

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

ELIEZER WILLIAMS, et al.,)

)

Plaintiffs,)

)

vs.) No. 312236

)

STATE OF CALIFORNIA,)

et al.,)

)

Defendants.)

_____)

DEPOSITION OF LAURI BURNHAM-MASSEY
Sacramento, California

Wednesday, July 2, 2003

Reported by:

DANIEL E. BLAIR

CSR No. 4388

Job No. 43747

1 APPEARANCES

2
3 For the Plaintiffs:

4 Mark D. Rosenbaum, Esq.
5 Sophie A. Fanelli, Esq.
6 ACLU Foundation of Southern California
7 1616 Beverly Boulevard
8 Los Angeles, California 90026-5752
9 (213) 977-9500
10 -and-
11 Jenny Pearlman, Esq.
12 Law Offices of Public Advocates, Inc.
13 1535 Mission Street
14 San Francisco, California 94103
15 (415) 431-7430

16 For the Defendant STATE OF CALIFORNIA:
17 Anthony Seferian, Deputy Attorney General
18 Office of the Attorney General
19 1300 I Street, Suite 1101
20 Sacramento, California 95814
21 (916) 327-0356
22 -and-
23 Vanessa Koury, Esq.
24 O'Melveny & Myers
25 400 S. Hope Street
Los Angeles, California 90071-2899
(213) 430-6219

For the Intervenor CALIFORNIA SCHOOL BOARDS ASSOCIATION:
Abe Hajela, Special Counsel
California School Boards Association
555 Capitol Mall, Suite 1425
Sacramento, California 95814
(916) 442-2952

1 INDEX OF EXAMINATION

2			
3		Page/Line	
4	Examination by Mr. Rosenbaum	4	12

10 INDEX OF EXHIBITS

11	Number	Description	Page/Line
12	SAD-273	The Annual Language Census,	
13	26 pages		149 8
14	SAD-274	Courageous Leadership,	
15	34 pages		254 7

1 BE IT REMEMBERED that on Wednesday, July 2, 2003,
2 commencing at the hour of 10:05 a.m., at 400 Capitol
3 Mall, Sacramento, California, before me, Daniel E. Blair,
4 a Certified Shorthand Reporter in the State of
5 California, personally appeared

6 LAURI BURNHAM-MASSEY,
7 a witness called by the Plaintiffs in the above-entitled
8 action, who, having been duly sworn by the Certified
9 Shorthand Reporter to tell the truth, the whole truth and
10 nothing but the truth, testified under oath as follows:

11 --oOo--

12 EXAMINATION BY MR. ROSENBAUM

13 Q. Can you state your name again for the record,
14 please.

15 A. Laurie Burnham-Massey.

16 Q. It's nice to see you again.

17 A. Thanks.

18 Q. You've been deposed more times than you care
19 to remember, right?

20 A. You mean ever or in this case?

21 Q. Ever.

22 A. Twice.

23 Q. Okay. And you've had a chance to talk to your
24 attorneys prior to this deposition this morning?

25 A. Yes.

1 Q. Okay. Do you want me to review the ground rules
2 of depositions, the procedures, like I did last time?

3 A. Not unless you think it's necessary.

4 Q. You know you need to answer as fully and fairly
5 as you can?

6 A. Yes.

7 Q. If you need a break, you want to get something
8 to drink, just stop and tell me. I'm glad to accommodate
9 you.

10 A. Thanks.

11 Q. If you don't understand my question, just tell
12 me. Again I'll be glad to accommodate you.

13 A. Okay.

14 Q. One thing that would help, Ms. Bernham, is if
15 you just speak up a little bit to help the reporter.

16 A. Yes.

17 Q. Prior to this morning did you review any
18 documents or materials in preparation for this
19 deposition?

20 A. No.

21 Q. Have you looked at your July 19th or July 20th,
22 2001 deposition at any time?

23 A. No.

24 MR. SAFARIAN: Please let him finish the
25 question before you give your answer.

1 Q. BY MR. ROSENBAUM: Have you ever read it over?
 2 A. Not completely.
 3 Q. Too painful?
 4 A. No.
 5 Q. Okay. If I ask you questions I previously asked
 6 you, I don't intend to go into other areas, I'm just
 7 using it as a predicate to get a baseline. Okay?
 8 A. Okay.
 9 Q. Have you -- subsequent to July 19th and 20th,
 10 2001, have you had any discussions regarding the Williams
 11 case?
 12 MS. KOURY: Objection. Overbroad.
 13 THE WITNESS: What kind of discussions?
 14 MR. ROSENBAUM: Anything. Anything at all.
 15 MS. KOURY: Same objection.
 16 THE WITNESS: Yes.
 17 Q. BY MR. ROSENBAUM: Okay. With whom?
 18 A. Just with staff to tell them where I would be.
 19 Q. Anything as to substance or content of the case?
 20 MS. KOURY: Objection. Overbroad, vague and
 21 ambiguous.
 22 THE WITNESS: Some.
 23 Q. BY MR. ROSENBAUM: With whom?
 24 A. Colleagues.
 25 Q. Can you name those colleagues, please?

1 A. Not -- no.
 2 Q. Can you name any of them?
 3 A. The consultants that I work with, but not about
 4 this deposition, just the newspaper accounts of the case.
 5 Q. Okay. Who -- with what consultants?
 6 A. The consultants in my unit.
 7 Q. Can you give me their names?
 8 A. I could, but I don't know that they were all
 9 there when we talked about it.
 10 Q. What do you remember about the content of those
 11 discussions?
 12 A. Just that we had a very general and very brief
 13 discussion of the case, that it was a big case, that it
 14 was going on for a long time, that it affected students.
 15 That's about all.
 16 Q. When you say it affected students, what do you
 17 mean by that?
 18 A. That it affected education for students.
 19 Q. Do you remember what you said, just in sum or
 20 substance?
 21 A. No.
 22 Q. Or what any of the consultants said?
 23 A. No. It was very brief.
 24 Q. Okay. Have you read any of the expert reports
 25 in this case?

1 A. No.
 2 Q. Do you know if any expert reports have been
 3 filed relating to EELs?
 4 MR. SAFARIAN: Other than anything you've
 5 learned from the attorneys in this case, you can answer
 6 that.
 7 THE WITNESS: No.
 8 Q. BY MR. ROSENBAUM: Okay. Do you know Kenji
 9 Hakuta?
 10 A. Personally?
 11 Q. Yes.
 12 A. No.
 13 Q. Do you know who he is?
 14 A. Yes.
 15 Q. What's your understanding of who he is?
 16 MS. KOURY: Vague and ambiguous and --
 17 MR. SAFARIAN: Overbroad.
 18 THE WITNESS: He's a professor and he does
 19 research in the area of services for English learners.
 20 Q. BY MR. ROSENBAUM: Have you read anything he's
 21 written?
 22 A. Yes.
 23 Q. What have you read?
 24 A. I've read the August and Hakuta -- what was the
 25 name of that? Forget the name of it. Probably remember

1 it later.
 2 Q. That's okay. Anything else?
 3 A. Yes. I've read at least two articles that he's
 4 written.
 5 Q. Do you remember the titles or the substance of
 6 those articles?
 7 A. Not specifically.
 8 Q. Did you choose to read the articles or were they
 9 given to you for reading?
 10 MS. KOURY: Vague and ambiguous.
 11 THE WITNESS: I chose to read them.
 12 Q. BY MR. ROSENBAUM: Why did you do that?
 13 MS. KOURY: Objection. Vague and ambiguous.
 14 THE WITNESS: Because I'm interested very much
 15 in this field.
 16 MR. ROSENBAUM: Of course you are.
 17 Q. And same thing for the August and Hakuta piece,
 18 you chose to read that?
 19 A. Yes.
 20 Q. How did you know about the articles? How did
 21 you find out about them?
 22 MS. KOURY: Objection. Vague and ambiguous.
 23 MR. SAFARIAN: Compound question.
 24 THE WITNESS: I looked in the library for
 25 references.

1 Q. BY MR. ROSENBAUM: Okay. And besides the three
 2 pieces that you've mentioned, anything else that you have
 3 read by Kenji Hakuta?
 4 A. Probably, but I don't specifically remember.
 5 Q. Okay. And approximately what period of time did
 6 you read these articles? I know I'm talking about three
 7 of them.
 8 A. The initial one, the book was 1999.
 9 Q. When it came out?
 10 A. Yes.
 11 Q. Okay. How did you find out about that book?
 12 A. I'm not sure how I found out.
 13 Q. What did you think of it?
 14 MS. KOURY: Objection. Vague.
 15 MR. SAFARIAN: Overbroad.
 16 MS. KOURY: Vague and ambiguous.
 17 We're going to stipulate that an objection made
 18 by one applies to the other.
 19 MR. ROSENBAUM: That's absolutely fine with me.
 20 Go ahead.
 21 THE WITNESS: I liked it. I thought it was a
 22 good research.
 23 Q. BY MR. ROSENBAUM: Why do you say that?
 24 A. I liked the way that it drew research
 25 conclusions and what the educational implications were

1 recommending the August and Hakuta book?
 2 MS. KOURY: Objection. Misleading,
 3 mischaracterizes the testimony.
 4 THE WITNESS: Not exactly.
 5 Q. BY MR. ROSENBAUM: Tell me what you did.
 6 MS. KOURY: If you remember.
 7 THE WITNESS: I had a number of articles, and
 8 that book was one.
 9 Q. BY MR. ROSENBAUM: Okay. Do you --
 10 A. That I had suggested.
 11 Q. Do you remember what you said?
 12 A. Not exactly.
 13 Q. What's your best recollection?
 14 MS. KOURY: Asked and answered.
 15 MR. SAFARIAN: Objection. Calls for
 16 speculation.
 17 THE WITNESS: I summarized the findings at that
 18 time and the educational implications and suggested that
 19 people should read all points of view.
 20 Q. BY MR. ROSENBAUM: Okay. And to the best of
 21 your recollection, what did you say about the educational
 22 implications?
 23 MS. KOURY: Objection. Asked and answered.
 24 THE WITNESS: Just reviewed what some of them
 25 were.

1 for those findings.
 2 Q. Were the research conclusions consistent with
 3 your experience in the field?
 4 MR. SAFARIAN: Objection. Overly broad, lacks
 5 foundation, calls for an inadmissible opinion.
 6 MS. KOURY: Also vague and ambiguous.
 7 MR. ROSENBAUM: Go ahead.
 8 THE WITNESS: Mostly I would say they were.
 9 Q. BY MR. ROSENBAUM: Okay. Why was that?
 10 MR. SAFARIAN: Same objections.
 11 MS. KOURY: Vague and ambiguous.
 12 THE WITNESS: That was just my opinion.
 13 Q. BY MR. ROSENBAUM: Did you recommend the book to
 14 other people?
 15 A. Yes.
 16 Q. To whom?
 17 A. Colleagues and workshop participants.
 18 Q. When you say colleagues and workshop
 19 participants, what do you mean by that?
 20 A. People who attended a workshop or a professional
 21 presentation.
 22 Q. Were you one of the speakers at a presentation
 23 or did you help put it together?
 24 A. Yes.
 25 Q. And as part of your presentation did you say I'm

1 Q. BY MR. ROSENBAUM: Which ones do you recall?
 2 A. I recall that there was at least one that said
 3 that language of instruction -- that primary language
 4 instruction could be beneficial to English learners.
 5 Q. Did you offer your point of view regarding that
 6 conclusion?
 7 MS. KOURY: Objection. Vague and ambiguous.
 8 THE WITNESS: I mostly summarized his findings.
 9 Q. BY MR. ROSENBAUM: Do you agree with him?
 10 MR. SAFARIAN: Objection. Overbroad, calls for
 11 inadmissible opinion, lacks foundation, vague and
 12 ambiguous.
 13 THE WITNESS: My opinion is yes.
 14 Q. BY MR. ROSENBAUM: Why is that?
 15 MR. SAFARIAN: Same objections.
 16 THE WITNESS: Based on my own experience and my
 17 own study.
 18 Q. BY MR. ROSENBAUM: Okay. And you also said that
 19 you presented your understanding of the findings. I
 20 don't want to repeat what you've just told me. Is there
 21 anything about the findings that you stated that you
 22 haven't already told me?
 23 MS. KOURY: Objection. Vague and ambiguous.
 24 THE WITNESS: Probably, but I don't recall that
 25 specifically.

1 Q. BY MR. ROSENBAUM: Okay. And then anything else
2 you recall about the book that you said that you haven't
3 told me so far?
4 MS. KOURY: Asked and answered.
5 THE WITNESS: Not specifically.
6 Q. BY MR. ROSENBAUM: Do do you have a library
7 either in your home or your office that you keep
8 principal materials that you think are useful to your
9 profession?
10 MS. KOURY: Objection. Vague and ambiguous,
11 overbroad, calls for speculation.
12 THE WITNESS: Yes.
13 Q. BY MR. ROSENBAUM: Okay. And is that book in
14 that library?
15 A. Yes.
16 Q. Okay. Then there also came a time when you
17 became familiar with two articles that Kenji Hakuta had
18 authored, correct?
19 A. At least two. I don't specifically remember. I
20 know I'm aware of him and I've read his work when it
21 comes across my desk or when I have an opportunity.
22 Q. When you see a new piece by Kenji Hakuta you
23 make a point of reading it over?
24 MS. KOURY: Objection. Mischaracterizes the
25 testimony, leading.

1 MR. SAFARIAN: Argumentative.
2 THE WITNESS: When I had the opportunity, yes.
3 Q. BY MR. ROSENBAUM: Why is that?
4 MS. KOURY: Objection. Vague and ambiguous,
5 calls for speculation. Also overbroad.
6 Go ahead.
7 THE WITNESS: I respect his work.
8 Q. BY MR. ROSENBAUM: Why is that?
9 MS. KOURY: Objection. Vague and ambiguous.
10 THE WITNESS: Because I understand him to be an
11 expert, and he writes clearly and understandably for me.
12 Q. BY MR. ROSENBAUM: Okay. To your knowledge, has
13 the Department of Education -- let's break this down a
14 little bit. Has your -- to your knowledge, has your
15 office ever used Kenji Hakuta as a consultant?
16 MR. SAFARIAN: Objection. Vague and ambiguous
17 as to consultant.
18 MS. KOURY: Calls for speculation.
19 MR. SAFARIAN: Vague and ambiguous as to your
20 office.
21 THE WITNESS: My unit has not, and I don't know
22 about others.
23 Q. BY MR. ROSENBAUM: What about the Department of
24 Education, do you know?
25 A. I don't know.

1 Q. Do you know Russell Gersten?
2 A. I've heard of him, yes.
3 Q. Have you ever read anything by Russell Gersten?
4 A. Yes.
5 Q. What have you read by him?
6 A. Again I don't recall the title of the article.
7 It's been a while. But I have it.
8 Q. When you say a while, what do you mean by that?
9 A. Probably 1999 or 2000.
10 Q. Okay. Do you remember anything about the
11 substance of -- it was an article; is that right?
12 A. Yes.
13 Q. Do you remember anything about the substance of
14 it?
15 A. Yes.
16 Q. What was that?
17 A. It was basically a case for immersion education.
18 Q. And do you remember the name of the article?
19 MS. KOURY: Objection. Asked and answered.
20 THE WITNESS: I think that was the title, but
21 I'm not sure.
22 Q. BY MR. ROSENBAUM: Do you recall what Russell
23 Gersten's conclusions were?
24 MR. SAFARIAN: Objection. Overly broad, lacks
25 foundation. Also calls for a narrative.

1 THE WITNESS: Not specifically.
2 Q. BY MR. ROSENBAUM: Had you ever heard of him
3 before you came across that article?
4 A. I don't think so.
5 Q. Okay.
6 A. Not sure what came first.
7 Q. Do you recall what your response was to the
8 article?
9 MS. KOURY: Objection. Vague and ambiguous,
10 overbroad.
11 MR. SAFARIAN: Objection. Assumes facts not in
12 evidence.
13 THE WITNESS: I was interested in it.
14 Q. BY MR. ROSENBAUM: Okay. Did you agree with his
15 conclusions as you understood them?
16 MR. SAFARIAN: Objection. Overbroad, calls for
17 an inadmissible opinion.
18 THE WITNESS: I just thought they were his
19 conclusions.
20 MR. ROSENBAUM: That's not quite the question.
21 Q. Did you personally agree with him?
22 MR. SAFARIAN: Same objections.
23 MS. KOURY: Vague and ambiguous.
24 Do you mean in terms of her experience in the
25 field?

1 MR. ROSENBAUM: Go ahead.
 2 MR. SAFARIAN: Lacks foundation, calls for
 3 speculation.
 4 THE WITNESS: I'm not sure.
 5 Q. BY MR. ROSENBAUM: Okay. What's your present
 6 title? Strike that.
 7 Have you read anything else by Russell Gersten
 8 since that article?
 9 A. Not sure. Not a lot. Might have been one other
 10 article.
 11 Q. Can you recall at this point?
 12 A. No.
 13 Q. You're not sure if you saw it or not, right?
 14 A. Right.
 15 Q. Okay. Tell me your present title.
 16 A. I'm the manager of the Comite follow-up
 17 monitoring unit.
 18 Q. And was that your title when we last met in 2001
 19 for your depositions?
 20 A. I think it was.
 21 Q. Okay.
 22 A. Yes.
 23 Q. Have your duties and responsibilities changed in
 24 any way since July of 2001 when -- you know, that's the
 25 date I'm using, because that's when we had our last

1 deposition. Have your duties or responsibilities changed
 2 in any way?
 3 MS. KOURY: Objection. Overbroad, calls for a
 4 narrative.
 5 THE WITNESS: Not substantially I don't think.
 6 Q. BY MR. ROSENBAUM: In any way that you can
 7 think?
 8 MS. KOURY: Same objection.
 9 THE WITNESS: I don't think so.
 10 Q. BY MR. ROSENBAUM: Maybe you just answered this
 11 question, but the unit itself, has its duties and
 12 responsibilities changed in any way, according to your
 13 understanding?
 14 MR. SAFARIAN: Objection.
 15 THE WITNESS: Since then --
 16 MR. SAFARIAN: Calls for inadmissible legal
 17 opinion, lacks foundation.
 18 THE WITNESS: I don't think so.
 19 Q. BY MR. ROSENBAUM: Now, what's your
 20 understanding, Ms. Burnham-Massey, as to the present
 21 status of the Comite case?
 22 MS. KOURY: Objection. Vague and ambiguous.
 23 Also calls for a legal conclusion.
 24 You can answer that to the extent that it
 25 doesn't call for information you've obtained from

1 attorneys.
 2 THE WITNESS: The consent decree was terminated
 3 on August 20th, 2002.
 4 Q. BY MR. ROSENBAUM: Okay. Did you read the
 5 judge's order?
 6 A. Oh, yes.
 7 Q. Were you in the courtroom?
 8 A. No.
 9 Q. Okay. What's your understanding of what the
 10 judge's order said regarding the termination of the
 11 decree?
 12 A. Said that he terminated the consent decree.
 13 Q. And do you -- what's your understanding as to
 14 the reasons?
 15 MS. KOURY: Objection. Calls for a legal
 16 opinion.
 17 MR. SAFARIAN: Instruct the witness not to base
 18 your answer on any privileged communications you've had
 19 with attorneys in answering this line of questioning.
 20 THE WITNESS: I read the order. And so just
 21 based on what I read in the order, he said that he felt
 22 that in the changing political environment and with the
 23 something else about the public interest, that the
 24 consent decree was no longer I think he said relevant or
 25 as read, something like that.

1 Q. BY MR. ROSENBAUM: Did your lawyers give you
 2 their version of what the termination of the decree
 3 meant?
 4 MS. KOURY: Objection. Calls for attorney-
 5 client privileged information.
 6 MR. SAFARIAN: Calls for privileged
 7 communications.
 8 MR. ROSENBAUM: Go ahead.
 9 MS. KOURY: Instruct her not to answer that.
 10 Q. BY MR. ROSENBAUM: Okay. Did you agree with
 11 what you understood the judge to say?
 12 MS. KOURY: Objection. Calls for a legal
 13 opinion. Also vague and ambiguous.
 14 MR. ROSENBAUM: Go ahead.
 15 THE WITNESS: I didn't agree with what he said
 16 about the Department of Education.
 17 Q. BY MR. ROSENBAUM: What did he say about the
 18 Department of Education?
 19 MS. KOURY: Objection. The document speaks for
 20 itself.
 21 Q. BY MR. ROSENBAUM: As you understood it.
 22 A. He said that the department had been dragged
 23 kicking and screaming into more compliance with the
 24 requirements of the consent decree than ever before in
 25 the sad history of the case. He said that the department

1 illustrated an arrogance toward the judicial system, and
 2 that he found the arguments unavailing.
 3 Q. Arguments of the department?
 4 A. Yes. That's what it said in the document.
 5 Q. Okay. You think that -- what did you understand
 6 "sad history of the case" to mean?
 7 MS. KOURY: Objection. Calls for speculation.
 8 MR. ROSENBAUM: Go ahead.
 9 THE WITNESS: It was a case that had been going
 10 on for nearly 20 years, and it was -- from what the judge
 11 wrote, he felt that the department had not fulfilled its
 12 obligations during that time fully.
 13 Q. BY MR. ROSENBAUM: Now, at the time when we last
 14 talked in July of 2001, you told me that there were 54
 15 districts that were out of compliance with the decree.
 16 Do you remember that?
 17 A. Yes.
 18 MS. KOURY: Objection to the extent it
 19 mischaracterizes her testimony.
 20 Q. BY MR. ROSENBAUM: And I'm mischaracterizing
 21 your testimony, am I, Ms. Burnham-Massey?
 22 MR. SAFARIAN: Objection. Argumentative.
 23 MS. KOURY: The deposition transcript speaks for
 24 itself, unless you want her to review it.
 25 Q. BY MR. ROSENBAUM: When the decree was

1 THE WITNESS: From our unit's perspective, it
 2 means out of compliance with state and federal
 3 requirements for services to English learners.
 4 Q. BY MR. ROSENBAUM: And there were 54 districts
 5 that were out of compliance in July of '81 -- July of
 6 2001? I'm sorry.
 7 MS. KOURY: Objection. Mischaracterizes her
 8 testimony. You haven't established out of compliance
 9 with which items.
 10 MR. ROSENBAUM: Go ahead.
 11 THE WITNESS: Out of -- that number meant out of
 12 compliance and in the Comite process.
 13 Q. BY MR. ROSENBAUM: Okay. Now, when you say in
 14 the Comite process, what does that mean?
 15 A. Districts identified as Comite follow-up
 16 districts, which are the districts my unit works with.
 17 Q. Okay. Your district doesn't -- your unit
 18 doesn't work with districts that have schools in the
 19 IIUSP program, right?
 20 MS. KOURY: Objection. Leading. Also
 21 mischaracterizes her testimony, calls for speculation.
 22 THE WITNESS: With some.
 23 Q. BY MR. ROSENBAUM: Okay. Help me understand
 24 this. I thought that IIUSP was off limits for your unit.
 25 Is that wrong?

1 terminated in August 2002, were there any districts that
 2 were out of compliance?
 3 A. Yes.
 4 MR. SAFARIAN: Objection. Vague and ambiguous.
 5 THE WITNESS: Yes.
 6 Q. BY MR. ROSENBAUM: How many districts?
 7 A. I don't know.
 8 Q. Can you give me your best estimate?
 9 A. If the question could be more specific.
 10 Q. Sure. Help me along here. When you talked to
 11 me about a district being out of compliance with the
 12 decree, you remember talking to me about that?
 13 MS. KOURY: Objection. Overbroad. I think
 14 there was a lot of discussion about noncompliance.
 15 MR. ROSENBAUM: Go ahead.
 16 MS. KOURY: If you understand the question.
 17 THE WITNESS: Don't understand out of compliance
 18 with the decree.
 19 Q. BY MR. ROSENBAUM: Districts would be out of
 20 compliance, right?
 21 A. Yes.
 22 Q. What does that mean?
 23 MS. KOURY: Objection. Overbroad, calls for a
 24 narrative, asked and answered.
 25 MR. ROSENBAUM: Go ahead.

1 MS. KOURY: Objection. Asked and answered.
 2 MR. SAFARIAN: Objection. Vague and ambiguous.
 3 THE WITNESS: Some of our districts include
 4 schools that happen to be IIUSP schools. We won't go
 5 into IIUSP stuff. We look at --
 6 MR. SAFARIAN: You've answered.
 7 Q. BY MR. ROSENBAUM: When you say IIUSP stuff,
 8 what do you mean by that?
 9 A. The providers that work with the schools.
 10 Q. Okay. You don't monitor what's going on in
 11 IIUSP schools; is that right?
 12 MS. KOURY: Objection. Asked and answered.
 13 THE WITNESS: Only the English learner part.
 14 Q. BY MR. ROSENBAUM: Do you read IIUSP reports?
 15 MS. KOURY: Objection. Vague and ambiguous as
 16 to which reports you're referring to.
 17 THE WITNESS: Not generally.
 18 Q. BY MR. ROSENBAUM: Okay. When do you if ever?
 19 Strike that.
 20 Have you ever read an IIUSP document?
 21 A. Not that I recall.
 22 Q. Okay. Do you ever direct anybody on your staff
 23 to do that?
 24 A. No.
 25 Q. Why is that?

1 MS. KOURY: Objection. Vague and ambiguous.
 2 MR. SAFARIAN: Objection. Argumentative.
 3 MR. ROSENBAUM: Stop for just a moment.
 4 MS. KOURY: Calls for speculation.
 5 MR. ROSENBAUM: You can make all the objections
 6 you want, but this is unprofessional and they are
 7 delaying this deposition. The last time we were in court
 8 the judge specifically mentioned inappropriate behavior,
 9 and this is inappropriate.
 10 MS. KOURY: Mark, my objections are appropriate,
 11 and I'm going to continue to object. Okay.
 12 MR. ROSENBAUM: It's a silly objection.
 13 MR. SAFARIAN: Continue asking the questions.
 14 Don't waste time.
 15 MR. ROSENBAUM: These are silly objections. You
 16 don't have to make them. We can stipulate you can have
 17 them. This is silly, unprofessional, and a waste of time
 18 in an important case. But you do what you want.
 19 Q. Why don't you direct people in your staff to
 20 look at that?
 21 MS. KOURY: Same objections.
 22 THE WITNESS: We don't seek out IIUSP schools,
 23 so we don't automatically go to those schools. If we
 24 happen to have chosen a school that's IIUSP, then we
 25 might have a discussion with the principal about what's

1 been going on with IIUSP. It's not a major part of our
 2 work.
 3 Q. BY MR. ROSENBAUM: Do you know how many IIUSP
 4 schools are part of your process?
 5 MS. KOURY: Objection. Vague and ambiguous as
 6 to the time frame.
 7 MR. ROSENBAUM: Go ahead.
 8 THE WITNESS: No.
 9 Q. BY MR. ROSENBAUM: Okay. Can you give me an
 10 estimate?
 11 A. No.
 12 Q. Is it more than five?
 13 MR. SAFARIAN: Objection. Lacks foundation.
 14 THE WITNESS: In all of our districts, I'm not
 15 sure.
 16 Q. BY MR. ROSENBAUM: Okay. How many districts
 17 that are part of the Comite process -- strike that for a
 18 minute.
 19 Notwithstanding that the decree has been
 20 terminated, do you still think of there being a Comite
 21 process?
 22 MS. KOURY: Objection. Vague and ambiguous,
 23 calls for speculation.
 24 THE WITNESS: I do, yes.
 25 Q. BY MR. ROSENBAUM: Okay. And how many districts

1 at the present time are out of compliance that are part
 2 of the Comite process?
 3 MS. KOURY: Objection. Vague and ambiguous as
 4 to out of compliance.
 5 THE WITNESS: Forty-two.
 6 Q. BY MR. ROSENBAUM: And have some of those
 7 districts been out of compliance more than ten years?
 8 A. Yes.
 9 Q. Can you name those, please?
 10 A. The districts' names?
 11 Q. Yes.
 12 A. Compton, Oakland, Inglewood. I think just
 13 those.
 14 Q. Okay. How long has Compton been out of
 15 compliance?
 16 MR. SAFARIAN: Objection. Asked and answered
 17 previously in deposition.
 18 MR. ROSENBAUM: As of today.
 19 THE WITNESS: Not sure. More than ten years.
 20 Q. BY MR. ROSENBAUM: Okay. Twenty years?
 21 A. No.
 22 Q. Fifteen years?
 23 A. Don't think so.
 24 Q. Okay. Do you know how many EL students are
 25 presently in the Compton school district?

1 MS. KOURY: Objection. Calls for speculation.
 2 THE WITNESS: No, not off the top of my head.
 3 Q. BY MR. ROSENBAUM: Can you give me a reasonable
 4 estimate?
 5 MS. KOURY: Same objection.
 6 THE WITNESS: I wouldn't want to.
 7 Q. BY MR. ROSENBAUM: Do you know how many
 8 students, EL students, have gone through -- strike that.
 9 Do you know how many EL students have been
 10 involved in Compton over the period of time that it's
 11 been out of compliance?
 12 MS. KOURY: Objection. Calls for speculation,
 13 overbroad.
 14 THE WITNESS: No.
 15 Q. BY MR. ROSENBAUM: Do you know -- prior to your
 16 becoming involved with Compton, do you know whether or
 17 not that district was in compliance with your standards
 18 and rules and regulations?
 19 MS. KOURY: Objection. Lacks foundation, calls
 20 for speculation, overbroad.
 21 THE WITNESS: I don't understand.
 22 Q. BY MR. ROSENBAUM: This is what I'm trying to
 23 get to, Ms. Burnham-Massey: You have a set of criteria
 24 that you utilize to determine whether our not a district
 25 that's in the Comite process is in compliance or out of

1 compliance, right?
 2 A. Correct.
 3 Q. Okay. I guess my first question is: When you
 4 look at a district, do you look to see whether or not
 5 they were out of compliance in years prior to your
 6 involvement?
 7 MS. KOURY: Objection. Asked and answered.
 8 We've had a lot of testimony on that issue.
 9 THE WITNESS: Yes.
 10 Q. BY MR. ROSENBAUM: Do you know if Compton was
 11 out of compliance with the criteria prior to your
 12 becoming involved?
 13 MS. KOURY: Calls for speculation.
 14 THE WITNESS: I don't know for sure because I
 15 wasn't here at that time.
 16 Q. BY MR. ROSENBAUM: Okay. What's your best
 17 judgment?
 18 MR. SAFARIAN: Objection. Lacks foundation,
 19 calls for speculation.
 20 MS. KOURY: Same --
 21 THE WITNESS: Yes.
 22 Q. BY MR. ROSENBAUM: What's the basis of that
 23 answer?
 24 MR. SAFARIAN: Same objections.
 25 THE WITNESS: Because of our procedures.

1 Q. BY MR. ROSENBAUM: Tell me what that means.
 2 A. One of the criteria for selecting a Comite
 3 district is past history of noncompliance with English
 4 learner requirements.
 5 Q. Do you have a judgment as to how long it had
 6 been out of compliance?
 7 MS. KOURY: Objection. Calls for speculation.
 8 THE WITNESS: No.
 9 Q. BY MR. ROSENBAUM: With respect to Oakland, same
 10 set of questions, do you know -- do you have a judgment
 11 as to whether or not it was out of compliance prior to
 12 your becoming involved?
 13 MR. SAFARIAN: Objection. Lacks foundation,
 14 calls for speculation.
 15 THE WITNESS: Yes.
 16 Q. BY MR. ROSENBAUM: What's that?
 17 A. That it was.
 18 Q. Okay. For the same reasons?
 19 MR. SAFARIAN: Objection. Vague and ambiguous.
 20 THE WITNESS: Yes.
 21 Q. BY MR. ROSENBAUM: And for some additional
 22 reasons?
 23 MR. SAFARIAN: Objection. Calls for
 24 speculation, vague and ambiguous.
 25 THE WITNESS: Yes.

1 Q. BY MR. ROSENBAUM: Okay. What are those
 2 additional reasons, please?
 3 A. My own research into the history of Oakland's
 4 compliance status.
 5 Q. What was the nature of that research, please?
 6 A. Looking back in the files and talking to
 7 colleagues from the Office of Civil Rights.
 8 Q. And when you say the files, what are you
 9 referring to?
 10 A. Comite files.
 11 Q. Okay. And how long had Oakland been out of
 12 compliance prior to your involvement?
 13 MS. KOURY: Objection. Calls for speculation.
 14 THE WITNESS: Don't know.
 15 Q. BY MR. ROSENBAUM: A decade?
 16 MS. KOURY: Objection. Calls for speculation,
 17 asked and answered.
 18 THE WITNESS: Don't know.
 19 Q. BY MR. ROSENBAUM: Could it be a decade?
 20 MR. SAFARIAN: Objection. Calls for
 21 speculation, lacks foundation.
 22 MS. KOURY: Getting argumentative.
 23 THE WITNESS: Not sure. I don't know.
 24 Q. BY MR. ROSENBAUM: Do you know how many EL
 25 students are in the Oakland school district at this time?

1 MS. KOURY: Objection. Calls for speculation.
 2 THE WITNESS: Not off the top of my head. It's
 3 in the thousands. I don't know exactly.
 4 Q. BY MR. ROSENBAUM: Is it as much as 10,000?
 5 MS. KOURY: Objection. Calls for speculation.
 6 THE WITNESS: Not sure.
 7 Q. BY MR. ROSENBAUM: Okay. Do you know how many
 8 students -- how long has Oakland been out of compliance
 9 to the best of your judgment?
 10 A. Over ten years.
 11 Q. Fifteen?
 12 A. Probably.
 13 Q. Twenty?
 14 A. Don't think --
 15 MR. SAFARIAN: Objection. Calls for
 16 speculation.
 17 Q. BY MR. ROSENBAUM: Do you know how many EL
 18 students have gone through the Oakland system during that
 19 period of time?
 20 MS. KOURY: Objection. Calls for speculation.
 21 THE WITNESS: No.
 22 Q. BY MR. ROSENBAUM: When we talked about Compton
 23 and Oakland, we're talking about elementary students,
 24 middle students and high school students?
 25 A. Yes.

1 Q. Have any of those areas been in compliance,
 2 elementary, middle or high school, during the past ten
 3 years?
 4 MR. SAFARIAN: Objection. Overly broad, calls
 5 for speculation, vague and ambiguous.
 6 MS. KOURY: Compound.
 7 THE WITNESS: Not to my knowledge.
 8 Q. BY MR. ROSENBAUM: Okay. Same question
 9 regarding -- same set of questions regarding Inglewood.
 10 Prior to your involvement with Inglewood, do you have an
 11 opinion as to whether or not it was out of compliance
 12 with the Comite criteria?
 13 MS. KOURY: Objection. Calls for speculation
 14 and lacks foundation.
 15 THE WITNESS: I think it was.
 16 Q. BY MR. ROSENBAUM: What's the reason for that,
 17 please?
 18 A. The same as with Compton.
 19 Q. Do you know how many students are EL in the
 20 Inglewood school district at this time?
 21 A. No.
 22 MS. KOURY: Calls for speculation.
 23 THE WITNESS: Not exactly, no.
 24 Q. BY MR. ROSENBAUM: And do you have an estimate?
 25 MS. KOURY: Objection. Calls for speculation.

1 THE WITNESS: No.
 2 Q. BY MR. ROSENBAUM: Do you know how many years
 3 it's been out of compliance?
 4 A. Over ten.
 5 Q. Okay. As many as 15 perhaps?
 6 A. Perhaps. Don't know.
 7 Q. Okay. And do you know how many EL students have
 8 gone through the Inglewood system during the period of
 9 time it's been out of compliance?
 10 MS. KOURY: Objection. Calls for speculation.
 11 THE WITNESS: No.
 12 MR. SAFARIAN: Objection. Vague and ambiguous.
 13 Q. BY MR. ROSENBAUM: And same question I asked
 14 regarding Oakland and Compton, when you say out of
 15 compliance, do you mean elementary, middle and high
 16 school?
 17 MR. SAFARIAN: Objection. Overly broad.
 18 MS. KOURY: Compound.
 19 Answer it if you understand.
 20 THE WITNESS: Yes.
 21 Q. BY MR. ROSENBAUM: Okay. Now, with respect to
 22 Compton, do you have an opinion -- I asked you this in
 23 2001, so -- but I want to know now if you have a
 24 different opinion or you've thought about it differently.
 25 Do you have an opinion why it's been out of

1 compliance for this period of time?
 2 MR. SAFARIAN: Objection. Overly broad.
 3 THE WITNESS: Some opinion, but I don't know.
 4 Q. BY MR. ROSENBAUM: What's your best judgment
 5 based on your experience and work in this area?
 6 MS. KOURY: Objection. Overbroad, calls for a
 7 narrative.
 8 THE WITNESS: Some of the issues, complex
 9 issues, some inability of staff to deal with the issues,
 10 and some resistance of staff to deal with issues.
 11 Q. BY MR. ROSENBAUM: Okay. When you say inability
 12 of staff to deal with certain issues, what issues are you
 13 referring to?
 14 A. English learner issues.
 15 Q. What does that mean?
 16 A. Compliance requirements.
 17 Q. Which ones?
 18 MR. SAFARIAN: Objection. Overbroad.
 19 Q. BY MR. ROSENBAUM: All of them?
 20 A. Many of them.
 21 Q. Which ones come to mind?
 22 A. Instructional requirements.
 23 Q. What does that mean?
 24 A. English language development and access to the
 25 CORE content for English learners.

1 Q. Is access to instructional materials part of
 2 that?
 3 A. It could be.
 4 MR. SAFARIAN: Objection. Vague and ambiguous.
 5 THE WITNESS: It could be part of it.
 6 Q. BY MR. ROSENBAUM: Okay. What other issues?
 7 MS. KOURY: In the framework of the original
 8 question?
 9 MR. ROSENBAUM: Yes.
 10 THE WITNESS: Evaluation, how to evaluate
 11 services and student outcomes.
 12 Q. BY MR. ROSENBAUM: What others issues?
 13 MS. KOURY: If any.
 14 THE WITNESS: Those are the main ones that come
 15 to mind.
 16 Q. BY MR. ROSENBAUM: What about qualified
 17 teachers?
 18 MR. SAFARIAN: Objection. Vague and ambiguous.
 19 THE WITNESS: Is there a question?
 20 MR. ROSENBAUM: Go ahead.
 21 THE WITNESS: What's the question?
 22 Q. BY MR. ROSENBAUM: Is that another issue that
 23 has been a problem area in Compton?
 24 A. It has been.
 25 Q. Why do you say that?

1 A. Because they didn't have enough teachers
 2 qualified for English learners.
 3 Q. When you say qualified, what do you mean by
 4 that?
 5 MR. SAFARIAN: Objection. Asked and answered.
 6 THE WITNESS: Holding or in training for
 7 appropriate English learner authorizations.
 8 Q. BY MR. ROSENBAUM: When you say appropriate
 9 English learner authorizations, what do you mean?
 10 MR. SAFARIAN: Objection. Asked and answered.
 11 THE WITNESS: A CLAD, BCLAD or equivalent
 12 authorization.
 13 Q. BY MR. ROSENBAUM: And equivalent means what?
 14 A. Could be SB 1969, 395, could be the old
 15 bilingual certificates of competence, the old language
 16 development specialist. It could be a bilingual emphasis
 17 credential, an ESL supplementary authorization. And
 18 probably there are others. Those come to mind.
 19 Q. And to your understanding, Ms. Burnham-Massey,
 20 is that a problem today in Compton, the question of
 21 qualified teachers?
 22 MR. SAFARIAN: Objection. Overly broad, lacks
 23 foundation, calls for an inadmissible opinion.
 24 THE WITNESS: It's an area of much improvement.
 25 I think it's still a problem.

1 Q. BY MR. ROSENBAUM: What's the basis of your
 2 answer?
 3 MR. SAFARIAN: Same objections.
 4 THE WITNESS: My best recollection of our last
 5 Report of Findings.
 6 Q. BY MR. ROSENBAUM: Okay. Is Compton -- do you
 7 have particular responsibility with respect to Compton?
 8 MS. KOURY: Objection. Vague and ambiguous.
 9 THE WITNESS: It's one of our Comite districts.
 10 Q. BY MR. ROSENBAUM: Do you know how many students
 11 at the present time -- EL students at the present time
 12 are being taught by students -- strike that.
 13 Do you know how many EL students in Compton at
 14 the present time are being taught by teachers who are not
 15 qualified by the definition you gave me?
 16 MS. KOURY: Objection. Calls for speculation,
 17 overbroad.
 18 THE WITNESS: No. I don't have it memorized,
 19 all the numbers.
 20 Q. BY MR. ROSENBAUM: Do you have that information
 21 though?
 22 A. Not exactly.
 23 Q. Why do you say that?
 24 A. Because in our reviews we don't count every
 25 teacher in every classroom. We go to certain schools and

1 then we make findings based on the schools we visit.
 2 Q. Okay. The schools you do visit, do you check as
 3 to qualified teachers, whether teachers are qualified or
 4 not by the definition you gave me?
 5 MS. KOURY: Objection. Asked and answered.
 6 THE WITNESS: Yes.
 7 Q. BY MR. ROSENBAUM: Do you keep counts of the
 8 number of students assigned to those teachers?
 9 A. Sometimes.
 10 Q. It's not a regular practice?
 11 A. No.
 12 MS. KOURY: Objection. Mischaracterizes her
 13 testimony.
 14 THE WITNESS: Not always.
 15 Q. BY MR. ROSENBAUM: Do you -- does your unit keep
 16 data as to the particular classrooms that have teachers
 17 who are not qualified by your definition? By that I mean
 18 third grade math classes, 8th grade pre-algebra classes
 19 or English classes. Is it at that level of detail?
 20 MS. KOURY: Objection. Vague and ambiguous,
 21 overbroad.
 22 MR. SAFARIAN: Asked and answered.
 23 THE WITNESS: Sometimes.
 24 Q. BY MR. ROSENBAUM: But it's not a regular
 25 practice?

1 MS. KOURY: Objection. Mischaracterizes her
 2 testimony.
 3 THE WITNESS: Not sure that I'm clear on the
 4 question.
 5 Q. BY MR. ROSENBAUM: If I said to you I want to
 6 know the number of students being taught by teachers who
 7 are not qualified to teach under the definition you gave
 8 me in seventh grade math, could you give me that
 9 information for a school that you looked at?
 10 MS. KOURY: Objection. Vague and ambiguous,
 11 calls for speculation, incomplete hypothetical.
 12 You can answer if you understand it.
 13 THE WITNESS: Probably not in most cases. But
 14 in some cases we do include that in the report.
 15 Q. BY MR. ROSENBAUM: How do you decide whether
 16 you're going to include that in the report?
 17 MS. KOURY: Objection. Assumes facts.
 18 THE WITNESS: It's the consultant's call who is
 19 doing the review.
 20 Q. BY MR. ROSENBAUM: There's no general rule or
 21 criteria for those consultants to follow, right?
 22 MS. KOURY: Objection. Mischaracterizes her
 23 testimony.
 24 THE WITNESS: The general rule is to look at
 25 that issue, how they report the findings. There's great

1 flexibility based on the individual situation.
 2 Q. BY MR. ROSENBAUM: So far as you know -- strike
 3 that.
 4 Now, again I know I asked you this two years
 5 ago, but how many schools do you typically -- are
 6 typically visited? Is there a practice or a rule?
 7 MS. KOURY: Asked and answered.
 8 THE WITNESS: There is.
 9 Q. BY MR. ROSENBAUM: What is that?
 10 MS. KOURY: Also calls for a narrative.
 11 THE WITNESS: It's a minimum of 15 percent of
 12 the schools on the initial visit.
 13 Q. BY MR. ROSENBAUM: Okay. And what about the
 14 follow-up visits, are they required?
 15 A. Follow-up visits are required, yes. There's not
 16 a particular percentage, and usually it's more than 15
 17 percent.
 18 Q. Okay. Ever as many as a hundred percent?
 19 A. Sure, in the small districts.
 20 Q. Is Compton a small district?
 21 A. No.
 22 Q. Is Inglewood a small district?
 23 A. No.
 24 Q. Or Oakland?
 25 A. No.

1 Q. And so if I said to you today does your unit
 2 have data as to the number of teachers who are not
 3 qualified to teach under the definition that you gave me
 4 with respect to ELs for Compton, could you give me that
 5 information?
 6 MS. KOURY: Objection. Asked and answered.
 7 THE WITNESS: No.
 8 Q. BY MR. ROSENBAUM: For any district that's a
 9 Comite district?
 10 MS. KOURY: Compound, overbroad, calls for
 11 speculation.
 12 THE WITNESS: No.
 13 Q. BY MR. ROSENBAUM: Okay. So far as you know,
 14 does any unit or office in the Department of Education
 15 have that information?
 16 MS. KOURY: Calls for speculation.
 17 THE WITNESS: I don't know. Somebody may be
 18 looking at that. I don't know.
 19 Q. BY MR. ROSENBAUM: You're not aware of it?
 20 A. No.
 21 Q. To your knowledge, has there ever been any
 22 discussion that it would be valuable to collect that
 23 data?
 24 MR. SAFARIAN: Objection. Asked and answered.
 25 MS. KOURY: Also vague and ambiguous.

1 THE WITNESS: Not that I'm aware of. It changes
 2 daily.
 3 Q. BY MR. ROSENBAUM: What does that mean?
 4 A. It would be hard to keep up. Teachers come and
 5 go.
 6 Q. Did anybody say we ought to get a snapshot of
 7 any particular day or time to see the number of teachers
 8 who aren't authorized to teach in a district?
 9 MR. SAFARIAN: Asked and answered.
 10 THE WITNESS: I don't know.
 11 Q. BY MR. ROSENBAUM: You're not aware of any such
 12 discussion?
 13 A. No.
 14 Q. And you've never seen any such data?
 15 MS. KOURY: Objection. Asked and answered.
 16 MR. ROSENBAUM: You're right. It was asked and
 17 answered.
 18 Q. You also told me with respect to Compton that
 19 there had been some resistance; remember you said that to
 20 me several minutes ago?
 21 A. Yes.
 22 Q. What did you mean by that?
 23 A. Compton has some very complex issues, and there
 24 were some staff members and some parents who are very
 25 concerned about issues for students who don't happen to

1 be English learners. And --
 2 Q. Go ahead.
 3 A. And felt maybe there was more focus on English
 4 learners, and that maybe there should be more focus on
 5 other students.
 6 Q. Some staff people felt that?
 7 MS. KOURY: Objection. Mischaracterizes her
 8 testimony, calls for speculation.
 9 THE WITNESS: Some of them expressed those kinds
 10 of concerns.
 11 Q. BY MR. ROSENBAUM: When was that?
 12 A. Not sure. A couple of years ago.
 13 Q. Okay. And what did they say?
 14 A. I don't remember specifically.
 15 Q. Give me your best recollection generally.
 16 MS. KOURY: Objection. Asked and answered,
 17 calls for speculation. He doesn't want you to guess.
 18 THE WITNESS: I don't know.
 19 Q. BY MR. ROSENBAUM: Were you present?
 20 A. At least on one occasion.
 21 Q. Where was that?
 22 A. In Compton district office.
 23 Q. At the direct office. And who was present?
 24 A. I don't remember the specific people.
 25 Q. Was Mr. Ward present?

1 A. Don't know if he was at the time of that
 2 discussion. I've been at meetings where he was there.
 3 Q. And -- Dr. Ward, actually.
 4 A. Yes. Dr. Ward.
 5 Q. Did people on your staff report to you about
 6 some of these statements regarding resistance?
 7 MS. KOURY: Objection. Vague and ambiguous.
 8 THE WITNESS: Yes.
 9 Q. BY MR. ROSENBAUM: What -- who was that?
 10 A. It would be the consultants assigned to Compton.
 11 Q. Can you give me those names, please?
 12 A. Jesus Contreras was lead consultant.
 13 MS. KOURY: These are just the consultants that
 14 reported to you, is that what you're referring to?
 15 THE WITNESS: Right.
 16 Q. BY MR. ROSENBAUM: Anyone else that you recall?
 17 A. Beth Anselmi Simpson.
 18 Q. Can you spell the name?
 19 A. Beth Anselmi, A-n-s-e-l-m-i, Simpson.
 20 Q. Is there a hyphen there?
 21 A. No.
 22 Q. Thanks. What did Mr. Contreras and Ms. Simpson
 23 say?
 24 A. It wasn't a lot. It was just a general
 25 conversation about the issues in Compton that are -- the

1 issues that almost, the political issues with the various
 2 subgroups of students, and the fact that those issues
 3 complicate our work on behalf of English learners.
 4 Q. And what did you say?
 5 A. Well --
 6 MS. KOURY: Objection. Calls for speculation,
 7 assumes facts.
 8 THE WITNESS: We talked about those issues and
 9 how they impact our work in Compton and in a couple of
 10 other districts.
 11 Q. BY MR. ROSENBAUM: To the best of your
 12 recollection, what did you say?
 13 MS. KOURY: Objection. Assumes facts.
 14 MR. SAFARIAN: Asked and answered.
 15 THE WITNESS: That it's very important that the
 16 districts understand that we are concerned and care about
 17 all the students in the district, but that our
 18 responsibility, our obligation is with these particular
 19 students. I feel it's important that consultants convey
 20 that so that we're not perceived wrongly as insensitive
 21 to the issues of the other students.
 22 Q. BY MR. ROSENBAUM: Did you report that to anyone
 23 above you?
 24 MS. KOURY: Objection. Vague and ambiguous.
 25 MR. SAFARIAN: Object to the extent it calls for

1 privileged communications.
 2 THE WITNESS: I've had those kinds of
 3 discussions with the division directors.
 4 Q. BY MR. ROSENBAUM: Who is that?
 5 A. Stu Greenfeld, I believe, at that time.
 6 Q. What did Mr. Greenfeld say to you?
 7 MS. KOURY: Objection. Assumes facts.
 8 Q. BY MR. ROSENBAUM: What if anything did he say?
 9 A. He basically understood and concurred that it
 10 wasn't a major kind of a discussion. It's just a real
 11 issue in some of our districts.
 12 Q. Who followed Stu Greenfeld?
 13 MR. SAFARIAN: Objection. Asked and answered.
 14 THE WITNESS: Marsha Bedwell.
 15 Q. BY MR. ROSENBAUM: Okay. And have you had
 16 those -- did you have those discussions with Ms. Bedwell
 17 when she had that job?
 18 MR. SAFARIAN: Object to the extent it calls for
 19 privileged communications.
 20 THE WITNESS: I think we did.
 21 Q. BY MR. ROSENBAUM: Do you recall what if
 22 anything she said?
 23 A. No.
 24 Q. And who succeeded Ms. Bedwell?
 25 A. Joseph Barankin.

1 Q. Can you spell the last name, please?
 2 A. I think so. B-a-r-a-n-k-i-n, Dr. Joseph
 3 Barankin.
 4 Q. Any other discussions with Dr. Barankin?
 5 A. No.
 6 Q. To your knowledge, is he aware of this issue?
 7 MR. SAFARIAN: Objection.
 8 MS. KOURY: Calls for speculation.
 9 THE WITNESS: I don't know. He's new.
 10 Q. BY MR. ROSENBAUM: And when you said -- you said
 11 about five questions ago other districts besides Compton
 12 this issue has arisen, right?
 13 A. Yes.
 14 Q. The issue being resistance?
 15 A. I don't know if I want to say resistance. It's
 16 just that their issues are very complex. I think
 17 resistance is probably too strong.
 18 Q. What other districts are you thinking of?
 19 A. Oakland and Inglewood.
 20 Q. Any other districts?
 21 A. Yes.
 22 Q. Which other ones?
 23 A. Pittsburgh.
 24 Q. Is Pittsburgh out of compliance presently?
 25 A. Yes.

1 Q. For how long has Pittsburgh been out of
2 compliance?
3 MS. KOURY: Objection. Calls for speculation.
4 THE WITNESS: Not sure. Under ten years.
5 Q. BY MR. ROSENBAUM: More than five?
6 MS. KOURY: Objection. Calls for speculation,
7 asked and answered.
8 THE WITNESS: About close to five, I'd say.
9 Q. BY MR. ROSENBAUM: Thanks. Other districts
10 you're thinking about?
11 A. Not right at the moment. Those come immediately
12 to mind.
13 Q. You mentioned to me, Ms. Burnham-Massey, that
14 you said to your consultants, if I understood you
15 correctly, please let the districts know and the
16 personnel know and the parents know we are just doing our
17 job. We're not playing favorites. This is just our job.
18 Is that in sum or substance your message?
19 MS. KOURY: Objection. Mischaracterizes her
20 testimony.
21 MS. KOURY: It's also leading.
22 THE WITNESS: Basically that our obligation is
23 the services to English learners. We totally understand
24 and agree with districts that services to all students
25 are important, and encourage them to of course work with

1 solving issues for all students. It's important that
2 they not think we only care about this group of kids. It
3 makes our work less effective if that's the perception.
4 Q. BY MR. ROSENBAUM: Sure. Regarding Oakland, are
5 there particular areas of noncompliance that have
6 historically characterized its response?
7 MS. KOURY: Objection. Calls for speculation
8 also vague and ambiguous.
9 MR. ROSENBAUM: Go ahead.
10 THE WITNESS: There are a number of issues of
11 noncompliance.
12 Q. BY MR. ROSENBAUM: Is it pretty much across the
13 board?
14 MR. SAFARIAN: Objection. Overly broad, lacks
15 foundation.
16 THE WITNESS: I'm not sure what across the board
17 means.
18 Q. BY MR. ROSENBAUM: All items, are they out of
19 compliance in all of your criteria?
20 A. No. They've resolved a number of issues. Some
21 issues have been resolved.
22 Q. Which ones have been resolved?
23 MS. KOURY: Calls for speculation.
24 THE WITNESS: I'm not positive without referring
25 back to our records.

1 Q. BY MR. ROSENBAUM: What would you look at?
2 A. Our most recent Report of Findings.
3 Q. Okay. Which ones to the best of your
4 recollection is Oakland still out of compliance with?
5 MS. KOURY: Objection. Calls for speculation,
6 asked and answered. He's not asking you to guess.
7 THE WITNESS: I'm not positive.
8 Q. BY MR. ROSENBAUM: How about access to CORE
9 curriculum?
10 A. Yes.
11 Q. Out of compliance?
12 A. Yes.
13 Q. How about qualified teachers?
14 MR. SAFARIAN: Objection. Vague and ambiguous.
15 THE WITNESS: Yes.
16 Q. BY MR. ROSENBAUM: Do you know the numbers of
17 Oakland students that are not taught by -- EL students
18 that are not taught by qualified teachers?
19 MS. KOURY: Objection. Asked and answered,
20 calls for speculation.
21 THE WITNESS: No.
22 Q. BY MR. ROSENBAUM: For the same reasons when we
23 talked about Compton?
24 A. Yes.
25 Q. How many schools did you look at in Oakland?

1 MR. SAFARIAN: Objection. Vague and ambiguous.
2 Q. BY MR. ROSENBAUM: Do you look at Oakland every
3 year?
4 A. Yes.
5 Q. Every week?
6 A. Four times a year.
7 Q. Okay. And how many times a year do you look at
8 Compton?
9 A. Four.
10 Q. And Inglewood?
11 A. One.
12 Q. Are there other districts you look at four times
13 a year?
14 A. Yes.
15 Q. Which ones?
16 A. Grant.
17 Q. Any others?
18 A. Pittsburg.
19 Q. Why Grant?
20 MS. KOURY: Objection. Overbroad, vague and
21 ambiguous.
22 THE WITNESS: Those are the districts that we've
23 taken enforcement actions against.
24 Q. BY MR. ROSENBAUM: Grant, Pittsburg, Compton,
25 Oakland and Inglewood?

1 A. Not Inglewood.
 2 Q. Any others besides Grant, Pittsburg, Compton and
 3 Oakland?
 4 MR. SAFARIAN: Objection. Vague and ambiguous.
 5 THE WITNESS: Not from Comite.
 6 Q. BY MR. ROSENBAUM: Okay. From the federal
 7 government?
 8 A. I don't know.
 9 Q. Okay. Do you know if CCR has done anything with
 10 respect to those districts in terms of enforcement
 11 actions?
 12 MS. KOURY: Calls for speculation.
 13 THE WITNESS: No.
 14 Q. BY MR. ROSENBAUM: You don't know?
 15 A. No. I don't think they have. I don't know for
 16 sure.
 17 Q. How long has Grant been out of compliance?
 18 MS. KOURY: Calls for speculation.
 19 THE WITNESS: Not sure. Over five years under
 20 ten, I think.
 21 Q. BY MR. ROSENBAUM: How about Pittsburg?
 22 MS. KOURY: Calls for speculation.
 23 THE WITNESS: Approximately five.
 24 Q. BY MR. ROSENBAUM: Okay. And going back to
 25 Oakland for a moment, is access to instructional

1 materials for ELs, is that another item that Oakland has
 2 been out of compliance with?
 3 MR. SAFARIAN: Objection. Vague and ambiguous.
 4 THE WITNESS: That in itself is not an item.
 5 Q. BY MR. ROSENBAUM: Okay. Is the access to CORE
 6 curriculum one of the items that Grant's out of
 7 compliance with?
 8 MR. SAFARIAN: Objection. Vague and ambiguous.
 9 THE WITNESS: Yes.
 10 Q. BY MR. ROSENBAUM: Pittsburg too?
 11 A. Yes.
 12 Q. Inglewood too?
 13 MR. SAFARIAN: Same objection.
 14 THE WITNESS: Yes.
 15 Q. BY MR. ROSENBAUM: And for the period of time
 16 that those districts have been out of compliance -- I'm
 17 glad to break it down if you want -- talking about Grant,
 18 Pittsburg, Oakland and Inglewood, have they always been
 19 out of compliance with respect to access to CORE
 20 curriculum as far as you know?
 21 MS. KOURY: Objection. Overbroad, compound.
 22 THE WITNESS: Out of compliance for the lengths
 23 of time they've been in Comite, but making substantial
 24 improvements during that time also.
 25 Q. BY MR. ROSENBAUM: And in terms of qualified

1 teachers by the definition you gave me earlier, is Grant
 2 out of compliance on that item?
 3 MR. SAFARIAN: Objection. Vague and ambiguous,
 4 assumes facts not in evidence.
 5 THE WITNESS: Actually, they recently resolved
 6 the compliance issue with respect to teachers for English
 7 language development.
 8 MR. ROSENBAUM: Okay.
 9 MR. SAFARIAN: Had you finished your answer?
 10 THE WITNESS: Yes.
 11 Q. BY MR. ROSENBAUM: When you say recently
 12 resolved --
 13 MR. SAFARIAN: I don't think she finished her
 14 answer.
 15 THE WITNESS: Well, that's the main part.
 16 They're still out of compliance with regard to qualified
 17 teachers, enough qualified teachers for access to CORE
 18 content. There's two pieces to the qualified teachers in
 19 our view.
 20 Q. BY MR. ROSENBAUM: Tell me what each of those
 21 pieces consist of.
 22 A. There are two English learner compliance items.
 23 They're known as EL 6A and EL 6B. EL 6A is specifically
 24 the requirement that districts have an adequate number of
 25 qualified teachers to provide English language

1 development or ELV for English learners. EL 6B is the
 2 requirement that districts provide adequate number of
 3 qualified teachers to provide access to CORE content
 4 instruction for English learners.
 5 Q. Can that -- help me with some vocabulary here in
 6 terms of the -- strike that for a minute.
 7 Compton, Oakland, Inglewood and Pittsburg,
 8 they're all out of compliance with respect to both 6A and
 9 6B; is that right?
 10 MR. SAFARIAN: Objection. Calls for
 11 speculation.
 12 MS. KOURY: Also compound.
 13 THE WITNESS: Right. And I don't think all of
 14 them are.
 15 Q. BY MR. ROSENBAUM: Okay. Is Compton 6A --
 16 what's Compton in terms of 6A and 6B?
 17 MS. KOURY: Calls for speculation.
 18 Answer if you know.
 19 THE WITNESS: Not positive.
 20 Q. BY MR. ROSENBAUM: What about Oakland?
 21 MS. KOURY: Same objections.
 22 THE WITNESS: I'm not sure.
 23 Q. BY MR. ROSENBAUM: Or Inglewood?
 24 A. I believe they've resolved those issues, but I'm
 25 not positive. They have all made progress on those

1 issues.

2 Q. Okay. And I remember you, Ms. Burnham-Massey,
3 you're a very modest individual. But would you say it's
4 fair to say that to the extent that progress has been
5 made your unit has helped that process?

6 MS. KOURY: Objection. Vague and ambiguous.

7 THE WITNESS: My opinion is that, yes, it has.

8 Q. BY MR. ROSENBAUM: Why is that?

9 MS. KOURY: Objection. Overbroad, calls for a
10 narrative.

11 THE WITNESS: Because we have highly qualified
12 consultants with specific criteria for being consultants
13 in our unit. They have a real commitment to these kids
14 and they spend a substantial amount of time now not only
15 reviewing districts but providing technical assistance to
16 those districts.

17 Q. BY MR. ROSENBAUM: And that technical assistance
18 has been invaluable in terms of helping those districts
19 make process; is that correct?

20 MS. KOURY: Objection. Grossly mischaracterizes
21 her testimony.

22 MR. ROSENBAUM: She wants you to trash your own
23 unit, Ms. Burnham-Massey.

24 MS. KOURY: Don't listen to his comments.

25 THE WITNESS: My opinion is that yes.

1 Q. BY MR. ROSENBAUM: Why is that? What's the
2 basis of that answer?

3 MS. KOURY: Objection. Vague and ambiguous,
4 overbroad and calls for a narrative.

5 THE WITNESS: The results of the reviews, what
6 we see in the school districts and in the schools.

7 Q. BY MR. ROSENBAUM: Okay. Do you have enough
8 consultants?

9 MS. KOURY: Objection. Vague and ambiguous.

10 Q. BY MR. ROSENBAUM: To do what you'd like to do?

11 MR. SAFARIAN: Objection. Vague and ambiguous,
12 overly broad.

13 THE WITNESS: I don't know.

14 Q. BY MR. ROSENBAUM: How big a staff do you have?

15 A. We have currently?

16 Q. Yes.

17 A. Eight consultants.

18 Q. Is that eight consultants and you?

19 A. And me. And there's two support staff called
20 office technicians, and one analyst.

21 Q. Does your unit -- strike that. Do you have a
22 judgment, Ms. Burnham-Massey, as to whether or not your
23 unit's going to be affected by the proposed budget cuts?

24 MR. SAFARIAN: Objection. Calls for
25 speculation, vague and ambiguous.

1 THE WITNESS: I don't know.

2 Q. BY MR. ROSENBAUM: It's possible?

3 A. Always possible.

4 Q. Do your eight consultants have a lot of free
5 time on their hands?

6 MS. KOURY: Objection. Vague and ambiguous.
7 Silly question.

8 THE WITNESS: No.

9 Q. BY MR. ROSENBAUM: Why is that?

10 MS. KOURY: Objection. Vague and ambiguous.

11 THE WITNESS: They have their assigned districts
12 and also they have particular projects in the summer that
13 we work on. So nobody has extra time on their hands.

14 MR. ROSENBAUM: Of course not.

15 Q. Now, you told me -- you talked -- you used the
16 phrase enforcement actions several questions ago. Do you
17 remember that?

18 A. Yes.

19 Q. What did you mean by that?

20 A. The specific enforcement action we've taken has
21 been the withholding of EIA-LEP funds.

22 Q. Who has the final say on the withholding? Is it
23 your unit or does it come from upstairs?

24 MR. SAFARIAN: Objection. Overly broad, vague
25 and ambiguous?

1 THE WITNESS: Right. It's not our unit.

2 Q. BY MR. ROSENBAUM: Do you know who it is?

3 MS. KOURY: Calls for speculation.

4 MR. SAFARIAN: Objection. Vague and ambiguous
5 as to withholding.

6 THE WITNESS: Yeah. Not sure.

7 Q. BY MR. ROSENBAUM: Okay. To your knowledge,
8 have all those funds ever been withhold on a particular
9 district, a hundred percent of the funds?

10 MR. SAFARIAN: Objection. Vague and ambiguous.

11 THE WITNESS: Of which funds?

12 Q. BY MR. ROSENBAUM: What was the --

13 A. EIA-LEP?

14 Q. Yes. What does that stand for?

15 A. Economic impact aid. And then LEP is limited
16 English proficient.

17 Q. Where does that money come from?

18 A. State.

19 Q. Okay. And every district that has EL students
20 gets that money?

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

23 Q. BY MR. ROSENBAUM: So far as you know?

24 A. As far as I know.

25 Q. To your knowledge have a hundred percent of

1 those funds ever been withheld from a district that's out
 2 of compliance?
 3 MS. KOURY: Calls for speculation.
 4 THE WITNESS: I'm not sure that it was a hundred
 5 percent.
 6 Q. BY MR. ROSENBAUM: Do you know what the largest
 7 percent was?
 8 A. No.
 9 Q. More than 50 percent?
 10 A. Oh, yes.
 11 Q. Okay. Oakland?
 12 MS. KOURY: Objection. I'm not sure that
 13 there's a question pending.
 14 MR. SAFARIAN: Vague and ambiguous.
 15 Q. BY MR. ROSENBAUM: Did Oakland have more than 50
 16 percent withheld at any point?
 17 A. Yes.
 18 Q. Okay. You think that's an enforcement -- an
 19 effective enforcement mechanism, based on your
 20 experience?
 21 MS. KOURY: Objection. Vague and ambiguous,
 22 overbroad, calls for a narrative.
 23 MR. SAFARIAN: Incomplete hypothetical.
 24 THE WITNESS: I think it has some effect.
 25 Q. BY MR. ROSENBAUM: It's kind of a two-edge

1 districts to earn back the money; isn't that right?
 2 MS. KOURY: Objection. Leading.
 3 MR. SAFARIAN: Overly broad.
 4 MS. KOURY: Mischaracterizing the testimony.
 5 THE WITNESS: It could, but it hasn't.
 6 Q. BY MR. ROSENBAUM: Okay. And do you think state
 7 resources have a beneficial effect on EL students?
 8 MS. KOURY: Objection. Vague and ambiguous,
 9 calls for an expert opinion.
 10 MR. SAFARIAN: Overly broad, vague and
 11 ambiguous as to resources.
 12 MR. ROSENBAUM: Go ahead.
 13 THE WITNESS: I think they do.
 14 Q. BY MR. ROSENBAUM: Why do you say that?
 15 MS. KOURY: Same objections.
 16 THE WITNESS: They enable districts to provide
 17 services, supplemental services, extra services to
 18 students.
 19 Q. BY MR. ROSENBAUM: Such as?
 20 A. Sometimes after-school tutoring, sometimes
 21 supplemental textbooks, sometimes instructional aides,
 22 resource teachers.
 23 MS. KOURY: I don't want to cut you off in the
 24 middle, but --
 25 MR. ROSENBAUM: I'm sensitive to that. Give me

1 sword, isn't it?
 2 MS. KOURY: Objection. Mischaracterizes her
 3 testimony. Also leading.
 4 MR. SAFARIAN: Argumentative.
 5 THE WITNESS: What's a two-edged sword?
 6 Q. BY MR. ROSENBAUM: These districts need that
 7 money, right?
 8 A. Yes.
 9 Q. And the kids need the money?
 10 A. Yes.
 11 Q. So if someone said to you, Ms. Burnham-Massey,
 12 we're trying to figure out some enforcement mechanism
 13 relative to districts out of compliance, would you
 14 recommend withholding these funds?
 15 MS. KOURY: Objection. Incomplete hypothetical,
 16 overbroad, vague and ambiguous.
 17 MR. SAFARIAN: Calls for an inadmissible
 18 opinion.
 19 THE WITNESS: When we withhold the funds it's
 20 not gone forever. It interrupts the funds. So the
 21 districts earn the funds back by meeting specific
 22 benchmarks. So the students don't lose the funds
 23 forever. Therefore, I think it's a potentially effective
 24 enforcement action.
 25 Q. BY MR. ROSENBAUM: It can take years for

1 a few more minutes and I'll give you a break.
 2 Q. When you say supplemental textbooks, what do you
 3 mean by that?
 4 A. Districts have an obligation with general funds
 5 to provide for English learners the same level of
 6 materials that all other students get, and then they can
 7 use EIA-LEP funds to purchase additional materials to
 8 provide that support.
 9 Q. In your experience are those supplemental
 10 textbooks beneficial to EL students?
 11 MS. KOURY: Objection. Vague and ambiguous.
 12 MR. SAFARIAN: Overbroad.
 13 THE WITNESS: Yes.
 14 Q. BY MR. ROSENBAUM: Why is that?
 15 MS. KOURY: Same objection.
 16 THE WITNESS: Because the more books kids have
 17 the better. They often have them as books they can take
 18 home.
 19 Q. BY MR. ROSENBAUM: Otherwise they don't have
 20 books that they can take home?
 21 MS. KOURY: Objection. Mischaracterizes the
 22 testimony.
 23 THE WITNESS: I don't know.
 24 Q. BY MR. ROSENBAUM: Why is that important?
 25 MS. KOURY: Calls for a narrative.

1 THE WITNESS: Gives the children some extra
 2 opportunity to read, and in many cases involves families
 3 in what's going on in the schools.
 4 Q. BY MR. ROSENBAUM: Why is that important?
 5 MS. KOURY: Same objection.
 6 MR. SAFARIAN: Objection. Vague and ambiguous.
 7 THE WITNESS: Because parent involvement makes a
 8 big difference for kids.
 9 Q. BY MR. ROSENBAUM: Why is that?
 10 A. There's research I think on that subject,
 11 although I could not cite it. But the parents are
 12 partners with the school, and the students realize that.
 13 It's helpful to the kids.
 14 Q. It's pretty obvious stuff, isn't it?
 15 MR. SAFARIAN: Objection. Argumentative.
 16 THE WITNESS: Yes.
 17 MR. ROSENBAUM: We can take our break now.
 18 [Recess.]
 19 MR. ROSENBAUM: We're back on the record.
 20 Q. You doing okay, Ms. Burnham?
 21 A. Yes.
 22 Q. Okay. You told me, if I remember right, there
 23 were 42 districts now; is that right?
 24 A. Yes.
 25 Q. Going back two years when we last talked, are

1 there districts that are now not in compliance that were
 2 not part of the Comite -- strike that.
 3 Were there districts -- are there districts now
 4 out of compliance that weren't on your list two years
 5 ago?
 6 A. Yes.
 7 Q. Do you know which districts those are? Can you
 8 name any of them?
 9 A. It's in our files, but I think I could name some
 10 of them.
 11 Q. Okay.
 12 A. It would be -- well, no, let me change that.
 13 They might have been out of compliance two years ago. I
 14 don't know. They weren't in Comite two years ago, that's
 15 a different question.
 16 Q. Okay. But it has since come -- these districts
 17 have since come to your attention?
 18 A. Yes.
 19 Q. Whether or not they were out of compliance two
 20 years ago is just something you don't have information
 21 on?
 22 A. Correct.
 23 Q. When you tell me it's in our files, you've said
 24 that a few times today. What are you talking about?
 25 A. Our Comite files.

1 Q. Okay. If I wanted the data that you and I
 2 talked about this morning, which files would I go to?
 3 MR. SAFARIAN: Objection. Overly broad, vague
 4 and ambiguous as to data.
 5 MS. KOURY: Compound.
 6 THE WITNESS: There would be a lot of data from
 7 the Comite files. Probably not all the data that you
 8 asked about.
 9 Q. BY MR. ROSENBAUM: Okay. Do these files have a
 10 name? Let me see if I can break it down.
 11 You have files on each district?
 12 A. Yes.
 13 Q. And that includes the reports?
 14 A. Yes.
 15 Q. And do you do an annual report on every district
 16 that's out of compliance?
 17 MR. SAFARIAN: Wait.
 18 THE WITNESS: I don't understand.
 19 MR. SAFARIAN: When you say out of compliance,
 20 are you talking about Comite out of compliance?
 21 MR. ROSENBAUM: Yeah. It's not a good question.
 22 Q. Do you have criteria that you apply to decide
 23 whether or not you're going to put together a report on a
 24 district?
 25 MS. KOURY: Objection. Vague and ambiguous.

1 THE WITNESS: We do at least a report on every
 2 district.
 3 Q. BY MR. ROSENBAUM: Every district that's a
 4 Comite district?
 5 A. Yes.
 6 Q. I don't want to waste your time, Ms. Burnham,
 7 but I don't have those files or reports and -- on the
 8 districts in this case. And I don't know why, but I am
 9 concerned about that.
 10 All right. So you have files organized by
 11 district; is that right?
 12 A. Yes.
 13 Q. And then do you also have files that contain
 14 some of the data that we talked about this morning under
 15 a different rubric or a different label?
 16 MS. KOURY: Objection. Compound.
 17 Q. BY MR. ROSENBAUM: For example, do you have a
 18 file on qualified teachers; do you have a file on access
 19 to core curriculum; do you have other data collection
 20 files?
 21 MS. KOURY: Objection. Vague and ambiguous,
 22 compound.
 23 THE WITNESS: I don't know exactly.
 24 Q. BY MR. ROSENBAUM: How many -- I'm trying to
 25 understand how your filing system is organized. You've

1 said that you keep files by districts; is that right?
 2 A. Yes.
 3 Q. So there's an Oakland file, and it goes all the
 4 way back?
 5 A. Yes.
 6 Q. Are there other files that your office keeps? I
 7 don't mean personnel files on consultants, but other
 8 files with respect to your unit.
 9 A. Other files with respect to the unit, yes.
 10 Q. Tell me what those files consist of, please.
 11 MS. KOURY: Objection. Compound, overbroad.
 12 THE WITNESS: We have files of documents that
 13 are -- that we consider to be helpful to school
 14 districts. We have sample documents, sample evaluation
 15 reports, for example.
 16 Q. BY MR. ROSENBAUM: That you give to the
 17 districts to help them with the process; is that right?
 18 A. That we could give to the district.
 19 Q. Any other files?
 20 A. General files only.
 21 Q. Okay. Is there a big database that your office
 22 has that I could look at and figure out where the
 23 teachers who are not qualified are at without going to
 24 individual districts?
 25 MS. KOURY: Objection. Vague and ambiguous,

1 overbroad.
 2 THE WITNESS: Not that I'm aware of.
 3 Q. BY MR. ROSENBAUM: Okay. Same thing for all the
 4 criteria items?
 5 MS. KOURY: Objection. Compound.
 6 THE WITNESS: Not that our unit keeps.
 7 Q. BY MR. ROSENBAUM: Does any unit keep that as
 8 far as you know?
 9 MS. KOURY: Calls for speculation.
 10 THE WITNESS: There's the CCR management unit
 11 that has data on what issues were found out of compliance
 12 in districts, not on numbers of teachers.
 13 Q. BY MR. ROSENBAUM: Or numbers of students?
 14 A. Or numbers of students, I don't think so.
 15 There's also on the CDE web site a giant
 16 database called Data Quest that's available to the public
 17 to get a variety of information.
 18 Q. Does the information that you obtain go into
 19 Data Quest as far as you know?
 20 MS. KOURY: Objection. Vague and ambiguous,
 21 calls for speculation.
 22 THE WITNESS: No.
 23 Q. BY MR. ROSENBAUM: Who gets copies of your
 24 reports?
 25 MR. SEFERIAN: Objection. Asked and answered.

1 MR. ROSENBAUM: It was asked and answered two
 2 years ago. I want to know now.
 3 THE WITNESS: The district superintendent, the
 4 consultant assigned to the case, and others as
 5 appropriate to any specific district.
 6 Q. BY MR. ROSENBAUM: Does Superintendent O'Connell
 7 get it?
 8 MS. KOURY: Objection. Calls for speculation.
 9 Q. BY MR. ROSENBAUM: As a matter of practice?
 10 A. Not usually.
 11 Q. The gentleman who replaced Ms. Bedwell, does he
 12 get it as a matter of practice?
 13 A. Most -- well, not always.
 14 Q. If he requests it?
 15 MS. KOURY: Objection. Mischaracterizing her
 16 testimony.
 17 THE WITNESS: If he requested it he would always
 18 get it. It's a certain amount of judgment as to whether
 19 it's possibly a volatile kind of a case that we feel it
 20 would be important for him to have. He can have any that
 21 he wants.
 22 Q. BY MR. ROSENBAUM: Anyone else as a matter of
 23 practice get the reports?
 24 A. Generally the district Comitè contact person.
 25 Q. Anyone else?

1 A. Well, lawyers in the Comitè case because they
 2 request them.
 3 Q. Anyone else?
 4 A. When it's a joint case with OCR the OCR staff
 5 involved in the case get the copy.
 6 Q. How many joint cases are now taking place?
 7 MS. KOURY: Objection. Calls for speculation.
 8 THE WITNESS: I don't know exactly.
 9 Q. BY MR. ROSENBAUM: What districts do you now
 10 know are subject of joint cases?
 11 A. Oakland, Compton, Inglewood, Grant, Pittsburg,
 12 Oceanside, Pajaro Valley. That's the ones I think of
 13 right now. I think there are a few others.
 14 Q. BY MR. ROSENBAUM: Approximately how many
 15 others?
 16 MS. KOURY: Objection. Calls for speculation.
 17 THE WITNESS: Not too many.
 18 Q. BY MR. ROSENBAUM: Do you have a person or
 19 persons that are contacts at OCR that you regularly deal
 20 with?
 21 A. Yes.
 22 Q. Who are they?
 23 A. For each case it's whoever is assigned to the
 24 case. The people that we work with most frequently,
 25 their names?

1 Q. Yeah.

2 A. Katie Riggs, Susan Spelletich.

3 MR. SEFERIAN: Spell that.

4 THE WITNESS: S-p-e-l-l-e-t-i-c-h.

5 Q. BY MR. ROSENBAUM: Why don't you tell me which
6 districts that they're involved with too.

7 MS. KOURY: Objection. Calls for speculation.

8 THE WITNESS: Let's see. Susan's on Pittsburg
9 and Oceanside. Katie's on Inglewood and Grant. I'm not
10 sure who is on Pajaro Valley. For the lawyers, then,
11 there's OCR, Kim Wood, Ann Simadel [phonetic], Ava Law,
12 L-a-w.

13 Q. BY MR. ROSENBAUM: Do your files have OCR
14 documents in them?

15 A. Some.

16 Q. How do you decide whether or not you have OCR
17 files? OCR documents. I'm sorry.

18 A. If they give us a copy, it goes in the file.

19 Q. And are you familiar with the OCR actions?

20 MS. KOURY: Objection. Vague and ambiguous.

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

23 Q. BY MR. ROSENBAUM: What level of awareness do
24 you have with respect to the OCR actions?

25 MS. KOURY: Same objection.

1 THE WITNESS: In our districts we share with
2 them, we copy each other and work -- we know each other's
3 actions very well.

4 Q. BY MR. ROSENBAUM: Is OCR concerned with
5 qualified teachers, the -- whether or not there are
6 sufficient qualified teachers as you've defined it in the
7 districts you've mentioned?

8 MS. KOURY: Objection. Calls for speculation.

9 THE WITNESS: They say they are.

10 Q. BY MR. ROSENBAUM: Okay. Why do you say that?

11 MS. KOURY: Objection. Vague and ambiguous.

12 THE WITNESS: Because of conversations with them
13 and because of the issues that we look at jointly.

14 Q. BY MR. ROSENBAUM: How about access to core
15 curriculum, is it your understanding that OCR is
16 concerned with that item also in the districts we've
17 talked about?

18 MR. SEFERIAN: Vague and ambiguous.

19 MS. KOURY: Calls for speculation.

20 THE WITNESS: My understanding is yes.

21 Q. BY MR. ROSENBAUM: Are there districts that OCR
22 is dealing with regarding EL students that are not Comite
23 districts?

24 MR. SEFERIAN: Objection. Lacks foundation.

25 THE WITNESS: Don't know.

1 Q. BY MR. ROSENBAUM: It's possible, you just don't
2 know one way or the other?

3 A. That's right.

4 Q. Now, we started this set of questions I asked
5 you if there were districts among the 42 districts that
6 were out of compliance that were not in the 54 districts
7 two years ago. Do you remember that?

8 A. Yes.

9 Q. What districts fall in that category?

10 A. Let's see. It would be the San Mateo Union
11 High, San Mateo, Foster City, San Mateo, those are two
12 different ones.

13 Q. Help me here. One is Foster City?

14 A. San Mateo Elementary.

15 Q. That's a district?

16 A. Yes.

17 Q. Uh-huh.

18 A. And San Mateo Union High School District.
19 Burlingame Elementary -- I'm not going to remember them
20 all, but --

21 Q. That's okay.

22 A. Livingston -- wait. Scratch Livingston. Lodi.
23 It starts with an L.

24 I'd have to look at my list.

25 Q. How many?

1 MS. KOURY: Objection. Calls for speculation.

2 THE WITNESS: We choose ten new districts each
3 year. So there would have been ten chosen in September
4 of 2001, and ten in September of 2002 that we wouldn't
5 have had in July of 2001.

6 Q. BY MR. ROSENBAUM: Okay. But -- and let me see
7 if I understand the process. You told me last time about
8 the criteria that you use to select which districts you
9 investigate. You don't have to go over that again with
10 me. But the same criteria, has that changed at all?

11 A. No.

12 Q. Now, let me see if I understand. You looked at
13 ten districts in 2001?

14 MS. KOURY: Objection. Vague and ambiguous.

15 Q. BY MR. ROSENBAUM: Ten new districts?

16 A. Ten new ones.

17 Q. And ten new ones in 2002?

18 A. Yes.

19 Q. And out of those districts, you found some of
20 those districts out of compliance; is that right?

21 MS. KOURY: Objection. Vague and ambiguous.

22 THE WITNESS: All of them.

23 Q. BY MR. ROSENBAUM: All of them, all 20 of them?

24 A. Yes.

25 Q. And have districts been selected for 2003?

1 A. Not yet.
 2 Q. Okay. Do you know which ones they're going to
 3 be?
 4 MR. SEFERIAN: Objection.
 5 MR. ROSENBAUM: Kind of like the Oscars.
 6 MS. KOURY: Calls for confidential information.
 7 MR. SEFERIAN: Calls for privileged information.
 8 THE WITNESS: And we don't know anyway yet.
 9 So --
 10 MR. ROSENBAUM: Touche.
 11 Q. Now, the 20 districts in 2001 and 2002, you
 12 found all of those out of compliance?
 13 MS. KOURY: Objection. Asked and answered.
 14 THE WITNESS: Yes.
 15 Q. BY MR. ROSENBAUM: And some of those districts
 16 were among the 54 districts?
 17 A. No.
 18 Q. I'm not asking you right now for the names of
 19 any districts, but I want to understand the process.
 20 A. Okay.
 21 Q. So for 2003 you're going to end up with ten
 22 districts, is that right, ten new districts?
 23 A. Yes.
 24 Q. And when will the envelope be opened?
 25 A. Depends on how you mean the envelope.

1 Q. When will those districts be identified?
 2 A. Those districts will be identified by August
 3 15th and notified by September 1st.
 4 Q. And I take it there's a cut list; is that right?
 5 A. Yes.
 6 Q. How big is the initial list of initial
 7 candidates?
 8 MS. KOURY: Objection. Vague and ambiguous as
 9 to time. Are you referring to this particular --
 10 MR. SEFERIAN: Asked and answered.
 11 THE WITNESS: For this year, for 2003?
 12 Q. BY MR. ROSENBAUM: Yeah.
 13 THE WITNESS: The initial list is over 200
 14 districts. They're the districts that received a
 15 coordinated compliance review this year, this past year.
 16 Q. BY MR. ROSENBAUM: Okay. And that's how the
 17 process starts every year, you look at all the districts
 18 that got a CCR review; is that right?
 19 A. Yes.
 20 Q. Okay. So there were 200 of them for 2003?
 21 A. Over 200.
 22 Q. Roughly the same number in 2002?
 23 A. Yes.
 24 Q. Roughly the same number 2001?
 25 A. Yes.

1 Q. Tell me what the next step is.
 2 MR. SEFERIAN: Objection. Asked and answered.
 3 THE WITNESS: We start to apply the criteria
 4 that we talked about last time.
 5 MR. ROSENBAUM: Okay.
 6 THE WITNESS: And narrow the list down based on
 7 that criteria.
 8 Q. BY MR. ROSENBAUM: For 2003 without giving me
 9 the names of any districts, what -- where do the number
 10 200 go to, what was the next number?
 11 MS. KOURY: Objection. Vague and ambiguous.
 12 THE WITNESS: We haven't done 2003 yet.
 13 Q. BY MR. ROSENBAUM: 2002, what will be the next
 14 number, what was the number that followed to the 200 plus
 15 number?
 16 MS. KOURY: Calls for speculation.
 17 THE WITNESS: It's not an exact number.
 18 Q. BY MR. ROSENBAUM: Give me your best estimate of
 19 what it was in 2002.
 20 A. I believe it was around 50 to 60.
 21 Q. So there were 50 to 60 districts in 2002 that --
 22 I don't want to put words in your mouth, so don't
 23 hesitate to correct me. I'm sure you won't. There were
 24 50 to 60 that your unit concluded were worthy of closer
 25 examination to see if they should be included as a unit

1 that you should -- a district that you should follow up
 2 on?
 3 MR. SEFERIAN: Objection. Misstates the
 4 witness's testimony.
 5 Q. BY MR. ROSENBAUM: Is that right?
 6 A. That's pretty much, yes.
 7 Q. Okay. And does your unit have -- there were six
 8 criteria, right?
 9 A. Correct.
 10 Q. Among those six criteria, are there particular
 11 criteria that in your experience your unit pays more or
 12 most attention to?
 13 MS. KOURY: Vague and ambiguous.
 14 MR. SEFERIAN: Asked and answered.
 15 MS. KOURY: Calls for speculation.
 16 THE WITNESS: We start with the noncompliant
 17 findings. That's the first cut, number of noncompliant
 18 findings and which issues were noncompliant.
 19 Q. BY MR. ROSENBAUM: Are there particular issues
 20 that cause your unit special concern?
 21 MS. KOURY: Objection. Vague and ambiguous.
 22 THE WITNESS: Yes.
 23 Q. BY MR. ROSENBAUM: Which ones are those?
 24 A. ELD and access to the core, the ones that most
 25 directly impact students.

1 Q. The first one was what?
 2 A. ELD, English language development.
 3 Q. What does that criteria consist of?
 4 A. That English learners are receiving instruction
 5 designed to ensure the acquiring of English as rapidly
 6 and effectively as possible.
 7 Q. Do you know the number of students in California
 8 that are not receiving ELD who qualify for it?
 9 MS. KOURY: Objection. Vague and ambiguous,
 10 calls for speculation.
 11 THE WITNESS: No.
 12 Q. BY MR. ROSENBAUM: Do you know if anybody in
 13 the State of California knows that answer?
 14 MS. KOURY: Same objection.
 15 THE WITNESS: Not to my knowledge.
 16 Q. BY MR. ROSENBAUM: Do you know the number of EL
 17 students who do not have access to core curriculum in the
 18 State of California who are EL students?
 19 MR. SEFERIAN: Objection. Vague and ambiguous.
 20 MS. KOURY: Calls for speculation.
 21 THE WITNESS: No.
 22 Q. BY MR. ROSENBAUM: Do you know if anybody in the
 23 State of California knows that?
 24 MR. SEFERIAN: Objection. Calls for
 25 speculation.

1 THE WITNESS: I don't know.
 2 Q. BY MR. ROSENBAUM: In all your years,
 3 Ms. Burnham, have you ever been in discussions where
 4 someone has said we ought to find out all the number of
 5 all the EL students who are not receiving ELD?
 6 MS. KOURY: Overbroad, calls for speculation.
 7 THE WITNESS: I don't recall that conversation.
 8 Q. BY MR. ROSENBAUM: Or we ought to find out the
 9 number of EL students who don't have access to core
 10 curriculum?
 11 MS. KOURY: Overbroad, calls for speculation.
 12 THE WITNESS: Not that I recall.
 13 Q. BY MR. ROSENBAUM: Or the number of students who
 14 don't have qualified teachers?
 15 MR. SEFERIAN: Objection. Asked and answered.
 16 MS. KOURY: Overbroad.
 17 THE WITNESS: I don't recall.
 18 Q. BY MR. ROSENBAUM: Now, then, it goes to 50 or
 19 60 in 2002, the best of your recollection?
 20 A. Yes.
 21 Q. Then is there another -- there's another cut
 22 after that?
 23 A. Yes.
 24 Q. Tell me what the process is to get it to the
 25 next cut.

1 MR. SEFERIAN: Objection. Asked and answered.
 2 MS. KOURY: Calls for a narrative.
 3 THE WITNESS: We look at the other criteria,
 4 more of the other criteria as a unit initially, and we
 5 also consider recommendations from the people that have
 6 done the CCRs or our colleagues at OCR. At that point we
 7 start to bring them into the discussions.
 8 Q. BY MR. ROSENBAUM: Bring OCR in?
 9 A. OCR and also the colleagues at CDE do that, the
 10 English language reviews. The English learners
 11 monitoring unit, the people that conduct the EECs.
 12 Q. And then the number in 2002 -- just -- I'm just
 13 trying to get a sense of the process. What was the
 14 number cut to next?
 15 MS. KOURY: Calls for speculation.
 16 THE WITNESS: I don't recall exactly. Two more
 17 cuts. I don't exactly know.
 18 Q. BY MR. ROSENBAUM: Who makes the final decision?
 19 A. The final decision would be made by the deputies
 20 or chief deputies at CDE. But we make the
 21 recommendation.
 22 Q. In your experience have your recommendations
 23 ever not been followed?
 24 MR. SEFERIAN: Objection. That calls for
 25 privileged information.

1 Q. BY MR. ROSENBAUM: Have they?
 2 MS. KOURY: Same objection. Instruct her not to
 3 answer.
 4 MR. ROSENBAUM: What privilege is that?
 5 MR. SEFERIAN: Official information and
 6 deliberative process privilege.
 7 MR. ROSENBAUM: I'm not asking for the names of
 8 any district at this time. I'm just asking if that's
 9 ever happened.
 10 MR. SEFERIAN: That's privileged.
 11 MR. ROSENBAUM: That's ridiculous. Okay. You
 12 have -- because it's going to be another reason to have
 13 to bring this witness back, so I'm going to ask you for
 14 any authority you have to support this objection.
 15 MR. SEFERIAN: The authority is the official
 16 information and deliberative process privilege.
 17 Q. BY MR. ROSENBAUM: Okay. With whom do you deal
 18 with in the EL monitoring unit at the present time?
 19 A. The manager and the consultants and the support
 20 staff.
 21 Q. Who is the manager?
 22 A. Peter Dibble.
 23 Q. How long has Mr. Dibble been on the job?
 24 A. About a year and half, going on two.
 25 Q. Thank you.

1 Do you know who his predecessor is?
 2 A. Yes.
 3 Q. Who was that?
 4 A. Well, there was Diane Levin who was an interim,
 5 so she was never -- you know, she was interim. And prior
 6 her it was Keric Ashley.
 7 Q. What happens, is there like a meeting you all
 8 come to and you hash out which districts should be part
 9 of the Comite follow-up?
 10 MS. KOURY: Objection. Asked and answered. Are
 11 you asking about since 2001?
 12 MR. ROSENBAUM: Yes. Since Mr. Dibble took his
 13 job, yes.
 14 MS. KOURY: So if anything changed from her
 15 testimony in 2001?
 16 MR. ROSENBAUM: Yes. I appreciate that.
 17 THE WITNESS: It hasn't changed since then.
 18 Q. BY MR. ROSENBAUM: Okay. And in your
 19 experience, based on your training and your background,
 20 Ms. Burnham, and your work experience, if you had more
 21 consultants and more resources, would you look at more
 22 districts?
 23 MS. KOURY: Objection. Calls for speculation.
 24 That's an incomplete hypothetical.
 25 MR. ROSENBAUM: Go ahead.

1 THE WITNESS: If we had more consultants, we
 2 would look at more districts.
 3 Q. BY MR. ROSENBAUM: Why is that?
 4 MS. KOURY: Objection. Vague and ambiguous.
 5 MR. SEFERIAN: Incomplete hypothetical.
 6 THE WITNESS: Because it's our opinion that it's
 7 excellent work and that it helps school districts and
 8 positively impacts students. That's our opinion of our
 9 own work.
 10 Q. BY MR. ROSENBAUM: Okay. And that's based on
 11 your reading of your track record; is that right?
 12 MS. KOURY: Objection. Mischaracterizing her
 13 testimony.
 14 THE WITNESS: Right. Review of that and also
 15 just experience with districts.
 16 Q. BY MR. ROSENBAUM: Okay. And in your
 17 experience, Ms. Burnham, do districts ever come into
 18 compliance within one year of your unit getting involved?
 19 MS. KOURY: Objection. Vague and ambiguous,
 20 overbroad.
 21 Q. BY MR. ROSENBAUM: Do you know what I mean by
 22 that? You've told me some districts are ten years or
 23 more. And incidentally of the 42 districts, subtract out
 24 the ones that have been ten years or more. How many are
 25 between five and ten, to the best of your judgment?

1 MS. KOURY: Calls for speculation.
 2 THE WITNESS: I don't know exactly.
 3 Q. BY MR. ROSENBAUM: Best estimate?
 4 A. Not with those numbers. I'm not sure.
 5 MS. KOURY: Same objection.
 6 THE WITNESS: Not too many I don't think.
 7 Q. BY MR. ROSENBAUM: Do some of the problems get
 8 cleared up in a year?
 9 MS. KOURY: Objection. Overbroad.
 10 MR. ROSENBAUM: That's not a good question.
 11 MS. KOURY: Excuse me?
 12 MR. ROSENBAUM: I said it wasn't a good
 13 question.
 14 MS. KOURY: I'm sorry.
 15 Q. BY MR. ROSENBAUM: Do some of those districts
 16 come into compliance within a year after you get
 17 involved?
 18 MR. SEFERIAN: Comite compliance?
 19 MR. ROSENBAUM: Yeah.
 20 THE WITNESS: With Comite it's rare, but, yes,
 21 it has happened.
 22 Q. BY MR. ROSENBAUM: How often in your experience?
 23 A. I think of two. And there could well be others.
 24 Not a lot, but it does happen.
 25 Q. Which two are you thinking about?

1 A. Downey this past year and North Sacramento from
 2 I think last year or the year before.
 3 Q. And you provided technical assistance to those
 4 districts?
 5 A. Yes.
 6 Q. And do some districts come into compliance
 7 within two years?
 8 MS. KOURY: Objection. Calls for speculation,
 9 overbroad.
 10 THE WITNESS: Some do. I'm not sure I can name
 11 those exactly.
 12 Q. BY MR. ROSENBAUM: Is there -- maybe this isn't
 13 a good question, and if it isn't, just tell me, but is
 14 there a mean time that you find that it takes for a
 15 district to come into compliance if it does come into
 16 compliance?
 17 MS. KOURY: Objection. Assumes facts, calls for
 18 speculation, overbroad.
 19 THE WITNESS: We expect them to come into
 20 compliance within three years, but oftentimes that
 21 doesn't happen. But many times it does.
 22 Q. BY MR. ROSENBAUM: When you say oftentimes, can
 23 you give me a ball park percentage?
 24 MS. KOURY: Objection. Calls for speculation.
 25 THE WITNESS: I'm not sure.

1 Q. BY MR. ROSENBAUM: When you talk to me about
2 technical assistance, what does technical assistance
3 mean?
4 A. Technical assistance includes on-site, technical
5 assistance when we work with districts on their specific
6 compliance issues.
7 Q. So many -- I know I'm stopping you and you
8 should feel free to cut me off, but you assign a
9 consultant to a particular district; is that right?
10 A. Yes.
11 Q. Do you ever assign two consultants?
12 A. Only one is a lead. We sometimes send two.
13 Q. Only one is what?
14 A. Is the lead consultant.
15 Q. Only --
16 A. Only one is the lead. But it's not unusual for
17 two consultants to go to a review.
18 Q. And these two consultants go to the district and
19 you've told me they visit a certain number of schools; is
20 that right?
21 A. Correct.
22 Q. And they talk to staff and personnel involved
23 with ELs, right?
24 MR. SEFERIAN: Are you talking about technical
25 assistance or Comite review?

1 THE WITNESS: Good question. On the reviews.
2 MR. ROSENBAUM: That's a good objection, isn't
3 it. So rare, but welcomed. Sorry. I apologize. I'll
4 withdraw that statement.
5 Q. On the reviews, is that what you're describing
6 to me?
7 A. Yes.
8 Q. And so -- all right. So then tell me what's
9 typically done if there is a typical process with respect
10 to technical assistance.
11 MS. KOURY: Objection. Calls for a narrative.
12 THE WITNESS: There's a whole variety of
13 technical assistance. At the minimum it's a phone
14 conversation each month. It's typically a lot more than
15 that where you talk about the issues that the district
16 still has unresolved, make some recommendation when they
17 ask for that. We provide some time sample documents or a
18 variety of resources for them.
19 Q. BY MR. ROSENBAUM: Which time sample documents?
20 A. We sometimes send sample documents, they're not
21 time sample.
22 Q. Okay.
23 A. And sometimes the technical assistance involves
24 the consultant going to the district. Sometimes they
25 meet with, for example, all the principals in the

1 district and talk about English learner services,
2 particularly what's keeping the district from resolving
3 an issue, meet with district staff.
4 Q. In your experience, is advice given as to how to
5 recruit and maintain qualified teachers as part of the
6 technical assistance process?
7 MS. KOURY: Vague and ambiguous, calls for
8 speculation.
9 MR. SEFERIAN: Asked and answered.
10 THE WITNESS: Could be.
11 Q. BY MR. ROSENBAUM: Okay. You or your
12 consultants talk about certain strategies to increase the
13 number of qualified teachers? Am I understanding that
14 right that that's one part of it?
15 MS. KOURY: Objection. Vague and ambiguous,
16 mischaracterizing her testimony.
17 MR. ROSENBAUM: Go ahead.
18 THE WITNESS: We talked about that sometimes.
19 Q. BY MR. ROSENBAUM: What sorts of things -- have
20 you ever been present when these things were discussed,
21 that is, how to retain and maintain qualified teachers?
22 MS. KOURY: Objection. Overbroad.
23 In her entire experience?
24 MR. ROSENBAUM: Yeah.
25 THE WITNESS: Forever and ever?

1 MR. ROSENBAUM: Forever and ever.
2 THE WITNESS: Yes.
3 Q. BY MR. ROSENBAUM: Within the last five years?
4 A. Yes.
5 Q. Within the last two years?
6 A. Yes.
7 Q. Tell me the sorts of things that are said.
8 MS. KOURY: Objection. Overbroad, calls for a
9 narrative.
10 THE WITNESS: Recruiting teachers, some things
11 that other districts have done that have been successful,
12 some strategies other districts have used we share
13 sometimes.
14 Q. BY MR. ROSENBAUM: Can you think of some
15 specific strategies?
16 A. Sure.
17 MS. KOURY: Objection. Vague and ambiguous and
18 calls for speculation. Are you asking for about specific
19 strategies she's had discussions about or generally?
20 MR. ROSENBAUM: I think she understood the
21 question fine. Go ahead.
22 THE WITNESS: Strategies like offering a stipend
23 for teachers who have English learner authorizations.
24 Sometimes strategies such as providing instructional
25 aides to give extra assistance in those classes. Really

1 the very best one is having an effective program for
 2 English learners that tends to be what attracts highly
 3 qualified teachers and marketing their services in a
 4 positive way, recruiting at universities and conferences.
 5 Those are a few.
 6 Q. BY MR. ROSENBAUM: What is an effective program
 7 in your judgment when you use that phrase?
 8 MR. SEFERIAN: Objection. Overly broad.
 9 MS. KOURY: Calls for a narrative.
 10 THE WITNESS: Programs that have evidence of
 11 success in English learners to acquire English
 12 proficiency and meet grade level content standards.
 13 Q. BY MR. ROSENBAUM: And in your experience, are
 14 there certain components of an effective program that you
 15 see time after time?
 16 MR. SEFERIAN: Objection. Overly broad, calls
 17 for an inadmissible opinion.
 18 THE WITNESS: I'm not sure what the question is.
 19 Q. BY MR. ROSENBAUM: If a district said to you,
 20 Ms. Burnham, what do you mean by an effective program,
 21 what should we do, what would you say?
 22 MS. KOURY: Objection. Incomplete hypothetical,
 23 calls for speculation, overbroad, and calls for a
 24 narrative.
 25 THE WITNESS: Yeah. It's kind of a long story.

1 MR. ROSENBAUM: That's okay.
 2 THE WITNESS: Well, for English language
 3 development they need to provide instruction for students
 4 that's targeted to the student's level of English
 5 proficiency. They need to be ensuring students are
 6 actually meeting standards that lead them ultimately to
 7 full proficiency. Need to provide obviously, as has been
 8 said, qualified teachers and appropriate materials. And
 9 then need to evaluate their program and show the results
 10 that the students are in fact successfully overcoming
 11 barriers that prevent them from full participation with
 12 native English speakers.
 13 Q. BY MR. ROSENBAUM: When you say appropriate
 14 materials, what do you mean by that?
 15 A. Materials that are targeted to their level of
 16 proficiency in English. So for students who speak little
 17 English, the materials wouldn't look exactly the same as
 18 for students at the advanced levels.
 19 Q. And when we talked about -- strike that.
 20 Do you find this technical assistance
 21 valuable --
 22 MS. KOURY: Objection. Vague and ambiguous.
 23 Q. BY MR. ROSENBAUM: -- to the districts that are
 24 out of compliance?
 25 A. Yes.

1 Q. Why is that?
 2 A. The evidence that it's --
 3 Q. That's a good place to start.
 4 A. The number of Comite graduates, the fact that
 5 it's increased substantially since we've had a fully
 6 staffed unit.
 7 Q. When you say Comite graduates, what do you mean
 8 by that?
 9 A. Districts that resolve issues and become
 10 compliant, they resolve their noncompliant issues.
 11 Q. Now, any other reasons?
 12 A. Well, that's kind of more like the evidence.
 13 The reasons is that many districts maybe lack the full
 14 understanding of how to best serve English learners. And
 15 so consultants who are experts themselves in this area,
 16 spending time with the districts. Especially in this
 17 time of budget crunches they get an expert that they
 18 don't have to pay extra money for, and it's just real
 19 helpful.
 20 Q. It's pretty cost effective for them; is that
 21 right?
 22 MS. KOURY: Objection. Mischaracterizing her
 23 testimony.
 24 THE WITNESS: I think it is.
 25 Q. BY MR. ROSENBAUM: And when you say many

1 districts lack this expertise, am I characterizing you
 2 correctly?
 3 A. Depending on the level of expertise.
 4 Q. Okay. Do you have an opinion as to why that's
 5 the case?
 6 MR. SEFERIAN: Objection. Lacks foundation.
 7 MS. KOURY: Calls for speculation.
 8 MR. SEFERIAN: Overly broad.
 9 THE WITNESS: Districts have to deal with many
 10 issues. The English learner issues are important, but
 11 they have everything to deal with, and so it's not always
 12 their highest level of expertise.
 13 Q. BY MR. ROSENBAUM: Okay. Now, if you've
 14 answered this question for me, you just tell me, as part
 15 of one of your other answers. But part of what your unit
 16 does is to monitor, is that right, monitor compliance?
 17 MR. SEFERIAN: Objection. Vague and ambiguous.
 18 MS. KOURY: And it has been asked and answered.
 19 THE WITNESS: And it's, yes, a big part.
 20 Q. BY MR. ROSENBAUM: Okay. And when you say a big
 21 part, what do you mean by that?
 22 A. That's the major activity that we do is
 23 monitor -- the technical assistance is monitoring in a
 24 sense.
 25 Q. Right. Let's break it down. Monitoring

1 including technical assistance; is that right?
 2 MR. SEFERIAN: Objection. Vague and ambiguous.
 3 THE WITNESS: I would define it that way.
 4 Q. BY MR. ROSENBAUM: And monitoring also includes
 5 collecting data as to compliance?
 6 MS. KOURY: Objection. Vague and ambiguous.
 7 MR. ROSENBAUM: Go ahead.
 8 THE WITNESS: Yes.
 9 Q. BY MR. ROSENBAUM: What else does monitoring
 10 consist of?
 11 A. The on-site reviews.
 12 Q. Anything else?
 13 MR. SEFERIAN: In the Comite unit?
 14 THE WITNESS: Right. The on-site reviews that
 15 we do.
 16 MR. ROSENBAUM: Right. Do you consider that to
 17 be valuable work in terms of student achievement?
 18 MS. KOURY: Objection. Vague and ambiguous.
 19 MR. SEFERIAN: Overly broad.
 20 THE WITNESS: I certainly do, yes.
 21 Q. BY MR. ROSENBAUM: Why is that?
 22 MS. KOURY: Same objection.
 23 THE WITNESS: Partly because of the results that
 24 students have gotten and the evaluation reports that they
 25 provide to us and the discussions we have with them, and

1 also the feedback that we get from Comite districts.
 2 They've given us numerous comments, and this has really
 3 made a difference for their students.
 4 Q. BY MR. ROSENBAUM: Any other reasons?
 5 A. Those are the ones I think of right now.
 6 Q. Do they tell you why it's made a difference for
 7 the students?
 8 A. Sometimes they do.
 9 Q. What do they tell you in your experience?
 10 MS. KOURY: Objection. Overbroad, compound.
 11 MS. KOURY: You can answer to the extent you
 12 know.
 13 THE WITNESS: Well, we have letters that we've
 14 sent, and they essentially say that the technical
 15 assistance they received from the consultants has been
 16 helpful to them, and the fact that they have English
 17 learners achieving better is really important to them.
 18 And some of them even look at -- one of them even looked
 19 at students going on to post-secondary education, and the
 20 increase of English learners doing that. So it's
 21 certainly the consensus of districts, although they
 22 almost never are happy about being chosen for Comite,
 23 they almost always are happy with the results.
 24 Q. BY MR. ROSENBAUM: What's the district that
 25 talked about the kids going on to secondary education?

1 A. Post-secondary -- this was Riverside Unified.
 2 Q. When did you get that letter?
 3 A. That would have been -- well, actually, it's
 4 their evaluation report. It was about a year ago.
 5 Q. The letters or the responses you're talking
 6 about, are they maintained in your files?
 7 A. Yes.
 8 Q. Okay. Have you ever had a district write you a
 9 letter as part of the evaluation report saying what
 10 you've done is useless?
 11 MS. KOURY: Objection. Calls for speculation,
 12 incomplete hypothetical.
 13 THE WITNESS: Never had one that exactly said
 14 that. We have had some that were less than positive.
 15 Q. BY MR. ROSENBAUM: Okay. When you say the
 16 greater percentage have been positive, can you give me an
 17 approximate percentage?
 18 MR. SEFERIAN: Objection. Vague and ambiguous.
 19 MS. KOURY: Also mischaracterizing her
 20 testimony.
 21 THE WITNESS: Nobody's written a negative
 22 letter, per se, about Comite. So no, the responses we've
 23 gotten are overwhelmingly positive in terms of the
 24 process.
 25 Q. BY MR. ROSENBAUM: Okay. When we talk about

1 books, one of the publishers of books that kids get in
 2 the California public school districts is Houghton
 3 Mifflin; is that right?
 4 A. Yes.
 5 Q. Now if I started using some terminology that I
 6 don't use right, you correct me. Part of the textbooks
 7 that Houghton Mifflin publishes have parts specifically
 8 devoted to EL students, is that right? Am I saying that
 9 right?
 10 A. Yes.
 11 Q. Okay. And tell me what that consists of.
 12 MR. SEFERIAN: Objection. Lacks foundation.
 13 MS. KOURY: Calls for speculation. The
 14 documents speak for themselves.
 15 THE WITNESS: They have an ELD binder, I guess
 16 you would call it. And it's my understanding -- I
 17 haven't looked at the Houghton Mifflin -- there's Open
 18 Court, and those binders try to give extra support for
 19 English learners in terms of vocabulary, phonics, what
 20 they need to be successful in the English language arts
 21 program.
 22 Q. BY MR. ROSENBAUM: Okay. Let's talk about Open
 23 Court. That's a reading program principally; is that
 24 right?
 25 A. Yes.

1 Q. Is it a particular grade that -- of kids that
 2 get it or kids whose reading needs --
 3 A. It's K-6. It's the state board accredited,
 4 Houghton Mifflin, and Open Court is from S.R.R.
 5 McGraw-Hill, are the two programs adopted for English
 6 language arts.
 7 Q. Which kids are supposed to get those textbooks,
 8 the Open Court, the Houghton Mifflin?
 9 MR. SEFERIAN: Vague and ambiguous.
 10 THE WITNESS: All K-6 students.
 11 Q. BY MR. ROSENBAUM: Do all K-6 students have
 12 them?
 13 MR. SEFERIAN: Lacks foundation, overbroad.
 14 MS. KOURY: Calls for speculation.
 15 THE WITNESS: I don't know.
 16 Q. BY MR. ROSENBAUM: You do you know if anyone in
 17 the State of California knows?
 18 MS. KOURY: Same objections. Overbroad, calls
 19 for speculation.
 20 THE WITNESS: I don't know.
 21 Q. BY MR. ROSENBAUM: Okay. Have you heard
 22 anything about an issue that has come up with respect to
 23 the ELD portion of the Houghton Mifflin books?
 24 A. Of Houghton Mifflin, no.
 25 Q. Do you know if anyone in the state surveys to

1 find out if all kids K through six who are EL students
 2 have one of the state-approved books?
 3 MS. KOURY: Objection.
 4 MR. SEFERIAN: Asked and answered.
 5 MS. KOURY: Vague and ambiguous.
 6 THE WITNESS: I'm not aware of that.
 7 Q. BY MR. ROSENBAUM: And this is the mechanism by
 8 which kids are supposed to learn to read English; is that
 9 right?
 10 MS. KOURY: Objection. Calls for speculation,
 11 impermissible opinion.
 12 THE WITNESS: It's the state board's English
 13 language arts program.
 14 Q. BY MR. ROSENBAUM: One of the functions, as you
 15 understand it, is to teach the students to read English,
 16 right?
 17 A. Right.
 18 MS. KOURY: Mischaracterizing her testimony.
 19 Q. BY MR. ROSENBAUM: Now, you talked to me several
 20 moments ago about Mr. Dibble's unit. Am I saying that
 21 right?
 22 A. Yes, that's right.
 23 Q. How does your unit -- what's the difference
 24 between Mr. Dibble's unit and your unit?
 25 MR. SEFERIAN: Objection. Asked and answered.

1 MS. KOURY: And just for clarification, do you
 2 mean whether the interaction between their units has
 3 changed since her deposition in 2001?
 4 MR. ROSENBAUM: That's a fair point.
 5 Q. Break it down in terms of your duties and
 6 responsibilities and Mr. Dibble's duties and
 7 responsibilities or his unit, are they the same as they
 8 were in 2001?
 9 A. Yes.
 10 Q. Okay. And when do you interact?
 11 MS. KOURY: Asked and answered.
 12 THE WITNESS: It's not exactly regularly
 13 scheduled. We interact sometimes in the summer for
 14 training, and then when we do the Comite selection we
 15 interact.
 16 Q. BY MR. ROSENBAUM: Do you read all the CCR
 17 reviews that are done?
 18 A. No.
 19 Q. Do you have an intimate knowledge of how CCR
 20 goes about its business?
 21 A. Yes.
 22 Q. Has that changed in the past two years so far as
 23 you know?
 24 MS. KOURY: Objection. Vague and ambiguous.
 25 THE WITNESS: It changed substantially

1 approximately two years ago.
 2 Q. BY MR. ROSENBAUM: What was the nature of those
 3 changes as you understand them?
 4 Q. It was the Comite court order. Prior to -- I'm
 5 not sure of the date. It was right around two years ago.
 6 Prior to that time, Mr. Dibble's unit, which wasn't his
 7 unit at the time --
 8 Q. Shall we call that the CCR unit?
 9 A. Yes, the CCR unit reviewed eight programs, one
 10 of which was the English learner program. As a result of
 11 the Comite court order, a separate unit was formed to do
 12 just EL program, English learner program. And the other
 13 unit -- the other seven programs, reviewed the other
 14 seven programs. So that was a substantial change.
 15 Q. Okay. And the nature of the -- and Mr. Dibble
 16 is head of the EL unit for CCR; is that right?
 17 A. That's correct.
 18 Q. And do you know if their practices have changed
 19 in terms of the way they go about their business? Has
 20 that changed over the past two years?
 21 MS. KOURY: Objection. Calls for speculation.
 22 MR. SEFERIAN: Vague and ambiguous.
 23 THE WITNESS: In the sense that they now just
 24 review the English learner program.
 25 Q. BY MR. ROSENBAUM: Fair point. But do you know

1 whether or not they've changed the way they go about
 2 their reviews?
 3 MS. KOURY: Objection. Calls for speculation.
 4 MR. ROSENBAUM: No, the question was do you
 5 know. That doesn't call for speculation.
 6 MS. KOURY: Same objection.
 7 MR. ROSENBAUM: Go ahead. Wow.
 8 THE WITNESS: They added as a result of the
 9 court order a checklist that they now use when they
 10 conduct their reviews that they didn't have prior to the
 11 court order.
 12 Q. BY MR. ROSENBAUM: Were you consulted about
 13 development of that check list?
 14 MS. KOURY: Objection. Vague and ambiguous.
 15 THE WITNESS: A little bit.
 16 Q. BY MR. ROSENBAUM: Okay. What does a little bit
 17 mean?
 18 A. It wasn't my main responsibility, but I made a
 19 few suggestions.
 20 Q. Okay. I'm going to go over that checklist with
 21 you, but that -- does it have an item with respect to
 22 qualified teachers?
 23 A. Yes.
 24 Q. Same definition that you talked to me about
 25 earlier this morning?

1 A. Yes.
 2 Q. Okay. And does it have an item with respect to
 3 access to core curriculum?
 4 A. Yes.
 5 Q. Same definition as to what we talked about
 6 earlier?
 7 A. Yes.
 8 Q. Does it have an item with respect to --
 9 specifically with respect to access to instructional
 10 materials?
 11 A. Not specifically that.
 12 Q. Okay. That goes under access to core
 13 curriculum?
 14 MR. SEFERIAN: Objection. Asked and answered.
 15 THE WITNESS: Yes.
 16 Q. BY MR. ROSENBAUM: Now, so far as you know, are
 17 there any changes that are being contemplated with
 18 respect to the way the EL CCR unit goes about its
 19 reviews?
 20 MS. KOURY: Objection. Vague and ambiguous,
 21 calls for speculation.
 22 MR. SEFERIAN: Objection to the extent it calls
 23 for privileged communications.
 24 THE WITNESS: Yes.
 25 Q. BY MR. ROSENBAUM: Okay. And what's the basis

1 of your understanding?
 2 A. I don't know if it's privileged communication.
 3 There's discussion generally about what changes to make.
 4 Q. Okay.
 5 A. Or if changes will be made.
 6 Q. And who has been part of those discussions?
 7 MS. KOURY: You can answer that to the extent it
 8 doesn't include conversation you've had with the
 9 attorneys in the case or reflects conversations had with
 10 attorneys.
 11 MR. ROSENBAUM: I don't want anything that
 12 you've talked to with counsel or any other counsel about.
 13 THE WITNESS: The division director and Peter
 14 Dibble and me specifically had some discussions and also
 15 the deputy superintendent, reviewing the whole CCR
 16 process, including English learner reviews.
 17 Q. BY MR. ROSENBAUM: Who was that?
 18 A. The deputy superintendent is Gino Flores.
 19 Q. Okay. And so have you been -- I'm not asking
 20 for any specific information at this point, but have you
 21 been privy to information about contemplated changes in
 22 CCR, not just the EL part, but other portions of CCR?
 23 MS. KOURY: Vague and ambiguous.
 24 Q. BY MR. ROSENBAUM: Do you know what I mean?
 25 A. Conversations with CCR?

1 Q. Yeah.
 2 MS. KOURY: To the extent they're conversations
 3 that reflect conversations you've had with attorneys in
 4 the case, he's not asking you for that information.
 5 THE WITNESS: Right, right. There have been
 6 conversations, and I've had some involvement. It's not a
 7 major part of my work.
 8 Q. BY MR. ROSENBAUM: Is there a task force or a
 9 committee or team that's dealing with this?
 10 MS. KOURY: Vague and ambiguous.
 11 THE WITNESS: I don't know now. There was at
 12 one time.
 13 Q. BY MR. ROSENBAUM: Who was that?
 14 A. The person in charge of it at the time was Laura
 15 Wagoner.
 16 Q. Who were the players?
 17 A. I don't know who they all were. I was just
 18 aware that this existed. So deputy superintendents and
 19 division directors and probably managers.
 20 Q. Maybe there's no answer to this, but is there a
 21 time that you contemplate that a decision is going to be
 22 made -- I'm just interested in with the ELs at this
 23 point. Is there a target date to reach a resolution of
 24 whether or not there will be the changes made with
 25 respect to CCRs as it involves ELs?

1 MS. KOURY: Again to the extent that that
2 reflects any conversations you've had with attorneys in
3 the case or even conversations with other people that
4 reflect conversations they've had with attorneys not
5 present, those are privileged and you need not answer.

6 THE WITNESS: There's always every year work
7 done to change or to make updates on monitoring. So
8 that's ongoing. And it's being worked on right now for
9 the 2004-5 school year. And there are some discussions
10 about even the two units, our unit and the CCR unit, how
11 they interact or how responsibilities could be changed.
12 So it should be finalized before September, I'm just
13 figuring, but I don't know specific times.

14 Q. BY MR. ROSENBAUM: What are the changes that
15 are being considered?

16 MR. SEFERIAN: Objection. Calls for privileged
17 communications.

18 MR. ROSENBAUM: Go ahead.

19 MS. KOURY: Again to the extent that those
20 reflect conversations you've had with attorneys in the
21 case, even if the attorneys weren't present, that calls
22 for privileged information and you need not answer.

23 MR. ROSENBAUM: I'm sorry. To the extent there
24 are discussions with attorneys who weren't present?

25 MS. KOURY: That reflects information that the

1 MR. SEFERIAN: Objection. Overly broad.

2 THE WITNESS: I don't know. I don't know.

3 MR. ROSENBAUM: Also, Tony, I want to point out
4 that when Mr. Dibble testified in deposition -- when was
5 that, Jenny? A week or so ago?

6 MS. PEARLMAN: A couple of weeks.

7 MR. ROSENBAUM: He testified about this matter.
8 So there isn't a privilege, but there was --

9 MS. KOURY: I was at that deposition and he
10 didn't testify about any privileged information to the
11 extent that I know. So I don't -- I'm not sure unless
12 you have the deposition testimony here how far that gets
13 you or what exactly you're trying to lay out.

14 MR. ROSENBAUM: There's no privileged
15 information here, but -- and there's -- if there were
16 privileged information, it would not --

17 MS. KOURY: All we asked you to do is narrow the
18 question. She's free to answer anything that doesn't
19 reflect a conversation she had with an attorney. Whether
20 or not the attorney was present doesn't matter. If
21 there's a communication from an attorney to one of her
22 colleagues and that communication was relayed to her,
23 it's still privileged. So that's all I'm doing.

24 Q. BY MR. ROSENBAUM: Okay. What are the
25 recommendations that are being considered?

1 attorneys have given, the answer is privileged.

2 MR. ROSENBAUM: Of course it isn't.

3 MR. SEFERIAN: You're asking for privileged
4 communication.

5 MR. ROSENBAUM: No, I'm asking what the
6 recommendations were.

7 MR. SEFERIAN: That's privileged.

8 Instruct the witness not to answer.

9 MR. ROSENBAUM: I'm going to have to bring you
10 back here, Ms. Burnham-Massey.

11 I'm not interested in anything you may have said
12 in a meeting or any memo that you may or may not have
13 written.

14 Q. Do you have a view as to whether or not the CCR
15 process should be changed with respect to ELs?

16 MS. KOURY: Objection. Vague and ambiguous,
17 overbroad.

18 THE WITNESS: No, I mean, I think things can
19 always be changed and improved. I think monitoring is
20 important, but I don't have an exact idea of how it
21 should be.

22 Q. BY MR. ROSENBAUM: Do you have a general idea?

23 A. I'm not sure.

24 Q. Do you think that more resources should be given
25 to that for that purpose?

1 MS. KOURY: Same objection.

2 If you have a question as to whether or not
3 information is privileged, we can go out and talk about
4 it.

5 THE WITNESS: I'm not privy to all of the
6 recommendations about the CCR process.

7 Q. BY MR. ROSENBAUM: Tell me, please, the ones you
8 are knowledgeable about.

9 MR. SEFERIAN: That's calling for privileged
10 communications.

11 MR. ROSENBAUM: I'm going to let you at a break
12 over lunch consult with your lawyers. And even though I
13 think these objections are beyond silly, I just want the
14 information. So you can --

15 MS. KOURY: I'd appreciate it if you don't refer
16 to my objections as silly on the record. It's an
17 unprofessional remark.

18 MR. ROSENBAUM: If you go through this record,
19 and go through the record of depositions, there have been
20 either you -- not either you, you and Tony make
21 objections to every question. That is impeding this
22 deposition. They are objections which are preserved for
23 the record anyway. And they are objections that under
24 any circumstances are not well taken.

25 Now, I apologize for using the word silly, and I

1 won't do that anymore. But I'd appreciate it if both you
 2 and Tony would give consideration to letting the
 3 deposition go forward without the interruptions. To the
 4 extent that you think these are meritorious objections,
 5 they're preserved for the record under any circumstances.
 6 MS. KOURY: You ready to break for lunch?
 7 MR. ROSENBAUM: Sure. Let's go off the record.
 8 [Lunch recess.]
 9 MR. ROSENBAUM: Okay. Back on the record.
 10 Q. How you doing, Ms. Burnham-Massey?
 11 A. Fine.
 12 Q. You told me that your staff consists of -- tell
 13 me if I'm right. You, eight consultants and an analyst;
 14 is that the phrase?
 15 A. Yes. And two office techs. That's current
 16 staff.
 17 Q. And the analyst, is that a man or a woman?
 18 A. Woman.
 19 Q. And what does she do?
 20 A. She does mostly the personnel and budget work
 21 for the unit. And she's an internet whiz.
 22 Q. Does she do any analysis of data that is
 23 obtained as parts of the reviews?
 24 A. Not really yet, but we're planning to maybe have
 25 her start doing some of that.

1 Q. What sort of work are you thinking about her
 2 getting involved with?
 3 A. With some of the data we bring back to look at.
 4 Q. Any data in particular?
 5 A. Student achievement data mostly.
 6 Q. Why would that be interesting to you?
 7 A. Well, because she's interested in learning more
 8 job-related kinds of things to advance. And so she's
 9 interested in going on a review with us and doing some of
 10 the analytical tasks that we do late at night in the
 11 hotel rooms.
 12 Q. You mean for items of her personal growth and
 13 development?
 14 A. Yes.
 15 Q. As part of your reviews, do you look to see
 16 whether or not the districts that you're concerned with
 17 have teacher training programs for new teachers of ELs?
 18 A. Yes.
 19 Q. And do you look to see whether or not the
 20 districts that you're concerned with have staff
 21 development programs for existing teachers who teach ELs?
 22 A. Yes.
 23 Q. Okay. And regarding the training programs for
 24 new teachers, do you regard that as an important matter
 25 to monitor?

1 MS. KOURY: Objection. Vague and ambiguous.
 2 MR. SEFERIAN: Overly broad.
 3 THE WITNESS: So in what way?
 4 Q. BY MR. ROSENBAUM: Why do you do it?
 5 A. To make sure that the teachers have the skills
 6 they need to teach English learners.
 7 Q. Why does looking at whether or not there are
 8 training programs provide information as to whether or
 9 not they have the skills to teach ELs?
 10 MS. KOURY: Objection. Vague and ambiguous.
 11 THE WITNESS: Well, it's one of the legal
 12 requirements. It's one of the EL issues that we're
 13 required to look at. And so we look at it from that
 14 obligation. And then also we observe classroom
 15 instruction, and when teachers either themselves indicate
 16 or our observations indicate a need for training, we
 17 bring that up.
 18 Q. BY MR. ROSENBAUM: If it were not a legal
 19 requirement would you still recommend that your unit
 20 investigate the training programs that exist for new
 21 teachers of ELs?
 22 MS. KOURY: Objection. Vague and ambiguous.
 23 Also an incomplete hypothetical, calls for speculation.
 24 THE WITNESS: We would.
 25 Q. BY MR. ROSENBAUM: Why is that?

1 A. Because even absent a requirement for
 2 professional development, it's part of ensuring students
 3 get good instruction.
 4 Q. Why is that?
 5 MS. KOURY: Vague and ambiguous.
 6 Q. BY MR. ROSENBAUM: You're talking about EL
 7 students, right?
 8 A. Yes.
 9 Q. Why is that?
 10 A. Because the classroom teachers are the most
 11 important single piece of making instruction happen for
 12 kids.
 13 Q. The teacher is?
 14 A. The classroom teacher, yes.
 15 Q. In your experience, Ms. Burnham-Massey, is the
 16 training for EL students different than the training
 17 that's required for non-EL students; is there specialized
 18 training that's required?
 19 MR. SEFERIAN: Objection. Compound question,
 20 lacks foundation.
 21 THE WITNESS: There is.
 22 Q. BY MR. ROSENBAUM: And what's the nature of that
 23 training, based on your experience?
 24 MS. KOURY: Objection. Compound, overbroad.
 25 THE WITNESS: It's training on working with

1 second language students who are acquiring English as a
 2 second language, and in many cases are receiving
 3 instruction largely in a language that they're not fully
 4 proficient in.
 5 Q. BY MR. ROSENBAUM: Meaning English?
 6 A. Yes.
 7 Q. In your judgement, has that need increased since
 8 the passage of 227?
 9 MS. KOURY: Objection. Overbroad, vague and
 10 ambiguous, calls for an opinion.
 11 THE WITNESS: Yes.
 12 Q. BY MR. ROSENBAUM: Why is that?
 13 A. Because under California law now it's legal to
 14 actually teach students in a language they don't -- in
 15 English when they don't understand English.
 16 Q. Okay. And do help me understand this. Maybe
 17 you can just clarify this for me. When we spoke this
 18 morning about teachers who were not qualified to teach,
 19 were you talking about teachers who were in classrooms,
 20 ELD classrooms, or were you talking about teachers who
 21 were in mainstream classrooms or both?
 22 MS. KOURY: Objection. Compound. I think she
 23 testified about that in a couple of areas.
 24 Go ahead, if you can.
 25 Q. BY MR. ROSENBAUM: Do you understand my

1 question?
 2 A. English learners, you're talking about teachers
 3 of English learners?
 4 Q. Yes.
 5 A. Then it's both.
 6 Q. It's both. Okay. And have you -- in the
 7 districts that you have surveyed over your tenure, have
 8 you ever been in districts where there was no training
 9 program for teachers who were teaching ELs, new teachers?
 10 MS. KOURY: Objection. Overbroad.
 11 THE WITNESS: Yeah, I don't fully understand.
 12 No kind -- any kind of training program for them?
 13 MR. ROSENBAUM: To teach ELs. I'm not talking
 14 about a training program to just generally deal with
 15 students. I'm talking about one that is particularly
 16 focused on ELs.
 17 THE WITNESS: I think that has been the case.
 18 In fact, I'm confident it has, but I couldn't name the
 19 district offhand.
 20 Q. BY MR. ROSENBAUM: In more than one district?
 21 A. Yes.
 22 Q. And to your knowledge, does the state conduct
 23 any training of new teachers who are teaching ELs
 24 specifically with respect to ELs?
 25 MR. SEFERIAN: Objection. Vague and

1 ambiguous.
 2 THE WITNESS: I don't know.
 3 Q. BY MR. ROSENBAUM: You're not aware of any?
 4 A. There could be, but I don't know.
 5 Q. And do county boards of education to your
 6 knowledge operate any training programs for new teachers
 7 who teach ELs?
 8 MS. KOURY: Objection. Overbroad, vague and
 9 ambiguous, calls for speculation.
 10 THE WITNESS: Not that I know of.
 11 Q. BY MR. ROSENBAUM: Now, the district programs
 12 that you've observed or receive information on, is there
 13 certain criteria that's applied in analyzing the quality
 14 of those training programs for new teachers of ELs?
 15 MR. SEFERIAN: In Comite?
 16 MR. ROSENBAUM: Yes.
 17 THE WITNESS: Not a specific criteria.
 18 Q. BY MR. ROSENBAUM: Do you know if CCR has a
 19 specific set of criteria?
 20 A. Not to my knowledge.
 21 Q. Is there any way for me to find out whether or
 22 not every district -- strike that.
 23 Is there any way for me to figure out which
 24 districts in the State of California have training
 25 programs for new teachers who teach ELs? Are you aware

1 of any?
 2 MR. SEFERIAN: Objection. Calls for
 3 speculation.
 4 THE WITNESS: I'm not aware of any specifically.
 5 MR. ROSENBAUM: Okay.
 6 THE WITNESS: I'm aware that the new
 7 credentialed teachers are coming out with that already,
 8 but I'm not aware of district -- how the state keeps
 9 track of that.
 10 Q. BY MR. ROSENBAUM: Or if it keeps track of it
 11 at all?
 12 A. Or if it does, right.
 13 Q. Now, the training programs that you're become
 14 familiar with either by firsthand -- have you observed
 15 any of the training programs for new teachers of ELs?
 16 A. Yes.
 17 Q. Do they vary in quality?
 18 A. I have not observed enough to say for sure about
 19 that.
 20 Q. Okay.
 21 A. I would assume they do. I don't know.
 22 Q. What's that assumption based on?
 23 A. Because people are different.
 24 Q. Okay. And are there training programs that are
 25 run with respect to new teachers for ELs that are

1 conducted by entities other than the districts?
 2 Do you understand my question?
 3 MS. KOURY: Objection. Vague and ambiguous.
 4 THE WITNESS: Not for sure.
 5 Q. BY MR. ROSENBAUM: Okay. What I'm interested in
 6 is, for example, do book publishing companies run
 7 training programs for new teachers who are teaching ELs
 8 to your knowledge?
 9 MS. KOURY: Calls for speculation.
 10 THE WITNESS: I know they provide training
 11 programs; I don't know that they're specifically for new
 12 teachers.
 13 Q. BY MR. ROSENBAUM: Do districts avail themselves
 14 of it as far as you know for those programs?
 15 A. For all teachers or new?
 16 Q. New teachers.
 17 A. I'm not sure specifically about new teachers.
 18 Q. Okay. Has your unit ever expressed concerns to
 19 districts about the quality of the training programs for
 20 new teachers of ELs?
 21 MR. SEFERIAN: Objection. Vague and ambiguous,
 22 overbroad, compound.
 23 THE WITNESS: As part of our concerns about the
 24 training program for all teachers, and there would be
 25 some explicit comments for new teachers, yes.

1 Q. BY MR. ROSENBAUM: Okay. Can you tell me some
 2 of the concerns that have been expressed with respect to
 3 training for new teachers?
 4 MS. KOURY: Objection. Overbroad, compound.
 5 THE WITNESS: Our concerns are usually a result
 6 of our observations or the teachers' comments that they
 7 don't have the knowledge that they need to deal
 8 effectively with English learners.
 9 Q. BY MR. ROSENBAUM: And what are some of the
 10 specific concerns that are expressed, unless you've just
 11 told me that?
 12 A. Teachers sometimes say that they aren't familiar
 13 with the district's ELD standards, that they don't know
 14 how to modify instruction for English learners, those
 15 kinds of things. And our classroom observations verify
 16 that.
 17 Q. Okay. And were there such observations with
 18 respect to the Oakland school district?
 19 MR. SEFERIAN: Objection. Overly broad, vague
 20 and ambiguous.
 21 MS. KOURY: Compound.
 22 THE WITNESS: At one time.
 23 Q. BY MR. ROSENBAUM: How about Compton?
 24 MR. SEFERIAN: Same objections.
 25 THE WITNESS: And the same answer. That was a

1 problem at one time. I think they've improved. Our
 2 observation is that they've improved.
 3 Q. BY MR. ROSENBAUM: Okay. But you can't say that
 4 they're fully compliant in that area; is that a fair
 5 statement?
 6 MR. SEFERIAN: Objection. Lacks foundation.
 7 THE WITNESS: I do not believe they are yet.
 8 Q. BY MR. ROSENBAUM: How about Oakland?
 9 A. Not there yet either quite, but they've
 10 progressed.
 11 Q. How about Inglewood?
 12 MR. SEFERIAN: Same objection.
 13 THE WITNESS: I'm not sure.
 14 Q. BY MR. ROSENBAUM: How about Pittsburg?
 15 A. Not positive.
 16 Q. Okay. If I wanted -- do you have knowledge,
 17 information in your files at your unit regarding the
 18 training for new teachers with respect to ELs?
 19 MS. KOURY: Objection. I'm sorry. Were you
 20 done?
 21 MR. ROSENBAUM: Yes.
 22 MS. KOURY: Objection. Vague and ambiguous,
 23 overbroad.
 24 THE WITNESS: Not necessarily specific to new
 25 teachers. We have training, but not necessarily new

1 teachers.
 2 Q. BY MR. ROSENBAUM: If I wanted to get that
 3 information, what files or documents would I call up; how
 4 would I know what to tell you or someone in your office
 5 that I want those documents; what should I ask for?
 6 A. Comite reports.
 7 Q. That's a portion of all the Comite reports?
 8 A. Not of every single report, but of every report
 9 when that's one of the issues that's noncompliant.
 10 Q. Is that part of the CCR review so far as you
 11 know?
 12 A. Yes.
 13 Q. I don't want to mischaracterize that. Training
 14 for new teachers or just training in general?
 15 A. Training in general. One of the EL items of
 16 seven deals with professional development for teachers
 17 and for the staff that interact -- not just teachers,
 18 other staff that interact with English learners. None of
 19 our items were specifically about new teachers.
 20 Q. What's your experience with respect to
 21 districts, do they break out special training for new
 22 teachers as opposed to existing teachers; is there a
 23 practice that you've noticed, or is it all over the
 24 place?
 25 MR. SEFERIAN: Objection. Overly broad,

1 compound question.
 2 MS. KOURY: Calls for speculation.
 3 THE WITNESS: They usually do have some specific
 4 training for new teachers.
 5 Q. BY MR. ROSENBAUM: If I asked you this question
 6 before -- well, I think I did ask you the question, so I
 7 won't ask it again.
 8 Now, sitting here today, do you know the numbers
 9 of teachers who -- new teachers who have not received
 10 specialized training in terms of EL?
 11 MR. SEFERIAN: Objection. Vague and ambiguous.
 12 MS. KOURY: Lacks foundation.
 13 THE WITNESS: No, I don't.
 14 Q. BY MR. ROSENBAUM: Do you know whether that
 15 data is available anywhere in the state as far as you
 16 know?
 17 A. It may well be, but I'm not aware of it.
 18 Q. Districts don't have to sign off anywhere so far
 19 as you know that they've given new teachers training in
 20 dealing with ELs; is that right?
 21 A. Not that I'm aware of.
 22 Q. And with respect to existing teachers, have you
 23 observed staff development programs for professional
 24 development programs that you believe are insufficient in
 25 terms of helping teachers teach ELs?

1 MS. KOURY: Objection. Vague and ambiguous,
 2 lacks foundation, incomplete hypothetical.
 3 THE WITNESS: Yes.
 4 Q. BY MR. ROSENBAUM: Have you heard of such
 5 programs through your work at the Comite unit?
 6 A. Yes.
 7 Q. And what sort of problems have you become
 8 familiar with either based on your personal observation
 9 or based on your work in the unit?
 10 MS. KOURY: Objection. Overbroad, compound.
 11 THE WITNESS: Often or sometimes that they don't
 12 provide professional development that's specific to
 13 English, the needs of English learners, especially
 14 English learners at the -- in the mainstream classes.
 15 Q. BY MR. ROSENBAUM: Okay. And how often have you
 16 found that?
 17 A. I don't know exactly.
 18 MR. SEFERIAN: Objection. Lacks foundation.
 19 Q. BY MR. ROSENBAUM: Okay. And did you -- is that
 20 the case in Oakland?
 21 MS. KOURY: Objection. Vague and ambiguous.
 22 MR. SEFERIAN: Overly broad.
 23 THE WITNESS: Is it one of the issues?
 24 MR. ROSENBAUM: Yes.
 25 THE WITNESS: It is one of the issues.

1 Q. BY MR. ROSENBAUM: And is it one of the
 2 continuing issues also in Compton?
 3 A. Yes.
 4 Q. And Inglewood?
 5 A. Inglewood I'm not so sure.
 6 Q. Pittsburg?
 7 A. Pittsburg, yes.
 8 Q. A few moments ago you used the phrase new
 9 credentials. Do you remember using that phrase?
 10 A. New credentials?
 11 Q. Yes.
 12 A. New teachers, new credentials. Oh, yes, I do.
 13 Q. What did you mean by that?
 14 A. That there's an effort now to embed
 15 instructional practices for English learners in the
 16 credentials of the teachers so that when they come out of
 17 the university as teachers they would have maybe the
 18 equivalent of a CLAD already.
 19 Q. Has that happened so far as you know?
 20 A. I think it's happening.
 21 Q. Okay.
 22 A. To my understanding. I don't know specifically.
 23 Q. Okay. And you think that's a good thing?
 24 MR. SEFERIAN: Objection. Overly broad.
 25 THE WITNESS: It would depend on the quality of

1 the program. And I don't know what those are yet.
 2 Q. BY MR. ROSENBAUM: Okay. If the quality is
 3 good, do you think that's an important thing?
 4 MS. KOURY: Objection. Overbroad.
 5 THE WITNESS: If the quality is good, yes.
 6 Q. BY MR. ROSENBAUM: And why is that important?
 7 MS. KOURY: Objection. Vague and ambiguous.
 8 THE WITNESS: Because California schools have so
 9 many English learners that I think it is important if
 10 teachers would come out with that it would be helpful to
 11 most teachers.
 12 Q. BY MR. ROSENBAUM: Almost every mainstream
 13 teacher has some ELs in his or her class; isn't that
 14 right?
 15 MR. SEFERIAN: Objection. Vague and ambiguous.
 16 MS. KOURY: Overbroad, calls for speculation.
 17 THE WITNESS: In the schools we work with, I
 18 would say that's true. I don't know about all over the
 19 state. I think there are some schools that don't have
 20 any.
 21 Q. BY MR. ROSENBAUM: Okay. But it would be your
 22 experience that the majority of schools would have -- if
 23 you're a teacher, the majority of schools in the state
 24 you're going to have ELs in your class?
 25 MR. SEFERIAN: Objection. Lacks foundation,

1 calls for speculation.
 2 MS. KOURY: Overbroad.
 3 THE WITNESS: Certainly the ones that we work
 4 with.
 5 Q. BY MR. ROSENBAUM: What would the elements of a
 6 good program consist of with respect to training teachers
 7 to work with ELs specifically?
 8 MR. SEFERIAN: Objection. Overly broad.
 9 THE WITNESS: It would include instructional
 10 techniques, I think that would be an important part. And
 11 certainly cultural sensitivity and an understanding of
 12 the process of acquiring a second language, research,
 13 those would be a few things.
 14 Q. BY MR. ROSENBAUM: Okay. And you think those
 15 are important elements?
 16 A. I think they are.
 17 Q. Why is that?
 18 A. Because in order to best serve the children that
 19 come from diverse backgrounds, diverse linguistic
 20 backgrounds, I think teachers need to have that level of
 21 awareness and that level of skill to effectively teach
 22 kids.
 23 Q. Okay. And that's what these specialized
 24 training programs are all about; isn't that right?
 25 A. Yes.

1 Q. Now, are there EL students, to your knowledge,
 2 Ms. Burnham-Massey, who have teachers who are not
 3 qualified in the way that you talked to me this morning,
 4 and also are emergency credentialed teachers?
 5 MS. KOURY: Objection. Compound, overbroad,
 6 vague and ambiguous, lacks foundation.
 7 THE WITNESS: I'm not sure.
 8 Q. BY MR. ROSENBAUM: Do you know what an emergency
 9 credentialed teacher is?
 10 A. Yes.
 11 Q. What's your understanding of what that is?
 12 A. Teachers that don't yet have full credentials,
 13 and so the district applies for an emergency credential
 14 for them. And two years ago there were many such
 15 teachers. I think there are less now. But they have to
 16 complete their credential requirements while they're
 17 teaching.
 18 Q. Does your unit investigate whether or not
 19 teachers of EL students are emergency credentialed
 20 teachers as you've defined it?
 21 MR. SEFERIAN: Objection. Asked and answered.
 22 THE WITNESS: That's part of what we look at.
 23 Q. BY MR. ROSENBAUM: Okay. And I take it from
 24 your answer you don't do any correlation to see if they
 25 are both emergency credentialed and not fully qualified

1 as you described it to me this morning?
 2 MS. KOURY: Objection. Vague and ambiguous.
 3 THE WITNESS: Not an automatic correlation.
 4 Q. BY MR. ROSENBAUM: Tell me what if anything you
 5 do.
 6 MS. KOURY: Objection. Calls for a narrative.
 7 THE WITNESS: On occasion in reports we've
 8 referenced numbers of emergency credentialed teachers or
 9 percentage when we thought that -- when it came to our
 10 attention and we thought it was important.
 11 Q. BY MR. ROSENBAUM: When would you think that's
 12 important?
 13 MR. SEFERIAN: Objection. Overly broad,
 14 incomplete hypothetical, vague and ambiguous.
 15 THE WITNESS: I think it's always important,
 16 but . . .
 17 Q. BY MR. ROSENBAUM: Why is that?
 18 A. Well, because English learners of all students
 19 need the most qualified of teachers, in my view.
 20 Q. Why is that?
 21 A. Because they have an additional requirement to
 22 learn in grade level academics and have to achieve full
 23 proficiency in a new language.
 24 Q. Okay. But sitting here today you don't have
 25 data in your files as to the number of classrooms in a

1 school taught by teachers who are emergency credentialed
 2 and not fully qualified as you defined it this morning
 3 for ELs?
 4 A. Yes, we don't.
 5 Q. And so far as you know, nobody in the state
 6 knows?
 7 MR. SEFERIAN: Objection. Lacks foundation.
 8 THE WITNESS: Not that I know of.
 9 Q. BY MR. ROSENBAUM: Okay. Now, when you talked
 10 to me a few moments ago, about four questions ago about
 11 instructional techniques --
 12 A. Yes.
 13 Q. -- what did you mean by that?
 14 A. Ways to modify instruction to make instruction
 15 understandable to students who don't have full
 16 proficiency in the language of instruction.
 17 Q. And that's part of the art and science of
 18 teaching teachers, isn't it, who have to work with ELs,
 19 to inform them about those techniques; is that right?
 20 MR. SEFERIAN: Objection. Vague and ambiguous.
 21 THE WITNESS: Yes.
 22 Q. BY MR. ROSENBAUM: And can you give me some
 23 examples of those techniques?
 24 MS. KOURY: Objection. Vague and ambiguous,
 25 overbroad.

1 THE WITNESS: Often includes using more visuals,
 2 using hands-on as well as just written words. Sometimes
 3 it's use of either paraprofessionals or the teachers
 4 themselves understanding the language of instruction and
 5 maybe previewing a lesson in the language the student
 6 does understand. Includes such things as graphic
 7 organizers. Just a number of techniques.
 8 Q. BY MR. ROSENBAUM: Okay. And would it also
 9 include working with teachers to understand those
 10 portions of the textbooks that are devoted to ELD, how to
 11 implement those portions?
 12 MR. SEFERIAN: Objection. Compound, vague and
 13 ambiguous.
 14 THE WITNESS: I don't understand that.
 15 MR. ROSENBAUM: I think my question wasn't well
 16 put.
 17 Q. You told me this morning that Open Court, for
 18 example, has a special section to help teachers with ELD;
 19 is that right?
 20 A. That's correct.
 21 Q. And to help students who are ELs?
 22 A. Yes.
 23 Q. Would part of the instructional techniques that
 24 teachers of EL students would be taught would be
 25 understanding how to use those portions of the textbooks

1 effectively; is that right?
 2 MR. SEFERIAN: Objection. Vague and ambiguous.
 3 THE WITNESS: I think it would be, yes.
 4 Q. BY MR. ROSENBAUM: Now, does -- as part of the
 5 training for teachers of EL students, are they taught how
 6 to teach students how to read English?
 7 MR. SEFERIAN: Objection. Overly broad.
 8 MS. KOURY: Calls for speculation.
 9 THE WITNESS: I think that's part of the
 10 training.
 11 Q. BY MR. ROSENBAUM: And do you think that's
 12 important?
 13 MS. KOURY: Objection. Vague and ambiguous.
 14 THE WITNESS: I think it is.
 15 Q. BY MR. ROSENBAUM: Why is that?
 16 A. Because reading is really important, and so
 17 teachers need the techniques to help diverse students
 18 learn how to read.
 19 Q. And that's based on your experience and your
 20 observations over all these years and your own readings,
 21 study; is that right?
 22 A. Yes.
 23 Q. Now, and that's true whether it's a new teacher
 24 or an experienced teacher; is that right?
 25 A. Yes.

1 Q. And do you know what an intern is?
 2 A. A general understanding.
 3 Q. What's that?
 4 A. I'm not quite sure how it differs from an
 5 emergency teacher. I think it's another term for a
 6 different kind of an emergency teacher. It's a teacher
 7 who is not fully authorized yet.
 8 Q. And the set of questions that I asked you with
 9 respect to emergency credentialed teachers, I'm glad to
 10 repeat them, but would your answer be the same if I asked
 11 about interns?
 12 MR. SEFERIAN: Objection. Compound, overly
 13 broad.
 14 THE WITNESS: Yes. I don't know the specific
 15 difference. I just know with my limited understanding of
 16 those they would be the same.
 17 Q. BY MR. ROSENBAUM: Do you know what a preintern
 18 is?
 19 A. Similarly to the others. I don't understand all
 20 the difference.
 21 Q. If I asked you the same question would your
 22 testimony as to preinterns be the same with respect to
 23 emergency credentialed teachers?
 24 MR. SEFERIAN: Objection. Overly broad,
 25 compound.

1 THE WITNESS: Again based on my limited
 2 knowledge of those credentials, yes.
 3 Q. BY MR. ROSENBAUM: Okay. Now, maybe you've
 4 already answered this, do you know the numbers of EL
 5 students taught by interns?
 6 A. No.
 7 Q. Or preinterns?
 8 A. No.
 9 Q. Or interns who have never received any training
 10 on how to teach ELs?
 11 A. No.
 12 Q. Or preintern teachers who have never received
 13 any training on how to teach ELs?
 14 MR. SEFERIAN: Objection. Assumes facts not in
 15 evidence.
 16 THE WITNESS: No.
 17 Q. BY MR. ROSENBAUM: With respect to those four
 18 categories, to your knowledge, does anybody in the state
 19 have that authorization?
 20 MS. KOURY: Objection. Compound, overbroad,
 21 calls for speculation.
 22 THE WITNESS: I'm not aware that there is.
 23 Q. BY MR. ROSENBAUM: Okay. Do you know what an
 24 API score is?
 25 A. Yeah.

1 Q. What's your understanding of what an API score
2 is?

3 MS. KOURY: Asked and answered.

4 MR. ROSENBAUM: I just want to ask as a
5 predicate.

6 THE WITNESS: It's an academic performance
7 index, and it's made up of several pieces. And it is one
8 indicator of how a school is doing in terms of serving
9 students.

10 Q. BY MR. ROSENBAUM: I know I asked you some of
11 these questions a couple of years ago, so I'm really
12 interested in the last two years.

13 Have you ever looked at API scores?

14 A. Yes.

15 Q. For what purpose have you looked at API scores?

16 A. Before all the reviews for one indicator of how
17 the student is -- how the school and district is doing in
18 terms of serving English learners.

19 Q. Okay. And when you look at those scores,
20 Ms. Burnham, can you determine whether or not EL students
21 are -- have access to qualified teachers as you defined
22 it this morning?

23 MS. KOURY: Objection. Overbroad.

24 THE WITNESS: Not from the API I cannot.

25 Q. BY MR. ROSENBAUM: And when you look at an API

1 score, can you determine whether or not EL students have
2 access to core curriculum?

3 MS. KOURY: Objection. Vague and ambiguous,
4 overbroad.

5 THE WITNESS: Not specifically.

6 Q. BY MR. ROSENBAUM: Okay. Can you in any way
7 determine whether or not they have access to core
8 curriculum?

9 MR. SEFERIAN: Objection. Vague and ambiguous,
10 overly broad.

11 THE WITNESS: I'm not aware of any way.

12 Q. BY MR. ROSENBAUM: Okay. And if you -- if you
13 see that an EL student has not -- strike that.

14 Do you know what the proficiency levels are for
15 the API for a student?

16 MR. SEFERIAN: Objection. Vague and ambiguous.

17 THE WITNESS: Not for the API, no.

18 Q. BY MR. ROSENBAUM: Let's say -- let me ask you a
19 question. Let's say an EL student misses a question on
20 her science test, her 8th grade science test, does that
21 tell you that she didn't understand that information?

22 MR. SEFERIAN: That's a vague and ambiguous
23 question.

24 Q. BY MR. ROSENBAUM: Does that tell you that she
25 was unable to comprehend the meaning of that question or

1 does it tell you that she didn't know the material? Do
2 you understand the distinction time I'm making here?

3 A. Yes.

4 MS. KOURY: Objection. Incomplete hypothetical,
5 calls for speculation, overbroad and still vague and
6 ambiguous.

7 THE WITNESS: And I don't think you can tell
8 from that score what the reason for the score was,
9 whether it was lack of English or lack of content
10 knowledge.

11 Q. BY MR. ROSENBAUM: And why is that?

12 MS. KOURY: Objection. Vague and ambiguous.

13 THE WITNESS: Because you can't get in their
14 head when you're just looking at a score on a piece of
15 paper.

16 Q. BY MR. ROSENBAUM: Okay. Have you ever talked
17 or had any discussions with anyone at any school or
18 district about the utility of API scores in analyzing the
19 academic proficiency of ELs?

20 MS. KOURY: Objection. Overbroad, vague and
21 ambiguous, compound.

22 THE WITNESS: I don't think exactly -- I think
23 maybe I don't fully understand. API is a number, it's
24 not a proficiency number, per se.

25 Q. BY MR. ROSENBAUM: Scores of students?

1 A. That's like the California standards test or --

2 Q. Yeah.

3 A. Yes, we have on that part, yes.

4 Q. And what have you heard in response to those
5 discussions?

6 MR. SEFERIAN: Objection. Overly broad.

7 THE WITNESS: Heard how?

8 Q. BY MR. ROSENBAUM: What have you spoken with
9 district personnel?

10 A. About the test scores?

11 Q. Yeah.

12 A. Yes.

13 Q. Can you name me some districts in particular?

14 A. All of our Comite districts, that's one of the
15 things we do talk to them about.

16 Q. What sort of responses have you received?

17 MR. SEFERIAN: Objection. Overly broad, calls
18 for a narrative.

19 MR. ROSENBAUM: Responses is the wrong word.

20 Q. What sort of discussions have you had, what have
21 you heard?

22 MS. KOURY: Same objections.

23 THE WITNESS: We talk to them about what the
24 scores for English learners look like, and then we talk
25 about reasons for the scores being what they are. And we

1 talk about the fact that the cross-sectional data that
 2 you get from the internet doesn't really tell the whole
 3 story about English learners. And we work with our
 4 Comite districts to use those scores in more of a
 5 longitudinal fashion so that it has more meaning for
 6 English learners.
 7 Q. BY MR. ROSENBAUM: And what -- how do you do
 8 that longitudinally?
 9 A. You can actually do it just looking at this --
 10 at one given year's academic performance, by noting how
 11 many years the students have been in the district. So
 12 the real question that they want to answer is not what's
 13 the cross-sectional score that all of our English
 14 learners receive, but what's the score of our English
 15 learners who have been in our district five years. Is
 16 that looking good? What's the score for kids at four,
 17 three, two, one year? You would expect recent arrivals
 18 who don't speak English to not score well, but expect
 19 students consistently older, four, five years to do darn
 20 well on the tests. If the score is good, it's an
 21 indicator of the success of the program.
 22 Q. And before you do that, has it been your
 23 experience not all districts undertake that analysis?
 24 MS. KOURY: Objection. Vague and ambiguous,
 25 overbroad, calls for speculation.

1 THE WITNESS: It's one of the things we work on
 2 in Comite that many of the districts have not looked at
 3 the data in that way prior to that.
 4 Q. BY MR. ROSENBAUM: It's one of the values of
 5 your technical assistance program?
 6 MS. KOURY: Objection. Mischaracterizing her
 7 testimony.
 8 Q. BY MR. ROSENBAUM: Is that right?
 9 A. We think it's one of the values.
 10 Q. Okay. Have you looked at -- to your knowledge
 11 have there been any analyses or studies as to how EL
 12 students do on the high school exit exam?
 13 A. I believe there have. Don't personally know of
 14 the results.
 15 Q. Do you know who if anyone has conducted such
 16 investigations or inquiries?
 17 A. Not specifically who. I know that they've been
 18 done. I don't know who.
 19 Q. Do you know if the State of California has?
 20 A. Not -- I think so, but I don't know.
 21 Q. You're not familiar with any of the conclusions
 22 sitting here today?
 23 A. Not that I can tell you specifically.
 24 Q. How about with respect to the Star program?
 25 MR. SEFERIAN: Objection. Overly broad, vague

1 and ambiguous.
 2 THE WITNESS: There's a lot of analysis of the
 3 Star program.
 4 Q. BY MR. ROSENBAUM: With respect to ELs?
 5 A. That's included.
 6 Q. Do you know who has conducted those
 7 investigations?
 8 MS. KOURY: Objection. Overbroad.
 9 THE WITNESS: Not specifically.
 10 Q. BY MR. ROSENBAUM: Okay. Do you know the
 11 results of any of those investigations?
 12 A. Of the Star program?
 13 Q. Let's break it down. How about the performance
 14 on the Stanford 9?
 15 A. I don't know a specific report. I think it's
 16 the assessment office, but I'm not sure. I know the data
 17 is compiled. We do it ourselves for the Comite
 18 districts.
 19 Q. But sitting here today can you tell me the
 20 conclusion from any of those inquiries or investigations?
 21 A. Not specifically.
 22 Q. How about generally?
 23 A. Generally that the --
 24 MR. SEFERIAN: Objection. Overly broad.
 25 THE WITNESS: English learners perform less well

1 than native English speakers.
 2 Q. BY MR. ROSENBAUM: Do you know any conclusions
 3 beyond that one?
 4 MS. KOURY: Asked and answered.
 5 THE WITNESS: Not that I can think of
 6 specifically.
 7 Q. BY MR. ROSENBAUM: Do you know what the College
 8 Achievement 6 test is?
 9 A. The Cat 6?
 10 Q. Yes.
 11 A. Yes.
 12 Q. Have you seen any analysis as to how EL students
 13 do on that?
 14 A. I think it's going to be the first time this
 15 year. I think it was just given.
 16 Q. So you haven't seen anything so far?
 17 A. No.
 18 Q. Okay. The longitudinal analysis that you
 19 described to me, has that ever been done at the state
 20 level of EL students?
 21 MS. KOURY: Objection. Overbroad, calls for
 22 speculation, vague and ambiguous.
 23 THE WITNESS: Not that I'm aware of to this
 24 point. I hope it will be.
 25 Q. BY MR. ROSENBAUM: Have you heard any plans to

1 do that?
 2 A. I think it's some of the discussion regarding
 3 Title 3.
 4 Q. Okay. But as far as you know, it's not
 5 imminent?
 6 MS. KOURY: Objection.
 7 THE WITNESS: Not sure. It may be, but I don't
 8 know.
 9 Q. BY MR. ROSENBAUM: Okay. And how do you get
 10 longitudinal data from Comite districts?
 11 A. More and more the districts are able to provide
 12 that data themselves with their own data systems. But if
 13 not, we may do random samples of students. And in some
 14 cases we have the printout of all the students and the
 15 SAT 9 results. And we do the results in the hotel room.
 16 Q. Do all districts have that capacity now, as far
 17 as you know, all Comite districts?
 18 MS. KOURY: Overbroad.
 19 THE WITNESS: I don't think they do. More and
 20 more they do.
 21 Q. BY MR. ROSENBAUM: Do you have a view as to
 22 whether or not EL students should be affected by the high
 23 school exit exam?
 24 MR. SEFERIAN: Objection. Asked and answered,
 25 vague and ambiguous, calls for an inadmissible opinion.

1 MR. ROSENBAUM: Go ahead.
 2 THE WITNESS: My view in what way? Obviously I
 3 have a view.
 4 Q. BY MR. ROSENBAUM: Well, what is your view?
 5 MR. SEFERIAN: Same objection.
 6 MS. KOURY: I think she just told you she didn't
 7 understand the question.
 8 Q. BY MR. ROSENBAUM: What are your views with
 9 respect to the California high school exit exam on EL
 10 students?
 11 MR. SEFERIAN: Objection. Overbroad.
 12 MS. KOURY: Calls for a narrative.
 13 THE WITNESS: I think there's a concern that
 14 their rate of passing is lower, and a concern that in
 15 many cases it's a language they don't fully understand,
 16 and so it's kind of a disadvantage.
 17 Q. BY MR. ROSENBAUM: You think it's a significant
 18 disadvantage?
 19 MS. KOURY: Objection. Excuse me. Vague and
 20 ambiguous.
 21 THE WITNESS: For some students.
 22 Q. BY MR. ROSENBAUM: And why is that?
 23 MS. KOURY: Objection. Vague and ambiguous.
 24 THE WITNESS: If they don't understand the
 25 language of the test, they're not likely to do well on

1 the test.
 2 Q. BY MR. ROSENBAUM: And we wouldn't be able to
 3 understand whether or not a missed question is a result
 4 of not understanding English or not mastering the
 5 material; is that right?
 6 MS. KOURY: Objection. Mischaracterizing her
 7 testimony, compound, vague and ambiguous.
 8 THE WITNESS: Yes.
 9 MR. ROSENBAUM: Okay. Off the record for a
 10 moment.
 11 [Discussion off the record.]
 12 MR. ROSENBAUM: Back on the record.
 13 Could I please have marked as Exhibit SAD-273 a
 14 26-page document with lots of stick figures.
 15 THE WITNESS: These are screen beans.
 16 Q. What are they called?
 17 A. Screen beans. They're not stick figures. They
 18 book like beans. They're called screen beans. This is
 19 important.
 20 Q. You know, your credibility just got totally
 21 destroyed. And plus I have a half hour's worth of
 22 questioning on screen beans. How do you spell screen
 23 beans?
 24 A. S-c-r-e-e-n b-e-a-n-s.
 25 Q. Is that one word or two words?

1 A. Two.
 2 MS. KOURY: You're done now.
 3 MR. ROSENBAUM: Your status is really dropping.
 4 All right. Let's have this marked as Exhibit
 5 273. And I'll place it in front of the witness who must
 6 have thousands of copies at home.
 7 [Discussion off the record.]
 8 [Exhibit SAD-273 was marked
 9 for identification.]
 10 MR. ROSENBAUM: On the record again.
 11 And I would like this attached as part of the
 12 record in this deposition, please.
 13 Q. Okay. Ms. Burnham, should I be calling you
 14 Ms. Burnham?
 15 A. That's right. It's easier.
 16 Q. Ms. Burnham, would you look at this last page.
 17 This is a disgrace. This is you that --
 18 A. I admit it. I did this whole thing.
 19 Q. Notwithstanding your earlier answers, you have
 20 way too much time on your hands.
 21 We're looking at a picture on page 26. How many
 22 drafts did this picture go through before you fixed on
 23 this one?
 24 A. No, it came that way.
 25 MS. KOURY: It's actually quite cute.

1 THE WITNESS: It captured this.
 2 Q. BY MR. ROSENBAUM: Okay. Is that you,
 3 Ms. Burnham?
 4 A. At the end of the deposition.
 5 Q. I see. All right. Directing your attention to
 6 what's been marked as SAD-273, you take as much time as
 7 you need to answer any of my questions. Are you
 8 generally familiar with what's been marked as Exhibit
 9 273?
 10 A. Yes.
 11 Q. Can you tell me what it is?
 12 A. It's a hand-out for a professional presentation
 13 that I did with two of my colleagues.
 14 Q. And your name is on page one of Exhibit 273?
 15 A. Yes.
 16 Q. And the other two names on the selection are
 17 Mr. Dolson and Mr. Gaj, G-a-j.
 18 A. Gaj.
 19 Q. Gaj. Those were your colleagues?
 20 A. Yes.
 21 Q. And what is your role with respect to the
 22 preparation of the annual language census?
 23 MR. SEFERIAN: Objection. Assumes facts not in
 24 evidence.
 25 MR. ROSENBAUM: That's fair.

1 Q. Do you have any role with respect to the
 2 presentation of the annual language census?
 3 A. Yes.
 4 Q. What is that?
 5 A. It's not a major role. The educational
 6 demographics office that is responsible for the language
 7 census usually gives me their draft so that I can give
 8 them comments, and I work particularly with David on the
 9 frequently asked questions that go with this. And that
 10 we send out to the districts. When the language census
 11 goes out now it's electronic. So . . .
 12 Q. Is every district required to file an R-30
 13 report?
 14 MR. SEFERIAN: Objection. Calls for a legal
 15 opinion.
 16 THE WITNESS: Every district that enrolls
 17 English learners.
 18 Q. BY MR. ROSENBAUM: And incidentally, not
 19 referring to just Exhibit 273 now, do you know what a
 20 staffing report is? We talked about that at the last
 21 deposition.
 22 A. Yes.
 23 Q. What's a staffing report?
 24 A. The one we talked about specifically?
 25 Q. Yeah.

1 A. That's a report we don't do anymore.
 2 Q. That's what I was getting at. What was a
 3 staffing report?
 4 A. It was a report that districts were required to
 5 submit as part of the consolidated application part two
 6 in which they identified their current need supply and
 7 shortage of appropriately authorized teachers for English
 8 learners.
 9 Q. And all districts or Comite districts?
 10 A. All districts.
 11 Q. And when was this requirement ended?
 12 A. With the Comite court order.
 13 Q. And again the date for that?
 14 A. I think it was in the summer of 2001. I'm not
 15 exactly sure on the date.
 16 Q. Now, some of the things that had been required
 17 by the Comite order, they continue today; is that right?
 18 A. That's right. And actually it was April that --
 19 of 2001 that we had to stop doing the staffing plans.
 20 Q. Okay. When you say you had to --
 21 A. Because of the court order.
 22 Q. The court order said no more staffing reports?
 23 A. It said only court-mandated activities. And the
 24 staffing report was not one of the court-mandated
 25 activities for our unit.

1 Q. But the State of California, so far as you know,
 2 is not precluded from requiring staffing reports; is that
 3 right?
 4 MR. SEFERIAN: Objection. Vague and ambiguous.
 5 MS. KOURY: Also calls for a legal conclusion.
 6 THE WITNESS: To my knowledge it was not. In
 7 fact, we talked about that, but they didn't have any
 8 other units pick it up, so it ceased.
 9 Q. BY MR. ROSENBAUM: When you say we talked about
 10 that, what do you mean by that?
 11 A. We talked about it in our division, and then
 12 probably some privileged communications, too, with the
 13 attorneys because --
 14 MS. KOURY: We don't need to talk about those.
 15 THE WITNESS: No, no. So . . .
 16 Q. BY MR. ROSENBAUM: Do you have an opinion as to
 17 whether or not those staffing reports should be
 18 continued?
 19 A. Yes.
 20 Q. What was that?
 21 MR. SEFERIAN: Objection. Overly broad.
 22 THE WITNESS: I thought they should be.
 23 Q. BY MR. ROSENBAUM: Why is that?
 24 A. Because I think staffing is a very important
 25 issue.

1 Q. Were the staffing reports useful in terms of
 2 staffing schools with teachers qualified to teach ELs?
 3 MR. SEFERIAN: Objection. Vague and ambiguous.
 4 MS. KOURY: Also overbroad.
 5 THE WITNESS: I don't know if they were or not.
 6 I thought that they were.
 7 Q. BY MR. ROSENBAUM: Why did you think that they
 8 were, based on your experience?
 9 MS. KOURY: Same objection.
 10 THE WITNESS: Because when we did reviews we'd
 11 look at the staffing report they had submitted, and use
 12 that as -- in our review to make sure in fact it was
 13 accurate. And it gave us some additional information
 14 about the status of their teachers.
 15 Q. BY MR. ROSENBAUM: And it let you know that
 16 there was a plan in place to increase qualified teachers
 17 for ELs; isn't that right?
 18 MS. KOURY: Objection. Mischaracterizes her
 19 testimony. Also vague and ambiguous.
 20 THE WITNESS: That is correct. And also we were
 21 able to monitor whether or not they were actually
 22 implementing that plan.
 23 Q. BY MR. ROSENBAUM: And the staffing report
 24 requirement, that hasn't been erased by anything else as
 25 far as you know?

1 MS. KOURY: Vague and ambiguous, calls for
 2 speculation.
 3 THE WITNESS: I think it has not been.
 4 Q. BY MR. ROSENBAUM: Now, directing -- strike
 5 that.
 6 Again I'm not referring to 273 right now. So
 7 far as you know -- and I'm not interested in any
 8 discussion you had with attorneys directly or indirectly.
 9 So far as you know, are there any plans being
 10 considered to eliminate your unit?
 11 MR. SEFERIAN: Objection. That calls for
 12 privileged communications. Instruct the witness not to
 13 answer.
 14 Q. BY MR. ROSENBAUM: Do you have an opinion as to
 15 whether or not your unit should continue -- well, I think
 16 we've already answered that.
 17 A. Yeah.
 18 MR. ROSENBAUM: All right. I want to just state
 19 for the record -- I've already stated it, but I think
 20 that's really an inappropriate objection, Tony. And I
 21 think I should be permitted to pursue this. I don't
 22 think the privilege is here well-taken. Okay.
 23 Q. Directing your attention, Ms. Burnham, to
 24 Exhibit 273, is this information, meaning the information
 25 contained within the annual language census, is it

1 compiled at a classroom level?
 2 MS. KOURY: Objection. Vague and ambiguous.
 3 You can answer if you understand it.
 4 THE WITNESS: No. It's a school site level
 5 report.
 6 Q. BY MR. ROSENBAUM: Is there any way for an
 7 individual to find out -- well, let's be specific.
 8 Strike my question.
 9 Directing your attention to page four of Exhibit
 10 273, this page is titled 2002 Enrollment of English
 11 Learners by Services; is that right?
 12 A. Yes.
 13 Q. And just so we're talking about the same
 14 vocabulary, what do you understand the word services to
 15 mean?
 16 MR. SEFERIAN: Objection. Lacks foundation.
 17 THE WITNESS: Instructional services.
 18 Instruction.
 19 Q. BY MR. ROSENBAUM: So far as you know, is there
 20 any way for an individual to find out whether or not the
 21 services that are identified on page four of Exhibit 273
 22 are offered in particular classrooms?
 23 MR. SEFERIAN: Objection. Calls for
 24 speculation.
 25 THE WITNESS: Also overbroad.

1 Q. BY MR. ROSENBAUM: From this data set?
 2 A. From this data set, no.
 3 Q. From any other data set that you're aware of?
 4 A. It would be at the school sites but not at the
 5 state level.
 6 Q. So far as you know, does the state get data as
 7 to the -- as to access to the services that are
 8 identified on page four of Exhibit 273 at the classroom
 9 level?
 10 MS. KOURY: Objection. Vague and ambiguous,
 11 overbroad, and calls for speculation.
 12 THE WITNESS: Not that I'm aware of.
 13 Q. BY MR. ROSENBAUM: Okay. And same thing for
 14 page five of Exhibit 273, do you see the title authorized
 15 teachers providing primary language instruction?
 16 A. Yes.
 17 Q. What's your understanding of what the phrase
 18 authorized teacher means at page five and page six and
 19 throughout the exhibit?
 20 A. Authorized -- my understanding is that
 21 authorized teachers mean teachers who actually hold an
 22 appropriate authorization, in this case to provide
 23 primary language instruction to English learners.
 24 Q. And what about page six, what's authorized
 25 teachers mean there, so far as you understand?

1 A. Again, teachers who actually hold an appropriate
2 authorization for providing SDAIE or ELD for English
3 learners.
4 Q. You told me this morning what you understood
5 authorization to mean with respect to ELD instruction; is
6 that right?
7 A. Yes.
8 Q. What about for SDAIE?
9 A. For the most part, it's the same authorizations.
10 Q. Any difference you're aware of?
11 A. The old ELS supplementary authorization was for
12 ELS. Under SB 395, 1969, they do have a component that's
13 just for ELG for -- just for SDAIE. So there are some
14 differences, but pretty much the same authorizations for
15 both.
16 Q. Okay. And same question that I asked you
17 regarding page four, when we were talking about services
18 for pages five and six, so far as you know, does the
19 state collect data on the classroom level as to whether
20 or not there are authorized teachers in classrooms?
21 MR. SEFERIAN: Objection. Overly broad.
22 MS. KOURY: Also compound.
23 THE WITNESS: Not as far as I know. It's school
24 level data, at least on this report.
25 Q. BY MR. ROSENBAUM: Primary language instruction

1 or for SDAIE and ELD instruction?
2 A. Correct.
3 Q. Okay. Is that data available anywhere on a
4 statewide level as far as you know?
5 MS. KOURY: Objection. Calls for speculation,
6 overbroad, compound. Also been asked and answered.
7 Go ahead.
8 THE WITNESS: Which data?
9 MR. ROSENBAUM: About authorized teachers at a
10 classroom level.
11 MS. KOURY: Same objections.
12 THE WITNESS: There probably is, but I'm not
13 aware of it.
14 Q. BY MR. ROSENBAUM: Okay. Do you know whether or
15 not the state has data as to the percentage of authorized
16 teachers at a particular school? And let me just be
17 clear what I mean by that. Let's say that 50 percent of
18 the teachers at a school are not authorized as you've
19 defined that to me. Is that data collected anywhere so I
20 could look at that data and say at Barindo [phonetic]
21 School the number of teachers teaching EL of the total
22 number of teachers teaching EL X percent of them are
23 authorized and Y percent are not?
24 MR. SEFERIAN: Objection. Vague and ambiguous.
25 MR. ROSENBAUM: Do you understand the question?

1 MS. KOURY: Also overbroad, calls for
2 speculation.
3 THE WITNESS: I'm not aware of percentages.
4 Q. BY MR. ROSENBAUM: How about numbers?
5 A. Numbers are collected at the school level on the
6 R-30.
7 Q. Okay. Now, let's take a look at page four of
8 what's been marked as Exhibit 273.
9 Incidentally, the questions I ask you about
10 authorized teachers, do you know if that's been broken
11 down by core curriculum subjects?
12 MR. SEFERIAN: Objection. Vague and ambiguous.
13 THE WITNESS: Not to my knowledge.
14 MR. ROSENBAUM: Or by any subject matter, math,
15 English.
16 THE WITNESS: ELD, but except for that, no, not
17 that I'm aware of.
18 Q. BY MR. ROSENBAUM: Not in terms of academic
19 subject matter?
20 A. Not that I'm aware of.
21 Q. Now will you help me walk through page four
22 here. And what we have is a black, white and gray
23 document here. So tell me -- first of all, I just want
24 to be clear about what equates to what.
25 MR. SEFERIAN: Wait.

1 Q. BY MR. ROSENBAUM: Okay. On page four -- all my
2 questions are going to be about page four of Exhibit 273
3 unless I say otherwise.
4 The first in the -- what's that called?
5 MS. FANELLI: Legend.
6 MR. ROSENBAUM: Legend.
7 Q. What courses to ELD --
8 MR. SEFERIAN: For the record I'm going to
9 object to questions to the extent that the witness is
10 being asked about the diagram which I believe was in
11 color, and she's not being presented with a color
12 diagram. And to ask her for percentages I think is
13 objectionable and not fair to the witness.
14 MR. ROSENBAUM: Well, we should have been
15 provided with a document in color. But put that aside.
16 I don't want you to answer any question that you're
17 guessing on.
18 THE WITNESS: And I'm not sure. I know some,
19 but --
20 MR. SEFERIAN: Tell me the ones you're sure of.
21 MS. KOURY: If any.
22 THE WITNESS: I know that -- I'm not a hundred
23 percent positive, so it's probably better to --
24 Q. BY MR. ROSENBAUM: Are you positive of any of
25 them? See the box in the legend: Not receiving any EL

1 services?
 2 A. Right.
 3 Q. Does that correspond to the 38 percent?
 4 A. No, no, I think that one is the five percent,
 5 but I'm not sure.
 6 Q. Okay.
 7 A. That's gone down over the years. I do know
 8 that.
 9 Q. So I know you told me you're not sure and I
 10 don't want you to guess. You have a colored one?
 11 A. If nothing else I have my notes, but not here.
 12 And I think I have a colored one.
 13 Q. Why did you take notes?
 14 A. Because I did this workshop.
 15 Q. Okay.
 16 A. I have to look at notes sometimes.
 17 Q. So you have a presentation that you make based
 18 on --
 19 A. This is our -- the three of us.
 20 Q. -- Exhibit 273?
 21 MR. SEFERIAN: Wait until he finishes the
 22 question.
 23 THE WITNESS: Sorry.
 24 Q. BY MR. ROSENBAUM: If I wanted to find out where
 25 your notes are, you keep them in a file?

1 A. Yes.
 2 Q. What's the name of that file?
 3 A. Doesn't have a name.
 4 Q. How would I know where it is besides just
 5 randomly rummaging through your office?
 6 A. To describe it, I have one overhead bin where I
 7 have all the workshops lined up. And there are little
 8 magazine files with several workshops in each one.
 9 Q. Do these notes appear in -- do you have more
 10 than one set of the notes?
 11 MS. KOURY: Objection. Vague and ambiguous.
 12 Are you referring to notes for just in this
 13 particular workshop?
 14 MR. ROSENBAUM: Yeah. Well, no, for Exhibit
 15 273.
 16 THE WITNESS: I probably have one set unless I
 17 lost it, but I know where it would be if I have it.
 18 Q. BY MR. ROSENBAUM: Where would you look?
 19 A. In that overhead bin that has all the workshop
 20 stuff.
 21 Q. Help me understand what this means. Not
 22 receiving any EL services. First of all, we're talking
 23 about the EL students, right?
 24 A. Yes.
 25 Q. And if the number were five percent, it would

1 mean that five percent of EL students are not receiving
 2 any EL services; is that right?
 3 MS. KOURY: Objection. Vague and ambiguous as
 4 to time. This document is dated 2002.
 5 THE WITNESS: It would mean that the districts
 6 reported that five percent were not receiving any EL
 7 services.
 8 MR. ROSENBAUM: I appreciate Nancy's point.
 9 Q. For the year 2002, the 2002 survey; is that
 10 right?
 11 A. That's correct.
 12 Q. And just so I know what that means, is that for
 13 the school year 2001-2002?
 14 A. It's for the point in time of March 1st, 2002.
 15 Q. On March 1st, 2002, I think is what you're
 16 telling me, five percent -- the schools are reporting
 17 that five percent of the EL students are not receiving
 18 any EL services?
 19 MR. SEFERIAN: Objection. Misstates the
 20 witness's testimony.
 21 THE WITNESS: No, I don't think so.
 22 Q. BY MR. ROSENBAUM: Is that right?
 23 A. I think that's right.
 24 Q. Now, when -- who gets the data, who gets the
 25 R-30 reports?

1 A. At the state level?
 2 Q. Yeah.
 3 A. The educational demographics office.
 4 Q. Does anyone in the Department of Education out
 5 of the educational demographics unit get this?
 6 MR. SEFERIAN: Objection. Lacks foundation.
 7 MS. KOURY: Calls for speculation.
 8 THE WITNESS: Actually, I get a copy with one of
 9 my colleagues, one of the analysts, who review it before
 10 they certify the data, but it's not given out until it's
 11 certified anywhere else.
 12 Q. BY MR. ROSENBAUM: What does that mean to
 13 certify the data?
 14 A. It means they say it's okay to go out. I'm not
 15 sure.
 16 Q. Has your office ever done any validation study
 17 to see whether or not the schools are accurately
 18 reporting the data on the census?
 19 MR. SEFERIAN: Objection. Vague and ambiguous.
 20 THE WITNESS: I wouldn't call it a validation
 21 study. We look at -- we take this data with us when we
 22 do our reviews.
 23 Q. BY MR. ROSENBAUM: And have you ever found that
 24 the data reported was inaccurate by school?
 25 MR. SEFERIAN: Objection. Overly broad, vague

1 and ambiguous.
 2 MS. KOURY: Are you asking just in her specific
 3 experience or unit?
 4 MR. ROSENBAUM: Yeah. Well, okay. In your
 5 personal experience.
 6 THE WITNESS: Yes.
 7 Q. BY MR. ROSENBAUM: Okay. And have -- has your
 8 unit -- have you ever learned that as a result of the
 9 work of your unit that the data reported on the R-30
 10 report is inaccurate?
 11 MS. KOURY: Objection. Overbroad.
 12 THE WITNESS: On occasion, but much less so over
 13 time. Schools have gotten much better about accuracy.
 14 Q. BY MR. ROSENBAUM: I don't want you to guess at
 15 this, but could you tell me what you think the error
 16 factor is or --
 17 MR. SEFERIAN: Objection. Lacks foundation,
 18 calls for an inadmissible opinion, vague.
 19 THE WITNESS: No.
 20 Q. BY MR. ROSENBAUM: Does the State of California
 21 so far as you know with the exception of what you do when
 22 you go out on your audits ever do any analysis to
 23 determine whether or not the information reported on the
 24 R-30 report is accurate?
 25 MS. KOURY: Objection. Overbroad, assumes

1 facts.
 2 THE WITNESS: Actually they do one, I don't know
 3 if -- they did a neat thing, it's now done
 4 electronically, and they have error checks. And I think
 5 that helps make the data more accurate to have error
 6 checks. So if the districts report something that's
 7 obviously wrong, then an error message flashes.
 8 Q. BY MR. ROSENBAUM: How do you know something is
 9 obviously wrong?
 10 A. Well --
 11 MR. SEFERIAN: Objection. Lacks foundation.
 12 THE WITNESS: If I could give you an example,
 13 for example, if they report that they have, which
 14 happened one time, 99 teachers providing the different
 15 subjects and there are only 33 teachers in their staff,
 16 that's clearly wrong. If they report more kids receiving
 17 primary language instruction than they have English
 18 learners in the school, that's clearly wrong. So there
 19 are a number of error checks. I helped develop those,
 20 actually, and there are quite a few done on this data
 21 now.
 22 MR. ROSENBAUM: Okay.
 23 MS. KOURY: Mark, we've been going for about an
 24 hour. If we can break whenever, that would be great.
 25 MR. ROSENBAUM: We can break right now. That's

1 okay. Thank you.
 2 [Recess.]
 3 MR. ROSENBAUM: Okay. On the record.
 4 Q. Are you doing okay, Ms. Burnham?
 5 A. Oh, yeah.
 6 Q. Again, let's just hypothetically say it's five
 7 percent. The numbers really aren't important. Do you
 8 know the number of districts for the -- I guess this is
 9 the 2003 census. Do you know the number of districts
 10 that are represented in terms of the students not
 11 receiving any EL services? Do you know what I mean?
 12 A. I know what you mean. And not without looking
 13 district by district, no.
 14 Q. Has anybody tabulated that number?
 15 A. Not to my knowledge.
 16 Q. Okay. Has anyone made a list of all the
 17 districts where students are not receiving any EL
 18 services in the state so far as you know, state
 19 government, so far as you know?
 20 MS. KOURY: Objection. Vague and ambiguous as
 21 to time, overbroad.
 22 To the extent you know.
 23 Q. BY MR. ROSENBAUM: For the 2003 census or any
 24 other year?
 25 A. The 2003 hasn't been collected yet. This is

1 instructions for collecting and shows some data for 2002.
 2 Q. I see. For the 2002 census has anyone -- did
 3 anyone, to your knowledge, in the state government make
 4 a -- identify all the districts where there were students
 5 not receiving any EL services?
 6 MS. KOURY: Objection. Overbroad.
 7 THE WITNESS: I'm not aware of that list.
 8 Q. BY MR. ROSENBAUM: Okay. Same thing for all
 9 these categories on page four of Exhibit 273?
 10 A. Same thing, yes.
 11 Q. Do you have an estimate that you have any degree
 12 of confidence in?
 13 A. For number of districts, no.
 14 Q. So maybe you just answered this, but as far as
 15 you know, the Comite districts, do they represent all the
 16 districts where students are not receiving any EL
 17 services?
 18 MS. KOURY: Objection. Assumes facts,
 19 overbroad, vague and ambiguous.
 20 THE WITNESS: No, they don't.
 21 Q. BY MR. ROSENBAUM: How do you know that?
 22 A. I just know that. I'm not sure how I know that.
 23 Q. Okay. All right. So the last box on the
 24 legend, those are students not receiving any EL services;
 25 is that right?

1 A. Correct.
 2 Q. Okay. And then the first box are students who
 3 are receiving ELD services; is that right?
 4 A. ELD only.
 5 Q. ELD only. Now, do we -- are there students in
 6 the system who should only be receiving ELD services? Do
 7 you know what you I mean by that?
 8 MR. SEFERIAN: Objection. Vague and ambiguous.
 9 MS. KOURY: Calls for a legal conclusion,
 10 overbroad.
 11 MR. ROSENBAUM: Go ahead.
 12 THE WITNESS: I think there are, yes.
 13 Q. BY MR. ROSENBAUM: What's the basis of that
 14 answer?
 15 MR. SEFERIAN: Same objections.
 16 THE WITNESS: Diagnosed need.
 17 Q. BY MR. ROSENBAUM: Now, is there -- can I --
 18 from the data that are reflected on page four of Exhibit
 19 273, can I figure out what portion of the students who
 20 should only -- who should be receiving only ELD services
 21 are receiving ELD services? Do you know what I mean by
 22 that?
 23 MR. SEFERIAN: Objection. Calls for
 24 speculation.
 25 MS. KOURY: Also vague.

1 THE WITNESS: Yes, my understanding is -- of
 2 your question is that -- is that you cannot get that from
 3 this.
 4 Q. BY MR. ROSENBAUM: Okay. Why is that?
 5 A. Because this just gives you a number. It
 6 doesn't say -- tell you which students need what service.
 7 It just tells you number of students receiving a certain
 8 service.
 9 Q. And this -- you're referring to page four of
 10 Exhibit 273?
 11 A. Yes.
 12 Q. Anywhere in the annual language census 2002, can
 13 I get that data? I want to know -- this is the question
 14 I want to solve: Of students who should only be
 15 receiving ELD services based on the diagnosis, how many
 16 of them are in fact receiving ELD services? Can I figure
 17 that out?
 18 MR. SEFERIAN: Objection. Vague and ambiguous,
 19 calls for speculation.
 20 THE WITNESS: I can't figure it out from this
 21 data.
 22 Q. BY MR. ROSENBAUM: This data meaning what?
 23 A. I'm sorry. The language census data.
 24 Q. Is that information compiled by the state so far
 25 as you know?

1 A. Not that I'm aware of. I don't think it really
 2 could be.
 3 Q. Why is that?
 4 A. It's something that needs to be reviewed at the
 5 school site.
 6 Q. Okay. But the school could collect data as to
 7 the number of students who should be receiving ELD
 8 services and the number of students who are actually
 9 receiving ELD services; isn't that right?
 10 MR. SEFERIAN: Objection. Calls for
 11 speculation, vague and ambiguous.
 12 MS. KOURY: Also argumentative. It's been asked
 13 and answered.
 14 THE WITNESS: The schools could and should look
 15 at that data.
 16 Q. BY MR. ROSENBAUM: Do they so far as you know?
 17 MR. SEFERIAN: Objection. Overly broad.
 18 THE WITNESS: Our Comite districts most of them
 19 do or are starting to.
 20 Q. BY MR. ROSENBAUM: But not all of them do; is
 21 that right?
 22 MS. KOURY: Objection. Argumentative, asked and
 23 answered.
 24 MR. SEFERIAN: Overly broad.
 25 THE WITNESS: I think not all of them do.

1 Q. BY MR. ROSENBAUM: What's the basis of your
 2 answer?
 3 MS. KOURY: Same objections.
 4 THE WITNESS: Experience in the schools.
 5 Q. BY MR. ROSENBAUM: Okay. And each of these
 6 categories with the exception of not receiving any EL
 7 services -- well, I don't want to over-generalize that.
 8 With respect to ELD and SDAIE, that's the second
 9 item on the legend, do you see that?
 10 A. Yes.
 11 Q. Same set of questions. There are some students
 12 who diagnostically should be receiving ELD and SDAIE
 13 services; is that right?
 14 A. Correct.
 15 Q. And can I figure out either from the census or
 16 from any other data that the state collects that you are
 17 aware of what percent of the students statewide who
 18 should be receiving ELD and SDAIE services are in fact
 19 receiving those services?
 20 MR. SEFERIAN: Objection. Overly broad, vague
 21 and ambiguous, calls for speculation.
 22 THE WITNESS: From this data you can't figure
 23 that out.
 24 Q. BY MR. ROSENBAUM: You're not aware of any other
 25 data that would help me figure that out, right?

1 A. That's right.
 2 Q. And not all schools keep that data so far as
 3 your experience tells you?
 4 MS. KOURY: Objection. Mischaracterizing her
 5 testimony.
 6 MR. SEFERIAN: Objection. Vague and ambiguous.
 7 THE WITNESS: I'm aware that some schools do not
 8 keep that.
 9 Q. BY MR. ROSENBAUM: And not all districts keep
 10 that data based on your experience; is that right also?
 11 MS. KOURY: Objection. Mischaracterizing her
 12 testimony.
 13 THE WITNESS: Yes.
 14 Q. BY MR. ROSENBAUM: Okay. Now, ELD and SDAIE on
 15 page four of Exhibit 273, what does that mean?
 16 MS. KOURY: Objection. The document speaks for
 17 itself.
 18 THE WITNESS: It means students who receive
 19 English language development. And if you need
 20 instruction which you don't have, at least two periods of
 21 SDAIE.
 22 Q. BY MR. ROSENBAUM: Okay. And is the training
 23 different for a teacher for ELD as opposed to SDAIE?
 24 MS. KOURY: Objection. Vague and ambiguous.
 25 MR. SEFERIAN: Overly broad.

1 THE WITNESS: It's a little different.
 2 Q. BY MR. ROSENBAUM: How is it a little different
 3 based on your experience?
 4 MS. KOURY: Calls for a narrative, overbroad.
 5 THE WITNESS: The goal for ELD is English
 6 acquisition, or it's targeted to how they can acquire
 7 English language academic content. SDAIE instruction is
 8 targeted to techniques to make instruction understandable
 9 to English learners.
 10 Q. BY MR. ROSENBAUM: When I look at an API score
 11 is there any way for me to tell whether or not a student,
 12 students did poorly because they were not -- did not have
 13 access to SDAIE materials as opposed to just didn't know
 14 the information intellectually?
 15 MR. SEFERIAN: Objection. Overly broad, vague
 16 and ambiguous.
 17 MS. KOURY: Asked and answered.
 18 THE WITNESS: I don't think you can find that
 19 out. I mean, to my knowledge, there's no way to find
 20 that out from an API score.
 21 Q. BY MR. ROSENBAUM: Okay. Now, where it says
 22 primary language support, do you see that in the third
 23 item in the legend on four of Exhibit 273?
 24 A. Yes.
 25 Q. What's that mean?

1 A. That means in addition to English language
 2 development, they -- and SDAIE, the students also receive
 3 some amount of support in their primary language, but not
 4 instruction through the primary language.
 5 Q. So what does that mean? Give me some examples,
 6 please.
 7 MR. SEFERIAN: Objection. Vague and ambiguous,
 8 overly broad.
 9 MS. KOURY: Calls for a narrative.
 10 THE WITNESS: It might mean either a teacher or
 11 an aide who speaks the primary language who could clarify
 12 concepts on occasion. It could mean some support
 13 materials in the primary language to help students
 14 understand the instruction in English.
 15 Q. BY MR. ROSENBAUM: Okay. And students are
 16 diagnosed as to whether or not they require a combination
 17 of ELD, SDAIE and primary language support; is that
 18 right?
 19 MR. SEFERIAN: Objection. Asked and answered.
 20 THE WITNESS: Yes.
 21 Q. BY MR. ROSENBAUM: Okay. And same set of
 22 questions that I asked you before: Any way of knowing
 23 what percent of those so diagnosed students in fact
 24 receive those services from the annual language census?
 25 A. Not that I'm aware of.

1 Q. Or any other information collected by the state?
 2 MS. KOURY: Objection. Overbroad, calls for
 3 speculation.
 4 MR. ROSENBAUM: Right.
 5 THE WITNESS: Not that I know of.
 6 Q. BY MR. ROSENBAUM: Okay. Not all districts
 7 collect that information?
 8 MS. KOURY: Objection mischaracterizes her
 9 testimony.
 10 Q. BY MR. ROSENBAUM: Is that correct?
 11 A. I'm aware of some that don't and I'm aware of
 12 some that do. So they all do for the purpose of this
 13 reporting; however, they all collect at least numbers.
 14 Q. Numbers of what?
 15 A. Of students receiving these different
 16 instructional services.
 17 Q. But do they also collect information as to how
 18 many students are diagnosed as requiring that data
 19 requiring those services?
 20 MR. SEFERIAN: Objection. Overly broad.
 21 THE WITNESS: Not necessarily.
 22 Q. BY MR. ROSENBAUM: It just depends on the
 23 particular district?
 24 A. Yes.
 25 Q. Okay. Same thing for ELD and SDAIE, not all

1 districts collect information as to the numbers of
 2 students that require those services; is that your
 3 experience?
 4 MR. SEFERIAN: Objection. Vague and ambiguous.
 5 MS. KOURY: Compound, overbroad.
 6 THE WITNESS: Yes.
 7 Q. BY MR. ROSENBAUM: That would be true of any of
 8 the items on page four of Exhibit 273?
 9 MR. SEFERIAN: Same objection.
 10 THE WITNESS: Yes.
 11 Q. BY MR. ROSENBAUM: What does other
 12 instructional services mean? That's the fifth item down.
 13 A. It's kind of a mystery.
 14 Q. I love a mystery.
 15 A. Districts will often report students receiving
 16 other instructional services. If they're in -- possibly
 17 in special education classes they may report them there.
 18 However, if they're receiving any of the services above
 19 that, they should be reported in that box. So I'm not
 20 always sure on what districts mean by other instructional
 21 services. One thing I know can happen -- no, that's one
 22 that I don't fully understand.
 23 Q. Now, if you've answered this, I don't want to
 24 belabor it, when you talked to me earlier this afternoon
 25 about training of teachers, thinking about training

1 teachers who teach ELs, those teachers receive training
 2 as to how to deliver ELD services, is that in sum or
 3 substance what you were telling me?
 4 A. Which teachers?
 5 Q. The teachers who will be teaching EL students.
 6 Is that right?
 7 MR. SEFERIAN: Objection. Overly broad.
 8 MS. KOURY: Mischaracterizes her testimony.
 9 THE WITNESS: I missed the question.
 10 MR. ROSENBAUM: I may not have stated it right.
 11 I'm just trying to get this.
 12 Q. Teachers who will be teaching EL students, you
 13 told me at length today that those teachers get
 14 specialized training as to how to teach EL students; is
 15 that right?
 16 A. That they all get it?
 17 Q. Nice point. That teachers -- well, actually,
 18 that's very helpful. You're familiar with what a BCLAD
 19 credential is?
 20 A. Yes.
 21 Q. All caps B-C-L-A-D?
 22 A. Yes.
 23 Q. And what a CLAD credential is?
 24 A. Yes.
 25 Q. As part of the BCLAD credential are teachers

1 taught how to teach EL students?
 2 MR. SEFERIAN: Objection. Asked and answered.
 3 THE WITNESS: Yes.
 4 Q. BY MR. ROSENBAUM: And taught how to teach -- to
 5 deliver ELD services; is that right?
 6 A. Yes.
 7 Q. And are they taught as part of BCLAD how to
 8 deliver SDAIE services?
 9 A. Yes.
 10 Q. Same thing for CLAD?
 11 A. Yes.
 12 Q. Now, the -- you're familiar with these training
 13 programs generally?
 14 A. Generally.
 15 MR. SEFERIAN: Objection. Vague and ambiguous.
 16 Q. BY MR. ROSENBAUM: Okay. And the training for a
 17 BCLAD teacher to deliver ELD and SDAIE services, how long
 18 does that take?
 19 MR. SEFERIAN: Objection. Vague and ambiguous,
 20 overly broad.
 21 MS. KOURY: Calls for speculation.
 22 THE WITNESS: Yeah, there's a certain number of
 23 courses. I'm not sure of the exact number.
 24 Q. BY MR. ROSENBAUM: Okay. And you're familiar
 25 generally with those courses?

1 MR. SEFERIAN: Objection. Vague and ambiguous.
 2 THE WITNESS: Generally. Not specifically.
 3 Q. BY MR. ROSENBAUM: Can you give me a rough
 4 estimate as to how many courses?
 5 MS. KOURY: Objection. Asks for a legal
 6 conclusion.
 7 THE WITNESS: I don't specifically recall. I'm
 8 not positive how many.
 9 Q. BY MR. ROSENBAUM: More than five?
 10 MS. KOURY: Objection. Asked and answered.
 11 THE WITNESS: Possibly.
 12 Q. BY MR. ROSENBAUM: Are they semester-long
 13 courses?
 14 A. I'm not sure. Semester or quarter.
 15 MS. KOURY: Calls for speculation.
 16 Q. BY MR. ROSENBAUM: Semester or quarter as far as
 17 you know?
 18 A. Yes.
 19 Q. The skills and the training that's required,
 20 based on your experience, Ms. Burnham, to learn how to
 21 deliver effectively ELD services, is that something you
 22 can learn in a day?
 23 MS. KOURY: Objection. Calls for speculation
 24 and impermissible opinion.
 25 THE WITNESS: No.

1 Q. BY MR. ROSENBAUM: Why is that?
 2 A. It's more complex.
 3 Q. Why is that?
 4 MS. KOURY: Objection. Vague and ambiguous.
 5 THE WITNESS: Yeah, I don't know what else to
 6 say about it. It's not something you learn in a day.
 7 Q. BY MR. ROSENBAUM: A week?
 8 A. Or in a week or sometimes in six courses.
 9 Q. Same thing for SDAIE?
 10 A. Yes.
 11 Q. Same thing for generally teaching EL students?
 12 MS. KOURY: Objection. Vague and ambiguous,
 13 calls for an impermissible opinion.
 14 THE WITNESS: Yes.
 15 Q. BY MR. ROSENBAUM: Has your opinion on that
 16 changed over the years?
 17 MS. KOURY: Objection. Vague and ambiguous.
 18 THE WITNESS: Over how many years?
 19 Q. BY MR. ROSENBAUM: When do you think you first
 20 formed that opinion?
 21 MS. KOURY: Objection. Vague and ambiguous.
 22 THE WITNESS: Probably at UCLA. Probably in
 23 college.
 24 Q. BY MR. ROSENBAUM: Okay. It's pretty obvious
 25 stuff, isn't it?

1 A. To me, yes.
 2 Q. And over the years based on your experience in
 3 work with the Comite schools, has your opinion become
 4 even stronger in this regard?
 5 MR. SEFERIAN: Objection. Vague and ambiguous.
 6 THE WITNESS: Yes.
 7 Q. BY MR. ROSENBAUM: Why is that?
 8 MS. KOURY: Same objection. Why is what?
 9 Q. BY MR. ROSENBAUM: Why has your opinion become
 10 even stronger?
 11 MS. KOURY: If you have any reason.
 12 THE WITNESS: Because working with Comite
 13 districts, it has become obvious to me that holding a
 14 CLAD or a BCLAD is not necessarily sufficient. That
 15 teachers who hold CLAD and BCLADs may still not be
 16 totally prepared to serve English learners, that training
 17 beyond that is often needed.
 18 Q. BY MR. ROSENBAUM: It's necessary, but is not
 19 necessarily sufficient; is that another way of
 20 characterizing your testimony?
 21 MS. KOURY: Objection. Mischaracterizes her
 22 testimony, vague and ambiguous and asked and answered.
 23 MR. SEFERIAN: Argumentative.
 24 THE WITNESS: I think it's not necessarily
 25 sufficient.

1 Q. BY MR. ROSENBAUM: Okay. Has the number --
 2 strike that.
 3 Have you ever met with Mr. O'Connell?
 4 MS. KOURY: Objection. Vague and ambiguous.
 5 MR. ROSENBAUM: I'm not interested in social
 6 gatherings. I mean --
 7 THE WITNESS: Only in a social gathering.
 8 That's what I was going to say. Otherwise no.
 9 Q. BY MR. ROSENBAUM: Did you button-hole him in a
 10 corner, Ms. Burnham?
 11 A. No. Wouldn't have been a good idea.
 12 Q. Okay. Because I'm a gentleman, I'm not going to
 13 pursue that.
 14 How about Ms. Easton, did you ever have official
 15 meetings with her?
 16 A. She came into one of our official meetings,
 17 so . . .
 18 Q. Okay. Just one?
 19 A. Well, if you don't count -- CDE has a whole
 20 staff meeting once a year, so where everybody goes, all
 21 the employees, and it's in the convention center. So
 22 those happened about once a year while she was there and
 23 while I was there. So seven of those years I was there
 24 and one where she came to a Comite meeting.
 25 Q. When was the Comite meeting?

1 A. It was in -- let's see. The summer of 2001.
 2 Q. Was there -- and did she say anything at this
 3 meeting?
 4 MS. KOURY: Objection. Vague and ambiguous.
 5 MR. ROSENBAUM: Besides good morning, good
 6 afternoon, when is this meeting going to be over.
 7 MS. KOURY: Calls for a narrative.
 8 MR. SEFERIAN: Object to the extent that it
 9 calls for privileged communication.
 10 THE WITNESS: I remember what she said, but I
 11 don't know if it's privileged.
 12 MR. ROSENBAUM: I'm not interested if an
 13 attorney was there.
 14 THE WITNESS: No, she just came in and basically
 15 gave a supportive talk to the staff and said do good
 16 work, and that was basically it.
 17 Q. BY MR. ROSENBAUM: She had said your work was
 18 important?
 19 A. Yes, she did. Sorry.
 20 MS. KOURY: That's okay. He was just leading.
 21 Q. BY MR. ROSENBAUM: What did she say?
 22 MR. SEFERIAN: Objection. Asked and answered.
 23 MS. KOURY: I think she just testified to that.
 24 Do you mean in addition to what she's already testified
 25 to?

1 MR. ROSENBAUM: Right.
 2 MS. KOURY: Is there anything in addition that
 3 you remember?
 4 THE WITNESS: Not that I'm going to say.
 5 Q. BY MR. ROSENBAUM: Okay. Have you ever heard
 6 any comment by any state official in your tenure about
 7 any of the results of the annual language census?
 8 MS. KOURY: Objection. Overbroad, calls for
 9 speculation.
 10 MR. SEFERIAN: Object to the extent it calls for
 11 privileged communications.
 12 THE WITNESS: You mean the higher state
 13 officials?
 14 MR. ROSENBAUM: Yeah.
 15 THE WITNESS: Not that I recall right now.
 16 Q. BY MR. ROSENBAUM: Okay. Are SB 1969 teachers,
 17 do they receive training as to how to teach EL students,
 18 specific training?
 19 MS. KOURY: Objection. Calls for speculation,
 20 legal conclusion.
 21 THE WITNESS: Yes.
 22 Q. BY MR. ROSENBAUM: Do you know to what extent
 23 if any it differs from that sort of training that CLAD or
 24 BCLAD programs offer?
 25 MS. KOURY: Objection. Overbroad, calls for a

1 narrative.
 2 THE WITNESS: I know it's different, and I don't
 3 know all the specifics of why it's different.
 4 Q. BY MR. ROSENBAUM: Do you know if it's more or
 5 less?
 6 MS. KOURY: Objection. Vague and ambiguous.
 7 More or less of what? And also calls for a narrative.
 8 MR. ROSENBAUM: That's a fair objection. Not
 9 the second part but the first part.
 10 Q. Do you know if it involves more or less courses?
 11 A. It's hours, not courses.
 12 Q. Do you know if it involves more or less hours?
 13 A. Less hours.
 14 Q. But you don't know how many less?
 15 MS. KOURY: He's not asking you to guess.
 16 THE WITNESS: I know exactly how many it called
 17 for. It was 45 hours for ELD or 45 hours for SDAIE. And
 18 then for teachers who had nine years or more of
 19 experience, they had what we termed in the training as
 20 convo course, which means you could for 45 hours get both
 21 of them. So it was 90 hours for ELD and SDAIE
 22 separately, 45 hours for just ELD, 45 for just SDAIE.
 23 And for the more experienced teachers, it's possible to
 24 get both in 45 hours. That's how it was designed.
 25 Q. BY MR. ROSENBAUM: Thanks. Have you ever heard

1 the opinion expressed that the CLAD credentialing
 2 requirement should be eliminated?
 3 MS. KOURY: Objection. Vague and ambiguous,
 4 overbroad.
 5 MR. SEFERIAN: Object to the extent it calls for
 6 privileged communications.
 7 THE WITNESS: I've heard that.
 8 Q. BY MR. ROSENBAUM: From whom?
 9 MR. SEFERIAN: Same objection.
 10 MR. ROSENBAUM: I don't care about an attorney.
 11 THE WITNESS: Not an attorney, but . . .
 12 MR. SEFERIAN: Object that it calls for
 13 privileged communications.
 14 THE WITNESS: It might be.
 15 Q. BY MR. ROSENBAUM: Do you personally support
 16 eliminating the CLAD requirement?
 17 A. No.
 18 Q. Or the BCLAD requirement?
 19 A. No.
 20 Q. Why is that? And I'm talking about both of
 21 them. If you want to distinguish it, please feel free to
 22 do that.
 23 MR. SEFERIAN: Objection. Vague and ambiguous.
 24 THE WITNESS: Because I think they provide
 25 important information for teachers who teach English

1 learners on how to meet the needs of the student
 2 population.
 3 Q. BY MR. ROSENBAUM: I don't want you to have to
 4 repeat yourself, but when you say important information,
 5 what do you mean by that?
 6 A. Teaching techniques, understanding of what's
 7 involved in acquiring a second language, understanding
 8 that it's not something that happens in one year, six
 9 months or three weeks.
 10 Q. Okay. If it were up to you would you require
 11 CLAD or BCLAD as opposed to SB 1969 or the other
 12 alternatives?
 13 MS. KOURY: Objection. Vague and ambiguous.
 14 MR. ROSENBAUM: For purposes of teaching EL
 15 students.
 16 MS. KOURY: Same objection.
 17 MR. SEFERIAN: Overly broad.
 18 THE WITNESS: I'm not sure. There are some very
 19 good 1969 or now 395 classes. Generally I think CLAD
 20 BCLAD are stronger.
 21 Q. BY MR. ROSENBAUM: Why do you think that?
 22 A. Because I think they're generally more rigorous.
 23 That's just my opinion.
 24 Q. Okay. Have you ever made a systematic analysis
 25 as to the adequacy of 1969, 395 programs for purposes of

1 teaching ELs?

2 MS. KOURY: Objection. Vague and ambiguous as
3 to systematic. It's also overbroad and calls for a
4 narrative.

5 But go ahead.

6 THE WITNESS: Not that I'm aware of
7 systematically, no.

8 MR. ROSENBAUM: Thank you.

9 Q. Have you seen any analysis by anybody as to the
10 adequacy of 1969 or 395 programs requirement?

11 MS. KOURY: Overbroad.

12 THE WITNESS: I haven't.

13 Q. BY MR. ROSENBAUM: Okay. Ms. Burnham, could you
14 please turn to page five of what's been marked as Exhibit
15 273. Do you have that in front of you?

16 A. Yes.

17 Q. What does primary language instruction, what's
18 that mean?

19 A. Instruction in the student's native language or
20 primary language, language other than English.

21 Q. And when is that -- in your understanding, when
22 is that required?

23 MS. KOURY: Objection. Calls for a legal
24 conclusion.

25 THE WITNESS: Now in the post proposition 227

1 Q. BY MR. ROSENBAUM: Any of that data at all?

2 A. Not that I'm aware of.

3 Q. Okay. So when you go in a Comite -- for
4 purposes of a Comite, you try to obtain that information;
5 is that right?

6 MS. KOURY: Objection. Assumes facts.

7 MR. SEFERIAN: Objection. Vague and ambiguous.

8 THE WITNESS: Yes, we do.

9 Q. BY MR. ROSENBAUM: You want to know those
10 classrooms where there are teachers providing -- teaching
11 kids whose parents have exercised that waiver; is that
12 right?

13 A. Yes.

14 Q. And you want to know whether or not the teacher
15 at the front of the classroom is authorized to provide
16 primary language instruction; is that right?

17 A. Yes.

18 Q. Why is that important for you to find out as
19 part of your Comite responsibilities?

20 MS. KOURY: Objection. Assumes facts. She
21 never said it was important.

22 But go ahead and answer that.

23 It's also vague and ambiguous. Important to
24 what?

25 Q. BY MR. ROSENBAUM: You know what -- why do you

1 era it's required when parents are granted a parental
2 exception waiver for their children to be enrolled in
3 bilingual classes.

4 Q. BY MR. ROSENBAUM: With respect to that category
5 of classes where the parents have made that request, do
6 you know the percent of teachers teaching those kids who
7 are authorized to provide primary language instruction?

8 MR. SEFERIAN: Objection. Vague and ambiguous.

9 MS. KOURY: Also overbroad and vague and
10 ambiguous as to time.

11 MR. ROSENBAUM: Well, that's a fair point.
12 This year.

13 MS. KOURY: Statewide are you asking?

14 MR. ROSENBAUM: Yeah.

15 THE WITNESS: I don't know.

16 Q. BY MR. ROSENBAUM: Or for 2002?

17 A. No.

18 Q. Or for any time past the passage of 227?

19 A. No.

20 Q. Does the state collect that information as far
21 as you know?

22 MS. KOURY: Calls for speculation, overbroad.

23 THE WITNESS: Not now that we don't do the
24 staffing plans, I'm not aware that the state collects
25 that.

1 do that?

2 A. Well, for one reason because it's one of the
3 legal requirements and we're obligated to review legal
4 requirements. So that's --

5 Q. If it weren't a legal requirement would you
6 still do it as part of carrying out your duties and
7 responsibilities?

8 MR. SEFERIAN: Objection. Incomplete
9 hypothetical, overly broad.

10 THE WITNESS: We would still look at it. We
11 wouldn't have authority to insist districts changed it --
12 were it not a legal requirement, we wouldn't have
13 authority to insist they correct it if it was not in
14 place, if it aren't required by law.

15 Q. BY MR. ROSENBAUM: And why would you look at it?

16 MS. KOURY: Objection. Incomplete hypothetical,
17 speculation. The situation doesn't exist.

18 Go ahead to the extent you can.

19 THE WITNESS: Because we would want to ensure
20 that those students had teachers who were qualified to
21 provide the best possible instruction for them.

22 Q. BY MR. ROSENBAUM: Incidentally, what's the
23 budget for your unit?

24 MS. KOURY: Objection. Vague and ambiguous as
25 to what year you're discussing.

1 MR. SEFERIAN: Assumes facts not in evidence.
 2 THE WITNESS: It's --
 3 MR. SEFERIAN: Overly broad.
 4 THE WITNESS: Yeah, I don't exactly know. I
 5 don't exactly know the budget. It's handled more at the
 6 division level.
 7 Q. BY MR. ROSENBAUM: Can you give me an estimate?
 8 I'm talking about at the preset time.
 9 MS. KOURY: To the extent you know.
 10 MR. SEFERIAN: Same objections.
 11 THE WITNESS: I know the travel portion of it
 12 which was around a million dollars last year.
 13 Q. BY MR. ROSENBAUM: Do you know what the --
 14 A. Salaries?
 15 Q. Yeah, the salaries for personnel?
 16 A. I don't offhand. I'd have to add it up. But I
 17 don't know.
 18 Q. Okay. Let's look, please, Ms. Burnham, at page
 19 six of what he was been marked as Exhibit 273. You have
 20 that in front of you?
 21 A. Yes.
 22 Q. Help me understand this. Does this mean --
 23 strike that.
 24 There are some students who diagnostically
 25 should be receiving ELD instruction, is that right, just

1 A. And not ELD?
 2 Q. And not ELD.
 3 A. Would it be legal?
 4 Q. Yeah, that's my -- what I thought.
 5 Now, this table at page six of Exhibit 273 or
 6 this graph, does this tell us anything about the percent
 7 of teachers teaching students who have been either
 8 diagnosed as requiring ELD or ELD and SDAIE who are in
 9 fact authorized?
 10 MR. SEFERIAN: Objection. Vague and ambiguous,
 11 overly broad.
 12 THE WITNESS: Could you tell me the question
 13 better?
 14 MR. ROSENBAUM: Yeah, I think I can. I think it
 15 would be easier for me to do it because I don't think I
 16 did a good job.
 17 Q. Does the graph on page six of Exhibit 273, can
 18 we figure out from the graph or the data reflected here
 19 what percent of teachers teaching students who either
 20 require ELD or ELD and SDAIE instruction that are
 21 authorized to teach, to provide SDAIE and ELD
 22 instruction?
 23 A. We can't, no.
 24 MR. SEFERIAN: Objection. Vague and ambiguous.
 25 THE WITNESS: Not from this, the percentage, to

1 ELD, period?
 2 MR. SEFERIAN: Objection. Vague and ambiguous.
 3 Q. BY MR. ROSENBAUM: Is that right?
 4 A. Yes.
 5 Q. And there are some students diagnostically who
 6 should be receiving ELD and SDAIE instruction; is that
 7 right?
 8 MS. KOURY: Objection. Mischaracterizes her
 9 testimony. Diagnostically. And it's also vague and
 10 ambiguous.
 11 Go ahead.
 12 MR. ROSENBAUM: I don't want to mischaracterize
 13 your testimony.
 14 Q. Am I mischaracterizing it?
 15 A. I understand what you said.
 16 Q. What did you understand me to mean?
 17 A. That some students are diagnosed to need ELD
 18 only and no only specialized EL services, and some are
 19 diagnosed to need ELD and SDAIE in order to fully access
 20 the core curriculum.
 21 Q. When you say fully access, what do you mean by
 22 that?
 23 A. To be able to do grade level work in English.
 24 Q. Are there students diagnostically who should
 25 receive just SDAIE instruction, is that such an animal?

1 my knowledge.
 2 Q. BY MR. ROSENBAUM: So far as you know, is that
 3 data collected by anybody in the state?
 4 MS. KOURY: Objection. Overbroad, calls for
 5 speculation.
 6 THE WITNESS: Not that I know of.
 7 Q. BY MR. ROSENBAUM: And when you go in as part of
 8 your Comite duties are you interested in that fact, what
 9 percent of the teachers teaching SDAIE and ELD diagnosed
 10 students are in fact authorized to provide SDAIE and ELD
 11 instruction?
 12 A. No.
 13 Q. And why are you interested in finding that out?
 14 A. Just because it's a legal requirement, and
 15 because of making sure students are receiving appropriate
 16 services.
 17 Q. Okay. Tell me in your experience, is the answer
 18 always a hundred percent? A hundred percent of the
 19 students who require SDAIE and ELD instruction are taught
 20 by teachers authorized to provide SDAIE and ELD
 21 instruction?
 22 MS. KOURY: Objection. Overbroad, vague and
 23 ambiguous as well.
 24 Go ahead.
 25 THE WITNESS: It's always the case -- it's

1 generally the case before we release districts from
 2 Comite.
 3 Q. BY MR. ROSENBAUM: Where does it usually start
 4 before you release them from Comite? I mean, have you
 5 found numbers as low as ten percent?
 6 MR. SEFERIAN: Objection. Vague and ambiguous,
 7 compound.
 8 MR. ROSENBAUM: When you started --
 9 THE WITNESS: Ten percent qualified?
 10 MR. ROSENBAUM: Yeah.
 11 MR. SEFERIAN: Same objections.
 12 THE WITNESS: I don't know the exact
 13 percentages.
 14 Q. BY MR. ROSENBAUM: Do you know what it is now in
 15 Oakland?
 16 MR. SEFERIAN: Objection. Vague and ambiguous.
 17 THE WITNESS: I don't know.
 18 Q. BY MR. ROSENBAUM: Would that be reflected in
 19 your reports?
 20 A. Not the percent. I don't think we would have
 21 the percents in our reports.
 22 Q. Okay. In your experience, Ms. Burnham, what's
 23 the result, what's the consequence for a student who is
 24 diagnosed as receiving -- who is requiring ELD and SDAIE
 25 instruction not having a teacher authorized to provide

1 SDAIE and ELD instruction?
 2 MS. KOURY: Objection. Incomplete hypothetical,
 3 calls for speculation. It's overbroad, vague and
 4 ambiguous.
 5 THE WITNESS: It may not -- it's conceivable
 6 that it would be okay for the student. It's conceivable
 7 that they could have a really good teacher who didn't
 8 hold the appropriate authorization. It's not the typical
 9 case, but it certainly is possible.
 10 Q. BY MR. ROSENBAUM: When you say it's not the
 11 typical case, what do you mean?
 12 A. More than likely if the teacher is not well
 13 prepared to meet the specific second language needs of
 14 the student.
 15 Q. What happens then?
 16 MS. KOURY: Objection. Incomplete hypothetical.
 17 MR. SEFERIAN: Overly broad, lacks foundation.
 18 THE WITNESS: Then what happens is we see
 19 students failing classes and not being successful.
 20 Q. BY MR. ROSENBAUM: Okay. What's -- do you ever
 21 look at what happens to the kids' psyche, their mental
 22 state in those circumstances?
 23 MS. KOURY: Objection. Incomplete hypothetical.
 24 What kids are we discussing? Vague and ambiguous and
 25 overbroad.

1 MR. SEFERIAN: Lacks foundation, calls for an
 2 inadmissible opinion.
 3 THE WITNESS: We don't do psyche, per se, but we
 4 do talk to students and get their impressions of their
 5 instructional props.
 6 Q. BY MR. ROSENBAUM: What's your experience when
 7 you talk to these kids?
 8 MR. SEFERIAN: Overly broad, calls for a
 9 narrative.
 10 THE WITNESS: It depends on the situation. I
 11 mean, there's no one answer to that. It's big.
 12 Q. BY MR. ROSENBAUM: Okay. Why do you talk to the
 13 students?
 14 A. I think it's really important to get the
 15 student's views on how they see the services they're
 16 getting.
 17 Q. Why is that important?
 18 MS. KOURY: Objection. Vague and ambiguous.
 19 THE WITNESS: I don't know exactly. It is
 20 important. They have a good perspective.
 21 Q. BY MR. ROSENBAUM: Are there some students who
 22 you speak with who don't have teachers authorized to
 23 deliver the services that they're diagnosed as to require
 24 to be upset about that fact?
 25 MS. KOURY: Objection. Vague and ambiguous.

1 It's overbroad. It's an incomplete hypothetical. I'm
 2 not clear which kids we've discussing.
 3 But if you can answer --
 4 MR. ROSENBAUM: That's a nice point. I
 5 appreciate that.
 6 Q. Do students know that they have teachers who are
 7 not authorized to teach them the services that they've
 8 been diagnosed to require?
 9 MS. KOURY: Objection. Overbroad, incomplete
 10 hypothetical, vague and ambiguous. Again I'm not sure
 11 which kids we're discussing.
 12 MR. SEFERIAN: Calls for speculation.
 13 MR. ROSENBAUM: You know, I want to stay on
 14 this.
 15 Q. Let's talk about a student who requires SDAIE
 16 and ELD services and her teacher is not authorized to
 17 teach that, is the student informed of that fact?
 18 MS. KOURY: Objection. Incomplete hypothetical,
 19 overbroad.
 20 MR. ROSENBAUM: In your experience.
 21 MS. KOURY: And assumes facts.
 22 THE WITNESS: I don't know whether they're
 23 informed. They usually don't know that. It's not
 24 something they express. I've never had one say my
 25 teacher is not qualified.

1 Q. BY MR. ROSENBAUM: How about their parents, did
2 they know it?
3 MR. SEFERIAN: Overbroad --
4 THE WITNESS: I don't know.
5 Q. BY MR. ROSENBAUM: Do you talk to parents also?
6 A. Yes, yes.
7 Q. And the parents typically don't know, is that
8 what you just told me?
9 MR. SEFERIAN: Objection. Overly broad.
10 MR. ROSENBAUM: You answered the question. You
11 don't need to repeat that.
12 Q. Has there been -- what's the difference -- I'm
13 looking at page eight of Exhibit 273. What's the
14 difference between an EL student and an FEP student? I'm
15 interested in the categories.
16 A. ELs are English learners. Those are students
17 that have a language other than English spoken in their
18 home and they don't pass the CELDT, the California
19 English Language Development Test.
20 Q. And FEP students?
21 A. FEP students are students who have a language
22 other than English spoken at home, but they either pass
23 the CELDT initially or they go through the district's
24 English learner program and are reclassified as FEP.
25 Q. Does your office keep data as to how well EL

1 Q. Okay. Has anyone, to your knowledge, and I know
2 I talked to you about this two years ago, but so I'm
3 really interested in the last two years, looked at
4 whether or not EL students who have had access to core
5 curriculum achieve better than EL students who do not on
6 the Stanford 9?
7 MS. KOURY: Objection. Vague and ambiguous.
8 Also overbroad.
9 THE WITNESS: It's not data I'm aware of that
10 people have been able to collect.
11 Q. BY MR. ROSENBAUM: Or have attempted to collect;
12 is that right?
13 A. To my knowledge.
14 Q. Same thing if I asked you about the California
15 high school exit exam?
16 MS. KOURY: Objection. Vague and ambiguous,
17 overbroad.
18 THE WITNESS: Yeah. Same answer.
19 Q. BY MR. ROSENBAUM: Okay. Same thing if I asked
20 you about the factor of access to qualified teachers for
21 ELs?
22 MS. KOURY: Objection. Vague and ambiguous,
23 overbroad.
24 THE WITNESS: Yeah. Same answer.
25 Q. BY MR. ROSENBAUM: Okay. Has there been any

1 students as opposed to FEP students do on the Stanford 9?
2 MR. SEFERIAN: Objection. Vague and ambiguous.
3 MS. KOURY: Also overbroad.
4 THE WITNESS: It's on the internet. So it's not
5 my unit. We don't particularly do that, but we use that
6 data.
7 Q. BY MR. ROSENBAUM: Have you ever looked at
8 results?
9 A. Yes.
10 Q. What do you find if you find anything?
11 MS. KOURY: Objection. Vague and ambiguous.
12 MR. SEFERIAN: Overly broad.
13 THE WITNESS: Lots of things for different
14 purposes.
15 Q. BY MR. ROSENBAUM: Okay. Do you know if -- is
16 the achievement level of FEPs higher than the achievement
17 level of ELs on the Stanford 9, as far as you know?
18 MR. SEFERIAN: Incomplete hypothetical, calls
19 for a narrative, overly broad.
20 THE WITNESS: It is.
21 Q. BY MR. ROSENBAUM: How do you know that?
22 A. From looking at the data on the internet and the
23 California -- I just remember that from there's a -- you
24 can print just the California state data, and it's on
25 that.

1 analysis, to your knowledge, about the performance on the
2 Stanford 9 of FEP students as opposed to native English
3 speakers?
4 A. Yes.
5 Q. What analysis are you aware of?
6 A. Just what's posted on the internet.
7 Q. You've looked at that data?
8 MR. SEFERIAN: Overly broad, incomplete
9 hypothetical.
10 THE WITNESS: Actually, that's mistaken. I do
11 look at it, but they have FEP and native English speakers
12 as one group. It's not broken out.
13 Q. BY MR. ROSENBAUM: No one's broken them out
14 separately as far as you know?
15 A. So far as I know, I don't think it is.
16 Q. You told me before we took a break about talking
17 to districts about longitudinal data. Do you remember
18 talking to me about that?
19 A. Yes.
20 Q. Is that longitudinal data about individual
21 students?
22 A. Individual students and group data both.
23 Q. Tracking an individual student's performance
24 each year on the Stanford 9, for example; is that right?
25 A. Yes.

1 Q. And whose idea was it in your unit, so far as
2 you know, to look at this longitudinal data?
3 MS. KOURY: Objection. Assumes facts not in
4 evidence.
5 THE WITNESS: I don't remember specifically.
6 Q. BY MR. ROSENBAUM: Were there discussions among
7 your unit about the value of doing that?
8 MS. KOURY: Objection. Vague and ambiguous.
9 MR. SEFERIAN: Object to the extent it calls for
10 privileged communication.
11 THE WITNESS: We talk about that a lot.
12 Q. BY MR. ROSENBAUM: And why -- you talk about the
13 value of longitudinal data for individual students?
14 A. Yes, because I work with the consultants to
15 encourage districts to collect it that way.
16 Q. Why do you do that?
17 A. Because it makes the data more meaningful for
18 English learners.
19 Q. Why is that?
20 MS. KOURY: Objection. Vague and ambiguous.
21 THE WITNESS: Because if students are not fully
22 proficient in the language of the test, then the test may
23 not be assessing much more than the fact that they don't
24 understand English. But as they've had more years
25 longitudinally in the district, the scores should be

1 going up as the students both acquire English and have
2 experience in American --
3 Q. So diagnostically, you're getting a sense of
4 whether the school is doing a good job of getting English
5 learners proficient; isn't that right?
6 MR. SEFERIAN: Objection. Overly broad,
7 incomplete hypothetical, vague.
8 THE WITNESS: Yeah.
9 Q. BY MR. ROSENBAUM: Exactly what your answer is;
10 isn't that right?
11 A. Yes.
12 Q. Look, please, Ms. Burnham, at page nine of
13 what's been marked as Exhibit 273. Do you have that in
14 front of you?
15 A. Yes, yes.
16 Q. Tell me what does -- what is this, by the way;
17 is this another one of these beans?
18 A. It's not a screen bean. It's another graphic
19 that I found.
20 Q. Okay. And I guess the important question is
21 does this one have a name?
22 A. No.
23 Q. Okay. And what is it -- on page nine of Exhibit
24 273 what do you mean by literacy measure, grades 3 to 12?
25 A. Okay. This is the identification of students.

1 So it's in terms of talking to districts about how they
2 arrive at whether or not students are limited in English,
3 they have the home language survey which triggers the
4 CELDT. And then they would -- they at one time were
5 required to do an additional literacy measure in grade 3
6 through 12. But actually that was before the CELDT test.
7 Now literacy is now part of the CELDT test.
8 Q. I see. Is passage of the CELDT, is that
9 synonymous with being literate?
10 MS. KOURY: Objection. Vague and ambiguous,
11 calls for an expert opinion.
12 Q. BY MR. ROSENBAUM: In your understanding?
13 A. Passage of the CELDT is synonymous with being
14 fluent in English by the state's definition right now.
15 Q. I see. Is there a relationship between
16 performance on CELDT and whether you're literate?
17 MS. KOURY: Objection. Vague and ambiguous.
18 MR. ROSENBAUM: It is vague and ambiguous. And
19 I'll correct it in a second.
20 THE WITNESS: There has been I think some look
21 at that, how the CELDT equates to the SAT 9. I'm not
22 real aware of that.
23 Q. BY MR. ROSENBAUM: Has there been any analysis
24 so far as you know as to performance on CELDT and
25 performance on the Stanford 9?

1 MS. KOURY: Other than what she just testified
2 to?
3 THE WITNESS: I think there has been, but I'm
4 not remembering right now the results of it.
5 Q. BY MR. ROSENBAUM: Do you know who conducted
6 that analysis?
7 THE WITNESS: I believe the standards and
8 assessment office.
9 Q. BY MR. ROSENBAUM: Do you have a copy of that in
10 your office?
11 A. I don't think -- I'm not sure.
12 Q. Did it show what -- is it broken down by
13 individual students?
14 A. No. And it was very complicated. I didn't
15 fully understand it. But it kind of attempts to show
16 CELDT scores matched up with SAT 9 English language arts.
17 Q. Do you remember anything about the results?
18 MS. KOURY: Objection. The document speaks for
19 itself, calls for speculation.
20 THE WITNESS: Right. Not really.
21 Q. BY MR. ROSENBAUM: Fair enough.
22 Okay. Page 11 of Exhibit 273, what's the
23 conflagration here?
24 A. What's that? It's the R-30 report being a hot
25 document.

1 Q. I see. Okay.
 2 A. And that's a screen bean.
 3 Q. Okay. Now, have you seen any analysis as to the
 4 effectiveness of Proposition 227 in terms of kids passing
 5 the CELDT?
 6 A. No, not specifically.
 7 Q. In terms of attaining proficiency in English?
 8 MS. KOURY: Objection. Vague and ambiguous,
 9 overbroad.
 10 THE WITNESS: There's a 227 evaluation study.
 11 I'm not sure that -- it doesn't talk about the CELDT, to
 12 my remembrance.
 13 Q. BY MR. ROSENBAUM: Does it talk about
 14 performance on the Stanford 9?
 15 A. I think it does.
 16 Q. Do you remember what the results were?
 17 MR. SEFERIAN: Objection. Overly broad.
 18 MS. KOURY: Calls for speculation. The document
 19 speaks for itself.
 20 MR. ROSENBAUM: Go ahead.
 21 THE WITNESS: It showed generally that it
 22 actually compared at least three groups of students or
 23 schools, schools with continuing bilingual programs,
 24 schools that had bilingual programs pre-227 and disbanded
 25 them. And then the largest number were schools that

1 never had bilingual programs. And they looked at results
 2 for students. And I don't remember real specifically,
 3 but they didn't find a great difference in the results
 4 for any of the groups on the Stanford 9.
 5 Q. Did it break it down -- maybe you just answered
 6 this question for me. Did it break it down by -- strike
 7 that.
 8 A English learner can be instruction emerging,
 9 can be in bilingual, and there's one other program?
 10 A. Yes.
 11 Q. What is that?
 12 A. Mainstream.
 13 Q. You don't have to tell me what you told me two
 14 years ago. Have you seen any studies in the last two
 15 years as to comparing performance of ELs based on what --
 16 which of those three programs they're enrolled in?
 17 MS. KOURY: Objection. Vague and ambiguous.
 18 Also overbroad.
 19 THE WITNESS: Not real definitive studies. Some
 20 of the district evaluation reports do that, and I'm
 21 trying to think what's the most recent studies. And I'm
 22 not really aware of any. I mean, I know there are some,
 23 but right now I --
 24 Q. BY MR. ROSENBAUM: Do you know who did the
 25 studies?

1 A. I know that West Ed has worked on the 227
 2 evaluation report.
 3 Q. Have you seen copies of it?
 4 A. Yes.
 5 Q. Do you have a copy in your office?
 6 A. Yes.
 7 Q. Do you remember anything else about the results
 8 than what you've told me?
 9 A. No. I just got the copy, so I've sort of
 10 skimmed it quickly, but I didn't detailed looked at it.
 11 Q. Do you know if it's on the web?
 12 A. I think it is.
 13 Q. Okay. And have you concerned yourself with
 14 issues regarding implementation of Proposition 227 as it
 15 affects proficiency of English learners?
 16 MR. SEFERIAN: Objection. Overly broad, vague.
 17 THE WITNESS: I don't understand the --
 18 Q. BY MR. ROSENBAUM: What I'm interested in is
 19 have you thought, well, persons in your unit have thought
 20 about here are some problems in terms of implementing
 21 Proposition 227 as it affects successful proficiency,
 22 obtaining successfully full proficiency in English? And
 23 I don't mean this as criticizing 227, per se, I mean it
 24 more have you thought, gee whiz, in terms of implementing
 25 227, here are some problems that districts are

1 experiencing, like access to core curriculum or having
 2 qualified teachers in mainstream classrooms or matters of
 3 that like, have you thought about that?
 4 MS. KOURY: Objection. Overbroad, calls for a
 5 narrative, vague and ambiguous.
 6 If you understand, you can answer.
 7 THE WITNESS: On an individual basis we work
 8 with districts on the problems as they see them and as we
 9 see them.
 10 Q. BY MR. ROSENBAUM: What problems have been
 11 expressed to you in the course of your duties and
 12 responsibilities?
 13 MS. KOURY: Objection. Vague and ambiguous.
 14 Expressed from the districts?
 15 MR. ROSENBAUM: Yeah.
 16 MR. SEFERIAN: Overly broad.
 17 MS. KOURY: To the extent you're able to answer.
 18 THE WITNESS: Sometimes problems for the lower
 19 proficiency students, the lower English proficiency
 20 students in making sure that they can get grade level
 21 standards and not be left behind while they're learning
 22 English. And districts I think have expressed
 23 frustration with students falling behind, and trying to
 24 come up with plans to help them catch up.
 25 Q. BY MR. ROSENBAUM: What did you tell them when

1 you hear those concerns expressed?
 2 MR. SEFERIAN: Objection. Overly broad.
 3 MS. KOURY: It's also an incomplete
 4 hypothetical. I'm not sure what -- is there a specific
 5 district that you have in mind?
 6 THE WITNESS: We work a lot with districts on
 7 the development of what's called a catchup plan. And how
 8 effective those are, it's really too early to say.
 9 Q. BY MR. ROSENBAUM: Do students -- do teachers
 10 get trained in catchup plans so far as you know?
 11 MR. SEFERIAN: Objection. Overly broad.
 12 THE WITNESS: In whose? In their own? In the
 13 district's catch up plan?
 14 Q. BY MR. ROSENBAUM: Do all districts have
 15 catchup plans?
 16 MR. SEFERIAN: Objection. Lacks foundation.
 17 MS. KOURY: Also calls for speculation.
 18 THE WITNESS: Comitè districts do before we're
 19 done with them.
 20 Q. BY MR. ROSENBAUM: In your experience, is it
 21 generally the rule that districts don't have catchup
 22 plans before you get involved?
 23 MS. KOURY: Objection. Mischaracterizing her
 24 testimony, vague and ambiguous.
 25 THE WITNESS: Some don't. I wouldn't say that

1 MS. KOURY: Objection. Overbroad.
 2 THE WITNESS: There are various activities that
 3 districts may include in their catchup plans that might
 4 be helpful.
 5 Q. BY MR. ROSENBAUM: Such as?
 6 A. After-school tutoring, additional instructional
 7 time with teacher or aides. Aides are sometimes part of
 8 it too. And in the catchup plan they lay out where they
 9 expect the kids to be after one, two, three, four years.
 10 And once they have catchup plans, so they know the
 11 expectation, they're less likely to retain students
 12 because they haven't met standards when they don't speak
 13 the language. So the standards help.
 14 Q. Do these catchup plans cost money in your
 15 experience?
 16 MR. SEFERIAN: Objection. Overly broad, lacks
 17 foundation, vague and ambiguous.
 18 THE WITNESS: The activities or the development
 19 of the plan?
 20 MR. ROSENBAUM: The actual activities
 21 themselves.
 22 MR. SEFERIAN: Same objections.
 23 THE WITNESS: Yes, some do.
 24 Q. BY MR. ROSENBAUM: In your experience do you
 25 think that that's a valuable expenditure of resources?

1 none of them do.
 2 Q. BY MR. ROSENBAUM: Can you give me a percentage
 3 that don't?
 4 MS. KOURY: Objection. Calls for speculation.
 5 If you're able to --
 6 THE WITNESS: No. I don't know.
 7 Q. BY MR. ROSENBAUM: When we talked earlier today
 8 about technical assistance, is that another piece of
 9 technical assistance to help districts either improve or
 10 develop catchup plans?
 11 A. Absolutely.
 12 Q. And is that an important contribution you
 13 believe your unit makes?
 14 MS. KOURY: Objection. Vague and ambiguous.
 15 THE WITNESS: We hope so.
 16 Q. BY MR. ROSENBAUM: Why do you think it is a
 17 valuable contribution?
 18 A. Because we're concerned about students getting
 19 left behind because they don't understand the language of
 20 instruction. And it's important that districts not only
 21 have but implement some specific strategies to help
 22 students recoup those deficits.
 23 Q. Are there particular strategies that you're
 24 familiar with that help particular districts either
 25 develop or improve catchup plans?

1 MS. KOURY: Objection. Vague and ambiguous,
 2 calls for speculation and an expert opinion.
 3 THE WITNESS: It's an important expenditure.
 4 Q. BY MR. ROSENBAUM: Why is that?
 5 A. Because otherwise the students may never recoup
 6 academic deficits and be able to do grade-level work.
 7 Q. When you look at API scores, you don't have a
 8 clue as to whether or not the students missed questions
 9 because they weren't given catchup plans or because they
 10 genuinely didn't learn the information; isn't that right?
 11 MR. SEFERIAN: Objection. Argumentative,
 12 mischaracterizing her testimony, assumes facts not in
 13 evidence.
 14 MS. KOURY: It's vague.
 15 THE WITNESS: You can't get that information I
 16 think from an API score.
 17 Q. BY MR. ROSENBAUM: Are you aware of any studies
 18 that have looked at the number of students who have been
 19 redesignated in the last two years?
 20 MS. KOURY: Objection. Vague and ambiguous.
 21 Statewide?
 22 MR. ROSENBAUM: Yeah.
 23 THE WITNESS: What study -- I mean, I'm aware of
 24 data.
 25 Q. BY MR. ROSENBAUM: Okay. And has there been any

1 attempt to determine whether or not a factor affecting
 2 redesignation is access of students to qualified
 3 teachers?
 4 MS. KOURY: Objection. Vague and ambiguous,
 5 overbroad.
 6 THE WITNESS: I don't know that there's a way to
 7 make that link.
 8 Q. BY MR. ROSENBAUM: Why is that? Couldn't you
 9 see which students are redesignated and see whether or
 10 not they have teachers who were qualified to teach to
 11 their diagnosis?
 12 MS. KOURY: Objection. Asked and answered,
 13 argumentative.
 14 MR. SEFERIAN: Compound question.
 15 THE WITNESS: I think it could be done. I'm not
 16 aware of it being done that way.
 17 Q. BY MR. ROSENBAUM: Or has there been to your
 18 knowledge any attempt to see whether or not there's a
 19 relationship between redesignation and access to ELD
 20 materials?
 21 MS. KOURY: Objection. Vague and ambiguous,
 22 calls for speculation.
 23 THE WITNESS: I'm not aware of any.
 24 MR. SEFERIAN: You okay? You want to take a
 25 break?

1 MR. ROSENBAUM: We can take a break.
 2 [Recess.]
 3 MR. ROSENBAUM: Back on the record.
 4 Q. You doing okay, Ms. Burnham?
 5 A. Oh, yeah.
 6 Q. As part of your unit's procedures, do you ask
 7 schools to do self-assessments?
 8 MR. SEFERIAN: Objection. Vague and ambiguous.
 9 Q. BY MR. ROSENBAUM: You know what I mean by that?
 10 A. I'm not sure what exactly --
 11 Q. Do you ask them to fill out a checklist and make
 12 their own analysis of their needs and problems with
 13 respect to ELs?
 14 A. Yes. A self-analysis, yes.
 15 Q. Why do you do that?
 16 A. We do that because we think it's really
 17 important that they know that information. And when they
 18 look at their self-analysis matrix, they sometimes
 19 discover they don't. So it's been very helpful.
 20 Q. Has that been the procedure, then, during your
 21 entire tenure?
 22 A. No. It changed with the court order also.
 23 Q. How did it change?
 24 A. Prior to the court order we had them actually do
 25 a self-study, a much more extensive review than we now do

1 now. We just do the self-analysis matrix.
 2 Q. Tell me the difference between the past and
 3 present.
 4 MS. KOURY: Objection. Overbroad and also calls
 5 for a narrative.
 6 THE WITNESS: The self-study was much more
 7 narrow because they reviewed every single school and
 8 reported the results for every single school.
 9 Q. BY MR. ROSENBAUM: In the district?
 10 A. In their district, yes.
 11 Q. And now what do they have to do?
 12 A. The self-analysis matrix is much more general.
 13 They do it, the superintendent and key staff members at
 14 the symposium, the Comite symposium we have each year for
 15 new districts, they start it and complete it and mail it
 16 to us.
 17 Q. They complete it at the symposium itself?
 18 MR. SEFERIAN: Wait, wait.
 19 Q. BY MR. ROSENBAUM: Do they get it at the
 20 symposium itself?
 21 A. No. They start it there.
 22 Q. I see. And in terms of your confidence in the
 23 quality of the responses, did you have more confidence in
 24 the prior method as opposed to the present method?
 25 MR. SEFERIAN: Objection. Overly broad, vague

1 and ambiguous.
 2 THE WITNESS: It was more thorough.
 3 Q. BY MR. ROSENBAUM: Can you give me examples of
 4 the more thoroughness?
 5 A. It was because --
 6 MS. KOURY: Objection. Vague and ambiguous,
 7 overbroad and calls for a narrative.
 8 THE WITNESS: Because they looked at every
 9 single item and every single school site and reported
 10 their results to us.
 11 Q. BY MR. ROSENBAUM: Were the prior analyses
 12 useful to you in ways that the matrix is not, the present
 13 matrix is not?
 14 MS. KOURY: Objection. Vague and ambiguous.
 15 THE WITNESS: In some different ways, yes.
 16 Q. BY MR. ROSENBAUM: How is that?
 17 A. Because when we went to a school site we had
 18 their view of that school and we could compare it to our
 19 view of the school.
 20 Q. Plus it also gave you information about
 21 schools -- you don't visit every school, right?
 22 A. That's -- in some cases we do. Not necessarily.
 23 Q. So that the prior method gave you information
 24 about schools that you might not visit; isn't that right?
 25 MS. KOURY: Objection. Mischaracterizing her

1 testimony.

2 THE WITNESS: But it did give us some

3 information about the other schools.

4 Q. BY MR. ROSENBAUM: Was that useful to you in

5 terms of helping the districts get into compliance?

6 A. Yes.

7 Q. Why is that?

8 A. Because we would discuss their findings with

9 them and we would discuss our findings. And where it was

10 different we'd discuss why it was different. And so that

11 helped them better understand the issues.

12 Q. Do you find this self-assessment, the prior --

13 strike that.

14 The prior method of self-assessment, is that the

15 right phrase I should be using?

16 A. That's fine, yes.

17 Q. Okay. When you or members of your staff went

18 out to check out the items on the checklist, did you find

19 that there was also consistency between the

20 self-assessment and your analysis?

21 MR. SEFERIAN: Objection. Vague and ambiguous.

22 MS. KOURY: Overbroad.

23 THE WITNESS: There's not always consistency.

24 Q. BY MR. ROSENBAUM: Do you have an explanation

25 generally as to why that was the case?

1 MS. KOURY: Objection. Vague and ambiguous and

2 overbroad.

3 THE WITNESS: I think the main reason is that

4 this is our area of expertise, so we understand the items

5 and what's expected in most cases better than most

6 principals, superintendents, you know, administrative

7 staff.

8 Q. BY MR. ROSENBAUM: In your experiences you find

9 who filled out the self-assessments?

10 MS. KOURY: Objection. Vague and ambiguous.

11 At the district?

12 MR. ROSENBAUM: That's what I'm trying to figure

13 out.

14 Q. Was it the principals, the district personnel?

15 MR. SEFERIAN: Assumes facts. That could vary

16 from district to district.

17 THE WITNESS: It varies depending on the

18 districts. We would make some recommendations that it

19 should may be a team that included district and site

20 staff, but . . .

21 Q. BY MR. ROSENBAUM: I see. Okay. But now so far

22 as you know it's done by the district personnel?

23 A. Could include site personnel.

24 Q. Okay. Lousy question.

25 Right before lunch we were talking about

1 proposed changes in the process. Now, I don't want you

2 to tell me anything a lawyer told you or anything you

3 told a lawyer. Can you tell me if there are proposals

4 that you're aware of to eliminate your unit?

5 MR. SEFERIAN: Objection. That calls for

6 privileged communications.

7 Instruct the witness not to answer.

8 Q. BY MR. ROSENBAUM: Again I'm not interested in

9 anything you said to a lawyer. Have you made statements

10 to anyone in your department -- strike that.

11 Have you made statements to anyone in your unit

12 about maintaining your unit?

13 MR. SEFERIAN: Same objection.

14 Q. BY MR. ROSENBAUM: What's your present reporting

15 relationship? To whom do you report?

16 A. To our new division director Joseph Barankin.

17 Q. Dr. Barankin?

18 A. Yes.

19 Q. Who does Dr. Barankin report to?

20 Q. Deputy Superintendent Gino Flores.

21 Q. And is it Mr. or Dr. Flores?

22 A. Dr. Flores.

23 Q. Does Dr. Flores report to Superintendent

24 O'Connell?

25 MR. SEFERIAN: Objection. Vague as to report.

1 THE WITNESS: I believe he does.

2 Q. BY MR. ROSENBAUM: Okay. And have you ever had

3 discussions with Dr. Flores?

4 A. Yes.

5 Q. Have you had any discussions with him about

6 maintaining your unit?

7 MR. SEFERIAN: Same objection. Calls for

8 privileged communications.

9 Q. BY MR. ROSENBAUM: Or Dr. Barankin?

10 MR. SEFERIAN: Same objection.

11 Q. BY MR. ROSENBAUM: Can you think of any reasons

12 not to continue your unit?

13 MS. KOURY: Objection. Vague and ambiguous.

14 Are you asking her about her personal opinion?

15 Q. BY MR. ROSENBAUM: I don't mean goofy reasons

16 like, you know, I don't like words with three vowels in

17 them, but can you think of any reasons that make sense to

18 you about discontinuing your unit, based on your training

19 and experience and background?

20 MR. SEFERIAN: Objection. Overly broad, vague

21 and ambiguous.

22 MS. KOURY: Calls for speculation.

23 MR. SEFERIAN: Incomplete hypothetical.

24 THE WITNESS: I don't think of any good reasons

25 programatically. I think of financial problems the state

1 is having right now. That's just what occurs to me. It
 2 costs money.
 3 Q. BY MR. ROSENBAUM: Okay. You ever seen any
 4 estimates about what it costs not to educate an EL
 5 student properly?
 6 MS. KOURY: Objection. Vague and ambiguous and
 7 incomplete hypothetical.
 8 MR. ROSENBAUM: Go ahead.
 9 MS. KOURY: Calls for expert opinion.
 10 THE WITNESS: I have not.
 11 MR. ROSENBAUM: Tony, I want you to state,
 12 please, on the record what privilege you're talking about
 13 and any support you have for that privilege so I'm real
 14 clear.
 15 You understand, Ms. Burnham, that my questions
 16 don't ask for any attorney-client privilege. I'm not
 17 interested in any discussion you've had with an attorney.
 18 Q. You've understood that?
 19 A. Yes.
 20 MR. ROSENBAUM: Could you state fully for the
 21 record, Tony, because it's my every intention to bring
 22 this matter to a judge, what privilege you're referring
 23 to and the basis for your assertion?
 24 MR. SEFERIAN: Official information privilege,
 25 Evidence Code Section 1040, and the deliberative process

1 A. We give trainings sometimes on request for the
 2 Comite districts for some of their staff members. And we
 3 typically also do trainings at some conferences.
 4 Q. What conferences?
 5 A. They've included CABE, C-A-B-E.
 6 Q. What's that?
 7 A. California Association for Bilingual Education.
 8 Q. Have you personally given presentations?
 9 A. Yes.
 10 Q. How many times?
 11 A. Many times. Almost every year except when the
 12 Comite court order prohibited us from doing so, and at
 13 the ACSA conference.
 14 Q. What's that?
 15 A. Association of California School Administrators.
 16 Q. What's that?
 17 A. It's the regional organization for
 18 administrators in California of which I'm still a member.
 19 I was in my school district and I still am. And not me
 20 personally, but our consultants, one of them
 21 particularly, has given presentations at special
 22 education conferences.
 23 Q. Are you -- at the CABE --
 24 A. Conference.
 25 Q. -- were you invited to give a presentation

1 privilege.
 2 MR. ROSENBAUM: Explain to me why the official
 3 privilege applies here as you understand it.
 4 MR. SEFERIAN: I believe that question you asked
 5 for calls for confidential information as protected by --
 6 MR. ROSENBAUM: I know that's your conclusion.
 7 Do you have any basis for it?
 8 MR. SEFERIAN: The basis is I believe the call
 9 of your question seeks confidential information that's
 10 protected by those privileges. And I think there's a
 11 legitimate basis for assertion of those privileges.
 12 MR. ROSENBAUM: Okay.
 13 Q. Ms. Burnham, you give trainings; is that right?
 14 A. Yes.
 15 Q. And to whom do you give trainings?
 16 A. We give trainings sometimes -- well, the Comite
 17 superintendent symposium every year.
 18 Q. What's that?
 19 A. That's a two-day training or professional
 20 development opportunity for the newly-selected Comite
 21 district superintendents and their key administrators.
 22 Sometimes a teacher's union rep or board member.
 23 Q. Do you give other trainings as well?
 24 A. Yes.
 25 Q. To whom?

1 there?
 2 A. No.
 3 Q. How did it happen?
 4 A. I made an application in the call for papers.
 5 Q. Did you deliver a paper there?
 6 A. On more than one occasion, yes.
 7 Q. Okay. How many occasions would you say?
 8 A. Well, maybe I should say define paper.
 9 Q. I'm not interested in -- I don't mean to bug you
 10 on such technicalities.
 11 A. Okay.
 12 Q. You made presentations; is that right?
 13 A. Right, yes.
 14 Q. With your little figures?
 15 A. Sometimes the figures are in them, sometimes
 16 not.
 17 Q. And on what subjects?
 18 A. Including state and federal requirements for
 19 services to English learners, in making the connection
 20 between research and practice for English learners. The
 21 last one at CABE was, yes, there still are requirements
 22 for serving English learners in the post 227 era, so a
 23 legal one --
 24 Q. Who thought of that?
 25 A. I did it with one of the consultants. We did it

1 jointly.
 2 Q. But you decided on that subject matter?
 3 A. Yes, yes.
 4 Q. And you wrote or spoke to someone at CABE and
 5 said this is the subject area I'd like to make a
 6 presentation on?
 7 A. Yes. You submit a paper.
 8 Q. Application or a paper?
 9 A. It's a call for -- they call it a call for
 10 presentations. And it's just a short two-page . . .
 11 Q. Why did you think that would be an interesting
 12 subject for CABE to hear?
 13 MS. KOURY: Assumes facts.
 14 THE WITNESS: Yeah, we usually do some sort of
 15 federal/state requirements every year, and there's always
 16 a good turnout.
 17 Q. BY MR. ROSENBAUM: What sort of numbers?
 18 A. Probably like a hundred people.
 19 Q. And besides CABE and ACSA, any other -- and the
 20 other audiences that you talked to me about, do you make
 21 other presentations?
 22 A. Done some at CDE's request at language census.
 23 We did one this year in Sacramento.
 24 Q. Who was the audience?
 25 A. State and federal project directors who weren't

1 able to go to CABE. We did it at CABE as well. So we
 2 did one, and that was well attended also.
 3 Q. When you say well attended, what do you mean by
 4 that?
 5 A. A room full of people. I don't know how many.
 6 Probably 50 to a hundred people.
 7 Q. Who in CDE asked you to do that?
 8 MR. SEFERIAN: Objection. Assumes facts not in
 9 evidence.
 10 THE WITNESS: It was the language policy office
 11 that Dave and Jose work with. So they asked me about
 12 doing that together with them.
 13 Q. BY MR. ROSENBAUM: Okay. Was there a particular
 14 person there?
 15 A. Well --
 16 Q. Oh, that's okay.
 17 And have you ever received any awards or
 18 commendations for your work? Don't be modest.
 19 A. No, I don't think so.
 20 Q. When you talked to me about -- tell me,
 21 Ms. Burnham, what's your understanding about changes to
 22 CCR?
 23 MR. SEFERIAN: Objection. That calls for
 24 privileged communications.
 25 MR. ROSENBAUM: I'm going to ask you, Vanessa,

1 you were at Dibble's deposition, that's the subject
 2 matter I'm interested in.
 3 MS. KOURY: I have to stay, first of all,
 4 whatever his testimony was is what it is. My
 5 recollection is that we did not get into substance in
 6 this area. If you have the deposition transcript, that's
 7 fine, if you want to go to the record and discuss it,
 8 even assuming it was discussed. I don't necessarily
 9 think that has any bearing on the testimony here today.
 10 So I'm not quite clear why you're asking that.
 11 MR. ROSENBAUM: Well, I don't have to
 12 demonstrate relevance to you.
 13 MS. KOURY: I don't have to answer your
 14 question. I was just being polite. So if you want to
 15 ask her another question --
 16 MR. ROSENBAUM: No, I don't want to ask her
 17 another question. I want to ask her that question. I
 18 have not seen the Dibble transcript, but I've seen
 19 summaries of that deposition, and he talked at
 20 considerable length; isn't that right?
 21 MS. PEARLMAN: There was some discussion about
 22 cases in his own unit and changes to the CCR and how it
 23 relates to the ELs.
 24 MS. KOURY: I specifically objected in that
 25 deposition based on the same privilege.

1 MS. PEARLMAN: No, you didn't. You made an
 2 attorney-client privilege objection.
 3 MS. KOURY: I'm not going to sit here and
 4 discuss what was or was not objected in that record. The
 5 record is what it is. My recollection is that that
 6 objection was made not once or twice but several times.
 7 So whatever it is, it is, and we're making it here now.
 8 MR. ROSENBAUM: So first of all --
 9 MS. KOURY: You're wasting time.
 10 MR. ROSENBAUM: No, I'm not wasting time. I'm
 11 here to get information that you shouldn't be withholding
 12 from this case and from us.
 13 MS. KOURY: I'm not withholding anything.
 14 MR. ROSENBAUM: Of course you are.
 15 MS. KOURY: It's an objection that's being made.
 16 So continue.
 17 MR. ROSENBAUM: No. Don't tell me what to do,
 18 ma'am. First of all my understanding was the objection
 19 wasn't made. But I don't have personal knowledge of
 20 that. Secondly, if the answer was given, that privilege
 21 has been waived.
 22 Q. So I'm going to ask you what changes are you
 23 aware of with respect to CCR as it affects ELs?
 24 MR. SEFERIAN: Objection. That calls for
 25 privileged communications.

1 MR. ROSENBAUM: Okay. I take it you would
2 object to any line of questions that relate to those
3 changes, is that right, so I don't take this witness's
4 time?

5 MR. SEFERIAN: I'm just objecting to the
6 specific questions you've asked that call for privileged
7 communications. And I believe that question you just
8 asked calls for information protected by the deliberative
9 process, official information privilege and possibly
10 attorney-client privilege.

11 MR. ROSENBAUM: I'm not asking about any
12 attorney-client stuff. Where is that memo on Dibble?

13 Q. Ms. Burnham, you talked to me this afternoon and
14 earlier this morning about Open Court, the Open Court.
15 Do you remember that?

16 A. Yes.

17 Q. Now, there are certain Open Court texts that
18 have been approved?

19 A. Yes.

20 Q. If I say this wrong, correct me, please. That
21 have ELD materials with respect to teaching reading; am I
22 right about that?

23 A. Yes.

24 Q. Open Court is one of them?

25 A. Yes.

1 Q. Houghton Mifflin is another one?

2 A. Yes.

3 Q. Are there others that you're aware of?

4 A. Those are the only two K-6 English language arts
5 programs.

6 Q. Thanks. Have you personally looked at the Open
7 Court materials?

8 A. Yes.

9 Q. Do you have criticisms of those materials?

10 MR. SEFERIAN: Objection. Overly broad, vague
11 and ambiguous, calls for an inadmissible opinion.

12 THE WITNESS: Some concerns in terms of English
13 learners and the ELD component.

14 Q. BY MR. ROSENBAUM: Could you please tell me
15 what those concerns are?

16 A. That that material in my opinion is good for
17 helping shelter or SDAIE the language arts instruction
18 but isn't really designed to provide students with the
19 developmental English language development program that
20 will allow them to gain full proficiency in English.

21 Q. Okay. And what's the basis for your answer,
22 please?

23 A. My review of the materials and discussion with
24 staff, school district staff.

25 Q. And when you reviewed these materials, how did

1 you go about undertaking that review that led to the
2 formation of your opinion?

3 A. I went with the consultants in my unit and some
4 of the consultants from the language policy unit to the
5 Sacramento County Office of Education where they had a
6 display of all the materials. And different ones of us
7 took different materials to review. And I took Open
8 Court. And then we sort of collected our analysis and
9 put it all together so that we would have some
10 understanding of terms that we were going to see in the
11 schools.

12 Q. Was your analysis reduced to writing?

13 A. Not my personal one, but the manager of the
14 language policy unit wrote up -- put all the comments
15 sort of together.

16 Q. And who is that?

17 A. Jan Mayer, Dr. Jan Mayer [phonetic].

18 Q. And is it Mr. or Ms. Mayer?

19 A. Dr., Ms., but . . .

20 Q. I'm sorry.

21 A. Dr.

22 Q. Do you know who received her writing?

23 A. I do not.

24 Q. Okay. Do you know anyone to whom it was
25 distributed?

1 A. I got a copy, so I -- but I'm not sure who else
2 other than the participants.

3 Q. And in whose files do you have a copy of
4 Dr. Mayer's memo?

5 A. I should have, but I'm not sure that I do.

6 Q. But if you did have it where would you based on
7 your practice keep it?

8 A. It would be in my ELD file.

9 Q. Okay. And did other persons besides you analyze
10 the Open Court materials?

11 A. One other person. I think there were two of us
12 looking at each set.

13 Q. Do you recall who the other person was?

14 A. I think it was one of the of the OCR attorneys.
15 I'm not sure.

16 Q. And did you have any discussion with this OCR
17 attorney about your conclusions?

18 A. Yes.

19 Q. And this person, is it a man or a woman?

20 A. A woman.

21 Q. And what did she say?

22 A. She agreed with me.

23 Q. Okay. And did you in any form whatsoever pass
24 on your views to Dr. Barankin or Dr. Flores?

25 A. No. They weren't there at the time. This is --

1 Q. Sorry.

2 A. This is a year ago we're talking about.

3 Q. I see. Do you have any plans to discuss it with

4 Dr. Barankin or Dr. Flores?

5 A. Not any specific plans.

6 Q. Okay. Now, as part of this are exercise did

7 anyone in your unit -- let me strike that.

8 The persons who carried out this exercise there

9 are persons from your unit?

10 A. Yes.

11 Q. You and all the other consultants?

12 A. Most of them were there.

13 Q. Okay. And there were persons from OCR?

14 A. There was -- were two of the OCR folks that

15 joined us.

16 Q. Were they both attorneys?

17 A. No. This other one was an investigator.

18 Q. Do you know who that person is?

19 A. I'm pretty sure it was Ava Law.

20 Q. And the OCR attorney, is she an experienced

21 attorney -- strike that.

22 Do you know if she's an experienced attorney?

23 MR. SEFERIAN: Objection. Vague and ambiguous.

24 THE WITNESS: I'm not an attorney. I think by

25 my standards, yes.

1 Q. BY MR. ROSENBAUM: Tell me why you say that.

2 A. I've worked with her for six years now in

3 different cases. She's very sharp.

4 Q. Why do you say that?

5 A. Just from my experience working with her.

6 Q. Okay. And were there other persons there

7 besides people from your unit and people from OCR?

8 A. And people from the language policy unit,

9 Dr. Mayer's unit.

10 Q. Was Dr. Mayer there?

11 A. Yes.

12 Q. Anyone else?

13 A. I think, yes, there were a couple of people from

14 Peter Dibble's unit.

15 Q. Okay. From CCR?

16 A. Yes.

17 Q. And was Peter Dibble there?

18 A. No.

19 Q. Do you know who else was there?

20 A. Yes.

21 Q. Who was that?

22 A. One of his consultants named Lynn Bartlett.

23 Q. Do you know her to be experienced in the area of

24 of ELs?

25 A. Not real experienced.

1 Q. Okay. Who else was there?

2 A. There may have been one more from his unit but I

3 don't recall specifically.

4 Q. Okay. Anyone else there besides the four

5 entities you've talked?

6 A. That's all I recall.

7 Q. Okay. And I think you told me this a minute

8 ago. This looked at Houghton Mifflin?

9 A. I don't recall that.

10 Q. Do you remember was the Houghton Mifflin

11 analysis discussed in the Mayer report?

12 A. Yes. It wasn't a big report, but she wrote --

13 we all at the end went around and said what we thought

14 were strength and concerns.

15 Q. And did you see any -- strike that.

16 Were there concerns expressed about the Houghton

17 Mifflin materials?

18 A. I think there were some strength and maybe

19 weaknesses or concerns about most all of them, most all

20 the different materials.

21 Q. Do you remember what any of the weaknesses were

22 of the Houghton Mifflin?

23 A. I think they were similar to the concerns we had

24 about the Open Court in terms of the ELD part.

25 Q. The ELD part?

1 A. Yes.

2 Q. Okay. And do you remember any of the other

3 materials that were looked at besides Open Court and

4 Houghton Mifflin?

5 A. What's that one called? There were other

6 materials on the state adopted list. High Point was one.

7 Q. And do you happen to remember who looked at the

8 High Point materials?

9 A. I think that one was Beth Anselmi Simpson. It's

10 already in there some place.

11 Q. She's in your unit?

12 A. Yes, she is.

13 Q. Do you remember what concerns if any she

14 expressed?

15 A. No. If I recall, I think that she liked High

16 Point pretty much.

17 Q. Have you looked at Open Court materials since

18 you undertook that review? Have you been in schools that

19 are using Open Court?

20 MS. KOURY: Objection. Compound.

21 THE WITNESS: I've been in schools using them,

22 yes.

23 Q. BY MR. ROSENBAUM: Have you looked at them

24 while you were in those schools?

25 A. Yes.

1 Q. Have you talked to teachers about the Open Court
2 materials?
3 MS. KOURY: Overbroad.
4 THE WITNESS: Yes.
5 Q. BY MR. ROSENBAUM: Have you talked to
6 administrators about the Open Court materials?
7 A. Yes.
8 Q. Have you talked to district personnel about the
9 Open Court materials?
10 A. Yes.
11 Q. Have there been conferences or meetings at which
12 you've been present where the Open Court materials have
13 been discussed?
14 MS. KOURY: Objection. Overbroad.
15 THE WITNESS: Yes.
16 MR. SEFERIAN: In school districts?
17 THE WITNESS: Yes, yes, one school district.
18 Q. BY MR. ROSENBAUM: Which one?
19 A. Oakland.
20 Q. With whom did you speak in Oakland about the
21 Open Court materials.
22 MS. KOURY: Assumes facts.
23 THE WITNESS: A number of people.
24 Q. BY MR. ROSENBAUM: Can you tell me?
25 A. Superintendent.

1 Q. Superintendent Chiccones [phonetic]?
2 A. Yes.
3 Q. Anyone else?
4 A. The assistant superintendent.
5 Q. Who is that?
6 A. Louise Waters.
7 Q. Anyone else?
8 A. Teachers and principals at school sites.
9 Q. Approximately how many?
10 A. Probably -- I don't exactly know. A few.
11 Q. Okay. We're talking about Oakland, right?
12 A. Yes.
13 Q. Can you tell me -- can you give me a ballpark
14 number over all as to the number of teachers with whom
15 you've had discussions about Open Court?
16 A. Couldn't say a number. Many.
17 Q. And administrators?
18 A. Also a number of them, quite a number.
19 Q. Okay. And have you had heard any concerns
20 expressed about the Open Court materials similar to the
21 concerns you have?
22 MR. SEFERIAN: Objection. Vague and ambiguous.
23 MS. KOURY: Overbroad.
24 THE WITNESS: Yes.
25 Q. BY MR. ROSENBAUM: Okay. What have been --

1 what's been expressed to you?
2 A. Well, they have discussed with us ways that they
3 supplement those materials so that they can be used
4 effectively with English learners.
5 Q. What ways have been discussed?
6 A. Specifically focusing on the ELD standards and
7 then bringing in materials that will help the students
8 meet the standards. In some cases district-developed
9 materials, in some cases another publisher.
10 Q. Do you know particular publishers?
11 MS. KOURY: Talking about in Oakland still?
12 MR. ROSENBAUM: I thought we were talking about
13 anybody.
14 THE WITNESS: Anybody, yeah.
15 MS. KOURY: Oh.
16 THE WITNESS: Hampton Brown for one.
17 Q. BY MR. ROSENBAUM: Okay. And do you know where
18 the districts or the schools get their money to bring in
19 the supplemental materials?
20 MS. KOURY: Objection.
21 MS. KOURY: Calls for speculation, overbroad,
22 vague and ambiguous?
23 THE WITNESS: EIA let funds would be some of it,
24 but I don't know in every district what it is. I look at
25 it when I'm there, but . . .

1 Q. BY MR. ROSENBAUM: And based on your discussions
2 and your experience with Comite since you initially made
3 this analysis about Open Court, have you had any change
4 of viewpoint?
5 MR. SEFERIAN: Objection. Overbroad.
6 THE WITNESS: No.
7 Q. BY MR. ROSENBAUM: Has it reinforced your
8 initial point of view?
9 MR. SEFERIAN: Same objection.
10 MS. KOURY: Vague and ambiguous.
11 THE WITNESS: It pretty much has, because I hear
12 from school personnel and practitioners who are in
13 agreement.
14 Q. BY MR. ROSENBAUM: Have you heard any contrary
15 views expressed by any administrator or teachers?
16 MS. KOURY: Objection. Vague and ambiguous.
17 THE WITNESS: Not really contrary views.
18 Q. BY MR. ROSENBAUM: Okay. How about Houghton
19 Mifflin, have you heard view points expressed since that
20 initial analysis was made that was consistent with the
21 analysis that was initially undertaken that was mentioned
22 in Mayer's report?
23 A. I would say the same as Open Court. I was
24 actually thinking of both of them when I was answering.
25 I was thinking Houghton Mifflin and Open Court.

1 Q. So far as you know, have you been in any
2 districts or seen reports of any districts, Ms. Burnham,
3 saying that K through 6 EL students don't have access to
4 either Houghton Mifflin or Open Court or any of the
5 materials of that category? Do you know what I mean by
6 that?

7 MR. SEFERIAN: Objection. Compound.

8 Q. BY MR. ROSENBAUM: I'm trying to find out if
9 there are -- in your experience if you've been able to
10 find out whether or not there are K through 6 ELs who
11 don't have access to one of those texts, either Houghton
12 Mifflin, Open Court, or one of the other materials that
13 have ELD reading materials.

14 MR. SEFERIAN: Objection. Asked and answered,
15 vague and ambiguous.

16 THE WITNESS: Some districts are using other
17 materials, but most districts are now using one of those.

18 Q. BY MR. ROSENBAUM: But have you found any
19 districts where none of them exist? I'm not interested
20 in the quality now. Where students don't have access to
21 any of them.

22 MR. SEFERIAN: Objection. Asked and answered,
23 vague and ambiguous.

24 MS. KOURY: Overbroad.

25 THE WITNESS: Yeah, I don't think of any.

1 Q. BY MR. ROSENBAUM: Okay. Are you aware of the
2 decision by the state board to postpone the
3 implementation of the high school exit exam?

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

6 MR. ROSENBAUM: You know what I mean by that?

7 MR. SEFERIAN: Calls for privileged

8 communications.

9 Q. BY MR. ROSENBAUM: The question is, are you
10 aware of the decision that's been publicly reported in
11 newspapers and the subject of numerous editorials and
12 materials? Go ahead.

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

15 THE WITNESS: Yes, I'm tangentially aware of it.

16 Q. BY MR. ROSENBAUM: And what's the nature of your
17 awareness?

18 A. My understanding is that the state board decided
19 to postpone for at least a year, but there's still an
20 intention to implement it.

21 Q. Okay. And I'm just interested in terms of your
22 experience with ELs. Based on your experience and
23 background and training, do you agree with that decision?

24 MS. KOURY: Objection. Vague and ambiguous.

25 MR. SEFERIAN: Overly broad.

1 Q. BY MR. ROSENBAUM: Okay. It's possible, you
2 just don't know?

3 MR. SEFERIAN: Objection. Calls for
4 speculation, argumentative, asked and answered.

5 MS. KOURY: Mischaracterizing her testimony.
6 She answered the question.

7 THE WITNESS: Yeah, I'm not aware of anywhere
8 students don't have something.

9 Q. BY MR. ROSENBAUM: Okay. When you told me a few
10 moments ago that you deal with -- you talked about
11 application of research into practice?

12 A. Yes.

13 Q. What did you mean by that?

14 A. There's a lot of research that's been done in
15 the field for 25 years or maybe more in the field of
16 education for English learners. And very oftentimes in
17 the schools we find conventional wisdom driving
18 instruction more than actual research. So the idea is to
19 look at research and say when it does have instructional
20 implications for schools.

21 Q. Can you give me an example of that?

22 MS. KOURY: Objection. Overbroad.

23 MR. ROSENBAUM: It is pretty broad. But if you
24 can answer it, great. If you can't, that's okay.

25 THE WITNESS: Yeah, not real specifically.

1 MR. SEFERIAN: Incomplete hypothetical.

2 THE WITNESS: I don't have a real profound
3 opinion. I mean, I have some concerns about the high
4 school exit exam. What they do about delaying it I think
5 is a state board decision.

6 Q. BY MR. ROSENBAUM: Those concerns are what?
7 Have we already gone over them? I don't want to waste
8 your time.

9 A. Yeah.

10 Q. Have you ever heard of anyone named Norton
11 Grubb?

12 A. Not that I remember.

13 Q. How about Christine Rozel [phonetic]?

14 A. Yes.

15 Q. What do you know about Christine Rozel?

16 A. I've read some of her work.

17 Q. Okay. What work have you read by her?

18 A. I'm not keeping the titles of these in my head,
19 but the word Christine Rozel and Baker did -- it's two
20 authors wrote that I actually analyzed in the research
21 workshop. So they did an analysis -- I think it was
22 something about an analysis of effect of bilingual
23 programs or comparing bilingual programs to structured
24 English emergent programs.

25 Q. And where did you -- you undertook an analysis?

1 A. Well, I read it, yes, and I made highlights of
 2 what I thought were important points.
 3 Q. Okay. Did you agree with their conclusions?
 4 MR. SEFERIAN: Objection. Overly broad, vague
 5 and ambiguous.
 6 THE WITNESS: I think with some and not all.
 7 Q. BY MR. ROSENBAUM: Which ones did you agree
 8 with?
 9 MR. SEFERIAN: Same objections.
 10 MS. KOURY: She doesn't have the document in
 11 front of her. There's no way for her to remember them.
 12 MR. ROSENBAUM: That's an inappropriate
 13 statement.
 14 MS. KOURY: Sorry. I meant to say calls for
 15 speculation.
 16 THE WITNESS: There was one conclusion that said
 17 something about academic outcomes for English learners
 18 being very complex, and that there were a lot of other
 19 factors besides just language of instruction that
 20 affected them. I forget how it was exactly put, but I
 21 sort of read that one and said I agree with that.
 22 Q. BY MR. ROSENBAUM: Were there also conclusions
 23 that you disagreed with?
 24 A. Yes.
 25 Q. Okay. To the best of your recollection could

1 you tell me what they are, please?
 2 A. Well, she made some conclusions based on a
 3 study -- she looked at a bunch of studies and set up
 4 criteria for which study she would look at. And some of
 5 her conclusions in my view didn't match what the studies
 6 actually said.
 7 Q. Which studies were those?
 8 A. The ones specifically dealing with two-way
 9 immersion programs, she had included some of those
 10 studies as showing that English-only instruction was
 11 superior to bilingual instruction, even though those
 12 particular programs were full bilingual programs that had
 13 the goal of developing full bilingualism, and by literacy
 14 weren't English-only programs. They did have immersion
 15 in their title. So my concerns perhaps were to a lot of
 16 reliance was on what the programs were labeled than what
 17 happened.
 18 Q. Were there other conclusions they reached that
 19 you disagreed with?
 20 A. I think there were. Don't recall them all
 21 specifically right now.
 22 Q. Do you still have a copy of that? You have a
 23 copy of her paper and you've marked it up; is that right?
 24 A. Yes.
 25 Q. Do you still have that?

1 A. Yes.
 2 Q. Where do you keep that?
 3 A. In my research file.
 4 Q. Does that have a name besides a research file?
 5 A. No, it doesn't.
 6 Q. Okay. And does it have handwritten notes on
 7 that document?
 8 A. It may have. I'm not sure if it does, because I
 9 wrote the notes on the workshop thing that we gave.
 10 Q. Did you keep that?
 11 A. Oh, yeah.
 12 Q. And where is that?
 13 A. That's in my workshop file.
 14 Q. Okay. And does it have a particular date -- or
 15 let me strike that.
 16 Do you know when you made this presentation?
 17 A. The first time?
 18 Q. Yeah.
 19 A. Was in 1999.
 20 Q. Okay. And have you made the same presentation
 21 again?
 22 A. Yes. Four times.
 23 Q. And you've talked about the Rozel and Baker
 24 piece each time?
 25 A. Yes.

1 Q. And what do you say about the Rozel and Baker
 2 paper?
 3 MR. SEFERIAN: Objection. Overly broad.
 4 THE WITNESS: Actually I wanted to correct that
 5 it's not the same presentation, it's evolved.
 6 MR. ROSENBAUM: I understand that.
 7 Q. What do you say about it as far as you can
 8 recall?
 9 MR. SEFERIAN: Same objection.
 10 THE WITNESS: I point out that it's important to
 11 look at all points of view. And that these are people
 12 that have been particularly critical historically of
 13 bilingual education. And very often the audiences that
 14 I'm talking with are bilingual educators, not always.
 15 And I admonish them that they need to look and understand
 16 all points of view. So I include that one.
 17 Q. BY MR. ROSENBAUM: Do you raise your concerns
 18 about some of their conclusions?
 19 MS. KOURY: Objection. Vague and ambiguous,
 20 overbroad.
 21 THE WITNESS: Actually not when I'm reporting on
 22 what they have done. I give my view of what they've
 23 said. And then further along in the workshop there are
 24 other studies that kind of do that.
 25 MR. ROSENBAUM: I see. Okay. Let me have

1 marked, please, as Exhibit 274. It's a multi-page
 2 document. It says Courageous Leadership. And at the
 3 bottom it says: Success for English Learners, Special
 4 Presentation to Mendocino County Administrators.
 5 I'm going to have it marked and put in front of
 6 you, Ms. Burnham.
 7 [Exhibit SAD-274 was marked
 8 for identification.]
 9 MR. SEFERIAN: Do you have another copy?
 10 MR. ROSENBAUM: I'm sorry.
 11 MR. SEFERIAN: Thank you.
 12 MR. ROSENBAUM: Ms. Burnham, you take as much
 13 time as you want to look at it. I'm going to ask you
 14 specific questions. You're always free to say I need
 15 more time to check this out.
 16 Q. Okay. Have you had a chance to examine the
 17 document?
 18 A. Okay. Just now. I have just now.
 19 Q. Have you ever seen this document before?
 20 A. No.
 21 Q. Okay. Let me ask you, Ms. Burnham, if you would
 22 please to turn to page eight. It's not marked as page
 23 eight, but it's the eighth page in. And it says
 24 instruction on that page. Do you have that page in front
 25 of you of Exhibit 274?

1 A. Yes.
 2 Q. And take a look, please, at the pie chart in the
 3 right side. It's labeled California 2002. Do you see
 4 that?
 5 A. Yes.
 6 Q. Okay. Now, I don't want you to guess or
 7 speculate, but we looked at a similar pie chart in
 8 Exhibit 273. Do you remember that?
 9 A. Yes, I do. This one is marked better.
 10 Q. Is this -- does this accurately to your
 11 recollection reflect the categories of students for the
 12 designated percentages?
 13 MR. SEFERIAN: Objection. Vague and ambiguous,
 14 lacks foundation.
 15 MS. KOURY: Also been asked and answered. It
 16 was her testimony she can't remember specifically.
 17 MR. ROSENBAUM: You're right.
 18 Q. And I'm asking you if this refreshes your
 19 recollection as to what the categories are.
 20 A. Yes. And you can see that we were right about
 21 five percent.
 22 Q. And it says: No services, five percent; ELD, 11
 23 percent; ELD plus SDAIE, 38 percent; ELD plus SDAIE plus
 24 L1 support, 25 percent; ELD plus L1 instruction, 10
 25 percent; and other, 11 percent.

1 Do those numbers attached to these titles
 2 refresh your recollection as to what's accurate?
 3 A. Yes.
 4 Q. Okay. And this is an accurate representation
 5 for each of these categories on what is page eight of
 6 Exhibit 274?
 7 MR. SEFERIAN: Objection. Lacks foundation.
 8 Q. BY MR. ROSENBAUM: Is that right?
 9 A. I think it's the same.
 10 Q. Okay. And of the five percent no services, five
 11 percent of those students, do you have any idea what
 12 percent of those kids are in Comite districts?
 13 MS. KOURY: Objection. Asked and answered.
 14 Also vague and ambiguous.
 15 THE WITNESS: I don't know.
 16 Q. BY MR. ROSENBAUM: Or the districts examined by
 17 CCR?
 18 MS. KOURY: Same objections.
 19 THE WITNESS: I don't know.
 20 Q. BY MR. ROSENBAUM: In the past two years since
 21 we've talked, have you looked at any FCMAT reports that
 22 talk about ELs?
 23 A. No.
 24 Q. Or any lost reports?
 25 A. No.

1 Q. Let me ask you, please, to look at pages three,
 2 four -- three and four of what's been marked as Exhibit
 3 274. And each page you'll notice says, A compelling
 4 vision. And then in white typewritten font it says
 5 student voices. Do you have those pages in front of you?
 6 A. Yes.
 7 Q. Take whatever time you need to take a look at
 8 the six bulleted statements.
 9 A. I've read some of these before.
 10 Q. Where have you read them before?
 11 A. Lauri Olson's books. I forget which exact
 12 books.
 13 Q. Who is that?
 14 A. She's executive director I think for Californian
 15 Tomorrow.
 16 Q. And are these six bullet statements, are they in
 17 sum or substance similar to statements you understand
 18 your unit has heard from students when you've interviewed
 19 them?
 20 MS. KOURY: Objection --
 21 MR. ROSENBAUM: Any of them.
 22 MS. KOURY: Vague and ambiguous, overbroad,
 23 calls for speculation.
 24 MR. SEFERIAN: Compound.
 25 THE WITNESS: Not these exact statements, but

1 some similar statements.

2 Q. BY MR. ROSENBAUM: When you say some similar
3 statements, what do you mean by that?

4 MS. KOURY: Objection. Overbroad, compound.

5 THE WITNESS: Concerns with their education as
6 they perceive it.

7 Q. BY MR. ROSENBAUM: What sort of statements have
8 you heard that you would characterize as similar? You
9 don't have to give me the exact quote. I'm just trying
10 to get your best sense.

11 MS. KOURY: Objection. Overbroad, compound.
12 Also an incomplete hypothetical.

13 THE WITNESS: Students in remedial math class
14 who shared with me that they had had higher level math in
15 their countries, nine students in one district, and they
16 were concerned about that. And some other similar ones.
17 We hear some statements like this sometimes.

18 Q. BY MR. ROSENBAUM: When you say like this, you
19 mean the statements that are on the two pages of Exhibit
20 274?

21 A. Yes.

22 Q. Okay.

23 MR. ROSENBAUM: Can I just have a minute,
24 please, off the record.

25 [Discussion off the record.]

1 A. Yes.

2 Q. Do you know if CCR does it?

3 A. I think they do some of them probably, but I
4 don't know specifically.

5 Q. Okay. And can you tell me, do you personally
6 ask these questions when you go out on a review?

7 MR. SEFERIAN: Objection. Vague and overbroad.
8 She goes on numerous reviews.

9 THE WITNESS: Not every one every time, but
10 these kinds of things we look at.

11 Q. BY MR. ROSENBAUM: Why is that? And we're
12 talking about graduation rates, A-G and AP enrollment,
13 special education placement, retention rates, drop out
14 rates, college-going rates, grades, gate placement and
15 test scores. Is that right?

16 A. Yes.

17 Q. Okay. Have you personally asked about some or
18 all of these different criteria?

19 A. About some.

20 Q. Which ones?

21 A. Ask about test scores, ask about gate placement,
22 ask about grades. In some cases about college-going
23 rates. Some districts have that and some don't. Haven't
24 asked a lot about drop out rates, A whole lot about
25 retention rates, special education placement. We ask

1 MR. ROSENBAUM: Let's go back on the record.

2 Q. Let me ask you, if you would, please,
3 Ms. Burnham to take a look at the page -- I think it's
4 page nine, but I don't -- it's the page that follows the
5 instruction page that you and I talked about a few
6 minutes ago. It says achievement.

7 Do you have that page in front of you?

8 A. Yes.

9 Q. Just for reference point, there's a question
10 mark in the middle of it. It says achievement, and there
11 are one, two, three, four, nine categories around that
12 question mark. Criteria around it.

13 A. Yes.

14 Q. Okay. Do you have an understanding of what this
15 page is trying to communicate?

16 MS. KOURY: Objection. Vague and ambiguous.

17 MS. KOURY: If anything.

18 MR. SEFERIAN: Objection. Lacks foundation.

19 MR. ROSENBAUM: I'll rephrase the question.

20 Q. What if anything do you understand that page to
21 mean?

22 A. It communicates to me questions that we want to
23 ask, that we do ask about English learners in school
24 districts.

25 Q. When you say we, you mean your unit?

1 about participation in A to G requirement, and AP classes
2 we ask about. And then graduation rates probably to a
3 lesser extent.

4 Q. Okay. Sometimes you do?

5 A. Sometimes, yes.

6 Q. And just for the sake of time, I'm going to lump
7 it together, but you feel free to break it down any way
8 you want. The criteria that you told me just now that
9 you ask about, why do you do that? And if it's a
10 different answer for test scores as opposed to grades or
11 special education placement, you answer as fully and as
12 is comfortable to you.

13 MR. SEFERIAN: Objection. Overly broad,
14 compound.

15 MS. KOURY: Also somewhat asked and answered.

16 THE WITNESS: We ask about it as an indication
17 of how effective the district's program for English
18 learners is, and to help make recommendations for changes
19 when changes are warranted.

20 Q. BY MR. ROSENBAUM: And why does it help you
21 understand how the districts are doing with respect to
22 English learners to ask about the items you've
23 identified?

24 MS. KOURY: Vague and ambiguous.

25 THE WITNESS: Because if English learners are

1 getting an effective program, their rate of participation
 2 or involvement in all of these should be at least similar
 3 to that of native English speakers.
 4 Q. BY MR. ROSENBAUM: Why is that?
 5 MS. KOURY: Objection. Vague and ambiguous.
 6 THE WITNESS: Because they're as intelligent on
 7 average as any other student. They just don't always
 8 have full proficiency in the language of instruction.
 9 So . . .
 10 Q. BY MR. ROSENBAUM: And is it your experience,
 11 Ms. Burnham, that many EL students and native speakers
 12 learn English in the same way?
 13 MS. KOURY: Objection. Vague and ambiguous.
 14 MR. SEFERIAN: Overly broad.
 15 MS. KOURY: Incomplete hypothetical.
 16 THE WITNESS: I'm not sure I know if I
 17 understand it.
 18 Q. BY MR. ROSENBAUM: Let me restate it. In your
 19 experience, and I understand that there are, you know,
 20 extremes both ways, but I want your best knowledge based
 21 on your experience. Do native people who are in families
 22 where there are native English speakers and ELs do they
 23 learn English at the same speed?
 24 MR. SEFERIAN: Objection. Overly broad.
 25 MS. KOURY: Incomplete hypothetical, vague and

1 ambiguous.
 2 THE WITNESS: I think I'm not exactly
 3 understanding the question.
 4 Q. BY MR. ROSENBAUM: Well, do they learn in the
 5 same sequence?
 6 MS. KOURY: Objection. Still an incomplete
 7 hypothetical. Who is they?
 8 MR. ROSENBAUM: I'm just -- there's no one here
 9 that's more experienced than you. I'm trying to find out
 10 based on your experience, does someone who is raised in a
 11 family where everyone speaks English, is the process by
 12 which she learns English in your experience the same by
 13 which an EL learns English?
 14 MS. KOURY: Objection. Incomplete hypothetical,
 15 overbroad and vague and ambiguous.
 16 THE WITNESS: Sequentially I think they go
 17 through a lot of the same -- I mean, developmentally
 18 linguistics sort of lays out how you acquire language.
 19 Obviously when you start school, the student who has
 20 spoken English all their lives has far more vocabulary in
 21 English, knows how to argue in English, knows how to
 22 whine in English, knows how get what they want, knows the
 23 nuances of language that the non-native speaker doesn't
 24 yet have. So sequentially I think it's very similar.
 25 But if you look at a kindergarten class, the needs of the

1 two groups are very different.
 2 Q. BY MR. ROSENBAUM: Do you think the two groups
 3 will learn reading at the same rate?
 4 MR. SEFERIAN: Incomplete hypothetical, overly
 5 broad.
 6 THE WITNESS: Any reading or English reading?
 7 MR. ROSENBAUM: English reading. Thank you.
 8 MR. SEFERIAN: Same objections.
 9 THE WITNESS: English reading, no.
 10 Q. BY MR. ROSENBAUM: Why is that?
 11 MS. KOURY: Objection. Vague and ambiguous,
 12 overbroad, incomplete hypothetical.
 13 THE WITNESS: Because it's much easier to learn
 14 to read in a language you already control orally. If the
 15 language -- if you don't speak the language of the
 16 reading, it's going to be -- you know, you're not going
 17 to learn English reading as fast.
 18 Q. BY MR. ROSENBAUM: Do you as part of your job
 19 and part of your passion in life make an effort to try to
 20 read the literature, be familiar with the literature with
 21 respect to English learners?
 22 A. I do.
 23 MS. KOURY: Objection. Vague and ambiguous.
 24 THE WITNESS: Not as much as I wish that I did,
 25 but I do, yes.

1 Q. BY MR. ROSENBAUM: Okay. And how do you do
 2 that? Do you subscribe to journals? Do you read books?
 3 A. All of the above. I have a couple of journals.
 4 I go to the library as I can. And then the internet has
 5 become a wealth of articles. And I'm on a couple of
 6 lists with people that send articles out. So a variety
 7 of ways.
 8 Q. You try to keep abreast of the current
 9 literature?
 10 A. I try to, yes.
 11 Q. You think in your lifetime you've read thousands
 12 of articles?
 13 A. I don't know about thousands. I've read a lot.
 14 MR. ROSENBAUM: If I can just have a minute to
 15 consult, please, let me go out of the room so you don't
 16 have to move. This isn't going to be much longer.
 17 [Recess.]
 18 MR. ROSENBAUM: Okay. Ms. Burnham, I have a
 19 brief area I want to go through with you.
 20 Q. To your knowledge, are there -- is there a
 21 professional development with respect specifically to the
 22 Open Court materials?
 23 MS. KOURY: Objection. Asked and answered.
 24 MR. ROSENBAUM: If you know. If it has, just
 25 tell me.

1 THE WITNESS: There is professional development.
 2 Q. BY MR. ROSENBAUM: Does every district -- to
 3 your knowledge, does every district -- strike that.
 4 Do you know who conducts that professional
 5 development?
 6 A. Not everybody that conducts it.
 7 Q. Okay. Who are you aware of that conducts it?
 8 A. Sacramento County Office of Education. There
 9 are some approved by the state board providers and also
 10 the publishers.
 11 Q. Do some districts rely only on the publishers as
 12 far as you know?
 13 A. I don't know.
 14 Q. Have you ever attended any of the professional
 15 development with respect to Open Court?
 16 A. Yes.
 17 Q. And where?
 18 MS. KOURY: Sorry. I thought we went through
 19 this just a few minutes ago. Go ahead.
 20 THE WITNESS: In Oakland I went to at least part
 21 of one session.
 22 Q. BY MR. ROSENBAUM: Okay. Did you have an
 23 opinion about quality of the staff development, the
 24 professional development regarding Open Court?
 25 A. No. I thought it was fine for what it was

1 doing.
 2 Q. Okay. But that's the only one that you've
 3 actually attended?
 4 A. Of the -- of those by the publishers, yes.
 5 We had somebody from CDE come to speak to our
 6 unit about the materials as well.
 7 Q. Who was that?
 8 A. Sue Vinos [phonetic] from the Department of
 9 Education. So that we would have a good understanding.
 10 MR. ROSENBAUM: Okay. I don't have anything
 11 else, Ms. Burnham.
 12 I object to the invocation of privilege, but
 13 that's really generous of you to share your time and
 14 expertise with us. Thank you very much.
 15 MS. KOURY: A standard stipulation that we've
 16 had in this matter regarding the process in which we deal
 17 with the transcript, specifically relieving the court
 18 reporter of his or her obligations under the Code.
 19 MR. ROSENBAUM: Yeah.
 20 [The deposition concluded
 21 at 4:34 p.m.]
 22 //
 23 //
 24
 25

1 CASE TITLE: Williams vs. State of California
 2 DATE OF DEPOSITION: July 2, 2003
 3 REFERENCE NO.: 43747
 4
 5
 6 Please be advised I have read the foregoing deposition,
 7 and I hereby state there are:
 8 (Check one)
 9 NO CORRECTIONS
 10 CORRECTIONS ATTACHED
 11
 12
 13
 14 _____
 15 Lauri Burnham-Massey
 16 _____
 17 Date Signed
 18
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1 DEPONENT'S CHANGES OR CORRECTIONS
 2
 3 Note: If you are adding to your testimony, print the
 4 exact words you want to add. If you are deleting from
 5 your testimony, print the exact words you want to delete.
 6 Specify with "add" or "delete" and sign this form.
 7 DEPOSITION OF: Lauri Burnham-Massey
 8 CASE: Williams vs. State of California
 9 DATE OF DEPO: July 2, 2003
 10 Page Line CHANGE/ADD/DELETE
 11 _____
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REPORTER'S CERTIFICATE

I certify that the witness in the foregoing deposition,

LAURI BURNHAM-MASSEY,
was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place herein named; that the testimony of said witness was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed under my direction into typewriting.

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

Dated July 25, 2003.

DANIEL E. BLAIR
Certified Shorthand Reporter
State of California
Certificate No. 4388