Los Angeles, California, Thursday, June 26, 2003  
9:37 A.M. - 4:34 P.M.

CHARLES BALLINGER,  
having been previously duly sworn, was examined and  
tested as follows:

EXAMINATION  
BY MR. VILLAGRA:

Q Good morning. If I could have you turn  
your attention to Exhibit 12, your report at page  
32.

First full paragraph, do you see the  
reference to: “Some school districts tracking the  
gifted and talented education program  
on less preferred attendance tracks.”  
A I do.

Q In the next sentence, you say:  
"The purpose of this type of  
attendance tracking is to insure that  
the less preferable tracks are not  
relegated only to students with lower  
socioeconomic status.”  
Do you see that?  
A I do.
Q: What do you mean by "regulated only to students with lower socioeconomic status"?

A: I'm here trying to negate critic's allegations that sometimes students from lower socioeconomic status are put into tracks that they might not otherwise prefer. I don't think that is true. So the sentence is, particularly, the second sentence is some districts make sure that a track, which may be less preferred, is not seen as simply one to be filled up with students from a lower socioeconomic status.

Q: You say some districts make sure that the less preferable tracks are not relegated with students with lower socioeconomic status. How many districts in California are you aware of that make sure that the less preferable tracks are not relegated in that way?

A: I don't have any idea; I have not made that study.

Q: In your opinion, are there some districts operating multitrack year-round schools in California that do not make sure that less preferable tracks are not relegated to students with lower socioeconomic status?

A: That would be the same part of the study I have not done.

Q: To the best of your opinion, sitting here today, it may be true that some districts in California operating multitrack year-round schools are relegating students with lower socioeconomic status to less preferable tracks? I don't have any idea; I have not made that study.

Q: You mentioned that "the purpose of this type of attendance tracking," and by that, I take it you mean putting the gifted and talented program on a less preferred track; is that correct?

A: Read the question to me.

(Record read.)

A: Yes.

BY MR. VILLAGRA:

Q: That the purpose of putting the gifted and talented program on a less preferred track is to insure that the less preferable tracks are not relegated to students with lower socioeconomic status.

A: Yes. Some districts do try, at the beginning, in the procedures that they set up before enrollment commences, some kind of balancing procedures in terms of ethnicity, race, socioeconomic status.

Q: Other than by doing something at the beginning in terms of balancing the tracks, how else might a school district insure that the less preferable tracks are not relegated only to students with lower socioeconomic status?

MS. DAVIS: Calls for speculation.

THE WITNESS: The district could insure that those policies continue, not just at the implementation point, but throughout.

BY MR. VILLAGRA:

Q: How would a district do that?

A: Well --

MS. DAVIS: Same objection.

THE WITNESS: It would be incumbent on the administrators to keep watching the enrollment. There is not major change in attendance tracks once the initial enrollment occurs.

Q: Other than by doing something at the beginning, how else might a school district insure that the less preferable tracks are not relegated only to students with lower socioeconomic status?

MS. DAVIS: Same objection.

THE WITNESS: I'm not coming up with anything else right now.

BY MR. VILLAGRA:

Q: You just testified about the different ways that a district might insure that the less preferable tracks are not relegated only to students with lower socioeconomic status. How do you know of those various methods?

A: Through the various conferences, seminars on year-round education that I have attended for over 30 years.

Q: You mentioned some districts try, at the beginning, to maintain balance in tracks in terms of race, ethnicity, and socioeconomic status. Do you recall that?

A: Yes.

Q: Does that imply that some do not?
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1 MS. DAVIS: Vague and ambiguous.
2 THE WITNESS: I can't determine that until
3 I have done the study, which may be a good study to
4 do here in the future.
5 BY MR. VILLAGRA:
6 Q Why might it be a good study?
7 A It would be good to see a status report.
8 Q What if the status report showed that some
9 districts were relegating students with lower
10 socioeconomic status to the less preferable tracks?
11 MS. DAVIS: Assumes facts not in evidence,
12 incomplete hypothetical.
13 THE WITNESS: If it showed what you
14 suggested, it might happen.
15 I think I would say the same thing as I
16 said yesterday when we were talking about
17 philosophy.
18 If I were still executive director, I
19 would encourage, either through spoken or written
20 word, the balancing of the tracks, that it occurred
21 to the greatest degree possible.
22 BY MR. VILLAGRA:
23 Q Do you believe that the State of
24 California should encourage, through spoken and
25 written word, balance across tracks in multitrack

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1 year-round school, to the greatest extent possible?
2 MS. DAVIS: Vague and ambiguous, asked and
3 answered.
4 THE WITNESS: I would have the same
5 response for the State.
6 Any of us would have to do the study
7 before we would have any idea what we need to say.
8 BY MR. VILLAGRA:
9 Q Do you understand you were retained as an
10 expert witness in this case by the State of
11 California?
12 A I do.
13 Q What do you understand the State of
14 California to be; what do you understand the entity
15 that retained you to be?
16 A The State of California would be the state
17 government of California, the legal agency called
18 the State of California.
19 Q If a district did not place its gifted
20 and talented education program on less preferred
21 tracks, would the result be that the less
22 preferable tracks would be relegated only to
23 students with lower socioeconomic status?
24 MS. DAVIS: Incomplete hypothetical,
25 assumes facts not in evidence, calls for

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1 specification.
2 THE WITNESS: Not necessarily, depends on
3 the size.
4 There are a lot of different factors that
5 might come into play.
6 BY MR. VILLAGRA:
7 Q But it could?
8 A It might be possible.
9 I don't think it's likely in a multitrack
10 situation, simply because we're already talking
11 about large numbers.
12 That's why we have -- why we're
13 considering multitrack.
14 Q Why would it not be likely by virtue of
15 the large numbers?
16 A Well, if we're talking about a school
17 large enough to have multitrack, usually we would
18 have enough GATE sections that there would be the
19 likelihood of GATE in each one of the tracks.
20 But, again, we really have to do some kind
21 of a census to find out what the real picture is.
22 Q In this discussion here, on page 32, are
23 you assuming that the GATE program has been placed
24 on all tracks at the multitrack year-round school?
25 A What I'm doing in this paragraph is

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1 responding to Dr. Mitchell and his comment when he
2 finds fault with the practice of some districts
3 which he assumes he knows or has heard of or
4 whatever, I don't know.
5 But anyway, I mentioned it; so I'm
6 responding to his comment.
7 Q In responding to his comment, are you
8 assuming that at that school, in that district,
9 that the GATE program has been placed on all tracks
10 at multitrack year-round schools?
11 MS. DAVIS: Calls for speculation, he
12 doesn't know what district.
13 THE WITNESS: I wouldn't be able to
14 respond to the question until I have done the kind
15 of study or census that I mentioned a while ago.
16 BY MR. VILLAGRA:
17 Q When you referred to the practice of
18 tracking the gifted and talented education program
19 on less preferred tracks, are you talking about
20 putting the GATE program only on less preferred
21 tracks?
22 A Not necessarily.
23 Q What is it that you're referring to?
24 A Again, I go back.
25 I only brought it up here because
Dr. Mitchell did.

I'm responding to his remarks.

Q: That's fine.

I'm trying to understand what your respond is.

Are you assuming, in responding to him, that when a school tracks a GATE program on less preferred attendance tracks, that it is putting the GATE program only on the less preferred attendance tracks?

MS. DAVIS: Vague and ambiguous, calls for speculation.

THE WITNESS: I don't have any way of knowing what they are doing unless I were to see the school and the picture at that school.

BY MR. VILLAGRA:

Q: So you really can't offer an opinion as to whether the example that Dr. Mitchell cited is a good or a bad one, can you?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: No. As I have said here a couple of times, really responding to his comment, I respond to it in the way I think it should be responded to.

That's all I'm doing.

BY MR. VILLAGRA:

Q: I'm entitled to understand what the substance of your response is.

When you refer to a practice of some school districts, what are you referring to; what is that practice?

A: Well, there is an assumption in his comment, I am taking the same assumption, if this is occurring.

Q: What is it that "this is occurring"?

A: What's talked about here, putting a GATE on a less preferred attendance track.

That if districts are doing that, they are making sure that a particular track is not relegated only to lower socioeconomic students.

Q: Are you assuming within the practice, the GATE program is put exclusively on less preferred attendance tracks?

A: Not at all.

Q: Are you assuming it is placed on all tracks?

A: I'm not assuming that either.

I'll go back to what I said.

I wouldn't have any idea until I were to do a census of the school and get a picture.

Q: At the end of the paragraph, you say that, in this example: "The district is trying to insure..."

A: Excuse me, where are you now?

Q: The sentence starts in both examples.

A: Okay.

Q: I just want to deal with the GATE example.

You say that "The school districts were attempting to insure there were enriched opportunities across all tracks as in the GATE example."

Do you see that?

A: I see that.

Q: If the GATE program was placed only on the less preferred attendance tracks, how does that enrich opportunities across all tracks?

A: If the assumption is that it's only on one track, the example is only one track, it may only mean they have only got one group of GATE students to put on any track.

And they may have chosen that particular track.

But it doesn't tell us what happens with the other tracks.

Q: And it doesn't necessarily enrich the opportunities on the other tracks, does it?

A: It wouldn't if there were only one GATE class and if they were only put on one track.

Q: I'm going to turn your attention to page 36, on this same Exhibit 12.

Under Heading "A," you described Dr. Mitchell's finding in his expert report.

Do you see that?

A: Yes.

Q: In the second sentence you write: "The Concept 6 category, as well as the multitrack not-Concept 6 category, are alike at Rank 5." While the traditional single-rank category is ranked as a 6.

The circumstance Dr. Mitchell indicates might be due to the fact that a particular locale contributes variability.

Do you see that?

A: I do.

Q: I just want to focus on the first part of this statement.

"The Concept 6 category, as well as the multitrack category not-Concept 6,
are alike at Rank 5."
What do you mean by that?
A I mean, simply, that's what Dr. Mitchel said.
And I'm taking this information from his report.
MR. VILLAGRA: I want to mark as Exhibit 29, a report by Ross E. Mitchell, entitled:
"Segregation in California, K Through 12, Public Schools: By season implementation, assignment, and achievement with a multitrack year-round calendar."
(Deposition Exhibit 29, Report by Ross E. Mitchell, entitled: Segregation in California's K-12, Public Schools; in implementation, assignment, and achievement with the multitrack year-round calendar.)(Deposition Exhibit 29, Report by Ross E. Mitchell, entitled: Segregation in California K Through 12, Public Schools, was marked for identification by the Court Reporter.)
BY MR. VILLAGRA:
Q Do you know what Exhibit 29 is?
A I have Exhibit 29 in front of me.
Q Do you know what it is?
A It's a report by Dr. Ross E. Mitchell, entitled: Segregation in California's K-12, Public Schools; in implementation, assignment, and achievement with the multitrack year-round calendar.
Q You have reviewed a copy of Exhibit 29, previously?
A I have, previously.
Q And at page 36 of Exhibit 12, when you talk about having taken this statement from Dr. Mitchel's report, you're referring to Exhibit 29; is that correct?
A Yes.
Q Can you show me where, in Exhibit 29, Dr. Mitchell finds that the Concept 6 category, and the multitrack not-Concept 6 categories, are alike at Rank 5?
A That may take a while.
It's been several weeks since I have looked at this.
If you'll give me some time.
Q Do you include the tables in the back?
That's what Mitchell is representing.
Are you including that as part of his report?
MR. VILLAGRA: I handed him an exhibit.
If you want to, indicate to your witness to look at the tables.
MS. DAVIS: Do you want a sentence from Dr. Mitchell, or do you consider the tables as part of his report?
MR. VILLAGRA: I believe the witness's testimony was that this is what Dr. Mitchell said.
MS. DAVIS: That's what I'm asking.
MR. VILLAGRA: He wants to show me where Dr. Mitchell said that.
(Discussion off the record.)
THE WITNESS: I'm not finding the exact words in his report.
From paging 20 to 22, he does talk about the ranks.
Particularly on page 22, there are the box plots that he has put in the back of his report.
I believe this particular information came from an earlier draft of Dr. Kneese's report.
And I believe we went through these box plots, and that's where I got the information.
But I would have to go back to my working notes, which are in San Diego, to see where this specifically came from.
But it originally came from his discussion on pages 20 through 22, where he talks about, for example, on page 22, first full sentence:  "Summarily, the left-hand scale makes it possible to see that the most frequent similar schools' rank for the Concept 6 multitrack schools is a two.
And the least frequent link is a 10 and so on." I believe we looked at the box plots and came up with this.
I cannot point to a specific reference in Dr. Mitchell's report, right now.
BY MR. VILLAGRA:
Q Let's try to backtrack; you had a lot in there.
You mentioned working notes.
Did you produce to defense counsel your working notes?
A No.
Q Why not?
A I was told: In the draft stage, that would be considered draft.
Everything I did was in draft form.
When I say "working notes," I meant
including the drafts.
I don't keep separate notes, as such.
Q What are the working notes, then?
A The drafts; I work on my drafts.
Q Are there handwritten notes on the drafts?
A Just as I revised things and that sort of thing.
Q You said that "we looked at the box plots and came up with this."
Who is the "we"?
A Dr. Kneese and I went through this, and see if we could ferret out to see what Dr. Mitchell was talking about here, and looked at the box plots in the back of the report.
Q Was anyone else involved?
A Not in those discussions.
Q Were you and Kneese able to ferret what it was that Dr. Mitchell was talking about?
A I believe this was part of the discussion. I can't speak for Dr. Kneese. I may have misunderstood what she told me. This is what my understanding was when I wrote this.
Q What was your understanding based on?
A Discussions with her.

I'm in conjunction with the paper written by Dr. Kneese for this same case.
Q If Dr. Kneese had not prepared her paper, would you have any independent basis to offer an opinion, an expert opinion, about the effects of multitrack year-round education on student achievement?
MS. DAVIS: On the paper in this case?
MR. VILLAGRA: Yes.
THE WITNESS: I would have some reason to have an expert opinion from three decades of working in the field.
Q Would I -- I'll just leave it there, yes.
BY MR. VILLAGRA:
Q What did you mean by that?
A Over the years, one has a certain sense of what year-round education can do and not do. The same as a teacher in a classroom has a sense about what students can do and not do, even prior to tests that may be given or achievement -- standardized achievement tests that may be given.
Q You have, based on your experience, a sense of the achievement of students in multitrack year-round schools?
A Yes. I have read as much as I can, the
reports that come out.
Dr. Kneese's work, but
Dr. Cooper's most recent report also.
So I think -- those reports confirm the
sense that I have had, although I'm not a
researcher and, again, I don't claim to be.
Q Can you speak to the propriety or
impropriety of the analyses made by Harris Cooper?
A I can in a surface way, but I can't to a
great degree.
Q Can you speak to the propriety or
impropriety of the analyses of Carolyn Kneese?
A I can in a general way.
But I'm not the researcher, so I have to
rely on her analyses.
Q When you say you have offered an opinion
on Harris Cooper's analyses "in a surface way,"
what do you mean?
A Dr. Cooper has a reputation as an expert
in the procedures of meta-analysis.
Outside of any work he's done on summer
learning laws and year-round education, that's one
of his areas of expertise.
He's in the psychology department.
He's not in the education department.

This is part of his work.
He's trained this way.
When he comes out with his analyses, one
has to assume he has some knowledge about what he's
doing.
Q Why does one have to assume that?
A Well, whenever it comes to expert
analyses, one has to rely on the background of the
person in order to have a fair understanding of
whether this person's work is something valid
enough to look at and respond to.
Q We talked yesterday, about a report by
Resnick in the Oakland Unified School District.
Do you have to assume that she was
qualified to offer the opinions?
A I don't know her background.
It's a different circumstance.
The backgrounds I know of is Dr. Cooper
and Dr. Kneese.
Q What about Claire Quinlan, who prepared a
report on multitrack year-round education; do you
know anything about her background?
A I do.
Q What do you know about her background?
A She was with the -- I don't remember what

it was called in those years -- the Department of
Evaluation for the California Department of
Education and had been there for several years.
So she had done a considerable amount of
work in the field of evaluation of schools in
California.
Q With respect to the Quinlan report, do you
have to rely on her background as being sufficient
to offer those opinions?
A I think she's had enough background to
offer her opinions, yes.
Q What about Dr. Mitchell, do you believe
that he had sufficient background to offer the
opinions reflected in Exhibit 29?
A I think he has background to offer his
opinions, sure.
Q Do you know what a shift-function analysis
is?
A I'm familiar with the term.
But I'm not an expert in that area.
Q Have you ever done one?
A I have not done one.
Q Do you know how one should be done
properly?
A I do not.
Q Can you say whether Dr. Mitchell did his
shift analysis properly or not?
A I cannot.
Q I want to direct your attention to
Figure 12.
A Of his report?
Q Of Exhibit 29; it appears to be Figure 12.
The appendix, do you see Figure 12; do you
see for the traditional single-track category, the
median rank is 6?
A I do.
Q Do you see that for the multitrack
not-Concept 6, the median rank is 5?
A And the other one is 5.
And that's where I got this in my report.
Q Do you believe that's where you got this
from?
A It probably is.
I could not find that as I was looking
through the pages.
Q Do you have a sufficient understanding to
interpret Figure 12?
A Myself, no.
Q Do you understand Figure 12 to say that
the Concept 6 category, and the multitrack
not-Concept 6 category, are alike at Rank 5, while
the traditional single-track category is ranked as
a 6?
A  I see that.
And in this box plot, I would have a quick
judgment that's what it says.
Again, I'm not an expert.
But that appears -- on the surface, it
appears to be so.
Q  But you're not sure whether that's the
proper interpretation of this figure?
A  I wouldn't swear to it in court or in a
deposition.
Q  I want to go back to your report,
Exhibit 12, page 38.
The second full sentence, it says:
"Given the choice, teachers
typically choose to avoid a school or
track with harder-to-teach students
such as those with limited English
language proficiency."
Do you see that?
A  I do.
Q  Yesterday we talked about less preferred
tracks.
You spoke about them in terms of what
parents would prefer.
Are there less preferred tracks, in your
opinion, at multitrack year-round schools in terms
of what teachers would prefer?
MS. DAVIS:  Vague and ambiguous.
The WITNESS:  There may be, but different
teachers may choose different tracks for their own
reasons.
BY MR. VILLAGRA:
Q  Are you aware of any study that has looked
at the distribution of teachers by experience level
across tracks in multitrack schools?
MS. DAVIS:  Vague and ambiguous as to
"experience."
The WITNESS:  I have not done any research
of a study of that kind, myself.
BY MR. VILLAGRA:
Q  Are you aware of any?
A  Not right at the moment.
Q  Is it fair to assume from this sentence,
that the less preferred tracks by teachers are
those with harder-to-teach students?
MS. DAVIS:  Vague and ambiguous.
The WITNESS:  Well, I know that is a
common understanding within my field of education.
Because there are articles, from time to
time, in the professional literature suggesting
ways of encouraging teachers to work with
harder-to-teach students.
BY MR. VILLAGRA:
Q  What do you understand harder-to-teach
students to be?
A  Harder to teach could include the limited
English language, as I say here.
It could be special-education students.
It could be disinterested students.
It could be students who have some
criminal background.
It could be -- I'll just leave it there,
students of that kind.
Q  Any other type of student that comes to
mind that you believe are harder-to-teach students?
A  Not right at the moment.
Q  If harder-to-teach students were equally
distributed across tracks, there would be no way
for a teacher to pick one track over another in
terms of harder-to-teach students; is that correct?
MS. DAVIS:  Vague and ambiguous.
The WITNESS:  I don't know.  I just don't
know.
BY MR. VILLAGRA:
Q  You have no idea?
A  No.
Probably would depend, to some degree, on
a union contract and what that contract might allow
or not allow.
Q  Here it says:  "Given a choice."
Let's assume the teacher has a choice.
If I'm a teacher and I would like to avoid
hard-to-teach students, how would I do that?
MS. DAVIS:  Vague and ambiguous.
BY MR. VILLAGRA:
Q  Wouldn't I pick the track that has the
fewest harder-to-teach students?
MS. DAVIS:  Calls for speculation.
The WITNESS:  You might.
But this sentence doesn't just talk about
tracks; it talks about school as well.
BY MR. VILLAGRA:
Q  It says school or track?
A  Yes.
Q  Is it true for track?
A  I just don't know.
Q  Is this an overstatement, then?
1 A No.
2 I think when I use school or track, I am
3 including the whole picture.
4 Q Are you assuming when you describe the
5 whole picture, that there are some tracks that have
6 more harder-to-teach students than other tracks?
7 A There may, I don't know.
8 Q Isn't that a necessary assumption of your
9 statement, here?
10 MS. DAVIS: Vague and ambiguous.
11 THE WITNESS: That's a possibility.
12 And I suspect that's why I made it so
general, school or track.
13 BY MR. VILLAGRA:
14 Q So it might not be so true with respect to
15 track, as it is with respect to school; is that
16 what you're saying now?
17 A What's not true?
18 Q That teachers would pick a track to avoid
19 harder-to-teach students?
20 A Again, it's a possibility.
21 But I would need to have some actual data
22 to make a final judgment.
23 Q So you have no data to support this
24 statement?
25

1 A In the sense that I talked about it a
2 while ago, there are articles within the literature
3 saying we need to find incentives to encourage
4 teachers to teach in schools or tracks with
5 harder-to-teach students.
6 So that problem has to be there or there
7 wouldn't be the discussion.
8 I don't have firsthand knowledge of what
9 some of those problems are.
10 Q Based on the research that you have seen,
11 have you seen any discussion of whether certain
12 tracks have more harder-to-teach students than
13 other tracks at multitrack year-round schools?
14 A I have not seen that, no.
15 Q Still on the same page, 38, you say:
16 "This problem, though, may
17 dissipate as districts change their
18 approach to teacher selection and
19 union contract."
20 Do you see that?
21 A Yes.
22 Q What's the problem you're referring to?
23 A This is in the White and Cantrell Report
24 as I mentioned here in my paper, a couple of
25 sentences later.

1 Q I want to turn back to page 21 of your
2 report.
3 In the first full paragraph, I believe
4 it's the last sentence: "Absent from these
5 figures..."
6 Do you see that?
7 A I see that.
8 Q "Absent from these figures, however, is
9 any analysis of factors such as the
10 population growth in the communities
11 utilizing Concept 6, the numbers of
12 students from single-parent families
13 attending the comparison schools, and
14 the socioeconomic status of the
15 families in the comparison schools."
16 Do you see that?
17 A I do.
18 Q Is this a point that you made based on
19 your discussion with Carolyn Kneese about
20 Dr. Mitchell's report?
21 A It very well may be.
22 Q You don't know?
23 A I don't remember the exact discussion.
24 Q Do you believe that socioeconomic status
25 is absent from Dr. Mitchell's analysis?

THE WITNESS: That's a different question. What are you referring to?

BY MR. VILLAGRA:

Q Here, at the start, you say: "Absent from these figures..."

A Those are the box plot pages.

Q So it's the figures?

A The figures, yes.

Q Do you believe that absent from Dr. Mitchell's figures, is any analysis of the socioeconomic status of the families in the comparison schools?

A I believe that when I wrote this, yes.

Q Do you know whether Dr. Mitchell could have analyzed any of these factors in his figures?

A There's no way I would know whether he did or didn't.

Q You don't know whether he did or not?

A In the box plots, no, I don't.

Q Do you know how he might have gone about incorporating these factors into his figures?

A No. I don't know whether he did or not. I'm simply saying I don't see those in his box plots. That's all I'm saying there. Because the pages I through 14 are the box plot pages.

Q When I read "absent from these figures," I should be reading: I don't see these figures in any analysis of the socioeconomic status of the families in the comparison schools?

A I believe that when I wrote this, yes.

Q Do you know whether Dr. Mitchell could have analyzed any of these factors in his figures?

A There's no way I would know whether he did or didn't.

Q You don't know whether he did or not?

A In the box plots, no, I don't.

Q Do you know how he might have gone about incorporating these factors into his figures?

A No. I don't know whether he did or not. I'm simply saying I don't see those in his box plots. That's all I'm saying there. Because the pages I through 14 are the box plot pages.

Q When I read "absent from these figures," I should be reading: I don't see these figures in any analysis?

A That's right.

Q All right.

A Absent -- the box plots don't tell us some of these other factors.

Q The box plots don't tell us, or you don't see that reflected in the box plots?

A I don't see it, anyway. I didn't see it.

Q Do you believe that Dr. Mitchell should have included analysis of the number of students from single-parent families attending the comparison schools in generating his figures?

A It might have been helpful; it might have given us a more complete picture.

Q You said "it might have been"?

A Yes.

Q But not necessarily?

A I don't know.

Q And the last factor, why do you believe it would have been helpful to include the numbers of students from single-parent families attending the comparison schools?

A It would have been of interest to see whether there is a comparison between the various groups, whether these factors come into play, and what happens in the box plots, for example.

Q Are you aware of any study on the subject of multitrack year-round education that has looked at that number of students from single-parent families attending the comparison schools?

A None is coming quickly to mind.

Q It doesn't mean that it isn't available.

A I just can't bring one to mind.

Q Do you believe that it would have been helpful to include population growth in the community utilizing Concept 6 as Dr. Mitchell generated his figures?

A Yes.

Q Why?

A Again, it would be one of the factors to see why the schools were on a multitrack schedule.

Q Don't we know why they are on multitrack schedules?

A Because of over-enrollment, yes.

Q So what would the population growth tell us?

A It might tell us that there was a very rapid increase in population over a short period of time.

Q Might it show anything else?

A That's enough for now.

Q If I could turn your attention to page 2 of Exhibit 24.

A All right.

Q I know we talked about this yesterday. Listed on page 2, are the characteristics included by the California Department of Education, in the school characteristics index; is that right?
A: We talked about it, yes.

Q: Is my understanding of it right; these are the factors included in the school characteristics index?

MS. DAVIS: The document speaks for itself.

THE WITNESS: Yes.

And I note, it says on this page: "The similar characteristics include, but are not limited to..."

So there are some that are listed here.

BY MR. VILLAGRA:

Q: All right.

A: I don't know what the others would be.

Q: Do you believe this is an incomplete list?

A: I don't know.

That's the language used here on the paper you're referring to.

Q: Do you have any knowledge as to whether this PSAA, the Public School Accountability Act of '99, specifies in terms of what factors are to be included in the similar characteristics index?

A: On this page 2 that you're referring to there, there is a list of factors.

Q: Can you look at the factors listed; can you tell me whether the numbers of students from single-parent families is included as a factor in the PSAA in the school characteristics index?

MS. DAVIS: I object, mischaracterizes his prior testimony and the documents.

MR. VILLAGRA: I'm asking a summation. Is that a fair conclusion?

(Record read.)

THE WITNESS: The answer is "yes," it did not.

BY MR. VILLAGRA:

Q: I want to turn your attention to page 3 of your report, Exhibit 12.

At the very top of the page, you write: "Dr. Oaks and Dr. Mitchell also claim that the multitrack year-round calendar fosters curriculum tracking, alleging the course offerings are not equal across tracks."

Do you see that?

A: Yes, curriculum vitae.

Q: You go on to say that "curriculum vitae tracking is not unique to the multitrack year-round calendar."

Do you see that?

A: I do.

Q: What I want to know is whether you have an opinion as to whether the multitrack year-round calendar fosters curriculum tracking?

A: I don't know that it does.

Q: You don't know one way or the other?

A: I don't.

Because I haven't done that particular study.

Q: You haven't done that; are you aware of any studies that have looked at that, whether multitrack year-round calendar fosters curriculum tracking?
tracking?
A I don't know that it does foster.
And I haven't done such a study to
determine one way or the other.
Q You haven't done a study; are you aware of
any studies?
A I have not.
Q Why don't you agree?
A There's no evidence.
I have seen, just by being a practitioner
in the field for many years, that the multitrack
year-round calendar fosters curriculum
tracking.
Curriculum tracking is -- is done at
almost every high school that I'm aware of.
Q Let's assume that's true.
Do you know whether curriculum tracking
occurs to a greater extent in multitrack year-round
schools than in other schools?
A Not that I'm aware of.
Q You said there's no evidence that you've
seen that the multitrack year-round calendar
fosters curriculum tracking.
If you were looking for such evidence that
the multitrack year-round calendar fosters
curriculum tracking, what would you look for?
MS. DAVIS: Assumes facts not in evidence.
THE WITNESS: I would probably look to see
if there was a much different picture of curriculum
or course offerings in students taking them and
that sort of thing.
It would be quite a different picture than
what we would see in a traditional calendar school.
If I was doing the study, that's probably
where I would start.
I don't know.
I might rethink that as I got into it.
Often when you do some kind of a survey or
study, once you get into it, you realize that you
need to look at different kinds of things.
So this is all speculative on what I might
do.
BY MR. VILLAGRA:
Q When you say "a much different picture,"
in terms of curriculum and course offerings, what
do you mean?
A Well, I would see whether the kinds of
courses the students are taking are considerably
different in a multitrack high school as compared
to a traditional high school, if there are patterns
that would be significantly different.
Q What do you mean by "significantly
different"?
A Huge difference between what a multitrack
program and numbers of course offerings and
students taking those course offerings would be
from a comparable traditional high school or,
probably, several multitrack schools compared with
-- with several comparable traditional calendar
high schools.
Q What would a huge difference be in your
opinion?
A Just a completely different picture.
Q Can you give me any idea?
A At this point, I can't.
Q Would you also look at the curriculum and
course offerings offered on each track at a
multitrack year-round school to determine whether
the multitrack year-round calendar fosters
curriculum tracking?
A I might.
Q All right.

BY MR. VILLAGRA:
Q When you say "a much different picture,"
in terms of curriculum and course offerings, what
do you mean?
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A At this point, I can't.
Q Would you also look at the curriculum and
course offerings offered on each track at a
multitrack year-round school to determine whether
the multitrack year-round calendar fosters
curriculum tracking?
A I might.
Q All right.
<table>
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<tr>
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<th>Page 763</th>
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<tbody>
<tr>
<td>It's not a fair comparison, all right?</td>
<td>cross-track, would have greater access to courses?</td>
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<tr>
<td>The beauty of a multitrack school is that</td>
<td>MS. DAVIS: That mischaracterizes his</td>
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<td>there is the possibility for cross-tracking.</td>
<td>prior testimony.</td>
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<td>So students in those multitrack schools</td>
<td>THE WITNESS: That's not speculation.</td>
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<td>may have a greater possibility of having additional</td>
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<td>course offerings than a traditional calendar</td>
<td>BY MR. VILLAGRA:</td>
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<td>school.</td>
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<td>Q When you say that, you're basing that on a</td>
<td>Q Why not?</td>
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<td>comparison to a 1,000-seat traditional high school?</td>
<td>A It's reality.</td>
</tr>
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<td>A 1,000-seat track on a multitrack with</td>
<td>A traditional school -- students in a</td>
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<td>1,000 students in a traditional calendar.</td>
<td>traditional calendar school would not have the</td>
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<td>Q If I compare 2,000 students at the</td>
<td>possibility of cross-tracking.</td>
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<td>multitrack track high school who are at the school</td>
<td>There is nothing to cross-track to.</td>
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<td>site on any given day, to a 2,000-seat traditional</td>
<td>So it's a reality.</td>
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<td>calendar high school, who you would expect to have</td>
<td>Q Do you have any idea of how many students</td>
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<td>greater availability of courses?</td>
<td>in Concept 6 high schools in California, this year,</td>
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<td>A I won't accept that.</td>
<td>have cross-tracked?</td>
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<td>Because I don't think you can do that.</td>
<td>A I don't have a number.</td>
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<td>Q I believe in the deposition, I'm entitled</td>
<td>Q How about last year?</td>
</tr>
<tr>
<td>to ask you?</td>
<td>A No.</td>
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<td>A You're entitled.</td>
<td>Q For any year?</td>
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<td>And I'm entitled to answer, which I don't</td>
<td>A No.</td>
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<td>think that would be a fair comparison.</td>
<td>Q You have no idea what percentage of</td>
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<td>Q And the court reporter, I'm sure, wrote</td>
<td>students cross-tracked?</td>
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<td>down that it wasn't fair.</td>
<td>A No.</td>
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<td>So let me have you make the comparison</td>
<td>MS. DAVIS: Asked and answered.</td>
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<td>anyway.</td>
<td>MR. VILLAGRA: Let's take a break.</td>
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<td>What would be the result if you compared</td>
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<td>the two tracks at a Concept 6 high school of 1,000</td>
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<td>students, each with the students at a 2,000-seat</td>
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<td>traditional high school, which group of students</td>
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<td>would you expect to have greater access to</td>
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<td>curriculum offerings?</td>
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<td>MS. DAVIS: Incomplete hypothetical,</td>
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<td>assumes facts not in evidence.</td>
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<td>THE WITNESS: I wouldn't have any way of</td>
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<td>judging that until I saw what the course offerings</td>
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<td>were.</td>
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<td>I just don't know.</td>
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<td>That could change school-by-school, too,</td>
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<td>you know.</td>
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<td>It's very speculative.</td>
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<td>I don't know.</td>
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<td>I would have to see some examples.</td>
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<tbody>
<tr>
<td>BY MR. VILLAGRA:</td>
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<tr>
<td>Q How can you say that looking at one track,</td>
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<td>compared to 1,000 students at a traditional</td>
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<td>calendar high school, isn't that speculative as to</td>
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<td>whether a student, given the ability to</td>
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<td>(Recess taken.)</td>
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<td>BY MR. VILLAGRA:</td>
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<td>Q I'm going to turn your attention to your</td>
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<td>report, Exhibit 12, page 35.</td>
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<td>The last paragraph, starts with</td>
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<td>&quot;moreover.&quot;</td>
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<td>A Yes.</td>
<td></td>
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<td>Q You write:</td>
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<td>&quot;Students off-track at times when</td>
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<td>various school activities occur, are</td>
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<td>invited to participate...&quot;</td>
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<td>Do you see that?</td>
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<td>A Yes.</td>
<td></td>
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<td>Q Are you aware of what the participation</td>
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<td>rate is of students off-track at times when various</td>
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<td>school activities occur?</td>
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<td>MS. DAVIS: Vague and ambiguous.</td>
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<td>THE WITNESS: I'm not.</td>
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<td>BY MR. VILLAGRA:</td>
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<td>Q So all those students off-track, at times</td>
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<td>when the school activities occur, might be invited;</td>
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<td>you don't know whether the students participate in</td>
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<td>the activities; you don't know at what rate the</td>
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<td>students participate?</td>
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<td>MS. DAVIS: Asked and answered.</td>
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</table>
THE WITNESS: That's correct.

BY MR. VILLAGRA:

Q   Are you aware of any studies looking at the participation rates of students off-track at times when school activities occur?

A   I'm not.

Q   Have you spoken with any administrators at multitrack year-round schools about the participation rates of students off-track when school activities occur?

THE WITNESS: Yes, about their participation. No, as to the rate.

MS. DAVIS: Vague and ambiguous.

THE WITNESS: I don't know.

BY MR. VILLAGRA:

Q   So in those conversations with administrators, or based on those conversations, you don't know whether students off-track, participate at the same rate as students on-track in school activities?

A   I don't know.

Q   Have you spoken with any teachers about the participation rates of students off-track at times when various school activities occur?

A   I have not.

Q   Do you think that would be an interesting subject to look at?

A   Could very well be, yes.

Q   Why might it be?

A   Just to get a picture of what is happening in multitrack schools.

Q   Would you expect, based on your experience, the participation rates to be equal between students off-track and students on-track when school activities occur?

THE WITNESS: I would think -- with some activities, yes, sure.

MS. DAVIS: Vague and ambiguous, calls for speculation.

THE WITNESS: That's correct.

BY MR. VILLAGRA:

Q   But not for others?

A   I just don't know.

Q   I want to turn your attention to page 41, the last bullet point, in that last sentence, you say: "There's no evidence that the quality and quantity of maintenance is somehow impaired by the calendar or that instructional time is lost."

Do you see that?

A   I do.

Q   What do you mean by "evidence"?

A   There's no study that shows that the quality and quantity of maintenance is compared by the calendar or that instructional time is lost.

Q   I know of no such study.

A   When you refer to "evidence," do you mean anything other than a study?

Q   You're not aware of anecdotal evidence where a calendar has caused that.

A   I don't even know of anecdotal evidence where the calendar has caused impairment in instructional time; is that correct?

MS. DAVIS: Due to maintenance?

MR. VILLAGRA: Yes.

THE WITNESS: That's correct.

Q   When you say "caused by the calendar," what do you mean?

A   The calendar itself does not do the maintenance -- nor no maintenance.

Q   But what if, as a result of being on a multitrack year-round calendar, school maintenance must occur at times when school is in session; would you say, then, that the calendar has caused the impairment in instructional time?

A   I wouldn't know that that is so.

Q   Why not?

A   Well, I don't know what the impairment of time might have been in a particular circumstance. You're giving me a hypothetical here. I just don't know what you might be referring to.

Q   Is it possible that maintenance could impair instructional time at a multitrack year-round school?

MS. DAVIS: Calls for speculation.

THE WITNESS: It could at any calendar school.

Q   There would be breakdown in the plumbing. It would have to be repaired wherever that might be.

BY MR. VILLAGRA:

Q   When you said that there was no study on this subject, do you mean no study showing that maintenance impairs or reduces instructional time or no study one way or the other?
A There’s no study one way or the other.
Q In the absence of a study, how would you go about looking for evidence as to whether maintenance does impair instructional time at a multitrack year-round school?

MS. DAVIS: Vague and ambiguous.
THE WITNESS: I would have to think about that one for awhile.
I would set up such a study.

BY MR. VILLAGRA:
Q Would you speak to school administrators.
A That would be one source.
It wouldn't be a highly definitive study.
I could get some feel for it, I would suspect.

Q What would the other sources be?
A You could talk about maintenance people, building some facility staff, whatever district might have in way of personnel, working with maintenance.

Q Would you also speak to teachers?
A Teachers might be a source.

Q Anyone else?
A Not at this time.

Q What about students?
A -- students may be a source where you could get some anecdotal information.
But students don't usually have a complete picture of what is going on.

Q Why do you say that?
A They may see that some repairs are taking place.
They may see that because the plumbing went out or water wasn't available on a given day school was held.
But that is outside of the calendar.
That has to do with facilities, not the calendar.

Q I want to turn your attention to page 43.
The Heading "B," it says: "Dr. Oaks."
At the end of that full paragraph, you criticize for relying on newspaper articles.
Do you see that?

A Yes.
Q How many studies are you aware of specifically addressing the Concept 6 calendar?
A I couldn't give you a number offhand.

MS. DAVIS: Vague and ambiguous.

BY MR. VILLAGRA:
Q Yesterday we saw some studies that LAUSD conducted regarding Concept 6.
A The two White and Cantrell studies.
Q Is that what you're referring to?
A Yes.

Q Are those two of the studies that you're aware of that refer to Concept 6?
A Yes.

Q Are you aware of the LAUSD in the late '80s conducting a study on Concept 6 schools?
A I am.

Q There were two, rather than one.
A Yes.

Q Two in the late '80s?

Q Other than those we just talked about, can you think of any other study that addresses Concept 6?

MS. DAVIS: Objection.
THE WITNESS: I can't right now.

Q A -- students may be a source where you could get some anecdotal information.

Q Did you cite any studies in your paper regarding the experience with Concept 6 in other states?
A I did not, in my paper.
Q Why not?
A Because I did not have them in -- there have been some studies on financial results in Colorado with Concept 6 that I'm aware of.

Q But I didn't cite those because they weren't applicable to this particular paper.
A Do you believe that more research has to be done into the Concept 6 calendar?

MS. DAVIS: Vague and ambiguous.
THE WITNESS: I would welcome any research into any phase of our year-round education program.

Q Compared to other year-round calendars, you would say that there are more or fewer studies addressing the Concept 6 calendar?

MS. DAVIS: Vague and ambiguous.
THE WITNESS: My answer would have to be speculative since there are far more 60-20, 45-15 calendars in far more districts than what we would have in schools or districts on Concept 6.
My speculation would be that there are more studies on other calendars than Concept 6, yes. But I don't know that for a fact.

BY MR. VILLAGRA:

Q Do you believe that it is always inappropriate for a researcher to rely on newspaper articles?

A What do you mean by "rely on"?

Q Here, you refer to Dr. Oaks's reliance on newspaper articles. What did you mean by "Dr. Oak's reliance"?

A I thought she cited a large number of newspaper articles, or cited to those newspaper articles, rather, quite a few times.

Once in awhile, a researcher may use a newspaper article as anecdotal or an interesting story. But, usually, researchers don't use newspaper articles as the source of specific data having to do with a calendar or anything else for that matter.

Q I appreciate that. But do you believe that it is inappropriate for a researcher to rely on newspaper articles?

A Depends on what it is they are relying on.

Q Does it also depend on the particular subject matter?

A No.

I would think a researcher would need to be careful on most any subject matter.

Q Did Dr. Oaks rely on anything other than newspaper articles in her report, to your recollection?

MS. DAVIS: Objection.

Dr. Oaks's report speaks for itself.

THE WITNESS: She did rely on other things, too, yes.

BY MR. VILLAGRA:

Q Did she cite research in the field of multitrack year-round education?

MS. DAVIS: Same objection.

THE WITNESS: She cited to things that would be relative to multitrack year-round education, yes.

BY MR. VILLAGRA:

Q Did she cite studies regarding Concept 6?

MS. DAVIS: Same objection.

THE WITNESS: May I look at the Oaks report?

BY MR. VILLAGRA:

Q I'm just asking for your recollection.

A Right at the moment, I'm not coming up with specific studies.

She referred to -- as I recall, she referred to the White and Cantrell study.

So yes, she did.

Q Do you believe her reliance on newspaper articles, given that she also relied on studies, research studies on multitrack year-round education is evidence of the lack of well-researched support for her theories?

A Well, to some degree, yes.

Q But to some degree, no?

A To -- I have to leave -- my sentence speaks for itself. I made the statement. I'll leave it there.

Q That's actually what we're here to understand, which is, what it is that you meant by that.

I take it that you mean that, to some extent, you believe that to be true.

Q I'm entitled to know what your intent was in saying this.

MS. DAVIS: If you clarify the question.

BY MR. VILLAGRA:

Q Do you believe, quoting your own words, that, "Dr. Oak's reliance on newspaper articles is the evidence of the lack of well-researched support for her theories regarding the Concept 6 calendar"?

A I do to the degree that she should cite other sources than newspaper articles for such things, as there are not available intercession classes, when the newspaper articles themselves said that there were students in intercession classes.

Q Anything else?

A That's enough for now.
Q So only to that degree do you believe that Dr. Oaks's reliance on newspaper articles is evidence of the lack of well-researched support for her theories?
A I spoke of intercession.
She cited to the newspaper articles that students had trouble finding jobs.
Even while those newspaper articles suggested that students were in jobs during the intercession time, I think her reliance on newspaper articles is not -- is evidence of the lack of well-researched support for her contentions.
Q Anything else?
A That's all.
Q Just to the degree that she cited newspaper articles about intercession classes, and students off-track finding jobs.
Just to that extent, do you believe that her reliance on newspaper articles is evidence of the lack of well-researched support for her theories?
A Those are definitely two examples.
Q Can you think of any others?
A Not at the moment.
Q Did you understand Dr. Oaks to say there were no intercession classes available on multitrack year-round calendars?
A She spoke on the lack of availability of intercession classes, even as she cited to articles where students in the articles talked about having intercession classes.
Q I appreciate that.
I want to find out what your understanding was of what she said.
Do you understand her to be saying that there were no intercession classes available at multitrack year-round school?
A In an absolute sense, I can't say that.
She inferred that it was very rare.
Q She implied or you inferred?
A I inferred that.
Q She didn't say that?
A I don't recall that, whether she made it absolute.
Q All right.
A I would have to go to the report and check that out, again.
Q So if the students off-track have trouble finding jobs, and you find an example of a student who did find a job, does that refute her point, in your opinion?
MS. DAVIS: Mischaracterizing his testimony.
THE WITNESS: It may refute it to a degree.
BY MR. VILLAGRA:
Q To a degree?
A Yes.
Q But to a degree it may not?
A To a degree it may not.
Q When you talk about Dr. Oaks citing newspaper articles regarding the lack of availability of intercession classes, do you recall whether Dr. Oaks cited any other support for the proposition that there was limited availability of intercession at multitrack year-round schools?
MS. DAVIS: Objection.
Dr. Oaks's report speaks for itself.
THE WITNESS: I think she referred to a statement made by another party.
I'm not remembering what it is right now.
BY MR. VILLAGRA:
Q What do you mean by "another party"?
A I think she quoted someone in one of her instances.
But I can't say right now.
Q Do you recall whether she quoted Gordon Wohlers regarding the limited availability of intercession at multitrack year-round schools?
MS. DAVIS: Same objection.
THE WITNESS: I said, I believe she quoted someone.
I can't remember who it was.
So I don't know whether it was Gordon Wohlers or not.
BY MR. VILLAGRA:
Q I want to turn your attention to page 44, still on your report, Exhibit 12.
You're discussing here, "the Lou Harris survey."
Q Do you see that?
A Yes.
Q Have you seen the Lou Harris study that Dr. Oaks cites in her report?
A I have seen it.
Q You have seen it?
A Yes.
Q When did you see it?
A When the materials were delivered to me.
that are pertinent to this particular aspect of
this case.
Q Did you ask to be sent the Harris survey?
A No.
Q You state in the second sentence:
"Initially, Dr. Oaks's report
provides no information as to how
this survey was conducted."
Do you see that?
A Yes.
Q Do you have any knowledge as to how this
survey was conducted?
A I don't.
And she didn't either.
Q How do you know that?
A I don't recall, anywhere, that she said
how it was conducted.
Q So if she didn't say in her report how the
Harris survey was conducted, your assumption is you
don't know how it was conducted?
A I said it provides no information, her
report doesn't.
I'm not assuming whether she knows or not.
Q I asked you, Mr. Ballinger, do you have
any knowledge as to how the survey was conducted,
the Harris survey?
And you said you did not.
Q Did you have any knowledge as to how this
survey was conducted?
A I don't.
Q How do you know that?
A I don't recall, anywhere, that she said
how it was conducted.
Q So if she didn't say in her report how the
Harris survey was conducted, your assumption is you
don't know how it was conducted?
A I said it provides no information, her
report doesn't.
I'm not assuming whether she knows or not.
Q I asked you, Mr. Ballinger, do you have
any knowledge as to how the survey was conducted,
the Harris survey?
And you said you did not.
Q Did you have any knowledge as to how this
survey was conducted?
A I don't.
Q How do you know that?
A I don't recall, anywhere, that she said
how it was conducted.
Q So if she didn't say in her report how the
Harris survey was conducted, your assumption is you
don't know how it was conducted?
A I said it provides no information, her
report doesn't.
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how it was conducted.
Q So if she didn't say in her report how the
Harris survey was conducted, your assumption is you
don't know how it was conducted?
A I said it provides no information, her
report doesn't.
I'm not assuming whether she knows or not.
Q I asked you, Mr. Ballinger, do you have
any knowledge as to how the survey was conducted,
the Harris survey?
Q How many teachers have you heard make the claim that there is not enough time to teach the entire curriculum?

A Dozens, if not more.

Q Dozens, if not more in the span of 45 years?

A 43 -- 45, yes.

Q Would you agree that's not necessarily a very high number?

MS. DAVIS: Vague and ambiguous, argumentative.

BY MR. VILLAGRA:

Q Do you believe that's an adequate scientific sample?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: My knowing?

BY MR. VILLAGRA:

Q Yes.

A I think it's such a common complaint, I was reacting, saying: I'm surprised the 42 percent isn't higher. Most teachers would say that they can't cover the material. I don't think it has anything to do with the calendar.

Q You have no --

A I have no study I have done on my own.

Q Are you aware of any study?

A No.

Q You refer to the complaint that "there is simply too much to teach in the time available."

A Yes.

Q Do you understand that complaint to be the equivalent of a teacher saying that the multitrack year-round schedule interferes with their ability to cover the curriculum?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: A teacher may say that. I don't know what else to say.

MS. DAVIS: Calls for speculation.

THE WITNESS: I don't know what the teacher would mean in that particular circumstance.

It could mean that, I suppose it could mean something else.

BY MR. VILLAGRA:

Q So the 42 percent of California teachers who feel that the multitrack year-round schedule interferes with their ability to cover the curriculum may be saying that the multitrack year-round schedule affords them too little time to cover the curriculum; is that correct?

MS. DAVIS: Asked and answered.

THE WITNESS: I don't know.

But it could be.

BY MR. VILLAGRA:

Q I want to look at page 45 of the same exhibit.

A Dr. Oaks claims in Concept 6 calendar, and presumably, all multitrack year-round calendars harm students. Do you see that?

A Yes.

Q What do you mean by "harm students"?

THE WITNESS: I don't know. But it could be.

BY MR. VILLAGRA:

Q To your recollection, when she made the case that Concept 6 was harmful, did she refer to anything other than students achievement, access to courses and activities and jobs, access to courses?
MS. DAVIS: Same objection.

THE WITNESS: She spoke of loss of instructional time.

BY MR. VILLAGRA:

Q To your recollection, did she address anything else?

MS. DAVIS: Same objection.

BY MR. VILLAGRA:

Q In terms of the harm to students from the Concept 6 calendar?

MS. DAVIS: Same objection.

THE WITNESS: Those are the things I recall, right at the moment.

BY MR. VILLAGRA:

Q The third sentence, down from the one we were just looking at, it says: "One would have to believe that students in those first seven multitrack year-round schools, had they been truly harmed, would have, by now, shown to be damaged citizens of the State."

A Yes.

Q What do you mean by "damaged citizens of the State"?

A I was referring, there, to what I just said.

Q These would be people who would come forward and say: I was hurt by the multitrack calendar in the school I was attending.

A I have not seen anything like that.

Q You haven't?

A Not that I recall.

Q Did you ask to see declarations of students at Concept 6 schools in California?

MS. DAVIS: From this case?

MR. VILLAGRA: Yes.

THE WITNESS: I didn't specifically ask for that, no.

BY MR. VILLAGRA:

Q Why not?

A I just asked for the materials I needed.

And those were presented to me.

MS. DAVIS: Calls for a legal conclusion. I think there was some confusion as to what the declaration was.

Maybe we straightened it out.

You talked about it on the first day.

BY MR. VILLAGRA:

Q You say there's no evidence supporting the theory that Concept 6 harms students?

A I do.

Q You say that the lack of evidence is that there aren't people coming forward saying that they are examples of students harmed by the Concept 6 calendar; is that correct?

A No.

Q Adults who have been harmed.

A I'm talking about adults.

Q So if adults were to come forward and say they were harmed by the Concept 6 calendar, you would take that as evidence of its harm?

A Not necessarily.

Q We could probably, then, begin examining why and how and so on.

Q Why would you consider it evidence if it came from an adult and not from a current student?

A I think time would show clearly what the picture might be, whether, indeed, there was damage and that sort of thing.

But there is no evidence, that I'm aware of, that there have been diminution of achievement...
results because of a multitrack year-round calendar.

Q   We're looking at the harm that you referred to here in terms of damaged citizens?
A   Right.

Q   Do you think it would have been helpful to you, to look at the statements made by students in the Concept 6 calendar in California, submitted in this case?

MS. DAVIS:  Calls for speculation.

THE WITNESS:  It may have been, but I don't know.

BY MR. VILLAGRA:

Q   Would it have been helpful to review the deposition testimony of any students at Concept 6 schools in California, that have been taken in this case?
MS. DAVIS:  Same objection.

THE WITNESS:  It may have been.

BY MR. VILLAGRA:

Q   Why might it have been?
A   Just to see what might be said, what the circumstances might have been.

Q   Have you requested that counsel obtain, for you, any of the data underlying the 1999 Mitchell and Mitchell study we spoke about yesterday?
A   Did I ask --

(Record read.)

A   I didn't request data from the Mitchell reports from the counsel, no.

BY MR. VILLAGRA:

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BY MR. VILLAGRA:

Q   Why might it have been?
A   Just to see what might be said, what the circumstances might have been.

Just to get a clearer, better picture.
Q What judgments can Dr. Mitchell make that you can't?
A The adequacy of the research methodology in particular reports.
Q Any other judgments that Dr. Mitchell can make that you cannot?
A I'll leave it at that.
Q Meaning, you can't think of anything else?
A Not at the moment.
Q What do you mean by "the adequacy of research methodology"?
A In that -- in the field of educational research, there is certain parameters that researchers have developed, certain ways of looking at data.
And he would be in a better position to judge that adequacy than I would.
But when it comes to conclusions, I can read as well and act on what my understanding is of those conclusions.
Q Would it be fair to state that you have to take the research studies and their conclusions more at face value, given that you can't judge the adequacy of the research methodology?
MS. DAVIS: Vague and ambiguous.

THE WITNESS: Fortunately, so often, these research studies have follow-up reports and studies where other researchers make judgments about the adequacy of those reports.
I try to read, faithfully, those reports.
I subscribe to journals put out by the American Educational Research Association.
I try to follow the debate back and forth about the adequacy.
So I feel that I'm fully informed and try to keep up with what the research is saying.
But I certainly have never tried to get into the field -- into the business myself of making those kinds of statements as to the -- to other researchers about the adequacy of their reports.

BY MR. VILLAGRA:
Q So when it comes to assessing the conclusions of a given research study, you look to the judgments expressed by other researchers about those conclusions?
MS. DAVIS: That mischaracterizes the testimony.

BY MR. VILLAGRA:
Q Is that correct?
Q   The Quinlan studies, did that rely on some statistical analysis?
A   Yes.
Q   The White and Cantrell analysis from LAUSD, I'll refer to both of them from 2001 and 2002.
MS. DAVIS:  2002 hasn't been in evidence; it hasn't been introduced here.
MR. VILLAGRA:  You're right.
THE WITNESS:  We talked about it.
MS. DAVIS:  We can have a general understanding.
BY MR. VILLAGRA:
Q   You understand there were two studies?
A   Yes.
Q   Do you believe that both of those White and Cantrell studies rely on statistical analyses?
A   I believe they do.
  But I didn't see any of that.
  What I really saw was the summary report that they presented to the Board of Education.
Q   All right.
A   I believe there were some tables, but not really detailed statistical analyses.
MR. VILLAGRA:  I want to mark as Exhibit 30, an e-mail from C. Kneese to Mr. Ballinger.
   It's Bates NO. State-EXP-CB 1419.
   (Deposition Exhibit 30, E-mail from C. Kneese to Mr. Ballinger, was marked for identification by the Court Reporter.)
BY MR. VILLAGRA:
Q   Have you had a chance to review Exhibit 30?
A   Yes.
Q   Do you know what it is?
A   It's an e-mail message from Dr. Carolyn Kneese to me.  "Subject: Hello."
Q   Have you reviewed this e-mail, previously?
A   Yes.
Q   When was the last time you saw a copy of what is Exhibit 30?
A   This is the fourth day.
   I think I said earlier, about a week-and-a-half.
   Now it's been two weeks.
Q   In the first line, Carolyn Kneese writes: "Thank you for giving me this opportunity," triple exclamation point.
A   Yes.
Q   What's the opportunity that she's referring to?
A   First, I haven't given her anything.
The opportunity, it's the chance to work through some of this data on multitrack year-round education.
This case has given us the reason to look more thoroughly into the achievement data on multitrack.
   For a researcher, this is an opportunity.
Q   Anything else?
A   That's all.
Q   You said you "didn't give her anything," what do you mean by that?
A   I didn't give her this chance -- the case; I guess, gave her this chance.
Q   Did you suggest to the defendant, State of California, that Carolyn Kneese would be someone they should contact about being an expert witness in this case, in the Williams' case?
MS. DAVIS:  Asked and answered, vague and ambiguous as to "expert."
THE WITNESS:  I did say to the State of California that Dr. Kneese was the most knowledgeable person in the U.S. on the topic of year-round education.
And she would be a person for them to consider.
Q   She was, in fact, considered?
MS. DAVIS:  Calls for speculation.
THE WITNESS:  I don't know what the State did with that information.
Q   You've never had a discussion with Carolyn Kneese about what happened in Sacramento?
A: Only --

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Only to the degree that:

Has the State asked you to do something?

Because I did suggest her name as someone
to look to.

BY MR. VILLAGRA:

Q: Did Carolyn Kneese tell you whether the
State asked her to do anything?

A: Yes.

Q: What did she say?

A: She said: "I've been asked to do a paper
on research results having to do with
multitrack year-round education."

Q: Has she said whether she will be paid by
the defendant, State of California, to prepare her
work?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Yes. She told me that she
was to be paid by the State of California for her
work.

BY MR. VILLAGRA:

Q: Did she say how much she was to be paid
for her work?

A: $250 an hour.

Q: With any cap?

A: I'm not sure about the cap.

So that would be speculation on my part.

Q: Has she mentioned how much she has been
paid?

A: No, she hasn't.

Q: Did you and Carolyn Kneese have any
discussions about whether studies of student
achievement on year-round calendars commingled
findings from single-track and multitrack schools?

A: Yes.

Q: What was the discussion?

A: The discussion had to do with the fact
that there were three studies where the result of
single-track year-round and multitrack year-round
were commingled.

Q: Do you recall anything else about the
discussion?

A: Yes.

Q: What else?

A: The fact that when the results were
commingled, the results looked more negative for
year-round education than when they were separated
out.

Q: Do you remember anything else about the
discussion?

A: I asked: Why would that be so?

Dr. Kneese explained it to me.

And in layman's terms, my recollection
would be she was saying: In effect, we don't know
why. It's a statistical anomaly.

Q: Was anything else said between you and
Carolyn Kneese about whether studies of student
achievement on year-round calendars commingled
findings from single-track and multitrack schools?

A: I think I have given a substance of the
discussion.

Q: Did you and Carolyn Kneese discuss whether
the Quinlan study commingled findings of
single-track and multitrack schools?

A: Yes.

Q: What was the significance of the Quinlan
study?

A: It had to do with the Quinlan findings
where the two kinds of year-round education had
been commingled.

Q: Anything else?

A: No.
single-track and multitrack.
Q   In a study where single-track and multitrack findings have been commingled, the findings regarding single-track schools are pulled out, they look better than when the results are commingled?

MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  They can look before, yes.
BY MR. VILLAGRA:
Q   They may not?
A   I don't know on that.
MR. VILLAGRA:  I want to mark as Exhibit 31, an e-mail from Charles Ballinger to Carolyn Kneese, dated February 14, 2003, and Bates No., it's State EXP-CB 1421.

(Question continued)
BY MR. VILLAGRA:
Q   Have you had a chance to look at Exhibit 31?
A   Yes.
Q   What is it?
A   It's a an e-mail from me to Carolyn Kneese.
"Subject: Addition to your paper."
Q Did you write this e-mail?
A   Yes.
Q   You've seen this e-mail, previously?
A   I have.
Q   Last sentence says:
"The obvious question, Oaks says, citing Dr. Mitchell, that the Quinlan study operated single-track and multitrack schools.
You said the scores were commingled, can you help me?"
Did you receive an answer from Carolyn Kneese on that answer?
A   I believe I did.
Q   What was the analysis?
A   Verbally, when we talked about it, she tried to explain to me that the scores were commingled.
That also, Dr. Quinlan had teased some of the scores and had done a regression analysis.
schools?
A Carolyn Kneese had done that in a study subsequent to the Quinlan study in '87.
Q Did you and Carolyn Kneese discuss the work of Bradley J. McMillan?
A Yes.
Q What did you discuss?
A Her first inquire to me was: Have you heard of the McMillan study?
And my response was: Yes.
And she didn't know where he could be located; I did.
So I supplied the information to her.
And she reported to me that, subsequently, she had talked personally with Mr. McMillan.
Q Is there a particular study about Bradley J. McMillan that you and Carolyn Kneese were discussing?
A Yes. His report -- his statewide report, "Year-round Education in North Carolina."
Q Do you recall any other discussion, other than what you have described for me now, about Bradley J. McMillan's statewide evaluation?
A The fact that his was a study -- his study also commingled single-track and multitrack scores.
Q Any other discussion?
A I can't recall, right at the moment.
Q Do you recall whether Bradley J. McMillan found no significant difference in achievement for single-track and multitrack schools as compared to traditional calendar schools?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I believe that's the substance of the report.
He did also note there were higher scores for what might be called "educationally disadvantaged students."
That was a notation in his report.
Q Did you find anything else about the findings that Bradley J. McMillan made in his study of year-round schools in North Carolina?
A I believe that's the substance of the report.
Q Is the finding of no significant difference for single-track and multitrack students as compared to students in traditional calendar schools, consistent with the findings of Carolyn Kneese?
A I'll go back to Mr. McMillan's study.
He did find positive results for the schools, both single-track and multitrack.
It was not a statistically significant difference.
He reported it that way.
I don't want to leave the impression that he found anything negative at all.
In fact, he found slight gains.
But gains, what he called, "not significant gains."
Q Do you have any understanding of what criteria Bradley J. McMillan used in determining whether the gains were significant or not?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I believe he used North Carolina scores.
I don't know which test North Carolina uses.
BY MR. VILLAGRA:
Q But in terms of determining whether the gains were statistically significant or not, do you know how he made that determination?
A I would have to presume he used the usual way that researchers determines significant gains.
Q What's that?
A Certain co-efficient level.
Q Do you recall whether Bradley J. McMillan found that the differences in student achievement, were not of practical significance?
MS. DAVIS: The document speaks for itself.
THE WITNESS: That would go along with statistical significance.
It's the same idea.
BY MR. VILLAGRA:
Q Do you believe whether Bradley J. McMillan said that there is currently no specific scientific evidence to support the contention that dividing the long summer vacation period into smaller pieces, helps alleviate some of the "forgetting" that occurs over the summer in traditional school programs?
MS. DAVIS: Document speaks for itself.
THE WITNESS: I believe he said that, yes.
BY MR. VILLAGRA:
Q Do you believe whether Bradley J. McMillan said that: "Despite several studies on the topic, most existing research on year-round education and achievement suffers from important methodological
1. Are you asking if he recalls?
2. Yes.
3. Ms. Davis: Are you asking if he recalls?
4. You're reading from the document.
5. The witness: I just heard it read.
6. I do recall that.
7. By Mr. Villagra:
8. Q Do you recall if Bradley J. McMillan stated that few of the studies on year-round education have been subjected to the peer-review process?
9. Ms. Davis: Same objection, the document speaks for itself.
10. The witness: Yes.
11. By Mr. Villagra:
12. Q Do you recall whether in Carolina, in North Carolina, what the distribution was of year-round schools between single-track and multitrack calendars?
14. The witness: It's very heavily single-track in North Carolina. Only one district has multitrack.
15. By Mr. Villagra:
16. Q Do you recall whether any of the year-round programs in North Carolina were voluntary?
17. Ms. Davis: Vague and ambiguous.
18. The witness: Most of them in North Carolina are voluntary.
19. By Mr. Villagra:
20. Q Do you recall whether Bradley J. McMillan concluded that future studies of year-round schools should address the possible differences between single-track and multitrack schools?
21. Ms. Davis: Same objection, the document speaks for itself.
22. The witness: Yes. I heard him say that at the meeting of the American Educational Research Association, that there needs to be more studies.
23. By Mr. Villagra:
24. Q When was that meeting?
25. A It would have been about four years ago.
26. Q All right.
27. A Maybe three years ago; excuse me, around that period of time.
28. Q Do you disagree with Bradley J. McMillan's conclusion that the future studies of year-round schools should address the possible differences between single-track and multitrack schools?
29. Ms. Davis: Same objections.
30. The witness: I don't disagree with that.
31. By Mr. Villagra:
32. Q Do you recall whether in his study, Bradley J. McMillan cited to the Harris Cooper meta-analysis from '96?
33. A I might react it may be an overbroad statement on his part.
34. Q He said it and he believes it.
35. Q Would you have any other reaction?
36. A No, not at this time.
37. Q Do you disagree with Bradley J. McMillan's conclusion that most existing research on year-round education and achievement suffers from important methodological limitations?
38. Ms. Davis: Same objections.
39. The witness: I don't disagree with that.
40. By Mr. Villagra:
41. Q Do you recall whether one of the studies he cited as "suffering from important methodological limitations," was a study by Richard Alcorn?
42. A I don't recall that.
43. Q Do you recall whether one of the studies that Bradley J. McMillan cited as "suffering from important methodological limitations," was the Gandara and Fish study that you referred to
yesterday?
A I don't recall that.
I do know there has been some discussion about that.
And others say: Depends on what they were looking at, whether the methodological report -- whether the methodological basis of the report suffers or not.

What Mr. McMillan was looking at, may have been quite different than what Drs. Alcorn and Gandara and Fish were looking at.

Q Do you agree with Bradley J. McMillan's conclusion that the question of whether the distribution of time across the calendar year might be responsible for any achievement advantages for year-round schools, has yet to be addressed in the research?

MS. DAVIS: Same objections.

THE WITNESS: I would like to hear the question.

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MS. DAVIS: Same objections.

THE WITNESS: I would like to hear the question.

Q Do you agree with Bradley J. McMillan's conclusion that the question of whether the distribution of time across the calendar year might be responsible for any achievement advantages for year-round schools, has yet to be addressed in the research?
more substance in her paper than what I incorporated in mine.

So I was saying:

I want to reread yours. And, if possible, work more of your material into my paper.

That's all.

Q When you refer to work more of her material into your paper, what did you mean?

A I thought she had good things that she pointed out. I hoped to bolster my paper by some of the things she said.

Q What do you mean by her material?

A The substance of her paper.

Q Her paper?

A Yes.

Q All right.

A I didn't do much more.

In fact, I don't recall that I did anymore. But be that as it may, that was a goal at that time.

Q When you say that there was "far more substance in her paper than in yours"?

A I didn't say that.

Q At that point, what do you mean?

A I don't think I said that. If I did, I misspoke. I thought she had a very substantive paper.

There were more points in her paper than what I had incorporated into my paper. I just, simply, was saying: I hope to incorporate more of your material.

That's all I'm saying or I was saying. In the e-mail from Carolyn Knese, her second paragraph, it says:

"I hope the fax I sent you is informative about residual scores."

Do you see that?

A Yes.

Q Do you recall a fax about residual scores that you produced that fax to defense counsel?

A That, I don't recall.

Q Do you recall whether you reviewed your files for correspondence from Carolyn Knese to you?

A I did review that.

And I thought I submitted all of the exchanges between us.

Q Do you recall what the residual scores fax was about?

A I don't -- I don't recall it right at the moment.

Q Did you rely on this fax about residual scores in preparing your report?

A I don't believe so, no.

MR. VILLAGRA: I'm going to mark as Exhibit 33, a document entitled: "Lodi Unified School District, Star 2002 Results by School," revised 9-5-02.

(Deposition Exhibit 33, Lodi Unified School District, Star 2002 Results by School, was marked for identification by the Court Reporter.)

MR. VILLAGRA: I'm not going to ask you to go through it. Take a look at it to see what it appears to be.

BY MR. VILLAGRA:

Q Does Exhibit 33 appear to be a copy of the data from Lodi Unified School District that you forwarded on to Carolyn Knese?

A Yes it is.

MS. DAVIS: It's not a copy of the actual data from Dr. Ballinger.

It's a copy that Tony Seferian got from you.

THE WITNESS: It appears to be a copy of what I got from her.

MR. VILLAGRA: Exhibit 34, it's entitled: "Vista Unified School District, National Percentiles for CTBS and SAT 9."

(Deposition Exhibit 34, Vista Unified School District, was marked for identification by the Court Reporter.)

BY MR. VILLAGRA:

Q Does Exhibit 34, to you, appear to be a copy or a reproduction of the data you passed on to Carolyn Knese regarding Vista Unified School District?

A It appears to be very similar to what I passed on to her.

MS. DAVIS: It's from Tony Seferian.

BY MR. VILLAGRA:
Q. Apart from Exhibit 33 and 34, did you send Carolyn Kneese any other data regarding Lodi Unified or Vista Unified School Districts?

A. Yes, I did.

Q. What was that data?

A. That data was a master's thesis written by an employee of Lodi Unified. It would be available in libraries.

Q. Maybe just to clarify, these Exhibits, 33 and 34, appear to me to be raw data?

A. Those are raw data. Nothing in addition to those in terms of raw data.

Q. Did you speak with Carolyn Kneese about the data contained in Exhibit 33?

A. To the extent that: Here is some data for you to look at; that's all. I very quickly passed it on to her for her review.

Q. Did you have any other discussions regarding the data in Exhibit 33 with Carolyn Kneese?

A. Yes. In the sense that she said she had received them, had looked at them, that sort of thing.

---

Q. Did she tell you what she thought upon looking at the data contained in Exhibit 33?

A. Not other than what she included in her report.

Q. And regarding Exhibit 34, did you have any discussions with Carolyn Kneese about the data contained there?

A. Not other than the kind I have just spoken about, Lodi.

Q. She didn't tell you her assessment of the data contained in Exhibit 34?

A. None other than what she has in her report.

MR. VILLAGRA: We can stop now.

---

Q. Can you think of any other examples?

A. A trip to a music venue, stage shows, recreation areas, visits with businesses, all kinds of activities could provide enrichment for students.

Q. Would a swimming program count as an enrichment program, in your opinion?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: It could.

Q. How might it?

A. If it would be part of a physical education program which is considered part of a school experience, it could very well be an enrichment program. Particularly, if there is really an instructor who helps students to improve, help students to do things correctly in terms of swimming.

Q. When you say "enrichment programs occur all year-round," what's your support for that statement?

A. I'm speaking on a community-wide basis,
within a community, particularly urban communities, there are just untold experiences that students could have, and those occur throughout the year.

Q   Is this based on any particular investigation you conducted into the availability of enrichment programs?

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  It's what I have experienced myself.

And I go on in the next sentence to say, I speak of the arts fields, for example.

Some of the best enrichment experiences don't occur during the summer, but, rather, in other seasons of the year.

Q   Did you conduct any kind of study to compare enrichment programs offered over the summer as opposed to those offered at other times during the year?

A   No formal study.

Q   Are you aware of any such study?

A   No formal study, no.

Q   All right.

A   This is just based on my own experience.

Q   All right.

A   I say that, in my experience.

Q   In your experience as a resident of San Diego?

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  As a resident of San Diego and other communities before that.

BY MR. VILLAGRA:

Q   All right?

A   Also in my experience as an educator.

Q   In what way does your experience as an educator provide you with knowledge about the availability of enrichment programs all year-round?

A   I have seen field trips through experiences throughout the year.

I know the teachers well and encourage students to avail themselves to activities on their own and weekends and evenings, that sort of thing.

Q   The last part of this paragraph: "For every experience that an off-track student may miss, there is another experience that students on-track may miss."

Do you see that?

A   I do.

Q   How do you know that?

A   I think that would just be an everyday human piece of knowledge.

I would think anybody could come to that conclusion.

Q   Have you conducted any kind of calculation to see if for every experience that an off-track student may miss, there is another experience students on-track may miss?

A   I think that's common knowledge.

Q   Besides common knowledge, do you have any other basis for that?

A   Not at this point.

MR. VILLAGRA:  I want to mark as Exhibit 35, a document entitled: "Comparison of Student Achievement and Student and Teacher Characteristics in Multitrack Year-Round and Single-Track Traditional School Calendars," update from 2000 to 2001, authored by Jeffrey White and Steven Cantrell.


(Deposition Exhibit 35, Comparison of Student Achievement and Student and Teacher Characteristics, was marked for identification by the Court Reporter.)

BY MR. VILLAGRA:

Q   Have you had a chance to review Exhibit 35?

A   I have it in front of me, yes.

Q   What is it?

A   It's a report authored by Jeffrey White and Steven Cantrell, dated July of 2002, entitled: "Comparison of Student Achievement and Teacher and Student Characteristics in Multitrack Year-Round and Single-Track Traditional School Calendars."

Q   You've seen a copy of Exhibit 35, previously?

A   I have.

Q   Have you reviewed a copy of Exhibit 35 in preparing your report in this case?

A   I reviewed it, yes.

Q   If I could turn your attention to the 2002 LAUSD; do you understand what I'm referring to?

A   Yes.

Q   Would it be okay if I refer this to the 2002 LAUSD; do you understand what I'm referring to?

A   It would be better if it was White and Cantrell.

Q   The 2002 White and Cantrell study?
1 A Yes.
2 Q If you look at the second paragraph, the second sentence, it says:
3 "Single-track schools have the highest performance followed by three-track schools, then four-track schools."
4 Do you see that?
5 A Yes.
6 Q Do you have any reason to dispute the finding in the 2002 White and Cantrell study, that single-track schools have the highest performance followed by three-track schools, and then four-track schools?
7 A I don't have any reason to dispute it at this time.
8 Q Skipping two sentences, do you see the sentence that starts with "variations"?
9 A Yes.
10 Q The next sentence starts with "a clear pattern."
11 A I see it.
12 Q Do you dispute the finding in the 2002 White and Cantrell study, that a clear pattern is evident such that the most desirable track on either multitrack calendar exhibits higher performance than in other tracks?
13 MS. DAVIS: Vague and ambiguous.
14 THE WITNESS: I can't dispute that's what they are saying here.
15 BY MR. VILLAGRA:
16 Q Do you have any basis to disagree with their finding?
17 A Not at the moment, no.
18 Q Do you have any idea what the authors, White and Cantrell, might be referring to when they use the term "most desirable tracks"?
19 MS. DAVIS: Calls for speculation.
20 THE WITNESS: I don't at this point, because they don't identify tracks here.
21 BY MR. VILLAGRA:
22 Q If you could, look at page 4.
23 A Arabic Numeral 4?
24 Q Yes, 0406.
25 At the very bottom of the page, second to last line, it says "in high schools."
26 A I'm with you.
27 Q "In high schools, this pattern was reversed. In spring 2000, single- and three-track gains were equivalent.
28 In spring 2001, single-track outperformed three-track schools by half a point in each subject."
29 Do you see that?
30 A I do.
31 Q Do you have any reason to dispute this finding in this 2002 White and Cantrell study?
32 MS. DAVIS: Vague and ambiguous, this pattern hasn't really been identified.
33 Q Do you want him to read up a little bit? You started with "this pattern was reversed."
34 MR. VILLAGRA: Yes. Let's start over.
35 BY MR. VILLAGRA:
36 Q Do you dispute the finding that between 2000 and 2001, single-track schools, single-track high schools outperformed three-track high schools by half a point in each subject?
37 MS. DAVIS: Vague and ambiguous, calls for speculation.
38 Q Page 6, Arabic Numeral 6, State-EXP-CB
Q: Do you see that?

A: Yes.

Q: If you go to the fourth sentence of the paragraph, it begins, "for three-track schools."

A: I see it.

Q: It says: "For three-track schools, B track has a negative effect on reading and math performance in all schooling levels. And C track has a negative effect on reading performance in elementary and middle schools."

A: Do you see that?

Q: Do you have any reason to dispute the finding in the 2002 White and Cantrell study, that in Concept 6 schools, B track has a negative effect on reading and math performance at all schooling levels?

MS. DAVIS: Vague and ambiguous, calls for speculation.

THE WITNESS: Repeat that question.

(Record read.)

Q: In your opinion, to the extent that the report suggests a causal link between B track in reading and math performance, you would dispute this statement?

MS. DAVIS: Mischaracterizes his testimony.

BY MR. VILLAGRA:

Q: Do you have any reason to dispute the finding in the 2002 White and Cantrell study, that in Concept 6 schools, B track has a negative effect on reading and math performance at all schooling levels?

MS. DAVIS: Vague and ambiguous, calls for speculation.

THE WITNESS: Repeat that question.

(Record read.)

Q: Do you understand those words to mean?

A: It says: "The Model 2 investigates the effect of school tracks for each multitrack calendar controlling for the student normal curve equivalent" and so on.

Q: Do you have subscriptions to any professional periodicals?

A: I do.

Q: Which ones?

A: EDUCATIONAL LEADERSHIP, put out by the Association of Supervision and Curriculum Development. I subscribe to EDCAL which is a newsletter of the Association of California's School Administrators. I subscribe to the JOURNAL OF EDUCATION RESEARCH, put out by the American Educational Research Association. I subscribe to THE PRINCIPAL, put out by the National Association of Elementary School Principals.
I subscribe to PHI DELTA KAPPA N, which is a publication of the Phi Delta Educational Honorary.

Q   Anything else that you can think of?
A   I subscribe to the EDUCATIONAL RESEARCHER, which is another journal of the American Education Research Association.
I subscribe to EDUCATION WEEK, which is a weekly newsletter out of Washington D.C., which is a compendium on newspapers and special articles on special subjects.

Q   Any other subscriptions to professional periodicals?
A   I have, in the past, subscribed to THE ADMINISTRATOR, the professional journal of the American Association of School Administrators. Those are the ones that come to mind, quickly.

Q   The only one that you identified as a past professional periodical that you subscribed to is The Administrator.
A   Yes.

Q   How long have you subscribed to EDUCATIONAL LEADERSHIP?
A   Probably around 30 years.

Q   And what about EDCAL?
A   That would be in the last three years.

Q   THE JOURNAL OF EDUCATION RESEARCH?
A   I probably have had that in the order of 20 years.

Q   THE PRINCIPAL?
A   15 years.

Q   PHI DELTA KAPPA N?
A   25.

Q   EDUCATIONAL RESEARCHER?
A   It would be the same time as for the other AERA publication.

Q   Which one was that?
A   JOURNAL OF EDUCATIONAL RESEARCH.

Q   And ED WEEK, how long would that be?
A   15 years.

Q   When did you have your subscription to THE ADMINISTRATOR?
A   Up through my requirement in 2000 and probably had had that -- probably for ten years.

Q   If you could turn to Exhibit 12, your report.
A   Yes.

Your CV, it's not numbered.

But it appears after the declaration up front.

A   Yes.

Q   Do you see where it says "professional publications"?
A   Yes.

Q   Are the items listed here all of what you deem your professional publications?

MS. DAVIS: Vague and ambiguous.
THE WITNESS: Are these all my publications?

BY MR. VILLAGRA:
Q   Yes.
A   I don't believe so, no.

Q   Are the items listed here your most recent publications?

MS. DAVIS: Vague and ambiguous as to publication.

BY MR. VILLAGRA:
Q   Let me step back.

The heading here is "Professional Publications," what did you mean by a publication?
A   Where it's been published in a journal, a situation -- let's just say, journal by one of the professional organizations.

Q   What do you mean by "professional organizations"?
A   Some of the organizations I mentioned to which I have subscriptions.

Q   Can you think of any things that you have written that you would describe as a professional publication that are not listed here?
A   I'm not remembering any right now.

Q   If you look at the fourth item up from the bottom of this list of "Professional Publications," there is a citation to Ballinger, Charles: "It's Good for Students, It's Good for the Community," from U.S.A. TODAY, January 14th, 1986.
A   I see that.

Q   Do you consider that to be a professional publication?
A   Not in the sense as the others.

Q   Can you identify for me any other items that you don't believe qualifies for professional publications as you have described the term to me today?
A   The CAMPING magazine is outside our field.
It is a professional journal of another group who invited me to write an article for their particular clientele. They did so for the professional field of year-round education.

Q Can you name for me the professional periodicals that you have written for?

MS. DAVIS: Other than what's listed here?

MR. VILLAGRA: Yes.

THE WITNESS: I can't at this time.

BY MR. VILLAGRA:

Q Have you ever taught in the area of education at a university?

A Yes.

Q What university?

A I have taught at Bucknell University.

Q What did you teach?

A I taught curriculum.

Q When did you teach?

A In the summer of -- I'm going to say in the summer of '68, 1968.

Q Do you have any other teaching experience at a university other than the summer that you taught at Bucknell?

A Only as I've been invited to come and instruct classes at the invitation of a professor or instructor.

Q What was the specific course you taught at Bucknell?

A I forget the exact title, it was a curriculum development course at the graduate level.

Q Would you name for me all of the university professors who have invited you to speak and address their classes?

A You know, I can't really recall their names right now.

Q Is it more than one?

A Yes.

Q Can you name for me the universities?

A Sure. Let's see, I have been at California State University. It's up in the middle part of the state. It's up in the Vasalia area. It's the name of a county up there.

Q Can you think of any other?

A I've been at the University of San Diego. I've been at National University. It's been some years back, so I'm not remembering.

Q How many times were you at the Cal State campus near Vasalia?

A Once.

Q What did you do?

A I spoke about my experience in year-round education as a part of a graduate administration class.

Q Was it during a single lecture that you spoke?

A Yes. All of these would be a single lecture.

Q At the University of San Diego, how many times?

A Same, once.

Q At National University?

A Once.

Q And was the University of San Diego also a graduate and administrative class?

A Yes.

Q And National University?

A Yes.

Q Did you, as executive director of the NAYRE, provide an address; did NAYRE provide an address at each yearly conference?

A Yes.

Q What, in your opinion, was the purpose of the address at the yearly NAYRE conference?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: It was to be a status report and a look at the field in general.

BY MR. VILLAGRA:

Q Anything else?

A That's what it was.

Q Back in the early years, we called it a "status report."

Q Was it the purpose of your address at the yearly conference of the NAYRE?

A To give attendees a sense of where the educational year-round movement was and where it's going, yes.

Q Do you consider yourself a part of the year-round education movement?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Yes.

Q What's the goal of the movement?

A The goal, two or three-fold; the goal is to provide better education for the students. It's to be a resource of information about year-round for educational policy makers, for
university researchers, for parents, students, and
teachers who may inquire about year-round
education.
Q   Anything else?
A   Also to prepare the best information to
make available to others about the topic.
In other words, to provide some
publications on the topic.
Q   Anything else?
A   No.
Q   Is part of the year-round education
movement, in your opinion, to eliminate the
traditional school calendar?
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  Our goal is to encourage the
increase and the use of year-round education which,
I would presume, eventually lead to abandonment of
the traditional school calendar.
BY MR. VILLAGRA:
Q   When you talk about increasing the number
of year-round schools, would you yourself prefer
to see growth in single-track as opposed to
multitrack year-round education?
MS. DAVIS:  Vague and ambiguous.
BY MR. VILLAGRA:
Q   Would you prefer to see increased growth
in single-track education.
Single-track is what most schools in the
United States would adopt because most schools
aren't overcrowded.
Multitrack is always a response to a prior
problem of over-enrollment.
So I would encourage multitrack to the
degree there is a problem of over-enrollment that
needs to be addressed.
BY MR. VILLAGRA:
Q   Would you prefer to see increased growth
in single-track year-round education as opposed to
multitrack year-round education?
A   Absent the issue or problem of
over-enrollment, the answer would be yes.
I would encourage single-track.
Q   Why?
A   Because it's administratively easier to
do.
It doesn't call for as much change on the
part of people in the school district.
It doesn't have some of the factors such
as we discussed yesterday and the day before,
changing schedules, changing transportation routes,
and that sort of thing, that would come with the
multitrack program.
Obviously, single-track is much easier to
launch, to implement than multitrack is.
So absent any issue of over-enrollment,
obviously, single-track is the way for districts to
go.
Q   You mentioned single-track is much easier
to launch than multitrack.
Is single-track also easier to sustain
than multitrack?
MS. DAVIS:  Vague and ambiguous.
A   Yes.
MR. VILLAGRA:  I want to mark as
Exhibit 36, a document entitled:  "Annual Report to
the Association on the Status of Year-round
Education," Dr. Charles Ballinger, executive
director, and it's dated February 9th, '93.
(Deposition Exhibit 36, was
marked for identification by the
Court Reporter.)
THE WITNESS:  It does use the word
"status," as I said, in the earlier years.
BY MR. VILLAGRA:
Q   Have you had a chance to review
Exhibit 36?
A   Yes.
Q   All right.
Q   I have it in front of me.
I haven't reviewed it yet.
Q   Please take a moment to review it.
A   Okay.
Q   Have you had a chance to review
Exhibit 36?
A   I have.
Q   What does it appear to be to you?
A   It appears to be a speech that I gave at
the 24th Annual Conference of the Association, in
Las Vegas, February of '93.
Q   You prepared this speech?
A   I did.
Q   I want to direct your attention to the
first page, which is No. 2, and the first
paragraph, the third sentence says:  "The year
1992."
Do you see that?
A   Yes.
Q   "The year '92 was another good one for
year-round education."
"And I am able to present a positive report for the 11th year in a row."

Do you see that?

A   Yes.

Q   What, in your opinion, is a good year for year-round education?

A   Any time there is growth in the year-round movement, which I would consider to be a good year of any kind.

Q   What do you mean by "growth of any kind"?

A   It could be the number of schools that implemented year-round education.

It could be in the number of districts that implemented year-round education.

It could be in the number of states where there is at least one or more year-round programs.

Those are the kind of factors that I looked at.

Q   Anything else?

A   Those are the three primary ones.

Q   And so, if there was a decrease of any kind in the number of schools or districts or states using year-round education, would that mark a bad year for you?

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  Not necessarily, if there was growth elsewhere.

On occasion, one of those figures would fluctuate.

But as long as the overall sense of it was growth, I considered it a good year.

Year-round operates in a political context, so these figures shift slightly.

BY MR. VILLAGRA:

Q   The very last paragraph, the one at the bottom, it says: "Perhaps the most significant development this school year has been the shift in numbers of single-track schools."

Do you see that?

A   Yes.

Q   Do you recall why you believed the shift in numbers of single-track schools was the most significant development in this school year, 1993?

A   Yes.
year-round education.

Before this point, the majority of schools had adopted year-round education in a multitrack as a response to overcrowding.

I thought it was highly significant that the educational values were beginning to be seen and accepted in more districts across the country.

Q What do you mean by "educational values"?
A The possibility of less learning laws.

The possibility of higher achievement scores, those kinds of factors.

Q Do you believe it is significant that in California, multitrack year-round education continues to constitute a much higher percentage of year-round schools than single-track schools?
MS. DAVIS: Vague and ambiguous.

THE WITNESS: Significant in what sense, numbers?
BY MR. VILLAGRA:

Q In numbers of students.
A I think it's a significant factor in California that the largest numbers are multitrack schools.

I think that only represents a response to the heavy population growth of this state.

Q Why would you say it's a "significant factor"?
A Significant factor in terms of numbers.

Here, in the state, the majority of students in year-round programs are in multitrack programs that's quite different than the rest of the nation.

So that, in itself is significant.

It's just a matter of what is.

I'm describing what is.

Q In the very last sentence, the very next page, Labeled 4 and 5.
A I see that.

Q The first full sentence says: "The growth of single-track schools will continue since most American and Canadian schools are not overcrowded and do not need to use the multitrack system."

Do you see that?
A Yes.

Q Do you believe that is still true today, that most American and Canadian schools are not overcrowded?
A Yes. And certainly to the degree that they have not looked at multitrack.

Q Do you believe that it is still true today that since most American and Canadian schools are not overcrowded, they don't need to use the multitrack system?
A Speaking of the nation as a whole, that's true, yes.

Q Do you believe that most schools in California are not overcrowded?
MS. DAVIS: Vague and ambiguous, calls for speculation.

THE WITNESS: It's speculative in terms of the degree of over-enrollment which determines the efficacy of multitrack programs, not just the fact that someone declares the school to be overcrowded.

BY MR. VILLAGRA:

Q Here in this paper, you say most American schools are not overcrowded?
A And do not need to use the multitrack system.

Q Let me phrase it that way, then. Do you believe most schools in California are not overcrowded and do not need to use the multitrack system?
A At this point, apparently not.

Q Why do you say "apparently not"?
A Because they haven't -- they haven't had or don't have the need to implement multitrack.

Understand the school may be overcrowded with 102 percent, that doesn't mean -- that does not mean that multitrack is warranted, yet at that point.

Q In the next sentence, you say: "However, I want to affirm the importance of the multitrack as a solution to overcrowded facilities and as a way to save districts both space and money."

Do you see that?
A Yes.

Q Do you still affirm the importance of multitrack as a solution to overcrowded facilities and to save districts both space and money?
A Yes.

Q Why?
A It's a time-tested way to handle over-enrollment.

And it's a way to save both space and money.

Q For any other reason?
1. A: Those are the reasons to use multitrack.
2. Q: Do you affirm the importance of multitrack as an educational calendar?
3. A: Yes.
4. Q: Why did you not, if you remember, affirm the importance of multitrack as an educational calendar in this address in 1993?
5. A: I don't know.
6. I was focusing more on its importance for over-enrollment and financial difficulties. But I could have easily have done that. I was focusing more on its usual reason for implementation.
7. Q: Why should you have said that?
8. A: Because I left it out. And I should have done it, as I look back on the report right now.
9. Q: You mentioned that you affirmed the importance of multitrack as a solution to overcrowded facilities and as a way to save districts both space and money, because it's the usual reason for its implementation. What do you mean by "usual reason for its implementation"?
10. A: With one or two exceptions, every time it's been implemented, it's been in response to over-enrollment. I want to say throughout my speech, I reiterate the educational values of year-round education. Multitrack is one part of the year-round movement. It's understood that I believe in the educational values, even though I don't specifically say it here.
11. Q: In the next sentence you say: "In these times of limited financial resource, we need acknowledge forthrightly the importance for multitrack."
12. Do you see that?
14. Q: Why does the importance of multitrack need to be acknowledged in times of limited financial resource?
15. A: It's a way of encouraging those districts that sent representatives to this conference, that were new to the field, to remember that multitrack is a way of handling over-enrollment, within limited financial resources.
16. Q: Anything else?
17. A: No.
18. Q: Are times of limited financial resources the only times, in your opinion, when the importance of multitrack has to be acknowledged?
19. A: No, it's not the only time. If financial times are good and there is still a problem of over-enrollment, multitrack would still be a viable option to handle the problem.
20. Q: Why did you choose not to acknowledge forthrightly, the importance of multitrack in times when financial resources were not limited?
22. THE WITNESS: I'm not sure what you're asking me there.
23. BY MR. VILLAGRA:
24. Q: Here, in this speech, you talk about acknowledging forthrightly, the importance of multitrack in times of limited financial resources. Why did you not acknowledge the importance of multitrack when times were not limited in financial resource?
25. A: I think every year, irrespective of the financial times; I would today.
26. Q: So do the financial times add anything to you in terms of the importance of multitrack?
27. A: Sure. It is a way of saving money compared with other options to handle over-enrollment at a certain point. And we usually say it's somewhere between 115 to 100 percent of over-enrollment. It is cheaper to implement multitrack than it is to continue to add relocate-ables. But we acknowledge, up until that point, relocate-ables are cheaper than multitrack.
28. If you have a limited financial situation, there is still over-enrollment as a problem to be solved. Obviously, then, we need to remind people that multitrack is a viable solution.
29. Q: I may get the percentages wrong. If a school is over-enrolled up to 110 percent, did you say?
30. A: I think it's usually up to 115 percent.
31. Q: It's cheaper to use temporary relocate-able classrooms than to implement a multitrack year-round program?
A That’s true, just looking at the financial aspects.
There may be other considerations, like lack of space to put on the relocate-ables.
But all -- but other things being equal, that is something that we have put out in one of our publications.
Q All things being equal, if I’m a school administrator and my school is 110 percent over-enrolled, would you encourage me to use temporary portable classrooms or to implement a multitrack year-round program?
MS. DAVIS: Incomplete hypothetical, assumes facts not in evidence.
THE WITNESS: I might say, yes. I might say to an administrator:
Look at your finances involved.
Look at your space involved. Make a decision as to your best judgment.
I would do that in any case as a professional.
But in most of our instances that we have looked at, we say multitrack comes at the point where you’re at about 115 to 120 percent of overenrollment of stated capacity of the original school.
BY MR. VILLAGRA:
Q Can you recall for me an instance, any time in the past, where you have encouraged a school administrator to use temporary portable classrooms rather than implement a multitrack year-round program?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I know I have. I couldn't specify a district right now.
BY MR. VILLAGRA:
Q Apart from space and resources, financial resources, what other factors do you think a school should consider in deciding whether to use temporary relocate-able classrooms or implement a multitrack year-round program?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I think those are the two most important factors.
BY MR. VILLAGRA:
Q Can you think of any others?
A Not at the moment.
Q I’m going to turn your attention to the page that’s Numbered 6, and then 7.
The middle paragraph, do you see that?
A Yes.
Q The last sentence says: "The traditional school calendar is not an educational calendar now; it has never been and never will be. It must give way to something better," exclamation point.
A Yes.
Q What do you mean by an "educational calendar"?
A It's not a calendar "designed for educational values."
Q What do you mean a traditional calendar was not designed for educational values?
A The traditional calendar came about because of its response to the economic condition of the time.
Our country was an agriculturally based economy.
And the school calendar recognized that many students were needed on the farms and ranches of prior decades.
Q What do you mean that the traditional calendar grew up in response to economic times?
A There is some historical documents that indicate that in the 1800s, for example, in some communities, the school calendar in largely rural areas was just -- was six months in length, which was quite clearly responding to the growing seasons of the Midwest, for example.
That is, school would take up in the fall soon after the corn was in, soon after the harvest was in, including corn.
And especially for older children, school was out in midsummer at the point where the older children could be helpful on the farms and ranches of that era.
Over a period of time, that's six months of school, six months off, it became a period of nine months in school, three months off.
So the traditional calendar is essentially a response to the economics of the nation.
Q When you say that the traditional calendar was not designed for educational values, do you mean anything other than what you have just told me
1. now?

2. A I said what I mean.

3. Q If the traditional calendar were not an educational calendar, wouldn't you expect to see damaged citizens?

4. A Might. The question would be if we had a different calendar, would they be better educated.

5. Q No. The question is: If the traditional calendar is not an educational calendar, wouldn't you expect to see students, who went to schools on an educational calendar, to grow up to be damaged citizens?

6. MS. DAVIS: Vague and ambiguous. I'm assuming you're referring to the discussion we had earlier?

7. MR. VILLAGRA: His use of the term.

8. THE WITNESS: They might have learned more if they had been on another calendar.

9. Maybe in that sense they were damaged.

10. BY MR. VILLAGRA:

11. Q All right.

12. A And they didn't reach their fullest potential.

13. Q Could the same be true of students who have attended school on the Concept 6 calendar?

14. A Less so than a traditional calendar.

15. Q Why do you say that?

16. A Because there would be less fewer periods of forgetting, less lengthy periods for forgetting.

17. I would have to say less so than if they were on a traditional calendar.

18. Q The Concept 6 calendar may have prevented students, educated at Concept 6 schools, to reach their full potential; is that correct?

19. MS. DAVIS: Objection, mischaracterizes his prior testimony.

20. THE WITNESS: They may have a greater degree of forgetting which, in turn, would mean some effect on the overall achievement.

21. Concept 6 is always a response to another problem.

22. BY MR. VILLAGRA:

23. Q At page 8, the very next page, the first full paragraph, you write: "The strongest argument for year-round education has yet to be fully recognized or fully implemented."

24. Do you see that?

25. A Yes.

26. Q What's the strongest argument for year-round education that as of at least '93, had yet to be fully recognized or implemented?

27. A It was the implementation of intercession programs in our year-round schools.

28. Q Does intercession, in your opinion, continue to be the strongest argument for year-round education that has been yet to be fully recognized or implemented?

29. A Yes.

30. Q Why do you believe that?

31. A I think intercessions are wonderful opportunities, throughout the year, to remediate either by enrichment or by remediation itself.

32. The problems that may have arisen through that school year -- I think it's unwise to wait until the end of nine months to say to students: Come back to summer school, now we'll remediate. It's too late.

33. Intercession has the -- it provides the opportunity to look at what students have done in the first learning period.

34. And, if possible, correct problems that may have arisen so those students are, then, ready during the next scheduled learning period to move right ahead with the rest of the class.

35. Q So what you're saying, that the
There may have to be some additional instructional resources made available at other sites.

There may have to be certain kinds of additional personnel hired in addition to the teacher.

Factors of that kind, all of which cost money.

Do you believe that in Concept 6 schools in California, intercession remains underutilized?

I don't know of any that don't provide any at all.

Do you believe that some multitrack year-round schools in California, underutilize the intercession as a time to remediate, provide remediation to students?

I do. And much of it is finance rather than just space.

If we ever fully realize what year-round education can do for students, it will be at the point where we can afford to run programs for whatever student problems occur to the greatest degree we can attack those problems.

You think it is matter of financial resources that prevents districts from preventing multitrack year-round programs from fully utilizing the intercession period?

That's certainly one of the primary factors.

Is there anything else other than financial resources that prevents districts from preventing multitrack year-round programs from fully utilizing the intercession period?

If financial resources were available, yes.

If financial resources were available, you would oppose extending the Concept 6 year from 163 to 180 days?

Not at all.

Why not?

Because if money were available, we could use outside spaces.

And that would be fine to have a longer year for Concept 6 students or any other students.

Do you think it would be to the benefit of students at Concept 6 schools to attend a school year that was 180 days instead of 163?

THE WITNESS: If good things are happening...
to students and poor students, then more days would always be desirable.

As long as there is an optional quality to that, too.

I do have some philosophical problems with just adding days without letting families make choices whether they choose to have those additional days.

BY MR. VILLAGRA:

Q   What do you mean by the "optional quality"?

A   Summer school is an option. That's additional education. If the money is made available for a program where all students in single-traditional and multitrack could all have 210 days of instruction, I would like to see that option. That's a personal philosophical view. As we covered before, I don't think the exact number of days is the real important factor in learning instructional efficacy.

Q   When you support the extended year, do you always support it with that caveat?

A   I have tried to, yes.

Q   If you could turn to page 10 and 11, there is a large paragraph in the middle that begins: "Increasingly."

A   Yes.

Q   If you look in about the middle, there is a series of questions.

A   Yes.

Q   "How long does a summer vacation need to be?"

A   Yes.

Q   "Three weeks? Four weeks? Five weeks? Certainly not ten to 12 weeks!"

A   Yes. Do you see that?

Q   Do you have an opinion how long summer vacation needs to be?

MS. DAVIS:  We have gone through this in great detail on another day.

THE WITNESS:  I don't have a specific recommendation. I have acknowledged that the association has suggested that, wherever possible, summer vacation be no longer than six weeks away from school.

BY MR. VILLAGRA:

Q   I know we spoke about research on summer learning laws. Here, at the end, you say: "Certainly not 10 to 12 weeks."

Q   Is it your position that a summer vacation should not be as long as ten weeks?

A   It is.

Q   And based on the research on learning laws?

A   Yes.

Q   All right.

A   Just simply, the longer we're away from anything, the more loss occurs.

MR. VILLAGRA:  Let's take a break.

(Recess taken.)

BY MR. VILLAGRA:

Q   You mentioned that the traditional calendar was not designed for educational reasons.

A   Yes.

Q   Do you remember that?

A   Yes, and social reasons.

Q   And is it the same process that in looking to see whether a calendar was designed for economic reasons, you look at the intended purposes for which the calendar was created?

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  That's what I am looking at, yes.

BY MR. VILLAGRA:

Q   That's how you would do it?

A   That's my statement and that's what I was looking at.

Q   Would you say that the multitrack calendar
was designed for educational reasons?
A Multitrack took the basic idea of year-round education.
And it was not designed for further education.
It was designed to meet the problem of over-enrollment.
Q Would you say that the multitrack year-round calendar was designed for educational reasons?
A No. It was designed to meet the problem of over-enrollment.
Q Would you say that the Concept 6 was designed for educational purposes?
A No. It was designed to address the problem of over-enrollment.
Q How do you know that?
A That was the reason given when the first Concept 6 calendar was implemented in Colorado.
(By Deposition Exhibit 37, Year-round Education and Overview, was marked for identification by the Court Reporter.)
BY MR. VILLAGRA:
Q Have you had a chance to review Exhibit 37?
A It appears to be a speech that I gave in 1985.
Q If I could turn your attention to looking at the top of page 3?
A Okay.
Q The first complete sentence says: "There are sure to be extra administrative details to be handled in a multitrack."
A I'm not following you.
Q There are page numbers at the top and bottom.
I'm using the page numbers at the top.
A Okay.
Q Do you see the first complete sentence: "There are sure to be extra administrative details to be handled in a multitrack situation (some staff such as principals and secretaries have more details to handle and greater responsibility)."
A Yes.
Q The next sentence says: "So, sometimes criticisms of year-round education come to the national office in this fashion. It's more work, it's more involved, it's disruptive. Most criticism is reflective of multitrack."
Q Do you see that?
A Yes.
Q Do you believe, sitting here today, that multitrack year-round education is more work?
A Yes.
MS. DAVIS: Let him finish.
BY MR. VILLAGRA:
Q More work than what?
A More work than would be true on a traditional calendar, for example.
Q What do you mean by more work?
A Designing the calendar, convincing people that we need to move in this direction, that sort of thing.
Q There is a lot of work in implementing a multitrack calendar at compared to a traditional calendar that's been around for 100 years.
Q Is a multitrack year-round calendar more work than a traditional calendar in any other way, in your opinion?
A There are some other things, too.
Q Could it be budgeting and so on.
A Everything that needs to be looked at in the changed process would need to be included.
Q Can you think of anything else?
A Not at that point.
Q When you say "multitrack year-round education is more involved," what do you mean?
A It's a continuation of more work.
Q It's more involved in the sense that the central office needs to keep track of which faculty...
are on-track, which are off-track. Same with students, which students are on-track, which are off.
Communication would be more involved because central office has -- always has to remember that some students and faculty are gone at a particular time. And an announcement may be made.

Q   Is multitrack year-round education more involved than the traditional school calendar in any other way, in your opinion?
A   I think at this point, that's what comes to mind.

Q   When you say "multitrack year-round education is disruptive," what do you mean?
A   That's what people say. What they have in mind, as I heard it, was -- well, our sports schedules are going to change. Or we won't be able to have a band. Or we won't be able to see everyone at the same time. All our friends will be gone. Those kinds of comments.

Q   Disruptive in any other way?
A   That's what I remember hearing.

Q   What you're describing here, are comments you remember coming to the national office of NAYRE, about multitrack year-round education?
A   It's disruptive that way, yes.
Q   All right.
A   It usually had to do with sports and bands, the important things of a school calendar, the most important, not just band, marching band.
Q   The last sentence that I read says: "Most criticism is reflective of multitrack."
A   Yes.
Q   What does that mean?
A   Most comments that are negative towards year-round education, revolve around the multitrack implementation of year-round education. Very rarely does someone speak against the educational value in the single-track version of year-round. They sometimes will criticize the implementation, how the process of implementing single-track.
But almost never do I hear an educational criticism. Now with multitrack, it's also true that very rarely is it really educational.

Q   It's more all the factors that go into the administration and the conduct of a multitrack program.
Q   Do you believe any of those factors that go into the administration of the year-round school can have any effect on education?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: I think it can have an effect.

Q   That has to be compared to what the effect would be if there was severe over-enrollment, if all the students were on the campus at the same time.

BY MR. VILLAGRA:
Q   The last sentence, you say: "The problem is the overcrowding of students in the limited space."
Do you see that?
A   Yes.
Q   Do you believe that the State of California, the entity that retained you to provide testimony in this case, should do anything to reduce the overcrowding of students into limited space in California schools?
MS. DAVIS: Vague and ambiguous, assumes facts not in evidence.
THE WITNESS: The State has done some things to relieve the overcrowding of students in limited space.

BY MR. VILLAGRA:
Q   Do you believe it should do more?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: If it's possible to do so, yes.

BY. MR. VILLAGRA:
Q   What are the things that you believe the State has done, so far, to relieve the overcrowding of students?
A   It's offered several statewide bond issues for the purpose of building new schools, refurbishing older schools, and even to provide some encouragement for the use of multitrack as another way of handling over-enrollment.
Q   Anything else?
A   Then, in the future, the State could certainly do the same sort of thing. Still easier to pass a bond issue statewide than it is -- even with the 55 percent that we currently have as of this day.
Q   In the next paragraph, the second
sentence, you say:

"Our experience has shown that

school overcrowding tends to run in

7- to 9-year cycles, and then a

decline of school enrollment sets

in."

Do you see that?

A   Yes.

Q   Do you believe that still to be the case?

A   I do on a national scale.

Most of our districts have used multitrack

for a period of time and not so at other times.

I said -- I used the word "tends."

I didn't say that was always true.

Q   That raises my next question.

When you talk about the school

overcrowding tends to run in 7- to 9-year cycles,

are you referring to overcrowding at a school level

or at a district level?

A   I don't remember when I said this exactly.

I think I was thinking of school level.

Q   So nationally, the tendency for a school

to be over-enrolled is for a 7- to 9-year cycle?

A   Yes.

Q   So if a school were over-enrolled and

implemented a multitrack year-round program, once

the over-enrollment ended, you would encourage the

school to convert to a single-track year-round

calendar?

A   Yes.

Q   Why would you encourage that?

A   Because of what I consider the inherent

educational values of a single-track calendar which

is less forgetting over the long summer of the

traditional calendar.

Q   All right.

A   Less forgetting than during the long

summer of the traditional school calendar.

Q   Have you looked at the Concept 6 high

schools in LAUSD to determine how long each has

been implementing a multitrack year-round calendar?

MS. DAVIS:  Vague and ambiguous.

"To encourage those of you from

districts already administering

multitrack programs to prepare for

the future when the decline does

occur."

Do you see that?

A   Yes.

Q   If it has not?

A   No.

Q   What about Garfield High School?

A   No.

Q   What about Roosevelt?

A   It hasn't been on that long to be in

a 7- to 9-year cycle.

Q   What about Fremont?

A   Same as the previous one.

Q   Do you have any idea how long Belmont has

been on a Concept 6 schedule?

A   No, not exactly.

Q   Can you give me an estimate?

A   I'm going to say right around 12 to 14

years, something in that period of time.

Q   What about at Garfield, how long has it

been on the Concept 6 calendar?

A   It would be roughly that same period of

time.

Q   And Fremont?

A   I can't say how long.

Q   On page 8 of this Exhibit 37?

A   Top number?

Q   No.  This time I was looking at the

bottom.

A   Okay.

Q   Do you see the first full paragraph in

this whole discussion of learning?

A   Yes.

Q   "I think we need to heed more of the

finding of the 1978 study of school calendars

conducted for the board of regents for the State of

New York titled:  "Learning Retention and

Forgetting."

In the next sentence you state:

"The report, please understand,

was not sponsored by the year-round

movement since New York has never

had, to my knowledge, a year-round
school whether extended year or
single or multitrack."
Do you see that?
A Yes.
Q Do you recall why you pointed out that
this report by the Board of Regents of the State of
New York was not sponsored by the year-round
movement?
A Well, so often, if it's a report that has
a connection with a group such as ours, critics
will say, if the -- if it was sponsored by,
therefore it can't be accepted.
In this instance, I wanted to be sure to
the listeners in my talk here, that I was saying
this was outside of any contact that NAYRE had had
with the study.
Therefore, it was important to realize it
was coming from a nonyear-round source, and
therefore may have more objectivity for some people
than what might otherwise be so if it were already
connected with year-round education.
Q For any other reason?
A No.
Q At the last full paragraph, the last
sentence, you say:
"I say as emphatically as I can,
I believe equal learning opportunity
for average and below-average
students would require more
year-round school in at least the
single-track, and perhaps the
multitrack and extended-year modes."
Do you see that?
A Yes.
Q Why did you say, if you recall, only,
perhaps, with respect to the multitrack mode?
A Because I was giving recognition to the
problem multitrack schools have with the extending
of the year within the four walls.
After this speech, I don't know exactly
the period of time, but I began speaking more and
more with a fellow educator to say we have to think
outside the box.
The box being the four walls of the school
house.
Q So at this time in 1985, you believed that
equal learning opportunity for average and
below-average students would certainly be provided
by single-track schools?
A It would be equal to traditional calendar
and -- actually, more than equal.
Q But not necessarily at multitrack schools?
A At this time, I was still thinking within
the box myself.
MR. VILLAGRA: I want to mark as
Exhibit 38, it's an article by Charles Ballinger,
entitled: UNLEASHING THE SCHOOL CALENDAR.
And it appears to have been published in
(Deposition Exhibit 38, UNLEASHING THE SCHOOL CALENDAR, was
marked for identification by the
Court Reporter.)
THE WITNESS: I don't remember including
this article in my declaration here.
MR. VILLAGRA: Can we help you out?
THE WITNESS: Yes, I did.
The fourth one listed.
BY MR. VILLAGRA:
Q Have you had a chance to look at
Exhibit 38?
A Yes.
Q What is it?
A It's an article I authored for Thrust
magazine, a publication for the Association of
California School Administrators, and it's for
Q Can we go back for one second to
Exhibit 37, the second to last page at the top,
it's Numbered 7?
A Yes.
Q The second full paragraph.
A Yes.
Q It says:
"Now, to be fair, we must all
recognize that scheduling classes in
high school is always a problem, and
scheduling in a multitrack situation
is more difficult for the scheduler.
It's not always possible to offer
all subjects to all students on all
tracks."
Do you see that?
A Yes.
Q It's still true?
A That's true.
Q All right.
A   Any calendar, including multitrack.
Q   Do you believe it is true at Concept 6
high schools in California?
MS. DAVIS:  Asked and answered.
THE WITNESS:  Yes.
MR. VILLAGRA:  If you could turn to the
last page of this document, we’ve touched on this
topic a few times in terms of the length of a
vacation.
   In the second full-length paragraph, what
is an optimum number of days of instruction for a
number of students?
   You said:
   "That question is opened for
further consideration.
I could make a good case for a longer
instructional year."
Do you see that?
THE WITNESS:  I see that.
BY MR. VILLAGRA:
Q   Do you believe that an optimum number of
instruction for students is still an option for
further consideration?
A   I do.
Q   If you were to make a case for a longer
instructional year, would you still make it with
the provisos you have listed here?
MS. DAVIS:  Down below?
MR. VILLAGRA:  It says:
   "I would include a few more long
weekends here and there.
And I would alter the
instructional program so it's more
varied.
And I would like to expand the
kinds of programs we have, such as
enriched intercession and the
collegiate January concept for
special study."
Is that still an accurate statement of
your position on the longer instructional year?
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  Yes.  In general, I would
say yes.
BY MR. VILLAGRA:
Q   Would you add any other provisos?
A   No.  I think the enriched intercessions
would be ones that I really stress, which I have
already.
The collegiate January concept, in some
colleges, January is between semesters and used for
special -- like an intercession, really.
   I think I could probably go along with
this.
   I would reword this maybe a little
different.
   But the ideas I would still hold to, yes.
Q   I'm going back to the exhibit we just
introduced, Exhibit 38.
   I'm going to No. 18, in the lower
left-hand corner.
   In the middle column, the first full
paragraph.
A   Yes.
Q   It says:
   "Quite clearly, multitrack
year-round education at the high
school requires careful planning and
constant watchfulness to see course
offerings so important to students
academic growth and subsequent
graduation are available to students
in a timely manner."
Do you see that?
A   Yes.
Q   What do you mean by "available to students
in a timely manner"?
A   So that what they need is available to
them before they graduate as seniors.
Q   Just to clear this up.
I know we have had a lot of discussion
about AP courses.
What are the corporation offerings, in
your opinion, that are important to economic growth
if AP growth is one of those?
Just let me know and we can put that to
one side.
MS. DAVIS:  So you're quoting "to student
academic growth"?
MR. VILLAGRA:  Yes.
THE WITNESS:  All the basic courses, of
course.
Required courses are important for
graduation.
That's true whether a student is going on
to an institution of higher education or not.
So all of those courses would be what I'm
talking about here.
Then, any courses that we could call
college prepare courses, or courses preparing for
BY MR. VILLAGRA:

Q   What about honors courses, where would those fall in?
A   Honors would be, again, like AP classes. Those are certainly enriched programs in preparation for college. But you don't have to just have those classes in order to get into many institutions of higher education.

Q   All right.
A   I'm talking here, in general terms.
Q   Are you familiar with what's known as the "A through G requirements"?
A   I don't.
Q   Do you believe all tracks at Concept 6 high schools make available to students course offerings so important to students's academic growth and subsequent graduation?
A   I do.
Q   What's your basis for believing that?

THE WITNESS:

A   That's the basic role and purpose of the high school, any high school.
Q   It's your assumption that Concept 6 high schools are doing that, or do you have evidence that that's being done?
A   I'm assuming, at this point. But the evidence is that graduates of these Concept 6 high schools are going on to institutions of higher learning. So I have to assume these schools are providing the basic requirements necessary to get into colleges.
Q   When you refer to evidence of students from these Concept 6 schools going to college, what did you mean?
A   The fact that they are graduates from Garfield, Huntington Park, the various multitrack high schools that are going to four-year colleges. Even though I haven't done a study, I would just say, obviously, these students have had the basic programs required to get into institutions of higher education.
Q   To your knowledge, is the California Department of Education keeping statistics on the number of high school graduates in the state who have taken the courses necessary to be able to apply to the University of California and Cal State systems?

MS. DAVIS: Vague and ambiguous.
THE WITNESS: I don't know that's done on any widespread scale or not.

Q   I don't know.
BY MR. VILLAGRA:

Q   Have you ever seen data indicating the figures?
A   Not on what I call a statewide scale.
Q   It might be there.
A   I haven't seen it.
Q   Have you ever studied the graduation rates of Concept 6 high schools versus traditional calendar high schools in California?
A   I haven't studied that, no.
Q   If I use the term "college going rate," would you know what I'm referring to?
A   I'm not sure.
Q   How would you describe the percentage of graduates from a particular high school, who have been accepted to a college?
A   Technical colleges call themselves colleges as well.

Q   Students could go to a technical college who wouldn't have the kind of requirements for the University of California.
A   That more clearly defines what you're referring to.
Q   Have you seen data comparing the number of students at Concept 6 high schools gaining admission to four-year colleges and universities as compared to students at traditional calendar schools?
A   I haven't seen that data.
Q   Do you think it would be useful to look at data showing those figures?
MS. DAVIS: Vague and ambiguous.
THE WITNESS: It could be useful, sure.

BY MR. VILLAGRA:

Q   To your knowledge, when calculating high school GPA, Grade Point Average, for applicants, do colleges and universities place additional weight on AP courses?
A   Yes, they do. I can't speak for all
colleges.
I know some do.
Q    Do you know whether the UC system does that?
A    I believe, generally.
      But, again, I don't know whether that's true for all campuses.
      But, yes, there is some weight given to AP courses, sure.
Q    What do you mean by "some weight" is given?
A    There is usually an acknowledgment that a student has been in an AP class and satisfactorily completed the class.
Q    To your understanding, would a grade of "A" in an AP class, which would normally rate a grade point average of 4.0, be weighted at a 5.0 at a college or university that gave additional weight for AP courses?
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  I'm not knowledgeable about the weight given.
I do know there is some weight given.
BY MR. VILLAGRA:
Q    Do you believe, given that some weight is given to grades in AP courses, that if students at Concept 6 high schools have limited access to AP courses as compared to traditional calendar students, that they are losing out on the opportunity to have their grade point averages scaled up when they apply for college admission?
MS. DAVIS:  Objection to the form.
THE WITNESS:  I don't know.
I don't know if there are affirmative action programs for students from small high schools or not.
BY MR. VILLAGRA:
Q    Do you know whether the State of California requires careful planning and constant watchfulness of multitrack year-round high schools to see the course offerings so important to students' academic growth and subsequent graduation are available to students in a timely manner?
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  I don't know whether it does or not.
BY MR. VILLAGRA:
Q    Do you believe that the State of California should require multitrack education at the high school requires careful planning and constant watchfulness.
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  I don't know whether it does or not.
I'm not in a position to make that judgment.
BY MR. VILLAGRA:
Q    Why not?
A    I'm just not in a position to.
Q    When you say: "Clearly, multitrack education at the high school requires careful planning and constant watchfulness," What do you mean to convey by the word "requires"?
A    I think that "requires," from a professional perspective of the role of high school, is to prepare students to be productive adult citizens in the society.
And all the things that goes with the meaning of that, if that's the high school's purpose, it seems to me, administrators, faculty, the professionals of the school have to have the careful planning and watchfulness to see that students are given the academic background to allow them to be as fully productive citizens as possible.

Q From a professional perspective?
A Yes.

Q Do you believe that the State of California should require multitrack year-round high schools to engage in careful planning and constant watchfulness that course offerings, important to students academic growth and subsequent graduation, are available to students in a timely manner?

MS. DAVIS: Vague and ambiguous.

THE WITNESS: Who?

BY MR. VILLAGRA:
Q The State of California.
A From which you described from a professional perspective?

MS. DAVIS: Asked and answered.

THE WITNESS: I don't know how I feel, whether the State should be doing that right at the moment.

BY MR. VILLAGRA:
Q Have you given that subject any thought, previously?
A Not the way you asked it.

Q You haven't given that thought in the way that I have asked it?
A Not in the way you have asked it.

Q In what way have you given it thought?
A The kind of thing which I say here, which is people at the high schools, who are responsible to see that students are well prepared, should be doing their jobs.

That's what they are there to do. At least at the local level, that should be done.

MR. VILLAGRA: I want to mark as Exhibit 39, a document entitled: "Year-Round Education, Learning More for Less," by Charles Ballinger, dated June 1990. (Deposition Exhibit 39, Year-Round Education, Learning More for Less, was marked for identification by the Court.

Q What do you mean by that?
A Pupils who are English language learners, whatever the language may be at the home, are very likely, during the three months away from classroom work where English is spoken or English acquisition is attempted, those students are very likely to revert to the language of the home during the three months away from language instruction, from the home or it could even be in the community, surrounding community of the home.

Q Okay.
A And those who deal with acquisition of language tell me that the longer the -- the steadier one uses a second language, the more proficient one will become in that language. And so, I'm writing that three months away from formal instruction in language acquisition is important -- is important to reduce in order to aid in the acquisition of a new language or a second language.

Q You mentioned you were informed of this by those who deal with language acquisition?
A Yes.

Q Can you name for me anyone in particular?
A Discussion with Rosalia Salinas, who is
director of foreign languages at the San Diego County Office of Education.

Q   Anyone else?
A   And prior to her, Robert Landon, who, likewise, was coordinator of foreign languages at the San Diego County Office of Education.

Q   Anyone else that you can recall?
A   Not by name.

I've talked with classroom teachers who say -- who have confirmed that that is important.

Q   Are you aware of any research supporting the proposition that three months away from formal instruction hinders language acquisition?
A   I don't recall research that says -- that specifies three months.

What we're referring to is -- here is the three months of the traditional calendar.

It doesn't mean there isn't such research that speaks to the length of time away.

Q   When you say you don't recall research dealing specifically with three months away from formal instruction, what did you mean?
A   I was going up to the sentence before that where I'm talking about the long summer vacation of the traditional calendar.

Q   Are you aware of any research dealing with the length of time away from formal instruction and its effect on language acquisition?
A   Not a specific study.

I can't refer to one.

Q   You mentioned that the reason the time away from formal instruction would hinder language acquisition is that the student would revert to the language of the home during the vacation; is that right?
A   Sure.

Q   A student on a Concept 6 calendar, how long would they be on vacation?
A   Two months.

Q   And they would have two 2-month vacations?
A   Yes.

Q   An English language learner at a Concept 6 school would have four months to revert to the language of home during vacation; is that correct?
A   They would have four months, but not in a continuous fashion.

Q   Is it your opinion that a two 2-month vacation is better than one 3-month vacation in terms of language acquisition?
A   That's my general feeling, yes.

Q   What's your support for that?
A   Just professional judgment, personal, professional judgment.

Q   Can you point to any research?
A   I cannot.

Q   Have you talked to Rosalia Salinas about her opinion whether a two 2-month vacation is better than one 3-month vacation for acquisition for English language learners?
A   I don't recall that kind of specific conversation.

Q   Have you had that kind of conversation to that effect with anyone?
A   Not to that specificity, no.

BY MR. VILLAGRA:
Q   Do you know who Charlie Naylor (phonetic) is?
A   I do.

Q   Who is he?
A   I don't know the exact title.

Q   I don't know the exact title.

Let's say "director," for lack of knowledge of his exact title, director at the British Columbia Federation of Teachers.

Q   How do you know Charlie Naylor?
A   I have read of the things he has written.

And I have spoken to him in person.

Q   What, written by Charlie Naylor, have you reviewed?
A   I believe I have read either an article that he wrote or snippets of an article he wrote about year-round education.

Q   One article?
A   Well --

Q   Or snippets of one article?
A   I don't know if it was one article.

But it was a series of quotations of his.

Q   You said you have always spoken with him?
A   Yes. I have met him in person.

Q   How many times have you spoken with him?
A   Twice.

Q   When was the first time you spoke with him?
A   I met him first, at a meeting on year-round education in Vancouver, British Columbia.
I think that was only a typical greeting.
I had a short but a little longer conversation with him at a meeting of the American Educational Research Association.

Q   When was that longer conversation?
A   Probably about three or four years ago.

Q   Have you spoken to him on any other occasions?
A   Not that I recall.

Q   What did you discuss during the second conversation about three or four years ago?
A   Well, I told him I disagreed with his point of view and I said: "As I read what you're saying, much of it has come from material put out by a group called "Time to Learn," sponsored by the International Association of Amusement Parks and Attractions."

Q   Did you discuss anything else?
A   No, it was a short conversation.

Q   What did he say?
A   He said: "I disagree with you."

Q   Do you recall whether Charlie Naylor has concluded that many of the studies which show increased educational achievement for students in year-round schools, are published by the National Association for Year-Round Education?
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  I think that he said that.

BY MR. VILLAGRA:
Q   And you disagree with that conclusion?
A   I disagree with that, because we don't have that many studies.

Q   Do you disagree with Charlie Naylor's conclusion that the NAYRE appears evangelical in its promotion of year-round education?
MS. DAVIS:  Calls for speculation as to Mr. Naylor.
THE WITNESS:  I know he has written that. I have seen that before. I guess that's a matter of personal judgment, whether we're evangelical in our attitudes.

BY MR. VILLAGRA:
Q   Do you consider yourself evangelical in the promotion of year-round education?
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  I don't consider myself evangelical, because I try to keep a rational tone to my talks.

I'm an advocate, clearly.
And I make no presence otherwise.
But I don't think I'm evangelical.

BY MR. VILLAGRA:
Q   When you say you "make no presence otherwise," to being an advocate of year-round education, what do you mean?
A   As you asked me the first day of these four days of deposition, I admitted right up front that, yes, I'm an advocate.
And I don't back away from any other suggestion.

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And I make no presence otherwise.
But I don't think I'm evangelical.
research study on its own. It's always invited others to do it. So, we published those three reports that I mentioned a couple of days ago. But we didn't do the research ourselves.

BY MR. VILLAGRA:

Q   Do you disagree that some of the research published by the NAYRE appears methodologically suspect?

A   I don't.

Q   He certainly is entitled to his opinion.

BY MR. VILLAGRA:

Q   One of the papers published by the NAYRE was authored by, I don't remember his first name, Winters?

A   Walter Winters; Dr. Walter Winters.

Q   Do you disagree with Charlie Naylor's conclusion that Walter Winter's review of studies published in '94 by NAYRE, only included studies supplied by the NAYRE and failed to conduct even the most basic of literature searches?

MS. DAVIS:  Vague and ambiguous, calls for speculation as to what Mr. Naylor is talking about.

THE WITNESS:  I know he's incorrect in that because we offered to talk to Winters about all that we knew about at the time, all that we knew at the time.

BY MR. VILLAGRA:

Q   Have you investigated any of the allegations by Charlie Naylor against NAYRE?

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  Most of them are untrue. Investigated further than my own reaction; is that what you mean?

BY MR. VILLAGRA:

Q   Have you taken any steps to determine whether any of the allegations by Charlie Naylor were accurate?

A   I object that he's answered that.

Q   You can answer.

MR. VILLAGRA:  If he has a gut-level opinion?

A   He told you he didn't.

Q   That he sent not only documents that were supportive of year-round but also negative.

BY MR. VILLAGRA:

Q   There are a number of allegations.

A   Did you investigate all of them to determine whether they were true or not?

MS. DAVIS:  Vague and ambiguous.

THE WITNESS:  Most of them are untrue.

Q   I didn't go further.

A   Since we have very limited resources at NAYRE, there is a decision to be made whether you spend time on positive forward movement or whether you spend your time answering negative critics. In this case, I was busy with the work of the association and really haven't had time to respond to all of these allegations.

BY MR. VILLAGRA:

Q   When you say most of the allegations were untrue?

A   From my perspective, yes.

Q   What do you mean by "from my perspective"?

A   Sitting where I sat as executive director of the association, I knew the kinds of things that he charged just weren't true.

Q   Did you ever consider, as executive director of the NAYRE, taking any legal action against Charlie Naylor for stating untruths in his article about the NAYRE?

A   No.

Q   Why not?

A   It's a democratic society, people are entitled their points of views.

Q   You never considered suit for defamation?

A   No. I didn't think he defamed me personally.

Q   He's a critic of year-round education.

A   He was there the first time it was raised by teachers in British Columbia.

Q   He is a union leader and has his own reasons for opposing the concept.

A   At a conference, the first conference in British Columbia on the topic, I know in sitting in one of the focus groups that he expressed his opposition.

Q   Expressed his opposition to what?

A   To year-round education from the get-go.

Q   What did you take from that?

A   I took from that, that he was opposed to year-round education and would do his best to block
its implementation in British Columbia.

Q   How is that connected to his union membership?
A   As a member of the union, leader of the union, he was going to use his power, if you will, as a union leader to block its introduction into the province of British Columbia or try to block it.

Q   Do you recall Charlie Naylor's allegation that a number of NAYRE articles appear uncritical and very limited in references with statements made which are frequently unsubstantiated by evidence?
MS. DAVIS:  Calls for speculation as to what he's calling "articles."
THE WITNESS:  I know he's made that statement. I don't know what he means by it.
BY MR. VILLAGRA:
Q   You believe that to be untrue?
A   I do.
Q   One of the articles he cites in particular is an article you authored in 1987?
A   Yes.
Q   It's entitled:  "Year-Round School Where the Learning Never Stops," published in PHI DELTA KAPPA N EDUCATION in 1987?
A   Yes.
Q   He says:  "An example is the work of Ballinger et al., unsubstantiated claims of failure of traditional calendar schools and the linkage between the purported failure and the traditional school calendar."
Do you still believe in the failure of traditional calendar schools?
MS. DAVIS:  Asked and answered.
THE WITNESS:  I believe the way I say it is a more positive way.
I believe that year-round education is a better way to educate children than traditional calendar.

BY MR. VILLAGRA:
Q   As we discussed, at length, that's based on your perception of the learning laws as associated with the summer vacation in a traditional calendar?
A   That's correct.
MS. DAVIS:  Mischaracterizes his prior testimony.
intercessions.
We have reason to believe that they are very important to have any kind of study that defines or helps to define the impact of intercession. I think it would be helpful to the profession, not just to those of us in year-round education.

Q   Do you believe it's necessary to compare apples with apples to look at year-round schools and their intercession programs and traditional calendar schools and their summer programs?
MS. DAVIS:  Vague and ambiguous.
THE WITNESS:  Yes.
BY MR. VILLAGRA:
Q   Why?
A   To the greatest degree possible, it would be a more solid research effort.
Q   What do you mean?
A   A more careful research effort would be a better way to put that.
Q   Do you have currently, sitting here today, any intention to do further work in the case?
A   I don't know.
MS. DAVIS:  Other than coming tomorrow?

THE WITNESS: I have been asked to allow two more days for deposition. I presume there would be further work.

BY MR. VILLAGRA:
Q   Do you intend to do any further research into the academic performance index?
MS. DAVIS:  For purposes of this case?
MR. VILLAGRA:  Yes.
THE WITNESS:  I may very well.
BY MR. VILLAGRA:
Q   Do you know?
A   I don't know.
Q   Besides the State document here, I would have to go to some of the professional journals to see what might be said.
Q   So sitting here today, you can't even tell me what else you would look at besides the Technical Design Group document on the school characteristics index?
A   I would go to journals to see what kind of articles have been written about the school characteristics indexes, if, indeed, there have been.
Q   Why didn't you do that previously?
MS. DAVIS:  Vague and ambiguous.
BY MR. VILLAGRA:
THE WITNESS:  Like other practitioners, I have a day-by-day working knowledge. I didn't -- I didn't see that as necessary for my report.
BY MR. VILLAGRA:
Q   You didn't see it as necessary for your report?
A   Not for further investigation as you're now suggesting.
Q   Why not?
A   Because I thought I had enough information for the kinds of things I said in my report.
Q   Do you still believe you had enough information for the kinds of statement you made in your report for school characteristics index?
A   For my report, yes.
Q   Why do you think that?
A   Simply because the report stands on its own and says what I want it to say and tries -- I think the report conveys what I wanted or needed to say.
Q   Don't you believe that you had the application to describe the school characteristics index accurately?
MS. DAVIS: Assume he hasn't described accurately.
Q   Do you believe you have described the school characteristics index inaccurately?
A   Not to my knowledge.
Q   Not to your knowledge?
A   That's correct.
MR. VILLAGRA: I have no further questions at this time.
May we stipulate that copies of documents attached to the deposition maybe used as originals. And may we stipulate that the original of this deposition be signed under penalty of perjury. That the original be delivered to the office of O'Melveny & Myers and Lynn Davis. That the court reporter is relieved of liability for the original of the deposition. That the witness will have 45 days from the date of the court reporter's transmittal letter to Lynn Davis at O'Melveny & Myers for the witness to sign and correct the deposition. That the witness will notify all parties in writing of any changes to the deposition. And that if such changes or the signature are not communicated within that time, any unsigned and uncorrected copy may be used for all purposes as if signed and corrected.
MS. DAVIS: So stipulated.
(TIME NOTED: 4:34 P.M.)