

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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ELIEZER WILLIAMS, a minor, by )  
SWEETIE WILLIAMS, his guardian ad )  
litem, et al., each individually )  
and on behalf of all others )  
similarly situated, )

Plaintiffs, )

) No. 312236

vs. )

STATE OF CALIFORNIA; DELAINE )  
EASTIN, State Superintendent of )  
Public Instruction; STATE )  
DEPARTMENT OF EDUCATION; STATE )  
BOARD OF EDUCATION, )

Defendants. )

DEPOSITION OF  
JEANNIE OAKES, VOLUME III  
TAKEN ON  
MONDAY, MARCH 10, 2003

Reported by:  
Cathy A. Reece, RPR, CSR No. 5546

1 Deposition of JEANNIE OAKES, taken on behalf of  
2 Defendants, at 400 South Hope Street, Los Angeles,  
3 California, commencing at 9:40 a.m., on Monday, March  
4 10, 2003, before Cathy A. Reece, RPR, CSR No. 5546.

5  
6  
7 APPEARANCES:

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1 APPEARANCES (Continued)

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1 I N D E X

2  
3 WITNESS: JEANNIE OAKES  
4  
5

6 EXAMINATION PAGE

7 BY MS. DAVIS 436, 513

8 BY MR. EGAN 554  
9

10 EXHIBITS

11 EXHIBIT MARKED

12 18 Professor Oakes' report re Concept 6 446  
calendar, undated, 47 pages  
13  
14  
15  
16

17 QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:

18 (NONE)  
19

20 INFORMATION TO BE SUPPLIED:

21 (NONE)  
22  
23  
24  
25

1 JEANNIE OAKES,  
2 having been first duly sworn, was  
3 examined and testified as follows:

4 EXAMINATION

5 BY MS. DAVIS:

6 Q. Dr. Oakes, we met off the record. I will  
7 reintroduce myself. I am Lynne Davis. I am an attorney  
8 at O'Melveny & Myers representing the State of  
9 California in this litigation.

10 You have written three expert reports in this  
11 case, and I am here today to question you on your report  
12 regarding the multi-track, year-round calendar known as  
13 "Concept 6" and busing.

14 Can you please state your name for the record.

15 A. Jeannie Oakes.

16 Q. I know you have been deposed previously. I  
17 will quickly run through the ground rules of  
18 depositions.

19 I ask the questions. You respond orally. The  
20 court reporter cannot record nodding heads and shaking  
21 heads. If you can please refrain from doing so, I would  
22 appreciate it.

23 My questions and your responses are recorded  
24 in a -- transcribed into a booklet, which will be sent  
25

1 Q. In reviewing that report did you find any  
2 errors or inaccuracies in it?

3 A. Not that I noticed.

4 Q. Are you -- you are not aware of any errors or  
5 inaccuracies in your report at this time?

6 A. Not that I am aware of.

7 MR. LONDEN: Your reference is to the Concept  
8 6 report?

9 MS. DAVIS: I tried to make that clear at the  
10 beginning. Today I am just focusing in on that report.

11 Q. Does your report contain a fair summary of all  
12 of the opinions you intend to offer at trial involving  
13 the multi-track calendar and busing?

14 A. I think it summarizes the main points.

15 Q. As you sit here today are you aware of any  
16 opinions you intend to offer at trial that are not  
17 contained in your report?

18 A. This report is six months old. There may be  
19 additional information that has occurred, events that I  
20 may be asked about, and I may speak about those things.

21 Q. Have you reviewed any additional material  
22 since completing your report that you think affects your  
23 report?

24 A. No.

25 Q. Your report indicates that plaintiffs in this

1 to you.

2 You can review the booklet and make any  
3 changes, but if you do make any changes, I can comment  
4 on that fact at trial. Obviously, it is an informal  
5 setting, but it is the same as if you were testifying in  
6 court.

7 Please tell me if you don't understand a  
8 question, and I will try to rephrase it.

9 Of course, if you need a break, just let me  
10 know, and we will break.

11 Any questions?

12 A. No.

13 Q. Is there any reason you can't give your best  
14 testimony today?

15 A. No.

16 Q. What did you do to prepare for your deposition  
17 today?

18 A. I reviewed my report and some of the  
19 underlying documents.

20 Q. Did you meet with any of the attorneys --

21 A. No.

22 Q. -- in this case?

23 A. No.

24 Q. How long did you spend reviewing your report?

25 A. About six hours.

1 case asked you to offer your opinions regarding the  
2 multi-track calendar known as "Concept 6" and busing; is  
3 that correct?

4 A. Busing to relieve overcrowding.

5 Q. Okay. When did plaintiffs ask you to offer  
6 your opinions on these subjects?

7 A. I don't recall.

8 Q. Do you know when you began working on your  
9 expert report?

10 A. I don't really recall. I could give you a --  
11 within probably a year, year -- around a year ago.

12 Q. Around a year ago?

13 A. Maybe a bit longer.

14 Q. So maybe somewhere around the beginning of  
15 2002 or the end of 2001?

16 A. It was probably longer ago than that. Maybe  
17 six months earlier than that. I really don't recall.

18 Q. Did anyone help you draft the report?

19 A. I worked collaboratively on this report.

20 Well, this report began as a declaration I  
21 made in the Godinez case, and in that case I worked with  
22 Hector Villagra at MALDEF to prepare that declaration,  
23 and this report began with that declaration, since it  
24 was on the same topic, and I worked again with Hector.

25 Q. Did you work with any grad students at all in

1 preparing this report?  
 2 A. Not -- no.  
 3 Q. What was the Godinez case about?  
 4 A. The Godinez case is a school facilities case.  
 5 Q. Did you draft all of the report or did Hector,  
 6 Mr. Villagra, draft any of the report?  
 7 A. We worked back and forth.  
 8 Q. Do you recall what parts of the report that  
 9 you drafted?  
 10 A. There -- at some point I drafted every bit of  
 11 the report.  
 12 Q. You provided Hector with a draft of the  
 13 report.  
 14 Did you provide plaintiffs with a draft of the  
 15 report other than Mr. Villagra?  
 16 A. Not until it was completed.  
 17 Q. When did you complete your report?  
 18 A. Early -- late summer 2002.  
 19 Q. In your report you identify the four school  
 20 districts in California that operate a Concept 6  
 21 calendar, Palmdale, Lodi Unified, Los Angeles Unified  
 22 and Vista Unified; is that correct?  
 23 A. Yes.  
 24 Q. Do you know if any of the four districts have  
 25 plans to eliminate or curtail the Concept 6 calendar?

1 A. I know that both Los Angeles and Lodi have  
 2 expressed in the newspaper and at their board meetings a  
 3 great deal of concern about the -- Concept 6 and their  
 4 wish and in some cases their -- I guess you might call  
 5 it a "plan" although I -- to my knowledge, it is only  
 6 under discussion at this point.  
 7 Q. Are you aware of any of the goals and  
 8 objectives regarding the Concept 6 calendar with respect  
 9 to Palmdale or Vista?  
 10 A. No.  
 11 Q. Have you looked into that at all?  
 12 A. No.  
 13 Q. In your opinion why have Concept 6 schools  
 14 been implemented in California?  
 15 A. To relieve -- as an effort to relieve  
 16 overcrowding.  
 17 Q. Any other reasons?  
 18 A. The lack of sufficient school buildings to  
 19 house California's children.  
 20 Q. Are you aware that in November 2002 the voters  
 21 in California approved a K through 12 school bond?  
 22 A. Yes.  
 23 Q. Do you know about how much money was approved?  
 24 A. Billions.  
 25 Q. Do you know how the bond money is allocated?

1 A. Not precisely.  
 2 Q. Do you know if any part of the bond has been  
 3 funded at this time?  
 4 MR. LONDEN: Vague. You mean whether school  
 5 districts have received any funds?  
 6 BY MS. DAVIS:  
 7 Q. Whether the money is there. I guess that was  
 8 the question.  
 9 A. I don't know.  
 10 MR. LONDEN: Vague and ambiguous.  
 11 MS. DAVIS: Did you get that? She said she  
 12 didn't know.  
 13 THE REPORTER: Yes.  
 14 BY MS. DAVIS:  
 15 Q. In your opinion how do you think the November  
 16 2002 bond measure and the billions of dollars will  
 17 affect overcrowding in California schools?  
 18 A. I think it remains to be seen. I know of no  
 19 provision specifically designed to relieve Concept 6  
 20 overcrowding.  
 21 Q. In your opinion how do you think the State of  
 22 California should handle overcrowding in public schools?  
 23 MR. LONDEN: Vague.  
 24 THE WITNESS: Maybe you should explain to me  
 25 what you mean by "handle."

1 BY MS. DAVIS:  
 2 Q. Well, I know from your report you are not  
 3 happy with Concept 6.  
 4 A. Uh-huh.  
 5 Q. We have got some overcrowding.  
 6 The question is: In your opinion, how do you  
 7 think the State should handle the overcrowding? What  
 8 can they implement to deal with the overcrowding?  
 9 A. They could build more schools.  
 10 Q. Well, let's assume that the bond money will  
 11 alleviate some of the overcrowding, but that it is not  
 12 going to happen immediately. We have got to find the  
 13 land and draw up the plans and build the actual  
 14 buildings. So relief may be coming, but it may take a  
 15 while to implement.  
 16 How do you think California should handle  
 17 overcrowding until more schools are built?  
 18 MR. LONDEN: Vague.  
 19 THE WITNESS: My sense is we -- my opinion is  
 20 that we should move as expeditiously as possible to  
 21 build more schools.  
 22 We have had overcrowded schools and Concept 6  
 23 schools for about two decades designed as a temporary  
 24 solution. I would hate to get involved in planning any  
 25 more temporary solutions.

1 BY MS. DAVIS:  
 2 Q. Anything else you can think of?  
 3 A. To relieve overcrowding?  
 4 Q. Right.  
 5 A. Well, I suppose if I had some time and was  
 6 charged with doing it, I could come up with some  
 7 strategies, but not at this time.  
 8 Q. Fair enough.  
 9 You indicate in your report that,  
 10 "Approximately 4.7 million students in California attend  
 11 schools operating on a traditional calendar."  
 12 What do you mean by "traditional calendar"?  
 13 A. A "traditional calendar" is one that begins in  
 14 the fall and ends in the late spring or early summer and  
 15 contains 180 days, with short breaks for holidays in the  
 16 winter and in the spring.  
 17 Q. And what about summer vacation? How long are  
 18 summer vacations generally in traditional calendars, if  
 19 you know?  
 20 A. Generally, from mid-June to early September.  
 21 Q. Now, you stated in your report that, "300,000  
 22 students attend schools operating on some form of  
 23 single-track, year-round calendar."  
 24 What do you mean by a "single-track calendar"?  
 25 A. It is where only -- where all of the pupils

1 and teachers who are members of that school community  
 2 are at school at the same time. They have the same days  
 3 of instruction, and they have the same vacations.  
 4 Q. Do they have different breaks than students on  
 5 traditional calendars?  
 6 I am talking about single-track, year-round  
 7 schools.  
 8 A. Yes. In some cases.  
 9 Q. And you state in your report that,  
 10 "Single-track calendars break up summer vacations into  
 11 shorter periods."  
 12 What do you mean by this?  
 13 A. Well, instead of 10 weeks, they may have six  
 14 weeks and then have another break at other times during  
 15 the year.  
 16 Q. You state in your report that, "Multi-track  
 17 calendars, with the exception of Concept 6, are capable  
 18 of providing 180 days of instruction per school year."  
 19 You use the word, "capable." I am interested  
 20 in knowing if the multi-track, year-round schools in  
 21 California, with the exception of Concept 6, do, in  
 22 fact, provide 180 days of instruction per year.  
 23 Do you know?  
 24 A. Well, the actual number of days sometimes  
 25 varies with the school district, but as far as I know

1 the other -- the calendars other than the Concept 6 or  
 2 modified Concept 6 provide students with 180 days.  
 3 Q. What do you mean when you say, "modified  
 4 Concept 6"?  
 5 A. Well, a modified Concept 6 plan is also a  
 6 three-track plan, but instead of -- I have the  
 7 definition in here.  
 8 Q. Should we go ahead and mark the report? It  
 9 looks like you are looking at your report.  
 10 Let's go ahead and mark it as an exhibit.  
 11 (Discussion off the record.)  
 12 MS. DAVIS: Why don't we mark -- I will mark  
 13 as Exhibit 18 the report that Dr. Oakes submitted in  
 14 this case regarding Concept 6 and busing to relieve  
 15 overcrowding.  
 16 (Exhibit 18 was marked for I.D.)  
 17 BY MS. DAVIS:  
 18 Q. Do you recognize this document, the one that  
 19 we have handed to you?  
 20 Just to make sure, we are all looking at the  
 21 same thing.  
 22 A. It looks like it. Yes.  
 23 Q. Okay. Did I interrupt you? Were you talking  
 24 about modified Concept 6?  
 25 A. Yes.

1 Q. Sorry about that. Why don't you go ahead.  
 2 A. On Page 11 in my report, there is a graphic  
 3 representation of the Concept 6 schedule which shows the  
 4 calendar that regular -- regular Concept 6 follows.  
 5 In Footnote 7 I describe that the modified  
 6 calendar differs from the Concept 6 calendar in that it  
 7 has four two-month blocks of instruction and four  
 8 one-month vacations.  
 9 Q. And Concept 6 schools, even though students  
 10 are in session for 163 days instead of 180 days, do  
 11 provide instructional minutes that are equivalent to  
 12 180 days of instruction?  
 13 A. The minutes in school, yes.  
 14 Q. You state in your report that, "Multi-track  
 15 schools disproportionately enroll low-income students of  
 16 color."  
 17 Are you referring to all multi-track schools  
 18 here or just Concept 6 schools?  
 19 Page 6, that is what I have noted, if I cited  
 20 that correctly.  
 21 A. Page 6, I am not finding it on that page.  
 22 Q. It is the end of the first paragraph. I think  
 23 it is the last sentence.  
 24 MR. LONDEN: Page 6.  
 25 THE WITNESS: Yes. That is all multi-track

1 schools.

2 BY MS. DAVIS:

3 Q. Who do you consider to be "students of color"?

4 A. I generally use "students of color" to talk  
5 about -- well, I use it in two ways.

6 In this report I am talking about students who  
7 are both low income and students of color, which are  
8 typically Latinos, African-Americans and some low income  
9 Asian students, but -- American Indians.

10 Q. Do you have any opinion as to why, as you  
11 claim in your report, that multi-track schools  
12 disproportionately enroll low-income students of color?

13 A. Well, my view is that more advantaged  
14 communities seek other solutions to overcrowding  
15 problems when they arise, and most have the political  
16 influence to avoid multi-track schools in their  
17 communities.

18 Q. What are the other solutions to overcrowding  
19 problems more advantaged communities have implemented?

20 A. The primary one is avoiding the influx of  
21 low-income children into their neighborhoods which would  
22 require them to move to such calendars.

23 Q. How do they avoid the influx of low-income  
24 children into their schools?

25 A. Usually through a process of drawing district

1 boundaries so that some districts have proportionately  
2 low-income children of color and others have few.

3 Q. You state in your report that, "Multi-track  
4 calendars artificially expand enrollment capacity of a  
5 school without construction of additional facilities."

6 What do you mean by "artificially expand"?

7 A. By -- it allows the school to enroll more  
8 pupils than the school was designed to accommodate.

9 Q. Do the multi-track calendars actually in  
10 practice expand the enrollment capacity?

11 I guess my confusion lies with "artificially  
12 expand." I am focused on the word, "artificial."

13 A. Well, when schools are designed, they are  
14 designed with specifications in mind about how many  
15 students would be an appropriate number in terms of  
16 density for a particular school site.

17 When you put students on a multi-track,  
18 year-round calendar and rotate students and teachers  
19 through those calendars, you end up increasing the  
20 number of students over what the capacity -- the  
21 specified capacity is.

22 Q. You claim that, "Multi-tracking is not an  
23 educational innovation or reform."

24 Is it your opinion that the multi-track,  
25 year-round calendar is never implemented for educational

1 innovation or reform?

2 MR. LONDEN: Vague. Foundational -- lacks  
3 foundation, rather.

4 THE WITNESS: I have certainly not come across  
5 an instance of that nor an educator who has made that  
6 claim.

7 BY MS. DAVIS:

8 Q. And have you -- when you say that, have you --  
9 are you talking about just in California or nationally?

10 A. My analysis is -- of year-round, multi-track  
11 Concept 6 schools? You know, I have confined my  
12 analysis to California.

13 Q. Okay. You claim in your report that, "The  
14 Concept 6 calendar results in a complex shuffle of  
15 students and teachers between three tracks."

16 What do you mean by "complex shuffle"?

17 A. Well, if you look at the chart on Page 11  
18 which describes the rotation cycles in and out, these  
19 are students who have -- and teachers -- who are packing  
20 up the classroom, turning in books, moving out of a  
21 classroom so that immediately following -- if they move  
22 out on a Friday, so that on the next Monday another  
23 group of students and teachers can come into those  
24 buildings.

25 It is complex in that it is an intricate

1 schedule of instructional days and vacation days. It is  
2 a shuffle because people are moving around and packing  
3 up things, and there is a lot of -- it is hard for me to  
4 think of a synonym for "shuffle" but --

5 MR. LONDEN: May I just note that the copy  
6 that has been marked as an exhibit, of this exhibit --  
7 of this report, rather -- probably does not reproduce  
8 the differences in gray scale on table -- on Page 11.

9 MS. DAVIS: You are right.

10 MR. LONDEN: I don't think we should try to do  
11 anything about that, frankly, because it will be further  
12 copied, but just by my speaking up, I want to put the  
13 reader of the transcript on notice that one should  
14 consult the first generation.

15 MS. DAVIS: Maybe on a break we will try to  
16 substitute in a better one.

17 MR. LONDEN: I don't think it is necessary.  
18 It will just get copied again, and the copy won't show  
19 it.

20 MS. DAVIS: Okay. Fair enough. It is a  
21 little better on my copy, but I can see on the copy that  
22 is distributed, you are not able to tell.

23 MR. LONDEN: I don't think it affects the  
24 content of any answer so far.

25 BY MS. DAVIS:

1 Q. Okay. In your opinion, Dr. Oakes, how does  
2 this complex shuffle affect students of Concept 6  
3 schools?

4 A. Are you asking me about the impact of being in  
5 a Concept 6 school on a student or simply on what I  
6 defined as a "complex shuffle"?

7 Q. Yeah. Let's stick with what you just defined  
8 as a "complex shuffle."

9 A. But I certainly don't believe it is only the  
10 complex shuffle --

11 Q. I promise we will get to all of your opinions.  
12 I won't limit you to that.

13 MR. LONDEN: The question is vague.

14 You can go ahead.

15 THE WITNESS: It is difficult for me to  
16 separate out -- and I don't believe any other analyst  
17 has -- the particular impact of any one aspect of  
18 Concept 6.

19 BY MS. DAVIS:

20 Q. You claim that, "Notwithstanding the consensus  
21 that Concept 6 is the last resort for districts facing  
22 severe overcrowding, Governor Davis recently vetoed AB  
23 2027, which would have phased out Concept 6 by 2008."

24 In your opinion how can Concept 6 schools be  
25 phased out by 2008?

1 A. I don't believe I gave that opinion.

2 Q. I am not -- I am just asking as you sit here  
3 today, do you think it is feasible to phase out Concept  
4 6 by 2008?

5 A. Based on the analysis I have done at this  
6 point, I would not be comfortable at all in giving you  
7 a date.

8 Q. Do you have an opinion as what will be  
9 required to phase out Concept 6 schools by 2008?

10 MR. LONDEN: Asked and answered.

11 Go ahead.

12 THE WITNESS: It would require a public will  
13 that determined that this is a building crisis, perhaps  
14 on the scale of the Northridge earthquake, wherein we  
15 were able to rebuild extraordinary facilities within a  
16 short period of time.

17 BY MS. DAVIS:

18 Q. Anything else?

19 A. Oh, I am sure it would take lots of logistical  
20 coordination and materials and dollars and lots of other  
21 things.

22 I wouldn't want to make a definitive list at  
23 this moment.

24 Q. You also state in your report, "The problem is  
25 that the State has not provided districts with the

1 option of building off of Concept 6."

2 What do you mean by that?

3 A. That they have -- that the option to build  
4 schools to remove -- to eliminate the Concept 6 calendar  
5 has not been permitted by the resources provided by the  
6 State.

7 Q. What is the basis for your statement in your  
8 report that the State has not provided districts with  
9 the option of building off of Concept 6?

10 A. There have been no policies or resources made  
11 available that have targeted that as a goal.

12 Q. Are you basing this on any specific study  
13 or --

14 A. There have actually been some disincentives.

15 The State provides additional funding to  
16 encourage schools to adopt a Concept 6 calendar  
17 and/or -- or a year-round calendar, and then it provides  
18 ongoing operational costs if a district chooses to make  
19 itself -- to avail itself of those funds.

20 It then lowers its priority or it makes it  
21 less likely to qualify for funding for new construction.

22 Q. Anything else?

23 A. Probably if I had some time to think about it.

24 Q. You state in your report that, "Multi-track  
25 calendars do not necessarily relieve overcrowding."

1 What do you mean by this statement?

2 A. Would you point it out to me? I would like to  
3 see it in context.

4 Q. Page 16 and 17.

5 A. Oh, what that statement refers to is that  
6 multi-track schools are often extremely overcrowded even  
7 though a third to a half -- a third of the students may  
8 not be on the campus at any one moment; that these are  
9 still very large and overcrowded schools.

10 Q. And you mean in just total enrollment of  
11 students that are there at any one time?

12 A. Yes.

13 Q. Do you know what the average size traditional  
14 high school is in California?

15 A. No.

16 MR. LONDEN: Ambiguous.

17 Go ahead.

18 BY MS. DAVIS:

19 Q. Do you know how the traditional high schools,  
20 in terms of the number of students on campus at one  
21 time, compares to Concept 6 schools, the number of  
22 students that are on campus at any one time?

23 A. Most Concept 6 schools have more students on  
24 campus at any one time than traditional schools, on  
25 average.

1 Q. And what is the basis for that statement?

2 A. Looking at the number of students who are in  
3 Concept 6 schools and the disproportionate -- well, let  
4 me give you an example.

5 I was sitting with the Superintendent of  
6 District F, Dale Vigil, the other day at a meeting. He  
7 is a principal -- he was telling me about one of his  
8 schools, South Gate Middle School. 4,200 students are  
9 enrolled. The school was designed for 800 students.

10 So that even by having the students rotating  
11 through the schools, at any one moment the school is  
12 seriously overcapacity.

13 Q. My question was: How do you know that the  
14 number of students at traditional schools -- and let's  
15 just pick a middle school -- how do you know there are  
16 more students on campus at any one time at traditional  
17 middle schools than students on campus at any one time  
18 at Concept 6 middle schools?

19 A. I think you said the question backwards.

20 MR. LONDEN: Yeah.

21 BY MS. DAVIS:

22 Q. What I am trying to figure out: Were you  
23 looking at any statistics or numbers?

24 A. I do regularly look at the California  
25 educational database, which includes those numbers.

1 Q. Do you have an opinion on what the  
2 teacher/student ratio should be?

3 MR. LONDEN: Vague.

4 THE WITNESS: I think there is considerable  
5 evidence -- the most widely cited evidence is that 15 to  
6 1 is probably a nice -- an ideal ratio.

7 Our State's Class Size Reduction was certainly  
8 based on the fact that 20 to 1 is better than the 35 and  
9 40 and sometimes 45 that exists in many California high  
10 schools.

11 BY MS. DAVIS:

12 Q. You cited to some research regarding the 15 to  
13 1 ratio.

14 What research are you referring to?

15 MR. LONDEN: Asked and answered.

16 Go ahead.

17 THE WITNESS: There is a whole body of  
18 research on class size that I think -- and I would want  
19 to -- names are coming to my mind, but I don't want to  
20 make an error.

21 I could certainly find that out for you on a  
22 break, though.

23 BY MS. DAVIS:

24 Q. You can't think of any as you sit here right  
25 now?

1 I have not sat down and done a systematic  
2 comparison.

3 Q. Now you claim that, "Overcrowding at the  
4 classroom level exists on multi-track calendars"?

5 A. Yes.

6 Q. Are you talking about all multi-track schools  
7 or just Concept 6?

8 A. I certainly know that is the case at Concept 6  
9 schools, and I haven't looked at it for other  
10 multi-track calendars.

11 Q. What do you consider to be "overcrowding at  
12 the classroom level"?

13 A. Certainly, when there are not enough desks  
14 for -- well, the -- there are two dimensions.

15 One has to do with the actual physical space,  
16 so when there are not enough desks or chairs or rooms to  
17 sit in for teachers and students, that is clearly an  
18 indicator of overcrowding.

19 Another indicator of overcrowding is when the  
20 number of students far exceeds a teacher's ability to  
21 interact with them productively.

22 So, for example, you might have a very large  
23 room that could hold 200 students, but if you had one  
24 teacher trying to teach those students, you might claim  
25 that was an overcrowded instructional environment.

1 A. But -- yes, I can, but I can't say with  
2 absolute certainty.

3 We have the Tennessee studies that Jeremy Finn  
4 at the University of -- SUNY, Buffalo has done, which is  
5 the most widely cited.

6 And there are lots of others, and it goes back  
7 many years.

8 Q. You said, "the Tennessee studies."

9 Was that a study of schools in Tennessee?

10 A. Yes.

11 Q. I know you don't remember precisely.

12 Do you recall reviewing any studies regarding  
13 California schools?

14 A. Well, there has certainly been a consortium of  
15 researchers over the last two or three years, the RAND  
16 Corporation, AIR, who have done a -- there is a  
17 consortium that has done a study of California's Class  
18 Size Reduction Plan.

19 There was also a study done by the Public  
20 Policy Institute of California.

21 And then Randy Ross here in Los Angeles has  
22 also looked at the impact of class size reduction on the  
23 students in Los Angeles. So there have been, yes, some  
24 California studies.

25 Those are different studies than ones that



1 have established the ideal class size, however.  
 2 Q. Do you know what Concept 6 schools are, in  
 3 your opinion, overcrowded at the classroom level?  
 4 A. What? For example --  
 5 Q. Which schools.  
 6 A. Fremont is one good example. Fremont High  
 7 School.  
 8 I certainly wouldn't want to depend on my  
 9 memory to list all the names of all the schools with  
 10 that problem.  
 11 Q. Do you know what the teacher/student ratio is  
 12 at Fremont?  
 13 I think from reading your transcript that your  
 14 daughter teaches at Fremont.  
 15 Does she --  
 16 A. No. My daughter teaches in Fremont,  
 17 California, which is a city in the East Bay.  
 18 Q. You are talking about --  
 19 A. I am talking about Fremont High School in Los  
 20 Angeles.  
 21 Q. Okay. Okay. Do you know what the  
 22 teacher/student ratio is at Fremont High School in Los  
 23 Angeles?  
 24 A. I know it has been as high as 40, above 40,  
 25 but it varies from day-to-day in the counts.

1 There are many different ways to count.  
 2 Q. Do you know if there is overcrowding at the  
 3 classroom level in traditional or single-track schools?  
 4 A. Yes.  
 5 Q. You claim in your report that, "Overcrowding  
 6 negatively affects many classroom activities,  
 7 instructional strategies and academic performance."  
 8 What do you mean by "classroom activities"?  
 9 A. The kinds of interactions that teachers can  
 10 engage with with students are constrained by  
 11 overcrowding.  
 12 Whether or not students can participate in  
 13 group work depends on whether they have room to move  
 14 their desks together and whether there is enough room to  
 15 reconfigure students, the number of times a teacher can  
 16 call on a student.  
 17 I mean, there are -- it is hard to imagine  
 18 what, other than lecturing, is not affected by the  
 19 number of students who happen to be in a classroom.  
 20 Q. And what do you base your statement on that,  
 21 "Overcrowding negatively affects classroom activities"?  
 22 A. The reports of teachers who are in those  
 23 settings.  
 24 Q. What reports of teachers?  
 25 A. Well, there is certainly many -- there are

1 many levels on which there are reports of teachers.  
 2 There are newspaper accounts.  
 3 There are my personal interactions with  
 4 teachers who I work with at UCLA.  
 5 There are my observations of classroom  
 6 instruction in schools with overcrowding.  
 7 Q. In what schools have you conducted classroom  
 8 observation?  
 9 A. Boy, I have been in hundreds of schools.  
 10 Q. Let's look at it this way: What was the  
 11 purpose of your classroom observation?  
 12 A. I do research that involves classroom  
 13 observation.  
 14 I was the director of UCLA's Teacher Education  
 15 Program for six years. During that time I spent many  
 16 hours observing classrooms, both of our students and of  
 17 their colleagues.  
 18 I routinely visit schools with -- take  
 19 visitors to schools to, for example, funders when they  
 20 are interested in learning more about schools.  
 21 I am in schools in the general course of my  
 22 work all the time.  
 23 Q. Have you specifically observed classrooms for  
 24 the purpose of researching overcrowding at the classroom  
 25 level?

1 MR. LONDEN: Ambiguous.  
 2 THE WITNESS: Are you asking if I did  
 3 observational studies in preparation for this report?  
 4 BY MS. DAVIS:  
 5 Q. Not even just for this report, but if you  
 6 observed classrooms for the purpose of looking at the  
 7 effects, if any, of overcrowding at the classroom level.  
 8 MR. LONDEN: Same objection.  
 9 THE WITNESS: Whenever I am observing in a  
 10 classroom the issue of the -- of whether it is  
 11 overcrowded or not is a part of my consideration.  
 12 BY MS. DAVIS:  
 13 Q. Have you ever observed classrooms, though, for  
 14 the purpose of researching the effects, if any, of  
 15 overcrowding at the classroom level?  
 16 MR. LONDEN: Same objection. Asked and  
 17 answered.  
 18 THE WITNESS: I have never observed a  
 19 classroom in which the only thing I was interested in  
 20 was whether or not it was overcrowded.  
 21 BY MS. DAVIS:  
 22 Q. What do you mean by "instructional  
 23 strategies"?  
 24 I am going back to your original statement in  
 25 your report that, "Overcrowding negatively affects

1 instructional strategies."

2 A. In that context, the "instructional  
3 strategies" would be personal -- purposeful activities  
4 that teachers engage with in order to assist students to  
5 learn.

6 Q. Can you give me some examples?

7 A. Discussion, small group work, projects,  
8 making -- working with computers and other media,  
9 lecturing, recitation.

10 The list could go on, but that gives you some  
11 examples.

12 Q. How does overcrowding negatively affect these  
13 instructional strategies?

14 MR. LONDEN: Assumes facts.

15 THE WITNESS: The -- in the way I described  
16 earlier, that there either can be physical barriers to  
17 accomplishing those activities or there can be  
18 limitations imposed by large numbers of children for a  
19 single teacher that restricts the interactions.

20 BY MS. DAVIS:

21 Q. Anything else?

22 A. Well, the density of children in a classroom  
23 can create all kinds of disruptions that go beyond the  
24 specific things I just mentioned.

25 Q. Have you -- are there any, to your knowledge,

1 and questions about constraints on learning due to  
2 various dimensions in both multi-track, year-round  
3 schools and facilities problems generally.

4 I can't remember whether there was a specific  
5 item about whether overcrowding negatively affected  
6 instructional strategies.

7 BY MS. DAVIS:

8 Q. Anything other than the Lou Harris data?

9 A. Generally, teachers are asked in many studies  
10 about the working conditions, and I know that  
11 constraints of size and, certainly, class size are often  
12 among those items.

13 Oh, yes. There are studies that have dealt  
14 with those questions.

15 Q. And can you think of any as you sit here  
16 today?

17 A. No. I would want to review my files.

18 Q. I am going to go back to the original  
19 statement. I know we have talked a lot about different  
20 things.

21 You claim in your report that, "Overcrowding  
22 negatively affects academic performance."

23 How are you measuring academic performance?

24 A. Well, the researchers who have done this work  
25 typically use students' scores on tests of academic

1 research or studies regarding the impact of overcrowding  
2 on instructional strategies?

3 MR. LONDEN: Vague.

4 THE WITNESS: I believe it is one of those  
5 facts that doesn't require -- I think it is part of the  
6 professional knowledge that I -- I don't know of any  
7 researcher that's felt the need to investigate beyond  
8 simply asking teachers about what are the constraints on  
9 their instruction, and certainly teachers do respond  
10 that their classrooms are -- overcrowding is severe  
11 enough to interfere with learning, and that is survey  
12 questions have been asked this in that way, although  
13 generally these have been in the context of studies that  
14 have looked at constraints more broadly.

15 BY MS. DAVIS:

16 Q. I just want to make sure that that was  
17 actually answered.

18 I am wondering if you are aware of any  
19 research or studies that find that overcrowding  
20 negatively affects instructional strategies.

21 MR. LONDEN: Vague. Asked and answered.

22 THE WITNESS: I would want to relook at the  
23 data that was collected last year as a part of the Lou  
24 Harris studies of schools.

25 I know there were questions about overcrowding

1 achievement.

2 Q. What tests are you referring to?

3 A. Generally, when -- most studies rely on  
4 standardized tests of basic academic knowledge, much  
5 like the ones California has used: SAT-9, CTBS, CAT.

6 Q. How do you feel about the SAT-9 test as a  
7 measure of academic performance?

8 MR. LONDEN: Vague and ambiguous.

9 THE WITNESS: I have certainly not studied the  
10 SAT-9 as a measure of academic performance in  
11 relation -- I want to strike that.

12 I think the SAT-9 is a -- I don't know what  
13 you mean when you say, "How do you feel about it?"

14 BY MS. DAVIS:

15 Q. In your opinion is the SAT-9 a fair assessment  
16 of students' abilities?

17 A. It depends on the purpose for which the test  
18 is being used.

19 It certainly tells you how students measure on  
20 the range of items that it covers compared to other  
21 students who have taken the test.

22 Q. What do you mean that -- what do you mean by,  
23 "It depends on the purpose for which the test is being  
24 used"?

25 What purposes are you referring to?

1 A. Well, tests may have many purposes, all the  
2 way from informing a teacher about the needs and -- of  
3 his or her students to making decisions about whether or  
4 not students should graduate from high school to making  
5 decisions about whether a school should be named as a  
6 low-performing school.

7 Tests are used in many ways.

8 Q. In your opinion are there purposes where the  
9 SAT-9 is not used as a fair assessment of -- or not a  
10 fair assessment of students' abilities?

11 MR. LONDEN: Vague and ambiguous.

12 THE WITNESS: Well, I would certainly never  
13 use the word, "abilities" in conjunction with an  
14 achievement test.

15 BY MS. DAVIS:

16 Q. What would you use?

17 A. "Achievement."

18 Q. Okay. Why don't you like "abilities"?

19 A. "Abilities" usually is referring to something  
20 that is thought to be capacities of a child rather than  
21 accomplishments of a child, and the measures of  
22 achievement, at least the good ones, are designed to  
23 measure accomplishments.

24 Q. Okay. So let me go back.

25 Are there purposes for which the SAT-9 is not

1 Q. Is it used --

2 A. Yes, it is.

3 Q. -- sometimes?

4 A. California policy says school districts have  
5 to frame their promotional policies around the students'  
6 scores on the standardized tests.

7 Q. You claim in your report that, "Teachers are  
8 forced to change classrooms" or "Teachers have reported  
9 that they are forced to change classrooms, and the time  
10 between classes is insufficient for them to even write  
11 warm-up exercises on a chalkboard."

12 How do you know this? What is the basis for  
13 this statement?

14 A. Well, certainly the basis of this particular  
15 statement is the reports of the teachers who said that.

16 I have also had some personal experience with  
17 being a teacher and moving from class to class and  
18 knowing how difficult it is even in a normal school to  
19 get from one class to another and to set up and prepare  
20 and get materials out.

21 Q. You are talking about reports of teachers.

22 Who, of teachers, have reported this to you?

23 A. I think there are some declarations cited in  
24 my report of teachers who have talked about the  
25 difficulties.

1 a fair assessment of student achievement?

2 A. Yes. The SAT-9 is not a fair measure of  
3 students' achievement of the California Content  
4 Standard.

5 Q. What do you mean by that?

6 A. Maybe you need to tell me which part of what I  
7 said you want me to explain.

8 Q. What do you mean by "California Content  
9 Standard" -- I guess -- I don't understand your answer.

10 It is not a fair assessment, why, in relation  
11 to California Content Standards?

12 A. Because the domains of knowledge that are  
13 included in the California Content Standards and the  
14 domains of knowledge in the SAT-9 are not well aligned.

15 Q. Do you think the SAT-9 for purposes of  
16 determining if students should be retained or held back  
17 is a fair assessment of whether that student should be  
18 retained or held back?

19 MR. LONDEN: Vague.

20 THE WITNESS: It is -- no, it is not.

21 BY MS. DAVIS:

22 Q. And why do you think that?

23 A. Because the test manufacturers say that the  
24 test should never be used alone to make a decision such  
25 as that.

1 I have also had some conversations with the  
2 reporters who have written about Concept 6 schools and  
3 who have talked to me about their conversations and  
4 asked me about their conversations with teachers who  
5 they have talked to as the basis of their story.

6 I also, of course, have had many personal  
7 experiences with the teachers from UCLA, many of whom  
8 end up in just these kinds of schools and complain  
9 bitterly about this experience.

10 You may have seen a film called, "First Year,"  
11 a documentary about new teachers.

12 Q. I haven't, actually.

13 A. One of the teachers, one of the five featured,  
14 was one of my graduates, and they actually showed her at  
15 Venice High School with her little wheelie cart moving  
16 around between -- from class to class and in tears and  
17 asking her principal if he couldn't somehow find her a  
18 classroom of her own.

19 Q. You say you have personal experience in this  
20 regard.

21 Is there any method that a teacher could  
22 employ for providing warm-up exercises that doesn't  
23 involve having to write them on the chalkboard?

24 A. That was simply one example to make concrete a  
25 more general statement that when teachers have to move

1 and carry with them their supplies and equipment from  
2 class to class they don't have time to adequately  
3 prepare for instruction, and instructional time is lost.

4 Q. Anything other than these reports of teachers  
5 and your personal experience that supports your  
6 statement regarding changing classrooms and the loss of  
7 instructional time?

8 MR. LONDEN: Asked and answered.

9 THE WITNESS: Let me -- you know, I talk about  
10 this at some length in my report, and I would hate to  
11 constrain my opinion to simply what I am recalling as  
12 you are asking me. So I want to make sure everything in  
13 my report is --

14 BY MS. DAVIS:

15 Q. Okay. Sure. Take your time.

16 A. No. I mean, I want my report to stand as my  
17 opinion as well as my reiteration of the points.

18 Q. Okay. Okay.

19 A. So that now as I look at my report, I recall  
20 that actually in one of Ross Mitchell's studies of  
21 year-round schools he talked about this problem of  
22 interfering with instruction, and that it was a  
23 particular problem for new teachers like the one I gave  
24 you the story about.

25 Also in the Social Policy Research Associates

1 rotate them in and out has a cumulative impact,  
2 cumulative negative impact, so while the negative  
3 effects of overcrowding are one thing and negative  
4 effects of multi-tracking are one thing, that when you  
5 put them together you get this cumulative impact that is  
6 more negative than either would be alone.

7 I think that is probably -- that's --

8 Q. Now, in terms of the classes being held in  
9 gyms and libraries, is that a problem that you attribute  
10 to the calendar itself, the multi-track calendar?

11 A. I think I would make the same response as I  
12 just did.

13 Q. How do you -- I know you are saying it is a  
14 cumulative effect.

15 How does the multi-track calendar factor into  
16 the fact that classes are being held in gyms and  
17 libraries?

18 A. Well, we talked about the "complex shuffle" --

19 Q. Right.

20 A. -- and if you think about the "complex  
21 shuffle" not being confined to simply what has been  
22 designated as classroom space or designed as classroom  
23 space, but you also have people engaged in a complex  
24 shuffle in and out of computer labs and gyms and storage  
25 rooms and teacher workrooms and the other kinds of

1 study of 17 California schools they noted in those  
2 schools that there was a negative impact on instruction.

3 Q. Anything else you wanted to add?

4 A. Not other than what is in my report.

5 Q. You stated in your report that,  
6 "Multi-tracking can actually exacerbate the negative  
7 effects of overcrowding." Here you cite specifically to  
8 "classes being held in gyms and libraries, and that  
9 these makeshift classrooms fail to provide adequate  
10 instructional space."

11 A. Uh-huh.

12 Q. Why do you claim that these alleged problems  
13 exist because of the multi-track calendar?

14 A. Will you point me to the sentence where I say  
15 that?

16 Q. I am looking at Page 18, and your statement is  
17 that, "Multi-tracking can actually exacerbate the  
18 negative effects of overcrowding."

19 I can put it to you this way: Do you claim  
20 these alleged problems exist because of the multi-track  
21 calendar?

22 A. The whole problem, the "over" problem and the  
23 lack of adequate capacity at school sites, it is all of  
24 a piece. And the whole -- the mentality that we can  
25 simply cram as many students into this space and to

1 places that get used as classrooms when they weren't  
2 designed for that way; it is a compounded effect in  
3 terms of the disruption in the school.

4 Q. Is the fact that classes are being held in  
5 gyms and libraries because there is not classroom space  
6 attributable to overcrowding --

7 MR. LONDEN: Ambiguous.

8 BY MS. DAVIS:

9 Q. -- or to the calendar?

10 A. The underlying problem that the State has not  
11 provided the ability to build enough schools for  
12 children has led to all of these problems.

13 They compound and exacerbate one another. I  
14 think it is real inappropriate to try to parse out which  
15 of these symptoms of a bigger underlying problem may  
16 cause another symptom.

17 Q. I am looking at the space problem, and the  
18 space problem -- what I am trying to figure out is if  
19 you are trying to say the space problem is attributable  
20 to the multi-track calendar.

21 A. I think they are both a function of the  
22 failure to provide enough schools to house students  
23 appropriately.

24 Q. You state in your report that, "With all of  
25 the classrooms in use in multi-track schools during the

1 entire year, schools have no space for makeup or  
2 enrichment classes, test preparation and other academic  
3 interventions."

4 You also state later in your report that,  
5 "There is no period on the multi-track calendar when the  
6 school is available to provide assistance to students  
7 struggling to reach grade level."

8 First of all, are you referring to all  
9 multi-track schools here or Concept 6?

10 MR. LONDEN: Could we get page references?

11 MS. DAVIS: Yes. 18 and 33.

12 MR. LONDEN: Thank you.

13 BY MS. DAVIS:

14 Q. And feel free to look at those pages --

15 A. Right.

16 Q. -- before you answer. I see you turning to  
17 them.

18 A. The problem of all classrooms being in use  
19 during the entire year and leaving no space for  
20 interventions for students who may need it is a  
21 multi-track problem. It is not limited to Concept 6.

22 Q. Are you saying that all multi-track schools  
23 have no space during the entire year for enrichment or  
24 other programs?

25 A. I would not like to make a blanket statement

1 do it on Saturdays, you have got all that intervening  
2 time that it is not -- can't come close to providing the  
3 setting that a regular week intersession or summer  
4 program might be able to do.

5 Q. Is there any other basis for that other  
6 than -- I think that is the Wohlers declaration?

7 A. Yes.

8 Q. Any other basis for that?

9 A. Well, certainly my own years of experience  
10 looking at the conditions that promote good instruction  
11 and learning.

12 Q. Anything else?

13 A. All the reading I have done. You are asking  
14 for my basis here.

15 Q. What is "all the reading" you have done?

16 A. Well, I have spent 20 years doing this kind of  
17 work, reading about, essentially, what makes schools  
18 effective and fair, and from that learning you -- I mean  
19 that reading -- you begin to develop some principles  
20 that guide your ability to evaluate what is a  
21 constructive learning environment and what is not.

22 Q. Are there any studies or research that you are  
23 aware of that find that after-school intervention or  
24 intervention on Saturdays is not productive?

25 A. I didn't -- what I said is that the

1 about all schools.

2 Q. I know you are still flipping pages.

3 Do you want me to wait?

4 A. No.

5 Q. Are you aware of any makeup or enrichment,  
6 test prep or academic interventions that take place at  
7 multi-track schools?

8 A. I know that in Los Angeles they have attempted  
9 to use after-school hours and Saturdays for this kind of  
10 an intervention.

11 I also know that they found it very  
12 unsatisfactory, and I think, as I cite in my report, the  
13 Chief of Staff to the Superintendent has basically said  
14 that it is really not any intervention at all when you  
15 have to do it under those circumstances.

16 Q. Do you know why the Chief of Staff said that;  
17 why it is not useful under those circumstances?

18 A. My guess is because he believes that to be  
19 true.

20 Q. Do you know what he means by "under those  
21 circumstances"?

22 A. That children at the end of a very long day of  
23 instruction or on Saturdays, that neither children nor  
24 teachers are prepared to engage in yet another intensive  
25 academic session, and that the disruptions, if you only

1 interventions that are conducted on those settings can't  
2 compare with having the time and space available to do  
3 them in a -- in something that resembles a normal school  
4 week or school time.

5 Q. Are there any studies or research that support  
6 your statement?

7 A. Not that are occurring to me right now, but we  
8 probably could find some.

9 Q. And you state in your report that, "Research  
10 suggests that an elementary school should be in the  
11 range of 300 to 400 students and high schools should be  
12 in the range of 400 to 800 students."

13 I see you flipping -- it should be at Page 19,  
14 if you are looking.

15 What "research" are you referring to?

16 A. Well, there is a -- on Page 19 there is a  
17 whole list of studies that have looked at exactly that  
18 question; whether or not large schools, small schools  
19 are the most -- what is the -- what is the optimal size  
20 of schools for students at various levels of schooling.

21 Q. And do all of the research and studies that  
22 you cited to conclude that the range should be 300 to  
23 400 in elementary schools and 400 to 800 in high  
24 schools?

25 A. The -- I'm not -- I don't believe they all

1 specify a particular size. They all suggest that small,  
2 in most cases, is better than large.

3 The Valerie Lee study is probably the most  
4 rigorous and comprehensive study on this topic, and I  
5 believe it was Valerie who settles on these numbers.

6 Q. So you think that is where you are getting  
7 these numbers?

8 MR. LONDEN: Asked and answered.

9 THE WITNESS: I have read all of these  
10 studies, and I know that Valerie Lee's studies -- and  
11 this is not the only one. She has done several studies  
12 on this topic -- does specify this range as being ideal.

13 BY MS. DAVIS:

14 Q. Where was the Valerie Lee research conducted,  
15 if you know?

16 A. Valerie Lee has done a combination of  
17 analyzing national databases that have been developed by  
18 the U.S. government and doing on-site visits to many of  
19 the schools as well.

20 So these are national studies that involve a  
21 combination of secondary analysis of large databases and  
22 primary studies that involve observations and interviews  
23 in schools around the country.

24 Q. Do you know how Valerie Lee determines that  
25 the 300 to 400 in elementary and 400 to 800 students in

1 to learn particular kinds of knowledge.

2 So those two -- especially the Lee studies and  
3 the Wisconsin studies -- turn out to be very, very  
4 powerful factors in why schools of this size seem to  
5 work better than great big ones.

6 Q. Do you know how Valerie Lee was looking --  
7 measuring student achievement?

8 A. She used the national what is called,  
9 "NELS:88" in high school and beyond. Those are two  
10 different surveys, each of those done by the U.S.  
11 Department of Education, contain measure of kids'  
12 knowledge in content areas as part of the survey, so  
13 they have their own measures.

14 They are then able to relate the dimensions of  
15 schooling they are studying to the students' performance  
16 on those measures.

17 Q. "NELS:88," is that what you said?

18 A. Uh-huh. The National Educational Longitudinal  
19 Study, and it began in 1988.

20 Q. Is it your opinion that California public  
21 schools should only operate elementary schools that  
22 house 300 to 400 students and high schools that only  
23 house 400 to 800 students?

24 A. No.

25 Q. Why isn't that your opinion? That seems to be

1 high schools is the desirable range of students?

2 A. They -- the study was a complex set of studies  
3 that came out of the National Center for Restructuring  
4 Schools. It was located at the University of Wisconsin,  
5 and they did a number of studies over five or six years,  
6 and one of their cumulative findings out of all that  
7 work was about this optimal size.

8 Q. Do you know why these ranges of students are  
9 the optimal size?

10 A. They -- the researchers have looked at two or  
11 three factors that seem to make a difference.

12 One is certainly the achievement outcomes of  
13 students, but there are two variables that seem to  
14 always stand out as contributing to that.

15 One is that with schools in this size,  
16 everyone can know each other. It is a variable that has  
17 become known as "personalization." It is very popular  
18 now, and that is, that students have -- are around  
19 adults that know them and can keep tabs on their  
20 progress and on their behavior, and that turns out to be  
21 very, very supportive of students learning.

22 A second variable is that when schools are  
23 about this size, they tend to offer a common curriculum  
24 to all of the students so that there are not huge  
25 variations in the kinds of opportunities students have

1 what Valerie Lee was suggesting.

2 A. The determination of an optimal size of  
3 schools is always -- ideally, if one had all the  
4 resources and land and everything available to it, that  
5 would be a nice goal to seek.

6 I would -- I think it would be too restrictive  
7 to impose it as a mandate.

8 Q. Do you have an opinion as to the optimal size  
9 of schools, and you can take them separately,  
10 elementary, middle and high school?

11 A. The reason I cited this is that I trust this  
12 research, so my professional opinion would be, that,  
13 yes, what has been identified here is probably optimal.

14 Q. Do you know how many new school buildings  
15 would be required in California in order to house only  
16 300 to 400 students in each elementary school?

17 A. Well, having small schools does not only mean  
18 that you have buildings that are only of this size.

19 In New York City we have lots of very large  
20 schools, buildings that have been broken up into small  
21 schools and operate as autonomous schools within a  
22 building and all kinds of interesting physical plants.

23 So I think there is no answer about how many  
24 schools it would take.

25 MS. DAVIS: This is a good time to take a

1 bathroom break.

2 MR. LONDEN: Fine.

3 (Recess taken.)

4 BY MS. DAVIS:

5 Q. You state in your report that, "Reconfiguring  
6 large urban schools into smaller schools has a positive  
7 impact on," and you list a couple of things here,  
8 "school performance, school climate, professional  
9 collegiality and parental satisfaction"?

10 A. Yes.

11 Q. You cite to a work entitled, "Small Schools,  
12 Great Strides."

13 Were schools in this work reconfigured into  
14 smaller schools?

15 A. Some were and some were not.

16 Q. Okay. What do you mean by "reconfiguring  
17 schools"?

18 A. The -- there are many ways schools can do  
19 this.

20 Generally, it is where a chunk of the space is  
21 designated as a school that is attended by a particular  
22 group of kids and taught by a particular group of  
23 teachers. It is a way of dividing up the physical space  
24 into much more separate, independent, autonomous places.

25 Q. Can you give me an example of a "particular

1 Q. This study, "Small Schools, Great Strides,"  
2 did this look at a particular geographic area in terms  
3 of reconfiguring schools?

4 MR. LONDEN: Ambiguous.

5 THE WITNESS: You know, I am not absolutely  
6 certain whether these schools were in a particular area.

7 I know there are some New York schools here,  
8 but it may be -- I would have to check what their sample  
9 was.

10 BY MS. DAVIS:

11 Q. How did reconfiguring the schools have a  
12 positive impact on school performance?

13 A. The variables I mentioned before about more  
14 personalized relationships and having common curriculum  
15 I think are the two factors that probably stand out as  
16 having an impact.

17 Q. And when you say, "school performance," what  
18 do you mean by that?

19 A. Student performance in this string of things  
20 that mattered has to do with student learning.

21 Q. And how is student performance measured?

22 A. I would have to -- do you have a copy of this?  
23 I would be happy to --

24 Q. No. Just if you recall.

25 A. No.

1 group of kids"?

2 You mentioned that it is divided up into "a  
3 particular group of kids" and then "a particular group  
4 of teachers."

5 A. I mean, that space is the property -- not the  
6 "property," but it is sort of the purview of a group of  
7 faculty members and a group of children.

8 So it could be like 300 children, elementary  
9 school kids, or any -- I didn't mean in particular --

10 Q. I thought you meant certain kids for certain  
11 reasons would go to one school --

12 A. No.

13 Q. -- maybe because of achievement or --

14 A. No.

15 Q. Okay. I am with you.

16 What do you mean by "smaller schools"? What  
17 is the size of a smaller school?

18 A. Well, most of these small schools -- again,  
19 you can't -- always in social science research you are  
20 talking about on average and the propensity.

21 Generally, these small schools cited in this  
22 particular study aim for the sizes that were mentioned  
23 on -- the 300 to 400 students in elementary and 400 to  
24 800 in high schools. Generally, that is what these  
25 small schools attempt to do.

1 Q. Okay. How did reconfiguring the schools have  
2 a positive impact on school climate?

3 A. Well, in the same sorts of ways. People know  
4 each other, and they also had control of their space.  
5 Often there is a sense of ownership about, "This is our  
6 place."

7 Q. How did reconfiguring the schools have a  
8 positive impact on professional collegiality?

9 A. Again, it is about relationships and a more  
10 personalized environment where people work together as a  
11 team, and they take responsibility -- one of the  
12 findings of this work on small schools is that in a  
13 small school the teachers tend to take responsibility  
14 for all of the children, so they are all -- like they  
15 share this group of children.

16 It makes it easier to work as colleagues when  
17 you share responsibility for a group of children.

18 Q. Anything else you can think of?

19 A. Yes. Just the general nature of  
20 relationships.

21 Q. And the same question regarding parent  
22 satisfaction.

23 How did reconfiguring have a positive impact  
24 on parent satisfaction?

25 A. I would answer in the same way.

1 Q. Do you think that California should  
2 reconfigure its large urban schools into smaller  
3 schools?

4 A. I think that would not be a bad idea.

5 Q. How would you go about doing that?

6 A. Well, there are several strategies that people  
7 use.

8 One is to start up new schools.

9 A second is to break up existing large  
10 schools. There are lots of people in California  
11 interested in doing this right now.

12 Q. Who is interested in it?

13 A. Well, Bill Gates gives a great deal of money  
14 to schools who are -- around the state who are  
15 interested in doing it.

16 There is a consortium of people called the  
17 "School Redesign Project" at Stanford. There is --  
18 Oakland has -- is interested in doing small schools.

19 These are local initiatives usually by  
20 educators who are seeking to do something outside the  
21 normal structure of the state system or the whole  
22 system.

23 Q. Have any of their plans been implemented to  
24 your knowledge?

25 A. Yes. Sure.

1 LAUSD by J.L. Herman.

2 Do you know what kind of study J.L. Herman  
3 conducted?

4 MR. LONDEN: Page reference, please?

5 BY MS. DAVIS:

6 Q. 20.

7 A. She did two things, to the best of my  
8 recollection.

9 One is that she looked at the numerical -- you  
10 know, the data that related the school calendar to  
11 academic achievement, and then she did some interviews  
12 with teachers to try to understand the constraints that  
13 they experienced on Concept 6 calendars.

14 Q. Do you recall how many schools she studied?

15 A. I don't recall.

16 Q. Do you recall what schools she studied?

17 A. I don't recall. She might not have named  
18 them. I don't recall.

19 Q. Do you know when -- it is a 1987 study. I  
20 don't need to know when.

21 Is there any other evidence that supports your  
22 statement that, "extra instructional minutes provided  
23 each day on the Concept 6 calendar are not necessarily  
24 used to provide additional academic content"?

25 A. Yes. I think that there are certainly

1 Q. Where have they been implemented?

2 A. There is a consortium of small schools in the  
3 Bay Area.

4 Q. Do you know what district that would be?

5 A. There are several districts. You can find  
6 their names through Stanford.

7 The -- Oakland has experimented with small  
8 schools actually in collaboration with a community  
9 organization.

10 You will find these -- there are several in  
11 Los Angeles.

12 Q. Do you know what schools in Los Angeles?

13 A. Yes. There is the Leadership Academy. Roger  
14 Lowenstein is the director of that school.

15 Q. Is that a public school?

16 A. Yes. Some of them operate under charter.

17 Roy Romer, the Superintendent of Los Angeles  
18 Unified School District, has a task force that is  
19 attempting to help him figure out how to break up the  
20 large schools in the district into small ones.

21 Q. You claim in your report that, "Evidence  
22 suggests that the extra instructional minutes provided  
23 each day on the Concept 6 calendar are not necessarily  
24 used to provide students with additional academic  
25 content," and you cite to a 1987 study prepared for

1 teachers' reports both in newspaper accounts and in  
2 their personal communications with me that this extra  
3 time is not very helpful, and it doesn't get used for  
4 instruction.

5 Q. You said, "personal accounts."

6 Who have you talked to regarding the use of  
7 the extra instructional minutes in Concept 6 schools?

8 A. I have talked to a number of teachers who are  
9 UCLA graduates who are in schools using open court, and  
10 they complain that the structure of the open court  
11 lessons and the pacing plans make it virtually  
12 impossible to use those extra minutes productively.

13 Q. What is "open court"?

14 A. It is a reading program used by Los Angeles  
15 Unified School District and many other school districts.

16 Q. Why does open court make it virtually  
17 impossible to provide extra academic content?

18 A. Because they are highly proscribed lessons  
19 that are at particular -- there is a pacing rate, and  
20 the lessons are designed to fit into a traditional  
21 school day, and so that the teacher -- you are not  
22 supposed to start the next lesson until there is another  
23 period of instruction, and you are not supposed to pick  
24 up one halfway through and start at that point. You are  
25 supposed to use them in discrete chunks over series of



1 days -- you know, each chunk on a day.  
 2 Q. And there is no flexibility there? Is that  
 3 what you are saying?  
 4 A. No.  
 5 Q. No?  
 6 A. No. The district has coaches that come in and  
 7 verify that teacher is in the right place at the right  
 8 time.  
 9 Q. Any information as to the use of the  
 10 additional instructional minutes on the Concept 6  
 11 calendar with respect to the other three districts using  
 12 a Concept 6 calendar?  
 13 MR. LONDEN: Assumes facts.  
 14 Go ahead.  
 15 THE WITNESS: Certainly one of the citations  
 16 in my report is a report of a teacher from Lodi --  
 17 BY MS. DAVIS:  
 18 Q. Is that a newspaper account?  
 19 A. Yes. And I am not -- I can't say with  
 20 certainty that the other teachers and newspaper accounts  
 21 were restricted to Los Angeles.  
 22 There is another source of evidence here about  
 23 all of these things that I remember as I look, and that  
 24 is the reports that the school districts have filed in  
 25 conjunction with the Intermediate

1 Intervention/Underperforming Schools program.  
 2 As you can see in the report many of those  
 3 talk about where the schools themselves have reported to  
 4 the State that the calendar has presented problems for  
 5 them.  
 6 Q. Do you recall any of those reports stating  
 7 that the extra instructional minutes are not used to  
 8 provide additional academic content?  
 9 A. You know, I would have to review -- I would  
 10 have to review them to say with any certainty whether  
 11 they do or they don't.  
 12 Q. Do you know if teachers used the additional  
 13 instructional minutes to cover a subject in more depth  
 14 than they otherwise could given the shorter class  
 15 minutes in non-Concept 6 schools?  
 16 A. I have seen no reports to that effect.  
 17 Q. You state in your report that, "The Concept 6  
 18 calendar results in providing fewer opportunities for  
 19 students to master and demonstrate mastery of material."  
 20 Why do you say this?  
 21 MR. LONDEN: Page reference?  
 22 MS. DAVIS: 21.  
 23 MR. LONDEN: Thank you.  
 24 THE WITNESS: I am trying to find that to see  
 25 the context in which I --

1 BY MS. DAVIS:  
 2 Q. Is --  
 3 A. Well, the evidence -- when teachers cover less  
 4 material, the students are able to master less material.  
 5 When teachers give fewer tests, students have  
 6 fewer opportunities to demonstrate that they have  
 7 learned it on the test their teachers give them.  
 8 Q. And in academic research is there any value  
 9 placed on -- this is if you know or you have heard of  
 10 this -- on covering material more in-depth as being an  
 11 advantage to students versus more content? For example,  
 12 covering part of an English course in more depth where  
 13 students are more involved and can go down beyond the  
 14 surface that sometimes you only get -- is there any  
 15 academic work out there?  
 16 MR. LONDEN: Vague.  
 17 THE WITNESS: The -- there certainly is a --  
 18 it depends on the purpose for which students are  
 19 learning material.  
 20 The -- there are many people in science  
 21 education who say, "Less is more," meaning it is better  
 22 to go into depth in a few basic concepts than to cover a  
 23 lot of things.  
 24 That seems -- that doesn't mean that you can  
 25 get away with less instruction in order to go into

1 depth.  
 2 BY MS. DAVIS:  
 3 Q. You cite to a newspaper account regarding  
 4 Hollywood High School -- this is Page 20 -- stating  
 5 that, "Students say they can't concentrate through class  
 6 periods in Concept 6 schools that now run 62 minutes."  
 7 Do you know how many teachers the author of  
 8 this newspaper account spoke with?  
 9 A. No.  
 10 Q. Do you know how long the average classes are  
 11 at universities? Let's take, for instance, UCLA.  
 12 A. The average class?  
 13 Q. Let's say an average freshman class, how long  
 14 they --  
 15 A. 50 minutes.  
 16 Q. I know in my major my classes were an hour and  
 17 50 minutes. I unfortunately couldn't remember back to  
 18 freshman and sophomore year.  
 19 They are 50 minutes at UCLA?  
 20 A. You know, I don't know. I don't teach  
 21 undergraduates. That is -- my sense is they run around  
 22 a 50-minute hour.  
 23 Q. I had an hour and 50 minutes for my major, but  
 24 I can't remember the freshman courses.  
 25 A. I don't -- I don't teach undergrads so --

1 Q. Okay. Are you aware of schools within or  
2 outside of California that have class periods longer  
3 than 62 minutes?

4 A. Yes. Sure.

5 Q. And where are those schools? Are they special  
6 schools? Are they states that call for classes longer  
7 than 62 minutes?

8 A. There are -- I don't know about whether there  
9 are any state policies that call for classes longer than  
10 that.

11 There has been block scheduling from time to  
12 time, which is a population education innovation, and  
13 typically that means that two classes are combined into  
14 one or that they are doubled in length. Sometimes they  
15 meet only every other day under those kinds of  
16 circumstances. But there are certainly strategies  
17 that -- where schools deliberately lengthen the class  
18 period.

19 Q. Do you know why -- what the conventional  
20 wisdom on employing those strategies is?

21 A. Well, those strategies are never employed  
22 independent of other strategies.

23 It is when the curriculum has been redesigned,  
24 so, for example, to be interdisciplinary, or a science  
25 curriculum has been designed to emphasize more

1 You have some declarations cited that have  
2 been filed by plaintiffs in this case.

3 Are there any other sources to support your  
4 statement that in Concept 6 schools teachers cover less  
5 material over the course of the school year and  
6 administer fewer tests?

7 A. Again, I think that the Harris survey and the  
8 Social Policy Research Associates study touched on these  
9 issues, although I am not recalling with specificity  
10 exactly what the items were -- the reports were.

11 Q. While we are talking about the "L.A. Times"  
12 article, do you recall the author stating that, "Several  
13 students said they are happy at Hollywood High, and they  
14 were grateful for the opportunity to make up classes  
15 during vacation"?

16 A. I don't recall that.

17 Q. And did you read the article, this article?

18 A. Yes.

19 Q. You state in your report that, "Teachers  
20 generally structure lesson plans around discrete class  
21 sessions and not minutes."

22 I know you talked about, in LAUSD, the  
23 reading.

24 A. Uh-huh.

25 Q. Any other basis for this statement?

1 experiments. The time is used as a way to accommodate  
2 those changes in curriculum.

3 Q. And why is this block scheduling, as you put  
4 it, a "popular educational innovation"?

5 A. I am not sure how popular it is right now.  
6 Ten years ago it was very popular, and the thought was  
7 to move more into an interdisciplinary curriculum. It  
8 was often accompanied by teams, team teaching, to make  
9 the curriculum more project based and give students  
10 additional time to do that kind of work.

11 Q. Do you know how many schools utilize block  
12 scheduling across the country?

13 A. No.

14 Q. You -- this goes back to something you  
15 mentioned a little earlier.

16 You state in your report that, "Because there  
17 are fewer nights for teachers to assign homework,  
18 teachers cover less material over the course of the  
19 school year and administer fewer tests."

20 You cite to a newspaper article from the "L.A.  
21 Times."

22 I am looking at Page 21 of your report --

23 A. Okay.

24 Q. -- entitled, "Year-Round Discontent at  
25 Hollywood High School."

1 A. Yes. My knowledge of how teachers do their  
2 planning and --

3 Q. Anything else?

4 A. Other than my knowledge of how teachers plan?

5 Q. Uh-huh.

6 A. That is pretty encompassing.

7 Q. What do you mean by "discrete class sessions"?

8 A. Well, teachers typically have lessons that  
9 they plan for. Many teachers use those lessons year  
10 after year.

11 Sometimes the lessons are guided by advice in  
12 instructors' manuals of textbooks about what constitutes  
13 a lesson.

14 Q. Can these lessons that teachers plan for  
15 accommodate the instructional minutes in Concept 6  
16 schools?

17 A. Usually lessons are designed to be a little  
18 bit shorter so, yes. They can accommodate them.

19 Q. Well, can they -- can teachers -- I guess the  
20 question is: Is it your opinion that lesson plans can't  
21 be modified by teachers to work in a longer class  
22 session?

23 A. They could be. I am -- I am simply reporting  
24 what people say they actually do, however.

25 Q. And reporting what they actually do, again,

1 that goes back to statements teachers have made to you?  
 2 A. And these accounts that are in my report.  
 3 Q. You state that, "Curriculum time is lost in  
 4 Concept 6 schools because time is spent moving in and  
 5 out of classrooms and because time must be spent  
 6 reviewing material after each of the long vacations."  
 7 What do you mean by the "long vacations"? How  
 8 long are they, I guess I should ask?  
 9 A. They vary. We can go back to the chart on  
 10 Page 11, and you can see that the blocks of time are  
 11 typically -- we have two months off and four months on,  
 12 and then track B has one four-month and two two-month  
 13 blocks of instruction and two two-month vacations. So  
 14 it varies some, but it means an absence of weeks.  
 15 Q. Are they all two months, the vacations?  
 16 A. Let's see.  
 17 Q. Is there a four-month vacation?  
 18 A. No. Although it happens when schools switch  
 19 from year-round to traditional or traditional to  
 20 year-round, there are some cases where children are out  
 21 of school for four months.  
 22 Q. I bet people are jealous of those students.  
 23 A. Not people who want them to learn.  
 24 Q. I know. I am thinking of their kids -- the  
 25 kids in their classroom.

1 MR. LONDEN: Having raised the problem of the  
 2 reproduction of that table, let me take a shot at  
 3 stating for the record Table 1 on Page 11 has three  
 4 columns, labeled, "Track A," "Track B," "Track C" at the  
 5 top respectively, and that the representations  
 6 graphically, if they were -- if they reproduced  
 7 faithfully would show, working downward, the first and  
 8 third blocks under "Track A" are off track, and the  
 9 second and fourth are in session.  
 10 Under "Track B," the first is in session.  
 11 Working down from the top, the second is off track; the  
 12 third is in session. The fourth is off track, and the  
 13 bottom one is in session.  
 14 And under "Track C" the top is in session, top  
 15 block, the second block is off track, the third is in  
 16 session and the bottom is off track.  
 17 I think we can all agree that that is, as far  
 18 as it goes, a correct description in lieu of trying to  
 19 solve the photocopying problem.  
 20 Is that acceptable?  
 21 MS. DAVIS: It looks acceptable to me, but my  
 22 copy is not that much better.  
 23 I trust that that is the representation --  
 24 THE WITNESS: But the modified Concept 6 does  
 25 not follow those patterns, and there are one-month

1 vacations on modified Concept 6.  
 2 BY MS. DAVIS:  
 3 Q. So we have vacations on Concept 6 and modified  
 4 Concept 6 ranging from one month to two months?  
 5 A. Yes.  
 6 Q. Now, how much curriculum time is lost because  
 7 of moving in and out of classrooms and reviewing  
 8 material after the vacations?  
 9 A. It varies.  
 10 Q. Where are you getting the information about  
 11 lost curriculum time?  
 12 I know there is an "L.A. Times" article and a  
 13 declaration.  
 14 I guess the question is: Is there anything  
 15 else?  
 16 A. Yes, there is. The reports of the teachers  
 17 with whom I work regularly.  
 18 Q. And, again, those are the teachers at UCLA?  
 19 A. And their colleagues at their schools.  
 20 Q. I want to clarify: The teachers at UCLA,  
 21 where are they teaching? Are they in a program with you  
 22 and teaching elsewhere, or they are people that are  
 23 alumni?  
 24 A. They are both.  
 25 Q. Okay.

1 A. The program is a two-year program.  
 2 Q. Okay.  
 3 A. The second year they are full-time teachers  
 4 and continue to be supervised by UCLA instructors and  
 5 continue to take courses so -- but we also have a  
 6 network of our alumni. So I interact regularly with  
 7 brand-new teachers through teachers who are -- I guess  
 8 our first group is in their seventh year of teaching.  
 9 Q. And I apologize if you went through this in  
 10 your -- the deposition on your first report.  
 11 The two-year program, is that post-college --  
 12 A. Yes.  
 13 Q. -- postgraduate?  
 14 A. We also have an internship program that works  
 15 with teachers on -- who are not fully credentialed who  
 16 are full-time teachers. So that is another group of  
 17 teachers that I regularly interact with and learn about.  
 18 Q. Okay. So the reports of the -- and these  
 19 teachers you say are reporting that they are losing  
 20 curriculum time?  
 21 A. Yes.  
 22 Q. But you don't have an estimate as to how much?  
 23 A. It varies.  
 24 Q. What is the -- what is the range when you say,  
 25 "it varies"?

1 A. I couldn't make an estimate of the range.  
 2 Q. You also state in your report that, "In the  
 3 week or two before vacation some instructional time must  
 4 be devoted to preparing the classroom for the teacher  
 5 and the students about to return from vacation."

6 Do you know how much time between this week or  
 7 two before vacation is devoted to preparing the  
 8 classroom?

9 A. It varies.

10 Q. And does it vary because of what teachers want  
 11 to do to prepare the classroom or are there mandates by  
 12 schools as to how to prepare a classroom?

13 A. It varies based on the age of the children and  
 14 how much of the instructional program is related to  
 15 having materials out and all over the walls.

16 It varies based on whether there are enough  
 17 textbooks in the school to allow children to keep the  
 18 textbooks during the breaks or they are required to be  
 19 all turned in, which is the case in some schools.

20 It means getting the -- I wouldn't say it  
 21 is -- there is much voluntary about it.

22 Q. Do teachers in traditional or single-track  
 23 schools generally devote any time to preparing the  
 24 classroom before they leave for vacation, let's say  
 25 summer vacation?

1 Q. And at traditional and single-track schools  
 2 the settling-in usually occurs when the students return  
 3 from a three-month vacation?

4 A. Yes.

5 Q. And here you cited to an II/USP for Lodi  
 6 regarding the time devoted to settling-in activities at  
 7 Concept 6 schools.

8 Is there any other support for your statement  
 9 that a week or two is required generally for the  
 10 settling-in activities?

11 A. I haven't looked at all the II/USP reports or  
 12 other reports of schools, but I am sure this is not the  
 13 only instance where this occurs.

14 Q. You state in your report that, "During the  
 15 weeks before and after Concept 6 vacations, students are  
 16 taught by teachers who are coping with a major  
 17 additional distraction."

18 What is that "major additional distraction"  
 19 that you are referring to?

20 MR. LONDEN: Page reference, please?

21 BY MS. DAVIS:

22 Q. 22.

23 A. Well, I think that is a generalization.  
 24 Although I can't tell you what was in his mind, but when  
 25 Mr. Wohlers was summing up the negative impacts on

1 A. A bit, but generally teachers have a couple of  
 2 days after the children leave where their classrooms are  
 3 empty and they can do that kind of work, just as they  
 4 have time before the school starts in their classrooms.

5 Q. And what is the basis of your statement? How  
 6 do you know that?

7 A. How do I know that?

8 Q. Yes. That is what I am here to ask.

9 A. Everyone knows it. Teachers report back.  
 10 Teachers' contracts require them to be at their schools  
 11 a few days before students arrive and a few days after  
 12 they leave.

13 Q. Is that usually a contractual thing?

14 A. Yes.

15 Q. I am learning here.

16 You state in your report that, "In the week or  
 17 two after a vacation some instructional time is devoted  
 18 to some settling-in activities."

19 You mention "unpacking, reestablishing  
 20 discipline and rapport with the students and reviewing  
 21 subject matter that was covered before the long  
 22 vacations."

23 Do these types of settling-in activities occur  
 24 at traditional and single-track schools generally?

25 A. Yes. But only once a year.

1 teachers and students of Concept 6 schools, this is the  
 2 statement he made.

3 Q. Okay. You also claim that, "The difficulty in  
 4 coordinating the distribution and collection of  
 5 textbooks and instructional materials at the beginning  
 6 and end of sessions results in a significant loss of  
 7 quality instructional time."

8 In support of this statement you cite to a  
 9 work entitled, "Social Equity Study Documentation."

10 Do you recall how the authors determined that  
 11 students lose instructional time due to the distribution  
 12 and collection of textbooks?

13 A. They interviewed teachers and observed in  
 14 classrooms at the schools they studied.

15 Q. Do you know what schools they studied?

16 A. No.

17 Q. Were the schools, if you know, Concept 6  
 18 schools?

19 A. Some were.

20 Q. Were some schools that they studied  
 21 traditional or single-track schools?

22 A. Yes.

23 Q. Do you know if they found that there was  
 24 difficulty in coordinating and distributing the  
 25 collection of textbooks in the traditional and

1 single-track schools?  
 2 A. In the single-track schools?  
 3 Q. Traditional and single-track.  
 4 A. No. I don't know. The finding that they  
 5 report was about multi-track schools.  
 6 Q. Do you know what -- what do you mean by  
 7 "significant loss in quality instructional time"?  
 8 A. Enough that teachers are disturbed by it  
 9 because they feel that students are not having adequate  
 10 opportunities to learn.  
 11 Q. Now, do the -- does the distribution and  
 12 collection of textbooks and instructional materials  
 13 occur at the beginning and end of sessions in  
 14 traditional and single-track schools?  
 15 A. Yes.  
 16 Q. Okay. You -- in the Social Equity Study  
 17 Documentation you cite that, "Students in Concept 6  
 18 schools could not keep their textbooks when they went  
 19 off track."  
 20 These are for the one-month to two-month  
 21 vacations?  
 22 A. Yes.  
 23 Q. Do students in traditional or single-track  
 24 schools generally keep their textbooks over the summer  
 25 vacation?

1 A. No. Because they are going on to a different  
 2 grade.  
 3 Q. Now, do you know if all -- in all Concept 6  
 4 schools if students can keep or are not allowed to keep  
 5 their textbooks over the off-track vacations?  
 6 A. I don't know about all schools.  
 7 Q. Do you know which schools have this policy of  
 8 not keeping textbooks over the off-track vacations?  
 9 A. I know many do, but I couldn't name them.  
 10 (Discussion off the record.)  
 11 BY MS. DAVIS:  
 12 Q. Let's do a little more, and we will break for  
 13 lunch.  
 14 You are doing all right?  
 15 A. Yes.  
 16 Q. You are a trouper.  
 17 You talk about in your report a news report  
 18 regarding Hollywood High School where students spent  
 19 their first week back in school listening to a teacher  
 20 discuss her trip to Egypt because the copies of "Of Mice  
 21 and Men" had not yet arrived.  
 22 You claimed in the report that the Concept 6  
 23 calendar caused the delay in obtaining "Of Mice and  
 24 Men."  
 25 Why do you believe it was the calendar that

1 caused the delay?  
 2 A. Where do I say the calendar caused the delay?  
 3 Q. I am looking at Page 23.  
 4 A. I see. It does say it.  
 5 Why? Because that was the teacher's  
 6 attribution.  
 7 Q. That is what the teacher said in the article,  
 8 in the newspaper article?  
 9 A. The reporter -- this Helfand article, I spent  
 10 hours on the phone with him in background for this  
 11 article, so it is confusing to me what he told me and  
 12 what actually got in print. So that is why I am not  
 13 always remembering exactly what is in this article.  
 14 Well, as it says here, that the books had to  
 15 be collected and tallied from students on one track who  
 16 went on vacation on October the 24th and were  
 17 redistributed to the students on another track that came  
 18 back from vacation on October 25th.  
 19 So the notion is, when you have to bring all  
 20 the books in, check off all the names of the students  
 21 who have returned their books, make notes of students  
 22 who have not returned the books and reissue the books to  
 23 all the students, it is just a logistical problem that  
 24 took some days.  
 25 Q. In your opinion -- and I know it sounds like

1 you talked to Helfand about the actual happenings at  
 2 Hollywood High School in relationship to this newspaper  
 3 account.  
 4 Could the teacher have improvised or changed  
 5 his or her lesson plan so the students wouldn't have  
 6 been stuck sort of listening to a vacation account  
 7 during this time?  
 8 A. I don't know.  
 9 Q. Did you talk to Helfand at all about that?  
 10 A. Not that I recall.  
 11 Q. You state that, "Because Track B students  
 12 generally start a new school year within a few days of  
 13 ending the old school year without a break they are not  
 14 afforded recovery time from the end of the school year."  
 15 A. Uh-huh.  
 16 Q. What do you mean by "recovery time"?  
 17 A. The traditional American experience of having  
 18 school be out and you finished sixth grade or fifth  
 19 grade and you are going to go on to middle school and  
 20 you have a chance to think about it and celebrate what  
 21 you have accomplished and go get some new school  
 22 supplies and figure out what it is going to be like to  
 23 be a sixth grader rather than a fifth grader.  
 24 Q. What amount of recovery time do you think is  
 25 necessary before starting a new school year?

1 A. I think most Americans think a nice  
2 two-and-a-half-month summer is what kids need between  
3 one grade and the next.

4 Q. Did you say two months?

5 A. Two-and-a-half months to three months.

6 Q. But what do you think? I know you talked  
7 about "most Americans."

8 A. Given our culture, that is probably  
9 appropriate.

10 Q. What about students that may attend summer  
11 school on a traditional track?

12 A. Those students -- students may choose to do  
13 all sorts of things.

14 What this refers to is the policy and what  
15 students have no choice about.

16 Q. What about a student that has to take summer  
17 school in order to move up to the next grade level in a  
18 traditional school year calendar? Is that person  
19 afforded the necessary recovery time?

20 A. It depends. Sometimes they are. Sometimes  
21 they are not.

22 They usually have a break either before summer  
23 school starts or after summer school ends, however.

24 MS. DAVIS: All right. This is probably a  
25 good place to break for lunch.

1 A. Yes.

2 Q. I am just looking for a practical solution.

3 Couldn't, then, such information be passed on  
4 from the old teacher to the new teacher prior to the  
5 end-of-the-year grades or the end-of-the-year  
6 evaluations that would help the new teacher?

7 A. If teachers weren't already so overburdened  
8 with all kinds of other requirements, that might be a  
9 possibility.

10 Q. What do you mean by "overburdened with all  
11 kinds of other requirements"?

12 A. Well, many secondary teachers, for example,  
13 teach 180 students or more every day, and they are busy  
14 engaged in assigning work and grading work and planning  
15 lessons, and to take on an additional task of writing up  
16 180 reports to hand on to a teacher, another teacher,  
17 would be a considerable burden.

18 Q. Do you -- do teachers in traditional schools  
19 or, I guess, even off of Track B generally have free  
20 time in which to prepare these evaluations to provide to  
21 the new teachers in the next grade?

22 A. Well, generally when the school year finishes,  
23 teachers do have a few days to get their grades in and  
24 their reports in before their assignment for the year is  
25 finished.

1 MR. LONDEN: Okay.

2  
3 (Whereupon at 11:50 a.m. the deposition  
4 of JEANNIE OAKES was adjourned.)

5 (Whereupon at 1:13 p.m. the deposition  
6 was reconvened.)

7  
8 EXAMINATION (Continued)

9 BY MS. DAVIS:

10 Q. Doctor, you state in your report that, "Track  
11 B students must begin a new school year often without  
12 end-of-the-year evaluations" -- "Track B teachers," not  
13 "students -- "must begin a new school year often without  
14 end-of-the-year evaluations or information on students  
15 from the previous year's teachers." Page 24.

16 You cite to a declaration filed by plaintiffs  
17 in this case as support for this statement.

18 Is there any other basis for your statement?

19 A. Yes. Just my knowledge of how it works.

20 Q. And your knowledge of how it works is based  
21 on?

22 A. On my general knowledge of school procedures.

23 Q. Is it fair to assume that teachers develop an  
24 opinion or understanding about a student prior to the  
25 end of the school year?

1 Q. And is that true of Concept 6 teachers other  
2 than Track B?

3 A. Well, it depends. Track B is the one --

4 Q. You had limited this to Track B, which is why  
5 I am doing the same thing.

6 A. It is certainly a problem on Track B because  
7 they have this -- it butts right up into it. It is the  
8 place where it is the most severe, that kids are  
9 beginning a new grade without their teachers having a  
10 chance to sum up the -- get a chance to get their  
11 grades, their report cards, the --

12 Q. So other than Track B do teachers have time in  
13 between?

14 A. It depends, because in some of these schools  
15 and because of the teacher shortage some of the teachers  
16 teach during their off-track times as well.

17 So while, technically, there is some time  
18 before those students come back, I couldn't say with  
19 certainty that all of the teachers have any additional  
20 time that they can devote to this task.

21 Q. You talk about "curriculum tracking of  
22 students" in your report.

23 Does curriculum tracking occur at schools that  
24 operate traditional and single-track calendars?

25 A. Sometimes.

1 Q. Can you give me an example of curriculum  
2 tracking at a traditional school?

3 A. Where are you referring to?

4 Q. Well, I am -- I think you talk about tracking  
5 on Page 26.

6 I am just asking a general question, but feel  
7 free to look at the report.

8 A. When students are separated by their prior  
9 achievement or their ability or their -- a range of  
10 factors and they are taught different things because --  
11 based on judgments about them, that is -- those are all  
12 examples of curriculum tracking.

13 Q. These examples occur also at traditional and  
14 single-track calendar schools?

15 A. Well, there is a difference that is important,  
16 because the -- when kids are on curriculum tracks in a  
17 school that is on the same calendar as children with  
18 other curriculum tracks, the potential for mobility, to  
19 move from one track to another, is far greater than when  
20 students are on a completely different calendar.

21 Q. A completely different calendar or track?

22 I don't want to put -- I am just trying to  
23 understand the difference.

24 A. That if -- say, for example, the advanced  
25 placement courses in a high school are all on Track A.

1 worker community often left town in January for a period  
2 of a few months, and these students would then have  
3 otherwise have lost some school time if they had been on  
4 a track that did not have a vacation in January.

5 Is this type of tracking harmful or bad, in  
6 your opinion?

7 MR. LONDEN: It is ambiguous if you are asking  
8 if she knows about Oxnard or not.

9 BY MS. DAVIS:

10 Q. Let's start there.

11 Are you aware of that?

12 A. Yes.

13 Q. In your opinion, is this type of tracking  
14 harmful or bad?

15 A. The Oxnard example?

16 Q. Right.

17 A. It turns out that this was actually Oxnard's  
18 second choice.

19 The first choice was to put everybody on a  
20 schedule that would accommodate the migrant kids, so  
21 they could have both a mix of kids and a schedule that  
22 fit the migrants' kids' needs, which they thought was a  
23 preferable choice.

24 There was considerable backlash from the  
25 community in some part at the urging of the sports

1 If you are mostly on Track A or a particular one you  
2 might want is on Track A, but you happen to be on Track  
3 C, it is very difficult to take advantage of that  
4 program because Track A is on a different schedule than  
5 Track C.

6 Q. Okay. In your opinion are there any  
7 circumstances where tracking students results in a  
8 positive outcome or positive result?

9 MR. LONDEN: Ambiguous.

10 THE WITNESS: What kind of tracking do you  
11 mean?

12 BY MS. DAVIS:

13 Q. Curriculum tracking.

14 A. Most -- for students who are identified as  
15 highly able and they are put in separate programs where  
16 they get extra educational advantages, those advantages  
17 benefit them, although I -- my opinion is that it is a  
18 function of the advantages they get, rather than the  
19 fact that they are in a separate track.

20 Q. I will bring up an example of tracking that  
21 you are probably familiar with in Oxnard, California  
22 that they used with children of migrant workers, where  
23 they encouraged students who are children of migrant  
24 workers to attend a certain track that had a vacation  
25 period in January because, apparently, the migrant

1 coaches who felt that changing the calendar to  
2 accommodate migrant students would affect their ability  
3 to do well in competitive athletics.

4 So it was a second choice. It was not  
5 Oxnard's first choice either.

6 Q. Even though it was the second choice, do you  
7 find that kind of tracking harmful to the students of  
8 the migrant workers -- the students who are children of  
9 the migrant workers?

10 A. I believe being deprived of a heterogenous  
11 group of students is harmful to students. Yes.

12 Q. Would it be preferable that the children of  
13 migrant workers were spread out among tracks and some of  
14 them just missed a couple of weeks of school?

15 A. I would have hoped that Oxnard would have been  
16 able to implement its first solution.

17 Q. In your opinion are all students cut out for a  
18 rigorous academic program?

19 A. My opinion is that all students certainly  
20 should have the opportunity and can benefit from a more  
21 rigorous program than most of them currently now have.

22 Q. How do AP classes generally work? Are all  
23 students invited to take AP classes?

24 A. It varies by school and by district.

25 Q. Can you tell me some of the ways in which it

1 varies.

2 A. Some have very strict enrollment policies  
3 where students have to demonstrate through their prior  
4 grades or a teacher's recommendation or a test score  
5 that they have met some prerequisite.

6 Other schools have those kinds of policies but  
7 permit students to opt in on like a waiver basis, where  
8 they have a parent's signature saying they would like  
9 their child to try, even though they didn't meet the  
10 criterion.

11 Other districts have open enrollment policies,  
12 where anyone can sign up. I have seen a range of the  
13 way those are done. Sometimes open policies are mostly  
14 in name only because the information kids get is so  
15 discouraging that only a few would dare attempt a class  
16 after being so discouraged, and other schools are --  
17 welcome any student in advanced placement.

18 Q. And in the schools where anyone is welcome and  
19 there are open enrollment policies, what happens to  
20 students that can't keep up with the AP course work?

21 A. Well, there is a range. The schools who  
22 implement open enrollment the most openly provide  
23 additional supports for students to help them keep up  
24 with the work.

25 I don't believe I know of a single example of

1 Q. You cite to a statement by Tom Payne where he  
2 states, "Placing all AP courses on one track is de facto  
3 segregation by ability."

4 I am curious as to how Mr. Payne's statement  
5 supports your statement in your report where you say  
6 that, "The State effectively does nothing to prevent --  
7 "to insure that each track mirror the ethnic and  
8 socioeconomic composition of the whole school  
9 population."

10 A. I think you need to explain to me how you see  
11 those things are related before I answer that.

12 Q. I am seeing the statement that we read, and  
13 then I see you cite to a Payne letter where it says  
14 referring to, you know -- referring to "placing all AP  
15 courses on one track is de facto segregation by  
16 ability."

17 It wasn't clear to me how this quote supported  
18 your statement in the sentence before that.

19 A. The second half of that sentence says, "and to  
20 minimize ability in special needs segregation by track."

21 Q. Uh-huh.

22 A. The Payne letter talks about "segregation by  
23 ability" as the -- in reference to that -- the second  
24 part of the sentence.

25 Q. It talks to, "placing all AP courses on one

1 an advanced placement program at a high school, however,  
2 where everyone succeeds.

3 Q. Do you know generally how many AP courses are  
4 offered at the Concept 6 high schools?

5 A. There is a range.

6 Q. Do you know how the number of AP courses  
7 offered on each of the three tracks at Concept 6 schools  
8 compares to the number of AP courses offered at  
9 traditional or single-track schools?

10 A. Both things vary a great deal.

11 Q. Do Concept 6 schools generally allow students  
12 to take AP courses on a different track than the track  
13 they are assigned to?

14 A. I know of many instances of that, yes.

15 Q. You state in your report that, "Although the  
16 State advises districts using multi-track calendars to  
17 develop policies to make sure each track mirrors the  
18 ethnic and socioeconomic composition of the whole school  
19 population, it effectively does nothing to prevent it."

20 I am looking at Page 30 here.

21 What do you mean by this statement?

22 A. The -- there is absolutely no monitoring of  
23 enrollments. The State neither knows nor seeks to find  
24 out the distribution of students from various groups on  
25 the various tracks in multi-track schools.

1 track."

2 Well, I guess my question is: Are all AP  
3 courses generally offered only on one track in  
4 multi-track schools?

5 A. It varies.

6 Q. Are there -- are you aware of any schools  
7 where AP courses are offered on only one track?

8 A. I am aware that in no multi-track school does  
9 every child have the same opportunities to take AP  
10 classes as children on traditional tracks where they are  
11 all offered at a time when they can choose among them  
12 and take the ones they want.

13 Q. I am just wondering if you are aware of any  
14 multi-track school where there are no AP courses offered  
15 on a track -- on one of the tracks?

16 A. I would have to review my data.

17 Q. Sitting here today --

18 A. Well, because the State doesn't collect data  
19 that allows us to see the differences by track, it is  
20 very difficult -- other than simply hearsay, and I have  
21 heard people tell me that; that the Track B kids can't  
22 take any AP. But because these things change from year  
23 to year, I would have to look at this year's data to  
24 make a definitive statement about what is currently  
25 happening right now.



1 Q. You state in your report that, "Students who  
2 are on vacation during the fall miss critical  
3 opportunities to attend college fairs and other college  
4 recruiting-type activities linked to attending college."

5 Is your claim that all students on vacation in  
6 the fall miss out on all of these opportunities?

7 A. My claim is that the normal pattern of the  
8 year goes -- in high schools is that during the fall of  
9 the year, that is the time when recruiters come to high  
10 schools, where there are events about getting ready for  
11 high schools that is generally driven by the December  
12 application filing date for the University of  
13 California, so things revolve around that. So that when  
14 children are not in school, they have less opportunity  
15 than other children to partake in those activities.

16 Q. Are students who are off track in the fall  
17 allowed to attend these events even though they are off  
18 track?

19 A. Sure.

20 Q. You also state in your report on Page 31 that,  
21 "Students on track in the summer cannot obtain summer  
22 internships and jobs."

23 You cite to it -- you cite to an "L.A. Daily  
24 News" article.

25 Is there any other basis for your statement --

1 BY MS. DAVIS:

2 Q. No. I read -- I pulled out the news article.

3 A. Could you give me the article so I can look at  
4 it in context?

5 Q. Yes. I can bring that up to you, but --

6 A. Okay.

7 Q. Let's just keep going with the questions. We  
8 don't have to worry about the citation.

9 Is your finding that students on track during  
10 the summer do not have jobs and internships available to  
11 them?

12 A. My finding is that they are less likely to  
13 have those opportunities than kids on traditional  
14 tracks.

15 Q. Have you heard of college counselors or career  
16 advisors within the high schools finding that they can  
17 place students into jobs and internships even though  
18 they may be in school during the summer?

19 A. The counselors I know and -- complain mostly  
20 that they don't have any time to do that kind of work at  
21 all, and it would be extraordinarily surprising to me to  
22 see a great deal of counselor time invested in finding  
23 kids internships and part-time jobs.

24 Generally, these are things kids do on their  
25 own.

1 let's take the word, "summer" out of it -- where  
2 students because they are on a Concept 6 calendar cannot  
3 participate in summer -- not "summer" -- internships or  
4 job opportunities?

5 A. Most of those things are offered during times  
6 when kids in multi-track schedules are in school. I  
7 mean -- and because the breaks are shorter, it also  
8 is -- restricts the amount of time that students can  
9 spend on those activities and the willingness of those  
10 who offer them to offer them.

11 Q. In one "L.A. Times" article that you cited in  
12 your report entitled, "Calendar Can Leave Students Out  
13 in the Cold" -- it is a March 17, 2002 article -- the  
14 author states that, "A career advisor at North Hollywood  
15 High School said that he has no problem placing juniors  
16 and seniors in jobs during their various vacation  
17 breaks" -- and I am quoting -- "because companies don't  
18 have a need for employees only during the summer."

19 How does this comport with your findings  
20 regarding internship and job opportunities for Concept 6  
21 students?

22 MR. LONDEN: Lacks foundation.

23 Go ahead.

24 THE WITNESS: I'm sorry. Are you -- you are  
25 not citing this from my report?

1 Q. You state in your report -- and this is a  
2 footnote at Page 33 -- that, "The district has no  
3 incentive to improve its retention rate."

4 It looks to me like you are talking about  
5 LAUSD here; is that correct?

6 A. Uh-huh.

7 Q. Why do you say, "The district has no incentive  
8 to improve its retention rate"?

9 A. The citation here is to the fact that the  
10 schools are so overcrowded that they actually, many of  
11 them, informally count on students dropping out and  
12 being absent because that is the only way that there are  
13 enough seats in classrooms in some schools.

14 Q. And how are you aware of this informal --

15 A. Because people at schools talk about it all  
16 the time.

17 Q. What people at schools?

18 A. Teachers, school administrators, other  
19 students.

20 If everybody came, there wouldn't be room.

21 Q. And these are conversations that you have had  
22 with teachers or students?

23 A. Teachers, students, school administrators.

24 Q. But this isn't part of a formal survey, is it,  
25 or is this something you are gathering from your

1 conversations with people but not in a formal survey  
2 format?

3 A. "Formal" -- I mean, I wouldn't call it a  
4 "conversation" because whenever I ask people questions  
5 about what is happening at the school, I have something  
6 more than just a social purpose in mind, but it is not a  
7 formal study.

8 Q. Any other basis for your statement that LAUSD  
9 has no incentive to improve its retention rate?

10 A. Probably, but nothing specifically that is  
11 occurring to me now.

12 Q. You state in your report that, "The skills of  
13 lower socioeconomic status students stay flat over the  
14 summer, and the skills of upper socioeconomic students  
15 continue to improve over the summer."

16 Initially, when you say, "summer," are you  
17 talking about the three-month break?

18 A. Yes. This was a national study looking at  
19 schools where -- and the presumption was that summer is  
20 the time when most children have breaks.

21 Q. And what do you mean by "skills"?

22 A. The kinds of things that standardized tests  
23 measure, because that is what these researchers use to  
24 measure achievement.

25 Q. Do you know why, as you claim in your report,

1 enrichment programs available to children that would --  
2 to low-income children -- that would mimic the kind of  
3 enrichment programs and the gains from those that the  
4 more advantaged children get.

5 I know you didn't know need to know all that.

6 Q. I do. I told you I am learning here today.

7 You state in your report that, "The  
8 achievement of multi-track students suffers in  
9 comparison to that of students in traditional  
10 calendars."

11 I am looking at Page 34 here, but I think you  
12 know this -- it goes on from that page.

13 First of all, are you talking about Concept 6  
14 students here or all multi-track students?

15 A. The finding applies to both. I think more  
16 severe in Concept 6 than other multi-track schools.

17 Q. You cite to an Oakland study, and I don't have  
18 the page here, but it is probably around 34 --

19 A. 35.

20 Q. How did the Oakland study measure student  
21 achievement, if you recall?

22 A. I would have to look to be absolute certain,  
23 but my recollection is that it was based on achievement  
24 tests.

25 Q. Standardized tests?

1 the skills of socioeconomic -- lower socioeconomic  
2 students stay flat over the summer?

3 A. Well, the researchers concluded from their  
4 study -- this is a -- I don't know if you want to know  
5 all this.

6 Q. Sure. Why not?

7 A. The conventional wisdom has been for about 10,  
8 15 years that there are summer losses; that when  
9 low-income children are not in school their  
10 achievement -- they lose achievement during that time.

11 And the reason why that has been a finding is  
12 that typically kids are measured at one point of time  
13 during the year and then measured again during the  
14 following year.

15 What these researchers did was measure kids'  
16 achievement at the beginning of the year and at the end  
17 of the year, the school year, and they realized that  
18 actually what is happening is not that there are losses  
19 in the summer, but that it is more affluent kids  
20 continue to gain, grow during the summer. So while the  
21 gap seemed to be wider at the end of the summer, it is  
22 not because the lower-skilled kids have lost, but rather  
23 that the kids from more -- and these are high SES  
24 kids -- have gained during the summer.

25 Their implication is that there should be more

1 A. Probably, but I am not -- I am not seeing the  
2 print on the page, so I --

3 Q. I won't hold you to it.

4 Do you recall if in the Oakland study they  
5 looked at scores in a snapshot in one year or if they  
6 looked at scores of students over time?

7 A. You know, I would need to look at that study  
8 again and --

9 Q. Do you recall what exactly the Oakland study  
10 found in terms of achievement of multi-track students?

11 A. The multi-track calendars disadvantaged  
12 students in terms of their achievement values.

13 Q. You state in your report that, "Socioeconomic  
14 status plays some part in the results of the Oakland  
15 study."

16 Do you recall if the study considered  
17 socioeconomic status?

18 A. Yes, it did.

19 Q. How did it do that?

20 A. Well, generally, in studies you control, you  
21 use statistical means to control for the effect of  
22 socioeconomic status, and you attempt to discern whether  
23 there is any -- whether that accounts for all of the  
24 difference you are seeing or whether there is some  
25 difference left over after you have accounted for those

1 things.

2 Q. Do you recall the Oakland study finding that  
3 academic achievement is chiefly influenced by  
4 socioeconomic status?

5 A. I don't recall the proportion of variance that  
6 was explained by SES and what was explained by the  
7 calendar.

8 Q. Do you remember if they found socioeconomic  
9 status was an important indicator of academic  
10 achievement?

11 A. I recall it played some significant part in  
12 the difference. Yes.

13 Q. You also cite to a study entitled, "Year-Round  
14 Education, Year-Round Opportunities," and it's authored,  
15 it looks like, by C. Quinlan, C. George --

16 MR. LONDEN: Q-U-I-N-L-A-N.

17 BY MS. DAVIS:

18 Q. And C. George -- I don't think I ever bothered  
19 to find out what the first names were -- and T. Emmet,  
20 E-M-M-E-T.

21 And you state that, "The study found that  
22 multi-track schools scored below predicted levels even  
23 after controlling for socioeconomic status."

24 Do you recall what the Quinlan study looked at  
25 in determining that the multi-track schools scored below

1 A. Statistically, that is what they did.

2 I am not sure exactly which variables they  
3 used. Usually kids eligible for free and reduced-price  
4 lunch -- that is usually what they ask about.

5 Q. Do you recall in the Quinlan study that they  
6 found the fact that achieving at -- the fact that  
7 multi-track students were not achieving at predicted  
8 levels was most likely due to factors unrelated to the  
9 calendar but related to the special problems of  
10 communities experiencing rapid growth?

11 A. Well, I think that that is -- that is  
12 certainly encompassed in this notion of controlling for  
13 socioeconomic levels. Both things matter.

14 Kids in different communities have a harder  
15 time learning; kids who are on multi-track schedules  
16 have a harder time learning, and the things compound,  
17 but they each have an independent effect.

18 Q. You cite to a news account on Page 35, stating  
19 that, "Statewide multi-track, year-round schools perform  
20 largely below average when compared to similar schools."

21 Do you recall what the news account meant by  
22 "largely below average"?

23 A. This is a statement made by the manager of the  
24 State Department's Office of Policy and Evaluation.

25 I have no idea what she was basing her

1 predicted levels?

2 A. They looked at the State test that was in --  
3 whatever the current State test was, and I am not  
4 recalling now which test it was.

5 Q. Do you recall if they looked at norm reference  
6 scores?

7 A. Yes.

8 Q. What are "norm reference scores"?

9 A. Norm reference scores are a score that tells  
10 you how a student scored in relationship to all other  
11 students who took that test at the same grade level.

12 So when you get a percentile score, for  
13 example, it gives you -- most standardized tests are  
14 norm reference tests. What they tell you is where a  
15 child ranks among all of those who have taken the test  
16 at the same grade.

17 Q. Do you recall if in the Quinlan study they  
18 looked at the scores in just one year or if they looked  
19 at scores over time?

20 A. You know, I don't recall.

21 Q. Do you recall how the study controlled for  
22 socioeconomic status?

23 I have a feeling you are going to give me the  
24 same answer as to Oakland, but I am going to ask you  
25 again.

1 statement on -- or he. I don't even know.

2 Q. You also claim that the Lodi Superintendent  
3 blamed some of the what is termed as "dismal scores" on  
4 Concept 6?

5 A. Yes.

6 Q. Are you aware of any recent studies regarding  
7 the academic performance of students in the Lodi  
8 schools?

9 A. Only the data that the -- the achievement data  
10 that is collected about every school.

11 Q. You cite in your report -- this is at Page  
12 36 -- the 2001 White and Cantrell report?

13 A. Yes.

14 Q. You state, "It concluded that students on a  
15 Concept 6 calendar do not perform as well in reading and  
16 math as students at traditional schools."

17 You also state that, "The study found that  
18 achievement gaps exist even after comparing only  
19 demographically similar schools."

20 Do you see that at Page 36?

21 A. Yes.

22 Q. Do you recall in -- the White and Cantrell  
23 report stating that they found evidence of an  
24 interaction effect between student background  
25 characteristics and student performance?

1 A. Yes. But it did not explain all the  
2 difference in performance.

3 Q. Do you recall them finding that they can't  
4 condemn a calendar policy for factors beyond the control  
5 of that policy; namely, socioeconomic status?

6 A. No, I don't recall. I don't recall them  
7 saying that.

8 I paid more attention to their data and their  
9 analysis than to their interpretation.

10 Q. Are you aware that in July 2002 White and  
11 Cantrell expanded on this 2001 study?

12 A. I don't think I have seen that. I am not sure  
13 if I have seen it or not. I have -- I don't remember  
14 the dates of what I have looked at.

15 Q. In July 2002 White and Cantrell documented in  
16 LAUSD the comparability of multi-track schools and other  
17 school calendars with the same SES, socioeconomic  
18 status, and demographics, and what they found was that  
19 the differences were equalized within a half NCE points.  
20 I guess that is "normal curve equivalent."

21 What are "NCE points"?

22 MR. LONDEN: Objection to the statement, I  
23 think, as ambiguous as to whether you are asking the  
24 witness -- whether you are asking the witness about your  
25 statement about the 2002 report.

1 school is a multi-track school, because the State  
2 considers it a risk factor. The State considers it a  
3 factor that suppresses students' achievement.

4 That means that students in multi-track  
5 schools are actually put in comparison groups with  
6 students in other schools who are lower performing for  
7 other reasons. So then when they attempt to compare  
8 schools based on the -- whether or not their gain scores  
9 are larger or smaller than predicted compared to those  
10 on multi-track, with those on regular track, they are  
11 really dis -- it makes for an extremely conservative  
12 comparison because the negative effects of  
13 multi-tracking are washed out in the fact that they are  
14 put in the comparison band to begin with.

15 Q. I think I am following you, because this came  
16 up in Mitchell's report as well.

17 A. Did it?

18 Q. Yes.

19 How much -- do you know how much weight is  
20 given to the multi-track indicator in the similar  
21 schools index?

22 A. Enough to put it in a different band of  
23 comparison schools. I don't know the precise formula.

24 Q. You cite in your report to a report authored  
25 by Doug and Ross Mitchell entitled, "Student Segregation

1 The objection is, it lacks foundation.

2 BY MS. DAVIS:

3 Q. I guess I am not really -- I guess I am just  
4 wondering what "NCE points" are.

5 A. It is a standardized score. It is a way --

6 Q. It is a standardized score. Okay.

7 In the White and Cantrell 2002 study they  
8 found that, "Elementary students in multi-track,  
9 year-round schools performed equally well or better than  
10 their single-track peers in reading and math."

11 Were you aware of any finding like this at  
12 LAUSD?

13 A. There is a fundamental flaw in the White and  
14 Cantrell study, and I would like to examine this new  
15 version to see if they committed this error as they had  
16 done in the earlier one.

17 Q. What is the "fundamental flaw" you are  
18 referring to?

19 A. They actually account for the -- they --  
20 the -- this is very complicated.

21 When they look at similar schools, they are  
22 using the State's similar schools criteria, the State's  
23 designation of schools being similar.

24 However, built into that similar schools index  
25 is an accommodation or an accounting for whether a

1 and Achievement Tracking in Year-Round Schools."

2 Do you recall citing to that?

3 A. Yes.

4 Q. Drs. Mitchell stated in their report that,  
5 "Year-round schools have lower achievement and a more  
6 challenging student population than traditional calendar  
7 years -- schools." I'm sorry.

8 And they found that, "The differences were due  
9 to family housing patterns, which can be explained by  
10 greater population densities in poor neighborhoods."

11 Do you recall reading this in the Mitchell --  
12 Drs. Mitchell report?

13 MR. LONDEN: Assumes facts.

14 THE WITNESS: I am not -- I am not recalling  
15 precisely the context in which that statement is made or  
16 those exact words.

17 BY MS. DAVIS:

18 Q. Did you find that they found a relationship  
19 between SES and student achievement?

20 A. Well, like the other reports, they find that  
21 part of the difference is related to students' social  
22 class background, neighborhood characteristics, all of  
23 those kinds of things.

24 Q. I will talk about socioeconomic status a  
25 little more.

1 In a study cited in your report entitled,  
2 "Mothers' Strategies for Children's School Achievement,"  
3 the authors found what they term is as "an impressive  
4 association between socioeconomic status of the  
5 students' parents, particularly the mother, and academic  
6 achievement."

7 Do you recall that finding by the authors of  
8 that study?

9 MR. LONDEN: Assumes facts not in evidence.

10 THE WITNESS: Are you saying I cited this  
11 study?

12 BY MS. DAVIS:

13 Q. Yes. I thought I saw -- is it a David Baker  
14 and David Stevenson --

15 A. Baker and Stevenson?

16 Q. Yeah. I know I read it in the materials that  
17 were noted as "Oakes multi-track."

18 A. Right.

19 MR. EGAN: Page 39?

20 THE WITNESS: Right.

21 The Baker and Stevenson study is one that  
22 suggests that parent involvement is a critical factor in  
23 school achievement, and generally what people mean by  
24 that, the more involved your parents are, the better you  
25 are likely to score on standardized tests.

1 MR. LONDEN: The question is vague.  
2 Go ahead.

3 THE WITNESS: Many, many experts from James  
4 Coleman on in the 1960's have tried to untangle the  
5 relationship between social class and school  
6 achievement, and there is a great deal of controversy  
7 about the nature of that relationship, although nearly  
8 everyone agrees that there -- the things do seem to  
9 co-exist, whatever the cause.

10 Q. Do you know the various reasons why students  
11 are bused in California?

12 A. I know some reasons.

13 Sometimes children are bused in rural areas  
14 because the distance between their home and school is  
15 great.

16 Sometimes children are bused because they or  
17 their families have chosen to participate in some sort  
18 of voluntary school choice program, which means they  
19 have to attend schools some distance from their home.

20 I am not actually certain whether any children  
21 in California are bused for purposes of desegregation  
22 any longer, but I suspect that is the case. Whether it  
23 is voluntarily or mandatory may be different.

24 There are many children -- there are at least  
25 some thousands of children who are bused because the

1 BY MS. DAVIS:

2 Q. Do you recall if the authors found any  
3 association between the socioeconomic status of the  
4 parents and student achievement?

5 A. I am not recalling.

6 Q. In your opinion how does socioeconomic status  
7 affect student achievement?

8 A. In my opinion there -- there are multiple  
9 ways, but probably the most significant way is the  
10 failure for schools to provide low socioeconomic status  
11 children with the support they need to learn.

12 Second, certainly is that children from homes  
13 in poverty often lack the materials and experiences at  
14 home that help more advantaged children learn -- at  
15 school, I should say.

16 They learn plenty. They learn real well, but  
17 it is the match between their -- the kinds of resources  
18 and experiences in their homes and neighborhoods is not  
19 as good a match with what schools want them to learn --  
20 it is not as good as for more advantaged students.

21 Q. And what are you basing that on?

22 A. Years of reading research on the topic.

23 Q. What research comes to mind on this topic?

24 Are there some experts in this area of SES and  
25 student achievement?

1 schools in their neighborhood are far too crowded to  
2 accommodate them.

3 Q. You state in your report that, "A recent study  
4 of school busing in five states indicates a negative  
5 affect on parental involvement."

6 That is Page 41.

7 Do you recall what states were studied?

8 A. No.

9 Q. Do you recall if California was studied?

10 A. I don't know.

11 Q. Do you know why the students in this study  
12 were bused?

13 A. I know that they were not students being bused  
14 for -- you know, I would want to review that before I  
15 made a -- because I read more than one study about this.

16 Q. Do you know what methodology was used in this  
17 study in terms -- how the study came to its conclusion?

18 MR. LONDEN: Which study again?

19 BY MS. DAVIS:

20 Q. This study that Dr. Oakes refers to in her  
21 report at Page 41, "Recent study of busing in five  
22 states."

23 A. The Howley, Howley and Shamblen?

24 Q. Howley, Howley --

25 A. Okay. I know they interviewed -- they

1 certainly talked to school administrators.  
 2 Q. Are you aware of any evidence that actual  
 3 parental involvement is less for bused students than for  
 4 nonbused students in California?  
 5 A. I know that, certainly in Los Angeles, it is  
 6 commonplace knowledge among educators that the parents  
 7 of students who are bused to relieve overcrowding are  
 8 not as involved as parents whose children go to  
 9 neighborhood schools, and that is -- I mean, that is --  
 10 that is simply what everybody you ask says.  
 11 Q. When you say, "educators," who are you  
 12 referring to?  
 13 A. Teachers and school administrators,  
 14 principals.  
 15 Q. Any other evidence that actual parental  
 16 involvement is curtailed due to busing in California?  
 17 A. The -- there is -- there is some indirect  
 18 evidence, for example, that the lack of an adequate  
 19 public transportation system in many California cities  
 20 makes it extremely difficult, the fact that many  
 21 low-income immigrant families don't have cars.  
 22 There are sort of these environmental factors  
 23 that make it difficult for parents to travel long, long  
 24 distances to participate in their child's school.  
 25 Q. Anything else?

1 A. Let me -- I want to review this section.  
 2 Q. Sure. Go ahead.  
 3 A. We certainly have Mr. Wohlers saying it is the  
 4 case.  
 5 I think that is essentially the reports of  
 6 school administrators, teachers and parents themselves  
 7 that -- I don't know of a specific study other than the  
 8 Howley study that has looked at this.  
 9 Q. You also talk about in your report at Page 44  
 10 a 1973 study from Oklahoma.  
 11 You stated that, "It found a relatively small  
 12 but significant difference between the performance of  
 13 bused and nonbused students in Grades 4 and 8."  
 14 A. Yes.  
 15 Q. Do you recall what the "relatively small but  
 16 significant difference in performance" was in this  
 17 study?  
 18 A. You mean actually the size of the difference  
 19 in achievement?  
 20 Q. Anything you recall regarding the student  
 21 achievement.  
 22 A. Well, I know that the -- that the findings  
 23 were significant, meaning that the differences could not  
 24 have occurred by chance.  
 25 The size of the difference doesn't mean a lot

1 to me without knowing sort of the nature of what exact  
 2 test was used, what it means, how it was scored, all  
 3 those things.  
 4 I would have to look again at their study.  
 5 Q. Do you know why the students in the Oklahoma  
 6 study were bused?  
 7 A. I know that none of them were bused because of  
 8 desegregation.  
 9 Q. Anything else?  
 10 A. I could make some guesses, but I don't know.  
 11 Q. You don't have to guess. I just want to know  
 12 if you know sitting here today.  
 13 Do you recall the authors of this Oklahoma  
 14 study finding a relationship between socioeconomic  
 15 status and student achievement?  
 16 A. You know, I don't recall precisely.  
 17 My suspicion is that it is the same in this  
 18 study as others; that they found a relationship, but it  
 19 did not explain all of the difference.  
 20 Q. You stated in your report that, "As LAUSD  
 21 consistently reports, its research shows that students  
 22 bused to school due to overcrowding score the lowest of  
 23 any group of students on California standardized tests."  
 24 Do you know what the performance of students  
 25 bused for reasons other than overcrowding looks like?

1 A. The performance of students in LAUSD?  
 2 Q. Yes.  
 3 A. I have a general sense of the patterns.  
 4 Q. What is your general sense?  
 5 A. That it varies by grade level. That generally  
 6 it is quite low, but at the earliest elementary grades  
 7 there is some improvement on standardized test scores.  
 8 Q. Do you know what the socioeconomic status of  
 9 LAUSD students bused due to overcrowding generally is?  
 10 A. They are predominantly low-income children,  
 11 immigrant children, Latinos.  
 12 Q. On -- one of the "L.A. Times" articles you  
 13 cited is, "The 4th R-Riding;" it is by Brett Johnson.  
 14 Do you recall a member of LAUSD -- I think it  
 15 is the evaluation planning team -- finding that "CAP  
 16 students' achievement is comparable to that of its  
 17 neighborhood schools"?  
 18 MR. LONDEN: I didn't understand the question.  
 19 Maybe I misheard it.  
 20 BY MS. DAVIS:  
 21 Q. I am wondering if she recalls reading that in  
 22 the "L.A. Times" article.  
 23 A. I don't recall reading that.  
 24 Q. What does "CAP" stand for?  
 25 A. It is -- it means, "capacity." It means when

1 a school reaches capacity, then they bus the children  
2 who are -- exceed that number out to other schools, and  
3 so it is called the "CAP program."

4 Q. Have you looked at all into achievement of  
5 students bused under CAP as compared to students in  
6 their neighborhood schools?

7 A. I have not directly looked at those scores. I  
8 looked at the task force report that reported their  
9 analysis of those scores.

10 Q. Of the CAP scores?

11 A. The facilities task force on the top of Page  
12 45 --

13 Q. Uh-huh. I am wondering what scores you said  
14 you looked at their analysis of.

15 You said you looked at their analysis of  
16 scores --

17 A. Of the district -- the scores on the State  
18 test.

19 Q. Of the district in total?

20 A. They compared -- their conclusion was after  
21 looking -- it says, "studies show" -- I don't know what  
22 they mean by that -- that the students that are bused  
23 for purposes of overcrowding score less well than the  
24 students who are able to remain in the home school.

25 MS. DAVIS: Okay. Is this a good time to

1 THE WITNESS: I know that many, many families  
2 who are -- who work hard to get their children into  
3 schools of choice are -- don't experience this  
4 disincentive even if going to those schools creates a  
5 long bus ride.

6 I think it is a difference between whether it  
7 is voluntary or involuntary.

8 BY MS. DAVIS:

9 Q. Is there any evidence that busing is the cause  
10 of any drop in kindergarten enrollment?

11 A. Evidence other than the view of the district  
12 official and the data about the changing enrollments?

13 Q. If I recall, it said the data suggests that  
14 parents may be keeping their children out of  
15 kindergarten so they don't have to ride a bus.

16 I am wondering if there is any evidence that  
17 actually links the two together more definitively.

18 A. Not that I have seen.

19 Q. You talk in your report about some of the  
20 effects of busing, just in terms of "awaking early in  
21 the morning, spending hours on the bus, experiencing the  
22 stress of riding a bus and attending distant schools."

23 This is at Page 45.

24 You say, "all of which may explain their lower  
25 achievement."

1 maybe take a bathroom break?

2 MR. LONDEN: Sure.

3 (Recess taken.)

4 BY MS. DAVIS:

5 Q. You state in your report that, "Busing to  
6 relieve overcrowding may create an incentive for parents  
7 not to send their young children to kindergarten in  
8 order to avoid making them ride the bus."

9 That is at 43.

10 And you cite to Wohlers' declaration in  
11 support of that statement.

12 Any other basis for your statement?

13 A. Well, the fact that Wohlers cites it, it is  
14 not just his opinion, but rather the district's  
15 statistics that show this big leap -- this big growth in  
16 the number of students who are in first grade compared  
17 to the number that finish kindergarten.

18 Q. What statistics is he referring to, if you  
19 know?

20 A. Just enrollment statistics.

21 Q. Do you know if busing for purposes other than  
22 overcrowding provides the same incentive that you claim  
23 exists for keeping children out of kindergarten?

24 MR. LONDEN: Vague.

25 Go ahead.

1 If these are the types of things that go on --  
2 go along with bussing, meaning awaking early, spending  
3 time on the bus, experiencing the potential stress of  
4 riding the bus, wouldn't students who are bused for  
5 reasons other than overcrowding experience the same  
6 types of things?

7 A. It depends on what is at the end -- the other  
8 end of the bus ride.

9 Most families who chose to have their family  
10 bused or if the busing is part of an educational  
11 program, like a desegregation program that is meant to  
12 provide enriched educational experiences for children,  
13 the costs, the potential costs of these disruptions to  
14 children are offset by advantages that they gain by what  
15 is at the end of the bus ride.

16 Many of these children are bused to schools  
17 that are also extremely overcrowded.

18 Q. But in terms of the actual experience in terms  
19 of waking up early and spending time on a bus, are those  
20 the same types of experience students would go through  
21 if they were bused for reasons other than overcrowding?

22 A. I think there is a difference in these -- in  
23 these experiences, dependent on whether you have chosen  
24 them or whether it is something you are forced to do.

25 Q. So waking up early to catch a school bus you

1 think is different if your parents have chosen to put  
2 you in a certain type of school an hour away than if you  
3 are bused for overcrowding?

4 Is that --

5 A. I think so.

6 Q. You cite to -- and this is at Page 46 -- an  
7 "L.A. Times" article where the principal of Cahuenga  
8 Elementary states that, "Children who are bused due to  
9 overcrowding usually score lower on standardized tests  
10 than those attending neighborhood schools because their  
11 parents can't be as involved in their education."

12 Do you recall if -- is this the principal's  
13 opinion in this "L.A. Times" article, if you recall?

14 A. Well, he certainly -- he -- these are his  
15 words, but I can't find the beginning of the quote.

16 Q. Do you know if there is any type of --

17 A. I actually don't know if those are his words  
18 or the words of the reporter. I tend to put the words  
19 of the reporters in quotes as well.

20 Q. Okay. Do you know the socioeconomic status of  
21 the students bused to Cahuenga Elementary?

22 A. Are bused away from Cahuenga Elementary?

23 Q. Bused to Cahuenga Elementary.

24 A. I don't believe any children are bused to  
25 Cahuenga Elementary.

1 A. As I said before, I have had some  
2 conversations with some of the people who have written  
3 these reports who have talked to me about the background  
4 work they did, but I did not independently verify --

5 Q. Do you often cite to newspaper articles in  
6 your academic writings?

7 A. Occasionally when they illustrate a point  
8 that -- I use them for illustrative purposes much as I  
9 have here.

10 MS. DAVIS: All right. I think I am done. I  
11 am going to pass the baton. I don't know if you need a  
12 minute.

13 MR. EGAN: I think I am ready to go ahead.

#### 14 EXAMINATION

15 BY MR. EGAN:

16 Q. Good afternoon, Dr. Oakes. I am Joe Egan. I  
17 am the attorney for the Department of Education, the  
18 Superintendent of Public Instruction and the Board of  
19 Education on the Williams case.

20 Following up on some of the questions that Ms.  
21 Davis asked, you indicated that you had conversations  
22 with several reporters that you have cited in your  
23 report.

24 You mentioned previously Mr. Hefland?  
25

1 Q. Are students bused away from Cahuenga  
2 Elementary?

3 A. Yes.

4 Q. Do you know the socioeconomic status of the  
5 students bused away from Cahuenga Elementary?

6 A. They are mostly low-income children of color.

7 Q. Do you know how parents and students feel  
8 about busing?

9 MR. LONDEN: Vague.

10 Go ahead.

11 BY MS. DAVIS:

12 Q. I should say, busing for overcrowding.

13 A. The parents with whom I have spoken and heard  
14 talk about this respond uniformly negatively.

15 Q. Do you recall in the "L.A. Times" article you  
16 cite, "The 4th R-Riding," a mother stating that she  
17 would rather bus her daughter out to Chatsworth because  
18 of the neighborhood's high gang population?

19 A. I don't recall that, but --

20 Q. Okay. You cite to a number of newspaper  
21 articles --

22 A. Uh-huh.

23 Q. -- throughout your report.

24 Did you verify any of the newspaper accounts  
25 cited in your report?

1 A. Uh-huh.

2 Q. Can you tell me who else you spoke with, what  
3 other reporters?

4 A. Elaine Woo.

5 Q. What paper does she work for?

6 A. She used to be with the "Los Angeles Times."

7 Q. Okay.

8 A. I am not sure where she is now. I have talked  
9 to her over the years.

10 Q. My question was specifically with regard to  
11 your Concept 6 report.

12 A. Richard Rothstein, he is writing here for the  
13 "L.A. Times," but he is on the staff of "The New York  
14 Times."

15 Helen Gao, G-A-O, of the "L.A. Times."

16 You know, I talked with some of these others,  
17 but I am not sure if it was in relationship to this  
18 report or other -- Doug Smith.

19 Q. For the individuals you have identified you  
20 did discuss -- you did talk with them with respect to  
21 your report?

22 A. Not about my report. I certainly talked with  
23 them in conjunction with the articles they were writing.

24 Q. Which ultimately are cited in your report?

25 A. Yes. The ones that were cited were cited.



1 Q. I believe you testified previously that you  
2 spoke many hours with Mr. Helfand from the "L.A. Times"?

3 A. Yes. I did talk with him for quite a while  
4 and on several different occasions.

5 Q. Are you talking eight hours or 12 hours or --

6 A. No. Probably a couple on one occasion and,  
7 you know, up to an hour on several other occasions.

8 Q. I believe it was your testimony that in one  
9 part of your report you weren't sure you were quoting  
10 from the article or you were quoting from your  
11 discussion from Mr. Helfand.

12 Is that an accurate statement?

13 A. That it was hard for me to recall what he --  
14 what of what we had discussed actually ended up in his  
15 article and what I was simply remembering from the  
16 context of that conversation.

17 Q. Okay. Was it -- I'm sorry. I think I  
18 misunderstood, then.

19 As I understood your testimony, what you  
20 discussed may have wound up in his article or may have  
21 wound up in your report?

22 A. No. I didn't put anything in my report that  
23 wasn't in his article.

24 It is that when -- Ms. Davis asked me a  
25 question, and I was trying to recall whether or not

1 experienced were things that he relayed to me.

2 He had done a lot of work before he talked to  
3 me. He may have talked to me on two occasions, once  
4 before he had done the work and after, but he had  
5 been -- I think we had been to Hollywood High School  
6 before we talked the first time. He talked to a lot of  
7 people.

8 Essentially he shared with me a lot of his --  
9 what he had found.

10 Q. Do you recall what he asked you for in terms  
11 of feedback, your views on particular points he was  
12 making?

13 A. He was particularly interested in kids' access  
14 to particular classes and activities as a result of  
15 their being in a multi-track, year-round school and  
16 whether that -- that comported with my understanding of  
17 how structures influence students' opportunities to  
18 learn from my research.

19 Q. I think you stated that you talked to him  
20 about his questioning multi-track, year-round education  
21 but not specifically Concept 6?

22 A. I think he was writing about Concept 6 mostly.

23 Q. So your discussions with him related  
24 specifically to Concept 6?

25 A. You know, we might have talked about both. I

1 something she mentioned was in his report.

2 I was not clear about whether -- the source of  
3 my information.

4 Q. Would it be fair to say, then, that your  
5 discussions with Mr. Hefland -- would it be fair to say,  
6 then, that in your discussions with Mr. Hefland you were  
7 providing him with information for use in his articles  
8 regarding --

9 A. No. Not really. He had done quite a lot of  
10 work on his own, and he was calling to run things by me,  
11 see what I thought; did this ring true with other things  
12 I knew?

13 Q. Okay. Do you recall: Did you take any notes  
14 of your conversations with Mr. Hefland?

15 A. No.

16 Q. Any notes with any of the other reporters that  
17 you have identified --

18 A. No.

19 Q. -- in connection with Concept 6?

20 A. No.

21 Q. Okay. Do you recall specifically what you  
22 discussed with Mr. Hefland?

23 A. I know that some of the things that ended up  
24 in the article -- some of the conversations he had with  
25 students and teachers about some of the things they

1 don't recall.

2 Q. Professor Oakes, are you aware of any research  
3 regarding the involvement of, school involvement of  
4 parents of low socioeconomic status students in general?

5 A. Yes.

6 Q. Okay. And what does the research suggest?

7 A. That it is -- that it is important.

8 Q. Okay.

9 A. That it is challenging. That it can be done,  
10 and that when schools do it, engage parents, it has an  
11 enormous payoff.

12 Q. And when you say, "It is challenging," does  
13 that mean that it is difficult to get parents of low  
14 socioeconomic status involved with their children's  
15 education?

16 A. It means the traditional ways that schools use  
17 to engage parents often don't fit well with the  
18 schedules and the demands of low-income parents, so that  
19 schools often have to develop new strategies to engage  
20 parents on a time schedule and in a way that fits with  
21 their lives.

22 Q. Is it fair to say that yes, it is difficult to  
23 get those parents involved?

24 A. I would say it is difficult for schools to --  
25 it is not difficult because there is resistance on the

1 part of low-income parents to caring and wanting to help  
2 their children with their education.

3 It is difficult because schools tend to have  
4 blinders on in terms of the way they think about parent  
5 involvement and how to go about getting it. It means  
6 there is a mismatch between the ways schools usually go  
7 about it and the schedules and needs and demands of  
8 low-income parents.

9 Q. That is your opinion -- let me rephrase that.

10 Is that based upon some research or is that  
11 just an opinion that you formed based upon your  
12 experience with schools?

13 A. I think most of my opinions have a research  
14 base, but there are also a number of studies that have  
15 alternative strategies for engaging low-income parents.

16 Q. What are some of those studies?

17 A. Well, probably the biggest body of work is by  
18 Joyce Epstein, who has a national center for school  
19 partnerships, who has done tons of work on the multiple  
20 ways.

21 I have had -- there's a woman named, "Concha  
22 Delgado-Guitan," who has done an enormous amount of work  
23 on the engagement of low-income families in children's  
24 schools and cited some very successful strategies.

25 I have had two doctoral students study parent

1 A. Yes.

2 Q. Is there a part of that research that suggests  
3 there is a very limited role that schools can play in  
4 improving student performance?

5 MR. LONDEN: Vague.

6 THE WITNESS: There is a great deal of  
7 controversy about the extent to which schools can  
8 interrupt that correlation.

9 BY MR. EGAN:

10 Q. What do you mean by "controversy"?

11 A. That researchers differ in their views of the  
12 extent to which schools can improve the achievement of  
13 low-income children.

14 Q. Do you consider the differences in this  
15 research to be legitimate good-faith differences?

16 MR. LONDEN: Vague.

17 THE WITNESS: I wouldn't use those two words,  
18 "legitimate" or "good faith."

19 I would say that different researchers have  
20 come to different conclusions based on their analyses.

21 BY MR. EGAN:

22 Q. Do you give more credit to one group of  
23 researchers as opposed to another in terms of their  
24 conclusions?

25 MR. LONDEN: Vague and ambiguous.

1 engagement with low-income families of color, and there  
2 are others, but the names are not coming immediately to  
3 mind.

4 Q. Professor Oakes, I think you testified that  
5 there was a -- that academic performance and  
6 socioeconomic status, I think you said, co-exist.

7 A. Uh-huh.

8 Q. Is there a correlation between the two?

9 A. Yes.

10 Q. And what is the correlation?

11 A. That the -- that children from low-income  
12 families tend to exhibit lower levels of academic  
13 performance. There is that relationship, but there --  
14 correlation.

15 Q. And is there research that supports that  
16 correlation?

17 A. The correlation comes from their search.

18 Q. Okay. Do you agree with that research and  
19 that conclusion?

20 A. That those things co-exist?

21 Q. Yes.

22 A. Yes.

23 Q. Is there research which addresses or discusses  
24 what schools can do to address the problems of academic  
25 achievement by low socioeconomic students?

1 Go ahead.

2 THE WITNESS: I attempt to evaluate each study  
3 on its own merits.

4 BY MR. EGAN:

5 Q. In -- have you evaluated studies that conclude  
6 that there is a very limited ability on the part of  
7 schools to improve the academic performance of low  
8 socioeconomic status students?

9 A. I'm sorry. Say that first part of that again.

10 (Record read.)

11 THE WITNESS: Yes.

12 BY MR. EGAN:

13 Q. Okay. And have you found that research to be  
14 valid?

15 A. I would say that research varies. There is a  
16 spectrum in terms of its validity and reliability and --

17 Q. Can you tell me what you consider -- which  
18 body -- that body of research, some examples of what you  
19 consider to be the most valid.

20 MR. LONDEN: That is vague.

21 THE WITNESS: I find most credible and  
22 thoughtful research looks comprehensively at the role of  
23 students' life circumstances and the role of schools and  
24 the interactions of those two things, rather than the  
25 studies that simply try to attribute in a more implicit

1 way outcomes to a particular single -- especially  
2 students' background characteristics.

3 BY MR. EGAN:

4 Q. Could you give me an example of a couple of  
5 research papers in the first category that you  
6 described.

7 A. Yes. My colleague, Pedro Noguera, at Harvard  
8 has done a number of studies that look at low-income  
9 students' achievements in the context of their  
10 communities and their schools that I found very  
11 powerful.

12 Q. Any other examples come to mind?

13 A. Yes. My own, actually.

14 Q. Okay. That is a good example. That's fair.

15 How about examples from the second category  
16 you described?

17 A. Sure. Probably David Armour is the person who  
18 comes most to mind as someone who, quite simplistically,  
19 tries to attribute all of the achievement disadvantages  
20 of low-income children to their families.

21 Q. Any other researchers come to mind in that  
22 category?

23 A. Herb Walberg, Christine Rossell.

24 Q. You stated previously that, I think, in  
25 connection with the White and Cantrell paper that the

1 A. You know, I don't know that I have.

2 Q. Have you discussed this risk factor with  
3 anybody at the Board of Education?

4 A. I don't believe I have.

5 Q. Okay. Let me ask you to take a look at Page  
6 35 of your report, the last paragraph that begins, "Last  
7 year it was reported," and there is a quote that is  
8 attributed to Pat McCabe of the State Department's  
9 Office of Policy and Education.

10 As I recall your testimony, you indicated that  
11 you had no knowledge of what Mr. McCabe had based his  
12 statement on -- the basis for his statement?

13 A. Well, my guess would be that it is based on  
14 the State tests, but since I don't have that in front of  
15 me, or in the article it didn't say, I wouldn't want to  
16 say with certainty that that is what he used.

17 Q. I understand.

18 So that -- again, this is the academic  
19 performance index test data, and you would be able in  
20 your understanding to determine how multi-track,  
21 year-round schools performed as stated by Mr. McCabe; is  
22 that correct?

23 A. What I was stating before, very awkwardly, is  
24 that these analyses have a built-in conservatism to them  
25 because schools are already expected to perform more

1 State used similar school criteria and includes  
2 multi-tracking and considers it a risk factor?

3 A. Yes.

4 Q. What is the basis for your statement that the  
5 State considers it a risk factor?

6 Is that something that has been published?

7 A. It is among the factors the State considers  
8 when it decides what sort of -- where schools fit in  
9 terms of the band of similar schools.

10 Q. Uh-huh. Focusing particularly on the concept  
11 of it being a risk factor, how is it identified as a  
12 risk factor?

13 A. They lower the prediction of the -- the  
14 expectation of the gain they expect the school to make  
15 if it is a year-round, multi-track school.

16 Q. That is what you meant by "risk factor" --

17 A. Yes.

18 Q. -- is the fact that they lowered the -- what  
19 the expected gain is?

20 A. Yes.

21 Q. And is this -- this is within the context of  
22 the academic performance index?

23 A. Yes.

24 Q. Have you discussed this risk factor with  
25 anybody at the Department of Education?

1 poorly, so that is built into the expectation for them,  
2 and then when they do less well in meeting their  
3 expectations compared to other schools, it gets  
4 accounted for again.

5 So it means that in the -- I would suspect  
6 that -- I would -- I would know with considerable  
7 certainty that the actual gaps between the scores of  
8 students on year-round, multi-track schools compared to  
9 the scores of similar students in traditional schools is  
10 wider than these analyses find.

11 Q. Have you done any independent analysis that  
12 compares those scores of multi-track, year-round with  
13 traditional schools?

14 A. No. I have relied on Mr. Mitchell's analysis.

15 Q. Are you aware of any -- other than  
16 Mr. Mitchell's -- any other analyses comparing the two?

17 A. The -- well, certainly the Cantrell and White  
18 study that was done in L.A. Unified and the other  
19 studies that are cited in my -- in my report, although  
20 some of them are before the current API system was in  
21 place.

22 Q. There are a number of research reports that  
23 you cite related to or that generally stand for the  
24 proposition that under certain circumstances academic  
25 performance of students who are in multi-track schools

1 is below that of students in not -- in traditional track  
2 schools; is that correct?

3 A. I don't know that I -- I certainly cite  
4 studies that say that. I am not sure about the "under  
5 certain circumstances" part.

6 Q. All right. In those studies that you cite do  
7 they generally rely upon norm reference tests as a  
8 measure of academic performance?

9 A. For the most part.

10 Q. And did you find that the reliance of those  
11 researchers on the norm reference test as a measure of  
12 academic performance in that context was reliable and  
13 justified?

14 A. Well, the norm reference test is an indicator  
15 that many of us use to get a sense of whether things are  
16 going well or poorly and whether there are differences.

17 I think they are not the best measures in the  
18 world, but they can be useful indicators in contexts  
19 like these.

20 Q. Are there indicators in the context of  
21 multi-track, year-round education that would be better  
22 than a norm reference test?

23 A. I would think that things like -- there are a  
24 whole range of indicators you could use.

25 My personal favorite would be the graduates of

1 but a summer gain on the part of more advantaged  
2 students.

3 BY MR. EGAN:

4 Q. Is it still technically correct to refer to  
5 "summer loss" or is there a better way to describe it?

6 A. I don't know.

7 Q. "Summer learning loss"?

8 A. I think the study suggests that that is not --  
9 there is enough imprecision in that phrase that it might  
10 lead us astray.

11 Q. Is it fair to say that there is substantial  
12 research that suggests that there is a significant  
13 summer learning loss on the part of low socioeconomic  
14 status students?

15 A. There was one study by Barbara Hines that I  
16 think might have been in '71. Don't hold me to it.  
17 Also early on -- but early on -- Barbara is also a  
18 terrific researcher. It was a very, very powerful  
19 study.

20 Essentially, I don't know how many more  
21 studies have been done than hers, but hers was cited  
22 everywhere.

23 Q. What was her specific conclusion with regard  
24 to --

25 A. She saw the differences between test scores,

1 those programs, their ability to satisfy the entrance  
2 requirements for four-year colleges and universities.  
3 That is my personal favorite indicator, and I would very  
4 much like to see comparisons of those data.

5 Q. Okay. Professor Oakes, I believe you  
6 testified previously that it was your opinion that  
7 the -- some of the research -- let me strike that --  
8 that the differences following in academic or in  
9 learning retention following summer breaks was  
10 attributable more to the growth of high socioeconomic  
11 status students than any loss of low socioeconomic  
12 status students; is that correct?

13 MR. LONDEN: Could I -- I lost the question.  
14 Could I just have it read back?

15 (Record read.)

16 MR. LONDEN: I have an objection to that as a  
17 faithful rendition of the earlier testimony, but not as  
18 a question now.

19 MR. EGAN: It is a question.

20 MR. LONDEN: Got it.

21 THE WITNESS: The recent study that I cited,  
22 that was a 2001 study, is a very rigorous and careful  
23 study done by some researchers at Johns Hopkins, and it  
24 certainly does suggest that what we used to talk about  
25 as "summer losses" is really not so much a summer loss

1 the widening gap when students were tested when they  
2 came back to school at the beginning of the school year  
3 and concluded there were some differences, but she had  
4 not tested students at the conclusion of the year prior.

5 Q. Okay.

6 A. Actually, what the Entwistle and the  
7 Alexander study -- the recent one -- does, it really  
8 suggests and they conclude that the influence -- the  
9 gains that are made during the year are comparable for  
10 low-income students and high-income students; that it is  
11 the summer problem, the additional learning  
12 opportunities that more privileged kids have. It is  
13 actually quite an optimistic study about the power of  
14 schooling for low-income children.

15 Q. That is generally consistent with your view,  
16 isn't it, in terms --

17 A. It is consistent with my research.

18 MR. LONDEN: The question is vague.

19 Go ahead.

20 BY MR. EGAN:

21 Q. I would like you to refer to Page 30 of your  
22 report. You refer towards the end of the paragraph that  
23 begins, "While that is true," to the "YRE Guide," which  
24 I understand is the "Year-Round Education Guide"?

25 A. Yes.

1 Q. That is a document put out by the California  
2 Department of Education?  
3 A. Yes. It is on their website.  
4 Q. And are you familiar with it?  
5 A. Yes.  
6 Q. Do you -- let's see.  
7 Can you describe generally what it includes or  
8 what it is?  
9 A. Well, it is a set of explanations about  
10 year-round schooling and some -- I just read it.  
11 Q. Let me ask a slightly different question.  
12 Does it have an audience? Is there an  
13 intended audience for the Year-Round Education Guide?  
14 A. It is intended for those engaged in year-round  
15 education.  
16 Q. Would this be school districts?  
17 A. School districts. I believe they would be  
18 happy to have others read it as well.  
19 Q. Parents, teachers?  
20 A. I would think, although it is on their  
21 year-round education site where they give statistics  
22 and -- there are four links on that site about  
23 year-round education.  
24 Q. The report advises districts using multi-track  
25 calendars to develop policies to insure that each track

1 look at each track separately within multi-track  
2 schools.  
3 Q. I think you referred to "inquiries" that you  
4 had made.  
5 Who did you speak to in that regard?  
6 A. I don't recall.  
7 Q. Was there anybody at the Department of  
8 Education?  
9 A. I might have had a conversation about this --  
10 with Bill Padilla about this. I am not recalling  
11 precisely.  
12 Q. Do you recall conversations with anyone at the  
13 Board of Education?  
14 A. The State Board of Education, you mean?  
15 Q. Yes.  
16 A. No.  
17 Q. Are you aware of any of statute or rule or  
18 regulation that requires any State agency to collect the  
19 data to determine whether tracks are segregated?  
20 A. Well, the Office of Civil Rights Data asks  
21 schools to report about the extent of segregation. The  
22 data would allow them to do that, but, you know -- my  
23 view is that I think the State probably could report  
24 data in this way; that the State probably does have data  
25 that would allow them to know whether tracks are

1 mirrors the composition of the whole school population.  
2 I take it you have no objection to that  
3 recommendation? You would support it?  
4 A. I would be more enthusiastic about it if there  
5 was any follow-up.  
6 Q. Let me ask you to answer the question, if you  
7 would.  
8 A. Yes. I think that the principle is a good  
9 one.  
10 Q. Are there any recommendations in the  
11 Year-Round Education Guide that you disagree with?  
12 A. I would have to review it.  
13 MR. LONDEN: The question is compound.  
14 BY MR. EGAN:  
15 Q. Nothing that occurs to you right now?  
16 A. I would have to review it.  
17 Q. Let me ask if -- you state on Page 30 that,  
18 "The State does not even collect the data necessary to  
19 determine whether tracks are segregated."  
20 What is the basis for that statement?  
21 A. Actually, some inquiries that I have made  
22 about that and my work with Richard Alarcon's staff in  
23 their -- as they were attempting to pass legislation  
24 that would require that the schools -- that the data be  
25 collected and reported in a way that would allow us to

1 segregated, but it is never reported or released that  
2 way.  
3 Q. My question is: Are you aware of any statute  
4 or rule or regulation that requires any State agency to  
5 collect it and report it in a way you would like?  
6 A. I think in the -- there are some requirements  
7 that come with the -- from the Office of Civil Rights in  
8 relationship to the use of federal moneys that do  
9 require and attempt to monitor whether or not different  
10 classrooms are -- especially when they are ability-based  
11 classrooms -- segregated by race.  
12 Q. Is it your testimony that there is some civil  
13 rights rule or regulation or statute that requires that  
14 this data be collected?  
15 A. I'm getting beyond the area of my precise  
16 knowledge.  
17 Q. Is it fair to say you just don't -- you don't  
18 know whether there is a specific requirement?  
19 MR. LONDEN: Are you asking about collection  
20 now?  
21 BY MR. EGAN:  
22 Q. Yes.  
23 A. I think it is required that it be collected.  
24 Q. Okay. But you -- but you cannot identify  
25 beyond what you already said as to what the specific

1 source of the requirement is?  
 2 A. Yes. That is correct.  
 3 Q. So, in general, it is basically civil rights  
 4 statutes?  
 5 A. There may be others, but that is certainly  
 6 what comes to mind in my work with OCR and looking at  
 7 the questionnaires that they use.  
 8 Q. When you refer to the "OCR," who are you  
 9 referring to?  
 10 A. The Office of Civil Rights and the U.S.  
 11 Department of Education.  
 12 Q. Is there anybody at the U.S. Department of  
 13 Education, Office of Civil Rights that you have  
 14 discussed this subject with?  
 15 A. I have actually discussed the -- at the  
 16 offices -- not in the -- not recently, but I have, yes.  
 17 Q. Okay. Who -- how long ago did you discuss it?  
 18 A. I was asked to speak at a conference hosted by  
 19 the Office of Civil Rights in -- maybe two years ago  
 20 that was -- they were reviewing the data collection  
 21 strategies they used for trying to understand  
 22 segregation by race and ability.  
 23 I don't recall people's names.  
 24 Q. You don't recall any particular person at the  
 25 Office of Civil Rights in that connection?

1 A. Just from time to time I will get called by  
 2 attorneys and asked to discuss it.  
 3 I was asked to by the National Academy of  
 4 Sciences to review the OCR data collection protocols in  
 5 the last eight months, but it was a researcher that  
 6 asked me, not somebody from the OCR.  
 7 Q. I believe that you discussed, among other  
 8 things, "block scheduling" --  
 9 A. Yes.  
 10 Q. -- in the context, I think -- I think in  
 11 follow-up to questions about extended periods and  
 12 whether that allowed a sufficient structure for  
 13 learning.  
 14 Is that correct?  
 15 A. We talked about block scheduling as a reform  
 16 strategy that some schools had adopted.  
 17 Q. Does block scheduling create the same problems  
 18 as you discussed in connection with the other  
 19 lengthening periods in the context of multi-track  
 20 schools?  
 21 A. I think depending on how it was done.  
 22 If block scheduling were the only thing that  
 23 were done and if there were no curriculum modifications  
 24 that were framed and part of the reform, it has that  
 25 potential.

1 I know many teachers complain about block  
 2 scheduling for just that reason.  
 3 Q. Do teachers complain about block scheduling  
 4 because it is too long and students' attention spans  
 5 don't last that long?  
 6 A. Yes. Sometimes.  
 7 Q. You also, I think, cited research that you  
 8 described as the -- you identified the optimal school  
 9 size as between 300 and 400 for elementary schools and  
 10 400 to 800 for high schools, if I recall.  
 11 And I believe that you indicated or you stated  
 12 that it was a nice goal if there were sufficient land  
 13 and resources.  
 14 Do you recall that testimony?  
 15 A. I recall saying that I thought it was -- would  
 16 be too proscriptive to mandate it, but I did think it  
 17 was a nice goal.  
 18 Q. But I think you also -- I think you also said  
 19 it was a nice goal if there were sufficient land and  
 20 resources?  
 21 Can you tell me what you meant by "land" in  
 22 that context?  
 23 A. No.  
 24 Q. Okay. Let me ask a more direct question.  
 25 Is it more difficult for urban districts to

1 find land to build new schools?  
 2 A. Yes.  
 3 Q. Okay. That is, more difficult as compared to  
 4 a suburban school district which may have open space?  
 5 A. Yes.  
 6 Q. In your opinion has that been a problem that  
 7 L.A. Unified School District has had in terms of  
 8 building new schools?  
 9 A. Yes.  
 10 Q. You also talked about school size in terms of  
 11 resources.  
 12 Are you familiar with how new school  
 13 construction is funded in California?  
 14 A. You know, I would like to go back just for a  
 15 minute to the question about urban schools.  
 16 I think it is a combination. It is a  
 17 combination of it being more difficult to find land in  
 18 urban spaces to build schools, but what compounds that  
 19 is that the State now expects a district to have  
 20 identified land and have toxic clearance and have gone  
 21 through a lot of steps before they can be allocated  
 22 money to do the building project which -- and especially  
 23 when the money is allocated on a first-come,  
 24 first-served basis. It puts urban districts at a  
 25 disadvantage.

1 So, yes, it is more difficult for the urban  
2 schools to find the land, but that difficulty is  
3 compounded by a set of policies that work against urban  
4 districts or don't help urban districts help accommodate  
5 that extra difficulty.

6 Q. Let me ask you to explain that.

7 The same policies apply across the board to  
8 all districts, is that correct, that you described?

9 A. My understanding is that it is first-come,  
10 first-served, but to come you have to have a site and a  
11 plan and certain approvals so that it -- it advantages  
12 those districts that are in areas where there is a lot  
13 of open, previously unused land.

14 Q. Okay. But I thought -- as I understood it,  
15 you are saying there were also policies that  
16 disadvantaged urban districts as distinguished from the  
17 absence or difficulty of obtaining land; is that  
18 correct?

19 A. The policies that I mentioned disadvantage  
20 urban districts.

21 Q. Would those policies apply to all districts --  
22 is that correct -- as you understand it?

23 A. Yes. But it is -- both things can be true.

24 Q. I accept that possibility.

25 Is that what you are saying; that they do

1 needed.

2 I have no quibble with the environmental  
3 impact or the environmental clearances that schools have  
4 to obtain. It is -- there should be some accommodation  
5 for that additional difficulty built into the policies.

6 BY MR. EGAN:

7 Q. You indicated that you had prepared a  
8 declaration that was filed in the Godinez litigation?

9 A. Yes.

10 Q. And if I recall, that declaration became sort  
11 of the start of your current Concept 6 report?

12 A. Yes.

13 Q. Do you know what the relief sought was in the  
14 Godinez litigation?

15 A. No.

16 Q. Do you know what the general subject was?

17 A. I know the general subject was the lack of  
18 facilities in L.A. Unified and overcrowding and an  
19 effort to try to get some relief, but I really did not  
20 follow that case closely at all.

21 Q. Do you know whether Godinez related at all to  
22 what you described as the first-come, first-served  
23 problem?

24 A. I have no idea.

25 Q. Let me go back to my initial question, which

1 apply across the board evenly to all districts?

2 A. I am not an expert in actually the financing  
3 of school facilities, so this is my understanding, but,  
4 yes.

5 Q. Okay. In what sense are urban school  
6 districts disadvantaged in terms of these rules?

7 MR. LONDEN: Asked and answered.

8 THE WITNESS: Because they can't get in line  
9 as quickly given the constraints to their ability to  
10 identify and develop plans for new sites.

11 BY MR. EGAN:

12 Q. And is that difficulty attributable to the  
13 difficulty in finding sites or is there some other  
14 reason?

15 A. It is in finding sites, in getting clearance  
16 for sites, and other reasons, I am sure.

17 Q. Do you take issue with the policies themselves  
18 as you have described them in terms of environmental  
19 clearances?

20 MR. LONDEN: Vague.

21 THE WITNESS: I take issue with the policies,  
22 as I have described them, that disadvantage urban  
23 districts because it is first-come, first-served. It  
24 seems to me the policies ought to be specifically framed  
25 so that the money gets to the places that are most

1 is: What is your understanding of how new school  
2 construction is financed in California?

3 MR. LONDEN: That is a vague question.

4 THE WITNESS: I know some things about it. I  
5 do not have a comprehensive understanding.

6 I know about the first-come, first-served  
7 policy.

8 I often know there is a requirement of  
9 matching funds that local districts have to guarantee in  
10 order to get funding.

11 I know there is -- until recently we had a  
12 very restrictive two-thirds vote requirement that made  
13 it extraordinarily difficult.

14 I may know a little more than that, but  
15 that --

16 BY MR. EGAN:

17 Q. Fair enough.

18 And the restrictive two-thirds requirement has  
19 now been changed --

20 A. Yes.

21 Q. -- is your understanding?

22 A. Uh-huh.

23 Q. You testified, I think, briefly or referred  
24 briefly to a recent State bond issue that would make  
25 funds available for new school construction.

1 Are you familiar in general -- generally with  
 2 the terms of that bond issue and the terms by which the  
 3 funds are distributed?  
 4 A. Only in the most general way.  
 5 Q. Do you know if the bond statutes make any  
 6 special provision for school districts that are impacted  
 7 and overcrowded?  
 8 A. It is my understanding that there is no  
 9 specific attempt to provide relief for multi-track,  
 10 year-round schools.  
 11 Q. That was not my question. Let me rephrase it.  
 12 Do you have any knowledge of whether the funds  
 13 that are made available are made available on any sort  
 14 of priority basis for school districts that are  
 15 overcrowded, not specifically dealing with  
 16 multi-tracking?  
 17 A. I believe there are some provisions, but the  
 18 specifics are not in my memory. I would have to take a  
 19 look at it.  
 20 Q. Do you know if there are any school districts  
 21 in California that operate schools at the optimal level  
 22 described, the 300 to 400 for elementary and the 400 to  
 23 800 for high schools?  
 24 A. I think there are schools of those sizes in  
 25 California.

1 Q. Are they relatively small in number?  
 2 MR. LONDEN: "They"?  
 3 THE WITNESS: I would say most California  
 4 schools do not conform to those ideal sizes.  
 5 BY MR. EGAN:  
 6 Q. Professor Oakes, I believe you previously  
 7 testified that it was your opinion that the State did  
 8 not provide the resources to relieve school  
 9 overcrowding; is that correct?  
 10 A. Yes.  
 11 Q. When you refer to "the State," what do you  
 12 mean by "the State"?  
 13 A. Generally, I mean those who are empowered to  
 14 make decisions on behalf of the people of California.  
 15 It is elected officials and top-level appointed  
 16 administrators.  
 17 Q. So this would be -- you are referring then to  
 18 the State as opposed to a district, school district,  
 19 when you refer to the State not providing resources to  
 20 relieve overcrowding?  
 21 A. Yes.  
 22 Q. And, again, you are talking about legislative  
 23 authority and executive authority?  
 24 MR. LONDEN: That is a vague question.  
 25 THE WITNESS: And the -- I would also say

1 that -- I mean, the State policy structure, school  
 2 funding structure as much as any -- I mean, we have some  
 3 historical artifacts here as well as intentions of  
 4 individual people.  
 5 BY MR. EGAN:  
 6 Q. Would you include Prop 13 as one of those  
 7 historical artifacts that affects school financing and  
 8 construction?  
 9 A. I would.  
 10 Q. Any other laws?  
 11 A. Well, the subsequent -- was it the Gann  
 12 initiative that required a two-thirds vote?  
 13 Certainly, those are the big ones that stand  
 14 out in my mind as the beginning on that trajectory of  
 15 limited resources and expanding numbers of students.  
 16 I mean, I think also there are choices made  
 17 about how to allocate the resources that are available,  
 18 and that those choices have not been made in ways that  
 19 would have diverted more funds to building schools.  
 20 Q. What choices do you have -- are you referring  
 21 to?  
 22 A. Well, for example, the huge amount of  
 23 resources we have spent on prison construction could  
 24 have been used to build schools.  
 25 Q. These are political choices that have been

1 made --  
 2 A. Yes.  
 3 Q. -- that you disagree with?  
 4 A. I am saying these are choices that have been  
 5 made to have -- divert the money that could otherwise  
 6 have been used to build schools.  
 7 Q. Fair enough.  
 8 You refer to Mr. Wohlers' declaration at  
 9 various points in your report.  
 10 Who is Mr. Wohlers?  
 11 A. My understanding is that he is Chief of Staff  
 12 in Governor Romer's office in the Los Angeles Unified  
 13 School District.  
 14 Q. Governor/Superintendent Romer?  
 15 A. Yes.  
 16 Q. Was Mr. Wohlers' declaration filed in the  
 17 Godinez case?  
 18 A. You know, I don't know.  
 19 Q. Do you know if Mr. Wohlers -- do you know what  
 20 the purpose of Mr. Wohlers' declaration was?  
 21 A. No. I simply read it for its content, but I  
 22 don't recall.  
 23 Q. Okay. I think you previously testified that  
 24 the -- that there were State incentives for year-round  
 25 education or for -- multi-track, year-round schools and



1 I believe you said also for Concept 6 schools.

2 Is that a correct --

3 A. You know, I don't recall whether Concept 6 is  
4 mentioned specifically or it is multi-track schools in  
5 general, which is my impression at the moment, but I  
6 would have to refresh my memory.

7 There are implementation grants and  
8 operational grants available to school districts as an  
9 incentive to use multi-track schooling to relieve  
10 overcrowding problems.

11 Q. Okay. My specific question is: To your  
12 knowledge is the incentive directed at multi-tracking,  
13 specifically Concept 6?

14 A. It is multi-tracking, to my understanding.

15 Q. So the State incentives you have in mind do  
16 not specifically refer to Concept 6?

17 A. Whenever multi-tracking is defined and there  
18 is sort of an elaborated definition, there are always  
19 several kinds of plans that are named, and Concept 6 is  
20 included among those.

21 So my presumption is when the State says,  
22 "multi-track, year-round," they are thinking of Concept  
23 6 as one of many plans that can be used.

24 Q. Okay. That is fair. That is a fair  
25 statement.

1 case, could you tell me a little more about what you  
2 meant by that?

3 A. That during the Godinez case, which I was only  
4 the -- had the most peripheral involvement with, I was  
5 called by Mr. Villagra from MALDEF and asked if I -- no.  
6 I was actually approached by Mr. English, I believe, and  
7 asked if I would be willing given my expertise on school  
8 structure and students' opportunities to learn, whether  
9 I would be willing to make a declaration about the  
10 impact of Concept 6, multi-track, year-round schools.

11 I said I was happy to do that and --

12 Q. Okay.

13 A. -- that is how it began.

14 Q. Let me ask: Have you published anything  
15 related to multi-tracking?

16 MR. LONDEN: Vague.

17 THE WITNESS: In -- I certainly have now  
18 published this work on my website of my center and --

19 BY MR. EGAN:

20 Q. Is that IDEA, the Institute for Democracy in  
21 Education --

22 A. -- and Access, yes.

23 You know, I don't recall in my work on school  
24 structure and practices and kids' opportunities whether  
25 I have ever referenced multi-tracking, year-round before

1 You also made reference to the governor's veto  
2 of legislation that would have phased out Concept 6?

3 A. Yes.

4 Q. Are you familiar with the reasons for the  
5 governor's veto?

6 A. Yes.

7 Q. What is your understanding of the basis for  
8 the veto?

9 A. What he said in his veto message is that, one,  
10 it would cost too much money and, second, it would  
11 restrict the flexibility of schools to choose their own  
12 schedules -- school districts.

13 Q. And do you know what the position of school  
14 districts was with respect to this particular  
15 legislation?

16 A. No.

17 MR. LONDEN: Vague and ambiguous.

18 THE WITNESS: I don't know if all school  
19 districts have the same opinion.

20 BY MR. EGAN:

21 Q. Do you know what the view of L.A. Unified  
22 School District was with regard to that?

23 A. I don't, actually.

24 Q. Okay. When you stated that your Concept 6  
25 report started with your declaration in the Godinez

1 or not.

2 Q. Okay. What do you mean when you talk about  
3 "school structure"? What are you referring to?

4 A. Well, all of my -- much of my research has  
5 focused on the decision educators make about how to  
6 organize students into -- in schools and in classrooms  
7 and between classrooms for purposes of instruction, and  
8 that is what I meant by it.

9 Q. Okay. But you don't recall right as you sit  
10 here today whether you published anything specifically  
11 related to multi-track, year-round education before the  
12 paper --

13 A. Before Godinez?

14 Q. Right.

15 MR. LONDEN: Asked and answered.

16 THE WITNESS: No. Not that I recall  
17 specifically, but I may have.

18 I mean, I have -- I have written a lot, and  
19 certainly in "Teaching to Change the World," I may have  
20 written about this, but I can't -- I don't really  
21 remember.

22 BY MR. EGAN:

23 Q. After you had prepared the declaration for  
24 Godinez how did that lead to -- how did you become  
25 involved in the preparation of the Concept 6 report?

1 A. I was asked by the attorneys if I would be  
2 willing to write an additional report on this subject  
3 for the Williams case.

4 Q. Okay. Did you have discussions with the  
5 attorneys for plaintiffs about why they wanted you to  
6 write the report?

7 A. Yes. I knew that Mr. Mitchell was writing a  
8 report, and I think that they were interested in having  
9 someone with long experience in understanding the impact  
10 of school structure and organization on students'  
11 opportunities and achievement to complement that work.

12 Q. Okay. So you viewed your report, then, as  
13 really a complement to Professor Mitchell's or  
14 Mr. Mitchell's report?

15 A. It was written completely independently. I  
16 never had any conversations with Mr. Mitchell. I knew  
17 he was writing his report, and I had read his earlier  
18 studies.

19 Q. But you had no discussion with him to see what  
20 he was writing to see if you were writing the same thing  
21 or taking inconsistent positions?

22 A. I have never had a conversation with  
23 Mr. Mitchell in my life.

24 Q. The report, I take it, evolved over time?

25 Let me ask this: I believe you testified that

1 multi-tracking.

2 He certainly referred me to declarations that  
3 had -- where this topic had been discussed.

4 Q. Okay. Would it be fair to say that basically  
5 he -- he understood what it is you were -- the  
6 conclusion that you were going to reach and basically  
7 gave you information that would help you support it?

8 A. No.

9 Q. That was not the process?

10 A. No. He knew what questions I was interested  
11 in addressing, and he helped me find anything that  
12 anybody had ever written about the topic to help  
13 formulate an opinion.

14 Q. In addition to giving you the II/USP reports,  
15 what else did he give you?

16 I think you referenced, "declarations"?

17 A. Yes.

18 Q. These are the declarations of students?

19 A. Of teachers --

20 Q. Okay.

21 A. -- and Mr. Wohlers. I believe that those --  
22 because he -- I am trying to think if there are any of  
23 these other -- I told him to look at the Howley studies  
24 and see if there was anything there because I knew Greg  
25 and Amy Howley and knew that they were interested in

1 you worked with Mr. Villagra in terms of the drafting of  
2 the report?

3 A. Yes.

4 Q. What did he contribute to the report?

5 A. He -- we talked about ideas that should be in  
6 the report. He took the original declaration. He  
7 brought things -- some things to my attention. I  
8 brought some things to his attention. For example, I  
9 think I had the Cantrell and White study before he did.

10 And he drafted some things. I looked at them,  
11 reviewed them.

12 I drafted some things. He looked at them. It  
13 was a very collaborative process.

14 Q. Okay. Let me ask you: What ideas did he  
15 bring to your attention?

16 A. He really didn't bring any ideas to my  
17 attention. He brought -- he found some studies. He  
18 worked in some ways like a research assistant, where he  
19 did lots and lots of searching to see what evidence was  
20 out there that I might not have seen before. He  
21 contributed some of those things.

22 Q. Can you be specific as to what "those things"  
23 were?

24 A. I think he brought to my attention II/USP  
25 reports that mentioned the problems associated with

1 school size. He may have actually tracked down the  
2 particular piece that is referenced here.

3 I gave him names of a number of people who had  
4 done research on school size, and he or somebody in his  
5 office helped find some of those things.

6 I think we -- there were some other things  
7 that we both sort of looked for, trying to use our own  
8 resources when we heard about a study and trying to  
9 track down where we could obtain a copy and look at it.

10 Q. Beyond reading research papers and  
11 declarations and the II/USP plans, was there any  
12 discussion of issues to be addressed in the report  
13 between you and Mr. Villagra?

14 A. Oh, I think so. We talked about what are the  
15 range of things one would want to comment about in terms  
16 of the impact of these structures, and that it was not  
17 only about achievement, but we wanted to know about  
18 other dimensions of the school climate and parent  
19 involvement, and we talked about those things together.

20 Q. Were there any specific subjects that were in  
21 an earlier draft that were taken out of your final  
22 report?

23 A. Nothing substantive. I know that I asked him  
24 to make sure whether anything that he was working on --  
25 he actually did the last formatting and stylistic, you

1 know -- getting the footnotes right and everything.  
 2 And I did ask him to read it to be very, very  
 3 sure that newspaper accounts were identified as  
 4 newspaper accounts. We weren't always careful about  
 5 that in early drafts, and I wanted to make sure they  
 6 were clearly identified as newspaper articles, not as  
 7 studies. I don't think that is taking anything out  
 8 but --

9 Q. Uh-huh. I appreciate it.

10 Are you familiar with any other litigation  
 11 involving L.A. Unified School District that in any way  
 12 relates to school facilities?

13 MR. LONDEN: Vague.

14 THE WITNESS: I am not familiar, no.

15 BY MR. EGAN:

16 Q. Are you familiar generally with any other  
 17 litigation, education litigation, involving L.A.  
 18 Unified?

19 MR. LONDEN: Even vaguer.

20 Go ahead.

21 BY MR. EGAN:

22 Q. It is certainly broader.

23 A. I am not aware of the specifications of any  
 24 particular litigation, but I am sure there must be some.

25 Q. I believe you are correct.

1 classrooms as classroom space.

2 They bus students away from overcrowded  
 3 schools, and they use multi-track, year-round schedules.  
 4 Those are the primary means that I know about.

5 Q. But you do not have an opinion as to which of  
 6 those methods would be preferable?

7 MR. LONDEN: Vague.

8 THE WITNESS: I think none of those are  
 9 educationally sound.

10 BY MR. EGAN:

11 Q. Okay. But given those ranges, those options  
 12 and understanding your view that none of them are  
 13 educationally sound, do you have any preference as to  
 14 what would be preferable, one over the other?

15 A. I wouldn't be placed in a position where I had  
 16 to recommend one over the other. I mean, it is not -- I  
 17 think -- they are all objectionable to me.

18 Q. Okay. I believe your report refers to various  
 19 educational disadvantages that students who are bused  
 20 due to overcrowding suffer.

21 Would students who are bused because they live  
 22 in a rural area to school suffer the same educational  
 23 disadvantages?

24 A. They might.

25 Q. Okay. Would students who are bused to achieve

1 I believe it is your opinion that multi-track,  
 2 year-round education is intended primarily to relieve  
 3 school overcrowding?

4 A. Yes.

5 Q. Are there other -- and I believe you  
 6 identified some alternatives to multi-track education,  
 7 year-round education to address overcrowding.

8 Do you have an opinion as to what methods are  
 9 preferable to address overcrowding?

10 A. Building more schools.

11 Q. If -- given that it may not be possible to  
 12 build schools in sufficient time to address  
 13 overcrowding, what then -- I would ask you the same  
 14 question: Excluding that option of building new  
 15 schools, do you have an opinion or preference as to what  
 16 methods are used to address overcrowding?

17 A. I haven't spent enough time on that topic to  
 18 give a sensible answer.

19 Q. Okay. So you haven't really -- do you know  
 20 whether -- what California school districts that do have  
 21 school facility overcrowding issues, what methods they  
 22 have used to address the problem?

23 A. Well, certainly schools bring -- they filled  
 24 the playgrounds with portable classrooms. They used  
 25 spaces that were not originally designed to be

1 racial desegregation suffer any of those same  
 2 educational disadvantages?

3 A. I think -- as I said before, I think that when  
 4 children are bused because there is something at the end  
 5 of the bus ride that is thought of as a desirable  
 6 educational experience, that the advantages of those --  
 7 of participating in those kinds of programs outweigh the  
 8 disadvantages that come when students are bused simply  
 9 to relieve overcrowding.

10 Q. I think I understand your answer, but I don't  
 11 think it really responds to my question.

12 My question is: Would they suffer the same  
 13 disadvantages? I understand you perceive significant  
 14 advantages, but wouldn't they also suffer certain  
 15 disadvantages that you have identified in the context --  
 16 the same disadvantages you identified in the context of  
 17 busing to avoid overcrowding?

18 MR. LONDEN: Asked and answered.

19 Go ahead.

20 THE WITNESS: I think they would, but there  
 21 would be some compensatory and compelling reasons to  
 22 undergo those burdens.

23 BY MR. EGAN:

24 Q. Have you -- on the subject of busing, is there  
 25 any difference attributable in terms of academic

1 performance to the time that students spend on the bus?  
 2 A. Actually, one of the studies I cite talks  
 3 about for every 30 minutes there is an increase in  
 4 the -- can you increase a disadvantage? I don't know --  
 5 that there is an additional disadvantage that comes with  
 6 increased time.

7 Q. Did you --

8 A. I think that is what it says. Or it may be  
 9 the longer the time, the more people perceive there is a  
 10 disadvantage, which is slightly different.

11 Q. I do recall the report dealt with that.

12 Do you want to take a look at that?

13 A. I don't want to misquote myself.

14 Q. Sure.

15 A. It is the study of busing in five states.

16 Q. Which page?

17 A. Pages 41 and 42.

18 Q. Okay.

19 A. It is -- what it is, is that 40 percent or  
 20 around 39 percent of the principals in schools -- in  
 21 schools with rides less than 30 minutes believe that the  
 22 length of the ride had a negative effect compared with  
 23 67 percent of principals in schools with the longest  
 24 rides, greater than 30 minutes in duration. It is more  
 25 that more people seem to agree that there is a

1 Q. Okay.

2 A. It is their reputation and my knowledge of  
 3 their work led me to this, although I did check this  
 4 study out independently.

5 Q. Okay. Your report references the State's  
 6 master plan for education?

7 A. Yes.

8 Q. And were you involved in any way in the master  
 9 plan development?

10 A. Yes.

11 Q. Okay. Could you describe what your role was.

12 A. I was appointed by Senator Alpert, and Strom  
 13 Martin, I believe, was the co-chair at the time to chair  
 14 the working group for the Legislature on student  
 15 learning.

16 It was one of several working groups they  
 17 appointed to make recommendations and -- to the State  
 18 about what a master plan should include.

19 Q. Okay. I believe your report cited a  
 20 recommendation that called for the elimination of  
 21 Concept 6?

22 A. Yes.

23 Q. Was that developed by your working group?

24 A. I think not, actually. I think it came out of  
 25 the facilities working group, but I am not remembering

1 disadvantage when the ride is longer.

2 Q. Are you aware of any other research that  
 3 addresses the amount of time that children are bused in  
 4 terms of the consequences on academic achievement?

5 A. Here is this other one on Page 44; that each  
 6 hour per day spent riding a bus could be predicted to  
 7 reduce achievement scores. That is the Oklahoma study.

8 Q. So working backwards, would it be fair -- do  
 9 you have an opinion as to whether less time or the time  
 10 spent is significant?

11 I take it you deem that it is?

12 A. I think the best evidence that is available --  
 13 which is not a whole lot -- says a longer bus ride  
 14 creates more problems. I think most people would  
 15 surmise that anyway.

16 Q. When you say, "the best data available, and  
 17 there isn't a whole lot," as far as you know, you cited  
 18 the only data that relates to the time of busing?

19 MR. LONDEN: Lacks foundation.

20 Go ahead.

21 THE WITNESS: The Howleys' paper in 2001 --  
 22 and they studied this over time -- says they believe  
 23 that this study is the most credible study addressing  
 24 this issue so --

25 BY MR. EGAN:

1 for sure.

2 It appeared in the final version of the master  
 3 plan, which was written by staff and others after they  
 4 had reviewed and independently analyzed all the  
 5 recommendations.

6 Q. Did you have any involvement with the  
 7 facilities working group?

8 A. No.

9 Q. Did you have any involvement with the  
 10 recommendation relating to the elimination of Concept 6?

11 A. You know, I don't think so, but it -- I would  
 12 have to check my report. It is not my recollection, but  
 13 it could be.

14 Q. Okay. Do you know whether there was  
 15 discussion of -- whether the working group discussed the  
 16 recommendation of year-round, multi-track schools?

17 A. I don't recall my working group having that  
 18 conversation.

19 Q. Okay. Do you know whether that was a source  
 20 or a topic of discussion in the facilities working  
 21 group?

22 MR. LONDEN: "That" being what?

23 BY MR. EGAN:

24 Q. The elimination of multi-track, year-round  
 25 schools.

1 A. I don't know. I wasn't part of their  
2 conversations.  
3 Q. Okay. Okay.  
4 A. I don't recall. I have read all the reports,  
5 but I just don't recall.  
6 Q. Have you had any discussions with anybody  
7 about the facilities working group recommendations?  
8 A. No. I was part of a meeting -- on two  
9 occasions the chairs came together, so I was in a room  
10 with Mr. Henry, who was the head of the facilities  
11 working group, and there was some conversation, but I  
12 don't recall that, the issue of multi-track or Concept 6  
13 ever coming up in that conversation.  
14 Q. Is that the same Mr. Henry that is associated  
15 with FCMAT?  
16 A. Yes.  
17 Q. F-C-M-A-T.  
18 Are you aware that -- of any research that  
19 suggests that students, low SES students, "SES" for  
20 "socioeconomic status," benefit from a year-round,  
21 multi-track calendar?  
22 A. I'm sorry.  
23 Say the first part of that again.  
24 Q. Are you aware of any research that supports  
25 the proposition that low SES students benefit from a

1 Q. Are you aware of -- other than the Herman  
2 report, are you aware of any other research that posits  
3 benefits in academic performance for low SES students  
4 resulting from attendance at a multi-track, year-round  
5 school?  
6 A. Multi-track, year-round?  
7 Q. Yes.  
8 A. I only know of the studies that appear in my  
9 report.  
10 Q. Okay. On Page 30 of your report, I think, you  
11 indicate that the California Department of Education  
12 rarely collects data -- I need to add on to that  
13 because they certainly do collect data -- it rarely  
14 collects or disaggregates data for different tracks  
15 within schools.  
16 From that I infer in some context the CDE has  
17 collected data from different tracks.  
18 Is that a --  
19 A. It is not clear to me, because my examination  
20 of the database makes it unclear about whether the  
21 variables are there and not just made available in a way  
22 that you could disaggregate them or whether or not they  
23 are not there.  
24 Q. Let me ask: Your report suggests to me that  
25 you had -- there was some data you had in mind that CDE

1 multi-track, year-round calendar?  
2 A. I know that that claim was made about Joan  
3 Herman's study in 1991, but the differences were not  
4 statistically significant, and some of the claims that  
5 have appeared about that study aren't borne out by the  
6 study itself. So that is one instance I know where a  
7 claim has been made that the kids in Concept 6 schools  
8 did slightly better.  
9 Q. Do you know specifically or -- as best you  
10 recall, what was the specific conclusion of the Herman  
11 report?  
12 A. That there was a small, I think -- I think he  
13 said there was a small advantage to year-round, to  
14 multi-track schools, but it was not statistically  
15 significant, meaning it could just as easily be a chance  
16 occurrence in the data.  
17 Q. Do you recall any other conclusions in that  
18 report?  
19 A. Yes. I believe that is the report where  
20 teachers said they didn't use the extra instructional  
21 minutes for instruction.  
22 Q. Okay. And that report specifically looked at  
23 Concept 6?  
24 A. I believe it did in the LAUSD. It was not a  
25 statewide study.

1 had collected; is that correct?  
2 A. Well, I think the uncertainty that I have  
3 about whether the data are collected and simply not made  
4 available or whether they are not collected is really  
5 reflected in the hesitant phrasing of that sentence.  
6 Q. Okay. So, basically -- would it be fair to  
7 say you just don't know whether CDE collects or  
8 disaggregates data from certain tracks in schools?  
9 A. I know for certain I can't get that from them,  
10 even if you are a Senator in the legislature, because  
11 Senator Alarcon has tried valiantly.  
12 Q. You are not aware of any specific study or  
13 collection of data that the Department conducted to look  
14 at tracks within schools?  
15 A. As far as my understanding is that the track  
16 within school study is -- the people who have done it  
17 have been LAUSD, where they have looked at the  
18 differences between Tracks A, B and C, but that the  
19 State tends to report those things at the level of the  
20 school, not at the level of the track within the school.  
21 Q. Okay. At Page 36 of your report, the last  
22 paragraph, there is a comparison of results of the 2001  
23 and 2002 spring administrations?  
24 A. Yes.  
25 Q. Did you do a comparison?

1 A. Yes.

2 Q. Is that referenced -- can you describe what  
3 you did.

4 A. Well, because the State didn't publish  
5 cumulative results, that the data that came out this  
6 year about how many students hadn't passed the exam were  
7 simply reports of how many hadn't passed in this  
8 administration, and what really mattered to me was the  
9 extent to which kids at particular schools had passed  
10 cumulatively, either passed as ninth graders, passed as  
11 tenth graders and, more importantly, how many had yet to  
12 pass.

13 So I went into the database, aggregated the  
14 data, used the number of tenth graders currently at the  
15 school as the denominator and calculated the percentage  
16 of students who had not passed yet on -- or had passed  
17 on either administration as ninth graders or tenth  
18 graders.

19 It is just a new little number crunching.

20 Q. Do you know whether you kept a record of that  
21 and if that record was produced as part of the many  
22 documents that have been produced in this case?

23 A. I know there is a record of it. It is  
24 publicly available on my website.

25 Q. Okay.

1 to go ask.

2 MR. EGAN: I appreciate it. Thank you, Jack.

3 Q. During the course of preparing your Concept 6  
4 report have you had any discussions with any of the  
5 parties involved in the -- related to Williams, involved  
6 in Williams, regarding what the solution to school  
7 overcrowding should be?

8 A. I don't think so.

9 Q. Do you have an opinion as to what should be  
10 done to solve the problems that you have identified in  
11 your Concept 6 report?

12 A. Not opinions that I would want to offer as  
13 expert opinions. It was not part of the task that I  
14 was -- that I accepted in doing this report, and if you  
15 would like me to do that, I would be happy to do another  
16 study, but I haven't done it.

17 Q. So you don't have any --

18 A. I don't have any expert opinions about remedy.

19 Q. Okay.

20 MR. EGAN: I have no further questions. Thank  
21 you.

22 MR. LONDEN: Now, at this point I would like  
23 to put on the record what I think is our understanding  
24 about the schedule.

25 Dr. Oakes and the plaintiffs are prepared to

1 A. It is on a website called, "Teaching to Change  
2 L.A.," where there is a whole article on Concept 6, and  
3 these data are displayed there for anybody who wants  
4 them.

5 Q. Okay.

6 A. I don't know whether -- I don't recall whether  
7 it was a part of the material that was turned over or  
8 not.

9 Q. Is there -- would there be anything in  
10 addition to what you published on your website that  
11 would relate to the comparison that you reference in  
12 your report?

13 A. I have a file in my computer that has those  
14 analyses in it.

15 Q. Okay.

16 MR. LONDEN: Let me just state my  
17 understanding that that file we did get --

18 MR. EGAN: Okay.

19 MR. LONDEN: -- and would have produced,  
20 although I don't recall.

21 MR. EGAN: Let me ask if you will produce it  
22 before --

23 MR. LONDEN: I am saying I think we have.

24 MR. EGAN: You have already?

25 MR. LONDEN: But I am willing, as a courtesy,

1 go forward continuously through this week; however, Los  
2 Angeles, we have agreed, may ask their questions about  
3 the Concept 6 report after this week, and the California  
4 School Board Association has questions on this subject  
5 which we are willing to defer until that time, and we  
6 understand that the lawyer for the State who is going to  
7 resume questioning on the report Dr. Oakes did on  
8 instructional materials is not available tomorrow.

9 So I understand that it is everyone's request  
10 to us that we reconvene for that purpose on Wednesday  
11 morning and that that leaves tomorrow open.

12 Having stated that we would come tomorrow and  
13 work if there were something to do, we are willing to  
14 accommodate CSBA's request as to scheduling, and I  
15 believe that leaves us with nothing to do tomorrow.

16 MS. DAVIS: I will just mention that I don't  
17 know if the lawyer for the State is unavailable  
18 tomorrow, but I do know that in the scheduling, my  
19 understanding was these two days, Monday and Tuesday,  
20 were reserved for the multi-track Concept 6 report and  
21 Wednesday through Friday for instructional materials. I  
22 think people have worked their schedules out that way.

23 MR. LONDEN: I accept that statement. It was  
24 what I was told, but secondhand, from a reliable  
25 intermediary that Wednesday would be the first day that

1 Mr. Herron would be available.  
 2 I don't think it makes any difference unless  
 3 you tell us you want us to be here tomorrow.  
 4 MR. HILL: For CSBA, I would say we can go  
 5 forward tomorrow if it is thought to be a better  
 6 schedule for Dr. Oakes or for yourself.  
 7 It seems more efficient to cover all the rest  
 8 of the Concept 6 at one time rather than go at it for a  
 9 couple of hours tomorrow and go at it again.  
 10 MR. LONDEN: I don't have any problem --  
 11 sorry.  
 12 MR. HILL: I am finished.  
 13 MR. LONDEN: I don't have any problem with the  
 14 schedule for your purposes.  
 15 There is right now a discussion, maybe a  
 16 dispute, about whether the deadline for production of  
 17 the State's reports -- the defendants' reports should  
 18 await completion of the intervenor's questioning.  
 19 Our position is that it doesn't need to, and  
 20 that is part of what is on my mind in saying we are fine  
 21 with you asking the questions later.  
 22 It is my hope that will all be worked out, and  
 23 in any event I think we are agreed we won't convene  
 24 tomorrow, but Dr. Oakes will be here again at 9:30, I  
 25 guess, on Wednesday morning.

1 MS. DAVIS: Agreed.  
 2 MR. LONDEN: We adjourn on that understanding.  
 3 MR. EGAN: Okay.  
 4 MS. DAVIS: Thank you. Thank you, Dr. Oakes.  
 5  
 6 (The following stipulation  
 7 from a prior deposition was  
 8 incorporated as follows:  
 9 "MR. HERRON: May we  
 10 stipulate the copies of the  
 11 documents attached to the  
 12 deposition may be used as  
 13 originals, and may we further  
 14 stipulate that the original of this  
 15 deposition be signed under penalty  
 16 or perjury.  
 17 "The original will be  
 18 delivered to the offices of the  
 19 ACLU and directed to Mark  
 20 Rosenbaum; that the reporter is  
 21 relieved of liability for the  
 22 original of the deposition. The  
 23 witness will have 30 days from the  
 24 date of the court's transmittal  
 25 letters to review, sign and correct

1 the deposition.  
 2 "And that Mr. Rosenbaum or  
 3 anyone he shall designate from  
 4 plaintiffs' side shall notify all  
 5 parties in writing of any changes  
 6 to the deposition within that  
 7 30-day period. And if there are no  
 8 such changes or signature within  
 9 that time, that any unsigned and  
 10 uncorrected copy may be used for  
 11 all purposes as if signed and  
 12 corrected.  
 13 "MR. ROSENBAUM: If it's not  
 14 a burden for the reporter, because  
 15 I'm out of town a lot now because  
 16 of depositions and my teaching, if  
 17 copies could be served -- the  
 18 stipulation that Mr. Herron read  
 19 may -- if it could be served on  
 20 both me and Ms. Lhamon, Catherine  
 21 Lhamon, I think it would facilitate  
 22 the process. Is that okay?  
 23 "THE REPORTER: Yes.  
 24 "MR. ROSENBAUM: With that  
 25 addendum, I certainly stipulate to

1 that.  
 2 "MR. HERRON: Very good.")  
 3  
 4 (Whereupon at 4:05 p.m., the  
 5 deposition of JEANNIE OAKES was adjourned.)  
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 25

1 STATE OF CALIFORNIA )  
 ) SS.

2 COUNTY OF LOS ANGELES )

3

4 I am the witness in the foregoing deposition.

5 I have read the foregoing deposition or have  
6 had read to me the foregoing deposition, and having made  
7 such changes and corrections as I desired, I certify  
8 that the same is true in my own knowledge.

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

12 This declaration is executed this \_\_\_\_ day of  
13 \_\_\_\_\_, 2003, at \_\_\_\_\_  
14 California.

15

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\_\_\_\_\_  
JEANNIE OAKES

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1 STATE OF CALIFORNIA )  
 ) SS.

2 COUNTY OF LOS ANGELES )

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4 I, CATHY A. REECE, CSR No. 5546, a Certified  
5 Shorthand Reporter in and for said County and State, do  
6 hereby certify:

7 That prior to being examined, the witness  
8 named in the foregoing deposition, JEANNIE OAKES, by me  
9 was duly sworn to testify to the truth, the whole truth,  
10 and nothing but the truth;

11 That said deposition was taken down by me in  
12 shorthand at the time and place therein named and  
13 thereafter reduced to computerized transcription under  
14 my direction and supervision, and I hereby certify the  
15 foregoing deposition is a full, true and correct  
16 transcript of my shorthand notes so taken.

17 I further certify that I am neither counsel  
18 for nor related to any party to said action nor in  
19 anywise interested in the outcome thereof.

20 IN WITNESS THEREOF, I have hereunto subscribed  
21 my name this \_\_\_\_ day of \_\_\_\_\_, 2003.

22

23

24

\_\_\_\_\_  
CATHY A. REECE, RPR, CSR No. 5546

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