

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

ELIEZER WILLIAMS, et al.,)

)

Plaintiff,)

)

vs.)

No. 312236

)

STATE OF CALIFORNIA, et al.,)

)

Defendants.)

)

DEPOSITION OF CHRISTINE ROSSELL

Los Angeles, California

Wednesday, August 13, 2003

Volume 2

Reported by:

SHERRYL DOBSON, RPR

CSR No. 5713

JOB No. 43720

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

1 ELIEZER WILLIAMS, et al.,)
2)
3 Plaintiff,)
4)
5 vs.) No. 312236
6)
7 STATE OF CALIFORNIA, et al.,)
8)
9 Defendants.)

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11
12 Deposition of CHRISTINE ROSSELL,
13 Volume 2, taken on behalf of
14 Plaintiffs, at 555 West 5th Street,
15 35th Floor, Los Angeles, California,
16 beginning at 9:15 a.m. and ending at
17 1:20 p.m. on Wednesday, August 13,
18 2003, before SHERRYL DOBSON, Certified
19 Shorthand Reporter No. 5713.
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25

1 INDEX
2 WITNESS: EXAMINATION
3 CHRISTINE ROSSELL
4 Volume 2

5 BY MR. LONDEN 189
6 EXHIBITS
7 PLAINTIFF PAGE
8 7 Document titled "Regression Emergency % 199
Six Variable Equation"
9
8 Document titled "Regression Emergency % 201
6 Variable Equation"
10
11 Document titled "Regression" 202
12 10 Document titled "A Rebuttal Report on the 265
Desegregation of the Fulton County Schools"
13
11 Document titled "Appendix to Fulton 265
County Board of Education's Pre-Hearing
Brief in Support of Motion for Unitary
Status
14
15
16
17
18
19
20
21
22
23
24
25

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1 Los Angeles, California, Wednesday, August 13, 2003
2 9:15 a.m. - 1:20 p.m.
3
4 CHRISTINE ROSSELL,
5 having been previously duly sworn, was examined and
6 testified further as follows:
7
8 EXAMINATION (Resumed)
9 BY MR. LONDEN:
10 Q You understand you're still under oath from
11 yesterday?
12 A Yes.
13 Q Look, please, at Appendix 4 to your report.
14 Appendix 4 is entitled "Multiple Regression
15 Analyses of the Relationship Between School Achievement
16 (SAT9) and Percentage of Teachers Who Have Certification
17 to Teach English Learners in California Schools,
18 2000-2001." The third variable is entitled "PCEL01
19 percentage English learners," with a mean of 33.918.
20 What does that mean reflect?
21 A The percentage of the school that is English
22 learners.
23 Q And among the 4,769 schools used in this
24 analysis, the percentage was 33.9?
25 A The average percentage.

1 Q The average.
 2 A Yes.
 3 Q And the last variable is the percentage fully
 4 English language/bilingual certified teachers, all
 5 language instruction.
 6 What does that represent?
 7 A Well, it means any fully-certified teacher.
 8 They don't have to be bilingual.
 9 Q I'm sorry, they don't have to be bilingual?
 10 A Right. It's not just the bilingual program.
 11 Q So a full certification, a clear credential to
 12 teach, would get the teacher into the -- well, withdraw
 13 that.
 14 What does the -- what teachers are not fully
 15 EL/bilingual-certified for purposes of this variable?
 16 A I used the State variable, and my understanding
 17 is that these are the teachers who have CLAD, BCLAD, DLD
 18 certifications.
 19 Q So the certification you're talking about, for
 20 purposes of describing this variable, is one or another
 21 of the certifications to teach English language learners
 22 specifically? You weren't just now saying that this
 23 variable is for the general teacher certification? Am I
 24 right about that?
 25 A Yes.

1 Q And the 61.21 reflects what?
 2 A The average percentage across these schools.
 3 Q Does that mean that, on average, the schools in
 4 this sample, 4,769 schools had 61 percent of their
 5 teacher force qualified in English language instruction,
 6 according to the criteria for that that were used for
 7 the variable?
 8 A That's a good question. I would have to look
 9 at this variable again. This is basically the State's
 10 variable, and I would have to reconstruct exactly how
 11 they calculated it.
 12 Q Well, just looking at these means, it looked to
 13 me as if in this sample of schools, the average fully EL
 14 or bilingual certified teachers was 61 percent for a
 15 student population that was 33 percent ELs.
 16 Is that what it looks like to you?
 17 A I'm going to have to check this.
 18 Q You have no idea about that or --
 19 A Well, the problem is it's not -- it all of a
 20 sudden hit me -- it didn't hit me before, but your
 21 question triggered a question in my mind as to what is
 22 the denominator.
 23 Q Mine too.
 24 But can you tell at all by looking at this?
 25 A Well, I'm going to guess that the denominator --

1 MR. VIRJEE: No one wants you to guess or
 2 speculate.
 3 THE WITNESS: Okay.
 4 BY MR. LONDEN:
 5 Q We're entitled to have your reasonable
 6 inferences if you have a basis. If you're --
 7 A I'm not going to guess.
 8 Q What are you going to do to check on this?
 9 A I'm going to take the numbers, not the
 10 percentages.
 11 Q So you think it would be more meaningful to
 12 rerun this analysis, using number rather than percentage?
 13 A No.
 14 MR. VIRJEE: Objection. Vague and ambiguous as to
 15 "meaningful."
 16 THE WITNESS: No. I'm simply going to look at the
 17 numbers and calculate my own percentages rather than
 18 using the State's percentages.
 19 BY MR. LONDEN:
 20 Q Okay. And when you do that, what numbers will
 21 you use and how will you calculate them?
 22 A I'll look at the numbers of teachers who are
 23 fully certified.
 24 Q And in this respect you mean fully --
 25 A Language certified.

1 Q -- certified with respect to --
 2 A English learners.
 3 Q -- English learners?
 4 A That's correct.
 5 And then I will look at the denominator all
 6 teachers, and I will look at the denominator all
 7 teachers who teach English learners.
 8 Q Is that last statistic available from the State?
 9 A I believe it is. My recollection is it is.
 10 Q And as you sit here now, your recollection
 11 simply isn't specific enough to tell you which of those
 12 two possible ratios is used in this last variable in the
 13 descriptive statistics table; is that right?
 14 A I made one assumption, which is it was the
 15 percentage of teachers who teach English learners who
 16 are fully certified, but your asking this question
 17 causes me to say I really should check that for sure.
 18 That would be -- that's what it seems to say in the
 19 description, but it needs to be checked.
 20 Q Okay. And am I right in understanding that the
 21 same need to check applies to all of the regressions
 22 in -- reflected in Appendix 4?
 23 A That is correct. I assumed the denominator was
 24 teachers of English learners, and I need to confirm
 25 that.

1 Q This regression did not include as a variable
2 the percentage of minority students in the school,
3 correct?
4 A Correct.
5 Q Why not?
6 A I forgot.
7 MR. VIRJEE: And this, you're talking about
8 Appendix 4?
9 MR. LONDEN: Right.
10 THE WITNESS: I forgot to put it in the run. Then
11 when I realized I had forgotten to put it in, I did a
12 run and put it in. And as I explained yesterday,
13 apparently I either didn't save it or I saved it in the
14 wrong directory, and gave my research assistant the
15 files before that run.
16 BY MR. LONDEN:
17 Q And as we discussed yesterday, you're going to
18 look and, if the final -- if you will rely on a final
19 run that has minorities included, we'll get it?
20 MR. VIRJEE: Her report already relies on it. So
21 we'll give it to you regardless. The run and an
22 Appendix 4 that reflects it.
23 MR. LONDEN: Great.
24 Q Now -- may I see the exhibits for a moment that
25 were marked yesterday.

1 A (Witness provides documents.)
2 Q Let me show you something I -- if it's all
3 right, we can decide whether we need to mark it after I
4 ask my questions, so that we conserve people's copying
5 bills.
6 I've given you a document that bears production
7 identification numbers 0148 through 0164, with the same
8 prefix as the earlier references. Could you look at the
9 page with the production number 0157, please.
10 Under the heading "Regression," there's a box
11 that says, "Warnings." And it says, "For models with
12 dependent variable SCI01 NP, the following variables are
13 constants or have missing correlations." And then
14 colon, "ELEM 01, elementary school, 00-01, they will be
15 deleted from the analysis."
16 What does that tell us?
17 A Only secondary school students took the science
18 and social studies test.
19 Q And if you'll look, please, at Page 0161.
20 I think it is true -- I won't ask you to accept
21 my representation -- that this regression was not used
22 in your report.
23 Can you tell me by looking at the descriptive
24 statistics and the variables entered in the summary and
25 coefficients what this run analyzes?

1 A It analyzed social studies scores for English
2 learners.
3 Q And do the results tell us anything?
4 A Tells you that --
5 MR. VIRJEE: I'm not sure what you're asking for,
6 Jack. That's kind of a vague, ambiguous question. The
7 document speaks for itself.
8 The results are what they are. Are you asking
9 whether they are reflected in a report? What they
10 reflect in her opinion? Whether they tell us anything
11 is kind of a vague question.
12 BY MR. LONDEN:
13 Q If you're unable to answer that, I can direct
14 your attention to the coefficients and to the R-square
15 score. Let me ask you about the latter.
16 The R-square is .53?
17 A Yes.
18 Q Does that R-square score tell you anything
19 about the relationship between the dependent variable
20 and the independent variables in this run?
21 A It tells you it explains about 55 percent of
22 the variation.
23 Q And would you put much reliance on a run that
24 had generated an equation explaining in the sense you've
25 used it, 55 percent of the variation?

1 MR. VIRJEE: Objection. Vague and ambiguous, calls
2 for speculation, incomplete hypothetical.
3 THE WITNESS: By itself, that's not the -- that's
4 not a standard I would use.
5 MR. LONDEN: Unless you want to mark this, I think
6 we can rely on the references --
7 MR. VIRJEE: I have no burning need.
8 MR. LONDEN: Once again, I would like to show you
9 something that we don't necessarily have to mark. We'll
10 decide that after I ask the questions.
11 Q I have put before you a document that bears
12 I.D. numbers 0200 through 0221.
13 I'd like you to look at the page that starts at
14 0219.
15 There's a heading "Summarize," and if you would
16 look at the tables below that heading, my question is:
17 What does the -- what do those tables tell you?
18 MR. VIRJEE: Same objection. Vague and ambiguous
19 as to what the tables tell you. Tables report
20 information, and it's vague as to in what context you're
21 asking, whether she used them in her report, whether
22 they provide her with any information that formed the
23 basis for her opinions. Vague and ambiguous.
24 THE WITNESS: I don't even remember doing this, nor
25 do I remember why I did it.

1 BY MR. LONDEN:

2 Q If you'll look at Page 0220, there's a list of
3 schools.

4 Are these California schools?

5 MR. VIRJEE: Objection. Lacks foundation, calls
6 for speculation.

7 THE WITNESS: Well, this is my California data
8 set. So it has to be California schools. I did -- this
9 is something that was in the printout that I didn't
10 realize was in the printout. SPSS, if you don't close
11 out of a printout, will just keep adding stuff to the
12 end. And I was doing some check here, but I can no
13 longer remember why or what.

14 So I did not intend to provide this as backup
15 in any way, shape or form.

16 BY MR. LONDEN:

17 Q On that same page, the variable PC free 01 --

18 MR. VIRJEE: Jack, same page being which page?

19 MR. LONDEN: 220.

20 MR. VIRJEE: Thank you.

21 BY MR. LONDEN:

22 Q PC free 01 is a variable you recognize as from
23 California data?

24 A Yes.

25 Q What does it represent?

1 that has a first page which is a cover sheet, "Not
2 marked for production" -- I don't have an explanation of
3 that -- followed by STATE-EXP-CR 0310 through 0314, with
4 the exception that there's another cover sheet between
5 12 and 13.

6 Have I correctly described this?

7 A You have lost me. So could you please go over
8 that again?

9 Q I'm not going to ask you to verify my
10 description.

11 A Okay.

12 Q We describe these things so that it's clear for
13 our record what paper we're talking about, but I don't
14 need you to testify about it.

15 MR. VIRJEE: Well, you asked her.

16 MR. LONDEN: I know.

17 MR. VIRJEE: Okay. I'll stipulate you described
18 it.

19 MR. LONDEN: Great.

20 Q Look at Page 310, please. And look also at
21 Table 1 from your report. If you would look at those
22 two things at the same time.

23 Are you with me?

24 A Yes.

25 Q My question is whether Page 310 -- Pages 310

1 A Percentage on free or reduced lunch.

2 Q And that is apparently a percentage among 33
3 schools in this instance?

4 A I really don't know. I mean -- it looks like
5 it. Let me just -- yeah.

6 Q And PC EL01, is that percentage English
7 learners?

8 A Yes.

9 Q WVR PC 01 or 2000-2001, percentage of teachers
10 working under waivers, that's a demographics -- CDE
11 demographics Web site variable?

12 A Correct.

13 Q And as you sit here, you don't have any
14 recollection of why this run was done?

15 A That's correct. Nor did I intend to give it to
16 you as backup for anything.

17 Q Okay.

18 MR. LONDEN: Unless you need to mark this, we can
19 rely on the reference to the production numbers, as far
20 as I'm concerned.

21 Mark this, please.

22 (Defendant's Exhibit 7 was marked for
23 identification by the court reporter.)

24 BY MR. LONDEN:

25 Q Before you, marked as Exhibit 7, is a document

1 through 312 of the document we've marked as Exhibit 7
2 are SPSS outputs for the run summarized under the column
3 Equation 3 in your Table 1.

4 A It appears to be.

5 MR. LONDEN: Fram, I have -- I'll just tell you.

6 I'll follow up with more checking, but I have not found
7 outputs for Equation 1 and Equation 2 in the
8 production. So I may have missed it, will do some more
9 checking, but that's where things stand at the moment in
10 my mind.

11 THE WITNESS: You haven't found outputs for what?

12 MR. VIRJEE: For Equations 1 and 2 on --

13 MR. LONDEN: Equations 1 and 2 --

14 MR. VIRJEE: -- Table 1.

15 MR. LONDEN: -- on Table 1.

16 Mark this, please.

17 (Defendant's Exhibit 8 was marked for
18 identification by the court reporter.)

19 BY MR. LONDEN:

20 Q Before you is the document that's been labeled
21 Exhibit 8 and bears I.D. numbers 329 through 331. It
22 appears to be an SPSS output, and if you will look at
23 Table 3 and the columns under Equation 3, my question is
24 whether Exhibit 8 represents the output of the SPSS runs
25 underlying the Equation 3 columns on Table 3.

1 A (Witness reviews documents.)
 2 It appears to be.
 3 May I take a quick bathroom break?
 4 MR. LONDEN: Sure.
 5 (Brief recess taken.)
 6 (Defendant's Exhibit 9 was marked for
 7 identification by the court reporter.)
 8 BY MR. LONDEN:
 9 Q We've marked as Exhibit 9 a document identified
 10 by the numbers 0332 and 0333. It appears to be a
 11 regression output printout from SPSS, and my question is
 12 whether this output printout describes the regression
 13 that was the basis for Equations 1 and 2 on Table 3.
 14 A (Witness reviews documents.)
 15 It appears to be.
 16 Q Turn, please, to Page 6 of the text of your
 17 report.
 18 There's a quotation continuing from the
 19 previous page in the first full paragraph of that
 20 quotation. The second sentence says, "In a recent
 21 study, Economist Dan Goldhaber and Dominic Brewer found
 22 that while certified math and science teachers
 23 outperformed those that lacked certification (as
 24 measured by their students' achievement), there was no
 25 statistical difference in performance between teachers

1 who attended conventional training programs and received
 2 traditional teaching licenses versus those who did not
 3 complete such programs and were teaching on emergency or
 4 temporary certificates." I'm ending my quote there.
 5 First of all, have you read the Goldhaber and
 6 Brewer study?
 7 A Not that particular one.
 8 Q Do you have an understanding of the comparisons
 9 that are being described in this sentence, what's being
 10 compared?
 11 A The purpose of this quotation is simply to show
 12 that there are experts in the field who think that
 13 certification is not all that necessary. In this
 14 particular case, I'd have to read the study to know
 15 exactly what was being compared.
 16 Q So for purposes of your report, you don't put
 17 any weight on the specific comparisons being described
 18 in that quote except that professionals and experts have
 19 differing opinions about the value of certification?
 20 A That's correct.
 21 Q Okay. Look at Page 7, please.
 22 In the last paragraph before the underlined
 23 heading, your report says, "In other words, if
 24 emergency-credentialed teachers received more mentoring
 25 and training and if they are selected on the basis of

1 other important qualities, such as impressive verbal
 2 abilities and personality, emergency-credentialed
 3 teachers might be no worse than fully-credentialed
 4 teachers and perhaps better than fully-credentialed
 5 beginning teachers."
 6 What's the basis for that statement?
 7 A Over the last 30 years in working with school
 8 districts, I've been told that the teachers who are not
 9 fully credentialed get training, additional training
 10 that the other teachers don't get, that
 11 fully-credentialed teachers don't get. They get
 12 mentoring. They also get teacher's aides. I've often
 13 been told that -- which I didn't mention here, but I've
 14 been told they'll get a teacher's aide until they're
 15 fully certified in many school districts.
 16 Q And is the experience that you are talking
 17 about over 30 years specific to California or across the
 18 country or both?
 19 A Both.
 20 Q Do you have any information about where in
 21 California schools emergency-credentialed teachers -- or
 22 put more clearly, in which California schools
 23 emergency-credentialed teachers receive mentoring and
 24 training and aides?
 25 MR. VIRJEE: You mean an instance in any school

1 district that she's aware of where a person who's
 2 credentialed received those things?
 3 MR. LONDEN: Any instance or statistic,
 4 information.
 5 THE WITNESS: In the school districts that I worked
 6 with on deseg. cases, this was an issue. And I was told
 7 that these teachers get extra support.
 8 BY MR. LONDEN:
 9 Q Are you familiar with the --
 10 A Oh, and by the way, also my bilingual cases.
 11 I'm sorry, I forgot -- I said deseg., but then I forgot
 12 I've had a couple bilingual cases.
 13 Q Are you familiar with the requirements laid
 14 down in the No Child Left Behind Act regarding who can
 15 and who cannot be considered highly qualified?
 16 A I haven't reviewed that recently.
 17 Q Do you know whether or not an
 18 emergency-credentialed teacher can be considered highly
 19 qualified under the Federal No Child Left Behind Act?
 20 MR. VIRJEE: Objection. Vague and ambiguous as to
 21 emergency-credentialed teacher, what context, what
 22 State, under what regulations.
 23 THE WITNESS: My understanding is that such a
 24 teacher would not, under the current law.
 25 BY MR. LONDEN:

1 Q On Page 7, the section that begins with the
2 title "Waivered Teachers" at the bottom -- are you with
3 me?
4 A Yes.
5 Q My first question is -- in your analysis, you
6 treat emergency-credentialed teachers in one section and
7 waived teachers in a separate section.
8 Did you do any work to analyze the combined
9 effects or analyze statistically the combination of
10 emergency-credentialed and waived teachers?
11 A No.
12 Q So in your statistical analyses, you're testing
13 for the significance of results from regressions
14 separately for emergency-credentialed teachers and then
15 separately for waived teachers, right?
16 A Correct.
17 Q Under California's practices, a teacher is
18 either emergency credentialed or on waivers. Those are
19 not overlapping categories. Is that your understanding?
20 A That's my understanding.
21 Q Could one do a regression analysis for the
22 significance of the dependent variable emergency
23 credentialed plus waived?
24 A Yes.
25 Q You don't know how that would turn out?

1 MR. VIRJEE: Objection. Vague and ambiguous as to
2 "turn out."
3 BY MR. LONDEN:
4 Q Viewed according to the same criteria you've
5 applied to them separately.
6 A I'm not going to hazard a guess.
7 Q Look at Figure 3, please.
8 Figure 3 is entitled "Ratio of Percentage of
9 Teachers with Waivered Credentials in High Poverty
10 Districts to Percentage of Teachers With Waivered
11 Credentials in Low Poverty Districts in California and
12 U.S., 2000-01," and it cites as a source a report of the
13 U.S. Department of Education called "Meeting the highly
14 qualified teacher challenge."
15 Have I described it correctly?
16 A Yes.
17 MR. VIRJEE: It also cites Appendix B-2 of that, if
18 you want to do it correctly.
19 BY MR. LONDEN:
20 Q What defines a high-poverty district for
21 purposes of this figure?
22 A I can't recall. I just simply used their data.
23 Q So there was no interpretation or calculation
24 on your part involved in putting this figure together?
25 A Correct.

1 Q In some -- at least once in another part of
2 your report, high poverty versus low poverty is defined
3 by the median percentage of free lunch students in the
4 schools.
5 Do you recall that?
6 MR. VIRJEE: I think that misstates her testimony.
7 MR. LONDEN: She hasn't testified about it yet.
8 It's in the report.
9 MR. VIRJEE: She did testify yesterday about what
10 high poverty meant and how she had defined it.
11 THE WITNESS: I probably used the mean rather than
12 the median.
13 BY MR. LONDEN:
14 Q I do stand corrected.
15 Do you know whether, in the analysis reflected
16 in Figure 3, all schools are included; that is, the ones
17 that aren't high poverty or considered low poverty?
18 A Would you repeat that question, please?
19 Q Sure. Maybe I'll make it clearer.
20 It would be possible to use the top 25 percent
21 and bottom 25 percent to say high poverty, low poverty,
22 or it would be possible to divide them so that the two
23 categories between them encompass all the schools.
24 Do you know which approach this chart reflects?
25 A I don't recall. I simply used their data,

1 which was consistently applied across cases.
2 Q You point out with arrows above the body of the
3 table six states that you label as cited as "Model for
4 California by Oakes, 2002, in report for this case."
5 Do you recall what attributes those states were
6 cited as models for?
7 A They weren't all cited as models for the same
8 thing. Some of them were cited as models for systemic
9 reform. Others were cited as models for -- I can't
10 recall all the different cites at this point. I'd have
11 to review her report.
12 Q Look at Page 32 of the text of your report,
13 please. You can keep the Figure 3 in front of you.
14 In the paragraph under "Resource Equity" on
15 Page 32, the second-to-last paragraph, it says, "Indeed,
16 California does a better job in solving this problem
17 than almost all the states cited by Dr. Oakes as a model
18 for the State to follow." And I'm going to end my
19 quote there.
20 What states did you have in mind when you
21 referred to almost all the states cited by Dr. Oakes as
22 a model?
23 A Rhode Island, Illinois, New York -- well, I
24 would say they do the same with Maryland and Florida.
25 So that sentence needs to be amended.

1 Q How would you amend it?
 2 A California does a better job in solving this
 3 problem than three of the -- than half of the states --
 4 or you could put it another way. It does a better job
 5 than half of the states cited by Dr. Oakes, about the
 6 same as two of the states cited by Dr. Oakes, or you
 7 could say, it does as well as or better than almost all
 8 of the states cited by Dr. Oakes as models for the State
 9 to follow.

10 Q And the states -- the total list of the states
 11 cited by Dr. Oakes as a model that you were referring to
 12 in the sentence on Page 32 are the same six states
 13 indicated by arrows on Figure 3?

14 A Yes.

15 Q And your statements just now about as good as
 16 reflect that the statistic on Figure 3 for two of the
 17 states, Maryland and Florida, is the same statistic --
 18 that is, 1.7 -- as for California?

19 A Correct.

20 Q And that one of the states, Connecticut, has a
 21 better statistic, 1.0?

22 A Yes.

23 Q And that three of the states, Rhode Island,
 24 Illinois, and New York, have poorer statistics than
 25 California, right?

1 In the text of your report at Page 9 --

2 A Page 9?

3 Q Page 9.

4 The first full paragraph, fourth sentence says,
 5 "The closer the ratio is to 1.0, the closer a state is
 6 to perfect equity." I end my quote there.

7 Now, that statement has to be qualified to
 8 understand that it means perfect insofar as these data
 9 tell you anything, right?

10 A Correct.

11 Q A 1.0 ratio doesn't tell you anything more than
 12 the underlying data allow?

13 A Correct.

14 Q If you look at the chart, it seems to me that
 15 the label for perfect equity was placed in the wrong
 16 place on your Figure 3 by whoever prepared the chart.

17 Am I right about that?

18 A I don't see why you say that.

19 Q The arrow under "Perfect equity" points to -- I
 20 think it's Michigan.

21 A Oh, no. It's pointing to the horizontal line.

22 Q Ah, okay. I see now.

23 In the last paragraph on Page 9, the last
 24 sentence, it states that more than 75 percent of
 25 California schools have none -- that is, no teachers

1 A Correct.

2 Q So the analysis reflected on Figure 3 was the
 3 basis for your statement that, "Indeed, California does
 4 a better job in solving this problem than almost all the
 5 states cited by Dr. Oakes as a model for the State to
 6 follow, and substantially better than one of the two
 7 states which Dr. Oakes says have been successful in
 8 systematic reform"; is that correct?

9 A Systemic.

10 Q Systemic.

11 A That is correct.

12 Q I know you don't recall this. If you assume
 13 that the definition of "high-poverty districts" is the
 14 top quartile of districts based on free and reduced
 15 lunch eligibility, does that make any -- does that have
 16 any impact on the conclusions you draw from this
 17 analysis?

18 MR. VIRJEE: Objection. Calls for speculation,
 19 incomplete hypothetical.

20 THE WITNESS: I agree with my counsel.

21 BY MR. LONDEN:

22 Q So unable to answer just based on that one
 23 assumption?

24 A Correct.

25 Q Thank you.

1 with waived credentials -- and 99 percent have less
 2 than ten percent, ending my quote there.

3 Is your data set downloaded from the California
 4 CDE Web site the source of that information that you
 5 relied on in that sentence?

6 A Correct.

7 Q Do you know anything about whether the one
 8 percent of schools that have more than ten percent of
 9 teachers with waived credentials also have
 10 above-average percentages of emergency-credentialed
 11 teachers?

12 A I don't recall what those schools look like.

13 Q Your statistical analysis of -- withdrawn.

14 Top of Page 10, please, of the narrative part
 15 of your report.

16 The first sentence states, "Finally, it should
 17 be noted that the ratio of high-poverty to low-poverty
 18 schools is virtually the same in states with plaintiff
 19 victories in state fiscal equity cases as in other
 20 states." I'm ending my quote there.

21 MR. VIRJEE: Actually, just for the record, you
 22 left out the parentheses of 2.1. So if you're going to
 23 have the full quote, you left that part out.

24 MR. LONDEN: Thank you. So "virtually the same
 25 (2.1) in states with plaintiff victories in state fiscal

1 equity cases as in other states."

2 Q The distinction high poverty and low poverty
3 is based on student eligibility for assistance of some
4 sort, right?

5 A This is essentially a discussion of Figure 3,
6 and that comes from the U.S. Department of Education
7 report "Meeting the highly-qualified teacher challenge,"
8 and I assumed they used free or reduced lunch, because
9 that's generally what people use, and it's consistent
10 across states. But I don't recall whether they even
11 defined what they meant by poor. But that's -- as long
12 as it's consistent across states, that's all that
13 matters.

14 Q In any of the fiscal equity cases you're
15 referring to in that sentence, do you know whether there
16 was a court order that said the ratio of teachers with
17 waived credentials should be equal in schools
18 according to student poverty?

19 A No.

20 Q Do you know whether -- well, the following
21 sentence says, "The courts may be able to order states
22 to more equitably distribute moneys to school districts,
23 but there's a limit to what they can achieve in a free
24 society."

25 What is it about the ratio of high-poverty to

1 Q But is there anything about that analysis that
2 tells you that a Court that was actually trying to
3 equalize the quality of teaching could not do so in a
4 free society?

5 A I would say asked and answered.

6 Q Not that specific question, I think.

7 Could you tell me what about the analysis
8 reflected in the first sentence leads you to believe
9 that a Court that addressed the distribution of
10 qualified teachers specifically, as distinguished from
11 the distribution of money, would not be able to achieve
12 better results as to qualified teachers?

13 A I don't really understand the question. I'm
14 sorry.

15 Q Is it your understanding that plaintiff
16 victories in state fiscal equity cases have failed to
17 bring about an increase in the equity of the
18 distribution of qualified teachers?

19 MR. VIRJEE: Objection. Calls for speculation,
20 lacks foundation, incomplete hypothetical.

21 THE WITNESS: I don't have that information. The
22 information I have is that the ratio of waived
23 teachers in high- and low-poverty schools in fiscal
24 equity cases where the plaintiffs won is the same as the
25 ratio in fiscal equity cases where the plaintiffs did

1 low-poverty schools among states in which there were
2 plaintiffs' victories in state fiscal equity cases that
3 supports the following sentence, in your mind?

4 A I don't understand your question.

5 Q Well, when you say "Thus the courts may be able
6 to order states to more equitably distribute moneys to
7 school districts, but there's a limit to what they can
8 achieve in a free society," does that mean that -- does
9 the word "thus" mean that you find that sentence to be
10 supported by the preceding sentence?

11 A Yes.

12 Q And why do you think so?

13 A Well, I would conclude, if, for example, a
14 fiscal equity case -- the cases with plaintiff
15 victories, if they had ratios of 1.0 and the ones
16 without plaintiff victories had inequity -- that is,
17 disproportionality anything above 1.0 -- then I would
18 conclude that these fiscal equity cases have brought
19 about equity, in terms of the distribution of waived
20 credentialed teachers. Sorry, waived teachers. But
21 that's not the case. The case is that they resemble
22 each other.

23 So simply distributing money more equally
24 doesn't solve some of the other problems that advocates
25 for the poor worry about.

1 not win.

2 BY MR. LONDEN:

3 Q In the next paragraph you observe that the
4 history of Court-ordered school desegregation plans
5 suggests very real limits on the power of Courts to make
6 administrators, parents and teachers comply with Court
7 orders even within a school district, let alone an
8 entire state. I'll end my quote there.

9 What applicability to this case does that
10 observation have, in your mind?

11 A Well, in this case the plaintiffs are asking
12 the Court to order the State to monitor education in the
13 school districts, such that the school districts are
14 more efficient and more equitable in their -- in the
15 distribution of resources.

16 And it seems to me that we could learn
17 something from the Court orders in individual school
18 districts, where very similar things were ordered, along
19 with a host of other things, and undone by teachers and
20 parents voting with their feet or school district
21 administrators being afraid to reassign teachers in
22 particular because the teachers tell them they are going
23 to vote with their feet.

24 Q Have you formed an expectation about things
25 going wrong if the plaintiffs' objectives were obtained

1 in this case?

2 MR. VIRJEE: Objection. Vague and ambiguous as to
3 "plaintiffs' objectives." Also calls for speculation,
4 also incomplete hypothetical.

5 THE WITNESS: Would you repeat the question?

6 BY MR. LONDEN:

7 Q Well, if I understand your last answer, your
8 experience suggests that the intentions of plaintiffs in
9 courts in the history of school desegregation cases
10 often are not realized because of the way
11 administrators, parents and teachers react to the
12 orders.

13 Is that a fair statement?

14 A Yes.

15 Q Do you have -- have you formed any expectation
16 about something comparable to that being likely to
17 happen in this case?

18 A There are two possibilities, it seems to me, if
19 the judge orders some sort of procedures by which you
20 will have perfect equity in the distribution of waived
21 and emergency-credentialed teachers. It seems to me
22 there are two outcomes. One, the school districts dig
23 their heels in and we enter into continuing litigation,
24 with money that should be spent on children being spent
25 on litigation. The other is that it accelerates the

1 trend of teachers leaving -- people leaving California.

2 Q When you say people, you mean teachers?

3 A Well, I don't have specific information on
4 teachers, but I do know that there are more people
5 leaving California than coming in from other states.

6 Q And you have a basis for expecting that -- I'm
7 sorry.

8 You refer to possibilities. Have you formed a
9 conclusion that those possibilities are likely to
10 happen?

11 MR. VIRJEE: Objection. Calls for speculation,
12 lacks foundation, incomplete hypothetical.

13 THE WITNESS: It's likely to happen. What is
14 difficult to predict is how much, the extent to which it
15 will happen.

16 BY MR. LONDEN:

17 Q And have you reached a prediction about the
18 extent?

19 A No.

20 Q You used the words "perfect equity" in a recent
21 answer.

22 Did you have in mind the same meaning for
23 "perfect equity" as is explained on Page 9 of your
24 report?

25 A More or less.

1 I better look at Page 9.

2 MR. VIRJEE: We were talking about in conjunction
3 with waived and emergency-credentialed teachers,
4 because that's what this is about, and that's what her
5 answer was about.

6 THE WITNESS: I mean, you know, in a sense perfect
7 equity is where the percentage of waived and
8 emergency-credentialed teachers is exactly the same in
9 every school. Another definition could be that the
10 poorer schools have fewer of them. I mean, there's
11 not -- there's really not agreement over what equity
12 is. But certainly, at a minimum, one could argue it's
13 the same percentages.

14 BY MR. LONDEN:

15 Q And have you given me in your testimony in the
16 last few minutes a fair summary of all of your thinking
17 about what you would expect to be problematic responses
18 of administrators, parents and teachers to such an order
19 in this case?

20 A I don't know.

21 Q I'm not asking you to think of something now
22 you haven't thought about before. I'm simply trying to
23 get the thinking that you're referring to in this
24 paragraph.

25 MR. VIRJEE: In which -- you're pointing to a

1 paragraph.

2 MR. LONDEN: The paragraph we've been talking about
3 is the second paragraph on Page 10.

4 MR. VIRJEE: Page 10.

5 MR. LONDEN: Right. Beginning with the sentence,
6 "Indeed the history of Court-ordered desegregation plans
7 suggests."

8 MR. VIRJEE: And your question is?

9 BY MR. LONDEN:

10 Q I asked you about what expectations, if any,
11 you have regarding what the effects of an order in this
12 case comparable to effects of school desegregation
13 orders, and do you have any other expectations than the
14 ones you have summarized so far?

15 A And what did I summarize? I simply said that
16 either the school districts will not comply --

17 Q And there will be costs of litigation and so
18 forth.

19 A Right.

20 Or they will comply, and the -- what results
21 will be one that affects the population. I mean, there
22 are a number of scenarios as to how one could do this.
23 Providing financial incentives is obviously less onerous
24 than assigning them, and since school districts don't
25 have printing presses in their basements -- or actually,

1 in California you don't even have basements. They don't
2 have printing presses in the supply room -- printing
3 presses for money, I meant, in the supply room, it's got
4 to come out of somewhere else.

5 One can imagine a number of places it could
6 come from, and one can imagine a number of scenarios
7 resulting from that. I probably can't even think of all
8 the possibilities.

9 Q That completes your answer?

10 A Yes.

11 Q Okay. Look at Page 12 of your report, please.

12 In the paragraph beginning at about the middle
13 of the page, the report describes Table 5, and if you
14 could get Table 5 and look at it as we -- at the same
15 time as Page 12.

16 "Table 5 is a hypothetical example," it says?

17 A Yes.

18 Q Did you intend the choice of assumptions for
19 the hypothetical example to resemble any real-world case
20 that you know about?

21 A It's not modeled off of a specific case, no.
22 It's a general hypothetical.

23 Q Okay. Page 12 says, "Table 5 shows a
24 hypothetical example over three years that demonstrates
25 how English learners as a whole could appear to be

1 by school, it is not possible to tell whether individual
2 students are making progress, as in the Table 5
3 hypothetical, or not?

4 MR. VIRJEE: Same objections. Incomplete
5 hypothetical and vague and ambiguous as to "numbers."

6 THE WITNESS: There are times when one can estimate
7 they are making progress. How much, obviously, you
8 really can't tell. But I personally am leery of
9 aggregate statistics, because they, in this -- for this
10 particular instance, because they mask -- they can mask
11 change.

12 BY MR. LONDEN:

13 Q What would characterize the times when you can
14 tell that the individuals are making progress on the
15 basis of aggregate statistics?

16 A If you were to look at School A in one year
17 and the average score for English learners was, let's
18 say, the 30th percentile and the following year it was
19 the 35th percentile and you learned that most of the
20 English learners -- the turnover in that school was
21 fairly low from one year to the next, most would be --
22 it'll be the same -- there'll be a -- there's an overlap
23 from one year to the next. Exactly how much depends on
24 the mobility rate in a particular school.

25 So one could conclude that there's a

1 making no progress although each individual English
2 learner is making considerable progress," end quote.

3 Do you have an opinion as to whether it is true
4 in the state of California now that the phenomenon
5 illustrated in Table 5 is taking place; that is,
6 statistics that aggregate individual students mask what
7 is in general positive progress for English learners?

8 MR. VIRJEE: Objection. Vague and ambiguous, calls
9 for speculation as to what statistics, incomplete
10 hypothetical.

11 THE WITNESS: I have seen many examples of this in
12 California.

13 BY MR. LONDEN:

14 Q Is it true that looking at the averages that
15 aggregate individual students, one cannot tell either
16 way whether the individual students are making progress
17 as in the hypothetical example or not?

18 MR. VIRJEE: Objection. Calls for speculation as
19 to which statistics.

20 THE WITNESS: Would you repeat the question,
21 please?

22 BY MR. LONDEN:

23 Q Sure.

24 Is it true that when one looks at numbers that
25 average the achievement of the category English learners

1 possibility -- you have to be very cautious -- there's a
2 possibility of change. That change that I just
3 mentioned would be too small for me to want to talk
4 about. I'd have to see something bigger, and I'd have
5 to know that there wasn't an influx of high-scoring
6 kids. That's the problem. It's not that you can't
7 analyze it -- I mean, we're talking simple descriptive
8 statistics. It's not that you can draw no conclusions,
9 but you have to be very careful about what conclusions
10 you draw.

11 Q Look at Page 13, please. And at the paragraph
12 that begins in the middle of the page. You note that
13 because of the change in the tests in California, we
14 cannot compare test scores before 2001 to those after
15 2001.

16 Is there any way to make meaningful comparisons
17 before 2001 to after 2001?

18 MR. VIRJEE: Objection. Incomplete hypothetical,
19 calls for speculation, vague and ambiguous as to
20 "meaningful comparisons" and what populations.

21 THE WITNESS: If I had individual level data, I
22 suppose I could try to see what the correlation is.
23 It'd be a very complicated analysis. I'd try to see
24 what the correlation was between the old test in a
25 school district and the new test. It would have to be

1 at the school district level. And if the correlation
2 was high and the change is large, I suppose one could
3 estimate that -- and depends on what high is. I mean,
4 high is in the eye of the beholder.

5 There might be instances -- I tend to shy away
6 from that -- that kind of analysis, that kind of data.
7 I mean, making comparisons across tests. But I suppose
8 there might be instances where one could make an
9 educated guess or a rough estimate if the change is
10 large enough and the correlation is high enough between
11 the old test and the new test.

12 BY MR. LONDEN:

13 Q In the last sentence of the same paragraph, you
14 refer to the criterion for defining a child as an
15 English learner having changed.

16 What criterion were you referring to there?

17 A The English proficiency test. The publishers
18 have cutoff scores for defining a child as limited
19 English proficient, and the situation before this CELDT
20 was that each school district chose their test from
21 among an approved list from the State of California.
22 And so the data we see on redesignation rates,
23 redesignating a child as an English learner, is
24 dependent on the English proficiency cutoff score as
25 well as teacher evaluations. So now we've gone to a

1 see if I can remember.

2 MR. VIRJEE: We don't want you to guess or
3 speculate, but if you can recall, he's entitled to it.

4 THE WITNESS: Yeah. Let me see if I can recall.

5 I believe it's simply the number of children in
6 advanced in 2002 compared to the number of children
7 advanced in 2001, divided by the number of children
8 advanced in 2001. And so forth for each category.

9 BY MR. LONDEN:

10 Q A comparison of head count numbers in the state
11 as a whole?

12 A Yes.

13 Q And not something that's school by school?

14 A The state data comes from the schools, but what
15 I looked at was a summary for the state.

16 Q Did the calculation of the percentages change
17 from 2001 to 2002 appear in the Web site, or is that a
18 calculation you did from numbers, head count numbers, as
19 you recall, you found in the Web site?

20 A My recollection is I did the calculation.

21 Q And your best recollection is it's a comparison
22 of the aggregate number of students in the whole state,
23 classified as, for example, advanced, based on the 2001
24 test, with the aggregate numbers categorized as advanced
25 on the 2002 test?

1 situation where everybody's got the same cutoff score.
2 They're working from the same test and the test
3 publisher's cutoff score.

4 Now, you know, one thing, of course, that one
5 can never know for sure is the extent to which school
6 districts comply with the test publisher's cutoff. But
7 the situation before, which was that everybody was using
8 a different test, and the situation currently, which is
9 they're using the same test, means that the two aren't
10 directly comparable.

11 Q In the following paragraph you refer to Figure
12 4. I'd like to look at Figure 4, please.

13 Can you explain the sources that you used to
14 compile Figure 4 and how the source information was
15 compared or calculated?

16 A I simply took it from the CDE Web site, which,
17 unfortunately, I did not cite in the figure, and now I'm
18 looking to see if I cited it in the text.

19 Q Footnote 15, perhaps?

20 A Yes, I did cite it in the text.

21 So that's where I got the data.

22 Q What's the numerator and what's the denominator
23 from the fractions used to supply the percentages of
24 English learners at each English learner level?

25 A I forgot to review this chart, and -- let me

1 MR. VIRJEE: Objection. Asked and answered.

2 THE WITNESS: Correct.

3 MR. LONDEN: I'm just confirming that.

4 THE WITNESS: Correct.

5 BY MR. LONDEN:

6 Q Okay. Page 14 of your report, please. The
7 second paragraph refers to the Gandara and Rumburger
8 2002 report.

9 Did you read that report?

10 A I read that report about a year ago, and then I
11 reviewed -- although I may not have read this specific
12 report. They've been putting out reports that I have
13 read. And it seems to be the same data set. And then I
14 looked at -- reviewed again relevant parts of it based
15 upon Kenji Hakuta's report.

16 Q What was the occasion for you to look at a
17 Gandara and Rumburger report a year ago?

18 A Because of my report on the implementation of
19 Prop 227 in California.

20 Q And is the specific report that you reviewed a
21 year ago by Gandara and Rumburger cited in your
22 implementation of Prop 227 paper?

23 A I hope so, but I don't know for sure.

24 I don't cite everything I read.

25 Q Do you recall whether or not you commented on

1 the Gandara and Rumberger report in the implementation
2 of 227 paper?

3 MR. VIRJEE: Objection. The paper speaks for
4 itself.

5 THE WITNESS: I have a recollection that I did,
6 although I can't remember why at this point.

7 BY MR. LONDEN:

8 Q Did you receive a copy of a Gandara and
9 Rumberger report in the three notebooks of materials
10 from O'Melveny?

11 A Yes.

12 Q Did you receive something other than that
13 report which you understood to be underlying data for
14 that report? And I'm asking now about the three
15 notebooks.

16 A I don't know.

17 Q Was there any -- withdraw that.

18 Did you download a copy of the Gandara and
19 Rumberger report from the decentschools.com Web site?

20 A I don't think so.

21 Q And aside from the three notebooks, was there
22 any other source that you went to to find underlying
23 data for the Gandara and Rumberger report?

24 A I don't have their specific data set,
25 although -- is it possible to request it from you?

1 A Yes.

2 Q What do you understand "English origin" and
3 "non-English origin" to mean in that quotation?

4 A "English origin" means students who never came
5 to school -- I mean, who came to school speaking
6 English, and "non-English origin" students are those who
7 are classified as LEP or formerly LEP. Limited English
8 proficient or formerly limited English proficient.

9 Q Is everyone who's not in the latter category --
10 that is, everyone who's not LEP or formerly LEP --
11 included in the first category, as you understand it?

12 A The way in which they described it, they have
13 all the students in those two categories.

14 Q The next sentence in your report says, "The
15 Gandara and Rumberger report does not in fact show an
16 increasing gap over grades," and I'll just stop there.

17 Your conclusion is that the report that
18 Mr. Hakuta relies on does not show an increasing gap in
19 achievement between English origin and non-English
20 origin students across grades?

21 A Yes. I looked at it, and I couldn't find it.

22 Q And then you say, "nor do the underlying data
23 that they use."

24 Focusing on underlying data, aside from what's
25 in the report, what is the basis for your statement?

1 Q Well, we produced in discovery to our -- to
2 other parties, and --

3 A In electronic form?

4 Q And why would you request that?

5 A Might be interesting to analyze.

6 Q Okay.

7 A I've not received any electronic files,
8 computer files, from your experts.

9 Q Have you asked the State for electronic data
10 that it has not provided to you?

11 A I asked Peter Choate to get me electronic files
12 for all the underlying data, and I didn't get it. I
13 don't know if it's because he didn't ask you or because
14 I didn't follow up with a specific file name. He had
15 said to me at one point, make a list of the data you
16 want, and I had said, can't I just get all the data?
17 And I think it was sort of left at that.

18 But I will try and make a list of the data that
19 your experts rely on to see if I can get a copy of it.

20 Q In the first full paragraph on Page 14, you
21 quote the statement that "A sizable and ultimately
22 growing achievement gap between English origin and
23 non-English origin students," and then dot-dot-dot, "in
24 California across grade levels."

25 Do you see where I am --

1 MR. VIRJEE: Other than -- when you say what's in
2 the report, you're saying what's in Dr. Hakuta's report
3 or in the Gandara and Rumberger report?

4 BY MR. LONDEN:

5 Q What underlying data did you mean when you used
6 those words in this sentence?

7 A I can't recall.

8 Q And when you wrote this sentence, did you have
9 in mind any -- an analysis that you did of anything
10 other than the report?

11 MR. VIRJEE: Objection. Vague and ambiguous as to
12 "the report." Are you referring to Dr. Hakuta's report
13 or Gandara and Rumberger's report?

14 THE WITNESS: I can't recall what I meant by
15 "underlying data." It's possible that I was looking at
16 some charts in their report.

17 BY MR. LONDEN:

18 Q By "them," you mean Gandara and Rumberger?

19 A Yes.

20 Q And do you recall any more than what you've
21 just said is possible?

22 A I don't have their data file, so it would have
23 to be I looked at the chart, didn't see it, and then
24 looked at data in their appendices, perhaps, or some
25 other table. But I would have to review that, because I

1 don't recall what I meant when I said underlying data.

2 Q In the next sentence you refer to children with
3 special needs.

4 What did you mean by that phrase? Read the
5 sentence as much as you need to.

6 A I mean students who are hard to teach, who've
7 got some educational problem or some problem at home.

8 Q And what's the basis for saying that, "With
9 each successive grade, the category English learner
10 includes more and more children with special needs"?

11 A Well, kids get redesignated. A lot of children
12 are redesignated by Grade 3. The children who are not
13 redesignated are children who are difficult to teach for
14 a variety of reasons or are new to the school district,
15 the school, new to the U.S. For example, the percentage
16 of students who are English learners declines with each
17 grade, and that's because kids get redesignated in the
18 earlier grades.

19 MR. VIRJEE: Whenever you're ready to take a quick
20 break, that'd be great.

21 MR. LONDEN: Now's fine.

22 (Brief recess taken.)

23 BY MR. LONDEN:

24 Q On Page 15 of your report, there begins a
25 section on language certification of teachers.

1 some schools means that the children are being taught in
2 a corner of the same classroom, and in other schools,
3 most schools, it's they're pulled out and they go to a
4 separate classroom. The next category is what we used
5 to call structured immersion. That is called in
6 California and in Massachusetts and Arizona sheltered
7 English immersion.

8 And then the next approach is bilingual
9 education, and within bilingual education there are --
10 there is transitional bilingual education, late exit or
11 developmental bilingual education, and two-way
12 immersion. They call it two-way immersion, but -- I
13 mean, that's the most common term, but it actually goes
14 in the category of bilingual education, even though the
15 word "immersion" is in the term.

16 Q Now, for each of the categories other than the
17 do nothing category, is teacher training involved?

18 MR. VIRJEE: Objection. Vague and ambiguous,
19 incomplete hypothetical, calls for speculation.

20 THE WITNESS: It depends on the school district,
21 but the -- at a minimum there is generally at least a
22 workshop for teachers, although I can imagine a
23 classroom where the teacher has -- does not have a
24 workshop in how to teach English learners. It's
25 unlikely that her whole class would be English learners,

1 You have devoted considerable attention to
2 methods of instructing English learners, right?

3 A Yes.

4 Q Can you give us a brief summary of your overall
5 conclusion about comparisons of different methods of
6 instruction?

7 MR. VIRJEE: Objection. Vague and ambiguous.

8 THE WITNESS: What do you mean by "methods of
9 instruction"?

10 BY MR. LONDEN:

11 Q In some of your work there is reference to
12 transitional bilingual education and other categories of
13 instructional method.

14 Could you give me the words that you would use
15 to refer to different approaches to teaching English
16 learners?

17 A Yes. There are three basic approaches, and we
18 can divide those up into other approaches, into
19 sub-approaches. The three basic approaches are -- well,
20 you can actually say there are four, because one
21 approach is do nothing. That's not an approach that
22 many people support, although it is the dominant
23 approach throughout the world; that is, do nothing
24 beyond what every kid gets in a classroom from a teacher.

25 The other approaches are ESL pull-out, which in

1 but it certainly happens in mainstream classrooms, where
2 the teacher will have English learners and then children
3 who are native English speakers.

4 The various certification -- certificates that
5 the State of California issues require course work in
6 the subjects. Many teachers also get a teacher's aide
7 as well as training, and that also depends -- that
8 varies from school district to school district.

9 BY MR. LONDEN:

10 Q Have you reached conclusions about which of the
11 approaches that you've described are more effective?

12 A On average, bilingual education is the least
13 effective for English learners, and sheltered English
14 immersion is the most effective and mainstream with ESL
15 pull-out and mainstream are in the middle.

16 Q Is mainstream do nothing?

17 A Yes.

18 Q Have you reached any conclusions about whether
19 there is evidence of benefits for English language
20 learners if their teachers have any of the kinds of
21 training that is required to receive any of the
22 California levels of certification?

23 MR. VIRJEE: Objection. Vague and ambiguous as to
24 "benefits."

25 THE WITNESS: I can't find it.

1 BY MR. LONDEN:

2 Q And have you reached conclusions about benefits
3 for English learners if their teachers have training
4 that's differently defined than the definitions used for
5 California certifications?

6 MR. VIRJEE: Objection. Vague and ambiguous as to
7 "benefits." Also, vague and ambiguous as to "training
8 that's different," calls for speculation, incomplete
9 hypothetical.

10 THE WITNESS: What was your question again?

11 MR. LONDEN: Let's read it back, and we'll get
12 another objection.

13 (Record read)

14 THE WITNESS: Let me phrase it in a way that I can
15 understand and answer.

16 BY MR. LONDEN:

17 Q Okay.

18 A I cannot determine a difference in the
19 achievement of children between teachers with
20 certification and teachers without certification, and as
21 a social scientist, that's all I can say.

22 Q Is there a certification category in California
23 for which teachers can be qualified by training
24 specifically for mainstream plus pull-out ESL
25 instructional?

1 A In an edited book. I've forgotten the title.

2 Q Was there peer review of your article on the
3 Berkeley Unified example?

4 A There was peer review of the entire book. I
5 didn't -- I don't -- I don't recall getting -- I don't
6 recall if I got any review of this analysis.

7 Q Look at Table 6.

8 This appears to reflect the results of three
9 linear regression analyses; is that right?

10 A Yes.

11 Q Did you make the underlying data upon which
12 these analyses were based available to the State's
13 lawyers for production in this case?

14 A No.

15 Q Do you have it?

16 A I should have it.

17 Q In the first part of Table 6, there is the
18 heading "Variable," and then I take it the first six
19 items under that heading are the variables?

20 A Yes.

21 Q What does NCE CTBS reading change mean?

22 A It is the change in the CTBS reading score one
23 year to the next.

24 Q For what group?

25 A For English learners.

1 A There's an ELD certification.

2 Q Have you made any attempt to analyze the
3 effects on achievement of English learners of any
4 category or type of training that doesn't coincide with
5 a state's certification requirement?

6 MR. VIRJEE: Objection. Asked and answered. Also,
7 incomplete hypothetical, calls for speculation.

8 THE WITNESS: The only analyses I've done are of
9 the certification versus not certified.

10 BY MR. LONDEN:

11 Q Okay. Look at Table 6, please.

12 Table 6 is described on Page 17 of your report
13 as showing the effect of bilingual certification on the
14 achievement of English learners enrolled in bilingual
15 education in 1988 in the Berkeley Unified School
16 District. I'm ending my quote there.

17 Is this research that you did?

18 A Yes.

19 Q What was the occasion for doing it?

20 A I was working on a case, Teresa P. versus
21 Berkeley Unified School District.

22 Q Did you publish the results, aside from your
23 use in the case?

24 A Yes.

25 Q And where was that?

1 Q And which English learners?

2 A The English learners in the Spanish bilingual
3 programs.

4 Q Within Berkeley Unified School District
5 between 1987 and 1988?

6 A Correct.

7 Q Are the CTBS scores -- withdrawn.

8 The second variable is entitled "NCE CTBS
9 reading 1987," and the mean is 28.33.

10 Is that a score on a hundred-point scale?

11 A Yes.

12 Q And the first entry is a change score.

13 Is that a variable that reflects the difference
14 between two numbers on a hundred-point scale?

15 A Correct.

16 Q And does the fact that there's no negative
17 sign on that mean there was a 2.43 percent improvement
18 in the average?

19 A Yes.

20 Q What was the source and nature of the data
21 reflected by the variable heading "Father's Occupation"?

22 A The student's cum. folders, cumulative folders.

23 Q And how are the contents of those folders
24 reflected in a numerical scale for father's occupation?

25 A The -- I used a scale that was published in a

1 sociological journal with a -- I did a number of things,
 2 but I -- I can't recall exactly at this point. I think
 3 this is simply a prestige scale, in which the
 4 sociologist ranked all the occupations, in terms of
 5 their prestige, the amount of intellectual ability you
 6 had to have, on average, to practice that occupation.
 7 So I simply used that particular sociologist's scale. I
 8 think it was actually two authors, now that I think
 9 about it in more detail.
 10 Q And what was the range of the scale? What were
 11 the potential high and low scores?
 12 A I can't recall now.
 13 Q What is the -- what are the values reflected in
 14 the variable "Grade"?
 15 A Simply the grade that the child was in.
 16 Q From "K" through 12?
 17 A Oh, no. This is the Spanish bilingual
 18 program. And that ended in, I believe, Grade 5.
 19 Q Did it start in "K," kindergarten?
 20 A Yes, it started in kindergarten.
 21 Q So what does the mean of 2.44 reflect?
 22 A The average grade the child was in.
 23 Q Do you remember whether that's between second
 24 and third or between first and second on this rating?
 25 A I can't recall.

1 Q And what does "Years in Program" reflect?
 2 A How many years they've been in the bilingual
 3 education program in Berkeley.
 4 Q And the "they" is the individual student?
 5 A Yes.
 6 Q And "Certified bilingual teacher," is that a
 7 yes or no?
 8 A Correct.
 9 Q Yes is a 1?
 10 A Yes.
 11 Q "N" is 77.
 12 That means there were 77 students whose records
 13 were included in this regression analysis?
 14 A Correct.
 15 Q Was that all the students in the Spanish
 16 bilingual program?
 17 A Probably not. I had to have scores at two
 18 points in time, and not every student will have scores
 19 at two points in time.
 20 Q The R-squared is .224.
 21 Do you draw any conclusion from that number in
 22 the context of the other things that are reported about
 23 reading achievement?
 24 A What conclusions do you want me to draw?
 25 Q Only those that you can, if you consider them

1 reasonable.
 2 A This equation explains 22 percent of the
 3 variance in reading achievement. Hard to know what else
 4 to say.
 5 Q In the variable "Certified bilingual teacher,"
 6 what kinds of training or experience teaching English
 7 learners, if you know, did the teachers who were not
 8 certified bilingual have in that program?
 9 A I can't recall exactly.
 10 Q Now, can we correctly conclude that of the 77
 11 students reflected in this regression, 71 percent of
 12 those 77, or about 55, if my arithmetic is correct, had
 13 a certified bilingual teacher?
 14 A I wouldn't jump to that conclusion.
 15 Q There's a flaw in my reasoning?
 16 A Well, this is -- these are students, and the
 17 teachers are in classrooms. Classrooms vary in size.
 18 Q So it's possible all of the 77 students had a
 19 certified bilingual teacher?
 20 A No.
 21 Q Is it possible that none of them did?
 22 A No.
 23 Q Did you, as you recall, have any information
 24 about how many of the 77 students actually had a
 25 certified bilingual teacher?

1 A I don't recall now.
 2 Q Okay. You did not include in this analysis
 3 percentage minority, right?
 4 A This is an individual student analysis.
 5 Q I see.
 6 And what's the significance of that for whether
 7 or not one would include minority status?
 8 A They're all minorities.
 9 Q I apologize if I already asked you this
 10 question, but I'm interested in knowing whether you have
 11 any -- or whether you recall having had any information
 12 about the range between zero and a hundred percent of
 13 the proportion of the 77 students whose teacher was
 14 bilingual certified.
 15 A I can't recall. I would have to go back and
 16 check the data.
 17 Q All right.
 18 A There were certified teachers, and there were
 19 uncertified.
 20 Q Did you have data that would tell you the
 21 answer to whether any individual student attended a
 22 class taught by a certified bilingual teacher?
 23 A I could go back and calculate that, and I may
 24 have done it at the time.
 25 Q Okay. If so, do you think it was reflected in

1 your report in that case?

2 MR. VIRJEE: Objection. The report speaks for
3 itself, calls for speculation.

4 BY MR. LONDEN:

5 Q Let me back up.

6 Did you write a report in that case that
7 reflected this regression analysis?

8 A I'm not sure. I may have done this after the
9 case was over.

10 Q For purposes of our present case, did you go
11 back and find any documentation of the analysis of the
12 Berkeley certified bilingual teachers for purposes of
13 making it available for production?

14 A Documentation?

15 Q Yeah.

16 A What is documentation?

17 Q I asked you earlier about the data, and now I'm
18 asking -- I'm intending to ask a broader question.
19 Reports, transcripts of testimony.

20 A I don't keep transcripts of testimony.

21 Q All right. Table 7.

22 Is my understanding correct that everything
23 summarized in Table 7 is set forth in more complete
24 detail in the Appendix 4 pages?

25 A That was my intent, but Appendix 4 -- did it

1 have --

2 Q Appendix 4, I think, has the minority problem.

3 A Okay.

4 Q We already know about that. I'm not asking
5 about that specifically.

6 A Okay.

7 Q Does the analysis that's reflected in Table 7
8 and Appendix 4 suffer from any of the same problem --
9 well, suffer from the same problem you note in the
10 middle paragraph on Page 13 regarding a change in
11 criteria for designating children as English learners?

12 A No.

13 Q Why not?

14 A I'm not using an English proficiency test.

15 Q In the first page of Appendix 4, the first
16 variable is EL students reading NCE 01.

17 Do you see that?

18 A Yes.

19 Q How are the students in that -- reflected in
20 that variable designated as EL students?

21 A By the school, by the school district and by
22 the school. The school district fills out a language
23 census in -- I believe it's March of every year.

24 Q And this is for 2001; that is, the variable
25 that's the first variable on the first page of Appendix

1 4?

2 A Spring of 2001, yes.

3 Q Is it your understanding that that designation
4 happened on the basis of the CELDT test?

5 A Yes.

6 Q And the second variable is EL students reading
7 NCE 1999-2000.

8 Does that variable also use a designation by
9 schools of who's an EL?

10 A Yes.

11 Q And was that done on the basis of a different
12 criterion than the 2001 --

13 A Yes.

14 Q -- variable?

15 And the sixth variable, percentage of EL who
16 are Spanish speakers, 2000-2001, does that also reflect
17 the use of the CELDT as the basis for EL designation in
18 2000-2001, or do you know?

19 A Yes. Although the CELDT is not the only
20 criteria school districts use.

21 Q CELDT, among other criteria?

22 A Yes.

23 Q The students -- I'm sorry, I think I've already
24 covered this. Okay.

25 Page 18, the last sentence of the last

1 paragraph in this section on language certification of
2 teachers.

3 A I have to get organized here. Excuse me.

4 Q That's all right.

5 A (Witness reviews documents.)

6 Page 19?

7 Q 18.

8 Last sentence of the section says, quote, "In
9 short, there is no evidence that a certification to
10 teach English learners is related to the achievement of
11 English learners whether individual students are
12 analyzed as in Table 6 or the average achievement of
13 English learners in a school is analyzed as in Table 7."
14 I'm ending my quote there.

15 Have you relied on any studies of individual
16 students -- that is, achievement of English learners
17 based on individual students -- other than the Berkeley
18 study that's reflected in Table 6? And for this purpose
19 I mean in California.

20 A Have I relied on any study of individual
21 students other than the Berkeley?

22 Q Yeah.

23 A I don't -- when I wrote that sentence, I was
24 referring to my analyses.

25 Q The Berkeley Table 6 analyses?

1 A Yeah.
 2 Q And when you made the statement there's no
 3 evidence, the body of evidence you were referring to
 4 regarding the average achievement of English learners in
 5 a school is the regression analyses analyzed in Table 7
 6 and presented in Appendix 4?
 7 A Correct.
 8 Q Anything else?
 9 A That's what I was referring to in that sentence.
 10 Q Okay. In the bottom paragraph on that same
 11 page, Page 18, under the heading "Educational Spending,"
 12 you refer to Figure 5.
 13 Could you look at Figure 5, please.
 14 Is Figure 5 a graphic presentation of the "PP\$"
 15 column values in Appendix 5?
 16 A It's supposed to be.
 17 Q At the top of Page 19, do you see the statement
 18 "Since 1985 the public schools have received 37.3
 19 percent of all lottery revenues."
 20 A Yes.
 21 Q End quote.
 22 What's the source of that?
 23 A I believe it's the Web site cited in Footnote
 24 22, but it's possible it's another Web site. I can't
 25 recall if I got it from that Web site or another Web

1 site.
 2 Q In the first full paragraph on Page 19, there's
 3 a statement, "California's educational expenditures are
 4 also a larger share of total governmental expenditures
 5 than other states. As shown in Figure 6 and Appendix 6,
 6 California ranks well above the other states in the
 7 percentage of state spending that goes to education."
 8 Could you tell me how Figure 6 was prepared?
 9 A I simply took the total expenditures from -- I
 10 believe it was Table 6 of the Census Bureau document,
 11 and -- actually, my research assistant did this under my
 12 direction -- divided by -- oh, excuse me. I took the
 13 total State expenditures and divided by the educational
 14 expenditures.
 15 Q Was it that way or the other way around?
 16 A Well, the denominator would be the total State
 17 expenditures, and the numerator is education.
 18 Q And the denominator comes from the chart on
 19 Appendix 6?
 20 A Yes.
 21 Q And the numerator comes from the chart on
 22 Appendix 5?
 23 A Yes.
 24 Q Including, for California, your correction for
 25 the -- to add to the Census Bureau figure of 43 million

1 something?
 2 A Yes.
 3 Q The following paragraph says, "It is
 4 interesting that the 25 states with plaintiff victories
 5 in fiscal equity cases have lower per pupil expenditures
 6 and about the same percentage of State funds devoted to
 7 education as the other states -- other 25 states," end
 8 quote.
 9 Have you made any analysis of other
 10 similarities or differences between the groups that do
 11 or do not have plaintiff victories in fiscal equity
 12 cases with respect to educational funding?
 13 A No.
 14 Q On Page 20, you state that California does
 15 keep educational expenditures by school districts and
 16 cite to the Web site noted in Footnote 24.
 17 And the footnote says, "These are the
 18 official," in quotes, "education expenditures," which
 19 means they do not include the lottery money or other
 20 sources," end quote.
 21 Is the basis for saying that the numbers on
 22 that Web site do not include lottery money or other
 23 sources the same discussion with Mr. Izumi and review of
 24 his primer and discussion with Vanessa Koury and perhaps
 25 others that we covered in questions and answers

1 yesterday?
 2 A The basis of it is my understanding that the
 3 official statistics do not include anything other than
 4 Prop 98 funds. On the other hand, school spending --
 5 excuse me. Never mind. I started to get off on another
 6 topic. That's the basis for it, my understanding that
 7 the official statistics do not include the other sources
 8 of funds.
 9 Q Do you know whether the State has in its
 10 possession the amount of lottery money or money in the
 11 same categories of other sources as you meant in
 12 Footnote 24 on a district-by-district basis?
 13 MR. VIRJEE: I'm going to object as vague and
 14 ambiguous. It calls for speculation.
 15 I'm assuming you're asking whether the State
 16 has that data, not whether they have the lottery money?
 17 Because that's what you asked.
 18 MR. LONDEN: I was asking about the information.
 19 THE WITNESS: And now I've lost the question.
 20 BY MR. LONDEN:
 21 Q Well, you report that the official education
 22 expenditures in the Web site don't include lottery money
 23 or other sources, and my question is: Does the State
 24 have that information on a district-by-district basis
 25 somewhere other than in the Web site, if you know?

1 A I don't know.
 2 Q In the sentence after the Footnote 24 in the
 3 text, it refers to Figure 7. I'd like to direct your
 4 attention to that figure and ask how it was prepared.
 5 A I simply averaged the per pupil expenditures
 6 for school districts that were above the state average
 7 and school districts that were below.
 8 Q And you found those expenditure numbers simply
 9 by copying them from what was reported at the Web site
 10 cited in Footnote 24?
 11 A No.
 12 Q Where did you get them?
 13 A I got them from the Rand Corporation.
 14 Q Can you be more specific?
 15 A I requested them. I asked them for -- I knew
 16 that they had per pupil expenditures by school district.
 17 Q Who did you ask?
 18 A Well, the process I went through is probably
 19 easier to describe --
 20 Q Sure.
 21 A -- than who I asked.
 22 Q Sure.
 23 A I went to the Rand Corporation Web site to see
 24 if they had per pupil expenditures by school district,
 25 and I discovered that they did. But the way in which it

1 was on the Web site was -- you had to do a query for
 2 each school district in California, which is obviously
 3 tedious and so forth and so on.
 4 So I e-mailed whoever this anonymous person is,
 5 you know, "Contact us," that person. I e-mailed them
 6 and said, "Do you have this in electronic file that I
 7 can simply -- that you can simply e-mail to me or I can
 8 download, so that I don't have to do a query for every
 9 school district in California?" And they said yes.
 10 And so I dealt with two different people, whose
 11 names I've forgotten, but you probably have that
 12 information.
 13 Q Did you make a copy of the data that you got
 14 from Rand and make it available to the State to produce
 15 to us?
 16 A Yes.
 17 Q Do you happen to remember what the data set was
 18 called?
 19 A No, but I try to make my data files have
 20 descriptive names.
 21 The other thing you need to know is that the
 22 first file I received -- there's more than one file.
 23 And the first file I received was missing a number of
 24 school districts. So I pointed that out to the person
 25 who gave it to me, and I received additional school

1 districts in an e-mail rather than in an electronic
 2 file, so that I had to input it -- I mean copy and paste.
 3 Q And did you provide a copy of that e-mail to
 4 the State's counsel --
 5 A Yes.
 6 Q -- to produce to us?
 7 So in order to get the whole data set, one must
 8 take the electronic file and then take the e-mail and
 9 add it to the electronic file?
 10 A Correct. And there's more than one e-mail.
 11 This wasn't all solved in one e-mail.
 12 Q Okay. Did you end up with an electronic data
 13 set that had all the numbers in it in order to produce
 14 the -- had a number for every district in it in order to
 15 produce this figure, Figure 7?
 16 A Yes.
 17 Q And did you give that file to the State to
 18 produce to us? Did you give a copy of that file after
 19 the additions?
 20 A I can't recall.
 21 Q Did you do any computations other than simply
 22 taking the numbers that Rand reported to you as per
 23 pupil expenditures?
 24 A No.
 25 Q And did Rand supply the percentage of students

1 on free or reduced lunch that you used to categorize the
 2 districts as high poverty or not?
 3 A No.
 4 Q Where did that come from?
 5 A The CDE Web site, my data file.
 6 Q Did you or someone working with you merge the
 7 two sets of data, so that the CDE free or reduced
 8 eligibility numbers were available for the groupings
 9 that you used in Figure 7?
 10 A I merged them.
 11 Q Have you provided to the State's counsel for
 12 production to the plaintiffs a copy of a data set that
 13 includes both the per pupil averages that you used and
 14 the free or reduced lunch cutoff designation that you
 15 used?
 16 A I don't recall if I sent the combined file.
 17 You've got the financial data by school district, and
 18 you've got the demographic data by school, which can be
 19 aggregated to school district. I don't recall if I sent
 20 my merged file.
 21 Q Okay. Do you know whether Rand used
 22 expenditure data per district that included the lottery
 23 money or other sources?
 24 A Rand used the data from the CDE Web site.
 25 Q So it's your conclusion that it did not include

1 lottery money or other sources?

2 MR. VIRJEE: Whether the data from the CDE Web site
3 included that?

4 MR. LONDEN: No.

5 Q It's your conclusion that the Rand --

6 A It's my understanding that it doesn't, because
7 it's the official statistics. Although for the -- this
8 purpose it really doesn't matter whether it does or it
9 doesn't.

10 Q And why is that?

11 A Well, because as long as you've got the --
12 you're comparing apples and apples, it strikes me that
13 this will be the same sort of comparison -- or
14 disparity, relative comparison. What it will affect is,
15 most obviously, the totals, the total per pupil.

16 Q Are you assuming that lottery money and money
17 from other sources is distributed in equal proportion to
18 high-poverty school districts and other school
19 districts?

20 A I am, but there is another possibility, which
21 is that it's distributed more to high poverty. And if
22 that's the case, then this will -- this is a
23 conservative estimate.

24 Q Isn't it also possible that the lottery money
25 and money from other sources is distributed

1 MR. LONDEN: Let's take a bathroom break, please.

2 MR. VIRJEE: Sure.

3 (Brief recess taken.)

4 BY MR. LONDEN:

5 Q On Page 20 of your report there's a section
6 entitled "Facilities and Student Achievement." The
7 first sentence under that section says, "Apparently,
8 there are only two states, Illinois and Maryland, that
9 have a facilities rating program." I'm ending my quote
10 there.

11 How do you know that?

12 A Well, I put the word "apparently," and I should
13 have been more specific. Jeanne Oakes cites them as
14 states that have State facilities rating programs. I
15 asked my research assistant to do a Web search to see if
16 he could find any states that had State facilities
17 rating programs, and these are the only two he could
18 find also. So I say apparently. I mean, obviously,
19 there could be more. I don't know of any.

20 Q On the next page, Page 21, your report says, "I
21 do not have data on the quality of school facilities in
22 any California school district, but I do have data from
23 a school district in Georgia that routinely surveys its
24 facilities and gives them a quality rating," end quote.

25 What was the occasion for your acquiring that

1 disproportionately to low-poverty school districts?

2 A No.

3 Q Why is that not possible?

4 A This is the state of California.

5 Q Okay. California wouldn't do a thing like
6 that?

7 A I assume you're joking.

8 Q No. You say this is the state of California,
9 and that tells you that lottery money and money from
10 other sources must be either distributed uniformly as
11 among high-poverty school districts or
12 disproportionately in favor of low-poverty school
13 districts, right?

14 A Correct.

15 Q And why do you exclude the possibility that
16 lottery money and money from other sources is
17 disproportionately available to low-poverty school
18 districts?

19 A Because the California Department of Education
20 is filled with liberal people who want money to go to
21 poor kids, and they're not going to -- the worst that
22 could happen is it's going to be equal. They're not
23 going to give money to wealthy school districts. And
24 then disproportionately to wealthy school districts.

25 Q Okay. Thank you.

1 data?

2 A I was working on a school deseg. case in Fulton
3 County. This is Fulton County data. And they were
4 applying for unitary status, which they now have. And
5 school facilities was an issue.

6 Q Can you tell us anything more about the school
7 facilities issue in that case?

8 A Well, there one of the issues in that
9 particular school district is north versus south, which
10 happens to coincide with race, so that south Fulton
11 County was mostly minority, mostly black, and north
12 Fulton County was mostly white. And I don't think it
13 was a big issue in that case. In fact, I can't even
14 remember if anybody ever complained about the
15 facilities, but -- in south Fulton County versus north,
16 but the school district routinely surveyed facilities,
17 and I just took those routine surveys that were done for
18 other purposes and used them.

19 Q What attributes of the school facilities were
20 assessed in the surveys?

21 A Just about everything. It's a pretty long
22 list. Physical -- it's basically the physical
23 facilities, and -- I don't recall all the different
24 items, but it was a lot.

25 Q Did you visit the schools in --

1 A Yes.
 2 Q -- Fulton County?
 3 A Yes.
 4 Q Did you see any schools that you considered to
 5 be in poor physical condition?
 6 A I don't --
 7 MR. VIRJEE: Objection. Vague and ambiguous as to
 8 "poor physical condition."
 9 THE WITNESS: I don't recall seeing schools in poor
 10 physical condition. There was some variation in the
 11 condition of schools, and really quite extraordinary
 12 variation in number of portables, and portables tend to
 13 get a little ratty looking. They don't look at nice.
 14 Although, amazingly -- many teachers actually prefer
 15 them because of the individual air conditioners.
 16 BY MR. LONDEN:
 17 Q Did you come by any information in the course
 18 of working on that case that led you to believe that
 19 anybody thought there were schools among the schools at
 20 issue where physical facilities interfered with an equal
 21 opportunity to learn?
 22 MR. VIRJEE: Objection. Vague and ambiguous as to
 23 "equal opportunity to learn," incomplete hypothetical,
 24 calls for speculation, lacks foundation.
 25 THE WITNESS: Would you repeat the question,

1 please?
 2 BY MR. LONDEN:
 3 Q Yeah.
 4 As far as you know, did anybody contend that
 5 differences in the qualities of the schools that were
 6 assessed in this survey gave rise to unequal learning
 7 opportunities?
 8 A There was a general complaint that the southern
 9 schools were older and not getting the kind of
 10 maintenance that they would have liked. And at one
 11 school I went to, the principal on my school tour was
 12 very careful to point out to me all of the horrors
 13 that had just gotten fixed. This door didn't used to be
 14 here, you know, and all -- so forth and so on. So I
 15 think that the southern schools felt that they weren't
 16 getting the kind of facilities that the northern schools
 17 were getting.
 18 Q Was that feeling an issue in the case; that is,
 19 the feeling by the southern schools they were not
 20 getting the same of something as the northern schools
 21 with respect to the facilities?
 22 A It was an issue, but it wasn't one of the more
 23 important ones.
 24 Q That school that the principal talked to you
 25 about, do you remember what the rating was on the

1 facilities survey scale?
 2 A No.
 3 Q Do you remember the range of the ratings on the
 4 scale?
 5 A The ratings were fairly high on that scale.
 6 Q My question was ambiguous.
 7 The scale that was used was a one-to-100 scale?
 8 A I believe so.
 9 Q Were there any schools that were below 70 on
 10 the ratings?
 11 A I don't think so. I can't recall. I'd have to
 12 look at it again.
 13 Q In the course of doing your work, did you ever
 14 make a plot, a chart of the school scores according to
 15 any parameters?
 16 MR. VIRJEE: In the course of doing her work in
 17 that desegregation case?
 18 BY MR. LONDEN:
 19 Q Any work on the Fulton, Georgia facilities
 20 data.
 21 A I don't recall.
 22 MR. LONDEN: Let's mark these as exhibits, these
 23 two in order. I don't think -- these don't appear to
 24 have been produced documents, so I'd rather mark them
 25 than take a chance on losing track of them.

1 (Defendant's Exhibits 10 and 11 were marked
 2 for identification by the court reporter.)
 3 BY MR. LONDEN:
 4 Q Before you are two documents marked as Exhibits
 5 10 and 11 to this deposition.
 6 Tell us first whether you recognize Exhibit 10,
 7 and if so, what it is.
 8 A It's a rebuttal report on the desegregation in
 9 the Fulton County schools written by me.
 10 Q And same question as to Exhibit 11.
 11 A This is the original report I wrote on the
 12 desegregation of the Fulton County schools.
 13 Q Okay. Can we look at Table 8 to your current
 14 report, please.
 15 A Table 8 to my what?
 16 Q Current report. I'm done with the Fulton
 17 County reports.
 18 A (Witness reviews documents.)
 19 Q Table 8 appears to reflect three or more
 20 regression analyses?
 21 A Yes.
 22 Q Did you do new regression runs on the Georgia
 23 data for purposes of this case?
 24 A Yes.
 25 Q And did you produce or cause to be produced

1 SPSS output printouts for the regression analyses that
 2 are reflected in this table?
 3 A I don't recall.
 4 Q Did you use in those regression analyses data,
 5 all of which you obtained as part of your work on the
 6 Fulton County case?
 7 A Yes.
 8 Q And did you make the data available to the
 9 State's counsel to produce to us?
 10 A Yes.
 11 Q In the first table, which is marked
 12 composite -- which is labeled "Composite," what does
 13 "composite" mean?
 14 A It's a composite score of reading/math.
 15 Q Is that a score that's reported as a composite?
 16 A Yes.
 17 Q And each of the reading and math scores in the
 18 tables below or in the chart -- sections of Table 8
 19 below are separately reported in the Fulton County data
 20 from the composite?
 21 A Yes.
 22 Q The unit of analysis in these tables is schools?
 23 A Yes.
 24 Q For purposes of the percentage poor variable,
 25 what's the basis for classification?

1 A Whether you're on free or reduced lunch.
 2 Whether you're eligible for free or reduced lunch.
 3 Q And the facilities rating variable is a range
 4 of scores on a scale of zero to a hundred? I'm sorry if
 5 I asked you that already.
 6 A That's the possible scale.
 7 Q The average was -- of the schools included in
 8 these regression analysis was 91 out of a hundred?
 9 A Correct.
 10 Q And hundred is high?
 11 A Yes. A hundred is the highest.
 12 Q What is the percentage of capacity utilized
 13 variable?
 14 A It's a statistic that the school district keeps
 15 on the capacity -- I calculated it from the school
 16 district's estimation of capacity, including an
 17 estimation of the capacity for the portables. They do a
 18 calculation of capacity based on brick and mortar, and
 19 then they show how many portables. And the school
 20 district people gave me an estimate of what the capacity
 21 of the portables was, and I simply added that to the
 22 brick and mortar capacity and calculated the percentage
 23 of capacity utilized by the students.
 24 Q In some instances and some contexts, capacity
 25 is assessed by comparing student head count to designed

1 capacity?
 2 A Yes.
 3 Q Is that what was done here?
 4 A Yes.
 5 MR. VIRJEE: Objection. Vague and ambiguous as to
 6 "designed capacity."
 7 BY MR. LONDEN:
 8 Q In some contexts, doing it that way, it's
 9 possible to have a percentage of capacity utilized that
 10 exceeds a hundred percent?
 11 A Yes.
 12 Q And was that a possibility, according to the
 13 method that was used here?
 14 A Yes.
 15 Q Do you know if there were any scores that
 16 exceeded a hundred?
 17 A Well, there definitely were when portables were
 18 not included. Once portables were included, I don't
 19 think there were, but I can't recall exactly.
 20 Q There were 58 schools included in the
 21 regression analyses?
 22 A Yes.
 23 Q Have you published your work on the Georgia
 24 school district facilities analysis anywhere other than
 25 by virtue of the public nature of the expert reports in

1 the case?
 2 A No.
 3 Q Has the analysis been peer reviewed in any
 4 sense?
 5 A No.
 6 Q Look at Page 22, please, of your report.
 7 The first sentence says, "Far and away, the
 8 most important variable is the percentage of students
 9 who are poor."
 10 Is that sentence a statement that characterizes
 11 the Georgia analysis?
 12 A Yes.
 13 Q If you look at Table 8, the first two variables
 14 under each of the regression summaries are percentage
 15 black and percentage poor.
 16 A Yes.
 17 Q Were those highly co-variant?
 18 A They were correlated with each other.
 19 Q Does that mean there's some degree of
 20 uncertainty about the relative importance as between
 21 percentage black and percentage poor, based on how this
 22 analysis works?
 23 A Percentage black is highly related to
 24 achievement. So is percentage poor. And percentage
 25 poor is the statistically significant variable.

1 Q But a lot of the same kids who are in the black
2 category are also in the poor category?
3 A Correct.
4 Q And for example, the two beta scores for
5 percentage black and percentage poor in the first
6 regression analysis --
7 A Those aren't betas, they're "B"s.
8 Q Oh, I'm sorry.
9 Does the relatively small size of the "B" score
10 for the black variable, as compared to the same score
11 for the poor variable, tell you that the percentage who
12 are poor is much more important than the percentage who
13 are black?
14 A Yes. Multicollinearity tends to -- I mean, a
15 high correlation between two variables tends to
16 primarily affect the significance level. So the "B"
17 coefficient isn't much affected.
18 Q And the significance level for the percentage
19 black, that taken alone is not significant, right?
20 A The percentage black is not significant,
21 correct.
22 Q But co-variance as between black and poor or
23 perhaps another variable might explain that?
24 A They are highly correlated, but other analyses
25 done in this case, same case, indicate that the primary

1 variable is the poverty variable.
2 Q Looking back at Page 22, the third sentence on
3 that page says, "It is unlikely that the quality of
4 school facilities would affect achievement in American
5 schools, since the scientific research indicates that
6 achievement is a function of the characteristics of the
7 student and effective time on task."
8 What scientific research did you have in mind?
9 A I'm constantly reading articles on educational
10 research, what affects achievement, and the research is
11 pretty clear that -- people don't even look at
12 facilities; it's not even in their equations -- that
13 student characteristics and teacher/school
14 characteristics, which is what I really mean by
15 effective time on task, are the explanatory variables
16 that pretty much explain everything.
17 Q What teacher and school characteristics are you
18 referring to when you say, "that's what I mean by
19 effective time on task"?
20 A Well, about -- you know, now we're getting back
21 to sort of a -- kind of a conceptual idea. I mean, if
22 we look at the bilingual education literature, for
23 example, it's fairly clear that the amount of time kids
24 are taught in English pretty much predicts their English
25 learning achievement, as does the characteristics of the

1 child.
2 So there's just a lot of different research
3 about -- there's a little bit of research that shows
4 that very small class size can have a positive effect on
5 children's achievement. In the research I've been
6 reading over the last 20 years, I can't find -- I
7 haven't found anything that has school facility in it,
8 or even talks about that as an issue.
9 Q The next statement is, "I have never seen a
10 public school in America whose facilities were so bad
11 that students could not learn in them."
12 Do you have an idea of what would -- what
13 circumstances would be so bad that students could not
14 learn?
15 A No heat in the winter in Minnesota, teachers
16 who don't speak English, class size that is a hundred to
17 one. In other words, it's -- it has to be extreme for
18 children to not be able to learn.
19 Q The next sentence says, "In addition, I have
20 toured many hundreds of schools in California over the
21 last three decades." Stop there.
22 And that reference to hundreds of schools, that
23 includes the 1999 to 2001 classroom visits that you did
24 in connection with your report on implementation of Prop
25 227?

1 A Yes.
2 Q What else does it include?
3 A On all of these deseg. cases I go on school
4 tours, and -- even in the bilingual case in Berkeley I
5 went on a school tour.
6 Q And in that sentence you say in that experience
7 you have never seen a public school in California whose
8 facilities were so bad that children could not learn in
9 them, end quote, and there again, you were referring to
10 the same kinds of extreme conditions you characterized
11 in your answer just now?
12 A Yes. I've never been in a California classroom
13 where learning was not going on.
14 Q And that's what you had in mind in that
15 sentence?
16 A Yes.
17 Q The next section is on Concept 6.
18 As you understand it, is there any school
19 district that has adopted a Concept 6 calendar because
20 they think -- because Concept 6 is considered to be a
21 better calendar for teaching?
22 MR. VIRJEE: Objection. Calls for speculation.
23 THE WITNESS: I don't have that kind of information.
24 MR. VIRJEE: Objection. Calls for speculation,
25 lacks foundation.

1 BY MR. LONDEN:

2 Q Do you have any understanding of the reasons
3 why Concept 6 calendars have been adopted in some
4 districts in California?

5 MR. VIRJEE: Objection. Calls for speculation,
6 lacks foundation.

7 THE WITNESS: I don't have any information on that.

8 BY MR. LONDEN:

9 Q Do you know whether or not there's any state
10 policy that encourages Concept 6 -- the adoption of
11 Concept 6 calendar -- is there any -- withdraw that.

12 Do you know whether there is now or has been in
13 recent years any policy of the State of California that
14 encourages the adoption of a Concept 6 or modified
15 Concept 6 calendar?

16 MR. VIRJEE: Objection. Vague and ambiguous as to
17 "encourages the adoption," calls for speculation, lacks
18 foundation.

19 THE WITNESS: I don't have any information on that.

20 BY MR. LONDEN:

21 Q In the last sentence on this section which
22 appears on Page 24, referring to the adoption of Concept
23 6 or modified Concept 6, by the word "it" you say, "It
24 is neither forced by State policy" --

25 A Where are you?

1 A I looked on the Web and I looked in Dr. Oakes'
2 report. I went to the CDE Web site. I looked at the
3 Concept 6 Web site. So I did a -- actually did a little
4 checking.

5 Q What Web site is the Concept 6 Web site?

6 A I don't know what the URL is, but there is one.

7 Q The next section is entitled "The Quality of
8 the State's Supervision of Education." It refers to a
9 survey by Education Week.

10 What is your source or what are your sources of
11 information about the Education Week survey that you
12 rely on here?

13 A Education Week itself makes the survey and the
14 results available on its Web site.

15 Q And did you go to the Web site of Education
16 Week and look for information about the survey?

17 A Yes.

18 Q Did you go to any other place to get
19 information about the Education Week survey?

20 A Go to any other place?

21 Q I won't limit it to going.

22 Was there any other source that you had or
23 someone you looked to or called besides what's contained
24 in the Education Week Web site regarding the survey?

25 A I first found out about the survey because

1 Q Page 24.

2 A Okay.

3 Q I'll give you the last two sentences. Quote,
4 "Clearly, the adoption of Concept 6 or modified Concept
5 6 is a choice made by a few school districts with regard
6 to how they spend their money. It is neither forced by
7 State policy nor by low per pupil expenditures."
8 That's the end of the quote.

9 What is the source of the information that led
10 you to say that it is not forced by State policy?

11 A Well, I couldn't find anything that said it
12 was, and so few school districts have it that one can
13 only conclude that this is some -- this is a choice they
14 make.

15 Q Did you look for something that might indicate
16 that State policy forced the adoption of Concept 6 or
17 modified Concept 6?

18 A I did a little research --

19 MR. VIRJEE: Objection. Vague and ambiguous as --

20 THE WITNESS: Yes, I couldn't find --

21 MR. VIRJEE: -- to force -- let me just object
22 before you start.

23 Vague and ambiguous as to "force."

24 BY MR. LONDEN:

25 Q And where did you look?

1 someone had cited it -- maybe even in Education Week.
2 There was some article I read that cited it. So I asked
3 the person who cited it to -- where they got the data,
4 and that person directed me to the Ed Week Web site.

5 Q Okay. So there was an exchange with someone
6 who had cited the Web site, and then you went to the Web
7 site?

8 A Correct.

9 Q Is there any other information you have
10 obtained about the Education Week survey?

11 A I don't recall.

12 Q Is the Education Week survey a statistical
13 analysis?

14 A It's simply a descriptive. It's a description
15 of -- it's a bunch of rows and columns, and there isn't
16 any statistical analysis.

17 Q And what is the source of the information
18 that's reported in the rows and columns?

19 A Their annual survey.

20 Q Who are the respondents to the survey, as you
21 understand it?

22 A The states.

23 Q Education -- Footnote 28 says, "Education Week
24 gave the states a letter grade, ranging from 'A' to
25 'F.'"

1 What, if anything, do you know about how that
2 grade is assigned by Education Week?

3 A Well, they have a number of items they look at,
4 and I don't recall all the specific standards.

5 Q Does Education Week explain criteria or an
6 algorithm for generating the grades?

7 A I don't recall them.

8 Q Do you know who it is who generates the
9 ratings? Other than that it's in Education Week.

10 A I don't know what individual.

11 Q Do you have any understanding about whether
12 it's the reporters or editors of Education Week or
13 consultants they talked to, or experts?

14 A I don't recall.

15 Q Do you know whether or not this Education Week
16 survey has ever been cited as evidence in peer-reviewed
17 journals?

18 A I don't know.

19 Q And you don't know the qualifications of the
20 people who make the judgments on the "A" to "F" grades;
21 is that right?

22 A That's correct.

23 Q Page 25, middle paragraph, the first sentence
24 says, "California is also above average for other
25 states, in terms of teacher salaries adjusted for the

1 to the teacher salaries data, as reported in Education
2 Week, to adjust for the cost of living.

3 A I did not.

4 Q That same paragraph says, "It," meaning
5 California, "falls dramatically below the other states
6 in the area of adequacy of resources."

7 The "it" in that sentence is California?

8 A Yes.

9 Q And what does the phrase "adequacy of
10 resources" mean in that sentence?

11 A How much is devoted to education.

12 Q Total educational expenditures?

13 A Well, they had a lot of different items under
14 that. One of them was whether or not it was above or
15 below a certain per pupil expenditure. There were other
16 items. I don't recall what they were.

17 Q Did anything in the Web site described in the
18 Education Week survey tell you that the information
19 Education Week used to assess adequacy of resources did
20 not include lottery money in the case of California?

21 A They didn't say anything.

22 Q But the sentence we were reading goes on to
23 say, quote, "Because this is the" -- in quotes --
24 "official," end quote, "expenditure, it does not
25 include the lottery money and thus underestimates

1 cost of living," end quote.

2 Is the -- what is meant by the phrase "adjusted
3 for the cost of living" in that sentence?

4 A The cost of living is higher in some states
5 than in others, and they calculated what the value of
6 the dollar was in one state versus another. And so if
7 you are in a high cost of living state, your salary gets
8 adjusted downward, and if you're in a low cost of living
9 state, your salary gets adjusted upward.

10 Q Now, for purposes of -- strike that.

11 Did Education Week make their report of teacher
12 salaries in a form that they had adjusted for the cost
13 of living, as far as they reported it -- as far as they
14 described it?

15 A Yes.

16 Q So you did not make any cost of living
17 adjustment to the figures reported in Education Week,
18 true?

19 A No.

20 Q I asked you a negative question.

21 My statement was correct?

22 A Well, now I better check. Would you repeat
23 it?

24 Q I'll say it again.

25 Tell us whether or not you made any adjustment

1 California's adequacy," end quote.

2 That last statement is your inference, based on
3 information other than what was in the Education Week
4 survey report; is that right?

5 A Correct.

6 Q On the bottom of Page 26 and continuing on 27,
7 you list 13 oversight programs in California, and what
8 follows that is the statement, quote, "And these are
9 only a small percentage of the State oversight programs
10 that are currently in place," end quote.

11 What State oversight programs, other than the
12 13 that are listed, did you have in mind?

13 A When I have gone to the California Web site,
14 which I have on many occasions, there are many more
15 programs than this listed. And probably a better
16 sentence would be these are not all the State oversight
17 programs that are currently in place. These are the
18 State oversight programs that were cited in Jeanne
19 Oakes' report.

20 Q So you did not make any calculation of a
21 percentage or any listing or enumeration of California
22 State oversight programs other than the -- aside from
23 the 13 that you list from Jeanne Oakes' report; is that
24 right?

25 A I did not calculate a specific percentage.

1 Q Did you make a listing?
 2 A No, there were just too many.
 3 Q Did you go and make an investigation or inquiry
 4 to find State oversight programs as part of your work on
 5 this report?
 6 A I did not do a systematic inquiry, but I've
 7 been to that Web site many times and read quite a bit
 8 about what's going on as well as worked with school
 9 districts.
 10 Q So this sentence is based on your familiarity
 11 over the years with California and your past occasions
 12 for visiting the Web site and consulting other sources?
 13 A Correct.
 14 Q Rather than going and making an inquiry to do
 15 any sort of rigorous listing, right?
 16 A I didn't calculate a specific percentage.
 17 Q And you didn't make any other listing or
 18 enumeration of things you considered to be State
 19 oversight programs?
 20 A No.
 21 Q The next sentence says, "The plaintiffs' major
 22 complaint seems to be" -- I think the word "be" ought to
 23 be in that sentence, I guess?
 24 A Yes.
 25 Q "The plaintiffs' major complaint seems to be

1 A I obtained it from the Web site that is cited
 2 in my report.
 3 Q And do you simply take the list as it existed
 4 on the Web site?
 5 A There were some -- there was one modification,
 6 I believe, in that sample. New York was in the
 7 plaintiffs' victory column, I believe, and at that point
 8 they were supposed to be in the defendants' victory
 9 column.
 10 Q And today they're back in the plaintiffs'
 11 victory column?
 12 A Correct.
 13 Q Based on the status of the CFE case at the
 14 time, right?
 15 A Right.
 16 Of course, they could stay in that column or go
 17 back to defendants'.
 18 Q Is there a court higher than the Court of
 19 Appeal of California that you think is --
 20 MR. VIRJEE: Here in California or New York?
 21 MR. LONDEN: Of New York, I mean.
 22 THE WITNESS: Well, my understanding was that
 23 wasn't the New York Supreme Court; was it?
 24 BY MR. LONDEN:
 25 Q In New York the term "Supreme Court" is given

1 that they want more," quote, "coherence," unquote, and
 2 they want more money devoted to data collection and to
 3 education in general," end quote.
 4 What does the word "coherence" in that sentence
 5 mean?
 6 A They want the State to be consistent, in terms
 7 of applying standards and oversight, and they want the
 8 State to not rely on the school districts to do
 9 oversight, but to do it themselves and to be aware of
 10 all the different oversight programs, so that there's
 11 not overlap or contradiction.
 12 Q Could we look at Figure 10.
 13 How was this chart prepared?
 14 A How?
 15 Q Hmm-hmm.
 16 A I took the average rating for each of these
 17 elements for California. I divided the remaining states
 18 into plaintiff's victories and not plaintiff's
 19 victories, and averaged those.
 20 Q In every place in your report where you
 21 categorize states according to whether plaintiffs have
 22 been victorious in a fiscal equity case, did you use the
 23 same list?
 24 A Yes.
 25 Q How did that list come about?

1 to the trial court, and the term the "Court of Appeal"
 2 is the highest court in the state.
 3 A Is that right?
 4 Q But be that as it may.
 5 A That is the highest court.
 6 Q The fat lady has sung in New York.
 7 A Okay. Well, then it's going to be in the
 8 plaintiffs' victories.
 9 Q Aside from CFE in New York, did you make any
 10 other adjustments to the list you found on the Web site?
 11 A I don't think so.
 12 Q Look at Page 31, please.
 13 There is a quote -- blocked quote toward the
 14 top of that page from Wymar and Vining.
 15 Was the subject of their discussion
 16 redistribution in schools?
 17 A No, it was a general discussion about
 18 redistribution of wealth.
 19 Q Do you think that the reasoning expressed in
 20 that quote applies to distribution of resources as among
 21 public schools?
 22 A The answer is, generally, yes.
 23 Q The quote says, "The key question, therefore,
 24 is how much current and future wealth are we as a
 25 society collectively willing to give up to achieve

1 greater equality in distribution."

2 Does it seem to you that greater equality as
3 among schools -- public schools is likely to bring about
4 reduction in future wealth as a society?

5 MR. VIRJEE: Object. Vague and ambiguous.

6 Are you meaning to assume that that's what
7 they're referring to or that's what she was referring
8 to, equality among schools? Because that's not what the
9 language of the section that you're in talks about in
10 her report.

11 BY MR. LONDEN:

12 Q Do you have my question in mind?

13 A No. Please repeat it.

14 MR. LONDEN: Let's read it back.

15 (The record was read as follows:

16 "The quote says, 'The key question,
17 therefore, is how much current and
18 future wealth are we as a society
19 collectively willing to give up to
20 achieve greater equality in
21 distribution.'

22 "Does it seem to you that greater
23 equality as among schools -- public
24 schools is likely to bring about
25 reduction in future wealth as a

1 "improving schools," calls for speculation, lacks
2 foundation, incomplete hypothetical.

3 THE WITNESS: There's a possibility, if the
4 improvement is not to the physical facilities but to the
5 teaching staff. That is, for example, if we pay
6 teachers a whole lot more money, got rid of
7 certification, made teachers go through this fabulous
8 training program, got the best and the brightest, paid
9 them a ton of money and they stayed in teaching, it's
10 possible it would affect the wealth of the students in
11 those schools.

12 The problem is, of course, that you would lose
13 the people who have to pay for this. And so it would
14 end up short-lived.

15 BY MR. LONDEN:

16 Q Are you able to form a view about whether
17 improving the equity of public education in California
18 will enhance or detract from California's future wealth
19 as a society?

20 MR. VIRJEE: Objection. Vague and ambiguous as to
21 improving the equity of schools in California.

22 THE WITNESS: Depends on how much improvement.

23 BY MR. LONDEN:

24 Q And are you able to say any more than that, as
25 you sit here now?

1 society?")

2 THE WITNESS: The answer is yes, it will bring
3 about a reduction in wealth. Although the term "wealth"
4 can get pretty complicated when we're talking about
5 schools.

6 BY MR. LONDEN:

7 Q Why do you think that?

8 A Well, because there are different ways to
9 define wealth.

10 Q I'm sorry. Why do you think that a greater
11 equality as among schools is likely to bring about a
12 reduction of future wealth as a society?

13 A Well, where do you get the money? There are
14 two possibilities. One, you take it from the other
15 schools. The parents in those schools are not going to
16 be happy. The other is that you take it from other
17 pieces in the budget, other parts of the budget. People
18 there aren't going to be happy, and we may -- you could
19 easily end up in more litigation.

20 The other is that you increase the tax rate,
21 and whenever you increase the tax rate, you lose some
22 wealth.

23 Q Does improving schools have any effect on
24 future wealth?

25 MR. VIRJEE: Objection. Vague and ambiguous as to

1 MR. VIRJEE: Objection. Incomplete hypothetical,
2 calls for speculation.

3 THE WITNESS: If it's a small amount of
4 improvement, it may go unnoticed.

5 BY MR. LONDEN:

6 Q Go to Page 32, under "Resource Equity." The
7 first sentence says, "The evidence presented in this
8 report indicates that the State has achieved resource
9 equity to the extent practicable in a democratic
10 society," end of quote.

11 What did you mean by "resource equity"?

12 A In the elements that I've talked about, the per
13 pupil expenditures in high- and low-poverty schools, the
14 Ed Week survey of equity.

15 Q And what is the evidence that greater resource
16 equity is not practicable in a democratic society?

17 A I suppose the fact that California has already
18 had one of these fiscal equity court cases. This was a
19 plaintiff's victory. And you're not satisfied with what
20 you got from that plaintiff's victory.

21 Q What case do you have in mind?

22 A I'm talking about Serrano.

23 And one of the problems is that you have to
24 depend on a Legislature and a bureaucracy that is
25 appointed, but it's supposed to represent the people.

1 So there can be small changes, but I don't envision
2 large changes.

3 Q Do you have a basis for reaching the view that
4 the Legislature of the state of California would not
5 enact measures that would result in greater equity among
6 public schools?

7 MR. VIRJEE: Objection. Vague and ambiguous as to
8 "equity."

9 BY MR. LONDEN:

10 Q Well, resource equity in the sense that you
11 used it.

12 A This is what we have after Serrano. How are
13 you going to change things?

14 Q Do you have in mind any basis for concluding
15 that the Legislature of the state of California would
16 not be willing to achieve greater resource equity?

17 MR. VIRJEE: Objection. Asked and answered.

18 THE WITNESS: They haven't done it in the past. In
19 other words, you've got this Legislature, and you're
20 unhappy with what they've produced.

21 BY MR. LONDEN:

22 Q So it's what the Legislature has done in the
23 past that leads you to believe that -- maybe among other
24 things, that leads you to believe that California has
25 achieved resource equity to the extent practicable?

1 A Since Serrano versus Priest, we've been
2 operating in a democratic society, and you're not happy
3 with what has resulted in this democratic society.

4 Q Have you completed your answer?

5 A Yes.

6 Q On Page 33, toward the bottom, the
7 second-to-the-last paragraph, second sentence -- well,
8 I'll read the first sentence. "Although per pupil
9 expenditures are not kept by school in California (nor
10 in any other state), they are kept by school district.
11 That data indicates that California spends more money on
12 high poverty school districts than on low poverty school
13 districts, thus demonstrating a good faith compliance
14 with the Serrano decision," end quote.

15 With that sentence in mind, would you look at
16 Page 20 in the first full paragraph and tell me whether
17 the high-poverty school district versus low-poverty
18 school district per pupil expenditure calculation on
19 Page 20 is the basis for the statement on Page 33?

20 A (Witness reviews documents.)

21 Yes.

22 Q So when it says, "that data," on Page 33 in the
23 sentence I read, that data is the data that you set
24 forth or summarize on Page 20 and Figure 7, right?

25 A Correct.

1 Q On Page 34, in the second-to-last paragraph,
2 second sentence refers to the states that plaintiffs
3 want California to model. The sentence starts with the
4 word "Moreover."

5 A I'm on Page 34.

6 Q And the paragraph starts with the word "Overall."

7 A Okay.

8 Q The line below that --

9 A I see.

10 Q -- starts with "Moreover" and is followed by
11 the reference, "The states the plaintiffs want
12 California to model."

13 A I see it.

14 Q And my question is: Which states did you mean
15 by the states that the plaintiffs want California to
16 model?

17 A The statements referenced in Dr. Oakes' summary
18 report.

19 Q And those are the six states that you
20 designated in the figure with arrows pointing to them?

21 A Correct.

22 Q Okay. And what was your basis for saying those
23 states do not seem to have done as good a job on this
24 issue?

25 A The fact that when we take this outside

1 observer, Ed Week, and look at their scores, they're
2 about the same. And in many cases not as good.

3 Q In the last line of this paragraph, you make a
4 reference to the plaintiffs as not being satisfied with
5 what resulted from the last court order.

6 What court order did you have in mind?

7 A Serrano versus Priest.

8 Q During the course of this deposition, you've
9 taken some notes.

10 What are those notes?

11 A They're notes regarding things I might want to
12 check up on, some formatting or other problems in my
13 resume, plane reservations. This is a calculation of --

14 MR. VIRJEE: He's only asking about notes you took
15 during the deposition.

16 THE WITNESS: Oh, during the deposition?

17 MR. VIRJEE: So if it's not during the deposition,
18 he doesn't need to know about it.

19 THE WITNESS: Oh, all right. Things I want to
20 refresh my memory with. I didn't have time to go over
21 all of my analyses before this deposition. I thought I
22 would remember them, but unfortunately, I didn't, so I
23 will go back and look at them and refresh my memory as
24 to how I did them.

25 BY MR. LONDEN:

1 Q Mr. Virjee may have explained this to you, but
 2 I would like to make a copy of your notes that relate to
 3 this case.
 4 MR. VIRJEE: Well, you can make a copy of the notes
 5 that she took contemporaneously at the deposition.
 6 MR. LONDEN: Fine.
 7 MR. VIRJEE: But not things she didn't do -- I
 8 think they're mixed up together.
 9 MR. LONDEN: Are there notes about the case that
 10 you think we're not entitled to see?
 11 MR. VIRJEE: I don't know what else is there. We
 12 haven't looked at them yet. So before we give them to
 13 you, we want to look at them, go over them and see
 14 what's there, and we'll give you a copy of anything that
 15 relates to contemporaneous notes that she took at the
 16 deposition or that formed the basis for her opinions
 17 that she's given.
 18 MR. LONDEN: But if they're not in that category,
 19 you think we're not entitled to them.
 20 MR. VIRJEE: No.
 21 MR. LONDEN: I don't care whether we make a copy
 22 now of what you are willing to produce or I get it
 23 later, but --
 24 MR. VIRJEE: Sure.
 25 MR. LONDEN: Which do you want me to do?

1 MR. VIRJEE: Later.
 2 MR. LONDEN: I can make a copy -- all right.
 3 And you'll designate it when you give us the
 4 copy, right?
 5 MR. VIRJEE: Sure.
 6 Designate it meaning by page?
 7 MR. LONDEN: You'll say this is what --
 8 MR. VIRJEE: Sure. I'll write you a letter and
 9 give you the pages that we agree to give you.
 10 BY MR. LONDEN:
 11 Q How many pages are there before you now of the
 12 notes that you took during this deposition?
 13 MR. VIRJEE: And again, the pages --
 14 THE WITNESS: Two.
 15 MR. VIRJEE: -- that are in front of her are a mix
 16 of both things she did at the deposition and away from
 17 the deposition.
 18 BY MR. LONDEN:
 19 Q But how many pages are there of notes you took
 20 at the deposition?
 21 MR. VIRJEE: That's what I'm saying. The pages
 22 have both things on them, I believe. And we haven't had
 23 a chance to look at them yet.
 24 BY MR. LONDEN:
 25 Q Okay. But the question is --

1 A And you can ignore my plane reservations.
 2 Q I'm just asking how many pages are there.
 3 A I have two pages and then two lines.
 4 MR. LONDEN: This is less a big deal than the
 5 exchange would suggest.
 6 Okay. So then you will follow up on that.
 7 MR. VIRJEE: I will.
 8 MR. LONDEN: I will -- there are some things that
 9 you're going to look at in the tables as to whether
 10 we've gotten everything that you actually relied upon,
 11 and I will -- I made reference to two of the regression
 12 analyses on one of the tables on the record that I don't
 13 think we've got the output files for, and I believe
 14 there may be others, and I will check. If so, I will
 15 tell you.
 16 MR. VIRJEE: If you think there are regression
 17 analyses that you do not have the tables for, let us
 18 know what they are, and we'll get the production to
 19 you. And if we agree and we've got them or she has
 20 them, we'll get them to you.
 21 MR. LONDEN: Okay. I've already done that as to
 22 two of the equations.
 23 MR. VIRJEE: And we have them.
 24 MR. LONDEN: I don't have any other questions for
 25 you, Dr. Rossell.

1 MR. VIRJEE: Great.
 2 MR. LONDEN: Thank you.
 3 MR. VIRJEE: Thank you.
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I, CHRISTINE ROSSELL, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____, _____, at _____, _____.

CHRISTINE ROSSELL
Volume 2

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand, which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: _____

SHERRYL DOBSON
CSR No. 5713