

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 CITY AND COUNTY OF SAN FRANCISCO

3
4 ELIEZER WILLIAMS, et al.,)

5)
6 Plaintiffs,)

7 vs.) No. 312 236

8)
9 STATE OF CALIFORNIA; DELAINE)
10 EASTIN; STATE SUPERINTENDENT)
11 OF PUBLIC EDUCATION; STATE)
12 DEPARTMENT OF EDUCATION;)
13 STATE BOARD OF EDUCATION,)

14)
15 Defendants.)

16)
17 STATE OF CALIFORNIA,)

18)
19 Cross-complainant,)

20 vs.)

21)
22 SAN FRANCISCO UNIFIED SCHOOL)
23 DISTRICT, et al.,)

24)
25 Cross-defendants.)

26)
27 Deposition of RUSSELL GERSTEN, Ph.D.,
28 Volume 1, taken on behalf of Plaintiffs, at
29 555 West 5th Street, Suite 3500, Los Angeles,
30 California, beginning at 9:35 A.M. and ending
31 at 4:44 P.M., on Monday, July 28, 2003, before
32 LORI SCINTA, RPR, Certified Shorthand Reporter
33 No. 4811.

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1 INDEX

2 WITNESS: EXAMINATION

3 RUSSELL GERSTEN, Ph.D.

4 Volume 1

5 BY MR. AFFELDT 5

6
7 EXHIBITS

8 Gersten Page

9 1 Document entitled, "Critique of 53
'English Language Learner Access to
10 Basic Educational Necessities in
11 California: An Analysis of
12 Inequities' by Kenji Hakuta"

13 2 One-page document with handwritten 78
14 notations

15 3 One-page email from Carlo Panlilio 149
16 to Vanessa Koury

17 INFORMATION REQUESTED

18 (None)

19 REFERENCE REQUESTED

20 (None)

21 INSTRUCTION NOT TO ANSWER

22 (None)

23
24
25

1 Los Angeles, California, Monday, July 28, 2003
2 9:35 A.M. - 4:44 P.M.

3
4 RUSSELL GERSTEN, Ph.D.,

5 having been first duly sworn, was examined and testified
6 as follows:

7
8 EXAMINATION

9 BY MR. AFFELDT:

10 Q Good morning, Dr. Gersten. My name is
11 John Affeldt. As I explained to you off the record, I
12 represent the plaintiffs in the Williams case.

13 And before we get started, I'm curious to know
14 if you have ever been deposed before.

15 A Yes, I have.

16 Q How many occasions?

17 A Twice.

18 Q What were those occasions?

19 A One was the -- in the Theresa P. Berkeley case,
20 and I don't remember the exact year. Late 1980s, I
21 believe.

22 And the second one was a case involving
23 Albuquerque and the State of New Mexico, many, many
24 parties. And that was about five years ago.

25 Q Were you an expert witness in both of those

1 cases?

2 A I was an expert, but one did not come to trial
3 and the other one, they shortened the witness list so I
4 didn't testify at the trial.

5 Q Was that the Theresa P. case?

6 A Yes.

7 Q The Albuquerque case didn't go to trial?

8 A That's correct.

9 Q But in both of those cases you were serving as
10 an expert witness?

11 A That's correct.

12 Q Have you ever been deposed in a personal
13 matter, such as a fender-bender?

14 A No.

15 Q So you're somewhat familiar with the rules of
16 deposition taking?

17 A Yes. I mean, these have been scattered over
18 almost 15 years. Yes.

19 Q Okay. Well, just to review, since we're on
20 paper here, we'll need you to affirmatively say "Yes" or
21 "No" as opposed to a nod or a shake of your head or an
22 "Uh-huh."

23 Is that understood?

24 A Yes.

25 Q It is important that you wait until I finish my

1 question before you begin to answer.

2 Is that agreeable?

3 A Yes.

4 Q And I will warn you ahead of time, sometimes I
5 drag out my questions.

6 A Okay. I am warned.

7 Q And by the same token, I will endeavor to let
8 you finish your answer before I ask my next question,
9 and if I am interrupting you, can you let me know?

10 A Okay.

11 Q If you don't understand a question, can we
12 agree that you'll let me know you didn't understand what
13 I was asking?

14 A Yes, I will try to do that.

15 Q And I will endeavor to understand what the
16 misunderstanding is and frame it in a way that makes
17 sense to you.

18 Is that agreeable?

19 A Yes.

20 Q If you need to take a break at any time, just
21 let me know and we'll take a break, but I would only ask
22 that you answer the pending question.

23 Is that acceptable?

24 A Yes.

25 Q Are you taking any medication or drugs of any

1 kind that might make it difficult for you to answer
2 questions truthfully here today?

3 A No.

4 Q Are you under a doctor's care for any illness
5 that might affect your ability to answer questions
6 truthfully?

7 A No.

8 Q What did you do to prepare for today's
9 deposition?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: I reviewed Hakuta's report, which
12 I have responded to, and I reviewed my own document.

13 BY MR. AFFELDT:

14 Q By your "own document," you mean your own
15 expert report?

16 A Yes, that's correct.

17 Q Did you review any other documents?

18 A I believe I looked at really just an overview
19 of the WestEd American Institute for Research report.

20 Q The one that you cite in your report?

21 A Yes, the one in that book. Yes.

22 Q So that would be the year 2002 report?

23 A Yes. Yes.

24 Q Have you looked at any of the other WestEd/AIR
25 reports?

1 A No.

2 Q Did you review any other documents in
3 preparation for your deposition?

4 A No.

5 Q Did you have any conversations with counsel for
6 the State?

7 A We met last night for approximately an hour.

8 Q Did you have any other meetings with counsel
9 for the State?

10 MS. DAVIS: Vague and ambiguous. You mean in
11 preparing for the depo?

12 MR. AFFELDT: Yes.

13 THE WITNESS: There was a brief phone call with
14 an attorney last -- about a week ago.

15 BY MR. AFFELDT:

16 Q Whom did you meet with last night?

17 A With Lynne.

18 Q Ms. Davis?

19 A Yes.

20 Q Whom did you have the phone call with a week
21 ago?

22 A Vanessa Koury.

23 Q How long did that phone call last?

24 A Probably five minutes.

25 Q What did you talk about in the phone call?

1 A We talked about scheduling a brief meeting the
2 night before about what -- what to wear, whether people
3 still dressed as formally, because I've noticed that at
4 other review panels I'm on that people don't dress as
5 formally anymore, and whether I should bring anything
6 with me to the actual deposition.

7 Q What did Ms. Koury tell you as to whether or
8 not you should bring anything to the deposition?

9 A She encouraged me not to.

10 Q Have you brought anything with you to the
11 deposition other than the L.A. Times?

12 A The L.A. Times. That's all.

13 Q Have you had any other meetings or phone calls
14 with counsel for the State --

15 MS. DAVIS: Vague and ambiguous.

16 BY MR. AFFELDT:

17 Q -- regarding the deposition?

18 A There was one with a gentleman, I don't know if
19 he was an attorney or an assistant, to schedule -- you
20 know, to check schedules.

21 And there may have been an earlier one with
22 Vanessa, just talking very generally about what the
23 deposition might be like, and I forget even when that
24 was.

25 Q Any other conversations with counsel for the

1 clarification on the law and what it meant.

2 And so that was a level of specificity to me
3 where you are really talking about the specifics in the
4 law and specific questions and that was not what we did
5 last night.

6 Q Okay. When you prepared with your personal
7 attorney, was that in preparation for testimony at a
8 deposition?

9 A No. No. That was for -- it was an internal
10 something or other. A hearing or something like that.
11 Yeah.

12 Q Did you end up testifying at the hearing?

13 A Yeah. Yeah. I mean, it was just an internal
14 thing. Yeah. I did. Yeah.

15 Q Internal to?

16 A An organization, a small organization.

17 Q Were you under -- sworn under oath during that
18 testimony?

19 A No.

20 Q Have you testified on any other occasions other
21 than the two depositions you mentioned earlier?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: The only time I testified in
24 court, there were two things and I believe I was a
25 teenager both times. And one was going 62 miles an hour

1 State regarding the deposition that you recall?

2 A No.

3 Q Did you review any documents when you met last
4 night with Ms. Davis?

5 A No.

6 Q What did you talk about?

7 A We basically reviewed the general kind of
8 guidelines of what a deposition is like and some broad
9 issues, so we talked broadly as opposed to specifically
10 when I prepare with a personal attorney.

11 MR. AFFELDT: Can you read back the answer,
12 please.

13 (The record was read as follows:

14 "A We basically reviewed the general
15 kind of guidelines of what a deposition is
16 like and some broad issues, so we talked
17 broadly as opposed to specifically when I
18 prepare with a personal attorney.")

19 BY MR. AFFELDT:

20 Q What do you mean when you prepare with a
21 personal attorney?

22 A Well, once I was involved in something and
23 working with -- before a hearing with my own attorney,
24 there actually was like some role-playing kind of things
25 and that type of -- type of thing. And, you know, I got

1 in a 60-mile-an-hour zone, and the other was operating
2 with an out-of-state license. And they were quite
3 brief. I was quite scared.

4 BY MR. AFFELDT:

5 Q What were the broad issues that you covered
6 with Ms. Davis last night?

7 A We talked about that this would be under oath
8 and that telling the truth was essential, the point that
9 you mentioned about if I don't understand a question I
10 can tell you -- you know, tell you that and you will
11 rephrase it or clarify.

12 We talked some about hypotheticals that I am
13 obligated to answer, hypothetical questions as an expert
14 witness. We talked about how if I don't remember
15 something, it's fine to say, "I don't remember it"
16 because I don't have an office and my computer here.

17 Those are some of the main things I remember.

18 Q Did your discussing those topics take an hour?

19 A Let's see. It was about an hour. Yeah. It
20 probably was about an hour including some social
21 amenities.

22 I probably paraphrased things quite a bit
23 because there was some instructional techniques so I
24 like to make sure I was remembering those principles,
25 and there were probably a couple other broad issues we

1 talked about that I don't recall this second.

2 Q Did you talk about any of the substantive
3 issues discussed in your report or in Dr. Hakuta's
4 report?

5 A No.

6 Q Did you discuss any of the documents that you
7 produced in this case?

8 A The only document I produced was a -- the
9 report, and our discussion was very broad. Lynne
10 mentioned that it was a good report and that was the
11 extent of our discussion on that.

12 Q You also produced documents underlying the
13 report, such as emails and papers that you looked at.

14 Do you remember that?

15 A Yeah. Yeah. We did not discuss those, with
16 the exception of an email that was about multitrack
17 years that seems like it was misfiled because I wasn't
18 familiar with this document and I just don't know that
19 much about multitrack years.

20 That was the only clarification.

21 Q Was that an email with you as an addressee on
22 one of the to, from or cc lines?

23 A I don't know, because it just -- I just -- I
24 just don't know. But Lynne just asked me if I was
25 familiar with that. It could have even just simply been

1 Q And what did Ms. Davis tell you with respect to
2 whether or not that's typical?

3 A I don't know that I recall exactly. I think
4 she might -- she might have indicated that it did seem
5 lengthy.

6 Q Did you discuss any other topic on the Hakuta
7 report?

8 A I -- I raised the issue of in his deposition,
9 the indication that it seemed as if it had been outlined
10 by an attorney and that seemed anomalous to me. I mean,
11 it wasn't what I was used to or what I assumed would be
12 normally the case.

13 Q Any other mention of the Hakuta report?

14 A No.

15 Q Did you review Mr. Hakuta's deposition since
16 he's had that taken?

17 A I did get a copy of it shortly after it was
18 taken, and I've read parts of it. It just was quite
19 lengthy so I only read parts of it.

20 Q Do you recall which parts you read?

21 A The material about the -- two things I remember
22 is preparing for the deposition, and I don't remember
23 how long it was, but it sounded like it was
24 approximately two full days, which struck me as very
25 different than my experience.

1 misfiled by somebody and went for another expert. Maybe
2 it was just placed in my file improperly. I didn't see
3 it -- I don't remember ever receiving anything.

4 Q Would you consider yourself an expert on
5 multitrack schools?

6 MS. DAVIS: Asked and answered.

7 THE WITNESS: No.

8 BY MR. AFFELDT:

9 Q Would you consider yourself an expert on
10 year-round schools?

11 A No.

12 Q Did you discuss any other documents that were
13 produced underlying your report?

14 A No.

15 Q Did you discuss any of the studies cited in
16 your report?

17 A No.

18 Q Did you discuss the Hakuta report?

19 A Yes.

20 Q What did you talk about with respect to the
21 Hakuta report?

22 A It was extremely brief. I think, as I recall,
23 and brief in almost a more casual, social, that it
24 seemed extremely lengthy and I wondered if that was
25 typical.

1 And then in terms of the writing of the report
2 where there was an indication of an outline that
3 had been drafted I believe by you, but by some attorneys
4 that he was working with, and also his allusion that he
5 had used a lot of material both from his assistants and
6 the Gandara and Rumberger's (phonetic) article that they
7 were preparing for publication.

8 Q Any other parts to the deposition that you
9 recall reading?

10 A Yeah. I remember that he talked about that it
11 would be unusual that someone who came on so strong for
12 rigorous research would support the Thomas and Collier
13 report that was not rigorous.

14 Q Anything else?

15 A That he described a demographic study, and I
16 forget the study, and that he thought that they used a
17 very good methodology. And that's all I remember of
18 that, reading that.

19 Q Do you recall having an opinion as to the
20 methodology of that demographic study?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: No. No, I had no opinion.

23 BY MR. AFFELDT:

24 Q And you don't remember which study?

25 A No.

1 Q As you sit here today, approximately what
2 percent of the -- as you say, the lengthy Hakuta
3 deposition do you think you made it through?

4 A I think the only material I received was the --
5 Vanessa's deposition, and then I think there was
6 additional -- she said there was additional material so
7 I didn't receive that.

8 Of her material, I probably read about a
9 quarter or a fifth.

10 Q Do you know if you received the full deposition
11 from Ms. Koury?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: I'm not -- I'm just not sure. I
14 just assumed so, but I didn't read the whole thing,
15 so...

16 BY MR. AFFELDT:

17 Q What was the nature of your testimony in the
18 Theresa P. case?

19 A My memory is hazy on that other than I remember
20 that some of the work I had done in the '80s looking at
21 immersion programs which had been published in a couple
22 of journals would have probably been more the core,
23 c-o-r-e, of what I testified or talked about during the
24 deposition.

25 Q Did you submit a written expert report in

1 the nature of your testimony?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: I'll tell you what I'm having a
4 hard time -- what I'm confused about, is I never -- in
5 that case I was more, you know, an expert to them but I
6 didn't really give any testimony. I didn't just answer
7 questions during a deposition because I never -- no, I
8 never wrote a report and I never gave testimony.

9 BY MR. AFFELDT:

10 Q You were testifying on behalf of the defendant,
11 Berkeley Unified School District; is that correct?

12 A That's correct.

13 Q What were you asked to testify about by the
14 defendants during --

15 A My memory is far from precise on that, other
16 than it was -- I think it was related to whether
17 immersion programs are a valid approach or if they are a
18 theoretically sound approach or is there any evidence
19 about them in either the U.S. or Canada.

20 Q And what was your opinion on those topics at
21 that time?

22 A That -- that there was some evidence of it
23 suggesting it was a useful approach and it could be used
24 successfully in at least three districts.

25 Q Is that still your opinion?

1 Theresa P. like you did in this case?

2 A No.

3 Q Did you submit any written opinions in
4 Theresa P.?

5 A No.

6 Q Do you know why you weren't asked to testify at
7 trial?

8 A What the attorney, Tom Donovan said, so the
9 answer would be -- well, I'm not sure I got an answer
10 might be the best thing. So maybe it was true, maybe it
11 wasn't true, the answer he gave me.

12 Q And what did Tom Donovan tell you?

13 A He said that they had to drastically shorten
14 the expert list and so I was one that was shortened, cut
15 out.

16 Q Do you know who else was cut out of the
17 defendants' experts?

18 A I don't.

19 Q Do you know who ended up testifying for
20 defendants' experts?

21 A I know Christine Rossell did and she had done
22 an evaluation of Berkeley's program using their data.

23 And I believe Rosalie Porter did, as well.

24 Q When you say you testified about some of the
25 work you did on immersion in the early '80s, what was

1 MS. DAVIS: Vague and ambiguous.

2 BY MR. AFFELDT:

3 Q Let me rephrase it.

4 A Yeah.

5 Q Is it still your opinion that immersion
6 programs can be an effective approach for teaching
7 English-language learners?

8 A I hesitate to answer that question because I
9 don't know that any two people define "immersion" in
10 precisely the same way.

11 Q How do you define it?

12 A I would see an immersion -- I would define an
13 immersion approach -- what I'd like to do is just think
14 about that for just a few seconds.

15 Q Sure.

16 A While I do that, is it okay if I grab another
17 cup of water?

18 Q Absolutely.

19 A I think I would define an immersion approach as
20 probably the key principle is that students learn
21 English as they're learning content and reading, either
22 reading books, reading poetry, learning how to read
23 doing math, that that would be the key thing, that the
24 learning of the second language is linked to concepts,
25 you know, vocabulary development. Print is a big part

1 of that.

2 So it's very different than, for example, the
3 way I learned French in junior high school with only
4 focusing on the grammar and the more conversational
5 thing.

6 It's one that definitely considers the
7 development of academic English from the inception.
8 Obviously, for five-year olds, it's different than it
9 would be for third-graders, but you're thinking of
10 helping kids with the abstract aspects of English.

11 And that's the way I define it in the U.S.
12 Obviously, in Canada or Turkey I would define it
13 differently in terms of their language, the core
14 language of the country.

15 Q When you say -- when you're talking about
16 students in your answer there, we're talking about
17 English-learner students?

18 A That's correct.

19 Q How would you define "immersion" differently in
20 Canada?

21 Before you answer that, I'm going to withdraw
22 the question and ask one more follow-up.

23 When in your answer you said -- referred to
24 "learning content," you mean academic content from core
25 classes like math?

1 to do is -- rather than going L1 and L2, which linguists
2 do, it's just for me easier to understand and for others
3 to understand if you say English, if you're talking
4 about the U.S. or German, if you're talking about
5 Germany or Dutch, if you're talking about Holland.

6 So that I was less getting into national
7 politics and just -- so Canada is not a good example of
8 that because the Quebec province is primarily
9 French-speaking and the other provinces are primarily
10 not.

11 So I would say basically an immersion program,
12 the specific answer might be in the U.S. it would be
13 quite similar to Toronto but would be quite different
14 than in the city of Quebec or some of the programs in
15 Montreal where the students are immersed in French, for
16 example.

17 Q Other than the different languages that might
18 make up L1 or L2, is there a difference in the framework
19 of immersion that you described earlier in Canada?

20 A The only -- I'm familiar with two things about
21 Canada and, obviously, it's a large, complex country.
22 One is the work that Lambert and Tucker did I believe in
23 the late 1970s. And, as I understand it, and this was
24 25 years ago, their immersion program was a little
25 unusual in that the kids initially, they were

1 MS. DAVIS: Vague and ambiguous.

2 THE WITNESS: I probably -- I think the content
3 would both be material for math or science but also
4 would be for younger children the content of what they
5 do in a reading language arts lesson so that they're not
6 necessarily -- they're learning about fiction, they're
7 learning about what goes on in the forests, they're
8 learning about birds or -- you know, all kinds of
9 things.

10 So it's -- the content definitely includes
11 reading and just opening up the whole world of reading
12 to kids. The content is learning how to read.

13 BY MR. AFFELDT:

14 Q In addition to learning how to read, what
15 subject matter do you consider to be content other than
16 math and science, which you already mentioned?

17 A I guess social studies and -- social studies
18 and history. I mean, often one is considered part of
19 the other, though people do argue about that.

20 Q Anything else?

21 A Not that I can think of at the current time.

22 Q How would an immersion class in Canada differ
23 from an immersion class in the U.S., under your
24 definition?

25 A I think I maybe didn't use the -- all I tried

1 English-speaking kids, they had a lot of French
2 initially, but then they started having a lot of English
3 and French in either the second grade or third grade and
4 partly because that country does have two national
5 languages.

6 The Toronto programs seemed from my reading of
7 them more similar to, for example, we currently have in
8 California, that there are -- you know, there are many
9 different language groups and much of the instruction is
10 in English.

11 Q Lambert and Tucker, were they writing about
12 immersion in Quebec?

13 A In that province, yes.

14 Q And other than the different languages that
15 might make up L1 or L2 in Turkey, was it?

16 A Well, it's really --

17 Q Holland?

18 A Holland, there seemed to be a lot of -- there's
19 a lot of research in Holland on this with the Turkish --
20 yeah, it's Holland. Yeah.

21 Q So other than the differences in what the
22 primary language and the target language might be, are
23 there differences in immersion programs in Holland from
24 what we see in California?

25 MS. DAVIS: Calls for speculation.

1 THE WITNESS: Yeah. I don't really know enough
2 about -- I just know their specific research studies by
3 Van Droop [sic] and others, but I don't know what goes
4 on other than the first- or second-grade reading that
5 they described.

6 BY MR. AFFELDT:

7 Q How many studies by Van Droop have you read?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: I can't recall. It's a small
10 number of studies, but I can't recall the exact number.

11 BY MR. AFFELDT:

12 Q Is it one of them that you cite in your report?

13 A It would actually help if I could see the
14 report to make sure.

15 Q We'll get to the report later. I'm just trying
16 to ascertain your present recollection.

17 MS. DAVIS: Were you asking if there is one
18 cited in his report or --

19 MR. AFFELDT: That's what I'm asking.

20 MS. DAVIS: Okay.

21 THE WITNESS: Yeah, one is cited in my report.
22 That's correct.

23 BY MR. AFFELDT:

24 Q And other than your reviewing the Van Droop
25 study or studies, do you have any familiarity with the

1 parties, but...

2 Q Did Ms. Koury ask you to -- or Ms. Davis ask
3 you to produce documents underlying your report?

4 A Yes.

5 Q And when was that request?

6 A It probably -- it would probably be when I
7 completed the report or a little bit after, and my sense
8 of chronology is getting mixed up I guess in the string.

9 Q What did O'Melveny & Myers ask you to produce?

10 A As -- as I recall, I was asked to produce
11 things that were not easily available, and then I get a
12 little confused about -- what I meant to me like a
13 journal, like Reading Research Quarterly is in all the
14 libraries and available online where some of these
15 conference papers or things that are in press or more
16 technical reports are not so easily found.

17 So I think she asked for things that were not
18 very easily available. But she may have asked for
19 others, as well. I'm just kind of vague.

20 Q And were you able to procure those things that
21 were not easily available?

22 A Yeah.

23 Q Did you have them in your possession at the
24 time you wrote the report?

25 A Usually, I did. Maybe my filing system isn't

1 kinds of immersion programs that are in Holland?

2 A No.

3 Q Do you recall having to produce the underlying
4 documents for your report to defendants' counsel?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: Could you -- I'm not sure I --
7 just with the defendants and the plaintiffs, I'm getting
8 a little confused with that question. Okay?

9 BY MR. AFFELDT:

10 Q Okay. Have you -- maybe we can make it simpler
11 just by referring to O'Melveny & Myers.

12 A Yeah. That would help. Yeah.

13 Q Okay.

14 A Or even if you go "Vanessa," it would just make
15 it more concrete to me.

16 Q Is Vanessa Koury the main contact you've had?

17 A That's correct.

18 Q What other lawyers for -- what other lawyers
19 have you talked to regarding this case?

20 A Lynne, obviously, last night. And Joe Egan
21 again, I believe his name is, and he stayed very
22 briefly.

23 Q Any other lawyers that you talked to, other
24 than me?

25 A Well, I've probably talked to lawyers at

1 the world's greatest, but I have them, yeah.

2 Q Did you actually review those not easily
3 available reports when you were writing your report?

4 A Parts of them, definitely. Yeah.

5 So the answer would be I reviewed sections of
6 those reports.

7 Q Who reviewed the documents you relied on for
8 your report and decided what was going to be produced to
9 plaintiffs, if you know?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: I don't think I know the answer
12 to that, other than I tried -- whenever Ms. Koury asked
13 me for something, I tried to supply her with what she
14 asked for.

15 BY MR. AFFELDT:

16 Q Did you gather documents for O'Melveny & Myers
17 twice?

18 MS. DAVIS: For this production?

19 MR. AFFELDT: Yes.

20 THE WITNESS: I -- I just don't recall if it
21 was once or twice or -- I just don't know. I just --
22 when she asked for things, I would try to find them
23 or -- find them in a pile or in my files, in my
24 computer.

25 BY MR. AFFELDT:

1 Q Do you recall producing typed and handwritten
2 notes regarding -- of yours regarding the -- this case
3 to Ms. Koury?
4 A I don't recall providing those.
5 Q Did you provide to Ms. Koury the documents you
6 relied on and referred to in writing your report?
7 A I tried to send her and I believe succeeded in
8 sending her everything she asked for and I'm guessing
9 she asked for everything that was in the report.
10 Q To the best of your recollection, what do you
11 recall Ms. Koury asking for?
12 MS. DAVIS: Asked and answered.
13 THE WITNESS: Yeah, my memory is just rusty. I
14 think as -- as Lynne said, that I have some memory of
15 things that were just in commonly accessible journals
16 she didn't ask for and most of everything else I did
17 supply, but I just don't remember. And a lot of times
18 my assistant helped with the locating of things in
19 files.
20 BY MR. AFFELDT:
21 Q Is there anything that you relied on and
22 referred to in writing your report that you did not
23 produce to Ms. Koury?
24 A Huh-uh.
25 Q You're shaking your head.

1 MS. DAVIS: You have to give an audible answer.
2 THE WITNESS: Oh, I'm sorry. Yeah. Yeah.
3 I don't -- I don't -- you know, I don't believe
4 so.
5 BY MR. AFFELDT:
6 Q Who downloaded the various emails you had with
7 counsel for O'Melveny & Myers?
8 A I think the two of us did some, I did some
9 myself, and some my research assistant, Carlo Panlilio,
10 just printed them or just went through my in-box and
11 printed them.
12 Q Did you -- do you have any emails of
13 correspondence with other of the State's experts on this
14 case?
15 A No.
16 Q Have you had any phone conversations -- have
17 you had any conversations with other experts who
18 represent -- or are working for the State on this case?
19 A No.
20 Q Does that include Christine Rossell?
21 A I have not spoken to her in many years.
22 Q When did you first learn of this case?
23 A The first I heard of it was from a colleague,
24 and I think it was almost a year ago that she mentioned
25 something about the case. And I think we were waiting

1 for a plane at the airport or something.
2 Q What colleague was that?
3 A Robin Scarcella.
4 Q When were you first contacted by anyone to work
5 on this case?
6 A I'm pretty sure it was in the fall. The exact
7 month, I don't recall. And it was Ms. Koury who called
8 me.
9 Q Fall 2002?
10 A Yeah.
11 Q And what did Ms. Koury ask you to opine on in
12 the case?
13 MS. DAVIS: Vague and ambiguous.
14 THE WITNESS: Yeah. I don't think I understand
15 the question.
16 BY MR. AFFELDT:
17 Q Okay. When Ms. Koury called you, what did she
18 say?
19 A She -- as I recall, she talked a little about
20 the case, and I was not particularly familiar with it
21 other than this very casual chat.
22 And I think that maybe when she asked if I'd
23 consider being an expert witness, and -- she may well
24 have asked me to mail her a copy of my resume. I'm not
25 totally sure, but that seems to happen so often that

1 that would be my guess.
2 Q And did you tell her you would consider being
3 an expert witness at that first contact?
4 A I said I'd think about it and we had a couple
5 conversations. And I'm a little blurry what happened
6 where, but she did talk about responding to Kenji
7 Hakuta's report during one of the earlier things and
8 mentioned the website, and a version of his report was
9 there, as well as some other material in the case.
10 Q Was that the decentschools.org website?
11 A Yeah.
12 Q At what point did you agree to work as an
13 expert on this case for the State of California?
14 A As I recall, it was right around Christmas
15 vacation 2002.
16 Q And other than being asked to respond to the
17 Hakuta report, were you asked to do anything else?
18 A Not that I can remember.
19 Q Have you been asked to provide any new
20 strategies to the State of California for educating
21 English learners?
22 MS. DAVIS: Vague and ambiguous.
23 THE WITNESS: I guess I don't understand the
24 question because the State of California, there's so
25 much going on.

1 Yeah, I don't understand the question.
 2 BY MR. AFFELDT:
 3 Q In relation to your work on this case, have you
 4 been asked to provide any help to the State of
 5 California in figuring out how to better educate
 6 English-language learners?
 7 MS. DAVIS: Same objection.
 8 THE WITNESS: I think I still don't understand
 9 that question. Could you try --
 10 BY MR. AFFELDT:
 11 Q What don't you understand about it?
 12 A It seems to me that, you know, one part is the
 13 State, you know, this pending trial, and then the State
 14 is doing all kinds of other things to the Department of
 15 Ed and districts in terms of educating the
 16 English-language learners. So you're only talking
 17 about -- so I'm not sure in terms of the State, in terms
 18 of this case did they ask me to come up with strategies
 19 for how they teach English-language learners?
 20 Q That's my question.
 21 A Not in terms of this case, no.
 22 Q Okay.
 23 THE WITNESS: Could we take a break either now
 24 or after this question?
 25 MR. AFFELDT: Sure. Let's take a break now.

1 (Recess taken.)
 2 BY MR. AFFELDT:
 3 Q Have you been asked as part of your work on
 4 this case to advise the State on how better to monitor
 5 the education of English-language learners in
 6 California?
 7 MS. DAVIS: Vague and ambiguous.
 8 THE WITNESS: I don't really understand the
 9 question, John. Do you want to try again or be a
 10 little --
 11 BY MR. AFFELDT:
 12 Q What about the question don't you understand?
 13 A I guess the term "the State," it just confuses
 14 me.
 15 Is it the Department of Justice in this state
 16 or is it -- I'm just not sure, or any representative of
 17 the State?
 18 Q As part of your work on this case, have you
 19 been asked by any representative of the State to advise
 20 them on how to monitor the education of English-language
 21 learners in California?
 22 MS. DAVIS: Same objection.
 23 THE WITNESS: If I'm understanding the question
 24 correctly, I'd say that the answer would be "no."
 25 BY MR. AFFELDT:

1 Q What was the nature of your conversation with
 2 Joe Egan that you referred to earlier?
 3 A As I recall, and I think I actually was in an
 4 airport in New York, because he called on my cell phone
 5 while I was flying home to visit family, it was
 6 basically whether I would be interested in clarifying
 7 the daily rate and more things related to the contract
 8 and that there be a contract sent out in a certain
 9 period of time.
 10 And I believe that was the extent of the
 11 conversation.
 12 Q When was that conversation?
 13 A I remember the airport, so I would guess it
 14 would be in the latter half of December because I went
 15 to New York around -- before the Christmas holidays.
 16 Q And how long did it last?
 17 A I think it was a fairly brief -- I'm just
 18 thinking, approximately five minutes.
 19 Q Had you worked with any of the attorneys for
 20 the State on any other cases?
 21 A Yes.
 22 Q And who did you work with?
 23 A They're two attorneys. One's name is Eileen,
 24 and it was a very brief interaction with her, and the
 25 other is Angela Botelho.

1 Q And where is Eileen employed?
 2 A She's with the State and I'm guessing
 3 Sacramento, but it was through phone and email.
 4 Q You don't know what particular area she works
 5 with?
 6 A I'd be pretty sure it's the Department of
 7 Justice, but I -- I can't say that, that I really
 8 verified that.
 9 Q What about Angela Botelho? Who did she work
 10 for?
 11 A I believe also for the Department of Justice,
 12 and -- and I believe she's in the Bay area.
 13 Q By "Department of Justice," you mean the
 14 California Department of Justice?
 15 A Yeah. Yeah.
 16 Q What has been the nature of your communications
 17 with Eileen --
 18 A It was --
 19 Q -- on this case?
 20 A On this particular case?
 21 Q Yeah.
 22 A Oh, no. It was nothing on this case. It was
 23 on a different case.
 24 Q I see.
 25 A Yeah.

1 Q Does the same hold true for Angela Botelho?
 2 A Yes, that's correct.
 3 Q What case did you work with those two
 4 individuals on?
 5 A The Pazmino case.
 6 Q The same case that you worked on both --
 7 A Yeah, yeah.
 8 Q What was the Pazmino case about?
 9 A It -- it's related to Reading First, which is
 10 part of No Child Left Behind.
 11 And I -- I don't -- I probably read -- I'm
 12 pretty sure I read the original complaint, but that was
 13 a while ago. But, basically, there is a dispute over
 14 whether the Reading First fund should go to the English
 15 part of a child's program, the reading and language arts
 16 and English, whether it should go for students on
 17 waivers to -- for Spanish-reading instruction and not
 18 for English-reading instruction.
 19 So it's fairly detailed.
 20 Q And what work have you done in the Pazmino case
 21 for the State of California?
 22 A I've written a declaration.
 23 Q Anything else?
 24 A No.
 25 Q Do you know the current status of that case?

1 A I think it's moving ahead. It was sort of
 2 after they got my declaration they said they'd get back
 3 to me at some point, and they haven't. So I'm not sure.
 4 Q Have you ever testified for a plaintiff's --
 5 strike that.
 6 Have you ever worked as an expert for
 7 plaintiffs in any case that you can recall?
 8 A I believe I did in the Albuquerque case. I
 9 know that sounds weird, but there was so many parties
 10 involved that I -- I was really confused.
 11 But I think the case originated by a mother
 12 whose son or daughter did not speak Spanish, had an
 13 Hispanic surname and was placed in a Spanish language
 14 bilingual class. And that originated this whole case
 15 that the State was involved in, the Albuquerque public
 16 schools, and I don't even know who else. And I
 17 really -- because it didn't go forward very far, I got
 18 confused as to the multiple parties. And I just gave
 19 them some basic information on issues.
 20 Q Were you an expert on behalf of the mother?
 21 A Well, I worked with a law firm and I remember
 22 at times asking -- I was just so confused with the cast
 23 of characters there, so I didn't work with the mother
 24 directly. I wasn't dealing with the particular issue.
 25 But that is probably what I remembered the most of any

1 kind of documents and reports I looked at.
 2 Q What was the name of the law firm?
 3 A I forget. It was a firm that specialized in
 4 intellectual copyright. See, everything about this
 5 seemed unusual to me, but -- and they were doing it
 6 pro bono.
 7 Q What was the name of the lawyer that you had
 8 primary contact with in that case?
 9 A I think there were three different individuals,
 10 and the one actually at the deposition with me was a
 11 young man with I think two Ph.D.s and a J.D. So that's
 12 my -- but I don't recall his name. My memory of that is
 13 fairly hazy because it didn't -- it didn't go very far.
 14 And then that was the last contact I had after the
 15 deposition. I never was in touch with him again.
 16 Q When was your deposition in that case?
 17 A I remember it was right before the Christmas
 18 holidays. It was the worst possible days for me. And
 19 I'm guessing probably -- I'd say five to seven years
 20 ago.
 21 Q Do you remember the names of any of the
 22 attorneys that you worked with in that case?
 23 A I'm sorry. I don't.
 24 Q Is it your understanding that the law firm was
 25 working pro bono on behalf of the mother?

1 A There were organizations involved. I was just
 2 confused with the large number of organizations.
 3 Q What was the nature of the testimony that you
 4 offered?
 5 A I never offered testimony there. There was
 6 just a fairly brief deposition. It was maybe only three
 7 hours long, and my memory is hazy, but I'm sure we
 8 talked about immersion, bilingual immersion, and the
 9 range of models being used to educate English learners.
 10 Q What exhibits were you asked to provide in that
 11 case?
 12 A I know it sounds strange, but I don't -- I
 13 don't really recall precisely. It possibly -- well, it
 14 possibly was that there was only one approach for
 15 Hispanic kids to teach them in their native language
 16 which, of course, wouldn't fit a child who doesn't speak
 17 Spanish. But I don't know. I was just supposed to give
 18 research background. It's very vague. It was
 19 utterly -- for me, the actual complaint was very
 20 confusing and how the array of forces linked together.
 21 Q But as you sit here today, you don't recall
 22 what you were intending to -- what opinions you were
 23 intending to express at trial?
 24 MS. DAVIS: Asked and answered.
 25 THE WITNESS: I -- I don't -- I don't, because

1 I obviously would have needed a lot more orientation
 2 than I was given at that point in time.
 3 BY MR. AFFELDT:
 4 Q Other than that case where you don't recall
 5 which side you were on, but it might have been
 6 plaintiffs, were there any other occasions where you've
 7 served as an expert for plaintiffs?
 8 A No, because I have -- those are my only
 9 experiences in expert witness.
 10 Q When you say, "those," what are you referring
 11 to other than -- strike that.
 12 When you say, "those," do you mean Theresa P.
 13 and the Albuquerque case?
 14 A That's correct. Those are the only -- and then
 15 this Pazmino, which is just really beginning.
 16 Q So other than those three cases, have you
 17 served as an expert in any other case?
 18 A Now, I -- I wrote a declaration for the State.
 19 It never -- no, wait a minute. It did come to trial but
 20 there was no testimony, just declarations. This was the
 21 Valeria -- Valeria G., I believe it was called, the 227
 22 case.
 23 Q When was that?
 24 A That was shortly after 227 was passed. It was
 25 circa 1998, possibly '9. I remember in that timeframe,

1 1998 or 1999.
 2 Q Other than providing one written declaration,
 3 did you do any other work on the Valeria G. case?
 4 A No.
 5 Q Other than the four cases you've mentioned, are
 6 there any other instances in which you served as an
 7 expert?
 8 A Let me think for a minute.
 9 MS. DAVIS: I was going to object to the extent
 10 that may mischaracterize his testimony. I'm not sure
 11 it's clear he was an expert in that Valeria G. and the
 12 Pazmino case.
 13 But go ahead.
 14 THE WITNESS: Yeah, because I'm not an attorney
 15 and I get -- whether I was an advise -- see, I don't
 16 know the -- you know, the -- yeah.
 17 There's nothing I recall. I believe someone
 18 had asked me once in a special education case but it
 19 didn't -- it either didn't make sense to me or
 20 something. So it was a distant memory. This could have
 21 been 20 years ago. I don't remember the party or the
 22 issue at this stage.
 23 BY MR. AFFELDT:
 24 Q So other than Theresa P., the Albuquerque case,
 25 Pazmino and Valeria G., you don't recall having served

1 as an expert in any other case?
 2 A No, I don't.
 3 And I guess it could well be in both Pazmino
 4 and Valeria. I don't know technically if I would be
 5 called an expert, but...
 6 Q Are you offering opinions as opposed to just
 7 facts in the Pazmino declaration?
 8 MS. DAVIS: Vague and ambiguous.
 9 THE WITNESS: Okay. I'm not -- okay. I'm
 10 not -- so I'm not --
 11 MR. AFFELDT: Let me withdraw the question and
 12 ask it this way.
 13 THE WITNESS: Okay.
 14 BY MR. AFFELDT:
 15 Q What have you been asked to do by the
 16 Department of Justice in the Pazmino case?
 17 A To look at whether -- to do more of an analysis
 18 of whether a student could pass the English Language
 19 Arts Reading Standards if their reading instruction was
 20 exclusively in Spanish from kindergarten to third grade,
 21 the point they asked me to address.
 22 MR. AFFELDT: Can you read back the answer,
 23 please.
 24 (The record was read as follows:
 25 "A To look at whether -- to do more

1 of an analysis of whether a student could
 2 pass the English Language Arts Reading
 3 Standards if their reading instruction was
 4 exclusively in Spanish from kindergarten
 5 to third grade, the point they asked me to
 6 address.")
 7 BY MR. AFFELDT:
 8 Q And what were you asked to do by the State of
 9 California in the Valeria G. case?
 10 A My memory of the specifics is vaguer, because
 11 it was several years ago, or approximately five years
 12 ago, but it was something along the lines of discussing
 13 immersion or immersion-type approaches as a viable
 14 theoretical model for educating English learners.
 15 Q And when you say, "immersion" -- an
 16 "immersion-type approach," do you mean the same kind of
 17 immersion program that we discussed earlier?
 18 A I think as I mentioned earlier, that there's so
 19 many variations on exactly what "immersion" means, but I
 20 would say, yes, approaches that merge English language
 21 development with content learning, reading, writing, so,
 22 in that sense, yeah.
 23 Q Have you worked with any of the other experts
 24 that are providing expert reports in this case to the
 25 extent you're aware of who those people are?

1 A In this particular case?
 2 Q Yes.
 3 A No, I am not working...
 4 Q Have you ever?
 5 A Have I ever worked with them? Okay. I'm
 6 aware -- the only way I'm aware of the other experts is
 7 through an article in the San Francisco Chronicle, so
 8 Christine Rossell I believe was mentioned.
 9 If that's the case, she and I have communicated
 10 by phone and email over the years but -- and I've shared
 11 different documents or reports, but I don't think we've
 12 ever worked together.
 13 Q Have you ever met her?
 14 A Yes, I did in the Theresa P. case, that she was
 15 basically in the law offices there one of the days. But
 16 that was the extent, I think, of our meeting, you know,
 17 saying "Hello" or whatever.
 18 Oh, now something else I remember. We -- she
 19 and I both testified together for the California Board
 20 of Education on just a broad -- not a legal hearing but
 21 an informational hearing about Proposition 227. They
 22 were just trying to develop an understanding if it were
 23 passed by the voters.
 24 So we were kind of waiting, you know, together,
 25 you know, where the audience waits until you are called

1 to testify or give your brief statement. So I did see
 2 her then as well as the other time, but that's the
 3 extent of it.
 4 Q Do you recall what you told the California
 5 Board of Education at that time?
 6 MS. DAVIS: Vague and ambiguous.
 7 THE WITNESS: You know, I don't -- I don't
 8 really recall. They were quite brief remarks I think
 9 that might have been limited to five minutes. And I
 10 don't -- yeah, I don't really recall.
 11 BY MR. AFFELDT:
 12 Q Do you know who Margaret Raymond is?
 13 A No, I don't.
 14 Q Have you ever -- does that mean you've never
 15 read any of her work?
 16 A Not that I recall, no.
 17 Q Do you know who Eric Hanushek is?
 18 A Yes.
 19 Q Have you ever had occasion to read his work?
 20 A I definitely read a summary of one of his
 21 reports or articles in -- probably in Education Week,
 22 which is a, you know, kind of a trade journal for
 23 educational professionals. It summarizes issues. And
 24 I've seen it cited other times. I'm not really a school
 25 finance person. I believe I met him on a panel on

1 Title One, but I was presenting and he was one of six or
 2 eight people asking questions. And people weren't
 3 really introduced to me, but I know he was on the panel.
 4 So that would be the extent, I think, of my
 5 knowledge of him.
 6 Q Have you ever -- strike that.
 7 Do you know who Susan Phillips is?
 8 A Yes.
 9 Q What is your familiarity with Susan Phillips'
 10 work?
 11 A Susan and I for about four years were on the
 12 Technical Advisory Group to the Oregon Department of
 13 Education and a main focus was accommodations for
 14 students with disabilities and students who were English
 15 learners.
 16 So Susan participated, and she has a strong
 17 legal background where many of the others were more
 18 statistical or measurement specialists. And once we
 19 shared a cab to the airport together.
 20 Q Accommodations for what kinds of measures?
 21 A The state assessment that Oregon gives -- at
 22 that point gave 3rd, 5th, 8th and I think 11th grade.
 23 Q Were there high stakes attached to that
 24 assessment?
 25 A At the beginning, there wasn't, and it just

1 evolved. And after they started the school's report
 2 card, reporting the data in the schools and the school
 3 report cards, schools were not given rewards for
 4 improvements there, so I don't -- I don't -- I don't
 5 know if I'd call it high stakes, really, compared to
 6 some other stakes.
 7 Graduation, I think it was unclear whether it
 8 would depend on passing the 11th grade exam. And I left
 9 the state. And I just was confused. We didn't talk
 10 about that issue so much, but...
 11 Q Was the test used for grade promotion?
 12 A No.
 13 Q What does Oregon include on their school
 14 accountability report card, or maybe I misnamed that.
 15 School report card? What --
 16 A Yeah.
 17 MS. DAVIS: Vague and ambiguous.
 18 BY MR. AFFELDT:
 19 Q What was the document called?
 20 A I just don't recall --
 21 Q Okay.
 22 A -- you know, those colloquial terms.
 23 Q Okay. Can you -- maybe you can explain what
 24 the Oregon school report card is.
 25 A I think for schools they definitely were the

1 number of -- or percentage of kids in the third and
2 fifth or eighth grade who are at proficient level or --
3 they have a basic level and proficient level.

4 I forget. They have, like many states, names
5 for that. I believe there's something on attendance and
6 I think there's something on the percent of kids
7 included in the assessment. And I'm unclear whether
8 that actually enters the report card because it's gone
9 back and forth, I think.

10 Q Does Oregon include any input factors such as
11 the quality of teachers at a given school?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: I -- I don't know that they do.
14 Oddly, because my work is so much on a national scale, I
15 don't think there would be something on the quality of
16 teachers.

17 I don't -- I believe they have something about
18 demographics of the students, but I'm not sure. I don't
19 believe they have as complex formally as California or
20 Texas for student demographics, but I've been out of the
21 state for a while and that technical group ended due to
22 funding a couple of years ago.

23 BY MR. AFFELDT:

24 Q Do you know who Carolyn Hoxby is?

25 A I think I've heard the name, but I don't -- I

1 the relevant body of work because it's not good to do it
2 based on memories. The field changes, I've learned
3 things, methodologies change, so...

4 BY MR. AFFELDT:

5 Q So does that mean the answer to my question is
6 yes, you don't have an opinion formed --

7 A Well, yes. We have to be careful here.

8 Yes, I don't have an opinion on the quality of
9 her work.

10 I'm just going to grab some ice cubes. I'll
11 listen.

12 Q Sure. You're getting paid \$225 an hour on this
13 case?

14 A That's correct.

15 Q Have you been paid anything to date?

16 A No, I have not.

17 Q Have you submitted an invoice?

18 A I recently did.

19 Q How much was that for?

20 A I don't have in front of me -- I don't recall
21 the amount.

22 Q Can you give me a ballpark figure?

23 MS. DAVIS: Calls for speculation.

24 THE WITNESS: I'd estimate it in the range of
25 \$20,000.

1 don't know her work.

2 Q Have you read Christine Rossell's work?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: I read not necessarily her first
5 article, but an article I think she did with a Ross, and
6 that was quite a few years ago, probably the '80s.

7 I think she did something with Keith Baker and
8 I don't know if I read it or saw it alluded to or
9 summarized.

10 And that was I think the extent of what I would
11 have read.

12 BY MR. AFFELDT:

13 Q Do you have an opinion as to the quality of
14 Christine Rossell's work?

15 MS. DAVIS: Vague and ambiguous, calls for
16 speculation.

17 THE WITNESS: Yeah. I -- I don't feel
18 comfortable speculating on dim memories of things I've
19 read a long time ago and the quality of the work.

20 BY MR. AFFELDT:

21 Q So sitting here today, based on your current
22 memory, you don't have an opinion?

23 MS. DAVIS: Asked and answered.

24 THE WITNESS: I'd say before reaching an
25 opinion I'd like to, you know, read the body of work or

1 BY MR. AFFELDT:

2 Q Do you expect to get paid for your trial
3 testimony?

4 MS. DAVIS: Calls for speculation.

5 THE WITNESS: I would assume I would be if this
6 does come to trial.

7 BY MR. AFFELDT:

8 Q Are you getting paid for your deposition
9 testimony here today?

10 A Yes.

11 Q At the same \$225 an hour rate?

12 A That's what the agreement was, yes.

13 Q Are you aware of any disparities in
14 compensation paid among the State's experts?

15 MS. DAVIS: Calls for speculation, vague and
16 ambiguous.

17 THE WITNESS: I'm not aware of what the others
18 are paid.

19 (Discussion off the record.)

20 (Gersten Exhibit 1 was marked for
21 identification by the court reporter
22 and is bound separately.)

23 BY MR. AFFELDT:

24 Q Okay. We have marked and handed you Gersten
25 Exhibit 1.

1 Do you recognize this document?
 2 A Yes, I do.
 3 Q Is this the expert report you submitted in this
 4 case?
 5 MS. DAVIS: And feel free to look it over.
 6 THE WITNESS: Yeah. I'll look over it for a
 7 few minutes.
 8 BY MR. AFFELDT:
 9 Q Sure. Why don't you take a look through it and
 10 let me know when you're done.
 11 A Yeah.
 12 Yeah, this looks like it.
 13 Q When did you first begin working on drafting
 14 this report?
 15 A I'd say January or February.
 16 Q Of '03?
 17 A Yeah.
 18 Q Approximately how many hours did you spend
 19 writing the report?
 20 A If you include the time reading the documents,
 21 I mean, Hakuta's document and some of the various
 22 sources he alluded to, I would bet it would clock in
 23 somewhere 80, 90, somewhere in there.
 24 Q Was Vanessa Koury the individual that you dealt
 25 with on behalf of the State in working on this report?

1 A That's correct.
 2 Q Were there any other attorneys that you dealt
 3 with --
 4 A No.
 5 Q -- in creating this report?
 6 A No.
 7 Q Now you can go.
 8 A Oh, I'm sorry. Yeah.
 9 MS. DAVIS: Did you get his answer?
 10 (Discussion off the record.)
 11 (The record was read as follows:
 12 "Q Were there any other attorneys
 13 that you dealt with --
 14 "A No.
 15 "Q -- in creating this report?
 16 "A No.")
 17 MR. AFFELDT: Do you need a break?
 18 THE WITNESS: Yeah. I'd think I'd like one, a
 19 brief break, please.
 20 MS. DAVIS: Sure.
 21 THE WITNESS: Okay.
 22 (Recess taken.)
 23 BY MR. AFFELDT:
 24 Q Did Ms. Koury give you any guidelines on what
 25 to write on?

1 MS. DAVIS: Vague and ambiguous.
 2 THE WITNESS: The initial guidelines were to
 3 respond to Hakuta's report and any problematic issues I
 4 saw in it.
 5 BY MR. AFFELDT:
 6 Q Anything else?
 7 A No.
 8 Let me rephrase it. The one question I did ask
 9 her is, "Did it need to be as long?" and she said, "No."
 10 Q Did Ms. Koury send you any materials?
 11 A Yes, she did. Some of the sources that Kenji
 12 used I was able to download from the websites, but
 13 others, like she sent the Hayes and Salazar report from
 14 L.A. Unified. Reports, rather.
 15 And there may have been something else she
 16 sent. I don't remember. But most of them I downloaded
 17 or found in journals, in some cases.
 18 Q Other than the materials that Professor Hakuta
 19 cited in his report, did Ms. Koury send you anything
 20 else?
 21 A No.
 22 Q Did Ms. Koury suggest you review anything
 23 specifically?
 24 MS. DAVIS: Vague and ambiguous.
 25 THE WITNESS: No.

1 BY MR. AFFELDT:
 2 Q Other than the decentschools.org website, did
 3 Ms. Koury direct you to any websites?
 4 A I know I downloaded the Thomas and Collier
 5 report, because it was in PDF. I think it took two days
 6 to download it, and my system wasn't too happy. But
 7 it -- I don't know if she gave me the website address or
 8 if I got it from Hakuta's report. I don't remember.
 9 Q Have you read the entire Hakuta report?
 10 A Oh, yes.
 11 Q Did you take notes on the entire report?
 12 MS. DAVIS: Vague and ambiguous.
 13 THE WITNESS: When I read things, sometimes I
 14 scribble notes on a yellow pad, sometimes I scribble
 15 them on the manuscript. And I'm sure I did -- I did
 16 that in both cases, and sometimes I don't write
 17 anything.
 18 BY MR. AFFELDT:
 19 Q Do you recall producing the pages on which you
 20 had scribbled notes of the Hakuta report to Ms. Koury?
 21 A I don't recall doing that.
 22 Q Did you write any notes on yellow pad upon
 23 reviewing the Hakuta report?
 24 MS. DAVIS: Asked and answered.
 25 THE WITNESS: Yes.

1 BY MR. AFFELDT:

2 Q Have you produced those to us via Ms. Koury?

3 A I don't recall doing that.

4 Q Do you still have those notes?

5 A I definitely have some of them. My -- my
6 understanding was that if -- when I customarily write, I
7 scribble things. I sometimes use the stickies on my
8 computer. And, yet, I only produce, you know, at least
9 a final draft or a draft that then goes to an editor,
10 that that was -- all those things were just internal to
11 me, the various notes I write to myself.

12 Sometimes I realize, Russell, it's too
13 detailed, or wait a minute. Later on they explain this
14 so you can't really say this is clear.

15 I'm talking about my work generally reviewing
16 articles which would include a report like this. So I
17 believe I was told that that need not be, you know,
18 submitted.

19 Q Do you ever type up notes when you review
20 reports?

21 A No, I don't type them. I sometimes take notes
22 on a laptop. I don't believe I did that in this case.

23 Q You do or don't believe --

24 A I don't believe I did that in this case.

25 Q When you take them on a laptop, you're typing

1 them into an electronic file?

2 A Yeah.

3 Q Did you review the entire Van Droop report when
4 you used it for this report?

5 A Let me -- I just want to refresh my memory on
6 that for a second.

7 Q For the record, you're turning to the reference
8 pages of the report?

9 A Yeah, yeah.

10 John, would you mind repeating the question?

11 MR. AFFELDT: Sure.

12 Can you reread the question.

13 (The record was read as follows:

14 "Q Did you review the entire Van
15 Droop report when you used it for this
16 report?

17 "A Let me -- I just want to refresh
18 my memory on that for a second.

19 "Q For the record, you're turning to
20 the reference pages of the report?

21 "A Yeah, yeah.")

22 THE WITNESS: And I did definitely look at the
23 article when it came out, which was right in the middle
24 of when I was writing this report.

25 I don't recall how thoroughly I studied the

1 full report. I definitely tried to get an understanding
2 of some of the key findings, but...

3 BY MR. AFFELDT:

4 Q What page are you looking at?

5 A Page 19.

6 Q On that page in the second full paragraph, the
7 first line where it says, "...[the] recent study by
8 Droop and Verhoeven (2003)..."

9 Is that the one we're talking about --

10 A Yeah. Yeah.

11 Q -- as the Van Droop report?

12 A No, no.

13 Did the "Van" come from me or you?

14 Q It came from you.

15 A From me? Oh, I'm sorry. Yeah, yeah. And I
16 don't know -- I don't know Dutch. Is it -- yeah, that's
17 what -- yeah, that's what I'm talking about.

18 Q Okay.

19 A I remembered a "V."

20 Q Is this report your best professional effort?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: "Best professional effort"? I --
23 I don't know. I don't feel comfortable answering that.

24 I think it's a professional effort.

25 BY MR. AFFELDT:

1 Q Why don't you feel comfortable answering that?

2 A I don't know what "best" -- part of me, I'm a
3 perfectionist, like a lot of us, so something could have
4 been better, I could have phrased this more succinctly
5 here. At some point I just decide it's reasonable and
6 get feedback and do that.

7 So I'm sure I probably could have done a better
8 job on this or anything I've done in my life.

9 Q So would you characterize this as a reasonable
10 professional effort?

11 MS. DAVIS: Vague and ambiguous.

12 THE WITNESS: I suppose I would, yeah. Yeah.

13 BY MR. AFFELDT:

14 Q What areas would you improve on the report now,
15 if you could?

16 MS. DAVIS: Assumes facts not in evidence.

17 THE WITNESS: I think in order to answer that
18 I'd probably have to really carefully review this and
19 think about writing style and all.

20 I'm trying to think. And also real -- I would
21 need periods of time to reflect on is there any more
22 recent research that really is relevant to this and I
23 don't -- off the top, I just couldn't answer that.

24 BY MR. AFFELDT:

25 Q That's fine. I'm just trying to ascertain

1 whether --

2 A Yeah. Yeah.

3 Q -- I'm just trying to ascertain whether sitting
4 here today there is some aspect of the report that you
5 have in mind you would want to improve.

6 And if I understand your last answer, it's
7 sitting here today, "no," but you --

8 A Yeah. Sitting here right now, having really,
9 you know, spent a lot of time on this and then being
10 away from it for a while, nothing comes to mind right
11 now in this current situation.

12 Q Did you give the same degree of care with this
13 report that you would an article that you would publish
14 in a peer-review journal?

15 MS. DAVIS: Vague and ambiguous, calls for
16 speculation.

17 THE WITNESS: The one -- the one probable --
18 the one -- I think when I do things for -- for
19 peer-review journals, it varies quite a bit, depending
20 on coauthors, the importance of the specific study.

21 Probably the one thing that makes this
22 different is if it was a professional journal, there
23 would be a professional copy editor who knows APA style
24 backwards and forwards who would go through it with that
25 in mind. And I didn't have that level of editing.

1 MS. DAVIS: Same objections.

2 THE WITNESS: I think from my end, but the part
3 that is the missing is the response to the three
4 reviewers, the senior editor and the copy or managing
5 editor. And those usually require additional efforts
6 and that is not typical in legal reports.

7 BY MR. AFFELDT:

8 Q Did you get a response from Ms. Koury --

9 MS. DAVIS: Vague and ambiguous.

10 BY MR. AFFELDT:

11 Q -- on the drafts?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: She did respond -- she did raise
14 editorial issues and we discussed things.

15 BY MR. AFFELDT:

16 Q All right. Did you make revisions based on
17 Ms. Koury's input?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: Her editing and the queries she
20 raised I did respond to.

21 BY MR. AFFELDT:

22 Q What was the query that she raised?

23 A From what I remember now, and it's -- I mean, I
24 think for many of us when you go through editing, be it
25 from a peer or an external reviewer, you are kind of

1 Internally, people looked at it.

2 And probably another thing is there is, you
3 know, a peer-review process so there are three --
4 usually three external reviewers. And that was not done
5 here.

6 So it's a different process that way.

7 BY MR. AFFELDT:

8 Q In terms of your input into the process, did
9 you take the same degree of care that you -- with this
10 report that you would normally with a journal you were
11 writing for a peer-review publication?

12 MS. DAVIS: Vague and ambiguous, calls for
13 speculation, asked and answered.

14 THE WITNESS: I just struggle to answer that.
15 If I was actually doing the report on my original
16 research, I'd probably put much more time into that
17 because it would be new data. If I was doing a
18 commentary for a journal, I might put less time into it,
19 depending on the topic and all kinds of things.

20 So I -- I just can't give it an easy answer, a
21 clear answer.

22 BY MR. AFFELDT:

23 Q Is it fair to say that the degree of care that
24 you put into this falls within the range of something
25 that you would publish in a journal?

1 glad it's over when it's over. You go, "Oh, I have to
2 go back and do this."

3 I think at times I remember her wanting more
4 information on such-and-such a thing or more clarity.
5 Those were probably the two major things in her editing.

6 Q Were you able to provide that information
7 clarity?

8 A Well, I could at least attempt to be clearer
9 and provide more information or more salient information
10 in a little more context. So they always seemed doable.

11 Q You said that internally people looked at this
12 report when you were writing it?

13 A I don't know that I said that. Often I use
14 internal editors in my institute staff, so -- so I think
15 I was using that as an -- you know, an example that I
16 just deal with internal editors all the time.

17 Q Did you do that with this report?

18 A Yes, I did.

19 Q And who looked at it?

20 A There was two members of my staff. One, Susan
21 Marks, who I have been using for close to a year as a
22 professional editor on all kinds of article, drafts and
23 reports that I do. And the other is Madhavi Jayanthi,
24 who is a part-time research associate with us.

25 Q How do you spell that?

1 A M-a-d-h-a-v-i, J-a-y-a-n-t-h-i.
 2 Q Is Madhavi the individual's first or last name?
 3 A Her first name. It's spelled like "Madavi,"
 4 but you sort of swallow the middle syllable so you
 5 actually say it "Madvi." It's...
 6 Q And what feedback did Susan Marks give you?
 7 A The -- basically, in both cases it was
 8 organizational and -- organizational. The other thing,
 9 the cutting -- Susan, especially, is not very verbose
 10 and likes me to get to the point quicker. So some of
 11 her suggestions were to just shorten things or say it
 12 more clearly. And they were also on the lookout for
 13 redundancies.
 14 Q Did either one of them make any substantive
 15 suggestions?
 16 A No, they did not.
 17 Q Other than editing for style, as you mentioned,
 18 or -- did either one of them have any role in preparing
 19 your report?
 20 A The only other thing would -- the only other
 21 role in Madhavi's case would be helping work with the
 22 assistant in terms of making sure the references were
 23 right, but that was all.
 24 Q Who is Carlo Panlilio?
 25 A He was a -- kind of a research assistant. He

1 recently earned his bachelor's degree and just helped
 2 out with whatever at the office -- he had a bachelor's
 3 in psychology so he knew APA style so he would do
 4 reference checks, copy, editing and help with timesheets
 5 and just basically helped keep the office moving.
 6 Q Did he have any role in drafting the report?
 7 A The references, finding them in our database
 8 and notes, adding new ones in. Sometimes I've used
 9 Carlo as more as like a proofreader and I don't recall
 10 if I used him in that role in this.
 11 Q Did you write this report entirely?
 12 A Yes, I did.
 13 Q Looking at page 1, the last sentence of the
 14 first paragraph says:
 15 "I also rely on the insights gathered
 16 from my research on English learners in
 17 urban schools over the past twenty years
 18 and my knowledge of the literature and
 19 perspectives gained from recent research
 20 by others on effective teaching of English
 21 learners, such as..." and then you list
 22 several names.
 23 A Yeah.
 24 Q You didn't rely on any recent research that
 25 you -- that is not cited in your report, did you?

1 A Let me think. Let me look at the reference
 2 list and see.
 3 I probably did in this sense:
 4 Sylvia Linan-Thompson and Sharon Vaughn have done a lot
 5 of research together and I've heard them present at
 6 conferences. We've been on panels together. And, so, I
 7 probably there relied both on the one article that was
 8 published that I cited, as well as my awareness of their
 9 ongoing research, some of which maybe has just been
 10 written up, or that kind of thing.
 11 The other case that would be true would be
 12 Dale Willows. She works a lot with Esther Geva. At
 13 this point in time Esther and I were writing a synthesis
 14 of the research.
 15 So she had access to some of Dale's, because
 16 they were colleagues -- what would they be called --
 17 conference proceedings reports or whatever. So I was
 18 basing it on the context and Esther's summary of the
 19 work that she had done jointly with Dale Willows or on
 20 her own because Esther is more the linguist and Dale the
 21 reading specialist. So those would be the only caveats.
 22 So I had some general awareness that it might
 23 go beyond what has actually been published and
 24 available. That would not be true for Linda Siegel
 25 because I don't know her.

1 Q On the Linan-Thompson and Vaughn work, did you
 2 say that some additional work had recently been
 3 published?
 4 A This is where Sharon Vaughn is one of the most
 5 prolific researchers in our field. So there are always
 6 recent things being published.
 7 I get a little -- when I say I'm confused,
 8 sometimes I'll hear her present and I'm not sure if the
 9 article -- if that study becomes Article 117 or
 10 Article 118.
 11 Some of their work involves English-language
 12 learners totally. Sometimes they do secondary analyses
 13 of them. So I can't always precisely map which is
 14 which. But I've seen that body of work or -- you know,
 15 or partly one of the amazing things, and I did discuss
 16 this with Sylvia, is in Texas, their idea of a bilingual
 17 program is by second grade the children are reading
 18 exclusively in English, which was not the norm in
 19 California prior to 227.
 20 So there's other work that's being published.
 21 It was just the sense of this finding kept coming out in
 22 their report.
 23 Sometimes, too, I review things prior to
 24 publication and -- so I have a sense of what's likely to
 25 be published in six or nine months as a member of

1 editorial review boards.

2 Q Did you review any written materials from
3 Linan-Thompson and Vaughn that you relied on for your
4 report that's not cited here?

5 A No. No, no, just possibly -- no. In fact, the
6 panel -- it would just be the memories of the
7 presentation, but basically it was just the report
8 there.

9 Q Do you have any slides or written materials
10 from those presentations?

11 A No, I don't. I don't in that case. Sometimes
12 people give them out as they announce but they didn't.

13 Q Did you review any written materials from
14 Dale Willows and Esther Geva that you relied on for your
15 report but that is not cited here?

16 A Well, the material from Esther Geva -- see,
17 there is this article, Gersten and Geva, so she
18 summarized a body of research which included her own and
19 Willows and Linda Siegel's mainly from Canada.

20 So if we relied on that, I probably also relied
21 on Esther's first draft, which was just too long and too
22 academic, so -- what's actually in the published article
23 is a shorter, pithier version of that. But I may have
24 relied on that. I don't know that there's anything very
25 different from what's in the published article.

1 BY MR. AFFELDT:

2 Q The ones that you referred to earlier: Math,
3 science, social studies, history. Aspects of language
4 arts, that would be reading.

5 A I think where probably to date the biggest
6 effort has been in areas of language arts that go beyond
7 reading is where the state now has the ELA standards and
8 they really follow what many contemporary thinkers and
9 scholars think is the best way to develop English.

10 So a lot of the written and oral English
11 objectives are linked to stuff kids read to narratives,
12 to telling narratives. So there's that nice linkage
13 that people are trying to move to in the field of
14 English as a second language or English-language
15 development.

16 Math, I am less aware of recent -- recent state
17 initiatives in math or science. I'm not an expert in
18 those areas, but it seems like the math and science -- I
19 mean, the reading has been such a major focus in this
20 state and many states for the last five years or so,
21 that -- I know of less in those areas.

22 Q When you say, "limited research in this
23 relatively new field," what do you mean by "relatively
24 new field"?

25 A I think the idea of systematic research on

1 But it was longer.

2 Q That's the published article that is cited here
3 on page 23?

4 A Yeah. Yeah. Let me make sure.

5 That's correct. But you see how short it is
6 because that is a journal for administrators and also
7 you really have to get to the point. And we cut both
8 our sections.

9 Q Looking at the second paragraph on page 1, the
10 first sentence says:

11 "In my view, the state of California
12 has engaged in a wave of initiatives in
13 the past several years that are likely to
14 enhance the achievement of English
15 learners, particularly in the area of
16 reading despite limited research in this
17 relatively new field."

18 Other than focusing on reading, what is
19 California doing to teach English learners better in
20 other content areas?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: John, could you explain that
23 question a little more clearly to me? What you mean by
24 "other content areas," if you could give me some
25 examples that might help.

1 teaching children to read in a second language is a
2 relatively new field. There is not a lot of research on
3 it. There's also very little research on -- that
4 integrates the findings from 15 years ago or so about
5 how to improve reading instruction with phonological
6 awareness and the importance of fluency that includes
7 second-language learners in it. So, in that sense, it's
8 quite new.

9 MR. AFFELDT: Can you read the answer back
10 again, please.

11 (The record was read as follows:

12 "A I think the idea of systematic
13 research on teaching children to read in a
14 second language is a relatively new field.
15 There is not a lot of research on it.
16 There's also very little research on --
17 that integrates the findings from 15 years
18 ago or so about how to improve reading
19 instruction with phonological awareness
20 and the importance of fluency that
21 includes second-language learners in it.
22 So, in that sense, it's quite new.")

23 MR. AFFELDT: One more time, please.

24 (The record was reread.)

25 BY MR. AFFELDT:

1 Q What do you mean when you refer to integrating
2 of improving "reading instruction with phonological
3 awareness and...fluency...?"

4 A If I could just -- one minor change in my
5 statement and I'll get back to it.

6 Q Okay.

7 A I probably should say in the last 10 years
8 where it says "15" because I think I'm allowed to amend.

9 Q Yeah.

10 A Yeah.

11 What do I mean? Well, the -- what's happened
12 is a convergence of findings of the importance of
13 teaching children one -- two things: One is students
14 who have the ability to -- if you say a word, so it has
15 nothing to do with reading, if you say a word like "hut"
16 and they can tell you the middle sound, those kids are
17 very likely to learn how to read well and pretty
18 quickly.

19 But children who don't have that ability to
20 know the first sound is "hu," the last sound is "ta,"
21 they're likely to have problems. And we haven't known
22 this with precision and we've only begun in the last
23 decade or even less than that to develop ways for
24 teachers to teach this to children, native English
25 speakers and English learners so they learn about

1 called phonemic awareness, building that ability.

2 Now, some children, their moms or dads or
3 siblings build it in them so they come to kindergarten
4 and they've got it, they know it.

5 Some kids ask, they're just curious about
6 words, they want to know how to read, so they just say,
7 "What's this sound?"

8 But either teachers or parents can build this
9 skill in children by -- they're various techniques in
10 practice. First sounds -- you just give kids a sense of
11 sounds so they really have a sense that words are made
12 up of sounds, individual sounds. Because initially they
13 think about a word like "bottle," "This is a bottle,"
14 but then there are all these different sounds in it. So
15 that's a major thrust of reading initiatives throughout
16 this country and in Canada and others.

17 Q And what is a "phoneme"?

18 A I'm not good at formal definitions, but a
19 phoneme is kind of the simplest element of language.

20 I should say, "Don't quote me." My
21 understanding or way to -- would be in a word like
22 "walk," there are three phonemes: "wa," "au," and
23 "ka." So there are four letters but three phonemes.

24 In "sit," there are three phonemes: "sa,"
25 "it," and "ta." So they're not the same as letters.

1 sounds.

2 And for some children then when they learn the
3 phonics and all the other reading approaches, they -- it
4 makes more sense to them because they can use them and
5 they kind of get it.

6 So what seems to be happening is programs that
7 explicitly teach this have better results for students
8 learning how to read.

9 And the implications for English learners has
10 only very, very recently been explored.

11 Fluency -- and then probably two things. One,
12 that kids need to be pretty fluent with their knowledge
13 of phonics but most importantly, it's -- if you read
14 fluently and accurately, you understand more. And that
15 just -- people knew that but they didn't really do much
16 instructionally to try to build fluency in students.
17 And that's been a big effort in the last five years or
18 so, to realize the importance of that, of getting kids
19 to do it so it becomes natural quickly.

20 Q A couple places in there referring to
21 phonological awareness, you used the phrase "teach this
22 to children."

23 What is the "this"?

24 A It's building in -- some children -- it's
25 building in children this phonological or sometimes

1 And some letters can be different phonemes,
2 like an "i" can be an "eye" sound and an "i" sound as in
3 "English." So those are phonemes.

4 (Discussion off the record.)

5 THE WITNESS: Am I allowed, I mean, to just
6 give a suggestion for how linguists do this, I think,
7 the phonemes?

8 BY MR. AFFELDT:

9 Q Sure.

10 A They -- would you like a --

11 Q Why don't we give you a blank piece of paper --

12 A Yeah, a blank piece.

13 Q -- and make it an exhibit.

14 A I'm not a linguist, but this is what I see,
15 that a lot of times they go like "s/i/t" or -- you see
16 what I'm saying? To differentiate it, so they put a
17 slash per phoneme.

18 Q You can explain it to me and we'll put it in
19 the record so she can look at it later.

20 How would you do "walk"?

21 A See, I would -- this is where I'm not a
22 linguist. They would have a certain way to do an "a" so
23 it would be "wa/ka."

24 You see what I mean? So it wouldn't look
25 exactly like "sit." It wouldn't look exactly the same

1 but it would be "walk."
 2 Or if we did "kite," it would be like
 3 this: "ka/eye/ta."
 4 So sometimes it looks like the word, sometimes
 5 it's a little different.
 6 MS. DAVIS: I think that will still be hard for
 7 the reporter.
 8 MR. AFFELDT: Why don't we mark that as Gersten
 9 Exhibit 2.
 10 (Gersten Exhibit 2 was marked for
 11 identification by the court reporter
 12 and is bound separately.)
 13 THE WITNESS: And, for the record, I -- there
 14 are people who have so much more knowledge -- I just
 15 have a sense of this as opposed to can sit down and do
 16 this kind of analysis.
 17 BY MR. AFFELDT:
 18 Q So the phoneme is the smallest divisible sound
 19 of a word?
 20 A Yeah. Yeah. That's a good definition. Yeah.
 21 Q Why -- would you consider yourself an expert in
 22 the area of phonemic awareness?
 23 A No, I wouldn't. I would not.
 24 Q Why is that?
 25 A I'm very aware of it but I don't have that high

1 level of expertise that some do. I'm aware of its
 2 importance to reading. I'm aware of a lot of the key
 3 research studies, but some people focus primarily on
 4 this, not me.
 5 Q Do you consider yourself an expert in
 6 linguistics?
 7 A No, I don't.
 8 Q Do you consider yourself an expert in syntax?
 9 A No.
 10 Q Do you consider yourself an expert in
 11 morphology?
 12 A No.
 13 Q Do you consider yourself a reading expert?
 14 MS. DAVIS: Vague and ambiguous.
 15 THE WITNESS: I'm very knowledgeable in some
 16 areas of reading. My career has not always been
 17 reading, and -- but I'm knowledgeable with a lot of
 18 different aspects of reading.
 19 BY MR. AFFELDT:
 20 Q Are there any aspects of reading that you would
 21 consider yourself an expert on?
 22 MS. DAVIS: Same objection.
 23 THE WITNESS: I don't think I can answer that,
 24 because I wouldn't be considered like one of the top 20
 25 experts in reading. But I'm very knowledgeable in it

1 and I'm very knowledgeable about research, so -- just
 2 "expert" has so many different meanings.
 3 BY MR. AFFELDT:
 4 Q Who are the top experts in reading that you
 5 would --
 6 MS. DAVIS: Vague and ambiguous.
 7 Sorry.
 8 BY MR. AFFELDT:
 9 Q -- that you would consider?
 10 MS. DAVIS: Vague and ambiguous.
 11 THE WITNESS: Some people that I believe would
 12 be considered right now experts in reading would be
 13 Barbara Fooman at the University of Texas; Isabel Beck,
 14 University of Pittsburgh; Michael Pressley. I think
 15 he's at Notre Dame. He moves around a lot, so...
 16 What would be another one? Joe -- Joseph
 17 Torgeson would be an expert in reading from Florida
 18 State; Andy Biemiller would be another one.
 19 BY MR. AFFELDT:
 20 Q Is that B, period, Miller?
 21 A B-i-e-m-i-l-l-e r.
 22 Q And where is he?
 23 A I don't know.
 24 Marilyn Adams.
 25 We could go on a lot, I mean, but these would

1 be some of the leading people, not necessarily -- I
 2 think Richard Anderson would be considered an expert. I
 3 just don't know if he's retired or how fully retired he
 4 is.
 5 Another one, Michael Kamil, K-a-m-i-l;
 6 Joanna Williams; Rollanda O'Connor; Steve Stahl. That's
 7 S-t-a-h-l.
 8 Should I keep going?
 9 Q Yes.
 10 MS. DAVIS: To the extent you have any --
 11 THE WITNESS: Yeah. I'm sure I'm leaving out
 12 somebody.
 13 Sharon Vaughn I think increasingly is
 14 considered one; Anne Cunningham; Jack Fletcher;
 15 Hollis Scarborough.
 16 BY MR. AFFELDT:
 17 Q What was the first name?
 18 A Hollis.
 19 Q Garber?
 20 A Scarborough, like Scarborough Fair.
 21 And Linda Siegel.
 22 I'm sure I'm leaving out many, but that's all I
 23 can, you know, think of right now.
 24 Q Are there any in California that come to mind?
 25 A Anne Cunningham, definitely.

1 Q Where is she?
 2 A At UC Berkeley.
 3 No one is coming to mind. That doesn't mean
 4 they aren't here...
 5 Q What about Robert Calfee?
 6 A I certainly have heard the name and I have not
 7 really followed his work much except a long time ago, so
 8 I would think many consider him an expert. I just don't
 9 know enough about his work.
 10 Q What about Connie Juel?
 11 A I wouldn't consider her an expert.
 12 Q Why is that?
 13 MS. DAVIS: Vague and ambiguous.
 14 THE WITNESS: Well, I think her -- her studies,
 15 a longitudinal research that she did about 15 years ago,
 16 which really documented the importance of this
 17 phonological awareness for how kids do years later and
 18 also how -- how well students read at the end of the
 19 first grade predicts years and years up the road, three
 20 years up the road how well they'll do so it's so
 21 critical to get kids to learn how to read.
 22 And another person who I neglected would be
 23 Keith Stanovich who helped raise that level of
 24 awareness.
 25 BY MR. AFFELDT:

1 Q Professor Hakuta's report refers to work by
 2 Catherine Snow and Lilly Wong-Fillmore.
 3 Would you consider either one of those
 4 individuals an expert in reading?
 5 MS. DAVIS: Vague and ambiguous.
 6 THE WITNESS: I have -- I'm familiar with Lilly
 7 Wong-Fillmore, a chapter she did on -- in a handbook,
 8 either the Handbook of Research on Reading or Handbook
 9 of Research on Teaching, and I think of her more as a
 10 bilingual education person than a reading expert, but I
 11 certainly haven't followed her work.
 12 Catherine Snow I think considers herself
 13 primarily a sociolinguist and has specialized in her
 14 work in -- as to the precursors of reading, the things
 15 that go on at home and language development before kids
 16 get to school. She, of course, was asked to chair the
 17 National Academy of Sciences panel on preventing reading
 18 disabilities in part because she had relevant knowledge
 19 but wasn't perceived as being a reading expert who would
 20 bring biases. And she's obviously learned a lot by
 21 chairing this national panel and, so I think at least
 22 through that experience and perhaps what she's done
 23 afterwards, many would consider her a reading expert.
 24 I know less of what she's actually done in the
 25 area of reading as opposed to language.

1 BY MR. AFFELDT:
 2 Q What areas do you considered yourself to be an
 3 expert in?
 4 MS. DAVIS: Vague and ambiguous.
 5 THE WITNESS: I'd say research methodology and
 6 definitely have done a lot on the process of translating
 7 research into practice.
 8 I consider myself highly knowledgeable in many
 9 important areas of educational research, and I think
 10 it's sort of a judgment call about whether I'd be called
 11 an expert in this or that, because I partly haven't
 12 devoted my professional life to one topic and one topic
 13 alone.
 14 BY MR. AFFELDT:
 15 Q And what are the areas that you consider
 16 yourself highly knowledgeable in that regard?
 17 A I'd say the research on English learners,
 18 research on beginning reading, reading comprehension,
 19 special education involving learning disabilities, the
 20 whole idea of cognitive strategy instruction, which cuts
 21 across specific topics.
 22 Q Cuts across specific --
 23 A Content topics so it can be done in reading
 24 comprehension or math.
 25 I'd say I have a lot of knowledge in the area

1 of math and it keeps growing.
 2 Q Anything else?
 3 A That's enough. I don't -- yeah.
 4 MS. DAVIS: We're getting -- I mean, it's about
 5 quarter to 1:00. Can we --
 6 THE WITNESS: Yeah. I was thinking that,
 7 too. I'm getting hungry.
 8 MS. DAVIS: Is this an okay time to break for
 9 lunch?
 10 MR. AFFELDT: Yeah.
 11 (At the hour of 12:45 P.M., a luncheon
 12 recess was taken, the proceedings
 13 to resume at 1:45 P.M.)
 14 (At the hour of 1:45 P.M., the proceedings
 15 resumed at the same place, the same
 16 persons being present.)
 17 (Record read.)
 18 EXAMINATION (Resumed)
 19 BY MR. AFFELDT:
 20 Q Who else would you consider -- strike that.
 21 Who would you consider to be an expert on
 22 research in English learners?
 23 MS. DAVIS: Vague and ambiguous.
 24 THE WITNESS: I think there are people with
 25 specific aspects of that that have expertise on specific

1 aspects of -- of that.

2 So I'd say for the second language reading,
3 which we had talked about earlier, Linda Siegel would be
4 an important person; and I think the two Dutch authors,
5 I'm not sure how to pronounce them, but Droop Verhoeven,
6 Georgia Garcia has done an excellent review of that
7 literature.

8 English immersion or structured content --
9 let's say for structured content, because immersion
10 overlaps, I think someone whose work is increasingly
11 regarded, though much of the research has yet to be
12 published, but from a pragmatic perspective it would be
13 Jana Echevarria.

14 Anna Chamot, C-h-a-m-o-t, has done a lot of
15 work in that area, as well.

16 There -- there is some new projects funded by
17 the National Institutes of Health jointly with the
18 Department of Education, and they -- some of the
19 researchers involved in them could come up with very
20 high quality research. It's too early to know.

21 BY MR. AFFELDT:

22 Q Are we still on structured content?

23 A No. No. Now we're just in the general area
24 of --

25 Q Okay.

1 A And, actually, in -- for Hispanics only, early
2 reading.

3 Q On structured content, would you consider
4 Ida Walqui an expert in that area?

5 A I've seen the name. I don't know enough about
6 her work.

7 Q When you said, "English immersion overlaps with
8 structured content," what did you mean?

9 A I meant that the teaching strategies for a
10 sheltered content are very similar to immersion, if not
11 identical to or vice versa, though some of the authors
12 who write about sheltered content -- content prefer
13 native-language instruction.

14 So it's confusing that way. So the way of
15 teaching would be the same but they would want this done
16 for older children.

17 Q Just for the record, what do you mean by
18 "sheltered content"?

19 A It would be that same -- the same idea that I
20 had expressed earlier that students learn English as
21 they're learning content so the vocabulary for science
22 or for reading is -- also the language development
23 activities are linked to that.

24 Q Moving beyond the structured content area, what
25 was the next area of research on English learners that

1 you were trying to identify experts for?

2 A The other areas, I'm not sure they're --
3 they're definitely scholars with strong views.

4 I don't know that -- I'd say there are expert
5 researchers. These would be the areas, the demographics
6 where I -- I just don't know enough about it to know
7 whether there are people with specific expertise in
8 demographics related to English learners. I don't
9 follow the demographic end enough.

10 In terms of studies of reading in the first
11 language of a child other than English, there are people
12 who do work in that area. I don't know that I would
13 call any expert researchers or that there's a lot of --
14 to date, that there's a lot of excellent research on
15 that topic or much research, period.

16 Q There is or there is not?

17 A I don't believe there is.

18 Q That was on the topic of reading in a first
19 language that's not --

20 A Yeah. That's correct. Yeah. Yeah.

21 I think in the issue of transfer of
22 native-language skills to English, there's only to date
23 a little bit of research that could change, so I
24 hesitate to call anyone an expert in that area.

25 Aidan I think her name is Durgunoglu? I'm

1 sorry. It's a Turkish name. I know it
2 approximately. The first name is A-e-i-d-a-n, [sic] I
3 think, has done one classic study in transfer, but I
4 don't know. Seems quite knowledgeable, but I don't know
5 that yet there are people with expertise.

6 No one else comes to mind at the current
7 point of time.

8 Q Are there other areas of English-learner
9 research that come to mind?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: Well, other areas that would be
12 important would be learning content, be it in a second
13 language or in the child's home language. And there are
14 people doing research in that area in both math and
15 science more -- a little bit familiar with it and some
16 of it is qualitative.

17 So there are people with some knowledge, but
18 I'm not sure I would say -- put them at the rank of
19 experts.

20 BY MR. AFFELDT:

21 Q Is it not good research if it's qualitative?

22 A Oh, it can be -- it can be -- it can be -- it
23 can be excellent research if it's qualitative and
24 dispassionate.

25 This topic which arises so much passion doesn't

1 lend itself as easily to dispassionate research as some
2 other areas seem to.

3 Q What -- other than being dispassionate, what
4 are the aspects of qualitative research that would --
5 you would look for in determining that the study was a
6 quality study?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: I think given that there are so
9 many qualitative traditions and a consensus has yet to
10 emerge about quality indicators that's comprehensive, I
11 don't know that I can answer that question at the
12 current point in time.

13 BY MR. AFFELDT:

14 Q From your perspective, are there any quality
15 indicators you would look for to determine whether a
16 qualitative research study was a good study?

17 MS. DAVIS: Vague and ambiguous.

18 THE WITNESS: I don't know, John, if I
19 understand this question in terms of how -- yeah, I
20 don't know if I understand the question in terms of the
21 issue I've raised with the multiplicity of qualitative
22 methodologies that I could answer that.

23 BY MR. AFFELDT:

24 Q You spoke of no emerging consensus.

25 My question is -- goes to whether or not you

1 experimental study I would look for? Is that a
2 correct --

3 Q What would you need to see in order to judge
4 this study to be of good quality?

5 MS. DAVIS: Vague and ambiguous, calls for
6 speculation.

7 THE WITNESS: I don't think I can answer that
8 question. I could -- I have things that I look for, but
9 I couldn't say if 5 are met or 10 are met, but I have
10 things that I look for in quantitative studies.

11 BY MR. AFFELDT:

12 Q Have you ever seen a study where all of your 20
13 items are met?

14 A I can't answer that off the top, and it's not
15 exactly 20.

16 Q Why?

17 A There are things that go through my mind and of
18 other reviewers, and the trade-offs -- one of the things
19 isn't doing any type of research. There are
20 trade-offs. So if you're very strong here and here, you
21 may not be as strong someplace else. So that balancing
22 is always part of evaluating the quality.

23 Q Does it come down to a judgment call at some
24 point to balance the different strengths and weaknesses
25 of given studies to determine whether or not you're

1 have, based on your knowledge and experience as someone
2 schooled in the area of research methodology, whether
3 you have particular quality indicators you would want to
4 see met for a good piece of qualitative research.

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: I at least can't articulate them
7 in my mind. They may be emerging in my own mind or
8 subconscious, but I don't have clear things like I would
9 do in a quantitative experimental study.

10 BY MR. AFFELDT:

11 Q What do you look for in a quantitative
12 experimental study --

13 MS. DAVIS: Vague and ambiguous.

14 BY MR. AFFELDT:

15 Q -- to determine whether or not the study is
16 good quality?

17 MS. DAVIS: Same objection.

18 THE WITNESS: There are probably about 20 or so
19 items I look for. I think the weightings aren't crystal
20 clear how important some are versus the others.

21 And most of these would come from the standard
22 textbooks.

23 BY MR. AFFELDT:

24 Q And what are those?

25 A So the question is what in looking at any

1 going to rely on -- rely on a study?

2 MS. DAVIS: Vague and ambiguous, calls for
3 speculation.

4 THE WITNESS: I don't understand the question
5 in a way that I could answer it.

6 BY MR. AFFELDT:

7 Q Let me ask you a different question. Can you
8 identify for me what -- what are the elements that you
9 look for when you're trying to determine whether a given
10 piece of experimental research is a quality piece?

11 MS. DAVIS: Vague and ambiguous, calls for
12 speculation.

13 THE WITNESS: Off the top of my head, I could
14 give you a list of some of the things I look for. I
15 could forget them without a study in front of me and my
16 normal materials.

17 I'd look for was the data analyzed
18 appropriately. I'd look for was the sample described in
19 some way, some operational way. I'd look for the
20 measures, were they reliable in different ways, internal
21 consistency, test, retest reliability, interscore
22 reliability.

23 I'd look for the range of -- of what's
24 measured. I'd look for the nature of the comparisons
25 made. Do we know things about the comparison groups?

1 Do we know exactly what went on in the intervention
 2 groups?
 3 I'd look for the grounding in prior research
 4 and theory that comes from empirical research.
 5 I'd look for kind of the crispness or clarity
 6 of the conception behind the study.
 7 I'd look for attrition, is it controlled for,
 8 is it reported.
 9 I'd look for, were the participants randomly
 10 assigned to one condition or another. I'd look for
 11 evidence that the groups were truly comparable as best
 12 we can gauge.
 13 And I'm sure there's a couple of others that I
 14 just can't recall at this point in time, access my
 15 memory.
 16 BY MR. AFFELDT:
 17 Q Is it important to control for effects?
 18 MS. DAVIS: Vague and ambiguous.
 19 THE WITNESS: I don't understand the question
 20 by -- what you mean by "effects."
 21 BY MR. AFFELDT:
 22 Q Demographic effects.
 23 MS. DAVIS: Same objection.
 24 THE WITNESS: It's important to control for
 25 demographic variables. It's important whenever possible

1 to have a random process if one is interested in
 2 something causing something else. So demographic
 3 variables are very, very important, as are abilities of
 4 students or teachers or with the participants that are
 5 related to what you're measuring.
 6 BY MR. AFFELDT:
 7 Q Do you need to control for the abilities of
 8 students when making comparisons?
 9 MS. DAVIS: Vague and ambiguous.
 10 THE WITNESS: See, the problem about answering
 11 these hypothetically is some studies focus more on the
 12 teachers, some on the students, some on the school. So
 13 there's such an array of things that could be studied
 14 experimentally.
 15 It's definitely important if the students are
 16 the focus that they come from the same pool of students
 17 and it's a chance that determines whether they're in
 18 Group 1 or Group 2. And if not that, that there's very,
 19 very clear evidence of the groups of students being
 20 comparable.
 21 BY MR. AFFELDT:
 22 Q Are there any other factors you look for when
 23 trying to determine the quality of a particular piece of
 24 research?
 25 MS. DAVIS: Vague and ambiguous, asked and

1 answered.
 2 THE WITNESS: I think, as I said, I tried to
 3 cover some of the ones at least I could pull up, you
 4 know, off of the top and I'm sure there are a couple,
 5 you know, I missed. And if I had documents in front of
 6 me, particular studies, I'd look at those.
 7 BY MR. AFFELDT:
 8 Q In your opinion, in order for research to be
 9 acceptable, must it establish a causal relationship?
 10 MS. DAVIS: Vague and ambiguous, calls for
 11 speculation.
 12 THE WITNESS: Could you repeat the question?
 13 BY MR. AFFELDT:
 14 Q In your opinion, in order for research to be
 15 acceptable, must it establish a causal relationship?
 16 MS. DAVIS: Same objections.
 17 THE WITNESS: That would depend on the claims
 18 that are made for -- based on the research study.
 19 There's a recent report by the National Research Council
 20 that tries to begin to map out what types of research
 21 fit what -- what types of claims or types of questions.
 22 And, so, there could be quality for various
 23 types of studies that address very different claims and
 24 what is effective in teaching children or what is
 25 effective in training teachers to be more -- you know,

1 more effective than there be different standards for
 2 things that describe -- or things that describe
 3 processes.
 4 BY MR. AFFELDT:
 5 Q When was that report done or -- strike that.
 6 When did that report come out from the National
 7 Research --
 8 A Very recently. 2002.
 9 Q Do you know who authored that?
 10 A The editors, and I may have the order wrong,
 11 but are Feuer, F-e-u-e-r, I believe is the spelling,
 12 Towne, T-o-w-n-e, & Shavelson.
 13 And there may be others. These were the
 14 editors and it was a panel of about 10 or 12 people.
 15 Q In your opinion, in the area of establishing
 16 educational policy, are correlational studies of any
 17 value?
 18 MS. DAVIS: Vague and ambiguous, calls for
 19 speculation.
 20 THE WITNESS: I think there are pieces of
 21 information. I think they require a lot of replication,
 22 because people can and have reached erroneous
 23 conclusions based on them.
 24 BY MR. AFFELDT:
 25 Q What do you consider to be a lot of

1 replication?

2 A There is a task force working through Division
3 for Research at CEC, and I'm not in the correlational
4 end, I'm in the experimental end, but people are.

5 It might be a number like five to eight, but
6 the precision of the replication becomes important.

7 Q What is the name of the task force you're
8 referring to?

9 A This is the CEC's Division for Research. It's
10 a task force and it may be called on -- Quality
11 Indicators, or the name may keep changing.

12 Q Did you say CC's?

13 A C-E, as in Edward, -C as in Charlie, or Council
14 for Exceptional Children.

15 Q What is the task of the task force?

16 A To develop quality indicators for different
17 types of research that could be used to help people
18 design proposals, to help people evaluate reports or
19 manuscripts for journals; and it could be used to assess
20 evidence, you know, whether it's valid or whether it's a
21 high-quality -- an acceptable quality or a high-quality
22 piece of evidence supporting practice.

23 Q Where is the task force at in terms of
24 achieving its goal?

25 A There are four units. I know the group I

1 Q In terms of acceptable research that you would
2 rely on, would you rely on a well-done correlational
3 study?

4 MS. DAVIS: Vague and ambiguous, calls for
5 speculation.

6 THE WITNESS: Could you repeat the question,
7 the first part?

8 BY MR. AFFELDT:

9 Q Would you rely on a well-done correlational
10 study?

11 MS. DAVIS: Same objections.

12 THE WITNESS: To do what? To do --

13 BY MR. AFFELDT:

14 Q As part of your work.

15 MS. DAVIS: Same objections.

16 THE WITNESS: I think definitely to stimulate
17 thinking and analysis and even to think about
18 incorporating elements that are using measures in it or
19 systematically pursuing questions raised by it.

20 Yeah, I definitely would consider it something
21 to think about. It would typically not be a basis for
22 practice. If there were many, many studies that showed
23 such-and-such predicts across populations and whatever,
24 then I think it definitely could have changed practice
25 in that we -- so that we could use that as a screening

1 chaired the best, for obvious reasons, and we have put
2 together a draft of quality indicators that the other
3 members are reviewing and then we'll have others review,
4 and some explanatory text.

5 We have not made a determination either about
6 what's acceptable versus unacceptable or high-quality
7 versus a quality study, so that's up the road.

8 Q What unit do you chair?

9 A Experimental Group Research. There's also one
10 on Single-Subject Research.

11 Q What are the other units?

12 A Correlational and Qualitative.

13 Q Do you believe that quality research can come
14 in the form of any one of those types of research?

15 A I --

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: I'm not -- with that general a
18 question, I don't know that quality would have so many
19 different meanings, being from something that is
20 intellectually stimulating, something that inspires
21 people to do larger, more systematic things. So it
22 depends on what "quality" means. I think in terms of
23 things that are interesting to read and stimulate
24 thinking, absolutely.

25 BY MR. AFFELDT:

1 measure.

2 BY MR. AFFELDT:

3 Q Would you rely on a well-done qualitative study
4 to change practice?

5 MS. DAVIS: Vague and ambiguous, calls for
6 speculation.

7 MR. AFFELDT: I assume we mean practices in the
8 classroom.

9 MS. DAVIS: Same objections.

10 THE WITNESS: I have a harder time answering
11 that.

12 I would say, because it depends so much on the
13 study. If there was a dispassionate qualitative study
14 or series of studies, they may help alert us to
15 misunderstandings or problems if the author's
16 interpretation is correct, which is why the replications
17 become so important there.

18 So I'd say if there was a theme that cut across
19 a lot of qualitative studies, it might lead to
20 rethinking of a certain kind of practice. That would be
21 the extent of it. Not necessarily knowing anything new,
22 we think of it is going to be better, but things are off
23 or wrong or not working.

24 BY MR. AFFELDT:

25 Q When you use the term "practice," what do you

1 mean?

2 A I mean mainly -- because my interest is more
3 what teachers do when -- you know, when there are groups
4 of kids, small groups, large groups.

5 Also, what the school itself does in terms of
6 putting -- you know, what curriculum is taught in what
7 order, that kind of thing.

8 Q Do you have a general opinion about the quality
9 of research in the area of English-learner education?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: Rather than present my own
12 opinion, I probably share two findings from reports of
13 the National Research Council. The first was on a panel
14 that Kenji Hakuta shared where it's one of the major
15 conclusions was the lack of rigorous systematic research
16 on critical education issues for what was then called
17 language minority students or English learners, and that
18 was released in 1997.

19 The other was the more recent 2002 report by
20 the National Research Council on Scientific Research and
21 Education, and they talked about that fundamentally they
22 didn't see the problems facing educational research to
23 be different than any other line of scientific inquiry.

24 But the number of scientifically rigorous --
25 there was something about needing improvement in the

1 that I thought were accurate parts that I thought were
2 problematic, parts that really raised very interesting
3 issues.

4 Q What are the parts that you agree with?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: All I can remember now, and I
7 think there are many parts that I would agree with, we
8 were independently looking at the experimental research
9 at that time for this population on English learners on
10 instruction and found it extremely small numbers of
11 study. So, in parallel, they're finding that there is
12 very, very little rigorous experimental research on this
13 topic.

14 I think another thing that I agreed with the
15 report is that the -- the large-scale evaluations saying
16 does this immersion versus this immersion versus short
17 exit, early exit, late exit, they -- they wind up being
18 so confused and compromised because these terms are
19 insufficient.

20 So that idea that it doesn't give us much of a
21 knowledge base and the future lies less in doing
22 large-scale evaluations like this and more in doing
23 rigorous studies, I agree with that approach. I might
24 have written it or expressed it differently, but I think
25 that message was a good one.

1 area of rigorous scientific research and really -- so I
2 guess for both reports, you're really setting up an
3 establishment so there is scientific research and
4 education which would include the topic of English
5 learners. And that's essentially why Congress set up
6 the new Institute of Educational Sciences.

7 BY MR. AFFELDT:

8 Q And so would you base your opinion on the
9 conclusions from those two reports?

10 A I wouldn't fundamentally disagree with either
11 of those two reports on that issue.

12 Q Have you in the past looked to Professor
13 Hakuta's work on reviewing research in the area of
14 English-learner education?

15 A I did probably in two ways. There was a piece
16 he did in Educational Researcher with I believe it was
17 Pease Alvarez.

18 And he talked about some issues and many of the
19 areas that were unanswered or hadn't been approached by
20 research and I think that came out about 10 years ago,
21 and I had cited that in at least one of the articles I
22 wrote.

23 My memory is fairly rusty on that. The other
24 was their report that he coedited with Diane August.
25 I've cited parts of that, including, you know, parts

1 I think, too, the message that there is no
2 research either supporting or not supporting the
3 benefits of native-language instruction for students who
4 come from -- who are English learners seemed sound, and
5 so those were some things from memory I would agree
6 with.

7 BY MR. AFFELDT:

8 Q Would you consider Professor Hakuta an expert
9 in the area of research methodology for English
10 learners?

11 MS. DAVIS: Vague and ambiguous.

12 THE WITNESS: I -- I don't know enough about
13 his work to be able to say that one way or another. I
14 know he's quite respected, but I just wouldn't
15 necessarily say that one way or another.

16 I'm less aware of active research projects he's
17 done recently or within the, whatever, last 8 or 10
18 years. But I'm just not aware of them.

19 BY MR. AFFELDT:

20 Q Who are the people you would consider experts
21 in the area of research methodology in education,
22 generally?

23 MS. DAVIS: Vague and ambiguous, overbroad.

24 THE WITNESS: I'd like to take a break after
25 this question, okay?

1 BY MR. AFFELDT:

2 Q Sure.

3 A The learning system, there are so many areas of
4 research but one person who seems quite erudite is
5 Richard Shavelson. Tony Bryk, B-r-y-k, seems like an
6 excellent methodologist and his work has led to some
7 breakthroughs and advances in how we analyze data; Steve
8 Raudenbush would be another; Larry Hedges seems an
9 excellent methodologist; David Francis seems an
10 excellent methodologist. I guess his background is more
11 in psychology.

12 My colleague, Lynn Fuchs, at Vanderbilt
13 University is an excellent methodologist.

14 Joseph Torgeson seems an excellent
15 methodologist.

16 And there are many others. Those are just all
17 I can think of at the current point in time.

18 MR. AFFELDT: Okay. Why don't we take a break.

19 THE WITNESS: Yeah, okay.

20 (Recess taken.)

21 BY MR. AFFELDT:

22 Q In your opinion, how should the field improve
23 the quality of educational research?

24 MS. DAVIS: Vague and ambiguous, calls for
25 speculation.

1 and chemistry and the history of science, I saw some of
2 those things and learned about them when I was young.
3 And I don't know that that is so much the culture of
4 educational research.

5 And the sense of being dispassionate is also
6 a -- relatively dispassionate is also not so common in
7 educational research. We're being passionate about some
8 things but dispassionate as a researcher.

9 So those are just the beginnings.

10 BY MR. AFFELDT:

11 Q If a study has not been peer-reviewed, do you
12 assign that study any weight in relying on its
13 conclusions?

14 MS. DAVIS: Calls for speculation, vague and
15 ambiguous.

16 THE WITNESS: I would not off the top exclude
17 it from further consideration, but it would -- there
18 would be some reason to be suspect of why it didn't go
19 through the process of submitting it to a journal and
20 re-, you know, thinking in writing and editing it down
21 and getting feedback from knowledgeable peers.

22 So it wouldn't off the top be, you know,
23 considered like not even worth looking at, but it would
24 raise issues about why this didn't happen.

25 BY MR. AFFELDT:

1 THE WITNESS: It's something I've thought some
2 about, and it's -- and it's a really complex,
3 overwhelming topic and, obviously, it's well beyond what
4 one person can come up with.

5 I think if there was an embrace of this concept
6 of scientific method, which there had not been in much
7 of the field in the 1990s, so if there was an embrace of
8 the -- you know, the technical knowledge and skills that
9 one needs to do any of these types of research, that
10 would be a fundamental change.

11 I think the culture of schools change some so
12 it would allow, I mean, more for rigorous studies to be
13 conducted. That would be a change. Funding agencies,
14 you know, funding educational research at a level close
15 to public health and other areas.

16 I see the training of graduate students being
17 critical, and even of the faculty.

18 I think, too, we need to figure out a way to
19 have people think of science as not only test tubes and
20 microscopes, that science is also thrashing out of
21 theories and -- and seeing disputes and occasionally
22 data leads to rarifications or radical rethinking.
23 Theory sometimes precedes data.

24 But not just learning it from memorizing a
25 textbook, but one advantage I had by studying physics

1 Q Have you ever relied on studies that weren't
2 peer-reviewed in your work?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: I don't understand the question
5 as framed, John.

6 BY MR. AFFELDT:

7 Q In the course of your writings, have you relied
8 on studies that have not been peer-reviewed in support
9 of positions you were making?

10 A From -- from what I'm thinking and remembering
11 now of the large amount of writing I've done, I'm sure
12 the answer is "yes." I certainly have used in certain
13 articles or certain pieces unpublished work of ours.
14 Usually it's been subsequently published but sometimes
15 timing has worked out differently. It's almost always
16 been subsequently published with one -- the exception of
17 one study that I can recall.

18 I have also -- I'm sure I have used things from
19 everything from writing to explain why there may be
20 misperceptions of why an area is so ambiguous, because I
21 do a lot of conceptual pieces.

22 So I've used probably from what I can recall,
23 those would be the two things -- the two -- the two
24 areas when either it's my own unpublished work and often
25 it's prior to publication; and the second would be if

1 I'm just trying to understand a concept or -- so those I
2 would say I have used nonpeer-reviewed material.

3 And I'm sure there are other cases that I can't
4 recall right now.

5 Q Are all the studies you cite in your expert
6 report in this case peer-reviewed?

7 A The AIR/WestEd would not be. The book chapter
8 which is just a preliminary production, Baker, Gersten
9 and Haager would not be.

10 The piece by Birman, there is a peer-reviewed
11 piece, and this is a shorter version of it, so my answer
12 would be more yes, it has been peer-reviewed than no.

13 So, this first-grade reading, it's in -- it's
14 in preparation and I've been waiting for the other
15 authors.

16 Q Which one is that?

17 A The Baker, Gersten, Haager, et cetera. So that
18 one, it's in preparation, and I have access to the data
19 that's accurate but it has not been peer-reviewed yet.

20 The Chiappe has been peer-reviewed. The Cohen
21 is just a textbook on statistics.

22 So the Garet, this is the peer-reviewed one, it
23 makes the same point as the one by Birman.

24 Fitzgerald was more an essay and I think I just
25 used it as -- as an essay as opposed to, you know,

1 Q -- correct that and initial it?

2 A Sure. Okay. And I noticed I think one other
3 typo. Was it page 19 where we were? Yeah.

4 This just -- I don't know why -- line 2, it
5 should say, "...such as Michael Kirst (cited in)" -- it
6 was cited 20 -- let me cite it in Gersten '99. That
7 would be fine.

8 Q All right. Going back to the reference list --

9 A So to clarify, so Fitzgerald would be
10 peer-reviewed.

11 Q Okay.

12 A The Gersten and Baker, which is our own work,
13 again, a preliminary report, would not have been
14 peer-reviewed. It was reviewed by one of the editors
15 but would not have been peer-reviewed, and I saw that
16 as, again, a format for the preliminary data.

17 Gersten and Geva is more for a general audience
18 so that isn't appearing here.

19 Q That is or is not --

20 A Not. The Geva one with Wade-Woolley would be
21 peer-reviewed. The book chapter would not be
22 peer-reviewed. And, again, it was an introduction to
23 our own work.

24 Hayes and Salazar was not peer-reviewed and was
25 only included because it was such a large part of

1 saying this is evidence. I think there was a quote from
2 that and I can check that, if you'd like.

3 Q Sure. Why don't we --

4 A Yeah. Let's just see.

5 Yeah. It's really an opinion, this is on
6 page 20, of Fitzgerald. I notice a typo there. It
7 should be 2000. "Distinguished researcher noted there
8 is little evidence to support the need for special
9 edition of second-language reading instruction."

10 So it's a pretty -- it's just a statement and
11 not her professional opinion, basically, or knowledge.

12 Q A statement about evidence, though?

13 A Yeah, yeah. And -- well, actually, so it's
14 kind of -- her essay, it's in Reading Research
15 Quarterly, so her essay would have been peer-reviewed as
16 an essay.

17 So the actual answer would be yes, that was
18 peer-reviewed. It's just not an original research
19 report. It is an attempt to draw together research.

20 Q Before you continue, you noted a typo. Where
21 is that?

22 A Oh, it says, "Fitzgerald (20)." At least in my
23 version it should be "2000."

24 Q Can you --

25 A Should I change that?

1 Hakuta's report, and that would be true for both of the
2 reports.

3 The Keller, it's not peer-reviewed, but it was
4 just an update on legislation.

5 Linan-Thompson, yes, peer-reviewed. Saunders
6 and Goldenberg, no. It's a book chapter.

7 The Schainberg again, was just an Education
8 Week. It was just an update of material so it would
9 just be a source of information. And I can check with
10 that.

11 Q Is that Lynn Schainberg?

12 A Yeah. Yeah. Did I spell -- is it
13 misspelled --

14 Q That is the Education Week EL reporter that
15 I --

16 A Yeah, yeah. That's what it is. So it's just a
17 reporter.

18 So how does she spell her name?

19 Q I believe there's no "l" in it.

20 A Oh, Schainberg.

21 Q And I thought it was "L," Lynn.

22 A Oh, the "L," it's definitely Lynn. It's an
23 "L." And Schainberg -- Schainberg sounds -- I thought I
24 saw a Schainberg, but -- I mean Schnailberg, but how
25 about if we look that up? It's just a spelling thing.

1 Q Fine.

2 A I could look up what we said, but it was just a
3 piece of information about either legislative or
4 whatever. I can look that up.

5 It's easier in the computer because I can just
6 do a "find."

7 Q For the record, you're looking through your
8 report presumably for --

9 A Yeah. Just to see where I cited Lynn's...

10 I'm not seeing it. There's a chance --
11 unless -- does it seem that important to you, because
12 it's basically a newspaper thing, maybe reporting on
13 things in California.

14 Q I don't recall seeing it, myself.

15 A Oh. So maybe it was in an earlier draft and we
16 deleted it and Hollis didn't delete it.

17 Q So sitting here right now, you don't know
18 exactly where that reference is supposed to go in the
19 report?

20 A No. No, I don't.

21 Q Okay.

22 A It looks like it would have been a historical
23 thing on Proposition 227 based on the title at the time.

24 Q Let's move on.

25 A Yeah.

1 fall. And there have been -- there were a lot of
2 conference calls in the fall and then --

3 Q Fall '02?

4 A '02, yeah. And then I've reviewed the results
5 and the more technical material and there have been
6 refinements. And someone did a version of the
7 procedures and I worked on that.

8 So it's just a matter of doing the introductory
9 material and the discussion which other folks, other
10 coauthors are responsible for. I'll look at it, of
11 course. And they've just been slow and he's been slow
12 for a variety of reasons.

13 Q So what percentage of the text has been written
14 at this point?

15 A I'd say between 50 and 70 percent of the text.
16 But the more scientific technical part has been
17 written. The actual -- but the data has been written.

18 Q And when do you anticipate that the
19 concluding -- let me ask a better question.

20 When do you anticipate that piece being
21 completed?

22 A It really -- he's a senior author, and it
23 depends on his time allocations. He's been in -- he's
24 switching positions, and I think that's had an influence
25 on this.

1 Q Thomas and Collier?

2 A And neither of those were from a peer-reviewed
3 journal and they were put in because of Hakuta's
4 emphasis on the second Thomas and Collier. And
5 Wong-Fillmore & Snow would not be reviewed. It was more
6 an informational piece.

7 Q The forthcoming 2003 study that you're working
8 on --

9 A Yeah. Yeah.

10 Q -- is that the third reference listed?

11 A Yeah.

12 Q Baker, Gersten?

13 A Yeah. Yeah.

14 Q That hasn't been peer-reviewed yet, I think you
15 indicated.

16 A No, it hasn't been completed yet. I have been
17 emailing Dr. Baker frequently and my part is -- no, just
18 to get the whole text, there is no -- it's the
19 introduction and the conclusions that the coauthors
20 haven't written so it's a matter of just getting it
21 written and it will be submitted.

22 Q How far along is that study?

23 A Well, the actual data has been analyzed and
24 I've gone through numerous versions with Scott -- should
25 be with Scott Baker, so it's been analyzed since the

1 I'd have to say realistically November, but I
2 can only guess so much about somebody else because he is
3 a senior person. And...

4 Q So when you relied on it to write this report,
5 what were you looking at?

6 A I was looking at the results which had been put
7 in tabular form and occasional emails where Scott gave
8 me the core of text, which is now gotten more into close
9 to a final draft I think of the results section of the
10 document.

11 MR. AFFELDT: Lynne, this is the only document
12 from the reference list that we haven't received.

13 MS. DAVIS: Uh-huh.

14 MR. AFFELDT: Do you have some form of it?

15 MS. DAVIS: I do not.

16 MR. AFFELDT: We haven't --

17 MS. DAVIS: At least to my knowledge, you know,
18 I do not. To my knowledge, we don't have it.

19 MR. AFFELDT: Okay. We sent you a letter on
20 July 15th asking for it and I think we would at least
21 like to see the 50 to 70 percent there and the data
22 there's there and --

23 MS. DAVIS: I'm sorry. What did you send the
24 letter on July 15th about?

25 MR. AFFELDT: On this document.

1 MS. DAVIS: On this document?
 2 MR. AFFELDT: Yeah.
 3 MS. DAVIS: Okay.
 4 MR. AFFELDT: And, obviously, there is some
 5 material there that Dr. Gersten has been able to refer
 6 to and rely on and we would like to see a copy of what
 7 he reviewed.
 8 THE WITNESS: I know it may be at some point
 9 fairly recently Vanessa called me and I did talk to
 10 Dr. Baker, because he -- you know, I -- he's more the
 11 one coordinating it and indicated that we -- I'd like to
 12 know what status it's in because with the other
 13 coauthors I really can't do things without their
 14 knowledge especially when I'm not the senior person. I
 15 mean, you know, so we can continue to work on that.
 16 Yeah.
 17 MR. AFFELDT: Do you have a response at this
 18 time?
 19 MS. DAVIS: I'll take your request under
 20 advisement. I don't have a knowledge of the
 21 conversation Dr. Gersten had with Ms. Koury, so I will
 22 look into it.
 23 MR. AFFELDT: Okay.
 24 MS. DAVIS: Sounds like there might be some
 25 resistance by the coauthors of letting that data go, so

1 I'll look into the issue.
 2 BY MR. AFFELDT:
 3 Q And did you cite any correlational studies in
 4 your expert report?
 5 A Yes, I did.
 6 Q Which are those?
 7 A Let me look. The three studies of myself and
 8 Baker were involved in correlational/descriptive.
 9 The study by Garet and Porter was correlational.
 10 I'd say Hayes and Salazar was more descriptive
 11 than correlational.
 12 Those would be the ones.
 13 Q And you think your correlational studies
 14 together with Mr. Baker are good research?
 15 MS. DAVIS: Vague and ambiguous.
 16 THE WITNESS: Yeah, I think the data we have is
 17 relevant to some of the issues that were raised in
 18 Dr. Hakuta's report.
 19 It's hard to ask a person himself or herself is
 20 it good research and it's doubly hard because the --
 21 it's not totally completed in two ways: The actual -- I
 22 haven't seen the writeup. I mean, it's outlined for
 23 what leads to the study and all.
 24 So I think it's a strength, certainly, of this
 25 research study is the fact the findings were replicated

1 two years consistently with totally different students.
 2 That would be a definite strength. And then there are
 3 linkages to other correlational studies that really go
 4 back in some ways to the '70s and work in the early
 5 '90s.
 6 I just don't feel comfortable giving a good,
 7 excellent, bad to my own work at this point in time.
 8 BY MR. AFFELDT:
 9 Q Modesty aside, you think it's good enough
 10 research in order for you to rely on it in your expert
 11 report to rebut Dr. Hakuta, don't you?
 12 A I think it's -- I think the findings are
 13 relevant to issues raised in his report, both the
 14 descriptive information and the -- and the correlations,
 15 yeah.
 16 Q You think your correlational data is reliable?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: Yeah, that -- that has so many
 19 meanings. I don't know that I can -- because the word
 20 "reliable" has a lot of different meanings in
 21 educational research.
 22 I wonder for me to understand the question
 23 better and how to answer it if you could reframe or
 24 rephrase it.
 25 BY MR. AFFELDT:

1 Q Do you think it's data that you can rely on to
 2 support the conclusions that your studies reach?
 3 A It would depend which conclusion you're talking
 4 about.
 5 Q The conclusions which you've reached in
 6 these -- the three reports that you and Mr. Baker have
 7 carried out that are cited in your reference list.
 8 A The one that's in preparation, the conclusions,
 9 haven't been written and internally reviewed, let alone
 10 externally reviewed.
 11 Conclusions on the other piece, let's see.
 12 You know, from memory, because I don't have
 13 those pieces in front of me, one of them, the conclusion
 14 was that there is a body of principles that have not
 15 been well articulated that effect of teaching to kids in
 16 the second language is one of the conclusions. And I
 17 think the correlations would support that, that there is
 18 a body but that it's not been fully or explicitly
 19 articulated and that it builds on knowledge of reading,
 20 how to teach and knowledge of second-language
 21 development or sheltered approaches.
 22 The chapter where Haager was the first author,
 23 some of the conclusions were related to Haager's own
 24 work in one of the schools in East L.A. and the kind of
 25 tailoring things and how to improve teachers' skills.

1 And I think there is some support of that. And then a
2 lot of it was also this chapter was showing the uses of
3 a measure, how a measure could be used in different
4 ways.

5 So at that level, I'd say yes, and I'd also say
6 that this, again, you know, shows that what teachers do
7 have at this time, how they explain things to kids and
8 are positive to kids and -- definitely has an impact on
9 their reading growth that the kids on average make in
10 their classrooms.

11 So -- so those conclusions, I think the
12 correlations with the ramification and the fact
13 historically there are somewhat similar findings, I
14 think there is a basis for it.

15 Q And which of these studies include
16 observational aspects?

17 A They all do. I mean, they're all really
18 different aspects and different ways to look at the
19 measure. There were two different years of the study so
20 one deals totally with the first year, one with the
21 second year with the first year in context. One is more
22 descriptive and one talks about uses of the measure.

23 So they have some things in common and some
24 different, different aspects of the study.

25 Q So at least with respect to the observational

1 observing is what seems to really be working, what is
2 exemplary, and that that can and probably should be
3 tested out using rigorous methods. You can actually
4 pick up ideas from teachers that are much better at
5 things than researchers or scholars think of themselves
6 or that are linked theoretically but they are better in
7 application.

8 BY MR. AFFELDT:

9 Q And if it's done, as you say, with some system,
10 can one determine reliably what is working through an
11 observational study?

12 A I don't think one study can ever on its own
13 determine what is working. If it has a built-in
14 replication, it's more evidence. But a correlational
15 study on its own couldn't lead to the conclusion that
16 such-and-such is working.

17 I think, again, I'd like to take a break. It
18 can either be now or after this question.

19 Q Maybe I can ask a few more and finish this --

20 A Yeah. Yeah. Sure. Yeah, that makes sense.

21 Q Could one observational study on its own
22 demonstrate reliably what's working?

23 MS. DAVIS: Vague and ambiguous, calls for
24 speculation.

25 THE WITNESS: I don't think I understand the

1 work done from studies that you yourself are involved in
2 you believe that there is some use to engaging in
3 observational studies?

4 A Oh, yes. Yeah. Yeah.

5 Q What do you see the use of observational
6 studies --

7 MS. DAVIS: Vague and ambiguous.

8 BY MR. AFFELDT:

9 Q -- in determining practice?

10 MS. DAVIS: Same objection.

11 THE WITNESS: Well, one thing that I did urge
12 the State to do when they put this small amount of
13 funding behind this study was that if you want to
14 understand how the new -- what at that time was a new
15 Reading Language Arts Framework is being implemented in
16 schools and you want to understand the impact of
17 Proposition 227, it makes sense to actually look inside
18 the classrooms rather than just interview a building
19 principal or a teacher.

20 So they always provide that information about
21 just seeing what's going on. And if you can do it with
22 some system, then you would have a sense of what are the
23 trends, what are the things that people are struggling
24 with.

25 I think another thing you can learn from

1 question enough that I can provide an answer. Yeah. I
2 think I -- I don't think I can.

3 BY MR. AFFELDT:

4 Q What don't you understand about the question?

5 A Well, the word "reliable" itself is a problem
6 for me. I'm not sure what exactly it means in this --
7 and I'm not sure exactly what it means in this
8 question.

9 And the other thing is the -- without a
10 context, you're dealing with -- it's just hard to answer
11 because there's -- it depends on so many other factors
12 and line of research and all kinds of other things. So
13 I couldn't really answer that one way or another.

14 Q But you could answer with respect to a
15 correlational study, which I believe you just testified,
16 that one correlational study alone could --

17 MS. DAVIS: What --

18 BY MR. AFFELDT:

19 Q -- reliably indicate what works in terms of
20 practice in the classroom?

21 So my question is: What's different about
22 correlational studies that enables you to answer the
23 question than observational studies?

24 A Let me think about that.

25 Could we look again -- the question was -- I

1 did answer can correlational studies reliably --
 2 MR. AFFELDT: Can you reread the question a
 3 couple back and the answer.
 4 (The record was read as follows:
 5 "Q And if it's done, as you say,
 6 with some system, can one determine
 7 reliably what is working through an
 8 observational study?
 9 "A I don't think one study can ever
 10 on its own determine what is working. If
 11 it has a built-in replication, it's more
 12 evidence. But a correlational study on
 13 its own couldn't lead to the conclusion
 14 that such-and-such is working.")
 15 THE WITNESS: I think I've been pretty
 16 consistent that one study on its own cannot lead to
 17 those conclusions.
 18 BY MR. AFFELDT:
 19 Q And my question, as the court reporter reminded
 20 us, was about observational studies. And you responded
 21 that --
 22 A Correlational -- yeah.
 23 Q So I'm just trying to determine what is your
 24 answer to that question with respect to observational
 25 and correlational.

1 A Okay. Observational studies are sometimes
 2 correlational and sometimes are just descriptive.
 3 I guess my answer is observational studies can
 4 provide information because you get to see what things
 5 look like in real classrooms, real schools.
 6 And on their own, neither an observational
 7 study nor a correlational study can determine what is or
 8 is not working.
 9 Yeah. Yeah. I think that's -- that would be
 10 true. It can be a piece of evidence that when put
 11 together with all kinds of other things can be used to
 12 reach conclusions or tentative conclusions.
 13 Q The last question before we take a break: Do
 14 you believe that experimental studies on their own can
 15 reliably determine what is working and what is not
 16 working in practice?
 17 MS. DAVIS: Vague and ambiguous.
 18 THE WITNESS: I think a series of well-designed
 19 experimental studies can provide us with evidence of
 20 what works or what is effective. It sometimes has to be
 21 constrained by who the sample of kids were, what the
 22 teachers were, but they can cumulatively build up that
 23 kind of knowledge.
 24 BY MR. AFFELDT:
 25 Q So, similarly, you wouldn't rely on one single

1 experimental study?
 2 A That's correct.
 3 Q You'd want a series?
 4 A A series, yeah.
 5 Q Do you have a definition of "series"?
 6 A No. We discussed this with the group and I
 7 can't take one out of a hat.
 8 Q When you said, "the group," is that quality --
 9 A The task force group, yeah.
 10 MR. AFFELDT: Why don't we take a break.
 11 THE WITNESS: Yeah.
 12 (Recess taken.)
 13 BY MR. AFFELDT:
 14 Q Do you agree that the data should be
 15 representative of the group about which the study's
 16 making considerations -- I'm sorry.
 17 Do you agree that data should be representative
 18 of the group about which a study is making conclusions?
 19 MS. DAVIS: Vague and ambiguous.
 20 THE WITNESS: "Data should be..."
 21 I hesitate to answer it, because I think for a
 22 field to progress forward, the data should come from
 23 samples that are somewhat similar, because to get the
 24 groups that are identical, it could take forever to
 25 move -- you know, to move an inch forward. So somewhat

1 similar. So if a group is radically different, the
 2 group of parents, you know, that are -- the kids whose
 3 parents who are all college graduates and a group where
 4 many of the parents haven't completed high school, you
 5 couldn't just mix and match across those two.
 6 So I think somewhat similar, so not extremely
 7 different is the way I would frame it. Some people
 8 frame it that they should really be similar, but then I
 9 don't see the field advancing and especially if things
 10 are replicated across different groups of kids or
 11 teachers or...
 12 So, somewhat similar would be the idea in
 13 making sure it's not radically different in
 14 effectiveness.
 15 BY MR. AFFELDT:
 16 Q Do you believe that to be methodologically
 17 sound a study should have a genuinely equivalent
 18 comparison group?
 19 MS. DAVIS: Vague and ambiguous.
 20 THE WITNESS: For one thing, we never know for
 21 sure what a genuinely comparable comparison group is.
 22 You certainly could make a better case if there is. We
 23 have a lot of research and we know what tends to predict
 24 outcomes. We do a lot better than areas that are newer.
 25 Randomization helps because the probability of

1 a participant being in one group or the other is -- is
2 equal or is due to chance. But -- so if there's no
3 evidence at all, it's a serious problem of the study and
4 would, you know, have a real negative impact on how most
5 would assess its quality. So it is a very -- it's an
6 important thing, but you never know they're exactly
7 comparable.

8 BY MR. AFFELDT:

9 Q Getting back to the question about data being
10 representative of the population studied, what, in your
11 opinion, makes data representative?

12 MS. DAVIS: Vague and ambiguous, calls for
13 speculation.

14 THE WITNESS: I think that there are
15 commonalities between the group of students or people
16 you're talking about and the ones in the research base,
17 or the research base covers such a range of populations
18 that it would seem to apply to even as diverse an area
19 as Los Angeles Unified or San Diego Unified.

20 So it's -- see, the trick is really that
21 they're the same on salient variables, but sometimes it
22 takes a long, long time to figure out what those are.

23 BY MR. AFFELDT:

24 Q What do you mean the trick is that they be the
25 same on salient variables?

1 A A salient variable would be something that
2 predicts how the -- the outcome that predicts like if
3 it's a reading study, how well kids are going to
4 read. So now we know consistently across languages and
5 different ethnic groups that for younger kids,
6 phonological awareness is a valid, pretty strong
7 predictor. So that to me is a salient variable, where
8 kids, for example, they're -- a level of misspoken
9 vocabulary isn't salient. It doesn't predict very well.

10 So the key is to get groups similar on salient
11 variables.

12 Gender, it's not clear that gender predicts
13 very well. So if one group was 60/40 female, male and
14 another 50/50, that would probably be less of a concern
15 than if the relevant skills were different to the kids
16 beginning the study.

17 So there would be other psychological things
18 where some people are internalizers or externalizers and
19 if it's salient for what you're doing, that's the key
20 thing to be matched. It would be ideal to have
21 everything pretty similar, but that's what I mean.

22 Q Do you have an understanding of the term
23 "objective data"?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: I think usually it refers to data

1 that -- data that there's some evidence that there is
2 reliability to it, that two people can be trained to
3 reach similar inferences or score a performance measure
4 the same way.

5 That the wiggle room for human bias is cut
6 pretty minimal or ideally very minimal I think is all --
7 of course, folks have argued and continue to argue about
8 what really is objective and -- but I think that's a
9 common use of the term.

10 BY MR. AFFELDT:

11 Q Do you agree that studies should produce
12 objective data?

13 A "Objective data"?

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: I probably think they should
16 produce -- unless they're qualitative research, they
17 should produce reasonably objective data. I think
18 that's an important concern. There is -- there are
19 others, the value of things being measured, the range of
20 things being measured, that are very, very important,
21 too.

22 BY MR. AFFELDT:

23 Q You qualified that by saying, "unless it's
24 qualitative research."

25 A Yeah.

1 Q And if it is qualitative research, does your
2 opinion change as to whether or not a study should
3 produce objective data?

4 A I think a good deal of qualitative research is
5 interpretive in nature and so it's definitely it just
6 can't produce objective data.

7 There are probably some qualitative studies
8 that there is just a lot of counting of things, so -- so
9 occasionally it can but often it doesn't. And I don't
10 think it's a good qualitative study if it just gives
11 tallies of things, number of smiles or numbers of
12 something, so it has to wind up interpreting it,
13 anyway.

14 Q And when you said that unless it's qualitative
15 research, the study should produce reasonably objective
16 data, can you quantify "reasonably"?

17 A No, I can't quantify it. I just don't -- I
18 know -- I'm not a philosopher and I know philosophers
19 disagree on what is objective reality, and so I -- I
20 want to allow for that idea that there may be many, many
21 things that we can agree on and that's the objective
22 basis. And then there are other factors.

23 Q And lawyers disagree on what's reasonable.

24 A Yeah. Yeah.

25 Q And then I believe you said that there can be a

1 range of things that are being measured and that's
2 important, too.

3 What did you mean by that qualification?

4 A There is a -- studies that measure a range of
5 things are usually richer, like various aspects of
6 reading or various aspects of school success than ones
7 that just measure one thing.

8 And sometimes if you move into a newer area,
9 you don't get -- the typical reliabilities aren't as
10 high because we're still beginning to understand the
11 construct of concept.

12 But I think that still can add to the richness
13 of the study and the value of the information.

14 Q Do you agree that studies should control for
15 affects of families?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: I -- I think a -- a confusion --
18 I don't understand the question. Let me say one -- one
19 reason it may be throwing me is when we talk about
20 effects, we say teaching children this way leads to
21 positive effects. And so family -- so we don't -- we
22 don't talk about controlling, at least usually not,
23 effects of family. It's more -- I just think of it more
24 as family variables so that phrase just throws me, to
25 focus things about the family aspects of the family.

1 systematic bias. There would be no reason why students
2 from this type of family are more likely to be in the
3 comparison group.

4 Correlational studies, it's definitely a
5 concern in the correlational studies, extraneous
6 variables, and so I'd probably say it's more something
7 on our minds that we try to ensure there's no -- it's
8 not a confound, it's not a -- it's not -- it's
9 relatively fair so that we look like, for example, if
10 all the children from such-and-such school, Harrison
11 School, did a lot better than maybe the effect was
12 Harrison School, the type of families in that
13 neighborhood, versus the other six schools in the
14 study.

15 So we kind of poke around to see if the school
16 leadership may be having an effect or the -- you know,
17 something like family variables have an effect.

18 But that would probably be a secondary. It
19 would probably depend on what the study was about. So
20 we do them like as teachers. We always look for years
21 of teaching experience. That usually has a bit of an
22 effect so we can pull that out statistically if we have
23 a large -- a large sampling.

24 BY MR. AFFELDT:

25 Q And when you say, "poke around to try to

1 Because when I hear of "effects," I think of
2 impacts.

3 BY MR. AFFELDT:

4 Q Do the -- well, in order to have a good
5 research study, do you think it's necessary that the
6 study control for the impacts of family on, say, student
7 achievement?

8 A And the -- see there, the answer is yes,
9 because otherwise it's extraneous. It's not related to
10 what you're evaluating. So you want to control for
11 anything that could have an extraneous or a relevant
12 effect.

13 So, yeah, there should be control for it, the
14 impacts or effects of various aspects of the family, be
15 it number of literacy-related events per day or cultural
16 traditions or whatever. Yeah. That should -- I mean,
17 that should -- should be attempted to be controlled
18 for. Yeah.

19 Q Do you control for effects of family on all of
20 the -- on the studies that you carry out?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: Have we done that?

23 The studies that used random assignment would
24 have been considered usually as doing a good job on
25 controlling for that, because there would be no

1 determine if there is an extraneous factor that has a
2 potential effect," are you relying on your professional
3 experience, judgment, to determine what those extraneous
4 factors might be?

5 A And knowledge of the literature. And, I mean,
6 it's nice -- if you have measures on them, you can
7 literally look at whether there's a significant
8 correlation or a large or moderate correlation and then
9 see if the groups are similar or different on that. So
10 it would really -- it depends so much on the situation
11 on the topic, on the subject.

12 Q What family effects would you want to control
13 for?

14 MS. DAVIS: Vague and ambiguous, calls for
15 speculation.

16 BY MR. AFFELDT:

17 Q Let me ask it this way.

18 What family effects do you think must be
19 controlled for?

20 MS. DAVIS: Vague and ambiguous, calls for
21 speculation.

22 THE WITNESS: Well, it seems if the topic is
23 reading with young children, a huge issue appears to be
24 that the number, frequency of literacy-related events
25 that happen in the homes, that that seems related both

1 to phonological awareness and to kids -- the speed with
2 which they learn how to read. So that would seem to be
3 an important one, an important thing to be on the look
4 out for to try to control for.

5 And sometimes proxies for that are the
6 education or literacy level of the parent or parents.
7 SES level is somewhat of a proxy for that, especially if
8 it's within the same culture and region.

9 And I'm not an expert in demography, but this
10 is something in reading. Now, in other areas like
11 learning history, there is no evidence that that in and
12 of itself is particularly salient or important.

13 So I wouldn't say that for all studies the --
14 ensuring the home situations are similar is the most
15 critical thing. It's always worth attending to.

16 Randomization is good because it -- it
17 basically precludes -- it makes it very unlikely there
18 would be bias.

19 BY MR. AFFELDT:

20 Q Do you agree that to be methodologically sound
21 the study must have a comparison group?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: An expert -- an experimental
24 study needs to have a comparison group or groups or some
25 comparison conditions to be in an experimental study

1 like in the Reading First schools, or what is inclusion
2 of kids with disabilities look like, you just describe
3 the sample.

4 If your question is: How are these rooms
5 different than these rooms, how are 227 classrooms
6 different than teachers of kids who are on waivers, then
7 you would want comparison groups.

8 So it depends on what the purpose of your
9 observations are. So correlational studies, it
10 depends. Sometimes it is useful.

11 But, actually -- actually, if you were doing
12 that, you would be doing a descriptive study. You'd be
13 comparing one set of rooms to another and you'd want to
14 make sure they're equal.

15 BY MR. AFFELDT:

16 Q What is the single-subject study design that
17 you referred to?

18 A They're known in special ed, although they're
19 primarily used in special education, sometimes clinical
20 work. It really evolves from the work of B.F. Skinner
21 and then people began applying it to humans. And it
22 typically works -- you work with one or perhaps four
23 individuals, be they teachers or students or moms or
24 dads.

25 And there are two types of designs. There is

1 unless it's a single-subject experimental study and
2 those are used the most in special education, so that's
3 a special case. It's a different kind of design.

4 But for the normal types of studies we do, you
5 need a comparison condition or conditions.

6 BY MR. AFFELDT:

7 Q Do you need a comparison group for a
8 correlational study?

9 A No.

10 MS. DAVIS: Same objections.

11 THE WITNESS: Usually, you don't. Now, again,
12 you can correlate almost anything with anything. So --
13 but usually, you don't. You have your core sample or
14 your subsamples and you explore relationships using
15 whatever theories or the scientific literature leads you
16 to want to pursue.

17 BY MR. AFFELDT:

18 Q Do you need a comparison group for an
19 observational study?

20 MS. DAVIS: Same objections.

21 THE WITNESS: Often observational studies don't
22 have comparison groups, because they're essentially
23 descriptive studies. Sometimes correlational, as well.

24 So if you're trying to get a window on what
25 does something look like, what does Reading First look

1 what is called the reversal design where for a certain
2 period of time you just look at how things are naturally
3 happening and then you try a change, so you may tell the
4 teacher, "What you're going to do now is circulate
5 around this classroom."

6 And about every three, four minutes, for this
7 child, you're going to just be around him, not staring
8 at him, not punishing him. Trying to be as positive,
9 or -- and let's see what happens to the quality of his
10 work. And so you try that for 10 days, and if the
11 quality goes up, then you say you withdraw it. So you
12 say, "Okay. Now don't do that any more. Just come by
13 his desk," like you do with most kids, once every
14 half-hour.

15 And if you can show like an on-off switch that
16 the work gets better, then you can say to the teacher,
17 "Hey, this is a good way for kids who get, you know,
18 distracted; if you're just around there a little bit."

19 and the other way to do it is you stagger it so
20 you have three of these similar kids or in three
21 different rooms and then you -- one kid for one week,
22 you know, for all of them for one week you just see how
23 things are.

24 Then you start being near the child No. 1. And
25 if that child goes up, then you try it with child

1 No. 2. And if that child also goes up and then you try
2 it with the third, then you'd have a replicable pattern
3 that whenever the teacher is spending time with the kids
4 when they have independent time, those problem kids, it
5 seems something worthy of continuing to investigate and
6 use.

7 So that's the two single-subject designs. It's
8 been used a teeny bit in research with English learners,
9 but real teeny. And the example, by the way, was
10 hypothetical.

11 Q Do you think that single-subject studies could
12 produce good research on English learners?

13 MS. DAVIS: Calls for speculation, vague and
14 ambiguous.

15 THE WITNESS: It could provide some useful
16 research. I wouldn't see it as a major tool, but it
17 can. And there's one group of researchers who've done a
18 couple few studies and seen some value in this area.

19 BY MR. AFFELDT:

20 Q What did those studies show?

21 A It looked at -- it's -- I believe it showed the
22 difference when kids read, and this is from memory, from
23 quite a while ago, when the vocabulary was taught to
24 them before reading or when it wasn't. It showed that
25 the vocabulary was -- the kids did much better if you

1 differences in students -- you know, their entry
2 knowledge of the phonological awareness and their
3 ability to name the letters of the alphabet in English
4 were huge predictors. So we parceled it out
5 statistically and all our analyses were done when that
6 was parceled out or residualized scores were used. So
7 that factor we took into account.

8 And we were comparing growth made by the kids
9 when we corrected or adjusted for what they started
10 school with, first grade with.

11 Q Remind me, your study looked at first-graders?

12 A Yeah.

13 Q And so in that context, what does residualized
14 growth scores mean?

15 A Well, in the -- when school started, and this
16 was during the second-year study, when school started
17 within I believe it was three to six weeks but very
18 early into the year, individual testers checked with
19 kids so, I mean, there were these little assessments of
20 their knowledge of the sounds like we were doing this
21 morning and their ability to name the alphabets all in
22 capital letters that are in a random order.

23 What else did we do? There are a couple other
24 measures. I'm just tired now. I don't remember, but
25 there were a couple other measures of initial ability

1 spent the five minutes or so going over the vocabulary
2 words, having the kids use them, the ones that would
3 likely be hard.

4 And then there was a second part to it, and I
5 forget what that one was. They might have practiced
6 reading to them or -- I just forget. So...

7 Q Should studies on student achievement take
8 account of initial differences in student achievement
9 that are not due to schools?

10 MS. DAVIS: Vague and ambiguous, calls for
11 speculation.

12 THE WITNESS: It's -- there should be some
13 awareness or some -- some adjustments made for anything,
14 depending on the type of study. If you're saying
15 something is better than something else, you want to
16 make sure that other things that could explain the
17 differences are controlled for.

18 BY MR. AFFELDT:

19 Q In the studies that you carried out with
20 Mr. Baker, how do you take account of initial
21 differences in student achievement?

22 A We did that by statistically adjusting, so what
23 we used were called residual -- residualized growth
24 scores.

25 And there's no question that the initial

1 and -- or initial skill level because some of it could
2 be due to the kindergarten teacher to the home to Head
3 Start or whatever they began first grade with in terms
4 of the salient variables. We also had their scores on
5 the -- on language assessment scales which is just a
6 test of language proficiency.

7 And you just sort of adjusted -- it's like a
8 handicap. So, basically, it's not as simple as a chain
9 score like if a kid goes from reading accurately 4 words
10 a minute to 30, but it's a way you adjust for what kids
11 bring with them using regression and correlation. So we
12 did adjust it that way.

13 MS. DAVIS: John, Dr. Gersten has mentioned he
14 was getting tired. I just want to check in with you.
15 It's after 4:30.

16 MR. AFFELDT: It is 4:30. How are you
17 feeling?

18 THE WITNESS: Maybe 10 more minutes would be
19 okay? Is that all right?

20 MR. AFFELDT: Sure.

21 Q Should studies focus on changes in school
22 inputs and policies that aren't influenced by parents?

23 MS. DAVIS: Vague and ambiguous, calls for
24 speculation.

25 THE WITNESS: Should the studies focus on

1 school and things not...

2 Well, it's -- it's -- I mean, I think that two
3 great areas to focus on would be school inputs, what
4 schools do, what teachers do, and possibly what we call
5 statistically the interaction between families and the
6 school inputs, but I would say the major thing we'd
7 study would be school -- what more economists call
8 school inputs or sociologists do.

9 BY MR. AFFELDT:

10 Q And in your studies, how do you separate out
11 what are school inputs as distinct from parental inputs?

12 A Actually, in one of the cites that was -- she's
13 now a faculty member, a doctoral student who had
14 extensive data on the family, what we did is since a
15 key -- a key family input is kids' familiarity with the
16 alphabet, with the sound, the phonological system, so we
17 parceled that out.

18 And we also did look -- we -- because the kids
19 were all from fairly similar schools in terms of
20 extremely high -- extremely low SES -- extremely high
21 free and reduced-lunch scores and we did look at
22 different patterns related to the language assessment
23 scales, numbers.

24 So we looked at not actually the homes but at
25 what the kids came to first grade with that was likely

1 A It's -- sorry.

2 Q -- when studying -- when engaging in research
3 that might affect education policy?

4 MS. DAVIS: Vague and ambiguous, assumes facts
5 not in evidence, calls for speculation.

6 THE WITNESS: I don't -- I don't think I
7 understand the question as framed. Do you want to maybe
8 help me try to reframe it or rephrase it?

9 BY MR. AFFELDT:

10 Q Let me ask you another question.

11 What types of measures of student outcomes in
12 your opinion are adequate?

13 MS. DAVIS: Vague and ambiguous, calls for
14 speculation.

15 THE WITNESS: I think the question becomes
16 "adequate for what?" to me. It's just -- it's just -- I
17 don't think I can give an answer for the whole spectrum
18 of things that we could be looking at.

19 BY MR. AFFELDT:

20 Q What types of measures of student outcomes do
21 you look at in your research?

22 A We've looked at a lot of things over the
23 years. In the English-learner study we looked at
24 ability to read fluently and accurately and
25 comprehension scores on a measure the State had

1 to have an impact on reading, you know, learning to read
2 in English and not the full gamut of things but there
3 would be no reason to see it confounded in one -- you
4 know, more in one group or one classroom than another.

5 Q When looking at research for the purpose of
6 establishing education policy, how important is it that
7 the conclusions be based on measures of student
8 outcomes?

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: It's very -- it's very, very
11 important. I could see, though, something in forming
12 policy that doesn't use outcomes in the whole gamut of
13 thousands of things done that if the key thing was
14 attitudes or whatever, I mean, unless you define
15 "attitudes" as a student outcome, even if probably an
16 approach may be students and parents consistently upset
17 and agitated and angry, that's worth knowing. But
18 outcomes is probably the key thing we look for most of
19 the time.

20 BY MR. AFFELDT:

21 Q To what extent do you think it important to
22 measure educational inputs when --

23 MS. DAVIS: Assumes -- go ahead.

24 BY MR. AFFELDT:

25 Q -- when studying --

1 developed.

2 We looked at -- I mean, over time, we've looked
3 at kids -- we were doing a study in math and they were
4 looking at standardized achievement test scores and also
5 a score on an individually administered test of their
6 math ability.

7 I've looked at standardized achievement in
8 large evaluations. I've looked at teachers' decisions
9 to stay in the field of special ed teaching in one
10 study, looked at newly developed tests of students'
11 knowledge of health and problem solving.

12 One study years ago we looked at little --
13 reasoning kids -- I'm thinking of that with a company
14 and that was developed, you know, by the research staff.

15 So a whole array of things I think I've looked
16 at.

17 MR. AFFELDT: I'm going to hand you what we
18 will mark as Gersten Exhibit 3, and I ask if you could
19 identify that, look it over.

20 (Gersten Exhibit 3 was marked for
21 identification by the court reporter
22 and is bound separately.)

23 THE WITNESS: Yeah. Okay.

24 BY MR. AFFELDT:

25 Q Do you recognize this document?

1 A Yes.
 2 Q You're cc'd on this email from Carlo Panlilio,
 3 correct?
 4 A Yeah.
 5 Q And in it he says:
 6 "I downloaded the PDF version of the
 7 critique from the Decent Schools
 8 website."
 9 Is that your critique?
 10 A Yeah.
 11 MS. DAVIS: Calls for speculation.
 12 THE WITNESS: Well, I believe what he's saying
 13 is of my critique, of my report.
 14 BY MR. AFFELDT:
 15 Q The subject of the email is "Comment on the PDF
 16 version of Russell's critique..."
 17 A Yeah, okay. So, yeah. Yeah.
 18 Q He says:
 19 "The only missing reference is an
 20 article by Droop and Verhoeven. Please
 21 advise as to how this should be added, if
 22 ever needed, onto the website."
 23 Is there another Droop and Verhoeven in -- let
 24 me ask the question.
 25 Is there another Droop and Verhoeven reference

1 that belongs on your reference list or do you have the
 2 one and only?
 3 A I believe -- I think you have the only one that
 4 I was involved in and I think Carlo had the whole thing
 5 ready except for this one reference.
 6 And, so -- it's not in the reference. So he
 7 sent it to Vanessa, and we thought it would be added.
 8 And it's not a hard reference to get. It's just that
 9 that copy of the journal no one could find.
 10 So --
 11 Q So, as you said, as you note, it's not in the
 12 reference list.
 13 Where would that belong?
 14 A Where would it belong in the reference list?
 15 Q Yeah.
 16 A It would go between Cohen and Gareth just
 17 because it's in alphabetical order.
 18 Q Can you just make a Droop and Verhoeven arrow
 19 and initial it on your version?
 20 A Yeah. (Witness complies.)
 21 MR. AFFELDT: Okay. We've gone more than 10
 22 minutes. Why don't we conclude for the day.
 23 THE WITNESS: Okay.
 24 MS. DAVIS: Are we going to reconvene tomorrow
 25 at 9:00?

1 MR. AFFELDT: Yeah.
 2 MS. DAVIS: Is that the plan?
 3 MR. AFFELDT: Yeah. And here is the copy of
 4 the letter on the outstanding publication.
 5 MS. DAVIS: I never got this letter, even
 6 though it is addressed to me.
 7 MR. AFFELDT: Okay.
 8 MS. DAVIS: Probably why it didn't refresh my
 9 memory at all when you mentioned it.
 10 I'll talk to Peter to see if he recalls getting
 11 the letter, but I've actually not seen it.
 12 MR. AFFELDT: Okay.
 13 MS. DAVIS: Okay.
 14 (At the hour of 4:44 P.M., the deposition
 15 was adjourned until 9 o'clock A.M., Tuesday,
 16 July 29th, 2003.)
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 9 I, RUSSELL GERSTEN, Ph.D., do hereby
 10 declare under penalty of perjury that I have read the
 11 foregoing transcript of my deposition; that I have made
 12 such corrections as noted herein, in ink, initialed by
 13 me, or attached hereto; that my testimony as contained
 14 herein, as corrected, is true and correct.
 15
 16
 17 EXECUTED this ____ day of _____,
 18 20____, at _____, _____.
 19 (City) (State)
 20
 21
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 23 _____
 24 RUSSELL GERSTEN, Ph.D.
 25 Volume 1

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

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

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

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

Dated: _____

LORI SCINTA, RPR
CSR No. 4811