DEPOSITION OF CHRISTINE ROSSELL
Los Angeles, California
Wednesday, August 13, 2003
Volume 2

Reported by:
SHERRYL DOBSON, RPR

CSR No. 5713

JOB No. 43720
Los Angeles, California, Wednesday, August 13, 2003
9:15 a.m. - 1:20 p.m.

CHRISTINE ROSSELL,
having been previously duly sworn, was examined and
testified further as follows:

EXAMINATION (Resumed)

BY MR. LONDEN:

Q  You understand you're still under oath from
yesterday?
A  Yes.
Q  Look, please, at Appendix 4 to your report.

Appendix 4 is entitled "Multiple Regression
Analyses of the Relationship Between School Achievement
(SAT9) and Percentage of Teachers Who Have Certification
to Teach English Learners in California Schools,
2000-2001."  The third variable is entitled "PCEL.01
percentage English learners," with a mean of 33.918.

Q  What does that mean reflect?
A  The percentage of the school that is English
learners.
Q  And among the 4,769 schools used in this
analysis, the percentage was 33.9?
A  The average percentage.
Q: The average.

A: Yes.

Q: And the last variable is the percentage fully English language/bilingual certified teachers, all language instruction.

A: What does that represent?

Q: I'm sorry, they don't have to be bilingual?

A: Right. It's not just the bilingual program.

Q: So a full certification, a clear credential to teach, would get the teacher into the -- well, withdraw that.

A: That is correct. I assumed the denominator was 33 percent ELs.

Q: And this is reflected in Appendix 4?

A: That's a good question. I would have to look into this. This is basically the State's percentages.

Q: Is that last statistic available from the State?

A: Yes.

Q: And the average.

A: The average percentage across these schools.

Q: Does that mean that, on average, the schools in this sample, 4,769 schools had 61 percent of their teacher force qualified in English language instruction, according to the criteria for that that were used for the variable?

A: That's correct.

Q: Is that last statistic available from the State?

A: That's correct.

Q: -- certified with respect to --

A: English learners.

Q: -- English learners?

A: That's correct.

Q: And then I will look at the denominator all teachers, and I will look at the denominator all teachers who teach English learners.

A: I made one assumption, which is it was the percentage of teachers who teach English learners who are fully certified, but your asking this question causes me to say I really should check that for sure.

Q: And as you sit here now, your recollection simply isn't specific enough to tell you which of those two possible ratios is used in this last variable in the descriptive statistics table; is that right?

A: That is correct. I assumed the denominator was teachers of English learners, and I need to confirm that.
Q This regression did not include as a variable the percentage of minority students in the school, correct?
A Correct.
Q Why not?
A I forgot.
MR. VIRJEE: And this, you're talking about Appendix 4?
MR. LONDEN: Right.
THE WITNESS: I forgot to put it in the run. Then when I realized I had forgotten to put it in, I did a run and put it in. And as I explained yesterday, apparently I either didn't save it or I saved it in the wrong directory, and gave my research assistant the files before that run.
BY MR. LONDEN:
Q And as we discussed yesterday, you're going to look and, if the final -- if you will rely on a final run that has minorities included, we'll get it?
MR. VIRJEE: Her report already relies on it. So we'll give it to you regardless. The run and an Appendix 4 that reflects it.
MR. LONDEN: Great.
Q Now -- may I see the exhibits for a moment that were marked yesterday.
A (Witness provides documents.)
Q Let me show you something I -- if it's all right, we can decide whether we need to mark it after I ask my questions, so that we conserve people's copying bills.
I've given you a document that bears production identification numbers 0148 through 0164, with the same prefix as the earlier references. Could you look at the page with the production number 0157, please.
Under the heading "Regression," there's a box that says, "Warnings." And it says, "For models with dependent variable SCI01 NP, the following variables are constants or have missing correlations." And then colon, "ELEM 01, elementary school, 00-01, they will be deleted from the analysis."
What does that tell us?
A Only secondary school students took the science and social studies test.
Q And if you'll look, please, at Page 0161.
I think it is true -- I won't ask you to accept my representation -- that this regression was not used in your report.
Can you tell me by looking at the descriptive statistics and the variables entered in the summary and coefficients what this run analyzes?
A It analyzed social studies scores for English learners.
Q And do the results tell us anything?
A Tells you that --
MR. VIRJEE: I'm not sure what you're asking for, Jack. That's kind of a vague, ambiguous question. The document speaks for itself.
The results are what they are. Are you asking whether they are reflected in a report? What they reflect in her opinion? Whether they tell us anything is kind of a vague question.
BY MR. LONDEN:
Q If you're unable to answer that, I can direct your attention to the coefficients and to the R-square score. Let me ask you about the latter.
The R-square is .53?
A Yes.
Q Does that R-square score tell you anything about the relationship between the dependent variable and the independent variables in this run?
A It tells you it explains about 55 percent of the variation.
Q And would you put much reliance on a run that had generated an equation explaining in the sense you've used it, 55 percent of the variation?
BY MR. LONDEN:
Q   If you'll look at Page 0220, there's a list of schools.
MR. VIRJEE:  Objection.  Lacks foundation, calls for speculation.
THE WITNESS:  Well, this is my California data set.  So it has to be California schools.  I did -- this is something that was in the printout that I didn't realize was in the printout.  SPSS, if you don't close out of a printout, will just keep adding stuff to the end. And I was doing some check here, but I can no longer remember why or what.
So I did not intend to provide this as backup in any way, shape or form.
BY MR. LONDEN:
Q   On that same page, the variable PC free 01 --
MR. VIRJEE:  Jack, same page being which page?
MR. LONDEN:  220.
MR. VIRJEE:  Thank you.
BY MR. LONDEN:
Q   PC free 01 is a variable you recognize as from California data?
A   Yes.
Q   What does it represent?
A   Percentage on free or reduced lunch.
Q   And that is apparently a percentage among 33 schools in this instance?
A   I really don't know.  I mean -- it looks like it.  Let me just -- yeah.
Q   And PC EL01, is that percentage English learners?
A   Yes.
Q   WVR PC 01 or 2000-2001, percentage of teachers working under waivers, that's a demographics -- CDE demographics Web site variable?
A   Correct.
Q   And as you sit here, you don't have any recollection of why this run was done?
A   That's correct.  Nor did I intend to give it to you as backup for anything.
Q   Okay.
MR. LONDEN:  Unless you need to mark this, we can rely on the reference to the production numbers, as far as I'm concerned.
Mark this, please.
(Defendant's Exhibit 7 was marked for identification by the court reporter.)
BY MR. LONDEN:
Q   Before you, marked as Exhibit 7, is a document that has a first page which is a cover sheet, "Not marked for production" -- I don't have an explanation of that -- followed by STATE-EXP-CR 0310 through 0314, with the exception that there's another cover sheet between 12 and 13.
Q   Have I correctly described this?
A   You have lost me.  So could you please go over that again?
Q   Q   I'm not going to ask you to verify my description.
A   Okay.
Q   We describe these things so that it's clear for our record what paper we're talking about, but I don't need you to testify about it.
MR. VIRJEE:  Well, you asked her.
MR. LONDEN:  I know.
MR. VIRJEE:  Okay.  I'll stipulate you described it.
MR. LONDEN:  Great.
Q   Look at Page 310, please.  And look also at Table 1 from your report.  If you would look at those two things at the same time.
A   Yes.
Q   My question is whether Page 310 -- Pages 310 through 312 of the document we've marked as Exhibit 7 are SPSS outputs for the run summarized under the column Equation 3 in your Table 1.
A   It appears to be.
MR. LONDEN:  Fram, I have -- I'll just tell you.  I'll follow up with more checking, but I have not found outputs for Equation 1 and Equation 2 in the production.  So I may have missed it, will do some more checking, but that's where things stand at the moment in my mind.
THE WITNESS:  You haven't found outputs for what?
MR. VIRJEE:  For Equations 1 and 2 on --
MR. LONDEN:  Equations 1 and 2 --
MR. VIRJEE:  -- Table 1.
MR. LONDEN:  -- on Table 1.
Mark this, please.
(Defendant's Exhibit 8 was marked for identification by the court reporter.)
BY MR. LONDEN:
Q   Before you is the document that's been labeled Exhibit 8 and bears I.D. numbers 329 through 331.  It appears to be an SPSS output, and if you will look at Table 3 and the columns under Equation 3, my question is whether Exhibit 8 represents the output of the SPSS runs underlying the Equation 3 columns on Table 3.
other important qualities, such as impressive verbal
abilities and personality, emergency-credentialed
teachers might be no worse than fully-credentialed
teachers and perhaps better than fully-credentialed
beginning teachers."
What's the basis for that statement?
A Over the last 30 years in working with school
districts, I've been told that the teachers who are not
fully credentialed get training, additional training
that the other teachers don't get, that
fully-credentialed teachers don't get. They get
mentoring. They also get teacher's aides. I’ve often
been told that -- which I didn't mention here, but I’ve
been told they’ll get a teacher's aide until they're
fully certified in many school districts.
Q And is the experience that you are talking
about over 30 years specific to California or across the
country or both?
A Both.
Q Do you have any information about where in
California schools emergency-credentialed teachers -- or
put more clearly, in which California schools
emergency-credentialed teachers receive mentoring and
training and aides?
MR. VIRJEE: You mean an instance in any school
district that she's aware of where a person who's
credentialed received those things?
MR. LONDON: Any instance or statistic,
information.
THE WITNESS: In the school districts that I worked
with on deseg cases, this was an issue. And I was told
that these teachers get extra support.
BY MR. LONDON:
Q Are you familiar with the --
A Oh, and by the way, also my bilingual cases.
I'm sorry, I forgot -- I said deseg., but then I forgot
I've had a couple bilingual cases.
Q Are you familiar with the requirements laid
down in the No Child Left Behind Act regarding who can
and who cannot be considered highly qualified?
A I haven't reviewed that recently.
Q Do you know whether or not an
emergency-credentialed teacher can be considered highly
qualified under the Federal No Child Left Behind Act?
MR. VIRJEE: Objection. Vague and ambiguous as to
emergency-credentialed teacher, what context, what
State, under what regulations.
THE WITNESS: My understanding is that such a
teacher would not, under the current law.
BY MR. LONDON:
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| Q On Page 7, the section that begins with the title "Waivered Teachers" at the bottom -- are you with me? A Yes. Q My first question is -- in your analysis, you treat emergency-credentialed teachers in one section and waivered teachers in a separate section. Did you do any work to analyze the combined effects or analyze statistically the combination of emergency-credentialed and waivered teachers? A No. Q So in your statistical analyses, you're testing separately for emergency-credentialed teachers and then separately for waivered teachers, right? A Correct. Q Under California's practices, a teacher is either emergency credentialed or on waivers. Those are not overlapping categories. Is that your understanding? A That's my understanding. Q Could one do a regression analysis for the significance of the dependent variable emergency credentialed plus waivered? A Yes. Q You don't know how that would turn out? A I don't recall. I simply used their data.

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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 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 In the text of your report at Page 9 --
2 A  Page 9?
3 Q  Page 9.
4 A  Page 9.
5 Q  The first full paragraph, fourth sentence says,
6 "The closer the ratio is to 1.0, the closer a state is
7 to perfect equity." I end my quote there.
8 Q  Now, that statement has to be qualified to
9 understand that it means perfect insofar as these data
10 tell you anything, right?
11 A  Correct.
12 Q  A 1.0 ratio doesn't tell you anything more than
13 the underlying data allow?
14 A  Correct.
15 Q  If you look at the chart, it seems to me that
16 the label for perfect equity was placed in the wrong
17 place on your Figure 3 by whoever prepared the chart.
18 Am I right about that?
19 A  I don't see why you say that.
20 Q  The arrow under "Perfect equity" points to -- I
21 think it's Michigan.
22 A  Oh, no. It's pointing to the horizontal line.
23 Q  Ah, okay. I see now.
24 A  Correct.
25 Q  In the last paragraph on Page 9, the last
26 sentence, it states that more than 75 percent of
27 California schools have none -- that is, no teachers

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 Q  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
equity cases as in other states."

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

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

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

A. No.

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

A. Yes.

Q. And why do you think so?

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

So simply distributing money more equally doesn't solve some of the other problems that advocates for the poor worry about.
in this case?

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

A   Is that a fair statement?

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

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

Q   When you say people, you mean teachers?

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

Q   And you have a basis for expecting that -- I'm sorry.  You refer to possibilities.  Have you formed a conclusion that those possibilities are likely to happen?

MR. VIRJEE:  Objection.  Calls for speculation, also incomplete hypothetical.

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

BY MR. LONDEN:

Q   And have you reached a prediction about the extent?

A   No.

Q   You used the words "perfect equity" in a recent answer.  Did you have in mind the same meaning for "perfect equity" as is explained on Page 9 of your report?

A   More or less.
in California you don’t even have basements. They don't have printing presses in the supply room -- printing presses for money, I meant, in the supply room, it's got to come out of somewhere else.

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

Q That completes your answer?
A Yes.

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

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

"Table 5 is a hypothetical example," it says?
A Yes.

Q Did you intend the choice of assumptions for the hypothetical example to resemble any real-world case that you know about?
A It's not modeled off of a specific case, no.

It's a general hypothetical.

Q Okay. Page 12 says, "Table 5 shows a hypothetical example over three years that demonstrates how English learners as a whole could appear to be making no progress although each individual English learner is making considerable progress," end quote.

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

MR. VIRJEE: Objection. Vague and ambiguous, calls for speculation as to what statistics, incomplete aggregate statistics, because they mask -- they can mask they are making progress. How much, obviously, you really can't tell. But I personally am leery of aggregate statistics, because they, in this -- for this particular instance, because they, in this -- for this change.

BY MR. LONDEN:
Q What would characterize the times when you can tell the individuals are making progress on the basis of aggregate statistics?
A If you were to look at School A in one year and the average score for English learners was, let's say, the 30th percentile and the following year it was the 35th percentile and you learned that most of the English learners -- the turnover in that school was fairly low from one year to the next, most would be -- it'll be the same -- there'll be a -- there's an overlap from one year to the next. Exactly how much depends on the mobility rate in a particular school.

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

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

Is there any way to make meaningful comparisons before 2001 to after 2001?
MR. VIRJEE: Objection. Incomplete hypothetical, calls for speculation, vague and ambiguous as to "meaningful comparisons" and what populations.

THE WITNESS: If I had individual level data, I suppose I could try to see what the correlation is. It'd be a very complicated analysis. I'd try to see what the correlation was between the old test in a 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

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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

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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?
MR. VIRJEE: Objection. The paper speaks for itself.

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

BY MR. LONDON:

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

A Yes.

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

A I don't know.

Q Was there any -- withdraw that.

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

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

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

BY MR. LONDON:

Q Did you receive a copy of a Gandara and Rumburger report from the decentschools.com Web site?

A I don't think so.

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

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

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

A In electronic form?

Q And why would you request that?

A Might be interesting to analyze.

Q Okay.

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

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

A I asked Peter Choate to get me electronic files for all the underlying data, and I didn't get it. I don't know if it's because he didn't ask you or because I didn't follow up with a specific file name. He had said to me at one point, make a list of the data you want, and I had said, can't I just get all the data?

Q And I think it was sort of left at that.

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

Q In the first full paragraph on Page 14, you quote the statement that "A sizable and ultimately growing achievement gap between English origin and non-English origin students, and then dot-dot-dot, "in California across grade levels." Do you see where I am --

Q Yes.

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

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

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

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

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

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

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

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

Focusing on underlying data, aside from what's in the report, what is the basis for your statement?
The other approaches are ESL pull-out, which in

Q In the next sentence you refer to children with

special needs.

A I mean students who are hard to teach, who've

got some educational problem or some problem at home.

Q And what's the basis for saying that, "With

each successive grade, the category English learner

includes more and more children with special needs"?

A Well, kids get redesignated. A lot of children

are redesignated by Grade 3. The children who are not

redesignated are children who are difficult to teach for

a variety of reasons or are new to the school district,

the school, new to the U.S. For example, the percentage

of students who are English learners declines with each

grade, and that's because kids get redesignated in the

earlier grades.

MR. VIRJEE: Whenever you're ready to take a quick

break, that'd be great.

MR. LONDON: Now's fine.

(Brief recess taken.)

BY MR. LONDON:

Q On Page 15 of your report, there begins a

section on language certification of teachers.

You have devoted considerable attention to

methods of instructing English learners, right?

A Yes.

Q Can you give us a brief summary of your overall

conclusion about comparisons of different methods of

instruction?

MR. VIRJEE: Objection. Vague and ambiguous.

THE WITNESS: What do you mean by "methods of

instruction"?

BY MR. LONDON:

Q In some of your work there is reference to

transitional bilingual education and other categories of

instructional method.

Could you give me the words that you would use

to refer to different approaches to teaching English

learners?

A Yes. There are three basic approaches, and we
can divide those up into other approaches, into

sub-approaches. The three basic approaches are -- well,
you can actually say there are four, because one

approach is do nothing. That's not an approach that

many people support, although it is the dominant

approach throughout the world; that is, do nothing

beyond what every kid gets in a classroom from a teacher.

The other approaches are ESL pull-out, which in
BY MR. LONDEN:

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

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

THE WITNESS: What was your question again?

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

(Record read)

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

BY MR. LONDEN:

Q   Okay.

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

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

A   There's an ELD certification.

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

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

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

BY MR. LONDEN:

Q   Okay. Look at Table 6, please.

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

Q   Is this research that you did?

A   Yes.

Q   What was the occasion for doing it?

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

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

A   Yes.

Q   And where was that?

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

Q   And which English learners?

A   The English learners in the Spanish bilingual programs.

Q   Within Berkeley Unified School District between 1987 and 1988?

A   Correct.

Q   Are the CTBS scores withdrawn.

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

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

A   Yes.

Q   And the first entry is a change score.

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

A   Correct.

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

A   Yes.

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

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

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

A   The -- I used a scale that was published in a
sociological journal with a -- I did a number of things, but I -- I can't recall exactly at this point. I think this is simply a prestige scale, in which the sociologist ranked all the occupations, in terms of their prestige, the amount of intellectual ability you had to have, on average, to practice that occupation. So I simply used that particular sociologist's scale. I think it was actually two authors, now that I think about it in more detail.

Q And what was the range of the scale? What were the potential high and low scores?
A I can't recall now.

Q What is the -- what are the values reflected in the variable "Grade"?
A Simply the grade that the child was in.

Q From "K" through 12?
A Yes, it started in kindergarten.

Q So what does the mean of 2.44 reflect?
A The average grade the child was in.

Q Do you remember whether that's between second and third or between first and second on this rating?
A I can't recall.

Q And what does "Years in Program" reflect?
A How many years they've been in the bilingual education program in Berkeley.

Q And the "they" is the individual student?
A Yes.

Q And "Certified bilingual teacher," is that a yes or no?
A Correct.

Q Yes is a 1?
A Yes.

Q "N" is 77. That means there were 77 students whose records were included in this regression analysis?
A Correct.

Q Was that all the students in the Spanish bilingual program?
A Probably not. I had to have scores at two points in time, and not every student will have scores at two points in time.

Q The R-squared is .224. Do you draw any conclusion from that number in the context of the other things that are reported about reading achievement?
A What conclusions do you want me to draw?
Q Only those that you can, if you consider them reasonable.

A This equation explains 22 percent of the variance in reading achievement. Hard to know what else to say.

Q In the variable "Certified bilingual teacher," what kinds of training or experience teaching English learners, if you know, did the teachers who were not certified bilingual have in that program?
A I can't recall exactly.

Q Now, can we correctly conclude that of the 77 students reflected in this regression, 71 percent of those 77, or about 55, if my arithmetic is correct, had a certified bilingual teacher?
A I wouldn't jump to that conclusion.

Q There's a flaw in my reasoning?
A Well, this is -- these are students, and the teachers are in classrooms. Classrooms vary in size.

Q So it's possible all of the 77 students had a certified bilingual teacher?
A No.

Q Is it possible that none of them did?
A No.

Q Did you, as you recall, have any information about how many of the 77 students actually had a certified bilingual teacher?
A I don't recall now.

Q Okay. You did not include in this analysis percentage minority, right?
A This is an individual student analysis.

Q I see.

A They're all minorities.
Q I apologize if I already asked you this question, but I'm interested in knowing whether you have any -- or whether you recall having had any information about the range between zero and a hundred percent of the proportion of the 77 students whose teacher was bilingual certified.

A I can't recall. I would have to go back and check the data.

A There were certified teachers, and there were uncertified.
Q Did you have data that would tell you the answer to whether any individual student attended a class taught by a certified bilingual teacher?
A I could go back and calculate that, and I may have done it at the time.
Q Okay. If so, do you think it was reflected in
MR. VIRJEE: Objection. The report speaks for itself, calls for speculation.

BY MR. LONDEN:

Q   Let me back up.
A   I'm not sure. I may have done this after the case was over.
Q   For purposes of our present case, did you go back and find any documentation of the analysis of the Berkeley certified bilingual teachers for purposes of making it available for production?
A   Documentation?
Q   Yeah.
A   What is documentation?
Q   I asked you earlier about the data, and now I'm asking -- I'm intending to ask a broader question. Reports, transcripts of testimony.
A   I don't keep transcripts of testimony.
Q   All right. Table 7.
A   That was my intent, but Appendix 4 -- did it have --
Q   Appendix 4, I think, has the minority problem.
A   Okay.
Q   We already know about that. I'm not asking about that specifically.
A   Okay.
Q   Does the analysis that's reflected in Table 7 and Appendix 4 suffer from any of the same problem -- well, suffer from the same problem you note in the middle paragraph on Page 13 regarding a change in criteria for designating children as English learners?
A   No.
Q   Why not?
A   I'm not using an English proficiency test.
Q   In the first page of Appendix 4, the first variable is EL students reading NCE 01.
A   Do you see that?
Q   Yes.
Q   How are the students in that -- reflected in that variable designated as EL students?
A   By the school, by the school district and by the school. The school district fills out a language census in -- I believe it's March of every year.
Q   And this is for 2001; that is, the variable that's the first variable on the first page of Appendix 4?
something?

A Yes.

Q The following paragraph says, "It is interesting that the 25 states with plaintiff victories in fiscal equity cases have lower per pupil expenditures and about the same percentage of State funds devoted to education as the other states -- other 25 states," end quote.

A No.

Q On Page 20, you state that California does not have plaintiff victories in fiscal equity cases with respect to educational funding?

A Yeah.

Q Do you know whether the State has in its possession the amount of lottery money or money in the same categories of other sources as you meant in Footnote 24 on a district-by-district basis?

A The basis of it is my understanding that the official statistics do not include anything other than Prop 98 funds. On the other hand, school spending -- excuse me. Never mind. I started to get off on another topic. That's the basis for it, my understanding that the official statistics do not include the other sources of funds.

Q Do you know whether the State has in its possession the amount of lottery money or money in the same categories of other sources as you meant in Footnote 24 on a district-by-district basis?

MR. VIRJEE: I'm going to object as vague and ambiguous. It calls for speculation.

I'm assuming you're asking whether the State has data, not whether they have the lottery money?

Because that's what you asked.

MR. LONDEN: I was asking about the information.

THE WITNESS: And now I've lost the question.

BY MR. LONDEN:

Q Well, you report that the official education expenditures in the Web site don't include lottery money or other sources, and my question is: Does the State have that information on a district-by-district basis somewhere other than in the Web site, if you know?
Q: In the sentence after the Footnote 24 in the text, it refers to Figure 7. I'd like to direct your attention to that figure and ask how it was prepared.

A: I don't know.

Q: Where did you get them?

A: I got them from the Rand Corporation.

Q: Can you be more specific?

A: I requested them. I asked them for -- I knew that they had per pupil expenditures by school district.

Q: Who did you ask?

A: Well, the process I went through is probably easier to describe --

Q: Sure.

A: -- than who I asked.

Q: Sure.

A: I went to the Rand Corporation Web site to see if they had per pupil expenditures by school district, and I discovered that they did. But the way in which it was on the Web site was -- you had to do a query for each school district in California, which is obviously tedious and so forth and so on.

So I e-mailed whoever this anonymous person is, you know, "Contact us," that person. I e-mailed them and said, "Do you have this in electronic file that I can simply -- that you can simply e-mail to me or I can download, so that I don't have to do a query for every school district in California?" And they said yes.

And so I dealt with two different people, whose names I've forgotten, but you probably have that information.

Q: Did you make a copy of the data that you got from Rand and make it available to the State to produce to us?

A: Yes.

Q: Do you happen to remember what the data set was called?

A: No, but I try to make my data files have descriptive names.

The other thing you need to know is that the first file I received -- there's more than one file. And the first file I received was missing a number of school districts. So I pointed that out to the person who gave it to me, and I received additional school districts in an e-mail rather than in an electronic file, so that I had to input it -- I mean copy and paste.

Q: And did you provide a copy of that e-mail to the State's counsel --

A: Yes.

Q: -- to produce to us?

So in order to get the whole data set, one must take the electronic file and then take the e-mail and add it to the electronic file?

A: Correct. And there's more than one e-mail.

Q: This wasn't all solved in one e-mail.

A: Okay. Did you end up with an electronic data set that had all the numbers in it in order to produce the -- had a number for every district in it in order to produce this figure, Figure 7?

A: Yes.

Q: And did you give that file to the State to produce to us? Did you give a copy of that file after the additions?

A: I can't recall.

Q: Did you do any computations other than simply taking the numbers that Rand reported to you as per pupil expenditures?

A: No.
Q   No.
A   Yes.
Q   Why is that?
A   Well, because as long as you've got the --
you're comparing apples and apples, it strikes me that
this will be the same sort of comparison -- or
disparity, relative comparison. What it will affect is,
most obviously, the totals, the total per pupil.
Q   Are you assuming that lottery money and money
from other sources is distributed in equal proportion to
high-poverty school districts and other school
districts?
A   I am, but there is another possibility, which
is that it's distributed more to high poverty. And if
that's the case, then this will -- this is a
conservative estimate.
Q   Isn't it also possible that the lottery money
and money from other sources is distributed
proportionately to low-poverty school districts?
A   No.
Q   Why is that not possible?
A   This is the state of California.
Q   Okay. California wouldn't do a thing like
that?
A   I assume you're joking.
Q   No. You say this is the state of California,
and that tells you that lottery money and money from
other sources must be either distributed uniformly as
among high-poverty school districts or
disproportionately in favor of low-poverty school
districts, right?
A   Correct.
Q   And why do you exclude the possibility that
lottery money and money from other sources is
proportionately available to low-poverty school
districts?
A   Because the California Department of Education
is filled with liberal people who want money to go to
poor kids, and they're not going to -- the worst that
could happen is it's going to be equal. They're not
going to give money to wealthy school districts. And
then disproportionately to wealthy school districts.
Q   Okay. Thank you.

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

A   Well, because as long as you've got the --
you're comparing apples and apples, it strikes me that
this will be the same sort of comparison -- or
disparity, relative comparison. What it will affect is,
most obviously, the totals, the total per pupil.
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from other sources is distributed in equal proportion to
high-poverty school districts and other school
districts?
A   Correct.
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proportionately available to low-poverty school
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BY MR. LONDEN:
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is filled with liberal people who want money to go to
poor kids, and they're not going to -- the worst that
could happen is it's going to be equal. They're not
going to give money to wealthy school districts. And
then disproportionately to wealthy school districts.
Q   Okay. Thank you.
A: Yes.
Q: -- Fulton County?
A: Yes.
Q: Did you see any schools that you considered to be in poor physical condition?
A: I don't --
MR. VIRJEE: Objection. Vague and ambiguous as to "poor physical condition."
THE WITNESS: I don't recall seeing schools in poor physical condition. There was some variation in the condition of schools, and really quite extraordinary variation in number of portables, and portables tend to get a little ratty looking. They don't look at nice.
BY MR. LONDEN:
Q: Did you come by any information in the course of working on that case that led you to believe that anybody thought there were schools among the schools at issue where physical facilities interfered with an equal opportunity to learn?
MR. VIRJEE: Objection. Vague and ambiguous as to "equal opportunity to learn," incomplete hypothetical, calls for speculation, lacks foundation.
THE WITNESS: Would you repeat the question, please?
BY MR. LONDEN:
Q: Yeah.
As far as you know, did anybody contend that differences in the qualities of the schools that were assessed in this survey gave rise to unequal learning opportunities?
A: There was a general complaint that the southern schools were older and not getting the kind of maintenance that they would have liked. And at one school I went to, the principal on my school tour was very careful to point out to me all of the horribles that had just gotten fixed. This door didn't used to be here, you know, and all -- so forth and so on. So I think that the southern schools felt that they weren't getting the kind of facilities that the northern schools were getting.
Q: Was that feeling an issue in the case; that is, the feeling by the southern schools they were not getting the same of something as the northern schools with respect to the facilities?
A: It was an issue, but it wasn't one of the more important ones.
Q: That school that the principal talked to you about, do you remember what the rating was on the facilities survey scale?
A: No.
Q: Do you remember the range of the ratings on the scale?
A: The ratings were fairly high on that scale.
Q: My question was ambiguous.
THE WITNESS: The scale that was used was a one-to-100 scale?
A: I believe so.
Q: Were there any schools that were below 70 on the ratings?
A: I don't think so. I can't recall. I'd have to look at it again.
Q: In the course of doing your work, did you ever make a plot, a chart of the school scores according to any parameters?
MR. VIRJEE: In the course of doing her work in that desegregation case?
BY MR. LONDEN:
Q: Any work on the Fulton, Georgia facilities data.
A: I don't recall.
MR. LONDEN: Let's mark these as exhibits, these two in order. I don't think -- these don't appear to have been produced documents, so I'd rather mark them than take a chance on losing track of them.
(Defendant's Exhibits 10 and 11 were marked for identification by the court reporter.)
BY MR. LONDEN:
Q: Before you are two documents marked as Exhibits 10 and 11 to this deposition.
A: It's a rebuttal report on the desegregation in the Fulton County schools written by me.
Q: And same question as to Exhibit 11.
A: This is the original report I wrote on the desegregation of the Fulton County schools.
Q: Okay. Can we look at Table 8 to your current report, please.
A: Table 8 to my what?
Q: Current report. I'm done with the Fulton County reports.
A: Table 8 appears to reflect three or more regression analyses?
Q: Did you do new regression runs on the Georgia data for purposes of this case?
A: Yes.
SPSS output printouts for the regression analyses that
are reflected in this table?
A  I don't recall.
Q  Did you use in those regression analyses data,
all of which you obtained as part of your work on the
Fulton County case?
A  Yes.
Q  And did you make the data available to the
State's counsel to produce to us?
A  Yes.
Q  In the first table, which is marked
composite -- which is labeled "Composite," what does
"composite" mean?
A  It's a composite score of reading/math.
Q  Is that a score that's reported as a composite?
A  Yes.
Q  And each of the reading and math scores in the
tables below or in the chart -- sections of Table 8
below are separately reported in the Fulton County data
from the composite?
A  Yes.
Q  The unit of analysis in these tables is schools?
A  Yes.
Q  For purposes of the percentage poor variable,
what's the basis for classification?
A  Whether you're on free or reduced lunch.
Whether you're eligible for free or reduced lunch.
Q  And the facilities rating variable is a range
of scores on a scale of zero to a hundred? I'm sorry if
I asked you that already.
A  That's the possible scale.
Q  The average was -- of the schools included in
these regression analysis was 91 out of a hundred?
A  Correct.
Q  And hundred is high?
A  Yes. A hundred is the highest.
Q  What is the percentage of capacity utilized
variable?
A  It's a statistic that the school district keeps
on the capacity -- I calculated it from the school
district's estimation of capacity, including an
estimation of the capacity for the portables. They do a
calculation of capacity based on brick and mortar, and
then they show how many portables. And the school
district people gave me an estimate of what the capacity
of the portables was, and I simply added that to the
brick and mortar capacity and calculated the percentage
of capacity utilized by the students.
Q  In some instances and some contexts, capacity
is assessed by comparing student head count to designed

capacity?
A  Yes.
Q  Is that what was done here?
A  Yes.
MR. VIRJEE: Objection. Vague and ambiguous as to
"designed capacity."
BY MR. LONDEN:
Q  In some contexts, doing it that way, it's
possible to have a percentage of capacity utilized that
exceeds a hundred percent?
A  Yes.
Q  And was that a possibility, according to the
method that was used here?
A  Yes.
Q  Do you know if there were any scores that
exceeded a hundred?
A  Well, there definitely were when portables were
not included. Once portables were included, I don't
think there were, but I can't recall exactly.
Q  There were 58 schools included in the
regression analyses?
A  Yes.
Q  Have you published your work on the Georgia
school district facilities analysis anywhere other than
by virtue of the public nature of the expert reports in
the case?
A  No.
Q  Has the analysis been peer reviewed in any
sense?
A  No.
Q  Look at Page 22, please, of your report.
The first sentence says, "Far and away, the
most important variable is the percentage of students
who are poor."
Is that sentence a statement that characterizes
the Georgia analysis?
A  Yes.
Q  If you look at Table 8, the first two variables
under each of the regression summaries are percentage
black and percentage poor.
A  Yes.
Q  Were those highly co-variant?
A  They were correlated with each other.
Q  Does that mean there's some degree of
uncertainty about the relative importance as between
percentage black and percentage poor, based on how this
analysis works?
A  Percentage black is highly related to
achievement. So is percentage poor. And percentage
poor is the statistically significant variable.
Q But a lot of the same kids who are in the black category are also in the poor category?
A Correct.
Q And for example, the two beta scores for percentage black and percentage poor in the first regression analysis --
A Those aren't betas, they're "B"s.
Q Oh, I'm sorry.
Does the relatively small size of the "B" score for the black variable, as compared to the same score for the poor variable, tell you that the percentage who are poor is much more important than the percentage who are black?
A Yes. Multicollinearity tends to -- I mean, a high correlation between two variables tends to primarily affect the significance level. So the "B" coefficient isn't much affected.
Q And the significance level for the percentage black, that taken alone is not significant, right?
A The percentage black is not significant, correct.
Q But co-variance as between black and poor or perhaps another variable might explain that?
A They are highly correlated, but other analyses done in this case, same case, indicate that the primary variable is the poverty variable.
Q Looking back at Page 22, the third sentence on that page says, "It is unlikely that the quality of school facilities would affect achievement in American schools, since the scientific research indicates that achievement is a function of the characteristics of the student and effective time on task."
What scientific research did you have in mind?
A I'm constantly reading articles on educational research, what affects achievement, and the research is pretty clear that -- people don't even look at facilities; it's not even in their equations -- that student characteristics and teacher/school characteristics, which is what I really mean by effective time on task, are the explanatory variables that pretty much explain everything.
Q What teacher and school characteristics are you referring to when you say, "that's what I mean by effective time on task"?
A Well, about -- you know, now we're getting back to sort of a -- kind of a conceptual idea. I mean, if we look at the bilingual education literature, for example, it's fairly clear that the amount of time kids are taught in English pretty much predicts their English learning achievement, as does the characteristics of the child.

Q The next statement is, "I have never seen a public school in America whose facilities were so bad that students could not learn in them."
Do you have an idea of what would -- what circumstances would be so bad that students could not learn?
A No heat in the winter in Minnesota, teachers who don't speak English, class size that is a hundred to one. In other words, it's -- it has to be extreme for children to not be able to learn.
Q The next sentence says, "In addition, I have toured many hundreds of schools in California over the last three decades." Stop there.
And that reference to hundreds of schools, that includes the 1999 to 2001 classroom visits that you did in connection with your report on implementation of Prop 227?

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

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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?

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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

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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
26 cost of living," end quote.
27 A The cost of living is higher in some states
28 than in others, and they calculated what the value of
29 the dollar was in one state versus another. And so if
30 you are in a high cost of living state, your salary gets
31 adjusted downward, and if you're in a low cost of living
32 state, your salary gets adjusted upward.
33 Q Now, for purposes of -- strike that.
34 Did Education Week make their report of teacher
35 salaries in a form that they had adjusted for the cost
36 of living, as far as they reported it -- as far as they
37 described it?
38 A Yes.
39 Q So you did not make any cost of living
40 adjustment to the figures reported in Education Week,
41 true?
42 A No.
43 Q I asked you a negative question.
44 A Well, now I better check. Would you repeat
45 it?
46 Q I'll say it again.
47 Tell us whether or not you made any adjustment
48 to the teacher salaries data, as reported in Education
49 Week, to adjust for the cost of living.
50 A I did not.
51 Q That same paragraph says, "It," meaning
52 California, "falls dramatically below the other states
53 in the area of adequacy of resources."
54 The "it" in that sentence is California?
55 A Yes.
56 Q And what does the phrase "adequacy of
57 resources" mean in that sentence?
58 A How much is devoted to education.
59 Q Total educational expenditures?
60 A Well, they had a lot of different items under
61 that. One of them was whether or not it was above or
62 below a certain per pupil expenditure. There were other
63 items. I don't recall what they were.
64 Q Did anything in the Web site described in the
65 Education Week survey tell you that the information
66 Education Week used to assess adequacy of resources did
67 not include lottery money in the case of California?
68 A They didn't say anything.
69 Q But the sentence we were reading goes on to
70 say, quote, "Because this is the' -- in quotes --
71 "official," end quote, "expenditure, it does not
72 include the lottery money and thus underestimates
73 California's adequacy," end quote.
74 A When I have gone to the California Web site,
75 which I have on many occasions, there are many more
76 programs than this listed. And probably a better
77 sentence would be these are not all the State oversight
78 programs that are currently in place. These are the
79 State oversight programs that were cited in Jeanne
80 Oakes' report.
81 Q So you did not make any calculation of a
82 percentage or any listing or enumeration of California
83 State oversight programs other than the -- aside from
84 the 13 that you list from Jeanne Oakes' report; is that
85 right?
86 A I did not calculate a specific percentage.
Q. Did you make a listing?
A. No, there were just too many.

Q. Did you go and make an investigation or inquiry to find State oversight programs as part of your work on this report?
A. I did not do a systematic inquiry, but I've been to that Web site many times and read quite a bit about what's going on as well as worked with school districts.

Q. So this sentence is based on your familiarity over the years with California and your past occasions for visiting the Web site and consulting other sources?
A. Correct.

Q. Rather than going and making an inquiry to do any sort of rigorous listing, right?
A. I didn't calculate a specific percentage.

Q. And you didn't make any other listing or enumeration of things you considered to be State oversight programs?
A. No.

Q. The next sentence says, "The plaintiffs' major complaint seems to be" -- I think the word "be" ought to be in that sentence, I guess?
A. Yes.

Q. "The plaintiffs' major complaint seems to be that they want more," quote, "coherence," unquote, and they want more money devoted to data collection and to education in general," end quote. What does the word "coherence" in that sentence mean?
A. They want the State to be consistent, in terms of applying standards and oversight, and they want the State to not rely on the school districts to do oversight, but to do it themselves and to be aware of all the different oversight programs, so that there's not overlap or contradiction.

Q. Could we look at Figure 10. How was this chart prepared?
A. How?
Q. Hmm-hmm.
A. I took the average rating for each of these elements for California. I divided the remaining states into plaintiffs' victories and not plaintiffs' victories, and averaged those.

Q. In every place in your report where you categorize states according to whether plaintiffs have been victorious in a fiscal equity case, did you use the same list?
A. Yes.

Q. How did that list come about?
A. I obtained it from the Web site that is cited in my report.

Q. And do you simply take the list as it existed on the Web site?
A. There were some -- there was one modification, I believe, in that sample. New York was in the plaintiffs' victory column, I believe, and at that point they were supposed to be in the defendants' victory column.

Q. Based on the status of the CFE case at the time, right?
A. Right.

Q. Is there a court higher than the Court of Appeal of California that you think is -- MR. VIRJEE: Here in California or New York?
MR. LONDEN: Of New York, I mean.

THE WITNESS: Well, my understanding was that wasn't the New York Supreme Court; was it?

BY MR. LONDEN:
Q. In New York the term "Supreme Court" is given to the trial court, and the term the "Court of Appeal" is the highest court in the state.
A. Is that right?
Q. But be that as it may.
A. That is the highest court.

Q. The fat lady has sung in New York.
A. Okay. Well, then it's going to be in the plaintiffs' victories.

Q. Aside from CFE in New York, did you make any other adjustments to the list you found on the Web site?
A. I don't think so.

Q. Look at Page 31, please. There is a quote -- blocked quote toward the top of that page from Wymar and Vining. What does the subject of their discussion mean?
A. They want the State to be consistent, in terms of applying standards and oversight, and they want the State to not rely on the school districts to do oversight, but to do it themselves and to be aware of all the different oversight programs, so that there's not overlap or contradiction.

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Q. In every place in your report where you categorize states according to whether plaintiffs have been victorious in a fiscal equity case, did you use the same list?
A. Yes.

Q. How did that list come about?
MR. VIRJEE: Objection. Vague and ambiguous as to future wealth?
Q   Does improving schools have any effect on wealth.
and whenever you increase the tax rate, you lose some
The other is that you increase the tax rate,
and whenever you increase the tax rate, you lose some
wealth.
Q   Does improving schools have any effect on future wealth?
MR. VIRJEE: Objection. Vague and ambiguous as to
"improving schools," calls for speculation, lacks
foundation, incomplete hypothetical.
THE WITNESS: There's a possibility, if the
improvement is not to the physical facilities but to the
teaching staff. That is, for example, if we pay
teachers a whole lot more money, got rid of
certification, made teachers go through this fabulous
training program, got the best and the brightest, paid
them a ton of money and they stayed in teaching, it's
possible it would affect the wealth of the students in
those schools.
The problem is, of course, that you would lose
the people who have to pay for this. And so it would
derfect the wealth of the students in
domesticating the section that you're in talks about in
her report.
BY MR. LONDEN:
Q   Do you have my question in mind?
A   No. Please repeat it.
BY MR. LONDEN: Let's read it back.
(The record was read as follows:
"The quote says, 'The key question, therefore, is how much current and future wealth are we as a society collectively willing to give up to achieve greater equality in distribution.' "Does it seem to you that greater equality as among schools -- public schools is likely to bring about a reduction in future wealth as a
society?")
THE WITNESS: The answer is yes, it will bring
about a reduction in wealth. Although the term "wealth"
can get pretty complicated when we're talking about schools.
BY MR. LONDEN:
Q   Why do you think that?
A   I'm talking about Serrano.
Q   What case do you have in mind?
A   I suppose the fact that California has already
improved the equity of public education in California
will enhance or detract from California's future wealth
as a society?
THE WITNESS: Depends on how much improvement.
BY MR. LONDEN:
Q   And are you able to say any more than that, as
you sit here now?
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 Q 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 A They're notes regarding things I might want to
11 check up on, some formatting or other problems in my
12 resume, plane reservations. This is a calculation of --
13 MR. VIRJEE: He's only asking about notes you took
14 during the deposition.
15 THE WITNESS: Oh, during the deposition?
16 MR. VIRJEE: So if it's not during the deposition,
17 he doesn't need to know about it.
18 THE WITNESS: Oh, all right. Things I want to
19 refresh my memory with. I didn't have time to go over
20 all of my analyses before this deposition. I thought I
21 would remember them, but unfortunately, I didn't, so I
22 will go back and look at them and refresh my memory as
23 to how I did them.
24 BY MR. LONDEN:
Q Mr. Virjee may have explained this to you, but I would like to make a copy of your notes that relate to this case.

MR. VIRJEE: Well, you can make a copy of the notes that she took contemporaneously at the deposition.

MR. LONDEN: Fine.

MR. VIRJEE: But not things she didn't do -- I think they're mixed up together.

MR. LONDEN: Are there notes about the case that you think we're not entitled to see?

MR. VIRJEE: I don't know what else is there. We haven't looked at them yet. So before we give them to you, we want to look at them, go over them and see what's there, and we'll give you a copy of anything that relates to contemporaneous notes that she took at the deposition or that formed the basis for her opinions that she's given.

MR. LONDEN: But if they're not in that category, you think we're not entitled to them.

MR. VIRJEE: No.

MR. LONDEN: I don't care whether we make a copy now of what you are willing to produce or I get it later, but --

MR. VIRJEE: Sure.

MR. LONDEN: Which do you want me to do?

MR. VIRJEE: Later.

MR. LONDEN: I can make a copy -- all right. And you'll designate it when you give us the copy, right?

MR. VIRJEE: Sure.

Designate it meaning by page?

MR. LONDEN: You'll say this is what --

MR. VIRJEE: Sure. I'll write you a letter and give you the pages that we agree to give you.

BY MR. LONDEN:

Q How many pages are there before you now of the notes that you took during this deposition?

MR. VIRJEE: And again, the pages --

THE WITNESS: Two.

MR. VIRJEE: -- that are in front of her are a mix of both things she did at the deposition and away from the deposition.

BY MR. LONDEN:

Q But how many pages are there of notes you took at the deposition?

MR. VIRJEE: That's what I'm saying. The pages have both things on them, I believe. And we haven't had a chance to look at them yet.

BY MR. LONDEN:

Q Okay. But the question is --
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 _____________, 20___, at _________________________, _______________.

_______________________________
CHRISTINE ROSSELL
Volume 2

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