

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  
Thursday, March 20, 2003  
Volume 3

REPORTED BY:  
TRACY L. PERRY  
CSR NO. 9577  
JOB NO. 880724

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 2 COUNTY OF SAN FRANCISCO  
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 14 EASTIN, STATE SUPERINTENDENT OF )  
 15 PUBLIC INSTRUCTION, STATE )  
 16 DEPARTMENT OF EDUCATION, STATE )  
 17 BOARD OF EDUCATION, )  
 18 )  
 19 Defendants. )  
 20 )  
 21 )  
 22 )  
 23 )  
 24 )  
 25 )

15 Deposition of KENJI HAKUTA, Ph.D., Volume 3,  
 16 taken on behalf of Defendants, at 275 Battery Street,  
 17 San Francisco, California, beginning at 9:42 a.m. and  
 18 ending at 1:45 p.m., on Thursday, March 20, 2003, before  
 19 TRACY L. PERRY, Certified Shorthand Reporter No. 9577.  
 20  
 21  
 22  
 23  
 24  
 25

1 APPEARANCES:  
 2  
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 THERE ALSO BEING PRESENT:  
 JENNIFER REISCH, LAW FELLOW

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1 San Francisco, California  
 2 Thursday, March 20, 2003  
 3 9:42 a.m. - 1:45 p.m.  
 4  
 5 KENJI HAKUTA, Ph.D.,  
 6 having been previously duly sworn, was further examined  
 7 and testified as follows:  
 8  
 9 EXAMINATION (Further)  
 10 BY MS. KOURY:  
 11 Q Good morning, Mr. Hakuta.  
 12 A Good morning.  
 13 Q Just wanted to remind you that you're still  
 14 under oath. Do you understand that?  
 15 A Yes, I do.  
 16 Q Did you have any discussions since the  
 17 deposition began on Monday regarding your deposition?  
 18 A No, I have not.  
 19 Q Have you reviewed any documents?  
 20 A No, I have not.  
 21 Q Could you tell me, without limiting your answer  
 22 to the English language learner context, your  
 23 understanding as to what Plaintiffs want in this case?  
 24 A My understanding is to -- for the State to  
 25 develop a system that addresses the adequacy of

1 teacher -- qualified teachers, educational materials,  
2 including textbooks, and facilities for an educational  
3 environment for students who are in schools that do not  
4 have such.

5 Q These items that you just listed are also a  
6 concern for the English language learner students, as  
7 well; is that correct?

8 A That's correct.

9 Q Keeping these items in mind, what is the  
10 hierarchy of importance, in your opinion?

11 A That's unclear to me what you mean by "hierarchy  
12 of importance."

13 Q How would you prioritize these items?

14 MR. AFFELDT: Objection; lacks foundation and  
15 assumes facts not in evidence.

16 BY MS. KOURY:

17 Q In your opinion, how would you prioritize these  
18 items?

19 A I would put all -- I would not be able to  
20 prioritize them because I think that they all come  
21 together in forming the basis of effective instruction  
22 for the students.

23 Q You've had some communications with other  
24 experts in this case; isn't that correct?

25 A I know the other experts -- or I know some of

1 Q At the bottom of Table 8 there is a note which  
2 indicates, "Results exclude respondents who did not  
3 answer question or answered 'not sure.' Results are  
4 weighted. All column differences are statistically  
5 significant at .05 level or better."

6 Do you know whether the "not sure" responses  
7 were excluded from the statistical testing -- the  
8 significance -- I'm sorry -- the statistical significance  
9 testing that was done?

10 A I believe -- I don't know -- I do not know the  
11 specific analysis that was conducted of these data, but  
12 my presumption is that the "not sure" categories would  
13 have been excluded.

14 Q Why is that?

15 A Because it says, and I'll quote, "Results  
16 exclude respondents who did not answer question or  
17 answered "not sure."

18 Q Do you think it would be problematic to exclude  
19 them from the statistical significance testing?

20 A No, I do not think that it would impose problems  
21 on the statistical significance testing.

22 Q Why is that?

23 A I believe we covered this issue yesterday.

24 Q My recollection was not specific to the  
25 statistical significance testing, but perhaps I

1 the other experts in this case, but I have not had  
2 extensive communication with them regarding this case.

3 Q Do you know, based on your communications with  
4 the other experts and also your review of some of the  
5 other experts' reports, whether any of the other experts  
6 in this case have prioritized what they want in terms of  
7 a remedy?

8 A I do not know what their -- their opinions are  
9 regarding priorities. I do know that they have areas of  
10 expertise that they hold, and therefore I read their  
11 testimony with the understanding that they are speaking  
12 to areas of expertise that they have, but I don't know  
13 nor expect them to believe that their area of expertise  
14 would have a higher priority than other areas.

15 Q Do you know whether Plaintiffs want to  
16 prioritize any of the items that you've listed?

17 A No, I do not.

18 Q Turning to your expert report, which I think is  
19 Exhibit 17, could you please turn to page 26?

20 Reviewing Table 8, could you please just review  
21 that and let me know when you've had an opportunity to do  
22 so?

23 ( Witness reviews document.)

24 THE WITNESS: Yes, I have.

25 BY MS. KOURY:

1 misunderstood your answer.

2 A Okay. Well, let me address that with respect to  
3 the statistical significance testing, which is that the  
4 statistical significance testing takes into account the  
5 sample size, and therefore if a response is not included  
6 because the respondent responds "not sure," the sample  
7 size would be smaller. And statistical significance  
8 testing takes into account the sample size in determining  
9 whether the result is -- exceeds the statistical  
10 probability error of a type 1 error or not.

11 Q Looking at Table 8, is it your understanding  
12 that the "not sures" were also excluded from the  
13 percentages that are listed here in Table 8?

14 A You're going to have to repeat that.

15 Q Sure. All the percentages that are listed in  
16 the columns here in Table 8, is it your understanding  
17 that the "not sures" were excluded from those  
18 percentages, the represented percentages?

19 A The note says results exclude respondents who  
20 did not answer question or answered "not sure," and  
21 therefore I assume that those numbers represent the data  
22 excluding the "not sure" cases.

23 Q And turning to Page 27 of your report and  
24 reviewing Table 10, if you would for me. Just let me  
25 know when you've had an opportunity to do so.

1 (□Witness reviews document.)

2 THE WITNESS: Okay.

3 BY MS. KOURY:

4 Q Is your understanding as to the exclusion of  
5 "not sures" for purpose of testing or statistically  
6 significant testing -- is that the same with respect to  
7 Table 10?

8 Let me repeat that.

9 In other words, is it your understanding that  
10 Gandara and Rumberger excluded the "not sures" when they  
11 conducted the statistically significant testing for  
12 purposes of Table 10?

13 A That is my understanding.

14 Q Did you have any discussions regarding  
15 significant testing?

16 A No, I did not.

17 Q Would you please turn to page 32 of your report  
18 and review Table 14, and just let me know when you've had  
19 an opportunity to do so?

20 (□Witness reviews document.)

21 THE WITNESS: Okay.

22 BY MS. KOURY:

23 Q At the bottom of page -- I'm sorry. At the  
24 bottom of Table 32 there is also a notation indicating  
25 that "Results exclude respondents who did not answer

1 within the all teachers group and probably within the EL  
2 teacher -- or within the teachers who have EL students,  
3 there were probably some who answered "not sure" and were  
4 excluded.

5 The discrepancy between the upper part and the  
6 lower part is -- I understand is because of a  
7 difference -- because not all teachers have English  
8 language learners in their classrooms.

9 Q So is it your understanding that both the upper  
10 and lower part of Table 14 excluded "not sure" answers?

11 A That would be my understanding.

12 Q And is it also your understanding that in terms  
13 of conducting significance testing that the "not sure"  
14 answers were also excluded from those tests?

15 A That would be my understanding.

16 Q I believe it was yesterday you testified  
17 regarding your opinion that there are studies which  
18 reported a generally known fact, which is that scores  
19 increased from pre-Proposition 227 to post-Prop 227. Do  
20 you recall that?

21 A Yes, I do.

22 Q And you provided an analysis of that and your  
23 explanation for it. Do you recall that?

24 A Yes, I do.

25 Q Why wasn't that known fact included in your

1 question or answered 'not sure.' Results are weighted.  
2 All column differences are statistically significant at  
3 .05 level or better."

4 Looking specifically at the upper portion of  
5 Table 14, it indicates "reported by all teachers,  
6 N=1071."

7 Is it your understanding or do you have an  
8 understanding as to whether the percentages in this upper  
9 portion of the table that are listed in these three  
10 columns include or exclude "not sures" -- "not sure"  
11 responses?

12 MS. READ-SPANGLER: I'm sorry. Just so the record  
13 is clear, Table 14.

14 THE WITNESS: You said Table 32. It's on page 32.  
15 Table 14.

16 MS. KOURY: I'm sorry. Table 14.

17 MR. AFFELDT: Objection; document speaks for itself.

18 BY MS. KOURY:

19 Q Can you answer that question?

20 A The sample size that the data are based on --  
21 the upper part of the table is based on 1071, and for the  
22 lower portion of the table, it's 775.

23 Q What does that mean to you?

24 A It means that there were -- not all teachers in  
25 the survey had students who were EL students. And then

1 report?

2 A Included in my report of --

3 Q I'm sorry. Your expert report, which you've  
4 submitted in this case. Why didn't you include that  
5 discussion regarding student achievement with respect to  
6 pre- versus post-Prop 227?

7 A I did not think that that's a relevant fact to  
8 the questions that my testimony addressed because that  
9 fact is only pertinent to a highly specific question of  
10 interpretation of the change in SAT-9 scores, and  
11 especially whether that change might have been due to the  
12 schools that were affected versus those that were not  
13 affected by Proposition 227.

14 Q In your opinion, both in your expert report and  
15 what you testified in the last couple days of deposition,  
16 you believe that California needs to recruit and retain  
17 more qualified teachers for English language learners;  
18 isn't that correct?

19 A That's correct.

20 Q And you testified that you've seen reference to  
21 California's efforts to recruit qualified teachers in  
22 some of the expert testimony that's been offered in this  
23 case; is that correct?

24 MR. AFFELDT: I'm just going to object generally to  
25 questions about what he testified to. The testimony will

1 speak for itself and that will be the record. This isn't  
2 a memory test here.

3 BY MS. KOURY:

4 Q Is that correct generally? I'm not trying to  
5 test your memory of what your testimony is. I'm trying  
6 to set up the next question.

7 A Let me test your memory of what it is that you  
8 asked me then.

9 Q Sure. I asked you whether you had investigated  
10 any of California's efforts to recruit qualified  
11 teachers. And your response was that you had spoken to  
12 other experts or it was based on your review of other  
13 expert testimony.

14 A I reviewed other expert testimony.

15 Q Other than that have you done any research to  
16 determine what efforts California has made to recruit  
17 qualified teachers?

18 A I base most of my other evidence on my personal  
19 knowledge of individuals who work in school districts who  
20 report to me about the difficulties they have in  
21 recruiting and retaining teachers and my participation in  
22 discussions at the State Department of Education  
23 meetings, which have addressed some of these issues.

24 Q Have you reviewed any documents which indicate  
25 the breakdown of categorical funds or funding for the

1 opinion -- I'm sorry -- as reflected in your expert  
2 report?

3 MR. AFFELDT: Objection; vague.

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

5 BY MS. KOURY:

6 Q To what extent are your opinions, as reflected  
7 in your expert report, dependent on the assumption that  
8 English language learners take between three to five  
9 years to become proficient?

10 A It would be pertinent to the extent that the --  
11 if students take, on average, less than between three to  
12 five years to become proficient in English, that the  
13 numbers of students requiring English language learner  
14 services would be reduced, and so that the magnitude of  
15 the so-called problem of English language learners would  
16 be reduced.

17 Q Is that the only way it would impact your  
18 opinion, as reflected in your expert report?

19 A I believe so.

20 MS. KOURY: Can we take a two-minute -- off the  
21 record.

22 (□) Recess taken: 10:03 until 10:09 a.m.)

23

24 EXAMINATION

25 BY MS. READ-SPANGLER:

1 recruitment of teachers by the State?

2 A I have not reviewed any documents that break  
3 down efforts by categorical funding levels.

4 Q Are you familiar with the various programs by  
5 the State to recruit teachers in terms of the funding  
6 that goes along with those programs?

7 A No, I'm not.

8 Q So you don't have an opinion as to whether or  
9 not the particular programs that the State has in place  
10 have been effective or not in terms of recruiting  
11 teachers?

12 A I'm not familiar with the programs. I do know  
13 that there is an insufficient supply of teachers who are  
14 qualified.

15 Q Again, I'm not trying to test your memory as to  
16 your testimony yesterday, but I have a follow-up  
17 question.

18 You had testified -- and correct me if I'm  
19 wrong -- that you're not aware of any research by experts  
20 which contradicts your opinion that it takes three to  
21 five years for English learners to become proficient in  
22 English; is that correct?

23 A That is correct.

24 Q Assuming that you were wrong, how would that  
25 impact your opinions as reflected in your expert

1 Q Good morning, Professor Hakuta. I'm Kara  
2 Read-Spangler, and I represent the Department of  
3 Education, the State Board of Education and the  
4 Superintendent of Public Instruction.

5 I notice on your C.V. that it says you're the  
6 Vita Jacks professor of education, and I was wondering  
7 what that meant. Is that just an endowed chair or --

8 A Yes, it's just an endowed chair that the -- that  
9 belongs to the school of education, and it's just a name.  
10 I don't know who Vita Jacks is, but that is what I was  
11 given as an honorary title.

12 Q So does that have any additional  
13 responsibilities than you had before you were the  
14 Vita Jacks professor of education?

15 A No, it does not.

16 Q I was also wondering -- from looking at your  
17 C.V. I ended up having a question on the difference  
18 between sociolinguistics and psycholinguistics, and I was  
19 wondering if you could explain the difference to me.

20 A Psycholinguistics is a cognitive  
21 characterization of language, which means that it has to  
22 do with the structure of language as represented in --  
23 ultimately in the brain, but in the mental system. It  
24 may have -- some of it is very specific to language and  
25 is correlated with neurologically organized --

1 neurological organization.

2 Others have to do with the relationship between  
3 the linguistics system of your cognition and other  
4 aspects of cognition, such as memory and attention and  
5 visual information.

6 So psycholinguistics refers to the scope of  
7 research and inquiry that goes into the -- that  
8 characterizes an individual's knowledge and  
9 representation of language.

10 Sociolinguistics is more of a social phenomenon  
11 so it has to do with interpersonal and group  
12 characterizations of language. Groups of people who  
13 speak a dialect, for example, are people who would be  
14 characterized sociolinguistically rather than  
15 psycholinguistically because that group's use of a  
16 language is determined by identification and membership  
17 in a social group.

18 Q And in terms of teaching English language  
19 learners, having a background in which or both would be  
20 required, or neither, I suppose I should add?

21 A Both, is my answer.

22 Q And what's your background?

23 A I have done research in both of those domains,  
24 although primarily my -- an area of my doctoral training  
25 was in the area of psycholinguistics.

1 Q When you say you're an expert as defined by your  
2 professional experience in the area of education, that  
3 sounds pretty --

4 A In the research -- research in the field of  
5 education.

6 Q That still sounds pretty broad to me. When you  
7 say "research of education," what exactly do you mean by  
8 that?

9 A It is very broad --

10 (Telephonic □ interruption in the proceedings.)

11 MS. READ-SPANGLER: I'm so sorry. I apologize for  
12 not turning that off.

13 THE WITNESS: It is a very broad field, but there  
14 are a handful of individuals who are concerned about the  
15 capacity of the field as a whole in education in  
16 conducting research that has credibility and can affect  
17 the -- especially policy and practice in the field of  
18 education.

19 And so issues such as how quality is  
20 regulated -- defined and regulated by the field of  
21 knowledge known as education, which itself has multiple  
22 components and multiple areas of expertise, is itself  
23 a -- is a policy issue. That is an issue that Congress  
24 concerns itself about in the development and funding  
25 and -- of the federal office of education.

1 Q And then you sort of later evolved into having  
2 expertise into sociolinguistics?

3 A That is correct.

4 Q What do you consider to be your areas of  
5 expertise? And I'm not limiting it to just this case.

6 A I'm --

7 MR. AFFELDT: Objection; asked and answered.

8 BY MS. READ-SPANGLER:

9 Q You can go ahead and answer.

10 A I'm an experimental psychologist, which covers  
11 areas of learning and conditions of learning, theories of  
12 learning as -- especially as tested under empirical  
13 methods that include the use of experiments and other  
14 empirical methods.

15 I consider myself to be an expert in the  
16 development of second language in children and in the  
17 psychology and sociology of bilingualism.

18 I also have expertise in policies and policy  
19 development regarding the instruction of English language  
20 learners, especially in the context of educational  
21 reform, primarily in the United States.

22 I have taught courses in statistics and research  
23 design, and I am also an expert, as defined by my  
24 professional experiences in the advancement of the field  
25 of research, in the area of education.

1 And so I have been very active in the promotion  
2 of that set of issues in the profession of educational  
3 researchers.

4 BY MS. READ-SPANGLER:

5 Q If I use the term "psychometrics," would you  
6 know what -- or would you have an understanding of what I  
7 meant?

8 A Yes, I would.

9 Q And what would your understanding be?

10 A Psychometrics is the measurement of mental  
11 abilities that range from simple capacities, such as  
12 speed of information processing of very simple tasks, to  
13 basic skills such as the recognition of letters or sounds  
14 or the correspondence between letters and sounds, to more  
15 complex functions such as the comprehension of a text.  
16 IQ tests, achievement tests, the SAT are examples of  
17 psychometric -- are examples of products that use the  
18 knowledge from the field of psychometrics.

19 Q So would I be correct in -- I mean would I be  
20 incorrect if I thought like the SAT-9 doesn't involve  
21 psychometrics?

22 I'm sorry. That's like a huge double negative.

23 I guess when you do achievement testing, like  
24 with the SAT-9, you don't strive for like psychometric  
25 validity?

1 MR. AFFELDT: Objection; vague.  
 2 You can answer if you can understand that  
 3 question.  
 4 THE WITNESS: The SAT-9 is a test that is based --  
 5 developed using psychometric principles.  
 6 BY MS. READ-SPANGLER:  
 7 Q Do you have a teaching credential?  
 8 A No, I do not.  
 9 Q So do you have a CLAD certification?  
 10 A No, I do not.  
 11 Q And then how about a BCLAD certification?  
 12 A No, I do not.  
 13 Q But you think that you're qualified to teach  
 14 CLAD courses?  
 15 A I am qualified to teach components of CLAD  
 16 courses. And whenever I teach CLAD courses, I  
 17 collaborate with people who have -- who hold or have held  
 18 CLAD, BCLAD or similar credentials.  
 19 Q But it's not required to effectively teach CLAD  
 20 or CLAD-component courses to hold a CLAD or BCLAD?  
 21 A I think it's important that somebody who is part  
 22 of the instructional team that offers CLAD or BCLAD be --  
 23 that they hold that credential or the equivalent of the  
 24 knowledge and practice components that go into the CLAD  
 25 or BCLAD credential. But I do not think that every

1 member of a team that offers a CLAD retention needs to  
 2 have that knowledge.  
 3 Q We touched briefly, I think, on SB 1059, which  
 4 is -- we didn't call it that, but that's the  
 5 requirement -- the new requirement where teachers who are  
 6 currently in the credentialing pipeline will come out  
 7 with something that's very similar to a CLAD. Do you  
 8 recall that discussion?  
 9 A Yes, I do.  
 10 Q And have you looked at the requirements for that  
 11 new -- I guess we were calling it CLAD-infused  
 12 requirement.  
 13 A I think we were calling it Standard 7 --  
 14 Q Oh, okay.  
 15 A -- which is on -- let me look for the table that  
 16 has it.  
 17 MR. AFFELDT: It's on page 9.  
 18 THE WITNESS: I'm sorry. Page 9. Right. Page 9 of  
 19 my testimony.  
 20 BY MS. READ-SPANGLER:  
 21 Q So I guess the answer to my question is yes,  
 22 you've looked at the requirements for --  
 23 A Yes, I'm familiar with that requirement and have  
 24 participated in the implementation of Standard 7 within  
 25 my own teacher credentialing program at Stanford.

1 Q And as I understand it, your concern isn't with  
 2 any strengths or weaknesses of Standard 7 itself; it's  
 3 with capacity of teacher education programs to teach the  
 4 standard; is that correct?  
 5 A That is a main concern that I have about the  
 6 strategy of increasing the number of CLAD-certified  
 7 teachers through the infusion of these skills in  
 8 preservice programs.  
 9 MS. READ-SPANGLER: Could you read that answer back,  
 10 please.  
 11 (The record was read as follows:  
 12 "Answer: That is a main concern that I have  
 13 about the strategy of increasing the number  
 14 of CLAD-certified teachers through the  
 15 infusion of these skills in preservice  
 16 programs.")  
 17 THE WITNESS: And the "that" meaning -- the "that"  
 18 referring to the concern that I have, being the adequacy  
 19 of the delivery of these components through preservice  
 20 programs.  
 21 BY MS. READ-SPANGLER:  
 22 Q I'm wondering, you were asked what the State  
 23 should do to address that concern, as I recall, and I'm  
 24 not trying to misstate the testimony. I'm just trying to  
 25 get us back to where we were when we were discussing it.

1 So you can correct anything I'm saying.  
 2 Your response was that you thought the CTC and  
 3 its accreditation process should try to ensure that there  
 4 were people who were capable of teaching the standards  
 5 that were seeking to be taught.  
 6 My question is, What, if anything, do you think  
 7 that the Department of Education should do with respect  
 8 to your concern about the capacity to teach the new  
 9 standard?  
 10 A Of the capacity of whom?  
 11 Q Teacher education programs.  
 12 A In California?  
 13 Q Correct.  
 14 A I think the CTC accreditation process needs to  
 15 look into that, as I suggested in my testimony on  
 16 Tuesday, I believe, and so I won't repeat what I think  
 17 should be done through the CTC accreditation process.  
 18 But I think that the State also, in addressing  
 19 the CLAD needs of the State, also needs to look not just  
 20 at how CTC-accredited programs address it, but other  
 21 teachers who enter the profession through alternative  
 22 means or from other states. That would also need to be  
 23 addressed by the State.  
 24 Q You're talking about teachers to whom we give  
 25 reciprocity?

1 A Yes.  
 2 Q Ensuring that they meet CLAD or the new  
 3 Standard 7?  
 4 A Yes.  
 5 Q I'm not sure your answer really addressed my  
 6 question, which was directed specifically towards whether  
 7 you think there was anything that the Department of  
 8 Education should be doing. And maybe you can't be that  
 9 specific, but if you can, I'd like you to try to answer.  
 10 MR. AFFELDT: Objection; vague and overbroad.  
 11 THE WITNESS: Are you including CTC within the  
 12 Department of Education? Because yesterday we had a  
 13 discussion about the system and whose system it was, and  
 14 it was very unclear who the "it" was that you were  
 15 referring to.  
 16 BY MS. READ-SPANGLER:  
 17 Q Right. Well, maybe I should make it clear that  
 18 the CTC is not within the Department of Education.  
 19 A I think that the role of the State Department of  
 20 Education should be in this particular case to encourage  
 21 the innovation and implementation of effective practices  
 22 within the CSUs and the UCs and other bodies that offer  
 23 preservice education.  
 24 I think the Department of Education should  
 25 follow up on the preservice that the student teachers are

1 receiving, and once they're in schools teaching, during  
 2 the induction phases especially, but even after the  
 3 induction phase, continue to provide appropriate and  
 4 targeted professional development programs to support the  
 5 teachers as they try to implement the strategies that  
 6 they have been exposed to in their preservice programs.  
 7 I think there is a role for the Department of  
 8 Education to play in making sure that what gets started  
 9 in the preservice training of these teachers is amplified  
 10 and have an opportunity to really establish itself in the  
 11 practices of teachers as they become professionals, as  
 12 they grow in their professional abilities.  
 13 Q Are you familiar with BTSA?  
 14 A I'm -- I do know what BTSA is.  
 15 Q Do you have an understanding as to whether BTSA  
 16 provides any induction services with respect to training  
 17 for teaching English learners?  
 18 A I do know that they are aware of it, and I do  
 19 know that some programs, such as the Santa Cruz New  
 20 Teacher Center, are highly aware of the issues of English  
 21 language learners, but I do not know the extent to which  
 22 they are addressing those needs.  
 23 Q When you say you know that they're aware of it,  
 24 what do you mean when you say "they're aware of it"?  
 25 A I know that one of the big needs addressed --

1 one of the issues that has been raised to me whenever I  
 2 have had contact with teachers who are in the induction  
 3 phase is that they need more help in addressing the needs  
 4 of English language learners. They don't believe that  
 5 they have sufficient help in that area.  
 6 Q What's the Santa Cruz New Teacher Center? Is  
 7 that what you called it?  
 8 A Yes.  
 9 Q What is that?  
 10 A It's a center that is based -- that is  
 11 affiliated with the University of California at  
 12 Santa Cruz and began as a relatively small program that  
 13 offers extensive support to induction-stage teachers  
 14 in -- initially in the Santa Cruz and Pajaro Valley  
 15 schools.  
 16 It is directed by Ellen Moir, M-o-i-r, who  
 17 started the program, and has grown. It received  
 18 foundation funding, and I believe it now gets some BTSA  
 19 money and has been expanding its services to San Jose and  
 20 even as far east as Hayward.  
 21 It is a -- the people who develop that program  
 22 are in great demand because of its -- it is perceived as  
 23 being quite successful.  
 24 So my understanding is that a program like that,  
 25 if it could be replicated broadly, would be very

1 successful. The problem with it, although I don't know  
 2 the -- I don't know all of the cost factors involved, is  
 3 that it is quite expensive to maintain their model for a  
 4 much larger group or population of new teachers.  
 5 Q I want to go back over and expand on some other  
 6 things we talked about before. So if it seems like I'm  
 7 kind of jumping around, it's because I am.  
 8 On the first day we talked about your depo  
 9 orientation meetings, and I was wondering if during the  
 10 course of that you discussed any strengths or weaknesses  
 11 of your report.  
 12 A Any strengths or weaknesses of my report. Not  
 13 that I recall.  
 14 Q Do you think that your expert report has any  
 15 weaknesses?  
 16 A My expert report is -- represents everything  
 17 that I'm willing to stand behind as based on the best  
 18 judgment I can offer, based on my understanding of the  
 19 research, supporting research and my own professional  
 20 experiences and observations.  
 21 Q So there's no areas where you would want to go  
 22 back and elaborate on anything or bolster any of your  
 23 testimony, rereading it today?  
 24 MR. AFFELDT: Objection; vague and inaccurate. He  
 25 hasn't reread his report today that I'm aware.



1 BY MS. READ-SPANGLER:

2 Q Well, if you were to reread it. You've reread  
3 it in the past week, correct?

4 A I read it prior to beginning my deposition, yes.

5 Q When you did that, did you note any areas where  
6 you thought -- where you might want to add anything,  
7 supplement anything, or bolster anything?

8 A It did not occur to me. However, you know, any  
9 document that one writes is always -- you know, it's the  
10 best guess that you can make to date on what your  
11 opinions are. And so I would not necessarily say that I  
12 would stand behind every word as the best foot forward  
13 that I would put, but I'm willing to stand behind this  
14 testimony.

15 Q Have you done any additional research in any of  
16 the areas addressed in your report since you finalized  
17 that report?

18 A I continue to read documents and books in this  
19 area, but I have frankly not been reading too much in  
20 this area because I've been doing research in other areas  
21 recently that are quite apart from this field.

22 Q And I apologize if this was asked, but I don't  
23 think this specifically was asked.

24 Given that, have you changed or would you add to  
25 any of the opinions set forth in your expert report?

1 report.

2 So that's a particular instance I can think of  
3 where maybe some additional information might have been  
4 helpful for this report.

5 Q Anything specific?

6 A One might be the area of national  
7 board-certified teachers. North Carolina has -- as a  
8 matter of state per capita per student ratio, has a very  
9 large percentage compared to other states of nationally  
10 board-certified teachers because of incentives that the  
11 state put in place for the recruitment of those teachers.

12 The board certification has a specialization in  
13 English as a new language, and so the strategy that I was  
14 recommending to North Carolina was to try to increase the  
15 number of board-certified teachers in the area of English  
16 as a new language and to then try to provide -- use those  
17 teachers to provide leadership to other teachers in the  
18 state who serve English language learners.

19 So I may have included in my testimony greater  
20 attention to that -- the recruitment of board-certified  
21 teachers, specifically in this area, and how they might  
22 help in providing especially building-level or  
23 district-level leadership and how the State might play a  
24 role in the expansion of incentives.

25 Q Do you know if California does have any

1 A Would I add or change anything?

2 Q Right.

3 A There are -- there is evidence probably that I  
4 might have used in here that occurred to me that I didn't  
5 include that I had thought of and wished that -- or might  
6 wish if I were rewriting it today, I would certainly  
7 probably add to try to change things, but I -- nothing  
8 that would substantially alter the -- my conclusions or  
9 recommendations.

10 Q So none of your opinions have changed?

11 A Correct.

12 Q What evidence might you include?

13 A I was -- two weeks ago I was in North Carolina  
14 speaking to the education cabinet of the state, and  
15 because that is a state that is experiencing a large  
16 influx now of immigrant students, they are very  
17 interested and concerned about how to serve these  
18 students.

19 And so I spoke quite expansively about the  
20 research in this area and about how the state could  
21 improve -- could be prepared or could prepare themselves  
22 for addressing the needs of these students. And as I  
23 spoke expansively about issues with them, there were some  
24 things that I mentioned to them that maybe could have  
25 helped additionally or might have changed nuances in this

1 incentives for teachers to become nationally  
2 board-certified?

3 A I believe there are some incentives, but  
4 certainly the -- I believe some of those incentives are  
5 at a district rather than state level. Los Angeles  
6 Unified, I believe, has some special incentives, but I  
7 don't know the specifics of it. But North Carolina  
8 certainly stands out as being a state that is quite  
9 aggressive in that regard because of the leadership in  
10 that area exercised by former Governor Jim Hunt.

11 Q Going back to your depo orientation, did you  
12 review any documents before -- well, in preparation for  
13 your deposition or at that meeting?

14 A During the depo preparation?

15 Q Or in preparation -- on your own in preparation  
16 for your deposition.

17 A Certainly I reviewed many documents that back up  
18 the testimony because I expected to be asked questions  
19 about documents that support the testimony and not the  
20 testimony alone.

21 Q Did counsel show you any documents?

22 A No, no documents were shown to me at the  
23 deposition preparation.

24 Q Did counsel read you any documents?

25 A No, not that I recall.

1 Q Other than what's reflected in your C.V., do you  
 2 have any other formal education or training which bears  
 3 on your testimony in this case?  
 4 A Other than what's on my C.V.?  
 5 Q Correct.  
 6 A Any formal education, no.  
 7 Q Like training seminars or...  
 8 A I have participated in various conferences and  
 9 participated in workshops in conferences that offer  
 10 workshops on specific areas of English -- of the teaching  
 11 of English language learners that I have participated in.  
 12 Conferences such as the National Association for  
 13 Bilingual Education, California Association of Bilingual  
 14 Education, California Association of Teachers that are  
 15 speakers of -- California Association of Teachers to  
 16 Speakers of Other Languages, TESOL.  
 17 I have sent members of my staff to receive  
 18 training in specific areas such as S-I-O-P or SIOP,  
 19 because that is one area in which my courses offer  
 20 training. I've been trained to be on an audit committee.  
 21 I don't know if that's relevant.  
 22 Q An audit committee? Auditing what?  
 23 A I am on an audit committee, so I've been trained  
 24 to be a member of an audit committee.  
 25 Q What are you auditing?

1 A It's -- I'm just on a board on which I'm on an  
 2 audit committee. These are financial audits.  
 3 Q Okay. I don't care about that.  
 4 What exactly is TESOL?  
 5 A It's an international organization. It stands  
 6 for Teachers of English to Speakers of Other Languages.  
 7 It's an international association and a national  
 8 association of ESL teachers.  
 9 Q And what's the nature of your participation with  
 10 that?  
 11 A I attend -- periodically I attend their national  
 12 conferences, which is an annual event. Periodically I'm  
 13 asked to speak at them. That is what they are. TESOL  
 14 has developed -- is notable because it has developed a  
 15 set of standards for the teaching of English as a second  
 16 language, known as the TESOL standards. And that was the  
 17 first, in a sense -- it is important because it's been  
 18 the foundation or at least an important resource for  
 19 state efforts to develop their own ELD standards.  
 20 Q And maybe that just kind of answers my next  
 21 question, but has anyone specifically adopted or -- any  
 22 entity or state specifically adopted those standards for  
 23 teaching second languages?  
 24 A No. But it has been influential in being  
 25 incorporated into state standards of states that have

1 developed ESL standards.  
 2 Q Which states have used it or have used it as a  
 3 foundation for their standards, if you know?  
 4 A I have not made a systematic comparison of the  
 5 TESOL standards against standards adopted by different  
 6 states. I personally know that it was quite influential  
 7 in the development of San Francisco Unified's English  
 8 language development standards, so that's at a district  
 9 level.  
 10 The New York state standard for ELS I believe is  
 11 quite closely aligned to the TESOL standards because the  
 12 same person who developed the TESOL or had a leadership  
 13 role in the development of TESOL standards played an  
 14 active role in New York state's development of standards.  
 15 Q Any other states or districts of which you're  
 16 aware?  
 17 A California's ESL, ELD standards, in its initial  
 18 form of development, I believe, certainly must have -- I  
 19 was not part of that committee. That was chaired by  
 20 Adel Nadeau, N-a-d-e-a-u, of the San Diego County Office  
 21 of Education. Actually, she was at the San Diego City  
 22 Schools but on loan to San Diego County Office of  
 23 Education when she did this, chaired the committee that  
 24 developed it. And my -- she is aware of and familiar  
 25 with the TESOL standards, and I'm sure that at some

1 earlier point the TESOL standards were made reference to.  
 2 Q Any other states or districts?  
 3 A I don't know of any other -- of the alignment of  
 4 other states with the TESOL standards because I do not  
 5 know the individuals who are associated with the  
 6 development of those standards in those states.  
 7 Q Do you know if there's a national ESL standard,  
 8 like a federal ESL standard?  
 9 A No, there are no federal ESL standards, just  
 10 like there are no federal content standards in any area.  
 11 The federal government has chosen to stay away from  
 12 curriculum standards.  
 13 Q Do you know if there's a reason they've chosen  
 14 not to do that?  
 15 A The reasons are political.  
 16 Q We discussed -- and I use the term "we", meaning  
 17 you and Ms. Koury -- your interactions with some of the  
 18 experts before. And I'm wondering if you have had any  
 19 interactions, communications with any of the consultants  
 20 in this case.  
 21 A Who are the consultants? I don't know the --  
 22 who the consultants are.  
 23 Q Have you had any interaction with Gary Blasi?  
 24 A No, I do not know Mr. Blasi.  
 25 Q Is there anything that is not set forth in your

1 C.V. other than what you've already testified to that you  
2 consider qualifies you as an expert regarding your  
3 report?

4 A My resume does not -- other than possibly a  
5 reference to the federal grant that I have with  
6 San Francisco union -- Unified School District, which is  
7 a Title 7 professional development grant, and recently a  
8 Title 3 grant to provide CLAD certification through the  
9 use of technology and enhance the capacity of the CSU  
10 faculty in delivering these services, it does not  
11 elaborate on or does not represent the extent of my  
12 development in -- the extent of my participation in the  
13 development of materials that would be useful in the  
14 teaching of English language learners because the resume,  
15 to a large extent, reflects more my academic research  
16 publications.

17 So that the resume -- it insufficiently  
18 represents the qualifications that I feel I have to  
19 testify regarding the qualities of the training of CLAD.

20 Q I notice you're on the board of directors of  
21 META.

22 A Yes, I am.

23 Q What's the extent of your involvement with META?

24 A META is a nonprofit advocacy organization for  
25 language minority children, in particular, limited

1 answers that might be -- and how I could go about  
2 addressing them. So it was more on the form rather than  
3 on the substance. But, of course, they -- you know, they  
4 involved asking questions about the substance of my  
5 testimony.

6 Q Right.

7 A But I don't recall any particular areas that  
8 would suggest that Mr. Affeldt did a poor job by not  
9 preparing me for this deposition.

10 Q Well, that wasn't what I was trying to suggest.

11 When Ms. Koury asked you about Russ Rumberger  
12 and Patricia Gandara's qualifications, you answered that  
13 Russ Rumberger is very qualified and you didn't mention  
14 Gandara. And I wanted to know if it was just that you  
15 never got around to answering or if there's something  
16 about her qualifications that you have reservations  
17 about.

18 A I believe that statement was with reference to  
19 the analysis of the large data sets that were reported  
20 here; that is, the reference to the Harris survey and the  
21 CBEDs data from the Department of Education. And Russ  
22 Rumberger's expertise is in the analysis of large data  
23 sets of that sort. That is not Professor Gandara's area  
24 of expertise. Rather, she is more in the field of policy  
25 analysis and development.

1 English-proficient children. I'm on the board, which  
2 meets only by telephone. In my experience I've not  
3 participated in a physical board meeting but through the  
4 telephone. So it's not a very engaged board other than  
5 to hear reports and receive documents of activities of  
6 META, but I am a -- I can't remember whether it's a  
7 director or trustee, one of those, that I am on the board  
8 of that organization.

9 Q Other than as a member of the board, have you  
10 been involved in the Comite litigation in any way?

11 A I have not been involved in the Comite  
12 litigation. However, I have served as an expert in their  
13 court cases and offered declarations for them.

14 Q Going back to your depo orientation, you  
15 indicated that you and John Affeldt had some sort of mock  
16 deposition questions, and I'm wondering if you covered  
17 any areas in that mock depo -- which is my term, of  
18 course -- that we haven't discussed.

19 MR. AFFELDT: Objection; vague and overbroad and  
20 ambiguous.

21 BY MS. READ-SPANGLER:

22 Q You can answer if you're able.

23 A It may take me a while to try to remember what  
24 all the areas were. The intent of this mock deposition  
25 was to try to orient me to the kind of questions and

1 She is the best in the field in that area. She  
2 has -- is extremely impressive in her ability to relate  
3 research to policies and policy analysis and policy  
4 development. She has participated in national  
5 discussions on issues of the inclusion of English  
6 language learners in standards-based reform. She has  
7 looked at and evaluated the programs to bridge English  
8 language learners and immigrant students into the  
9 University of California system, so the recruitment into  
10 higher education, and she has recently worked quite  
11 actively as the expert on issues related to English  
12 language learners with the Harvard Civil Rights Project,  
13 which is a national project trying to address issues of  
14 civil rights law and minority students. So that is her  
15 area of expertise.

16 And to the extent that the questions that you  
17 asked were about the quantitative analyses of the report  
18 rather than the parts of the report that addressed the  
19 chasm system of teacher certification and inclusion  
20 issues, reform issues as addressed by that report, I  
21 didn't speak about her expertise. I did not expand on  
22 her expertise because the questions were less on that  
23 aspect of her report.

24 Q Is it your understanding, if you have one, that  
25 Russ Rumberger did the analysis of the Harris survey and

1 that -- well, let me just stop there.

2 A Yes, my understanding is that Russ Rumberger  
3 himself did the analysis for the report.

4 Q Okay. We also -- I'm sorry. Go ahead.

5 A I base that on the fact that he is -- he -- when  
6 I've talked to him about the data, he had firsthand  
7 knowledge of the data and the analysis.

8 Q And we also talked about some white papers and  
9 there was a lot of confusion with that term, and I just  
10 want to try to clear up exactly what the white paper or  
11 white papers were so that's very clear.

12 You said you helped prepare some white papers or  
13 a white paper. Was that only the Linda Darling Hammond  
14 paper?

15 A No. The white paper would also refer to the  
16 paper by Rumberger and Gandara.

17 Q Okay.

18 MS. PEARLMAN: Off the record for a second.

19 (□Recess taken: 11:03 until 11:15 a.m.)

20 MS. READ-SPANGLER: We're back on the record.

21 Q You mentioned just a little bit ago that you had  
22 conversation with Russ Rumberger; is that correct, about  
23 his analysis?

24 A Yes, mm-hmm.

25 Q What exactly did you discuss with him?

1 Q Right. Okay.

2 A And he agreed that those points are just  
3 estimated means, and therefore it's fine to draw the line  
4 without the points on there.

5 Q Are you aware that other experts are receiving  
6 compen- -- or received compensation for preparing their  
7 expert reports?

8 A I -- I believe that experts were compensated in  
9 some form, and that was made clear to me by Mr. Affeldt.

10 Q And why did you agree to prepare your report for  
11 no compensation?

12 A I have never received compensation for  
13 participation in legal cases.

14 Q And why is that?

15 A I find it easier to discriminate between cases  
16 that I would be involved in or not, and I consider it  
17 part of my job as a researcher to have research be useful  
18 in cases that make a difference for public policy.

19 Q Do you have an estimate of how much time you  
20 spent preparing your expert report?

21 A No, I don't have an estimate.

22 Q Was it more than a week?

23 A Yes.

24 Q More than a month?

25 MR. AFFELDT: Objection; vague and ambiguous to the

1 A I think I -- one thing we discussed was the  
2 inability of the data -- the state data set to get down  
3 to the classroom level, and we also discussed the  
4 representation of the table -- or of the figure that  
5 shows the percentage of qualified teachers as a function  
6 of percent EL students in the school controlling for SES,  
7 in which I suggested that he change the formatting of the  
8 way that the figure looked.

9 Q What -- how did you suggest that he change the  
10 formatting?

11 MS. KOURY: Point of clarification. Are you  
12 referring to Figure 1, which -- of the report, which we  
13 discussed?

14 THE WITNESS: Yes, uh-huh.

15 MR. AFFELDT: Then objection; asked and answered.

16 BY MS. READ-SPANGLER:

17 Q This question wasn't asked and answered, but you  
18 can answer it.

19 A Well, I actually answered it or described it  
20 earlier, which is the figure as he had it -- because I  
21 wanted to use it in the testimony to incorporate it. The  
22 way in which the figure presented itself was to put  
23 points along the line representing the -- what would be  
24 the estimated means on the regression line. And I didn't  
25 want those points in there.

1 extent we're talking -- are you talking about the  
2 exhibit, the white papers --

3 MS. READ-SPANGLER: No.

4 MR. AFFELDT: -- all of that?

5 BY MS. READ-SPANGLER:

6 Q Exhibit 17, your expert testimony. And when I  
7 say "more than a month," I'd say of full-time work.

8 A It would not be more than a month, no.

9 Q Referring you to Exhibit 2.

10 A Which is?

11 Q In that pile someplace. It's a stack of  
12 e-mails.

13 A Oh, yes, mm-hmm.

14 Q And specifically the page ending in LDH 11428.

15 A Yes.

16 MS. PEARLMAN: I'm sorry. What exhibit?

17 MS. READ-SPANGLER: 2.

18 MR. AFFELDT: LDH --

19 MS. READ-SPANGLER: 11428.

20 Q Looking at the e-mail at the top of the page  
21 that starts "John, just wanted to keep you updated on the  
22 ACLU paper." It continues on. In about the middle  
23 there's a sentence that reads, "I have found the  
24 necessary citations we discussed and reworked some of the  
25 numbers to be more clear and 'legally defensible.' Kenji

1 is reviewing my edits now and will forward the completed  
2 document next week." And it's signed "MBG."

3 Is it your understanding that that's from your  
4 research assistant, Michele?

5 A Yes, it is.

6 Q Do you have any understanding of what she meant  
7 by -- or what was needed to make it, quote, "legally  
8 defensible"?

9 A I'm sure what it's referring to is that it's a  
10 documentable number.

11 Q What do you mean by a documentable number?

12 A That it's backed up by numbers. That would be  
13 your data that would be publicly accessible, such as the  
14 Department of Education at Data Quest or some such  
15 source.

16 Q And just so the record's clear, the ACLU paper  
17 this is referring to is Linda Darling Hammond's paper,  
18 correct?

19 MR. AFFELDT: Objection; lacks foundation.

20 THE WITNESS: I think this is -- that's probably  
21 what she meant.

22 BY MS. READ-SPANGLER:

23 Q You testified before that John Affeldt wrote the  
24 initial draft of your report. Why didn't you write it?

25 A I -- the paper, as he drafted it, was based on

1 things that I believe to be true.

2 BY MS. READ-SPANGLER:

3 Q When you sign a declaration, you sign it under  
4 penalty of perjury. When you do your expert report, you  
5 make no such oath. Does that help you differentiate  
6 between the two?

7 MR. AFFELDT: Objection; calls for a legal  
8 conclusion.

9 MS. READ-SPANGLER: Well, I think he knows if he  
10 signs something under penalty of perjury.

11 MR. AFFELDT: Well, I wouldn't necessarily agree  
12 with your characterization.

13 MS. READ-SPANGLER: Okay. Whatever. It's not that  
14 important.

15 Q Did you ever have an understanding as to whether  
16 Russ Rumberger or Patricia Gandara would act as experts  
17 in this case?

18 A I had no expectations that were preformed.

19 Q Is that a "no"?

20 A I did not have an expectation about whether they  
21 would serve as expert witnesses until the point which I  
22 was asked to be the expert witness in this case.

23 Q So you have no understanding -- or do you have  
24 an understanding as you sit here today that either  
25 Patricia Gandara or Russ Rumberger will be experts in

1 discussions that we had about the format and the content  
2 of the document. I didn't have the time to put into  
3 preparing the draft. And in this particular case I  
4 believe I expressed a preference that the paper be put in  
5 the form that is maximally useful for the case, as long  
6 as I was able to react and respond and revise the  
7 testimony.

8 Q I know you've prepared declarations before.  
9 Have you prepared an expert report for any case before?

10 A I don't draw any distinction, I guess, between  
11 an expert report and a declaration, and so I don't know.  
12 I've prepared declarations or what I thought were  
13 declarations that I would have thought is more like an  
14 expert testimony. So I don't know how I would be able to  
15 answer your question.

16 Q Well, a declaration is prepared on pleading  
17 paper and submitted directly to the court. Does that  
18 help you at all?

19 MR. AFFELDT: Objection; calls for a legal  
20 conclusion.

21 THE WITNESS: Yeah, I really don't have the  
22 expertise. What I do is I write and offer opinions that  
23 are useful for legal cases. And as an academic or as an  
24 expert, I personally don't distinguish between  
25 declarations and expert testimonies. In both cases I say

1 this case?

2 A I believe they will not.

3 Q Do you consider yourself -- well, strike that.

4 Earlier we discussed your areas of expertise,  
5 and you did not indicate that you consider yourself to be  
6 an expert in psychometrics. Do you consider yourself to  
7 be an expert in test design or psychometrics or test  
8 validity?

9 A I don't -- that answer really depends on one's  
10 definition of "expertise." Psychometrics is a  
11 specialized application of statistics and science but  
12 uses methodologies from statistics and research design  
13 that are common across areas.

14 And so the -- while I have not constructed a  
15 test from the ground up, I am an expert in the sense that  
16 I can evaluate whether the construction and the  
17 application of a test is appropriate or not.

18 So I can determine -- make an expert  
19 determination of whether a test being used, for example,  
20 has valid use and has been developed according to  
21 professionally adopted standards for validity and  
22 fairness, for example.

23 I also for over five years, on the board of the  
24 Educational Testing Service, which is the largest testing  
25 organization in the world -- I serve on that board. And

1 one of the reasons I'm on the board is because of my  
2 knowledge and understanding of construction and test  
3 usage. So in that sense I consider myself an expert who  
4 can speak to issues of psychometrics.

5 Q When you said you're knowledgeable of issues of  
6 validity and fairness, what do you mean by those terms in  
7 the context of tests?

8 A Well, in this particular case related to English  
9 language learners, validity has to do with whether a test  
10 measures the intended construct, the intended thing to be  
11 measured in the context of students whose English  
12 language proficiency is limited. So a test validity  
13 would be threatened to the extent that, for example, if  
14 you're trying to measure math, the test becomes more of  
15 an English measure rather than of math by virtue of the  
16 student's English language proficiency.

17 So that's what I mean by issues of validity.

18 What was the other word?

19 Q Fairness.

20 A Yeah. Fairness, again, is a concept having --  
21 you know, it's whether a test response is prejudiced in  
22 any way for reasons other than its intended purpose. So  
23 in fairness reviews, all test companies that have any  
24 serious quality control standards subject their items to  
25 fairness review, both subjective through the use of

1 that ring a bell at all?

2 A Yes, it is does.

3 Q Okay. Good. I want you to explain to me if you  
4 could, first of all, what you meant by "California  
5 system" in the context of that sentence.

6 A I believe I was referring to the use of the  
7 SAT-9 as an accountability mechanism and as the primary  
8 instrument for the STAR program. So I wasn't referring  
9 to the California educational system per se, but rather  
10 just to the system of testing and accountability as  
11 formulated under the STAR program. Those are S-T-A-R,  
12 all in caps.

13 The standard I was referring to was the APA,  
14 AERA NCME standards, which is the American Psychological  
15 Association, American Educational Research Association  
16 National Council for Measurement in Education Standards,  
17 who have set forth a set of standards for fairness and  
18 validity in educational measurement.

19 And there are a number of standards which the --  
20 including the issues such as the need for multiple  
21 measures of multiple assessments and not reliance on a  
22 single test. And that the test should be measuring what  
23 it's intended to measure and not, in the case of English  
24 language learners, for example, becoming inadvertently a  
25 measure of English language development rather than of

1 expert or panels that look at experts -- so, you know, if  
2 there's an item about tanks and guns, it would likely be  
3 excluded because boys would be more likely to respond to  
4 that item than girls. Or if it's about Barbie dolls, it  
5 would probably be excluded for the other reason.

6 So fairness review of items are done both  
7 through the judgment of panels that look at the items, as  
8 well as statistically by the differential responses of  
9 categories of people.

10 In my particular case, this would be whether the  
11 fairness has -- you know, can be applied to English  
12 language learners or not. There are race and culture  
13 fairness, judgments that are exercised as well, and those  
14 are all things that test makers worry about.

15 Q There's a little boy on our street who loves  
16 Barbie dolls, so --

17 A Well, there you go.

18 Q I hope I can give you enough context for you to  
19 answer this question because I don't have a transcript to  
20 refer you to. But we were talking on the first day about  
21 standards for test practices in the National  
22 Psychiatric -- or something that starts with "psych,"  
23 because that's all I put in my notes -- organizations and  
24 their standards for test practices. And you said  
25 California's system violates those test standards. Does

1 the content that it is trying to address; that if you  
2 apply those standards to the way in which California  
3 is -- has been solely -- not solely but virtually solely  
4 relying on, the SAT-9, as the measure for achievement,  
5 that it would be in violation of those standards.

6 Q When you say that California virtually solely  
7 relies on the SAT-9, what do you mean by "virtually  
8 solely"?

9 A Well, there are other measures that are used.  
10 The graduation test, for example. But by "virtually  
11 solely," I guess I mean -- the emphasis is on "solely" --  
12 the SAT-9 is the measure, that is, the annual test that's  
13 used upon which API scores are assigned.

14 For English language learners whose native  
15 language is Spanish and who have been here for less than  
16 one year, there is the opportunity to take SABE, S-A-B-E,  
17 in Spanish, but that test is not included in the API, and  
18 therefore it is solely the measure that's used, and that  
19 would be not good practice as far as the use of test to,  
20 say, make educational decisions.

21 Q With the exception of students taking the SABE,  
22 is it your understanding that API scores are based  
23 exclusively on the SAT-9?

24 A Looking at the improvement in SAT-9 scores,  
25 taking into account the socioeconomic status of the

1 school, I believe -- I'm not -- I'm not a user of API  
2 scores, but my close colleague at Stanford, Professor  
3 Haertel, H-a-e-r-t-e-l, is on the State committee that is  
4 the advisory committee for API, and my understanding from  
5 him is that that's what it is.

6 Q So your understanding is 100 percent of a  
7 school's API score is based on SAT-9 scores?

8 A Or derivatives.

9 Q What do you mean by "derivatives"?

10 A Well, adjustments that are made on the basis of  
11 SES, for example.

12 Q You're not familiar with the California  
13 Standards Test?

14 A Yes, I -- well, I'm familiar with its existence,  
15 and I'm also familiar with the fact that there's an  
16 extremely high correlation between the SAT-9 score and  
17 the standards test because the standards test is really a  
18 separate measure -- it's separately reported, but many of  
19 the items that go into the standards test is selection of  
20 items that are contained within the SAT-9, such that when  
21 you do a correlation between the SAT-9 score and the  
22 standardized test, there is an almost perfect correlation  
23 between the two because they're really subsets of the  
24 other -- one is a subset of the other with a few items  
25 added to fill in a few gaps in the test where the

1 incomplete. So I think what I suggested was just that  
2 the sections that seemed complete in that, because there  
3 was some sort of deadline approaching, that those were  
4 the ones that they concentrated on rather than the  
5 sections that were incomplete. I was just giving them  
6 collegial advice there, because I was not an author of  
7 the paper.

8 Q I know at one point you queried John Affeldt as  
9 to whether or not Rumberger and Gandara couldn't be the  
10 experts because there was a lot going on in your life,  
11 and I'm wondering if you were ever told whether they were  
12 asked if they could be the experts.

13 A I was not told either -- one way or another.

14 Q And you told us that one reason why you thought  
15 Patricia might not be as good -- well, that's probably  
16 the wrong word, but as desirable an expert is that she's  
17 identified too much with the bilingual versus structured  
18 English immersion debate, and that that might be  
19 perceived as a negative. Aren't you identified with that  
20 debate, as well?

21 A Yes, I am. But I'm also identified with the  
22 National Research Council report, which acknowledged that  
23 bilingual, all things equal, would yield better outcomes  
24 than English only, that there were many other things that  
25 one ought to be paying attention to in school improvement

1 standards may not have been addressed by the SAT-9 test.

2 Q Did you participate in the litigation in  
3 San Francisco, which I know as the STAR litigation, but  
4 where it was based on English learners complaining about  
5 having to take the SAT-9?

6 A No, I don't believe I did. I did receive -- I  
7 think I talked to some people who were involved in the  
8 case, but I don't think I was personally involved in it.

9 Q Are you familiar with the process whereby  
10 parents can waive their child out of having to take the  
11 SAT-9?

12 A I know that parents can waive their children  
13 from taking the SAT-9.

14 Q Going back to the Rumberger and Gandara 2002  
15 paper, you testified that the final version was quite  
16 polished and you thought that some items had been  
17 eliminated. Do you recall testifying to that?

18 A No, I don't. I think I said that some sections  
19 of what had been in the draft had been eliminated.

20 Q Do you recall what sections you -- were  
21 eliminated?

22 A No.

23 Q Do you recall whether they were sections that  
24 you thought weak sections?

25 A I believe there were sections that were

1 rather than the bilingual versus English-only debate.

2 And so I think that as seen by the fact that the  
3 report's conclusions were embraced by opponents of  
4 bilingual education just as much as it was embraced by  
5 and even criticized by advocates for bilingual education,  
6 I think the record of my own writings would suggest that  
7 I'm -- that I would be seen as and perceived as somebody  
8 who is more in the middle rather than on one side of the  
9 debate.

10 The grounds on which I was opposed to  
11 Proposition 227 had just as much to do with the fact that  
12 the approach advocated by Proposition 227 was inflexible  
13 and that the program it was advocating did not have a  
14 sound theoretical basis rather than by the advocacy for  
15 bilingual education programs.

16 Q So you wouldn't necessarily be opposed to  
17 English-only if it were done in a supportive, more  
18 flexible manner?

19 A All things being equal, I still believe that  
20 bilingual education will yield the better outcome than an  
21 English-only. So I would still say that all things being  
22 equal, one ought to try to implement bilingual programs.

23 But given the difficulty of doing that through  
24 the difficulty of recruiting bilingual teachers, for  
25 example, or possibly just the costs associated with heavy

1 political opposition, that one has to be more realistic  
2 and look for programs that are -- that can be implemented  
3 with adequate resources, adequate staffing. And, you  
4 know, that would be where I would put my energy rather  
5 than hanging all of the debates on English-only versus  
6 bilingual.

7 I still believe that the research is quite clear  
8 that the bilingual approaches are superior to  
9 English-only if you control for all of the background  
10 characteristics of students.

11 Q Do you know how many different languages are  
12 spoken in California by public students?

13 A Somewhere in the 150 to 175 range, I would  
14 imagine, but about 75 percent of it would be Spanish.

15 Q I think you stated you gave a deposition in the  
16 Theresa P. case; is that correct?

17 A Yes, I did.

18 Q Do you have a transcript of your deposition  
19 testimony?

20 A I do have it. I believe you have been given it.

21 Q I apologize if I already asked this. I don't  
22 think I have, but if I did, just tell me.

23 Have you ever worked on any other case as a  
24 non-testifying expert or consultant?

25 A As a non-testifying -- as in providing a

1 you've previously told us about, which I think was --

2 A I did list a few the other day.

3 Q Yeah, Angie V., Valeria J., same case.

4 Theresa P., the Colorado Center -- Colorado Federal  
5 Mediation Services thing, and then something -- the  
6 English regents in New York State.

7 A Right.

8 MR. AFFELDT: I would issue the same instruction as  
9 to cases that are resolved.

10 MS. READ-SPANGLER: I'm just asking him if he's  
11 worked on any others. That's not privileged.

12 MR. AFFELDT: It might be. I don't know the answer  
13 to the question. But if he's working on stuff that is  
14 currently going on as a consulting expert, then that is  
15 work product.

16 THE WITNESS: No cases that have been resolved,  
17 other than what you've listed.

18 BY MS. READ-SPANGLER:

19 Q Okay. Have you given any other testimony in the  
20 area of teaching of English learners or second language  
21 acquisition, for example, to any legislative bodies?

22 A Yes, I have.

23 Q What -- to whom and what was the nature of the  
24 testimony?

25 A I've testified to both houses of Congress

1 declaration?

2 Q Or even working behind the scenes and not -- as  
3 a consultant?

4 A Not as a paid consultant. I have offered  
5 several declarations, which are -- actually, all the  
6 declarations that I think I've made are posted on my  
7 website.

8 Q How about just as a consultant where you've  
9 provided research assistance or anything of that nature  
10 beyond what you've already testified to, which I think  
11 was declarations?

12 MR. AFFELDT: I'm going to object to the extent that  
13 that may seek to invade attorney work product and people  
14 on those cases. I don't know if that's a proper area of  
15 inquiry.

16 MS. READ-SPANGLER: Are you instructing him not to  
17 answer?

18 MR. AFFELDT: Yeah, at this point, I think I will.

19 MS. READ-SPANGLER: Well, I think if the cases are  
20 resolved, he can answer.

21 MR. AFFELDT: If the cases are resolved, you can  
22 answer.

23 MS. READ-SPANGLER: Well, let's ask this first, and  
24 we may not even need to go down that road.

25 Q Have you worked on any cases other than what

1 regarding the reauthorization of the Elementary and  
2 Secondary Education Act, not No Child Left Behind, prior  
3 to No Child Left Behind, in the Improving America's  
4 Schools Act. I've testified to the State Board of  
5 Education in California, Connecticut.

6 I've offered written testimony to New York  
7 State -- no, not New York State but New York City Board  
8 of Education. I've spoken in seminars of legislators,  
9 the Aspen Institute, which are congressional leaders from  
10 the Senate and the House, bipartisan, in the area of  
11 education.

12 I just mentioned earlier I spoke to the  
13 education cabinet of North Carolina State. In  
14 Massachusetts I believe I've spoken to their Board of  
15 Education. I can't recall. I'm sure there are others,  
16 but that's what I can recall right now.

17 Q On how many occasions have you spoken to or  
18 testified before the California State Board of Education?

19 A I believe it must be just once or maybe twice.

20 Q And when was or were those occasions?

21 A I cannot remember.

22 Q Was it --

23 A It was regarding bilingual education, however.

24 Q Was it within the last year?

25 A No.



1 Q Was it pre-Prop 227?  
 2 A Yes.  
 3 Q Was it in regard to Prop 227?  
 4 A No.  
 5 Q And what was the nature of your testimony -- I  
 6 guess we should start with the House, regarding the  
 7 reauthorization of the SEA?  
 8 A It was around the various provisions of Title 1  
 9 and Title 7 as they pertain to -- well, Title 7 is all  
 10 about English language learners, but Title 1 has  
 11 provisions that pertain to English language learners, and  
 12 so it had to do with the importance of assessment and  
 13 accountability provisions that were being developed in  
 14 Title 1 for the inclusion of English language learners.  
 15 It was about the improvement of and the importance of  
 16 professional development efforts in Title 7, which -- a  
 17 large part of which is federal funding to improve  
 18 professional development and develop the teaching force  
 19 for English language learners.  
 20 They were -- I was testifying in my capacity as  
 21 the chair of a group that was known as the Stanford  
 22 Working Group. The Stanford Working Group had no  
 23 affiliation with Stanford other than it was -- that it  
 24 was through a grant administered by Stanford from a  
 25 number of private foundations to bring together experts

1 and proponents of programs for English language learners  
 2 and trying to improve the federal law in services for  
 3 English language learners.  
 4 Q Was the nature of your testimony to the Senate  
 5 similar?  
 6 A Yes.  
 7 MS. READ-SPANGLER: Let's go off the record.  
 8 (Discussion off the record.)  
 9 (Recess taken: 12:00 until 12:42 p.m.)  
 10 BY MS. READ-SPANGLER:  
 11 Q We're back. I think we have about an hour,  
 12 so...  
 13 Who is the director of the teacher education  
 14 program at Stanford?  
 15 A Rachel Lotan, L-o-t-a-n.  
 16 Q We talked on the first day about professional  
 17 development, and you said that effective programs are the  
 18 exception, not the rule, and you discussed a couple  
 19 different programs, Evergreen and San Francisco Unified.  
 20 I'm wondering, what constitutes an effective  
 21 professional development program, in your opinion?  
 22 A It's one that addresses both the English  
 23 language development needs and the content area language  
 24 needs for English language learners; that enables  
 25 teachers in the course of their practice to reflect on

1 the theories and larger framework around which we  
 2 understand the learning needs of students. It's a  
 3 program that helps teachers use assessment, not for  
 4 accountability-type assessments like tests, but ongoing  
 5 assessments of students to understand what their current  
 6 level of development is, both in language and in academic  
 7 content to bring them to the next level.  
 8 And I would say it's one that allows teachers an  
 9 opportunity to be reflective about their teaching. But I  
 10 think that an effective professional development is one  
 11 that is generative of more than a bag of tricks. That  
 12 is, that if you're taught a specific strategy for  
 13 teaching English language learners, that there's  
 14 something -- that the teacher understands that it's more  
 15 than just a trick or a particular strategy to be done but  
 16 is understood within a larger framework of instruction.  
 17 Q And what do you think -- what, if anything, do  
 18 you think that the Department of Education should do in  
 19 terms of supporting or creating such professional  
 20 development programs?  
 21 A For creating such programs?  
 22 Q Supporting or creating.  
 23 A I think that it should create incentives through  
 24 participation in such professional development programs.  
 25 Where they do provide such programs, they ought to --

1 specifically in the area of English language learners,  
 2 they should try to encourage programs that lead to  
 3 certification in that area, that is, a class  
 4 certification.  
 5 They should be -- have a developmental sense as  
 6 some professional development programs may be more  
 7 appropriate for beginning teachers than for more  
 8 experienced teachers.  
 9 The department could help districts to find  
 10 resources to pay for strong professional development.  
 11 Q What, if any, role do you think the State Board  
 12 of Education should have in creating and supporting such  
 13 programs?  
 14 A The State Board of Education as opposed to the  
 15 State Department of Education? It could develop  
 16 standards for -- that are specific to professional  
 17 development programs for the students and ask the State  
 18 Department of Education to monitor and enforce the  
 19 provision of professional development programs that  
 20 conform to those standards.  
 21 Q And what, if any, role do you think the  
 22 superintendent of public instruction should have in  
 23 creating and supporting such professional development  
 24 programs?  
 25 A Well, as I understand it, the state

1 superintendent of public instruction is the chief  
2 administrator and leader and provides leadership to the  
3 Department of Education and therefore would place --  
4 through all of the tools available, exercise leadership  
5 in those areas, direct the units within the department to  
6 enforce the development and provision of appropriate  
7 professional development for English language learners.

8 Q Do you have an opinion as to whether such  
9 professional development programs like you described are  
10 more appropriately created and supported by districts or  
11 by state-level entities?

12 A I think that it's really a two-way  
13 responsibility. The districts are the ones who know  
14 better what they need, but the State also needs to remind  
15 districts of what it is that they should be doing in  
16 exercising their responsibility in professional --  
17 appropriate professional development for students.

18 The State also should take its responsibility in  
19 the distribution of federal funds, such as Title 1, to  
20 school districts in ways that maximally encourage  
21 professional development that helps teachers be better  
22 trained to teach English language learners.

23 Q We discussed before that there's not -- or that  
24 all educational researchers agree that it takes three to  
25 five years to acquire full English proficiency. Is that

1 to the point where they have developed oral proficiency  
2 in English.

3 So even for those students, it seems to take  
4 three to five years. It may take longer for older  
5 students to develop proficiency. But there's actually an  
6 argument to be made that for older students who already  
7 know -- have a lot of academic content knowledge, that  
8 some of those students may actually paradoxically learn  
9 English more quickly because they're learning it in the  
10 context of academic subject matter that they understand.

11 So just to answer your question, it's not  
12 necessarily the case that the younger kids take a shorter  
13 period of time.

14 Q Who are the main scholars -- what scholars'  
15 research do you look to in the field of English language  
16 learners and second language acquisition? Who is  
17 preeminent?

18 A The work that I've relied on are -- well, much  
19 of it is my own data collection, the data that I've  
20 collected. I've also found useful research conducted  
21 by -- through case study research conducted by  
22 researchers in second language acquisition, such as  
23 Leo Van Lier, L-e-o, V-a-n L-i-e-r, at the Monterey  
24 Institute for International Studies. I've looked at the  
25 work of Catherine Snow, who is a professor at Harvard.

1 an accurate restatement of what you said before?

2 A Yes, it would be. I would say three to five  
3 years or longer.

4 Q I'm not trying to be argumentative, but wouldn't  
5 that be somewhat age-dependent? I mean wouldn't it take  
6 less time for a younger student to learn just by virtue  
7 of the fact that they have smaller vocabularies and less  
8 grammar and stuff like that?

9 A The research shows that the younger the  
10 students, the more likely they are ultimately to attain  
11 proficiency in English that is as close as possible to  
12 that of native English speakers. But the best evidence  
13 that exists for how long it takes kids to learn English  
14 are for kids who begin early. That is, most of the data  
15 that exists are for children who begin school in  
16 kindergarten, entering as English language learners, and  
17 it tracks how long it takes those children to development  
18 English proficiency.

19 Based on that evidence, and I would specifically  
20 point to a school district, Evergreen, which I pointed to  
21 as having a well-organized English language development  
22 program, and also a school in which many of the  
23 conditions of poverty do not exist -- of high poverty do  
24 not exist -- that in those students it takes up to three  
25 to five years or it takes from three to five years to get

1 I've looked at the work conducted at the Center for  
2 Applied Linguistics in Washington, D.C. Virginia Collier  
3 conducted a study awhile back, but nevertheless it's  
4 still good, on students learning English.

5 In a paper that I wrote I gathered primary data  
6 from a number of other sources, data reported by  
7 James Cummins, data reported by a gentleman who I can't  
8 remember who is -- works at the North York School  
9 District in Canada. That would be international data.

10 Q Anyone else?

11 A I'll leave it at that.

12 Q Not Patricia Gandara?

13 A Patricia Gandara does not do research in second  
14 language acquisition.

15 Q What's the area of her research?

16 A She does mostly policy research, policy  
17 analysis, programs for English language learners. She is  
18 an expert in the area of school reform. She has also  
19 looked at programs for the transition of minority  
20 students from high school to institutions of higher  
21 education, such as the University of California. She has  
22 been also an analyst in education in I believe the  
23 Assembly Office of Research in California, and so she's  
24 really a policy expert.

25 Q So would it broaden the field from the list of

1 names you gave before if I said sort of education of  
2 English learners? Would that be a bigger group of people  
3 that would be the main people in the field than what you  
4 gave me before?

5 A The name you gave me before, you asked people on  
6 whom I might rely to offer the opinion that it takes  
7 students three to five years to master English.

8 Q That wasn't my question, so I'm glad you  
9 clarified that.

10 A That's how I understood your question.

11 Q It was a totally different subject. I just  
12 wanted to know just main people in the field of English  
13 learners and second language acquisition in general. So  
14 education of English learners.

15 MR. AFFELDT: Objection; vague and overbroad.

16 BY MS. READ-SPANGLER:

17 Q So whose research -- when you're doing a paper,  
18 like if you're going to do a META analysis or something  
19 like that of education of English learners and second  
20 language acquisition, who besides who you've already  
21 listed would you look to?

22 MR. AFFELDT: Same objection.

23 BY MS. READ-SPANGLER:

24 Q You can go ahead and answer.

25 A You could look at the roster of the National

1 A It really would depend on the specific topic  
2 that I would be interested in. So I don't feel -- the  
3 field of education of English language learners is not  
4 really a field. It is a field of specialization of a  
5 particular population but around whom people with  
6 expertise and in other areas of education may touch upon  
7 because in almost any sample of English language  
8 learners, you would -- you know, they would be included  
9 in your sample.

10 And so that would almost be like saying, well,  
11 you know, who -- it's really no different than if you  
12 were asked, even within a field of law, such as  
13 litigation, to say, well, who are the preeminent people  
14 in the field of litigation that you would point to? And  
15 really it depends on the specialized area of litigation.

16 So if you were to ask me who in the area of  
17 English language assessment, I could answer that. Who in  
18 the area of English language professional development, I  
19 might be able to answer that.

20 So on those grounds, I don't feel I can answer  
21 the question you're asking.

22 Q Is second language acquisition a specialization  
23 that you could answer that for?

24 A Sure.

25 Q How about let's take it for second language

1 Academy of Sciences committee that I chaired, which was a  
2 broad roster that had been developed by the National  
3 Academy of Sciences to form the question of English  
4 language learners.

5 And included in that are -- the study director  
6 for that study was Diane August. There are people on  
7 that committee, such as Professor Richard Duran, who is  
8 at University of California, Santa Barbara, and Lucinda  
9 Pease-Alvarez, who specializes in teacher preparation at  
10 the University of California, Santa Barbara. Catherine  
11 Snow, who is at Harvard University.

12 There's a roster there that one could begin if  
13 you needed to formulate in this. But it's a very large  
14 list of people that I -- and I would be happy to go  
15 through my Rolodex and name them for you if you'd like.

16 Q I'm just wondering who you think are the most  
17 respected or who you find to be the people whose research  
18 you -- like if an article or paper comes out by someone,  
19 you put it at the top of your pile because it's, "Oh,  
20 Catherine Snow published something. I want to look at  
21 that because I respect her work." Who is sort of  
22 preeminent in the field in your mind?

23 MR. AFFELDT: Objection; vague and overbroad.

24 BY MS. READ-SPANGLER:

25 Q You can answer.

1 acquisition?

2 A Well, I would look at Professor Lily  
3 Wong-Fillmore at University of California, Berkeley,  
4 Ellen Bialystok, B-i-a-l-y-s-t-o-k, at the University  
5 of -- at York University. Professor Fred Genesee,  
6 G-e-n-e-s-e-e, at McGill University, Professor Hugo  
7 Baetens-Beardsmore, H-u-g-o, B-a-e-t-e-n-s  
8 B-e-a-r-d-s-m-o-r-e, who is at the -- I believe  
9 University Of Belgium. Professor Guus Extra, G-u-u-s,  
10 E-x-t-r-a, who is at the University of Tilburg,  
11 T-i-l-b-u-r-g, in the Netherlands. I would list  
12 Professor Patsi Lightbown, L-i-g-h-t-b-o-w-n, at McGill  
13 University. Michael Long, L-o-n-g, at the University of  
14 Hawaii at Manoa. And there are many others, but those  
15 come to mind.

16 Q Would you include yourself in that group?

17 A In second language acquisition? Yes, I would.

18 Q Who do you consider to be preeminent in the  
19 field of English learner assessment?

20 A English learner assessment. There is assessment  
21 of English language, and then there is assessment of  
22 English learners in the content area.

23 Q Let's start with English language assessment.

24 A Okay. In the area of English language

25 assessment, I guess I would list Lyle Bachman, L-y-l-e,

1 B-a-c-h-m-a-n, at UCLA. Frances Butler at -- who is  
2 also -- at a different unit but also at UCLA. Dorry  
3 Kenyon, K-e-n-y-o-n, at the Center for Applied  
4 Linguistics in Washington.

5 There are experts at the -- that work with the  
6 English language assessments at the Educational Testing  
7 Service, whose unit is headed by Mari Perlmann, although  
8 she herself is not an expert. There are a large number  
9 of psychometricians there who work in the area of English  
10 language assessment. Ed De Avila, D-e A-v-i-l-a, who is  
11 an independent consultant but has created -- is the  
12 creator of the Language Assessment Scales, the most  
13 widely used test of English language proficiency used in  
14 this country.

15 Do you want more?

16 Q That's okay. How about assessment of content?

17 A In that area there is Jamal Abedi, J-a-m-a-l,  
18 A-b-e-d-i, who is at UCLA. There is -- the problem is I  
19 have such a hard time remembering names of people.  
20 But --

21 Q Just your best recollection.

22 A I'm just trying to think of the person. Just  
23 give me a second and I'll come up with a name. Why can't  
24 I think of her name? Anyway, there's a professor at  
25 George Washington University who has worked quite a bit

1 is at Georgetown University. David Ramirez, who is at  
2 Cal State, Long Beach.

3 Q Lots of good names. Interesting names.

4 A Interesting names. It's a diverse field.

5 Q Yes.

6 We talked about the Wong-Fillmore and Snow  
7 research discussing that all teachers of English learners  
8 should have a minimum of seven college-level or a range  
9 of these seven college-level-type courses. And you had  
10 indicated that these were addressed in the CLAD, BCLAD  
11 training; is that correct, that those areas were?

12 A Yes, I believe so.

13 Q Is it your understanding or your opinion that  
14 those areas are also addressed in the new Standard 7 CLAD  
15 infused standard?

16 A They could be. They could be.

17 Q What do you mean by that?

18 A They're not specified or they're not -- you  
19 know, if you read what those seven courses are, they're  
20 not enumerated in the Standard 7, but to the extent that  
21 Standard 7 talks about language acquisition, the theory  
22 underlying it, its uses in social situations and so  
23 forth, you could -- you know, a curriculum that follows  
24 Standard 7 could incorporate the elements of what  
25 Wong-Fillmore and Snow say would be what every teacher

1 in this area. Diane August, who was at the Center for  
2 Applied Linguistics, who has worked on this topic. A guy  
3 by the name of Olson, whose first name I can't remember,  
4 who is at the American Institutes for Research. There is  
5 Rebecca Kopriva, K-o-p-r-i-v-a, at the University of  
6 Delaware. That's about it.

7 Q And just because we've talked about it a lot,  
8 how about preminent scholars in the field of English  
9 language professional development?

10 A I would put in there Aida Walqui, A-i-d-a  
11 W-a-l-q-u-i, who currently works at West Ed, an  
12 educational organization in San Francisco. Alba Ortiz,  
13 O-r-t-i-z, at the University of Texas at Austin. I would  
14 put Else Hamayan, E-l-s-e, H-a-m-a-y-a-n, who is at the  
15 Illinois Resource Center. As a practitioner, I would put  
16 Ellen Moir, M-o-i-r, who is the director of the  
17 Santa Cruz New Teacher Project, who also maintains a  
18 research staff there. One researcher who works with her  
19 is a Michael Strong, S-t-r-o-n-g.

20 Q Anyone else?

21 A Sure. The -- I guess I would put in there --  
22 include in there Debbra Short, as in long and short, from  
23 the Center for Applied Linguistics. Jana Ecchevarria,  
24 J-a-n-a, E-c-c-h-e-v-a-r-r-i-a, from Cal State,  
25 Long Beach. Ana Uhl Chamot, A-n-a U-h-l C-h-a-m-o-t, who

1 should know about language acquisition into their courses  
2 that satisfy Standard 7.

3 Q So, in your opinion, would a teacher receiving  
4 the Standard 7 training or certification -- would that  
5 teacher be at least minimally qualified, as you used the  
6 term on the first day, to teach English learners?

7 MR. AFFELDT: Objection; improper hypothetical,  
8 insufficient facts upon which to form an opinion.

9 BY MS. READ-SPANGLER:

10 Q Well, let me back up a little.

11 On the first day you talked about that CLAD and  
12 BCLAD -- teachers with CLAD and BCLAD certifications had  
13 at least minimally met -- were minimally qualified to  
14 teach English learners, and you said "minimally" because  
15 you'd hope they'd keep getting professional development.

16 A Yes, I did.

17 Q So my question is, Would the new Standard 7  
18 training provide the same or a similar sort of minimal  
19 qualification, in your opinion, to teach English  
20 learners?

21 MR. AFFELDT: Same objection and lacks foundation,  
22 as well.

23 BY MS. READ-SPANGLER:

24 Q You can go ahead and answer.

25 A I stated my concerns about the extent to which

1 programs will be able to provide sufficient coverage of  
2 the elements of Standard 7, given their capacity or lack  
3 of capacity. So my -- I would only be able to say that  
4 it would meet the minimum requirement if they're able to  
5 fully staff and resource the programs to address all of  
6 those elements. But I have questions about whether --  
7 how realistic that is as a possibility.

8 Q But it's a good first step by, first, we create  
9 a standard, and then we'll get people to teach a standard  
10 and mentors to -- who are trained to mentor the students?

11 A I believe --

12 MR. AFFELDT: Objection; vague and ambiguous and  
13 compound.

14 BY MS. READ-SPANGLER:

15 Q You can answer.

16 A I believe that if you look back at the history  
17 of where the State has been, that it has been a series of  
18 first steps that have never been followed by a second  
19 step, and so the issue of English language learners  
20 really became -- came to the State's awareness in the  
21 '70s, and first steps were taken to try to address the  
22 needs of these students. So by those grounds you can say  
23 that, yes, many first steps have been taken.

24 The state department in 1981 published a  
25 theoretical framework for dealing with English language

1 A Well, I think maybe I shouldn't say just  
2 accountability, but supports that go along with it so  
3 that improvement can happen. So by "accountability," I  
4 mean asking whether improvement is taking place in the  
5 quality of the kinds of services that are being provided  
6 for professional development, the -- and, in the  
7 preservice programs, whether that is actually resulting  
8 in improvements in the number of students that are being  
9 served by these certified teachers, indicators whether  
10 that is actually having a positive outcome on the  
11 achievement of these students, both short-term and  
12 long-term, and improvement and changes in the process if  
13 those outcomes are not being achieved.

14 THE WITNESS: Can I take a quick run to the  
15 bathroom?

16 MS. READ-SPANGLER: Sure.

17 (Recess taken: 1:20 until 1:22 p.m.)

18 THE WITNESS: Can I go back and add that name I was  
19 trying to remember?

20 BY MS. READ-SPANGLER:

21 Q Oh, please.

22 A It's Sharlene Rivera.

23 Q Which group was she in?

24 A She was in experts in content area testing for  
25 English language learners. R-i-v-e-r-a.

1 learners and took steps to try to develop professional  
2 development efforts to meet those standards. There was  
3 never a second step.

4 So I think, you know -- I think what one is  
5 looking for are assurances that several steps could be  
6 put together. But there is really no reason from the  
7 history of things that even the best of intentions are  
8 carried through. And so that's my own beliefs about  
9 first steps, is that unless there is serious  
10 accountability for things that happen beyond the first  
11 step, that efforts are inadequate.

12 Q What do you mean by "serious accountability for  
13 things that happen beyond the first step"? Actually, I  
14 think I may have misquoted you.

15 Can you read back what he said, "from serious  
16 accountability" on?

17 Could you read from "serious accountability" on?

18 (The record was read as follows:  
19 "Answer: ...unless there is serious  
20 accountability for things that happen beyond  
21 the first step, that efforts are  
22 inadequate.")

23 BY MS. READ-SPANGLER:

24 Q What do you mean by "serious accountability for  
25 things that happen beyond the first step"?

1 Q And you know we're going to contact all these  
2 people and tell them you gave us their names? No, I'm  
3 just kidding.

4 A I'm more worried that she'd see that I couldn't  
5 remember her name. I'll hear from them then.

6 Q When we were talking about capacity issues with  
7 teacher education programs and the -- regarding the  
8 placement of student teachers with supervising teachers  
9 with English learner certification -- certifications, you  
10 were -- do you remember that general topic?

11 A Yes, I do.

12 Q You were asked what the State should do to help  
13 remedy that capacity issue, and I'd like to know if you  
14 have any thoughts on what, if anything, the Department of  
15 Education specifically could or should do to help remedy  
16 that particular capacity issue.

17 A I think that --

18 MR. AFFELDT: I'm just going to object as vague and  
19 ambiguous.

20 You can answer.

21 THE WITNESS: What the Department of Education might  
22 be helpful in here is in trying to identify the teachers  
23 who with -- who would be in such situations where they  
24 might be cooperating teachers with preservice providers,  
25 like the CSUs or the UC teacher education programs, and

1 identify those who quite readily could obtain themselves  
2 a CLAD certification and work with them so that they can  
3 be placed with -- so that they could adequately supervise  
4 students with -- adequately service preservice student  
5 teachers who would work with them.

6 The State Department could maintain a database  
7 of teachers where they could offer teacher education  
8 programs or they could afford teacher education programs  
9 the ability to more readily identify teachers who could  
10 serve as cooperating teachers.

11 So that would be another mechanism that the  
12 State Department could do by maintaining better records  
13 and keeping track of specific teachers.

14 BY MS. READ-SPANGLER:

15 Q Other than just leading the Department of  
16 Education, would you have anything to add if I asked the  
17 same question about the superintendent of public  
18 instruction?

19 MR. AFFELDT: Same objection. And objection to the  
20 extent it calls for a legal conclusion.

21 THE WITNESS: Yeah, I would just say that that is  
22 beyond my expertise because I would be able to answer  
23 that if I really had an understanding of the leadership  
24 characteristics of particular individuals, but those  
25 leadership characteristics, like that in any industry,

1 English learner certifications, I'm wondering if you have  
2 an opinion as to anything that the State Board of  
3 Education could do to help remedy that.

4 MR. AFFELDT: Same objections.

5 THE WITNESS: I think that, you know, to the extent  
6 that the State Board can request, can require of the  
7 Department of Education the maintenance of better  
8 information, better database of teachers so that it can  
9 have a better sense of the resources that are out there  
10 in the existing teacher force for the improvement of the  
11 professional, that is, improvement of the profession to  
12 teach English language learners, I think that they could  
13 be quite helpful because that would provide the  
14 motivation and authority for the State Department of  
15 Education to gather statistics.

16 And I mentioned in my testimony the importance  
17 of doing a labor market analysis of teachers for English  
18 language learners, and this falls within that domain.  
19 It's not just about the attraction of teachers to teach  
20 in these schools, but also the motivation of teachers to  
21 work as cooperating teachers if they're CLAD-certified.

22 And so I think that the State Board could ask  
23 for analyses of data -- first, a collection of data, but  
24 analyses of the data to try to improve the situation.

25 BY MS. READ-SPANGLER:

1 vary from individual to individual. So I think that this  
2 would be -- I don't think I can answer that question.

3 BY MS. READ-SPANGLER:

4 Q That's fine. What, if any, role do you think  
5 the State Board of Education could or should have in  
6 terms of helping to resolve the capacity issues with  
7 regard to the placement of student teachers with  
8 supervising teachers with English learner certifications?

9 MR. AFFELDT: Same objections.

10 BY MS. READ-SPANGLER:

11 Q You can answer if you can.

12 A I think I'm not sure that I would like to answer  
13 that question or that I would -- that may be an answer  
14 that requires more thinking than I can offer  
15 spontaneously. It's not -- it's a hypothetical situation  
16 that I'm not ready to answer.

17 Q Is there some way I can clarify it for you?

18 A Sure. Why don't you repeat the question?

19 Q I'm just trying to get a sense, since I  
20 represent different people than Ms. Koury does or  
21 different entities, what different roles you might see my  
22 clients playing in terms of trying to remedy some of the  
23 issues you've presented.

24 And so with regard to this -- the problem of  
25 placing student teachers with supervising teachers with

1 Q Is it fair to say that you don't have a good  
2 understanding of the delineation of roles and  
3 responsibilities between the superintendent, the State  
4 Board, and the Department of Education?

5 A I have a -- I have an understanding that they  
6 are separate entities, but I also understand that  
7 decision making and policy development is a -- I guess  
8 the kind word would be an interactive process, but that  
9 ultimately it really comes down to the political process  
10 involved in the policy making between these different  
11 boards.

12 Q What do you mean that ultimately it comes down  
13 to the political process in the policy making between  
14 these boards?

15 A Well, any policy regarding the English language  
16 learners is -- there are multiple voices that speak, in  
17 this case, State Board, superintendent, Department of  
18 Education, and who raises an issue and how it gets  
19 addressed is a matter of negotiation between those bodies  
20 and the CTC.

21 So unless one is actually in the middle of that  
22 process of decision making, one is never certain as to  
23 how or what the right levers are to be the most effective  
24 in advocating for a change. And my understanding is that  
25 those things change from moment to moment. And the

1 personalities of particular individuals -- you know,  
2 there's a very effective member of the State Board of  
3 Education who may, you know -- and personalities do  
4 matter in these cases.

5 And that's why I say that my understanding of --  
6 in -- trying to make a general case based on the specific  
7 instance, based on specific personalities and individuals  
8 is not -- it's a waste of time trying to specify what the  
9 exact decision-making process is because we're dealing  
10 with a distributed system of governance, and much of  
11 that, therefore, rests on the negotiation of power and  
12 deals that are made between those bodies.

13 Q Did I hear you correctly when you said there's a  
14 very effective member of the Board of Education?

15 A I'm hypothesizing that if there is --

16 Q Oh, if there is.

17 A If there were a particular individual, and I  
18 could even name an individual, such as Marian Joseph, who  
19 has been a very effective member of the board in terms of  
20 impacting curriculum and impacting various policies.

21 Now, if -- and all I'm saying is that there are  
22 things like that which are the effects of strong and  
23 effective individuals or policy-makers. And if that  
24 individual goes away, that affects the power and  
25 political relationship between entities.

1 So that is my understanding of how the system  
2 works. That's the way in which -- it's not a -- you  
3 know, a top-down system like Texas, where the  
4 commissioner really can have certain authority -- there's  
5 a more top-down system.

6 So, anyway, that is just my own opinion that  
7 I've formed from working with various parts of the  
8 system. That would be my characterization of the system  
9 as I understand it.

10 Q You just used the term "a distributed system of  
11 governance," and the other day you used the phrase  
12 "highly distributed system of governance." I don't want  
13 to beat a dead horse so let me just ask, Do you think  
14 that you've explained between today and your other  
15 previous days' testimony what you mean by "highly  
16 distributed system of governance" in California  
17 education?

18 MR. AFFELDT: Objection to the extent it misstates  
19 his testimony.

20 BY MS. READ-SPANGLER:

21 Q Have I misstated your testimony?

22 MR. AFFELDT: I thought what he said was  
23 "distributed system of power."

24 I'm not sure what you said the other day, but  
25 the record will speak for itself.

1 BY MS. READ-SPANGLER:

2 Q Well, in any event, the other day you said  
3 "highly distributed system of governance" or words to  
4 that effect.

5 Do you think that you've fully elaborated on  
6 that, or could you elaborate on that more fully than you  
7 have today or in previous days?

8 A I think I would --

9 MR. AFFELDT: Objection; vague and overbroad --  
10 BY MS. READ-SPANGLER:

11 Q You can answer.

12 MR. AFFELDT: -- and calls for a narrative.

13 THE WITNESS: I think I will stand by what I've  
14 said, and I don't feel like I need to elaborate further.

15 BY MS. READ-SPANGLER:

16 Q Yeah, that's all I'm asking.

17 A It is something that is particularly well  
18 understood if you contrast it with other systems of  
19 governance, in places like -- that are in states or  
20 countries that are centralized.

21 Q And, in fact, when you were asked whether  
22 California needs to be more centralized, we discussed the  
23 pros and cons, and one of the cons, you said, was you  
24 lose -- you sacrifice local control and some of the  
25 positives.

1 Do you remember having that sort of discussion?

2 A I remember the discussion.

3 Q What are the positives that you were referring  
4 to in terms of local control?

5 MR. AFFELDT: Objection; asked and answered.

6 THE WITNESS: I think I elaborated on that the other  
7 day.

8 BY MS. READ-SPANGLER:

9 Q If you did, I don't recall. Would you mind at  
10 least beginning to elaborate again so you can refresh my  
11 memory? Because I don't think you did.

12 A Well, one of them was the fact that you get  
13 greater political participation locally in the  
14 educational process --

15 Q Are there any -- I'm sorry. Go ahead.

16 A -- and to that -- and then there are some  
17 important derivative effects of that, of local engagement  
18 in educational process, which is that you'll get more  
19 interesting -- when educational issues come up, there  
20 will be a greater interest on the part of individual  
21 citizens in educational process.

22 I'm just conjecturing this just from my  
23 knowledge of how politics works. So there could be some  
24 very positive effects coming from local governance.

25 I personally believe that it's important for

1 democracy to have issues that are going on at the local  
2 level where people can feel more participative in it and  
3 school boards and local control there can contribute to  
4 greater local participation in the democratic process.

5 Now, that's a very abstract statement, but I do  
6 think that the issue of local-controlling governance is  
7 important there. Of course, the problem with that sort  
8 of a system is that inequities can happen that do not or  
9 cannot get addressed.

10 Q I was just focusing on the positives. Can you  
11 think of any other positives right now?

12 A Positives of?

13 Q Local control.

14 MR. AFFELDT: Objection; inadequate hypothetical.

15 THE WITNESS: What do you think? No.

16 BY MS. READ-SPANGLER:

17 Q Wait. I get to ask the questions. I mean, if  
18 not, that's fine. I'm just -- I get to keep saying, "Any  
19 more? Any more?" until there's no more.

20 A Sure, if you give me time to think.

21 Q Well, let me ask you this: Did you talk to  
22 counsel about your deposition when we broke for lunch  
23 today?

24 A No.

25 Q Did you review any more documents or any

1 innovations is positive, I think. There should be the  
2 ability of a school district to develop such programs,  
3 and that would be a positive.

4 Q Anything else?

5 A I'm done.

6 MS. KOURY: Let's go off the record.

7 //

8 //

1 documents at lunch today?

2 A No.

3 Q Any other positives?

4 A I think one of the things, you know -- again,  
5 these are all having to do with positives of citizens  
6 participating in this process, but there are local  
7 circumstances that local communities can get engaged in  
8 quite effectively.

9 In my own area, for example, the ability to form  
10 innovative language education programs locally, because  
11 there happens to be a source of students who speak a  
12 particular language that the native speakers of English  
13 want to know or want to learn by forming what are called  
14 two-way bilingual programs, is a local decision that is  
15 encouraged, that's desirable, and is sometimes negatively  
16 impacted by certain State policies.

17 So, for example, two-way bilingual programs were  
18 impacted by Proposition 227 by making it more difficult  
19 for the language minority participants in those programs  
20 to participate in them because they would have to sign a  
21 waiver -- they would have to go through a waiver process.  
22 And so there's a situation where the program that has  
23 great local interest is negatively impacted by a  
24 statewide policy.

25 So the ability to develop locally-brewed

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I, KENJI HAKUTA, Ph.D., do hereby declare  
under penalty of perjury that I have read the foregoing  
transcript of my deposition; that I have made such  
corrections as noted herein, in ink, initialed by me, or  
attached hereto; that my testimony as contained Herein,  
as corrected, is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, at \_\_\_\_\_,

\_\_\_\_\_  
(City) (State)

\_\_\_\_\_  
KENJI HAKUTA, Ph.D.



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

25