

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
Wednesday, July 30, 2003
Volume 3

Reported by:

LORI SCINTA, RPR
CSR No. 4811

JOB No. 43710

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2 CITY AND COUNTY OF SAN FRANCISCO

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10 EASTIN; STATE SUPERINTENDENT)
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12 DEPARTMENT OF EDUCATION;)
13 STATE BOARD OF EDUCATION,)

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15 Defendants.)

16 _____)
17 STATE OF CALIFORNIA,)

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19 Cross-complainant,)

20 vs.)
21)

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

24)
25 Cross-defendants.)

26 _____)
27
28 Deposition of RUSSELL GERSTEN, Ph.D., Volume 3,
29 taken on behalf of Plaintiffs, at 555 West 5th
30 Street, Suite 3500, Los Angeles, California,
31 beginning at 9:16 A.M. and ending at 5:09 P.M.,
32 on Wednesday, July 30, 2003, before LORI SCINTA,
33 RPR, Certified Shorthand Reporter No. 4811.

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2 WITNESS: EXAMINATION
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7 EXHIBITS
8 Gersten Page
9 7 Multipage document entitled, "Standards 337
10 of Quality and Effectiveness for
11 Professional Teacher Preparation Programs,"
12 dated September 2001
13 8 Multipage document entitled, "Reading/Language 471
14 Arts Framework for California Public Schools"
15 9 Multipage document entitled "State Board 477
16 Policy on K-8 Instructional Materials for
17 English Learners"

18 INFORMATION REQUESTED
19
20 (None)

21 REFERENCE REQUESTED
22
23 (None)

24 INSTRUCTION NOT TO ANSWER
25
26 (None)

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(Of record but not present)

1 Los Angeles, California, Wednesday, July 30, 2003
2 9:16 A.M. - 5:09 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: John, Dr. Gersten wanted to clarify
9 something from yesterday, if it's okay to start with
10 that.

11 MR. AFFELDT: Sure.

12 THE WITNESS: Yeah. And, John, in looking back
13 at page 4, I realized when I reread it last night in
14 context that I did mean Hakuta's one-size-fits-all
15 approach, meaning that what he seemed to -- well,
16 meaning that he seemed to advocate one method, one type
17 of training for teachers of English learners and that
18 the State, in my opinion, allows for flexibility and
19 locally developed approaches and models.

20 So the original wording represents accurately
21 my opinion. I mean, no one words what they --
22 perfectly, but it does represent the sense of what I
23 wanted to communicate.

24 EXAMINATION (Resumed)

25 MR. AFFELDT: Okay. I appreciate that

1 clarification.

2 Q What is the one-size approach that you believe
3 Dr. Hakuta is advocating?

4 A According to my recollection of the report, it
5 made it seem as if certification -- there was a certain
6 type of certification, the CLAD or seven courses in
7 language, which is what Wong-Fillmore and Snow said.

8 And once people had that kind of certification,
9 they would then have the knowledge to teach English
10 learners well.

11 So that's what I meant, that there's one way to
12 train people, which is seven courses in language, a CLAD
13 certificate and -- and/or a BCLAD for people who work in
14 native language, and also a sense that teaching students
15 to read in their native language is always better than
16 to teaching students to read in English and using that
17 as a tool to develop English.

18 Q And is it your understanding that the State
19 allows people to teach who don't have CLAD, that teach
20 English learners that don't have a CLAD certification?

21 MS. DAVIS: Now, at the present time?

22 MR. AFFELDT: Yes.

23 THE WITNESS: Now, I am unsure of that. I know
24 there are certainly teachers in California and in the
25 urban areas, in many urban areas of the country that are

1 Q Do you think the State's action to see that all
2 teachers are fully certified is an appropriate one when
3 it comes to the education of English-language learners?

4 A Yes.

5 Q And why is that?

6 A There are -- is some evidence to suggest that
7 people that are certified, that are trained, do better
8 and are more effective than those that are not trained.

9 The reason I hesitate a little is, there is
10 some people going through programs where they're
11 teaching interns and being trained, and some of them
12 seem to do very well based upon observations I've made.

13 But, overall, I would think that would seem a
14 reasonable principle, and there is the fact that
15 certification can be changed and adjusted to reflect
16 advances in knowledge about effective teaching.

17 So I think it's a good idea to have trained
18 teachers.

19 MR. AFFELDT: Can you read the last part of his
20 answer back regarding certification can be adjusted.

21 (The record was read as follows:

22 "But, overall, I would think that
23 would seem a reasonable principle, and
24 there is the fact that certification can
25 be changed and adjusted to reflect

1 not fully certified and so my sense is the State now
2 does.

3 I have not researched this extensively.

4 BY MR. AFFELDT:

5 Q Is that part of the State's flexible approach,
6 to allow people who don't have certification to teach
7 English learners?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: I wouldn't link those two
10 concepts together.

11 BY MR. AFFELDT:

12 Q Why is that?

13 A Well, the State has said that teachers by law
14 must be fully certified in the very near future, so in
15 my sense, they have taken action to address the
16 property.

17 And I think there has been a good deal of
18 thinking about effective ways to teach English learners,
19 rather than training people through a series of courses
20 that was developed, conceptualized 10, 12 years ago.

21 And in an attempt to give access to
22 research-based practices to English learners, that is
23 what I see as a flexible approach in this state in
24 trying to incorporate that information from either
25 in-service or pre-service or both.

1 advances in knowledge about effective
2 teaching.")

3 BY MR. AFFELDT:

4 Q Are you aware of any adjustments California has
5 made or is in the process of making with respect to its
6 certification process as concerns English learners?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: Am I aware? I'm not an expert in
9 certification. There are many things happening in many,
10 many task forces and I'm not aware of their work.

11 The one thing I am aware of, which I believe
12 was several years ago, is people who taught beginning
13 reading had to pass a test to show they had knowledge of
14 the research on beginning reading. Whether or not they
15 were credentialed or not, this was essential.

16 And that seemed a very important thing to do
17 and one that research would suggest would benefit
18 English learners, because they have people who knew more
19 about how to teach reading than in the past.

20 But there are many areas that I'm not aware of.

21 MR. AFFELDT: I'm going to hand you what we'll
22 mark as Exhibit 7.

23 (Gersten Exhibit 7 was marked for
24 identification by the court reporter
25 and is bound separately.)

1 MR. AFFELDT: This is a document entitled,
2 "Standards of Quality and Effectiveness for Professional
3 Teacher Preparation Programs." It bears the stamp of
4 the State of California, purports to be from the
5 California Commission on Teacher Credentialing, dated
6 September, 2001.

7 Q Have you ever seen this document before?

8 A No, I have not.

9 Q Are you familiar with the California Commission
10 on Teacher Credentialing's standards of quality and
11 effectiveness for professional teacher preparation
12 programs?

13 A No.

14 Q If I could have you turn to page 24, which sets
15 forth "Program Standard 13: Preparation to Teach
16 English Learners."

17 Why don't you take a moment to look at that
18 standard, which is on page 24 and 25, and let me know
19 when you are done.

20 A I have read those two pages. I have not read
21 the other standard that they cross-reference.

22 Q And the first in sentence under Standard 13, it
23 says, "In the professional teacher preparation
24 program all candidates have multiple
25 systemic opportunities to acquire the

1 maintain.

2 Q That makes sense, especially since legalistic
3 frameworks can often be incomprehensible, speaking as a
4 lawyer.

5 The next sentence says, "Candidates
6 demonstrate knowledge and application of
7 pedagogical theories, principles and
8 practices for English Language Development
9 leading to comprehensive literacy in
10 English, and for the development of
11 academic language, comprehension and
12 knowledge in the subjects of the core
13 curriculum."

14 Do you think it's important for teachers of
15 English learners to demonstrate knowledge and be able to
16 apply pedagogical theories, principles and practices for
17 English-language development?

18 A Yes, I do, with the caveat that in many cases
19 they are theories of promise and practices, but I think
20 it is excellent that this be incorporated in teacher
21 preparation.

22 Q Similarly, do you think it's important for
23 teachers of English learners to demonstrate knowledge
24 and be able to apply pedagogical theories for the
25 development of academic language, comprehension and

1 knowledge, skills and abilities to deliver
2 comprehensive instruction to English
3 learners."

4 Then it goes on to say, "Candidates
5 learn about state and federal legal
6 requirements for the placement and
7 instruction of English learners."

8 Do you think it's important for teachers of
9 English learners to learn about state and federal legal
10 requirements for the placement and instruction of
11 English learners?

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

14 THE WITNESS: I'm not sure I understand the
15 degree of knowledge that you're talking about in your
16 question.

17 BY MR. AFFELDT:

18 Q I'm talking about the general principle that
19 the State of California has set forth here, Standard 13.

20 A I would think having some awareness of some
21 state and federal legal requirements, that teachers
22 should have that level of awareness.

23 And it should be presented to them in a
24 comprehensible as opposed to a legalistic framework so
25 they understand how it relates to their positions they

1 knowledge in the subjects of the core curriculum?

2 MS. DAVIS: I'm just going to object to the
3 extent any of those terms Dr. Gersten, you know, is not
4 sure how the CTC is using those terms in this document.
5 He's never seen this document.

6 THE WITNESS: Yeah. So I think this is a broad
7 statement of goals. I don't know exactly how they
8 operationalize or exactly what they mean or how the
9 universities in the state are implementing them, so as a
10 broad direction, this seems to reflect current
11 thinking. It's quite ambitious.

12 And beyond that, I don't know that I can
13 comment on specifics because I don't -- I'm not in
14 teacher training, per se, so I don't know how they're
15 operationalized, what exactly they mean. But the words
16 do indicate the contemporary feeling to the way it's
17 conceptualized broadly. But I don't know that I can
18 talk to specifics.

19 BY MR. AFFELDT:

20 Q Okay. The next sentence says,
21 "Candidates learn how to implement an
22 instructional program that facilitates
23 English language acquisition and
24 development, including receptive and
25 productive language skills, and that

1 logically progresses to the grade level
2 reading/language arts program for English
3 speakers."

4 Do you think it's important for teachers of
5 English learners to be able to implement an
6 instructional program that facilitates English-language
7 acquisition and development in accord with the broad
8 principle laid out here?

9 MS. DAVIS: Vague and ambiguous, and calls for
10 speculation as to what the terms mean in this document.

11 THE WITNESS: Yeah, I don't -- I don't
12 understand the question, because I don't know how it's
13 operationalized in the schools at the current point in
14 time.

15 So it's hard to say if it's important or not,
16 if it's -- so I -- given the vagueness of these terms.

17 BY MR. AFFELDT:

18 Q I didn't ask you how it was operationalized in
19 school. I am asking you if you agree with the broad
20 goal that the commission has laid out here for teacher
21 preparation programs.

22 MS. DAVIS: Same -- go ahead.

23 MR. AFFELDT: Okay.

24 Q So do you think it is important that teachers
25 of English learners learn how to implement an

1 Q Do you think it's important that teachers of
2 English learners be able to implement an instructional
3 program that logically progresses their students to
4 grade-level reading language arts programs for English
5 speakers?

6 MS. DAVIS: Vague and ambiguous.

7 THE WITNESS: Yeah. I need to know more about
8 exactly what this means to look at the sequence and
9 examples and that kind of thing to know what they
10 have --

11 BY MR. AFFELDT:

12 Q You don't know what that sentence means?

13 A I have a vague sense of what it's getting at
14 but, no, I don't.

15 Q Dr. Gersten, isn't your entire report
16 supporting the notion that the State is on the right
17 track in trying to progress English learners to
18 grade-level reading through the reading language arts
19 curriculum?

20 MS. DAVIS: That's argumentative. He's
21 talking about words you're using in a document he said
22 he's never seen.

23 MR. AFFELDT: And I'm not asking him what the
24 Commission on Teacher Credentialing meant or not. I'm
25 asking him whether these broad goals are ones he thinks

1 instructional program that facilitates English-language
2 acquisition and development?

3 MS. DAVIS: Same objections.

4 THE WITNESS: I think this is -- it -- it's so
5 vague and ambiguous as a broad statement. I think it's
6 on the right track to figure out exactly what it means,
7 or -- how to rate each particular sentence is important
8 or unimportant is beyond what I'm comfortable
9 speculating on at this point in time, given the
10 limitations of the research base. And I'm not being
11 sure how the State uses these terms in higher ed.

12 BY MR. AFFELDT:

13 Q Do you find the term "English-language
14 acquisition and development" to be vague and ambiguous?

15 A It's very, very broad so, yes, it is -- it's
16 very, very broad to me.

17 Q Have you ever used the term "English-language
18 acquisition" without explaining what you meant --

19 MS. DAVIS: Vague and ambiguous.

20 BY MR. AFFELDT:

21 Q -- in any of your writings?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: Yeah. I would need the writings
24 in front of me to answer your question.

25 BY MR. AFFELDT:

1 are important.

2 And I'm entitled to an answer without some
3 claim that he doesn't know what the same terms that he
4 uses in all of his writings including his expert report
5 of his utilize.

6 MS. DAVIS: If you're asking him the terms -- I
7 mean, he doesn't know what the CTC means by this term.

8 But, you know, to the extent you understand the
9 question...

10 That was a vague question regardless --

11 THE WITNESS: Is the question so "important"
12 means -- I'm not sure what "important" means in this
13 context.

14 BY MR. AFFELDT:

15 Q Is that a skill that a teacher of
16 English-language learners should have, the ability to
17 implement an instructional program that logically
18 progresses the student to grade-level reading language
19 arts program for English speakers?

20 A I still don't feel comfortable doing that for
21 several reasons. One is this field is emerging. There
22 is very little research. So I think people are
23 developing -- developing ways to do this as a field
24 throughout the nation, and I think in some ways I'm
25 including in Canada, definitely.

1 There is a great awareness in the field that
2 English-language development has been the neglected
3 bilingual education, so there is efforts to improve what
4 we do.

5 So I don't know that at this point in time you
6 could say somebody is skilled and has this skill to be
7 able to do this.

8 I think people can be doing things and
9 promoting things in this direction, activities, ways of
10 thinking, ways of presenting things to kids that would
11 get the kids to read, to use reading and writing as a
12 tool to acquire language as a broad direction.

13 But at a very specific level to say is it
14 important or not, it's too vague to me, because these
15 aren't tangible things yet. They're things that we're
16 developing as a field, developing as a field.

17 Q So is it your testimony that, currently, we
18 don't have the ability to create instructional programs
19 that logically progress English learners to grade-level
20 reading language arts programs for English speakers?

21 MS. DAVIS: That mischaracterizes his
22 testimony.

23 THE WITNESS: Yeah, that does miss -- I don't
24 feel that's what I'm saying.

25 I'm saying we have directions that -- that seem

1 MS. DAVIS: If you want to read the sentence.

2 THE WITNESS: Yeah. "Can-..."

3 I'm sorry. I'm just reading out loud to
4 myself.

5 I can't answer that question for the State. I
6 mean, I -- I -- there's -- I just don't know precisely
7 what's going on.

8 I think the WestEd report at least explores
9 that issue, but I can't answer that.

10 BY MR. AFFELDT:

11 Q I'm generally confused by what is impeding your
12 ability to answer that question.

13 A I'm perplexed why you're confused. I mean,
14 it's hard for one person to know everything that's going
15 on in a state this large.

16 Q Maybe you misunderstood my question. My
17 question was: Does that sentence reflect current
18 thinking in -- in your field regarding the way to
19 educate English-language learners?

20 I'm not asking you what is actually happening.

21 MS. DAVIS: Okay. That is a different
22 question.

23 THE WITNESS: Yeah, that's a different
24 question.

25 That would represent to me a lot of -- a lot of

1 promising, that some of the first-grade classrooms we
2 observed show that that can be accomplished in first
3 grade.

4 But we don't have a firm empirical solid base
5 of specific routes to accomplish this, as opposed to
6 directions that would lead to -- to these goals, which
7 would seem to be in the best interests of the children.

8 BY MR. AFFELDT:

9 Q I'm not asking you if -- about the empirical
10 base. I'm asking you if you agree that this is a worthy
11 goal.

12 A Okay. So is it a worthy goal? Then I would --
13 I would say -- because some of -- some of this is hazy
14 to me.

15 I'd say it is a goal to have the development of
16 language linked as much as possible to reading language
17 arts and content learning that children do. It's a
18 worthy goal to have that kind of linkage and synergy in
19 consideration for the students.

20 That is a worthy goal and it's -- it's good
21 that some people are addressing that goal.

22 Q Does that sentence that we have been just
23 looking at beginning with "Candidates learn how to
24 implement an instructional program," et cetera, reflect
25 current practice, in your opinion?

1 solid thinking in the field in an attempt to articulate
2 that, yes.

3 BY MR. AFFELDT:

4 Q And current thinking?

5 A A good deal of current thinking, yeah.
6 Certainly not all. Yeah.

7 Q Looking at the next sentence, do you believe
8 it's important that candidate teachers of
9 English-language learners "acquire and demonstrate

10 the ability to utilize assessment
11 information to diagnose students' language
12 abilities, and to develop lessons that
13 promote students' access to and
14 achievement in the state-adopted academic
15 content standards"?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: Again, I find the word
18 "important" is confusing to me -- I mean, ambiguous to
19 me to be more precise. The word "important" is
20 ambiguous to me.

21 BY MR. AFFELDT:

22 Q Are those skills abilities that teachers of
23 English-language learners should have?

24 A And by "should have," do you mean they should
25 be fired if they don't have them?

1 Q No. I mean that they should have them in order
2 to enable English-language learners to access the
3 curriculum.

4 A I need to know more about what you mean by the
5 "skills" because -- you need to explain to me what you
6 mean by this before I can answer this.

7 Q I'm just going on the general principles that
8 are laid out in that sentence, which are that teacher
9 candidates through a teacher preparation program acquire
10 and demonstrate the ability to utilize assessment
11 information to diagnose students' language abilities and
12 to develop lessons that promote students' access to and
13 achievement in the state-adopted content standards.

14 So let's break that down.

15 Do you think in order to enable English
16 learners to access the curriculum that teachers of
17 English learners should acquire and demonstrate the
18 ability to utilize assessment information to diagnose
19 students' language abilities?

20 MS. DAVIS: Vague and ambiguous.

21 THE WITNESS: Yeah, I don't -- I can't answer
22 that question because I don't know exactly what the
23 state credentialing -- which assessments they're talking
24 about.

25 I believe the CELDT is the one the State is

1 A I don't feel comfortable speculating in this
2 "if" thing. I think it has been very dangerous in
3 education when people have used things that aren't valid
4 and treated them as if they are valid, so I just don't
5 like to speculate if a valid thing is here.

6 If a valid thing is here, I'd like to look at
7 it, see how people use it and then I think we can draw
8 inferences.

9 Q Dr. Gersten, as part of an expert deposition,
10 I'm entitled to pose hypotheticals --

11 A That's correct.

12 Q -- and you're here and you have agreed to
13 answer those hypotheticals. And my hypothetical assumes
14 that the assessment is valid.

15 And assuming that a teacher has a valid
16 assessment, do you think that a teacher of English
17 learners should be able to diagnose their students'
18 language abilities?

19 MS. DAVIS: Incomplete hypothetical.

20 THE WITNESS: Yeah. I don't understand enough
21 about "valid." The works on "valid" talk about five --
22 about five types of validity, and I need to know which
23 types of validity there is evidence about.

24 BY MR. AFFELDT:

25 Q Assume there is evidence on all five types of

1 using. Is that the one they're talking about? I don't
2 know that measure well, so I cannot answer that
3 question.

4 BY MR. AFFELDT:

5 Q The question wasn't about any specific
6 assessment, it's just a statement in general: Do you
7 think it's part of an English-language teacher's duties
8 that they need to be able to use assessment information
9 to diagnose their students' language abilities?

10 A And diagnose is an assessment. The devil is in
11 the details. I would need to know what assessments, are
12 they valid.

13 Q Of course.

14 A So without that, I can't answer the question.
15 I can't answer the question.

16 Q Well --

17 A I know there is some concern about the validity
18 of any oral language assessment instrument currently
19 available that I've read, but I'm not primarily an
20 assessments person, so I can't answer that question.

21 Q Assuming we have a valid assessment and that
22 the assessment has not been an issue, do you think that
23 teachers of English-language learners should have the
24 ability to be able to use assessment information to
25 diagnose their students' language abilities?

1 validity. My question doesn't turn on --

2 A Then --

3 Q -- on the nature of the assessment.

4 MS. DAVIS: Same objection.

5 Go ahead.

6 THE WITNESS: Then -- okay. Then if all of the
7 criteria that Samuel Messick laid out of these
8 assessments were met, that they predicted performance,
9 there were no unintended consequences and he knew that
10 there were none, then I would think that would
11 definitely be something teachers should be able to do,
12 that they were useful, they helped improve instruction.

13 If all those criteria were met, then I think it
14 would be important for teachers to know how -- teachers
15 or school personnel to know how to use these as they
16 teach.

17 BY MR. AFFELDT:

18 Q Do you believe that teachers of English
19 learners should be able to develop lessons that promote
20 students' access to and achievement in the State-adopted
21 academic content standards?

22 MS. DAVIS: "...access to and
23 achievement..."?

24 MR. AFFELDT: Yes.

25 THE WITNESS: Well, my understanding is the

1 "access" to is -- let me think for a second of the right
2 term.

3 Federal case law would indicate that that is a
4 responsibility of schools and so I definitely would feel
5 that schools should comply with the Castenada ruling to
6 supply -- provide access for students on the State
7 content standards.

8 BY MR. AFFELDT:

9 Q Does that include meaning that the actual
10 teacher of the student needs to be able to develop
11 lessons that promote that access?

12 MS. DAVIS: Vague and ambiguous.

13 THE WITNESS: I think it would be important
14 that lessons be implemented to comply. I don't know
15 that I have huge concerns over who develops those
16 lessons or if they're implemented by a coteacher or a
17 language specialist or a reading specialist. That would
18 be fine with me and I think would be in compliance with
19 federal case law.

20 BY MR. AFFELDT:

21 Q Do you think that candidates -- that teachers
22 of English learners need to "...learn how cognitive
23 pedagogical and individual factors affect student's
24 language acquisition"?

25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: I must say I don't really
2 understand exactly or even approximately what this
3 sentence means. Yeah, I don't.

4 BY MR. AFFELDT:

5 Q Okay. Is there any part of the program
6 Standard 13 paragraph we just looked at that you would
7 consider antiquated in terms of the current theories and
8 thinking in the field of English-language learner
9 education?

10 MS. DAVIS: Vague and ambiguous.

11 THE WITNESS: I think this goal statement, the
12 last sentence, it's just -- I don't understand.

13 But, beyond that, I wouldn't say the goal
14 statement or the underlying intent -- the underlying
15 intent reflects a good deal of contemporary thinking.

16 I'm less sure without knowing anything about
17 how it's implemented or even understood by faculty
18 members in the California Colleges and universities,
19 I -- it's -- I mean, that's where it could either be
20 contemporary, antiquated, innovative or worthless.

21 I mean, it would depend how it's implemented
22 and how they understand it, how the instructors
23 understand it.

24 So the goal statement would seem not antiquated
25 to me.

1 BY MR. AFFELDT:

2 Q Okay. If I could have you turn to the appendix
3 at A-8, this is entitled, "TPE 7: Teaching English
4 Learners."

5 A It's actually missing from my xerox copy. I go
6 from A-7 to A-9.

7 MS. DAVIS: I do, too.

8 MR. AFFELDT: My gosh. How can that be?
9 (Discussion off the record.)

10 MR. AFFELDT: He'll get that copied. You're
11 right, it's not in the copies. We'll come back to that.

12 MS. DAVIS: Are you off that exhibit now?

13 MR. AFFELDT: Yes.

14 MS. DAVIS: Okay.

15 THE WITNESS: I'd like to take a break, even if
16 it's a brief one?

17 MR. AFFELDT: Yes, sure.

18 (Recess taken.)

19 MR. AFFELDT: Back on the record.

20 I succeeded in procuring a copy of the missing
21 A-8 --

22 MS. DAVIS: No, it's not our lucky day.

23 MR. AFFELDT: -- which can we stipulate that
24 we'll insert it in the Exhibit 7 --

25 MS. DAVIS: Yes.

1 MR. AFFELDT: -- rather than create a new
2 exhibit?

3 MS. DAVIS: Yes.

4 MR. AFFELDT: So I'll hand you the loose-leaf
5 version for now.

6 (Discussion off the record.)

7 BY MR. AFFELDT:

8 Q So why don't you read --

9 MS. DAVIS: You want him to read TPE 7?

10 MR. AFFELDT: Yes.

11 Q You can feel free to look at other TPEs in
12 Appendix A, which is entitled "Teaching Performance
13 Expectations."

14 A I have read this.

15 Q Okay. If you could look at the second-to-last
16 sentence in the first paragraph, which lays out as a --
17 a teacher performance expectation that teachers "...use
18 English that extends students' current level of
19 development yet still is comprehensible."

20 Does that broad goal sound at all like your
21 idea of modulating language for English-language
22 learners, depending on their abilities?

23 A My idea, they're a little different.

24 This is something that I believe that Steve
25 Krashen has been writing about and is in all the books

1 and is about -- and is very much like Vygotsky's idea
2 which permeates a lot of educational thinking, just
3 generally, of pushing kids into a next zone.

4 What I was trying to talk about was what I
5 observed some teachers do to try to encapsulate that,
6 maybe to help people meet some of these very ambitious
7 goals, that in my, let's say, theory or concept, if a
8 teacher just knew and was trained and then it became
9 automatic, that there were times during the lesson where
10 the goal was to get kids to just practice speaking in
11 English and just say things.

12 So there's something like this, it's a picture,
13 so there's a lot -- kids can have a lot of ideas, and
14 that would be the time to really work on constructions
15 and sophistication in using adjectives and using verbs
16 and language -- use sophisticated language use.

17 And then other times when kids are really
18 working hard and thinking hard about what is the theme,
19 what is the most important motive, that would be the
20 time where even very truncated approximate responses
21 would be done, because there the main goal is cognitive
22 and other times it's language. And it's a very subtle
23 balance to do.

24 The more traditional way is to have your
25 content time and then to have your ESL where you're

1 fairly -- very vague. I'm not sure that any two people
2 would mean the same things by this or use the same
3 words, so I'm just not sure what to do with it.

4 BY MR. AFFELDT:

5 Q Is there a general understanding of what the
6 term "structured English immersion" means?

7 A I think that it's such an emotion-laden term
8 that for that -- if only for that reason, there is not a
9 commonly understood -- whatever. Commonly --
10 commonly -- a common understanding of that term in the
11 field of education.

12 I don't believe there is at the current point
13 in time.

14 Q Do you believe there was a common enough
15 understanding of -- strike that.

16 Is your answer the same as to the term
17 "immersion"?

18 A I think that is also true, that it's -- it's --
19 people mean different things by it. Yep, yep.

20 Q Has your opinion on whether or not there's a
21 common enough understanding of what -- structured
22 English immersion changed since you testified in the
23 Prop 227 case in 1998?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: Has it changed? My thinking

1 talking about "I am going to the store," "She will not
2 go to the store," and I think if it's integrated in the
3 lesson, it potentially could be much more effective.

4 So it's -- they're related somewhat but they
5 are not exactly the same.

6 Q Do you think it's that teachers of English
7 learners should be able to use English that extends the
8 students' current level of development yet is still
9 comprehensible?

10 A That certainly would be a goal. I -- I think
11 both in Krashen speculation or Vygotsky's speculations,
12 they're sort of ideals and I think people at best, if
13 they're honest, can roughly approximate this. It just
14 gives people a way to think about what they're doing as
15 opposed to a very, very precise kind thing that people
16 do.

17 So I -- I think it's thinking that seems in the
18 right direction to me.

19 Q Do you think that teachers of English learners
20 should be "...familiar with the philosophy,
21 design, goals, and characteristics of
22 programs for English language development,
23 including structured English immersion"?

24 MS. DAVIS: Vague and ambiguous.

25 THE WITNESS: I find this sentence fairly --

1 tends to evolve, so it -- but I don't recall exactly
2 what I wrote in my declaration for that case.

3 I'd like to just extend that answer. I think
4 as people have been talking more and more in the last --
5 since that time period, or since '96 about dual
6 immersion and bilingual immersion, the term "immersion"
7 has become even more confusing to pinpoint exactly what
8 any two people mean.

9 BY MR. AFFELDT:

10 Q Are any of the broad goals stated as part of
11 Teaching Performance Expectation 7 -- are there any of
12 these goals with which you disagree as being something a
13 teacher of an English learner should know and be able to
14 do?

15 MS. DAVIS: I'm going to object because this is
16 the first time he's seen this document, and it's over
17 half a page.

18 If you're able to answer that --

19 THE WITNESS: Yeah.

20 MR. AFFELDT: For the record, it's not the
21 first time he's seen it. It's quoted word for word in
22 Dr. Hakuta's report.

23 MS. DAVIS: Okay. But he said he's never seen
24 this CTC document, so I don't know if he has read this
25 entire thing before.

1 THE WITNESS: Yeah, I --
 2 BY MR. AFFELDT:
 3 Q You can take your time, as much time as you
 4 need.
 5 MS. DAVIS: You can take time or you can go
 6 over the broad goals, if you think that would be easier,
 7 John.
 8 THE WITNESS: How should I proceed with this?
 9 BY MR. AFFELDT:
 10 Q We can go one by one. I'm just trying to save
 11 time.
 12 In the -- we've already discussed many of
 13 these, because they come from Standard 13. But looking
 14 in the middle of the first paragraph, the sentence
 15 beginning, "They draw upon information..."
 16 Do you see that?
 17 A Yeah.
 18 Q Okay. That sentence reads, "They
 19 draw upon information about students'
 20 backgrounds and prior learning, including
 21 students' assessed levels of literacy in
 22 English and their first language, as well
 23 as their proficiency in English to provide
 24 instruction differentiated to students'
 25 language abilities."

1 Do you believe the teachers of English learners
 2 should be able to provide instruction differentiated to
 3 their students' language abilities?
 4 A This sentence to me seems a very idealistic
 5 statement, given our current knowledge base.
 6 So that I don't know that I have ever seen a
 7 human teacher this planet being able to do this, so
 8 people can move in this direction. And I think when
 9 there's a movement in that direction it's helpful to
 10 many students, but I don't believe on this planet at
 11 this point in time this is an achievable goal or that it
 12 has been achieved to date in history.
 13 Q Why don't you believe it is achievable?
 14 A Just because no one has achieved it yet. It
 15 may be achievable a century from now or five years from
 16 now or 20 years from now, but it would require rapid
 17 advances in all aspects of instruction.
 18 Q When you say they haven't achieved it, do you
 19 mean that no teacher has ever been able to provide
 20 instruction differentiated to students' language
 21 abilities?
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: I was talking about the whole
 24 goal, so are we going to break it into --
 25 BY MR. AFFELDT:

1 Q Yeah. We're looking at this particular
 2 sentence.
 3 A To provide differentiated --
 4 Q Your testimony, just to be clear, was about the
 5 entire --
 6 A Sentence.
 7 Q -- the entire sentence?
 8 A Yes.
 9 Q Okay. So incorporating other specific aspects
 10 of the sentence then, what is it precisely that we
 11 haven't been able to achieve?
 12 A I think in the broad field of education, we
 13 have been able to differentiate instruction a little
 14 bit, somewhat for students but not a lot, that what we
 15 can't do, if there are 32 or 20 students in a room, is
 16 perfectly or even differentiate instruction so that
 17 every child -- these are native English speakers from
 18 mainstream culture so that every child accesses
 19 everything all the time. We can do things that more
 20 students access things.
 21 We have also learned through research that
 22 there is a pull and a push of a whole group. That a
 23 group, be it a small group or a whole class, is more
 24 than the individual parts, so people who can capitalize
 25 on that can push a class towards understanding.

1 But just for mainstream kids, we cannot -- we
 2 can aspire to provide instruction that is more
 3 differentiated than just one thing for everybody, but we
 4 cannot -- we cannot really provide instruction that's
 5 differentiated to each child's cognitive needs or
 6 personal background or whatever.
 7 We can try to avoid horrible errors like if
 8 kids don't know anything about George Washington because
 9 they're all recent arrivals to not assume they know a
 10 lot about George Washington.
 11 We can know things about certain cultures that
 12 are going to make -- you know, like screaming at Asian
 13 kids to look you in the eye when they talk to you
 14 doesn't seem a good thing to do, but I wouldn't call
 15 that exactly to differentiate instruction.
 16 So I think that goal is just up there, that
 17 something people aspire towards, just like writers
 18 aspire towards clarity and never quite achieve it.
 19 Q As a goal, do you think it's a worthy goal?
 20 A This is -- all parts of this or the last part?
 21 Q All parts.
 22 A All parts.
 23 Well, let's do each part of the sentence.
 24 "Draw upon information about students' backgrounds and
 25 prior learning...", since that one is framed loosely,

1 that you draw on it loosely, like this is a group of Lao
 2 students, so that seems fine.
 3 But as opposed to precisely but just having a
 4 sense about kids' backgrounds or that many of these kids
 5 are third-generation immigrants, so they are fairly
 6 familiar with many, many conventions in the U.S., that
 7 seems okay to me, fine with me.
 8 Knowing "...students' assessed level of
 9 literacy in English..." we can do because we do have
 10 valid and reliable measures of that, you know, that are
 11 pretty valid. So teachers having some awareness of them
 12 makes perfect sense.
 13 Students' literacy in their first language, it
 14 would make sense to have some general awareness of that
 15 because some students are immigrant kids and are
 16 literate in Spanish or Korean and some aren't, and some
 17 know just a teeny bit.
 18 So that basic knowledge is important. It's
 19 probably especially important in beginning reading
 20 because kids who know how to read in one language can
 21 transfer that.
 22 Having some knowledge of their proficiency in
 23 English as a group and if there are actually subgroups
 24 that need extra work is good.
 25 I -- I think we don't yet know very well how to

1 use and do this information, and when I was on the
 2 advisory group for California's Reading Excellence Act,
 3 I know there was discussions about, "Do you split kids
 4 into eight groups according to their different levels?"
 5 And some of the folks that the State uses for
 6 training were saying to do that. Others of us were
 7 feeling there can be a synergy from kids who are more
 8 advanced, who model understanding.
 9 So I think that's an area that is just very
 10 amorphous. Extreme violations of that make no sense,
 11 that kids who are totally fluent in English should not
 12 be in sheltered-type instruction. And similarly -- even
 13 if they are kind of shy.
 14 And similarly, kids who know -- virtually know
 15 no English need quite a bit of additional help. But
 16 when -- the large group of kids that are in the middle,
 17 it's very hard to pigeonhole them exactly and I don't
 18 know precise ways to do this.
 19 And, so, then we can talk some about
 20 differentiation, that it's -- it's an approximate thing
 21 but having some awareness of that and having some good
 22 ideas that have balance, I think, makes people more
 23 effective teachers.
 24 Q So taken as a whole, do you think this
 25 expectation lays out a worthy goal for California

1 teachers of English learners?
 2 A It does seem like a worthy goal. It does seem
 3 like a worthy goal.
 4 Q Do you believe that California should not use
 5 an assessment if it has not been validated according to
 6 all five of Messick's methods of validation?
 7 MS. DAVIS: Vague and ambiguous.
 8 THE WITNESS: To clarify, the five types of
 9 validity, three are pre-Messick and Messick added two
 10 more. It's a course I used to teach.
 11 But I -- I don't -- my -- my main area of
 12 knowledge and expertise is merging instructional
 13 principles and using them, extending them to English
 14 learners rather than formal oral language development.
 15 And so I'm not so comfortable making a
 16 recommendation to the State. I think certainly the
 17 State should comply with federal law, so I would make
 18 that recommendation, as just a citizen.
 19 BY MR. AFFELDT:
 20 Q Do you think it's important for teachers of
 21 English learners to understand how and when to
 22 collaborate with specialists and paraeducators to
 23 support English-language development?
 24 MS. DAVIS: Vague and ambiguous.
 25 THE WITNESS: The word "important" is -- again,

1 I'm not sure what that --
 2 BY MR. AFFELDT:
 3 Q Do you think that's an ability that a teacher
 4 of an English learner should have?
 5 MS. DAVIS: Same objection.
 6 THE WITNESS: I don't think of "collaboration"
 7 as an ability that somebody can collaborate or can't
 8 collaborate, especially to the wide array of educational
 9 specialists and paraeducators, so at our present in
 10 American schools...
 11 BY MR. AFFELDT:
 12 Q Do you think of it as a knowledge or a skill?
 13 A I think of "collaboration" as a personality
 14 characteristic, you know, sort of a temperamental -- a
 15 temperament orientation.
 16 Q Let me ask you about whether you think that
 17 teachers of English learners should understand how and
 18 when to work with specialists and paraeducators to
 19 support English-language development.
 20 MS. DAVIS: Same objection.
 21 THE WITNESS: I'd need to know more about the
 22 kind of specialists they're talking about and the skills
 23 of the specialists. It's just so vague, it's hard for
 24 me to appraise and say, "Yes, they should"; "No, they
 25 shouldn't."

1 BY MR. AFFELDT:

2 Q Do you think teachers of English learners in
3 California should be able to use appropriate assessment
4 information to select instructional materials and
5 strategies that develop students' abilities to
6 comprehend and produce English?

7 MS. DAVIS: Vague and ambiguous.

8 THE WITNESS: I find this -- this is going to
9 be a very conjectural answer, because I don't know that
10 we have great agreement in most areas of education about
11 what are appropriate assessment information, so this
12 sentence assumes we have such a consensus. And with a
13 few exceptions, I don't know that we do.

14 So this becomes quite hypothetical.

15 BY MR. AFFELDT:

16 Q Let's assume for hypothetical purposes that we
17 have appropriate assessment information.

18 A Okay. So we're --

19 MS. DAVIS: Incomplete hypothetical.

20 Go ahead.

21 THE WITNESS: Okay. So we're assuming these
22 appropriate assessment materials drop from the heavens.

23 I guess the problem I have is: It would be
24 such a different world that I -- I would -- I think it
25 is an incomplete hypothetical, because would we have

1 because it would depend, I think, if -- if there were
2 validated instructional techniques and strategies, it
3 would be an ambitious but -- and the appropriate
4 assessments, it would be an ambitious goal but a
5 reasonable one.

6 If there aren't validated instructional
7 strategies and materials, it's just too vague to
8 speculate on.

9 Probably people shouldn't do the opposite of
10 this, shouldn't use inappropriate, incomprehensible
11 things, but I don't know that this is a precise
12 operational goal.

13 Q Do all materials selected for English-language
14 learners need to be validated?

15 MS. DAVIS: Vague and ambiguous.

16 THE WITNESS: I can't answer that on a yes-no
17 basis.

18 I think as a profession, if we have awareness
19 of what is valid and validated and what our best guess
20 is or things seem to us to work, it's honest. So
21 ideally we would have a battery of validated
22 approaches.

23 And, barring that, we probably have a sense of
24 some directions not to go in and -- and that's the
25 extent that I think I can comfortably commit myself to.

1 similar -- see, I don't know, would we have similar
2 advances in instructional strategies, in technologies
3 that would help teachers link these brand-new
4 assessments that haven't even been conceptualized.

5 So it's a level of hypotheticals that I -- I
6 don't function very well at.

7 BY MR. AFFELDT:

8 Q Unless -- assuming that we do have appropriate
9 assessment information that the skill that I'm asking
10 you about is: Should teachers of English learners be
11 able to "...select instructional materials and
12 strategies..." that "...develop their students'
13 abilities to comprehend and produce English"?

14 MS. DAVIS: Vague and ambiguous, incomplete
15 hypothetical.

16 THE WITNESS: To flesh out your hypothetical
17 further, would there also be validated instructional
18 materials and strategies that would also emerge, or only
19 the assessments, the appropriate assessments would be
20 here?

21 BY MR. AFFELDT:

22 Q I'm not including one way or another whether or
23 not instructional materials and strategies have been
24 validated.

25 A I do think it's an incomplete hypothetical

1 BY MR. AFFELDT:

2 Q What do you mean when you say "materials
3 ideally would be validated"?

4 A That there would be evidence, if you do this
5 instead of that it leads to better outcomes for the
6 students.

7 Q Do you believe Open Court has been validated?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: To help me attempt to provide an
10 answer to that question, would -- let's see. Which
11 edition of Open Court are you talking about?

12 BY MR. AFFELDT:

13 Q The edition currently adopted by the State
14 Board of Education.

15 A What I'm uncertain is -- and I don't know all
16 the details -- there's a very recent revision, and then
17 there was one that was out several years ago, I
18 believe.

19 And you're -- and I don't -- I just simply do
20 not know if the State has adopted both or only the newer
21 one.

22 Q When was the very recent revision adopted?

23 A I know Open Court was adopted. I just don't
24 know if -- enough details about the State adoption to
25 say whether they would allow the -- I believe the 2002

1 version and the one that preceded it or only the 2002,
2 because they are somewhat different and I'm not sure the
3 exact differences, what they are.

4 Q So 2002 is the most recent version of
5 Open Court that you're aware of?

6 A Yeah. I think it's 2002.

7 Q When was the previous version of Open Court
8 published?

9 A I believe 1998, and these are approximate
10 estimates.

11 Q Is your answer different for different versions
12 as to the question of whether or not the material has
13 been validated according to your standard?

14 A Well, I just want to raise the issue that there
15 was some research done with I believe primarily
16 African-American students but some English learners in
17 Houston showing good outcomes when Open Court was used,
18 that on average, especially in the early grades, its --
19 its explicit teaching of phonics and phonological
20 awareness led to better outcomes. So there is a core in
21 that program that's validated.

22 And it appears -- I have not studied this or
23 seen it in action to the extent I have with the last
24 version of Open Court, that Houghton Mifflin, the new
25 version, does not include components like -- that are

1 tended to have a good effects on the second grade better
2 than two other programs that were evaluated. One was
3 Open Court. In this case, they looked at three programs
4 perceived to be pretty strong.

5 So there is some evidence suggesting they have
6 strong components in that program.

7 BY MR. AFFELDT:

8 Q Other than some evidence for the second grade,
9 has any other part of the Houghton Mifflin series been
10 validated?

11 MS. DAVIS: Same objection.

12 THE WITNESS: Yeah. I just simply don't -- I
13 simply don't know.

14 BY MR. AFFELDT:

15 Q You believe it's that teachers of English
16 learners should "...know how to analyze student errors
17 in oral and written language in order to understand how
18 to plan differentiated instruction"?

19 MS. DAVIS: Vague and ambiguous.

20 I just want to make sure. I mean, you're
21 reading from the CTC document, but you're asking that
22 question in sort of a general how he understands these
23 terms?

24 MR. AFFELDT: Uh-huh.

25 MS. DAVIS: Okay. I just don't want him to

1 like quite explicit for teaching phonics, phonological
2 awareness and working on comprehension and fluency.

3 So there is some evidence that they be
4 effective. It's not a -- it's not a
5 beyond-the-shadow-of-the-doubt because of the shifts
6 and -- but it seems that -- it seems a good direction to
7 take.

8 I said in prin- -- as long as there is some
9 evidence that -- as long as those -- the principle of
10 explicitness is there or the areas of phonics and
11 phonological awareness, more kids will learn how to
12 read.

13 So that's complete specifically on what we
14 know.

15 Q Has the Houghton Mifflin series been validated?

16 MS. DAVIS: Vague and ambiguous.

17 THE WITNESS: I can only answer in terms of
18 what I know of research. And the last version of
19 Houghton Mifflin, and I believe there have been changes
20 and improvements in that, indicated that -- it was done
21 in Washington, D.C. and I think there were issues that
22 the quality of implementation was not considered very
23 good.

24 But there was a sense that -- I believe the
25 data showed, this is from memory, that Houghton Mifflin

1 speculate as to what the CTC means.

2 THE WITNESS: In terms of "should," how do you
3 mean the word "should"? That every single teacher must
4 know this or be on a plan of assistance or be
5 terminated -- I'm not -- see, I'm not sure about the
6 word "should."

7 BY MR. AFFELDT:

8 Q That that is a skill that the teacher should
9 have in order to access the curriculum for their
10 students.

11 A The skill that a teacher -- are you using
12 "should" to mean "must have"?

13 Q I'm using it to mean "should."

14 If they don't have it, then their access to the
15 curriculum is impaired.

16 A "...is impaired." I don't understand exactly
17 what you mean by "access to the curriculum."

18 Q I'm using the same definition you testified
19 about a half hour or so ago in reference to the
20 Castenada and the federal requirement.

21 A In terms of answering the question, and I know
22 that is both the language of the Castenada decision and
23 then was all -- also showed up in the special ed
24 legislation IDA.

25 For the special ed, there were a group of

1 experts that the Department of Ed convened, and the
 2 major conclusion we reached, and this was around two
 3 years ago, was -- or two-and-a-half years ago, there was
 4 no common understanding of what that term meant among
 5 the experts. These included researchers, practitioners
 6 and attorneys that what that term meant.
 7 Q And what do you mean when you say "that term"?
 8 A "Access to the curriculum."
 9 Q That was in the context of --
 10 A Special education.
 11 Q -- special education.
 12 A I would predict the same would be true in --
 13 for English learners. What I tried to do in that book
 14 is by working with the Office for Civil Rights in trying
 15 to understand approximately what it was and what OCR was
 16 looking for, those were my attempts to begin to explain
 17 it.
 18 Looking back on it, I'm still not sure I
 19 totally understand what that means, because it's been
 20 more and more in use and less and less specialized.
 21 Q So with your 20 years' of training and
 22 experience in the field of English learner education,
 23 it's your testimony that you don't understand what the
 24 term "access to the curriculum" means?
 25 A In any --

1 MS. DAVIS: Mischaracterizes his testimony.
 2 THE WITNESS: Yeah. I think that is a
 3 mischaracterization.
 4 I don't -- I don't know that any two people
 5 define it exactly the same way, and I see it as a --
 6 more as a direction that the courts wanted that they
 7 did -- no longer wanted students segregated in native
 8 language classes where the curriculum was whatever.
 9 And, so, important things that were covered
 10 were just not vaguely covered and then kids went into
 11 middle school was one thing, and the other thing is they
 12 wanted support for students.
 13 But I see the "access to the curriculum" is
 14 just a broad, broad statement of an objective and a
 15 sense of "If you are doing this, you're going the wrong
 16 way," much like in the pursuit of happiness or liberty,
 17 various things like that. I see it as a pretty, pretty
 18 broad concept, to me.
 19 I think it's a good thing for people to think
 20 about and continue to grapple with, but it certainly
 21 should not be taken for granted as something we
 22 understand and we can just train people to do this.
 23 BY MR. AFFELDT:
 24 Q Can we measure access to the core curriculum
 25 with test scores?

1 MS. DAVIS: Vague and ambiguous, calls for
 2 speculation.
 3 THE WITNESS: I wouldn't see test scores as a
 4 way I would measure access to the curriculum.
 5 BY MR. AFFELDT:
 6 Q How would you measure access to the curriculum?
 7 A Well, as I said, if I -- I would look for the
 8 things being covered. So if weather is being covered or
 9 what compromise is, I'd look at does that even show up
 10 in this setting? Does the teacher even know about that?
 11 Is it in books? Is it in material?
 12 Even so, if it's not vaguely present, certainly
 13 there would be no access to the curriculum if the fourth
 14 grader's supposed to learn about themes and motivation
 15 and no one ever talks about it, that would not be access
 16 to the curriculum.
 17 I'd look somewhat at teachers when they cover
 18 material that is relevant to the core curriculum, do it
 19 in a way where kids are engaged, where kids get
 20 feedback.
 21 Some teachers may be better on the engagement,
 22 some better on the feedback, some seem to be better on
 23 the explaining, but those are all at least ways to make
 24 it accessible or teach at -- so it's -- it's -- it's a
 25 very broad goal. So I think we -- we have more

1 agreement when it's not vaguely present.
 2 What's utterly confusing for English learners,
 3 kids with disabilities, is if a kid has real solid
 4 deficiencies in reading or in just general
 5 comprehension, or if there's language, knowledge of
 6 English is deficient, how do you balance the time
 7 building up that one area like for a high school kid who
 8 can't read well versus providing access to biology and
 9 whatever.
 10 And how to balance that for either special ed
 11 students or English learners is ambiguous. It's
 12 ambiguous. There's no consensus about that.
 13 Q So if you measure access to the curriculum by
 14 reviewing what each teacher has covered, comparing it to
 15 what the mainstream curriculum is getting, how do you
 16 determine whether maybe a district program is providing
 17 its English learners access to the curriculum?
 18 MS. DAVIS: Vague and ambiguous.
 19 THE WITNESS: I'm telling you how I would begin
 20 to assess that and where I could really probably -- like
 21 if I was suggesting to a team, "Note the absence of
 22 access to the curriculum." I don't know exactly how I
 23 would assess if a district is doing it or doing it
 24 well. I think you can do it a little bit, do it well,
 25 do it poorly, and it's just not a well-defined concept.

1 I think I see it more as a direction the court
 2 pushed the educational community to move towards,
 3 and...
 4 BY MR. AFFELDT:
 5 Q Would you ever give the students in the
 6 district a test to determine if English learners had
 7 learned the same math that native speakers had learned?
 8 MS. DAVIS: Vague and ambiguous, calls for
 9 speculation.
 10 THE WITNESS: I would think most tests would
 11 more show what students have learned and are proficient
 12 at than what the district has provided.
 13 I suppose if you gave a test and not one kid
 14 seemed to have any idea of this whole area of math,
 15 fractions or what an equation was, it's likely that it
 16 wasn't taught to the group of students, but you would
 17 just be extrapolating from tests.
 18 BY MR. AFFELDT:
 19 Q Have you ever extrapolated from test scores to
 20 determine whether or not English learners are being
 21 provided access to the curriculum?
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: Not that I recall.
 24 BY MR. AFFELDT:
 25 Q So when you referenced the WestEd AIR report in

1 your expert report and referenced test scores of -- as
 2 evidence of positive student achievement, in your
 3 testimony you're not making a statement as to English
 4 learner access to the core curriculum?
 5 A I was making a statement about learning
 6 performance, that students seemed to be learning more,
 7 seemed to be reading better, more students were reading
 8 at a higher level.
 9 I don't think from the test scores you can say
 10 they had more access to the curriculum. It's just that
 11 they're reading better, which is a major goal of
 12 education.
 13 And nothing in Castenada indicated any concern
 14 that schools were supposed to teach students how to read
 15 as a common assumption of a goal -- of a major goal of
 16 education or the beginnings of education. That merely
 17 is you teach students how to read and then you do things
 18 with their reading ability in later years.
 19 Q Beyond the issue of reading you weren't making
 20 an assertion about English learner access to the core
 21 curriculum?
 22 MS. DAVIS: Mischaracterizes his testimony.
 23 MR. AFFELDT: I'm not trying to
 24 mischaracterize. I thought I just repeated it.
 25 THE WITNESS: Let me look at the report and see

1 exactly what I said.
 2 I'm not seeing that assertion in my material in
 3 those pages, 16, 17, 18, about access to the
 4 curriculum. I see myself talking about success as
 5 measured by small but some closing of the gap between EL
 6 students and native English speakers and improvements in
 7 reading performance.
 8 BY MR. AFFELDT:
 9 Q What gap are you referring to?
 10 A In the U.S. overall, there tends to be gaps in
 11 achievement between English learners -- many, many
 12 groups of English learners and native English speakers.
 13 And in the AIR report, they spent quite a bit
 14 of time looking at whether the gap was being narrowed in
 15 the years since passage of 227.
 16 Q And a -- a gap on what measures?
 17 A Well, in this case, it would be the SAT 9 was
 18 the State test at that point in time.
 19 Q And what subtests of the SAT 9 were being
 20 discussed in the AIR/WestEd report?
 21 A I need to have the full report in front of me.
 22 I just -- just don't remember if it was a total reading
 23 or parts of reading. I just don't recall this right
 24 now.
 25 Q You don't recall if math was included in that

1 discussion?
 2 A I don't. I think it was, but I really don't.
 3 I just don't recall at the current point in time.
 4 Q But was it your intent to focus here on closing
 5 the gap in reading?
 6 MS. DAVIS: Intent in his report?
 7 MR. AFFELDT: Yes.
 8 THE WITNESS: My intent in the report was to
 9 just try to share some of the -- present some of the key
 10 findings from the AIR/WestEd report that were relevant.
 11 BY MR. AFFELDT:
 12 Q Does this report meet your standards for
 13 professionalism and reliability?
 14 MS. DAVIS: Vague and ambiguous.
 15 THE WITNESS: Yeah. I can't --
 16 MS. DAVIS: Are you talking about the AIR
 17 report?
 18 MR. AFFELDT: Yes.
 19 Q Does the AIR report meet your standards of
 20 professionalism sufficient for you to rely on the data
 21 of the reports?
 22 A I assume that it was honest and it's
 23 essentially a descriptive -- it is a descriptive report,
 24 but it appeared to be honest. It did not appear to be a
 25 highly biased piece of work to me.

1 I have no reason to suspect they fudged the
2 data, or anything like that. So I think -- my sense was
3 I was pleased to see that because there are many things
4 that I read that appear to be biased and this didn't
5 appear to be that way.

6 MS. DAVIS: We've been going for a little over
7 an hour. I need to take a break.

8 THE WITNESS: Yeah, that would be good.

9 MS. DAVIS: I don't think I can --

10 MR. AFFELDT: Can I ask one more question?

11 THE WITNESS: Yeah. We're getting close to --
12 BY MR. AFFELDT:

13 Q The report did two things, as you note in your
14 bullet on the bottom of page 15, top of 16, analyzed
15 demographic and student achievement data and conducted a
16 survey of teachers and administrators.

17 And does -- does your -- did you rely on both
18 aspects of the data that WestEd gathered?

19 A Yes. I looked -- I looked at them and, yeah,
20 read them.

21 Q Your statement about the report being not
22 biased, does that apply to both kinds of data that they
23 gathered and reported?

24 A I actually read this quite a while ago. My
25 memory would say it didn't. Neither part seemed

1 Q Do you have an opinion on whether or not the
2 State should provide guidance to districts on when it's
3 appropriate to transition ELs from structured English
4 immersion to mainstream classes?

5 MS. DAVIS: Same objection.

6 THE WITNESS: Do I have an opinion? I don't
7 have an opinion on that issue.

8 BY MR. AFFELDT:

9 Q Do you think districts should know -- strike
10 that.

11 Do you think districts should receive guidance
12 from the State on what kinds of instruction they should
13 be delivering in structured English immersion
14 classrooms?

15 MS. DAVIS: Same objection.

16 THE WITNESS: I'm not a big "should" person,
17 like "the State should do this," "the schools should do
18 that." Unless we have a really firm knowledge base, I
19 think providing -- states can provide many things, but
20 one thing they can do is long lists of regulations and
21 require documents.

22 Another thing they can do is provide resources,
23 provide access to teachers and professionals to ideas
24 that are promising, show them how to use these ideas.

25 And I think the State -- I would hope the State

1 particularly biased. I mean, there may be a paragraph
2 that was. It just didn't seem that to me from memory
3 but I'd need the whole report in front of me to give a
4 precise, accurate answer to that.

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

6 THE WITNESS: Yeah.

7 (Recess taken.)

8 BY MR. AFFELDT:

9 Q Do you think under Proposition 227 that
10 districts should have roughly the same standard for
11 transitioning English learners from structured English
12 immersion to mainstream classes?

13 MS. DAVIS: Vague and ambiguous.

14 THE WITNESS: Are you saying that all districts
15 in the state should have the same -- roughly the same
16 standards?

17 BY MR. AFFELDT:

18 Q Yes.

19 A I just don't understand the question.

20 (Discussion off the record.)

21 THE WITNESS: I don't -- I don't have a strong
22 opinion on that. I haven't thought much about it. I
23 don't have much context, and I just don't have a strong
24 opinion one way or another on that issue.

25 BY MR. AFFELDT:

1 continues to do that, to provide relevant information as
2 schools and districts implement 227 and instruct
3 English-language learners because, as I recall, prior to
4 the passage of 227, approximately three and four English
5 learners were taught totally in English is what I
6 believe I kept reading in various reports that were
7 coming out at the time.

8 So I think the more the State continues to do
9 in this area would be helpful.

10 BY MR. AFFELDT:

11 Q Do you have an opinion as to whether -- strike
12 that.

13 Do you know whether the State has provided
14 guidance to districts on what kind of instruction they
15 should be providing in structured English immersion
16 classrooms?

17 MS. DAVIS: Vague and ambiguous.

18 THE WITNESS: I don't have precise knowledge of
19 all of the communications from the State to districts.

20 I've read in the AIR/WestEd report that
21 initially there was not much direction during the first
22 year.

23 I'm just not in a position to have a conclusion
24 about that. I don't know enough about it.

25 BY MR. AFFELDT:

1 Q Do you have any other information on that topic
2 other than what you read in the AIR/WestEd report?

3 A Well, I know what I saw in those 30-odd
4 classrooms during those two years of implementation,
5 but -- so I must say, though, I did not -- I know more
6 what I saw.

7 I don't know exactly what guidance the
8 principals or the district superintendent's office or
9 the teachers themselves specifically got from the State.

10 Q Do you have any more information on the type of
11 guidance the State provided on Proposition 227
12 implementation than those two sources that we've talked
13 about?

14 A No, not to the best -- not that I can recall
15 right now. No.

16 Q Did you review the AIR/WestEd first year report
17 as part of your preparation for this --

18 A Yes.

19 MS. DAVIS: Let him finish --

20 THE WITNESS: Oh, yeah. Sure. Sure.

21 Okay. I focused on the more recent, the
22 second-year report, as I recall. And, as I recall, it
23 had a fairly lengthy summary and allusions to the
24 first-year report.

25 BY MR. AFFELDT:

1 speaks for itself.

2 THE WITNESS: I think, again, the document
3 would speak for itself. And, if you'd like, I can go
4 through and see if there are allusions in the document
5 to areas other than reading, if you think that would be
6 a productive use of my time.

7 BY MR. AFFELDT:

8 Q Sitting here right now, though, without going
9 through it, can you think of any opinions that you
10 offered in this document that go to areas beyond reading
11 and reading language arts?

12 A Sitting here right now. I'll think about that.

13 MS. DAVIS: Same objections.

14 THE WITNESS: Yeah. I -- it probably would
15 be -- I just would feel either I should reread it and
16 see if there is any specific allusions in the document
17 or not rely on my memory or read it tonight and come
18 back tomorrow with an answer.

19 BY MR. AFFELDT:

20 Q My question is going to your memory, though.
21 Do you have any specific recollection of
22 referring to "EL access to the core curriculum"?

23 A And by the "core curriculum," tell me what you
24 mean, again, the "core curriculum"?

25 Q The academic content that native speakers are

1 Q Did you review the first-year report itself?

2 A I don't think I did.

3 Q Did you make any -- strike that.

4 Do you offer any opinions in your report as to
5 what the State is doing to help English learners access
6 the core curriculum?

7 MS. DAVIS: The document speaks for itself.

8 THE WITNESS: Yeah. The only way I can answer
9 that question directly as to whether I used that precise
10 phrase would be to reread the whole report now.

11 Do you think that would be a good use of my
12 time as opposed to just having whoever just look at this
13 document and see if it's in there, that phrase?

14 BY MR. AFFELDT:

15 Q Well, I'm not asking that particular
16 formulation -- any particular formulation of words in
17 there.

18 Your report, as I understand it, focuses on
19 beginning reading and reading language arts -- the
20 reading language arts curriculum.

21 My question is: Do you -- are you offering
22 with this report any opinions on the State's programs
23 with respect to accessing the core curriculum for
24 English learners?

25 MS. DAVIS: Vague and ambiguous, the document

1 being taught.

2 A In kindergarten through 12th grade?

3 Q That's right.

4 A I don't recall addressing that very broad issue
5 directly, but focusing in my critique of Hakuta's report
6 on some of the issues that the report that was submitted
7 under his name alluded to in challenging some of the
8 assertions there.

9 I also use some of my knowledge in the act of
10 research on the beginning reading, which has both been a
11 State initiative and a huge research area in U.S. and
12 Canada and Holland.

13 So the material from the AIR/WestEd report does
14 go broader. It's not only on K-3 reading, so there are
15 occasional allusions to it, as I recall, and to some
16 broader instructional principles that go beyond
17 beginning reading.

18 But I did not extend -- expand on those in this
19 document, that I recall.

20 Q Is reading -- the studies that you refer to
21 regarding beginning reading deal with English learners
22 at early grade levels. Is that fair?

23 A Yes. That's what I recall, yes.

24 Q Has similar research been done regarding how
25 English learners at more advanced grade levels compare

1 to native speakers in terms of learning to read?

2 A In the upper grades, kids would no longer be
3 learning to read. You know, there would be
4 reading-related activities, comprehension and with
5 literature, but usually by fourth, fifth, sixth grade
6 you're not teaching students how to read any
7 more. So --

8 Q That's true for native speakers, correct?

9 A Yeah.

10 Q But it's not necessarily true for a new
11 arrival, immigrant, who enters the fourth grade not
12 having any English skills.

13 So --

14 A Yeah, I -- I don't --

15 Q Let me ask the question.

16 A Oh, sure.

17 Q So how does -- has any research been done
18 concerning how best to teach English learners who are
19 newly arrived in fourth grade or beyond?

20 A I'm not --

21 MS. DAVIS: Assumes facts not in evidence.

22 THE WITNESS: Yeah. I'm not aware of this. It
23 doesn't mean it hasn't been done, but I'm not aware of
24 it.

25 BY MR. AFFELDT:

1 "i" has different sounds in the two languages, a short
2 "i," or "e," so that children need to be taught that but
3 can probably learn at a much faster clip than a
4 five-year-old or a six-year-old can learn.

5 So those would be two different pieces of
6 relatively scientific evidence or information you'd
7 have.

8 I think then a program would need to be
9 developed using the resources of the school. And they
10 would vary, depending on all kinds of things, and a
11 program that would work on English development and --
12 English development and reading and then reading things
13 related to other areas.

14 How I would proceed, I don't know of any -- I
15 know districts struggle with this all my years in
16 San Diego and in a briefer period in Denver with
17 programs for recent arrivals.

18 It's just a national struggle -- well, in the
19 U.S., Israel, Holland, England, et cetera. People are
20 not familiar with the key language in the school.

21 BY MR. AFFELDT:

22 Q Is there a difference between a phonological
23 awareness and reading comprehension?

24 A Yeah, yeah. There is a large -- yeah.

25 Q What is that difference?

1 Q How do you think a fourth-grade teacher should
2 teach a newly arrived English learner who has no English
3 skills to read in English?

4 MS. DAVIS: Incomplete hypothetical, calls for
5 speculation.

6 THE WITNESS: Yeah. I would need to know a lot
7 more about the situation.

8 BY MR. AFFELDT:

9 Q What would you need to know?

10 A A few things would be: Can the child read in
11 another language? Is the child literate? What else is
12 available in the school? Is it a school with large
13 numbers of recent arrivals or only one or two per year?

14 Those would be just a few of the things that
15 would help provide an answer.

16 Q And if the newly arrived fourth grader could
17 read in their primary language, how would that affect
18 your approach to teaching the person?

19 A Here there is some descriptive research that
20 would say that when students can read in one language,
21 their phonological awareness, the fact that they know
22 that words are made up of sounds, transfers. So, as a
23 teacher, you would have that information.

24 Another thing that keeps coming up is that the
25 knowledge of sounds, like from Spanish to English, an

1 A Phonological awareness, and, again, they're
2 somewhat microscopic differences there, but, basically,
3 the key to phonological awareness would be knowing
4 "walk" has the three sounds and which is the beginning
5 and the middle, or -- then rhyming is also -- it also
6 includes things like rhyming and other things related to
7 language and sounds, so that's phonological awareness.

8 Reading comprehension is usually defined as
9 the -- you know, a child's understanding -- or a
10 person's understanding of what she or he reads.

11 Now, precise -- precise -- precise
12 operationalization of reading comprehension is something
13 the field has struggled with for many years. There are
14 many ways -- many imperfect ways to assess that. There
15 is a recent article by Isabel Beck that discusses that
16 at length, but basically that one is understanding what
17 you read and the other is awareness of this idea that
18 words are made up of sounds and that -- words are made
19 up of sounds, and so that sets the stage for reading
20 words in any alphabetic language.

21 Q On page 16 of your report, in the second full
22 paragraph at the end of the first sentence, there is a
23 black box.

24 A Okay. I think I can -- yes.

25 Q Is that supposed to be a cite or --

1 A Yes. Let me -- I was actually explaining this
2 to Lynne earlier.

3 Q Okay.

4 A This is kind of like the mosquito in my life.
5 The page is page "X" for Roman X, okay, from
6 the executive summary. But every time somebody has
7 copy-edited it, they always blacken it with the computer
8 and -- or they'll type in a comment, "Russell, find the
9 page number."
10 This is the page number. And, so, then I go
11 through it with one person and I usually have things
12 reviewed by several in the office, so at this version
13 that was sent to Vanessa Koury, just was put back in. I
14 think somebody did a final proof and they left this in
15 there.
16 So it's page X of the AIR report.
17 So the "X," that thing should be removed. I
18 think it's --
19 Q Can you write that in? Do you have a pen?
20 A So to actually write "page" --
21 Q Right.
22 A Okay. That's -- (witness complies).
23 Q -- that's helpful, of the AIR and WestEd
24 report?
25 A Yeah.

1 Q In the sentence immediately after that, it
2 reads, "This suggests that the direction
3 the State is taking makes sense to
4 teachers, and may well be more productive
5 than the earlier emphasis on content areas
6 contained in CLAD and BCLAD
7 certifications."
8 What do you mean when you refer to "content
9 areas"?
10 MS. DAVIS: You may want to read the sentence
11 before to put some context --
12 THE WITNESS: Yeah. Yeah. Yeah. Yeah.
13 Yeah. Yeah.
14 MS. DAVIS: Read --
15 THE WITNESS: Yeah.
16 I believe the point I was trying to make is
17 generally -- well, there have been courses in strategies
18 for teaching content to English learners, just as there
19 have been courses called "strategies for teaching
20 content to students with learning disabilities."
21 And the problem -- the problem with these
22 courses is they're fairly abstracted out, so they go
23 typically from -- a lot from science and social studies
24 and sometimes math, and they assume teaching students
25 in, let's say, these three disciplines is similar.

1 Research in human learning increasingly shows
2 that we do better if it's situated in something when we
3 start, and research in teaching for all children,
4 culturally diverse children, mainstream children, shows
5 that there is a reasoning, a discipline, a language to
6 math, a language to science, a language to history and
7 they're all a little different or a lot different.
8 And, so, it makes lessons to teach these very
9 generic things, use visuals, use gestures, and assume a
10 human can then transfer that from math to science except
11 at very primitive levels.
12 There is more engagement when people learn
13 principles and they're embedded or linked to a
14 discipline. So by the states doing more with English
15 learners in terms of reading, which has been a major
16 thrust for the last three or four years, it seems more
17 potent than the more generic abstracted content area of
18 work that had -- that had been done and is the
19 orientation as I read it in CLAD and BCLAD, or at least
20 in the -- there would be more this generic content area
21 than the discipline-specific.
22 BY MR. AFFELDT:
23 Q I believe you testified earlier that you
24 haven't reviewed specific CLAD courses. Is that
25 correct?

1 A That's correct. I just looked at the -- the
2 topics of the courses from what I knew about, other
3 materials I reviewed and the -- yeah, the way they were
4 framed and the list of courses. Yeah.
5 Q Where did you look at the list of courses?
6 A As I recall, it was in Hakuta's report. As I
7 recall. I may have searched out another document but I
8 think it was in the report.
9 Q You didn't produce to us any such documents, a
10 listing of CLAD courses.
11 A That's why I think it was in Hakuta's report.
12 I don't even know how I would have accessed the CLAD.
13 I don't recall calling up UCLA or wherever to
14 get the CLAD courses, so I wonder if it was -- my memory
15 is it was in Hakuta's report. That's just my memory.
16 Q Do you agree that it's important that all
17 teachers, including those for English learners, are
18 trained in the subject matter that they're teaching?
19 MS. DAVIS: Vague and ambiguous, calls for
20 speculation.
21 THE WITNESS: I can't give a clear answer to
22 that given the diverse -- the different setups we have
23 in elementary and secondary schools.
24 I can give one answer to that. Any answer
25 would -- could be misconstrued because it's so general.

1 BY MR. AFFELDT:

2 Q You don't think it's a general principle that
3 teachers need to have training in whatever subject
4 matters they are teaching to students?

5 MS. DAVIS: Vague and ambiguous.

6 THE WITNESS: I don't -- I don't know that that
7 always is the case. I could think of some examples like
8 I don't know that someone teaching second-grade math
9 using a good math program would necessarily need
10 training as a mathematician. It might help, but I don't
11 know that that's the most important thing if I had to
12 pick the top five.

13 I don't know if people who teach middle school
14 language arts and history and geography need a lot of
15 formal training as historians or geographers.

16 It kind of would be nice, but people can
17 sometimes learn on their own. It's -- it's -- it's not
18 a yes-no subject to me.

19 BY MR. AFFELDT:

20 Q They need enough training to understand the
21 level that they're offering instruction at, don't they?

22 MS. DAVIS: Vague and ambiguous.

23 THE WITNESS: It depends what -- what you mean
24 by "understanding."

25 BY MR. AFFELDT:

1 teaching math needs a Ph.D., but I am asking is whether
2 or not a teacher who's teaching a subject needs to have
3 had some -- needs to be able to understand what it is
4 they're teaching their students.

5 A And I'm telling you how -- these aren't people
6 with Ph.D.s. These -- these -- so, basically, there are
7 many people based on this study teaching sixth-grade
8 math who don't have the understanding of graphing that a
9 good high school math teacher -- a math student has,
10 like I had when I went to high school.

11 So they don't -- in the formal sense, that's
12 what in mathematics understanding graphing means. So
13 that's a lot of what -- "understanding" has so many
14 meanings in a discipline.

15 Now, being able to perform is different than
16 understanding, but it's not something that I can
17 comfortably answer.

18 I can share other kind of anecdotes or
19 information, but the ability to convey information to
20 students is incredibly important and the one research
21 study in math show that tends to be more important, that
22 a teacher's in-depth understanding of mathematics,
23 conveying mathematics, concepts and principles to kids
24 and letting them verbalize those principles seems more
25 important than how much math they know.

1 Q I mean a second-grade math teacher needs to be
2 able to know enough second-grade math to be able to
3 teach it.

4 MS. DAVIS: Is that a question?

5 MR. AFFELDT: Yes.

6 MS. DAVIS: Calls for speculation, vague and
7 ambiguous.

8 THE WITNESS: Actually, in math, some of the
9 research has shown, like the one study I recall the most
10 and I think it's either fifth- or sixth-grade math
11 teachers did not understand -- were teaching graphing
12 did not understand at their fingertips functions and
13 relationships and were not able to fully understand the
14 abstract mathematical bases of graphing and -- the
15 majority.

16 So "understanding" means something different to
17 a math professor than it does to a sixth-grader class.

18 It's not clear that they are ineffective math
19 teachers but they didn't fully understand the discipline
20 of math.

21 And I think you run into that all the time.
22 People who don't have a rigorous understanding of -- of
23 the discipline that they're teaching to children.

24 BY MR. AFFELDT:

25 Q I'm not asking whether or not every teacher

1 But "understanding" is -- we can't give a
2 precise limited -- I said the word "limit," but I'd like
3 to retract that.

4 There are too many meanings to it for me to
5 give an answer.

6 Q And when you say that research that you're
7 aware of indicated that it's more important for teachers
8 to be able to convey the subject, what research are you
9 referring to?

10 A This is research that Deborah Ball conducted,
11 and it was in the National Academy of Sciences report
12 called, "Adding It Up in Mathematics and the Teaching of
13 Mathematics."

14 Q What year was that?

15 A Either -- I believe 2001 or 2002. I think it
16 was 2001.

17 And I'm doing this from memory, but I think
18 that was the source because it surprised me so much,
19 because of the emphasis of math educators on building
20 conceptual understanding in math.

21 Q Based on that research and any other
22 information you're aware of, do you believe it's
23 important that teachers then be able to know how to
24 convey the subject matter they're teaching, whether or
25 not they understand it?

1 A Well, again, there are so many different levels
2 of understanding that is why I get -- have a hard time
3 with that.

4 There is some work Gaea Leinhardt did in terms
5 of trying to understand in both history and math how
6 teachers who are skilled convey information to children
7 and how important that is.

8 And, in some ways, that's related to but not
9 near -- not really this -- not really the same as the
10 teacher's actual understanding of the mathematical
11 concepts, taking the concept and explaining it to a
12 fifth-grader, or like in my case when I used to teach
13 statistics and design to doctoral students, so much of
14 teaching is how do you convey it, how do you get people
15 to talk about it, how do you ask questions so that they
16 understand it. How do you develop exercises so they
17 understand it is so much what teaching is about.

18 And some books and teacher's guides are very
19 good at helping at that, build that in rooms.

20 Q Going back to your point about the problem with
21 the generic courses on strategies for teaching content
22 to ELs, would you be supportive of a teacher preparation
23 course that was subject-specific that did try, in other
24 words, to teach candidates how to convey the California
25 math content standards for teachers who were going to be

1 That issue is not resolved. So things -- I see
2 what's most important is what's covered in teacher
3 training and the professional development activities
4 offered by districts and schools as a totality as
5 what -- is the key to improvement and advancement of the
6 profession.

7 I think one more question and I think it's
8 about break time. Does that sound about right?

9 MS. DAVIS: We're a little before that but if
10 you need to take a break --

11 THE WITNESS: We can go until 12:30 or so?

12 MR. AFFELDT: That would be great.

13 THE WITNESS: Okay. Fine. No problem.

14 BY MR. AFFELDT:

15 Q Do you -- strike that.

16 We talked about previously the -- your notion
17 of immersion as integrating English-language development
18 and concept instruction.

19 What is your understanding of SDAIE?

20 MS. DAVIS: Of what?

21 MR. AFFELDT: "SDAIE," all caps, S-D-A-I-E,
22 which stands for Specially Designed Academic Instruction
23 in English.

24 THE WITNESS: Good.

25 MS. DAVIS: Do you want his understanding of

1 math teachers?

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

4 THE WITNESS: So is the idea -- let me see if I
5 understand your question, John.

6 You're asking me: Should there be a course
7 that helps teachers convey math concepts -- that teaches
8 them ways to convey math concepts like if they're at the
9 elementary level to elementary students or middle school
10 to middle school?

11 Sounds like a good idea to me, sounds like a
12 direction -- yeah, sounds like a good direction for --
13 you know, for course -- education courses to take.

14 I have to add this caveat. One concern I've
15 had with some of the questions about teacher training,
16 and this is an issue no one can resolve, teacher
17 learning -- it keeps coming out, you can't know
18 everything by the time you earn your teaching license.
19 It just -- it has -- it has to keep going. It just
20 can't stop at when someone has a license.

21 So what different people grapple with is, do
22 you just set the stage for things so people can learn or
23 do you try to teach them a lot of different things so
24 they'll have this bag of tricks and hopefully they'll
25 remember it four, six years from now.

1 the entire thing or generally -- general --

2 MR. AFFELDT: Yes.

3 Q What do you understand that term to be?

4 A When we were working actually in some of the
5 professional work groups that led to exhibit -- which
6 one is this -- this is Exhibit 6 or possibly even --
7 Exhibits 5 and 6, we did some work in California because
8 there is a large population here and the term "SDAIE" I
9 was introduced to.

10 And it seemed the way people explain this and
11 this would be professors and various Cal State schools,
12 it was -- it was an attempt -- or very similar to what
13 people had called "sheltered English" or "content area,"
14 "ESL" or what else would they call it? Sometimes
15 "content ESL" seemed similar to that, that it was the
16 idea that it was an attempt to take material from
17 different areas, you know, history, literature, math,
18 et cetera, and do two things with it: Make it
19 accessible to students whose English was limited and
20 also to use it as a venue for English-language
21 development.

22 At least that was my understanding. I am not
23 sure -- I have heard the term used much, much less the
24 last couple of years, but I don't know if the State has
25 changed, you know, no longer uses it.

1 I know one of the better books, at least in my
2 view, by -- calls it "Sheltered English" rather than --
3 excuse me. Sheltered -- "Sheltered Instruction," I
4 believe is what it's called. To me, they're -- one
5 flows into the other.

6 There was a feeling about 10 years ago that
7 "sheltered" was a pejorative term, these poor kids from
8 Laos and Guatemala, we have to shelter them and so
9 people tried other terms.

10 Now, SDAIE has not caught on in California,
11 so -- but I think the ideas of sheltered or sheltered
12 content or content ESL are -- that's my understanding.
13 BY MR. AFFELDT:

14 Q "Sheltered English" is another synonym, isn't
15 it?

16 A I think so, yeah. "Sheltered English."

17 Q And it is sheltered -- I don't know whether
18 your preferred term is "sheltered immersion" I think you
19 said or "structured immersion" --

20 A I don't -- I don't --

21 Q Do you have a preferred term?

22 A I don't like "structured immersion" of them
23 all. I don't --

24 Q Let's use SDAIE.

25 A We could do that, yeah.

1 the goal just became the history, covering the history,
2 getting kids to learn something.

3 So that was the issue we raised for the field
4 to think about so I think it's just still emerging as a
5 field or a discipline, I think.

6 BY MR. AFFELDT:

7 Q Are you aware of the extent to which CLAD
8 training includes English-language development?

9 MS. DAVIS: Vague and ambiguous.

10 THE WITNESS: What I'm not aware of in just
11 looking at the -- from a mixture of looking at the
12 course listings and my conversations with teachers who
13 have been through this was that the orientation was
14 fairly theoretical and fairly oriented to -- still had a
15 lot of linguistic side to it.

16 It's inherently linguistic in theory and theory
17 of assessment and that list we looked at in appendix
18 whatever that was, the one that got misplaced --

19 BY MR. AFFELDT:

20 Q Exhibit 7?

21 A Exhibit 7, a professor could take that list and
22 make a course very theoretical with a few practical
23 exercises or a sequence of courses for very applied,
24 very linked teaching.

25 There could be a lot on assessment or

1 Q Is SDAIE part of your notion of what immersion
2 and immersion -- a good immersion program has?

3 A Yes, it would have something like SDAIE or
4 sheltered approaches, yeah.

5 Q And do you think that a teacher preparation
6 program should try to train future teachers of English
7 learners in SDAIE techniques?

8 MS. DAVIS: Vague and ambiguous.

9 THE WITNESS: Well, I think teachers should at
10 least have some orientation in this, in this approach,
11 the sheltered -- I think I'd probably use like a term
12 like "sheltered approach."

13 But it's unclear whether they learn this better
14 by having their one course in this or seeing it in
15 action as they work on mathematics, reading, history or
16 whatever they may teach, biology.

17 It seems -- I mean, it's a very exciting
18 concept, but when we ran those groups, and it is in my
19 various reports, there was a consistent feeling that the
20 English-language development -- and these were more the
21 people out in the schools either supervising student
22 teachers or the people from like San Diego Unified who
23 are out observing as part of the ESL department -- they
24 felt that the language development got lost, that they
25 more -- one was like a science class or a history class,

1 assessment can be taught as a way to improve
2 instruction, and there's latitude and often professors
3 can gravitate towards the abstract and familiar.

4 So I think the CLAD to me had a tendency -- had
5 a sense that it would tend to gravitate, say, for that
6 one course in SDAIE, or content, could well gravitate
7 towards the abstract and towards a lot on testing and
8 theories and linguistics.

9 And that was a sense chatting with people, that
10 they got -- they found things interesting in terms of
11 the linguistics, you know, learning about language and
12 thinking about it in a very formal sense, but it was
13 more, perhaps, intellectually stimulating and helping
14 them see more about their teaching -- I mean, how to
15 infuse language into their teaching. So --

16 Q And those are the teachers you talked to as
17 part of your Baker-Gersten study?

18 A This was really more -- yeah, some we talked to
19 there and then the ones in the other study with the
20 mid-'90s.

21 Q The '93-94 study?

22 A Yeah.

23 Q My question, though, was: Are you aware of the
24 extent to which English-language development coursework
25 is part of the CLAD training?

1 A And, as I recall, there was a course or two in
2 it and it wasn't clear whether it was -- whether it was
3 aligned towards some of the themes I saw in Exhibit 7,
4 which was really linking it to reading and writing or
5 whether -- which I also saw in the ELA standards for the
6 State, that they -- the theme there is a goal towards
7 linkage of English-language development towards
8 reading -- towards the actual reading curriculum the
9 kids are in.

10 And I would just be surprised if that was the
11 thrust of these courses, because it didn't link things
12 to disciplines and if it doesn't link them to
13 disciplines then you're asking people to do it on their
14 own.

15 So it's possible it's there but nothing led me
16 to believe that was the focus of the CLAD series of
17 courses.

18 Q By the same token, are you aware of the extent
19 to which sheltered approaches are part of the training
20 for CLAD?

21 A And I was more answering that before. As I
22 recall, there is a course in that. And what I'm not
23 aware of is how contemporary it would be in terms of
24 linking it, especially to the actual reading language
25 arts curriculum.

1 THE WITNESS: Second.

2 MR. AFFELDT: Oh. Is there a period?

3 MS. DAVIS: Yeah.

4 MR. AFFELDT: You're right.

5 THE WITNESS: I think these were the points I
6 mentioned this morning about strategies being linked --
7 not linked to natural teaching of various disciplines
8 and skills, and also, that it looked like there was
9 still a big linguistics and theory focus as opposed to a
10 more pragmatic focus.

11 BY MR. AFFELDT:

12 Q Okay. In the next sentence where you say,
13 "Specifically, CLAD and BCLAD courses are designed to
14 help teachers develop skills in language
15 structure/linguistics and ESL methodologies."

16 What do you mean by "language
17 structure/linguistics"?

18 A Essentially, linguistics in the structure of
19 language -- because there are required linguistics
20 courses or applied linguistics courses and that is
21 almost always the content.

22 Q And that -- could you read his answer back.
23 (The record was read as follows:

24 "A Essentially, linguistics in the
25 structure of language -- because there are

1 And I would be surprised if it suddenly
2 reinvented itself with the same course title it had had
3 for 10, 12 years. It's possible but I would be
4 surprised.

5 MR. AFFELDT: This might be a good time to take
6 a lunch break.

7 THE WITNESS: Yeah.

8 (At the hour of 12:35 P.M., a luncheon
9 recess was taken, the proceedings
10 to resume at 1:30 P.M.)

11 (At the hour of 1:50 P.M., the proceedings
12 resumed at the same place, the same
13 persons being present.)

14 EXAMINATION (Resumed)

15 BY MR. AFFELDT:

16 Q Dr. Gersten, if you could look at page 11 of
17 your report.

18 A Okay.

19 Q You may have already covered this in other
20 testimony, but I just want to be clear on what you mean
21 in the first sentence of the first full paragraph when
22 you refer to the "...somewhat antiquated linguistic
23 focus in the CLAD and BCLAD certifications."

24 MS. DAVIS: Where are you? Oh, the second
25 sentence --

1 required linguistics courses or applied
2 linguistics courses and that is almost
3 always the content.")

4 BY MR. AFFELDT:

5 Q What do you mean by "applied linguistics
6 courses"?

7 A I don't recommend -- I don't recollect the
8 exact title of the courses, so sometimes they're called
9 "applied linguistics."

10 Q What is applied linguistics, as you understand
11 it?

12 A Attempts to teach aspects of linguistics to
13 individuals, and that's about all I understand about it,
14 know about it.

15 Q Do you think teachers of English learners
16 should have some understanding of second-language
17 acquisition?

18 A Yes.

19 Q Would that understanding be part of a
20 linguistics or applied linguistics course?

21 A Maybe yes, maybe no.

22 Q You'd have to look at the specific course?

23 A Yeah.

24 Q What, if any, other aspects that might be
25 considered linguistics or applied linguistics do you

1 think teachers of English learners should have some
 2 knowledge about?
 3 MS. DAVIS: Vague and ambiguous.
 4 THE WITNESS: Yeah. It's -- I don't -- I can't
 5 answer the question. I don't -- I don't understand it.
 6 BY MR. AFFELDT:
 7 Q Okay. Is morphology an aspect of linguistics?
 8 A I believe it is.
 9 Q Is phonemic awareness?
 10 A Yes.
 11 Q At least it was when I took --
 12 A Yeah. Yeah.
 13 Q -- linguistics in college.
 14 A Yeah. Yeah. Yep.
 15 Q That's where I learned my definition of
 16 phone --
 17 A Oh, okay.
 18 MS. DAVIS: I won't ask you if that's outdated
 19 now.
 20 MR. AFFELDT: Please don't.
 21 THE WITNESS: Or how I did on my test.
 22 BY MR. AFFELDT:
 23 Q What is the concept of "decoding"?
 24 A "Encoding"?
 25 Q "Decoding."

1 A "Decoding." "Decoding" to me is -- is
 2 correct -- spatially correctly reading a word, and it
 3 usually or almost always entails knowledge of phonemes
 4 and the letter sounds correspondent to the syllables for
 5 longer words and that kind of thing.
 6 Q Is decoding an aspect of linguistics or applied
 7 linguistics?
 8 A I -- I have always thought of it as an aspect
 9 of reading. I'm just unsure.
 10 Q Is decoding a different concept than reading
 11 comprehension?
 12 A Yes.
 13 Q And how is it different from reading
 14 comprehension?
 15 A One is to -- to me, decoding is accurately
 16 reading words, and comprehension is understanding
 17 meanings of written text.
 18 Q Are there any other aspects of linguistics like
 19 morphology, second language acquisition, phonemic
 20 awareness that you think teachers of English learners
 21 should be familiar with?
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: I can't answer that question. I
 24 don't have a comprehensive grasp of linguistics.
 25 BY MR. AFFELDT:

1 Q What do you mean when you refer in that same
 2 sentence to "ESL methodologies"?
 3 A I believe I was going by the list of courses in
 4 the Hakuta report that consist of -- that comprise the
 5 CLAD and BCLAD.
 6 Q Do you -- "ESL" there means English as a second
 7 language?
 8 A Yeah.
 9 Q What do you typically understand to be the
 10 meaning of ESL methodology?
 11 A Varying approaches to teach children and adults
 12 English who already speak another language, a different
 13 language.
 14 Q Would those methodologies include immersion and
 15 sheltered approaches as we talked about earlier?
 16 A That is one approach. That is one approach.
 17 Q Can you name any other approaches?
 18 A Ones that are more formal and -- focus more on
 19 the formal structures of language: Grammar, syntax,
 20 that type of thing.
 21 Q Do you think that courses on ESL methodologies
 22 are -- let me ask it this way.
 23 Do you think it -- it necessary for teachers of
 24 English learners to be familiar with ESL methodologies?
 25 MS. DAVIS: Vague and ambiguous.

1 THE WITNESS: I don't understand the question
 2 as framed.
 3 BY MR. AFFELDT:
 4 Q What don't you understand about it?
 5 A What the word "familiar" is. Like for 10
 6 minutes somebody explains it to him? Is it taking a
 7 full course that covers it?
 8 I don't understand it.
 9 Q Do you think teachers of English learners
 10 should have formal training in ESL methodologies?
 11 A No.
 12 Q And why is that?
 13 A I don't always think teachers find it useful.
 14 It's fairly divorced from the other things a teacher
 15 does. It wouldn't necessarily or -- link at all to, for
 16 example, California's framework where there is a huge
 17 linkage between reading language arts and language
 18 development. And that could happen in an ESL course,
 19 but it would just be a hope that would happen.
 20 Q What if the training on ESL methodologies were
 21 linked to trainings on how to teach specific subject
 22 matters? Would you think that that was an important
 23 component for an English-learner teacher's training?
 24 MS. DAVIS: Vague and ambiguous, calls for
 25 speculation.

1 THE WITNESS: Yeah. I mean, it -- that
2 question is too vague. What -- yeah, it's too vague
3 about what "link" means, what "important" means,
4 depending on what the linkage was, what "important"
5 means. Situations, things are important in one
6 situation and not in others.

7 I can't answer it.

8 BY MR. AFFELDT:

9 Q "Link" is your term, just using terms that you
10 used.

11 But I'm trying to understand whether you're
12 objecting to the isolated course on ESL methodologies,
13 as opposed to that material being integrated into some
14 other kind of course.

15 A My preference is integration.

16 Q So how, according to your preference, should
17 a -- should ESL methodologies be integrated into a
18 teacher-preparation program?

19 A I'm not in a position to conceptualize a full
20 teacher-training program. I don't have that kind of
21 background.

22 I think that I can more just support that
23 concept and present that concept out -- out of
24 integration.

25 Q Can you conceptualize a course in a

1 "methodology" means could be so -- no, I don't.

2 Q It means going to a class like all of us have
3 and being trained on the subject matter in the class.

4 A I'd say no.

5 Q So if I understand your testimony correctly,
6 you don't believe it's necessary for a teacher to have
7 had any exposure to ESL methodologies before they walk
8 into a classroom of English learners?

9 MS. DAVIS: That mischaracterizes his
10 testimony, but --

11 THE WITNESS: I feel it mischaracterizes my
12 testimony.

13 BY MR. AFFELDT:

14 Q Okay. So -- so the answer to my question would
15 be no --

16 A No.

17 Q -- that you don't feel that to be the case?

18 A No, I don't feel "training" as you defined it
19 is necessary.

20 Q Do you feel that teachers of English learners
21 should have had any exposure to ESL methodologies before
22 they walk into a classroom to teach English learners?

23 MS. DAVIS: Vague and ambiguous.

24 THE WITNESS: I think it would be desirable
25 that there be some exposure.

1 teacher-preparation program that would integrate ESL
2 methodologies with --

3 A I don't have that kind of background that I
4 could conceptualize a full course with the details and
5 activities and that kind of level that you would need
6 for it to be -- for it to work.

7 Q Do you think that teachers of English learners
8 should have had training on ESL methodologies albeit in
9 an integrated program before they teach English
10 learners?

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

13 THE WITNESS: Yeah. Yeah. The term
14 "training," it would depend what you mean by "training"
15 and it would depend on what you mean by "the
16 methodologies."

17 MR. AFFELDT: I'm going by the dictionary
18 definition of "training" and the meaning of
19 "methodologies" that you used in your report on page 11.

20 THE WITNESS: So tell me about the dictionary
21 definition of "training."

22 BY MR. AFFELDT:

23 Q You don't understand what the word "training"
24 means?

25 A In this context, no. What "training" and

1 BY MR. AFFELDT:

2 Q Desirable but not necessary?

3 A Yes.

4 Q And why do you think it would be desirable?

5 A Usually, if people have a formal -- a formal
6 sense, or at least some people, they -- it helps them
7 use programs, so that's why I could see it as desirable.

8 But I don't think it's necessary.

9 Q When you say "some exposure," what amount of
10 exposure do you think would be desirable?

11 MS. DAVIS: Calls for speculation, vague and
12 ambiguous.

13 THE WITNESS: I can't speculate there. It
14 would depend upon the person and many other factors.

15 BY MR. AFFELDT:

16 Q And why do you say it's not necessary for a
17 teacher who's going to be teaching English-language
18 learners to have had any exposure to ESL methodologies?

19 A They can be imbued and integrated into reading
20 trainings, writing trainings. They can be imbued and
21 integrated into curriculum.

22 Q Wouldn't that be exposure to "training"?

23 A Not the way you define "training" as taking a
24 formal course.

25 Q I said sitting in a class.

1 A Oh, sitting in the class.
 2 Oh, no, I wouldn't call -- call it that.
 3 Q So I have allowed for the concept of the
 4 training being integrated with some other subject
 5 matter.
 6 My question was: Do you think it's necessary
 7 that they be exposed to any training of any type in ESL
 8 methodologies?
 9 MS. DAVIS: Vague and ambiguous.
 10 THE WITNESS: I -- it's too vague for me,
 11 "training of any type." When training was sitting in a
 12 class, I said no, but I don't -- I'd need to know what
 13 "training of any type" means.
 14 BY MR. AFFELDT:
 15 Q It's your testimony that you don't know what
 16 "training of any type" means here under oath?
 17 A Yes, that's my testimony.
 18 Q Okay. Is it sufficient, according to your
 19 opinion, that a teacher who is walking for the first
 20 time into the classroom to teach English learners has
 21 only been trained on how to teach reading?
 22 MS. DAVIS: Vague and ambiguous, calls for
 23 speculation.
 24 THE WITNESS: Yeah, yeah. I -- I can't answer
 25 that question as framed. I don't understand it.

1 BY MR. AFFELDT:
 2 Q What don't you understand about it?
 3 A The "only trained to teach reading" I don't
 4 understand. I don't think there is a common meaning to
 5 that.
 6 Q What kind of training do you think a teacher, a
 7 new teacher who's walking into a classroom to teach
 8 English learners should have?
 9 A I think the training should create someone
 10 who's proficient in teaching the curriculum that they're
 11 supposed to teach and that students at that level have
 12 skills in managing classrooms and organizing classes so
 13 that instruction is facilitated, have some awareness and
 14 some practice in working with and thinking about the
 15 kind of adjustments that one makes for English learners.
 16 Q Anything else?
 17 A There are many other things that are desirable
 18 but at a minimum that would be there.
 19 Q And when you talk about an awareness of the
 20 practice of the kinds of adjustments one would need to
 21 make to teach English learners, what -- what kind of
 22 training would that -- would provide that awareness?
 23 A I think there are many ways to acquire that.
 24 It's an ill-defined body of knowledge, so there are many
 25 ways that people can acquire it.

1 Q Why don't you give me the variety of ways that
 2 you're familiar with.
 3 A Sometimes people might acquire it from student
 4 teaching or being an instructional assistant with
 5 someone who models and uses those kinds of things.
 6 They can acquire it by diligently using
 7 programs that have that built in, I would think.
 8 They can acquire it by being encouraged to use
 9 their intuitions and maybe debriefing with a peer or
 10 colleague or friend.
 11 They could acquire it through watching videos
 12 or attending a training. They could acquire it from
 13 comprehensive reading workshops. And I'm sure there are
 14 many other ways it could be acquired.
 15 Q What do you mean by "comprehensive reading"?
 16 A Well, comprehensive reading workshops, I think,
 17 would typically include work in developing
 18 comprehension, building vocabulary, teaching kids ways
 19 to talk about -- about what they read and all of that
 20 would be extremely useful.
 21 Q And is it -- could one also acquire that
 22 awareness of how to make adjustments to effectively
 23 teach English learners through a teacher-preparation
 24 program?
 25 MS. DAVIS: Can you repeat that? I'm sorry.

1 Could I just --
 2 MR. AFFELDT: Sure.
 3 MS. DAVIS: Get the last -- can you repeat that
 4 question?
 5 (The record was read as follows:
 6 "Q Could one also acquire that
 7 awareness of how to make adjustments to
 8 effectively teach English learners through
 9 a teacher-preparation program?")
 10 THE WITNESS: It's possible. It would depend
 11 on the person and the amount of practice they needed to
 12 develop that comfort but it certainly is possible.
 13 BY MR. AFFELDT:
 14 Q And is it your belief that a person could --
 15 strike that.
 16 One of your options was diligently using a
 17 program that has it built in. Are -- is the Open Court
 18 or Houghton Mifflin materials an example of that kind of
 19 program?
 20 A I can't give a definitive answer to that. I
 21 don't know them well enough. We were talking in
 22 hypotheticals.
 23 Q Okay. So in concept, what do you mean by
 24 "program"?
 25 A It could be a reading language arts program, it

1 could be an ELD program, it could be one that's
2 independent or linked to the curriculum.

3 Q Would a teacher need to be trained on how to
4 use those materials prior to walking into the classroom
5 for the first time?

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

8 THE WITNESS: Is this someone their very first
9 day of teaching in their life, you're talking about?

10 MR. AFFELDT: Yes.

11 THE WITNESS: They would require -- I hate to
12 use the word "training" because if it means sitting in a
13 class, but they would require relevant -- I don't know
14 what word to use instead of "training," relevant --

15 BY MR. AFFELDT:

16 Q Use "training" and define it the way you want
17 to use it.

18 A Relevant training in that they've used, gotten
19 feedback, thought about, seen models of some of these
20 practices. And it could be in a classroom, it could be
21 in a lot of places. But they should -- yep, I think
22 that would be what would be best.

23 Q But they should have that training, as you've
24 defined it, before they start actually using the
25 materials on children?

1 That's typically how it has been implemented,
2 at least in this state.

3 Q And do you understand that those waivers are
4 obtained by parents who want to see their students in
5 those types of classroom settings?

6 A Yes.

7 Q Do you think that teachers who are teaching in
8 those -- strike that.

9 Before I ask you that, do you think that it's
10 appropriate for parents to be able to determine the type
11 of educational setting for their English-learner child?

12 MS. DAVIS: Vague and ambiguous, calls for a
13 legal conclusion.

14 THE WITNESS: Yeah, that's too broad a
15 question. I -- that's too broad a question for me to
16 answer.

17 BY MR. AFFELDT:

18 Q Do you think that -- am I correct that -- well,
19 let me -- do you have a preferred methodological
20 approach for teaching of English learners?

21 A I don't think I have one precise approach. The
22 one approach that I really don't think is in children's
23 best interests is a half hour a day of isolated ESL
24 instruction for the first couple, few years of school.

25 And just beginning English language reading in

1 A Again, it depends what "should" means. If they
2 don't have that training, I wouldn't fire them.

3 Q But, ideally, you'd want them to have that
4 training in order to have confidence that they could use
5 those materials effectively?

6 A They could acquire the competence by using the
7 materials. They could acquire the competence by
8 simultaneously attending courses or trainings or all
9 kinds of things, so there's a lot of ways it could be
10 acquired.

11 Q Are you aware that there are still bilingual
12 education classes in California's public schools under
13 Proposition 227?

14 A I know there are students on waivers. I don't
15 know that I understand what "bilingual" or what
16 "bilingual education" is, but I do know there are
17 students on waivers who receive native language
18 instruction.

19 Q What do you understand "native language
20 instruction" to mean in that waiver context?

21 A That students learn -- if they come from a
22 Spanish-speaking country or home, they learn in Spanish
23 is usual bilingual education with a little bit of time
24 devoted to English-language development for the first
25 few years.

1 fourth grade, I've seen how horrible it looks and what
2 the kids suffer and I don't like that approach.

3 Q So would you be in favor of some version of
4 primary language instruction if it were modified to deal
5 with those aspects that you don't like?

6 MS. DAVIS: Vague and ambiguous, calls for
7 speculation, incomplete hypothetical.

8 THE WITNESS: Yeah. I don't know what -- there
9 are so many factors in what native language instruction
10 means, what's taken away, that kind of thing, so I -- I
11 can't answer that question.

12 BY MR. AFFELDT:

13 Q So am I correct that you are not universally
14 opposed to the use of native language instruction as the
15 primary means to convey academic content for English
16 learners?

17 MS. DAVIS: Mischaracterizes his testimony.

18 THE WITNESS: That's not an apt
19 characterization.

20 BY MR. AFFELDT:

21 Q I'm not trying to characterize or
22 recharacterize your testimony. I'm just trying to
23 understand if that's your position or not.

24 A I said I'm not universally opposed to some
25 native language instruction for children.

1 (Interruption.)
 2 (Discussion off the record.)
 3 (Record read.)
 4 BY MR. AFFELDT:
 5 Q If an English learner is in a classroom through
 6 a Proposition 227 waiver where they're receiving
 7 academic content through their primary language, do you
 8 think it's appropriate for the teacher to be trained to
 9 provide academic content through primary language
 10 instruction?
 11 MS. DAVIS: Vague and ambiguous, calls for
 12 speculation, incomplete hypothetical.
 13 THE WITNESS: Yeah. I -- I don't know if I
 14 could speculate that -- to what that -- those -- to
 15 answer that question, I don't understand what it's
 16 saying or what it's asking, rather.
 17 BY MR. AFFELDT:
 18 Q What part don't you understand?
 19 A "Trained to present academic content in the
 20 native language," does that mean -- what that means,
 21 does that mean trained how to teach and how to teach
 22 reading, math, science if they're elementary?
 23 Does it mean that all their training is
 24 conducted in Spanish or Korean?
 25 See, that's what -- I'm not sure what it

1 means. They're very different things.
 2 Q Do you think it's appropriate for a teacher
 3 teaching a waiver class to have a BCLAD?
 4 MS. DAVIS: Vague and ambiguous, calls for
 5 speculation.
 6 THE WITNESS: Yeah. I don't know enough about
 7 the BCLAD to be able to answer that question.
 8 Based on the superficial reading, I don't -- I
 9 don't see that much there that's essential for being
 10 able to teach effectively in Spanish or whatever other
 11 language.
 12 BY MR. AFFELDT:
 13 Q Do you know what the requirements are to obtain
 14 a BCLAD?
 15 A I reviewed the requirements listed in the
 16 report, so --
 17 Q The Hakuta report?
 18 A Yeah. So that's my source of knowledge there.
 19 Q Do you have any other source of knowledge on
 20 what the requirements are for BCLAD?
 21 A One other source was just someone I met who
 22 said she enjoyed the classes and learned a lot about
 23 culture.
 24 Q Did she tell you what all of the classes were
 25 that she took to get a BCLAD?

1 A I think I asked and she couldn't remember them
 2 anymore. It had been quite a while back.
 3 Q How many years had she taken them?
 4 A I don't know.
 5 Q Are you familiar with the SB 1969 certificate
 6 in California?
 7 A No.
 8 Q Are you familiar with the SB 395 certificate in
 9 California?
 10 A No.
 11 Q You said that one way that a teacher could
 12 develop awareness of how to make adjustments to teach to
 13 English learners was through videos and trainings?
 14 A That's correct, and I was using "trainings"
 15 there the way school people do, that there are often
 16 these one- or two-day or three-hour things where people
 17 do hands-on activities and are introduced to
 18 techniques. Yeah, so that's what...
 19 Q And how many of those -- how many hours of
 20 training would one need to meet your minimum level of
 21 awareness necessary to teach an English learner?
 22 A I can't answer that question.
 23 Q Why is that?
 24 A I don't think we are close to having an answer
 25 to that. The body of knowledge is -- is fragmented and

1 unclear. People's aptitudes seem to range quite a bit
 2 for doing these things, how well they pick it up, based
 3 on my observations. So I just can't give a number of
 4 hours or credited hours or things like that.
 5 Q Could one hour be enough for some individuals?
 6 A I think it would be unlikely, but I -- I have
 7 seen people who appear to have been self-taught because
 8 there were no trainings in sheltered English and in the
 9 '80s.
 10 Q Again, we're -- assuming in my hypothetical the
 11 person has never stepped into a class for teaching the
 12 ELs yet.
 13 A I just can't answer that question. I can't
 14 give you a number of hours.
 15 Q So you don't have in your mind any standard
 16 course or training that you would minimally want to see
 17 new teachers exposed to?
 18 MS. DAVIS: Asked and answered.
 19 THE WITNESS: I think I -- I think I've
 20 answered that earlier. I don't -- yeah, I think I've
 21 answered that earlier.
 22 BY MR. AFFELDT:
 23 Q And what was your answer?
 24 A That I can't -- I can't give a precise minimum.
 25 No, I can't.

1 Q Turning in your report again to page 16,
2 the last sentence on the page says, "This
3 is a significant accomplishment that
4 contradicts Hakuta's suggestion that
5 California's program will likely lower
6 achievement for English Learners."
7 That is supposed to be "California," I assume.
8 A Yeah. I don't know --
9 MS. DAVIS: Which means: How did it make it
10 through spell check?
11 THE WITNESS: I don't know, either. You got
12 me.
13 BY MR. AFFELDT:
14 Q Can you just note that those letters should be
15 flipped? Thanks.
16 A (Witness complies).
17 Q What is your recollection of what Dr. Hakuta's
18 suggestion was as to how the Prop 227 program "...will
19 likely lower achievement for English Learners"?
20 A My recollection is that he argued that 227 was
21 likely to lower achievement levels of English learners,
22 and that was my recollection.
23 Q And that's your recollection of statements
24 Dr. Hakuta had made in his report --
25 A Yes.

1 Q -- in this case?
2 A That's correct, that's my recollection.
3 (Interruption.)
4 (Discussion off the record.)
5 (Record read.)
6 BY MR. AFFELDT:
7 Q Turning to page 17 of your report, in the first
8 paragraph you discuss achievement results from the AIR
9 and WestEd reports reporting those results.
10 You might have answered this yesterday, but are
11 they reporting on test scores from the SAT 9?
12 A According to my recollection, they are. And I
13 would be -- yeah, I believe they are.
14 Q Are you aware of trends in other states whereby
15 test scores across groups rise after the initial
16 introduction of the -- a new standardized test?
17 A I am aware that that has happened in Texas, and
18 Larry Cuban in an article he wrote mentioned that
19 that does happen. Not all the time, but does happen.
20 Q Did you find Dr. Cuban's article to be
21 credible?
22 MS. DAVIS: Vague and ambiguous.
23 THE WITNESS: It was written probably two or
24 three years ago, so it's just something to be aware of,
25 yeah, that -- not that it always happens.

1 He didn't deal with English learners or ethnic
2 minorities. He just talked about test scores in
3 general.
4 BY MR. AFFELDT:
5 Q I apologize for the pausing, but we're actually
6 saving time.
7 A I apologize for the -- doing this with my
8 mouth.
9 Q I realize we're able to skip over questions
10 we've already done.
11 MS. DAVIS: All right. Very good. I don't see
12 you crossing anything off.
13 MR. AFFELDT: It's happening mentally.
14 Q On page 18 of your report, under the
15 "California's current approach..." et cetera section,
16 the second sentence --
17 A On page 18, what -- just the top paragraph or
18 the second paragraph?
19 Q The second paragraph --
20 A Okay.
21 Q -- the second sentence, you refer to, "...high
22 quality scientific research on beginning reading and
23 linguistics research."
24 A Yeah.
25 Q Is that the research we talked about the other

1 day underlying No Child Left Behind?
2 A Basically, yeah. Yes.
3 Q Anything else that you would add?
4 A Not that I can think of now.
5 Q On page 19, the third full paragraph, the first
6 sentence says, "The approach taken by California
7 calls for infusing an integrating
8 vocabulary instruction and language
9 development activities (ELD services) into
10 the reading and language arts activities
11 in order to reduce that gap over the years
12 students are in school."
13 Is that approach set out in any specific
14 policy, document or legislation or law that you're aware
15 of?
16 A It definitely is laid out in my reading of the
17 ELA standards, that it constantly alludes to. It links
18 language, written and spoken language to reading and
19 writing activities.
20 It definitely was reflected in the State's
21 request for -- demand of publishers that the reading
22 series had to have an English learner's component that
23 was integrated with it that dealt -- covered
24 English-language development, so those are the two
25 things I know of. There may be others.

1 Q You said, "ELA standards." Did you mean "RLA
2 standards"?

3 A No, English Language Acquisition Standards.
4 They are -- they came after the reading standards.

5 Q They came after the Reading Language Arts
6 Standards?

7 A Yeah.

8 Q Are those different from the English Language
9 Development Standards?

10 A I don't -- probably not.

11 I think the document I had called it an ELA
12 standards, but I would think they would be the same
13 thing.

14 Q Is that a document that you reviewed in
15 preparing this report?

16 A I did look at it, so I did review it, yes.

17 Q Do you recall what year those standards were
18 adopted?

19 A My memory would be about two years ago,
20 I would say, but it's just an educated guess.

21 MR. AFFELDT: Lynne, I may have that document
22 or I may be able to get it easily, but if we can't, then
23 we'd like a copy of it, if -- since Dr. Gersten says he
24 did look at it as part of preparing his report.

25 MS. DAVIS: Okay. I'll talk to Dr. Gersten

1 aware necessary in English."

2 First of all, the second parenthetical doesn't
3 have a close parenthetical. Does that come after the
4 word "alphabet"?

5 MS. DAVIS: If you know.

6 THE WITNESS: Yeah, I'm -- that would be my
7 guess, but I don't know for sure so I'd rather not enter
8 it in the exhibit.

9 MR. AFFELDT: Okay.

10 Q Presumably, that would be in the original --

11 A Yeah.

12 Q -- article.

13 Does the "their" in front of "alphabetic
14 knowledge" refer back to ELs or native speakers?

15 A Let me reread it one more time to make sure.

16 It refers to English learners.

17 Q And what does it mean when it says,

18 "...their alphabetic knowledge...and
19 letter sound correspondences...may precede

20 and facilitate the acquisition of

21 phonological awareness in English"?

22 A My interpretation of what they concluded was if
23 you learn to speak in your own language, usually first
24 you have the phonemic awareness and then you merge that
25 with learning the different sounds for letters and you

1 about it --

2 THE WITNESS: Yeah.

3 MS. DAVIS: -- and I'll check to see if it's
4 even in the production.

5 (Interruption.)

6 THE WITNESS: Would this be a good time for a
7 break? I could hang in for 10 minutes but if you're
8 reading something --

9 MR. AFFELDT: Why don't we go 10 more minutes.

10 Q On page 20 of your report, the middle
11 paragraph, you have a quote in the second sentence from
12 Chiappe, et al., and I just need some help understanding
13 the technical aspects.

14 A Sure.

15 Q The quote is, "The acquisition of basic
16 literacy skills for children from both
17 language groups developed in a similar
18 manner... Children learning English may
19 acquire literacy skills in English in a
20 similar manner to NS (native speaking)
21 children, although their alphabetic
22 knowledge (i.e., their knowledge of the
23 English alphabet and letter sound
24 correspondences in English may precede and
25 facilitate the acquisition of phonological

1 become a decoder or a reader.

2 But she's saying that these students who don't
3 have the same familiarity with how sounds blend together
4 in English, because to some of them it's quite a new
5 language with more minimal exposure, sometimes they
6 learn like "b" is a "bu" sound, a "d" is a "du" sound,
7 and that actually helps their phonological awareness
8 because they then, you know, learn to read a word like
9 "deaf" and just get a sense of how it fits together.

10 So that she's saying it's not harmful but the
11 one thing that may be a little different -- that though
12 they develop at about the same rate, which part comes
13 first and second is a little different for these kids.

14 Q Okay. In the next sentence, is that a page
15 reference or a year reference?

16 A It's a year reference.

17 Q And the parentheses after "Bernhart"?

18 A Yeah.

19 Q What year is that --

20 A I believe it's 2000, but I'd rather doublecheck
21 that before entering it.

22 Oh, wait a minute. In the current issue. So
23 it would be 2003, because when I wrote this, it was --
24 this was written in 2003.

25 Q It's not in the reference list.

1 A No.
 2 Q What -- what is the cite to that?
 3 A It would be in Reading Research Quarterly 2003.
 4 Q Okay. In the -- in looking at Footnote 3,
 5 which comes from the first incomplete paragraph on the
 6 page, is that cite referring back to Gersten and Baker
 7 or Gersten and Geva, which is the last two cites
 8 preceding the footnote and appearing on the bottom of
 9 page 19?
 10 A I think I have a way to figure that out.
 11 Q Okay.
 12 A If you look at the reference list, you'll
 13 notice it's Gersten and Baker. Do you see how -- see
 14 how I did it by the page number?
 15 Q Uh-huh. Yes.
 16 A Because 102 is in there and it's not...
 17 Q That's from Gersten and Baker.
 18 And this footnote describes observations that
 19 were made as part of the Gersten and Baker study?
 20 A That's correct.
 21 Q Were they observations that you made,
 22 personally?
 23 A I think one of them -- well, some Baker and I
 24 made jointly, some I made myself, and some he made
 25 himself, so this was kind of an overview of a set of

1 three or four teachers.
 2 Q And does the Footnote 3 observations pertain to
 3 the total of three or four teachers?
 4 A That is my sense, yeah, three or four teachers
 5 who seemed to do this.
 6 Q Did you and/or Dr. Baker conduct all of the
 7 observations as part of the Baker-Gersten study?
 8 A No. This was the one that you now have, and
 9 there was a total of five people who observed.
 10 Of the five of us, Baker was probably in
 11 two-thirds of the classrooms and I was in half,
 12 approximately. Some of the other observers -- one was
 13 only in two classrooms and one was in only one
 14 classroom, so...
 15 Q And in order to engage in the kind of
 16 incorporation of vocabulary activities throughout the
 17 reading lesson and combining it with other literacy
 18 activities as you describe in Footnote 3, would the
 19 average teacher require training to know about how to
 20 engage in those activities effectively?
 21 MS. DAVIS: Calls for speculation, vague and
 22 ambiguous.
 23 THE WITNESS: Yeah, it is pretty speculative,
 24 because I'm weighing that versus telling that or putting
 25 that in the teacher's guide or having them drop into a

1 room like one of these for five minutes, so they pick up
 2 the idea and try it out. Any of those, depending on the
 3 person, could -- could lead to this.
 4 BY MR. AFFELDT:
 5 Q Is Footnote 3 an example of the kinds of
 6 activities teachers should have awareness of in terms of
 7 making adjustments for English-learner instruction?
 8 A I think it's a good approach. I think it
 9 seemed to engage kids and to be aligned with the
 10 objectives of the program, so it seemed good to me.
 11 Q Could the training for this -- these kinds of
 12 activities be built into a pre-service or in-service
 13 training program?
 14 MS. DAVIS: Vague, calls for speculation.
 15 THE WITNESS: It is speculating -- speculative,
 16 but I don't see any reason why not, especially given the
 17 reading series now being used in the state. The series
 18 lend themselves to it very easily.
 19 BY MR. AFFELDT:
 20 Q The far right-hand end of the fourth line down,
 21 should there be a "d" on the end of "provide"?
 22 A Fourth line -- in the footnote?
 23 Q Yes, I'm sorry, in the footnote.
 24 A "...offered and provide." Let me read it one
 25 more time.

1 I believe that is the case.
 2 Q Can you add that in for me?
 3 A (Witness complies.)
 4 MS. DAVIS: Like a proofreader. Like a habit
 5 you can't break or --
 6 THE WITNESS: I think that's what --
 7 MR. AFFELDT: That's what an English major will
 8 do to you.
 9 THE WITNESS: With a linguistics background.
 10 BY MR. AFFELDT:
 11 Q One course.
 12 A One course.
 13 Q And also the quote, there is a quotation mark
 14 at the very end of the footnote.
 15 Is there a -- where is the other end of the
 16 quote, or is the whole thing --
 17 A The whole thing is a quote.
 18 Q Okay. So probably -- that's a quote from the
 19 work?
 20 A Yeah, from the chapter itself, it's page 102.
 21 Q So there to be a quote --
 22 A At the beginning.
 23 Q Could you do that.
 24 A Yeah.
 25 MS. DAVIS: He already did it.

1 THE WITNESS: Yeah. Yeah. Yeah.
 2 MS. DAVIS: He's getting good at this.
 3 THE WITNESS: A copy editor but this is a
 4 different context.
 5 MR. AFFELDT: Okay. Why don't we take a break.
 6 MS. DAVIS: Okay.
 7 (Recess taken.)
 8 MR. AFFELDT: Back on the record.
 9 Q Dr. Gersten, if you could look at page -- the
 10 bottom of page 20 and the top of page 21 of your
 11 report --
 12 A Okay.
 13 Q -- the sentence that carries over reads,
 14 "The most pressing issue for reading
 15 instruction is the preparation of teachers
 16 to ensure that they have the knowledge or
 17 skill to diagnose and assess children's
 18 progress," which is part of a quote from
 19 Bernhart.
 20 A Right.
 21 Q Do you agree with that statement?
 22 A I probably -- I'm -- I'm in agreement in the
 23 main with it, but the only thing I would -- I would
 24 include both diagnosis and instructional strategies on
 25 how to teach the children. But the idea that the core

1 is in reading, you know, in knowing how to teach reading
 2 very well would be so linked to be a good teacher of
 3 English learners because of the linkage of reading
 4 language arts development, if people are knowledgeable
 5 of the kind of things that English learners need.
 6 Q So to "...the knowledge or skill to diagnose
 7 and assess children's progress," you would add "the
 8 knowledge or skill to provide good reading instruction"?
 9 A Yeah.
 10 Q Do you know whether or not California -- all
 11 California teachers of English learners have those two
 12 sets of knowledges and skills?
 13 A I don't.
 14 Q Do you think that those two sets of knowledges
 15 and skills, diagnosing and assessing children's
 16 progress, and may be able to provide good reading
 17 instruction, do you know whether or not those knowledges
 18 and skills are part of California's current teacher
 19 preparation program?
 20 A I think they are in some institutions, but I
 21 don't know. I don't know exhaustively what happens
 22 during teacher training.
 23 Q Don't you think it varies by institution?
 24 A Yes.
 25 Q Do you know -- can you identify for me which

1 institutions you think are providing those -- those
 2 skills as part of their teacher-preparation program?
 3 A I -- I don't know the individual institutions
 4 well enough to know that. I know individual faculty
 5 members, but I'm not -- I can't.
 6 Q The next paragraph reads, "Experts
 7 agree that teachers need training in
 8 reading instruction for English learners,
 9 and that publishers and experts in the
 10 area must develop practical materials that
 11 guide teachers as they teach reading to
 12 English learners. This has been the
 13 demand that the State Board of Education
 14 has placed on publishers of reading
 15 materials for years - to develop programs
 16 that show teachers how to use reading
 17 materials and reading lessons to enhance
 18 vocabulary development, build greater
 19 knowledge of the English syntax, tense
 20 agreement and word order. As a result,
 21 this has been and continues to be a major
 22 priority for publishers such as Houghton
 23 Mifflin, Open Court, Scott Foresman, and
 24 McGraw Hill."
 25 Have you reviewed the materials from the

1 publishers you list here to determine whether or not
 2 they develop programs that show teachers how to use
 3 reading materials and reading lessons to enhance
 4 vocabulary development?
 5 A I have looked at Houghton Mifflin and
 6 Open Court. I have not looked at the others. I haven't
 7 extensively reviewed them, and I've seen Open Court in
 8 action in those rooms we observed in.
 9 I also know authors of all four of the series
 10 or people -- one case, one of the publishers becoming an
 11 author, and I know in their meetings where they
 12 conceptualized the series this issue comes to the fore
 13 all the time as a priority of the publishers.
 14 Q What do you mean by "this issue"?
 15 A The issue of improving the quality for the
 16 materials for English learners, having them being less
 17 vague than in the earlier attempts is, I believe, due in
 18 large part because of the pressure the California Board
 19 of Ed has put on publishers that they're going to have
 20 to meet a pretty stiff criteria.
 21 Q Do you know which version of Open Court -- let
 22 me -- do you know whether the earlier version of
 23 Open Court which you testified you thought was published
 24 in 1998 sufficiently addresses how to teach English
 25 learners?

1 MS. DAVIS: Vague and ambiguous.
 2 THE WITNESS: I think it's hard to answer
 3 because I don't know what "sufficiently addresses" is.
 4 This is a new area for the series. I think we are
 5 better at knowing things that are just essentially close
 6 to useless where it just says, "Use a lot of hand
 7 gestures when you explain the vocabulary words" tends
 8 consistently not to be useful to teachers but I don't
 9 know what "sufficient" is.
 10 BY MR. AFFELDT:
 11 Q What have you done to review the Houghton
 12 Mifflin and Open Court materials?
 13 A I've just looked at them, really scanned them.
 14 I've not done a comprehensive review.
 15 Q Similarly, have you -- have you looked at the
 16 teacher guides at all?
 17 A Yes.
 18 Q Have you similarly scanned the teacher guides?
 19 A That's correct.
 20 Q Have you similarly scanned the English learner
 21 workbooks?
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: I don't know if "similarly." I
 24 have -- I've looked at the support materials for the
 25 English learners in those two series.

1 BY MR. AFFELDT:
 2 Q How thoroughly have you reviewed those?
 3 A It's not been a thorough review.
 4 Q What about the reading intervention materials
 5 for -- I'm sorry, the remedial intervention materials
 6 for grades 4 to 8?
 7 A I have not reviewed those. I focused more on
 8 K-3.
 9 Q So when you looked at the teacher guides and
 10 the English learner supplemental materials, was that
 11 just for the K-3?
 12 A Yes.
 13 Q For both Houghton Mifflin and Open Court?
 14 A Yes.
 15 Q Have you looked at the grades beyond three
 16 materials?
 17 A Very briefly for one series.
 18 Q Which series?
 19 A Open Court.
 20 Q What do you mean when you say "very briefly"?
 21 A I just more looked at it out of curiosity.
 22 Q When you say at the last sentence of the next
 23 paragraph, "California's professional development
 24 requirements are also linked to principles in recent
 25 federal legislation such as No Child Left Behind and

1 Reading First," what do you mean?
 2 A Let me read the paragraph so I can get some
 3 context.
 4 Q Sure.
 5 A What I mean there is in Reading First, the --
 6 they have encapsulated the key principles in beginning
 7 reading to five areas that should be done well and
 8 consistently.
 9 And to me, it's given a focus in the sense of
 10 organization that was lacking, for example, in the
 11 earlier State standards where it was more a list of too
 12 many things, so the -- I see acute value in really
 13 working on these areas that there is a research base.
 14 We have some knowledge of how much a research base there
 15 is. And so that's basically what they meant.
 16 And they include vocabulary and comprehension,
 17 which are easily linked to English-language
 18 development.
 19 So that's what I meant there, that they're
 20 linked to those five key principles and to the
 21 explicitness, focus on the explicitness, adequate
 22 practice, those kinds of things.
 23 Q At the top of page 22, you refer to in the
 24 first two lines, "...beginning reading research
 25 conducted by the National Institutes of Child Health and

1 Development."
 2 Is that research we talked about previously?
 3 A Essentially, yes.
 4 Q Can you give me a cite for that research, since
 5 one is not provided in your report?
 6 A I could give two cites: The National Reading
 7 Panel looked at all relevant research but prominently
 8 featured that work, and that's the 2000 publication.
 9 And there's one that the National Institutes of
 10 Health did that just summarized their own research,
 11 which may be of less value because it's a little more
 12 dated, and I don't know the citation for that off the
 13 top.
 14 Q What is the description of it, as best you can?
 15 A It was given out -- there was a summit on
 16 learning disabilities. I think it was called "Summary
 17 of NICHD Research on Reading" or "Beginning Reading,"
 18 something to that effect.
 19 Q Do you have a year that that came out?
 20 A Let me look at my vita.
 21 May 1999, approximately.
 22 Q What are you looking at in your vita to help
 23 you anchor it?
 24 A The speech, so it's the second from the
 25 bottom. It's the National Summit on Research and

1 Learning Disabilities.

2 Q You made a presentation at that time?

3 A That's correct, yeah, and the gentleman who
4 went before me from the NICHD, there was a pamphlet he
5 had given out, and I believe it had been published
6 somewhere else that summarized their research, so...

7 Q Do you have that pamphlet?

8 A I don't know that I do anymore. It was in a
9 packet for conferences, but I don't know that I saved
10 it.

11 Q Did you review that report at the time?

12 MS. DAVIS: At what time?

13 MR. AFFELDT: At the time that you first became
14 aware of it.

15 THE WITNESS: Briefly, yes.

16 BY MR. AFFELDT:

17 Q Did you review the summary pamphlet or the
18 report itself?

19 A This was a summary -- oh, the National Reading
20 Panel?

21 Q Yeah.

22 A The National Reading Panel.

23 Q I'm sorry. Is this different from the NI- --

24 A Yes, it is.

25 Q Okay.

1 Q Any others?

2 A I think almost -- there are several people who
3 have written about this extensively, numerous articles.
4 Reid Lyon, in particular. Louisa Moats would be another
5 one that I have just read and used this whole range of
6 articles.

7 Q When you refer to "...beginning reading
8 research conducted by the National Institutes of Child
9 Health and Development," are those the -- the two cites
10 that you're -- you were referring to in your report?

11 Or was it --

12 A It was more generically. I mean, because
13 people have continued to do work since 1999, and I have
14 read various reports and journals. And I'm on panels
15 with these people, and I present on things, so...

16 Q And are those people part of reading research
17 conducted by the National Institutes of Child Health and
18 Development?

19 A Yes, yes. So there's a group of people and
20 they continue to do research and they'll present at
21 conferences or meetings and panels.

22 Q Are they being funded by the National
23 Institutes of --

24 A Yes. Yes.

25 Q -- Child Health --

1 A There is such overlap that the --

2 Q I'm talking about the --

3 A NICHD.

4 Q Yeah.

5 A I -- the pamphlet was a summary of various --
6 contributions of various researchers there that had
7 written articles and book chapters, so it wasn't an
8 actual report, it was a summary of their accomplishments
9 and what they learned and so I did review that.

10 Q That's the pamphlet that you don't think you
11 have anymore?

12 A That's correct.

13 Q And is there any greater report that it links
14 to?

15 A I think the National Reading Panel report is a
16 good -- there is a good strong linkage which came out in
17 2000, because they relied extensively on that research
18 and other relevant research supported by other agencies.

19 Q So the National Reading Panel produced a
20 report?

21 A Right.

22 Q So the two cites you have for me there would be
23 the National Reading Panel Report and the Summary
24 Pamphlet from the NI --

25 A -- CHD, yes.

1 A Yes. Yes.

2 Q You have to wait until I --

3 A Oh, okay.

4 Q -- finish.

5 And where can we obtain the National Reading
6 Panel report?

7 A It was massively distributed at the time, so I
8 would say either from -- the U.S. Department of
9 Education website would probably be the easiest and most
10 direct.

11 Q And that was what year?

12 A 2000.

13 Q Do you have a title for that?

14 A The author's -- it was written -- actually, I
15 think the NICHD was jointly supported but I think the
16 NICHD is the key -- would be cited as the author, and I
17 think it was called "Report of the National Reading
18 Panel," but I don't have it memorized.

19 Q In the next sentence it reads, "Indeed, many
20 experts in the field consider California's approach to
21 professional development is to be of high quality."

22 Is the "is" the --

23 A Yes, professor.

24 Okay. I will initial that and hire a new
25 person to do copy editing.

1 Q My services are available.
 2 In that sentence, what -- what do you mean by
 3 "California's approach to professional development"?
 4 A I believe what it says, and I could revisit the
 5 article, was that there -- that there was some citation
 6 indicating -- I mean, that this group did an extensive
 7 study, professional development related to math and
 8 science, concluded that California's professional
 9 development was high quality.
 10 This group determined that coherence was a key
 11 feature in terms of professional development that
 12 teachers perceive to be of high quality and useful in
 13 their classroom teaching.
 14 Q When that article talks about professional
 15 development, is it talking about professional
 16 development generically as opposed to specific
 17 professional development for English learners?
 18 A It is not specific to English learners.
 19 Q Does it mention English learners professional
 20 development at all?
 21 A No, or at least not to the best of my
 22 recollection.
 23 Q In the next sentence in the -- which is a new
 24 paragraph, you refer to "...higher quality instructional
 25 materials..."

1 Higher than what?
 2 A Than what had been used in the past.
 3 Q In California?
 4 A In California than what is used in the other
 5 states, so both kind of comparisons, I think.
 6 Q Do you know if Houghton Mifflin and Open Court
 7 series are used in waiver classrooms in California?
 8 A I don't know in the past if they've been used.
 9 My understanding is they will be used for the English
 10 reading. I don't know for Spanish reading. I think so,
 11 but I just have not really attended much to the native
 12 language instructional materials.
 13 I believe, so, that would be the same -- I
 14 mean, they would also be used there, but I don't know
 15 for sure.
 16 I know there is a Spanish language version of
 17 Open Court.
 18 Q In the second-to-last sentence where you say,
 19 "...the state's recent adoption..."?
 20 A The second to the last --
 21 Q Yes. "As stated above, the state's recent
 22 adoption..." et cetera --
 23 MS. DAVIS: Sorry. You might want to read the
 24 sentence.
 25 BY MR. AFFELDT:

1 Q I just want to know: Adoption of what?
 2 A I was thinking of the adoption of -- of
 3 Open Court, which was adopted several years ago in
 4 Los Angeles, the largest district in the State, was
 5 perhaps a factor in the rise in achievement of English
 6 learners.
 7 And, tied in with that, the two series they
 8 have likely to lead -- continue to lead to improved
 9 outcomes is what I meant, so the fact that the State has
 10 been quite demanding in the reading series that can be
 11 used.
 12 Q Do you know to what grade level the Open Court
 13 reading series goes to?
 14 A I believe sixth grade. I don't know if it goes
 15 beyond that.
 16 Q What about Houghton Mifflin?
 17 A I -- I don't know. I just assume these core
 18 basal reading programs goes to sixth grade. I don't
 19 know.
 20 Q What do you mean by "basal reading program"?
 21 A This is a term --
 22 (Interruption.)
 23 THE WITNESS: -- that was -- has been used
 24 probably for 50 years and now been replaced by the term
 25 "core reading program," but the basal reading series is

1 basic -- it's the core of a reading program.
 2 So when I went to school it was the "Wonderful
 3 Fun with Dick and Jane," Scott Foresman series. So the
 4 workbooks go with it and they had stories, different
 5 types of stories. And they've definitely expanded in
 6 the 50 years since I attended first grade, or close to
 7 50 years.
 8 They have expanded, so they're more
 9 comprehensive in most cases, so -- and those are
 10 typically in most areas in American education what
 11 teachers have used to rely on to teach reading.
 12 BY MR. AFFELDT:
 13 Q You say in the beginning of the final paragraph
 14 on page 22, "California also has high quality content
 15 standards that reflect current research whenever
 16 possible..."
 17 What do you mean by that statement?
 18 A What I meant is the standards in reading
 19 reflect research in areas where there is research, but
 20 where there's no research, it's kind of moot on that.
 21 They seem appealing to me and fairly logical, but I
 22 can't say it reflects high-quality research in all
 23 areas.
 24 Q And are you only referring there to the Reading
 25 Language Arts Content Standards?

1 A Those are the only ones I'm familiar with.
 2 Q And what is the research? Is it the same --
 3 A The same -- the same century's worth of reading
 4 research that I was talking about, yeah.
 5 Q The century's worth?
 6 A Yeah. Actually, yeah.
 7 Q Okay.
 8 A It's accelerated recently, but it is.
 9 Q We've been referring to it as the research that
 10 underlies the No Child Left Behind Act or the Reading
 11 First --
 12 A Yeah, No Child Left Behind. Yeah.
 13 Q Does any of that beginning research focus on
 14 English learners reading?
 15 A Some does. Most does not. Some does.
 16 Q Which -- which research articles or studies
 17 focus on English learners that you are referring to?
 18 A The study by Penny Chiappe and colleagues does.
 19 Some of Esther Geva's work and some of the work she and
 20 I summarized in the article do.
 21 Some of Sharon Vaughn's work does, the study by
 22 Dur -- I'm still not going to pronounce it correctly,
 23 Durgunoglu.
 24 (Discussion off the record.)
 25 MR. AFFELDT: You're pointing to the court

1 reporter --
 2 THE WITNESS: Because we did the spelling this
 3 morning.
 4 I don't know the extent to which the research
 5 that Barbara Foorman and her colleagues have done in
 6 Houston and Washington, D.C. includes English learners.
 7 I just haven't reviewed it with that in mind. My guess
 8 is knowing those districts there would be some and
 9 Houston has an appreciable English-learners population.
 10 BY MR. AFFELDT:
 11 Q When you refer to Chiappe and Geva, are those
 12 the ones cited in your report?
 13 A Yes.
 14 Q And the same with Vaughn?
 15 A Yeah, that study is the one that had the
 16 largest English-learner population. She'd done
 17 something related -- she'd done another one in '96 that
 18 also had primarily English learners in it.
 19 Q Do you know the extent to which teachers in
 20 California have been trained in the Reading Language
 21 Arts Standards?
 22 A No, I don't.
 23 Q Have you reviewed the State's Reading Language
 24 Arts Framework?
 25 A I have looked at over the years -- I get

1 frameworks and standards mixed up, it seems, but I've
 2 looked at both over the years.
 3 And when we developed the observational
 4 instrument with Baker and that group, several members of
 5 the team were very conversant with it so it's infused in
 6 our instrument we developed and artwork.
 7 Q And what is your opinion of the Reading
 8 Language Arts Framework, based on your reviews?
 9 A It seems quite good to me, quite comprehensive.
 10 Q Is it in line with what you believe to be the
 11 current research in the field?
 12 A Yes.
 13 Q Do you have any opinion on the effectiveness of
 14 California's program for teaching reading to English
 15 learners in grades 7 to 12 --
 16 MS. DAVIS: Vague and ambiguous.
 17 Sorry if you're not done.
 18 BY MR. AFFELDT:
 19 Q -- for those English learners who are
 20 newcomers and have not had previous -- and don't have
 21 any skills in English?
 22 MS. DAVIS: Vague and ambiguous.
 23 THE WITNESS: I -- I can't answer that. I
 24 don't have adequate knowledge to address that.
 25 BY MR. AFFELDT:

1 Q And why is that?
 2 A I just haven't reviewed -- I mean, I don't know
 3 exactly what the approach is. I can guess and
 4 speculate, but I'd prefer not to do it. I don't think
 5 it's appropriate.
 6 Q Is your answer the same with respect to the
 7 State's approach for teaching academic content to that
 8 same group of English learners?
 9 MS. DAVIS: Same objection.
 10 THE WITNESS: It's so broad I -- I don't know
 11 what -- I can't answer that.
 12 BY MR. AFFELDT:
 13 Q Why not?
 14 A I don't know what you mean by "the State's
 15 approach to teaching content to English learners in
 16 grades 7 through 12."
 17 Q Are you familiar with California's program for
 18 teaching academic content to English learners in grades
 19 7 to 12?
 20 A I didn't know the State had one approach for
 21 them.
 22 Q Well, what do you understand to be the State's
 23 various approaches for teaching academic content to
 24 English learners in grade 7 through 12?
 25 A I can't answer that, because I don't see a

1 state having an approach in all these areas in middle
2 school and high school and it's consistent and I
3 don't -- if it's true, I'm not aware of that so I can't
4 answer that.

5 Q Are you aware of any other textbook series that
6 you would consider appropriate to fulfill the -- the
7 California approach, as you understand it?

8 Let me ask it in a better way. You've
9 testified in your report that you think California's
10 going in a good direction in terms of conceptually how
11 they have their approach in teaching reading to English
12 learners.

13 And you've given some support to Open Court,
14 Houghton Mifflin as vehicles to carry out California's
15 approach.

16 My question is: Are there other materials
17 which you're familiar with that you also think would be
18 good vehicles for California to carry out its approach?

19 A I'm -- none -- none come to mind. I know there
20 is so much retooling of curricula as we speak because of
21 the changes of No Child Left Behind and Reading First,
22 that things could be very different in 9 months or 12
23 months, so it's a time of such flux but nothing easily
24 comes to mind.

25 MR. AFFELDT: I'm going to hand you what we

1 A Yes.

2 Q When was the last time you looked at the
3 Reading Language Arts Framework?

4 A I think a while ago. Hum. I don't remember.
5 Could have been a couple years ago since I looked more
6 at the standards.

7 Q On page 233 --

8 A I was thinking maybe after this question of
9 taking a break or --

10 MR. AFFELDT: Why don't we take one now.

11 THE WITNESS: Okay. Yeah. Now, because this
12 might be a better point. Yeah.

13 (Recess taken.)

14 BY MR. AFFELDT:

15 Q Do you have an opinion as to how long it takes
16 an English learner to become proficient in academic
17 English and --

18 MS. DAVIS: Vague --

19 BY MR. AFFELDT:

20 Q -- and as part of that hypothetical, let's
21 assume we have an English learner with no prior skills
22 in English starting in kindergarten.

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

25 THE WITNESS: I don't think I can answer that

1 will mark as Exhibit 8, I believe.

2 (Gersten Exhibit 8 was marked for
3 identification by the court reporter
4 and is bound separately.)

5 (Discussion off the record.)

6 BY MR. AFFELDT:

7 Q This is a portion of the Reading Language Arts
8 300-page framework, and it is a faint "7" on the second
9 page, but it's Chapter 7 of Section 7, if you look in
10 the upper right-hand corner. "Universal Access to
11 Language Arts Curriculum."

12 This is the section I wanted to ask you some
13 questions about. If you could just take a look at it
14 and see if it looks -- let me know if it looks familiar
15 to you.

16 A I probably saw it years ago but have not --
17 I've looked much more at the standards than this
18 framework.

19 I've not read this thoroughly, but I've looked
20 through every page to get a sense of it and probably
21 spent more time on English learners and the least on the
22 advanced or accelerated learners.

23 Q Does this refresh your recollection as to
24 what's in the California Reading Language Arts
25 Framework?

1 in part. I don't know of any -- any research that
2 really documents that.

3 There are people who discuss this, but I don't
4 know of any research that documents the -- the process
5 or different trajectories of kids or even has really
6 defined what "proficient in academic English" means.

7 BY MR. AFFELDT:

8 Q Do you have an opinion of how long it takes our
9 same hypothetical kindergarten English learner to become
10 proficient in English?

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

13 THE WITNESS: Yeah. It seems -- there is no
14 clear definition of what that means. I don't know.

15 BY MR. AFFELDT:

16 Q Are you familiar with the term RFEP?

17 A More recently I've become familiar with that,
18 so it's reclassified as fluent in English proficiency.

19 Is that correct?

20 Q Correct.

21 Using the category of RFEP as the
22 classification for becoming proficient in English, do
23 you have an opinion as to how long it should take the
24 average English learner starting with kindergarten to
25 become reclassified as fluent in English proficiency?

1 MS. DAVIS: Same objections.
 2 THE WITNESS: I don't and, actually, if the
 3 State has such data, I don't have access to that.
 4 BY MR. AFFELDT:
 5 Q My question is not an empirical one but more:
 6 Do you have an opinion of how long you think that
 7 process should take?
 8 MS. DAVIS: Same objections.
 9 THE WITNESS: No.
 10 BY MR. AFFELDT:
 11 Q Why is that?
 12 MS. DAVIS: Vague and ambiguous.
 13 THE WITNESS: Because I just don't -- I don't
 14 have an opinion. I don't know enough to give an answer
 15 to that or have even an opinion about that.
 16 BY MR. AFFELDT:
 17 Q What more would you need to know?
 18 A I'd like to see -- I'd like to see empirical
 19 studies that trace what happens to kids over time.
 20 I think there is some research beginning from
 21 NICHD that is doing that, using language measures and
 22 doing it systematically, so that would help me
 23 understand this better or maybe venture guesses.
 24 I don't know that we know enough about
 25 individual trajectories and language. I know for native

1 speakers, they are huge. You know, kids the same age,
 2 there is a huge span.
 3 Reading seems to somewhat play a role in it, as
 4 does sophistication of language in the house. I just
 5 don't know.
 6 Q Are you aware of other academics in the
 7 English-learner field who have opined that they should
 8 take "X" amount of time to -- for English learners to
 9 become proficient?
 10 A Yes, I am.
 11 Q But it's your opinion that you don't -- you're
 12 unwilling to or -- I don't mean to cast aspersions, but
 13 you do not have an opinion on --
 14 A That's correct.
 15 Q -- that specific question?
 16 A Yeah.
 17 Q Okay. On page 236 of Exhibit 8, the last
 18 sentence in the first column which carries over to the
 19 top of the next, second column, reads,
 20 "English-language development occurs
 21 daily; is specifically identified within
 22 the curriculum of the school district and
 23 the school; and is supported by
 24 high-quality instructional materials, a
 25 sufficient amount of instructional time,

1 and professional development for
 2 teachers."
 3 Do you agree with that statement as a means by
 4 which to provide English-language development to English
 5 learners?
 6 A I do in the context of the sentence that
 7 follows it, which helps situate it.
 8 Q Do you want to read that?
 9 A Sure. "Language development and
 10 literacy instruction are integrated with
 11 the basic instructional materials and
 12 should be specifically identified in the
 13 teacher's edition as differentiated
 14 instruction for students not fully
 15 proficient in English."
 16 Q Okay. Do you know whether Houghton Mifflin and
 17 Open Court satisfy those goals --
 18 MS. DAVIS: Vague and ambiguous.
 19 BY MR. AFFELDT:
 20 Q -- laid out in those two opinions?
 21 MS. DAVIS: Vague and ambiguous.
 22 THE WITNESS: I couldn't -- I'm not in a
 23 position to assess their -- I know they aspire to do
 24 that, to give an answer as to how successful they are.
 25 BY MR. AFFELDT:

1 Q You're not in a position to give an answer as
 2 to how successful they are --
 3 A They are, yeah.
 4 Q And that is because you haven't reviewed those
 5 materials that thoroughly?
 6 A And I haven't seen the Houghton Mifflin in
 7 action. It's just been beginning to be used in schools
 8 as of next month.
 9 Q Do you think you have the expertise to make
 10 that assessment?
 11 MS. DAVIS: To make the assessment that they
 12 satisfy the goals?
 13 MR. AFFELDT: That's -- it is a confusing
 14 question.
 15 THE WITNESS: Yeah.
 16 MR. AFFELDT: I'll withdraw it.
 17 I'm going to hand you what we'll mark as
 18 Gersten Exhibit 9.
 19 (Gersten Exhibit 9 was marked for
 20 identification by the court reporter
 21 and is bound separately.)
 22 BY MR. AFFELDT:
 23 Q And this is a document which purports to be
 24 from the State Board's website. And it's entitled,
 25 "State Board Policy on K-8 Instructional Materials for

1 English Learners" and includes various documents which
2 are bullet-pointed in the table of contents on the first
3 page.

4 Take a moment --

5 MS. DAVIS: What is the date of this?

6 THE WITNESS: I think it said 2001 somewhere.

7 Oh, 2000 --

8 MR. AFFELDT: The date that it was printed off
9 of the website was 7-11-2001, but the first document at
10 least is a memo to members, Board of Education, from
11 John Mockler, then Executive Director of the State Board
12 of Ed, dated March 29th, 2000.

13 MS. DAVIS: Do we know -- this whole document
14 was put together in what year?

15 MR. AFFELDT: At what time?

16 MS. DAVIS: Yes. It's just not clear to me if
17 this is -- you know, when this entire document was
18 prepared.

19 MR. AFFELDT: I believe that was the case, but
20 I don't know for sure.

21 As you'll see from the Bates stamp, it was a
22 document produced by plaintiffs to defendants in
23 response to I believe requests about materials that we
24 had obtained in our research.

25 MS. DAVIS: Uh-huh.

1 A It's too broad a question to answer.

2 Q Well, looking in this context pertaining to
3 instructional materials for adoption in kindergarten
4 through eighth grade, one of the Board's policy lays out
5 here seven bullet points.

6 If you could review those seven bullet points
7 and let me know if you agree that they are components of
8 the extra assistance that English learners need to
9 successfully complete grade-level content.

10 A They're a way to frame -- frame an approach.

11 Q The second-to-the-last bullet from the bottom
12 says, "Connect the additional materials to the basic
13 program being taught in the regular classroom."

14 Do you agree that that's necessary that, in
15 other words, the supplemental materials for English
16 learners should connect to the basic program being
17 taught native speakers in the regular classroom?

18 A My -- my opinion is that it's a compassionate
19 thing to do for the students. It makes language
20 learning easier and has the possibility of helping them
21 succeed, so I guess yes, my opinion is yes.

22 Q Being compassionate, is it also necessary in
23 order to assist the English learner in accessing
24 grade-level content?

25 MS. DAVIS: Vague and ambiguous, calls for

1 BY MR. AFFELDT:

2 Q If you could just take a quick look at at least
3 the -- maybe you've already leafed through it?

4 A No, I haven't.

5 MS. DAVIS: It's 40 pages.

6 THE WITNESS: Yeah. Is there anything in
7 particular --

8 MS. DAVIS: It takes a long time to even skim
9 something like this.

10 THE WITNESS: Yeah.

11 BY MR. AFFELDT:

12 Q Have you ever reviewed the memo from John
13 Mockler to the State Board on "State Board Policy on K-8
14 Instructional Materials for English Learners"?

15 A No, I have not.

16 Q So these are not familiar documents to you?

17 A No, they are not.

18 Q If you could look on the third page in, which
19 bears the Bates No. PLTF 42226, the fourth paragraph
20 down, the first sentence says, "English learners need
21 extra assistance to successfully complete grade-level
22 content." Do you agree with that statement?

23 A Yes.

24 Q And in your view what kind of extra assistance
25 do English learners need?

1 speculation.

2 THE WITNESS: It would be speculating. I would
3 guess it wouldn't be necessary, that kids could have a
4 more traditional program and still learn. I think
5 probably fewer would learn, but certainly the kids would
6 learn English if it was a more isolated program, so I
7 don't think it's necessary.

8 MR. AFFELDT: Could you read this answer back,
9 please.

10 (The record was read as follows:

11 "THE WITNESS: It would be
12 speculating. I would guess it wouldn't be
13 necessary, that kids could have a more
14 traditional program and still learn. I
15 think probably fewer would learn, but
16 certainly the kids would learn English if
17 it was a more isolated program, so I don't
18 think it's necessary.")

19 BY MR. AFFELDT:

20 Q What do you mean by "a more traditional
21 program"?

22 A Where it's just an isolated ESL program like
23 some of the ones used with adults for various programs
24 districts have used in the '80s and '90s.

25 Q If I heard your answer, it was saying that kids

1 would still learn English.
 2 A Yeah.
 3 Q But my question went to not English but the
 4 academic content that was being taught in the regular
 5 classroom in order for that -- for English learners to
 6 access academic content being taught to the native
 7 speakers, should their supplemental EL materials cover
 8 the same content that the regular classrooms -- the
 9 regular lesson does?
 10 A I think that I can't answer if it's
 11 necessary. It seems that it's helpful, but I just can't
 12 answer.
 13 Q If you could turn to page 12 of 37, if you're
 14 going by the numbering on the top.
 15 MS. DAVIS: Where?
 16 MR. AFFELDT: On the top right-hand corner,
 17 page 12 of 37.
 18 MS. DAVIS: I don't have it.
 19 THE WITNESS: Mine aren't --
 20 MS. DAVIS: Yeah. I don't have the number.
 21 MR. AFFELDT: Maybe it got cut off on yours.
 22 Then look at the Bates No. on the bottom and
 23 it's PLTF 42235.
 24 Q The last section with the bullet points, it has
 25 a small "a," "English Learners - criteria for 30-45

1 BY MR. AFFELDT:
 2 Q My question is: In order for English learners
 3 to master the English Language Arts Content Standards
 4 like their native-speaking peers, is it necessary that
 5 their supplemental materials help teachers teach English
 6 learners to access the content standards?
 7 MS. DAVIS: Same objection.
 8 THE WITNESS: To me, I would say yes, because
 9 it seems tautological to me. They're going to master
 10 these standards, so the answer would be yes, because
 11 it's tautological.
 12 BY MR. AFFELDT:
 13 Q The second bullet says, "Lessons address
 14 the various English language proficiency
 15 levels of English learners as determined
 16 by the state-approved English Language
 17 Development Test (in development)."
 18 MS. DAVIS: Can I just ask a question?
 19 MR. AFFELDT: Yeah.
 20 MS. DAVIS: Where does this page fall in the
 21 table of contents? I'm just wondering what document
 22 this is or -- or the subchapter? It looks like a whole
 23 list of things put together.
 24 MR. AFFELDT: It is the fourth bullet down,
 25 "2002 Language Arts Adoption Criteria."

1 minutes of additional instructional materials."
 2 Do you see that section?
 3 A Yeah.
 4 Q The first bullet says, "Materials help
 5 teachers teach English learners to master
 6 the English-Language Arts Content
 7 Standards - notably, to read, write,
 8 comprehend and speak it personally and at
 9 academically proficient levels."
 10 Do you think that's a -- that it's necessary
 11 for supplemental EL materials to help teachers teach
 12 English learners mastery of the English Language Arts
 13 Content Standards?
 14 MS. DAVIS: Vague and ambiguous, calls for
 15 speculation.
 16 THE WITNESS: Necessary for what?
 17 BY MR. AFFELDT:
 18 Q Necessary for English learners to access the
 19 English Language Arts Content Standards.
 20 A To master the English Language Arts Content
 21 Standards?
 22 Q Yes.
 23 MS. DAVIS: And your question is: Is it
 24 necessary?
 25 THE WITNESS: I think --

1 MS. DAVIS: Okay.
 2 MR. AFFELDT: "WEB Version, 1/31/2000."
 3 MS. DAVIS: Thank you.
 4 BY MR. AFFELDT:
 5 Q Presumably, the English Language Development
 6 Test is what we now know to be the CELDT?
 7 A That's my understanding.
 8 Q Do you believe that it's important that lessons
 9 within the instructional materials adopted by the State
 10 Board address the various English-language proficiency
 11 levels of English learners as determined by the CELDT?
 12 MS. DAVIS: Vague and ambiguous.
 13 THE WITNESS: Would I -- I don't understand
 14 what "important" means in this context.
 15 BY MR. AFFELDT:
 16 Q The context is trying to -- the State's trying
 17 to adopt instructional materials that will help English
 18 learners to read and to access the language arts content
 19 standards.
 20 In that context, should those instructional
 21 materials address various proficiency --
 22 English-language proficiency levels of English learners
 23 as determined by the CELDT?
 24 A It seems logical to me that the materials would
 25 address what the kids are being tested on, so it seems

1 logical.
 2 Q Do you know how many proficiency levels the
 3 CELDT has?
 4 A No, I don't.
 5 Q Do you know whether the lessons in Open Court
 6 and Houghton Mifflin address different levels of
 7 proficiency?
 8 A I don't.
 9 MR. AFFELDT: This is probably a good breaking
 10 point for today.
 11 MS. DAVIS: Okay.
 12 MR. AFFELDT: I don't think I'll be done by
 13 noon tomorrow.
 14 MS. DAVIS: Okay.
 15 THE WITNESS: Okay. So I'll plan on the full
 16 day, and we'll know about the intervenor at some point?
 17 MS. DAVIS: Yeah. We'll probably hear
 18 something from them in the morning if they want to go.
 19 I guess we'll just kind of keep them apprised of our
 20 progress.
 21 THE WITNESS: Yeah. Okay.
 22 (At the hour of 5:09 P.M., the deposition
 23 was adjourned until 9 o'clock A.M.,
 24 Thursday, July 31, 2003.)
 25 //

1
 2
 3
 4 I, the undersigned, a Certified Shorthand
 5 Reporter of the State of California, do hereby certify:
 6 That the foregoing proceedings were taken
 7 before me at the time and place herein set forth; that
 8 any witnesses in the foregoing proceedings, prior to
 9 testifying, were placed under oath; that a verbatim
 10 record of the proceedings was made by me using machine
 11 shorthand which was thereafter transcribed under my
 12 direction; further, that the foregoing is an accurate
 13 transcription thereof.
 14 I further certify that I am neither
 15 financially interested in the action nor a relative or
 16 employee of any attorney of any of the parties.
 17 IN WITNESS WHEREOF, I have this date
 18 subscribed my name.
 19
 20 Dated: _____
 21
 22 _____
 23 LORI SCINTA, RPR
 24 CSR No. 4811
 25

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 8
 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)
 17
 18
 19
 20
 21 _____
 RUSSELL GERSTEN, Ph.D.
 22 Volume 3
 23
 24
 25