

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

ELIEZER WILLIAMS,)
)
 Plaintiff(s),)
)
 vs.) No. 312236
)
 STATE OF CALIFORNIA, et. al.,)
)
 Defendant(s),)
 _____)

DEPOSITION OF JOHN KIRLIN, Ph.D.
Sacramento, California
Friday, September 5, 2003
Volume 3

Reported by:
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CSR No. 5883
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1 BE IT REMEMBERED that, on Friday, the 5th day of
 2 September 2003, commencing at the hour of 9:07 a.m.
 3 thereof, at the Law Offices of Morrison & Foerster, 400
 4 Capitol Mall, Suite 2700, Sacramento, California,
 5 before me, LISA RICHARDSON, a Certified Shorthand
 6 Reporter in and for the State of California, duly
 7 authorized to administer oaths and affirmations, there
 8 personally appeared,
 9 JOHN J. KIRLIN, Ph.D.,
 10 a Witness in the within-entitled action called by the
 11 Plaintiffs herein, who having been duly sworn by the
 12 Certified Shorthand Reporter to tell the truth, the
 13 whole truth, and nothing but the truth, was thereupon
 14 examined and interrogated as hereinafter set forth.
 15
 16 (Plaintiffs' Exhibit 22 was marked for identification.)
 17
 18
 19 EXAMINATION BY MS. WELCH (cont'd)
 20 Q Morning, Dr. Kirlin.
 21 A Morning, Leecia.
 22 Q Looking at page 23 of your expert report, if
 23 you could.
 24 A Yes.
 25 Q I'm also going to direct your attention to

1 what's been marked Exhibit 8.

2 MR. CHOATE: Before you get started, let me
3 just quickly note for the record that Dr. Kirlin has
4 provided information to counsel for plaintiffs before
5 the deposition this morning that shows the source of
6 the data in table 9 of Dr. Kirlin's expert report.

7 MS. WELCH: I will be making that an exhibit
8 in a bit.

9 Q Could you take a look at Exhibit 8,
10 Dr. Kirlin?

11 Comparing the numbers in Exhibit 8 to the
12 numbers on page 23, could you take a moment to let me
13 know if Exhibit 8 is the source for these numbers? And
14 I'm referring to the numbers on the bottom of the page.

15 A (Witness reviewing document.)

16 It is the source from which those numbers were
17 derived. But what I don't see on Exhibit 8 is the
18 summation, if you will, which then yielded the text on
19 page 23. So it might take me another minute to find
20 it, but I'm not sure it is in the exhibit. These are
21 the raw data which then end up in that text.

22 Q When you say it might take a minute to find
23 it, do you mean referring to Exhibit 8?

24 A I will spend another minute on Exhibit 8. But
25 what I was looking for, since these data -- these

1 statements on page 23 -- as an example, I have, "Total
2 revenue/enrollment equal to 102.4 percent of districts
3 of the same type." That refers to all of the types of
4 districts; so it includes the elementary, the unified
5 and the high school.

6 And what I saw in my first look at table 8
7 kept those separate. And I will take just a moment --
8 Exhibit 8. I will take a moment to see if it was in
9 here someplace, because that is a summation figure, if
10 I may.

11 Q I'd appreciate that. Take as much time as you
12 need.

13 A (Witness reviewing document.)

14 Give you a brief progress report here, because
15 I found some of the numbers, but it's very hard to read
16 them. On page 7 of 16, the last of the small print
17 pages.

18 In the far right column CU, which is the label
19 at the top, average of 16 districts, the first item had
20 total revenues/enrollment equal to 102.4 percent of
21 districts of the same type, is actually seen at line
22 345 where the value is 102.36, rounded to 102.4.

23 Similarly, the next item of text on page 23 is
24 at line 348 showing the table 104.29, rounded in the
25 text to 104.3.

1 The next item has enrollment amount, average
2 spent in enrollments, per enrollment on instructional
3 materials. What I don't see in front of me is the
4 absolute value 1,008 -- that's the reason it's a
5 progress report, not yet a complete report -- 2002
6 annually. That's an arithmetic calculation, just
7 divide by 5, and equals 107 percent of like districts.

8 And this I find that I can't -- what is shown
9 at line 351 is hard to read, but it appears that it is
10 104.8. If that's accurate, then I made an error in
11 transmitting it. Instead of 107, it's 104.5.

12 And then if you go down to the next item of
13 expenditures on sites and buildings, again I don't find
14 the absolute value. But the percentage value is seen
15 in line 357, and it does appear to be correctly
16 entered, because the value shown in the column is
17 89.11, and it is shown in the text as 89.1.

18 I'd have to go back now and find the average
19 balance of unexpended funds which is shown at line 340,
20 and it is shown in the table as 22.36 and is rounded at
21 22.4.

22 So I've been able to find those. I could dig
23 further and find the enrollment, the absolute values,
24 also, or it could be that they are not in this printed
25 copy of the document.

1 Q Why don't you just take a couple more minutes
2 to see if you can find it in the printed copy.

3 A I find this in the document, and I need now to
4 go back and -- the figure on buildings in figure -- on
5 page 23 is reflected at line 355, and shows in the
6 table -- in Exhibit 8 as \$2,474.03, and is shown in the
7 text at \$2,474. So it is correct.

8 Q Would you tell me which page you are looking
9 at?

10 A This is the same page. I'm sorry, the last of
11 page small text it is page 7 of 16.

12 Q Okay. Thanks.

13 A The figure on instructional materials is shown
14 at line 349, and the value shown in the table is also
15 as it was for the percentage figure, the absolute value
16 is somehow different than it was in the text at page
17 23. And the value shown in the table is 979.27. So
18 \$979.27. I am not -- I have no understanding of why
19 there's a discrepancy between the printed copy here and
20 what's in the text. I'd have to find a way to resolve
21 that. But that's the source of the numbers that you
22 asked about.

23 Q How would you resolve it? What would you need
24 to do?

25 A I would observe first it doesn't change the

1 thrust of this argument. They are still expending the
2 amount that they are spending, and it is an amount
3 greater than like districts. So it doesn't go to the
4 general conclusion of the section.

5 I would have to go back and check this file,
6 which was printed at the time, April 16th, so right at
7 the end of the process, and I presume -- and compare it
8 to whatever I have electronically to see. It's always
9 possible I made an error in entering numbers, but it's
10 very odd that I made apparently two errors in the same
11 category and the others are exactly accurate. So I
12 don't know what happened.

13 These are complex Excel spreadsheets, and
14 it's possible if someone changed one number someplace
15 in this, an error was introduced. And it could have
16 happened on my side, or it could have happened after I
17 transmitted the file to counsel.

18 But I could go back, basically have to go back
19 to that. I would have to make certain that the -- if
20 it's not immediately apparent in the electronic copies
21 I have, I would have to then work back and quality
22 control, make certain that the summation equations are
23 accurate. So basically a digging back to see where the
24 discrepancy arose.

25 Q Okay. I will just reiterate my earlier

1 how you have to enter the website, you are given an
2 opportunity to ask for a variety of types of reports.
3 And to get this report, you have to enter in up above
4 under district comparisons, select a year -- and these
5 data are 2000-2001 -- select county, then select a
6 district -- in this case I selected Los Angeles County
7 and Inglewood Unified. Then to get this specific
8 report, you also need to go to the next comparison
9 value section and ask to compare districts by
10 enrollment. It will give you this -- it will give you
11 the enrollment of the district you selected -- in this
12 case Inglewood Unified. And the default value will be
13 plus or minus 15 percent. That will then pull up the
14 data that is shown in the balance of the report. And
15 as I said, you have to do this district-by-district.

16 If one were to go then to the table and look
17 at Inglewood Unified, which on the screen shows
18 highlighted, but here is not highlight and is the fifth
19 row, there are a number of values. And I rearranged
20 them for table 9, but the second from the right value,
21 for instance, is annual ADA, 16,969. And if you were
22 to look at table 9 for Inglewood Unified, you would
23 find that value.

24 Immediately to the right of that is cost for
25 ADA, which is also the same number in table 9, \$6,142.

1 request for the electronic data.

2 MS. WELCH: Why don't we go ahead and make
3 this document you brought today an exhibit.

4 (Plaintiffs' Exhibit
5 No. 23 was marked for
6 identification.)

7 Q BY MS. WELCH: Dr. Kirlin, do you recognize
8 Exhibit 23?

9 A Yes, I do.

10 Q Could you explain what it is, please?

11 A Yesterday or the day before, but possibly
12 yesterday, I was asked for the sources on table 9 which
13 somehow got omitted in the draft that I -- in my expert
14 report, for which I apologize again.

15 This is that source. The data comes from the
16 California Department of Education. And this is a -- I
17 brought this down last night. This is an example of
18 the information for Inglewood Unified School District.
19 And to do this you have to do it district-by-district
20 or for all districts in the county, which gives you a
21 longer list. And I will explain two things here.

22 One, how I got the data, and then second, how
23 I entered them into the table.

24 When one enters the site at the department
25 after the back slash at www.ed-data.k12.ca.us/, that's

1 Table 9 also includes percent minority, and
2 for that you have to go back over to the left, to the
3 third column from the left, and that value is 99.3
4 percent, shown in table 9.

5 The next column in table 9 is percent free and
6 reduced price meal. That is immediately to the right
7 of the percent minority as 61.8 shown accurately in the
8 table.

9 The next number in the table to the right and
10 also to the right in the data source is percent English
11 learners, and it is 36.4 percent.

12 So in doing this -- now that's just the
13 process. This is the source and how -- where the data
14 extracted from.

15 In doing this I pulled them up, and I had the
16 Excel version of table 9 open, and I would get the
17 numbers and probably scratch them down on a piece of
18 paper, close the CDE cite, or shrink it down, and then
19 enter the data into the Excel file. So that's how I
20 did it.

21 Q I'm sorry if you already told me this.

22 Why did you put -- in the comparison value
23 section, why did you put in 17,295 as the enrollment?

24 A Actually you don't enter that. Once you've
25 selected Inglewood Unified, it provides the enrollment

1 value you have to select -- it gives you a variety
2 of -- under this -- the box to the left under
3 enrollment there are a variety of other choices you can
4 make. This one ends up getting -- what I was seeking
5 to do in this, in this table was some basics about the
6 districts I was seeking to analyze. And this was
7 the -- turned out the way that I found to find those
8 data on the CDE cite.

9 Q I think you've stated earlier that you then
10 did this for each of the districts --

11 A That's correct.

12 Q -- in your chart.

13 A That's correct.

14 Q Going back for a second to Exhibit 8, my
15 recollection is when we spoke about this earlier that
16 you were not able to remember where that data came
17 from. Is that correct?

18 MR. CHOATE: Objection, vague and ambiguous.

19 Are we talking about -- what data specifically
20 are we talking about?

21 MS. WELCH: All of the data in Exhibit 8.

22 MR. CHOATE: All of the data in Exhibit 8.

23 Q BY MS. WELCH: Who gave you the data, in other
24 words?

25 A This is the one that my memory was that

1 Q BY MS. WELCH: Does the data in Exhibit 8
2 contain figures for how you averaged out the five years
3 from 1996/97 to 2000-2001 that you reference on page
4 23?

5 MR. CHOATE: Objection, vague and ambiguous,
6 asked and answered.

7 THE WITNESS: As I understand the question,
8 what I just referred to is the source for those numbers
9 on page 23 is in that right-most column. And those are
10 arithmetic calculations. So it's a -- let me go back
11 to it and make sure I'm speaking -- there is an
12 underlying formula under those that those are stated to
13 be averages for all 16 districts, and so they would --
14 that is my understanding of what they are. They are
15 arithmetic averages.

16 Q BY MS. WELCH: In your comparison of certain
17 districts which you say plaintiffs are enrolled in and
18 other districts of the same type, you analyzed figures
19 relating to instructional materials and facilities.

20 Is there a reason why you didn't analyze the
21 teacher characteristics in these districts?

22 MR. CHOATE: Objection, vague and ambiguous as
23 to "teacher characteristics" and "districts."

24 THE WITNESS: I did not. And I don't have a
25 particular -- I -- I don't remember what my thinking

1 whether it came from the Department of Finance or
2 whether it came directly from them and whether they had
3 it from their own files or they got it from the
4 California Department of Education. I don't know
5 whether part of it came from Department of Finance and
6 part from the California Department of Education. And
7 that's what I could not remember. It came to me from
8 some representative of the -- one of those two, as I
9 remember.

10 Q Do you know if it's publicly available?

11 MR. CHOATE: Again, Leecia, are you referring
12 to all the data everywhere within Exhibit 8?

13 MS. WELCH: Yeah.

14 THE WITNESS: All the data in table 8.
15 Actually I do not know the answer to that question. I
16 do not know the answer to that question.

17 Q BY MS. WELCH: The date on Exhibit 23 is
18 fiscal 2000-2001. I take it that's the year for table
19 9; is that correct?

20 A That is correct.

21 MR. CHOATE: Can you read back the question,
22 please? Just the question.

23 THE REPORTER: The date on Exhibit 23 is
24 fiscal 2000-2001. I take it that's the year for table
25 9; is that correct?

1 was in that regard.

2 It may be that -- I don't remember what the
3 thought process was that led me to focus on
4 instruction. I don't think I ever even attempted to do
5 teachers.

6 Q BY MS. WELCH: Do you think that analyzing
7 whether or not NAEP scores are improving is a good way
8 to measure whether California's education reforms are
9 working?

10 MR. CHOATE: Objection, vague and ambiguous.
11 I will also object to the extent it calls for
12 Dr. Kirilin to testify about matters that are outside
13 the scope of his expert report.

14 THE WITNESS: This is not an area of my
15 expertise of how one would assess the performance of
16 students.

17 There is a discussion in the report of some of
18 the debate about using NAEP scores, and I did not take
19 a position on that.

20 MR. CHOATE: Leecia, can we set Exhibit 8
21 aside?

22 MS. WELCH: Yes.

23 Q So if the state is interested in knowing
24 whether or not the reforms are working, you don't think
25 they should look at test scores as indicators?

1 MR. CHOATE: Objection, argumentative, it's
2 vague and ambiguous. And again I will object to the
3 extent that it calls for Dr. Kirlin to testify about
4 matters outside the scope of his expert report.

5 THE WITNESS: This is not the subject of my
6 expert report. I discuss test scores in my expert
7 report in the context of the difficulty in ascertaining
8 what progress was. And I think that is relevant to
9 the, to one of the arguments I'm developing in the
10 report about how, how challenging policy making is in
11 this area. If there was an easily-agreed upon measure
12 of success in performance, that would make it easier to
13 then work back logically and agree on what was working.

14 And part of the reason I've introduced that
15 controversy and the difficulty and challenges in
16 assessing progress is in that context. It's not to
17 make an absolute judgment, it is my observation that
18 people look at these scores, they must look at them,
19 that's wholly sensible to me. But the fact that
20 there's not, not closure, if you will, and broad
21 agreement as to which scores can be used is the point
22 I'm making here. And I think they will use those
23 scores, and others will say they are not right, and so
24 that's what -- that's the point that I'm making here.

25 Q BY MS. WELCH: Have you analyzed the level of

1 that Dr. Kirlin testified that this document is part of
2 the analysis of the LAO.

3 MS. WELCH: It's the exact website reference
4 that he cites to in footnote 5.

5 THE WITNESS: This is the section that I
6 reference at footnote 5, although the pagination turns
7 out to be different.

8 Q BY MS. WELCH: In this document, Dr. Kirlin,
9 doesn't the LAO conclude that there's a spending gap in
10 California's education spending relative to the nation?

11 MR. CHOATE: Objection, the document speaks
12 for itself.

13 If you want to point Dr. Kirlin to whatever
14 specific area you are looking at, that may be the most
15 helpful way to proceed.

16 Q BY MS. WELCH: Can you answer my question
17 without reference to the document?

18 A Without reference to the document?

19 Q I will let you look at it. But do you know
20 the answer to my question?

21 A I've looked at this document, and I'd be happy
22 to discuss what's in the report here with you in this
23 document.

24 Q Could you answer my question?

25 MR. CHOATE: I don't even remember the

1 centralization of California's education system?

2 MR. CHOATE: Objection, vague and ambiguous.

3 THE WITNESS: As I would understand that
4 question and that task, I would say no.

5 MS. WELCH: Can we mark this as Exhibit 24?
6 (Plaintiffs' Exhibit
7 No. 24 was marked for
8 identification.)

9 THE WITNESS: (Witness reviewing document.)

10 MR. CHOATE: Do you have a specific question
11 about the exhibit? Maybe that will help direct our
12 review.

13 MS. WELCH: I can do that. I was respecting
14 the fact that Dr. Kirlin was reviewing the document.

15 THE WITNESS: Yes.

16 Q BY MS. WELCH: Dr. Kirlin, do you recognize
17 this document?

18 A This is a part of the annual analysis of the
19 budget bill produced by the Legislative analysts
20 office, discussion of K-12 education for the 2000-2001
21 budget bill. So it's familiar to me in form, and it is
22 a document that I've seen before.

23 Q And isn't it the document that you cite to at
24 footnote 5 of your report?

25 MR. CHOATE: I will just object to the extent

1 question. Could you read it back, please?

2 THE REPORTER: In this document, Dr. Kirlin,
3 doesn't the LAO conclude that there's a spending gap in
4 California's education spending relative to the nation?

5 MR. CHOATE: Objection, the document speaks
6 for itself. The question is vague and ambiguous.

7 THE WITNESS: This is an example of an
8 analysis that I referred to earlier where the
9 legislative analysts office will state that total K-12
10 funding is more than that that is done under
11 Proposition 98, and then continue with an analysis that
12 focuses only to Proposition 98. So it is in my
13 judgment an example of something I've talked about
14 already.

15 In their context of their analysis they talk
16 only about funding under Proposition 98. They say
17 there is a gap. They also say on page 1 of this
18 document, as an example, Proposition 98 funding
19 constitutes about three-fourths of overall K-12
20 funding. So I'm not quite certain why, having
21 demonstrated this fact for several years, they then
22 return to a discussion of Proposition 98 funding only
23 in the calculation of their gap. I consider it a
24 weakness in the analysis, frankly.

25 MR. CHOATE: I will also object to the extent

1 the question itself mischaracterizes the document's
2 conclusions.

3 Q BY MS. WELCH: Dr. Kirlin, could you please
4 look at page 9?

5 A Yes.

6 Q The second to the bottom paragraph says,
7 "Using the methodology described above, we estimate the
8 current gap to be between \$370 and \$500 per enrollment
9 as measured by the NCES index, and between 450 and \$550
10 per enrollment as measured by the NEA index."

11 Do you see that statement?

12 A Yes.

13 Q Do you see anywhere around here that they
14 criticize those figures or give reservations about
15 those figures?

16 MR. CHOATE: Anywhere around here?

17 Q BY MS. WELCH: You can look at the whole
18 document.

19 Do you see where they question those figures?

20 A I've suggested -- this is the legislative
21 analysts report, it is not my report. Okay.

22 I will point to you what they've done that I
23 believe is responsive to your question. I just
24 mentioned, as they say at page 1, that Proposition 98
25 funding does not constitute all of California's K-12.

1 based on identifiable needs and opportunities for
2 investment rather than general funding targets."

3 Second bullet. "Education spending is an
4 input not an output."

5 Q Dr. Kirlin, this is going to be an exhibit to
6 your deposition so, I mean, you can just point to the
7 page if you'd like. I mean, there's really no reason
8 to read the whole page into the record, unless you need
9 to for purposes of responding.

10 A You asked me if they express caution. I was
11 directing you to three types of caution that they
12 express. As you gave me the document, I didn't
13 understand whether you had read this section or not.
14 I'm pointing out this section.

15 So if -- it is, in summary, three bullets at
16 the top of page 10 which express caution.

17 Q My question was quite different from that.

18 My question was, if they expressed caution
19 about using the NCES figure or the NEA figure that they
20 actually use in this document.

21 MR. CHOATE: Objection, asked and answered.

22 THE WITNESS: I did respond to that question.

23 Q BY MS. WELCH: So you think that those bullet
24 points are an expression of caution relating to using
25 those figures as a measure of per pupil expenditure in

1 Much of the analysis that follows is -- focuses on --
2 as I understand the document, on funding a Proposition
3 98 limit only. So if you ignore a substantial amount
4 of the funding, then it increases the gap.

5 They also talk about the differences in the
6 measurement at pages 7 through 9 of this document. As
7 I said, this is paginated differently than the document
8 I cite. But basically this is a set of concerns about
9 how the indices are created.

10 They then continue in their third caution, if
11 you will, to use your phrasing, to talk about the -- I
12 can find this now -- at the top of -- as this is
13 paginated -- page 10, which actually follows an
14 introductory sentence at page 9, in evaluating
15 California's position relative to the nation's, the
16 legislature should consider the following points. And
17 three bullets at the top of page 10.

18 "While comparisons to the national average may
19 have an illustrative value, the analytic basis for
20 pursuing the national average as a spending goal is
21 unclear. The level of spending necessary for
22 California to provide quality K-12 programs depends on
23 many variables, and may be higher or lower than the
24 national average. Accordingly, we believe the
25 legislature should approach spending for K-12 education

1 California?

2 MR. CHOATE: Objection, asked and answered,
3 vague and ambiguous, argumentative.

4 THE WITNESS: In response specifically -- we
5 should go back and have the question that I responded
6 to read again, if possible.

7 MS. WELCH: If you could just respond to the
8 question that I just asked, that would be great.

9 MR. CHOATE: I think he -- Dr. Kirlin just
10 asked to have the original question read back. So if
11 you could find that.

12 MS. WELCH: Then we will go back to the
13 question that I just asked, and he can respond to that.

14 MR. CHOATE: Sure.

15 THE WITNESS: That's fine.

16 THE REPORTER: So you think that those bullet
17 points are an expression of caution relating to using
18 those figures as a measure of per pupil expenditure in
19 California?

20 THE WITNESS: Prior to that my understanding
21 was the question was about the gap. That's the reason
22 I responded that way. I'm seeking to be responsive to
23 your questions, Counselor.

24 MS. WELCH: If you could respond to the
25 question that's pending.

1 MR. CHOATE: Which is?

2 MS. WELCH: The same question I asked earlier,
3 frankly.

4 THE REPORTER: So you think that those bullet
5 points are an expression of caution relating to using
6 those figures as a measure of per pupil expenditure in
7 California?.

8 THE WITNESS: My response to that is again
9 yes. And that in the pagination on this document is at
10 pages 7 through 9.

11 Q BY MS. WELCH: Your response is in pages 7
12 through 9 you think they express caution?

13 MR. CHOATE: Objection, asked and answered.
14 It's exactly what he just said.

15 MS. WELCH: I just want to make sure we are
16 clear.

17 THE WITNESS: Yes. That is true.

18 Q BY MS. WELCH: Okay.

19 A Starting at, "Why do estimates in the gap
20 vary?"

21 Q Looking at page 9 of your expert report, the
22 second full paragraph after you cite to the LAO section
23 that you just pointed to in the document. You say,
24 "Many reports of spending on education in California
25 exclude important costs."

1 agency, as an example.

2 Q BY MS. WELCH: Other than the LAO report that
3 is footnote 6, can you tell me any other reports that
4 you are relying on for this statement?

5 A I had no others that come to mind right now.
6 I would be happy to generate some more information
7 about those if that becomes desirable.

8 Q We are just entitled to the basis for your
9 opinions, so that's what I'm asking for.

10 A I've told you that the only one that I have --
11 what I'm remembering right now is I've answered as best
12 I can.

13 Q Can you think of any policy debates where this
14 issue has been discussed?

15 MR. CHOATE: Objection, it's vague and
16 ambiguous.

17 MS. WELCH: I'm just using his language.

18 THE WITNESS: In my -- the policy debates are
19 oftentimes -- get focused as California is X rank in
20 expenditure in education in California -- in --
21 education expenditures often are focused, as I look at
22 the data, on incomplete data. Very common.

23 Q BY MS. WELCH: As you sit here today, can you
24 think of any particular policy debates that are focused
25 on this issue though?

1 Could you tell me which reports you mean?

2 A Following that is a citation to an LAO report
3 that we just talked -- no. It's a different one than
4 we just talked about. And that's the one that I had in
5 mind.

6 But this is a general comment. I see -- my
7 professional experience I've seen people talk about
8 expenditures for education in California that focus
9 only on Proposition 19 -- 98 expenditures or that focus
10 only on current operations, don't include teacher
11 retirements, is an example. It's a general comment
12 about what I see in conversations or policy debates,
13 actually, often about education. And I tried to
14 provide one specific illustration for the LAO to parse
15 out the differences.

16 Q When you are using the word "reports," you are
17 not talking about specific written analyses, you are
18 talking about reports from people or the policy world?

19 MR. CHOATE: I will object to the extent it
20 mischaracterizes Dr. Kirlin's testimony.

21 THE WITNESS: I use the word "reports" here in
22 some form. Sometimes there will be written documents,
23 sometimes press reports. I meant to be generic, more
24 general than something that would be -- to include
25 things to be more than a report of an agent, state

1 MR. CHOATE: It's vague and ambiguous. It's
2 been asked and answered.

3 THE WITNESS: I've -- I'm comfortable with the
4 statement I've made there. And I don't know how much
5 further I can go with this.

6 MS. WELCH: I'm not questioning the statement.
7 I'm looking for the basis for the statement.

8 MR. CHOATE: He's just answered your question
9 I think about four different times.

10 THE WITNESS: I had some three decades of
11 observing and analyzing policy debates at the state
12 level in California. One of the things that has been
13 my impression is that these data about education are
14 often very -- are much in dispute, and parties will
15 take one set of numbers or another set of numbers and
16 very often they are partial numbers.

17 Q BY MS. WELCH: Could you take a look at page 5
18 of your expert report?

19 MS. WELCH: Actually, we've been going an
20 hour, let's take a break.

21 (A break was taken.)

22 Q BY MS. WELCH: Dr. Kirlin, could you take a
23 look at page 5 of your expert report?

24 A Yes.

25 Q We talked a little bit about your sentence in

1 the third paragraph that says, "However, I found little
2 evidence of systematic comparison of policies and
3 practices and caution in sources of data and analyses
4 in the opinions offered by the plaintiffs' experts."

5 My question is, when do you think an expert
6 should express caution in citing to data?

7 MR. CHOATE: Objection, vague and ambiguous.

8 THE WITNESS: Always. And the primary way to
9 exercise caution is to have an explicit framework with
10 which you launch your analysis. Failing to have an
11 explicit framework makes it very easy to miss relevant
12 things. And so I think one should always be cautious
13 about data analysis.

14 Q BY MS. WELCH: Do you think it's improper for
15 an expert not to express caution in citing to data if
16 the source of that data questions its reliability?

17 MR. CHOATE: Vague and ambiguous.

18 THE WITNESS: I would think that an analyst
19 would be wanting to look, or someone would be looking
20 for multiple sources of data and building an argument
21 on multiple sources of data.

22 In my experience, data are often imperfect,
23 and -- almost always imperfect. And so one -- my
24 general approach and what I would argue as preferred
25 practice is where possible find multiple sources of

1 rule of thumb in that regard.

2 Q BY MS. WELCH: On page 29 and 30 of your
3 expert report you cite to a report of the National
4 Commission on Governing America's Schools. And you
5 talk about their two competing images of the future of
6 education.

7 Isn't it true that the national commission
8 finds that facilities matter for school success?

9 MR. CHOATE: Objection, vague and ambiguous,
10 and the document also speaks for itself.

11 THE WITNESS: I don't have the document in
12 front of me. I don't remember all the document.

13 MS. WELCH: I can give you a copy to look at
14 if you'd like. I don't know if we need to make this an
15 exhibit at this point.

16 MR. CHOATE: Might as well.

17 (Plaintiffs' Exhibit
18 No. 25 was marked for
19 identification.)

20 Q BY MS. WELCH: I'd like to direct your
21 attention to page Roman numeral XII. You are welcome
22 to review as much of the document as you'd like.
23 That's the page that I'm referring to.

24 A (Witness reviewing document.)

25 Once again the reference was to Roman XII?

1 data and construct a -- an understanding that does rely
2 on multiple sources of data.

3 If in the context of doing that one has a data
4 source that is -- that the source is expressing a
5 caution about, I think the analyst should be
6 understanding that caution and making a judgment about
7 where it fits into the whole figure. If it's
8 confirming of other things you are seeing, then you
9 might, you know, go ahead and use it. If it's wildly
10 discrepant, you would have to observe it. You would
11 have to look at specific instances to make a judgment
12 about what would be appropriate.

13 Q BY MS. WELCH: Do you think experts should put
14 in a reference that cites to the caution of the author
15 in terms of using the data?

16 A I think it would depend a lot upon how the
17 expert was using the data.

18 Q In what cases do you think it would be
19 appropriate to include a footnote?

20 MR. CHOATE: Objection, vague and ambiguous.

21 THE WITNESS: I would have to look at
22 specifics and make a judgment about that in a specific
23 context. You are constructing an understanding, and
24 you are pulling evidence from lots of places. I don't
25 necessarily -- I don't know that it's easy to have a

1 Q Yeah.

2 MR. CHOATE: Leecia, it may make things
3 slightly easier if you would point us to wherever you
4 are referring to Roman XII. That is just --

5 THE WITNESS: I'm not certain what I'm
6 supposed to look for in Roman XII.

7 Q BY MS. WELCH: If you look in the fourth
8 paragraph it says, "An increasing amount of research
9 over the last 20 years has shown that schools that are
10 most successful in educating students are characterized
11 by:" One of the bullet points says, "A safe and
12 orderly school environment."

13 A Yes.

14 Q And my question was --

15 MS. WELCH: Would you read back my question,
16 please?

17 THE REPORTER: On page 29 and 30 of your
18 expert report you cite to a report of the National
19 Commission on Governing America's Schools. And you
20 talk about their two competing images of the future of
21 education.

22 Isn't it true that the national commission
23 finds that facilities matter for school success?

24 MR. CHOATE: I will just object to the extent
25 that the question mischaracterizes the bullet point to

1 which Ms. Welch referred us.

2 THE WITNESS: I don't read that bullet as
3 making that argument. Indeed I interpret it -- I'd
4 have to go back and confirm that interpretation with
5 the balance of the document -- but this could speak to
6 something wholly different, which is the state of
7 public order in schools, not the facilities.

8 There are those who believe that that is one
9 of the large challenges in educational performance.

10 Q BY MS. WELCH: So you interpret this bullet as
11 having nothing to do with the state of the facilities
12 of a school?

13 A That misstates what I said. I said I'd have
14 to look at the balance of the document. This could be
15 interpreted as speaking about public order, not
16 facilities. And I -- it's a large document, I'd have
17 to look at the balance of the document to see how they
18 define it.

19 Q I wasn't trying to misstate your testimony, I
20 was just asking another question.

21 A Okay. I'm sorry. What was the other
22 question?

23 Q I think you answered it. I think you said you
24 would have to look at the balance of the document in
25 order to respond.

1 citing to a particular report, you are referring to all
2 of these reports; is that correct?

3 MR. CHOATE: I will object to the extent this
4 has been asked and answered.

5 THE WITNESS: There are some 13, 14, however
6 number of reports here. When I make those statements,
7 I'm characterizing themes that I believe to be dominant
8 in the reports. I would not make the statement that
9 they are found in each and every one of the reports. I
10 believe I've accurately characterized the themes that I
11 see in the reports.

12 Q BY MS. WELCH: In looking at these reports,
13 can you list the reports whose opinions you are
14 rebutting for purposes of this case?

15 A I wasn't asked to rebut the opinions of any
16 specific experts. I didn't take that to be my task.

17 Q Are you familiar with the Public School
18 Accountability Act?

19 MR. CHOATE: Objection, vague and ambiguous.

20 THE WITNESS: You'd have to -- I'm not certain
21 that I understand what you are referring to.

22 Q BY MS. WELCH: The California Public School
23 Accountability Act of 1999.

24 A Not in any particulars, no.

25 Q Are you familiar with the Academic Performance

1 A Okay.

2 MS. WELCH: Can we mark this as the next
3 exhibit?

4 (Plaintiffs' Exhibit
5 No. 26 was marked for
6 identification.)

7 MS. WELCH: I will represent for the record
8 this is a document that I downloaded from the Decent
9 Schools website. And specifically it's the page that
10 has a list of plaintiffs' expert reports. I downloaded
11 it this morning.

12 Q Dr. Kirlin, we previously talked about the
13 expert reports that you've reviewed. And you couldn't
14 recall the exact reports you reviewed, but you said you
15 got them off this website.

16 I just wanted to know if you could please
17 review this list and let me know if there are any
18 reports on the list that you did not review of
19 plaintiffs' experts.

20 A I believe this is the list of the reports I
21 reviewed.

22 Q And you reviewed all of these reports?

23 A Yes.

24 Q So when you refer in your report at various
25 times to "plaintiffs' experts," in plural, without

1 Index?

2 MR. CHOATE: Objection, vague and ambiguous.

3 THE WITNESS: Only as to its existence.

4 Q Do you know if there are public school
5 students in California who would like to have access to
6 books in their classrooms but don't because the books
7 are not available?

8 MR. CHOATE: Objection, assumes facts not in
9 evidence, it's vague and ambiguous.

10 THE WITNESS: I have no knowledge about that.

11 Q BY MS. WELCH: Do you know if there are
12 schools in California with more than 50 percent of the
13 teachers on staff who do not have a preliminary or
14 clear credential?

15 MR. CHOATE: Objection, compound, vague and
16 ambiguous.

17 THE WITNESS: I do not have knowledge of that.

18 Q BY MS. WELCH: Do you know if there are
19 schools in California where the facilities are run-down
20 and unsafe?

21 MR. CHOATE: Objection, vague and ambiguous,
22 it's compound.

23 THE WITNESS: That was -- I did not analyze
24 that for my report.

25 Q BY MS. WELCH: Are you familiar with

1 California's school accountability report cards?
 2 A I did not look at those sorts of documents in
 3 my report, my work.
 4 Q Are you familiar with the -- with California's
 5 coordinated compliance review program?
 6 MR. CHOATE: Objection, vague and ambiguous.
 7 THE WITNESS: That's not a subject of my work
 8 in this report.
 9 Q BY MS. WELCH: Are you familiar with it
 10 though?
 11 A Not in any detail.
 12 Q Is the expert work that you've done in this
 13 case the first time you have analyzed the state's
 14 education accountability system?
 15 A I don't believe I analyzed the state's
 16 education accountability system in this report.
 17 Q Do you have an opinion on the components of a
 18 good education accountability system?
 19 MR. CHOATE: Objection, vague and ambiguous.
 20 THE WITNESS: I wasn't asked to render such an
 21 opinion.
 22 Q BY MS. WELCH: Have you ever written any
 23 papers about education accountability systems?
 24 A No.
 25 Q Do you think school districts in California

1 have a great degree of local control?
 2 MR. CHOATE: Objection, vague and ambiguous.
 3 THE WITNESS: I don't think that's a metric of
 4 that. I would only answer as I answered before in a
 5 comparative context.
 6 Q BY MS. WELCH: How would you compare
 7 California to other places?
 8 A The first comparison I would make would be to
 9 other local governments in California where schools
 10 have less than cities and would depend on what areas
 11 you are looking at.
 12 I don't have a good sense of how California
 13 would compare systematically to other states. I didn't
 14 seek to make such a comparison. I did identify some
 15 major features in the California system that are like
 16 other states in the report. But I didn't -- did not
 17 seek to have a systematic comparison of all the
 18 features. I have not undertaken that work.
 19 Q Could you please take a look at page 43 of
 20 your expert report.
 21 The first sentence under the numbers says,
 22 "The factors contributing to success in the exceptional
 23 progress schools included: 1. Curriculum based
 24 reforms, parenthesis, all teachers use the same books."
 25 Then it goes on to say other things. I will just read

1 you it.
 2 "All teachers use the same books, have had the
 3 same training on using the curriculum effectively,
 4 share common expectations regarding student
 5 performance, the same methods of student assessment and
 6 the same suite of tools to help students having
 7 trouble, end parenthesis."
 8 In quoting to this report, doesn't the phrase
 9 "all teachers use the same books" indicate to you that
 10 having instruction materials available to all the
 11 students was a component of the reforms that that
 12 school was using?
 13 MR. CHOATE: Can you read back the question,
 14 please?
 15 THE REPORTER: Could you please take a look at
 16 page 43 of your expert report.
 17 The first sentence under the numbers says,
 18 "The factors contributing to success in the exceptional
 19 progress schools included: 1. Curriculum based
 20 reforms, parenthesis, all teachers use the same books."
 21 Then it goes on to say other things. I will just read
 22 you it.
 23 "All teachers use the same books, have had the
 24 same training on using the curriculum effectively,
 25 share common expectations regarding student

1 performance, the same methods of student assessment and
 2 the same suite of tools to help students having
 3 trouble, end parenthesis."
 4 In quoting to this report, doesn't the phrase
 5 "all teachers use the same books" indicate to you that
 6 having instruction materials available to all the
 7 students was a component of the reforms that that
 8 school was using?
 9 MR. CHOATE: Objection, vague and ambiguous,
 10 assumes facts not in evidence.
 11 THE WITNESS: I would have to refresh my
 12 memory by looking at the document.
 13 But my memory is that it actually spoke to not
 14 specifically the materials, because there are materials
 15 in classrooms, but rather to the way the teachers were
 16 prepared and expected to use instructional materials.
 17 And so the balance of that whole clause is
 18 what I take to be the message. And actually I
 19 interpret this to be if one is teaching fourth grade
 20 reading in a school in which there are seven fourth
 21 grades for some reason, that the fourth grade teachers
 22 would use the same books so they wouldn't have five
 23 different types of books and they could learn from each
 24 other more about their success. That's my memory of
 25 that discussion.

1 As I said, I would be happy to look at the
2 document.

3 Q BY MS. WELCH: And that doesn't suggest to you
4 that the books need to be made available to the
5 students?

6 MR. CHOATE: Objection, argumentative.

7 THE WITNESS: What I'm doing here is reporting
8 the -- and seeking to report accurately what is stated
9 in this report. And you are asking me now a separate
10 question which is my own independent judgment. And
11 that's not what I was asked to do here, that's not what
12 I sought to do here.

13 Q BY MS. WELCH: So you don't have a view on
14 that, on my question?

15 MR. CHOATE: Objection, argumentative.

16 THE WITNESS: The question again is?

17 MS. WELCH: Could you read back the question?

18 THE REPORTER: And that doesn't suggest to you
19 that the books need to be made available to the
20 students?

21 MR. CHOATE: Again, it's argumentative, it's
22 an incomplete hypothetical. It's beyond the scope of
23 the expert report.

24 THE WITNESS: This is a version of a
25 conversation we've had a couple times before about the

1 interpretation of my memory, was that this, this
2 discussion was not about the number of those documents,
3 but rather was about how teachers use the documents,
4 the teaching materials. That's my memory of this
5 report. So I was trying to be responsive. It remains
6 my memory of this report. If examination were to
7 amplify or change that, I would be happy to add an
8 additional text in here. But that is my memory of that
9 report.

10 Q BY MS. WELCH: So is it your opinion that
11 whether or not a school has enough books for all
12 students to use will have no bearing on the success of
13 the reform effort at that school?

14 MR. CHOATE: Objection, mischaracterizes the
15 witness's testimony, it's vague and ambiguous.

16 MS. WELCH: I wasn't characterizing his
17 testimony, I was asking for his opinion.

18 THE WITNESS: I wasn't asked to offer an
19 opinion on this, and I don't consider myself an expert
20 in that area.

21 Q BY MS. WELCH: So you have no opinion on that?

22 A That's correct.

23 MS. WELCH: Can we go off the record?
24 (Off the record.)

25 Q BY MS. WELCH: Dr. Kirlin, I previously asked

1 difference between a preference, mine, or yours, or any
2 citizen's, and what happens in the public policy
3 process.

4 We have a process that makes decisions,
5 allocates resources, and we all get to try to influence
6 that process. I'm not certain my own personal
7 preference is relevant to this.

8 Q BY MS. WELCH: I'm not asking for your
9 personal preference.

10 You state in the report that -- you expressly
11 state in the report that all the reform efforts that
12 you discuss on these pages don't mention plaintiffs' --
13 the conditions that are at issue in this lawsuit except
14 where you expressly reference them.

15 What I'm trying to understand is your view as
16 to whether this phrase that you use on page 43 suggests
17 that instructional materials will be used as part of the
18 reform.

19 MR. CHOATE: I'm going to -- the same exact
20 objections to the last question that were asked.

21 THE WITNESS: I tried to respond to that
22 question.

23 Obviously there were instructional materials
24 involved. And what I interpret and what I said, I
25 would be happy to look at the document to confirm that

1 you questions about what you did to prepare for your
2 expert deposition.

3 Have you done anything to prepare for -- let
4 me rephrase that.

5 Did you do anything to prepare for it on
6 Wednesday night?

7 A Nothing.

8 Q Did you do anything on Thursday night?

9 A The only thing I did last night, Thursday
10 night, was pull down this document.

11 Q And you are referring to the exhibit --

12 A Yes. I'm referring to the material that was
13 behind table 9.

14 Q On Wednesday did you have any conversation
15 with Mr. Choate regarding your testimony?

16 A Of a general sort that he was comfortable with
17 how I was responding to the questions, yes.

18 Q Did you have any conversation about the
19 substance of the case?

20 A No. With one -- with one exception. I'd
21 heard mention of rebuttal experts, and I asked are
22 there going to be rebuttal experts to my report. And I
23 believe he said there could be. That was the only
24 response -- only discussion that I remember.

25 Q You don't recall anything with more

1 particularity about the conversations about your
2 testimony?
3 A No. I believe that was generally the
4 character of them; that he was comfortable with what I
5 was doing and liked the way I was responding to the
6 questions.
7 Q Did you have any conversations with Mr. Choate
8 regarding your testimony yesterday?
9 A Same general sort of character as we walked
10 back towards the hotel.
11 Q Any conversations about the substance of this
12 case yesterday?
13 A I asked about -- because we went down in the
14 elevator with Abe, whose last name I forget.
15 Q Hajela.
16 A Excuse me?
17 Q Hajela.
18 A Who was talking about a mediation. And I said
19 it sounds like Abe would like this case to settle. And
20 the response was, as I remember it, yes, he would like
21 this case to settle.
22 Q And that's the only conversation about the
23 substance of the case yesterday?
24 A Yes.
25 Q You had any conversations with Mr. Choate

1 today regarding your testimony?
2 A Walking over, again, just a general
3 conversation about the processes and some version of
4 continue to stay the course and be responsive and speak
5 to your report.
6 Q Any conversations today with Mr. Choate or
7 anyone else about the substance of this case?
8 A No.
9 MS. WELCH: No further questions.
10 I just -- we've talked about some documents
11 that haven't been produced, and I would like to take a
12 look at the electronic data. So I don't -- I reserve
13 the right to reopen to discuss those things.
14 (Off the record.)
15 EXAMINATION BY MR. POULOS
16 Q Goods morning, Mr. Kirlin. We've had occasion
17 to speak with each other just occasionally during the
18 last couple days.
19 Am I correct we had not had occasion to meet
20 prior to your deposition beginning?
21 A That's correct.
22 Q As I think I spoke to you off record, I'm one
23 of the lawyers that represents the Los Angeles Unified
24 School District in the Williams case.
25 I first want to thank you for being here. I'm

1 going to just take this opportunity to ask you what I
2 hope will be a fairly brief set of questions.
3 Does that sound like a good idea?
4 A Sounds fine. That's what we are here for.
5 Q You have obviously substantial experience in
6 the field of public policy and public policy analysis;
7 is that correct?
8 A Yes.
9 Q Give me just a rough breakdown of how much of
10 your academic work would you say relates to public
11 policy in some fashion in the state of California.
12 A 85, 90.
13 Q So the vast majority.
14 A Vast majority.
15 Q How long did you reside in Indiana?
16 A Five years.
17 Q And prior to that most of your career was
18 spent in the State of California; is that correct?
19 A I was a faculty member at the University of
20 Southern California for 29 years prior to that, and
21 I've been a graduate student at UCLA four years before
22 that, part of that time was analyzing California
23 politics.
24 Q I've wondered how a Notre Dame grad ended up
25 at the University of Southern California, but I suspect

1 that's probably not really germane to the issue at
2 hand.
3 With respect to your public policy experience,
4 you have had substantial engagements relating to local
5 government; is that correct?
6 MR. CHOATE: I will object, it's vague and
7 ambiguous.
8 MR. POULOS: It sort of is.
9 THE WITNESS: Often with local governments
10 looking at -- but most commonly looking at the
11 relationship between local governments and the state.
12 Q BY MR. POULOS: And the state. That's where I
13 was going.
14 How much of your work has been examining the
15 governments of local, local government? In other
16 words, I'm trying to get a sense of how much work you
17 have done in looking at policies within local
18 governments as opposed to interactions between local
19 and state government?
20 A On a somewhat less of the interaction between
21 local and state government, but, but some work. Some
22 fraction.
23 Q And of that fraction, would it be fair to
24 characterize the work split between cities, counties
25 and then special districts? Is that a rough --

1 A Yes. That work has been focused on the
2 operations of cities, counties and special districts.
3 Q Is it possible for you to break down in that
4 genre', if you will, the kind of percentage of your
5 academic work in those three forms of local government?
6 A Much more on cities than the other two.
7 Q And I'm going to ask you to split one more
8 hair. And that is within what I'm calling special
9 districts.
10 Do you recall how much of your work, scholarly
11 work has involved school districts?
12 A At the level of operations inside school
13 districts?
14 Q Yes.
15 A Virtually none.
16 Q Okay. Have you had occasion to do any
17 scholarly work focused on the operations of the Los
18 Angeles Unified School District?
19 A No.
20 Q Are you aware generally of the governance
21 structure of LAUSD?
22 A Generally, yes.
23 Q Have you ever visited a school in the Los
24 Angeles Unified School District? By that I mean a
25 public school.

1 A I believe I have, because I resided in Los
2 Angeles for many years, and probably was in one or more
3 at different times. But it would have been incidental
4 to some other activity.
5 Q Is it fair to say that none of the opinions
6 that you've expressed in your report are based on any
7 personal experience or observations at any school in
8 the LAUSD?
9 MR. CHOATE: Object, vague and ambiguous.
10 THE WITNESS: As I -- yes. As I understand
11 the question, that's true. That's not the type of
12 report I wrote.
13 Q BY MR. POULOS: Now, I think in your report
14 you allude to kind of the vigorous various policy
15 debates that exist in the educational arena.
16 Do you have a good -- strike that.
17 Do you have an understanding of kind of the
18 policy debate between a decentralized school structure
19 versus a centralized school structure that exists in
20 the school reform, I don't know if you want to call it
21 movement?
22 A Within districts or between schools and the
23 state? Which?
24 Q Mostly within districts.
25 A Yes, I have some, some general knowledge of

1 that, of that debate.
2 Q But if I'm correct, your -- you were not
3 asked to opine in this report about the relative
4 benefits or --
5 A Absolutely not. My observations about these
6 debates is not to take a side on one side or the other,
7 but to note the existence of the debates. And the mere
8 existence of the debates has impacts on the policy
9 process.
10 Q I believe you testified that you read the
11 plaintiffs' liability statement and the plaintiffs'
12 expert reports that were reflected on the website; is
13 that correct?
14 A Yes.
15 Q Did you review any documents -- I would
16 include in that pleadings, memoranda, or any other
17 document -- relating to any claims by anybody against
18 the LAUSD?
19 A None. Separate from whatever was expressed --
20 I don't think there's any in the plaintiffs' liability
21 statement relating to the LAUSD. But if it's buried in
22 there.
23 Q In the -- you might want to -- you have your
24 expert report?
25 I was looking on page 2 of this declaration --

1 and I believe you testified that you did not prepare
2 this; is that correct?
3 A That's correct.
4 Q But it does at least appear to coincide with
5 your recitation of the assignment as you understood it
6 on page 2 and 3 of your expert report; is that correct?
7 A Page 2 and 3 I did write, and I believe that
8 the document was prepared by Mr. Silvaty at O'Melveny &
9 Myers and comports generally with that, with some
10 difference in language.
11 Q Am I correct that you did not do kind of a
12 comprehensive analysis on a school-by-school basis, but
13 there is a section of your report where you did look at
14 districts within the state of California; is that
15 correct?
16 A That's correct.
17 Q This -- and if you -- so if you look at page 2
18 and 3 of your report, you see you list three numerical
19 categories. I'm going to ask you a few questions, just
20 so you know, about category number 2, and then just a
21 few about number 3 insofar as you referred to LAUSD in
22 section 3. But I'm not going to ask you -- I don't
23 have any questions about number 1. So just so you have
24 the framework, that's where I'm going to ask you a few
25 of these questions.

1 When -- if you look at number 2 and it says
2 that you are going to analyze the resources available
3 to and used by the districts, are you using resources
4 there synonymously with money?

5 A Well, I went beyond -- I looked -- primarily
6 money. The -- and I'd have to think about whether
7 there was a time I used anything other than money. But
8 primarily money.

9 Q And you talked about that there was at least
10 the possibility for -- as I understood it -- dollars to
11 be under reported because those dollars could have come
12 from other sources other than the school districts
13 themselves; is that correct?

14 A That's correct.

15 Q But I didn't understand you -- at least in
16 this category, question number 2, that you were
17 referring to anything other than dollars. Is that
18 fair?

19 A That's fair.

20 Q And I believe that you may have answered this
21 in one of your responses to my other questions, but I
22 just want to make sure that I understand.

23 You understand that plaintiffs advocate one of
24 several alternative approaches to improving educational
25 performance, correct? I mean, you understand that they

1 of the development, financing and implementation of
2 public policies; is that correct?

3 A That's correct.

4 Q And I just again want to clarify that you did
5 not, in this report, study the development, financing
6 or implementation of any internal LAUSD policy,
7 correct?

8 A That is correct.

9 Q I believe you also testified that California
10 is unique in several respects. And I believe you
11 mentioned size of population, diversity of population,
12 high percentage of nonEnglish speaking population, and
13 large number of economically disadvantaged students.

14 Is that a fair summary of some of the things
15 that you said made California kind of a unique place?

16 A It certainly is distinguishing features of
17 California. Whether it makes it wholly unique,
18 California is at the extreme end of all of those
19 measures.

20 Q And is it fair to say that in your opinion
21 those factors complicate the state's ability to deliver
22 public education?

23 MR. CHOATE: Objection, vague and ambiguous.

24 THE WITNESS: What the report says is they
25 make the policy process and policy implementation

1 have an approach, and from what I gather from your
2 report you disagree with that approach. Is that a fair
3 characterization?

4 A I make two arguments. One, theirs is one of
5 several competing approaches. I also wouldn't say I
6 disagree so much as judge it to be -- as the report
7 reflects, I don't make a statement of disagreement, but
8 rather that it would be extraordinarily hard to
9 implement. It would have what I believe to be harmful
10 consequences.

11 MS. WELCH: I'm just going to object to the
12 question to the extent it mischaracterizes what
13 plaintiffs' positions are in this lawsuit.

14 Q BY MR. POULOS: And you also note in your
15 report that there are other alternative approaches, and
16 that the best way, if you will, to achieve educational
17 improvement is hotly contested, correct?

18 A Yes.

19 Q And you don't endorse or opine to the merits
20 of that particular policy debate in this report, is
21 that also correct?

22 A That is correct.

23 MR. CHOATE: Objection, vague and ambiguous.

24 Q BY MR. POULOS: I think one of the things that
25 you testified to is that your expertise is in the area

1 process much more complicated. If you summarize it as
2 they complicate the process, yes. I think the answer
3 is a little more nuanced than the report.

4 MR. POULOS: I'm not trying to characterize
5 the report, I'm just trying to get an understanding.

6 Q Would you agree that a district -- I'm just
7 talking about a district level -- that has a high
8 percentage of those same factors that you are talking
9 about, would also have a higher degree of challenges
10 than a district that did not have some of those same
11 characteristics?

12 MR. CHOATE: Objection, incomplete
13 hypothetical.

14 THE WITNESS: I wasn't offering an opinion on
15 that. But by extension the same argument would apply.

16 Q BY MR. POULOS: Do you have a general
17 understanding that Los Angeles Unified is a large
18 school district?

19 A Oh, absolutely. It's the nation's second
20 largest, isn't it?

21 Q And do you also have a general understanding
22 that there are a lot of economically disadvantaged
23 students in the Los Angeles Unified School District?

24 A Absolutely.

25 Q Same question with respect to English language

1 learners.

2 Do you understand that Los Angeles has a high
3 proportion of English language learners?

4 A Yes.

5 Q Am I also correct that you were not asked to
6 calculate the cost of educating students in LAUSD?

7 A That is correct.

8 Q In section number 2 -- do you understand what
9 I'm meaning when I say "section number 2"?

10 MR. CHOATE: Are you referring to page 3,
11 or --

12 MR. POULOS: I'm actually referring to page
13 23. It's -- I guess that's an Arabic 2, right?

14 Q If you could --

15 A Okay.

16 Q Did you compare LAUSD to any other particular
17 district in section number 2?

18 A In this section, which was reported at pages
19 23 and following, the district comparisons were -- I
20 would have compared LAUSD to other unified districts as
21 a set, but not to any specific district.

22 Q And in that comparison, you were just -- you
23 were using the fact that it was a unified district and
24 certain expenditures for unified districts; is that
25 correct?

1 distinction.

2 Q And I guess my question is, for this purpose
3 of Roman II that appears on 23, you did not delve into
4 the implications of those different types of dollars;
5 is that correct?

6 A That's -- I did no analysis at that level.

7 Q If you look at page 24, it talks about -- the
8 second full paragraph you say, "No good explanation
9 exists for these" -- what I'm going to refer to as
10 urban districts -- those aren't your words, those are
11 mine -- "being below average on facilities." You see
12 that?

13 Do you think that it's at least possible that
14 urban districts are below average on facilities because
15 it takes longer in urban districts to locate sites to
16 build new schools, conduct environmental review, those
17 types of things which slow down the process?

18 MR. CHOATE: Objection, calls for speculation,
19 incomplete hypothetical, it's vague and ambiguous.

20 THE WITNESS: I didn't dig into possible
21 explanations. All of those are factors that generally
22 complicate development processes for schools, or
23 shopping malls, or whatever in urbanized areas. But I
24 did no analysis of such factors.

25 Q BY MR. POULOS: Are you aware of how the

1 A I was comparing fiscal information about those
2 sets of districts, yes.

3 Q But you weren't making any other assumptions
4 about similarity --

5 A No.

6 Q -- other than the fact they were both unified
7 districts?

8 A Exactly. Yes.

9 Q Do you have a general understanding that in
10 the arena of education finance, that dollars are not --
11 all dollars are -- I don't know how to say this
12 artfully -- but created equal, for lack of better
13 words?

14 MR. CHOATE: Objection, vague and ambiguous.

15 MR. POULOS: It is indeed that.

16 THE WITNESS: I would be helped if you could
17 explain.

18 MR. POULOS: Let me expand upon it.

19 Q Do you have an understanding that in school
20 finance there are what I'm going to refer to as
21 unrestricted dollars that can be spent with, you know,
22 without, as it says, restrictions or without regard to
23 programs, and what I'm going to refer to as categorical
24 dollars that are restricted for certain purposes?

25 A Yes. Absolutely I understand that

1 students in LAUSD are performing on the API as compared
2 to other districts in the state?

3 A I didn't look at those sort of data.

4 Q If you could turn to page 29 of your report.
5 I'm looking at the paragraph that's about middle of the
6 page. It says, "Their ideas."

7 You see that paragraph?

8 A Hmm-hmm.

9 Q Maybe I could get you to just read that to
10 yourself real quick, because I do have a couple
11 questions regarding that paragraph.

12 A (Witness reviewing document.)

13 Yes.

14 Q The -- do you have an understanding of whether
15 any of the reforms that I think you refer to elsewhere
16 in your report have, in fact, resulted in increased
17 flexibility for school districts?

18 MR. CHOATE: Objection, vague and ambiguous.

19 THE WITNESS: No, I did not assess whether or
20 not they did increase flexibility, advocate that, which
21 is what this paragraph says.

22 Q BY MR. POULOS: And I believe you testified
23 earlier that at least it was your view that after
24 Serrano there was less flexibility for school
25 districts.

1 Did I recall that correctly?

2 A There was less flexibility in the financing of
3 schools, yes.

4 Q Did you have the same understanding about the
5 Public Schools Accountability Act, whether that
6 operated to increase or decrease the flexibility for
7 local schools?

8 MR. CHOATE: Objection, vague and ambiguous.

9 THE WITNESS: I didn't analyze that. And I
10 have no judgment about that.

11 Q BY MR. POULOS: If you look at page 30, the
12 first full paragraph that begins "The plaintiffs and
13 their experts." If you could please read that
14 paragraph to yourself, because I do have a few
15 questions about that.

16 A (Witness reviewing document.)

17 Yes.

18 MR. CHOATE: Just give me one second, John, I
19 want to finish reading it.

20 MR. POULOS: Absolutely.

21 Q If I'm understanding this paragraph correctly,
22 you give two examples of areas where school reform
23 advocates have argued for what they refer to as
24 increasing local control as being vouchers and charter
25 schools.

1 Do you know an individual by the name of Paul
2 Koehler?

3 A No.

4 Q Catherine Jovicich?

5 A No.

6 Q Joan McRobbie?

7 A No.

8 MR. CHOATE: Can you repeat that name for me?

9 MR. POULOS: McRobbie. M-c-R-o-b-b-i-e.

10 Q Next name Malia Villegas?

11 A No.

12 Q And then last name June Lee-Bayha.

13 A No.

14 Q And let me just tell you those individuals are
15 listed on the WestEd report that is reported to in your
16 report.

17 A I know none of them.

18 Q Do you know how you learned of the WestEd
19 report?

20 A I know the WestEd organization, and so at some
21 point I was using their website as a possible source
22 for information. It came to me to the best -- wholly
23 to my memory independently through looking for analyses
24 of education in California.

25 Q And if I'm correct, your reference to that

1 Is that a fair summary of what you are getting
2 at in that paragraph?

3 A The paragraph starts with the second sentence,
4 which sort of -- it was a lead for what follows.

5 And you are right, the advocates of charters
6 and vouchers characterize those as increasing local
7 community flexibility, control, whatever language they
8 use. Yes.

9 Q And just so I'm clear, by your language there,
10 you are not taking -- you have no opinion whether
11 that's the right way to go or the wrong way to go; is
12 that correct?

13 A That's correct. I'm only observing. As it
14 says, there's -- there are strong advocates to this and
15 they are, like it says, making some progress in this
16 area.

17 Q And do you know what percentage of California
18 students attend charter schools?

19 A No.

20 Q Are you aware of any voucher schools in the
21 State of California?

22 A No. Not currently.

23 Q I'm going to ask you just a couple questions,
24 first about some individuals and then about a couple
25 organizations.

1 report -- and this is I believe in section 3, what I'm
2 going to refer to as Arabic 3 of the report, and in
3 particular --

4 MR. CHOATE: I think where you may be
5 referring to, John, is page 35.

6 MR. POULOS: Let me just get the beginning of
7 the section. I think section 3 begins on page 29.

8 Q Am I correct?

9 A I didn't distinguish the sections in the way
10 in which you have. I don't characterize this as
11 section 3, but let's proceed and see where we go.

12 Q If you look at page 35, as counsel points out,
13 you are quoting from the WestEd report; is that
14 correct?

15 A That's correct.

16 Q And please tell me the purpose for the quote
17 that appears on page 35 onto page 36.

18 A This is in support of the argument that is
19 begun in the prior two paragraphs, the first one of
20 which is that the first paragraph, "Remedies Advanced
21 By Plaintiffs Are Not Well Tested" states that. But
22 the most important sort of setting -- the next
23 paragraph you got, "It takes challenges in effective
24 implementation of any large initiative in complex
25 arenas are well-known but not recognized by plaintiffs

1 and their experts."

2 Then the setup sentence follows. "It takes
3 more than good ideas and good intentions to reform a
4 complex school district," a point well illustrated by
5 LA Unified School District.

6 And my point here was to illustrate that --
7 the challenges of reform of educational systems. This
8 is the state's largest district, a complex district.
9 People have taken it seriously. They've tried to
10 improve it.

11 And I was -- and this was one compilation of
12 such efforts. So I was citing it as an example of a
13 series of efforts to improve the performance of LA
14 Unified School District.

15 Q And except in one little spot in the report,
16 you are very careful and you say that WestEd concluded
17 or WestEd argued. I just want to make sure that you
18 are not in any way opining to or endorsing the position
19 set forth in that WestEd report; is that correct?

20 A I'm not. And it's the only place where my
21 language is unclear on that, if -- in terms of their
22 specific recommendations is what should be done, is
23 that what you are asking me about?

24 Q Let me take you to it on page 36. You get --
25 if you look down, there's the third, the third

1 Q BY MR. POULOS: It talks about the poor track
2 record of student performance. And I want to make sure
3 you have no independent basis for that statement other
4 than what appears in the WestEd report.

5 MR. CHOATE: Objection, vague and ambiguous.

6 THE WITNESS: Actually it says something
7 different than that. I did no independent work
8 separate from the WestEd.

9 Q BY MR. POULOS: And at any trial in this
10 matter you are not going to express any opinion as to
11 the quality of education in the LAUSD; is that correct?

12 MR. CHOATE: Objection, vague and ambiguous.

13 THE WITNESS: That's correct.

14 Q BY MR. POULOS: Again, I believe I know the
15 answer to the following set of questions, but are you
16 familiar with the various aspects of the reforms that
17 you list on page 36?

18 A Only as they are described in the WestEd
19 report, with one exception, of which I know not much
20 more, which was the Learn effort begun in 1993. And
21 that happened to be when I was doing some other work in
22 government issues in the Southern California region.
23 So I understood some more about the Learn effort.

24 Q Can you tell me just briefly what additional
25 understandings you have about the Learn program?

1 paragraph starts, "The plaintiffs focus." You see
2 that? If you look at the second sentence in there it
3 says, "Given the poor track record," you see that?

4 And I just want to be clear that that sentence
5 is based entirely on the WestEd report; is that
6 correct?

7 A Yes.

8 MR. CHOATE: Your question is whether that
9 sentence "given the poor track record" is based
10 entirely on the WestEd report?

11 MR. POULOS: Correct.

12 THE WITNESS: I did no independent work to
13 assess the impact or reforms on student performance. I
14 was relying on the WestEd report, if that's the
15 question.

16 Q BY MR. POULOS: It's just a follow on
17 statement as to the conclusions that were reached in
18 the WestEd report, correct?

19 A Yes.

20 Q And just -- I don't want to beat a dead horse.
21 But to be clear, you have no independent basis for
22 concluding that; is that correct?

23 MR. CHOATE: Objection, vague and ambiguous.

24 THE WITNESS: Help me understand what "that"
25 is in this case, Counsel.

1 A Very little other than Mike Roos -- whoever
2 the individual was who got the funding to start the
3 effort, and that some of the people that I was working
4 with in efforts to reform regional governance broadly
5 in Southern California, but focused -- there was a
6 business coalition, LA 2000. Some of those people also
7 got involved in or supported -- in any case it was
8 happening contemporaneously in the environment I was
9 working in professionally, so I knew a little more
10 about it in general terms. But nothing other hardly
11 than it got launched.

12 Q Are you familiar with the Open Court program
13 that -- in LAUSD?

14 A No.

15 Q And if I asked you a bunch of other questions
16 about particular reading or math programs in LAUSD,
17 would your answer likely be the same?

18 A Yes.

19 MR. CHOATE: Object to the extent that the
20 question asks whether he's familiar.

21 Q BY MR. POULOS: But you will be expressing no
22 opinions at trial as to the effectiveness of any of
23 those programs?

24 A There's nothing in my report or in my
25 expertise that would provide any basis for such a

1 comment.
 2 Q Do you know what efforts, if any, LAUSD has
 3 taken to give individual schools in the districts more
 4 discretion over funding?
 5 MR. CHOATE: Objection, vague and ambiguous.
 6 THE WITNESS: Nothing beyond what I might have
 7 learned incidental to reading the WestEd report.
 8 Q BY MR. POULOS: Did you ever read a rebuttal
 9 to the WestEd report?
 10 A If you could expand a little bit. But in my
 11 recesses there's some memory of somebody saying
 12 something about it, but I don't remember. I don't
 13 remember. Or maybe knowing that there was someone who
 14 attacked it, but I don't know.
 15 Q Given your report, would it surprise you to
 16 learn that there were people that disagree strongly
 17 with the conclusion reached in the WestEd report?
 18 A Absolutely not. I would expect them to find
 19 other perspectives to advocate.
 20 Q Do you know what LAUSD has done, if anything,
 21 regarding the allocation of resources within the
 22 district to support instructional improvement?
 23 MR. CHOATE: Objection, vague and ambiguous.
 24 THE WITNESS: No.
 25 Q BY MR. POULOS: Same question with respect to

1 MR. CHOATE: Can we stipulate to having 45
 2 days from the date of the transmittal letter to review
 3 the report and make any corrections that may be
 4 necessary?
 5 MS. WELCH: Yes.
 6 MR. CHOATE: Okay. Great.
 7 MR. POULOS: Absolutely.
 8 (The deposition was adjourned at 11:24 a.m.)
 9 //
 10 //

1 building capacity of teachers and principals.
 2 MR. CHOATE: Same objection.
 3 THE WITNESS: No knowledge.
 4 Q BY MR. POULOS: Same question as to building
 5 system capacity through investment and extra learning
 6 opportunities.
 7 MR. CHOATE: Same objection.
 8 THE WITNESS: No knowledge.
 9 Q BY MR. POULOS: If I asked you some specifics
 10 about conclusions that were reached in the WestEd
 11 report with respect to programs at the LAUSD, would you
 12 have opinions regarding the various efforts?
 13 A No.
 14 MR. POULOS: I don't think I have any further
 15 questions.
 16 MS. WELCH: I just have one follow-up
 17 question.
 18 EXAMINATION BY MS. WELCH
 19 Q Dr. Kirlin, have you been asked to calculate
 20 the cost of educating any students in California public
 21 schools?
 22 MR. CHOATE: Objection, vague and ambiguous.
 23 THE WITNESS: No. I've not been asked to do
 24 that.
 25 MS. WELCH: Okay. That's it.

1 PURSUANT TO SECTION 2025 (q) (1) of the Code of
 2 Civil Procedure of the State of California, I hereby
 3 certify that I have read my deposition, made those
 4 changes and corrections I deem necessary, and approve
 5 the same as now written.
 6
 7 (Check one) NO CORRECTIONS
 8 CORRECTIONS PER ATTACHED
 9
 10
 11 DATED this ___ day of _____,
 12 2003, at _____,
 (CITY) (STATE)
 13
 14 _____
 15 JOHN KIRLIN, Ph.D.
 16
 17
 18 CASE TITLE: Williams v State of Calif.
 19 DATE OF DEPOSITION: September 5, 2003
 20 JOB NUMBER: 45548
 21
 22
 23
 24
 25

1 DEPONENT'S CHANGES OR CORRECTIONS

2 Note: If you are adding to your testimony, print the
3 exact words you want to add. If you are deleting from
4 your testimony, print the exact words you want to
5 delete. Specify with "Add" or "Delete" and sign this
6 form.

7 DEPOSITION OF: John Kirlin, Ph.D.

8 CASE: Williams v State of Calif.

9 DATE OF DEPOSITION: September 5, 2003

10

11 I, John Kirlin, Ph.D., have the following corrections
12 to make to my deposition:

13

14 PAGE	LINE	CHANGE/ADD/DELETE
15	---	_____
16	---	_____
17	---	_____
18	---	_____
19	---	_____
20	---	_____
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23	---	_____
24	---	_____

25 SIGNATURE _____ DATE _____

1 REPORTER'S CERTIFICATE

2 --o0o--

3 I, LISA RICHARDSON, a Certified Shorthand Reporter
4 for the State of California, duly licensed and a
5 disinterested person, certify:

6 That the foregoing deposition was taken before me
7 pursuant to applicable sections of the Code of Civil
8 Procedure of the State of California at the time and
9 place herein set forth;

10 That John Kirlin, Ph.D., the deponent herein, was
11 put under oath by me;

12 That the testimony of the witness and all
13 objections made at the time of the examination were
14 recorded stenographically by me, to the best of my
15 ability, and were thereafter transcribed;

16 That the foregoing deposition is a verbatim record
17 of the testimony of the deponent and all objections
18 made at the time of the examination.

19 IN WITNESS WHEREOF, I have subscribed my name on
20 this 18th day of September, 2003.

21

22

23 _____
24 LISA RICHARDSON
25 Certified Shorthand Reporter,
License No. 5883