

1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2                   IN AND FOR THE COUNTY OF SAN FRANCISCO

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4   ELIEZER WILLIAMS, a minor, by  
5   Sweetie Williams, his guardian ad litem,  
6   et al., each individually and on behalf  
7   of all others similarly situated,  
8                           Plaintiffs,

9                           vs.

No. 312236

10   STATE OF CALIFORNIA, DELAINE EASTIN,  
11   State Superintendent of Public  
12   Instruction, STATE DEPARTMENT OF  
13   EDUCATION, STATE BOARD OF EDUCATION,  
14                           Defendants.

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15                           Deposition of  
16                           THOMAS PAYNE

17                           Volume II, Pages 131 through 316  
18                           Wednesday, November 21, 2001

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21  
22   Reported by:  
23   TRACY LEE MOORELAND  
24   CSR No. 10397  
25   Job No. 29857

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18 State Board of Education:

19 DEPARTMENT OF JUSTICE  
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1 BE IT REMEMBERED, that on Wednesday, November  
2 21, 2001, commencing at the hour of 9:11 a.m., thereof,  
3 at the offices of Morrison & Foerster, 400 Capitol Mall,  
4 26th Floor, Sacramento, California, before me,  
5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in  
6 the State of California, there personally appeared  
7 THOMAS PAYNE,  
8 called as a witness herein, who, having been duly sworn  
9 to tell the truth, the whole truth, and nothing but the  
10 truth, was thereupon examined and interrogated as  
11 hereinafter set forth.  
12 ---o0o---

13 EXAMINATION BY MR. VILLAGRA

14 Q. Morning, Mr. Payne.  
15 A. Good morning.  
16 Q. You understand that you're still under oath?  
17 A. Yes, I do.  
18 Q. Is there any reason why you believe you're not  
19 able to provide truthful testimony today?  
20 A. No.  
21 Q. We talked yesterday about your answering  
22 questions from parents or principals or superintendents  
23 about year-round education. Do you recall that?  
24 A. Yes.  
25 Q. And you said that you have a standard response

1 to those questions?  
 2 A. Yes.  
 3 Q. And as part of that standard response, you said  
 4 that you always discuss standard alternatives to  
 5 multi-track year-round education?  
 6 A. Right.  
 7 Q. And those include portable classrooms,  
 8 reconfiguring grade levels and double sessions; is that  
 9 correct?  
 10 A. Yes.  
 11 Q. In your opinion, must a district consider these  
 12 options before converting schools to multi-track  
 13 year-round education?  
 14 MR. SEFERIAN: Objection. No foundation.  
 15 Calls for an inadmissible opinion. Incomplete and  
 16 improper hypothetical. Vague and ambiguous as to  
 17 "must."  
 18 THE WITNESS: They should consider those  
 19 alternatives.  
 20 Q. BY MR. VILLAGRA: Why do you believe that?  
 21 MR. SEFERIAN: Same objections.  
 22 THE WITNESS: In order to make a reasonable  
 23 choice, they should know what their alternatives are.  
 24 Q. BY MR. VILLAGRA: Are these alternatives,  
 25 portable classrooms, reconfiguring grade levels and

1 double sessions, in your opinion, preferable to  
 2 multi-track?  
 3 MR. SEFERIAN: Objection. Vague and ambiguous  
 4 as to "preferable." Calls for an inadmissible opinion.  
 5 Incomplete and improper hypothetical. Overly broad.  
 6 MR. SALVATY: In every case?  
 7 MR. SEFERIAN: If you can answer the question.  
 8 THE WITNESS: I can answer the question.  
 9 Sometimes they're just not possible. Yes,  
 10 portables -- adding portables under the right  
 11 circumstances is the best of all possible choices.  
 12 Q. BY MR. VILLAGRA: Under what circumstances is  
 13 adding portables the best solution to -- or the best  
 14 response to overcrowding?  
 15 MR. SEFERIAN: Objection. Vague and ambiguous.  
 16 Incomplete and improper hypothetical. Calls for an  
 17 inadmissible opinion. Lacks foundation. Calls for  
 18 speculation.  
 19 THE WITNESS: It requires two components, the  
 20 first having enough acres to accommodate the portables  
 21 and the expanded population for play fields and, No. 2,  
 22 having an infrastructure of bathrooms, again, play  
 23 fields and lunchroom cafeteria space to house those  
 24 additional kids.  
 25 Q. BY MR. VILLAGRA: What about reconfiguring

1 grade levels, are there circumstances where, in your  
 2 opinion, that is an option preferable to multi-track  
 3 year-round education?  
 4 MR. SEFERIAN: Objection. Vague and ambiguous.  
 5 Calls for an inadmissible opinion. Lacks foundation.  
 6 Calls for speculation. Incomplete and improper  
 7 hypothetical question.  
 8 THE WITNESS: Yes.  
 9 Q. BY MR. VILLAGRA: What are those circumstances?  
 10 MR. SEFERIAN: Same objections.  
 11 THE WITNESS: When it's possible.  
 12 Q. BY MR. VILLAGRA: And when is it possible?  
 13 MR. SEFERIAN: Objection. Overly broad.  
 14 Vague. Calls for an inadmissible opinion. Lacks  
 15 foundation. Vague and ambiguous as to "it." Calls for  
 16 speculation.  
 17 THE WITNESS: When overcrowding is specific to  
 18 a grade level.  
 19 Q. BY MR. VILLAGRA: And last, what are the  
 20 circumstances when a double session is preferable to  
 21 multi-track year-round education as a way of addressing  
 22 overcrowding?  
 23 MR. SEFERIAN: Objection. Calls for an  
 24 inadmissible opinion. Lacks foundation. Calls for  
 25 speculation. Incomplete and improper hypothetical

1 question.  
 2 THE WITNESS: I know of none.  
 3 Q. BY MR. VILLAGRA: Why then would you have --  
 4 why then do you believe a district should consider  
 5 double sessions before converting schools to multi-track  
 6 year-round education?  
 7 MR. SEFERIAN: Objection. Calls for an  
 8 inadmissible opinion. Lacks foundation. Incomplete and  
 9 improper hypothetical question.  
 10 THE WITNESS: I think they have the right to  
 11 select from all possible alternatives.  
 12 Q. BY MR. VILLAGRA: Are portable classrooms,  
 13 reconfiguring grade levels and employing double sessions  
 14 all the possible alternatives to multi-track year-round  
 15 education?  
 16 MR. SEFERIAN: Objection. Overly broad. Calls  
 17 for speculation. Vague and ambiguous. No foundation.  
 18 THE WITNESS: No.  
 19 Q. BY MR. VILLAGRA: What are the other  
 20 alternatives?  
 21 MR. SEFERIAN: Same objections.  
 22 THE WITNESS: Building new schools and busing.  
 23 Q. BY MR. VILLAGRA: What do you mean by "busing"?  
 24 A. Transporting children from one attendance area  
 25 to another attendance area.

1 Q. Why is transporting students from one  
2 attendance area to another not an alternative that you  
3 discuss as part of your standard discussion with  
4 superintendents or principals interested in year-round  
5 education?  
6 MR. SEFERIAN: Objection. Misstates witness'  
7 testimony. Assumes facts not in evidence.  
8 THE WITNESS: Typically the district is  
9 overcrowded, not the school. And I forgot to mention  
10 that one.  
11 Q. BY MR. VILLAGRA: So is it fair to say that it  
12 is one of the alternatives that you discuss as part of  
13 your standard discussion with superintendents or  
14 principals interested in year-round education?  
15 A. Yes.  
16 Q. Are there circumstances when transporting  
17 students from one attendance area to another is  
18 preferable to multi-track year-round education?  
19 MR. SEFERIAN: Objection. Improper and  
20 incomplete hypothetical question. Overly broad. Calls  
21 for speculation. Lacks foundation. Calls for an  
22 inadmissible opinion.  
23 THE WITNESS: That's not my decision to make.  
24 Q. BY MR. VILLAGRA: But are you aware of any  
25 circumstances where transporting students from one

1 your son in a school in your neighborhood than bused to  
2 another school?  
3 MR. SEFERIAN: Objection. Relevance.  
4 THE WITNESS: So he could walk to and from  
5 school and be with his neighborhood friends, go to  
6 school with neighborhood friends.  
7 Q. BY MR. VILLAGRA: Is there some particular  
8 benefit you see to your son's being able to walk to and  
9 from school and attend a school with neighborhood  
10 friends?  
11 MR. SEFERIAN: Objection. Overly broad.  
12 Relevance. Lacks foundation.  
13 THE WITNESS: Yes.  
14 Q. BY MR. VILLAGRA: And what is it?  
15 MR. SEFERIAN: Same objections.  
16 THE WITNESS: I'm sorry to smile. I don't know  
17 how to say this without sounding facetious. I just  
18 think it's important to have a neighborhood play group  
19 that he also goes to school with.  
20 Q. BY MR. VILLAGRA: When we were discussing the  
21 circumstances under which portables would be preferable  
22 to multi-track year-round education, what was the basis  
23 of your opinion?  
24 MR. SALVATY: Objection. Vague and ambiguous.  
25 Incomplete hypothetical.

1 attendance area to another is preferable to multi-track  
2 year-round education?  
3 MR. SEFERIAN: Objection.  
4 MR. SALVATY: Preferable to whom?  
5 MR. SEFERIAN: Vague and ambiguous as to  
6 "preferable." Calls for an inadmissible opinion. Lacks  
7 foundation. Calls for speculation.  
8 THE WITNESS: Again, it's a local decision that  
9 they have to decide what's preferable and what isn't.  
10 Q. BY MR. VILLAGRA: Do you have a personal  
11 opinion as to whether transporting students from one  
12 attendance area to another is preferable to multi-track  
13 year-round education?  
14 MR. SEFERIAN: Objection. Vague and ambiguous  
15 as to "preferable." Relevance. Lacks foundation.  
16 Calls for speculation. Asked and answered.  
17 THE WITNESS: Yes.  
18 Q. BY MR. VILLAGRA: What is your opinion?  
19 MR. SEFERIAN: Same objections.  
20 THE WITNESS: I would prefer multi-track.  
21 Q. BY MR. VILLAGRA: Why is that?  
22 MR. SEFERIAN: Same objections.  
23 THE WITNESS: I'd rather have my son in a  
24 school in my neighborhood than bused someplace else.  
25 Q. BY MR. VILLAGRA: Why would you rather have

1 THE WITNESS: It's a lot easier transition. It  
2 doesn't require a transition.  
3 Q. BY MR. VILLAGRA: And what do you mean by a  
4 "transition"?  
5 A. A change of vacation schedules for families,  
6 the change for teachers.  
7 Q. Anything else?  
8 A. Administrative changes.  
9 Q. Anything else?  
10 A. I can't think of anything.  
11 Q. What do you mean by a "change for teachers"?  
12 A. A typical transition from the traditional  
13 calendar to a multi-track calendar means they have to  
14 change from a semester system to, in most cases, a  
15 trimester system.  
16 Q. What do you mean by administrative changes?  
17 A. Payroll is changed, supervision is changed and  
18 shipping and receiving is changed.  
19 Q. What do you mean by "payroll is changed"?  
20 A. It's now distributed for -- during 12 months  
21 because there are 12 months for the teachers on the  
22 campus.  
23 Q. And how is supervision changed?  
24 A. A typical administrator contract, principal  
25 contract, let's say, doesn't accommodate a whole year's

1 worth of students, so either the student -- the  
 2 principal has to extend that contract to be there more  
 3 often or use a vice principal or a roving principal to  
 4 cover the extra time.  
 5 Q. Is that the only supervision change?  
 6 MR. SEFERIAN: Objection. Lacks foundation.  
 7 Calls for speculation. Overly broad.  
 8 THE WITNESS: No.  
 9 Q. BY MR. VILLAGRA: What are the others?  
 10 MR. SEFERIAN: Same objections.  
 11 THE WITNESS: A district that has some  
 12 multi-track schools and some traditional schools needs  
 13 to, at the district office, accommodate the needs of the  
 14 year-round school.  
 15 Q. BY MR. VILLAGRA: What do you mean by  
 16 "accommodate the needs of the year-round school"?  
 17 A. Shipping and receiving, gardening and  
 18 maintenance schedules, special school board meetings for  
 19 expulsions, for instance. Those come to mind.  
 20 Q. Any others that you can think of?  
 21 A. No. I'm sure some exist.  
 22 Q. What do you mean by "shipping and receiving"?  
 23 A. Well, commodities typically aren't delivered to  
 24 the cafeteria during the summer in traditional schools.  
 25 Now the whole shipping of food has to be accommodated 12

1 months -- must be accommodated 12 months a year.  
 2 Q. Is shipping and receiving affected in other  
 3 ways?  
 4 MR. SEFERIAN: Objection. Lacks foundation.  
 5 MR. SALVATY: Calls for speculation.  
 6 MR. SEFERIAN: Overly broad.  
 7 THE WITNESS: Textbook delivery, instructional  
 8 supplies, and that's what I can think of.  
 9 Q. BY MR. VILLAGRA: And how is it that you know  
 10 that multi-track year-round education requires the  
 11 transition that we've been discussing?  
 12 A. Just through experience and testimony.  
 13 Q. Testimony by whom?  
 14 A. Principals, superintendents, teachers.  
 15 Q. Who work at multi-track year-round schools?  
 16 A. Yes.  
 17 Q. When we were discussing the circumstances under  
 18 which reconfiguring grades would be preferable to  
 19 multi-track year-round education, what was the basis of  
 20 your opinion?  
 21 MR. SEFERIAN: Objection. Lacks foundation.  
 22 MR. SALVATY: Incomplete hypothetical.  
 23 THE WITNESS: It would seem to involve fewer  
 24 types of the changes we just discussed in conversion to  
 25 multi-track. It would seem to be a bit of a simpler

1 process, not drastically simpler.  
 2 Q. BY MR. VILLAGRA: Anything else?  
 3 A. No.  
 4 Q. How do you know that reconfiguring grades would  
 5 be a simpler process than multi-track year-round  
 6 education?  
 7 MR. SEFERIAN: Objection. Lacks foundation.  
 8 Calls for speculation. Overly broad.  
 9 MR. SALVATY: Incomplete hypothetical.  
 10 THE WITNESS: It's simply based upon the steps  
 11 that I can see required by each, and fewer steps  
 12 required, fewer changes required with grade level  
 13 configuration than multi-track.  
 14 Q. BY MR. VILLAGRA: Is it also based on your  
 15 experience and the testimony of administrators and  
 16 teachers in multi-track school dollars?  
 17 MR. SEFERIAN: Objection. Lacks foundation.  
 18 Argumentative.  
 19 THE WITNESS: No.  
 20 Q. BY MR. VILLAGRA: Is it based on the testimony  
 21 of administrators at schools where grades have been  
 22 reconfigured?  
 23 MR. SEFERIAN: Objection. Lacks foundation.  
 24 Vague and ambiguous.  
 25 THE WITNESS: No.

1 Q. BY MR. VILLAGRA: Is the option of building new  
 2 schools one of the standard alternatives that you put  
 3 forth to superintendents or principals interested in  
 4 converting schools to multi-track year-round education?  
 5 MR. SEFERIAN: Objection. Overly broad.  
 6 MR. SALVATY: Vague and ambiguous.  
 7 MR. SEFERIAN: Incomplete and improper  
 8 hypothetical question.  
 9 THE WITNESS: My standard answer always begins  
 10 there, but doesn't stay there very long.  
 11 Q. BY MR. VILLAGRA: Why doesn't your answer stay  
 12 there very long?  
 13 MR. SEFERIAN: Same objections.  
 14 THE WITNESS: Because the response I get is, we  
 15 can't.  
 16 Q. BY MR. VILLAGRA: We were discussing yesterday  
 17 a conversation you had had last week regarding  
 18 year-round education.  
 19 A. Uh-huh. Yes.  
 20 Q. Did you put forward the option of building new  
 21 schools in that conversation?  
 22 MR. SEFERIAN: Objection. Assumes facts not in  
 23 evidence.  
 24 MR. SALVATY: It's vague and ambiguous also.  
 25 THE WITNESS: I don't recall that I did. I

1 can't imagine that I didn't.  
 2 Q. BY MR. VILLAGRA: Do you recall whether the  
 3 person you were speaking to, I believe it was a  
 4 principal, said that they couldn't build new schools?  
 5 A. I don't recall that.  
 6 Q. And when you say that the typical response is,  
 7 we can't build new schools, do you have an understanding  
 8 as to why new schools can't be built?  
 9 MR. SEFERIAN: Objection. Overly broad. Vague  
 10 and ambiguous. No foundation. Calls for speculation.  
 11 Vague and ambiguous as to "understanding." Vague as to  
 12 time.  
 13 MR. SALVATY: It's an incomplete hypothetical  
 14 also.  
 15 THE WITNESS: I make the assumption that they  
 16 just can't afford to do it, and usually that is  
 17 explicitly the case.  
 18 Q. BY MR. VILLAGRA: Why do you make the  
 19 assumption that the administrators you're talking to  
 20 can't afford to build new schools?  
 21 MR. SALVATY: Same objections.  
 22 THE WITNESS: It just seems self-evident to me.  
 23 They wouldn't be calling asking for my help if that were  
 24 an alternative.  
 25 Q. BY MR. VILLAGRA: Why is it self-evident that

1 they wouldn't be calling you if building new schools  
 2 were an alternative?  
 3 MR. SEFERIAN: Objection. Vague and ambiguous.  
 4 Overly broad. Lacks foundation. Calls for speculation.  
 5 Vague and ambiguous as to "they."  
 6 THE WITNESS: You don't ask for a Band-Aid if  
 7 you're not bleeding. I mean, that metaphor kind of  
 8 characterizes how I perceive that. I didn't mean that  
 9 to be a wisecrack.  
 10 Q. BY MR. VILLAGRA: In that analogy, is it fair  
 11 to say that overcrowding is the bleeding and multi-track  
 12 year-round education is the Band-Aid?  
 13 MR. SEFERIAN: Objection. Argumentative. I'm  
 14 going to instruct him not to answer that question.  
 15 MR. VILLAGRA: I don't think there's any basis  
 16 for instructing him not to answer. There's no privilege  
 17 here.  
 18 MR. SEFERIAN: It's an argumentative question  
 19 and it's a completely unfair question and it  
 20 mischaracterizes what he said, and I would ask you to  
 21 rephrase your question.  
 22 MR. VILLAGRA: I can't understand how it's  
 23 unfair. He proposed the analogy, and I'm trying to have  
 24 him unpack it, and I'm asking him whether that's true or  
 25 not. He can affirm or deny whether that's the analogy

1 he intended. There's no basis for instructing him not  
 2 to answer.  
 3 MR. SEFERIAN: That's the instruction.  
 4 (Record read.)  
 5 Q. BY MR. VILLAGRA: Do you understand the  
 6 question, Mr. Payne?  
 7 MR. SEFERIAN: I'm going to instruct you not to  
 8 answer that question.  
 9 MR. VILLAGRA: Now, this additional question as  
 10 well? I'm asking if he understands the question.  
 11 MR. SEFERIAN: It's an unfair question.  
 12 MR. VILLAGRA: This question I'm asking now is  
 13 does he understand my question. You're instructing him  
 14 not to answer that question as well?  
 15 MR. SEFERIAN: Yes, because it's argumentative.  
 16 It's unfair. It's mischaracterizing what he just said.  
 17 He made a statement making an analogy, and you're trying  
 18 to twist what he said. I'm not going to allow you to do  
 19 that.  
 20 Q. BY MR. VILLAGRA: Mr. Payne, are you going to  
 21 follow your counsel's advice not to answer this  
 22 question?  
 23 A. Yes.  
 24 MR. VILLAGRA: If I could ask the court  
 25 reporter to mark this portion of the transcript.

1 Q. Mr. Payne, what did you mean when you said that  
 2 you don't ask for a Band-Aid unless you're bleeding?  
 3 A. That the call wouldn't have been made to me to  
 4 begin with if building a facility -- or if there was a  
 5 facility option at hand.  
 6 Q. So in your analogy, what was the bleeding?  
 7 MR. SEFERIAN: Objection. I'll instruct him  
 8 not to answer that question.  
 9 Counsel, we've been over that. Let's move on  
 10 to something relevant.  
 11 MR. VILLAGRA: I think overcrowding is very  
 12 directly relevant to the case.  
 13 MR. REED: I want to clarify. Are you  
 14 instructing him not to answer on a relevancy objection?  
 15 MR. SEFERIAN: I'm instructing him not to  
 16 answer, that it's completely mischaracterizing what he's  
 17 saying. It's taking it out of context. It's  
 18 argumentative.  
 19 MR. VILLAGRA: I can't be taking it out of  
 20 context if I'm asking him for the context.  
 21 MR. SEFERIAN: And you're characterizing  
 22 overcrowding as bleeding, and I think you're being  
 23 completely unfair to the witness. He's here to answer  
 24 your questions, but not to be tricked or not to have  
 25 questions -- not to have his testimony twisted unfairly,

1 so I'm instructing him not to answer that question.  
 2 MR. SALVATY: You're not getting at information  
 3 here, you're just trying to twist his words. It is  
 4 unfair. The questions are unfair. And to claim that  
 5 it's relevant and goes to the core of overcrowding,  
 6 that's not accurate.  
 7 MR. REED: He's asking him to explain his  
 8 words.  
 9 MR. SALVATY: He asked him to explain, and he  
 10 responded. He wants to put words in his mouth and have  
 11 him confirm his words.  
 12 MR. REED: He can either confirm or deny what  
 13 he meant. The alternative is for that portion of the  
 14 transcript to remain unexplored and we'll all wonder  
 15 what that meant.  
 16 MR. SALVATY: I think he asked, and he  
 17 explained what it meant.  
 18 MR. VILLAGRA: I apologize, Mr. Payne, if you  
 19 feel I'm putting words in your mouth. I'm actually just  
 20 trying to put your own words on the record and  
 21 understand exactly what they meant. I apologize if  
 22 there's any misunderstanding about that.  
 23 Q. Mr. Payne, do you personally conduct any  
 24 studies regarding year-round schools?  
 25 MR. SEFERIAN: Objection. Overly broad.

1 Assumes facts not in evidence.  
 2 THE WITNESS: No.  
 3 Q. BY MR. VILLAGRA: Do you request that others  
 4 conduct studies of year-round education?  
 5 MR. SEFERIAN: Objection. Overly broad.  
 6 Assumes facts not in evidence. Vague and ambiguous as  
 7 to "studies."  
 8 THE WITNESS: I have at different times.  
 9 Q. BY MR. VILLAGRA: Do you understand what I'm  
 10 referring to as a study?  
 11 MR. SEFERIAN: Objection. Calls for  
 12 speculation.  
 13 Q. BY MR. VILLAGRA: What do you understand a  
 14 study of year-round education to be?  
 15 MR. SEFERIAN: Objection. Overly broad.  
 16 THE WITNESS: Achievement studies.  
 17 Q. BY MR. VILLAGRA: Do you recall how many  
 18 achievement studies of year-round education you have  
 19 requested that others conduct?  
 20 MR. SEFERIAN: Objection. Assumes facts not in  
 21 evidence.  
 22 THE WITNESS: I don't recall.  
 23 Q. BY MR. VILLAGRA: Are you able to put any  
 24 estimate on the number of achievement -- studies of  
 25 achievement that you have requested regarding year-round

1 education?  
 2 MR. SEFERIAN: Same objection.  
 3 THE WITNESS: Probably three. My estimate is  
 4 three.  
 5 Q. BY MR. VILLAGRA: Let's start with the first  
 6 one. When did you request that study be conducted?  
 7 A. My estimate was based upon doing this for 10  
 8 years, and I really couldn't give you a specific date  
 9 for any of them.  
 10 Q. Do you recall who you requested to conduct any  
 11 of the three studies?  
 12 MR. SEFERIAN: I think he said approximately  
 13 three studies. Is it three or is it approximately  
 14 three?  
 15 THE WITNESS: Approximately three. Yes.  
 16 Q. BY MR. VILLAGRA: And who did you request to  
 17 conduct any of the studies?  
 18 A. Duwayne Brooks and Ann Evans.  
 19 Q. We've discussed Duwayne Brooks. Who is Ann  
 20 Evans?  
 21 A. Ann Evans was the director of school facilities  
 22 planning division for four years -- three years.  
 23 Q. Are those the only two people that you've  
 24 requested to conduct studies of achievement at  
 25 year-round schools?

1 A. That's the chain of command, yes.  
 2 Q. What was it that you requested Duwayne Brooks  
 3 to do?  
 4 A. I thought it would be good to do some  
 5 achievement studies, and that we should ask the  
 6 Department to fund those studies.  
 7 Q. Why did you think that it would be good to do  
 8 some achievement studies?  
 9 A. Since year-round students represented a fifth  
 10 of our entire students, I thought it would be  
 11 interesting to see the results on education.  
 12 Q. Do you recall what Mr. Brooks' response was to  
 13 your request that a study be done of the achievement at  
 14 year-round schools?  
 15 MR. SEFERIAN: Objection. No foundation.  
 16 THE WITNESS: He thought it was a good idea and  
 17 passed it on upwards.  
 18 Q. BY MR. VILLAGRA: Do you know who Mr. Brooks  
 19 passed it on upwards to?  
 20 MR. SEFERIAN: Objection. Calls for  
 21 speculation.  
 22 THE WITNESS: I don't know.  
 23 Q. BY MR. VILLAGRA: To your knowledge, was the  
 24 study that you requested of Mr. Brooks of the  
 25 achievement at year-round schools ever conducted?

1 MR. SALVATY: Objection. Vague and ambiguous.  
 2 THE WITNESS: It was not.  
 3 Q. BY MR. VILLAGRA: Do you know why the study  
 4 that you requested of year-round schools was not  
 5 conducted?  
 6 MR. SEFERIAN: Objection. Lacks foundation.  
 7 Calls for speculation.  
 8 THE WITNESS: No money in the budget.  
 9 Q. BY MR. VILLAGRA: And how do you know that?  
 10 MR. SEFERIAN: Same objections. Lacks  
 11 foundation. Calls for speculation.  
 12 THE WITNESS: I was told.  
 13 Q. BY MR. VILLAGRA: By whom?  
 14 A. Duwayne.  
 15 Q. Did you request this study of achievement at  
 16 year-round schools of Mr. Brooks within this calendar  
 17 year?  
 18 A. No.  
 19 Q. Did you request the study of achievement at  
 20 year-round schools of Mr. Brooks last calendar year?  
 21 A. I don't remember.  
 22 Q. Is it possible that you made the request last  
 23 year?  
 24 MR. SEFERIAN: Objection. Calls for  
 25 speculation. Asked and answered.

1 THE WITNESS: It is possible.  
 2 Q. BY MR. VILLAGRA: Have you only requested of  
 3 Mr. Brooks once that a study of the achievement at  
 4 year-round schools be conducted?  
 5 A. I don't remember.  
 6 Q. Is it possible that you made other requests of  
 7 Mr. Brooks that studies be conducted of the achievement  
 8 at year-round schools?  
 9 MR. SEFERIAN: Objection. Asked and answered.  
 10 Lacks foundation. Calls for speculation.  
 11 THE WITNESS: It is possible.  
 12 Q. BY MR. VILLAGRA: Now, with respect to Ann  
 13 Evans, do you recall making a request of her that a  
 14 study of achievement at year-round schools be conducted?  
 15 A. Yes.  
 16 Q. Do you recall speaking with her about a study  
 17 being conducted of the achievement at year-round  
 18 schools?  
 19 A. Yes.  
 20 Q. Do you recall what you said?  
 21 A. No.  
 22 Q. Do you recall what her response was to your  
 23 request that a study be done of the achievement at  
 24 year-round schools?  
 25 A. Yes.

1 Q. What was her response?  
 2 A. She'll pass it on.  
 3 Q. Do you know whether your request was passed on?  
 4 MR. SEFERIAN: Objection. Lacks foundation.  
 5 Calls for speculation.  
 6 THE WITNESS: I don't know.  
 7 Q. BY MR. VILLAGRA: Do you know whether the study  
 8 that you requested of the achievement at year-round  
 9 schools was conducted?  
 10 MR. SEFERIAN: Objection. Vague and ambiguous  
 11 as to "study".  
 12 THE WITNESS: It was not.  
 13 Q. BY MR. VILLAGRA: And how do you know that the  
 14 study that you requested of Ann Evans regarding the  
 15 achievement at year-round schools was not conducted?  
 16 A. I would have been told.  
 17 Q. Did anyone specifically tell you why the study  
 18 was not conducted?  
 19 A. Yes.  
 20 Q. Who told you?  
 21 A. Ann Evans.  
 22 Q. And what did she say?  
 23 A. No money in the budget.  
 24 Q. Did she say anything else about why the study  
 25 that you requested of her of the achievement at

1 year-round schools was not conducted?  
 2 A. I don't recall.  
 3 Q. Do you recall making any other requests of Ann  
 4 Evans that a study of the achievement at year-round  
 5 schools be conducted?  
 6 A. I don't recall doing so.  
 7 Q. Is it possible that you may have made other  
 8 requests of Ann Evans that a study be conducted of the  
 9 achievement at year-round schools?  
 10 MR. SEFERIAN: Objection. Calls for  
 11 speculation. Asked and answered.  
 12 THE WITNESS: Yes.  
 13 Q. BY MR. VILLAGRA: Do you recall making a  
 14 request of anyone else that a study of the achievement  
 15 at year-round schools be conducted?  
 16 A. No.  
 17 Q. When you made the request of Mr. Brooks that a  
 18 study be conducted of the achievement at year-round  
 19 schools, did you make the request orally?  
 20 A. Yes.  
 21 Q. Had you prepared any document describing to  
 22 Mr. Brooks what sort of study you were envisioning of  
 23 the achievement at year-round schools?  
 24 A. No.  
 25 Q. When you made the request of Ann Evans that a



1 study be conducted of the achievement at year-round  
2 schools, did you make that request orally?

3 A. Yes.

4 Q. Did you prepare for Ann Evans a written  
5 description of the sort of study that you were  
6 envisioning of the achievement of students at year-round  
7 schools?

8 A. No.

9 Q. Do you recall, sitting here today, what sort of  
10 study regarding the achievement of students at  
11 year-round schools you were envisioning when you made  
12 the request of Mr. Brooks?

13 MR. SEFERIAN: Objection. Calls for  
14 speculation. Vague and ambiguous as to "study" and  
15 "envisioning."

16 THE WITNESS: No.

17 Q. BY MR. VILLAGRA: And do you recall -- when you  
18 made the request of Ann Evans that a study be conducted  
19 of the achievement of students at year-round schools, do  
20 you recall what sort of study you were envisioning?

21 MR. SEFERIAN: Objection. Assumes facts not in  
22 evidence. Calls for speculation.

23 THE WITNESS: No.

24 Q. BY MR. VILLAGRA: When you speak in terms of an  
25 achievement study of students at year-round schools,

1 year-round programs and some charts about achievement  
2 studies that it did.

3 Q. BY MR. VILLAGRA: Do you recall who conducted  
4 the studies of achievement at year-round schools that  
5 was contained in this book put out in about 1987?

6 A. Yes.

7 Q. Who was that?

8 A. Her last name was Quinlan.

9 Q. Do you recall if her name was Claire Quinlan?

10 A. I do recall that.

11 Q. Is that her name?

12 A. Yes.

13 Q. Do you know who Claire Quinlan was?

14 A. I don't.

15 Q. Do you know whether she was an employee of the  
16 California Department of Education?

17 A. She was.

18 Q. Do you know what her title was?

19 A. I believe she was a consultant.

20 Q. And do you recall what, if any, findings Claire  
21 Quinlan made of the achievement of students at  
22 year-round schools?

23 MR. SEFERIAN: Objection. Vague and ambiguous  
24 as to "findings." Lacks foundation. Overly broad.

25 Calls for a narrative.

1 what are you referring to?

2 A. If the year-round calendar has any bearing on  
3 student achievement.

4 Q. To your knowledge, has the California  
5 Department of Education conducted any studies of the  
6 achievement of students at year-round schools?

7 MR. SEFERIAN: Objection. Assumes facts not in  
8 evidence. Calls for speculation.

9 THE WITNESS: Yes.

10 Q. BY MR. VILLAGRA: What studies has the  
11 Department of Education conducted?

12 MR. SEFERIAN: Same objections.

13 THE WITNESS: In 1987 they produced a book  
14 about year-round education. I don't remember the title.

15 Q. BY MR. VILLAGRA: Do you recall what was in the  
16 book?

17 MR. SEFERIAN: Objection. Overly broad. Lacks  
18 foundation.

19 THE WITNESS: Yes.

20 Q. BY MR. VILLAGRA: What was in the book?

21 MR. SEFERIAN: Objection. Calls for a  
22 narrative. Lacks foundation. Calls for speculation.

23 Vague and ambiguous.

24 MR. SALVATY: Document speaks for itself.

25 THE WITNESS: A general description of

1 MR. SALVATY: Document speaks for itself.

2 THE WITNESS: Yes.

3 Q. BY MR. VILLAGRA: How do you recall the  
4 findings?

5 MR. SEFERIAN: Objection. Overly broad.

6 THE WITNESS: I read them.

7 Q. BY MR. VILLAGRA: And what were the findings?

8 MR. SEFERIAN: Objection. Overly broad. Calls  
9 for a narrative.

10 MR. SALVATY: Document speaks for itself also.

11 THE WITNESS: That students at year-round  
12 schools performed more poorly than students at  
13 traditional schools, but the results weren't measured  
14 for -- I'm trying to quote the language -- weren't  
15 measured for similar demographic characteristics.

16 Q. BY MR. VILLAGRA: Do you recall any other  
17 findings of the study?

18 MR. SEFERIAN: Objection. Overly broad.

19 MR. SALVATY: Objection. Document speaks for  
20 itself.

21 THE WITNESS: I don't.

22 Q. BY MR. VILLAGRA: Okay. Do you recall whether  
23 the study that Claire Quinlan conducted of achievement  
24 at year-round schools distinguished between single-track  
25 and multi-track year-round schools?

1 MR. SEFERIAN: Objection. Vague and ambiguous  
2 as to "distinguished."

3 THE WITNESS: I don't recall.

4 Q. BY MR. VILLAGRA: Do you recall whether the  
5 study that Claire Quinlan conducted was of California  
6 year-round schools?

7 A. Yes, it was.

8 Q. Was the study that Claire Quinlan conducted of  
9 California schools a statewide study?

10 MR. SEFERIAN: Objection. Vague and ambiguous  
11 as to "statewide."

12 MR. SALVATY: Objection. Document speaks for  
13 itself.

14 MR. SEFERIAN: Lacks foundation.

15 THE WITNESS: Yes.

16 Q. BY MR. VILLAGRA: It was?

17 A. Yes, it was.

18 Q. And by a statewide study, what do you mean?

19 MR. SEFERIAN: Objection. Overly broad. Vague  
20 and ambiguous.

21 THE WITNESS: That it included the K-12  
22 enrollment of California -- in California, of all of  
23 California.

24 Q. BY MR. VILLAGRA: Do you have an opinion  
25 regarding the findings of the study that Claire Quinlan

1 MR. SEFERIAN: That's okay.

2 Q. BY MR. VILLAGRA: Is it fair to say that if the  
3 study had taken into consideration the demographics of  
4 the group study, you would have found its findings to be  
5 adequate?

6 MR. SEFERIAN: Objection. Misstates the  
7 witness' testimony. Calls for an inadmissible opinion.  
8 Incomplete and improper hypothetical question. Lacks  
9 foundation. Calls for speculation. Overly broad.

10 THE WITNESS: No.

11 Q. BY MR. VILLAGRA: Is that the only study that  
12 you're aware of that has been conducted by the  
13 California Department of Education of the achievement of  
14 students at year-round schools?

15 A. Yes.

16 Q. Mr. Payne, do you prepare any reports regarding  
17 year-round education?

18 MR. SEFERIAN: Objection. Overly broad. Vague  
19 and ambiguous as to "reports." Vague as to time.

20 THE WITNESS: Yes.

21 Q. BY MR. VILLAGRA: What sorts of reports do you  
22 prepare regarding year-round education?

23 MR. SEFERIAN: Same objections.

24 THE WITNESS: Enrollment statistics and then  
25 programmatic aids.

1 conducted and as you've described them here today?

2 MR. SEFERIAN: Objection. Calls for an  
3 inadmissible opinion. Lacks foundation. Calls for  
4 speculation. No foundation.

5 THE WITNESS: Yes, I do.

6 Q. BY MR. VILLAGRA: What is the opinion?

7 MR. SEFERIAN: Objection. Calls for an  
8 inadmissible opinion. Lacks foundation. Calls for  
9 speculation. Overly broad. Calls for a narrative.

10 THE WITNESS: That it wasn't conclusive or even  
11 adequate.

12 Q. BY MR. VILLAGRA: Anything else?

13 A. No.

14 Q. And why do you believe that the study that  
15 Claire Quinlan conducted wasn't conclusive or even  
16 adequate?

17 MR. SEFERIAN: Objection. Calls for an  
18 inadmissible opinion. Lacks foundation. Calls for  
19 speculation.

20 THE WITNESS: Because it didn't take into  
21 consideration the demographics of the groups studied.

22 Q. BY MR. VILLAGRA: Anything else?

23 A. No.

24 MR. SEFERIAN: Same objections.

25 THE WITNESS: Sorry.

1 Q. BY MR. VILLAGRA: Anything else?

2 A. Escutia report. That's it.

3 Q. What do you mean by "enrollment statistics"?

4 A. Year-to-year tracking year-round education  
5 enrollment trends.

6 Q. Anything else?

7 A. It's done by single-track versus multi-track,  
8 and by calendar.

9 Q. Anything else?

10 A. No.

11 Q. Do the enrollment statistics reflect the race  
12 or ethnicity of students in multi-track year-round  
13 education?

14 A. They do not. Mine don't.

15 Q. Are you aware of any enrollment statistics  
16 regarding year-round education that do reflect the race  
17 or ethnicity of students in year-round schools?

18 MR. SEFERIAN: Objection. Overly broad.

19 MR. VILLAGRA: In California.

20 MR. SALVATY: Vague and ambiguous.

21 THE WITNESS: Yes.

22 Q. BY MR. VILLAGRA: And how are you aware?

23 A. A report was done by CASH which reflected, in  
24 general numbers, ethnicity and poverty levels.

25 Q. Of students in year-round schools?

1 A. Yes.  
 2 Q. Did it reflect any other data about students in  
 3 year-round schools?  
 4 MR. SALVATY: Objection. Document speaks for  
 5 itself.  
 6 MR. SEFERIAN: Objection. Lacks foundation.  
 7 THE WITNESS: Language proficiency, and that  
 8 was it.  
 9 Q. BY MR. VILLAGRA: Did you see this report by  
 10 CASH?  
 11 A. Yes, I did.  
 12 Q. Do you have a copy of it?  
 13 A. Yes.  
 14 Q. In your office?  
 15 A. Yes.  
 16 Q. Do you recall when this report by CASH was  
 17 prepared regarding year-round education?  
 18 A. I believe three years ago.  
 19 Q. Is that the only report that you're aware of  
 20 that reflects the ethnicity, race, poverty levels or  
 21 language of students in year-round schools?  
 22 MR. SEFERIAN: Objection. Compound question.  
 23 Overly broad.  
 24 THE WITNESS: I believe CTA has some figures.  
 25 I haven't seen them.

1 Q. BY MR. VILLAGRA: Why do you believe CTA has  
 2 some figures?  
 3 A. I just kind of recall seeing that.  
 4 Q. Anything else?  
 5 A. No.  
 6 Q. Does the CDE report the race or ethnicity of  
 7 students in year-round schools?  
 8 MR. SEFERIAN: Objection. Lacks foundation.  
 9 Vague and ambiguous as to "report."  
 10 THE WITNESS: No.  
 11 Q. BY MR. VILLAGRA: And by CDE I'm referring to  
 12 the California Department of Education. Did you  
 13 understand that?  
 14 A. I understood that. Yes.  
 15 Q. Sorry. Does the California Department of  
 16 Education collect data regarding the race or ethnicity  
 17 of students in year-round schools?  
 18 MR. SEFERIAN: Objection. Lacks foundation.  
 19 Vague and ambiguous as to "data." Vague as to time.  
 20 MR. SALVATY: Calls for speculation.  
 21 THE WITNESS: Yes, it does.  
 22 Q. BY MR. VILLAGRA: How do you know that?  
 23 A. It's done as part of the API process.  
 24 Q. And what is the API process?  
 25 A. Achievement performance index.

1 Q. To your knowledge, does the California  
 2 Department of Education report data regarding the  
 3 poverty level of students in year-round schools?  
 4 MR. SEFERIAN: Objection. Lacks foundation.  
 5 Calls for speculation. Vague and ambiguous as to  
 6 "data." Vague and ambiguous as to "report."  
 7 THE WITNESS: It does not.  
 8 Q. BY MR. VILLAGRA: To your knowledge, does the  
 9 California Department of Education collect data  
 10 regarding the poverty level in students in year-round  
 11 schools?  
 12 MR. SEFERIAN: Objection. Lacks foundation.  
 13 Calls for speculation.  
 14 THE WITNESS: Yes, it does.  
 15 Q. BY MR. VILLAGRA: How do you know that?  
 16 A. It's part of the API process.  
 17 Q. And, to your knowledge, does the California  
 18 Department of Education report data regarding the  
 19 primary language of students in year-round schools?  
 20 MR. SEFERIAN: Objection. Lacks foundation.  
 21 Calls for speculation. Vague and ambiguous as to  
 22 "report."  
 23 THE WITNESS: It does not.  
 24 Q. BY MR. VILLAGRA: To your knowledge, does the  
 25 California Department of Education collect data

1 regarding the primary language of students in year-round  
 2 schools?  
 3 MR. SEFERIAN: Objection. Lacks foundation.  
 4 Calls for speculation.  
 5 THE WITNESS: It does not.  
 6 Q. BY MR. VILLAGRA: To your knowledge, is the  
 7 only way that the California Department of Education  
 8 collects data regarding the race or ethnicity of  
 9 students in year-round schools is through the API  
 10 process?  
 11 MR. SEFERIAN: Objection. Compound question.  
 12 Lacks foundation.  
 13 THE WITNESS: That misstates it a bit. It  
 14 doesn't collect that data because they're year-round  
 15 schools, the data is collected along with data about  
 16 year-round education as part of the API process.  
 17 Q. BY MR. VILLAGRA: From that data could the race  
 18 or ethnicity of students in year-round schools be  
 19 determined?  
 20 MR. SEFERIAN: Objection. Lacks foundation.  
 21 Calls for an inadmissible opinion. Calls for  
 22 speculation. Incomplete and improper hypothetical.  
 23 Vague and ambiguous as to "determined."  
 24 THE WITNESS: Yes.  
 25 Q. BY MR. VILLAGRA: And does the same go for

1 poverty level?

2 MR. SEFERIAN: Same objections. Vague and  
3 ambiguous.

4 THE WITNESS: Yes.

5 Q. BY MR. VILLAGRA: When we were talking a few  
6 minutes ago about reports that you prepare regarding  
7 year-round education, you mentioned programmatic aids.  
8 What are those?

9 A. Implementation steps a district should follow  
10 in implementing year-round education, track assignment  
11 considerations, special day class, SDC guidelines,  
12 alternatives to in-class intercessions.

13 Q. Anything else?

14 A. I'm thinking. Those are the ones I recall.  
15 There have probably been others, I just don't recall  
16 them.

17 Q. Are the programmatic aids that you've described  
18 to me so far the main ones, in your opinion?

19 A. Yes.

20 MR. SEFERIAN: We've been going for about an  
21 hour. When you reach a convenient place, can we take a  
22 short break?

23 MR. VILLAGRA: Sure. I think we can stop here.

24 (Recess taken.)

25 (Mr. Reed not present.)

1 Q. And it's your recollection that the study that  
2 Claire Quinlan conducted did not consider the background  
3 of students as you've described it?

4 A. Yes, that's my recollection.

5 MR. SALVATY: Objection. Document speaks for  
6 itself.

7 Q. BY MR. VILLAGRA: When you say "poverty  
8 levels," to your understanding, how is that normally  
9 measured?

10 MR. SEFERIAN: Objection. No foundation.  
11 Calls for speculation. Vague and ambiguous as to  
12 "normally" and "measured." Vague and ambiguous.

13 THE WITNESS: I'm not an expert on this, but  
14 it's typically, to my understanding, measured by free  
15 and reduced lunches and AFDC recipients.

16 Q. BY MR. VILLAGRA: How do you know that?

17 MR. SEFERIAN: Same objections.

18 THE WITNESS: I don't know how I know that.

19 Q. BY MR. VILLAGRA: Based on your work in  
20 education?

21 A. Yes.

22 Q. And when you refer to primary language  
23 proficiency, is that sometimes also referred to as a  
24 student's being limited English proficient?

25 MR. SEFERIAN: Objection. No foundation.

1 Q. BY MR. VILLAGRA: Mr. Payne, when we were  
2 discussing the study conducted by Claire Quinlan, you  
3 said you didn't believe the study to be conclusive  
4 because it didn't take into consideration the  
5 demographics of the groups study; is that correct?

6 A. Yes.

7 Q. What do you mean by the "demographics of the  
8 groups studied"?

9 MR. SEFERIAN: Objection. No foundation.  
10 Calls for an inadmissible opinion.

11 THE WITNESS: Their background, their primary  
12 language proficiency, their poverty levels, whether they  
13 went to school in Beverly Hills or whether they went to  
14 school in Compton.

15 Q. BY MR. VILLAGRA: Anything else?

16 A. No.

17 Q. What do you mean by the student's background,  
18 apart from the other things that you mentioned?

19 A. That's not apart from the other things that I  
20 mentioned. I was using background to characterize all  
21 of those.

22 Q. I'm sorry. So background referred to primary  
23 language proficiency, poverty levels and where their  
24 schools are located?

25 A. Yes.

1 Calls for speculation.

2 MR. SALVATY: Leading.

3 THE WITNESS: Yes.

4 Q. BY MR. VILLAGRA: And limited English  
5 proficiency, is that a term you're familiar with?

6 A. Yes.

7 Q. How are you familiar with that term?

8 A. Just in my work.

9 Q. Do you recall when you became aware of the  
10 study that Claire Quinlan had conducted of achievement  
11 at year-round schools in California?

12 A. Yes, I do.

13 Q. When was that?

14 A. 1989 when I first began learning about  
15 year-round education.

16 Q. And how was it that you came to become aware of  
17 the study that Claire Quinlan had conducted?

18 A. I was given a lot of material to read, and I  
19 read it.

20 Q. Who gave you the material to read?

21 A. His name was Bob Rowe.

22 Q. Can you spell his last name?

23 A. Uh-huh, R-o-w-e.

24 Q. And who was Bob Rowe?

25 A. He was a consultant.

1 Q. On year-round education?  
 2 A. Amongst other things, yes.  
 3 Q. Did you discuss with Mr. Rowe the study that  
 4 Claire Quinlan had conducted of year-round schools?  
 5 A. No.  
 6 Q. Have you discussed with any other consultants  
 7 at the California Department of Education the study that  
 8 Claire Quinlan conducted?  
 9 A. Yes.  
 10 Q. Do you recall who?  
 11 A. Yes.  
 12 Q. Who is that?  
 13 A. Don Glines, G-I-I-n-e-s.  
 14 Q. Anyone else?  
 15 A. No.  
 16 Q. Who is Don Glines?  
 17 A. He used to be a consultant for the Department  
 18 of Education.  
 19 Q. On year-round education?  
 20 MR. SEFERIAN: Objection. Vague and ambiguous.  
 21 THE WITNESS: I believe so.  
 22 (Mr. Reed entered the room.)  
 23 Q. BY MR. VILLAGRA: And did you have one  
 24 discussion with Mr. Glines regarding the study that  
 25 Claire Quinlan conducted?

1 A. I don't remember.  
 2 Q. Do you recall any of the substance of your  
 3 discussion with Mr. Glines regarding the study that  
 4 Claire Quinlan conducted?  
 5 A. I don't recall the substance.  
 6 Q. Do you recall any of your conversation with  
 7 him?  
 8 MR. SEFERIAN: Objection. Asked and answered.  
 9 THE WITNESS: Yes, just we went through the  
 10 documents. He was helping me learn about year-round  
 11 education, and he pointed out the shortcomings.  
 12 Q. BY MR. VILLAGRA: Was that it?  
 13 A. Yes.  
 14 Q. Do you recall what Mr. Glines said about the  
 15 shortcomings of the study?  
 16 MR. SEFERIAN: Objection. Asked and answered.  
 17 THE WITNESS: I don't.  
 18 Q. BY MR. VILLAGRA: Do you recall what  
 19 Mr. Glines' educational background was?  
 20 A. I have no idea.  
 21 Q. And other than his work as a consultant for the  
 22 California Department of Education, do you recall  
 23 anything about Mr. Glines' work history?  
 24 A. He was a principal at one time in Wisconsin,  
 25 and I don't remember much else about Don.

1 Q. Have you had any other discussions with anyone  
 2 at the California Department of Education regarding the  
 3 study that Claire Quinlan conducted?  
 4 A. Not to my recollection.  
 5 Q. Have you had any discussions with anyone  
 6 outside of the California Department of Education  
 7 regarding the study that Claire Quinlan conducted?  
 8 A. Yes.  
 9 Q. Who have you had those discussions with?  
 10 A. Numerous people. I couldn't tell you who they  
 11 were because virtually everybody who operates a  
 12 year-round school has seen that study.  
 13 Q. Do you recall the last time you had a  
 14 conversation with someone outside of the California  
 15 Department of Education regarding the study that Claire  
 16 Quinlan conducted?  
 17 A. I haven't the slightest idea.  
 18 Q. When you made the request to Mr. Brooks that a  
 19 study be conducted of the achievement of students at  
 20 year-round schools in California, had you given any  
 21 thought as to how that study should be conducted?  
 22 MR. SEFERIAN: Objection. Asked and answered.  
 23 THE WITNESS: No.  
 24 Q. BY MR. VILLAGRA: Had you given any  
 25 consideration to whether year-round schools should be

1 compared to traditional schools?  
 2 MR. SEFERIAN: Objection. Asked and answered.  
 3 MR. SALVATY: Vague and ambiguous.  
 4 THE WITNESS: Yes.  
 5 Q. BY MR. VILLAGRA: And what thought had you  
 6 given to that issue?  
 7 MR. SEFERIAN: Objection. Vague and ambiguous.  
 8 THE WITNESS: Since they represented 22 percent  
 9 of our students in California, I thought it would be  
 10 interesting to compare achievement.  
 11 Q. BY MR. VILLAGRA: At year-round schools as  
 12 opposed to traditional schools?  
 13 A. Yes.  
 14 Q. Anything else?  
 15 A. No.  
 16 Q. Had you given any thought to whether  
 17 single-track year-round schools should be -- I'm sorry,  
 18 the achievement at single-track year-round schools  
 19 should be compared to the achievement at multi-track  
 20 year-round schools?  
 21 MR. SEFERIAN: Objection. Vague and ambiguous.  
 22 Vague as to time.  
 23 THE WITNESS: I had not given any thought to  
 24 distinguishing between the two in the study.  
 25 Q. BY MR. VILLAGRA: You had not at that time?

1 A. Right.  
 2 Q. When you made the request to Mr. Brooks?  
 3 A. No.  
 4 Q. And when you made the request to Mr. Brooks  
 5 that a study be conducted of the achievement of students  
 6 at year-round schools, had you given any thought to how  
 7 achievement would be measured?  
 8 A. No.  
 9 Q. Would achievement have included graduation  
 10 rates of students at year-round schools?  
 11 MR. SEFERIAN: Objection. Asked and answered.  
 12 Calls for speculation. No foundation.  
 13 THE WITNESS: I gave no thought to that.  
 14 Q. BY MR. VILLAGRA: Okay. What about the dropout  
 15 rate for students at year-round schools, had you given  
 16 any thought to that when you requested of Mr. Brooks  
 17 that a study be conducted of the achievement of students  
 18 at year-round schools?  
 19 MR. SEFERIAN: Objection. Asked and answered.  
 20 Calls for speculation.  
 21 THE WITNESS: No.  
 22 Q. BY MR. VILLAGRA: Are you familiar with  
 23 University of California Cal State eligibility rates?  
 24 A. I'm not familiar at all.  
 25 Q. Do you have an opinion, sitting here today, as

1 to whether a study should be conducted of the  
 2 achievement of students at year-round schools?  
 3 MR. SEFERIAN: Objection. Overly broad. Calls  
 4 for an inadmissible opinion. Lacks foundation. Calls  
 5 for speculation. Vague as to time. Vague and ambiguous  
 6 as to "study." Assumes facts not in evidence.  
 7 THE WITNESS: Would you repeat the question,  
 8 please.  
 9 (Record read.)  
 10 MR. SEFERIAN: Also vague and ambiguous as to  
 11 "achievement."  
 12 THE WITNESS: I would like to see a good study  
 13 conducted.  
 14 Q. BY MR. VILLAGRA: Why is that, other than as  
 15 you've explained 22 percent of kids attend year-round  
 16 schools, if there is a reason beyond that?  
 17 MR. SEFERIAN: Same objections.  
 18 THE WITNESS: No other reason.  
 19 BY MR. VILLAGRA: When you refer to a "good  
 20 study," what do you mean?  
 21 MR. SEFERIAN: Same objections.  
 22 THE WITNESS: I'm not an expert on testing, but  
 23 it should have some breadth and compare apples to  
 24 apples.  
 25 Q. BY MR. VILLAGRA: Do you recall if Mr. Glines

1 was an expert on testing?  
 2 MR. SEFERIAN: Objection. No foundation.  
 3 Calls for speculation. Vague and ambiguous as to  
 4 "expert on testing."  
 5 THE WITNESS: I don't recall that he was.  
 6 Q. BY MR. VILLAGRA: What is your understanding of  
 7 what an expert on testing is?  
 8 MR. SEFERIAN: Objection. Vague and ambiguous  
 9 as to "expert on testing." No foundation. Calls for an  
 10 inadmissible opinion. Vague and ambiguous. Overly  
 11 broad.  
 12 THE WITNESS: Somebody who knows about data  
 13 gathering and statistics. I know it's a specialization.  
 14 Q. BY MR. VILLAGRA: Anything else?  
 15 A. No.  
 16 Q. Do you recall if Claire Quinlan was an expert  
 17 on testing as you've defined it?  
 18 MR. SEFERIAN: Objection. Vague and ambiguous  
 19 as to "expert on testing." No foundation. Calls for an  
 20 inadmissible opinion.  
 21 THE WITNESS: I don't know her background.  
 22 Q. BY MR. VILLAGRA: When you say that a good  
 23 study regarding the achievement of students at  
 24 year-round schools should have breadth, what do you  
 25 mean?

1 MR. SEFERIAN: Objection. Calls for an  
 2 inadmissible opinion. Lacks foundation. Overly broad.  
 3 Vague and ambiguous. Calls for speculation.  
 4 THE WITNESS: Should be based on more than one  
 5 or two years.  
 6 Q. BY MR. VILLAGRA: Anything else?  
 7 A. No.  
 8 Q. And when you say a good study of student  
 9 achievement at year-round schools should compare apples  
 10 to apples, what did you mean?  
 11 MR. SEFERIAN: Objection. Calls for an  
 12 inadmissible opinion. Calls for speculation. Lacks  
 13 foundation. Overly broad. Vague and ambiguous.  
 14 THE WITNESS: That it should compare students  
 15 with similar demographic profiles.  
 16 Q. BY MR. VILLAGRA: And similar demographic  
 17 profiles is the background that we discussed earlier?  
 18 MR. SEFERIAN: Same objections.  
 19 Q. BY MR. VILLAGRA: Is that correct?  
 20 A. That's correct.  
 21 Q. Anything else?  
 22 A. No.  
 23 Q. To your knowledge, has anyone else in the  
 24 California Department of Education requested that the  
 25 Department conduct a study of the achievement of

1 students at year-round schools?  
 2 MR. SEFERIAN: Objection. Calls for  
 3 speculation.  
 4 THE WITNESS: Not to my knowledge.  
 5 Q. BY MR. VILLAGRA: Have you discussed with other  
 6 consultants in the California Department of Education  
 7 the possibility of having the Department conduct a study  
 8 of student achievement at year-round schools?  
 9 MR. SEFERIAN: Objection. Asked and answered.  
 10 THE WITNESS: No.  
 11 Q. BY MR. VILLAGRA: Have you discussed with other  
 12 employees of the California Department of Education the  
 13 possibility of having the Department conduct a study of  
 14 the achievement of students at year-round schools?  
 15 MR. SEFERIAN: Objection. Asked and answered.  
 16 THE WITNESS: Yes, I have, which is also a  
 17 modification to the last question. I remember Leroy  
 18 Small and I have discussed this.  
 19 Q. BY MR. VILLAGRA: On how many occasions?  
 20 A. I wouldn't have any idea.  
 21 Q. More than one?  
 22 A. Yes.  
 23 Q. More than 10?  
 24 A. I'm guessing. I don't know.  
 25 Q. Don't want you to guess.

1 What have you discussed with Mr. Small about  
 2 the possibility of having the California Department of  
 3 Education conduct a study of student achievement at  
 4 year-round schools?  
 5 A. Just that it would be nice to have a definitive  
 6 study.  
 7 Q. Do you recall what Mr. Small has said in any of  
 8 these conversations about the possibility of the  
 9 California Department of Education doing a study of  
 10 student achievement at year-round schools?  
 11 A. He didn't comment on the possibility.  
 12 Q. What did he comment on?  
 13 A. The desirability.  
 14 Q. What did he say?  
 15 A. It would be desirable.  
 16 Q. Did he explain why it would be desirable?  
 17 A. He echoed my feelings, that it would be nice to  
 18 have a definitive study.  
 19 Q. Why is that? Why would it be nice to have a  
 20 definitive study?  
 21 MR. SEFERIAN: Objection. Overly broad. Calls  
 22 for an inadmissible opinion. Lacks foundation. Calls  
 23 for speculation. Vague and ambiguous.  
 24 MR. SALVATY: Asked and answered.  
 25 MR. VILLAGRA: Vague and ambiguous as to

1 "definitive."  
 2 THE WITNESS: To answer the numerous questions  
 3 that are asked of us.  
 4 Q. BY MR. VILLAGRA: What do you mean by "numerous  
 5 questions asked of us"?  
 6 A. A frequently asked question is is there a  
 7 difference in achievement.  
 8 Q. And what is your response to that frequently  
 9 asked question?  
 10 MR. SEFERIAN: Objection. Assumes facts not in  
 11 evidence. Improper -- incomplete and improper  
 12 hypothetical. Vague and ambiguous.  
 13 MR. SALVATY: Overbroad.  
 14 MR. SEFERIAN: Vague as to time.  
 15 THE WITNESS: We have no credible evidence one  
 16 way or the other.  
 17 Q. BY MR. VILLAGRA: No credible evidence one way  
 18 or the other of what?  
 19 A. Whether there is a difference in achievement or  
 20 not.  
 21 Q. A difference in achievement between what and  
 22 what?  
 23 A. Year-round schools and traditional schools.  
 24 Q. Is it fair to say, then, that you also have no  
 25 credible evidence one way or the other as to a

1 difference in achievement between multi-track year-round  
 2 schools and traditional schools?  
 3 MR. SALVATY: Objection. Leading.  
 4 MR. SEFERIAN: Objection. Argumentative.  
 5 Misstates the witness' testimony. Calls for an  
 6 inadmissible opinion. Lacks foundation. Calls for  
 7 speculation.  
 8 THE WITNESS: I would say that.  
 9 Q. BY MR. VILLAGRA: Why is that?  
 10 MR. SEFERIAN: Same objections.  
 11 THE WITNESS: There's no evidence.  
 12 Q. BY MR. VILLAGRA: Regarding year-round  
 13 education generally, which includes single-track and  
 14 multi-track school; is that correct?  
 15 MR. SEFERIAN: Objection. Calls for an  
 16 inadmissible opinion. Lacks foundation. Calls for  
 17 speculation. Overbroad. Incomplete and improper  
 18 hypothetical question.  
 19 THE WITNESS: There's no evidence, credible  
 20 evidence.  
 21 Q. BY MR. VILLAGRA: And is it fair to say that it  
 22 would be nice in answering the frequent question about  
 23 difference in achievement, that it would be better for  
 24 you if you could offer a definitive answer to that  
 25 question?

1 MR. SEFERIAN: Objection. Vague and ambiguous  
 2 as to "nice" and "better." Overly broad. Relevance.  
 3 Incomplete and improper hypothetical question. No  
 4 foundation.  
 5 MR. SALVATY: Objection. Leading question.  
 6 THE WITNESS: I would like to have a definitive  
 7 answer.  
 8 Q. BY MR. VILLAGRA: And you're being asked -- do  
 9 you recall when the last time was that you were asked  
 10 whether there was a question -- whether there was  
 11 evidence of a difference in achievement at year-round  
 12 schools versus traditional schools?  
 13 A. Yes.  
 14 MR. SEFERIAN: Objection. Assumes facts not in  
 15 evidence.  
 16 Q. BY MR. VILLAGRA: When was that?  
 17 A. Last Thursday.  
 18 Q. And did you provide the answer that there was  
 19 no credible evidence?  
 20 A. Yes.  
 21 Q. What was the response from the person you were  
 22 speaking to?  
 23 A. No response.  
 24 Q. Is there typically no response when you say  
 25 that there's no credible evidence one way or the other?

1 MR. SEFERIAN: Objection. Assumes facts not in  
 2 evidence. Vague and ambiguous. Vague as to time.  
 3 Overly broad.  
 4 THE WITNESS: It often becomes the trigger for  
 5 other comments.  
 6 Q. BY MR. VILLAGRA: Such as?  
 7 A. It seems to me that there should be.  
 8 Q. Anything else?  
 9 A. That's pretty typical.  
 10 Q. We were speaking a little bit before the break  
 11 about the reports that you prepare, and in terms of  
 12 programmatic aids you mentioned that you prepare reports  
 13 regarding the implementation steps the district should  
 14 follow; is that correct?  
 15 A. That's correct.  
 16 Q. What are those implementation steps?  
 17 MR. SEFERIAN: Objection. Calls for a  
 18 narrative.  
 19 MR. VILLAGRA: Apart from -- I know yesterday  
 20 we spoke about the public notice requirement, so you can  
 21 skip that.  
 22 THE WITNESS: I list about 25 on that  
 23 guideline. I can't remember all 25, but I can go  
 24 through some of them.  
 25 MR. VILLAGRA: Okay.

1 MR. SEFERIAN: Objection. Calls for a  
 2 narrative.  
 3 Q. BY MR. VILLAGRA: I'm sorry to interrupt. The  
 4 document that you're referring to, what is that called?  
 5 A. Implementation steps.  
 6 Q. And that's a document that you've written?  
 7 A. Yes, it is.  
 8 Q. Is that part of the year-round education  
 9 program guide?  
 10 A. Yes, it is.  
 11 Q. Did you write the guide as well?  
 12 MR. SEFERIAN: Objection. Overly broad.  
 13 THE WITNESS: I didn't write the entire guide.  
 14 Q. BY MR. VILLAGRA: Part of it?  
 15 A. Part of it, uh-huh.  
 16 Q. Let me focus this a little more. Is one of the  
 17 implementation, steps that a district should follow  
 18 before converting to year-round education to conduct a  
 19 feasibility study?  
 20 MR. SEFERIAN: Are you asking if that's one of  
 21 the 25 guidelines he put in the guide?  
 22 THE WITNESS: It is not in my guide.  
 23 Q. BY MR. VILLAGRA: Is it a step to be followed  
 24 by districts in implementing year-round education?  
 25 MR. SEFERIAN: Objection. Overly broad.

1 Incomplete and improper hypothetical question.  
 2 Do you understand the question?  
 3 THE WITNESS: Yes, I do.  
 4 No, it's done before the decision is made to  
 5 implement.  
 6 Q. BY MR. VILLAGRA: How do you know that?  
 7 A. Just based upon experience, and it was part of  
 8 a piece of legislation, AB 1650.  
 9 Q. So would that have been something at the time  
 10 that came up in the legislative issues that you informed  
 11 districts about?  
 12 A. Yes.  
 13 Q. When did the legislation requiring feasibility  
 14 studies come into effect, if you can recall?  
 15 MR. SALVATY: Objection. Calls for a legal  
 16 conclusion.  
 17 THE WITNESS: About 1989.  
 18 Q. BY MR. VILLAGRA: And are you familiar with  
 19 these feasibility studies regarding year-round  
 20 education?  
 21 A. I've read just some of them.  
 22 Q. And why did you happen to read some of them?  
 23 A. They came to our office but were read by Leroy  
 24 Small.  
 25 Q. Do you recall when you read some of these



1 feasibility studies?  
 2 A. Well, as they started coming in 1989, I  
 3 would -- Leroy would have me read some of them. I  
 4 haven't read one for a long time.  
 5 Q. Do you know who reads these feasibility studies  
 6 now in the California Department of Education?  
 7 MR. SEFERIAN: Objection. Assumes facts not in  
 8 evidence. Calls for speculation.  
 9 THE WITNESS: If they were to come in, Leroy  
 10 Small would still read them.  
 11 Q. BY MR. VILLAGRA: Do you know if anyone else  
 12 would read them?  
 13 MR. SEFERIAN: Same objections.  
 14 THE WITNESS: Nobody else would read them.  
 15 Q. BY MR. VILLAGRA: Are you familiar with -- back  
 16 a step. Are the feasibility studies submitted to the  
 17 California Department of Education for its review and  
 18 approval?  
 19 MR. SEFERIAN: Objection. Calls for an  
 20 inadmissible opinion. Vague and ambiguous as to "review  
 21 and approval." Vague as to time.  
 22 MR. SALVATY: Calls for speculation also.  
 23 THE WITNESS: For their review.  
 24 Q. BY MR. VILLAGRA: And what are the feasibility  
 25 studies reviewed for, if you know?

1 MR. SEFERIAN: Objection. Vague and ambiguous.  
 2 THE WITNESS: I don't know, but there was  
 3 criteria defined.  
 4 Q. BY MR. VILLAGRA: And what were the criteria  
 5 for?  
 6 MR. SEFERIAN: Objection. Calls for  
 7 speculation. No foundation. Vague and ambiguous.  
 8 THE WITNESS: The criterion was -- one of them  
 9 was a consideration of the alternatives to implementing  
 10 multi-track. Another criterion was a statement of the  
 11 current overcrowding conditions in the district.  
 12 Another one was a consideration and review of different  
 13 calendar plans. And that's all I can remember.  
 14 Q. BY MR. VILLAGRA: Are you familiar with the  
 15 year-round advisory committee of the California  
 16 Department of Education?  
 17 A. Yes.  
 18 Q. Do you sit on the committee?  
 19 A. Yes.  
 20 Q. How long have you been on the year-round  
 21 education advisory committee?  
 22 A. Since its inception, and I believe that was  
 23 1995.  
 24 Q. Do you recall who appointed you, made you a  
 25 member of the year-round education advisory committee?

1 MR. SEFERIAN: Objection. Assumes facts not in  
 2 evidence.  
 3 THE WITNESS: I formed the committee.  
 4 Q. BY MR. VILLAGRA: Why did you form the  
 5 committee?  
 6 A. I was told to.  
 7 Q. By whom?  
 8 A. Duwayne Brooks.  
 9 Q. Did anyone else tell you to form the committee?  
 10 A. No.  
 11 Q. Did Mr. Brooks tell you why to form the  
 12 committee?  
 13 MR. SEFERIAN: Objection. Calls for  
 14 speculation.  
 15 THE WITNESS: If he did, I don't remember.  
 16 Q. BY MR. VILLAGRA: Who are the other current  
 17 members of the year-round advisory committee, if you can  
 18 recall?  
 19 A. Calvin Lee, the superintendent of Dry Creek;  
 20 Richard Alcorn, representing the national association  
 21 for year-round education; Maria Tostada, and I don't  
 22 know who she -- she used to be with Anaheim, but she's  
 23 not anymore; Larry Carletta, Los Angeles Unified School  
 24 District; the superintendent from Newhall, and I'm just  
 25 drawing a blank on his name. Oh, Mark Winger; Leroy

1 Small; Marilyn Stenval, and she too is from the national  
 2 association of year-round education; Judy Fish,  
 3 superintendent of the Saugus Unified School District; a  
 4 woman from Delano, and I'm drawing a blank on her name  
 5 right now. Those are the ones I remember.  
 6 Q. Did you select all these various people to sit  
 7 on the committee?  
 8 A. Initially they were recommended. I recommended  
 9 them for review by Bill Honig.  
 10 Q. The former superintendent of public  
 11 instruction?  
 12 A. That is right.  
 13 Q. And it was his decision to approve them?  
 14 MR. SEFERIAN: Objection. Vague and ambiguous  
 15 as to "his decision."  
 16 THE WITNESS: He approved of the ones I  
 17 recommended. The membership has changed a bit since  
 18 then.  
 19 Q. BY MR. VILLAGRA: Do you now make  
 20 recommendations for the year-round education advisory  
 21 committee to Delaine Eastin?  
 22 A. No, I don't.  
 23 Q. Do you make recommendation for the year-round  
 24 education advisory committee to anyone?  
 25 A. No.

1 Q. So if there were a vacancy tomorrow, how would  
2 that vacancy be filled?

3 MR. SEFERIAN: Objection. Assumes facts not in  
4 evidence. Hypothetical question. Calls for  
5 speculation.

6 THE WITNESS: It has become less formal, and  
7 members attend if -- people attend if they're  
8 interested, in addition to the regular members I  
9 mentioned.

10 Q. BY MR. VILLAGRA: Do you recall why you  
11 recommended Calvin Lee being a member of the year-round  
12 education advisory committee?

13 MR. SALVATY: Objection. Assumes facts not in  
14 evidence.

15 THE WITNESS: Other than his outstanding  
16 reputation as an educator and the fact that his  
17 district -- that he has great experience with  
18 multi-track year-round, those would be the reasons.

19 Q. BY MR. VILLAGRA: Did you make a recommendation  
20 as to his membership on the committee?

21 A. No, I just invited him.

22 Q. Did you make a recommendation regarding Richard  
23 Alcorn's membership on the year-round education advisory  
24 committee?

25 A. I don't remember a formal recommendation being

1 committee?

2 A. At the time she represented a heavily impacted  
3 school district, impacted by overcrowding, and was seen  
4 as an educational innovator and leader.

5 Q. Did you invite Larry Carletta to be on the  
6 year-round education advisory committee?

7 A. No. Well, yes, but he replaced the original  
8 member from LAUSD.

9 Q. Who you had invited?

10 A. Yes.

11 Q. Who was that?

12 A. Gordon Wohlers.

13 Q. Why had you invited Mr. Wohlers onto the  
14 year-round education advisory committee?

15 A. How could one exclude LAUSD from any  
16 discussions about year-round education?

17 Q. What do you mean by that?

18 A. They represented a significant part of the  
19 multi-track enrollment in California.

20 Q. And like Anaheim, is LAUSD seen as heavily  
21 impacted by overcrowding?

22 MR. SEFERIAN: Objection. Vague and ambiguous  
23 as to "seen" and "heavily impacted." Overly broad.  
24 Vague as to time. Lacks foundation. Calls for an  
25 inadmissible opinion.

1 made.

2 Q. Why did you invite Mr. Alcorn to be a member of  
3 the year-round education advisory committee?

4 MR. SALVATY: Objection. Assumes facts not in  
5 evidence.

6 THE WITNESS: He's very active in the  
7 California association of year-round education, and we  
8 try to include them.

9 Q. BY MR. VILLAGRA: Did you invite Mr. Alcorn to  
10 be on the committee?

11 A. I don't remember how he started coming, I just  
12 don't remember.

13 Q. Why would it be important to have  
14 representation on the committee from the California  
15 association of year-round education, in your opinion?

16 MR. SEFERIAN: Objection. Assumes facts not in  
17 evidence. Vague and ambiguous as to "important."  
18 Overly broad.

19 THE WITNESS: At the time they employed a  
20 lobbyist to handle year-round education issues, and it  
21 was important to have communication with that lobbyist.

22 Q. BY MR. VILLAGRA: Did you invite Maria Tostada  
23 to be on the year-round education advisory committee?

24 A. She was one of the original members, yes.

25 Q. And why did you invite her to be on the

1 MR. SALVATY: Misstates testimony and leading.

2 THE WITNESS: I perceive them as being an  
3 overcrowded district.

4 Q. BY MR. VILLAGRA: And did you invite Mark  
5 Winger onto the year-round education advisory committee?

6 A. I'm trying to remember how Mark started coming  
7 to the meetings. Yes, I invited him. He asked if he  
8 could come.

9 Q. Why did you invite him?

10 A. He's superintendent of a district that operates  
11 multi-track and expressed an interest on being on the  
12 committee.

13 Q. Did you invite Marilyn Stenval onto the  
14 year-round education advisory committee?

15 A. No.

16 Q. Did she just come along with Mr. Alcorn?

17 A. She replaced Charles Ballinger, who was an  
18 original member of the committee.

19 Q. Would you mind spelling Ballinger?

20 A. Not at all. B-a-l-l-i-n-g-e-r.

21 Q. Was Mr. Ballinger also with the national  
22 association of year-round education?

23 A. Yes, he was.

24 Q. Why had you invited Mr. Ballinger onto the  
25 year-round education advisory committee?

1 A. I'm at a loss for words. I'm sorry. It was  
 2 just assumed that he would be an important member. I  
 3 can't articulate the reasons.  
 4 Q. Was Mr. Alcorn also an original member of the  
 5 year-round advisory committee?  
 6 A. No, he wasn't.  
 7 Q. Do you recall when it came to be that the  
 8 national association of year-round education had two  
 9 members on the year-round education advisory committee?  
 10 A. I would be guessing. I can't guess.  
 11 Q. Did you invite Judy Fish onto the year-round  
 12 education advisory committee?  
 13 A. Yes.  
 14 Q. Why did you invite her?  
 15 A. Judy was the assistant superintendent of the  
 16 Palmdale school district and operated a multi-track  
 17 program called the Orchard Plan, which was a pilot  
 18 project as part of AB 1650 in 1989.  
 19 Q. Anything else?  
 20 A. A wonderful educator.  
 21 Q. What are the functions of the year-round  
 22 education advisory committee?  
 23 MR. SEFERIAN: Objection. Vague and ambiguous  
 24 as to "functions." Overly broad. Calls for a  
 25 narrative. Vague as to time.

1 THE WITNESS: To discuss legislative proposals  
 2 or the need for legislation and programmatic issues.  
 3 Q. BY MR. VILLAGRA: Anything else?  
 4 A. No.  
 5 Q. What do you mean by "programmatic issues"?  
 6 A. It was a forum for discussing innovative ideas,  
 7 such as how to conduct intercessions out of the  
 8 classroom, how off-track students could be used as peer  
 9 tutors. Those are some of the educational innovations  
 10 that are programmatic issues.  
 11 Q. Is it fair to describe them as issues related  
 12 to the operation of year-round schools?  
 13 MR. SALVATY: Objection. Vague and leading.  
 14 THE WITNESS: Issues suggest it's a problem. I  
 15 would describe them as simply educational strategies and  
 16 opportunities specific to year-round schools.  
 17 Q. BY MR. VILLAGRA: Does the year-round education  
 18 advisory committee hold meetings?  
 19 A. Yes, it does.  
 20 Q. Are those meetings open to the public?  
 21 A. Yes, they are.  
 22 Q. How often does the year-round education  
 23 advisory committee meet?  
 24 MR. SEFERIAN: Objection. Vague and ambiguous  
 25 as to time.

1 MR. SALVATY: Currently? Is the question,  
 2 currently?  
 3 MR. VILLAGRA: Currently.  
 4 THE WITNESS: Once a year.  
 5 Q. BY MR. VILLAGRA: Has that been true  
 6 historically?  
 7 A. No.  
 8 Q. When did that change?  
 9 A. I think it changed this year. I haven't called  
 10 one since last March, and March is an approximation. It  
 11 was in the spring.  
 12 Q. And that would have been March of 2000?  
 13 A. Yes.  
 14 Q. Do you recall how many meetings there were in  
 15 1999?  
 16 A. No, I'm sorry, that's March of 2001.  
 17 Q. Do you recall how many meetings there were of  
 18 the year-round education advisory committee in the year  
 19 2000?  
 20 A. Two or three.  
 21 Q. What about 1999?  
 22 A. Two or three.  
 23 Q. Would you believe the same to be true for the  
 24 prior years of the year-round education and advisory  
 25 committee's existence?

1 A. I'd believe that to be true.  
 2 Q. Are there minutes of the meetings of the  
 3 year-round education advisory committee?  
 4 MR. SEFERIAN: Objection. Vague as to time.  
 5 THE WITNESS: There are sometimes notes and  
 6 sometimes not. And I laugh. It's part of my -- the way  
 7 I've conducted the meetings.  
 8 Q. BY MR. VILLAGRA: Do you know if the notes of  
 9 the meetings are still in existence?  
 10 A. If notes were taken, they're still in  
 11 existence.  
 12 Q. Where would they be?  
 13 A. In my office.  
 14 Q. Let's take that meeting in March of this year.  
 15 Was there an agenda for the meeting?  
 16 A. Yes, there was.  
 17 Q. A written agenda?  
 18 A. Yes, there was.  
 19 Q. Is there typically a written agenda for the  
 20 meetings of the year-round education advisory committee?  
 21 A. Yes.  
 22 Q. And would those agendas still be in existence,  
 23 to your knowledge?  
 24 A. Many of them are still in existence.  
 25 Q. Would they also be in your office?

1 A. Yes.

2 Q. Where does the committee meet? Where did the  
3 meeting in 2001 take place?

4 A. In Sacramento.

5 Q. Do all of the meetings of the year-round  
6 education advisory committee take place in Sacramento?

7 A. Yes.

8 Q. Does the year-round education advisory  
9 committee issue recommendations of any kind?

10 MR. SEFERIAN: Objection. Vague and ambiguous  
11 as to "recommendations." Assumes facts not in evidence.  
12 Overly broad. Vague and ambiguous as to "issue."

13 THE WITNESS: The recommendations typically are  
14 oral and just given to me, so it's not formal.

15 Q. BY MR. VILLAGRA: So the year-round education  
16 advisory committee does make recommendations?

17 MR. SEFERIAN: Objection. Asked and answered.  
18 Vague.

19 THE WITNESS: Often.

20 Q. BY MR. VILLAGRA: And when a recommendation is  
21 made to you by the committee, do you then pass that  
22 along to anyone?

23 MR. SEFERIAN: Objection. Overly broad.  
24 Hypothetical question.

25 MR. SALVATY: Vague.

1 THE WITNESS: If the recommendations -- yes, to  
2 Duwayne Brooks, if it's appropriate.

3 Q. BY MR. VILLAGRA: Does the year-round education  
4 advisory committee have a staff?

5 A. No.

6 Q. Are presentations made to the year-round  
7 education advisory committee by anyone?

8 A. No.

9 Q. Does the year-round education advisory  
10 committee take testimony from witnesses before the  
11 committee?

12 A. No.

13 Q. Does the year-round education advisory  
14 committee report to anyone?

15 MR. SEFERIAN: Objection --

16 MR. SALVATY: Objection. Vague.

17 MR. SEFERIAN: -- vague and ambiguous as to  
18 "report." Asked and answered.

19 THE WITNESS: No.

20 Q. BY MR. VILLAGRA: We talked a while ago now  
21 about statistics that are compiled by the California  
22 Department of Education, and specifically by yourself.  
23 Do you know approximately how many students are  
24 in year-round programs this school year, this current  
25 school year?

1 MR. SEFERIAN: Objection. Lacks foundation.  
2 Vague and ambiguous as to "year-round programs." Overly  
3 broad.

4 THE WITNESS: Approximately a million.

5 Q. BY MR. VILLAGRA: Is that the student  
6 population in all year-round programs?

7 A. Yes.

8 Q. How do you know that?

9 MR. SEFERIAN: Same objections.

10 THE WITNESS: It's on our compilation sheet,  
11 the data sheet.

12 Q. BY MR. VILLAGRA: Is that a sheet that you  
13 prepare?

14 MR. SEFERIAN: Objection. Vague and ambiguous  
15 as to "you."

16 THE WITNESS: Shannon Ferrell-Hart prepared  
17 that.

18 MR. VILLAGRA: I'd like to introduce Exhibit  
19 205, a document entitled year-round education 2000-2001  
20 statistics, off the CDE's website.  
21 (Exhibit SAD-205 was marked.)

22 Q. BY MR. VILLAGRA: Have you had a chance to  
23 review Exhibit 205?

24 A. Just long enough to see that I was 300,000 off  
25 on my estimate.

1 Q. What is Exhibit 205?

2 A. It's the statistics sheet that we keep in our  
3 division.

4 Q. And that would be the school facilities  
5 planning division?

6 A. Yes.

7 Q. And I believe you said that Shannon  
8 Ferrell-Hart prepared this document?

9 A. Yes.

10 Q. Did you play any role in the preparation of  
11 this document?

12 MR. SEFERIAN: Objection. Overly broad. Vague  
13 and ambiguous as to "role."

14 THE WITNESS: No.

15 Q. BY MR. VILLAGRA: And I believe you were  
16 starting to tell me about the figure for students in  
17 year-round education programs. Do you see that total on  
18 this document?

19 A. Yes, I do.

20 Q. What is it?

21 A. 1,331,859.

22 Q. And do you know approximately how many of the  
23 kids on year-round schools are learning English as a  
24 second language?

25 MR. SEFERIAN: Objection. Lacks foundation.

1 Vague and ambiguous as to "learning English as a second  
2 language." Calls for speculation.  
3 THE WITNESS: I don't know.  
4 Q. BY MR. VILLAGRA: I believe earlier I asked you  
5 about how poverty levels are measured for students, and  
6 you testified that one of the ways is by measuring  
7 student's eligibility for the free or reduced lunch  
8 program; is that correct?  
9 A. That's correct.  
10 Q. Of the kids in year-round programs, do you know  
11 approximately how many are poor, using their eligibility  
12 for the free or reduced lunch program as the measure of  
13 poverty?  
14 MR. SALVATY: Objection. Vague and ambiguous.  
15 MR. SEFERIAN: Objection. Lacks foundation.  
16 Vague and ambiguous as to "poor." Calls for  
17 speculation.  
18 THE WITNESS: I don't know.  
19 Q. BY MR. VILLAGRA: Okay. I forgot to ask you  
20 this. Does the California Department of Education  
21 collect that data?  
22 MR. SALVATY: Objection. Vague. What data?  
23 I'm sorry.  
24 MR. SEFERIAN: Objection. Lacks foundation.  
25 MR. VILLAGRA: The numbers of students in

1 year-round programs who are poor, using their  
2 eligibility for the free or reduced lunch program as the  
3 measure.  
4 MR. SALVATY: Objection. Vague and ambiguous.  
5 MR. SEFERIAN: Objection. Lacks foundation.  
6 Calls for speculation.  
7 THE WITNESS: I believe it's part of the API.  
8 MR. VILLAGRA: I'd like to introduce as  
9 Exhibit 206 a document that is four pages long and it's  
10 entitled year-round classes mean so long, summer. It's  
11 dated July 25th, 2001, and it's from the OC, Orange  
12 County Register.  
13 (Exhibit SAD-206 was marked.)  
14 Q. BY MR. VILLAGRA: Please take your time to  
15 review the document.  
16 MR. SEFERIAN: Do you want him to read the  
17 whole entire article?  
18 MR. VILLAGRA: If he feels that's necessary.  
19 I'm going to point him to a specific part of it.  
20 Q. Have you had a chance to review it?  
21 A. I have.  
22 Q. Do you recall being interviewed by a reporter  
23 from the Orange County Register?  
24 MR. SEFERIAN: Objection. Vague as to time.  
25 MR. VILLAGRA: In about July of this current

1 year.  
2 THE WITNESS: I do remember that.  
3 Q. BY MR. VILLAGRA: If you could look at page 2  
4 of Exhibit 206, the second paragraph quotes Tom Payne, a  
5 State Department of Education consultant. Do you see  
6 that?  
7 A. Yes, I do.  
8 Q. Do you believe this article to be referring to  
9 you?  
10 MR. SEFERIAN: Objection. No foundation.  
11 THE WITNESS: Yes.  
12 Q. BY MR. VILLAGRA: Do you have any reason to  
13 believe this article does not refer to you?  
14 MR. SEFERIAN: Objection. No foundation.  
15 Overly broad. Calls for speculation.  
16 THE WITNESS: I believe it refers to me. I  
17 have no -- I forget what you said.  
18 MR. VILLAGRA: Magic lawyer words.  
19 THE WITNESS: It is I.  
20 Q. BY MR. VILLAGRA: You recall being interviewed  
21 by Maria, and I'm sure I'll butcher her name, Sacchetti?  
22 A. I do remember that.  
23 Q. Okay. Looking at the third paragraph of  
24 Exhibit 206 on page 2 it says, quote, statewide the  
25 number of students in year-round schools rose to 1.3

1 million in 2000.  
2 MR. SEFERIAN: I'm sorry, which paragraph --  
3 which page are you on?  
4 MR. VILLAGRA: I'm in the third paragraph on  
5 page 2, Exhibit 206, second sentence of that paragraph.  
6 MR. SALVATY: Third full paragraph?  
7 MR. VILLAGRA: No, the third paragraph.  
8 Do you see where he is, Mr. Payne?  
9 THE WITNESS: Yes.  
10 Q. BY MR. VILLAGRA: Quote, statewide the number  
11 of students in year-round school rose to 1.3 million in  
12 2000 from 503,052 in 1990 --  
13 MR. SALVATY: It actually says 530,052.  
14 MR. VILLAGRA: Sorry. Typo.  
15 -- period. More than half the students in  
16 these schools are poor and at least half are learning  
17 English as a second language, but they have five fewer  
18 school days than a regular school because of the lack of  
19 space, Payne said, period.  
20 Q. Does this refresh your recollection as to  
21 whether you knew the figures regarding the percentage of  
22 students at year-round schools who are poor?  
23 MR. SEFERIAN: Objection. Vague and ambiguous  
24 as to "poor." Overly broad. Vague as to time.  
25 THE WITNESS: Yes, I got these figures from the

1 CASH report.  
 2 Q. BY MR. VILLAGRA: And, I'm sorry, I know I  
 3 asked you. The CASH report was from three years ago?  
 4 A. Yes.  
 5 Q. Okay. So these figures quoted in this -- in  
 6 Exhibit 206 are from three years ago; is that correct?  
 7 MR. SALVATY: Objection. Vague and ambiguous.  
 8 MR. SEFERIAN: Objection. Vague and ambiguous  
 9 as to "these figures." Misstates the witness'  
 10 testimony.  
 11 MR. VILLAGRA: Let me try to do that again.  
 12 Q. So the figures regarding students at year-round  
 13 schools that are poor that are reflected in Exhibit 206,  
 14 those are not current figures; is that correct?  
 15 MR. SEFERIAN: Objection. Lacks foundation.  
 16 MR. SALVATY: Vague and ambiguous. I still  
 17 don't know which figures.  
 18 Q. BY MR. VILLAGRA: It says more than half the  
 19 students in these schools are poor. So that statement  
 20 is based on a CASH report from about three years ago; is  
 21 that correct?  
 22 MR. SEFERIAN: Objection. No foundation.  
 23 Calls for speculation.  
 24 You're asking where the reporter came up with  
 25 that statement?

1 MR. VILLAGRA: I'm asking Mr. Payne.  
 2 MR. SEFERIAN: Objection. No foundation.  
 3 Calls for speculation.  
 4 MR. SALVATY: And the CASH report speaks for  
 5 itself.  
 6 THE WITNESS: I believe I got this information  
 7 from the CASH report, and I believe the CASH report was  
 8 about three years ago.  
 9 Q. BY MR. VILLAGRA: Okay. Has the reporter, in  
 10 Exhibit 206, and I'm referring specifically here to the  
 11 portion that says more than half the students in these  
 12 schools are poor, does that accurately reflect what you  
 13 told the reporter?  
 14 MR. SEFERIAN: Objection. Vague and ambiguous  
 15 as to "accurately reflect." No foundation. Overly  
 16 broad. Calls for speculation.  
 17 THE WITNESS: I don't remember word for word  
 18 what I told the reporter, but -- I don't remember word  
 19 for word what I told the reporter.  
 20 Q. BY MR. VILLAGRA: Did you complain to the  
 21 reporter about not accurately reporting what you had  
 22 said anywhere in this article?  
 23 MR. SEFERIAN: Objection. Argumentative.  
 24 Vague and ambiguous as to "complain." Assumes facts not  
 25 in evidence.

1 THE WITNESS: I did not.  
 2 Q. BY MR. VILLAGRA: And just to be overly  
 3 cautious about this, where it says at least half of the  
 4 students in year-round schools are learning English as a  
 5 second language, you had also obtained that information  
 6 from the CASH report; is that correct?  
 7 MR. SEFERIAN: Objection. Assumes facts not in  
 8 evidence. Vague and ambiguous as to "learning English  
 9 as a second language."  
 10 THE WITNESS: I obtained those from the CASH  
 11 report, as I recall.  
 12 Q. BY MR. VILLAGRA: And do you understand the  
 13 phrase learning English as a second language?  
 14 MR. SEFERIAN: Objection. Overly broad. Calls  
 15 for speculation. No foundation.  
 16 THE WITNESS: I do. I think I do.  
 17 Q. BY MR. VILLAGRA: What do you think that term  
 18 refers to?  
 19 MR. SEFERIAN: Same objections. Overly broad.  
 20 No foundation. Vague and ambiguous.  
 21 THE WITNESS: That English is not their primary  
 22 language.  
 23 Q. BY MR. VILLAGRA: Do you know of all students  
 24 in California, public school students, what percent are  
 25 learning English as a second language?

1 MR. SEFERIAN: Objection. No foundation.  
 2 Calls for speculation. Vague as to time. Calls for an  
 3 inadmissible opinion.  
 4 THE WITNESS: I don't know.  
 5 Q. BY MR. VILLAGRA: Do you believe the percentage  
 6 statewide of students learning English as a second  
 7 language to be higher or lower than for year-round  
 8 schools?  
 9 MR. SEFERIAN: Objection. Lacks foundation.  
 10 Calls for speculation.  
 11 THE WITNESS: I believe it to be lower.  
 12 Q. BY MR. VILLAGRA: How do you know that?  
 13 MR. SEFERIAN: Same objections. Lacks  
 14 foundation. Calls for speculation. Calls for an  
 15 inadmissible opinion.  
 16 THE WITNESS: I'm speculating.  
 17 Q. BY MR. VILLAGRA: Based on what?  
 18 MR. SEFERIAN: Same objections.  
 19 MR. SALVATY: If you're speculating, it's not  
 20 based on anything. Don't speculate, Mr. Payne. You're  
 21 not being asked to speculate. He's asking for your  
 22 personal knowledge, nothing more.  
 23 THE WITNESS: I don't know that.  
 24 Q. BY MR. VILLAGRA: Do you know the percentage of  
 25 public school students statewide who are poor, using

1 their eligibility for the free or reduced lunch program  
 2 as the measure?  
 3 MR. SEFERIAN: Objection. Lacks foundation.  
 4 Calls for speculation. Vague as to time.  
 5 THE WITNESS: I don't know.  
 6 Q. BY MR. VILLAGRA: Do you believe the statewide  
 7 figure to be higher or lower than for year-round  
 8 schools?  
 9 MR. SEFERIAN: Objection. Lacks foundation.  
 10 MR. SALVATY: Calls for speculation.  
 11 MR. SEFERIAN: Will you read the question,  
 12 please.  
 13 (Record read.)  
 14 MR. SEFERIAN: Vague and ambiguous as to  
 15 "statewide figure."  
 16 THE WITNESS: I believe it to be lower.  
 17 Q. BY MR. VILLAGRA: And how do you know that?  
 18 MR. SEFERIAN: Objection. Lacks foundation.  
 19 THE WITNESS: I don't know.  
 20 Q. BY MR. VILLAGRA: Do you personally know the  
 21 racial or ethnic composition of students in year-round  
 22 schools, the percentage of black and Hispanic students,  
 23 for example?  
 24 MR. SEFERIAN: Objection. Overly broad. Vague  
 25 and ambiguous. Vague as to time. Lacks foundation.

1 Calls for speculation.  
 2 MR. SALVATY: In all schools total black or  
 3 total Hispanic or what? What's the question?  
 4 Q. BY MR. VILLAGRA: Do you know the racial  
 5 composition of California's year-round enrollment?  
 6 MR. SEFERIAN: Objection. Overly broad. Vague  
 7 as to time. Lacks foundation. Calls for speculation.  
 8 THE WITNESS: I don't know.  
 9 Q. BY MR. VILLAGRA: Do you believe the racial  
 10 composition of students in year-round programs to be  
 11 higher or lower than the overall figure statewide?  
 12 MR. SALVATY: Objection. Vague and ambiguous,  
 13 and completely unintelligible to me. I don't understand  
 14 it.  
 15 MR. SEFERIAN: Lacks foundation. Calls for  
 16 speculation.  
 17 THE WITNESS: I don't know.  
 18 Q. BY MR. VILLAGRA: Do you know, Mr. Payne,  
 19 approximately how many kids are currently in  
 20 single-track year-round programs?  
 21 A. 300,000.  
 22 Q. And is that reflected on Exhibit 205?  
 23 A. As a matter of fact, it is.  
 24 Q. What is the figure?  
 25 A. 315,292.

1 Q. And do you know approximately how many students  
 2 are currently in multi-track year-round programs?  
 3 MR. SEFERIAN: Objection. Lacks foundation.  
 4 MR. SALVATY: Is he just reading the document.  
 5 You want him to read the document?  
 6 MR. SEFERIAN: Do you want him to go from the  
 7 document? He's looking at the document.  
 8 Q. BY MR. VILLAGRA: Do you know independent of  
 9 the document?  
 10 A. No.  
 11 Q. Okay. Looking at Exhibit 205, can you tell me  
 12 what that figure is?  
 13 MR. SEFERIAN: Objection. Lacks foundation.  
 14 MR. SALVATY: Document speaks for itself.  
 15 THE WITNESS: 1,016,567 students, as I recall.  
 16 Q. BY MR. VILLAGRA: Of those students in  
 17 multi-track year-round programs, do you know  
 18 approximately what percentage are learning English as a  
 19 second language?  
 20 MR. SEFERIAN: Objection. Lacks foundation.  
 21 Calls for speculation. Vague and ambiguous as "to  
 22 learning English as a second language." Overly broad.  
 23 MR. SALVATY: Asked and answered.  
 24 THE WITNESS: It's reflected in the CASH report  
 25 which says half.

1 Q. BY MR. VILLAGRA: And is it your testimony that  
 2 you recall that the CASH report distinguished between  
 3 year-round education and multi-track year-round  
 4 education?  
 5 MR. SEFERIAN: Objection. Calls for  
 6 speculation.  
 7 MR. SALVATY: Document speaks for itself.  
 8 THE WITNESS: I don't remember the document  
 9 making that distinction.  
 10 MR. VILLAGRA: Okay. Because I thought the  
 11 figures or the percentages in Exhibit 206 referred to  
 12 year-round education as a whole.  
 13 MR. SALVATY: Objection. Vague and ambiguous  
 14 as to which figures we're talking about.  
 15 MR. SEFERIAN: He hasn't asked you a question.  
 16 Q. BY MR. VILLAGRA: When it says more than half  
 17 the students in these schools are poor, I took that to  
 18 refer to students in year-round schools.  
 19 Is that your understanding as well?  
 20 MR. SEFERIAN: Objection --  
 21 MR. SALVATY: Calls for speculation.  
 22 MR. SEFERIAN: -- calls for speculation. No  
 23 foundation. Overly broad. Vague and ambiguous.  
 24 Are you asking him what the reporter was  
 25 thinking when the reporter wrote that?

1 MR. VILLAGRA: No. Then the objection might be  
2 okay.  
3 THE WITNESS: I'm sorry?  
4 Q. BY MR. VILLAGRA: From your recollection of the  
5 CASH report when it spoke in terms of more than half the  
6 students being poor, do you recall whether it was  
7 referring to year-round education enrollment as a whole,  
8 or specifically to multi-track year-round enrollment?  
9 MR. SALVATY: Objection. The CASH report  
10 speaks for itself.  
11 MR. SEFERIAN: Calls for speculation.  
12 THE WITNESS: I would not have recalled. Now  
13 that it's in front of me, I can recall.  
14 Q. BY MR. VILLAGRA: Okay. Do you have a copy of  
15 the CASH report?  
16 A. Yes.  
17 Q. In your office?  
18 A. Yes.  
19 MR. SEFERIAN: We've been going for over an  
20 hour now. Can we take a short break?  
21 MR. VILLAGRA: Sure.  
22 MR. SEFERIAN: Thank you.  
23 (Lunch recess taken.)  
24 Q. BY MR. VILLAGRA: Mr. Payne, do you know  
25 whether the number of students in multi-track year-round

1 programs has grown in the last 16 years?  
2 A. I do know.  
3 Q. How do you know?  
4 A. We've kept data.  
5 Q. Do you have any idea by how much the figure has  
6 grown?  
7 A. Over the last --  
8 Q. 16 years.  
9 A. -- 16 years? Not specifically. A lot.  
10 Q. Generally you would say a lot?  
11 A. Oh, tremendously so.  
12 Q. Do you know whether there has been similar  
13 growth in the enrollment at single-track year-round  
14 schools?  
15 MR. SEFERIAN: Objection. Vague and ambiguous  
16 as to "similar." Lacks foundation.  
17 THE WITNESS: I don't know.  
18 Q. BY MR. VILLAGRA: Has there been growth in the  
19 last 16 years in the enrollment at California  
20 single-track year-round schools?  
21 A. Yes.  
22 MR. SEFERIAN: Objection. Overly broad.  
23 Q. BY MR. VILLAGRA: Has that growth been  
24 tremendous?  
25 MR. SALVATY: Objection --

1 MR. SEFERIAN: Objection. Vague and ambiguous  
2 as to "tremendous." Overly broad.  
3 MR. SALVATY: -- calls for speculation.  
4 Would you use that word, Mr. Payne?  
5 Objection. Leading also.  
6 THE WITNESS: Significant.  
7 Q. BY MR. VILLAGRA: Is it fair for me to  
8 characterize your description of the growth in  
9 enrollment at California multi-track year-round schools  
10 as tremendous?  
11 MR. SEFERIAN: Objection. Argumentative.  
12 MR. VILLAGRA: I'm sorry, over the last 16  
13 years.  
14 MR. SEFERIAN: Objection. Argumentative.  
15 Calls for speculation.  
16 MR. SALVATY: Leading.  
17 THE WITNESS: Yes.  
18 Q. BY MR. VILLAGRA: Do you have an opinion as to  
19 why there has been tremendous growth in the enrollment  
20 at California multi-track year-round schools over the  
21 last 16 years?  
22 MR. SEFERIAN: Objection. Lacks foundation.  
23 Calls for speculation. Calls for an inadmissible  
24 opinion. Overly broad.  
25 THE WITNESS: Yes.

1 Q. BY MR. VILLAGRA: What is that opinion?  
2 MR. SEFERIAN: Same objection.  
3 THE WITNESS: Three factors, Assembly Bill  
4 1650, and that's about a 1989 bill which tied  
5 participation in the state school building program to a  
6 substantial enrollment in multi-track year-round  
7 education; Assembly Bill 87, and that's a 1990 bill,  
8 which did essentially the same thing; and finally just  
9 growing facilities needs.  
10 Q. BY MR. VILLAGRA: Anything else?  
11 A. No.  
12 Q. And how do you know that these three factors  
13 are responsible for the tremendous growth in the  
14 enrollment at California's multi-track year-round  
15 schools over the last 16 years?  
16 MR. SEFERIAN: Objection. Calls for an  
17 inadmissible opinion. Lacks foundation. Calls for  
18 speculation.  
19 THE WITNESS: I was around for both of those  
20 bills and saw their impact as it was reflected in growth  
21 numbers.  
22 Q. BY MR. VILLAGRA: And with respect to the  
23 growing facilities needs, how is it that you know that  
24 has been a factor in the tremendous growth enrollment at  
25 California's multi-track year-round schools?



1 MR. SEFERIAN: Objection. Calls for an  
2 inadmissible opinion. Lacks foundation. Calls for  
3 speculation.

4 THE WITNESS: I think it's just a common sense  
5 correlation.

6 Q. BY MR. VILLAGRA: Let's talk a little bit about  
7 AB 1650.

8 A. Uh-huh.

9 Q. How is it that AB 1650 tied participation in  
10 the school building program to substantial enrollment in  
11 multi-track year-round education?

12 MR. SEFERIAN: Objection. Overly broad. Calls  
13 for a legal opinion.

14 THE WITNESS: It established eight priority  
15 categories, and those priority categories determined who  
16 would go to the front of the facilities line, who would  
17 be second in line, and all the way down to the eighth  
18 position.

19 The first priority categories in that bill you  
20 could only get to by having a substantial enrollment in  
21 multi-track year-round education or taking a substantial  
22 enrollment, and it was called a hit.

23 Q. BY MR. VILLAGRA: And when you refer to school  
24 facilities funds, are you talking about new school  
25 construction funds provided by the State of California?

1 Q. Do you recall how AB 87 modified the priority  
2 that was granted to districts with multi-track  
3 year-round education?

4 MR. SEFERIAN: Objection. Vague and ambiguous  
5 as to "modified." Calls for an inadmissible legal  
6 opinion. Calls for speculation.

7 THE WITNESS: As I recall, it did away with the  
8 eight priority categories of 1650 and replaced them with  
9 fewer categories, maybe four, but I don't remember the  
10 specific number.

11 Q. BY MR. VILLAGRA: And was one of the priority  
12 categories under AB 87 for districts utilizing  
13 multi-track year-round education?

14 MR. SEFERIAN: Objection. Vague and ambiguous  
15 as to "priority categories."

16 MR. SALVATY: Calls for a legal conclusion.

17 THE WITNESS: Yes.

18 Q. BY MR. VILLAGRA: And your understanding is  
19 that that priority remained in existence until 1998; is  
20 that correct?

21 MR. SEFERIAN: Objection. Misstates the  
22 witness' testimony. Calls for an inadmissible legal  
23 opinion.

24 THE WITNESS: In 1998 SB 50 was passed and had  
25 changed that system.

1 A. Yes, I am.

2 Q. And AB 1650 I think you identified as having  
3 been enacted in 1989; is that correct?

4 A. Yes, that's what I said. I believe it was '89.  
5 It might have been '88.

6 Q. Are new school construction funds or  
7 applications for new school construction funds still  
8 given priority today as you've described under AB 1650?

9 MR. SEFERIAN: Objection. Calls for an  
10 inadmissible legal opinion. Vague and ambiguous as to  
11 "priority." Lacks foundation. Calls for speculation.

12 THE WITNESS: No, they're not.

13 Q. BY MR. VILLAGRA: When did priority under AB  
14 1650 stop?

15 MR. SEFERIAN: Same objections.

16 THE WITNESS: It was modified by AB 87, and I  
17 don't remember the nuances of the modification, but  
18 priority stopped completely with SB 50, which was the  
19 1998 state school bond measure.

20 Q. BY MR. VILLAGRA: And when you say "priority,"  
21 you're referring to the priority of applications from  
22 school districts with substantial enrollment in  
23 multi-track year-round education?

24 A. The whole priority system that was introduced  
25 by those two bills.

1 Q. BY MR. VILLAGRA: Do you remember, Mr. Payne,  
2 whether priority was granted to a district simply  
3 because it had multi-track year-round enrollment?

4 MR. SALVATY: Objection.

5 MR. SEFERIAN: Objection. Overly broad. Vague  
6 and ambiguous. Lacks foundation.

7 MR. SALVATY: Calls for a legal conclusion.

8 THE WITNESS: Would you repeat the question.

9 Q. BY MR. VILLAGRA: Sure. Let me rephrase it.  
10 Do you recall whether under AB 87, districts were  
11 granted priority for new school construction funds if  
12 they had substantial enrollment in multi-track  
13 year-round schools --

14 MR. SEFERIAN: Objection. Vague and ambiguous  
15 as to priority. Calls for an inadmissible legal  
16 opinion. Lacks foundation. Calls for speculation.

17 MR. VILLAGRA: Just to finish the question.

18 -- if the project was for -- was to be  
19 operated on a multi-track year-round calendar?

20 MR. SEFERIAN: Same objections.

21 THE WITNESS: Yes. But there is an alternative  
22 to that.

23 Q. BY MR. VILLAGRA: What's the alternative?

24 MR. SEFERIAN: Same objections.

25 THE WITNESS: The alternative was that the

1 funding would be assumed to fund the project as if it  
2 were being operated on a multi-track year-round  
3 education calendar.

4 If, for instance, you were building a school  
5 for 100 kids, fat chance, for 100 kids, that was your  
6 eligibility, the funding would be for 90 kids because it  
7 would be assumed that that project would operate as a  
8 multi-track year-round education school.

9 Now, this is all recollection, and if I'm --  
10 it's not accurate -- or it's not precise.

11 Q. BY MR. VILLAGRA: And that would have afforded  
12 the district submitting a project, as you've described,  
13 the same priority as a district submitting a -- a  
14 district with substantial enrollment in multi-track  
15 year-round education submitting an application for a  
16 project to be operated on a multi-track year-round  
17 calendar?

18 MR. SEFERIAN: Objection. Incomplete and  
19 improper hypothetical question. Calls for an  
20 inadmissible legal opinion. Lacks foundation. Calls  
21 for speculation.

22 MR. SALVATY: Calls for a legal conclusion.  
23 Vague and ambiguous.

24 THE WITNESS: No, that wasn't the same.

25 Q. BY MR. VILLAGRA: It was a lesser priority?

1 Lacks foundation. Calls for speculation.

2 MR. SALVATY: Objection as a leading question.

3 You don't need to adopt his language unless you  
4 want to.

5 THE WITNESS: The State certainly gave  
6 incentives to those choosing to operate multi-track  
7 year-round education.

8 Q. BY MR. VILLAGRA: To your knowledge, has the  
9 State provided other incentives to districts to convert  
10 to multi-track year-round education other than what  
11 you've described to me so far relating to AB 1650 and  
12 AB 87?

13 MR. SEFERIAN: Objection. No foundation.  
14 Calls for speculation. Vague and ambiguous as to  
15 "incentives." Calls for an inadmissible legal opinion.

16 THE WITNESS: There have been several grant  
17 programs, the first of which could be called an  
18 incentive.

19 Q. BY MR. VILLAGRA: Which is that program that  
20 could be called an incentive?

21 A. It was implemented in the '80s, and it did  
22 three things. I don't know the enabling legislation. I  
23 kind of inherited it, so I just got in at the end of it.

24 It allowed a \$25 per student enrolled at a  
25 multi-track year-round education school a

1 MR. SEFERIAN: Same objections.

2 THE WITNESS: No. I should go back and explain  
3 it again a bit.

4 MR. SALVATY: You just need to answer his  
5 questions, Mr. Payne.

6 THE WITNESS: Okay. No.

7 Q. BY MR. VILLAGRA: Do you feel the need to  
8 qualify your answer?

9 MR. SEFERIAN: Objection. He's answered the  
10 question.

11 Q. BY MR. VILLAGRA: Mr. Payne, how is it that AB  
12 1650 and AB 87, in your opinion, contributed to the  
13 tremendous growth in multi-track year-round schools?

14 MR. SEFERIAN: Objection. Calls for an  
15 inadmissible legal opinion. Lacks foundation. Calls  
16 for speculation. Assumes facts not in evidence.

17 THE WITNESS: It gave priority status to those  
18 districts operating multi-track year-round education.

19 Q. BY MR. VILLAGRA: Is it fair to say then that  
20 the State effectively encouraged districts to convert to  
21 multi-track year-round education if those districts  
22 wanted to receive new school construction funding?

23 MR. SEFERIAN: Objection. Misstates the  
24 witness' testimony. Argumentative. Vague and ambiguous  
25 as to "encouraged." Calls for an inadmissible opinion.

1 no-strings-attached grant. It created a sliding scale  
2 grant amount of between zero and \$125 a student for  
3 students enrolled in MTYRE, and it also created an  
4 air-conditioning grant, and the air-conditioning grant  
5 was for those districts implementing or operating MTYRE  
6 who could show a need for air conditioning.

7 Q. And you specifically mentioned that the first  
8 grant, the \$25 per student at multi-track year-round  
9 schools had no strings attached to it.

10 What about the sliding scale grant amount you  
11 mentioned of zero to \$125 per student in multi-track  
12 year-round education?

13 MR. SALVATY: Objection. Calls for a legal  
14 conclusion.

15 MR. SEFERIAN: Objection. Vague and ambiguous.

16 THE WITNESS: I believe that was free of  
17 strings too.

18 Q. BY MR. VILLAGRA: And do you believe that all  
19 three of these grants served as incentives for districts  
20 to convert schools to multi-track year-round education?

21 MR. SEFERIAN: Objection. No foundation.  
22 Calls for speculation. Calls for an inadmissible  
23 opinion.

24 THE WITNESS: Whether they served as an  
25 incentive or not would be up to why the school chose to

1 operate the program. They were called incentive grants,  
 2 and I think that was in the enabling legislation, that  
 3 term.  
 4 Q. BY MR. VILLAGRA: Are districts still today  
 5 eligible for any of the three grants, incentive grants  
 6 that you've described to me?  
 7 MR. SALVATY: Objection.  
 8 MR. SEFERIAN: Objection. Overly broad. Vague  
 9 and ambiguous as to "districts" and "eligible." Calls  
 10 for an inadmissible legal opinion. Lacks foundation.  
 11 THE WITNESS: Two of the grants have  
 12 disappeared. The \$25 grant and the \$125 grant, the  
 13 programs disappeared. The air-conditioning grant still  
 14 exists, but is not funded but any mechanism.  
 15 Q. BY MR. VILLAGRA: Do you recall when the first  
 16 two grants, the \$25 per student and zero to \$125 per  
 17 student grants disappeared?  
 18 A. Yes, I do.  
 19 MR. SALVATY: Objection. Calls for a legal  
 20 opinion.  
 21 Q. BY MR. VILLAGRA: When was that?  
 22 MR. SALVATY: Same objection.  
 23 THE WITNESS: 1990.  
 24 Q. BY MR. VILLAGRA: Is 1990 approximately when  
 25 the operational grants that you discussed yesterday for

1 inadmissible legal opinion. Lacks foundation. Calls  
 2 for speculation. Overly broad.  
 3 THE WITNESS: It was a site specific grant to  
 4 provide air conditioning to year-round schools,  
 5 multi-track year-round schools.  
 6 Q. BY MR. VILLAGRA: Do you know whether the air  
 7 conditioning grant would have covered the maintenance of  
 8 air conditioning units at multi-track year-round  
 9 schools?  
 10 MR. SEFERIAN: Objection. Vague and ambiguous  
 11 as to "covered." Calls for an inadmissible legal  
 12 opinion. Lacks foundation.  
 13 THE WITNESS: I don't know.  
 14 Q. BY MR. VILLAGRA: Mr. Payne, in your opinion,  
 15 is multi-track year-round education a facility strategy,  
 16 and by that I mean a housing strategy used by districts  
 17 to manage growth in enrollment?  
 18 MR. SEFERIAN: Objection. Lacks foundation.  
 19 Calls for speculation. Overly broad. Calls for an  
 20 inadmissible opinion. Vague and ambiguous as to  
 21 "facility," "strategy." Vague as to time.  
 22 MR. SALVATY: It's a leading question also.  
 23 THE WITNESS: I do think it's a facility  
 24 strategy.  
 25 Q. BY MR. VILLAGRA: What do you mean by a

1 multi-track year-round education came to be?  
 2 MR. SALVATY: Objection. Calls for a legal  
 3 opinion.  
 4 MR. SEFERIAN: Objection. Vague and ambiguous.  
 5 THE WITNESS: Yes.  
 6 Q. BY MR. VILLAGRA: And what do you mean when you  
 7 say that the air-conditioning grant for multi-track  
 8 year-round education still exists but is not funded by  
 9 any mechanism?  
 10 A. The funding for that grant came from state  
 11 school construction bond language, there was designated  
 12 a pot of money for it. In SB 50, no pot of money was  
 13 designated.  
 14 Q. Do you know whether the air-conditioning grant  
 15 is for -- what is the purpose of the air-conditioning  
 16 grant, in your understanding?  
 17 MR. SEFERIAN: Objection. Calls for an  
 18 inadmissible legal opinion. Lacks foundation. Vague  
 19 and ambiguous as to "purpose." Calls for speculation.  
 20 Overly broad.  
 21 MR. VILLAGRA: Let me try to rephrase it.  
 22 Q. In your understanding, what are the funds to be  
 23 used for by a district that receives the air  
 24 conditioning grant funds?  
 25 MR. SEFERIAN: Objection. Calls for an

1 "facility strategy"?  
 2 MR. SEFERIAN: Same objections.  
 3 THE WITNESS: To accommodate enrollment when it  
 4 exceeds seating capacity.  
 5 Q. BY MR. VILLAGRA: Mr. Payne, are you familiar  
 6 with the term comprehensive high school?  
 7 A. Yes.  
 8 Q. What does that term refer to?  
 9 MR. SEFERIAN: Objection. Overly broad.  
 10 THE WITNESS: Offering a full curricula of  
 11 classes and choices.  
 12 Q. BY MR. VILLAGRA: Anything else?  
 13 A. Not that I know of.  
 14 Q. Do you have any idea how many comprehensive  
 15 high schools there are in California currently?  
 16 MR. SALVATY: Objection. Vague and ambiguous.  
 17 Calls for speculation.  
 18 THE WITNESS: I don't know.  
 19 Q. BY MR. VILLAGRA: To your knowledge, is there a  
 20 document that would contain that information?  
 21 MR. SEFERIAN: Objection. Calls for  
 22 speculation.  
 23 THE WITNESS: Yes, there is.  
 24 Q. BY MR. VILLAGRA: Does the document that you're  
 25 thinking of have a name or a title?

1 A. I think we call it -- we, the Department --  
2 fingertip facts.  
3 Q. And who -- when you say we call it fingertip  
4 facts, who are you referring to?  
5 A. The Department of Education.  
6 Q. Is the fingertip facts a Department of  
7 Education document?  
8 A. Yes.  
9 MR. SALVATY: Objection. Vague and ambiguous.  
10 THE WITNESS: Yes.  
11 Q. BY MR. VILLAGRA: Is the fingertip facts  
12 created by any particular division of the California  
13 Department of Education?  
14 MR. SEFERIAN: Objection. Calls for  
15 speculation.  
16 THE WITNESS: It is.  
17 Q. BY MR. VILLAGRA: And which?  
18 A. I don't know.  
19 Q. Okay. Mr. Payne, do you know how many  
20 year-round high schools there are in California  
21 currently?  
22 MR. SEFERIAN: Objection. Calls for  
23 speculation.  
24 MR. SALVATY: I thought it was asked and  
25 answered too.

1 THE WITNESS: I don't know.  
2 Q. BY MR. VILLAGRA: Do you have any idea?  
3 A. Seventeen.  
4 Q. What's the basis for that figure?  
5 A. The year-round data that we collect.  
6 Q. Do you have any idea how many multi-track  
7 year-round high schools there are currently in  
8 California?  
9 MR. SEFERIAN: Objection. Calls for  
10 speculation.  
11 THE WITNESS: I meant that 17 to reflect  
12 multi-track high schools.  
13 MR. VILLAGRA: I'm sorry.  
14 THE WITNESS: My fault.  
15 Q. BY MR. VILLAGRA: Seventeen multi-track  
16 year-round high schools, to your knowledge?  
17 A. Yes.  
18 Q. Do you have any idea how many year-round high  
19 schools there are currently in California?  
20 A. I don't know.  
21 Q. To your knowledge, is there a document that  
22 contains information as to how many year-round high  
23 schools there are currently in California?  
24 MR. SEFERIAN: Objection. Calls for  
25 speculation.

1 THE WITNESS: Our data would have that.  
2 Q. BY MR. VILLAGRA: By "our data," you're  
3 referring to?  
4 A. Referring to our division, the records we keep  
5 in our division.  
6 Q. The school facilities planning division?  
7 A. Yes.  
8 MR. VILLAGRA: Can we go off the record for a  
9 "second."  
10 (Discussion held off the record.)  
11 Q. BY MR. VILLAGRA: Mr. Payne, I'm going to show  
12 you a document that's entitled year-round education  
13 2000-2001, year-round districts.  
14 Have you had a chance to take a look at it?  
15 A. I know this document.  
16 Q. And just to add, for the record it's a 55-page  
17 document.  
18 When you were referring to school facilities  
19 planning division data that would reflect the number of  
20 year-round schools in California, is this the data that  
21 you were referring to, the document that I've put in  
22 front of you entitled 2000-2001 year-round districts?  
23 A. Yes, it is.  
24 Q. And from looking at this document, can you tell  
25 me, does this refresh your recollection as to how many

1 year-round high schools there are in California  
2 currently?  
3 MR. SEFERIAN: Do you want him to count from  
4 this document?  
5 MR. VILLAGRA: No. No. I think --  
6 MR. SALVATY: Do you have a memory of it, and  
7 does this refresh it?  
8 MS. CIAS: It's on this document. Number of  
9 year-round high schools is on this document.  
10 MR. VILLAGRA: Oh, is it really?  
11 MS. CIAS: Yeah.  
12 MR. REED: This document is Exhibit 205?  
13 MS. CIAS: The 2001 statistics that you handed  
14 out this morning.  
15 MR. REED: Exhibit SAD-205 is what she's  
16 talking about?  
17 MR. VILLAGRA: Yeah, it is.  
18 Q. Is it reflected on the document I've put in  
19 front of you?  
20 A. You could construct that information from this  
21 document.  
22 Q. Okay. Taking the cue, thank you, if you could  
23 take a look at Exhibit 205, does that document reflect  
24 the number of year-round high schools that there are in  
25 California?

1 MR. SEFERIAN: I'll object. The document  
2 speaks for itself.  
3 MR. SALVATY: Calls for speculation.  
4 THE WITNESS: Yes, it does.  
5 Q. BY MR. VILLAGRA: And what is that figure?  
6 A. Forty multi-track and single-track combined.  
7 Q. Mr. Payne, do you have an opinion as to whether  
8 the number of multi-track year-round high schools in  
9 California is low?  
10 MR. SALVATY: Objection. Vague and ambiguous.  
11 MR. SEFERIAN: Objection. Calls for an  
12 inadmissible opinion. Lacks foundation. Calls for  
13 speculation. Incomplete and improper hypothetical  
14 question. Vague and ambiguous as to "low."  
15 THE WITNESS: I don't know what you mean by  
16 "low."  
17 Q. BY MR. VILLAGRA: Okay. Do you have an opinion  
18 as to whether the number of multi-track year-round high  
19 schools in California is a small number relative to the  
20 total number of comprehensive high schools in  
21 California?  
22 MR. SEFERIAN: Objection. Vague and ambiguous.  
23 Calls for an inadmissible opinion. Lacks foundation.  
24 Calls for speculation.  
25 THE WITNESS: It is a low number using that for

1 a comparison.  
2 Q. BY MR. VILLAGRA: Do you have an opinion as to  
3 why the number of multi-track year-round high schools is  
4 low using the comparison I've described?  
5 MR. SEFERIAN: Objection. No foundation.  
6 Calls for speculation. Calls for an inadmissible  
7 opinion. Vague and ambiguous as to "low." Calls for  
8 speculation.  
9 THE WITNESS: Yes.  
10 Q. BY MR. VILLAGRA: What is that opinion?  
11 MR. SEFERIAN: Same objections.  
12 THE WITNESS: Enrollment growth hasn't bubbled  
13 up in great numbers to the high school level. That's  
14 part of the answer. The second part of the answer, it  
15 seems more problematic for some people to implement  
16 MTYRE at the high school.  
17 Q. BY MR. VILLAGRA: And when you refer to MTYRE,  
18 you're referring to multi-track year-round education?  
19 A. I am.  
20 Q. What do you mean when you say enrollment growth  
21 has not bubbled up to the high school level?  
22 MR. SEFERIAN: Objection. Calls for an  
23 inadmissible opinion. Lacks foundation. Calls for  
24 speculation.  
25 THE WITNESS: Population trends that I have

1 seen from the Department of Finance have indicated that  
2 enrollment is most impacted -- enrollment is most  
3 significant at the elementary schools, less so at the  
4 middle schools and less so at the high schools.  
5 Q. BY MR. VILLAGRA: What population trends data  
6 from the Department of Finance are you referring to?  
7 A. Just population figures from the Department of  
8 Finance. I don't know what else to call them.  
9 Q. Are they contained in a particular report?  
10 A. There's a printout that they produce at least  
11 once a year.  
12 Q. And what do you mean when you say that  
13 multi-track year-round education seems more problematic  
14 for some people to implement at the high school level?  
15 MR. SEFERIAN: Objection. Calls for an  
16 inadmissible opinion. Lacks foundation. Calls for  
17 speculation. Overly broad.  
18 THE WITNESS: Sports programs, often sacrosanct  
19 for people, are considered to be at risk. The band  
20 program for the same reason, and electives are much  
21 harder to offer on every track in smaller high schools.  
22 Q. BY MR. VILLAGRA: I apologize for looking back  
23 a little. How is it that you know that enrollment has  
24 not bubbled up to the high school level?  
25 MR. SEFERIAN: Objection. Lacks foundation.

1 Calls for speculation. Calls for an inadmissible  
2 opinion.  
3 MR. SALVATY: Asked and answered.  
4 THE WITNESS: I haven't seen that reflected on  
5 the Department of Finance figures.  
6 Q. BY MR. VILLAGRA: And how is it that you know  
7 that multi-track year-round education seems more  
8 problematic for some people to implement at the high  
9 school level?  
10 MR. SEFERIAN: Objection. Calls for an  
11 inadmissible opinion. Lacks foundation. Calls for  
12 speculation.  
13 THE WITNESS: Testimony.  
14 Q. BY MR. VILLAGRA: From?  
15 A. Parents primarily.  
16 Q. Who secondarily?  
17 MR. SEFERIAN: Objection. Argumentative.  
18 Assumes facts not in evidence.  
19 THE WITNESS: Probably superintendents.  
20 Q. BY MR. VILLAGRA: Anyone else?  
21 A. Principals.  
22 Q. Anyone else?  
23 A. No.  
24 Q. And you had given me three ways in which  
25 multi-track year-round education was more problematic to

1 implement at the high school level, sports, band and  
 2 electives. Are there any others?  
 3 MR. SEFERIAN: Objection. No foundation.  
 4 Calls for speculation. Calls for an inadmissible  
 5 opinion. Overly broad.  
 6 THE WITNESS: I think I said seem to be  
 7 problematic, didn't I?  
 8 MR. VILLAGRA: Okay.  
 9 THE WITNESS: Extracurricular activities.  
 10 That's it.  
 11 Q. BY MR. VILLAGRA: How is it that sports are  
 12 considered to be at risk in multi-track year-round  
 13 schools, to your knowledge?  
 14 MR. SEFERIAN: Objection. Overly broad. Vague  
 15 and ambiguous as to at "risk." Lacks foundation. Calls  
 16 for speculation.  
 17 THE WITNESS: Students who are off track are  
 18 expected to come back to school for athletic practices  
 19 and games.  
 20 Q. BY MR. VILLAGRA: And, to your knowledge, what  
 21 is the consequence of expecting students who are off  
 22 track to come back for practices and games?  
 23 MR. SEFERIAN: Objection. Overly broad. Vague  
 24 and ambiguous as to "consequence." Lacks foundation.  
 25 Calls for speculation.

1 THE WITNESS: From my experience, based upon  
 2 testimony, there's little consequence.  
 3 Q. BY MR. VILLAGRA: Have you ever studied whether  
 4 multi-track year-round education impacts sports programs  
 5 in California high schools?  
 6 MR. SEFERIAN: Objection. Vague and ambiguous  
 7 as to "study" and "impacts." Vague as to time. Lacks  
 8 foundation.  
 9 THE WITNESS: I don't know what "study" means,  
 10 but I have inquired.  
 11 Q. BY MR. VILLAGRA: Who have you inquired from?  
 12 A. Principals who have operated multi-track.  
 13 Q. Do you have any idea how many principals you've  
 14 inquired of?  
 15 A. No, I don't.  
 16 Q. And what have you inquired of principals  
 17 regarding sports programs at multi-track year-round high  
 18 schools?  
 19 A. Has there been an impact, are the fears  
 20 confirmed.  
 21 Q. And what have principals responded to your  
 22 inquiries?  
 23 MR. SEFERIAN: Objection. Overly broad. Calls  
 24 for a narrative.  
 25 THE WITNESS: Maria Tostada felt that the

1 athletic program was improved.  
 2 Q. BY MR. VILLAGRA: And why did she feel that?  
 3 MR. SEFERIAN: Objection. Calls for  
 4 speculation.  
 5 Q. BY MR. VILLAGRA: Did she explain why she  
 6 thought the athletic program was improved?  
 7 A. Yes.  
 8 Q. And how did she explain the program was  
 9 improved?  
 10 A. Because student athletes off track prefer to be  
 11 unfettered from their studies.  
 12 Q. Do you know how it is that Maria Tostada came  
 13 to the conclusion that the athletic program had  
 14 improved?  
 15 A. She was the principal of a big high school in  
 16 Los Angeles. I don't remember the high school.  
 17 Q. Do you know whether she spoke to any of the  
 18 coaches at the high school she was a principal at in Los  
 19 Angeles?  
 20 MR. SEFERIAN: Objection. Calls for  
 21 speculation.  
 22 THE WITNESS: I don't know.  
 23 Q. BY MR. VILLAGRA: Do you know if she spoke to  
 24 anyone about the impact of multi-track year-round  
 25 education on the sports program at the high school she

1 was a principal at?  
 2 A. I don't know that.  
 3 Q. And you mentioned earlier that the same concern  
 4 is raised with respect to band?  
 5 A. Yes.  
 6 Q. With respect to electives, what do you mean  
 7 when you say it's much harder to offer electives on  
 8 every track in smaller high schools?  
 9 MR. SEFERIAN: Objection. Lacks foundation.  
 10 Calls for speculation. Calls for an inadmissible  
 11 opinion. Overly broad.  
 12 THE WITNESS: A comprehensive high school of  
 13 2000 can offer singleton classes, a multi-track  
 14 comprehensive high school of 2000 is effectively four  
 15 high schools of 500, and has to be careful where they  
 16 place those singleton classes.  
 17 Q. BY MR. VILLAGRA: What are you referring to  
 18 when you use the term "singleton" class?  
 19 A. Classes that would typically have only an  
 20 enrollment of -- typically have an enrollment just small  
 21 enough to offer one section, AP French, for instance.  
 22 Q. Let's take the example of one AP French class.  
 23 What are a high school's options in terms of offering AP  
 24 French, and let's take your example of a multi-track  
 25 comprehensive high school of 2000 students, what are the

1 options available to the school in terms of offering the  
 2 AP French class?  
 3 MR. SALVATY: Objection. Calls for  
 4 speculation. Incomplete hypothetical. Vague and  
 5 ambiguous.  
 6 Q. BY MR. VILLAGRA: Do you understand the  
 7 question?  
 8 A. I do.  
 9 Q. Okay.  
 10 MR. SEFERIAN: Same objections.  
 11 THE WITNESS: One -- these are options, one,  
 12 putting the AP French class just on one track; two,  
 13 putting the AP French class on several tracks; and  
 14 three, as a variation of one, putting the AP class on  
 15 one track and rainbow tracking.  
 16 Q. BY MR. VILLAGRA: Are there any other options,  
 17 to your knowledge?  
 18 MR. SEFERIAN: Objection. Lacks foundation.  
 19 Calls for speculation. Incomplete and improper  
 20 hypothetical question.  
 21 THE WITNESS: There are no other options that I  
 22 know of.  
 23 Q. BY MR. VILLAGRA: How do you know that these  
 24 are the options available to a high school -- to a  
 25 multi-track year-round high school in terms of offering

1 electives?  
 2 MR. SEFERIAN: Objection. Calls for an  
 3 inadmissible opinion. Lacks foundation. Calls for  
 4 speculation.  
 5 MR. SALVATY: Misstates testimony.  
 6 THE WITNESS: I'm sorry, would you repeat the  
 7 question.  
 8 (Record read.)  
 9 THE WITNESS: From testimony.  
 10 Q. BY MR. VILLAGRA: From?  
 11 A. Principals.  
 12 Q. Principals who operate multi-track year-round  
 13 schools?  
 14 A. Yes.  
 15 Q. Do you have an understanding as to what the  
 16 effect is of putting, in the example we've been  
 17 discussing, the AP French class on only one track?  
 18 MR. SEFERIAN: Objection. Vague and ambiguous  
 19 as to "effect." Incomplete and improper hypothetical  
 20 question. Overly broad. Calls for an inadmissible  
 21 opinion. Lacks foundation. Calls for speculation.  
 22 MR. SALVATY: Can I ask for that question to be  
 23 read back?  
 24 (Record read.)  
 25 MR. SALVATY: Effect on what? Vague and

1 ambiguous. Objection. Unintelligible.  
 2 MR. SEFERIAN: Do you understand the question?  
 3 THE WITNESS: I do understand the question.  
 4 Using option No. 1 that I mentioned, the effect would be  
 5 that only students on that track could take that class.  
 6 Using option No. 3, the effect would be that some  
 7 students who are off track would have to come back to  
 8 school to take that class at some time during the year.  
 9 Q. BY MR. VILLAGRA: In terms of option one, then,  
 10 if you put the AP French class on one track, three  
 11 quarters of the students at the high school would not  
 12 have access to that AP French course; is that correct?  
 13 MR. SEFERIAN: Objection. Incomplete and  
 14 improper hypothetical question. Lacks foundation.  
 15 Calls for speculation. Misstates the witness'  
 16 testimony.  
 17 THE WITNESS: Well, three quarters of the  
 18 students in that class wouldn't qualify to take AP  
 19 French. But, yes, using option No. 1, those students  
 20 who did qualify, would have to be on that track or they  
 21 wouldn't have access to it.  
 22 Q. BY MR. VILLAGRA: In terms of the third option,  
 23 what is it that you're referring to when you refer to  
 24 rainbow tracking?  
 25 A. Rainbow tracking is when students from every

1 track combine into one track for a specific class.  
 2 Q. Looking at the hypothetical that we've been  
 3 discussing, would you recommend option one, that the AP  
 4 French class be put on a single track?  
 5 MR. SALVATY: Recommend to whom? Objection.  
 6 Vague and ambiguous. Overbroad. Calls for speculation.  
 7 Calls for expert opinion improperly. Recommend to whom?  
 8 MR. SEFERIAN: Vague and ambiguous as to  
 9 "recommend." Vague as to time. Vague as to audience.  
 10 THE WITNESS: That would not be my choice of  
 11 the three choices.  
 12 Q. BY MR. VILLAGRA: Why is that?  
 13 MR. SEFERIAN: Same objections. Lacks  
 14 foundation. Calls for speculation. Calls for an  
 15 inadmissible opinion. Incomplete and improper  
 16 hypothetical question.  
 17 THE WITNESS: It doesn't give full exposure of  
 18 that class to the students.  
 19 Q. BY MR. VILLAGRA: In your discussions with  
 20 principals and administrators at multi-track year-round  
 21 schools, have you discussed this issue with what to do  
 22 with electives?  
 23 MR. SEFERIAN: Objection. Overly broad.  
 24 MR. SALVATY: Vague and ambiguous as to this  
 25 "issue."

1 THE WITNESS: Yes.  
 2 Q. BY MR. VILLAGRA: In those discussions have you  
 3 ever offered your recommendation as to which option a  
 4 principal or administrator should pursue in terms of  
 5 offering electives at the high school?  
 6 MR. SEFERIAN: Objection. Overly broad. Vague  
 7 and ambiguous as to "recommendation." Vague as to time.  
 8 THE WITNESS: Yes.  
 9 Q. BY MR. VILLAGRA: On many occasions, or one?  
 10 MR. SALVATY: Vague and ambiguous. Overbroad.  
 11 THE WITNESS: Certainly more than one. Many  
 12 occasions.  
 13 Q. BY MR. VILLAGRA: Over the years?  
 14 A. Yes.  
 15 Q. Do you recall the last time that you had a  
 16 discussion with a principal or administrator at a  
 17 multi-track year-round high school on the subject of  
 18 electives?  
 19 A. No, I don't.  
 20 Q. In the hypothetical that we were discussing,  
 21 the multi-track year-round comprehensive high school of  
 22 2000 students, the second option was putting AP French  
 23 on several tracks. Is that an option that you would  
 24 recommend to principals or administrators?  
 25 MR. SEFERIAN: Objection. Incomplete and

1 two tracks. The third track then rainbows up to this  
 2 track and then rainbows down to this track and completes  
 3 the course in an articulated, consistent manner. So by  
 4 putting that AP French class on two of the three tracks,  
 5 all three tracks take AP French.  
 6 Q. BY MR. VILLAGRA: Okay. And at a four-track  
 7 high school, would it take three out of the four tracks?  
 8 MR. SEFERIAN: Objection. Vague and ambiguous.  
 9 Incomplete and improper hypothetical question. Lacks  
 10 foundation. Calls for speculation.  
 11 MR. SALVATY: Is there a question pending?  
 12 (Record read.)  
 13 THE WITNESS: I'm not sure there are four-track  
 14 high schools, and, no, it would take two. You could do  
 15 it two out of the four tracks.  
 16 Q. BY MR. VILLAGRA: So it's your understanding  
 17 that all the multi-track year-round high schools in  
 18 California currently are on the three-track schedule?  
 19 MR. SEFERIAN: Objection. Misstates the  
 20 witness' testimony. Calls for speculation.  
 21 MR. SALVATY: Improper, leading question.  
 22 THE WITNESS: I believe they're all Concept 6  
 23 high schools. I could be wrong.  
 24 Q. BY MR. VILLAGRA: Just to be clear on this,  
 25 when you were describing to me how you could provide

1 improper hypothetical question. Vague and ambiguous.  
 2 Overly broad. Lacks foundation. Calls for speculation.  
 3 THE WITNESS: Yes.  
 4 Q. BY MR. VILLAGRA: Why is that?  
 5 MR. SEFERIAN: Same objections.  
 6 THE WITNESS: It gives full access to the  
 7 singleton class to all students.  
 8 Q. BY MR. VILLAGRA: Is it fair to say to provide  
 9 full access to all students, the AP French class would  
 10 have to be offered on all four tracks in our  
 11 hypothetical?  
 12 MR. SEFERIAN: Objection. Incomplete and  
 13 improper hypothetical question. Lacks foundation.  
 14 Calls for speculation.  
 15 MR. SALVATY: It's an improper, leading  
 16 question.  
 17 THE WITNESS: It's not fair to say that.  
 18 Q. BY MR. VILLAGRA: Okay. Why not?  
 19 MR. SEFERIAN: Same objections.  
 20 THE WITNESS: I'd have to draw you a chart.  
 21 MR. SEFERIAN: I don't want you to draw a  
 22 chart. You can try to explain it, but we're not here to  
 23 draw pictures.  
 24 THE WITNESS: The LA Unified model in a  
 25 three-track high school where they put that singleton on

1 students full access to the AP French class without  
 2 putting it on all the tracks at the school, did your  
 3 answer depend on whether the school was allowing rainbow  
 4 tracking?  
 5 MR. SEFERIAN: Objection. Incomplete and  
 6 improper hypothetical question. Lacks foundation.  
 7 Calls for speculation.  
 8 MR. SALVATY: Misstates testimony as to full  
 9 access. Those were your words, Counsel.  
 10 MR. VILLAGRA: We can go back in the record.  
 11 His answer was to option 1, why it was preferable, that  
 12 it gives full access to all students. I'm just trying  
 13 to unpack what he told me.  
 14 MR. SALVATY: The record will speak for itself.  
 15 THE WITNESS: I'm sorry, what was the question  
 16 again?  
 17 MR. VILLAGRA: Do you mind reading it back?  
 18 (Record read.)  
 19 Q. BY MR. VILLAGRA: Do you understand the  
 20 question?  
 21 A. I believe I do.  
 22 It would require rainbow tracking or putting  
 23 that AP French class on every class.  
 24 Q. To provide full access to all students to the  
 25 AP French class; is that correct?



1 MR. SEFERIAN: Objection. Vague and ambiguous  
2 as to "full access." Incomplete and improper  
3 hypothetical question. Lacks foundation. Calls for  
4 speculation.

5 MR. SALVATY: Misstates his previous testimony.

6 THE WITNESS: To provide access to those  
7 students who would qualify for that singleton, yes.

8 Q. BY MR. VILLAGRA: To provide full access to  
9 those students who would qualify for the AP French  
10 class?

11 MR. SEFERIAN: Same objections.

12 Q. BY MR. VILLAGRA: Is that correct?

13 MR. SALVATY: Same objections.

14 THE WITNESS: Yes.

15 MR. SEFERIAN: May we take a brief break?

16 MR. VILLAGRA: Actually, I have a couple of  
17 follow-up.

18 Q. To your knowledge, Mr. Payne, which of these  
19 three options is most prevalent in multi-track  
20 year-round high schools in California?

21 MR. SEFERIAN: Objection. Vague and ambiguous  
22 as to "options." Lacks foundation. Calls for  
23 speculation. Overly broad.

24 MR. SALVATY: Which option, French class?

25 MR. VILLAGRA: In terms of electives.

1 at the high school level seems problematic. Would you  
2 say that it seems programmatically problematic?

3 MR. SEFERIAN: Objection. Vague and ambiguous  
4 as to "programmatically problematic." Calls for an  
5 inadmissible opinion. Lacks foundation. Calls for  
6 speculation. Overly broad. Vague as to time. Vague  
7 and ambiguous.

8 MR. SALVATY: It's a leading question.

9 THE WITNESS: Well, the key word there is seem.  
10 Indeed it isn't, but because it's a change, it appears  
11 to be that way initially.

12 Q. BY MR. VILLAGRA: When we were talking about  
13 the option available to a multi-track year-round high  
14 school, option one was putting all of the AP courses on  
15 one track, right?

16 A. Yes.

17 MR. SALVATY: I thought it was one AP class we  
18 were talking about.

19 THE WITNESS: It was. I'm sorry, it was AP  
20 French class.

21 Q. BY MR. VILLAGRA: And some high schools have  
22 more than one AP course; is that correct?

23 A. Yes.

24 Q. And to expand the analogy at a high school  
25 where there was more than one AP class, option one, as

1 MR. SEFERIAN: Lacks foundation. Calls for  
2 speculation. Objection.

3 THE WITNESS: I have no knowledge of which is  
4 most prevalent.

5 Q. BY MR. VILLAGRA: And I believe I asked you  
6 about the first and you said it was not your choice.

7 Do you have any preference among the three for  
8 offering electives at multi-track year-round high  
9 schools?

10 MR. SEFERIAN: Objection. Overly broad. Vague  
11 and ambiguous. Calls for an inadmissible opinion.  
12 Incomplete and improper hypothetical question. Calls  
13 for speculation.

14 THE WITNESS: I do not have a preference of  
15 those two.

16 Q. BY MR. VILLAGRA: And those two being options  
17 two and three as you've described them?

18 A. Yes.

19 MR. VILLAGRA: We can take a break now if you  
20 want.

21 MR. SEFERIAN: Thank you.

22 (Recess taken.)

23 (Mr. Reed not present.)

24 Q. BY MR. VILLAGRA: And I know, Mr. Payne, that  
25 you've testified that multi-track year-round education

1 we've been discussing it, would be to put all the AP  
2 courses on one track; is that correct?

3 MR. SEFERIAN: Objection. Misstates the  
4 witness' testimony. Improper and incomplete  
5 hypothetical question. Overly broad. Calls for an  
6 inadmissible opinion. Calls for speculation. Lacks  
7 foundation.

8 THE WITNESS: That's not correct.

9 Q. BY MR. VILLAGRA: Okay. Going back to the  
10 hypothetical of the one AP French class at the  
11 comprehensive high school of 2000 students. If you --  
12 take that back.

13 Mr. Payne, do you know who Robert Rosenfeld is?

14 A. I don't.

15 Q. Do you recall ever communicating with him?

16 MR. SEFERIAN: Objection. Calls for  
17 speculation.

18 THE WITNESS: I believe I wrote him a letter,  
19 but I'm not sure.

20 Q. BY MR. VILLAGRA: Do you recall what the letter  
21 was about?

22 A. No.

23 Q. Do you recall when the letter was written?

24 A. No.

25 Q. Do you recall the last time you saw the letter?

1 MR. SALVATY: Objection. Calls for  
 2 speculation, all of these questions.  
 3 THE WITNESS: No.  
 4 Q. BY MR. VILLAGRA: Do you believe, Mr. Payne,  
 5 that at the high school level, despite its apparent  
 6 problems as we've been discussing, multi-track  
 7 year-round education, nonetheless, starts to look good?  
 8 MR. SEFERIAN: Objection. Vague and ambiguous  
 9 as to "apparent problems." Argumentative. Vague and  
 10 ambiguous as to "starts to look good." No foundation.  
 11 Calls for speculation. Calls for an inadmissible  
 12 opinion. Unintelligible. Overly broad.  
 13 MR. SALVATY: It's an improper, leading  
 14 question.  
 15 What problems are we talking about?  
 16 THE WITNESS: I would need specific instances  
 17 when I might have made a statement like that or when I  
 18 would make a statement like that.  
 19 Q. BY MR. VILLAGRA: Do you believe you have made  
 20 statements like that in the past?  
 21 MR. SEFERIAN: Objection. Calls for  
 22 speculation. Vague and ambiguous as to "statements like  
 23 that."  
 24 MR. VILLAGRA: And the statement being that at  
 25 some point, despite its complications, multi-track

1 year-round education starts to look good.  
 2 MR. SEFERIAN: Same objections.  
 3 THE WITNESS: I don't know what complications  
 4 you're talking about. I would say that given some  
 5 complications, I would make that statement.  
 6 Q. BY MR. VILLAGRA: What are the "some  
 7 complications" that you're referring to?  
 8 MR. SEFERIAN: Objection. Overly broad. Calls  
 9 for an inadmissible opinion. Vague and ambiguous.  
 10 THE WITNESS: Severe overcrowding.  
 11 Q. BY MR. VILLAGRA: So is it fair to say that in  
 12 the face of severe overcrowding, multi-track year-round  
 13 education, in your opinion, looks good?  
 14 MR. SEFERIAN: Objection. Calls for an  
 15 inadmissible opinion. Vague and ambiguous as to "severe  
 16 overcrowding." Lacks foundation. Calls for  
 17 speculation. Overly broad.  
 18 MR. SALVATY: Misleading and unfair question.  
 19 THE WITNESS: I would say it can be a good  
 20 alternative, yes.  
 21 Q. BY MR. VILLAGRA: And what would you describe  
 22 as severe overcrowding?  
 23 MR. SEFERIAN: Objection. Vague and ambiguous.  
 24 THE WITNESS: I can't quantify that.  
 25 Q. BY MR. VILLAGRA: There's no percentage over

1 capacity that would signify severe overcrowding for you?  
 2 MR. SEFERIAN: Objection. Overly broad.  
 3 Vague. Calls for an inadmissible opinion. Vague and  
 4 ambiguous as to capacity.  
 5 THE WITNESS: It's contextual. It depends upon  
 6 specifics to the site.  
 7 Q. BY MR. VILLAGRA: What sort of specifics to the  
 8 site does your answer depend on?  
 9 MR. SEFERIAN: Objection. Calls for an  
 10 inadmissible opinion. Lacks foundation. Incomplete and  
 11 improper hypothetical question.  
 12 THE WITNESS: Size of the site, existing  
 13 facilities, conditions of the building.  
 14 Q. BY MR. VILLAGRA: Anything else?  
 15 MR. SEFERIAN: Same objections.  
 16 THE WITNESS: No.  
 17 Q. BY MR. VILLAGRA: And when you refer to "size,"  
 18 what are you referring to?  
 19 A. Acres.  
 20 Q. And when you refer to "existing facilities,"  
 21 what do you mean?  
 22 MR. SEFERIAN: Same objections.  
 23 THE WITNESS: Number of classrooms, size of the  
 24 gym, multi-purpose room, cafeteria and restrooms.  
 25 Q. BY MR. VILLAGRA: And what is it in terms of,

1 for example, the size of the gym that would make  
 2 multi-track year-round education a viable option, in  
 3 your opinion?  
 4 MR. SEFERIAN: Objection. Incomplete and  
 5 improper hypothetical question. Lacks foundation.  
 6 Calls for speculation. Overly broad. Vague and  
 7 ambiguous.  
 8 MR. SALVATY: Assumes facts not in evidence and  
 9 misstates testimony also.  
 10 THE WITNESS: Whether it can accommodate the  
 11 educational program, the physical education program.  
 12 Q. BY MR. VILLAGRA: All year long, is that the  
 13 issue?  
 14 MR. SEFERIAN: Same objections.  
 15 THE WITNESS: I don't understand that question.  
 16 Q. BY MR. VILLAGRA: Okay. I guess I'm having a  
 17 little difficulty understanding how the size of the gym  
 18 relates to this.  
 19 My understanding is that at a traditional  
 20 school you'd have, say, 100 students on campus during  
 21 the school year. If you went multi-track year-round and  
 22 you went to a four-track calendar, for example, you  
 23 would still only have 100 students on campus at any  
 24 given time. So how is it that the size of the gym would  
 25 relate to whether multi-track year-round education would

1 be a viable option?  
 2 MR. SEFERIAN: Objection. Incomplete and  
 3 improper hypothetical question. No foundation. Calls  
 4 for speculation.  
 5 Q. BY MR. VILLAGRA: Does that make sense?  
 6 MR. SEFERIAN: Same objections.  
 7 THE WITNESS: Yes.  
 8 MR. VILLAGRA: Okay.  
 9 THE WITNESS: If you had 150 students who had  
 10 to use that gym on a traditional calendar, the gym would  
 11 be overcrowded. It couldn't accommodate those extra 50  
 12 kids.  
 13 Q. BY MR. VILLAGRA: Okay. When we refer to the  
 14 conditions of buildings, what are you referring to?  
 15 MR. SEFERIAN: Objection. Incomplete improper  
 16 hypothetical question. No foundation. Calls for  
 17 speculation.  
 18 THE WITNESS: If the buildings were in  
 19 disrepair. That's all.  
 20 Q. BY MR. VILLAGRA: Okay. So if the buildings  
 21 were in disrepair, would that militate against  
 22 converting to multi-track year-round education?  
 23 MR. SEFERIAN: Objection. Overly broad. Vague  
 24 and ambiguous as to "disrepair." Incomplete and  
 25 improper hypothetical question. No foundation. Calls

1 produced. And I'm not sure what document request in  
 2 particular you're referring to. But I'll go ahead and  
 3 question Mr. Payne and we can note your objection for  
 4 the record.  
 5 MR. SALVATY: Yeah, let me just add, I think --  
 6 I'm not sure, but I think this was produced the day  
 7 before the deposition, and so I would just join in the  
 8 objection to the extent a large number of documents were  
 9 dumped on us the day before the deposition began. They  
 10 were documents that were requested long ago and many of  
 11 which, I believe, had been withheld on work product  
 12 privilege grounds. They've now been dumped on us the  
 13 day before the deposition because plaintiffs wanted to  
 14 question Mr. Payne about the documents, and so I join in  
 15 the objection on that basis.  
 16 MR. VILLAGRA: Okay.  
 17 MR. SEFERIAN: Yes, we did receive a copy of  
 18 this document the day before Mr. Payne's deposition  
 19 began, but I was referring to my understanding that we  
 20 did not receive this document in response to specific  
 21 discovery requests that were previously propounded in  
 22 the case.  
 23 MR. VILLAGRA: I'll just note your objection to  
 24 the characterization of our dumping documents or  
 25 improperly withholding documents.

1 for speculation. Vague and ambiguous. Vague as to  
 2 "militate."  
 3 THE WITNESS: It would have to be considered in  
 4 the options.  
 5 MR. VILLAGRA: I'd like to mark as Exhibit 207  
 6 a two-page letter Bates stamped PLTF 05846 to 05847.  
 7 It's an August 29th, 1994 letter from Mr. Payne to  
 8 Mr. Rosenfeld.  
 9 (Exhibit SAD-207 was marked.)  
 10 Q. BY MR. VILLAGRA: Let me know when you've had a  
 11 chance to review that. Have you had a chance to review  
 12 Exhibit 207?  
 13 A. Yes, I have.  
 14 MR. SEFERIAN: I'm going to object to the  
 15 introduction of this document, Exhibit 207, and all  
 16 questions regarding the document on the grounds that the  
 17 document was requested in discovery, defendants  
 18 requested this document and other similar documents from  
 19 plaintiffs, and the document has not been produced in  
 20 discovery. And I think it's -- I don't believe it's  
 21 been produced in discovery, and I don't think it's fair  
 22 that the document be introduced or be used in deposition  
 23 if it has been requested in discovery and not produced  
 24 before deposition.  
 25 MR. VILLAGRA: I believe that document has been

1 Q. Mr. Payne, looking at page 2, is that your  
 2 signature?  
 3 A. Yes, that is.  
 4 Q. Do you recall writing a letter to Mr. Rosenfeld  
 5 in 1994?  
 6 A. I do now.  
 7 Q. This document refreshes your recollection?  
 8 A. Yes.  
 9 Q. And what is this letter, Exhibit 207?  
 10 MR. SALVATY: Objection. Vague and ambiguous.  
 11 Q. BY MR. VILLAGRA: What prompted you to write  
 12 Exhibit 207?  
 13 MR. SEFERIAN: Objection. Calls for  
 14 speculation.  
 15 THE WITNESS: It just appears that I received a  
 16 request. I don't remember the specific request for  
 17 information.  
 18 Q. BY MR. VILLAGRA: Do you believe that you wrote  
 19 the letter that is Exhibit 207?  
 20 A. Yes, I do.  
 21 Q. Looking at the second full paragraph of Exhibit  
 22 207, the second sentence says, yet of the 807  
 23 comprehensive high schools in California, only 14,  
 24 parenthesis, 12 of these from Los Angeles Unified, close  
 25 parenthesis, operate using MTYRE calendars. Do you see

1 that?

2 A. Yes.

3 Q. And MTYRE refers to multi-track year-round  
4 education; is that correct?

5 A. It does.

6 Q. Why did you parenthetically note that 12 of the  
7 14 comprehensive high schools operating on multi-track  
8 year-round calendars were in Los Angeles Unified?

9 MR. SALVATY: If you recall.

10 MR. SEFERIAN: Objection. Calls for  
11 speculation.

12 THE WITNESS: I have no idea.

13 Q. BY MR. VILLAGRA: Do you see at the start of  
14 the third full paragraph it says, second, high school  
15 MTYRE is grammatically problematic?

16 A. Yes, I do.

17 Q. You've testified here today that you believe  
18 that multi-track year-round education seems  
19 grammatically problematic; is that correct?

20 A. Yes.

21 MR. SEFERIAN: Objection. The record speaks  
22 for itself.

23 Q. BY MR. VILLAGRA: Has your opinion changed  
24 since 1994?

25 MR. SEFERIAN: Objection. Argumentative.

1 high school offering one AP French class and one AP  
2 calculus class, and the first option described in the  
3 letter is they can all be put on one track, parenthesis,  
4 de facto segregation by ability, close parenthesis.

5 MR. SEFERIAN: Objection -- I'm sorry.

6 Q. BY MR. VILLAGRA: Do you recall what you meant  
7 by "de facto segregation by ability"?

8 MR. SEFERIAN: Objection. Misstates the  
9 document. It's argumentative. Calls for an  
10 inadmissible opinion. Lacks foundation.

11 THE WITNESS: Yes, I do.

12 Q. BY MR. VILLAGRA: What did you mean?

13 MR. SEFERIAN: Same objections.

14 THE WITNESS: That it's wrong to have a smart  
15 track.

16 Q. BY MR. VILLAGRA: A smart track being a track  
17 with all of the AP courses on it?

18 A. That's right.

19 Q. And why would it be wrong to have a smart  
20 track?

21 MR. SEFERIAN: Objection. Overly broad. Vague  
22 and ambiguous. Calls for an inadmissible opinion.  
23 Lacks foundation. Calls for speculation. Incomplete  
24 and improper hypothetical question. Vague and ambiguous  
25 as to "wrong."

1 Misstates the witness' testimony. Vague and ambiguous.  
2 Vague and ambiguous as to "opinion."

3 MR. SALVATY: Objection. Misleading and unfair  
4 question also.

5 THE WITNESS: My opinion hasn't change. It is  
6 more consistent. It's always been consistent with what  
7 I've said today, "seems," than the way I expressed it  
8 here, "is."

9 Q. BY MR. VILLAGRA: In the very next sentence it  
10 says to divide a high school in, say, four tracks is to  
11 compromise the number of electives available to  
12 students. Do you see that?

13 A. Yes, I do.

14 Q. Do you believe that that is what MTYRE,  
15 multi-track year-round education, does, it compromises  
16 the number of electives available to students?

17 MR. SEFERIAN: Objection. Calls for an  
18 inadmissible opinion. Lacks foundation. Calls for  
19 speculation. Incomplete and improper hypothetical  
20 question. No foundation. Vague and ambiguous as to  
21 "compromise." Overly broad.

22 THE WITNESS: I think I overstate it in the  
23 letter, but certainly the letter says that.

24 Q. BY MR. VILLAGRA: As that paragraph continues,  
25 there's an example of what happens at a comprehensive

1 THE WITNESS: It might characterize the  
2 students on the other tracks poorly.

3 Q. BY MR. VILLAGRA: Anything else?

4 MR. SEFERIAN: Same objections.

5 THE WITNESS: No.

6 Q. BY MR. VILLAGRA: Might putting all of the AP  
7 courses on one track also deny eligible students on  
8 other tracks the ability to take the AP courses?

9 MR. SEFERIAN: Objection. Incomplete and  
10 improper hypothetical question. Lacks foundation.  
11 Calls for an inadmissible opinion. Calls for  
12 speculation.

13 MR. SALVATY: Asked and answered.

14 THE WITNESS: Without employing these other  
15 strategies, yes.

16 Q. BY MR. VILLAGRA: Okay. To your knowledge, do  
17 any California multi-track year-round high schools put  
18 all of their AP courses on one track?

19 MR. SEFERIAN: Objection. Calls for  
20 speculation.

21 THE WITNESS: Not to my knowledge.

22 Q. BY MR. VILLAGRA: To your knowledge, does the  
23 California Department of Education monitor whether  
24 multi-track year-round high schools in California put  
25 all of their AP courses on one track?

1 MR. SEFERIAN: Objection. Vague and ambiguous  
 2 as to "monitor." Assumes facts not in evidence. Calls  
 3 for speculation. No foundation.  
 4 THE WITNESS: Not to my knowledge.  
 5 Q. BY MR. VILLAGRA: The second option in Exhibit  
 6 207 is they, referring to all the AP courses, can be  
 7 offered on each track, parenthesis, very expensive  
 8 unless full, close parenthesis.  
 9 What did you mean by the parenthetical "very  
 10 expensive unless full"?  
 11 MR. SALVATY: Objection. Misstates the letter.  
 12 MR. SEFERIAN: Objection. Calls for  
 13 speculation. Lacks foundation. Argumentative.  
 14 THE WITNESS: If there are enough students to  
 15 fill each of those classes, then it's no more expensive  
 16 to do it that way than it would be to fill any four  
 17 classes on any tracks.  
 18 Q. BY MR. VILLAGRA: Except that at a multi-track  
 19 year-round high school on four tracks, you'd be offering  
 20 the same classes four times over?  
 21 MR. SEFERIAN: Objection. Incomplete and  
 22 improper hypothetical question. Lacks foundation.  
 23 Calls for speculation. Calls for an inadmissible  
 24 opinion.  
 25 MR. SALVATY: Improper, leading question.

1 MR. SEFERIAN: Argumentative.  
 2 Q. BY MR. VILLAGRA: Is that correct?  
 3 A. Well, it's incorrect in any high school that  
 4 classes are offered multiple times whether multi-track  
 5 or traditional.  
 6 Q. But here in this, the example in this letter,  
 7 if you had one AP French class and one AP calculus class  
 8 and you offered those courses on each track, instead of  
 9 one of each, the high school would have to offer four of  
 10 each; isn't that correct?  
 11 MR. SEFERIAN: Objection. Incomplete and  
 12 improper hypothetical question. Lacks foundation.  
 13 Calls for speculation. Calls for an inadmissible  
 14 opinion. Argumentative.  
 15 MR. SALVATY: Objection. Leading.  
 16 THE WITNESS: That is correct.  
 17 Q. BY MR. VILLAGRA: To your knowledge, do any  
 18 California multi-track year-round high schools offer all  
 19 their AP courses on one track?  
 20 MR. SEFERIAN: Objection. Calls for  
 21 speculation. Asked and answered.  
 22 THE WITNESS: I don't know.  
 23 Q. BY MR. VILLAGRA: The last option is they,  
 24 again, referring to the AP courses, can be taught on  
 25 rainbow tracks by extending teacher contracts and

1 accommodating multiple tracks of students, parenthesis  
 2 and subject exposure, close parenthesis, per class, open  
 3 parenthesis, a challenge, close parenthesis. Do you see  
 4 that?  
 5 A. Yes, I do.  
 6 MR. SALVATY: Objection. Misstates the letter.  
 7 Q. BY MR. VILLAGRA: Why is it, if you recall,  
 8 that rainbow tracks require extending teacher contracts?  
 9 MR. SEFERIAN: Objection. No foundation.  
 10 Incomplete and improper hypothetical question. Calls  
 11 for an inadmissible opinion. Overly broad. Vague and  
 12 ambiguous. Vague and ambiguous as to "teacher  
 13 contracts."  
 14 THE WITNESS: This is a variation of rainbow  
 15 tracking that I frankly forgot about.  
 16 MR. VILLAGRA: Okay.  
 17 THE WITNESS: In the first scenario, I  
 18 mentioned in earlier testimony, that in the three-track  
 19 system we had a teacher on two of the three tracks in a  
 20 regular schedule with a third track bouncing up and down  
 21 and rainbow tracking.  
 22 In this scenario you have a rainbow teacher who  
 23 is teaching an extended contract who is always available  
 24 for those students who are rainbowing in and out of the  
 25 classroom.

1 Q. BY MR. VILLAGRA: To bridge the other tracks?  
 2 A. Yes.  
 3 Q. If I could direct your attention to the last  
 4 paragraph, the second sentence says, part of the  
 5 secondary reform movement in California calls for an  
 6 elimination of the, quote, shopping mall, close quote,  
 7 approach to choosing high school courses in favor of a  
 8 more structured, dash, and narrower, dash, core of  
 9 electives. Do you see that?  
 10 (Mr. Reed entered room.)  
 11 Q. BY MR. VILLAGRA: What secondary reform  
 12 movement are you referring to?  
 13 MR. SEFERIAN: Objection. Calls for  
 14 speculation. Calls for an inadmissible opinion.  
 15 THE WITNESS: That's a Department publication  
 16 called Second to None.  
 17 Q. BY MR. VILLAGRA: When you say "Department,"  
 18 are you referring to the California Department of  
 19 Education?  
 20 A. Yes.  
 21 Q. Do you recall when the document entitled Second  
 22 to None was written?  
 23 A. I don't know.  
 24 Q. The reform that you're referring to in the  
 25 fourth paragraph of Exhibit 207, is that a reform that

1 California implemented in its high schools?  
 2 MR. SEFERIAN: Objection. Vague and ambiguous.  
 3 Overly broad. Vague and ambiguous as to "reform."  
 4 Calls for speculation.  
 5 MR. SALVATY: Vague and ambiguous as to which  
 6 high schools.  
 7 THE WITNESS: High schools could choose how to  
 8 run their programs. Some did.  
 9 Q. BY MR. VILLAGRA: Some did, and I take it some  
 10 didn't?  
 11 A. I don't know those numbers.  
 12 MR. SEFERIAN: Objection. No foundation.  
 13 Q. BY MR. VILLAGRA: Do you know the figures  
 14 either way?  
 15 A. I don't.  
 16 Q. Okay. Do you see at the end of the fourth  
 17 paragraph on the first page of Exhibit 207, given a  
 18 commitment to this kind of a reformed high school  
 19 curriculum, the impact of MTYRE would be minimal?  
 20 A. I do see that.  
 21 Q. Is it only in the context of a reformed high  
 22 school curriculum that calls for the elimination of the  
 23 shopping mall approach to choosing high school courses  
 24 in favor of a more structured and narrow core of  
 25 electives that the impact of multi-track year-round

1 education would be minimal, in your opinion?  
 2 A. No.  
 3 MR. SEFERIAN: Objection. Misstates the  
 4 witness' testimony. Calls for an inadmissible opinion.  
 5 Calls for a -- it's an incomplete and improper  
 6 hypothetical question. No foundation. Calls for  
 7 speculation. Vague and ambiguous as to "impact."  
 8 Q. BY MR. VILLAGRA: Why else is it that you  
 9 believe that the impact of multi-track year-round  
 10 education at the high school level would be minimal?  
 11 MR. SEFERIAN: Same objections.  
 12 THE WITNESS: Because you can offer the  
 13 elective program using the strategies I've outlined.  
 14 Q. BY MR. VILLAGRA: And going back to paragraph  
 15 three, if a high school implemented option 1, which is  
 16 putting all the AP on one track resulting in what you  
 17 called de facto desegregation by ability, would the  
 18 impact of multi-track year-round education then be  
 19 minimal?  
 20 MR. SEFERIAN: Objection. Vague and ambiguous  
 21 as to "impact" and "minimal." Incomplete and improper  
 22 hypothetical question. Assumes facts not in evidence.  
 23 Calls for an inadmissible opinion. Lacks foundation.  
 24 Calls for speculation. Argumentative.  
 25 MR. SALVATY: It's a leading question.

1 THE WITNESS: In my opinion it would not be  
 2 minimal.  
 3 Q. BY MR. VILLAGRA: If a high school implemented  
 4 option 2, offering all the AP on each track, would the  
 5 impact of multi-track year-round education then be  
 6 minimal?  
 7 MR. SALVATY: Objection. Are we talking about  
 8 the hypothetical earlier?  
 9 MR. VILLAGRA: I'm sorry, no, the hypothetical  
 10 in this letter, where there's more than one AP  
 11 classroom. Thanks.  
 12 MR. SEFERIAN: Objection --  
 13 Q. BY MR. VILLAGRA: Did you understand that?  
 14 A. I did.  
 15 MR. SEFERIAN: Objection. Vague and ambiguous  
 16 as to "impact" and "minimal." Incomplete and improper  
 17 hypothetical question. Calls for an inadmissible  
 18 opinion. Lacks foundation. Calls for speculation.  
 19 MR. SALVATY: And also misstates the document.  
 20 THE WITNESS: It would be minimal.  
 21 Q. BY MR. VILLAGRA: If option 3 were implemented  
 22 and AP courses were randomly spread across all tracks,  
 23 would the impact of multi-track year-round education  
 24 then be minimal, in your opinion?  
 25 MR. SEFERIAN: Same objections.

1 THE WITNESS: No.  
 2 Q. BY MR. VILLAGRA: And last, the fourth option  
 3 is the AP courses can be taught on rainbow tracks.  
 4 If that option were implemented at a high  
 5 school, would the impact of multi-track year-round  
 6 education then be minimal, in your opinion?  
 7 MR. SEFERIAN: Objection. Calls for an  
 8 inadmissible opinion. Lacks foundation. Calls for  
 9 speculation. Incomplete and improper hypothetical  
 10 question. Vague and ambiguous as to "impact" and  
 11 "minimal."  
 12 MR. SALVATY: And it misstates the document  
 13 too.  
 14 THE WITNESS: Yes.  
 15 Q. BY MR. VILLAGRA: How, in your opinion, would  
 16 you describe the impact of a high school implementing  
 17 option 1, that is, of putting all the AP courses on one  
 18 track?  
 19 MR. SEFERIAN: Objection. Calls for an  
 20 inadmissible opinion. Vague and ambiguous as to  
 21 "impact." Lacks foundation. Incomplete and improper  
 22 hypothetical question.  
 23 MR. SALVATY: Objection. Misstates,  
 24 mischaracterizes the document.  
 25 THE WITNESS: I would characterize it as

1 wrongly implemented.  
 2 Q. BY MR. VILLAGRA: Is that for the reasons  
 3 you've discussed previously as to why you think that  
 4 this is -- it is wrong to have, I think you testified,  
 5 all the smart kids on one track?  
 6 MR. SEFERIAN: Objection. Misstates the  
 7 witness' testimony. Calls for an inadmissible opinion.  
 8 Lacks foundation.  
 9 THE WITNESS: It is for that reason.  
 10 Q. BY MR. VILLAGRA: Any other reason?  
 11 MR. SEFERIAN: Same objections.  
 12 THE WITNESS: No.  
 13 Q. BY MR. VILLAGRA: And with respect to option 3,  
 14 how would you describe the impact of randomly spreading  
 15 AP courses across all tracks?  
 16 MR. SEFERIAN: Objection. Incomplete and  
 17 improper hypothetical question. Vague and ambiguous as  
 18 to "impact." Calls for an inadmissible opinion. Lacks  
 19 foundation. Calls for speculation.  
 20 THE WITNESS: Wrongly implemented.  
 21 Q. BY MR. VILLAGRA: And is that for the reason  
 22 that some students -- some eligible students would be  
 23 denied access to the courses?  
 24 MR. SEFERIAN: Objection. Argumentative.  
 25 Assumes facts not in evidence. Calls for an

1 inadmissible opinion. Incomplete and improper  
 2 hypothetical question.  
 3 MR. SALVATY: Objection. Leading.  
 4 MR. SEFERIAN: Lacks foundation.  
 5 THE WITNESS: Without the implementation of the  
 6 other options here, they would be denied, eligible  
 7 students would be denied.  
 8 Q. BY MR. VILLAGRA: And would option 3 be wrongly  
 9 implemented, in your opinion, for any other reason?  
 10 MR. SEFERIAN: Same objections.  
 11 THE WITNESS: No.  
 12 Q. BY MR. VILLAGRA: If you could turn to page 2  
 13 of Exhibit 207, it says, as we discussed earlier, MTYRE  
 14 is a facility strategy, a way to deal with overcrowding.  
 15 In California presently there is no state money to build  
 16 schools. We have a high school with 45 students per  
 17 class and another with 87 portables spreading across its  
 18 play field. We have students attending tent classrooms.  
 19 What did you intend to convey by referring to a  
 20 high school with 45 students per class?  
 21 MR. SEFERIAN: Objection. Argumentative.  
 22 Lacks foundation. Calls for speculation.  
 23 MR. SALVATY: If you recall.  
 24 THE WITNESS: I do recall. A portrait of a  
 25 severely overcrowded school.

1 Q. BY MR. VILLAGRA: And with your reference to  
 2 another high school with 87 portables spreading across  
 3 its play field, what were you intending to convey?  
 4 MR. SEFERIAN: Objection. Argumentative.  
 5 Misstates the document. Calls for speculation.  
 6 THE WITNESS: An overcrowded high school.  
 7 Q. BY MR. VILLAGRA: Anything else that you were  
 8 intending to convey?  
 9 MR. SEFERIAN: Same objections.  
 10 THE WITNESS: No.  
 11 Q. BY MR. VILLAGRA: And with your reference to  
 12 students attending tent classrooms, were you also  
 13 intending to convey a portrait of a severely overcrowded  
 14 school?  
 15 MR. SEFERIAN: Same objections.  
 16 THE WITNESS: Yes.  
 17 Q. BY MR. VILLAGRA: Do you recall in 1994 how  
 18 many high schools in California had 45 students per  
 19 class in them?  
 20 MR. SEFERIAN: Objection. No foundation.  
 21 Calls for speculation. Assumes facts not in evidence.  
 22 THE WITNESS: I don't recall how many, no.  
 23 Q. BY MR. VILLAGRA: More than one?  
 24 MR. SEFERIAN: Objection. No foundation.  
 25 Calls for speculation.

1 THE WITNESS: I don't know how many.  
 2 Q. BY MR. VILLAGRA: Okay. Do you happen to  
 3 recall if in 1994 you knew how many high schools had 87  
 4 portables spread across play fields?  
 5 MR. SEFERIAN: Objection. No foundation.  
 6 THE WITNESS: Again, I don't know how many.  
 7 Q. BY MR. VILLAGRA: And high schools where  
 8 students attended tent classrooms, do you recall in 1994  
 9 knowing how many such schools there were in California?  
 10 MR. SEFERIAN: Objection. No foundation.  
 11 THE WITNESS: I don't.  
 12 Q. BY MR. VILLAGRA: Do you know whether today  
 13 there are high schools in California with 45 students  
 14 per class?  
 15 MR. SEFERIAN: Objection. No foundation.  
 16 Calls for speculation.  
 17 THE WITNESS: I don't know that.  
 18 Q. BY MR. VILLAGRA: One way or the other?  
 19 MR. SEFERIAN: Same objections.  
 20 THE WITNESS: One way or the other.  
 21 Q. BY MR. VILLAGRA: Do you know whether currently  
 22 in California there are any high schools with 87  
 23 portables spreading across its play field?  
 24 MR. SEFERIAN: Objection. No foundation.  
 25 Calls for speculation.

1 THE WITNESS: I don't know that either.  
 2 Q. BY MR. VILLAGRA: And do you know whether  
 3 currently there are any schools in California with  
 4 students attending tent classrooms?  
 5 MR. SEFERIAN: Objection. Vague and ambiguous  
 6 as to "tent classrooms." No foundation. Calls for  
 7 speculation.  
 8 THE WITNESS: I don't know that.  
 9 Q. BY MR. VILLAGRA: At the end of this paragraph  
 10 on page 2 of Exhibit 207 you conclude, at some point, in  
 11 spite of its complications, MTYRE begins to look awfully  
 12 good. Do you see that?  
 13 MR. SEFERIAN: Objection. Argumentative.  
 14 THE WITNESS: I do see that.  
 15 Q. BY MR. VILLAGRA: Is it in the face of severe  
 16 overcrowding, as with a high school with 45 students per  
 17 class, that multi-track year-round education begins to  
 18 look awfully good?  
 19 MR. SEFERIAN: Objection. Argumentative.  
 20 Incomplete and improper hypothetical question. Lacks  
 21 foundation. Calls for speculation. Calls for an  
 22 inadmissible opinion. Mischaracterizes and misstates  
 23 the document. Misstates the witness' testimony.  
 24 THE WITNESS: Forty-five students per classroom  
 25 isn't the only criteria I would use to measure

1 overcrowding and to make the opinion that MTYRE looks  
 2 good.  
 3 Q. BY MR. VILLAGRA: Is it one of the criteria you  
 4 would use?  
 5 MR. SEFERIAN: Same objections.  
 6 THE WITNESS: Yes.  
 7 Q. BY MR. VILLAGRA: What are the other criteria  
 8 you would use to determine whether multi-track  
 9 year-round education looks awfully good?  
 10 MR. SEFERIAN: Objection. Vague and ambiguous  
 11 as to looks awfully good. Incomplete and improper  
 12 hypothetical question. Calls for an inadmissible  
 13 opinion. Lacks foundation. Calls for speculation.  
 14 THE WITNESS: Students per acre, students per  
 15 classroom, the differences between seating capacity and  
 16 enrollment. Those are they.  
 17 Q. BY MR. VILLAGRA: Anything else?  
 18 MR. SEFERIAN: Same objections.  
 19 THE WITNESS: No.  
 20 Q. BY MR. VILLAGRA: Is there a point or a number  
 21 at which the students per acre in a school makes  
 22 multi-track year-round education begin to look awfully  
 23 good?  
 24 MR. SEFERIAN: Objection. Vague and ambiguous  
 25 as to "looks awfully good." Calls for an inadmissible

1 opinion. Incomplete improper hypothetical question.  
 2 Lacks foundation.  
 3 THE WITNESS: That point would be a local  
 4 decision.  
 5 Q. BY MR. VILLAGRA: Do you have any opinion as to  
 6 what point that would be?  
 7 MR. SEFERIAN: Objection. Asked and answered.  
 8 Same objections. Argumentative.  
 9 He just answered the question.  
 10 MR. VILLAGRA: No, he didn't. It's a different  
 11 question.  
 12 THE WITNESS: Certainly in the scenario I  
 13 described here, 45 students per classroom and 87  
 14 portables spreading across the play field, that would be  
 15 a case where I would say multi-track looks good. But it  
 16 would be case to case.  
 17 Q. BY MR. VILLAGRA: Okay. So this is a  
 18 particular instance -- 45 students per class and 87  
 19 portables is a point at which you would say multi-track  
 20 year-round education begins to look awfully good; is  
 21 that correct?  
 22 MR. SEFERIAN: Objection. Misstates the  
 23 witness' testimony. Calls for an inadmissible opinion.  
 24 Incomplete and improper hypothetical question.  
 25 THE WITNESS: Overcrowding would not have to be

1 defined this way for me to say MTYRE begins to look  
 2 awfully good. Certainly in this characterization I  
 3 think it looks good.  
 4 Q. BY MR. VILLAGRA: That's not an exhaustive --  
 5 A. No.  
 6 Q. And what do you mean by multi-track year-round  
 7 education begins to look awfully good? Do you recall  
 8 what you intended to convey by writing that in Exhibit  
 9 207?  
 10 MR. SEFERIAN: Objection. Compound question.  
 11 THE WITNESS: Yes.  
 12 Q. BY MR. VILLAGRA: What is it?  
 13 A. It looks -- as an alternative to superloaded  
 14 classrooms and a field that is taken up by portables,  
 15 multi-track is a desirable alternative.  
 16 Q. To your knowledge, Mr. Payne, does the State of  
 17 California -- I'm sorry, the California Department of  
 18 Education conduct an inventory of its school  
 19 construction needs?  
 20 MR. SEFERIAN: Objection. Vague and ambiguous  
 21 as to "inventory." Assumes facts not in evidence.  
 22 Calls for an inadmissible legal opinion. Lacks  
 23 foundation.  
 24 Q. BY MR. VILLAGRA: Do you understand the  
 25 question?



1 A. I do. It does not conduct an inventory.  
 2 Q. What do you mean by an "inventory"?  
 3 MR. SEFERIAN: Objection. Vague and ambiguous.  
 4 THE WITNESS: A formal document that goes to  
 5 each district for the specific purpose of asking them  
 6 what their facility needs are.  
 7 Q. BY MR. VILLAGRA: And "facility needs" would  
 8 encompass what?  
 9 MR. SEFERIAN: Objection. No foundation.  
 10 Overly broad. Vague and ambiguous. Calls for an  
 11 inadmissible opinion. Vague and ambiguous. Lacks  
 12 foundation.  
 13 THE WITNESS: Facility needs to accommodate  
 14 growth and modernization needs for existing facilities.  
 15 Q. BY MR. VILLAGRA: Do you have an understanding  
 16 as to why the State does not conduct an inventory of  
 17 school facility needs as you've described it?  
 18 MR. SEFERIAN: Objection. Assumes facts not in  
 19 evidence. Argumentative. Calls for an inadmissible  
 20 legal opinion. Lacks foundation. Calls for  
 21 speculation.  
 22 THE WITNESS: Yes, I do.  
 23 Q. BY MR. VILLAGRA: Why is that?  
 24 MR. SEFERIAN: Same objections.  
 25 THE WITNESS: Because the information is

1 to the office of public school construction?  
 2 MR. SEFERIAN: Objection. Lacks foundation.  
 3 Calls for speculation. Vague and ambiguous as to  
 4 construction projects.  
 5 THE WITNESS: I do know that.  
 6 Q. BY MR. VILLAGRA: What is the answer?  
 7 A. They don't.  
 8 Q. Okay. To your knowledge, why do some districts  
 9 not apply for new school construction funding from the  
 10 state?  
 11 MR. SEFERIAN: Objection. Overly broad. Calls  
 12 for speculation. Lacks foundation.  
 13 THE WITNESS: For two reasons. They can fund  
 14 their projects locally, or they have no projects to  
 15 fund.  
 16 Q. BY MR. VILLAGRA: Are those the only two  
 17 reasons why some districts do not apply for new school  
 18 construction funding from the state, in your  
 19 understanding?  
 20 MR. SEFERIAN: Objection. Lacks foundation.  
 21 Calls for speculation.  
 22 THE WITNESS: To the best of my knowledge.  
 23 Q. BY MR. VILLAGRA: You testified a while earlier  
 24 about SB 50.  
 25 A. Yes.

1 collected by the state allocation board, office of  
 2 public school construction.  
 3 Q. BY MR. VILLAGRA: And how is it that the state  
 4 allocation board, office of public school construction  
 5 conducts an inventory of school facility needs in the  
 6 state?  
 7 MR. SALVATY: Objection. Calls for  
 8 speculation.  
 9 MR. SEFERIAN: Objection. Misstates the  
 10 witness' testimony. Lacks foundation.  
 11 THE WITNESS: By processing applications for  
 12 state school construction money.  
 13 Q. BY MR. VILLAGRA: And how do you know that the  
 14 SAB, the state allocation board, office of public school  
 15 construction, conducts this inventory of new school  
 16 construction needs?  
 17 MR. SEFERIAN: Objection. Misstates the  
 18 witness' testimony. He testified that the office of  
 19 public school construction processes applications.  
 20 Argumentative.  
 21 Q. BY MR. VILLAGRA: How do you know that the OPSC  
 22 processes applications as you've described it?  
 23 A. We are a part of the process.  
 24 Q. Do you know whether every district in the state  
 25 submits applications for new school construction funding

1 Q. Do you recall that?  
 2 A. I do recall that.  
 3 Q. And what is SB 50?  
 4 MR. SALVATY: Objection. Calls for a legal  
 5 conclusion.  
 6 THE WITNESS: SB 50 was the 1998 state school  
 7 bond measure.  
 8 Q. BY MR. VILLAGRA: And do you recall under SB 50  
 9 whether there were any limitations on whether districts  
 10 could apply for new school construction funding?  
 11 MR. SEFERIAN: Objection. Calls for an  
 12 inadmissible legal opinion. Vague and ambiguous as to  
 13 "limitations." Lacks foundation. Calls for  
 14 speculation.  
 15 THE WITNESS: I do recall.  
 16 Q. BY MR. VILLAGRA: What do you recall?  
 17 MR. SEFERIAN: Same objections.  
 18 THE WITNESS: They had to show a need for new  
 19 facilities through a comparison of existing facilities  
 20 and current enrollment or projected enrollment growth.  
 21 For modernization money, they had to demonstrate that  
 22 their existing facilities were of a certain age.  
 23 Q. BY MR. VILLAGRA: So is it fair to say that, in  
 24 your understanding, not all districts would have been  
 25 eligible for school facilities funding under SB 50?

1 MR. SEFERIAN: Objection. Vague and ambiguous  
2 as to "eligible." Calls for an inadmissible legal  
3 opinion. Lacks foundation.

4 THE WITNESS: That is my understanding.  
5 Q. BY MR. VILLAGRA: So if not all districts were  
6 eligible to apply for school facilities funding under  
7 SB 50, would the state -- would the office of public  
8 school construction have obtained a measure of what the  
9 state's school facility needs are?

10 MR. SEFERIAN: Objection. Lacks foundation.  
11 Argumentative. Calls for speculation. Calls for an  
12 inadmissible opinion.

13 MR. SALVATY: Objection. Leading.

14 THE WITNESS: No.

15 Q. BY MR. VILLAGRA: To your knowledge, was the  
16 amount of funding available under SB 50 enough to fund  
17 all districts eligible to receive funding under its  
18 terms?

19 MR. SEFERIAN: Objection. Calls for an  
20 inadmissible opinion. Lacks foundation. Calls for  
21 speculation. Vague and ambiguous as to "enough."  
22 Overly broad. Incomplete and improper hypothetical  
23 question. Assumes facts not in evidence.

24 THE WITNESS: It was not enough.

25 MR. SEFERIAN: We've been going for about an

1 MTYRE, multi-track year-round education.

2 Q. BY MR. VILLAGRA: Is it fair to say, then, that  
3 the grant is not available to districts operating single  
4 track year-round education programs?

5 MR. SALVATY: Objection. Vague and ambiguous.  
6 Leading.

7 Which grant?

8 MR. SEFERIAN: Calls for an inadmissible  
9 opinion.

10 THE WITNESS: The operational grant is not  
11 available for single-track schools.

12 Q. BY MR. VILLAGRA: Okay. Do you have an  
13 understanding as to why there is a grant available to  
14 districts operating on multi-track year-round education  
15 but not to those operating single-track year-round  
16 education?

17 MR. SEFERIAN: Objection. Lacks foundation.  
18 Calls for speculation. Calls for an inadmissible  
19 opinion. Vague and ambiguous.

20 THE WITNESS: Yes, I do.

21 Q. BY MR. VILLAGRA: Why is that?

22 MR. SEFERIAN: Same objections.

23 THE WITNESS: The legislature perceived  
24 multi-track year-round education as a way of relieving  
25 pressures on state school construction funds. It does

1 hour. Can we take a short break?

2 MR. VILLAGRA: Okay.  
3 (Recess taken.)

4 Q. BY MR. VILLAGRA: Mr. Payne, we talked  
5 yesterday about operational grants for multi-track  
6 year-round education. Do you recall that?

7 A. I do recall that.

8 Q. Are those operational grants sometimes also  
9 referred to as incentive grants?

10 A. Yes.

11 Q. And the operational grants that we were talking  
12 about yesterday, are those for districts to convert  
13 schools to multi-track year-round education?

14 MR. SEFERIAN: Objection. Overly broad.

15 MR. SALVATY: Objection. Vague and ambiguous.

16 MR. SEFERIAN: Calls for an inadmissible legal  
17 opinion.

18 THE WITNESS: No.

19 Q. BY MR. VILLAGRA: What are they for?

20 MR. SEFERIAN: Objection. Overly broad. Calls  
21 for a narrative. Calls for an inadmissible legal  
22 opinion.

23 THE WITNESS: It's general fund money, and they  
24 were offered as a way of avoiding state school  
25 construction costs through encouraging operation of

1 not perceive single-track education as being an aid.

2 Q. BY MR. VILLAGRA: To your knowledge, are there  
3 any restrictions on the use by districts of multi-track  
4 year-round education operation grants?

5 MR. SEFERIAN: Objection. Calls for an  
6 inadmissible opinion. Vague and ambiguous as to "use."

7 MR. SALVATY: Calls for a legal conclusion.

8 THE WITNESS: There are no restrictions.

9 Q. BY MR. VILLAGRA: Do you know whether the  
10 operational grants to districts operating multi-track  
11 year-round education are intended to help pay the  
12 additional costs of operating on a multi-track  
13 year-round calendar?

14 MR. SEFERIAN: Objection. Calls for  
15 speculation. No foundation. Calls for an inadmissible  
16 opinion. Vague and ambiguous as to "intended."

17 THE WITNESS: I'm trying to remember the  
18 language of AB 87. I do not believe that was a stated  
19 intent.

20 Q. BY MR. VILLAGRA: Okay. In your understanding,  
21 are there additional operational costs that are  
22 necessitated by operating on a multi-track year-round  
23 calendar?

24 MR. SEFERIAN: Objection. No foundation.

25 Calls for speculation. Calls for an inadmissible

1 opinion. Vague and ambiguous as to "operational costs."  
 2 THE WITNESS: In some cases, yes, in some  
 3 cases, no.  
 4 Q. BY MR. VILLAGRA: In what cases are there  
 5 additional operational costs from operating on a  
 6 multi-track year-round educational calendar?  
 7 MR. SEFERIAN: Objection. Vague and ambiguous  
 8 as to "operational costs." Lacks foundation. Calls for  
 9 speculation.  
 10 MR. SALVATY: Incomplete hypothetical.  
 11 THE WITNESS: It depends upon the study that  
 12 one refers to. In this case I would refer to a study  
 13 done by the Lodi Unified School District.  
 14 Q. BY MR. VILLAGRA: If we could actually back up  
 15 a second. When you say depends upon the study you're  
 16 relying on, what do you mean?  
 17 A. There are numerous studies, and some indicate a  
 18 neutral cost and some indicate even a positive cost.  
 19 Gee, that's vague. Some indicate a cost savings.  
 20 Q. From multi-track year-round education?  
 21 A. Yes.  
 22 Q. And some other studies find additional costs?  
 23 A. Yes.  
 24 Q. Okay. How many studies are you aware of of the  
 25 impact of multi-track year-round education on costs of

1 operating the school?  
 2 A. I'm aware of four or five.  
 3 Q. Are you in possession of the four or five  
 4 studies that you're aware of of the impact of  
 5 multi-track year-round education on the costs of  
 6 operating the school?  
 7 A. Yes, I am.  
 8 Q. Are those studies in your office?  
 9 A. Yes, they are.  
 10 Q. Do you recall what districts the studies are  
 11 from?  
 12 MR. SALVATY: Objection. Vague.  
 13 MR. SEFERIAN: Objection. Assumes facts not in  
 14 evidence.  
 15 THE WITNESS: I'm sorry, I don't.  
 16 Q. BY MR. VILLAGRA: Okay. When you referred to  
 17 the Lodi study, what did the Lodi study conclude about  
 18 the impact of multi-track year-round education on the  
 19 cost of operating the school?  
 20 MR. SALVATY: Objection. Document speaks for  
 21 itself.  
 22 MR. SEFERIAN: Objection. Assumes facts not in  
 23 evidence. Vague and ambiguous as to "conclude". Lacks  
 24 foundation. Calls for speculation.  
 25 THE WITNESS: It concluded there were costs not

1 only of implementing multi-track but of operating  
 2 multi-track.  
 3 Q. BY MR. VILLAGRA: Additional costs?  
 4 MR. SEFERIAN: Objection. Vague and ambiguous  
 5 as to "additional."  
 6 THE WITNESS: Yes.  
 7 Q. BY MR. VILLAGRA: And by additional, I mean  
 8 costs greater than those of operating a traditional  
 9 calendar school.  
 10 Is that how you understood it as well?  
 11 A. That's the way I understood it.  
 12 Q. Why is it that you refer to the study by Lodi  
 13 and not the other studies that you're aware of?  
 14 MR. SEFERIAN: Objection. Vague and ambiguous  
 15 as to "refer."  
 16 THE WITNESS: Because you asked me to clarify  
 17 if there are additional costs associated and how I knew  
 18 that, and I know that from the Lodi study.  
 19 Q. BY MR. VILLAGRA: Do you consider the study by  
 20 Lodi of the impact of the multi-track year-round  
 21 education on the operational costs -- on the costs of  
 22 operating the school to be valid?  
 23 MR. SEFERIAN: Objection. Vague and ambiguous  
 24 as to "valid." Lacks foundation. Calls for  
 25 speculation. Calls for an inadmissible opinion. Overly

1 broad.  
 2 THE WITNESS: I don't have the expertise to  
 3 measure its validity.  
 4 Q. BY MR. VILLAGRA: Is the same true for the  
 5 other studies that you're aware of on the impacts of  
 6 multi-track year-round education on the cost of  
 7 operating the school?  
 8 A. Yes, it is.  
 9 Q. Of the other studies, do you remember how many  
 10 indicate a neutral cost from operating a multi-track  
 11 year-round calendar?  
 12 MR. SALVATY: Objection. Vague.  
 13 THE WITNESS: I believe -- my recollection is  
 14 that two of them suggest a neutral cost and two of them  
 15 suggest a cost savings. That's to the best of my  
 16 recollection.  
 17 Q. BY MR. VILLAGRA: I think as we discussed  
 18 yesterday you answer questions from principals and  
 19 superintendents about year-round education. Do you  
 20 recall that discussion?  
 21 A. I do.  
 22 Q. When principals or superintendents ask you  
 23 whether there are additional operational costs  
 24 necessitated by multi-track year-round education, do you  
 25 have a standard answer?

1 MR. SALVATY: Objection. Assumes facts not in  
2 evidence. Vague.  
3 MR. SEFERIAN: Vague and ambiguous as to  
4 "standard answer."  
5 THE WITNESS: Yes, I do.  
6 Q. BY MR. VILLAGRA: What is the standard answer  
7 that you give?  
8 A. It depends on how you operate the program.  
9 Q. To your knowledge, what are the additional  
10 operational costs that the Lodi study identified from  
11 operating a multi-track year-round school?  
12 MR. SALVATY: Objection. Document speaks for  
13 itself.  
14 MR. SEFERIAN: Calls for speculation.  
15 THE WITNESS: The cost of supplying additional  
16 elective teachers, the cost of air conditioning, the  
17 cost of extending the contract of clerical staff. Those  
18 are the ones that come to mind.  
19 Q. BY MR. VILLAGRA: Would additional salary also  
20 be necessary for a principal at a multi-track year-round  
21 school?  
22 MR. SEFERIAN: Objection. Vague and ambiguous.  
23 Incomplete and improper hypothetical question. No  
24 foundation. Calls for speculation. Calls for an  
25 inadmissible opinion.

1 THE WITNESS: Yes.  
2 Q. BY MR. VILLAGRA: And you mentioned that there  
3 would be the additional cost of supplying additional  
4 elective teachers. Would there be additional salary for  
5 teachers generally that would result from multi-track  
6 year-round education?  
7 MR. SEFERIAN: Objection. Calls for an  
8 inadmissible opinion. Incomplete and improper  
9 hypothetical question. Lacks foundation. Calls for  
10 speculation.  
11 THE WITNESS: No.  
12 Q. BY MR. VILLAGRA: Why not?  
13 MR. SEFERIAN: Same objections.  
14 THE WITNESS: Because the excess students  
15 enrolled in the school would need teachers whether  
16 they're at a year-round school or a traditional school.  
17 Q. BY MR. VILLAGRA: Would there be additional  
18 salary for maintenance workers necessitated by  
19 multi-track year-round education?  
20 MR. SEFERIAN: Objection. Improper  
21 hypothetical question. Lacks foundation. Calls for  
22 speculation. Overly broad. Vague and ambiguous. Calls  
23 for an inadmissible opinion.  
24 THE WITNESS: A tricky answer. Yes, but  
25 whenever there are additional students generating ADA.

1 And so my previous answer when I say it depends on how  
2 you operate the system, that's particularly true, but it  
3 is true with maintenance people too.  
4 Yes, you can exceed the number of -- you can  
5 exceed with maintenance crew the budget that those  
6 students in excess capacity would generate at a  
7 different school, you can exceed that or you can keep it  
8 constant.  
9 Q. BY MR. VILLAGRA: Are there increased utilities  
10 costs from operating a school on a multi-track  
11 year-round calendar?  
12 A. Yes.  
13 MR. SEFERIAN: Objection. Incomplete and  
14 improper hypothetical question. Vague and ambiguous as  
15 to "utilities." No foundation. Calls for speculation.  
16 Q. BY MR. VILLAGRA: And what do you consider to  
17 be encompassed by utilities?  
18 A. Air conditioning and heating and electricity,  
19 gas.  
20 Q. And how do you know that there would be  
21 additional utilities costs from operating a multi-track  
22 year-round school?  
23 MR. SEFERIAN: Objection. Misstates the  
24 witness' testimony. Lacks foundation. Calls for  
25 speculation. Incomplete hypothetical question. Calls

1 for an inadmissible opinion.  
2 THE WITNESS: It's in the Lodi study, and I  
3 believe it's in the other studies too.  
4 Q. BY MR. VILLAGRA: Okay. Could there also be  
5 increased transportation costs from operating on a  
6 multi-track year-round calendar?  
7 MR. SEFERIAN: Objection. Calls for  
8 speculation. Overly broad. Vague and ambiguous. Calls  
9 for an inadmissible opinion. Lacks foundation. Calls  
10 for speculation. Incomplete hypothetical question.  
11 THE WITNESS: The operative word there is could  
12 be.  
13 Q. BY MR. VILLAGRA: When could there be  
14 transportation costs from implementing a multi-track  
15 year-round calendar?  
16 MR. SEFERIAN: Same objections.  
17 THE WITNESS: Again, it depends upon the  
18 operational style of the district and how many -- how  
19 many schools in the district are year-round.  
20 Q. BY MR. VILLAGRA: Do you have an understanding  
21 as to how the operational grant, the size of the  
22 operational grant is determined for a district operating  
23 on a multi-track year-round?  
24 A. Yes, I do.  
25 Q. And how is the size of the grant determined?

1 MR. SEFERIAN: Objection. Calls for a  
 2 narrative. Overly broad. Calls for a legal opinion.  
 3 THE WITNESS: It's a combination of two  
 4 factors, the first, how many students in excess of  
 5 capacity a district is claiming, and, second, the  
 6 percentage of expanded capacity a particular school site  
 7 has achieved through multi-track year-round education.  
 8 Q. BY MR. VILLAGRA: Are those two factors  
 9 multiplied together?  
 10 MR. SEFERIAN: Objection. Vague and ambiguous.  
 11 THE WITNESS: The first factor is multiplied --  
 12 the first factor of excess capacity students is  
 13 multiplied by a dollar amount on a sliding scale  
 14 determined by the percentage of students in excess of  
 15 capacity.  
 16 Q. BY MR. VILLAGRA: Do you have an understanding  
 17 as to how this formula that determines the size of  
 18 operational grants for multi-track year-round education  
 19 was arrived at?  
 20 MR. SEFERIAN: Objection. No foundation.  
 21 Calls for an inadmissible legal opinion. Calls for  
 22 speculation.  
 23 THE WITNESS: I'm trying to remember AB 87 and  
 24 the discussion that went into it. Those students that  
 25 were -- those schools that had achieved certain

1 enrollment levels based upon MTYRE were saving the state  
 2 the most money, construction money, theoretically, and  
 3 were to be rewarded proportionately.  
 4 Q. BY MR. VILLAGRA: Do you have an understanding  
 5 as to whether the amount -- the proportional amount of  
 6 money that districts are rewarded with for operating on  
 7 multi-track year-round education has any relation to the  
 8 costs of operating on a multi-track year-round calendar?  
 9 MR. SEFERIAN: Objection. No foundation.  
 10 Calls for speculation. Calls for an inadmissible  
 11 opinion. Argumentative. Vague and ambiguous as to  
 12 rewarded?  
 13 THE WITNESS: By design there is no  
 14 relationship.  
 15 Q. BY MR. VILLAGRA: Do you know whether, in  
 16 effect, there is any relationship?  
 17 MR. SEFERIAN: Objection. No foundation.  
 18 Calls for speculation. Calls for an inadmissible  
 19 opinion. Vague and ambiguous as to "effect."  
 20 MR. SALVATY: Do you understand that?  
 21 THE WITNESS: I do understand that.  
 22 No.  
 23 Q. BY MR. VILLAGRA: Do you know whether the  
 24 California Department of Education has ever assessed the  
 25 relationship between the amount of operational grant

1 funding the districts receive and the costs of operating  
 2 on a multi-track year-round calendar?  
 3 MR. SEFERIAN: Objection. Vague and ambiguous  
 4 as to "assessed." Assumes facts not in evidence. Lacks  
 5 foundation. Calls for speculation.  
 6 THE WITNESS: No.  
 7 Q. BY MR. VILLAGRA: When you receive calls from  
 8 principals or superintendents about year-round  
 9 education, are you sometimes asked about the operational  
 10 grant funding that becomes available from operating on a  
 11 multi-track year-round calendar?  
 12 MR. SALVATY: Objection. Vague.  
 13 THE WITNESS: Yes.  
 14 Q. BY MR. VILLAGRA: Are you ever asked whether  
 15 the amount of funding that a district would receive in  
 16 operational grant funds is equal to the cost of  
 17 operating on a multi-track year-round calendar?  
 18 MR. SEFERIAN: Objection. Vague as to time.  
 19 Overly broad.  
 20 THE WITNESS: No.  
 21 Q. BY MR. VILLAGRA: Never been asked that  
 22 question?  
 23 A. I don't believe I ever have. That sounds like  
 24 a good question too.  
 25 Q. Why do you think it sounds like a good

1 question?  
 2 MR. SEFERIAN: Objection. Argumentative.  
 3 THE WITNESS: I just think that would be a  
 4 question one would ask.  
 5 Q. BY MR. VILLAGRA: Going back, Mr. Payne, to the  
 6 costs of operating on a multi-track year-round calendar.  
 7 Do any of the studies that you're aware of  
 8 consider the cost of using textbooks all year around  
 9 instead of only for nine months out of the year?  
 10 A. I don't recall having seen that calculated.  
 11 Q. Would you expect there to be additional wear  
 12 and tear on textbooks from using them 12 months out of a  
 13 year instead of 9?  
 14 MR. SEFERIAN: Objection. No foundation.  
 15 Calls for speculation. Overly broad. Incomplete and  
 16 improper hypothetical question. Calls for an  
 17 inadmissible opinion. Vague and ambiguous as to "wear  
 18 and tear."  
 19 THE WITNESS: That's a very hard question for  
 20 me to answer anyway because I don't know how quickly  
 21 textbooks are circulated in and out, revised. I just  
 22 don't know.  
 23 Q. BY MR. VILLAGRA: But compared to a traditional  
 24 calendar, a multi-track year-round calendar would result  
 25 in three months of additional use of those textbooks; is

1 that fair to say?

2 MR. SEFERIAN: Objection. Assumes facts not in  
3 evidence. Argumentative. Incomplete and improper  
4 hypothetical question. Lacks foundation. Calls for  
5 speculation.

6 MR. SALVATY: It's a leading question.

7 THE WITNESS: Again, it depends upon the  
8 textbook system of the district, so I don't think you  
9 can generalize about that. I just don't think you can  
10 generalize about it.

11 Q. BY MR. VILLAGRA: Okay. When it comes to  
12 school facilities, if you're on a multi-track year-round  
13 calendar, there's no period when the school is being  
14 unused, as with a traditional calendar during the  
15 summer.

16 Do any of the studies that you're aware of of  
17 the operational costs of multi-track year-round  
18 calendars, do any of them consider the additional costs  
19 of -- necessitated by the additional use of the  
20 facilities?

21 MR. SALVATY: Objection. Assumes facts not in  
22 evidence.

23 MR. SEFERIAN: Calls for speculation. Vague  
24 and ambiguous.

25 THE WITNESS: Yes.

1 Q. BY MR. VILLAGRA: Do you recall which studies  
2 specifically? I'm sorry, you didn't remember the  
3 studies.

4 Did more than one study consider the  
5 implications for facilities costs from multi-track  
6 year-round education?

7 A. I don't recall the studies that well to say  
8 that.

9 Q. What is it that you recall that the studies say  
10 about the implications for facilities from multi-track  
11 year-round education?

12 MR. SEFERIAN: Objection. Overly broad. Calls  
13 for a narrative. Vague and ambiguous as to "studies."

14 THE WITNESS: That maintenance crews were paid  
15 more to work on weekends or at nights because those are  
16 the available times.

17 Q. BY MR. VILLAGRA: And what about in terms of  
18 the buildings themselves, did any of these studies  
19 consider the depreciation in value from using the  
20 buildings all year instead of for nine months as on a  
21 traditional calendar?

22 MR. SALVATY: Objection. Assumes facts not in  
23 evidence.

24 THE WITNESS: I can't tell you they did or they  
25 didn't. There was one reference to play fields, which

1 doesn't mean the other information doesn't exist.

2 Q. BY MR. VILLAGRA: Would you expect there to be  
3 a depreciation in value of school facilities from using  
4 them all year on a multi-track year-round calendar  
5 instead of on a traditional calendar?

6 MR. SALVATY: Objection. Incomplete  
7 hypothetical. Calls for expert opinion.

8 MR. SEFERIAN: Lacks foundation.

9 MR. SALVATY: He's not a CPA.

10 MR. SEFERIAN: Vague and ambiguous as to  
11 "depreciation." Overly broad.

12 THE WITNESS: I think it depends entirely upon  
13 the maintenance program.

14 Q. BY MR. VILLAGRA: And what would it depend on?

15 MR. SALVATY: Same objections.

16 THE WITNESS: Just the commitment to  
17 maintaining the buildings.

18 Q. BY MR. VILLAGRA: Is it the same level of  
19 commitment that's required to operate on a traditional  
20 calendar?

21 MR. SALVATY: Objection. Calls for  
22 speculation.

23 MR. SEFERIAN: Vague and ambiguous as to "same  
24 level." Lacks foundation. Incomplete hypothetical  
25 question. Objection.

1 THE WITNESS: I think it's a different  
2 commitment.

3 Q. BY MR. VILLAGRA: Different how?

4 MR. SALVATY: Same objections.

5 THE WITNESS: Planning when maintenance will  
6 occur. That, primarily.

7 Q. BY MR. VILLAGRA: Okay. And let's go back to  
8 that. You mentioned that some of the studies found that  
9 maintenance crews were paid more to work at night or on  
10 weekends because those are the times -- those are the  
11 available times.

12 What do you mean by the "available times"?

13 A. Los Angeles Unified Concept 6 schools operate  
14 51 weeks a year, unlike a traditional school that would  
15 have two and a half months off in the summer, so they  
16 have fewer daylight days for maintenance.

17 Q. Why is it that the Concept 6 schools that  
18 you're talking about have fewer daylight days for  
19 maintenance?

20 MR. SEFERIAN: Objection. Calls for  
21 speculation. Vague and ambiguous.

22 THE WITNESS: Again, it's the mathematics of  
23 how the tracking system works, but as you rotate the  
24 tracks in and out of the school, the school utilizes 51  
25 weeks a year.

1 Q. BY MR. VILLAGRA: Why wouldn't maintenance at a  
 2 Concept 6 school be done during the day?  
 3 MR. SALVATY: Objection. Assumes facts not in  
 4 evidence. Calls for speculation.  
 5 MR. SEFERIAN: Incomplete, improper  
 6 hypothetical question. Vague and ambiguous as to  
 7 "maintenance." Overly broad.  
 8 THE WITNESS: Because students are there.  
 9 Q. BY MR. VILLAGRA: And doing the maintenance  
 10 during the day would be a disruption?  
 11 MR. SALVATY: Objection. Leading question.  
 12 Calls for speculation.  
 13 MR. SEFERIAN: Incomplete and improper  
 14 hypothetical question. Vague and ambiguous as to  
 15 "disruption."  
 16 Q. BY MR. VILLAGRA: Let me rephrase. Is it  
 17 something to be avoided, to have maintenance going on  
 18 during the day when students are in classrooms?  
 19 MR. SALVATY: Same objections.  
 20 THE WITNESS: It really depends upon the  
 21 planning that goes around how the maintenance is to be  
 22 done.  
 23 Q. BY MR. VILLAGRA: But do you have an  
 24 understanding, though, why more of the maintenance work  
 25 ends up being done at night and on weekends at a

1 MR. VILLAGRA: Okay. I could use up five  
 2 minutes or just stop here. Probably should just stop  
 3 here for the day. It's about four of 4:00.  
 4 Is that okay with you all?  
 5 MR. SALVATY: That's fine.  
 6 MR. SEFERIAN: That's fine.  
 7 (The deposition concluded at 3:56 p.m.)  
 8  
 9 ---oOo---  
 10  
 11 Please be advised that I have read the foregoing  
 12 deposition. I hereby state there are:  
 13  
 14 (check one) \_\_\_\_\_ NO CORRECTIONS  
 15 \_\_\_\_\_ CORRECTIONS ATTACHED  
 16  
 17 \_\_\_\_\_  
 18 Date Signed  
 19  
 20 \_\_\_\_\_  
 21 THOMAS PAYNE  
 22  
 23 Case Title: Williams vs State, Volume II  
 24 Date of Deposition: Wednesday, November 21, 2001  
 25 ---oOo---

1 Concept 6 school, for example?  
 2 MR. SALVATY: Objection. Assumes facts not in  
 3 evidence.  
 4 MR. SEFERIAN: Objection. No foundation.  
 5 Calls for speculation. Argumentative.  
 6 THE WITNESS: We talked about planning. In  
 7 those cases where it might be a disruption and daylight  
 8 time is unavailable, then weekends and evenings would be  
 9 more desirable.  
 10 MR. VILLAGRA: I'm not sure I understand how a  
 11 maintenance crew working at night would be more  
 12 desirable.  
 13 MR. SALVATY: Objection -- well, there's no  
 14 question.  
 15 MR. SEFERIAN: There's no question.  
 16 Q. BY MR. VILLAGRA: Why is it that nighttime  
 17 would be preferable for some maintenance work rather  
 18 than during the day when students are in class?  
 19 MR. SALVATY: Objection. Incomplete  
 20 hypothetical. Calls for speculation.  
 21 MR. SEFERIAN: Lacks foundation. Assumes facts  
 22 not in evidence.  
 23 THE WITNESS: There are some maintenance jobs  
 24 that require a vacant facility, a completely vacant  
 25 facility.

1 DEPONENT'S CHANGES OR CORRECTIONS  
 2 Note: If you are adding to your testimony, print the  
 3 exact words you want to add. If you are deleting from  
 4 your testimony, print the exact words you want to  
 5 delete. Specify with "Add" or "Delete" and sign this  
 6 form.  
 7 DEPOSITION OF: THOMAS PAYNE, VOL. II  
 8 CASE: WILLIAMS VS STATE  
 9 DATE OF DEPOSITION: WEDNESDAY, NOVEMBER 21, 2001  
 10 I, \_\_\_\_\_, have the following  
 11 corrections to make to my deposition:  
 12  
 13 PAGE LINE CHANGE/ADD/DELETE  
 14  
 15 \_\_\_\_\_  
 16 \_\_\_\_\_  
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 23 \_\_\_\_\_  
 24 \_\_\_\_\_  
 25 THOMAS PAYNE DATE

REPORTER'S CERTIFICATE

1 I certify that the witness in the foregoing  
2 deposition,  
3 THOMAS PAYNE,  
4 was by me duly sworn to testify the truth, the whole  
5 truth, in the within-entitled cause; that said  
6 deposition was taken at the time and place therein  
7 named; that the testimony of said witness was reported  
8 by me, a duly certified shorthand reporter and a  
9 disinterested person, and was thereafter transcribed  
10 into typewriting.

11 I further certify that I am not of counsel or  
12 attorney for either or any of the parties to said cause,  
13 nor in any way interested in the outcome of the cause  
14 named in said deposition.

15 IN WITNESS WHEREOF, I have hereunto set my hand  
16 this 3rd day of December, 2001.

17  
18  
19  
20  
21  
22  
23 TRACY LEE MOORELAND, CSR 10397  
24 State of California  
25

1 ESQUIRE DEPOSITION SERVICES  
2 Certified Shorthand Reporters  
3 1801 I Street, Suite 100  
4 Sacramento, California 95814

5 MORRISON & FOERSTER  
6 ATTN: LEECIA WELCH, ESQ.  
7 429 Market Street  
8 San Francisco, CA 94105-2482

9 Re: Williams vs State  
10 Deposition of: Thomas Payne, Vol. II  
11 Date Taken: Wednesday, November 21, 2001

12 Dear Ms. Welch:

13 We wish to inform you of the disposition of this  
14 original transcript. The following procedure is being  
15 taken by our office:

16 \_\_\_\_\_ The witness has read and signed the  
17 deposition. (See attached.)

18 \_\_\_\_\_ The witness has waived signature.

19 \_\_\_\_\_ The time for reading and signing  
20 has expired.

21 \_\_\_\_\_ The sealed original deposition is  
22 being forwarded to your office.

23 \_\_\_\_\_ Other:

24 Sincerely,

25 TRACY LEE MOORELAND, CSR  
Esquire Deposition Services  
Ref. No. 29857

1 ESQUIRE DEPOSITION SERVICES  
2 Certified Shorthand Reporters  
3 1801 I Street, Suite 100  
4 Sacramento, California 95814

5 Mr. Thomas Payne  
6 Department of Education  
7 1224 47th Street  
8 Sacramento, CA 95819  
9 Re: Williams vs State, Volume II  
10 Date Taken: Wednesday, November 21, 2001

11 Dear Mr. Payne:

12 Your deposition is now ready for you to read, correct,  
13 and sign. The original will be held in our office for  
14 45 days from the last day of your deposition.

15 If you are represented by counsel, you may wish to  
16 discuss with him/her the reading and signing of your  
17 deposition. If your attorney has purchased a copy of  
18 your deposition, you may review that copy. If you  
19 choose to read your attorney's copy, please fill out,  
20 sign, and submit to our office the DEPONENT'S CHANGE  
21 SHEET located in the back of your deposition.

22 If you choose to read your deposition at our office, it  
23 will be available between 9:00 a.m. and 4:00 p.m.  
24 Please bring this letter as a reference.

25 If you do not wish to read your deposition, please sign  
here and return within 45 days of the date of this  
letter.

THOMAS PAYNE DATE

Sincerely,

TRACY LEE MOORELAND, CSR  
Esquire Deposition Services  
Job No. 29857

cc: Kevin Reed, Esq. Anthony Seferian, Esq.  
Paul Salvaty, Esq. Judy Cias, Esq.  
Hector Villagra, Esq.