
9 rotation or roving.

10 A Yes.

11 MS. DAVIS: Let him ask the question.

12 BY MR. VILLAGRA:

13 Q It's necessary for proper implementation?

14 A Yes. Sorry.

15 Q Develop a community-school communication system
16 for notifying off-track families of important school
17 dates and activities.

18 A Yes. Excuse me.

19 Q We can just assume it's a standing question.

20 A Okay.

21 MS. DAVIS: Okay. That's fine.

22 BY MR. VILLAGRA:

23 Q 28 we did.

24 Reschedule special events, such as holiday
25 programs.

1 a multi-track year-round program?

2 A I'll say yes.

3 Q Modify/expand food services according to need,
4 do you believe that's necessary to proper implementation
5 of a multi-track year-round program?

6 A Yes.

7 Q I'll skip to the next page, develop a system
8 for plant maintenance and utilization of empty rooms.

9 Do you believe that's necessary to proper
10 implementation of a multi-track year-round program?

11 A Yes.

12 Q We did 20.

13 22, develop a work schedule for office,
14 custodial and administrative staff.

15 A Yes.

16 Q You believe that's necessary?

17 A Yes.

18 Q And Number 23, just to be clear of earlier
19 discussion, develop a system to deliver electives and
20 special services, such as special day classes,
21 psychological services, resource specialists and
22 bilingual education.

23 Do you believe that's necessary to the proper
24 implementation of a multi-track year-round program?

25 A I'll use the same response I did before. Yes,

1 A I don't think that that's necessary, no.

2 Q Do you understand what an attendance accounting
3 system is?

4 A I don't for sure. I presume that's the State's
5 attendance accounting system.

6 Q Okay. 32, coordinate with community services,
7 such as the recreation department, youth organizations
8 church groups and police department.

9 A I'll say yes.

10 Q Identify and coordinate with child care
11 providers.

12 A That one's not required for implementation of
13 the school. I think that's a wise idea, however.

14 Q Okay. 34, identify intersession instructional
15 programs and schedules.

16 A That's not required for initial
17 implementation. Again, that is wise to do, but that may
18 follow from experiences during the school year what the
19 intersession classes will be.

20 Q And modify student testing program.

21 MS. DAVIS: Same question?

22 MR. VILLAGRA: Yes.

23 MS. DAVIS: Okay.

24 THE WITNESS: Yes. I'll say yes.

25 BY MR. VILLAGRA:

1 Q And just to loop back, in order to properly
 2 implement a multi-track year-round program, should a
 3 school not load tracks by ability level?
 4 MS. DAVIS: Asked and answered.
 5 THE WITNESS: They should not.
 6 BY MR. VILLAGRA:
 7 Q Should a school not load tracks by special
 8 groups, like band or football?
 9 A Well, that one is a little different, because
 10 depending on the size of the school, it's very likely
 11 that band may just be available on one track. Or
 12 football, there would just be one team for each track --
 13 for the whole school rather than track. So those two
 14 are outside of a track situation. Or may be.
 15 Q Okay. Do you believe that there is a causal
 16 relationship between race, ethnicity and academic
 17 achievement?
 18 A Repeat the question for me, please.
 19 MR. VILLAGRA: Would you read that back, please.
 20 (Record read)
 21 THE WITNESS: No.
 22 BY MR. VILLAGRA:
 23 Q Do you believe there's a causal relationship
 24 between socioeconomic status and academic achievement?
 25 A Yes.

1 Q What's your basis for saying that?
 2 A The kinds of research studies which I read,
 3 including the research that Dr. Cooper did on summer
 4 learning loss.
 5 Q Can you name for me the research that you cited
 6 in your paper?
 7 A I think I probably referred to Dr. Cooper's
 8 report.
 9 Q Can you check, if you look at your bibliography
 10 in the back?
 11 A Well, I certainly cited Dr. Cooper's report.
 12 Q Okay.
 13 A I'm not sure that I wrote about it
 14 specifically.
 15 Can you point to the particular statement I
 16 made in my report?
 17 MS. DAVIS: Or you can look at the section.
 18 BY MR. VILLAGRA:
 19 Q I'm just looking at the section about causal
 20 relationships, and I'm trying to find out what you
 21 thought.
 22 A Page 14?
 23 Q 12.
 24 A 12.
 25 (Witness reviews documents.)

1 MS. DAVIS: Number 12, then, goes --
 2 MR. VILLAGRA: Yes.
 3 MS. DAVIS: -- to 14. Okay.
 4 THE WITNESS: I don't say anything about race and
 5 ethnicity here; do I? I don't find anything where I
 6 do. I do speak of socioeconomic when I refer to
 7 disadvantaged students.
 8 BY MR. VILLAGRA:
 9 Q And just in terms of your paper, if I wanted to
 10 see your support for the causal relationship between
 11 socioeconomic status and academic achievement, I would
 12 look to the Harris Cooper paper?
 13 A Well, that's one, sure.
 14 MS. DAVIS: I'm going to object that the document
 15 speaks for itself.
 16 BY MR. VILLAGRA:
 17 Q What else would I look to?
 18 A I know Dr. Kneese in her paper speaks to
 19 relationship of socioeconomic and results. I think the
 20 Oakland paper cited by Drs. Oakes and Mitchell --
 21 particularly Dr. Oakes -- speaks to the fact that
 22 socioeconomic is the predominant factor in student
 23 achievement scores. And there would be several others
 24 as well that would speak to that.
 25 Q Okay. Do you believe there's a causal

1 relationship between parental education and student
 2 academic achievement?
 3 A I do.
 4 Q What's your support for that?
 5 MS. DAVIS: I'm going to object. The document
 6 speaks for itself.
 7 THE WITNESS: I do know that, in looking at some of
 8 the results from the State's API scores and so on, I
 9 believe one of the primary factors -- one of the primary
 10 relational factors between achievement scores is with
 11 the factor of parental education, particularly the
 12 mother's education.
 13 BY MR. VILLAGRA:
 14 Q Do you believe there's a causal relationship
 15 between teacher experience level and student academic
 16 achievement?
 17 A I do.
 18 Q Why do you believe that?
 19 A Just from experience being in the field for so
 20 long. Teachers who are experienced usually are better
 21 teachers than the first-year teacher. Not always. But
 22 as a general rule, the more experience a teacher has,
 23 the better they're able to impart knowledge.
 24 Q Do you believe there's a causal relationship
 25 between class size and academic achievement?

1 A I think the jury's still out on that one.
 2 There is certainly some research -- and Dr. Oakes speaks
 3 to this, I know -- that 15-to-one is a desirable level.
 4 But having said that, I'm not sure that 17-to-one makes
 5 that much difference. The disparity has to be
 6 considerable to really have an impact.
 7 Q I want to look at Page 14, now, of your report,
 8 Exhibit 12, under Number 2. Or actually, Heading 2
 9 says, "Socioeconomic status provides the primary
 10 indicator of student achievement."
 11 A Yes.
 12 Q What factors do you mean to encompass by
 13 socioeconomic status?
 14 MS. DAVIS: Vague and ambiguous.
 15 BY MR. VILLAGRA:
 16 Q Do you understand the question?
 17 A It is somewhat ambiguous, but go ahead and ask
 18 me again.
 19 Q Well, socioeconomic status can be measured any
 20 number of different ways; is that correct?
 21 A The word "status"? Yes.
 22 Q Socioeconomic status.
 23 A Yes.
 24 Q And how is it you intended?
 25 A Primarily, income level of the family.

1 Q Secondly, anything else?
 2 A Sometimes the nature of the community.
 3 Q What do you mean by the nature of the
 4 community?
 5 A Whether there are other child-enhancing
 6 circumstances within the community. By that I mean,
 7 other child agencies that provide services for children
 8 within that community.
 9 Q What about parental education?
 10 MS. DAVIS: Vague and ambiguous.
 11 BY MR. VILLAGRA:
 12 Q Do you intend that to be included as part --
 13 A That could probably be included under the
 14 "socio" part.
 15 Q Okay. And when you say primary indicator, what
 16 do you mean by indicator?
 17 A It is the socioeconomic status that will be the
 18 first thing to look at when looking at student levels of
 19 achievement.
 20 Q What do you mean by the first thing to look at?
 21 A Well, if we're seeking -- if we're wanting to
 22 help students, one thing we should always look at is
 23 what kind of background this student has, are there any
 24 other things that we can bring to bear on helping this
 25 child raise achievement level, if indeed we're looking

1 at students of low achievement levels, which I presume
 2 we are, primarily, here.
 3 But this really talks to what is a causative
 4 factor of low achievements, and I'm responding to
 5 Dr. Mitchell and Dr. Oakes in this section.
 6 Q Are you saying that if I want to see what level
 7 of achievement a student has attained, the first thing I
 8 should look at is socioeconomic status?
 9 A First thing I would look at is the student's
 10 records, because socioeconomic is not an absolute
 11 determinant.
 12 But what I'm really responding to here is what
 13 I implied very early in this section before, that I felt
 14 that Drs. Mitchell and Oakes were using the calendar
 15 itself as a cause of student low achievement, and I was
 16 coming back and saying, no, it's socioeconomic status
 17 that is a far more important factor than the calendar
 18 chosen by the school.
 19 Q Okay.
 20 A And I quote both of them to indicate that, in
 21 reality, they believe so as well.
 22 Q Do you believe that socioeconomic status is the
 23 exclusive indicator of student achievement?
 24 A It's not the exclusive, no.
 25 Q What are the other indicators of student

1 achievement that you recognize?
 2 A Well, obviously, income level can be low but
 3 parent interest in education can be high, and those
 4 kinds of factors can mitigate the lower socioeconomic
 5 standing. So parental involvement in education would
 6 certainly be one.
 7 Q What are the other indicators of student
 8 achievement that you recognize?
 9 A Well, the quality of the school program can
 10 certainly be a factor in the achievement level of the
 11 students.
 12 Q And how would you measure the quality of the
 13 school's program?
 14 A Primarily, by the overall scores achieved by
 15 students at that school, given socioeconomic factors.
 16 Q What other indicators of student achievement do
 17 you recognize?
 18 A I'll leave it there for right now.
 19 Q What does that mean?
 20 A At this point I am not coming up with any
 21 others.
 22 Q Do you believe that teacher experience is an
 23 indicator of student achievement?
 24 A It may be. It may be, yes.
 25 Q But not always?

1 A Not always.
 2 Q Do you believe the school calendar is an
 3 indicator of student achievement?
 4 A To a lesser degree, considerably less degree.
 5 Q Do you believe the school calendar is an
 6 indicator of student achievement?
 7 A Very negligible.
 8 Q Do you believe that socioeconomic status is an
 9 indicator of student achievement?
 10 A Do I believe it is?
 11 Q Yes.
 12 A It can be.
 13 Q Do you know what the academic performance index
 14 is?
 15 A API, yes.
 16 Q What is it?
 17 A Well, it's a standard -- it's a ranking of
 18 schools within the state by achievement levels of that
 19 school.
 20 Q Is that your complete understanding of what the
 21 API is?
 22 A In general, yes.
 23 Q Do you know what the API statewide rank is?
 24 A Generally, yes.
 25 Q What is it?

1 A Well, schools are ranked at their achievement
 2 level, and done in deciles, I guess I should say.
 3 Q Is that your complete understanding of the API
 4 statewide rank?
 5 A Yes.
 6 Q Do you know what the API similar schools rank
 7 is?
 8 A I do.
 9 Q What is it?
 10 A That's where socioeconomic factors have been
 11 brought into a comparison band. Schools that -- a
 12 hundred schools within that particular rank are ranked 1
 13 through 100 by similar characteristics.
 14 Q And what are those similar characteristics, if
 15 you recall?
 16 A I don't have that in front of me. So I won't
 17 speak to that right now.
 18 Q Do you recall any of the factors that are taken
 19 into account in the similar schools rank?
 20 MS. DAVIS: Vague and ambiguous.
 21 THE WITNESS: Can you give me the State's papers on
 22 SSR?
 23 BY MR. VILLAGRA:
 24 Q I can.
 25 A Would you?

1 Q We'll get to it.
 2 But I am entitled to your best recollection.
 3 A I'll just not recollect right now, because I'm
 4 not quickly coming up with all those.
 5 Q Do you know what the school characteristics
 6 index is?
 7 A Yes, and I wish I -- I know the -- I'm going to
 8 wait until you provide that, so we can speak to those
 9 various areas.
 10 Q Do you know what the school characteristics
 11 index is, sitting here right now?
 12 A I could not spell it all out for you.
 13 Q I want to turn your attention to Page 22 of
 14 your report, Exhibit 12. The first full paragraph.
 15 You say, "Significantly, Dr. Mitchell admits
 16 that he has no knowledge as to why multi-track
 17 year-round education is included as an indicator in the
 18 SCI and does not believe he ever sought an explanation
 19 for its inclusion."
 20 Do you see that?
 21 A I see that.
 22 Q Why is that significant to you?
 23 A Well, because I learned, in the process of
 24 writing this paper, that this indicator is a very
 25 negligible indicator for the State.

1 Q And here you don't seem to be talking about the
 2 weight of the indicator. You're pointing out that
 3 Dr. Mitchell has no knowledge as to why the multi-track
 4 year-round -- why multi-track year-round education is
 5 included as an indicator and does not believe that he
 6 ever sought out an explanation for its inclusion.
 7 Why is that fact significant to you?
 8 A Well, because he made much of it in his report,
 9 that this was an important factor, and I'm saying that,
 10 in fact, it's not an important factor and he indicated
 11 it was and he has no knowledge why it was included and
 12 how important it was to the State when it was included.
 13 Q And you believe that's important to
 14 understanding the factor?
 15 A I think it's important to know that it's
 16 negligible in its effect.
 17 Q Do you know why multi-track year-round
 18 education is included as an indicator in the SCI?
 19 A Because it's a way of the State finding out
 20 whether the score comes from a year-round school. But
 21 the State itself considers that a negligible factor.
 22 Q Do you know why multi-track year-round
 23 education is included as an indicator in the SCI?
 24 MS. DAVIS: Didn't he just answer that question?
 25 BY MR. VILLAGRA:

1 Q I think we'll move a little quicker, though, if
2 you just stick to the question.

3 A I would give the same answer again.

4 Q You would?

5 A I think so, yeah.

6 Q So you think it's included solely to
7 differentiate between multi-track and non-multi-track
8 schools; is that correct?

9 A I think it's more of an indicator than -- it's
10 more of knowing which schools are than it is what it
11 represents in looking at the whole picture of the
12 school.

13 Q What's your basis for saying that?

14 A Partly came from a conversation with a
15 colleague who works with all of these API scores for
16 schools in San Diego County. I was at lunch one day,
17 and I happened to mention that I was working on this
18 paper, and I asked him what the State meant by including
19 that as a factor.

20 He says, "Well, it's not important."

21 And I said, "What do you mean?"

22 He says, "Well, it just doesn't mean anything.

23 It has no -- very little bearing." And he says, "Did
24 someone else say that that was important?"

25 I said, "Well, yes."

1 He says, "Oh, it's not important at all."

2 Q Who was this colleague?

3 A Dr. Jack Tierney, T-i-e-r-n-e-y.

4 Q And how do you know Dr. Jack Tierney?

5 A We worked together for many years at the San
6 Diego County Office of Education.

7 Q To your knowledge, was he involved in the
8 construction of the SCI?

9 A I don't have knowledge one way or the other.

10 Q Do you dispute that multi-track year-round
11 education is included as an indicator in the SCI?

12 A Oh, I don't dispute that, no.

13 Q Do you dispute that regression analysis shows a
14 relationship between MTYRE and academic achievement, as
15 measured by the API?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: Read the question back, please.

18 (Record read)

19 THE WITNESS: I would have questions about that,
20 yes. So I guess I would dispute it.

21 BY MR. VILLAGRA:

22 Q Do you dispute that MTYRE has a negative
23 correlation with academic achievement, as measured by
24 the API?

25 A I would have questions about that. So yes, I

1 dispute it.

2 MS. DAVIS: Do you want to take a break?

3 THE WITNESS: Let's take a break.

4 MR. VILLAGRA: Okay.

5 THE WITNESS: Within a couple minutes, anyway. If
6 he needs to finish this section --

7 MR. VILLAGRA: We can go a little bit. Yeah, I
8 think I can be allowed to finish this section.

9 THE WITNESS: Are you looking at another full
10 page?

11 MS. DAVIS: We're just talking at a break at this
12 point to run to the bathroom. I don't want to stop you
13 sort of mid-thought.

14 MR. VILLAGRA: That's all right.

15 (Brief recess taken)

16 BY MR. VILLAGRA:

17 Q I want to turn your attention back to Page 22
18 of Exhibit 12, which is your report.

19 The third sentence in the full paragraph says,
20 "In fact, the multi-track year-round school indicator
21 contained in the SCI is of negligible weight."

22 Do you see that?

23 A I see that, yes.

24 Q How did you conclude or on what basis did you
25 conclude that the multi-track year-round school

1 indicator contained in the SCI is of negligible weight?

2 MS. DAVIS: Asked and answered.

3 THE WITNESS: I'll give the same answer as before,
4 talking with a colleague.

5 BY MR. VILLAGRA:

6 Q Is there nothing besides speaking to that
7 colleague?

8 A I did talk with someone else, and I can't
9 recall who, who was working in the same field, and the
10 response was the same, it's of negligible weight.

11 Q Who was the second person?

12 A I don't recall.

13 Q What was their --

14 A It was a colleague, but I really don't recall.

15 Q What do you mean by negligible weight?

16 A It really doesn't tell very much about the
17 indicators.

18 Q To your knowledge, is that what the technical
19 design group concluded?

20 A Well, I go on to say in this next sentence that
21 the group made it very clear that the background
22 characteristics of the SCI are not predictors of
23 achievement levels or anything else.

24 Q Did the technical design group, in your
25 understanding, conclude that the multi-track year-round

1 school indicator contained in the SCI is of negligible
2 weight?

3 A That's my word, not theirs. So I'll stand by
4 my own use of the word there, "negligible." The group
5 did not, to answer your question.

6 Q Do you have any idea what the weight of the
7 MTYRE indicator is?

8 A Yes, it is located on one of the charts that
9 the State has -- the technical group has sent out, and
10 you probably have that chart somewhere. And I'll refer
11 to that to give the exact weight.

12 Q Okay. Why don't we do that.

13 MR. VILLAGRA: I want to submit as Exhibit 24 a
14 document entitled "Construction of California's 1999
15 School Characteristics Index and Similar Schools Ranks,"
16 by the Technical Design Group of the Advisory Committee
17 for the Public Schools Accountability Act of 1999, and
18 it's dated April 2000.

19 (Plaintiff's Exhibit 24 was marked for
20 identification by the court reporter.)

21 THE WITNESS: (Reviews documents.)

22 BY MR. VILLAGRA:

23 Q Have you had a chance to review Exhibit 24?

24 A I've seen it. I haven't read it through, but
25 yes, I'm looking at it now.

1 Q What is Exhibit 24?

2 A It's the construction of California's 1999
3 school characteristics index and similar schools ranks.

4 Q Have you ever seen Exhibit 24 before?

5 A I have.

6 Q When was the last time you saw it?

7 A Probably a month and a half ago.

8 Q Did you review Exhibit 24 or a copy of it in
9 preparing your report in this case?

10 A I looked at it, yes.

11 Q Do you remember what parts of it you looked at?

12 A Well, I looked at some of the quotes which I --
13 we just talked about from the technical design group.

14 Q Okay.

15 A I looked at general overall picture here. But
16 I don't work with this report on any basis at all. So
17 I'm not an expert in this report and don't expect to be
18 considered an expert in this report.

19 Q What do you mean by that?

20 A I don't work with it. I'm not a test person.

21 So I simply used the words of this report in my report.

22 Q Well, you made a claim that the MTYRE indicator
23 in the SCI is negligible.

24 A I did.

25 MS. DAVIS: I don't believe he made that -- oh,

1 excuse me. I'm sorry.

2 THE WITNESS: I did.

3 MS. DAVIS: I thought you were referring to the
4 actual report.

5 THE WITNESS: I did say that, yes.

6 BY MR. VILLAGRA:

7 Q Would you mind taking a look at Page 27 of
8 Exhibit 24.

9 A Okay.

10 Q Can you identify for me the correlation between
11 the API and the year-round indicator?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: I will not be able to do that, no.

14 BY MR. VILLAGRA:

15 Q Do you see a column on the left-hand side
16 labeled "API"?

17 A I do.

18 Q Do you --

19 MS. DAVIS: On the left -- the left top or the left
20 left?

21 MR. VILLAGRA: The left -- what would it be? Is
22 that a column or a --

23 MS. SCHAEFER: It's a column.

24 MR. VILLAGRA: A column, okay.

25 THE WITNESS: So you're reading down?

1 BY MR. VILLAGRA:

2 Q Yes.

3 A Okay.

4 Q And in the row across the top, do you see a
5 label for year-round indicator?

6 A I do.

7 Q Do you see what the value of it is?

8 A I do.

9 Q And it's negative 0.356?

10 A I see that.

11 Q Do you see that there are three stars next to
12 it?

13 A I do.

14 Q Do you see that at the bottom of the page
15 there's a footnote that says, "Significant at the 0.01
16 level"?

17 A I do.

18 Q Do you understand, then, the correlation
19 between the API and the year-round indicator to be
20 statistically significant?

21 MS. DAVIS: Again, vague and ambiguous.

22 THE WITNESS: At this point I'm not going to be an
23 interpreter of this, because I'm not a researcher.

24 BY MR. VILLAGRA:

25 Q I'm asking for your understanding. If you

1 don't have one, that's fine.
 2 A I don't have one at this point.
 3 Q So you don't know how to read this technical
 4 report?
 5 A Not in a fair way, no.
 6 Q Okay.
 7 A Not in an expert way, is a better way to say
 8 that, than fair way. Not in an expert way.
 9 Q And I take it that you didn't consult that
 10 table on Page 27 when you decided to write that the
 11 multi-track year-round school indicator contained in the
 12 SCI is of negligible weight?
 13 A I looked at it. I consulted in that sense.
 14 But I relied on the opinions of my colleagues in making
 15 that statement.
 16 Q Okay. And that would be Jack Tierney and some
 17 second unidentified person?
 18 A That's correct.
 19 Q Did you have Carolyn Kneese take a look at this
 20 table?
 21 A I don't know whether she's looked at this or
 22 not.
 23 Q Did you ask her to look at it?
 24 A I don't recall doing so, no.
 25 Q Based on what you saw on Page 27 and that

1 correlation that was indicated, does that alter your
 2 opinion of whether the correlation between the API and
 3 the year-round indicator is statistically significant or
 4 not?
 5 MS. DAVIS: He just said that he doesn't know how
 6 to interpret the correlation.
 7 BY MR. VILLAGRA:
 8 Q Does it cause you any pause about your opinion
 9 that the multi-track year-round indicator is negligible?
 10 A I don't --
 11 MS. DAVIS: Same objection. Sorry.
 12 THE WITNESS: I won't at -- no, I wouldn't change
 13 at this point. I would rely on my colleagues and their
 14 opinion. I trust their opinion.
 15 BY MR. VILLAGRA:
 16 Q Even if they're wrong?
 17 A Not if they're wrong, but I don't know that
 18 they're wrong.
 19 Q Well, they may well be.
 20 MS. DAVIS: Argumentative.
 21 THE WITNESS: I don't know whether they would be
 22 wrong.
 23 BY MR. VILLAGRA:
 24 Q When you look at studies like the Quinlan
 25 study --

1 A Yes.
 2 Q -- do they do regression analysis?
 3 A There was some regression analysis.
 4 Q Are you able to read those studies?
 5 A I'm able to read them. I'm not an interpreter
 6 of them. That's why I relied on Dr. Kneese, for
 7 example, and her interpretation of that. She went
 8 through those figures and made a judgment.
 9 MS. DAVIS: Just to clarify, are you talking about
 10 the written report or the tables in the Quinlan -- when
 11 you're asking him if he --
 12 MR. VILLAGRA: The tables.
 13 MS. DAVIS: The tables, okay.
 14 BY MR. VILLAGRA:
 15 Q Is it your opinion that multi-track schools
 16 provide equal access to educational opportunities?
 17 A Yes.
 18 Q And is it your opinion that multi-track
 19 students provide equal opportunities across tracks?
 20 A Yes.
 21 Q So that each track affords equal access to
 22 educational opportunities?
 23 A Yes.
 24 Q Are you aware that LAUSD Superintendent Roy
 25 Romer has stated publicly that AP classes are not

1 distributed fairly across tracks?
 2 A I am not aware of that.
 3 Q Do you have any reason to disagree with
 4 Superintendent Romer?
 5 A I do.
 6 Q What is your basis for that?
 7 A The kind of information which I included in my
 8 report from a counselor at Garfield High and the
 9 information sent to me by Mr. Mel Mares.
 10 Q And what page are you referring to in your
 11 report? Is it Page 30, Exhibit 12?
 12 A Yes.
 13 Q Okay. So you're referring to information from
 14 Garfield and Bell Senior High?
 15 A That's correct.
 16 Q So you disagree with Superintendent Roy Romer
 17 that AP classes are not distributed fairly across
 18 tracks, based on what you have discovered about two high
 19 schools in LAUSD?
 20 MS. DAVIS: Argumentative.
 21 THE WITNESS: That's correct.
 22 BY MR. VILLAGRA:
 23 Q Okay. Do you know how many Concept 6 high
 24 schools there are in LAUSD?
 25 A Currently, probably 17 or 18.

1 Q Do you know how many Concept 6 schools there
2 are in California?
3 A The same number as Los Angeles Unified.
4 Q Is multi-tracking more or less prevalent at the
5 high school level than at the elementary level?
6 A Less.
7 Q Why is that?
8 A Degree of -- to this point, the degree of
9 over-enrollment has been heavier at the elementary
10 level, for one thing. It's easier to implement
11 multi-track at the elementary level. And the greatest
12 resistance to multi-track probably comes at the high
13 school level.
14 Q So it's more difficult to implement multi-track
15 year-round at the high school level?
16 A Yes.
17 Q Why is that?
18 A Well, because high schools have separate
19 courses, while many of the elementary programs are
20 self-contained classrooms. So the scheduling of class
21 work becomes more difficult at the secondary level than
22 at the elementary level.
23 Q For that reason, would you agree that
24 multi-track year-round education at the high school
25 level is programmatically problematic?

1 A Not necessarily.
2 Q Why not?
3 A Well, it depends on the skill of the
4 administrators in developing the multi-track schedule
5 and the academic program within that schedule. It can
6 be a problem if it's not skillfully handled, but it
7 isn't necessarily problematic.
8 Q So it can be?
9 A It can be.
10 Q When you divide a high school into different
11 tracks, is the number of electives available to students
12 compromised, in your opinion?
13 A Not necessarily, no.
14 Q Why not?
15 A Well, I'm not a strong believer in huge numbers
16 of electives. I think electives are important, but I
17 don't think the quality of a high school program depends
18 on the number of electives.
19 Q Any other reason?
20 A No.
21 MR. VILLAGRA: I want to introduce as Exhibit 25 a
22 two-page letter from Tom Payne to Robert Rosenfeld, and
23 it's labeled STATE-EXP-CB 0966 through 967.
24 (Plaintiff's Exhibit 25 was marked for
25 identification by the court reporter.)

1 THE WITNESS: (Reviews documents.)
2 BY MR. VILLAGRA:
3 Q Have you had a chance to review Exhibit 25?
4 A I've looked at it, yes.
5 Q What is it? What does it appear to be to you?
6 A It appears to be a letter back in 1994 from Tom
7 Payne, consultant in year-round education at the
8 California Department of Education, to Mr. Robert
9 Rosenfeld in Maryland, a long-time opponent of
10 year-round education.
11 Q Have you seen this -- have you seen Exhibit 25
12 previously?
13 A I have.
14 Q When did you last see it?
15 A When I was reviewing materials sent to me by
16 the attorneys for the defendants.
17 Q If you look at the third full paragraph.
18 A All right.
19 Q It says, "High school MTYRE is programmatically
20 problematic."
21 Do you see that?
22 A I see that, yes.
23 Q And I take it that you disagree with that
24 statement?
25 A I think, as he's using it, I see where he says

1 that. It can be, as I mentioned a while ago. Doesn't
2 have to be.
3 Q Does he say that it can be or that it is?
4 A He says that it is. That's his opinion.
5 Q Do you disagree with Tom Payne --
6 A I would disagree, in part.
7 Q To the extent that he suggests that it's
8 necessarily problematic?
9 A That's correct.
10 Q In the next sentence he says, "To divide a high
11 school into, say, four tracks is to compromise the
12 number of electives available to students."
13 Do you see that?
14 A I see that, yes.
15 Q Do you disagree with that statement by Tom
16 Payne?
17 A No, in the sense that, obviously, the number of
18 electives will be different if you divide a high school
19 into four tracks. I wouldn't use the word "compromise,"
20 but I understand what he's trying to say.
21 Q What word would you use instead of
22 "compromise"?
23 A I'd simply say it's going to change the number
24 of electives.
25 Q In what direction will it change?

1 A Ordinarily, fewer.
 2 Q So it would decrease --
 3 A The number of electives, yes.
 4 Q In the next sentence he posits an example of a
 5 high school of 2,000 which can offer one AP French class
 6 and one AP calculus class.
 7 Do you see that?
 8 A I see that, yes.
 9 Q He posits four options for what can become of
 10 the AP classes.
 11 A Yes.
 12 Q The first one, he says, is they can all be put
 13 on one track, parenthesis, "de facto segregation by
 14 ability."
 15 Do you see that?
 16 A I see that.
 17 Q Is that one option for what this hypothetical
 18 high school could do with its AP classes?
 19 MS. DAVIS: Incomplete hypothetical.
 20 THE WITNESS: That could be one possibility.
 21 BY MR. VILLAGRA:
 22 Q Would you agree that putting all the AP on one
 23 track would be de facto segregation by ability?
 24 MS. DAVIS: Vague and ambiguous.
 25 THE WITNESS: I wouldn't agree that it would

1 necessarily be de facto segregation.
 2 BY MR. VILLAGRA:
 3 Q Why not?
 4 A Well, because it's very common in schools --
 5 traditional calendars as well -- to have a kind of
 6 segregation by ability. That is, if there is a college
 7 prep track at all in a high school, irrespective of the
 8 calendar, I suppose some people might consider that a
 9 segregated situation.
 10 But when I think of de facto segregation, I
 11 think more of intent, the intent was to make sure one
 12 class of students were not involved with another.
 13 Q The second option that he lists for this
 14 hypothetical high school is to offer all the AP on each
 15 track, and in parentheses it says, "Very expensive
 16 unless full."
 17 Do you see that?
 18 A I see that, yes.
 19 Q Is that an option for --
 20 A That would be an option --
 21 MS. DAVIS: I would just say incomplete
 22 hypothetical.
 23 Go ahead.
 24 THE WITNESS: That would be an option, certainly.
 25 BY MR. VILLAGRA:

1 Q The third option he lists is they, meaning the
 2 AP courses, can be randomly spread across all tracks,
 3 parentheses, "Ensuring the inaccessibility of a
 4 portion."
 5 Do you see that?
 6 A I see that, yes.
 7 Q Is that an option?
 8 MS. DAVIS: Incomplete hypothetical.
 9 THE WITNESS: It's not a -- well, it's a
 10 possibility, yes.
 11 BY MR. VILLAGRA:
 12 Q And the last option he lists is, four, they,
 13 meaning the AP classes, can be taught on rainbow tracks
 14 by extending teacher tracks and accommodating multiple
 15 tracks of students and subject exposure per class,
 16 parentheses, "A challenge."
 17 Do you see that?
 18 A I see that, yes.
 19 Q Do you agree that that's an option as well?
 20 MS. DAVIS: Same objection.
 21 THE WITNESS: That's an option. And ordinarily, we
 22 call that cross-tracking.
 23 BY MR. VILLAGRA:
 24 Q Okay. Which of these options would you prefer,
 25 if any?

1 MS. DAVIS: I'm going to -- in the context of this
 2 hypothetical --
 3 MR. VILLAGRA: Of this hypothetical.
 4 MS. DAVIS: Okay. Incomplete hypothetical.
 5 THE WITNESS: The option I would choose would
 6 depend on the school, the need of the students, the
 7 number who would be involved, and there are a lot of
 8 different factors, and I can't give you a final answer,
 9 which I would choose.
 10 BY MR. VILLAGRA:
 11 Q Do you know the extent to which multi-track
 12 year-round high schools in California have chosen any of
 13 these four options for distribution of their AP courses?
 14 A I couldn't tell you exactly, no.
 15 Q What about at Concept 6 multi-track year-round
 16 schools?
 17 A I could not tell the full picture. I could not
 18 give you the full picture, no. Or any picture right
 19 now, for that matter.
 20 Q You mentioned earlier that there were no other
 21 Concept 6 high schools other than those in LAUSD.
 22 A At the present moment, yes.
 23 Q Do you know how many AP courses are offered at
 24 each of the Concept 6 high schools in LAUSD?
 25 A At each of them, no.

1 Q Is that something you don't remember?
 2 A No. I have not asked for that information. I
 3 specifically requested the information from the two
 4 sources that I mentioned in my report.
 5 Q Okay.
 6 A But I did not seek out each of the schools.
 7 Q Do you know how many AP courses are offered at
 8 each track at the Concept 6 high schools in LAUSD?
 9 A At each school? The answer is no.
 10 Q On Page 30 of your report, Exhibit 12, you
 11 make reference to the Garfield and Bell. And you
 12 mentioned them earlier as well.
 13 A Hmm-hmm.
 14 Q In your opinion, is this a specifically large
 15 sample to establish the quality of opportunity, in terms
 16 of electives, at Concept 6 high schools?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: I don't know whether it's a large
 19 sample if the study were to be simply what the overall
 20 picture is. All I was trying to show here was, for
 21 example, here are two high schools that are Concept 6
 22 multi-track who are offering a full range of AP courses.
 23 BY MR. VILLAGRA:
 24 Q How did you choose Garfield as one of the
 25 schools that you would look into?

1 A Because I met some of the people at Garfield
 2 High.
 3 Q How did you choose Bell Senior High?
 4 A I -- actually, that came by -- as a result of a
 5 conversation with Mel Mares, whom I know and had worked
 6 with in the past. He's not principal of Bell High now.
 7 But I simply asked him, "Do you know what Bell
 8 has right now?"
 9 He says, "I'll get back with you," and he did
 10 within a day or so, and gave me the information which is
 11 in Footnote 19 of my report on Page 30.
 12 Q At Page 30 for Bell you give a total number of
 13 AP classes as well as the distribution across track.
 14 A Yes.
 15 Q Do you see that?
 16 A I do.
 17 Q Focusing our attention on Garfield High School,
 18 do you know how many of the 38 AP classes in the
 19 2000-2003 school year were offered on Track A?
 20 A I can't give you that at this point.
 21 Q Do you know what the number is for Track B?
 22 A I do not.
 23 Q For Track C?
 24 A I do not.
 25 Q So for all you know, could all 38 AP courses be

1 on Track A?
 2 A That I know is not possible, because I did get
 3 an indication from Mr. Gill that these were spread
 4 across the three tracks.
 5 Q But you don't know how evenly?
 6 A At this point I don't.
 7 Q Do you know what subject AP courses are offered
 8 on Track A at Garfield High School?
 9 A I don't.
 10 Q What about Track B?
 11 A No.
 12 Q Track C?
 13 A No.
 14 Q Without knowing the subject of the courses and
 15 the number of courses offered on each track, how can you
 16 know whether there's a quality of opportunity across
 17 tracks, in terms of AP courses?
 18 MS. DAVIS: I'm going to object, in terms of the
 19 phrasing of it. I don't think it accounts for
 20 cross-tracking. I guess I'm not sure if you mean that
 21 or not.
 22 THE WITNESS: I don't know, at Garfield, whether
 23 it's evenly spread and so on at this point. I used Bell
 24 because I did get the good picture there that it was
 25 quite evenly spread across the tracks.

1 BY MR. VILLAGRA:
 2 Q So Garfield's incomplete?
 3 A At this point it's incomplete, yes.
 4 Q Are you aware that, in 2002, there were 593 AP
 5 courses offered at LAUSD's Concept 6 high schools?
 6 A I'm not aware of that.
 7 Q Are you aware that, of those 593 AP courses,
 8 232 were on Track A?
 9 A I'm not aware of that.
 10 Q Are you aware that, of those 593 AP courses,
 11 216 were on Track C?
 12 A 202 on Track A, did you say, please?
 13 Q I said 232 on Track A.
 14 A 232 on Track A.
 15 Q 216 on Track C.
 16 A 216 on Track C.
 17 Q And I take it, since you're scribbling these
 18 down, that you were not aware of these?
 19 A I'm not aware of these, no.
 20 Q Are you aware that, of those 593 courses -- AP
 21 courses, only 145 were on Track B?
 22 A I was not aware of that.
 23 Q Would it alter your opinion regarding the
 24 quality of opportunity at Concept 6 high schools to
 25 learn that this was the distribution of AP courses

1 across tracks at LAUSD's Concept 6 high schools in
 2 2002?
 3 MS. DAVIS: Vague and ambiguous.
 4 THE WITNESS: At first glance it looks that way,
 5 but I would go further, if I were doing a study, and ask
 6 are there some mitigating circumstances.
 7 BY MR. VILLAGRA:
 8 Q What do you mean by mitigating circumstances?
 9 A Well, I don't know the number of students on
 10 each track, for example, what the loading is. I don't
 11 know what the needs of the students would be on Track B,
 12 for example. There would be some follow-up questions
 13 that I would want to seek out.
 14 Q What are those other follow-up questions
 15 besides --
 16 A Well, I just --
 17 Q -- number of students per track and the needs
 18 of students per track?
 19 A Well, I've given two at this point. I'll stop
 20 there.
 21 Q Does that mean you can't think of any others?
 22 A Not right now.
 23 Q When you say the needs of students, what does
 24 that mean?
 25 A Well, depending on the achievement level of the

1 it's 5:00 o'clock.
 2 MR. VILLAGRA: Oh, is it?
 3 MS. DAVIS: So if this is a good time to stop or if
 4 you want to keep going.
 5 MR. VILLAGRA: We can stop.
 6 MS. DAVIS: Okay.
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1 students, I need to find out whether they would even
 2 choose AP classes if they were offered.
 3 Q Anything else?
 4 A If there were a language problem, again, I
 5 would need to find out whether, if offered, it would be
 6 something of value to those students.
 7 Q Do you believe, then, that numbers of eligible
 8 students for AP courses are not spread evenly across
 9 tracks?
 10 A Well, the numbers you've given me -- gave me
 11 right now would suggest they're not evenly distributed.
 12 That's why I said, at first glance, it appears that way.
 13 Q Does this suggest to you or indicate to you
 14 that Track B is unequal in the educational opportunities
 15 it offers students?
 16 MS. DAVIS: Asked and answered.
 17 THE WITNESS: I would need to know more
 18 information.
 19 BY MR. VILLAGRA:
 20 Q And what you just described to me is that
 21 information?
 22 A That's correct, yes.
 23 Q I want to turn your attention to Page 31 of
 24 your report, Exhibit 12.
 25 MS. DAVIS: Just so you know, we're getting just --

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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 _____, _____.
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 CHARLES BALLINGER
 Volume 2

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand, which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: _____

SHERRYL DOBSON
CSR No. 5713