

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

ELIEZER WILLIAMS, A MINOR, BY)
SWEETIE WILLIAMS, HIS GUARDIAN)
AD LITEM, ET AL., EACH)
INDIVIDUALLY AND ON BEHALF OF)
ALL OTHERS SIMILARLY SITUATED,)

Plaintiffs,)

vs.)

No. 312236)

STATE OF CALIFORNIA, DELAINE)
EASTIN, STATE SUPERINTENDENT OF)
PUBLIC INSTRUCTION, STATE)
DEPARTMENT OF EDUCATION, STATE)
BOARD OF EDUCATION,)

Defendants.)

DEPOSITION OF KENJI HAKUTA, Ph.D.
San Francisco, California
Monday, March 17, 2003
Volume I

REPORTED BY:
TRACY L. PERRY
CSR NO. 9577
JOB NO. 880708

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 2 COUNTY OF SAN FRANCISCO
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 16 DEPARTMENT OF EDUCATION, STATE)
 17 BOARD OF EDUCATION,)
 18)
 19 Defendants.)
 20)
 21)
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15 Deposition of KENJI HAKUTA, Ph.D., Volume 1,
 16 taken on behalf of Defendants, at 275 Battery Street,
 17 San Francisco, California, beginning at 9:35 a.m. and
 18 ending at 4:57 p.m., on Monday, March 17, 2003, before
 19 TRACY L. PERRY, Certified Shorthand Reporter No. 9577.
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1 Q And you also understand that testifying here
 2 today you're subject to penalties of perjury and the
 3 testimony you give here has the same force and effect as
 4 if you were in a court of law?
 5 A Yes, I do.
 6 Q So throughout the day I'll be asking you
 7 questions relating to this lawsuit, and you're required
 8 to answer those questions to the best of your ability.
 9 If you don't understand a question that I ask, let me
 10 know and I'll try to rephrase it.
 11 If you do tell me -- I'm sorry. If you don't
 12 tell me that you don't understand a question, I'll assume
 13 that you do. Is that clear?
 14 A Yes.
 15 Q Please answer my questions verbally. Nodding of
 16 the head or shaking of the head, the court reporter can't
 17 transcribe that. It's also difficult for the court
 18 reporter to get a clear record if there's more than one
 19 of us speaking at a time. So I'll ask you to allow me to
 20 finish asking my question before you answer it, and I'll
 21 do the same for you before asking my next question.
 22 The questions I ask today and your answers will
 23 be transcribed into a booklet at a later time, and you'll
 24 have an opportunity to review your answers and make any
 25 changes you feel are necessary. However, you should know

1 San Francisco, California
 2 Monday, March 17, 2003
 3 9:35 a.m. - 4:57 p.m.
 4
 5 KENJI HAKUTA, Ph.D.,
 6 having been first duly sworn, was examined and testified
 7 as follows:
 8
 9 EXAMINATION
 10 BY MS. KOURY:
 11 Q Good morning, Mr. Hakuta. My name is Vanessa
 12 Koury, and I'm an attorney representing the State of
 13 California in this litigation.
 14 Would you please state and spell your full name
 15 for the record?
 16 A Kenji, K-e-n-j-i, Hakuta, H-a-k-u-t-a.
 17 Q Have you had your deposition taken before?
 18 A Yes, I have.
 19 Q Okay. Well, then, you generally know what's
 20 going to happen here today. I'll just go over some of
 21 the ground rules.
 22 You understand you have taken an oath and this
 23 requires you to answer questions honestly; is that
 24 correct?
 25 A Yes.

1 that the lawyers in this case are free to comment on any
 2 changes that you make. Is that clear?
 3 A Yes.
 4 Q If you need a break at any time during the
 5 deposition, just let me know and we'll take a break. If
 6 there's a question pending, I'll just ask that you answer
 7 the question before we break. Is that okay?
 8 A Yes. I -- yes.
 9 Q I want to obtain a clear record of your opinions
 10 and the testimony today. If during the deposition you'd
 11 like to supplement or change a prior answer, please let
 12 me know and we'll do so. Is that okay?
 13 A Yes.
 14 Q Is there any reason you can't provide your best
 15 testimony today?
 16 A No.
 17 Q Any medication?
 18 A No.
 19 Q Illness?
 20 A No.
 21 Q Disabilities?
 22 A No.
 23 Q What did you do to prepare for today's
 24 deposition?
 25 A I reviewed my own testimony. I reviewed the

1 supporting documents that were referred to in my
2 testimony. I had two and a half days of meetings with
3 the attorneys in this case that prepared me for the
4 deposition.

5 Q Anything else?

6 A No.

7 Q When you say "testimony," what do you mean, that
8 you reviewed your testimony?

9 A My expert report.

10 Q And which particular documents, supporting
11 documents did you review?

12 A I reviewed all the major documents that were
13 referred to in my testimony, including the report by
14 Rumberger and Gandara, the reports by Professors Oakes
15 and Linda Darling Hammond, the research papers that were
16 used in support of my expert testimony, which I could
17 list but they are listed in the references to my report.

18 Q Which Rumberger and Gandara report did you
19 review?

20 A It is the document that's referred to in the
21 footnote. It's the -- I don't recall the exact title on
22 there of their paper, but it was a 2000 -- a document
23 dated 2002.

24 Q And the Oakes and Darling Hammond reports, are
25 those the reports that they submitted in this case?

1 Q What particular issues did you see or did your
2 attorneys mention with respect to your qualifications?

3 A My experiences in the professional training of
4 teachers in both preservice and inservice, my
5 qualifications in the area of research, my involvement in
6 past issues with legal -- with legal issues in education,
7 especially bilingual education, my involvement with the
8 National Academy of Sciences and other organizations
9 through whom I've issued reports.

10 Q What was your experience in -- I'm sorry. Did
11 you say experience in professional training in pre-intern
12 and intern teachers?

13 A Yes.

14 Q What was your experience in that regard?

15 A I have -- I've chaired a committee of the
16 National Academy of Sciences that reviewed the research
17 relevant to the education and language of minority
18 students, and several of the chapters -- two of the
19 chapters refer to the -- and conducted review of research
20 relevant to the training of teachers for English language
21 learners.

22 I also teach in the teacher education program at
23 Stanford University, which prepares teachers, and I teach
24 courses that specifically prepare the students for the
25 aspect of teaching that involves teaching English

1 A Yes, they're the ones that are available from
2 the website.

3 Q And which attorneys were present during your two
4 and a half days of preparation?

5 A Jack Londen, John Affeldt and Jenny Pearlman.

6 Q How long was each day of preparation?

7 A We started at 9:00 and ended around 4:00 or
8 5:00.

9 Q And what was said?

10 A I -- there was a general orientation for what a
11 deposition would involve. There was then the practice
12 for the kinds of issues that might be raised in the
13 deposition.

14 Q Anything else?

15 A Nothing -- nothing that's pertinent to the case.
16 We discussed the weather.

17 Q What kinds of issues were mentioned in terms of
18 practicing for the deposition?

19 A They ranged from questions about my
20 qualifications, qualifications of others that might be
21 raised in the deposition, questions about the scientific
22 credibility of the research that's referred to in both my
23 testimony and in other -- the testimony of others,
24 general issues related to the hardness of the evidence
25 underlying the claims that were made.

1 language learners.

2 I have federal funding to provide training in
3 the area of CLAD, cross-cultural academic language, and
4 cross-cultural language and academic development training
5 to teachers in the San Francisco Unified School District,
6 and teach courses actively with teachers in the district
7 that provide State-certified CLAD certification through
8 the successful completion of these courses, and am
9 working with three other school districts as well in
10 providing those services.

11 Q With respect to the scientific credibility of
12 your research, what issues were raised when you met with
13 the attorneys in this regard?

14 A I've been active in the -- in my capacity as a
15 federal official to improve the quality of educational
16 research, and a lot of that would involve being quite
17 critical of the research evidence that's out there, and
18 so issues having to do with my public role in trying to
19 improve the quality of educational research; the research
20 that I've done in the area of bilingual education and how
21 that could be -- become an issue that's relevant to a
22 particular methodology that might be advocated in -- or
23 that might be raised in the course of this trial.

24 Q What particular methodology are you referring
25 to?

1 A Quite commonly, the alternatives are
2 characterized as English-only instruction, which is
3 referred to as structured English immersion, versus some
4 form of bilingual education that involves the native
5 language.

6 Q And do you find that problematic in terms of the
7 methodology?

8 MR. LONDEN: The question is vague.

9 BY MS. KOURY:

10 Q Do you understand my question?

11 A No.

12 Q You mentioned that there was -- was there
13 anything problematic with respect to the methodology that
14 you were referring to when you were discussing the
15 methodologies that you're currently investigating?

16 MR. LONDEN: The question is vague and ambiguous.

17 THE WITNESS: No.

18 MR. LONDEN: Answer if you're able.

19 BY MS. KOURY:

20 Q Did you answer no?

21 THE WITNESS: I don't understand the question.

22 BY MS. KOURY:

23 Q You don't understand the question. Okay. I'll
24 rephrase it in a different way.

25 In terms of your -- you said you were -- your

1 A We discussed issues of the quality of the
2 research underlying the studies in this case.

3 Q When you say "the studies in this case," are you
4 referring to the other experts in this case and their
5 studies?

6 A No. I'm referring to studies that are referred
7 to directly in my testimony, as well as the -- as well as
8 the studies that are relied on by other experts in the
9 field of educational research generally.

10 Q What particular studies did you discuss with
11 your attorneys in this regard in terms of discussing the
12 quality of research?

13 A We discussed the studies that are -- have not
14 been through a formal peer review process and publication
15 or published in standard academic venues, reports to the
16 State, evaluations, studies conducted by districts.
17 There are many, many levels that studies go through for
18 the public -- their eventual publication. And so to the
19 extent that going through a peer review process is an
20 indicator of -- an indicator of the quality of the
21 research as judged by peers, that bears on the perceived
22 quality of the research.

23 Q Do you think it's important for a study to have
24 gone through the formal peer review process and be
25 published?

1 role as a federal officer is to be critical of research
2 that's out there. What have you done specifically in
3 that regard and -- go ahead with that question.

4 A My role was as the chair of a federal board that
5 oversees the research conducted by the U.S. Department of
6 Education. And the role that the board played in that
7 capacity was oversight of federal standards for the
8 quality of research and peer review used to judge the
9 quality of research.

10 And our board has continued to exercise
11 oversight on that issue and has commissioned studies,
12 reports, including a report from the National Academy of
13 Sciences, to try to enlighten, shed light on the issue of
14 research quality in the field of education.

15 Q Is your role on that board ongoing?

16 A No.

17 Q When did that conclude?

18 A It was in the fall of 2001 -- 2002.

19 Q You've also stated that you discussed the
20 hardness of evidence underlying this case; is that
21 correct?

22 MR. LONDEN: Misstates the testimony.

23 Go ahead.

24 BY MS. KOURY:

25 Q Tell me where I'm wrong with that.

1 A For what purpose?

2 Q Reliability.

3 A Going through a peer review process and having
4 it published is a form of proxy that you're giving to the
5 peer group or a peer group for a formal process of
6 evaluation of the quality of evidence. And so it gives
7 you or it gives the user of the research another
8 dimension by which to judge the quality, and it is the
9 most commonly used proxy for quality, but it is not the
10 only avenue through which you judge quality of a study.

11 Q I'm sorry. The board that you were a member of,
12 the federal board that you discussed earlier, what was
13 the name of that board or the commission?

14 A National Educational Research Policy and
15 Priorities Board.

16 Q Did the National Education and Policies Board --
17 did they have an opinion as to whether the quality of
18 educational research depended on peer review?

19 A It lists peer review as a factor that would help
20 improve the quality of research in the field of
21 education. But our charge is much more -- had more to do
22 with the peer review process as used in the evaluation of
23 research proposals that are submitted to the government
24 for funding. So it's at a very different level in the
25 production process of a research study.

1 Q In other words, when someone provides you a
2 proposal for funding for their research, you determine
3 whether that proposal had been peer reviewed?

4 A You determine whether the peer review process
5 that occurs -- there has to be peer review that occurs,
6 but you determine whether the peer review process is
7 adequate to guarantee that there's some objectivity and
8 balance in the review of the quality of the proposal.

9 Q With respect to proxies, you indicated that
10 it's -- I'm sorry -- with peer review you indicated it's
11 a proxy. What other -- if you don't have peer review,
12 what other measure do you have to judge the reliability
13 of a study?

14 A There are absolute standards that one can apply,
15 just like a -- the peer reviewers of a manuscript or of a
16 study or a study proposal, each forms an independent
17 opinion of the quality of the work based on what is
18 reported in the paper. And so there are -- you might
19 make judgments about the appropriateness of a methodology
20 to address the question that's being asked, and the
21 judgments that are made by any individual scholar or
22 expert in the area is used.

23 It's just that peer review itself in the
24 publication of a paper is an organized process by which a
25 journal editor assigns manuscripts for review by more

1 Q Why did this issue even come up, do you know
2 why? Discussing with your attorneys, how did this issue
3 come up?

4 A I think I may have raised it.

5 Q Why did you raise it?

6 A Because I have been publicly identified as
7 somebody who has called into -- identified as an
8 important issue for public policy the improvement of
9 research quality in the field of education. I have a web
10 page, for example, that talks about that.

11 Q How many of the reports -- I'm sorry -- reports
12 or studies that you reference in your expert report in
13 this case were not published?

14 A I don't know. As far as I know, they're -- most
15 of them are in some process of being published.

16 Q In some process?

17 A Mm-hmm.

18 Q Were there any particular -- when this issue
19 came up and you were discussing it with your attorneys,
20 did any particular study that is referenced in your
21 report come up for discussion?

22 MR. LONDEN: The question is vague. Answer if you
23 know.

24 BY MS. KOURY:

25 Q Do you understand the question? I can rephrase

1 than a single peer, by several peers, and collects their
2 opinions and then adjudicates -- among lawyers, that word
3 should be -- adjudicate? Is that the word?

4 Q Adjudicate, yeah.

5 A Between the different terms.

6 Q So when you have a document or a study that was
7 peer reviewed, you can assume that all of the other
8 elements that you just indicated have been done by their
9 peer experts in the area?

10 A It certainly -- you can never be certain, but
11 you can be more confident that that has been done.

12 Q How many of the studies that you list or you
13 refer to in your report in this case were not peer
14 reviewed?

15 A I cannot say.

16 Q Do you know of any that were not peer reviewed?

17 A I, again, cannot say whether -- what level of
18 review they have gone through because, you know, studies
19 and even a -- an evaluation study is reviewed by peers,
20 but it doesn't go through a process of -- formalized
21 process of peer review.

22 Q Were there any studies in your report that
23 didn't go through the formal process of peer review as
24 you understand it and as you've explained?

25 A I don't know. I cannot say.

1 it.

2 A Yeah, if you can rephrase it.

3 Q When discussing with your attorneys the peer
4 review process and what you indicated that you raised as
5 an issue, did you discuss any particular study or report
6 that you cite in your expert report?

7 A I think I raised in particular the study by
8 Thomas and Collier because I've been involved with that
9 issue in some public forum.

10 Q And what was said about the Thomas and Collier
11 report? I should say, What did you say about that
12 report?

13 MR. LONDEN: In preparation? Is that your question?

14 MS. KOURY: Yes.

15 THE WITNESS: In the preparation session? I think I
16 raised the fact that the study has been a -- the study
17 has been paid attention to by the field, both by
18 proponents and opponents of bilingual education because
19 its findings suggest that one form of instruction of
20 bilingual education is superior to another form of
21 education, ELS or English-only instruction, but it has
22 also been criticized for not -- for publishing the
23 findings before the data have been subjected to a jury of
24 peers or by their -- commentary by peers.

25 BY MS. KOURY:

1 Q What -- I'm sorry.

2 A And so I -- and I had spoken about this in
3 various forms. And so the fact that I was mentioning
4 this study I raised as a potential area where, because
5 there's some public debate about the quality of that
6 study, that it might become an issue or be raised as an
7 issue.

8 Q Which Thomas Collier report are you referring
9 to? Is it the 2002 report that you cited to?

10 A I don't recall the date, but it's the one that
11 I -- the one that I referred to is a Thomas and Collier
12 report. The issue that was raised was about a prior
13 report by Thomas and Collier.

14 Q A prior report that you do not refer to in your
15 report?

16 A Correct.

17 Q What about the Thomas and Collier report that
18 you do refer to in your expert report? Are there the
19 same issues raised about that study?

20 A That report has been vetted through the
21 National -- the Center for Research and Educational
22 Diversity and Excellence, which is a U.S. Department of
23 Education funded center. Prior to the publication of
24 that report on its website it has been vetted by a jury
25 of peers.

1 Q Is that the same thing -- would you qualify that
2 as a formal peer review process then, that it's undergone
3 a formal review process?

4 A It has undergone a formal review process as
5 defined by this National Center for Research and
6 Educational Diversity and Excellence.

7 Q Have there been any -- I'm sorry. Has it been
8 formally published, as well?

9 A I believe it's in the process of being formally
10 published.

11 Q Has there been any debate about the quality of
12 that study?

13 A I don't know. I haven't followed it that
14 closely since I've moved away from that issue.

15 Q Since you don't cite the Thomas and Collier
16 report that you had concerns about or that you indicated
17 there's public debate about the quality of, why did you
18 feel that was an issue?

19 MR. LONDEN: Assumes facts.

20 BY MS. KOURY:

21 Q Why did you feel the need to raise it in your
22 preparation?

23 A Because that -- often authors are identified
24 with particular reports and they carry over. So if
25 there's a paper that is written by a particular author

1 and then that same author publishes a subsequent version
2 or revision, the issues carry over from one to the other.

3 Q So to the extent that there was a debate about
4 the quality of their prior report, that carries over into
5 their subsequent reports?

6 A I was expressing my concern that that concern
7 might spill over into the study, which would then affect
8 the credibility of the evidence here.

9 Q Were there any other reports that you identified
10 specifically or that the attorneys identified
11 specifically in this regard with respect to peer review?

12 A I don't recall. I don't recall.

13 Q Were there any other reports that were discussed
14 specifically with respect to the quality or the
15 reliability of those reports? In other words -- let me
16 rephrase that.

17 Do you recall the names of any other reports
18 that you've cited in your expert report that you
19 discussed during your preparation because of the quality
20 or reliability issues of that report?

21 A We did not discuss them because of the quality
22 or the reliability of the report.

23 Q Did that issue come up, in other words, the
24 quality and reliability of a particular report?

25 A I was asked about my opinions about the quality

1 or reliability of the reports.

2 Q Which reports, other than what you've already
3 discussed?

4 A I guess I was asked about the Lou Harris survey.

5 Q What did they ask you?

6 A What I thought about it.

7 Q And what did you say?

8 A I said that I was quite impressed by the
9 reporting of the methodology, the transparency, I should
10 say, of the methodology by which they collected,
11 identified and gathered their sample, the way in which
12 they did interviews of the respondents in a way to
13 minimize interviewer effects, the extent to which they
14 addressed data quality by conducting follow-up interviews
15 with a number of their respondents, and the general
16 reputation of the Harris organization.

17 Q When you indicated that you were impressed by
18 the transparency of the report itself, the Harris
19 report -- is that what you were referring to?

20 MS. READ-SPANGLER: Actually, before you go on,
21 could she read back his answer.

22 (The record was read as follows:

23 "Answer: I said that I was quite impressed
24 by the reporting of the methodology, the
25 transparency, I should say, of the

1 methodology by which they collected,
2 identified and gathered their sample, the
3 way in which they did interviews of the
4 respondents in a way to minimize interviewer
5 effects, the extent to which they addressed
6 data quality by conducting follow-up
7 interviews with a number of their
8 respondents, and the general reputation of
9 the Harris organization.")

10 BY MS. KOURY:

11 Q When you indicated that you were impressed by
12 the transparency of the methodology by which they
13 collected the data, were you referring to the
14 transparency in the actual Harris report?

15 A By transparency of a methodology, one is talking
16 about the ability to reconstruct in reading the report
17 what procedures they went through to identify their
18 sample and gather information and ensure quality of the
19 evidence.

20 Q What did you mean by the fact that you were
21 impressed that they interviewed respondents in a manner
22 to minimize the effects of the interviewer? Or am I
23 misstating what you said?

24 A No. You said it correctly. In their report
25 they have a table in their appendix in which they

1 to. So it's important to get a sense of how much
2 discrepancy there is from a given response to a follow-up
3 response. So that's why it's important.

4 Q What else did you say about the Harris report,
5 if anything?

6 A I don't recall. I thought we talked about the
7 methodology and the substance of their findings; that I
8 was surprised that Lou Harris was still alive.

9 Q Did you have any concerns about the
10 methodologies used by the Harris survey?

11 A No, I did not have any technical concerns that I
12 expressed to them.

13 Q Did you have any concerns about the reliability
14 in general of the Harris survey as opposed to technical
15 concerns?

16 A Well, the technical concerns drive the
17 reliability of the data, so I did not have any serious
18 concerns.

19 Q Did anyone else raise the issue of concerns
20 about the reliability of the Harris survey during your
21 preparation time?

22 A They raised the possibility of bias introduced
23 by the fact that the percentage of teachers in their
24 response pool was much higher -- the percentage of
25 teachers who are credentialed is higher than the

1 identify interviewers, specific interviewers and how
2 they're distributed across different sites and categories
3 and areas where they try to collect their samples, such
4 that they do not end up confounding interviewers with
5 specific subgroups of the sample being surveyed.

6 Q What do you mean by that, the last part of your
7 answer?

8 A "Confounding" is where a -- if a specific
9 interviewer, for example, ends up interviewing just the
10 teachers from a single school or geographical region, in
11 which case you may end up with interviewer effects rather
12 than effects having to do with the particular subgroup
13 being sampled. And a good research design avoids such
14 confounding of variables.

15 Q And why did you find it impressive that they had
16 follow-up interviews?

17 A In a telephone survey interview the responses
18 are often -- you won't get the exact same responses from
19 the same person because of what would be considered
20 sampling error. It may be that just as the question was
21 being asked the interviewer is being -- is distracted or
22 the interviewee is distracted. You call them while
23 they're cooking dinner and the five-year-old starts
24 coming to ask for something, and so then the response may
25 not be entirely accurate or having been paid attention

1 percentage of teachers in the general population.

2 Q Did they -- who raised this as an issue, I
3 should ask?

4 A Their -- I think in practice questions, that was
5 raised by John Affeldt as the line of questioning, asking
6 whether that was a concern.

7 Q Did he suggest an answer for that?

8 A No, he did not.

9 Q Do you have an answer to that question?

10 A Yes, I do.

11 Q What is it?

12 A The data, to the extent that the survey is about
13 schools rather than about an opinion or attitude of
14 teachers -- you can think of the qualified, credentialed
15 teachers who are more established members of the school
16 community as being more -- in a sense more accurate, a
17 more perceptive characterization of the condition of the
18 schools. And so it's not a concern that the teachers do
19 not map the same proportion of credentialed teachers as
20 in the teacher population at large.

21 To the extent that one is asking and trying to
22 draw generalizations about the quality of the teacher
23 level variables, such as availability of materials, you
24 can assume that the data would be biased because you
25 would be talking to teachers who may -- who may be able

1 to compensate for the lack of poor materials much more
2 than you will be talking to teachers who, without
3 training, are less capable of doing it.

4 But that actually would result in an
5 underestimate of the extent to which the schools are
6 troubled by lack of resources or support.

7 Q When you said to the extent that the surveys,
8 studies look at schools rather than the opinions of
9 teachers, what do you mean by schools? What types of
10 questions in the survey are you referring to?

11 MR. LONDEN: That question is ambiguous and vague.

12 MS. KOURY: I'm sorry. What was your objection?

13 MR. LONDEN: The question is ambiguous and vague,
14 and the witness can answer if he's able.

15 BY MS. KOURY:

16 Q Did you understand the question? Do you want me
17 to rephrase it?

18 A Why don't you rephrase it?

19 Q You said that to the extent the Harris survey
20 asks about schools rather than opinions of teachers, you
21 think that the credentialed teachers have a more accurate
22 perception than uncredentialed teachers. When you refer
23 to "schools," what do you mean with respect to --

24 A The physical condition of schools and the
25 professional staffing conditions of schools that speak to

1 that correct?

2 MR. LONDEN: The question is ambiguous.

3 BY MS. KOURY:

4 Q What would you consider the unit of analysis for
5 these particular questions that you just -- I'm sorry.

6 With respect to the elements that you just
7 listed, physical conditions of schools, professional
8 staffing of schools, work environment, would you consider
9 the unit of analysis to be school conditions? Is that a
10 fair summary?

11 A They're school conditions, but they're also the
12 feeling of preparedness on the part of teachers.

13 Q Wouldn't that --

14 A That would be the teacher as a unit of analysis.

15 Q And that's separate. Would you think if the
16 teacher is a unit of analysis, that your same opinion
17 holds, which is that credentialed teachers have a more
18 accurate perception than uncredentialed teachers?

19 A No.

20 MR. LONDEN: Misstates testimony.

21 BY MS. KOURY:

22 Q You said no?

23 A No. I said that's where the data would be
24 biased in the direction of overestimating the sense of
25 being qualified to teach students.

1 the working environment for teachers.

2 Q Anything else?

3 A I don't have the full set of questions in front
4 of me, but the full set of classes of questions that
5 refer to school-wide characteristics rather than to an
6 individual. This is what is referred to as "unit of
7 analysis" and where -- the unit of analysis or unit of
8 generalizations of schools, that's what I'm referring to.

9 Q And why do you think that credentialed teachers
10 have a more accurate perception than an uncredentialed
11 teacher?

12 A For one thing they are more likely to have been
13 in the school longer. They're probably more likely to
14 focus on issues that really bear on teaching, instruction
15 and learning. The uncredentialed teachers have probably
16 been in the building for a shorter period of time.

17 Q Anything else? Any other reason?

18 A Only issues that are correlated with that, but I
19 think that's the main issue. By issues being correlated,
20 I mean if you've been there longer, you're more likely to
21 know other teachers and start sharing opinions and so
22 forth.

23 Q So with the Harris surveys you indicated the
24 unit of analysis are school conditions in this
25 particular -- with respect to this particular area; is

1 Q Focusing on the unit of analysis which -- the
2 first unit of analysis which you indicated, school
3 conditions --

4 A Mm-hmm.

5 Q -- what is the unit -- the sample unit that the
6 Harris survey used?

7 A They would be teachers.

8 Q Is there a problem when you're comparing one
9 unit, that is -- is it a problem that the sample unit is
10 different from the unit of analysis?

11 A Not if the data are weighted accordingly or
12 appropriately.

13 Q If it's not weighted, why is it a problem?

14 A Well, the -- you know, in -- you're trying to
15 draw inferences about a population of schools, and so you
16 would want to make adjustments depending on the schools
17 that are over- or underrepresented.

18 In this case I think this is, in any event, not
19 a big problem because the teachers -- the amount of
20 overlap of teachers reporting from a given school was
21 very small, that is, most teachers -- there were very few
22 cases where two teachers from a given school were
23 interviewed.

24 Q How does that resolve the problem or help
25 resolve the problem?

1 A Can you be more specific?

2 Q Sure. You indicated that -- the fact that the
3 unit of analysis was different from the sample unit was
4 less likely to have problematic results because there was
5 little overlap of teachers from the same school. How
6 does that help resolve the issue?

7 MR. LONDEN: Can I be clear? For this question are
8 you still relying on the assumption that there's no
9 weighting?

10 MS. KOURY: Yes. Without weighting.

11 THE WITNESS: I believe that the data were
12 appropriately weighted. I don't know this for sure. You
13 can probably go back and ask the people who did this, but
14 I believe that the way in which you would properly weight
15 it is that if you're trying to generalize to a sample of
16 schools, you would go and if you have, you know, two
17 teachers that are from the same school, you would then --
18 you would divide or take -- make adjustment for the fact
19 that a school is represented twice in the sample.

20 But what I was saying in terms of that not being
21 a problem is that the number of teachers and the number
22 of schools that were being sampled was quite -- was
23 almost the same, which means that there were not that
24 many cases where they were the case.

25 So regardless of whether they were weighted or

1 Q Reliable?

2 A No. Did you call it essential?

3 Q Necessary.

4 A Necessary. Yeah. I don't know whether that
5 would be necessary or not to draw -- have solid
6 conclusions.

7 Q In your opinion generally among experts, do
8 you -- is it usually considered problematic when the unit
9 of analysis is different from the sample unit?

10 MR. LONDEN: Vague and lacks foundation.

11 BY MS. KOURY:

12 Q Do you understand that question?

13 A Yeah. And it is not a problem.

14 Q Why is that?

15 A As long as you understand what the unit of
16 analysis is and then keep track of it, it's quite common
17 that unit of analyses would be overlapping or nested or
18 have different relationships.

19 Q And you don't know whether or not the Harris
20 survey results were weighted or not?

21 A As I say, I believe they were weighted, and the
22 inference is to the population of schools.

23 Q Is there likely to be disagreement among teacher
24 opinions within a particular school?

25 MR. LONDEN: Vague.

1 not, I believe that these data are a representative
2 sampling of schools in California. That's the population
3 to which you'd like to generalize your sample estimates.
4 BY MS. KOURY:

5 Q Do you think that it's important -- regardless
6 of that issue, do you think it's important for the
7 reliability of the survey results to have been weighted?

8 MR. LONDEN: Vague, lacks foundation.

9 BY MS. KOURY:

10 Q To the extent that the survey has a different
11 unit of analysis from the sample unit, do you think it's
12 important that the survey results were weighted?

13 A I don't --

14 Q Let me rephrase that.

15 A Yeah.

16 Q Do you think it would have been necessary to
17 have weighted the results?

18 A I would consider that issue of weighting to be
19 outside of my scope of expertise in a sampling survey of
20 this sort. You know, I can -- you know, the kind of
21 survey that the Harris organization does is a very
22 technical and specialized form of data collection and
23 data analysis. So I can't say whether it's -- I can't
24 remember what the word was that you tried -- what was
25 that adjective that you used?

1 BY MS. KOURY:

2 Q Do you understand the question? In terms of
3 sampling, in terms of the Harris survey, the other -- let
4 me back up.

5 The other sample unit, you indicate were -- I'm
6 sorry. The other unit of analysis that you indicated was
7 teacher opinion, that will be more specific to a
8 teacher's individual opinion; is that correct?

9 A Their perceptions of -- yes. When you say
10 "opinion," I want to make sure that you know that it's
11 not an opinion as in, What do they think of the Iraqi
12 war? It's an opinion, a statement about -- there's not
13 an attitude about a specific issue, but it is their --
14 it's really their perception about the conditions of --
15 about teaching and schooling and availability of
16 materials. Those are the questions that we're talking
17 about. So in a sense they're stating, yeah, their
18 perception rather than their opinion.

19 Q So -- I'm sorry. Go ahead.

20 A No, ask your question again and I'll answer it.

21 Q Well, so to a certain extent the survey question
22 is subjective necessarily?

23 MR. LONDEN: Vague and compound as to the questions.

24 BY MS. KOURY:

25 Q Do you want me to repeat the question?

1 A Sure.

2 Q The survey results are necessarily subjective;
3 isn't that correct?

4 A A particular response made by an individual is
5 subjective because that's what you're doing is you're
6 asking people for what they perceive and what they
7 report. But the collective response is less likely to be
8 subjective because of the instability of the responses,
9 which may be subjective and therefore change from
10 respondent to respondent, when you have a sample of
11 sufficient size, corrects itself to be close to where the
12 uncertainties introduced by the subjectivity are
13 minimized.

14 Q Do you think that there was a sufficient sample
15 in this particular survey that that was minimized?

16 A Yes, I do.

17 Q And what do you base that opinion on?

18 A The sample was over a thousand. That seems to
19 be quite standard practice in surveys of this sort trying
20 to represent a -- present an estimate of an entity of the
21 population, such as schools. And that's -- so I'm quite
22 confident that the data -- the sample size was
23 sufficient.

24 Q Was there anything else that was raised during
25 your preparation with respect to the Harris survey?

1 A The survey results. There are different levels
2 of the survey. There was Harris' reporting of it, and
3 then there was further analysis of the data by Rumberger
4 and Gandara to look at LEP-specific issues, ELL-specific
5 issues. So the -- I was asked what I thought of the
6 qualifications of Rumberger and Gandara in doing such
7 analysis.

8 Q And what was your answer?

9 A I said that Rumberger is very qualified to work
10 in this area.

11 Q Based on what?

12 A Based on his academic publications and his area
13 of expertise and my knowledge of his professional
14 reputation.

15 Q Were you involved at all with him in the
16 methodology that he used to draw his conclusions based on
17 the Harris survey?

18 A No.

19 Q To the extent that you cite his results -- I'm
20 sorry, Rumberger's results of the Harris survey, you
21 weren't at all involved in the underlying research or
22 manipulation of the Harris data that he conducted?

23 A No.

24 Q Was there anything else said with respect to the
25 Harris survey?

1 A Not that I recall.

2 Q Do you have any other concerns with respect to
3 the reliability of the Harris report?

4 A No.

5 Q Did you have any concerns with respect to the
6 reliability of the results that Rumberger concluded based
7 on the Harris survey?

8 A No.

9 Q What else was said during your preparation with
10 respect to the quality or reliability of the underlying
11 research?

12 A I don't recall any.

13 Q Were there any other reports other than the ones
14 you've already testified to that were discussed?

15 A Regarding data quality?

16 Q Yes.

17 A I don't recall.

18 Q I think I may have already asked this, so
19 forgive me if I did, but was there anything else that you
20 recall in general from the preparation sessions?

21 A Long and tedious, but...

22 Q But otherwise entertaining?

23 A Just like a root canal.

24 MR. HAJELA: How does it compare with this
25 deposition?

1 MS. READ-SPANGLER: Too soon to tell.

2 THE WITNESS: Too soon to tell, right.

3 Yeah, not that I recall.

4 BY MS. KOURY:

5 Q When did you -- I'm sorry.

6 Do you know when this lawsuit, the Williams
7 lawsuit was first filed?

8 A No. I have a general sense that this started
9 three -- three years or so back, but I don't know --

10 Q Did you -- I'm sorry. Were you finished?

11 A I read about it in the newspapers.

12 Q After it was filed?

13 A I believe so.

14 Q Did you talk with any of Plaintiffs' lawyers
15 prior -- about the nature of this case prior to the time
16 it was filed?

17 A Actually, I -- not being a lawyer, I don't know
18 whether the lawsuit was filed or whether the press report
19 was about the issue, so I can't say relative to the time.
20 But I was -- but the first time I was contacted by
21 attorneys having to do with this file was about two and a
22 half years ago.

23 Q And who contacted you?

24 A John Affeldt.

25 Q What did he say?

1 A He said that they were preparing some documents
2 relative to this case and he wanted my involvement, or
3 would I be interested in being involved.

4 Q What did you say?

5 A I expressed a willingness to help. I also
6 indicated that I didn't have that much time.

7 Q Did he indicate how he wanted your assistance?

8 A I don't recall. I -- but what I do know was
9 that it involved helping to prepare some papers, white
10 papers that would -- would be a resource for this case.

11 Q What kind of paper?

12 A Resource -- papers referring to the condition of
13 education for specifically my area of expertise, which is
14 the education of English language learners in the state.

15 Q What happened after this phone call? What was
16 the next communication that you had with any of
17 Plaintiffs' attorneys about the nature of this case?

18 A I don't recall when the next contact was.

19 Q Do you know whether you began -- what did you do
20 after this phone call in terms of helping with these
21 papers?

22 A I think I assembled some information relative to
23 the condition of certified -- CLAD-certified and
24 otherwise qualified teachers in California for English
25 language learners, demographics, what we know about

1 MR. LONDEN: Lacks foundation. Sorry.

2 BY MS. KOURY:

3 Q At some point presumably -- well, I should ask.

4 Did your attorneys at some point ask you to
5 collect any documents that you used or any
6 communications --

7 A Mm-hmm, yes.

8 Q Among those documents, were these materials
9 included?

10 A I think that they were in touch with her
11 separately, but I don't know for sure. I did not produce
12 them for the attorneys.

13 Q What do you mean by "in touch with her
14 separately"? Who was in touch with whom separately?

15 A I think that somebody from John Affeldt's office
16 had contacted her for all of the papers and materials
17 that we had used in our testimony, and I think that at
18 that point they must have asked for communications that
19 she's had with -- relevant to the preparation of these
20 papers.

21 Q As far as you know, though, these particular
22 documents that you assembled and that Michele then
23 forwarded to an assistant of Professor Darling Hammond
24 were not included among that production?

25 A Right, that --

1 materials, for -- what we know about the assessment and
2 accountability system, and instructed my -- I have a
3 research assistant who had just done a similar sort of
4 data collection effort for an area of qualified teachers
5 or teacher qualifications in CLAD. So I had her pull
6 some materials together.

7 And she worked with somebody who I'm not quite
8 sure who it is, but -- I can't remember who it is, but
9 did work with Linda Darling Hammond for a paper that she
10 was preparing more generally in the area of teacher
11 preparation.

12 Q What was your research assistant's name?

13 A Her name is Michele, M-i-c-h-e-l-e, Bousquet,
14 B-o-u-s-q-u-e-t.

15 Q And who did you give these materials to that you
16 just indicated that you prepared or assembled?

17 A To Michele. And then she -- I believe she
18 passed it on to, I think his name was John, but I -- an
19 assistant who is working with Linda Darling Hammond in
20 the preparation of her paper.

21 Q Do you know if these materials have been
22 produced in this matter?

23 A Have been produced?

24 Q Yes. Do you know if they've been produced to us
25 in this case, in other words?

1 MR. LONDEN: Lacks foundation.

2 BY MS. KOURY:

3 Q You can go ahead and answer that.

4 A As far as I know, I -- among the materials that
5 I produced, I did not have -- I did not produce the text
6 that she had passed on to John Affeldt -- or not to John
7 whatever -- the other -- the John that works with Linda.
8 Actually, I think the name is -- Luczak might be the last
9 name. Don't put that down because I'm not certain of it.

10 MR. LONDEN: She gets to put down everything that
11 you say.

12 THE WITNESS: Okay.

13 MR. LONDEN: But you've expressed your lack of
14 certainty so your testimony is clear.

15 BY MS. KOURY:

16 Q Were there other experts in this case that you
17 communicated with during this time frame?

18 A Any experts from the -- experts for this trial,
19 no.

20 Q Did you have communications in particular with
21 Professor Darling Hammond during this time frame, which
22 would have been, from what you stated, two and a half
23 years ago, so about June of 2000?

24 A I never spoke to her about any of the specifics
25 related to this case that I recall. I should just

1 qualify that by saying she is a close colleague, and I
2 teach in the program that she runs and so forth. I run
3 into her quite regularly. But we've never really
4 discussed the specifics of these materials that were
5 being prepared for this.

6 Q And when you say "materials," you mean the ones
7 that you just testified about?

8 A Information about teacher -- you know, the
9 number of teachers, you know, the number of -- the
10 requirements for CLAD certification, materials, my
11 opinions of the assessment and accountability system and
12 so forth.

13 Q Did you -- other than what you've testified to
14 with respect to assembling these materials, did you do
15 any other research after that initial phone call or did
16 you conduct any research?

17 MR. LONDEN: Related to the work in response to
18 Mr. Affeldt's inquiry?

19 MS. KOURY: First phone call, correct.

20 THE WITNESS: Not that I -- not that I recall.

21 MR. LONDEN: Could we go off the record a second?

22 MS. KOURY: Yes.

23 (Recess taken: 10:41 until 10:55 a.m.)

24 BY MS. KOURY:

25 Q Mr. Hakuta -- I'm sorry. Dr. Hakuta, we just

1 Q And it's dated August 2, 2000, for the record.

2 To be accurate, you're actually an addressee to
3 this e-mail; is that correct?

4 A Yes, I am, mm-hmm.

5 Q And do you recall whether you had had any
6 conversations with Professor Darling Hammond prior to
7 receiving this e-mail?

8 A No, I don't recall. I knew that she was
9 involved in this case, but this is the first time I've
10 seen this e-mail.

11 Q For purposes of the record, it states, "Attached
12 is a somewhat elaborated draft outline for the expert
13 paper."

14 Do you have an understanding as to what that
15 outline for the expert paper was?

16 MR. LONDEN: Lacks foundation.

17 THE WITNESS: Do you want an answer?

18 BY MS. KOURY:

19 Q Yeah.

20 A Yeah. No, I don't. I'm clueless as to what's
21 in those documents because I haven't seen them.

22 Q Do you have any recollection of seeing an
23 outline, a draft outline or an outline for the expert
24 papers in this case?

25 MR. LONDEN: Vague.

1 got back from a break. Did you want to supplement any of
2 your prior answers?

3 A No.

4 Q We were discussing your involvement in this
5 matter about two and a half years ago. Did you speak
6 with Patricia Gandara or Russ Rumberger during that time
7 at all about the nature of this lawsuit, which would have
8 been around the summer of 2000?

9 A I spoke to them about the preparation of the
10 paper that resulted in their authorship.

11 Q Which paper is that?

12 A This is the 2002 paper that is referred to in my
13 document. I don't have the title here with me, but...

14 Q I'm going to hand you a copy of an e-mail which
15 we'll mark as Exhibit 1 to your deposition. Would you
16 just review that and let me know when you've had an
17 opportunity to do so?

18 (Deposition Exhibit 1 was marked.)

19 (□ Witness reviews document.)

20 THE WITNESS: Mm-hmm.

21 BY MS. KOURY:

22 Q Do you recognize this e-mail at all?

23 A No, I don't.

24 Q It's not at all familiar to you?

25 A No. But I see that I am cc'd on it.

1 BY MS. KOURY:

2 Q Do you understand the question?

3 A I do. And I don't recall having seen these --
4 seeing an outline.

5 Q You mentioned that you do recall speaking to
6 Professor Darling Hammond but you don't recall the
7 specifics of those conversations regarding this matter.
8 Do you recall whether she asked you to contribute with an
9 expert -- with an expert report for the case?

10 MR. LONDEN: I object to the characterization of the
11 testimony. I don't think it's quite accurate, but as a
12 question standing alone, that's fine.

13 THE WITNESS: Can you repeat that?

14 MS. KOURY: Could you repeat that? Just the
15 question back.

16 (The record was read as follows:

17 "Question: Do you recall whether she asked
18 you to contribute with an expert -- with an
19 expert report for the case?")

20 THE WITNESS: No, I do not recall.

21 BY MS. KOURY:

22 Q Did you eventually get contacted by Bill Koski
23 with respect to this matter or in connection with this
24 matter?

25 A Yeah. I think Bill is the one actually -- it's

1 not John then. I take it back. It was Bill that I
 2 referred to Michele to give him some help.
 3 BY MS. KOURY:
 4 Q I've just handed you a compilation of e-mails
 5 which we'll mark as Exhibit 2. They're Bates stamped
 6 PLTF-XP-LDH 11420 through 11454.
 7 (Deposition Exhibit 2 was marked.)
 8 BY MS. KOURY:
 9 Q Could you flip to the page bearing the Bates
 10 stamp PLTF-XP-LDH 11444?
 11 A Mm-hmm.
 12 Q About halfway through that page there's an
 13 e-mail, which appears to be -- I'm sorry. Towards the
 14 bottom of that page there's an e-mail dated 11/8/2000.
 15 If you could just review that e-mail correspondence.
 16 A Which one?
 17 Q There's an e-mail dated November 8th, 2000,
 18 which says, "Thanks for being in touch."
 19 A Mm-hmm.
 20 Q "Are you able to join me in my research group
 21 next Monday at noon?"
 22 A Oh. Yes, uh-huh.
 23 Q Below that there's an e-mail from Bill to you
 24 dated 11/7/2000 --
 25 A Mm-hmm.

1 Q -- in which he indicates that, among other
 2 things, "Professor Darling Hammond mentioned that you
 3 might have some time to help us out on issues pertaining
 4 to ELL students in the state."
 5 A Right. Mm-hmm. Mm-hmm. Okay. That makes
 6 sense.
 7 Q Was it in response to this e-mail that you
 8 gathered some of the -- or you assembled some of those
 9 documents that you testified to?
 10 A I believe that's correct, because what I -- I
 11 believe that's correct because then Michele is my
 12 research assistant who organizes our research group
 13 meetings. I have many doctoral students who are
 14 interested in this topic, and I'm always bringing
 15 visitors and people together who bring interesting
 16 issues. And so I thought he could come and speak to us,
 17 and I believe this was the initiating e-mail.
 18 Q And do you recall the meeting that you had with
 19 him that followed this e-mail?
 20 A Yeah, I don't recall the specifics of the
 21 meeting. I think what may have happened in that
 22 meeting -- I don't especially recall because what I did
 23 is get her -- get him in touch with Michele and say
 24 Michele will do this, and I think I wasn't there for much
 25 of the meeting.

1 Q When you refer to your research group in this
 2 particular e-mail, who are you referring to?
 3 A These are my doctoral --
 4 Q Students?
 5 A -- doctoral students and research assistants who
 6 work on various projects that I have going. These are
 7 research projects.
 8 Q And at some point you were given an assignment
 9 to prepare an expert report in this case; is that true?
 10 A Yes.
 11 Q And who provided you with that assignment?
 12 A There was -- early on there was an expert --
 13 Q Let me re-ask the question.
 14 Is the expert report -- are you referring to
 15 that particular expert testimony that has been filed, or
 16 are you referring to the white papers or background
 17 papers leading up to the expert testimony?
 18 A I'm --
 19 Q I'm sorry. You stated the white papers?
 20 A Yeah, background documents, papers. I think
 21 they were referred to as white paper. That's why I keep
 22 referring to them --
 23 Q And those papers are the papers that you
 24 testified about earlier that you're not sure whether or
 25 not they were produced in that matter; is that correct?

1 A Well, one of them was produced, the Gandara and
 2 Rumberger paper.
 3 Q When you refer to "white papers," I want to make
 4 sure I understand you correctly. You're referring to the
 5 papers that you assembled and you gave to Michele, who
 6 then forwarded it perhaps to --
 7 A Well, I was unclear myself as to what papers
 8 were being produced for what purpose. I was under the
 9 impression what I had agreed to help out on was in the
 10 production of a white paper, a research document, and
 11 that by having Michele work with Bill, I was
 12 accomplishing that part of what I'd agreed to do.
 13 I was not aware that there was another paper,
 14 which is the Gandara and Rumberger that was being
 15 produced separate from the Darling Hammond paper until I
 16 was touch with Gandara and Rumberger to produce it.
 17 Q So as of the time that you received and
 18 responded to the November 7th e-mail from Bill Koski,
 19 your understanding was that you were just working on the
 20 white papers?
 21 A Correct. I didn't even know at that point,
 22 probably, that I was working on the white papers. I
 23 think I had agreed in principle to help out in some form,
 24 and I think probably this was the first time that there
 25 was a concrete request to help out.

1 Q And eventually you did so; in other words, you
 2 followed up with the white papers, as you refer to it?
 3 A I followed up by having Michele provide
 4 information under my guidance to -- information such as
 5 the number of students, characteristics and so forth,
 6 yes.
 7 Q And was there any other follow-up after Michele
 8 forwarded those white papers to Bill Koski with respect
 9 to this particular assignment?
 10 MR. LONDEN: I think there's an ambiguity in the
 11 question.
 12 BY MS. KOURY:
 13 Q With respect to the white papers or the research
 14 that you just testified about, teacher credentialing
 15 numbers, et cetera, other than what you've testified to.
 16 In other words, you assembled the information and
 17 provided it to Michele, who eventually provided it to
 18 Bill Koski; is that correct?
 19 A Yes, I believe so.
 20 Q Was there any other discussion or was there any
 21 other communications that you had with any of Plaintiffs'
 22 attorneys in that regard with respect to that particular
 23 assignment?
 24 A I don't think so.
 25 Q Was that the conclusion of that assignment?

1 A Of that particular piece, I believe so.
 2 Q What other assignments, for lack of a better
 3 word, did you have with respect to this lawsuit or have
 4 you had?
 5 A After this point I was in touch with Patricia
 6 Gandara and Russ Rumberger as they were preparing their
 7 paper in which they asked for input and comment, whose
 8 timing I don't recall when that was, but that was
 9 subsequently after this. It might have been several
 10 months later, but it could have been as long as a year
 11 later. And I provided some text that they could use in
 12 that document.
 13 Q At the time that you came into contact with
 14 Rumberger and Gandara regarding this report -- regarding
 15 this particular report, did you already know that you
 16 were going to be drafting a separate expert report for
 17 this matter?
 18 A No. No, I did not.
 19 Q And who contacted you regarding the Rumberger
 20 report?
 21 A I think that Pat Gandara or Russ Rumberger did.
 22 Q Did they say why they were contacting you?
 23 A No. I mean that they were writing this report.
 24 There was some conversation whose basis I don't recall
 25 that led us to understand that I was working with them in

1 the preparation of this paper.
 2 Q Their paper?
 3 A Of their paper.
 4 Q What was the purpose of their paper? What was
 5 your understanding as to the purpose of their paper?
 6 A This was what -- their paper was going to be
 7 part of the resource documents. And this is what I was
 8 referring to as the white paper. And now we've confused
 9 the record by having white paper all over the place --
 10 Q We have.
 11 A -- but the white paper are the so-called factual
 12 bases or fact-finding bases upon which the lawsuit would
 13 be filed.
 14 Q So to the extent that you helped -- or responded
 15 to Bill Koski's e-mail in November of 2000 and that you
 16 prepared and assembled documents, you'd refer to those as
 17 white papers? In other words, those were documents that
 18 would provide factual bases for the lawsuit?
 19 A I think you referred to them as white papers.
 20 Q Okay. What would you refer to them as?
 21 A Providing facts and supporting information.
 22 Q Okay. And in addition to that or subsequent to
 23 that, Patricia Gandara and Russ Rumberger contacted you
 24 to provide additional factual documents?
 25 A No. They sent me a draft of their paper as it

1 was and asked for help.
 2 Q And your understanding of what that -- the
 3 purpose of that document was what?
 4 A Was to be a resource document, a white paper, so
 5 to speak, in support of this case.
 6 Q How long was it after you began working with
 7 Gandara and Rumberger with respect to their paper -- how
 8 long after that did you come to some understanding that
 9 you were going to draft your own expert report in this
 10 case?
 11 A I don't know. It was many months.
 12 Q Turning back to Exhibit 2, flip to Bates stamp
 13 or the document bearing the Bates stamp 11451. At the
 14 bottom of that page there's an e-mail dated
 15 December 10th, 2000, indicating, "Professor Hakuta, just
 16 wanted to check in with you and get an update on your
 17 team's progress on the project. Linda and I will be
 18 meeting with the attorneys early next week, and we'd like
 19 to give them as much information as we can."
 20 Do you recall --
 21 A Mm-hmm.
 22 Q Are you familiar with this e-mail?
 23 A I don't -- I don't recall, actually. I probably
 24 did receive it. It doesn't -- it seems -- yeah, it
 25 follows up on an e-mail to Bill that Michele's been

1 gathering the information, but I don't remember
2 responding to this e-mail, so I -- it just shows that I'm
3 an irresponsible e-mail reader, I guess, but I don't
4 remember.

5 Q My only question is, Was this -- to the extent
6 that you have a recollection, was this perhaps -- or in
7 your opinion, was this referring to the preliminary
8 factual documents that you were providing in response to
9 Bill Koski's initial e-mail on November 7th, 2000?

10 A Yes. I believe that this is referring to the
11 completion of the provision of pertinent information that
12 Michele was going to provide to Bill Koski.

13 Q And flipping in the same exhibit to the document
14 Bates stamped 11453 at the bottom of that page, this
15 document is -- I'm sorry. At the bottom of this page
16 there is an e-mail dated December 19th, 2000, from
17 Michele Bousquet --

18 A Yes.

19 Q -- to Bill Koski, and you're cc'd on the e-mail?

20 A Mm-hmm, right.

21 Q It says, "I've attached the document we've
22 agreed to do for the Williams versus California case."

23 Is it your recollection that this would -- this
24 is referring to the same initial material that you've
25 discussed; in other words, the factual documents?

1 A Yes. I'll note for the record that she got
2 married sometime before that, and now she has Gutierrez
3 as her last name.

4 Q Her last name? Okay.

5 So up until this point, which would have been
6 December of 2000, had you been retained as an expert in
7 this case?

8 A No.

9 Q When were you retained as an expert in this
10 case?

11 A What do you mean by being "retained as an
12 expert"?

13 Q Well, is it your understanding that you're
14 retained as an expert in this case now?

15 A Yes, I guess so. I've offered expert testimony,
16 but there was no such thing as signing a, you know,
17 contract that says, you know, I'm being retained. So
18 I -- but basically I don't know when I was -- I cannot
19 put a date on when I was retained as an expert.

20 Q And there's no signed agreement with respect to
21 your retention?

22 A That's correct.

23 Q How about compensation?

24 A There was discussion of compensation in the
25 last -- one of the deposition preparation sessions.

1 Q And what was that discussion?

2 A I don't remember even the dollar amount,
3 actually, that we discussed. I think it was \$300, \$400
4 an hour, something like that.

5 Q And what was that for?

6 A For testimony, for testifying, but I don't
7 remember. My memory for monetary compensation is not
8 very good.

9 Q Was there any compensation for the initial
10 research that you did in this case?

11 A No.

12 Q Is there any compensation for the expert report
13 that you drafted and submitted in this case?

14 A No.

15 Q Has there been any compensation thus far?

16 A No.

17 Q Could you flip to page 11 bearing Bates stamp
18 number 11428 of Exhibit 2? At the top of that page or I
19 should say almost the middle of the page there's an
20 e-mail dated January 12th, 2001, from Michele Bousquet
21 indicating -- or to John -- I'm not going to attempt to
22 pronounce his last name. Did you say it was Luczak?

23 A Luczak.

24 Q L-u-c-z-a-k?

25 A Yes. So there was a John involved. A Bill and

1 a John.

2 Q Yes. It indicates --

3 A The -- the plot thickens.

4 Q This particular e-mail states, "I spoke with
5 Kenji, and he said that next Tuesday at 1:00 in his
6 office should work out for the three of us to discuss the
7 paper."

8 Do you have any recollection as to which paper
9 she's referring to?

10 A I'm sure it has to do with our section of the
11 paper that John was preparing for Linda.

12 Q I'm sorry. That John was preparing for who?

13 A For Linda Darling Hammond.

14 Q In addition to doing some initial preliminary
15 research in response to Bill Koski's request in which you
16 provided factual information, you were also assisting in
17 preparing a portion of Linda Darling Hammond's report?

18 A That's -- that's correct. At that time, in my
19 mind I was not differentiating out the work that Gandara
20 and Rumberger were doing from the paper that Linda
21 Darling Hammond was preparing. I was -- I just saw my
22 role as providing expert guidance on issues related to
23 English language learners for the people preparing
24 materials.

25 Q And why didn't you differentiate between the two

1 in your mind?

2 MR. LONDEN: Assumes facts.

3 BY MS. KOURY:

4 Q You just indicated that you didn't differentiate
5 between the two papers. Why is that?

6 A I was busy and neither of them involved a task
7 that I had to accomplish; that is, these were
8 different -- you know, I have many requests come in for
9 help in doing this or that, and I just saw this as one of
10 many such efforts -- you know, requests for information
11 or advice. And I knew that there was this case going on
12 and so I -- and there's two distinct needs that I saw,
13 but I had no idea nor any interest in knowing how they
14 would end up as different pieces in, you know, the
15 evidence-producing process for this case.

16 Q Did the issue overlap between these two
17 papers -- between -- in other words -- let me ask a
18 different question.

19 With respect to your support during this time
20 frame, were you providing the same information to Linda
21 Darling Hammond for her report as you were providing to
22 Rumberger and Gandara for their report?

23 A I believe that's the case, yes. They're
24 overlapping, and my view was that, you know, my
25 assistant, Michele, would then be responding to the

1 A My only involvement with it was the provision of
2 this information through my assistant.

3 Q Were you providing research to Professor Darling
4 Hammond on particular issues?

5 A I was providing her with information on the
6 statistics on the number of ELL students, the number of
7 teachers, the need for teachers with qualifications.
8 Michele did some research from the State -- information
9 available through the State on these characteristics,
10 which she was doing anyway for something else that I
11 was -- that I needed the information for. And so we
12 provided that to Linda Darling Hammond's people.

13 Q Did you draft a particular section of the
14 report -- Darling Hammond's report?

15 A No, I did not.

16 Q Did you review any drafts of Darling Hammond's
17 report?

18 A Only the section that Michele sent to Darling
19 Hammond.

20 Q Did Michele draft that section of Darling
21 Hammond's report?

22 A Probably she drafted most of it. She also had
23 taken other stuff, other texts that I had written for
24 other purposes, the specific purpose being a grant
25 proposal that I was writing to get funding to get

1 specific requests for information from both of these
2 entities.

3 Q So right above that e-mail on the same page,
4 Exhibit 2, the page bearing Bates stamp 11428, at the top
5 it indicates an e-mail from Michele to John stating,
6 "Just wanted to keep you updated on the ACLU paper. I
7 routed the paper to Pat Gandara at Davis. She provided a
8 few really good suggestions, which I've incorporated. I
9 have found the necessary citations we discussed and
10 reworked some of the numbers to be more clear and legally
11 defensible. Kenji is reviewing my edits now, and we'll
12 forward the completed document next week."

13 What is your understanding as to which ACLU
14 paper she's referring to?

15 MR. LONDEN: Foundation.

16 BY MS. KOURY:

17 Q First of all, let me ask, Are you familiar with
18 this particular e-mail?

19 A Yes.

20 Q Which -- do you have an opinion as to which ACLU
21 paper she's referring to?

22 A I think she's referring to the Linda Darling
23 Hammond paper.

24 Q With respect to Linda Darling Hammond's report,
25 what was your involvement with respect to that report?

1 training for these students where we had to argue for the
2 need for these teachers.

3 And so she -- you know, she probably -- I told
4 her to take information from that and to draft up things
5 as needed. So it would end up being a hybrid document
6 where she had authority to take what I'd written and
7 craft it and add information of her own and so forth.

8 Q To the extent that Michele drafted portions of
9 that document and forwarded it to Professor Darling
10 Hammond, you reviewed those sections, as well, correct?

11 A Yes, I did.

12 Q And provided edits and revisions to it?

13 A Yeah. I don't think that I did a whole lot of
14 revision to those sections.

15 Q Are you familiar with the November 2001 meeting
16 of the scholars?

17 A No.

18 Q So you have no recollection of that meeting?

19 MR. LONDEN: Assumes facts.

20 THE WITNESS: What -- what -- can you tell me more
21 about that information?

22 BY MS. KOURY:

23 Q A meeting that occurred in November 2001 where
24 Plaintiffs' attorneys, including Jack Londen, was present
25 among many of the experts that Plaintiffs' -- many of

1 Plaintiffs' experts in which there was an agenda, and
2 issues in this case were discussed. Are you familiar
3 with that meeting?

4 A You know, I -- there's a possibility that I'd
5 heard about it. I probably did hear about it, but I
6 don't recall anything about it.

7 Q Was there -- were you present at the meeting
8 or --

9 A No, I was not present at the meeting.

10 Q -- did you just hear --

11 A I don't think so. I should qualify that. I
12 don't think I am at meetings where I'm not sure where I
13 am. A life of going to meetings.

14 Q We'll mark as Exhibit 3 -- I'll ask you to look
15 at this e-mail document dated February 12th, 2002, from
16 John Affeldt addressed to you.

17 (Deposition Exhibit 3 was marked.)

18 BY MS. KOURY:

19 Q Are you familiar with this e-mail?

20 A Yes.

21 Q The subject line states "ELL Draft." Do you
22 know to which paper this refers?

23 A This would refer to the document that resulted
24 as my expert testimony.

25 Q Do you recall when you began drafting that

1 for comments.

2 Q I'll mark this as Exhibit 4. It's an e-mail
3 communication dated April 11th, 2002, from John Affeldt
4 to you, as well. Just review that for me.

5 (Deposition Exhibit 4 was marked.)

6 BY MS. KOURY:

7 Q The subject line of that e-mail indicates "ELL
8 Draft Report." Are you familiar with this e-mail?

9 A Probably. Yes, I mean this would be a draft
10 that he sent back probably. It says "Williams 8." So it
11 must have gone back a few times.

12 Q How substantive from the initial draft that
13 John Affeldt sent you and presumably wrote -- how
14 substantive were your changes to that draft?

15 MR. LONDEN: Object to that first statement as
16 lacking foundation, but go ahead.

17 BY MS. KOURY:

18 Q You stated -- it's your opinion that John or
19 someone other than yourself drafted the initial report;
20 is that correct?

21 A Yes.

22 Q How substantive were your changes to that
23 report?

24 MR. LONDEN: Vague.

25 THE WITNESS: They were substantive.

1 document? Actually, let me ask you another question.

2 The e-mail states, for the record, "Here's the
3 draft so far. Take a look and I'll try to call you
4 tomorrow about filling the holes we discussed." And it's
5 signed "John."

6 What is he referring to in that e-mail?

7 A It seems like -- it seems like so much longer
8 ago than it is that maybe the -- maybe the date is right.
9 He had called me to ask me to be the person who would
10 offer expert testimony for this trial, and we
11 discussed -- actually we had a number of telephone calls,
12 I think, talking about the structuring contents of the
13 testimony. And so that's what the draft he's referring
14 to is. And he drafted that initial draft.

15 Q "He," meaning John Affeldt?

16 A I believe so.

17 Q When you say "I believe so," do you mean just --

18 A He sent me the draft. I don't know what or
19 who -- who might have helped him in drafting it up. I
20 don't know anything about the -- you know, his writing
21 style or whatever.

22 Q Do you recall what you did with this particular
23 draft, with John's draft?

24 A We had a phone conversation about it. I added
25 to it and then probably sent it back to him at some point

1 BY MS. KOURY:

2 Q What do you mean by that?

3 A I added a section on the research on the
4 effectiveness of professional development programs. I
5 think I worked on the remedies. The -- I don't recall
6 whether there were other sections that I add, but that
7 was the point at which I got engaged in the sense of
8 really writing text myself for this case.

9 Q During those conversations that you had with
10 John Affeldt before you received an initial draft of your
11 report, did you ever forward him research or materials to
12 base that initial draft on?

13 A I did not directly forward to him research or
14 materials. My understanding was that he was basing that
15 testimony or the draft on the so-called white papers that
16 were available to him.

17 Q When you say "white papers," are you referring
18 to --

19 A Rumberger and Gandara and the relevant portions
20 of the Linda Darling Hammond report.

21 Q I'll mark this as Exhibit 5. This is an e-mail
22 communication from John Affeldt to you dated September
23 10th, 2002. If you could just review that.

24 (Deposition Exhibit 5 was marked.)

25 BY MS. KOURY:

1 Q This particular e-mail has a subject line that
2 states "Outline and Gandara Rumberger Paper." Are you
3 familiar with this e-mail in general?

4 A Yes.

5 Q With respect to this subject line where it says,
6 "Outline," do you know what it is referring to?

7 A Yeah, I think it's referring to the expert
8 testimony report.

9 Q Your expert testimony?

10 A Yes, mm-hmm.

11 Q The first line of the e-mail states, "Here's a
12 draft of the outline for your report as we discussed.
13 Let me know if I haven't captured our conversation
14 accurately." What is he referring to?

15 A We had a number of telephone conversations
16 talking about the substance of the report.

17 Q What was Michele Bousquet's role with respect to
18 your particular report? In other words, with respect --
19 I know that you had other assignments, but with respect
20 to the expert report that you've submitted in this case,
21 what was her role?

22 A None.

23 Q She didn't have any communications with
24 John Affeldt about this report, as far as you're aware?

25 A I think that she provided -- there was some

1 Q Did you instruct Michele Bousquet, your
2 assistant, to do the same?

3 A No, I did not.

4 Q Do you know whether she produced or was
5 instructed to produce any documents?

6 A I don't know.

7 Q I'll mark this as Exhibit 6, another e-mail
8 communication.

9 (Deposition Exhibit 6 was marked.)

10 BY MS. KOURY:

11 Q I've just handed you Exhibit 6, which appears to
12 be an e-mail communicated -- dated September 26th, 2002,
13 from Michele Bousquet to John Affeldt. And it indicates
14 on the subject line, "Williams Edits/Section
15 Supplemental," or "s-u-p-p-l," and in the text of the
16 e-mail it indicates, "Attached are the section
17 supplements and below are the edits to the paper that
18 need to be made."

19 Is this e-mail communication familiar to you?

20 A Yes.

21 Q To what document are these edits -- or for what
22 document are these edits?

23 A They must be to the expert report.

24 Q Your expert report?

25 A Yes.

1 request for information that I think I had her send to
2 him, but I don't know what they were. But she was a
3 resource as John prepared this, I believe.

4 Q When you say -- she was a resource to John
5 Affeldt in preparing the report, your report?

6 A My expert report, yeah, that's right. Because I
7 think that she did ask me -- I recall questions that she
8 would ask me, oh, "What should I send them?" or "What is
9 he asking?" and so forth. So I think she did communicate
10 directly with John Affeldt.

11 Q Do you know whether any of her communications --
12 whether she -- let me back up.

13 You indicated that at some point the attorneys
14 asked you to search for any documents and/or
15 communications that relate to your expert report to
16 produce in connection with this case.

17 A Right.

18 Q What kind of search did you conduct when doing
19 that?

20 A I went into my computer and just looked for
21 "Affeldt," searched "Affeldt," and I believe those were
22 what I produced.

23 Q Other than your e-mail search, was there
24 anything else that you did?

25 A No.

1 Q Based on this e-mail communication, is it your
2 understanding that Michele was also providing edits from
3 her own behalf -- or on her own behalf, I should say, to
4 your report?

5 A I think all of these were ones that I instructed
6 her to send.

7 Q One more e-mail communication. We'll mark this
8 as Exhibit 7. I'm going to hand you an e-mail dated
9 September 30th, 2002.

10 (Deposition Exhibit 7 was marked.)

11 BY MS. KOURY:

12 Q Is this e-mail familiar to you?

13 For the record, this e-mail is dated --
14 actually, I'm more interested in the e-mail dated
15 September 29th, 2002, from you to John Affeldt and the re
16 line indicates "Draft ELL report II as we discussed."

17 A Yes.

18 Q What document is that ELL report to?

19 A That is my expert testimony draft.

20 Q I'll mark as Exhibit 8 another e-mail
21 communication dated September 30th, 2002, from you to
22 John Affeldt, and the subject line indicates
23 "Revisions."

24 (Deposition Exhibit 8 was marked.)

25 BY MS. KOURY:

1 Q In the text of this e-mail it states, "Revisions
2 are in large font italics. I could not find the website
3 for International High School with pertinent
4 information."

5 Are you familiar with this e-mail?

6 A Yes.

7 Q What document is this referring to with respect
8 to the revisions?

9 A The expert testimony.

10 Q Your expert testimony?

11 A My expert testimony.

12 Q And why were you looking for the website for
13 International, if you recall?

14 A I think my recollection is that International
15 High School is a model -- model high school for teaching
16 English language learners. That's in New York City, and
17 we -- I think I was looking for information that could be
18 used to illustrate the kinds of schooling and practices
19 that could be useful for English language learners, and I
20 thought that there was information on their work on the
21 Web, which I couldn't find.

22 Q What do you mean by "model"?

23 A An exemplary practice.

24 Q What -- I'm going to hand you another exhibit,
25 which will be Exhibit 9, is it? It's an e-mail

1 MR. LONDEN: It simply records an objection for the
2 record. It doesn't affect your ability to answer if
3 you're able to answer.

4 THE WITNESS: Mm-hmm, yeah.

5 No, I don't think -- I don't think that anybody
6 else that works with me has reviewed the document other
7 than Michele.

8 BY MS. KOURY:

9 Q I'm sorry. I didn't mean to limit that question
10 to people that work with you. Did anyone else in this
11 case review any of your draft expert reports?

12 A I do not think so.

13 Q So as far as you know, Patricia Gandara didn't
14 review any drafts of the report?

15 A No.

16 Q Russ Rumberger?

17 A I'm sure they've seen the report, but I don't
18 know at what point they were asked to review the report.

19 Q And Linda Darling Hammond, you didn't -- you
20 don't know whether she received any drafts of your
21 report?

22 A Of my report? I do not know.

23 Q You mentioned that you early on had discussions
24 with Russ Rumberger and Patricia Gandara regarding the
25 report that they were submitting in this case.

1 communication dated October 2nd, 2002, from Loretta
2 Morgan to John Affeldt, on which you're copied.

3 (Deposition Exhibit 9 was marked.)

4 BY MS. KOURY:

5 Q What was -- or for the record, it has a re line
6 "From Kenji Hakuta," and the text states, "This
7 attachment is from Kenji Hakuta. Please let me know if
8 you have any trouble receiving the document."

9 What role, if any, did Loretta Morgan have in
10 connection with your expert report?

11 A Oh. None. I think Loretta Morgan is a
12 secretary at an educational testing service, and I was at
13 a meeting there. I wanted him to receive something. I
14 guess it's the conclusion section which I drafted which
15 was sent as an attachment, and I did not have the
16 capacity there to e-mail it so I gave a disk to
17 unsuspecting Ms. Morgan, who -- and here she is. But I
18 did send it -- she forwarded an attachment to John for
19 me.

20 Q Other than John Affeldt, did anyone else review
21 your draft -- and Michele Bousquet, did anyone else
22 review your report, your expert report? I'm sorry --
23 drafts of your expert report?

24 MR. LONDEN: Foundation. You can answer.

25 THE WITNESS: What does "foundation" mean?

1 MR. LONDEN: Objection; that misstates the
2 testimony.

3 BY MS. KOURY:

4 Q You mentioned that you had discussions with
5 Patricia Gandara and Russ Rumberger beginning in -- was
6 that beginning in the summer of 2000 regarding the nature
7 of this case?

8 A Probably -- probably earlier.

9 Q And...

10 So initially when you had discussions with
11 Gandara and Rumberger, your understanding was that the
12 purpose of the document that they were working on was
13 simply to provide a factual basis for the lawsuit?

14 A Yes.

15 Q At some point did that purpose change? Was
16 it -- your understanding as to the purpose of that paper,
17 did it change?

18 A No.

19 Q Did you also understand at some point that
20 Russ Rumberger and Patricia Gandara were going to assist
21 in yet a different fashion with respect to the lawsuit?
22 In other words, in addition to providing factual basis
23 for the lawsuit, at some point did you have an
24 understanding that they were going to provide another
25 report?

1 A No. I really did not have any understanding of
2 what the role was with respect to the participation in
3 the lawsuit as an expert witness, but -- yeah. Period.

4 Q We'll mark this as Exhibit 10. I'll hand you an
5 e-mail communication dated February 25th, 2002, from you
6 to Patricia Gandara. Could you review that initial
7 e-mail for me and just let me know when you've had a
8 chance to?

9 A Mm-hmm.
10 (Deposition Exhibit 10 was marked.)

11 THE WITNESS: Mm-hmm.

12 BY MS. KOURY:

13 Q In your e-mail to Patricia Gandara you state, "I
14 just talked with John Affeldt regarding expert testimony,
15 and I'd like to talk with you directly so that we can
16 coordinate contributions."

17 What were you referring to?

18 A I think I was trying to clarify who was doing
19 what in this case because I knew that Pat Gandara and
20 Russ Rumberger were involved in the preparation of a
21 paper. And I don't recall what exactly it was that
22 John Affeldt talked to me about on this phone call that
23 precipitated this, but it was precipitated by a phone
24 call from him probably asking me if I would be able to
25 offer expert testimony. And I wanted to know what the

1 status was with respect to their paper after -- and so
2 that's all it was was checking in.

3 I should say that I know Pat and Russ very well,
4 and so this was saying, "What's going on here?" was the
5 intent of this e-mail.

6 Q At this point, February 25th, 2002, was it your
7 understanding that Russ Rumberger and Patricia Gandara
8 were still working on a report related to this case?

9 A I believe that they were -- they were in control
10 and in charge of providing the expert information
11 necessary for this case.

12 Q What do you mean by that?

13 A That they were in charge of preparing the
14 white -- what we've been referring to as the "white
15 paper"; that they were -- that they were -- that I -- I
16 interpreted that to mean that I did not have any
17 responsibilities that I had to worry about with respect
18 to this case.

19 Q As of this date, February 25th, 2002, you were
20 already working on your expert report; in other words,
21 John Affeldt had already sent you an initial draft of
22 that report. So what was your understanding as to your
23 role?

24 MR. LONDEN: Assumes facts.

25 THE WITNESS: I -- I do not know. I think -- yeah.

1 I'm really unclear as to the chronology and the dates,
2 how this interacts vis-a-vis the documents that were
3 being sent. But I believe these documents -- this e-mail
4 predated, I believe, any of the expert testimony e-mails
5 that were referenced earlier. I could be wrong, but I
6 believe that's the case.

7 BY MS. KOURY:

8 Q The initial --

9 MS. READ-SPANGLER: Can we go off the record?
10 (Discussion off the record.)

11 THE WITNESS: In answer to that question earlier,
12 I -- as of this conversation I don't think that I had --
13 that there was a document called an "expert testimony"
14 that I would be the author of that existed; that that
15 happened after this conversation. So I believe what my
16 comment was was in reference to a phone call from
17 John Affeldt asking me if I would be the expert
18 testifying on this issue.

19 BY MS. KOURY:

20 Q I understand the chronology is unclear, but
21 turning back to Exhibit 3, which is an e-mail dated
22 February 12th, 2002, which --

23 A It's not numbered on here. What's the page
24 number, the last four digits?

25 Q PLTF-XP-KH 0194, which predates this e-mail

1 communication of February 25th, 2002, and Exhibit 3,
2 which you testified earlier was an initial draft of your
3 report.

4 A Yeah. That's probably -- that's probably the
5 Gandara and Rumberger draft then. I would think that
6 that's what that is, rather than referring to the draft
7 of this testimony.

8 Q The February 12th, 2002 e-mail and all the other
9 e-mails that you testified about which were referred to
10 as ELL draft --

11 A Mm-hmm.

12 Q -- it's your belief that those were drafts of
13 the Rumberger and Gandara report and not your draft
14 report?

15 MR. LONDEN: Compound.

16 THE WITNESS: No.

17 BY MS. KOURY:

18 Q You can answer that.

19 A The ones that we were talking about earlier
20 which have the attachment with the ELL draft, those were
21 all drafts of the expert testimony.

22 Q Your expert testimony.

23 A Of my expert testimony.

24 Q Why do you think this particular e-mail refers
25 to the Gandara/Rumberger report? And let me be clear for

1 the record. "This particular e-mail," meaning Exhibit 3.

2 A Because the draft that appeared -- I'm just
3 doing this by a process of elimination, and I don't have
4 the chronology straight in my own mind, but I believe
5 that the testimony appeared -- the draft testimony --

6 Q Your draft testimony?

7 A -- my draft testimony was produced for the first
8 time after there was a relatively complete paper by
9 Gandara and Rumberger.

10 Q Is it still your testimony, though, that the
11 initial draft of your report that you received came from
12 John Affeldt? In other words, you didn't draft the
13 initial --

14 A Correct.

15 Q And why is it your belief that your -- that you
16 received an initial draft of your expert report after
17 there was a relatively complete paper by Russ Rumberger
18 and Patricia Gandara?

19 A That was my belief -- that's my fairly firm
20 recollection that that testimony happened, having had a
21 chance to review the Rumberger and Gandara report that
22 was quite complete. An earlier draft of the Rumberger
23 and Gandara report that I reviewed was quite incomplete,
24 and at that time I was helping them finish that paper.

25 Those were the pieces that I tried to supply to

1 call it? It's a collegial ribbing in the elbow, saying,
2 "I thought I was going to do this, and now here I am
3 stuck with this." I think that's what she really meant
4 by -- I know fully that the understanding was all along
5 that I wasn't going to do that, but I never agreed to do
6 the paper and that she was doing it.

7 But I think that Pat is an extremely, extremely
8 busy person, and I'm sure she just meant, "Gee, what did
9 I get myself into? And I thought you were going to do it
10 and I got into it because you were going to help me
11 because" -- that was the intent of the message.

12 Q When you referred to "the paper," you're
13 referring to the Rumberger/Gandara paper?

14 A Correct.

15 Q Did you have a conversation that you recall
16 subsequent to these e-mail communications about your
17 coordination of contributions?

18 A I don't remember what precipitated from this
19 conversation. She was -- we had a conversation. We
20 finally did connect on the phone and she talked about how
21 much work this was, that "they couldn't pay me enough."
22 She said something about, you know, a penny a word or
23 something is what she was getting, which was her way of
24 saying this was just, you know, "a lot more work than I
25 had bargained for," and that I offered to help. And I

1 them. And I believe that that was triggered by this --
2 or that happened after or subsequent to this e-mail,
3 page 1043, in which we talk about this paper. And I
4 think at that time, as of that date, which is February
5 25th, 2002, I think that the report still had significant
6 pieces that were incomplete.

7 Q Which report? The Russ Rumberger --

8 A Rumberger and Gandara. Right, that is my
9 reconstruction. I -- beyond that, I can't be certain.

10 Q On the same exhibit, Exhibit 10, there's an
11 earlier mail -- I'm sorry, subsequent e-mail dated
12 February 25th, 2002, which is addressed from you to
13 Patricia Gandara, in which -- I'm sorry.

14 There is another e-mail that is also dated
15 February 25th, 2000, which appears to be addressed from
16 Patricia Gandara to you, and it states, "Seems I remember
17 sometime back that I was going to help you to do this
18 thing. Russ and I have been tearing our hair out because
19 this is a really huge undertaking, more than we
20 anticipated."

21 What was your understanding as to what she
22 meant -- I'm sorry. What was your understanding as to
23 what she meant by "I was going to help you do this
24 thing"?

25 A Oh. I think that's just -- it's -- what do they

1 think I did try to help out in some sections.

2 MS. KOURY: Can we go off the record for a quick
3 second?

4 (□Discussion off the record.)

5 (Recess taken: 12:01 until 1:13 p.m.)

6 BY MS. KOURY:

7 Q Welcome back from lunch, Mr. Hakuta.

8 Before we broke for lunch, we were reviewing
9 Exhibit 10, which is an e-mail dated February 25th,
10 2002 -- actually, two e-mails or three e-mails dated
11 February 25th, 2002.

12 During this time frame when you received this
13 particular e-mail from Patricia Gandara on February 25th,
14 2002, did you have an understanding as to whether or not
15 you would be testifying in this case?

16 MR. LONDEN: Asked and answered.

17 Go ahead.

18 THE WITNESS: No, I did not. I think this e-mail
19 alerted me to the possibility that I would be testifying,
20 or this e-mail follows a conversation in which it was
21 suggested that I might be the expert testimony.

22 BY MS. KOURY:

23 Q Instead of Patricia Gandara and Rumberger?

24 A Yes.

25 Q So previously had you had an understanding that

1 the two of them would testify in this case?
 2 A I didn't have any kind of understanding of that.
 3 MS. KOURY: I'll mark as Exhibit 11 an e-mail
 4 communication with -- bearing the Bates stamp PLTF-XP-KH
 5 1040.
 6 I'm handing what we've marked as Exhibit 11,
 7 which contains a few e-mail communications. Would you
 8 please review that and let me know when you have?
 9 (□Deposition Exhibit 11 was marked.)
 10 BY MS. KOURY:
 11 Q Are you ready?
 12 A Yes.
 13 Q In the initial e-mail dated February 26th, 2002,
 14 which appears to be from Patricia Gandara, she states,
 15 "Here's the current draft. You can see all kinds of
 16 working notes to ourselves in it and lots of places where
 17 I have to plug some things in. Any advice is welcome."
 18 Is this e-mail familiar to you?
 19 A Yes.
 20 Q What was your understanding as to why she was
 21 sending you this e-mail?
 22 A I think I was being asked to help out with the
 23 completion of the paper.
 24 Q And at this point did you have an understanding
 25 as to the -- what the purpose of Gandara's report was?

1 A No.
 2 Q Why did you think that -- I'm sorry.
 3 What did you do with this draft report when you
 4 received it?
 5 A I reviewed it. I saw a section that I felt I
 6 could contribute my expertise in, which is on the
 7 assessment and accountability section. And I offered
 8 some additional edits, and I sent it back to them.
 9 Q How long did you spend working on this draft,
 10 approximately?
 11 A Maybe a day and a half.
 12 Q Was the assessment and accountability section --
 13 was there already an accountability section in the draft
 14 when you reviewed it?
 15 A I believe there was something, but it was, you
 16 know, not complete.
 17 Q How was it incomplete?
 18 A I don't remember.
 19 Q Why was it you chose to revise this particular
 20 section?
 21 A Because the assessment and accountability issues
 22 regarding English learners is an area where I've done
 23 quite a bit of work, and I felt I could be useful in that
 24 area.
 25 Q And in the subsequent e-mail dated March 5th,

1 2002, also in Exhibit 11, you wrote back to Patricia
 2 Gandara and Russ Rumberger and you state, "I thought I
 3 could make best use of my time to contribute by reworking
 4 the section on assessment/accountability."
 5 Did you think at this point that was going to be
 6 the extent of your involvement with this particular
 7 report?
 8 A I -- I don't recall what I thought. I was just
 9 doing what I thought would be helpful.
 10 Q Had you had any other conversations with either
 11 Patricia Gandara or John Affeldt with respect to what
 12 your contributions were going to be or how you were going
 13 to coordinate contributions between you and Gandara and
 14 Rumberger?
 15 A No.
 16 Q At this point it was still up in the air who was
 17 going to be testifying in this case?
 18 A I believe so.
 19 Q As of -- I know that you've testified earlier
 20 and I just want to make sure the record is clear, so to
 21 the extent I've already asked this question, let me know.
 22 Do you recall when you first received a draft
 23 report -- your expert draft report from John Affeldt?
 24 A No, I don't recall.
 25 Q Do you recall generally what year it was?

1 A It was probably in the summer of last year.
 2 Q 2002?
 3 A Mm-hmm. Summer, late fall -- or late summer,
 4 maybe.
 5 Q Also in this e-mail you indicate, "One
 6 additional thing I could do is add a few paragraphs on
 7 what Texas is doing with TAAS" -- T-A-A-S -- "and
 8 inclusion of ELLs."
 9 What did you mean by this?
 10 A Texas has an assessment and accountability
 11 system which talks about the assessment of academic
 12 skills as a main component, and it is successful in
 13 including English language learners because they offer
 14 assessment through Spanish and also have good policies
 15 that successfully and appropriately include English
 16 learners in their system. And I thought that a
 17 description of that model would be useful in their paper.
 18 Q Did you include it in their paper?
 19 A I don't recall.
 20 Q Do you recall whether there was any further
 21 communication about that?
 22 A No, I don't recall. I don't think that there
 23 was.
 24 Q Do you have an opinion sitting here today
 25 whether that would have been something useful to add to

1 their paper?

2 A It would have been, except that the paper ended
3 up not focusing very much on assessment and
4 accountability provisions as much as on the input side of
5 the educational process, and therefore I think it would
6 not -- would not add that much to the paper as it
7 transpired into its final form.

8 Q Whose call was that to have the paper shift
9 towards a focus on input as opposed to assessment and
10 accountability?

11 MR. LONDEN: Assume facts.

12 Go ahead.

13 THE WITNESS: I don't know.

14 BY MS. KOURY:

15 Q Did you have any input with respect to the
16 Gandara and Rumberger report -- I'm sorry.

17 With respect to the report, did you have any --
18 I'm going to use "input" twice. Did you have any input
19 with respect to the input section of the report?

20 A I don't -- I think I offered some comments,
21 which I don't remember what they were, but I did not have
22 any input in the sense of writing any other sections of
23 their report.

24 Q Was -- were there any other sections of the
25 report that you drafted other than the assessment/

1 for instruction, the kinds of instruction that English
2 language learners receive about the formatting of some of
3 their figures or one of their figures, and it was -- it
4 was more with form than substance.

5 Q Which particular -- you said discussing the
6 formatting of their figures or one particular figure.
7 What figure was that?

8 A That was a figure in their paper which reports
9 the percentage of English -- of qualified, certified
10 teachers as a function of the percentage of English
11 language learners in the school, controlling for
12 socioeconomic status.

13 Q And is this the -- I'm sorry. This was a figure
14 in Russ Rumberger and Patricia Gandara's report?

15 A That's correct. And in that paper -- in that
16 figure, the regression slope estimated for that function
17 inserted estimated data points -- what are called
18 estimated -- mean estimated data points on that line,
19 which fell right on the regression slope, which is --
20 it's what you would call an estimated mean. And the
21 points were -- there were actual points inserted in the
22 estimated mean with a line running through it. And I
23 said I would not put those actual estimated points in
24 there because they are estimated points, not real data
25 points.

1 accountability section?

2 A Not that I recall, except indirectly through
3 what materials my assistant, Michele, may have shared
4 with them.

5 Q How much time did you contribute to reviewing
6 and revising the Gandara/Rumberger report?

7 A I would say two days.

8 Q Is that --

9 A I think I wrote the assessment and
10 accountability section, which probably -- which would be
11 about a day and a half of work and maybe another half a
12 day of just revising and commenting on their paper.

13 Q In revising and commenting on their paper, did
14 you --

15 A Reviewing and commenting, not revising.

16 Q -- reviewing and commenting on their paper, did
17 you ask to see any of the underlying support for their
18 opinions?

19 A I think I had a conversation about the database
20 with them, the CBEDS with Russ Rumberger, but I did not
21 have them send me any materials.

22 Q What was that conversation about?

23 A Oh, I don't recall all of the details of it, but
24 it was about the quality of the data and the -- some of
25 the frustrations on getting data at the classroom level

1 Q What do you mean by that, estimated points as
2 opposed to real?

3 A A regression line is the line that's a
4 straight-fitted line that goes through all of the data
5 points on which the regression slope is based that
6 minimizes the sum of the square deviations of each
7 individual point from the straight line.

8 I'll be happy to repeat that or explain it if
9 you'd like, but -- and therefore, for any given point on
10 the X variable, which is the axis on the bottom that goes
11 along the bottom -- for any given point on the X axis,
12 you can -- the regression line is what's called the
13 estimated mean, taking into account all of the data
14 points around the regression line. But it's not a real
15 data point in the sense that it's what would be called a
16 floating mean.

17 And so -- but that's what's meant by an
18 estimated mean. It's not based on real data points, but
19 rather -- I mean it is based on real data points, but it
20 is not an exact data point and therefore I was afraid
21 that those -- if you put those data points on the line,
22 that it actually made the data look less real than it
23 really is. So I advised him to remove those points.

24 Q Did he remove them?

25 A I believe he did. And for my expert testimony

1 he sent me a figure that I inserted, which I removed
 2 those points.
 3 Q I'm not sure I understood your prior testimony.
 4 Did you have other formatting concerns or
 5 comments -- I'm sorry -- comments about the form of their
 6 data? Is that what you testified to?
 7 A That's what I meant by the form of their data,
 8 which is the way in which the figure represents the
 9 quantitative analysis that they performed.
 10 Q Were there any other figures that you had
 11 comments about other than this figure?
 12 A No.
 13 Q Is there any other comment about the quality of
 14 data that you testified about?
 15 A As I said earlier, we talked about the
 16 difficulty of making classroom-level inferences because
 17 of the way that the State data system is organized.
 18 Q Why is that important in your opinion to get
 19 classroom-level data?
 20 A Because it allows you to get a much closer
 21 estimate of what -- how many children or what proportion
 22 of English language learners are receiving instruction
 23 from CLAD-certified or otherwise certified teachers.
 24 Q Okay.
 25 A Is the coffee from -- off the record? Sorry.

1 (Discussion off the record.)
 2 BY MS. KOURY:
 3 Q I'll mark as Exhibit 12 another e-mail
 4 communication. It's actually bearing a Bates stamp
 5 PLTF-XP-KH 1042. Could you review this?
 6 (Deposition Exhibit 12 was marked.)
 7 MS. KOURY: For the record, there are two e-mails on
 8 this document, both of which are dated March 6th, 2002,
 9 between Patricia Gandara and Professor Hakuta.
 10 Q The e-mail at the top of the page from
 11 Patricia Gandara indicates, "Russ and I have been
 12 gathering data and writing an academic paper on this
 13 issue. I can see from the way you have approached this
 14 that there's a more legalistic way of doing this.
 15 Although John has spent countless hours on the phone with
 16 me, I didn't get the message as clearly until I saw your
 17 draft section."
 18 Was it your understanding that the Gandara paper
 19 was initially -- let me ask you another question.
 20 When you reviewed this e-mail, did you have an
 21 understanding as to what she meant by that?
 22 A I thought she was being very kind to me or very
 23 flattering, but other than that, I -- she was referring
 24 to the fact that she has been spending a lot of time
 25 talking with John and working on the paper.

1 I saw that the way in which I approached -- the
 2 way I wrote what I sent her was very different from the
 3 draft of her paper, as I saw it then. So she was
 4 acknowledging that they were very different in style.
 5 I thought "legalistic" was a funny way for her
 6 to put it because I didn't think of it as being -- my
 7 style of writing being particularly legalistic, but
 8 that's what I thought.
 9 Q Was it your understanding that the Gandara paper
 10 was initially an academic paper?
 11 A No.
 12 Q When I say "academic paper" -- or I should say
 13 her reference to, quote, "academic paper," what's your
 14 understanding of that?
 15 A I would think that the academic paper is one
 16 that is less argumentative around a particular -- less
 17 structured to make a specific point in making reference
 18 to some kind of standard of evidence or standard of
 19 quality.
 20 The way in which I wrote the section that I did
 21 had -- was framed around a standard that is held by
 22 professional organizations and the American Psychological
 23 Association, and AERA, American Educational Research
 24 Association, and NCME, National Society for Measurement
 25 in Education Standards for Test Practices, and there are

1 specific standards in that -- in those guidelines which
 2 refer to standards of good testing practice.
 3 And I used that to say that the way in which the
 4 California system is structured violates those standards.
 5 And so it was very much to the point that there's a
 6 standard and it violates that standard.
 7 And that I think the way in which she was
 8 writing and she and Russ were approaching their paper was
 9 more expansive in writing about the issues, and I think
 10 she was referring to the difference in styles.
 11 Q I'll mark as Exhibit 13 a document bearing Bates
 12 stamp PLTF-XP-KH 1045. Exhibit 13 is dated March 6th,
 13 2002, and also contains e-mail communications between you
 14 and Patricia Gandara. Could you just let me know when
 15 you've had an opportunity to review this?
 16 (Deposition Exhibit 13 was marked.)
 17 THE WITNESS: Yes.
 18 BY MS. KOURY:
 19 Q In the top e-mail, which is authored by you to
 20 Patricia Gandara, you indicate, "I think the best thing
 21 to do at this point, given the time, is to concentrate on
 22 the more developed points on the front end of the paper,
 23 work on polishing those, and simply do away with the
 24 later arguments that are less developed/supported."
 25 Are you familiar with this e-mail?

1 A Yes.

2 Q What arguments were you referring to that are
3 less developed and supported?

4 A I frankly do not remember the sections that were
5 on there. I felt that the sections that were in the
6 paper that were at the beginning that were the strongest
7 were on teacher availability and resources, on outcome
8 data, the assessment and accountability piece that I
9 provided, and the resources available -- not resources
10 available, but textbooks available or materials available
11 from the Harris survey and other information sources.

12 And then there were other sections which I
13 frankly do not remember what they were. There were some
14 less-developed sections that I just felt weren't as
15 well-developed as the front end, and therefore I just
16 suggested that they delete it.

17 Q Did you have any conversations with her
18 regarding those less-developed sections?

19 A I did not.

20 Q Are you aware of whether she followed your
21 advice and eliminated those sections from her report?

22 A I do not know, but I think -- I'm pretty sure
23 that they were, because the final product turned out to
24 be quite polished. I think they must have eliminated
25 them.

1 Q If you could turn back to Exhibit 5 for a
2 moment, which was an e-mail dated September 10th, 2002,
3 John Affeldt to you.

4 A Could you read the number?

5 Q Sure. PLTF-XP-KH 0852.

6 A 0852. Okay.

7 Q The second sentence in that e-mail states, "I
8 also attach the most recent version of Patricia's and
9 Russ's paper and Linda's and yours, which also cover
10 certain ELL issues. Let's try to talk tomorrow."

11 Did you review -- I'm sorry.

12 Attached to this e-mail, was there a draft copy
13 of the Gandara/Rumberger report?

14 A Yes.

15 Q Do you recall whether you reviewed that draft
16 report?

17 A Did I -- did you say did I review it before?

18 Q No. When you received that draft report
19 attached to this e-mail --

20 A Oh, report. Yes. I heard you say before "not
21 report."

22 Yes, I did review the draft.

23 Q The Gandara/Rumberger draft?

24 A Yes, uh-huh.

25 Q Did you provide any comments based on that

1 review?

2 A I don't think so. I believe this was close to
3 final, final draft.

4 Q Do you recall if that subsequent conversation
5 with John Affeldt occurred to which he refers to in his
6 e-mail?

7 A I don't recall, but probably it did.

8 MS. KOURY: I'll mark this as Exhibit 14.

9 (Deposition Exhibit 14 was marked.)

10 BY MS. KOURY:

11 Q I've just handed you what we'll mark as
12 Exhibit 14, which -- I'm only interested actually in the
13 cover sheet, which is an e-mail with the Bates stamp
14 number, PLTF-XP-KH 0954, but the actual exhibit runs
15 through 1025.

16 The cover sheet with the e-mail
17 communications -- for the record, it's an e-mail dated
18 September 27th, 2002, from Russ Rumberger to John
19 Affeldt, on which you are copied.

20 Does this e-mail look familiar to you?

21 A Yes. Oh, actually, let me put it this way. I'm
22 not sure if I'm familiar with this e-mail, but I do --
23 the whole -- the content of the e-mail is familiar to me.

24 Q Reviewing this e-mail, are you familiar or do
25 you have an opinion as to what paper he's referring to in

1 the subject line which states "Revised Williams Paper"?

2 A It's the same as the Williams report, the one
3 that's called "Williams ELL Report Outline 9" from the
4 earlier -- from the September 10th e-mail.

5 Q Which is the Gandara report --

6 A Yes.

7 Q -- Gandara draft report.

8 And in this e-mail it states, "I updated all the
9 tables from the Harris data using the revised data set,
10 in places used -- in places used school LEP percentage
11 instead of classroom LEP percentage."

12 Do you know what data set he's referring to?

13 A This is the Lou Harris data set, I believe.

14 Q Did you have access to this data set to which
15 he's referring?

16 MR. LONDEN: Ambiguous.

17 BY MS. KOURY:

18 Q Do you understand my question?

19 MR. LONDEN: Go ahead.

20 THE WITNESS: At some date that I don't know whether
21 it was before or after this, I was sent the full data set
22 by Mr. Affeldt. So I had access to it.

23 BY MS. KOURY:

24 Q Did you have an understanding as to what he
25 meant by this particular sentence where he states that he

1 revised the data set and "in places used school LEP
2 instead of classroom LEP percentage"?

3 A I believe I talked with Russ about some issue
4 relating to -- that centers around that, but I didn't --
5 but I -- I don't think that it makes a difference in
6 terms of the results.

7 Q What were -- what was discussed with respect to
8 this particular issue?

9 A Actually, I did not have input as -- an opinion
10 as to it, but I believe that Russ mentioned to me that
11 there were issues of whether it was -- how the data got
12 reported, whether it was classroom or school, and that he
13 was making those changes and that I would see those
14 changes in a revision or something. I recall a
15 conversation to that effect.

16 Q I'm sorry. I couldn't hear the latter part of
17 your answer.

18 (The record was read as follows:
19 "Answer: Actually, I did not have input
20 as -- an opinion as to it, but I believe
21 that Russ mentioned to me that there were
22 issues of whether it was -- how the data got
23 reported, whether it was classroom or
24 school, and that he was making those changes
25 and that I would see those changes in a

1 At this point, September 2002, did you have an
2 understanding as to what the purpose of the Russ
3 Rumberger report and Gandara's report -- what was the
4 purpose of that report?

5 A It would be the basis or a basis upon which
6 expert testimony would be developed for the Williams
7 case.

8 Q Did you have an understanding as to whether or
9 not they would be testifying in this case?

10 A No.

11 Q Did you have an understanding as to whether or
12 not you would be testifying in this case?

13 A Mr. Affeldt had at some point in our discussions
14 suggested or asked if I would be available to testify.

15 Q And during this period between the summer of
16 2002 and September of 2002 while you were reviewing the
17 Russ Rumberger and Patricia Gandara report and providing
18 comments, you were at the same time drafting your own
19 report; is that true?

20 A I don't recall the relative timing of those two
21 things.

22 Q Correct me if I'm wrong, but earlier you
23 testified you believe you began -- or you received the
24 draft report for your expert report from John Affeldt
25 sometime in the summer of 2002; is that correct?

1 revision or something. I recall a
2 conversation to that effect.")

3 BY MS. KOURY:

4 Q When you say "how the data got reported," what
5 are you referring to?

6 A How the data got reported in his and Pat
7 Gandara's report.

8 Q Which relies on the Harris survey?

9 A Yes. The part on the Harris survey on which
10 their report relies.

11 Q The next part of the e-mail states, "I also did
12 a bit of editing and formatting" -- actually, I start
13 with -- strike that.

14 The e-mail also states, "And I altered Figure 1
15 in response to Kenji's request."

16 Do you know if Figure 1 to which he's referring
17 is the same figure that you testified about a bit
18 earlier?

19 A I think -- yeah, I'm sure that that is what it
20 refers to.

21 Q Up until this point, which would have been
22 September of 2002, did you have an understanding at this
23 point as to the purpose of the Russ Rumberger and
24 Patricia Gandara report and how it -- I'm sorry. Let me
25 rephrase that.

1 A That was a very -- that was a rough estimate. I
2 think I qualified that to say it was sometime around
3 then, but I couldn't tell you the difference between
4 whether I thought it was at the beginning of the summer
5 or later in the summer.

6 Q Do you have a general opinion about the
7 Rumberger/Gandara report in terms of its reliability?

8 A I believe it's a good piece of empirical work.

9 Q How heavily do you think your own expert report
10 relies on that, on Patricia Gandara and Russ Rumberger's
11 report?

12 MR. LONDEN: Vague.

13 BY MS. KOURY:

14 Q You can go ahead and answer that.

15 A It relies quite heavily on it.

16 MS. KOURY: I'll mark this as Exhibit 15.

17 (Deposition Exhibit 15 was marked.)

18 BY MS. KOURY:

19 Q This is a document with the Bates stamp number
20 PLTF-XP-KH 0948, which we'll mark as Exhibit 15.

21 Dr. Hakuta, could you just review this?

22 Exhibit 15 contains an e-mail communication

23 dated September 23rd, 2002, from you to John Affeldt.

24 A Mm-hmm.

25 Q Does this e-mail look familiar to you?

1 A Yes.
 2 Q For the record, it states, "I wondered, given
 3 that the testimony depends so much on Pat and Russ's
 4 paper anyway, whether you could get one of them to do it
 5 rather than me."
 6 What did you mean by "the testimony"?
 7 A By "the testimony," it's the expert report.
 8 Q Which expert report?
 9 A My expert report.
 10 Q How does your expert report depend so much on
 11 the -- or I'm sorry -- Gandara and Rumberger's report?
 12 MR. LONDEN: Vague and compound.
 13 Answer if you're able.
 14 BY MS. KOURY:
 15 Q Do you understand that?
 16 A Could you repeat that or rephrase it?
 17 Q What did you mean by saying that it depends so
 18 much on Pat and Russ's paper?
 19 A Much of the evidence that's relied on in the
 20 expert -- my expert testimony is inter-corporation of the
 21 analysis reported in the Gandara and Rumberger paper.
 22 Q Given what you just testified to, to what extent
 23 did you look into the reliability of the evidence and
 24 research that the Gandara and Rumberger report cites to?
 25 A I relied primarily on the scholarship of both

1 individuals that I place great weight on, having known
 2 them and reviewed their work in the past, and I -- so I
 3 relied on it the same way that I would rely on any other
 4 piece of scholarship done by professionals in the field
 5 whose expertise I trust.
 6 Q So to the extent that the conclusions that their
 7 paper draws are incorrect or inaccurate, the same could
 8 be said about the conclusions in your opinions and your
 9 report to the extent that you rely on their report?
 10 MR. LONDEN: Vague.
 11 BY MS. KOURY:
 12 Q Did you understand that?
 13 A Why don't you rephrase that?
 14 Q To the extent that the conclusions that
 15 Rumberger and Gandara draw in their report -- to the
 16 extent that those conclusions are inaccurate, the same is
 17 true for your conclusions in your report?
 18 A I would disagree with that. I draw conclusions
 19 in my report, and the conclusions that I draw in my
 20 report I would stand behind. I have not had the -- I
 21 would not want to say that every word in their report is
 22 accurate. I mean I don't draw on all aspects of -- all
 23 of the conclusions that they draw.
 24 Q You also state in this e-mail in Exhibit 15,
 25 "Reading the testimony, it really looks like they would

1 be even more capable than me."
 2 What did you mean by that?
 3 A They are very accomplished researchers in that
 4 area, and they did write the report on which much of my
 5 testimony is based. I wouldn't necessarily say that
 6 they're more capable than me since I've also done work in
 7 the area of my testimony, but they would be -- they would
 8 be as capable in offering opinions as I would be.
 9 Q To the extent that you asked in this e-mail,
 10 "whether you could get one of them to do it rather than
 11 me," what were you referring to specifically?
 12 A I was referring to their writing the expert
 13 report and being available for testimony. I was trying
 14 to get out of doing it because of the fact that I have to
 15 take care of my mother's cancer and so forth.
 16 Q To the extent that you did state in the e-mail
 17 that, "It looks like they would be even more capable than
 18 me," was that based at all on your opinion that they had
 19 already drafted this report?
 20 A No. It was my effort to try to get them to talk
 21 to Pat and Russ to do it. I was trying to see if it
 22 would be at all possible for them to take on that
 23 responsibility. I was trying to use a rhetorical
 24 persuasive device.
 25 Q Did you ever have a follow-up conversation with

1 John Affeldt regarding this issue?
 2 A Yes, I did.
 3 Q Did you speak to any other of Plaintiffs'
 4 attorneys regarding this issue?
 5 A No, I didn't.
 6 Q What was said during your conversation with
 7 John?
 8 A I suggested -- I reiterated what I said here,
 9 and he suggested that he really wanted me to be the
 10 expert in this because he felt that the -- that the --
 11 especially -- well, especially Pat Gandara, who I think
 12 would be the person to testify because of her experience
 13 in the policy arena much more than her co-author, Russ
 14 Rumberger -- that she is identified too much with the
 15 bilingual education versus structured English immersion
 16 debate, and that that was a peripheral tangential point
 17 to the case, and that would be unfortunate for trying to
 18 focus attention on the key issue of -- key issues
 19 surrounding this case, that is, it is not about bilingual
 20 versus English-only programs. So that's why he thought I
 21 would be a better witness.
 22 Q Did he -- what is your understanding as to what
 23 the key issues are with this case with respect to English
 24 language learners?
 25 A I think that the key issue is the same as

1 with -- for all students in high-poverty schools, which
 2 is that they do not have access to adequate facilities,
 3 teachers, and textbooks and inputs into their educational
 4 process and that in the case of English language
 5 learners, they are particularly hampered because in
 6 addition to that they're not given access to teachers or
 7 materials that support their specific needs.

8 Q What result -- or I'm sorry. I take it you
 9 agreed to continue to testify after this communication
 10 with John Affeldt?

11 A Yes, I did.

12 Q Why?

13 A Because I believed in the importance of the case
 14 and I wanted to help out.

15 Q Did you think his point with respect to
 16 Patricia Gandara and the fact that she would be, as you
 17 put it, too connected to the bilingual versus
 18 English-only debate was a valid point?

19 A It was a valid point as far as the perception of
 20 her. I don't think that she is herself an advocate in
 21 that in the sense of political advocacy, but that -- but
 22 the perception is certainly true that she would be more
 23 identified with the bilingual advocacy group than would
 24 I.

25 Q Have you ever spoken to any of Plaintiffs' other

1 Q But are there any additional conversations that
 2 you've had with him?

3 A No.

4 Q Ross Mitchell?

5 A No.

6 MR. LONDEN: You need to speak audibly.

7 THE WITNESS: Okay. No.

8 BY MS. KOURY:

9 Q Robert Corley?

10 A No.

11 Q Glen Earthman?

12 A No.

13 Q Nancy Myers?

14 A No.

15 Q Michele Fine?

16 A No.

17 Q Megan Sandel?

18 A No.

19 Q Norton Grubb?

20 A No.

21 Q Laura Goe?

22 A No.

23 Q Heinrich Mintrope?

24 A No.

25 Q And Mr. Huerta? Have you spoken to him?

1 testifying experts in connection with this case? Do you
 2 know who the other -- let me back up and say, Do you know
 3 who the other experts that are testifying in this case
 4 are, Plaintiffs' experts?

5 A I know Professor Oakes from UCLA. I know
 6 Linda Darling Hammond. I actually don't know who the
 7 other witnesses are.

8 Q Have you ever spoken to Professor Oakes in
 9 connection with this case?

10 A I don't believe I did. If I did, it would have
 11 been very peripherally.

12 Q And I know that you testified earlier about
 13 Professor Darling Hammond, but I just want to make sure
 14 the record is clear. Have you discussed the case with
 15 her at all since your initial involvement in this case?

16 A We have made passing reference to it, but we
 17 have not discussed the case.

18 Q Have you discussed -- I'm just going to name off
 19 some of the experts. Tom Sobol?

20 A No.

21 Q William Koski?

22 A I know him.

23 Q To the extent that you've already testified, you
 24 don't have to --

25 A Mm-hmm, yeah.

1 A No.

2 Q Have you reviewed any of the -- any of the other
 3 testifying experts' reports in this case?

4 A I have gone to the website and opened up some of
 5 the reports. I read in detail the reports of Linda
 6 Darling Hammond, and Jeanie Oakes' two reports, the
 7 synthesis report and the textbook report.

8 Q Why those two? Why did you review those two
 9 reports?

10 A Because they're the two that bear the most
 11 materially to the English language learner report that I
 12 was responsible for.

13 Q Did you -- I'm sorry. Were you finished?

14 A Yes.

15 Q Did you review Professor Darling Hammond's
 16 report before it was finalized? Did you review some of
 17 her drafts?

18 A No.

19 Q Turning back to Exhibit 5, which has a Bates
 20 stamp number 0852 at the end, and again, this reflects an
 21 e-mail communication dated September 10th, 2002. It
 22 states, "I also attach the most recent version of
 23 Patricia and Russ's paper and Linda's and yours, which
 24 will also cover certain ELL issues."

25 Was it your understanding that a draft of

1 Darling Hammond's report was attached to this e-mail
 2 communication?
 3 A Yes.
 4 Q You didn't review it, though?
 5 A I may have reviewed it sometime after then, but
 6 I did not review it at that time.
 7 Q Do you know how long you spent reviewing
 8 Darling Hammond's draft report?
 9 A I don't recall, but I would imagine that it
 10 would have taken me about three hours to read.
 11 Q And did you provide any comments on that report?
 12 A I don't recall. I may have commented on the ELL
 13 section of her report, but I do not recall.
 14 Q Do you know whether you have any notes regarding
 15 your review of that report?
 16 A No, I don't.
 17 Q Did you rely on any of her opinions in that
 18 report -- I'm sorry. Did you rely on any of the opinions
 19 included in her draft report while drafting your expert
 20 report?
 21 A There are references to her report in my report.
 22 Q What about Professor Oakes' paper? Did you
 23 review any of her draft reports?
 24 A No.
 25 Q I'm going to hand you what we'll mark as

1 Exhibit 16, another e-mail communication dated September
 2 10th, 2002.
 3 (Deposition Exhibit 16 was marked.)
 4 BY MS. KOURY:
 5 Q This is from John Affeldt to you, and it
 6 indicates, "Here's the near final version of
 7 Jeanie Oake's paper, which also has some information on
 8 ELL textbook issues."
 9 Are you familiar generally with this e-mail?
 10 A Yes.
 11 Q Do you recall whether you reviewed this draft
 12 report?
 13 A I again looked at it. I don't recall when or
 14 how long I spent with it.
 15 Q Do you recall whether you provided any comments
 16 with respect to it?
 17 A I did not provide any comments with respect to
 18 it.
 19 Q And you also rely on Oakes' report in your
 20 report; is that true?
 21 A Yes, mm-hmm.
 22 Q Other than the communications that we've already
 23 discussed with John Affeldt and any other attorneys,
 24 could you generally tell me on how many occasions you've
 25 spoken to Plaintiffs' attorneys in this case?

1 A Plaintiffs' attorneys?
 2 Q Yes. Which would include John Affeldt,
 3 Jack Londen, anyone else from --
 4 A How many times or how long?
 5 Q Why don't we start with how long in terms of
 6 time frame.
 7 MR. LONDEN: The question is unclear, it's
 8 ambiguous.
 9 MS. KOURY: Let me rephrase it. You're right.
 10 Q Beginning in 2000 you had conversations with --
 11 I'm sorry, in 2001 you had conversations with John
 12 Affeldt. Were there any other attorneys during that time
 13 frame from Plaintiffs' counsel that you spoke with?
 14 A No.
 15 Q Since that time have you spoken with any other
 16 attorneys with respect to this case?
 17 A In my deposition preparation I've spoken with
 18 Jenny Pearlman and Jack Londen.
 19 Q Other than speaking with them during your
 20 deposition preparation, were there any plaintiffs'
 21 attorneys that you've spoken to in this case?
 22 A No.
 23 Q Did you receive any written communications from
 24 the various Plaintiffs' attorneys throughout the -- your
 25 involvement in this case?

1 A No.
 2 MS. KOURY: We'll mark this as Exhibit 17.
 3 I'm going to hand you a copy of your expert
 4 report that was submitted in this case, which we'll mark
 5 as Exhibit 17.
 6 (Deposition Exhibit 17 was marked.)
 7 BY MS. KOURY:
 8 Q Could you review this?
 9 A Mm-hmm. Yes.
 10 Q What is it? I'm sorry. Is this your expert
 11 report?
 12 A Yes, it is.
 13 Q And you've already testified -- to the extent
 14 you've already testified how you prepared it, I don't
 15 want you to repeat yourself, but do you recall how you
 16 were given the particular assignment for this report?
 17 A I was asked to be the person offering the expert
 18 testimony by Mr. Affeldt. We talked on the telephone
 19 about the contents of what the testimony would be about,
 20 and then some period of time passed, and then I was given
 21 an initial outline draft from Mr. Affeldt.
 22 Q Did Mr. Affeldt specify the various areas that
 23 he wanted you to testify about?
 24 A It's been clear from the beginning of our
 25 communications that this is about the adequacy of

1 teachers, materials, and facilities.
 2 Q Did you have any input from your own perspective
 3 as to what you thought your report should focus on within
 4 that realm?
 5 A Yes.
 6 Q What was that?
 7 A My sense of -- overall sense of the scope of
 8 this case was that it was very consonant with the
 9 findings of the National Research Council or National
 10 Academy of Sciences report that was issued from a
 11 committee that I chaired and the report that I
 12 co-authored with that committee on characteristics of
 13 effective programs for English language learners, having
 14 to do with staffing, materials, and opportunities or
 15 resources for the schools that serve these students.
 16 Q Can you turn to page 2 of your expert report?
 17 At the very bottom, for the record, the last paragraph
 18 reads, "This paper will seek to quantify the extent of
 19 the inequities that exist for English learners in terms
 20 of access to qualified teachers, appropriate
 21 instructional materials, and sound teaching and learning
 22 environments. In addition to identifying the actions and
 23 failures of action on behalf of the State which have led
 24 to and even exacerbated these conditions, the paper will
 25 propose some policy options for the State to adopt to

1 address the unequal and substandard learning conditions
 2 of ELs in California."
 3 Is this last paragraph of page 2 a fair summary
 4 of the assignment that you were ultimately given in this
 5 case with respect to your expert report?
 6 A Yes, I would say so.
 7 Q Was this paragraph included in the first draft
 8 report that you received from John Affeldt?
 9 A I don't know.
 10 Q Do you know whether you, yourself, wrote this
 11 particular paragraph?
 12 A I don't think I did.
 13 Q With respect to qualified teachers, what would
 14 you quant- -- or what would you -- what do you mean by
 15 "qualified"?
 16 A A qualified teacher minimally would have
 17 training that is specific to English language learners
 18 and would have a number of characteristics, but probably
 19 the most important is the ability to address both the
 20 language needs, that is, the English language acquisition
 21 needs, and the content needs, learning of academic
 22 content through various methods, including native
 23 language but not only native language instruction.
 24 In addition, the teacher would need to have an
 25 understanding of the theories underlying those approaches

1 and know how to use the learning environment ranging from
 2 instruction to assessment --
 3 MS. KOURY: I'm sorry. Could you repeat that last
 4 phrase?
 5 (The record was read as follows:
 6 "Answer: In addition, the teacher would
 7 need to have an understanding of the
 8 theories underlying those approaches and
 9 know how to use the learning environment
 10 ranging from instruction to assessment --")
 11 THE WITNESS: -- of student learning.
 12 And in California, much of that is incorporated
 13 in the CLAD certificate.
 14 BY MS. KOURY:
 15 Q You say "much." Do you think that -- I'm sorry.
 16 A CLAD certificate? Is that what you referred to?
 17 A Yes, mm-hmm.
 18 Q When you say "much," then does a CLAD
 19 certificate meet the standards you just articulated?
 20 A It would meet it in a minimal way.
 21 Q What about a BCLAD?
 22 A A BCLAD is important because in addition to the
 23 components of CLAD, it also involves proficiency in the
 24 native language of the students.
 25 Q My question was actually, Does a BCLAD meet the

1 standard for qualified teachers that you just
 2 articulated?
 3 A Again, in a minimum way.
 4 Q Is it your opinion or -- I'm sorry. Turning to
 5 page 37 of your report, in the last paragraph you state,
 6 "With respect to providing access to qualified EL
 7 teachers specifically, the State has failed on several
 8 fronts to detect, prevent and correct the instruction of
 9 hundreds of thousands of ELs by unqualified teachers."
 10 Do you define "qualified" in this particular
 11 sentence the same way that you just articulated to me?
 12 A Yes. There are other forms besides CLAD and
 13 BCLAD --
 14 Q Of what?
 15 A -- to begin to meet some of these needs.
 16 Q Right. My question, though, is with respect to
 17 qualified, the term "qualified" as you just defined it --
 18 A Yes.
 19 Q -- when you used "qualified" throughout your
 20 report, is that the definition you had in mind?
 21 MR. LONDEN: The question is ambiguous.
 22 BY MS. KOURY:
 23 Q To the extent -- you use the term "qualified
 24 teachers" throughout your report; is that true?
 25 A Yes.

1 Q In defining "qualified" throughout your report,
2 is the definition that you have in mind the same
3 definition that you articulated to me a moment ago?
4 A Yes, mm-hmm.
5 Q You indicated that the CLAD and the BCLAD only
6 meet this standard of qualified teachers in a minimal
7 way. Do you have any credentials in mind in the
8 California system that meet it completely -- that meet
9 your standard completely?
10 A The sense in which those are minimum is that to
11 be a proficient teacher of English language learners or
12 to be a proficient teacher, period, you have to think of
13 a credential as a minimum because much growth happens
14 with experience. And so appropriate professional
15 development in the course of teacher development after
16 they've received their credential and are in their
17 classrooms is an important part of their qualifications.
18 So in that sense, I mean, qualified in a minimum
19 way one would become qualified if with experience one
20 accrues experience, depth, texture, and all the things
21 that are involved in being a good teacher if you're given
22 those opportunities for growth in the course of
23 professional development, once teachers are in place.
24 Q Taking into account the credentialing
25 requirements that go into place for a CLAD or BCLAD, are

1 a -- an independent assessment that's administered by the
2 Educational Testing Service. And that's considered a --
3 that is an official certificate which results in -- it is
4 a recognition of high accomplishment in that area.
5 Q In your opinion, someone who has obtained a
6 National Board for Professional Teaching certificate is
7 qualified under the standard that you've provided?
8 A It would be high -- yes, I would say so.
9 Q And just so the record is clear, someone who has
10 received a BCLAD certification under the California
11 credentialing requirements would not completely meet your
12 standard of, quote, "qualified teacher"; is that correct?
13 A I think it would be minimally qualified, as
14 in -- minimally qualified meaning they are -- so they
15 would -- that would mean that they are qualified. I did
16 not -- but they would have to be -- you know, there's
17 room for growth, however.
18 Q I don't understand that because -- does that
19 meet the standard --
20 A I don't mean to use "minimally qualified" to
21 mean "unqualified."
22 Q So the standard that you've articulated as
23 qualified teacher -- and if we want -- I think you recall
24 what you just testified to. There's two particular
25 areas. The training for the specific -- actually, let me

1 any of the other credentialing requirements under the
2 California system, which include professional development
3 and/or the coursework that's done in order to get that
4 credential -- is there any credential that you think --
5 in other words, attaining that credential in the
6 California system -- that you think meets your standard?
7 A That is a -- some kind of a credential as
8 opposed to, say, experience or time logged?
9 Q Correct.
10 A Well, the only other official recognition beyond
11 that would be national board certification in this area
12 of instruction that's called the English as a New
13 Language certificate for the National Board for
14 Professional Teaching Standards.
15 Q I'm sorry. Would you repeat that?
16 A National Board for Professional Teaching
17 Standards.
18 Q And that's a certificate?
19 A It's a board certification. It's a national --
20 nationally recognized certification that's offered
21 through a -- well, an independent board much like the
22 medical board, I guess. It's a national board that
23 offers a certificate that -- in which teachers have to go
24 through a rigorous process of review and evaluation,
25 submit their materials and have it be evaluated through

1 start over.
2 The definition that you've already provided that
3 defines in your mind what qualified teachers are, is
4 that -- can that standard be minimally met?
5 A Yes, and it is minimally met by meeting the
6 CLAD, BCLAD certificate requirements.
7 Q So someone who has received a BCLAD or a CLAD,
8 in your mind, is minimally qualified to teach in a
9 classroom?
10 A Is qualified, yes.
11 Q So the minimal, the adjective you've given,
12 "minimal," is that meaningless?
13 MR. LONDEN: That's an argumentative question.
14 MS. KOURY: Sorry. I didn't mean it that way.
15 Q In other words, you think they'd be qualified to
16 teach in a classroom with English language learners?
17 A Yes. I can minimally swim, which means that I
18 don't drown, and I can get across a pool, but I'm not a
19 very good swimmer. So, you know, a teacher who is CLAD
20 certified has the minimum tools to survive in an
21 environment of teaching English language learners and to
22 do good -- you know, to provide adequate service, but
23 there is plenty of room for improvement.
24 MS. KOURY: Can we take a five-second recess?
25 MR. LONDEN: Why don't we take a break?

1 MS. KOURY: Good.

2 (Recess taken: 2:30 until 2:41 p.m.)

3 BY MS. KOURY:

4 Q Mr. Hakuta, turning to page 48, if you would, of
5 your expert report -- did you want me to shut that?

6 Okay. Turning to the first full paragraph on
7 page 48 it states, "The State must first establish a
8 standard that requires each English language learner be
9 taught by a teacher qualified to teach them. At a
10 minimum, under the State's certification system, that
11 means all English language learner teachers must at least
12 have the equivalent of a CLAD or an SB 1969/395
13 certification before providing ELD and/or SDAIE
14 instruction and at least the equivalent of a BCLAD for
15 primary language content instruction."

16 Is this still your opinion today?

17 A Yes.

18 Q And to the extent that you refer to qualified
19 teachers on page 2 in the last paragraph --

20 A Mm-hmm.

21 Q -- would that same definition of "qualified"
22 that's articulated on page 48 apply?

23 A Yes.

24 MR. LONDEN: The question has been answered. I can
25 withhold my objection.

1 knowledge of instructional materials for English
2 learners.

3 Q Do you have in your mind or have you reviewed
4 instructional materials for English language learners
5 that you think are appropriate under your definition of
6 "appropriate"?

7 A I have seen materials that are appropriate for
8 English language learners.

9 Q Could you describe for me those types of
10 materials, either by name or which school districts offer
11 them?

12 Let me rephrase that question.

13 Could you identify for me where you've seen
14 those instructional materials that you qualify as
15 appropriate?

16 A I don't think I can refer in a generic sense.
17 It really depends on the subject matter that's being
18 taught. But typically they would be materials that
19 are -- if they're high school materials -- that are
20 supported by the appropriate glossary materials. Many of
21 them are teachers who have adapted materials so that the
22 materials are thematically organized or they're graphic
23 representations of a text that are available for students
24 to understand or to have a more general understanding of
25 the subject matter so that they can then use that as a

1 BY MS. KOURY:

2 Q And that paragraph, on page 2, how do you define
3 "appropriate" as referenced in the phrase "appropriate
4 instructional materials"?

5 A "Appropriate" would mean that the materials
6 are -- materials that are in the content area are not --
7 the quality of the content and the level of the content
8 is not sacrificed in order to be accessible to English
9 language learners; that is, you should not offer English
10 language learners in algebra classes a textbook in
11 pre-algebra content in order to make it more -- in order
12 to make the English more accessible to students. That
13 would be an example of appropriate, meaning that the
14 materials are supported by adequate scaffolding, as it
15 were, or adequate supporting materials to make the same
16 high content of algebra available to the students.

17 Q In formulating your opinions for your expert
18 report and for testifying in this case, did you review
19 various types of instructional materials for English
20 language learners?

21 A I did not review materials specifically for
22 purposes of my testimony, but I am constantly being
23 exposed to materials for English language learners in the
24 course of my other work in visiting schools and talking
25 to teachers. And so I base my opinions on my general

1 framework around which they could develop an
2 understanding of the content.

3 I co-teach a class with an expert in this area
4 at Stanford University who -- and much of what it is,
5 even to the extent that as needed, taking materials that
6 are out there and then adapting them further for the
7 specific English language level of the students.

8 Q Is that adaptation done by the teacher, in your
9 opinion, or should that adaptation be done by the
10 teacher, in your opinion?

11 A I think to some degree it has to be adapted by
12 the teacher, but to some degree the materials themselves
13 have to be made so that they're adaptable or they might
14 have to be offered in a form that is usable by teachers
15 without having to adapt them.

16 Q In --

17 A Oh, can I also add one more thing, by the way?

18 Q Of course.

19 A There are also appropriate materials in English
20 as a second language, as well, so I talked about English
21 language learners. There's also English as a second
22 language materials. And there, I think there are more
23 off-the-shelf materials that can be used by teachers.

24 Q Could you describe those?

25 A Well, there are English as a second language

1 series, I believe the -- oh, I can only -- I wish I knew
2 the names. Since I don't purchase textbooks, I don't
3 know the names of them, but there is a series that has
4 lions and dragons on the cover. But they're a series
5 that are thematically organized and not just
6 drill-and-kill grammar in English but have content
7 support, and there's quite a bit of materials there that
8 are available.

9 Q Where have you seen these materials being used?

10 A School districts that I've worked with.
11 Evergreen School District would be one such in South
12 San Jose.

13 Q Any other school districts?

14 A There are some of the materials that are used in
15 San Francisco Unified School District that I work with.
16 There are materials that I've seen up there.

17 Q In San Francisco Unified School District they
18 use this particular ELS series?

19 A I cannot say whether the system as a whole uses
20 them. I do know that I've worked with the district
21 language development resource specialists who have shown
22 me some of their materials.

23 I'm not a curriculum specialist per se, so I
24 don't go and sit there and analyze and try to figure out
25 what they are, but I certainly have seen them in the

1 course of interacting with professionals who work in that
2 area. Whether that gets universally adopted through a
3 school system or not, I can't tell you.

4 Q In the last sentence of the last paragraph on
5 page 2 your report states, "The paper will propose some
6 policy options for the State to adopt to address the
7 unequal and substandard learning conditions per ELs in
8 California."

9 What do you mean by "unequal"?

10 A Unequal means compared to other schools where
11 there are fewer English language learners or fewer
12 students in poverty not having the same amount of
13 qualified teachers, not having access to teachers with
14 professional development opportunities as students in
15 those other schools.

16 Q Are you comparing English language learners in
17 certain school districts against English language
18 learners in other districts or in other schools when you
19 say "unequal"? I'm just trying to clarify.

20 A It really depends on the analysis, but the --
21 for example, in referring to the percentage of qualified
22 teachers in schools being different depending on the
23 percentage of English language learners in the school,
24 the unit of analysis there are schools, not districts.

25 Q Was your analysis focused on the equality

1 between English language learners versus non-English
2 language learners or some other comparison?

3 A The analysis was focused on English language
4 learners in schools with a large proportion of English
5 language learners compared to those in schools with
6 smaller proportions of English language learners. So
7 concentrations of English language learners.

8 Q In the last half of that testimony when you said
9 "compared to those," "those," you were referring to other
10 English language learners?

11 A Compared to those in schools with lower
12 percentages of English language learners.

13 Q Again, when you say "those," are you referring
14 to students in general or English language learner
15 students in other schools with lower concentrations of EL
16 students?

17 A Which analysis are you referring to?

18 MS. KOURY: Can you read back his prior testimony?

19 (The record was read as follows:

20 "Answer: The analysis was focused on
21 English language learners in schools with
22 large proportion of English language
23 learners compared to those in schools with
24 smaller proportions of English language
25 learners. So concentrations of English

1 language learners.")

2 THE WITNESS: I can't answer that without reference
3 to a specific analysis that you'd like me to comment on.

4 BY MS. KOURY:

5 Q I'm referring to your analysis -- I'm referring
6 to your analysis in your report.

7 A The report contains many different pieces of
8 information to which I'm referring.

9 Q So when you state "equal," that your report will
10 propose policy options for the State to adopt to address
11 unequal learning conditions, there's more than one
12 analysis involved there in terms of comparisons?

13 A I think the goal would be to address both
14 districts and schools because schools are contained
15 within districts. But some of the analyses that you look
16 at would be at the school level; others might be at the
17 district level.

18 Q What I was trying to ask you about was more in
19 terms of comparing English language learners at schools
20 with higher level concentration of English language
21 learners. Are you comparing those students against other
22 students in general at schools without high
23 concentrations of EL students, or are you comparing those
24 students against English language learners in schools
25 with lower concentrations?

1 A Comparing them to English language learners
2 in -- yeah, it's English language to English language
3 learner comparisons. That's what I was mostly referring
4 to.

5 Q Okay. As you sit here today, are you aware of
6 any opinions that you intend to offer at trial that are
7 not fairly summarized in your report?

8 A No. I believe that this testimony refers to
9 opinions that I plan to offer at the trial.

10 Q Turning to footnote 1 of your report --
11 actually, I think it's an asterisk. I'm not even sure
12 that's a footnote.

13 It states, "This report sets forth the opinions
14 that I expect to offer as a testifying expert in Williams
15 versus State of California and the bases for those
16 opinions, which include, and this report adopts and
17 incorporates in substantial parts, work of Professor
18 Patricia Gandara and Professor Russ Rumberger."

19 Do you intend to offer any testimony related to
20 Rumberger and Gandara's report which is not cited in your
21 report?

22 A That is contained in the Rumberger and Gandara
23 report?

24 Q Correct.

25 A Yeah. I --

1 A Yes.

2 Q Is it current?

3 A It was last updated June 2002.

4 Q Have there been any updates since then that you
5 would want to add?

6 A There's some publications that are not listed
7 here.

8 Q How many publications?

9 A I don't know, maybe two or three.

10 Q Do you have the titles of those publications?

11 A No, I don't.

12 Q Earlier you testified that you had had your
13 deposition taken before; is that correct?

14 A Yes.

15 Q How many times have you had your deposition
16 taken?

17 A Just that one time.

18 Q And in that instance were you serving as an
19 expert witness?

20 A Yes, I was.

21 Q And the subject matter of that litigation was?

22 A Bilingual education.

23 Q And the name of that case?

24 A Theresa P.

25 Q What did you charge in that case for your

1 Q Let me rephrase that question.

2 Do you plan on offering any opinions or
3 testimony in trial on this case that is included in the
4 Rumberger/Gandara report which is not cited in your
5 report?

6 A No, I do not. I do not intend to do that.

7 Q Do you know whether all the documents you've
8 relied on in forming your opinions which you intend to
9 offer at trial have been produced in this litigation?

10 MR. LONDEN: Foundation, vague.

11 BY MS. KOURY:

12 Q Do you understand the question?

13 A I believe that all of the documents that are
14 included in this have been offered, along with this
15 testimony.

16 MS. KOURY: I'll mark this as Exhibit 18.

17 (Deposition Exhibit 18 was marked.)

18 BY MS. KOURY:

19 Q I'm handing you what appears to be a copy of
20 your C.V. Do you recognize this document?

21 A Yes, I do.

22 Q For the record, this document bears the
23 Bates-stamp PLTF-XP-KH 0924 through 0942.

24 Is it true and correct in all respects as far as
25 you can tell?

1 deposition testimony?

2 A I believe I was not paid.

3 Q And you were working for -- I'm sorry. What
4 side were you on, were you working for on that?

5 A Plaintiffs.

6 Q How did you get involved in that case?

7 A I was asked by the attorneys at META, Inc.

8 Q What did they ask you?

9 A They asked me to serve as an expert witness.

10 Q What was -- could you just briefly describe the
11 nature of your testimony?

12 A I actually cannot remember. I believe it had to
13 do with basic research in bilingual education and with
14 the effectiveness of bilingual education programs and
15 referring to the evaluation studies showing the relative
16 effectiveness of that approach compared to English-only
17 approaches.

18 Q And have you ever been hired as a non-testifying
19 expert or a consultant?

20 A I was on a federal mediation panel for the --
21 for central Colorado on a bilingual education case.

22 Q Any other case?

23 A I offered expert declarations in Valeria, which
24 was a case involving Proposition 227.

25 Q Any other cases?

1 A I offered testimony in New York state regarding
2 the regents -- the use of English regents for English
3 language learners for graduation requirements.

4 Q For high school?

5 A Yes.

6 Q Any other cases?

7 A Not that I recall.

8 Q For the federal mediation panel, who hired you?

9 A It was the federal mediation service in Denver,
10 Colorado.

11 Q What was the scope of your --

12 A Judge Hansen, I think was his name. I can't
13 remember. This was about 20 years ago.

14 Q Were you paid in that case?

15 A No. Well, I take it back. I don't know. I
16 don't recall, but it was --

17 Q What was the nature of the testimony given in
18 that case, if you recall?

19 A I didn't testify. I just participated in a
20 mediation.

21 Q What was the extent of your involvement in
22 participating?

23 A I think I made two visits to Colorado to sit
24 around tables.

25 Q And in the Prop 227 case that you mentioned, the

1 I -- I also rebutted the testimony from declarants on the
2 other side.

3 Q Were you paid in that case?

4 A No, I was not.

5 Q And with respect to the testimony that you
6 offered in connection with the New York state case, what
7 was the nature of that testimony?

8 A The declaration was about the difficulty of
9 attaining a high standard of English proficiency to pass
10 English regents within a short period of time for recent
11 immigrants who are in high school.

12 Q Was it is your opinion in that case that recent
13 immigrants should be subject to the exam?

14 A That they should be given some sort of
15 provisional graduation requirement so that they could go
16 on to higher education without having to meet that
17 standard at the point of graduation.

18 Q And I take it you were hired by the plaintiffs
19 in that case?

20 A Yes.

21 Q Do you remember by whom you were hired?

22 A No, I don't. I think it was PRLDEF, in
23 New York, a Puerto Rican legal defense and educational
24 fund.

25 Q And were you paid in that case?

1 Valeria case?

2 A I offered two declarations.

3 Q Was that on behalf of the plaintiffs in the
4 case?

5 A Yes.

6 Q And who hired you in that case?

7 A It was -- I don't know what the coalition of
8 attorneys was, but it involved, again, attorneys from
9 META, Inc. Peter Roos is the attorney.

10 Q And what was the nature of your testimony in the
11 declarations?

12 A I testified that or declared that -- is that the
13 right word? Declare?

14 Q Either.

15 A -- that the program initiated -- advocated by
16 Proposition 227 was not -- did not meet the standard of
17 sound educational theory, which is the first standard of
18 Castaneda versus Pickard, and on the grounds of it being
19 unrealistic and how long it's expected it would take
20 English learners to learn English, and that there was no
21 educational basis on which we would expect those programs
22 to be successful.

23 Q I'm sorry. What was the last part of that?

24 A There was no educational basis for believing
25 those programs to be successful, among other things that

1 A No, I wasn't.

2 Q Turning to your C.V., you received your BA in --
3 I'm sorry, in psychology and social relations from
4 Harvard in 1975; is that correct?

5 A Yes.

6 Q Did you have any courses in education in
7 obtaining your BA?

8 A I think I took two courses in the school of
9 education.

10 Q Do you recall what the nature of those courses
11 were?

12 A One was on second language development and
13 another was in research methods.

14 Q You received your doctorate in experimental
15 psychology in '79; is that correct?

16 A Yes.

17 Q Also in Harvard?

18 A Yes.

19 Q What is experimental psychology?

20 A It's the study of human behavior as affected by
21 variables that can be controlled through experiments,
22 usually defined as random assignment or controlled
23 assignment of subjects or individuals to those
24 conditions. It used to be called behaviorism, as in
25 B.F. Skinner.

1 Q Could you generally describe the course of study
2 there, aside from what you've just testified to?

3 A They're all courses on learning and language.
4 Those were my specialization -- area of specialization.
5 The study of psycholinguistics, experimental design,
6 research design, child development, basic learning.

7 Q Did you write a dissertation in connection with
8 obtaining your doctorate?

9 A Yes.

10 Q What was the title of that?

11 A I actually don't remember the title of my
12 dissertation, but it was -- it had to do with the
13 acquisition of Japanese grammar by -- in children.

14 Q Was there anything else that you did during that
15 period while you were pursuing your Ph.D.? I'm sorry.

16 A Was there anything else that I did? Yeah, I got
17 married.

18 Q No. Anything else in terms of publishing
19 materials?

20 A I published a review paper on second language
21 acquisition in children, which was apart from my
22 dissertation or area of expertise. That was published in
23 the Harvard Education Review. And I spent some time in
24 the public schools in Cambridge, Massachusetts, as
25 just -- as an observer to understand the process of

1 teaching involved basic courses in statistics, research
2 design, introductory statistics and psychology of
3 language and child development. I trained graduate
4 students in child development. I ran a training grant --
5 a pre-doctoral and post-doctoral research training grant
6 under the National Institutes for Mental Health.

7 And then in my research I worked very closely
8 with the New Haven public schools in looking at their
9 program for Puerto Rican children, bilingual programs and
10 English language development programs for those children.

11 Q So while you were -- did that -- does that
12 description similarly apply to -- let me just ask, What
13 were -- what was your general responsibility as an
14 associate professor of psychology at Yale?

15 A Exactly what I just described.

16 Q You just articulated?

17 A Mm-hmm.

18 Q So why did you transition into bilingual
19 research at UC?

20 A Actually, I did -- almost all of my research at
21 Yale was with bilingual children in the New Haven public
22 schools. And we looked at the cognitive and language
23 development of those children. We worked very closely
24 with teachers and administrators of the program there,
25 and I worked on policy issues related to bilingual

1 second language acquisition.

2 Q What grade levels were you observing?

3 A It was mostly elementary.

4 Q And was there a particular native language that
5 you were involved with -- I'm sorry. In --

6 A No.

7 Q No. So what was the range of various languages?

8 A Portuguese, Spanish, Japanese. I was involved
9 in a organization known as MATSOL, which is the
10 Massachusetts Association of Teachers of Speakers of
11 Other Languages.

12 Q Did you ever teach any courses at the primary
13 level?

14 A No, I did not.

15 Q Did you ever teach any courses -- when I say
16 "primary," I meant elementary school level.

17 A No.

18 Q What about the high school level?

19 A No.

20 Q Middle school?

21 A No.

22 Q Could you just generally describe your
23 responsibilities while you were an assistant professor of
24 psychology at Yale?

25 A I did both teaching and research, and my

1 children.

2 I testified in Congress during that period on
3 the issues related to the education of English language
4 learners or who then were called limited
5 English-proficient children.

6 Q Was this during the time frame that you were
7 still at Yale?

8 A Yes.

9 Q And then as director of the bilingual research
10 group at UC Santa Cruz --

11 A Right. We developed a research program to study
12 bilingual children in schools.

13 Q What were your general responsibilities as a
14 professor of education and psychology at the UC Santa
15 Cruz?

16 A I taught courses for their teacher education
17 program, again, in the areas of research -- research
18 methods and student assessment and courses on learning
19 and second language development and the language courses
20 that at that time -- I guess they had the -- it was the
21 certificate that preceded, predated the current CLAD,
22 BCLAD, but this was -- even in those days they had a
23 requirement for students to understand about the
24 linguistics instructor of the English language, and so I
25 taught courses related to that.

1 Q And the scope of your responsibilities while a
2 professor at the school of education at Stanford?

3 A I again taught courses in the area of research
4 methods, statistics, language acquisition. I've taught
5 courses in policy development with school reform and the
6 English language learners, psychology of learning. I've
7 taught -- almost every year I've been there I've taught a
8 course in the teacher education program for students
9 obtaining their certificate.

10 Q And have your responsibilities changed at all in
11 any significant way from your current position at
12 Stanford?

13 A No. It's pretty much the same. I've done --
14 continued to teach those courses, to do research. I've
15 expanded some of my work to go outside of the university,
16 as I said earlier. I have a project with the
17 San Francisco Unified School District to offer the CLAD
18 certificate to district teachers who don't have the CLAD
19 certificate, and that I do outside my regular teaching
20 load.

21 Q Throughout your career, have you ever had any
22 input with the California teaching credential -- I'm
23 sorry -- Commission on Teacher Credentialing with respect
24 to the credentialing requirements promulgated by the
25 CCTC?

1 piece of knowledge or skill that teachers need to have is
2 infused into the rest of the curriculum and teacher
3 education without it being specifically earmarked or
4 targeted or set aside, one often ends up watering it down
5 so that the needs don't get addressed by the program.

6 So as the CCTC has moved from having a CLAD
7 certificate separately to one that is supposed to be
8 infused, you're in danger of just watering it down, so
9 you do too little too late -- or it becomes too diffuse.

10 So the nature of my input has been to say that
11 there needs to be identifiable pieces of the training,
12 regardless of whether you have a model that's infused or
13 separate.

14 BY MS. KOURY:

15 Q Turning to page 3 of your report, in the first
16 paragraph it states: "Instructors of these students need
17 explicit training and additional teaching skills and
18 theoretical knowledge beyond that which is taught to
19 mainstream teachers in order to effectively instruct this
20 population."

21 With respect to theoretical knowledge, what did
22 you mean by this?

23 A They have to understand knowledge about
24 language, about what human language is and what acquiring
25 language is. You have to have knowledge about how

1 THE WITNESS: (Inaudible.)

2 THE REPORTER: I'm sorry. Can you repeat the
3 answer?

4 MS. KOURY: I'll just rephrase the question.

5 Q Have you had any input with the CCTC in
6 developing credentialing requirements?

7 A I have -- I have not testified to the CCTC, but
8 I have provided input through our director of teacher
9 education at Stanford, who interacts with the CCTC. I've
10 also provided input through a similar person at UC Santa
11 Cruz when I was there.

12 Q What kind of input did you provide to the
13 director at Stanford?

14 A The issue in teacher education for English
15 language learners is how to provide targeted,
16 not-watered-down training for teachers of English
17 language learners. And so the nature of the input I
18 provided is to -- for the curriculum to always have some
19 identifiable specific piece of the training that
20 addresses issues of English language learners so that it
21 doesn't just become watered down and infused throughout,
22 which often means that it doesn't get paid attention to.

23 Q I'm sorry. What did you mean by that last half?

24 MR. LONDEN: The question is vague.

25 THE WITNESS: Let me clarify. If you say that a

1 learning and -- how language interfaces with learning.
2 So those are all theoretical. As opposed to how it is,
3 you have to know about the research that shows that
4 language has some special properties and that learning
5 and language interact.

6 Q What credentials, if any, in the California
7 system do you think meet the standard?

8 A The CLAD retention would address that.

9 Q What about the SB 1969 certification?

10 A I believe SB 1969 exposes teachers to those
11 concepts but does not get very deeply into them.

12 Q Do you think that a teacher that doesn't have
13 those particular credentials, a CLAD, could gain that
14 knowledge through professional development subsequently?

15 A They could.

16 Q Do you have an opinion as to whether that would
17 be -- certain professional development geared in that
18 direction would be effective?

19 MR. LONDEN: Vague.

20 THE WITNESS: Yeah, I -- could you define the
21 "effective"?

22 BY MS. KOURY:

23 Q Sure. Do you think that a teacher that doesn't
24 have a particular CLAD retention could gain the same
25 access to that theoretical knowledge through professional

1 development?
 2 A I believe that they could. I do not know that
 3 the quality of professional development -- that the
 4 quality control would be very high, just knowing what I
 5 know about professional development activities in many
 6 school districts.

7 Q I'm sorry. I couldn't hear that last --

8 A Given what I know about the quality of
 9 professional development in many school districts, I
 10 would say that I could not be certain that that would be
 11 very effective.

12 Q What type of research have you done to determine
 13 the types of professional development that various school
 14 districts in California provide?

15 A I've sat in many such programs as an observer
 16 and I have talked to many teachers about the quality of
 17 their experiences in such programs.

18 Q Anything else?

19 A I know of research of the sort, for example,
 20 that I reviewed in the National Academy of Sciences book
 21 that I edited of effective professional development
 22 programs for English language learners, and I know that
 23 they are much more the exception than the rule.

24 Q What do you mean by that -- in California?

25 A In California.

1 not reveal their identities.

2 Q That's fine.

3 A Do you want to know those or --

4 Q What school districts that are named in this
 5 case have you reviewed?

6 A I've had extensive connection with the
 7 San Francisco Unified School District.

8 Q Any others? Any other school districts that are
 9 named in this Complaint?

10 A I don't know all of the school sites that are
 11 listed in here, so --

12 Q How about Oakland Unified?

13 A Yes, I can speak for Oakland Unified.

14 Q What about LAUSD in terms of professional
 15 development to the extent that you observed those
 16 districts and how they -- or how they implement their
 17 professional development programs?

18 A No, I cannot speak for LA Unified.

19 Q Long Beach Unified School District?

20 A I know -- yeah, well, I do have connections with
 21 Long Beach.

22 Q When you say connections, have you observed that
 23 district's professional development?

24 A I said that because that's a district with whom
 25 I'm currently working to develop some professional

1 Q What do you base that opinion on?

2 Let me rephrase that for the record.

3 On what do you base your opinion that the
 4 effective professional development programs that are set
 5 forth by the National Academy of Sciences are more the
 6 exception than the rule in California?

7 A I base that mostly on my personal experiences in
 8 schools and on the accounts of many educators that I have
 9 spoken with.

10 Q With your personal observations of school
 11 districts, what school districts have you been involved
 12 in, in observing --

13 A I've been --

14 Q -- in connection with professional development?

15 A I've been at many, many school districts.

16 Q Could you list the school districts or is it --

17 A Well, most recently I've -- you know, I have
 18 been with -- or involved with the Evergreen School
 19 District. There are some districts that I really cannot
 20 reveal the identities of because they're research sites
 21 with whom I have confidentiality agreements that I
 22 believe would be protected.

23 Q I don't know if you have an opinion on this, but
 24 you have --

25 A The agreement to do research means that I would

1 development programs.

2 Q And what about Lynwood Unified School District?

3 A No.

4 Q Are there any other -- sorry.

5 A San Diego City schools.

6 Q Is that yes, you have?

7 A Yes. I have had occasion to be part of
 8 professional development activities there.

9 Q Any others? Ravenswood City Elementary School
 10 District?

11 A In California, no.

12 Q And to the extent that you reviewed these
 13 districts that you just listed, their professional
 14 development programs --

15 A I did not review.

16 Q -- you observed. I'm sorry.

17 To what extent did you observe their
 18 professional development programs?

19 A They're usually casual or -- but I've also
 20 spoken to individuals on those school districts about
 21 professional development activities.

22 Q At the district level?

23 A Yes.

24 Q And how long ago were these -- or how long ago
 25 were your observations of San Francisco Unified School

1 District's professional development?
 2 A San Francisco is weekly.
 3 Q What about Oakland?
 4 A Oakland? About a year ago.
 5 Q And Long Beach you stated you're currently
 6 helping them revise their program?
 7 A Yes, I'm currently -- yes. Not directly, but,
 8 yes, my graduate student team is working with them.
 9 Q San Diego City schools?
 10 A Two years. Two or three years.
 11 Q You stated that you've talked with many teachers
 12 with respect to professional development. What did you
 13 mean by that? Are these formal discussions? Informal
 14 discussions?
 15 A Informal discussions.
 16 Q And do these teachers range from a various
 17 number of schools?
 18 A They're not -- I would not characterize them as
 19 a random sampling of the school districts.
 20 Q What have your observations been of various
 21 teachers that you discussed professional development
 22 with?
 23 A Most of them are crying out for high-quality
 24 professional development experiences and are not happy
 25 with what's available in the district -- in their present

1 which gives the appearance of their being capable of
 2 receiving and doing fine in an instructional setting in
 3 which English is being used. And usually that's quite
 4 superficial and so they'll have difficulty when they're
 5 in a -- in an instructional setting that's only in
 6 English.
 7 Teachers may make assumptions about how long it
 8 takes children to acquire English, you know, that kids
 9 who show this superficial proficiency in English after a
 10 year, that they're really ready to be mainstreamed and
 11 they really aren't. And so that would be the kind of
 12 assumptions the research would suggest, that it takes
 13 more like three to five years to really develop strong
 14 proficiency in English.
 15 So it really has to do with expectations, and
 16 teachers need to be more realistic about what the
 17 expectations are for the time course of second language
 18 acquisition.
 19 Q Your statement that it takes three to five years
 20 for English learners to become proficient in English, is
 21 that an issue that's pretty well debated in the area --
 22 in your field among experts?
 23 MR. LONDEN: Vague, ambiguous.
 24 THE WITNESS: Pretty well debated?
 25 BY MS. KOURY:

1 circumstances.
 2 Q Are any of these communications documented in
 3 any of your research?
 4 A No.
 5 Q On page 3 of your report, if you would please
 6 turn to it. The first full paragraph in the last
 7 sentence you state, "Without appropriate training,
 8 teachers may make assumptions and/or have unrealistic
 9 expectations about a student's ability to learn English
 10 or content-area knowledge through English, which may lead
 11 to a detrimental learning environment for students."
 12 Did you draft this particular sentence, do you
 13 recall?
 14 A I probably did.
 15 Q Why do you say that?
 16 A I can't -- I can't recall whether I did or not,
 17 but McLaughlin 1992 is a reference that I often use to
 18 talk about the second language acquisition.
 19 Q Is it still your opinion today?
 20 A Yes.
 21 Q What did you mean by "make assumptions or have
 22 unrealistic expectations about a student's ability to
 23 learn English"?
 24 A Some children may develop a superficially -- a
 25 surface level of language -- English language proficiency

1 Q Is it hotly debated in your field of expertise?
 2 A It's hotly debated in the policy environment
 3 because legislation tries to set time limits or time
 4 frames around language acquisition. There is very little
 5 disagreement among researchers in this area as to how
 6 long it takes children to develop high levels of
 7 proficiency in English.
 8 Q Are you aware of experts in that area that
 9 disagree with that finding?
 10 A I'm not aware of any research -- any experts who
 11 have conducted research on this topic who would claim
 12 otherwise.
 13 Q Is it your opinion that a teacher with the
 14 appropriate training will be able to avoid making these
 15 types of assumptions that you refer to in this paragraph
 16 on page 3?
 17 A Can you rephrase that?
 18 Q Sure. You write -- your report states without
 19 appropriate training teachers may make assumptions. Is
 20 it your opinion that teachers with the appropriate
 21 training can avoid making these types of assumptions?
 22 A Teachers with the appropriate training would be
 23 less likely to make those assumptions.
 24 Q When you state "appropriate training," what are
 25 you referring to?

1 A Appropriate training -- ideally appropriate
2 training would have both a theoretical and a practical
3 component.

4 Q And does that translate into any credentials
5 offered or any credentialing requirements?

6 A Again, if you had a well-implemented CLAD
7 curriculum, that would meet that requirement.

8 MS. READ-SPANGLER: Can we take another break when
9 you get to a good stopping point?

10 MS. KOURY: Sure. We can take a break now.

11 (Recess taken: 3:37 until 3:48 p.m.)

12 BY MS. KOURY:

13 Q Professor, can you turn again to page 3 of your
14 report, second paragraph? It states, "The International
15 Education Association Teachers of English to Speakers of
16 Languages, TESOL, states that, "The field of teaching
17 English to speakers of other languages is a professional
18 activity that requires specialized training."

19 And it goes on to say, "TESOL describes the
20 field of English as a second language instruction, as 'a
21 multi-faceted, academic discipline requiring training in
22 linguistics, second language acquisition, language
23 pedagogy'" --

24 A Pedagogy.

25 Q Thank you.

1 established two differing certification options for ELL
2 teachers to choose from. One, a focus on students in
3 early childhood through middle childhood, or two, an
4 emphasis on students in early adolescence through young
5 adulthood.

6 "These development levels are then further
7 subdivided into two certification paths, one that focuses
8 on issues specific to instructors of English language
9 development, and another that focuses on specific -- or
10 issues specific to bilingual teachers."

11 Is this something that you wrote, this
12 particular paragraph?

13 A Yes.

14 Q And are either of these certification paths or
15 options comparable to the certifications established by
16 the CTC?

17 A Yes.

18 Q How are they comparable?

19 A Well, the national board, again, is for teachers
20 of English language learners rather than teachers of
21 English as a second language. So that certification --
22 the intent of that certification is to develop teachers
23 who are both -- addressing both the English language
24 development needs and the content development needs of
25 English language learners.

1 -- "methodology, materials development, testing
2 and research, curriculum and syllabus design, program
3 administration, and cross-cultural communication."

4 Is this something that you wrote, this
5 particular paragraph?

6 A I think I did.

7 Q And are the TESOL's requirements for English as
8 a second language and ELL students, are those comparable
9 to those requirements established by the CTC?

10 MR. LONDEN: Vague.

11 BY MS. KOURY:

12 Q Do you understand that question?

13 A The -- no, they're not -- it's a subset of it.
14 The TESOL requirements would be a subset of the CTC
15 requirements in the sense that the CTC requirements, the
16 CLAD requirements address both the English language
17 development and the content development needs of
18 students. TESOL is only concerned with the English
19 language development side of the development needs of
20 English language learners.

21 Q In your opinion, does the class encompass the
22 requirements set forth by TESOL?

23 A Yes.

24 Q On page 3 you also state, "The National Board of
25 Professional Teaching Standards has established -- has

1 Q How does that translate into being comparable to
2 the CTC's credential requirements?

3 A That is also the intent of the CTC credential
4 requirements. It serves language needs as well as the
5 content needs of language learners.

6 They are different in that the national board
7 intent is a high level of competency in these areas,
8 whereas the CLAD certification is a lower level of
9 competence.

10 Q Also on page 4 you cite a Lily Wong Fillmore and
11 Catherine Snow for their conclusion that "all teachers
12 should have a minimum of seven college-level courses on
13 specific -- or I'm sorry -- specified aspects of the
14 language to ensure their ability to teach children
15 academic English."

16 Did you draft this particular paragraph?

17 A Yes.

18 Q Is this your opinion still?

19 A Yes, it is.

20 Q Looking at the courses listed with respect to --
21 or in footnote 6, the courses listed --

22 A Mm-hmm, yes.

23 Q -- are the courses listed in footnote 6 the
24 seven -- I'm sorry -- the seven college-level courses
25 that you think are necessary?

1 A The intent of listing them there is to specify a
2 range of the kinds of knowledge about language that -- in
3 the area of language acquisition that teachers of English
4 language learners need to have.

5 I would not be so prescriptive as to say that
6 this is the particular way in which that whole range
7 needed to be divided, but that the intent of it is that
8 it goes to everything from the grammatical structural
9 aspects of language to its uses in social situations and
10 ranges from oral to textual kinds of data.

11 Q You're not tied to these particular courses, but
12 these are the types of courses that you think are
13 necessary?

14 A These are the range of areas that should be
15 covered by courses that address the language development
16 needs of the English language learners.

17 Q Are you aware of any research or data showing
18 that this range of courses results in higher student
19 achievement?

20 A The data that one would refer to are -- are the
21 studies that are referred to in my testimony in which we
22 argue that teachers who have received the kinds of
23 training that includes these sorts of knowledge areas
24 show better student outcomes than teachers who don't have
25 that training. So this would refer to several of the

1 studies that I've cited in my testimony.

2 Q Could you specify which of those studies you're
3 referring to?

4 A One of them would be the Hayes and Salazar
5 study, which looked at teachers in Los Angeles Unified.
6 Another would be the Collier and Thomas study, looking at
7 teachers in Houston, and another would be the -- I guess
8 those two would address the language-specific needs --
9 these language domains that are listed in footnote 6.

10 Q When you say "included," do you mean that the
11 teachers studied in those particular reports were trained
12 in these particular -- had these particular range of
13 courses in their training?

14 A These components are addressed in CLAD, BCLAD
15 training. These components I believe are addressed in
16 ELS certification in the state of Texas. The Houston
17 data show that those students who had ELS-certified
18 teachers, who took classes from ELS-certified teachers had
19 better outcome than those who took classes from teachers
20 who didn't have that certification.

21 Q You said you believe these components were
22 included in a Houston ELS training. What do you base
23 that on?

24 A Because in most states the -- an ESL
25 certification involves courses of this range.

1 Q Have you reviewed the courses required for an
2 ESL teacher -- or the requirements to teach ESL in
3 Houston?

4 A In Houston, no.

5 Q Do you know of any jurisdiction, any state that
6 requires a minimum of seven college-level courses that
7 includes these components which are listed in footnote 6
8 as a retentional requirement to teach English learners?

9 A I think most jurisdictions don't specify the
10 number of courses, but I think most teacher credential --
11 states with teacher credentials -- Connecticut would be
12 an example of a state like that that has an ELS
13 certificate -- include specification of areas to be
14 addressed in an ELS certificate program, and these would
15 be included in those.

16 Q And to a certain extent you testified -- I'm
17 sorry.

18 And you testified that the BCLAD and the CLAD
19 also include these components in their requirements?

20 A Yes.

21 Q Are you -- in your opinion, is it important that
22 there is a minimum number of seven college-level courses?

23 A No.

24 Q What's important, in your opinion?

25 A That there be serious engagement with these

1 issues rather than superficial coverage of these issues.

2 Q And to what extent do you think that the
3 California teaching requirements as they now stand fail
4 to meet that serious engagement?

5 MR. LONDEN: It's vague.

6 BY MS. KOURY:

7 Q Do you understand the question?

8 A Which California requirement?

9 Q The California teaching requirements in general
10 for English language learners.

11 A The CLAD certification?

12 Q Not limited to just that credential. The
13 certification in general for any teachers teaching
14 English language learners in California.

15 A That would have to be CLAD or BCLAD presently.

16 Q So in your opinion only the CLAD or BCLAD would
17 meet that level?

18 A The CLAD and BCLAD are the only certifications
19 that are currently available for teachers certified in
20 California to teach English language learners except for
21 those who have been grandfathered in from previous
22 authorization such as BCC and so forth.

23 Q What about the SB 1969 certification?

24 A Those would be people who -- yes, I mean if
25 you -- those would not be people coming up through the

1 system.

2 Q Is it your opinion that they would not meet the
3 standard; in other words, that their training would not
4 have included these components?

5 A That's right. I don't think that those that go
6 through 1969 would have really the seat time even to
7 enable them to get into and engaged with these domains in
8 any serious depth.

9 Q In your opinion, are courses for teachers
10 teaching English language learners in building strategic
11 comprehension important? Do you want me to repeat that?

12 A Yes, please.

13 Q In your opinion, are courses in building
14 strategic comprehension important for teachers who are
15 going to teach English language learners?

16 A What do you mean by "strategic comprehension"?

17 Q Do you have any understanding as to what that
18 means --

19 A No.

20 Q -- in your own mind? Development of academic
21 English proficiency or through dialogue, reading and
22 writing?

23 A Is that one of the -- I mean I think if what
24 we're talking about is language development and second
25 language learning and teaching, that would be covered in

1 what that would cover.

2 Q Do you think it's important for teachers
3 teaching English language learners to have courses that
4 teach them how to -- how to teach reading and
5 comprehension of text, in and of itself?

6 A Yes.

7 Q Do you think to a certain extent that that is
8 taught in these particular courses that are listed in
9 footnote 6?

10 MR. LONDEN: Vague.

11 THE WITNESS: Is what taught in these courses?

12 BY MS. KOURY:

13 Q Is that taught in the courses that you've listed
14 here in footnote 6? How to teach reading comprehension
15 and writing.

16 A It should be. I think the teaching of reading
17 itself as taught in teacher education programs is --
18 needs to have these competency areas, which are really
19 meant to talk about areas that are specific to English
20 language learners, need to be infused into the courses
21 that teach reading, per se. Reading strategies that you
22 talk about.

23 So, yes, I would say that issues of second
24 language learning and teaching and text analysis and
25 language understanding and educational settings, those

1 that, I believe.

2 Q In your opinion -- I'm sorry. Which one?
3 Language development?

4 A Second language learning and teaching.

5 Q In your opinion, second language learning and
6 teaching would cover the development of academic English
7 through dialogue, reading and writing?

8 A I don't know what dialogue, reading and writing
9 is. Are you referring to like dialogue journals that
10 teachers use to dialogue with their students -- that
11 teachers and students exchange? I mean I've heard of it
12 in that kind of a context, but --

13 Q To that extent do you think that those courses
14 cover what you just articulated?

15 A They may cover it. These labels -- these
16 categories are fairly broad categories, and they may --
17 if appropriately implemented, what they encompass are
18 specific teaching strategies to enable these areas to be
19 addressed. But I certainly know that control of coverage
20 of the curriculum content of courses that bear these
21 labels in teacher education programs vary considerably in
22 quality. The CTC does not monitor that very well, and so
23 I can't assure you that just by somebody saying, "We
24 cover second language learning and teaching," that that
25 would -- you know, that would -- I can't really guarantee

1 should be taught in the context of how to teach reading
2 comprehension that are sensitive to these aspects of
3 second language learners.

4 Q Also on page 4 in the last full paragraph you
5 describe your role on the National Research Council,
6 which I think you've testified about a little bit earlier
7 today; is that correct?

8 A Yes.

9 Q What exactly was your role in that committee?

10 A I was appointed to be a member and chair of the
11 committee. And as chair, usually the chair works with
12 the study director, who is a staff member of the National
13 Academy of Sciences, to write much of the report, to have
14 other members of the report -- of the committee write
15 various components of it, and to pull it together into a
16 book that is vetted through a rigorous National Academy
17 review process and is eventually released with a set of
18 recommendations.

19 Q With respect to chapter 7 of that report which
20 dealt with educating limited English-proficient students,
21 what was your particular role with that?

22 A The chapter -- actually, the whole book dealt
23 with the education of English language learners, and
24 chapter 7 was about characteristics of effective schools
25 for English language learners.

1 And my role in that was to formulate or to frame
2 the scope of the review of the literature of the studies
3 that were included in the review, to commission -- in
4 that particular case we had a commissioned paper written
5 by a person external to the committee whose expertise was
6 in the area of that literature to take that report and
7 the deliberations of the committee on the quality of the
8 evidence and its recommendations and to draft the chapter
9 for -- you know, that became the chapter for the report.

10 Q Is it fair to say that the 33 studies for
11 systemic review that the National Research Council
12 identified were effective -- had effective programs for
13 English language learners?

14 A It would be fair to say that they were judged to
15 be effective either on the grounds of achievement test
16 scores or on the grounds of the professional judgment of
17 multiple educators who have had experience with the
18 school.

19 Q That was going to be my next question. Who --
20 you somewhat testified to it already. Who made the
21 decision as to whether or not they would be included as
22 one of the 33 studies? Was it just educators, as you
23 indicated?

24 A It's based on criteria that include objective
25 test scores, plus nomination -- a nomination process by

1 compared against a control group or some other group?

2 A No.

3 Q Was California -- were any programs within
4 California included among these 33 studies?

5 A I believe there were some schools in California
6 that were included, yeah.

7 Q Do you recall specifically which programs or
8 what components of California programs were included?

9 A I think there was a -- there was a middle school
10 in San Francisco that was in there, an elementary school
11 somewhere in Southern California. I don't recall the
12 specific names of the schools. In the case -- some case
13 studies, they're not -- because of confidentiality,
14 they're not identified.

15 Q The committee determined that staff development
16 is part of an effective English language program; is that
17 correct?

18 A Yes.

19 Q What type of staff development did the committee
20 determine was necessary or I should say effective?

21 A I don't think we necessarily said that -- got
22 into the characteristics of the staff development in
23 terms of content coverage. What we were interested in
24 more in this particular case was the overall school
25 climate, such that there was serious attention paid to

1 educators to sort of -- to identify those characteristics
2 or identify the schools as being effective.

3 Q So there were two components that you measured
4 these programs by. One was student scores; was that
5 correct?

6 A It was an either/or. These are either schools
7 where the test scores show the schools to be effective or
8 schools that were identified as being effective.

9 Q By whom?

10 A By district personnel, State -- people in the
11 State Department of Education, people who know the
12 schools and know the long-term outcomes of students in
13 those programs.

14 Q And how did you decide which component would
15 govern whether a study was going to be included --
16 whether a program would be included? In other words, how
17 did you know whether to look at the test scores or
18 determine from feedback from the administrators of the
19 district?

20 A We used both.

21 Q I thought you said it was an either/or.

22 A Yeah, I mean if it met one or the other of the
23 criteria and the school was well-described, we accepted
24 that.

25 Q The 33 programs that you reviewed, were they

1 staff development that was -- that had continuity and
2 avoided or did not have -- or had continuous and
3 accumulative and long-term properties rather than a
4 weekend workshop on the method of the week.

5 Q Do you have an opinion as to whether or how that
6 type of staff development compares to staff development
7 provided generally among districts in California from
8 your observations of them?

9 MR. LONDEN: Assumes facts.

10 BY MS. KOURY:

11 Q You can go ahead and answer.

12 A My opinion in general is that most staff
13 development efforts are episodic and that more sustained
14 and accumulative efforts at staff development would be
15 desirable, but also that just providing the form of a
16 professional development isn't nearly as important as the
17 receptivity of the staff to receiving staff development,
18 which has to come about through not just -- I mean it's
19 necessary to provide the right kinds of staff
20 development, but also requires will on the part of the
21 leadership in the school to value professional
22 development, and that often comes from principals and the
23 tone set by the school district and so forth, and the
24 State.

25 Q What do you think the State's role should be

1 with respect to professional development, in making
 2 professional development effective?
 3 MR. LONDEN: Vague.
 4 Go ahead.
 5 BY MS. KOURY:
 6 Q Do you understand that question?
 7 A Can you try to make it a little more specific?
 8 Q Sure. To the extent that you've testified or to
 9 the extent that your experience on the National Research
 10 Council allowed you to view what you called effective
 11 professional development programs, what do you see the
 12 State's role in trying to bring that type of effective
 13 professional development to the school districts here in
 14 California -- what do you see the State's role being?
 15 A I think the State could play an important role
 16 in providing incentives for participating in professional
 17 development, in providing and working with or
 18 establishing an infrastructure that helps develop
 19 effective professional development.
 20 I think the State could play a greater
 21 leadership role in integrating professional development
 22 activities across the different domains in which
 23 professional development activities are offered, by which
 24 I mean that much of the State efforts at professional
 25 development, through the professional development

1 institutes at the University of California or they're run
 2 through the University of California, are content
 3 area-specific or discipline-specific, and the State could
 4 play a role in trying to interweave programs that address
 5 English language learner needs into those professional
 6 development programs.
 7 The State could play more of a leadership role
 8 in trying to get more external assistance, such as
 9 federal aid, to develop effective models of professional
 10 development.
 11 Q To what extent have you reviewed the current
 12 professional development program or model used by the
 13 State?
 14 A I have some involvement with the professional
 15 development institutes at the University of California
 16 system. I have, again, looked at CLAD and the system for
 17 providing CLAD to those who are already credentialed
 18 teachers.
 19 Q Anything else?
 20 A Repeat that question again, if you don't mind.
 21 I started to answer it, but I want to make sure I answer
 22 it thoroughly.
 23 MS. KOURY: Do you mind repeating it?
 24 (The record was read as follows:
 25 "Answer: To what extent have you reviewed

1 the current professional development program
 2 or model used by the State?")
 3 THE WITNESS: Yeah, I guess those would be my two
 4 main sources of information.
 5 BY MS. KOURY:
 6 Q With respect to page 4 of your report in that
 7 same paragraph we were discussing, you go on to say that
 8 "often the training identified in the studies reviewed
 9 here is specific to teachers of these students, such as
 10 English language development and the use of sheltered
 11 instruction."
 12 How are these programs to which you're referring
 13 comparable to the staff development offered by school
 14 districts in California for English language development
 15 and the use of sheltered instruction, other than to what
 16 you've already testified?
 17 A I think I've lost you here. What are you
 18 referring to on page 4?
 19 Q You know, you can disregard that. I think I've
 20 already covered it. I'm going to move on.
 21 Can you turn to page 30 of your report?
 22 In the first paragraph of that report you state
 23 that, "in fact, many districts sponsor extensive
 24 professional development programs, yet this program is
 25 the largest statewide effort" -- I'm sorry.

1 Let me start back with the beginning of that
 2 paragraph.
 3 Do you mind reviewing that paragraph for me?
 4 And let me know when you've finished reviewing it.
 5 A Sure. Go ahead. I'm familiar with that
 6 paragraph.
 7 Q About the third sentence down you say, "Of this
 8 amount, only \$8,358,104 were earmarked for professional
 9 development in the area of English language development.
 10 This constituted about 16 percent of the professional
 11 development budget, although English language learners
 12 constitute fully 25 percent of the students in the state
 13 and arguably one of the public schools' most significant
 14 professional development challenges."
 15 A Mm-hmm.
 16 Q Do you know, to the extent -- what extent the
 17 various school districts' budgets allocate money from
 18 their general fund to professional development?
 19 A This is not school district money here. This is
 20 State funding to the University of California
 21 Professional Development Institutes, which are
 22 institutes -- subject-matter institutes, subject-matter
 23 projects, foreign language, English, language arts,
 24 social studies and so forth, and they are projects in
 25 which teachers participate over the summer. It's the

1 largest statewide initiative for professional
2 development. So these aren't district money.

3 Q So is it your opinion that the percentage of the
4 budget for these programs -- the percentage allocated to
5 professional development for English language issues
6 should be increased?

7 A I think that what I'm saying here is that it's
8 not adequately managed. I'm not saying that the amount
9 of money spent for English language -- for the specific
10 English language development institute should be
11 proportional to the proportion of English language
12 learners in the state. I'm just using that as an
13 indication of a problem, which is a problem because none
14 of the other subject-matter areas adequately address the
15 needs of English language learners.

16 Q What do you mean, "other subject-matter areas"?

17 A Well, you know, math. The math professional
18 development institute is a subject-matter institute to
19 work with math teachers. That is considered a math
20 institute, not a math for English language learners
21 institute. The way that the math institute individuals
22 look at their role is that "We're doing math. We're not
23 doing English language learners."

24 Now, they should be doing English language
25 learners. The basis of my complaint here was based on a

1 subject-matter issues should try to infuse the needs of
2 the English language teacher?

3 A It's a separate matter as to whether this is an
4 adequate amount of money or not to address this need.
5 But certainly the first place to turn to is to make it
6 much more efficient in the way in which the money is used
7 so that the needs of English language learners are
8 addressed.

9 Q Turning back to page 5 of your report --

10 MR. HAJELA: You're not familiar with the "no going
11 backwards" rule, are you?

12 THE WITNESS: I see the strategy. It's an onion
13 thing.

14 BY MS. KOURY:

15 Q You conclude on page 5, with respect to your
16 comments on the National Research Council report, that,
17 "Thus the overall conclusion of the National Research
18 Council report supports the finding of Darling Hammond in
19 regard to the importance of high-quality teacher training
20 and as the important observation that the most effective
21 programs for ELs have training that is specifically
22 focused on specific needs for ELs."

23 Do you agree that there are many different ways
24 to create training programs for teachers which
25 specifically focus on the needs of English learners?

1 personal experience in working with the subject-matter
2 project, in which the Office of the President of the
3 University of California asked -- called together,
4 somewhat hastily, a meeting of the subject-matter project
5 directors plus, including the English language
6 development initiative and me and a few other
7 outsiders -- Patricia Gandara happened to be there -- to
8 say we need to try to infuse and coordinate these
9 efforts.

10 That effort happened in April, and the
11 institutes were happening in June. And by my reference
12 to too little, too late, you can't coordinate these large
13 projects in April when people are making plans for June.

14 So this is an example of where one could
15 leverage the funding to have adequate coordination of
16 re-effort so that the math institutes addressed the needs
17 of English language learners, but leadership is not there
18 to have that happen.

19 Q What do you see, if any, of the State's role in
20 trying to address that problem?

21 A The State should demand that.

22 Q So to the extent that you just testified, your
23 complaint is not that the amount of funds should be
24 allocated specific to English language learners' needs,
25 but rather that the general professional development

1 A Yes, I do.

2 Q And in fact, you've listed several different
3 training approaches in your report; isn't that correct?

4 A Mm-hmm, yes.

5 Q Do you have an opinion as to whether one of
6 these types of training is better than another?

7 A No. What's in common with them is that the
8 needs of English language learners is explicit and they
9 take it seriously.

10 Q So in your opinion, so long as the teacher
11 development program focuses on the needs of English
12 learners, the training would be satisfactory?

13 A As long as they focus seriously on -- yes.

14 MS. KOURY: Just a two-second off-the-record.
15 (□Off the record.)

16 BY MS. KOURY:

17 Q Also on page 5 you -- the second full paragraph,
18 could you review that paragraph for me?

19 A "Also reinforcing"?

20 Q Yes.

21 A Mm-hmm. Okay.

22 Q The report titled "Research Evidence: Five
23 Standards for Effective Pedagogy and Student Outcomes"
24 states that instructional conversation should not be used
25 to the exclusion of other teaching strategies; is that

1 correct?

2 A Mm-hmm.

3 Q Do you agree with her conclusion?

4 A Yes.

5 Q Why is that important?

6 A That it not be used to the exclusion of other
7 strategies?

8 Q Right.

9 A I think learning happens best when it's not in
10 prescribed, preset, repetitive strategies. And I think
11 it's -- these -- researchers have shown that this form of
12 instructional conversation which they define as planned,
13 goal-directed conversations on an academic topic between
14 a teacher and a small group of students is a very good
15 strategy, but a day filled with that is not going to be a
16 terribly interesting day.

17 Q Do you know -- I'm sorry. Were you finished?

18 A No, I'm done.

19 Q Do you know how many or if any school districts
20 in California use this particular approach in teaching
21 English learners?

22 A I don't know how many districts use this.
23 Goldenberg and his colleague, Bill Saunders, are
24 highly -- they're very active in schools in -- around the
25 Long Beach area, and I would imagine -- and they've been

1 working with LA Unified. I believe that there are many
2 schools that have started to listen to what they have to
3 say.

4 Q Do you think -- do you see the State's role in
5 any way in determining which various strategies school
6 districts use in teaching English learners should be a --
7 let me rephrase that.

8 Do you think that the State should advocate a
9 uniform set of strategies that teachers should use in
10 approaching English language learner teaching? If you
11 understand that.

12 A Yeah. No, I personally don't think that one
13 should pursue a one-size-fits-all strategy; that there
14 should be -- but that the State's role should be
15 somewhere in between a prescriptive form and anything
16 goes.

17 So the State's role should be in developing a
18 set of monitoring mechanisms to look at progress that's
19 being made to address the needs of English language
20 learners, both in terms of outcomes and inputs, and to
21 help school districts develop the capacity to implement
22 and improve their systems.

23 Q On page 5 you, in the next paragraph, discuss
24 the Saunders/Goldenberg report and indicate that they
25 have described how to design, lead and sustain improved

1 learning through, one, teacher work groups; two, grade
2 level or department meetings; three, academic achievement
3 leadership teams; and four, faculty-wide settings and
4 training workshops.

5 Do you think that any -- or do you know of any
6 school districts in California that are currently
7 implementing some form of these four settings?

8 A I believe that LA Unified is encouraged by these
9 results and are working on trying to replicate these in
10 their schools.

11 Q And to the extent that Saunders and Goldenberg
12 found that, quote, "The particular content and substance
13 on which these four settings focus must be determined by
14 the issues and challenges that a particular school
15 faces," do you agree with that finding?

16 MR. LONDEN: It's vague.

17 BY MS. KOURY:

18 Q Did you understand that?

19 A I'm trying to look at the line in which you're
20 quoting.

21 Q I'm not quoting from a particular line.

22 A Oh. Okay. Then could you repeat what you said?

23 Q Sure. Do you agree that the particular content
24 and substance on which the four settings focus must be
25 determined by the issues and challenges of a particular

1 school?

2 A I believe that there are variations in the
3 challenges faced by the school. And so programs need to
4 be adaptive to the particular needs. Comparing a school
5 whose needs may be entrenched in stubborn teachers versus
6 one of idealistic and young, hopeful teachers who don't
7 have much experience, the needs in those two contrasting
8 schools would be very different. So you shouldn't have
9 the same solution to those.

10 But that said, there are many, many common
11 characteristics among schools that serve these students.

12 Q With the Saunders and Goldenberg report, which
13 is cited here on page 5, what academic achievement -- or
14 what did they use to measure academic achievement in that
15 particular study?

16 A I don't remember what measure they used. It was
17 some form of standardized test.

18 Q Do you know whether it was -- do you know any
19 more -- anything more -- can you recall anything more
20 specific about what that standardized test measured?

21 A I think it was reading and math.

22 Q Reading and math comprehension?

23 A It was a standardized -- most likely it was the
24 SAT-9 reading and math, but I don't recall from -- I can
25 tell you if I saw -- looked at the paper.

1 Q Why do you say most likely it was the SAT-9?
 2 A Because that's the test that's most commonly
 3 used in California.
 4 Q Do you think that's a more reliable measurement
 5 of academic achievement --
 6 MR. LONDEN: Objection.
 7 BY MS. KOURY:
 8 Q -- or a reliable measurement?
 9 A I believe that the SAT-9 is the only measure
 10 that's available in California and it's better than
 11 having no information. It is often reliable; not
 12 necessarily very valid.
 13 Q On page 7 of your report you cite the Thomas and
 14 Collier report.
 15 A Well, funnily, I'm missing page -- oh, no, here
 16 it is in reverse order.
 17 Q Could you just review the paragraph beginning
 18 with "Finally"?
 19 A Mm-hmm.
 20 Q Just let me know when you've had an opportunity
 21 to do so.
 22 (□Witness reviews document.)
 23 THE WITNESS: Yes.
 24 BY MS. KOURY:
 25 Q We discussed earlier some of the reliability

1 issues that you had with respect to Thomas and Collier's
 2 earlier reports. With respect to this particular report
 3 that you cite, the 2002, what type of social science
 4 research methods did they use in developing this report?
 5 MR. LONDEN: I think the first phrase doesn't
 6 accurately characterize the earlier testimony, but I
 7 don't think it's essential to the question, so I object
 8 to that, but you can answer the question.
 9 THE WITNESS: Sure. If you think it's useful, I'll
 10 just rephrase what the issue that Thomas and Collier's
 11 work is in the previous work. And it was that they
 12 really did not -- they only reported their summary
 13 results, which showed the effectiveness of bilingual
 14 programs over English-only programs without adequately
 15 describing how they collected the data or analyzed the
 16 data in order to draw their conclusions.
 17 And therefore, when asked, "Well, how could you
 18 have gotten these results? Because we don't know the
 19 methods by which the data were collected." So it wasn't
 20 an issue of reliability. It was really an issue of the
 21 transparency of the earlier reports.
 22 Now, this report was issued after a long wait by
 23 the field, hoping that they would come through and be
 24 transparent and that it would be reviewed by a jury of
 25 peers before being released, and both of those things did

1 happen. Although having looked at the data, I would
 2 still say in some districts there's some problems, that
 3 it's a multi-site study.
 4 There were others, but the data that I'm relying
 5 on here, I can feel fairly confident in standing behind.
 6 It is the data from Houston, which has a -- by all
 7 accounts a pretty good data system in the school district
 8 on which the researchers relied.
 9 They weren't making the comparisons that have
 10 been controversial from their study. That is one of the
 11 controversial parts of their study is a comparison of
 12 so-called two-way bilingual programs with other programs.
 13 And that wasn't my comparison of interest.
 14 My comparison of interest was not between ELS
 15 versus bilingual, which was their interest, but between
 16 bilingual or ELS compared to no services or no training
 17 teachers in either of those methodologies.
 18 So it was an unintended finding of theirs. That
 19 was not their intent. But the data are very clear in
 20 that study that students whose parents chose to have
 21 their children in neither bilingual nor ELS did much more
 22 poorly than students who were in either a bilingual or an
 23 ESL program.
 24 BY MR. KOURY:
 25 Q Okay. So with respect to this non-intended

1 finding, you think that the underlying data that they
 2 relied on was reliable or you found this particular
 3 unintended finding reliable?
 4 A I found it of interest, yes.
 5 Q And so with respect to the point you make, you
 6 were only concerned with the fact that students receiving
 7 some ELS services and/or bilingual education performed
 8 better than those students receiving no services?
 9 A That's not quite what I meant. All of these
 10 teachers were certified -- what I'm comparing is not
 11 certified versus noncertified students who were in the
 12 bilingual or the ELS state certification teaching in
 13 those areas.
 14 The students who were in the -- whose parents
 15 had elected to remove them from those programs have
 16 certified teachers, but not -- presumably they did not,
 17 except maybe by accident, have a teacher who held a
 18 certificate in ELS or bilingual.
 19 So the key comparison is between having that
 20 State certificate for ELS bilingual or not.
 21 Q The finding that was articulated in paragraph --
 22 I'm sorry -- in the first full paragraph on page 7 is,
 23 "Those data showed that students who were enrolled in
 24 neither transitional bilingual education nor ELS services
 25 had extremely poor educational outcomes compared to those

1 receiving services." Is that correct?
 2 A Yes.
 3 Q But there is no finding between those students
 4 receiving some ELS services and those students receiving
 5 bilingual services?
 6 A There is a little bit of a difference but not
 7 very much.
 8 Q And you didn't rely on that finding?
 9 A That's right.
 10 Q The conclusion or -- I'm sorry. Your statement
 11 that students without ELS services or non-ELS services
 12 and non-bilingual services had certified teachers, are
 13 you certain of that?
 14 A I'm not certain of it, but the certification
 15 rate in Houston, I think, is quite high --
 16 Q There's nothing --
 17 A -- from what I understand. I mean our secretary
 18 of education was superintendent of Houston and --
 19 MS. READ-SPANGLER: Rod Page.
 20 THE WITNESS: Rod Page, yeah.
 21 BY MS. KOURY:
 22 Q There's nothing in the particular report
 23 indicating one way or the other what the qualifications
 24 of the teachers teaching those students who were not
 25 receiving ELS and bilingual teachers -- let me repeat

1 that.
 2 A Yes, that is right. The report talks about the
 3 certification of bilingual or ELS of the teachers, and --
 4 but it is highly unlikely that the parents would have
 5 opted to go from a bilingual or ELS teacher that would be
 6 certified to a noncertified teacher.
 7 Q What do you base that opinion on?
 8 A Because usually parents who exercise a choice by
 9 signing either a waiver or trying to get their kids out
 10 tend to be much more engaged in their children's
 11 educational process than those who don't participate. So
 12 they're much more likely to pay attention to the kinds of
 13 options that their actions are likely to lead to.
 14 Q Do you know how the certification requirements
 15 for teachers teaching ELS classes in Houston compare to
 16 the credentialing requirements in California?
 17 A No, I do not.
 18 Q Do you have an opinion as to how rigorous the
 19 requirements for teachers teaching ELS services in
 20 Houston are?
 21 A For teaching, how rigorous the State
 22 certification for ELS or how Houston's firing -- I mean
 23 hiring of these teachers -- I don't know anything about
 24 Houston's hiring practices. I have looked at the state
 25 certification process in Texas. Every year I have my

1 students write a comparison in my bilingual education
 2 class of Texas and California. And if you were a parent
 3 of a -- they go to the state website and just look at
 4 every page that's out there, and their assignment is, if
 5 you were a parent of a limited English-proficient
 6 student, which state would you send your child to, and
 7 every year they unanimously vote Texas. These are
 8 California students.
 9 Q So my question was, Is that your opinion of how
 10 rigorous the ELS certification would be in Texas?
 11 A Relative to California, yes.
 12 Q In California, students who are English language
 13 learners under California's program are required to have
 14 some sort of either English language development
 15 services -- I'm sorry -- are required to have English
 16 language development services; is that accurate?
 17 A In California?
 18 Q Mm-hmm.
 19 A They are I believe right now, under
 20 Proposition 227 they're offered a structured English
 21 immersion program, and you can waive your student -- your
 22 child out of it into a bilingual program or I believe to
 23 no services.
 24 Q You also quote the report, stating that only one
 25 percent of the bilingual ELS teachers in a given year may

1 not be certified when initially hired. What does this
 2 mean? This is in reference to teachers in Houston?
 3 A To teachers in Houston.
 4 MR. LONDEN: And the report is a reference to Thomas
 5 and Collier?
 6 MS. KOURY: Yes.
 7 THE WITNESS: I quote their report. "Only one
 8 percent of" -- the report says, quote, "Only one percent
 9 of the bilingual/ELS teachers in a given year may not be
 10 certified when initially hired, and subsequently they
 11 take coursework and receive their teaching credentials
 12 during the first year of teaching."
 13 So that their account of it is that there is
 14 virtually zero tolerance policy in the district for
 15 hiring noncertified, non-ELS-certified teachers that
 16 teach.
 17 Q Is that only one percent of the teachers that
 18 are hired specifically to teach bilingual or ELS
 19 instruction or one percent of teachers in general?
 20 A I don't know the answer to that.
 21 Q How many teachers or how many of the teachers
 22 that get hired without full credentials actually achieve
 23 that goal that's set by the districts in Houston?
 24 A I don't know.
 25 Q Do you know what the attrition rate is after one

1 year for new teachers in Houston?
 2 A No, I don't know that either. But I will say
 3 that, again, Houston is considered a national model for
 4 the teaching of English language learners. There is --
 5 at least the secretary of education was superintendent
 6 there.
 7 There's a very active program of research and
 8 development in reading acquisition that researchers at
 9 the University of Houston Medical Center, headed by Jack
 10 Fletcher and Barbara Foorman, F-o-o-r-m-a-n, are heading
 11 up that work actively with schools. And reading scores
 12 in the district are quite high, even for English language
 13 learners. And professional development is one of the
 14 components -- not professional development but the
 15 teacher certification is one of the components that is
 16 included in that research program.
 17 Q Is it your opinion -- I'm going to move along
 18 to -- you also summarize in that paragraph, quote, "One
 19 may draw a straightforward connection between teacher
 20 qualification and educational outcomes."
 21 How do you draw that connection? What are you
 22 basing that connection on?
 23 A The connection -- the points there are that you
 24 have students who either have teachers who are ELS or
 25 bilingual certified, they have that certification, and

1 those whose parents opted to keep their students away
 2 from teachers who have those certifications. And their
 3 outcomes are quite different.
 4 Q Aren't the comparison groups, though, students
 5 that are receiving ELS instruction or bilingual
 6 instruction versus students not receiving either of those
 7 types of instruction?
 8 A Correct.
 9 Q And you're also assuming that the students not
 10 receiving ELS instruction nor bilingual instruction were
 11 taught by uncertified teachers?
 12 A No. These teachers were not certified in ELS or
 13 bilingual.
 14 Q And that's based on your opinion that parents
 15 wouldn't enroll their students in classes without
 16 certified teachers? I'm sorry. I take that back. I
 17 understand your point.
 18 Actually, could you read back the last portion
 19 of it before my question?
 20 Q Are you -- actually --
 21 MS. READ-SPANGLER: It's almost 5:00.
 22 MR. LONDEN: If you're going to change subjects,
 23 Dr. Hakuta might have better luck with the traffic
 24 tonight if we --
 25 THE WITNESS: That would be nice.

1 MS. KOURY: Yeah, I'm at a good breaking point.
 2 MR. LONDEN: And we can go off the record to talk
 3 scheduling for just a moment.
 4 (Discussion off the record.)
 5 (The deposition was adjourned at 4:57 p.m.)
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 9 I, KENJI HAKUTA, Ph.D., do hereby declare
 10 under penalty of perjury that I have read the foregoing
 11 transcript of my deposition; that I have made such
 12 corrections as noted herein, in ink, initialed by me, or
 13 attached hereto; that my testimony as contained Herein,
 14 as corrected, is true and correct.
 15 EXECUTED this ____ day of _____,
 16 20__, at _____,
 17 _____ (City) (State)
 18
 19
 20 _____
 21 KENJI HAKUTA, Ph.D.
 22
 23
 24
 25

1 STATE OF CALIFORNIA)
: ss
2 COUNTY OF CONTRA COSTA)

3
4 I, the undersigned, a Certified Shorthand
5 Reporter of the State of California, do hereby
6 certify:

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

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

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

20
21 Dated: _____

22
23
24 _____
TRACY L. PERRY
CSR No. 9577

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