

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

ELIEZER WILLIAMS, et al., )  
)  
Plaintiffs, )  
)  
vs. ) No. 312 236  
)  
STATE OF CALIFORNIA; DELAINE )  
EASTIN; STATE SUPERINTENDENT )  
OF PUBLIC EDUCATION; STATE )  
DEPARTMENT OF EDUCATION; )  
STATE BOARD OF EDUCATION, )  
)  
Defendants. )  
\_\_\_\_\_)  
STATE OF CALIFORNIA, )  
)  
Cross-complainant, )  
)  
vs. )  
)  
SAN FRANCISCO UNIFIED SCHOOL )  
DISTRICT, et al., )  
)  
Cross-defendants. )  
\_\_\_\_\_)

DEPOSITION OF RUSSELL GERSTEN, Ph.D.

Los Angeles, California  
Tuesday, July 29, 2003  
Volume 2

Reported by:

LORI SCINTA, RPR  
CSR No. 4811  
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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  
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9 STATE OF CALIFORNIA; DELAINE )  
10 EASTIN; STATE SUPERINTENDENT )  
11 OF PUBLIC EDUCATION; STATE )  
12 DEPARTMENT OF EDUCATION; )  
13 STATE BOARD OF EDUCATION, )

14 Defendants. )

15 STATE OF CALIFORNIA, )

16 Cross-complainant, )

17 vs. )

18 SAN FRANCISCO UNIFIED SCHOOL )  
19 DISTRICT, et al., )

20 Cross-defendants. )

21 Deposition of RUSSELL GERSTEN, Ph.D.,  
22 Volume 2, taken on behalf of Plaintiffs, at  
23 555 West 5th Street, Suite 3500, Los Angeles,  
24 California, beginning at 9:16 A.M. and ending  
25 at 5:00 P.M., on Tuesday, July 29, 2003, before  
LORI SCINTA, RPR, Certified Shorthand Reporter  
No. 4811.

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1 INDEX  
2 WITNESS: EXAMINATION  
3 RUSSELL GERSTEN, Ph.D.  
4 Volume 2  
5 BY MR. AFFELDT (Resumed) 159  
6

7 EXHIBITS  
8 Gersten Page  
9 4 Curriculum Vitae of Russell M. Gersten 162  
10  
11 5 Multipage document entitled, 256  
12 "Practices for English-Language  
13 Learners"  
14  
15 6 Multipage document entitled, 316  
16 "Document Resume"  
17

18 INFORMATION REQUESTED  
19 (None)

20 REFERENCE REQUESTED  
21 (None)

22 INSTRUCTION NOT TO ANSWER  
23 (None)  
24  
25

1 Los Angeles, California, Tuesday, July 29, 2003  
2 9:16 A.M. - 5:00 P.M.  
3

4 RUSSELL GERSTEN, Ph.D.,  
5 having been previously duly sworn, was examined and  
6 testified further as follows:  
7

8 MS. DAVIS: Can I mention something regarding  
9 the document you requested yesterday, "First Grade  
10 Reading Instruction for English Learners and  
11 Observational Study."

12 Dr. Gersten has attempted to contact the head  
13 author, Scott Baker, and just has not heard back from  
14 him yet to see if there is any reservation about  
15 releasing a document that is not completed.

16 He again is going to try to contact him on a  
17 break later today, and we'll let you know as soon as we  
18 have any information.

19 MR. AFFELDT: Okay.  
20 EXAMINATION (Resumed)

21 BY MR. AFFELDT:  
22 Q Was that since the deposition yesterday that  
23 you contacted him?

24 A Yes. Last night I contacted him and I said,  
25 "Let's try to talk during the day."

1 Q Great. I appreciate that.  
 2 Good morning, Dr. Gersten.  
 3 A Good morning.  
 4 Q How are you this morning?  
 5 A Good.  
 6 Q I'm just reminding you that you are still under  
 7 oath. Are you aware of that?  
 8 A Yes.  
 9 Q And how are you feeling this morning?  
 10 A Just fine.  
 11 Q Any reason that you can't answer the questions  
 12 truthfully and honestly today?  
 13 A No. At least not that I'm aware of.  
 14 Q Okay. Why is it that you consider yourself an  
 15 expert in research methodology?  
 16 A I have over a 125 published research studies in  
 17 journals. Many of them are major journals. I serve on  
 18 11 editorial boards of various journals that all are  
 19 either exclusively research or publish a good deal of  
 20 research.  
 21 I have been asked to chair several task forces  
 22 going back through the 1980s on research design, on  
 23 research -- on bilingual education in the '80s and the  
 24 National Council for Bilingual Ed.  
 25 I won a research award from the Council for

1 Exceptional Children -- excuse me, the American  
 2 Educational Research Association.  
 3 Q Special Ed Division?  
 4 A Special Ed Division, yeah.  
 5 I studied it thoroughly and continue to study  
 6 research design. I advise around the country research  
 7 design and for national studies, as well.  
 8 Q When you say you advise around the country,  
 9 what does that include?  
 10 A University of Texas, Miami University, Lehigh  
 11 University, the recently created institute to -- for  
 12 research on English-language learners in reading at the  
 13 University of Houston, the national -- two national  
 14 studies of special ed students and special ed teachers.  
 15 We're going to ask to synthesize the research  
 16 for AERAs, which is a major research organization on  
 17 field research on special ed teaching.  
 18 So advising around the country, so there would  
 19 be other projects. I've helped states design  
 20 evaluations, Ohio and Texas, for the Reading First  
 21 Initiative.  
 22 Q And why do you consider yourself an expert in  
 23 the area of I believe you said turning research into  
 24 practice -- process of translating research into  
 25 practice?

1 A I have written extensively on the topic. I  
 2 have conducted a range of studies on the topic. I  
 3 continue to read extensively on the topic.  
 4 I have been asked to advise various groups in  
 5 developing a model for translating research into  
 6 practice or a framework that would include the Office of  
 7 Special Ed Programs that much of our work is from, and  
 8 they had me as the lead author of a piece that came out  
 9 in 1997.  
 10 I have also -- let me think what else. Let me  
 11 think for a second.  
 12 My work on that topic is in the reading list  
 13 for many graduate courses in special education. People  
 14 who recently got their degrees will tell me that at  
 15 conferences.  
 16 Yeah, those are some of them.  
 17 MR. AFFELDT: Okay. I'm going to hand you what  
 18 we'll mark as Gersten Exhibit 4.  
 19 (Gersten Exhibit 4 was marked for  
 20 identification by the court reporter  
 21 and is bound separately.)  
 22 BY MR. AFFELDT:  
 23 Q After you have had a chance to review that, if  
 24 you would let me know if that is your vita.  
 25 A Yes, it certainly appears to be.

1 Q This was the -- I'll represent to you this was  
 2 the vita that was submitted along with your expert  
 3 report in this case to plaintiffs on April 14th -- April  
 4 18th of this year.  
 5 Is there -- are there any updates to your vita  
 6 since that time or does looking over --  
 7 A On page 12, the article that was at that point  
 8 in press, the top one with Baker, Gersten and Graham, is  
 9 now published.  
 10 Q Can you make a change to that and initial it?  
 11 A Yeah.  
 12 There have been perhaps some additional  
 13 conference presentations, but I don't perceive them as  
 14 being particularly relevant to this.  
 15 Probably the one -- let me make sure it's here.  
 16 Q What page are you on?  
 17 A I'm going to "Conference Presentations," which  
 18 is 28.  
 19 Yeah. In April 2003, there was a symposium at  
 20 AERA, American Educational Research Association, and I  
 21 was one of several discussants. Kenji Hakuta was  
 22 another one. And is it Patricia Gandara?  
 23 Q Yes.  
 24 A Was another one, so that would probably be the  
 25 most relevant and we discussed various aspects of the

1 WestEd AIR report, which had been sent to us.  
 2 So I can add that in, if you think it's  
 3 appropriate or...  
 4 Q Why don't we just take that addition on the  
 5 record.  
 6 A Fine. Other than that, there have just been,  
 7 you know, perhaps some other talks but nothing, I don't  
 8 think, that would -- you know, this is essentially my  
 9 vita as of today.  
 10 Q Okay. Looking at page 1, what is the  
 11 difference between the Instructional Research Group in  
 12 Long Beach, California and the R.G. Research Group?  
 13 A One is for grants and one is for contracts.  
 14 Q Which is which?  
 15 A Instructional Research Group is a nonprofit, a  
 16 501(c)(3) and it's for grants. And the other one is for  
 17 contracts.  
 18 Q Would that be -- grants from where?  
 19 A They're almost invariably from the U.S.  
 20 Department of Education. They could come from other  
 21 sources but, typically, that's where they have been  
 22 from.  
 23 Q And you're still teaching at the University of  
 24 Oregon?  
 25 A I'm transitioning into a professor emeritus

1 status. So for the next four years I can if I so choose  
 2 work for one-third time at the university. And, in  
 3 reality, it's more in contact with colleagues and a  
 4 little bit with students and former students.  
 5 So, given the distance, it's unlikely that I  
 6 would do that. So it's a loose affiliation now  
 7 bordering on a professor emeritus status.  
 8 Q Are you currently teaching any courses?  
 9 A No.  
 10 Q Did you teach any courses last year?  
 11 MS. DAVIS: Last academic year?  
 12 THE WITNESS: Last academic year?  
 13 BY MR. AFFELDT:  
 14 Q Yes.  
 15 A No, I didn't.  
 16 Q When was the last academic year that you taught  
 17 courses?  
 18 A In 2002, spring of -- is that -- wait a  
 19 minute. Let me -- that's right, Spring 2002.  
 20 Q When was the last time you were a full-time  
 21 professor at the University of Oregon?  
 22 MS. DAVIS: Vague and ambiguous.  
 23 THE WITNESS: Yeah.  
 24 BY MR. AFFELDT:  
 25 Q Let me put it this way. When was the last time

1 you were teaching a full load at the university?  
 2 MS. DAVIS: Vague and ambiguous.  
 3 THE WITNESS: Could you explain what you mean  
 4 by a "full load"?  
 5 BY MR. AFFELDT:  
 6 Q What normal professors who are exclusively  
 7 working as professors at the University of Oregon teach.  
 8 MS. DAVIS: Same objection.  
 9 THE WITNESS: At a research institution like  
 10 Oregon, there is a big push for people to get research  
 11 grants and buy out their time. So, in reality, at least  
 12 in the school of education, there's a small number of  
 13 people in -- at least in special education in my field  
 14 that fully -- you know, fully teach as one might find in  
 15 English.  
 16 In that case it might be five or six courses a  
 17 year. I've never done that. I've always been engaged  
 18 in research and coordinated for a while until 1992, from  
 19 '78 to 1992.  
 20 BY MR. AFFELDT:  
 21 Q When was the last time you were a full-time  
 22 employee at the University of Oregon?  
 23 A Probably that would be approximately 1990 or  
 24 '91.  
 25 Q And starting in 19 -- starting after that

1 period, were you working at the Eugene Research  
 2 Institute when you weren't employed at the university?  
 3 A That's correct.  
 4 Q What was the -- what is the Eugene Research  
 5 Institute?  
 6 A It's a relatively small nonprofit research  
 7 institute that does grant-related research in education  
 8 and technology and previously had done work in  
 9 psychology.  
 10 Q Did you found that institute?  
 11 A No.  
 12 Q What percentage of your time was spent at the  
 13 institute?  
 14 MS. DAVIS: From November 2000 and March 2002  
 15 as noted on his vita?  
 16 MR. AFFELDT: No.  
 17 Q From -- during the 1990s, generally.  
 18 A It varied. I'd say between -- sometime between  
 19 half and three-quarters' time, full time in the  
 20 summers. Sometimes it depended. If I was teaching a  
 21 certain term, it would be lower. If I wasn't teaching  
 22 at all, it would be higher.  
 23 Q With the remainder of your work time spent at  
 24 the university?  
 25 A That's correct.

1 Q Did you found the Instructional Research Group?  
 2 A Yes, I did.  
 3 Q Did you found the R.G. Research Group?  
 4 A Yeah. That was an easy one to do.  
 5 Q When did you found those groups?  
 6 A The first one, we began working on it -- I'll  
 7 just -- just one second.  
 8 (Telephone interruption.)  
 9 THE WITNESS: This is Dr. Baker.  
 10 MS. DAVIS: Should we take a break? Do you  
 11 want him to take this?  
 12 MR. AFFELDT: Sure.  
 13 (Discussion off the record.)  
 14 (The record was read as follows:  
 15 "Q When did you found those groups?  
 16 "A The first one, we began working  
 17 on it -- I'll just -- just one second.")  
 18 THE WITNESS: So getting back to -- so the --  
 19 we began work on the Instructional Research Group, the  
 20 nonprofit institute, in October of 2001.  
 21 BY MR. AFFELDT:  
 22 Q And R.G. Research Group?  
 23 A In June of 2002.  
 24 Q Did you form either of these groups in  
 25 collaboration with other individuals?

1 A Yes, Joseph Dimino.  
 2 Q How do you spell that?  
 3 A D-i-m-i-n-o.  
 4 Q Is he a researcher like yourself?  
 5 A He works on research projects. His forte is  
 6 more applications, training teachers, making sure things  
 7 are set up the right way in research studies and in our  
 8 efforts to translate research into practice.  
 9 Q Did you move to -- when did you move to  
 10 Long Beach, California?  
 11 A July 2002, just a little over a year ago.  
 12 Q Was that for professional reasons?  
 13 A It was probably professional and personal.  
 14 Q What were the reasons for moving?  
 15 MS. DAVIS: He can give you the professional  
 16 reasons. I don't know if you need the personal reasons.  
 17 THE WITNESS: Yes. I would refer not to talk  
 18 about personal issues.  
 19 The professional reasons were we had been doing  
 20 a lot of work really since 1979 in Southern California  
 21 schools, and the advantage of actually being here as  
 22 opposed to flying down for three days, staying in a  
 23 motel, et cetera, seemed very appealing. I mean, it  
 24 made sense in terms of continuing this line of research.  
 25 BY MR. AFFELDT:

1 Q What is the research that you have been engaged  
 2 in in Southern California schools?  
 3 MS. DAVIS: Vague and ambiguous.  
 4 Go ahead.  
 5 THE WITNESS: Are you -- what I don't  
 6 understand about the question, are you talking about  
 7 since I came down here, or...  
 8 BY MR. AFFELDT:  
 9 Q I'm referring to your last question, which --  
 10 so what time -- you said 1979 --  
 11 A Yeah. Yeah.  
 12 Q -- to the present. And I don't need an  
 13 exhaustive list but just a general description of the  
 14 kinds of research you've been engaged in in Southern  
 15 California schools.  
 16 A We did one study of implementation, a  
 17 follow-through in San Diego, in southeast San Diego.  
 18 That was in the late '70s.  
 19 Then I did another larger study of  
 20 implementation of two different approaches, and these  
 21 were in high-poverty schools and schools with, in many  
 22 cases, a large number of English learners.  
 23 We also looked at the progress of students in  
 24 the immersion program that San Diego had for a period of  
 25 time.

1 We then did a study of algebra, of basic  
 2 algebra and intermediate algebra in all the high  
 3 schools. We did studies of technology, special  
 4 education. We did qualitative work on English learners  
 5 and during -- making the transition from Spanish to  
 6 English.  
 7 And we did this study that -- you know, with  
 8 Baker, more recently in both San Diego and L.A. and  
 9 Inglewood. And there's probably a couple I left out,  
 10 but that's most of them.  
 11 Q Generally speaking, what is the study that  
 12 you're doing with Baker in San Diego, L.A. and  
 13 Inglewood?  
 14 A There basically were two parts of it.  
 15 The first one was to observe implementation of  
 16 the new Reading Language Arts Framework and Proposition  
 17 227 in action in schools with large numbers of English  
 18 learners that were high-poverty schools.  
 19 And the second thing we added on was to link  
 20 what we observed to student growth in reading.  
 21 Q And who is funding this work?  
 22 A At the current point in time, nobody.  
 23 Q Are you still doing it?  
 24 A Yes.  
 25 Q Who has funded it in the past?

1 A We -- this is complex. We worked with two  
2 institutes. The State has two institutes that were  
3 working on reading improvement at that point in time in  
4 '98-99. One was for the UC system and one for the CSU  
5 system.

6 They supported it, but they did it by getting a  
7 grant from a bank, and which -- I forget which -- First  
8 Inter -- some bank, some large bank. Bank of America,  
9 perhaps.

10 So really Bank of America supported it, and it  
11 was filtered through these two State higher-ed systems  
12 and it was actually fairly small amounts of money. Most  
13 of it was release time for faculty members which  
14 explains partly the five authors, that there were four  
15 faculty members from CSU who were involved in this.

16 Q What are the names of those two institutes?

17 A One was -- is called the -- I think the -- I  
18 believe it was called the -- the one that's easier is  
19 the California Institute for Reading Improvement.

20 That's the one out of CSU. And the other one  
21 is the University of -- the University of California one  
22 was I think at that point called the Reading and  
23 Literature Project.

24 MR. AFFELDT: Can you read the answer back.  
25 (The record was read as follows:

1 that we should finish with the obligation.

2 Probably both reasons.

3 BY MR. AFFELDT:

4 Q How much longer will you continue the project?

5 A My guess is we'll soon finish this draft, have  
6 all five authors review it. And probably they'll mainly  
7 look at the parts they didn't write themselves and then  
8 send it to a journal and get reviews, and that will  
9 probably take about six months, and then respond to the  
10 reviews and see what happens.

11 So my guess is about another year, maybe  
12 longer. It's very common when research is published.

13 Q Are you continuing to collect data and make  
14 observations?

15 A No, no.

16 Q So at this point the continuing work is  
17 finishing the journal published article?

18 A And the analyses and reanalyses of the data.

19 Q Do you consider yourself an expert in the area  
20 of curriculum for English-language learners?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: I don't know that I understand  
23 the question that I can answer that -- I don't think I  
24 understand the question.

25 BY MR. AFFELDT:

1 "A One was -- is called the -- I  
2 think the -- I believe it was called the  
3 -- the one that's easier is the California  
4 Institute for Reading Improvement.

5 "That's the one out of CSU. And  
6 the other one is the University of -- the  
7 University of California one was I think  
8 at that point called the Reading and  
9 Literature Project.")

10 BY MR. AFFELDT:

11 Q Have you received any additional funding for  
12 this work?

13 A No.

14 Q How long did that funding last?

15 A Two years.

16 Q Are you continuing -- why are you continuing to  
17 pursue the work?

18 MS. DAVIS: Vague and ambiguous.

19 THE WITNESS: There are probably two reasons:  
20 One, we think it's important to disseminate it to go  
21 through the peer-review process. And when we present it  
22 at various conferences, there's been interest in it.

23 And the second reason would be in part because  
24 of this responsibility to mentor people in the more  
25 teaching faculties at the CSU schools, there is a sense

1 Q What don't you understand about it?

2 A It just -- it seems very broad to me what a  
3 curriculum expert would be. I don't know if you're  
4 referring to a curriculum author, somebody who analyzes  
5 curriculum, somebody who develops unique curriculum,  
6 somebody who adapts curriculum for English learners.

7 I don't know.

8 Q Would you consider yourself an expert in terms  
9 of curriculum needed for English-language development  
10 for English learners?

11 MS. DAVIS: Vague and ambiguous.

12 THE WITNESS: I'd like to understand more what  
13 you mean by an expert in curriculum development for --  
14 so this is for the ELD or the English-language  
15 development part of the curriculum.

16 What would you consider somebody as an expert?  
17 Somebody who actually can sit down and author this or  
18 oversee this?

19 BY MR. AFFELDT:

20 Q Well, it depends on your understanding of what  
21 an expert is and does.

22 Are there people that you look to in the field  
23 who are -- would you consider experts in the area of --

24 MS. DAVIS: Of -- what? Are you done?

25 MR. AFFELDT: Evaluating the curriculum for

1 English-language development.

2 THE WITNESS: I think there are people with  
3 some very promising ideas, would probably be my way of  
4 describing that, that seem sound to me, and some of them  
5 I mentioned yesterday.

6 BY MR. AFFELDT:

7 Q And who are those people?

8 A I think Jana Echevarria. These names at least  
9 in part to repeat, and Debra Short whose ideas seem to  
10 make sense to me.

11 Some of Anna Chamot's ideas make sense. Some  
12 of the -- some of the ideas of Bill Saunders and his  
13 colleagues made sense.

14 For actually teaching students how to read in a  
15 second language as they're learning English, I think the  
16 work of some of the folks I mentioned yesterday, Linda  
17 Siegel, Dale Willows, makes sense to me. The other two  
18 were Vaughn and Linan-Thompson. Their approach seems to  
19 make sense to me.

20 Q As you noted, some of those names were the same  
21 names you gave yesterday when talking about  
22 second-language reading experts.

23 A Yeah. Yeah.

24 Q So you had also -- do you consider yourself an  
25 expert in any sub-area of evaluating curriculum for

1 understanding of the principles that would be the most  
2 promising?

3 A Yeah, that would be the most promising, based  
4 on extrapolating from research on vocabulary, the  
5 research on comprehension, the research -- basically,  
6 extrapolations from the beginning reading research to  
7 English learners, how those principles can be applied.

8 Q I'm not sure if you were clarifying your  
9 previous answer or answering my most immediate question,  
10 so I'll just ask it again.

11 A Okay.

12 Q When you said the -- you have a good  
13 understanding of the principles involved in evaluating  
14 curriculum for English learners, what do you mean?

15 A The kind of things I would advise a staff  
16 person or a group who -- who were evaluating curriculum,  
17 the kind of things I want to make sure they were looking  
18 for, some of the concepts or principles they should be  
19 looking for.

20 Q And what are those?

21 A That vocabulary students should have multiple  
22 exposures to it over -- over multiple days, using  
23 multiple media, like writing and speaking or reading and  
24 speaking; students should have opportunities to speak in  
25 English that should be set up and part of the

1 English-language development?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: I think typically there are two  
4 ways curriculum are evaluated: One is a kind of a  
5 rating, a logical kind of thing; and the other is a  
6 quantitative evaluation of effectiveness using the kind  
7 of comparisons we talked about yesterday.

8 And I would -- my strength would be in the  
9 second one, that level of evaluation, or my expertise.

10 BY MR. AFFELDT:

11 Q Do you have any expertise in reviewing actual  
12 materials and determining whether or not they are  
13 appropriate for teaching English learners?

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: Which type of evaluation do you  
16 mean by that? The comparison or the just rating,  
17 looking at it and rating it?

18 BY MR. AFFELDT:

19 Q Any kind of evaluation.

20 A I think I have a good conceptual understanding  
21 of some of the key principles that seemed the most  
22 promising, and -- but I do not have experience in  
23 actually sitting down and going page by page and doing  
24 that kind of analysis lesson by lesson.

25 Q What do you mean when you say you have a good

1 curriculum; a concern for building academic language,  
2 that there is a conscious attempt to slowly build a  
3 student's understanding of abstract terms, pronouns,  
4 words -- pronouns, et cetera, words that are hard to  
5 visualize.

6 And that can't be done in an overwhelming way  
7 but consistently needs to be there; the use of peers,  
8 students partnering so that they get practice talking to  
9 each other and practice speaking language in a  
10 nonthreatening way; use of heterogeneity in the  
11 students' either abilities or language --  
12 English-language competence as part of the way the  
13 curriculum is designed.

14 Those would be to me some principles, and there  
15 are quite a few others.

16 It's hard to just off the top go through the  
17 whole array of things I would look for. It would depend  
18 on the age level of the student and various things.

19 Q So sensitivity to age level of the student  
20 would be something you'd want to look for?

21 A Absolutely, in any curriculum, age-level  
22 language-proficiency level or levels.

23 Q When you talked about the first way of  
24 evaluating curriculum as a rating system or comparison  
25 or review, what did you mean, exactly?

1 A Well, an example of that would be a consumers'  
2 guide for Reading First that many states are using,  
3 and -- for part of the Reading First program.

4 And what that means is you go through the  
5 curriculum, you look at samples and you follow these  
6 criteria and you give a rating of I think it's "meets,"  
7 "highly acceptable" or something like that. You have  
8 like three tiers of things, and you rate it that way.  
9 And then you come up with a total number of points.

10 So it's -- you don't actually try it out on  
11 real living children and teachers, but you extrapolate  
12 from principles of reading instruction and give a rating  
13 of it, which would be like a Consumer Reports kind of  
14 thing.

15 Q And who does that kind of review and rating?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: Yeah. I think different states  
18 are taking different tacks as to who does that. With  
19 Reading First, it's emerging as we speak.

20 BY MR. AFFELDT:

21 Q In your mind what kind of people are qualified  
22 to review curriculum for English learners and rate it?

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

25 THE WITNESS: Yeah. I -- I -- I don't feel

1 Yeah, that would be to me a quantitative  
2 measure showing with some rigor that this approach works  
3 better and trying to understand the features that lead  
4 to it.

5 Q In preparation for your responding to  
6 Dr. Hakuta's report, did you review California's Reading  
7 Language Arts Standards?

8 A Yes.

9 Q Are you familiar with those standards?

10 MS. DAVIS: He just said that he read them.

11 THE WITNESS: I am familiar.

12 BY MR. AFFELDT:

13 Q Have you reviewed California's Content  
14 Standards?

15 MS. DAVIS: Vague and ambiguous.

16 THE WITNESS: Content standards for what -- I'm  
17 not sure which area.

18 BY MR. AFFELDT:

19 Q K to 12 content standards that have been  
20 adopted by the State Board of Education.

21 A You refer --

22 MS. DAVIS: In every subject?

23 THE WITNESS: You took that area as other than  
24 reading?

25 BY MR. AFFELDT:

1 comfortable speculating in that area.

2 BY MR. AFFELDT:

3 Q Why is that?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: I -- I haven't had experience  
6 doing this kind of thing, so I just don't feel  
7 comfortable speculating.

8 BY MR. AFFELDT:

9 Q And "by this kind of thing," you mean  
10 evaluating and judging curriculum for English-language  
11 learners?

12 A Or curriculum, period, yeah.

13 Q Okay. And when you talked about qualitative  
14 evaluation of curriculum for English learners, that  
15 would be after the curriculum had been implemented and  
16 used in classrooms, correct?

17 MS. DAVIS: Vague and ambiguous.

18 THE WITNESS: I --

19 BY MR. AFFELDT:

20 Q Quantitative.

21 A Quantitative, that would be correct. That  
22 would actually be looking at a group taught this way and  
23 a similar group taught that way, and there would be all  
24 kinds of other features of the research design or  
25 evaluation design you would want in place.

1 Q Correct.

2 A No, I have not.

3 Q Have you reviewed California's Content  
4 Standards for reading?

5 A Yes, I have reviewed them.

6 Q Have you ever reviewed California's English  
7 Language Development Standards?

8 A I have reviewed them.

9 Q When was that?

10 A It was twice, I think. Once was when I was  
11 preparing the report, which might have been March or  
12 April, and I looked at them briefly more recently, a  
13 week or so ago.

14 Q What was your purpose for looking at them a  
15 week or so ago?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: I think I wanted to take a look  
18 at them for two reasons: One, I was starting to get  
19 ready to refresh my memory for the deposition; and the  
20 second, I had just gotten a call from a firm that does  
21 software about wanting me to present some ideas for  
22 expanding their reading materials for English learners,  
23 so it made sense to take a quick look through that  
24 again, the standards again.

25 BY MR. AFFELDT:



1 Q Are there any other documents you reviewed in  
2 preparation for your deposition that you haven't  
3 mentioned yet?

4 A I think I mentioned I briefly looked at more  
5 the overview of the Linqanti, the WestEd AIR report,  
6 and not that -- not that I recall.

7 Linqanti, it's the name of one of the key  
8 authors.

9 Q In responding to Dr. Hakuta's expert report,  
10 did you review any materials describing professional  
11 development that takes place in California?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: Are you -- are you asking when I  
14 first responded to this, when I wrote the drafts in  
15 February, March, April?

16 BY MR. AFFELDT:

17 Q Yes.

18 A Yeah.

19 At that point in time, we were -- I -- I talked  
20 to people involved with California's both reading  
21 initiative and Reading First program, and so it was more  
22 verbal from people who were involved in various  
23 trainings. And I got a better handle on it. It took a  
24 while for me to understand some of the terms, the  
25 Governor's Institutes, and other terms that California's

1 above and beyond preparing for this case.

2 So, you know, our talks covered Reading First  
3 and what the State has done and is planning to do.

4 Q And, on average, how long were those  
5 discussions?

6 A What -- I don't understand the question.

7 Are these the discussions about writing the  
8 three proposals and understanding Reading First with the  
9 two purposes in mind?

10 Q Yes. You identified three to four discussions  
11 with Dr. Haager.

12 A Yeah. Yeah.

13 MS. DAVIS: But some didn't relate to your  
14 question, really.

15 THE WITNESS: Yeah.

16 BY MR. AFFELDT:

17 Q So the portions that related to your gaining an  
18 understanding to write your rebuttal report, how long  
19 were those portions of your discussion with Dr. Haager?

20 A I can't disentangle in my mind. I mean, we  
21 talked about logistics, about the budget for these  
22 various grant proposals, shaping of the research  
23 questions.

24 Q So including, then, the other matters you were  
25 discussing with Dr. Haager, how long were those

1 used.

2 So I got a sense of what's covered as opposed  
3 to read formal documents.

4 Q Who did you talk to?

5 A Probably my key source was Dr. Diane Haager at  
6 Cal State L.A.

7 Who else? I believe -- I believe I also spoke  
8 to Michelle Windmueller, who is a doctoral student at  
9 the University of Southern California.

10 I talked with Joseph Dimino, who has worked in  
11 some of the schools with English learners in  
12 L.A. Unified and continues to.

13 And there may have been somebody else. I just  
14 don't recall at this point in time.

15 Q On how many occasions did you talk to  
16 Dr. Haager?

17 A We probably talked on three or four times and  
18 once -- the thing about preparing for, you know, either  
19 responding to Dr. Hakuta's report or preparing for the  
20 deposition is I continually work and write proposals and  
21 articles in this area.

22 So I'll read things and talk to people, so  
23 Dr. Haager and I submitted three proposals that we both  
24 played a role in, looking at Reading First  
25 implementation, so I wanted to get a feeling for that

1 discussions, on average?

2 MS. DAVIS: Calls for speculation.

3 THE WITNESS: Yeah. I'm -- my memory is hazy.  
4 I mean, my memory is just hazy about how long they were  
5 or, actually, how many there were, either.

6 BY MR. AFFELDT:

7 Q Were they over an hour?

8 MS. DAVIS: Calls for speculation.

9 THE WITNESS: Just my memory is too hazy to  
10 clarify.

11 BY MR. AFFELDT:

12 Q How many times did you talk with Michelle  
13 Windmueller?

14 A I think it was approximately once face to face  
15 and once or twice by email.

16 Now, again, in her case, we talked about her  
17 doctoral dissertation and all kinds of other issues, as  
18 well as Reading First in California and professional  
19 development in California.

20 Q How long were those one or two face-to-face  
21 discussions?

22 A There's only one -- I think that was  
23 face-to-face, and it was fairly lengthy, but it was  
24 mainly about her doctoral program and a little bit I was  
25 giving her a flavor of what we were planning to do in

1 research.  
 2 How about taking a break maybe after this  
 3 question, the next question?  
 4 Q Sure. As part of your work on this expert  
 5 report, did you interview anyone for any purpose?  
 6 MS. DAVIS: Vague and ambiguous.  
 7 THE WITNESS: Not that -- not that I can  
 8 recall.  
 9 MR. AFFELDT: Okay. Why don't we take a break.  
 10 THE WITNESS: Yeah.  
 11 (Recess taken.)  
 12 BY MR. AFFELDT:  
 13 Q Dr. Gersten, if you could look at your expert  
 14 report. It's Exhibit No. 1.  
 15 A I wonder if there is -- during a break if there  
 16 is a stapler.  
 17 (Discussion off the record.)  
 18 THE WITNESS: Okay. This is my expert report.  
 19 BY MR. AFFELDT:  
 20 Q On page 1, returning to the first sentence in  
 21 the second paragraph, if you could review that sentence  
 22 and let me know if there is any evidence that the  
 23 State's initiatives in the past several years are  
 24 succeeding, that you're aware of.  
 25 MS. DAVIS: I'm sorry. Where are you?

1 THE WITNESS: First full paragraph.  
 2 MS. DAVIS: Vague and ambiguous.  
 3 THE WITNESS: So what I don't understand in the  
 4 question is what I said here is "...are likely to  
 5 enhance the achievement..."  
 6 So your question is: What evidence that it  
 7 already has enhanced the achievement or that it's likely  
 8 to?  
 9 BY MR. AFFELDT:  
 10 Q Does the use of the word "likely" mean they're  
 11 so new we don't have evidence yet?  
 12 A That we don't have firm evidence yet, that's  
 13 correct. Yeah, that we don't have firm evidence yet.  
 14 Q What is the less-than-firm evidence that we  
 15 have?  
 16 A The problem with any policy -- oh, the  
 17 less-than-firm evidence. Okay.  
 18 The rising of achievement scores of  
 19 English-language learners since the beginning of the  
 20 new -- what's often called the RLA Framework or Reading  
 21 Language Arts Framework and 227 that began approximately  
 22 the same time would seem to be on the positive side,  
 23 that there's evidence that achievement is improving.  
 24 It doesn't prove which exactly is the factor  
 25 and that's something in the WestEd report they talk --

1 spend quite a bit of time talking about. It could be  
 2 Proposition 227 and it could be the reading initiative.  
 3 It could be both.  
 4 It could be the increased attention to English  
 5 learners as a result of 227, but something about that  
 6 mix, achievement is rising for English learners in the  
 7 State.  
 8 So that would be one set of evidence. And the  
 9 little bit, the view up close, and granted it was only  
 10 at probably 35 classrooms or so, would indicate that  
 11 when people implement both of these, let's say, State  
 12 initiatives or State policies well, that what our  
 13 research group that -- perceived to be effective use of  
 14 the various techniques, achievement of the kids in  
 15 reading in the first grade is quite good.  
 16 So that's limited because we don't know how  
 17 they're going to do in the sixth grade yet, but it's  
 18 something after a very bleak, bleak history.  
 19 Q On that second point you're referring to your  
 20 own study that you have been -- that is cited in the  
 21 references, the Baker, Gersten work?  
 22 A Yeah. Yeah. Yeah.  
 23 Q Is that a good way to refer to it?  
 24 A Yeah, that's fine. Yeah.  
 25 Q It's the same study?

1 A It's the same study. It went on for two years  
 2 and we looked at things differently in different years  
 3 in different reports.  
 4 Q Anything less than firm evidence?  
 5 A Let me think. These would be a much softer  
 6 indicator, but -- I'll talk louder.  
 7 The fact that approaches like California have  
 8 been used in Toronto and now the documentation of their  
 9 effectiveness would seem to -- in these published  
 10 articles that have recently come out would seem to  
 11 suggest the State is moving in a good direction, so that  
 12 would be one indicator.  
 13 What I saw in the WestEd report, the 2002  
 14 report, was the sense that implementation of 227 was  
 15 going better, that there are still needs but that  
 16 teachers' attitudes seemed better in the schools.  
 17 I noticed -- my colleagues and I noticed some  
 18 dramatic shifts in teachers who had done previously --  
 19 previously thought it was only good to teach kids in  
 20 their native language. And then when they were told to  
 21 teach the children in English, actually some just seemed  
 22 very comfortable with it, quite positive about it.  
 23 And my guess is these kinds of changes are  
 24 happening in more than these four schools or so that we  
 25 saw them in. So those would be the softer indicators.

1 Q When you talk about the published articles, you  
2 mean the ones that you cite in your report?  
3 A Yes, yeah. Yeah.  
4 Q When was the Reading Language Arts Framework  
5 adopted?  
6 A I don't know the exact year, and I know there's  
7 a framework and the standards and I get them confused.  
8 I'm more interested in what they look like in  
9 the schools, but I -- it seemed that by '99, the winter  
10 of '99, they both were in place and that's with most  
11 initiatives.  
12 It takes a while for people to really  
13 understand them and understand what training -- and how  
14 to do it better and that kind of thing. So I know it  
15 was in place by '99. I don't know if it was passed by  
16 the Board in '98, possibly '97. I'm just not sure.  
17 Q The next sentence you list the initiatives  
18 you're referring to in the first sentence; is that  
19 correct?  
20 MS. DAVIS: The document speaks for itself.  
21 THE WITNESS: I think the document does speak  
22 for itself.  
23 MR. AFFELDT: I just want to make sure I'm  
24 reading it right.  
25 THE WITNESS: Yeah. I think -- yeah, it

1 appears that interpretation seems consonant with the  
2 document.  
3 BY MR. AFFELDT:  
4 Q The first item you list, "...adoption of state  
5 Reading and Language Arts Standards that are based on  
6 empirical research..." what empirical research are  
7 those standards based on?  
8 A They're based on a large body of research on  
9 beginning reading and that was synthesized on a national  
10 level three different times. In the very early '90s,  
11 Marilyn Adams wrote a book which was a Congressionally  
12 mandated synthesis, "Beginning Reading Research."  
13 Then there was the National Academy of Sciences  
14 report that came out in 1998, and then there was the  
15 National Reading Panel report that came out in 2000.  
16 And each of those is a little bit of an advance  
17 on each other but the key messages are pretty consonant  
18 one to the other and are well reflected in California's  
19 standards, the ones from the late '90s and were not at  
20 all reflected in California's standards of the late  
21 '80s, which were contrary to what the scientific  
22 research shows. A good approach is to teach most  
23 children to read -- most all children to read.  
24 Q What are the basic findings we've learned from  
25 this empirical research?

1 MS. DAVIS: Vague and ambiguous.  
2 THE WITNESS: Does the question refer to what  
3 we found from the empirical research on teaching  
4 children how to read when they're young or the totality  
5 of reading?  
6 BY MR. AFFELDT:  
7 Q I'm using the -- whatever you meant when you  
8 used "based on empirical research" in your report.  
9 Were you referring to beginning reading  
10 research or totality of reading research?  
11 A Primarily, the beginning reading  
12 research. That's where the strongest amount of  
13 information is and the most national effort has been  
14 there.  
15 Q So what are the principal findings of the  
16 beginning reading research that you're referring to?  
17 A I can share some of them with you but this will  
18 neither be an exhaustive nor a precise list.  
19 One would be -- we talked quite a bit about  
20 this yesterday, the importance of phonological or  
21 phonemic awareness that needs to be developed in a  
22 person before he or she learns how to read.  
23 Now, it can be developed -- some people figure  
24 it out for themselves. Most are taught by an adult or  
25 someone older, a sibling or a teacher. So that is one

1 major finding.  
2 A second key thing emphasized in all these  
3 reports is phonics is very important to teach kids  
4 systematically and explicitly. And if that is done and  
5 done well, many more kids learn how to read.  
6 If phonics is taught implicitly, as was the  
7 case -- what was advocated in the State's old standards  
8 from the '80s, fewer kids learned how to read. And it's  
9 particularly troublesome, that approach, for students  
10 from low socio -- low family income -- low-income homes.  
11 Work on -- systematic work on vocabulary is  
12 important. We know less about that than we do about the  
13 phonics and the phonemes, but working on vocabulary  
14 using some of those principles I taught, so the kids are  
15 not just exposed to words for a few minutes but get to  
16 use them and live with them and work with them seems  
17 critical.  
18 Teaching kids explicitly strategies for  
19 comprehension, the research suggests they will improve  
20 students' comprehension.  
21 More of that research has been done with  
22 slightly older kids, maybe third through sixth grade,  
23 than very young kids, but there are suggestions that  
24 would make sense to teach kids earlier those skills.  
25 And the importance of reading fluently that

1 links to -- it links to comprehension. So for kids who  
2 read very slowly who struggle, using a range of  
3 techniques so that they become fluent readers so their  
4 reading is comfortable and it's not requiring a lot of  
5 effort would seem to be a key goal.

6 And those are the five things and they are  
7 codified in Reading First and they are the key tenants  
8 of the State standards.

9 New research would suggest the importance of  
10 spelling and writing for young kids as a way to so --  
11 even increase further their ability to read words,  
12 because they get to understand the language system even  
13 better.

14 And there are many, many other things that  
15 research suggests. These are probably at least from  
16 memory key ones.

17 Q The next clause lists "...provision of  
18 intensive professional development to teachers on this  
19 research base..."

20 What professional development are you referring  
21 to?

22 A There are four things I'm aware of. Number one  
23 is -- and I know the intent of each of these. I don't  
24 know the exact details.

25 So number one is, I believe, what's often

1 development showing that linking research to practice by  
2 using the actual curricula teachers use makes it much  
3 more useful to teachers. They retain it more, they  
4 understand it better, so that seems like an excellent  
5 move.

6 And the last one is using valid screening  
7 measures, monitoring students' progress using these  
8 fairly quick assessments that are valid and reliable  
9 and -- and are valid and reliable both for English  
10 learners learning to read in English and native English  
11 speakers to use those to very early on catch kids who  
12 are struggling and have the school set up a system for  
13 giving the children extra help when they're very young,  
14 kindergarten, first, second grade.

15 And those are four excellent professional  
16 development initiatives, in my opinion.

17 Q It's unclear to me how the fourth one is a  
18 professional development initiative.

19 A I was just reading a report of a survey done  
20 not that long ago, several years ago, about reading  
21 assessments for teachers in early reading, and it said  
22 that most teachers like to just do their own informal  
23 assessments. There is no validity. There are only a  
24 very, very few valid, reliable assessments in early  
25 reading.

1 called the Governor's Institutes, which are week-long  
2 institutes where teachers are taught the key principles  
3 and concepts and the century's worth of research in  
4 beginning reading.

5 So it's much more extensive than the quick  
6 overview I gave you and they are given examples and do  
7 various activities.

8 And California, along with Texas, were  
9 innovators in doing this for teachers in the state, so  
10 that's one part, the institutes.

11 Another part is the use of coaches actually  
12 helps teachers put these principles into practice, and  
13 there have been some very, very large projects in  
14 California involving coaching, especially with the  
15 Open Court series.

16 And that seems a good means to help teachers  
17 see how the principles relate to their own kids, their  
18 own curriculum, that kind of thing.

19 Third is what I believe are a new series of  
20 institutes, and I don't know if they're going to start  
21 this fall or have already started, but they -- they take  
22 material from the first institute and then link it to  
23 the two State-approved curricula, which are an  
24 Open Court and the Houghton Mifflin series.

25 And there is a good deal of research on teacher

1 So to get teachers who normally just sort of  
2 ballpark things to really use, understand, interpret  
3 these valid reliable measures to really get a sense of  
4 which are the kids that are struggling using performance  
5 rather than guesswork seems a major advance, a major  
6 professional development in reaching their facility.

7 It's like doctors need to understand treatments  
8 and how to diagnose and assess. So it's really working  
9 on the diagnosis and assessment.

10 Q Are you talking about assessments specifically  
11 for reading?

12 A For reading, that's correct.

13 Q What assessments are those that are being used  
14 in California?

15 A There are probably two, and I don't know the  
16 exact details of the State. One is the -- there are  
17 ongoing assessments linked to the two rating series:  
18 Open Court and Houghton Mifflin. And those are being  
19 used to monitor the progress, and teachers are taught or  
20 reinforced or work with their coach or principal to  
21 understand how to use this information to know which  
22 kids need help and to provide help early on.

23 There are also measures developed at the  
24 University of Oregon called the DIBELS measures. And  
25 that's D-I-B-E-L-S.

1 And those measures are used in some schools and  
2 some districts and some cities.

3 Q In California?

4 A In California.

5 Q Is the professional development that trains  
6 teachers to use these reading assessment measures part  
7 of the series of institutes on Open Court and Houghton  
8 Mifflin?

9 A I'm simply not sure if they're part of it or  
10 above and beyond or if the coaches just work on it. I'm  
11 just not sure.

12 Q How do you know that teachers are being  
13 provided professional development on reading assessment  
14 screening measures?

15 A I don't know with that level of detail. I know  
16 that is the State's plan. That's definitely the plan  
17 for the lower-achieving Reading First schools.

18 And I -- I don't know at a microlevel exactly  
19 how they implement this or if they are still developing  
20 plans, how schools will be doing this kind of  
21 assessment.

22 But it would need to be more than just an  
23 institute, and I'm not a -- a detail -- I don't know the  
24 details of this, but it sounds like a sound initiative  
25 and a direction for the State to go in.

1 people who work in the schools.

2 They are probably attended more by teachers at  
3 schools with poor reading scores or below average  
4 reading scores than others, but I don't know the exact  
5 details.

6 Q When you say, "a very large number," what does  
7 that translate to out of California's 300,000-odd  
8 teachers?

9 A I just don't know. I just don't know. I  
10 don't -- I don't want to guess.

11 It's information I would think Sacramento would  
12 have, but I -- I don't -- I don't know.

13 Q Is that information you think Sacramento should  
14 maintain in order to assess the extent of their  
15 professional development activities?

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

18 THE WITNESS: Yeah. I can't -- you know, state  
19 governance and all I can't get into. I know one state  
20 has such numbers for their training institutes, but  
21 they're just legal areas that are beyond what I...

22 BY MR. AFFELDT:

23 Q What state is that?

24 A Texas.

25 Q Do you know how many teachers in Texas have

1 Q So your testimony is at the level of the  
2 concept at the State, endorsing the concept that the  
3 State has?

4 A That's correct, and knowing that the State is  
5 moving in these areas but not knowing on a  
6 month-to-month level exactly what's going on in each of  
7 these levels.

8 Q Sitting here today, do you know how many  
9 teachers throughout the State have received any of this  
10 professional development?

11 A I don't know the number. My sense is a very  
12 large number have attended those institutes.

13 Q What is your sense based on?

14 A Well, talking to the folks with the two who  
15 supported the study with Baker; the two different  
16 centers from UC and CSU, whose names I'm not that  
17 comfortable with or remember that well. They basically  
18 gave a sense that many, many of these institutes were  
19 being conducted.

20 I have a friend who retired but was a principal  
21 through June 30th, and she and the teachers at her  
22 school attended many institutes -- or attended  
23 institutes.

24 So it's based on that and primarily the  
25 exposure to the group and talking to principals and

1 been through their teacher-training institutes?

2 A I don't, but I know it's in an evaluation  
3 report and I did the student reading and somebody else  
4 did the tally of the number of teachers, so I...

5 Q What evaluation report is that?

6 A It was an evaluation of Texas's statewide  
7 initiative that I wrote with someone at the University  
8 of Texas and was delivered to the state last January,  
9 February.

10 Q Is it listed in Exhibit 4?

11 A Is that my --

12 Q That's your vita.

13 A Let me see. It would be under "Technical  
14 Reports," I would think.

15 It is not in this one. I have a feeling we may  
16 have updated it since -- since then, so it's not -- it's  
17 not in here.

18 Q When did you complete that?

19 A I completed my end of that essentially in  
20 January, and then the state added on various other  
21 things that they wanted for the legislature. And the  
22 final was emailed to me probably in, I don't remember,  
23 March, April, May.

24 Q Is there a title that you can give me?

25 A I can't give you a precise title. I believe

1 the state had a certain title they wanted. I can give  
2 you a sense -- I mean, it was called -- it was somehow  
3 called an "Evaluation of the Student Success Initiative"  
4 is what Texas calls its reading initiatives.

5 Q When you said you completed your part in  
6 January and received an email later, is that '03?

7 A That's correct, yeah.

8 Q The first professional development activity you  
9 identified was the Governor's Institutes' week-long  
10 training.

11 What are they being trained on?

12 A I believe I answered that question already.

13 Q You might have, but I don't want to ask the  
14 court reporter to go back and try to find it.

15 A They basically trained on the key research  
16 principles from the body of research on beginning  
17 reading and applications for classrooms.

18 Q So beginning reading training?

19 A Yes.

20 Q And is that for what? What grade level of  
21 teachers?

22 A I'm pretty sure it targets K-3.

23 Q And the use of coaches to help teachers put  
24 beginning reading principles into practice, is that --  
25 that was the second initiative?

1 A I think it's also -- it's both to help students  
2 at a younger age be comfortable with expository material  
3 and to increase their knowledge of first and second  
4 grade social studies, which is everything from  
5 understanding rudiments of geography to those basic  
6 pillars of social studies.

7 Q And the use of coaches to help principles --  
8 put the principles into practice concerns -- strike  
9 that.

10 Does the use of coaches to help teachers put  
11 principles into practice deal at all with more advanced  
12 reading principles?

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: Clarify what you mean by  
15 "advanced reading."

16 BY MR. AFFELDT:

17 Q You might have answered it by saying you think  
18 it's limited to K-3, but I'm trying to understand if it  
19 deals with later grades and higher levels of reading or  
20 just what you're defining as "beginning reading."

21 A I think it may deal with K-5. I just don't  
22 know. That's easily to be checked. But definitely by  
23 third grade and especially the newer series that the  
24 State has adopted have a lot more comprehension than in  
25 starting in, really, in first grade.

1 A I believe that's also K-3. It's possible they  
2 work with fourth and fifth grade with Open Court because  
3 that's a K-5 program. I just don't know. My focus was  
4 more on K-3.

5 Q And on the use of coaches, am I right that  
6 that, again, is just limited to principles around  
7 beginning reading?

8 A As opposed to other?

9 Q Other content areas.

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: I think they deal with beginning  
12 reading. I don't know to the extent to which they  
13 handle other things like classroom management or setting  
14 up rules for kids to work together, et cetera.

15 That would be important for all areas, but it  
16 is a reading initiative. It's a reading curriculum,  
17 reading language arts curriculum.

18 BY MR. AFFELDT:

19 Q So it's not a math or social studies  
20 curriculum?

21 A No. There is social studies in the Open Court  
22 area, and I don't know how much but there is some social  
23 studies material in it.

24 Q The social studies material that's in  
25 Open Court, that's to assist with reading language arts?

1 By third grade, it gets fairly complex, what  
2 the kids are asked to do. Some of the things would  
3 be -- in the first grade are kind of challenging for a  
4 six-and-a-half year old.

5 So it covers what Open Court does, either K-3  
6 or K-5, and it is a very rich, extensive -- both  
7 Open Court and Houghton Mifflin stress comprehension,  
8 analysis, et cetera.

9 Q So is the use of coaches aligned with  
10 Open Court and Houghton Mifflin materials?

11 MS. DAVIS: Vague and ambiguous.

12 THE WITNESS: The use of coaches -- I'm not  
13 sure --

14 BY MR. AFFELDT:

15 Q What I mean is: Is the use of coaches to help  
16 teachers use Open Court and Houghton Mifflin materials?

17 A To use them well would be the purpose of it.

18 Q As opposed to using some other materials?

19 MS. DAVIS: Vague and ambiguous.

20 THE WITNESS: I'm not -- I don't understand  
21 that question.

22 BY MR. AFFELDT:

23 Q The use of coaches, its purpose is to help  
24 teachers use the State-adopted Open Court and Houghton  
25 Mifflin materials, correct, as opposed to some other

1 kind of reading materials that perhaps the local  
2 district might decide to adopt on its own?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: My understanding as of this past  
5 July for year-round schools or this coming September is  
6 schools in California must adopt one of those two  
7 series. That is my understanding. I don't know.

8 There may be waivers to this, but that is my  
9 understanding; whereas, that was not the case last year  
10 or two years ago.

11 BY MR. AFFELDT:

12 Q And based on your understanding, what changed  
13 in the last year or two to now require schools to adopt  
14 Open Court or Houghton Mifflin?

15 A The State Textbook Review Committee has  
16 historically approved a number of series, more than  
17 two. It might be five. It might be eight. It might be  
18 ten, and districts would pick amongst them.

19 And this past year, they only found two  
20 acceptable, so districts had only a choice of one of the  
21 two, where before they had a choice of a larger number.

22 Q The third item you mentioned was a new series  
23 of institutes that take the materials from the  
24 Governor's Institutes and link them to Open Court or  
25 Houghton Mifflin.

1 base."

2 A Yeah.

3 Q What is the curricula that you are referring  
4 to?

5 A Open Court and Houghton Mifflin would be the  
6 two that deemed to encapsulate.

7 Q Didn't the State approve four series?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: I believe the State approved two,  
10 is what I've heard consistently.

11 Now, my focus is only -- has really only been  
12 on schools with kids in poverty and there may be others  
13 open, but those schools where reading achievement is not  
14 at optimal levels. I don't know. I've heard the two so  
15 I have not heard that four were approved.

16 Four were approved as core reading programs.  
17 See, they also allow other kinds of programs and I  
18 forget the word, like for kids who need extra help, or  
19 kids who are well behind.

20 There may be other programs that supplement or  
21 are used for help with struggling readers above and  
22 beyond Open Court and Houghton Mifflin, and I just don't  
23 know the details of that.

24 BY MR. AFFELDT:

25 Q But your testimony in the expert report is

1 What is your understanding of when those new  
2 series of institutes have begun?

3 A I say about now, they may be starting in  
4 October, they may have started last spring, so it's --  
5 so that's my sense, that they're newer.

6 The State has known about the adoption, these  
7 two adoptions, for a year, so people have had a chance  
8 to prepare materials. But I'm not an expert at  
9 state-wide implementation. I'm more talking about a  
10 direction for the State to take that is likely to be  
11 beneficial to low-income students and English learners.

12 Q So you don't know how many teachers have  
13 participated in the new series of institutes?

14 A No, I don't know.

15 Q And referring back to your report on this  
16 research base "provision of intensive professional  
17 development to teachers on this research base," is that  
18 the same research base we talked about earlier and which  
19 is referenced in the previous clause "based on empirical  
20 research"?

21 A That's correct.

22 That would be the research base on reading  
23 instruction and learning how to read.

24 Q And the next clause is, "and adoption of  
25 curricula that encapsulate key features of the research

1 focused on Houghton Mifflin and Open Court --

2 A The two core programs. And my understanding is  
3 from kindergarten to fifth grade, that is the -- those  
4 are the two programs that constitute the core of the two  
5 and a half or two hours of reading with charts and  
6 instruction.

7 Q When you say your focus has been on schools in  
8 poverty, how do you define "schools in poverty"?

9 A Schools with high levels of free and reduced  
10 lunch. Typically, that would be the definition.

11 Q Is there a range that you would look for to --  
12 for free and reduced lunch to determine that school's in  
13 poverty?

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: It would depend on the  
16 study. The one -- in San Diego where it was the most  
17 in-depth study, we knew those numbers sort of  
18 microscopically, and in that case the range was 82 to  
19 99.

20 BY MR. AFFELDT:

21 Q And by that you mean 88 to 92 percent of  
22 students on free or reduced lunch --

23 A Correct.

24 Q The new series of institutes teaching materials  
25 from the Governor's Institute and linking it to

1 Open Court, Houghton Mifflin, which was the third item  
2 that you had mentioned, is that -- that professional  
3 development focuses on teaching teachers to use the  
4 Open Court or Houghton Mifflin materials; is that  
5 correct?

6 A One could describe it that way. One could also  
7 say it -- it shows them how the research principles --  
8 or its goal is to show them how the research principles  
9 are embodied in those series and how to implement them  
10 in a thoughtful, professional fashion so that they can  
11 make the kind of adjustments for kids that are  
12 struggling or a class that is struggling that are  
13 consistent with research, spending more time,  
14 explanations, that kind of thing.

15 That's the goal, to the best of my  
16 understanding.

17 Q And your understanding comes from where?

18 A From conversations with the individuals I  
19 mentioned and having reviewed California's Reading First  
20 application, which is on the State's website where they  
21 did describe -- they described the approach.

22 At least they described the approach they  
23 currently use and what they would expect in the Reading  
24 First schools.

25 Q Do you know if the research principles are

1 "interview."

2 BY MR. AFFELDT:

3 Q Your answer?

4 A I did not -- I did not conduct a formal  
5 interview with her, no. No.

6 Q Looking at the sentence as a whole that we have  
7 been looking at, "These include adoption  
8 of state Reading and Language Arts  
9 Standards that are based on empirical  
10 research, provision of intensive  
11 professional development to teachers on  
12 this research base, and adoption of  
13 curricula that encapsulate key features of  
14 the research base."

15 Do you have any empirical knowledge of the  
16 extent to which English-language learners in California  
17 are -- the extent to which each English-language learner  
18 in California has a book of their own from Open Court or  
19 Houghton Mifflin?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: I certainly can't speak for the  
22 whole state. I can only speak for the schools I was  
23 in. And in those schools, in the first grade, every  
24 child had almost brand new books. I mean, you know,  
25 both the reading series and the workbooks.

1 discussed as part of the professional development?

2 A I don't. I would assume they are. I'd be --  
3 I'd be very surprised if they aren't, based on my  
4 knowledge of the two series where they occur a lot in  
5 the series and the teacher's guide and that kind of  
6 thing.

7 They'll talk about phonological activity,  
8 vocabulary activity and writers' workshop activity, but  
9 I haven't actually sat through a workshop or sat down  
10 and read the manuals.

11 Q Have you seen any of the materials that are  
12 used in these professional development workshops?

13 A Have I ever -- no.

14 Q Have you interviewed any participants in any of  
15 the professional development workshops?

16 A The -- definitely the principal I spoke with  
17 attended them. I haven't -- no, I haven't.

18 Q The principal you spoke with is a friend of  
19 yours?

20 A Yeah.

21 Q A neighbor?

22 A No. Sort of a friend of a friend.

23 Q But you didn't interview her on her experience  
24 with the professional development workshop?

25 MS. DAVIS: Vague and ambiguous as to

1 And these various -- they have -- Open Court  
2 has something called "Young Scholars Series," I believe  
3 it's called, so there are other books that kids could  
4 read, like class library books.

5 And there were a lot of books for -- for the  
6 kids and they were -- so that was in the first grade in  
7 the seven high-poverty schools. That's what I saw  
8 routinely.

9 BY MR. AFFELDT:

10 Q Those were the seven high-poverty schools that  
11 were part of the Baker, Gersten --

12 A Yeah, that's correct.

13 Q But you're not aware of any statewide  
14 information on the extent to which English learners have  
15 their own Open Court or Houghton Mifflin books?

16 A I simply don't personally have access to that  
17 kind of information.

18 Q Do you think the State should maintain that  
19 kind of information?

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

22 THE WITNESS: It's not -- I don't see that as  
23 my role as to what kind of recordkeeping the State  
24 should have or keep.

25 BY MR. AFFELDT:



1 Q Do you think it's important in order for this  
2 program to succeed that each English learner have their  
3 own book to use in class and to take home for homework?

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

6 THE WITNESS: I think that calls for too much  
7 speculation on my part.

8 BY MR. AFFELDT:

9 Q What do you have to speculate about?

10 A Oh, whether a program could succeed if kids  
11 didn't have enough books to bring home with them. I  
12 don't know that I could speculate on that.

13 There are things that would be nice, but I  
14 don't -- it could succeed without that.

15 I could even envision, it wouldn't be ideal,  
16 where kids shared books from the morning to the  
17 afternoon and a program still could succeed. It's all  
18 just speculative, so I would prefer not to speculate  
19 there.

20 It certainly seemed to feel -- well, to me it  
21 felt good when the kids had new books and when they had  
22 books that reflected research-based strategies, as was  
23 the case in all schools but two.

24 And now the State has ensured that all of the  
25 books will encapsulate research, and that was not the

1 class and schools where every student had their own book  
2 in class, in order to determine whether or not these  
3 materials were effective, which -- which schools would  
4 you choose --

5 MS. DAVIS: Vague and ambiguous, incomplete --  
6 but go ahead.

7 MR. AFFELDT: Let me just finish.

8 Q -- all other factors being equal?

9 MS. DAVIS: Incomplete hypothetical, vague and  
10 ambiguous, calls for speculation.

11 THE WITNESS: Where I have a hard time with  
12 that question in speculating is since 1978, I have never  
13 seen that situation in southeast or east San Diego and  
14 Inglewood and East L.A., so it -- it's hard -- you know,  
15 as a researcher, it would depend if the issue was how  
16 important is it for kids to have their own books to  
17 bring home with them. And it would be important to look  
18 at both classes of situations.

19 If it -- I don't -- I don't -- I don't see that  
20 as an issue. I mean, I just haven't seen that in the  
21 classrooms I've been in for at least 24 years, and it's  
22 certainly not every room in the State but I just have  
23 not seen that.

24 I've seen the quality of the materials, the  
25 instructional design and the consonants in alignment

1 case several years ago.

2 Q Do the Open Court and Houghton Mifflin series  
3 have homework assignments in them?

4 A I'm pretty sure they do.

5 Q How can English learners carry out homework  
6 assignments if they can't take a book home?

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

9 THE WITNESS: Well, I can envision a lot of  
10 things, if the homework is just out of a worksheet.

11 I don't know. I -- I'm just saying I can't  
12 speculate as to what are the key things for a program to  
13 succeed. I have no evidence that students don't have  
14 their own books. It certainly -- these schools and  
15 rooms were picked because overall they were quite  
16 high-poverty and in most cases low-achieving or  
17 potentially high at risk and I saw the kids with their  
18 own books.

19 But it's just too much speculation. There  
20 could be other factors that come into play that I just  
21 can't guess at for a state this large.

22 BY MR. AFFELDT:

23 Q If you were carrying out your study in  
24 high-poverty schools with Mr. Baker and you had to  
25 choose between schools where children shared books in

1 with research vary all over the place. And some were  
2 shiny and new but they were illogical.

3 And I think there were problems with what the  
4 State has as its framework in the '80s and have written  
5 about it. And the day-to-day, the trends kept going  
6 down when that framework was implemented.

7 BY MR. AFFELDT:

8 Q I didn't ask what you had seen in classes. I  
9 gave you a hypothetical. All other factors being equal,  
10 if you were doing a research study, trying to determine  
11 whether or not student achievement was improving, would  
12 you choose schools where every student had a book or  
13 would you be content to carry out your study in schools  
14 where students were sharing their books in class?

15 MS. DAVIS: Incomplete hypothetical, calls for  
16 speculation, vague and ambiguous.

17 THE WITNESS: I think it is quite incomplete.  
18 It would depend on the nature of what the study was  
19 about.

20 If the State wanted to know how important it is  
21 for each child to have their own book and that was the  
22 purpose of the study, we usually want to get some input  
23 data, what is the instance of this, is this one  
24 classroom out of all the classrooms in the State? Is  
25 this half?

1 So it would depend do they want a large-scale  
2 study or a small-scale focus study? Do they want a  
3 rigorous study or just a kind of boost descriptive  
4 thing?

5 It just depends on many things. Is that the  
6 most important feature or 1 of 20? It could depend on  
7 many things.

8 BY MR. AFFELDT:

9 Q The research base that you refer to in the  
10 sentence we've been looking at, you testified about  
11 earlier, does that research assume that all children  
12 have access to curricular materials?

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

15 THE WITNESS: Yeah, I think it depends. Each  
16 study is different in that research base, so it would  
17 depend on the particular study you were talking about.

18 BY MR. AFFELDT:

19 Q Which studies don't children have access to  
20 curriculum materials that you're aware of?

21 MS. DAVIS: If you know.

22 Vague and ambiguous.

23 THE WITNESS: There are so many studies in that  
24 base that I could think of two. One would be one of  
25 the -- some of the studies on phonological awareness in

1 rather not speculate there.

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

3 THE WITNESS: Okay.

4 (Recess taken.)

5 BY MR. AFFELDT:

6 Q Are there supplemental materials for English  
7 learners under the Open Court, Houghton Mifflin series?

8 A Yes, there are.

9 Q Is the State's concept, as you understand it,  
10 for every EL student to have their own Open Court,  
11 Houghton Mifflin book and supplemental materials?

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

14 THE WITNESS: My understanding of the State  
15 policy is for English learners, they need additional  
16 time above and beyond the reading language arts block to  
17 work on English-language development.

18 And I -- this is not a legal -- I don't know  
19 the legal or official policy, but at least there's  
20 movement or talk or perhaps a written policy that it be  
21 linked to material the kids read and write and the  
22 material they're doing in their academic work during the  
23 day.

24 And it would typically entail the supplemental  
25 materials again. I've seen them in the schools I've

1 kindergarten where the teacher had a book but students  
2 did not have any books and they practiced sounds and did  
3 different things and pointed at letters and sang songs.

4  
5 And so there was a curriculum for the teacher  
6 but not for the children. Some of the work on  
7 vocabulary was not done with textbooks.

8 Those are two examples, but there are hundreds  
9 and hundreds of studies. There's every variety under  
10 the sun.

11 I think I need a break now, or if you want to  
12 ask one more question.

13 BY MR. AFFELDT:

14 Q The Open Court, Houghton Mifflin series intend  
15 that each student have their own textbook, don't they?

16 MS. DAVIS: It assumes facts not in evidence.

17 THE WITNESS: I don't -- I just don't know for  
18 sure. I would assume so.

19 BY MR. AFFELDT:

20 Q Is that your understanding of how this series  
21 operates?

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

24 THE WITNESS: I don't know enough about the  
25 specifics of the series to -- I mean, I just would

1 been with Open Court, which was adopted by L.A. Unified  
2 for the lower-achieving schools several years ago.

3 BY MR. AFFELDT:

4 Q So it's your understanding that according to  
5 the State's concept, each student receives their own  
6 supplemental materials?

7 MS. DAVIS: Vague and ambiguous, calls for  
8 speculation.

9 THE WITNESS: Yeah. I don't know enough about  
10 every detail of the two curricula, whether there be a  
11 teacher's guide that the language activities would come  
12 from.

13 I don't know whether there's another book that  
14 goes with it. I just don't know. I'd just be  
15 speculating randomly.

16 I know to be adopted, the series needed --  
17 specialized materials for English learners was a  
18 requirement of the State of California. And I know it  
19 has had a profound impact on the publishers because it's  
20 a huge market.

21 BY MR. AFFELDT:

22 Q But you don't know whether each English learner  
23 in a classroom is supposed to have their own individual  
24 supplemental materials?

25 MS. DAVIS: Asked and answered.

1 THE WITNESS: I'm not sure what "supposed to"  
2 means.

3 BY MR. AFFELDT:

4 Q Under the State concept that you're supporting  
5 in your expert report.

6 MS. DAVIS: Vague and ambiguous, calls for  
7 speculation, asked and answered a couple times now.

8 THE WITNESS: Yeah. I don't know that  
9 proceeding in this area is going to be very productive.

10 BY MR. AFFELDT:

11 Q You've already given me your best answer?

12 A Yeah.

13 Q Your report goes on to say about the middle of  
14 the second paragraph on page 1, "Other initiatives  
15 are grounded in sound theory. The new  
16 state law that requires teachers to be  
17 fully certified, inclusion of all students  
18 in state assessment including English  
19 learners, and adoption of a strong  
20 accountability system in education."

21 There is actually not a verb in that sentence,  
22 but is there supposed to be a colon after "Other  
23 initiatives are grounded in sound theory"?

24 A I would believe so, yeah. Yeah.

25 Q Okay. Can you make that change and initial

1 effect very soon.

2 BY MR. AFFELDT:

3 Q Why do you think that that initiative is  
4 grounded in sound theory -- or let me ask it this way.

5 What is the sound theory that that initiative,  
6 as you understand it, is grounded in?

7 A I think -- I think looking at this again --  
8 this is an overview paragraph.

9 I think when I -- I want to retract the  
10 semicolon. I think when I said, "Other initiatives are  
11 grounded in sound theory," I was implicit about material  
12 I deal with later, which was to me the idea of  
13 integrating ELD and content learning is grounded in  
14 sound theory. There's not a strong database on that,  
15 but it's grounded in sound theory. And, so, that's what  
16 I was -- I was implicit about that.

17 MS. DAVIS: Why don't you change that.

18 THE WITNESS: Yeah, so let me --

19 MS. DAVIS: Sort of an inherent problem of  
20 changing actual text.

21 THE WITNESS: Yeah. So this one is the new  
22 State law -- and, in fact, I believe just -- because I  
23 don't know that this is the best setting for copy  
24 editing.

25 It should say, "The new state law

1 it?

2 A (Witness complies.)

3 Q What is the new State law that requires  
4 teachers to be fully certified that you're referring to  
5 there?

6 A I think that's the one, and I read the summary  
7 of it in Education Week by B. Keller of February 2003,  
8 and I don't see my area of expertise as legal or -- so  
9 this indicated that teachers would need to be fully  
10 certified and they would not hire the -- continue to  
11 hire the alternate -- the teachers are -- that aren't  
12 fully certified.

13 And I believe it takes effect in 2004, but I  
14 don't -- it's either 2004 or 2005 and it's consonant  
15 with No Child Left Behind.

16 So that is the law I'm talking about and I  
17 don't know the exact number of it or whatever.

18 Q But that would be a future hypothetical  
19 initiative?

20 MS. DAVIS: Vague and ambiguous,  
21 mischaracterizes his testimony.

22 THE WITNESS: My understanding from the article  
23 is that this was passed by the State legislature, so it  
24 would be a State law. I think it takes effect I believe  
25 within 6 or 12 months, so it is a law that will take

1 requires teachers to be fully certified,  
2 inclusion of all students in the state  
3 assessment including English learners, and  
4 adoption of a strong accountability system  
5 in education."

6 So I don't know if we want to deal with  
7 "grounded" --

8 MS. DAVIS: No.

9 BY MR. AFFELDT:

10 Q I'm trying to understand what your intent is --

11 A Okay.

12 Q -- in your report here so we know what --

13 A Yeah.

14 Q -- what we're dealing with.

15 A Okay. So --

16 Q When you refer to "Other initiatives are  
17 grounded in sound theory," it's now your testimony that  
18 you're referring to the integration of ELD and content?

19 A That's correct, yeah, yeah. And I think that  
20 was my thing. I just was thrown looking at this with  
21 the copy editing frame of mind. Yeah.

22 Q And what's -- what was your intention when you  
23 wrote this with the following sentence which lays out  
24 three other initiatives?

25 A That these are moves to improve the quality of

1 education provided to English learners, having teachers  
2 that are fully certified and -- and I have again  
3 noticed, and this is anecdotally, some of the teachers  
4 who are not fully certified have completed and -- often  
5 teaching for many, many years because they were fluent  
6 in Spanish and there were empty slots, they have  
7 completed their certification program because they know  
8 they will lose their jobs.

9 And I think it's been an incentive for people  
10 to get certification.

11 I think the moves to include students in State  
12 assessments, both students with disabilities and English  
13 learners, is generally perceived as a way to upgrade  
14 expectations to increase awareness of whether this group  
15 is learning or not learning, because before kids were  
16 typically exempted from inclusion in State assessments.  
17 Or if they took them, their scores were excluded from  
18 the reports.

19 So the State has actively moved in that  
20 direction, which is likely to improve the educational  
21 opportunities and services for English learners.

22 And the general strong accountability system  
23 that schools that aren't progressing for groups of  
24 students including English learners will have intensive  
25 work done with them, which is infused in No Child Left

1 I've read it, because of this project I'm working on,  
2 special education and teacher quality; and the other is  
3 Hayes and Salazar's data.

4 Granted, it's not a rigorous study but it did  
5 suggest, as I recall and I think it's in my report later  
6 on, that the teachers who are uncertified, the gains in  
7 reading for their kids were less than those that were  
8 certified.

9 So those would be the two.

10 Q Do you know the title of the Linda  
11 Darling-Hammond report you're referring to?

12 A I know don't.

13 Q Can you describe it generally?

14 A What's that?

15 Q Can you describe it generally?

16 A The title, no. I've read this, oh, my Lord, it  
17 was probably a year-and-a-half ago.

18 I more got a packet of things. It was a  
19 National Center on Special Ed Teacher Quality, so they  
20 gave us some things, the advisory group to read. And I  
21 looked through it at that point in time, and I don't  
22 remember the title.

23 I -- I remember wondering a little, not  
24 necessarily seeing more descriptive things in it, for  
25 instance, descriptive data, and also wondering -- to me,

1 Behind is again likely to improve the quality of  
2 education.

3 So I think these three initiatives tied in with  
4 the more content things are likely to be a powerful  
5 package for improving educational attainment, especially  
6 in the area of reading and language.

7 Q How does requiring teachers to be fully  
8 certified improve the quality of education for English  
9 learners?

10 A Teachers have to fill in courses they haven't  
11 had, so if they haven't had -- they would have courses  
12 relevant to teaching. So they could be courses in  
13 reading methods, it could be courses in classroom  
14 management, it could be courses in -- in language.

15 It could be courses in math, but it's likely to  
16 improve because there's some suggestions, and I'm not an  
17 expert in this area, that certified teachers on average  
18 tend to do somewhat better than those who have no  
19 certification in terms of student outcomes.

20 I think it's still suggestive at this point, so  
21 that's why I think it would improve services.

22 Q What suggestions are those you're referring to?

23 A Well, there is a very lengthy report by Linda  
24 Darling-Hammond and I don't know about the rigor of that  
25 report and I have not studied that report carefully.

1 sometimes I wonder more if a study exactly fits the  
2 hypothesis or the report of the people going into it and  
3 maybe it's not shaped or molded by the data. And this  
4 report seemed of that ilk.

5 But, nonetheless, there were some suggestions  
6 here. But I just read it. I believe that was a year  
7 and a half ago, February. So I'm -- I don't remember it  
8 very well.

9 It's possible -- it's possible it was even  
10 two-and-a-half years ago. I remember it was in a  
11 winter.

12 Q Do you have a view as to whether teachers  
13 certified to teach special ed students -- as to whether  
14 having teachers who teach special ed students are --  
15 certified to teach special ed students leads to  
16 increased student achievement for special ed students?

17 MS. DAVIS: Vague and ambiguous.

18 THE WITNESS: There is -- I think this relates  
19 to another line of work and I'm a consultant on this  
20 project. They were not able to find any such studies in  
21 the center, which operates out of the University of  
22 Florida; trying to explore the study but it involves  
23 developing valid measures.

24 So they're trying to at least look at the types  
25 of training and certification that lead to better

1 quality teachers is the goal of this very ambitious  
2 study.  
3 But I don't know that there is data to that  
4 point other than sometimes people going into a room and  
5 seeing somebody with no training not doing very well.  
6 But they have all seen people with training not doing  
7 very well.  
8 BY MR. AFFELDT:  
9 Q And the Florida study is about special ed  
10 teachers?  
11 A That's correct, yeah.  
12 Q It sounds like -- am I correct that people just  
13 haven't studied that for special ed --  
14 A That's correct. They have not.  
15 Q You have to let me finish.  
16 A Oh, I'm sorry. Yeah.  
17 Q -- with regard to special ed teachers before?  
18 A At least the research team at the University of  
19 Florida did not find any studies about -- empirical  
20 studies.  
21 Q When including English learners in the State's  
22 accountability system, do you believe it's important to  
23 ascertain the extent to which ELs are making progress in  
24 the English-language development?  
25 MS. DAVIS: Vague and ambiguous, calls for

1 speculation.  
2 THE WITNESS: Could you repeat the question?  
3 I'm not sure that I understand it.  
4 BY MR. AFFELDT:  
5 Q Yes. Let me try to ask it a better way.  
6 Do you believe it's important as part of the  
7 State's accountability system that the State assess the  
8 extent to which English learners are making progress in  
9 English-language development?  
10 MS. DAVIS: Vague and ambiguous.  
11 THE WITNESS: I think what I may do here is  
12 defer to Congress. And I believe in the No Child Left  
13 Behind, they did say that would be an obligation of  
14 states, to try and track that.  
15 So I think that is the law of the land, I  
16 believe.  
17 BY MR. AFFELDT:  
18 Q Congress -- congressional wisdom aside --  
19 A That was an interesting week last week,  
20 Congress. Security being called but...  
21 Q Do you think that is a wise practice --  
22 MS. DAVIS: Vague and ambiguous.  
23 BY MR. AFFELDT:  
24 Q -- as a professional working in this area?  
25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: I'd probably focus less on oral  
2 language development and more on written language,  
3 reading, reading comprehension. And the advantage of  
4 that is we're much better at being able to validly  
5 measure those than oral language. It's been a huge  
6 problem for English learners and everyone, you know.  
7 But I think this should be tracked, but with  
8 the caveats that the measures tend to be less precise  
9 and valid and I don't -- I still am not sure we know  
10 exactly what to assess in oral language.  
11 The only thing we know, that seems to  
12 consistently come out, is that oral language proficiency  
13 in English is -- never predicts significantly how well  
14 kids learn how to read where their phonological  
15 knowledge consistently does.  
16 BY MR. AFFELDT:  
17 Q Do you think schools should be held accountable  
18 for improving EL student outcomes on the  
19 English-language development measures you mentioned?  
20 MS. DAVIS: Vague and ambiguous, calls for  
21 speculation.  
22 THE WITNESS: I would rather to make a  
23 knowledgeable, professional judgment, the federal  
24 government very, very recently awarded contracts to  
25 three consortia of states to develop measures of

1 English-language acquisition that are valid, so there is  
2 awareness in the fields that the ones we have now are  
3 not terribly valid and to see what those measures look  
4 like, what people say about them when they're used.  
5 And I think we'd be in a better position to do  
6 that. And this work has yet to begin. They recently  
7 awarded the contracts.  
8 BY MR. AFFELDT:  
9 Q Assuming we have valid measures of  
10 English-language development in the areas of reading and  
11 writing, do you think it important to hold schools  
12 accountable for improving EL student outcomes on those  
13 measures?  
14 MS. DAVIS: Incomplete hypothetical, calls for  
15 speculation, vague and ambiguous.  
16 THE WITNESS: I don't -- I just don't feel  
17 comfortable when there are so many ifs, speculating.  
18 BY MR. AFFELDT:  
19 Q Do you think schools should be held accountable  
20 for improving EL student outcomes on content area  
21 assessments, such as math and reading language arts?  
22 MS. DAVIS: Same objections.  
23 THE WITNESS: I -- I believe the State already  
24 has that in effect. They have a way they rate schools.  
25 I'm forgetting the letters. T -- there's an

1 intention. In Texas it's TLI. In California, it's  
2 another thing. They have an index where they look at --  
3 which is a little different than the annual yearly  
4 process which is something the federal government  
5 has. So they have these measures already.

6 And I would take that accountability and  
7 improving the quality of curriculum and services and  
8 teacher relevant training would be important ways to  
9 go.

10 Whether -- what I like about California's  
11 approach is it's not just saying there is  
12 accountability, there is also radical rethinking and  
13 upgrading of how English-language development is taught  
14 and how reading is taught.

15 So it's providing inputs as well as making  
16 demands for increases. And that just seems a more  
17 sensible way to handle the teaching profession, to me.

18 BY MR. AFFELDT:

19 Q My question was whether you thought that was a  
20 good idea, that California is holding student -- holding  
21 schools accountable for EL achievement in content areas.

22 MS. DAVIS: Vague and ambiguous, asked and  
23 answered.

24 THE WITNESS: I think I've answered as much as  
25 I can on that.

1 THE WITNESS: I don't think enough is known  
2 about that yet. I know the State began using it as a  
3 gauge to assess progress of children, but I really think  
4 it needs to be studied carefully for students in terms  
5 of growth.

6 It probably would reflect both growth and  
7 knowledge of English and knowledge of the content, how  
8 to read or vocabulary or math.

9 I don't think it's been studied in enough  
10 detail, that particular issue. It certainly has  
11 resulted in dramatic increases of inclusion of English  
12 learners in State assessments based on the data we had  
13 seen from the '98-99 period when many kids in many  
14 schools were excluded and that seems to be happening  
15 much less.

16 BY MR. AFFELDT:

17 Q Do you know whether California assesses  
18 student's English-language development as part of its  
19 current accountability system?

20 A There is a new test called the CELDT, and this  
21 is all caps C-E-L-D-T, that is one-on-one administered  
22 by teachers to students who are English learners. And I  
23 don't know much about this test.

24 I know it's new and it is used in the State as  
25 a measure of English-language development.

1 BY MR. AFFELDT:

2 Q You answered what California's doing. My  
3 question is whether you think that's a good idea.

4 MS. DAVIS: Asked and answered.

5 THE WITNESS: I think I answered the best I  
6 can. It sounds like what California is doing is  
7 complying with federal law, which it seems the State's  
8 obligation to do or make a good-faith effort to do. And  
9 I'd like to stop there.

10 BY MR. AFFELDT:

11 Q So you don't have an opinion on whether the  
12 California accountability system is -- is a good idea?

13 MS. DAVIS: Mischaracterizes --

14 BY MR. AFFELDT:

15 Q -- with respect to English learners?

16 MS. DAVIS: Misstates prior testimony, vague  
17 and ambiguous, asked and answered.

18 THE WITNESS: I don't feel comfortable  
19 commenting any more on this issue.

20 BY MR. AFFELDT:

21 Q For English learners with low levels of  
22 proficiency in English, are -- is the SAT 9 a valid  
23 measure of that student's content knowledge?

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

1 Q Do you know whether that's part of the State's  
2 accountability system?

3 MS. DAVIS: Vague and ambiguous.

4 THE WITNESS: Personally, I don't. I can only  
5 speculate.

6 BY MR. AFFELDT:

7 Q And you don't -- strike that.

8 At the bottom of page 1, the next sentence  
9 starts out, "Given that there is so little relevant  
10 research on this topic..."

11 Just for clarification purposes, what is the  
12 "topic" you're referring to there?

13 A The "topic" probably is teaching students in a  
14 second language, in particular, reading -- in  
15 particular, reading. But I would say in this sentence  
16 I'm broadening it out to include other content areas,  
17 because there is the most in reading but even that is  
18 still quite small. And a lot of it is within the last  
19 three years.

20 Q The next page, page 2, the end of the first  
21 incomplete paragraph, it says, "As I discuss  
22 in this report, it does not appear that  
23 the plaintiffs have any valid evidence to  
24 support the instructional approach  
25 advocated in the Hakuta report."

1 What approach -- what instructional approach is  
2 advocated in the Hakuta report?

3 A This is from memory. The things that stand out  
4 in memory that he advocated were: Teaching students  
5 initially in their native language, possibly with a dual  
6 immersion program, but I couldn't always track that;  
7 increasing class size in the primary grades; having  
8 teachers that had a BCLAD or a CLAD certificate as being  
9 important.

10 And there was quite a bit of allusion to seven  
11 courses in language and linguistics.

12 So those are the main things I remember from  
13 the report.

14 (Discussion off the record.)

15 BY MR. AFFELDT:

16 Q The top of page 3, the first full sentence  
17 says, "Hakuta argues that the State should be  
18 required to provide EL students with  
19 instructional materials that are designed  
20 to make the curriculum comprehensible to  
21 them."

22 Do you disagree with that premise?

23 A Let me just read the context here --

24 Q Sure.

25 A -- because I think I explain what I mean in

1 language.

2 Q So you agree with the premise that Hakuta  
3 states, you just think the State is in fact doing that  
4 already? Is that fair?

5 MS. DAVIS: I'm going to object to the extent  
6 that might mischaracterize his testimony.

7 THE WITNESS: You know, I guess the word  
8 "comprehensible" can have different meanings. If it  
9 means does the person fully understand every word, I  
10 don't know that that's the best way to teach children  
11 because their vocabulary isn't going to development very  
12 much.

13 So he and I may be using the word  
14 "comprehensible" in a different way. It certainly  
15 should be something that makes sense to the students in  
16 the context of the classroom learning environment, that  
17 it's useful for them learning content and acquiring  
18 English skills.

19 BY MR. AFFELDT:

20 Q Well, this is your word.

21 A What --

22 Q "Comprehensible" here is your word describing  
23 Hakuta's argument.

24 A Yeah. Yeah. And that was my sense that I got  
25 this from Hakuta's report. I don't have it in front of

1 the subsequent paragraph.

2 Okay. We could return to that question now.  
3 Would you --

4 Q Okay. So the question is: Do you disagree  
5 with that premise?

6 A I think the materials should be comprehensible  
7 and useful to students in the context of their  
8 classroom, and so what the State has done and what I  
9 explained here is that it has materials that have an ELD  
10 component to them so they get additional practice on  
11 vocabulary they may encounter.

12 So what it's doing is pushing the English  
13 acquisition of students by giving them support materials  
14 and hooking the English-language development to  
15 cognitive learning and acquiring of knowledge about the  
16 world rather than the old approaches that were used,  
17 which was just this out-of-context, isolated practice  
18 and grammar or the natural-language approach that was  
19 used quite a bit in the 1980s and early '90s, which is  
20 very conversational.

21 So I think that the State has an approach to  
22 make the curriculum comprehensible to students who are  
23 English learners and to use the curriculum to push the  
24 kids into higher levels of comprehension, understanding  
25 of the English language, including the harder academic

1 me.

2 Q But you think based on your understanding of  
3 "comprehensible" that the curriculum should be made  
4 comprehensible to English learners, I assume?

5 A Yeah. Using this basic approach which seems  
6 theoretically sound which the State does, which is  
7 different than what he seemed to be arguing, which was  
8 to have Lao and Vietnamese, et cetera, Korean, Spanish,  
9 Tagalog -- T-a-g-a-l-o-g.

10 (Discussion off the record.)

11 THE WITNESS: This is an approach to make  
12 things comprehensible and useful to kids.

13 BY MR. AFFELDT:

14 Q And how does the State's approach as you  
15 understand it provide curriculum materials that will  
16 lead to English-language development for English  
17 learners?

18 A There are -- with both of the core reading  
19 series for K-5 English-language development activities  
20 that are linked to the lessons that accompany and the  
21 State also continues to have a wide variety of training  
22 and content, learning structure, learning whatever it's  
23 called as their courses at universities, so that is --  
24 those are the positive features of what the State is  
25 doing.

1 And it seems a theoretically sound position to  
2 me to take. It's similar to the, you know, approach  
3 used in Toronto and many other places.

4 Q Used where?

5 A Toronto. That's where a lot of the Canadian  
6 research has been done.

7 Q And this approach, is this the immersion  
8 approach you were describing yesterday?

9 A Well, or -- immersion is such a broad umbrella  
10 but that is a principle of immersion, yeah. Yeah, be it  
11 bilingual immersion, dual immersion, structured  
12 immersion.

13 Q What kind of immersion is this that we're  
14 talking about?

15 A This would be true for all of them. This would  
16 be true for all three types of immersion: Dual  
17 immersion, bilingual immersion or --

18 Q Structured --

19 A -- structured immersion, or I'm sure there is  
20 modified immersion. There are so many different words.  
21 Sheltered English to immersion with some native  
22 language.

23 Any of those approaches, this is a core  
24 principle in any of them.

25 Q What kind of immersion is the predominant

1 Q As part of that approach, do English learners  
2 need to have specific English-language development  
3 activities for English learners --

4 MS. DAVIS: Vague and --

5 BY MR. AFFELDT:

6 Q -- as distinct from native English-speaking  
7 students?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: Could you repeat that question?  
10 Let me see if I understand it.

11 Or, Lori --

12 MR. AFFELDT: I'll repeat it.

13 THE WITNESS: Okay.

14 BY MR. AFFELDT:

15 Q Under the State's concept for educating English  
16 learners you describe here, do English learners need  
17 specialized English-language development activities?

18 By "specialized," I mean that you teach to the  
19 English-learner population that's not being taught to  
20 native speakers.

21 A There is no consensus in the field on that.

22 One issue that has emerged in contemporary  
23 reading research, and this comes I think especially from  
24 the recent work of Barbara Foorman and other folks at  
25 the University of Michigan, is there are populations of

1 California approach under Prop 227?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: Yeah.

4 MS. DAVIS: Assumes facts not in evidence.

5 THE WITNESS: Yeah. I think the terms are used  
6 so broadly.

7 If I base it on the WestEd report, there would  
8 seem to me to be a good deal of variability in what is  
9 being implemented between districts and schools.

10 But it would -- it would be one of the types of  
11 immersions and they blur one to the other, to me -- to  
12 many.

13 BY MR. AFFELDT:

14 Q Yesterday, you talked about the California  
15 concept of immersion is one combining English-language  
16 development with content development.

17 A Yeah.

18 Q Is that what you're describing here in the  
19 second paragraph, the first full paragraph on page --

20 A Yeah. To me, at least in the area of reading  
21 that would be -- that's correct. That would be -- I  
22 believe that's correct, that that does -- that that is a  
23 theoretical principle in at least California's attempt  
24 to develop a program that's both an immersion approach  
25 and a research-based reading approach.

1 low-income African-American students who -- who -- whose  
2 vocabulary and vocabulary development even when they  
3 learn how to read is much lower than a kind of average  
4 rate of growth for American children.

5 It could also be true for certain subgroups of  
6 native American students. They have not been studied as  
7 extensively recently.

8 What I don't know, and I'm not sure anyone  
9 knows this, does one teach these students radically  
10 different, African-American, native American students  
11 with limited language who might not get a great score on  
12 the CELDT. They obviously know more English than a  
13 recent arrival from wherever, Vietnam, so we don't know  
14 whether these are entirely unique, you know, children  
15 whose -- whose receptive language is not very  
16 sophisticated.

17 The same approaches may be used at times for  
18 students who are English learners and students who just  
19 have low language. It's under the same vocabulary  
20 extension, getting them to extend the length of  
21 utterance, getting them to use more complex phrases when  
22 they talk about books they read.

23 It may well work for both groups, just like the  
24 research in learning disabilities seems to show that the  
25 students with reading disabilities benefit from many of



1 the same techniques that succeed with other children,  
 2 except they need more of certain things. Don't know, we  
 3 just don't know as a field.  
 4 Q Apart from the special populations you  
 5 mentioned of disadvantaged African-Americans and native  
 6 American students, do English learners need specific ELD  
 7 activities that the mainstream students in California  
 8 don't need?  
 9 MS. DAVIS: Vague and ambiguous.  
 10 THE WITNESS: Is the question do they need  
 11 special activities that mainstream students don't need?  
 12 Explain more what you mean by "mainstream."  
 13 You would mean a child, native English speaker?  
 14 BY MR. AFFELDT:  
 15 Q Yes, native English speaker.  
 16 A With good language skills in English?  
 17 Q With -- with grade-level language skills.  
 18 A Okay. Okay.  
 19 Then the children -- this set of children would  
 20 need extra work in English-language development, that's  
 21 correct.  
 22 Q And that's what, at least in part, what the  
 23 supplemental Open Court and Houghton Mifflin materials  
 24 are for?  
 25 A That's correct, yeah.

1 MS. DAVIS: John, before your next question, we  
 2 should start thinking about lunch.  
 3 (Discussion off the record.)  
 4 MR. AFFELDT: Can you reread the last  
 5 meaningful question and answer.  
 6 (The record was read as follows:  
 7 "Q And that's what, at least in  
 8 part, what the supplemental Open Court and  
 9 Houghton Mifflin materials are for?  
 10 "A That's correct, yeah.")  
 11 BY MR. AFFELDT:  
 12 Q What kind of supplemental English-language  
 13 development activities do English learners need?  
 14 A I -- I don't think there's a specific answer to  
 15 that question. There are some things that I think are  
 16 theoretically sound or sensible and I mentioned earlier  
 17 in the -- today some of the principles where kids -- do  
 18 I need to repeat those or can we just kind of  
 19 cross-reference what I talked about earlier?  
 20 Q Why don't you start with cross-referencing.  
 21 A Okay. But should I repeat them to  
 22 cross-reference?  
 23 Q At least hum a few bars and remind me what it  
 24 was.  
 25 A Okay. That work in vocabulary development is

1 important for all children but more important for this  
 2 group of children and they probably should have more of  
 3 it; that words that are taken for granted by the  
 4 mainstream, what you're calling the mainstream  
 5 proficient English speaker, you can't always take for  
 6 granted --  
 7 Q Let me stop you and --  
 8 A Yeah.  
 9 Q That was part of your five principles codified  
 10 in Reading First testimony earlier?  
 11 A No. No. That's for reading for all  
 12 children. This was -- I don't know where this came...  
 13 Q Okay. So I'm just trying to give us a  
 14 shortcut. Maybe you should continue, then. So work on  
 15 vocabulary development?  
 16 A Yeah. I'll do a shorter version.  
 17 Vocabulary development which involves a  
 18 multiple exposure so kids know words; the kids need  
 19 activities that require extended utterances. Often if  
 20 they can do this, some of this work in pairs, it's nice  
 21 because it's more -- less-threatening and people feel  
 22 okay about making a little, you know, mistake if a word  
 23 is mispronounced; linking reading and writing, having  
 24 the kids practice writing.  
 25 And so it sort of solidifies the language

1 growth and they get to see what the words look like; use  
 2 of visuals and visual organizers so kids have good ways  
 3 to remember things and maybe can absorb the new language  
 4 quicker and also learn ways to organize their own  
 5 thinking across any language.  
 6 Those are just some things I'd like to see. I  
 7 think the book by those -- Echevarria and Short has some  
 8 excellent material there. Some of the things I've done  
 9 with Baker have some principles.  
 10 Q You mean some of the writings you've done with  
 11 Baker have laid out --  
 12 A Yeah. Yeah. Just not simply --  
 13 Q Wait. I have to finish.  
 14 A Oh, sorry.  
 15 Q Some of the writings you have done with  
 16 Dr. Baker have laid out some of these principles?  
 17 A Yeah, that's correct.  
 18 Q Do English learners need extra assistance to  
 19 successfully complete grade-level content?  
 20 MS. DAVIS: Vague and ambiguous, calls for  
 21 speculation.  
 22 THE WITNESS: I think it would depend a lot on  
 23 the student, particular student.  
 24 BY MR. AFFELDT:  
 25 Q What kind of English learners would not need

1 extra assistance to successfully complete grade-level  
2 content?

3 MS. DAVIS: Calls for speculation, vague and  
4 ambiguous.

5 THE WITNESS: I think I've just seen some  
6 students that -- that don't need that much extra  
7 assistance, they just do very well. I mean, some  
8 combination of being bright and motivated, picking up  
9 the language quicker, maybe being somewhat limited in  
10 their English-language proficiency but not a lot  
11 limited.

12 There are some that just do very, very well and  
13 extra support is fine but they can perform at grade  
14 level.

15 The reading tests we gave the first graders in  
16 some of those rooms, the average was at what would be a  
17 quite decent score for native English speakers. And  
18 these were kids in their first year of full-day school  
19 as kindergarten is a half day in California.

20 So it depends but most kids would need the type  
21 of extra assistance that the State mandates and that  
22 Castenada has set as a policy for districts that kids  
23 are provided with meaningful access to curriculum  
24 content and work on English-language development.  
25 BY MR. AFFELDT:

1 critical to learning: The quality of the interactions,  
2 the quality of the explanations.

3 So I think there are things -- it's not  
4 necessarily that the students might need an extra  
5 half-hour of math, but math should be taught in a way  
6 that is sensible or at least seems to us to be best  
7 practiced, which would involve perhaps extensive use of  
8 visuals, chances for kids to talk so teachers can assess  
9 comprehension and easily explain words that kids may be  
10 struggling with.

11 Under like -- how do I phrase it? Teachers  
12 should not over-rely on synonyms for kids that are  
13 English learners in the beginning because it's easier to  
14 learn a language if you use words consistently so kids  
15 get to see the word and the concept it entails. And so  
16 math is a great place to do that.

17 So if teachers are trained to do that and do  
18 that, it makes the learning increase, or at least our  
19 theories would suggest it does. So it's partly the  
20 quality of what they do.

21 The minutes are a factor but we can "rivet" the  
22 minutes from the quality and the...

23 BY MR. AFFELDT:

24 Q Are there things that a teacher teaching  
25 content to English learners should do that the teacher

1 Q So most kids would need extra assistance?

2 A Probably, yeah, probably. Yeah. Yeah. Extra  
3 instruction. I don't know if "assistance" may be a more  
4 pejorative term.

5 Q By Castenada, you mean the court case,  
6 Castenada?

7 A Yeah, yeah.

8 Q What should that extra instruction entail?

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

11 MR. AFFELDT: Let me ask it in a better way.

12 Q What are the corresponding principles that  
13 English learners that -- should receive when they're  
14 receiving extra instruction in the content areas?

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

17 THE WITNESS: I'm having a hard time  
18 understanding this because we're talking about  
19 English-language development. We were providing -- we  
20 were talking about providing access to grade-level  
21 content and skills.

22 And when I see teachers that appear to be  
23 proficient, the day includes those kind of  
24 activities. So it's hard to know if it's extra time.  
25 It's the quality of what's done that I think is so

1 wouldn't necessarily have to do if they were teaching  
2 the same content to native speakers?

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

5 THE WITNESS: There are levels of awareness  
6 that -- there probably are things. Some are subtle,  
7 some become second nature.

8 Many of the things might well increase the  
9 teacher's ability to teach or communicate with more  
10 children in her class or his class effectively, because  
11 you're talking about the mainstream child with  
12 grade-level language skills. Well, half are below the  
13 national norm level, even native English speakers in  
14 mainstream culture.

15 So some of these techniques about clarity and  
16 having kids talk more are likely to accelerate learning,  
17 period, kids using concepts as they're learning math.

18 So I can't give you a definitive answer there.

19 I think we're about at our stop point.

20 MS. DAVIS: Do you need to stop now?

21 THE WITNESS: What?

22 MS. DAVIS: Do you need to stop now?

23 THE WITNESS: Well, I could go for one more  
24 question, if that makes sense. I don't know. It  
25 depends --

1 MS. DAVIS: Depends on the question.  
 2 THE WITNESS: Yeah. Yeah. If it's a real  
 3 lengthy one, because I'm just afraid, the lunch, it's  
 4 going to get garbled.  
 5 MS. DAVIS: John, I leave it to your  
 6 discretion.  
 7 MR. AFFELDT: Why don't we break for lunch now.  
 8 MS. DAVIS: Okay.  
 9 THE WITNESS: Okay.  
 10 (At the hour of 12:53 P.M., a luncheon  
 11 recess was taken, the proceedings  
 12 to resume at 2:05 P.M.)  
 13 (At the hour of 2:18 P.M., the proceedings  
 14 resumed at the same place, the same  
 15 persons being present.)  
 16 MR. AFFELDT: Dr. Gersten, I'm going to hand  
 17 you what we're going to mark as Gersten Exhibit 5 and  
 18 ask if you can review that.  
 19 (Gersten Exhibit 5 was marked for  
 20 identification by the court reporter  
 21 and is bound separately.)  
 22 EXAMINATION (Resumed)  
 23 BY MR. AFFELDT:  
 24 Q Do you recognize that document?  
 25 A Yes, I do.

1 Q What is this?  
 2 A This is a report that we did for the National  
 3 Institute For Urban School Improvement.  
 4 Q You and Scott Baker?  
 5 A Correct.  
 6 Q What is a topical summary?  
 7 A I don't know. This center had a subcontract to  
 8 the University of Oregon, and they were asked to do  
 9 something on English-language learners and Phil  
 10 Ferguson, who the researcher for the Oregon component,  
 11 asked us to do this.  
 12 But I don't know if they've done others -- I  
 13 don't know that much about the organization. I know the  
 14 director, but -- so I don't -- you know, I think it's  
 15 just getting information together on topics that their  
 16 stakeholders wanted information.  
 17 Q On page 8, if you turn to that, under  
 18 "Principles of Best Practice," you identify five  
 19 specific instructional variables that are in the box at  
 20 the bottom --  
 21 A Yeah.  
 22 Q -- "Critical Components of Instruction."  
 23 Do you see that?  
 24 A Yeah.  
 25 Q Are those what you would consider to be the

1 critical components of instruction for English learners?  
 2 MS. DAVIS: Why don't you make sure you take  
 3 a --  
 4 THE WITNESS: Yeah. Let me take a careful look  
 5 at this.  
 6 I'd say this now from my current  
 7 perspective. I'm going to give you some background.  
 8 These were five principles that emerged from a series of  
 9 professional work groups that Baker and I conducted over  
 10 a two-year period for the Office of Special Ed  
 11 Programs.  
 12 These five definitely emerged from the group  
 13 there. If I were to look at it now, I'd say A is still  
 14 very, very important. I mean, it could be phrased  
 15 different ways and I've talked a lot about that.  
 16 B is very important. I'd frame it even more  
 17 richly. I talk more about using semantic maps to help  
 18 kids think and visualize cause, effect and compare  
 19 things.  
 20 For C, I would call it peer work and I think  
 21 especially working with two children rather than the  
 22 large groups tends to work better. And that's just a  
 23 trend in the research.  
 24 D, I would -- I am less sure of now, and I  
 25 simply am unsure of it. It definitely came out with the

1 groups. It was definitely something my colleague at  
 2 that time stressed that the use be strategic, but I'm  
 3 not as sure of its ultimate importance in terms of  
 4 outcomes based on some of the work we did since then,  
 5 which was the first-grade work we talked about.  
 6 E, the "modulation of cognitive and language  
 7 demands," it's still to me an insight or an intuition or  
 8 a sense I have, but it seems to resonate with people but  
 9 it hasn't yet not been tested. So I kind of think it's  
 10 right but that one is unique to me, essentially.  
 11 I tried it out with a group, so I feel probably  
 12 the most comfortable with re- -- reformed -- let's say  
 13 revised versions of A, B and C. And also I would  
 14 probably add now the extended discourse, that kids have  
 15 activities that ask for extended discourse beyond one or  
 16 two words, be it a phrase, a clause, a sentence, which  
 17 builds their academic language and their familiarity  
 18 with the structures of English, using the structures of  
 19 English.  
 20 BY MR. AFFELDT:  
 21 Q So what would extended discourse be? An -- F,  
 22 if you were --  
 23 A Yeah. Yeah.  
 24 Q -- to write this down?  
 25 A Yeah. Yeah. Yeah.

1 Q Again, you have to make sure that I finish my  
2 sentence --

3 A Oh, I'm sorry.

4 Q -- before you answer for the court reporter's  
5 sake.

6 When talking about E, you said you trotted it  
7 out to the group, what does that mean?

8 A Well, I just tried it. That came from  
9 qualitative observations I had done in the earlier  
10 research study where we looked at third, fourth and  
11 fifth graders, and I just wanted to see if it resonated  
12 with others.

13 And some of these groups, there were teachers  
14 or people involved in curriculum departments or ESL  
15 coordinators in districts. And people felt it made  
16 sense to them but -- I mean, nobody but me has talked  
17 about this and it's a hard thing to experimentally  
18 study.

19 And it's possible to study experimentally but  
20 it's not -- nothing anyone has gotten around to, so I  
21 may be -- have -- there is less weight behind that one,  
22 I think, where the extended discourse seems to remain  
23 very important, yeah.

24 I think he is right, but I don't have the same  
25 confidence in that as I do with the others.

1 Q But you haven't studied it yourself?

2 A No. It's just an observation and  
3 interpretation based on qualitative work, fieldwork I  
4 did.

5 Q Can you identify that qualitative fieldwork?

6 A Yeah. What --

7 Q Would it be in Exhibit 2, your vita?

8 MS. DAVIS: I'm not sure --

9 MR. AFFELDT: 4 --

10 MS. DAVIS: Exhibit 4.

11 THE WITNESS: 4. Here we go.

12 I'll start with the grant, which would come  
13 first; and that would be on page 3, third from the  
14 bottom.

15 BY MR. AFFELDT:

16 Q "The Language Minority Student and Special  
17 Education: A Multi-faceted Study"?

18 A Correct. Yeah. That's just the name of the  
19 grant that supported the work.

20 Then in terms of the actual publications, there  
21 were quite a few, and you'll see I have different  
22 colleagues.

23 Let's start with -- if you turn to page 14,  
24 we'll start seeing them. The third one down, "Lost  
25 opportunities," came from that line of research.

1 The fourth one down, with Jimenez, Robert  
2 Jimenez.

3 Third from the bottom, the Gersten '96 came  
4 from that project, as did the next two.

5 One of them is really just an introduction to  
6 the issue, but it's -- it's only an introduction to the  
7 issue so it's not a research report. It's an issue that  
8 I had...

9 The second one on page 15 is related to the  
10 qualitative work we did. It's one aspect of it. It's  
11 more of a support thing, and two more. Gersten and  
12 Jimenez, '94 and Gersten and Woodward, '94.

13 Q Is that it?

14 A Yeah. At least I believe that is all.

15 (Discussion off the record.)

16 BY MR. AFFELDT:

17 Q The last page -- well, on page 10 the  
18 "Conclusion" section, you identify three characteristics  
19 of programs that are successful. "Some native-language  
20 instruction," "for most students, a relatively early  
21 phasing in of English instruction," and "teachers  
22 specially trained in instructing English-language  
23 learners."

24 Are those still three characteristics of  
25 successful English-language learner programs that you

1 would identify?

2 MS. DAVIS: And if you want to read some  
3 more --

4 THE WITNESS: Yeah. Let me read some more --

5 MR. AFFELDT: Absolutely.

6 THE WITNESS: -- that's a good idea.

7 Probably based on what I know now and some of  
8 the newer research from what was, I'm sure, written in  
9 2000, because of the slowness of the whole process for  
10 this getting out, I'd say this, that it's -- the first  
11 point, the "some native-language instruction," it's not  
12 clear to me how important that is.

13 It seemed positive in the evaluation I did with  
14 John Woodward of El Paso's program. When it was done  
15 with the Asian students in San Diego, it seemed, based  
16 on our observations, not very productive where students  
17 had about 45 minutes a day of native-language  
18 instruction. And in this case it was Korean or  
19 Vietnamese or Cambodian.

20 What we observed in California was the use of  
21 native language in rooms implementing 227 was often more  
22 like managerial, like "come here" or "find a book and  
23 work there." You know, it was very -- as opposed to  
24 helping students understand concepts or reinforcing  
25 concepts.

1 So it's probably a nice feature but I think  
2 it's somewhat overweighted here.

3 Then -- to be "some native language  
4 instruction." We tried earlier to talk about the  
5 importance of it being strategic, so it's just possibly  
6 a tool for students to move into English-language  
7 instruction or into immersion, be it dual immersion,  
8 English immersion, structured immersion.

9 The second one I still believe is very  
10 important, and I know it's not -- well, it wasn't the  
11 conventional wisdom in the field of bilingual  
12 education. It's now evolving, it seems to me, that  
13 people with dual immersion are talking about in some  
14 cases an earlier introduction of English.

15 The special training, I would think I would be  
16 more precise now than I was in 2000 or so when I wrote  
17 this with Scott, and I would talk more about teachers  
18 needing training in those principles I was talking about  
19 before: The visuals, the extended discourse, how to use  
20 vocabulary, be it from an in-service or as part of their  
21 teacher-training programs.

22 That would seem important. The newer research  
23 has shown me that children can learn to read -- I mean,  
24 it's again reinforced, learn to read in English with no  
25 native-language support at all. The various studies

1 A No.

2 Q When a little further down in the long  
3 concluding paragraph you -- the first sentence says,  
4 "The erratic quality of instruction  
5 aimed at English-language development is  
6 at the root of the growing dissatisfaction  
7 with current practice."

8 What do you mean by that sentence?

9 A What I meant at that time, so it's talking more  
10 about things in the period, let's say, '95 to '98, that  
11 it was still often then called ESL instruction, a very  
12 typical model at least in California and some other  
13 states, Massachusetts, I believe, New York, was for  
14 students to learn in Spanish, they were Hispanic-English  
15 learners, from kindergarten through third grade and to  
16 have a half-hour or so of ESL.

17 And sometimes it involved colorings. It was  
18 not at all integrated with curriculum.

19 And what we observed in that observational  
20 study that I pointed out to you earlier, the qualitative  
21 one, was when fourth, fifth grade came around, it was an  
22 unmitigated disaster.

23 Kids were left to their own devices to survive  
24 in English because this little bit of English-language  
25 development, it wasn't called ESL, was not -- was not

1 from Canada with a whole array of languages has  
2 influenced my teaching -- I mean, my thinking.

3 So what "special training" meant would be a lot  
4 how to -- how to do the immersion techniques properly,  
5 so it would be refined I think from several years ago.  
6 BY MR. AFFELDT:

7 Q I think you answered my next question.

8 Do you think that special training on how to do  
9 immersion techniques properly can be done either as part  
10 of an in-service professional development program as  
11 part of teacher training?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: Yeah, I -- I don't know if I  
14 know -- I mean, I think it should be attended to in both  
15 cases. A hunch I have, but it's purely a speculative  
16 hunch, is there are huge advantages to doing it during  
17 the in-service time, because people know more what  
18 teaching is about and know more what the world of  
19 English learners is about, if they're working with them  
20 everyday. So probably a combination, but that's just a  
21 hunch, would be optimal.

22 BY MR. AFFELDT:

23 Q Have you studied that hunch?

24 A No.

25 Q Do you know anyone that has?

1 sufficient to make sense out of what goes on in a  
2 fourth- or fifth-grade classroom.

3 So the fact that there was no integration to  
4 the actual reading and language curriculum the kids used  
5 I think often was a huge problem, so these things kind  
6 of sat there independent of the other work kids were  
7 doing, be it in Spanish or English.

8 So those were some of the things I meant by  
9 "the erratic nature." Teachers would talk about how  
10 horrible -- or minimal their training was in  
11 English-language instruction, that the bulk of it was in  
12 multicultural and/or native-language instruction would  
13 be the major thrust of most training -- bilingual  
14 training programs.

15 Q And when you say teachers would talk about  
16 their training that way, what point in time are we  
17 covering, based on your research?

18 A Probably it would extend from that period I'd  
19 say '91 through '97 or so. And that's really  
20 approximate.

21 Q Do you know if CLAD training in California  
22 incorporates any of the critical components that you  
23 defined earlier in this report, including your new  
24 addition of extended discourse?

25 A CLAD or BCLAD?

1 Q CLAD.

2 A CLAD. My sense is that some of those things  
3 are mentioned, but I don't believe teachers feel --  
4 what's the word -- proficient in how to use them, let  
5 alone how to link them to a curriculum they're using.

6 It would be my sense that the knowledge is  
7 fairly academic. It's not very pragmatic in many of the  
8 programs. I have not studied them extensively, but  
9 looking at the roster of courses required, that would  
10 reinforce it, in a sense.

11 Q Other than looking at the roster of courses  
12 required for CLAD, are you familiar with what takes  
13 place during the training for a CLAD credential?

14 MS. DAVIS: Vague and ambiguous.

15 THE WITNESS: I'm not sure how to answer that,  
16 if there's something beyond the courses.

17 BY MR. AFFELDT:

18 Q Have you ever sat in a CLAD classroom?

19 A No.

20 Q Have you ever reviewed the materials used in a  
21 CLAD classroom?

22 A In a university classroom that teaches one of  
23 the required courses?

24 Q Yes.

25 A Yeah. Well, I've seen the multicultural, which

1 A California. Yeah. Yeah. And the degree was  
2 called "Language Development Specialist" years ago, and  
3 it -- so I saw people with both -- I mean, you know --  
4 you know, with language development specialist or CLAD,  
5 but I think the requirements were about the same.

6 Q How many people did you observe?

7 A Observed in the schools quite a few teachers,  
8 and my understanding was in San Diego they needed the --  
9 the language development specialist courses or then CLAD  
10 courses to maintain their jobs teaching.

11 So it was my assumption that any of the people  
12 there for more than a couple of years working with  
13 English learners had the courses. Some of them  
14 described them to me during -- you know, interviews or  
15 times we spoke.

16 So I would guess I observed 10, 12, something  
17 like that.

18 Q So you've observed -- did you know if those  
19 individuals actually had credentials of one type or  
20 another or are you just assuming that they had a CLAD or  
21 LDS?

22 A Some told me and some I assumed, so it was a  
23 probably pretty even mix of the two.

24 But someone would be taking the courses and  
25 then I would come back and they had finished them, so I

1 is typically a requirement, the multicultural materials,  
2 because at the University of Oregon, I chaired the  
3 diversity task force as we were retooling our  
4 course. So I've seen that.

5 When I've seen the people who've completed the  
6 program and watched -- watched them work with them, the  
7 students, I didn't see any proficiency in -- in the kind  
8 of things I'm talking about.

9 So I had not sat through a class of the four or  
10 five required courses, and I don't remember off the top  
11 how many were required.

12 Q When you talk about the multicultural materials  
13 you reviewed in -- that was for the University of  
14 Oregon?

15 A That's correct, yeah.

16 Q So it wasn't for a California CLAD --

17 A No.

18 Q -- certificate?

19 A It was a course in multicultural "ad" and it  
20 varied from campus to campus and probably is not just  
21 from state to state.

22 Q And when you talked about reviewing --  
23 observing, rather, some graduates teaching, were you  
24 talking about California CLAD graduates or Oregon  
25 graduates?

1 assume they passed and got their certificate.

2 Q When you observed those individuals, were they  
3 still in the process of taking their courses?

4 A I think it varied. It varied.

5 Q Of those 10 or 12 individuals that you observed  
6 who had an LDS or a CLAD credential, what period of time  
7 are we talking about?

8 A Primarily I guess in '93, '4. I think that  
9 probably was the main time, that '93-94 period. It  
10 doesn't seem like so long ago, but...

11 Q Have you observed CLAD or LDS teachers teaching  
12 in California classrooms since 1993 or '94?

13 A The teachers I've observed in the schools as  
14 part of this study --

15 Q What's "this"?

16 A The study with Baker, the more recent study,  
17 which was '99 to 2001, I was less sure -- I just wasn't  
18 sure if they had CLAD or whatever. I did not pursue  
19 that.

20 In particular, it seemed that those that were  
21 certified did because of the requirement that they do,  
22 but I did not pursue that.

23 Some of the former bilingual teachers I learned  
24 were -- were simply not certified, period.

25 Q So you didn't gather that, on what credentials

1 the teachers had, as part of that study?

2 A No. No, we didn't. I think actually a member  
3 of the team did that, gathered it and interviewed some  
4 of the teachers, but we didn't, no.

5 Q Could the CLAD certificate program be modified  
6 so as to include the critical components that you  
7 discussed earlier?

8 MS. DAVIS: Vague and ambiguous, calls for  
9 speculation.

10 THE WITNESS: Yeah, I'm -- I -- I don't feel  
11 comfortable speculating. I know the State is changing.  
12 I spoke to someone on the Board who said they're  
13 changing the requirements for working with English  
14 learners.

15 I got the sense that it was towards more  
16 integration of curriculum with English-language  
17 development, but it's very broad and I'm not an expert  
18 in teacher certification. I -- I -- so I don't -- I  
19 don't -- I don't know.

20 I think there definitely can be training that  
21 would fit those principles, but whether the CLAD system  
22 of these evening courses or late afternoon courses is  
23 the way to do it, I don't know.

24 BY MR. AFFELDT:

25 Q Is that conversation you had with a member of

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

3 THE WITNESS: It would, of course, be  
4 speculative, but I think if the various professional  
5 development programs, in-service programs included some  
6 of those principles, I think it would be useful.

7 BY MR. AFFELDT:

8 Q My question was: Could it be done, based on  
9 your training and experience?

10 MS. DAVIS: In California, are you talking  
11 about?

12 MR. AFFELDT: Yes.

13 MS. DAVIS: Same objections.

14 THE WITNESS: Yeah. I -- I'm not -- I'm  
15 neither an expert on in-service or credentialing, and I  
16 just -- it's like any area, there are so many things  
17 that can get lost with any change. And, so, I kind of  
18 know more about classrooms than I do about research in  
19 that area.

20 BY MR. AFFELDT:

21 Q Well, in the Exhibit 5, if you turn back to the  
22 concluding paragraph on page 10, the second sentence  
23 says, "Inadequate attention has been devoted  
24 to curriculum development, pragmatic  
25 teacher training and professional

1 the State Board? Is that --

2 A That's correct.

3 Q Is that conversation you had with the member of  
4 the California State Board of Education the extent of  
5 your knowledge of what changes are being made to the  
6 California credentialing system as it impacts teachers  
7 of English learners?

8 A That's correct, yeah. I have not followed...

9 Q You have not followed --

10 A -- the credentialing process and the changes.

11 I'm both -- new to the State and I have not  
12 followed that.

13 Q Do you see any barriers to modifying a teacher  
14 preparation program such as CLAD so that it could  
15 include your critical components of instructing  
16 English-language learners?

17 MS. DAVIS: Vague and ambiguous, calls for  
18 speculation, asked and answered.

19 THE WITNESS: I think I've dealt with that as  
20 much as I'd far -- care to speculate.

21 BY MR. AFFELDT:

22 Q Do you think the critical components for  
23 teaching English learners that you have identified could  
24 be conveyed in an in-service professional development  
25 program?

1 development, and applied research."

2 What do you mean when you offer your opinions  
3 there as to inadequate attention being devoted to  
4 pragmatic teacher training?

5 A I guess I meant training like I was talking  
6 about this morning that's linked to the curricula  
7 teachers are using that -- where the trainer herself or  
8 himself has a grounding in the curriculum and -- and --  
9 and has a feel of how it can reasonably be extended to  
10 include English-language development.

11 Q What about content knowledge?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: To understand the question, I'd  
14 need to know content of what? Of math? Of  
15 psycholinguistic theory?

16 BY MR. AFFELDT:

17 Q No. Pragmatic teacher training such that in  
18 addition to English-language development, the training  
19 could address the teacher candidates' ability to teach  
20 content, meaning math, social science, history, for  
21 English learners.

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: I'm getting lost following the  
24 question.

25 MR. AFFELDT: That was a poor question. I'll

1 admit it.

2 Q When you say "Inadequate attention has been  
3 devoted to...pragmatic teacher training," does that  
4 include training with respect to both English-language  
5 development and training for teaching academic content  
6 to English-language learners?

7 A What I meant here, I wasn't so much talking  
8 about science or math. I meant training that -- that  
9 fits the real world.

10 Some of the folks presenting, at least this one  
11 experience, are some of the people who have been -- and  
12 when I worked with the State on directions for English  
13 learners, many did not have a pragmatic sense. Their  
14 still was a lot of talk of welcoming children, and  
15 teachers need to welcome children.

16 There was a sense of splitting classes down by  
17 English-language development level and constantly  
18 reassessing that without understanding the synergy  
19 between learning to read and learning new English.

20 And so there was a whole kind of gap about what  
21 made things practical and feasible and linking them to  
22 contemporary thinking that is -- is not there in a lot  
23 of people.

24 And I was hoping things were -- along those  
25 lines is what needed to be done.

1 awareness of language demands while you teach using  
2 visual and written words more to reinforce things so  
3 kids get to see them and they can look back at them and  
4 either ask about them or just remembering them better,  
5 not overusing synonyms, having kids talk more so you get  
6 an ongoing sense of whether they understand and what  
7 they understand. Those are the kinds of things I was  
8 thinking about.

9 Q Do the critical components of instruction on  
10 page 8 apply to both English-language development and  
11 the merging with academic content?

12 A The -- yes, yes. They obviously don't deal  
13 with what you teach in chemistry or science but how you  
14 teach or how you make it more comprehensible or more  
15 accessible to students.

16 Q Can a teacher be taught to align the linguistic  
17 demands placed on students with the students' knowledge  
18 of English?

19 MS. DAVIS: Calls for speculation, vague and  
20 ambiguous.

21 BY MR. AFFELDT:

22 Q Another way, maybe a better way to frame the  
23 question is: Is that a natural skill a teacher has or  
24 is that something they can be trained to do?

25 MS. DAVIS: Vague and ambiguous.

1 Q The next sentence says, "An emerging  
2 body of research suggests that the use of  
3 approaches such as 'sheltered English,'  
4 whereby the linguistic demands placed on  
5 students are aligned with their knowledge  
6 of English, can lead to students' learning  
7 of complex, age-appropriate content, as  
8 well as English-language development."

9 What is the emerging body of research you were  
10 referring to there?

11 A It would be a small -- it would be a small  
12 body. It would be some of the work, and this has not  
13 been published yet, in my talks with Jana Echevarria,  
14 some of the directions I think Bill Saunders was  
15 beginning to go in his research, some of the descriptive  
16 work of Okhee Lee. That's O-k-h-e-e space L-e-e.

17 Those are a few of the -- some of Anne Chamot's  
18 work with some of the older kids. I think that's  
19 usually often high school, middle school and high  
20 school.

21 Q What does it mean to align the linguistic  
22 demands placed on students with their knowledge of  
23 English?

24 A It means, I think, some of the things I've  
25 talked about in my writing: Using a -- having an

1 THE WITNESS: I -- that's too highly  
2 speculative. I think that's too speculative for me to  
3 give a "yes" or "no" answer to.

4 BY MR. AFFELDT:

5 Q What do you have to speculate to answer that  
6 question?

7 A We've -- we've rarely had this kind of  
8 training. So knowing how successful it will be, we  
9 don't really measure impacts of training models on  
10 anything, so I'm speculating in two different ways, you  
11 know, about this training, which is only beginning to be  
12 implemented in small amounts on what its effects will be  
13 and also on how you measure and evaluate the  
14 effects. So there's too much speculation.

15 Q What training are you referring to that's begun  
16 to be implemented?

17 A Well, I think we talked about that earlier:  
18 The -- the attempts to link principles of -- of research  
19 to the curriculum, the -- the English-language learner  
20 components that will be added to that, or have been  
21 added to that. And I don't track what the State does.

22 That just seemed very nonintegrated in earlier  
23 work in the State. It was like its own world to me,  
24 that there's -- there's a big push to have them  
25 integrated together, and I think that would be a plus.



1 It would be more manageable and comprehensible to  
 2 teachers who use it, so we'll see.  
 3 And then I think some of the independent people  
 4 doing work on sheltered -- sheltered English  
 5 approaches -- sheltered immersion approaches, some of  
 6 those materials we'll start to see their impact on  
 7 teachers, at least what people think of them, whether  
 8 they like them, whether they say they're using them but  
 9 they're just really beginning these things.  
 10 Q Do you know whether as part of the training  
 11 institutes you discussed earlier on reading teachers are  
 12 being trained in how to align the linguistic demands  
 13 placed on EL students with students' abilities in  
 14 English?  
 15 A No, I don't. I don't. No.  
 16 Q You go on to say, "We have produced  
 17 that particularly effective teachers  
 18 carefully modulate their use of English  
 19 depending on their teaching goals. They  
 20 decrease cognitive demands when  
 21 English-language development is the  
 22 primary goal, and increase cognitive  
 23 demands when content acquisition is the  
 24 goal."  
 25 Do you believe that teachers can be trained in

1 how to modulate English?  
 2 A I think it's worth a shot.  
 3 Q Do you know whether any training on modulating  
 4 cognitive demands on English learners is part of the  
 5 training institutes that you discussed earlier?  
 6 A I don't know. I don't even know what state of  
 7 development they were. I know that past efforts in the  
 8 CLAD, an idea like that would never appear.  
 9 Q So what are the additional skills you feel a  
 10 teacher of English learners needs?  
 11 MS. DAVIS: Vague and ambiguous. In addition  
 12 to what?  
 13 MR. AFFELDT: In addition to the skills that a  
 14 teacher who never taught an English learner would need.  
 15 MS. DAVIS: Vague and ambiguous.  
 16 THE WITNESS: I don't -- yeah, I see that as  
 17 being vague, and I -- and a question that I couldn't  
 18 answer, because I see this being extensive for teachers  
 19 who are well trained or well prepared to teach reading  
 20 and language arts, extending that forward.  
 21 And, right now, there is a move in the State  
 22 and in the country to extend the quality of that  
 23 training, so it is aligned with research. But that  
 24 movement has begun. California and Texas are the  
 25 earlier states.

1 So it's not a one or the other. I think as  
 2 people get better and more attuned at teaching  
 3 vocabulary and understanding its importance, I think  
 4 it's easier to layer these kinds of things on. Then  
 5 we'll know more.  
 6 BY MR. AFFELDT:  
 7 Q If a teacher is not -- strike that.  
 8 How can the State ensure a teacher has the  
 9 minimum level of training you think is necessary for  
 10 teaching English learners if -- if there's not a  
 11 credentialing system in place?  
 12 MS. DAVIS: Vague and ambiguous, calls for  
 13 speculation.  
 14 THE WITNESS: I think one thing that makes that  
 15 question harder and probably impossible to answer is the  
 16 State needs -- the field needs a sense of what should go  
 17 into that field of training.  
 18 These are some of my thoughts. And -- not the  
 19 State, this whole field, be it in this country, Canada,  
 20 or Holland, need that knowledge and need to advance that  
 21 knowledge.  
 22 And so it's hard -- when you don't know exactly  
 23 what the training is, it's hard to know how the State  
 24 can ensure the optimal training.  
 25 It can certainly take steps by improving the

1 quality of reading instruction kids receive, because it  
 2 would just help the kids learn how to read and there  
 3 would be this synergy between reading and language  
 4 development.  
 5 And you can just keep trying things out. Maybe  
 6 more quickly move away from the old mode which was so  
 7 dominated by psycholinguistics and multicultural  
 8 theories towards more pragmatic things, and I project  
 9 movement would be faster.  
 10 The State can bring in curriculum that have  
 11 these support programs, pressure publishers to upgrade  
 12 the quality.  
 13 BY MR. AFFELDT:  
 14 Q Assuming that the field has identified what the  
 15 minimum level of training necessary for teaching English  
 16 learners is, do you think it is appropriate to have a  
 17 state credentialing system in place so the districts  
 18 will know which teachers have that minimum level of  
 19 training?  
 20 MS. DAVIS: Incomplete hypothetical, assumes  
 21 facts not in evidence, calls for speculation.  
 22 THE WITNESS: Yeah, the amount of speculation  
 23 is so high and I also in one answer would be speculating  
 24 between a middle-school science teacher and a  
 25 second-grade reading teacher.

1 And so I -- I don't think I can answer that  
 2 question.  
 3 BY MR. AFFELDT:  
 4 Q What is California's current system for  
 5 ensuring all English learners have appropriately trained  
 6 teachers?  
 7 MS. DAVIS: Vague and ambiguous.  
 8 THE WITNESS: I can't answer that question. I  
 9 know things are in flux, and I don't know currently what  
 10 the State exactly requires.  
 11 BY MR. AFFELDT:  
 12 Q Do you currently know of any system that the  
 13 State has in place to ensure that English learners have  
 14 an appropriately trained teacher?  
 15 MS. DAVIS: Vague and ambiguous -- I mean asked  
 16 and answered.  
 17 THE WITNESS: Yeah, I haven't anything to add.  
 18 BY MR. AFFELDT:  
 19 Q What is California's system for ensuring that  
 20 all English learners have appropriate instructional  
 21 materials --  
 22 MS. DAVIS: Vague and ambiguous.  
 23 MR. AFFELDT: -- as you've defined the  
 24 instructional materials?  
 25 THE WITNESS: I -- I -- I don't know the answer

1 to that. I just simply -- I think that certainly could  
 2 and should be asked of State officials, but I don't know  
 3 the answer to that, be it California or any state.  
 4 BY MR. AFFELDT:  
 5 Q Are you aware of any evidence of the proportion  
 6 of professional development time spent on English  
 7 learners -- sorry, spent on EL issues in California?  
 8 MS. DAVIS: Vague and ambiguous.  
 9 THE WITNESS: I don't know. I don't know  
 10 specific percentages. I know there are numerous  
 11 trainings and institutes the State has, but I have no  
 12 idea what proportion they are.  
 13 BY MR. AFFELDT:  
 14 Q Is, in your opinion, 30, 40 minutes a day spent  
 15 helping English learners students with the content  
 16 material for their grade level a sufficient  
 17 supplementation?  
 18 MS. DAVIS: Vague and ambiguous, calls for  
 19 speculation.  
 20 THE WITNESS: Earlier I talked about how  
 21 it's -- there's -- there's a quantity and quality number  
 22 of minutes and quality, how things are taught, and --  
 23 quality is a huge factor.  
 24 So if the time during the school day is used in  
 25 a sensible fashion, that kids are really working on

1 language throughout the day, I would expect growth in  
 2 language and reading and writing.  
 3 I think it feels a little -- I think when we  
 4 used to do either the pullouts or -- this is the time of  
 5 day for ESL, 2:30 to 3:00, that information was very  
 6 fragmented and it didn't integrate very well, so having  
 7 a more integrated approach, I think, is an improvement.  
 8 BY MR. AFFELDT:  
 9 Q Turning back to your expert report on page 3 --  
 10 MS. DAVIS: Is this a good time to take a  
 11 break? We've been going about an hour.  
 12 (Recess taken.)  
 13 BY MR. AFFELDT:  
 14 Q Turning to Exhibit 1, page 3, the middle  
 15 sentence in the only full paragraph on that page says,  
 16 "The instructional materials adopted  
 17 for this new program are aligned to the  
 18 standard curriculum and include a lesson  
 19 each day the teachers can use for  
 20 approximately 30-40 minutes to help EL  
 21 students with the content-material for  
 22 their grade level."  
 23 Is it your understanding that that 30 to 40  
 24 minutes that ELs receive is to assist with their  
 25 understanding of the content material for their grade

1 level?  
 2 A My understanding is that the supplemental  
 3 materials have two goals: One is to improve students'  
 4 access to the material in the reading language arts  
 5 curriculum and the other is to build their  
 6 English-language skills, because by building vocabulary  
 7 and a sense of construction and a sense of how things  
 8 fit together like in various concepts, what are mammals  
 9 or whatever, these are typical language-development  
 10 activities and are paired with the series, so that is my  
 11 understanding of what these programs attempt to do.  
 12 Q When you say "paired with the series," you mean  
 13 with the Open Court and Houghton Mifflin series that  
 14 native speakers are receiving?  
 15 A Right.  
 16 Q Is it your understanding that the supplemental  
 17 materials for ELs covers the same content that the main  
 18 series does?  
 19 A That there's a linkage, yeah, that they're  
 20 linked to things that are in the chapters the kids are  
 21 reading or the various exercises they're doing, that  
 22 many of them are linked, is my understanding.  
 23 Q What do you mean by "linked"?  
 24 A This is a hypothetical. If there's something  
 25 about rabbits and warrens in the story for the day or

1 for those couple of days, there may be other language  
2 activities related to that that deal more with rabbits,  
3 possibly other animals, the concept of homes and that  
4 kind of thing, so that it's linked -- the language  
5 activities are linked to what the kids do. And I do not  
6 know this microscopic detail.

7 Q To what extent have you reviewed the Houghton  
8 Mifflin and Open Court materials?

9 A I have just looked at the materials. I have  
10 not done a serious review. I'm more dealing with the  
11 intent at this point in time.

12 Q More dealing with the --

13 A Intent of the programs, what the -- because  
14 this was the committee, Textbook Adoption Committee, the  
15 State felt was doing -- you know, that these programs do  
16 a satisfactory job or a better job in this direction of  
17 building English skills and being linked to the  
18 curriculum, is my understanding.

19 Q Are you thereby relying on the State's Textbook  
20 Adoption Committee -- are you relying on its judgment  
21 that these are sound materials?

22 A I'm just -- I'm saying the direction, to me,  
23 the State has taken is better than the directions other  
24 places take where ESL is often improvisatore, where it's  
25 not integrated with the core curriculum.

1 "codable" text for children, which there had not been.  
2 It's the move that it could just be quality literature.  
3 Whether or not the kids could read the words was not a  
4 major issue.

5 So the standards by which they're evaluated are  
6 much better. And in my sense, I've really seen  
7 Open Court in action quite a bit and not Houghton  
8 Mifflin because it came out more recently. The  
9 Open Court seemed very good to me, what I saw in the  
10 first grade.

11 Q Was that in the seven classrooms you referred  
12 to earlier?

13 A Well, it was 35 or so. I wasn't in all 35. I  
14 was in probably 20 to 25.

15 Q Classrooms?

16 A Yeah.

17 Q In the last sentence in the only full paragraph  
18 on the page, you refer to reading intervention program  
19 materials for grades 4 to 8.

20 Do you see that?

21 A Yeah.

22 Q Do you have any empirical evidence, any extent  
23 to which the reading intervention program materials are  
24 available to all EL students who need them in  
25 California?

1 So all I can really talk about at this point is  
2 the direction being taken as opposed to actually the  
3 quality of the specific materials.

4 Q So in your report you aren't making  
5 representations about the quality of the specific  
6 materials; you're endorsing the concept that the State  
7 has done?

8 MS. DAVIS: Is that a question?

9 MR. AFFELDT: Yes.

10 I'll withdraw the question. I think -- I think  
11 you answered it.

12 Q When you say in the next paragraph that "The  
13 State's newly-adopted instructional materials are  
14 dramatically better than the materials used by  
15 California in the past," what are you referring to?

16 A I'm referring to every attempt was made in both  
17 selecting the materials and developing criteria for  
18 evaluating them to ensure that they are based on  
19 principles from research where, for example, when the  
20 State adopted programs in the late '80s or early '90s,  
21 there was this theory of whole language as a way to  
22 teach beginning reading so programs that have explicitly  
23 taught phonics would not be adopted, were unacceptable.

24 So it's dramatically better. It's just  
25 dramatically better. There's a real concern with the

1 MS. DAVIS: Vague and ambiguous.

2 THE WITNESS: I don't know that I can answer  
3 that question.

4 BY MR. AFFELDT:

5 Q Why is that?

6 A I guess basically, I don't know, this adoption  
7 takes effect either July for year-end schools or  
8 September, and I don't know if anyone knows who has what  
9 at this point in time. I certainly don't.

10 Q You say in the next paragraph that these  
11 materials are better than those used in many other  
12 states.

13 What other states are you referring to?

14 A As I was --

15 MS. DAVIS: Where are you? I'm sorry.

16 THE WITNESS: He's in the paragraph --

17 MS. DAVIS: Oh, okay. Okay.

18 THE WITNESS: I've seen some other states where  
19 they tend to approve a large number of programs, and my  
20 sense is that they're not as clear about the programs  
21 needing to be research-based and explicit.

22 And they'll have a tendency to use -- so there  
23 would be more -- there would be fewer teachers using  
24 research-based materials and following research-based  
25 principles when they open things up to a very light

1 criteria, and my sense is some states are doing that.  
2 BY MR. AFFELDT:

3 Q Which states?

4 A I'm not going to name them. I have just a  
5 sense from informal discussions.

6 California I think is the only state with  
7 two -- with the two accepted. Not the specific number,  
8 but some states are not, I don't think, adhering as  
9 seriously to the use of research to guide program  
10 selection.

11 Q In the next sentence, you say,  
12 "Moreover, because the state has  
13 incorporated ELD into its main  
14 reading/language arts program, all  
15 teachers are now being trained in ELD  
16 teaching strategies so that they are  
17 capable of using these materials."

18 What is your basis for your saying that "...all  
19 teachers are now being trained in ELD teaching  
20 strategies...?"

21 A I think it's the intent of the State is to  
22 train teachers in -- in the reading materials they use,  
23 so the teachers that work with the English learners,  
24 which is a reasonably large percentage, would have this  
25 as part of their training, but I do not know the

1 English learners, it sounded to me when I've sometimes  
2 heard people talk that they're made to feel kind of  
3 afraid of them and how different they are from them.

4 And the tack the State is taking now I think is  
5 a much more sensible approach.

6 Q So the teaching techniques specific to  
7 English-language learners you're referring to pages 3  
8 and 4 of your report include the emphasis on vocabulary?

9 A Some of the same things we're talking about,  
10 the use of visuals, occasionally physical gestures,  
11 spending adequate time on words, kids using words,  
12 making sure that kids understand common constructions  
13 and the language, having a sequence in which you teach  
14 things.

15 Q When you say in the next sentence, "...the  
16 state continues to provide districts support with  
17 professional development for structured immersion in  
18 ELD," what State support are you referring to?

19 A The fact that through the Reading First for  
20 many districts through the Governor's Institutes and  
21 these other institutes, districts are provided with  
22 support as part of the reading initiative.

23 I don't know the exact level. I don't know  
24 why -- the impact of any funding cuts or whether there  
25 are significant funding cuts in that area, but I think

1 details. I do not know the exact details.

2 Q So your use of the phrase "all teachers" there  
3 is a statement of the intent of the State rather than an  
4 empirical state?

5 A Right, that's correct, yes, especially at this  
6 point in time.

7 Q The next sentence, which starts at the bottom  
8 of page 3, carries over to the top of page 4, says,

9 "In this way, teaching techniques  
10 specific to English-language learners are  
11 being infused throughout the state's  
12 professional development programs."

13 What are the techniques specific to  
14 English-language learners you are referring to there?

15 A I think some of the things I've been talking  
16 about before, about the stress on vocabulary, having  
17 kids talk about the words that they're using and reading  
18 and writing about those words, use things like  
19 adjectives, that those things are integrated, where  
20 before trainings -- there weren't very much trainings  
21 about them.

22 And it just seemed an unfortunate approach that  
23 many have taken in this state and others, so there would  
24 be a lot on understanding them and various linguistic  
25 theories and just utter mystification, so students or

1 my main point was that I didn't see it as a  
2 one-size-fits-all approach.

3 And there is flexibility in terms of how it's  
4 interpreted at school levels by individual teachers.

5 Q Okay. At least with respect to the Reading  
6 First professional development, that's funding coming  
7 from the federal government rather than the State, isn't  
8 it?

9 A Given to the State, that's correct, yeah, yeah,  
10 as was reading excellence.

11 Q What do you consider to be Hakuta's  
12 one-size-fits-all approach in that sentence?

13 A He criticizes the State for having a  
14 one-size-fits-all approach for teaching English learners  
15 in the report, and that's what I was alluding to.

16 Q He criticizes the State?

17 A Yeah. Yeah, and I said I've not seen that.  
18 Since I've worked some more with Southern California to  
19 see what's happening in districts and with agencies, it  
20 doesn't seem to be one-size-fits-all approach.

21 Q What is Hakuta's criticism -- I'm sorry. Let  
22 me phrase that better.

23 What is Hakuta's one-size-fits-all criticism?

24 A It was phrased as a criticism in the  
25 report. If I could look at the report, we could find

1 it. It could take a while, but --

2 Q As you sit here now, what is your recollection  
3 of what -- what -- what the one size was that he was  
4 criticizing the State for making everyone fit into?

5 A I think it was -- I remember in reading it it  
6 didn't fit what I knew about and what I've been seeing  
7 in California schools. It just seemed not one size fits  
8 all.

9 I think he was probably talking about  
10 immersion, possibly about the reading series. I don't  
11 remember that. I just remember that phrase being used,  
12 and it just seemed not at all to fit what I've seen in  
13 different schools for all kinds of reasons. The way  
14 schools implement things is different. Districts  
15 interpret things differently. The immersion groups as  
16 the WestEd report showed vary quite a bit from place to  
17 place.

18 Q So what your report intends to say is contrary  
19 to Hakuta's characterization of the State's approach as  
20 a one-size-fits-all --

21 A Yeah.

22 Q -- approach --

23 MS. DAVIS: Maybe you should read that  
24 sentence. That's all I'm...

25 BY MR. AFFELDT:

1 the end of that paragraph to "...findings of increased  
2 student achievement," you don't provide a cite.

3 Are you referring to the findings you discuss  
4 later in the report --

5 A Yes.

6 Q -- from WestEd?

7 A That's correct, yeah.

8 Q Any other?

9 A Yeah, the reports every year in the L.A. Times  
10 and other newspapers about the rising scores being  
11 another source in the largest district in the State.

12 Q So you rely on L.A. Times reports of L.A.  
13 student performance in making judgments about how well  
14 students in L.A. are doing?

15 A It's a source of information that came from the  
16 State releasing the data. It's listed in several other  
17 newspapers or periodicals, that I've just noticed scores  
18 continue to go up in L.A. and L.A. adopted Open Court  
19 very early on for the low-performing schools. And in  
20 most cases, 227 was implemented.

21 There wasn't often active encouragement of  
22 waivers as some other districts have done, and it's a  
23 large district with many second-language kids, so it's  
24 just a barometer. It's a piece of information.

25 Q Does L.A. Unified use the supplemental

1 Q The sentence in -- in the Gersten expert  
2 report -- or the phrase says, "Contrary to Hakuta's one  
3 size fits all approach," which I read to mean that  
4 Hakuta had a one-size-fits-all approach.

5 And what I understand you to say now is that  
6 you meant contrary to Hakuta's criticism of the State as  
7 having a one-size-fits-all approach, you find the  
8 State's approach flexible.

9 Is that fair?

10 MS. DAVIS: I wouldn't write on the exhibit.

11 THE WITNESS: Yeah. Yeah. Yeah. Yeah. So I  
12 think for our verbal -- I think that's -- yeah, I think  
13 that's in -- Hakuta's characterized the State as one  
14 size fits all and having a one-size-fits-all approach  
15 and it's not what I'm observing or hearing or seeing  
16 develop.

17 BY MR. AFFELDT:

18 Q Okay. I understand that better now.

19 And it's your recollection that Hakuta uses  
20 the -- or I don't know, maybe not.

21 Is it your recollection that Hakuta uses the  
22 phrase "one size fits all" in his expert report?

23 A Yeah, it's my recollection -- yeah, it is my  
24 recollection.

25 Q Okay. And in the last -- when you referred at

1 Open Court materials for ELs, too?

2 MS. DAVIS: Vague and ambiguous.

3 THE WITNESS: I believe they do. I'm not  
4 totally up to speed on that because I've been working a  
5 lot with implementation plans for this current school  
6 year versus last year.

7 I'm not -- I'm not sure on that issue, if they  
8 use -- they do use Open Court.

9 BY MR. AFFELDT:

10 Q Looking at the next paragraph, what do you  
11 understand Dr. Hakuta's criticism to be as to the  
12 State's decision to -- let me phrase it this way.

13 How do you understand Dr. Hakuta to be  
14 criticizing the State in terms of applying the same  
15 academic standards to ELs as not ELs?

16 A As I recall, he said the same standard  
17 shouldn't be applied, so since the State -- I mean, it  
18 was a criticism. The report is a criticism of the -- it  
19 talks about English-language learner access to basic  
20 educational necessities in California and it's quite  
21 critical.

22 And he saw the -- the -- applying the same  
23 standards, high standards for EL students as one of the  
24 many negative things he saw in the State at the current  
25 point in time.

1 Q Do you think it's appropriate for the State to  
2 fail English learners on the High School Exit Exam if  
3 they haven't had the standards-aligned instruction?

4 MS. DAVIS: Vague and ambiguous.

5 MR. AFFELDT: If they haven't had the -- the  
6 access to the standards-aligned instructional materials  
7 which encompass the content of the High School Exit  
8 Exam?

9 THE WITNESS: I don't feel comfortable  
10 answering that question. I know there are complex legal  
11 issues involved in graduation, and that's well beyond my  
12 knowledge, both the law and even the -- the details of  
13 the high school...

14 BY MR. AFFELDT:

15 Q Is it beyond your expertise, as well?

16 A Probably. I'm not an expert on graduation  
17 retention, those kind of issues. And really -- and not  
18 at secondary, either.

19 Q Are you an expert on Opportunity to Learn  
20 issues?

21 MS. DAVIS: Vague and ambiguous.

22 THE WITNESS: To answer your question, I have  
23 to know what you mean or -- or what others have meant by  
24 the term, because I've never understood it as used by  
25 anybody.

1 BY MR. AFFELDT:

2 Q You've never understood the term "Opportunity  
3 to Learn"?

4 A No, I've never understood that. I know it was  
5 used for a while, but I -- Mike Smith during the Clinton  
6 Administration, but I've never understood it and I've  
7 never seen it well understood in the schools.

8 Q Do you think it's appropriate for the State to  
9 fail English learners on the High School Exit Exam if  
10 they haven't been taught by teachers trained to teach  
11 the content standards that are tested on the High School  
12 Exit Exam?

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

15 THE WITNESS: Yeah. That's beyond -- that's  
16 beyond what I feel any comfort or -- knowledgeable  
17 enough to answer.

18 BY MR. AFFELDT:

19 Q Is that beyond your area of expertise to  
20 answer?

21 A I think we went through --

22 MS. DAVIS: He just said he's not an expert on  
23 graduation.

24 THE WITNESS: I think we just went through --  
25 yeah, I think we just went through that and I said it is

1 beyond my area of expertise. There is a whole array of  
2 legal issues I'm not familiar with, high school issues  
3 that I'm not familiar with.

4 BY MR. AFFELDT:

5 Q What do you mean by the term "academic  
6 English"?

7 MS. DAVIS: Are you looking at his report  
8 somewhere?

9 MR. AFFELDT: I'm looking at the question I  
10 have written.

11 MS. DAVIS: Oh, okay. I was just wondering if  
12 we were looking at a certain sentence in his report  
13 somewhere. Okay.

14 THE WITNESS: Is that a term that you found in  
15 my report or --

16 BY MR. AFFELDT:

17 Q I believe you used it in your report. But my  
18 question goes to your general understanding of the  
19 term.

20 Is that a term that you have used before?

21 A Yes, I have. I found it useful and I think, as  
22 I recall from memory, the National Academy of Sciences  
23 report said that although it's not a precisely defined  
24 term, "academic English," it is useful for understanding  
25 English-language learners and instructional issues for

1 this group of children.

2 And I kind of agree with it. So some people  
3 define it as several different types, but the initial  
4 distinction that Cummins made, and I know others have  
5 written about it since, was between conversational  
6 language and academic language or conversational English  
7 and academic English.

8 The early words we use, Byck's and Calp  
9 (phonetic), it was communicated badly and more recently  
10 people talk about academic English.

11 And that is -- different ways to explain it is  
12 it's conversational English tends to be more  
13 contextualized. It uses more concrete kinds of things.  
14 "Go to the movie. See you later." The level of  
15 extraction is much less.

16 Academic English uses a lot of the words that  
17 are very, very hard or impossible to visualize or  
18 imagine. A lot of the -- so the "however," "because"  
19 is a big part of academic English. So it's  
20 conversational English is more reinforced at home and in  
21 the playground and wherever, the community, than would  
22 be academic English.

23 Academic English is the way often that we don't  
24 speak to each other. Probably depositions, it's a  
25 little more academic; whereas, when you're going to

1 lunch and you just say, "Where's the elevator to the  
2 cafeteria," so that is a distinction.

3 People use them different ways. One is that --  
4 that kids, because even if they show some conversational  
5 English or a good amount of it, it doesn't mean they  
6 necessarily have academic English is one way it's been  
7 used.

8 It seems important to teach that to children,  
9 because you can't assume it's going to happen. And  
10 there are also -- many believe that that is the one in  
11 particular that the linkage of -- to reading and writing  
12 is incredibly important, because all of us develop more  
13 formal language primarily not from chatting but from  
14 reading, writing, summarizing, answering questions.

15 So the idea that ESL instruction move away from  
16 natural language which tended to be conversational and  
17 to include academic language is something that people  
18 have been writing and thinking about a lot in the past  
19 decade or so.

20 So that's my understanding of it and it's --  
21 you know, there are all kinds of variations on the  
22 theme.

23 Q Is a synonym for "academic English" "academic  
24 language"?

25 A Yeah, that's correct, yeah, because "academic"

1 don't see any reason why not but, again, there's no  
2 systematic data on this.

3 But -- and, again, it's both a training issue  
4 and a curriculum selection issue, because if your ESL or  
5 English-language development time is -- uses academic  
6 English as opposed to conversational English, then  
7 teachers will be doing something with academic English.

8 Maybe they'll be teaching doing a great job or  
9 an okay job, but when you urge people just to do natural  
10 conversational English, you won't get that much.

11 So I think there's both training which we'll  
12 see how well that works and there's also aligning  
13 standards, selection of curricula that will promote  
14 development of academic English having the standards  
15 articulated, so teachers think and are aware of them,  
16 having it present in the curriculum.

17 BY MR. AFFELDT:

18 Q On page 11, the first full paragraph, first  
19 sentence says, "California's recently adopted  
20 basic reading series for English Learners  
21 is remarkably compatible with teaching  
22 strategies aimed at building strategic  
23 comprehension."

24 I'm assuming by the "reasonably adopted basic  
25 reading series," you mean Open Court and Houghton

1 would be --

2 Q Sometimes people use one term or sometimes the  
3 other?

4 A Yeah. Yeah. I think so. Yep. Because it --  
5 linguists often talk about native language, L1, and I  
6 have found it's harder to communicate that way to people  
7 in education or the lay public, that they don't think  
8 about it in such an abstract level and they don't  
9 process the materials, so people do talk more about  
10 academic English.

11 Q How do ELs develop academic English when they  
12 don't have access to it outside of the school?

13 A I think school is a great place for most people  
14 to really develop academic English. Reading, of course,  
15 there can be a synergy between reading and school  
16 experiences.

17 Many think that it's good to explicitly teach  
18 academic English to children who are English learners.

19 Q Do you think that?

20 A Makes sense to me, yes.

21 Q Can teachers be trained to teach academic  
22 English to English learners?

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

25 THE WITNESS: It is highly speculative. I -- I

1 Mifflin?

2 A That's correct.

3 Q What do you mean by "strategic comprehension"?

4 A There has been a whole line of research  
5 beginning in the 1980s on what usually is called  
6 "comprehension strategies" or what initially was called  
7 "explicitly teaching children strategies" for getting  
8 the gist, for understanding how narratives are made up,  
9 things that often weren't taught until college courses,  
10 trying them out with children. And it's been reasonably  
11 successful.

12 So sometimes it's called "strategic reading" or  
13 "strategic comprehension." Probably "strategic reading"  
14 would be a more ideal term. But the aim is to build  
15 comprehension of material using strategies, teaching  
16 kids strategies.

17 Earlier basal series tried to get comprehension  
18 by asking kids a lot of questions, so there were a lot  
19 of questions, some literal, some inferential questions.

20 But the idea, and this is true in both series,  
21 kids are taught strategies to see if they understand  
22 strategies for putting pieces together.

23 So what's appealing about that is in teaching  
24 those strategies, it requires elaborated discourse  
25 because you're dealing with -- you know, with every

1 story, what is the character trying to accomplish?  
 2 So it's a fairly sophisticated analysis that  
 3 children do, so it's a highly conceptual thing. So it  
 4 links very nicely to building English-language  
 5 development, building academic English.

6 Q The next sentence, you refer to "...the  
 7 state's current professional development  
 8 requirements..."

9 What are those?

10 A At least for the Reading First schools, which I  
 11 know the most about, they are 60 -- it was a year of  
 12 training, I believe, some fairly large number of hours  
 13 of training. I think it's either 60 or 80.

14 And what the State provides is three types of  
 15 institutes, and I think we talked about the first two:  
 16 One was on the general principles of reading, which many  
 17 teachers have attended already; the second is on the  
 18 series and how they exemplify them and how to use them  
 19 in a way that it reflects research.

20 And the third is more advanced. And these  
 21 we'll hit more in comprehension, vocabulary and fluency,  
 22 is my sense. So I think they will be useful in terms of  
 23 English-language development as well because of the  
 24 synergy.

25 Q The third one, has that been implemented yet?

1 year. It could be one institute and another of  
 2 follow-up work, or other workshops in areas of  
 3 particular interest or focus.

4 I'm going to need to take a break either now or  
 5 in a few minutes.

6 Q One more question and why don't we take a  
 7 break.

8 A Okay.

9 Q I just want to clarify that these professional  
 10 development -- two questions.

11 These are professional development  
 12 opportunities for individuals in Reading First schools  
 13 and not requirements; is that correct?

14 A I -- I can't answer that question precisely.  
 15 I -- I just -- I don't know for sure. My hunch is that  
 16 attendance at institutes is a requirement, but I just --  
 17 I just don't have -- I don't have access to the exact  
 18 regulations.

19 Q And these professional developments, whether  
 20 they're opportunities or requirements, are -- that  
 21 you're testifying about here are those that are  
 22 available in Reading First schools?

23 A Well, I -- I don't -- the Governor's Institutes  
 24 were available throughout the State for reading  
 25 teachers, and I believe they are continuing. And I

1 A It starts this year so I don't know if they'll  
 2 begin in August. It starts approximately now, is my  
 3 understanding.

4 Q And these are requirements for teachers in  
 5 Reading First schools? Is that your testimony?

6 A Well, they have this number of hours to meet,  
 7 so this is one way to meet them. And then -- I don't  
 8 know the exact system. These are what's available.

9 There are other types of trainings and  
 10 workshops available, many of which deal with  
 11 comprehension, vocabulary. And that's my sense of the  
 12 gist of what the State is requiring.

13 I think they probably allow it to be  
 14 staggered. If someone has had none of the institutes, I  
 15 don't know that they would be expected to do three in  
 16 one year. So they're kind of three different levels.

17 Q Is it 60 to 80 hours total or per institute?

18 A Let me -- you know what? I'm sorry. I am just  
 19 totally -- the number of hours, let me retract that.  
 20 It's a large number of hours, and I forget what they are  
 21 because the institutes themselves I would think would  
 22 be -- I think they're probably four days, so they're  
 23 probably 30 or 40 hours.

24 I don't -- it seems -- it may be 80. It's a  
 25 large number of hours, so it could be two institutes a

1 don't know the exact level but it's not only the Reading  
 2 First schools. That's my particular area of knowledge.  
 3 I don't know all the details. I am not -- sure there  
 4 are people at the California Department of Ed and  
 5 through the State Board that know the requirements at  
 6 this level.

7 I'm more talking about the directions, the gist  
 8 of the requirement, the goal of providing a meaningful  
 9 access to the content and high standards for English  
 10 learners.

11 Q As you sit here today, you can't talk about the  
 12 requirements beyond the Reading First school?

13 A No, I -- I can't.

14 MR. AFFELDT: Okay. Why don't we take a break.  
 15 (Recess taken.)

16 BY MR. AFFELDT:

17 Q If you could turn to page 14 of your expert  
 18 report, the last sentence of the page that carries over  
 19 to the top of the next page reads, "California's  
 20 use of reading series that incorporate  
 21 principles that are supported by rigorous  
 22 research, and that are research-based  
 23 basic linked in an integral fashion with  
 24 high quality literature that is decodable  
 25 is, at the very least, an approach that



1 has consistently been correlated with high  
2 growth in reading for English learners in  
3 the first grade when implemented well."

4 On the last line of page 14, there is an error  
5 there in the "research-based basic" --

6 A It's a copying and editing error and I'll --

7 Q What is that supposed to read?

8 A It should read, "California's use of reading  
9 series that incorporate principles," then we should  
10 delete the next six words "principles" -- delete "that  
11 are supported by rigorous research," so those words  
12 should be deleted and then it would go "incorporate  
13 principles that are research based."

14 That word "basic," I don't know where -- that  
15 should be deleted, "linked in an integral fashion with  
16 high quality literature that is decodable is, at the  
17 very least, an approach that has been consistently  
18 correlated."

19 It is a long sentence but that is what I meant  
20 to say.

21 Q Okay. Can you make those changes in your  
22 version?

23 A I just want to check with Lynne.

24 MS. DAVIS: I mean, you can. I think there is  
25 an inherent problem in changing the document in that he

1 terms of their understanding, you know, how to teach  
2 children, how to teach reading, and some of the  
3 principles of vocabulary and language development.

4 Q How do you ensure that the teachers know how to  
5 teach children in accord with those principles?

6 A My understanding of the professional  
7 development literature says there are probably  
8 approximately four or five things to do to get good  
9 implementation.

10 One would be to have some session or sessions  
11 or institutes or academies that orient people to the big  
12 picture, why we're doing this, what underlies this.

13 The second would be to have some kind of  
14 coaching or feedback so people get a sense of how  
15 they're doing, can work with a mentor teacher in  
16 figuring out solutions to things.

17 The third would be the possibility of setting  
18 up teacher study groups or teacher work groups where  
19 teachers at a given grade level work together on  
20 vocabulary and link it to the curriculum.

21 And the fourth would be simultaneously building  
22 assessment and diagnostic skills.

23 And the overarching principle, and this comes  
24 from a very large scale study that I cited, is  
25 coherence, so if all the pieces fit together, there is

1 had to change it back before when he changed his mind,  
2 so I'm not going to object to it but I don't really  
3 think it's necessary, since we have a record of his  
4 changes.

5 BY MR. AFFELDT:

6 Q So can you -- I'd like you to make the changes  
7 that you -- on this one that you identified, which is,  
8 as I understand it, deleting "that are supported by  
9 rigorous research and..." and deleting "basic."

10 A I will do it at his request.

11 Q Thank you.

12 In -- what do you mean by "when implemented  
13 well" at the end of the sentence that we have been  
14 reading?

15 A Like virtually anything, merely putting a  
16 program in doesn't mean students will have high reading  
17 growth, but if you have a solid program and it's  
18 implemented well, you would get high reading growth.

19 So "implemented well" means people understand  
20 the principles, know how to use many of them, are  
21 working on others. That's what I mean by "implementing  
22 the program well."

23 So it would be in this case, implementing the  
24 Open Court or the Houghton Mifflin program well and you  
25 would get growth so that the teacher plays a big role in

1 some common message there so it's handled  
2 intellectually, on an individual basis, more  
3 theoretically in the study groups, more specifically to  
4 you in the coaching.

5 If they all more or less fit together towards  
6 common goals, it's very likely to improve teaching.  
7 That's the best combination we know of.

8 Q The last sentence in the first partial  
9 paragraph on page 15 starts, "In a two-year research  
10 project..."

11 Is that referring to the Baker and Gersten work  
12 we have been talking about?

13 A Yep, yep, that's correct.

14 Q And when it refers to "teaching practice," what  
15 teaching practice are you referring to there?

16 A Those would be observers, appraisals of 29  
17 teaching practices and the total score on those 29  
18 items.

19 Q That are identified in your -- in your report  
20 of those studies?

21 A Yeah. Yeah. Yeah.

22 Q Are those 29 teaching practices capable of  
23 being taught in pre-service or in-service training?

24 A I believe they could be taught and developed in  
25 pre-service and in-service training.

1 Q To what extent are those teaching practices  
2 currently being taught in pre-service or in-service  
3 training in California?

4 A I think -- I think the in-service has gone at a  
5 very good, rapid direction in this direction.

6 Preservice has been much slower and resistant  
7 to change, so it's moving much more slowly with some  
8 exceptions, some individual universities or some  
9 individual professors.

10 Q When you say that pre-service has moved more  
11 slowly, what is your answer based on?

12 A Oh, input from a member of the State Board,  
13 numerous conversations with colleagues and the research  
14 team who work at various State universities, CSU  
15 universities.

16 Yep, those -- probably those items, mainly.

17 Q What State Board member did you have a  
18 conversation with on this topic?

19 A It's Marion Joseph.

20 Yeah. She was a State Board member when we  
21 talked. She since retired, recently.

22 MR. AFFELDT: I'm going to hand you what we'll  
23 mark as Exhibit 6 and ask if you can identify this  
24 document when it's marked.

25 (Gersten Exhibit 6 was marked for

1 it.

2 A We did receive a grant from the Department of  
3 Education to -- small grant to synthesize the research  
4 on this topic, and there's an inherent assumption that  
5 you'll disseminate your work and they'll push to  
6 disseminate it to practitioners, so that's probably the  
7 main reason we did this.

8 Q It says on the fourth page in that this --

9 "This publication is an expansion of  
10 material published in 'Strategies for  
11 Teaching English-Language Learners,' by  
12 Russell Gersten and Scott K. Baker and  
13 Susan Unok Marks in 'Teaching Every Child  
14 Every Day.'"

15 Was this -- how did this expand upon your  
16 earlier piece, "Strategies for Teaching English-Language  
17 Learners"?

18 A As I recall, there were more examples and more  
19 detail and that was a book chapter and was briefer.

20 Q Was this -- strike that.

21 If you could turn to page 17 --

22 MS. DAVIS: Which 17? The page numbers at the  
23 bottom or at the top?

24 MR. AFFELDT: Yeah, at the bottom.

25 MS. REISCH: The beginning of the chapter.

1 identification by the court reporter  
2 and is bound separately.)

3 THE WITNESS: Yes, I can. This is a document  
4 I've worked on with Scott Baker and Susan Marks for the  
5 Council for Exceptional Children.

6 BY MR. AFFELDT:

7 Q What is the purpose of this document?

8 MS. DAVIS: Vague and ambiguous.

9 BY MR. AFFELDT:

10 Q Do you understand the question?

11 A I don't think I do.

12 Q It says on the front, "Funded by the Office of  
13 Special Education Programs, U.S. Department of  
14 Education."

15 It's entitled, "Teaching English-Language  
16 Learners with Learning Difficulties," subtitled "Guiding  
17 Principles and Examples from Research-Based Practice."

18 Did you receive funding from the U.S.  
19 Department of Education to write this?

20 A No. The -- the -- no, I did not. The ERIC  
21 Clearinghouse received funds, I'm sure, dissemination  
22 funds to find authors that would produce this because  
23 they were a dissemination center.

24 Q It says on -- pardon me.

25 Why did you write this, is a better way to put

1 MR. AFFELDT: The beginning of section 3, "What  
2 is Meaningful Access to the General Curriculum."

3 THE WITNESS: Yeah.

4 BY MR. AFFELDT:

5 Q If you go to the last paragraph, second  
6 sentence says, "English-language learners need  
7 to be explicitly taught how to access  
8 grade-level texts, and the materials may  
9 require adaptation to meet the  
10 students' needs."

11 What do you mean by "explicitly taught how to  
12 access grade-level texts"?

13 MS. DAVIS: If you need to read more context  
14 to --

15 THE WITNESS: Let me read this a --

16 MS. DAVIS: Please do.

17 THE WITNESS: What I meant is explicitly taught  
18 how to access grade-level texts that students would need  
19 instruction in -- may well need instruction in how to  
20 make sense out of a science book, strategies for taking  
21 notes, for that kind of thing, taking notes. Practice  
22 often in a way of what we call studying is you summarize  
23 for yourself, say it in your own words.

24 So that is what I meant there by that half of  
25 the sentence.

1 BY MR. AFFELDT:

2 Q The next half of the sentence where you say  
3 "...the materials may require adaptation to meet the  
4 students' needs," what do you mean?

5 A I use that term "adaptation" broadly, or we  
6 used it broadly, so it might mean having pictures of a  
7 microscope frog so that kids have additional visual  
8 supports that you wouldn't necessarily do with  
9 mainstream native English speakers.

10 It could be extra vocabulary work prior to  
11 beginning this, even where it's at a -- more basic to  
12 make sure kids understand the words, the key words.

13 What else could it be? It could be using  
14 partners so kids are answering questions for each other  
15 and helping each other define words. There is a whole  
16 array of things that could be done.

17 Q Are you done?

18 A I guess one -- one point we were trying to make  
19 here, as I couch this, is that arguing against the  
20 exclusion and segregation of students in native-language  
21 programs for throughout typically the entire elementary  
22 years, so that was quite prevalent where their access to  
23 grade-level content was often quite sporadic.

24 So that's what our goal was doing. We were  
25 trying to give some ideas. Yeah.

1 grade-level content?

2 A I think that's too highly speculative for me  
3 because there is such an array of students which we're  
4 talking about in terms of cognitive abilities,  
5 English-language proficiency. I can't give you a "yes,"  
6 "no."

7 Q What would you need to know to determine  
8 whether or not an English learner needed extra help to  
9 access the grade-level content?

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

12 THE WITNESS: Yeah, it -- it's too amorphous a  
13 question for me to answer in every area, so...

14 BY MR. AFFELDT:

15 Q On page 13 --

16 MS. DAVIS: Of this --

17 BY MR. AFFELDT:

18 Q Of this document, Exhibit 6, of section 2,  
19 "What is Comprehensible Input," the second sentence, you  
20 say, "Comprehensible input means that students should be  
21 able to understand the essence of what is being said or  
22 presented to them."

23 Do you still stand by that definition today?

24 MS. DAVIS: I'm just going to say if you need  
25 to read more to put that in context --

1 Q So if you look at the first bullet above this  
2 paragraph, you give the example of, in italics, saying,

3 "If students in a particular district  
4 are learning about the weather in grade  
5 four, then the English-language learners  
6 with learning difficulties in grade four  
7 should be learning the key concepts about  
8 the weather."

9 Do you still believe that?

10 A Yeah. Yeah, I do.

11 Q The last sentence on the page says,  
12 "It does mean that these students  
13 receive something extra to ensure that  
14 they learn the key principles in that unit  
15 of fourth-grade science."

16 Do you still believe that?

17 A Yes. Of course, we're talking here about  
18 students with learning difficulties, which we're more or  
19 less using this for learning disabilities or speech and  
20 language disabilities so, yeah, I would say yes. And  
21 they are under IDA, entitled to special education  
22 services.

23 Q Do you think that generally speaking  
24 English-language learners who don't have learning  
25 disabilities don't need something extra to access

1 THE WITNESS: Yeah, let me look at that.

2 I think overall the point we were trying to  
3 make is that this is a useful concept for teachers to  
4 have as they begin to think about teaching English  
5 learners, and so I think it's -- I mean, I didn't see  
6 this as a policy but just as a tool to help teachers or  
7 those that work with teachers understand some, you know,  
8 key principles about teaching English learners with  
9 disabilities, in this case.

10 BY MR. AFFELDT:

11 Q And when you use the term "comprehensible," in  
12 terms of making the curriculum comprehensible for  
13 English learners, do you still mean that term to mean  
14 that students are able to understand the essence of what  
15 is being said or presented to them?

16 A That certainly would be the goal of  
17 comprehensible input, yeah.

18 I think the word "essence" is probably  
19 intentionally a little lawyerly. It doesn't -- what  
20 exactly in essence is going to vary in all kinds of  
21 things.

22 It could be understanding one sentence in the  
23 paragraph because that's the key one and one reinforces  
24 class discussion. It could be getting the gist of every  
25 sentence, depending on all kinds of things.

1 I never knew about the 10-second rule. It's  
2 not relevant.

3 Q Are you familiar with Proposition 227's terms?

4 MS. DAVIS: Vague and ambiguous.

5 THE WITNESS: I'm not -- I don't understand the  
6 question.

7 BY MR. AFFELDT:

8 Q Are you familiar with the actual language of  
9 Proposition 227?

10 MS. DAVIS: All of it or certain portions of  
11 it?

12 MR. AFFELDT: All of it. It's not very long.

13 MS. DAVIS: Every term?

14 THE WITNESS: I've read -- I don't know. I've  
15 read some of the language of Proposition 227. I don't  
16 recall if I read all of it, and at this current moment  
17 I'm not -- I can't say I remember the exact language  
18 used there.

19 BY MR. AFFELDT:

20 Q When Proposition 227 refers to instruction  
21 overwhelmingly in English, what does "overwhelmingly"  
22 mean to you?

23 A I'd want to see the whole proposition written  
24 out so that I have the context to understand precisely  
25 what it's meant -- what is meant.

1 Q As you sit here today, are you aware of whether  
2 or not there is a common understanding of what  
3 "overwhelmingly" means in that context in California  
4 English-learner classrooms?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: I am -- I'm having a hard time  
7 understanding that question.

8 BY MR. AFFELDT:

9 Q What don't you understand about it?

10 A It seems to be asking me about understanding  
11 throughout the State of one phrase in an act, and I  
12 don't know how I could reach that level of knowledge.

13 Q You don't have that level of knowledge about --

14 A About what people in this -- the educators in  
15 this state think about "overwhelmingly in English"? No,  
16 I don't.

17 Q Do you know what it means to be reasonably  
18 fluent in English?

19 A I'd like to stop after this question.

20 Okay. I'm just saying because you said we --  
21 because it's almost 5:00.

22 "Reasonably fluent in English." I'd want to  
23 look at the whole -- if that is in the proposition, I'd  
24 like to look at the whole -- to get a better sense of  
25 the context of that phrase.

1 Q Do you need to stop because you'd like to stop  
2 or you're tired?

3 A Well, I am tired.

4 MS. DAVIS: And he'd probably like to stop,  
5 too.

6 THE WITNESS: I'm under oath. What I would  
7 also like to -- I am tired and I don't know that the  
8 quality of the responses...

9 MR. AFFELDT: Okay. Why don't we stop for the  
10 day.

11 (At the hour of 5 o'clock P.M., the deposition  
12 was adjourned until 9 o'clock, Wednesday,  
13 July 30th, 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 EXECUTED this \_\_\_\_ day of \_\_\_\_\_,  
16 2003, at \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

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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